



EMPLOYMENT TRIBUNALS

Claimant Mr M Compton

Respondent Ministry of Defence

Heard at: Exeter (remotely)

On: 7 & 8 April 2021

Before: Employment Judge Goraj

Representation

Claimant: Mr S Harding of Counsel

The Respondent: Mr J Dixey of Counsel

RESERVED REMEDY JUDGMENT PURSUANT TO THE LIABILITY JUDGMENT SENT TO THE PARTIES ON 19 MAY 2017

THE JUDGMENT OF THE TRIBUNAL is that: -

1. The claimant is awarded, and the respondent is ordered to pay to him, the agreed sums of £7,726.73 and £350 for respectively the claimant's basic award and loss of statutory rights pursuant to sections 119 and 123 of the Employment Rights Act 1996 in respect of the claimant's successful complaint of unfair dismissal.
2. The claimant is awarded compensation in the sum of £30,000 for injury to feelings pursuant to sections 119 (4) and 124 (2) of the Equality Act 2010. This award will be subject to an award of interest to determined (in default of agreement between the parties) at a further remedy hearing.
3. If the claimant had not been subjected to unlawful disability discrimination by the respondent (as found in the Liability Judgment) :-
(a) there is an 80 per cent chance that he would have remained in the employment of the respondent until 31 December 2019 (b) there is a 90 per cent chance that the claimant would have been lawfully dismissed by the respondent on 31 December 2019 (by reason of ill health or capability) (c) further there is a 90 per cent chance that the claimant would as at 31 December 2019 have received the then maximum permitted award for compensation for dismissal for inefficiency and (d) and any awards of compensation pursuant to sections 119 (4) and 124(2) of the Equality Act 2010 should be adjusted accordingly.

4. The claimant's claim for relocation expenses, compensation for alleged insurance losses and "unfortunate spending" are dismissed.
5. The remaining aspects of the claimant's claim for compensation for disability discrimination and unfair dismissal (including the quantification of such claims and any claim for pension losses) will be determined at a further remedy hearing in default of agreement between the parties.

REASONS

Introduction

1. The claimant was employed by the respondent from 17 January 2003 to 26 February 2016.
2. By a claim form presented on 21 June 2016, the claimant alleged that he had been unfairly dismissed and unlawfully discriminated against by the respondent because of disability. The disabilities upon which the claimant relies for the purposes of his claim are stated in the claim form as :- (1) back related conditions (2) bowel and intestinal related conditions and (c) mental health and depression. The claims were denied by the respondent save that the respondent accepted that the claimant was at all relevant times a disabled person for the purposes of the Equality Act 2010 ("the 2010 Act") by reason of the physical disabilities referred to above.

The liability hearing and subsequent events

3. There was a liability hearing on 3 – 6 April 2017. The Tribunal subsequently held, by a reserved judgment which was sent to the parties on 19 May 2017 ("the Judgment"), as referred to in more detail below, that :- (a) the claimant was unfairly dismissed in breach of section 98 of the Employment Rights Act 1996 ("the 1996 Act") (b) the claimant had been unlawfully discriminated against because of disability pursuant to sections 15 and 20/21 of the 2010 Act and (c) the claimant's remaining of claims of disability discrimination (including for unlawful victimisation) were dismissed.
4. The claims which the Tribunal upheld were as follows:-
 - 4.1 The claimant's complaint that the respondent had failed to make reasonable adjustments (sections 20 and 21 of the 2010 Act) in respect of the requirement to attend meetings at Bovington camp (22 October, 4 November, 4 December and 11 December 2015) (paragraphs 5 and 44 of the Judgment).
 - 4.2 The claimant's complaint that he had been unlawfully discriminated against by the respondent by reason of unfavourable treatment arising from disability (pursuant to section 15 of the 2010 Act) in respect of the initiation of disciplinary proceedings and his subsequent dismissal (28 January 2016 – 26 February 2016) (paragraphs 8 and 43 of the Judgment).

- 4.3 The claimant's complaint of unfair dismissal (paragraphs 6 and 47 of the Judgment).
5. The Tribunal rejected the respondent's contention that the claimant had contributed to his dismissal for the purposes of sections 122(2) and/or 123 (6) of the 1996 Act.
6. The history of this case since the issue of the Judgment is largely as summarised in the case management orders of Employment Judge Dawson dated 21 January 2020 and 23 April 2020. In brief summary, the reasons for the delay largely relate to the circumstances surrounding the provision of the relevant medical information to / the obtaining of expert medical evidence. The parties have, for the purposes of this remedy hearing, jointly instructed two medical experts namely , a consultant rheumatologist, Dr Armstrong and a consultant psychiatrist, Dr Bashir (whose reports are referred to further below).

The conduct of the Hearing

7. The Employment Tribunal Judge who chaired the liability hearing has since retired. Further, the parties have consented to the remedy hearing been conducted by an Employment Judge sitting alone. The Employment Judge conducting this hearing has had the helpful assistance of the Counsel who appeared on behalf of the parties at the liability hearing.
8. The hearing was with the agreement of the parties conducted as a remote hearing as it was in the interests of justice to do so.

The witnesses

9. The Tribunal has received a witness statement and heard oral evidence from the claimant.
10. The Tribunal also received a witness statement from Mr Scott Turner, Head of Civil Service HR Advice and Casework Services. Mr Turner has had no previous direct involvement with the claimant including in respect of his dismissal or in the subsequent Tribunal proceedings. In paragraph 6 of his witness statement, Mr Turner offers his apologies to the claimant on behalf of the respondent for the way in which the claimant was treated in 2015 and in 2016 leading to his dismissal.
11. The Tribunal made reasonable adjustments for both witnesses to facilitate their participation in the remedy hearing.

The Issues and associated matters

12. In the Case Management order dated 23 April 2020 ("the Order dated 23 April 2020") it is recorded (at paragraph 2 of the Order) that the key issue for the purposes of remedy is whether the claimant can succeed in a claim for career loss as a result of the respondent's actions or whether as the respondent contends :- (1) the claimant's medical conditions which prevented him from working since the acts

complained of, were not caused by the respondent's actions and/or (b) the claimant would have been subject to medical retirement in any event.

