Hell hath no fury like an employee scorned?

The High Court has ordered that an employee who was dismissed during his probationary period should be restrained from harassing the Chairman of the company and must return copies of all information that he had taken from the company.

What happened in this case?

The claimant in this case was the Founder and Chairman of an asset management company (the Company). In 2023, the Company appointed the Defendant to a management position. However, there were a number of complaints about the Defendant's conduct, which resulted in him being dismissed during his probationary period. In response, he brought an unfair dismissal claim in the Employment Tribunal, but the claim was struck out as he did not have the two years' qualifying service needed.

At some point after his dismissal, the Defendant turned up at the Claimant's house and blocked his driveway for three hours. The Claimant invited him into his home and the Defendant pleaded for his job back. The Claimant said this was a matter for HR and not for him. On 31 May 2024 the Defendant sent an email to the Claimant in which he set out the names of several individuals and a company and included hyperlinks to various webpages. The Defendant stated that most, if not all, the names would be familiar to the Claimant and his staff would be interested in hearing about them. The suggestion was that the named individuals and company were

disreputable and were connected to the Claimant and the Company. The email also alleged that the Claimant and Company were involved in multiple frauds and false accounting. The Defendant went on to make various threats including that:

- he had the power to *"completely destroy"* the Company and if the law could not provide him with a remedy that he would *"have to fight dirty"* until the Company financially compensated him for his losses;

- he would email everyone who worked at the Company, the FCA, HMRC and the Serious Fraud Office, as well as others connected to the Company's projects;

- he had secretly recorded conversations with the Claimant and taken emails and documents from the Company;

- he could, and would, hound the Company *"like a rabid dog"* and that he could, and would, *"completely destroy"*the credibility and *"fragile mental health"* of five individuals at the Company;

- he had run someone over who had threatened him, stating that *"…he didn't see me coming, there was no witnesses, I'm too smart to leave any evidence behind"*;

- he had engaged in extensive reconnaissance and surveillance of the Claimant *"both in your manor and online"*;

- if he was ignored he would *"light so many fires"* around the Company that the Defendant would only be able to

watch if all *"burn to the ground"*; and

- if he did not receive a settlement by a certain date the Claimant could watch his staff leave and see things *"go up in flames".*

The next day, the Defendant sent a truncated version of the email to the Claimant three times via WhatsApp. A few days later, the Defendant sent an email to individuals at the Company who were closely connected to the Claimant. The email was substantially the same as the email of 31 May 2024, save that it told the recipients that they too would be damaged by the publicity that he planned to generate. He addressed to them the same demand for money that had been made to the Claimant.

On 6 June 2024, the Claimant made a "without notice" application under the Protection from Harassment Act 1997 for an injunction to restrain the Defendant from approaching him, communicating with him and/or from carrying out his threat to publish material to third parties. The injunction was granted on an interim basis. The Defendant was also ordered to serve on the Claimant's solicitor (a) copies of all communications already made to any third party about the Claimant, his family, the Company or its staff; and (b) copies of all information obtained by the Defendant from the Company which was in his possession or the possession of a third party.

On 28 June 2024, the Defendant stated that he had nothing to disclose as he had not made any communications to any third party. However, he refused to hand over copies of the

information he had taken from the Company on the basis that he needed to keep it to act as a whistleblower and to bring a counterclaim.

On 12 July 2024, a "return date" hearing was held to consider whether the injunction should be discharged or continue, pending the full trial. The Defendant did not attend the hearing.

What was decided?

The High Court ordered that the injunction should continue until the full trial of the claim.

The Court held that it was likely that the statements made in the email would be found to be *"…deliberate, unacceptable, oppressive, highly objectionable and of a gravity to sustain criminal liability under the Protection from Harassment Act 1997".* Their tone was intimidating, and they threatened to ruin the Company and damage the Claimant's reputation. There was also a threat of physical violence and the *"unsettling"* claim that the Defendant had been carrying out surveillance on the Claimant.

The messages were targeted at the Claimant and aimed at extracting money from him. The Defendant was persistent – he had promised to hound the Company like a *"rabid dog"* and appeared to be carrying out the threat. He had since taken to leaving intimidating voice messages with the Claimant's solicitors and had submitted two job applications to the Company for roles he did not appear to be qualified for.

