EMPLOYMENT TRIBUNALS

Claimant: Ms D Leigh

Respondent: Lancashire County Council

Heard at: Manchester **On:** 14 May 2024 and 29 July 2024 (in chambers)

Before: Employment Judge Slater
Mr D Wilson
Mr M Stemp

Representation
Claimant: Mr P Gilroy KC
Respondent: Mr E Stenson, counsel

RESERVED JUDGMENT

1. The respondent is ordered to pay to the claimant net compensation of £184,542 for the acts of disability discrimination set out in the judgment on liability sent to the parties on 18 December 2023, inclusive of 5% uplift for failure to comply with a relevant ACAS Code of Practice and interest.

2. The sum of £184,542 is the amount to be received by the claimant after deduction of tax due on the award. If the parties cannot agree on the amount by which the net award must be grossed up, they must write to the Tribunal by no later than 35 days from the date this judgment is sent to the parties, asking the Tribunal to determine this and setting out their arguments. If no application is made to the Tribunal by this date, the case will be treated as concluded and the file will be closed.

REASONS

This remedy hearing

1. This was a remedy hearing following a hearing on liability, reserved judgment for which was sent to the parties on 18 December 2023.

2. The Tribunal had found the following complaints to be well founded:

2.1. An act of harassment concerning the claimant's suspension on medical grounds on 14 April 2021.

2.2. A failure to make reasonable adjustments in relation to the provision, criteria or practices of requiring restraints and sleep ins.

2.3. A complaint of discrimination arising from disability in relation to initiating the respondent's attendance capability policy on 16 or 17 December 2021.

3. One day had been allocated for this remedy hearing. We were able to hear evidence and submissions during the course of this day but the time allocation was insufficient to allow the Tribunal to make a decision. The Tribunal met in chambers on 29 July 2024 to make a decision, the first available date when all members of the Tribunal could meet.

4. The parties had prepared a remedy bundle of 752 pages, a small supplementary bundle and lengthy written skeleton arguments. We had a remedy witness statement from the claimant, from Shelagh Gibbons, a former employee of the respondent and from Caroline Holmes, former manager of the claimant, and heard evidence from these witnesses, on behalf of the claimant. The respondent did not call any witness evidence.

5. The claimant had produced an updated schedule of loss as at 9 May 2024 and the respondent provided a counter schedule of loss.

Issues

6. The main areas of dispute were as follows.

6.1. Whether the claimant should be awarded compensation for loss of earnings prior to the ending of her employment.

6.2. The period from the effective date of termination for which the claimant should be awarded loss of earnings. The claimant contended she would have worked until age 67 if reasonable adjustments had been made. The respondent contended (1) that the claimant's employment would have ended in any event on or around 28 February 2022 (the effective date of termination), on the basis that she was incapable of any gainful employment by that date; alternatively (2) that the claimant's losses stopped when she was found to be permanently incapable of gainful employment following her appeal for tier 1 ill health retirement; alternatively

(3) that the claimant would have retired by age 64 (but it being likely that she would have stopped work earlier).

6.3. The correct amount of net weekly pay to be used in any calculation of loss of earnings.

6.4. Whether ill health retirement and other pension payments should be deducted in arriving at financial loss.

6.5. The amount to be awarded for injury to feelings.

6.6. Whether there should be a separate award for personal injury and, if so, how much.

6.7. Whether there should be a separate award for loss of congenial employment and, if so, how much.

6.8. Whether there should be a separate award for aggravated damages and, if so, how much.

6.9. Whether there could be an uplift to compensation on the basis of failure to comply with a relevant ACAS Code of Practice.

7. The representatives agreed that, if the amount awarded was such that the claimant was likely to be taxed on any amount, the Tribunal's decision should leave the parties to agree the amount by which the award should be grossed up to take account of the tax likely to be payable.

