



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Hancock

Respondent: Warrington and Halton Hospital NHS Foundation Trust

Heard at: Liverpool **On:** 18, 19 and 20 March 2019

Before: Employment Judge T Vincent Ryan
Mr M Gelling
Miss J M Stewart

REPRESENTATION:

Claimant: Mr K Ali, Counsel
Respondent: Dr E Morgan, Counsel

JUDGMENT ON REMEDY

The judgment of the Tribunal is that:

1. The respondent shall pay the following sums (subject to grossing up and interest where applicable, the final total figure to be confirmed) to the claimant:
 - 1.1 Unfair dismissal basic award – £9,580.
 - 1.2 Financial losses attributable to discriminatory unfair dismissal for the period 31 August 2016 to 30 March 2019 – £9,904.58.
 - 1.3 Future loss of earnings – nil.
 - 1.4 Loss of statutory rights – £500.
 - 1.5 In respect of the findings of disability discrimination, damages for injury to feelings – £20,000.
 - 1.6 Aggravated damages – nil.
 - 1.7 Personal injury damages – £5,000.
 - 1.8 Provisional award – £44,984.58.

2. The respondent shall pay interest on any award made to the claimant in a sum to be assessed.
3. The Tribunal further reserves its judgment in respect of the claimant's claim for loss of pension with interest and which figure is to be grossed up. This is to be the subject of further discussion at a preliminary hearing to be notified.

REASONS

This reserved Remedy Judgment is further to the liability Judgment signed on 9 January 2018 and sent to the parties on 19 January 2018 (“the Liability Judgment”).

1. The Issues

- 1.1 In a situation where the Tribunal found that the claimant was constructively unfairly dismissed and that the dismissal was also discriminatory in relation to the protected characteristic of disability, and that the respondent further discriminated against the claimant in relation to that protected characteristic by way of harassment, because of something arising in consequence of her disability and also indirectly, it fell to the Tribunal to consider an award of compensation and damages.
- 1.2 The claimant presented an updated Schedule of Loss to the Tribunal for the purposes of this remedy hearing, claiming:
 - 1.2.1 an unfair dismissal basic award;
 - 1.2.2 an unfair dismissal compensatory award including losses to date, future losses, loss of statutory rights, pension loss (this claim is also made under the discrimination head but not to be duplicated);
 - 1.2.3 disability discrimination damages for injury to feelings;
 - 1.2.4 discrimination aggravated damages;
 - 1.2.5 personal injury compensation;
 - 1.2.6 uplift on compensation for failure to follow the ACAS Code;
 - 1.2.7 interest;
 - 1.2.8 any award would be subject to “grossing up”.
- 1.3 In breach of a case management order the respondent failed to provide a counter-schedule. Counsel for the respondent did however comment in principle on the heads claimed.
- 1.4 With regard to the constructive unfair dismissal finding, the usual issues were to be considered in respect of compensation under sections 118 - 126 Employment Rights Act 1996. The damages claimed are to be assessed in terms of compensating the claimant for her losses or damage suffered and not as punitive matters to reflect the respondent’s conduct;

awards such as for injury to feelings and personal injury damages are to be assessed in accordance with applicable guidelines.

- 1.5 The parties kindly, and somewhat hurriedly in view of a late request by the Tribunal, prepared a schedule of some 19 questions in a document entitled "Schedule of Questions requiring determination on the question of Remedy", some or all of which were directly answered by the Tribunal and to which this Judgment in part refers as appropriate but without our setting out all the questions here.
- 1.6 It was agreed that the Tribunal would make findings in principle where it was unable to make actual financial awards so that the parties could apply the principles to their agreed or other calculations arriving at a final figure. It was further agreed that following this Judgment, with a mixture of principled awards and actual figures awarded, there would be a preliminary hearing probably conducted by telephone conference call between respective counsel and Employment Judge Ryan to determine how best to conclude the Remedy Judgment, which could either include confirmation of an agreed settlement figure or provision for an additional hearing before the full Tribunal panel to determine any outstanding issues.

