



EMPLOYMENT TRIBUNALS

Claimant: Ms S Yousaf

Respondent: City of Bradford Metropolitan District Council

RECORD OF A PRELIMINARY HEARING

Date: 21 August 2023

Before: Employment Judge
James

At: Sheffield (by telephone)

Appearances

For the claimant: Mr J Raizon, counsel

For the respondent: Mrs J Beaumont, solicitor

CASE MANAGEMENT ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure 2013

Final hearing

1. All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members by video link (CVP) at the request of/with the agreement of both parties, between Tuesday 19 and Friday 22 December 2023 inclusive (4 days), starting at 10 am or as soon as possible afterwards.

2. The time estimate for the hearing is 4 days, based on the claimant's intention to give evidence and the respondent's intention to call three to four witnesses, and on the following provisional timetable:
 - 2.1. half a day for reading in and any preliminary matters;
 - 2.2. maximum one and a half days for oral and other evidence on liability;
 - 2.3. a maximum total of 1 hour (half each) for submissions on liability;
 - 2.4. approximately 1 day for the Tribunal to determine the issues which it has to decide, reach its conclusions and prepare its reasons;
 - 2.5. one hour for the Tribunal to give judgment, with reasons if possible;
 - 2.6. three hours for the Tribunal to deal with remedy, including hearing further evidence if appropriate, reaching conclusions and giving judgment, if the claimant succeeds in whole or part.
3. The claimant and the respondent must inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and/or of the case not being ready for the final hearing; or if less days are needed because of a narrowing down of the issues.

Amendment/Further Information

4. By 4pm on 8 September 2023 the claimant will write to the respondent and the tribunal:
 - 4.1. To confirm whether any discrimination claims are being pursued, arising out of the grievance, and if so, the brief legal and factual basis of those claims, and whether a formal application is made to amend the claimant's claim accordingly;
 - 4.2. To set out the substantial disadvantage suffered by the claimant relating to issue 2.2.4 of the list of issues below;
 - 4.3. To set out how it is alleged that the respondent breached the Acas Code of Practice during the grievance process.
5. By 4pm on 22 September 2023, the respondent will confirm what, if any points are taken in relation to any proposed amendments of the claim by the claimant (bearing in mind any information provided in relation to 4.1 above, and the draft list of issues in Annex A), and the legal and factual basis for any objection to the claimant amending her claim accordingly. Save for any application made pursuant to order 4.1 above, the application to amend will be deemed to have been made on 17 August 2023.
6. By 4pm on 22 September 2023, the respondent will also file and serve an amended response.
7. To the extent that any application to amend is opposed, the claimant must provide to the tribunal and the respondent a written response to the respondent's objections by 4pm on 6 October 2023.
8. If any application to amend is made and/or opposed, the judge will then determine the amendment issue on the papers, as soon as possible thereafter. Subject to any

such determination, the claimant's claim will be deemed to be amended by the addition of the information in the Supplementary Particulars of Claim and the matters set out in the attached List of Issues, on the basis that such information is simply the provision of further information about existing claims; or the relabelling of facts that are set out in box 8.2 of the claim form; and on the basis that any application to amend accordingly is not opposed (save as has been notified in accordance with order 5 above).

Judicial mediation

9. The parties are referred to the "Judicial Mediation" section of the Presidential Guidance on 'General Case Management', which can be found at: [presidentialguidance-general-case-management-20180122.pdf \(judiciary.uk\)](https://www.judiciary.uk/wp-content/uploads/2018/01/presidential-guidance-general-case-management-20180122.pdf) . Both parties are interested in judicial mediation. A judicial mediation hearing has been listed, and related case management orders made in a separate case management order.

Complaints and issues

10. The parties must inform each other and the Tribunal in writing within 14 days of the date this is sent to them, if what is set out in the Case Management Summary section below about the case and the draft List of Issues in Annex A is inaccurate and/or incomplete in any important way.

Documents

11. By 4pm on 20 October 2023 the respondent must send the claimant copies of all documents they rely on in relation to any issue in the case, together with documents that support the claimant's case or which adversely affect their own or the claimant's case.
12. By 4pm on 27 October 2023 the claimant must send to the respondent copies of all additional documents that she relies on in relation to any issue in the case, together with documents that support the respondent's case or which adversely affect her own or the respondent's case, including the issue of remedy, that the respondent did not provide her with when complying with the above case management order.
13. The parties and their representatives should note that an order for disclosure of documents to a party to legal proceedings is made upon the implied undertaking given by the receiving party or their representative to the tribunal that they will not use or allow the documents or copies of them to be used for any purpose other than the proper conduct of the legal proceedings. The use of such documents for a collateral or ulterior purpose is a breach of that implied undertaking and is a contempt of court (Harman Appellant and Secretary of State for the Home Department Respondent [1983] 1 A.C. 280 at 304H to 305A).

Final hearing file/bundle

14. By 4pm on 10 November 2023, the parties must have agreed which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files, and provide the claimant with an electronic copy of the bundle by the same date.
15. The bundle should only include documents relevant to any disputed issue in the case including remedy, including the following documents if applicable:
 - 15.1. The Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional/further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
 - 15.2. Documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.
16. In preparing the bundle the following rules must be observed:
 - 16.1. Unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle.
 - 16.2. The documents in the bundle must follow a logical sequence which should normally be simple chronological order.
 - 16.3. The index to the digital pdf bundle should be numbered in such a way that the numbering of the pages in the pdf bundle is the same as the page numbers on the hard copy.

