**Case No:2300485/2017 &**
**2301264/2017**

# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs. L Sooroojbally

**Respondent:** Her Majesty's Revenue and Customs

**Heard at: London South, Croydon**
**On: 9 and 10 March 2020 and the 14-15 April 2020 in chambers (video and audio via Microsoft Teams)**

**Before: Employment Judge Sage**
**Members: Mrs. V Blake**
**Ms. C. Edwards**

**Representation**

Claimant: Mr Kemp of Counsel

Respondent: Ms. L Robinson of Counsel

*The in chambers in this case has been a remote hearing. The form of remote hearing was V. A face to face hearing was not held because it was not practicable and all the issues in the chambers hearing could be determined in a remote hearing. The documents that have been referred to were in the bundle, the contents of which have been recorded*

# RESERVED REMEDY JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The Tribunal awards to the Claimant the sum of £17,000 injury to feelings together with interest of £7765 making a total sum of **£24,765**.
2. The Tribunal awards to the Claimant the sum of £8500 for personal injury plus interest of £1939.40 which makes a total sum of **£10,439.40**
3. The Tribunal awards to the Claimant a sum in relation to deductions made for sick pay of £2583.33 plus interest of £302.07 which comes to a total of **£2885.40**.
4. The Tribunal awards to the Claimant a sum of **£6450** for medical treatment.

5. The Tribunal makes a recommendation that the Respondent provides to the Claimant a written apology for the discrimination suffered within 21 days.

These awards are not subject to recoupment.

# REASONS

1. This is a remedy hearing following the Tribunal decision promulgated on the 12 January 2019. The Tribunal found that the Claimant had been subject to victimization in respect of her claims in the list of issues at pages 90-94. The matters that were successful and will be relevant to the issue of remedy are as follows:
    a. That in a meeting on the 26 June 2014 Mr Heywood focused purely on the questions that the Claimant had raised to being targeted stating it was a misconduct issue (c);
    b. On the 26 September 2014, Mr Heywood refused to postpone the Claimant's PMR meeting or even grant a comfort break, despite her having informed him that she felt she was going to collapse (e);
    c. On the 25 November 2014, Ms Collins send the Claimant an array of documents including the Claimant's PMRs for August and September 2014 which had been signed on behalf of the Claimant without her approval or consent and contained notes which did not reflect what was actually discussed with her (f);
    d. Mr Heywood proposed to issue the Claimant with a PIP for raising concerns on the 17 June 2014 when there was no warrant for a PIP (g);
    e. There was collusion between Mr Heywood and Ms. Marman in respect of the 26 June 2014 meeting notes which mentioned the discontinuation of the Claimant's temporary position and provided a detailed justification as to why the decision was taken by Ms. Marman when this topic was not discussed with the Claimant at any time (k);
    f. Mr Steven's decision not to uphold the Claimant's grievance in his report dated the 12 February 2016 (o);
    g. Ms Ward's ongoing failure to act on the Steven's report and/or follow the report's recommendations (p);
    h. In December 2016 Ms Bahra contacted the Claimant's GP to obtain her home address even though her home address was known to the Respondent's HR department and recorded on the Respondent's computer system (cc);
    i. In January 2017 Ms Spencer contacted the Claimant's husband at work breaching confidentiality rules to query the Claimant's address despite the fact that this was known to HR and recorded on the computer system (dd);
    j. On the 16 February 2017 Ms. Bahra made an unannounced home visit to the Claimant's home when she was signed off sick despite having contact with her (ee).

2. The Tribunal had before it two schedules of loss, one dated the 21 August 2018 at pages 65-6 and an updated schedule of loss served on the 23 January 2020 at pages 156-163. The Tribunal had an agreed medical report from Dr Briscoe dated the 16 December 2019 at pages 382-436. The Tribunal also had a considerable number of documents relating to the job vacancies at Higher Officer (HO) level and Senior Officer (SO) level at pages 842-2263.

**The Witnesses**

The Witnesses before the Tribunal were as follows:
The Claimant;
Mr Sooroojbally the Claimant's husband;
Mr Shelley Import Pre-Clearance for the Respondent

**Findings of fact**

**Evidence in relation to loss of promotion.**

3. The Claimant has been employed on a permanent full-time basis from 1 June 1999, first as an Administrative Assistant, she was then promoted to the grade of Administrative Officer working in Debt management in the Finchley office. She was then promoted to Officer Grade in April 2000 and started working in the Stratford Office. The Claimant was then transferred (at her request) to the Dorset House office in Waterloo.

4. During the year of 2006/7 the Claimant initiated a project on Onward Supply Relief and presented her findings in Northern Ireland. The Claimant then took maternity leave in 2008 and returned to work in 2009.

5. The Tribunal heard from Mr Shelley who gave evidence in relation to career progression at the HMRC and to the adoption of competency-based interviews. He told the Tribunal that when he first joined HMRC one had to be 'fitted for promotion' in order to be considered. That system was then replaced with a system that required line manager approval to apply for promotion. This then fell out of favour and was replaced with the Competency Framework which was introduced in 2012 and was in place at the relevant time. The system of career progression again changed in 2019 but the Tribunal did not hear any evidence as to what it was replaced with.

6. In 2009/2010 the Claimant was identified by her manager at the time to be 'suitable for promotion', at this time managers were required to give their approval to those in their team who wished to advance as we heard from Mr Shelley. Despite being identified as being suitable for promotions, she did not seek out any positions to apply for. In 2012 she was temporarily promoted to Higher Officer "HO" and during this time she deputized for her Senior Officer at Divisional Management meetings "DMM". The Claimant stated that during this time all her appraisals were good, or she received the top mark and her aspiration was to become a senior officer "in the next 3 years" (paragraph 2 of her statement). The Claimant stated that when she was acting up in the HO role, she allocated work to Higher Officers and Officers, managed the team's performance and collated statistics for the DMM. The Claimant's temporary promotion ended on the 31 March 2014.

The Claimant described in her statement at paragraph 55 of being within 'touching distance' of becoming a permanent HO by June 2014 and believed that she would have achieved this by June 2015.

7. The Tribunal also heard evidence from Mr Sooroojbally who has also worked for the Respondent for a considerable period of time (30 years). In that time, he has only managed to advance to the grade of HO but confirmed he had moved in different sectors 5 or 6 times. He also told the Tribunal that he was placed in a Talent Pool in 2013-2014 which was a one-year programme however despite this assistance he was not selected for promotion. He accepted that being on this programme was not a guarantee of promotion, it merely gave the person an opportunity to apply. He accepted that he did not secure promotion as a result of being a part of this development programme. Although Mr Sooroojbally blamed the issues relating to his wife's difficulties on his failure to advance, there was no evidence that this was the case. The Tribunal find as a fact that promotions were not guaranteed despite someone being identified as fit for promotion and placed in a Talent pool.

8. The Claimant in her statement at paragraphs 7-8 stated that it was her expectation to achieve a substantive promotion to HO and then "*would have hoped to reach the grade of SO within about two years of my substantive promotion to Grade HO*". The Claimant confirmed that this meant that she would have been promoted to SO by April 2017 (paragraph 55-6 of her statement). The Claimant stated that promotion to grade HO and SO was competency based which was seen at pages 325-7 of the bundle and in most cases specific qualifications were not required to be promoted to the higher grades. The Claimant in her statement at paragraph 11 stated that there had been numerous roles advertised at the grade of HO and SO that she could have applied for but was unable to do so because she had been "in a very anxious and unstable mind". She also stated that it was her belief that her manager would not support her application because she was taking HMRC to Court.

**9.** The Claimant accepted in cross examination that her last substantive promotion was 20 years ago. The Claimant was taken to page 814 in the bundle which was a document recording her appraisal results and it stated that in 2009/10 she was marked by Mr Jeffery her line manager at the time as being 'suitable for promotion', however Mr Rice in 2011/12 had deemed her to be 'not suitable for promotion'. The Claimant also conceded that her major project had been in 2006 or at the latest 2008 as we have referred to above and after that she had taken on no further projects. The Tribunal saw no applications for promotion in the bundle for level transfer to gain wider experience or for promotion to a higher grade. The Claimant explained that she had her baby in 2008 and wanted to wait until after he had started school in 2013 before she applied for any promotion.

**10.** The Tribunal heard that as promotions were competency based, a successful candidate had to show that they had taken on work over and above their pay grade or that they had undertaken project work or initiatives that extended their skill sets. The Claimant conceded that the only training she had pursued was mandatory training that was essential to her role (pages 800-6). The Claimant accepted that she did not take on CAP cases

when asked by Ms Bahra to do so in August 2016 because she had not undertaken the training, but she denied that she did not want to do the training. The Claimant was asked in cross examination about whether she failed to attend the training to undertake Strategic Export work and she could not recall. It was also put to the Claimant in cross examination that she failed to complete the Pacesetter and Own to Act training and again she was unable to recall. However, the Tribunal found as a fact in our liability decision at paragraphs 105-6 that the Claimant was given a PIP for failing to complete the training for Pacesetter and Own to Act. It was put to the Claimant that this evidence showed that she was not behaving in a manner that suggested she was keen to apply for promotion and her first answer was that her priority was to look after her little boy and when it was put again she could not recall**.**

**11.** The Tribunal find as a fact and on the balance of probabilities that the Claimant had failed to take positive steps to place herself in a position where she was likely to be successful in a competency based competitive process. The evidence about her expectations as a mother was also inconsistent as she had previously told the Tribunal that she had wanted to wait until her child was of school age before applying for promotions (see above at paragraph 9 where she stated she wanted to wait until 2013 before applying for promotions) but by 2016 her child was about 8 years old and would be in full time education. Her reply in cross examination also ran counter to her statement at paragraph 4 when she said that in 2014, she started to focus on her career because her son was aged 6 and 'did not require so much of her time'. The Tribunal conclude that the Claimant's evidence on why she had failed to take on projects, initiatives and training that would have increased her chances of promotion was inconsistent.

