EMPLOYMENT TRIBUNALS

Claimant: **Ms S Fox**

Respondent: **South Essex Academy Trust**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **28 May 2021**

Before: **Employment Judge A Ross**
Members: **Mrs M Long**
Mr D Ross

Representation
Claimant: In person
Respondent: Ms S Brewis, Counsel

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT WITH REASONS FOLLOWING RECONSIDERATION

UPON a reconsideration of the judgment dated 22 June 2021 under rule 73 of the Employment Tribunals Rules of Procedure 2013 on the application of the Claimant and with the consent of the Respondent at the hearing on 15 June 2022, the Tribunal has reconsidered its award of interest and has substituted the figure underlined for that contained in the original judgment and increased the judgment sum accordingly

The judgment of the Tribunal is that:-

1. The Respondent shall pay the Claimant compensation in the sum of £6,733.32 assessed as follows:

1.1 Damages for injury to feelings: £5,000;

1.2 Interest: £1,733.32.

REASONS

Introduction

1. The procedural background in this Claim is set out in the Judgment and Reasons promulgated on 14 November 2018 and the Judgment and Reasons promulgated on 22 March 2021 ("the March 2021 Reasons"). It is not necessary to repeat this background.

2. In the March 2021 Reasons, the Tribunal concluded that the Respondent had breached the duty to make reasonable adjustments by not providing the Claimant with all the documentary evidence relevant to her grievance prior to the grievance hearing on 31 March 2021. The case was listed for a remedy hearing.

The adjustments for the remedy hearing

3. Prior to the remedy hearing, on 25 May 2021, the Claimant applied in writing to the Court because there had been a dispute over whether her documents, as highlighted, could be included in the bundle. The application was supported by a letter from her GP, dated 25 May 2021. This application was swiftly resolved by a direction from Employment Judge Russell that such documents should be included and that arguments as to the evidential weight to be attached to them could be made. (In the event, the Tribunal's decision did not turn on those documents nor the weight to be attached to them.)

4. The remedy hearing was listed as a CVP hearing. This was the first time that the Claimant had attended the Tribunal by CVP. At the outset of the Remedy Hearing, because she appeared visibly anxious, the Tribunal checked whether the Claimant was ready to proceed. She was upset and explained that it was because she was facing two employees of the Respondent (Ms. Calahane and Mr. Harbrow) who had been witnesses in the liability hearings, and who were attending the hearing as lay clients, with the Respondent represented by Counsel. The Claimant was upset even though their cameras had by that stage been switched off.

5. After a short adjournment, Counsel confirmed that she had authority to proceed without the attendance of Ms. Calahane or Mr. Harbrow, but that she may need an adjournment to take instructions. The Tribunal agreed to proceed on that basis; and in the event, Ms. Brewis did not need to take further instructions.

6. Before commencing the evidence, the Tribunal confirmed with the Claimant that she was ready to proceed; she confirmed that she was.

7. At the conclusion of the evidence, the Tribunal checked whether the Claimant was ready to proceed to submissions; she confirmed that she was ready.

8. The Tribunal proceeded to hear submissions from each party, and then reserved judgment because there was insufficient time to hold in chambers discussion of the issues, draft conclusions and deliver a comprehensive oral judgment. Moreover, the Tribunal was aware of the Claimant's impaired ability to process information. The Tribunal considered it preferable for the Claimant to receive a decision in written form.

9. The Tribunal witnessed, as it had at the previous hearings in the case, that a formal Tribunal hearing did cause the Claimant's symptoms of her impairment of anxiety, including signs of distress; and the Claimant explained why this was the case in her evidence and submissions at the remedy hearing. In terms of reasonable adjustments, the Tribunal were satisfied that every reasonable adjustment that could have been made to address the substantial disadvantage caused by a Tribunal hearing was made. The Claimant did not suggest any further adjustment.

The Issues

10. At the outset of the hearing, the Tribunal clarified the issues of compensation between the parties. These were as follows:

10.1 What general damages should be awarded for injury to feelings?

10.2 Whether any award of special damages in respect of lost wages should be made? If so, what amount should be awarded?

11. At the outset of the hearing, noting the absence of any expert medical evidence prepared for the remedy hearing, the Tribunal asked the Claimant whether she was advancing a claim for personal injury as a distinct head of loss, because this was unclear from her written evidence. The Claimant explained that she was not confident as to how a claim for personal injury could be brought, and that she understood that it could potentially be included within the claim for injury to feelings, which is how she had decided to proceed.

