EMPLOYMENT TRIBUNALS

Claimant: Mr P Wrigley

Respondent: British Telecommunications PLC

Heard at: Manchester **On:** 7-8 August 2018 and (in chambers) 6 September 2018

Before: Employment Judge Aspden
Mrs A Jarvis
Mr W Haydock

REPRESENTATION:

Claimant: Mr Lynch, Trade Union Representative
Respondent: Mrs Brown, Solicitor

JUDGMENT ON REMEDY

The respondent is ordered to pay to the claimant the following:

1. Compensation for unfair dismissal of £13,172.50.

2. An award pursuant to s124 of the Equality Act 2010, made up of:

    (i) compensation in the sum of £416,014.58.

    (ii) Interest of £8,777.97

3. The recoupment regulations do not apply.

REASONS

Issues

1. The purpose of the hearing was to determine the remedy that should be awarded to Mr Wrigley following this Tribunal's judgment dated [xxx]. In that judgment we held that the respondent had unfairly dismissed Mr Wrigley and had discriminated against Mr Wrigley, in contravention of the Equality Act 2010 as set out in our first judgment

2. Mr Wrigley confirmed that he did not wish the Tribunal to consider making an order for reinstatement or re-engagement.

3. In preparation for the hearing Mr Lynch had prepared a detailed Schedule of Loss. For reasons that were not explained to us clearly, however, Mr Lynch had asked for that Schedule of Loss to be removed from the bundle that had been prepared for the remedy hearing and instead we were referred to over 40 pages of notes prepared by Mr Lynch, together with a further 20 or so pages of email correspondence between the parties setting out their respective positions and a document prepared by Mr Lynch explaining the remaining points of difference between the parties, as he saw them and referring back to his notes.

Unfair dismissal

4. In respect of unfair dismissal Mr Wrigley sought a basic award. The parties agreed that the amount of any basic award would be £13,172.50, subject to a point raised by Mr Lynch about whether the statutory cap on a week's pay used in calculating the basic award was applicable. Mr Lynch told us that Mr Wrigley had said he thought the cap on a week's pay might not apply in his case although he could not point to any legal authority to support that suggestion.

5. It was common ground that no compensatory award would be due to Mr Wrigley in respect of unfair dismissal as Mr Wrigley would be fully compensated for his dismissal by the award under the Equality Act 2010.

Discrimination

6. Mr Wrigley sought an award under the Equality Act 2010 made up of the following elements:

6.1. Compensation for lost earnings consequent on dismissal.

6.2. Compensation for loss of the following benefits consequent on dismissal:

6.2.1. Death in service cover

6.2.2. Death in retirement cover

6.2.3. Broadband

6.3. Compensation for pension loss consequent on dismissal.

6.4. A sum to reflect loss of statutory rights.

6.5. Compensation for both injury to feelings and personal injury caused by the pre-dismissal acts of discrimination and/or the dismissal.

6.6. Aggravated damages

6.7. An uplift for failing to follow the ACAS Code on discipline and grievances.

7. Before hearing evidence, we sought to ascertain, through discussion with the parties representatives, which issues remained to be determined by the Tribunal and which had been, or could be resolved by agreement.

8. In relation to financial losses, Mr Wrigley's case was that, but for the discrimination, he would have remained in the respondent's employment until his retirement at the age of 65 on 1 May 2025. He has not found a new job and, on Mr Wrigley's primary case, is unlikely to do so and therefore should be awarded compensation on the basis that, but for the discrimination, he would have continued to accrue those earnings and benefits up to 1 May 2025. Mr Wrigley did not contend that the respondent's acts of discrimination led to any financial loss prior to the termination of his employment in November 2016.

9. For its part, the respondent did not dispute that, but for the discrimination, Mr Wrigley would not have been dismissed in November 2016. However, Mrs Brown contended that:

9.1. Mr Wrigley is likely to find alternative employment in the future and any compensation should reflect that likelihood.

9.2. Mr Wrigley failed to mitigate his loss, including by failing to accept an offer of reengagement made by the respondent.

9.3. Mr Wrigley would have been lawfully dismissed in any event due to mental ill health at some point after his actual date of termination. Mrs Brown explained that the respondent's case was that, even if the respondent had not discriminated against Mr Wrigley, Mr Wrigley would or might have been lawfully dismissed on medical grounds at some point ahead of his retirement age and any compensation should be reduced to reflect the chance or likelihood of that happening. Mrs Brown confirmed to us that the respondent was not contending that, but for the discrimination, Mr Wrigley would or might have been otherwise lawfully dismissed on or before his actual termination date.

9.4. Mr Wrigley is in receipt of 'RTIE benefits' in consequence of the termination, which should be offset against any losses.

9.5. Any compensation should be reduced to reflect accelerated receipt.

10. In relation to pension loss, the following facts were not in dispute.

10.1. Up to the termination of his employment Mr Wrigley was an active member of a defined benefit pension scheme, referred to by the parties as the 'BTPS scheme'.

10.2. The respondent closed that scheme on 30 June 2018, whereupon existing members were able to join a defined contribution scheme referred to as the 'BTRSS scheme' with effect from 1 July 2018.

10.3. Had Mr Wrigley remained in employment, he would have remained an active member of the BTPS scheme until 30 June 2018. As such he would have continued to make the employee pension contributions that he was required to make. He would then have joined the BTRSS scheme on 1 July

2018 and remained in it until his employment ended. During such period the respondent would have made employer contributions to the BTRSS scheme at a rate based on a percentage of Mr Wrigley's pensionable pay at the time, which would have been £38,766.27 per annum.

10.4. On termination the respondent provided Mr Wrigley with the option of taking pension benefits under the BTPS scheme under arrangements known as 'retirement in the interests of efficiency'. Mr Wrigley accepted that offer. As a result, with effect from termination, Mr Wrigley received what were referred to by the parties as 'RTIE benefits', which included a lump sum and an annual pension.

11. In light of the above, Mr Wrigley's claim in respect of pension loss was made up of two elements:

11.1. The loss in relation to the BTPS scheme.

11.2. Loss in relation to the BTRSS scheme.

12. Ahead of the hearing Mr Lynch had calculated Mr Wrigley's pension loss. In doing so he had regard to the Presidential Guidance to Employment Tribunals issued on 10 August 2017 attaching a document setting out the Principles for Compensating Pension Loss (which we refer to in this judgment as 'the Principles'). He adopted the 'seven steps model' for calculating pension loss in complex cases advocated by paragraphs 5.54 - 5.61 of the Principles, albeit that he was unable to take the seventh step and deal with grossing up as that can only be done once the full extent of the award is known. Mr Lynch calculated this aspect of pension loss (without grossing up for tax) amounted to £27,522.24. This figure was agreed by the respondent. We asked Mrs Brown if it was the respondent's case that any loss in relation to the BTPS should be reduced to reflect any chance that he would/might have been dismissed on health grounds in any event. She replied that a deduction was only being sought in relation to future loss and that the respondent was happy to agree the figure in relation to BTPS pension loss without deduction.

13. At the start of the hearing Mr Wrigley's position, however, was that the figure identified in the paragraph above represented only losses in respect of Mr Wrigley's annual pension deriving from the BTPS scheme and that an additional amount should be awarded to reflect the fact that the termination of his employment had led to a reduction in the value of the lump sum to which he would have been entitled had his employment continued. The respondent's stance was that no additional compensation was appropriate as the difference in any lump sum entitlement was factored in to the 'seven steps' approach in the Principles and had already been taken into account (at step 6 of that calculation) in reaching the figure of £27,522.24. When we asked Mr Lynch what his response was to this he suggested that Mr Wrigley had sustained an additional loss in relation to his lump sum entitlement because the lump sum he received under the RTIE scheme was lower than his lump sum would have been had he remained in employment. When asked, however, Mr Lynch acknowledged that Mr Wrigley had not been compelled to take RTIE benefits – he could have chosen not to do so.

14. As for the loss in relation to the BTRSS scheme, Mrs Brown contended that (subject to our findings in relation to causation and mitigation) the correct approach to ascertaining loss is, as explained in the Principles, to calculate pension loss on the basis of lost employer contributions. There was initially a dispute between the parties as to the rate at which the respondent would have contributed to that scheme if Mr Wrigley had remained in employment. Following discussions during the course of the hearing and in adjournments, however, the parties agreed that the Tribunal should calculate any such losses based on an employer contribution rate of 12% ie £387.66 per month.

15. At the start of the hearing Mr Wrigley's case, however, was that this approach would not fully compensate Mr Wrigley. Mr Wrigley's case was that, in addition to being awarded the sum calculated by reference to employer pension contributions, Mr Wrigley should be awarded an additional amount of £15,000 to reflect what Mr Lynch contended was a reduction in the value of a lump sum which Mr Wrigley would have accrued under the BTRSS scheme. Mrs Brown had pointed out to Mr Lynch that the Principles provide for loss in relation to DC schemes to be calculated by reference to employer contributions and the ability to take a lump sum should be ignored. Nevertheless Mr Lynch's position was that the Tribunal should make an additional award on the basis that it would be 'just and equitable' to do so.

16. The respondent also contended that Mr Wrigley is likely to obtain a new job by July 2019 with an equivalent defined contribution scheme and that, therefore, any pension loss sustained in relation to the BTRSS scheme will be limited to 12 months' worth of contributions. As noted above, Mr Wrigley's primary case was that he will not obtain alternative employment. Mr Lynch submitted that if the Tribunal does not agree with that hypothesis then, at best, Mr Wrigley is likely to benefit only from any employer contributions that are mandated by auto-enrolment regulations, which the parties agreed would equate to contributions at the rate of 3%. We also understood Mr Lynch to suggest that, even if he were to obtain employment, Mr Wrigley might opt out of any auto-enrolment pension scheme so as to avoid paying employee contributions and thereby maximise his disposable income.

17. Turning to the claim in respect of lost earnings, there was no dispute as to Mr Wrigley's gross earnings on termination. The parties also agreed that, had he remained in employment, Mr Wrigley would have received certain pay increases and were able to agree the amount of gross pay Mr Wrigley would have been entitled to up to and including the hearing date. By the time the hearing began, however, the parties had not managed to agree the extent of Mr Wrigley's net loss of earnings on a weekly or monthly basis. The dispute on this issue stemmed from a disagreement between the parties as to whether the payments Mr Wrigley would have made by way of employee pension contributions and payments into a 'Sharesave' scheme should operate to reduce Mr Wrigley's weekly/monthly net loss. Mr Wrigley's case was that Mr Wrigley's net loss should be ascertained without making deductions for such payments. Initially the respondent's case was that Mr Wrigley's net loss should be ascertained net of such payments. During the course of the hearing, however, Mrs Brown, after further reflection, conceded that the payments to Sharesave should not go to reduce Mr Wrigley's net loss. She also conceded that, in line with the Principles, any contributions Mr Wrigley would have made to the BTRSS scheme from 1 July 2018 should not go to reduce Mr Wrigley's net loss. She maintained, however, that Mr Wrigley's presumed net earnings for the period to 30 June 2018 should be calculated

net of his pension contributions as the making of such contributions was a condition of his membership of the BTPS scheme and that compensation to reflect his losses in relation to that scheme (the quantum of which had been agreed between the parties) was calculated on the assumption that those contributions would have continued. On that basis, Mrs Brown calculated Mr Wrigley's net monthly loss of earnings as follows:

17.1. As at 5 November 2016: £2,186.93

17.2. From 31 March 2017: £2,224.48

17.3. From 31 March 2018: £2,288.46

17.4. From 1 July 2018: £2,466.46

18. Mr Lynch neither agreed nor disagreed with those revised figures. We, therefore, proceeded on the basis that he remained of the view that Mr Wrigley's contributions to the BTPS scheme should not reduce his net monthly pay for the purpose of calculating lost earnings.

19. As noted above, Mrs Brown contended that the RTIE benefits received by Mr Wrigley in consequence of the termination should be offset against any losses. At the start of the hearing the respondent's case was that the RTIE benefits were only available to Mr Wrigley because of his dismissal – had his employment not been terminated he would not have received those benefits; therefore by choosing to take the RTIE benefits Mr Wrigley had mitigated his loss and the sums paid to him, and payable in future up to retirement, should be offset against Mr Wrigley's lost earnings. Mr Wrigley's position, however, was that it was the respondent's policy that from the age of 55 employees were entitled to draw down their pension entitlements and continue working for the respondent; therefore, if he had remained in employment he would have been entitled to receive the same amounts under the pension scheme as he was now receiving by way of RTIE benefits without affecting his income. As we understood it, Mr Wrigley's position, in effect, was that the RTIE benefits were no more than Mr Wrigley would have been entitled to draw down from the pension scheme by virtue of being over 55 even if he had remained in employment. We discussed this further with the parties and gave the parties' representatives time in an adjournment to discuss this further and ascertain whether or not Mr Lynch was correct in saying that the RTIE benefits received were no more generous than the benefits Mr Wrigley would have been entitled to had he remained in employment. Having discussed the matter further Mr Lynch and Mrs Brown agreed that in fact the benefits paid to Mr Wrigley under the RTIE benefit scheme were more generous than those he would have been otherwise entitled to draw down from the pension scheme had he remained in employment and chosen to take his pension early, to the tune of £336.57 per month. Mrs Brown confirmed that the respondent's revised position was that this amount (rather than the full amount of RTIE benefits received) should be offset against any lost earnings. Mr Lynch accepted that, if the Tribunal considered that RTIE benefits should be offset against lost income then the amount to be offset would be £336.57 per month.

20. With regard to other pecuniary losses, it was common ground that, if his employment had continued, Mr Wrigley would have been entitled to the following benefits:

20.1. Death in service cover for as long as his employment continued, which would have provided his partner with a lump sum and annual pension in the event of his death in service.

20.2. Death in retirement cover, which would have provided his partner with an annual pension in the event of his death after retirement and, if his death occurred in the first five years after retirement, a lump sum.

21. The respondent did not accept that the claimant had suffered a loss in relation to these benefits as a result of dismissal.

22. It was common ground that, if his employment had continued, Mr Wrigley would also have been entitled to the benefit of free broadband at home. The parties had failed to agree on an amount representing the loss to Mr Wrigley in financial terms. In the notes referred to above Mr Lynch had suggested £69.80 per month would be appropriate. The respondent's position was that Mr Wrigley could obtain equivalent broadband cover on the open market for £36 per month (as per a quote at p453 of the bundle) and that any compensation for loss of this benefit should be limited to that amount.

23. We understood Mrs Brown also to be suggesting that Mr Wrigley would obtain employment in the future that would include equivalent benefits to those enjoyed by Mr Wrigley during his employment.

24. As noted above, Mr Wrigley sought compensation to reflect his loss of statutory rights. He contended that the sum of £500 was appropriate. The respondent submitted that £350 would be more appropriate.

25. With regard to injured feelings, aggravated damages and personal injury, Mr Wrigley's case was that we should make awards as follows:

25.1. Injury to feelings: £37,500, including £7,500 for aggravated damages.

25.2. Personal injury: £10,000.

26. The respondent's position was as follows:

26.1. Injury to feelings: the Tribunal should award no more than £20,000; and this is not a case in which aggravated damages are appropriate.

26.2. Personal injury: the Respondent's primary case was that the respondent's discriminatory acts did not cause any personal injury to Mr Wrigley and that if Mr Wrigley had a personal injury it was entirely caused by the road traffic accident and not discrimination. In the event we did not agree with that primary case, the respondent's position was that damages for personal injury should be quantified at no more than £1350.

27. Mr Lynch made no reference to tax in his notes setting out the amounts claimed by Mr Wrigley, other than in referring to the need to perform a grossing up calculation in 7th step of the pension loss calculation. When we raised this issue with the parties on the first day of the hearing, however, Mrs Brown acknowledged that it would be necessary for us to factor in to the award of compensation any tax liability in respect

of the award, and gross up the award accordingly. Mrs Brown also acknowledged in her submissions that we would need to consider whether to award interest on the discrimination award pursuant to the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996.