**Promotion to HO**

12. The Claimant identified a number of roles that she felt she was suited for at HO level at pages 869 (CITEX Operations/ HO Support), page 878 (Alcohol Fraud Investigator), page 889 (HO CITEX Tax Specialist), page 906 (HO Complaints Caseworker), page 908 (CITEX HO case Worker). However, it was put to the Claimant in cross examination that her opinion that she would have been "suited for" these positions was not the same of showing that she met the competencies for the roles.

13. It was put to the Claimant that at the time the first role at HO level at page 869 was advertised in July 2014, only one act of victimization had occurred (which was on the 26 June 2014) and there was no evidence that she had visited her GP (and had not gone to her GP with stress until May 2015). The Claimant accepted that she did not apply for this role and accepted that at the time she was "strong and resilient". The Tribunal also noted the evidence she gave above about her child no longer requiring so much of her time and therefore there appeared to be no impediments to her applying for this role, however she failed to do so.

14. The Claimant was then asked in cross examination about the second role she relied upon at page 878 which was advertised in September 2014 and again it was put to her that she did not apply for this and at the time, there was no significant impact on her health. The Claimant accepted that at this

time she did not go to the GP because at the time she was being 'brave'; she stated that if she was not having a problem with Ms. Marman and others, she would have applied for the job. It was also put to the Claimant that she was unlikely to apply for the role at page 878 because it necessitated the occasional overnight stay to attend meetings and training events and she had previously stated that she did not wish to travel outside of her postcodes and needed to be within one hour of her child's school. The Claimant explained that she had discussed this role with her colleagues and they told her that overnight stays were rare, however she did not apply for the role because in 2014 she "did not have a clear mind" and did not think her managers would support her application. However, the Tribunal noted that by 2014 the selection process was on competency based interviews and manager approval was no longer required.

15. The Claimant was then taken in cross examination to page 889 which was the role advertised in October 2014, which again had an expectation that the successful candidate was expected to have overnight stays away from home. At that time, she had not been to her GP complaining of stress and she still did not apply. She replied that she did not attend her GP practice every time something happens. The Tribunal find as a fact that although the Claimant stated in her statement that she was suited to this role, she did not apply and there appeared to be no reason why she was unable to pursue this opportunity.

16. The Claimant was taken in cross examination to the roles at page 906 and 908 which were advertised in February 2015 and again this was before she had gone to her GP. The Claimant again gave the same answer that she was not the sort of person who attended her GP lightly. Again the Tribunal heard no reason as to why she was unable to pursue these opportunities that she maintained she was suited for. Her child was at school and there was no evidence before the Tribunal that at this time, she was suffering from ill health such that she was prevented from applying.

17. The Claimant at paragraph 13 of her statement also provided a list of nine further roles at HO grade (pages 890, 903, 932, 936, 941, 943, 1044, 974, 973) that she felt she could have applied for and which she felt she had a good chance of success based on the job profile. In cross examination it was put to the Claimant that the jobs at pages 890, 903 and 932 were dated November 2014, January 2015 and March 2015 respectively and at those times, she had not been to the GP so she could have applied but she did not. She referred to her previous answers and stated that at the time the grievance process was underway and felt that it "*would not be good in the middle of a grievance and that the manager has to approve the application*". The same question was put about the roles identified at pages 936 (dated March 2015), 941 (dated April 2015) and 943 (dated April 2015) that the Claimant had not been to the GP and she could have applied if she wanted to and again, she said that no manager would support the application. The Claimant gave the same answers. The Tribunal find as a fact that there appeared to be no reason why she could not have applied for these roles and as she had not been to her GP and was not suffering from ill health that may have prevented her from pursuing these opportunities. It was also the case again that manager approval was not required should an employee wish to pursue promotion.

18. The Claimant was taken to the role at page 1044 which was advertised in September 2016, it was a customer facing role involving Tribunals. It was put to the Claimant that at the time this role was advertised it was her evidence that she would already be an HO; this was a specialized role and she was unlikely to succeed in this application. The Claimant disagreed saying that in her role she carried out face to face interviews and in some instances had to give evidence in Court, she therefore felt she possessed the relevant experience. The Claimant was taken to the role at pages 973 and 974 which were both advertised in August 2015 and by that date she had been to her GP but was not on medication and had not taken any time off sick therefore she could have applied for the role; however her answer was that her manager would not approve it.

**Promotion to SO**

19. The Claimant identified a number of roles that she felt she was suited for at SO level and they were pages 2095 and 2159 SO Team Leader, 2146-7 SO Business Manager, page 1763 Customs and International Trade (CITEX), pages 1519, 2149, 2157, 2160 Front Line Manager.

20. The Claimant was asked in cross examination about these roles she had identified in her statement in the position of SO. The Claimant was taken in cross examination to page 1769 which was an SO role advertised in March 2015, it was put to the Claimant that she was unlikely to get this role as it was too soon after any promotion to HO. The Claimant disagreed. However the Tribunal noted that in her statement at paragraph 56 she stated that she would have secured an SO role by April 2017, the Tribunal therefore find as a fact that even on her best estimate, she was unlikely to secure a further promotion to SO until April 2017 at the earliest. Her evidence that she had a chance of securing promotion to HO and SO by March 2015 was contradicted by her statement and was found to be lacking credibility.

21. The Claimant was taken in cross examination to the SO roles at pages 2159 (dated November 2016) and 2095 (dated June 2017), both were specialist intelligence roles and it was put to her that she was unlikely to secure these roles as she did not have the relevant experience. The Claimant expressed the opinion that she had done intelligence work in Customs and Excise and therefore could show relevant experience. The Claimant was asked about the role identified at page 1763 which was advertised in March 2015 and it was put to her that it was unlikely she would have been promoted to an SO as in June 2014 she had not applied for any HO roles; she replied that it was possible to be promoted from HO to SO within a year but the Tribunal saw no examples of when this had happened (or how usual it would be). The same point was put to the Claimant about the role at page 1519 which was dated September 2014 and in fact it would mean that she would have to be promoted to HO and then to SO immediately afterwards; the Claimant disagreed that such a quick promotion through two grades would be unlikely as she stated that as an “HO I did more than anyone else on the floor, I was deputizing for the SO at the time, there was no specific time limit you would have to serve”. Although it may have been the case that the Claimant was performing the HO role on an acting basis, there was no evidence that the

Claimant had applied for a substantive position using the example she gave to the Tribunal on an application form. As there were no applications for any promotions in the bundle it was impossible to predict whether the Claimant would have secured an HO role and whether after promotion she would have then been successful a second time in an application for an SO role.

22. It was put to the Claimant in cross examination that the SO roles in the bundle at pages 2149 (August 2016), 2157 (November 2016) and 2160 (December 2016) all had the requirement for the successful candidate to travel and stay overnight and it was therefore unlikely the Claimant would have applied because she had told the Tribunal that she needed to be within one hour of her child's school. However, the Claimant disagreed that the posts would entail overnight stays as the Respondent did not have the funds to pay for travel and people hardly ever stayed overnight at different locations. Although this may have been the Claimant's personal opinion, the Tribunal noted that as overnight stays were part of the job specification, it was likely that the successful candidate for the role would be expected on occasion to do this

23. The Claimant at paragraph 13 of her statement provided a list of a further eight roles at SO level (pages 2076-7, 2081, 2087, 2102, 2104, 2112, 2091, 2142, 2162) that she felt she could have applied for and which she felt she had a good chance of success based on the job profile. The Claimant was asked about the roles at grade SO at page 1503 (replicated at 2076-7) which was dated January 2017 and it was put to her that this was not an area she was familiar with which was the role of Private Office Business Manager, the role was described as 'challenging and fast paced'. The Claimant explained to the Tribunal that she had managed an office and staff. It was put to the Claimant that she could have applied for the role at page 1519 dated September 2014 but did not and it would be highly unlikely she would be successful if she had only become an HO in June 2014 and again she said she did not apply because she "wouldn't be supported" and she "did not have a clear head". The Claimant's answers were the same when she was taken to the roles at page 2091 (April 2017) and 2142 (June 2016).

24. The Claimant did not accept she had no relevant experience for the role advertised in January 2017 at page 2081 which required a tax professional as in her view "some managers came in with no knowledge of tax". The Claimant accepted that the role that was advertised on page 2087 dated March 2017 she could not have applied for due to her health. The Claimant was taken to the roles at pages 2102-3 which required agile project management skills (dated August 2017) she did not accept she needed to be trained in these skills and did not show that she had appreciation of what this meant. The Claimant did not accept that the roles on pages 2104, 2112 (dated August and September 2017) were outside of her relevant experience even though the first was working in the NAO and the latter was an IT project; however she again stated that she would not have been able to apply for these roles due to the state of her health at the time. Although the Claimant suggested that she could have applied for the IT project role, there was no evidence before the Tribunal that she possessed the relevant competencies required, which would have included some specialist understanding in technology and IT skills.

25. The Claimant accepted in cross examination that in the period from 2015-17 promotion was based on competency examples and interviews. It was also accepted that the only example she could provide of work done over and above her pay grade was the example she had given in 2008 when she gave a presentation in Northern Ireland, however the Claimant did not accept that this meant that it was unlikely she would be promoted in 2015. The Claimant gave an opinion in cross examination that she was "pretty certain" she would have been promoted to an HO grade as she was "very ambitious". Although this was the Claimant's personal view it was not corroborated by any positive action on her part. If she had been ambitious the Tribunal found it hard to understand why she had not applied for any promotions since her previous promotion in 2000. It was also noted that she was identified as being suitable for promotion in 2010 but failed to take any positive action to apply for any new roles either on the same level to widen her experience or at a higher level. It was also of note that during the time when she was acting up in the HO role she did not take the opportunity to put in applications for promotion based on this experience. The Tribunal felt that this was telling as during this two-year period, her child was at school and there were no impediments to her advancement, however no action was taken by her to further her career. This did not suggest that the Claimant was very ambitious.

