



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A McGuinness

**Respondent:** Merseycare NHS Foundation Trust

**Heard at:** Liverpool (by CVP)

**On:** 10 - 11 June 2024;  
18 - 20 November 2024;  
27 January 2025  
(In Chambers)

**Before:** Employment Judge Ainscough  
Mrs J Pennie  
Mr A Wells

## REPRESENTATION:

**Claimant:** Mr O'Dempsey, Counsel

**Respondent:** Ms Knowles, Counsel

# REMEDY JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant has suffered from the following personal injuries as a result of the respondent's failure to make reasonable adjustments:
  - a) Social Phobia
  - b) Recurrence and exacerbation of depression and anxiety.
2. The respondent is ordered to pay the claimant **£30,000** in compensation for pain, suffering and loss of amenity.
3. The respondent is ordered to pay the claimant **£15,079.31** in compensation for past financial loss from April 2021- 11 June 2024.
4. The respondent is ordered to pay the claimant **£16,760.75** in compensation for future financial loss from 11 June 2024 – January 2026.

5. The respondent is ordered to pay the claimant **£11,810.49** in compensation for pension loss.
6. The respondent is ordered to pay the claimant **£18,000** in compensation for injury to feelings.
7. The respondent is ordered to pay the claimant **£16,829.33** in compensation for past care costs attributable to the personal injuries.
8. The respondent is ordered to pay the claimant **£19,070.40** in compensation for future care costs attributable to the personal injuries.
9. The respondent is ordered to pay the claimant **£19,302.74** in interest.
10. The respondent is ordered to pay the claimant **£55,599.01** in grossing up.

## **REASONS**

### **Introduction**

1. Following a judgment given by the Tribunal on 10 November 2023 that the respondent had failed to make reasonable adjustments, a hearing was initially listed for 2 days to determine the issue of remedy. However, during the expert's evidence it became apparent that he had not had sight of all of the claimant's medical records. The matter was adjourned and listed for a further 2 days to allow disclosure of the records and for the expert to complete his evidence and deliberation.
2. The Tribunal sat in chambers for a further day to complete deliberation and reach this decision.

### **Evidence**

3. The Tribunal heard evidence from the claimant, his wife, his daughter, Michelle Fanning Deputy Divisional Director of Urgent Care and the Expert – Dr Elnazer – Consultant Neuropsychiatrist.
4. The parties initially agreed a bundle of 496 pages. Additional pages were provided throughout the hearings.

### **Issues**

5. The issues for the Tribunal to determine where as follows:
  - a) Without the failure to make reasonable adjustments, when would the claimant have retired?
  - b) Did the failure to make reasonable adjustments cause the claimant to retire sooner than this date?

- c) Did the failure to make reasonable adjustments cause the claimant to suffer a personal injury?
- d) If so, what category of personal injury, with reference to the Judicial College Guidance, has the claimant suffered?
- e) Are there any care costs attributable to the personal injury?
- f) What level of compensation should be paid to the claimant for injury to feelings?

### **Relevant Findings of Fact**

#### Claimant's health prior to December 2016

- 6. The claimant has Diabetes and the GP records contain Diabetic reviews. Depression screening is part of this review. However, the Tribunal accepts that this was not undertaken by the claimant or his assessor prior to December 2016.
- 7. Whilst the GP records record that the claimant was prescribed anti-depressants between 2009 and 2016, the Tribunal accepts the claimant's evidence that he didn't take them, and in any event, the GP reports recovery from depression in 2016.
- 8. The poor memory loss that is recorded during this period was as a side effect from medication prescribed for the claimant's diabetes. Once this medication had been changed, the claimant's memory improved.
- 9. For these reasons, the Tribunal has determined that the records of memory/mood conditions from 2009 to 2016, are not relevant to the question of the claimant's health prior to the failure to make reasonable adjustments.

#### Claimant's health following December 2016

- 10. In December 2016, the claimant had a brain haemorrhage. The claimant was absent from work from December 2016 until May 2018. In May 2018 the claimant returned to work until October 2019 when he then took further sickness absence until February 2020.
- 11. On the claimant's first return to work he thought he was managing in the role but his colleagues reported to him that he was missing things. As a result, the claimant went off sick in October 2019 and complained of memory loss. The GP referred the claimant for a Dementia Assessment on the basis that he was making too many mistakes at work.
- 12. The Tribunal has accepted the claimant's evidence that after the claimant's haemorrhage his friends stopped seeing him because they had difficulty dealing with his condition rather than the claimant withdrawing from his social life.
- 13. At this stage, there was no recurrence of the depressive condition from which the claimant last suffered in 2016.