28. In relation to the discrimination award, therefore, the following issues remained to be determined.

28.1. The likelihood of Mr Wrigley finding alternative employment in the future and, if he does so, the pay and benefits he is likely to receive in such employment.

28.2. Whether Mr Wrigley has failed to mitigate his loss, including by failing to accept an offer of reengagement made by the respondent.

28.3. The likelihood that Mr Wrigley would have been lawfully dismissed in any event at some point after his actual date of termination due to ill health.

28.4. In light of those conclusions, the amount that should be awarded to Mr Wrigley to reflect lost earnings consequent on his dismissal. This entails determining:

28.4.1. What Mr Wrigley's net earnings would have been had he not been dismissed, including whether Mr Wrigley's contributions to the BTPS scheme should go to reduce net earnings for these purposes.

28.4.2. Whether RTIE benefits received by Mr Wrigley of £336.57 per month should be offset against lost earnings.

28.5. In light of our conclusions on future employment prospects, mitigation and dismissal in any event, the amount that should be awarded to Mr Wrigley to reflect the loss of broadband benefit in kind.

28.6. In light of our conclusions on future employment prospects, mitigation and dismissal in any event, the amount that should be awarded to Mr Wrigley to reflect the loss of death in service benefit.

28.7. Whether any compensation should be awarded to reflect alleged loss of death in retirement benefit and if so, what amount.

28.8. In relation to loss in respect of the BTPS, whether Mr Wrigley should be awarded an additional amount, over and above the £27,522.24 loss agreed by the respondent, to reflect alleged loss in relation to Mr Wrigley's lump sum entitlement under that scheme.

28.9. In light of our conclusions on future employment prospects, mitigation and dismissal in any event, the amount that should be awarded to Mr Wrigley to reflect the loss in relation to the BTRSS pension scheme.

28.10. The amount that should be awarded to Mr Wrigley to reflect the loss of statutory rights.

28.11. Whether there should be any reduction in compensation to reflect accelerated receipt and, if so, in what amount.

28.12. The amount that should be awarded to Mr Wrigley in respect of injury to feelings.

28.13. Whether the respondent's discriminatory acts caused Mr Wrigley to sustain a personal injury and, if so, the amount that should be awarded to Mr Wrigley in respect of that injury.

28.14. Whether an award of aggravated damages should be made and, if so, in what amount.

28.15. The amount by which any award should be increased to account for tax.

28.16. Whether the respondent unreasonably failed to comply with the ACAS Code of Practice on Discipline and Grievances and, if so, the extent to which, if at all, the award should be increased under TULRCA s207A.

28.17. Whether interest should be awarded and if so how much.

Evidence and Facts

29. Mr Wrigley gave further evidence at the remedy hearing, his evidence in chief being set out in a witness statement. His wife, Tracy Ainsworth-Wrigley, also gave evidence. The respondent did not call any witnesses to give evidence.

30. We were also referred to certain documents in the bundle.

31. The documents we were referred to included medical reports prepared during and after Mr Wrigley's employment as well as certain extracts from Mr Wrigley's medical records.

32. Amongst the documents we were referred to were reports prepared by Consultant Psychiatrist, Sheila Cooper, who was providing treatment to Mr Wrigley at the time those reports were prepared. Those reports recorded her qualification as an HCPC Registered Practitioner Psychologist. Ms Cooper was not called to give evidence. However, the respondent did not question Ms Cooper's qualifications. Nor did the respondent suggest that she was not qualified to make the statements or express the opinions set out in her reports.

33. We were also referred to two reports prepared by Dr Alan Corrin, who described himself as a clinical psychologist specialising in the assessment of psychological injuries. Those reports were addressed 'to the court'. We infer they were prepared for the purpose of litigation in the civil courts in connection with the road traffic accident in which Mr Wrigley was involved in September 2014 and not for the purpose of these Employment Tribunal proceedings. Dr Corrin was not called to give evidence. However, the respondent did not question Dr Corrin's qualifications. Nor did the respondent suggest that he was not qualified to make the statements or express the opinions set out in his reports.

34. Based on information in Ms Cooper's report dating from March 2016 and Dr Corrin's report from April 2017, we find that Ms Cooper was commissioned to work with Mr Wrigley on psychological issues following his road traffic accident in September 2014; they met for initial assessment on 2 July 2015 and commenced psychological therapy on 21 July 2015 and met roughly weekly since that time, with the exception of breaks for holidays, up until at least March 2016. The treatment received by Mr Wrigley included CBT treatment. He completed 31 sessions of psychological therapy from Ms Cooper.

35. The first of Dr Corrin's reports was dated 15 April 2015 and was prepared following an examination of Mr Wrigley on 26 March 2015 (just over six months after Mr Wrigley's accident). We make the following observations about that report:

35.1. In the summary of his conclusions Dr Corrin said: 'I believe Mr Wrigley developed post traumatic stress disorder ('PTSD') in the aftermath of the index accident which continued to endure when I examined him on 26 March 2015 ' and 'I believe Mr Wrigley should expect to notice a marked improvement in his accident related psychological symptoms by the end of the recommended treatment and to recover fully within a further six months. Following this he should remain psychologically asymptomatic in the future barring further incidents.'

35.2. In that report Dr Corrin also commented on Mr Wrigley's psychological history, stating: 'Mr Wrigley reported a history of stress related depression and anxiety on occasions prior to the accident.' He said: 'On the basis of the GP consultation record I believe Mr Wrigley would have been inordinately vulnerable to psychological injury when the index accident occurred.'

35.3. Dr Corrin made the following observations about Mr Wrigley's symptoms:

35.3.1. 'Mr Wrigley described enduring symptoms of depressed mood which commenced in the immediate aftermath of the index accident in relation to the pain and subsequent physical incapacity this causes him and the psychological implications of the accident on his lifestyle.'

35.3.2. 'He reported that he experiences persistent anxiety in relation to not being able to do as much as he did prior to the accident and not being able to engage in physical activities such as playing golf, going to the gym and running etc.'

35.3.3. 'Mr Wrigley reported that he has noticed a reduction in his ability to maintain his concentration and attention since the accident as well as low motivation and mental energy which together has made his job as a telecommunications engineer harder and more stressful.'

35.3.4. 'I believe on the balance of probabilities that he suffered an acute stress reaction to the index accident and subsequently developed PTSD classified as 309.81 by the DSM-5 clinical nosology. I am satisfied that this condition continued to affect Mr Wrigley when I examined him.'

35.4. Under the heading 'Implications for Employment' the report said: 'Mr Wrigley did not report any psychological detriment from the index accident in terms of his employment.'

35.5. There was no reference in Dr Corrin's report to the way the respondent had treated him having affected his mental health. However, the claimant explained that he did tell Mr Corrin about the situation with his job. We found the claimant to be a credible witness and accept his evidence on this point. Given that he made it clear to his employers that he was unhappy with the way he was being treated, and reported his concerns to Ms Cooper, it seems unlikely that he would have said nothing to Dr Corrin.

35.6. Dr Corrin recommended CBT treatment and said: 'Mr Wrigley should expect to notice a marked improvement in his PTSD symptoms by the end of the recommended treatment and to recover fully within a further six months. Following his recovery I would not expect Mr Wrigley to be psychologically compromised in his daily living or employment by the index accident in the future.'

36. One of Ms Cooper's reports was dated 10 November 2015, some 14 months after the road traffic accident. We make the following observations about that report:

36.1. Under the heading 'Physical injuries and their psychological sequalae', Ms Cooper said: 'Mr Wrigley continues to experience high levels of pain, reportedly variable according to the time of day and what activities, if any, he may be engaged in. Psychological therapy has encouraged him to manage his pain and this is improving. In addition he reports that medication 'takes the edge off' the pain and he is currently halfway through a course of acupuncture. The pain continues to prevent Mr Wrigley from re-engaging in many of his previously enjoyed activities – e.g. golf, football, playing actively with his grandchild, dog walking, etc. Importantly, his job required both a high level of physical mobility and the capacity to drive long distances, neither of which he can now manage. He is very concerned that he will not be able to return to that particular job. This of course leads to worry over future employment.'

36.2. Under the heading 'Mood', Ms Cooper said: 'At this interim review, on the Hospital Anxiety and Depression scale…Mr Wrigley scored 15 for depression (previously 18) and 10 for anxiety (previously 9: see below under 'anxiety'). His mood can be said to have improved slightly (from severely clinically significant, to clinically significant) and he has begun to resume non-physically demanding tasks which he let drop. He continues to be socially withdrawn compared to pre RTA, but less so and is showing more willingness to engage when the opportunity arises. He reported that he is highly irritable with family members (for no good reason) and lacks power of concentration.'

36.3. Under the heading 'Anxiety', Ms Cooper said: 'On the HADS Mr Wrigley scored 10 for anxiety (clinically significant). He attributed nearly all of his stress and anxiety to worries surrounding his job and employment future. After a period of seemingly persistent pressure from his employers regarding a possible return to work, this pressure was lifted as it appeared to become policy to allow him to recover further before pursuing the matter. Recently, this policy

appears to have lapsed, with a direct detrimental impact on Mr Wrigley's psychological wellbeing. On the general anxiety disorder scale (GAD7, possibly a more accurate measure in this case) Mr Wrigley scored 17 out of a possible 21, indicative of severe anxiety.'

36.4. Under the heading 'Sleep', Ms Cooper said: 'Mr Wrigley continues to experience disturbed nights, due to physical pain and discomfort…His poor sleep pattern offers many opportunities for rumination and for anxieties, outlined above, to escalate.'

36.5. Under the heading 'Symptoms of PTSD', Ms Cooper said: 'These – flashbacks, and recurring dreams – still occur but have reduced in frequency, intensity and duration. The intensity of symptoms 0-10 = 6. Intensity of symptoms for sleep = 9, for anxiety = 8, for mood = 8 and for physical injuries and their psychological sequalae = 7.'

36.6. Under the heading 'Cognitive function', Ms Cooper said: 'Mr Wrigley continues to have some difficulty in concentrating. By report, however, he has managed to deploy psychological tours and tactics which have enabled him, for example, to work successfully from home several mornings per week. In addition, he is showing more interest than before in previously enjoyed activities, such as watching sport of film. At times of high anxiety, however (such as at the time of this interim review), his concentration levels drop significantly.'

36.7. Ms Cooper also said: 'Mr Wrigley has not returned to his old job, nor to full-time employment. He works a few mornings/week, from home. This is desk work, whereas his previous job required high physical mobility and the capacity to drive long distances. Mr Wrigley's return to work is currently under discussion. The manner of these discussions has been a cause of very considerable stress and anxiety to Mr Wrigley.'

36.8. Under the heading 'Impact on lifestyle', Ms Cooper said: 'Mr Wrigley has made progress in learning to manage his pain and to undertake more activities within his current physical capacity. The final outcome of physical therapy, however, is still uncertain.'

36.9. Ms Cooper also recorded that she had carried out CBT treatment for Mr Wrigley and recommended further CBT treatment, expressing the opinion that Mr Wrigley was expected to gain a moderate to good improvement with the further recommended treatment. She added, however, that: 'The most significant factor, currently under discussion, is Mr Wrigley's future employment. It is the reported manner of these discussions and the pressure to which he feels he is being subjected that are causing Mr Wrigley significant anxiety and stress. Once this issue has been resolved, further improvement in psychological wellbeing should be possible'.'

37. We were also referred to a report prepared by Ms Cooper and dated 21 March 2016 (a few weeks after Mr Wrigley was told his employment was being terminated). We make the following observations about that report:

37.1. Ms Cooper recorded that ‘at initial assessment’ (ie 2 July 2015, around 10 months after the accident) ‘the main causes of concern were: pain from physical injuries sustained in the RTA, and the psychological impact of this pain; clinical depression and anxiety, maintained by enforced changes in lifestyle including being unable to work and not being able to pursue previously enjoyed activities (e.g. sports); and poor sleep, through a combination of physical pain and perturbing dreams (trauma related).

37.2. Ms Cooper went on to note that when a review was carried out on 10 November 2015 the focus of anxiety had shifted from travel related issues to worries surrounding the job and future. She recorded that: ‘From that time to the current date his position at BT has remained a pathological concern for Mr Wrigley. Considerable time in sessions has subsequently been spent in discussing ways of managing and containing this anxiety, using recognised cognitive techniques such as ‘worry time’, and ‘compartmentalisation’. It was deemed clinical necessary to adopt this approach as Mr Wrigley appeared to be overwhelmed by the sheer volume of work related contact (emails, text messages) and the perceived requirement to respond rapidly, fearing that a failure to do so might further jeopardise his position. Such was the evidence strain upon Mr Wrigley that I sought, and gained, an extension to the number of psychology sessions authorised.’

37.3. Ms Cooper said ‘In my clinical opinion, the pressure of contact from his employers over the past few months has confounded our work in CBT sessions and unquestionably has had a detrimental impact on Mr Wrigley’s psychological wellbeing. We have only four sessions outstanding. Again in my clinical opinion, this is insufficient clinical time in which to address the psychological impact of recent events.’

38. The documents we were referred to also included a report from Ms Cooper dated 6 June 2016. In that report she again recorded that, at the time of the interim review in November 2015, the focus of Mr Wrigley's anxiety had shifted from travel related issues to worries surrounding his job and future employment. Ms Cooper said: ‘In my clinical opinion this was due to quantity of work related contact (emails, text messages, telephone calls) from Mr Wrigley’s employers and the perceived requirement to respond rapidly, fearing that a failure to do so might further jeopardise his position. As matters escalated and Mr Wrigley’s union representative became more involved so the number of work/union related contacts also increased.’

39. In that report Ms Cooper also said:

39.1. ‘A standard technique used in CBT for challenging anxiety inducing/maintaining negative automatic thoughts is to pose questions such as, ‘what evidence do I have for this thought?’ or ‘am I underestimating what I do to deal with the situation?’. The sheer volume and reported content of communication from Mr Wrigley’s employers whilst he was on sick leave and known to be receiving psychological therapy rendered this approach redundant.’

39.2. ‘I am bound to observe that our work has been repeatedly sabotaged by the reported behaviour of Mr Wrigley’s employer.’

39.3. 'The receipt of his P45 by Mr Wrigley on returning from a one week holiday, even though termination of his contract has been suspended, is but one example of the 'evidence' which it has been so hard to challenge cognitively (other than to cite incompetence).'

39.4. 'In my clinical opinion, the pressure of contract from his employers over the past few months has undoubtedly confounded out work in CBT sessions and has had a significant detrimental impact on Mr Wrigley's psychological wellbeing.'

39.5. '…In my clinical opinion there is insufficient clinical time available in which to address the psychological sequalae of Mr Wrigley's RTA and the ongoing impact of work related stress.'

40. In a further report dated 20 August 2016 Ms Cooper said: 'I have been asked to express my professional opinion on the interaction between perceived pain and psychological wellbeing (mental health), with particular reference to Mr Wrigley's case. The interaction is well documented in the relevant research literature.' She went on to refer to literature which, she said, stated that: 'Patients with more negative thoughts in response to pain report more severe pain' and added 'In my professional opinion there is no clinical doubt that the chronic pain experienced by Paul Wrigley since his work related road traffic accident has had a direct and detrimental impact on his psychological wellbeing and that the one has fed into the other, contributing to severe depression.'

41. Dr Corrin prepared a second report dated 20 March 2017 following an examination on 9 March 2017 ie some four months after the termination of Mr Wrigley's employment. In that report Dr Corrin made the following statements:

41.1. 'After re-examining Mr Wrigley's psychological condition on 9 March 2017 in relation to the index accident, on 6 September 2014 I believe on the balance of probability his PTSD condition in relation to the accident has resolved to be superseded by adjustment disorder with mixed anxiety and depressed mood. The predominant underlying stressors for his condition are his enduring pain and consequential physical incapacity and the associated implications.'

41.2. 'Mr Wrigley 'reported that despite having undergone so many sessions of psychological treatment, he does not perceive any psychological improvement in relation to the index accident.'

