EMPLOYMENT TRIBUNALS

Claimant: Mrs N McGarry-Gribbin

Respondent: B&Q Limited

HELD AT: Liverpool (by CVP) **ON:** 28 June & 2 September 2021

BEFORE: Employment Judge Shotter

Members: Mr G Barker
Ms C Doyle

REPRESENTATION:

Claimant: In person
Respondent: Ms J Price, counsel

RESERVED JUDGMENT ON REMEDY

The unanimous judgment of the Tribunal is that:

1. The claimant is awarded damages for injury to feelings in respect of the successful claim brought under section 20 to 21 of the Equality Act 2010 in the sum of £2000 (two-thousand pounds) plus interest in the sum of £348.76 (£2000 @ 8% multiplied by 776-days).

2. The claimant's claim for aggravated damages and injury to feelings is not well-founded and is dismissed.

RESERVED REASONS

Preamble

The hearing

RESERVED JUDGMENT & REASONS

1. This has been a remote hearing by video which has been consented to by the parties. The form of remote hearing was Kinley CVP fully remote. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in a bundle of 696 pages together with a copy of the claimant's November 2019 payslip, the contents of which I have recorded where relevant below.

2. A number of case management orders were made leading to this remedy hearing which have not been complied with. It is unfortunate, as a great deal of time was spent with the claimant today going through her evidence in chief and remedy calculations including loss of earnings, injury to feelings, personal injury and aggravated damages. The claimant has had difficulty differentiating between her successful claims and the bulk of her claims which were unsuccessful and it has not been easy for the Tribunal to follow her arguments on why she should be awarded £44,000 injury to feelings, £25,000 in damages for personal injuries and an unquantified additional amount for aggravated damages. The claimant's approach to this remedy hearing serves only to emphasis the difficulties the Tribunal has in assessing the injured feelings flowing from the successful claims and those flowing from all of the claims that had allegedly taken place over a lengthy period of time, brought by the claimant (which were largely dismissed by this Tribunal) and valued at the amounts she is now seeking to recover. As a matter of logic injury to feelings damages for the period July 2018 to the date of resignation on 20 November 2020 calculated by the claimant at £44,000 with aggravated damages of £25,000 cannot be solely attributable to the injury to feelings suffered by the claimant when she was put to work on the staffed till for two-days in close succession.

3. The claimant was reminded of the Tribunal 's findings that the respondent was in breach of its duty to make reasonable adjustments in respect of allegation 11(a), a requirement to work on the tills and front-end department in respect of working on staffed tills only, on the 1 and 9 July 2019. The reasonable adjustment was ensuring the claimant was not required to work on the staffed till in the front-end department. The claimant was indirectly discriminated against on the grounds of her disability in relation to agreed issue 11(a) when she was put to work on the staffed tills on 1 and 9 February 2019. The remedy hearing arises solely in relation to those successful complaints and nothing else.

<u>The claimant's arguments</u>

4. The claimant gave oral evidence under affirmation dealing with the four heads of claim; loss of earnings, injury to feelings, personal injuries and aggravated damages in that order, referring the Tribunal to a number of documents which have been dealt with below. The Tribunal repeats its observations made in the reserved judgment and reasons (for example at para.18) concerning the claimant's lack of credibility and the disingenuous evidence which are also applicable to the way she has approached this remedy hearing.

<u>Loss of earnings</u>

5. The claimant claims she was absent from work on the 2 July 2019 as a result of the respondent's failure to make reasonable adjustments on the 1 July 2019, and she received no pay, claiming £40.73 net. The claimant maintains she was absent again on the 10 July 2019 as a result of the respondent failing to make reasonable adjustments on the 9 July 2019 until her resignation on the 22 November 2019 and claims the sum of £1, 130.48 net taking into account the payments of SSP and sick pay in the months of July, August, September and October, and the payment of SSP only in the month of November 2019. The

claimant has not quantified her personal injury claim despite being ordered to do, and no satisfactory reason has been given for this failure.

6. The Tribunal has considered the wage slip to which it was taken, and the November 2019 wage slip produced by the respondent today confirming SSP was paid, and the claimant has not discharged the burden of proving she suffered a loss of earnings when she was paid statutory sick pay and not full contractual pay during her sickness absence and no pay on the 2 July 2019 when she was absent and should have worked a 5 hour shift at £8.15 net per hour, totalling £40.73.

