Case No. 1802068/2020
1803135/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Willis**

Respondent 1: **GWB Harthills LLP**
Respondent 2: **Miss Hester Russell**
Respondent:3 **Mrs Elizabeth Lord**

HELD **by CVP** **ON: 3-6 October 2022**
Deliberations 7,10 October and 15 December 2022

BEFORE: **Employment Judge Rogerson**
Members: **Mr W Roberts**
Mrs N Arshad-Mather

REPRESENTATION:

Claimant: **Mr T Cordrey (Counsel)**
Respondents: **Mr A Burns (Kings Counsel)**

RESERVED JUDGMENT

1. In accordance with section 124(2)(b) Equality Act 2010, the Tribunal makes no award of compensation for injury to feelings.
2. In accordance with section 124(6) Equality 2010, the Tribunal makes no award of compensation for personal injury.
3. The compensation claims for special damages and gratuitous care are not well founded and are dismissed.
4. The claim for pecuniary loss (past and future loss of profit share) is withdrawn but is not dismissed.

REASONS

1. The extant remedy issue was whether the claimant a designated member of the 1st Respondent ("the LLP") had suffered any non-pecuniary loss (injury to feelings and personal injury) flowing from the conceded acts of unlawful disability

discrimination committed by the 2nd Respondent ("Mrs Lord") and the 3rdd Respondent "Miss Russell" the designated members and agents of the 1st Respondent held vicariously liable to pay any compensation awarded by the tribunal.

2. The parties had settled liability issues in relation to the first claim lodged on 16 April 2020 (Claim1) based on the concessions made by the respondent in November 2020 admitting the unlawful conduct recorded in the liability judgment made by Employment Judge Maidment on 6 January 2021. While the declaration of unlawful conduct avoided the need for a liability hearing, the parties then agreed Claim 1 compensation issues would be decided after liability had been determined in the claimant's second claim lodged on 7 June 2021. In Claim 2 the claimant made allegations of continuing disability discrimination in the period from 17 April 2020 to 8 March 2021 when he voluntarily retired from the LLP. After a liability hearing lasting 6 days all the complaints were dismissed for the reasons given in the reserved judgment sent to the parties on 3 May 2022 (C2 Judgment pages 1102-1190).

3. The tribunal had found that during the period July 2018 to 8 March 2021 the claimant was on a long-term ill-health absence. Initially his absence was due to his disability (cancer) and from 22 January 2020 it was due to acute stress reaction and then depression. The respondent's treatment of the claimant during his long-term absence before and after the admitted discrimination was found to be lawful. Sandwiched in between the period of lawful conduct were the admitted acts of unlawful disability discrimination which had occurred in late 2019 and early 2020.

4. In Claim 2 the Tribunal had concluded that the claimant was an untruthful witness who had attempted to mislead the tribunal in some material aspects of his case for the reasons given in the C2 judgment. The evidence he gave was largely contradicted and unsupported by the undisputed contemporaneous evidence. During his long- term absence, the claimant was receiving Permanent Health Insurance (PHI) benefit from the insurer (Aviva). He had concealed the truth from Aviva about the work he was doing and about his income from the LLP because it would have affected his PHI benefit. He had also concealed the truth from the respondents about the information he had disclosed Aviva supporting their legitimate concerns that he may be engaging in insurance fraud. He had pursued complaints to obtain relief which were fundamentally contrary to the undisputed facts or would have involved running the LLP in an unreasonable and inappropriate way. His complaint of a failure to make a reasonable adjustment was made on the basis that it would have been reasonable to hold partners meeting at his home when the claimant knew it was impossible for him to meet with Mrs Lord and Miss Russell after they had accused him of insurance fraud, and he would not have allowed or wanted them in his home. The claimant had pursued a detriment complaint alleging it was unfavourable treatment not to allow him to retain his title of 'Managing Partner' as a gesture of good will even though he was not performing the responsibilities of that role because he was unfit to work. The tribunal had dismissed the complaint concluding it would have been a misleading way to run the LLP.

5. Before this hearing the parties knew that the second claim had failed and the reasons why it had failed, and that the tribunal would be assessing Claim 1

compensation with the benefit of its findings in Claim 2. It had been agreed that Claim 2 should be decided before Claim 1 remedy and before the Claim 1 costs' application. If the second claim had succeeded, the tribunal would have assessed compensation for both claims at this hearing. The claimant knew he was expected to provide evidence to prove the injury to feelings and personal injury he relies upon to support his claim for compensation for non-pecuniary loss assessed at £80,000. The parties had been unable to agree to any of the facts before this hearing, leaving the tribunal to find all the relevant facts on the evidence provided on the balance of probabilities.

6. For ease of reference in these reasons the admitted unlawful conduct has been extracted from the liability judgment and rearranged in chronological order. Any highlighted text in these reasons is for our emphasis only.

"1. The Respondent's admit liability to the Claimant under s 45(2) Equality Act 2010 on the following basis:

a) Contrary to s 15 Equality Act 2010, they treated the Claimant unfavourably because of something arising in consequence of the Claimant's disability, namely his sickness absence and the funds he has received under his PHI cover by:

(i) Withholding management and accounting information (November/December 2019)

(ii) Removing the claimant from his roles as a Designated Member and Managing Partner (28 November 2019 – 16 December 2019).

(iii) Removing the claimant on (13 December 2019) as a Person with Significant Control of the First Respondent and reinstating him (22 January 2020).

(iv) Removing the claimant from the First Respondent's management and decisions making processes.

(v) Taking steps to expel him as a member of the First Respondent (19 December 2019- 7 January 2020).

(vi) Excluding him from a partners' meeting scheduled to take place on 24 January 2020 cancelled on 7 January 2020.

b) The treatment was not a proportionate means of achieving the Respondent's legitimate aims of properly managing the First Respondent's business.

c) Contrary to section 19 Equality Act 2010, they had a practice of holding partners meetings at the First Respondent's Rotherham Office, instead of the Claimant's home which put the Claimant at a particular disadvantage and was not a proportionate means of achieving the legitimate aim of properly managing the First Respondent's business.

d) Contrary to section 20 Equality Act 2010 they failed to investigate and make such reasonable adjustments to enable the claimant to work from home, continue with his management roles and/or return to work on a phased basis.

e) The Second and Third Respondent are liable for the discrimination as the agents of the First Respondent which is liable and is treated as having done their acts".

The agreed issues: Compensation

7. The agreed list of remedy issues drafted by counsel was:

"Background

1. By case number 1802068/2020 lodged on 16 April 2020 (Claim 1) the claimant alleged various acts of disability discrimination by R1(the LLP) (R2 Hester Russell) and R3 (Elizabeth Lord) covering the period from 1 October 2018 to 16 April 2020.

2. By a letter dated 24 November 2020 the Respondents' admitted in response to Claim 1 having committed certain acts of disability discrimination against the claimant.

3. On 6 January 2021 Judgment in Claim 1 was made by consent by EJ Maidment setting out the admitted claims and those which were dismissed on withdrawal. References below to 'the unlawful discrimination' are to the unlawful conduct as per that Claim 1 Liability Judgment.

Compensation for personal injury (Sheriff-v-Klyne Tugs (Lowestoft) Ltd (1999) IRLR 481)

4. Did any of the unlawful discrimination cause the claimant's personal injury? If so,
   a. What general damages for pain suffering and loss of amenity should be awarded to the claimant?
   b. What financial losses if any, flow from the personal injury?

Injury to feelings pursuant to EqA 2010 s119(4) and aggravated damages (Armitage Marsden and HM Prison Service -v- Johnson (1997) IRLR 162)

5. What Injury to feelings did the claimant suffer as a result of the unlawful discrimination?
6. Taking into account the relevant Presidential Guidance and uprating for RPI, which Vento band applies and what award should be made?

7. Was the unlawful discrimination: a) done in a high-handed, malicious, insulting, or oppressive way: and/or b) motivated by prejudice animosity spite or vindictiveness, and/or c) was there a failure to apologise or treat the claimant's complaints about his treatment seriously?

8. If so, objectively viewed, was the conduct capable of having aggravated the claimant's sense of injustice and injured the claimant's feelings further.

9. If so what award of aggravated damages, if any, are appropriate?

10. What interest is due on any award?"

Evidence

8. The parties provided 3 remedy bundles (RB total 2595 pages) and 2 costs bundles (CB total 1193 pages) running to 4000 pages of documents which was in our view excessive and unnecessary in relation to a limited number of admitted acts of unlawful conduct over a short period of time. We were provided 3 reports from the Consultant Psychiatrist Dr J K Appelford, dated 12 January 2021 ('Appelford1' RB pages 1031-1119), 23 March 2021 ('Appelford 2' RB pages 1121-1160), and 22 September 2021('Appelford 3" CB 1453-1496 pages). As part of our prereading we read the following witness statements:

   7.1 Claimant's first witness statement signed 20.9.2022 (RB pages 2370-2418).

   7.2 Claimant's supplemental witness statement signed 20.9.2022 (RB pages 2419-2426)

   7.3 Claimant's second witness statement updated signed 20.9.2022 (RB pages 2455-2503)

   7.4 Jennifer Willis' witness statement updated 20.9.2022 (RB pages 2427-2444).

   7.5 Jennifer Willis' supplemental witness updated signed 20.9.2022 (RB pages 2445-2454)

   7.6 Second respondent's updated witness statement signed 20.9.2022 (RB pages 2504-2531)

   7.7 Third Respondent's updated witness statement signed 20.9.2022 (RB 2532-2572)

9. Mr Burns had requested the Tribunal listen to audio recordings of some of the telephone calls made between the claimant and Mr Munday (Senior Claims Adviser, Aviva) and read the undisputed transcript of those recordings admitted in evidence. These recordings were obtained by the claimant in June 2022 following a data subject access request. The agreed transcript of those calls has been prepared by the respondent's solicitors. The claimant relied on the call of 1 April 2019 (transcript at pages CB 998-992). The respondent relied upon the calls of 18 June 2018 (pages CB976-981) and 29 November 2019 (pages CB1005-1007).

10. We listened to all 3 calls and read the transcripts. The call made by the claimant on 29th November 2019 was by far the most significant and relevant call in the timeline of events we were considering. It was a call the claimant had made to Mr Munday which provided a contemporaneous insight into the claimant real thoughts and feelings about the events at work and how he felt about returning to work.

11. Evidence we excluded from our considerations was the recent disclosure of an email the claimant had sent to his insurer in September 2018 which had not previously been disclosed to the respondents. Mr Burns submits this email significantly damages the claimant's credibility undermining the case he had presented at the last hearing when he had viewed the PHI premiums paid by the LLP as his personal expense not a business expense of the firm. It was accepted this email had not been disclosed and there was some dispute as to whether the fault for that lay with the claimant or with his solicitor. Irrespective of fault, Mr Burns wanted the tribunal to consider the contents of the email because it was

damaging to the claimant's credibility. We decided not to attach any weight to this email because it was not relevant to remedy. We were able to assess the claimant's credibility on the evidence relevant to the claimant's compensation claim without considering evidence of emails or calls or messages relating to an earlier period. We spent a lot of time in deliberations considering and assessing a large amount of documentary evidence and took the view it was unnecessary and disproportionate to extend the scope of our enquiries to make findings of fact about this email.

Applicable Law

12. Equality Act 2010(EQA 2010) Remedies: general.

"*Section 124 provides that*

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section120(1)" (here 120 (1) (a) a contravention of Part 5 (work) (section 45 Limited Liability Partnerships applies)

(2) The tribunal may-

(a) Make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate:

(b) Order the respondent to pay compensation to the complainant:

(c) Make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.

(4) Subsection (5) applies if the tribunal

(a) finds that a contravention is established by virtue of section 19, but

(b) is satisfied that the provision criterion or practice was not applied with the intention of discriminating against the complainant.

(5) It must not make an order under section 2(b) unless it first considers whether to act under subsection(2)(a) or(c).

(6) The amount of compensation which may be awarded under subsection 2(b) corresponds to the amount which could be awarded by the county court under section 119.

(7) if a respondent fails without reasonable excuse, to comply with an appropriate recommendation the tribunal may-

(a) if an order was made under subsection (2) (b) increase the amount of compensation to be paid.

(b) if no such order was made, make one.

Section 119 (2) provides that the county court has power to grant any remedy which could be granted by the High Court (a) in proceedings in tort".

13. Equality and Human Rights Commission Code of Practice on Employment 2011 (EHRC)

13.1 Chapter 15 of the EHRC code provides guidance on the remedy provisions of the Equality Act 2010 (paragraphs 15.40-15.54) and in Chapter 11 guidance on the statutory provisions that apply specifically to Limited Liability Partnerships (paragraphs 11.19-11.23:

"15.40: (ss 124(6) and 119) An Employment Tribunal can award a claimant compensation for injury to feelings. An award of compensation may also include personal injury (physical or psychological) caused by the discrimination: aggravated damages which are awarded when the respondent has behaved in a highhanded malicious insulting or oppressive manner.

15.42: Generally, compensation must be directly attributable to the unlawful act. This may be straightforward where the loss is, for example related to an unlawful discriminatory dismissal. However, subsequent losses including personal injury may be difficult to assess.

15.43: A worker who is dismissed for a discriminatory reason is expected to take reasonable steps to mitigate their loss for example by looking for new work or applying for state benefits. Failure to take reasonable steps to mitigate loss may reduce compensation awarded by a tribunal. However, it is for the respondent to show that the claimant did not mitigate their loss.

15.44: (ss 124(4) & (5)). Where an Employment Tribunal makes a finding of indirect discrimination but is satisfied that the provision criterion or practice was not applied with the intention of discriminating against the claimant it must not make an award of compensation unless it first considers whether it would be more appropriate to dispose of the case by providing another remedy such as a declaration or a recommendation. If the tribunal considers that another remedy is not appropriate in the circumstances, it may make an award of damages".

Guidance from Cases: Injury to feelings and Aggravated Damages

14. In **Ministry of Defence and Connock 1994 IRLR 509** the principle established of compensating for injury feelings were confirmed as being tortious to as best as money can do, put the applicant into the position they would have been in but for the unlawful conduct.

15. In **Vento -v- Chief Constable of West Yorkshire Police (No2) (2003) IRLR 102** the Court of Appeal endorsed the following principles to assist Employment Tribunals in assessing non-pecuniary loss in discrimination cases. The relevant

guidance in relation to injury to feelings (paragraphs 50-53) and quantum (paragraphs 65-68) is:

"50. It is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. ….. there is no medium of exchange or market for non-pecuniary losses and their monetary evaluation "… is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable**,** fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution."

51. Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury. In these circumstances an appellate body is not be entitled to interfere with the assessment of the Employment Tribunal simply because it would have awarded more or less than the tribunal has done. It has to be established that the tribunal has acted on a wrong principle of law or has misapprehended the facts or made a wholly erroneous estimate of the loss suffered. Striking the right balance between awarding too much and too little is obviously not easy.

53. In *HM Prison Service -v- Johnson* Smith J reviewed the authorities on compensation for non-pecuniary loss and made a valuable summary of the general principles gathered from them. We would gratefully adopt that summary. Employment Tribunals should have it in mind when carrying out this challenging exercise. In her judgment on behalf of the Appeal Tribunal Smith J said at p. 283B

    (i) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.
    (ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use the phrase of Sir Thomas Bingham MR, be seen as the way to "untaxed riches".
    (iii) Awards should bear some broad general similarity to the range of

awards in personal injury cases. We do not think that this should be done by reference to any particular type of personal injury award, rather to the whole range of such awards.

(iv) In exercising that discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.

(v) Finally, tribunals should bear in mind Sir Thomas Bingham's reference for the need for public respect for the level of awards made.

Guidance

65. Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

(i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

(ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.

(iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

66. There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.

67. The decision whether or not to award aggravated damages and, if so, in what amount must depend on the particular circumstances of the discrimination and on the way in which the complaint of discrimination has been handled.

68. Common sense requires that regard should also be had to the overall magnitude of the sum total of the awards of compensation for non-pecuniary loss made under the various headings of injury to feelings, psychiatric damage and aggravated damage. In particular, double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage. The extent of overlap will depend on the facts of each particular case".

16. It is agreed that the updated (applicable) "Presidential Guidance on Employment Tribunals Awards for Injury to Feelings and Psychiatric Injury (third addendum

dated 27 March 2020) in respect of claims presented on or after 6 April 2020, sets the Vento bands at:

(i.) A lower band of £900 to £9,000 (less serious cases).
(ii.) A middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band
(iii.) An upper band of £27,000 to £45,000(the most serious cases), with the most exceptional cases capable of exceeding £45,000.

Aggravated Damages

17. In **Police Commissioner Metropolis-v- Shaw (2012 IRLR 299)** the Court of Appeal provided more detailed guidance on aggravated damages:

"22. The circumstances attracting an award of aggravated damages fall into the three categories:

The manner in which the wrong was committed.

(a) The basic concept here is of course that the distress caused by **an act of discrimination may be made worse by it being done in an exceptionally upsetting way**. In this context the phrase "high-handed, malicious, insulting or oppressive" is often referred to. An award can be made in the case of any exceptional (or contumelious) conduct which has the effect of seriously increasing the claimant's distress.

Motive.

(b) Discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. That will, however, only of course be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate the injury **There is thus in practice a considerable overlap with head (a).**

Subsequent conduct.

(c) The practice of awarding aggravated damages for conduct **subsequent** to the actual act complained of originated, again, in the law of defamation, to cover cases where the defendant conducted his case at trial in an unnecessarily offensive manner. A failure to apologise may also come into this category; but whether it is in fact a significantly aggravating feature will depend on the circumstances of the particular case. This basis of awarding aggravated damages is rather different from the other two in as much as it involves reliance on conduct by the defendant other than the acts complained of themselves or the behaviour immediately associated with them**.** A purist might object that subsequent acts of this kind should be treated as distinct wrongs, but the law has taken a more pragmatic approach. However, tribunals should be aware of the risks of awarding compensation in respect of **conduct which has not been properly proved or examined in evidence**, and of allowing the scope of the hearing to be disproportionately extended by considering distinct allegations of subsequent misconduct only on the basis that they are said to be relevant to a claim for aggravated damages.

How to fix the amount of aggravated damages.

23. As Mummery LJ said in *Vento v Chief Constable of West Yorkshire Police (no. 2) [2003] ICR 318* , at paras. 50-51 (pp. 331–2), "translating hurt feelings into hard currency is bound to be an artificial exercise". Quoting from a decision of the Supreme Court of Canada, he said: "The award must be fair and reasonable, fairness being gauged by earlier decisions;

but the award must also of necessity be arbitrary or conventional." Since, there is no sure measure for assessing injury to feelings, choosing the "right" figure within that range cannot be a nicely calibrated exercise. Those observations apply equally to the assessment of aggravated damages – inevitably so since, as we have sought to show, they are simply a particular aspect of the compensation awarded for injury to feelings; but the artificiality of the exercise is further increased by the difficulty, both conceptual and evidential, of distinguishing between the injury caused by the discriminatory act itself and the injury attributable to the aggravating elements. Because of that artificiality, the dividing line between the award for injury to feelings on the one hand and the award of aggravated damages on the other will always be very blurred, and tribunals must beware of the risk of unwittingly compensating claimants under both heads for what is in fact the same loss. The risk of double-counting of this kind was emphasised by Mummery LJ in Vento; but the fact that his warning is not always heeded is illustrated by Fletcher (above). The ultimate question must be not so much whether the respective awards considered in isolation are acceptable but whether the overall award is proportionate to the totality of the suffering caused to the claimant.

Relationship between the seriousness of the conduct and the seriousness of the injury.

24. It is natural for a tribunal, faced with the difficulty of assessing the additional injury specifically attributable to the aggravating conduct, to focus instead on the quality of that conduct, which is inherently easier to assess. This approach is not necessarily illegitimate: as a matter of broad common sense, the more heinous the conduct the greater the impact is likely to have been on the claimant's feelings. Nevertheless, it should be applied with caution, because a focus on the respondent's conduct can too easily lead a tribunal into fixing compensation by reference to what it thinks is appropriate by way of punishment or in order to give vent to its indignation. Tribunals should always bear in mind that the ultimate question is "**what additional distress was caused to this particular claimant, in the particular circumstances of this case, by the aggravating feature(s) in question?",** even if in practice the approach to fixing compensation for that distress has to be to some extent "arbitrary or conventional".

28. ……"It would be a healthy reminder of the real nature of aggravated damages if any such awards were in future formulated as a sub-heading of "injury to feelings" – i.e. "injury to feelings in the sum of £X, incorporating aggravated damages in the sum of £Y" – rather than as a wholly distinct head: this may reduce the risk of the tribunal being seduced into introducing a punitive element by the back door. More generally, tribunals should pay careful attention to the principles which we have endeavoured to set out above. Ultimately the most important thing is that they identify the main considerations which have led them to make the overall award for injury to feelings, specifying any aggravating or mitigating features to which they attach particular weight. As long as this is done, they should not lose sleep over exactly where the dividing line falls between the award for ("ordinary") injury to feelings and the award of aggravated damages (and the award for psychiatric injury where one is made). What matters is whether the total award for non-pecuniary loss is fair and proportionate".

18. Finally, in this section, Mr Cordrey has helpfully referred to the unreported case of **HM Land Registry -v- McGlue** (UKEAT/0435/11) decided in 2013 by the then President of the EAT, Mr Justice Langstaff. In a case of indirect sex discrimination, the EAT upheld an injury to feelings of £12,000 but did not uphold the £5,000 awarded for aggravated damages which it held was made on an insufficient basis. Helpful guidance was provided at paragraphs 26 and 35 about the correct approach to fact finding in relation to injury to feelings and aggravated damages further explaining the 3 categories of conduct identified above in Shaw at paragraph 22:

*"26 We must recognise that the Tribunal here had an opportunity which we do not have on review as an Appellate Court: it **saw and heard** the claimant. In any case involving injury to feelings, **the Tribunal using its experience***

must assess the effect upon the individual. *That involves* ***understanding and evaluating*** *what* ***truly*** *is the* ***subjective effect*** *of what objectively is discrimination. It means a considerable margin must be recognised around any award which is made.*

35. A Tribunal in examining whether there is a case for aggravated damages, has to look first whether ***objectively viewed the conduct is capable of being aggravating****, that is aggravating the sense of injustice which the individual feels and injuring their feelings still further. The three categories set out by Ms Wheeler all give examples rather than an exhaustive list of the behaviour which will qualify under each head. We note however that* ***the emphasis is one of degree****. Thus under (a) the word* ***exceptionally is used to qualify the word "upsetting".*** *The expression "****highhanded" and "insulting" occurs, in the general phrase involving four words all of which characterise the phrase including "malicious" and "oppressive****". Aggravated damages certainly have a place and role to fill, but a Tribunal should also be aware and be cautious not to award under the heading "Injury to Feelings" damages for the self-same conduct as it then compensates under the heading "Aggravated Damages". It must be recognised that aggravated damages are not punitive and therefore do not depend on any sense of outrage by a Tribunal as to the conduct which has occurred".*

Personal Injury

19. The summary of the law provided by Mr Cordrey was agreed. Compensation for personal injuries resulting from unlawful discrimination lies within the jurisdiction of the Employment Tribunal (per Stuart-Smith LJ in Sheriff -v- Klyne Tugs (Lowestoft) Ltd (1999) ICR 1170). So long as there is a direct causal link between the unlawful discrimination and the loss suffered the Tribunal may make an award of compensation for the losses flowing from an injury including an award of general damages for pain suffering and loss of amenity (per Pill LJ in Essa-v Laing Ltd (2004) ICR 746).

20. Once a causal link is determined the principles on which to award general damages for pain and suffering and loss of amenity are to be applied by the Tribunal which must have regard to the relevant Judicial College Guidelines 15 Edition Psychiatric and psychological damage is dealt with in Chapter 4 of which Section (a) sets out the general approach to valuing claims for psychiatric damage generally.

21. Both Counsel referred the Tribunal to the case of **BAE Systems (Operations) Ltd v Konczak (2017 EWCA Civ. 1188)** in which the Court of Appeal considered how Employment Tribunal's should approach the divisibility of injury and the apportionment of causative responsibility for injury where part of the illness may be due to the employers wrong, and a part is due to other causes for which the employer is not liable to pay compensation:

"An injury was single and indivisible where there was simply no rational basis for an objective apportionment of causative responsibility for the injury; that an ***employment tribunal had to try to identify a rational basis on which the harm suffered could be apportioned between a part caused by the employer's wrong and a part that was not so caused,*** *that exercise being concerned not*

with the divisibility of the causative contribution but with the divisibility of the harm; that, in the case of psychiatric injury, where a claimant suddenly tipped over from being under stress into being ill, the tribunal should seek to find a rational basis for distinguishing between a part of the illness due to the employer's wrong and a part due to other causes; that, if there was no such basis, the injury would be truly indivisible, and the claimant was required to be compensated for the whole of the injury, though, importantly, if the claimant had a vulnerable personality, a discount might be required to take account of the chance that the claimant would have succumbed to a stress-related disorder in any event; that it would often be appropriate to look closely, particularly in a case where psychiatric injury proved indivisible, to establish whether the pre-existing state might not nevertheless demonstrate a high degree of vulnerability to, and the probability of, future injury; that the employment tribunal had been entitled to conclude, on the evidence, that it was only after the comment was made that the claimant developed a diagnosable mental illness, and, while in such a case where there was vulnerability".

Findings of Fact

22. Throughout the claimant's long-term absence from July 2018 to 8 March 2021 he was unfit to perform any work whether as a criminal solicitor or designated member and managing partner with delegated day-to-day responsibility for running the firm and its finances or to perform the regulatory and statutory functions for the LLP to provide legal services to the public. For the period we were considering the relevant fit notes confirming the claimant was totally unfit for work were:

    a. Dated 18 October 2019: diagnosis: carcinoma metastatic: duration: 1 October 2019 – 2 December 2019.
    b. Dated 3 December 2019: diagnosis: carcinoma metastatic: duration: 2 December 2019 – 20 January 20120.
    c. Dated 22 January 2019: diagnosis: acute stress reaction: carcinoma: duration: 22 January -22 March 2020.
    d. Dated 23 March 2019: diagnosis: depressive disorder: duration: 22 March 2020-22 June 2020.

