**REVIEW DECISION OF THE TRIBUNAL**

FTS/HEC/AC/21/0072

**Claim**

1. This is a decision on an application for review made by the responsible body in relation to a decision arising out of a claim under the Equality Act 2010 (**2010 Act**).
2. The responsible body seeks clarification of certain wording of a remedy in the tribunal’s decision of April 2022 and the extension of the timescales in that decision for compliance with two of the remedies.

**Decision**

1. The decision of April 2022 (**the original decision**) is set aside under s.44(1)(b) of the Tribunals (Scotland) Act 2014 (**2014 Act**).
2. The claim is re-decided under s.44(2)(a) of the 2014 Act. As a result, a new decision is issued. That decision is dated today’s date, but is otherwise identical to the original decision, except for the following changes:
   1. In paragraph 3.c., the words ‘for all currently employed staff’ are removed, and the phrase ‘within 9 months of the date of issue of this decision’ is replaced with ‘by 15 April 2023’.
   2. In paragraph 3.d., the words ‘within six months of the date of issue of this decision’ are removed and replaced with the words ‘by 15 December 2022’.
   3. Paragraphs 135 and 136 are replaced with the following paragraph, numbered 135:

‘As a result of a review application by the responsible body, which led to the original decision of April 2022 being set aside under s.44 of the Tribunals (Scotland) Act 2014 and being replaced with this one, certain changes were made to the original paragraphs 3.c. and 3.d, which are reflected in those paragraphs above. The reasons for these changes are explained in the decision on the review application, issued with this decision. The changes are to the original time limits for carrying out the remedies in those paragraphs, and a change to the wording of the original remedy in paragraph 3.c.’

**Process**

1. The claimant raised a claim under the Equality Act 2010. Following a hearing, the original decision of the tribunal was issued to the parties in April 2022. The tribunal found that discrimination under the 2010 Act had occurred, and certain remedies were ordered.
2. In April 2022, the responsible body made a review application under The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (Schedule to SSI 2017/366) (**the rules**). The Chamber President made directions on that application dated May 2022. As a result, a review of the decision was permitted, I (as the legal member on the tribunal that made the original decision) was directed to conduct the review and I was directed to do so without a hearing.
3. In reaching this decision, I have taken full account of the review application, the paper submitted with it, entitled ‘Information and timeline regarding training and policy review’ and the claimant’s representatives response to the review application (by e-mail in May 2022).

**Reasons for the Decision**

1. The responsible body seeks certain amendments to two of the remedies in the original decision.
2. The amendments sought are of two types: (a) clarification of the wording of one of the remedies and (b) changes to the timeframes for compliance with two of the remedies. I will deal with each in turn.
3. In deciding this application, I have applied the ‘interests of justice’ test set out in rule 11(1) of the rules.

