



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr A Visram

and

Respondent

ICTS (UK) Limited

Held at Reading on

15, 16 & 17 March 2017 (Remedy Hearing)
18 April & 22 September 2017 (In Chambers)

Representation

Claimant: Mr O Isaacs, counsel
Respondent: Mr M Duggan QC, counsel

Employment Judge

Mr SG Vowles **Members:** Mrs CE Callard
Miss HT Edwards

RESERVED UNANIMOUS REMEDY JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents in a bundle provided by the parties and heard and read submissions from both representatives. The Tribunal determined as follows.

Remedy

2. The Claimant has been paid his entitlement under the Long Term Disability Benefits (LTDB) Plan from the date of dismissal to date. The following awards therefore run from the date of this judgment. The Tribunal awarded the following sums:

Basic award

3. £10,672.

Loss of statutory rights

4. £600.

Future Loss of Earnings

5. Two thirds of the annual base salary less income received from State Invalidity Pension amounting to an annual net pay of £12,940 until the Claimant's return to his original job, death, retirement at age 68 or securing employment which would, had he still been employed by the Respondent, have had the effect of terminating his entitlement to LTDB under the "*Employee Retirement Death and Disability Plans*". This sum to continue to be paid on a monthly basis as at present.

Death in Service Benefits

6. £16.85 per month for the same period that future loss of earnings is awarded at paragraph 5 above and subject to the same terminating events.

Pension Plan

7. £20.73 per month for employer pension contributions for the same period that future loss of earnings is awarded at paragraph 5 above and subject to the same terminating events.
8. £18.33 per month for employer pension contributions in respect of a spousal pension for the same period that future loss of earnings is awarded at paragraph 5 above and subject to the same terminating events.

Injury to feelings

9. £14,000.

Interest on injury to feelings

10. £3,469.10.

Reasons

11. This judgment was reserved and written reasons are attached.

REASONS

BACKGROUND

1. On 23 December 2014 the Claimant presented complaints of automatically unfair dismissal, unfair dismissal, discrimination arising from disability and unpaid holiday pay to the Tribunal.
2. On 26 January 2015 the Respondent presented a response and resisted all claims. It asserted that the Claimant had been fairly dismissed by reason of capability. It conceded that the Claimant was a disabled person by reason of depression but denied any discrimination based on the Claimant's disability.
3. A 4 day hearing was held on 4-7 August 2015. At the start of the hearing the Respondent conceded liability for the unpaid holiday pay and by consent an award of £2,482.07 was made in favour of the Claimant. Judgment was reserved. On 24 August 2015 the Judgment with reasons was promulgated to the parties. The complaints of unfair dismissal and discrimination arising from disability were successful. The complaint of automatically unfair dismissal failed.
4. Remedy hearings were listed for 22 October 2015, 7 March 2016, 13 April 2016 and 4 November 2016. These hearings were adjourned for various reasons.
5. A 3 day remedy hearing was held on 15-17 March 2017. The remedy judgment was reserved and the Tribunal deliberated in chambers on 18 April 2017 and 22 September 2017.

EVIDENCE

6. The Tribunal heard evidence on oath from Mr Anthony Visram (Claimant), Dr Michael Bristow (Consultant Psychiatrist), Dr Michael Banks (Vocational and Employment Consultant) and Mr Trevor Gilbert (Employment Expert Witness).
7. The Tribunal also read written closing statements regarding remedy from both representatives.

FUTURE LOSS OF EARNINGS

8. Between the end of the remedy hearing and the reserved remedy discussions, the parties' representatives presented further written submissions as requested by the Tribunal on the following issue:

Whether or not the LTDB entitlement in paragraphs 30/31 of the Employment Tribunal reasons is dependent upon a return to work with the Respondent to the role being performed immediately before absence on sick leave or to any role.

