EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
AB	**v**	CD

Heard at: Reading (by CVP) **On:** 25 & 27 June and 1 & 2 July, 19 September 2025 (in chambers)

Before: Employment Judge S George

Appearances
For the Claimant: EF
For the Respondent: Ms T O'Halloran, Counsel

RESERVED REMEDY JUDGMENT

1. The Respondent discriminated against the Claimant by treating him less favourably on grounds of disability and by subjecting him to unfavourable treatment for a reason arising in consequence of disability:

    1.1. by removing him from the S&I Manager position on 21 June 2017;

    1.2. by refusing to return him to the S&I Manager position by a decision in about February 2019 communicated to him on 7 March 2019.

2. The Respondent subjected the Claimant to unjustified indirect disability discrimination by the practice of disciplinary and grievance matters taking a long time to conclude.

3. The Respondent shall pay to the Claimant compensation for disability discrimination in the sum of **£35,802.91** calculated as follows:

GENERAL DAMAGES

Personal Injury	20,000.00		
Interest on @ 8% from 31.08.23 to 29.09.25 (761 days) @ £4.38 p.d	3,333.18[1]	23,333.18	
LESS 32% Chaggar reduction[2]		(7,466.62)	
		15,866.56	15,866.56
Injury to feelings	8,000.00		
Interest on @ 8% from 30 April 2018 to 29 September 2025 (2710 days) @ £1.75 p.d.	4,742.50[3]	12,742.50	
LESS 0% Chaggar reduction[4]		0	
		12,742.50	12,742.50
Aggravated Damages	NIL		
Exemplary Damages	NIL		

FINANCIAL LOSS

Reduced salary due to sickness absence tax year 01.04.2018 to 31.03.2019	11,066.66		
Interest on that @ 8% from 1.12.2018 to 27.06.2025 2399 days @ £2.42 p.c.	5,818.94[5]		
COVID-19 cover	7,208.60[6]		
Interest on that @ 8% from 30.09.2020 to 29.09.2025 5 years @ £576.69	2,883.44[7]		
Total loss of earnings (including interest)	26,977.64	26,977.64	
LESS 32% Chaggar reduction		(8,632.84)	
		18,344.80	18,344.80

Other past financial loss:

EF's earnings	NIL
Loans & Life insurance	NIL

Future LOSS

Future loss of earnings	NIL

[1] See para.157 & 158 below
[2] See para.163 & 164 below
[3] See para.176 below.
[4] See para.177 below.
[5] See para.209 below.
[6] See para.220 below.
[7] See para.221 below.

Care and Assistance	NIL
Treatment	NIL
Other adjustments	
ACAS	NIL

Total	**46,953.86**
LESS £11,150.95 paid by Respondent on 27.06.2025	**(11,150.95)**
TOTAL COMPENSATION	**35,802.91**

REASONS

1. This reserved judgment contains the following sections:

   1.1. A brief description of the documentary, statement and oral evidence before me (paras.2 to 4);

   1.2. A description of the hearing, including an explanation of how it came to be that I proceeded in the absence of the Claimant himself (paras.5 to 27);

   1.3. The Issues in the case (paras.28 to 45);

   1.4. The Law applicable to the issues in dispute (paras.46 to 63);

   1.5. General Findings of Fact (paras.64 to 88);

   1.6. Conclusions on intention (paras.89 to 93);

   1.7. The Claimant's State of Health (paras.94 to 137);

   1.8. Should I award compensation for indirect disability discrimination (para.138 to 143);

   1.9. Conclusions on the causes of personal injury and assessment of compensation for personal injury – including interest and Chaggar adjustment (paras.144 to 164);

   1.10. Findings on injury to feelings and conclusions on compensation for injury to feelings – including interest and Chaggar adjustment (paras.165 to 177);

   1.11. Aggravated Damages (paras.178 to 183);

   1.12. Exemplary Damages (paras.184 to 185) ;

1.13. Past Loss of Earnings (paras.190 to 221);

1.14. Future Loss of earnings (paras.222 to 229);

1.15. Failure to Mitigate (paras.230 to 233);

1.16. Reduction in EF's earnings (paras.234 to 245);

1.17. Cost of Treatment/Travel to Treatment (paras.246 to 249);

1.18. Loans & Life Insurance (paras.250 to 254);

1.19. Pension Loss (paras.255 to 258);

1.20. ACAS uplift/reduction (paras.259 to 263).

The documentary, statement and oral evidence

2. In this Hearing I had the benefit of the following documents:

2.1. A hearing file for the Remedy Hearing. Page numbers in that are referred to as RB page 1 to 2202.

2.2. A hearing file for the Liability Hearing originally scheduled to take place starting on 27 June 2023. Page numbers in that are referred to as LB page 1 to 4372.

2.3. A separate PDF file of "relevant extracts from liability bundle" – although neither party referred to pages in that, using the Liability Hearing file where necessary.

2.4. A PDF file prepared for the preliminary hearing before Employment Judge Laidler on 6 January 2025 which had been retained by the tribunal.

3. Some documents were sent separately by each of the Respondent and EF before the remedy hearing. Many also appeared in one of the above hearing files, but for the avoidance of doubt, I had my attention particularly drawn to the following by them being sent separately:

3.1. The claimant's schedule of loss updated on 13 June 2025. In its MS Word format it had other documents embedded in it and part of the reason additional document were sent to me was because I wanted to ensure that I had located all of the embedded documents because the links did not work as intended.

3.2. A table of sickness absence and the Verita Report of July 2021 were sent separately when I asked for them although they were subsequently located in the Remedy Hearing file together with the Verita Report update.

3.3. An email from EF on 29 June 2025 clarifying the claimant's position about his objection to the role he was offered.

3.4. An email and two worksheets sent on 30 June 2025 to clarify the claimant's earnings between April 2024 and March 2025.

3.5. The respondent's opening statement for the Remedy Hearing (referred to here as RNOTE 2) and the respondent's opening note for the hearing on 22 April 2024 (RNOTE 1).

3.6. The respondent's closing submissions (referred to here as RSUB).

3.7. The claimant's closing statement (referred to here as CSUB).

4. I had files of witness statements prepared for both the Liability Hearing (WLB pages 1 to 392) and the Remedy Hearing (RWB pages 1 to 127). In particular, there were remedy witness statements and a supplementary statement from each of the claimant and EF and also from two of the respondent's witnesses: LM and NO. There was also one witness statement from IJ. The claimant did not give oral evidence and was not cross-examined because of his state of health. All other witnesses gave evidence: EF was cross-examined and asked questions of the respondent's witnesses.

The hearing before me

5. The Remedy Hearing before me was unusual in two respects. In the first place, the Respondent had conceded liability for some of the Claimant's claims on 26 May 2023. Then, by a letter of 14 June 2023 (RB page 159), the Respondent conceded liability for all of the Claimant's claims which appear in the List of Issues. The List of Issues that was the subject of that concession is found at RB page 145. This meant that I was considering the Remedy to be awarded for accepted acts of discrimination when there had not been a determination by an Employment Tribunal of liability or detailed findings of fact about the events which gave rise to liability for disability discrimination. For the avoidance of doubt, I had played no previous part in case managing or determining issues in this claim.

6. The second way in which the Hearing before me was unusual was that the Claimant did not attend it. He participated through the written statement, the detailed comments in the schedule of loss and was consulted about the closing statement. His supplementary statement explains the depths he presently finds himself in. Nevertheless, it was clear that EF was able to consulted with him to some extent and one benefit of the breaks between sitting days was that there was time between evidence and closing statements for him to contribute to what was said on his behalf in closing by EF. The way he describes his present state of mind in the supplemental statement means that the amount of consultation should not be overstated because it comes across that it is painful, difficult and exceptionally tiring for the claimant to discuss the litigation and EF is, understandably, cautious given his fragility.

7. The claimant provided medical evidence, which I shall refer to in more detail below, which stated that he was under the care of the Mental Health Hub Team for PTSD, severe anxiety and depression with suicidal ideation and felt unable to attend his next Tribunal Hearing. That medical evidence was dated 7 January 2025. It was sent to the Tribunal on 22 January 2025, shortly after a Preliminary Hearing on 6 January 2025 which the Claimant did not attend.

8. The Claimant remains unfit to work and has been certified unfit to work until 21 October 2025 because of mixed anxiety and depressive disorder. The letter dated 7 January 2025 is at RB page 1934. AB had reported to his doctor that he fainted on his previous tribunal hearing due to severe anxiety

   "will be working with mental health team to improve his symptom, until then, he feels he is unable to attend his next tribunal. We are unable to give a time frame on how long he will suffer with this or to the extent it will affect him."

   I have no reason to think that the situation described in the letter has changed.

9. Judge Laidler had decided to list the Remedy Hearing notwithstanding the expectation that the Claimant would be too unwell to attend. Some detail of the litigation history is necessary in order to understand that decision. At the time of the Respondent's concession on liability, the claim had been listed for a Liability Hearing which was due to take place starting on 3 July 2023. It was converted to a Remedy Hearing by an Order sent to the parties on 27 June 2023. The first half day of what was to have been the Final Hearing was converted to a Case Management Preliminary Hearing to case manage the Remedy issues. On 3 July 2023, a Remedy Hearing was listed for four days to take place between 22 and 25 April 2024 by Cloud Video Platform (CVP). Employment Judge Postle made directions for further information about how the losses were calculated and for a Medical Expert.

10. The Remedy Hearing was listed to be heard before a Full Tribunal chaired by Employment Judge Laidler (RB page 1823). The Claimant appeared in person and Ms O'Halloran, who appeared before me, was Counsel for the Respondent on that occasion. The Laidler Tribunal made Anonymity Orders.

11. It is apparent from the Case Management Summary at RB page 1823 that the Remedy issues to be considered by the Laidler Tribunal were not agreed between the parties at the start of that Hearing. Judge Laidler records in her Case Summary, at paragraph 8 and following, an issue that arose as to the scope of the June 2023 concession in relation to the indirect discrimination complaint. The Laidler Tribunal went on to determine the extent of that concession when case managing the claim ahead of starting the Hearing by clarifying the issues. I will go into the detail of their decision when considering the issues that it was necessary

for me to determine in order to reach a conclusion on all matters that remain in dispute between the parties in this litigation.

12. However, for the purposes of understanding how it came to be that the Claimant did not attend the Hearing before me, it is only necessary to record first that the Claimant has appealed the Laidler Tribunal decision about the scope of the concessions and the issues to be determined and a Rule 3(10) Hearing of that Appeal is listed for 8 October 2025 (RB page 1961). The other matter it is necessary to record is that on Day 3 of the time allocated in April 2024 for the Remedy Hearing, the Claimant, through his wife, explained that his mental health had declined and he would not be able to participate in the Hearing. The Claimant was unable to continue and the emergency services were called to attend to him.

