EMPLOYMENT TRIBUNALS

Claimant: Mr M P Sutcliffe

Respondent: Crown Prosecution Service

HELD AT: Manchester **ON:** 17 December 2020
26 February 2021 (in chambers)

BEFORE: Employment Judge Slater
Mr M C Smith
Mrs S J Ensell

REPRESENTATION:

Claimant: Ms K Nowell, counsel
Respondent: Mr D Bunting, counsel

JUDGMENT ON REMEDY

The judgment of the Tribunal is that:

1. The respondent is ordered to pay to the claimant compensation of £15,000 for personal injury suffered as a result of unlawful discrimination plus interest of £1804 on that amount.

2. The respondent is ordered to pay to the claimant compensation of £15,000 for injury to feelings suffered as a result of unlawful discrimination plus interest of £1804 on that amount.

3. Judgment on financial loss, including pension loss, is to be given at a second stage remedy hearing, on a date to be arranged, or, if the parties are able to agree the amount of pension loss and the grossed up amount of financial loss to be paid, in a judgment to be issued by consent. The parties have leave to call expert evidence in relation to pension loss (preferably in the form of a joint report) at the second stage remedy hearing, if they wish to do so.

4. The respondent is ordered to pay to the claimant interest on past financial loss of £1603.

REASONS

Introduction

1. Code V indicates that this hearing was partly conducted by video conference on 17 December 2020. The claimant gave evidence by video link and the lay members of the Tribunal and Mr Kemp of the respondent, who was observing, attended by video link. The judge and the representatives attended in person. The meeting of the Tribunal in chambers on 26 February 2021 was held in person.

2. The claimant had been represented by his wife at the liability hearing. At the remedy hearing, he was represented by Ms Nowell of counsel. The respondent had been represented by Mr Redpath of counsel at the liability hearing and was represented by Mr Bunting of counsel at the remedy hearing.

3. This was a remedy hearing, following a reserved judgment on liability sent to the parties on 18 July 2019. The claimant had succeeded in two complaints: (1) the complaint of victimisation listed at 2(1) in the agreed list of issues; and (2) the complaint of failure to make reasonable adjustments identified as FP4 in the agreed list of issues. The remedy hearing, therefore, was to determine the remedy for these two acts of discrimination.

4. In relation to the complaint of victimisation, we concluded that the respondent had subjected the claimant to a detriment because of a protected act (an allegation of a contravention of the Equality Act 2010 contained in a grievance of 22 June 2017) in the decision of the grievance investigating officer, Howard Gough, to embark on the examination of time sheets for the period July to October 2017 (paragraph 144).

5. The complaint of failure to make reasonable adjustments related to a provision, criterion or practice of treating a complaint about an employee's own manager as being a grievance which had to be discussed with that manager first, which put the claimant at a substantial disadvantage when the respondent addressed his complaint of 21 May 2018. Mr Goldman replied to the claimant's complaint informing the claimant that he had to first raise the issues on an informal basis via Sue Dziegel as the commissioning manager for the disciplinary investigation. The claimant was being required to discuss the complaint with a manager about whom a complaint was being made. We concluded that it would have been a reasonable adjustment to appoint an independent person at a higher level than Ms Dziegel to deal with the complaint (paragraph 173).

6. The remedy hearing had originally been listed for 22 October 2019 but was postponed, at the parties' request, pending the outcome of an appeal by the respondent. That appeal was unsuccessful. The remedy hearing was then re-listed

for 4 May 2020. That hearing was converted to a case management preliminary hearing by telephone, due to the COVID-19 pandemic. At that preliminary hearing, the claimant was again represented by his wife. Mrs Sutcliffe informed Employment Judge Slater that the claimant would be claiming compensation for injury to feelings and injury to health, but was not seeking to argue that there was any financial loss arising from the acts of discrimination for which the respondent was found liable. Shortly after that hearing, Mrs Sutcliffe wrote to the Tribunal to say that, having taken further legal advice, contrary to legal advice they had received previously, they were now aware that they could also claim financial loss, given that the claimant had been unable to work since July 2018 and remained in ill health. There was some dispute in correspondence as to whether the claimant was entitled to claim compensation for financial loss, given the previously expressed position. However, the respondent has not argued, at this remedy hearing, that the claimant is precluded from seeking financial loss arising from the acts of discrimination because of the position stated by Mrs Sutcliffe at the preliminary hearing. The respondent does not, however, accept that the claimant is entitled to financial compensation for losses arising from his dismissal, for reasons largely about causation.

7. The claimant's schedule of loss was in the bundle (p.90). The respondent presented a counter-schedule of loss, provided separately to the Tribunal.

8. The only remedy sought by the claimant is compensation; compensation for actual financial loss, past and future; injury to feelings; and personal injury. The claimant's case is that he contends that he has suffered a moderate depressive disorder as a direct result of the victimisation and that his symptoms were exacerbated or prolonged by the failure to make reasonable adjustments. The claimant contends that, as a result of his illness, he has been unfit to work since his dismissal on 19 July 2018. He claims loss of earnings from the date of his dismissal.

9. The respondent argues that causation has not been established in respect of the claimant's injury and the acts of discrimination. Alternatively, the respondent argues that the injury should be apportioned and only a small fraction of the injury suffered by the claimant was caused by those findings.

Evidence

10. We heard evidence from the claimant. No evidence was given on behalf of the respondent. We had a remedy bundle of documents of 226 pages. Page references in these reasons are to pages in this bundle. The remedy bundle included a report by Dr Michael Bond, a consultant forensic psychiatrist, prepared for the Tribunal on the joint instruction of the claimant and the respondent (p.114) and answers given by Dr Bond to Part 35 questions (p.136).

11. A job search bundle had been prepared but Mr Bunting told us we did not need to read this, since the claimant's position was that he had not applied for work.

Facts

12. We rely on facts found in the liability decision to the extent they are relevant to the issue of remedy and make further findings of fact as follows. Paragraph references in the findings of fact are to paragraphs in the reasons to the liability judgment.

13. We concluded, in relation to the victimisation complaint (paragraph 138):

> "138. We conclude that the claimant was subjected to a detriment by Mr Gough carrying out this enquiry. A formal investigation resulted from the enquiry and Mr Gough's recommendation. This was unusual; a more normal investigation would be questions from the line manager nearer the relevant time. The claimant suffered anxiety from having to face a formal disciplinary investigation. The claimant was at a disadvantage in this investigation, compared to the position had he been questioned by a line manager at an earlier stage, in having to account for all his time at a much later date."

14. The claimant was employed by the respondent from 6 December 2001 until his dismissal with effect from 19 July 2018. The claimant had not had any disciplinary action taken against him during his career, prior to the action recommended by Mr Gough. In addition to his work for the respondent as a case worker, he had a role with the union, which included representing other employees in high level disciplinary matters.

