EMPLOYMENT TRIBUNALS

Claimant: Miss P O Muchilwa

Respondent: Stockport Metropolitan Borough Council

Heard at: Manchester **On:** 10 & 11 October 2022

Before: Employment Judge Phil Allen
Ms A Booth

REPRESENTATION:

Claimant: Mr S S Maini-Thompson, counsel
Respondent: Mr S Brochwicz-Lewinski, counsel

JUDGMENT ON REMEDY

The unanimous judgment of the Employment Tribunal is that:

1. As a result of the respondent's unlawful discrimination and victimisation, the respondent is ordered to pay the claimant compensation for injury to feelings of **£25,000**;

2. The respondent is also ordered to pay the claimant interest on the injury to feelings award of **£14,537**;

3. The respondent is also required to pay the claimant damages for the personal injury suffered of **£8,574**. This has been calculated as being 70% of: general damages of £10,000; and special damages of £2,210;

4. The respondent is also ordered to pay the claimant interest on the personal injury damages of **£2,484.**

5. The respondent is not ordered to pay the claimant any further compensation as a result of: aggravated damages; and/or losses claimed.

REASONS

Introduction

1. In a liability Judgment sent to the parties on 24 March 2021, the Tribunal found that the respondent treated the claimant less favourably because of race (direct discrimination) in the following ways:

    a. Mr Smallbone's conduct of the claimant's suspension on 7 July 2015;

    b. The decision to make a referral to the Channel Panel communicated on 17 and 24 July 2015;

    c. The terms of a letter stated to be from Ms Stewart of 24 July 2015 (387);

    d. In an email from Mr Reynolds of 29 July 2015 (398); and

    e. In an email from Mr Reynolds of 30 July 2015 (404).

2. The Tribunal also found that the respondent subjected the claimant to unlawful victimisation:

    a. In the letter from Ms Stewart of 24 July 2015 (387); and

    b. In correspondence with the claimant of 7 September 2015.

3. The Tribunal also found that the respondent treated the claimant unfavourably because of something arising in consequence of her disability (PTSD) in correspondence with the claimant of 24 July 2015 (387).

4. This hearing was arranged to determine the remedy due to the claimant as a result of the Tribunal's liability Judgment.

Issues in dispute

5. The claimant had prepared a schedule of loss (149). In that schedule she claimed the following:

    (1) £2,405 as financial loss for discrimination;

    (2) Between £27,445 and £45,741 as an injury to feelings award (being the upper band);

    (3) £15,000 as aggravated damages; and

    (4) £35,350 as damages for personal injury, made up of £33,000 general damages (moderately severe) and £2,360 special damages (which duplicated some of the costs claimed as financial loss).

6. The claimant did not claim interest in her schedule of loss, but it was also an element of loss which the Tribunal needed to consider and determine.

7. The respondent had prepared a counter schedule of loss (151). In that document it disputed all the elements claimed by the claimant, except for injury to feelings. The respondent accepted that the claimant was due an injury to feelings award; contended that it should be in the lower Vento band and stated that it should be £8,000 (being near the top of the lower band).

Procedure

8. The claimant was represented by Mr Maini-Thompson, counsel. The respondent was represented by Mr Brochwicz-Lewinski, counsel. Both parties were represented at the remedy hearing by different counsel to those who had represented them at the liability hearing.

9. The hearing was conducted as a hybrid hearing. At the request of the claimant's counsel, he attended remotely by CVP. Both parties, both witnesses, and the respondent's counsel, attended in-person, as did the Tribunal panel.

10. Unfortunately, shortly before the remedy hearing, one of the members of the panel who had conducted the liability hearing (the member nominated from the employee side), became unable to attend the remedy hearing due to a medical emergency. Both parties agreed in writing (in emails) that they consented to the hearing being conducted by a panel of two, when that option was put to them as a way of the remedy hearing proceeding on the dates listed. At the start of the hearing, both counsel re-confirmed that the parties agreed with the hearing proceeding on that basis.

11. The Tribunal was provided with a bundle for the remedy hearing containing 707 pages. Shortly before the hearing, the claimant also sent in some additional documents. At the start of the hearing any of the documents sent in by the claimant which needed to be printed off and added to the bundle were identified and read. A few additional documents were identified during the hearing and also added to the bundle. Where a number is included in brackets in this Judgment, that is reference to the page number in the remedy hearing bundle.

