Case No: 2400080/2023

EMPLOYMENT TRIBUNALS

Claimant: Mrs C Browne

Respondent: Mersey Care NHS Foundation Trust

Heard at: **Liverpool** **On:31 March 2025 – 3 April 2025**
4 April 2025 (in chambers)
29 – 30 May 2025 (in chambers)

Before: Employment Judge Ainscough
Mr A Clarke
Mr P Dobson

Representation
Claimant: in person
Respondent: Mr J Boyd - Counsel

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1. The complaint of unfair dismissal is successful. The respondent is ordered to pay a Basic Award of £14,275 and a Compensatory Award of £8732.04.

2. The complaint of discrimination arising from disability is unsuccessful and is dismissed.

3. The complaint of harassment related to disability is unsuccessful and is dismissed.

REASONS

Introduction

1. The claimant worked as a registered advanced practitioner nurse at the respondent NHS Trust from 1995 until 2022. The claimant specialised as a

mental health practitioner with a particular interest in the care of patients who were treated with clozapine.

2. The claimant was diagnosed with depression and anxiety in 2017. The claimant submitted her resignation to the respondent on 7 July 2022 and left employment on 29 July 2022.

3. The claimant submitted her claim on 7 December 2022 in which she complained of constructive dismissal, discrimination arising from disability and harassment related to disability.

4. The respondent conceded that the claimant was a disabled person as a result of depression and anxiety but denied any breach of the implied term of trust and confidence or any unlawful discrimination.

Evidence

5. The claimant is a litigant in person and gave evidence over the first two days of the final hearing. On the third day, the Tribunal heard evidence from Zoe Prince, the claimant's second line manager, Natalie Sutton the claimant's return to work manager and Donna Robinson the grievance manager.

6. The Tribunal did not hear evidence from the claimant's line manager Nicola Lamont. Nicola Lamont left her employment with the respondent in July 2021. The Tribunal did issue a witness order to Nicola Lamont, but she did not attend at the hearing to give evidence.

7. The parties agreed a bundle of 1534 pages. Following the completion of the witness evidence but before the parties made submissions, the respondent disclosed handwritten notes of meetings with the claimant. As a result, it was necessary to recall Donna Robinson and hear further evidence under oath.

Issues

8. During the case management process the claimant struggled to articulate the issues in her claim. Following the third case management hearing it was agreed that the list of issues was those prepared by Employment Judge Mellor on 12 June 2023 with the addition of the dismissal as a further act of harassment.

9. The issues for the Tribunal are contained in the Annex to this judgment.

Relevant findings of fact

Claimant's employment status

10. The claimant was a registered advanced practitioner nurse who specialised in the treatment of mental health. In 2007/2008 the claimant achieved Band 7 status and became a clinical advanced practitioner nurse specialist with prescribing rights.

11. By 2017 the claimant was the leading nurse on clozapine (anti-psychotic) distribution and care and provided support across three Health and

Wellbeing clinics as and when needed. The claimant's base for work was the Broad Oak clinic.

12. At this time, the claimant's line manager was James Cousineau. Under his management, if the claimant or a colleague were off sick, James Cousineau positively encouraged their attendance at the clinic to keep in contact with colleagues.

Policies

13. The Tribunal is aware that the claimant's absence was managed under the absence management policy because at various times she was subject to formal staged meetings. However, the Tribunal did not consider this policy as that process was not something about which the claimant complained.

Respect Civility and Resolution Policy

14. The second version of this policy dated 2 September 2020, applied to the claimant's employment. Prior to the introduction of this policy the respondent operated a separate grievance policy that contained a right of appeal and a separate dignity at work policy which did not contain a right of appeal.

15. The dignity at work policy is now known as "respect and civility" and the grievance procedure is now known as "resolution" and the two policies are now one. Donna Robinson's evidence was that the respect and civility procedure applied if "a colleague perceives incivility, poor behaviours or bullying in workplace" and the resolution procedure applied if colleagues have concerns about their employment.

16. In order to start either process an employee completes a form setting out their issues and what they hope to achieve by way of resolution. The form does not give an employee the option to say whether they have a respect and civility issue or a resolution issue. It does state that an appeal is only available for a "Resolution and not Respect and Civility".

17. There is an initial meeting between the employee and the responsible manager within 2 working days of the form being submitted to discuss the issues and identify the most suitable route for resolution – either the respect and civility route or the resolution route. Any investigation should be completed within 28 working days and the employee provided with the outcome 15 working days later.

18. If the resolution route is followed the employee will have a right of appeal.

Claimant's sickness absence

19. The claimant was off sick from 14 December 2017 until 8 September 2018 as a result of neurological episode and depression and anxiety.

20. In August 2018, during a stage 3 sickness absence management meeting, the claimant was informed that Nicola Lamont would be her line manager.

21. From 15 April 2019 until 19 February 2021 the claimant was off sick as a result of a respiratory problem until July 2019 and depression and anxiety thereafter.

Restriction on attending clinic

22. On 10 May 2019 the claimant attended a stage 1 absence management meeting with Nicola Lamont. During the meeting, Nicola Lamont asked the claimant to stop working from her laptop whilst she was off sick.

23. On 28 June 2019, Nicola Lamont called the claimant and asked the claimant to hand her fit notes to the reception staff at Broad Oak and not to enter the clinic unless for a pre-arranged appointment as she was upsetting the staff.

24. On the same date, Nicola Lamont sent an email to Kim Stanley (HR), Rachael Tyrrell (a nurse junior to the claimant), Zoe Prince and Rebecca Lea (HR) stating "I have received a call from CB to say that she has another sick note for 2 weeks (CB has been asked not to attend the clinic on an informal basis)."

25. On 31 July 2019 the claimant attended a stage 2 absence management meeting with Nicola Lamont. At the meeting the claimant asked Nicola Lamont why she was not allowed to come into the unit and was told it was because she was upsetting staff.

26. On 30 September 2019, during a phone call between the claimant and Nicola Lamont, the claimant asked if she could pop into the clinic to give flowers to a colleague as she was also on site to attend an appointment. Nicola Lamont refused the claimant's request to attend when she was on site but agreed that the claimant could return at end of day when Nicola Lamont was on site.