41.3. 'Mr Wrigley reported that he lost his job as a telecoms engineer on 3 November 2016 due to his inability to return to work. He reported that he remains unable to work due to his enduring physical injuries from the accident and his only income presently is employment support allowance.'

41.4. 'After re-examining Mr Wrigley I believe his PTSD condition in relation to the index accident has now resolved and that his present psychological condition can best be described as adjustment disorder with mixed anxiety and depressed mood, classified as 3.09.28 by the DSM-5 clinical nosology…The predominant stressors underpinning Mr Wrigley's adjustment disorder appear

to be related to his enduring pain and consequential physical incapacity, particularly in relation to his inability to work.'

41.5. 'Ms Sheila Cooper, Clinical Psychologist, indicates in her interim report that Mr Wrigley's psychological condition from the accident has changed from being trauma based to being associated with his enduring pain and consequential physical incapacity etc. It is axiomatically appreciated that adjustment disorders which have pain and consequential physical incapacity as predominant underlying stressors can be notoriously refractory in nature and it certainly appears that this has been the case for Mr Wrigley. The refractoriness in such cases is typically due to the inability of psychological therapists to directly influence the course of intensity of pain which usually requires medical improvement in order for a psychology improvement to be realised.

41.6. 'Prognosis: given the apparent refractoriness of Mr Wrigley's psychological condition in relation to his enduring pain and consequential incapacity associated with the index accident, it will not be possible to provide a definitive prognosis at this time. '

42. In submissions, Mrs Brown pointed out that Dr Corrin's reports do not say that the respondent's treatment of the claimant or claimant's dismissal had an effect on the claimant's wellbeing. She suggested that there were two explanations for this: either Dr Corrin did not believe the claimant's dismissal or the respondent's earlier treatment of him had affected his mental health; or the claimant deliberately withheld this information from Dr Corrin, the implication presumably being that it might adversely affect his compensation claim if Dr Corrin were to attribute his mental health problems to the respondent's behaviour rather than the road traffic accident. We deal with the first suggestion in our conclusions below when we consider causation. As for the suggestion that Mr Wrigley misled Dr Corrin, we reject it, and find that the claimant did refer to his employment history and impact on his mental health of his dismissal for the following reasons:

42.1. Mr Wrigley's evidence was that he did talk about losing his job but that Dr Corrin did not go into much detail with him about his job, what happened to him during his employment – Mr Wrigley said Dr Corrin didn't seem to want to go into the ins and outs of it. We found the claimant to be entirely honest and credible as a witness and the suggestion that he might have set out to deceive Dr Corrin does not fit with our overall impression of the claimant as an honest witness.

42.2. The judgment in these proceedings is a matter of public record and it is clear from that judgment that the claimant believes his employer caused him mental ill health. Attempting to conceal that in the civil proceedings would be futile.

42.3. Dr Corrin had access to reports from Ms Cooper and would have been aware, from her reports, that she was of the view that the respondent's treatment of the claimant during his employment had a detrimental impact on his mental health.

42.4. It is unlikely that he would not have talked about the impact of losing his job given that he and his union representative made it clear throughout his employment to managers and Ms Cooper that he thought the way he was being treated was having a severe effect on his mental health.

42.5. Far more likely, it seems to us, is that Dr Corrin did not refer to the effect on the claimant of the treatment from his employers because his report was produced in connection with a claim against the driver of the car. It is not disputed that but for the accident Mr Wrigley would not have suffered from any psychological injury at all. In that sense, the accident could be said to be a cause of all of the claimant's psychological ill health. We accept Mr's Brown's point that Dr Corrin had a duty not to mislead the court when preparing that report for the purpose of court proceedings but we do not know whether Dr Corrin was even asked to express an opinion as to whether events subsequent to his accident (but which would not have happened but for the accident) might have contributed to his difficulties.

42.6. The report refers to one of the predominant underlying stressors for Mr Wrigley's condition being the 'associated implications' of his physical incapacity. Although not explicitly referred to, one of the 'associated implications' of the claimant's physical incapacity was the loss of his job (and the treatment he received in the time leading up to the loss of his job). We think it more likely than not that this is what Dr Corrin was alluding to here.

42.7. Similarly, Dr Corrin refers to Ms Cooper's interim report, saying she indicated that the claimant's condition was, by then, associated with his enduring pain and 'consequential physical incapacity etc'. That, we infer, was a reference to the interim review in November 2015. In fact what Ms Cooper made clear in that report – and in subsequent reports in which she referred back to it – is that the focus of Mr Wrigley's anxiety had, by that time, shifted from travel related issues to 'worries surrounding the job and future employment.' She also referred to the way he perceived he was being treated by his employer. We do not think it is conceivable that Dr Corrin overlooked or misinterpreted Ms Cooper's report. Nor does he suggest he disagrees with it. That leads us to conclude that the use of 'etc' in his report alluded to the impact on the claimant of worries about his work and future employment.

In light of the above, we do not consider that the absence of any express reference to the impact on the claimant of the dismissal or the way the claimant had been managed by his employers warrants an inference that the claimant did not tell Dr Corrin about the impact on him of his dismissal or that prior treatment.

43. During the hearing we were referred to certain parts of Mr Wrigley's GP consultation records. We make the following observations about those records:

43.1. Although some parts of the documents we were referred to were illegible, the legible parts indicate that Mr Wrigley consulted his GP for depression on 3 December 1997, 7 January 1998, 1 April 2004 and 26 May 2009.

43.2. A 'Medical attendance report' at page 381 of the bundle signed by Mr Wrigley's GP recorded that Mr Wrigley had a 'depressive episode' on 1 April

2004. That was a document recording referrals for treatment. That document had a heading ' 'Significant Past'. There is no reference to depression in that section. The reference to depression appears under the heading 'Problems'. We infer from this document that Mr Wrigley was not referred for any treatment in relation to his attendance on his GP in April 2004.

43.3. The notes recorded that on 1 February 2017 Mr Wrigley was recorded as having a depression score of 17 out of 21 on the HAD scale and an anxiety score of 16 out of 21 on the HAD scale.

43.4. The notes also purported to record certified time off work in the last five years. That document recorded that no events were found prior to Mr Wrigley being signed off as not fit for work in November 2017. That note recorded that Mr Wrigley was signed off as not fit for work on account of a 'depressive episode'. It is surprising that there is no record of certified time off work in the five years prior to that date given that it is acknowledged that Mr Wrigley was in fact off work and had been certified as off work immediately after the accident in 2014.

44. Mr Wrigley's GP, Dr A Vance, prepared a report dated 21 March 2018 addressed, 'To whom it may concern'. We infer it was prepared for the purpose of this remedy hearing. It said:

44.1. 'Paul has been a patient of this Practice since 1988. He has attended the surgery on many occasions since his accident in September 2014 and I am well aware of the physical and mental impact that it had on him.'

44.2. 'I am aware that Paul was able, over a period of time, to increase his hours at work. However, I am also aware that he continued to feel extremely anxious and stressed by ongoing threats to his employment.'

44.3. 'I observed the pressure Paul felt to return to work and the underlying threat of dismissal that he felt he was under was having a significantly negative effect on his mental health. I am aware that his consultant, Sheila Cooper, had provided a report in which she formed the opinion that this pressure was impeding Paul's recovery from the mental impact of his accident. On the basis of my observations and knowledge of Paul I would support this view.'

44.4. 'It is clear to me that the pressure Paul felt he was under with regard to trying to hold onto his job had slowed down his recovery. It is also clear to me that the impact of his eventual dismissal has been to set him further back mentally, exacerbating his mental condition and adding a new layer of anxiety and stress and depression. I am aware that at one stage he felt so low that he harboured suicidal thoughts. Since the dismissal Paul continues to suffer from increased anxiety, depression and low mood. Since the loss of his job he struggles to maintain a positive outlook. He has lost confidence. His self esteem has been affected. He is reluctant to socialise. I am aware that the circumstances have undermined his family relationship. He has told me he has fears of rejection and feels traumatised when contemplating interviews and having to explain again all that has happened to him to new prospective employers.'

44.5. 'I have been asked to express a view on whether I think Paul has been fit enough to look for and/or perform alternative work. In my medical opinion, as a consequence of how Paul feels he has been treated by his employer, culminating in his dismissal, the impact on his mental health has been such that I do not believe Paul has been fit enough to look for or contemplate new employment. It is in my professional opinion that the additional pressure and the continuing fear of dismissal, culminating in the dismissal itself, has been a regular and significant part of his ongoing problem. Mt opinion is that Paul should have been able to continue working on the basis that had been agreed with his employer. It is difficult to say at the moment how long Paul's current condition is likely to continue, but in my view it is likely to last for a considerable time yet.'

45. In his report Dr Vance referred to having issued Mr Wrigley with sick notes for his condition and having prescribed medication, although he did not say what that medication was for. We note that it includes Co-codamol which we are aware is prescribed as medication for pain. We note that Mr Wrigley's GP signed a sick note on 20 March 2018 saying Mr Wrigley was not fit for work due to a depressive episode.

46. As noted above, we heard evidence from Mr Wrigley's wife, Mrs Ainsworth-Wrigley. We found her to be a compelling witness. Much of her witness statement was taken up with describing the impact the change in Mr Wrigley's behaviour has had on her. She referred to experiencing shock and anger, lack of sleep, not eating, overwhelming bouts of worry, and sleeplessness. Without wishing in any way to be thought to be diminishing or being dismissive of the impact on Mrs Ainsworth-Wrigley of the events experienced by Mr Wrigley, and we note that Mrs Brown did not seek to challenge her evidence of that impact, we must observe that the purpose of compensation is to compensate Mr Wrigley for the effects of the discrimination on him, and not to compensate those close to him for the affects the discrimination may have had on them. Nevertheless, we consider that Mrs Ainsworth-Wrigley's evidence as to her reaction to events does provide valid insights into the extent to which he claimant's behaviour changed during the period with which we are concerned. Furthermore, the impact of the discrimination Mr Wrigley's relationships with family is an appropriate factor to take into account in assessing compensation, as is clear from the Judicial College guidance. Her evidence on these matters was, therefore, pertinent to the issues we have to determine.

47. We also heard evidence from Mr Wrigley himself. In addition he had given evidence at the original hearing on liability of course and on that occasion parts of his evidence touched on the impact on him of the treatment he received from the respondent. On both occasions that he gave evidence we found Mr Wrigley to be a compelling witness.

48. Our primary findings of fact, set out below, should be read together with those from in our earlier judgment.

49. Mr Wrigley left school at around 16 years of age with three GCSEs, an E in Maths; a D in English and a D in Art. He has no other formal educational qualifications. His first job was as an apprentice with a sheet metal fabrication firm where he worked for about five years. He started work for BT at the age of 21 and worked there from then until he was dismissed in November 2016. He loved his job with BT. In his time

at the company he worked his way up to become a Service Enablement Technician. By the time his employment ended he had completed 35 years of service. He was dismissed at the age of 56½. He had had no plans to walk away from his job. He was on a good annual salary and had been a member of BT's pension scheme for around 35 years, which providing generous benefits. We accept his evidence that he would not have left the company voluntarily until he reached the age of 65 when he would have retired. As he said, there was no prospect of him obtaining similar benefits in a new job at his age and with his qualifications, and having come that far in the company and having earned those benefits he would not have left the company of his own free will before he was due to retire at the age of 65. He had had no thoughts of early retirement or drawing his pension benefits early. He expressed the view that it would have been extremely foolish to leave his employer voluntarily and that it is 'impossible to imagine circumstances where I would have chosen to 'walk away' and seek work elsewhere'.

50. Prior to his dismissal Mr Wrigley enjoyed the following benefits, in addition to salary and pension scheme membership:

50.1. Death in service cover, which would have provided his partner with a lump sum and annual pension in the event of his death in service.

50.2. Death in retirement cover, which would have provided his partner with a lump sum and annual pension in the event of his death after retirement.

50.3. Free BT broadband.

51. Having been referred by Mrs Brown to documents in the bundle comparing the cost of broadband services, we find that Mr Wrigley could obtain equivalent BT broadband on the open market for £36 per month.

52. Mrs Brown submitted that the claimant could obtain equivalent death in service cover on the open market for £93.51 per month and directed us to documents in the bundle evidencing that. We accept that is the case.

53. The agreed facts in relation to the claimant's pension benefits have been set out above. Mr Lynch referred us to some documents in the bundle that referred to the ability to take a lump sum of 25% when drawing pension benefits. It was clear to us, however, that those documents simply provided an illustration of the ways in which, on retirement, an individual might choose to take the funds contained in the pension pot that had been built up over the years. We find the BTRSS scheme did not provide an entitlement to a lump sum in addition to the funds contained in the pension pot. The references to the ability to take a lump sum simply explained that an employee the option upon retirement to 'commute' part of the pension income ie sacrifice some of the future income element of the pension in exchange for an immediate lump sum, which is usually tax-free.

54. Mr Wrigley experienced episodes of depressed mood and anxiety in December 1997, January 1998, April 2004 and May 2009, which led to him being prescribed anti-depressants. We infer these episodes constituted the 'history of stress related depression and anxiety on occasions' referred to by Dr Corrin in his first report. Those episodes were isolated and short-lived and did not necessitate any further treatment.

We were not referred to any evidence suggesting that Mr Wrigley took time off work on account of those episodes and we infer that he did not. The episodes were stress related, being triggered by particular events, including deaths in his family. On none of these occasions, nor at any time prior to the events described below, was Mr Wrigley diagnosed as having clinical depression.

55. In September 2014 Mr Wrigley was badly injured in a road traffic accident. Those injuries are described in paragraph 33 of the original judgment.

56. Mr Wrigley suffered an acute stress reaction to the accident and subsequently developed post-traumatic stress disorder ('PTSD'). The symptoms of that condition included depressed mood (which commenced in the immediate aftermath of the accident and related to the pain and subsequent physical incapacity this caused him and the psychological implications of the accident on his lifestyle); persistent anxiety (in relation to not being able to do as much as he did prior to the accident and not being able to engage in physical activities such as playing golf, going to the gym and running etc); a reduction in his ability to maintain his concentration and attention; and low motivation and mental energy. That condition continued to endure when Dr Corrin examined Mr Wrigley on 26 March 2015 but the prognosis was for a full recovery within 6 months. In line with a recommendation by Dr Corrin, Mr Wrigley was referred to Ms Cooper for psychological therapy including CBT. When she first saw Mr Wrigley in July 2015 she identified that he had clinical depression and anxiety. At that time the main features of Mr Wrigley's condition were: pain from physical injuries sustained in the RTA, and the psychological impact of this pain; the impact of enforced changes in lifestyle including being unable to work and not being able to pursue previously enjoyed activities (e.g. sports); and poor sleep, through a combination of physical pain and perturbing dreams (trauma related).

57. While Mr Wrigley was still hospitalised, the respondent discriminated against him by sending him a letter which gave the clear impression that his job was at risk and by requiring him to attend a meeting with Mr Vernon to discuss his future employment. The letter was received by Mr Wrigley at a time when he was already feeling low and vulnerable both physically and mentally after the accident. It caused Mr Wrigley acute distress, upset and fear at the sense of being abandoned so readily by a company he had worked for most of his life and so soon after a serious accident on duty. Within weeks of the accident he felt as if he was being 'thrown to the wolves, thrown into an uncertain future' with no chance of alternative employment given his medical condition at the time. Mr Vernon apologised for sending that letter, explaining that it had been a mistake, but Mr Wrigley was left with a fear that his future was in jeopardy.

58. Mr Wrigley was also shocked and distressed to receive the letter from Mr Vernon of 26 May 2015 indicating, again, that the termination of Mr Wrigley's employment was being considered. Mr Wrigley felt Mr Vernon's conduct in considering terminating his employment without even waiting for the OHS report, was callous and indifferent. We found the sending of that letter at that time to be discriminatory.

