EMPLOYMENT TRIBUNALS

Claimant: Mr T Duncan

Respondent: Fujitsu Services Limited

Heard at: Watford (in public; by video)

On: 20 October 2023

Before: Employment Judge Quill; Ms Harris; Ms Barratt

Appearances
For the claimant: Representing himself
For the respondent: Mr P Michell, counsel

REMEDY JUDGMENT

1. The award for injury to feelings is £15,000.

2. The award for interest on the injury to feelings award is £6,572.05

3. There is no entitlement to an award for financial loss, aggravated damages, exemplary damages or personal injury.

4. There is no entitlement to an ACAS uplift.

5. Thus the total sum to be paid by the Respondent to the Claimant is £21,572.05. The Respondent is ordered to pay this to the Claimant within 14 days of this judgment being sent to the parties. (The Respondent's application for a stay on the date for payment/enforcement is refused).

6. The Recoupment Regulations do not apply.

REASONS

Introduction

1. The above decision (and these reasons) was announced orally on 20 October 2023.

2. This was a one day remedy hearing which followed on from the reserved liability judgment and reasons sent to the parties on 29 June 2023, and the subsequent case management orders.

3. The Respondent had made an application that the hearing be listed for two days so that costs could be dealt with in this hearing as well. As per the case management orders, that application had been refused.

4. By agreement of the parties (at the end of this remedy hearing) the respective costs applications will be dealt with by the panel in chambers, without the parties' presence, and on the basis of written submissions and documents.

Hearing and Evidence

5. The hearing took place fully remotely by video. The Respondent had the same representation as at the liability hearing. The Claimant represented himself. His father did not attend.

6. The panel still had access to the documents from the original hearing. This included the email from Ms Duddy dated 1 October 2020 and the letter from the Claimant's doctor dated 14 November 2022, as well as all the other items.

7. We had received, in advance of the hearing, a remedy bundle, a costs bundle, a skeleton argument from the Claimant (email dated 13 October 2023, which was also incorporated into remedy bundle) and costs application letter with attachments from the Respondent (letter dated 2 October 2023, which was also incorporated into costs bundle).

8. The remedy bundle also included two statements on the Claimant's side. One from his father, and one jointly from the Claimant and his partner. It also included the Respondent's skeleton argument.

9. During the hearing, the Claimant forwarded an email which he believed had been omitted from the bundle(s) prepared by the Respondent for this hearing. The Respondent pointed out that that the item, while not in the remedy bundle, had been page 58 of the costs bundle.

10. The same email attached a 3 page letter (dated 2 October 2023) from DWP to the Claimant, which had not previously been disclosed. The Respondent did not object to the Tribunal submitting the document as evidence, while making no admissions as to relevance.

11. The Claimant's father did not attend the hearing. We took his statement into account, and gave it such weight as we saw fit.

12. The Claimant gave evidence on oath, and we treated his evidence in chief as being both the statement at pages 192 and 193 of remedy bundle (the joint statement with his partner) and the Claimant's skeleton argument [Bundle 194 to 195].

Law

13. 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.

14. Section 124 of the Equality Act 2010 ("EQA") states, in part:

> 124 Remedies: general
>
> (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
>
> (2) The tribunal may—
>
> (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
>
> (b) order the respondent to pay compensation to the complainant;
>
> (c) make an appropriate recommendation.
>
> (3) 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.
>
> (6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court … under section 119.

15. Section 119 of EQA states, in part

> (2) The county court has power to grant any remedy which could be granted by the High Court—
>
> (a) in proceedings in tort;
>
> (b) on a claim for judicial review.
>
> (4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).
>
> (6) The county court … must not make an award of damages unless it first considers whether to make any other disposal.

16. 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.

Injury to feelings

17. 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 the loss has been sustained. Some persons who are harassed or discriminated against may feel deeply hurt and others may consider it a matter of little consequence and suffer little, if any, distress.

18. Respondents must "take their victim as they find him", which is the so-called eggshell skull/personality principle which the Claimant has referred to previously and again at this hearing. The application of the concept to discrimination claims was confirmed in Olayemi v Athena Medical Centre and Another [2016] ICR 1074.

> Where the respondent's wrongdoing was a material cause of the claimant's injury, it was no defence for the respondent to show that she would not have suffered as she did but for a vulnerability to that condition,

19. This vulnerability may manifest in a case in two ways. One is it may be held that the claimant would have suffered that level of injury at some future point anyway, irrespective of the actionable event. The other is that it may simply mean the level of injury caused by the wrongdoer was greater.