27. On 9 October 2019 Nicola Lamont sent an email to her line manager, Zoe Prince, which recorded that the claimant felt victimised and that the claimant's counsellor had advised the claimant to have no more meetings with the respondent for a week. Nicola Lamont informed Zoe Prince that the matter was getting ridiculous. Nicola Lamont stated that had sought advice about possibility of moving the claimant to a stage 4 meeting. The Tribunal understands from the live evidence, that this meeting could conclude in the dismissal of the claimant.

Occupational Health intervention

28. In October 2019 Occupational Health advised Nicola Lamont and Zoe Prince to delay any further meetings with the claimant until her health improved. By this date the claimant had refused Nicola Lamaont access to her Occupational Health reports, and they were instead, sent directly to Zoe Prince.

29. On 4 December 2019 the claimant attended an Occupational Health assessment. The Occupational Health advanced practitioner recorded that the claimant's GP wanted to refer the claimant to the respondent's mental health service. However, the claimant wanted assurances from senior

management that the referral would remain confidential from her colleagues.

30. On 20 January 2020 the claimant attended another occupational health assessment. The Occupational Health practitioner recorded that the claimant was now capable of engaging with HR/Senior management but needed assurances about the GP referral to the mental health service.

Zoe Prince management of claimant's sickness absence

31. On 21 January 2020, Zoe Prince sought advice from HR on how to progress matters with the claimant because she had taken the over management of the claimant's sickness absence from Nicola Lamont.

32. On 28 February 2020 the claimant attended the stage 3 absence meeting with Zoe Prince. During the meeting Zoe Prince apologised to the claimant for the delay in offering assurances about the confidentiality of any referral to the mental health service.

33. On 4 March 2020, Zoe Prince sent the claimant a letter summarising their discussion on 28 February 2020 in which she recorded: "you had asked about confidentiality assurance as your GP wanted to refer you to our services. I assured you that I could look into this for you if you wanted to be referred into Mersey Care."

Advert

34. On 3 April 2020 the claimant saw an advert for the role of Clozapine Team Leader for 12 month fixed term contract. The claimant spoke to Lara Derbyshire of the Human Resources department, on the same day who advised the claimant not to worry as she thought it was an advert for an additional role not that held by the claimant. Lara Derbyshire said she would check with Zoe Prince.

35. By 6 April 2020, Lara Derbyshire had emailed the claimant to say she had spoken to Zoe Prince who had confirmed that advert was in fact for the claimant's role but only for a fixed term to cover the claimant's post whilst she was off sick.

36. As a result, on 17 April 2020, the claimant submitted a grievance about the advert.

37. On 20 April 2020, Zoe Prince called the claimant to apologise for the confusion caused about the advert. Zoe Prince assured the claimant that it was a fixed term contract and that there was still money in the budget for her post when she returned to work. The claimant accepted the apology and considered her complaint had been informally resolved.

Dispute about claimant's status

38. On 30 October 2020, the claimant attended a further stage 3 absence management meeting with Zoe Prince. The claimant asked if she could return to work on a part time basis at Broad Oak in the Health and Wellbeing Team, as an advanced practitioner with a different line manager to Nicola

Lamont. Nicola Lamont subsequently informed Zoe Prince that this would be possible.

39. By 5 November 2020, Nicola Lamont had informed Zoe Prince that there was no evidence on file that the claimant was working at the level of an Advanced practitioner.

40. On the same date Nicola Lamont sent an email to Dave Underwood, the claimant's Trade Union representative, confirming that the claimant would have to agree to return to work as a clinic nurse – the role, in Nicola Lamont's opinion, the claimant had performed before her sickness absence.

41. On 16 November 2020 Nicola Lamont sent an email to Zoe Prince informing her that she had told Dave Underwood "we will pay her as a band 7 however she will be classed and managed as a clinic nurse in the first instance". Nicola Lamont also confirmed that the claimant would not be able, for capacity reasons, to return to Broad Oak.

42. On 5 February 2021, the claimant attended a meeting with Nicola Lamont and was supported by Dave Underwood. During the meeting there was a discussion between the claimant and Nicola Lamont as to the claimant's advanced practitioner status.

43. Nicola Lamont asserted that there was no evidence of the claimant being appointed to the role of an advanced practitioner following the completion of her training. Nicola Lamont also said she was unable to find documents to support the claimant's assertion that she was based at Broad Oak.

44. Nicola Lamont asserted that prior to her sickness absence, the claimant had not performed a Band 7 Team Leader role at Broad Oak but rather had worked as a nurse in the clinic and this was the role to which the claimant would return, albeit at a different site.

45. On 12 February 2021 and 15 February 2021 Nicola Lamont confirmed the content of this meeting in emails to the claimant.

46. On 22 February 2021 the claimant sent a response to Nicola Lamont asserting that she was a band 7 and was paid in accordance with that grade. The claimant pointed out that she had been concerned that in April 2020 that her role had been advertised and it was now clear that there was no role to which she could return. The claimant asserted that this amounted to a detriment related to disability, because of her sickness absence, under the auspices of Equality Act and that she would be submitting a grievance.

Claimant's grievance

47. On 3 March 2021 the claimant submitted a complaint under the Respect, Civility and Resolution policy.

48. The claimant complained that Nicola Lamont had attempted to discredit the claimant's reputation by carrying out a flawed investigation into the clozapine clinics run by the claimant. The claimant complained that as a result, her job had disappeared, and she was being pushed to accept a role which was not equivalent to her grade. The claimant repeated her assertion

that the treatment was related to her sickness absence and therefore unlawful discrimination.

49. By way of resolution, the claimant asked for confirmation that her job had disappeared and also asked for an explanation about the lack of documents on her personal file. The claimant asked for reassurance that her personal file would reflect her achievements and that any shortcomings would not limit her options. The claimant sought confirmation that her job status had not been compromised in order to have trust and confidence in the respondent.

50. Donna Robinson, Zoe Princes' line manager was asked to manage and respond to the claimant's grievance.

51. On 4 March 2021 Nicola Lamont emailed the claimant to apologise for any distress caused by the meeting on 5 February 2021 and the subsequent emails. Nicola Lamont stated that the claimant's band 7 grade was never in dispute. Nicola Lamont also informed the claimant she would not be her line manager.

