Ref. J90SA002

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
SWANSEA DISTRICT REGISTRY

2 Park Street
Cardiff

Before HIS HONOUR JUDGE HARRISON (Sitting as a Judge of the High Court)

IN THE MATTER OF

WAYNE LEIGHTON (Claimant)

-v-

BRISTOW AND SUTOR (Defendant)

THE CLAIMANT appeared in person
MR C FENDER appeared on behalf of the Defendant

JUDGMENT
20th SEPTEMBER 2023
(AS APPROVED)

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JUDGE HARRISON:

1. This case concerns claims made by Mr Wayne Leighton regarding the activity of the defendants, who are an enforcement agency based in Worcestershire, but who carry out enforcement work for local authorities on a national basis. The agency were instructed by City of York Council to pursue council tax liabilities said to be owed by Mr Leighton in relation to 2 Oldman Court in York. This property was owned by the claimant but not occupied by him; rather, it was let under a tenancy agreement and/or was unoccupied.

2. The agency contends that they were instructed to enforce four liability orders obtained by the council over the period 2015 and 2021, and acted accordingly. The claimant argues that in fact, in seeking to enforce the same, the defendant acted unlawfully in a number of ways, or a number of different alternative ways, for which liability in damages attaches. These can be summarised as follows:

> (a) Breach or paragraph 66 of the Tribunals and Courts Enforcement Act 2007, the TCEA
> (b) Harassment, contrary to section 3 of the Protection from Harassment Act 1997
> (c) Breach of the Statute of Marlborough 1267, and
> (d) Breach of a commercial lien.

Mr Leighton has represented himself in these proceedings. It is clear that these are matters about which he feels strongly, and in respect of which he has invested much time and research. It is equally clear that much of his concern is directed towards the City of York Council, who are not party to these proceedings.

Background

3. In order to understand these proceedings, it is perhaps necessary to consider briefly the background. Mr Leighton was aggrieved at how the City of York Council dealt with his council tax liability. Specifically, he considered that he should have had some discount from his liabilities over the relevant years for periods when Oldman Court was unoccupied. It appears that the City of York Council had, in the exercise of its discretion, made a decision not to apply discounts to vacant properties. Mr Leighton wanted to challenge this, and sought disclosure of documentation relevant to the decision-making process. He felt, indeed he feels, that he did not get a satisfactory response, and informed the council of his intention to challenge their decision. He also felt that in relation to at least some of the periods of council tax claimed, the liability was that of his tenant, rather than his own.

4. Notwithstanding this, the council proceeded to enforce what they saw as a legitimate obligation on the claimant, and one which they felt they were obliged to pursue. The procedure for enforcement involved issuing a summons to appear before the Magistrates' Court. It is worth noting in passing that this area of enforcement is one of those areas that remains within the remit of the Magistrates' Court, albeit perhaps, for reasons that may become apparent within this judgment, it is one which is ripe for reform.

5. Mr Leighton only answered one of the summonses. That was the first, and it was the summons sent to his address at number 175 Kingsway West in York.

6. Thereafter and in relation to subsequent years, summons were sent to 2 Oldman Court. During this period, the claimant was out of the country, travelling, and he says he was

unaware of the same. Oldman Court was let under a tenancy agreement for at least part of the relevant periods. The liability order purported to be enforced by the defendants arose from these summons.

7. During the course of this case, I received evidence from Mr Paul Sanderson, the revenues and benefits manager at the City of York Council. He explained the process by which liability orders were obtained by the City of York. Specifically, he explained how liability orders were granted by the Magistrates. In many ways, the term "order" is a misnomer, if used in the same way as might be understood in the civil courts of Wales and England. No physical individual order as such is ever actually produced by the court. Rather, the presenting officer on behalf of the council attends, with a list of those summons to appear. Having heard anyone who does attend the court, and subject to any amendment, the list is simply signed by a magistrate, and the liability order is deemed to be made.

