



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Shittu

**Respondent:** South London & Maudsley NHS Foundation Trust

**Heard at:** London South

**On:** On 25, 26 and 27 November 2019 and  
in-chambers on 17 and 21 February 2020

**Before:** Employment Judge Freer

**Members:** Ms B C Leverton  
Mr N Shanks

## Representation

**Claimant:** Mr E MacDonald, Counsel

**Respondent:** Ms L Chudleigh, Counsel

## **RESERVED JUDGMENT ON REMEDY**

It is the unanimous judgment of the Tribunal that the Respondent shall pay to the Claimant compensation in the sum of sum of £12,245.26 comprising a Basic Award of £5,748; loss of statutory rights of £500; injury to feelings of £5,000; and interest of £997.26.

## **REASONS**

1. By a judgment and reasons sent to the parties on 15 December 2018 it was the unanimous judgment of the Tribunal that:
  - The Claimant's claims of detriment on the ground of having made a protected disclosure; detriment on the ground of health and safety; automatically unfair dismissal by reason of a protected disclosure; automatically unfair dismissal by reason of health and safety and wrongful dismissal are dismissed upon withdrawal;
  - The Claimant's claim of ordinary unfair constructive dismissal is successful;

- The Claimant's claims of discrimination arising from disability and a failure to make a reasonable adjustment are successful in part;
  - The Claimant's claims of direct disability discrimination, indirect disability discrimination, harassment, and victimisation are unsuccessful.
  - The Claimant's claims of unauthorised deductions from wages were presented to the Tribunal out of time and the Tribunal has no jurisdiction to consider them having regard to provisions relating to the statutory time limits.
2. The matter was listed for this remedy hearing. The Tribunal received evidence from Mr and Mrs Shittu and Mrs Dibben, Head of Employee Relations for the Respondent. The Tribunal was presented with three bundles of documents comprising 942 pages plus other documents provided at the hearing as agreed by the Tribunal.
  3. The Tribunal received written submissions upon agreement from both parties. It was not possible to receive oral submissions at an earlier date due to the availability of Counsel and the Tribunal. Written submissions were received for the in-chambers dates at which this decision was reached and they were carefully taken into account.

#### **A brief statement of the relevant law**

4. The statutory provisions relating to remedy for unfair dismissal are set out in sections 112 to 127 of the Employment Rights Act 1996.
5. It is well-established law that the principle contained in **Polkey –v- A E Dayton Services Ltd** [1987] IRLR 503, HL, applies to the consideration of the just and equitable element of the Compensatory Award. A Tribunal may reduce the Compensatory Award where an unfairly dismissed employee may have been dismissed fairly at a later date or if a proper procedure had been followed.
6. There is no need for an 'all or nothing' decision. If the Tribunal thinks there is a doubt whether or not the employee would have been dismissed, this element can be reflected by reducing the normal amount of compensation by a percentage representing the chance that the employee would still have lost his employment.
7. In **Software 2000 Ltd -v- Andrews** [2007] IRLR 568, the EAT reviewed the authorities and set out some guidance, such as:

"If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself".