13. The Employment Judge also directed at the Case Management Hearing on 23 April 2020 that the determination of any pension loss should be deferred until a separate further hearing as if the claimant did not succeed in his career loss claim he might decide not to incur the expense of obtaining expert evidence in respect of pension.
14. The parties provided for the purposes of this hearing an agreed (attached) List of Issues which includes the above.
15. It was agreed with the parties that the Tribunal would for the purposes of this remedy judgment limit its findings to :- (a) the award of any injury to feelings (b) whether the claimant is entitled to claim losses to retirement or whether, if the unlawful discriminatory conduct had not occurred, the claimant would have been lawfully and fairly dismissed and if so when and how (including if appropriate the percentage chance of this happening) and (c) the claimant's entitlement to the claim for expenses and other losses listed in his Schedule of Loss.
16. It was further agreed that the Tribunal would defer the quantification of the amount of any loss of earnings / award of interest/ tax treatment of any award pending further submissions from the parties in the light of the findings of the Tribunal in respect of the primary issues referred to above.
17. It was also agreed that the Employment Tribunal would defer any consideration (pending confirmation of the position of the claimant) of any claim for compensation in respect of the application of the ACAS Code of Practice (if relevant).
18. The respondent indicated that it may ask the Tribunal to limit any award of interest in the light of the claimant's alleged delays in providing relevant medical evidence.

The documents

19. The Tribunal was provided with an agreed (PDF) bundle of documents.

Schedule of Loss / counter schedule of Loss

20. The parties' schedule of loss/ counter schedule of loss are at pages 60 – 62 and 63-66 of the bundle respectively. The parties have agreed that the claimant is entitled to a basic award of £7,726.73 and loss of statutory rights in the sum of £350. The parties also indicated that the claimant has been paid an interim payment on account which they understand to be £27,000.
21. In summary, in addition to loss of earnings to the remedy hearing and projected future losses to retirement (retirement age of 62 on 10 May 2024) the claimant seeks :- (1) injury to feelings of £45,000 (top band

of Vento) (2) other losses comprised of (a) relocation expenses of £3,000 (b) loss of Wealth builder/ life insurance (approximately £80,000) and (c) compensation for “unfortunate spending” caused by depression in the sum of £50,000. The claimant did not however provide any details/ documentary evidence in support of any such “other losses”.

22. The respondent’s response to the claimant’s claims for compensation are summarised at paragraph 5 of the counter schedule (page 64 of the bundle). In brief summary, in addition to the monies referred to at paragraph 20 above, the respondent accepted for such purposes that the claimant was entitled to :- (a) loss of earnings from date of dismissal to the date of the liability hearing (26 February 2016 to 9 April 2017 (58 weeks in the sum of £9,103.77 and (b) injury to feelings of between £9,000 - £27,000 –(the middle band of Vento). The respondent denied that it was liable to compensate the claimant for the relocation expenses or other losses referred to in the schedule of loss.
23. The Tribunal reminded the parties that the “Vento bands “ required adjustment in accordance with the Presidential Direction referred to below.

The Judgment

24. The Judgment is at pages 1- 31 of the bundle.
25. The Tribunal has noted in particular the following :-
- 25.1 The Tribunal recorded (at paragraph 7 of the Judgment) (as part of its initial clarification of the issues to be determined at the liability hearing), that the respondent conceded that the claimant was a disabled person (for the purposes of the 2010 Act) at the relevant time by reason of issues with his back and bowels but that the question of disability in relation to the claimant’s mental health had not been conceded and that this issue would therefore require determination at the liability hearing.
- 25.2 When however, the Tribunal enquired further (paragraph 13 of the Judgment), as to whether the respondent continued to dispute that the claimant suffered at the relevant times from a disability by reason of mental impairments (depression/anxiety/stress) in the light of the fact that a finding of such disability been made during previous Tribunal proceedings, the respondent confirmed (notwithstanding the denial made in its response and during case management hearings) that it now accepted that the claimant also had a mental impairment at the relevant times by reason of such medical conditions. The Tribunal has further had regard to the Tribunal’s observations at paragraph 34 of the Judgment regarding the respondent’s late change in position regarding the claimant’s mental impairments including that no explanation had been given for the “apparent metamorphosis”

- 25.3 The comprehensive findings of fact at paragraph 16 of the Judgment-some of which are relied upon by the Tribunal for the purposes of remedy as referred to further below.
- 25.4 The Tribunal's observations regarding the actions of Mr Rogers of the respondent as investigating officer (at paragraph 35 - 38 of the Judgment -page 27 of bundle) including :- (a) that his report failed to make any mention of the claimant's physical and mental disabilities and that it therefore gave a misleading impression that the claimant was an able bodied person with no significant issues (b) his failure to include with / in his report a copy of his email dated 27 October 2015/ a proper summary of such email which chronicled the difficulties in health and associated pressures experienced by the claimant and (c) the consequential adverse effect which this had on the conduct of the subsequent disciplinary proceedings including that the dismissing officer was not aware that the claimant was disabled by way of mental health problems and (d) further the evidence of the dismissing officer that if he had seen the email dated 27 October 2015 he would have adjourned the disciplinary hearing to obtain occupational health guidance on the claimant's health and its impact on his actions and behaviour (paragraph 38 of the Judgment). The email dated 27 October 2015 is set out in full at paragraph 16.27 of the Judgment (pages - 11- 12 of the bundle).
- 25.5 The related submissions of the claimant's representative (paragraph 30 of the Judgment) (which do not appear to have been challenged) that notwithstanding the importance of the email dated 27 October 2015, it was only disclosed by the respondent during the course of evidence / whilst the dismissing officer was being cross – examined at the liability hearing and that no explanation had been provided by the respondent as to why it had not been disclosed or previously included in the disciplinary pack provided to the dismissing officer.
- 25.6 The finding of the Tribunal at paragraphs 43-47 of the Judgment.

The Medical evidence

26. The Tribunal has been provided with 3 principal sources of medical evidence namely :- (a) the Occupational health reports dated 3 March, 20 March, 17 April and 20 July 2015 (which are at pages 205.1 to 205.8 of the bundle (b) the expert reports and associated correspondence prepared by Dr R Armstrong, consultant rheumatologist and Dr A Bashir, consultant psychiatrist for the purposes of these proceedings (pages 92 – 121 of the bundle and (c) the review of the computerised notes of the claimant's GP from 8 July 2014 to 21 December 2018 contained in Dr Armstrong's report (pages 100 – 114 of the bundle) (together with his subsequent review in his further report dated 6 March 2020 of the later GP records referred to at paragraph 31 below).