2. The Facts

- 2.1 In considering relevant facts regarding remedy issues and the questions raised as referred to above, the Tribunal has taken into account its findings of fact set out in the Liability Judgment which was comprehensive. This Remedy Judgment should be read in conjunction with the Liability Judgment in that regard.
- 2.2 The claimant's employment with the respondent as an Accredited Checking Pharmacy Technician ended on 31 August 2016 and she commenced employment with L Rowland & Co (Retail) Limited trading as Rowlands Pharmacy on 1 September 2016. She remains in that employment, which she commenced as an Accuracy Checking Technician during the interim period until she was re-accredited; she is currently employed as an Accredited Checking Pharmacy Technician again; the claimant earned less in the interim period than she is currently earning, and she is now earning less than she earned when employed by the respondent with the same job title. The claimant's accreditation had lapsed in the circumstances described in the Liability Judgment and her re-registration was delayed for reasons set out in that Judgment at paragraph 4.19.
- 2.3 The claimant's calculation of her full statutory basic award in accordance with section 119 Employment Rights Act 1996 is £9,850. The calculation was agreed by the respondent. The Tribunal confirms it is the correct figure based on 100% of the statutory calculation, in other words confirms as fact the core data used to calculate it.
- 2.4 The claimant produced at the Tribunal for the Remedy Hearing an updated Schedule of Loss which appears in the remedy bundle at pages 84-92 (and all further page references will be to that bundle of documents

unless otherwise indicated), confirming various rates of gross and net pay at certain dates. The respondent did not contest that data. The Tribunal confirms as a fact the rates of pay specified by the claimant in her said schedule at each date shown by her in it.

- 2.5 The claimant obtained alternative employment immediately upon her resignation, which was so timed. She did not seek alternative employment with the respondent because of the matters set out in detail in the Liability Judgment which meant it was not possible for the parties to sustain a relationship based on trust and confidence. At the time of her constructive unfair dismissal the claimant's medical condition restricted her capacity for pain free commuting; there are no NHS hospitals in the geographical radius of the claimant's home that would likely have allowed her to commute pain-free at that time. This finding of the Tribunal is based on medical reports of Dr Murgatroyd of 23 August 2018 at pages 439-442 and 5 March 2019 at pages 444-445, Dr Dickinson of 18 September 2018 at page 445 and the respondent's Occupational Health consultants of 18 February 2019 at pages 466-472. The latter report is relied on also for our finding that the claimant's emotional condition described in the Liability Judgment took some 2-3 years to settle. The claimant's commute to work with Rowlands Pharmacy is approximately seven miles one way and takes less than 20 minutes on average according to the unchallenged AA route planner produced by the claimant at page 203. Having secured congenial employment relatively close to her home, and with a commute that the claimant could manage without exacerbating her emotional or physical conditions, the claimant has decided to commit to it. She has stopped looking for alternative employment either in an NHS or private setting. She is now content to accept her lower earning potential for her own personal reasons.
- 2.6 The Liability Judgment sets out our findings regarding the claimant's absence from work whilst employed by the respondent. Regardless of findings of discrimination and conduct by the respondent that damaged the relationship of trust and confidence, the claimant was nevertheless appropriately at stage 2 of a four-stage absence management procedure. The respondent treated the claimant contrary to the implied term of trust and confidence and in a discriminatory way in failing to address the claimant's issues and concerns at a welfare meeting. The Tribunal finds that had the respondent acted properly the claimant would have remained in employment, with agreed reasonable adjustments, for as long as she could physically manage her duties. Her intention was to work until retirement age of 60. She would have done so if she could have done so from a health point of view. The Tribunal is unable, for reasons explained below, to make a finding that the claimant would only have been able to continue in post for a further 2 or 15 years as respective parties contended. On the respondent's Occupational Health evidence, the claimant could have continued for two years, that is up to approximately 31 August 2018, in her Band 5 post. Bearing that in mind and the time for the claimant's physical and emotional conditions to settle to an acceptable level, the time taken to obtain re-accreditation and to settle into a congenial post with Rowlands Pharmacy, the Tribunal finds the claimant

has mitigated her loss to the date of assessment of compensation and financial losses sustained to that date are in consequence of the constructive unfair dismissal and are attributable to the actions of the respondent described in the Liability Judgment.