26. The Claimant gave similar answers to explain why she had not applied for any of the many roles that she referred to in her statement. She stated that she could not apply because her line manager would not have supported her application, however this was no longer a requirement for applications when the competency-based system was introduced in 2012. She also stated that she was in an unstable and anxious state of mind but again this was not supported by the evidence which showed that her first trip to the GP was in August 2015 and on that date, she was not on any medication. There was little evidence to suggest that she was unable due to ill health to apply for roles up until August 2015.

27. The Claimant was taken in cross examination to her original schedule of loss at page 65-6 of the bundle dated 21 August 2017 which only included a claim for the time when she was placed on half pay; there was no claim for loss of promotion. It was put to her in cross examination that there was no reference in this schedule to her belief that she would have been promoted twice in 2015 and then in 2017. The Claimant was asked why this was and her reply was "can't say". It was put to the Claimant that the reason these heads of claim did not appear was because she did not believe it to be true and she replied that she found that comment to be 'patronising' but then said she could not remember. The Claimant accepted that the updated schedule of loss at page 156 was served on the 23 January 2020 and had been prepared about one year after the Tribunal's decision. It was put to the Claimant that had she believed that her plan to be promoted twice had been knocked off course, it would have been included in the first schedule of loss and she replied "I don't know, my brain is muddled up". The Tribunal noted that at the date the first schedule of loss was drafted, the Claimant's evidence was that she would have been promoted to an SO grade by April 2017 (paragraph 56), if that had been the case and if that was her genuine belief at the time, it would have been included in her original schedule of

loss. The Tribunal therefore conclude that the Claimant's evidence on her prospective promotion to SO was not consistent.

28. It was put to the Claimant that she had not provided a career development plan for 2014, she stated that she had not saved it on her personal drive, and it got deleted. It was put to the Claimant that she didn't have a career development plan in 2014 and her reply was that it was 'something like a CV', however the Claimant had declined to provide a CV to the Respondent. The Claimant then stated that she had no opportunity to talk about career development because her managers were against her. However, it was put to the Claimant that at the time in 2013 and 2014 she got on well with Mr Hayward which is when career development would have been discussed; however, the Claimant disagreed with this. The Tribunal noted that although the Claimant did not appear to accept in cross examination that career development was discussed in the annual appraisal, we saw evidence that this was the case as shown on page 814 which included comments about promotion which was discussed in the appraisal process. The evidence of the Claimant was not credible on this point.

29. In the light of this evidence the Tribunal find as a fact and on the balance of probabilities that there was no evidence that the Claimant had been ambitious and had intended to apply for promotion twice. There had been no impediment to her applying for roles until she became unwell in October 2015 but there was no evidence of any steps being taken to pursue any of the opportunities that have been identified before that date. Even when she had been identified as being suitable for promotion there appeared to have been no preparatory work taken by her to apply for advancement and no steps had been taken to apply for project work which would help with any applications. When the Claimant was acting up in the HO role, no steps were taken to apply for roles using this experience and after it ended no work was done to progress or advance her promotion prospects. There was no evidence to suggest that the Claimant was 'on track' to receive a promotion or that she was in 'touching distance' of a permanent HO role. There was also no evidence to suggest that, had she been promoted to an HO level she would then have succeeded in advancing to an SO level within a short space of time. The Tribunal found the Claimant's evidence on this issue to be contradictory, as in her statement she opined that this would take two years (by April 2017) however in cross examination she suggested she would advance to SO level almost immediately after securing promotion to HO level.

30. We heard from Mr Shelley that in his view it was rare for a person to succeed on their first application as the competency-based application system was time consuming and competitive, it often required a number of applications before one was successful. Advancement to SO level in a short space of time after promotion to HO level would be the exception; he gave his view that the Claimant's chances of success at less than 1% based on her career background and his role as a manager of 300 people. The Tribunal noted that Mr Shelley's view of the difficulties experienced by those seeking promotion appeared to have been experienced by Mr Sooroojbally who had only managed to secure promotion to HO level despite being placed in a talent pool.

**Personal Injury**

31. The Tribunal were taken to the GP records at pages 236-7 and it showed that there were no entries in 2014 that referred to stress and anxiety. The Claimant said that at this time she was a "*strong and resilient person. I do not want sympathy from the world. I try and be positive and work with the HMRC – I got on well with Steve (Heywood) before*". It was then put to the Claimant in cross examination that in her statement at paragraph 15 she indicated that following the meeting with Mr Heywood on the 26 June 2014 she suffered neck pain, headache, anxiety and low mood and she linked these complaints to the detriments above at paragraph 1(a) to (e) above which dated from June 2014 to January 2015. Even though the Claimant stated that she suffered from these symptoms, she did not seek advice or assistance from her GP explaining that she was not someone who sought "sympathy" and did not wish to be signed off work. The Tribunal noted from Dr Briscoe's report at paragraph 127 (page 402) that although the Claimant developed symptoms of stress it did not amount to a specific psychiatric disorder.

32. The Tribunal were then taken to page 236 of the bundle which was a GP entry for the 12 May 2015 which recorded "*recently brother died suddenly very tearful findinf (sic) work very stressful and unsupportive*". It was put to the Claimant that other things were going on at the time which she accepted. This was 4 months after the victimisation in January, and it was put to her that there was no mention of stress anxiety low mood or neck pain. The only mention of headache was in connection with a chest infection. The Claimant told the Tribunal that if she had told her GP about her symptoms, he would have signed her off, however it was noted that at that time the Claimant was signed off sick with a chest infection. There was no corroborative medical evidence before the Tribunal to suggest that in the period from June 2014 to May 2015 the Claimant suffered from anxiety and low mood related to work.

33. The Claimant was then asked about the period February 2015 to February 2016 (detriment (o) and (p) at paragraph 1 (f) and (g) above). Again the Claimant was taken to her GP notes that covered this period of time, she accepted that during this time she attended her GP with a chest infection but did not mention stress during her consultation because it was her evidence that she did not want to be signed off sick.

34. On the 9 October 2015 the Claimant was signed off sick for two weeks with stress (page 235) and it was recorded that she was "*undergoing grievance procedure at work which is causing her a great deal of stress. Tearful when discussing problems*". The Claimant when taken to this entry became very distressed and stated that she used to be a strong and resilient person but now she was 'broken'. The Claimant was off sick from the 9 October to the 3 December. It was evident to the Tribunal that at this date the Claimant appeared to be deeply distressed and when being taken to the GP records of this consultation she was visibly upset. The Tribunal was taken to the GP records on page 233 which was a consultation on the 2 November 2015, it recorded that there were no thoughts of self-harm and the Claimant didn't feel ready to go back but wanted to try a phased return to work. The GP record then recorded on the 19 November that the Claimant tried a phased

return to work but it was not successful because the manager was "*not helpful*" and was "*causing stress because she will not stop grievance procedure*". There was also a mention of stress being caused by noisy neighbours in the GP record, but the Claimant denied the issue with the neighbours caused her stress. The Claimant accepted that she returned to work on the 3 December 2015.

35. Dr Briscoe concluded that the Claimant developed an adjustment disorder as a result of receiving Mr. Crane's report dated the 8 September 2015. He concluded at paragraph 128 that her symptoms were reasonably mild, and she was able to return to work in December 2015. However, Mr Crane's report was not found to be an act of victimisation by the Tribunal. Although Mr Crane's report itself was not an act of victimisation, it investigated the two grievances raised by the Claimant on 6 August 2014 and the 19 March 2015 and reached findings after having investigated the matter. This would have been the first time that the Claimant learnt of the attitude of her managers to her protected acts and their view that she had no right to raise a grievance and of their defensive attitude towards her. The report dealt with acts of victimisation above at paragraphs 1 (a)-(e) of this decision and would have caused the Claimant distress to read what had been said about her by her colleagues and managers over the period from 20 June 2014 to November 2014. The Tribunal conclude on the evidence that the adjustment disorder was an injury that flowed directly and naturally from the acts of victimisation in 2014. It also caused the Claimant hurt to her feelings.

36. The Claimant did not appear (from the GP records in the bundle at pages 232-3) to visit her GP from 19 November 2015 to the 17 October 2016. This was corroborated by Dr Briscoe, the joint medical expert appointed in this case, in his report on page 413 at paragraph 11.3. It was put to the Claimant that Mr. Stevens' report dated the 12 February 2016 did not appear to cause a deterioration in her health and she appeared to agree with this saying "*If I didn't go to the GP, I was fine. If the GP wasn't helping, I wouldn't go*". The Claimant also added that she did not want to be signed off sick or to have a bad sickness record. The Tribunal therefore find as a fact that as the Claimant did not visit her GP during this period of time and she was not taking any medication, her stress and anxiety had resolved or had improved to the extent that no further medical assistance or support was required.

37. Dr Briscoe went on to conclude that the adjustment disorder then developed into a moderate depressive episode in November 2016 (see page 408 at paragraph 5.1). He gave his opinion that the deterioration in the Claimant's health was as a result of "being managed by Ms Bahra". The Tribunal note that we did not find Ms Bahra's management of the Claimant to be an act of victimisation. It was noted from the list of issues at pages 93-94 that the acts of victimisation above at paragraphs 1(f) and (g) were on the 12 February 2016 and the ongoing failure to act on the Stevens' report (by Ms Ward). The next act of victimisation was in December 2016 (page 94), there appeared to be no direct link between the next act of victimisation and the deterioration of the Claimant's condition.

