EMPLOYMENT TRIBUNALS

Claimant: Ms E Taylor-Valles

Respondent: Her Majesty's Passport Office

HELD AT: Manchester **ON:** 2 September 2021 and 3 September 2021 (in chambers)

BEFORE: Employment Judge Slater
Mr I Taylor
Mr J King

REPRESENTATION:

Claimant: Ms S Johnson, counsel
Respondent: Mr A Crammond, counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The respondent is ordered to pay to the claimant net compensation of £41,371.52 including interest, for the acts of failure to make reasonable adjustments, discrimination arising from disability and victimisation found to be well founded in the Tribunal's judgment on liability sent to the parties on 26 July 2021.

2. The parties are invited to make written submissions to the Tribunal, copied to the other party, within 21 days of these written reasons being sent to the parties, as to whether part, or all, of the Tribunal's award needs to be grossed up to ensure that the claimant receives, after any tax due on the award, the net amount of compensation awarded above. Any comments on the other party's submissions must be received within 28 days of these written reasons being sent to the parties.

REASONS

Issues

1. This was a remedy hearing following the tribunal's decision on liability sent to the parties on 26 July 2021. As set out in that decision, the tribunal had found the following complaints to be well-founded:

1.1. a complaint of failure to make reasonable adjustments in relation to the respondent's car parking policy, requiring individuals to qualify for a blue badge and/or to live in excess of a 1 mile radius of the workplace in order to be considered for an on-site car parking space;

1.2. a complaint of discrimination arising from disability in relation to the refusal to recommend the claimant for a permanent role by Danielle Payne on 20/21 November 2018;

1.3. a complaint of victimisation in relation to the refusal to recommend the claimant for a permanent role by Danielle Payne on 20/21 November 2018.

2. The claimant claimed compensation for these acts of discrimination consisting of financial loss before and after her dismissal up to 4 May 2021 (the date on which she voluntarily left a temporary job), including pension loss, and injury to feelings and interest on the award. The claimant provided a revised schedule of loss, setting out compensation claimed for these acts of discrimination.

3. The respondent had not prepared a counter schedule of loss. However, Mr Crammond informed us at the start of the hearing, that the respondent's primary position was that there should be no compensation for financial loss and the respondent proposed £5000 compensation for injury to feelings for all the acts of discrimination. Mr Crammond informed us that the respondent argued that, due to issues of causation, no financial loss flowed from the acts of discrimination. Alternatively, the respondent argued that, if any losses flow, they should be substantially reduced because of the chance that the claimant would have been dismissed for non-discriminatory reasons and because of various other competing non-discriminatory causes for the loss.

4. The issues for the tribunal were, therefore, what, if any, financial loss flowed from the acts of discrimination and what level of compensation should be awarded for injury to feelings for the acts of discrimination.

5. During submissions, there was some discussion about what compensation would be taxable in the context of whether the tribunal would need to do a grossing up exercise, depending on the amount of compensation awarded. After the tribunal reserved its decision, Mr Crammond wrote to the tribunal, following discussion with Ms Johnson. Counsel proposed that the tribunal should invite submissions from the

parties on the matter of grossing up following its decision. The tribunal has adopted this suggestion.

Evidence

6. The tribunal heard evidence from the claimant. There was a remedy witness statement. There was a remedy bundle of 36 pages, including the index.

Facts

7. We rely on facts found in our decision on liability. References to paragraph numbers are to paragraphs in our reasons for this decision. We highlight particular findings of significance for this remedy hearing and make further findings of fact as follows.

8. We accept the evidence of the claimant, as set out in her remedy witness statement, as to how she felt at relevant times.

9. In addition to the acts of discrimination, the claimant has accepted that there were other concerns at work and at home which contributed to stress felt by her. We address issues of causation in our conclusions.

10. The claimant was acknowledged as being good at the work she did with the respondent. When she found that her post would be made permanent, provided she successfully completed her probation, she was thrilled and excited for her future with the respondent. The job suited her well in terms of location, being a short distance from home. The claimant has three children. The convenient location became even more important when her husband became seriously ill, from early October 2018 onwards, and the claimant had to look after their children on her own. We find that the claimant would have wished to remain long term with the respondent, had the recommendation not been made not to confirm her in post, which set in train the process leading to her dismissal. As we note in paragraph 171, Danielle Payne's recommendation was likely to lead to the end of the claimant's employment and, if that recommendation had not been made, we consider it likely that the claimant's employment would have been confirmed at the end of her extended probationary period, on 4 December 2018.