> …the employment tribunal should always take account of any existing vulnerability or any divisible cause when it awards compensation. In the former case it will make allowance for the chance that the Claimant would at some point have suffered the psychiatric condition in any event. In the latter case it will not award compensation for any harm which would have occurred in any event by reason of the other cause. How the employment tribunal takes account of such a factor will depend on the case.

20. Where there are potentially two material causes for the injury the approach is to

    20.1 Consider if the injury is truly indivisible. (Can a rational apportionment be made or not?)

    20.2 If it is indivisible, the wrongdoer is responsible for all of it even if there are other causative acts contributing to the injury.

21. 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, and taking account 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:

    21.1 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.

21.2 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.

21.3 The lower band is appropriate for other 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. All discrimination, and all contraventions of EQA are serious matters; the banding does not imply otherwise. The existence of the lower band is for cases which do not merit an award in either the top or the middle band.

22. 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.

23. There is presidential guidance which takes account of the above, and which is updated from time to time.

24. Claim 1 was issued in September 2019. The relevant guidance applicable to this claim is the second addendum which states:

> *2. In respect of claims presented on or after 6 April 2019, the Vento bands shall be as follows: a lower band of £900 to £8,800 (less serious cases); a middle band of £8,800 to £26,300 (cases that do not merit an award in the upper band); and an upper band of £26,300 to £44,000 (the most serious cases), with the most exceptional cases capable of exceeding £44,000.*

25. Claim 2 was issued in October 2020. The relevant guidance applicable to this claim is the third addendum which states:

> *In respect of claims presented on or after 6 April 2020, the Vento bands shall be as follows: a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases), with the most exceptional cases capable of exceeding £45,000.*

26. So, for either period, sums in the range £9000 to £26300 form part of the middle band, although that band starts lower, at £8800 for the earlier year, and ends higher, at £27000, for the latter year.

Personal injury

27. Tribunals have jurisdiction to award damages for personal injuries caused by discrimination, in addition to the award for injury to feelings. Most commonly, the alleged personal injury will be for psychiatric harm but there is no reason in principle why a tribunal should not award damages for physical personal injury provided it is shown to have been caused by the

discrimination, harassment, etc in question. "Psychiatric harm" is an aspect of personal injury which can arise on its own or in conjunction with a physical injury.

28. Causation must be proven. It has to be a loss which flows from the contravention of the Equality Act 2010 ("EQA") as the Tribunal has decided at the liability stage. Foreseeability is not a requirement, but the Tribunal cannot award compensation for personal injury caused by anything other than the contraventions as per the liability decision.

29. It will generally be appropriate to take into account Judicial College Guidelines, as well as any other appropriate guidance or precedent, when determining the appropriate level of award for pain and suffering for personal injury. The extract for psychiatric injury includes:

> This chapter covers those cases where there is a recognisable psychiatric injury. In part (A) of this chapter some of the brackets contain an element of compensation for post-traumatic stress disorder. This is of course not a universal feature of cases of psychiatric injury and hence a number of the awards upon which the brackets are based did not reflect it. Where it does figure any award will tend towards the upper end of the bracket. Cases where post-traumatic stress disorder is the sole psychiatric condition are dealt with in part (B) of this chapter.
>
> 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.
>
> (a) Severe
>
> In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor. £54,830 to £115,730
>
> (b) Moderately Severe
>
> In these cases there will be significant problems associated with factors (i) to (iv) above but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category. £19,070 to £54,830
>
> (c) Moderate
>
> While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good.
>
> Cases of work-related stress may fall within this category if symptoms are not prolonged. £5,860 to £19,070

(d) Less Severe

The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Cases falling short of a specific phobia or disorder such as travel anxiety when associated with minor physical symptoms may be found in the Minor Injuries chapter. £1,540 to £5,860

Aggravated Damages

30. There can be an award for aggravated damages where the necessary factors have arisen. Where it arises, it is part of the overall award of compensation for injury to feelings. The award is made as a recognition that some existing injury to feelings has been aggravated further by factors which are in some way related to the act of discrimination but may not necessarily form part of the statutory tort itself.

31. In Alexander v Home Office [1988] 2 All ER 118, the court said:

> *compensatory damages may and in some instances should include an element of aggravated damages where, for example, the defendant may have behaved in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination.*

32. In Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT, the EAT undertook a review of aggravated damages. It stated that it may be appropriate to make an award of aggravated damages based on analysis of

    a. The manner in which the discrimination was committed and/or
    b. The motive of the discriminator and/or
    c. The discriminator's subsequent conduct.