38. However, the Claimant described it in cross examination as being a "*build-up of events*" and stated that "*any normal human being will break up*". The Tribunal accept the Claimant's evidence that there had been a build up in the incidents and having received the Stevens' report, which contained clear findings of collusion, breaches of confidentiality and evidence of a detrimental change in attitude towards the Claimant such that her managers were considering taking legal action against her. Far from resolving matters, the Claimant was placed in an extremely difficult position following the Stevens report where she was left with no action being taken against those who had been found to have breached her confidentiality and no meeting with the Claimant on how to positively move forward. Although the Claimant pursued an appeal, the outcome dated the 21 April 2016 only dealt with procedural shortcomings and as such did not suggest a resolution. The Claimant in her statement for the liability hearing at paragraph 66 stated that she expected Ms Ward to speak to her within 3 months of the date of the appeal, this did not happen. Then Ms Bahra took over as line manager on the 1 August 2016 and again the Claimant stated in her statement for the liability hearing at paragraph 67, that she again expressed the hope that someone would speak to her about implementing the recommendation of the Stevens report, but no one did. The ongoing failure to act on the Stevens report was a significant cause of distress for the Claimant that left her feeling unsupported and vulnerable. The Tribunal conclude that it was likely that her adjustment disorder made her more vulnerable to developing a more serious impairment, which developed in November 2016 after the Respondent appeared to fail to take any action on the outcome of the Stevens report.

39. On the 17 October 2016 the Claimant visited her GP (page 232) and was signed off sick with stress and at this time was prescribed with medication for her condition for the first time. The Claimant was signed off sick until the 11 January 2017. She briefly returned to work but had to take further time off sick from 26 January 2017. The Tribunal were taken to a GP record of a consultation on the 26 April 2017 which recorded that the Claimant was still suffering from depressed mood but had 'no suicidal ideation currently' (page 231). It was then recorded by her GP on the 14 June 2017 that she had improved quite a bit and was fit for work. Her last date on sick leave was the 26 June 2017.

40. After the visit to the GP on the 14 June 2017 she did not visit the GP again until the 5 December 2017 and that was with a cough (page 277). There was no evidence before the Tribunal that the Claimant had cause to visit her GP with symptoms of stress and anxiety during this six-month period and this was also the conclusion of Dr Briscoe (page 421 at paragraphs 25-6).

41. The Tribunal then saw at page 274 that she saw the GP on the 22 February 2018 with a depressive disorder and she was not sleeping well and was anxious about the future. The Claimant also mentioned that she had some suicidal thoughts and her concentration was poor. As a result of this, the Claimant attended a memory clinic on the 22 May 2018. The letter dated the 5 June 2018 from the clinic confirmed that the Claimant had reported "poor concentration and short-term memory". The letter also stated that the Claimant's husband provided collateral information stating that "he has to

ensure he is on hand when his wife is cooking due to incidents of her not recalling she had left something on the hob or to turn on the oven".

42. The Tribunal find as a fact and on the balance of probabilities that the Claimant suffered from a depressive disorder and we conclude that this was as a direct and natural consequence of acts of victimisation. There was no evidence that prior to the acts of victimisation the Claimant had suffered from any form of mental impairment and she rarely visited her GP. There was a clear link between the acts of victimisation and the more recent visits to the GP complaining of stress and anxiety and then to depression. Although the worsening of the symptoms did not directly match the dates of the acts of victimisation above at paragraphs 1(a) to (j), the Tribunal accept the evidence of the Claimant that it was due to the gradual build up of events. The situation was exacerbated by the Respondent's failure to discuss the outcome of the grievance with her or to take any action on the findings and conclusions of his report. The Tribunal also accept that the Claimant's health suffered due to the Respondent's failure to recognise the many failings that had been identified in the Stevens' report or to apologise to the Claimant as she stated in her witness statement at paragraph 25 this led to her feeling demoralised, worthless and unvalued.

43. Dr Briscoe concluded that if the Claimant were provided with the right treatment (thirty sessions of CBT incorporating mindfulness and acceptance and commitment therapy ACT see paragraphs 7.1-2 at pages 409-410 of the bundle) she was likely to recover. He provided an opinion that he expected the Claimant to recover from her moderate depressive episode and severe anxiety within 12 months of treatment. Her loss of self esteem and confidence are likely to take a further two years to return to her pre-2014 levels (paragraph 3.3 at page 406).

**Care provided by the Claimant's husband.**

44. The Claimant attended her GP on the 13 November 2018, and she was recorded to have said that she "*struggles with daily chores, but now takes longer*". The Claimant was taken to her schedule of loss at page 157 where she stated that from the 16 February 2017 she depended on a high level of help from her husband "*to manage with basic day to day activities such as cooking, cleaning, gardening, washing and providing extensive emotional and other support*". In her statement at paragraph 53 she went further stating that she was now no longer able to "cook clean, garden or sort out the laundry". The Claimant is claiming in respect of 12 hours cooking per week, five hours cleaning, two hours gardening five hours washing and five hours ironing that she states have been carried out by her husband since 2017. The Claimant is claiming the sum of £49,107.68 for this head of claim (page 158 of the bundle).

45. The Claimant was then taken in cross examination to the typed schedule that her husband provided to Dr Briscoe at page 416 and it was put to her that the document did not say that the Claimant could not do cooking, cleaning laundry or gardening but suggested that she often left the cooker on or forgets to switch the microwave. This strongly suggested that she still cooked as the document at page 416 stated she can "*hardly* cook from scratch". The Claimant when taken to this document stated that she had no

focus and could not complete a task from start to finish. The Claimant told the Tribunal that she was more of a hinderance. The Claimant accepted in cross examination that the list prepared by her husband did not say she could not do the ironing, the washing or the gardening. It put to the Claimant a second time that the list on page 416 did not say she could not wash, clean, garden or iron and it was not consistent with what she said at paragraph 53 of her statement where she stated she was no longer able to do these things and she replied "I don't say I can't do – I hardly do. As time progresses it is getting worse". The Tribunal find as a fact and on the balance of probabilities, the evidence in paragraph 53 of the Claimant's statement was not corroborated by the documentary evidence in the bundle or by the Claimant's evidence given in cross examination. We conclude on all the evidence that the Claimant was able to carry out domestic tasks, but she took longer to do so and at times needed help from her husband.

46. In re-examination the Claimant was taken to page 392 of Dr Briscoe's report where she confirmed in the consultation that took place on the 25 October 2019) that she no longer cooked (paragraph 38 and 39). In Dr Briscoe's report at paragraph 11.4-5 he concluded that the Claimant's condition deteriorated markedly in respect of her concentration problems after February 2017 and this was first mentioned by the Claimant to her GP in June 2017. Dr Briscoe did not see a discord between the Claimant being able to attend work with the considerable assistance she required at home from her husband due to the structure in a work environment that was not present in the home (paragraph 11.5).

47. The Claimant was then taken to a letter dated the 30 October 2017 from the Hertfordshire NHS Wellbeing Service which stated that the Claimant was "maintaining her self-care and her responsibilities as a mother…", and it was put to her that she was not unable to carry out these tasks. Her first reply was that she did not know what this entry meant, then she stated that *"it means that I can't be left on my own. I can start but can't do things to this standard*". The Claimant was taken back to the GP entry on page 265 dated the 13 November 2018 where she stated she struggled with daily chores but took longer and she replied that "I may take 2 hours to do one dish". This reflected a contradiction in the Claimant's evidence as to the level of support she required on a daily basis from her husband. The contemporaneous documentary evidence showed that the Claimant was able to carry out tasks but took longer to do so. There was no documentary evidence that she was unable to carry out domestic tasks.

48. Mr Sooroojbally stated in his evidence in chief at paragraph 13 that he could not allow the Claimant to do cleaning, washing, ironing and gardening in case she "burns or hurts herself". He also added that he had to get their son ready in the morning and prepare the meal in the evening and get their son ready for bed. It was put to Mr Sooroojbally that it was difficult to hurt yourself putting clothes into and getting them out of a washing machine and he replied that she "*may close the door on her hand or leave the clothes inside and forget*". He confirmed that the Claimant now 'helped' with the gardening whereas they used to do it together. It was put to Mr Sooroojbally that what he was describing in his statement are the tasks that any parent has in respect of maintaining a normal family life and he agreed that where both parents work full time (as they do), they would expect to share the

household chores equally and that being the case the 29 hours of domestic chores he is claiming for in the schedule of loss, 14.5 hours are his responsibility. He denied this saying that the "*contract of marriage did not say this, and I have other things to do, she does the things at home*". He accepted that before the Claimant became ill, she did more than he did. He confirmed in cross examination that he had charity work he did on a Saturday and Sunday and when he was out, she did the housework. Mr Sooroojbally's evidence that he was often out at the weekend engaged on charity work was inconsistent with the Claimant's evidence that she could not be left alone (above at paragraph 46).

49. Mr Sooroojbally stated at paragraph 16 of his statement that he had been on sick leave in 2016 and implied that this was connected in some way to the treatment of the Claimant. He stated that the ill treatment of his wife "*has also destroyed [his] own career progression*". He was asked in cross examination about the reason for his sickness absence and he accepted that it was for water on the brain which was a 'medical problem'. He told the Tribunal in cross examination that in his opinion, he suffered from this condition because of what happened to his wife. However, there was no evidence to suggest that his medical problem was related in any way to the Claimant's situation. The Tribunal noted that Mr Sooroojbally appeared to be reluctant to tell the Tribunal the nature of his condition or how it arose, and he failed to provide any evidence to support his claim that his medical condition had been caused by the Respondent.