Facts

8. We rely on facts found in our decision on liability and make additional findings of fact.

9. We accept the evidence in the claimant's witness statement as to how she felt at relevant times. The claimant suffered a great deal of anxiety and stress due to the respondent's failure to make reasonable adjustments. She found it difficult to sleep. Stress, anxiety and lack of sleep exacerbated the pain she suffered. She was extremely worried about her future with the respondent and worried about her financial position if she was not allowed to keep working, with adjustments.

10. The claimant had thoroughly enjoyed her job and its loss caused her considerably upset.

11. The suspension on 14 April 2021 left the claimant distraught, shocked and completely embarrassed and made her even more anxious and depressed.

12. The claimant's medical suspension ended some time in December 2021 and the claimant continued on sick leave until her employment ended on 28 February 2022.

13. On taking early retirement, the claimant started to receive two different pension payments from the respondent's scheme. She received an ill health retirement

payment of £426.47 per month and a further payment of deferred pension taken early, which was £241.26 per month. She also received a lump sum of £24,779.30. The claimant had elected to take part of her pension as a lump sum, which would reduce her future pension payments.

14. The claimant received and continues to receive Employment and Support Allowance of £71 per week, which the claimant gives credit for in the calculation of her financial loss.

15. The claimant was 59 years old when she took ill health retirement on 28 February 2022. She had her 60th birthday a few months later, on 13 May 2022. The claimant had previously told Shelagh Gibbons that she would work at least until the age of 64. This is consistent with what the claimant put in her claim form, that she would possibly have been ready to retire in another 3-4 years. We accept that the claimant, because of her financial situation and because she really enjoyed her job, would have wanted to continue to remain in the job as long as she physically could, retiring no later than age 67 (which would have been 13 May 2029.

Expert evidence

16. The parties, with joint instructions, had obtained two expert medical reports: one from Mr Bernard S Sylvester, Consultant Orthopaedic and Upper Limb Surgeon, dated 22 April 2024 (p.23) and one from Dr Nicola J McCalliog, Psychologist, dated 25 April 2024 (p.42).

17. We refer to relevant parts of these reports in our conclusions.

Submissions

18. Both representatives prepared written skeleton arguments and made oral submissions.

19. We deal with the parties' principal submissions in our conclusions.

Law

20. Section 124(6) of the Equality Act 2010 provides that the amount of compensation which may be awarded for a breach of the Equality Act in relation to work is "the amount which could be awarded by a county court…under section 119". Section 119 provides that the county court has power to grant any remedy which could be granted by the High Court in proceedings in tort and section 119(4) provides: "an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)". The aim of damages in tort is to put the claimant in the position they would have been in, had the act of discrimination not occurred. Compensation (with the possible exception of exemplary damages which may be relevant in rare cases) is to compensate for loss caused by the act of discrimination. There is no limit on compensation for discrimination.

21. There are some limited exceptions to the general principle that the claimant should recover no more than they have actually lost. We will deal with what we

understand to be the effect of the House of Lords' decision in **Parry v Cleaver** [1969] 1 All ER 555 in relation to whether pension payments should be deducted in calculating financial loss, within our conclusions.

22. In relation to compensation for injury to feeling, we have regard to the guidelines in **Vento v Chief Constable of West Yorkshire Police (no.2)** [2003] IRLR 102**.** We note, in particular, the guidance that awards are compensatory and not punitive. **Vento** sets out the bands that we must consider. These were amended by subsequent case law. The Presidents of the Employment Tribunals in England and Wales and Scotland issued joint guidance in September 2017 to update the **Vento** bands to take account of inflation and to incorporate an uplift in accordance with the **Simmons v Castle** [2012] EWCA Civ 1039 and 1288 CA authority.

23. The claimant's claim was presented on 7 July 2022. The relevant updated *Vento* bands are, therefore, those which appear in the Fifth Addendum to the Presidential Guidance. These are: lower band £990- £9,900 (less serious cases); middle band £9900 - £29,600 (cases that do not merit an award in the upper band); and upper band £29,600- £49,300 (the most serious cases). In the most exceptional cases, the award can exceed £49,300.