12. Witness statements were prepared for the remedy hearing by Mr Urry (a former colleague of the claimant) and the claimant. Those statements were read by the Tribunal at the start of the hearing. Each of the witnesses gave evidence under oath and were cross-examined by the respondent's counsel. No evidence was called on behalf of the respondent.

13. Each of the parties made submissions to the Tribunal. The claimant's counsel had prepared a written submission document prior to the hearing and he provided a further submission document on the second day prior to his oral submissions. The respondent's counsel also prepared written submissions which were provided on the morning of the second day. Both counsel made oral submissions.

14. At the end of the parties' submissions the Tribunal reserved judgment and, accordingly, provides the remedy Judgment and Reasons contained in this document.

The facts

15. It is not necessary for the Tribunal to repeat the relevant findings of fact as found in the liability Judgment. It is also not necessary for the Tribunal to re-produce in this Judgment all the evidence which was considered. The matters which were found to have amounted to unlawful discrimination occurred in the period from 7 July 2015 (when the claimant was suspended, the manner of which was found to have been discriminatory) and 7 September 2015 (being the last correspondence which was found to have been an act of victimisation). The discrimination found included the decision to make a referral to the Channel Panel in that period (that is a referral to the Counter Terrorism Unit when the criteria for such a referral were not met). In the claimant's claims determined at the liability hearing, the claimant had asserted discrimination and victimisation arising from events which both preceded and post-dated the discrimination/victimisation found.

Medical evidence

16. The Tribunal did not have the benefit of an agreed medical report or one which had been obtained on an agreed basis. However, the Tribunal was provided with some medical evidence regarding the claimant.

17. The claimant had a complex medical history, which included experiencing complex post-traumatic stress and trauma following being present when an act of terrorism had occurred. The claimant had a diagnosis of Post-Traumatic Stress Disorder (PTSD). In her report of 1 October 2020, Dr Rivers (a clinical psychologist who treated the claimant) recorded that (703) the environment and relationships which the claimant experienced within her role during 2014/15 were similar enough to previous experiences (albeit not equivalent to them) to trigger previous trauma.

18. A discharge report provided by Dimitra Karachaliou of the Psychological Wellbeing Service following discharge on 6 April 2018 (663), recorded that the claimant had repressed all the memories of the previous incidents "*but working at the council in 2015 as a secretary brought back all the memories due to sounds in the reception*". That report accordingly recorded that the repressed memories were brought back by things which occurred during the claimant's employment with the respondent, but which pre-dated the discrimination/victimisation found.

19. Dr Rivers' report (701) described the claimant's presentation at the start of therapy (which commenced after the end of her employment) as having displayed experiences consistent with a post-traumatic stress response. Those were attributed to intrusive experiences relating to the claimant's work and subsequent Tribunal experiences with the respondent.

20. The report listed a series of employment events which caused traumatic feelings of fear, abuse and neglect, that became overwhelming (702). The entire list will not be re-produced in this Judgment. It included a number of things which had not been found to have been unlawful discrimination. It included at least two things which clearly were reflective of the matters found to have been unlawful discrimination: "*a sense of 'gaslighting' (eg., implication that she was to blame for her psychological responses to the style of personnel management; and referral to*

channel panel); unease at invitations from her manager to meet outside of work to discuss the work-related issue and the humiliation that resulted when she declined".

21. In addressing the impact of additional stressors, Dr Rivers reported (704): "*The prolonged disciplinary suspension involved ongoing exposure to communication which created feelings of being attacked from multiple sources. Given what I have described above, it makes sense that these would act as triggers to traumatised states within PTSD. I cannot comment on whether the actual process of channel panel proceeding could have retriggered trauma due to a lack of information, but the channel panel referral itself implied that she was at risk of harm to others and vulnerable to radicalisation. The suggestion that* [the claimant] *was capable of abusing/harming others, could well have reconnected her to her own experiences of abuse and threatened discreditation. This was significant enough to result in suicidality at the time*."

22. At the end of Dr Rivers' report, she provided a positive prognosis for the claimant at that time, with an end to therapy envisaged to be after a limited number of further sessions.