*(a) Clarification of wording*

1. Prior to the hearing of the claim, the parties had lodged a ‘Joint Minute of Agreed Facts’ (T056-063) (**Joint Minute**). In that document, the parties had agreed certain facts, but had also agreed (at paragraph 34) that in the event that a breach of the 2010 Act was found to have happened, the making of certain orders would be reasonable. In effect, the parties agreed the wording of the remedies (should any be required) in advance.
2. Those agreed remedies did not include any timescales for their delivery, and the tribunal asked the parties to address that matter in writing. Both did so, and as a result certain timescales for delivery were included in the original decision.
3. As part of its deliberations, the tribunal decided on the timescale for each remedy and these were included in paragraphs 3.b., c. and d. of the original decision. In the remedy in paragraph 3.c. (relating to staff training), the tribunal adopted the agreed wording from the Joint Minute, but added at the end ‘such training to be completed for all currently employed staff within 9 months of the date of issue of this decision’.
4. The responsible body argues that the words ‘for all currently employed staff’ are ambiguous and it proposes to deliver the required training to all staff employed by the responsible body in schools under its control who are identified as requiring training. There are 400 such members of staff. The claimant expresses concern around this interpretation of the remedy wording, since there are (to use figures provided by the responsible body) 2000 school staff employed by the responsible body.
5. The claimant argues that the wording of the training remedy was agreed between the parties. That is substantially true, but the parties did not agree to the phrase ‘for all currently employed staff’. That wording was added by the tribunal, as part of the wording for a timescale. However, that wording is not required in order to express a timescale. If those words are omitted, the remedy is left as originally agreed, with the timescale attached.
6. Given that the wording of the training remedy was agreed in advance, and that the tribunal was simply adding a timescale for delivery, it is in the interests of justice that the additional, unnecessary wording is removed. I accept that this still leaves a question of interpretation of the remedy, but the parties agreed that wording.
7. Further, the wording ‘for all currently employed staff’ offers interpretation questions that are similar to ‘the responsible body and their staff’, part of the wording of the training remedy agreed between the parties.
8. On the question of interpretation of the remedy in the re-made decision, it is clear that this should be guided mainly by the words ‘relevant’ and by the specified focus of the training. This should lead the responsible body to reach a view on the members of staff who should be trained in order to comply with the remedy. I cannot properly say more than that, since it is not for the tribunal to regulate precisely how the remedy is to be implemented. Short of approving a list of names of staff to be trained (which is clearly not appropriate), it is not easy to see how the tribunal could perform such oversight. It is in the nature of remedies of this kind that an element of interpretation is required.

*(b) Changes to remedy compliance timeframes*

1. The compliance timeframes for the remedies in paragraphs 3.c. and 3.d. of the original decision (the training remedy and the remedy on policy revisions respectively) were 9 months and 6 months respectively.
2. The responsible body in the review application seeks an extension of those remedies to 12 months (for the training remedy) and 8 months (for the policy revisions remedy). Clear and detailed reasons are provided for these requests. The claimant does not oppose these revisions to the compliance timeframes. In these circumstances, I have amended the wording of the remedies accordingly.
3. Since the responsible body makes it clear that work is already underway on complying with these remedies (see the ‘Proposed Timeline’ produced as part of the information and timeline document referred to above), it is in the interests of justice that the new compliance timeframes run from the date of the original decision, not from the date of the new decision. That is reflected in the chosen compliance dates in the new decision.

*Other matters*

1. As a consequence of these changes, I have made some amendments to the reasons for the decision, to reflect how the wording of the remedies arose following the review process. This involves deleting paragraphs 135 and 136 in the original decision and replacing them with a new paragraph 135 in the new decision.
2. Finally, the claimant, in his response to the review application, asks for an order that, as an interim measure, the responsible body takes steps to inform parents, carers and young people of their right to raise a tribunal claim where similar circumstances to the claim here apply. He refers to the heightened risk of time bar applying due to the extended period for compliance with the remedies in this case.
3. Such a remedy would, on a proper interpretation of Schedule 17, paragraph 9 of the 2010 Act, not be appropriate, especially given the reference in paragraph 9(3)(a) to ‘obviating or reducing the adverse effect on [the child] of any matter to which the claim relates’. Such a remedy would relate not to the child, but to other pupils. I accept that the wording of that paragraph does not exclude such a remedy, which would be technically competent (given the wording of paragraph 9(2) and the use of ‘may, in particular’ at the start of paragraph 9(3)(a)), but there is no evidential basis to support it. There is nothing from which I can infer that the extended deadlines for compliance would create a risk of others not being able to make claims, any more than there is evidence of the original deadlines having the same effect.
4. Further (and related to this point) to entertain this request for an interim remedy would involve opening a line of enquiry which was not made at any point prior to the review application stage. This would not be in the interests of justice, since the purpose of a review process is to consider the original decision, not to raise fresh matters that could have been raised at the hearing. For that reason also, I decline to make the interim remedy requested.