The Occupational Health reports

27. The Tribunal has noted in particular, the contents of the OH reports (interim) dated 20 March and 20 July 2015 (following assessments of the claimant).

The OH (interim) report dated 20 March 2015 (page 205.2 - 205.3 of the bundle)

28. In brief summary, the Occupational Physician :-

28.1 Described the situation as follows:- (a) that the claimant had been out of the workplace for approximately five years (b) that the claimant had a complex background of physical health problems and was also suffering from a depressive illness (with substantial ongoing symptoms of depression)(b) advised that the claimant was not fit to return to work at the present time because of the depressive illness.

28.2 Advised that if the claimant's mental health improved he could become fit to return to work in the future but accommodations would be required in view of the claimant's complex physical health problems.

28.3 Further advised that he was seeking a report from the claimant's GP and that in the meantime although the claimant might in principle be able to return to work with further treatment/support for his depression within a few months it was difficult to be certain.

The OH report dated 20 July 2015 (pages 205.7 – 205.8 of the bundle)

29. In brief summary the Consultant Occupational Health Physician :-

29.1 Described the claimant's relevant medical issues as follows:- (a) bilateral deafness (corrected by hearing aids) (b) severe back pain with bilateral sciatica (with constant pain exacerbated by activity) (b) irritable bowel syndrome (with alternative constipation and diarrhoea leading to incontinence) (c) that the claimant had had mental health problems with anxiety and a tendency to bouts of irritation and anger related to his health and work issues (and that it was not clear that he had ongoing mental health problems separate from such trigger factors) and (d) previous bouts of renal colic and a partial prostatectomy (although the claimant's kidney and bladder functions were currently normal).

29.2 Advised that the claimant was likely to be considered as a disabled person for the purposes of the 2010 Act in relation to his back and bowel problems.

29.3 Current capacity for work advised that :- (a) the claimant was fit for office style duties and that he wished to resume working(b) that the claimant would need a car to commute to and from work (either by way of job share or through access to work /Motability)

(c) if the claimant was undertaking office work he could do some working days from home and if on site he would need a suitable workstation, frequent and regular breaks from his computer and ready access to the toilet (d) the claimant had indicated that he would be prepared to consider relocation for a suitable job within the UK or EU.

29.4 Outlook – advised that :- (a) the outlook for the claimant's back pain could only be assessed after a further injection (b) the claimant's mental health and irritable bowel syndrome should improve if his work situation also improved and (c) it would be prudent to assume that the claimant's health problems would continue to affect him in the same way.

The expert medical reports

Dr Armstrong – report dated 26 June 2019

30. The report dated 26 June 2019 (pages 92 – 121 of the bundle) the Tribunal has noted in particular :-

30.1 The record of the history given by the claimant to Dr Armstrong during their interview concerning his state of health prior to and after July 2015 and associated matters (pages 93 -99 of the bundle) including: - (a) that he had had a car crash on 1 December 2015 which the claimant said had put him off driving in the future (b) the incident when the claimant had soiled himself in the taxi (c) that the claimant had been diagnosed as having type II diabetes six weeks prior to their interview (d) the claimant's further medical conditions including that he experienced fatty liver, hypertension headaches and fatigue in addition to previous ongoing issues with chronic back pain, irritable bowel syndrome, anxiety and depression (e) the claimant's description of his perception of the impact of the respondent's actions (f) the claimant's description of his current mental state including that he had given up and spent much of his time in bed and (f) the claimant stated that he was capable of working from home but was unclear what work he might do which would match his identified skills and (g) that he had applied for a job at a local hotel but had been unsuccessful.

30.2 The opinion of Dr Armstrong including that :- (a) the most important impairments arose from the claimant's chronic back pain and mental health difficulties (including that there was evidence of mental health issues in the GP notes from 2002 – including a mental breakdown in 2002 and a problem with stress in 2011) (page 115 of the bundle) (b) the impact of the impairments on the claimant's ability to seek employment (page 116 of the bundle) including that it was difficult to disentangle the claimant's chronic pain and mental health difficulties as each caused a degree of exacerbation of the other (c) the claimant's back pain could be regarded as chronic pain syndrome which

interfered with the claimant's mobility, sleep and ability to carry out every day physical activities (d) the claimant's ability to undertake work would be restricted to relatively sedentary activity and that given his symptoms and the duration of his absence from work any return would have to be on a phased basis including to assess whether he would be likely to return to full-time working or would be restricted to a part-time role (e) the impact of the discriminatory acts - it was clear from the claimant's statements that he believed that his employers/managers were deliberately obstructive and manipulative in their dealings with him and that they failed to accommodate his difficulties and set him up to fail, which beliefs appear to have been detrimental to his mental health. Any impact on his physical health would however be very limited save that a deterioration in the claimant's mental status would be likely to cause an exacerbation of his chronic pain and ability to deal with it and (f) whilst the conclusion of the litigation may result in some limited improvement in the claimant's mental health status and also in his chronic pain and functional status he considered that any improvements were likely to be modest and that the claimant's symptoms and disabilities would persist indefinitely.

Dr Armstrong's further report dated 6 March 2020

31. Dr Armstrong provided a further report dated 6 March 2020 in which he reviewed the claimant's GP records from April 2019. The report dated 6 March 2020 is at pages 186.1 – 186.9 of the bundle. In brief summary, the Dr Armstrong advised that :- (a) the claimant appeared to be experiencing difficulties in gaining control of his diabetes (b) that the records reflected the ongoing stress experienced by the claimant which appeared to be multifactorial in origin (b) Around 2019 there appeared to be some evidence of some improvement in the claimant's mood with a lessening of his pain and increase in physical activity which provided some grounds for optimism once the litigation had concluded (c) however he had not seen anything in the medical records which would cause him to alter his previous comments regarding his prognosis and prospects for working.

The report of Dr A Bashir dated 14 May 2020

32. The report of Dr Bashir, Consultant Psychiatric Consultant dated 14 May 2020 (and associated documents) is at pages 122 – 155 of the bundle. Dr Bashir was provided with a copy of the reports of Dr Armstrong as part of the documentation which was supplied to him.
33. The Tribunal has noted in particular :-
- 33.1 Dr Bashir's review of the claimant's GP and associated medical notes relating to the claimant's mental health (pages 125-127 of the bundle).

