



EMPLOYMENT TRIBUNALS

Claimant: Miss. L Thomas
Respondent: Jelsons Limited
Heard at: Leicester
On: 20th & 21st November 2023
Before: Employment Judge Heap
Members: Mr. A Greenland
 Ms. K Srivastava

Representatives

Claimant: Ms. E Sole - Counsel
Respondent: Mr. A Taylor - Counsel

RESERVED JUDGMENT

The Respondent subjected the Claimant to unlawful discrimination contrary to Section 26(3) Equality Act 2010 and they are Ordered to pay to the Claimant the total sum of **£92,113.70** made up as follows:

Financial losses (including interest)	£32,542.19
Injury to feelings (including interest)	£49,571.51
Pain, suffering and loss of amenity	£10,000.00
Total sum that the Respondent must pay to the Claimant	£92,113.70

REASONS

BACKGROUND AND THE ISSUES

1. This remedy hearing followed on from a Reserved Judgment on liability (“The Liability Judgment”) in which we found in favour of the Claimant in respect of a number of her complaints advanced under Section 26(3) Equality Act 2010. The complaints that we found had occurred, amounted to harassment and were done in the course of the perpetrators’ employment were as follows:

- 1.1. That MF¹ had touched the Claimant near her bottom (paragraph 260 of the Liability Judgment);

¹ We refer to him in the same way as we did in the Liability Judgment for the same reasons.

- 1.2. That MF had asked the Claimant if she was wearing stockings and suspenders (paragraph 268 of the Liability Judgment);
 - 1.3. That Kevin Graham had tried to kiss the Claimant and commented that she was at the right height for him to bite her nipples (paragraph 273 of the Liability Judgment);
 - 1.4. That Kevin Graham had exposed his erect penis to the Claimant (paragraph 278 of the Liability Judgment);
 - 1.5. That MF had sent the Claimant a text message asking if she was wearing a short skirt, stockings and suspenders (paragraph 283 of the Liability Judgment);
 - 1.6. That Kevin Graham had said that the Claimant looked sexy in her shorts and top, had grabbed her and stroked her arm and grabbed her genitals (paragraph 285 of the Liability Judgment); and
 - 1.7. MF telling the Claimant that if she wanted to be paid for “extras” then she should try escorting.
2. The purpose of this hearing was therefore to deal with the remedy which it was appropriate to Order so as to compensate the Claimant for those particular complaints which we had determined to be well founded and which had accordingly succeeded.
 3. We should observe that the liability hearing took place some time ago over a period of eleven days on 13th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd, 23rd, 24th September 2021 & 7th October 2021. It has therefore unfortunately taken over two years to reach this Remedy hearing. That is for the most part as a result of delays – and consequent postponements – for a joint expert report to be obtained.
 4. The Claimant had, shortly prior to the hearing today, made a further postponement application. That was on the basis that there was dissatisfaction with the content of some of the joint expert report and a wish to obtain a further report. Given the timing of the application and the further delay that would result that application was refused and the hearing proceeded.
 5. Ms. Sole had produced useful outline submissions which set out that the Claimant was seeking remedies under the following heads of claim:
 - (i) Damages for injury to feelings;
 - (ii) Compensation for financial losses;
 - (iii) Damages for pain, suffering and loss of amenity;
 - (iv) An adjustment to compensation under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992; and
 - (v) Interest;
 6. Both parties are agreed that whatever the level of the award made to the Claimant it is not necessary for there to be grossing up because the constructive dismissal claim did not succeed and therefore there is no issue as to termination.

THE PARTIES' RESPECTIVE POSITIONS

7. We set out here the respective positions of the parties on each of the heads of claim sought by the Claimant. We have done so only briefly but the parties can nevertheless be assured that we have taken into account all that they have set out in their helpful written and oral submissions and

all that we have seen and heard in evidence before reaching our conclusions.

Compensation for financial losses

8. The Claimant seeks compensation for financial losses for two periods of time. The first is for a period prior to her resignation and the second for the period thereafter to date along with future loss of earnings.
9. Mr. Taylor submits that the first is a period that is not pleaded and does not even feature on the Claimant's schedule of loss. He submits that no award should be made in respect of that period of time. In respect of losses post termination the Respondent submits that the Claimant would, in accordance with the opinion of the jointly instructed expert, Dr. Courteney, have become ill and unable to work in all events and so no loss of earnings should follow. The Respondent points to the fact that that was the stance also taken by the Claimant's former representative, Mr. Capek, in correspondence to which we have been taken.
10. Alternatively, it is the Respondent's case that if we are not with them on that then any losses should be apportioned to take into account the fact that there were a number of competing features which caused the Claimant to become mentally unwell and incapacitated which were either not part of the claim or failed as allegations of discrimination.