52. Despite this, on 9 March 2021 the claimant informed HR that she still wanted to pursue the grievance.

53. On same date Jennifer Cooney from the HR department made a note of the action that needed to be taken to progress the grievance. Jennifer Cooney also noted: that Nicola Lamont was resigning, that Donna Robinson would meet with Nicola Lamont and Zoe Prince and that HR would revise the claimant's grievance form.

54. On 12 March 2021 Donna Robinson met with Nicola Lamont to discuss the claimant's grievance. Donna Robinson subsequently sent a letter on 26 March 2021 to confirm the content of meeting. During her evidence, Donna Robinson confirmed that she also met with Zoe Prince to discuss the grievance.

55. On 16 March 2021 the claimant met with Jennifer Cooney to discuss content of her grievance.

56. On 29 March 2021 there was a further meeting between the claimant and Jennifer Cooney. During that meeting there was a discussion about the claimant's phased return to work. The claimant was informed of a temporary redeployment away from Broad Oak due to the investigation into her grievance.

57. On 31 March 2021 Donna Robinson sent the terms of reference for the investigation of the claimant's grievance to the investigating manager, Dale Williams. Donna Robinson asked for clarification as to the claimant's role, whether there were any documents on the claimant's personal file, details of the clozapine clinic review, whether there were any concerns about the claimant's performance, whether there were any attempts to discredit the claimant, details of the management of the claimant during her sickness absence and whether she had been treated differently in light of her mental health.

58. There are subsequently 4 fact-find meetings between the claimant and Dale Williams in April and May 2021. The claimant was not provided with the notes of these meetings until the end of November 2021 which she returned with her amendments on 6 December 2021.

Claimant's first resignation

59. On 21 April 2021 the claimant submitted her first resignation. The claimant stated that it was as a result of Nicola Lamont's management and the destruction of the claimant's career.

60. By this date, the claimant had attempted to return to work at another site but was unable to do so for more than one day.

61. On 22 April 2021, Donna Robinson wrote to the claimant and said she would not accept her resignation as she wanted the claimant to exhaust all options and processes. Donna Robinson offered to meet with the claimant.

62. On 4 May 2021 the claimant and Donna Robinson met. The claimant informed Donna Robinson that she had a good employment case and would take legal advice. Donna Robinson asked the claimant to await the outcome of the grievance before she did so. However, Donna Robinson did not want to discuss the grievance with the claimant as the investigation was ongoing.

63. Donna Robinson also informed the claimant she could not return to Broad Oak whilst the investigation was ongoing. The claimant informed Donna Robinson that she did not want to return to work until the investigation had concluded.

64. By 17 May 2021 the claimant had informed Donna Robinson that she would take unpaid leave until the investigation was completed and that she had withdrawn her resignation.

Further investigation of grievance

65. Between June 2021 – December 2021 Donna Robinson chased Dale Williams for updates and the outcome of investigation and provided the claimant with updates. Dale Williams informed Donna Robinson that the investigation was complex and that she was struggling to find time in the working day to complete the report.

66. Donna Robinson received the report on 13 December 2021. Donna Robinson informed the claimant that she needed time to review it before meeting with the claimant to discuss the outcome.

67. On 5 January 2022 the claimant met with Donna Robinson to discuss the report. However, Donna Robinson was unable to give the claimant the final outcome as Dale Williams had not dealt with all the terms of reference. The claimant was provided with the terms of reference for the first time at this meeting.

Return to work

68. Donna Robinson and the claimant also spoke about the claimant returning to work in the role the claimant had performed prior to sick leave to complete sufficient duties to ensure her nursing registration revalidation by April 2022.

69. On 28 January 2022 the claimant met with her new line manager, Natalie Sutton to discuss her return to work. Natalie Sutton informed the claimant that she would return to work in a band 7 clinical role. The claimant informed Natalie Sutton that she would return to work to ensure revalidation but would not agree to work in the suggested role until the outcome of the investigation was known.

70. The claimant returned to work for 6 days in February 2022. The claimant was then absent with COVID and unable to return to work after the death of her brother. The claimant subsequently took annual leave to delay her return to work. Despite this the claimant was able to achieve revalidation by May 2022.

71. In February 2022 Dale Williams reinterviewed Zoe Prince and provided an updated report to Donna Robinson on 20 February 2022. On 23 February 2022 Donna Robinson informed the claimant that she had the report and needed to review it.

72. The claimant a received response to her subject access request in May 2022.

73. The claimant was certified as absent from work from 24 February 2022 until 13 May 2022.

Grievance outcome

74. Donna Robinson contacted the claimant on 26 March 2022 to ask the claimant to contact her to discuss the report when she was ready.

75. On 13 May 2022 the claimant asked Jennifer Cooney if she could have a copy of the investigation report. On 24 May 2022 Jennifer Cooney responded and informed the claimant that she would only get a copy if the respondent deemed that further action should be taken

76. On 14 June 2022 Donna Robinson and the claimant met to discuss the outcome.

77. Donna Robinson did not uphold any aspect of the claimant's grievance. Donna Robinson concluded the advanced practitioner role was recognised in the department and on the clozapine service. Donna Robinson also concluded that the claimant never formally requested flexible working. Donna Robinson said that Nicola Lamont did move the claimant's base, but it was for the claimant's benefit and there had been a breakdown in communication about the move.

78. Donna Robinson confirmed that there had been no questioning of the claimant's competency but rather the respondent just wanted to support the claimant's return to work. It was confirmed that the respondent did not hold

HR files for any employee. Donna Robinson said there was no evidence that Nicola Lamont sought to discredit the claimant and no evidence that she forced the claimant into lesser role.

79. On 28 June 2022 Jennifer Cooney informed the claimant that she had no right of appeal because her grievance had been dealt with as a respect and civility complaint as opposed to a resolution complaint under the policy.

Claimant's resignation

80. On 7 July 2022 the claimant submitted her resignation with effect from 29 July 2022. The claimant's reasons for resigning were the content of the subject access request response and confirmation, in the claimant's opinion, that Nicola Lamont and Zoe Prince had orchestrated to remove her from post. The claimant stated she had lost all trust and confidence in the respondent as a result of perceived acts of discrimination relating to her mental health.