23. The admitted discrimination arising from disability had started in November 2019 and stopped on 7 January 2020 following the claimant's solicitors' intervention. The complaints of discriminated were taken seriously and corrective action was taken. The respondents appointed new solicitors in October 2020 and shorty after disclosure they conceded liability for the limited admitted unlawful conduct. By December 2020 the liability terms were settled in relation to 6 acts of unfavourable treatment arising from disability, indirect disability discrimination and a failure to make reasonable adjustments.

24. It is agreed that from 9/10/18 until 3/4/21, the claimant received PHI benefit payments from Aviva in the total sum of £214,216.82. From late November 2019 he received monthly payments of £6,948.90 which increased to £7,295.35 per month in September 2020. Payments continued to be made until April 2021 when the PHI benefit claim was suspended pending an investigation to the claim. The claimant knew when he presented his claim for compensation for non-pecuniary loss that his full profit share for the years 2018/2019 and 2019/2020 had been allocated into his current account without any deductions for the PHI payments

he had received in those financial years. He also knew that the LLP agreement provides that when a designated member leaves the LLP, they become an outgoing member of the firm and a creditor of the LLP in relation to any undrawn balance of profit share, capital, and interest on capital. After the claimant retired on 8 March 2021 the LLP accountant prepared the final accounts which enabled the claimant to be repaid his capital and interest. As at 31/3/21 based on the profit share forecasts there was a sum of £336,731 to be paid to the claimant if there was no deduction made for the PHI payments which is part of the ongoing dispute between the parties and the reason why the final accounts have not been approved.

25. Until October 2019, the claimant had agreed with the respondents that he could not have the PHI benefit (paid to compensate him for lost income) and profit costs (continuing income) from the firm. After October 2019, the claimant changed his mind and decided he could have both without any deductions of his PHI benefit. He told the respondents that Aviva agreed with his interpretation of the policy until PHI benefit was suspended on 3 April 2021. There has since then been an ongoing investigation by Aviva however the only documentary evidence the claimant has voluntarily disclosed and admitted into evidence is the audio recordings of the telephone calls made between the claimant and the claims adviser, Mr Munday following his Data Subject Access Request (DSAR) made in June 2022.

26. Witness statements had been amended and updated in September 2022. We read all the statements and heard evidence from the claimant. The Tribunal were considering all the evidence it saw and heard to understand and evaluating what the **true** subjective effect of the conceded unlawful conduct was and whether objectively viewed there were any aggravating features of the unlawful conduct to answer the question "*what additional distress was caused to this particular claimant, in the particular circumstances of this case, by the aggravating feature(s) in question?"*

27. Mr Burns invites the Tribunal to carefully examine the evidence having found the claimant has proved himself to be an unreliable historian because his account is often unsupported by the unchallenged more reliable contemporaneous documentary evidence. The claimant has been found to be untruthful and has given misleading evidence unsupported by the contemporaneous evidence and has concealed the truth. The claimant has asserted that but for admitted discrimination he would have returned to work in January 2020 which is untrue and is not supported by the transcript of the call made to Mr Munday on 29 November 2019. He tells the tribunal he believes he had been expelled from the firm when he received the letter dated 27 November 2019 when he knows that was not true. These assertions are made to support a claim for a substantial award of compensation from the tribunal and should be carefully considered.

28. Mr Cordrey invites the Tribunal to accept the evidence given by the claimant and his wife about the effects of the admitted discrimination. He invited the Tribunal to focus *on the way in which the admitted discrimination took place* to consider whether it was done in a high handed and malicious way. In relation to the personal injury claim, Mr Cordrey suggests the focus should be on the evidence

of the joint medical expert Dr Appleford. In order to prove the conduct was high handed and malicious the claimant relies upon the 'cruel' WhatsApp messages exchanged between Mrs Lord and Miss Russell "as well as the '*inherent'* vindictiveness of their admitted conduct" A key finding of fact he invited the Tribunal to make to support the seriousness of the injury claimed is that "*but for the Claim 1 discrimination, the claimant* ***would have*** *returned to work on or around January 2020"* (paragraph 32 claimant's written submissions). His suggested approach to our fact finding was that "*since the injury to feelings test is largely subjective, and the aggravated damages test involves an objective assessment, it is necessary for the Tribunal to reach findings of fact about nature of the admitted discrimination and its gravity, as well as its effects on C's feelings.*

Relationship between the claimant Mrs Lord and Miss Russell before the admitted acts of discrimination

29. On 16 October 2019, the last partners meeting before the admitted unlawful conduct, there was a common understanding between the partners about how the PHI benefit payments the claimant received would be treated by the LLP. It had been agreed that the claimant could not have PHI and profit share from the firm. The detailed findings of fact about that dispute are deal with in the Claim 2 judgment (C2 judgment) at paragraphs 95 -116 (pages 1140-1146). The claimant has confirmed that he understands how insurance works and that PHI benefit was a form of insurance to replace income while the insured person is in incapable of working due to illness or injury. Insurance provides cover for something you are not otherwise getting. The claimant agreed that if he was expecting to be paid by the LLP during his illness there would be no point in having an insurance policy. The claimant had accepted that the insured person was being paid normally during the period of incapacity, the insurance would not pay the benefit because there was no loss to cover. After this partners' meeting the claimant decided he could have both. When Mrs Lord and Miss Russell raised concerns that the claimant was acting in bad faith and engaging in insurance fraud. The claimant acknowledged those were their genuine concerns at the time in the emails exchanged immediately after the partner's meeting and before any of the admitted unlawful conduct. In response to Mrs Lord and Miss Russell directly raising those concerns with the claimant he accused them of 'catastrophising' the situation and was dismissive and annoyed that they would not agree with what he intended to do (RB page 549).

30. Mrs Lord and Miss Russell were genuinely and legitimately concerned that they could be implicated in insurance fraud and felt personally and professionally compromised by the claimant's change of position and his unwillingness to reconsider his position. Just a few weeks later they reported the claimant to the SRA on the grounds he was engaging in fraudulent behaviour (paragraph 82 claimant's witness statement). At this time, the respondents had suspected, and we later found, the claimant was not at this time being transparent with the insurer or with the respondents (C2 judgment paragraph 125).

31. On 18 October 2019, 2 days after that partners' meeting the claimant provided another fit note which confirmed his cancer related absence was continuing and that he remained unfit to work until 2 December 2019.

32. On 19 October 2019, Miss Russell sent an email to the claimant in which she "*very gently*" requested the claimant reconsider his position on his PHI benefit and revert to the previously agreed position. The claimant refused to reconsider his position leaving Mrs Lord and Miss Russell with no other option but to take steps to protect themselves and the firm.

Mrs Lord and Miss Russell's report to SRA about the claimant made on 15 November 2019

33. During the claimant's ill-health absence, the claimant had never given, and Mrs Lord or Miss Russell had never requested access to the LLP's bank account. The claimant had always insisted he remain the Managing Partner and he would control the finances of the firm during his absence with the assistance of the practice manager.

34. On 5 November 2019, Mrs Lord accessed the LLP's bank account and statements discovering that the claimant had been reimbursing himself 'work related' business expenses. As a result of the business expenses and the suspected insurance fraud Mrs Lord and Miss Russell jointly reported the claimant to the Solicitors Regulatory Authority (SRA) for suspected financial misconduct.

35. The referral to the SRA was made on 15 November 2019 (RB page 652-653). It summarised the events leading to the report and provided the documentary evidence that was available to the respondents at that time to support the referral. It explained why the respondents were not satisfied with the claimant's assurances:

> **"***It took things no further as* ***it did not say that mike could work****. I do not know what has been said to mike's insurer, but* ***it seems inconceivable that they would pay him insurance for incapacity whilst at the same time allowing him to work***".
>
> **"***Up until this point we trusted Mike Willis and did not feel that it was necessary to scrutinise bank accounts ourselves. It seems clear that Mike Willis has been claiming expenses from business that cannot possibly be associated with business expenses since he is not working".*

36. Mr Jones (the non-designated member) had informed the claimant about the SRA referral. This had been one of the detriment complaints made in Claim 1 which had been withdrawn and dismissed in the liability judgment. The claimant had seen the SRA referral and the ET3 response and knew why the referral had been made (paragraph 10 page 44). When he gave his account at this hearing, he knew the tribunal had already found that the respondents had been legitimately concerned that he may be engaged in insurance fraud. For the avoidance of any doubt this is not one of the admitted acts of disability discrimination for which the

respondent is liable to pay the claimant compensation for any injury caused by the referral, but the claimant has given evidence about this to support his compensation claim.

37. The claimant was very upset and angry about the SRA referral which he asserts was made "*entirely in bad faith motivated by malice greed and spite*". In his account he has referred to clause 9.5 of the LLP agreement which allows designated members to claim reimbursement of expenses. He expected Mrs Lord and Miss Russell would as solicitors *"be more than capable of understanding*" the terms of LLP agreement. He says this clause authorised him to reimburse his motoring expenses under this clause "*as agreed from time to time"*. He does not explain how the respondents knew he had made the reimbursement when they did not have access to the account or the bank statements until November 2019.

38. We agreed that for a solicitor to refer another solicitor to the SRA is a very serious step to take. If it was done in bad faith, it would be a very serious misconduct. The claimant's assertions were not supported by the findings of fact made by that the respondents were legitimately concerned that the claimant was engaging in insurance fraud. They had attempted to raise those concerns directly with the claimant they had pleaded with him to reconsider but he refused. Those were the circumstances in which Mrs Lord and Miss Russell jointly made the SRA referral on 15 November 2019. The SRA referral was made in good faith based on legitimate concerns of suspected financial misconduct. They were not motivated by malice greed or spite but by their professional obligation to report their legitimate concerns.

39. Although the referral was not an admitted act of disability discrimination, the claimant's solicitors asked the medical expert Dr Appleford to consider the effect the SRA referral had on the claimant's mental ill health. The question in "Appleford 1" was put in the following way (RB page 1095):

"Do you believe that there is a link between the report to the SRA by Mesdames Russell and Lord in which they accused Mr Willis of fraudulent behaviour (he has now been fully exonerated of this)?

40. Dr Appleford confirmed that he was 'largely reliant' on the claimant's account given at the assessment interviews in December 2020 after the SRA outcome had exonerated the claimant in October 2020 and after liability had been conceded by the respondents in November 2020. (RB page1096):

"Mr Willis told me that his colleagues later made a complaint to the SRA that he was fraudulently claiming insurance. He said that they never told him this. He said that they also said that he was claiming motor expenses as business expenses. He told me that he felt that this was "hurtful", and he said that these were "groundless allegations" of fraud and dishonesty. He said that this led to an eleven-month investigation which "totally and utterly exonerated me ". He said the SRA never even spoke to him. He told me that he found out at Christmas 2019 that rumours were being spread about financial irregularity. He said that there had been comments to the effect that colleagues had "no salary increase

because Mike's taken the money ***". He experienced anxiety which he described as "constant feeling of worry about the future and the way things have happened around me. He mentioned that he was accused of "criminal dishonesty to my own professional body" and that was "*absolutely devastating*". This felt "hurtful and upsetting".***

41. As a solicitor in practice for more than 30 years the referral to the SRA was a very serious matter and potentially very damaging to him professionally and personally. The subsequent investigation took almost a year leaving the claimant with serious allegations of financial misconduct hanging over him would have been an extremely worrying time. The claimant had understood that Mrs Lord and Miss Russell were accusing him of criminal dishonesty to his own professional body. We accept it would have been "absolutely devastating, hurtful and upsetting" for him. We accept the hurt feelings he experienced at the time tipped him over from injured feelings to personal injury damaging his mental health. The medical expert described the anxiety the claimant suffered as "a *constant feeling of worry about the future and the way things have happened around him*". We accepted the evidence accurately reflects how the claimant was feeling about the SRA referral which he describes sent his mental health 'spiralling down'.

42. At the same time as the claimant's solicitors were asking questions of the medical experts the claimant had been asking questions about his PHI claim. In December 2020 he asked Mr Munday to confirm the medical reason why the insurer considered the claimant was incapable of working which supported his PHI claim. Mr Munday confirmed that from the fit notes and the regular health updates provided he had understood the claimant was "*totally unable to work since July 2018 as a result of bowel cancer, complications from his illness and from treatment/surgery and more recently mental health difficulties as a result of his diagnosis, the complications and treatment*".

43. It was clear from that answer that the mental health difficulties the claimant was describing in his evidence to the tribunal was described differently to the insurer in the regular contemporaneous updates he provided. He told his insurer all his mental health difficulties were attributable to his cancer not to any of the admitted unlawful conduct or the lawful conduct of the SRA referral relied upon at this hearing to support his compensation claim.

Detriment 1: Withholding management and accounting information relating to the first respondent in November 2019

44. On 19 November 2019, following a Legal Aid Authority Audit, the LLP received notices of a failed inspection in breach of the legal aid contract. The failures identified by the LLP included not fulfilling its duty solicitor slots allocated to the claimant and a failed peer review. The notices gave the LLP a period of 6 months to correct the failures.

45. Under the heading "withholding management and accounting information" (paragraph 134) the claimant says his feelings were injured because he was not provided with the notices when they were issued which were "necessary" for him

to carry out his roles and responsibilities as a designated partner of the LLP. He says:

"In late 2019- early 2020 the LLP failed a LAA peer review and received three LAA contract notices. The respondent did not provide me with this important information or any of the key documents until their former legal representatives disclosed documents on 7 October 2020. This is despite the fact I was a ***full equity member*** **of the LLP** *and the failure of the peer review and contract notices could have been catastrophic for the LLP and me personally. The* ***withholding of this important*** *information* ***caused me distress and concern about the management of the LLP and the future of both myself and the LLP"***

46. The claimant did not see the notices that were issued to the LLP on 19 November 2019 until 7 October 2020 and could not have suffered any injury in November 2019 when the unlawful conduct occurred. The claimant saw the notices nearly a year after they were issued and knew the legal aid contract had continued and there had been no catastrophic consequences for the LLP or for him personally. Despite those known facts the claimant has describes injured feelings of distress and concern to support his compensation claim which are not supported by the evidence.

Detriment 2: Removing the claimant from his roles as a Designated Member and Managing Partner (28 November 2019 – 13 December 2019)

47. On 28 October 2019, having sought legal advice about the suspected insurance fraud, Mrs Lord and Miss Russell exchanged WhatsApp Messages in a private group chat which did not include the claimant (RB page 759). The messages state:

"I think we ***arrange a meeting*** *of Des partners at which* ***we agree by majority not to let mike work without a fit note,*** *that we take back COLP, COFA, MLRO, GDPR, complaints etc and* ***we agree tell him have taken advice*** *and he is not entitled to profit share as discussed. I'll draft an agenda and* ***we'll do it by the letter****. We might not be able to get him out, but* ***we can strip him of all power****" "in fact I can see no reason why we cannot strip him of managing partner title either. That is by* ***simple majority****".*

48. Although the claimant did not see these WhatsApp messages until the disclosure process in October 2020, he refers and relies upon them in his witness statement as an aggravating feature of the unlawful conduct to support his claim that he suffered additional distress which increasing his hurt feelings. Under the section in his statement headed "Attempts to expel me" (paragraphs 119-133) he identifies this message as the beginning of the 'expulsion process' in paragraph 119 in which he says:

"*In a discussion about me, the respondent states: "We might not be able to get him out, but we can strip him of all power" Then continues "in fact I can see no reason why we cannot strip him of managing partner title either".*

49. The claimant's account selected parts of the message which do not accurately reflect the full meaning. Mrs Lord and Miss Russell had legitimate concerns the claimant was involved in fraud they had told the claimant they were going to take legal advice and they intended to protect themselves and the firm by ensuring they were doing things properly (by the letter) going forward. They intended to arrange a partners' meeting and had decided that by a simple majority they would agree not to let the claimant work without a fit note. If at that meeting the claimant's absence was continuing, they intended to reassign the claimant's roles and responsibilities as the designated member and managing partner accepting, they had no power to remove him from the firm.

50. Mrs Lord and Miss Russell accepted they should have taken over the claimant's roles and responsibilities earlier. They had delayed because they felt manipulated into agreeing with the claimant that he could continue to hold those roles during his absence because of his position within the firm and because they were trying to be supportive. However, when they realised, they could be implicated in insurance fraud if they allowed him to do any work without a fit note, they took action to protect themselves and the firm.

51. Mrs Lord and Miss Russell expressed regret at some of the language they have used in these private messages they sent to each other at a time of partnership dispute. They admit they felt frustrated and stressed and never expected or intended the claimant to see those messages. They did intend the claimant to see the letter they sent dated 27 November 2019 which states:

"*Dear Mike*

We refer to the Limited Liability Partnership Agreement for GWB Harthills LLP made in 2015 (the LLP agreement). Whilst the agreement was never signed, it was attached as schedule 6 to the merger agreement forming the LLP and its terms have been agreed to by all the members and you yourself have positively asserted that its terms have been acted upon as binding between us. It therefore governs our relationship.

We hereby give notice under clause 13 of the LLP agreement to convene a meeting of Members on the 6th December 2019 at 2pm at the Rotherham Office ***to discuss whether you are physically and/or mentally unfit to carry on your duties and obligations as a Member under the LLP Agreement.***

Whilst you are entitled to attend the meeting and make representations to the Members, we do not consider that on a proper construction of the LLP Agreement you are entitled to vote on the matter as it directly concerns you.

Yours sincerely,

Hester Russell and Elizabeth Lord"

52. The claimant agrees he was expecting a partners' meeting to be arranged after the October 2019 meeting to discuss his fitness to work and to update him on

any management matters that had occurred since the last meeting. He was not expecting it to be arranged formally by letter served by a process server known to the claimant. The claimant describes this as an aggravating feature of the unlawful conduct. He says it caused additional hurt feelings because it was 'humiliating' for him because the process server suggested "*it would not be good news*" which he understood to mean that the respondents had discussed the contents of the letter with the process server.

53. Mrs Lord explained a process server was used following legal advice to ensure a proper process was followed to manage the absence. The suggested motive that she had shared the content of the letter with the process server to humiliate the claimant had never been put to her and was unsupported by any other evidence.

54. The claimant as an experienced lawyer knows process servers are often used when parties are in dispute to ensure effective service of notice of meetings or court proceedings. From October 2019, he knew Mrs Lord and Miss Russell suspected he was acting in bad faith/fraudulently in relation to his sickness and PHI claim and he was involved in a partnership dispute with his partners who had taken legal advice. Those were the material circumstances the claimant knew about before he received the letter from the process server inviting him to a partners' meeting. He knew from the letter the meeting would consider whether he should be deemed unfit to carry out his duties as a designated member. We do not accept the claimant's account implying Mrs Lord and Miss Russell had shared the contents of the letter with the process server which was never put to them and was very unlikely. They used a process server to ensure effective service of the notice of a partners' meeting. They did not share the contents of the letter with the process server to humiliate the claimant. On the balance of probabilities, we find the claimant did not suffer any humiliation or additional distress.

<u>Was the Claimant intending to return to work before the admitted discrimination?</u>

55. In the claimant's witness statement signed on 25 September 2022, the contents were sworn to be the truth and make the repeated assertion that in November 2019, the claimant felt well enough to and would have returned to work in January 2020, but for the admitted discrimination:

> "*On 27 November 2019, two days after I notified the Respondents' of my intention to return to work (please see page 553) I was informed that the second and third respondents* ***intended to vote on whether I should be expelled*** *from the first respondent because I was mentally and /or physically unfit to carry out my duties and obligations as a member of the First Respondent (please refer to pages 660-661 of the bundle)".* He continues ***"I fully intended to return to work early in the New Year*** *(following my routine '3' month post operation scan) and* ***my medical records support the fact that I would have been fit to return to work had it not been for the respondent's attempts to expel me and the significant damage this caused to my mental health****. I had* ***anticipated that a partners meeting would be arranged*** *so that the Respondents could update me on management matters and for us to discuss my planned return to work (this would have taken place as usual at my home at a time that suited all parties).*

56. Page 553 is the supporting evidence the claimant refers to which is the email he sent to his partners on 25 November 2019 stating:

"I hope to have my drain removed soon and my infection is reducing so we could meet later next week. ***I have every intention of returning when it is appropriate.***

I see that the draft accounts for 2018-2019 have been put on hold. I do not understand the reason why as they will only be draft and at this stage, they do not have to identify individual breakdown-the overall performance of the firm and the Net Profit would be the starting point and we already have a baseline figure. Do I have your agreement to request Sarah let us have that? We also need to lodge accounts professionally, so they are needed.

The partnership agreement needs clarifying. Finally, for the record- if any of my partners found themselves in my situation of having a life changing illness, and I dearly hope that will never be the case, then, I would wish they share to the fullest extent to any partnership monies-it would never have entered my mind to do otherwise as I regard this as a key element of being a supportive partnership".

57. The email did not state the claimant was well enough to or planned to return to work in January 2020. It confirms there was ongoing uncertainty about any return to work. It confirms the claimant was continuing to be involved in the financial management of the firm. The claimant continues to express his disappointment and frustration with Mrs Lord and Miss Russell's decision not to support him having both PHI benefit and share "to the fullest extent" any partnership monies during his sickness absence.

58. The claimant's account of the injury to feelings caused by the letter is set out at paragraph 131 of his witness statement:

"The first and second respondent had not had the decency to ask me how my health was or to ***notify me that they were considering my fitness to carry out my duties****. As I have mentioned above* ***at the time my mental and physical health <u>were improving</u> as my blog entry 13 November 2019*** *illustrated referring to me having walked 3KM that day and "keeping mentally active". In these circumstances* ***I found the suggestion that I was mentally or physically unfit to perform my role to be highly offensive and unprofessional****. It was also very distressing coming out of the blue as it did"*

59. The claimant suggests his email to the partners and the blog message he posted confirm his fitness to work even though they completely contradict the fit notes provide by his GP declaring he had been and continued to be physically unfit to perform any work.

60. Mrs Willis refers to the impact of the letter of 27 November 2019 in her witness statement. At paragraph 8 she describes it in this way "*to put the shock and distress into perspective, it eclipsed the upset we felt when the claimant first received his cancer diagnosis".* At paragraph 11 she says "*the claimant's mental health went further downhill when he discovered the respondents had reported him to the SRA and alleged, he had engaged in fraudulent activity. This was a very cruel blow for him which took an immediate toll on his mental health. It was incredibly shocking to see and deeply upsetting for me and our children. The claimant is a highly respected man within his family and working community. The claimant felt incredibly humiliated by these unfounded allegations of dishonesty which he was later fully exonerated by the SRA"*

61. On 29 November 2019, the day after the claimant (MW) received the 27 November 2019 letter which the claimant has repeatedly treated as his 'expulsion' from the firm, he made an unscheduled telephone call to Mr Munday (MM). We have set out in full the relevant parts of the agreed transcript to accurately record this evidence before making our findings of fact (CB pages 1005 -1009).

Page 1004:

MW: Sorry we weren't due to speak until I think January. But there's queries that I wish to just run past you if I may.
MM: Yeah. By all means. Carry on.
MW: Obviously, I've been off work for some few months, and I had my operation four weeks ago, which was successful but unfortunately, I had an infection and was then back in hospital and still have a drain coming out of my chest and various bits and bobs. But there is **talk at work that they are going to ask me to leave.**
MM: Okay.
MW: Because you know, I can't do my job.
MM**:** Yes.
MW: And I just- I didn't know and I couldn't see the answer in the policy document, what would happen to my insurance if effectively work were to get rid of me if you like?
MM: We are- the policies are designed to look at generic duties. So, **we're not looking at who your employer is, or the availability of work, it is whether you can do the duties of your occupation.**
MW: Yeah.
MM: Is it--you know we're just looking at can you do the job, it doesn't matter where it is or who it's for, it's your ability to do the role.
MW: Basically**, the suggestion is that I'm physically or mentally unfit to carry out my duties and obligations as a member under the agreement i.e. being the managing partner.**
MM: Yes.
MW Obviously, no decisions have been made yet, but this has been flagged up to me. I'm just looking through the policy document. **You know the benefit ceases when you're no longer incapacitated**. **You're no longer suffering a loss of earnings to justify payment**.
MM: Yes

Page 1006

MW: I've been back to the consultant twice and I've got to go again possibly next week for them to review my situation. But certainly, it's been **problematic** this time after the operation so. Really then, in the circumstances of what you're saying shall I speak to you again in January as originally planned? Because you know I don't quite know what's afoot, but **I am concerned that the firm is going to want me to go because they say I can't carry out my duties and obligations within the firm.**
MM**:** Yeah.
MW: And **certainly, as things are medically**, **that's probably true (laughing**)*.*
MM: Yeah.
MW: You know, I can't really argue with that. Whatever the duties are as a bog-standard criminal lawyer going to police stations at night*.*
MM: No.
MW: **Or as the managing partner, I'm afraid I wouldn't be able to do any of.**
MM: **Any of those duties. No**
MW: Yeah.

Page 1007

MM: But no, I mean it wouldn't have an effect. It's not something that I'd turn around and say oh, you haven't got a job anymore so I'm going to stop your benefit. You Know.
MW: Yeah.
MM: **We will look at it to say well, okay, you lost that role but were looking at your ability and the medical evidence at the moment shows that you still can't do that role**, **so we'll carry on paying you***.*
MW: Yes. Yes. Well, that's all okay. Obviously gives me a **bit of reassurance** because I'm not quite - it's kind of with no prior discussion as to whether, I've been in hospital for several weeks and I'm obviously **in recovery mode at the moment**, so I was a **little bit surprised** when I was made aware of this. So, I thought I'd seek that clarification. So **certainly, as things presently stand at the moment with me not being fit to work in any shape or form things remain as they are and obviously, I'll speak to you in January or if anything changes in the meantime.**
MM: *Yeah. No that's fine. And as I say, it's the **period of incapacity** which is in the page 1 of the **terms and conditions**.*
MW: Yeah. Okay. I'll have a look.