Damages for injury to feelings

11. The Claimant's schedule of loss sets out compensation for injury to feelings within the entire range of the middle band of the **Vento**² bracket. Ms. Sole's submissions set out the seriousness of the conduct, the considerable impact that matters have had on the Claimant and that they have had a long term impact.
12. Mr. Taylor sensibly concedes that the conduct which was made out was serious and that the Respondent does not seek to downplay that. However, he points out that there were a number of other events, including those in the Claimant's personal life and acts which we did not find to be acts of discrimination, which impacted the Claimant and so the effects that she described cannot be solely attributed to the harassment. His position is that this was properly a middle band **Vento** case.
13. Both parties were agreed that as the Claim Form was issued on 1st April 2019 the Presidential Practice Direction issued on 23rd March 2018 was the appropriate one that we were required to consider.

An adjustment to compensation under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992

14. Ms. Sole submitted that there should be an adjustment to compensation as a result of the Respondent having failed to comply with the ACAS Code of Practice on Grievance & Disciplinary Procedures ("The Code"). She relied upon the findings made at paragraph 174 and 217 of the Liability Judgment and submitted that paragraphs 4 and 40 of the Code in respect

² **Vento v The Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871** as 'up-rated' by **Da'Bell v NSPCC [2010] IRLR 19 EAT.**

of a general requirement to carry out necessary investigations and deciding on appropriate action.

15. Mr. Taylor did not concede that the threshold for such an adjustment was crossed and submitted that there was no finding in the Liability Judgment of any failure to comply with the Code. He further points out that the Claimant raised her complaint informally and was asked seven times over a period of seven months for details so as to enable there to be an investigation which were not then provided. He submits that the starting point under the Code is that the employee should let the employer know the nature of the grievance and paragraph 32 required that to be set out in writing. As that never occurred, it rendered it difficult for the Respondent to comply with the provisions of the Code on which Ms. Sole relied.
16. Mr. Taylor also submits that the Liability Judgment recognised that the person dealing with Human Resources matters was inexperienced and there was no malice in their actions.

Interest

17. Mr. Taylor does not dispute that interest should be awarded and there is no dispute that the rate of 8% per annum is the appropriate rate. However, he contends that interest should be disallowed for certain periods as a result of the Claimant's refusal to disclose all of her medical records as had been Ordered previously at a Preliminary hearing on 29th March 2022. That failure was the subject of a further Preliminary hearing on 28th March 2023 but the delay in disclosing the records – which should have been done by no later than 26th April 2022 – meant that a Remedy hearing listed for 26th and 27th April 2023 had to be postponed because the parties had not obtained the expert report which they had requested leave to obtain.

THE HEARING

18. We had before us a Remedy bundle agreed between the parties and were provided with some additional documentation during the course of the hearing which were not objected to. In addition to the documentary evidence, we also heard evidence from the Claimant on her own account. We were also provided with a witness statement from the Claimant's father. We did not hear evidence from him, however, given that Mr. Taylor had no questions in cross examination. However, we did not feel that we needed to place weight on his witness statement given that we had sufficient evidence from the Claimant and the medical report to which we will refer below.

THE LAW

19. The statutory provisions which are relevant to the issues before us are as follows:

20. Section 124 Equality Act 2010 deals with the ability of the Tribunal to make Orders where a complaint or complaints of unlawful discrimination have been made out. The relevant parts of Section 124 provide as follows:

124 Remedies: general

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(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.

.....

(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 or the sheriff under section 119.

21. It is common ground that an Order for compensation under Section 124 Equality Act 2010 can include compensation for injury to feelings in respect of which reference needs to be paid to the **Vento** Bands. There is no dispute that the joint Presidential Guidance which was issued on 23rd March 2018 is applicable to the award and the relevant part says this:

“In respect of claims presented on or after 6 April 2018, the Vento bands shall be as follows: a lower band of £900 to £8,600 (less serious cases); a middle band of £8,600 to £25,700 (cases that do not merit an award in the upper band); and an upper band of £25,700 to £42,900 (the most serious cases), with the most exceptional cases capable of exceeding £42,900”.

22. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (“The Regulations”) provide for interest to be awarded in respect of both financial and non-pecuniary loss flowing from acts of discrimination. The relevant provision for our purposes is Regulation 6 which provides as follows:

“(1) Subject to the following paragraphs of this regulation—

(a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;

(b) in the case of all other sums of damages or compensation (other than any sum referred to in regulation 5 and all arrears of remuneration, interest

shall be for the period beginning on the mid-point date and ending on the day of calculation.

(2) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of the subject matter of the award, interest in respect of that part of the award covered by the payment shall be calculated as if the references in paragraph (1), and in the definition of “mid-point date” in regulation 4, to the day of calculation were to the date on which the payment was made.

(3) Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may—

(a) calculate interest, or as the case may be interest on the particular sum, for such different period, or

(b) calculate interest for such different periods in respect of various sums in the award, as it considers appropriate in the circumstances, having regard to the provisions of these Regulations”.

Adjustments under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992

23. Also relevant are the provisions of Section 207A Trade Union & Labour Relations (Consolidation) Act 1992 which provide as follows:

“207A Effect of failure to comply with Code: adjustment of awards

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employee has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

(4) In subsections (2) and (3), “relevant Code of Practice” means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.

(5) Where an award falls to be adjusted under this section and under section 38 of the Employment Act 2002, the adjustment under this section shall be made before the adjustment under that section.”

FINDINGS OF FACT

24. We have confined our findings of fact in these circumstances to the areas of dispute between the parties and those facts which are relevant to the conclusions that we have reached.
25. Prior to securing a role with the First Respondent, the Claimant had a long history of working in painting and decorating roles, predominantly on a self employed basis. The Claimant was taken on as an employee by the Respondent and she worked for them between 21st July 2016 and 4th March 2019 when her employment ended by reason of her resignation.
26. Prior to her resignation and with effect from 12th July 2018 the Claimant began a period of sickness absence suffering from work related stress. That followed on from harassment that we were satisfied occurred at work. She submitted a statement of fitness for work (“Fit Note”) to the Respondent dated 16th July 2019 which signed her off as being unfit to work for two weeks. She continued to submit further Fit Notes until her resignation from employment. She has not worked since her resignation in any capacity and was certified by the Department of Work and Pensions as being entitled to Universal Credit without a requirement that she look for employment.
27. The Claimant has received treatment for her mental health including working with the Crisis Team and Broadgate Mental Health Team from 2018 until April 2022 although she is now only under the care of her General Practitioner. She has been consistently taking antidepressant medication which she continues to take (see page 76 of the hearing bundle).

Other life events

28. The Claimant has had something of a troubled life including problems in relationships, including domestic violence and her second husband having had an affair, the suicide of a partner and she herself had previously attempted suicide. She had also had a burglary in her flat which she attributed to those employed by the Respondent and in respect of which she believed that she had been the victim of a serious sexual assault although we did not make any finding about that in the Liability Judgment because it was not a matter for this Tribunal. Those matters were clearly ones that would impact upon the Claimant and her mental health and they are dealt with in more detail in the expert report of Dr. Courteney which we set out below.
29. For the most part, however, the Claimant has weathered those matters and it has not impacted significantly on her ability to work. She first experienced problems with depression following the breakdown of her second marriage in 2011/2012. During that time she was prescribed anti-depressant medication and took an overdose. That period of depression lasted for approximately two years with her taking medication for a similar period. However, she only took a period of approximately four months off

work and was able to otherwise continue in employment consistently (see page 73 of the hearing bundle).

30. The Claimant had a further period of time when her mental health was impacted during further relationship difficulties and had to go back on antidepressant medication but that appears to have stabilised relatively swiftly and until the events with the Respondent had no period of sustained low mood between then and 2013 (see page 73 of the hearing bundle).