The threats were also likely to amount to blackmail, given that they constituted demands with menaces and there was no lawful basis for them. This meant that the Defendant's right to freedom of expression did not have much weight and would not stand in the way of a final injunction.

At the hearing the Claimant gave evidence that the Defendant had mischievously, or wrongly, linked him and the Company to parties and online material that had nothing to do with them in order to suggest wrongdoing. The Claimant also denied all the allegations of fraud. If established at trial, this would add to the oppressive nature of the conduct (although, even if the allegations were true, they could be found to have been advanced for an improper purpose, meaning they would still be oppressive and unacceptable).

There was also a strong case to say the Defendant knew (or ought to have known) that his conduct amounted to harassment – any reasonable person in his position would have recognised this. The Claimant had given evidence that he was genuinely frightened of the actions that the Defendant could take to harm him and the Company.

Turning to the Defendant's failure to comply with the order to hand over the documents he had taken from the Company, the Court said that the reasons offered by the Defendant were not good reasons in law. The Court referred to the recent decision of the High Court in Payone GmbH v Logo [2024] EWHC 981 (KB) where it was said that *"It is well-established that the Courts will not sanction employees helping themselves to, or retaining, their employers documents for the purposes of future litigation, or anticipated regulatory issues or protected disclosures, or even taking legal advice".* Accordingly, the Defendant was ordered to comply

with the order, or put forward a valid legal reason for not doing so.

What does this mean for employers?

Although situations like this are thankfully rare, this case reminds us that if a disgruntled former employee wages a campaign of harassment against employees of the company, there is a route available to restrain them. Harassment in this context covers more than just threats of physical violence but includes any action which could cause alarm or distress. For example, things like watching or following someone or threatening to publish or publishing humiliating, offensive or upsetting content about them. Where there have been at least two instances of such harassment, this will count as a course of conduct which could give rise to a claim under the Protection from Harassment Act 1997.

Employers should also be mindful that they can be vicariously liable for the harassment of their employees in the course of their employment under the Protection from Harassment Act 1997. Unlike harassment under the Equality Act 2010, there is no "reasonable steps" defence available to an employer in this situation. Therefore, if an employee has suffered harassment at work on one occasion, employers should take swift action to protect the employee at work to avoid a second incident which could give rise to a claim.

RBT v YLA

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss

any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

Government presses ahead with its promises to upgrade the National Minimum Wage

In its General Election Manifesto, the Labour Party promised to upgrade the National Minimum Wage to reflect the cost of living and ensure that all adults received the same rate. Less than a month after being elected, the Labour Government has set the wheels in motion for these changes to take effect in April 2025.

What was promised in the Manifesto?

In its General Election Manifesto, the new Labour Government promised that it would *"make sure the minimum wage is a genuine living wage".* It planned to do this by changing the remit of the Low Pay Commission (the LPC), the independent body that advises Government about the minimum wage. The expanded remit would mean that the minimum wage rates should account for the cost of living. Currently, the 21 year+ national minimum wage rate sits at £11.44 per hour (also known as the "National Living Wage" rate). If adjusted for the cost of living, it would be brought closer to the pay rates

championed by the charity, the Living Wage Foundation. The Living Wage Foundation recommends that employers pay, on a voluntary basis, a "real living wage" of £12.00 per hour outside London and £13.15 per hour within London.

Labour also promised to remove the "discriminatory" minimum wage rate age bands, so that all adults would be entitled to the same rate. Effectively, this would mean doing away with the 18 to 20 year old rate (currently, £8.60 per hour). However, there were no plans to remove the 16 to 18 year old rate or the Apprentice rate (currently, £6.40 per hour in both cases).

What steps have been taken since the election?

The Government has already taken steps to fulfil these Manifesto promises. On 30 July 2024, the Government wrote to the Chair of the LPC to confirm the update to its remit. The LPC has been asked to recommend a National Living Wage rate to apply from April 2025 which should take into account the cost of living, including the expected annual trends in inflation between now and March 2026. In addition to the cost of living, the remit of the LPC will continue to consider the impact on business, competitiveness, the labour market and the wider economy, as well as ensuring that the rate does not drop below two-thirds of UK median earnings for workers aged 21 and over.

As far as regional differences in pay rates are concerned, the Government has asked the LPC to continue to gather evidence on the differing impact across the United Kingdom of increases to the minimum wage rates, to inform how the minimum wage helps to deliver greater living standards for working

people in all areas of the UK.

