



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Fields  
**Respondent:** Kingston upon Hull City Council  
**Heard at:** Hull **On:** 13 February 2017  
**Before:** Employment Judge Davies  
Mrs S Richards  
Mr I Williamson

## Representation

**Claimant:** In person  
**Respondent:** Mr R Quickfall (counsel)

# RESERVED REMEDY AND COSTS JUDGMENT

1. In respect of the Respondent's failure to provide a mobility scooter for use within the Guildhall from the end of October 2015 until 15 January 2016, the Respondent shall pay the claimant £2205.59 in respect of injury to feelings, being £2,000 plus interest of £205.59.
2. Pursuant to Rule 76(4) Employment Tribunal Rules 2013 the Respondent shall pay the Claimant costs of £1,200, being the issue and hearing fees paid by her.
3. The Respondent's defence did not have "no reasonable prospect of success" and the Claimant's application for costs more generally does not succeed.

# REASONS

## 1. Introduction

- 1.1 This was the hearing to decide the remedy to be awarded to the Claimant in respect of her successful claim of failure to make reasonable adjustments, namely that the Respondent failed to provide a mobility scooter for use within the Guildhall from the end of October 2015 until 15 January 2016 ("the relevant dates").

- 1.2 The Claimant represented herself and the Respondent was represented by Mr Quickfall of counsel. The Tribunal was provided with a file of documents by the Respondent, and we considered those to which the parties drew our attention. The Claimant produced a number of additional documents. We discussed those with her and agreed that a number of them were not relevant to the issues to be decided. We agreed that some were relevant, and the Respondent did not object to those being admitted in evidence. The Claimant also sought to rely on CCTV footage of an occasion when the Council's mobility scooter broke and she says that she was distressed and humiliated as a result. That incident occurred many months after the relevant dates when the Tribunal found that the Respondent had failed to make reasonable adjustments. Further, it related to a breakdown of the scooter, not to a failure to provide it. The Tribunal did not consider that it was relevant to the issues to be decided. We therefore refused to admit the CCTV footage in evidence.
- 1.3 The Tribunal heard evidence from the Claimant on her own behalf and from Mr I Anderson, Town Clerk, for the Respondent.

## **2. The Issues**

- 2.1 The issues to be determined were:
- 2.1.1 Did the Claimant suffer financial losses for which she should be compensated as a result of the failure to provide a mobility scooter for use in the Guildhall between the end of October 2015 and 15 January 2016 ?
- 2.1.2 Did the Claimant suffer injury to feelings as a result of that failure and, if so, what is the appropriate sum to compensate her for that injury?
- 2.2 The Respondent accepted that it should bear the cost of the issue fee and hearing fee that had been paid by the Claimant. The Claimant also said that the Respondent ought to pay her legal costs and/or preparation time costs. She accepted that the Respondent had not acted unreasonably in its defence of the proceedings, but she said that it had "defended the indefensible." The Tribunal took that as an application for costs on the basis that the defence had no reasonable prospect of success. A further issue therefore arose: Did the defence have no reasonable prospect of success and, if so, should a costs or preparation time order be made?

## **3. Further findings of fact**

- 3.1 The Claimant sought compensation from the Respondent for the costs of hiring a scooter, taxi fares, petrol and vehicle running costs, the cost of gifts she gave friends who assisted her, printing and photocopying costs and the cost of her damaged scooter.
- 3.2 She also sought to recover legal fees, postage costs and telephone costs. Those items were plainly costs associated with the Tribunal proceedings, rather than expenses incurred because of the failure to provide a scooter between the relevant dates. Those matters were therefore dealt with as part of the Claimant's costs application.

- 3.3 Returning to the other matters, the Claimant had provided some receipts for scooter hire, from October and November 2016. She had not provided any other receipts. She was asked in evidence about the expenses she said she had incurred during the relevant dates. She said that there was one occasion when she had to hire a scooter between the relevant dates, but she was not able to say when that was or what it was for. At various times she referred to a Youth Parliament and to the Lord Mayor's Christmas dinner. When asked about the latter, she then said that she could not remember if she hired a scooter on that occasion. Later in her evidence she said that she was claiming the costs of hiring a scooter for use in the Guildhall but that she could not identify the dates.
- 3.4 She was asked whether there was any other money she had to spend between the relevant dates because the Respondent had not provided a scooter for use in the Guildhall. She said that she could not say. The Claimant was unable to explain how the lack of a scooter for use in the Guildhall had caused her to need to use a taxi, nor how it had led to petrol or running costs for her own car. She did not give evidence of any occasion when the lack of a scooter for use in the Guildhall between the relevant dates had led to such expenses.
- 3.5 The Claimant said that she had bought gifts for friends who had helped her during "the whole year that this was going on." Her written documents referred to friends helping her by pushing her wheelchair so that she could attend with residents at various venues when the scooter hire facility was not open.
- 3.6 The Claimant said that she had incurred photocopying costs because she was trying to get her work done, but she gave no evidence of such costs being incurred between the relevant dates because of the failure to provide a scooter for use within the Guildhall.
- 3.7 The Claimant explained that she was unable to give precise dates in part because the Respondent's computer system had broken. Even allowing for that, the Tribunal simply was not satisfied that the Claimant had proved on a balance of probabilities that she had incurred any expenses as a result of the failure to provide a mobility scooter for use in the Guildhall between the relevant dates. Her evidence was far too vague and uncertain.
- 3.8 The Claimant also gave evidence about the effect on her of the failure to provide a scooter for use in the Guildhall between the relevant dates. She gave evidence on this occasion, as she had at the last hearing, about the distress and humiliation she said the Respondent's actions and failures had caused her. Much of that evidence failed to distinguish between those parts of her claim that did not succeed before the Tribunal, and the one part that did succeed. She explained that she had suffered from stress and anxiety from some time before the relevant dates, as a result of the situation with her scooter. This had lasted throughout the period she was trying to resolve the situation. There was some support for that in a letter from her doctor, which referred to increasing levels of anxiety during the last couple of years, which had been exacerbated by stresses going on in her life generally, and in a more recent letter.

