Failure to take adequate steps to deal with a pregnant employee's grievance emails was discrimination but did not warrant a £10,000 injury to feelings award.

In the recent case of *Eddie Stobart Ltd v Graham*, the EAT overturned an Employment Tribunal's award of £10,000 for injury to feelings for an act of pregnancy and maternity discrimination. The EAT found the award to be "manifestly excessive" given that the act in question was failing to adequately deal with the claimant's grievance.

What happened in this case?

The claimant worked for Eddie Stobart as a Planner and announced her pregnancy in October 2021. Shortly before she was due to commence her maternity leave, her employer began a redundancy process. The claimant was aware that she had a preferential right to be offered a suitable alternative vacancy ahead of other employees. There was an open position for a Transport Shift Manager (**TSM**), however, her employer did not agree that this was a suitable alternative role for her. She, therefore, had to apply for the role and take part in a competitive interview process once on maternity leave. She was unsuccessful and a redundancy consultation began.

During the redundancy consultation period, the claimant sought to raise a grievance about the redundancy process. However, her email was blocked by the employer's firewall. She brought this up at her redundancy consultation meeting and was advised to resend the email, but it was again blocked by the firewall. After her dismissal, she raised the issue of the failure to acknowledge her grievance for a second time, but there was no response from the employer.

The claimant went on to bring claims of automatic unfair dismissal, unlawful detriment, pregnancy and maternity discrimination and victimisation.

What was decided?

The Employment Tribunal's decision

The Employment Tribunal agreed with the employer that the TSM role was not suitable and rejected most of the claimant's claims. However, it held that the failure to take adequate steps to deal with the grievance was materially influenced by the claimant's maternity leave absence and amounted to unlawful detriment and discrimination. By way of remedy, the Tribunal awarded £10,000 for injury to feelings.

An injury to feelings award is a type of compensation that can be awarded in successful discrimination claims. It is intended to be compensatory to the innocent party and not to punish the party in the wrong. The leading case of *Vento v Chief Constable of West Yorkshire Police (No 2)* set guidelines known as "Vento bands", used by tribunals to apply the severity of the discrimination suffered by claimants into one of three

bands (which are now amended in line with inflation each year). An award in the top Vento band will be given in circumstances where there has been a sustained campaign of discrimination and cases in which there has been an isolated incident will fall into the bottom band. In this case, the claimant's award fell at the lower end of the middle Vento band.

The Employment Appeal Tribunal's decision

The employer appealed to the EAT on two grounds, namely, that the award was excessive, and that the Tribunal had not given sufficient reasons for awarding such an amount.

The EAT found that the only proper and reasonable conclusion was that the employer's failure to deal with the grievance was limited in its scope and impact. It upheld the appeal on both grounds and substituted an injury to feelings award of £2,000 plus interest. It noted that it would have awarded a lower amount, save for the fact that the claimant was forced to chase up her grievance when she was on maternity leave, and this would have caused her particular distress as an expectant mother.

What does this mean for employers?

The judgment laid out considerations that will be taken into account when a Tribunal decides to include an injury to feelings award. In every case of discrimination, it is likely there will be some injury to feelings, but the key takeaway is that tribunals will focus on the effect of discrimination on the particular individual.

The Vento bands will be used as a guide to place cases of discrimination into the relevant level of severity. If the discrimination is overt, it will be more likely to cause distress and humiliation. Similarly, if the discrimination was enacted in front of colleagues, then the degree of harm will be higher due to the humiliation caused. Tribunals may also look to acts such as threats of disciplinary action or exclusion in the workplace, which can show an imbalance of power and influence and increase the harm caused. The EAT also highlighted that in cases of pregnancy and maternity discrimination involving an unborn child, there will be additional stress placed on the expectant mother and thus the upset is increased.

Tribunals will scrutinise each situation on a case-by-case basis and may find that employees who appear relatively stoic about the situation may indeed be struggling to fully describe the effect that the discrimination has had on them. Conversely, some employees may be more vulnerable to upset and so be impacted more greatly by lesser discriminatory acts.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Adele Getty (AdeleGetty@bdbf.co.uk) , Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Embracing neurodiversity in the workplace: insights from the new Acas guidance

New Acas guidance on neurodiversity highlights the importance of fostering inclusive workplaces that support workers with conditions like ADHD, autism, dyslexia, and dyspraxia. By understanding the unique strengths and challenges of neurodivergent workers, businesses can create environments where all workers thrive, at the same time as avoiding costly discrimination claims. We explore below the topics set out in the guidance, including understanding neurodivergence, key strategies for promoting neuroinclusion and what to consider when dealing with performance or capability procedures.