Claimant's health following return to work in February 2020

14. The claimant completed an Access to Work report in January 2020 and reasonable adjustments were suggested. On the claimant's return to work the respondent knew that the claimant was having issues with his memory.
15. The Tribunal has previously determined that at the earliest, the claimant was provided with some adjustments in August 2020 and then further adjustments in December 2020. The Tribunal determined that the onus was put on the claimant to chase provision of the equipment but that he never received the training on how to use the equipment. The Tribunal also determined that there was a failure to ensure that the claimant was removed from the case load holder duties.
16. The Tribunal concluded that these failures to make reasonable adjustments led to the claimant's eventual and non-recoverable absence from work.
17. The claimant suffered stress and anxiety trying to do his job without the necessary adjustments. At paragraph 9 of the claimant's witness statement he stated:

*"Once I could return to my nursing duties and was not office based, I was placed in one of our hubs. I know I was managing very well whilst working at the hub where I had developed my own coping strategies, my stress and anxiety levels at that time were manageable and easing. That was until the lack of support commenced. Every time I asked for assistance, I was told there was none and was often left alone when I should have been supported by another registered nurse. I was left in dangerous situations, with multiple patients to care for, and even though I reported these they were not acted upon. My HR27 agreement was not being adhered to. I was ignored by the management. This massively increased my anxiety and deepened the depression I continue to suffer with. It became so severe I developed stress related eczema on my face, elbows and upper torso and is debilitating alone. The stress and anxiety levels were greatly elevated over the months following as I was seeking assistance and help but was being ignored. I was angry and frustrated and couldn't seem to get through how desperate I was becoming."*

18. Whilst the claimant didn't report to his GP with stress, anxiety and depression between January 2020 and April 2021, the Tribunal accepts the claimant's evidence that he was anxious and depressed when trying to sort out adjustments at work.
19. When the claimant was signed off sick following the incident on 11 April 2021, the fit note recorded that he was signed off with stress at work. By June 2021 the fit note recorded Amnesia. The claimant's memory loss was the root cause of why he could not work because the reasonable adjustments were not in place to counter the memory issues. As a result of the lack of adjustments, stress and anxiety (according to the expert) exacerbated the cognitive damage that had been caused by the brain haemorrhage and compounded the claimant's memory loss.

Claimant's allotment

20. The Tribunal has determined that in April 2021 the claimant was allocated an allotment. The Tribunal has concluded that, on the balance of probabilities, the claimant was still using his allotment in July 2022. The occupational health and GP notes from this time record that the claimant told medics he was still visiting the allotment.
21. The claimant's recall of time is compromised by his memory loss issues and the Tribunal has considered that the contemporaneous notes of the medics outweigh the claimant's recollection as to when the claimant was using his allotment.

Care of claimant's wife

22. The claimant's wife needs assistance with care. The claimant's witness statement stating that he cannot care for his wife was written in May 2024.
23. On 1 November 2022 the claimant made an application for Carer's Allowance for the care of his wife. In that application the claimant said he was caring for his wife 35 hours or more each week. The Tribunal has accepted the claimant's evidence that only one person can claim for the allowance, and he is assisted with providing care to his wife by other family members over a 35 hour period.

Claimant's health after 11 April 2021

24. On 12 April 2021 the claimant's GP recorded that the claimant had had a meltdown, and the claimant was referred for a Dementia Assessment.
25. In May 2021 the GP notes record an active decline in the claimant's emotional health in response to a workplace incident.
26. In August 2021 the claimant told Doctor Upton, a Consultant Old Age Psychiatrist, that he was not going out much but still had his allotment and reported to the same physician in March 2022, that he was still driving and still using the allotment.
27. In November 2021 the claimant had psychiatric intervention and by December 2021 was talking about ill health retirement.
28. In February 2022 the claimant was prescribed anti-depressants and by 12 October 2022 the dosage of that medication had been increased.
29. In April 2022, Dr Phalp a Clinical Psychologist, noted that the claimant had withdrawn from social life.
30. In July 2022 the claimant made an application for Personal Independence Payment. The claimant relied upon the conditions of depression and anxiety for which he had received an increase in his medication and the condition of memory loss about which he described as getting worse over the last six months and gave examples.