23. In a letter of 15 August 2018 (161), Dr Fletcher of Cornbrook Medical Practice confirmed that the claimant had a diagnosis of PTSD. In letters of 19 November 2018, 17 December 2018 and 4 March 2019, Dr Fletcher (amongst other things) confirmed that the claimant was suffering with hypervigilance, stress, and stress reaction. In a letter of 28 September 2020 (175), Dr Fletcher confirmed that the claimant suffered from complex PTSD. In a letter of 6 October 2022, Dr Warner confirmed that the claimant continued to take certain medication.

The claimant's evidence

24. In her evidence, the claimant provided a detailed history of matters which she believed related to her remedy hearing, much of which repeated matters which had been heard in the liability hearing. She placed some reliance on some handwritten notes which had been taken at, or around the time of, the events. Her evidence was that she had written the notes for the benefit of her family. The notes were not in chronological order and had not been disclosed prior to the liability hearing (albeit they were clearly relevant to it). The claimant was unable to recall why the entries were written in the order they were, when questioned about them. The Tribunal had no reason to doubt the claimant's evidence to the Tribunal, where she recounted what she recalled about the events from the time and the impact which they had upon her. However, the Tribunal gave no weight to what was recorded in the notes provided (or to the parts of the claimant's evidence which relied on those notes in order to evidence what happened and the impact of it), as a result of the issues raised by the respondent about the credibility of those notes.

25. In her statement, the claimant recorded events from April 2015 and May 2015 which she evidenced had an adverse impact upon her health. She described herself as having suffered from a relapse of PTSD on 26 May 2015. Her evidence was, accordingly, that the relapse first occurred before any of the matters which the Tribunal found to have amounted to discrimination/victimisation.

26. In her witness statement, the claimant described a particular event which occurred immediately after her suspension and as a result of being unable to re-

enter the respondent's premises, and she described the indignity of it as causing her humiliation and emotional damage. She evidenced that the suspension (and subsequent events) on 7 July were a very humiliating and degrading experience.

27. Following the claimant's suspension and the correspondence immediately after, the claimant described herself as being left feeling suicidal. Her evidence was that she was broken and had lost hope. In her statement, the claimant described the suspension experience as having left her suicidal, and she said she was still traumatised and humiliated, today.

28. In respect of the channel panel referral, the claimant described herself as humiliated and outraged, and explained that she shut down her feelings, suffered debilitating migraines, and had been left profoundly hurt. She described during her verbal evidence how she became a "*hot mess*" and referred to the actions she took at the time such as abuse of alcohol (something she described in her statement as self-medicating). In her evidence, the claimant emphasised the impact of the channel panel referral on herself as a black female immigrant, as she felt at the time that she was vulnerable to deportation if it was felt that she had been radicalised. Her witness statement referred to the fact that the referral had meant that she had been unable to progress with adoption as she had hoped (and she described the impact which that had upon her).

Mr Urry's evidence

29. The Tribunal also heard evidence from Mr Urry, who was present when the claimant was suspended and who saw her regularly at the time as a friend. His evidence corroborated that of the claimant about the impact on her of: the manner of the suspension; the subsequent correspondence; and the channel panel referral. He described the claimant as being in a very dark place at the time. He also described the claimant as becoming more paranoid and hyper vigilant at the time, and said she hardly left the house. He described that it was like watching a balloon slowly deflating and that the claimant had been crushed.

30. Both Mr Urry and the claimant were cross-examined at length about the language they used to describe the content of letters sent to the claimant. The respondent's representative demonstrated that the language used in their evidence was not consistent with what was said in the content of the letters sent. However, the Tribunal entirely accepted Mr Urry's evidence as being entirely honest and truthful when he evidenced the impact on the claimant of the events at the time, including the manner of the suspension and the channel panel referral.

Costs

31. It was not in dispute that the claimant had incurred £2,210 of cost on the psychological therapy sessions undertaken with Dr Rivers between 5 February 2020 and 18 November 2020. The claimant had also incurred £150 of cost on an assessment and report from Dr Parker in December 2019. The claimant also claimed for £45 which she had incurred to obtain advice from an HR expert in relation to the respondent's disciplinary hearing in 2016.