- 33.2 Dr Bashir's record of the history given by the claimant during their interview (pages127 – 128 of the bundle).
- 33.3 Dr Bashir's record of the claimant's past and present medical history (pages 130 – 132 of the bundle).
- 33.4 Dr Bashir's mental state examination and opinion (pages 133-136 of the bundle) including in particular that :- (a) the claimant's mood was depressed (b) the claimant had prominent anger and feelings of injustice and was preoccupied with what he considered to be the unjust, inconsiderate and dishonest attitude of the respondent (c) the claimant's depression, as a mental impairment, started in 2009 following the recurrence of lymphoma, the end of the claimant's long army service and the onset and exacerbation of physical health problems (back pain and irritable bowel syndrome) which made it difficult for him to work. Further the symptoms of the claimant's depression became worse in 2009 with the accusation of misconduct (b) it was difficult to separate out the adverse effects of the claimant's mental and physical impairments however his depression adversely effected his day to day activities including his ability to work (c) the claimant's depression had uncovered dysfunctional traits of his personality (d) the claimant's ongoing case against the respondent continued to effect his mood (d) the claimant's depression was likely to improve within 3 months after the resolution of his legal case at which time his depression on its own would not adversely affect his normal day to day activities and the claimant would be able to seek employment in a job which took into account his physical disability (e) the claimant would however be likely to continue with some level of depression in the years to come and would remain at high risk of exacerbation of depression due to stress from any worsening of his physical illness or stressful life events and (f) the effect of pressures to attend meetings and the claimant's dismissal – the pressure to attend back to work meetings and subsequent investigations were very stressful for the claimant in 2015 and the claimant's dismissal and ongoing litigation continued to perpetuate and prolong his dismissal (g) it was difficult to separate out the effect of his dismissal from that of litigation and stress due to financial difficulties due to dismissal – overall the direct and indirect effect of dismissal would continue to maintain the claimant's depression until the resolution of the litigation against the respondent.

Dr Bashir's further report dated 25 August 2020

34. Following further questions/ exchange of correspondence with the parties Dr Bashir provided a further report dated 25 August 2020 (pages 190 – 205 of the bundle) (as corrected – page 186.12) . The Tribunal has noted in particular that Dr Bashir advised that:- (a) on the balance of probability, if the claimant had not been subjected to the

disciplinary process in 2015 – 2016, had not commenced Employment Tribunal proceedings and had not been required to attend at Bovington he would not have continued to be disabled by reason of a psychiatric impairment within the meaning of the 2010 Act (b) however it was difficult to say in such circumstances that the claimant's ability to travel to work (whether by car or public transport) would not , if he had not been subject to the above treatment, been impaired as the effects of medicines and poor mobility would have resulted in an inability to drive/ caused difficulty travelling on public transport (c) if the claimant had not been subjected to the above treatment and had not commenced Tribunal proceedings he would not have suffered severe depression with the consequential effects on his health and his ability to undertake paid work during those years would not have been impaired (d) there was more than a 50 percent chance of an improvement in the claimant's depression within months of the resolution of the case and (e) the risk of relapse in the claimant's depression depended upon the severity of stressful events or physical health worsening – the likely of an exacerbation of his depression was more than 50 per cent in the event of a severe stressful life event.

The respondent's policy documents

35. The Tribunal has had regard to the respondent's policy documents relating to efficiency / inefficiency compensation , absence management / attendance / loss of capability and ill health retirement which are at pages 720- 727 of the bundle.

Findings of fact

Background

36. The Tribunal has had regard to the findings of fact contained at paragraph 16 of the Judgment. The Tribunal has had regard in particular to such findings as referred to below together with the further following findings of fact:-

36.1 The claimant's date of birth is 10 May 1962.

36.2 The claimant had over 20 years' service as a tele communications Systems Engineer in HM Armed Forces (from August 1978 to 2002) prior to his employment with the respondent. (Paragraph 16.2 of the Judgment).

36.3 The claimant was employed by the respondent from 13 January 2003 until his dismissal on 26 February 2016. Details of the claimant's professional training and qualifications are contained in his CV at pages 90 – 91 of the bundle.

36.4 The claimant was originally employed by the respondent as a D grade Instruction Officer within the Defence School of Communications at its site in Blandford Dorset.

36.5 In or around 2009, the claimant was disciplined for alleged malpractice (relating to the provision of answers to students in respect of examinations). The claimant was the subject of similar allegations in 2011 which resulted in the claimant being demoted from Band D to Band E (paragraph 16.2 of the Judgment). Band E is a basic administrative role in which employees are allocated to a designated base within up to an hour's travelling time of their home.

36.6 The claimant did not undertake any work for the respondent after December 2009. The claimant was absent from work on full pay from December 2009 until his dismissal on 26 February 2016, including by reason of sickness absence (paragraph 16.2 of the Judgment).

36.7 The claimant had a car crash on 1 December 2015 which made him reluctant to drive in the future.

The previous Tribunal proceedings

36.8 The claimant-initiated Employment Tribunal proceedings against the respondent in 2012 for disability discrimination. The respondent conceded in those proceedings that the claimant was a disabled person for the purposes of the 2010 Act in respect of irritable bowel syndrome and back problems but denied that the claimant had any mental impairment which constituted a disability for such purposes. In a judgment promulgated on 7 October 2014, the Tribunal however determined that the claimant was, in addition to the physical impairments, disabled for the purposes of the 2010 Act by reason of stress anxiety and depression over a number of years (paragraph 16.5 of the Judgment).

The events of 2015/2016

37. In July 2015 the claimant was in poor health. The claimant described his health in his witness statement dated 9 March 2017 (which was prepared for the purposes of the liability hearing) in brief summary as set out as follows. The claimant was experiencing anxiety and depression and was being treated by the mental health team in Dorset. The claimant was also experiencing a lot of back pain which made it very painful/ difficult for him to walk or drive and the claimant struggled to get out of bed. The claimant also suffered with IBS which made him nervous as to whether he would require a toilet at short notice. The claimant was on strong medication to help him to manage his pain.

38. The discussions between the parties in the summer/autumn 2015 concerning the claimant's return to work proceeded on the basis that the closest base to the claimant's home was Bovington camp. Neither party proposed an alternative return to work base.

39. The claimant moved home from Dorset to the Southampton area in around February 2016 (the GP notes at page 101 of the bundle). This relocation was not made at the request of the respondent and the claimant did not make any application to the respondent for any relocation assistance/expenses in respect of such move.
40. The claimant has not undertaken any paid employment since the termination of his employment with the respondent in February 2016. The claimant has given evidence of one job application for hotel work which was unsuccessful.
41. In 2017, the claimant concluded that it would be difficult for him to undertake employment as he was unable to drive due to medication and travelling on public transport was painful and problematic due to his health problems.