24. Interest is normally payable on awards of compensation for discrimination. This is currently at the rate of 8%. Interest on compensation for injury to feelings normally runs from the date of the act of discrimination until the calculation date; interest on financial loss normally runs from the mid-point between the act of discrimination and the calculation date.

25. The Tribunal has power to make personal injury awards for injury suffered in consequence of acts of discrimination. The Judicial College Guidelines 17th edition gives guidance on appropriate awards for psychiatric and psychological damage.

26. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 applies to claims listed in Schedule A2 to that Act. That includes complaints about discrimination in work under the Equality Act 2010. Section 207A(2) provides that:

> "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%."

Conclusions

Loss of earnings prior to the effective date of termination

27. The claimant argued that she should be compensated for loss of earnings during the periods she was on sick leave or suspended in the period from 7 September 2020 until 28 February 2022. The respondent argued that the claimant's absence from 7 September 2020 started before the acts of discrimination found by the Tribunal, so no award should be made.

28. The claimant's absence from work from 7 September 2020 was triggered by the meeting on 2 September 2020. We found (paragraph 22) that the claimant may have formed the impression that the respondent would not allow her to continue working in residential care. However, the claimant did not satisfy us that John Simpson told her that at this meeting. We do not consider, therefore, that the claimant's sickness absence in the period September 2020 until her return to work on 6 April 2021 was attributable to any act of discrimination found by us. Any loss of earnings in this period was not, therefore, attributable to discrimination and we make no award in relation to this period.

29. We concluded in our liability judgment that the suspension on medical grounds on 14 April 2021 was harassment related to disability. We conclude that the claimant's absence from 14 April 2021 when her medical suspension began, until the end of her employment was attributable to discrimination by the respondent and that the claimant should, therefore, be compensated for the difference in this period between what she would have earned, had she not been on suspension then sick leave, and what she did receive in wages and sick pay during this period.

30. We have decided that the best way to calculate this is by taking what we consider is a fair estimate of the claimant's net monthly earnings and deducting from this what the claimant received each month, for the period April 2021 to February 2022. For reasons we explain later, we have concluded that the appropriate figure to use for net weekly earnings is £545.25 and the monthly net equivalent of that is £2362. The calculation of loss in this period is set out at the end of these reasons.

The period from the effective date of termination for which the claimant should be awarded loss of earnings

31. We do not agree with the respondent's submissions that the claimant's employment would, without the discrimination, have ended either at the same date (28 February 2022) or when she was awarded the tier 1 ill health pension, following her appeal against the tier 3 award. We refer to paragraph 114 of our liability reasons which set out why we considered it was not inconsistent that the claimant could have continued working with reasonable adjustments, although she was assessed as not fit for work. The report of Mr Sylvester supports that the claimant could have continued working, if reasonable adjustments had been made. Mr Sylvester's opinion is that the claimant could have carried on working up to the age of 64 to 69.

32. We concluded that the claimant would have carried on working for the respondent, in a job she really enjoyed and had been able to manage, with

adjustments, until she decided to retire. We considered whether she would have retired at age 64 or whether there was a chance she would have worked beyond this age.

33. We have concluded that there was 100% chance that the claimant would have worked until at least the age of 64. The report of Mr Sylvester supports that the claimant would have been physically fit enough to work until at least this age. The claimant enjoyed her job and intended to work until at least this age, needing to do so for financial reasons. This is consistent with what she told Shelagh Gibbons and what the claimant wrote in her claim form and previous schedules of loss.

34. We conclude, based on the claimant's evidence at this hearing and that of Shelagh Gibbons, that she would have continued to work past age 64 if fit enough to do so. The claimant enjoyed her job and it would have helped her financially to work until her state retirement age (67) if she was able to do so. Mr Sylvester's opinion is that the claimant could have carried on working up to the age of 64 to 69. Doing the best we can on the evidence available, noting the lack of precision acknowledged by Mr Sylvester, we conclude that there is a 50% chance that the claimant would have been able to carry on working, and would have carried on working, for the respondent, if the respondent had made reasonable adjustments, until the age of 67.