8. Mr Leighton makes a number of points about this process, and challenges its legitimacy. He points to the apparent tension between what ordinarily is thought of as a valid order of the court, and that which this process produces. By way of example, he contends that this is not a proper record of the proceedings. It does not identify clearly the maker of the order, and it is neither stamped, nor sealed. Further, insofar as it purports to be the basis for an award of costs, then it does not comply with the obligation to make clear whether or in what sum such costs are rewarded. Of equal importance in these proceedings, Mr Leighton makes the point that, in the absence of any paper record, then the court should not be satisfied that any such liability order was ever made against him.

9. There is, of course, an important practical point to Mr Leighton's complaints about the order. This particular method by which liability orders are produced means that there is no record retained by the court regarding making the same. How then, Mr Leighton asks, is he, as a subject of such an order, able to apply to set such an order aside and/or appeal the same? He says that is precisely what he wanted to do in this case, but when he tried to do so, his attempts revealed the flaw in the process, and potentially Article 6 of the European Convention on Human Rights is engaged.

10. Before moving on from the process before the Magistrates' Court, Mr Leighton also invites me to reflect upon the issue of service. The documents in this case reveal that, save for the first summons, all of the other summons were served on 2 Oldman Court. Mr Leighton points to the fact that at this time he had told the council that he was not resident at that address. In fact, that was the whole point of his argument. Nevertheless, he argues they presumably went to the court and pursued it in his absence, when service of the summons could not be established.

11. In completing my brief synopsis of the background to this claim, it is necessary to note the following: in passing the claim to the enforcement agents, the council simply send a list of persons against whom liability orders have been obtained. The defendants, on the evidence, taken them at their word and proceed accordingly. In their defence, drafted on 15 June of 2022, they plead that they have a general authority to proceed with enforcement from the council. This document is signed by Mr Sanderson, as the corporate income manager of City of York Council, it is dated 18 April 2014, and appears at page 65 of the trial bundle. It reads as follows:

> "In accordance with the Tribunals, Courts and Enforcement Act 2007, we authorise enforcement agents employed by Bristow

> and Sutor to enter premises and take control of goods, in connection with debts owed to the City of York Council."

As the case has progressed before me, Mr Fender, counsel for the defendant, recognised that this document could not be read as providing authority to the defendant to do what the letter says. Rather, it can only amount to a written confirmation of instructions to the defendants to act on behalf of the council.

The relevant law and analysis
Tribunals and Courts Enforcement Act 2007

12. The nature of the work upon which the defendants were engaged is strictly regulated. In this case, it is Schedule 12 of the Tribunal and Courts Enforcement Act 2007 that is most relevant to my considerations. Paragraph 66 of Schedule 12 provides:

> "Remedies available to the debtor
>
> (1) This paragraph applies when an enforcement agent -
>
> > (a) breaches a provision of the Schedule, or
> > (b) acts under an enforcement power under a writ, warrant, liability order or other instrument that is defective.
>
> (2) That breach or defect does not make the enforcement agent of a person he is acting for a trespasser.
>
> (3) But the debtor may bring proceedings under this paragraph.
> …
>
> (5) In the proceedings the court may -
>
> > (a) order the goods to be returned to the debtor,
> >
> > (b) order the enforcement agent or any related party to pay damages in respect of loss suffered by the debtor as a result of the breach, or of anything done under the defective instrument."

Sub-paragraph (6), sub-paragraph (7), I move onto sub-paragraph (8):

> "(8) Sub-paragraph (5)(b) does not apply where the enforcement agent acted in the reasonable belief -
>
> > (a) that he was not breaching a provision of the Schedule, or
> >
> > (b) (as the case may be) that the instrument was not defective"

13. Mr Leighton advances his case under paragraph 66 in two ways: firstly, he argues that the defendants have proceeded under a defective instrument, in that no liability orders were in fact made in his case, and/or if they were made, then they should not have been made, for the reasons that I have attempted to outline above, by way of background.