11. When Danielle Payne informed the claimant on 19 November 2018 that she would not recommend the successful completion of the claimant's probation, because of her conduct and attendance, and that she did not fit in with the values of the respondent, the claimant felt this was grossly unfair. The claimant intended to fight this and submitted grievances. She prepared a statement for the probationary review scheduled for 30 November 2018. However, before this took place, she began what was to be a lengthy period of sick leave on 28 November 2018, because of work-related stress. At paragraph 8 in her witness statement, the claimant's evidence, which we accept, is as follows: "I was tired and crumpled from trying to stand up for my rights as I saw them to be - bear in mind too that my husband was still very ill, we were still unsure at that time if he did have cancer and I had our three kids to look after who were scared that they were losing their father. I just couldn't go on." Having to deal with the work issue was causing her so much stress and anxiety that she did not feel in a position to "fight my corner".

12. The claimant cried and had low moods. She experienced panic attacks, which she had never had before or since. She was not thinking clearly. She was concerned about how she was going to get another job if she was dismissed, which she thought most likely to happen after the notice of intention to dismiss.

13. The claimant was prescribed medication when on stress-related absence, but decided not to take it because she felt she needed to stay alert. She did not take up the offer of counselling, feeling it would be an added stress to fit in the appointments.

14. The claimant's evidence, which we accept, is that the car parking situation was not much of a surprise because she felt the respondent was not really minded to support her.

15. As noted in our decision on liability, the claimant's husband became seriously ill in early October 2018 (paragraph 50). For a few months, they feared he may have cancer and that this would be life threatening. By Christmas 2018, they knew he did not have cancer and it was not life-threatening. He was diagnosed with Crohn's disease and ulcerative colitis which, whilst serious and lifelong conditions, were not life-threatening. The claimant's husband was off work for approximately 12 months from around August 2018 until August 2019.

16. As noted at paragraph 88, the claimant had a severe asthma attack while de-icing her car getting ready for work on 1 February 2019. She was absent for seven days. The claimant gave oral evidence that she could have returned to work earlier, if she had been provided with parking on site, knowing that she would not have the walk to do. There was no reference to this possibility in the claimant's witness statements for the liability or remedy hearing. We do not consider the claimant's view, expressed for the first time in cross examination, to be sufficient basis on which to make a finding of fact that the claimant's absence would have been less than 6 days if car parking had been provided on site, near the building entrance.

17. The claimant did not have any more asthma-related absences prior to her dismissal. She had an asthma review and her medication changed in March 2019. She did not have any serious problems with her asthma after that, which would have led to absences from work, until an attack in July 2021.

18. The claimant had a further period of absence for stress, beginning 11 March 2019 and continuing until her dismissal took effect on 10 May 2019 (paragraph 90). The claimant attributes her absence to the grievance process. This period of absence began shortly before a grievance hearing on 13 March 2019.

19. We find, based on figures in the schedule of loss, that the claimant received statutory sick pay during this period of absence, 4 weeks at £92.05 then, due to a rate increase in April 2019, 5 weeks at £94.25.

20. The probationary hearing resulting in her dismissal took place on 26 April 2019 (paragraph 94).

21. The claimant was dismissed with effect from 10 May 2019.

22. Following her dismissal, the claimant felt mentally exhausted and felt she needed a few weeks to reset before looking for a new job.