- 2.7 In its Liability Judgment the Tribunal made findings that from 22 July 2017 (the respondent's referral of the claimant to Occupational Health advisers with request for consideration of early retirement) until her resignation on 31 August 2016 the claimant was subjected to discriminatory treatment by the respondent summarised in paragraph 6 of the Liability Judgment as being "progressive". Counsel for the respondent referred at the remedy hearing to "institutional fatigue" on the part of the respondent, and the Tribunal has found that it progressed through intimidatory intransigence to the point that it "just wished to get on without her". In its Liability Judgment the Tribunal found one claim of indirect discrimination, five claims of harassment, two claims of discrimination arising from disability and a further five claims that amounted to both harassment and discrimination "arising" over a period of 12 months. The effects on the claimant are found in respect of each successful claim and the claimant suffered those injuries to her feelings as described in more detail in the Liability Judgment.
- 2.8 The respondent's actions as found in the Liability Judgment did not exacerbate the claimant's physical condition save in relation to the experience of pain and stress that the claimant suffered as a result. The respondent's conduct as found caused stress and upset which exacerbated her fibromyalgia; in consequence the claimant suffered sleep disturbance with nightmares, pain and fatigue. Such symptoms are reported in the previously cited medical reports from April 2015 until August 2016 (the constructive dismissal) with confirmation of a settling of those symptoms over 2-3 years. Our findings are based on the Liability Judgment, the claimant's oral evidence, and the medical reports adduced by both parties.
- 2.9 Over and above the Tribunal's findings in the Liability Judgment, which describes the gradual deterioration of the relationship between the parties and of the respondent's attitude and conduct towards the claimant, the Tribunal does not find as a fact that there were aggravating features of high-handedness, personal malice or directly insulting and oppressive conduct. The respondent's conduct amounted to discrimination in respect of some but not all the claimant's claims; 13 incidents on which the claims were based were dismissed as amounting to the discriminatory conduct claimed. Bad as the discrimination described in the Liability Judgment was, the Tribunal does not find that this was an extraordinary situation. The Tribunal finds its summary at paragraph 6 of the Liability Judgment fairly summarises what sadly passes as an "ordinary" case of unlawful discrimination without aggravating features beyond what can properly be compensated by means of awards for injury to feelings and personal injury.
- 2.10 The claimant raised a grievance, and as found in the Liability Judgment (paragraph 4.14) the respondent chose not to deal with it in accordance

with its own grievance policy and in line with the ACAS Code on Grievance Procedures. In its Liability Judgment the Tribunal found that this amounted to harassment, discrimination arising from disability and was part of the breach of the implied term of trust and confidence leading to a constructive unfair dismissal (“a substantial contributory factor”). The Tribunal finds therefore that this was a tactical decision in accordance with the respondent’s strategy of easing the claimant out of her employment. The respondent deliberately disappplied its grievance procedure and adherence to the ACAS Code and in so doing discriminated against the claimant and fundamentally breached her contract.

Findings in relation to the respondent’s request for “additional findings of fact”

- 2.11 The claimant's contract of employment at page 93 of the trial bundle required the claimant to discharge a Band 5 role. That role had been the subject of a detailed job evaluation exercise in accordance with Agenda for Change.
- 2.12 The duties inherent to that role required:
- (a) Ward activities;
 - (b) Autonomous working;
 - (c) Job rotation.
- 2.13 The Tribunal would add that whilst they were inherent to the unadjusted role the claimant had carried out her Band 5 role without ward activities for a considerable period of time before the respondent’s attitude to her worsened to the extent that it began its discriminatory campaign in breach of contract.
- 2.14 The claimant was temporarily dispensed from the rotational aspect of her role and ward obligations, which amounted to some 60% of the job content of the unadjusted full Band 5 role.
- 2.15 In July 2016 the claimant was allocated some administrative duties which she considered to be “menial”. The claimant was not prepared to remain in an administrative capacity working for the respondent doing what she considered to be menial tasks. The Tribunal finds that it is likely that had she been designated those tasks solely she would in due course have left employment with the respondent to pursue her vocation elsewhere as an Accredited Checking Pharmacy Technician.
- 2.16 Conventional duties of a Registered Pharmacy Technician in both NHS and private settings are subject to professional regulatory compliance and involve patient critical roles. There is a potential for errors in checking to lead to harm to patients, and in the most extreme case with fatal consequence.
- 2.17 Within a hospital environment the beneficiaries of pharmaceutical services frequently but not invariably have complex medical care needs, are