Claimant's submissions

9. The Claimant submitted that the terms of his eligibility for Long Term Disability Benefits (LTDB) was based upon his inability to return to his previous role as an International Security Coordinator and not to any other role with the Respondent or with any other employer.
10. The Claimant relied upon the Supreme Court decision in Arnold v Britton [2015] UKSC 36 in which Lord Neuberger set out guiding principles regarding the construction of a contract as follows:
 - a. *Commercial common sense should not be used to undermine the importance of the language actually used in the contract;*
 - b. *The less clear the drafting of a provision, the more ready the court will be able to depart from its natural meaning; but the court should not hunt for problems with the drafting of a contract solely in order to justify departing from its natural meaning;*
 - c. *Commercial common sense must be assessed as at the date the contract was entered into, and should not be invoked retrospectively only once it has become clear that the bargain "has worked out badly, or even disastrously, for one of the parties";*
 - d. *The court should be slow to reject the natural meaning of a term merely because it appears to have been an imprudent term to have agreed, even at the time of entering the contract;*
 - e. *Surrounding factual circumstances may only be taken into account to the extent that they were known or reasonably available to both parties;*
 - f. *When an unanticipated event occurs, and it is clear what the parties would have intended had they contemplated or intended that event to occur, the court will give effect to that clear intention;*
 - g. *Service charge clauses are not subject to any special rule of interpretation; they need not be construed "restrictively".*
11. The Claimant also relied upon the approach to be adopted when faced with different definitions for when and how PHI benefits were to be made to an employee set out by the Court of Appeal in the case of Briscoe v Lubrizol (2) EWCA Civ 508 -

It is also true that the court does not look favourably upon an employer who seeks to restrict his contractual obligations in reliance upon a document

(whether by reference to a “works notice” or an insurance policy) to which the employee is not party and to which his attention has not been specifically drawn, so as to limit a right or benefit which information given in the handbook has led the employee to expect...

12. The Claimant referred to the wording in the company handbook: “*Employee Retirement Death and Disability Plans*” which was only partially quoted in paragraphs 30 and 31 of the Employment Tribunal Reasons. In full, the relevant part reads as follows:

“(G) Long Term Disability Benefits

Should you be absent from, and unable to work due to sickness or injury for a continuous period of twenty six weeks or more, you will receive a Disability Income of 2/3rds of your Base Annual Salary less the State Invalidity Pension.

The disability income will commence twenty six weeks after the start of your absence. It will continue until the earlier date of your return to work, death or retirement.

The disability income is treated as normal pay and is subject to the necessary PAYE deductions. Any long-term benefits that you receive from the State will be payable directly to you and not via the Company.”

13. The Claimant asserted that having regard to the circumstances of the case, the critical issue to be determined was whether the words “return to work” mean “return to any work”, “return to any work undertaken by the Respondent” or “return to the Claimant’s work as an International Security Coordinator”. It was submitted that the words meant return to the Claimant’s work as an International Security Coordinator. If the words were ambiguous they should be read *contra proferentem* so that any ambiguity was determined in favour of the Claimant’s submission.

Respondent’s submissions

14. The Respondent responded by reference, in particular, to the case of Jowitt v Pioneer Technology (UK) Ltd [2003] EWCA Civ 411 which was said to be the most helpful case in this field. In that case, the relevant part of the handbook provided the following:

“5.3 Long Term Disability

The Company runs a scheme that is designed to provide an income during lengthy periods of absence due to prolonged sickness or injury. Permanent and Established members of staff are entitled to two thirds of normal pay (inclusive of State benefits) after 26 weeks’ continuous absence through illness or disability, or if they are unable to work up to date of retirement, as certified by a medical practitioner and, if necessary confirmed by the Company’s doctor.

I would therefore hold that Clause 5.3 covers only employees who are medically certified, after 26 weeks' absence because of illness or injury, as still unable to work. But how disabled, and disabled from what, must an employee be for this purpose? In my judgment (and Mr Underhill has accepted this during his submissions) "unable to work" in the present context cannot mean incapacitated from any and every purposeful activity. In my judgment, an employee is "unable to work" for the purposes of clause 5.3 if there is no continuous remunerative full-time work which he can realistically be expected to do: compare Walton v Airtours [2003] IRLR 161. The scheme set out in clause 5.3 in the context of the handbook and the employment relationship is there, in other words, to cushion the earnings of employees who become so disabled that they can neither be found other work within the organisation nor realistically be expected to find employment elsewhere."

15. The Respondent therefore submitted that the above case was in point and that the clause in the Respondent's handbook meant that the Claimant remained entitled to LTDB only whilst he was unable to work and while there was no continuous remunerative full time work, with the Respondent or elsewhere, which he could realistically be expected to do. The clause should not be interpreted as requiring him to return to, or be able to return to, his last job as an International Security Coordinator.

Decision

16. The Tribunal preferred the Claimant's submissions on this issue.
17. The Tribunal interpreted "return to work" under paragraph (G) of Long Term Disability Benefits quoted above as referring to a return to the Claimant's original work as an International Security Coordinator. The Tribunal was assisted by the American Airlines UK statement of terms and conditions of employment dated 15 April 1992 which included:

"6. Pension

The Company has established a Pension and Death and Disability Benefits plan for all eligible employees on the payroll in the United Kingdom.

