EMPLOYMENT TRIBUNALS

Claimant: Mr P Ballam

Respondent: Dacorum Borough Council

Heard at: Watford Employment Tribunal (in public; by video)

On: 15 March 2023
And (in chambers) on 14 April 2023

Before: Employment Judge Quill; Mr Dykes; Ms Telfer

Appearances
For the claimant: In person
For the respondent: Mr P Ward, counsel

RESERVED REMEDY JUDGMENT

1. The award for injury to feelings is £12,000.

2. The award for interest on the injury to feelings is £2,456.55.

3. The basic award for unfair dismissal is £1632.

4. The award for loss of statutory rights is £300.

5. The Claimant has acted reasonably to mitigate his losses. There is no Polkey reduction and no reduction for contributory fault.

6. The award for past financial loss is £5,600.26 and for future financial loss is £2,074.17.

7. The award for interest on past financial loss is £261.45

8. The Recoupment Regulations do not apply.

9. The aggregate of the above is £24,324.43, and the Respondent is ordered to pay that to the Claimant.

10. We do not make any recommendations.

REASONS

Hearing and Evidence

1. We heard evidence and submissions on 15 March 2023. As with the liability hearing, this was fully remotely by video, and there were no significant technical issues with the video. (Though there were some significant delays in our receiving some of the documents that the parties attempted to email to us during the course of the day).

2. We reserved our decision. In part this was because, by the time the submissions concluded, there would not have been time to deliberate and read out an oral decision.

3. However, we also believed that there were some important items that we needed to see being: (i) payslips from the Claimant's employment with the Respondent and (ii) documents relating to the £5000 market supplement which, according to the Claimant (and denied by the Respondent), was relevant to the assessment of his financial losses. We ordered disclosure of those.

4. We heard witness evidence from the Claimant and the Claimant's wife. We also read a statement from the Claimant's father.

5. On behalf of the Respondent, we heard witness evidence from Ms Priti Gohil, a Team Lead in the Human Resources department.

6. We were provided with "remedy bundle" of 102 electronic pages and "second remedy bundle" of 294 electronic pages. We were also provided with screenshots by the Claimant which were about 29 pages when the panel combined them to make a further pdf bundle. We also received various emails from the parties during the course of the day, which the parties cc'ed to each other.

7. After the hearing, we received a further screenshot from the Claimant, being a 25 August 2021 payslip from the Respondent. We received two further documents from the Respondent, being a two page item with file name "Market Supplement final draft 06.10.2021" and a 38 page item with file name "Ballam v DBC Documents requested by ET following Rededy Hearing".

Law

8. The purpose of compensation is to provide proper compensation for the wrong which we found the Respondent to have committed. The purpose is not to provide an additional windfall for the Claimant and is not to punish the Respondent.

9. For financial losses, we must identify the financial losses which actually flow from complaints which we upheld. We must take care not to include financial losses caused by any other events, or losses that would have occurred any way.

10. For injury to feelings, we must not simply assume that injury to feelings inevitably flows from each and every unlawful act of discrimination. In each case it is a question of considering the facts carefully to determine whether an injury to feelings has been sustained. Some persons who are discriminated against may feel deeply hurt and others may consider it a matter of little consequence and suffer little, if any, distress.

11. When making an award for injury to feeling, the tribunal should have regard to the guidance issued in *Vento v Chief Constable of West Yorkshire Police (No 2) [2003] EWCA Civ 1871*, *[2003] IRLR 102*, *[2003] ICR 318, CA*, and taking out of the changes and updates to that guidance to take account of inflation, and other matters. Three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury, were identified:

    a. The top band was (at the time) between £15,000 and £25,000. Sums in the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.

    b. The middle band was, initially, £5,000 and £15,000. It is to be used for serious cases, which do not merit an award in the highest band.

    c. The lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. Awards in this band must not be so low as to fail to be a proper recognition of injury to feelings.

12. In *Da'Bell v NSPCC* (2009) UKEAT/0227/09, [2010] IRLR 19 the Employment Appeal Tribunal revisited the bands and uprated them for inflation. In a separate development in *Simmons v Castle* [2012] EWCA Civ 1039 and 1288, [2013] 1 WLR 1239, the Court of Appeal declared that - with effect from 1 April 2013 - the proper level of general damages in all civil claims for pain and suffering, would be 10% higher than previously. In *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879, the Court of Appeal ruled that the 10% uplift provided for in *Simmons v Castle* should also apply to Employment Tribunal awards of compensation for injury to feelings and psychiatric injury.