participating in acute forms of care and require medication upon an urgent basis. Similar considerations apply to outpatients or those in receipt of continuing healthcare in the community who have not been admitted to hospital. The Tribunal is unable to find that patients in the community have less complex medical care needs than those who are inpatients in hospital in the generality of cases. Working as an Accredited Pharmacy Technician requires sustained and consistent levels of attention. Sustained and consistent levels of attention could be adversely affected by fatigue or other circumstances impinging upon concentration, focus and attention. Such matters would be of concern both to the respondent in respect of its staff and a private pharmacist in respect of its staff.

- 2.18 The claimant did not disclose to her Regulatory Body that she was operating under a medical condition which had the potential of adversely impacting upon her ability to practice or conduct her professional duties.
- 2.19 As referred to in the Liability Judgment, the respondent referred the claimant to its Occupational Health consultants albeit not all the referrals were entirely appropriate, and indeed one was found to be, at least in part, an act of harassment.
- 2.20 Certain allocations of tasks and adjustment of duties agreed to by the respondent were in response to medical opinion received from Occupational Health consultants. Had the claimant continued in her employment the parties would have to have agreed a way forward that did not involve unlawful discrimination and did not breach the implied term of trust and confidence, and such a way forward could have been planned at a welfare meeting. This may have resulted in temporary or permanent adjustments to the claimant's role and temporary adjustments could have been short, medium or long-term. Subject to this, there may have been an agreement to re-band the claimant. Banding under the Agenda for Change project is a detailed job evaluation scheme upon which the Tribunal cannot embark. The Tribunal finds that the claimant foresaw the risk of her being banded at Band 4 and notes the respondent's contention that she ought to have been re-banded to Band 2 or Band 3. On the basis of the claimant being asked only to carry out the administrative duties at which she balked, it is possible that Band 2 or Band 3 would have been appropriate (subject to Agenda for Change assessment).
- 2.21 The introduction of the Lorenzo system has been covered in the Liability Judgment and would have had an impact on the number and nature of the tasks the respondent would have required from the claimant had she remained in employment.
- 2.22 The Tribunal has found in the Liability Judgment that the claimant was subject to disability discrimination and that the respondent acted in such a way as to seriously damage or destroy the relationship of trust and confidence. The claimant did not do either of these things, and her conduct was not such as to be open to criticism or be considered reprehensible. The claimant did not cause or contribute to her dismissal. The discriminatory conduct and breach of the implied term of trust and

confidence in this case is summarised at paragraph 6 of the Liability Judgment and rests on the conduct of the respondent.

3. The Law

3.1 Unfair dismissal awards –

3.1.1 Sections 119-122 Employment Rights Act 1996 (“ERA”) set out the basis for making of a basic award and the matters to be taken into consideration, including in respect of reductions of either or both the basic and compensatory awards to reflect the claimant’s conduct. Section 123 ERA covers compensatory awards with limits imposed at section 124 ERA and adjustments at section 124A, which in turn refers to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the failure to comply with any applicable statutory code, such as the ACAS Code on Grievance Procedures.

3.1.2 By virtue of section 126 ERA where acts are found to be both discriminatory and amount to unfair dismissal, compensation falls to be awarded under both the ERA and the Equality Act 2010, but the Tribunal shall not award compensation under either of those Acts in respect of any for other matter which is or has been taken into account under the other award in compensation on the same or another complaint in respect of that Act.

3.1.3 A claimant who has been unfairly dismissed may face reduction to his compensatory award to reflect any risk faced of being fairly dismissed (“the Polkey Principle”).