33. An analysis of these things might determine that there has been conduct which is capable of being "aggravating". However, the purpose of analysis is not to determine whether the discriminator acted so badly that they deserve some sort of punishment; it is to consider whether, because of the manner of the conduct, some further injury has been caused to the claimant.

Exemplary Damages

34. The availability of exemplary damages in EQA cases () was established by the house of Lords in Kuddus v Chief Constable of Leicestershire Constabulary [2001] UKHL 29, [2001] 3 All ER 193. Unlike the other heads of compensation, exemplary damages do not compensate injury and are punitive in nature.

Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

35. The provisions of section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 are engaged when the claim falls within those jurisdictions listed within schedule A2 to that Act, and that includes compensation for contravention of EQA. The provisions are not limited to financial loss. An award of injury is also potentially subject to adjustment.

36. Where there is any unreasonable breach of an applicable code of practice, the tribunal may increase or reduce any financial award by up to 25% unless it would be unjust to do so. The code of practice most often engaged is in relation to dismissal and grievances.

37. Where the tribunal is satisfied that there has been an unreasonable breach of an applicable code, the approach suggested in Slade and another v Biggs and others EA-2019-000687-VP is to ask:

37.1 Is the case such as to make it just and equitable to award any uplift?

37.2 If so, what does the employment tribunal consider a just and equitable percentage, not exceeding although possibly equalling, 25%?

37.3 Does the uplift overlap, or potentially overlap, with other general awards, such as injury to feelings; and, if so, what in the Tribunal's judgment is the appropriate adjustment, if any, to the percentage of those awards in order to avoid double-counting?

37.4 Applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the Tribunal disproportionate in absolute terms and, if so, what further adjustment needs to be made?

Global Awards; Avoiding Double recovery

38. In Ministry of Defence v Cannock [1994] IRLR 509, [1994] ICR 918, the EAT pointed out that Tribunals should:

> not simply make calculations under different heads, and then add them up. A sense of due proportion, and look at the individual components of any award and then looking at the total to make sure that the total award seems a sensible and just reflection of the chances which have been assessed.'

39. There should be no double recovery or double counting in the compensation awarded for losses suffered. There is a need to step back and take a final view of the award overall to avoid double counting and maintain a proportionate figure.

40. In particular, a tribunal should give particular consideration to the dangers of double counting when awarding

40.1 Injury to feelings alongside psychiatric personal injury.

40.2 Injury to feelings alongside aggravated damages.

40.3 Aggravated damages alongside any uplift under s.207A of Trade Union and Labour Relations (Consolidation) Act 1992.

Interest

41. The provisions of the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996 should be considered by the Tribunal regardless of whether raised by the parties or not. There is a discretion about whether to award interest or not. However, if awarded, the rate must be 8% per annum. The start date for the period of interest on any

award must be fixed by the Tribunal judicially, taking into account all relevant facts and circumstances. Different start dates might (and usually will be) used for different heads of damage.

Facts

42. The Claimant's witness statement describes suffering the following ("among many others")

42.1 Anxiety

42.2 Depression

42.3 PTSD

42.4 Asthma

42.5 Worsened IBS

42.6 Worsened dermatophagia

42.7 Panic attacks

42.8 Migraines / Ice-pick headaches

42.9 Agoraphobia

43. The panel accepts his evidence that he suffers from those conditions, and also that his GP has declared him unfit to work and that (from 2 October 2023) the DWP has accepted that he does not need to supply them with ongoing fit notes (showing inability to work) or proof of looking for work. However, we have to assess causation.

44. In his own witness statement, the Claimant attributes the above to

44.1 The respondent's treatment of the claimant during employment

44.2 The respondent's methods for handling complaints

44.3 The defence strategy for the respondent

44.4 The manner in which these proceedings have been conducted

44.5 The unlawful hacking of private accounts

44.6 The dissemination of private information to third parties

45. Having referred to his own stress, and that on his partner, and the reduced ability to socialise and leave the house, he adds:

> 7. This statement will not be able to do justice to the several years of damage caused by an excessive litigation for an extremely simple matter where the was

a failure to risk assess and an admission to denial of opportunity due to a protected characteristic - where this has been concealed

8. As it stands, the claimant experiences (or has experienced) the following over the course of these issues:

8.1. Inability to leave the home for greater than two hours without severe fatigue or illness;

8.2. Asthma Attacks (with 3x hospitalization)

8.3. Constant feelings of suicidal ideation / distress

8.4. Severe exacerbation of IBS

8.5. Severe exhaustion

8.6. Inability to sleep

8.7. Extreme periods of extended sleep

8.8. Nightmares, ruminations and flashbacks

9. Most of these are exacerbated by the claimant's disability due to the difficulty in understanding other people (and why they do things) and a delay in processing or understanding emotion

46. The Claimant's father's statement refers to the effects on the Claimant from early in employment. It goes on to add:

11.There is no doubt in my mind that Tom suffered considerably from the Fujitsu management and considerable harm was caused to him over a prolonged period of time but all arising from the basic failure of Fujitsu to carry out appropriate management planning for a person with protected characteristics.