13. The Remedy Hearing was adjourned and re-listed for 2 – 4 December 2024 with submissions on a later date in December 2024 and Tribunal deliberations on 6 January 2025. However, correspondence from the parties including a letter from the Claimant's GP of 4 October 2024 were referred to Employment Judge Laidler and on 13 November 2024 she postponed the Remedy Hearing and scheduled a Case Management Hearing before herself to take place on 6 January 2025.

14. The Claimant's wife attended for part of that Hearing but both the original letter that was before Judge Laidler when she postponed the December Remedy Hearing (RB page 1932) and the medical evidence dated 7 January 2025 (that I have already referred to), explain that the Claimant was being treated for PTSD, severe anxiety and depression with suicidal ideation and felt unable to attend a Tribunal Hearing until his symptoms improved.

15. This GP opinion had followed directions from Employment Judge M Warren sent to the parties on 12 July 2024 (RB page 1845). Judge Warren explained that the Claimant must arrange for a written opinion from his advisors covering, first, his diagnosis; secondly, that he was not capable of attending a video hearing for the purposes of case management; thirdly, his prognosis in particular as to when it might be anticipated that he might be well enough to attend a case management hearing and well enough to attend a substantive hearing. Judge Warren's letter stated,

> "It should be understood that if a hearing cannot take place within a reasonable time frame, the interests of justice may require that a Hearing take place notwithstanding the Claimant's health."

16. As Judge Laidler records, the Claimant's wife attended for a short while at the Hearing on 6 January 2025, the learned Judge re-listed the Remedy Hearing for reasons that she explains in paragraph 13 and following of her Order:

16.1. The overriding objective involved avoiding delay insofar as compatible with a proper consideration of the issues and also saving expense.

16.2. It was not in either party's interests for the case to be hanging over for them for much longer and it was over five years since the claim was issued.

16.3. The Claimant had been able to engage on paper with the Employment Appeal Tribunal because he had by then put together reasoned arguments for a ground of appeal against the Laidler Tribunal decision on the scope of the concessions. Judge Laidler did later accept that he had had help with that from Plumstead Law Centre. Nevertheless, he had given instructions to the Law Centre who had drafted appeal grounds on his behalf.

16.4. The Claimant was entitled to participate on the next occasion by way of written representations and Judge Laidler made reference to Rule 42 which states that any written representations are sent not less than 7 days before the Hearing.

17. Judge Laidler went on to say that the adjourned Remedy Hearing should be re-listed because the Claimant could participate by way of written representations, if he was not well enough to attend in person (see her analysis of the relevant authorities at RB page 1878 when making this decision).

18. This is a summary of the communications that there were between the parties and the Tribunal following the postponement of the Remedy Hearing from April 2024. It should be noted that the Respondent objected to the postponement of the Remedy Hearing from December.

18.1. The Claimant's wife wrote on his behalf on 13 February 2025 responding to matters in the Case Summary of 6 January 2025. In broad terms she argued that there should be a further medical assessment, that it was inaccurate to presume that the Claimant had been engaging with the Employment Appeal Tribunal in light of the assistance provided by the Law Centre and she reminded the Tribunal of the outstanding Preparation Time Order.

18.2. These representations were dealt with by Judge Laidler on 5 March 2025 (RB page 1891) when she asked the Respondent to comment on the question of whether the Remedy Hearing (by then listed to start on 24 June 2025) should be postponed and re-listed.

18.3. The Respondent argued that the Remedy Hearing should not be postponed (RB page 1895). Among other things, they stated that their understanding was that the Claimant had received assistance drafting an Application for a Rule 3(10) Hearing but did not have assistance when the Appeal was initially submitted in June 2024 and that the Claimant had emailed the EAT directly on a number of

matters because Plumstead Community Law Centre had not gone on the record as formally acting for him. They argued that the fact of the Rule 3(10) Hearing was not a valid basis to postpone the Remedy Hearing and set out in the section that starts at page 1897 the disadvantages that they argued there would be to the Respondent if the Remedy Hearing did not proceed. They pointed out that at that time there were 21 months on from the date on which liability had been conceded without any resolution of the issues and that there were Witnesses who were impacted by that delay.

18.4. On 3 April 2025, Judge Laidler directed that the Remedy Hearing should remain as then listed for 24 – 27 June 2025 and 1 – 2 July 2025 (RB page 1901).

19. Unfortunately, pressure on the Tribunal lists meant that there was no judge available to consider the Remedy Hearing on those dates and on 23 June 2025 the Regional Employment Judge postponed the Hearing to be re-listed on an alternative mutually convenient date. By that time, the Claimant had submitted an updated Schedule of Loss on 16 June 2025 (RB page 2080). A number of other documents that postdate the decision that the Remedy Hearing would remain as listed, notwithstanding any doubt about whether the Claimant would be able to attend, have been included in the Remedy Hearing Bundle and were, as I understand it, provided to the Respondent on behalf of the Claimant by the Claimant's wife.

20. Representations were made about the desirability of retaining the listing if possible and the Respondent explained that in their view the six day listing was generous, given that the expectation was now that the Claimant would not attend in person but would participate by way of written submissions. Their detailed representations are set out in their email of 23 June 2025, timed at 1722hrs.

21. The Claimant's wife wrote on his behalf to the Tribunal that evening and said that the Claimant was content with the postponement due to non-availability of judicial resource because he objected to the Hearing continuing only on the basis of his written submissions and in his absence. She went on to say that she had written some questions that she wanted to ask the Respondent's Witnesses and it is clear from her email that she had discussed those questions with the Claimant himself. She argued that six days as originally listed was necessary.

22. Part of the argument by the Respondent was based upon the Medical Expert which had been obtained through joint instructions for the Remedy Hearing, which states that resolution of the Employment Tribunal proceedings would have,

> "a substantial positive impact on his [the Claimant's] mental health condition"

and that lack of resolution of the Employment Tribunal proceedings was among the number of reasons that the Claimant's symptoms and challenge to recovery persisted. They therefore argued that there was medical evidence that it was in the Claimant's best interests that the proceedings were concluded as soon as possible.

23. The Tribunal wrote on 24 June 2025 to the parties to say that they had been able to source a Judge for 25 June, 27 June and 1 and 2 July 2024. The dates were convenient to the Respondent. The Claimant's wife responded the same day to say,

> "Obviously the dates are not suitable for my husband and I. However, if the session would continue against our wish I would be in attendance to capture issues and questions which I will subtly feed to my husband for response / comment because like I always mentioned in the past, I don't have the in depth knowledge of the case as it happened at work. If there is any issue I have an answer to I will surely respond to it without getting my husband involved. I want to ensure that there are no misleading statements made by anyone as I fear there is such a risk. We have questions to ask the Respondent's Witnesses and would want them responded to. Please take note, the process of going to and fro in speaking to my husband will be slow."

24. The Remedy Hearing was therefore listed to be heard by me on those dates by Regional Employment Judge Foxwell.

25. As the Claimant's wife explained in that email, she attended because she was concerned that there should not be any misleading statements made by anyone and because she had questions to ask the Respondent's Witnesses on behalf of her husband. She explained before me that she had originally not intended to appear to represent her husband's interests because she does not personally have the in depth knowledge of the case that he did and was not present during many of the index events. I explained to her that my usual practice in any Video Hearing is to have a break every hour for five or ten minutes as a screen break and that I was quite happy for those sorts of breaks to be extended if it was helpful to her to take that time to consult with her husband. She was dialling into the Video Hearing from their home and her husband was lying down in another room. In fact, since the Witnesses gave fairly short evidence, it was possible to manage breaks for the most part by having those breaks between evidence given by Witnesses, although there was a break in the middle of the evidence given by NO.

26. I expressed the Tribunal's gratitude to the Claimant's wife for her attendance because she was able to represent his interests to the best of her ability. Her participation meant that the principle consequence of the Claimant's ill health was his unavailability to be cross-examined upon his Witness Statement. I also expressed the Tribunal's gratitude to both parties for their accommodating the alternative dates which had been

made available in order that the Remedy issues in the case could be determined.

27. The first two and a half hours on Day 1 was spent in housekeeping and preliminary matters.

    27.1. Ms O'Halloran had provided an opening note which had been sent to the Claimant the night before the Hearing (RNOTE2). The Claimant's wife said that she was put to a disadvantage by the late provision of the note and drew attention to the Order that any written submissions needed to be sent to the other party 7 days before the Hearing.

    27.2. In principle these observations were well made, however, Ms O'Halloran argued that the opening note was very similar in content to an opening note provided in April 2024 ahead of the adjourned Remedy Hearing (RNOTE1). I asked for that original draft be provided and it is perhaps more accurate to say that the Respondent's substantive Remedy arguments set out in RNOTE 1 are the same as those in RNOTE2. Therefore it is fair to say that AB and EF would have been aware of those.

    27.3. The difference was in respect of procedural events and an update of the position immediately prior to the June 2025 Hearing. Those were matters which Ms O'Halloran could have explained orally. In fact I had not been sent her note before I started the Hearing and therefore had not read it before hearing from the parties. Any potential disadvantage to the Claimant's wife by the late sending of the note, was alleviated by the fact that she had plenty of time available to consider it before she needed to respond to it.

    27.4. This was because the listing of pairs of non-contiguous days meant that, following case management and the preliminary matters on Day 1, there was a break for tribunal reading. There was then a day for cross examination and witness evidence on Day 2. Then following the weekend (during which the Claimant's wife works in her part time role) the Tribunal was not sitting on Monday and resumed for submissions on Day 3, on Tuesday. I explained to the Claimant's wife that, in addition to any response she wished to make to RNOTE2 – and I stress the substantive arguments in the opening note are those in RNOTE1 – she would have the opportunity, if she wished to do so, to set out in writing any submissions to be made in a closing speech in the time available on Monday 1 July. I explained that she would probably find it helpful if she followed the structure of the issues set out in Judge Laidler's Order at RB page 1826 paragraph 17 and following.

    27.5. The Claimant's wife has childcare responsibilities which meant that she was unable to be present in the Hearing for approximately an hour and a quarter in the afternoon of Day 2 and Day 3 for the

school run. Their child has special needs and is at primary school. We shortened the lunch break on Day 2 and then broke for enough time for EF to collect her child before completing the witness evidence.

27.6. Ms O'Halloran explained on Day 1 that she intended to provide written submissions and speak to those in closing. She agreed to provide those to the Claimant the night before the day allocated for closing speeches.

27.7. The Hearing start time was scheduled for 11.00 am on Day 3 to give the parties the opportunity to read their respective written submissions before anything they wished to say to supplement them by way of oral submissions or in response to the other side's written submissions. EF emailed the Tribunal in the early hours of the morning on Day 3 to say that she had not yet completed her written submissions and was invited to send them in draft and to finish anything she wished to say orally.