23. Mr Crammond referred to evidence from the claimant that she did not start to look for permanent work until early this year, in the context of a submission about failure to mitigate. There was an apparent inconsistency in the claimant's evidence as to when she started to look for permanent work. She initially told us that she did not sign up to an agency until July 2019 because she was looking for a permanent role to start with but there was nothing in Southport. Following questions about the three temporary role she took, Mr Crammond asked the claimant whether she had made any applications for permanent positions. She replied that she had done so during the first two temporary appointments but there was nothing in Southport. Mr Crammond then asked when she started looking for permanent posts and the claimant said probably early this year; she had hoped to be kept on by the coroner's office, but this was not to be. Mr Crammond then asked why she did not look from May 2019 onwards. She replied that she did look but there was nothing available. It suited her needs at the time to be temping. We consider it likely, given the context in which the question was asked, that the claimant understood Mr Crammond's question about when she started looking for permanent posts to relate to the time from when she had taken temporary posts. We find that the claimant did, initially, look for permanent posts in the local area but did not find anything suitable. She then signed up to an agency in July 2019. She took some temporary positions further away from home than she wanted to work. She ended the second one early because she was offered another temporary position in Southport, which suited her much better.

24. The claimant signed up with Brook Street temp agency in July 2019. Through them, she was offered an assignment working for HMRC at Bootle. The location was not ideal but the flexi hours helped and she needed the money. It took some weeks for the necessary checks to be carried out before the claimant could begin work. She worked for HMRC Bootle, employed by Brook Street agency, from 16 September 2019 until 8 November 2019 when the assignment came to an end (7.5 weeks). During this time she earned £429.67 gross per week, £372.33 net per week. Whilst working in Bootle, she had an extra 26 miles round trip each day. She drove to work.

25. The claimant started a second temporary position, through Brook Street agency, on 30 December 2019, after the necessary checks were completed. This position was with HMCTS in Liverpool. She worked there for five weeks until 4 February 2020 when she left because she had obtained a more local position. Her gross and net weekly pay were the same as when working for HMRC at Bootle. Working in Liverpool involved a journey of an extra 32 miles round trip each day. The claimant has claimed for 15 days of travel by car. She sometimes drove and she sometimes took the train. She has not claimed for any rail fares, having not got any evidence of the train fare costs. We accept as a fair estimate that she travelled 15 days by car.

26. Through the Reed agency, the claimant obtained another temporary post with Merseyside police coroner's office in Southport. This started on 10 February 2020. She worked there until 4 May 2021. The position was due to end in June 2021 but the claimant left voluntarily because the position had by then moved to Bootle and was no longer flexitime but fixed hours, 9-to-5, and she found this difficult with the commute during rush hour and her domestic commitments. In oral evidence, the

claimant told us that she was furloughed for a few weeks early in the first national lockdown due to the COVID-19 pandemic. She then returned to work, working from home for a considerable period, although she sometimes had to go into the office to pick up work or to do printing. The schedule of loss was prepared as if the claimant had been attending the office every day during her employment. We do not have any reliable evidence as to how many days the claimant travelled to the office after the start of the first national lockdown. We accept that she travelled to the office in Southport each day prior to the start of the first national lockdown and that this involved an extra 4 miles round trip each day, travelling by car.

27. The claimant worked full time, 5 days per week, in each of the temporary roles.

28. The claimant, in her schedule of loss, claimed payments for extra time spent in travel when on the temporary assignments. The claimant was unable to explain the basis for this claim. However, she confirmed that she was not saying that, had she not had to travel that extra distance, she would have been working, and therefore earning more, during the extra time spent on travel.

29. The claimant did not have any time off for illness when in the temporary roles following her dismissal.

30. The claimant has been working in a role as a credit controller since 17 May 2021. Since the claimant is not claiming financial loss past 4 May 2021, it is not necessary to make any further findings of fact about this new employment.

31. When working for the respondent, the claimant's gross weekly pay was £398.12 and net weekly pay £338.75. In addition, employer's pension contributions of 26.6% of gross pay were made i.e. £105.90 when her gross salary was £398.12. The AO grade gross weekly pay increased on 1 July 2019 to £404.06, net weekly pay to £344.79, and employer's pension contributions to £107.48. The AO grade pay increased again on 1 July 2022 to £412.13 gross per week, £350.71 net per week and employer's pension contribution of £109.62.

32. No employer's pension contributions were paid during the claimant's temporary assignments at HMRC Bootle and HMCTS Liverpool since the claimant did not work long enough. When working at the coroner's office, employed by the Reed agency, employer's pension contributions of £10.04 per week were made once the claimant was eligible for these. A total of £351.96 employer's contributions was made.

33. The claimant applied for Employment Support Allowance, but her application was rejected because she had not paid sufficient national insurance contributions in previous years when she was self-employed.

