Case Numbers: 2200179/2022
2211483/2022

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Ms R Meade	**AND**	(R1) Westminster City Council (R2) Social Work England

REMEDY HEARING

Heard in person on 12 and 13 February 2024 and deliberations in Chambers on 28 February 2024.

Before: Employment Judge Nicolle

Non-legal members: Ms N Sandler and Ms P Breslin

For the Claimant: Ms N Cunningham, of Counsel
For the Respondents: Mr S Cheetham KC, of Counsel

JUDGMENT

1. An injury to feelings award of £40,000, which together with interest of £7416.99 gives a total of £47,416.99, for which the Respondents are joint and severally liable.

2. An aggravated damages award of £5,000, which together with interest of £463.56, gives a total of £5463.56, for which the Respondents are joint and severally liable.

3. An exemplary damages award against the Second Respondent of £5,000, which together with interest of £463.56, gives a total of £5463.56, for which the Second Respondent is liable.

4. Therefore the total award for which the Respondents are jointly and severally liable is £52,880.55.

5. The Second Respondent is separately liable for an exemplary damages award of £5463.56.

Reasons

The Hearing

6. Ms Cunningham and Mr Cheetham provided detailed submissions which they expanded on in their oral submissions. The Tribunal was referred to a bundle of documents and a separate bundle of case law authorities. We deal with the Claimant's costs application in a separate judgment.

Schedules of Loss

7. The Claimant's solicitors provided a schedule of loss dated 8 February 2024. The Respondents provided a counter schedule of loss. There are significant differences of principle between the parties which are primarily as follows.

Injury to feelings

8. The Claimant seeks separate awards for injury to feelings of £30,000 against each Respondent. The Respondents submit that there should be a single award of injury to feelings and propose that £20,000 would be appropriate.

Aggravated damages

9. The Claimant seeks aggravated damages awards of £5000 from both Respondents. The Respondents dispute that any award for aggravated damages should be made.

Exemplary damages

10. The Claimant seeks an award for exemplary damages against the Second Respondent of £10,000. Mr Cheetham says that any award for exemplary damages would be impermissible on the basis that it would need to have been brought against both Respondents and further that the case is inappropriate for such an award.

Financial loss

11. The Claimant seeks to recover that proportion of her legal fees not attributable to the conduct of the proceedings as financial loss. The Respondents dispute that such a recovery is legally permissible.

Other remedies

12. The Claimant seeks various recommendations pertaining to the individual Respondents. The Respondents accept some of these recommendations but dispute the applicability of others.

Witness evidence

13. The Claimant produced two short witness statements and was called to give evidence. She says that she had been made to feel like a criminal for over two years. She says that the First Respondent's cost warning letters had terrified her. She is incredibly disappointed that the Second Respondent has not even now apologised to her or taken responsibility for its biased and flawed investigation.

14. The First Respondent submitted a witness statement from David Bello, who was Director of Health Partnerships and Mental Health from September 2021, and since October 2023 has responsibility for the Hospital and Social Care Services. Subsequent to the Tribunal's liability judgment being promulgated he met with and apologised to the Claimant. Ms Cunningham criticises the failure by the First Respondent to call him as a witness so that he could be questioned on what steps the First Respondent was taking to address issues of concern arising from the Tribunal's judgment and to provide reassurance to the Claimant

that she would have unrestricted freedom to discuss her gender critical views without fear of further disciplinary action.

15. No witnesses were called on behalf of the Second Respondent. Ms Cunningham criticised this and averred that the Second Respondent should have called Colum Conway, Chief Executive (Mr Conway), to answer questions regarding what steps had been taken following the judgment and the Second Respondent's position on Social Workers articulating gender critical views, and more generally the legitimate expression of opinions pursuant to their Article 9 and 10 rights.