15. Prior to the acts of discrimination, the claimant had an underlying vulnerability to anxiety and depression symptoms (p.130).

16. In 1999, the claimant developed depressive symptoms following the breakdown of a relationship. In 2014, he developed psychological problems following a road traffic accident.

17. The claimant went through a very difficult time around the time of the birth of his son, relating to the health of his wife and son. However, this did not lead to any period of depression requiring him to seek medical attention.

18. The claimant was off work with anxiety symptoms from October 2015 until January 2016. The claimant attributes this to a build-up of pressures of work, including taking on too much union work. Following this period of absence, the claimant did not have any other sickness absence due to anxiety, stress or depression until December 2017. He made no further psychological complaints to his GP after the 2015/2016 period of absence until 19 December 2017 (p.130).

19. The claimant was sent, on 13 December 2017, the grievance report and outcome, which included a recommendation by Mr Gough for a disciplinary investigation into the timesheet anomalies he had identified. This was the first time the claimant was informed that Mr Gough had been looking through his timesheets and that this was the further evidence Mr Gough had referred to in his update of 29 November 2017 (paragraph 42).

20. Within a few days of receiving the report and recommendation for a disciplinary investigation, the claimant began, on 19 December 2017, a period of sickness absence for stress and depression which continued until his dismissal which took effect from 19 July 2018.

21. We accept the claimant's evidence as to how the news of the recommendation for a disciplinary investigation into the timesheet anomalies made him feel. We accept that this news had a greater impact than the news that the grievance was not upheld. We do not agree with the respondent's argument that this evidence was tailored (albeit unconsciously) because of the Tribunal's decision on liability which meant the claimant knew what he needed to say to get over hurdles. The evidence given as to the effect on the claimant was in accordance with the evidence in the claimant's witness statement for the liability hearing, before the claimant knew which, if any, claims were going to be successful. The information that the grievance was not upheld was a huge blow but the claimant was absolutely devastated by the recommendation for a disciplinary investigation (p.222). He felt physically sick and in real shock. He was unable to eat or sleep properly. He lost weight rapidly and struggled with panic attacks and a strain was put on his personal relationships. He was prescribed anti-depressants by his GP. The claimant feared losing his job. He described the impact of the recommendation for disciplinary action as a "cliff edge crash". The claimant had previously had an unblemished work record.

22. The claimant felt unmanageable anxiety at any contact with the respondent so relied on his wife to deal with the respondent on his behalf. The claimant suffered great guilt and shame at seeing her his wife having to work on his case as well as taking the main role in terms of household tasks and childcare. The claimant feels unable to deal with paying bills or maintaining the household budget. The imbalance of tasks put considerable pressure on the claimant's relationship with his wife. For a period, the claimant moved to his mother's home, when relations between himself and his wife completely broke down.

23. The claimant often felt like an absent father, although physically present with his children, because his mind was so often preoccupied with this case.

24. The claimant suffered loss of ability to concentrate. He was previously an avid reader, but, from December 2017, has felt unable to concentrate on reading. The claimant has felt really unmotivated.

25. The claimant had worked for the respondent since he was 28. He found consistency and security in his working relationships and friendships he formed through work. He found the work interesting and felt respected. He enjoyed helping others in his union role, although in 2015 he felt he had taken on too much of this work. The claimant took great pride in his work and his union role and had good feedback. The claimant felt, when he was no longer able to do his job, that he did not have a place in society any more. He did not feel he was making a meaningful contribution to his family or society. His confidence and self-esteem were seriously adversely affected. He feels disappointed in himself and weak, because he has not been able to exercise his way out of low mood as he had previously. The claimant feels a heavy sense of sadness at the loss of his career with the CPS.

26. The claimant's ability to socialise with friends has been adversely affected. He has kept in touch with work friends through a What's App group and went on one social outing with them, but felt anxious when they mentioned work.

27. The claimant's evidence to the Tribunal about his state of mental health at this time was consistent with the information he gave to Dr Bond about his symptoms and we accept he was experiencing these symptoms (p.124). The symptoms he described were:

> "• Low mood
> • "I felt desperate"
> • "Disappointment at being treated like that"
> • Physical symptoms of anxiety – tight chest, increased frequency of bowel movements and "gulping"
> • Panic attacks
> • Difficulty concentrating
> • Difficulty falling asleep
> • Waking during the night
> • Reduced motivation
> • Feeling "drained"
> • Feelings of worthlessness – "Even though I knew I hadn't done anything wrong"
> • Guilt because of the impact on his wife."

28. Mr Goldman wrote to the claimant on 1 June 2018, in response to the claimant's complaint made on 21 May 2018, informing the claimant that he had to take up the matter first on an informal basis with Sue Dziegel (paragraph 91). The claimant felt crushed at the response he received from Mr Goldman. His anxiety spiked (p.224). The claimant had viewed the complaint to Mr Goldman and the DPP as a last attempt to save his job. He described to Dr Bond the response from Mr Goldman as "a huge blow to me as well" (p.125).

29. Following a process under the respondent's procedure relating to long term absence, the claimant was dismissed on capability grounds. He was dismissed with pay in lieu of notice and was paid compensation of £18,792.31 under the Civil Service compensation scheme. The claimant did not bring a complaint of unfair dismissal and did not bring a complaint that the dismissal itself was an act of unlawful discrimination.

30. The claimant has not sought work or claimed benefits since his dismissal.

31. The claimant enrolled on a course at Salford University in September 2018 but left the course after a short while because of anxiety when going into group meetings on the course. In October 2019, the claimant began studying psychology full time with the Open University on a three year degree course. He plans to work with children with Autism Spectrum Disorder after obtaining his degree. We accept the claimant's evidence that he has only been allowed to do the course full time because

the Open University has accepted that he has a disability which means he is not fit to attend a face to face course.

32. The claimant and his wife have two primary school age children. The youngest child was diagnosed in 2017 with Autism Spectrum Disorder. He also has learning difficulties. Prior to the events giving rise to this claim, the claimant's wife worked part time and she continues to work part time. We accept the claimant's evidence that care of the children would not prevent him working.

33. The claimant was aged 44 at the effective date of termination. He had completed 16 years' service with the respondent.

34. The claimant's date of birth is 24 November 1973. The claimant was a member of the respondent's "Classic" pension scheme prior to 31 March 2015. He then became a member of the Alpha scheme, a career average pension scheme. His schedule of loss states that the normal retirement age for the Alpha pension scheme is the normal state pension age and gives this as 66 for the claimant. However, the Tribunal is aware that, for people of the claimant's age, the state retirement age is currently 67.