14. The first point that I have to consider is whether I am satisfied that liability orders were actually made by the magistrates. The practice of obtaining a liability order as set out above is potentially problematic for a local authority, or, indeed, any enforcement agent trying to prove that it was made. Here the documents provided to the court appeared at trial bundle 247 to 255, repeated as better copies at trial bundle 273 to 279, comprise effectively extracts from court lists, showing that on the material day the claimant was on the court list, and pairing that with a signature applied at the end of the list by a magistrate or district judge.

15. The documents, as I say, do reveal a series of problems with the process. By way of an example, the name of the individual making the order is not readily discernible. Secondly, what the magistrate or judges certify is the number of liability orders made that day. For example, by way of what appears at trial bundle page 277, the magistrates certify that on 21 June 2017, 1,474 liability orders were made.

16. The defendants argue that, when that document is read in conjunction with the extract of the court list, at trial bundle page 276, then that is enough to establish that Mr Leighton was one of the 1,474. However, the way in which the orders are made certainly makes it difficult for an absent debtor either to challenge the same by applying to set aside, or even appeal the same. In fact, that which appears at trial bundle page 277 goes further than the documents provided in relation to different dates, in that the document at page 277 records an amount of costs to be applied. The other similar documents do not make such a recording. This discrepancy is surprising, to say the least.

17. However, putting my misgivings about the process aside, it seems to me that it is necessary to remind myself that City of York Council are not the defendants in this case. If I ask myself, on the balance of probabilities, whether the Magistrates' Court on the dates shown made liability orders against those persons on the court list, then the contemporaneous documentation suggests that this was the case. Insofar as Mr Leighton gave evidence that his recollection was that no order was made on the one occasion that he attended the Magistrates' Court, then in that regard he must be mistaken; I prefer the evidence set out in the documents.

18. Whether Article 6 of the Convention on Human Rights is engaged, or whether or not the form of the order is capable of challenge is not, in my judgment, central to the resolution that I must resolve in this case. What is relevant is that I am satisfied, on the balance of probabilities, that the Magistrates' Court indicated they were granting liability orders against those shown in the list on the days in question. Furthermore, the council noted the making of the same, and the council then passed on that information to the defendants for enforcement.

19. Putting oneself in the defendants' position, they were being told by a public body that, for enforcement purposes, liability orders had been obtained against individuals on a list. For the purposes of paragraph 66(8)(b), that would amount for grounds for a reasonable belief on the part of the enforcement agent that there was in existence a non-defective instrument. It was not, in my judgment, necessary, in order for the enforcement agent to have a reasonable belief, for him to go further and enquire how the order was obtained, or the process involved.

20. Whilst I am persuaded that paragraph 66(8)(b) is an answer to an argument regarding any defect in the instrument itself, I would reiterate my concerns that the process does, in my judgment, cause the problems that I set out in the following paragraphs.

21. The second point made by the claimant regarding the defendants' failings relates to the argument that in any event there has been a breach of the Schedule. Specifically, he alleges that paragraph 26 is engaged. That paragraph provides as follows:

> "(1) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of -
>
> (a) his identity, and
>
> (b) his authority to enter the premises.
>
> (2) The request can be made before the enforcement officer enters the premises, or while he is there."

The claimant says that in the context of this case, he has requested provision of the defendants' authority and it was not provided. Specifically, he points to the refusal of the defendants to provide a copy of the liability order on request, or otherwise to identify under what authority they were intending to enter his premises. For example, reference can be made to trial bundle page 96.

22. The defendant argues that these provisions should be read as being restricted to the time of the actual visit itself. In other words, paragraph 26 is restricted to requests made as the enforcement agent enters the premises, or whilst there. Here they say Mr Leighton was never present when agents visited, and so no request relevant to this paragraph could be made. Whilst tenants were there on occasions, and whilst agents did visit Mr Leighton's parents at 28 Elvington Park, neither of those, it is submitted, requested sight of authority to enter.

23. In his skeleton argument, Mr Fender, for the defendant, argues that the authority for an enforcement agent to act comes from the enforcement provisions as set out in paragraph 7 of Schedule 12. Paragraph 7 provides:

> "(1) An enforcement agent may not take control of goods unless the debtor has been given notice.
>
> (2) Regulations must state -
>
> (a) the minimum period of notice,
>
> (b) the form of the notice,
>
> (c) how it must be given,
>
> (d) who must give it.