On top of this, the LPC has also been asked to recommend a new national minimum wage rate for 18 to 20-year-olds to apply from April 2025. The aim is to narrow the gap with the National Living Wage rate as a first step towards achieving the promise of a single adult rate. The Government says that steps will need to be taken year by year to achieve this, taking into account the effects on employment of younger workers, incentives for them to remain in education or training, and the wider economy.

As far as under-18s and Apprentices are concerned, the Government has asked that these rates should be set *"as high as possible"* without damaging the employment prospects of each group.

Next steps?

The LPC has been asked to provide its recommendations to the Government by the end of October 2024. In due course, the Government will confirm the new rates, which will come into force in April 2025. Employers who have workers paid at a rate on or around the national minimum wage will need to take care to ensure that the new rates are applied on time. Care must also be taken not to inadvertently fail to pay in line with the new rates, since this can lead to action by HMRC who can demand underpayments going back six years, issue fines and publicly "name and shame" the employer. For example, many employers operate salary sacrifice arrangements as a way of providing benefits, such as pensions, to staff in a tax efficient way. However, it is the *post* salary sacrifice pay that counts for national minimum wage purposes.

National Minimum Wage and National Living Wage: Low Pay Commission remit – July 2024

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New law on tipping due to come into force on 1 October 2024

The Government has introduced regulations which will bring the Employment (Allocation of Tips) Act 2023 into force on 1 October 2024, applying to tips paid on or after that date. The Act will require employers to ensure that workers receive tips in full, and that they are allocated in a fair and transparent way. Our briefing note provides a quick reminder of what the new law is all about.

What will the new Act do?

Under the new Act, employers will be required to ensure that all qualifying tips, gratuities and service charges over which an employer exercises control or significant influence are

allocated fairly to workers (including eligible agency workers). This means tips, gratuities and service charges received directly by the employer (e.g. those paid to an employer by a customer using a credit or debit card) *and* those received by the worker where the employer directs what happens to them. However, the Act does not apply to cash tips paid directly to workers and which are kept by them or shared out between the workers on their own terms.

Tips must be paid to workers in full by no later than the end of the month following the month in which the customer paid the tip. If this is not done, the worker will have the right to bring a claim for unlawful deductions from wages. An employer may arrange for all or part of the qualifying tips, gratuities and service charges to be allocated between workers by an independent tronc operator.

Employers may not require workers to agree to give up their rights under the Act, nor can they get around the new rules by reducing wages by an amount equivalent to the tips (or otherwise asking the worker to reimburse them for the amount of the tips). Workers will also have the right to complain to an employment tribunal where an employer fails to allocate fairly and/or pay tips in line with the new rules. An employer can be ordered to revise its allocation of tips and/or make a payment to the worker (and other workers). It may also be ordered to pay compensation of up to £5,000.

In addition, those employers that pay tips, gratuities and service charges on more than an occasional and exceptional basis will be required to have a written tips policy which is given to all workers. Further, such employers must keep records of tip allocation for three years and make those records available to workers on request. Workers will have the

right to complain to an employment tribunal about a failure to comply with rules on policies or keeping records.

Statutory Code of Practice

Accompanying the new Act will be a statutory Code of Practice on the Fair and Transparent Distribution of Tips (the Code). The Code has five sections covering:

- qualifying tips and qualifying workers;
- the factors and methods relevant to fairness;
- transparency;
- addressing problems; and
- a glossary of terms.

Non-compliance with the provisions of the Code does not give rise to a legal claim in itself. However, as a statutory code, it will be admissible in evidence in employment tribunal proceedings and will be taken into account where relevant.

Next steps?

Employers operating in sectors where staff receive tips will need to familiarise themselves with the new rules and Code, devise a fair system for distributing tips, prepare a written policy and ensure it maintains appropriate records. Although the new rules apply to employers in all sectors, in practice, it is most likely to affect employers operating in the following areas:

- the hospitality sector, in relation to bar and restaurant staff;
- the beauty sector, in relation to hairdressers and beauticians;
- the hotel sector, in relation to valets, doorman, porters and maids; and
- the transport and delivery sector, in relation to taxi drivers and take-away delivery drivers.

Employment (Allocation of Tips) Act 2023

Statutory Code of Practice on fair and transparent distribution of tips

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