31. The same application recorded that the claimant had trouble mixing with other people, he found it difficult to socialise, and eventually had stopped going out.
32. In September 2022, Doctor Nesbitt, a Consultant in Old Age Psychiatry, recorded that the claimant had social anxiety, withdrawn behaviour and was in isolation. In November 2022 Doctor Lister, an Occupational Health Physician, recorded that the claimant would not recover and wanted to proceed with ill-health retirement.

Claimant's application for ill health retirement

33. On 2 December 2022 the claimant submitted an ill-health retirement application. In the application he set out the problems he had experienced on his return to work and his subsequent sickness absence. The claimant recorded that he rarely left the house. The claimant's application was supported by Doctor Lister.
34. The claimant met with Michelle Fanning to discuss his ill-health retirement. During that interview Michelle Fanning asked the claimant whether there was any more that the respondent could have done prior to the claimant going off sick on 12 April 2021. The claimant informed Michelle Fanning that there was nothing more that could have been done, that he had memory problems and he was scared of hurting anybody.
35. However, the Tribunal has determined that this comment was taken out of context by Michelle Fanning. Whilst the claimant was complaining about memory loss at the time he went off sick, he needed the support recommended in the Access to Work report to ameliorate that loss. The respondent failed to make the reasonable adjustments and the claimant was unable to cope.
36. Whilst Michelle Fanning acknowledged the incident on 11 April 2021 in her chronology, she did not acknowledge it as the cause of the claimant's distress. The Tribunal has found that the incident on 11 April 2021 was in fact the tipping point for the claimant following the lack of support from January 2020 until 11 April 2021 which led to his inability to work.
37. It is noted that during that interview the claimant told Michelle Fanning that he didn't like to leave the house.
38. Michelle Fanning's conclusion that the cause of the claimant's ill health retirement was his memory problems, was not incorrect. However, had the claimant been subject to reasonable adjustments, it is possible that such problems may have been ameliorated.
39. The claimant took ill health retirement on 31 January 2023.

Expert Evidence

40. The expert, Dr Elnazer a Consultant Neuropsychiatrist, was instructed by both parties. The parties agreed a letter of instruction and put additional questions to Dr Elnazer who produced addendum reports.

41. The Tribunal refused the respondent's request for the subsequent appointment of their own expert following receipt of the initial report from Dr Elnazer. I informed the respondent that any challenge to Dr Elnazer's report should be made in cross examination at the remedy hearing.
42. In the first report of 15 March 2024, Dr Elnazer reported that he did not have access to the claimant's GP records. Dr Elnazer produced a subsequent report dated 28 August 2024 after he had access to the GP records and concluded that, having reviewed the records, he was of the view that they supported his initial findings from the first report.

#### First report

43. In his first report Dr Elnazer concluded that the claimant's pre-existing depression had resolved by 2016 and by the time of the brain haemorrhage.
44. The claimant informed Dr Elnazer that he was house bound because of his anxiety and memory loss.
45. It is Dr Elnazer's opinion that the brain damage caused by the haemorrhage is static. However, he is also of the opinion that the failure to make reasonable adjustments has caused a recurrence of the depression and anxiety which has compounded the claimant's ability to cope with the effects of his brain damage such as memory loss and therefore, the claimant's ability to cope at work.
46. Dr Elnazer drew the conclusion that the claimant has suffered from a personal injury as a result of the failure to make reasonable adjustments. Dr Elnazer diagnosed the claimant as suffering from social phobia as result of his frustration at not receiving the adjustments and diminished self-esteem.
47. Dr Elnazer also concluded that it was likely, which the Tribunal has determined means at least 50%, that the claimant would have retired earlier than January 2026, even with reasonable adjustments.
48. Dr Elnazer stated that ill health retirement could have been delayed had the adjustments been made but it was inevitable at some point prior to the claimant's expected retirement date of January 2026.
49. Dr Elnazer was unable to say how long the adjustments would have delayed the claimant's ill health retirement because of multiple factors which included age and unknown future events.