35. We calculate loss of earnings up to the date of calculation (29 July 2024) and future loss until 13 May 2026 (the claimant's 67th birthday) on this basis, as set out in the Schedule.

36. As set out in the claimant's Schedule of Loss, Employment Support of £71 per week is deducted in arriving at financial loss. We deal separately with the issue of whether pension benefits are to be deducted in arriving at financial loss.

<u>The correct amount of net weekly pay to be used in the calculation of financial loss</u>

37. The claimant asserts that this is £633.09 per week. We have not been able to understand completely the claimant's calculation arriving at this amount, the footnote in the calculation dealing with gross, rather than net, pay. However, we understand that the claimant includes, in addition to basic pay, shift allowance, first aid and weekend shift allowances and an amount for additional hours worked. The claimant has calculated a gross monthly amount of £441.69 for additional hours worked by using an average of additional hours in the period January 2019 until September 2020.

38. The respondent asserts that the correct net weekly pay is £498.53, which we understand from their counter schedule of loss to represent basic pay only.

39. We conclude that it would be appropriate to include in the net earnings the various elements contended for by the claimant, save that we consider the additional hours to be inflated by including additional hours worked during the peak of Covid. We have, therefore, considered that a fair way to assess the claimant's net weekly earnings would be by using the total net income from the respondent in the period May 2019 to April 2020 inclusive, taking the net income for each month from the table at page 662 of the remedy bundle, and dividing this by 52. The calculation is £28,352.94/52 = £545.25. The monthly net figure is £2362.75.

Whether ill health retirement and other pension payments should be deducted in arriving at financial loss

40. The claimant argues that pension payments should not be deducted. The claimant argues that ill health pension payments should not be deducted in calculating loss of earnings, relying on the authorities of **Parry v Cleaver** [1969] 1 All ER 555 and **Longden v British Coal Corporation** [1998] AC 653. If the Tribunal decides that the ill health pension should be deducted, the claimant argues no deduction should be made for the other pension elements.

41. The respondent argued that both elements of pension paid to the claimant, the ill health pension and the deferred pension taken early, and the benefit to the claimant of early receipt of a lump sum, should be deducted in calculating financial loss.

42. The respondent argues that the facts in this case are distinguishable from the facts in **Parry v Cleaver** and **Longden**. Mr Stenson argued that, in those cases, the incapacity to work was caused by the unlawful act but it is not the claimant's case that the respondent caused her physical injury.

43. Perhaps due to pressure of time, the representatives did not make detailed submissions on the relevant legal cases, referring us only to the headnote in **Parry v Cleaver**. We have, however, read the authorities and considered relevant parts from Clerk and Lindsell on Torts in reaching our conclusions.

44. We deal with the different elements of pension separately since it appears to us that different considerations apply.

45. The **Parry v Cleaver** argument appears to us to be potentially relevant only to the ill health pension. The case concerned calculation of damages for tort; in that case injury caused by the defendant's negligence. When calculating damages for discrimination, we are, in accordance with section 119 Equality Act, calculating damages that could be granted by the High Court in proceedings in tort. The authority is, therefore, binding on us if the principle in that authority applies to the situation in Ms Leigh's case.

46. **Parry v Cleaver** deals with an exception to the primary principle of compensation, that the claimant should recover no more than they have actually lost and, prima facie, the respondent's liability should be reduced where the claimant's loss has been diminished in whole or in part by a benefit received from a collateral source. There is no dispute, for example, that loss of earnings claimed from a respondent must be reduced by the amount the claimant is able to earn by taking reasonable steps to mitigate that loss.