Relevant facts

The Claimant's witness evidence at the liability hearing

16. Ms Cunningham referred us to the first and second witness statements of the Claimant from the liability hearing. She says that numerous paragraphs within these statements are relevant to our assessment of the injury to feelings sustained by the Claimant. She referred us specifically to paragraphs 34, 38, 39, 40, 43-45, 63, 72-75, 77, 85, 88-89, 95, 101, 107-117 of her first witness statement and paragraphs 7, 8, 10, 11, 17, 21-24, 26, 30, 35, 37, 40-42 and 44 of her second witness statement. There is no need for us to set these out.

The position of the Second Respondent on the liability judgment being promulgated

17. Ms Cunningham referred us to what she considers the "minimal" statement made by Mr Conway subsequent to the Tribunal's liability judgment being promulgated on 9 January 2024. She states that nothing further has been stated and that this is indicative of the Second Respondent's reluctance to accept that gender critical beliefs, and the legitimate expression of them, are legally protected. Mr Cheetham says that it is perfectly normal and appropriate for a party to consider its legal position and there is no basis for any inference being drawn from their not having made any further statement or offered the Claimant an apology.

Costs warnings

18. We were referred to correspondence between the parties in which the First Respondent gave the Claimant a warning as to costs in settlement negotiations. In particular an email from the First Respondent's solicitors to the Claimant's solicitors dated 19 June 2023 which included:

> "We are prepared to offer £30,000 in full and final settlement. If your client refuses this offer and either does not succeed in her claims, or is awarded less, we will rely on this letter in a costs application".

19. The subsequent negotiations did not succeed primarily because the Claimant would not accept a settlement where the First Respondent did not concede liability.

Robin White's tweet

20. Whilst we were referred to a tweet from Robin White, the Respondents' previous counsel, in which she sought to minimise the impact of the Tribunal's liability judgment, we did not consider this to have any significance to our deliberations. Whilst it is unusual for solicitor or barrister to express an opinion on a case with which they have previously been involved we do not consider that her views can be seen as attributable to the Respondents.

The wider context

21. Ms Cunningham asked us to read the Employment Tribunal's judgment in Appleby v Tavistock and Portman NHS Foundation Trust. She referred to this as another example of egregious abuse and a "chilling" culture of freedom of speech being restricted for those with gender critical views or otherwise seeking to challenge the culture of gender self-identification.

22. She also referred us to the report of Akua Reindorf dated 21 December 2020 (the Reindorf Report) in which a review was undertaken of the cancellation of the Centre for Criminology Seminar on Trans Rights, Imprisonment and the Criminal Justice System scheduled to take place on 5 December 2019 and the arrangements for speaker invitations to the Holocaust Memorial Week event on the State of Anti Semitism Today, scheduled for 30 January 2020. The Reindorf Report included reference to Professor Jo Phoenix of the Open University and the Tribunal is aware that she has subsequently brought a successful Employment Tribunal claim based on her gender critical beliefs.

23. Whilst we considered the Appleby judgment and the Reindorf Report we did not consider them to be of direct relevance to our deliberations given that we need to consider the specific facts of the Claimant's case, together with the conduct of the Respondents, rather than seeking to apply remedies based on the wider public concerns regarding the stigmatisation and cancellation by some public bodies of those having gender critical views. We are, of course, aware of this background, but it is background only, and not directly relevant to our deliberations.

The Law

Injury to feelings

24. A tribunal has the power to award compensation to an employee for injury to feelings resulting from an act of discrimination by virtue of s.124 (5) and s.119 (4) of the Equality Act 2010 (the EQA).

25. The purpose of the award is to compensate the complainant for the anger, upset and humiliation caused by the discrimination.

26. As set out in Prison Service v Johnson [1997] IRLR 162:

- Awards should be compensatory and just to both parties.
- Awards should not be too low as this would diminish respect for the anti-discrimination legislation.
- Awards should bear some broad general similarity to the range of awards in personal injury cases.
- In exercising their discretion tribunals should remind themselves of the value in everyday life of the sum they had in mind by reference to purchasing or earnings and should bear in mind the need for public respect for the level of awards made.