Family issues

42. The claimant lost his stepson in tragic circumstances in November 2018 (entry in the GP notes 13 and 14 December 2018 – page 108 of the bundle). The claimant's wife was diagnosed with lymphoma in 2019 (entry in GP notes dated 18 July 2019 page 186. 4 of the bundle) both of which had an adverse impact on the claimant's mental health.

The claimant's recent diagnoses

43. The claimant has developed Bell's palsy since Christmas 2020. The claimant further informed the Tribunal that he had recently been diagnosed with Lyme's disease.

The claimant's claim for relocation and other expenses

44. As stated previously above, the claimant claims as part of his claim for compensation relocation expenses, monies withdrawn for an insurance policy and for £50,000 in respect of "unfortunate spending". The claimant has not however provided the Tribunal with any documentary or further evidence in support of such claims.

The respondent's attendance management policies

45. The claimant was subject to the application of the respondent's attendance management policies namely the attendance management policy (pages 731-732 of the bundle), the attendance management procedures (pages 733-734.41), the managing unsatisfactory attendance policy (pages 735-736) and the managing unsatisfactory attendance procedures (pages 737-750.12) collectively known as the "AM policies". In brief summary, the purpose of the policies is to assist civilian employees to achieve and maintain a satisfactory level of attendance in order to deliver an effective service. The Tribunal has noted in particular the procedure for an employee's return to work following a period of sickness absence at pages 734 – 735 of the bundle. The policy provides (page 734.3 of the bundle) that if an employee is absence because he is waiting for agreed reasonable

adjustments the respondent is required to grant (paid) disability leave which does not count towards trigger points for absence.

46. In the event of absences from work due to sickness the claimant was entitled to sick pay of six months at full pay and six months at half pay. If the claimant had been dismissed pursuant to the AM policies he would have been eligible for inefficiency dismissal compensation under the civil service Compensation Scheme (pages 728-730 of the bundle).
47. The Tribunal accepts the evidence of Mr Turner that the respondent's normal process for assisting an employee to return to work after sickness absence (such as in the claimant's case in the summer/ autumn of 2015) would have been focused on what could be done to resolve the issues including :- (a) to have considered with Access to work how the employee could travel to his place of work and (b) undertaking a review of the workplace / working environment with view to putting into place reasonable adjustments (such as in the claimant's case – ready access to toilets, addressing any mobility/ access issues and providing appropriate management/ associated support / adjustments for the claimant's mental issues).

Closing submissions

48. The Tribunal has had regard to the written and oral submissions of the parties together with the authorities relied upon as referred to below. The submissions are summarised as part of the Tribunal's conclusions.

The Law and associated provisions

49. The Tribunal has had regard in particular to sections 119 and 124 of the 2010 Act and section 123 (1) of the Act.

The Tribunal has also had regard in particular to the following authorities:-

Vento v Chief Constable of West Yorkshire (No 2) [2003] IRLR 102 CA

Ministry of Defence v Cannock [1994] ICR 918 CA.

Abbey National plc and anor v Chagger [2010] ICR 397CA.

Wardle v Credit Agricole Corporate and Investment Bank [2011) ICR 1290, CA.

50. The Tribunal has also had regard to the Presidential Guidance dated 5 September 2017 relating to Employment Awards for injury to feelings (including in particular paragraphs 11 and 12 thereof relating to the adjustments to **Vento** in accordance with the RPI).
51. The Tribunal has reminded itself in particular that if the Tribunal decides to award compensation, section 119 (1) of the 2010 Act sets out what a county court may order which is to grant any remedy which could be granted in the High Court in proceedings for tort or judicial review and which includes compensation for financial loss and personal injury. Such compensation can include damages for injury to feelings (section 119 (4) of the 2010 Act) . Such damages would be

payable by reason of a statutory tort on the part of the respondent, the measure of damages in respect of which is to place the claimant, so far as is possible, in the position that he would have been in but for the discrimination (**Cannock**).

52. Placing a claimant in the position he would have been in but for the discrimination will entail an assessment of the degree of chance that the claimant's dismissal would have occurred in any event if there had been no unlawful discrimination (**Chagger**).
53. When a claimant has succeeded on grounds of discrimination and unfair dismissal the claimant is not entitled to be compensated twice and the Tribunal should consider first the discrimination element of the claim.

Injury to feelings

54. In the case of **(1) Armitage, (2) Marsden and (3) HM Prison service v Johnson [1997] IRLR 162** the EAT set out five principles to consider when assessing awards for injury to feelings in cases of discrimination namely:-

54.1 Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.

54.2 Awards should not be too low as that would diminish respect for the policy of the legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches.

54.3 Awards should bear some broad general similarity to the range of awards in personal injury cases. This should be done by reference to the whole range of such awards rather than to any particular type award.

54.4 In exercising discretion in assessing a sum, the Tribunal should remind themselves the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power by reference to earnings.

54.5 The Tribunal should bear in mind the need for public respect for the level of awards made.

55. Further guidance was given on awards by the setting of three bands for compensation for injury to feelings by the Court of Appeal in the case of **Vento (2003)**.

56. Those bands (subject to the adjustments referred to below) are as follows:-

- 56.1 The top band should normally be from £15,000-£25,000. Awards in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.
- 56.2 The middle band between £5,000 and £15,000 should be used in serious cases, which do not merit an award in the highest band.
- 56.3 A lower band of between £500 and £5,000 are appropriate for less serious cases, such as where the act discrimination is an isolated or one-off occurrence.
- 56.4 Those bands were subsequently amended to take into account inflation in the case of **Da’Bell v NSPCC [2010] IRLR 19 EAT**.
- 56.5 Further in the case of **Simmons v Castle[2013] 1 WLR 1239**, the Court of Appeal held that the general level of damages in certain types of claim (such as injury to feeling type claims) should be increased by 10% in cases where judgment is given after 1 April 2013. The Court of Appeal subsequently confirmed in **Da Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879** that Employment Tribunal injury to feelings awards should similarly be uplifted.
- 56.6 Following **De Souza**, The Presidents of the Employment Tribunals issued guidance on 5 September 2017 adjusting the **Vento** figures for inflation and the **Simmons** 10% uplift in respect of which proceedings were issued on or after 11 September 2017. The Tribunal has noted in particular the guidance set out at paragraph 11 of the Presidential guidance on the recalculation of the Vento boundaries in cases where proceedings were issued before 11 September 2017 as in this case.
- 56.7 The proceedings in this case were issued in June 2016. In accordance with such guidance, the Tribunal has divided each of the figures by 178.5, being the RPI figure as at the date of **Vento**, and then multiplied them by 262.9 being the RPI figure in June 2016. The Tribunal then multiplied the results of those calculations by 10 per cent to add the **Simmons v Castle** uplift.
- 56.8 On that basis, the **Vento** bands for the purposes of this case are as follows:-
- 56.9 Top £24,301.64 - £40,502
- 56.10 Mid- £8,100.57 - £24,301.64
- 56.11 Bottom £810.01 - £8,100.57