47. What, then, is the nature of this exception? Clerk and Lindsell tells us:

> "The application of the primary principle and its qualifications means that all but two main categories of collateral benefits are deducted. The two categories are, first, insurance payments and similar payments (such as pensions), and secondly, gratuitous payments and the like. As Lord Bridge said in *Hunt v Severs*[256]:

> "The starting point for any inquiry into the measure of damages which an injured [claimant] is entitled to recover is the recognition that damages in the tort of negligence are purely compensatory. He should recover from the tortfeasor no more and no less than he has lost. Difficult questions may arise when the [claimant's] injuries attract benefits from third parties. According to their nature these may or may not be taken into account as reducing the tortfeasor's liability. The two well-established categories of receipt which are to be ignored in assessing damages are the fruits of insurance which the [claimant] has himself provided against the contingency causing his injuries … and the fruits of the benevolence of third parties motivated by sympathy for the [claimant's] misfortune.""

The reference for *Hunt v Severs* contained in footnote 256 is [1994] 2 AC 350 at 357-358.

48. The principle that proceeds of a personal accident insurance policy will not be deducted from damages pre-dated **Parry v Cleaver.** In **Parry v Cleaver** the House of Lords, by a majority, held that an occupational disability pension was sufficiently analogous to an accident insurance benefit for it to be treated in the same way. The House of Lords was considering a situation where the pension would not have been payable but for the accident which gave rise to the damages claim. Lord Reid, as p.558E described the rationale for not deducting the proceeds of an insurance policy:

> "As regards moneys coming to the plaintiff under a contract of insurance, I think that the real and substantial reason for disregarding them is that the plaintiff has bought them and that it would be unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit from it should enure to the benefit of the tortfeasor."

49. Lord Reid considered public policy, as interpreted by Parliament, in deciding whether disablement pension benefits should be deducted in calculating damages. Although he refers frequently to "pensions" rather than disablement or ill health pensions, we consider it clear from the initial references to disablement pension that it is this type of pension with which the House of Lords was concerned, which we consider can include the type of ill health pension we are dealing with in Ms Leigh's case. At page 563C-E, Lord Reid refers to the Fatal Accidents Act 1959 which provided that, in assessing damages in respect of a person's death under certain statutes, "there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of his death." Lord Reid wrote:

> "If public policy, as now interpreted by Parliament, requires all pensions to be disregarded in actions under the Fatal Accidents Acts, I find it impossible to see how it can be proper to bring pensions into account in common law actions. …….In my judgment, a decision that pensions should not be brought into account in assessing damages at common law is consistent with general

> principles, with the preponderating weight of authority, and with public policy as enacted by Parliament and I would therefore so decide."

50. It appears to us that the rationale for not deducting disablement pension was that it was a benefit "bought" by the plaintiff to be paid because of injury suffered (although later authority has clarified that it is irrelevant whether the claimant made contributions to such a benefit provided by their employer) and that the context of the damages claimed being for the causing of that injury is significant to the reasoning.

51. Whilst Ms Leigh has "bought" the ill health pension, we consider the situation is significantly different to that in **Parry v Cleaver** in that the ill health pension is payable because Ms Leigh, due to health conditions not caused by the respondent, has been assessed as not being able to work. Her claim for damages is not for causing those health conditions; it is, rather, a claim for damages for discrimination, which includes earnings lost as a result of that discrimination. **Parry v Cleaver** established an exception to the general principle of compensation. We do not consider that exception was that all pension payments, whether or not payable because of the tortious act for which damages are being sought, are not to be deducted in calculating compensation. We consider that the claimant is seeking to extend the exception established in **Parry v Cleaver**. In accordance with the general principle that the claimant should not be compensated for more than she has lost, we conclude that the ill health retirement pension should be deducted in calculating financial loss and putting the claimant, as far as possible, back in the position she would have been in had the act of discrimination not occurred.