8. By combination of Section 207A and Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992 and section 124A of the Employment Rights Act 1996, where a claim by an employee is made under any of the jurisdictions listed in Schedule A2 of the 1992 Act and is also one to which the ACAS Code of Practice on Disciplinary and Grievance Procedures applies, where a party has failed to comply with that Code in relation to that matter, and that failure was unreasonable, the Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase or decrease any compensatory award by no more than 25%.
9. Such an adjustment shall be applied immediately before any reduction for contributory fault and any adjustment under section 38 of the Employment Act 2002 for a failure to provide employment particulars.
10. By virtue of section 122(2), a Tribunal may reduce the basic award where the conduct of the employee before the dismissal was such that it would be just and equitable to do so. Also, by virtue of section 123(6), the Tribunal may reduce the compensatory award by such proportion as it considers just and equitable where the dismissal was to any extent caused or contributed to by any action of the employee.
11. The remedy provisions in discrimination claims at the Employment Tribunal are set out in section 124 of the Equality Act 2010:
12. A Tribunal is not obliged to actually make an order for compensation if it doesn't consider it to be just and equitable to do so, but once it has decided to make an order for compensation, it must adopt the usual measure of damages in the same way as damages for a statutory tort.
13. The claimant is to be put into the financial position they would have been 'but for' the unlawful conduct of the employer. (see **Ministry of Defence -v- Cannock** [1994] ICR 918)
14. It is the Claimant's personal loss, or estimated loss, which is important and not any hypothetical loss calculated on the basis of how a 'reasonable employer' might have behaved.
15. The loss must be attributable to the specific act that has been held to constitute discrimination, and compensation should not be awarded in respect of other acts either inferring discrimination or showing discrimination that is not part of the pleaded claim.
16. Where loss has been caused by a combination of factors, of which some factors are not the unlawful discrimination, the compensation awarded can be discounted by a percentage to reflect that circumstance.
17. The EAT in **Thaine -v- London School of Economics** [2010] ICR 1422 held that: "The test for causation when more than one event causes the harm is to ask whether the conduct for which the defendant is liable materially contributed

to the harm. . . . But the extent of its liability is another matter entirely. [The Respondent] is liable only to the extent of that contribution”.

18. However, focus should be on the relative apportionment of the harm and not on the causative contribution to the discrimination as found. The assessment is of the particular part of the loss that is due to the wrong (see **BAE Operating Systems Ltd -v- Conczak** [2017] EWCA Civ. 1188).
19. There is no requirement for the loss suffered to be 'reasonably foreseeable'. Compensation is awarded in respect of all harm that arises naturally and directly from the act of discrimination (see **Essa -v- Laing** [2004] ICR 746; and **Chagger -v- Abbey National plc** [2010] IRLR 47).
20. 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. Which effectively means applying a similar approach to the *Polkey* principle in unfair dismissal cases and assess what would have happened if there had not been the discriminatory conduct.
21. The appropriate awards of compensation for the purposes of injury to feelings are set out in the *Vento* guidelines (**Vento -v Chief Constable of West Yorkshire Police (No.2)** [2003] IRLR 102, updated and helpfully summarised in Presidential Guidance).
22. Awards for injury to feelings should be purely compensatory and should not be used to punish the Respondent for its actions (see **Prison Service -v- Johnson** [1997] IRLR 162).
23. A victim of unlawful discrimination may suffer stress, anxiety or depression to the extent that psychiatric and/or physical injury can be attributed to the unlawful act.
24. In that situation the Tribunal has jurisdiction to award compensation, subject only to the requirement of causation being satisfied.

### **Conclusions and associated findings of fact**

25. With regard to the claim of ordinary unfair constructive dismissal the relevant parts of the Tribunal's earlier reasons (“the liability decision”) are set out at paragraphs 101 to 135 of the liability decision and the main conclusion is at paragraph 134.
26. The successful part of the Claimant's claim of discrimination arising from disability is set out at paragraph 296 of the liability decision and the successful part of the failure to make a reasonable adjustment claim is set out at paragraph 368.
27. All of the successful claims relate to the Claimant not being paid for a single day period of absence from work on 10 April 2015 due to a hospital appointment relating to his Cancer condition.