The claimant's work since dismissal/discrimination

32. In the liability decision, the Tribunal did not find that the dismissal of the claimant was discriminatory. Accordingly, the claimant's losses as a result of being out of employment after that dismissal, were not losses which followed from the discrimination found. However, what the claimant had done since she was dismissed by the respondent was relevant to the remedies claimed, to the extent that it showed the injury to feelings and/or personal injury suffered.

33. There was some dispute about the claimant's work history since leaving the respondent. A Linked-In profile was provided by the respondent, which the claimant contended inaccurately recorded her employment history in certain key respects. Her evidence was that she had not completed it and, since the errors had been identified, she had corrected it. The Tribunal accepted her evidence. Nonetheless, the Linked-In entries provided a helpful basis for establishing what the claimant had done since her dismissal (and the discrimination found).

34. What the claimant had done since her dismissal, was found to have been as follows (based upon the evidence heard):

a. The claimant completed a Masters degree in Business Analytics at Manchester Metropolitan University in approximately 2018. The claimant's evidence was that she had taken longer to complete this than would normally have been the case;

b. The claimant was employed part-time, 17 hours per week, by Manchester Metropolitan University, from 25 January 2017 until mid-2017;

c. The claimant undertook contract work for the Information Commissioner's Office for a period in 2017;

d. The claimant worked part-time for EG Data as a Data Research Analyst on a zero-hours contract, for some period between her work with the University and her subsequent work with Network Rail; and

e. Since August 2020 the claimant has been engaged as a consultant by Network Rail Consulting as a Software Licensing Analyst, effectively on a full-time basis (albeit as a contractor without the same certainty of continuous future engagement, as an employee).

The Law

35. Remedy is governed by section 124 of the Equality Act 2010. The Tribunal may order the respondent to pay compensation to the claimant.

36. Where compensation for discrimination is awarded, it is on the basis that (as stated in **Ministry of Defence v Cannock [1994] IRLR 509**):

> *"As best as money can do it, the claimant must be put into the position she would have been in but for the unlawful conduct of [her employer]."*

37. The Tribunal took account of the case of **Vento v Chief Constable of West Yorkshire Police [2003] IRLR 102** and the bands identified in that case.

38. The approach to awards was helpfully (and uncontroversially) summarised by HHJ Eady KC in the Judgment of the Employment Appeal Tribunal in the case of **Base Childrenswear Ltd v Otshudi UKEAT/0267/18** in which she said the following:

> *"When making awards for non-pecuniary losses, it is trite law that an ET must keep in mind that the intention is to compensate, not punish. It must, therefore, be astute neither to conflate different types of awards nor to allow double recovery. The ET should, moreover, not allow its award to be inflated by any feeling of indignation or outrage towards the respondent. On the other hand, awards should not be set too low as that would diminish respect for the policy of the anti-discrimination legislation…In Vento, the Court of Appeal laid down three levels of award: most serious, middle and lower. Specifically, at paragraph 65 of that Judgment, the Court of Appeal suggested that the top band should apply to the most serious cases, such as where there had been a lengthy campaign of discriminatory harassment on the prohibited ground; that the middle band should be used for serious cases which do not merit an award in the highest band; and the lower band would be appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. It was accepted, however, that the precise level of award under any particular head would depend on the facts of the case, which, of course, will depend on the evidence before the ET….*
>
> *As a matter of principle, aggravated damages are also available for an act of discrimination, albeit again, the award made must still be compensatory not punitive. As was explained by EAT in* ***Commissioner of Police of the Metropolis v Shaw*** *[2012] IRLR 291, Underhill J (as he then was) presiding, such damages are really an aspect of injury to feelings and ETs should have regard to the total award made (i.e. for injury to feelings and for the aggravation of that injury), to ensure that the overall sum is properly compensatory and not - as was held to have been the case in Shaw itself - excessive. Although ETs are not required to make only one global award, it is important that they have regard to the overall sum awarded and, specifically, to the risk of double recovery.*
>
> *Finally, for present purposes, it is not uncommon for a victim of unlawful discrimination to suffer stress and anxiety. To the extent that a psychiatric and/or physical injury can be attributed to the unlawful act, it is again common ground that the ET has jurisdiction to award compensation, subject only to the requirements of causation being satisfied (see* ***Sheriff v Klyne Tugs (Lowestoft) Ltd [1999] ICR 1170 CA****)."*