27.8. In the event, comprehensive and helpful written submissions running to 67 pages from EF were submitted at 10:30 am so the start time was put back to 11:30 am so that both parties could read the other's submissions. Both the Claimant's wife and Ms O'Halloran explained at the start of the Hearing that they had not completed that task, so Day 3 was timetabled for Ms O'Halloran to say anything orally she wished to, to supplement her written submissions and then for the Claimant's wife to do the same before having a 20 minute break for them to complete their reading. The intention then was that they should have a short further opportunity to say anything more that either of them wished to say in response to the written submissions.

27.9. As the start time had been put back, Ms O'Halloran did not conclude her oral remarks until approximately 1.00 pm, when she had been speaking for about an hour, if one excludes Judge's questions. Since the Claimant's wife had a commitment to collect her child, the parties and the Tribunal agreed that, following a short comfort break, the Claimant's wife should continue with her closing oral remarks without a longer lunch break and the break to conclude reading of written submissions and then final remarks should fit around the school run. This was done.

27.10. As I had suggested, the Claimant's wife's written submissions on behalf of her husband did follow the List of Issues from Judge Laidler and are a helpful and detailed summary of the points the Claimant wishes to make. It is likely that the listing with non-sequential Hearing days means that there was ample opportunity for EF to consult with AB at a time and pace appropriate for his health needs, as she had asked in her original email.

27.11. I reserved my decision at the end of Day 3, intending to write the reserved judgment on Day 4. Unfortunately, the relative complexity and the sensitivity of the issues in the case meant that it was not possible to complete it in that time and there has been a delay until another day could be scheduled for me to do so. Part of the reason why this could not occur until September was a period of non-working days and annual leave.

The Issues

28. The issues for the Remedy Hearing were clarified by the Laidler Tribunal as set out in paragraph 17, RB page 1826. I replicate those below. However, it is necessary to reiterate the scope of the original claim before I do so. That is because in the Witness Statements for the Remedy Hearing and the Claimant's Schedule of Loss (including the most recent update of that Schedule of Loss at RB page 2080) the Claimant continues to argue that there has been a continuous course of discriminatory conduct against him since July 2015.

29. The Laidler Tribunal decided in April 2024 that the Respondent's concession of the claim, and in particular the indirect disability discrimination complaint, accepted liability for the disciplinary action which started in June 2017 and continued to March 2019. They set their reasoning out in some detail in paragraphs 8 – 16 of the Case Management Summary sent to the parties on 13 June 2024. This is the subject of the Claimant's Appeal which was rejected at Rule 3(7). Ground 2 of the Appeal (RB page 1940) is the only ground pursued by the Claimant to the Rule 3(10) stage and it appears to challenge the analysis of the Laidler Tribunal that the complaint of indirect discrimination did not cover pre-June 2017 matters at the time of the Respondent's concession.

30. This has been the subject of a decision by another first instance Tribunal and I do not seek to go behind it, particularly when a Deputy Judge in the EAT held that there does not appear to have been an error of Law (RB page 1947) by the Laidler Tribunal. However, I was also mindful that the primary duty of the Tribunal was to decide the issues in accordance with the Law and the evidence and had there been any reason for me to consider that an important issue had been overlooked, I consider that I would have been duty bound to raise that.

31. The original claim form was presented on 30 July 2019. It included a statement of the Grounds of Complaint (RB page 38) and it does refer to the 2015 suspension within the narrative, although it goes on to say that the core of the grievance with his employer "is as detailed in the ongoing grievance" which is particularised within the statement attached to the ET1.

32. As Employment Judge Tynan explained in his Case Management Summary (RB page 98), when he was considering the claim on 3 November 2020, he made decisions about the scope of the claim and the

scope of an apparent Amendment Application which was found in the Agenda form for that Hearing (see para. (6) of the Record of Hearing). Judge Tynan expressly refused an Application to add a complaint of harassment by the Claimant's former Line Manager and complaints of breach of the duty to make reasonable adjustments (RB page 100, para. (10)). The amendment he did permit was analysed by the Laidler Tribunal, in particular in paragraph 10 of the Order (RB page 1825) and I agree with what is said there.

33. Although Judge Tynan's summary (para.11 RB page 100) does allow the amendment about complaints "of inordinate delays by the [legacy employer] in dealing with his *grievances* and the related disciplinary proceedings" (my emphasis) the further details provided by the claimant and the disadvantage which was accepted by the respondent refer only to the disciplinary procedure which came to an end when the claimant was notified it was discontinued in early March 2019 (see para.36 below).

34. I am therefore satisfied on my own account that, although there were references in the original Claim Form to events from 2015, the core matters at the heart of the claim – those necessary to be decided to determine the dispute - were the removal from the S & I role in June 2017 and the Respondent's unwillingness for the Claimant to return to that role. In effect, Judge Tynan decided that an indirect disability discrimination complaint concerned with the delay in disciplinary procedures over the same time period could be added by amendment.

35. This is a situation where a narrative pleading is case managed at what was then a relatively early stage to refine the issues so that the parties move forward with clarity about what the core complaints are and what evidence will be necessary to prove their respective cases on those complaints.

36. Judge Tynan directed the Claimant to refine the wording of the provision, criterion or practice relied on for his indirect disability discrimination complaint and his response is found at page 128. It is true that that includes reference to other HR processes than the disciplinary between June 2017 and March 2019 but the disadvantage explained at RB page 129 is in identical terms to the wording that ultimately found its way into paragraph 526 of the liability Witness Statement and which is replicated at paragraph 13 of the Laidler Tribunal Order.

37. A draft List of Issues (RB page 154) was approved by Employment Judge Kurrein at a Case Management Preliminary Hearing on 3 April 2022 (see paragraph 5 of RB page 154). It is that which was the basis of the concession of liability (RB page 145) and it defines the scope of the acts which were admitted to.

38. The Claimant in the closing written submissions (CSUB page 20, paragraph 21) refers to the case management directions for the Remedy Hearing of Judge Postle which directed further information to be provided

about the heads of loss, including the basis of a claim for loss of earnings from 2015 for work linked to Ebola. That Order for the Claimant to explain the basis of that particular alleged head of loss cannot be read to vary or revoke the decision of Judge Tynan about the scope of the claim. For it is not a question of what the scope of the concession was so much as a question of what the scope of the claim was at the time that the concession was made.

39. Essentially for the same reasons as the Laidler Tribunal, I have separately come to the conclusion that the scope of the indirect disability discrimination complaint which was permitted to be added by amendment in November 2020, was limited to the processes associated with the core complaints. Furthermore, the particular disadvantage relied on by the Claimant for the purposes of the claim, was anxiety and an adverse impact on his ability to concentrate because of the extended disciplinary proceedings started in June 2017. Therefore the acts of the Respondent which amounted to indirect disability discrimination in this case on the pleaded case, were only those part of the disciplinary action between the removal from his substantive S&I Manager role and failure to reinstated him which lasted 21 months from June 2017. The Claimant expressly accepted that it was that disadvantage which was conceded as Judge Laidler explains in paragraph 15. For the Claimant to seek to argue loss caused by a disadvantage going outside that set out in paragraph 526 of his liability witness statement (LWB page 346), is to seek to go outside the scope of the core allegations in the complaint following case management which was intended to differentiate between what was genuinely in dispute and what was a matter of background.

40. The second admitted act of direct discrimination and discrimination arising in consequence of disability, is that of the refusal to return the Claimant to the S & I Team in about February 2019 (see RB page 160, paragraph 14 and the equivalent paragraph in the List of Issues at RB page 146). This is the latest act which was within scope of the claim at the time the concessions of liability were made.

41. I go into the law on calculation of loss in more detail below, however, the question in respect of any particular alleged head of loss is whether it flows directly and naturally from the admitted conduct. In his Witness Statement, Schedule of Loss and closing submissions, the Claimant or his wife on his behalf, have referred to subsequent proceedings which in some cases they say caused delay, loss and prolonged the difficulty for the Claimant to recover from the health problems that he has. For example, he refers to a Grievance procedure starting in April 2019 and extending to December 2020. The Respondent has not admitted that their conduct of that procedure was unlawful discrimination. A complaint about that procedure was not one of the pleaded issues in the case. It is therefore only if losses which may have been precipitated by delay in resolution of subsequent proceedings can be said to flow naturally from the admitted conduct, that they fall for me to consider as matters for which the Claimant needs to be compensated.

42. I have listed the case for a Final Hearing to decide the Claimant's Preparation Time Order Application because it was decided at an earlier stage that that would be decided after Remedy had been concluded at a separate Hearing.

43. Some matters in the Schedule of Loss are explicitly stated to be related to the alleged pay deficit that is the subject of a separate claim, which is to be heard at a Preliminary Hearing in public on 17 October 2025 (see para. 24 of Judge Laidler's Order sent to the parties on 30 January 2025). RB pages 2086 – 2087 under the alleged financial loss is expressly said to be part of that claim and that is not something that I need to consider.

44. Other parts of the Schedule of Loss which are plainly not within scope of this Remedy Hearing are as follows:

    44.1. The claim for the wages the Claimant says he would have earned doing extra weekend shifts supporting the Government in combatting the spread of Ebola but did not because he was suspended in 2015. The Claimant has included a sum of £43,515.62 including interest in his Schedule of Loss for those sums which are not recoverable in this litigation because they do not in any way flow from the admitted conduct and I do not need to consider them any further.

    44.2. It was decided by Judge Laidler in January 2025 that the Remedy Hearing would consider only the principle of whether there should be any compensation for pension loss and defer the question of any detailed calculation of loss contingent upon that decision.

    44.3. Oral questions of the Witness LM appear to put a case that the Claimant has not been paid in accordance with the contractually agreed rate for his Band. Where the argument is that the Respondent, for example, had reduced his pay to half pay or nil pay because of sickness absence that the Claimant says flowed directly from the admitted conduct, that is within the scope of this claim. However, where the Claimant complains that the sums that he was paid on any particular occasion were less than they should have been because the Respondent paid him according to the wrong rate of pay, then that is not a complaint within the present scope of this claim and should be argued as a separate unauthorised deduction from wages complaint, subject to time limits for such a claim being met.

45. Following that clarification to exclude irrelevant submissions and evidence, the Remedy issues are as follows:

    45.1. Should the Tribunal make a declaration or recommendation instead of compensation, having regard to s124 of the Equality Act 2010?

    45.2. Is it otherwise just and equitable to make an order for compensation?

45.3. What is the admitted conduct? This is as set out above.

Past loss of earnings

45.4. What if any loss of earnings did the Claimant incur?

45.5. What if any loss was attributable to the Respondent's admitted conduct?

45.6. What credit if any ought to be given for earnings made?

45.7. What are the chances the Claimant would have suffered these losses in any event i.e., absent the Respondent's admitted conduct?

Injury to feelings

45.8. What if any injury to feelings did the Claimant suffer and when?

45.9. What if any injury was attributable to the Respondent's admitted conduct?

45.10. If so, what is the appropriate Vento banding and award?

45.11. What if any personal injury did the Claimant develop and when?

45.12. What if any injury was caused by the Respondent's admitted conduct?

45.13. What are the chances the Claimant would have developed this injury in any event?

45.14. What if any damages should be awarded having regard to the need to avoid double recovery/overlap with any award for injury to feelings?