59. By the time Mr Wrigley received that letter he was becoming increasingly anxious and worried about the way his situation was being managed by BT and wrote to Mr Vernon on 31 May to express his concerns. He referred to the number of review meetings so soon after his accident, and being invited to a review meeting with

possible termination before the OHS report had been read by the manager. He felt that the process being followed by BT was having a significant effect on his mental health and causing him to sink into deep depression.

60. Mr Wrigley's distress was exacerbated in August 2015 when Mr Vernon discriminated against him by instructing him to attend another meeting, this time on 1 October, to discuss his employment, notwithstanding that a return to work plan had only recently been agreed and he was due to see his line manager for a review meeting the following day.

61. When Ms Cooper saw Mr Wrigley in November 2015 he still had symptoms of PTSD, namely flashbacks, and recurring dreams, but they had reduced in frequency, intensity and duration. By November 2015, Mr Wrigley's mood had improved slightly (from severely clinically significant, to clinically significant). However his anxiety levels had increased and the focus of Mr Wrigley's anxiety had shifted from travel related issues to worries surrounding his job and future and the treatment he received from Ms Cooper began to focus on those issues.

62. Mr Wrigley was also upset by other action taken by the respondent's managers that we have not found to be discriminatory. For example, Mr Wrigley was unhappy with a letter from Mr Vernon dated 28 July 2015 in which Mr Vernon said he would review Mr Wrigley's progress in about six weeks and also said that if he was unable to reach full-time hours and begin working at a BT building within a reasonable timescale Mr Vernon would need to reconsider his future with BT again. Mr Wrigley was also upset that Mr Murphy had sent a letter to him on 6 January 2016 asking him to attend an SLMR meeting. Mr Wrigley attributed a great deal of his anxiety to the 'constant warnings that his employment was always on the verge of termination'. This, he felt, exacerbated his depression.

63. The respondent discriminated against Mr Wrigley again when Mr Murphy decided to dismiss Mr Wrigley in February 2016. Mr Wrigley found that decision painful, distressing and shattering. He was shocked and humiliated and felt that he had been treated with indifference, callousness and contempt. He still finds it extremely painful to reflect on this now, and it has left him feeling angry, distressed and humiliated.

64. Even after he had been allowed to return to work in an adjusted role Mr Wrigley continued to feel under stress about possible termination, which continued to have a detrimental effect on him mentally. He was in a constant state of dread about imminent dismissal, a state largely caused by the earlier discriminatory decision to terminate his employment and the discriminatory decision to extend his notice period rather than allow an appeal. As we said in our earlier judgment, Mr Wrigley 'understandably, felt he had had the sword of Damocles handing over him'. The effects on him were that he became more anxious, fearful, depressed, tearful, uncommunicative, had difficulty sleeping, was disinterested and friends fell away. He could see this was having an effect on his wife who he knew was frequently tearful about the situation and struggled with the changes in his behaviour.

65. Notwithstanding the CBT treatment he received from Ms Cooper, Mr Wrigley remained severely depressed by August 2016 and had high levels of anxiety. The CBT treatment had not been successful due to the pressure Mr Wrigley felt under as a

consequence of the way he had been treated by a succession of managers at the respondent company, included the acts we found to be discriminatory.

66. When Mr Wrigley began to suspect that a decision to dismiss him had been made in November 2016 he was beside himself and went home feeling very down and tearful which upset his family.

67. The effect of the dismissal was devastating for Mr Wrigley and also for his family, which itself had a severe impact on Mr Wrigley. It affected their relationships and their sense of security for the future. Mr Wrigley had worked for BT for 35 years, virtually the whole of his adult working life. Working for BT was, in his words, 'basically all I knew'. He was disabled physically and mentally and he could not comprehend how he was going to be able to get another job or any job at all. He was in despair. In Mrs Ainswoth-Wrigley's words, the dismissal 'knocked him completely off course'. All the hopes and plans Mr Wrigley and his wife had for retirement were in disarray. His dismissal 'took away [their] hope and confidence for the future'. Financially they have been, in Mrs Ainsworth-Wrigley's words 'flattened'. They had had their lives planned out in terms of when to retire and what they were going to do, but it has become harder to imagine what their future will look like. The anxiety that has caused has taken a toll on their relationship.

68. As well as losing his salary, Mr Wrigley also lost the benefit of death in service cover when his employment ended. If Mr Wrigley had not been dismissed he would have been covered by death in service benefit until the age of 65 and then a death in retirement cover for five years from the ages of 65 to 70. Mr Wrigley could not afford the premiums to take out an insurance policy guaranteeing the same death in service benefits that were available to him when employed by the respondent. By taking RTIE benefits he has mitigated this loss to some extent in that he is covered now by death in pension insurance for five years from November 2016. Having opted for RTIE benefits, however, he will no longer be covered by death in pension cover between the ages of 65 and 70 however. Mr Wrigley's dismissal also meant he no longer benefited from free BT broadband, a benefit in kind that had been available to him during his employment.

69. As a consequence of his dismissal Mr Wrigley experienced anger, frustration, worry and grief and struggled to cope. Mrs Ainsworth-Wrigley often bore the brunt of his anger and frustration. Mr Wrigley's character and personality changed to the point that she did not want to be married to him anymore. The dismissal of Mr Wrigley has almost caused the breakdown of his relationship with his wife, after 26 years of marriage. Mr Wrigley and his wife remain 'sick with worry' not just about how they will survive financially but how they will survive psychologically, and how their family and marital relationships will cope, between now and until retirement.

70. Mr Wrigley was too devastated and exhausted emotionally to look for work after the dismissal. Mr Wrigley's struggle to keep his job had taken a severe toll on his mental health and his dismissal made things worse. After the dismissal Mr Wrigley visited his GP to discuss his feelings and his increasing anxiety. His GP gave him a sick note. He signed on for Employment Support Allowance, which he did initially receive, but then had to repay once he started receiving pension payments.

71. Mr Wrigley remained unable to consider a return to work for some time. He remained anxious and depressed, had no confidence in himself and was distrustful of others. He felt that he had been cheated and let down by a big employer he had worked for for 35 years and, in his words, 'what chance did I have with an employer that did not know me?'

72. By April 2017, when Mr Wrigley saw Dr Corrin again, he continued to experience anxiety and depressed mood. It is clear from Dr Corrin's report that this cannot be attributed to the PTSD resulting from the accident, which Dr Corrin observed had been superseded by 'adjustment disorder with mixed anxiety and depressed mood.'

73. The Tribunal proceedings did nothing to improve Mr Wrigley's mental ill health. In the course of those proceedings he learned that Mr Harkin had changed his conclusions into his grievance after consultation with HR. Mr Wrigley feels he was deceived by his employer with regard to Mr Harkin's findings in relation to his grievance. He finds this distressing and upsetting; he is angry about it and disillusioned. He says it has shattered his confidence in other people and that his instinct to trust people has now been shaken and undermined.

74. As at March 2018 Mr Wrigley's mental ill health meant that he was still not fit enough to look for and/or perform alternative work. Nevertheless Mr Wrigley felt well enough to start looking for work in April or May. That suggests that there has been some improvement in his mental health since Dr Vance wrote his report in March 2018. Indeed the claimant himself says he feels 'a lot, lot better' than he has done and that although each day his mental health is a challenge, he is feeling now that he can integrate back into society and he is getting the confidence to get back into a work environment.

75. Mr Wrigley finds looking for a new job frightening. The idea of having to explain to a potential new employer about the accident, his restrictions, how he was dismissed, what adjustments he might need, and why he took his old employer to an Employment Tribunal fills him with anxiety and dread. He has had nightmares about interviews in which he starts to panic when asked about why he left his last job. He is filled with fear and dread at the idea of not just finding a new job but his ability to hang on to one once he has found one.

76. Despite his fears and anxieties, Mr Wrigley has applied for a number of jobs but so far without success. Mrs Ainsworth-Wrigley has experience in HR and has helped Mr Wrigley with his CV preparation and job applications and job interview preparation. He has also registered with a number of agencies who tell him about vacancies that are available. On some days he spends four hours or more on the computer looking at vacancies and applying for jobs he thinks he might be able to do. So far he has not been successful and has not even been invited to an interview. He finds the process of looking for jobs disheartening. As he says: 'With the skills I learned at BT, to find myself rejected for very basic jobs like work at a supermarket is not great for my self esteem.'

77. Mr Wrigley feels that he has no chance of finding a comparable role to the one he was doing with BT. Openreach is the only telecoms company where internal work in exchanges is done on main distribution frames. The only other telecoms job Mr

Wrigley has seen involved experience working in cabinets and customer premises on telephone systems, installing and repairing, which he does not have.

78. Mr Wrigley lacks confidence that he has the skills needed to find another job. He feels that 'Many employers require you to have knowledge and experience in the field for which you are applying', and that because of the time he spent with BT he has not acquired those skills and experience. He is also feels that his GCSE results hold him back. He applied for a welfare assistant job it was advertised as requiring 'extensive experience of providing welfare advice'. It also required GCSE levels in Maths and English at A-C. Mr Wrigley has enquired with various colleges about the possibility of doing some courses to improve his skills and qualifications. He is continuing to look for vacancies that he feels he might stand a chance of getting although he is not optimistic about finding a job.

79. Mr Wrigley has not recovered from his physical injuries and still has difficulties with driving. This restricts the type of jobs Mr Wrigley can apply for. Nevertheless he did apply for a local driving job because he felt he might be able to do it if it involved driving for shirt distances. He was not selected.

80. Mr Wrigley is now 58 years of age and feels his age is against him in the job market. He applied for one particular job and when rejected was told that he had not met the minimum standards of criteria in his application. He applied again giving a lower age and his application was passed through to their recruitment team although he was not offered the job.

81. On 9 July 2018 the respondent made an open offer to Mr Wrigley to re-engage him. The respondent offered him a choice of three roles and said that if he accepted they would also pay him compensation amounting to roughly £54,000 in full and final settlement of his claim. In the alternative they offered compensation of £85,500 to settle Mr Wrigley's claim. They gave him 4 days in which to respond. Mr Wrigley rejected the offer. He was not willing to return to work with the respondent because his trust and confidence in the respondent had been irretrievably undermined and he could not contemplate placing himself at risk of similar treatment and putting himself and his family through the situation he has experienced again. The offer to settle for compensation of £85,500 was rejected because it did not realistically address his likely losses.

The Law

Unfair dismissal – basic award

82. The basic award under the Employment Rights Act 1996 (ERA 1996) is calculated by reference to the periods, ending with the effective date of termination, during which the employee was continuously employed, as follows:

82.1. for each year of continuous employment when the employee was below the age of 22, half week's pay;

82.2. for each year of continuous employment when the employee was below the age of 41 but not below the age of 22, one week's pay;

82.3. for each year of continuous employment when the employee was not below the age of 41, one and half week's pay.

83. Section 227 of ERA 1996 provides that, for the purpose of calculating a basic award of compensation for unfair dismissal, the amount of a week's pay shall not exceed a specified amount, which, for dismissals taking effect between 6 April 2016 and 5 April 2017, stood at £479.

84. The statutory cap on a weeks pay applies regardless of whether the employee's dismissal contravened the Equality Act 2010. And although there are some prescribed cases in which the basic award is subject to certain minimum levels (such that the limit on a week's pay may not have any effect) the circumstances of Mr Wrigley's dismissal do not fall within those prescribed cases.

Compensation under Equality Act

85. Where an employment tribunal finds that there has been a contravention of part 5 of the Equality Act 2010 (as we have in this case), the tribunal may order the respondent to pay compensation to the complainant: Equality Act 2010 s124(2)(b).

86. The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court under section 119: Equality Act 2010 s124(6). This means that, where compensation is ordered, it is to be assessed in the same way as damages for a statutory tort: see Hurley v Mustoe (No 2) [1983] ICR 422, EAT and Equality Act s 119(2)(a). The measure of tortious damages is such amount as will put the claimant in the position he or she would have been in but for the employer's unlawful conduct, as best as money can do so.

87. In calculating compensation according to ordinary tortious principles the tribunal must take into account the chance that the respondent might have caused the same damage lawfully if it had not done so on discriminatory grounds. In the context of discriminatory dismissals this means asking what would have happened if there had not been a discriminatory dismissal: Abbey National plc and Hopkins v Chagger [2009] IRLR 86, [2009] ICR 624, EAT.

88. In Wardle v Credit Agricole Corporate and Investment Bank [2011] EWCA Civ 545, [2011] IRLR 604, [2011] ICR 1290, CA, the Court of Appeal gave the following guidance to tribunals having to assess future loss of earnings after a discriminatory dismissal:

88.1. Where it is at least possible to conclude that the employee will, in time, find an equivalently remunerated job (which will be so in the vast majority of cases), loss should be assessed only up to the point where the employee would be likely to obtain an equivalent job, rather than on a career-long basis, and awarding damages until the point when the tribunal is sure that the claimant would find an equivalent job is the wrong approach;

88.2. in the rare cases where a career-long-loss approach is appropriate, an upwards-sliding scale of discounts ought to be applied to sequential future slices of time, to reflect the progressive increase in likelihood of the claimant securing an equivalent job as time went by;

88.3. Applying a discount to reflect the date by which the claimant would have left the respondent's employment anyway in the absence of discrimination was not appropriate in any case in which the claimant would only voluntarily have left his employment for an equivalent or better job; and

88.4. In career-long-loss cases, some general reduction should be made, on a broad-brush basis (and not involving calculating any specific date by which the claimant would have ceased to be employed) for the vicissitudes of life such as the possibility that the claimant would have been fairly dismissed in any event or might have given up employment for other reasons.

89. When an award is made to compensate for future loss, the claimant receives their compensation before the actual loss has been incurred. That being the case, a Tribunal may discount any award to take into account any interest that might be earned on the money if it were to be invested as a lump sum. In Bentwood Bros (Manchester) Ltd v Shepherd [2003] IRLR 364, CA, the Court of Appeal held that if an award is reduced for accelerated receipt, the Tribunal must set out the method it has used and its reasons for using it.

90. The Principles for Compensating Pension Loss address the question of accelerated receipt. Although the Principles are primarily concerned with assessing pension loss, the section of the document dealing with accelerated receipt makes it clear that the same approach should be taken when dealing with loss of earnings. The Principles say this:

> *Whether dealing with loss of earnings or loss of pension, the multiplier chosen must reflect the appropriate rate of return on investments. The current edition of the Ogden Tables provides multipliers in columns that range from minus 2% to plus 3%. These represent various rates of return if the one-off lump sum were to be invested. In the case of Wells v. Wells [1999] 1 AC 345, the House of Lords decided that the discount rate applied to compensation should be based on the yields on index-linked government stock (ILGS). This reflects the likelihood that an injured claimant would adopt a risk-averse approach to the investment of their award, so that it would be exhausted at the end of the period which was being compensated and not before.*
>
> *The discount rate is fixed by the Lord Chancellor under Section 1 of the Damages Act 1996. When the Damages (Personal Injury) Order 2001 came into force, the rate was set at 2.5%. This reflected the expectation of the time that, once invested in ILGS, a lump sum award of damages would yield annual growth of 2.5%. A corresponding discount of 2.5% would minimise the chances of a claimant being over-compensated.*
>
> *The rates of return on ILGS have fallen consistently in recent years. By the time the current edition of the Ogden Tables was released in 2011, its editor was already describing the discount rate of 2.5% as long out of date. The Lord Chancellor confirmed that the discount rate would be reconsidered and, following a consultation period, a panel of experts was convened to advise on any change. On 27 February 2017, the Lord Chancellor announced that the discount rate would be reduced to minus 0.75% with effect from 20 March 2017.76 This rate reflects the prevailing assumption that, in the current*

economic climate, a lump sum invested in ILGS will lose money: a negative discount rate increases the amount of compensation to offset that loss. An interim set of Ogden Tables has now been produced (available at the link at paragraph 5.42 above), with a new range of multipliers incorporating a discount rate of minus 0.75%. 'At a glance' versions of the Tables are also at Appendix 2, which extract all the relevant columns using that discount rate.