39. At the start of the hearing, the parties' counsel were asked to agree the levels of the **Vento** bands which applied to this case (in the light of the date of claim and the relevant Presidential Guidance). In his supplemental submissions, the claimant's counsel set out how the 2017 Presidential Guidance in respect of claims submitted before 11 September 2017 applied and what the resulting figures were once the relevant calculation and the 10% uplift were applied to them. In submissions, the

respondent's counsel agreed that those figures were correct. Accordingly, the relevant Vento bands to be applied were agreed as follows:

a. lower band - £804 to £8,045;

b. middle band - £8,045 to £24,135; and

c. upper band - £24,135 to £40,226.

40. In terms of aggravated damages, in order to justify an award, the respondent would have needed to have acted in a *"high-handed malicious, insulting or oppressive manner"* (**Broome v Cassell & Co Ltd [1972] AC 1027**). The Tribunal took into account the fact that aggravated damages are really an aspect of injury to feelings, and the Tribunal should have regard to the total award made when considering aggravated damages (**Commissioner of Police of the Metropolis v Shaw [2012] IRLR 291**). The Tribunal is not required to make one global award, but it did need to be careful about the risk of double recovery.

41. To the extent that a psychiatric and/or physical injury can be attributed to the unlawful act, the Tribunal has jurisdiction to award personal injury compensation. What was said by LJ Stuart-Smith in the key case of **Sheriff v Klyne Tugs (Lowestoft) Ltd [1999] ICR 1170** was: *"In my judgment that language is clear. The principle must be that the claimant is entitled to be compensated for the loss and damage actually sustained as a result of the statutory tort".* The claimant must prove that the discrimination found had a causal link to any personal injury suffered.

42. The Court of Appeal in **BAE Systems (Operations) Ltd v Konczak [2017] EWCA Civ 1188** held that where harm is caused by more than one cause, a respondent should only pay for the proportion attributable to their wrongdoing (unless the harm is truly indivisible). A Tribunal should try and establish a rational basis for apportioning, even if the basis for doing so is rough and ready.

43. In his submissions in relation to causation, the claimant's counsel referred to: **Ahsan v The Labour Party EAT/0211/10**; **Olayemi v Athena Medical Centre [2016] ICR 1074**; **Essa v Laing Ltd [2004] ICR 746**; **Thaine v London School of Economics [2010] ICR 1422**; **BAE Systems (Operations) Ltd v Konczak [2017] EWCA Civ 1188**; and **Blundell v Governing Body of St Andrew's Catholic Primary School [2011] EWCA Civ 427**.

44. The Judicial College guidelines for the assessment of general damages in personal injury cases identified the following categories in respect of PTSD (recounting only those which may be relevant and including what is said for general damages):

a. Moderate (£8,180-£23,150), where, while the claimant has suffered problems as a result of the discrimination, marked improvement has been made by the date of the hearing and the prognosis is good; and

b. Moderately severe (£23,150-£59.860) which includes those where there is work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment.

45. Injury to feelings and psychiatric injury are distinct heads of loss, but care should be taken that no double counting has taken place. Either could be reduced if that is the case.

46. Interest is governed by the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. In particular, regulation 6(1)(a) provides that, in the case of any sum for injury to feelings, interest shall be calculated for the period beginning on the date of the contravention or act of discrimination complained of and ending on the date of calculation. Regulation 6(1)(b) provides that "*in the case of all other sums of damages or compensation*" interest is from the mid-point date to the date of calculation; the mid-point date being the date half-way between the date of the discrimination and the date of calculation The applicable rate is 8% per annum.

47. Where a Tribunal considers that serious injustice would be caused if interest were to be calculated according to the standard approach, it can calculate interest on such different period as it considers appropriate (regulation 6(3)).

48. The Tribunal considered the detailed submissions made on behalf of both parties. The Tribunal has not re-produced all of the points made within this Judgment. It did consider all of the matters raised, whether or not they have been expressly referred to.

