



EMPLOYMENT TRIBUNALS

Heard at: Croydon **On:** 11 March 2022
Claimant: Mr R A Leslie
Respondent: Driver and Vehicle Standards Agency
Before: Employment Judge Fowell
Mr J Havard
Ms A Rodney
Representation:
Claimant: Mr P Withers of counsel
Respondent: Mr T Kirk of counsel

JUDGMENT ON REMEDY

The claimant is awarded compensation of **£39,180.99**

REASONS

Introduction

1. This remedy hearing follows a liability hearing on 1 to 5 November 2021 which found in Mr Leslie's favour on his complaints of unfair dismissal and of discrimination arising from disability.
2. As noted previously Mr Leslie worked for the DVSA as a driving examiner until his dismissal on 9 May 2019. He now says that as a result of his treatment at work he has been unable to work at all during the period of nearly three years since then, and will not be able to do so in the future; further, that he had planned to retire aged 69 in October 2028 when his wife reaches pensionable age. In the meantime he has a police pension of over £25,000 per year. The company on the other hand say that his employment was unlikely to have lasted more than a further 12 months in any event, given his difficulties at work and existing mental health problems.
3. In addressing these issues we heard evidence from Mr Leslie, and on behalf of the agency from Mr Jacob Stapleton, a Senior Human Resources Business Partner, who gave evidence about typical retirement ages for driving examiners

and the sickness absence process which would have continued to apply.

Previous findings

4. Before considering how to approach these questions, it is useful to remind ourselves of the factual position as we found it to be up to Mr Leslie's dismissal. The full findings remain as previously set out in our liability judgment, but some aspects may be conveniently highlighted.
5. Mr Leslie started work for DVSA in October 2015, just before his 56th birthday. Before then he had worked for the Ministry of Justice, and before that he was a police officer.
6. He has long-standing mental health problems - depression, anxiety and post-traumatic stress disorder, and these were exacerbated by an incident at work in October 2016. As we noted, by reference to a medical report at the time

“In October 2016, he describes being subject to humiliation at work at the hands of two female colleagues. He stated that he was publicly criticised having been observed by one of the female colleagues undertaking a particular test manoeuvre whilst examining a candidate. Mr Leslie stated that he was publicly criticised in front of colleagues which caused him some concern. He raised his concerns with his manager but was left feeling unsupported and vulnerable. Mr Leslie raised the issue directly with the colleagues in question but discovered that the colleagues had actively decided to treat him in this manner and felt no apology was due. Following this, he has felt ostracised by his colleagues with them ignoring his presence in the office.
7. That led to grievance proceedings which occupied most of 2017 and we described the extreme feelings which this aroused in Mr Leslie. He referred in correspondence to his managers being corrupt when they disagreed with him, of him being banished to a different office and of suffering mental torture.
8. In August he submitted a claim form to this Tribunal, unhappy with the way his grievance was being handled. His mental health then suffered a sharp decline, he told his manager that he was considering ending his life, and he was immediately suspended on medical grounds.
9. Shortly afterwards, he was moved to the Hastings office, he was encouraged by efforts to rehabilitate him, and he withdrew his Tribunal claim, so as we explained previously, the events raised in that claim, in particular the events of October 2016, did not form part of our considerations.
10. Occupational Health recommended weekly reviews with his new manager, the conclusion of the grievance, a stress risk assessment and ongoing counselling and support. A psychiatric report was suggested but not implemented.
11. They also noted that he was likely to need more sickness absence than his colleagues should he have any difficult interactions with a colleague and so his sickness absence threshold should be increased, and indeed it was, from 15 to 20 days per year for short term absences.