12. I remember well at one pivotal time during proceedings that Tom was so ill and feeling suicidal that I had to step in and take direct action, contacting Fujitsu senior management and Pinsent Masons Partners to see if I could find a settlement solution to the Employment Tribunal proceedings to reduce the stress on Tom who was at that time simply unable to function.

13. My efforts at intervention led to an open offer from Fujitsu to settle the claims and upon communicating this to Tom I saw a gradual improvement for a while in his mental health because he felt that at last he had been heard and something was being done to help him.

Analysis and conclusions

47. It is our task to award proper compensation for the wrongs which we found to have occurred at the liability stage: that is, the contraventions of the Equality Act 2010 ("EQA") which we decided had happened.

48. There were 6 contraventions in total in the first 5 paragraphs of the liability judgment (corresponding to 5 acts/omissions stated in particular rows of the Scott Schedule). There was one example of indirect discrimination, two of harassment and three of failure to make reasonable adjustments.

49. The following were complaints included in Claim 1:

> 1. By a unanimous decision, the complaint of harassment related to disability by failure to conduct stress risk assessment (identified in Row 2 of Scott Schedule) succeeds.
>
> 2. By a unanimous decision, the complaints of failure to make reasonable adjustments and indirect discrimination about contact requirements during sickness absence (identified in Row 15) of Scott Schedule succeed.
>
> 3. By a majority decision (Ms Barratt and Ms Harris), the complaint of harassment related to disability by supplying information to the Claimant's mother (identified in Row 17 of Scott Schedule) succeeds.

50. The following were complaints included in Claim 2:

> 4. By a unanimous decision, the complaint of failure to make reasonable adjustments in relation to requiring oral communication (Row 51 of Scott Schedule) succeeds.
>
> 5. By a unanimous decision, the complaint of failure to make reasonable adjustments in relation to information about meetings (Row 61 of Scott Schedule) succeeds.

51. We have taken account of the fact that there was different presidential guidance applicable to each of Claim 1 and Claim 2, and of the parties' comments on that fact. None of the complaints in Claim 3 were successful.

52. We have taken account of the Claimant's schedule of loss prepared on 21 November 2021 (pages 133 to 139 of bundle for liability hearing) and of the Claimant's answers to cross-examination questions at the remedy hearing. A claimant is not necessarily bound by any previous written schedule when making oral submissions on remedy and, in this case, as ordered, the Claimant has produced an up to date schedule of loss which puts forward his specific arguments following the liability decision. [Remedy Bundle 184 to 186]. The fact that the injury to feelings based specifically on the failure to conduct risk assessment (paragraph 1 of liability judgment; Row 2 of Scott Schedule) was not itemised in the previous schedule is not, in itself, of immense significance. A global award for injury to feelings is often the most appropriate outcome, and it would not be fair or reasonable or appropriate to "mark down" a schedule of loss document for failing to identify a specific sum for injury to feelings for each individual alleged contravention. That is especially true, when, as here, there were around 50 alleged acts and omissions (in Claim 1), many of which were said to give rise to more than one breach of the legislation.

53. That being said, we do not ignore the sums that were alleged to be appropriate for Claims 1 and 2 as a whole, as per the Schedule of 21 November 2021, when considering the most up to date Schedule and the Claimant's arguments in support of it.

54. The Claimant seeks an injury to feelings award on the basis that his case is an exceptional one which should exceed the top band of Vento. He seeks a personal injury award for severe psychiatric damage in the band £51,460 to £108,620 (and acknowledges there would have to be a discount to avoid double recovery. In addition, he seeks, for paragraph 1 of the liability judgment (Row 2 of the Scott Schedule), damages for:

    a. Severe Asthma - involving hospitalization, constant treatment, impact of employment prospects and daily life - £39,150 to £59,760

    b. Worsening of IBS in link with stress/anxiety - £34,940 to £47,730

    c. PTSD - £21,050 to £54,420

    d. Any other damages identified by the tribunal as reasonable

55. The Claimant also seeks an award for financial loss, alleging loss of income since the end of employment (and on-going) and present incapacity for work (and also stigma damages in relation to future search for employment) are all attributable to the complaints which we upheld.