Remedy Facts and Findings

Injury to feelings

49. It was not in dispute that the Tribunal should require the respondent to pay compensation to the claimant for injury to feelings. The first question upon which the Tribunal focussed was which of the **Vento** bands would be appropriate for such an award for all of the unlawful discrimination and victimisation found. Neither representative proposed that separate awards be made for different elements of the unlawful discrimination/victimisation found; the claimant sought a single award for all of the discrimination/victimisation found.

50. The Tribunal focused, when determining the appropriate band, upon the impact of the discriminatory conduct on the claimant, as the award is compensatory not punitive. The Tribunal found that the effect of the conduct found to have been discriminatory on the claimant, could hardly have been more serious (at least in the shorter term). The manner of the claimant's suspension and the referral to the channel panel (in particular), alongside the other discrimination and victimisation found, had a very severe and negative impact on the claimant as evidenced by her and Mr Urry. The claimant became suicidal, hardly left the house, and became what Mr Urry described as having been crushed by it. It was also apparent from the correspondence at the time, that the claimant had a severe health reaction to the events including, in particular, the discrimination found.

51. The respondent's representative emphasised the fact that the respondent did not cause the claimant's PTSD; it was a pre-existing condition. That was right and was considered. The award for injury to feelings had to be assessed on the injury caused to the claimant which was, because of her history of PTSD and vulnerability

to events such as those found, greater than it might have been to others without existing PTSD.

52. The respondent's representative also, quite rightly, highlighted that the claimant's PTSD had been re-triggered earlier in 2015 before the discrimination found occurred, as is recorded in this Judgment above and as the claimant herself evidenced. Nonetheless, the Tribunal found that it was very clear that the events found to be unlawful discrimination/victimisation triggered a far more severe adverse health reaction in the claimant than had occurred prior to the discriminatory conduct in 2015. The impact on the claimant of the manner of the suspension was particularly pronounced, as she herself evidenced. The referral to the channel panel had a significant impact, as was clear from both the claimant's evidence and the report of Dr Rivers. Whilst the claimant clearly had health issues prior to the discrimination/victimisation found occurring, the Tribunal found that the discriminatory/victimisation found did have a very significant and adverse impact upon her, which included resultant suicidal ideation.

53. The claimant also sought aggravated damages as a result of the respondent's conduct and, in particular, its failure to apologise to the claimant even after Greater Manchester Police had reached its conclusion on the channel panel referral. There was a lack of any empathy or apology from the respondent at the time. In the liability findings, the Tribunal has already determined what it thought of the relevant correspondence, which was not that of a caring employer. Taking into account the importance of not providing the claimant with double-recovery and ensuring the overall sum awarded is not excessive, the Tribunal decided not to award the claimant an additional award for aggravated damages. The issues raised as supporting aggravated damages and the reasons why the Tribunal found the correspondence at the time to be unlawful discrimination and victimisation were also intrinsically linked, making a separate award not appropriate. The nature of the respondent's conduct which was unacceptable (such as the method of suspension and the discriminatory correspondence) can be, and has been, reflected in the injury to feelings award, based on the significant impact on the claimant of the discrimination/victimisation.

54. Also relevant to the injury to feelings award was the length of time for which the significant health impact on the claimant continued. Whilst the Tribunal noted that the claimant succeeded in completing a Masters degree and in undertaking part-time employment in the period after her dismissal, the Tribunal accepted that it was a number of years before the claimant was able to undertake full-time employment (or equivalent). The Tribunal took into account both the claimant's own employment record and the detail recorded in Dr Rivers' report. The length of time for which the claimant's adverse health reaction impacted upon her, was a factor in the injury to feelings award.

55. The respondent's representative submitted that account should be taken of both the chance that the claimant's health would have been adversely impacted in any event by the earlier events which caused the re-occurrence of the symptoms of PTSD, and the extent to which the other events of 2016 (which the Tribunal did not find to be discrimination) would have had an impact on her in any event (such as the disciplinary process and dismissal). The Tribunal did so.

56. Having considered all the matters evidenced and outlined, the Tribunal found that the injury to feelings awarded to the claimant should fall into the highest Vento band. As explained, having focussed in particular on the impact on the claimant of the discriminatory conduct found, this is a case which clearly fell into the most serious of cases.