12. At the beginning of 2018 his new line manager was Ms McLaren. She carried out a stress risk assessment with him, he had a phased return to work and other steps were taken such as encouraging him to talk openly about his stress and anxiety at the workplace. As a result, his health rapidly improved.
13. On 30 April he was off sick following an accident at home. That brought his absences for the year to 43.
14. Then in August there was a falling out with Ms McLaren over a survey on driving examiners, which aimed to detect how much variation there was between their pass and fail rates and other statistics. Mr Leslie was "livid" about the fact that his statistics were extremely close to the average, and yet he was not recognised as having done a good job.
15. That led to a deterioration in their working relationship. He was not sleeping and lost concentration on the way to work, nearly having an accident. His attempts to stay alert by taking large amounts of energy drinks back-fired when he was taken to the Emergency Department with intense abdominal pains resulting from an overdose of caffeine. The root of the problem, we found, was his continued determination to avoid taking any time off work and so put his job at risk.
16. The next Occupational Health report at the end of August stated that he was not fit to drive until his sleep issues had been resolved. He was off sick for another week, returning long before his sick note expired. By then, patience was running thin. He was given admin tasks for three weeks and told that he may have to redeployed to other work after that. However, on receipt of a letter from his GP, he was allowed to return to driving duties.
17. He was next seen by occupational health in October 2018 and again there was firm advice that he ought not to be driving given his sleep apnoea, but given the risk to his job, Mr Leslie refused to disclose that report.
18. Later that month he had a quarterly appraisal review which gave him a downgraded performance assessment of "developing", not because of his absences but because of his behaviour. Ms McLaren referred to the excessive number of emails he sent her and their underlying tone of sarcasm which she found intimidating. He raised a grievance about this and that was really the end of their working relationship. On 13 December Mr Leslie saw his GP and was signed off work again, this time until 6 January 2019.
19. On receipt of this medical certificate a further occupational health referral was made. That led to another report by a Dr Obi on 28 December 2018. He confirmed that Mr Leslie was not medically fit for work pending the outcome of his sleep study, and recommended that management undertake a further stress risk assessment and agree an action plan with Mr Leslie to support him on return to work. Some further, more detailed guidance was provided about how to go about that assessment; it was suggested that someone from HR should conduct it rather than his line manager, perhaps with a trade union representative also

present.

20. On 7 January, when the sick-note expired, Mr Leslie was able to return to work but Ms McLaren explained to him that he would be better off staying off sick and having a long period of continuous absence, rather than several short periods, and so he went home. By then he had accumulated 27 days of absence over the past 12 months, taking him again past the trigger point of 20 days.
21. While off sick he completed a Wellbeing Action Plan, setting out the changes he wanted in rather emotive terms, starting:

“Being treated as a sentient and relevant human being.”
22. Ms McLaren referred the question of Mr Leslie’s continued employment to her manager, Mr Mark Aston. By then, his grievance had been rejected. On 6 February Mr Leslie’s sick note came to an end, and he wanted to return, but he was not allowed back, pending a further occupational health report.
23. That final occupational health report was again carried out by Dr Obi, this time on 27 March 2019. He confirmed unequivocally that Mr Leslie was fit to work, stating:

“It is my opinion that Mr Leslie is now medically fit to return to work in his capacity as a driving examiner. I would recommend the following adjustments if management is able to accommodate them.”
24. The first of these was a phased return to work. Another was that he continue to engage with his GP to manage his background medical conditions. The main section stated,

“Management is strongly advised to consider concluding the stress risk assessment as soon as possible and have a mutually agreed action plan with a view to addressing his perceived unresolved work-related stresses. I would recommend that this should be in place just before commencement of the above phased return to work plan and recommendations.”
25. In response to a number of specific questions raised in the referral letter, Dr Obi also confirmed that Mr Leslie was fit to be managed under the sickness absent procedure and stated, at paragraph 12:

“Providing that management has a mutually agreed action plan addressing his perceived work-related stressors, I do not foresee Mr Leslie being prone to further sickness absences due to psychological symptoms.”
26. In the final paragraph he adds:

“In my opinion, ill health retirement is not applicable because Mr Leslie’s underlying medical conditions are currently treatable and in the majority are stable and controlled.”
27. In response to this report, Mr Leslie was invited to a meeting with Mr Aston on 10 April. The meeting lasted for about four hours but no real attention was paid to his current workplace stresses, or what steps managers need to take to

address them. The main topic was the events in 2016 and whether Mr Leslie could move on from them. We found, in short, that however much his sense of injustice over those events continued to gnaw at him this was not a barrier to him returning to work.

