**DEPUTY DISTRICT JUDGE WHYBROW:**

**1.** David Hosegood issued a claim on 22 August 2011 under section 29 of the Equality Act 2010 for the failure to make reasonable adjustments in the provision of access to a restaurant on 3 April 2011. Damages were sought of “up to £5,000 including interest”.

**2.** In the Acknowledgement of Service, filed 24th November 2011, the Defendant indicated that he would defend the action. A defence document was also filed in November 2011 in which the Defendant denied that the incident took place. He said it was a baseless claim and that the Claimant was a Racist and a Conman. He counter-claimed for damages for stress and damage to his reputation in the sum of £16,000.

**3.** No fee was paid for the issue of the counterclaim so that this was struck out on 16th December 2011. On the same day the Defendant was given 7 days to file his Allocation Questionnaire, which he failed to do, so that the defence was struck out too. The Claimant then applied for Judgement, which was entered for the Claimant on 6th February 2012 and the case was listed on 15th March for a 30 minute hearing for the assessment of damages.

**4.** The Claimant attended court accompanied by his wife who acted as his McKenzie friend. The Defendant did not appear and was not represented.

**5.** In this Small Claims Hearing, I have read the court file including the documents referred to above and the Particulars of Claim dated 21st October 2011. I have listened to the Claimant who has made representations about how he felt after the incident. He also has shown me letters sent to the Defendant’s restaurant dated April 7th and 20th 2011, 2nd May, 3rd and 25th June 2011.

**6.** The background to the claim is that the Claimant formerly worked in the Royal Air Force. Approximately 39 years ago he suffered an accident at work and severed his spinal cord. He uses a wheelchair and came to Court in that wheelchair today. He told me that he strives to be as independent as possible. After his accident he re-trained as a mechanical engineer. In his job, he was posted to different sites to carry out assessments and appraisals. He was able to do this in his wheelchair for approximately 25 years until eventually his physical condition prevented him from working. He added that he is now suffering from spondylosis and stomach cancer. He told me that he rarely goes out and that when he does it has to be very carefully planned.

**7.** His sense of independence is such that he has a wheelchair without handles so that he can move himself around. He told me that he does not let anyone else touch his wheelchair except his wife, even his friends.

**8.** The Particulars of Claim recite how, in April 2011, his wife and he went to the Defendant’s restaurant for an anniversary meal. They had telephoned the restaurant in advance to make Sure that there was wheelchair access and was assured that there was. It was the first time the Claimant and his wife had been out for a meal for a year.

**9.** On arrival, the entrance was difficult for the Claimant because there was a step up from the pavement into the restaurant. Mrs Hosegood went into the restaurant and asked how they should enter. A member of staff, described as the Manager, came out and offered to help Mr Hosegood up the step. The Claimant gave evidence that the Manager and a member of staff were insistent that they help him up the step by lifting his wheelchair. Mrs Hosegood helped with this.

**10.** The Claimant said that this manoeuvre was made under protest because he wanted to be provided with a ramp. He said that he was told that there was a ramp at the back of the restaurant but that rather than fetch this, he would be helped into the restaurant physically.

**11.** The Particulars of Claim, para 6, says that “since I had no other option to get into the restaurant, I allowed him to help me up the step. It was undignified, embarrassing and uncomfortable. My wheelchair is not designed to be handled or lifted by another person. I should have been able to enter the restaurant unaided like anyone else”.

**12.** An issue was raised in the Hearing as to whether access through the back of the restaurant, where the ramp was situated, would have been sufficient to meet the expectations of the Equality Act 2010. However, the Defendant was not present to argue this point and judgment has already been entered against the Defendant. It is not necessary to decide this point but I should state that I think it is highly unlikely that the Court would find, in this case, that the rear entrance is an acceptable alternative for disabled patrons of the restaurant.

**13.** The Claimant and his wife did not stay to eat, having been so distressed at their experience of entry. Mrs Hosegood helped her husband out of the restaurant.

**14.** After April 3rd, the Claimant wrote several letters to the restaurant and I have seen these letters. It is clear from these letters that the Claimant was primarily concerned to ensure that a ramp is provided in future for disabled customers. He had no reply to the letters written except that on 4th May, a representative from the restaurant, possibly the Defendant, telephoned the Claimant, saying that he accepted the service on 3rd April had not been acceptable. The Claimant wanted to meet the caller to discuss the problem in person but the caller never called back.