57. Having determined that the injury to feelings award should fall in the highest band, the Tribunal found that the award should appropriately be towards the lower end of that band. Whilst clearly serious and in the view of the Tribunal sufficiently serious to fall within that highest band, the Tribunal did not consider this to be a case where the injury was such as to fall at the higher end of the very top band (reserved for the most serious of cases). On that basis, the Tribunal awarded the claimant injury to feelings of **£25,000**.

Interest on injury to feelings

58. With regard to interest on this figure, the parties were not in dispute about the result of applying regulation 6(1)(a). When the Tribunal suggested the relevant number of days for the calculation, neither counsel objected to the figure proposed to be used, or provided an alternative figure. What was in dispute, was the broader issue of whether or not the Tribunal should exercise its discretion either to award no interest or to award interest for a reduced period under regulation 6(3) (that is because awarding it would cause serious injustice). The respondent's position was that if the interest was awarded in full it would represent a windfall in the hands of the claimant, as it greatly exceeded the amount of interest which she otherwise could have obtained on the relevant sum over the period in question.

59. Interest ran from 7 July 2015 (the date of the first act of discrimination) to 11 October 2022 (the calculation date). That was 2653 days. Interest on the injury to feelings award for 2653 days at 8% per annum (the rate applied) resulted in an award of interest on the sum awarded of **£14,537**.

60. The Tribunal did consider carefully the respondent's submissions and was mindful that any award should not be a windfall. The Tribunal noted that this figure for interest was what resulted from the relevant rules being applied. The size of the figure arose from the fact that the claimant has had to wait for over seven years between the discrimination found and the sum being awarded. There was, in this case, no particular factor or fault identified which had resulted in the length of time involved. Whilst the respondent may have been correct in asserting that the interest awarded was more than the claimant could have earned in that time by other means, the Tribunal did not find that alone meant that such an award was a serious injustice. The Tribunal determined that it would not exercise its discretion to award no interest or interest for a shorter period. The Tribunal considered it right to follow the approach laid down in the rules and decided that the size of the interest awarded reflected the period of delay before being paid the amount awarded.

Aggravated damages

61. As already addressed, the Tribunal decided that it was not just and equitable to award an additional sum to the claimant for aggravated damages. To the extent that the matters relied upon were evident (and clearly the respondent had never

apologised for the channel panel referral), those matters were already reflected in the injury to feelings awarded.

Discrimination loss

62. As part of her damages for discrimination, the claimant claimed for £45 which she had incurred to obtain advice from an HR expert in relation to the respondent's disciplinary hearing in 2016. The Tribunal did not find those to be costs arising from the discrimination/victimisation found. Those were costs which the claimant chose to incur for assistance with, and representation at, the disciplinary hearing. That hearing determined matters which had not been found to have been unlawful discrimination or victimisation. The claimant was not awarded those costs.

Personal injury

63. In terms of personal injury, the Tribunal acknowledged (as did the claimant's counsel) that it was not ideal that there was not an agreed report from a jointly appointed expert. The Tribunal did not need to try to identify any blame for the absence of such a report, albeit in submissions both counsel addressed that issue. The Tribunal needed to reach a decision based upon the medical evidence which it had before it. The Tribunal did, in particular, have before it the medical report of Dr Rivers which advised in some detail on the claimant's condition, albeit without necessarily addressing which event found had caused the injury suffered (or any element of it).

64. The evidence considered has been addressed above. The relevant arguments have also been considered in relation to injury to feelings and will not be reproduced in this section of the Judgment. The respondent's representative was right to emphasise that the claimant had already had a return of the symptoms of her PTSD before the discriminatory events occurred and he was correct that other events not found to have been discrimination could have contributed to the impact upon the claimant's health in 2015.

65. The Tribunal found that the acts of discrimination/victimisation found did cause the claimant personal injury in 2016, by the worsening of the symptoms of her PTSD. That was clear from the report of Dr Rivers, when considered alongside the evidence of Mr Urry and the claimant. The channel panel referral, the manner of the claimant's suspension and the suggestion in correspondence that the claimant should meet individuals off-site, all caused the injury.