35. The claimant's net monthly pay with the respondent, prior to sick leave, was £918.05. This increased to £923.09 from April 2018. The claimant received full pay for the first six months of his sickness absence which began in December 2017. In June 2018, the claimant received net pay of £881.93 and July net pay of £569.38.

36. The claimant was assessed by Dr Bond on 22 July 2020. The claimant described to Dr Bond that his mood had remained persistently low since December 2017 (p.126). He described that his mood "plummets further" in reaction to anything to do with his case involving the respondent. He described becoming stressed about the simplest things, in marked contrast to his functioning when he was mentally well. He described having lost confidence, having continuing problems with his sleep, and his motivation to engage in physical activities having been impaired. He also described having increased his alcohol consumption.

37. Dr Bond recorded a GP's note from 4 March 2020, that included the information that the claimant's brother-in-law had committed suicide a few days before. The GP recorded that this "understandably exacerbated symptoms". The claimant had also informed the GP that an appeal by the respondent against the Tribunal's decision on liability had made him anxious and affected his mood and he had been struggling with symptoms since then. The claimant had been weaning himself off anti-depressants, but agreed to restart these, as well as a short course of sleeping tablets.

38. Dr Bond's opinion is that, by the time the claimant consulted his GP on 19 December 2017, he had developed a Moderate Depressive Episode (ICD-10 F32.1) (p.131). At paragraph 14 of his report, Dr Bond expressed the opinion that causative/contributory factors to his depressive episode in December 2017 included the following:

> "• Pre-existing vulnerability to anxiety and depressive symptoms
> • Work-related stress dating from February 2017
> • Stress relating to his son's assessment for autism in February 2017
> • The impact of the report prepared by Howard Gough which was sent to him on 13 December 2017."

39. Dr Bond wrote at paragraph 15 (p.131):

> "It is impossible to scientifically quantify the relative contributions of each of the above factors to the development of his depressive episode in December 2017. However, on the balance of probabilities, the content of Mr Gough's report was probably the most significant factor in the marked deterioration in Mr Sutcliffe's mental condition in December 2017, a deterioration which was clinically significant because it resulted in him consulting his GP, being signed off work and being prescribed an antidepressant."

40. Dr Bond wrote, in paragraph 16 (p.132), that the claimant's depressive symptoms had not fully resolved since December 2017 and expressed the opinion that this was largely because he had remained embroiled in litigation relating to his work issues.

41. In paragraph 17 (p.132), Dr Bond wrote, in relation to the second act of discrimination (being required to discuss a complaint with a manager about whom a complaint was made):

> "I consider that this was a contributory factor to the maintenance of Mr Sutcliffe's depressive symptoms after he was signed off work in December 2017. However I consider that his depressive symptoms would have continued in any event because of the ongoing work-related issues and the impact these had on his trust and self-confidence."

42. At paragraphs 18 and 19 (p.132), Dr Bond wrote:

> "18. Mr Sutcliffe will continue to experience anxiety and depressive symptoms. I anticipate that he will not make a complete recovery until six to twelve months after the Employment Tribunal matter has concluded.
>
> "19. There is scope for him to benefit from psychiatric and psychological treatment on an outpatient basis to speed up the process of recovery and improve the prospects of him completing his Open University course and re-engaging in full-time employment."

43. Dr Bond wrote that the claimant was likely to obtain speedier access to appropriate treatment if he could access treatment in the private sector and suggested an assessment appointment with a psychiatrist at a cost of £300, plus three or four follow-up appointments, at a cost of £150 to £200 each, would be needed (p.132).

44. The parties put questions to Dr Bond, following his report, and he produced written replies to these Part 35 questions on 24 September 2020 (p.136). His answers included the following, at paragraph 1.5 (p.138):

> "I consider that the absence of references to anxiety symptoms in his medical records after he returned to work and prior to 19 December 2017 suggests that the symptoms of anxiety he had experienced in late 2015 had resolved by the time he returned to work in January 2016."

45. Dr Bond was asked whether he considered it likely or possible that the Claimant would be suffering from the symptoms that he is at present without Mr Gough having undertaken what the Tribunal describes as a 'trawl' through the Claimant's timesheets and without the Respondent having required the Claimant to discuss a complaint with the manager about whom the complaint was made. Dr Bond replied, at paragraph 4.1, in answer to this question (p.139):

> "It is possible that Mr Sutcliffe would be suffering from the symptoms that he has at present without Mr Gough trawling through his timesheets and without the Respondent having required him to discuss a complaint with the manager about whom the complaint was made. This is because Mr Sutcliffe was psychologically vulnerable as I indicated in paragraph 14 of the opinion section of my report. He also had a background of work-related stress and stress relating to his son's assessment for autism which I highlighted in paragraph 14 of the opinion section
> of my report."

46. Dr Bond was asked whether he considered that the grievance outcome/report as a whole was the most significant factor in the marked deterioration in the claimant's mental condition in December 2017 or whether a specific element of the report/grievance outcome was the most significant factor in the deterioration in his mental condition. Dr Bond replied, at paragraph 6.1, as follows (p.141):

> "This question was not part of my instructions. If it had been I would have put it directly to Mr Sutcliffe when I assessed him. All I was able to establish from Mr Sutcliffe was that his mental health deteriorated from the time he read Mr Gough's report. I cannot say whether the grievance outcome / report as a whole was the most significant factor, or whether a specific element of the report / grievance outcome was the most significant factor in the deterioration in his mental condition."

Submissions

47. Ms Nowell provided a written skeleton argument at the outset of the hearing and made oral closing submissions.

48. Mr Bunting relied on the preamble in the respondent's counter-schedule of loss as an opening written skeleton argument. He made oral closing submissions.

49. We summarise the principal arguments made by the parties.

50. The claimant's submissions were, in summary, that the psychiatric injury suffered by the claimant was not divisible. The respondent bears the burden on apportionment and there was no evidence on which a sensible apportionment could be made. The respondent should, therefore, be liable for the whole injury, which the claimant submitted was, on the balance of probabilities caused by the acts of discrimination. The claimant submitted that £15,000 would be an appropriate figure for psychiatric injury. In relation to injury to feelings, Ms Nowell suggested an award of £27,000. Ms Nowell submitted that there should be no discount under proposition 16 in **Hatton** because of the vulnerability of the claimant. In the past, other than in October 2015, there had been a significant trigger for illness. The only trigger Dr Bond referred to in recent times was the suicide of the claimant's brother-in-law which aggravated his condition for a short period. Ms Nowell submitted that there was a minimal chance that the outcome of the grievance and appeal would have led to illness and time off.

51. Ms Nowell submitted that there was some overlap between injury to feelings and psychiatric injury but this was limited. She suggested that this could be addressed by taking a bit off the injury to feelings award or, if the tribunal went for a joint award, she proposed a joint award of £35-£40,000.