56. The sums sought for the successful complaints (only) exceeds the sums previously sought if all of Claims 1, 2 and 3 were fully successful. We make no criticism of the Claimant for arguing his case in that way at the remedy stage. However, the Respondent is, of course, entitled to remind us that if the Claimant has suffered injury to feeling or financial loss then (even if that loss has been caused by the Respondent) he is not entitled to compensation for it from this tribunal unless it has been caused by the contraventions of EQA as per the liability decision.

57. We have taken account of the cases referred to in the Respondent's representative's skeleton. We have also taken account of both the matters referred to by the Claimant: one being a news report of an out of court settlement in a claim brought against the Scouts; the other being the County Court decision (judgment and reasons) in Abrahart v University of Bristol, Claim No: G10YX983. We have also (as we told the parties we would) examined some of the samples of injury to feelings awards set out in Harvey on Industrial Relations and Employment Law (Division L, Section 7B).

58. In looking at these reports/cases, we have taken into account that we are seeking to assess the actual injury to this claimant's feelings, and we must make sure not to be misled into thinking that we are seeking to compare the respondent's wrongdoing from case to case. We have, however, found the cases, particularly those in Harvey, to be a useful guide when assessing the size of award for particular levels of injury.

59. We have decided that it is appropriate to make an overall global award for injury to feelings for the six successful complaints, rather than attempt to assess and make a separate award for the injury caused by each contravention. The case law guides us down that path and, quite apart from

any practical difficulties that might arise, it is appropriate given that the overall injury should be assessed cumulatively in any event.

60. As per the Claimant's statement, he was affected badly by his overall experience of working for the Respondent, and the termination of that employment. As per the 2 October 2023 letter from DWP, he currently has limited capability for work, effectively on an indefinite basis, pending further assessment.

61. However, even taking account everything that the Claimant has said, and the letter from the DWP, and the medical evidence (including the 14 November 2022 and 9 August 2021 letters from his GP), the Claimant has not proven to us that he has suffered a personal injury that was caused by any one (or any combination of) the contraventions of EQA as found by us at the liability stage. He has not proved that they caused an injury in themselves, or that they contributed to causation of an injury along with other factors, or that they exacerbated a personal injury that was caused by something else.

62. We have spent some time considering in detail the contravention (harassment related to disability) that occurred as a result of the Respondent's failure to conduct a stress risk assessment. As stated in more detail in the liability decision, there was a recommendation made by the Respondent's occupational health advisers in February 2018, and it was not actioned at all by the Respondent: it was not actioned by his then line manager, Mr Tolgyesi; it was not actioned by Ms Godfrey when she became line manager in May 2018; it was not actioned by Mr Lockwood in or after April 2019, when he became line manager.

63. We explained why this failure amounted to harassment in the liability decision (as well as setting out the things which the Respondent actually did do at various stages, such as during the period when Mr Welek was on the team, during the stages when he brought grievances and received offers of assistance, and during the stages when Ms Doherty was a regular point of contact). Our analysis stated at paragraph 531 of the liability reasons, and the wrongdoing identified as part of this contravention was something that went on for a long period of time.

64. At paragraph 537, we said:

> The Claimant did not specifically request a stress risk assessment. However, based on what he did specifically request and the contents of the February 2018 report, our unanimous decision is that it would have been obvious to a reasonable employer that a stress risk assessment was required.

65. It is no defence for the employer to say that the employee did not specifically ask for the risk assessment to be done. As the Claimant rightly says, where the obligation exists, there are potentially statutory requirements. However, in any event, we found in the Claimant's favour on liability. The

Respondent's argument (in the remedy hearing) was not that its contravention was excusable (or that it should not have been found to be a contravention), it was that the fact that the Claimant did not press for a stress risk assessment to be done is evidence that the failure to do it had not, at the time, caused a significant injury to the Claimant's feelings. As against that, it is significant that the Respondent's own OH advisers had recommended it, and it was in accordance with the Respondent's own published policies for it to be done. The OH advice itself contained links to where the managers could find assistance with those policies and the associated documents and procedures.

66. The failure to do the assessment did have a significant impact on the Claimant. That was part of our reasons for deciding that it did amount to harassment. It caused him significant injury to feelings. We acknowledge the Claimant's point that it would have been slightly artificial for him to attempt (in the written documents or oral arguments) to identify a specific level of injury to feelings for this in isolation. However, as we identified in paragraph 540 of the liability decision, the Respondent's failure to do this assessment caused (or, at the least, significantly contributed to) his opinion that the Respondent was not taking his concerns seriously and was not willing to deal with the risks to him, as an individual, because of his disability.