28. The issue in the unfair dismissal and discrimination arising from disability claims was the Respondent not dealing with the Claimant's complaint made on 23 June 2015 about his one day deduction from pay on 10 April 2015.
29. The issue in the failure to make a reasonable adjustment claim was the deduction from wages that related to 10 April 2015. The Claimant discovered that deduction from pay on 26 May 2015 when he received his pay advice for April.
30. The Claimant was off work with sickness from 14 April 2015. He returned to work in October 2015 and remained at work until April 2016.
31. The Tribunal refers to paragraphs 2 and 14 of the Claimant's remedy witness statement by way of example of how the Claimant says the pay issue on 10 April 2015 and in respect of which liability issues were decided in his favour, was the seam that ran through his complaints and one that was constantly on his mind when he was making complaints about his employer. This contention was repeated by the Claimant in his oral evidence to the Tribunal.
32. For convenience the Tribunal has set out the discussion of the heads of remedy claimed below, however a great many of the points of reference necessarily overlap and the entirety of the relevant factors have been considered as appropriate.

#### Loss of earnings

33. The Claimant presented the Tribunal with two medical reports from Dr Brow (starting at pages 559 and 846 respectively). The first Report relates to an assessment on 17 June 2017, the second relates to the assessment on 17 June 2017 and also 28 April 2019, post promulgation of the Tribunal's judgment on liability.
34. These reports do not make any reference to any causative effect on the Claimant's health with regard to the liability issues now under review.
35. In the first report under 'history of presenting complaints' there is no mention of the April 2015 deduction from pay. There is however, reference to the July 2015 deduction at paragraph 214. Therefore the report's reference at paragraph 282 to the effects of the stopping of pay must be a reference to July 2015. The second report refers to a deduction of pay in April but the clinical effects relate only to the July 2015 deduction (see paragraph 121).
36. Notably under the section in the second combined report entitled 'My Opinion' and 'Formulation and Causation', Dr Brow refers to a range of other matters including the Claimant's predisposition to depression; physical ill health; being threatened by Ms Adejobi; the stoppage in pay in July 2015; traumatic management meetings; the group bullying and harassment complaint not being upheld; lack of acknowledgement of his medical issues; perceived poor job prospects; and the prolonged litigation. However, there is no mention of the stoppage of pay in April 2015.

37. The Tribunal was also presented with a medical report by Dr Briscoe (p169) dated 24 October 2019 which addresses the Claimant's complaint in June regarding the April deduction from pay and concludes that: "in itself, the Respondent's failure to deal with the Claimant's unlawful deduction to his pay complaint of 23 June 2015 was not more likely than not to cause him suffer from any specific health condition".
38. The medical reports are addressed further below with regard to the Claimant's claim for an award in respect of psychological injury.
39. In cross-examination the Claimant maintained he did not mention the issues that were causing him distress to his medics, but this is inconsistent with the fact that on 10 August 2015 (page 703F) the Claimant makes express reference to his GP of the July salary stoppage (which the Tribunal found was not discriminatory).
40. The Tribunal concludes that the Claimant's period of sickness that arose from 14 April 2015 was not linked to the successful claims. It predates the key dates on all of them (26 May 2015 when he first knew of the deduction in pay and 23 June 2025 when he made a complaint about it) and the Tribunal refers to the medical evidence above.
41. The Claimant was placed on half pay from 25 April 2016 and would have been placed on nil pay from 04 October 2016 had he not resigned. The Tribunal concludes that no award in remedy arises from that reduction in pay.
42. The Tribunal concludes on balance that the deduction from pay in April 2015 was only one very small part of the overall problem. If that deduction had not occurred the Claimant would have been off work in any event. The Claimant had returned to work in October 2015 for six months and the events in April 2016 were not materially due to the 10 April 2015 deduction. There were significantly more unrelated matters occurring. The Tribunal concludes that the Claimant's pay would have reduced to half pay in any event.
43. The Tribunal also concludes that although no detriment of dismissal was relied upon as part of the discrimination arising from disability and failure to make reasonable adjustment claims, those circumstances did form part of the Claimant's reason for leaving his employment and therefore loss of earnings may arise from the dismissal in respect of those claims and requires consideration.
44. The Tribunal refers to paragraphs 84 and 85 of the Claimant's submission which accepts, quite correctly, that a *Polkey* reduction does not apply in discrimination claims, but considers that factors relevant to a *Polkey* deduction are likely to be relevant to the discrimination context and states the Claimant's position that he would not have resigned 'but for' the disability discrimination.
45. The Tribunal has therefore considered carefully the extent to which the 10 April 2015 deduction and the complaint made on 23 June 2015 had a part in the circumstances and summarises the essential points.