The evidence

12. There was a bundle of documents prepared by the Respondent (pp 1-498). Each party and each Member of the Tribunal had been sent an electronic copy of the bundle. There was no complaint at this hearing that the bundle did not contain all the documents that the parties sought to rely upon.

13. The bundle included the following documents:

13.1 Extracts of the Claimant's GP notes and other medical records and medical appointment letters;

13.2 The Claimant's updated schedule of loss;

13.3 The Respondent's counter-schedule of loss.

14. In terms of witness evidence, the only witness at the remedy hearing was the Claimant. The Tribunal pre-read a detailed witness statement from her.

15. As in the earlier hearings, the Tribunal assisted the parties by asking questions designed to clarify the Claimant's evidence. The Claimant was then cross-examined. The Claimant was then given an opportunity to add any further evidence, as if in re-examination; but she felt she did not need to do so.

16. The Tribunal found that the Claimant's oral evidence was difficult to follow in places, in part because of her perception that the single act of discrimination found to be proved

was a critical and overarching event, which had had several effects. The Tribunal found that this perception, whilst honestly held, was not reliable. This perception was, on balance, inconsistent with the evidence.

Background facts

17. It is important to set out some context for the relevant findings of fact at this hearing taken from the findings of fact in the March 2021 Reasons:

17.1 The Tribunal found that the Claimant could not attend the grievance hearing on 31 March 2017 because of the adverse effects of her mental impairment combined with the failure to provide her with the relevant grievance documentation.

17.2 The fact that the Claimant did not receive all the relevant documents prior to the grievance was the result of error and oversight; Ms. Wiggs proceeded with the grievance hearing unaware that the Claimant had not been sent all the relevant documents.

17.3 The grievance outcome reflected the documentary evidence before Ms. Wiggs; she had reached her conclusions for the reasons set out in the decision letter.

17.4 The Claimant received the documents relevant to the grievance at different times after the grievance hearing as explained in paragraphs 69-72 of those Reasons.

17.5 The breach of the duty to make reasonable adjustments proved was not a cause of the resignation.

Findings of Fact

18. The Claimant's evidence was that the discriminatory act covered the period from 21 February to 31 March 2017, when the grievance hearing took place in the absence of the Claimant. We accepted that the failure to disclose relevant documentation did extend over that period, but also that relevant grievance documents were provided at different times after 31 March 2017, including after dismissal, and that on each disclosure the Claimant did suffer some degree of injury to feelings in the form of feelings of hurt, distress and anxiety.

19. As explained in our findings of fact in the March 2021 Reasons, we found that the Claimant's failure to attend that hearing had made no difference to the outcome of the grievance.

20. The central point in the Claimant's evidence was that the failure to disclose all the grievance documentation to her before the grievance hearing was an act of discrimination which had had far-reaching and long-lasting consequences – which she described as overreaching everything. It had meant that she could not get closure. In essence, her evidence was that although she was unfit for work at the time, her condition was improving with the assistance of medication and counselling; and that, over time, if she had had a chance to put her case at the grievance hearing, she would have returned to work, as she had done after her sickness absence over 2014-2015, after her grievance was heard by a

director and after she felt that she had been heard. The Claimant stated that, because of the failure to make reasonable adjustments, the medical evidence showed that her symptoms of mental illness had deteriorated, that she had started a new anti-depressant medication (sertraline) over the relevant period, and that a neurology referral had been made for her at that time. As for medical evidence, the Claimant identified her GP letter at p.357, her GP notes, documents in respect of the neurology referral and cognitive therapy, and the referral for a mental health assessment.

21. The Tribunal did not accept the thrust of the Claimant's evidence. We considered that although the Claimant held this perception, her memory was unreliable due to her negative perception of the Respondent arising from the events detailed in our earlier sets of Reasons and because of the anxiety and distress caused by the number of work-related matters complained of by the Claimant which were not acts of discrimination. We reached this conclusion by considering her evidence at this hearing and weighing it against the primary facts already found in the liability hearings and the further documentary evidence at this remedy hearing. The Tribunal reached the following findings of fact.