52. Miss Nowell submitted that loss of earnings all flowed from the act of discrimination. The claimant was incapacitated due to psychological disorder. There was no intervening act. The claimant was dismissed because of a prolonged inability to work. The claimant sought past loss of earnings in full to the date of calculation. He sought future loss of earnings to a date six months after completion of his Open University course in June 2022.

53. The claimant had included a complex calculation of pension loss in his schedule of loss based on various assumptions.

54. The respondent's submissions were, in summary, that causation was the main issue. The respondent did not accept that the claimant was entitled to compensation for financial loss after dismissal. Mr Bunting proposed that a sensible effort at applying the tribunal's mind to apportionment would result in the claimant receiving little compensation arising from the act complained of, other than for injury to feelings. The respondent should only pay for the proportion of harm they were responsible for. Mr Bunting also submitted that, applying proposition 16 in **Hatton**, the claimant would have suffered a similar breakdown without these acts of discrimination so there should be a further discount for this.

55. Although, in the written submissions, the respondent had asserted that the 10% uplift was not applicable to personal injury damages in the Tribunal, in oral submissions, Mr Bunting accepted that the claimant was probably correct to say that this did apply.

56. Mr Bunting submitted that the claimant was someone who was sick and the respondent says he would have gone off sick at the time he did and have been dismissed when he was dismissed without the acts of discrimination so the claimant was not entitled to compensation for loss of earnings.

57. The respondent submitted that the claimant was not entitled to compensation for loss of earnings after the dismissal because the dismissal was an intervening act because there was no finding that the claimant's dismissal was unlawful in any sense. The respondent relied particularly on the case of **Ahsan v Labour Party** EAT/0211/10 in support of this argument.

58. The respondent proposed an award of injury to feelings of £10,000. The respondent submitted that the claimant's compensation ought not to reflect the injury to feelings he undoubtedly suffered as a result of other matters than the two complaints which were upheld by the tribunal.

59. In relation to personal injury, Mr Bunting submitted that concurrent causes should be reflected in the percentage deduction in general damages. He also submitted that the claimant should not be compensated for the aggravation of his symptoms by way of ongoing litigation; the proceedings are not the claimant's cause of action, they are his taking action. The respondent submitted that damages of £10,000 should be reduced to £500, based on a deduction of 95%. The respondent proposed a similar deduction to the treatment costs.

60. The respondent did not take issue with the claimant's mathematical calculations for past loss of earnings, accepting the figures used for pay, but suggested that pre-termination losses should be reduced by around 95% causation issues. In relation to past loss of earnings after termination, the respondent relied on dismissal as an intervening act. Mr Bunting pointed out that the claimant was paid in lieu of notice so his losses did not effectively commence until 19 October 2018. The respondent submitted that the claimant had entirely failed to mitigate his losses. The respondent did not accept that the claimant was unfit for work.

61. In relation to future loss of earnings, again, the respondent relied upon dismissal as an intervening act. Also, given the concurrent causes of the claimant's health problems and the risk he would have suffered a further depressive episode even if it had not been for the discrimination, the respondent submitted the claimant would not have remained in the respondent's employment date. For the same reasons, the respondent submitted that there should be no award for pension loss. Alternatively, if the tribunal held that the claimant was entitled to pension losses, the respondent contended that a simple pension calculation ought to be undertaken. In the event that the Tribunal held that a simple pension calculation was not appropriate, the respondent asked the Tribunal to determine the appropriate withdrawal factor with a

view to the mathematical issue of pension calculation being determined on a subsequent date, at which time the Tribunal could consider any relevant expert evidence from an actuary and/or complex pension calculation based upon the seven step model in *Principles for Compensating Pension Loss*.

62. Both parties agreed that the payment the claimant received under the civil service pension scheme should be offset against the claimant's financial losses.

The Law

63. Section 124(6) of the Equality Act 2010 provides that the amount of compensation which may be awarded for a breach of the Equality Act in relation to work is "the amount which could be awarded by a county court…under section 119". Section 119 provides that the county court has power to grant any remedy which could be granted by the High Court in proceedings in tort and section 119(4) provides: "an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)". The aim of damages in tort is to put the claimant in the position they would have been in, had the act of discrimination not occurred. Compensation (with the possible exception of exemplary damages which may be relevant in rare cases) is to compensate for loss caused by the act of discrimination. There is no limit on compensation for discrimination.

64. In relation to compensation for injury to feeling, we have regard to the guidelines in *Vento v Chief Constable of West Yorkshire Police (no.2) [2003] IRLR 102.* We note, in particular, the guidance that awards are compensatory and not punitive. *Vento* sets out the bands that we must consider. These were amended by the case of *Da'Bell v NSPCC [2010] IRLR 19*. The Court of Appeal in *Da Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879,* held that the 10% uplift provided for in *Simmons v Castle [2012] EWCA Civ 1039,* should also apply to employment tribunal awards of compensation for injury to feelings and psychiatric injury in England and Wales. The Court of Appeal invited the President of the Employment Tribunals to issue guidance adjusting the *Vento* figures for inflation and incorporating the *Simmons v Castle* uplift. The Presidents of the Employment Tribunals in England and Wales and Scotland issued joint guidance, which has been updated on a number of occasions. The guidance provides that, in relation to cases presented after 6 April 2018, the Vento bands are as follows: lower band £900- £8,600 (less serious cases); middle band £8600 - £25,700 (cases that do not merit an award in the upper band); and upper band £25,700 - £42,900 (the most serious cases). In the most exceptional cases, the award can exceed £42,900.

65. The Tribunal has jurisdiction to award compensation for personal injury arising out of unlawful discrimination: *Sheriff v Klyne Tugs (Lowestoft) Limited* [1999] ICR 1170. The Judicial Studies Board issues Guidelines for Assessment of Damages in Personal Injury Litigation which includes a chapter on Psychiatric and Psychological Damage.

66. The Tribunal may make separate awards for injury to feelings and for personal injury, but the Tribunal must avoid double counting; not compensating for the same injury under two separate heads of damages.

67. Where there are a number of causes of psychiatric injury, the Tribunal should make a sensible attempt to identify the extent to which the discrimination caused the injury. The EAT, in *Thaine v London School of Economics [2010] ICR 1422* held that an employer should not have to compensate a claimant for his or her injury in its entirety when the harm for which it was responsible was just one of many causes of the ill health. In so holding, the EAT had regard to obiter guidance on the issue of apportionment in psychiatric ill-health cases given in *Hatton v Sutherland and other cases 2002 ICR 613, CA*. There, Lady Justice Hale suggested (obiter) that where there are multiple causes of psychiatric illness, the court should make a sensible attempt at apportionment between them.

