EMPLOYMENT TRIBUNALS

Claimant: Mrs Abimbola Adeturinmo
Respondent: Whittington Health NHS Trust

Heard at: Watford **On:** 16 February 2024

Before: Employment Judge Dick
Mr M Bhatti OBE
Mr N Boustred

Representation
Claimant: Mr W Brown (solicitor)
Respondent: Mr P Sangha (counsel)

JUDGMENT ON REMEDY

1. The unanimous decision of the Tribunal is that the respondent shall pay compensation to the claimant of £ 16884.40 made up as follows:

    a. A basic award for unfair dismissal of £ 8,444.24;

    b. A compensatory award for unfair dismissal of £ 1,534.08;

    c. Compensation for unlawful discrimination and failure to make reasonable adjustments, inclusive of interest, of £ 6,906.08.

2. The recoupment provisions do not apply.

3. The claimant's application for costs against the respondent is refused.

<u>**Note**</u>: The total figure for damages announced orally was £ 16885.20, which was incorrect due a slight arithmetical error in adding up the sub-totals, which were all correctly announced. The correct figures are as above: 8444.24 + 1534.08 + 6906.08 = 16884.40.

WRITTEN REASONS FOR JUDGMENT ON REMEDY

1. At the remedy hearing on 16 February 2024 we gave a judgment and our reasons for it orally. On 18 February 2024 the Tribunal received a request for written reasons made on behalf of the claimant. As the request for reasons was received before the written record of the judgment had been sent to the parties, judgment and reasons are dealt with in this one document.

INTRODUCTION

2. In our decision on liability we found that the claimant had been unfairly dismissed and that the respondent had subjected her to indirect disability discrimination and had failed to make reasonable adjustments – see judgment and written reasons sent to the parties on 11 and 23 January 2024 respectively. It is important to note that those findings were in the claimant's favour only to a limited extent. So far as the unfair dismissal was concerned, we found that the respondent had acted reasonably before and throughout the bulk of a dismissal process which began on 13 October 2021 and ended on 18 April 2022 (the claimant's final day in employment). We found that the reason for dismissal was the claimant's incapability (as a result of the symptoms of sickle cell anaemia) to carry out the main functions of her contracted role and that, up to the point of the claimant's hospitalisation on 23 March 2023, the respondent acted reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The dismissal was unfair because (i) while the claimant was in hospital the respondent declined to extend the notice period (and so to allow the claimant to continue participating in the redeployment process once better) and (ii) the respondent neglected to inform the claimant about her appeal rights. We went on to find that there was a 90% chance that the claimant would have been dismissed after a fair process, applying the principle in *Polkey* v *AE Dayton Services Ltd* [1987] UKHL 8.

3. At the remedy hearing we considered a 75-page bundle, witness statements from the claimant and her husband, as well as a letter from a clinical psychologist Laura Mazzotti. We also had an amended schedule of loss, some information about the claimant's pension and the written submissions of counsel for the respondent. We heard oral evidence from the claimant and oral submissions from both advocates.

4. During the course of the hearing the parties were able to provide us with agreed figures for the claimant's gross and net weekly pay at the time of her dismissal, and also weekly figures for the ill-health retirement pension which she would be receiving. The claimant had not yet claimed this but the parties agreed that she soon would and that, when she did, she would be paid the arrears due from the date her employment ended. So, without objection from the parties, we calculated the claimant's losses (i.e. deducted the pension payments) as if she had been paid the pension weekly since her dismissal. Since it was not mentioned on the schedule of loss, we gave Mr Brown for the claimant the

opportunity to take instructions on whether the claimant sought compensation for loss of future pension rights. Mr Brown was able to confirm that she did not. Mr Brown was also able to confirm that the claimant did not seek reinstatement or reengagement and did not suggest that we make any recommendations.

5. There were no issues raised in this case as to failures to comply with codes of practice, contributory fault or failure to give written particulars of employment. The recoupment regulations did not apply as the claimant had not received relevant state benefits at any material time.