22. As the Claimant accepted, the act of discrimination proved did not cause the mental impairment of the Claimant. There were several other events which were stressors for the Claimant, before the act of discrimination proved. These were evidenced by the several complaints made in this Claim.

23. Over a period of time, these various stressors had caused or contributed to the stress-related impairment. The Tribunal found that it was unlikely that the act of discrimination had the broad, overarching, effect that the Claimant alleged.

24. The Claimant had started anti-depressant medication, citalopram, in January 2015, and commenced therapy in late in 2014 which continued into 2015. This treatment was required well before the act of discrimination, indicating that the symptoms of her impairment required measures to be taken to ameliorate them before the failure to provide her with all the grievance documentation. A central stressor for the Claimant concerned her pay and pay appeal. We explained our findings and conclusions on those issue in our November 2018 Reasons.

25. The Claimant had a phased return to work after her grievance outcome of October 2015, but was then absent sick from 22 November 2016 until her resignation. The inference from the Claimant's evidence was that the cause of this absence was her feeling that the grievance outcome had not been honoured and the resulting stress that this caused.

26. Although the Claimant alleged that the act of discrimination found proved had dramatically altered the trajectory of her improvement, we found that she was unable to return to work by the end of February 2017 and that her condition at that point was not the result of any discrimination by the Respondent. Moreover, as explained in the November 2018 Judgment and Reasons, and as admitted by the Claimant in her evidence at this hearing, the Claimant found the Sickness Review Meeting on 12 January 2017 to be particularly distressing.

27. Although the Claimant's evidence was that after the 12 January 2017 review meeting, a referral to Occupational Health, counselling and adjustments made at her son's college meant that her mental health was improving, the Tribunal found that the Claimant's recollection about the degree of improvement and its trajectory was not accurate. The GP

records at p.145-147 do not suggest that she was ready to return to work nor that her symptoms had improved at the point at which she first learned that she had not received all the grievance documents (when she received the grievance outcome).

28. Although the Claimant stated that the records showed that her symptoms had deteriorated, due to references to self-harm and Irritable bowel syndrome and irritable bladder syndrome, the Tribunal did not accept that this was apparent from the medical evidence provided. For example, on 22 November 2016, the GP notes record that there was a pay related issue from 2 years ago, which was not yet resolved and that the Claimant "*does not feel she can go back to the school*"; and the notes for 2 February and 3 March 2017 tend to suggest that the Claimant had not had any change in her symptoms. Moreover, the Tribunal had already made findings of fact that the Claimant did not know precisely what grievance documents were held by the grievance officer, so it was unlikely (because of that lack of knowledge and also because of the content of those documents) that her condition deteriorated or that the rate of improvement in her symptoms was reduced on a medium or long-term basis because of the proven breach of the duty to make reasonable adjustments.

29. There was no expert medical opinion evidence setting out what effect the act of discrimination had on the Claimant's impairment. The Tribunal found that there was no medical evidence linking the act of discrimination with a further injury. Although the Claimant's evidence was that she had been referred to a specialist to assess whether she had Post Traumatic Stress Disorder, she did not prove on a balance of probability that she had that impairment, nor that this specific impairment was caused by the discrimination proved. There was no expert evidence to support such a diagnosis or causation.

30. Having weighed all the relevant evidence, the Tribunal found that the act of discrimination caused only a moderate exacerbation of the Claimant's symptoms. As explained in our March 2021 Reasons, this did prevent the Claimant from attending at the grievance hearing, which was a lost opportunity for her to put her case. However, we found that the exacerbation was relatively short-lived, probably for the period of around 6 weeks leading up to the grievance hearing and the grievance outcome and for a short time thereafter.

31. However, the Tribunal did find that this was an unusual case, in that the Claimant's anxiety symptoms and injured feelings were increased episodically, for a few weeks, on each of the later dates when the Respondent disclosed further documents. As we have found, some of this injury to feelings occurred even after her resignation.