The Death and Disability benefits provided are:-

- (a) *an in-service lump sum death benefit equal to twice base annual salary at the time of death.*
- (b) *A spouse's pension of 25% of base salary at the time of death.*
- (c) *A long-term disability plan that, when integrated with public disability benefits, will pay an annual payment of two thirds of salary at the time of*

disability.”

18. It was clear from paragraph 6(c) that the long term disability plan benefits were based upon two thirds of the salary of the Claimant's original role, that is the job he was performing at the time of disability, namely International Security Coordinator.
19. The long term disability benefits were originally provided under an insurance policy which included the following:

“Disabled Members” means an Insured Member who at any time,

- (i) in the opinion of Legal & General, is incapacitated by an illness or injury which prevents him from performing his own occupation, and*
- (ii) continues to be in Employment, and*
- (iii) is not engaged in any other occupation, other than one which gives rise to payment of a partial benefit.*

For the purposes of (i) above

- (a) “own occupation” means the essential duties required of the Insured Member in his occupation immediately prior to the commencement of the Deferred Period, and*
- (b) The Insured Member's capacity to perform the essential duties of his own occupation will be determined whether or not that occupation remains available to him.”*

20. This definition also added weight to the conclusion that it was the Claimant's job immediately before he went absent on sick leave that was being referred to in the term “return to work”.
21. The Tribunal distinguished the decision in Jowitt v Pioneer Technology UK Ltd from the present case because there, the only words which were considered by the court were “*unable to work*”. There was no consideration of the other matters quoted above in the handbook and insurance policy such as “*return to work*” or those matters referred to under the heading “*Disabled Members*” definitions.
22. The Tribunal found that the words “*return to work*” could only refer to the Claimant's previous work as an International Security Coordinator.
23. Additionally, the Claimant referred to the Respondent's letter dated 24 July 2014 which stated “*Unfortunately there isn't anything of a non-security nature available at Heathrow*”. Also it was pointed out that it had never been suggested there was the possibility of future work within the Respondent company at a more junior or menial level, or indeed at any level which would have allowed the Claimant to return to an alternative role whereby he would only be entitled to partial benefits.

24. The Tribunal did not accept that the terms of the entitlement and obligation were ambiguous. Even if they were, the *contra proferentem* principle would apply in favour of the Claimant rather than the Respondent.
25. On this basis, the Tribunal found that the Claimant was entitled to receive two thirds of his annual base salary less income received from State Invalidity Pension amounting to an annual net pay of £12,940.00. It follows from the terms of the entitlement and obligation set out in the handbook above that the only circumstances under which the Claimant would cease to be entitled to this annual net pay would be his return to his original job, death or retirement.
26. It was common ground between the parties, based upon Dr Bristow's opinion expressed on several occasions, but latterly in the report dated 3 January 2017, that:

"I feel there is no chance that Mr Visram will be able to return to a job such as the one he had."

Alternative interpretation

27. The Tribunal went on to consider what it would have decided if it had accepted the Respondent's submission that the words "return to work" should be interpreted as meaning return to any continuous remunerative full time work which the Claimant could reasonably be expected to do, either for the Respondent or elsewhere. The Tribunal would have decided as follows.
28. It was common ground between the parties that the medical evidence should be based upon the reports of Dr Bristow. His diagnosis and prognosis set out in the various reports was summarised in the latest report dated 3 January 2017 as follows:

a) This is correct. I feel there is no chance that Mr Visram will be able to return to a job such as the one he had.

b) Given the apparent symptomatic deterioration, I think that his chances of returning to gainful employment within 2-3 years are even lower than when examined in February 2016. I would estimate about 2-3%. Beyond this is more difficult to predict and it is probably more sensible to give percentage charges of various long term outcomes. Of these I think the chance of complete remission is low (10% or less), little or no improvement is moderate (30-40%) and the most likely outcome is a degree of improvement giving rise to a residual depressive state (50-60%) I would envisage this to feature fluctuations (good and bad days) and impaired resilience to change In the case of either of the better two outcomes he has around a 50% chance of a further relapse (probably higher in the residual situation) before retirement age with likely further loss of functional capacity.

c) i) given that functional improvement generally lags behind symptomatic improvement, the 'best case' scenario would be about 3-4 years if he achieves complete remission (see above).