Care and assistance

45.15. What if any care and assistance did the Claimant require and was this attributable to the Respondent's admitted conduct?

Treatment

45.16. Does the Claimant require treatment and if so at what level?

45.17. Is this treatment attributable to the Respondent's admitted conduct?

45.18. What are the chance the Claimant would have required this treatment in any event?

Aggravated and Exemplary Damages

45.19. Is the Claimant entitled to aggravated damages and if so at what level and on what basis?

45.20. Is the Claimant entitled to exemplary damages and if so at what level and on what basis?

Future loss of earnings

45.21. Is the Claimant suffering any ongoing loss of earnings? The Respondent says the Claimant was redeployed to a similar salaried role and pay scale, Senior Project Manager, in Autumn 2022, such that he is not suffering any ongoing loss of earnings.

45.22. If so, at what level and what is the estimated period of loss?

45.23. If so, what is the financial loss?

45.24. What are the chances the Claimant's employment would have terminated in any event and when?

Pension loss

45.25. What if any pension loss has the Claimant suffered? The Respondent denies he has suffered pension loss since he remains within the NHS pension scheme and has not been dismissed only redeployed within the same pay scale.

Missed loans and life insurance

45.26. What is the basis for the Claimant's claim for missed payments and loans, and life insurance?

45.27. What if any financial loss in respect of these claims is attributable to the Respondent's admitted conduct?

Interest

45.28. What if any interest is the Claimant entitled to?

Deductions or uplift

45.29. What if any adjustments ought to be made to any award having regard to: -

a. The chances the Claimant would have suffered said losses in any event

b. Any failure to mitigate his losses

c. Any failure by either party to comply with the ACAS Code of Practice

Proportionality

45.30. Is the overall compensation figure proportionate?"

The Law applicable to the Issues in Dispute

46. The starting point for assessing compensation for unlawful discrimination is s.124 EQA. In particular, s.124(2) to (6) which provide that where a tribunal has upheld a complaint of discrimination (or, as here, a respondent has conceded liability):

"(2) The tribunal may—

(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

(b) order the respondent to pay compensation to the complainant;

(c) make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.

(4) Subsection (5) applies if the tribunal—

(a) finds that a contravention is established by virtue of section 19 […], but

(b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.

(5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).

(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by [the county court] or the sheriff under section 119."

47. There is nothing in the wording of s.124(4) & (5) which prioritises or emphasis one remedy over another nor steer tribunals away from making a compensatory award: Wisbey v Commissioner of the City of London Police [2021] I.C.R. 1485, CA. In that case (see para.35 of the judgment of Simler LJ as she then was) the court cited JH Walker Ltd v Hussain [1996] I.C.R. 291 with approval which explained that intention in a different provision of the then applicable Sex Discrimination Act 1975 required knowledge on the part of the employer that the application of the PCP would result in indirect discrimination and a desire for this consequence to follow.

48. When considering the correct approach to the assessment of financial loss, the successful claimant is entitled to be compensated for the loss and

damage which arises naturally and directly from the wrongful act: Essa v Laing Ltd [2004] IRLR 313, CA. So far as possible, the Tribunal must put the claimant into the position that they would have been in but for the unlawful conduct: Ministry of Defence v Cannock [1994] I.C.R. 918 EAT. It was also held in Essa v Laing that there is no need to show that the loss claimed was reasonably foreseeable, provided that a direct causal link between the act of discrimination and the loss can be made out. The discriminator must take their victim as they find them.

49. If it can be shown that psychiatric and/or physical injury can be attributed to the unlawful act then the employment tribunal had jurisdiction to award compensation: Sheriff v Klyne Tugs (Lowestoft) Ltd [1991] IRLR 481, CA.

50. Judicial College Guidelines 17th Ed. are a useful source of guidance about the factors to be taken into account and the levels of comparable awards. In particular, I have regard to Chapter 4 - Psychiatric and Psychological Damage. Section (A) - Psychiatric Damage Generally

> "The factors to be taken into account in valuing claims of this nature are as follows:
>
> (i)the injured person's ability to cope with life, education, and work;
>
> (ii)the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;
>
> (iii)the extent to which treatment would be successful;
>
> (iv)future vulnerability;
>
> (v)prognosis;
>
> (vi)whether medical help has been sought.
>
> (a) Severe
>
> In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor.
>
> £66,920 to £141,240
>
> (b) Moderately Severe
>
> In these cases there will be significant problems associated with factors (i) to (iv) above, but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting

in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.

£23,270 to £66,920

(c) Moderate

While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good.

Cases of work-related stress may fall within this category if symptoms are not prolonged.

£7,150 to £23,270

(d) Less Severe

The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Cases falling short of a specific phobia or disorder such as travel anxiety when associated with minor physical symptoms may be found in Chapter 14: Minor Injuries.

£1,880 to £7,150"

51. If the loss has been caused by a number of factors, in principle it is open to the Tribunal to reduce compensation so that it reflects only the extent to which the unlawful discrimination contributed to the employee's loss if there is a rational basis on which to apportion responsibility for those losses as between the different causes: Thaine v LSE [2010] ICR 1422, EAT and Hatton v Sutherland [2002] ICR 613, CA and BAE Systems (Operations) Ltd v Konczak [2018] ICR 1, CA. The Tribunal must take care, however, where there is a pre-existing health condition or vulnerability and where separate awards for alleged psychiatric injury and injury to feelings are sought, to avoid double recovery because the aim is to award compensatory damages.

52. The law in relation to injury to feelings is well established. I remind myself of the case Armitage, Marsden and HM Prison Service v Johnson [1997] ICR 275 EAT where it was said, among other things, that the awards for injury to feeling should be compensatory rather than punitive and that, on the one hand, they should not be so low as would diminish respect for the anti-discrimination legislation but on the other they should not be excessive. I should also remind myself of the purchasing power of the value of the award of everyday life and balance that with the need that awards for discrimination should command public respect.

53. The injury must be proved, my findings must be evidentially based and the injury for which compensation is claimed must result from the discrimination

which has been proved: MOD v Cannock [1994] IRLR 509 and Alexander v The Home Office [1988] ICR 604.

54. The well-known case of Vento v. Chief Constable of West Yorkshire Police (No. 2) [2003] ICR 318 CA (followed by Da'Bell v. NSPCC [2010] IRLR 19 EAT) set out three bands or brackets into which it was said that awards of this kind could fall. Following the judgment in De Souza, the Presidents of the Employment Tribunals in England & Wales and in Scotland have published Joint Presidential Guidance by which the Vento bands are updated annually. The present claim was presented on 21 June 2019 and therefore the applicable bands are

    1. £26,300.00 and upwards for the most serious cases;

    2. Between £8,800.00 to £26,300.00 for serious cases not meriting an award in the highest band;

    3. Between £900.00 to £8,800.00 for less serious cases, such as an isolated or one-off act or discrimination.

55. The claimant argues that this is a suitable case for an award of aggravated damages. They are, in principle, available for an act of discrimination: HM Prison Service v Johnson. They are compensatory rather than punitive and are available when the respondent has behaved in a high-handed, malicious, insulting or oppressive manner when discriminating against the claimant. In Metropolitan Police Commissioner v Shaw [2012] I.C.R. 291 EAT, Underhill P, as he then was, cautioned against the risk that a separate award of aggravated damages can lead a tribunal, unconsciously to punish a respondent rather than compensate the victim. There is also a risk of duplication of compensation and the tribunal must be satisfied that there is a causal connection between the conduct and the aggravation of the injury. In many cases it will be appropriate rather to include in compensation for injury to feelings an element which reflects the way in which the victim was treated.

56. Aggravated damages are available to compensate for the manner in which legal proceedings are conducted where that amounts to misconduct (Zaiwalla & Co v Walia [2002] I.R.L.R. 697, EAT) but the Tribunal should have regard to the total size of the award for non-pecuniary damages and note the relationship with injury to feelings. Aggravated damages are available if the harm is uncompensated for by other remedies.

57. In addition, the claimant claims exemplary damages. Although within the awards open to the Employment Tribunal they are reserved for the "very worst cases of oppressive use of power by public authorities" Ministry of Defence v Fletcher [2010] I.R.L.R. 25, EAT (para.105). A high degree of gravity of conduct is required where the high threshold of oppressive, arbitrary or contumelious conduct by has been shown. They are punitive rather than compensatory.

58. Three potential reasons for an adjustment to the compensation assessed are contended for: the chance that the loss would have been suffered in any event; failure to mitigate loss and unreasonable failure to comply with an applicable ACAS Code of Conduct.

59. In assessing compensation, it is necessary to ask what would have occurred had there been no unlawful discrimination; if there were a chance that the losses would have occurred in any event then, in the normal way, that must be factored into the calculation of loss: Chagger v Abbey National plc [2010] IRLR 47, CA.

60. When there is a substantial issue as to whether the claimant has failed to mitigate, the questions that I need to ask myself are :

    60.1. what steps were reasonable for the claimant to have to take in order to mitigate his or her loss;

    60.2. whether the claimant acted unreasonably in failing to take those steps to mitigate loss; and

    60.3. to what extent, if any, the claimant would have actually mitigated his or her loss if he or she had taken those steps. Whether an employee has done enough to fulfil the duty to mitigate depends on the circumstances of each case and is to be judged subjectively. (Gardiner-Hill v Roland Berger Technics Ltd [1982] IRLR 498, EAT)

61. Under s.207A Trade Union and Labour Relations (Consolidation) Act 1992, the tribunal can adjust compensation by up to 25% where there is a claim which concerns a matter to which a relevant ACAS Code of Practice applies and the employee or the employer have unreasonably failed to comply with it.

62. In para.77 of Biggs v Slade [2022] I.R.L.R. 216 EAT, Griffiths J described this as a four stage test where it is argued that the employer's conduct is such as to merit an uplift. First, is the case such as to make it just and equitable to award any ACAS uplift. This itself requires the tribunal to identify the conduct which is said to amount to a failure and the relevant paragraph which was not complied with as well as considering whether there was an unreasonable failure to comply with the provision and whether it is just & equitable to make an award. The second stage is to decide what would be a just & equitable percentage, not exceeding 25%. This must reflect all the circumstances including the seriousness and/or motivation for the breach. Then thirdly, does the uplift overlap or potentially overlap with other general awards and what is the appropriate adjustment to avoid double-counting. Finally, the tribunal should apply a final sense-check to see whether the sum of money represented by the application is disproportionate in absolute terms and should any further adjustment be made

63. Interest is payable on awards in discrimination cases by virtue of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (Interest on Awards Regulations 1996). The tribunal is required to consider whether to make such an award whether or not a party has applied for it. Ordinarily interest on any sum for injury to feelings is calculated for the period beginning on the date of the contravention and ending on the day of calculation (reg.6(1)(a)). Interest on any other sum of compensation is calculated from the mid-point between the date of the contravention and the date of calculation (reg.6(1)(b) read with reg.4(2)). The tribunal retains a discretion where it considers that, in the circumstance of the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be calculated for the periods in reg.6 to calculate interest for a different period or for different periods in respect of various sums in the award (reg.6(3)).