6. The claimant's employment began on 7 January 2002 and ended on 18 March 2022 (the effective date of termination, "EDT"); she therefore had a period of 20 years' continuous service with the respondent. She was born in September 1964 and was aged 57 on the EDT. Her statutory notice period was 12 weeks. The agreed figures for net and gross weekly pay were £ 250.85 and 301.58 respectively.

Issues

7. The issues on remedy to be decided were as follows:

    a. Whether the claimant should be awarded compensation for losses arising from her dismissal as compensation for unfair dismissal or for discrimination.
    b. The amount of the basic award for unfair dismissal.
    c. The amount to be awarded for loss of statutory rights.
    d. The period of loss for which the claimant should be compensated.
    e. The financial losses over that period caused by the dismissal.
    f. Adjustment (*Polkey*).
    g. The injury to feelings caused by the discrimination and the amount to be awarded for that.
    h. Whether there should be an award for aggravated damages and if so how much.
    i. Whether the discrimination caused the claimant personal injury and if so the amount to be awarded for that.
    j. Whether it is necessary to gross up any part of the award if it will be subject to tax.
    k. Interest.
    l. Costs.

APPLICABLE LAW

Remedy for unfair dismissal

8. The award for compensation for unfair dismissal is assessed under two heads on the principles set out at ss 118 to 126 of the Employment Rights Act 1996 ("ERA").

9. The first head is the basic award, which is calculated on a formula based on age, length of service and gross weekly pay. A week's pay is subject to a statutory maximum.

10. The second head is the compensatory award, generally calculated net of tax. It is intended to compensate for loss actually suffered and not to penalise the

employer for its actions. The relevant questions will be: was the loss caused by the dismissal; whether it was attributable to the employer's actions; and whether it is just and reasonable to award compensation.

11. The compensatory award may include: past and future loss of earnings, loss of pension and fringe benefits, expenses incurred in looking for other work, and compensation for loss of statutory rights. The award for loss of statutory rights reflects the fact that the claimant would have to work for 2 years in new employment to reacquire the right not to be unfairly dismissed and may also reflect that the claimant has lost the statutory notice period built up during the length of their employment. It will be a nominal sum, usually of the order of few hundred pounds.

12. Because the award is intended to compensate for actual loss, the amount of wages etc. lost by the claimant will have deducted from it any amounts the claimant has made, or should have made, by way of mitigation – the most obvious example being earnings from a new job. An employee who has been unfairly dismissed must mitigate their loss by taking reasonable steps to reduce their losses to the lowest reasonable amount. This does not mean they have to take all possible steps. The burden of proving a failure by a claimant to mitigate lies on the respondent. The compensatory award may also be the subject of certain other adjustments, for example to reflect contributory fault on the part of the claimant or where the Tribunal finds that the claimant might still have been dismissed had a fair dismissal procedure been conducted (applying the principle in *Polkey* above).

13. Although the compensatory award is calculated net of tax, some parts of an award may be subject to tax once in the claimant's hands. This includes awards for losses consequent on dismissal in so far as they exceed £30,000. In such cases, the award must be "grossed up" to include the tax the claimant will have to pay so as to still leave the claimant with the correct amount of (net) compensation. Compensation is taxed in the year that it is received, and so in grossing up the Tribunal will have to consider any other taxable income the claimant might have that year. The correct approach to grossing up where the claimant will pay tax in different bands was set out in *PA Finlay and Co Ltd* v *Finlay* EAT 0260/14.

14. ERA s 124 places a cap on the compensatory award for unfair dismissal of the lower of 52 weeks' pay or the prescribed amount applicable on the date of the EDT.

Remedy for discrimination (and other conduct prohibited by the Equality Act) in general

15. When a Tribunal determines that there has been a contravention of the Equality Act 2010 ("EqA"), the three available remedies are set out in s 124. 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. In a case of indirect discrimination where the Tribunal finds that the provision, criterion or practice was not applied with the intention of discriminating against the complainant, the Tribunal must not award compensation, i.e. (b), unless it has first considered (a) or (c).