Relevant Legal Principles

Constructive Dismissal

81. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996. An unfair dismissal claim can be pursued only if the employee has been dismissed, and the circumstances in which an employee is dismissed are defined by section 95. The relevant part of section 95 was section 95(1)(c) which provides that an employee is dismissed by his employer if:

> "**the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."**

82. The principles behind such a "constructive dismissal" were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp [1978] IRLR 27**. It was held that unreasonable conduct is not enough, there must be a breach of contract which led to the constructive dismissal.

83. The statutory language incorporates the law of contract, which means that the employee is entitled to treat himself as constructively dismissed only if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

84. The term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606** the House of Lords considered the scope of that implied term and the Court approved a formulation which imposed an obligation that the employer shall not:

> **"…without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."**

85. It is also apparent from the decision of the House of Lords that the test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls put the matter this way at page 611A:

"The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances."

86. The EAT in *Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT* said:

"The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of…"

87. The objective test also means that the intention or motive of the employer is not determinative. An employer with good intentions can still commit a repudiatory breach of contract.

88. In **Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908** the Court of Appeal confirmed that the test of the "band of reasonable responses" is not the appropriate test in deciding whether there has been a repudiatory breach of contract of the kind envisaged in **Malik**.

89. Not every action by an employer which can properly give rise to complaint by an employee amounts to a breach of trust and confidence. The formulation approved in **Malik** recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. In **Frenkel Topping Limited v King UKEAT/0106/15/LA 21 July 2015** the EAT chaired by Langstaff P put the matter this way (in paragraphs 12-15):

"12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of BG plc v O'Brien [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in Malik v BCCI [1997] UKHL 23 as being:

> **"… apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."**

13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in Morrow v Safeway Stores [2002] IRLR 9.

14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 it was "conduct with which an employee could not be expected to put up". In the more modern formulation, adopted in Tullett Prebon plc v BGC Brokers LP & Ors [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term.

15. Despite the stringency of the test, it is nonetheless well accepted that certain behaviours on the part of employers will amount to such a breach. Thus in Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908 CA Sedley LJ observed that a failure to pay the agreed amount of wage on time would almost always be a repudiatory breach. So too will a reduction in status without reasonable or proper cause (see Hilton v Shiner Builders Merchants [2001] IRLR 727). Similarly the humiliation of an employee by or on behalf of the employer, if that is what is factually identified, is not only usually but perhaps almost always a repudiatory breach."

90. There is also an implied term that an employer will reasonably and promptly give employees an opportunity to seek redress for any grievance: **Goold WA (Pearmak) Ltd v McConnell [1995] IRLR 516**. Alternatively, failure to handle a grievance properly might amount to breach of the implied term as to trust and confidence if serious enough to be repudiatory.

91. In the case of **Blackburn v Aldi Stores Limited [2013] IRLR 846** the Employment Appeal Tribunal determined that a failure to adhere to a grievance procedure was capable of amounting to or contributing to a fundamental breach. However, not every failure to adhere to such procedure will constitute a fundamental breach. The Employment Appeal Tribunal was clear that this is a question for the Tribunal to assess in each individual case.

92. If the claimant is successful with the claim for constructive dismissal they are entitled to payment of a basic award, calculated in accordance with section 119 of the Employment Rights Act 1996 as follows:

"(1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by —

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In subsection (1)(c) "the appropriate amount" means —

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and

(c) half a week's pay for a year of employment not within paragraph (a) or (b).

(3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

93. The claimant is also entitled to payment of a compensatory award in accordance with section 123 of the Employment Rights Act 1996 which provides as follows:

"(1) Subject to the provisions of this section and sections 124 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."

94. In the case of **Polkey v AE Dayton Services Ltd (1988) ICR 142, HL**, the House of Lords determined that were a dismissal is unfair because of procedural irregularities, whether those irregularities made any difference to whether the employee was dismissed, will be taken into account when the Tribunal calculates any compensation.

95. In the case of **O'Donoghue v Redcar and Cleveland Borough Council (2001) IRLR 615, CA**, the Court of Appeal determined that even if a Tribunal concluded that a claimant had been substantively unfairly dismissed, but also concluded that but for the dismissal the claimant would have been fairly dismissed a short time later, then it would be just and equitable to calculate compensation for the unfair dismissal on that basis.

96. In **Software 2000 Ltd v Andrews and others (2007) IRLR 568**, the Employment Appeal Tribunal provided guidance on the calculation of compensation which included: assessing how long the employee would have been employed but for the dismissal with regard to all reliable relevant evidence, including evidence from the claimant, even if the Tribunal must, to a certain extent, speculate as to what would have happened.

97. In **Williams v Amey Services Ltd EAT 0287/14** the Employment Appeal Tribunal determined:

'In making such an assessment the [employment tribunal] is plainly given a very broad discretion. In some cases it might be just and equitable to restrict compensatory loss to a period of time, which the [tribunal] concludes would have been the period a fair process would have taken. In other cases, the [tribunal] might consider it appropriate to reduce compensation on a percentage basis, to reflect the chance that the outcome would have been the same had a fair process been followed. In yet other cases, the [tribunal] might consider it just and equitable to apply both approaches, finding that an award should be made for at least a particular period during which the fair process would have been followed and thereafter

allowing for a percentage change that the outcome would have been the same. There is no one correct method of carrying out the task; it will always be case-and-fact-specific. Equally, however, it is not a "range of reasonable responses of the reasonable employer" test that is to be applied: the assessment is specific to the particular employer and the particular facts.'

Discrimination

98. Discrimination in employment is prohibited by section 39(2) Equality Act 2010:

"An employer (A) must not discriminate against an employee of A's (B) –

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment."

99. Harassment during employment is prohibited by section 40(1)(a).

Discrimination arising from disability

100. Section 15 of the Equality Act 2010 states that there will be discrimination arising from disability if:

"(a) A treats B unfavourably because of something arising in consequence of B's disability and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."

Harassment

101. The definition of harassment appears in section 26 which so far as material reads as follows:

"(1) A person (A) harasses another (B) if -

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B…

(4) In deciding whether conduct has the effect referred to sub-section (1)(b), each of the following must be taken into account -

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are …disability".

Code of Practice on Employment 2011

102. The Code of Practice on Employment issued by the Equality and Human Rights Commission in 2011 provides a detailed explanation of the legislation. The Tribunal must take into account any part of the Code that is relevant to the issues in this case.