THE CONCLUSIONS OF THE TRIBUNAL

The claim for injury to feelings

57. The Tribunal has considered first the claimant’s claim for injury to feelings.

The claimant's submissions

58. The claimant claims in his schedule of loss (page 62 of the bundle) a sum of £45,000 for injury to feelings.
59. In brief summary, the claimant contended that the unlawful discrimination by the respondent's was particularly egregious and had a life changing impact on the claimant for the reasons set out in the expert reports of Drs Armstrong and Bashir. The award should reflect the seriousness of the breaches as well as the profound impact thereof on the claimant. The claimant further relied in particular on the following :- (a) during the events of 2015/2016 the respondent failed to treat the claimant as having a mental impairment (depression/ anxiety) notwithstanding the finding of the earlier Employment Tribunal regarding such mental impairment (b) the respondent moved immediately to gross misconduct without having regard to the claimant's medical conditions (c) the aggravating features in this case including the claimant's soiling of himself whilst attempting to attend the return to work meeting at Bovington on 22 October 2015, the failure to provide the disciplinary officer with a copy of the email dated 27 October 2015, the conduct of the disciplinary hearing and the failure of the respondent to disclose such email in the Tribunal proceedings until the course of the liability hearing and (e) the reports of Drs Armstrong and Bashir which confirmed that the consequences of the unlawful discrimination on the claimant were profound. In such circumstances the claimant contended that the award for injury to feelings should be at the top of the top band of Vento.
60. The respondent contended in its counter schedule of loss and in its submissions in brief summary, that :- (a) it accepted that an award should be made for the injury to the claimant's feelings (b) that the award fell however within the middle band of Vento (£ 9,000 to £27,000) as the claimant's case concerned the claimant's dismissal/ the attempts to meet with him prior to that dismissal in order to secure his return to work and further (c) that the claimant's claim for victimisation was dismissed.

The conclusions of the Tribunal regarding injury to feelings.

61. After giving the matter very careful consideration, the Tribunal is satisfied that it is appropriate in this case to award the claimant compensation for injury to feelings. The Tribunal is further satisfied that, in all the circumstances of this case, the award should fall within the top band of Vento and that the appropriate figure is £30,000.
62. The Tribunal has reminded itself of the guidelines referred to above including that the purpose of the award is to compensate the claimant rather than to punish the respondent. The Tribunal has also taken into account that the claimant's complaint of victimisation was dismissed, that this case has not been brought as one of harassment and the (belated) apology which Mr Turner proffered in his witness statement (paragraph 6 thereof) on behalf of the respondent for the way in which

the claimant was treated in 2015 and 2016 leading to the claimant's dismissal.

63. When reaching its conclusions regarding the appropriate level of the award, the Tribunal has taken into account in particular, that :- (a) it is clear from the claimant's witness evidence (at the liability and remedy hearings) that the respondent's established unlawful discrimination has had a profound effect on him (b) the expert reports of Drs Armstrong and Bashir which record the claimant's account of the effect of the respondent's conduct/ confirm that the respondent's unlawful discrimination exacerbated the claimant's existing medical conditions (c) the period of the unlawful discrimination extended over a period of more than 4 months (from the commencement of the return to work meetings in October 2015 to the claimant's dismissal on 26 February 2016) (d) the events of 22 October 2015 when the claimant soiled himself in an attempt to attend a return to work meeting (e) the treatment by the respondent of the claimant's case as a disciplinary matter including the respondent's failure to acknowledge/recognise the claimant's mental health impairments (depression/anxiety) notwithstanding the judgment in the earlier Employment Tribunal proceedings (f) Mr Rogers' failure properly to record the contents of his telephone conversation with the claimant on 27 October 2015/the subsequent email to the respondent of the same day, in his investigatory report and the consequential impact of such failings on the conduct of the subsequent process (including the conduct of the disciplinary hearing on 22 February 2016 (paragraph 16.50 of the Judgment) leading to the claimant's dismissal/ the exacerbation of the claimant's mental health difficulties (as referred to above).
64. The Tribunal has also had regard to the way in which the respondent conducted the liability proceedings including in particular:- (a) the failure to concede that the claimant was at the relevant times a disabled person by reason of the mental impairment of anxiety/depression until the commencement of the liability hearing notwithstanding the finding of the Employment Tribunal in the previous Tribunal proceedings and the available medical evidence and (b) the failure to disclose the email from Mr Rogers dated 27 October 2015 until the course of evidence in the liability proceedings (paragraphs - 34- 38 of the Judgment) and the associated impact on the claimant.
65. In all the circumstances, the Tribunal is satisfied that it is appropriate to award compensation in the middle of the top band of Vento. The Tribunal is satisfied that it is inappropriate to go beyond such level in the light in particular of the matters referred to at paragraph 63 above. This award is however subject to a further award of interest which will be determined by the Tribunal in default of agreement between the parties. The Tribunal has not awarded interest at this stage because, as referred to above, the respondent indicated at the commencement of the hearing that it may wish to make further submissions as to the appropriate period of an award of interest in the light of the delays until this remedy hearing.

66. The claimant is therefore awarded £30,000 for injury to feelings (plus interest to be determined in default of agreement between the parties).

The claim for financial losses

67. The Tribunal has therefore gone on to consider the claimant's claim for compensation for financial losses. This element of the claim falls into three parts namely (a) loss of earnings from the date of dismissal (26 February 2016 to the date of the remedy hearing (7-8 April 2021) (b) future losses (claimed until retirement in 2024) and (c) expenses and other monies as identified in the claimant's schedule of loss (pages 60 – 63 of the bundle).