32. In addition to the above findings, the Tribunal reached the findings at paragraphs 30 and 31 above because:

32.1 The act of discrimination proved was not a cause of the resignation; the March 2021 Reasons explained, at paragraph 83, that there were several other matters which were the cause of the resignation and, by inference, these were the causes of the greater degree of upset and injury felt by the Claimant.

32.2 There were several other complaints of discrimination alleged, all of which were not upheld. This is apparent from the original List of Issues agreed for the hearing on liability, which shows that there were approximately 19-20 complaints of discrimination at the outset of the liability hearing as well as

additional matters which were alleged to amount to a breach of the implied term of trust and confidence. It is not apparent from the Claim form, nor from the Claimant's first witness statement, nor from the original List of Issues, that the breach of the duty to make reasonable adjustments found proved was alleged to be of such fundamental importance in terms of injury to the Claimant or her feelings. This was inconsistent with the thrust of the Claimant's evidence at the remedy hearing.

32.3 At the time that the Claimant learned of the grievance outcome, it was the fact that Ms. Wiggs had proceeded in her absence, and reached a grievance outcome which was largely against the Claimant, that triggered the greater part of the increase in those symptoms: see paragraph 25 of the Claimant's witness statement which describes how she felt shocked and sick on learning that the hearing had taken place.

32.4 Although the grievance outcome informed her that some relevant documents had not been disclosed, the Claimant only found out about the remaining documents over time. The Tribunal found that she was vulnerable to injury to feelings and exacerbation of symptoms due to her mental impairment, and these late disclosures did cause fairly short episodes of anxiety. In the March 2021 Reasons, we explained that we accepted the Claimant's evidence about when she received each batch of further documents.

33 A good example of the Claimant's misperception of events which demonstrated that her evidence was not reliable was the Claimant's evidence about the sum of £298.11 sick pay, which she claimed in respect of April 2017. When asked what this claim was based on, the Claimant stated that her contract of employment had entitled her to sick pay as full pay for a certain period, and then as half pay; and that after the grievance hearing outcome in March 2017 and grievance appeal hearing, her pay had reduced to half pay in April 2017, before her resignation in May 2017. When questioned about this, it was put to the Claimant that the grievance outcome would have been unsatisfactory for the Claimant, even if the documents had been disclosed, and so she would have remained off work. The Claimant stated that that depended, and contended that she would not have remained off work if she had been able to attend the grievance, even if her grievance had not been upheld. Her evidence was that she would have "*happily returned to work*", had her grievance been handled fairly.

34 The Tribunal found that this part of the Claimant's evidence difficult to follow and found that it was inconsistent with the medical evidence and the history of her sickness absence, which showed that she had been sick for one year in 2014-2015 with stress-related illness and that she had been absent sick from 21 November 2016 through to March 2017 with no suggestion that she was likely to be well enough to attend work.

35 For the avoidance of doubt, the Tribunal heard no evidence that the Respondent had apologised to the Claimant for the disability discrimination found proved.

Relevant Law

Injury to feelings

36 The principles of law to be applied by the Tribunal when assessing injury to feelings are set out in Armitage v Johnson [1997] IRLR 162, paragraph 27, which we summarise as follows:

36.1 Injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award;

36.2 Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches;

36.3 Awards should bear some broad general similarity to the range of awards in personal injury cases – not to any particular type of personal injury but to the whole range of such awards;

36.4 Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings;

36.5 Tribunals should bear in mind the need for public respect for the level of awards made.

37 The matters compensated for by an injury to feelings award encompass subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression (see Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102).

38 Further, we took into account the Presidential Guidance on Employment Tribunal awards for injury to feeling and psychiatric injury issued on 5 September 2017 as providing the approximate Vento bands relevant in this case (i.e. uprated for inflation and the Simmons v Castle uplift). We recognised, without doing the precise calculations, that the relevant bands would have been slightly lower given the date of presentation of the Claim (8 June 2017).