Impact of discriminatory events on the Claimant

31. We turn then to the impact that these matters have had on the Claimant.

32. It is clear that the matters that we found made out as acts of discrimination have had a profound effect on the Claimant. The clearest impression of that is what we have observed from her over the course of her evidence both at the original hearing and at this Remedy hearing. The liability hearing took place over three years after the harassment occurred that we found to have been made out. At that hearing the Claimant was visibly distressed and often in uncontrollable floods of tears when discussing what had happened to her in cross examination and, particularly, when dealing with the incidents involving Kevin Graham. Although to a slightly lesser extent – and given that she was recounting more the effects on her at this hearing – the Claimant was still very visibly distressed and in tears when dealing with those same events. We remind ourselves that this remedy hearing took place over five years after the events in question and it is abundantly clear that the harassment that the Claimant experienced and which we found to have been made out remains a considerable source of distress to her and has had a significant and long term impact. It was plain that she was similarly impacted when discussing her experiences with the Respondent during examination by Dr. Courtney (see page 77 of the hearing bundle).

33. For example, we are satisfied from the Claimant's evidence that she now has a significant distrust of men to the extent that she even flinches away from her own male children. We accept her evidence that she finds it difficult to be away from her home other than when absolutely necessary and has to be accompanied by her father for support. We also accept that she has isolated herself from her family at times and has missed out on spending time with them, including young grandchildren. She relies on her father for support and to accompany her outside the house.

34. The Claimant was forced to take a period of ill health absence with work related stress and as we have already observed after that time she did not return to work for the Respondent prior to her decision to resign from her employment. She has not worked since leaving the Respondent and has been certified by the Department of Work & Pensions as being entitled to Universal Credit without the need to actively seek employment.

Medical report

35. The parties jointly instructed a consultant psychiatrist, Dr. Paul Courtney, to produce a report as to the impact that the harassment had had on the Claimant. He examined the Claimant and, eventually, was provided with a

full copy of her medical records. He produced a report dated 11th July 2023 and the relevant parts of that report said this:

“What mental health condition, if any, does the Claimant presently suffer from?”

Diagnosis is difficult and likely to have changed over the years. On balance consider the most likely diagnosis to be one of Bipolar Affective Disorder II (ICD11 6B43) presently in remission. In addition, Ms. Thomas is suffering from an Adjustment Disorder (ICD11 6B43) which is ongoing.

When did she start to suffer from this condition, if you are unable to provide a precise date, how likely is it that the Claimant suffered from this condition at any date prior to February 2017?

The Bipolar Affective Disorder is a long-term relapsing/remitting condition which she has most probably had since adolescence. The Adjustment Disorder is a more recent condition. It relates to the Court Case that she is involved in with her ex-employer. It is difficult to determine when this condition started but it is likely to have been in or around 2019, but became more severe in 2021.

How long is this condition likely to last?

The Bipolar Affective Disorder is likely to be a lifelong condition. Ms Thomas will have periods of remission and then relapse either going high or low or a combination of two usually triggered by stress. I consider Ms Thomas is presently in a period of remissions of her Bipolar Affective Disorder.

The Adjustment Disorder is ongoing and likely to last until six months after the conclusion of the court case³.

To what extent, if any, does the condition prevent her from working?

The Bipolar Affective Disorder is a relapsing and remitting disorder. The impact on Ms. Thomas’s ability to work will depend on the phase of the condition. During periods of mania or hypomania she is unlikely to be able to work. During periods of depression, she may be able to work, but she will find that she is less efficient at work and find it difficult to motivate herself to find work if she is out of work. During periods of remission she will be able to work. Furthermore, there remains significant stigmatisation of individuals with mental health problems in the workplace. This can make returning to work after absence difficult.

Normally an Adjustment Disorder would not make an individual incapable of working but as with depression is likely to impact on her effectiveness at work. When someone has already been out of work for a considerable time an Adjustment Disorder may be sufficient to prevent them from returning to a working environment.

We note that the Claimant was prescribed mirtazapine from at least as far back as September 2016. What condition is this medication prescribed for, and in your opinion what condition did the Claimant suffer from at that point, if any?

Mirtazepine (sic) is an antidepressant medication. It was presumably prescribed for the low periods of her Bipolar Affective Disorder. However, many individuals remain on antidepressants when their symptoms have resolved. This is out of fear of relapse by the patient or their clinician.

³ The court case is a reference to these proceedings.

We understand from the medical records that the Claimant stopped taking that medication at some point prior to October 2018. Could that have contributed to the Claimant's absence from work from July 2018, a deterioration in the Claimant's health and any further mental health condition that she may now suffer from?

It is possibly but not probably that the stopping of mirtazapine in 2018 led to a deterioration in her condition. There were many psycho-social stresses occurring at this time which contributed to the decline in Ms Thomas's mental health.

Is the Claimant currently incapable of working?