103. In particular the Tribunal has considered:

(a) paragraphs 5.7 – 5.10 to decide what is unfavourable treatment and what something arising in consequence of a disability means;

(b) paragraphs 7.9 – 7.11 to decide whether acts of harassment are related to the claimant's disability; and

(b) paragraphs 7.16 – 7.19 to decide whether acts of harassment had the necessary purpose or effect.

Burden of Proof

104. The burden of proof provision appears in section 136 and provides as follows:

"(2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.

(3) But sub-section (2) does not apply if A shows that A did not contravene the provision".

105. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ held that "could conclude", in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment.

106. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination. However, whether the burden of proof has shifted is in general terms to be assessed once all the evidence from both parties has been considered and evaluated. In some cases, however, the Tribunal may be able to make a positive finding about the reason why a particular action is taken which enables the Tribunal to dispense with formally considering the two stages.

Time Limits

107. Finally, the time limit for Equality Act 2010 claims appears in section 123 as follows:

> **"(1) Proceedings on a complaint within section 120 may not be brought after the end of –**
>
> **(a) the period of three months starting with the date of the act to which the complaint relates, or**
>
> **(b) such other period as the Employment Tribunal thinks just and equitable …**
>
> **(2) …**
>
> **(3) For the purposes of this section –**
>
> **(a) conduct extending over a period is to be treated as done at the end of the period;**
>
> **(b) failure to do something is to be treated as occurring when the person in question decided on it".**

108. In considering whether conduct extended over a period we had regard to the decision of the Court of Appeal in **Hendricks v Metropolitan Police Commissioner [2003] IRLR 96**.

Submissions

Claimant's submissions

109. The claimant submitted that she was a litigant in person and had not received any professional help in the pursuance of her claim.

110. The claimant conceded that her illness had caused suspicion and paranoia but maintained her complaints.

111. The claimant asserted that the respondent knew it was not following the correct policy and assumed the claimant would leave.

112. The claimant submitted that the removal of her advanced practitioner role served a purpose as she was no longer part of the team. The claimant also asserted that a clinic nurse would not have prescribing rights.

113. The claimant clarified that the main area of her concern was her job role and therefore the grievance was a resolution and not respect and civility.

Respondent's submissions

114. The Tribunal considered the respondent's written and oral submissions.

115. The respondent submitted that the old dignity at work policy did not have a right of appeal and the claimant would have been aware of that and understood the parameters of the new policy.

116. The respondent asserted that there had been a meeting between the claimant and Donna Robinson to agree the terms of reference.

117. Further the respondent asserted that Donna Robinson had a genuine perception that she was dealing with a respect and civility complaint and therefore there was no repudiatory breach.

118. The respondent submitted that the denial of a right of appeal was not the reason for the claimant's resignation as it was not mentioned in her resignation letter.

119. The respondent asserted that there had been no breach of the claimant's confidentiality. The respondent also asserted that the claimant had never asked Dale Williams to speak to the HR witnesses.

120. It was the respondent's contention that it was not for Zoe Prince to make the referral to the mental health service and assurances were provided to the claimant.

121. The respondent submitted that the claimant's resignation was not because of a repudiatory breach and that any award for compensation should be reduced to reflect the likelihood that the claimant would have been dismissed in any event.

122. The respondent submitted that the alleged acts of harassment were not related to the claimant's disability and were out of time. The respondent conceded that the advertisement of the claimant's job was unwanted conduct, but it was not reasonable for that to have upset the claimant in the way that she says it did.

123. The respondent denied that the claimant's prescription rights had been removed but that in any event, there was a need to upskill the claimant.

Discussions and Conclusions

Constructive Dismissal

2.1.1 – What did the respondent do?

124. Jennifer Cooney informed the claimant by email on 24 May 2022 that she would not be entitled to a copy of the investigation report prepared by Dale Williams unless the respondent decided that further action should be taken. The claimant was told there would be a feedback meeting which took place with Donna Robinson on 13 June 2022.

125. In live evidence, the claimant said she understood Jennifer Cooney's email to mean that if the claimant decided to appeal, she would receive a copy of the investigation report. It was the respondent's evidence that in fact, what Jennifer Cooney meant was that the claimant would only get a

copy of the investigation report if the respondent instigated disciplinary action as a result of the outcome.

126. The Tribunal has determined that the claimant was not allowed to the see the investigation report because Donna Robinson concluded that the claimant's grievance was unsubstantiated.

127. Jennifer Cooney also informed the claimant by email on 28 June 2022 that she could not appeal the outcome of the grievance because it had been dealt with as "respect and civility" and not "resolution".

128. It was the claimant's evidence that she had understood she would have a right of appeal if she disagreed with the outcome – as had been the case with the old grievance policy. It was the claimant's intention to introduce the content of the response to the subject access request as evidence of her grievance.

129. However, Donna Robinson, who the Tribunal considered to be an inconsistent witness, gave evidence that the decision to pursue the "respect and civility" route had been taken by her and was agreed by the claimant.

130. The claimant's evidence was that she had no idea about the two different pathways and did not meet with Donna Robinson until May 2021 and did not receive a copy of the terms of reference until January 2022.

131. The respondent's policy is clear that the right of appeal will only be afforded when the employee has pursued a "resolution" complaint. The respondent's policy is also clear that there should be a fact-finding meeting with the employee at which the most suitable route for resolution will be identified.

132. The claimant's fact-finding meetings were with Jennifer Cooney on 16 March 2021 and 29 March 2021. Donna Robinson determined the terms of reference and sent them to Dale Williams on 30 March 2021. Donna Robinson did not meet with the claimant until 4 May 2021.

133. It was Donna Robinson's evidence under oath that the claimant had agreed the terms of reference. However, Donna Robinson was unable to produce a note of any meeting with the claimant prior to sending the terms of reference. In any event, the terms of reference did not indicate which pathway the investigating manager should pursue.

134. The Tribunal has determined that it was the terms of reference that were vague not the respondent's policy.

135. The Tribunal has also determined that by the very nature of the claimant's grievance, it was clear that she was seeking clarity around her conditions of employment and the "resolution" pathway should have been pursued. As a result, the Tribunal has concluded that the claimant was denied the opportunity to appeal the outcome of her grievance.