39 We reminded ourselves of, and applied, the following from the relevant Presidential Guidance:

> *10. Subject to what is said in paragraph 12, in respect of claims presented on or after 11 September 2017, and taking account of Simmons v Castle and De Souza v Vinci Construction (UK) Ltd, the Vento bands shall be as follows: a lower band of **£800 to £8,400** (less serious cases); a middle band of **£8,400 to £25,200** (cases that do not merit an award in the upper band); and an upper band of **£25,200 to £42,000** (the most serious cases), with the most exceptional cases capable of exceeding £42,000.*
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> *11. Subject to what is said in paragraph 12, in respect of claims presented before 11 September 2017, an Employment Tribunal may uprate the bands for inflation by applying the formula x divided*

by y (178.5) multiplied by z and where x is the relevant boundary of the relevant band in the original Vento decision and z is the appropriate value from the RPI All Items Index for the month and year closest to the date of presentation of the claim (and, where the claim falls for consideration after 1 April 2013, then applying the Simmons v Castle 10% uplift).

Damages for psychiatric injury

40 The assessment of damages for psychiatric injury is a question of fact to be determined by the tribunal.

41 Injury to feelings and psychiatric injury are distinct. But in practice, they are not always separable, leading to a risk of double recovery; it may be impossible to say when the distress and humiliation becomes a psychiatric injury.

42 Given the guidance in Armitage (that awards for injury to feelings should bear some broad general similarity to the range of awards in personal injury cases), the Tribunal also considered the Judicial College Guidelines for the Assessment of Damages in Personal Injury Cases, 14th Edition (i.e. not the 15th Edition published in 2019). These include:

"Psychiatric Damage Generally

The factors to be taken into account in valuing claims of this nature are as follows:

(i) the injured person's ability to cope with life, education, and work;

(ii) the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;

(iii) the extent to which treatment would be successful;

(iv) future vulnerability;

(v) prognosis;

(vi) whether medical help has been sought;

(vii) Claims relating to sexual and physical abuse usually include a significant aspect of psychiatric or psychological damage. ..."

43 There are four categories of award (including the *Simmons v Castle* uplift):

43.1 Less Severe: between £1,350 and £5,130. Where the claimant has suffered temporary symptoms that have adversely affected daily activities;

43.2 Moderate: between £5,130 and £16,720. Where, while the claimant has suffered problems as a result of the discrimination, marked improvement has been made by the date of the hearing and the prognosis is good;

43.3 Moderately Severe: between £16,720 and £48,080. Moderately severe cases include those where there is work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment. These are cases where there are problems with factors a) to d) above, but there is a much more optimistic prognosis than Severe;

43.4 Severe: between £48,080 and £101,470. Where the claimant has serious problems in relation to the factors at i) to iv) above, and the prognosis is poor.

Divisible and Indivisible Harm

44 The Tribunal directed itself that divisible harm is where different acts cause different damage, or quantifiable parts of the damage. In these cases, the tribunal must establish and award compensation only for that part of the harm for which the respondent is truly responsible. Indivisible harm is where multiple acts result in the same damage.

45 In *BAE Systems (Operations) Ltd v Konczak* [2017] EWCA Civ. 1188, the Court of Appeal held:

45.1 Where the harm has more than one cause, a respondent should only pay for the proportion attributable to their wrongdoing unless the harm is truly indivisible.

45.2 Tribunals should try to "*identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrong, and a part which is not so caused*." The Tribunal should see if it "*can identify, however broadly, a particular part of the suffering which is due to the wrong*".

45.3 Where such a 'rational basis' can be found, the Tribunal should apportion accordingly, even if the basis for doing so is '*rough and ready*'.

45.4 Any such assessment must consider any pre-existing disorder or vulnerability, and account for the chance that the claimant would have succumbed to the harm in any event, either at that point or in the future.

45.5 In cases of psychiatric injury, careful evidence should be obtained from experts, particularly in relation to the likelihood of suffering the harm in any event.

Submissions

46 The Tribunal heard oral submissions from the parties. Each party expanded on the points in their schedules of loss.

47 In terms of the award for injury to feelings, the Respondent's Counter-Schedule contended that lower band was £500 to £5,000; and that the award should be in the middle of the lower band at £2,500. The Tribunal pointed out to Counsel that, given the date of the presentation of the Claim (June 2017) and allowing for inflation and the *Simmons v Castle* 10% uplift, the lower band was actually close to that defined in the Presidential Guidance dated 5 September 2017; so the lower band was roughly £800 to £8,400. The Respondent accepted this point; and therefore argued that the award for injury to feelings should be £4,200 to £4,800.