50. The Tribunal conclude on the balance of probabilities that the evidence of the Claimant and her husband did not appear to be consistent or credible that she needed such a high degree of help and support that is now suggested to the Tribunal. It was not suggested in the document at page 416 that the Claimant was unable to do housework, gardening or cleaning, these were not mentioned in his document which was prepared very recently. There was no evidence to suggest that the Claimant's husband had to keep her away from these tasks. This assertion was felt to be unreliable. The consistent evidence before the Tribunal was that the Claimant took longer to carry out these tasks and he had to be on hand when she was cooking as she was 'hardly' able to cook from scratch. Mr Sooroojbally also pursued a claim for the personal care he provided to the Claimant however there was little evidence as to what this was apart from what he described as her not being "bothered" to take care of herself and that he laid out the Claimant's clothes on a daily basis. This was not corroborated by the Claimant's consultation with the Wellbeing service in 2017 where she stated that she attended to self care and her duties as a parent. We conclude that this head of claim was also significantly exaggerated.

51. It was put to the Claimant in cross examination that she was off sick from the 17 October 2016 until the 17 June 2017; she returned to work until the 13 August 2018 and she did not say that she was unable to travel to and from work. The Claimant replied that she is not able to go on her own, she travels to work on the train with her neighbour and a colleague picks her up from the station as this was a reasonable adjustment. However, this evidence did not appear to be consistent with what she told Dr Briscoe at page 391 at paragraph 31 where she stated that she "goes to work on her

own". Again, the Tribunal were concerned that the evidence before us in relation to the high degree of care that the Claimant required, was not consistent and at times appeared to be exaggerated.

**Claim for cost of treatment**

52. The Claimant is claiming for the cost of CBT, to be provided by a Harley Street practitioner (see above at paragraph 42). The Tribunal saw in Dr Briscoe's report at page 409 paragraph 7.2 that he recommended that the Claimant should have up to thirty sessions on a weekly basis of CBT incorporating mindfulness and acceptance commitment therapy (ACT). It was put to the Claimant that CBT can cost between £40 and £100 (NHS website). The Claimant replied that when this was discussed with Dr Briscoe, he recommended that she go 'private' and she wanted to go with what he recommended. The cost per hour was stated to be £215, the Claimant produced an email during the hearing on the 10 March 2020 from a business called 'Cognacity' confirming this was the rate for a consultation of up to one hour. The Tribunal accept the evidence of the Claimant on this point, that this was the treatment recommended by Dr Briscoe and was identified to treat the exact condition that the Claimant suffered from. We did not feel that the cost per hour for this particular treatment to be excessive or unreasonable taking into account Dr Briscoe's opinion about the efficacy of this treatment on the Claimant's recovery.

**Sick Pay**

53. The Respondent did not dispute the Claimant's claim for the wages deducted due to her sickness absence, £2583.33. This will be included in the judgment.

**Cases referred to by the Claimant**
Cooper Contracting Ltd v Lindsey UKEAT/0184/15/JOJ
Giambourne v Sunworld Holidays Limited [2004] EWCA Civ 158
Prison Service v Johnson [1997] ICR 275 at 283
Commissioner of the Metropolitan Police v Shaw [2012] IRLR 291 (also by the Respondent)
Alexander v The Home Office [1988] IRLR 190 (also by the Respondent)
Lycee Francais Charles de Gaulle v Delambre UKEAT/0563/10/RN

**Cases referred to by the Respondent.**
Essa v Laing Ltd [2004] ICR 746 Court of Appeal
Sheriff v Klyne Tugs (Lowestoft) Ltd [1999] ICR 1170
Ahsan v The Labour Party EAT/0211/10 [2011]
Marshall v Southampton and South West Hampshire Health Authority (Teaching) (No 2) [1993] ICR 893 at 932
London Borough of Hackney v Sivanandan and others [2011] ICR 1374
BAE Systems (Operations) Ltd v Konczak [2018] ICR 1
Thaine v London School of Economics [2010] ICR 1422
HM Prison Service v Salmon [2001] IRLR 425
Simmons v Castle [2012] EWCA Civ 1288
De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879
Vento v Chief Constable of West Yorkshire Police (No 2) [2003] ICR 318

Miles v Gilbank and anor [2006] ICR 1297

**Submissions**

54. Both parties produced written submissions which were referred to by the Tribunal but will not be replicated in this decision. The representatives made the further oral submissions.

**The Respondent**

55. Counsel stated that she disagreed with Mr Kemp's submission that the burden of proof was the 'but for' test, this was not a case of failure to mitigate. It is for the Claimant to show that the loss sustained flows from the act complained of. It was stated that it was not the but for test that applied but the test of the "consequences which naturally arise directly from the wrong". Therefore, the Claimant must show that the reason she did not get a promotion to HO and SO arise from the acts of victimisation. The Claimant would have to prove that the acts of victimisation are naturally and directly associated. The Claimant only might have got the job and none of the acts of victimisation were found to have anything to do with jobs she wanted to apply for. There was no evidence before the Tribunal to support this and it only appeared in the schedule of loss one year later, it is remarkable that it should appear then with a big price tag and no evidence being presented at the liability hearing.

56. Secondly, looking at the likelihood of her being promoted, if you are not with me on the first submission, it is only an opportunity to apply, it is only the loss of a chance to be promoted to HO and SO. The Claimant said she couldn't apply because management would not support her but you did not need management approval since the competency based system was introduced. Also past indicators give you the best indication of future circumstances, it counts here.

57. If someone has been promoted before or has been making significant inroads into career development, there would be evidence of a loss of a chance. The Claimant has produced no evidence that she was even considering going for promotion. I say therefore there was no chance. There was no career development plan, there was nothing in her appraisals. What she told the Tribunal was not a vague plan, it was that she would be HO by June 2015 and SO by April 2017. If that were true, I would expect it to be in the original evidence, not for the Tribunal to be told of this head of loss in the schedule of loss 8 weeks ago and for there to be some contemporaneous evidence and to see a pattern of attempts to be promoted. If that was the plan in 2015 and she knew it was competency based, you need to have practice runs, you either apply for every role in that area or you apply for more jobs in other areas to extend skills.

58. Even if we are being kind to the Claimant and saying she did not want to move out of the area, she did not apply for any roles. Some of the roles she referred to were after only one act of victimisation (Steve Heywood) and at a time when there was no evidence in the GP records to show she was suffering from stress. If the Claimant felt her manager was victimising her, she would have made as many applications for promotion to get out. The

Claimant gave it away by saying that the people in CITEX had been there years and years because they liked the job and it suited them and they are happy to do that. I say she had no intention of getting promoted and that is why she made no applications.

59. If the Tribunal is not with me, I say there was only a low chance of 1% taking into account the evidence of Mr Shelley who has direct experience (of himself and for others) of getting a promotion to HO and then to SO in the timeframe the Claimant suggested. To do so would be wholly exceptional. It was unlikely for this Claimant as there was no evidence to show that she stood out, 14 years at the same level is not meteoric. Nothing the Claimant has provided showed any training apart from mandatory training. She also turned down CAP, Strategic and offers to work outside her postcodes. She could not prove to anyone that she had the sort of attitude or skill. In respect of Pacesetter, the Claimant hadn't done the training which was e-learning and as a result she was placed on a PIP. Own to Act the Claimant hadn't done the work. I say there was a very low chance of promotion once and certainly not twice. There was a low chance of promotion to HO perhaps a 10% chance and no chance of promotion to SO on a probability of less than 1%.

60. In relation to the claim for loss of earnings the Claimant wants the money for the job as if she had been appointed. This does not represent the loss of a chance. You must discount by the loss of a chance calculation.

61. In respect of the Claimant's claim for when she was placed on half pay the Respondent has no issue and the sum is £2583.33.

62. On the issue of the claim for gratuitous care you cannot trust what Mr Sooroojbally says. He refused to answer questions as to why he was off sick in 2016. He first denied he was off sick then could not recall why he was off sick. He then said he was but wouldn't concede why he was off sick unless he was shown the documents. If you were off sick from September to December 2016 you would remember why you were off sick. He was totally disingenuous. He accepted he had water on the brain, which was entirely different to what he said in paragraph 16 of his statement. He tried to give the impression that his mental health suffered. He then accepted that he had water on the brain, and this was a physical problem and not attributable to the Respondent.

63. Mr Sooroojbally's evidence was shot down entirely about the care he gave to his wife. He would not answer questions with a straight answer. He accepted he watched her cook, then she did not cook. She starts a job then he takes over. He says that she is allowed to put oil into a pan but not anything else. However on Saturdays he said he did voluntary work and is out. His evidence was entirely inconsistent and it was entirely inconsistent with the evidence on page 215-6 on the 30 October 2017, where she stated that she was maintaining her self care and her responsibilities as a mother, this seems pretty clear that she went to the service and told them that. Equally by the time you get to the agreed medical expert evidence of Dr Briscoe, it does not say anything like what we see in the statement now. It is also consistent with dissociation, I would call it numb, you may forget what you are doing and walk away. It was not suggested to Dr Briscoe that the

Claimant was unable to do any tasks. Dr Briscoe says she is able to go to work and she then dissociates herself. It is not consistent with her not being able to do anything. He let slip that they are now doing fifty fifty, it is a bit of a shock that he is having to do his share. He let slip that they do the gardening and he is in the kitchen while she cooks.

64. This is nowhere near to the level you are being asked to believe. It is also inconsistent with going to work full time from June 2017 to the present day. The Claimant had two weeks off in 2018 but the rest of the time she had worked full time.

65. Also, the Claimant said for the first time today that she did not go to work on her own. This is not consistent with Dr Briscoe's report on page 391 at paragraph 31 where she is recorded as telling him that she went to work alone. It was not in her statement nor did she tell Dr Briscoe that she needed to travel to work with another person and I say it is not true. Also, at paragraph 42 on page 393 it is entirely inconsistent with her doing nothing, it says in this paragraph that she does 'practical things' after her son goes to bed such as emptying the dishwasher.