62. On 29 November 2019 (the day after he received the letter dated 27 November 2019) the claimant is confirming to Mr Munday that he agrees he is medically unfit to carry out his duties and obligations within the firm, he laughs about the situation because he accepts it is true. He can't argue with it because he knows his PHI benefit is paid by the insurer because he is incapacitated and suffering a loss of earnings which justifies the PHI payment. In his account to the tribunal now he says he found that suggestion "*highly offensive and unprofessional and very distressing coming out of the blue as it did"*.

63. In his call to Mr Munday, he makes no reference the 'expulsion' letter referring to 'talk at work' and expecting to be asked to leave because he had been unable to work in any "shape or form" for a long time. The claimant is eager to persuade Mr Munday there was unlikely to be any change of circumstances or any improvement in his health because of the complications with his cancer treatment. In his account to the tribunal, he says his health was improving and would have returned to work in January 2020 had he not been expelled which were substantial changes of circumstance which would have affected his PHI benefit. We find the claimant has presented a fundamentally contradictory account to support his claim for compensation.

64. Before the claimant made the telephone call, he had time to think about the letter and what he wanted to say to Mr Munday. He was being very careful about the information he shared with Mr Munday so as not to arouse any suspicion. By the end of the call the claimant knew the only way his PHI benefit would continue to be paid by the insurer was if he continued to provide medical evidence supporting his incapacity. He knew his fit note was due to expire on 2 December 2019. If he continued to be medically incapacitated and left the firm the insurer had made it clear he would be expected to find work as a solicitor effectively starting again from the bottom.

65. While the claimant cannot change what he said/did at the time, he had the opportunity in his account to the tribunal to set the record straight now, knowing we would be listening to the call and reading the transcript. If the claimant had returned to work in January 2020, he would have only received his monthly drawings as a partner of £5,000 for working full time. By not returning to work he knew he was better off financially because he would receive PHI benefit of £7,000 per month and his full profit share. At the time of the call, he knew Mrs Lord and Miss Russell were concerned he was involved in insurance fraud. He did not disclose those concerns to Mr Munday presumably because that would have prompted further enquiry.

66. Contrary to the claimant's account which was unsupported by the undisputed transcript we find the claimant had no intention of returning to work before the admitted discrimination. He has given a deliberately false account at this hearing to bolster his claim for compensation. On 29 November 2019, he had confirmed to the insurer that his cancer related absence to continue to the next review in February 2020.He was not 'highly offended' by the suggestion he should be deemed unfit and had agreed it was 'true' but presents a contrary position to support his claimed losses.

67. Having carefully considered the position we find the claimant was presenting a false account at this hearing to try to mislead the tribunal into make a finding of fact he knew was untrue (*but for the Claim 1 discrimination, the claimant* ***would have*** *returned to work on or around January 2020")*.If the claimant had been transparent with Mrs Lord and Miss Russell about what he was saying to his insurer, he would have had to admit he agreed he should be deemed unfit and could not retain his roles and responsibilities which should be reassigned to them in his absence. The claimant was not being transparent with the Insurer or with the respondents or with the tribunal.

68. After his call to Mr Munday on 29 November 2019, the claimant had no intention of participating in any meetings with the respondents or agreeing he should be deemed unfit. Having decided it was not in his interests to participate or attend the meetings he decided he would not engage in any way to deliberately frustrate the process.

69. On 3rd December 2019 the claimant spoke to his GP Dr Evans. He refers to this consultation in his witness statement under the heading "depression and acute stress reaction". At paragraph 155 he says: "*I spoke with my GP Dr Evans and explained that I was feeling very stressed about the letter I had received from the respondents regarding the proposed expulsion (please refer to page 1280 of the bundle*)".

70. The GP record (page 1280) dated 3 December 2019 15:06: states "***has been expelled from his firm*** *has sought legal advice but* ***obviously V upset****.* ***Having BUPA counselling*** *and seeking help at Cavendish Centre. Fit note issued not fit for work. Diagnosis: Carcinoma Metastatic NOS: Duration* ***2 December 2019-20 January 2020***".

71. The claimant's account to the GP was inconsistent with his earlier account to Mr Munday. He informed his GP he has already been expelled and that he had sought legal advice which suggests his solicitors were involved very early in the process although they did not engage in the process until 6 January 2020. Dr Evans was completely reliant on the claimant's account and attributed the upset the claimant was describing to the expulsion that she believed had already happened by the date of the consultation on 3 December 2020. We found the claimant's account to Dr Evans was not reliable or accurate because the claimant knew he had not been expelled. The inference we draw is that the claimant was deliberately inaccurately reporting events to Dr Evans to gain her sympathy and provide a reason to issue a fit note. Although the claimant was reporting a work-related event as the cause, he must have requested that Dr Evans recorded the reason was related to his cancer to support his continuing absence from 2 December 2019 to 20 January 2020. This is significant because work related mental health difficulties were not subsequently picked up as the cause from the fit note by the insurer or by the medical expert when the fit notes were being considered for different purposes.

72. On 4 December 2019, Mr Mike Jones (the partner who was not a designated partner) sent the claimant his written objections to the proposed resolution to deem the claimant unfit to work confirming his intention to vote against it as a friend and ally of the claimant. It was made clear to the claimant that Mr Jones had decided to vote against the proposed resolution before the partners' meeting.

73. On 6 December 2019, Mr Jones attended the partners meeting at the Rotherham office with Mrs Lord and Miss Russell. The claimant did not attend or attempt to contact the members with his views on the proposal or explain why he was not attending the meeting.

74. Following that first partners meeting a second letter was sent by Mrs Lord and Miss Russell inviting the claimant to the rearranged partners meeting. Clause 13.3(j) of the LLP agreement confirms that if a partnership meeting is not quorate within 1 hour of the notified start time the meeting "*shall be adjourned until the **same time** the following week. If at such adjourned meeting the appropriate quorum is not present within 1 hour of the start time of the meeting those persons present shall constitute a quorum for the purposes of this agreement*".

75. In accordance with that clause by a letter dated 6 December 2019 the second partners meeting was arranged for 13 December 2019 at 2pm. The letter states:

"Dear Mike,

We are sorry that you were unable to attend the meeting on 6 December 2019 at 2pm.
As a consequence of your non-attendance, we were not quorate therefore in accordance with 13.1.3(j) of the LLP Agreement the meeting has been adjourned until 13 December 2019 at 2pm in the Rotherham Office".

Yours sincerely,
Hester Russell and Elizabeth Lord"

76. On 13 December 2019, Mr Jones attended the partners' meeting at the Rotherham office with Mrs Lord and Miss Russell. The claimant did not attend or contact the members about the meeting. The meeting proceeded in the claimant's absence. Again, in evidence the claimant refers to this meeting as an "expulsion meeting" even though he told Dr Evans he had already been expelled by the letter dated 27 November 2019.

77. On the same day the claimant attended an appointment with Dr Evans. At paragraph 158 of his witness statement, he says "*I explained that I was suffering from low mood, sleeplessness, an upset stomach, skin conditions, ulcers, night sweats, irritability, nausea, extreme worry about the effect of stress on my physical, health a sense of bereavement in respect of the **premature loss of my career**, the way my work partners had treated me and the loss of direction and motivation*".

78. The GP record states: "*Problem: cannot sleep-insomnia (new). History: Not surprising considering circumstances at work-has meeting today so will know more. Feels like a **bereavement as worked there for >30 years**. Not sleeping despite relaxation tapes, seeing counsellor, and trying acupuncture at Cavendish. Discussed ongoing low mood and uses anti-deps if needed. Wife has stopped job to support him. Allow himself to grieve cannot rush the process inc activity again to try and reduce stress".*

79. As this was a follow up meeting after the claimant's 'expulsion' it was understandable that Dr Evans would treat the symptoms the claimant described attributable to the premature loss of his career akin to a bereavement recognising the need for the claimant to process that loss after 30 years of work. The claimant

knew that he had not been expelled and was continuing to inaccurately report work events to his GP.

80. On 16 December 2019, the claimant was provided with the detailed minutes of the meetings of 6 and 13 December 2019 so he knew exactly what had been discussed and decided in his absence. In his witness statement (paragraph 127) when he refers to these minutes, he only comments on the parts referring to the SRA referral:

"I noted that the minutes referred to me being contacted by the SRA in connection with improperly claiming business expenses whilst absent from work. This came as a further complete shock to me. The wholly unjustifiable allegations in respect of my honesty and integrity and the fact that the respondents had reported me to the SRA without asking me or allowing me the opportunity to make representations about these matters was incredibly upsetting. Their actions sent me into a ***downward spiral from a mental health perspective and I became very unwell***"

81. The meeting minutes of 6 December 2019 identified Mrs Lord and Miss Russell's ongoing concerns about 'fraud'. Mrs Lord explained how concerns about the claimant's business expenses had come to light and confirmed that until then she was unaware the claimant had received reimbursement for those expenses. Mrs Lord and Miss Russell confirmed they had taken legal advice and had reported their concerns to the SRA. Mr Jones confirmed that he knew the SRA report had been made and had already told the claimant about it (*confirming that the claimant knew about the SRA referral before he saw these minutes*) .Miss Russell confirmed she had called the meeting to discuss the claimant's health to sit down with the claimant and "*find out when he is going to be well and when he is hoping to be back".* Mr Jones raised the question of expulsion and Mrs Lord and Miss Russell made it very clear in the minutes that it was not an expulsion meeting but had been arranged to decide whether the claimant should be deemed unfit to enable the partners to reassign his roles and responsibilities during his sickness absences. Miss Russell went through the LLP's Quality Procedures Manual to identify each of the claimant's roles and responsibilities that needed to be reassigned while he remained unfit to work. She confirms her understanding that the insurer would not have permitted the claimant to claim PHI benefit and work and the firm could not allow the claimant to work without a fit note to avoid the firm and members being implicated in insurance fraud. In the minutes she describes they were "***in an incredibly vulnerable position. We need to know where we stand. We need to take those roles off him and dive them up between us".***

82. The minutes of the meeting of 13 December 2019 confirm there was a further detailed discussion about the difficulties caused by the claimant's absence in relation to each of the roles he held as a designated member of Criminal Defence Solicitor/Higher Court Advocate, Duty Solicitor, Business Continuity Manager, Compliance COLP role, Compliance COFA, Credit Controller, Data Protection Partner, Fire Safety, Health and Safety Officer, IT partner, Managing Partner. Mrs Lord expressed her concerns in relation to the claimant's role as Credit Controller dipping in and out of managing the firm's finances which was "counterproductive".

Mrs Lord and Miss Russell give examples of the difficulties they had been experiencing with the claimant retaining the delegated responsibilities without performing the roles.

83. Miss Russell explained the roles needed to be performed because (page 681) "*the buck needs to stop with somebody with specific responsibilities. We cannot have one person trying to do things when they are unwell*". After detailed discussion a unanimous resolution was passed by Mr Jones, Mrs Lord and Miss Russell deeming the claimant unfit and reassigning his roles to Mrs Lord and Miss Russell. It was also agreed Miss Russell would need to take steps to inform Companies House of the change in managing partner to confirm the claimant was no longer a person of significant control. It is important to note that Mr Jones (the claimant's ally) also voted for the resolution which was passed unanimously and not by a simple majority as Mrs Lord and Miss Russell had anticipated.

84. Given that those undisputed detailed minutes have been available to the claimant since 16 December 2019 explaining the members rationale and decision confirming the claimant had not been expelled it was surprising the claimant has maintained his account that he believed he had been expelled. The evidence he gives about this admitted unlawful conduct to support his injury to feelings is all given under the heading "Attempts to expel me from the First Respondent". He describes the expulsion process started with the What's App message of 28 October 2018 and ended on the 7 January 2020. At different times in his account, he refers to an expulsion by letter dated 27 November 2019 then at the December meetings later described as attempts to expel him without explaining how those inconsistencies are explained in the light of the undisputed contemporaneous evidence.

85. In a partnership/LLP expulsion is the process of termination of the members position within the firm with a defined date communicated in words or actions a partner/designated member could reasonably understand as a termination on a particular date. The claimant having left the LLP in March 2021 was familiar with the process the LLP is required to follow when a designated member leaves the LLP whether by way of retirement or expulsion. The departing member becoming an outgoing members and creditor of the LLP until all liabilities are settled. Although the letters of 27 November and 6 December arranging the partners' meetings and the detailed minutes of the meetings of 6 December and 13 December 2019 make it clear that the claimant had not been expelled, the claimant invites the Tribunal to find that at the time he genuinely believed he had been expelled. The evidence does not support that finding of fact. We find the claimant did not genuinely or reasonably believe he had been expelled to support the injury to feelings he claims he suffered attributable to this.

86. The findings we make about this detriment are supported by the unchallenged contemporaneous evidence. All the members had decided on 13 December 2019 to unanimously deem the claimant medically unfit and to reassign his roles and responsibilities to the other members while the claimant's absence continued. The members' decision was supported by the GP fit notes which confirmed the claimant's remained unfit to work and that his long-term absence would continue. In those circumstances the members unanimously agreed to reassign his roles

and responsibilities to Mrs Lord and Miss Russell. Although Mr Jones had initially objected to the proposal, he was persuaded it was necessary to deem the claimant unfit and to reassign his roles and responsibilities to Mrs Lord and Miss Russell who were able to take over those specific responsibilities in the best interests of the LLP. It was a common-sense decision made by the members acting in good faith in an open transparent and inclusive way. The claimant had been invited to all the meetings and could have participate by providing information to help the members make a different decision if he had genuinely wanted to return to work. The easiest way of doing that was to confirm he was fit to return to work and to resume his roles and responsibilities. On the balance of probabilities, we find the claimant was not highly offended by this and did not suffer any injured feelings.

Detriment 3 Removing (13 December 2019) and reinstating (22 January 2020) the claimant as a Person with Significant Control of the First Respondent (PSC).

87. After the meeting on 13 December 2019, Ms Russell completed and signed form LLPSC07 (notice of ceasing to be an individual with significant control (PSC) of a limited liability partnership). The purpose of the form is to inform Companies House when a person is no longer a person of significant control. The form requires the person signing the form to have contacted the individual before filing the form. All the designated partners are individuals with significant control of the LLP but only the claimant was on the public register as PSC. As the managing partner he had always been on the register and had never added Mrs Lord or Miss Russell. They were unaware that they should have also been registered and had wrongly assumed only the managing partner was a PSC.

88. After the partners' meeting on 13 December 2019, Miss Russell filed form LLPSCO7 on 16 December 2019, removing the claimant as PSC. When the claimant's solicitors intervened on 6 January 2020 and identified the error steps were taken to immediately reinstate him. He was registered alongside Miss Russell and Mrs Lord on 22 January 2020. Although the admitted detriment is framed as if the reinstatement is part of the unfavourable treatment that was obviously an error. The unfavourable treatment was the removal of the claimant from the register from 13 December 2019 for a period of just under 6 weeks.

89. In the ET3 Mrs Lord and Miss Russell (page 48 paragraph 20) confirm Miss Russell had completed the form in error believing only the managing partner of the should be identified on the register. The grounds of resistance confirm the position: *"briefly and when updating its return to Companies House the respondents changed its return so that the claimant was not shown as a person of significant control. An amendment was needed because in his filing the claimant had omitted to include Mrs Lord and Miss Russell as persons of significant control. When the claimant raised this as an issue the respondents took advice and reinstated the claimant as PSC. The change was an administrative matter and only because of the respondents genuinely held belief that the change in return was necessary*".

90. The claimant knew that the partners had unanimously passed a members' resolution reassigning his management role to Mrs Lord and Miss Russell. He

knew that as the managing partner he had only registered himself at Companies House supporting the respondent's belief. In evidence the claimant does not describe any injured feelings only the facts he relies upon about the act which are not in dispute. He says "*it was not correct that I was no longer a person with significant control of the respondent. Further Miss Russell signed and filed this form at Companies House without my knowledge or consent despite the clear warning in the signature box which states "you must not send this form to us in respect of an individual unless that individual has confirmed that they have ceased to be a person of significant control"*. At paragraph 30 he refers to being restored as a person of significant control following his solicitors' intervention on 6 January 2020 but does not describe the effect of temporarily being removed from the register.

91. It was not clear if the claimant was inferring Miss Russell had deliberately incorrectly filled out the form and that error was an aggravating feature of the act causing him to suffer additional injury. He has not identified the injury or the additional injury to support the claim. Having seen the form, the warning the claimant refers to is at the side of the signature box in small text and is not immediately apparent. Miss Russell confirmed in her unchallenged evidence that it was a stressful time, they had taken on new management responsibilities and were unfamiliar with the registration process and she signed the form in error without first obtaining the claimant's agreement. We accepted it was an error on Miss Russell's part. She had not taken sufficient care filling out the form out of ignorance not malice or spite. Once the error was pointed out it was admitted and corrected.

92. We considered Mrs Willis' account about this. She describes the claimant was visibly upset linking the upset to the SRA referral describing and how the claimant felt betrayed because he could not understand "*why the Second Respondent had willingly signed a declaration that was false, yet he had been reported to the SRA by them for acts he had not committed*". Her evidence was consistent with the claimant's belief it was a deliberate act, but we have found it was an error. Mrs Willis describes the claimants feeling of upset and betrayal at the way the form was signed linking his hurt feelings to the SRA not to the claimant's temporary removal from the register.

93. We concluded that the reason the claimant has not identified any hurt feelings about this detriment is not because he is being stoic about it, but because he knew it was temporary and done in error and corrected and the claimant did not suffer any injury to feelings. Mrs Willis describes the claimant's feelings of betrayal by Miss Russell's linking his hurt feelings to the SRA referral which was not unlawful admitted discrimination. On the balance of probabilities, the claimant has not identified or proved he suffered any injured feelings.

Detriment 4: Removing him from the First Respondent's management and decisions making processes.

94. Although the claimant chose not to communicate with his partners in relation to any of the partnership meetings arranged in December 2019, he did choose to communicate with them about the partnership returns which needed to be filed

by January 2020. On 6 December 2019 (RB page 554), Ms Russell had emailed the claimant about the 2018/2019 accounts suggesting they were prepared based on the agreement made on 17 April 2019, that the claimant would receive his profit share less 6 months drawings and his permanent health payments (grossed up) for the period November 2018 to March 2019.

95. On 17 December 2019 (RB page 555), Miss Russell sent an email to Ms Fields (the LLP accountant and the claimant's personnel accountant) confirming the resolution that had been passed by unanimously by the members on 13 December 2019. She confirmed the LLP had agreed the claimant was deemed unfit to fulfil his role as a member. Miss Russell confirmed that while the claimant's absence was continuing, he would not be managing the firm. Miss Russell confirmed she would request information about the PHI payments the claimant had received in 2018/2019 so they could be included in the accounts. She accepted that if that information was not provided by 19 December 2019, the accounts would have to be prepared on the assumption that the claimant had received £7000 PHI benefit per month since November 2018. The actual figures could then be inserted later if that assumption was incorrect.

96. On 18 December 2019 (RB page 556 RB), the claimant refused to provide the information requested confirming that the income protection policy was personal to him and that no deductions should be made to the allocated profit costs. In his email he states: "*in the absence of any agreement to the contrary the draft LLP agreement entitles me to a full share of profit for the year 2018/2019 and* ***for each year thereafter****. As the policy is personal to me the information related to it is confidential to me and as those payments are tax free, they are not relevant to the draft account figures".*

97. On the same date, the claimant emailed Ms Fields to persuade her that the accounts should be prepared without any deductions for PHI payments. The claimant was using his close working relationship with the accountant, his interpretation of the LLP agreement and his refusal to share information about his PHI benefit to ensure the accounts were prepared in way that was most beneficial to his position in the current financial year and for future years. In contrast in Miss Russell's communication with the accountant she was less forceful, she accepted she was making assumptions which might be wrong and might need to be corrected.

98. Despite Miss Russell's attempts to limit the claimant's continued involvement in the management of the finances of the firm, the claimant continued to have a proactive role which contradicts with his account at this hearing that he believed he had already been expelled from the firm by the letter dated 27 November 2019.

99. On 19 December 2019, because of the time constraints and the claimant's refusal to provide any information about his PHI benefit Miss Russell agreed that Ms Fields should prepare the accounts as the claimant had proposed allocating him his full profit share without any deductions for PHI payments.

100. In his evidence (paragraph 134) the claimant suggests his feelings were hurt because 'accounting' information was withheld from him. The contemporaneous

evidence shows that assertion was not true. It was the claimant who was withholding financial information from the respondents. He was very proactively engaged in the preparation of the accounts and had by 19 December 2019 secured his financial position with the LLP and with Aviva ensuring payment of PHI until at least the next review planned in February 2020.

101. On the balance of probabilities, we were not satisfied the claimant suffered any hurt feelings.

Detriment 5: taking steps to expel the claimant as a member of the First Respondent from 19 December to 7 January 2020

102. On 19 December 2019(RB pages 690-691) Ms Russell and Mrs Lord wrote to the claimant to give him notice of a meeting to discuss and to vote upon expulsion. The letter identifies clause 13 of the LLP agreement because the expulsion of a partner is a major decision a partnership can make which requires a meeting a vote and the unanimous agreement of all the designated members.

103. Clause 13 of the LLP agreement expressly provides the designated members must unanimously approve any major decisions affecting the LLP which includes appointing or removing a designated member, changing the business premises, and borrowing money (13 (c)(e)(m)). A designated member could stop the other designated members from making any major decisions about the LLP simply by not voting for it. In Claim 2 we saw some examples of decisions the claimant had blocked by using his power of veto. He refused to agree to the CBIL loan urgently needed by the LLP and to refused to agree relocation to new premises when the existing premises were deemed to be unsafe (paragraph 293 C2 Judgment page 1188). Although designated members could stop major decisions being made clause 15 of the LLP agreement requires each member to "*show the utmost good faith to the LLP and the other members*".

104. The letter states:

"We have written to you previously to confirm that on the 13 December 2019 a resolution was passed by the members under Clause 20.1.1(j) that in the reasonable opinion of the members you are not physically or mentally fit (whether or not certified as such by a medical practitioner) to carry on your duties and obligations as a member under the LLP Agreement.

We hereby give notice under clause 13 of the LLP Agreement to convene a meeting of Members on 31 December 2019 at 2pm at the Rotherham Office ***to discuss and vote upon your expulsion*** *from GWB Harthills LLP under Clause 20.1.1(j) as detailed above.*

The vote on expulsion ***requires the approval of the Designated Members under clause 13.1.6(e)*** *but whilst you are entitled to attend the meeting and make representations to the Designated Members' we do not consider that on a proper construction of the LLP Agreement you are entitled to vote on the matter as it directly concerns you."*

105. At paragraphs 129-132 of the claimant's witness statement, he describes the effect of receiving this letter:

"129. I received a further letter again delivered to me by a process server, inviting me to an expulsion meeting on 31 December 2019. This letter confused me as I believed I had already been expelled from the First Respondent. The Respondents later claimed that they had removed my roles and responsibilities but that they had not expelled me from the First Respondent.
130. Due to my ill-health I did not attend the meeting on 31 December 2019, and it was adjourned to take place on 7 January 2020 (presumably because the meeting on 31 December 2019 was not quorate).
131. If the respondents genuinely believed that I had committed any wrongdoing in respect of my expenses and/or my PHI claim I would have expected them to seek to expel me under clause 20.1(a) or 20.1 (f) of the LLP Agreement rather than clause 20.1 (j).
132. The Respondent's also took the most aggressive course of action possible to attempt to remove me from the First Respondent. The correct process would have been to disclose any concerns about me in writing so that I could prepare properly for such an important meeting, we could then consider and discuss any concerns and if a dispute or difference arose, we could have attempted to settle it by mediation. However, the peremptory and very aggressive route chosen by the Respondent's, ***predictably and perhaps deliberately ruined my career and hard-earned reputation****.* ***It is hard for a solicitor to survive allegations of dishonest and fraudulent behaviour that has been levied against them, however ill-founded and malicious those allegations have proven to be****."*

106. As an experienced managing partner, the claimant was more knowledgeable of the terms of the LLP agreement than either Mrs Lord or Miss Russell. He is critical of their lack of understanding suggesting that Mrs Lord and Miss Russell as solicitors should also have been able to easily understand the LLP agreement. His evidence that he was 'confused' is rejected based on the findings made. The claimant has always known that he could not be expelled unless he voted for his expulsion. He was not attending any of the partners meeting to deliberately frustrate the process while he was proactively engaging with Miss Russell and the accountant to ensure the LLP accounts were prepared in the way most favourable to him.

107. On the same day as he received the 'expulsion' letter the claimant had secured the allocation of his profit share into his current account and confirmed he expected the same entitlement for future years. The account the claimant gives that he did not know his roles and responsibilities had been reassigned was not true. The minutes he received 3 days before this letter made that very clear. The respondents did believe that the claimant was acting fraudulently had had committed wrongdoing. His suggestion that the respondents had not previously disclosed their concerns to him is untrue. The route the respondents used to discuss and vote on expulsion was to arrange a partners' meeting to discuss and vote on expulsion. It was not a 'peremptory' or 'very aggressive' and was stopped before any discussion ever took place let alone a vote. As soon as the claimant chose to engage with the respondents and communicate his disagreement the process stopped. Subsequently he was unable to resume his career at any time

up to his retirement due to his ill-health and because he did not want to return to work.

108. We agreed with the claimant that allegations of dishonest and fraudulent behaviour made maliciously would be an aggravating feature which could cause additional distress. However, we had found Mrs Lord and Miss Russell were genuinely and legitimately concerned the claimant was engaging in fraudulent behaviour and had acted in good faith.