28. Mr Aston then invited Mr Leslie to a final meeting, to take place on 1 May 2019. That meeting went over the same ground and resulted in his dismissal, by letter dated 9 May 2019.
29. One consequence of his dismissal was that Mr Leslie became eligible to payments from the Civil Service Compensation Scheme (CSCS), originally assessed at 50% by Mr Aston, but increased on appeal to 100%, on the basis that there was no real lack of co-operation on his part with his absence management and that more allowance should have been made for his mental health.
30. As well as finding in his favour on unfair dismissal the specific acts of unfavourable treatment found to have occurred were:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. [REDACTED]

31. In short, these are the events of 2019, as distinct from the events of 2016 or earlier. We made no adjustments for contributory fault, for any failure to comply with the ACAS Code of Practice or on grounds that a fair process might have led to the same outcome.
32. Having heard evidence about later events today, our further findings are as follows.

Further findings

33. According to his CV, Mr Leslie was in the Royal Navy for five years as a young man. He served in the Falklands conflict and his experiences there gave rise to his subsequent PTSD. After that he served in the Sussex Police for 25 years in various roles but he had to retire on ill health grounds due to his anxiety, depression and PTSD. From 2007 to 2010 he was self-employed as an Approved Driving Instructor. Then for the next five years he worked as a court

usher at Lewes Crown Court where he received a commendation for tackling and detaining a dangerous prisoner who escaped from the dock. Finally, in 2015, he returned to driving, this time as a Driving Examiner with the respondent.

34. Since his dismissal Mr Leslie has not made any efforts to look for alternative work. His police pension was worth £25,708.76 in the tax year to 5 April 2021, and his wife also works, so he has been able to manage financially. He put his efforts instead into challenging the 50% CSCS award and then pursuing these Tribunal proceedings. The 100% CSCS award was worth £2,336.38 so the point was more one of principle than to safeguard his financial future.
35. There is very little medical evidence for the first 12 months or so after Mr Leslie's dismissal. He has not provided his medical records in full to allow us to see, for example, how often he was seeing his GP, what symptoms he was reporting, what other services he accessed. As already noted, his position in the run up to his dismissal was that he was fit to return to work, and the last Occupational Health assessment from Dr Obi was that he would have been able to maintain a satisfactory level of attendance if adjustments had been made. That is very different from his present position, that he will not be able to work again.
36. Before embarking on these proceedings his solicitors took the precaution of writing to his GP, Dr Rabuszko, to ask whether he would be able to cope mentally with the process. Dr Rabuszko replied on 10 July to say that there would be some effect on his health, it would be challenging, but "I think he needs to go through with this process to move forward and hopefully attain a better mental health profile when all is completed."
37. No further description was given of Mr Leslie's symptoms at that time but on 24 February 2020 Dr Rabuszko referred him to a secondary mental health service called The Assessment and Treatment Service in East Sussex. The main points to draw from the referral form are that:

- a. ~~_____~~
~~_____~~
- b. ~~_____~~
- c. ~~_____~~
- d. ~~_____~~
~~_____~~

38. This tallies with the Tribunal record which shows that a telephone preliminary hearing had been listed for 22 January 2020 but had been adjourned at the request of the claimant. It also matches Mr Leslie's own recollection, that he was referred to a consultant psychiatrist in February 2020 but was not seen; instead he was given further medication. A letter from Dr Rabuszko on 16 March 2020 confirms this. It details the advice from the consultant psychiatrist about medication and Dr Rabuszko also recommended that Mr Leslie refer himself to

the Health in Mind service.

39. There is a further letter from Dr Rabuszko to Health Management Limited dated 6 April 2020. Their role is unclear but they must have written about absences from work. In his reply Dr Rabuszko noted that they would have access to Mr Leslie's Occupational Health reports. He confirmed that Mr Leslie's absences in December 2016 (about the time that he first experienced problems at work) were related to anxiety and depression, he went on to explain that Mr Leslie had been suffering from chronic anxiety, low mood and PTSD since the Falklands war. Then:

"He had previously been making a good recovery until several stressful work events became apparent where allegations of bullying at work and refusal of fit notes for his adjustment disorder were made."