She would be capable of working in an existing job. However, the level of mental health necessary to return to the workforce after a substantial period of absence is higher than the level to remain in a job an individual has done for a long time. Ms Thomas has not worked for some time now. This makes it more difficult for her to return to work even when she is suffering from a condition (Adjustment Disorder) which would normally allow someone to work.

If so, to what extent is the incapability caused by her mental health condition, and to what extent have any physical conditions she reports as suffering from in the Universal Credit report caused any incapability?

In the 2019 Universal Credit report, Ms. Thomas is informed that she has been deemed to not have the capability of working. There is no indication from the report what the nature of Ms. Thomas's physical conditions are. I am therefore unable to answer this question. Furthermore as a psychiatrist I have limited expertise in commenting on the impact of physical illness.

For how long to you envisage she will remain incapable of work, and please specify whether this is by reason of a mental health condition or a physical condition?

From a psychiatric viewpoint, Ms Thomas is likely to remain incapable of returning to the work environment until three months after the conclusion of the court case. If there is a return of her Bipolar Affective Disorder then it could be much longer. I am unable to comment on the impact of her physical health conditions on her capability for work.

The Claimant brought a number of claims, to what extent can it be said that any continuing inability to obtain employment, was caused by the proven acts of harassment, as opposed to the claims that failed, and/or her pre-existing mental health condition for which she was being treated with mirtazapine, and/or ceasing to take mirtazapine, and/or the other things that occurred in her personal life as documented in the medical records, including the burglary on 8 October 2018 just prior to the intervention by the crisis team, issues with her neighbours, rape by her previous partner, housing issues, financial worries and relationship issues with her daughter?

It is my opinion that the principle mental health issue now relates to the court case. Whilst the acts of harassment are not the direct cause of the adjustment disorder, if they had not happened the court case would not be occurring. Other events which in my opinion had a major impact on the relapse of Ms Thomas's Bipolar Affective Disorder are now, in my opinion, having a relatively minor impact on her Adjustment Disorder.

The medical records refer to the Claimant's father and daughter reporting that they had seen packets of white powder at the Claimant's flat and their suspicion that the Claimant was taking illicit drugs. Could the taking of illicit drugs and/or the consumption of alcohol have caused or contributed to the absence from work from July 2018?

The use of recreational drugs (particularly stimulants such as amphetamine or cocaine) could have triggered a relapse of her Bipolar Affective Disorder. Alternatively, the symptoms of hypomania described in 2018/19 by Drs Srinvas and Booth may have been the manifestation of a drug induced psychosis. It is often difficult to determine the causation at the time and impossible years later.

To what extent is this ongoing Tribunal claim causing or contributing to any current condition the Claimant suffers from?

This is the major reason for Ms Thomas's ongoing mental health problems. Her present adjustment disorder is a response to the stress of the Tribunal. When this is finished her mental health will start to improve.

How probable is it that the Claimant's condition, if any, may improve once the remedy hearing in this matter has taken place?

It is highly probable that Ms Thomas's mental health will improve once the Tribunal process has concluded. It is likely to be 6 months from the conclusion of the court before her adjustment disorder has fully resolved.

What impact has the sexual harassment had on the Claimant's mental health and where she may have had previous vulnerabilities, to what extent has the sexual harassment caused or contributed to the cause of the deterioration in her mental health and psychological symptoms generally?

It is clear that Ms Thomas had pre-existing mental health problems. As mentioned above they fulfilled the diagnostic criteria for the psychiatric condition Bipolar Affective Disorder II.

Ms Thomas experienced a depressive relapse of this condition in 2017 and then a manic relapse in 2018. During this period Ms Thomas reports experiencing a number of negative events including her house being broken into, phone being hacked, money stolen, her drink being spiked twice, a sexual assault in her home, separation from a friend, loss of her home as well as being bullied and sexually harassed at work.

It is impossible to precisely apportion causation to these various reported stresses. It is likely that they all contributed to the relapse of Ms Thomas's Bipolar Affective Disorder. With her pre-existing mental health vulnerabilities, on balance, she did not need all of these to occur for her to have become mentally unwell in 2017/18. In my opinion, if we accept that all of these reported events happened then it is likely that Ms Thomas would have become mentally unwell whether she had experienced the bullying and sexual harassment at work or not. It is therefore my opinion that while the bullying and sexual harassment contributed to the decline in Ms Thomas's mental health, she most probably would have experienced a deterioration in her mental health without them occurring.