48 The Claimant's case was that the award for injury to feelings should be at the lower end of the middle band. She assessed its value as £6,600 (although this was asserted on the mistaken basis as to the value of the relevant bands at the material time, the date of presentation of the Claim). In submissions, however, the Claimant explained that it was not a question of the size of the award; she wanted recognition that the act of disability discrimination had been serious for her as an individual.

49 In her evidence and submissions, the Claimant did not allege that the discriminatory act found proved had caused the stress-related illness, but that it had made the symptoms worse and that she had been improving to such an extent with the benefit of medication and counselling that, had the discriminatory act not occurred, she was likely to have returned to work. As the Tribunal has explained in the findings of fact, we did not accept the Claimant's case.

50 The Tribunal proceeded to determine the issues by recognising that the Claimant sought an enhanced injury to feeling award to reflect the exacerbation of her symptoms of anxiety and depression by the act of discrimination found proved.

51 The Claimant explained that she did not seek aggravated damages, but that there were aggravating features which should lead to an enhanced award of injury to feelings. These were alleged to be:

51.1 the Respondent had disputed the issue of whether she was a disabled person;

51.2 there was late disclosure of documents even after the original non-disclosure in the period leading up to the grievance hearing; and

51.3 the Respondent had failed to apologise.

52 The Claimant did not advance any arguments to suggest that she was entitled to sums claimed in her schedule of loss in respect of unfair dismissal or failure to comply with the ACAS Code of Practice. This was sensible, because, given our findings of fact, those heads of loss could not succeed.

Conclusions

53 Having taken into account all the evidence and submissions, the Tribunal applied the above law to the facts found, and reached the following conclusions.

Issue 1: Award for injury to feelings

54 The Tribunal agreed with the Claimant that this was not a case where it was just and appropriate to make a separate award for personal injury. This was a case in which it was likely to be very difficult (if not impossible) to state precisely whether or when the distress and humiliation from the act of discrimination proved became personal injury.

55 However, the Tribunal accepted that the act of discrimination proved did exacerbate the anxiety symptoms of the Claimant on a temporary basis, and episodically, as explained in our findings of fact. We considered that the just way to proceed was to factor the exacerbation of symptoms into the award for injury to feelings, which, after all, should include damages for worry, anxiety and distress.

56 The Tribunal decided that the appropriate award for injury to feelings on the facts in this case was in the lower Vento band. We decided that the award should be slightly above the mid-point of that band and concluded that the appropriate award was £5,000. We reached these conclusions for the following reasons:

56.1 It is important to recognise that the guidance of the Court of Appeal in Vento (at paragraph 66) explained that the lower band was the appropriate band for less serious cases where there was an isolated or one-off occurrence. In this case, there was one finding of disability discrimination.

56.2 The Tribunal found that the proven act of discrimination did not prevent the Claimant returning to work. On a balance of probabilities, considering the medical and other evidence as a whole, the Claimant did not return to work because of her underlying mental impairment and ill-health, not because of the effects of the proven discrimination. In particular, the Claimant did not discover about several documents which had not been disclosed until after her resignation.

56.3 The Claimant viewed the discriminatory act as of fundamental importance to the degree of her injury to feelings. We concluded that this was incorrect as a matter of fact.

56.4 The Tribunal recognised that there is a spectrum of single incidents of discrimination; and some single incidents of discrimination may be very serious by the words used or their context, such as where a disability-related or race-specific insult or punishment is used. However, this case was towards the less serious part of that spectrum, because:

56.4.1 The discrimination had not been deliberate. Although unlawful, it had been the result of oversight and mistake: see paragraph 116.1 of the March 2021 Reasons.

56.4.2 The Respondent had not refused to send the grievance documentation to the Claimant at any point. On the contrary, they had agreed to do so, evidenced by the findings of fact made including that a pack of relevant documents had been sent to the Claimant ahead of the hearing. Ms. Wiggs thought that the Claimant had been sent all the relevant documents and she planned to go through the additional documents, which had been sent to Ms. Wiggs just before the grievance hearing, at that hearing: see, in particular, paragraph 107.3 of the March 2021 Reasons.