66. It is a lot to spend 29 hours each week doing household tasks, he is unlikely to spend that amount of time. I am firmly of the view that it is 50% each and it cannot be apportioned and be paid by the Respondent. It is generally settled in Personal Injury law that gratuitous care can only be paid for something they would do normally. I do not think that this is the situation here, maybe he has to do more, but it does not reach the threshold. There is no element of gratuitous care. If you are not with me on this, it should be paid for a much shorter period and it should be discounted by 50% for a significantly reduced number of hours per week.

67. In respect of interest, in the Employment Tribunal interest can be awarded in such sums as can be awarded by the County Court. In respect of personal injury, anything not pain and suffering and loss of amenity, it is 0.5% for special damages from the midpoint. Why should it be different here? In 2015 the Court of Appeal said that the rate of 8% was no longer appropriate, I say that is right.

68. With regard to future loss, I have been given this email this morning saying that the cost of CBT is £215 per hour however the NHS website says that this can be provided at a cost of £40-£100 per hour (average £70). No one said it had to be in Harley Street. There is a suggestion of 30 sessions.

69. With regard to future gratuitous care there is no question that it had to be for another year. Dr Briscoe said the Claimant would be better within one year. He suggested that the Claimant needed 30 session, that would be just over 6 months, by then the Claimant should be feeling better.

70. The Claimant claims loss of earning at the SO level for 3 years, this is based on Dr Briscoe's report saying she would not get her confidence back. However, it does not mean that she could not apply for roles. The Claimant claims losses at a rate of a SO for three years but this is speculative and not appropriate.

71. The pension loss in the schedule of loss is more speculation and too remote. Why should this be paid in full? It is more and more remote.

72. There is a further pension difficulty, she is in the Alpha so it is so remote we should not be in this arena.

73. Turning to the non-pecuniary loss, it is in the middle band and I refer to the Sivanandan case where you need to apportion the part suffered by the wrong, divisibility of the harm. That is why I have carefully gone through all the events from the first 5 acts on page 91 which date from June 2014 to January 2015 when the Claimant did not attend her GP at all. There was no ill health to flow, no injury to feelings (in respect of personal injury).

74. In February 2016 Mr Stevens gave his decision. The Claimant had been off sick from the 17 October to the 3 December 2016. She does not visit her GP in 2015 until the 17 October 2016, there was no medical intervention following Mr Stevens delivering his decision.

75. The next act of victimisation is in November 2016. By October 2015 the Claimant had an adjustment disorder which had resolved itself in November 2016. This started before the next act of victimisation, what caused it? Dr Briscoe concluded that it was the Crane report in September 2015 which the Tribunal found to be balanced and neutral. He also found that Ms Bahra's management of the Claimant in August 2016 caused it but none of that was victimisation and there was nothing before November 2016. Even if the Claimant's depression was due to the management of the Claimant it was not due to victimisation.

76. Clearly it is appropriate to award a sum for injury to feelings, but you can only compensate where it is due to an act of victimisation. The two acts that are identified were not acts of victimisation. In my counter schedule I say there should be a global award of £15,000 which includes both injury to feelings and moderate psychiatric injury and middle band Vento. You have to look at how much you award overall. In the County Court you would not get more than £17,000 for the two together.

77. In response to the claim for aggravated damages the test is as set out in Alexander, there has to be a 'rubbing salt into the wounds'. There should be a finding of fact on which an award should be pinned. These allegations were not put in the liability trial and there have been no findings on that basis.

78. The ACAS uplift. The Tribunal found that the appeal was properly upheld and there had been no procedural problems. The Claimant may say that Mr Stevens got it wrong, but the ACAS uplift is not about getting the right answer. This was not pleaded, and the Respondent will say there was no ACAS contravention.

79. Turning to grossing up, just because there is a loss of chance does not make it taxable and 'grossupable'. Grossing up is wrong in law in this case because what is being awarded is not salary. It is only loss on termination that is taxable. This is not a grossing up case.

80. Recommendations – the statement the Claimant wanted was for the people involved in her grievance to be trained and to receive letters of apology from everyone involved. What would they be trained in? A lot of them have not been found to have victimised the Claimant. Also, personal letters of apology, not all those involved have been found to have victimised the Claimant. It should be a recommendation on the Respondent. It has to be something that can be delivered. It is all very well to say that Ms Ward should act on the Stevens report, but it came out in 2016. CITEX was shut down and the Claimant now works in a different part of the business with a manager she finds to be supportive. It is not that they have no regard for the Claimant but from a practical point of view it has to be measurable and they have to be able to act upon it.

81. The Respondent says that this is not a situation where a financial penalty should be awarded.

82. In reply to the Claimant's submissions the Respondent referred to Dr Briscoe's report at page 407 paragraph 4.3 and stated that he had used a 'but for' test for the evidence saying that 'but for' the grievance there would have been no report and therefore she would not be ill. However, this is not the test, it is the 'consequences which naturally flow from the act".

**The Claimant**

83. It will not be lost on the Tribunal in this case who is the wrongdoer. Although not all acts were upheld a large number were. They were qualitatively serious for example the unannounced home visit; they were carried out over a period of time. The Respondent has not pleaded that the Claimant has been dishonest or exaggerated her case for pecuniary gain. Such a case at remedy stage should be squarely put. Mr Sooroojbally had a document put to him where it was to impugn his reliability or putting to the Claimant Dr Briscoe's report rather than going to the list. It is a mitigation analogy, the burden is on the Respondent.

84. If there is a loss of chance the burden is on the Claimant. I refer to the case of Cooper Contracting. You are not to put too higher burden on the Claimant. This is the remedy for victimisation.

85. You have seen the joint report of Dr Briscoe, it lies at the heart of this case and should be given considerable weight, its nature, the effect and the fact that the Claimant is now a disabled person. You should give it particular weight because it is a good report and commissioned on a joint basis and accepted. We say that the impact of the report goes to credibility and reliability.

86. With regard to the witness evidence, we ask you to find the Claimant to be reliable, you have already found for her at the liability stage and repeated findings of credibility and reliability. That is an important backdrop. She was found to be clinically reliable by Dr Briscoe.

87. Also on the disconnect on what the Claimant said to the Tribunal and Dr Briscoe is all addressed by Dr Briscoe in his medical opinion. He has not found issues of credibility. He was instructed to consider the disconnect

between home and work life, he said they could call evidence but the Respondent chose not to do so.

88. In respect of the calculation of promotion case, the Respondent made much of only mentioning it in the remedy but I refer you to paragraph 2 in the decision of the liability hearing. She said her aspiration was to become a SO in 3 years, this was not pursued with vigour as it was a liability hearing. The schedule of loss was prepared with the benefit of legal advice.

89. Fourthly the Claimant's case for loss of promotion is credible, her son was born in 2008 and when he was 4 she was temporarily promoted to an HO in 2012-4. During that period she deputised for a SO and performed some of the duties. This was the trajectory prior to the onset of her injury. The Tribunal found that as a fact. She could provide evidence of competency for SO and HO part of that was available to fill out the form. We know the Claimant applied for and joined the Embrace programme this shows motivation at that later stage. Once you get a permanent promotion to HO you get a greater opportunity to gain competence, it is not fanciful to get promoted to SO. It is not uncommon or unusual. We know from the disclosure that there are many HO/SO vacancies. It is no disrespect to those who are appointed but they are generic roles and job descriptions and there was no evidence that the Claimant would not have been appointed to a role. Even Mr Shelley said that the Claimant had a realistic opportunity to be appointed to some of the HO roles. Mr Shelley gave an opinion as to the Claimant's chance to be promoted when he did not know what the Claimant did.

90. The loss of prospect of promotion is based on a compensatory principle, it is to put the victim in the position they have been but for the discrimination, it is to remedy the tort. I accept that the Tribunal has to assess the chance, but it is not a question of causation, we may be splitting hairs, what you do is to reconstruct the case had none of the victimisation happened. It is not rocket science. We seek loss of earnings and pension for that loss.

91. The Respondent hasn't challenged the arithmetic in the schedule of loss so as there is no dispute on the methodology you should accept the Claimant's method, but you have a broad discretion to assess the chance of 1-100%. We say there is a high chance of her being promoted to HO and then to SO, it is open to you to assess the chance but is not to be assess on the balance of probabilities. We say she had a 100% chance of reaching HO and then a high chance of getting promotion to SO on a self-perpetuating trajectory.

92. The care point, the Claimant and her husband have been fundamentally consistent on the care and the degree of care. Before this the Claimant did most of the tasks around the house; this was the way it was. Now because of the clinical effects Mr Sooroojbally is providing a high degree of care since the home visit. Dr Briscoe supported her, there was a need for care, and she needed care for the future and at least for one year when treatment is provided. We say the claim should be paid in full, they haven't applied a stop watch. The clinical need justifies it and it is recoverable.

93. The claim for the cost of treatment, at page 99 the Respondent has adopted a bizarre stance. The Claimant has provided a rate of £210 per hour, what is sauce for the goose is sauce for the gander. The burden is on the Respondent to show an unreasonable failure to mitigate (the case of Cooper), they could have found cheaper quotes but they did not do so. They have failed to show an unreasonable failure to mitigate.

94. At page 409 paragraph 7.1 CBT has been recommended (plus loads of additional stuff), the Claimant is willing to do this and it will lead to a full recovery. We say this head of claim is justified and recoverable.

95. The personal injury claim, it is fair to say that this is in the moderate bracket and we place it is the middle. If this was in the County Court without overlap, the Briscoe report positions it in the middle/higher bracket. The effects have caused a significant disability and requires treatment.