66. The claimant's counsel submitted that the claimant's personal injury fell within the moderately severe category (and in submissions he sought £33,000 as a result). The Tribunal did not find that the injury fell within that category. The guidance for moderately severe psychiatric damage generally referred to a long-standing disability preventing a return to comparable employment. The claimant's injuries had a significant impact on her and that impacted upon her employability for a significant period of time, but (positively) the claimant has returned to full time comparable employment (or equivalent) and the prognosis is positive. In those circumstances the Tribunal found that the injury fell more accurately into the moderate category than the moderately severe.

67. The moderate category for PTSD is recorded above. The Tribunal was mindful of the submissions made by the respondent's representative that double-recovery must be avoided and that the Tribunal must take account of what is awarded for injury to feelings when considering personal injury damages. The Tribunal remained of the view that an award in the moderate category should be made (particularly in the light of the suicidal ideation and the length of time before full time employment was resumed), but nonetheless determined that the award should be at the lower end of the figures in that category. Accordingly, the Tribunal awarded the claimant £10,000 as a personal injury award for general damages (subject to apportionment addressed below).

68. The claimant claimed two sums as special damages. The claimant claimed the sum of £150 for a report from Dr Parker in December 2019. That report was obtained as part of the proceedings to enable the claimant to prove that her PTSD amounted to a disability at the relevant time. Those are costs of pursuing the proceedings, not costs incurred as a result of the discrimination found. She also claimed £2,210 of cost for the psychological therapy sessions with Dr Rivers between 5 February 2020 and 18 November 2020. That was therapy which could be awarded as special damages arising from the injury caused. The respondent's representative submitted that the delay in the therapy being undertaken meant that it should not be awarded. The Tribunal found that, irrespective of the delay in undertaking such therapy, the therapy was undertaken to treat the personal injury which resulted from the discrimination/victimisation found. The claimant was awarded the special damages claimed of £2,210 (subject to the apportionment decision addressed below).

69. During submissions there was some discussion about the decision of the Court of Appeal in **BAE Systems (Operations) ltd v Konczak [2017] EWCA Civ 1188** and what that meant. It was ultimately accepted by both representatives that the Judgment required the Tribunal to try to identify a rational basis upon which the cause of the harm can be apportioned between a part caused by the employer's wrong/discrimination and the part which is not caused by it. In any event, even if it had not been accepted, it is what the Judgment required the Tribunal to do. The focus is on the divisibility of the harm, not the divisibility of the causation.

70. The Tribunal has determined that applying the evidence of the claimant and Dr Urry about what caused the harm in 2016 (including, in particular, what led to the most significant downturn in the claimant's health and her suicidal ideation), considered alongside the report of Dr Rivers, the acts found to have been discrimination/victimisation were 70% of the cause of the harm. Such a percentage must, by its nature, be somewhat imprecise, but it reflected the Tribunal's understanding that there were other contributory factors to the decline in the claimant's health in 2016, but also a finding that the principal cause of the most significant impact on the claimant's health was the manner of the suspension, the channel panel referral and the other discrimination/victimisation found.

71. Accordingly, the Tribunal started with an award for general damages of £10,000 and special damages of £2,210, totalling £12,210. However, the claimant was awarded only 70% of those amounts, apportioning the harm on a rational basis between the harm caused by the discriminatory acts and that not. That resulted in a personal injury award of **£8,547** (incorporating the apportioned general damages of £7,000 and the apportioned special damages of £1,547).

Interest on the personal injury award

72. The respondent's representative was entirely correct in his submission that the approach to interest which applies to injury to feelings in regulation 6(1)(a) is specific to injury to feelings. The words highlighted above in regulation 6(1)(b) make clear that the mid-point approach to interest applies to all other awards. Interest on the personal injury award is calculated using the mid-point between the date of the discrimination and the date of calculation. That meant that the calculation of interest on the personal injury award was for 1326 days at 8%. The interest payable on the damages for personal injury was accordingly **£2,484**. That was an appropriate amount of interest to be awarded and not one which caused serious injustice.

Employment Judge Phil Allen
21 October 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
24 October 2022

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2400744/2016**

Name of case: **Miss P O Muchilwa** v **Stockport Metropolitan Borough Council**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 24 October 2022

the calculation day in this case is: 25 October 2022

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note: www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.