52. We turn now to the other pension elements. We were provided by the parties with fairly sparse information relating to these. However, using our judicial knowledge, we conclude that the other monthly pension payment was her "normal" pension taken early and, therefore, will have been subject to an actuarial reduction, because the claimant was taking it before normal retirement age. This will mean that, when she reaches normal retirement age, her pension payments will be lower than they would have been, had she waited until normal retirement age to take them. The claimant has not identified, in her schedule of loss, an adverse impact on her future pension benefits through retiring early. However, again using our judicial knowledge, we anticipate that there would be some adverse impact. Similarly, taking a lump sum at the date of her ill health retirement will have reduced future pension benefits. In the absence of specific information as to pension loss, we have concluded that we should not make any deduction in calculating lost earnings, for the non-ill health retirement element of pension and for the benefit of receiving the lump sum early (accelerated receipt). We aim to achieve, by not making any deductions for these, a broad brush way of balancing additional income and any benefit of accelerated receipt now, against damage to her future pension.

<u>Personal injury</u>

53. We deal with this before considering injury to feelings, because, in making an award for injury to feelings, we will need to consider the effect of any personal injury award, avoiding compensating the claimant twice over for the same non-financial loss.

54. We are satisfied, on the basis of Dr McCalliog's report, obtained on the joint instructions of the parties, that the claimant has suffered a severe depressive disorder and generalized anxiety disorder because of the acts of unlawful discrimination. We had some reservations about the way Dr Calliog set out at 3.1 what she describes there as "accident details" which, we understand, is what she later refers to as "the index accident". This description is not confined to the acts of discrimination which the Tribunal upheld in our decision on liability. However, despite these reservations, we consider that the report provides sufficient basis for concluding that the acts of discrimination caused the severe depressive disorder and generalized anxiety disorder which were diagnosed after the discrimination. We note, at paragraph 3.5, that Dr Calliog identifies that, prior to the "incident," the claimant was not suffering from any diagnosable psychological disorder. There is no suggestion of any causes of the psychological conditions she developed, external to what was happening at work. We consider that the complaints we upheld, although not all the complaints brought, encompass the most serious parts of what is described in paragraph 3.1. The report, in describing the impact on the claimant, is consistent with evidence we heard from the claimant and her other witnesses, about the change in the claimant. For example, Shelagh Gibbons described the claimant, prior to relevant events, as having always been a lively and optimistic individual. However, when she visited the claimant, after the suspension (one of the complaints of discrimination we upheld), she described the claimant as seeming depressed, looking ill and limiting her time outside the house.

55. In section 11 of the report, Dr Calliog assesses the claimant's psychological problems against DSM-5 criteria. The criteria met, which led to an assessment of severe depressive disorder and generalized anxiety disorder, included:

- Persistent low mood.
- Weight loss or changes in appetite experienced every day.
- Insomnia or hypersomnia nearly every day.
- Fatigue or loss of energy.
- Feelings of worthlessness or excessive or inappropriate guilt.
- Diminished ability to think or concentrate.
- Clinically significant impairment to social functioning.
- Anxiety and panic attacks.

56. Dr McCalliog expresses the opinion, at 13.3, that the claimant's psychological symptoms severely affected her social, cognitive and emotional function.

57. Dr McCalliog did not feel able to give a prognosis, but recommended CBT for 10 to 12 sessions to aid her psychological recovery and a review in 9-12 months.

58. Dr Calliog examined the claimant on 11 April 2024 and produced her report on 25 April 2024. The claimant's employment had ended more than two years before the examination and effects of the discrimination had been felt for some considerable time before the end of employment; most notably since the suspension on medical grounds on 14 April 2021. The examination was about a month before the remedy hearing. The claimant's condition had not improved markedly by the date of the hearing.

59. Considering the evidence and expert opinion against the categories of psychiatric and psychological damage in the Judicial College Guidelines 17th

edition, we conclude that the injury suffered by the claimant due to the discrimination we found falls within the moderately severe category. We conclude there are significant problems with the claimant's ability to cope with life and work; significant effect on the claimant's relationships with family, friends and those with whom she comes into contact. There is uncertainty as to the extent to which treatment will be successful; the condition has persisted for 2-3 years already. There has not been a significant improvement by the time of the hearing and the prognosis is uncertain. We consider an appropriate award for injury to feelings within the moderately severe category is £30,000.