46. The Occupational Health Report dated 24 March 2015 by Specialist Nurse Advisor Mary O'Sullivan (p460 of the liability bundle) stated that the Claimant: "perceives stress at work . . . in relation to workload, role changes, support issues around resources, relationship issues with expectations to complete on excessive workload and issues with changes and restructuring within the CAG". The Tribunal finds that these were the index elements giving rise to the Claimant's stress condition.
47. On 10 April 2015 the Claimant attended hospital for an inpatient appointment and the Tribunal cross-refers to paragraphs 101 and 102 of the liability decision.
48. The Claimant was absent from work through illness from 14 April 2015. The Claimant was not warned about any prospective loss of pay and therefore that could not have been part of the reason for absence as confirmed in the Claimant's liability witness statement at paragraph 38: "I have since seen that despite calling in sick Edith has marked me as AWOL" and cross-refers to paragraphs 33 and 34 which relate to workload and his treatment by Ms Adejobi in that respect.
49. A Fitness for Work statement dated 17 August 2015 stated a condition of: "anxiety with depression to work related stress".
50. Ms Michelle Davies (27 May 2015 to 21 Sept 2015) and Ms Linh Sy (15 June 2015 to 28 September 2015) were also signed off from work by their GP with a condition of stress at work. They were part of the same team as the Claimant.
51. The Claimant attended an Occupational Health appointment on 22 June 2015 (page 512 of the liability bundle) and the outcome cross-refered to the previous report. There is no mention of pay deduction, or that there was anything different from the events that he had previously reported before the deduction.
52. By an e-mail dated 29 June 2015 to Ms O'Sullivan (page 516 of the liability bundle) the Claimant requested for certain matters that he considered he raised to be included in the report, which included the 10 April deduction.
53. On 23 June 2015 the Claimant sent a letter of complaint to Ms Adejobi (page 510 of the liability bundle). The first issue raised over the first page of the letter relates to an obligation for regular contact. The 10 April deduction was mentioned towards the end of the letter.
54. On 02 July 2015 Ms Adejobi wrote to the Claimant in response to his complaint (page 520 of the liability bundle) and the Tribunal refers to paragraph 107 of the liability decision.
55. After a clinic on 17 July 2015, Dr Pierides wrote to Ms O'Sullivan in which he states: "Mr Shittu is keen to get back to work, provided he has adequate support and some adjustments are made for him when he does return to work". That letter summarises the complaints and the arrangements from which the Claimant would benefit. The pay issue is not raised. The Tribunal concludes that had the pay deduction issue for the single day been the "golden thread" running

throughout the Claimant's issues with the Respondent, as the Claimant put it in oral evidence, it would have been likely have been specifically addressed by Dr Pierides. The Tribunal can understand that with all that was happening at that time the Claimant may not have mentioned the matter, but if it was the serious catalyst both to his ill-health and eventual resignation as the Claimant now argues, one might reasonably expect it to be mentioned in a schedule of beneficial action in a medical summary made less than a month after his complaint.