General Findings of Fact

64. I make my findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. I do not set out in this judgement all of the evidence which I admitted but only my principal findings of fact, those necessary to enable me to reach conclusions on the remedy issues.

65. There were particular challenges to the exercise of fact finding in the present case. Those were that the claimant was not present at the hearing to confirm his statements and be cross examined upon them because of his ill health – a reason beyond his control. Furthermore, the witnesses relied on by the respondent only had direct knowledge of managing the claimant's absences from November 2021 onwards (following his transfer to CD from legacy employer) and AB's performance of the Senior Project Manager (Band 8A) role in primary care from June/July 2022 onwards. The respondent did not call oral evidence about the index events so where it was necessary to make some findings about the events which amounted to the concession, the respondent's witnesses had no direct knowledge.

66. It was argued that I should find the claimant's witness statement unreliable and give limited weight to it. As is often the case, the weight I should give it depends very much on what his evidence is about. On the one hand it is true that the respondent has not had the opportunity to challenge it and, where contemporaneous documents exist I give more weight both to the claimant's evidence and to EF's evidence where it is supported by those documents.

67. There are particular forensic points made by Ms O'Halloran which, in principle, are valid. The claimant's disability impact statement denied a history of mental health issues prior to the legacy employer commencing disciplinary proceedings in 2015. This is contradicted by the medical records analysed by the expert, Dr Pettit. The unexplained inconsistency does mean that I treat the claimant's own account of his health and injury to feelings with caution. In many places the claimant's account includes

reliance on events which fall outside the scope of liability. That is particularly so in relation to pre-2017 events and the allegations which fall within the 2023 claim (which I explain in more detail below). Therefore I need to read his account seeking to focus only on matters which are relevant because they are in scope and exclude complaints about the effects of events that are outside the scope of proceedings.

68. It is not so much that the claimant is not setting out the truth as he perceives it as that the chronology of his experiences comes across from his statements as an indivisible whole when legal liability is attributed only to the admitted conduct. However, it is so difficult to separate out the effects of the index events as described by the claimant that I based my findings predominantly on the analysis of the medical records by Dr Pettit.

69. It is entirely understandable that both AB (in his written statements) and EF (in writing and in oral evidence) should lack objectivity in their evidence. The situation they are in is very sad and commands sympathy. However I do seek corroboration of what they say when making my findings because in some respects their evidence lacks objectivity, as well as tending to mix the relevant with the irrelevant. Nevertheless, as is often the case, a witness may be reliable about some matters but unreliable about others and do not reject their evidence in its entirety.

70. At this point I would also observe that people with mental health problems can sometimes behave in a way which is, objectively, unacceptable and a behavioural concern. The behaviour may nevertheless be evidence of declining mental health. Indeed it often is evidence of a loss of control because of overwhelming feelings of distress. The responsible employer still has to address the behaviour but what they do about it should be informed by an understanding of the causes of it. I say this because the respondent appears to rely on evidence of NO that objectively problematic behaviour in November 2023 was not a sign of deteriorating mental health at that time. That may be his view, but behavioural concerns and mental health concerns are not mutually exclusive.

71. Some findings about the index events are necessary for several reasons. First, I need to reach a conclusion on whether or not the respondent intended the act of indirect disability discrimination. Secondly, what happened can inform my findings about the loss suffered by the claimant as a result, particularly when I need to assess the harm caused by part only of the chronology set out in AB's statement. Finally, the claimant seeks an award for aggravated damages and exemplary damages.

72. The claimant's employment with the NHS started in 2009. On 1 April 2013 he transferred to the legacy employer and transferred by TUPE transfer to the present respondent with effect on 30 September 2021. He therefore has 12 years employment working in the service of public health.

73. On 4 June 2015, AB was arrested because he had collected funds in cash to purchase a car and (according to EF) the police told them they were

acting on information received from the bank. His work laptop was seized by the police. In July 2015 he was suspended by the legacy employer on the basis that he had not informed them about the arrest. He regarded this as unjust and challenged it through a grievance which was substantially upheld. He received an apology.

74. His mental health suffered greatly as a result of these events including him experiencing symptoms of PTSD following the arrest. He had some sickness absence because of poor mental health in 2015 and 2016. Therapy notes and reports from this time refer to a loss of trust with the employer and perception of lack of support from the organisation (RB page 910 para. 5.10 from August 2015 and also RB page 912 paras 5.15, 5.16 & 5.17). In the liability witness statement, the claimant describes conflict with his line manager in 2016 and 2017.

75. The acts which amount to the admitted conduct start when, in June 2017, the claimant was informed that there would be an investigation into a number of allegations against him. Those allegations are set out in a document at LB page 1570. I have not heard argument or evidence about the underlying matters and it is not necessary to do so given the concession of liability. I would categorise them as a mixture of capability matters and some which might be categorised as disciplinary. The claimant's evidence in his liability statement was that they were purportedly drafted by his employer but actually by the line manager with whom he was in conflict. That line manager left on 3 June 2017.

76. He was told on 21 June 2017 that he would be removed from his substantive role by the legacy employer but that appears to have been at the request of the present respondent (LB page 1376). In the S&I Manager position, the claimant was embedded with and alongside employees of the present respondent. He states (RWB page 17 para.67 and LWB page 187 para.382) that he was initially told that it would be for three months.

77. There were 25 separate allegations. The methodology of the investigation is set out at LB page 1991 and following. In that report the investigator found 3 allegations substantiated and one partially substantiated. Twenty allegations were not substantiated by the investigator. Furthermore, mitigating factors were identified which meant that it was difficult for her to conclude to what extent AB was at fault for those matters which were substantiated. The investigator also reported concerns about outstanding matters relating to a Stress Risk Assessment apparently not having been completed satisfactorily over a prolonged period and an inability to conclude whether "any mental health and well being issues have been adequately taken into account, and in the context, too, of [the legacy employer's] duty of care to others." (LB page 2059).

78. Various principle witnesses were interviewed in the latter months of 2017. There was a change of investigator in mid-January 2018. Both investigators appear to have made unsuccessful attempts to interview the claimant's pre-June 2017 line manager over the period to February 2018

when the then investigator decided that they had had the best opportunity to engage with it and decided that it was not possible to interview them. They would certainly have been a very relevant witness and it is understandable that the investigators allowed time to see whether this was possible. Further interviews took place and the final report appears to have been written in April 2018 (see LB page 1996) subject to interviewees confirming acceptance of the records of interviews.

79. On 25 June 2018 (LB page 2066 and LWB page 209 para.414) the claimant was told there was a case to answer in respect of 5 bullet points. He was absent from work through ill health for the whole of the rest of 2018 although occupational health recommended that he was fit at that time to attend disciplinary investigation meetings. He and his union were taking steps to press for a disciplinary hearing as he was going to exhaust his full contractual sick pay entitlement. A long term sickness absence process commenced.

80. Eventually, on 4 February 2019, the commissioning manager of the 2017 investigation wrote to the claimant's union representative stating that the disciplinary process was closed and recommending that the claimant be returned to his substantive S&I Manager role. For some reason this letter does not appear to have been sent to the claimant until March 2019. However, a representative of the present respondent stated that he would not be accepted back into that role and on 25 February 2019 the legacy employer accepted that decision.

81. The claimant brought a grievance on 17 April 2019. Among other things, he challenged whether sufficient had been done by the legacy employer to persuade the respondent against their decision to refuse to accept him back into the S&I role. The reasoning for the decision not to proceed with the disciplinary hearing is set out in para.3.11.4.2 of the Stage one Grievance Outcome Report (itself dated April 2020) which is at LB page 2885. That Outcome Report also details the reasoning given by the respondent for their decision to refuse to accept the claimant back (see para.3.16.1.3 LB page 2889). According to the claimant's union representative, the grievance was heard on 19 June 2020 and the outcome was received by letter dated 28 July 2020 (LWB page 7 & 8 paras 38 & 42). The appeal was lodged on 10 August 2020, heard on 19 October 2020 and the outcome letter, rejecting the appeal, was provided on 4 December 2020 (See para.50 of the trade union representative's witness statement).

82. When the employment transferred to the respondent the claimant was managed by a group of HR Business Partners and managers who had not previous been aware of him and were not advised by the present respondent about the ongoing Employment Tribunal litigation. My impression of the steps taken by GH and, following her return to work from maternity leave, IJ in the HR department is that they were effective in supporting the claimant in his absence, arranging some training because of that absence from the workplace (see GH para.14 at RWB page 77) and in finding a potential role for him to return to work.

83. The claimant first met with NO on 10 February 2022 which led to the claimant being offered a role on a permanent basis (see NO para.10 RWB page 92). The claimant stated that he was taking the role under protest and, as at Spring 2022, he had outstanding Employment Tribunal litigation alleging that the permanent removal from his role was disability discrimination. This Project Manager role was at Agenda for Change terms at Band 8A at same rate of pay as the S&I Manager role so, aside from any reduction of pay for sickness absence, there has been no reduction in salary caused by AB's displacement from the S&I Manager role.

84. Nevertheless, although I accept that the claimant did not accept his permanent removal, he commenced in the role on a phased return in June and July 2022 reporting to an immediate line manager who reported to NO. Overall, the evidence is that the return to work went well and NO gave evidence which I accept that there was positive feedback to him about AB's contribution in the role; he was adjudged to have settled in well and provided good quality work through the Autumn/Winter of 2022 and into Spring 2023. NO gave examples of that work to substantiate his evidence.

85. Unfortunately, it became apparent to NO that the claimant's wellbeing was beginning to deteriorate in the months running up to the scheduled Liability Hearing for the tribunal claim and there were further referrals to occupational health. The explanations provided by the claimant to OH and through the stress risk assessment support a finding that the facts underlying the Employment Tribunal claim and the litigation itself were causing stress and impacting on his psychological wellbeing.

86. The claimant took an extended period of leave in August 2023 and NO's evidence about their meetings on his return on 19 September 2023 and 9 November 2023 cause me to find that the claimant was ruminating upon the events of 2017 to 2019. He told NO that he was not willing to perform the role which he had returned to work in because he regarded himself as unlawfully removed from the S&I Manager role and that he should be returned to it. This was outside NO's power to arrange at the time and the claimant was unable to think beyond the removal from that role which by then the respondent had conceded to be unlawful discrimination.

87. NO had concerns about the claimant's behaviour, as I have previously mentioned, which he set out in writing (RB page 575). The claimant started a period of sickness absence on 1 December 2023 which was extended until 19 January 2024. He returned to work and NO took over direct line management on 29 January 2024.