13. There is presidential guidance which takes account of the above, and which is updated from time to time. These claims were issued in June 2021 and February 2022. The relevant guidance applicable to this claim is the fourth addendum which states:

    In respect of claims presented on or after 6 April 2021, the Vento bands shall be as follows: a lower band of £900 to £9,100 (less serious cases); a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600.

14. Section 123 of the Employment Rights Act 1996 ("ERA") provides tribunals with a broad discretion to award such amount as is considered just and equitable in all the circumstances, having regard to the loss sustained by the claimant because of the unfair dismissal. However, compensation for unfair dismissal under s.123(1) cannot include awards for non-economic loss such

as injury to feelings (see the House of Lords decision in Dunnachie v Kingston upon Hull).

15. As part of the assessment, the tribunal might decide that it just and equitable to make a reduction following the guidance of the House of Lords in Polkey v AE Dayton Services [1987] IRLR 503. For example, the tribunal might decide that, if the unfair dismissal had not occurred, the employer could or would have dismissed fairly; if so, the tribunal might decide that it is just and equitable to take that into account when deciding what was the claimant's loss flowing from the unfair dismissal.

16. In making such an assessment the tribunal, there are a broad range of possible approaches to the exercise.
    a. In some cases, it might be just and equitable to restrict compensatory loss to a specific period of time, because the tribunal has concluded that that was the period of time after which, following a fair process, a fair dismissal (or some other fair termination) would have inevitably taken place.
    b. In other cases, the tribunal might decide to reduce compensation on a percentage basis, to reflect the percentage chance that there would have been a dismissal had a fair process been followed (and acknowledging that a fair process might have led to an outcome other than termination).
    c. If a tribunal thinks that it is just and equitable to do so, then it might combine both of these: eg award 100% loss for a certain period of time, followed by a percentage of the losses after the end of that period.

17. There is no one single "one size fits all" method of carrying out the task. The tribunal must act rationally and judicially, but its approach will always need to be tailored specifically to the circumstances of the case in front of it. When performing the exercise, the tribunal must also bear in mind that when asking itself questions of the type "what are the chances that the claimant have been dismissed if the process had been fair?", it is not asking itself "would a hypothetical reasonable employer have dismissed"? It must instead analyse what this particular respondent would have done (including what are the chances of this particular respondent deciding to dismiss) had the unfair dismissal not taken place, and had the respondent acted fairly and reasonably instead.

18. A similar approach should be taken when analysing and deciding what financial loss to award for a dismissal which has been found to be a breach of the Equality Act 2010. In other words, the Tribunal must ask itself what might have happened in the absence of such contraventions, and consider the possibility that there might have been a dismissal which was (not unfair and) not discriminatory and not an act of victimisation or harassment. See Chagger v Abbey National plc Neutral Citation Number [2009] EWCA Civ 1202 (where it was said that: *The task is to put the employee in the position he would have been in had there been no discrimination; that is not necessarily the same as asking what would have happened to the particular employment relationship had there been no discrimination*)

19. Under both EQA and ERA, tribunals apply the same rules concerning the duty to mitigate loss as apply to damages recoverable under the common

law. Where the employee has mitigated, a tribunal should give credit for sums earned.

20. When assessing the amount of deduction for the employee's failure to mitigate their loss, the tribunal does not reduce the compensatory award that it would otherwise make by a percentage factor. The correct approach is to make a decision about the date on which the Claimant would have found work had they been acting reasonably to seek to mitigate their losses, and then make an assessment of what income they would have had from such work.

21. So the approach is:

    a. Consider what steps it would have been reasonable for the claimant to have had to take to mitigate their loss;

    b. Ask if the claimant failed to take reasonable steps to mitigate their loss;

    c. Decide to what extent would the claimant have mitigated their loss had they taken those steps

22. It is for the Respondent to prove that the Claimant has unreasonably failed to take appropriate steps, and that – on balance of probabilities - had those steps been taken, then the losses would have been mitigated.

Recommendations

23. Section 124(2)(c) EQA states that an employment tribunal may make an appropriate recommendation. An appropriate recommendation is a recommendation that (within a specified period) the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.