34. The claimant's husband received working tax credits when his pay reduced during sick leave. The amount of these increased when the claimant was out of work. He received approximately £400 per month. We did not hear evidence as to the proportion of this which was attributable to the reduction in the household income when the claimant lost her job. The working tax credits were paid into their joint account.

35. Had the claimant become a permanent employee with the respondent, she would have been subject to the Attendance Management Policy applying to all permanent employees. The sickness trigger increased to 6 days' absence or three spells of absence in a rolling 12 month period for permanent employees. Under the policy, an attendance warning could be issued if the triggers were reached. Dismissal could follow if attendance did not improve.

36. From evidence heard from the respondent's witnesses at the liability hearing, we find that the respondent employs a number of permanent employees with asthma, including some of the respondent's witnesses. Although some have received warnings for absence, they have successfully remained in the respondent's employment on a long term basis.

37. We also know, from evidence at the liability hearing, that the respondent sometimes makes adjustments to the triggers in the Attendance Management Policy where a disability, such as asthma, may cause increased absence. From the evidence we heard, this would tend to be in the region of a 25% to 50% increase in the triggers (paragraph 41).

Law

38. 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.

39. In *Abbey National plc and another v Chagger [2010] ICR 397,* the Court of Appeal held that, if there was a chance that, apart from the discrimination, the claimant would have been dismissed in any event, that possibility had to be factored into the measure of loss.

40. 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.

41. 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%.

Submissions

42. Both representatives made oral submissions.

43. Mr Crammond, for the respondent, submitted that the claimant could not prove a causal link between the discriminatory act and financial loss. Alternatively, he submitted that the discrimination was but one small cause among many others so loss should be reduced accordingly. He submitted it was likely that the claimant would have suffered the losses even if she had not been discriminated against. He submitted that the sickness absence beginning in November 2018 and the further absence in March 2019 were either not caused by the discrimination at all or would have occurred in any event. These absences caused the decision to dismiss. This was strong evidence the claimant would have been dismissed without the discrimination. There were numerous allegations not found to be discrimination. The claimant also had very difficult personal circumstances.

44. Mr Crammond submitted that the claimant's asthma was likely to lead to further absences. It was very likely, even if she had been in a permanent role, she would have had subsequent absences because of asthma which would have led to her dismissal.

45. Mr Crammond submitted that none of the financial loss pre-or post dismissal was recoverable.

46. Alternatively, Mr Crammond submitted that there was a failure by the claimant to mitigate her loss; there was a question as to when she started to look for permanent work. He submitted that if, contrary to the respondent's primary position which was that no financial loss should be awarded, no more than six months loss should be awarded.

47. In relation to injury to feelings, the respondent relied on the same arguments relating to causation. The respondent suggested that the car parking matter was at the lesser end of seriousness in terms of injury. The failure to recommend was, at worst, the loss of an opportunity to have permanent employment. The claimant had been offered but did not take medication, she was offered counselling but did not take this up. She was able to carry on with day-to-day life. Mr Crammond suggested that the tribunal should make one award for both acts of discrimination since there was an overlap in time and hurt feelings. He submitted it was hard to say this should fall in the middle Vento band when there were so many other causes. He suggested a fair and reasonable sum would be £5000.

48. Mr Crammond suggested there was no legal basis for the claim for extra time spent in travelling. In relation to the travel expenses, he submitted that the evidence of the claimant was not reliable. She had been working from home for a large part of the time.

49. Mr Crammond submitted that account should be taken of the extra amount the claimant's husband received in working tax credits which went into the "family pot". He submitted that this should be accounted for if the tribunal awarded loss flowing from dismissal. Mr Crammond was unable to point the tribunal to any authority which would assist in this matter.

50. Ms Johnson, for the claimant, submitted that the tribunal had to consider what would have happened if there had not been unlawful discrimination. She referred the tribunal to the key paragraph 171 in the tribunal's judgement. She submitted that, but for the discrimination in relation to the failure to make a recommendation for permanent employment, the claimant's employment would have been made permanent from 4 December 2018.

51. Ms Johnson submitted that the work related stress absence was caused by the discriminatory acts. The claimant's husband's illness had started in October but the claimant did not go off sick until 28 November 2018. She suggested that, if the claimant was going to be ill as a result of her husband circumstances, it would have been earlier than 28 November. There were no issues with the claimant's work.