7. There was no evidence the claimant was not paid her contractual pay and this claim was not before the Tribunal either in the claimant's pleadings as an unlawful deduction and nor was it referred to in the agreed list of numerous issues, and there is no evidence apart from the claimant's say so that she had suffered an unlawful deduction of wages. This claim cannot go any further.

8. The claimant also appeared to be claiming the differential between SSP and her contractual rate of pay, but was unable to calculate the amount on the basis that she did not know what she had received, for example, in November 2019. The claimant was ill-prepared, and the burden was on her to prove she had suffered a loss of earnings, which she failed to do. During the hearing the respondent provided the claimant with the November 2019 payslip, and it made no difference to the coherency of her loss of earnings claim. In short, the claimant failed to adduce any satisfactory evidence in support of her allegation that she had not received full pay for the 1 July 2019 when she had not worked, and the Tribunal did not accept the claimant's sickness absence after the 10 July 2019, a day the claimant worked her contractual hours, through to the date of resignation and beyond, was attributable or had any causal connection with the disability discrimination found by the Tribunal to have taken place.

Injury to feelings

9. On a full liability basis the claimant claims £44,000 injury to feelings, which she confirmed was the amount also sought for the respondent's failure to make reasonable adjustments on the 1 and 9 July 2019 on the basis that the respondent's failure made the claimant feel humiliated, degraded, caused her stress, her concerns were disregarded even though she had put them in writing and had informed Jo Foulds and/ managers. It is notable when the claimant was invited to explain in her own words how had she suffered an injury to feelings, she was unable to move away from the "disregarded complaints" she had made throughout despite the Tribunal rejecting the claims in their entirety, and the Tribunal found on balance the claimant exaggerated the effect of the respondent breaching its duty to make reasonable adjustments.

10. On the 1 July 2019 the claimant described how she was caused physical pain in her abdominal that was not abated by her ordinary pain relief and took 4 to 5 hours to get better after pain relief was taken. The claimant adduced no medical evidence to support this, and accepted under cross-examination that she had not taken medical advice or been to see her GP.

11. The claimant referred the Tribunal to an occupational health report prepared on the 19 August 2019 after the event, and a meeting with Jo Foulds on the same day when she described taking opiate analgesics after her first shift on the serviced till, and still being in pain the next day. In the same note the claimant described working on the tills on 9 July 2019

confirming when she came into work her diverticular disease symptoms "were manageable." The claimant gave evidence today that after the 9 July 2019 she was admitted to hospital and prescribed the maximum dose of steroids. The claimant's note to Jo Foulds refers to the claimant going to see her GP "the following week" then "rushed to hospital on the Saturday morning" due to exacerbation of her asthma and the "stress was the causative factor…I am now diagnosed with anxiety and depression and been prescribed antidepressants…" As found by the Tribunal the note taken by Jo Foulds of the meeting on 19 August 2019 was completely different to that produced by the claimant. Having heard from the claimant today it is clear the claimant attributed her absence from work through stress, anxiety, diverticulitis flare up and asthma was a result of the move to the serviced checkouts and nothing else.

12. The Tribunal found with reference to the claimant working her first early shift on a staffed till on 1 July 2019, she worked without complaint until part way through the shift when she found the twisting and lifting exacerbated her medical condition. As a result of twisting and turning when working on the staffed tills the claimant realised that it exacerbated her medical condition and informed the respondent of this for the first time. As soon as the claimant complained she was immediately taken off the tills and worked on self-service for the remainder of the shift. It appears therefore that the claimant was well-enough to continue working on her shift, and this undermines her evidence that the physical pain was such ordinary pain relief could not abate it. Had the claimant been in so much pain, she would have said so at the time to the manager who had made the "wise" decision to move her, but she did not and continued working.

13. It is notable in the letter to Debbie Hayes dated 2 July 2019 the claimant reported that the "repetitive twisting motion…has caused extreme left abdominal pain extending down my left leg and aggravating my condition" and she confirmed the supervisor, had "made the wise decision to move me onto the self-service tills…Even with my experience and medical knowledge in nursing I have to say that I had not anticipated that actually working on the tills would aggravate my condition."