> (3) The enforcement agent must keep a record of the time when the notice has been given.
>
> (4) If regulations authorise it, the court may order in prescribed circumstances that the notice given may be less than the minimum period.
>
> (5) The order may be subject to conditions."

24. Not unreasonably, Mr Leighton points to that section of the amended defence to which I have already referred above. Paragraph 11 of the amended defence, trial bundle page 45, specifically reads as follows: "With regards to paragraph 4 and 5 of the particulars, the authority of an enforcement officer to enter a premises is given by the council. A copy of one of the letters of authority is attached hereto, marked BS2. Pursuant to paragraph 26(1)(b) of Schedule 12 of the Tribunal, Courts and Enforcements Act 2007, a copy of the relevant authority is carried by the enforcement agent, so that it can be provided if it is asked for by any party upon the agent attending the premises."

25. Now, as set out above, Mr Fender, for the defendants, recognises the problem with this document. The suggestion that the council, as effectively clients, can authorise employees of the defendant to enter premises and take control of goods is problematic, to say the least. Mr Fender characterises the document as an unfortunate piece of drafting, and concedes it could not form the basis for authority for the defendant to enter premises. Hence his argument that the authority for the defendants comes from paragraph 7.

26. There are, in my view, a number of problems with this assertion. Firstly, paragraph 7 is not drafted in a way to confer authority. Rather, it restricts what an agent can do. Secondly, it is in contradiction with the specifically pleaded paragraph that I have set out above. Whilst I do not regard this as fatal to Mr Fender's argument, the point can properly be made that the pleading must have been made on clear instructions from the defendants as to how they regarded this document. Thirdly, paragraph 18(xi) of the amended defence, bundle 49, is even more specific. It reads:

> "On 14 June 2016, the defendant emailed the claimant in response to an email received on 13 June 2016. The defendant explained that there was no requirement for their office of the enforcement agent to hold a copy of the liability order, as the defendant is acting as agent for the council, and as referenced in paragraph 7 above. The defendant hold that there is a different between the liability order obtained by the council and letter of authority the defendant holds to enter the premises to take control of goods, which is what is required by paragraph 26(1)(b) of Schedule 12 of the Tribunal, Courts and Enforcement Act 2007. While the defendant may not hold copy of the liability orders, they still held the relevant authority from the council to enforce their orders."

Lastly, and perhaps most obviously, Sarah Brown for the defendant gave evidence to the court to the effect that the defendants regarded the council's document as being the relevant authority, and furthermore, as the pleadings say, the document was carried by the agents when attending to enforce council tax liabilities, and was presumably produced by agents for

that purpose. It follows that the defendants did not themselves regard paragraph 7 as providing authority to them to act, and even if it was, it rather begs the question of what they would show to a householder if they were asked to produce it.

27. In any event, Mr Fender argues that there is no breach of Schedule 12 paragraph 26, because no request was made contemporaneously to the attendance of the agent at the relevant premises. He submits that this paragraph should be construed as being restricted to the occasion when the agent is physically at the premises. Whilst I can see why this would be the usual situation, I cannot read the paragraph as being so restrictive. If a householder knows that an agent will visit, why should he not seek sight of any authority in advance? There is no doubt that Mr Leighton made it clear that he wanted to see the defendants' authority to enter his premises, and whilst he may himself have focused on having sight of liability orders, it is not, in my judgment, sufficient simply to signpost him to the local authority. In this case, and for the reasons explained above, we have no physical, individual order that can be shown by the defendants to the claimant. He is simply told to contact the local authority. In my judgment, a householder is entitled to ask the defendants on what authority they are purporting to enter his property, and the fact that they cannot do so, and refer him back, effectively to their client, is almost bound to cause him to be dissatisfied. In my judgment, the defendants are in breach of paragraph 26.