Witness statements

17. The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other by 4pm on 1 December 2023. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must:
 - be typed in double or 1.5 line spacing;
 - have numbered paragraphs;
 - set out the relevant events in chronological order, with dates;
 - contain all the evidence which the witness is called to give;
 - be cross-referenced where relevant to the documents in the bundle (including references to the page numbers of those documents);
 - contain only evidence relevant to issues in the case; state the source of any information not acquired at first hand;
 - be signed and dated.

18. The claimant's witness statement must include a statement of the amount of compensation or damages she is claiming, together with an explanation of how it has been calculated.

Final hearing preparation

19. Since the hearing is to be held by video link, the parties must discuss and agree how the public joining the online hearing will be able to access documents and witness statements.
20. The respondent will prepare a neutral chronology, to incorporate a cast list and agree that with the claimant if possible, prior to it being uploaded (see below).
21. The respondent is to upload to the Tribunal's Document Upload Centre (DUC) a copy of the index to the bundle, the bundle, the witness statements, any skeleton or opening, any chronology and cast list, any updated list of issues and any other relevant document, by 4pm on Friday 15 December 2023. A link to the DUC will be sent to the respondent.

Other matters

22. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
23. The parties may agree to vary any dates specified in any order by up to 14 days without the tribunal's permission, but only if that will not affect the hearing date.
24. Public access to employment tribunal decisions - all judgments and reasons for the judgments are published, in full, online at [Employment tribunal decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
25. Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

CASE MANAGEMENT SUMMARY

The Claim

26. The claimant has been employed by the respondent, as a Public Health Advanced Practitioner, since 4 November 2019. She is still employed by the respondent.
27. Acas early conciliation took place between 11 April and 15 May 2023. The claim form was presented on-line on 3 June 2023 but was rejected on 8 June 2023 because the name of the respondent on the Acas Early Conciliation certificate did not match the name of the respondent on the claim form. The claim was accepted after reconsideration and has been treated as having been received on 8 June 2023. The claimant brings complaints of disability discrimination, relating to an internal

application for the post of Public Health Specialist in January 2023. The respondent denies the claims.

The issues

28. The draft issues are set out in Annex A.

Adjustments

29. I explained to the parties how a final hearing would normally proceed, with the Tribunal sitting generally from 10am to 4.30pm each day, with a break mid-morning and mid-afternoon.
30. The claimant requests that she be provided with extended and regular breaks as required; and longer periods to answer questions during cross examination. Counsel for the respondent should avoid lengthy and/or composite questions and only ask one question at a time.

Other matters

31. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at: [presidential-guidance-general-casemanagement-20180122.pdf \(judiciary.uk\)](#) . The parties are reminded of rule 92: "Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...". If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.
32. The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
33. The above case management orders were uncontentionous and largely made by consent. Insofar as they are not made by consent, reasons, to the extent not set out above, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision.

Employment Judge James

Employment Judge James

21 August 2023

Sent to the parties on:

31 August 2023

For the Tribunal:

ANNEX A – LIST OF ISSUES

The Issues

1. Discrimination arising from disability (Equality Act 2010 section 15)
 - 1.1 Did the respondent treat the claimant unfavourably by failing to promote her to the role of Public Health Specialist?
 - 1.2 Did the following ‘something’ arise in consequence of the claimant’s disability:
 - 1.2.1 The claimant’s inability to comprehend and then answer complex verbal questions without time being given properly or appropriately to articulate a verbal answer. Characteristic features of the claimant’s dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed.
 - 1.3 Was the unfavourable treatment because of that ‘something’?
 - 1.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:
 - 1.4.1 [the respondent will set out the legitimate aims relied on in its amended response, if any]
 - 1.5 The Tribunal will decide in particular:
 - 1.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 1.5.2 could something less discriminatory have been done instead;
 - 1.5.3 how should the needs of the claimant and the respondent be balanced?
 - 1.6 The respondent admits that it knew that the claimant had the disability.
2. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)
 - 2.1 The respondent admits that it knew that the claimant had the disability at the material time.
 - 2.2 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:

- 2.2.1 Requiring interviewees to give a presentation as part of the interview process;
 - 2.2.2 Not showing interview questions to interviewees in advance;
 - 2.2.3 Asking complex or composite questions in interview without breaking questions down further; and
 - 2.2.4 Not constituting interview panels in line with policy.
- 2.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that characteristic features of C's dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed. [The claimant is to clarify the substantial disadvantage arising from 2.2.4 in due course].
- 2.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantages alleged?
- 2.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:
- 2.5.1 Not having to give a presentation;
 - 2.5.2 Being provided with the interview questions [how long?] in advance of the interview;
 - 2.5.3 Breaking the questions down in advance.
- 2.6 Was it reasonable for the respondent to have to take those steps?
- 2.7 Did the respondent fail to take those steps?
3. Harassment related to disability (Equality Act 2010 section 26)
- 3.1 Did the respondent, during the interview, ask the claimant: "Can you tell us more about your disability and how this affects you?"
 - 3.2 If so, was that unwanted conduct?
 - 3.3 Did it relate to disability?
 - 3.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
 - 3.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Remedy for discrimination or victimisation

- 4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend? The claimant requests: a recommendation that the respondent rerun the promotion and interview process.
- 4.2 What financial loss has the discrimination caused the claimant?
- 4.3 Has the claimant taken reasonable steps to replace lost earnings, for example by applying for another promotion?
- 4.4 If not, for what period of loss should the claimant be compensated?
- 4.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 4.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 4.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 4.8 Did the respondent or the claimant unreasonably fail to comply with it by [claimant to specify the breaches relied on]?
- 4.9 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 4.10 By what proportion, up to 25%?
- 4.11 Should interest be awarded? How much?