Injury to feelings, loss of congenial employment and aggravated damages

60. We consider it appropriate to make one award for injury to feelings for all the acts of discrimination which we found to have occurred. This is in accordance with the approach adopted by both parties in their submissions.

61. We consider it appropriate to include loss of congenial employment and factors relied on in support of an award of aggravated damages, in assessing an award for injury to feelings. We consider this reduces the risk of double counting. We accept that the loss of a job the claimant had much enjoyed has increased the severity of the injury to feelings. We accept that the injury was exacerbated by the feeling that the claimant was not being listened to.

62. We found that the claimant suffered a great deal of anxiety and stress due to the respondent's failure to make reasonable adjustments. She found it difficult to sleep. Stress, anxiety and lack of sleep exacerbated the pain she suffered. She was extremely worried about her future with the respondent and worried about her financial position if she was not allowed to keep working, with adjustments.

63. The claimant had thoroughly enjoyed her job and its loss caused her considerably upset.

64. The suspension on 14 April 2021 left the claimant distraught, shocked and completely embarrassed and made her even more anxious and depressed.

65. We must avoid compensating the claimant twice over for injury for which the claimant has been awarded personal injury damages. Excluding the elements which resulted in the personal injury award, we conclude that the injury to feelings award (incorporating loss of congenial employment and factors the claimant has relied on as arguing would merit an aggravated damages award), should fall in the middle **Vento** band. We consider an award of £17,500 to be appropriate for the level of injury suffered, which has been severe and long term.

66. We note that adding the personal injury and injury to feelings awards together would give compensation for non-financial loss of £47,500, which would, if for injury to feelings only, be an award towards the top end of the upper **Vento** band. We consider this to be an appropriate total award for non-financial loss. The discrimination we found occurred has had a very serious and long lasting impact on the claimant's life. We consider that the level of award appropriately reflects this injury.

Interest

67. No reason has been given why we should not award interest in accordance with normal principles on the compensation. We, therefore, will award interest at 8% on past financial loss from the mid-point until the calculation date (29 July 2024) and on non-financial loss. We consider the appropriate start point for interest to run on personal injury and injury to feelings to be 14 April 2021, the date of the medical suspension.

ACAS uplift on compensation

68. We have considered again the grievance submitted by the claimant on 11 March 2021 (L1117). This includes reference to advice from occupational health that the claimant could, with reasonable adjustments, continue with her role. In our liability judgment (paragraph 52), we disagreed with the respondent's categorization of the claimant's grievance as mostly raising matters falling under the Council's absence procedures. The concerns included an allegation that Mr Simpson said she could not work in residential but then denied saying this. The respondent did not deal with the claimant's letter as a grievance. It appears to us that the complaint of failure to make reasonable adjustments concerns a matter to which the grievance provisions of the Code of Practice applies, namely concerns raised by the claimant in her grievance about what she alleged Mr Simpson had said and an assertion that she could continue working with reasonable adjustments. The claimant's grievance letter could properly be interpreted as raising a grievance that the respondent was refusing to make reasonable adjustments. We conclude that the respondent was in breach of the ACAS Code of Practice on Discipline and Grievance by not dealing with the letter as a grievance. We conclude that that failure was unreasonable. We may, therefore, in accordance with s.207A Trade Union and Labour Relations (Consolidation) Act 1992, if we consider it just and equitable to do so, increase the awards we have made by no more than 25%.