#### Second report

50. The parties asked a number of questions. Dr Elnazer's headline response was that any answer to those questions and any answer made during cross-examination during the hearings, must be read or heard in conjunction with his original report of 15 March 2024.
51. At paragraph 4 of this report, Dr Elnazer concluded:

*“Upon his return to work, he had found it stressful to carry out his usual duties. He described finding it very difficult to cope with his duties, which he said were not adjusted to accommodate his compromised cognitive functions. He increasingly became self-conscious. As a result, he started to experience intense anxiety in relation to being around others, which turn expanded to include a variety of social contexts.”*

52. Dr Elnazer reemphasised that whilst the claimant was back at work, he did still struggle with the impairments from his brain injury. It was his view that had the reasonable adjustments been made it would have been less likely that there was the recurrence of the anxiety and depression and the development of social phobia.
53. Dr Elnazer did not comment on the claimant's care needs.
54. Dr Elnazer advised that stroke survivors typically retired earlier than they would have done without a stroke.
55. Dr Elnazer confirmed his view that the claimant's adverse reaction to the failure to make reasonable adjustments turned into social phobia which will have a long lasting impact on the claimant's life.

### Third report

56. In Dr Elnazer's third report of 29 April 2024, he repeated the conclusions from his first report and commented that the claimant would benefit from intervention.
57. Having been cross examined for a number of days during the remedy hearing, Dr Elnazer did not change his opinion that the claimant's brain injury was static but, the stress at work from the failure to make reasonable adjustments had led to a recurrence of the depression and anxiety which compounded the memory loss the claimant suffered as a result of the brain injury. Dr Elnazer also confirmed that because the claimant was so concerned about his performance at work, he became isolated, and this led to a separate injury of social phobia.

### **Relevant legal principles**

58. If a discrimination complaint is well-founded, remedy is determined by section 124 of the Equality Act 2010, which states:  
  

**“(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 in which the proceedings relate; and**
  - (b) order the respondent to pay compensation to the complainant.”**
59. Subsection 6 states:



**“The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which may be awarded by the County Court or the Sheriff under section 119.”**

60. Section 119 of the Equality Act 2010 determines that:
- “An award of damages can include compensation for injury to feelings.”**
61. In the case of **Abbey National PLC and another v Chagger (2009) EWCA Civ 1202**, the Court of Appeal determined that a correct way to calculate financial losses in appropriate cases was to determine what the claimant would have earned and then apply a percentage deduction for loss of chance.
62. In the case of **Komeng v Creative Support Limited UKEAT/0275/18/JOJ**, the Employment Appeal Tribunal confirmed that any injury to feelings award must focus on the injury suffered by the claimant and not the Tribunal’s view of the gravity of the acts performed by the respondent.
63. In the case of **Prison Service v Johnson [1997] IRLR 162**, the Employment Appeal Tribunal set out general principles to assist Tribunals in assessing injury to feelings awards. Those principles are as follows:
- (1) Injury to feelings award should be compensatory and just to both parties. Such awards cannot punish the discriminator.
  - (2) Awards should not be too low that they would diminish the respect of the antidiscrimination legislation. Equally they should be restrained so as not to be excessive.
  - (3) Such awards should be similar to those awarded in personal injury cases.
  - (4) Tribunals are advised to take into account the value of the sum in everyday life.
  - (5) Tribunals need to consider the public respect for the level of awards made.
64. The case of **Vento v The Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102** in the Court of Appeal determined that:
- “Injury to feelings awards can compensate for feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.”**
65. The Court of Appeal also gave guidance on the bands of compensation that can be awarded for such injury to feelings as follows:
- (a) A top band for the most serious cases where there has been a lengthy campaign of harassment on the ground of sex or race;
  - (b) The middle band, to be used for serious cases which do not merit an award in the highest band; and
  - (c) The lowest band for less serious cases where there has been a one-off act of discrimination.