56. On 27 July 2015 there is another Fitness for Work statement referring to "stress at work".
57. There is a further Occupational Health report by Ms O'Sullivan dated 27 July 2015 (page 531 of the liability bundle) which refers to anxiety shown by the Claimant over upcoming medical tests and supported his fitness to attend a management meeting to address his work issues.
58. By a letter dated 27 June 2015 the Claimant wrote to Ms Dawson (page 534 of the liability bundle), which mainly raised the pay stoppage in July. The 10 April deduction is mentioned expressly, but by reference to the July deduction.
59. The joint bullying and harassment complaint was made on 29 July 2015 (page 539 of the liability bundle). Deductions from pay were mentioned twice (page 542 and 543). The first reference is to the Claimant and Ms Davies. The letter contains 35 bullet points of group complaint.
60. On 17 August 2015 a further Occupational Health Report was produced by Ms Stella Sawyer, Senior Specialist Nurse Advisor (p563 of the liability bundle). That report expressly mentions the July deduction which Ms Sawyer records as "causing additional stress". There is no mention of the April 2015 deduction.
61. There is a further Fitness for Work statement dated 09 September 2015, which gives a condition of "anxiety with depression related to work related stress".
62. A further Occupational Health Report was produced on 10 September 2015 by Ms Sawyer. This does not mention pay but it does not address problems generally.
63. On 08 October 2015 the Claimant wrote a long letter to Dr Brimblecombe raising a complaint about the manner in which the bullying and harassment complaint was being conducted.
64. Ms Sawyer produced another Occupational Health Report dated 13 October 2015 which addresses a phased return to work but does not mention the outstanding April pay deduction.
65. On 19 October 2015 the Claimant returned to work.
66. The Claimant had a complaint interview on 03 November 2015 (pages 693 to 715 of the liability bundle) lasting one and a half hours, which confirms that the



issues of concern to him dated back to 2013. Only an extremely small part of that meeting touched on pay deduction.

67. On 08 November 2015, the Claimant wrote to Ms Hall (p728 of the liability bundle), in which pay is mentioned at page 730.
68. The complaint meeting resumed on 16 November 2017 (pages 741 to 785 of the liability bundle) and the April deduction is discussed principally (page 743 to 745). There is a reference at the start of the meeting to Ms Dibben stating: "I have undertaken to look into the sickness when you had money docked". The Tribunal does not consider that is a reference to sickness caused to the Claimant because of the pay deduction, but the sickness day in respect of which it was deducted.
69. The final complaint meeting took place on 06 January 2016 (pages 863 to 898 for the liability bundle) in which the April deduction was discussed, the Claimant offered the medical appointment confirmation and Ms Dibben told the Claimant that receipt of the written confirmation would be "useful for reinstating that day of pay" (see para 132 of the liability decision).
70. The complaint outcome meeting took place on 25 February, the matter was raised and Ms Dibben reconfirmed that she would look into the April pay deduction.
71. On 09 March 2016, the Claimant appealed the outcome (page 1153 of the liability bundle), which principally addresses procedure issues.
72. The Claimant wrote a long e-mail to Dr Brimblecombe on 24 March 2016 in which the April deduction is raised briefly.
73. The Claimant wrote an e-mail to Ms Dibben on 11 April 2016 regarding the outcome of the complaint, which addresses how the investigation was addressed
74. On 05 May 2016 an Occupational Health report was produced by Dr Shujina Haq (page 1226 of the liability bundle), which refers to the Claimant feeling that: "the ongoing e-mail communication and issues around his return to work location to have become overwhelming and his opinion feels that the Trust is trying to terminate his employment, redeploy him or make him resign". There is no express mention of the pay deduction issue. The report states: "Mr Shittu feels his current perceived ongoing stress to be related to the ongoing issues with HR and management regarding his location upon return to work and other ongoing communication which he perceived to be overwhelming and causing him distress".
75. By an e-mail dated 09 May 2016 the Claimant contacted the finance department to enquire about five matters relating to his pay, of which one was to confirm whether or not his April pay had been refunded.
76. On 07 July 2016 the Claimant wrote a long e-mail to Dr Patrick, Chief Executive (pages 1320 to 1325 of the liability bundle). In this letter the Claimant set out why he was considering constructive dismissal and the deduction from pay

issues is one of many issues raised in that communication. It forms one of thirteen detriments he considers occurred because of having made a protected disclosure and one of 14 breaches of contract.