52. Ms Johnson submitted that, at worst, the claimant would have received a warning because of the asthma related absence in February 2019.

53. Ms Johnson submitted that all the claimant's losses were caused and directly attributable to the act of discrimination. She would not have had to look for another job but for the act of discrimination.

54. Ms Johnson submitted that the burden is on the respondent in relation to mitigation to point to a specific job the claimant could have applied for. The respondent had not put forward any correspondence or job adverts.

55. The claimant would not have had to incur additional travel but for the discrimination. The claimant had not received any benefits. Ms Johnson said she had looked at Nexus Lexis over the lunch break but was unable to find any authority in relation to the point taken by the respondent about working tax credits. She was unsure of the respondent's legal argument and it was incumbent on the respondent to produce the relevant case law.

56. In relation to injury to feelings, Ms Johnson referred to the evidence of the claimant and submitted that the tribunal ought to award the full level of damages in the pleaded claim.

Conclusions

57. In awarding compensation, the aim is to put the claimant back, so far as possible, in the position she would have been in had the acts of discrimination not occurred.

58. This means we must consider the likelihood of the claimant having been dismissed at the same time as she was, or some later date, had the recommendation not been made for the claimant's dismissal and whether the claimant would have been on reduced pay in the period 11 March 2019 until her dismissal, but for that act of discrimination. We do not consider that, if the adjustment had been made in relation to car parking, this would have made any material difference to the chances of the claimant remaining in employment.

59. We concluded in our decision on liability (paragraph 171) that, if Danielle Payne had not recommended dismissal then it was likely that the claimant's employment would have been confirmed at the end of her extended probationary period on 4 December 2018.

60. Whilst, as the claimant acknowledged, there were factors causing her stress at work which were not the acts of discrimination and the situation with her husband was also causing stress, she attributed her absence beginning on 28 November 2018 to the recommendation on 20 November 2018 not to confirm the claimant's appointment. The claimant's husband had been seriously ill since early October 2018. We consider that, if this had been likely to cause the claimant to go off sick with stress, she would have done so at an earlier stage. Whilst the claimant was aggrieved about various work matters which we have not held to be acts of discrimination, which we accept contributed to some extent to the claimant's state of mental health, we conclude that the most significant factor by far, causing the claimant's absence beginning 28 November 2018, was the act of discrimination, being the refusal to recommend the claimant for a permanent role. This, the claimant believed, was likely to lead to her dismissal. We conclude that, had it not been for this act of discrimination, the claimant was not likely to have gone on sick leave at this time.

61. We also conclude that, had the act of discrimination not occurred, the claimant was unlikely to have been in the midst of grievance proceedings in March 2019, when the claimant again went off work due to stress and remained off work until her effective date of termination on 10 May 2019. By this time, the claimant knew that her husband did not have a life threatening illness so stress from her personal circumstances was considerably reduced. The major event at the time she went off sick was the ongoing grievance process. She was due to have a grievance hearing on 13 March. The grievance was largely, although not exclusively, about matters relating to the recommendation not to confirm her in post. We conclude that, had it not been for the act of discrimination, the claimant was not likely to have embarked on grievance proceedings or, if she had, they would have been of a much lesser nature, unlikely to cause the same level of stress. We conclude that, but for the act of discrimination, she was not likely to have gone on sick leave at this time. The claimant would not, therefore, have been on reduced earnings in this period pre-dismissal.

62. We conclude that, had the act of discrimination relating to the refusal to recommend the claimant for a permanent role not occurred, the claimant would have been confirmed in permanent employment on 4 December 2018. She would not have had the lengthy periods of sickness absence beginning in November 2018 and beginning on 11 March 2019.