Understanding neurodiversity in the workplace

Neurodiversity describes that individuals think, learn, and behave differently, highlighting the natural variations in how people's brains work and process information. Neurodivergent individuals may have unique strengths and challenges, and understanding these differences can create more inclusive workplaces.

Some common neurodivergent conditions include (further details are available by following the links):

- Attention Deficit Hyperactivity Disorder (ADHD)

- Autism
- Dyslexia
- Dyspraxia

Each of these conditions have a range of strengths and challenges and not all individuals will experience each condition in the same way.

It is quite common for neurodivergent people to suffer from mental health problems. Some of these are caused by them trying fit in and behave in a neurotypical way. This is known as “masking” and can lead to exhaustion and isolation, as well as mental health problems such as depression and anxiety. Creating a neuroinclusive work environment where workers feel supported and accepted can reduce the need for masking and improve mental well-being.

Disability rights

While some neurodivergent individuals do not see themselves as disabled, neurodivergence may qualify as a disability under the Equality Act 2010, which, in turn, triggers the duty to make reasonable adjustments and protects workers from disability discrimination. Disabled workers may also be able to get support from Access to Work, a Government scheme aimed at supporting people to get or remain in work.

Talking about neurodiversity in a sensitive way can help prevent workplace problems and create an inclusive environment where all workers feel supported. Workers are not required to disclose their neurodivergence but if they choose to do so, it should be on their terms. They may hesitate to do so for fear of negative reactions or stereotyping. Employers should offer support, regardless of when the disclosure happens or whether there is a formal diagnosis.

If an employer suspects a worker is neurodivergent, they should approach the situation sensitively and focus on discussing potential support and adjustments. Using appropriate language around neurodiversity is essential to avoid distress. Employers should avoid terms like *"suffering from"* or *"symptoms"*, which suggest an illness. Language preferences can vary, so it is helpful to ask the worker what terms they prefer and listen to them. For example, some people may prefer to say, *"I have autism"* rather than *"I am autistic".*

Performance, conduct and capability

Employers must not discriminate against neurodivergent workers when addressing performance issues. Before initiating formal procedures, employers must ensure they have done everything reasonably possible to support the worker. Failing to offer support first can lead to unnecessary time and effort spent on internal processes and legal claims, while also negatively impacting an worker's wellbeing.

The Acas guidance gives the example of Sam, who struggles with distractions and meeting deadlines, and is suspected of having ADHD. Sam and his manager discuss possible support and agree

on reasonable adjustments, including a quiet space and regular check-ins, which improve Sam’s performance. A formal procedure could have caused stress and would have failed to address the underlying issue.

However, there are situations where formal procedures may be necessary, such as persistent performance issues despite support or reasons not related to their neurodivergence. During these procedures, employers must ensure they make reasonable adjustments to the process for neurodivergent workers, such as providing clear meeting records for someone with autism or talking through written correspondence with a worker with dyslexia. It is usually most helpful to discuss with the worker what support would help them, rather than making an assumption based upon their condition.

Making your organisation neuroinclusive

Neuroinclusion involves actively including neurodivergent workers and many helpful changes can be made which are not necessarily costly or complicated. Some possible steps include:

- **Adjusting recruitment processes:** employers should review their recruitment processes and consider taking steps such as offering different ways to complete application forms, providing interview questions in advance and ensuring interviews are conducted in quiet spaces.

- **Providing training:** training and supporting managers to handle neurodiverse teams, including providing guidance on reasonable adjustments and discrimination, is also essential.

- **Raising awareness:** raising awareness of neurodiversity throughout the wider organisation through training, awareness days and campaigns can also help normalise conversations about it. Setting up a staff network may be a measure which supports workers to share their experiences.

- **Policy guidance:** creating a dedicated Neurodiversity Policy can be very helpful, outlining the organisation's commitment to inclusion, available support and legal responsibilities.

- **Making workplace adjustments:** employers can also make support available for all workers, such as offering noise-cancelling headphones or quiet spaces, which can assist neurodivergent workers without requiring them to disclose their condition.

Neurodiversity at work – Acas Guidance

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Esmat Faiz (EsmatFaiz@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Workplace sexual harassment on the big screen: what can we learn from the Bridget Jones movies?

Bridget Jones: Mad About the Boy **has reignited love for the** ***Bridget Jones*** **films, but rewatching the series, you cannot help but notice that the behaviour in Bridget's workplaces has not aged as well as her fondness for Chardonnay. In this article, we consider the examples of workplace sexual harassment in the movies and the learning points for today's employer.**

What conduct are we talking about?