14. The Tribunal accepts the claimant's evidence that she was upset as a result of being placed on the staffed till, and worried about the consequences should her disability flare up. The Tribunal on the balance of probabilities does not accept the claimant suffered a flare-up that incapacitated her to the extent of the exaggerated evidence given at this remedy hearing, but some degree of discomfort was suffered by the claimant that can be translated to injuring her feelings further.

15. By the 4 July 2019 the claimant was aware from the return to work interview and 'Informal' meeting she had with Philip Stephens, that reasonable adjustments would be made and she would be re-deployed. The claimant was told, as found by the Tribunal, she would be working on the self-check tills in the early morning starting at 7am when there were fewer customers giving Philip Stephens time to redeploy her into a "mix of roles with no twisting." Philip Stephens made it clear to the claimant "I have no issues regarding [you] leaving a till until a long-term solution." The agreed evidence is that the claimant could leave for the toilet whenever she wanted without giving anybody notice. Philip Stephens made it clear that he would redeploy the claimant into another department and reasonable adjustments would be put in place giving him time to do so. Contrary to the claimant's arguments at the remedy hearing concerning the injury of feelings being ongoing, the Tribunal concluded the real reason for the claimant's upset was that she was not getting her own way by being transferred immediately back to the seasonal/gardening department, and was required to remain carrying out work she found "very much brain numbing and totally

boring as well as having very valid concerns about using the toilet in an emergency" as recorded in hr grievance letter dated 08/07/19.

16. The claimant came in to work on the 9 July 2019 and was initially put to work on the staffed tills, she complained to a supervisor and was immediately put to work on the self-service till and returns without any further complaints being raised. The claimant worked from 7am to 12pm, and worked on the staffed till for a short period at the start of the shift. She was not asked to, and did not work on a staffed till again during the remainder of her employment, and from the point of time when the claimant was taken off the staffed till the respondent was not in breach of its duty to make reasonable adjustments and so the Tribunal found as set out in the reserved judgment and reasons. The claimant continued working and it is notable in the occupational report dated 9 July 2019 she was found "fit to continue in her current role and is currently at work." The claimant's "current role" was working at the front end which included staffed and self-service tills, and there was no satisfactory evidence before the Tribunal that the claimant continued to suffer an injury to her feelings as a result of the respondent's failure to make reasonable adjustments on the 1 and 9 July 2019 and the Tribunal found, on the balance of probabilities, that she did not.

17. The fact the claimant returned to work, and was then signed off with "stress at work" was not attributable to the respondent failing in its duty to make reasonable adjustments on the 1 and 9 July 2019. The claimant raised a number of allegations post 9 July 2019 which were not found in her favour by the Tribunal, which reflect her attempts to ensure she was not re-deployed into the lighting department and returned to work in seasonal/gardening (the key issue for the claimant) coupled with the dismissal of a number of managers. The Tribunal has set out in detail the claimant's grievance and the events leading to her resignation, including going on a "holiday of a lifetime" which it does not attempt to repeat.

Law and conclusion: Injury to feelings

18. An award for injury to feelings is given statutory foundation by S.119(4) Equality Act ("EqA").

19. The Tribunal took into account the 'PRESIDENTIAL GUIDANCE Employment Tribunal awards for injury to feelings and psychiatric injury following De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ': and found the claimant's claim for failure to make reasonable adjustments on the 1 and 9 July 2019 fell into the lower band (less serious cases) and not the upper band consisting of the most serious cases) where the claimant places her claim.

20. In Prison Service and ors v Johnson 1997 ICR 275, EAT (a race discrimination case), the EAT summarised the general principles that underlie awards for injury to feelings:

18.1 Awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party. This is particularly relevant to the claimant's case given the numerous allegations of disability discrimination she was relying on, with the most important being the initial decision to remove her from the gardening/seasonal department.

18.2 An award should not be inflated by feelings of indignation at the guilty party's conduct. This is also relevant given the fact that the respondent had breached the duty to make reasonable adjustments on the 1 July, and the claimant had been told by a manager that adjustments had been put in place only for the duty to be breached a second time

on 9 July 2019.

18.3 Awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches. This is also relevant given the large number of the discrimination complaints before the Tribunal that failed, and were the claimant to be awarded the £40,000 injury to feelings awards she seeks at this hearing, there is no doubt she would be the recipient of untaxed riches and an injustice will have taken place.