27. The Vento bands for claims presented after April 2021 were as follows:

Lower Band: £900 to £9,100
Middle Band: £9,100 to £27,400
Upper Band: £27,400 to £45,600

28. We need to take account of the following factors:

- The discrimination must cause the injury.
- Knowledge of the discrimination is not necessary.
- The need for foreseeability of injury to feelings is not necessary.
- The award should compensate the claimant's injury and not punish tortfeasor for the manner of discrimination.

Separate awards for injury to feelings against the First and Second Respondents

29. The Claimant contends that separate awards should be made but this is disputed by the Respondents. Ms Cunningham referred us to Al Jumard v Clywd Leisure Ltd [2008] IRLR 345 as authority for the proposition that injury to feelings arising from separate kinds of discrimination should be considered separately; the more so should separate acts of discrimination be committed by different bodies.

30. Mr Cheetham asserts that where the injury is not divisible, the respondents are jointly and severely liable. He referred us to the judgment of Mummery LJ in London Borough of Hackney v Sivanandan and others [2013] IRLR 408 and in particular:

> "Where the same, "indivisible", damage is done to a claimant by concurrent tortfeasors – i.e. either tortfeasors who are liable for the same

> act (joint tortfeasors) or tortfeasors who separately contribute to the same damage – each is liable for the whole of that damage".

He says that a tribunal does not have power to apportion liability for compensation under the Civil Liability (Contribution) Act 1978.

31. In a situation such as the present where two respondents are sued because they each committed a discriminatory act or omission causing the injury it would only be in circumstances where the injury that follows is divisible, so that a rationale basis for apportionment can be made as between the two wrongdoers, that separate awards can be made for the extent of injury caused by each.

Aggravated damages

32. Aggravated damages are an award to recognise how other factors surrounding, connected to or following the discriminatory act have aggravated the injury. That might be in the manner in which the tort was committed, where it was done maliciously or in a high-handed manner.

33. In Alexander v The Home Office [1988] to ALL ER 118, May LJ said:

> "Compensatory damages may and in some incidences 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".

34. Further guidance was provided in Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT which set out the following criteria:

The manner in which the wrong was committed.

35. The basic concept being that the distress caused by an act of discrimination may be made worse by it being done in an exceptionally upsetting way. In this context the phrase "high-handed, malicious, insulting or oppressive" is often referred to

Motive

36. Discriminatory which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense or common experience, likely to cause more distress than the same acts would cause if evidently done without such motive say, as a result of ignorance or insensitivity.

Subsequent conduct

37. A tribunal should be minded of the difficulty, both conceptual and evidential, of distinguishing between the injury caused by the discriminatory act itself and the injury attributable to the aggravated elements. Tribunals must be aware of the risk of unwittingly compensating Claimant's under both heads for what is in

fact the same loss. Further, tribunals need to take account of whether the overall award is proportionate to the totality of the suffering caused to the claimant. The ultimate question is what additional distress was caused to the particular claimant, in the particular circumstances of the case, by the aggravating features in question.

Exemplary damages

38. Exemplary damages are designed to punish conduct that is oppressive, arbitrary or unconstitutional. Awards of exemplary damages are reserved for the most serious abuses of governmental power.

39. Mr Cheetham referred us to McGregor on Damages which states:

> "Where joint wrongdoers are sued together, the conduct of one defendant does not allow exemplary damages to be awarded in the single judgment which must be entered against all if the conduct of the other defendant or defendants does not merit punishment".

40. Further, Mr Cheetham referred us to the judgment of the House of Lords in Kuddus v Chief Constable of Leicestershire Constabulary [2001] UKHL 29 and specifically paragraph 128 which includes:

> "Since all the wrongdoers are jointly liable for the wrong and, if their employer is vicariously liable, he is jointly liable with them, an exemplary damages award against any of them ought, in principle, to be a justifiable award against each of them".