136. During the course of hearing, the claimant asserted that Nicola Lamont had breached her confidentiality by sending the email at page 334 of the

hearing bundle on 28 June 2019 to Rachel Tyrell and stating in brackets: "CB has been asked not to attend the clinic on an informal basis",

137. The Tribunal has determined that the phrase in brackets was not a reference to the claimant's health and wellbeing and therefore not a breach of her confidentiality. The phrase in brackets was to inform the recipients of the email that the claimant should not be in attendance at the unit unless she had a formal reason to be there. The inference drawn from that information was that the claimant had been attending the unit on an informal basis.

138. The reason for Nicola Lamont sharing that information was because of the disruption caused by the claimant's informal visits as opposed to the claimant's health and wellbeing. The Tribunal did not hear any evidence that the cause of the claimant's visits were connected to her ill health.

139. The claimant clarified that her complaint that the respondent had carried out a poor or flawed investigation into her complaints was because Dale Williams had failed to speak to the HR representatives that had attended the meetings between Nicola Lamont and the claimant.

140. The claimant accepted under cross-examination that Dale Williams' investigation report was thorough. The claimant explained that had Dale Williams spoken to the HR representatives they would have confirmed Nicola Lamont's behaviour during those meetings.

141. The Tribunal has determined that the respondent's investigation was not poor or flawed. As the claimant conceded the investigation report was thorough. Dale Williams spoke to the claimant on 4 separate occasions. She also spoke with Nicola Lamont before she left her employment with the respondent and Zoe Prince.

142. Dale Williams did speak to Lois Newitt, a HR lead, who had advised Nicola Lamont during the management of the claimant's sickness absence. Dale Williams also spoke to the claimant's colleague Jeannie May and considered a number of emails before reaching her conclusions.

143. Donna Robinson highlighted areas that required further investigation and Dale Williams undertook the further investigation, which included speaking to Zoe Prince on a second occasion, before she completed her report.

144. The Tribunal has determined that the respondent did have regard to the claimant's wellbeing and disability throughout the process. The respondent appointed a new manager, Natalie Sutton, about who the claimant had no criticism.

145. The claimant and Natalie Sutton worked together to agree a phased return to work to allow the claimant to attain her accreditation. It was also agreed the claimant could use accrued annual leave to help with her phased return to work.

146. When the claimant was unable to continue in work, Natalie Sutton facilitated the contact with the regulator and helped the claimant achieve her accreditation despite her ongoing absence.

147. The claimant accepted during cross examination that Zoe Prince did not breach her confidentiality when dealing with the issue of referring the claimant to the respondent's mental health service.

148. The Tribunal has determined that it was not the responsibility of Zoe Prince to refer the claimant to the mental health service but rather the claimant's GP.

149. The Tribunal understands that the claimant's GP wanted to complete the referral, but the claimant wanted assurances from Zoe Prince that any such referral would be kept confidential from her colleagues.

150. It was Zoe Princes' evidence that she provided the claimant with his assurance during the meeting on 28 February 2020 and confirmed such an assurance in an email after the meeting.

2.1.2 Did the respondent breach the implied term of trust and confidence?

151. The Tribunal has determined, objectively, that not allowing the claimant to see the investigation report or appeal was calculated to destroy or seriously damage the relationship of trust and confidence between the claimant and the respondent. Any reasonable employer who wanted to continue the employment relationship would have been transparent throughout the process.

152. At the outset of the grievance, Donna Robinson as the allocated manager, failed to meet with the claimant to discuss her issues and agree on the pathway in accordance with the respondent's own policy. Instead, Donna Robinson met with Nicola Lamont and Zoe Prince, the two subjects of the claimant's grievance.

153. As a result, Donna Robinson was able to draft the terms of reference without the claimant's agreement following consultation with the two subjects of the grievance. Whilst the terms of reference did not state the particular pathway for the investigation of the grievance, they were vague enough to allow Donna Robinson to claim that the "resolution and civility" pathway had been used to deny the claimant the right to appeal the outcome.

154. The Tribunal has determined that the content of the claimant's grievance is clearly a "resolution" matter. The claimant primarily complains about the removal of her role and seeks clarification as to the respondent's view and evidence of her position within the respondent's organisation.

155. Donna Robinson took such a perverse view of the claimant's grievance when determining it as a "respect and civility" matter that no reasonable employer would have taken, that it is clear she did not want to give validation to the claimant's grievance or allow her to progress it further after the outcome was known. The Tribunal has determined that Donna Robinson had no intention of acting in accordance with the contractual relationship.

156. The claimant had submitted the grievance in order to obtain trust and confidence in the respondent. However, the outcome and the denial of the claimant's right of appeal meant that she lost all trust and confidence in the respondent.

2.1.3 Was the breach a fundamental one?

157. The management of the claimant's grievance amounted to a fundamental breach of the claimant's contract. After 16 months awaiting the outcome, the claimant was told that she could not see the investigation report or appeal the outcome. As a result, when the claimant asked for the respondent to consider the content of the response to the subject access request, the claimant was told she would have to submit a fresh complaint. It is the view of the Tribunal that no reasonable employer would have acted in such a way and the respondent had abandoned the contract of employment.

158. It is clear to the Tribunal that the breach was more than unreasonable. The respondent treated the claimant unfairly and improperly. Such treatment seriously damaged the employment relationship that the claimant was entitled to treat the contract as being at an end.

2.1.4 Did the claimant resign in response to the breach?

159. In her resignation letter the claimant stated that she had awaited the outcome of the grievance process. The claimant also stated that she had informed the respondent of the content of the response to the subject access request which validated her complaints but had been told that she must submit a further complaint to progress her complaints.

160. The claimant set out that she was not able to do this because she had lost all trust and confidence in the respondent and would pursue her complaints elsewhere.

161. The Tribunal has determined that the claimant did resign in response to the fundamental breach. The claimant had awaited the outcome of the process and despite possessing evidence to validate her claims, had been told she could not appeal and to start a new process. The claimant is clear that as a result she had no trust and confidence in the respondent resolving the complaints and would pursue the matter elsewhere.

2.1.5 Did the claimant affirm the contract before resigning?

162. The claimant did not affirm the contract before resigning. Whilst the claimant was told in May 2022 that she would not receive a copy of the investigation report, it was the claimant's understanding that she would get one if she needed to appeal.