69. This was not a case where the respondent completely ignored the grievance; rather, they miscategorized it. Whilst we consider this unreasonable, we do not consider it just and equitable that the awards should be increased by an amount at, or towards, the upper range of the possible uplift. However, we do consider that it was a significant, albeit not intentional, failure to comply with the Code. Had the respondent dealt properly with the claimant's grievance, perhaps some of what followed might have been avoided. We consider it just and equitable, in all the circumstances, to increase the awards by 5% for failure to comply with the Code.

Grossing up

70. The awards have been calculated on a net basis. The award will be, in large part, subject to tax. The award, therefore, needs to be grossed up to take account of the tax that will be payable so that the amount paid to the claimant, once tax has been paid, will be equal to the net award we have calculated.

71. The representatives agreed at the remedy hearing that, if the Tribunal made an award of such a size that it would require grossing up, the parties could be left to agree between them the amount of the grossed up award. We have, therefore, expressed the award on a net basis, but made provision for the parties to apply to the Tribunal within 35 days of the judgment being sent to the parties, if agreement cannot be reached on the amount to be added to the award due to grossing up. If no application is made during that period, the case will be treated as concluded and the file closed.

The calculation of compensation

Loss of earnings

Loss of earnings prior to the effective date of termination – April 2021 to 28 February 2022

April 2021	2362-1952 =	410	
May to December 2021	8 x (2362-2160) =	1616	
Jan to Feb 2022	2 x (2362-1362) =	2000	
Total loss to EDT			**4026**

Loss of earnings to calculation date – 1 March 2022 to 29 July 2024 (109 weeks)

109 x 545.25 =			59432
Less			
Ill health pension – 109 x 97.26 =		10602	
ESA	- 109 x 71 =	7739	
			18341
Total 1.3.22 to 29.7 24			**41091**

Total past loss – 4026 + 41091 = 45117

Future loss – 30 July 2024 to 13 May 2026 (93 weeks)
100% loss to age 64

93 x 545.25 =			50708
Less			
Ill health pension – 93 x 97.26 =		9045	
ESA -	93 x 71 =	6603	
			15648
			35060

Future loss – age 64 to age 67 (156 weeks)
50% loss

156 x 545.25 = 85059

Less
Ill health pension – 156 x 97.26 = 15173
ESA - 156 x 71 = 11076

26249
58810

50% of 58810 = **29405**

Total future loss of earnings **64465**

Adjustment for ACAS uplift

Uplift on past loss of earnings
5% of 45117 = 2256

Adjusted past loss of earnings
45117 + 2255.85 = 47373

Uplift on future loss of earnings
5% of 64465 = 3223

Adjusted future loss of earnings
64465 + 3223 = 67688

Interest on adjusted past loss of earnings from mid point (608 days)

8/100 x 608/365 x 47373 = 6313

Non-financial loss

Personal injury **30000**

Injury to feelings **17,500**

Total non-financial loss **47,500**

Adjustment for ACAS uplift

Uplift on personal injury
5% of 30,000 = 1500

Adjusted personal injury
30,000 + 1500 = 31,500

Uplift on injury to feelings
5% of 17.500 = 875

Adjusted injury to feelings = 18,375

Interest on adjusted personal injury from 14 April 2021 to 29 July 2024 (1216 days)

8/100 x 1216/365 x 31,500 = 8396

Interest on adjusted injury to feelings from 14 April 2021 to 29 July 2024 (1216 days)

8/100 x 1216/365 x 18375 = 4897

Total award

Adjusted past loss of earnings	47,373
Interest on past loss of earning	6,313
Adjusted future loss of earnings	67,688
Adjusted personal injury	31,500
Interest on personal injury	8,396
Adjusted injury to feelings	18,375
Interest on injury to feelings	4,897
	184,542

Employment Judge Slater
Date: 2 August 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
5 August 2024

FOR EMPLOYMENT TRIBUNALS

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2405355/2022**

Name of case: **Ms D Leigh** v **Lancashire County Council**

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

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

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

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

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

the relevant decision day in this case is: 5 August 2024

the calculation day in this case is: 6 August 2024

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

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

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

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

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

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

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

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

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

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

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

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