**15.** The Claimant became increasingly frustrated and upset by the failure of the restaurant to respond and he sought help from the Equality and Human Rights Commission who wrote to the restaurant on his behalf. The Claimant has been told that one telephone call from the restaurant was made and the representative suggested that the incident had never taken place that the Claimant had never been to the restaurant.

**16.** This response further aggravated the Claimant who started these proceedings in August 2011.

**17.** In assessing damages under the Equality Act 2010, the Court assessing the proper level of compensation for the unlawful discrimination against the Claimant. The court is also specifically enabled by section 119 to have regard to “the injury to the feelings” of the Claimant.

**18.** The Claimant tells me that he feels anger about what happened on 3rd April and also about how he has been treated since. He feels insulted and frustrated. He was obviously still very emotional about what happened when he gave his evidence. Having seen the Claimant and his wife in Court, I have no doubt of the sincerity of their evidence about what happened and how he feels about it. He referred to several factors which made him feel even worse about the experience: (a) The failure of the restaurant to engage in any real dialogue with him with a view to making good what had happened and in particular the provision of a ramp at the front of the restaurant;

(b) The wording of the defence document that he is a “Racist and a Conman” which he found deeply upsetting and unfair;
(c) The suggestion to the Commission that the incident had never taken place and that by implication he is a liar.

**19.** By his own admission, the Claimant has been “consumed” by what has happened. It has taken over his life, such is his incredulity about what has happened to him. He referred to his deteriorating health and his despair that he and his wife have to deal with this matter.

**20.** I asked him for any precedents for the award of damages in this type of case. He said that he was aware that awards had been made in the bracket £1,500 to £6,000 and that he had material which he had left at home. I decided that the range is so large and this matter is so serious to both parties that I should reserve judgment, allowing the Claimant a week to provide his materials in writing to the Court by way of further representations. Had the Defendant attended Court and participated in the proceedings, the same facility would have been open to him. Regrettably he was not present to hear this.

**21.** I have received a letter dated 16th March from the Claimant who has referred to several previously decided cases which have been provided to him by the Sheffield Law Centre which has assisted him. I have also made my own investigations as to precedents and have taken into account the following cases:

*Royal Bank of Scotland PLC v David Allen* [2009] EWCA Civ 1213
*Milner v Carnival PLC (T/a Cunard)* [2010] EWCA Civ 389
*Ross v Ryanair Ltd* [2004] EWCA Civ 1751
*Vento v Chief Constable West Yorkshire Police* [2002] EWCA Civ 1871
*Da’bell v NSPCC* [2009] UKEAT 0277 09 2809 *Langden v Webster* (a decision of Hull County Court of 26/3/08)
*Shaban v Wharfe* (a decision of Yeovil County Court of 24/9/07)
*Martins v Choudhary* [2007] EWCA Civ 1379

**22.** I have also had regard to the Judicial Studies Board Guidelines for the Assessment of General Damages on Personal lnjury Cases (Tenth Edition), in particular the Chapter on Psychiatric Damage. This book does not give guidance on cases of injury to feelings but I am taking into account in a broad way the level of General Damages awarded in cases of other types of injuries. Under the heading of Psychiatric Damage Generally, pages 11-12, I note that for what are considered “minor cases of such damage, the bracket of award is £1000 to £3875, and the court is invited to consider “the length of the period of disability and the extent to which daily activities and sleep were affected”.

**23.** In this case I do take into account the evidence of the Claimant that he is stilt “consumed” by what happened nearly a year from the incident and that is has taken over his life. I do bear in mind too that he has not suffered psychiatric injury in the sense meant by the Guidelines so that the band referred to above is not strictly applicable.

**24.** From the *Vento* case I take the general observation that “it is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise ....hurt feelings are nonetheless real in human terms. The Courts and Tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury” paras 50 and 51).

**25.** I also take into account the general principles quoted in para 53 of the Court of Appeal judgment in *Vento*.

**26.** The *Vento* case established three broad bands of compensation for injury to feelings, as distinct from psychiatric or similar personal injury. The *Vento* case, decided in 2002 involved an award of £18,000 for “a lengthy campaign of discriminatory harassment”. The lowest band envisages awards in between £500 to £5,000 such as where the “act of discrimination is an isolated or one off occurrence.” Without using that term with any pejorative meaning, I am satisfied that the case before the Court today comes within the “lowest” bracket.