67. The failure to do the risk assessment was not the only contravention that we found to have occurred. However, the failure started in 2018, and was not rectified in 2019, or in 2020, or at any time prior to the end of employment. (Although, as stated above, and in the liability decision, there was some engagement with the Claimant in relation to his disability, including the attempts to create the passport; furthermore, for the last few months of employment, he was not at work, first because of illness, and then because of suspension).

68. The other incidents were each comparatively more confined in their duration.

69. Paragraph 4 of the liability judgment is about a failure to make reasonable adjustments, and the analysis commenced at paragraph 909 of the liability reasons. As we mentioned, it was not suggested that the Claimant was likely to be disciplined, but he was pressured to speak to (rather than send written communications to) Mr Kjelstrup-Johnson in particular, when that had not been necessary previously with Mr Welek.

70. Paragraph 5 of the liability judgment is the failure to make reasonable adjustments, and the analysis commenced at paragraph 976 of the liability reasons. We accepted that the PCP did exist, regardless of the fact that the Respondent thought that it was justified. We said at paragraph 982 why there was a contravention of EQA. It was one which had a significant and ongoing effect on the Claimant, making his work life more difficult.

71. Paragraph 2 of the liability judgment is both indirect discrimination and failure to make reasonable adjustments (Row 15 of Scott Schedule). The Claimant was told that he had to contact the Respondent by telephone rather than by other method. It is significant that the Respondent's own policies, had they been applied to the Claimant, would not necessarily have required that. For example, he ought to have been able to nominate someone else to deal with it. That being said, we take into account that the Claimant did not comply with the requirement, and was not disciplined for that failure, although, of course, he did receive letters saying that the absence was unauthorised. [He was also told, via his partner, that he could supply authorisation for her to speak to the Respondent, but did not do so.] As per paragraphs 655 to 657, the harassment complaint based on Row 15 failed. Paragraphs 635 to 654 outline what the PCP was, and why the indirect discrimination and failure to make reasonable adjustments succeeded.

72. The other successful harassment complaint was paragraph 3 of liability judgment. It arose out of communication between Ms Godfrey and the Claimant's mother in around March 2019. The overall heading for Row 17 was "Disclosure of confidential personal health and work information to C's mother without consent or other lawful excuse". The specific details of what we decided had actually happened (and why it was harassment) are set out in paragraphs 663 to 672 (and the minority reasons are irrelevant to the remedy decision). As we said in para 672.1, "*The effect on the Claimant was severe. He was extremely upset to find that his mother and Ms Godfrey had spoken by phone (and exchanged text messages)*."

73. As set out in the findings of fact, and in the analysis, in the liability decision, we did not accept that Ms Godfrey was the source of all of his mother's knowledge about the situation (including the fact that she had read a letter from the Respondent, the contents of which the Claimant had described to us) and we rejected the assertion that Ms Godfrey had told the Claimant's mother that the Claimant was at risk of redundancy. Although it is no criticism of the Claimant that the Respondent's letter was left somewhere that his mother could find and read it, the Respondent is not responsible for that. Likewise, while the Claimant and his mother might have had strong differences of opinion about how the Claimant should interact with his employer, and whether a severance package was something that should be explored, the Respondent's contraventions of EQA did not create that situation. The Claimant's mother took it upon herself to contact the Respondent and while it was wrong (and a contravention of EQA amounting to harassment) for Ms Godfrey to say what she did say, she did not, in fact, (based on our findings) say/do all of the things that the Claimant came to believe that she said/did. Put another way, a significant part of his anger and hurt feelings from this incident is based on a combination of a mistaken belief about what the Respondent did, and/or anger about things which his mother did, for which the Respondent is not responsible.

74. Our assessment, taking into account the effects on the Claimant, is that this is not a case in which the injury to feelings award should be in the lower

band. There was more than one contravention of EQA. The contraventions themselves were not short-lasting, and nor were the effects.

75. It is also not a case which merits an award in the upper band of Vento. The Claimant has suffered serious injury to feelings as a result of his overall dealings with the Respondent. However, there were many things which the Respondent did, which caused significant anger or emotional distress to the Claimant [as set out in the claim forms, Scott Schedule, statement for liability hearing, statements for remedy hearing, and schedule of loss for liability hearing] which were not actually contraventions of EQA. Some of the things which the Claimant has identified as causing him significant distress (dismissal, the way the chat logs were dealt with, the way the grievances were dealt with) were addressed by us and found not to be contraventions. Other things (such as alleged hacking) were not complaints before us.