In contrast it is my opinion that the court case that flows from the bullying and sexual harassment has caused Ms Thomas to suffer from an Adjustment Disorder which is ongoing".

36. Whilst the Claimant disputes the content of the medical report – and in particular the diagnosis of bi-polar disorder from adolescence – she was not given leave to obtain any further report and we are satisfied that we are able to place reliance on the conclusions reached by Dr. Courtney. In particular, he is a consultant psychiatrist with experience of producing medico-legal reports, he has examined the Claimant in person at her request and he has confirmed that he had taken into account all of the Claimant's medical records in reaching his conclusions.

37. As the questions asked of Dr. Courtney allude to, in addition to suffering mental health problems the Claimant also has a number of physical ailments. However, there is no evidence that those would have prevented the Claimant from either continuing in her employment with the Respondent had she not resigned nor from obtaining alternative employment had her mental health not precluded her from doing so.

CONCLUSIONS

38. Insofar as we have not already done so, we turn now to our conclusions in relation to each of the heads of remedy sought by the Claimant.

Injury to feelings

39. We deal firstly with the question of injury to feelings. It is without doubt that the Claimant has been deeply affected by the acts of discrimination that we found to have been made out in the Liability Judgment. That needs to be reflected within the level of award for injury to feelings to be made.

40. We accept the submissions of Ms. Sole that this is a case which sits in the higher band of **Vento**. It was a serious case with profound effects on the Claimant and conduct which extended over a relatively lengthy period of time.

41. Applying the agreed Practice Direction that band is from £25,700.00 to £42,900.00. We are satisfied that the higher band is appropriate for the following reasons:

- a. The Claimant's unchallenged evidence was that in respect of the incident at the Broughton Astley site on 23rd January 2018 she had thought that Kevin Graham was going to rape her. That was also her evidence at the Liability hearing and she was visibly distressed during that part of her evidence (see paragraph 133 of the Liability Judgment). She was equally still visibly distressed during her evidence at this hearing when recounting the impact of that event. We take into account that her evidence at the Liability hearing was well over three years after the event in question and at the Remedy hearing well over five years. It remains clear that she was and still is some years later deeply affected by what had happened to her;
- b. All of the acts that occurred were humiliating and they included highly inappropriate and sexualised conduct from her line manager with whom there was a considerable imbalance of power;

- c. The incident at Broughton Astley to which we have referred above amounted to both a sexual assault and to Mr. Graham indecently exposing himself to the Claimant. Those are extremely serious matters which, as we have already observed, had a very significant and lasting impact upon the Claimant;
 - d. The incidents which we have found to have been made out took place over a relatively lengthy period of time – March 2017 to July 2018 – and were deeply unpleasant, offensive and targeted;
 - e. The Claimant has been affected by these events to the extent that she is now insecure and flinches from men – to the extent that that includes her own male children and is wary of people approaching her;
 - f. Whilst the Claimant has had other life experiences which we fully accept have no doubt impacted upon her she has nevertheless been able to work and function during highly difficult times and we are satisfied from her presentation before us that in reality it is her experiences working for the Respondent in respect of the harassment that she has experienced which has affected her significantly. She remains very emotional in respect of the harassment that we found to be made out and it is plain that that is her main focus; and
 - g. The Claimant has lost out on spending time doing what she would usually do in socialising and spending time with her family, including her grandchildren, as a result of these matters. She is impacted to such a degree that she flinches from contact with her own sons.
42. For all of those reasons we are satisfied that this is a case which falls within the top band but we do not agree it is the most serious case which would warrant an award at the very top of that scale as is contended for on behalf of the Claimant.
43. Taking into account the relevant Presidential Guidance and the figures reflected within that for the higher band we are satisfied that the Claimant's injury to feelings award should fall towards the middle of that bracket and that an award of **£36,000.00** is an appropriate one in the circumstances, taking into account the severity of the discrimination which we have found to be made out.
44. We are satisfied that that award for injury to feelings is sufficient and appropriate to compensate the Claimant for the upset caused by the acts of discrimination made out and as dealt with within the Liability Judgment whilst reflecting on what that amount means in real terms.
45. We add to that sum interest. It is not in dispute that that is applicable nor that it should be in the sum of 8%. Given that the acts of harassment occurred over a period from late February/early March 2018 to July 2018 we raised with the parties the time when it is said that interest should begin to run. Ms. Sole submitted that for any loss of earnings that should be from October 2018 (when the Claimant went off sick) and from July 2018 for injury to feelings. Mr. Taylor took a neutral stance and was content to leave the matter to us. In those circumstances, we accept the

position advanced by Ms. Sole in respect of injury to feelings. In respect of financial loss because we have not accepted the Claimant's case on loss of earnings prior to her resignation (as we have dealt with below) the commencement date to consider when having regard to the mid-point of discrimination is the date of termination of employment – i.e. 4th March 2019.