18.4 Awards should be broadly similar to the range of awards in personal injury cases.

18.5 Tribunals should bear in mind the value in everyday life of the sum they are contemplating.

21. In Vento v Chief Constable of West Yorkshire Police (No.2) 2003 ICR 318, CA, the Court of Appeal set down three bands of injury to feelings award, indicating the range of award that is appropriate depending on the seriousness of the discrimination in question.. According to Lord Justice Mummery, injury to feelings encompasses 'subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and the Tribunal accepts the claimant felt worry, anxiety, mental distress, the possibility of humiliation (but not the actuality), unhappiness and stress as a direct result of the respondent breaching its duty to make reasonable adjustments on those two occasions for a very short period of time.

22. The Tribunal found on the 1 July 2019 neither the claimant nor the respondent foresaw any problems with the physical act of working on the tills per se, and had the claimant and respondent addressed their minds both would have realised that working on the staffed tills could be problematic for her when twisting and bending in addition to the toilet issue which both were aware of at the time. It is notable that when it became apparent the claimant was not comfortable she was immediately moved. The issue of the claimant's condition flaring up was always present and a worry to the claimant, over which she felt stress and the possibility of humiliation sometime in the future and this has been reflected in the injury to feelings award.

23. On the 9 July 2019 the claimant worked on the till to fill a void as an employee had not turned up, and as soon as she complained was moved. Nevertheless, there was a relatively short period when the claimant understandably felt frustrated and distressed; she had been told reasonable adjustments would be made and yet the respondent breached its duty a second time. In cross-examination it was put to the claimant that by the 12 July 2019 at the latest she knew she would not be returning to front end and she accepted she knew she would not be working on the serviced tills by this date. The claimant did not accept her anxiety and stress at the prospect of working on the tills was resolved by the 12 July 2019 when this was put to her in cross-examination, and she asked counsel for his medical qualifications as stress was not a switch that could be turned off. The Tribunal are in a similar position to Mr Piddington in that they have no medical qualifications or knowledge enabling them to accept the claimant's version of events which was that her medical problems flowed from the breach of duty, without supporting evidence.

24. The Tribunal found reasonable adjustments had been and were to take place with the result that the claimant would not longer work on a staffed till. Consequently, taking into account the fact that in the words of Mr Piddington, the breach of duty to make reasonable adjustments on the 1 and 9 July 2019 was "a tiny fraction of the allegations" and there was

no medical evidence supporting the claimant's view that the work related stress she continued to suffer from and the personal injuries claimed flowed from "a tiny fraction" of the disability discrimination alleged as opposed to the entirety of complaints including the main issue and the claimant's primary focus at the time which was the move from gardening/seasonal, it was not possible for the Tribunal to conclude on the balance of probabilities that the claimant suffered all of the injuries she alleges now, and this heightened the injury to feelings suffered.

25. Finally, Mr Piddington submitted that any injury to feelings caused by the 2 July 2019 breach was not foreseen, and the claimant had acknowledged this as it was not a problem she had raised until occupational health mentioned it. The Tribunal did not agree. In a letter from the claimant dated 23 November 2018 she objected to working front end and wrote "there is more bending and lifting working on the front end" pointing out it "could potentially compromise my health needs." In the letter to Philip Stephens dated 28 June 2019 the claimant referred to "during a flare up I need light work only what with being unable to bend, lift, stretch or push." Mr Piddington did not refer the Tribunal to any case law, and it is apparent from the well-known case of Essa v Laing Ltd 2004 ICR 746, CA, the Court of Appeal, by a majority, confirmed that compensation for an act of direct race discrimination should cover all harm caused directly by the act of discrimination, whether or not it was reasonably foreseeable. According to Lord Justices Pill and Clarke, who gave the majority decision, even if a foreseeability test does in fact apply, in negligence and other common law tort cases, the defendant is liable unless the damage differs in kind from what was foreseeable. It is the kind of damage, and not its extent, that is important. As to the question whether the kind of damage suffered must be reasonably foreseeable, Lord Justices Pill and Clarke held that, although there is a difference between physical or psychiatric injury on the one hand and injury to feelings on the other, the two are not so unlike as to be of a different kind for the purposes of the test of reasonable foreseeability. Thus, since injury to feelings was a reasonably foreseeable result of the discrimination, it followed that damages in respect of psychiatric injury were not too remote to be recoverable.