68. There were two propositions set out in **Hatton** which are relevant to this case. Proposition 15 is:

> "Where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing, unless the harm is truly indivisible. It is for the defendant to raise the question of apportionment…"

Proposition 16 is:

> "The assessment of damages will take account of any pre-existing disorder or vulnerability and the chance that the claimant would have succumbed to a stress-related disorder in any event."

69. The Court of Appeal in **BAE Systems (Operations) Ltd v Konczak** [2017] IRLR 893 reviewed the case law in relation to discounting of damages for personal injury. In paragraph 71, Lord Justice Underhill wrote, dealing with the proposition 15 situation:

> "What is therefore required in any case of this character is that the tribunal should try to identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrong and a part which is not so caused. I would emphasise, because the distinction is easily overlooked, that the exercise is concerned not with the divisibility of the causative contribution but with the divisibility of the harm. In other words, the question is whether the tribunal can identify, however broadly, a particular part of the suffering which is due to the wrong; not whether it can assess the degree to which the wrong caused the harm."

70. In paragraph 72, Lord Justice Underhill wrote:

> "That distinction is easy enough to apply in the case of a straightforward physical injury. A broken leg is "indivisible": if it was suffered as a result of two torts, each tortfeasor is liable for the whole, and any question of the relative degree of "causative potency" (or culpability) is relevant only to contribution under the 1978 Act. It is less easy in the case of psychiatric harm. The message of **Hatton** is that such harm may well be divisible. In **Rahman** the

> exercise was made easier by the fact (see paragraph 57 above) that the medical evidence distinguished between different elements in the claimant's overall condition, and their causes, though even there it must be recognised that the attributions were both partial and approximate. In many, I suspect most, cases the tribunal will not have that degree of assistance. But it does not follow that no apportionment will be possible. It may, for example, be possible to conclude that pre-existing illness, for which the employer is not responsible, has been materially aggravated by the wrong (in terms of severity of symptoms and/or duration), and to award compensation reflecting the extent of the aggravation. The most difficult type of case is that posited by Smith LJ in her article, and which she indeed treats, rightly or wrongly, as the most typical: that is where "the claimant will have cracked up quite suddenly, tipped over from being under stress into being ill". On my understanding of **Rahman** and **Hatton**, even in that case the tribunal should seek to find a rational basis for distinguishing between a part of the illness which is due to the employer's wrong and a part which is due to other causes; whether that is possible will depend on the facts and the evidence. If there is no such basis, then the injury will indeed be, in Hale LJ's words, "truly indivisible", and principle requires that the claimant is compensated for the whole of the injury-though, importantly, if (as Smith LJ says will be typically the case) the claimant has a vulnerable personality, a discount may be required in accordance with proposition 16."

71. In the case before it, the Court of Appeal found that the tribunal's finding that it was only after the comment held to be discrimination that the claimant developed a diagnosable illness was not perverse. At paragraph 78, Lord Justice Underhill wrote that, on that analysis, this was a case of the kind where, until the moment of the wrongful act, the employee was vulnerable but not ill. He wrote: "even in such a case, as I have said, apportionment may be possible, but it is necessary to identify a rational basis for it, and none was identified here."

72. This apportionment of injury due to multiple causes is distinct from the principle that the wrongdoer must take the victim as they find them, or the "eggshell skull principle". It is no defence to say that a claimant would not have suffered as they did but for their susceptibility or vulnerability to a psychiatric condition. The respondent will be liable for the whole of the injury if it was caused by the discrimination but the injury was worse than would have been suffered by someone else, because the claimant was vulnerable or pre-disposed to psychiatric injury. A discount could be applied to damages, however, under **Hatton** proposition 16, on the basis that the claimant would have suffered injury even if the discrimination had not occurred.

73. Lord Justice Underhill commented, in paragraph 83 of the **BAE** case, that that was the kind of case where a substantial discount might have been justified on the basis that the claimant would have suffered psychiatric injury in any event, had the comment in question not occurred. However, that was a proposition 16 argument which was not before the tribunal.

74. Interest may be awarded on awards made in discrimination cases in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases)

Regulations 1996. The interest rate for claims presented on or after 29 July 2013 is 8%.

Conclusions

75. Cross references to paragraph numbers in these conclusions are to paragraphs in our findings of fact.

Apportionment of harm

76. We deal first with this issue which potentially impacts on the awards for personal injury and financial loss. We are dealing here with the **Hatton** proposition 15, as confirmed in **BAE Systems (Operations) Ltd v Konczak** [2017] IRLR 893 CA**.**

77. The authorities direct us that we must try to identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrong and a part which is not so caused. The exercise is concerned with the divisibility of the harm. Can we identify, however, broadly, a particular part of the suffering which is due to the wrong?

78. The parties obtained a joint medical report from Dr Bond. Dr Bond pointed to a number of causative/contributory factors to the claimant's depressive episode in December 2017 (see paragraph 36). These included the report prepared by Mr Gough sent to the claimant on 13 December 2017. At paragraph 15 of his report, Dr Bond, wrote that it is impossible to scientifically quantify the relative contributions of each of these factors to the development of the depressive episode but he expressed the view that, on the balance of probabilities, the content of Mr Gough's report was probably the most significant factor (p.131). In his answers to the Part 35 questions, Dr Bond was unable to say whether the grievance outcome/report as a whole was the most significant factor, or whether a specific element of the report/grievance was the most significant factor in the deterioration of the claimant's mental condition (p.141).

79. On the basis of the claimant's evidence, we conclude that it was the part of the report recommending a disciplinary investigation of the claimant, following Mr Gough's "trawl" through the claimant's timesheets, which had the most significant impact on the claimant. We rely on the facts found in paragraph 21 to support this conclusion.

80. Prior to the December 2017 act of victimisation, the claimant had not had any psychological issues which caused him to take time off work or to consult his GP since a period of absence at the end of 2015 into the start of 2016. There was no ongoing psychological problem.

81. Having regard to the report of Dr Bond and the claimant's evidence, we cannot identify any rational basis on which the harm suffered by the claimant can be apportioned between the harm done by the act of victimisation and the other causal factors identified by Dr Bond. We have no other evidence which would provide the basis for an apportionment.

Discounting in accordance with the Hatton proposition 16

82. The claimant had a vulnerable personality. Prior to the acts of discrimination, the claimant had an underlying vulnerability to anxiety and depression symptoms (p.130). We, therefore, need to consider the chances that the claimant would have suffered the same type of psychiatric harm if the acts of discrimination had not occurred.