46. Mr. Taylor did submit, however, that in accordance with Regulation 6(3) Industrial Tribunals (Interest on awards in discrimination cases) Regulations 1996 we should not award interest after 27th April 2023 as that would cause serious injustice to the Respondent given that, had the Claimant complied properly and fully with case management Orders previously made the Remedy hearing would have been concluded on that date. We accept that submission. Orders for medical records were made by consent but the Claimant's refusal to properly comply with those Orders had the inevitable result of the original Remedy hearing being unable to go ahead because it stalled the obtaining of the full medical expert report.
47. We therefore award interest from the period 13th July 2018 to 27th April 2023 which amounts to 1,720 days at a rate of 8%. The amount of interest therefore equates to the sum of £13,571.51.

Total for injury to feelings and interest: **£49,571.51**

Pain suffering and loss of amenity

48. The Claimant contends that there should be an award of £30,000.00 in respect of personal injury and relies on the moderately severe bracket of the JSB Guidelines.
49. The Respondent accepts that the Claimant now suffers from an Adjustment Disorder which it is not disputed followed on from the acts of harassment that we found to have been made out. However, Mr. Taylor contends that no separate award should be made and that this can be dealt with by way of adequate compensation for injury to feelings.
50. We are satisfied that there should be a separate award under this heading as the Claimant has not just suffered injury to her feelings but a separate and distinct psychiatric disorder flowing from the acts of harassment as well as playing a part in the deterioration of her Bi-Polar Adjustment Disorder.
51. However, we do not accept that they fall into the moderately severe category of the JSB Guidelines. We are satisfied that it falls within the moderate band as there has been an improvement in the Claimant's condition and the prognosis is good following the conclusion of the Remedy hearing according to the report of Dr. Courteney – his opinion being that there will be recovery within the relatively short term once these proceedings are at an end.
52. The moderate range is £5,860.00 to £19,070.00. We consider matters to sit at the top end of that bracket given the length of time that the Claimant has suffered from this condition and the seriousness of what she has experienced.

53. However, there must be a discount for double recovery given that we have also awarded the Claimant a significant sum in respect of injury to feelings. We consider that a fair sum to award to the Claimant in respect of this head of loss is **£10,000.00**.

Financial losses

54. It does not appear to be in dispute that the Claimant earned the net sum of £19,239.96 per annum whilst employed by the Respondent (see paragraph 40 of her witness statement for the purposes of this remedy hearing and page 634 of the Remedy hearing bundle). That equates to a weekly rate of remuneration in the sum of £370.00 per week.

55. The Claimant claims financial losses for two periods of time. The first period of time related to a point before the termination of the Claimant's employment when it is said that her pay had at time decreased whilst she was on sickness absence.

56. The first period is essentially a new matter raised by Ms. Sole. It was not dealt with in the Claimant's schedule of loss nor in her witness statement. Mr. Taylor invited us not to deal with that period of time because it was not in the Claimant's pleaded case. We dealt with that as a preliminary matter and determined that we would permit the Claimant to advance that argument. We gave our reasons for that orally at the time. No one has asked us to include those within this Judgment and so we say no more about them.

57. The second period of time is post the Claimant's resignation when she contends that because of the effect of the harassment that we found to have been made out she has been left unable to work. She contends that that state of affairs will be ongoing for a considerable period of time and invites us to award significant future loss as a result.

58. We deal firstly with the first period. We make no award in respect of that period because we cannot be satisfied what loss, if any, the Claimant sustained during that period of time. There was no cogent evidence given by the Claimant about those matters either in her witness statement nor in the supplemental questions which we permitted Ms. Sole to ask. We had no wage slips over the relevant periods of time and were effectively asked to try to extrapolate them from a selection of the Claimant's bank statements. It is for the Claimant to prove her losses in this regard and we are not satisfied that she has done so. We therefore make no award of compensation for the first period.