Recommendations under the Equality Act

16. 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 claimant of any matter to which the proceedings relate. If a respondent fails without reasonable excuse to comply with a recommendation the Tribunal may increase the amount of compensation to be paid. Tribunals have a wide discretion when it comes to recommendations but a recommendation must be practicable in terms of its beneficial effect on the claimant.

Principles applying to compensation under the Equality Act

17. The purpose of compensation is to put the claimant in the position, so far as is reasonable, that they would have been in had the discrimination not occurred.

18. Similar principles as to those in in unfair dismissal apply, though there are some differences:
    a. The Tribunal does not award damages on the “just an equitable basis”, but rather under the principles that would be applied by the County Court for a claim in tort, although both approaches often lead to same result.
    a. The Tribunal can award compensation for non-financial losses such as injury to feelings, aggravated damages and general damages for personal injury.
    b. There is no statutory cap on the compensation.
    c. Interest on past losses may be awarded.
    d. The Recoupment regulations do not apply.

19. Where harm has been contributed to by a combination of factors, some of which amounted to unlawful discrimination for which the employer is liable, but others which did not, the extent of the employer’s liability will be limited to their contribution *Thaine* v *London School of Economics* [2010] I.C.R. 1422

Compensation for injury to feelings

20. The applicable principles were considered by the Court of Appeal in *Vento* v *Chief Constable of West Yorkshire Police* [2003] ICR 318. An award for injury to feelings is intended to compensate the claimant for the hurt feelings (as distinct from psychiatric or similar injury) caused by the unlawful treatment they received. This may include “subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on.” Since the award is compensatory, and not punitive, the focus is on the actual injury suffered by the claimant and not the gravity of the acts of the respondent; feelings of indignation at the employer’s conduct should not be allowed to inflate the award. Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation; on the other hand, awards should be restrained. They should bear some broad general similarity to the range of awards in personal injury cases. In exercising its discretion in assessing a sum, the Tribunal should remind itself of the value in everyday life of the sum they have in mind and the need for public respect for the level of awards made. *Vento* established three broad bands of compensation, identified by reference to the level of injury to feelings experienced by the claimant:

a. Upper band – For the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. To be exceeded only in the most exceptional case.

b. Middle band – For serious cases which do not merit an award in the highest band.

c. Lower band – For less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

21. There is 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. The amounts for each band are set by the Addendums to the Presidential Guidance on awards for injury to feelings. Which Addendum applies is determined by the date on which the claim was presented.

Aggravated damages

22. Aggravated damages are generally considered to be a sub-head of damages for injury to feelings. The Tribunal must look first at 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 Tribunal must take care not to award damages twice for the same conduct, once for (non-aggravated) injury to feelings and again as aggravated damages. Aggravated damages are not punitive and therefore do not depend upon any sense of outrage by a Tribunal as to the conduct which has occurred. (*HM Land Registry* v *McGlue* EAT 0435/11.) The general principle is that aggravated damages can be awarded in a discrimination case where the respondents have behaved 'in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination' (*Alexander* v *Home Office* 1988 ICR 685). Three broad categories of such case were identified in *Commissioner of Police of the Metropolis* v *Shaw* 2012 ICR 464:

- Where the manner in which the wrong was committed was particularly upsetting (as in *Alexander*).

- Where there was a discriminatory motive — i.e. the conduct was evidently based on prejudice or animosity, or was spiteful, vindictive or intended to wound (provided the claimant was aware of the motive in question).

- Where subsequent conduct adds to the injury — for example, where the employer conducts Tribunal proceedings in an unnecessarily offensive manner, or 'rubs salt in the wound' by plainly showing that it does not take the claimant's complaint of discrimination seriously.

General damages for physical or psychiatric injury (personal injury)

23. Employment Tribunals have jurisdiction to award compensation for personal injury, whether physical or psychiatric, caused by unlawful discrimination (*Sheriff* v *Klyne Tugs (Lowestoft) Ltd* 1999 ICR 1170). In assessing such damages Tribunals adopt the same basis as the Courts and will have regard to

the Judicial College Guidelines on assessing general damages. It is advisable for claimants to obtain medical evidence in order to prove personal injury, though there is no absolute requirement for it (*Hampshire County Council* v *Wyatt* EAT 0013/16). Care will need to be taken to avoid double recovery, as it may be difficult to identify where injury to feelings ends and psychiatric injury starts. The principle in *Thaine* (above) will apply where there are a number concurrent causes for the claimant's ill health for which the employer is not liable – the employer should only be required to pay compensation for personal injury for that proportion of the harm attributable to its wrongdoing, unless the harm (not the causative contribution) was truly indivisible.