When applying the Ogden Tables to both loss of earnings and loss of pension, the tribunal will mirror the Lord Chancellor's discount rate of minus 0.75% (and will track future changes to the rate). The EAT has confirmed that it is good practice for the tribunal to apply the same discount rate as the courts [See Benchmark Dental Laboratories Group Ltd v. Perfitt (EAT/0304/04), para 20] and the courts themselves are applying it consistently when making lump sum awards [see, for example, Marsh v. Ministry of Justice [2017] EWHC 1040 (QB), paras 222–228].

91. A claimant is under a duty to mitigate his loss. In Cooper Contracting Ltd v Lindsey UKEAT/0184/15 (22 October 2015, unreported), the President of the EAT summarised the law on mitigation as follows:

'(1) The burden of proof is on the wrongdoer; a Claimant does not have to prove that he has mitigated loss.

(2) It is not some broad assessment on which the burden of proof is neutral.... If evidence as to mitigation is not put before the Employment Tribunal by the wrongdoer, it has no obligation to find it. That is the way in which the burden of proof generally works: providing the information is the task of the employer.

(3) What has to be proved is that the claimant acted unreasonably; he does not have to show that what he did was reasonable....

(4) There is a difference between acting reasonably and not acting unreasonably.....

(5) What is reasonable or unreasonable is a matter of fact.

(6) It is to be determined, taking into account the views and wishes of the claimant as one of the circumstances, though it is the Tribunal's assessment of reasonableness and not the claimant 's that counts.

(7) The Tribunal is not to apply too demanding a standard to the victim; after all, he is the victim of a wrong. He is not to be put on trial as if the losses were his fault when the central cause is the act of the wrongdoer....

(8) The test may be summarised by saying that it is for the wrongdoer to show that the claimant acted unreasonably in failing to mitigate.

9) In a case in which it may be perfectly reasonable for a Claimant to have taken on a better paid job that fact does not necessarily satisfy the test. It will be important evidence that may assist the Tribunal to conclude that the employee has acted unreasonably, but it is not in itself sufficient.'

92. Compensation for discrimination can include compensation for injured feelings. In Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102, the Court of Appeal held that held that awards for injury to feelings of the most serious kind should normally lie between the range of £15,000-25,000. For less serious cases, the Court of Appeal stated that awards should fall within the range of £500-£5,000 at the lower end and £5,000-£15,000 in the middle. Those bands now need to be uplifted to take account of inflation and the case of Simmons v Castle [2013] 1 All ER 334. In that case the Court of Appeal declared that, with effect from 1 April 2013, 'the proper level of general damages for (i) pain, suffering and loss of amenity in respect of personal injury, (ii) nuisance, (iii) defamation and (iv) all other torts which cause suffering, inconvenience or distress to individuals, will be 10% higher than previously. …'. In September 2017 the Presidents of Employment Tribunals for England and Wales and Scotland published guidance on Employment Tribunal awards for injury to feelings and psychiatric injury in light of those developments. The Presidential guidance states:

> *11. …, in respect of claims presented before 11 September 2017, an Employment Tribunal may uprate the bands for inflation by applying the formula x divided by y (178.5) multiplied by z and where x is the relevant boundary of the relevant band in the original Vento decision and z is the appropriate value from the RPI All Items Index for the month and year closest to the date of presentation of the claim (and, where the claim falls for consideration after 1 April 2013, then applying the Simmons v Castle 10% uplift).*

93. Mr Wrigley's claim was presented in April 2016. The RPI All Items Index value for that month is 261.40. Applying the Presidential guidance the original Vento bands should be multiplied by a factor of 1.61 (ie (261.40/178.5) x 1.1). Therefore the Vento bands applicable to this case are:

93.1. lower band of £805 to £8,050 (less serious cases);

93.2. middle band of £8,050 to £24,150 (cases that do not merit an award in the upper band);

93.3. upper band of £24,150 to £40,250 (the most serious cases), with the most exceptional cases capable of exceeding £40,250.

94. In Vento, the Court of Appeal described the lower band as being 'suitable for one-off and isolated incidents where the nature of the prohibited conduct is less serious', the middle band as being 'suitable for serious cases which do not merit an award in the highest band', and the top band as 'suitable only in the most serious cases, such as where there has been a lengthy campaign of harassment.' It is essential to bear in mind, however, that notwithstanding references in Vento to the 'nature of the prohibited conduct', awards are to be compensatory in nature, not punitive: it is the impact of the discriminatory act upon the claimant that determines the appropriate level of compensation.

95. A Tribunal may also award aggravated damages, in appropriate circumstances, for an act of discrimination. Such an award is compensatory and not punitive in nature, and is an aspect of injury to feelings compensation and tribunals should have regard to the total award made (ie for injury to feelings and for the aggravation of that injury) to ensure that the overall sum is properly compensatory and not excessive:

Commissioner of Police of the Metropolis v Shaw [2012] IRLR 291, EAT. In HM Land Registry v McGlue UKEAT/0435/11, [2013] EqLR 701, the EAT said such awards might be appropriate where the sense of injustice and injured feelings have been aggravated (a) by being done in an exceptionally upsetting way, eg 'In a high-handed, malicious, insulting or oppressive way'; (b) by motive: conduct based on prejudice, animosity, spite or vindictiveness where the claimant is aware of the motive; (c) by subsequent conduct: eg where a case is conducted at a trial in an unnecessarily offensive manner, or a serious complaint is not taken seriously, or there has been a failure to apologise. An award of aggravated damages will not be appropriate, however, merely because an employer acts in a brusque and insensitive manner towards an employee or is evasive and dismissive in giving evidence: Tameside Hospital NHS Foundation Trust v Mylott UKEAT/0359/09 (11 March 2011, unreported).

96. An employment tribunal has jurisdiction to award compensation for personal injury provided the claimant proves that his injury was caused by the discriminatory acts: Sheriff v Klyne Tugs (Lowestoft) Ltd [1999] IRLR 481, [1999] ICR 1170, CA.

97. In the case of BAE Systems (Operations) Ltd v Konczak [2017] IRLR 893 the Court of Appeal considered the proper approach to awarding compensation for injuries with more than one cause. As recorded in the headnote the Court of Appeal held as follows:

> *'The tribunal should try to identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrong and a part which is not so caused. The exercise is concerned not with the divisibility of the causative contribution but with the divisibility of the harm. The question is whether the tribunal can identify, however broadly, a particular part of the suffering which is due to the wrong; not whether it can assess the degree to which the wrong caused the harm.*
>
> *That distinction is easier to apply in the case of a physical injury. It is less easy in the case of a psychiatric injury, but such harm may well be divisible. It may, for example, be possible to conclude that a pre-existing illness, for which the employer is not responsible, has been materially aggravated by the wrong (in terms of severity of symptoms and/or duration), and to award compensation reflecting the extent of that aggravation. Even in a case where the claimant tipped over from being under stress to being ill, the tribunal should seek to find a rational basis for distinguishing between a part of the illness that is due to the employer's wrong and a part that is due to other causes; but whether that is possible will depend on the facts and the evidence. If there is no such basis, the injury will be truly indivisible, and principle requires that the claimant is compensated for the whole of the injury (although if the claimant has a vulnerable personality, a discount may be required on that basis).'*

98. In HM Prison Service v Salmon [2001] IRLR 425, the EAT observed that it is important for tribunals making awards where there are damages both for injury to feelings and psychiatric injury should make clear what sums are attributable to which, in order to avoid the danger of double counting, given that there is a considerable overlap in the effects that the two types of award are designed to compensate for.

99. The Judicial College has published guidance for the assessment of general damages in personal injury cases. The guidance provides for the following factors to be taken into account when valuing claims of psychiatric injury:

99.1. the injured person's ability to cope with life and work;

99.2. the effect on the injured person's relationships with family, friends and those with whom he comes into contact;

99.3. the extent to which treatment would be successful;

99.4. future vulnerability;

99.5. prognosis;

99.6. whether medical help has been sought;

100. The guidance outlines 4 categories of award as follows (including the Simmons v Castle uplift):

100.1. Less Severe: between £1,350 and £5,130. Where the claimant has suffered temporary symptoms that have adversely affected daily activities;

100.2. Moderate: between £5,130 and £16,720. Where, while the claimant has suffered problems as a result of the discrimination, marked improvement has been made by the date of the hearing and the prognosis is good;

100.3. Moderately Severe: between £16,720 and £48,080. Moderately severe cases include those where there is work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment. These are cases where there are problems with factors 38.1 to 38.4 above, but there is a much more optimistic prognosis than Severe;

100.4. Severe: between £48,080 and £101,470. Where the claimant has serious problems in relation to the factors at a) to d) above, and the prognosis is poor.

101. The loss sustained by the claimant is generally calculated on the basis of the net loss to the claimant, after deduction of the income tax which he would have been required to pay in the absence of the relevant wrong. Where an award of compensation is taxable, however, then to avoid under-compensating the claimant, the award should be 'grossed-up' in order to place the claimant in the position in which the Tribunal's award seeks to place them, after they have discharged their tax liability: British Transport Commission v Gourley [1956] AC 185, HL.

102. Part 6 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) provides for certain payments on termination of employment to be subject to tax. Certain amendments to that legislation took effect in April 2018. Those amendments provide for an element of termination pay, referred to in the legislation as 'Post Employment Notice Pay' (PENP) to be taxable as earnings (and a corresponding change to the legislation dealing with National Insurance Contributions provide for PENP also to be subject to employer national insurance contributions). In addition, the amendments to

ITEPA provide, in effect, that compensation for injured feelings arising from termination is taxable; before this amendment such compensation was not taxable. What is not clear on the face of the amending legislation, however, is whether the new rules apply to any payments of compensation made after the regulations took effect in April, or whether they only apply were the termination of employment resulting in the award occurred after that date. Mrs Brown submitted that HMRC have expressed the view that the amendments relating to PENP apply only where termination occurred after [date]. That is borne out by HMRC's manual which has been made available online to the public. Mrs Brown submits that given that this is HMRC's stance, it is clear that they will not seek to apply the new PENP rules to any award we make and we should approach any grossing up exercise on the basis that the pre-April 2018 rules apply to any award we make. Mr Lynch did not seek to challenge that submission and we agree with it. Given that the changes to tax on injury to feelings awards were effected by the same piece of legislation it appears to us that HMRC will take the view that the pre-April 2018 rules also apply to any award for injury to feelings we make.

103. The applicable tax rules in ITEPA can be summarised as follows:

103.1. Compensation for discrimination that is not made in connection with the termination of a person's employment is not taxable.

103.2. Compensation for discrimination that is made in connection with the termination of a person's employment is not taxable if it is an award made for personal injury or injured feelings: Moorthy v Revenue & Customs, Court of Appeal.

103.3. Otherwise, compensation for discrimination arising in connection with the termination of a person's employment is treated as employment income under part 6 of ITEPA if and to the extent that it exceeds the £30,000 threshold.

104. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that an employment tribunal may, if it considers it just and equitable, increase an award for discrimination by up to 25% if it appears to the tribunal that the employer has unreasonably failed to comply with the ACAS Code of Practice on Discipline and Grievances. However, the Code does not apply to internal procedures operated by an employer concerning an employee's alleged incapability to do the job arising from ill health or sickness absence and nothing more (Holmes v Qinetiq Limited [2016] IRLR 664, [2016] ICR 1016, EAT).

105. In relation to grievances, the ACAS Code provides that employers should arrange for a formal meeting to be held without unreasonable delay; allow employees to be accompanied to that meeting and explain their concerns; decide on what action, if any, to take and communicate decisions to the employee, in writing, without unreasonable delay; allow the employee to appeal if they feel that their grievance has not been satisfactorily resolved; and deal with any appeal without unreasonable delay.

106. When making an award under s124 of the Equality Act 2010, a tribunal may include interest on the sums awarded. Awards of interest in such cases are governed by the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996, which provide as follows:

106.1. A Tribunal is required to consider whether to award interest even if the claimant does not apply for it: reg 2.

106.2. Interest is to be calculated as simple interest, which accrues daily: reg 3(1).

106.3. For claims presented after 28 July 2013, the rate of interest to be applied shall be, in England and Wales, the rate fixed by section 17 of the Judgments Act 1838 (which is, and has been throughout these proceedings, 8%): reg 3(2).

106.4. No interest shall be included in respect of any sum awarded for a loss or matter which will occur after the on the day on which the amount of interest is calculated by the tribunal (or in respect of any time before the contravention or act of discrimination complained of): reg 5. This includes pension loss.

106.5. Subject to regs 6(2) and (3), in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day on which the amount of interest is calculated by the tribunal: reg 6(1)(a).

106.6. Subject to regs 6(2) and (3), in the case of all other sums of damages or compensation (other than any sum referred to in regulation 5) and all arrears of remuneration, interest shall be for the period beginning halfway through the period that starts with the act of discrimination and ends with the day on which the amount of interest is calculated by the tribunal: reg 6(1)(b).

106.7. Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may— (a) calculate interest, or as the case may be interest on the particular sum, for such different period, or (b) calculate interest for such different periods in respect of various sums in the award, as it considers appropriate in the circumstances: reg 6(3).

Conclusions

Unfair dismissal

107. The parties have agreed that Mr Wrigley is due a basic award of £13,172.50 – the cap on a week's pay in calculating a basic award applies in the usual way in this case as explained in the section headed 'Law".

108. We order the respondent to pay that amount to Mr Wrigley by way of compensation for unfair dismissal. No further award is sought or made in respect of unfair dismissal.

Compensation for discrimination

109. We accept that this is a case in which it is appropriate to award compensation under the Equality Act 2010.

Duration of loss

110. We have concluded that, had he not been dismissed, Mr Wrigley would not voluntarily have left his employment before he was due to retire at the age of 65 on 1 May 2025.

The likelihood of Mr Wrigley finding alternative employment in the future and, if he does so, the pay and benefits he is likely to receive in such employment.

111. Over his period of long service with the respondent, Mr Wrigley acquired and developed his skills as a telecoms engineer. However, those skills have limited transferability to other roles. We accept that the chances of Mr Wrigley finding work as a telecoms engineer with any other employer are negligible to non-existent. Indeed Mrs Brown did not suggest that he could do so. Mrs Brown also recognised that Mr Wrigley was unlikely to find alternative work earning the amount he had managed to earn with British Telecom.

112. We do feel, however, that Mr Wrigley will have acquired some generic transferable skills in his time with British Telecom. He has demonstrated that he has an extremely good work ethic and is a very loyal employee. He has no doubt had to work with other people in the course of his career, and the ability to work with others is a valuable transferable skill. However, clearly there are barriers to him finding alternative employment. He has on-going physical ailments which narrow down the range of jobs that he could realistically apply for. The fact that he has on-going psychological problems that have lasted now for some years will also, in all likelihood, work against him. Regardless of the fact that there is legislation aimed at protecting job candidates from disability discrimination, the reality is that some employers will be wary of taking on an individual with Mr Wrigley's medical history, and the fact that he has brought a Tribunal claim against his former employer will not increase his attractiveness to other employers. Mr Wrigley's age is also against him and, again, is likely to affect his ability to find alternative work. It effectively rules out an option that might have been open to a younger individual of re-qualifying into a different career. Mr Wrigley only has another 6½ years to go before the date on which he was planning to retire.

113. We recognise that Mr Wrigley has already applied for numerous jobs and had numerous rejections. We also acknowledge that Mr Wrigley's mental health problems have set him back and may well set him back in the future. Each rejection is a setback for Mr Wrigley in terms of his mental health. Mr Wrigley gave us the clear impression of someone who is not resilient and lacks confidence.

114. We do not accept, however, that Mr Wrigley's future prospects are as gloomy as he fears. He is now in a position where he feels mentally able to apply for other jobs and is physically able to consider a range of work, albeit that that range is not as wide as it would have been were it not for his impairments. He has applied for a variety of different jobs to date. The impression we have of Mr Wrigley is that he is driven to work and that he is motivated to get back to work and participate fully in society, notwithstanding his difficulties. He has worked all of his adult life and has an strong work ethic. This is not a time of high unemployment: the job market is not flat and there are jobs to be had. Mr Wrigley's wife works in HR. The fact that she is helping him is greatly in his favour. We were referred to applications he has made which appeared to us to be strong. Whilst Mr Wrigley fears interviews and is inexperienced in them,

the assistance of his wife will go some way towards helping him overcome those fears and lack of experience. She should also be able to help him recover from knockbacks.