83. Although the claimant had had previous episodes of depression, he had gone lengthy periods without these occurring. As noted above, prior to the December 2017 act of victimisation, the claimant had not had any psychological issues which caused him to take time off work or to consult his GP since a period of absence at the end of 2015 into the start of 2016. The 1999 episode of depression was prompted by a relationship breakdown. Psychological problems in 2014 followed a road traffic accident. These problems were not identified by Dr Bond as being a depressive episode, but Adjustment Disorder with mixed anxiety and depressive reaction. The absence from work in late 2015/early 2016 was not attributed to depression. The claimant was diagnosed by his GP as having an anxiety state and Dr Bond considered the symptoms documented by the GP as consistent with a diagnosis of Panic Disorder. The claimant attributed this to taking on too much union work.

84. We note that Dr Bond, in paragraph 4 of his opinion, states that, of patients who have one episode of major depression, 50% to 85% will go on to have a second episode and 80% to 90% of those who have a second episode will go on to have a third (p.130). Dr Bond appears to be using “major depression” to include the types of episodes the claimant had in 1999 and then 2017, since, in paragraph 23 (p.133), he expresses the view that, since the claimant had two documented depressive episodes, which he identifies as being those in 1999 and 2017, there was an 80% to 90% risk of the claimant developing a third depressive episode in the future. We conclude, based on these paragraphs, that, if the act of discrimination had not occurred, the claimant would not have had the depressive episode in 2017, so he would have been at a 50% to 85% risk of having a second depressive episode. Dr Bond does not specify a period within which that episode would be likely to occur, so we take it that this could mean at some point during the person’s lifetime.

85. Since the claimant’s episodes of depression have been triggered by particular life events, we consider that the claimant was at risk of having another episode of depression if there was a traumatic life event. We note, however, that the claimant had weathered very difficult life events around the birth of his son without this triggering a depressive episode so not every traumatic life event would trigger depression (see paragraph 17).

86. We have had no evidence that there were any other significant life events around the time of the acts of discrimination which would have been likely to trigger a depressive episode. Although the claimant was aggrieved by various matters which were not found to be discrimination, we do not consider these would have triggered the illness which was triggered by the act of victimisation in December 2017 and exacerbated by the later failure to make reasonable adjustments. The claimant had

remained at work, despite the difficulties, until Mr Gough's recommendation of disciplinary action.

87. The only significant life event that we have heard about since the acts of discrimination which we consider might, potentially, have triggered a depressive episode was the tragic suicide of the claimant's brother in law around March 2020. Based on the GP's notes about this, we conclude this exacerbated the existing illness. A few months later, when Dr Bond was assessing the claimant, Dr Bond makes no mention of this as a significant factor in the claimant's depressive symptoms having not fully resolved since December 2017 (see paragraph 37). We conclude that this life event would not, by itself, have caused the claimant to suffer a depressive episode.

88. We note Dr Bond's opinion, in answers to questions, that it was possible the claimant would be suffering from the symptoms that he was at the time of examination if the acts of discrimination had not occurred. Dr Bond does not quantify the likelihood of this having occurred. Given the matters we have referred to, however, we do not consider this was a material possibility.

89. We conclude that, by the time the claimant is assessed by Dr Bond for the personal injury for which we are considering awarding damages, there had been no life events, other than the acts of discrimination, which would have caused the claimant to suffer psychiatric harm. We do not, therefore, consider that there is any rational basis on which to discount the personal injury award because of the claimant's vulnerability to anxiety and depression symptoms.

90. For the reasons we give when we deal with financial loss following dismissal, we have concluded that there will be no loss of earnings (other than pension loss) after the end of October 2021. We do not consider there is any rational basis on which to discount financial loss in the period to the end of October 2021 because of the claimant's vulnerability to anxiety and depression symptoms. Based on Dr Bond's prognosis, the claimant should start to feel better with the end of the litigation and should, with treatment, reach a full recovery 6 to 12 months after the Employment Tribunal matter has concluded. We do not, therefore, make any discount to financial loss under **Hatton** proposition 16.

Damages for personal injury

91. Dr Bond's opinion, which we accept, is that, by the time the claimant consulted his GP in December 2017, he was suffering from a Moderate Depressive Episode (ICD-10 F32.1). The parties agree that damages for personal injury should come within bracket 4(A)(c) of the Judicial College Guidelines (15th edition) for general damages for pain, suffering and loss of amenity, for psychiatric damage. This bracket, including 10% Simmons uplift, which the parties now agree should apply (Mr Bunting having conceded this during oral submissions), is £5,500 to £17,900. The claimant suggests a figure of £15,000, the respondent £10,000 (prior to the discounting Mr Bunting said should apply).

92. Considering the factors which the Judicial College Guidelines provide as relevant, we consider that the damages should be towards the upper end of the scale. The injury had a high impact on the claimant's ability to cope with life, education and work. It had a moderate impact on the claimant's relationships with family, friends and those with whom he came into contact. It put considerable strain on his relationship with his wife, including leading to a short period when they separated and the claimant lived with his mother. However, the relationship with his wife was repaired. The injury had an adverse effect on the claimant's ability to fully engage with his children. The injury had some impact on his friendships, the claimant finding it difficult to socialise with friends he made through work because of anxiety when he talked about work. The prognosis is that the claimant will fully recover within 6 to 12 months of the conclusion of the proceedings with the benefit of treatment. The claimant's future vulnerability is affected to a considerable extent. Since he has now had two episodes of major depression, Dr Bond states that the likelihood of suffering a further episode is 80 to 90% (up from 50 to 85% after one episode). The prognosis, as stated above, is for a full recovery within 6 to 12 months of the end of proceedings. The claimant has sought appropriate medical help throughout. Taking into account all these matters, we agree with the claimant's submission that £15,000 is the appropriate level of damages.

93. For the reasons given under the headings "Apportionment of harm" and "Discounting in accordance with the Hatton principle 16", we do not agree with the respondent's submissions that there should be discounting of the amount of damages because of, either, divisibility of harm, or because of the likelihood of suffering further episodes of depression because of pre-existing vulnerability.

Injury to feelings

94. The parties are agreed that injury to feelings should fall within the middle band in **Vento**. In accordance with the presidential guidance applying to cases presented on or after 6 April 2018, this band, is £8600-£25,700. The claimant suggested injury at the top end of the middle band suggesting £27,000. It appears to us that Ms Noll and Mr Bunting have mistakenly referred to the band as it was further revised in 2019. Mr Bunting has suggested, for the respondent, an award of £10,000, although it appears that this suggestion is in part because of the respondent's argument that the claimant's compensation ought not to reflect the injury to feelings he suffered as a result of matters other than the complaints which were upheld by the tribunal.

95. We are aware of the risk of double counting, compensating the claimant twice for the same loss under the personal injury and injury to feelings headings. We take this into account when deciding on the appropriate level of the injury to feelings award.