59. We then turn to deal with the second period of loss. We do not accept the Respondent's primary position that the Claimant would have definitely been unable to work because of her mental health irrespective of the harassment that we found to have been made out. The catalyst for the commencement of the Claimant's ill health absence was that harassment. The episode of mania following the Claimant suspecting that her home had been broken into and she had been raped did not come until later.

60. Whilst the report of Dr. Courteney makes plain that, irrespective of the acts of harassment, she would have likely become mentally unwell, it does not definitively opine that that decline in her mental health would have rendered her unable to work to the extent that she has. We remind

ourselves that the Claimant had previously experienced very trying circumstances which had tested her mental health resilience and had weathered those and remained in a position to work, save as for one short period of time after the breakdown of her second marriage.

61. We are therefore satisfied that financial losses do flow from the acts of harassment because she has been rendered in part unable to work because of them. However, we agree that there must be an apportionment of those losses because the harassment was not the sole reason for the decline in the Claimant's mental health which has rendered her unable to work since her resignation. There were a number of other aggravating features including the burglary, a belief that she had been raped, things that happened with MF and Kevin Graham which we had found not to be acts of discrimination for the reasons set out in the Liability Judgment and those other matters referred to in the extracts from Dr. Courteney's report which we have set out above.
62. However, we are satisfied from the Claimant's presentation before us that the harassment formed a major part in the deterioration in her mental health and thus her inability to return to the workplace. We consider the appropriate reduction in financial losses to be 50% to take into account the fact that the harassment was not the sole cause of those losses and other significant factors were at play.
63. The Claimant also seeks ongoing losses, effectively until retirement. Reliance is placed on the fact of the Universal Credit position and that the Claimant is not required to actively seek employment. However, we must balance that against the expert opinion of Dr. Courteney that the Claimant will be recovered and able to work within 6 months and the only ongoing losses that it is therefore appropriate to award are over that period.
64. The relevant losses for the period from her resignation on 4th March 2019 to 6 months from the date of this Remedy hearing (i.e. until 21st May 2024) equate to a period of 5 years and 78 days. Losses over that period are therefore in the sum of £100,270.00.
65. From those losses we must deduct the Universal Credit that the Claimant has been in receipt of since the termination of her employment. It is not in dispute that that should occur. The Claimant has received the sum of £39,508.94 in that regard over the period of four years to 4th March 2019 (see page 634 of the hearing bundle). The Claimant will also continue to receive Universal Credit. Having regard to the information contained within the schedule of loss she is in receipt of Universal Credit in the sum of £9,877.24 per annum (i.e. £39,508.94 divided by the 4 years of claim referred to at that point in the schedule). Over the period of six months until 21st May 2024 that equates to the sum of £4,938.62. The total deduction for Universal Credit over the relevant period therefore equates to the sum of £44,447.56.
66. That results in a total financial loss during the relevant period of £55,822.44.
67. We then reduce that by 50% for the reasons that we have already given which amounts to the sum of **£27,911.22**.

68. To that we add interest at a rate of 8% from the midway point of discrimination to the date on which the previously listed Remedy hearing should have taken place. That is a period of 757 days at a rate of 8% and equates to the sum of **£4,630.97**.

Total loss of earnings and interest: **£32,542.19**

Breach of the ACAS Code of Practice on Disciplinary & Grievance Procedures (“ACAS Code”)

69. As we have set out above, Ms. Sole relies on paragraphs 4 and 40 of the ACAS Code as having been breached and in respect of which we should find that the Respondent unreasonably breached the ACAS Code and accordingly upwardly adjust the award. She also relied upon the findings made at paragraph 174 and 217 of the Liability Judgment.

70. As set out at paragraph 171 of the Liability Judgment, the Claimant initially reported matters orally to Anne de Vere Hunt and asked her to deal with matters informally. We accept that she attempted to do so but was stymied from dealing with matters by both the Claimant’s failure to supply evidence and information in support of what she was reporting over a period of several months and also the matters set out at paragraph 178 of the Liability Judgment. Whilst there was a failure to properly investigate and provide an outcome, given the circumstances that we have set out there was not an unreasonable failure. We therefore do not consider it appropriate to adjust the award under Section 207A Trade Union & Labour Relations (Consolidation) Act.

Employment Judge Heap

Date: 6th February 2024

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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