26. The Tribunal found the respondent was liable for the injury to feelings suffered by the claimant caused by the its failure to make the adjustment on the 1 July 2019, and such a loss was reasonably foreseeable even taking into account the fact that the claimant was taken surprised by the extent to which the twisting and bending aggravated her condition. However, once she realised that this was the case the Tribunal accepts, on balance, that she suffered an injury to her feelings.

27. Mr Piddington submitted that an award of £900.00 for injury to feelings should be made, taking into account the evidence that the claimant at the time did not send any WhatsApp or text messages showing anxiety or hurt feelings, which she was prone to do. The Tribunal did not agree, accepting the claimant's evidence that she was anxious and experienced hurt feelings at the time when she was put on the staffed till, and her concern after the 1 July 2019 that she would be asked to work on the staffed till again, which she was on the 9 July 2019 despite being told that adjustments would be put in place. The Tribunal accepts Mr Piddington's submission that after the 10 July 2019 the claimant knew she would remain on the self-service tills, and that she was to be moved.

28. By the 12 July 2019 at the latest any concerns the claimant may have had that contributed towards her feelings being injured in any way should have dissipated. It was the unsuccessful complaints that lay heavily on the claimant's mind before and after the 1 July 2019 primarily revolving around the requirement to be moved from gardening/seasonal in the first place and so the Tribunal found.

29. The Tribunal has taken into account the latest figures for the Vento bands set out in the Presidential Guidance despite the claim having been presented in 2019, thus allowing the effect of interest. The lower Vento band is appropriate for less serious one-off occurrences, the middle band appropriate for more serious cases possibly with ongoing consequences. Despite the claimant's arguments to the contrary, the Tribunal did not find evidence of any ongoing consequences; by the 9 July 2019 she was aware that redeployment was to take place into another department and adjustments would be made in the meantime. The effect on the claimant was limited in duration, it was a serious matter for her and the Tribunal accepts on balance, she sustained an injury to her feelings between the 1 July to 9 July as a result of the worry and stress, but not beyond this date when she had received assurances from the store manager that reasonable adjustments would be made from that point on. During this period the claimant had taken some time off work, but she continued to work her shift on both days clearly able to stand up for herself with the result that when she asked to be moved this took place immediately. Objectively assessed, it was not unreasonable for the claimant to feel upset at the way she had been treated, and taking into account the fact she was frustrated, concerned and angry with the enforced move away from gardening/seasonal which she considered to be an act of disability discrimination, as reflected in her communications with the respondent's managers, friends and partner. The Tribunal has assessed the injury to feelings award directly attributable to the wrongful acts of 1 and 9 July 2019 fall in the lower band of Vento. It is just and equitable to award the claimant £2,000 plus interest injury to feelings taking into account all of the factors referred to above, and the claimant's less than credible evidence on this issue.

Aggravated damages

30. The Court of Appeal in Alexander v Home Office 1988 ICR 685, CA, held that aggravated damages can be awarded in a discrimination case where the defendants have behaved 'in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination'. Mr Justice Underhill, then President of the EAT, identified three broad categories in Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT as follows:

22.1 Where the manner in which the wrong was committed was particularly upsetting. For the reasons set out above, the Tribunal did not find this to be the case. The supervisors on the 1 and 9 July 2021 acted quickly when the claimant complained, and in her oral evidence dealing with remedy the claimant described a supervisor to be "empathetic, appropriate and understanding."

22.2 Where there was a discriminatory motive — i.e. the conduct was evidently based on prejudice or animosity, or was spiteful, vindictive or intended to wound. There was no evidence of such motive. The Tribunal found the claimant had been placed to work on the staffed tills through ignorance on the part of the supervisor and a lack of insensitivity. As indicated above, neither the claimant nor the managers making the decisions had taken on board the possibility that twisting and bending whilst working on the serviced tills would exacerbate her disability. On the 9 July the claimant was covering for a member of staff and there was no suggestion she had been put to work on the tills spitefully, because of her disability. The reality was that once the claimant complained she was moved off immediately by the "wise " supervisor as described by her in relation to the 1 July 2019 and recorded in the reserved judgment and reasons

22.3 Where subsequent conduct adds to the injury — for example, where the employer conducts tribunal proceedings in an unnecessarily offensive manner, or 'rubs salt in the wound' by plainly showing that it does not take the claimant's complaint of discrimination seriously. This did not happen in the claimant's case. Her complaint was taken seriously, she was removed immediately and assured that reasonable adjustments would be made going into the future, which they were.