3.2 Discrimination compensation and damages –

3.2.1 If a Tribunal finds that an employer has discriminated against an employee it may make a declaration as to the rights of the complainant and the respondent, order the respondent to pay compensation to the claimant and/or make a recommendation. Each of the remedies is discretionary.

3.2.2 Sections 124 and 126 Equality Act 2010 set out the statutory basis for awarding remedies in discrimination cases. The assessment is under tort principles, the aim being to put the claimant so far as is reasonable in the same position they would have been in but for the discrimination found. Damages may be limited because of issues of causation and remoteness, but those losses that are caused by the unlawful discrimination will be recoverable and may be both financial and non-financial. Non-financial losses would include matters such as aggravated damages, damages for injury to feelings and personal injury damages.

3.2.3 Aggravated damages are to be considered only in cases that are not ordinary, such as where a respondent is found to have acted

“in a highhanded, malicious, insulting or oppressive manner in committing the discrimination or in the manner in which the matter was handled, including the conduct of the hearing itself”. Aggravated damages are awarded above and beyond matters of upset and distress which can be properly compensated by an award of damages for injury to feelings, and the Tribunal must be wary of double recovery.

3.3 Injury to feelings –

3.3.1 The Tribunal may make an award of damages for injury to a successful claimant's feelings in discrimination cases. Such an award is designed to compensate for anger, distress and upset and is not intended to be penal. The Tribunal has a broad discretion subject to consideration of applicable guidance in respect of which Presidential Guidance has been issued setting out compensation in three bands.

3.3.2 The Presidential Guidance sets the bands for compensation in respect of matters arising on or after 11 September 2017 and therefore the applicable bands in this case are known as the “Vento” guidelines (**Vento v Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102**). The effect of **Simmons v Castle [2012] EWCA Civ 1288** effects increases on the then existing levels of damages awarded. Proof of injury must be provided by the claimant. A claimant must establish injury, the nature of the injury and its extent, showing the impact of the discrimination and any subjective feelings of upset, frustration, worry and the like. The award ought not to double account in respect of damages for personal injury suffered. Any such award may be uplifted by a percentage to a maximum of 25% to reflect any failure on the part of an employer or employee to comply with an applicable ACAS Code.

3.4 Personal injury –

3.4.1 A claimant may claim damages for personal injury caused by unlawful discrimination, but once again the Tribunal must be careful not to conflate injury to feelings and personal injury awards. Tribunals are “obliged to approach the assessment of damages for psychiatric injury on the same basis as a common law court in an ordinary action for personal injury” (**HM Prison Service v Salmon [2001] IRLR 425**). Reference ought to be made to the Judicial College guidelines and relevant precedent text, such as **Kemp v Kemp**. Those authorities detail the factors to be taken into account when valuing claims of psychiatric injury, such as an ability to cope, effect on family and relationships, extent of treatment and future vulnerability prognosis.

3.5 Respondent's submissions on law –

- 3.5.1 The Tribunal must be clear as to the precise acts which are relied on as the subject of compensation.
 - 3.5.2 The issue of causation requires care, especially where there are a number of contributory causes.
 - 3.5.3 The Tribunal must ensure there is no double recovery, although the Tribunal may make a single composite award where there are multiple claims of discriminatory conduct.
 - 3.5.4 The purpose of a compensatory award is restorative.
 - 3.5.5 The Tribunal must take account of the possibility that some losses may have been occasioned by lawful conduct by the respondent.
 - 3.5.6 The principles of causation are as with other tortious claims.
 - 3.5.7 The Tribunal must consider the issue of discounts for matters such as the prospect of a fair dismissal.
 - 3.5.8 In considering future loss the Tribunal must consider what would have occurred had there not been discriminatory conduct.
 - 3.5.9 The Tribunal must bear in mind proportionality.
 - 3.5.10 The Tribunal may reduce any compensation to reflect contributory conduct of a claimant.
 - 3.5.11 Awards in respect of indirect discrimination can only be made where the discrimination was intentional.
 - 3.5.12 Injury to feelings awards cannot be discounted to reflect the possibility of the same event, for example dismissal, occurring on non-discriminatory grounds.
 - 3.5.13 A personal injury claim must be supported by medical evidence.
- 3.6 Claimants submissions on law –
- 3.6.1 Aggravated damages are appropriate where distress is made worse by exceptionally upsetting conduct by a respondent, with reliance on **HM Land Registry v McGlue [2013] [EAT/0435/11]** at paragraphs 30-40.
 - 3.6.2 On the basis of Judicial College guidelines and quoted authorities extracted from Lawtel, the Tribunal can assess personal injury compensation and the appropriate figure is £5,000.
 - 3.6.3 The claimant adduced a number of reported cases which were appended to Mr Ali's written submissions.