- 3.9 The Claimant did give some evidence that focussed specifically on the relevant dates. She said that she was told that the scooter would be bought and thought that it would be within a week or a fortnight. Then nothing happened, and she had also to deal with the fact that her brother was very unwell and she was visiting him in Edinburgh once or twice a week. She accepted that she had not chased up the scooter with the Respondent between the relevant dates. She thought that she might have raised it once with Mr McVie. As the Tribunal's judgment on liability makes clear, there was email correspondence about the scooter during December 2015, but, for the Claimant's part, that tended to be concerned with what type of scooter should be bought (and whether the Claimant's own scooter should be repaired instead) rather than any suggestion that the Respondent was delaying.
- 3.10 The Claimant was asked questions about whether the lack of a scooter for use in the Guildhall between the relevant dates had actually prevented her from attending any meeting or function she was required to attend. Mr Anderson gave evidence that both before and after the scooter was provided, the Claimant did not always attend such meetings. She said that she had been told by the chief whip that she had a 100% attendance record. That was not easy to square with her evidence at the last hearing about being unable to attend for a lengthy period because of the issues with the scooter. When she was asked about this, she said that she could be "deemed to have attended" because she had a valid reason and that she "would not get a black mark if it was because of the scooter." She was then asked about her evidence on the last occasion that she had been subjected to months of forced non-attendance at official meetings, that she had received a "black mark" from the Labour party for each non-attendance and that this had led to a threat of suspension. In response to that question, the Claimant said that the junior whip had made the threat and the senior whip had withdrawn it. She did not know when that was. It appeared to the Tribunal that the Claimant's evidence about attendance at meetings and "black marks" shifted and that it was difficult to have confidence in what she said. Nonetheless, on the basis of the records and notes referred to by Mr Anderson, the Tribunal was satisfied that the Claimant did in general attend a good proportion of meetings and functions. Further, there were meetings and functions at the Guildhall between the relevant dates that she would ordinarily have been expected to attend. She was visiting her brother during this period, but the Tribunal accepted that she fitted this around her work, not the other way round. She explained that, knowing she was unable to attend at the Guildhall, she told her family that she would visit her brother at particular times instead. As regards the failure to provide a scooter, she referred to not being given the freedom of choice to attend.
- 3.11 The Claimant also referred to being criticised and abused by residents in her ward, who felt that she was not properly representing them. Again, the Claimant found it difficult to separate out events relating to the failure to provide the scooter for use in the Guildhall between the relevant dates, and events more generally. She referred to one family who had abused her when she did not accompany them to the Guildhall to support them, but she did not know when that was.

#### **4. The Law**

- 4.1 An award of compensation in a discrimination case is designed to put the individual so far as possible in the position he or she would have been in but for the discrimination.

- 4.2 Awards for injury to feelings are compensatory, not punitive. The aim is to compensate the Claimant fully for the proven, unlawful discrimination for which the Respondent is liable. The crucial consideration is the effect of the unlawful discrimination on the Claimant. The Tribunal must have regard to the well-established bands of compensation for injury to feelings: see *Vento v Chief Constable of West Yorkshire Police (No 2)* [2003] IRLR 102, as upgraded in the case of *Da'Bell v NSPCC* [2010] IRLR 19, and subsequently *Simmons v Castle* [2012] EWCA CIV 1039, which indicates that those bands should be uprated by a further 10%.
- 4.3 The award of interest in discrimination cases is governed by the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 as amended by the Employment Tribunals (Interest on Awards in Discrimination Cases)(Amendment) Regulations 2013 (SI 2013/1669). Under those Regulations, interest at a rate of 8% is payable on injury to feelings awards, from the date of the act of discrimination complained of to the calculation date. Where the act of discrimination extends over a period, the Tribunal must determine the appropriate start date.
- 4.4 The award of costs is dealt with by rule 76 of the Employment Tribunal Rules of Procedure 2013. That rule allows for costs or preparation time orders to be made where the Tribunal considers that a party has acted unreasonably, vexatiously, abusively or disruptively in the conduct of the proceedings, or that the claim or response had no reasonable prospect of success. The threshold for establishing that a claim or response had “no reasonable prospect of success” is a high one. The question is not whether it was “likely to fail” but whether it had *no* reasonable prospect of success.