In the *Bridget Jones* films, there are many instances of Bridget's boss, Daniel Cleaver – played by Hugh Grant – engaging in sexually inappropriate behaviour. In the first

film in the series (released in 2001), *Bridget Jones's Diary*, Daniel makes a comment on the length of Bridget's skirt when he sends an email to her which says, "*You appear to have forgotten your skirt. Is skirt off sick?*". He also grabs her bottom in an office lift.

In the sequel (released in 2004), *The Edge of Reason*, despite their relationship having ended, Daniel seeks Bridget out and makes a sexually inappropriate comment to her. Alive to the inappropriate nature of the behaviour, Bridget threatens to report him for sexual harassment. However, Daniel dismisses her rebuff with yet another inappropriate comment, asking, "*Is that your most serious skirt, Jones?*".

By the time we get to the third instalment in the series (released in 2016 in the post #MeToo era), *Bridget Jones's Baby*, the rampant sexual harassment is less prevalent. Nevertheless, in one scene Jack Qwant – played by Patrick Dempsey – chases Bridget through the lobby of her workplace after they spent the night together, demanding to know why she left and did not contact him afterwards.

Finally, in *Bridget Jones: Mad About the Boy* (released in 2025), Bridget's new boss remarks that she "*looks hot*". Bridget points out that *"…that sort of language is a little outmoded in the workplace",* only to find that her boss really meant that she looked like she was having a menopausal hot flush.

What is the law?

Under the **Equality Act 2010,** sexual harassment is defined as

any unwanted conduct of a sexual nature that violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating, or offensive environment.

Employers may be vicariously liable for the actions of employees, meaning that sexual harassment committed by employees in the course of their employment can lead to claims against the employer as well as in the individual perpetrator.

Since October 2024, employers have also been subject to a duty to take reasonable steps to prevent sexual harassment in the workplace.

The new Employment Rights Bill, expected to come into force in 2026, proposes to make the duty more onerous and require employers to take all reasonable steps to prevent sexual harassment in the workplace. The bill also proposes to extend protection for employees to harassment committed by a third-party (e.g. clients, contractors, conference or event attendees, and building maintenance workers).

Is this conduct sexual harassment?

Sexual harassment, under the Equality Act 2010, requires that the conduct be unwanted. In the first film, while Daniel’s comments and actions are of a sexual nature, Bridget seems receptive to them, which means they are unlikely to meet the definition of harassment. However, it is not always possible to know whether a particular comment will be wanted or unwanted before it is made and this is why such comments in a work context can give rise to grievances and claims.

By the time we get to *The Edge of Reason*, the dynamic between the pair has changed. Daniel's repeated inappropriate comments are not welcomed by Bridget. However, the assessment of whether the behaviour would qualify as harassment is also context-dependent. While the comments certainly have the potential to create an unacceptable environment, Bridget may not feel that her dignity is violated or that the environment is intimidating, hostile, degrading, humiliating or offensive. Yet her threat to report Daniel for sexual harassment is a good indicator that she does feel that her dignity has been violating. And it would probably also count as a "protected act", meaning that any subsequent mistreatment might amount to victimisation.

In *Bridget Jones's Baby*, Jack's actions in pursuing Bridget could be considered unwanted conduct that creates an intimidating or degrading environment. However, Jack is a guest on the TV show not an employee of the TV company. Although employers currently have a duty to take reasonable steps to prevent sexual harassment by third parties, they are not vicariously liable for harassment by third parties, meaning Bridget would struggle to bring a claim. However, under the Employment Rights Bill, as currently drafted, employers will become responsible for harassment by third parties, such as Jack. If they have also failed in their duty to take reasonable steps to prevent such harassment then the compensation in such claims could be uplifted by up to 25%.

The comment from Bridget's boss in *Mad About the Boy* that she "*looks hot*" is quickly clarified to be a non-sexual comment and, therefore, unlikely to amount to sexual harassment. However, humiliating comments about menopause could amount to harassment related to sex, age and/or disability.

What are the takeaways for employers?

Employers should consider the following points:

- **Risk assessment**: conduct a risk assessment to ascertain what the risks are for your specific business and how they might be mitigated. Don’t forget to assess the risks posed by third parties.

- **Training**: ensure that staff receive training on how to recognise and report sexual harassment (and other types of harassment) and victimisation. Managers should be trained separately on their responsibilities to help prevent it.

- **Policies**: have a specific policy on sexual harassment (and other types of harassment) which makes it clear what behaviours are unacceptable and when disciplinary action will be taken. Make sure third parties are aware of your approach to sexual harassment.

- **Reporting**: encourage staff to report incidents of sexual harassment as well as situations where they felt at

risk, even if nothing happened.

- **Review**: keep your training and policies under review and refresh them as needed.

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