Interest

24. The Tribunal can, and usually will, award interest on awards of compensation made in discrimination claims, applying s124(2)(b) EqA and the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Interest will of course only apply to the compensation for past, not future, losses. The current rate of interest is 8%. On injury to feelings awards, interest is calculated *from* the date of the discriminatory act. Otherwise, interest is calculated *from* the date which falls halfway through the period between the date of the discriminatory act and the date when the compensation is calculated. In any case, interest is calculated *to* the date on which the compensation is calculated. There is a discretion to award interest on a different basis if the Tribunal considers that serious injustice would otherwise be caused.

Matters common to remedy for unfair dismissal and discrimination

25. *Burden of Proof.* It is for the claimant to prove their loss and that the loss was caused by the unlawful act of the respondent. Though the claimant is obliged to take reasonable steps to mitigate their loss (see above), it is for the respondent to prove that the claimant failed to do so.

26. *Basis for compensation.* It is a matter for the Tribunal to decide whether to award compensation under ERA or EqA. Double recovery must be avoided.

Costs

27. For the purposes of this case, Rule 76(1) sets out the grounds upon which a costs order may be made:

    a. 76. When a costs order or a preparation time order may or shall be made
    b. (1) A Tribunal may make a costs order…, and shall consider whether to do so, where it considers that—
    c. (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted;
    d. (b) any claim or response had no reasonable prospect of success; or
    e. …

28. So far as the grounds for considering an order are concerned:
    a. 'Vexatious' was defined in *ET Marler Ltd* v *Robertson* 1974 ICR 72, NIRC: 'If an employee brings a hopeless claim not with any expectation of recovering compensation but out of spite to harass his employers or

for some other improper motive, he acts vexatiously.' Simply being 'misguided' is not sufficient to establish vexatious conduct (*AQ Ltd*, v *Holden* 2012 IRLR 648). A later case in the Court of Appeal, however, suggests that the effect of the conduct is more important than the motive behind it (*Scott* v *Russell* 2013 EWCA Civ 1432, CA).

b. "Unreasonable" has its ordinary English meaning: *Dyer* v *Secretary of State for Employment* EAT 183/83.

29. Costs in the Employment Tribunal are the exception, not the rule (*Yerrakalva* v *Barnsley Metropolitan Borough Council and anor* 2012 ICR 420).

FINDINGS AND REASONS

30. Our calculations for the different aspects of the award are set out in the table below. Before that, our findings and reasons on particular issues which require explanation beyond what is set out in the calculation are as follows.

Basis – ERA or EqA

31. In this case we considered it most appropriate to compensate the claimant for her losses on the basis of ERA, since the act of discrimination relied upon in this case was not the act of dismissal itself. It was therefore preferrable to calculate losses cased by the dismissal on the ERA basis.

Period of assessment

32. Following our previous findings on *Polkey,* there would be two periods over which damages would be assessed in this case. The first period would be the period over which, had a fair process been followed, there was a 100 % chance that claimant would have continued in employment. For that first period, the claimant would be entitled to recover 100 % of her losses. The second period would be the period during which there was only a 10 % chance that the claimant would have remained employed by the respondent. For this period, the claimant would only be entitled to 10 % of her losses.

33. As to the first period, we had already found that a fair dismissal process would have taken eight weeks. At the remedy hearing we therefore indicated that we were provisionally minded to take the first period as eight weeks. However, Mr Sangha submitted that this would be wrong as, had a fair process, including an appeal, which resulted in the claimant's dismissal taken place, the claimant would still only have been paid until the end her notice period (i.e. even if the appeal process had carried on past that point). Mr Brown for the claimant did not disagree with this. On consideration, we agreed with this point. On the facts of this case, then, the length of the first period would in fact be the period by which in our view that claimant's notice period should have been extended by the respondent, i.e. the number of days which the claimant spent in hospital (which was 27). Neither party took issue with this approach.