77. On 21 July 2016 Dr Haq produced another Occupational Health report (page 1346 of the liability bundle), which addresses matters in a general sense.
78. By a letter dated 10 August 2016 the Claimant resigned from employment (pages 1368 to 1372 of the liability bundle) and the deduction from pay forms part of that letter as described in the liability decision. The letter commences: "Please accept this as my formal letter of resignation and the termination of our contract. I feel that I am left with no choice but to resign following your reply, dated 14 July 2016, which I received together with the Subject Data Access Request documentation on 26 July 2016. Also, in light of my recent experiences regarding a fundamental breach of contract by SLaM's continuous refusal to deal with all grievances and appeals I raised to date".
79. With regard to that letter the Claimant stated in his liability witness statement: "My resignation letter explains in detail the reasons for my resignation. I struggled putting this five-page letter into reasonable size to explain what led to my resignation. My mental and physical health was at a point of total collapse and thinking of my young family I couldn't see any other way to avoid further exacerbation of the state of my health".
80. The Tribunal has also reviewed the Subject Access Request documents and the Claimant's liability witness statement at paragraph 250.
81. The Tribunal has carefully considered the entirety of the evidence and concludes that the issues on which the Claimant was successful in his discrimination claims clearly form part of a large series of allegations.
82. The Tribunal has placed the matter in the context of the entirety of claims that the Claimant pursued and also those he withdrew from pursuing at the employment tribunal together with all the complaints the Claimant raised during the internal process.
83. The Tribunal also notes the significant absence of medical evidence corroborating the Claimant's evidential account, both before and after the Tribunal's judgment on liability.
84. There is no contemporaneous material that demonstrates the seriousness of the matter to the degree the Claimant now alleges in evidence.
85. Therefore although the Claimant gave in evidence, both written and oral, his account of the effects that the deduction and the complaint had on him, the Tribunal concludes that this needs to be approached with particular caution given the very limited success in his proceedings at the Tribunal and the surrounding evidence.

86. When all matters are considered, in particular the medical evidence, the Tribunal is led to the conclusion that had 10 April 2015 deduction and the 23 June 2015 complaint not happened the remainder of the events would have occurred, the Claimant would not have been in any materially different position and would have resigned.
87. The Tribunal therefore concludes that there is no loss of earnings that arises from the Claimant's discrimination complaints attributable to the acts of discrimination as found.

### Psychiatric Injury

88. The Claimant claims an award in respect of psychiatric injury. The Tribunal concludes that the Claimant's contentions as set out in the Claimant's submissions at paragraph 13 are incorrect: "The Claimant explained that prior to 10 April 2015 deduction he felt "supported" but that this changed significantly from the time that Ms Adejobe decided to deduct his pay for one of his [cancer-related] appointments. It was a sudden "change of heart". He explained that the deduction of his pay, and the failure to consider his complaint, was a trigger for him to raise a grievance".
89. The Claimant's complaints go back to 2013, he harboured a dislike for Ms Adejobi almost from the moment she started working with him and was referred to Occupational Health prior to the deduction with stress at work in relation to "workload, role changes, support issues around resources, relationship issues with expectations to complete on excessive workload and issues with changes and restructuring".
90. The question for the Tribunal is whether the discrimination as found materially contributed to the injury. As set out above, there is nothing in the medical reports addressing the subject. Also, the content of the Occupational Health report that was produced before the deduction from wages occurred was along similar lines to those that occurred after it.
91. The Tribunal has considered the medical report of Dr Briscoe from an assessment of the Claimant on 04 October 2019 commissioned by the Respondent.
92. At paragraph 16 he records: "By August 2015, the Claimant had developed an adjustment disorder warranting treatment with anti-depressions and cognitive behaviour therapy. He benefited from psychological therapy which enabled a return to work in October 2015 at which point his psychiatric condition of adjustment disorder had resolved".
93. At paragraph 19: "The Claimant does not have and has never had symptoms compatible with a diagnosis of post-traumatic stress disorder".
94. At paragraph 28: "The Respondent's failure to deal with the Claimant's unlawful deduction to his pay complaint of 23 June 2015 was not more likely than not to cause him to suffer from any specific health condition".