68. In this case, the Tribunal is faced with two "polar" positions by the parties. The claimant claims accrued loss of earnings together with future losses of earnings until the date of his intended retirement 10 May 2024. The respondent on the other hand, contends that in the absence of any unlawful discrimination on its part the claimant's employment would, in any event, have come to an end lawfully by no later than 26 February 2017 for the reasons/ on the basis set out in Mr Turner's witness statement/ its counter schedule of loss.

The submissions of the claimant

69. In brief summary, the claimant contended that:- (a) as a starting point in disability cases compensation should be awarded on a tortious basis namely to place the claimant back in the position he would have been in had he not been discriminated against (Cannock) (b) it is clear from the medical evidence that the respondent's actions caused the deterioration of the claimant's mental and physical health to an extent that he could no longer work (c) the expert medical evidence (from Drs Armstrong / Bashir) supports the claimant's case for career loss including in the light of their views regarding the interaction between the claimant's physical and mental health, that the claimant's symptoms and disabilities would persist indefinitely and if the claimant had not been subjected to disciplinary proceedings/required to attend Bovington / dismissed he would not have been disabled and would have been able to return to work (d) the arguments relied upon in Mr Turner's evidence that the claimant would in any event have been dismissed on the grounds of ill-health or pursuant to the capability process are misconceived in the light of the above mentioned medical evidence / fails to adopt a loss of a chance approach (e) applying Wardle there was no basis to conclude that if the claimant had not been subjected to the unlawful discrimination he would not have continued in his role until retirement (f) the claimant could not secure future alternative employment because of the cumulative effects of his disabilities.

The respondent

70. In brief summary , the respondent :- (a) denied that it was liable to compensate the claimant for any period of loss beyond a reasonable

period of time during which it could have lawfully terminated the claimant's employment (b) In its counter schedule of loss the respondent accepted that the claimant was entitled to 31 weeks of lost earnings in respect of the period of time it would have taken for the respondent lawfully to have terminated the claimant's employment (page 64-65 of the bundle) (c) contended that it was established that an employer may, notwithstanding an employee's disability, fairly and lawfully dismiss an employee and further the duty to make reasonable adjustments was not an unlimited one (d) it was clear from the evidence concerning the claimant's medical conditions (which predated the respondent's alleged discriminatory treatment of the claimant) that would have prevented the claimant from ever returning to the respondent's employment/would any event have led, on the balance of probabilities, to the claimant's dismissal on grounds of unsatisfactory attendance or performance due to ill-health resulting in the claimant's lawful dismissal by 26 February 2017 (e) the claimant's loss of earnings claim should be limited to 12 months on sick pay (6 months full and 6 months half pay) (f) the Tribunal should have regard to the OH report dated March 2015 which makes clear the claimant's ongoing medical difficulties (g) the Tribunal should be careful not to conflate the findings of the Tribunal regarding the unlawful discrimination in this case with the earlier treatment by the respondent and (h) as far as the claims for compensation for relocation expenses, insurance and "unfortunate" spending are concerned the claimant has not provided any disclosure or other details of the claim and there is no proper evidence on which the Tribunal could therefore make any such award.

THE CONCLUSIONS OF THE TRIBUNAL

Accrued and future loss of earnings

71. The Tribunal has considered the claimant's claim for accrued loss of earnings and future losses in respect of the claimant's discriminatory treatment by the respondent culminating in his dismissal on 26 February 2016.
72. Having given very careful consideration to all of the above, the Tribunal is satisfied that if the discriminatory conduct of the respondent from October 2015 to 26 February 2016 (relating to the requirement to attend meetings at Bovington, the initiation of the disciplinary process and the claimant's subsequent dismissal) had not occurred the following would, on the balance of probabilities, have happened.

The period between the summer/ autumn of 2015 and 26 February 2016.

73. The respondent would have undertaken the process described by Mr Turner (paragraph 47 above) with a view to seeking to return the claimant to work. This process would have continued from the summer/ autumn of 2015 until the end of February 2016. As part of such process, the respondent would have taken into account both the

claimant's physical and mental conditions and would have consulted with claimant (by means of a meeting at an accessible venue close to his home) regarding a suitable grade E position, base location, obtained further OH/ Access to Work advice and offered to make reasonable adjustments to the claimant's working conditions / environment (to include easy access to toilets and some home working).

74. As part of such consultations, the respondent would have considered base locations for the claimant in the Southampton area in the light of the claimant's relocation in early 2016 (paragraph 39). The Tribunal is also satisfied that as part of such process the claimant would, following the conclusion of the claimant's sick leave / expiration of the claimant's sick pay entitlement, have been retained on full pay pending the implementation of reasonable adjustments and that he would therefore have been paid accordingly (paragraph 45).
75. The Tribunal is also satisfied that following such consultations, during which the respondent would have had proper regard to the claimant's mental impairments of depression and anxiety alongside his physical impairments, there is an 80 percent chance that the claimant would have been offered and accepted a grade E administrative position in the Southampton area with the reasonable adjustments referred to above and further would, in such circumstances, have been well enough to return to work on or around 26 February 2016.
76. When reaching such conclusions:- the Tribunal has taken into account in particular:- (a) that the claimant was an army man "through and through" and was unlikely therefore voluntarily to walk away from such career particularly if the respondent had shown proper consideration for his physical and mental conditions and offered appropriate support and (b) the expert evidence of Dr Bashir that the claimant would not have been disabled for the purposes of the 2010 Act by reason of depression / anxiety if he had not been subjected to the unlawful disability discrimination by the respondent (paragraph 34 above). Accordingly, it is likely in such circumstances that the claimant would have had a more positive outlook on any return to work and been better able to tolerate the levels of pain experienced because of his physical conditions of back pain and IBS.
77. The respondent has pursued its case on the basis that the claimant would have remained in employment for a further period of one year (until 26 February 2017). The Tribunal has however, assessed such chance of return at 80 per cent as it is not satisfied that it is a 100 per cent certain that the claimant would, absent the discriminatory or unfair treatment, have continued in the respondent's employment after 26 February 2016 particularly as :- (a) the claimant had not undertaken any work for the respondent since December 2015 (paragraph 36.6 above) and (b) the claimant's physical and mental health was poor in June/ July 2015 (paragraphs 28, 29 and 37 above) and therefore absent any discriminatory or unfair treatment there is still a chance that

he would not have been fit enough to return/ continue to work after 26 February 2016.