109. On 30 December 2019 the claimant saw Dr Evans and he refers to this at paragraph 162 of his statement. He says: "*my GP prescribed antidepressant medication for me as I was feeling increasingly low spirited and anxious* (please refer to page 1278)" Page 1278 is the GP record. It identifies the problem: cannot sleep-Insomnia (review). It records the history: "Tried ½ Zoplicone but drowsy next day so not keen. Has been stripped of roles but has expulsion meeting tomorrow".

110. On 31 December 2019 (page 694-695 RB) Ms Russell and Mrs Lord wrote to the claimant, confirming the arranged meeting had not proceeded in the claimant's absence and had been rearranged for 7 January 2020.The claimant refers to his solicitors sending a letter on 6 January 2020, to the respondents raising serious concerns about their discriminatory behaviour and unlawful attempts to expel him. He acknowledges the letter was effective immediately and permanently stopping the process on 7 January 2020 (pages 168-178 RB). He says that following that intervention the attempted expulsion was put on hold and he was restored on the register as a PSC. He also says he had hoped to return on or around 20 January 2020 upon the expiry of his sick note however he was ***"unable to resume his role at that time because of the devastating impact of the respondents' discriminatory actions including their report to the SRA and their attempts to expel me***" (paragraph 31).

111. The claimant's solicitors had identified the terms of the LLP agreement relating to expulsion had pointed out that the claimant could not be expelled unless he voted for his expulsion. They summarised the history of the claimant's cancer related absences, confirming that the claimant relied upon the fit notes supplied to confirm his unfitness to work. They did not assert, as the claimant now asserts, that but for the alleged discrimination the claimant would have returned to work. The respondents treated the allegations made by the claimant's solicitors very seriously accepted their interpretation of the LLP agreement took corrective action and agreed steps to obtain a medical report to help them manage the claimant's ongoing absence.

112. The claimant was aware that although his solicitors' intervention had been successful it could not stop the SRA investigation which was continuing to have a devastating impact on his health. On 22 January 2022, the claimant saw a different GP, Dr Pinninty who confirmed the claimant was unfit to work for 3 months from 22 January 2020-22 March 2020. Dr Pinninty diagnosed "Acute stress reaction: Carcinoma" linking the stress symptoms to the cancer not to any work-related event. There is no reference in the GP notes to the claimant reporting the ongoing SRA investigation.

113. In July 2020, Dr Pinninty was asked to provide a report to the claimant's solicitors in which she refers to her consultation with the claimant on 22 January 2020. Her report states:

"Initial Diagnosis

My impression on 22 January 2020 was of a reactive depression ie a depressive episode seemingly triggered by unfair treatment at work and the frustration of his inability to return to work as patient would have desired.

Causation

*Mental health presentations are usually multi-factorial and I note his cancer diagnosis was a significant diagnosis. However, these seems to be a significant step down in December 2019 in his mental health from being very low-grade tiredness and manageable symptoms to a diagnostic depression and this seems to coincide with the "**workplace difficulties that have been reported to us**"*

114. On 21 February 2020, Mr Munday chased up the update the claimant had promised in the call on 29 November 2019. The claimant responded on the same day confirming the reason for his ongoing absence was continuing was related to his cancer not work-related mental health difficulties. He states: "*I met my consultant on the 31 January 2020.The results of the first '3' month scan, were clear of cancer although they did reveal damage to my liver that is continuing to repair. I have attached herewith my latest fit note which runs until 22/3/20".*

115. In the claimant's update to his insurer, he does not disclose the work-related mental health difficulties he had reported to his GP in December or the SRA report, which would have prompted further enquiries. The inference we draw from this is that the claimant limited the information he gave his insurer to the cancer to ensure consistency with the information provided in the fit note.

116. The difficulty for the claimant is that he relies on his subjective evidence of injury to feelings as at this hearing to support his claim for non- pecuniary loss based on his version of past events which was unreliable and was not accepted by the tribunal. His account was not supported by the finding of facts. He says that when he received the first letter 27 November 2019, he believed that he had already been expelled (we found that was not true), that he had deliberately been prevented from participating in the meetings (we found that was not true), that the respondents did not have legitimate concerns about fraud/financial misconduct (we have found that was not true). He says they took the most aggressive route (we found that was not true). He says that but for the discrimination he would have returned to work in January 2022 (we have found that was not true). If the claimant was (as he now suggests) fit to return to work before when the first letter was issued, it is surprising he did not simply return to work and resume his roles.

117. After 7 January 2020, the only ongoing issue which prevented the claimant from returning to work with the respondents was the fact that they had reported him to the SRA, and he was under investigation for suspected financial misconduct until October 2020. It was the SRA outcome that the claimant was concerned could ruin his "***career and hard-earned reputation".*** It was the SRA referral that made

the allegations of **"dishonest and fraudulent behaviour"** which remained outstanding and was continuing to hurt his feelings towards the respondents and was damaging his mental health.

118. We found there was only one unsuccessful attempt made by the respondents to start an expulsion process on 19 December 2019 which was stopped on 6 January 2020 as soon as the claimant engaged in the process. All planned meetings in January 2020 were cancelled on 7 January 2020. That attempt had got no further than arranging a partners' meeting to discuss and vote on expulsion. The claimant knew that as soon as he objected the planned meeting was stopped and his complaints of discrimination were treated seriously.

119. The claimant has given different accounts of his understanding of the 'expulsion' depending on the purpose it serves. Having seen the 'expulsion' letter he does not tell the insurer on 29 November 2019 that he has already been expelled so as not to arouse any suspicion but 3 days later tells his GP he had been expelled to ensure a fit note was issued. He was using the term 'expulsion' to his GP not because he truly believed he had been expelled but because it fit with what he was telling his insurer. We find the claimant did not genuinely believe he had been expelled by the letter dated 27 November 2019.

120. The claimant's description of hurt feelings in relation to this detriment is completely reliant on his account of the expulsion being accepted by the Tribunal. We found that account was untrue. On the balance of probabilities, we were not satisfied the claimant has suffered any injured feelings.

Detriment 6: Excluding the claimant from a partners' meeting on 24 January 2020

121. This detriment was pleaded at paragraph 121.6 of the claim form (RB page 39) as "*The claimant was deliberately excluded from a Partner Meeting on 24 January 2020"* and has been admitted in those same terms. It is agreed the process was stopped and that no partners meetings took place in January 2020. The claimant cannot claim he suffered injured feelings for being 'excluded' from a meeting that never took place.

122. The injury to feelings relies upon the claimant seeing a WhatsApp message exchange between Mrs Lord and Miss Russell referring to the cancelled scheduled meeting on 24 January 2020 as "dodgy as fuck". The claimant says that when he saw this message in October 2020 it made him feel "anxious and hurt" because he believed the purpose of the cancelled meeting "was to discuss him and his future in his absence".

123. At the time the claimant saw the message he knew he had been invited to every meeting arranged to try to discuss his absence. For the discussions that had taken place in his absence he was provided with the detailed minutes, so he knew exactly what his partners had discussed in his absence. On the balance of probabilities, we were not satisfied the claimant has suffered the injured feelings of anxiety and hurt he describes.

Indirect Discrimination: practice of having meetings in Rotherham office and not at the claimant's house

124. The agreed provision criterion or practice (PCP) of arranging partners meeting at the claimant's home was not a practice that would put disabled persons who share the claimant's disability at a group disadvantage. The requirement to prove group disadvantage to prove indirect discrimination is set out in section 19 (2) (b) Equality Act 2010. Although the requirement was not met indirect disability discrimination has been conceded by the respondents.

125. The claimant subjective evidence of hurt feelings is that Mrs Lord and Miss Russell were taking all steps to 'prevent his participation in meetings making it difficult for him to attend in person making him feel like he was no longer welcome at partnership meetings'. It was not in the respondents' interests to make it difficult for the claimant to attend/participate because if he had attended, they would have arranged fewer partners meetings because the meetings would have been quorate. It was as we have found in the claimant's interest not to attend to frustrate the process. He decided when he would engage in the partners meeting and how he would engage with them.

126. After the SRA report had been made the claimant would never have agreed to allowing Mrs Lord or Miss Russell into his home. In his second claim he agreed he could not have had any face-to-face contact with them he would not have wanted or allowed them in his home which remained his position up to his retirement in March 2021.

127. On the balance of probabilities, we were not satisfied the claimant has suffered any injured feelings.

Failing to make reasonable adjustments as would have enable me to work from home continue with my management roles and/or return to work on a phased basis.

128. At this hearing the claimant confirmed that during the Claim 1 admitted discrimination period he was unfit to perform any work. In Claim 2 that same admission had resulted in the claimant agreeing the duty to make reasonable adjustments involving a return to work could not be engaged and it followed that there could not be any failure to make reasonable adjustments.

129. Despite those agreed facts the claimant claims compensation for injury to feelings caused by the respondents' failure to make reasonable adjustments in the Claim 1 period. He says (paragraph 137) that "had these adjustments been made **as it is admitted** it would have been reasonable to, and had the respondents' not attempted to expel me I consider that I could have returned to work in January 2020 and that I would have been able to work until my planned retirement date in June 2023".

130. He relies upon the concession made by the respondent while accepting the duty to make reasonable was not engaged while he remained unfit to work. He does not identify any injured feelings except for saying he would have returned to work

in January 2020 and then continued to work until June 2023. The tribunal have not made that finding of fact. On the balance of probabilities, we were not satisfied the claimant has suffered any injured feelings.

The respondents' conduct throughout the case

131. In the claimant's witness statement (paragraphs 176-185) he identifies aggravating features of the respondents' subsequent conduct of the case referring to correspondence exchanged between the parties' solicitors. In the second claim that same allegation was a pleaded detriment which had failed. The tribunal had found that in litigation correspondence exchanged between the parties' solicitors may at times be combative. Having had the opportunity to examine the evidence in more detail in the second claim, we do not find it was an aggravating feature of the respondents' conduct which causing the claimant to suffer any additional distress.

132. The claimant also relies upon WhatsApp messages exchanged between the Mrs Lord and Ms Russell as evidence of aggravating features of the respondents' conduct because he says the comments were offensive discriminatory and spiteful. He only saw the messages in October 2020 following disclosure and not when they were exchanged. It was accepted these were private messages exchanged between Mrs Lord and Miss Russell which they never intended the claimant to see.

133. From the messages sent at the time of the admitted discrimination the claimant has identified the words he found upsetting: "*liar*" "*being fully paid out by insurers*. *Basically, a fraudster*", "*greedy nasty piece*" and "*that absolute fucking- robbing bastard!"* (messages 15 November 2019). "*We account for every last penny, and he robs us blind*" (28 November 2019)

134. We accepted the evidence of Mrs Lord and Miss Russell expressing regret and embarrassment about the language used was genuine. They explain it in the following way: "*the reality of our situation was that we were extremely stressed and felt upset and disempowered by Mike. We shared our frustrations with each other intermittently which I found comforting. I now regret the language we used in the heat of the moment. It was never our intention that those private messages would be shared or seen by the claimant as they were considered private conversations venting emotion in what was believed to be a private forum"*.

135. None of those messages were seen by the claimant at the time of the admitted acts of discrimination and the messages could not have had the effect of making any of the admitted acts of unlawful discrimination more distressing for the claimant. The respondents had communicated their feelings that they though the claimant was trying to benefit financially from insurance fraud and by not deducting his PHI payment from the LLP accounts.

136. We do not find the messages were an aggravating feature which increased the effects of the admitted acts of discrimination on the claimant.

Evidence of Mrs Willis

137. We read Mrs Willis' statements and take from her account that she supports the claimant's account. She is however largely reliant on the claimant account about the admitted acts and cannot give any direct evidence. Unfortunately, we have

found the claimant was not a reliable historian. We do not attach much weight to Mrs Willis' evidence and have made our findings of fact on the direct evidence of the claimant attaching more weight to the undisputed contemporaneous documents.

Personal Injury

138. There were 2 psychiatric injuries diagnosed by Dr Appleford in his report dated 12 January 2021 (Appleford 1 pages 1031 to 1119). He identifies "Acute Stress Reaction" and a "Moderate Depressive Episode". The diagnosis is based on the GP medical records that refer to mental health issues from the beginning in December 2019, and the mental health diagnosis made in fit notes from January 2020 (see paragraphs 21.11 and 21.13 (page1086).

139. The diagnosis of 'Acute Stress Reaction' (paragraph 21.15) is made under F43.0 in the ICD -10 Classification of Mental and Behavioural Disorder described as "*a transient disorder of significant severity which develops in an individual without any other apparent mental disorder in response to exceptional physical and/or mental stress which usually subsides within hours or days*". The stressors identified can include "*an unusually sudden and threatened change in the social position and or network of the individual such as bereavement or domestic fire*". The claimant's fit note issued on 22 January 2020 was for two months gives a diagnosis of "Acute stress reaction. Carcinoma."

140. The diagnosis of a "Moderate Depressive Episode" is made based on the subsequent symptoms experienced by the claimant from January 2020 ICD F32.1. For depressive episodes of all three grades of severity (mild, moderate, and severe) a duration of at least 2 weeks is usually required for diagnosis. The claimant fit note issued on 22 March 2020 to 22 June 2020 made a diagnosis of "depressive disorder".

141. After identifying the conditions Dr Appleford is asked to consider the causation question put to him by the claimant's solicitors in the following way (see question 5 at page 1095):

"Do you believe that there is a link between:

(1) Mesdames Russell's and Lord's attempt to expel Mr Willis from the First respondent: and

(2) The report to the SRA by Mesdames Russell's and Lord's in which they accused Mr Willis of fraudulent behaviour (he has now been fully exonerated of this): and/or

(3) The removal of Mr Willis's role as managing partner and responsibilities:

(4) Any wider work-related issues and his mental health condition(s)?

If so, to what extent do you feel there is a link, and would you say that any work-related issues have contributed materially to, or caused, Mr Willis's mental health condition(s)

Dr Appleford's opinion was (page 1096):

"*In considering this question* ***I am largely reliant on Mr Willis' account*** *as described in the body of this report. With regard to each of the issues mentioned above I would note that:*

(1) Mr Willis told me that on receiving a letter from his colleagues via a process server in which they wanted him to accept that he was unfit to perform the role as a member of the LLP and which he said used the wording that is contained in the capacity expulsion paragraph of their agreement he said: "I think I dropped off a cliff". He felt "the whole of my life was being ripped away. He was concerned regarding loss of income. He said that he was "absolutely in shock".

*(2) Mr Willis told me that his colleagues later made a complaint to the SRA that he was fraudulently claiming insurance. He said that they never told him this but that he found out in December 2019.He said that they also said that he was claiming motor expenses as business expenses. He told me that he felt that this was "hurtful", and he said that these were "groundless allegations" of fraud and dishonesty. He said that this led to an eleven-month investigation which "totally and utterly exonerated me". He said the SRA never even spoke to him. He told me that he found out at Christmas 2019, that rumours were being spread about financial irregularity. He said that there had been comments to the effect that colleagues had "no salary increase because Mike's taken the money". He experienced anxiety which he described as "constant feeling of worry about the future and the way things have happened around me. He mentioned that he was accused of "**criminal dishonesty to my own professional body**" and that was "**absolutely devastating". This felt "hurtful and upsetting".***

*(3) Mr Willis told me that he has not seen his colleagues since the meeting in October 2019. He said they "stripped me of all my roles" in the meeting that took place in December 2019. He said that they have now accepted that they have discriminated against him and that they "weren't entitled to do that ". **He told me his colleagues took him off The Companies House Register as a person of significant control and said that he had signed to agree this**. He told me there was no direct contact until July of this year. He said that they wanted involvement in issues involving an ex-partner. He said that there had been regular communications since July 2020. He said that prior to this his colleagues "basically excluded me". He said that they told staff that he had "stepped down from all my roles"*

(4) Mr Willis has reported concerns regarding his future, as a result of these events. He had intended to return to work and was not planning retirement at this stage. He has come to feel that his professional reputation has been damaged. He feels that this would prevent him from working in the Yorkshire, Derbyshire or Nottinghamshire regions. He misses the "collegiality of the legal community". He worries about the financial implications and the impact upon his future including his finances in retirement.

I would also note that Mr Willis' account and the information in the available records suggests that the onset of his mental health problems followed the notification by his colleagues of their intentions to remove him from the partnership. In my opinion therefore it seems likely on balance of probabilities that the work-related issues have materially contributed to the onset of Mr Willis' recent mental health problems"

142. Answer (3) above corresponds to Detriment 2: Removing the claimant from his roles as a Designated Member and Managing Partner (28 November 2019 – 13 December 2019) and our findings of fact can be found at paragraphs (47-87). The claimant described this event to Dr Appleford as "stripping him of his roles". We found it was the members passing a unanimous resolution to reassign the claimant's roles and responsibilities to other members during his sickness absence. While the claimant has accurately reported his removal on the register as a person of significant control, he has not disclosed that he was reinstated 6 weeks after removal. The rest of that paragraph deals with the claimant's report of work-related events which were detriment complaints raised in the second claim which failed and are not part of the admitted unlawful treatment.

143. Answer (1) above corresponds with Detriment 5; Taking steps to expel the claimant from 19 December to 7 January 2020 (see findings of fact paragraphs 102-121). None of the findings of fact we have made support the account the claimant gave to Dr Appleford. In his account to Dr Appleford he puts the past events in this way: "*Mr Willis told me that, on receiving this (27 November) letter "I think I dropped off a cliff". He said that he intended to go back to work. He felt, "The whole of my way of life was being ripped away". He was concerned regarding loss of income. He said that he was "absolutely in shock" because everything had been good until that point and his colleagues had been supportive. He said that he had a good Practice Manager and that there were good systems in place. They were planning to bring in new partners.* ***He had felt well enough to return to work, and he had continued to undertake some of his roles whilst away from work****. Their system had worked well, and nobody had raised any concerns".*

144. The claimant's reaction to the letter on 29 November 2019 more closer in time is more accurately reflected in our findings of fact (paragraph 62). Those findings were inconsistent with the account the claimant gave to the medical expert. We found the claimant did not intend to go back to work which was inconsistent with the account the claimant gave to the medical expert. The claimant had secured his financial position in the most advantageous by 19 December 2019 by refusing to disclose any information about his PHI benefit to the respondents. He failed to disclose the true facts to the medical expert (paragraph 100). The claimant reported that nobody had raised concerns which was untrue and inconsistent with the legitimate concerns raised by the respondents before any of the admitted unlawful conduct (paragraph 29-30). The claimant had reported to the insurer he was not undertaking any of his roles (in any shape or form) during his ill-health absence (paragraph 62) but gives a different account to the medical expert. We have found the claimant is very capable of changing his account depending on the purpose it serves.

Appleford 2

145. In his second report Dr Appleford was asked some questions by the respondent's solicitors who had read the claimant's cancer blogs and were surprised by the conclusion reached that the claimant had not experienced any mental health condition prior to his "Acute Stress Reaction". They provided Dr Appleford with the claimant's cancer blog entries from 29 July 2018-28 October 2019 and

requested that he review them and consider whether it changed any of his opinions and findings in his first report.

146. Dr Appleford confirmed (page 1145 RB) that "Mr Willis' account to me **did not include details suggesting the development of a depressive disorder prior to the work- related issues in November 2019…**. Taken as a whole, it is my opinion on balance of probabilities that the entries suggest the presence of mild and intermittent symptoms but there is insufficient evidence to support the diagnosis of a moderate depressive episode at that time. In my opinion these symptoms are likely on balance of probabilities to represent episodes of **adjustment disorder** which are classified under F43.2 "adjustment disorders".

147. At page 11512RB "If the information in Mr Willis' blog (May 2019) is representative of his mental state at that time then **his statement to me that there had been no mental health problems by this point would not be correct**"

148. The claimant's reporting of his mental health difficulties prior to the admitted acts of discrimination was factually incorrect. If the respondent's representatives had not asked further questions the first report would never have been corrected.

149. In his conclusion at page 1152RB, Dr Appleford recognises that it is for the Employment Tribunal to make the findings of fact about the past events. Having considered the evidence disclosed by the respondents he concludes that "*If the Employment Tribunal accepts that Mr Willis has experienced episodes of adjustment disorder prior to November 2019 then it would be my opinion on balance of probabilities that the events from 27 November 2019 served* ***to exacerbate his*** *symptoms, leading to the development of a moderate depressive episode*".

150. We accept that conclusion and find the claimant did experience episodes of adjustment disorder prior to November 2019 which he did not disclose to Dr Appleford. The claimant's account of past events in relation to the injury to feelings and personal injury and his reporting of his injuries was unreliable.

Appleford 3

151. In his third and final report dated September 2021, the claimant's solicitors asked Dr Appleford some follow up questions in relation to the second claim and events in the period 17 April to 8 March 2021.The respondents are not liable to compensate the claimant for lawful conduct in this period. The third assessment was carried out on 31 August 2021. The claimant provided his account of the legal proceedings and the complaints in that period. That evidence was not relevant to the tribunal deciding the remedy issues in Claim 1.

152. The claimant confirmed that he had not attended the psychological counselling sessions Dr Appleford had recommended in his first report. Dr Appleford had suggested 12-20 sessions of CBT at a cost of £120-£150 for each session

(unlikely to exceed £3000) to treat the symptoms of depression. The claimant confirmed he had decided to wait until the case was concluded.

153. The claimant's solicitors asked Dr Appleford to comment on the extent to which the events during the period 17 April 2020 and 8 March 2021 had exacerbated Mr Willis's existing moderate depressive episode and /or mirrored the same. Dr Appleford's opinion was that:

"*Mr Willis has described continuing depressive symptoms. His account to me is that he has become* ***more depressed*** *since the time of my first assessment. I found him to be depressed on examination, but I would note that his* ***scores*** *on the Beck Depression and Anxiety Inventories whilst in the range associated with moderate depression and anxiety, respectively,* ***had reduced*** *when compared to the scores obtained at my first assessment.*

It is my opinion on balance of probabilities, that Mr Willis remains depressed. Mr Willis has alleged continuing discrimination by his former colleagues. I am aware that ***it will fall to the Employment Tribunal to determine the facts in this case.*** *However, in my opinion and on balance of probabilities, Mr Willis had developed a depressive illness by early 2020.****If the Employment Tribunal accepts Mr Willis's account*** *that these were* ***continuing acts of discrimination*** *during the period from 17 April 2020 to March 2021 then it is my opinion, on balance of probabilities that these have served to maintain and exacerbate his depressive symptoms. Mr Willis' continuing tendency to ruminate on the work-related issues, the* ***ongoing pressures of litigation*** *and his* ***concerns regarding his financial situation*** *are likely on balance of probabilities to have been additional maintaining factors".*

154. The claimant's solicitors also asked questions about the measures that were being taken to treat the claimant's mental health impairment including Cognitive Behavioural Therapy (CBT). Dr Appelford confirmed the antidepressants treatment the claimant was taking. He also confirmed the claimant "*had not engaged in specific psychological therapy to address his depressive disorder such as Cognitive Behavioural Therapy".* Dr Appleford did not say one of the measures the claimant required to treat the symptoms of his depression was full time care from his wife.

155. The answer he gave identifying the claimant's decision not to engage in CBT was important because Dr Appleford's first report (paragraph 21.54) explained the general prognosis for an episode of depression if treated using standard treatment such as antidepressants **and** cognitive behavioural therapy. Around 70 % of patients will recover within a year. Around 20% may remain depressed for 2 years and around 12% 7% and 6% may remain depressed at 5, 10 and 15 years respectively. If the claimant had used CBT as Dr Appleford had suggested in January 2021, he could have expected to a 70% chance of recovering from that episode within a year.

156. The claimant's solicitors ask about the future prognosis and whether the condition could be permanent. Dr Appleford (paragraphs 21.58-21.61 RB page 1100) opinion was that:

"Mr Willis' account and the information contained within the medical records suggests he has been depressed since January 2020. My assessment is that he remains depressed a year to date. It is difficult to predict when Mr Willis will make a recovery from his depression. In his case, it is likely on balance of probabilities that the ***ongoing proceedings and uncertainty regarding his future will serve to prolong his depression****. In short, his recovery maybe dependent upon satisfactory resolution of the proceedings, and upon Mr Willis' ability to make an adjustment to the change in his situation following the conclusion of the proceedings. If he does not return to work and/or if his financial situation is altered as a result, he will need to make emotional and practical adjustments to this.* ***He will also need to resolve his negative feelings regarding the way he perceives that he has been treated****. He is likely to require psychological support such as Cognitive Behavioural Therapy to assist him to do this. Depressive episodes are usually not permanent conditions. But by virtue of having experienced an episode of depression there will be a risk of recurrence".*

157. His opinion on how long the mental health condition would persist (paragraph 21.73) was that:

"*It is likely on balance of probabilities that* ***the ongoing proceedings*** *and uncertainty regarding his future* ***will serve to prolong his depression****. His recovery may be dependent upon satisfactory resolution of the proceedings and upon Mr Wills' ability to make an adjustment to the change in his situation following the conclusion of the proceedings".*

Conclusions

158. For the reasons we have set out above we were not satisfied that any of the injury to feelings or personal injury was attributable to, arose from, or can be apportioned in any way to the unlawful conduct conceded by the respondents in Claim 1. In so far as any injury to feelings or personal injury has been proven we have found the injury was attributable to the respondents' lawful conduct for which the respondents are not liable to pay any compensation to the claimant.

159. For the same reasons all the cost of care, it is claimed was provided to the claimant, as a result, of his personal injury, is not attributable to, did not arise from and cannot be apportioned to the unlawful actions conceded by the respondents in Claim 1. For the same reasons the special damages claimed are also not recoverable. The costs claimed for CBT treatment have not yet been incurred by the claimant because he has decided to wait until the outcome of these proceedings.

160. Two key assertions the claimant has made to support his compensation claim have been found to be untrue. The claimant would *not have returned to work on or around January 2020 and* the claimant did not genuinely believe he had been expelled by the letter dated 27 November 2019. These were false assertions the claimant has made knowing them to be untrue in another attempt to mislead the

tribunal to support his compensation claim. This was unreasonable conduct of these proceedings by the claimant.