95. Paragraph 29: "The failure of Ms Adejobe to contact the Claimant during his first eight weeks of his sickness absence from 14 April 2015 would not in itself cause a psychiatric injury".
96. At paragraph 31: "The Claimant's psychiatric condition arose out of his experience associated with his belief that he had been bullied and harassed, his dismay that the investigation that ensued did not uphold his and his colleagues complaint, his distress at not being allowed to appeal the outcome of the investigation and his declined request for an appeal and grievance into the report of the investigation".
97. The Tribunal also refers to paragraph 169: "Although he would naturally have been distressed by his complaint regarding deduction to his pay not being dealt with, this was not something that would have brought about a psychiatric injury"
98. Paragraph 174: "In my opinion, the Claimant's sickness absence in April 2016 is more likely than not to have been as a result of his disappointment at the outcome of the investigation into bullying and harassment relating to claims that were not upheld by the employment tribunal".
99. The Tribunal refers to the summary findings of causation at paragraphs 184 to 189 of the report.
100. The Tribunal has also considered the reports by Dr Brow from assessments of the Claimant on 17 June 2017 and 28 April 2019. These reports were commissioned by the Claimant and the second assessment occurred after he had received the liability judgment and reasons.
101. Paragraph 121 of the report records: "In April 2015, Mr Shittu took time off work after becoming unwell following a necessary colonoscopy, management were displeased and his pay was docked for the day of the procedure. He was signed off as unfit for work by his GP but whilst recovering was advised not to remain in contact with the line manager. Subsequently, Mr Shittu's pay was stopped in July 2015; this caused hardship to his family and increased his depression". The Tribunal reads that last statement to refer to the July 2015 deduction.
102. Paragraph 122 states: "The subsequent management meetings were traumatic for Mr Shittu and after a meeting in October 2015 he "developed syndromic PTSD at this time in addition to depression".
103. Paragraph 123 records that the Claimant: "felt subjected to further humiliation, due to his ongoing grievance hearing and the lack of acknowledgment of his medical issues".
104. At paragraph 125: "The constant battle with management to maintain his disability rights, the negotiations of the grievance process and clearly, the loss of his job, have all materially damaged Mr Shittu's mental health - causing him harm and helping to precipitate his current poor level of functioning, depression and cognitive difficulties".

105. The Tribunal agrees with the Respondent's submissions at paragraphs 19 to 22 in that the April 2015 deduction from pay issue is not mentioned in any of the Claimant's clinical records in evidence despite the Claimant having been a regular attender at his GP surgery and having had numerous consultations with consultants, counsellors and Occupational Health, including those of his GP; Occupational Health; the Staff Counselling and Wellbeing service; Kingston iCope Psychological Therapy Service; the Primary Care Mental Health Team; and Doctor Pierides, a Consultant Psychiatrist.
106. The Tribunal unanimously concludes that although the pay deduction issue formed part of the Claimant's reason for leaving his employment, it did not materially contribute to any psychiatric injury as alleged.
107. The Tribunal did not have reliable evidence from which it could reach that conclusion having regard to the facts, the issues raised before the deduction from wages was made, the medical reports post dismissal, and the medical evidence generally, which are indicators of the level of contribution that the successful liability issues had towards the Claimant's injury.
108. The Tribunal repeats its conclusion above that had the 10 April 2015 deduction and the consequential complaint not occurred, on balance, the same events would likely have happened, on the same timings and the same psychiatric health issues would have arisen.
109. Although it is not necessary to state given the above conclusion, but the Tribunal also concludes that the medical evidence before it was not such that any rational apportionment could be made in this case, even if actual apportionment should be considered.
110. The Tribunal concludes that there are no damages awarded for psychiatric injury.