ii) see b) for percentages. Clearly if there is little or no improvement there will be no prospect of work.

iii) implicit factors pertaining to this such as response to medication and further therapy are factored into my answers to C b). Extraneous factors include the state of his marriage and of his physical health, threats to either are likely to provoke relapse. Under normal circumstances I would regard the end of this case as a positive prognostic factor but given Mr Visram's beliefs as expressed to me in December 2016 I have doubts.

iv) I am not an expert on vocational or employment matters. The presence of residual symptoms will challenge Mr Visram's ability to hold down a regular job full or part time but might allow some form of zero hours or 'cash in hand' work. Complete remission with no further relapses might permit an unskilled role on a regular basis."

29. The Tribunal accepted that in these circumstances, a high degree of speculation was required. However, as set out in the Respondent's submissions, and as noted in Harvey, based upon Abbe National Plc v Chagger [2010] ICR 397 and Wardle v Credit Agricole Corporate and Investment Banks [2011] ICR 1290:

"Whole career loss: It will be a rare case where it is appropriate for a tribunal to assess compensation over a career lifetime: Credit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604, [2011] ICR 1290, CA. That is not because the exercise is in principle too speculative. It is incumbent on the tribunal to do its best to calculate the loss, albeit that there is a considerable degree of speculation. In the normal case if a tribunal assesses that the claimant is likely to get an equivalent job by a specific date, that will encompass the possibility that he might be lucky and secure a job earlier, in which case he will receive more in compensation than his actual loss, or he might be unlucky and find the job later than predicted, in which case he will receive less than his actual loss. The tribunal's best estimate ought in principle to provide the appropriate compensation. The various outcomes are factored into the conclusion. Exceptionally, a tribunal will be entitled to take the view on the evidence before it that there is no real prospect of the claimant ever obtaining an equivalent job. In such a case, the tribunal necessarily has to assess the loss on the basis that it will continue for the course of the claimant's working life. Where it is considered appropriate to treat the loss as accruing over the whole of the claimant's career, some reduction should be made for the vicissitudes of life such as the possibility that the claimant would have been fairly dismissed in any event or might have given up employment for other reasons. That is, however, a general reduction

calculated on a broad brush basis and it does not involve calculating any specific date by which the claimant would have ceased to be employed.”

30. In the report dated 8 December 2016 Dr Bristow made comment on the potential for improvement in the Claimant's medical condition, and therefore the potential for him to be sufficiently well to apply for an undertake work. He said:

“6.1 Mr Visram told me that since we last spoke he has completed 20 sessions of Cognitive Behavioural Therapy. These sessions seem to be mainly aimed at activity scheduling, i.e. getting him to do more and more and perhaps increase the amount of pleasure he derives from it. He feels that they were moderately helpful in, e.g. getting him to take his children out. The therapy stopped in August. ...

6.3 Mr Visram describes the improvements discussed in 6.1 as being outweighed by increasing “obsession” with the delay in the settlement of his case and the reasons behind it. ...

7.4 While the CBT that he had earlier this year may have led to a slight improvement, this has been counterbalanced by the degree of obsession that he has developed about the case, he now has pronounced overvalued ideas about the activity of his erstwhile employer and possibly delusions. I feel that Mr Visram's mental state is worsening visibly as a result of these protracted hearings and urge that they be concluded as soon as possible.”

31. It was clear therefore that the conclusion of these Tribunal proceedings are likely to have a positive impact on the Claimant's medical condition and his prospects of return to work. Additionally, as Dr Bristow pointed out, the Claimant had made improvements as a result of Cognitive Behavioural Therapy, which was discontinued in August 2016. It follows there is at least a possibility that CBT in the future could have a beneficial outcome.
32. In the letter from Mind Matters Surrey (NHS) to the Claimant's GP regarding CBT sessions from 19 January 2016 to 30 August 2016, it was stated:

“Anthony has now completed treatment with us. You may recall he was offered CBT.

He attended 20 sessions from 19.01.16-30.08.16. By the end of the treatment he reported of still feeling anxious about the upcoming court case, however, expressed that he has learnt some useful CBT ideas and techniques to help him stay well. Please find below their questionnaire scores at the start and end of treatment.”

33. The Tribunal concluded, based upon the beneficial effects of the conclusion of these proceedings, the possibility of further improvement due to further CBT treatment, and the percentages given by Dr Bristow above, that at the end of four

years from now, the Claimant was likely to be sufficiently well to engage in gainful employment, albeit perhaps in a “residual depressive state” and it was possible that he could achieve complete remission within that period.