24. In Hill v Lloyds Bank plc 2020 IRLR 652, the tribunal had upheld a complaint of failure to make reasonable adjustments. The Claimant appealed against the refusal to make a recommendation. (A recommendation had been made, but set aside on reconsideration). The EAT held that the tribunal erred in concluding that no recommendation should be made. There is no objection in principle to a recommendation having potential financial implications. The reasonable adjustments requirements are intended to benefit disabled employees and, in itself, a recommendation intended to benefit a disabled employee (provided it is within the terms of section 124) can be made, even where it requires expenditure by the Respondent. Furthermore, while it is necessary for the decision to specify the date by which the respondent must take the appropriate steps, there is nothing wrong, in principle, with specifying that the recommended steps must thereafter remain in place indefinitely. Specifying a finite duration is also permissible.

Facts

25. The Claimant’s employment ended on Friday 11 February 2022 and he commenced work, via a temporary work agency on Monday 14 February 2022.

26. The Claimant was significantly distressed by the treatment which he received from the Respondent which we found to be contraventions of EQA. We

accept the Claimant's own evidence, and that of his wife. We have taken care to take account of the fact that (i) the nature of the Claimant's disability was that he had bouts of depression even before any of these events, and we cannot assume that every period of low mood which occurred after the contraventions of EQA was necessarily caused by the contraventions and (ii) some of the things which caused disappointment to the Claimant (such as delays in being able to see his then fiancée, who is now his wife) were not caused by acts/omissions of the Respondent which we found to contravene EQA. More generally, we also had to take account of the fact that the Covid pandemic caused problems, and affected the moods of many people.

27. The Claimant was able to start work for another employer not long after leaving the Respondent. That is a testament to the Claimant's work ethic, and the fact that he has been able to make the best use of coping strategies in order to keep his depression at bay. However, it also implies that the on-going effects of the injury to his feelings were not such that he was unable to work following his February 2022 departure from the Respondent's employment.

28. In seeking to calculate the Claimant's average income prior to dismissal, we have not taken account of his payslip for February, which includes holiday pay. We have also not taken account of September 2021, which includes back pay. So we have taken his average using the 4 months October 2021 to January 2022.

	Month	Net	Pensionable Gross	Taxable Gross
1.	October 2021	£1,882.30	£2,511.24	£2,348.01
2.	November 2021	£1,803.63	£2,373.24	£2,218.98
3.	December 2021	£1,796.63	£2,373.24	£2,218.98
4.	January 2022	£1,984.51	£2,672.24	£2,498.54
	Aggregate	£7,467.07	£9,929.96	£9,284.51
	Weekly average	£430.80	£572.88	£535.64

29. At first, the end user was another local authority, and the Claimant was performing similar work to that which he had done for the Respondent. Later, he changed to a different end user, in around September 2020.

30. The Claimant had the opportunity to be considered for direct employment by the local authority, but decided not to progress the matter, because perceived their treatment of his application to be inappropriate. They did not guarantee him an interview despite their claims that they would do so for disabled applicants, and he was concerned this might be indicative of what their attitude to his disability might be if he became an employee.

31. His income via the agency, as shown on his mobile phone banking app was as follows:

1.	25 February 2022	£455.91
2.	4 March 2022	£344.89
3.	10 March 2022	£446.17
4.	17 March 2022	£420.32
5.	24 March 2022	£413.28
6.	31 March 2022	£413.28
7.	7 April 2022	£439.67
8.	14 April 2022	£282.88
9.	21 April 2022	£500.91
10.	28 April 2022	£457.09
11.	5 May 2022	£436.94
12.	12 May 2022	£464.33
13.	19 May 2022	£451.27
14.	26 May 2022	£406.13
15.	1 June 2022	£275.84
16.	9 June 2022	£275.15
17.	16 June 2022	£355.19
18.	23 June 2022	£410.15
19.	30 June 2022	£438.93
20.	7 July 2022	£348.42
21.	14 July 2022	£348.42
22.	21 July 2022	-
23.	28 July 2022	£476.37
24.	4 August 2022	£431.98
25.	11 August 2022	£434.80
26.	18 August 2022	£414.11
27.	25 August 2022	£420.04