88. The remedy witness statements set out details about a further proposed TUPE transfer away from the present respondent which AB objected to and the search for alternative employment which followed that. However, I do not need to make detailed findings about that because the position has since been updated. The Project Manager role to which the claimant returned in June/July 2022 is no longer going to sit within the function of the present respondent. However, the S&I Manager role remains within their

function and there is a Band 8A Screening & Immunisation manager role vacant into which the respondent can recruit the claimant, despite a present freeze on recruitment.

Intention

89. The respondent argues that the effect of s.124(4) EQA is that, prior to awarding compensation for the act of indirect disability discrimination, I need to decide whether or not they have shown that the did not apply the PCP of disciplinary matters taking a long time to conclude with the intention of discriminating against AB. If I am so satisfied, then I must not make an order for compensation unless I first consider whether to make a declaration as to the rights of the claimant and the respondent in relation to the matters to which the proceedings relate and whether I should make an appropriate recommendation. In reality I am concerned with the actions of the legacy employer against whom the claim was originally brought. The present respondent is liable for their acts because of the intervening TUPE transfer.

90. I am persuaded that the respondent did not intentionally discriminate against the claimant when they failed to conclude the disciplinary and grievance matters. The question is whether the facts of the delay in the disciplinary procedure between June 2017 and March 2019 cause me to infer that the legacy employer knew that delaying would result in indirect disability discrimination of the claimant and intended that consequence.

91. There are several reasons why I find that not to be the case. First, there was a change of investigator and a number of second interviews following that. That change of investigator is a matter of chance. Secondly, the legacy employer took time attempting to interview the claimant's pre-June 2017 line manager who had left and did not respond. It is reasonable for an employer in that situation to make those attempts notwithstanding the delay. It may be that their attempts extended over too long a period. However, when competing aims have been balanced and the result is disadvantage to the claimant, that point away from intentional discrimination.

92. There was a delay between the completion of the report and the decision to discontinue proceedings despite the claimant urging the legacy employer to convene a hearing. It seems that part of the reasoning may have been concern about the claimant's fitness for a hearing.

93. Setting those matters out does not go behind the concession that this was unjustified indirect disability discrimination. However they are factors which cause me to conclude that those dealing with the matter did not intend there to be indirect discrimination. As Ms O'Halloran argues, unlawful indirect discrimination can occur when the respondent cannot show that their actions were reasonably necessary in pursuit of their stated aim so intention cannot be inferred from the fact of the concession.

The Claimant's State of Health and the Causes of Ill Health

94. The parties jointly instructed an expert following Judge Postle's directions: Dr Tor Pettit, a Consultant Psychiatrist,. The specific questions addressed to Dr Pettit are at RB page 897 and his Psychiatric Report starts at RB page 900. It is dated 6 February 2024 and he assessed the Claimant on 12 December 2023. Following the expert's initial Report, the Respondent asked additional questions which are set out at RB page 948 and the Claimant asked additional questions which are set out at RB page 950. A single response to both sets of questions was produced on 19 March 2024 (RB page 955).

95. In this part of my findings I first address the state of the Claimant's mental health at various times prior to June 2017. Then I make findings about any changes to the state of his health from June 2017 through to the end of the period relevant for the claim; that is approximately February 2019 when the Respondent refused to return the Claimant to the Screening & Immunisation Team. Finally, I make findings about any changes to his state of health from then until the date of the Expert Assessment. It will also be necessary to set out my findings about the Claimant's state of health since the date of the Expert's Assessment. There is some medical evidence in the Remedy Bundle directed to the Claimant's state of health in that period, although self evidently it is not covered by the joint Expert.

96. I have read the Expert's Report in full but do not set out every piece of evidence recorded by him. However, since Dr Pettit analysed the available medical records, it has not been necessary for me separately to do so exhaustively. Based upon his analysis of the available medical records, I find that:

    96.1. The Claimant had been referred in April 2010 to be put on a waiting list for Therapy which led to an Assessment in September 2010 which recorded that he had been seen by Time to Talk and recorded scores on commonly used rating scales which Dr Pettit interpreted as suggesting, "severe symptoms of depression, severe symptoms of anxiety and significant functional impairment" (RB page 908). The Therapist did not identify any risks to the Claimant himself but reported lack of sleep, negative thoughts and poor concentration, lack of pleasure in life in general and social anxiety. He was prescribed Citalopram and set up with a planned 12 treatment sessions. I understand that while the Claimant was employed by the NHS at this time, it was not with the legacy employer whose functions were transferred to the Respondent in this case. His employment directly by the legacy employer as the Screening & Immunisation Co-ordinator started following a TUPE transfer with effect from 1 April 2013.

    96.2. After 11 sessions, on 1 April 2011, the Therapist recorded that there had been an improvement in the rating scores after three months of therapy but that three months later the Claimant was thinking repetitively or ruminating about work related matters which was having an impact on his mood. The Therapist reported that if he

was to continue to recover from the depressive episode a gradual return to work would be of benefit to him.

96.3. Although Dr Pettit refers to an Occupational Health letter dated 11 January 2015, the Claimant averred that this was mis-dated and in fact related to 2016. Nevertheless, there is reference at RB page 910 to a Therapy Assessment in July 2015 and rating scores which Dr Pettit opined suggested severe symptoms of depression and severe symptoms of anxiety at that stage. The Assessment recorded that early onset had been seven years ago and recent onset two months previously. If one cross-refers this to the chronology of background events, the Claimant's arrest was on 4 June 2015 and he was suspended, on the Respondent's account for not disclosing that he had been arrested and bailed, on 13 July 2015. In his Remedy Witness Statement (see paras. 18 – 20) the Claimant argues strongly that this was contrary to Policy but that is not something that it is for me to decide within this Hearing, for reasons I have explained. He also gives evidence in his paragraph 20 that he reported to his GP on the date of his suspension and "broke down" on 14 July 2015, becoming unfit to work and certified so by a sick note submitted on 16 July 2015.

96.4. The Claimant was referred to Therapy and had three sessions of Cognitive Behavioural Therapy (CBT) (see para. 5.9 RB page 910). When he was assessed by Occupational Health on 26 August 2015 it appears that they considered him not to be psychologically well enough to return to work and then by November 2015 a six week graded return to work was recommended by Occupational Health.

96.5. By the time of the Occupational Health Assessment on 4 April 2016 (para. 5.12 RB page 911) it appears that the Claimant had returned to work and was working from home. He was still receiving CBT, twenty sessions of which were completed by 29 June 2016 when his rating scales recorded healthy scores at the end of the sessions. The Therapist records that they could not work on his PTSD because of the ongoing Police investigation into what happened when he was forcibly detained and arrested which had caused the PTSD.

96.6. The following month it appears that the Occupational Health Physician recorded that the Claimant had been working full time since March 2016 and supported him working unrestrictive hours as well as supporting him attending the NHS Leadership Academy course.

96.7. He seems to have been referred for further Therapy in September 2016 and completed six sessions between 20 February 2017 and 24 April 2017, at which time the Claimant was apparently reporting that he found it difficult to trust people and did not feel comfortable at work in particular with regard to his Manager's behaviour.

96.8. The next Assessment analysed by Dr Pettit at paragraph 5.18 (RB page 913) dates from 6 July 2017 after the first of the admitted acts of discrimination.

97. I have set those Reports out in some detail because they record the base line state of mental health of the Claimant prior to the index events. In Dr Pettit's opinion, he diagnoses an Adjustment Disorder where the Claimant is preoccupied with the stressful incidents at work, constantly ruminating on those events which is highly distressing (para. 7.3 RB page 934). Dr Pettit's opinion was that an Adjustment Disorder related to workplace stress was first developed in 2010 and then again from July 2015 onwards. The symptoms typically seen in PTSD he identified as developing in the Claimant after his arrest in June 2015. He distinguished between the symptoms associated with the traumatic arrest, namely vivid flash backs and nightmares and those associated with work related stress, namely distress and rumination on workplace events and the future implications of those events, as well as a,

> "… marked propensity to distrust his employers, anger at how he has been treated, feeling he has been humiliated, feelings of being overwhelmed and difficulties establishing relationships with colleagues."

98. He also diagnosed a Recurrent Depressive Disorder of moderate severity. The first episode of which was between approximately 2010 and 2012, after which the Claimant recovered. In paragraph 7.11 (RB page 935) Dr Pettit states that the Claimant next developed a depressive episode in July 2015 and that the intensity of his symptoms have varied since that time, with depression being in remission for most of 2016 and a relapse at some point in 2017. Dr Pettit's opinion is that residual symptoms when he was in remission were more likely to be associated with his Adjustment Disorder than being residual symptoms of depression.

99. As at December 2023 when Dr Pettit assessed the Claimant, his Depressive Disorder was of moderate severity and,

> "… he had difficulty functioning socially, at work, and in his home life. On balance they [sic.] have been times where his depressive disorder has been severe, when his symptoms are particularly intense and when he has been unable to function in all significant domains of his life."

(paragraph 7.12, RB page 936)

100. He explains in paragraph 7.13 that symptoms of both Adjustment Disorders and Depressive Disorders involve considerable overlap.

101. He states that the Claimant had a pre-existing vulnerability to developing adjustments and Depressive Disorders prior to the period 2010 to 2012 and that those episodes themselves substantially increased his

vulnerability to developing the disorders in 2015. Further, the proximal cause of the nightmares and flashbacks was the arrest in June 2015.

102. In paragraph 7.17, Dr Pettit gave the opinion that work related stress was the main cause of the Adjustment Disorder and depressive episode in July 2015, the relapse of depression in 2017, and exacerbation of symptoms of Adjustment Disorder after 2015. He explains the way in which the three conditions (Adjustment Disorder, Depressive Disorder and the nightmares and flashbacks directly related to the Claimant's traumatic arrest) interact negatively with each other in paragraph 7.18 (RB page 937). However, he does say that there would be an element that financial difficulties and the stress of caring for a child with severe Autistic Spectrum Disorder would exacerbate the symptoms, albeit the causal effect of those matters would be relatively small (para. 7.19).

103. It is worth noting at this point that when responding to questions at paragraph 2.7 on RB page 957, Dr Pettit was asked what would be the effect on the Claimant's clinical trajectory had he not been suspended in July 2015 (that being the act to which harm was principally attributed but which should have been excluded from consideration as it is not part of the admitted conduct). In essence I read paragraphs 2.7 and 2.8 as meaning that Dr Pettit's view was that, had the Claimant not been suspended in July 2015, an Adjustment Disorder and relapse of Recurrent Depressive Disorder of the same nature would have occurred in any event as a result of the alleged bullying and victimisation in 2016 / 2017 and suspension in June 2017 but that the symptoms would have been less severe. I also note in paragraph 7.27 of the main Report (RB page 938) that Dr Pettit says,

> "There was also a cumulative effect of being suspended twice and multiple grievances which have served to maintain his symptoms. Furthermore, as his symptoms have become increasingly chronic, in my opinion this will make it increasingly more difficult for him to achieve complete recovery in the future."