Employment Judge Rogerson

_____

Date 16 December 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

21 December 2022

……

FOR EMPLOYMENT TRIBUNALS

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Case No. 1802068/2020
1803135/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Willis**

Respondent 1: **GWB Harthills LLP**
Respondent 2: **Miss Hester Russell**
Respondent:3 **Mrs Elizabeth Lord**

HELD **by CVP** **ON: 3-6 October 2022**
Deliberations 7,10 October and 15 December 2022

BEFORE: **Employment Judge Rogerson**
Members: **Mr W Roberts**
Mrs N Arshad-Mather

REPRESENTATION:

Claimant: **Mr T Cordrey (Counsel)**
Respondents: **Mr A Burns (Kings Counsel)**

RESERVED JUDGMENT

1. In accordance with section 124(2)(b) Equality Act 2010, the Tribunal makes no award of compensation for injury to feelings.
2. In accordance with section 124(6) Equality 2010, the Tribunal makes no award of compensation for personal injury.
3. The compensation claims for special damages and gratuitous care are not well founded and are dismissed.
4. The claim for pecuniary loss (past and future loss of profit share) is withdrawn but is not dismissed.

REASONS

1. The extant remedy issue was whether the claimant a designated member of the 1st Respondent ("the LLP") had suffered any non-pecuniary loss (injury to feelings and personal injury) flowing from the conceded acts of unlawful disability

discrimination committed by the 2nd Respondent ("Mrs Lord") and the 3rdd Respondent "Miss Russell" the designated members and agents of the 1st Respondent held vicariously liable to pay any compensation awarded by the tribunal.

2. The parties had settled liability issues in relation to the first claim lodged on 16 April 2020 (Claim1) based on the concessions made by the respondent in November 2020 admitting the unlawful conduct recorded in the liability judgment made by Employment Judge Maidment on 6 January 2021. While the declaration of unlawful conduct avoided the need for a liability hearing, the parties then agreed Claim 1 compensation issues would be decided after liability had been determined in the claimant's second claim lodged on 7 June 2021. In Claim 2 the claimant made allegations of continuing disability discrimination in the period from 17 April 2020 to 8 March 2021 when he voluntarily retired from the LLP. After a liability hearing lasting 6 days all the complaints were dismissed for the reasons given in the reserved judgment sent to the parties on 3 May 2022 (C2 Judgment pages 1102-1190).

3. The tribunal had found that during the period July 2018 to 8 March 2021 the claimant was on a long-term ill-health absence. Initially his absence was due to his disability (cancer) and from 22 January 2020 it was due to acute stress reaction and then depression. The respondent's treatment of the claimant during his long-term absence before and after the admitted discrimination was found to be lawful. Sandwiched in between the period of lawful conduct were the admitted acts of unlawful disability discrimination which had occurred in late 2019 and early 2020.

4. In Claim 2 the Tribunal had concluded that the claimant was an untruthful witness who had attempted to mislead the tribunal in some material aspects of his case for the reasons given in the C2 judgment. The evidence he gave was largely contradicted and unsupported by the undisputed contemporaneous evidence. During his long- term absence, the claimant was receiving Permanent Health Insurance (PHI) benefit from the insurer (Aviva). He had concealed the truth from Aviva about the work he was doing and about his income from the LLP because it would have affected his PHI benefit. He had also concealed the truth from the respondents about the information he had disclosed Aviva supporting their legitimate concerns that he may be engaging in insurance fraud. He had pursued complaints to obtain relief which were fundamentally contrary to the undisputed facts or would have involved running the LLP in an unreasonable and inappropriate way. His complaint of a failure to make a reasonable adjustment was made on the basis that it would have been reasonable to hold partners meeting at his home when the claimant knew it was impossible for him to meet with Mrs Lord and Miss Russell after they had accused him of insurance fraud, and he would not have allowed or wanted them in his home. The claimant had pursued a detriment complaint alleging it was unfavourable treatment not to allow him to retain his title of 'Managing Partner' as a gesture of good will even though he was not performing the responsibilities of that role because he was unfit to work. The tribunal had dismissed the complaint concluding it would have been a misleading way to run the LLP.

5. Before this hearing the parties knew that the second claim had failed and the reasons why it had failed, and that the tribunal would be assessing Claim 1

compensation with the benefit of its findings in Claim 2. It had been agreed that Claim 2 should be decided before Claim 1 remedy and before the Claim 1 costs' application. If the second claim had succeeded, the tribunal would have assessed compensation for both claims at this hearing. The claimant knew he was expected to provide evidence to prove the injury to feelings and personal injury he relies upon to support his claim for compensation for non-pecuniary loss assessed at £80,000. The parties had been unable to agree to any of the facts before this hearing, leaving the tribunal to find all the relevant facts on the evidence provided on the balance of probabilities.

6. For ease of reference in these reasons the admitted unlawful conduct has been extracted from the liability judgment and rearranged in chronological order. Any highlighted text in these reasons is for our emphasis only.

"1. The Respondent's admit liability to the Claimant under s 45(2) Equality Act 2010 on the following basis:

a) Contrary to s 15 Equality Act 2010, they treated the Claimant unfavourably because of something arising in consequence of the Claimant's disability, namely his sickness absence and the funds he has received under his PHI cover by:

(i) Withholding management and accounting information (November/December 2019)

(ii) Removing the claimant from his roles as a Designated Member and Managing Partner (28 November 2019 – 16 December 2019).

(iii) Removing the claimant on (13 December 2019) as a Person with Significant Control of the First Respondent and reinstating him (22 January 2020).

(iv) Removing the claimant from the First Respondent's management and decisions making processes.

(v) Taking steps to expel him as a member of the First Respondent (19 December 2019- 7 January 2020).

(vi) Excluding him from a partners' meeting scheduled to take place on 24 January 2020 cancelled on 7 January 2020.

b) The treatment was not a proportionate means of achieving the Respondent's legitimate aims of properly managing the First Respondent's business.

c) Contrary to section 19 Equality Act 2010, they had a practice of holding partners meetings at the First Respondent's Rotherham Office, instead of the Claimant's home which put the Claimant at a particular disadvantage and was not a proportionate means of achieving the legitimate aim of properly managing the First Respondent's business.

d) Contrary to section 20 Equality Act 2010 they failed to investigate and make such reasonable adjustments to enable the claimant to work from home, continue with his management roles and/or return to work on a phased basis.

e) The Second and Third Respondent are liable for the discrimination as the agents of the First Respondent which is liable and is treated as having done their acts".

The agreed issues: Compensation

7. The agreed list of remedy issues drafted by counsel was:

"Background

1. By case number 1802068/2020 lodged on 16 April 2020 (Claim 1) the claimant alleged various acts of disability discrimination by R1(the LLP) (R2 Hester Russell) and R3 (Elizabeth Lord) covering the period from 1 October 2018 to 16 April 2020.

2. By a letter dated 24 November 2020 the Respondents' admitted in response to Claim 1 having committed certain acts of disability discrimination against the claimant.

3. On 6 January 2021 Judgment in Claim 1 was made by consent by EJ Maidment setting out the admitted claims and those which were dismissed on withdrawal. References below to 'the unlawful discrimination' are to the unlawful conduct as per that Claim 1 Liability Judgment.

Compensation for personal injury (Sheriff-v-Klyne Tugs (Lowestoft) Ltd (1999) IRLR 481)

4. Did any of the unlawful discrimination cause the claimant's personal injury? If so,
   a. What general damages for pain suffering and loss of amenity should be awarded to the claimant?
   b. What financial losses if any, flow from the personal injury?

Injury to feelings pursuant to EqA 2010 s119(4) and aggravated damages (Armitage Marsden and HM Prison Service -v- Johnson (1997) IRLR 162)

5. What Injury to feelings did the claimant suffer as a result of the unlawful discrimination?
6. Taking into account the relevant Presidential Guidance and uprating for RPI, which Vento band applies and what award should be made?

7. Was the unlawful discrimination: a) done in a high-handed, malicious, insulting, or oppressive way: and/or b) motivated by prejudice animosity spite or vindictiveness, and/or c) was there a failure to apologise or treat the claimant's complaints about his treatment seriously?

8. If so, objectively viewed, was the conduct capable of having aggravated the claimant's sense of injustice and injured the claimant's feelings further.

9. If so what award of aggravated damages, if any, are appropriate?

10. What interest is due on any award?"

Evidence

8. The parties provided 3 remedy bundles (RB total 2595 pages) and 2 costs bundles (CB total 1193 pages) running to 4000 pages of documents which was in our view excessive and unnecessary in relation to a limited number of admitted acts of unlawful conduct over a short period of time. We were provided 3 reports from the Consultant Psychiatrist Dr J K Appelford, dated 12 January 2021 ('Appelford1' RB pages 1031-1119), 23 March 2021 ('Appelford 2' RB pages 1121-1160), and 22 September 2021('Appelford 3" CB 1453-1496 pages). As part of our prereading we read the following witness statements:

   7.1 Claimant's first witness statement signed 20.9.2022 (RB pages 2370-2418).

   7.2 Claimant's supplemental witness statement signed 20.9.2022 (RB pages 2419-2426)

   7.3 Claimant's second witness statement updated signed 20.9.2022 (RB pages 2455-2503)

   7.4 Jennifer Willis' witness statement updated 20.9.2022 (RB pages 2427-2444).

   7.5 Jennifer Willis' supplemental witness updated signed 20.9.2022 (RB pages 2445-2454)

   7.6 Second respondent's updated witness statement signed 20.9.2022 (RB pages 2504-2531)

   7.7 Third Respondent's updated witness statement signed 20.9.2022 (RB 2532-2572)

9. Mr Burns had requested the Tribunal listen to audio recordings of some of the telephone calls made between the claimant and Mr Munday (Senior Claims Adviser, Aviva) and read the undisputed transcript of those recordings admitted in evidence. These recordings were obtained by the claimant in June 2022 following a data subject access request. The agreed transcript of those calls has been prepared by the respondent's solicitors. The claimant relied on the call of 1 April 2019 (transcript at pages CB 998-992). The respondent relied upon the calls of 18 June 2018 (pages CB976-981) and 29 November 2019 (pages CB1005-1007).

10. We listened to all 3 calls and read the transcripts. The call made by the claimant on 29th November 2019 was by far the most significant and relevant call in the timeline of events we were considering. It was a call the claimant had made to Mr Munday which provided a contemporaneous insight into the claimant real thoughts and feelings about the events at work and how he felt about returning to work.

11. Evidence we excluded from our considerations was the recent disclosure of an email the claimant had sent to his insurer in September 2018 which had not previously been disclosed to the respondents. Mr Burns submits this email significantly damages the claimant's credibility undermining the case he had presented at the last hearing when he had viewed the PHI premiums paid by the LLP as his personal expense not a business expense of the firm. It was accepted this email had not been disclosed and there was some dispute as to whether the fault for that lay with the claimant or with his solicitor. Irrespective of fault, Mr Burns wanted the tribunal to consider the contents of the email because it was

damaging to the claimant's credibility. We decided not to attach any weight to this email because it was not relevant to remedy. We were able to assess the claimant's credibility on the evidence relevant to the claimant's compensation claim without considering evidence of emails or calls or messages relating to an earlier period. We spent a lot of time in deliberations considering and assessing a large amount of documentary evidence and took the view it was unnecessary and disproportionate to extend the scope of our enquiries to make findings of fact about this email.

Applicable Law

12. Equality Act 2010(EQA 2010) Remedies: general.

"*Section 124 provides that*

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section120(1)" (here 120 (1) (a) a contravention of Part 5 (work) (section 45 Limited Liability Partnerships applies)

(2) The tribunal may-

(a) Make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate:

(b) Order the respondent to pay compensation to the complainant:

(c) Make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.

(4) Subsection (5) applies if the tribunal

(a) finds that a contravention is established by virtue of section 19, but

(b) is satisfied that the provision criterion or practice was not applied with the intention of discriminating against the complainant.

(5) It must not make an order under section 2(b) unless it first considers whether to act under subsection(2)(a) or(c).

(6) The amount of compensation which may be awarded under subsection 2(b) corresponds to the amount which could be awarded by the county court under section 119.

(7) if a respondent fails without reasonable excuse, to comply with an appropriate recommendation the tribunal may-

(a) if an order was made under subsection (2) (b) increase the amount of compensation to be paid.

(b) if no such order was made, make one.

Section 119 (2) provides that the county court has power to grant any remedy which could be granted by the High Court (a) in proceedings in tort".

13. Equality and Human Rights Commission Code of Practice on Employment 2011 (EHRC)

13.1 Chapter 15 of the EHRC code provides guidance on the remedy provisions of the Equality Act 2010 (paragraphs 15.40-15.54) and in Chapter 11 guidance on the statutory provisions that apply specifically to Limited Liability Partnerships (paragraphs 11.19-11.23:

"15.40: (ss 124(6) and 119) An Employment Tribunal can award a claimant compensation for injury to feelings. An award of compensation may also include personal injury (physical or psychological) caused by the discrimination: aggravated damages which are awarded when the respondent has behaved in a highhanded malicious insulting or oppressive manner.

15.42: Generally, compensation must be directly attributable to the unlawful act. This may be straightforward where the loss is, for example related to an unlawful discriminatory dismissal. However, subsequent losses including personal injury may be difficult to assess.

15.43: A worker who is dismissed for a discriminatory reason is expected to take reasonable steps to mitigate their loss for example by looking for new work or applying for state benefits. Failure to take reasonable steps to mitigate loss may reduce compensation awarded by a tribunal. However, it is for the respondent to show that the claimant did not mitigate their loss.

15.44: (ss 124(4) & (5)). Where an Employment Tribunal makes a finding of indirect discrimination but is satisfied that the provision criterion or practice was not applied with the intention of discriminating against the claimant it must not make an award of compensation unless it first considers whether it would be more appropriate to dispose of the case by providing another remedy such as a declaration or a recommendation. If the tribunal considers that another remedy is not appropriate in the circumstances, it may make an award of damages".

Guidance from Cases: Injury to feelings and Aggravated Damages

14. In **Ministry of Defence and Connock 1994 IRLR 509** the principle established of compensating for injury feelings were confirmed as being tortious to as best as money can do, put the applicant into the position they would have been in but for the unlawful conduct.

15. In **Vento -v- Chief Constable of West Yorkshire Police (No2) (2003) IRLR 102** the Court of Appeal endorsed the following principles to assist Employment Tribunals in assessing non-pecuniary loss in discrimination cases. The relevant

guidance in relation to injury to feelings (paragraphs 50-53) and quantum (paragraphs 65-68) is:

"50. It is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. ….. there is no medium of exchange or market for non-pecuniary losses and their monetary evaluation "… is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable**,** fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution."

51. Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury. In these circumstances an appellate body is not be entitled to interfere with the assessment of the Employment Tribunal simply because it would have awarded more or less than the tribunal has done. It has to be established that the tribunal has acted on a wrong principle of law or has misapprehended the facts or made a wholly erroneous estimate of the loss suffered. Striking the right balance between awarding too much and too little is obviously not easy.

53. In *HM Prison Service -v- Johnson* Smith J reviewed the authorities on compensation for non-pecuniary loss and made a valuable summary of the general principles gathered from them. We would gratefully adopt that summary. Employment Tribunals should have it in mind when carrying out this challenging exercise. In her judgment on behalf of the Appeal Tribunal Smith J said at p. 283B

    (i) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.
    (ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use the phrase of Sir Thomas Bingham MR, be seen as the way to "untaxed riches".
    (iii) Awards should bear some broad general similarity to the range of

awards in personal injury cases. We do not think that this should be done by reference to any particular type of personal injury award, rather to the whole range of such awards.

(iv) In exercising that discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.

(v) Finally, tribunals should bear in mind Sir Thomas Bingham's reference for the need for public respect for the level of awards made.

Guidance

65. Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

(i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

(ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.

(iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

66. There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.

67. The decision whether or not to award aggravated damages and, if so, in what amount must depend on the particular circumstances of the discrimination and on the way in which the complaint of discrimination has been handled.

68. Common sense requires that regard should also be had to the overall magnitude of the sum total of the awards of compensation for non-pecuniary loss made under the various headings of injury to feelings, psychiatric damage and aggravated damage. In particular, double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage. The extent of overlap will depend on the facts of each particular case".

16. It is agreed that the updated (applicable) "Presidential Guidance on Employment Tribunals Awards for Injury to Feelings and Psychiatric Injury (third addendum

dated 27 March 2020) in respect of claims presented on or after 6 April 2020, sets the Vento bands at:

(i.) A lower band of £900 to £9,000 (less serious cases).
(ii.) A middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band
(iii.) An upper band of £27,000 to £45,000(the most serious cases), with the most exceptional cases capable of exceeding £45,000.

Aggravated Damages

17. In **Police Commissioner Metropolis-v- Shaw (2012 IRLR 299)** the Court of Appeal provided more detailed guidance on aggravated damages:

"22. The circumstances attracting an award of aggravated damages fall into the three categories:

The manner in which the wrong was committed.

(a) The basic concept here is of course that the distress caused by **an act of discrimination may be made worse by it being done in an exceptionally upsetting way**. In this context the phrase "high-handed, malicious, insulting or oppressive" is often referred to. An award can be made in the case of any exceptional (or contumelious) conduct which has the effect of seriously increasing the claimant's distress.

Motive.

(b) Discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. That will, however, only of course be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate the injury **There is thus in practice a considerable overlap with head (a).**

Subsequent conduct.

(c) The practice of awarding aggravated damages for conduct **subsequent** to the actual act complained of originated, again, in the law of defamation, to cover cases where the defendant conducted his case at trial in an unnecessarily offensive manner. A failure to apologise may also come into this category; but whether it is in fact a significantly aggravating feature will depend on the circumstances of the particular case. This basis of awarding aggravated damages is rather different from the other two in as much as it involves reliance on conduct by the defendant other than the acts complained of themselves or the behaviour immediately associated with them**.** A purist might object that subsequent acts of this kind should be treated as distinct wrongs, but the law has taken a more pragmatic approach. However, tribunals should be aware of the risks of awarding compensation in respect of **conduct which has not been properly proved or examined in evidence**, and of allowing the scope of the hearing to be disproportionately extended by considering distinct allegations of subsequent misconduct only on the basis that they are said to be relevant to a claim for aggravated damages.

How to fix the amount of aggravated damages.

23. As Mummery LJ said in *Vento v Chief Constable of West Yorkshire Police (no. 2) [2003] ICR 318* , at paras. 50-51 (pp. 331–2), "translating hurt feelings into hard currency is bound to be an artificial exercise". Quoting from a decision of the Supreme Court of Canada, he said: "The award must be fair and reasonable, fairness being gauged by earlier decisions;

but the award must also of necessity be arbitrary or conventional." Since, there is no sure measure for assessing injury to feelings, choosing the "right" figure within that range cannot be a nicely calibrated exercise. Those observations apply equally to the assessment of aggravated damages – inevitably so since, as we have sought to show, they are simply a particular aspect of the compensation awarded for injury to feelings; but the artificiality of the exercise is further increased by the difficulty, both conceptual and evidential, of distinguishing between the injury caused by the discriminatory act itself and the injury attributable to the aggravating elements. Because of that artificiality, the dividing line between the award for injury to feelings on the one hand and the award of aggravated damages on the other will always be very blurred, and tribunals must beware of the risk of unwittingly compensating claimants under both heads for what is in fact the same loss. The risk of double-counting of this kind was emphasised by Mummery LJ in Vento; but the fact that his warning is not always heeded is illustrated by Fletcher (above). The ultimate question must be not so much whether the respective awards considered in isolation are acceptable but whether the overall award is proportionate to the totality of the suffering caused to the claimant.

Relationship between the seriousness of the conduct and the seriousness of the injury.

24. It is natural for a tribunal, faced with the difficulty of assessing the additional injury specifically attributable to the aggravating conduct, to focus instead on the quality of that conduct, which is inherently easier to assess. This approach is not necessarily illegitimate: as a matter of broad common sense, the more heinous the conduct the greater the impact is likely to have been on the claimant's feelings. Nevertheless, it should be applied with caution, because a focus on the respondent's conduct can too easily lead a tribunal into fixing compensation by reference to what it thinks is appropriate by way of punishment or in order to give vent to its indignation. Tribunals should always bear in mind that the ultimate question is "**what additional distress was caused to this particular claimant, in the particular circumstances of this case, by the aggravating feature(s) in question?",** even if in practice the approach to fixing compensation for that distress has to be to some extent "arbitrary or conventional".

28. ……"It would be a healthy reminder of the real nature of aggravated damages if any such awards were in future formulated as a sub-heading of "injury to feelings" – i.e. "injury to feelings in the sum of £X, incorporating aggravated damages in the sum of £Y" – rather than as a wholly distinct head: this may reduce the risk of the tribunal being seduced into introducing a punitive element by the back door. More generally, tribunals should pay careful attention to the principles which we have endeavoured to set out above. Ultimately the most important thing is that they identify the main considerations which have led them to make the overall award for injury to feelings, specifying any aggravating or mitigating features to which they attach particular weight. As long as this is done, they should not lose sleep over exactly where the dividing line falls between the award for ("ordinary") injury to feelings and the award of aggravated damages (and the award for psychiatric injury where one is made). What matters is whether the total award for non-pecuniary loss is fair and proportionate".

18. Finally, in this section, Mr Cordrey has helpfully referred to the unreported case of **HM Land Registry -v- McGlue** (UKEAT/0435/11) decided in 2013 by the then President of the EAT, Mr Justice Langstaff. In a case of indirect sex discrimination, the EAT upheld an injury to feelings of £12,000 but did not uphold the £5,000 awarded for aggravated damages which it held was made on an insufficient basis. Helpful guidance was provided at paragraphs 26 and 35 about the correct approach to fact finding in relation to injury to feelings and aggravated damages further explaining the 3 categories of conduct identified above in Shaw at paragraph 22:

*"26 We must recognise that the Tribunal here had an opportunity which we do not have on review as an Appellate Court: it **saw and heard** the claimant. In any case involving injury to feelings, **the Tribunal using its experience***

must assess the effect upon the individual. *That involves* ***understanding and evaluating*** *what* ***truly*** *is the* ***subjective effect*** *of what objectively is discrimination. It means a considerable margin must be recognised around any award which is made.*

35. A Tribunal in examining whether there is a case for aggravated damages, has to look first whether ***objectively viewed the conduct is capable of being aggravating****, that is aggravating the sense of injustice which the individual feels and injuring their feelings still further. The three categories set out by Ms Wheeler all give examples rather than an exhaustive list of the behaviour which will qualify under each head. We note however that* ***the emphasis is one of degree****. Thus under (a) the word* ***exceptionally is used to qualify the word "upsetting".*** *The expression "****highhanded" and "insulting" occurs, in the general phrase involving four words all of which characterise the phrase including "malicious" and "oppressive****". Aggravated damages certainly have a place and role to fill, but a Tribunal should also be aware and be cautious not to award under the heading "Injury to Feelings" damages for the self-same conduct as it then compensates under the heading "Aggravated Damages". It must be recognised that aggravated damages are not punitive and therefore do not depend on any sense of outrage by a Tribunal as to the conduct which has occurred".*

Personal Injury

19. The summary of the law provided by Mr Cordrey was agreed. Compensation for personal injuries resulting from unlawful discrimination lies within the jurisdiction of the Employment Tribunal (per Stuart-Smith LJ in Sheriff -v- Klyne Tugs (Lowestoft) Ltd (1999) ICR 1170). So long as there is a direct causal link between the unlawful discrimination and the loss suffered the Tribunal may make an award of compensation for the losses flowing from an injury including an award of general damages for pain suffering and loss of amenity (per Pill LJ in Essa-v Laing Ltd (2004) ICR 746).

20. Once a causal link is determined the principles on which to award general damages for pain and suffering and loss of amenity are to be applied by the Tribunal which must have regard to the relevant Judicial College Guidelines 15 Edition Psychiatric and psychological damage is dealt with in Chapter 4 of which Section (a) sets out the general approach to valuing claims for psychiatric damage generally.

21. Both Counsel referred the Tribunal to the case of **BAE Systems (Operations) Ltd v Konczak (2017 EWCA Civ. 1188)** in which the Court of Appeal considered how Employment Tribunal's should approach the divisibility of injury and the apportionment of causative responsibility for injury where part of the illness may be due to the employers wrong, and a part is due to other causes for which the employer is not liable to pay compensation:

"An injury was single and indivisible where there was simply no rational basis for an objective apportionment of causative responsibility for the injury; that an ***employment tribunal had to try to identify a rational basis on which the harm suffered could be apportioned between a part caused by the employer's wrong and a part that was not so caused,*** *that exercise being concerned not*

with the divisibility of the causative contribution but with the divisibility of the harm; that, in the case of psychiatric injury, where a claimant suddenly tipped over from being under stress into being ill, the tribunal should seek to find a rational basis for distinguishing between a part of the illness due to the employer's wrong and a part due to other causes; that, if there was no such basis, the injury would be truly indivisible, and the claimant was required to be compensated for the whole of the injury, though, importantly, if the claimant had a vulnerable personality, a discount might be required to take account of the chance that the claimant would have succumbed to a stress-related disorder in any event; that it would often be appropriate to look closely, particularly in a case where psychiatric injury proved indivisible, to establish whether the pre-existing state might not nevertheless demonstrate a high degree of vulnerability to, and the probability of, future injury; that the employment tribunal had been entitled to conclude, on the evidence, that it was only after the comment was made that the claimant developed a diagnosable mental illness, and, while in such a case where there was vulnerability".

Findings of Fact

22. Throughout the claimant's long-term absence from July 2018 to 8 March 2021 he was unfit to perform any work whether as a criminal solicitor or designated member and managing partner with delegated day-to-day responsibility for running the firm and its finances or to perform the regulatory and statutory functions for the LLP to provide legal services to the public. For the period we were considering the relevant fit notes confirming the claimant was totally unfit for work were:

    a. Dated 18 October 2019: diagnosis: carcinoma metastatic: duration: 1 October 2019 – 2 December 2019.
    b. Dated 3 December 2019: diagnosis: carcinoma metastatic: duration: 2 December 2019 – 20 January 20120.
    c. Dated 22 January 2019: diagnosis: acute stress reaction: carcinoma: duration: 22 January -22 March 2020.
    d. Dated 23 March 2019: diagnosis: depressive disorder: duration: 22 March 2020-22 June 2020.