31. Aggravated damages are compensatory, not punitive and there must be some causal link between the conduct and the damage suffered if compensation is to be available. In HM Prison Service v Salmon 2001 IRLR 425, EAT, the EAT made it clear that 'aggravated damages are awarded only on the basis, and to the extent, that the aggravating features have increased the impact of the discriminatory act or conduct on the applicant and thus the injury to his or her feelings'. In Ms McGarry Gribben's case there was no satisfactory evidence of any aggravating features that increased the impact of the respondent's failure in its duty to make reasonable adjustments. The claimant confirmed in cross-examination that she was not alleging the decision to put her on the staffed tills was malicious.

32. Taking into account the Tribunal's findings that there was no history of disability discrimination, and the circumstances in which the respondent breached its duty to make reasonable adjustments unintentionally, the Tribunal dismisses the claim for aggravated damages.

Personal injury claim: the law and conclusion

33. The claimant confirmed her personal injury claim related to the alleged toilet incident on 9 July 2019, her suffering from asthma and being hospitalised. She relies on a Discharge Letter confirming discharge was 23 August 2019, Occupational Health Report dated 19 August 2019 and undated GP letter referred below together with copy articles provided by the claimant from sources such as Asthma UK and a study from the University of British Columbia that not directly address the issue of causation with reference to the claimant's specific circumstances. When invited to explain why the Tribunal should award personal injury damages for her claim that she had suffered an "accident" whilst at work, which the Tribunal found not to have been the case in the reserved judgment and reasons, the claimant's response was ex-colleagues refused to give testimony and the Tribunal's findings "with respect does not make it untrue." Clearly, the claimant can only be awarded damages on claims that were well-founded and not on those dismissed by the Tribunal, contrary to the claimant's expectations.

34. The claimant also referred the Tribunal to a number of fit notes set out within the bundle as relevant documents to both her injury to feelings an personal injury claim. The claimant's argument was that the failure to make reasonable adjustments compromised her mental and physical health and she ended up suffering with asthma, psoriasis, depression and anxiety for which she now makes a personal injury claim.

35. Turning first to the GP letter undated and marked "To whom it may concern" the first point to note is that it is not an expert report dealing with causation of the claimant's medical condition, linking the claimant's poor health as described by her above, with the respondent's failure to make reasonable adjustments. Dr Huma Afzal refers to the claimant being off work since 12 July 2019 with work related stress, and makes reference to the claimant informing him **"there have been occasions at work where she has soiled due to inability to reach the toilet in time. This led to a triggering of stress and worsening of her anxiety and depression**. She feels this has not only brought indignity but compromised her mental and

emotional wellbeing. She has recently [no date given] had a flare of psoriasis too which can be triggered by stress. Niamh also suffers from asthma which until recently was well controlled and managed but she was admitted to hospital on 20 July 2019 with exacerbation of asthma. Although at the time she did not have upper respiratory symptoms however **the background of stress at work may have contributed to the breathlessness as a physical presentation of anxiety** and hence may have resulted in worsening of her asthma symptoms" [the Tribunal's emphasis].

36. It is notable Dr Afzal did not confirm the claimant had asthma when admitted to hospital; she had breathlessness and the stress at work "may have" contributed to this. This finding is insufficient on which to base a personal injury claim that the claimant's asthma was adversely affected by the respondent breaching its duty to make reasonable adjustments. Further, taking the report as a whole, it is clear Dr Afzal causally links the claimant's incontinent incident with stress at work; and the Tribunal found as a matter of fact the incontinent incident did not take place for the reasons set out in the reserved judgment and reasons.