104. The Respondent removed the Claimant from work in about June 2017, delayed resolution of the associated disciplinary procedure over a 21 month period and refused to return him to his role in about February 2019. That last decision had continuing consequences as when the Claimant, in fullness of time, returned to work it was in a different role, which he has explained he felt ill equipped to carry out and was unsure about, at least to start with. This treatment was of a person who at the time of the admitted conduct was vulnerable to a repeat episode of Adjustment Disorder, had had an episode of Adjustment Disorder in 2010 and again in 2015; had had symptoms of PTSD starting in June 2015. Therefore the effect of the admitted conduct was more intense because of a pre-existing vulnerability (see para. 7.18 of Dr Pettit's Report where he discusses how the conditions interact negatively). In addition he was an individual who had previously had Recurrent Depressive Disorder, first in 2010 to 2012 and then from July 2015 onwards, with remission in 2016. To the extent that

the Claimant's reaction to the index events was more severe because of his previous history of mental health problems, the Respondent must take him as they find him. However, I accept that what I need to assess is the extent of loss of damage to the Claimant over and above the state of vulnerable mental health that existed prior to June 2017.

105. It is clear from the analysis of the Medical Records in Dr Pettit's Report, that the Claimant reported emotional reaction to events at work that were in part linked to the alleged harassment by his Line Manager for which permission to amend the claim was not given. However, it seems to me that the Medical Expert's opinion does not provide a logical basis upon which to divide the harm of the Adjustment Disorder episode and the Recurrent Depressive Disorder episode which were triggered in 2017 as between the different causes. As he puts it, the work related stress was the main cause of these episodes in 2017 and he specifically refers to the cumulative effect of suspension twice, making it more difficult for the Claimant to achieve a complete recovery from these conditions.

106. Particulars of the symptoms that the Claimant experienced through 2017, 2018 and 2019 include the following:

106.1. The Occupational Health letter of 23 February 2018 recorded that he had difficulty getting up in the morning, experienced loss of energy and generalised weaknesses, suffered from flashbacks related to the 2015 episode about twice a week, had nightmares about twice a week associated with previous work events, experienced initial insomnia until about 3 o'clock and only slept soundly about two nights a week using a sleeping tablet on occasions. He explained that he felt sad, angry and irritable internally and that his social activities had been adversely affected.

106.2. He had 18 sessions of Therapy between 8 August 2017 and 19 March 2018, which he described to the Therapist as following bullying behaviour from his Line Manager who had retired in May 2017, although he also said he was waiting for a date for the Investigation Hearing (this was in March 2018) and feared that that would be stressful. He expressed anger and disappointment at the number of historic allegations he was facing at the time. Counselling had been helpful to enable him to manage the emotional impact of the situation.

106.3. The main symptoms he described in May 2018 when he was triaged for Therapy by Rehab Works were lethargy with a loss of energy, a high level of worry and fear of people at work, flashbacks to "bullying", "feeling traumatised", disturbed sleep and had lost interest in outside interests including sport and gym.

106.4. He had originally been engaged on some work projects but started a period of sickness absence on 22 March 2018 (para. 1.16 RB page 903). This period of sickness absence seems to have

continued until 26 February 2019 (a total of 342 days, RB page 291).

106.5. He was certified fit to return to work once the disciplinary process had been completed by an Occupational Health Physician on 28 August 2018 who recommended adjustments to enable him to return to work. Despite this, the Occupational Health letter of 17 April 2019 reported that the Claimant had not resumed work as anticipated and in the following four months he was described as not having made any significant substantial medical progress which the Occupational Health Physician said, "[Is] best explained by his relationship with his employer". The 17 April 2019 Occupational Health letter is at RB page 1198. In it "ongoing mood issues with increased anxiety, flashbacks and panic attacks" are reported.

106.6. The Occupational Health assessment of 19 August 2019 is at RB page 1200 and it recorded that, at that time, he met with his GP for an assessment every two weeks. He was due to have his final of 26 CBT appointments on 20 August 2019 and described himself as, "frustrated at the lack of progress to address his concerns regarding his work". The OH Physician recorded that the Claimant's mood could deteriorate rapidly and unexpectedly. The Physician also recorded that,

> "[the Claimant] finds himself in a very complex and difficult set of circumstances. These issues are best explained by his relationship with his employer. His ability to engage in a redeployment process is limited due to the degree of impact on his mood by the working relationship. A resolution of his outstanding grievance process will remove some of the pressures and triggers impacting his mood and ability to cope. His ability to refocus on work and if necessary re-deployment would then be more sustainable."

107. I infer from this that the Claimant was finding it difficult to engage in the re-deployment process because of his state of mental health. However, the re-deployment process was necessitated by the refusal of the Respondent to return him to his substantive S & I Manager role which is, itself, one of the admitted acts of disability discrimination. It therefore seems to me that the dispute about whether or not and the extent to which the Claimant said that he was working under protest, either at this point in 2019 or subsequently when he was eventually re-deployed in 2022, is not the issue. This provides medical evidence that the Claimant, as a person with pre-existing mental health problems, found it difficult to engage positively with a re-deployment process that he regarded as unjust and which was necessitated because of an act which has now been admitted to be discriminatory. It therefore seems to me that the Claimant's difficulty to engage itself flows from the discriminatory act. By this time the Claimant had presented Employment Tribunal proceedings in July 2019.

108. Nevertheless, it appears that the Claimant continued to obtain some benefit from Therapy as can be seen from the rating scales at the start and end of the session that concluded in October 2019. The outcome suggests that the fact that the work related issues were still not resolved, was an impediment to a more complete recovery.

109. By 28 January 2020, Occupational Health were reporting (para. 5.28 RB page 918) that the Claimant had been assigned a short term project and had completed core training for NHS Leadership.

110. An ongoing depressive reaction is referred to in the Consultant Psychiatrist's letter of 7 April 2020. The Consultant Psychiatrist recommended that the Claimant continue with the current course of medication (see para. 5.30 RB page 920) and recommended the long term support of Psychotherapy. The Psychiatrist stated that the depressive reaction to stressful life events was likely to continue as those events were ongoing. By this time the last of the admitted acts of conduct had occurred but the Claimant still did not have a substantive post. He was also pursuing a Grievance and those combined factors are noted in Therapy Notes of 28 April 2020, which are both described as, "significant impactors on his low mood and anxiety". Moderately severe depression, severe anxiety, social anxiety and significant functional impairment were assessed with the rating scale.

111. It seems to me that taken as a whole, the lack of current substantive post in April 2020 was still linked causally and directly with the admitted act of disability discrimination. As I understand it, it is another approximately two years before the Claimant returned to work in another substantive permanent post.

112. As at the 28 April 2020 Occupational Health letter, the Therapist analysed the Psychiatrist's Report and noted that the Claimant had been discharged to the care of his GP with referral to long term Psychotherapy. They also noted that the

> "Therapy model of CBT is not going to resolve things, he now must pursue the suggested route of care".

113. Additionally, they stated that the Claimant required early resolution of his employment relationship as this is the predominant stressor that is perpetrating his low mood.

114. The Claimant remained certified unfit to work by the Occupational Health Therapist in their review in July 2020 and November 2020. This corresponds with the periods of absence noted at RB page 291 which show that he was absent from 7 April 2020 to 16 December 2020 because of sickness and then had a further period of certified sickness from 9 January to 31 January 2021.

115. The Claimant's account to Dr Pettit as recorded in paragraph 6.69 at RB page 930, was that from around April / May 2023 his mood had been getting worse,

> "due to going to court and feeling a breakdown in trust and confidence with his employers".

He appears to have told the Doctor that there had been conclusions in 2015, 2017 and 2019 that removals from work were discriminatory acts but no one was talking about his return.

116. As an aside, this broadly corresponds with the evidence of NO (paragraph 24 of NO's first Witness Statement), that in Spring 2023 and in particular April to May 2023, it had become apparent that the Claimant's wellbeing was beginning to deteriorate. An Occupational Health Referral was made and a Report dated 15 June 2023 (RB page 1360) states the opinion that the Claimant is currently fit to remain in work undertaking his current role and

> "a recovery is expected with the aid of his advised treatment in the foreseeable future".

117. However, it does state that there is a current flare up of the Claimant's mental health symptoms which he reported as being,

> "…due to his perceived work–based stress due to stated issues within work, excessive working patterns / workload and feelings of lack of support, causing increased stress leading to increased anxiety and low mood around work issues and his PTSD."

118. The Therapist confirmed that the Claimant was experiencing significant symptoms affecting his ability to undertake normal daily activities, interact socially and concentrate long term at that time. They described the Claimant as,

> "psychologically vulnerable at present".

119. A further opinion was given in a letter dated 8 August 2023 (RB page 1368) at which time the Claimant was still working normal duties and hours with modifications. He was not at that time being prescribed any anti-depressant medication but:

"He reports that on a day-to- day basis,

- his mood is very low,
- Anxiety levels are extremely high,
- Sleep pattern is quite poor,
- His appetite is reasonable,

- Concentration and short term memory are variable and he has good days and bad days,

- He does not currently have symptoms of feeling better off dead."

120. The rating score at that time was consistent with moderately severe depression and severe anxiety. He was assessed as fit to work with modifications and adjustments. (See also paragraph 6.75 on RB page 941).

121. It should be noted that there is one point where the Medical Expert Dr Pettit expresses an opinion which does not seem to be within his expert knowledge. That is at paragraph 7.33 where he states,

> "[the Claimant] has also lacked opportunities to build his portfolio, to achieve specialist registration in public health, which is required to become a Consultant."

122. It may be that he was presuming that to be the case from the periods of sickness absence that the Claimant has had and the periods when he was attending work but was engaged in project work rather than in a substantive role. However, that appears to be based on a presumption or possibly the Claimant's statement to him that he would have had opportunities to build his portfolio had he remained in the Screening and Immunisation Manager's role. This is a matter of dispute before me and not something that Dr Pettit was able to give evidence about to which I should give weight.

123. Dr Pettit did recommend that long term Psychotherapy would be required (para. 7.41 RB page 940). He set out in that paragraph the types of approach which might be effective, although stated that the type of therapy should be decided by the Therapist. He listed a number of problems that maintained the Claimant's then current symptoms and prevented recovery, those included,

> "… lack of resolution of the Employment Tribunal and other outstanding grievances; lack of secure employment; and working on projects without sufficient training to feel comfortable in that area. In my opinion without substantial progress in these areas, further therapy will have little impact beyond helping him cope day to day with ongoing work-related problems."

124. He anticipated that if the problems were resolved that therapy would be more effective and that there should be a further assessment by a Consultant Psychiatrist in order to trial different classes of anti-depressant medication.