#### Care and Treatment Costs

111. The Tribunal reaches the same conclusion with regard to the Claimant's claim for care and treatment costs. The Tribunal concludes that these costs as claimed are not attributable to the acts of discrimination as found. Putting the Claimant in the position he would have been in had the tort not occurred, the care and treatment costs would still have arisen to the extent and level to which they are claimed. For the reasons set out above the Tribunal concludes that the care and treatment costs were not attributable to the discriminatory acts.
112. Further, as stated above with regard to psychiatric injury, the medical evidence before the Tribunal was not such that a rational apportionment could be made in any event.

#### Injury to feelings

113. With regard to injury to feelings, the Tribunal concludes when all matters are considered that the award falls in the lower band. The applicable *Vento* band at the date the Claimant's Tribunal claim was presented was £600 to £6,000.
114. The Tribunal has considered the general principles set out in **Prison Service -v- Johnson** [1997] IRLR 162 and that the award can encompass subjective feelings of upset.
115. The issue of any injury to feelings was not contemporaneously raised by the Claimant and significantly nor was it contained in any post dismissal medical reports.
116. However, the issue of the one day pay deduction was pursued by the Claimant during his employment and the payment was not made by the Respondent even when it was accepted, and the Claimant raised it as part of his resignation letter.
117. Therefore, although there is no persuasive evidence that the issue materially contributed to the Claimant's mental health condition, or the care and treatment costs, and the Tribunal finds on balance that the Claimant would have resigned in any event, the Tribunal concludes having regard to all the evidence above that an award of £5,000 is appropriate, which includes an uprating formula that incorporates the value of the RPI at October 2016 when the Claimant presented his claim and a **Simmons -v- Castle** uplift.

#### Interest

118. The Claimant is entitled to interest on that sum from the mid-point from May 2015 of 910 days at 8% which gives an additional sum of £997.26 (see Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013).

#### Credit for sums received

119. The Tribunal has made no award for loss of earnings and therefore credit for sums received is not appropriate. In any event the Tribunal declines to make any reduction to the amount awarded on the basis of sums received by the Claimant. It is true that the evidence revealed very large sums of money passing from the Claimant's brother to him, but they were not such that there should be any credit off-set.

#### Basic Award

120. With regard to the unfair dismissal claim, the Basic Award is £7,664. However the Tribunal concludes that further to section 122 of the Employment Rights Act 1996, it is just and equitable to reduce this sum because of the conduct of the Claimant before dismissal of not engaging with Mr Patrick, when he had written to the Claimant, despite no appeal process being available under the applicable procedure, and gave the Claimant an opportunity to speak to him to resolve the outstanding issues. The Tribunal concludes that the offer by Mr Patrick was

genuine and the Claimant's conduct of not availing himself of this offer results in a just and equitable reduction to the Basic Award of 25% giving a total of £5,748.

Compensatory Award and *Polkey*

121. For the reasons given above relating to the discrimination claims, when considering the *Polkey* principle the Tribunal inevitably reaches the unanimous conclusion that the Claimant would have resigned in any event absent the deduction from wages and consequent complaint issue arising in April 2015 and accordingly no loss of earnings arise.

Loss of statutory rights

122. The Tribunal makes an award of £500 with regard to loss of statutory rights.

ACAS Code of Practice

123. The Tribunal concludes that there has not been any specific breach of the Code that would make it appropriate to apply an uplift. The joint complaint was made voluntarily under the bullying and harassment procedure. Further, the matter was dealt with in a timely manner given the circumstances of all those involved, an outcome provided, and the procedure did not incorporate an appeal process.

124. Therefore, it is the unanimous judgment of the Tribunal that the Respondent shall pay to the Claimant compensation in the sum of £12,245.26 comprising a Basic Award of £5,748; loss of statutory rights of £500; injury to feelings of £5,000; and interest of £997.26.

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Employment Judge Freer  
Date: 21 May 2020