34. As to the second period, the claimant sought her losses until the end of 2022, being the period she agrees it would reasonably have taken for her to find a new job. We considered this to be a fair basis for compensation, given the difficulties she faced at that time. For the respondent, Mr Sangha submitted that this period was too long. It would not be just and equitable to award loss of earnings beyond the time that the Tribunal considered a fair appeal process would have taken. The claimant's assertion that she would (reasonably) have found a job by January 2023, rather than the fact that she did find a job was, he submitted, telling. The claimant's ill health likely prevented her from finding work. The Tribunal's findings to the effect that the respondent had made all the reasonable adjustments it could have done and the slim chances of redeployment, should be kept in mind. Coupled with the claimant's health, they showed that the claimant's health was an overbearing impediment to gainful employment. While these arguments would have had a bearing on efforts the claimant could or should have made to mitigate her losses, they would if anything have assisted the claimant, i.e. by showing that she was unable to mitigate her losses by finding a new job. None of that in our judgment changes

the fact, as we have found it to be, that there was a 10% chance that the claimant would not have lost her employment (in some form) with the respondent. It is also the case that there was no suggestion from either party that the claimant was unfit to work *at all* after her dismissal – relatively short periods of time in hospital because of sickle cell crises aside, the claimant was fit to work from home. The claimant reasonably in our view limited her claim to the period it might have taken her to find a new job having made reasonable efforts, no doubt bearing in mind her assertion at the liability hearing that there was work available for pharmacists who wanted to work from home (albeit not with the respondent). Whether she in fact found work after that time was not relevant. The respondent did not seek establish in evidence that she had failed to take reasonable steps to mitigate her loss before that time – her assertion that she was not psychologically "in a state" to look for work in the months after her dismissal was not challenged. We therefore do not find that the claimant failed to make reasonable steps to mitigate her losses in 2022. We also find that it is just and equitable for her to be compensated (subject to the *Polkey* reduction) over what we have called the second period until the end of December 2022. The claimant limited her claim to what was in our judgment a reasonable period.

Injury to feelings

35. On the facts of this case, the focus had to be on the hurt to feelings caused by the respondent's failure to extend the notice period; or, to put it another way, the respondent carrying on with the dismissal process while the claimant lay ill on one of the respondent's own hospital beds. We were in no doubt that this action caused the claimant hurt feelings. However, the claimant's hurt at the respondent's actions went significantly beyond that. The claimant was also genuinely upset at what she saw as the respondent refusing to make reasonable adjustments – and by this, she meant the respondent not making adjustments to allow her to continue to work. The claimant loved her work as a pharmacist and understandably was very hurt that she would not be able to continue that work for the respondent. But it is important to note that we concluded that it was not unreasonable for the respondent to have decided that it was not possible for the claimant to work on site, nor was it unreasonable to have concluded that her role could not continue to be done from home. It was clear to us from the claimant's oral evidence at both liability and remedy hearings that these decisions caused a substantial proportion of the claimant's hurt feelings. None of these, however, on our findings were unlawful acts on the part of the respondent – the respondent cannot be liable to pay damages for any feelings hurt by those acts. We also, of course, cannot take into account whatever concerns the claimant has about alleged discriminatory acts which were withdrawn from our consideration upon the claimant's application at the start of the liability hearing.