115. Looking at the evidence in the round, we conclude there is a high chance that Mr Wrigley will find alternative work within 12 months. We have put that chance at 80%.

116. Mrs Brown did not contend that Mr Wrigley will be able to find a highly paid job or work earning anything like the level of earnings he would have achieved with BT. She submitted that Mr Wrigley would find work earning around £20,000 gross within 12 months of the hearing. Mr Lynch, on the other hand, pointed to evidence in the bundle of jobs on the market. Those vacancies ran to around 100 pages. Mr Lynch told us he had calculated that the average annual rate of pay for the vacancies that showed a rate of pay was £15,457 for hourly paid jobs and £16,897 for salaried work. Mrs Brown did not suggest that figure misrepresented the evidence.

117. We consider that Mrs Brown's assessment of the earnings Mr Wrigley is likely to achieve is somewhat optimistic. Realistically, we think the likelihood is that if Mr Wrigley does find work, as we have suggested in 12 months' time, his gross salary will be in the region of £16,000 per annum, in line with the calculations performed by Mr Lynch. Given that Mr Wrigley already has an annual income from his pension in excess of his personal tax allowance, it appears to us that the salary would be taxed in full at the 20% rate. That being the case, it appears to us that a £16,000 per annum gross salary would translate into approximately £1,067 net per month.

118. In summary, therefore, we conclude that there is an 80% chance that Mr Wrigley will find work earning £1067 per month within 12 months of the assessment date of 6 September 2018.

119. We think it highly unlikely that such a job would attract the same benefits that Mr Wrigley was in receipt of with BT, including a generous defined benefit pension scheme, death in service benefits, etc., and broadband. We think it likely that, other than an auto enrolment pension, there would be no other benefits associated with the kind of job we envisage Mr Wrigley is likely to obtain.

120. So far as auto enrolment is concerned, we reject Mr Lynch's submission that Mr Wrigley would not join an auto enrolment scheme. This was not supported by the evidence of Mr Wrigley himself. It also seems unlikely given that opting out of an auto enrolment would involve losing the benefit of employer contributions. We find that if Mr Wrigley does find alternative employment within 12 months at £16,000 per annum gross, he will, at the same time, be enrolled into an auto enrolment pension scheme with pension contributions of 3% of that gross income i.e. £40 per month.

121. We are of the view, however, that Mr Wrigley's pessimism as to his future employment prospects is not entirely without foundation. There remains a not insignificant chance, 20%, that he will not find work within 12 months. If he does not find work within 12 months then, unfortunately, we think it unlikely Mr Wrigley will find work at all. Mr Wrigley will, in our view, continue to be negatively affected by rejection. In 12 months' time he will be older, a year closer to retirement, and a slightly less attractive proposition for employment than he is now. The longer somebody is out of work, the harder it is for them to get back into work. This is likely to be the case for Mr

Wrigley, particularly given his mental health difficulties. We think if he cannot find work within 12 months the chances of him having the mental resilience to continue an effective job search and persuade an employer to take him on will be so limited that his chances then of obtaining future employment will be negligible.

122. In light of the above, Mr Wrigley's loss of future earnings and employer pension contributions into the BTRSS scheme must be reduced to reflect the likelihood of him finding alternative employment in 12 months, but that future mitigation must itself be tempered by our finding that there is a 20% chance that Mr Wrigley will be out of work up until the age of 65.

Whether Mr Wrigley has failed to mitigate his loss, including by failing to accept an offer of reengagement made by the respondent.

123. The claimant's decision not to accept the offer of reengagement is entirely understandable and justified. He had lost all faith in the company and wanted to protect himself against future discrimination. The fact that he may have been unlikely to encounter the managers who discriminated against him does not make that decision unreasonable. The acts of discrimination were not isolated incidents by an individual manager. He had experienced serious and persistent discrimination at the hands of a sequence of managers, all of whom were supported by HR in the decisions they made. The claimant, not unreasonably, felt he could not trust the organisation as an institution. It is notable that the offer contained no apology or acknowledgement of wrongdoing.

124. In any event, even if the relationship had been salvageable, the offer of reengagement was conditional on the claimant withdrawing his claim and accepting, in return, a sum by way of compensation that did not reflect the claimant's actual loss and basic award to which he was entitled.

125. As far as the claimant's attempts to find alternative work are concerned, we have found as a fact that the claimant was not well enough to work following his dismissal until April or May this year, from which time he has made real efforts to find alternative work, including making applications, registering with an agency and looking into ways of enhancing his qualifications. As already noted, he has a strong work ethic and there is no evidence to support a finding that he has acted in any way unreasonably.

126. In light of the above, we conclude that the claimant has not failed to mitigate his loss.

The likelihood that Mr Wrigley would have been lawfully dismissed in any event at some point after his actual date of termination due to ill health.

127. By the time of his dismissal Mr Wrigley was working 32 hours a week, notwithstanding his on-going physical injuries and psychological problems. There is no evidence before us that his physical condition has deteriorated since then and we find that it has not. Nor does the evidence suggest that it would have done so had he not been dismissed, and we find that it would not have done so. Indeed Mrs Brown does not suggest that his employment would have been terminated because of physical ill health. Rather, the respondent's case is that there is a likelihood, or at

least a chance, that at some point in the future Mr Wrigley's employment would have ended, absent discrimination, on the grounds of incapacity brought about by mental ill health.

128. The respondent's case effectively is that Mr Wrigley had a propensity towards depression. Mrs Brown submitted that he had a history of depression and there was a possibility that sooner or later he would have succumbed to a period of long-term ill health occasioned by depression. In support of this submission Mrs Brown referred us to Dr Corrin's report referring to a 'history of depression' and Mr Wrigley's GP records. The suggestion by the respondent, as we understood it, was that this showed Mr Wrigley had an underlying vulnerability and/or a propensity towards depression.

129. In support of that submission are the following matters in particular:

129.1. Mr Wrigley experienced episodes of depressed mood and anxiety in December 1997, January 1998, April 2004 and May 2009, which led to him being prescribed anti-depressants.

129.2. After the road traffic accident he experienced PTSD. Dr Corrin's opinion, in light of the episodes referred to above, was that, 'Mr Wrigley would have been inordinately vulnerable to psychological injury when the index accident occurred.'

129.3. it is clear that Mr Wrigley's mental health has been significantly affected by events over the last two years. He has been diagnosed with depression and anxiety. The discriminatory treatment by the respondent was not the sole cause of his mental ill health. In particular it remains the case that Mr Wrigley has physical injuries and that the pain he experiences as a result is a stressor.

130. Militating against a conclusion that Mr Wrigley was vulnerable to mental ill health that would or could lead to the termination of his employment are the following factors:

130.1. The episodes of depressed mood and anxiety in 1997, 1998, 2004 and 2009 were stress related, being triggered by particular events, including deaths in his family; they were isolated and short-lived and did not necessitate any further treatment nor lead to Mr Wrigley taking time off work.

130.2. At no time prior to the events that followed Mr Wrigley's accident was Mr Wrigley diagnosed as having clinical depression.

130.3. Although Dr Corrin's opinion is that Mr Wrigley was vulnerable to psychological 'injury', it does not necessarily follow that Mr Wrigley was vulnerable to psychological ill health in the ordinary course of events absent some kind of particularly traumatic or stressful experience. The PTSD was triggered by a severely traumatic incident. Although of course one cannot rule out the possibility that Mr Wrigley might experience a similar traumatic experience in the future, the chances of that happening are low.

130.4. Mr Wrigley has recovered from his PTSD.

130.5. Notwithstanding Mr Wrigley's mental ill health in the period up to the termination of his employment, he was keen – indeed we would say desperate - to get back to work and fought to do so. By the time of his termination his mental ill health did not prevent him from working in the adjusted duties. He was working almost full time hours and it was his physical injuries that restricted his ability at that time to achieve full time hours.

131. For the respondent's submission to hold good we would have to find not only that Mr Wrigley is vulnerable to psychological ill health, but also that there is a chance that such vulnerability would lead to Mr Wrigley suffering from a depressive episode or other psychological illness that was severe enough to cause him to be absent from work, for that absence to continue for such a period that it would lead or could lead to his dismissal, and for the respondent to be unable to make reasonable adjustments that would facilitate a return to work. Looking at the evidence in the round, we are not satisfied there is any realistic chance of that happening. We do not accept that Mr Wrigley had a propensity towards depression. At most, we find that he may be vulnerable to mental ill health triggered by particularly stressful situations. But even then, Mr Wrigley is slow to take time off work. The mental trauma of the RTA he experienced, the stress occasioned by his physical injuries and the way he was dealt with by his employers did not prevent Mr Wrigley being mentally well enough ultimately to return to work and there is no reason to think that, absent discrimination, he would not respond similarly in the face of any similar illness that were to befall him in the future. We conclude that even if Mr Wrigley, absent discrimination, would have been vulnerable to mental ill health triggered by particularly stressful situations, the chances of all of the following happening in combination are so remote that the risk can be discounted: (a) a stressful or traumatic situation occurs that is significant enough to trigger a depressive episode or other psychological illness; (b) that depressive episode or psychological illness is severe enough to cause Mr Wrigley to be absent from work for a significant period of time such that it would be reasonable to consider dismissal; (c) there are no adjustments that the respondent could make that would facilitate a return to work.

132. We therefore reject Mrs Brown's submission that compensation should be reduced to reflect a chance Mr Wrigley would have been lawfully dismissed in any event at some point after his actual date of termination due to ill health.

Calculation of financial loss other than pension loss

<u>The amount that should be awarded to Mr Wrigley to reflect lost earnings consequent on his dismissal.</u>

What Mr Wrigley's net earnings would have been had he not been dismissed, including whether Mr Wrigley's contributions to the BTPS scheme should go to reduce net earnings for these purposes.

133. We accept Mrs Brown's submission that Mr Wrigley's presumed net earnings for the period to 30 June 2018 should be calculated net of his pension contributions. We say that because the making of such contributions was a condition of his membership of the BTPS scheme and compensation to reflect his losses in relation to that scheme (the quantum of which was agreed between the parties) was calculated on the assumption that those contributions would have continued.

134. Mrs Brown calculated Mr Wrigley's net monthly loss of earnings as follows:

134.1. As at 5 November 2016: £2,186.93

134.2. From 31 March 2017: £2,224.48

134.3. From 31 March 2018: £2,288.46

134.4. From 1 July 2018: £2,466.46

135. Mr Lynch did not dispute that those figures accurately reflected net earnings after contributions to the BTPS scheme were taken into account (in the period to 30 June 2018) and we therefore accept that they accurately reflect the sums Mr Wrigley would have earned, net, had his employment continued.

Whether RTIE benefits received by Mr Wrigley of £336.57 per month should be offset against lost earnings.

136. We accept the respondent's case that, by choosing to take the RTIE benefits, Mr Wrigley has mitigated his loss by securing an alternative source of income. To the extent that the sums paid to him, and payable in future up to retirement, exceed the amount that Mr Wrigley could have obtained by simply drawing his pension early whilst in employment, that income would not have been available to Mr Wrigley had he not been dismissed. Accordingly, we conclude that, to the extent that the RTIE benefits exceed the amount that Mr Wrigley could have obtained by simply drawing his pension early whilst in employment, they should be offset against Mr Wrigley's lost earnings. The parties agreed that, on that basis, the amount to be offset would be £336.57 per month.

<u>The amount that should be awarded to Mr Wrigley to reflect the loss of broadband benefit in kind.</u>

137. We have concluded that loss of BT broadband should be compensated at £36 per month, being the cost of equivalent cover on the open market, from the date of termination. The claimant is unlikely to be provided with this benefit in alternative employment. Therefore this loss will persist until the date he would have retired in May 2025.

<u>The amount that should be awarded to Mr Wrigley to reflect the loss of death in service benefit. Whether any compensation should be awarded to reflect alleged loss of death in retirement benefit and if so, what amount.</u>

138. It is not disputed that the claimant lost his entitlement to death in service benefit in consequence of his dismissal. Ordinarily compensation is available for such loss based on the cost of obtaining the same benefit through buying an insurance policy. As far as past losses are concerned ie to the hearing date, however, such loss would not ordinarily be recoverable unless the individual had actually purchased such insurance.

139. As far as loss of death in retirement cover is concerned, Mr Wrigley did not lose his right to death in retirement benefit as a consequence of termination. The termination itself did not affect his entitlement to that life assurance benefit as from the

age of 65. It is possible that the value of benefits payable to his partner might have been affected by the fact that he was no longer employed by BT and if so, the claimant would be entitled to be compensated However, that is not the way Mr Lynch appeared to put the claim. That is because the claimant's position was complicated by the fact that he chose to take RTIE benefits. As such he is treated as being in retirement as we understand it. As we understand it that means the claimant is covered by death in retirement cover as present. This means that if he dies the claimant's wife will be entitled to an annual pension. However, she will only be entitled to a lump sum if the claimant dies within 5 years of his dismissal and will have no such cover if he dies between the ages of 65 and 70 as he would have done if he had not taken RTIE benefits.

140. As already recorded we have found that the decision to take RTIE benefits was a matter of choice. Therefore the loss of lump sum cover between the ages of 65 and 70 is not directly attributable to dismissal.

141. Returning to loss of death in service benefit, it appears to us that the claimant should be compensated for this loss. Even though the claimant did not purchase equivalent cover he has in effect secured alternative life assurance by opting to take RTIE benefits and effectively retire early. That decision means he is covered by life assurance in the form of death in pension cover. That has come at a cost to the claimant in that he has effectively sacrificed part of the cover (the lump sum element) to which he would have been entitled between the ages of 65 and 70. We consider that the claimant should be compensated for that 'cost'.

142. It appears to us that, in the absence of any reliable calculation of the actual costs, the best, albeit somewhat rough and ready, approach to calculating loss in respect of life assurance benefits is simply to take the cost on the open market of obtaining such cover from the period of termination to the date on which the claimant would have retired (we have found that he claimant is unlikely to be provided with this benefit in alternative employment). This is the approach we have taken. Mrs Brown submitted that the claimant could obtain equivalent death in service cover on the open market for £93.51 per month and directed us to documents in the bundle evidencing that. We have accepted that is the case. This is the figure we have used in our calculations in the table below.

<u>The amount that should be awarded to Mr Wrigley to reflect the loss of statutory rights.</u>

143. We consider it appropriate to compensate Mr Wrigley for his lost statutory rights in the sum of £500, rather than £350 as suggested by the respondent, given his length of service and level of pay at termination (both of which influence the value of those statutory rights to Mr Wrigley).

<u>Calculation of financial loss other than pension loss</u>

144. Based on our conclusions above, we calculate that, excluding pension loss, Mr Wrigley's financial losses amount to:

144.1. £54,793.13 representing past losses flowing from the dismissal for the period from termination to 6 September 2018.

144.2. £122,926.05 representing future losses flowing from the dismissal for the period from 6 September 2018, taking into account the 80% chance that Mr Wrigley will find alternative employment by 6 September 2019 and the 20% chance that he will not obtain alternative employment at all.

145. A breakdown of how these sums are calculated is contained in the table below.

Pension loss

In relation to loss in respect of the BTPS, whether Mr Wrigley should be awarded an additional amount, over and above the £27,522.24 loss agreed by the respondent, to reflect alleged loss in relation to Mr Wrigley's lump sum entitlement under that scheme.

146. As noted above, Mr Lynch contended that that the figure of £27,522.24 represented only losses in respect of Mr Wrigley's annual pension deriving from the BTPS scheme and that an additional amount should be awarded to reflect the fact that the termination of his employment had led to a reduction in the value of the lump sum to which he would have been entitled had his employment continued.