63. The claimant would still have had the seven days period of absence in February 2019 relating to an asthma attack had she been confirmed in post. She would have come under the regime of the normal Attendance Management Policy following her confirmation in a permanent position. The respondent would have been under a duty to make reasonable adjustments. At the least, they would have needed to consider whether any adjustment to the trigger points should have been made to take account of the claimant's disability. It is possible that an increase in the trigger points would have been made which would have meant that the February absence would not have triggered consideration under the Attendance Management Policy. It is possible that, if no adjustment had been made and the claimant had to attend an Attendance Management review, the respondent would have decided not to issue a warning, if they had been aware that adjustments were being made to the claimant's medication. At worst, the claimant would have received a warning. The claimant's asthma became better controlled again from March 2019 after a medications review and change. She did not have any asthma-related incidents which would have led to sickness absence during the period for which she claims loss of earnings. As noted in our decision on liability, prior to the absence beginning in June 2018, the claimant's asthma had been well controlled and she had not had a serious attack since childhood (paragraph 19).

64. Although we did not find that the dismissal was an act of discrimination, we conclude that the claimant would not have been dismissed had the act of discrimination in relation to the refusal to recommend the claimant for a permanent role not occurred. The claimant would not have been on sick leave and, therefore, on reduced earnings in the period 11 March to 10 May 2019 had it not been for the act of discrimination. We conclude that financial losses in relation to loss of earnings both before and after the dismissal flow from the act of discrimination.

65. We do not consider that, in the circumstances we have described, any reduction should be made to loss of earnings for the chance that the claimant would have been dismissed in a non-discriminatory manner during the period for which she claims loss of earnings. We do not consider that the claimant was more likely than any other employee with asthma to have such a level of absences as to lead to a non-discriminatory dismissal and we know that the respondent has a number of employees with asthma who work successfully on a long term basis for the respondent. There are no other matters that we consider give rise to a material chance that the claimant would have been dismissed; she was recognised as a good worker and the respondent had a need for good staff.

66. The respondent has not satisfied us that the claimant did not take reasonable steps to mitigate her loss. We have accepted that she did look for permanent employment soon after her employment ended. She sought and obtained temporary work. She is not claiming loss of earnings beyond 4 May 2021, when she voluntarily left her third temporary post. The respondent has not produced evidence of any posts which would have been suitable for the claimant, for which she could have applied, and which would have allowed her to mitigate her loss to a greater extent.

67. In relation to the pre-dismissal loss, the claimant was on reduced earnings during the sickness absence beginning on 11 March 2019 which we have concluded would

not have occurred but for the act of discrimination. We conclude that the claimant should be compensated for the loss of earnings in this period.

68. Whilst the claimant was able to mitigate her loss to a considerable extent, she suffered loss of earnings on an ongoing basis up to the point at which she has ceased to claim compensation i.e. 4 May 2021. We conclude that the claimant should be compensated for her loss of earnings in the period from her dismissal up to and including 4 May 2021.

69. We conclude that the claimant should also be compensated for lost employer's pension contributions from dismissal up to and including 4 May 2021.

70. As a matter of principle, the claimant can be compensated for any additional costs incurred in mitigating her loss. Additional travel expenses would come within this category. We have accepted that the claimant has correctly set out these additional expenses in relation to the first two temporary positions. However, the evidence is insufficiently reliable about extra costs in the third position, following the start of the first national lockdown. We, therefore, conclude that the respondent should compensate the claimant for additional travel costs up to the point of the start of the first national lockdown but not afterwards.

71. We can find no basis in law for making an award to compensate the claimant for additional time spent travelling. This has not resulted in any actual financial loss.

72. We reject the respondent's argument that we should, in some way, reduce compensation which would otherwise be due to the claimant because of an increase in working tax credits awarded to her husband when her income reduced. Although her husband chose to pay the money into a joint account, this was not a payment to the claimant and she would not have had any call on it, had her husband chosen to pay it into an account in his name only, as he could have done. Without any authority to suggest to us that a reduction could be made to the claimant's compensation to take account of her husband's entitlement to benefits, we decline to do so.