96. We conclude that the act of victimisation, in particular, caused the claimant very significant injury to feelings. The second act of discrimination, the failure to make reasonable adjustments, aggravated this further. The claimant suffered a significant loss of confidence and very significant loss of self-worth. He had enjoyed his job, which he had done for 16 years since the age of 28 and felt valued in the job and the associated union work which he did. He had never had any disciplinary action taken against him in his lengthy career. The recommendation of a disciplinary investigation against him caused him to feel as if he was falling off a cliff edge. He was worried that he would lose his job. Indeed, the illness he suffered as a result of the act of discrimination led to his capability dismissal and the loss of the career which he had valued. He felt devastated by the loss of his career. The failure to make reasonable adjustments was the loss of the last hope he had that someone would listen to him.

97. If we had not been making a separate award for personal injury, we would have awarded £25,000 for injury to feelings, placing the injury to feelings at the top end of the middle bracket. This level of award would have been because of many of the factors which led to the level of personal injury damages we awarded plus factors which would not be relevant for the personal injury award. Taking account of the overlap in factors considered for both awards, we award £15,000 for injury to feelings in addition to the £15,000 we have awarded for personal injury. This makes a combined award of £30,000 for personal injury and injury to feelings, which we consider to be an appropriate level of award, having regard to the seriousness of the personal injury and level of injury to feelings suffered as a result of the two acts of discrimination.

Interest on the personal injury and injury to feelings awards

98. We conclude that interest should run on both the personal injury and injury to feelings awards from 13 December 2017, the date Mr Gough's report was sent to the claimant. Although there was a second act of discrimination later, the majority of the injury was suffered because of the first act. Interest is awarded at 8% in accordance with the regulations.

Financial loss

99. We need to consider what financial loss, if any, was caused by the act of discrimination. We must try to put the claimant, financially, in the position he would have been in, had the act of discrimination not occurred.

100. We have concluded that the claimant became ill because of the act of victimisation and this was exacerbated by the act of failure to make reasonable adjustments. The claimant was too ill to work and, therefore, after full sick pay ended, had a period of sick leave on less than full pay, prior to his dismissal. He was dismissed because he was too ill to work.

101. For the reasons given under the headings “Apportionment of harm” and “Discounting in accordance with the Hatton principle 16”, we do not agree with the respondent’s submissions that there should be discounting of the amount of financial loss caused by the act of discrimination because of, either, divisibility of harm, or because of the likelihood of suffering further episodes of depression because of pre-existing vulnerability.

102. We conclude, therefore, that the financial loss during the period of sick leave on less than full pay was caused by the acts of discrimination and the claimant should be awarded the full financial loss for this period, June to July 2018.

103. The claimant claimed, in his schedule of loss, the cost of wasted tuition fees, although he did not put a figure on this in the schedule and none was subsequently provided. Ms Nowell made no submissions about this head of financial loss. The claimant gave very little information about his decision to start a course at Salford University. The claimant has not provided sufficient information to enable us to conclude that the loss of tuition fees was caused by the acts of discrimination and has provided no information about the amount of wasted tuition fees. We, therefore, conclude that no compensation should be awarded for this head of financial loss.

104. We conclude that the cost of medical treatment for the illness caused by the acts of discrimination is financial loss for which the claimant should be compensated. Dr Bond set out the cost of the assessment and subsequent sessions with a psychiatrist and we conclude that the claimant should be awarded compensation of this amount.

105. The claimant suffered loss of earnings following his dismissal. We conclude that loss of earnings following dismissal was caused by the acts of discrimination, provided that there is no intervening act which breaks the chain of causation.

106. We do not accept the respondent’s argument that the dismissal breaks the chain of causation. The dismissal was because of the claimant’s illness, which was because of the acts of discrimination. We do not consider that **Ahsan v Labour Party** or any of the other authorities to which we were referred mean that only an unfair or discriminatory dismissal will not break the chain of causation. Indeed, as Ms Nowell pointed out, in **Thaine v London School of Economics** UKEAT/144/10, the claimant was awarded compensation for financial loss after her dismissal which flowed from the act of discrimination preceding the dismissal, although the dismissal itself was not found to be unfair or otherwise unlawful; the claimant’s health had broken down, following acts of sexual harassment, which ultimately led to her dismissal.

107. The respondent’s arguments as to why the claimant should not be compensated for financial loss after dismissal relate in very large part to causation and we have rejected the respondent’s arguments on those points for the reasons given earlier. If financial loss is caused by the acts of discrimination, as we have found to be the case, we see no reason based in case law or otherwise as to why the claimant should not be compensated for that loss. The fact that the claimant has

not brought any complaint about his dismissal does not preclude him from being awarded damages for post-dismissal loss of earnings caused by the acts of discrimination.

108. The respondent has not argued that there are any other events which break the chain of causation, after the dismissal.

109. The respondent argued that the claimant failed to mitigate his loss because he did not seek other work or claim benefits. The claimant was not asked why he did not claim benefits. There could be a number of reasons for not claiming benefits. The respondent has not put forward evidence as to benefits to which the claimant would have been entitled but has not claimed. The respondent has not discharged the burden on them of satisfying us that the claimant failed to mitigate his loss by not claiming benefits which would have been available to him. We conclude, on the basis of the evidence of Dr Bond and the claimant, that the claimant has not been fit for work to the present. He cannot, therefore, have failed to mitigate his loss by not seeking other work. The fact that the claimant was unable to cope with the face-to-face contact required with the course at Salford University supports a conclusion that the claimant was not fit for work at that time. On the basis of the evidence of Dr Bond, the claimant is likely to make a full recovery 6 to 12 months after the litigation is over, with the benefit of treatment. On the basis of this evidence, we conclude that the claimant should be compensated for loss of earnings to the end of October 2021. We conclude that, leaving aside pension loss which we deal with separately, the claimant should be able to obtain comparable employment and earnings by the end of October 2021. We note that the claimant, if he continues with his Open University course on a full-time basis, would not conclude that course until June 2022. The claimant is, however, under a duty to mitigate his loss and we consider that, if he decides to finish his course on a full-time basis before seeking work, loss of earnings after the end of October 2021 would be due to that personal decision, rather than the loss of earnings being caused by the acts of discrimination.

110. Dr Bond's view is that the claimant has not been able to recover because of the ongoing litigation. We do not consider that the ongoing litigation could be considered to be an intervening act; it is a matter which arises from the acts of discrimination. In any event, we do not consider that there is any evidence which would suggest to us that the claimant would have recovered, had he decided not to litigate about the discriminatory acts.

111. We make no discount for the chances that the claimant would have become ill without the acts of discrimination before the end of October 2021. With the end of the litigation and with the treatment suggested by Dr Bond, the claimant should start to feel better. We do not consider there is any basis on which we could conclude that there was any quantifiable risk of the claimant suffering a similar depressive episode up to the end of October 2021, had the acts of discrimination not occurred.