28.	1 September 2022	£348.42
29.	8 September 2022	£244.35
30.	15 September 2022	£546.89
31.	22 September 2022	£664.23
32.	29 September 2022	£490.83
33.	6 October 2022	£260.22
34.	13 October 2022	£219.72
35.	20 October 2022	£750.76
36.	27 October 2022	£711.82
37.	3 November 2022	£420.09
38.	10 November 2022	£716.14
39.	17 November 2022	£716.14
40.	24 November 2022	£736.13
41.	2 December 2022	£706.25
42.	8 December 2022	£577.38
43.	15 December 2022	£726.04
44.	22 December 2022	£334.07
Aggregate		£19731.95
Average Over 44 weeks Over 43 weeks (Ignoring 21 July 2022)		 £448.53 £458.88

32. The only payslip provided was for 13 January 2023. Thus, for the above weeks, we do not know how many hours were worked, and we do not have documentary evidence about whether any of those payments were paid holiday, or whether they were all weeks in whether the Claimant actually worked.

33. However, it does appear that there was an entitlement to holiday pay, because the only payslip which we actually have (13 January 2023) shows that there was holiday pay of £591.45 (gross) for 36.02 hours at £16.42 per hour.

34. The 13 January 2023 payslip gives some "year to date" totals. These are for the tax year April 2023 to April 2024. It does not supply net figures, or the national insurance figures for the year to date. It shows the gross aggregate taxable pay for 41 weeks was £22,917.25. By comparison, the January 2022 payslip, showed a year to date gross aggregate taxable pay for to end of January 2022, of £23,745.03. In other words, approximately £800 more in the period covered by the Dacorum payslip, but the period covered by the YTD figures in the Dacorum payslip was around two weeks longer [that is to the last day of January in 2022 (so around week 43 of tax year 21/22)].

    a. The "taxable pay" shown in the Dacorum payslips for the 4 months October 2021 to January 2022 was £2,348.01, £2,218.98, £2,218.98, £2,498.54. Converting to a weekly gross average over that period, £535.65.

    b. This compares to the average in the 41 weeks illustrated on the 13 January 2023 payslip as being £22,917.25/41, £558.96.

    c. The "taxable pay" is not necessarily the full gross income which the Claimant received. (For example, "NIable pay" gives a higher figure). However, to compare between 21/22 (the period when employed by Dacorum, until termination in February 2022), and the period covered by the only payslip we have for post-termination work (13 January 2023) we have mentioned the similarity in the "taxable pay" as that is the only aggregate common to both.

35. Taking account of all the evidence, in terms of salary (before and after termination), the Claimant has not proven that he has suffered a loss of net salary when his income from salary immediately prior to the (constructive) dismissal is compared to the income that he has received since.

36. The Claimant argues that we should take account of a market supplement, of £5000 per year. He did not receive this from the Respondent prior to his dismissal, but argues that he should have.

37. The Respondent's disclosure in relation to this supplement, even after the order we made on 15 March 2023, is not satisfactory. In the bundle for the liability hearing, we had a two page letter at pages 453 and 455. (454 was one of the many blank pages in the bundles supplied for the hearings). The letter was dated 19 October 2021, and was addressed to the Claimant specifically. It described to the Claimant that the Respondent was introducing a market supplement, and said that the Claimant did not qualify for it. It claimed that there were two eligibility criteria

    a. Any employee who holds a valid LGV licence, and has no restrictions on them that prevent their ability to drive an associated vehicle; and

    b. "You agree, and are able, to drive a Council vehicle on receipt of a management instruction given at any time the business requires during your working day".

38. The panel wanted to see confirmation that the latter requirement, as expressed in the letter to the Claimant, was actually described that way in the policy itself. We expected that, as a public body, the Respondent would have

documentary evidence which showed both (i) exactly what the policy wording was and (ii) what the process had been for adopting the policy, and (iii) when the policy had been introduced. We ordered those documents to be disclosed.

39. However, the only items we received in response were:

    a. A completely irrelevant Cabinet decision, from February 2023 (in other words, later than the liability decision in this case) which described the future approach to making decisions about market supplements, and which made no reference to the £5000 supplement which was the subject of our orders

    b. A two page document of unknown provenance, which is not dated, and contains various blanks, which, on its face, appears to be a template letter to offer staff a market supplement on terms similar to those described to the Claimant in the letter dated 19 October 2021.

40. Although it is extremely surprising that the Respondent apparently has no documents about this supplement, other than those mentioned, we regarded Ms Gohil as a credible witness. We accept her evidence on oath that the scheme as described in the 19 October 2021 letter to the Claimant was the scheme which was introduced council wide, for all employees.