36. In her statement, the claimant described constant stress from the respondent not giving "honest support for redeployment" but also for not making reasonable adjustments, and says she faced less favourable treatment from the start of the COVID-19 pandemic (early 2020); the conduct we are concerned with occurred over approximately four weeks in 2022. The claimant describes feelings of rejection, anxiety and betrayal, which we do not doubt were entirely genuine, after the 20 years' service she had given. She describes in particular the hurt caused when, in hospital, she found out that the termination of her employment had already been done without her input. Of course, on our findings it would be

more accurate to say *continued* rather than *done* – there were seven meetings in which the claimant was able to take part during the part of the process in which we found the respondent to have acted reasonably.) As the claimant put it, it was very painful and exacerbated an already painful experience. She goes on to say: "The way that the respondent managed or handled issues that led to the commencement of my claim left me feeling betrayed, ignored and unvalued by the respondent, despite putting in 20 years of service." Since the end of her employment she had battled with "depression, severe anxiety and lack of confidence", which affected her personal life. The claimant's husband, Mr Ambrose Adeturinmo, described that in his statement.

37. The letter from Laura Mazzotti, a clinical psychologist, explained that Ms Mazzotti had been seeing the claimant for psychological therapy since May 2023 (though it was clear from the claimant's oral evidence that the claimant had received psychological treatment on and off before that time as well). Ms Mazzotti describes symptoms of severe anxiety and depression and then says: "One of the most [not, we note, the only] recurrent themes which have emerged during our sessions is the trauma linked to being dismissed from her job". Ms Mazzotti describes the claimant's concern about not being allowed to work remotely and the claimant's belief that the respondent did not make sufficient adjustments to allow her to keep her job. Ms Mazzotti also records the claimant struggling to come to terms with the way her job ended and reporting that she had struggled to process the information that the employment was coming to an end as she was very poorly in hospital, experiencing a sense of betrayal. In summary, on the most favourable reading for the claimant, Ms Mazzotti attributes trauma to the dismissal process, noting it as one, but not the only, recurrent theme – those other themes are not explored at all. Even within the trauma attributed to the dismissal process, Ms Mazzotti does not purport to separate out the hurt caused by what we have found to be the unlawful aspects of the process (though that should not be taken as any criticism whatsoever of Ms Mazzotti). Ms Mazzotti also notes that the claimant still (in late January 2024) found talking about the experience very distressing.

38. That last point was evident to us from the claimant's oral evidence, both at the liability and remedy hearings. When asked whether the trauma described in Ms Mazzotti's letter was caused solely by her dismissal, the claimant said that it was a major part of it. When it was put to her that there were also other causes of her psychological symptoms, including having to deal with sickle cell disease and its attendant crises, she pointed out that before her dismissal she had been able to manage, working from home, though she did concede that the disease had a psychological impact to some extent as well. The major thing that tiggered things, she said, was how the respondent was dealing with it [i.e. the dismissal process] – every meeting – she wanted to work from home and then there was the shock of going into hospital and not being treated with compassion. We note that here the claimant is attributing the causes as a mixture of actions for which we have found the respondent liable and actions for which we have not, as well as other things entirely.

39. Taking all of the above into consideration, we considered that the injury to feelings occasioned by the discriminatory acts for which we found the respondent liable fell into the lower band, which for claims presented on or after 6 April 2022 was £990 to £9,900. We did so having concluded that the bulk of the claimant's injured feelings were not caused by those acts. We decided that the appropriate sum in damages for injury to feeling was £ 6000.

Aggravated damages

40. Mr Brown for the claimant submitted that the respondent knowingly discriminated against the claimant. Given our findings at the liability hearing, we do not accept that, though of course the respondent was aware of the claimant's disability and the fact that she was in hospital. We do not find that, objectively viewed, the respondent's conduct was capable of aggravating the claimant's sense of injustice and injuring her feelings still further, or was so particularly upsetting as to make an award for aggravated damages appropriate. Whatever legitimate criticism there might be, we do not consider it appropriate to describe the respondent's conduct as high-handed, malicious, insulting or oppressive (either during the dismissal process or afterwards). We therefore do not award aggravated damages.