76. Even apart from what the Claimant has said himself on past occasions about the causes of his distress, based on the totality of the evidence, the dismissal, and the associated fact that the Claimant has since been out of work were significant components of the overall distress suffered by the Claimant, and alleged injury to feelings. Furthermore, during the liability phase, the single factor that caused the most stress and anguish to the Claimant was the discussions about, and evidence about, the chat logs. The specific context of the GP's November 2022 letter was that the Claimant had informed the Tribunal that he could not answer questions about the chat logs, and was upset if they were even mentioned (and could not hear any extract being read from them); upon receipt of this medical evidence, an adjustment was made to the hearing such that he did not have to face cross-examination (save as described in the liability reasons) on the chat logs.

77. We take into account that the August 2021 letter said:

> This is a letter to confirm that Thomas Duncan was diagnosed formally with ADHD in 2012. Since then it has become apparent that he also has Autistic Spectrum Disorder but has never been formally diagnosed.
>
> I have referred him on the NHS, but unfortunately there is a very long waiting list for this diagnostic service. His autistic quotient score was 10/10. Due to the situation with his ex-employer, he is currently seeing a psychologist for therapy and they think he has complex PTSD; it has also been difficult to get a formal diagnosis of this by a psychiatrist due to a lack of diagnostic services on the NHS.

And that the November 2022 letter said

> This is a letter to confirm that I am Thomas Duncan's GP and have been seeing him with regard to his depression, ADHD and autism.
>
> His current issues are mainly related to problems he had at work. He has been diagnosed with complex PTSD due to the way he felt he was treated at work. Therefore as you can appreciate, it would be incredibly difficult to talk about in a

> Court setting, for example leading to traumatic flashbacks. I would be grateful if you could support him in giving his evidence in a different setting.

In other words, the suspected PTSD diagnosis was confirmed.

78. However, none of the contraventions which we upheld related to the chat logs, or subsequent dismissal which was based on them. The Claimant has not proven that PTSD (or any other injury) was caused by (or contributed to by) the contraventions that we did uphold, as opposed to those which we rejected, and/or other matters which were not the subject of complaints before us.

79. Our decisions were that the Claimant's grievances had been dealt with appropriately. There had been meetings with the Claimant, and the opportunity for him to explain his case. Our decisions were that the outcomes and the appeals had performed a detailed assessment of the evidence (though, at paragraph 745 of liability decision, we identified one particular matter in relation to which the panel would have assessed the evidence differently, and/or made further enquiries before deciding whether it was one person's word against another's) and supplied detailed explanations to the Claimant, including offering support for the future. The Claimant is entitled to disagree with the outcomes of those grievances, but to the extent that he suffered an injury to feelings as a result of an opinion that the Respondent was further discriminated against him, or harassing him, in relation to the conduct of those grievances, he is not entitled to compensation from this tribunal for that injury.

80. Our decision is that an award in the middle band of Vento is appropriate, even taking account of the fact that many of the complaints failed (and therefore there is no compensation for any injury caused by those acts/omissions).

81. We make an award of £15,000, which is slightly below the mid-point of the middle band (in each of the presidential guidance for 2019 and 2020 respectively).

82. While we are confident that this is the appropriate amount of compensation, as a global sum for all the injury to feelings, and also firmly of the opinion that interest should be awarded, it has to be said that the fact that the (start) dates of different contraventions were very spread out does create room for argument as to the date from which interest should run. We do not think it appropriate to allocate different start dates to interest from different (successful) complaints, or even to try to split between Claim 1 and Claim 2. The failure to conduct a risk assessment was not the only contravention that has contributed to the overall sum of £15,000, but it was by no means a negligible one. This was the earliest contravention in time, and we do think it appropriate to make an award of interest based on the timing of that particular harassment.

83. Put another way, while we acknowledge that the injury to feelings (assessed at £15,000) did not all occur on one specific exact date, there is no better, more logical, different start date for interest to run from than from the failure to conduct the risk assessment.

84. The recommendation was made in February 2018. It was harassment that it was not done by the Respondent and, in particular, not done by either Ms Godfrey or Mr Lockwood. We do not think it appropriate for interest to run from the date on which the recommendation was first made. However, we consider 1 May 2018 to be an appropriate and logical date, coinciding, as it does, with the month in which the Claimant was to move to Ms Godfrey's team, and being several weeks after the recommendation. So regardless of whether the outgoing manager (Mr Tolgyesi) or the incoming manager (Ms Godfrey) should have done it, it should have been done by 1 May 2018 at the latest, and that is the date from which interest runs.

85. The period 1 May 2018 to 20 October 2023 is 1999 days. Therefore, at 8% per annum, the interest to today is: (1999 x 0.08 x £15000)/365 = £6572.05.