163. It was only after the claimant was aware of the outcome and told on 28 June 2022 that she had no right of appeal that she took the view that she had lost all trust and confidence in the respondent and submitted her resignation.

164. The Tribunal has therefore determined that the complaint of constructive dismissal succeeds.

Remedy for Unfair Dismissal

165. The claimant does not seek reinstatement in her role or re-engagement in her employment with the respondent.

3.7 What basic award is payable to the claimant, if any?

166. The claimant is entitled to a Basic Award in accordance with section 119 of the Employment Rights Act 1996 and the formula provided in that section.

167. The claimant worked for the respondent for 27 years and on termination of employment earned £917 gross per week and £727.76 net per week.

168. The length of service for the calculation of the Basic Award is capped at 20 years working backwards from the date of termination of employment. The claimant's date of birth is 27 November 1970.

169. The claimant is entitled to 1.5 weeks pay for each year she worked for the respondent that she was not below the age of 41. In the claimant's case this was for a period of 10 years. The claimant is entitled to 1 weeks pay for each year she worked for the respondent that she was not below the age of 22. In the claimant's case this was for the maximum remaining period of 10 years.

170. The claimant lodged her claim in December 2022. The weekly wage for the calculation of the Basic Award was also capped, in the 2022/2023 financial year, at £571.

171. Therefore, the claimant's basic award is calculated as 10 years x £571 x 1.5 = £8565 + 10 years x £571 = £5710. The total basic award is £14,275.

3.6 If there is a compensatory award, how much should it be?

172. The Tribunal has not dealt with each of the sub-issues to reach the finding on the level of the compensatory award in light of the claimant's statement in her Schedule of Loss under the heading "future loss of earnings".

173. The claimant says:

> *"Due to the impact caused to my mental health and wellbeing I do not foresee a return to nursing with which the banding I left on (band 7) in the NHS or to nursing to within the NHS. If I returned to nursing it would likely to be as an agency nurse and the type of work would be of a lower skill, which would be reflected in the pay. As I have operated at an Advanced level, I don't know whether I would feel frustrated working at a basic level and (or) have the mental health stability to work at any level. Since leaving I have attended various aesthetic training courses but due to ongoing mental health problems, I have not had the motivation to set a small business up or whether working in aesthetics is a feasible option due reality*

of being a Mental Health Nurse and (or) my ongoing mental health struggles."

174. The Tribunal has determined that this is evidence from the claimant that she was not capable of returning to work on the date she resigned and has not been capable of returning to work since that date.

175. The claimant was only able to return to work for 6 days in February 2022 and had to use annual leave to assist with this phased return to work.

176. The respondent witness evidence revealed that the claimant was having intrusive thoughts about her colleagues, which, the claimant admitted during her own evidence, she feared she would act upon if she returned to work.

177. The Tribunal has determined that even if the claimant had been allowed to appeal against the outcome of the grievance and introduce the new evidence, on the balance of probabilities, she would not have been fit enough to return to work, even if the grievance was substantiated.

178. Any appeal of a resolution matter in accordance with the respondent's policy must be made within 10 working days of the outcome meeting, in the claimant's case by 27 June 2022. The appeal hearing must take place within another 20 working days, in this case by 25 July 2022.

179. Once the outcome of the appeal was known, the Tribunal has determined that the respondent would have referred the claimant back to Occupational Health for an assessment and this process would likely to have been completed within 4 weeks by 22 August 2022.

180. The Tribunal has also determined that any stage 4 absence management meeting would likely have taken place within another 4 weeks and in any event by no later than 19 September 2022.

181. Throughout these internal processes, the claimant would have remained on sickness absence on no pay.

182. The Tribunal has determined that it is more likely than not that the claimant would have been dismissed at the end of the stage 4 absence meeting and would have received pay in lieu of notice on the termination of her employment.

183. The Tribunal was not provided with the claimant's contract of employment to ascertain if she was entitled to contractual notice pay or subject to the statutory maximum of 12 weeks. In the absence of the contract the Tribunal has calculated the claimant's notice period on the basis of the statutory maximum period in accordance with section 86 of the Employment Rights Act 1996.

184. The claimant would have received £8732.04 net pay in lieu of notice – (12 x 727.67).

185. Therefore, the Tribunal has determined that it would be just and equitable in all the circumstances to award this amount as the compensatory award on the basis that had the respondent allowed the

claimant to appeal against the outcome of the grievance, the claimant would have remained employed by the respondent until at least the 19 September 2022 and been entitled to pay in lieu of notice on dismissal at stage 4 of the absence management policy.

186. The Tribunal notes that the claimant was in receipt of carers allowance at the rate of £69.70 per week from 15 August 2022. The Tribunal does not consider that it would be just and equitable to deduct the receipt of the carers allowance from the pay in lieu of notice because the rate of the carers allowance suggests the claimant would have been able to work her notice period, if fit to do so, and meet her caring responsibilities and therefore, entitled to both amounts.

Discrimination arising from disability

5.1 Did the respondent treat the claimant unfavourably?

187. The Tribunal has determined that Nicola Lamont told the claimant during the meeting on 5 February 2021 that there was no evidence that the claimant was working as an advanced practitioner prior to her sick leave. It was Nicola Lamont's view, confirmed in an email on 15 February 2021, that the claimant had worked as a nurse in the clinic.

188. As a result of taking this position, Nicola Lamont also removed the claimant's prescribing rights because a nurse in the clinic would not have had such prescribing rights, whereas an advanced practitioner would have prescribing rights.

189. Nicola Lamont did not provide evidence to the Tribunal and therefore, the claimant's recollection of that meeting was not challenged by the respondent.

190. The respondent therefore treated the claimant unfavourably.

5.2 Did the claimant's sickness absence arise in consequence of her disability?

191. The claimant's sickness absence from July 2019, according to the GP fit notes administered, and in particular that administered between 19 January 2021 until 19 February 2021, was because of depression and therefore, arose in consequence of the claimant's disability.

5.3 Was the unfavourable treatment because of the claimant's sickness absence?

192. The Tribunal has determined that the Nicola Lamont did not downgrade the claimant because of the claimant's sickness absence. Instead, the Tribunal has determined, that Nicola Lamont formed this view following an audit of the Health and Wellbeing/clozapine clinics and the documents held by the respondent about the claimant's role.