66. Following subsequent case law, the President of the Employment Tribunal has issued Presidential Guidance on the applicable values to each band which at the time the claimant issued his claim on 18 August 2021 were as follows:
- Upper band - £27,400 to £45,600
  - Middle band - £9100 to £27,400
  - Lower band - £900 to £ 9,100
67. The value of any award in a particular banding will be calculated in accordance with the date on which the claim form was issued.
68. Interest can be awarded on compensation for discrimination, including injury to feelings. Regulation 6(1)(a) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 provides that interest accrues from the date of the discrimination and ends on the date the Tribunal calculates compensation.
69. Where a past financial loss is awarded as part of that discriminatory compensation, the interest will accrue from a mid point between the date of discrimination and the date of calculation.
70. In the case of **Sheriff v Klyne Tugs (Lowestoft) Ltd (1999) IRLR 481** the Court of Appeal determined that a claimant can, in Employment Tribunal proceedings, recover compensation for a personal injury caused by a discriminatory act.
71. The 15<sup>th</sup> edition of the Judicial College Guidance for the assessment of general damages in personal injury cases provides that the following factors should be taken into account when calculating compensation for a personal injury:
- a) the injured person's ability to cope with life and work;
  - b) the effect on the injured person's relationships with family, friends and those with whom he comes into contact;
  - c) the extent to which treatment would be successful;
  - d) future vulnerability;
  - e) prognosis;
  - f) whether medical help has been sought;
  - g) whether the injury results from sexual and/or physical abuse and/or breach of trust; and if so, the nature of the relationship between victim and abuser, the nature of the abuse, its duration and the symptoms caused by it.
72. There guidance suggests 4 categories of award:

- 1) Less Severe: between £1,440 and £5,500. Where the claimant has suffered temporary symptoms that have adversely affected daily activities;
- 2) Moderate: between £5,500 and £17,900 as a result of the discrimination, marked improvement has been made by the date of the hearing and the prognosis is good;
- 3) Moderately Severe: between £17,900 and £51,460. Moderately severe cases include those where there is work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment. These are cases where there are problems with factors a) to d) above, but there is a much more optimistic prognosis than Severe;
- 4) Severe: between £51,460 and £108,620. Where the claimant has serious problems in relation to the factors at a) to d) above, and the prognosis is poor.

## **Submissions**

### Respondent's submissions

73. The respondent submitted that any award must be compensatory and not punitive.
74. It was the respondent's position that there had been inconsistencies in the claimant's evidence and any doubt should be exercised in favour of the respondent.
75. The respondent also submitted that there were inconsistencies with the expert evidence. It was the respondent's position that the failure to make reasonable adjustments only had a slight impact on the claimant's health and that, in any event the claimant would have retired earlier than intended.
76. The respondent maintained that when the claimant applied for and was granted ill health retirement, he did not attribute the cause to the failure to make reasonable adjustments.

### Claimant's submissions

77. The claimant submitted that the Tribunal should apply common sense and reach conclusions based on realistic chances.
78. The claimant urged the Tribunal to consider what would have happened to the claimant if the respondent had made the necessary reasonable adjustments.
79. The claimant submitted that the Tribunal should accept the expert evidence that the claimant had suffered a separate personal injury as a result of the failure to make reasonable adjustments.
80. The claimant maintained that the respondent was aware of the reason for the claimant's ill health retirement and that the claimant has been consistent as to the cause.

## Calculation of Losses

### Personal Injury - Pain, suffering and loss of amenity

81. The Tribunal has accepted the evidence of the jointly instructed expert that the claimant has suffered from distinct and separate personal injuries as a result of the respondent's failure to make reasonable adjustments. The first personal injury is that of social phobia and the second is the exacerbation of the recurrence of the depression and anxiety. In particular, the Tribunal accepts the jointly instructed expert's opinion from his first report from which he never withdrew or resiled.
82. The claimant had recovered from anxiety and depression by 2016 but it recurred on the failure to make reasonable adjustments after January 2020. There are various references within the records to diminishment of the claimant's self-esteem such that he describes himself as house bound, giving up his allotment and reliant on care from relatives.
83. The Tribunal has made this award on the basis of two distinct personal injuries, social phobia and recurrence and exacerbation of the pre-existing anxiety and depression.
84. In his calculation the claimant has relied upon the most recent addition of the Judicial College guidelines for psychiatric disorder and places his injuries in the moderately severe bracket.
85. The Tribunal has concluded that the personal injuries are divisible from the effects of the brain damage. The expert was clear that the claimant would have coped better with the effects of the brain damage had it not been the failure to make reasonable adjustments.
86. The Tribunal agrees, having considered factors a) to f) that the claimant's injuries are within the moderately severe category.
87. The Tribunal has used the 2021 figures from the Judicial College guidance as this is the year in which the claimant submitted his claim.
88. In the claimant's calculation he submits that the award should be in the top third of the moderately severe bracket but subject to a reduction of 33.33% to reflect the effects of the brain haemorrhage. The top third figure is £45,100 and the reduction of 33.33% equates to **£30,000**. The Tribunal has therefore determined that the claimant should receive this amount of compensation for the personal injuries caused by the unlawful discrimination.