96. In tab 8 of the authorities bundle those are the factors to show psychiatric damage generally. The medical and witness evidence shows that the Claimant's ability to cope with life, education and work has been affected (i), the injury has had an effect on the Claimant's relationship with family friends and those with whom she comes into contact with (ii), it shows the extent to which treatment would be successful (iii) and there is also a future vulnerability. The Respondent can't have it both ways, either they pay for the treatment or for the future vulnerability. Before this happened, she had very few trips to the doctors. I say it is in the moderate bracket.

97. Turning to injury to feelings, looking at the Presidential Guidance, we accept that we would observe that awards can be made over the top bracket and we pitch it at the top of that bracket. The analogy is with Vento cases are difficult, the finding of victimisation, the home visit, speaking to the husband. The Respondent has continued to take on a bullish stance. The Claimant is the victim this is compounded by the way they have defended this case without making concessions, they are not recognising that the Claimant is disabled and are not apologising.

98. The aggravated element of injury to feelings, we say for all the same reasons you can carve out an aggravated damages award out of the injury to feelings rubric.

99. There has been no apology or expression of regret and no offers to resolve it, just a bullish defence. It is a liability point not a remedy point; you can have a separate award for aggravated damages.

100. You should take a holistic approach. At the end of assessing the non-pecuniary loss you should stand back and not award for overlap, they are different heads of claim. The impact of the personal injury has given rise to care and has given rise to a disability and adjustments have been made relying on that. The impact on the son has been eye watering and compelling, it has had a devastating impact.

101. An award for injury to feelings can cover different things for pain and suffering and loss of amenity. The Claimant has given a lot of evidence, then you look at £15,000 it grossly under compensates the Claimant and disregards any injury to feelings based on your findings.

102. The ACAS Code of Practice uplift, (page 96) this is a remedy point, the fact that it is not pleaded in the ET1 is not relevant. You take the findings of fact at the liability stage and see if the grievance complied with the ACAS Code. Failing to do anything that was recommended and not putting in place an outcome; how could that be an appropriate decision? It must be reasonable to try to resolve grievances in the workplace. It is a serious breach. They should always comply with the code. There has been no explanation for the failure to comply and we say 25% is justifiable. If the decision is victimisation it is a breach.

103. The law says the interest rate for discrimination is 8%, it does not matter what the Court of Appeal says in a County Court appeal. It is mandatory.

104. The disability and apportionment, the Respondent did not take this point in the counter schedule. It is telling it is not on the counter schedule and Dr Briscoe says at page 402 at paragraph 126 that the Claimant had a "*propensity to develop emotional and physical symptoms associated with stress but, in my opinion, this did not amount to her having a psychiatric condition prior to the index events*". At page 405 paragraph 1.2 he stated "*In my opinion, the Claimant has not suffered an aggravation of a pre-existing mental health condition but during the material time, i.e. from the date on which I consider the Claimant to have developed an adjustment disorder, her condition has fluctuated in severity*". The Respondent has not put this as a case of Hatton; there should be no apportionment under Section15 of discriminatory and non-discriminatory. There is no evidence of a pre existing problem as found by Dr Briscoe.

105. At page 406 at paragraph 4.1 Dr Briscoe found that the conduct of the Respondent's employees "*collectively and materially contributed to the Claimant's emotional distress as described in 2014 and 2015*"; and in paragraph 4.3 he referred to the Crane report which was not found to be an act of victimisation. In this paragraph he stated that the report arose out of the grievance and he found that there was a link between the conduct complained of, the investigation carried out by Mr Crane and the Claimant's reaction to the report resulting in the development of the Claimant's adjustment disorder. He stated, "*if the Claimant had not been affected such that she deemed it necessary to raise a grievance, then, in my opinion, she would not have developed an adjustment disorder*". That conclusion is fatal to the Respondent's divisibility argument, the causal effect is the further context to it progressing to depression and anxiety in 2016. This is the way to view non-discriminatory acts, this part of the medical report was not referred to in the Respondent's submissions, but the non-discriminatory act was not the cause , one is to look at the cause of the injury, it was the act of victimisation in 2014 which is the cause. We do not have a rational case for divisibility, the Respondent should be liable.

106. If you are not with me, there should be some apportionment, look at the medical report of Dr Briscoe and see what he says about the home visit and Ms Ward extending it, the victimisation lays at the aetiology. The argument to the converse is dealt with by Dr Briscoe and this report has been accepted by the Respondent.

107. A recommendation – this is a perfect case for one and the Claimant is still there. You have got a report where recommendations were made but not complied with. You must be practical; the recommendation should reduce the effect of the discrimination on the Claimant. It must be an order you can make with precision. Mr Stevens outlined training and we add to that training in bias and subconscious bias. Only those who were found to have victimised the Claimant should go on the training and they should do so within a couple of months. That training is to be available on the open market and should be undertaken within 2 months.

108. An apology – the Tribunal can ask the decision makers to issue an apology but if you are not with me you can ask the HMRC to provide a letter of apology.

109. Financial Penalty – this is not to be conflated with aggravated damages. This is under Section 12 A and can be awarded where there is one or more aggravating features (section 12A(1)(a)) where an employer has breached the workers rights and this has been engaged. If you are of the opinion that the breach has one or more aggravating features and I say it has because they were found to have failed to implement the Stevens report and this is still ongoing today. It is aggravated because they failed to do anything and brushed it under the carpet. This is the aggravating feature that leaps out of the page and on which you can form an opinion. The penalty requires the HMRC to pay an amount to the Secretary of State under an older regime a sum of £5,000 and we say why not, it is not all about the money. It is to try and put the Claimant back to that position she would have been and to try and build her life, she was doing well prior to 2014.

**The Law**

**Section 124 Equality Act 2010**

**Remedies: general**

(1) This section applies if an employment Tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The Tribunal may—

(a) make a declaration as to the rights of the complainant and the Respondent in relation to the matters to which the proceedings relate;
(b) order the Respondent to pay compensation to the complainant;

(c) make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the Respondent takes specified steps for the purpose of obviating or reducing the adverse effect [on the complainant] of any matter to which the proceedings relate—

(a), (b) …

## Decision

The unanimous decision of the Tribunal is as follows:

110. The Tribunal will first make some comments about the evidence of the Claimant and Mr Sooroojbally. There were a number of aspects of their evidence which the Tribunal found to be unreliable and at times exaggerated. We found the Claimant's evidence to be inconsistent in relation to her prospects of promotion to HO and then SO. Even though the Claimant had not applied for any substantive promotions since her advancement to Officer grade in 2000, she maintained that she would have received promotion to HO and then SO within a short space of time. These claims were not supported by any evidence of CV's, career plans or of discussions with her managers during her appraisals, even when her manager had identified her as being suitable for promotion in 2009/2010 (see above at paragraph 9). The Claimant's explanation as to why she did not apply for any roles was that her manager would not support her application. However, this was irrelevant for the time frame given to the Claimant when asked about this in cross examination, as from 2012 manager approval was no longer required as it was changed to a competency-based system. Had the Claimant taken any steps to start the application process to advance her career, she would have been aware of this. The Claimant told the Tribunal that she was very ambitious, but this was not corroborated by the evidence before us.

111. We also noted above at paragraph 7 that Mr Sooroojbally had been with the Respondent for 30 years and had only been promoted to the HO grade. He had not managed to secure promotion to the SO grade despite being placed in a Talent Pool for one year. This confirmed to the Tribunal that promotion to the higher grades was not guaranteed. Even when identified for promotion and provided with support, this was far from certain. The Claimant had not advanced beyond officer grade and no steps had been taken to start the work needed to secure advancement to a higher grade as we have found as a fact above at paragraph 10.

112. The Tribunal also had concerns about the exaggerated evidence provided by Mr Sooroojbally in relation to the care he provided to the Claimant and the claim that he himself suffered injury due to the actions of the Respondent. He claimed in his statement at paragraph 16 and at paragraphs 7 and 48 of our findings of fact above that the Respondent had

"destroyed" his career progression. In cross examination he reluctantly admitted that he had been off sick with water on the brain and he provided no evidence to suggest that this was anything but a physical injury and not psychological damage.

113. Similarly, Mr Sooroojbally's evidence in relation to the care he provided for his wife was also exaggerated and we refer above to our findings of fact above at paragraph 49. The Tribunal found that the most reliable evidence of the care he provided for his wife was on page 416, which was the schedule he provided for the consultation with Dr Briscoe. In that schedule he made no reference to the Claimant being unable to do the washing, housework and gardening only to the fact that she hardly cooks from scratch and she forgets to turn on the microwave and often leaves the oven on. This strongly suggested that the Claimant still did the cooking but he needed to be on hand.

114. The evidence in chief provided by both the Claimant (at paragraph 53 of her statement) and Mr Sooroojbally to the Tribunal was that she was incapable of doing anything around the house and he could not let her do any chores in case she hurt herself. This we found to be a significant exaggeration and we refer to paragraphs 45-6 above as it was conceded by Mr Sooroojbally (see above at paragraph 48) that he often did charity work at the weekends and when he is out, the Claimant did the household chores. We have found as a fact above that the Claimant was able to carry out household duties and cooking but took longer to do the tasks and the husband had to be on hand while she cooked, this was a far cry from being unable to carry out any activities in the home

115. Turning to the heads of claim in this case, firstly in regard to the Claimant's claim for loss of promotion, we have found as a fact above that the Claimant's evidence was not consistent with someone who described themselves as very ambitious. We saw no steps taken by the Claimant to place herself in a favourable position to apply for promotion such that she would have secured promotion to an HO role by June 2015. She had taken on no project work after 2008 and no additional training (aside from mandatory training) was done and we refer above to paragraph 10. The Tribunal saw no career plan or evidence that promotion was discussed in appraisals despite the fact that a previous manager had identified her as being suitable for promotion (see above at paragraph 9 and 29). There was no evidence to suggest that the Claimant was on track for promotion or that she had a reasonable prospect of being promoted, had she applied for any of the many roles that were in the bundle. At best the Claimant maintained that certain roles would have been suitable for her (paragraph 12 of her statement), but that is not the same as saying that she had a reasonable prospect of meeting the competencies of the post and of being appointed.