40. Given the reference to 2016 the word "previously" must refer to his health around the time he joined DVSA, but the reference to refusal of fit notes seems to relate to the respondent's refusal to accept Dr Obi's recommendation and allow him to return to work. Nothing was said in that letter about his current health apart from his ongoing sleep apnoea but Dr Rabuszko added:

"I believe currently there are ongoing tribunals and reports that are affecting his mental health and period of sickness and in view of the work-related issues of alleged bullying and acceptance of fitness to work certificates, I know that his stress levels have increased and he has found difficulties with working continuously in such surroundings with his colleagues."

41. Summarising this limited information, by this time – nearly a year after his dismissal – Mr Leslie had had his medication reviewed and increased by a consultant psychiatrist and was suffering some increased stress and anxiety as a result of the litigation process. His own statement expanded on the stress caused to him during this process by what he regarded as the respondent's unreasonable refusal to disclose key documents to him, a dispute in which the Information Commissioner's Office then became involved.
42. Unfortunately, as he explained to us, on 24 May 2020 he then used the increased medication he had acquired to take an overdose in an attempt to end his life. Fortunately he was found in time, taken to hospital and successfully treated.
43. After that serious episode we have another period with very little evidence. On discharge from hospital he was referred to a Veterans Mental Health service, but it is unclear whether this was followed up. Then in 2021 Mr Leslie applied for Employment and Support Allowance, for which he needed a letter from his GP. So, we have another letter from Dr Rabuszko, dated 28 September 2021. It seems to be rather carefully worded. It starts by saying that he has been asked to produce a suitable letter to be backdated to 14 June 2021. Then:

"Mr Leslie has certainly been unable to work since that date due to his chronic and unremitting anxiety states related to probably post-traumatic stress disorder since

1990. He has type 2 diabetes and obstructive sleep apnoea.

I believe that his inability to work due to his chronic anxiety would be on-going into the future and making him [in]eligible for suitable or similar work in the future.”

44. This is two years and four months after Mr Leslie’s dismissal, and Dr Rabuszko does not say, as he might, that he has been unfit for work since May 2019. Nor does he attribute his current ill health to his dismissal or even to events at work with DVSA. The only other medical information we have is a fit note from his surgery on 11 November 2021, stating simply:

“Unlikely to find gainful employment till retirement”

Conclusions

45. The first question we have to answer is how long Mr Leslie’s employment would have lasted but for his dismissal. The respondent suggests that it would not have lasted longer than 12 months whereas Mr Leslie says that it would have lasted until 2028.
46. That lengthy period seems to us quite unrealistic given that Mr Leslie also now says that he will be unable to work ever again. He blames this on his dismissal, but there is simply no medical evidence to link his current mental health with the dismissal. Even the short letter from Dr Rabuszko in September 2021 stating that he has been unfit for work since 14 June 2021 does not connect it with DVSA; instead he attributes it to Mr Leslie’s longstanding PTSD going back to 1990. Given that long history of serious mental health problems, and the time which had elapsed since his dismissal, it is not a natural inference to connect the two. Indeed, from the limited evidence provided by Mr Leslie his mental health appears to have got worse in the run up to the suicide attempt he made in May 2020. Insofar as any cause is indicated in the brief records made around that time it appears to be due to the stress of litigation or of contesting disclosure issues. That is quite separate to the acts of discrimination for which the respondent has been found liable.
47. Hence, there is evidence that from June 2021 onwards he has been unable to work. That is some indication that his employment with DVSA would not have continued beyond that point too, although it is by no means an inevitable inference. We cannot know how Mr Leslie’s mental health might have progressed had he remained in employment rather than being at home and pursuing employment tribunal proceedings. The stresses and strains of working life might have made his condition worse, or he might have done better with more to occupy his time. A better guide, it seems to us, is his history of employment and the circumstances as they existed at the time of his dismissal.
48. Reviewing his employment history, this job lasted for three years even though it was ended prematurely. His previous role as a court usher lasted five years, and before that he had three years as a driving instructor. Before that, his long police career was ended by way of retirement due to his mental health.