### Past loss of wages

89. The claimant's date of birth is 17 January 1960; in January 2026 he will be 66 years of age. Paragraph 23 of the claimant's witness statement confirms he had no intention of retiring until that date.
90. The Tribunal has considered whether, with reasonable adjustments from February 2020 onwards the claimant would have stayed in his role for another six years.

91. Between May 2018 to October 2019 the respondent was not under a duty to make reasonable adjustments and the memory loss about which the claimant complained was directly caused by the brain haemorrhage.
92. The claimant's representative has conceded a discount of at least one year in recognition that the brain haemorrhage was causing problems, absent the failure to make reasonable adjustments. The claimant's intention to work until January 2026 was before he had the brain haemorrhage.
93. The Tribunal has determined that the claimant would not have been capable of reaching his intended retirement date of January 2026.
94. The expert stated in his report that stroke victims are more likely to take ill health retirement. At paragraph 125 of the first report, the expert concluded that it was likely that the claimant would still have retired earlier than January 2026 even with the reasonable adjustments. The Tribunal has determined that likely means at least a 50% chance.
95. The Tribunal does not have sufficient facts to conclude when exactly the claimant would have applied for ill health retirement absent the failure to make reasonable adjustments. The expert was also not able to provide an answer to this question.
96. Therefore, the Tribunal has approached the calculation of the claimant's financial losses in accordance with the case of **Abbey National PLC and another v Chagger (2009) EWCA Civ 1202**.
97. The Tribunal has concluded that any wage loss, should be reduced by at least 50% in accordance with the opinion of the expert.
98. The Tribunal has considered both the claimant's schedule of loss and the respondent's counter schedule of loss. Both agree that the claimant's gross monthly salary in April 2021 was £3,157.50.
99. The respondent disagrees about the inclusion within the claimant's calculation of £910.94 in monthly enhancements. The Tribunal has accepted the respondent's calculation of the claimant's average monthly earnings as at April 2021 based on the last twelve weeks of his earnings from his payslips. Having reached that determination, the Tribunal notes the following figures:
- |   |           |
|---|-----------|
| April 2021 to September 2021 net monthly figure | £2,696.25 |
| 1 September 2021 to 1 September 2022            | £2,752.22 |
| 1 September 2022 to January 2023                | £2,841.60 |
100. Based on those figures the respondent has calculated that the net earnings between April 2021 until 11 June 2024, if there had been no discrimination, would have been £107,243.45.
101. The Tribunal has also accepted the respondent's figure for the claimant's actual net earnings over the same period of £63,567.89. In addition, the

claimant was paid £9,457.50 in lieu of notice and received pension of £19,694.40. These amounts give a net earnings figure of £92,719.79.

102. The claimant has set out that during that same period he had deductions of £11,998.04 and £3,636.92. This provides a net figure of earnings for the claimant up to the Employment Tribunal hearing on 11 June 2024 of £77,084.83.
103. That amount is deducted from the amount the claimant would have earned had he stayed in the respondent's employment i.e. £107,243.45 minus £77,084.83 and gives a past loss figure of £30,158.62. The Tribunal has determined that this figure should be reduced by 50% to reflect the likelihood of the claimant's early retirement. The claimant's past loss is therefore, **£15,079.31**.

#### Future Loss

104. In order to calculate the future loss using the same formula to calculate the past loss, the Tribunal has calculated the claimant's losses from 11 June 2024 until January 2026.
105. The Tribunal accepts in the absence of any evidence from the respondent that the net monthly pay to the claimant during this period would be £2,995.19. The calculation for this period is therefore £2,995.19 x 19 months = £56,908.61.
106. The claimant's actual earnings for this period are calculated as £1,230.90 x 19 months = £23,387.10.
107. This gives a future loss of net earnings figure of £33,521.51. The 50% reduction in light of the claimant's anticipated earlier retirement leads to a total future loss figure of **£16,760.75**.