28. It is perhaps illuminating to note that, according to the defendants' own evidence, if a request had been made on the day of a visit, then the likelihood is that the householder would have been shown a document that the defendants now accept did not amount to the relevant authority. Furthermore in this respect, I am unable to conclude that the defendant can escape responsibility by relying upon paragraph 66(8)(b). It is, in my judgment, difficult to conclude that the defendants had a reasonable belief that they were acting in accordance with the Schedule, when the basis for doing so seemed originally to have been a letter from their client, purporting to give authority. The provisions at paragraph 26 require the defendant to be able to put themselves in a position where they can provide on request their authority to act. That, it seems to me, is an important obligation placed upon them, and is something in respect of which they needed to address their minds, and make arrangements accordingly. Otherwise they run the risk of not being able to tell the claimant anything useful, and simply signposting him to a client, which is what they have purported to do here.

29. Protection from Harassment Act 1997

> "A person must not pursue a course of conduct -
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other."

Section 7 of the Act provides as follows:

> "(2) References to harassing a person must include alarming the person or causing the person distress."

"A course of conduct" is defined as follows:

> "It must involve -

> (a) in the case of conduct in relation to a single person, conduct on at least two occasions in relation to that person, or
>
> (b) in the case of conduct in relation to two or more persons, conduct on at least one occasion in relation to each of those persons."

Thus to succeed, a claimant must establish (1) a course of conduct, (2) that course of conduct must amount to harassment, and (3) the defendant must know or ought to have known that the course of conduct amounted to harassment.

30. The assessment of the alleged conduct is by way of an objective test. It is the point of view of the alleged victim of harassment that is relevant to this objective test, and the test can be met by correspondence. See *Ferguson v British Gas Trading Limited* [2009] EWCA 46. In *Dowson & Ors v Chief Constable of Northumbria* [2010] EWHC 2612, Simon J provided some assistance in the consideration of what was required:

> "(a) There must be conduct which occurs on at least two occasions,
>
> (b) which is targeted at the claimant,
>
> (c) which is calculated in an objective sense to alarm or distress,
>
> (d) which is objectively judged to be oppressive and unacceptable,
>
> (e) what is oppressive and unacceptable may depend on the social or working context in which the conduct occurs, and
>
> (f) a line has to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways as torment of the victim, or is of an order which would sustain criminal liability."

31. Section 1(3) of the 1997 Act sets out statutory defences to the Act as follows - I summarise:

> "Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it"

- the relevant sub-paragraphs being (b) and (c) -

> "(b) that it was pursued under any enactment or rule of law, or to comply with any condition or requirement imposed by any person under any enactment, or
> (c) that in the particular circumstances, the pursuit of the course of conduct was reasonable."

32. The argument advanced by Mr Leighton as regards this element of the claim is reasonably straightforward. He contends that during the period complained of, there were a total of about 35 enforcement actions by the defendants in various forms of contact, including email and correspondence. There were 15 visits to three separate properties, namely Kingsway West, Oldman Court and Elvington Park. Whilst the claimant was not present for any of the visits, his tenants were present at Oldman Court some of the time, and his parents were at Elvington Park for the two visits made in April and June 2021. The defendants do not contend otherwise, and at paragraph 11 of the amended defence, set out the Schedule of the 15 visits.

33. Mr Leighton points to the upset caused by the prospect of visits of this sort. He also points to the type of correspondence received by way of enforcement visit warning, for example, at trial bundle 302, warning the recipient that his goods were banned, that there would be a return visit, and that costs could become substantial. Mr Leighton explained that the visits to the premises occupied by his parents were particularly troublesome for him. He felt that the defendants were using them as a means to get to him.

34. Set against this, the defendants argue that on any proper analysis of the evidence, their activity could not be categorised as actionable harassment. In order to make a proper assessment of the same, they submit that the court must first look at the period over which the activity is alleged. Here the relevant period is between May 2015 and June 2021, a period a little over six years. Mr Fender submitted, and it was not contradicted, that within that period there were periods of no enforcement activity taking place at all. On his calculations, made at paragraph 20 of the skeleton argument, there were a total of about four and a half years out of the six during which no activity took place. If, it is submitted, this is combined with the fact that the defendants were dealing with four separate liability orders, then the amount of contact is consistent with fairly normal enforcement activity.