34. Dr Banks provided a detailed analysis of job availability in the Surrey area and, although his report was criticised by Mr Gilbert, the Tribunal found that it carried considerable weight. His conclusions included the following:

4.7 *The one outstanding absence, as far as I can see from the documents, is that no vocational rehabilitation has been put in place to support Mr Visram when he returned to his security job with ICTS, or in respect of future alternative employment on returning to the labour market. This could be available through employer based health/income protection schemes, through independent providers, or indeed to some extent through the DWP Disability Services. I would need to know a little more about Mr Visram’s circumstances and his former employer’s responsibilities and past actions before commenting further. I would think that if Mr Visram were to consider a return to his former position, or equivalent, then it would be essential for an agreed plan of action to be put in place, so that he is supported should events occur as they did on the first occasion of his graduated return to work.*

4.8 *If Mr Visram does not recover to the point of being able to resume job responsibilities equivalent to that of a lead security agent, then he will need to take up work at a lower level, possibly to regain his status at a subsequent point, or if not then remain at that level for the rest of his working life. Given Mr Visram’s past experience and geographical location, I would say that the median earnings figures would provide a reasonable indication of earnings potential over the rest of his working life. He is currently aged 50 and therefore potentially has 18 years left before the state pension. For a wide range of routine work the average is £21,524 pa gross, say £18,462 pa net. With further experience of new occupations and/or improvement in his psychological condition, he will probably increase his earnings but I doubt that he will approach the average earnings for men working in Surrey, which was £651.60 pw gross in 2015, say £26,207 pa net. I believe he will settle on earnings somewhere in the middles of these two extremes of £18,462 and £26,207 pa net.*

4.9 *The local labour market in Surrey is reviewed in section 3.7. The implications of these statistics for Mr Visram are that there are routine jobs in his locality, including sales, customer services, driving administrative and office positions, and semi-skilled operative work, should he consider himself on the labour market.*

35. The Tribunal accepted Dr Banks’ conclusion that, after a period of four years, there was a reasonable prospect of the Claimant returning to one or more of the

roles suggested by Dr Banks which would yield an income at least equivalent to the two thirds salary provided by the LTDB entitlement under the Respondent's contract of employment.

36. So far as the covert surveillance material was concerned, the Tribunal did not attach much weight to it. At its highest, it showed that the Claimant was not housebound, that he can drive, take his children to school and that he does get out and about on various chores. On the subject of the surveillance material, Dr Bristow commented:

"I would not therefore expect Mr Visram to be unable to interact with e.g. cashiers or supermarket assistants unless there was an element of social phobia or his depression was extremely severe, neither of which is the case."

37. The Tribunal would have decided, therefore, that the future loss of earnings should be limited to two thirds salary for four years from the date of the remedy hearing.
38. The Tribunal emphasises however that it did not adopt this alternative interpretation of the contractual entitlement. It is set out here only to assist the parties to know what the Tribunal's decision would have been if it had accepted the Respondent's submission.

BASIC AWARD

39. The sum of £10,672 for this head of compensation was agreed between the parties.

LOSS OF EARNINGS

40. Up to the date of the remedy hearing the Claimant has suffered no loss of earnings. The Respondent has continued to pay on a monthly basis, without admission of liability, two thirds of his annual base salary in accordance with the LTDB entitlement.

FUTURE LOSS OF EARNINGS

41. Two thirds of the Claimant's annual base salary less income received from State Invalidity Pension amounting to an annual net pay of £12,940 until his return to his original job, death, retirement at age 68 or securing employment which would, had he still been employed by the Respondent, have had the effect of terminating his entitlement to LTDB under the *"Employee Retirement Death and Disability Plans"*. This sum to continue to be paid on a monthly basis as at present. This is based upon the Claimant's submission, which the Tribunal accepted, that the amount to be awarded is not to be assessed on a just and equitable basis, but must put the Claimant in the same position in which he would have been but for the unlawful act (MOD v Wheeler [1998] IRLR 23). But for the unlawful act of discrimination,

the Claimant would have continued to be paid on a monthly basis and not by way of a lump sum. This approach was particularly apposite in view of the indeterminate date upon which the terminating events described above may occur.

DEATH IN SERVICE BENEFITS

42. The LTDB plan states:

During the period that you receive disability income you will remain a member of the UK Life Assurance Plan and will be covered for the appropriate death-in-service benefits.