#### Pension Loss

108. The claimant's representatives have used a multiplier/multiplicand method to calculate the claimant's pension loss.
109. The respondent submitted that different figures should be used but did not provide an alternative calculation.
110. In accordance with the overriding objective, matters need to be dealt with proportionately. The Employment Tribunals Principles for Compensating Pension Loss advises the Tribunal to deal with pension loss in the simplest way. The Tribunal agrees with the multiplier/multiplicand method used by the claimant which calculates a pension loss figure of £23,620.98.
111. As the Tribunal has determined that there was at least a 50% chance that the claimant would retire before January 2026, this amount has been reduced by 50% to **£11,810.49**.

Injury to feelings

112. The Tribunal is conscious that any injury to feelings award must compensate a claimant for hurt feelings and not punish the respondent for any unlawful treatment.
113. The claimant lodged his claim form on 18 August 2021 and therefore the Tribunal has taken into account the bandings for an injury to feelings award from the financial year 2021 to 2022 which were as follows:
- Lower: £900 to £9,100
- Middle: £9,100 to £22,400
- Upper: £27,400 to £45,600
114. The claimant submitted that his claim was in the top quarter of the middle band. The respondent's primary position in the counter schedule was that the award should be in the lower band at £7,000, but in submissions stated that in the alternative if the Tribunal agreed with the middle banding, that it should be no more than £15,000.
115. The Tribunal agrees with the points 1 to 4 as set out in the claimant's Schedule of Loss as to how he was affected by the respondent's actions. In particular, the Tribunal was persuaded of the claimant's anger and upset at how he was treated by the respondent and that was evident throughout the liability and remedy hearings.
116. However, the Tribunal does not agree that the unlawful discrimination was the only cause of the claimant's career loss. The claimant had a brain haemorrhage and suffered brain damage and was struggling prior to his return to work in February 2020. The Tribunal has determined, in accordance with the expert's advice that he would have been subject to ill-health retirement prior to his intended retirement date, even with reasonable adjustments.
117. Therefore, the Tribunal does not agree that the claimant is entitled to an award in the top quarter of the middle band. However, the Tribunal has found that the claimant had to repeatedly ask for reasonable adjustments and was subject to the comment in the ill health retirement meeting as to whether there was anything else that could have been done from the respondent's point of view.
118. The Tribunal has concluded that the claimant is entitled to a compensation award for injury to feelings of **£18,000**. The claimant endured sixteen months of difficulties with the respondent from January 2020 to April 2021 which ultimately led to the tipping point on 11 April 2021 to his unrecoverable absence from work.
119. In particular the Tribunal notes the case of **Georgiou -v- (1) Jordan Andrews Limited (2) Mr J Stavrinou; (3) Mr S Stavrinou (Watford) (Case No**

**3325393/2019) (1 December 2021, unreported)** in which a claimant was awarded £15,000 when similarly upset that their request for reasonable adjustments had been ignored and became frustrated and subsequently suffered from depression.

Care claim

120. The Tribunal has determined that the claimant admitted under cross examination that he was still the main carer for his wife but now needed assistance from wider family to look after himself and his wife.
121. The claimant has contended that he requires 50 hours of care as a result of the personal injuries suffered.
122. The Tribunal has noted from the application that was put in for Carer's Allowance on behalf of the claimant's wife, that the claimant's wife requires 35 hours of care. Therefore, the Tribunal has concluded that the claimant receives approximately 15 hours of care from the wider family to cope with, as the respondent submits, the need for assistance with social phobia and the impact of the recurrence of the depression and anxiety.
123. The claimant conceded that half of any care provided would be for the pre-existing brain damage and therefore, the Tribunal has determined that the claimant is likely to receive 7.5 hours of care per week for the personal injuries suffered whilst working for the respondent.