112. The claimant was paid 13 weeks' pay in lieu of his notice period. His loss of earnings does not, therefore, begin until 19 October 2018.

<u>Interest on financial loss to the calculation date</u>

113. We conclude that interest should be awarded on past financial loss from the midpoint between the acts of discrimination and the calculation date at the rate of 8%.

Pension loss

114. The claimant was a member of a defined benefit scheme. It is unlikely that the claimant would find new employment in the private sector offering a comparable defined benefit scheme. However, the area in which the claimant, according to his schedule of loss, would like to work in, working with autistic children, could be in the public sector, or equally in the private sector. It is also possible that the claimant could return to the public sector in another type of role. We conclude there is a 50% chance that the claimant will work in the public sector from the end of October 2021 and, therefore, a 50% chance that he will fully mitigate his pension loss by this time.

115. We consider the chance that the claimant would have left the respondent prior to retirement, which the claimant says would have been at age 66 (although we consider that this is an error and the correct retirement age is 67). The claimant had worked for the respondent for 16 years. His expertise was related particularly to the respondent's work. Prior to the acts of discrimination, the claimant had not expressed any dissatisfaction at working for the respondent or any desire to move employers. It is the type of employer for whom employees may often work for most, if not all, of their career. Having regard particularly to the pension provision, employees will be reluctant to leave the respondent's service as they get closer to retirement age.

116. Although there were issues which arose at work with certain managers from February 2017, we do not consider that relationships would have deteriorated so much that the claimant would have been unable to work at the respondent had it not been for the discriminatory acts. The claimant had managed to remain at work until the recommendation for disciplinary action by Mr Gough in December 2017. It may have been possible for the claimant to move to work for another manager, or, indeed, managers may have moved to other roles.

117. As noted previously, had it not been for the acts of discrimination, the claimant would have been at risk of another depressive episode because of the episode in 1999. However, we consider that the risk of such an episode occurring and leading to the claimant being dismissed on capability grounds to be small. If he had suffered an episode, he might well have been able to return to work following sick leave.

118. Taking all these matters into consideration, we assess that there was a 25% chance that the claimant would have left the respondent before retirement age, either voluntarily or on capability grounds.

119. The parties did not have information about the likely value of the claimant's Alpha pension at retirement had he continued with the respondent until retirement. The claimant's schedule of loss contained a calculation based on assumed future salary in each year to retirement, which the claimant's representative suggested was

likely to result in an estimation of future pension entitlement below the true sum, had indexation been applied. The respondent proposed that the Tribunal should do a simple pension calculation but, if the Tribunal considered this was not appropriate, that it should determine the appropriate withdrawal factor with a view to the mathematical issue of pension calculation being determined on a subsequent date, at which time the tribunal could consider any relevant expert evidence from an actuary and/or a complex pension calculation based upon the seven steps model in *Principles for Compensating Pension Loss.*

120. Given the length of time over which pension loss is to be calculated, the tribunal does not consider that a simple pension calculation will give a sufficiently accurate estimate of the claimant's pension loss. The tribunal also considers that would be preferable to do a more accurate calculation than would be possible on the information currently available to the tribunal. The tribunal has, therefore, decided that it should issue this judgment on the matters it has decided and provide the parties with time within which to seek to agree a figure for pension loss. This will enable the parties to obtain from the respondent's pension providers the necessary information to do a more accurate calculation of pension loss, seeking expert evidence to assist them, if the parties wish to obtain this. If the parties are unable to agree on pension loss, a further remedy hearing will take place. To avoid unnecessary delay, the tribunal will list a one day stage two remedy hearing with the parties, consulting the parties about their availability, which may be used if required, with a further day for the Tribunal to meet in chambers, if required. If the parties are able to reach agreement on outstanding matters, that hearing would be cancelled and a judgment by consent would be issued for the remaining elements of compensation. The tribunal gives leave to the parties to call expert evidence at a resumed remedy hearing (preferably in the form of a joint report) if a further hearing is required.

Credit for payment received under the Civil Service Compensation Scheme

121. Credit must be given by the claimant for the payment of £18, 792.31 received under the CSCS against loss of earnings and loss of pension.

Grossing up

122. The amount of compensation for pension loss will have an impact on the grossing up of the elements of compensation which would be subject to tax. The tribunal therefore calculates the net financial losses but does not, at this stage, order the respondent to pay compensation for financial loss. The parties are invited to try to agree the outcome of the grossing up exercise, if they are able to agree on the pension loss. Failing agreement, the gross amount will be decided at the resumed remedy hearing.

Calculation

123. The calculation of those parts of the compensation which we are able to calculate at this stage is as follows. Pence have been rounded up or down.

Personal injury		£15,000
Interest on personal injury (8% on £15,000 from 13.12.17 to 26.2.21 - 549 days) 549/365 x 8/100 x 15,000		£1804
Injury to feelings		**£15, 000**
Interest on injury to feelings (8% on £15,000 from 13.12.17 to 26.2.21 - 549 days) 549/365 x 8/100 x 15,000		**£1804**
Financial losses		
Loss in period June and July 2018 (923.09 x 2) – (881.93 + 569.38)		395
Loss of earnings to calculation date		
19.10.18 – 26.2.21 (123 weeks) 213.02 x 123		26,201
Interest on past loss of earnings (8% on 394.87 + 26201 from the midpoint Between 13.12.17 and 26.2.21 – 275 days) 275/365 x 8/100 x 26,595.87		1603
Future loss of earnings		
27.2.21 – 31.10.21 (35 weeks)		
213.02 x 35		7,456
Cost of treatment Assessment 3.5 sessions at 175 each	300 612.50	
		913
Pension loss		To be determined at stage 2 remedy hearing if not agreed
Less credit for payment under the CSCS		18, 792.31
Grossing up to be done		

Employment Judge Slater

Date: 7 March 2021

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON

9 March 2021

FOR THE TRIBUNAL OFFICE

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

NOTICE

INTEREST ON DISCRIMINATION AND EQUAL PAY AWARDS
The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996

Tribunal case number: **2410222/2018**

Name of case: **Mr MP Sutcliffe** v **Crown Prosecution Service**

The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 apply the Employment Tribunals (Interest) Order 1990 so as to provide that sums of money payable as a result of a judgment of an Employment Tribunal under discrimination or equal pay legislation (excluding sums representing costs or expenses), shall carry interest where the sum remains unpaid on a day ("*the calculation day*") which immediately follows the day ("*the relevant judgment day*"), that the document containing the Tribunal's judgment is recorded as having been sent to the parties.

No interest will be payable if the full amount is paid to the complainant within 14 days after the judgment is sent to the parties.

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

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

"the relevant judgment day" is: **9 March 2021**

"the calculation day" is: **10 March 2021**

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

* The Employment Tribunals (Interest) Order 1990 SI 1909/479