116. The Tribunal has to assess the likelihood of the chance that the Claimant would secure promotion to HO and then to SO. The Claimant's representative has indicated that we have to assess what would have happened 'but for' the discrimination or the test according to the Respondent's representative is to consider the 'consequences which naturally arise from the wrong'. The Tribunal went through a number of vacancies at both HO and SO grade in our findings above at paragraphs

12-18 and 19-24 respectively. In each case the Claimant replied to questions posed in cross examination that she did not apply because her manager would not support her however, we have concluded in our findings of fact above at paragraph 27 that this was not a requirement under the new competency based system. We also concluded that from 2013 to 2015 the Claimant's health had not suffered. There appeared to be no impediment that prevented her applying for these roles at the time they were advertised. Applying both legal tests reach the same conclusion, that the Claimant had taken no steps to further her career for a number of years and there was no evidence that but for the discrimination, the Claimant would have been in a position to apply for and meet the competencies to secure promotion to HO and no evidence she would have advanced to SO grade. As the Claimant's career history showed no evidence of actively applying for promotion or of taking on additional duties (see above at paragraphs 28-9 above), there was no evidence to suggest that she was on a well-planned trajectory for promotion. As there was no evidence of career planning or of a clear evidence of job applications, we conclude that there was no evidence to suggest that 'but for' the discrimination the Claimant would have secured promotion to HO. This head of claim is dismissed.

117. Turning to the claim for personal injury, we accept the very clear evidence of Dr Briscoe that the Claimant had developed an adjustment disorder by the 8 September 2015, and this had developed into a moderate depressive episode by November 2016. We accept that there was evidence that this injury was suffered by the Claimant and the injury arose directly and naturally from the wrong. Although it was put in cross examination to the Claimant that Dr Briscoe's conclusion that the depressive episode was said to arise from an act that was not found by the Tribunal to be an act of victimisation, we have concluded that this was a distinction that was highly artificial. The Tribunal accepted the Claimant's evidence that this was due to an accumulation or build-up of events as we have found as a fact above at paragraphs 35 and 42; it was the overall effects of the acts of victimisation that caused the injury, not the individual impact of each act of victimisation in isolation.

118. We have been taken to the JC Guidelines for Psychiatric Injury in the Claimant's authorities bundle. It was accepted by both parties that this fell within the Moderate band and the range of awards fall between £5,500 to £17,900. Having read the medical report and the prognosis of Dr Briscoe we conclude that the Claimant should be awarded the sum of £8,500. We award this because we have also concluded that with the right treatment the Claimant is likely to make a full recovery sooner.

119. Turning to the associated claim for payment for treatment, the Claimant has claimed the sum of £6450 for 30 CBT sessions as recommended by Dr Briscoe. Although the Respondent has stated that CBT can be obtained from the NHS at a lower cost, we took into account that this was not just CBT but had an element of ACT which was vital to the Claimant's recovery. We conclude that the Respondent should pay for this treatment as it is a cost that arises from the injury suffered by the Claimant and will ensure that she makes a full recovery.

120. The Tribunal now turn to the claim for payment for care provided by Mr Sooroojbally. We have made some findings of fact and reached conclusions on the veracity of the evidence given in connection with this head of claim. We found it to be exaggerated and inconsistent with documents in the bundle and we refer to paragraphs 48-51 above. It was of concern that the Claimant's first schedule of loss made no reference to needing a payment to recompense her husband for the personal care he gave to his wife. We found this to be surprising as the first schedule of loss was produced by the solicitors on the 21 August 2017, at a time when the Claimant had stated that she had been unable to do any household tasks (from February 2017). This head of claim was only added to the updated schedule of loss served very recently. We have found the evidence in relation to this claim to be exaggerated and inconsistent and because of this we will make no award for this head of claim. We have concluded that the Claimant needed help and assistance with cooking but apart from that, there was little evidence to suggest she was unable to carry out most domestic tasks and no evidence that she was unable to travel to work alone. This head of claim is therefore dismissed.

121. Turning to the claim for injury to feelings, we accept that this was a serious case. The Claimant obviously felt considerable distress when she was taken back to the incidents that were found to be acts of victimisation and we have recorded above that the Claimant became tearful and upset when being taken to documents that reminded her of the events that led to this litigation (see above at paragraph 34). We concluded that the acts extended over a considerable period of time and there were a number of employees involved. This was not a one-off act, but a series of incidents carried out by those with line management responsibilities over the Claimant. We also considered that even though the Claimant pursued a grievance, the recommendations were not acted on nor was there any meeting with the Claimant to discuss the outcome and how matters were to be taken forward. The Claimant did not receive an apology for the actions of others where they were found to have been in the wrong (for example for breaching her confidentiality). These elements have led us to conclude that an award of £17,000 should be made for injury to feelings.

122. The Claimant also asks for an award to be made for aggravated damages; however, we do not consider this to be a case where an award of this nature should be made. We note that aggravated damages should only be awarded if there is evidence of actions that were 'high handed' or if it was in effect 'rubbing salt into the wounds'. In this case we have seen a number of failings of managers when dealing with the Claimant's grievance and a failure to implement the recommendations of the Stevens report. However, these failings appeared to be as a result of incompetence and defensiveness rather than a vindictive or malicious act. In the absence of clear evidence of actions that were high handed or malicious, we do not consider that an award for aggravated damages is appropriate in this case.

123. The Claimant also asks for an uplift for failing to comply with the ACAS Code of Practice; however, we do not believe that there has been a failure to comply with the requirements of the Code. The Claimant stated in the written submissions that an uplift should be awarded because the decision of the Stevens' report failed to 'decide on appropriate action'. We found as

a fact that action points were provided in the report, (paragraph 136 of our liability decision at page 149 of the bundle). Although the Tribunal concluded that Mr Stevens' decision not to uphold the grievance was an act of victimisation; we found as a fact that he complied with the ACAS Code because he held a meeting and decided on appropriate action and we refer to our findings of fact in our liability decision at paragraph 87(b) where he identified certain learning points and for the Claimant to be given help to rebuild her career (page 125 of the bundle). The Claimant did not agree with the conclusions reached by Mr Stevens and appealed. On the evidence the Tribunal conclude that a decision was made on appropriate action to take in this case; there was no breach of the ACAS Code in this respect.

124. The Claimant also asked for an uplift because they failed to decide what action to take, it was noted that recommendations were made in the Stevens' report and Ms Ward failed to take them forward. However, the Code does not place an absolute requirement on the employer to show that they have complied with recommendations or that they have taken appropriate action. As this is not a requirement of the Code there were no grounds on which the Tribunal should order an uplift to the compensation awarded.

125. In relation to interest we accept the Claimant's submission that interest should be awarded at the rate as set down in regulation 3 Employment Tribunals (Interest on Awards) Regulations 1996 and the rate since 1993 has been 8%. In the Respondent's submission it was stated that anything not personal injury should be 0.5% and referred to a case in the Court of Appeal that said that the rate of 8% was no longer appropriate. Even though that may be the case the Tribunal are required to follow the Regulations that apply to us and as that states that the rate is 8%, we are required to apply that rate to the injury to feelings and personal injury award.

126. In the Claimant's schedule of loss, it was stated that interest should be applied from the first date of discrimination which was the 26 June 2014 until the 10 March 2020 which was 2084 days. As we have awarded the sum of £17,000 for injury to feelings the sum of interest to be added is £7765.

127. The interest on the claim for personal injury which we have concluded is £8,500 should be calculated from the mid-point and the Claimant states in the schedule of loss that this amounts to 1041 days at 8%. This comes to a total payment of interest of £1939.40.

128. Lastly turning to the issue of whether a recommendation should be made and if so what should that be, the Tribunal is content that it is appropriate in this case for the Respondent to issue to the Claimant a letter of apology for the acts of victimisation and for any distress caused. We do not order that a letter of apology is issued by each individual manager as this would be difficult to enforce and the individual managers were not Respondents in this case, so it was felt to be inappropriate to do so. The apology is to be provided within 21 days of the date of promulgation of this decision.

129. We do not order that those who were identified in the grievance undergo training. There were several reasons for this, firstly time has moved on and

many would no longer be working in the same team. It was difficult to identify what training is presently available and when it should be undertaken. We are also mindful that we are in the centre of the Covid-19 lockdown and training is not taking place save for limited on-line training. For all these reasons we do not make a recommendation for training to be provided.

130. The Claimant asks for a financial penalty to be awarded against the Respondent. We are not prepared to make such an award as it has not been accepted by the Tribunal that the matters identified in the Claimant's closing submissions (that managers colluded, there was a failure to implement the findings of the Stevens report, the home visit and a failure to apologise) were aggravating factors for the purposes of an award under Section 12A. The matters he identified were considered when the Tribunal assessed the appropriate award to make in respect of injury to feelings. Although the Tribunal accept that there has been a failure to apologise or to implement the Stevens' report recommendations, there was no evidence that these failings have one or more aggravating factors that bring it within Section 12A. There was no evidence to suggest that any of the breaches were deliberate or malicious, the Tribunal have concluded that they arose out of significant management failings or incompetence (see above at paragraph 121) and not as a result of any aggravating features.

131. The Tribunal also awards to the Claimant her sick pay of £2583.33 which was deducted from her pay from the 12 April 2017 to the 26 June 2017. The Tribunal awards to the Claimant interest on this sum. We calculated that the total number of days was 1067 and the mid-point was 533.5 days. We therefore award to the Claimant interest of £302.07 to be added to this sum.

Employment Judge **Sage**

Date 28 April 2020