147. We reject that submission. Mrs Brown was right to say that the difference in any lump sum entitlement was factored in to the 'seven steps' approach in the Principles and had already been taken into account (at step 6 of that calculation) in reaching the figure of £27,522.24. That much was clear from the detailed calculations tendered by Mr Lynch.

148. We also reject Mr Lynch's submission that Mr Wrigley sustained an additional loss arising from termination in relation to his lump sum entitlement because the lump sum he received under the RTIE scheme was lower than his lump sum would have been had he remained in employment. Mr Wrigley was not compelled to take RTIE benefits – he could have chosen not to do so. If and to the extent that the decision to take those benefits had an impact upon the lump sum actually paid to Mr Wrigley under the pension scheme, that was not a consequence of the discriminatory dismissal; it was a consequence of Mr Wrigley choosing to take advantage of the offer extended to him of drawing his pension benefits early.

149. It follows that we reject Mr Lynch's submission that Mr Wrigley should be awarded an additional sum over and above the agreed pension loss figure of £27,522.24. Mr Wrigley's losses in relation to the BTPS scheme therefore amount to £27,522.24 and we include that amount in the award of compensation.

The amount that should be awarded to Mr Wrigley to reflect the loss in relation to the BTRSS pension scheme.

150. Mrs Brown contended that the correct approach to ascertaining loss is, as explained in the Principles, to calculate pension loss on the basis of lost employer contributions, which the parties agreed we should take to be £387.66 per month.

151. Mr Lynch contended that, in addition to being awarded the sum calculated by reference to employer pension contributions, Mr Wrigley should be awarded an additional amount of £15,000 to reflect what Mr Lynch contended was a reduction in the value of a lump sum which Mr Wrigley would have accrued under the BTRSS scheme.

152. As the Principles acknowledge, 'It is the disappearance of the employer's contributions to the DC scheme, following an unlawful dismissal, which leads to loss that the tribunal can compensate.' At paragraphs 4.17-4.18 the Principles say:

> *4.17 Where a successful claimant has, through dismissal, lost the benefit of membership of a DC scheme, it is usually straightforward to calculate the resulting net loss of pension that is attributable to the employer and which flows from its unlawful conduct. The basis for calculation will be the employer's contributions for whatever period of loss the tribunal has identified. This is known as the "contributions method".*
>
> 4.18 The contributions method is a "broad brush" approach. The precise level of future pension loss a claimant will experience in retirement because of dismissal from a job with DC pension benefits is, as at the date of the hearing, very difficult to predict. The fund associated with that pension might, in the future, perform well. It might perform poorly. A process of aggregating the employer's pension contributions for the appropriate period of loss is felt to be a tolerably accurate assessment of the pension loss that, after income tax, a claimant will experience in retirement. It is worth emphasising that, despite appearances to the contrary, an award of pension contributions for a past period is not an award of past loss; it is an award designed to capture future net loss of pension income.

153. Although the claimant sought compensation to cover the loss of those contributions, Mr Lynch's position was that the Tribunal should also make an additional award on the basis that it would be 'just and equitable' to do so. We explained to Mr Lynch that the purpose of compensation is to put Mr Wrigley in the position he would have been in but for the employer's unlawful conduct, as best as money can do so, and sought to ascertain from him the basis on which he contended that we should depart from the approach to calculating pension loss set out in the Principles. Mr Lynch suggested that that the BTRSS scheme provided an entitlement to a lump sum in addition to the funds contained in the pension pot. We have found as a fact that that is not the case – a lump sum is available only by commuting part of the pension income. In the circumstances we see no valid reason for departing from the approach recommended in the Principles. The claimant is being compensated for loss in relation to the pension scheme by receiving now the contributions that the respondent would otherwise have made into the scheme. He is free to invest that compensation as he sees fit, including in a pension scheme should he choose to do so.

154. We conclude that, in accordance with the Principles, Mr Wrigley's loss in relation to the BTRSS scheme should be calculated in the manner suggested by Mrs Brown ie based on notional employed contributions alone (£387.66 per month). As shown in the table below, that amounts to a loss of £31,788.12 up to 1 May 2025.

155. Against that we offset the amount we have found Mr Wrigley is likely to receive by way of employer contributions in future employment. We have found that there is an 80% chance that, from 6 September 2019, Mr Wrigley will benefit from employer pension contributions into an auto-enrolment scheme of £40 per month. As shown in the table below, the amount to be deducted is £2169.60.

156. Mr Wrigley's losses in relation to the BTRSS scheme therefore amount to £29,618.52 and we include that amount in the award of compensation.

Whether there should be any reduction in compensation to reflect accelerated receipt and, if so, in what amount.

157. The loss in relation to the BTPS scheme is calculated by reference to the Ogden tables. As such accelerated receipt is already factored in to calculations.

158. As for other losses, as is made clear in the Principles, if we were to factor in an amount for accelerated receipt then the amount should be calculated in the same way as it would be in the civil courts in relation to personal injury awards. As such, compensation would be increased rather than decreased, given that the discount rate set by the Lord Chancellor currently set at minus 0.75%. Mrs Brown did not identify any other rate that should be applied or explain why we should depart from the approach of the civil courts. In the circumstances we reject Mrs Brown's submission that compensation should be reduced for accelerated receipt.

159. Although not invited to do so by Mrs Brown, we have also considered whether there should be any discount to compensation to reflect the vicissitudes of life, such as the possibility that Mr Wrigley would have been fairly dismissed in any event or might have given up employment for other reasons. As noted above, we have rejected the idea that Mr Wrigley might have sustained a psychological illness or injury and been dismissed lawfully on that account. As recorded in our findings of fact, we have also dismissed the possibility that Mr Wrigley would have left his job voluntarily at any time prior to retirement. Nor is there any evidence to support a finding that there is a chance the claimant might have been made redundant and there was no submission to that effect from Mrs Brown. That leaves the possibility of mortality or that Mr Wrigley might sustain another injury (or a worsening of his existing physical injuries) that would cause him to lose his job within the next six and a half years. Of course, we cannot rule out the possibility of that happening. However, we consider the chances of such a thing happening are extremely low. Taking a broad brush approach, we take the view that any reduction that might be made to reflect such possibilities is negated by any increase in compensation that might be factored in to reflect the negative discount rate applicable to reflect accelerated receipt. Accordingly we have decided that it would not be appropriate to make any adjustments.

Compensation for injury to feelings, personal injury and aggravated damages

<u>The amount that should be awarded to Mr Wrigley in respect of injury to feelings.</u>

160. The acts of discrimination were not isolated incidents. There were several discriminatory acts and omissions taking place over a period of two years, committed by a series of managers, advised by HR. Only the first act – the sending of the letter in October 2014 - was not committed by a manager but even then, as the letter was sent in Mr Vernon's name, it had the appearance, to the claimant, of having his endorsement at the very least.

161. We have set out in some detail the effect on his feelings of the respondent's discriminatory acts. What follows is just a summary of those findings. The discrimination had a severe impact on Mr Wrigley from the start, causing him acute

distress and upset at a time when he was already feeling low and vulnerable. For two years prior to his dismissal he lived with the fear that his job, and therefore his future and that of his family, was in jeopardy and a sense of abandonment, having invested virtually his entire working life in working for the company. This was not the only cause of anxiety in his life – the effects of his PTSD and the pain and loss of capacity from his physical injuries undoubtedly affected his mental health – but there is no reason to think those stressors caused him any injury to his feelings. There were other acts by the respondent that we have not found to be discriminatory that did contribute to his injured feelings but the discriminatory acts leading up to his dismissal were clearly significant causes of his sense of abandonment and fear for his future. Although Mr Wrigley had psychological treatment to address the impact on his mental health, it was not as successful as hoped. Based on Ms Cooper's reports, we find that was due, at least in part, to the continuing nature of the discrimination. The decision to dismiss Mr Wrigley in February 2016 left him feeling angry, distressed and humiliated. Although he was allowed to return to work in adjusted duties – and the state of his mental health did not prevent him from doing so - he had to fight to be allowed to do so and the threat of dismissal remained hanging over him until his fears were realised and his employment was ended in November 2016. The dismissal caused a deterioration in his mental health to the extent that he was no longer able to work and had difficulty coping. That inability persisted for around 18 months. The financial impact of the loss of his job has caused the claimant extreme anxiety and despair. His dismissal was devastating to him. The events have had a serious impact on his relationship with his wife to the extent that their long marriage has almost broken down. As at August 2018 when we heard evidence from Mr Wrigley, 21 months after his dismissal, he had still not recovered psychologically from the effect of the dismissal although he is feeling significantly better than he did. The job search process remains a source of stress and anxiety for the claimant and is likely to do so for at least another 12 months. Even if he does find employment it is likely to be in a low paid job which will not provide the claimant, previously, a skilled engineer, with the same job satisfaction and pride as his role with BT.

162. We are of the view that this is a serious case which merits an award at the lower end of the upper Vento band. Bearing in mind the amount we have decided to award for personal injury (below), we consider an award of £25,000 in respect of injury to feelings is appropriate. For the avoidance of doubt, this takes account of the Simmons v Castle uplift.

<u>Whether the respondent's discriminatory acts caused Mr Wrigley to sustain a personal injury and, if so, the amount that should be awarded to Mr Wrigley in respect of that injury.</u>

163. Mr Wrigley's case is that he sustained a psychological injury as a consequence of the discrimination, that injury being anxiety and depression.

164. In the four years since his accident in 2014, Mr Wrigley has experienced PTSD and depression and anxiety.

165. We find that the claimant's PTSD was caused entirely by his road traffic accident – it was not suggested otherwise by Mr Lynch. We find that the PTSD is divisible from the anxiety and depression and does not fall to be compensated by the respondent.

166. The anxiety and depression is another matter. There is a considerable amount of evidence that the discriminatory treatment the claimant received from the respondent, including but not limited to his dismissal, was a significant cause of that condition. We refer in particular to the following:

166.1. Our findings of fact as to the claimant's reaction to the events in question and their impact on his relationship with his wife.

166.2. Immediately after his dismissal the claimant was unable to work due to his psychological condition. Prior to his dismissal, the claimant was able to work.

166.3. Ms Cooper's was of the opinion, in November 2015, that the manner in which the respondent was discussing the claimant's future employment (as reported to her by the claimant), and the pressure he felt under to return to work as a result had been and continued to be a cause of very considerable stress and anxiety to Mr Wrigley. She remained of this view in March 2016, noting that Mr Wrigley's position at BT remained a pathological concern for Mr Wrigley and that the pressure of contact from his employers had unquestionably had a detrimental impact on Mr Wrigley's psychological wellbeing. She was of the same opinion in June 2016.

166.4. Dr Vance, the claimant's GP, agrees with Ms Cooper. He is also of the opinion that the pressure Mr Wrigley felt he was under with regard to trying to hold onto his job slowed down his recovery and that the impact of his eventual dismissal 'set him further back mentally, exacerbating his mental condition and adding a new layer of anxiety and stress and depression.'

167. Mrs Brown suggested, however, that Dr Corrin's reports were evidence that the claimant had not in fact sustained a psychological injury as a consequence of the respondent's discrimination and that his mental ill health was caused by the road traffic accident and/or other non-discriminatory acts by the respondent. Mrs Brown observed, in her submissions, that Dr Corrin's reports do not say that the respondent's treatment of the claimant or claimant's dismissal had an effect on the claimant's wellbeing. She referred to Dr Corrin's opinion, expressed in his second report (prepared some four months after the termination of Mr Wrigley's employment), that the predominant underlying stressors for the claimant's condition were 'his enduring pain and consequential physical incapacity and the associated implications'. Elsewhere he says the predominant stressors 'appear to be related to his enduring pain and consequential physical incapacity, particularly in relation to his inability to work.' As already recorded in our findings of fact, Mrs Brown suggested that there were two explanations for this: either Dr Corrin did not believe the claimant's dismissal or the respondent's earlier treatment of him had affected his mental health; or the claimant deliberately withheld this information from Dr Corrin.

168. We have rejected the suggestion that Mr Wrigley misled Dr Corrin and have found that the claimant did refer to his employment history and impact on his mental health of his dismissal. We turn now to the submission that the absence of any express reference to the effect of the respondent's treatment of the claimant and his dismissal implies that Dr Corrin did not believe they had affected the claimant's mental health. Dr Corrin's first report was prepared just a few months after the claimant's accident.

At that time we accept that the main stressors on the claimant were relating to his injuries, and this is supported by Ms Cooper's reports. His second report was prepared several months after the claimant's dismissal. Dr Corrin had access to reports from Ms Cooper and would have been aware, from her reports, that she was of the view that the respondent's treatment of the claimant during his employment had a detrimental impact on his mental health. He does not suggest he disagrees with her opinion. As we have already noted, it seems likely to us that Dr Corrin did not refer to the effect on the claimant of the treatment from his employers because his report was produced in connection with a claim against the driver of the car – we refer to our observations on that point in the section headed 'Facts and Evidence above'. Furthermore, for reasons explained above, we consider that the references the 'associated implications' of the claimant's physical incapacity alluded to the claimant losing his job (and the treatment he received in the time leading up to the loss of his job) and the use of 'etc' in his report when describing Ms Cooper's conclusions alluded to the impact on the claimant of worries about his work and future employment.

169. We do not think the 'omission of an express reference to termination or the earlier discriminatory treatment in Dr Corrin's report can bear the weight that Mrs Brown tries to put on it. Looking at all the facts and medical evidence in the round it is clear to us that the discriminatory acts that occurred before termination in November 2016 contributed the claimant feeling that his job was at risk, which was a cause of considerable stress and anxiety to the claimant and contributed to his depression. We find that the claimant's psychological health was further damaged by his dismissal in November 2016.

170. We find, however, that the discriminatory acts were not the sole cause of that anxiety and depression. As noted above, Mr Wrigley was upset by some things done by the respondent that we have not found to be discriminatory. In addition, the claimant's mental health was, and remains, affected by the physical pain and discomfort he has experienced as well as other impacts of his physical injuries on his lifestyle. As Ms Cooper opined 'there is no clinical doubt that the chronic pain experienced by Paul Wrigley since his work related road traffic accident has had a direct and detrimental impact on his psychological wellbeing and that the one has fed into the other, contributing to severe depression.'. We also find that the effects of the claimant's physical injuries and consequent pain, in itself must have caused the claimant to worry about his future employment, both when employed by the respondent and since his dismissal as he contemplates his future. Similarly, the PTSD affected matters such as the claimant's ability to drive or travel as a passenger, and this must have added the claimant's concerns about his ability to get back to work.

171. Looking at the evidence in the round and the nature of the claimant's condition, we have reached the view that the only rational basis on which we can apportion the harm suffered between a part caused by the respondent's and a part which is not so caused is in recognising that up to around July 2015 the main causes of the claimant's stress and anxiety, as explained by Ms Cooper, were attributable to his other injuries caused by the RTA and that some time between then and November 2015 the claimant's anxiety was mostly related to the way he was treated by his employer. There were other stressors post November 2015 but we do not believe the harm in that period is divisible on any rational basis and therefore the claimant must be compensated for the whole of the injury from that point.

172. The injury affected Mr Wrigley's ability to cope with life and work and has had a significant effect on his marriage. It caused him to be unable to work for around 18 months and has lasted for over three years. In April 2017 the prognosis was uncertain. However, he has made a significant improvement recently, to the extent that he feels able to return to work, and the evidence does not support a conclusion that his injury will be permanent. Although the claimant is not expected to return to comparable employment, that is not a consequence of the injury. We are of the view that if the injury were viewed in isolation it would fall within the 'Moderate' category in the Judicial College guidance. We are, however, awarding a significant amount for injured feelings, the effects of which overlap considerably with the effects of the injured feelings award. To avoid double recovery, therefore, we consider that an award of £5000 for the psychological injury would be an appropriate amount, making a total £30,000 when the two awards are combined. For the avoidance of doubt, this takes account of the Simmons v Castle uplift.