41. He also referred us to Broome v Cassell & Co [1972] AC 1027 to include from the judgment of the Lord Hailsham:

> "I think the effect of the law is exactly the opposite and that awards of punitive damages in respect of joint publication should reflect only the lowest figure for which any of them can be held liable. This seems to me to flow inexorably both from the principle that only one some may be awarded in a single proceeding for a joint tort, and from the authorities cited to us. I think that the inescapable conclusion to be drawn from these authorities is that only one sum can be awarded by way of exemplary damages where the plaintiff elects to sue more than one defendant in the same action in respect of the same publication".

42. Ms Cunningham contends that the First and Second Respondents are not joint wrongdoers. She says that there are two different wrongdoers with separate consequences. Further, this is not a case of vicarious liability but rather one involving two different respondents. She says that whilst the claims have been consolidated they could have been brought separately.

Legal costs as financial loss

43. The Claimant seeks to recover financial loss of £42,672 pertaining to that element of her legal costs of which was not attributable to the conduct of the proceedings. Ms Cunningham asserts that the measure of the Claimant's damages under this head should be costs which she reasonably incurred on the basis that this constitutes a conventional damages claim. She asserts that the burden is on the Respondents to show that the Claimant's attempts to mitigate her losses were unreasonable pursuant to Wilding v British Telecom [2002] IRLR 524.

44. Under s.124(6) of the EQA 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 s.119.

45. Mr Cheetham referred us to an article, "Costs as Damages" (Law Quarterly Review 2009, 125 (Jul), 468-490 in which Louise Merrett analysised the issues. He refers specifically to:

> "The basic rule of English Law is that, unless the claimant can rely on a separate cause of action, litigation costs can only be recovered as costs, and not as damages".

46. Also from Ms Merett's article she states that the main consideration is what was the dominant purpose for which the expense was incurred. If the purpose was litigation, the expense can be recovered only as "litigation costs" not damages. If, on the other hand, the expenses are not "costs" and can therefore be recovered as "damages", the claim will be tested on normal damages principles. Nevertheless, the above represents commentary rather than the application of the basic rule which remains that there are only two exceptions to the rule that costs cannot be recovered as damages. The first is where the costs were incurred in proceedings involving a third party. The second is where the claimant is relying on a separate and independent cause of action.

47. She goes on to state:

> "When it is realised that the true justification for the rule is a policy one, it can be seen that the rule should not be that you can never recover the costs of proceedings as damages. In other words, there is nothing about litigation costs per se which means that they could not be recovered as damages. Rather, you could not do so if that would undermine the cost regime".

48. The Tribunal was referred to the Supreme Court's judgment in Willers v Joyce and another [2016] UK SC 43. This involved a claim for malicious prosecution. The claimant sought the difference between his costs on a standard basis and actual expenditure. His claim was allowed to proceed.

49. In paragraph 41 of the judgment of Lord Toulson a distinction was drawn between the non-recoverability of the excess of costs as special damage in a civil claim as opposed to not extending the rule to costs incurred in defending criminal proceedings.

50. Further, he referred us to paragraph 145 of the dissenting judgment of Lord Mance which includes:

> "There is a strong line of case law over the last 200 years holding as a rule that extra costs of this nature are as a matter of principle irrecoverable as between the parties to the original proceedings".

51. He also referred us to Ladak v DRC Locums Ltd UKEAT/0488/13 as authority for the potentially wide recoverability of costs in the Employment Tribunal and that the words "fees, charges, disbursements or expenses" are not to be read restrictively.

Recommendations

52. S 124 of the EQA provides as follows:
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 of any matter to which the proceedings relate—

(a)on the complainant;

(b)on any other person.

The parties' submissions to the extent not referred to in the section addressing the law above.

Claimant

Injury to feelings

53. Ms Cunningham asserts that the legal wrongs are separate and that the Respondents are two separate bodies in distinct relationships with the Claimant.