49. Focussing on his time with DVSA, it was clear at the liability hearing that the events of 2016 still loomed large at the time of his dismissal. The respondent's case was that he was simply unable to let go of that incident or the outcome of his grievance, so that a continued working relationship was simply not viable. We found that they made too much of that, and it was something of a pretext for dismissal, but equally he was nevertheless adamant that it ought to be re-opened and that otherwise it would take him at least six months to get over it. He continued (and no doubt continues) to have a strong sense of injustice over it, and repeatedly accused his managers of being corrupt over this episode and has referred to his treatment as psychological torture. On any view it would have been difficult to resume a harmonious working relationship. Mr Leslie would have needed to make some changes to his own approach and language to make it viable, and it is far from clear that he would have been willing or able to do so.
50. Then there is the fact that if he had been allowed to return to work it is likely that some further steps would have been taken over his absence. If he had returned on 6 February 2019 (as he should) there would still have been after an absence of nearly three months (since 13 December 2018). His total absences since 2015 would still have exceeded 120 days, and a warning about his absence would have been perfectly appropriate. Some steps had already begun to address his absence level and there was an ongoing problem in that he persistently attempted to return to work too soon in order to avoid this, which proved counter-productive on occasion. The fact that absences are due to a disability does not mean that an employer must simply overlook them. Reasonable adjustments have to be made to ensure a satisfactory level of attendance, and his trigger point for absence management purposes had already been increased from 15 to 20. We made no finding to the effect that that was inadequate.
51. The fact that such a warning is given does not of course mean that dismissal will follow. Mr Leslie's absence record might have improved, although in light of later events that now seems unlikely. But a bigger concern is how he would have reacted to such a warning. His view, expressed again at this hearing, was that only two days out of this 120 or so was down to his ill health and the rest was "down to my managers". This shows that the events of 2016 were still at the front of his mind. That was in his view the cause of his absences (rather than his mental health) and the failure to uphold his grievance, and the refusal to reopen that grievance process, were in his view acts of corruption; by extension any absence management was inappropriate and unfair. Any such warning is likely to have been seen in that light, leading to a further appeal and quite possibly to further attempts to re-open that earlier grievance process.
52. Even if these pitfalls were avoided it is clear that Mr Leslie would have remained highly vulnerable to any setbacks at work. The incident in October 2016 involved two female colleagues criticising him in public over his approach to a parking

manoeuvre. But for his mental health problems (and we do not doubt the effect it had on him) that might have been resolved by an apology, or at most by the office move which followed. Insensitive or unprofessional acts do take place at work from time to time. We also recorded the various incidents that led to the breakdown in his working relationship with Ms McLaren – particularly the faint praise given in the IGF survey and the reduction in his appraisal grading – both of which resulted in a fairly extreme reaction on his part. Again, such things may occur from time to time at work. Had his level of absences continued it would have been perfectly understandable for this to be reflected in an appraisal grading, since absence does have an effect on performance, regardless of the cause, and that too might have led to further disagreements.

53. On the other hand, we remind ourselves of the Occupational Health advice from Dr Obi that he should be able to return and maintain a satisfactory level of attendance. That view may not take account of the ongoing sense of injustice Mr Leslie was labouring under, but it opens the possibility that if he was able to move on, things might have got back onto an even keel.
54. There are a range of possible approaches in assessing how long the employment would have lasted. A period of months or years could be arrived at, or a percentage approach could be taken. The latter would be more appropriate if, say, there was an appreciable chance of a very long period of employment. We considered whether to set out our conclusions in stages, with a relatively high chance of the employment continuing for six months, then a lower chance of it lasting for a year, a yet lower chance of it lasting two years and so on. However, given the difficulties in the way of a successful return to work, and the medical evidence of very severe mental health problems having resurfaced since, we do not consider there is any realistic prospect that the employment would have lasted for a period of years. A simple time period approach seems to be indicated, and balancing the relevant factors we assess as a median figure that it would on balance have lasted for **18 months**.