43. Accordingly, the Tribunal awards £16.85 per month for the same period that future loss of earnings is awarded at paragraph 41 above and subject to the same terminating events.

PENSION PLAN

44. The LTDB plan states:

During the period that an employee receives disability income, the employee remains a member of the UK Pension and Life Assurance Plan, earning pension credit and is covered for the appropriate death-in-service benefits. Disability income is treated as normal pay and is subject to the necessary PAYE (pay as you earn) deductions. ...

During the period that you receive disability income you will remain a member of the UK Pension Plan, and your own and the Company's Contributions will be based on your disability income.

45. Accordingly, the Tribunal awards £20.73 per month for employer pension contributions for the same period that future loss of earnings is awarded at paragraph 41 above and subject to the same terminating events.

46. Also, the Tribunal awards £18.33 per month for employer pension contributions in respect of a spousal pension for the same period that future loss of earnings is awarded at paragraph 41 above and subject to the same terminating events.

LOSS OF HEALTH INSURANCE AND LIFE COVER

47. These payments/benefits are not available under the LTDB entitlement. The Claimant is only entitled to two thirds of his annual base salary. The Tribunal accepted the Claimant's submission that the amount of compensation in the claim for discriminatory unfair dismissal should be assessed, not on a just and equitable basis, but must seek to put the Claimant back in the same position in which he would have been but for the unlawful act. (MOD v Wheeler [1998] IRLR 23).

48. The Tribunal accepted the Respondent's submission that the Claimant made voluntary contributions while in employment. The Claimant will be in receipt of the LTDB entitlement and would be able to make these payments out of that income.

LOSS OF ANNUAL LEAVE PAY

49. Holiday pay should correspond to "normal remuneration". For a payment to count as "normal" it must have been paid over a sufficient period of time. (see Dudley MBC v Willetts [2017] EAT).
50. The LTDB plan states:

Disability income is treated as normal pay and is subject to the necessary PAYE (pay as you earn) deductions. ...

51. It follows that if the Claimant takes holiday during the period in which he is entitled to loss of earnings under paragraph 41 above, then he will be entitled to receive holiday pay at that rate and not at his full base salary rate. The Claimant has been receiving the LTDB since 2012.

LOSS OF MEAL ALLOWANCE

52. The Claimant would not receive this allowance when on LTDB disability income and not physically at work. There is no entitlement under this head of claim.

LOSS OF STATUTORY RIGHTS

53. The sum of £600 for this head of compensation was agreed between the parties.

INJURY TO FEELINGS

54. The sum of £14,000 for this head of compensation was agreed between the parties.

INTEREST ON INJURY TO FEELINGS

55. The sum of £3,469.10 (period 14 August 2014 – 22 September 2017 = 1,130 days @ 3.07 per day) in interest based upon 8% per annum.

APPLICATION FOR AGGRAVATED DAMAGES

56. In Alexander v Home Office [1988] ICR 685, the Court of Appeal held that aggravated damages can be awarded in a discrimination case where the defendants have behaved in a highhanded, malicious, insulting or oppressive manner, committing the act of discrimination or in the conduct of Tribunal proceedings.

57. In Commissioner of Police of the Metropolis v Shaw EAT 0125/11, it was said that aggravated damages are an aspect of injury to feelings and should be dealt with as a sub-heading under the same head of loss to avoid over-compensation. Tribunals should avoid compensating claimants under both heads for the same loss.
58. The Tribunal took account of the effect of the covert surveillance upon the Claimant. It clearly had some effect and was referred to by Dr Bristow as resulting in an element of paranoia. However, the sum of £14,000 for injury to feelings was in the view of the Tribunal sufficient to compensate the Claimant's injury to feelings, including that aspect which had been caused by the surveillance on his movements, and any issues arising from it in respect of the conduct of the Tribunal proceedings.
59. Although the Tribunal attached little weight to the material provided by the surveillance, it was of some assistance both to Dr Bristow and to the Tribunal and the Tribunal accepted that it arose as a result of the Claimant's refusal to attend an interview with Dr Banks which was, in the circumstances, a reasonable request and, on the part of the Claimant, an unreasonable refusal.
60. In these circumstances, given the amount of the sum awarded for injury to feelings, the Tribunal did not think that it was necessary or appropriate to award any additional sum by way of aggravated damages.

Employment Judge Vowles

Date: 3 October 2017

Sent to the parties on:

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For the Tribunals Office