Exemplary damages

54. She contends that the Second Respondent has allowed its processes to be subverted to suppress the Claimant's lawful political speech. She refers to the Second Respondent using its regulatory muscle to make certain truths unspeakable.

Respondents

55. Mr Cheetham does not accept that the Claimant's injury to feelings is divisible between the Respondents as the Tribunal's findings of fact regarding each are completely intertwined and their respective processes ran in parallel. Further, the Claimant in her witness statement does not seek to divide the distress she suffered as between the Respondents.

Discussion and conclusions

Injury to feelings

Should we make separate awards for injury to feelings against the First and Second Respondents?

56. We do not consider that it would be appropriate to make separate awards. We reach this decision for the following reasons. First, we do not consider that the First and Second Respondents are responsible for separate kinds of discrimination. Whilst we accept that it is at last arguable that the First and Second Respondents were responsible for separate acts of discrimination we do not consider that the injury to feelings sustained by the Claimant are divisible between the acts of the First and Second Respondents. The Claimant has not herself sought to apportion her injury to feelings between individual acts in the chronology and even less so between the respective acts of the First and Second Respondents. In any event, had she sought to do so, we consider that this would

have been a wholly artificial exercise. In these circumstances had we sought to make separate awards we do not consider that a rational basis would have existed for an apportionment of the injury to feelings award between the respective wrongdoing of the First and Second Respondents.

What injury to feelings award would be appropriate

57. In view of our finding above the Respondents are joint and severally liable for the award for injury to feelings.

58. We consider that an appropriate award is £40,000. We consider that the Claimant's injury to feelings falls within the upper Vento band. In reaching this decision we have carefully taken account of the criteria set out in Prison Service v Johnson. We consider this award to be appropriate to compensate the Claimant's injury and not to punish the Respondents for the manner of discrimination.

Relevant considerations

Mitigation

59. We acknowledge that there were some mitigating circumstances primarily that the Claimant was not dismissed and continued to receive her full renumeration from the First Respondent.

60. Factors which we have taken into account in our assessment of an appropriate award for injury to feelings include:

Actions of the Second Respondent (dealt with first given the chronology)

61. That the Second Respondent had a preordained view as to the Claimant's gender critical views being unacceptable, offensive, transphobic and discriminatory.

62. That the Case Examiners' initial investigation was defective in various ways as set out in paragraph 259 of the liability judgment.

63. As the Claimant's Regulator, telling her that her conduct was discriminatory. The Claimant initially felt compelled to accept that she was at fault given that she was stressed, felt under duress and understandably took the view that if the Regulator said her posts were discriminatory that was likely to be a reasonable position to adopt and therefore she must have been at fault.

64. That the Claimant was placed under significant duress when she agreed to accept a sanction which would appear on the Second Respondent's website.

65. Subjecting the Claimant to a prolonged investigation into her beliefs from November 2022 June 2021.

66. That the Second Respondent's statement of case dated 6 July 2022 was in our view oppressive and involved an attempt to restrain the Claimant's freedom of expression notwithstanding the EATs judgment in Forstater on 10 June 2021.

<u>First Respondent</u>

67. Inconsistency as to which of the Claimant's Facebook posts were regarded as offensive with Ms Farrell at one point referring to 70 posts.

68. That the comments made by Ms Farrell in the investigation report dated 6 December 2021 were hostile, oppressive and arguably punitive in nature. In particular we refer to those comments set out in paragraphs 219-221 of the liability judgment. We consider that it was wholly unacceptable that Ms Farrell was raising serious concerns regarding the Claimant's integrity and honesty and that she recommended that the findings of her investigation be reported to the Second Respondent which may wish to review its outcome in light of the Claimant's current position and evidence given during the investigation. We consider that this was indictive of Ms Farrell's intransigence in accepting that the Claimant's expression of her gender critical views constituted a legitimate exercise of her freedom of expression and that her views were protected beliefs.

69. The addendum to Ms Farrell's investigation report in which she maintained that 4 of the Claimant's Facebook posts were transphobic.