35. Of course the court cannot ignore the fact that the work undertaken by the defendants by definition involves sending letters and undertaking visits to people who would rather not receive the same. While such contact might still amount to harassment in the right circumstances, it does seem to me that the court has to approach the same with a degree of care when applying the guidance set out in *Dowson.* Can the conduct be said to be objectively oppressive and unacceptable when considered against the working context in which it occurs? Is the conduct over the period alleged such that the court can conclude that the threshold for a finding of harassment is met - ie, the conduct is of an order that would sustain criminal liability if proved to the requisite standard?

36. In my judgment, the conduct does not reach that threshold, especially seen in the context of enforcement activity. In my judgment, the period over which the activity took place and the long periods of no activity lead me to that conclusion.

<u>The statute of Marlborough 1267</u>

37. The claimant raises this ancient provision as potentially giving rise for a cause of action for him against the defendants. Specifically, he contends that the Act prohibits unreasonable distresses wherein it provides:

> "None from henceforth shall cause any distress that he hath taken to be driven out of the county where it is was taken, and if one neighbour do so to another, of its own authority and

> without judgment, he shall make fine, as above is said, as for a thing done against the peace. Nevertheless, if the Lord presume so to do against his tenant, he shall be grievously punished by amerciament. Moreover, distresses shall be reasonable and not too great, and he that taketh great and unreasonable distresses shall be grievously amerced for the excess of such distresses."

Now, apart from the fact that the language is far removed from today, it is of course relevant to try to analyse what the statute was intended to prevent. The practice of exercising distresses over another person's property or livestock involves taking control or impounding the same. The Statute of Marlborough is intended to limit the practice of distress to that which is reasonable. The Act provides a penalty, by way of amerciament, to be applied to any person taking unreasonable distress. What is an amerciament? In *Dayani v Bromley LBC* [1999] 3 EGLR 1 44, the court considered a different part of the 1267 statute, and was referred to the meaning of amerciament provided in Jowitt's Dictionary of English Law. The definition is set out in that judgment. Whilst the court appears not to have ruled decisively on the issue, the following is relevant to my consideration. Namely, an amerciament was a punishment for an offence, and was described as being "more merciful than a fine". They were, it is said, a source of revenue to the Crown.

38. In my view, therefore, the statute was not intended to convey a right of action for damages on an individual. Rather, as submitted by Mr Fender for the defendants, it takes its place as part of the criminal law, whereby an individual could be fined or amerced for a transgression. It is also difficult to see what the provisions of the statute would add to the claimant's case in this particular action.

The commercial lien

39. Whilst travelling in Thailand in 2015, Mr Leighton appears to have visited a notary, to draw up a notice. The document is dated and signed by Mr Leighton before the notary on 13 August 2015, and appears at trial bundle 337. It was sent on to the defendants' email address. In that document Mr Leighton states as follows:

> "Your unlawful, nonsensical, threatening correspondence has caused me to suffer a tort. Any future unlawful correspondence from your corporation will be the subject of a commercial lien in the sum of £10,000 sterling. All agents, representatives and individuals should be made aware that they are subject under common law for full commercial liability for their actions, and inform any bonding agents or insurers accordingly. Any further contact from you or anyone acting on behalf of your corporation will be confirmation of this contract."

Mr Leighton contends that, rather like a motorist driving into a car park might be deemed to accept the terms and conditions of the same regarding parking his vehicle, so the defendants, in continuing in this case with their conduct of contacting him and visiting his property, should be held liable to accepting a contractual liability of £10,000.

40. Applying first principles of contract, it cannot, in my judgment, be said that the defendants accepted the terms as set out in that document. There was no meeting of the minds of the claimant and the defendants on this issue, and it simply cannot be inferred that

the defendants accepted that in attending the property, for example, they accepted a contractual liability to the claimant in the way now alleged. The defendants were not seeking to attend the property pursuant to the alleged contractual term; rather, they attended pursuant to their work as enforcement agents. Whilst, as considered above, their conduct in this regard is rightly regulated, the claimant cannot, in my judgment, unilaterally impose such conditions, as he appears to have tried to do.