## 5. Application of the law to the facts

- 5.1 We start with the claim for compensation for financial losses. As the findings of fact indicate, the Claimant did not prove on a balance of probability that she had suffered any financial loss as a result of the failure to provide a scooter for use in the Guildhall between the relevant dates. Further, while she may have bought gifts to show her appreciation to friends for their assistance over a lengthy period, the Tribunal considered that that was a matter for her and was not something she could recover from the Respondent. As had been explained to her on more than one occasion, the cost of the damage to her own scooter was not something that she could ever have recovered in this claim. It certainly did not arise from failure to provide a scooter for use within the Guildhall between the relevant dates. No award of compensation for financial losses is therefore appropriate.
- 5.2 We turn to the question of compensation for injury to feelings. The Tribunal did not accept the Respondent’s submission that the Claimant needed to be able to show that she had actually been prevented from attending specific meetings between the relevant dates in order to establish that the Respondent’s failure to provide the scooter had caused her injury to feelings. It seemed to the Tribunal that it was open to the Claimant to say that she was upset by the failure over a period of more than two months to provide a scooter that would have enabled her to access the Guildhall in her role as a councillor.

- 5.3 Looking at all the evidence in the round, the Tribunal accepted that the Claimant had suffered injury to her feelings as a result of that particular failure. It was plainly part of an ongoing picture, and the Tribunal had to do its best to disentangle the Claimant's upset and distress about the other events from her upset and distress about this aspect. In doing so, the Tribunal took into account the medical evidence about increased anxiety over a lengthy period that included the relevant dates. We also took into account the Claimant's evidence about expecting the scooter to arrive within a week or two and then it not coming, and about feeling that she was denied freedom of choice to carry out her duties as a councillor. Her distress and upset was evidently real, and that was, to some extent, caused by the failure to provide the scooter between the relevant dates. Put another way, had the scooter been provided by the end of October 2015, that factor contributing to the Claimant's stress and anxiety would have been removed more than two months before it was.
- 5.4 The Tribunal recognised, of course, that this period coincided with the distressing circumstances of the Claimant's brother's illness, but we were quite satisfied that the distress that she was describing to the Tribunal related to the circumstances involving the scooter.
- 5.5 This was in one sense a one-off failure, but it was one that lasted for more than two months. It was, however, tempered by the fact that the Claimant knew that a scooter was to be provided – that had been agreed shortly after she suggested it. The failure related to a delay in doing so. The Claimant suffered a level of genuine upset and distress that was caused by the situation involving the scooter and part of that related to the failure over a period of more than two months to provide a scooter that had been promised. The Tribunal considered that the level of injury to the Claimant's feelings in all those circumstances fell towards the bottom of the lower band (as updated), and we found that £2000 was the appropriate sum to compensate her for that injury.
- 5.6 The Respondent contended that interest should run from the middle of the relevant period. However, the Tribunal accepted the Claimant's submission that it should run from the start of the failure. That was when the Claimant's injured feelings as a result of this failure began, and the Tribunal considered it just to award interest from that date. From 1 November 2015 to 13 February 2017 is a period of 469 days. The interest payable is therefore  $469/365 \times 0.08 \times £2000 = £205.59$ .
- 5.7 In her written remedy statement, the Claimant sought a variety of other remedies, including an apology, written assurances as to the Council's future conduct, recommendations for risk assessments and other measures. As we explained to the Claimant at the remedy hearing, the Tribunal does not have power to award any of those remedies. The Tribunal's power to make recommendations is limited to recommendations that the Respondent take specific steps for the purpose or obviating or reducing the adverse effect *on the Claimant*.
- 5.8 We turn finally to the application for costs or a preparation time order. The Claimant's application was based on the suggestion that the Respondent had "defended the indefensible" and the Tribunal therefore considered whether the

Respondent's defence to this part of the claim had "no reasonable prospect of success." We were satisfied that this threshold was not met. There was a live issue as to whether this part of the claim was brought in time and, if not, whether time should be extended. There was then the issue of whether provision of a scooter was reasonable and, if so, when it ought reasonably to have been provided. In order for those matters to be resolved it was necessary for the Tribunal to hear evidence and cross-examination, to make appropriate findings and to form a judgment about what was reasonable. This was not a case in which it could be said that the Respondent's position – that it did not fail to make reasonable adjustments in this particular respect – had *no* reasonable prospect of success. Accordingly, the threshold for making a costs or preparation time order is not met and the costs application cannot succeed.

- 5.9 As we explained to the Claimant at the remedy hearing, this is different from the making of a costs order to cover Tribunal fees. For such an order, the threshold conditions do not apply. That is why the Respondent accepted that it should pay those fees, given that the Claimant had succeeded in part of her claim.

Employment Judge Davies

Date: 16 February 2017

Date sent: 17 February 2017