56.5 It was necessary to separate out the injury to feelings caused by the single failure of the duty to make reasonable adjustments found proved from the several other stressors and allegations, which were found not to be the result of discrimination, but which were alleged to have injured the Claimant's feelings. Having done so, the injury to the Claimant's feelings caused by the proven discrimination lasted for a relatively short time overall, and it was overtaken by her feelings of anxiety and distress caused by the Claimant's perception that there were flaws in the grievance outcome; and this perception was mistaken: see for example paragraph 65 of the March 2021 Reasons. Subsequently, the Claimant's feelings of anxiety and distress were caused by those matters which she identified to be a fundamental breakdown in the employment relationship or breach of the implied term of trust and confidence: see paragraph 83 of the March 2021 Reasons.

56.6 However, there were factors which enhanced or aggravated the injury to feelings which caused the Tribunal to decide that the award in this case should be slightly above the centre of the lower Vento band:

56.6.1 The Claimant's anxiety symptoms were exacerbated each time she discovered there were documents before the grievance officer not disclosed to her. This lasted initially for a period of weeks up to and extending for a few weeks after the grievance outcome letter, which was when she realised that she had not been sent all the relevant documents; and then she had similar symptoms arising for a few weeks on each occasion that she received further documents that were before the hearing officer at the grievance hearing.

56.6.2 The Respondent had defended the allegation that the Claimant was a disabled person. This had been done in the face of overwhelming evidence that she was a disabled person protected by section 6 and Schedule 1 EQA. After all, she had been absent sick as a result of her impairment for the best part of two school years at the point of her resignation, the Respondent's Occupational Health evidence had advised that she was likely to be a disabled person as defined in the EQA, and the Respondent had advanced no positive case against her evidence. By proceeding in this way, by putting the Claimant to proof, it caused considerable further upset to the Claimant not least by increasing the length of the hearing. The Claimant identified that each Tribunal hearing was a real stressor for her. Moreover, the Tribunal had some difficulty in understanding how or why the Respondent could maintain this defence after the Claimant gave oral evidence.

56.6.3 There was no apology by the Respondent. This was despite the fact that the Respondent had known from the date of promulgation of the March 2021 Reasons that a finding of disability discrimination had been made and despite the Respondent having maintained its stance that the Claimant was not a disabled person at all.

56.6.4 The effect of this act of discrimination on the Claimant was far from trivial. She was vulnerable to injury to her feelings, because of her misperception of past events. This did not mean that the injury to feelings that she suffered was not significant. The Tribunal concluded that an award towards the bottom of the lower Vento band would not reflect the seriousness of the injury suffered and would under-compensate the Claimant. An award of that size was likely to reduce respect for the policy of the anti-discrimination legislation.

56.7 The Tribunal took into account the real concern of the Claimant that the award should be publicly seen to be serious – and if an award was made in the lower Vento band, the discrimination would not be seen as serious despite the significant impact of it on her. However, we recognised that Society has condemned discrimination and noted that awards must be at such a level to ensure that it is seen to be wrong. The fact that we decided to award a sum in the lower bracket of Vento did not mean that the act of discrimination was

not serious. As the Court of Appeal in Vento explained, certain acts of discrimination are less serious. The Tribunal considered that breach of the prohibitions on discrimination in the EQA are never trivial nor insignificant. We concluded that all acts of unlawful discrimination by an employer are serious – but some are more serious than others.

56.8 We cross-checked our award with the relevant Judicial College Guidelines (14th Edition) for the assessment of general damages awards in cases of Personal Injury. We found that the exacerbation of symptoms in this case put the award towards the middle of the Less Severe category. Therefore, an award of £5,000 adequately compensated the Claimant for both the injury to feelings and the exacerbation of her anxiety symptoms.

Issue 2: Pecuniary loss

57 The Claimant failed to prove that she was entitled to the loss of earnings claimed. The Tribunal repeats the findings of fact at paragraph 33 – 34 above.

Interest

58 The Respondent properly admitted that the Claimant was entitled to statutory interest at 8%. Interest was agreed at £1,733.32. The figure for interest provided in the original judgment (£860.27) had been miscalculated by the Tribunal.

Employment Judge A Ross
Date: 15 June 2022