193. The fact that the claimant was off sick when Nicola Lamont formed this view is irrelevant. The Tribunal has determined that Nicola Lamont would have formed this view even if the claimant had been in attendance at work.

194. The complaint of discrimination arising from disability is therefore, unsuccessful and is dismissed.

Harassment related to disability

6.1 What did the respondent do?

195. The claimant asserted in live evidence, that it was in fact June 2019 that Nicola Lamont called the claimant whilst she was on sick leave and said "Just put your sick note in, don't come in as you're upsetting staff."

196. The respondent, in submissions, did not dispute that this was said.

197. At this time, the claimant had submitted fit notes which recorded the reason for her absence was an ear, nose and throat problem.

198. In evidence, the claimant confirmed that the stage 2 sickness absence meeting took place on 31 July 2019 and Nicola Lamont sent a letter confirming the content of that email on 5 August 2019. Despite this clarification, the claimant maintained that Nicola Lamont had told her she was "upsetting staff".

199. Nicola Lamont did not give evidence to the Tribunal and therefore the respondent was unable to dispute the claimant's account. Whilst the letter on 5 August 2019 makes no reference to this comment, Nicola Lamont did draft a letter to the claimant dated 27 June 2019 asking her not to attend at the clinic whilst on sick leave, and as the Tribunal considers the claimant to be a credible witness, accepts that this was said to the claimant during this meeting.

200. Similarly, the Tribunal accepts the claimant's evidence that on 30 September 2019 Nicola Lamont said to the claimant: "I have told you not to come in; I believe you are coming in."

201. It was not disputed that there was a phone call between the claimant and Nicola Lamont on this date, following the claimant's return from a holiday during which the claimant enquired if she could attend the unit to give a colleague some flowers on her birthday.

202. The Tribunal has determined that on 5 February 2021, Nicola Lamont told the claimant that there was no evidence that she was an advanced practitioner and that she had only worked as a nurse on the clinic prior to her sick leave. The Tribunal has also determined that Nicola Lamont told the claimant there was similarly no evidence to substantiate the claimant's position that Broad Oak was her base.

203. The Tribunal has found that on 3 April 2020 the claimant saw an advert for her role. It was determined during evidence that Zoe Prince told the claimant that the advert was for fixed term cover for the claimant's role whilst the claimant was off sick, but that there was enough money in the budget to accommodate the claimant's return to work.

204. The claimant clarified during the course of the hearing that her complaint that Nicola Lamont and Zoe Prince had indicated that there would be

organisational change and the claimant would become a clinic nurse, was in fact a complaint about the content of the meeting with Nicola Lamont on 5 February 2021 about which the Tribunal has already made a finding.

205. It was agreed at the outset of the hearing that the claimant also pursued any constructive dismissal as a separate act of harassment. The Tribunal has already determined that the claimant was constructively dismissed.

6.2 Did the respondent's actions amount to unwanted conduct?

206. The claimant gave clear evidence that each of the acts complained about were unwanted conduct.

207. The first three acts upset the claimant because she had been used to attending the clinic when on sick leave and felt ostracised from her colleagues by Nicola Lamont's stance.

208. Whilst the claimant initially agreed that the complaint about the advertising of her role had been informally resolved, after the meeting with Nicola Lamont on 5 February 2021, she considered her concerns to be well founded that there was an effort by her managers to remove her from her role and therefore, the latter three acts also amount to unwanted conduct.

209. The claimant was also clear that she did not want to be in a position where she had to resign from her role as a Mental Health Nurse. The claimant's evidence about the loss of her career was compelling.

6.3 Did the respondent's unwanted conduct relate to disability?

210. The Tribunal has determined that the first three acts of unwanted conduct – the restrictions place on the claimant attending the clinic – did not relate to the claimant's disability.

211. As the Tribunal has already found, the restrictions placed on the claimant were because the claimant was having a negative effect on staff morale. The Tribunal was not presented with any evidence to suggest that the claimant's behaviour was related to her disability.

212. The Tribunal has also determined that the act of unwanted conduct – the content of the meeting on the 5 February 2021 – did not relate to the claimant's disability.

213. The meeting between the claimant and Nicola Lamont was about the claimant's role in the Health and Wellbeing/clozapine clinic following Nicola Lamont's audit. Nicola Lamont would have taken this view regardless of the claimant being on sick leave for a disability related reason.

214. The Tribunal has determined that the advertising of the claimant's role whilst she was on sick leave was related to the claimant's disability.

215. The claimant was on sick leave for a disability related reason and this created the need to advertise cover for her role.

216. The claimant's constructive dismissal was not related to her disability. The Tribunal has made findings that the reason for the claimant's resignation was because the respondent had failed to follow a fair grievance procedure. The claimant did not assert that the advertisement of her role was also the cause of her resignation.

6.4 Did the advertisement of the claimant's role have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

217. The purpose of the advertisement was to find cover for the claimant's role whilst she was on long term sick leave.

218. Zoe Prince provided the claimant with this clarification and assured the claimant there was sufficient money in the budget for the claimant to return to work. The claimant subsequently accepted this explanation.

6.5 If not, did it have that effect – when taking into account the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

219. The Tribunal has determined that when the claimant first saw the advert she was told by HR that it was not an advert for her job and knew it was for a fixed term. When the claimant was then told it was in fact her job, she was provided with a reassurance that it was only for a fixed term whilst the claimant was on sick leave.

220. Zoe Prince further reassured the claimant that there was sufficient money in the budget to accommodate the claimant's return to work.

221. The Tribunal has therefore concluded that it was not reasonable for this conduct to have the effect complained about. The claimant had assurances from the outset that it either wasn't her job, or when it transpired that it was, it was a temporary state of affairs until the claimant was well enough to return.

222. The complaint of harassment is therefore unsuccessful and is dismissed.

223. In light of the Tribunal's conclusions about the discrimination complaints, the Tribunal has not gone on to determine issue of time limits.

Approved by:

Employment Judge Ainscough

2 July 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

5 August 2025

FOR EMPLOYMENT TRIBUNALS

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2400080/2023**

Name of case: **Mrs C Browne** 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: 5 August 2025

the calculation day in this case is: 6 August 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

   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.