4. Application of Law to Facts

- 4.1 The Tribunal accepted the claimant's calculation of the statutory basic award which was not in any event challenged by the respondent. The Tribunal has not made any findings of fact that would justify a reduction in the basic award in accordance with section 122 ERA or otherwise. Being dealt with properly at the time the claimant was only at stage 2 of the four-stage absence procedure; reasonable adjustments were outstanding; there had not been a proper welfare meeting and the respondent's treatment of the claimant, who wanted to work on and resolve issues through applicable procedures, was both discriminatory and in breach of contract. The tribunal does not consider that the claimant was at a recognisable and assessable risk of being fairly dismissed, without unlawful discrimination, at the time of her dismissal.
- 4.2 The claimant set out a calculation of losses of earnings from the date of her dismissal to 30 March 2019 and justified the ten day additional period from the date of the remedy hearing for simplicity as it coincides with the annual change in NHS pay bands; this was not contested by the respondent. The Tribunal considered in all circumstances that the claimant had properly mitigated her loss, keeping them to a reasonable minimum, securing employment immediately following on from her resignation. Given the circumstances of the claimant's medical conditions, the proximity of her new employment and her inability to commute the required distances if she were to seek employment at another NHS hospital, the Tribunal is satisfied that she has made appropriate mitigation. In the light of medical evidence as to the period of time it would take for the claimant's symptoms to settle from the date of her resignation and the time to settle into that employment and come to a settled decision as to her long-term, the Tribunal was entirely satisfied that the claimed losses to date were fair and reasonable; specifically we found that it would be just and equitable to award those losses as they were sustained by the claimant in consequence of the discriminatory dismissal and they were attributable therefore to the actions and inactions on the part of the respondent as found in the Liability Judgment and this Remedy Judgment.
- 4.3 The claimant has stopped looking for alternative employment. She has settled into employment with Rowlands Pharmacy and is making no further efforts to mitigate her loss. The Tribunal has awarded ample time for the claimant to reach a situation where for her own reasons she does not wish to seek employment at a commensurate rate of pay to rates that she could have achieved in an NHS hospital. It would not be just and equitable in all the circumstances to attribute the continuing losses henceforth to the respondent as they are not attributable to the respondent's actions but rather the decision of the claimant to remain in the employment she currently finds more congenial and to her satisfaction.
- 4.4 The respondent did not contest the claimant's claim of £500 compensation for loss of statutory rights, and the Tribunal considers it just and equitable to award it.