173. Mr Wrigley expressed the belief that the treatment he received at the hands of the respondent exacerbated his physical condition and delayed his recovery. Mr Lynch made a similar submission. Mr Lynch suggested that support for this submission could to be found in the medical evidence, and in particular the report of Ms Cooper from August 2016, specifically the following comments: 'Patients with more negative thoughts in response to pain report more severe pain' and 'In my professional opinion there is no clinical doubt that the chronic pain experienced by Paul Wrigley since his work related road traffic accident has had a direct and detrimental impact on his psychological wellbeing and that the one has fed into the other, contributing to severe depression.' Mr Lynch also referred to the reference in Dr Corrin's second report to the 'refractory nature' of psychological illnesses.

174. We are not convinced by Mr Lynch's submissions on this point. Although it is clear from Ms Cooper's report that she is expressing the view that the presence of pain from physical injuries can have a psychological impact, it is not clear that she was suggesting that the reverse is the case ie that psychological conditions can exacerbate physical injuries. Her statement that 'the one feeds into the other' is ambiguous and does not necessarily mean that they both feed in to each other. And although Ms Cooper says 'patients with more negative thoughts in response to pain report more severe pain', that is not the same as saying that patients with negative thoughts about other matters report more severe pain. So far as Dr Corrin's report is concerned, we do not accept that the reference to psychological conditions being 'refractory' means they have an impact on physical conditions. As Mrs Brown submitted, the word 'refractory' does not bear the meaning ascribed to it by Mr Lynch but rather means that psychological conditions can be resistant to treatment. The burden of proof is on Mr Wrigley and we are not satisfied that he has shown that the respondent's discriminatory acts exacerbated his physical health problems or delayed his recovery. Even if it is the case that a psychological condition can affect perceptions of pain, we are not satisfied that Mr Wrigley has shown that it did so in his particular case.

Whether an award of aggravated damages should be made and, if so, in what amount.

175. Whilst we do consider the way in which managers and members HR dealt with Mr Wrigley could fairly be described as dismissive, lacking in empathy and, in many respects, seriously incompetent, we have not found there was malicious or high-handed treatment and nor have we found that the conduct was based on prejudice,

animosity, spite or vindictiveness. Nor do we consider that the case was conducted at trial in an unnecessarily offensive manner, although we note that the respondent appears not to have apologised to Mr Wrigley for discriminating against him.

176. It was suggested by Mr Lynch that Mr Wrigley's injured feelings have been aggravated by learning, during the course of proceedings that one of the reasons Mr Murphy chose not to continue Mr Wrigley's employment was a desire not to set a precedent. But whilst we have found this not to have justified Mr Wrigley's dismissal, we do not accept that it constitutes the kind of insulting behaviour designed to be compensated by an award of aggravated damages. Mr Lynch also suggested that the way in which Mr Harkin dealt with Mr Wrigley's grievance warrants an award of aggravated damages. However, although Mr Harkin's final conclusions on the aspects of Mr Wrigley's grievance were swayed by HR, we are not persuaded that he simply failed to take Mr Wrigley's complaints seriously at all and nor are we persuaded that he set out to deceive Mr Wrigley.

177. The awards of compensation for injured feelings and personal injury have been set at a level that we feel compensates Mr Wrigley fully for the intense distress and upset and psychological harm he has experienced, and continues to experience, in consequence of the discrimination he suffered. We agree with Mrs Brown that this is not a case in which an additional award of aggravated damages are appropriate.

Other matters

<u>The amount by which any award should be increased to account for tax.</u>

178. We have found that Mr Wrigley would need to receive £264,859.94 after tax, in order to put him in the position he would have been in had the unlawful discrimination not occurred.

179. We calculate that the amount we need to award Mr Wrigley in order for him to receive that amount after tax is £416,014.58. That calculation is done on the following basis:

179.1. Compensation will be paid in the current tax year.

179.2. The compensation for injury to feelings and personal injury (£30,000 combined) is not taxable.

179.3. Mr Wrigley's basic award of £13,172.50 will take up part of the £30,000 tax free element.

179.4. Therefore only £16,827.50 + £30,000 of the discrimination award will be tax free, leaving £218,032.44 to be taxed.

179.5. The amount awarded means Mr Wrigley's personal allowance for this tax year will be reduced to zero.

179.6. Mr Wrigley will be liable for tax at basic rate (20%) on £17,365.20 of the award (bearing in mind he has an income from his pension of £17,365.20 which is also taxable at basic rate).

179.7. Mr Wrigley will be liable for tax at higher rate (40%) on £115,499 of the award.

179.8. Mr Wrigley will be liable for tax at the additional rate (45%) on the remainder of the award.

180. Further details of the calculation are shown in the table at the end of this judgment.

181. Accordingly, we increase Mr Wrigley's compensation for discrimination to £416,014.58.

Whether the respondent unreasonably failed to comply with the ACAS Code of Practice on Discipline and Grievances and, if so, the extent to which the award should be increased under TULRCA s207A.

182. As noted above, the ACAS Code, in so far as it addresses the steps an employer should take before dismissing an employee, does not apply to internal procedures operated by an employer concerning an employee's alleged incapability to do the job arising from ill health or sickness absence.

183. We accept, however, that the element of the Code dealing with grievances applies to grievances arising in relation to incapacity. We also accept that Mr Wrigley did lodge a grievance about the way he had been treated, which was referred to be dealt with by Mr Harkin. When we asked Mr Lynch in what way the company had failed to follow the Code, the only issue he raised was the fact that Mr Harkin had omitted from the final report sent to Mr Wrigley certain comments he had been included in a rationale document not sent to Mr Wrigley, namely an observation that certain letters should have been altered to be more supportive to Mr Wrigley and an observation that a more genuine effort to find Mr Wrigley suitable work could have 'potentially benefitted this case.'

184. This would only be a breach of the Code if it could properly be said to constitute wither a failure to decide on what action, if any, to take or a failure to communicate such a decision to Mr Wrigley in writing. We have concluded that it did not. Mr Harkin's original observations that letters that had been sent to Mr Wrigley in the past should have been altered to be more supportive and that there should have been a more genuine effort to find work were not decisions as to what action to take and even if they had been, they were not his final decisions. Mr Harkin adjusted his conclusions after taking soundings from HR. He did not fail to decide what action to take and nor did he fail to communicate such decision. To the extent that he made any 'decisions' they were communicated in the document sent to Mr Wrigley. Furthermore, Mr Wrigley was permitted to appeal, and he did so.

185. There was no suggestion that the respondent had otherwise failed to arrange for a formal meeting to be held without unreasonable delay; failed to allow Mr Wrigley to be accompanied to that meeting or explain his concerns; failed to communicate decisions without unreasonable delay; or failed to deal with any appeal without unreasonable delay.

186. In light of the above, we find that the respondent did not fail to comply with the ACAS Code. That being the case no uplift is appropriate.

Whether interest should be awarded and if so how much.

187. We consider it is appropriate to award interest in this case.

188. In respect of injured feelings, the default position is that interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day on which the amount of interest is calculated by the tribunal. The end date for these purposes is 1 November 2018, which is the date the calculation is being performed. Identifying the start date is more tricky. This is because the discrimination continued for some time, beginning in September 2014 and ending in November 2016. We have not sought to breakdown the award of £25,000 to attribute discrete elements to the various acts of discrimination and to do so would be artificial and not feasible. It would not be appropriate to award interest on £25,000 from the date of the fist act of discrimination as that would result in the claimant receiving interest on a compensation for damage that had not yet been incurred. It is significant that in our view it was the dismissal that caused the most hurt to the claimant. It appears to us the most sensible approach to take is to adopt the same approach as the Equality Act does to time limits in relation to continuing acts of discrimination ie treat the act as taking place when it ended. In that case that would be the termination on 3 November 2016.

189. The same issue arises in relation to the personal injury award. Interest on that sum, as other past losses, runs from the period beginning halfway through the period that starts with the act of discrimination and ends with the day on which the amount of interest is calculated by the tribunal: reg 6(1)(b). We have taken the same approach as above and calculated interest on the personal injury award based on the midpoint starting with the termination date. That is also the applicable date for other financial losses given that they were caused by the termination.

190. We include interest of £8,777.97 in the award of compensation, calculated as shown in the table below.

Total discrimination award

191. Pursuant to s124 of the Equality Act 2010, we order the respondent to pay to Mr Wrigley an award made up of:

191.1. compensation in the sum of £416,014.58.

191.2. Interest of £8,777.97

192. The table below sets out in more detail how those amounts are calculated.

BREAKDOWN OF COMPENSATION

1. **KEY INFORMATION**

Claimant's date of birth		1 May 1960
Actual termination date		4 November 2016
Claimant's age at termination		56
Remedy assessment date		6 September 2018
Period between termination and assessment date:		22 months
Gross pay		As at 5 November 2016: n/a From 31 March 2017: n/a From 31 March 2018: n/a From 1 July 2018: £38,766.27 pa
Net monthly pay at termination and net monthly pay Mr Wrigley would have earned had he not been dismissed		As at 5 November 2016: £2,186.93 From 31 March 2017: £2,224.48 From 31 March 2018: £2,288.46 From 1 July 2018: £2,466.46
Monthly value of other employment benefits: Death in service: £93.51 pcm Broadband: £36 pcm		£129.51
Date new job estimated to start		6 September 2019 (subject to 20% chance Mr Wrigley will not find paid employment at all)
	Net value of RTIE benefits	

Net monthly benefits in mitigation:		From 5 November 2016 and ongoing: £336.57 pcm From 6 September 2019: £
	Estimated net pay from alternative employment based on estimated gross salary of £16,000 pa	From 6 September 2019: £1067 pcm (subject to 20% chance Mr Wrigley will not find paid employment before the date he would have retired)
BTRSS Defined contribution scheme Value of employer pension contributions: agreed at 12% of pensionable pay, which would be £38,766.27 pa gross at 1 July 2018		From 1 July 2018: £387.66 per month
Date by which employer should no longer be liable – claimant's 65th birthday when he would have retired		1 May 2025

UNFAIR DISMISSAL

2. **BASIC AWARD**

Basic award (agreed by parties)	**£13,172.50**

3. **COMPENSATION FOR DISCRIMINATION**

Pecuniary loss: immediate loss to assessment date (excluding pension loss)				
***Loss from 5 November 2016 to 6 September 2018* assessment date**				
Loss of net earnings:	From 5 November 2016 to 31 March 2017: number of months (4.8) x net monthly pay (£2,186.93)	£10,497.26		

	From 31 March 2017 to 31 March 2018: number of months (*12*) x net monthly pay (£2,224.48)	£26,693.76		
	From 31 March 2018 to 30 June 2018: number of months (*3*) x net monthly pay (£2,288.46)	£6,865.38		
	From 1 July 2018 to 6 September 2018: number of months (6.2) x net monthly pay (£2,466.46)	£15,292.05		
Loss of other benefits ie Death in Service benefit and broadband: number of months (22) x net value (*£129.51*)		£2849.22		
3.1 **Sub-total**		£62,197.67		
Less				
Sums obtained through mitigation post-notice period: RTIE benefits: number of months (22) x net value (*£336.57*)		(£7,404.54)		
3.2 **Reductions sub-total**		(£7,404.54)		
3.3 ***Immediate loss from termination to 6 September 2018 sub-total (3.1 – 3.2):***			£54,793.13	
Future loss from *7 September 2018* assessment date to 1 May 2025				
Loss of net earnings: number of months (79.8) x net monthly pay (£2,466.46)		£196,823.50		
Loss of other benefits: ie Death in Service benefit and broadband: number of months (79.8) x net value (*£129.51*)		£10,334.90		

	Loss of statutory rights	£ 500		
	3.4 **Sub-total**	£207,658.40		
	Less			
Future mitigation:	RTIE benefits: number of months (79.8) x net value (*£336.57*)	(£26,858.27)		
	Earnings from alternative employment from 6 September 2019: number of months (67.8) x net monthly pay (£1067) x 80% (to reflect chance claimant will not find work before planned retirement date)	(£57,876.08)		
	3.5 **Reductions sub-total**	(£84,732.35)		
	3.6 ***Future loss sub-total (3.4 – 3.5):***		£122,926.05	
Pension Loss				
	BTPS			
	Agreed loss	**£27,522.24**		
	BTRSS scheme (from 1 July 2018)			
	Value of employer contributions to 6 September 2018 = £387.66 pcm x 2.2 months	£852.85		
	Value of employer contributions from 7 September 2018 to 1 May 2025 = £387.66 pcm x 79.8 months	£30,935.27		
	Subtotal of employer contributions	£31,788.12		
	Less value of employer contributions in employment obtained in future from 6	(£2169.60)		

September 2019 to 1 May 2025 based on 3% of gross salary (£16,000 pa) £40 pcm x 67.8 months x 80% (to reflect chance claimant will not find work before planned retirement date)			
BTRSS pension loss subtotal:	**£29,618.52**		
3.7 ***Combined pension loss sub-total:***		£57,140.76	
3.8 ***Future loss and pension loss sub-total (3.6 + 3.7):***			***£180,066.81***
Injury to feelings and Personal injury			
3.9 ***Personal injury***			***£5,000***
3.10 ***Injury to feelings***			***£25,000***
3.11 ***Total* award before grossing up (3.3 + 3.7 + 3.9 + 3.10)**			**£264,859.94**
Grossing up – see annex			
3.12 **Grossed-up award**			**£416,014.58**

4. **INTEREST**

Injury to feelings Interest at 8% per annum on the sum of £25,000 for the period beginning on 3 November 2016 and ending on the day of calculation (1 November 2018), a period of 729 days. Interest = £25,000 x 729/356 x 0.8%	£3994.52
Past losses and personal injury Interest at 8% per annum for the period beginning on the mid-point date (2 November 2017) and ending on the day of	£4,783.45

calculation (1 November 2018) on the sum of £59,793.13 made up of: Past losses: £54,793.13 Personal injury: £5,000 The mid point date is the date half-way between 3 November 2016 and the calculation date. In this case the mid point date is as shown above. The period from the midpoint to the calculation date is 365 days. Interest = £59,793.13 x 365/356 x 0.8%	
Total interest:	**£8777.97**

Total award

Unfair dismissal	£**13,172.50**
Discrimination	**£416,014.58 + interest of £8,777.97 = £424,792.55**

Breakdown of tax calculation for purposes of grossing up

TAXABLE AMOUNT		
T1 Amount of compensation award before grossing-up		**£264,859.94**
T2. Element of compensation award within ITEPA s403: £54,793.13 + £180,066.81	£234,859.94	
T3. Less tax free element ie up to £30,000 threshold less £13,172.50 basic award	(£16,827.50)	
T4. Total amount of compensatory award subject to tax		£218,032.44

GROSSING UP		
Element of T4 within personal allowance	n/a	
Basic rate: 20%		
Element of T4 within basic rate tax band: £34,500 less pension income of £17,365.20	£17,134.80	
T5. Grossed up compensation (above figure ÷ 0.8)		**£21,418.50**
Higher rate: 40%		
Element of T4 within higher rate tax band: £34,501 to £150,000 = £115,499	£115,499	
T6. Grossed up compensation (above figure ÷ 0.6)		**£192,498.33**
Additional rate: 45%		
Element of T4 within additional rate tax band ie over £150,000 = £218,032.44 – (£115,499 + £17,134.80)	£85,398.64	
T7. Grossed up compensation (above figure ÷ 0.55)		**£155,270.25**
Compensatory award grossed up to reflect tax liability T5 + T6 + T7 (ie £369,187.08) + non taxable elements of award (ie injury to feelings and personal injury compensation of £30,000 plus tax free element of £16,827.50)		£416,014.58

Employment Judge Aspden

Date 1 November 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

6 November 2018

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to Mr Wrigley(s) and respondent(s) in a case.

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2401005/2016**

Name case(s):	of	**Mr P Wrigley**	v	**British Telecommunications Plc**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 6 November 2018

"the calculation day" is: 7 November 2018

"the stipulated rate of interest" is: **8%**

MISS H KRUSZYNA
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.