23. The admitted discrimination arising from disability had started in November 2019 and stopped on 7 January 2020 following the claimant's solicitors' intervention. The complaints of discriminated were taken seriously and corrective action was taken. The respondents appointed new solicitors in October 2020 and shorty after disclosure they conceded liability for the limited admitted unlawful conduct. By December 2020 the liability terms were settled in relation to 6 acts of unfavourable treatment arising from disability, indirect disability discrimination and a failure to make reasonable adjustments.

24. It is agreed that from 9/10/18 until 3/4/21, the claimant received PHI benefit payments from Aviva in the total sum of £214,216.82. From late November 2019 he received monthly payments of £6,948.90 which increased to £7,295.35 per month in September 2020. Payments continued to be made until April 2021 when the PHI benefit claim was suspended pending an investigation to the claim. The claimant knew when he presented his claim for compensation for non-pecuniary loss that his full profit share for the years 2018/2019 and 2019/2020 had been allocated into his current account without any deductions for the PHI payments

he had received in those financial years. He also knew that the LLP agreement provides that when a designated member leaves the LLP, they become an outgoing member of the firm and a creditor of the LLP in relation to any undrawn balance of profit share, capital, and interest on capital. After the claimant retired on 8 March 2021 the LLP accountant prepared the final accounts which enabled the claimant to be repaid his capital and interest. As at 31/3/21 based on the profit share forecasts there was a sum of £336,731 to be paid to the claimant if there was no deduction made for the PHI payments which is part of the ongoing dispute between the parties and the reason why the final accounts have not been approved.

25. Until October 2019, the claimant had agreed with the respondents that he could not have the PHI benefit (paid to compensate him for lost income) and profit costs (continuing income) from the firm. After October 2019, the claimant changed his mind and decided he could have both without any deductions of his PHI benefit. He told the respondents that Aviva agreed with his interpretation of the policy until PHI benefit was suspended on 3 April 2021. There has since then been an ongoing investigation by Aviva however the only documentary evidence the claimant has voluntarily disclosed and admitted into evidence is the audio recordings of the telephone calls made between the claimant and the claims adviser, Mr Munday following his Data Subject Access Request (DSAR) made in June 2022.

26. Witness statements had been amended and updated in September 2022. We read all the statements and heard evidence from the claimant. The Tribunal were considering all the evidence it saw and heard to understand and evaluating what the **true** subjective effect of the conceded unlawful conduct was and whether objectively viewed there were any aggravating features of the unlawful conduct to answer the question "*what additional distress was caused to this particular claimant, in the particular circumstances of this case, by the aggravating feature(s) in question?"*

27. Mr Burns invites the Tribunal to carefully examine the evidence having found the claimant has proved himself to be an unreliable historian because his account is often unsupported by the unchallenged more reliable contemporaneous documentary evidence. The claimant has been found to be untruthful and has given misleading evidence unsupported by the contemporaneous evidence and has concealed the truth. The claimant has asserted that but for admitted discrimination he would have returned to work in January 2020 which is untrue and is not supported by the transcript of the call made to Mr Munday on 29 November 2019. He tells the tribunal he believes he had been expelled from the firm when he received the letter dated 27 November 2019 when he knows that was not true. These assertions are made to support a claim for a substantial award of compensation from the tribunal and should be carefully considered.

28. Mr Cordrey invites the Tribunal to accept the evidence given by the claimant and his wife about the effects of the admitted discrimination. He invited the Tribunal to focus *on the way in which the admitted discrimination took place* to consider whether it was done in a high handed and malicious way. In relation to the personal injury claim, Mr Cordrey suggests the focus should be on the evidence

of the joint medical expert Dr Appleford. In order to prove the conduct was high handed and malicious the claimant relies upon the 'cruel' WhatsApp messages exchanged between Mrs Lord and Miss Russell "as well as the '*inherent'* vindictiveness of their admitted conduct" A key finding of fact he invited the Tribunal to make to support the seriousness of the injury claimed is that "*but for the Claim 1 discrimination, the claimant* ***would have*** *returned to work on or around January 2020"* (paragraph 32 claimant's written submissions). His suggested approach to our fact finding was that "*since the injury to feelings test is largely subjective, and the aggravated damages test involves an objective assessment, it is necessary for the Tribunal to reach findings of fact about nature of the admitted discrimination and its gravity, as well as its effects on C's feelings.*

Relationship between the claimant Mrs Lord and Miss Russell before the admitted acts of discrimination

29. On 16 October 2019, the last partners meeting before the admitted unlawful conduct, there was a common understanding between the partners about how the PHI benefit payments the claimant received would be treated by the LLP. It had been agreed that the claimant could not have PHI and profit share from the firm. The detailed findings of fact about that dispute are deal with in the Claim 2 judgment (C2 judgment) at paragraphs 95 -116 (pages 1140-1146). The claimant has confirmed that he understands how insurance works and that PHI benefit was a form of insurance to replace income while the insured person is in incapable of working due to illness or injury. Insurance provides cover for something you are not otherwise getting. The claimant agreed that if he was expecting to be paid by the LLP during his illness there would be no point in having an insurance policy. The claimant had accepted that the insured person was being paid normally during the period of incapacity, the insurance would not pay the benefit because there was no loss to cover. After this partners' meeting the claimant decided he could have both. When Mrs Lord and Miss Russell raised concerns that the claimant was acting in bad faith and engaging in insurance fraud. The claimant acknowledged those were their genuine concerns at the time in the emails exchanged immediately after the partner's meeting and before any of the admitted unlawful conduct. In response to Mrs Lord and Miss Russell directly raising those concerns with the claimant he accused them of 'catastrophising' the situation and was dismissive and annoyed that they would not agree with what he intended to do (RB page 549).

30. Mrs Lord and Miss Russell were genuinely and legitimately concerned that they could be implicated in insurance fraud and felt personally and professionally compromised by the claimant's change of position and his unwillingness to reconsider his position. Just a few weeks later they reported the claimant to the SRA on the grounds he was engaging in fraudulent behaviour (paragraph 82 claimant's witness statement). At this time, the respondents had suspected, and we later found, the claimant was not at this time being transparent with the insurer or with the respondents (C2 judgment paragraph 125).

31. On 18 October 2019, 2 days after that partners' meeting the claimant provided another fit note which confirmed his cancer related absence was continuing and that he remained unfit to work until 2 December 2019.

32. On 19 October 2019, Miss Russell sent an email to the claimant in which she "*very gently*" requested the claimant reconsider his position on his PHI benefit and revert to the previously agreed position. The claimant refused to reconsider his position leaving Mrs Lord and Miss Russell with no other option but to take steps to protect themselves and the firm.

Mrs Lord and Miss Russell's report to SRA about the claimant made on 15 November 2019

33. During the claimant's ill-health absence, the claimant had never given, and Mrs Lord or Miss Russell had never requested access to the LLP's bank account. The claimant had always insisted he remain the Managing Partner and he would control the finances of the firm during his absence with the assistance of the practice manager.

34. On 5 November 2019, Mrs Lord accessed the LLP's bank account and statements discovering that the claimant had been reimbursing himself 'work related' business expenses. As a result of the business expenses and the suspected insurance fraud Mrs Lord and Miss Russell jointly reported the claimant to the Solicitors Regulatory Authority (SRA) for suspected financial misconduct.

35. The referral to the SRA was made on 15 November 2019 (RB page 652-653). It summarised the events leading to the report and provided the documentary evidence that was available to the respondents at that time to support the referral. It explained why the respondents were not satisfied with the claimant's assurances:

> **"***It took things no further as* ***it did not say that mike could work****. I do not know what has been said to mike's insurer, but* ***it seems inconceivable that they would pay him insurance for incapacity whilst at the same time allowing him to work***".
>
> **"***Up until this point we trusted Mike Willis and did not feel that it was necessary to scrutinise bank accounts ourselves. It seems clear that Mike Willis has been claiming expenses from business that cannot possibly be associated with business expenses since he is not working".*

36. Mr Jones (the non-designated member) had informed the claimant about the SRA referral. This had been one of the detriment complaints made in Claim 1 which had been withdrawn and dismissed in the liability judgment. The claimant had seen the SRA referral and the ET3 response and knew why the referral had been made (paragraph 10 page 44). When he gave his account at this hearing, he knew the tribunal had already found that the respondents had been legitimately concerned that he may be engaged in insurance fraud. For the avoidance of any doubt this is not one of the admitted acts of disability discrimination for which the

respondent is liable to pay the claimant compensation for any injury caused by the referral, but the claimant has given evidence about this to support his compensation claim.

37. The claimant was very upset and angry about the SRA referral which he asserts was made "*entirely in bad faith motivated by malice greed and spite*". In his account he has referred to clause 9.5 of the LLP agreement which allows designated members to claim reimbursement of expenses. He expected Mrs Lord and Miss Russell would as solicitors *"be more than capable of understanding*" the terms of LLP agreement. He says this clause authorised him to reimburse his motoring expenses under this clause "*as agreed from time to time"*. He does not explain how the respondents knew he had made the reimbursement when they did not have access to the account or the bank statements until November 2019.

38. We agreed that for a solicitor to refer another solicitor to the SRA is a very serious step to take. If it was done in bad faith, it would be a very serious misconduct. The claimant's assertions were not supported by the findings of fact made by that the respondents were legitimately concerned that the claimant was engaging in insurance fraud. They had attempted to raise those concerns directly with the claimant they had pleaded with him to reconsider but he refused. Those were the circumstances in which Mrs Lord and Miss Russell jointly made the SRA referral on 15 November 2019. The SRA referral was made in good faith based on legitimate concerns of suspected financial misconduct. They were not motivated by malice greed or spite but by their professional obligation to report their legitimate concerns.

39. Although the referral was not an admitted act of disability discrimination, the claimant's solicitors asked the medical expert Dr Appleford to consider the effect the SRA referral had on the claimant's mental ill health. The question in "Appleford 1" was put in the following way (RB page 1095):

"Do you believe that there is a link between the report to the SRA by Mesdames Russell and Lord in which they accused Mr Willis of fraudulent behaviour (he has now been fully exonerated of this)?

40. Dr Appleford confirmed that he was 'largely reliant' on the claimant's account given at the assessment interviews in December 2020 after the SRA outcome had exonerated the claimant in October 2020 and after liability had been conceded by the respondents in November 2020. (RB page1096):

"Mr Willis told me that his colleagues later made a complaint to the SRA that he was fraudulently claiming insurance. He said that they never told him this. He said that they also said that he was claiming motor expenses as business expenses. He told me that he felt that this was "hurtful", and he said that these were "groundless allegations" of fraud and dishonesty. He said that this led to an eleven-month investigation which "totally and utterly exonerated me ". He said the SRA never even spoke to him. He told me that he found out at Christmas 2019 that rumours were being spread about financial irregularity. He said that there had been comments to the effect that colleagues had "no salary increase

because Mike's taken the money ***". He experienced anxiety which he described as "constant feeling of worry about the future and the way things have happened around me. He mentioned that he was accused of "criminal dishonesty to my own professional body" and that was "*absolutely devastating*". This felt "hurtful and upsetting".***

41. As a solicitor in practice for more than 30 years the referral to the SRA was a very serious matter and potentially very damaging to him professionally and personally. The subsequent investigation took almost a year leaving the claimant with serious allegations of financial misconduct hanging over him would have been an extremely worrying time. The claimant had understood that Mrs Lord and Miss Russell were accusing him of criminal dishonesty to his own professional body. We accept it would have been "absolutely devastating, hurtful and upsetting" for him. We accept the hurt feelings he experienced at the time tipped him over from injured feelings to personal injury damaging his mental health. The medical expert described the anxiety the claimant suffered as "a *constant feeling of worry about the future and the way things have happened around him*". We accepted the evidence accurately reflects how the claimant was feeling about the SRA referral which he describes sent his mental health 'spiralling down'.

42. At the same time as the claimant's solicitors were asking questions of the medical experts the claimant had been asking questions about his PHI claim. In December 2020 he asked Mr Munday to confirm the medical reason why the insurer considered the claimant was incapable of working which supported his PHI claim. Mr Munday confirmed that from the fit notes and the regular health updates provided he had understood the claimant was "*totally unable to work since July 2018 as a result of bowel cancer, complications from his illness and from treatment/surgery and more recently mental health difficulties as a result of his diagnosis, the complications and treatment*".

43. It was clear from that answer that the mental health difficulties the claimant was describing in his evidence to the tribunal was described differently to the insurer in the regular contemporaneous updates he provided. He told his insurer all his mental health difficulties were attributable to his cancer not to any of the admitted unlawful conduct or the lawful conduct of the SRA referral relied upon at this hearing to support his compensation claim.

Detriment 1: Withholding management and accounting information relating to the first respondent in November 2019

44. On 19 November 2019, following a Legal Aid Authority Audit, the LLP received notices of a failed inspection in breach of the legal aid contract. The failures identified by the LLP included not fulfilling its duty solicitor slots allocated to the claimant and a failed peer review. The notices gave the LLP a period of 6 months to correct the failures.

45. Under the heading "withholding management and accounting information" (paragraph 134) the claimant says his feelings were injured because he was not provided with the notices when they were issued which were "necessary" for him

to carry out his roles and responsibilities as a designated partner of the LLP. He says:

"In late 2019- early 2020 the LLP failed a LAA peer review and received three LAA contract notices. The respondent did not provide me with this important information or any of the key documents until their former legal representatives disclosed documents on 7 October 2020. This is despite the fact I was a ***full equity member*** **of the LLP** *and the failure of the peer review and contract notices could have been catastrophic for the LLP and me personally. The* ***withholding of this important*** *information* ***caused me distress and concern about the management of the LLP and the future of both myself and the LLP"***

46. The claimant did not see the notices that were issued to the LLP on 19 November 2019 until 7 October 2020 and could not have suffered any injury in November 2019 when the unlawful conduct occurred. The claimant saw the notices nearly a year after they were issued and knew the legal aid contract had continued and there had been no catastrophic consequences for the LLP or for him personally. Despite those known facts the claimant has describes injured feelings of distress and concern to support his compensation claim which are not supported by the evidence.

Detriment 2: Removing the claimant from his roles as a Designated Member and Managing Partner (28 November 2019 – 13 December 2019)

47. On 28 October 2019, having sought legal advice about the suspected insurance fraud, Mrs Lord and Miss Russell exchanged WhatsApp Messages in a private group chat which did not include the claimant (RB page 759). The messages state:

"I think we ***arrange a meeting*** *of Des partners at which* ***we agree by majority not to let mike work without a fit note,*** *that we take back COLP, COFA, MLRO, GDPR, complaints etc and* ***we agree tell him have taken advice*** *and he is not entitled to profit share as discussed. I'll draft an agenda and* ***we'll do it by the letter****. We might not be able to get him out, but* ***we can strip him of all power****" "in fact I can see no reason why we cannot strip him of managing partner title either. That is by* ***simple majority****".*

48. Although the claimant did not see these WhatsApp messages until the disclosure process in October 2020, he refers and relies upon them in his witness statement as an aggravating feature of the unlawful conduct to support his claim that he suffered additional distress which increasing his hurt feelings. Under the section in his statement headed "Attempts to expel me" (paragraphs 119-133) he identifies this message as the beginning of the 'expulsion process' in paragraph 119 in which he says:

"*In a discussion about me, the respondent states: "We might not be able to get him out, but we can strip him of all power" Then continues "in fact I can see no reason why we cannot strip him of managing partner title either".*

49. The claimant's account selected parts of the message which do not accurately reflect the full meaning. Mrs Lord and Miss Russell had legitimate concerns the claimant was involved in fraud they had told the claimant they were going to take legal advice and they intended to protect themselves and the firm by ensuring they were doing things properly (by the letter) going forward. They intended to arrange a partners' meeting and had decided that by a simple majority they would agree not to let the claimant work without a fit note. If at that meeting the claimant's absence was continuing, they intended to reassign the claimant's roles and responsibilities as the designated member and managing partner accepting, they had no power to remove him from the firm.

50. Mrs Lord and Miss Russell accepted they should have taken over the claimant's roles and responsibilities earlier. They had delayed because they felt manipulated into agreeing with the claimant that he could continue to hold those roles during his absence because of his position within the firm and because they were trying to be supportive. However, when they realised, they could be implicated in insurance fraud if they allowed him to do any work without a fit note, they took action to protect themselves and the firm.

51. Mrs Lord and Miss Russell expressed regret at some of the language they have used in these private messages they sent to each other at a time of partnership dispute. They admit they felt frustrated and stressed and never expected or intended the claimant to see those messages. They did intend the claimant to see the letter they sent dated 27 November 2019 which states:

"*Dear Mike*

We refer to the Limited Liability Partnership Agreement for GWB Harthills LLP made in 2015 (the LLP agreement). Whilst the agreement was never signed, it was attached as schedule 6 to the merger agreement forming the LLP and its terms have been agreed to by all the members and you yourself have positively asserted that its terms have been acted upon as binding between us. It therefore governs our relationship.

We hereby give notice under clause 13 of the LLP agreement to convene a meeting of Members on the 6th December 2019 at 2pm at the Rotherham Office ***to discuss whether you are physically and/or mentally unfit to carry on your duties and obligations as a Member under the LLP Agreement.***

Whilst you are entitled to attend the meeting and make representations to the Members, we do not consider that on a proper construction of the LLP Agreement you are entitled to vote on the matter as it directly concerns you.

Yours sincerely,

Hester Russell and Elizabeth Lord"

52. The claimant agrees he was expecting a partners' meeting to be arranged after the October 2019 meeting to discuss his fitness to work and to update him on

any management matters that had occurred since the last meeting. He was not expecting it to be arranged formally by letter served by a process server known to the claimant. The claimant describes this as an aggravating feature of the unlawful conduct. He says it caused additional hurt feelings because it was 'humiliating' for him because the process server suggested "*it would not be good news*" which he understood to mean that the respondents had discussed the contents of the letter with the process server.

53. Mrs Lord explained a process server was used following legal advice to ensure a proper process was followed to manage the absence. The suggested motive that she had shared the content of the letter with the process server to humiliate the claimant had never been put to her and was unsupported by any other evidence.

54. The claimant as an experienced lawyer knows process servers are often used when parties are in dispute to ensure effective service of notice of meetings or court proceedings. From October 2019, he knew Mrs Lord and Miss Russell suspected he was acting in bad faith/fraudulently in relation to his sickness and PHI claim and he was involved in a partnership dispute with his partners who had taken legal advice. Those were the material circumstances the claimant knew about before he received the letter from the process server inviting him to a partners' meeting. He knew from the letter the meeting would consider whether he should be deemed unfit to carry out his duties as a designated member. We do not accept the claimant's account implying Mrs Lord and Miss Russell had shared the contents of the letter with the process server which was never put to them and was very unlikely. They used a process server to ensure effective service of the notice of a partners' meeting. They did not share the contents of the letter with the process server to humiliate the claimant. On the balance of probabilities, we find the claimant did not suffer any humiliation or additional distress.

<u>Was the Claimant intending to return to work before the admitted discrimination?</u>

55. In the claimant's witness statement signed on 25 September 2022, the contents were sworn to be the truth and make the repeated assertion that in November 2019, the claimant felt well enough to and would have returned to work in January 2020, but for the admitted discrimination:

> "*On 27 November 2019, two days after I notified the Respondents' of my intention to return to work (please see page 553) I was informed that the second and third respondents* ***intended to vote on whether I should be expelled*** *from the first respondent because I was mentally and /or physically unfit to carry out my duties and obligations as a member of the First Respondent (please refer to pages 660-661 of the bundle)".* He continues ***"I fully intended to return to work early in the New Year*** *(following my routine '3' month post operation scan) and* ***my medical records support the fact that I would have been fit to return to work had it not been for the respondent's attempts to expel me and the significant damage this caused to my mental health****. I had* ***anticipated that a partners meeting would be arranged*** *so that the Respondents could update me on management matters and for us to discuss my planned return to work (this would have taken place as usual at my home at a time that suited all parties).*

56. Page 553 is the supporting evidence the claimant refers to which is the email he sent to his partners on 25 November 2019 stating:

"I hope to have my drain removed soon and my infection is reducing so we could meet later next week. ***I have every intention of returning when it is appropriate.***

I see that the draft accounts for 2018-2019 have been put on hold. I do not understand the reason why as they will only be draft and at this stage, they do not have to identify individual breakdown-the overall performance of the firm and the Net Profit would be the starting point and we already have a baseline figure. Do I have your agreement to request Sarah let us have that? We also need to lodge accounts professionally, so they are needed.

The partnership agreement needs clarifying. Finally, for the record- if any of my partners found themselves in my situation of having a life changing illness, and I dearly hope that will never be the case, then, I would wish they share to the fullest extent to any partnership monies-it would never have entered my mind to do otherwise as I regard this as a key element of being a supportive partnership".

57. The email did not state the claimant was well enough to or planned to return to work in January 2020. It confirms there was ongoing uncertainty about any return to work. It confirms the claimant was continuing to be involved in the financial management of the firm. The claimant continues to express his disappointment and frustration with Mrs Lord and Miss Russell's decision not to support him having both PHI benefit and share "to the fullest extent" any partnership monies during his sickness absence.

58. The claimant's account of the injury to feelings caused by the letter is set out at paragraph 131 of his witness statement:

"The first and second respondent had not had the decency to ask me how my health was or to ***notify me that they were considering my fitness to carry out my duties****. As I have mentioned above* ***at the time my mental and physical health <u>were improving</u> as my blog entry 13 November 2019*** *illustrated referring to me having walked 3KM that day and "keeping mentally active". In these circumstances* ***I found the suggestion that I was mentally or physically unfit to perform my role to be highly offensive and unprofessional****. It was also very distressing coming out of the blue as it did"*

59. The claimant suggests his email to the partners and the blog message he posted confirm his fitness to work even though they completely contradict the fit notes provide by his GP declaring he had been and continued to be physically unfit to perform any work.

60. Mrs Willis refers to the impact of the letter of 27 November 2019 in her witness statement. At paragraph 8 she describes it in this way "*to put the shock and distress into perspective, it eclipsed the upset we felt when the claimant first received his cancer diagnosis".* At paragraph 11 she says "*the claimant's mental health went further downhill when he discovered the respondents had reported him to the SRA and alleged, he had engaged in fraudulent activity. This was a very cruel blow for him which took an immediate toll on his mental health. It was incredibly shocking to see and deeply upsetting for me and our children. The claimant is a highly respected man within his family and working community. The claimant felt incredibly humiliated by these unfounded allegations of dishonesty which he was later fully exonerated by the SRA"*

61. On 29 November 2019, the day after the claimant (MW) received the 27 November 2019 letter which the claimant has repeatedly treated as his 'expulsion' from the firm, he made an unscheduled telephone call to Mr Munday (MM). We have set out in full the relevant parts of the agreed transcript to accurately record this evidence before making our findings of fact (CB pages 1005 -1009).

Page 1004:

MW: Sorry we weren't due to speak until I think January. But there's queries that I wish to just run past you if I may.
MM: Yeah. By all means. Carry on.
MW: Obviously, I've been off work for some few months, and I had my operation four weeks ago, which was successful but unfortunately, I had an infection and was then back in hospital and still have a drain coming out of my chest and various bits and bobs. But there is **talk at work that they are going to ask me to leave.**
MM: Okay.
MW: Because you know, I can't do my job.
MM**:** Yes.
MW: And I just- I didn't know and I couldn't see the answer in the policy document, what would happen to my insurance if effectively work were to get rid of me if you like?
MM: We are- the policies are designed to look at generic duties. So, **we're not looking at who your employer is, or the availability of work, it is whether you can do the duties of your occupation.**
MW: Yeah.
MM: Is it--you know we're just looking at can you do the job, it doesn't matter where it is or who it's for, it's your ability to do the role.
MW: Basically**, the suggestion is that I'm physically or mentally unfit to carry out my duties and obligations as a member under the agreement i.e. being the managing partner.**
MM: Yes.
MW Obviously, no decisions have been made yet, but this has been flagged up to me. I'm just looking through the policy document. **You know the benefit ceases when you're no longer incapacitated**. **You're no longer suffering a loss of earnings to justify payment**.
MM: Yes

Page 1006

MW: I've been back to the consultant twice and I've got to go again possibly next week for them to review my situation. But certainly, it's been **problematic** this time after the operation so. Really then, in the circumstances of what you're saying shall I speak to you again in January as originally planned? Because you know I don't quite know what's afoot, but **I am concerned that the firm is going to want me to go because they say I can't carry out my duties and obligations within the firm.**
MM**:** Yeah.
MW: And **certainly, as things are medically**, **that's probably true (laughing**)*.*
MM: Yeah.
MW: You know, I can't really argue with that. Whatever the duties are as a bog-standard criminal lawyer going to police stations at night*.*
MM: No.
MW: **Or as the managing partner, I'm afraid I wouldn't be able to do any of.**
MM: **Any of those duties. No**
MW: Yeah.

Page 1007

MM: But no, I mean it wouldn't have an effect. It's not something that I'd turn around and say oh, you haven't got a job anymore so I'm going to stop your benefit. You Know.
MW: Yeah.
MM: **We will look at it to say well, okay, you lost that role but were looking at your ability and the medical evidence at the moment shows that you still can't do that role**, **so we'll carry on paying you***.*
MW: Yes. Yes. Well, that's all okay. Obviously gives me a **bit of reassurance** because I'm not quite - it's kind of with no prior discussion as to whether, I've been in hospital for several weeks and I'm obviously **in recovery mode at the moment**, so I was a **little bit surprised** when I was made aware of this. So, I thought I'd seek that clarification. So **certainly, as things presently stand at the moment with me not being fit to work in any shape or form things remain as they are and obviously, I'll speak to you in January or if anything changes in the meantime.**
MM: *Yeah. No that's fine. And as I say, it's the **period of incapacity** which is in the page 1 of the **terms and conditions**.*
MW: Yeah. Okay. I'll have a look.