Injury to feelings

- 4.5 The Tribunal has made findings as to the nature and extent of the injury to the claimant's feelings. There was a considerable period of time when she was distressed and upset. She attempted to resolve issues. She attempted to pursue the grievance procedure. She correctly perceived that the respondent was inclined to dispense with her services and engineered her departure. The respondent's attitude hardened over time such that what was described as "institutional fatigue" became deliberate harassment. This had a deleterious effect on the claimant's health in that her emotional state exacerbated her feelings of pain and discomfort brought on by fibromyalgia. The injuries themselves are compensated by way of personal injury compensation and damages, however the distress which is fully described in the Liability Judgment and this Remedy Judgment warrants an award in the figure of £20,000 as assessed by the claimant. Once again there was not considerable opposition from the respondent to the claimant's assessment, with which the Tribunal agrees, but the Tribunal has taken into account all evidence, the submissions made and the applicable guidelines in reaching its conclusion.
- 4.6 The claimant sustained the personal injuries described and the damages assessed by the claimant at £5,000 were not contested by the respondent, who considered it was an appropriate figure if the Tribunal made findings consistent with the claimant's claim. The Tribunal does make those findings. Specifically, the claimant has been caused to suffer significant aggravation of her fibromyalgia which had a severe detrimental effect on her health. Whereas previously she was able to cope with the condition, the exacerbation of the condition had a debilitating effect. Overall the claimant was caused to suffer severe psychological reaction due to work related stress impacting on her personal and family life over and above the effect sustained as a result of any injury to her feelings. Our findings are therefore in line with the claimant's summary set out in the Schedule of Loss at page 90. The Tribunal has relied on all the medical evidence available to it and cited above. The said schedule initially estimated damages at £10,000 but Mr Ali revised that estimate down to £5,000 and the Tribunal considered that this sum more accurately reflects the personal injury sustained.

Pension Loss

- 4.7 The particular bone of contention between the parties throughout the remedy hearing has been the claimant's pension loss. Respective counsel advanced the argument to the Tribunal that it had to choose between 2 year's loss of pension in accordance with the Occupational Health advice adduced by the respondent, or 15 year's pension loss on the basis of medical evidence adduced by the claimant. The claimant obviously made the point that whilst the Occupational Health advice indicated that she could only work in her role for two years, she was already working in a similar role in a private setting for in excess of that period of time. Counsel for the respondent made the point that the jobs were not entirely comparable and that the hospital based job was more pressured; furthermore, the Occupational Health Consultants were more appropriate

experts to advise than a GP or osteopath. It was obvious to us, and confirmed by respective counsel, that we are not qualified to estimate the loss of any other figure, on 2 or 15 years bases, on the basis of the information available to us, and that it would have been inappropriate for us to gainsay all available medical experts' evidence. That said, we were unable on the basis of the information before us to choose between 2 year's and 15 years' loss.

- 4.8 In its deliberations the Tribunal considered that it would be advantageous for a single expert to comment on the job specifications and descriptions applicable to the claimant's role whilst employed with the respondent and as currently in force with Rowlands Pharmacy. Alternatively, the Occupational Health Consultants who have already reported, Dr Dickinson and Mr Murgatroyd, could consider all that documentation and the evidence of the claimant with updated medical records, asking each other questions and clarifying any issues they respectively have, hopefully to come to a unified view. Without further such evidence, and it may be a matter for the respective parties to decide on how they wish to approach it, the Tribunal was unable to conclude on the question of pension loss. The Tribunal is entirely happy for me to conduct a preliminary hearing with respective counsel to discuss a better way of solving this issue if indeed the parties are unable to settle the claim.
- 4.9 The Tribunal also noted, as did counsel for the claimant throughout the remedy hearing, that to date the respondent has failed to provide a counter Schedule of Loss. A counter schedule would have assisted and that was why one was ordered. The claimant's claim in respect of pension loss before interest and grossing up is £359,215 on the basis of a 15-year period of loss. The Tribunal surmised that this is hundreds of thousands pounds more than the respondent's estimation.
- 4.10 If the matter cannot be resolved between the parties then there will have to be some further evidence to assist the Tribunal in assessing the period of loss, and also the respondent will have to produce a counter-schedule. All such matters will be discussed at a preliminary hearing, notice of which will be issued in due course. It would assist if the parties provided to the tribunal written confirmation of their non-available dates for a two-hour telephone conference call case management preliminary hearing in the six months period from the date on which this judgment is sent to them.

Employment Judge T Vincent Ryan

Date: 05.04.19

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

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 the claimant(s) and respondent(s) in a case.

NOTICE**THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

Tribunal case number(s): **2400182/2017**

Name of **Mrs L Hancock** v **Warrington And Halton
Hospital NHS Foundation
Trust**
case(s):

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: **16 April 2019**

"the calculation day" is: **17 April 2019**

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

MRS L WHITE
For the Employment Tribunal Office