70. The duration of the Claimant's suspension from 22 July 2021 until 12 July 2022. We accept that her suspension had a very profound effect on her, and would inevitably have fundamentally eroded her dignity, given that her career was very important to her. Further, we accept that she would have felt ostracised and stigmatised. She was precluded from having any contact with her colleagues and thereby increasing her sense of isolation.

71. Subjecting her to a disciplinary process of significant duration.

72. We consider that the suggestion that the Claimant may pose a threat to vulnerable service users was something she regarded as very offensive and to have violated her personal and professional dignity.

73. We consider that the letter dated 20 January 2022 would have caused injury to feelings in that the Claimant would have felt restricted in her ability to make further comments of her gender critical beliefs. This would have caused her to perceive that her views remained unacceptable to the First Respondent.

74. We consider that this situation was maintained at the return to work interview on 25 July 2022 where Ms Harris and Ms Barry advised that the Claimant should maintain boundaries around behaviours, in other words should desist from espousing her gender critical views in front of her colleagues.

75. We further find that the letter of 15 November 2022 implied ongoing disapproval of the Claimant's conduct and continued the restraint on her freedom of expression. Whilst Mr Wrobel withdrew the disciplinary sanction, he did not state that her conduct was not a matter of concern.

<u>Aggravated damages</u>

76. We consider that an award of £5,000, for which the Respondents are jointly and severally liable, is appropriate. In reaching this decision we have taken into

account the following factors. Whilst we have taken into account factors which are relevant to our assessment of an appropriate award for injury to feelings we have nevertheless sought to avoid double recovery. Particular aggravating factors which we have taken into account include.

The manner in which the wrong was committed

77. We consider that the First Respondent's contention that the Claimant posed a risk to vulnerable service users was highly insulting and upsetting to her as a long serving social worker with an impeccable reputation.

78. The express and implied restrictions imposed on the Claimant at her return to work meeting with the First Respondent were oppressive and in effect constituted an ongoing gagging order.

79. The Second Respondent's reformatted statement of case dated 6 July 2022 was insulting and oppressive. Further, it failed to give proper cognisance to the EAT's decision in Forstater but rather sought to demonstrate the Claimant's culpability.

80. That the Respondents in the conduct of the respective procedures demonstrated considerable animosity against the Claimant on account of her gender critical beliefs.

Motive

81. We consider that the comments made by Ms Farrell on behalf of the First Respondent in the investigation report dated 6 December 2021 were spiteful or vindictive. We refer to paragraphs 219-221 of the liability judgment and particularly to her contention that the Claimant's change of position raised serious concerns regarding her integrity and honesty and further that the Second Respondent may wish to review its outcome in light of the Claimant's current position. We consider that this was vindictive and was predicated on Ms Farrell's personal opinion that the Claimant's gender critical beliefs were unacceptable.

Subsequent conduct

82. We consider that the Second Respondent, in its failure to offer any form of apology to the Claimant subsequent to the Tribunal's liability judgment being promulgated, has demonstrated an unwillingness to accept that its actions were unacceptable and caused the Claimant considerable distress. Nevertheless, we do not consider that this would justify an apportionment of the aggravated damages awards between the Respondents given that our overall findings are that the liability in this respect is joint and several.

83. We consider that all the Respondents' witnesses failed to acknowledge that the Claimant's gender critical views were acceptable and ones she was entitled to espouse. We find it notable that all of the witnesses refused to give unequivocal reassurance to the Claimant in this respect and were unwilling to respond to hypothetical scenarios as to whether certain comments in this

polarised debate would have been regarded as acceptable and constantly fell back on the response that it all depended on context. We consider that this represented an ongoing reluctance by the Respondents, both as institutions, but also in respect of individual managers/employees, to fully accept that the Claimant's gender critical views were ones she was entitled to hold and express.