Analysis and Conclusions

Basic Award and Loss of Statutory Rights

41. The Claimant was employed for more than 2 years but less than 3 (September 2019 to February 2022). The entire period of his employment was after his 41st birthday. The statutory cap on a week's pay at the time was £544. We are satisfied that the Claimant earned at least the statutory cap immediately prior to termination.

42. We therefore assess the basic award at: 2 x 1.5 x £544 = £1632

43. We also award £300 in respect of the loss of the benefit of that period of continuous employment, and the associated statutory rights.

Market Supplement and salary loss

44. The fact that the Claimant did not receive the £5000 supplement is not a loss attributable to any of the contraventions of the Equality Act 2010 which we found – as per our liability decision – to have occurred. We express no opinion on whether – had the Claimant brought a claim alleging that the none payment of the supplement to him was a failure to make reasonable adjustments or unfavourable treatment because of something arising in consequence of his disability – any other complaints might have succeeded or failed. For one thing, we heard no detailed evidence on the justification for the restrictions on eligibility restrictions.

45. Paragraph 6 of our liability decision was:

The Respondent discriminated against the Claimant, within the definition in section 15 of the Equality Act 2010 by subjecting him to the unfavourable treatment of refusing to allow him to carry out driving duties after the end of his medical suspension.

46. However, the Claimant's own evidence to us at the liability hearing was that he could not necessarily do driving every shift, and required to be allowed to do (most shifts as a driver but) some shifts as a loader, as a reasonable adjustment. [This was a complaint which we upheld, as per paragraph 4 of the liability judgment.] The Respondent's decision that he was not eligible for the supplement would not have been different even had it allowed him to do some (or most) shifts as a driver following his return from medical suspension, but applied the reasonable adjustment. According to the policy that the Respondent adopted, he was not eligible for the supplement if there were some times when he was working, but not able to drive. The lack of payment of the supplement is not a loss flowing from the contraventions described in the liability decision and is not income which the Claimant would have been receiving but for the unfair constructive dismissal.

47. There is no financial loss attributable to salary.

Pension Loss

48. The situation is different in relation to pension.

49. The Respondent's disclosure of relevant documents in relation to pension was also inadequate, in our opinion. We have therefore resorted to taking judicial notice of the fact that the Respondent's employer contribution rate is 18.5% of gross salary.

50. As discussed above, the Claimant's gross pensionable pay at Dacorum was £572.88 per week, so the weekly employer's pension contributions were 18.5% of that, so £105.98 per week.

51. As of 22 December 2022, the Claimant's pension pot from his work after leaving the Respondent was £812.25, and the employer's contribution to that was £317.02. This was for the period 14 February 2022 to 22 December 2022, which we have rounded down to 44 weeks. Thus the employer contributions were £7.21 per week.

52. Thus the difference in employer's pension contributions was £105.98 - £7.21 = £98.77 per week.

53. It is our assessment that the Claimant will potentially be able to regain access to Local Government Pension Scheme ("LGPS") in the future. He decided not to progress his application to Hertsmere in around September 2022, but it is likely that there will be vacancies there, and at other authorities, in the future. Drivers are in short supply and there is a high demand for them. We do not think that it would be an unreasonable failure to mitigate his losses to decline to work for the Respondent again in the future. However, we do think it would be an unreasonable failure to mitigate his losses to apply for, and accept, employment with other local authority employers (even if that employer required the Claimant to go through the full standard recruitment process, notwithstanding the fact that a tribunal has found that he has a condition which satisfies the definition of "disability" within section 6 EQA).

54. Given that the Claimant is likely to be able, in our judgment, to rejoin the LGPS, we think it appropriate to take a simplified approach to assessing his financial loss attributable to leaving LGPS with effect from 11 February 2022. We therefore think it reasonable to assess his loss by reference to his loss of employer pension contributions.

55. From 12 February 2022 (first day after end of employment with the Respondent) to the remedy hearing on 15 March 2023 is 56 weeks and 5 days (so 56.7 weeks). At £98.77 per week, the pension loss up to the date of the remedy hearing was £5,600.26.

56. It is our judgment that, taking account of the likely availability of work with LGPS employers for someone with the Claimant's skillset, it would be reasonable to allow a further 21 weeks of future loss, at £98.77 per week £2,074.17.