Mitigation of losses

55. That 18 month period is therefore the outer limit of what loss of earnings may be recovered. The fact is that he did not make any attempts to look for other work. He says that this was due to his mental health but we have already rejected that. There is simply no evidence of an adverse reaction to his dismissal, and it cannot in our view simply be inferred from his attempted suicide a year later.
56. There is a duty to mitigate one's loss, even if the employee does not feel that it is necessary at the time or even reasonable. In **Ministry of Defence v Cannock and others** 1994 ICR 918 one of the claimants decided not to look for work for nine months after the birth of her baby. The Tribunal concluded that this was a reasonable decision in the circumstances. However, on appeal, the Employment Appeal Tribunal held that she was under a duty to mitigate her loss by continuing to look for work. If she chose not to do so, then she could not continue to claim

compensation. The fact that a decision not to pursue another role was reasonable did not mean that she had taken all reasonable steps to mitigate her loss.

57. There is an obvious parallel here. As we have found, Mr Leslie had his pension and did not necessarily need to work, or at least to go back to work straight away. He elected not to while he pursued his CSCS claim and these proceedings. But that does not mean that he can claim his loss of wages from DVSA. The only period for which compensation may be paid is the length of time it would have taken him to find alternative employment. Clearly he had some options. The main one appears to be returning to work as a self-employed driving examiner, or a job as a court usher, or work in the security industry, perhaps as a fraud investigator, using his skills from his police career. The respondent has provided evidence of these options, and that he could in each case have earned as much as before. The first seems to be the most obvious move. He would be self-employed and so not subject to the constraints of management. The only obstacle he identified was that to be an Approved Driving Examiner (ADI) he would need to be assessed and approved by DVSA. He felt that they would not approve him, given all that had passed. We discount that possibility. As a former ADI, and one who had worked for DVSA as a driving examiner, this accreditation should have been a straightforward exercise. Making some allowance for possible delay in obtaining that accreditation, and then in re-establishing his own business, we allow a period of **12 months** loss of earnings.

Injury to feelings

58. The final major question is the assessment of damages for injury to feelings. We note that there is no claim for personal injury and (again) no medical evidence of such injury.
59. We remind ourselves that the purpose of such an award is compensation rather than to punish the employer.
60. The general guidelines that apply to compensation in discrimination claims were set out by the Court of Appeal in **Vento v Chief Constable of West Yorkshire Police** 2003 ICR 318, CA. These guidelines provide for three broad bands:
- a. ~~£10,000 to £20,000~~
 - b. ~~£20,000 to £30,000~~
 - c. ~~£30,000 to £50,000~~
61. The President of the Employment Tribunals has issued periodic guidance on the appropriate award in each Vento band, and the most recent applies to for claims submitted after 6 April 2019. This provides that:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]

62. This exercise is far from straightforward. Mr Leslie's case is essentially that his suicide attempt followed as a direct result of his dismissal and so his injury to feelings should be at the top of the top band, £44,000, but we have rejected that simple or automatic connection and he has provided very little evidence or even description as to the effect on him of his dismissal.
63. We also have to guard against attributing all of the ill effects to the acts of discrimination which we have found, i.e. to the events of 2019. It is clear that the events of 2016/17 were still and are still a significant part of the sense of injustice he feels, indeed are the most significant aspects.
64. Looking first at the overall effect on Mr Leslie of events at work, including those earlier events, we take the view that it was a major and all-consuming episode for him. In our decision on liability we quoted some of the passages he set out in his Wellbeing Action Plan about wanting to be treated as a sentient human being, and the equally dramatic language with which he withdrew his initial employment tribunal claim. It was clear that he felt intensely about these events and those feelings led to several lengthy periods of ill health and absence from work. On that basis therefore we conclude that this is a case which would fall (as a starting point) in the upper band.
65. We were referred to a number of cases in *Harvey on Industrial Relations and Employment Law*, although parallels are hard to find and each case turns on its own facts. The main feature here is Mr Leslie's vulnerability, not the steps or actions taken against him by the respondent. It is well-established that a wrongdoer has to take the victim as they find them, and that whereas one person may shrug off adverse events another may be badly damaged by them. This is known as the "egg-shell skull" principle.
66. The only case mentioned on his behalf was **Tameside Hospital NHS Foundation Trust v Mylott** (Manchester) (Case No 2403493/07, 9 February 2010, unreported, UKEAT/0352/09/DM, where an award of £16,000 was made. The description reads:

The claimant was an Accounts Payable Manager in the respondent's Finance Department. He went off sick with stress and made a complaint about bullying following a meeting at which the Deputy Director of Finance was rude to him about some work which she thought he should have done but which he said was someone else's responsibility. The grievance process was mishandled over many months in a way which involved breaches of the respondent's duty to make reasonable adjustments including that the respondent should have conducted its own independent management review into the bullying allegation and made a

finding on it. A consequence of the mishandling was that the claimant failed to recover his health and was eventually dismissed as a result. He suffered a significant injury to his feelings including a loss of trust in his employer and uncertainty about the workplace and job security during and after his employment.

67. This has some similar features, in that it involved a grievance process, arguments over that process, stress-related absence and ultimately a dismissal. In Mr Mylott's case it may well be that all of these aspects were considered to be acts of discrimination. But again, the personal impact of these events may differ widely from person to person. That impact is shown to some extent, in both cases, by the stress-related absences, and in Mr Mylott's case it sufficed to bring him into the bottom of the Upper Band. That is a fairly rough and ready comparison, but it reinforces our view from that the intense emotions described by Mr Leslie at various stages that this should fall in the upper bracket. We assess the overall impact in financial terms as **£30,000**.
68. However, not all of that can be ascribed to the events of 2019. Some apportionment has to be made, as explained by the Court of Appeal in **Sutherland and others v Hutton and others** [2002] IRLR 263 CA. An example is the case of **Sadler v Portsmouth Printing and Publishing Ltd** UKEAT/0280/04, where the award of injury to feelings was reduced by 80% to reflect the extent to which the injury was attributable to the discrimination.
69. Mr Leslie's sense of injustice was largely due to the events of 2016. That was the cause of his periods of absence with stress and was the main topic of discussion in the meetings leading up to his dismissal. The dismissal was nevertheless significant in that it brought to an end his long campaign, but it was not the main feature. We assess the proportion attributable to the relevant acts of discrimination here as 40%, and so the amount of compensation is reduced to **£12,000**.

Calculations

70. It remains to quantify the combined effect of these decisions. Since we did not conclude that a long period of loss of earnings was appropriate the simplified pension calculation method can be used, and the relevant figures are as follows:

Pay in former employment	Per year	Per month	Per week	
Gross pay	£25,514.00	£2,126.17	£490.65	
Net pay after tax and NI	£20,997.60	£1,749.80	£403.80	
Employer's Pension contribution	£586.82	£48.90	£11.28	(at 2.3%)
Total net package	£21,584.42	£1,798.70	£415.08	
Compensatory Award				
12 months net loss	£21,584.42			

Loss of Statutory Rights	£500.00
(Civil Service Absence Benefit)	-£2,336.38
Net sum	£19,748.04
Basic Award	£2,207.93 (agreed)
Total Award	£21,955.97

Interest on Financial Loss

Day of Calculation	11 March 2022
Act of discrimination	09 May 2019
Days between	1037
Days from mid-point	519
Mid-point date	09 October 2020
Rate of interest	8%
Interest	£2,497.57

Non-financial loss

Injury to Feelings	£12,000.00
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Interest on Non-Financial Loss

Day of Calculation	11 March 2022
Date of Injury	09 May 2019
Days between	1037
Rate of interest	8%
Interest	£2,727.45

Summary of Losses

Financial loss	£21,955.97
Interest	£2,497.57
Non-financial loss	£12,000.00
Interest	£2,727.45
Total	£39,180.99

71. Since there is a tax-free allowance of £30,000 and the award of injury to feelings is not taxable, there is liability to tax on this amount.

Employment Judge Fowell

13 March 2022