Exemplary damages

84. We do not accept Mr Cheetham's argument that exemplary damages can only be awarded against both Respondents and not where, as in this case, the Claimant only seeks an award against the Second Respondent. In reaching this decision we have taken account of his reference to McGregor on Damages and the judgment of the House of Lords in Kuddus and Broome. However, we consider that the circumstances in these cases are different in that they involved either vicarious liability in Kuddus or in Broome a claimant electing to sue more than one defendant in the same action in respect of the same publication.

85. We consider that the circumstances are different in that the First and Second Respondents were different wrongdoers. We consider this situation different to our finding on the non-divisibility of an award for injury to feelings in that it is not necessary for us to consider whether injury suffered by the Claimant was divisible between the respective actions of the First and Second Respondents. We find that the Claimant would be able to point to separate acts of each Respondent. For example, if prior to the First Respondent becoming aware of the regulatory process the Claimant was subject to with the Second Respondent, the Claimant had initiated tribunal proceedings against the Second Respondent it would have been open for a tribunal to award exemplary damages in respect of that claim. Further, it would at least have been conceptually possible for separate proceedings to have been brought by the Claimant against the First and Second Respondents, and the fact that they were consolidated does not mean that the legal issues are automatically based on their having been the same combined wrongdoers.

The level of award

86. We consider that the Second Respondent's actions constituted a serious abuse of its power as a regulatory body. We accept Ms Cunningham's argument that the Second Respondent has allowed its processes to be subverted to punish and supress the Claimant's lawful political speech, and to do so on grounds of her protected beliefs. In doing so it has violated her Convention rights to freedom of belief and expression and combined that violation with unlawful discrimination.

87. Further, we consider that the Second Respondent had a pre-ordained view as to the Claimant's beliefs being unacceptable. We contrast the perfunctory investigation undertaken at the triage stage regarding the circumstances of the Claimant's Facebook posts with the total failure to consider the position of Mr Woolton and whether he had an agenda in raising a complaint against the Claimant. This constituted the Second Respondent having what we consider to be an institutional view to favour one side of the debate i.e. that gender self-

identification was a legitimate expression of belief whilst gender critical beliefs were unacceptable.

Legal costs and financial lost

88. We do not consider that the element of the Claimant's legal costs, not attributable to the Tribunal proceedings, of £42,672 constitute recoverable damages. We accept the Respondents' argument that the only exceptions to the general principle that legal expenses can only be recovered as litigation costs, and not as damages, is where the costs were incurred in proceedings involving a third party or where a claimant is relying on a separate and independent cause of action.

89. We do not consider that any of the Claimant's legal costs can be regarded as involving a third party. Whilst we are able to envisage situations where this may be applicable they do not apply in this case. For example, we considered a hypothetical situation where an individual brought a whistleblowing claim against their employer, but had previously incurred costs as result of a report made by that employer to the FCA under the approved persons regime, which was then found to have been motivated by bad faith as a result of protected disclosures. We consider that in circumstances where the FCA was not named as a party to the tribunal proceedings that the costs pertaining to the regulatory process would potentially involve a third party and arguably be recoverable as financial damages. That is not the case in this instance.

90. Further, we do not consider that the costs claimed relate to an independent cause of action as ultimately the respective legal proceedings, and advice given on related matters prior to and during the proceedings, related to the same overall sequence of events and cause of action.

Recommendations

First Respondent

91. We recommend that within six months of the promulgation of this judgment that it ensures that all of its managers and human resources staff receive training on freedom of expression and protected belief, to include the implications of the EAT's judgment in Forstater, with full details of the training, including details of the trainer and any slides, handouts etc to be shared with the Claimant.

92. We do not consider it appropriate that we recommend that the First Respondent should apologies to Ms Barry and Ms Gilroy. We reach this decision given that their disciplinary processes were peripheral to the Claimant's case. We take account of the fact that s.124 (3) of the EQA is primarily designed to obviate or reduce the adverse effect of any matter on the Claimant. Whilst we acknowledge that s.124 (3) (b) refers to any other person we consider that this would nevertheless be inappropriate given that Ms Barry and Ms Gilroy were as peripheral to the overall process and have, in any event, left the First Respondent's employment.