73. We set out the calculation of financial loss in the schedule below.

74. In relation to injury to feelings, if we were considering compensation for each act of discrimination separately, we would place compensation for the failure to make reasonable adjustments at the lower end of the lower *Vento* band. Whilst this was of concern to the claimant, her evidence is that it did not cause her much surprise and she does not give evidence of any particular distress caused by this act of discrimination. We would, however, place compensation for the discrimination in relation to the refusal to recommend the claimant for a permanent role in the middle *Vento* band. This act of discrimination caused the claimant considerable distress and worry both before and after her dismissal. It resulted in her dismissal. It caused her to have lengthy periods of sick leave beginning in November 2018 and March 2019 and to have panic attacks. We do not consider that the refusal of medication and counselling indicates in some way that the injury was not substantial. The claimant had plausible reasons for refusing medication and counselling at the time. We would place the injury suffered because of the act of discrimination in relation to the refusal to recommend the claimant for a permanent role in the lower half of the middle *Vento* band. We consider that the overall amount sought by the claimant for injury to

feelings in the schedule of loss, being £10,750 for both acts of discrimination, is modest in the circumstances. We, therefore, order the respondent to pay this amount of compensation for injury to feelings for both acts of discrimination.

75. Interest is payable on financial loss, (other than pension loss since this is future loss) and compensation for injury to feelings. In relation to interest on financial loss, we consider it appropriate to take a midpoint from 20 November 2018 and the date of calculation, 3 September 2021 as the start point for the calculation of interest. In relation to compensation for injury to feelings, we consider it appropriate that interest should run from the date of the act of discrimination i.e. 20 November 2018.

76. The calculations are set out in the schedule which follows.

77. In accordance with proposals made by counsel, we have not conducted any grossing up exercise at this stage. The parties are being given the opportunity to make written representations in relation to grossing up.

SCHEDULE
Calculation of compensation and interest

Pre-dismissal loss of earnings

11.3.19 – 10.5.19 (9 weeks)

9 weeks @ £338.75 =		3048.75	
Less SSP received			
4 weeks @ £92.05 =	368.20		
5 weeks @ £94.25 =	471.25		
		839.45	
			2209.30

Post-dismissal financial loss (excluding pension loss)

Earnings claimant would have received with respondent

11.5.19 – 30.6.19 (7 weeks) @ 338.75 =	2371.25	
1.7.19 – 30.6.19 (52 weeks) @ 344.79 =	17929.08	
1.7.20 – 4.5.21 (44 weeks) @ 350.71 =	15431.24	
		35731.57

Additional travel costs

HMRC, Bootle
26 miles each day
@45 pence per mile x 37.5 days = 438.75

HMCTS, Liverpool 32 miles each day @45 pence per mile x 15 days =	216	
M'side Police Coroner's Office (6 weeks between 10.2.20 and 22.3.20) 4 miles each day @45 pence per mile x 30 days =	54	
		708.75
		36440.32

Less mitigation earnings

HMRC, Bootle 7.5 weeks @ 372.33 =	2792.48	
HMCTS, Liverpool 5 weeks @ 372.33 =	1861.65	
M'side Police Coroner's Office 64 weeks @ 286.31 =	18323.84	
		22977.97
Total post dismissal financial loss (excluding pension loss)		13462.35

Total financial loss (excluding pension loss)

Pre-dismissal loss of earnings	2209.30
Post dismissal financial loss	13462.35
	15671.65

Interest on financial loss (excluding pension loss)

From midpoint between 20.11.18 and 3.9.21 (509 days)

509/365 x 8/100 x 15671.65 = 1748.36

Pension loss

Lost pension value from respondent

11.5.19 – 30.6.19 (7 weeks) @ 105.90 =	741.30
1.7.19 – 30.6.20 (52 weeks) @ 107.48 =	5588.96
1.7.20 – 4.5.21 (44 weeks) @ 109.62 =	4823.28

	11153.54
Less mitigation pension contributions	352.96
	10800.58

Injury to feelings

£10,750

Interest on injury to feelings

From 20.11.18 to 3.9.21 (1019 days)

1019/365 x 8/100 x 10,750 = 2400.93

Total net award including interest without grossing up

Financial loss excluding pension loss	15671.65
Interest on financial loss	1748.36
Pension loss	10800.58
Injury to feelings	10750.00
Interest on injury to feelings	2400.93
	41371.52

Employment Judge Slater
Date: 3 September 2021

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON
6 September 2021

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2400058/2019**

Name of case(s): **Mrs E Taylor-Valles** v **Her Majesty's Passport Office**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

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

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

"the relevant judgment day" is: 6 September 2021

"the calculation day" is: 7 September 2021
"the stipulated rate of interest" is: **8%**

Mr S Artingstall
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.