62. On 29 November 2019 (the day after he received the letter dated 27 November 2019) the claimant is confirming to Mr Munday that he agrees he is medically unfit to carry out his duties and obligations within the firm, he laughs about the situation because he accepts it is true. He can't argue with it because he knows his PHI benefit is paid by the insurer because he is incapacitated and suffering a loss of earnings which justifies the PHI payment. In his account to the tribunal now he says he found that suggestion "*highly offensive and unprofessional and very distressing coming out of the blue as it did"*.

63. In his call to Mr Munday, he makes no reference the 'expulsion' letter referring to 'talk at work' and expecting to be asked to leave because he had been unable to work in any "shape or form" for a long time. The claimant is eager to persuade Mr Munday there was unlikely to be any change of circumstances or any improvement in his health because of the complications with his cancer treatment. In his account to the tribunal, he says his health was improving and would have returned to work in January 2020 had he not been expelled which were substantial changes of circumstance which would have affected his PHI benefit. We find the claimant has presented a fundamentally contradictory account to support his claim for compensation.

64. Before the claimant made the telephone call, he had time to think about the letter and what he wanted to say to Mr Munday. He was being very careful about the information he shared with Mr Munday so as not to arouse any suspicion. By the end of the call the claimant knew the only way his PHI benefit would continue to be paid by the insurer was if he continued to provide medical evidence supporting his incapacity. He knew his fit note was due to expire on 2 December 2019. If he continued to be medically incapacitated and left the firm the insurer had made it clear he would be expected to find work as a solicitor effectively starting again from the bottom.

65. While the claimant cannot change what he said/did at the time, he had the opportunity in his account to the tribunal to set the record straight now, knowing we would be listening to the call and reading the transcript. If the claimant had returned to work in January 2020, he would have only received his monthly drawings as a partner of £5,000 for working full time. By not returning to work he knew he was better off financially because he would receive PHI benefit of £7,000 per month and his full profit share. At the time of the call, he knew Mrs Lord and Miss Russell were concerned he was involved in insurance fraud. He did not disclose those concerns to Mr Munday presumably because that would have prompted further enquiry.

66. Contrary to the claimant's account which was unsupported by the undisputed transcript we find the claimant had no intention of returning to work before the admitted discrimination. He has given a deliberately false account at this hearing to bolster his claim for compensation. On 29 November 2019, he had confirmed to the insurer that his cancer related absence to continue to the next review in February 2020.He was not 'highly offended' by the suggestion he should be deemed unfit and had agreed it was 'true' but presents a contrary position to support his claimed losses.

67. Having carefully considered the position we find the claimant was presenting a false account at this hearing to try to mislead the tribunal into make a finding of fact he knew was untrue (*but for the Claim 1 discrimination, the claimant* ***would have*** *returned to work on or around January 2020")*.If the claimant had been transparent with Mrs Lord and Miss Russell about what he was saying to his insurer, he would have had to admit he agreed he should be deemed unfit and could not retain his roles and responsibilities which should be reassigned to them in his absence. The claimant was not being transparent with the Insurer or with the respondents or with the tribunal.

68. After his call to Mr Munday on 29 November 2019, the claimant had no intention of participating in any meetings with the respondents or agreeing he should be deemed unfit. Having decided it was not in his interests to participate or attend the meetings he decided he would not engage in any way to deliberately frustrate the process.

69. On 3rd December 2019 the claimant spoke to his GP Dr Evans. He refers to this consultation in his witness statement under the heading "depression and acute stress reaction". At paragraph 155 he says: "*I spoke with my GP Dr Evans and explained that I was feeling very stressed about the letter I had received from the respondents regarding the proposed expulsion (please refer to page 1280 of the bundle*)".

70. The GP record (page 1280) dated 3 December 2019 15:06: states "***has been expelled from his firm*** *has sought legal advice but* ***obviously V upset****.* ***Having BUPA counselling*** *and seeking help at Cavendish Centre. Fit note issued not fit for work. Diagnosis: Carcinoma Metastatic NOS: Duration* ***2 December 2019-20 January 2020***".

71. The claimant's account to the GP was inconsistent with his earlier account to Mr Munday. He informed his GP he has already been expelled and that he had sought legal advice which suggests his solicitors were involved very early in the process although they did not engage in the process until 6 January 2020. Dr Evans was completely reliant on the claimant's account and attributed the upset the claimant was describing to the expulsion that she believed had already happened by the date of the consultation on 3 December 2020. We found the claimant's account to Dr Evans was not reliable or accurate because the claimant knew he had not been expelled. The inference we draw is that the claimant was deliberately inaccurately reporting events to Dr Evans to gain her sympathy and provide a reason to issue a fit note. Although the claimant was reporting a work-related event as the cause, he must have requested that Dr Evans recorded the reason was related to his cancer to support his continuing absence from 2 December 2019 to 20 January 2020. This is significant because work related mental health difficulties were not subsequently picked up as the cause from the fit note by the insurer or by the medical expert when the fit notes were being considered for different purposes.

72. On 4 December 2019, Mr Mike Jones (the partner who was not a designated partner) sent the claimant his written objections to the proposed resolution to deem the claimant unfit to work confirming his intention to vote against it as a friend and ally of the claimant. It was made clear to the claimant that Mr Jones had decided to vote against the proposed resolution before the partners' meeting.

73. On 6 December 2019, Mr Jones attended the partners meeting at the Rotherham office with Mrs Lord and Miss Russell. The claimant did not attend or attempt to contact the members with his views on the proposal or explain why he was not attending the meeting.

74. Following that first partners meeting a second letter was sent by Mrs Lord and Miss Russell inviting the claimant to the rearranged partners meeting. Clause 13.3(j) of the LLP agreement confirms that if a partnership meeting is not quorate within 1 hour of the notified start time the meeting "*shall be adjourned until the **same time** the following week. If at such adjourned meeting the appropriate quorum is not present within 1 hour of the start time of the meeting those persons present shall constitute a quorum for the purposes of this agreement*".

75. In accordance with that clause by a letter dated 6 December 2019 the second partners meeting was arranged for 13 December 2019 at 2pm. The letter states:

"Dear Mike,

We are sorry that you were unable to attend the meeting on 6 December 2019 at 2pm.
As a consequence of your non-attendance, we were not quorate therefore in accordance with 13.1.3(j) of the LLP Agreement the meeting has been adjourned until 13 December 2019 at 2pm in the Rotherham Office".

Yours sincerely,
Hester Russell and Elizabeth Lord"

76. On 13 December 2019, Mr Jones attended the partners' meeting at the Rotherham office with Mrs Lord and Miss Russell. The claimant did not attend or contact the members about the meeting. The meeting proceeded in the claimant's absence. Again, in evidence the claimant refers to this meeting as an "expulsion meeting" even though he told Dr Evans he had already been expelled by the letter dated 27 November 2019.

77. On the same day the claimant attended an appointment with Dr Evans. At paragraph 158 of his witness statement, he says "*I explained that I was suffering from low mood, sleeplessness, an upset stomach, skin conditions, ulcers, night sweats, irritability, nausea, extreme worry about the effect of stress on my physical, health a sense of bereavement in respect of the **premature loss of my career**, the way my work partners had treated me and the loss of direction and motivation*".

78. The GP record states: "*Problem: cannot sleep-insomnia (new). History: Not surprising considering circumstances at work-has meeting today so will know more. Feels like a **bereavement as worked there for >30 years**. Not sleeping despite relaxation tapes, seeing counsellor, and trying acupuncture at Cavendish. Discussed ongoing low mood and uses anti-deps if needed. Wife has stopped job to support him. Allow himself to grieve cannot rush the process inc activity again to try and reduce stress".*

79. As this was a follow up meeting after the claimant's 'expulsion' it was understandable that Dr Evans would treat the symptoms the claimant described attributable to the premature loss of his career akin to a bereavement recognising the need for the claimant to process that loss after 30 years of work. The claimant

knew that he had not been expelled and was continuing to inaccurately report work events to his GP.

80. On 16 December 2019, the claimant was provided with the detailed minutes of the meetings of 6 and 13 December 2019 so he knew exactly what had been discussed and decided in his absence. In his witness statement (paragraph 127) when he refers to these minutes, he only comments on the parts referring to the SRA referral:

"I noted that the minutes referred to me being contacted by the SRA in connection with improperly claiming business expenses whilst absent from work. This came as a further complete shock to me. The wholly unjustifiable allegations in respect of my honesty and integrity and the fact that the respondents had reported me to the SRA without asking me or allowing me the opportunity to make representations about these matters was incredibly upsetting. Their actions sent me into a ***downward spiral from a mental health perspective and I became very unwell***"

81. The meeting minutes of 6 December 2019 identified Mrs Lord and Miss Russell's ongoing concerns about 'fraud'. Mrs Lord explained how concerns about the claimant's business expenses had come to light and confirmed that until then she was unaware the claimant had received reimbursement for those expenses. Mrs Lord and Miss Russell confirmed they had taken legal advice and had reported their concerns to the SRA. Mr Jones confirmed that he knew the SRA report had been made and had already told the claimant about it (*confirming that the claimant knew about the SRA referral before he saw these minutes*) .Miss Russell confirmed she had called the meeting to discuss the claimant's health to sit down with the claimant and "*find out when he is going to be well and when he is hoping to be back".* Mr Jones raised the question of expulsion and Mrs Lord and Miss Russell made it very clear in the minutes that it was not an expulsion meeting but had been arranged to decide whether the claimant should be deemed unfit to enable the partners to reassign his roles and responsibilities during his sickness absences. Miss Russell went through the LLP's Quality Procedures Manual to identify each of the claimant's roles and responsibilities that needed to be reassigned while he remained unfit to work. She confirms her understanding that the insurer would not have permitted the claimant to claim PHI benefit and work and the firm could not allow the claimant to work without a fit note to avoid the firm and members being implicated in insurance fraud. In the minutes she describes they were "***in an incredibly vulnerable position. We need to know where we stand. We need to take those roles off him and dive them up between us".***

82. The minutes of the meeting of 13 December 2019 confirm there was a further detailed discussion about the difficulties caused by the claimant's absence in relation to each of the roles he held as a designated member of Criminal Defence Solicitor/Higher Court Advocate, Duty Solicitor, Business Continuity Manager, Compliance COLP role, Compliance COFA, Credit Controller, Data Protection Partner, Fire Safety, Health and Safety Officer, IT partner, Managing Partner. Mrs Lord expressed her concerns in relation to the claimant's role as Credit Controller dipping in and out of managing the firm's finances which was "counterproductive".

Mrs Lord and Miss Russell give examples of the difficulties they had been experiencing with the claimant retaining the delegated responsibilities without performing the roles.

83. Miss Russell explained the roles needed to be performed because (page 681) "*the buck needs to stop with somebody with specific responsibilities. We cannot have one person trying to do things when they are unwell*". After detailed discussion a unanimous resolution was passed by Mr Jones, Mrs Lord and Miss Russell deeming the claimant unfit and reassigning his roles to Mrs Lord and Miss Russell. It was also agreed Miss Russell would need to take steps to inform Companies House of the change in managing partner to confirm the claimant was no longer a person of significant control. It is important to note that Mr Jones (the claimant's ally) also voted for the resolution which was passed unanimously and not by a simple majority as Mrs Lord and Miss Russell had anticipated.

84. Given that those undisputed detailed minutes have been available to the claimant since 16 December 2019 explaining the members rationale and decision confirming the claimant had not been expelled it was surprising the claimant has maintained his account that he believed he had been expelled. The evidence he gives about this admitted unlawful conduct to support his injury to feelings is all given under the heading "Attempts to expel me from the First Respondent". He describes the expulsion process started with the What's App message of 28 October 2018 and ended on the 7 January 2020. At different times in his account, he refers to an expulsion by letter dated 27 November 2019 then at the December meetings later described as attempts to expel him without explaining how those inconsistencies are explained in the light of the undisputed contemporaneous evidence.

85. In a partnership/LLP expulsion is the process of termination of the members position within the firm with a defined date communicated in words or actions a partner/designated member could reasonably understand as a termination on a particular date. The claimant having left the LLP in March 2021 was familiar with the process the LLP is required to follow when a designated member leaves the LLP whether by way of retirement or expulsion. The departing member becoming an outgoing members and creditor of the LLP until all liabilities are settled. Although the letters of 27 November and 6 December arranging the partners' meetings and the detailed minutes of the meetings of 6 December and 13 December 2019 make it clear that the claimant had not been expelled, the claimant invites the Tribunal to find that at the time he genuinely believed he had been expelled. The evidence does not support that finding of fact. We find the claimant did not genuinely or reasonably believe he had been expelled to support the injury to feelings he claims he suffered attributable to this.

86. The findings we make about this detriment are supported by the unchallenged contemporaneous evidence. All the members had decided on 13 December 2019 to unanimously deem the claimant medically unfit and to reassign his roles and responsibilities to the other members while the claimant's absence continued. The members' decision was supported by the GP fit notes which confirmed the claimant's remained unfit to work and that his long-term absence would continue. In those circumstances the members unanimously agreed to reassign his roles

and responsibilities to Mrs Lord and Miss Russell. Although Mr Jones had initially objected to the proposal, he was persuaded it was necessary to deem the claimant unfit and to reassign his roles and responsibilities to Mrs Lord and Miss Russell who were able to take over those specific responsibilities in the best interests of the LLP. It was a common-sense decision made by the members acting in good faith in an open transparent and inclusive way. The claimant had been invited to all the meetings and could have participate by providing information to help the members make a different decision if he had genuinely wanted to return to work. The easiest way of doing that was to confirm he was fit to return to work and to resume his roles and responsibilities. On the balance of probabilities, we find the claimant was not highly offended by this and did not suffer any injured feelings.

Detriment 3 Removing (13 December 2019) and reinstating (22 January 2020) the claimant as a Person with Significant Control of the First Respondent (PSC).

87. After the meeting on 13 December 2019, Ms Russell completed and signed form LLPSC07 (notice of ceasing to be an individual with significant control (PSC) of a limited liability partnership). The purpose of the form is to inform Companies House when a person is no longer a person of significant control. The form requires the person signing the form to have contacted the individual before filing the form. All the designated partners are individuals with significant control of the LLP but only the claimant was on the public register as PSC. As the managing partner he had always been on the register and had never added Mrs Lord or Miss Russell. They were unaware that they should have also been registered and had wrongly assumed only the managing partner was a PSC.

88. After the partners' meeting on 13 December 2019, Miss Russell filed form LLPSCO7 on 16 December 2019, removing the claimant as PSC. When the claimant's solicitors intervened on 6 January 2020 and identified the error steps were taken to immediately reinstate him. He was registered alongside Miss Russell and Mrs Lord on 22 January 2020. Although the admitted detriment is framed as if the reinstatement is part of the unfavourable treatment that was obviously an error. The unfavourable treatment was the removal of the claimant from the register from 13 December 2019 for a period of just under 6 weeks.

89. In the ET3 Mrs Lord and Miss Russell (page 48 paragraph 20) confirm Miss Russell had completed the form in error believing only the managing partner of the should be identified on the register. The grounds of resistance confirm the position: *"briefly and when updating its return to Companies House the respondents changed its return so that the claimant was not shown as a person of significant control. An amendment was needed because in his filing the claimant had omitted to include Mrs Lord and Miss Russell as persons of significant control. When the claimant raised this as an issue the respondents took advice and reinstated the claimant as PSC. The change was an administrative matter and only because of the respondents genuinely held belief that the change in return was necessary*".

90. The claimant knew that the partners had unanimously passed a members' resolution reassigning his management role to Mrs Lord and Miss Russell. He

knew that as the managing partner he had only registered himself at Companies House supporting the respondent's belief. In evidence the claimant does not describe any injured feelings only the facts he relies upon about the act which are not in dispute. He says "*it was not correct that I was no longer a person with significant control of the respondent. Further Miss Russell signed and filed this form at Companies House without my knowledge or consent despite the clear warning in the signature box which states "you must not send this form to us in respect of an individual unless that individual has confirmed that they have ceased to be a person of significant control"*. At paragraph 30 he refers to being restored as a person of significant control following his solicitors' intervention on 6 January 2020 but does not describe the effect of temporarily being removed from the register.

91. It was not clear if the claimant was inferring Miss Russell had deliberately incorrectly filled out the form and that error was an aggravating feature of the act causing him to suffer additional injury. He has not identified the injury or the additional injury to support the claim. Having seen the form, the warning the claimant refers to is at the side of the signature box in small text and is not immediately apparent. Miss Russell confirmed in her unchallenged evidence that it was a stressful time, they had taken on new management responsibilities and were unfamiliar with the registration process and she signed the form in error without first obtaining the claimant's agreement. We accepted it was an error on Miss Russell's part. She had not taken sufficient care filling out the form out of ignorance not malice or spite. Once the error was pointed out it was admitted and corrected.

92. We considered Mrs Willis' account about this. She describes the claimant was visibly upset linking the upset to the SRA referral describing and how the claimant felt betrayed because he could not understand "*why the Second Respondent had willingly signed a declaration that was false, yet he had been reported to the SRA by them for acts he had not committed*". Her evidence was consistent with the claimant's belief it was a deliberate act, but we have found it was an error. Mrs Willis describes the claimants feeling of upset and betrayal at the way the form was signed linking his hurt feelings to the SRA not to the claimant's temporary removal from the register.

93. We concluded that the reason the claimant has not identified any hurt feelings about this detriment is not because he is being stoic about it, but because he knew it was temporary and done in error and corrected and the claimant did not suffer any injury to feelings. Mrs Willis describes the claimant's feelings of betrayal by Miss Russell's linking his hurt feelings to the SRA referral which was not unlawful admitted discrimination. On the balance of probabilities, the claimant has not identified or proved he suffered any injured feelings.

Detriment 4: Removing him from the First Respondent's management and decisions making processes.

94. Although the claimant chose not to communicate with his partners in relation to any of the partnership meetings arranged in December 2019, he did choose to communicate with them about the partnership returns which needed to be filed

by January 2020. On 6 December 2019 (RB page 554), Ms Russell had emailed the claimant about the 2018/2019 accounts suggesting they were prepared based on the agreement made on 17 April 2019, that the claimant would receive his profit share less 6 months drawings and his permanent health payments (grossed up) for the period November 2018 to March 2019.

95. On 17 December 2019 (RB page 555), Miss Russell sent an email to Ms Fields (the LLP accountant and the claimant's personnel accountant) confirming the resolution that had been passed by unanimously by the members on 13 December 2019. She confirmed the LLP had agreed the claimant was deemed unfit to fulfil his role as a member. Miss Russell confirmed that while the claimant's absence was continuing, he would not be managing the firm. Miss Russell confirmed she would request information about the PHI payments the claimant had received in 2018/2019 so they could be included in the accounts. She accepted that if that information was not provided by 19 December 2019, the accounts would have to be prepared on the assumption that the claimant had received £7000 PHI benefit per month since November 2018. The actual figures could then be inserted later if that assumption was incorrect.

96. On 18 December 2019 (RB page 556 RB), the claimant refused to provide the information requested confirming that the income protection policy was personal to him and that no deductions should be made to the allocated profit costs. In his email he states: "*in the absence of any agreement to the contrary the draft LLP agreement entitles me to a full share of profit for the year 2018/2019 and* ***for each year thereafter****. As the policy is personal to me the information related to it is confidential to me and as those payments are tax free, they are not relevant to the draft account figures".*

97. On the same date, the claimant emailed Ms Fields to persuade her that the accounts should be prepared without any deductions for PHI payments. The claimant was using his close working relationship with the accountant, his interpretation of the LLP agreement and his refusal to share information about his PHI benefit to ensure the accounts were prepared in way that was most beneficial to his position in the current financial year and for future years. In contrast in Miss Russell's communication with the accountant she was less forceful, she accepted she was making assumptions which might be wrong and might need to be corrected.

98. Despite Miss Russell's attempts to limit the claimant's continued involvement in the management of the finances of the firm, the claimant continued to have a proactive role which contradicts with his account at this hearing that he believed he had already been expelled from the firm by the letter dated 27 November 2019.

99. On 19 December 2019, because of the time constraints and the claimant's refusal to provide any information about his PHI benefit Miss Russell agreed that Ms Fields should prepare the accounts as the claimant had proposed allocating him his full profit share without any deductions for PHI payments.

100. In his evidence (paragraph 134) the claimant suggests his feelings were hurt because 'accounting' information was withheld from him. The contemporaneous

evidence shows that assertion was not true. It was the claimant who was withholding financial information from the respondents. He was very proactively engaged in the preparation of the accounts and had by 19 December 2019 secured his financial position with the LLP and with Aviva ensuring payment of PHI until at least the next review planned in February 2020.

101. On the balance of probabilities, we were not satisfied the claimant suffered any hurt feelings.

Detriment 5: taking steps to expel the claimant as a member of the First Respondent from 19 December to 7 January 2020

102. On 19 December 2019(RB pages 690-691) Ms Russell and Mrs Lord wrote to the claimant to give him notice of a meeting to discuss and to vote upon expulsion. The letter identifies clause 13 of the LLP agreement because the expulsion of a partner is a major decision a partnership can make which requires a meeting a vote and the unanimous agreement of all the designated members.

103. Clause 13 of the LLP agreement expressly provides the designated members must unanimously approve any major decisions affecting the LLP which includes appointing or removing a designated member, changing the business premises, and borrowing money (13 (c)(e)(m)). A designated member could stop the other designated members from making any major decisions about the LLP simply by not voting for it. In Claim 2 we saw some examples of decisions the claimant had blocked by using his power of veto. He refused to agree to the CBIL loan urgently needed by the LLP and to refused to agree relocation to new premises when the existing premises were deemed to be unsafe (paragraph 293 C2 Judgment page 1188). Although designated members could stop major decisions being made clause 15 of the LLP agreement requires each member to "*show the utmost good faith to the LLP and the other members*".

104. The letter states:

"We have written to you previously to confirm that on the 13 December 2019 a resolution was passed by the members under Clause 20.1.1(j) that in the reasonable opinion of the members you are not physically or mentally fit (whether or not certified as such by a medical practitioner) to carry on your duties and obligations as a member under the LLP Agreement.

We hereby give notice under clause 13 of the LLP Agreement to convene a meeting of Members on 31 December 2019 at 2pm at the Rotherham Office ***to discuss and vote upon your expulsion*** *from GWB Harthills LLP under Clause 20.1.1(j) as detailed above.*

The vote on expulsion ***requires the approval of the Designated Members under clause 13.1.6(e)*** *but whilst you are entitled to attend the meeting and make representations to the Designated Members' we do not consider that on a proper construction of the LLP Agreement you are entitled to vote on the matter as it directly concerns you."*

105. At paragraphs 129-132 of the claimant's witness statement, he describes the effect of receiving this letter:

"129. I received a further letter again delivered to me by a process server, inviting me to an expulsion meeting on 31 December 2019. This letter confused me as I believed I had already been expelled from the First Respondent. The Respondents later claimed that they had removed my roles and responsibilities but that they had not expelled me from the First Respondent.
130. Due to my ill-health I did not attend the meeting on 31 December 2019, and it was adjourned to take place on 7 January 2020 (presumably because the meeting on 31 December 2019 was not quorate).
131. If the respondents genuinely believed that I had committed any wrongdoing in respect of my expenses and/or my PHI claim I would have expected them to seek to expel me under clause 20.1(a) or 20.1 (f) of the LLP Agreement rather than clause 20.1 (j).
132. The Respondent's also took the most aggressive course of action possible to attempt to remove me from the First Respondent. The correct process would have been to disclose any concerns about me in writing so that I could prepare properly for such an important meeting, we could then consider and discuss any concerns and if a dispute or difference arose, we could have attempted to settle it by mediation. However, the peremptory and very aggressive route chosen by the Respondent's, ***predictably and perhaps deliberately ruined my career and hard-earned reputation****.* ***It is hard for a solicitor to survive allegations of dishonest and fraudulent behaviour that has been levied against them, however ill-founded and malicious those allegations have proven to be****."*

106. As an experienced managing partner, the claimant was more knowledgeable of the terms of the LLP agreement than either Mrs Lord or Miss Russell. He is critical of their lack of understanding suggesting that Mrs Lord and Miss Russell as solicitors should also have been able to easily understand the LLP agreement. His evidence that he was 'confused' is rejected based on the findings made. The claimant has always known that he could not be expelled unless he voted for his expulsion. He was not attending any of the partners meeting to deliberately frustrate the process while he was proactively engaging with Miss Russell and the accountant to ensure the LLP accounts were prepared in the way most favourable to him.

107. On the same day as he received the 'expulsion' letter the claimant had secured the allocation of his profit share into his current account and confirmed he expected the same entitlement for future years. The account the claimant gives that he did not know his roles and responsibilities had been reassigned was not true. The minutes he received 3 days before this letter made that very clear. The respondents did believe that the claimant was acting fraudulently had had committed wrongdoing. His suggestion that the respondents had not previously disclosed their concerns to him is untrue. The route the respondents used to discuss and vote on expulsion was to arrange a partners' meeting to discuss and vote on expulsion. It was not a 'peremptory' or 'very aggressive' and was stopped before any discussion ever took place let alone a vote. As soon as the claimant chose to engage with the respondents and communicate his disagreement the process stopped. Subsequently he was unable to resume his career at any time

up to his retirement due to his ill-health and because he did not want to return to work.

108. We agreed with the claimant that allegations of dishonest and fraudulent behaviour made maliciously would be an aggravating feature which could cause additional distress. However, we had found Mrs Lord and Miss Russell were genuinely and legitimately concerned the claimant was engaging in fraudulent behaviour and had acted in good faith.