Conclusion

41. In summary, I am satisfied that the claimant has established a breach of paragraph 26 of the Schedule, in that the defendants failed to provide evidence of their authority. I am not persuaded that the other pleaded causes of action are established. For reasons that I have set out above, there is a danger in conflating Mr Leighton's grievance with the City of York Council with the position of the defendants. Mr Leighton's Article 6 argument is a case in point. Whilst I have made such observations as I am able about the process adopted to obtain liability orders, I remind myself that City of York Council are not party to the proceedings, and therefore have not had the opportunity to argue their position in detail. I have confined myself to the position of the defendants, who, as enforcement agents, are rightly subject to the regulatory framework of the 2007 Act.

42. Having established such a breach, paragraph 66 provides the claimant will remedy in damages. There is no real guidance as to how the same should be assessed. Here there is no obvious, direct pecuniary loss. The claimant has, however, suffered a non-pecuniary loss by way of injury to feelings and/or frustration, consequent upon the protracted period of engagement between the claimant and the defendants on this issue. The claimant invested significant time in this matter, and was plainly frustrated by what he saw as the defendants' failure to appreciate what he was asking for, together with their persistence in continuing with a process against a background of what I have concluded was a breach of the Schedule on their part.

43. In my judgment, the quantum of any award would not be the same as for an harassment case, albeit, the approach adopted by the courts in such cases is informative. Harassment cases themselves have often turned to discrimination cases for guidance. Specifically, the approach in the *Chief Constable of West Yorkshire Police v Vento (No 2)* [2003] ICR 318. The court is also mindful of the view expressed by Nicol J in *S & D Property Investments Limited v Nisbet* [2009] EWHC 1726 (Ch). Here the point was made that discrimination, by its very nature, involved an element of humiliation for being treated differently, and this is generally absent from most harassment claims.

44. In reaching a conclusion as to this non-pecuniary loss, it is relevant to consider the period over which the conduct complained of persisted, and it is relevant to consider that effectively the conduct is one of a repeated breach, perhaps caused by a lack of understanding of their obligations under the Schedule. Whilst the defendants might have been somewhat dismissive of the claimant's point, I am not satisfied that they behaved in a way that suggested either malice or bad faith on their part. We now know that they felt that the letter from City of York Council was enough to act. As it transpires, it is accepted that the letter cannot amount to the same. I have concluded that, had they stopped to think about it at the time, they should have realised this and perhaps sought to put in place a system that allowed them better to evidence their authority to act. Equally, it seems to me that someone in the claimant's position is entitled to be told on what authority he is threatened with entry to his premises.

45. The protracted period relevant to this case was, as highlighted above, punctuated by periods of inactivity. Nevertheless, in my view the breach must be marked by an award of damages. To mark the breach, the frustration suffered and the repeated failure to comply with the Schedule, I will assess damages as being in the sum of £4,000. This sum is less than I would have awarded if harassment had been established. If established, I would have awarded a sum perhaps nearly double that sum. Aggravated damages arise where the injury to feeling suffered by the claimant is increased by the flagrancy, malevolence, and the nature of any particular unacceptable behaviour on behalf of a defendant. My analysis of the case, set out above, does not allow me to bring this case within the same, and I make no reward in respect of aggravated damages.

46. For completeness' sake, I have also considered whether an award of exemplary damages is justified. Such damages arise where the court is able to conclude that the established conduct was malicious, oppressive, arbitrary or unconstitutional, and/or where the conduct is calculated by way of profit. The point of such damages is to punish the defendant. Again, on the basis of the analysis set out above, I am unable to conclude that exemplary damages are applicable to this situation.

47. It follows from my judgment that there will be judgment for the claimant in the sum of £4,000. In ordinary circumstances the issue of interest would arise, which would, in the nature of these damages, be at the rate, I think, of 2 per cent per annum from the date of issue of proceedings.

This transcript has been approved by the Judge