57. By then, the Claimant will have had an aggregate of around 18 months to successfully obtain replacement income/pension from a new employer. Even from the date of the remedy hearing, and taking account the length of time between application and start date, our judgment is that 21 weeks is long enough to obtain a job which will mean he has no ongoing pension losses.

Injury to Feelings

58. This was not a one off act of discrimination. There were three contraventions of EQA in total:

    a. The Respondent had a duty to make reasonable adjustments, and breached that duty, between September 2020 and May 2021.

    b. The Respondent discriminated against the Claimant by refusing to allow him to carry out driving duties (after the end of his medical suspension) from around July 2021 to end of employment.

    c. The Respondent discriminated against the Claimant, by informing him (by letter dated 12 January 2022) of a change in his terms and conditions.

59. The injury to the Claimant's feelings was substantial and was on-going from September 2020. However, in our judgment, the on-going effects ended not long after the end of his employment.

60. An award in the lower Vento band or the higher Vento band would not be appropriate. A fair reasonable and appropriate award is one in the middle Vento band.

61. Like all examples of contraventions of EQA, the contraventions in this case were serious; they did significant damage to the Claimant's feelings. We do not consider that the injury is such that we should award a sum which is above the mid-point of the middle Vento band. Our judgment is that an award around the middle of the lower half of the middle band is appropriate, and we assess the injury to feelings award at £12,000.

Interest Calculations

62. It is appropriate for us to award interest at 8% per annum. The date of the calculation is our decision in chambers on 14 April 2023.

63. For the financial loss, it is appropriate to take the mid-point between 12 February 2023 and 14 April 2023. That is 426 days, and, taking the midpoint, we use 213 days for the interest calculation.

64. We therefore award interest on the financial loss up to date of hearing of: £5,600.26 x 0.08 x 213/365 = £261.45.

65. For the interest on injury to feelings, the calculation is from 23 September 2020. This is the date from which the failure to take reasonable adjustments took effect. This is 934 days to 14 April 2023. So the interest calculation is: £12000 x 0.08 x 934/365 = £2,456.55.

Recommendations

66. Ms Gohil told us, and we accept that "all staff receive mandatory equality training that includes disability-related issues" and that the Respondent's anti-harassment policy is "included in the Employee Handbook, reinforced during induction training and the Respondent routinely carries out staff workshops".

67. In the Claimant's case, one of the problems was that, when the Claimant started work, he had discussions with a supervisor and adjustments were informally agreed, and recorded in writing. Later on, the Respondent argued (irrelevantly) that this did not amount to a variation of contract. It also argued that, in any event, it was not obliged to adhere to the agreement because it was informal. We accept Ms Gohil's evidence about the attempts that have been made to improve record keeping in relation to reasonable adjustments which the Respondent has agreed to implement. We do not think it necessary to make a recommendation given that the Respondent has already addressed that issue.

68. The Claimant also sought a recommendation that "current management team be redeployed". Even had that not been too vague, given that the Claimant has left the Respondent anyway, this would not be a recommendation affecting the Claimant's line management. We do not think there is a proper basis for us to make this recommendation to the Respondent.

69. The Claimant also seeks "an independent elected person from the workforce to report instances of bullying harassment victimisation discrimination to off site where it can be logged anonymously so no one fears speaking out". We accept Ms Gohil's evidence that the Respondent already has arrangements to co-operate with unions and already has a whistleblowing policy. In this case, the Claimant did report what he saw as inappropriate behaviour by managers; his complaints were not upheld, but he was not prevented from raising them. We decline to make a recommendation that the Respondent change its arrangements about the method of raising grievances, or making protected disclosures, or reporting alleged bullying.

70. We note the Claimant's invitation to us to make whatever recommendations we see fit in order to encourage the Respondent to adopt best practice. We make no formal recommendations.

71. We do wish the Respondent to understand that it seemed to us that, in at least some of its dealings with the Claimant, the Respondent's contemporaneous correspondence seemed to show a failure to understand the type of issues which might need to be discussed and investigated and recorded in order to avoid it doing things, or failing to do things, being a breach the disability discrimination provisions of the Equality Act 2010. We express the hope that management and Human Resources will reflect carefully on what the Respondent did wrong in this case.

Employment Judge Quill

Date: 9 May 2023

Judgment sent to the parties on

GDJ

11.5.2023
For the Tribunal office