86. In arriving at our decision, we considered the Claimant's arguments that there should be aggravated damages and/or exemplary damages.

87. In the liability decision, we did not decide that the Respondent had deliberately breached the legislation, or that it had taken a reckless approach to the requirements of the legislation. Where we found harassment, we did not find that it had been the Respondent's (or its employees') purpose to violate the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant

88. We addressed some of the Claimant's arguments about the conduct of the litigation in paragraphs 62 to 78 of the liability reasons. We do not need to add much to what we already said there to explain our decision that the Claimant has not demonstrated that the manner in which the litigation has been conducted has been such that the Respondent has (unreasonably) exacerbated the Claimant's injury to feelings). [More generally, in relation to the way in which it defended itself against the allegations of breaches of EQA, as mentioned above, we did not decide that the way in which it dealt with the Claimant's grievances was improper or unreasonable; it was certainly not done with the intention of upsetting or bullying the Claimant.]

89. In terms of the allegedly egregious nature of the contraventions themselves, we have already taken that into account when deciding upon £15,000 as the appropriate level of compensation for hurt feelings. Neither the nature of the discrimination itself (including the motive) nor the manner in which the litigation (and internal processes) were conducted provides any justification for an award of aggravated damages.

90. This is not a case in which an award of exemplary damages would be appropriate.

91. As mentioned above, the Claimant has not satisfied us that there should be any award for personal injury. He did not lose his job in the first place because of any of the contraventions which we upheld in the liability judgment; on the contrary, he was dismissed for the reasons stated in the liability reasons, and the dismissal was not unfair, and was not a contravention of EQA. Furthermore, although he is currently out of work (and has been since been dismissed by the Respondent) and is currently not fit for work, based on the evidence available, the Claimant has not proven that either of those states of affairs has been caused by any of the contraventions which we upheld in the liability judgment.

92. We are not satisfied that there will be any "stigma" that will cause the Claimant any future difficulties in the job market as a result of the specific contraventions that we found had occurred.

93. The Claimant is not entitled to any compensation for financial loss, because he has not proven that any of the alleged financial loss was caused by any of (or any combination of) the matters identified in the first five paragraphs of the liability judgment.

94. The Claimant has claimed an ACAS uplift. There could be no uplift for failure to follow ACAS Code in relation to his dismissal, since none of the complaints in relation to dismissal succeeded. (We are not suggesting that there was a breach of the Code, just that it is not necessary to comment further in the remedy decision; the liability decision described the invitations to meetings, and the offer of an appeal, etc).

95. For the grievances, while the Claimant does not agree with the outcomes, we set out our detailed findings in the liability decision. We did not find that there was an unreasonable delay. We did find that the Claimant was invited to meetings, the matters which he raised were investigated, he was given written outcomes, and was given the opportunity to appeal. When he did appeal, those were also investigated, and written decisions were supplied. There was no breach of the ACAS Code, and no unreasonable breach of it, and there is no entitlement to an uplift.

96. Finally:

96.1 In his submissions, the Claimant made comments about what offers the Respondent made to him and said that, in his opinion, the size of the offers demonstrated that the Respondent knew that it had behaved extremely unlawfully and/or was potentially liable for a large sum. We do not regard that as something which is relevant to our remedy decision. If relevant to costs, we will consider the argument then.

96.2 During his cross-examination, it was important to the Claimant that we had available to us the email which contained (what the Claimant alleges) is a screen shot of a remark made by Mr Lockwood when interviewed during the internal procedures. The Claimant seemed to accept that the document would not be relevant to remedy, but, in any event, our decision is that – even taking the Claimant's case at its highest in relation to what this item is said to prove – it is not an item which causes the compensation to be any higher than we have set out above.

Next Steps

97. After we had given our decision and reasons orally, we were asked to supply written reasons. These are they.

98. We refused the Respondent's request that we stay the judgment pending a decision on costs.

99. There are deposit orders and so, in any event, we have to decide whether the deposits go to the Respondent or are returned to the Claimant. In addition, the Respondent has made a specific and detailed application for costs, and the Claimant has indicated that we should consider a costs award in his favour.

100. Neither party seeks a further hearing. We ordered that each party has 28 days from the date that this judgment and reasons is sent to make any further submissions on either (a) who should receive the deposit or (b) why the other side should pay them costs or (c) why they should not pay costs to the other side. The panel has already fixed a date to meet to make the decisions (in the absence of the parties) and it is therefore important for the parties to stick to this deadline.

Employment Judge Quill

Date: 23 October 2023

Judgment sent to the parties on

4/12/2023

N Gotecha
For the Tribunal office