**27.** I also rely on the *Da’bell* case decided in 2009 for authority that the top of the lowest band should be increased to £6,000 to take into account the effect of inflation (para 44). That case involved disability discrimination at work which was classed as within the middle band.

**28.** With one exception, the other cases referred to above relate to the provision of services rather than employment. The *Cunard* case from 2010 gave general guidance for the award of damages in holiday cases. The Court of Appeal quoted Lord Diplock from 1993: “Non economic loss..... is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to all litigants should be even-handed instead of depending on idiosyncrasies of the assessor...... the figure must be a ‘conventional figure derived from experience and from awards in comparable cases’.” The Court also relied on Lord Steyn from the *Farley* case “l consider that awards in this area should be restrained and modest. It is important that logical and beneficial developments in this corner of the law should not contribute to the creation of a society bent on litigation” (para 41).

**29.** The *Ross* case concerned failure to provide free wheelchair service to a Ryanair aircraft. The decision in 2004 was to award compensation of £1,000 for injury to feelings for a one-off incident. The reasons for the size of the award were not set out in detail.

**30.** The later case of *Allen* involved an award of £6,500 for failure to make reasonable adjustments to enable disabled access to a branch of RBS in Sheffield. I have seen the judgment of HHJ Dowse in Sheffield County Court of November 2008 and the Court of Appeal judgment on the issue of liability. There is consideration of the amount of the award in the County Court. The facts include a number of failed attempts at access to the Bank on different occasions over a long period of time. HHJ Dowse decided that “because of the long period of discrimination which David has suffered and continues to suffer and the embarrassment which has been caused by the Bank I am satisfied that this case falls into the middle band under the principles of *Vento*” (para 65).

**31.** The *Shaban* case is from 2007 at County Court level. The Claimant was awarded £3,000 for injury to feelings and £1,500 in respect of aggravated damages. This case involved a one-off attempt to eat at a restaurant/tea shop when the Claimant was told that “you can’t come in here; I can’t have you in here”. It was a case of direct discrimination through the refusal to provide a service to the Claimant. The Claimant was not able to stay in the shop. The Defendant’s conduct towards the Claimant and in the litigation was heavily criticised, hence the relatively large award of aggravated damages.

**32.** The *Webster* case was another County Court decision, this time in Hull where the Claimant was awarded £5,000 for the unlawful failure to make reasonable adjustments to a Golf Club at which the Claimant attended “an Evening Do”. In the circumstances of that case, which are not fully explained in the judgment, the Judge awarded the Claimant the maximum he asked for (which may have included a sum for aggravated damages).

**33.** Finally, the case of *Choudhary* involved an award of £10,000 for injury to feelings following a campaign of harassment. This was upheld on appeal. The Judge included an element in the award to include aggravating aspects including a racial element in the harassment and the continuation of distress by prolonged litigation.

**34.** Turning to the issue of aggravated damages, I take into account the guidelines to the effect that a separate award may be made where a Defendant has behaved in an insulting way towards the Claimant or his conduct otherwise exacerbates the original wrongdoing.

**35.** In hearing this case, I have been impressed by the sincere and deep-felt response of the Claimant to the treatment he has endured. I have also been impressed by his restrained and constructive approach throughout the case. I am balancing the depth of his reaction to what happened with the general policy as to the award of damages in these cases set out above. Overall, taking into account the authorities referred to above, and the facts set out at the beginning of this Judgment, I consider that an award of £3,000 is appropriate on the facts of this case as found, approximately midway in the lowest band set by *Vento*, as amended in the *NSPCC* case. I consider that this accurately reflects the purpose of damages in this area as set out in the case law quoted above. I add a further £500 by way of aggravated damages for the insulting and abusive way in which the Defendant responded to the claim and failed to engage with the Claimant or his representatives in relation to this incident.

**36.** For the same reasons, I award the Claimant his costs in making this claim which amount to £160 Court costs and petrol and postal costs assessed at £30. Interest on the damages is payable at the rate of 8% from the date of the incident, which amounts to £274.63 (358) days. The total sum owing of £3964.63 shall be paid in 14 days.