Past Care Calculation – April 2021 – 11 June 2024

124. From 1 April 2021 to 31 March 2022 was a period of 51 weeks. The Tribunal has accepted the hourly rate provided by the claimant as the NJC Aggregate in the absence of any evidence from the respondent. If the claimant was in receipt of 7.5 hours care per week at the rate of £12.61, the cost of his care per week was £94.57. Therefore, the cost of his care for 51 weeks was £4,823.33.
125. From 1 April 2022 to 11 June 2024 was 115 weeks. The rate for the provision of care was £13.92. If the claimant received 7.5 hours per week, the weekly cost of care was £104.40. Therefore, the total cost of that care for this period was £12,006.
126. The total past care calculation is **£16,829.33**

Future cost of care

127. The claimant claims for future cost of care from 12 June 2024 to 10 December 2024, a period of 26 weeks at the rate of £13.92. If the claimant receives 7.5 hours per week for this period, the cost of the care would be £2,714.40.
128. The claimant then claims five years' worth of care at 5 hours per week at the rate of £13.92, which equates to a weekly cost of care of £69.60. If the claimant were to receive this level of care over 235 weeks the cost of that care will be £16,356.



129. The total future care calculation is **£19,070.40**.

Conclusion

130. The total award of compensation is **£127,550.28**.

Interest

131. The Tribunal has applied interest at the rate of 8% on the injury to feelings award, past loss of earnings, interest on general damages and interest on past care.

132. The calculation of interest on the injury to feelings award is from 24 April 2020 (in accordance with the Tribunal's findings at paragraph 85 of the liability judgment) until 24 March 2025 which equates to 1799 days.

133. The calculation of interest on past loss, general damages and past care runs from the mid-point date to the date of the calculation.

134. Those calculations equate as follows:

Interest on Injury to feelings =  $1799 \times 0.08 \times 1/365 \times 18000 = £7097.42$

Interest on past loss of earnings =  $1799/2 \times 0.08 \times 1/365 \times 15,079.31 = £2972.89$

Interest on general damages =  $1799/2 \times 0.08 \times 1/365 \times £30,000 = £5914.52$

Interest on past care =  $1799/2 \times 0.08 \times 1/365 \times £16,829.33 = £3317.91$ .

135. The total amount of interest is **£19,302.74**.

Grossing Up

136. The total award of compensation plus interest is £146,853.02.

137. Section 401 of the Income Tax (Earnings and Pensions) Act 2003 provides that where payments are made as a consequence of a termination of employment, the first £30,000 of compensation shall be paid without the deduction of income tax. Income tax will be deducted for any award of compensation over this amount.

138. The award for general damages (£30,000) is also not subject to income tax.

139. The remaining award of compensation plus interest subject to deductions in income tax is £86,853.02. Therefore, it is necessary to gross up this amount to ensure the claimant retains the compensatory awards made by the Tribunal.

140. As the total award of compensation exceeds £125,000 the claimant cannot use any personal allowance to reduce the amount subject to income tax.

141. The income tax rates for this financial year 2024/2025 are:

Basic rate: 20% tax on gross earnings up to £37,700.

Higher Rate: 40% tax on gross earnings between £37,701 to £125,140.

Additional Rate: 45% tax on gross earnings over £125,141.

142. The Tribunal has used net figures to calculate the claimant's financial losses. Therefore, it is necessary to work out the net earnings for each tax rate to calculate the grossed up figure. The net earnings figure for the basic rate of tax is £30,160.
143. In accordance with the claimant's schedule of loss the sum of £14,877.40 in annual pension payment and £3684 in annual carers allowance are subject to the basic rate of tax. The Tribunal has worked on the assumption that these figures are gross amounts and the net figures are £11,901.92 and £2847.20 respectively.
144. This means £15,410.88 of the compensation will be subject to income tax at the rate of 20%. The grossed up figure for this amount of compensation will be  $£15,410.88 / 0.8 = £19,363.60$ .
145. The net earnings figure for the higher rate of tax is £44,922. This amount of the compensation will be subject to income tax at the rate of 40%. The grossed up figure of this amount of compensation will be  $£44,922 / 0.6 = £74,870$ .
146. The remaining compensation, £26,520.14 will be subject to income tax at the rate of 45%. The grossed up figure of this amount of compensation will be  $£26,520.14 / 0.55 = £48,218.43$ .
147. The amount of grossing up for income tax is  $£19,363.60 + £74,870 + £48,218.43 - £86,853.02 = \mathbf{£55,599.01}$ .

Employment Judge Ainscough

24 March 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON

10 April 2025

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](https://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: **2409186/2021**

Name of case: **Mr A McGuinness** v **Mersey Care NHS  
Foundation Trust**

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: 10 April 2025

**the calculation day** in this case is: 11 April 2025

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

Paul Guilfoyle  
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](https://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.