The period between 26 February 2016 and 31 December 2019

78. The claimant contends that but for the discriminatory / unfair treatment of the respondent, as a result of which he has been medically unfit to work since 26 February 2016, he would have remained in the employment of the respondent until his retirement on 10 May 2024 and that he should therefore be compensated accordingly. The respondent however, denies that medical conditions which prevented the claimant from working were caused by their actions and further contends that the claimant would have been subject to medical retirement in any event.
79. Having given the matter careful consideration (and in particular the available medical evidence) the Tribunal is satisfied that the respondent's discriminatory/ unfair treatment (between October 2015 and 26 February 2016) exacerbated, rather than caused, the claimant's mental impairment of depression which :- (a) started in 2009 and uncovered dysfunctional traits in the claimant's personality (paragraph 33.4) and (b) was effecting the claimant in June/ July 2015 (paragraphs 28, 29 and 37) prior to the discriminatory/ unfair treatment of the claimant upheld in the Judgment. The Tribunal is further satisfied on the medical evidence that such exacerbation also had an adverse impact on the claimant's ability to cope with the chronic pain caused by the claimant's physical disabilities (paragraph 30).
80. Having considered the competing contentions in the light of all of the above, the Tribunal is not satisfied, on the balance of probabilities, that but for the discriminatory/ unfair treatment of the respondent the claimant would have remained in the employment of the respondent until retirement in May 2024 or that his employment would have come to an end by 26 February 2017.
81. Having given the matter careful consideration the Tribunal is satisfied, on the balance of probabilities, that but for the discriminatory / unfair treatment :- (a) that there is an 80 per cent chance that the claimant would have continued in the respondent's employment until 31 December 2019 (in the light of the factors identified at paragraph 77above) and (b) that there is however, a 90 percentage chance that the claimant's employment with the respondent would, in any event, have come to an end lawfully and fairly by 31 December 2019 by reason of ill health / capability.
82. When reaching such conclusions the Tribunal has taken into account in particular :- (a) Dr Armstrong's pessimistic assessment of the long term prognosis in respect of the claimant's physical impairments (paragraphs 29.4 and 30.2 and 31 above) (b) the claimant's ongoing physical difficulties relating to this back and (c) the development of further physical conditions in 2019 relating to the onset and control of the claimant's diabetes (page 186.2 – 6 of the bundle) (d) Dr Bashir's

assessment (paragraph 33.4 above) that the claimant remained at high risk of exacerbation of his depression by the worsening of his physical conditions / stressful life time events (e) the claimant's mental health issues relating to non – work related events in 2018 and 2019 including the death of his stepson (page 108 of the bundle), diagnosis of his wife's lymphoma (page 186 .4 of the bundle) and the adverse effect of his diabetes, (page 186.6 of the bundle) and (e) the time that it would have taken the respondent to progress the claimant lawfully/ fairly via its procedures for ill health / capability in response to such matters.

83. In all the circumstances, The Tribunal is satisfied that there is a 90 percent chance that the claimant's employment would have been lawfully and fairly terminated by reason of ill health / capability by 31 December 2019. The Tribunal is further satisfied that there is also a 90 per cent chance that the claimant would at that time have received the maximum permitted amount of Compensation for Inefficiency dismissal pursuant to the terms of the Civil Service Compensation Scheme upon such termination.

Mitigation / the possibility that the claimant may be able to secure alternative employment prior to 10 May 2024.

84. In this case there are no monies from alternative employment to set off against any award of compensation as the claimant has not undertaken any paid employment since his dismissal by the respondent on 26 February 2016. Further the Tribunal is not aware of any relevant benefits for such purposes (details of which should however be provided to the respondent if any relevant benefits have been received).
85. This is not a case in which the respondent contends that the claimant has failed to mitigate his losses / that there should be any reduction in the amount of the award in respect thereof. Having considered the period between now and May 2024 the Tribunal does not consider that there is a realistic prospect of the claimant being able to undertake alternative paid employment during this period/ that any adjustments to the awards such therefore made to take into account any possible alternative source of income in the period to 10 May 2024.
86. When reaching such conclusion, the Tribunal has taken into account Dr Bashir's opinion that the claimant's depression is likely to improve within 3 months after the legal resolution of his case such as to allow him to be able to undertake employment in a job which took into account his physical disabilities(paragraph 33.4 above). The Tribunal has however also taken into account in particular :- (a) its conclusions above regarding the 90 per cent likelihood of medical retirement by 31 December 2019 (b) Dr Armstrong's pessimistic assessment of the long- term prognosis in respect of the claimant's physical conditions (paragraph 83 above)(c) the claimant is almost 59 and has not

undertaken any employment since December 2009 and (d) the further recent deterioration in the claimant's health (paragraph 43 above).

87. In summary, therefore the Tribunal is satisfied that it is just and equitable to award the claimant compensation for loss of past and future earnings pursuant to sections 119 and 124 of the 2010 Act as follows :-

87.1 -80 % percent of net salary for the period between 27 February 2016 and 31 December 2019.

87.2 -90 percent of the permitted maximum inefficiency dismissal compensation payment calculated as at 31 December 2019.

87.3 -10 percent of net salary from 1 January 2020 to retirement date of 10 May 2024.

Other losses

88. Finally, the Tribunal has considered the claimant's claim for relocation expenses and the other payments (page 62 of the bundle and paragraph 44 above). As explained above, the claimant has not provided any details/ documentary evidence regarding this element of his claim. Further, the Tribunal is not satisfied that the claimant has, in any event, established the necessary causal link between any such monies and the proven discrimination. These elements of the claim are therefore dismissed.

The unfair dismissal claim

89. The Tribunal has restricted its formal findings to the discrimination element of the claim. Many of the findings will however, apply equally to the claimant's claim for compensation for unfair dismissal (subject to the prohibition on double recovery/ the application of the statutory cap/ any further submissions of the parties).

The way forward

90. The parties are directed **jointly** to confirm to the Tribunal within 21 days of the date of the issue of this judgment :- (a) any outstanding matters which require determination and (b) any proposed directions (including with regard to the length and availability of any final remedy hearing) to address any such outstanding issues.

Employment Judge Goraj
Date: 06 May 2021

Judgment and Reasons sent to the Parties: 12 May 2021

FOR THE TRIBUNAL OFFICE