37. The date when the claimant was admitted to hospital was explored on cross-examination and the claimant gave evidence she was hospitalised for 4 days, her partner 6-days and Dr Afzal records the claimant was admitted on the 20 July 2019 corroborating the claimant's evidence. There is no explanation for why the claimant attended hospital on the 20 July 2019 when the incident relied upon as the causative link took place 11-days earlier on 9 July 2019 following which the claimant knew there would be no repeat of any requirement for her to work on the staffed tills, and ten days after the claimant's last day physically at work on the 10 July 2021. Without medical expert evidence dealing with causation and the claimant's asthma the Tribunal is not in a position to accept the claimant's evidence on the balance of probabilities that her admission to hospital was attributable to the respondent's failure to make reasonable adjustments.

38. The claimant also relies on an article "Asthma and Stress" dated March 2019 and a manuscript dated 13 November 2007 or 2019 "Stress and Inflammation in Exacerbations of Asthma" and "Stress as an Influencing Factor in Psoriasis" which did not assist the Tribunal. Expert medical evidence was necessary to establish causation, and the Tribunal do not possess any medical expertise and are unable to ascertain whether the claimant's medical conditions were caused by external matters or the respondent. On the scant evidence before it the Tribunal considers that a direct causal link between the claimant's personal injuries and the respondent's limited actions is unlikely to be established. It is notable in a footnote of the manuscript the publisher has included a disclaimer to the effect that the PDF file was an unedited manuscript. None of the articles produced by the claimant are specific to her, and the Tribunal does not accept the claimant's proposition that the online information prove her case on causation, and nor does it accept fit notes citing stress at work assists her claim that managers by placing her in a vulnerable position on the 1 and 9 July 2019 exacerbated and caused a number of medical conditions.

39. The occupational health report dated 19 August 2019 confirmed the claimant had been suffering from work related stress that exacerbated her asthma and diverticulitis. It recounts how the claimant was made to work on tills and there were "occasions" when the claimant had to close the tills down and leave. Reference was made to the claimant leaving work early. The report continues to set out the claimant's version of events including being told she was to be placed back in the garden centre and she "still had not been back within the garden centre. With the incident at work that greatly upset Mrs McGarry Gribben and the fact she felt her health issues were being ignored; Mrs McGarry Gribben developed anxiety

with stress which impacted not only the diverticulitis condition but her asthma when Mrs McGarry Gribben became that breathless she needed a four day stay in hospital. Mrs McGarry Gribben's general practitioner had stated that she should not work on the tills due to the condition of diverticulitis, and recently diagnosed Mrs McGarry Gribben with depression and referred her to counselling."

40. There was no evidence that the claimant's GP had said the claimant should not work on the "tills" and the report that the claimant was told she was to be placed back into the garden centre was incorrect; the claimant was aware by 19 August 2019 that she was to be transferred to the lighting department where she had the best access to a toilet. Occupational health confirmed that stress can cause a flare up of diverticulitis and asthma through feeling breathlessness "as this is a way for a body to deal with stress issues." There was no evidence before the Tribunal that the claimant closed down and left her till on the 1 and 9 July 2019, and the Tribunal found from the evidence before it the claimant worked the remainder of the shift on the 9 July 2019 and contrary to the information she provided to occupational health, did not leave work early.

41. The occupational health report reinforced the Tribunal's finding that the information provided by the claimant was unreliable, and this in turn made the occupational health report less than reliable when recording the truth of the claimant's instructions, as it was clear from the contents the claimant was bent on achieving a return to the garden/seasonal department and this was the real issue for her otherwise she would have disclosed the reality of the situation, which was adjustments had been made to the role and she was to be transferred to a department involving light work closest to the toilets. The claimant did not inform occupational health of this because to do so would defeat the object of the exercise, which was the effect a return to work in the gardening/seasonal department she enjoyed and found stimulating. The occupational health report and the GP letter fail to resolve the key issue relating to causation; whether the claimant working on a staffed till as opposed to tills per se, for 3 hours on 1 July 2019 and a short period in July 2019, resulted in the personal injuries the claimant claims were a direct result despite her evidence that the move to front end was the "lesser of two evils" and the disparaging comments about the boredom of working on the tills, and undesirability of working for the manager in the lighting department.