Psychiatric injury

41. The claim was not put on the basis that the respondent's conduct caused physical injury by, for example, making her sickle cell crises more frequent. Rather, the claimant argued that the respondent had caused psychiatric injury, i.e. the symptoms described by Ms Mazzotti which we have set out above (severe anxiety and depression). But the most favourable reading which we refer to above is somewhat too favourable in our judgment. Ms Mazzotti does not say the symptoms were caused by dismissal. She refers to "trauma linked to being dismissed" emerging as a "recurrent theme" in the sessions to treat the symptoms. She does not say that the trauma was an operating cause of the symptoms, nor does she consider any other recurring themes or causes. Even if Ms Mazzotti is to be taken to be saying that the dismissal caused the symptoms (and we do not think she is saying that) she does not say to what degree (if any) the symptoms were caused by (or contributed to by) solely those actions of the respondent which we found to be unlawful. Without more, we do not regard this as a sufficient basis to conclude, on the balance of probabilities, that the respondent's unlawful actions caused the claimant psychiatric injury (beyond of course the injury to feelings we have already considered).

Interest

42. For the reasons given at paragraph 96 of our written reasons on liability, we took the date of the discriminatory act as one week after the claimant was admitted to hospital.

Grossing up

43. We heard evidence from the claimant about whether she might have any other income this tax year (i.e. the year in which the award will be made) in case that should have a bearing on grossing up. In the event, since the award was under £ 30,000, it will not be subject to tax and so there was no need for grossing up.

Costs

44. The claimant's application for costs was put on the basis that the conduct of the respondent in defending the claim was unreasonable, in particular in the respondent not accepting a proposal for settlement. We were provided with no details about this proposal, so were in no position to judge whether the

respondent's refusal to accept it was unreasonable. It is of course the case that in a significant proportion of cases before the Tribunal one or other party will have rejected a proposal for settlement. Were that alone to be treated as unreasonable conduct, that would completely undermine the position that costs in the Tribunal are the exception not the rule. More generally, we found no grounds on which to conclude that the respondent's conduct of the litigation was unreasonable. The respondent was found liable on some points, but equally it successfully defended significant parts of the claim. There was nothing unreasonable or otherwise objectionable about the way the final hearing was conducted on the respondent's behalf and we found the respondent's witness Mr Man honest and willing to concede where things had gone wrong. We therefore considered that none of the grounds under rule 76 were made out and made no order for costs.

Other points

45. In this case we did not consider it appropriate to make recommendations under s 124(2)(c). We had already made declarations under s 124(2)(a) EqA by way of the judgment given after the liability hearing and considered that this alone would not be sufficient remedy in this case. We therefore decided also to order compensation under s 124(2)(b).

46. We are grateful to counsel for the respondent for pointing out an error in the calculation of interest, which we were able to correct during the course of our oral judgment. The written judgment and the calculation below reflect that correction.

CALCULATION

Agreed figures		
	Net weekly pay	£250.85
	Gross weekly pay	£301.58
	(This does not exceed the statutory maximum)	
	Net weekly IHR pension	£46.18
BASIC AWARD		
	28 qualifying weeks * Gross weekly pay	£8,444.24
COMPENSATORY AWARD		
(1) Period 1 (no Polkey reduction)		
	27 days from discharge is 16/5/22	
	C was paid up to 18/4/22	
	Period 1 will be 19/4/22 to 16/5/22 = 28 days = 4 weeks	
	Loss over that period (250.85-46.18)*4 =	£818.68
(2) Period 2 (subject to Polkey reduction)		
	17/5/22 to 31/12/22 is 33 weeks	
	Loss over 33 weeks (250.85-46.18) * 33	£6,754.11
	Plus £ 400 loss of statutory rights	£7,154.11
	Polkey reduction of 90%	£715.40
(3) Total compensatory award		
	Period 1 + Period 2	£1,534.08
	(This does not exceed the statutory cap)	

TOTAL AWARD FOR UNFAIR DISMISSAL		
	Basic award + compensatory award	**£9,978.32**
AWARD FOR INJURY TO FEELINGS		
Award		£6,000.00
Interest	Date of discriminatory act 30/3/22	
	Date of calculation 16/2/24	
	Number of days for interest = 689	
	689*6000*0.08*(1/365)	906.08
Award including interest		**£6,906.08**
TOTAL AWARD		
	Unfair dismissal + Injury to feelings	**£16,884.40**

Employment Judge Dick

Date: 13 March 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

13/03/2024

FOR THE TRIBUNAL OFFICE