109. On 30 December 2019 the claimant saw Dr Evans and he refers to this at paragraph 162 of his statement. He says: "*my GP prescribed antidepressant medication for me as I was feeling increasingly low spirited and anxious* (please refer to page 1278)" Page 1278 is the GP record. It identifies the problem: cannot sleep-Insomnia (review). It records the history: "Tried ½ Zoplicone but drowsy next day so not keen. Has been stripped of roles but has expulsion meeting tomorrow".

110. On 31 December 2019 (page 694-695 RB) Ms Russell and Mrs Lord wrote to the claimant, confirming the arranged meeting had not proceeded in the claimant's absence and had been rearranged for 7 January 2020.The claimant refers to his solicitors sending a letter on 6 January 2020, to the respondents raising serious concerns about their discriminatory behaviour and unlawful attempts to expel him. He acknowledges the letter was effective immediately and permanently stopping the process on 7 January 2020 (pages 168-178 RB). He says that following that intervention the attempted expulsion was put on hold and he was restored on the register as a PSC. He also says he had hoped to return on or around 20 January 2020 upon the expiry of his sick note however he was ***"unable to resume his role at that time because of the devastating impact of the respondents' discriminatory actions including their report to the SRA and their attempts to expel me***" (paragraph 31).

111. The claimant's solicitors had identified the terms of the LLP agreement relating to expulsion had pointed out that the claimant could not be expelled unless he voted for his expulsion. They summarised the history of the claimant's cancer related absences, confirming that the claimant relied upon the fit notes supplied to confirm his unfitness to work. They did not assert, as the claimant now asserts, that but for the alleged discrimination the claimant would have returned to work. The respondents treated the allegations made by the claimant's solicitors very seriously accepted their interpretation of the LLP agreement took corrective action and agreed steps to obtain a medical report to help them manage the claimant's ongoing absence.

112. The claimant was aware that although his solicitors' intervention had been successful it could not stop the SRA investigation which was continuing to have a devastating impact on his health. On 22 January 2022, the claimant saw a different GP, Dr Pinninty who confirmed the claimant was unfit to work for 3 months from 22 January 2020-22 March 2020. Dr Pinninty diagnosed "Acute stress reaction: Carcinoma" linking the stress symptoms to the cancer not to any work-related event. There is no reference in the GP notes to the claimant reporting the ongoing SRA investigation.

113. In July 2020, Dr Pinninty was asked to provide a report to the claimant's solicitors in which she refers to her consultation with the claimant on 22 January 2020. Her report states:

"Initial Diagnosis

My impression on 22 January 2020 was of a reactive depression ie a depressive episode seemingly triggered by unfair treatment at work and the frustration of his inability to return to work as patient would have desired.

Causation

*Mental health presentations are usually multi-factorial and I note his cancer diagnosis was a significant diagnosis. However, these seems to be a significant step down in December 2019 in his mental health from being very low-grade tiredness and manageable symptoms to a diagnostic depression and this seems to coincide with the "**workplace difficulties that have been reported to us**"*

114. On 21 February 2020, Mr Munday chased up the update the claimant had promised in the call on 29 November 2019. The claimant responded on the same day confirming the reason for his ongoing absence was continuing was related to his cancer not work-related mental health difficulties. He states: "*I met my consultant on the 31 January 2020.The results of the first '3' month scan, were clear of cancer although they did reveal damage to my liver that is continuing to repair. I have attached herewith my latest fit note which runs until 22/3/20".*

115. In the claimant's update to his insurer, he does not disclose the work-related mental health difficulties he had reported to his GP in December or the SRA report, which would have prompted further enquiries. The inference we draw from this is that the claimant limited the information he gave his insurer to the cancer to ensure consistency with the information provided in the fit note.

116. The difficulty for the claimant is that he relies on his subjective evidence of injury to feelings as at this hearing to support his claim for non- pecuniary loss based on his version of past events which was unreliable and was not accepted by the tribunal. His account was not supported by the finding of facts. He says that when he received the first letter 27 November 2019, he believed that he had already been expelled (we found that was not true), that he had deliberately been prevented from participating in the meetings (we found that was not true), that the respondents did not have legitimate concerns about fraud/financial misconduct (we have found that was not true). He says they took the most aggressive route (we found that was not true). He says that but for the discrimination he would have returned to work in January 2022 (we have found that was not true). If the claimant was (as he now suggests) fit to return to work before when the first letter was issued, it is surprising he did not simply return to work and resume his roles.

117. After 7 January 2020, the only ongoing issue which prevented the claimant from returning to work with the respondents was the fact that they had reported him to the SRA, and he was under investigation for suspected financial misconduct until October 2020. It was the SRA outcome that the claimant was concerned could ruin his "***career and hard-earned reputation".*** It was the SRA referral that made

the allegations of **"dishonest and fraudulent behaviour"** which remained outstanding and was continuing to hurt his feelings towards the respondents and was damaging his mental health.

118. We found there was only one unsuccessful attempt made by the respondents to start an expulsion process on 19 December 2019 which was stopped on 6 January 2020 as soon as the claimant engaged in the process. All planned meetings in January 2020 were cancelled on 7 January 2020. That attempt had got no further than arranging a partners' meeting to discuss and vote on expulsion. The claimant knew that as soon as he objected the planned meeting was stopped and his complaints of discrimination were treated seriously.

119. The claimant has given different accounts of his understanding of the 'expulsion' depending on the purpose it serves. Having seen the 'expulsion' letter he does not tell the insurer on 29 November 2019 that he has already been expelled so as not to arouse any suspicion but 3 days later tells his GP he had been expelled to ensure a fit note was issued. He was using the term 'expulsion' to his GP not because he truly believed he had been expelled but because it fit with what he was telling his insurer. We find the claimant did not genuinely believe he had been expelled by the letter dated 27 November 2019.

120. The claimant's description of hurt feelings in relation to this detriment is completely reliant on his account of the expulsion being accepted by the Tribunal. We found that account was untrue. On the balance of probabilities, we were not satisfied the claimant has suffered any injured feelings.

Detriment 6: Excluding the claimant from a partners' meeting on 24 January 2020

121. This detriment was pleaded at paragraph 121.6 of the claim form (RB page 39) as "*The claimant was deliberately excluded from a Partner Meeting on 24 January 2020"* and has been admitted in those same terms. It is agreed the process was stopped and that no partners meetings took place in January 2020. The claimant cannot claim he suffered injured feelings for being 'excluded' from a meeting that never took place.

122. The injury to feelings relies upon the claimant seeing a WhatsApp message exchange between Mrs Lord and Miss Russell referring to the cancelled scheduled meeting on 24 January 2020 as "dodgy as fuck". The claimant says that when he saw this message in October 2020 it made him feel "anxious and hurt" because he believed the purpose of the cancelled meeting "was to discuss him and his future in his absence".

123. At the time the claimant saw the message he knew he had been invited to every meeting arranged to try to discuss his absence. For the discussions that had taken place in his absence he was provided with the detailed minutes, so he knew exactly what his partners had discussed in his absence. On the balance of probabilities, we were not satisfied the claimant has suffered the injured feelings of anxiety and hurt he describes.

Indirect Discrimination: practice of having meetings in Rotherham office and not at the claimant's house

124. The agreed provision criterion or practice (PCP) of arranging partners meeting at the claimant's home was not a practice that would put disabled persons who share the claimant's disability at a group disadvantage. The requirement to prove group disadvantage to prove indirect discrimination is set out in section 19 (2) (b) Equality Act 2010. Although the requirement was not met indirect disability discrimination has been conceded by the respondents.

125. The claimant subjective evidence of hurt feelings is that Mrs Lord and Miss Russell were taking all steps to 'prevent his participation in meetings making it difficult for him to attend in person making him feel like he was no longer welcome at partnership meetings'. It was not in the respondents' interests to make it difficult for the claimant to attend/participate because if he had attended, they would have arranged fewer partners meetings because the meetings would have been quorate. It was as we have found in the claimant's interest not to attend to frustrate the process. He decided when he would engage in the partners meeting and how he would engage with them.

126. After the SRA report had been made the claimant would never have agreed to allowing Mrs Lord or Miss Russell into his home. In his second claim he agreed he could not have had any face-to-face contact with them he would not have wanted or allowed them in his home which remained his position up to his retirement in March 2021.

127. On the balance of probabilities, we were not satisfied the claimant has suffered any injured feelings.

Failing to make reasonable adjustments as would have enable me to work from home continue with my management roles and/or return to work on a phased basis.

128. At this hearing the claimant confirmed that during the Claim 1 admitted discrimination period he was unfit to perform any work. In Claim 2 that same admission had resulted in the claimant agreeing the duty to make reasonable adjustments involving a return to work could not be engaged and it followed that there could not be any failure to make reasonable adjustments.

129. Despite those agreed facts the claimant claims compensation for injury to feelings caused by the respondents' failure to make reasonable adjustments in the Claim 1 period. He says (paragraph 137) that "had these adjustments been made **as it is admitted** it would have been reasonable to, and had the respondents' not attempted to expel me I consider that I could have returned to work in January 2020 and that I would have been able to work until my planned retirement date in June 2023".

130. He relies upon the concession made by the respondent while accepting the duty to make reasonable was not engaged while he remained unfit to work. He does not identify any injured feelings except for saying he would have returned to work

in January 2020 and then continued to work until June 2023. The tribunal have not made that finding of fact. On the balance of probabilities, we were not satisfied the claimant has suffered any injured feelings.

The respondents' conduct throughout the case

131. In the claimant's witness statement (paragraphs 176-185) he identifies aggravating features of the respondents' subsequent conduct of the case referring to correspondence exchanged between the parties' solicitors. In the second claim that same allegation was a pleaded detriment which had failed. The tribunal had found that in litigation correspondence exchanged between the parties' solicitors may at times be combative. Having had the opportunity to examine the evidence in more detail in the second claim, we do not find it was an aggravating feature of the respondents' conduct which causing the claimant to suffer any additional distress.

132. The claimant also relies upon WhatsApp messages exchanged between the Mrs Lord and Ms Russell as evidence of aggravating features of the respondents' conduct because he says the comments were offensive discriminatory and spiteful. He only saw the messages in October 2020 following disclosure and not when they were exchanged. It was accepted these were private messages exchanged between Mrs Lord and Miss Russell which they never intended the claimant to see.

133. From the messages sent at the time of the admitted discrimination the claimant has identified the words he found upsetting: "*liar*" "*being fully paid out by insurers*. *Basically, a fraudster*", "*greedy nasty piece*" and "*that absolute fucking- robbing bastard!"* (messages 15 November 2019). "*We account for every last penny, and he robs us blind*" (28 November 2019)

134. We accepted the evidence of Mrs Lord and Miss Russell expressing regret and embarrassment about the language used was genuine. They explain it in the following way: "*the reality of our situation was that we were extremely stressed and felt upset and disempowered by Mike. We shared our frustrations with each other intermittently which I found comforting. I now regret the language we used in the heat of the moment. It was never our intention that those private messages would be shared or seen by the claimant as they were considered private conversations venting emotion in what was believed to be a private forum"*.

135. None of those messages were seen by the claimant at the time of the admitted acts of discrimination and the messages could not have had the effect of making any of the admitted acts of unlawful discrimination more distressing for the claimant. The respondents had communicated their feelings that they though the claimant was trying to benefit financially from insurance fraud and by not deducting his PHI payment from the LLP accounts.

136. We do not find the messages were an aggravating feature which increased the effects of the admitted acts of discrimination on the claimant.

Evidence of Mrs Willis

137. We read Mrs Willis' statements and take from her account that she supports the claimant's account. She is however largely reliant on the claimant account about the admitted acts and cannot give any direct evidence. Unfortunately, we have

found the claimant was not a reliable historian. We do not attach much weight to Mrs Willis' evidence and have made our findings of fact on the direct evidence of the claimant attaching more weight to the undisputed contemporaneous documents.

Personal Injury

138. There were 2 psychiatric injuries diagnosed by Dr Appleford in his report dated 12 January 2021 (Appleford 1 pages 1031 to 1119). He identifies "Acute Stress Reaction" and a "Moderate Depressive Episode". The diagnosis is based on the GP medical records that refer to mental health issues from the beginning in December 2019, and the mental health diagnosis made in fit notes from January 2020 (see paragraphs 21.11 and 21.13 (page1086).

139. The diagnosis of 'Acute Stress Reaction' (paragraph 21.15) is made under F43.0 in the ICD -10 Classification of Mental and Behavioural Disorder described as "*a transient disorder of significant severity which develops in an individual without any other apparent mental disorder in response to exceptional physical and/or mental stress which usually subsides within hours or days*". The stressors identified can include "*an unusually sudden and threatened change in the social position and or network of the individual such as bereavement or domestic fire*". The claimant's fit note issued on 22 January 2020 was for two months gives a diagnosis of "Acute stress reaction. Carcinoma."

140. The diagnosis of a "Moderate Depressive Episode" is made based on the subsequent symptoms experienced by the claimant from January 2020 ICD F32.1. For depressive episodes of all three grades of severity (mild, moderate, and severe) a duration of at least 2 weeks is usually required for diagnosis. The claimant fit note issued on 22 March 2020 to 22 June 2020 made a diagnosis of "depressive disorder".

141. After identifying the conditions Dr Appleford is asked to consider the causation question put to him by the claimant's solicitors in the following way (see question 5 at page 1095):

"Do you believe that there is a link between:

(1) Mesdames Russell's and Lord's attempt to expel Mr Willis from the First respondent: and

(2) The report to the SRA by Mesdames Russell's and Lord's in which they accused Mr Willis of fraudulent behaviour (he has now been fully exonerated of this): and/or

(3) The removal of Mr Willis's role as managing partner and responsibilities:

(4) Any wider work-related issues and his mental health condition(s)?

If so, to what extent do you feel there is a link, and would you say that any work-related issues have contributed materially to, or caused, Mr Willis's mental health condition(s)

Dr Appleford's opinion was (page 1096):

"*In considering this question* ***I am largely reliant on Mr Willis' account*** *as described in the body of this report. With regard to each of the issues mentioned above I would note that:*

(1) Mr Willis told me that on receiving a letter from his colleagues via a process server in which they wanted him to accept that he was unfit to perform the role as a member of the LLP and which he said used the wording that is contained in the capacity expulsion paragraph of their agreement he said: "I think I dropped off a cliff". He felt "the whole of my life was being ripped away. He was concerned regarding loss of income. He said that he was "absolutely in shock".

*(2) Mr Willis told me that his colleagues later made a complaint to the SRA that he was fraudulently claiming insurance. He said that they never told him this but that he found out in December 2019.He said that they also said that he was claiming motor expenses as business expenses. He told me that he felt that this was "hurtful", and he said that these were "groundless allegations" of fraud and dishonesty. He said that this led to an eleven-month investigation which "totally and utterly exonerated me". He said the SRA never even spoke to him. He told me that he found out at Christmas 2019, that rumours were being spread about financial irregularity. He said that there had been comments to the effect that colleagues had "no salary increase because Mike's taken the money". He experienced anxiety which he described as "constant feeling of worry about the future and the way things have happened around me. He mentioned that he was accused of "**criminal dishonesty to my own professional body**" and that was "**absolutely devastating". This felt "hurtful and upsetting".***

*(3) Mr Willis told me that he has not seen his colleagues since the meeting in October 2019. He said they "stripped me of all my roles" in the meeting that took place in December 2019. He said that they have now accepted that they have discriminated against him and that they "weren't entitled to do that ". **He told me his colleagues took him off The Companies House Register as a person of significant control and said that he had signed to agree this**. He told me there was no direct contact until July of this year. He said that they wanted involvement in issues involving an ex-partner. He said that there had been regular communications since July 2020. He said that prior to this his colleagues "basically excluded me". He said that they told staff that he had "stepped down from all my roles"*

(4) Mr Willis has reported concerns regarding his future, as a result of these events. He had intended to return to work and was not planning retirement at this stage. He has come to feel that his professional reputation has been damaged. He feels that this would prevent him from working in the Yorkshire, Derbyshire or Nottinghamshire regions. He misses the "collegiality of the legal community". He worries about the financial implications and the impact upon his future including his finances in retirement.

I would also note that Mr Willis' account and the information in the available records suggests that the onset of his mental health problems followed the notification by his colleagues of their intentions to remove him from the partnership. In my opinion therefore it seems likely on balance of probabilities that the work-related issues have materially contributed to the onset of Mr Willis' recent mental health problems"

142. Answer (3) above corresponds to Detriment 2: Removing the claimant from his roles as a Designated Member and Managing Partner (28 November 2019 – 13 December 2019) and our findings of fact can be found at paragraphs (47-87). The claimant described this event to Dr Appleford as "stripping him of his roles". We found it was the members passing a unanimous resolution to reassign the claimant's roles and responsibilities to other members during his sickness absence. While the claimant has accurately reported his removal on the register as a person of significant control, he has not disclosed that he was reinstated 6 weeks after removal. The rest of that paragraph deals with the claimant's report of work-related events which were detriment complaints raised in the second claim which failed and are not part of the admitted unlawful treatment.

143. Answer (1) above corresponds with Detriment 5; Taking steps to expel the claimant from 19 December to 7 January 2020 (see findings of fact paragraphs 102-121). None of the findings of fact we have made support the account the claimant gave to Dr Appleford. In his account to Dr Appleford he puts the past events in this way: "*Mr Willis told me that, on receiving this (27 November) letter "I think I dropped off a cliff". He said that he intended to go back to work. He felt, "The whole of my way of life was being ripped away". He was concerned regarding loss of income. He said that he was "absolutely in shock" because everything had been good until that point and his colleagues had been supportive. He said that he had a good Practice Manager and that there were good systems in place. They were planning to bring in new partners.* ***He had felt well enough to return to work, and he had continued to undertake some of his roles whilst away from work****. Their system had worked well, and nobody had raised any concerns".*

144. The claimant's reaction to the letter on 29 November 2019 more closer in time is more accurately reflected in our findings of fact (paragraph 62). Those findings were inconsistent with the account the claimant gave to the medical expert. We found the claimant did not intend to go back to work which was inconsistent with the account the claimant gave to the medical expert. The claimant had secured his financial position in the most advantageous by 19 December 2019 by refusing to disclose any information about his PHI benefit to the respondents. He failed to disclose the true facts to the medical expert (paragraph 100). The claimant reported that nobody had raised concerns which was untrue and inconsistent with the legitimate concerns raised by the respondents before any of the admitted unlawful conduct (paragraph 29-30). The claimant had reported to the insurer he was not undertaking any of his roles (in any shape or form) during his ill-health absence (paragraph 62) but gives a different account to the medical expert. We have found the claimant is very capable of changing his account depending on the purpose it serves.

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145. In his second report Dr Appleford was asked some questions by the respondent's solicitors who had read the claimant's cancer blogs and were surprised by the conclusion reached that the claimant had not experienced any mental health condition prior to his "Acute Stress Reaction". They provided Dr Appleford with the claimant's cancer blog entries from 29 July 2018-28 October 2019 and

requested that he review them and consider whether it changed any of his opinions and findings in his first report.

146. Dr Appleford confirmed (page 1145 RB) that "Mr Willis' account to me **did not include details suggesting the development of a depressive disorder prior to the work- related issues in November 2019…**. Taken as a whole, it is my opinion on balance of probabilities that the entries suggest the presence of mild and intermittent symptoms but there is insufficient evidence to support the diagnosis of a moderate depressive episode at that time. In my opinion these symptoms are likely on balance of probabilities to represent episodes of **adjustment disorder** which are classified under F43.2 "adjustment disorders".

147. At page 11512RB "If the information in Mr Willis' blog (May 2019) is representative of his mental state at that time then **his statement to me that there had been no mental health problems by this point would not be correct**"

148. The claimant's reporting of his mental health difficulties prior to the admitted acts of discrimination was factually incorrect. If the respondent's representatives had not asked further questions the first report would never have been corrected.

149. In his conclusion at page 1152RB, Dr Appleford recognises that it is for the Employment Tribunal to make the findings of fact about the past events. Having considered the evidence disclosed by the respondents he concludes that "*If the Employment Tribunal accepts that Mr Willis has experienced episodes of adjustment disorder prior to November 2019 then it would be my opinion on balance of probabilities that the events from 27 November 2019 served* ***to exacerbate his*** *symptoms, leading to the development of a moderate depressive episode*".

150. We accept that conclusion and find the claimant did experience episodes of adjustment disorder prior to November 2019 which he did not disclose to Dr Appleford. The claimant's account of past events in relation to the injury to feelings and personal injury and his reporting of his injuries was unreliable.

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151. In his third and final report dated September 2021, the claimant's solicitors asked Dr Appleford some follow up questions in relation to the second claim and events in the period 17 April to 8 March 2021.The respondents are not liable to compensate the claimant for lawful conduct in this period. The third assessment was carried out on 31 August 2021. The claimant provided his account of the legal proceedings and the complaints in that period. That evidence was not relevant to the tribunal deciding the remedy issues in Claim 1.

152. The claimant confirmed that he had not attended the psychological counselling sessions Dr Appleford had recommended in his first report. Dr Appleford had suggested 12-20 sessions of CBT at a cost of £120-£150 for each session

(unlikely to exceed £3000) to treat the symptoms of depression. The claimant confirmed he had decided to wait until the case was concluded.

153. The claimant's solicitors asked Dr Appleford to comment on the extent to which the events during the period 17 April 2020 and 8 March 2021 had exacerbated Mr Willis's existing moderate depressive episode and /or mirrored the same. Dr Appleford's opinion was that:

"*Mr Willis has described continuing depressive symptoms. His account to me is that he has become* ***more depressed*** *since the time of my first assessment. I found him to be depressed on examination, but I would note that his* ***scores*** *on the Beck Depression and Anxiety Inventories whilst in the range associated with moderate depression and anxiety, respectively,* ***had reduced*** *when compared to the scores obtained at my first assessment.*

It is my opinion on balance of probabilities, that Mr Willis remains depressed. Mr Willis has alleged continuing discrimination by his former colleagues. I am aware that ***it will fall to the Employment Tribunal to determine the facts in this case.*** *However, in my opinion and on balance of probabilities, Mr Willis had developed a depressive illness by early 2020.****If the Employment Tribunal accepts Mr Willis's account*** *that these were* ***continuing acts of discrimination*** *during the period from 17 April 2020 to March 2021 then it is my opinion, on balance of probabilities that these have served to maintain and exacerbate his depressive symptoms. Mr Willis' continuing tendency to ruminate on the work-related issues, the* ***ongoing pressures of litigation*** *and his* ***concerns regarding his financial situation*** *are likely on balance of probabilities to have been additional maintaining factors".*

154. The claimant's solicitors also asked questions about the measures that were being taken to treat the claimant's mental health impairment including Cognitive Behavioural Therapy (CBT). Dr Appelford confirmed the antidepressants treatment the claimant was taking. He also confirmed the claimant "*had not engaged in specific psychological therapy to address his depressive disorder such as Cognitive Behavioural Therapy".* Dr Appleford did not say one of the measures the claimant required to treat the symptoms of his depression was full time care from his wife.

155. The answer he gave identifying the claimant's decision not to engage in CBT was important because Dr Appleford's first report (paragraph 21.54) explained the general prognosis for an episode of depression if treated using standard treatment such as antidepressants **and** cognitive behavioural therapy. Around 70 % of patients will recover within a year. Around 20% may remain depressed for 2 years and around 12% 7% and 6% may remain depressed at 5, 10 and 15 years respectively. If the claimant had used CBT as Dr Appleford had suggested in January 2021, he could have expected to a 70% chance of recovering from that episode within a year.

156. The claimant's solicitors ask about the future prognosis and whether the condition could be permanent. Dr Appleford (paragraphs 21.58-21.61 RB page 1100) opinion was that:

"Mr Willis' account and the information contained within the medical records suggests he has been depressed since January 2020. My assessment is that he remains depressed a year to date. It is difficult to predict when Mr Willis will make a recovery from his depression. In his case, it is likely on balance of probabilities that the ***ongoing proceedings and uncertainty regarding his future will serve to prolong his depression****. In short, his recovery maybe dependent upon satisfactory resolution of the proceedings, and upon Mr Willis' ability to make an adjustment to the change in his situation following the conclusion of the proceedings. If he does not return to work and/or if his financial situation is altered as a result, he will need to make emotional and practical adjustments to this.* ***He will also need to resolve his negative feelings regarding the way he perceives that he has been treated****. He is likely to require psychological support such as Cognitive Behavioural Therapy to assist him to do this. Depressive episodes are usually not permanent conditions. But by virtue of having experienced an episode of depression there will be a risk of recurrence".*

157. His opinion on how long the mental health condition would persist (paragraph 21.73) was that:

"*It is likely on balance of probabilities that* ***the ongoing proceedings*** *and uncertainty regarding his future* ***will serve to prolong his depression****. His recovery may be dependent upon satisfactory resolution of the proceedings and upon Mr Wills' ability to make an adjustment to the change in his situation following the conclusion of the proceedings".*

Conclusions

158. For the reasons we have set out above we were not satisfied that any of the injury to feelings or personal injury was attributable to, arose from, or can be apportioned in any way to the unlawful conduct conceded by the respondents in Claim 1. In so far as any injury to feelings or personal injury has been proven we have found the injury was attributable to the respondents' lawful conduct for which the respondents are not liable to pay any compensation to the claimant.

159. For the same reasons all the cost of care, it is claimed was provided to the claimant, as a result, of his personal injury, is not attributable to, did not arise from and cannot be apportioned to the unlawful actions conceded by the respondents in Claim 1. For the same reasons the special damages claimed are also not recoverable. The costs claimed for CBT treatment have not yet been incurred by the claimant because he has decided to wait until the outcome of these proceedings.

160. Two key assertions the claimant has made to support his compensation claim have been found to be untrue. The claimant would *not have returned to work on or around January 2020 and* the claimant did not genuinely believe he had been expelled by the letter dated 27 November 2019. These were false assertions the claimant has made knowing them to be untrue in another attempt to mislead the

tribunal to support his compensation claim. This was unreasonable conduct of these proceedings by the claimant.

Employment Judge Rogerson

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Date 16 December 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

21 December 2022

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