42. The Tribunal acknowledges that claimants do not need to have expert medical evidence to support his or her claim for personal injury in order to be awarded compensation: in Hampshire County Council v Wyatt EAT 0013/16 the EAT rejected the employer's argument that a personal injury award cannot be made in the absence of expert medical evidence except in cases of low value. It held that, when claiming damages for personal injury, it is advisable for claimants to obtain medical evidence — especially in cases involving psychiatric injury, which can give rise to difficult questions of causation and quantification — as a failure to produce such evidence risks a lower award than might otherwise be made, or even no award being made at all. On the available evidence, the Tribunal had been able to make a clear finding that the claimant had suffered a 'moderately severe' depressive illness, which was caused by the employer's unlawful treatment and which subsisted at the time of the remedies hearing. In contrast, Ms McGarry Gribben's case is far from clear; causation is complex, there are a number of medical conditions and the Tribunal found that the toilet incident (and not incidents plural referred to in Dr Afzal's letter) had not taken place. It is notable that the claimant's evidence before this Tribunal was that apart from the one alleged incident that took place on the last day she was physically working, there were no "accidents" at work when she was unable to reach the toilet in time.

43. It is notable Dr Afzal links the claimant's work-related stress and absence to the "occasions" at work when there have been accidents due to her inability to reach a toilet in time. He does not confirm or even suggest there was a causal link to the respondent's failure to make reasonable adjustments on the 1 and 9 July 2019, and the Tribunal concludes that no causal link has been established on the balance of probabilities. Dr Afzal also refers to the claimant being off work since 12 July 2019 with work related stress, and again he does not confirm or suggest the claimant experienced work related stress was directly attributable to the failure to make reasonable adjustments 11 days and 3 days previous, and the Tribunal concludes there is no causal link otherwise Dr Afzal would have said so. Given the claimant's less than credible evidence throughout these proceedings, the Tribunal cannot accept her evidence, with an objective medical report ideally prepared by a medical expert dealing with the fact the claimant was put to work for a very short period of time manned tills during two 5-hour shifts which the claimant continued to work after the event without complaint, resulted in the claimant suffering from an exacerbation of her disability, stress at work, asthma, psoriasis, depression and anxiety. The causes of these medical conditions are unclear and it is not obvious the failure to make reasonable adjustments caused or exacerbated them and the claimant has failed to discharge the burden of proof establishing a causal link and differentiating between those conditions for which the respondent was not liable and for which it should not have to compensate the claimant. For example, the claimant's anxiety and depression according to Dr Afzal appears to be liked to her disability and has no causal connection to the events of 1 and 9 July 2019.

44. When an Tribunal decides to award compensation, it must be calculated in the same way as damages in tort — S.124(6) in combination with S.119(2)(a) and (3)(a) EqA i.e. what loss has been caused by the discrimination in question and in order to establish this the Tribunal is required to look at causation. On the evidence before it as explored above, the necessary adjustments were put in place on the 9 July 2019 when the claimant was immediately taken off the till and understood reasonable adjustments would be put in place and instigated following which she continued to work the next day. Thereafter, the claimant took an active part in meetings, grievance complaints and so on in respect of the move from gardening/seasonal to lighting. including fighting a proposed move to another department, and this broke the chain of causation. After the 9 July 2019 the claimant continued to work with the adjustments in place in the knowledge that the necessary adjustments would continue to be made. There was no satisfactory evidence, part from the claimant's say so, that the respondent breaching its duty to make reasonable adjustments triggered the personal injuries which the claimant maintains, continues to this day. The Tribunal on the balance of probabilities finds the claimant has not established a causal link between the respondent breaching the duty to make reasonable adjustments and her medical conditions, accordingly the claimant's claim for personal injury damages is dismissed.

45. In conclusion, the claimant is awarded damages for injury to feelings in respect of the successful claim brought under section 20 to 21 of the Equality Act 2010 in the sum of £2000 (two-thousand pounds) plus interest in the sum of £348.76 (£2000 @ 8% multiplied by 776-days). The claimant's claim for aggravated damages and injury to feelings is not well-founded and is dismissed.

Employment Judge Shotter

Date: 2/9/21

RESERVED JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 September 2021

FOR THE SECRETARY OF THE TRIBUNAL

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2411556/2019**

Name of case: **Mrs N McGarry-Gribbin** v **B&Q Limited**

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: 17 September 2021

"the calculation day" is: 18 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.