Second Respondent

93. We recommend that it shall within six months of this judgment being promulgated ensure that all its triage staff, investigation staff, and case examiners shall receive training on freedom of expression and protected belief. We consider that this is appropriate given the deficiencies in the process, we have found to have existed in the liability judgment.

94. We do not consider that it would be appropriate to recommend that within 14 days of the remedy judgment being promulgated that the Second Respondent should publish on its website, and announce on its social media accounts, a statement that social workers are free to engage in legitimate debate, including, but not limited to, the debate about sex and gender, in public and in private. We consider that this would be extremely vague, would not serve to obviate the effect of the discriminatory conduct on the Claimant and would give rise to potential issues as to exactly what statements would constitute legitimate debate in what are often contentious areas. For example, the current polarised expressions of opinion regarding the respective positions of Israel and Palestine and how many organisations are reluctant to set a particular view on what are, and what are not, legitimate expressions of opinion. This applies equally to many other often evolving areas of debate within the public domain.

95. We do not consider it appropriate to recommend that the Second Respondent undertakes an internal review of its triage and investigation processes. We do not consider that this would have the effect of obviating the effect of discriminatory conduct on the Claimant and further that such a review would, in our opinion, be too remote from the findings we have made against the Second Respondent in the liability judgment.

96. We do not consider it appropriate to recommend that the Second Respondent post a copy of the Tribunal's liability and remedies judgments to the various bodies stated. We consider that the Claimant, and her solicitors, are able to do this given that the judgment is a matter of public record and there is no legitimate basis for requiring the Second Respondent to do so directly.

Final conclusions

Calculation of interest

Injury to feelings award

97. In accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (s.1996/2803) the Claimant is awarded interest on the injury to feelings awarded under the EQA which is calculated based on the prevailing rate of interest under s.17 of the Judgments Act 1838 which for the applicable period is 8%.

98. Therefore based on injury to feelings award of £40,000 interest, calculated at a rate of 8%, with the date of the prohibited act of 6 November 2021, and calculation date of 1 March 2024, is £7416.99.

Aggravated and exemplary damages awards

99. Under Regulation 6 (1) (b) on an award of compensation interest shall be paid for the period beginning on the mid-point date and ending on the day of calculation.

100. Pursuant to Regulation 4(1) and 4(2) the mid-point date is halfway between the commencement date of the discriminatory act of 6 November 2021 and the date of the judgment of 1 March 2024 and therefore is 2 January 2023. This is therefore a period of 423 days.

101. Based on the above the total interest awarded to the Claimant on the aggravated damages award is £463.56.

102. Based on the above the total interest awarded to the claimant on the exemplary damages award is £463.56.

103. The Claimant is therefore awarded the following:

104. An injury to feelings award of £40,000, which together with interest of £7416.99 gives a total of £47,416.99, for which the Respondents are joint and severally liable.

105. An aggravated damages award of £5,000, which together with interest of £463.56, gives a total of £5463.56, for which the Respondents are joint and severally liable.

106. An exemplary damages award against the Second Respondent of £5,000, which together with interest of £463.56, gives a total of £5463.56, for which the Second Respondent is liable.

107. Therefore the total award for which the Respondents are jointly and severally liable is £52,880.55.

108. The Second Respondent is separately liable for an exemplary damages award of £5463.56.

Tax

109. The award for injury to feelings, given that it is unrelated to the termination of employment, is tax free.

110. As with the award for injury to feelings the award of aggravated damages does not relate to termination of the Claimant's employment and is tax free.

111. The award for exemplary damages is punitive, rather than compensatory, and as such we do not consider it liable to tax.

Employment Judge Nicolle

Dated: **1 March 2024**

Sent to the parties on:

26 March 2024

……..

M PARRIS

……..

For the Tribunal Office