125. He expanded upon his conclusions in relation to prognosis in the response to further questions, where he expanded upon the likely effect on the

Claimant's mental state of conclusion of the Employment Tribunal litigation. He stated that it was more likely than not that there would be little change in his mental state and he would be unable to return to work until the conclusion of the current proceedings (RB page 958 para.2.13).

126. The Claimant had by then become absent due to ill health on 1 December 2023 (RB page 1372). He had had a period of extended annual leave in August / September 2023 when NO had agreed to four weeks' leave from work during which he travelled to Nigeria as he told Dr Pettit. NO describes meetings in his paragraphs 41 and 42 which took place on 19 September 2023 and 9 November 2023 (RWB page 99 to 100), during which the Claimant expressed increasingly firmly his view that he was not willing to perform the Project Manager role in the Transformation Team any more as he considered that he had been illegally removed from his S & I Manager role. The Claimant provided a sick note on 1 December 2023 covering an initial period of 30 days which was renewed until 19 January 2024 (RB page 1372 and 1373). The Claimant then returned to work and then provided a sick note on 19 April 2024, shortly before the scheduled Remedy Hearing during which his health deteriorated. The Claimant has been absent and unfit to attend work since then.

127. Self-evidently, the Report of Dr Pettit was prepared prior to the postponed Remedy Hearing of April 2024. At that time he gave the opinion that,

> "If the Claimant perceives the conclusion of the Employment Tribunal litigation as being fair and just, he will experience a significant improvement in his mental state in the following months."

128. He also stated that poor prognostic factors would include,

> "Lack of meaningful work; being offered work that required expertise the Claimant does not possess; harassment, bullying or other unfair treatment within the workplace; lack of opportunities for career progression; marked difficulties in the relationship with his wife; financial hardship; adverse experiences related to immigration or Police (similar to the past experiences he has described)."

129. Of course not all of those are matters for which the Respondent could be said to be capable of being responsible. A generic Screening and Immunisation Manager role is presently vacant in NO's Team and he has been told that the current recruitment freeze would be relaxed to enable him to appoint the Claimant into that vacant position. There is therefore the prospect at the present time of the Claimant, should he choose to engage with the Respondent, returning to work in an equivalent and near identical position to the one from which he was excluded in February 2019. There are also references to other disputes that are not the subject of the present claim; for example in paragraph 2.28 on RB page 960, the Claimant apparently described events which contributed to his perception of an ongoing fight with his employers to include a dispute over pay, which I understand to be a reference to the factual matrix of the 2023 Claim.

130. Overall the conclusion at paragraph 2.31 is that the admitted conduct (which by then had been clarified to Dr Pettit to have started in 2017),

> "Exacerbated a pre-existing Adjustment Disorder. In my opinion had he continued to have felt supported at work from 2020 onwards, and been given meaningful work appropriate to his expertise that would contribute to his career development, the symptoms of his Adjustment Disorder would have continued to improve and would have been relatively mild before experiencing some deterioration from April or May 2023 onwards."

131. Based on the evidence, in particular that recounted in the expert evidence, it appears that the deterioration from April or May 2023 onwards was associated with the imminent Liability Hearing. There was then a gradual deterioration of his wellbeing, although he was still certified fit to work and a gradual disengagement of the Claimant until he was certified unfit to work immediately before the scheduled Remedy Hearing. Although he returned to work in February and March 2024, I accept NO's evidence and find that he was not contributing as effectively in those months. At the April 2024 Hearing, AB experienced a particular episode that seems to have been something of a step change in his mental health as a result of his mistaken perception that the Respondent was going back on the concession they had made the previous year.

132. Dr Pettit said that if the cited poor prognostic factors were absent and he received appropriate treatment,

> "I would anticipate gradual and sustained recovery over the next year or two."

133. Elsewhere, he states that,

> "Overall, accepting there are considerable uncertainties, I would anticipate that the Claimant will be able to return to work approximately within six months of completion of the current proceedings and resolution of the main work related problems if he were given in the region of 10 sessions of therapy with the purpose of preparing him to re-enter the workplace. Any graded return to work and reasonable adjustments to the workplace should be guided by Occupational Health services."

134. It appears, therefore, that Dr Pettit's prognosis for the Claimant's state of health as at the time he saw him was that, provided the Employment Tribunal proceedings were resolved (and provided the Claimant perceived the conclusion of the litigation as being fair and just), he would experience improvement to his mental state. Provided the poor prognostic factors were absent, which presupposed that there was a return to meaningful work and the Claimant received therapy, then Dr Pettit's opinion was that the Claimant should be fit to return to work within six months of the conclusion of the Employment Tribunal proceedings and have a gradual

and sustained recovery over the next year or two. He assumed that the adverse impact of the Claimant's mental state caused by the proceedings was attributable to the admitted conduct as the Tribunal claim would not have occurred but for that conduct – para. 2.30 RB page 960.

135. I also note that he gave his opinion in paragraph 2.5 on RB page 956 that there was a high percentage chance that the Claimant would have developed a depressive episode at some point in the future,

> "…if he were to experience a similarly severe adverse event, particularly within the workplace. If he were not to experience any adverse events, I would anticipate a low risk of relapse."

(para. 2.5 RB page 956)

136. As EF argues, since the expert opinion is that the episodes of depression had occurred in response to adverse events at work, I need first to assess the likelihood of the Claimant experiencing a severe adverse event at work – which may not necessarily be one which involves culpability on the part of the Respondent, let alone an unlawful act of discrimination – and then go on to assess the chance that if such an event were to happen then the Claimant would have experienced the depressive episode that he did in fact experience in response to the events of 2017 to 2019.

137. As I have previously said, Dr Pettit's report was written prior to the episode during the Remedy Hearing when the emergency services had to be called to the Claimant and since which he has been persistently certified as unfit to work by his GP. It comes across clearly from the insistence in the Claimant's Witness Statement and in argument (and in the fact of the Appeal) that the Claimant does not accept that the decision that the concession was based on a pleaded claim limited to the events between 2017 and 2019, was a just and correct decision. I do not have specific medical evidence about the cause of that step change in his mental health. However, the parties' accounts of that Hearing and the vulnerability to such deterioriation described by Dr Pettit cause me to conclude that it was the mistaken perception that the Respondent had gone behind their concession that precipitated the step change in the claimant's psychological wellbeing.

Should I award compensation for indirect disability discrimination?

138. Before awarding compensation for the act of indirect disability discrimination, I need to decide whether or not the respondent has shown that they did not apply the PCP of disciplinary and grievance matters taking a long time to conclude with the intention of discriminating against AB. My findings on that are set out above (paras.89 to 93).

139. As I am satisfied that they did not apply the PCP with the intention of discriminating against AG, then I must not make an order for compensation unless I first consider whether to make a declaration as to the rights of the claimant and the respondent in relation to the matters to

which the proceedings relate and whether I should make an appropriate recommendation (s.124(5) EQA). However, s.124(5) does not preclude me awarding compensation as well as giving a declaration or making a recommendation (Wisbey).

140. I do consider that I should make a declaration setting out in the judgment that the claimant has received discriminatory treatment from the respondent. They made that concession in June 2023 but a judgment setting out that declaration has not, to my knowledge, been approved and sent to the parties. It seems to me that it is important for the claimant and important for the public to know that the claim has succeeded. It is an important part of the relief to which the claimant is entitled.

141. The claimant through the closing statement (CSUB page 47) says he had no objection to a recommendation and but has not asked for a particular recommendation. He is still employed by the respondent although on long term sickness absence but I am told that a generic Band 8A Screening and Immunisation Manager role is available for him to be appointed to, should that be something he is interested. As a generic role, it may not be identical to the role he was removed from in June 2017 but the evidence suggests that it is very similar. I am confident that it is the respondent's settled intention to seek to engage with the claimant to facilitate deployment into that role. However, I also accept the respondent's evidence that the future of the Respondent's areas of responsibility is itself uncertain because of Department level development.

142. Dr Pettit's report is some basis to think that redeployment would obviate or reduce the adverse effect on AB of the admitted conduct. However, I do not think that it is just & equitable to direct CD to appoint the claimant to a specific role which he has not, at present, shown an ability to engage with and where the future structure of the respondent is uncertain.

143. The claimant's ability to engage is bound up in his continuing ill health and a need for there to be resolution to these proceedings. The part that the indirect discrimination complaint plays in these proceedings is it represents unlawful mishandling of the Claimant's attempts to challenge the first of the acts of unlawful disability discrimination. It is right that he should be compensated for the effects of that. However, it is not possible to distinguish between the losses caused by the three separate factual allegations and, in that situation, I award compensation for losses caused by a combination of the three matters and set out my conclusions on different heads of loss which flow directly from the course of conduct from June 2017 to February 2019 which is made up of two acts of direct discrimination/discrimination arising from disability and one of indirect disability discrimination.

Conclusions on causes of Personal Injury and assessment of compensation

144. The Claimant was an individual who had experienced significant mental health problems before the admitted conduct. My findings about the extent of the personal injury caused by the Respondent's admitted acts of discrimination are that they caused a relapse of Adjustment Disorder and of Recurrent Depressive Disorder, although there had been some deterioration of the Claimant's mental wellbeing prior to the removal from the role in June 2017 which the Claimant attributed to the actions of his Line Manager. Nevertheless, the removal from the role appears to have been the precipitating event for the relapse and the unlawful acts cover a 21 month period in themselves.

145. Furthermore, it seems to me that the predominant cause of the fluctuating mental health of the Claimant from June 2017 throughout the period to 2019 and to the end of 2022 is not something which can logically be divided or compartmentalised into one part that was caused by the admitted conduct and another part that was not. The Claimant may have brought a Grievance and there was an extended consideration of that; that in itself is not part of the admitted conduct. However, it is clear that the expert's evidence is that remaining out of his substantive post was a continuing cause of poor mental health throughout that period.

146. I find that over this period there was a relapse of Adjustment Disorder and moderately severe depression, the effects of which fluctuated over time and which were successfully treated at least at some periods by Therapy. This meant that the Claimant was able to return to work in a permanent role on a phased return which started in June or July 2022. He continued to regard the role as unsatisfactory because he remained of the view that he should not have been removed from and should have been returned to his Screening and Immunisation Manager position - with some justification, given the concession which has been made.

147. Being a person with the conditions he had, he ruminated on this and considered there was a lingering sense of injustice. The Respondent must accept the Claimant as they find him in this regard and it cannot be said that the continuing sense of injustice was unreasonable or unfounded, particularly once the Respondent had accepted that it had been unjustified discrimination arising from disability to refuse to permit the Claimant to return to the post. There was by then a different individual permanently appointed to that role and there were no vacancies there, or in an equivalent position.

148. However, I do find that the significant deterioration of the Claimant's health in April 2024 was caused by his disappointment about the decision of the Laidler Tribunal. I also remind myself that the 2015 suspension was not within the scope of the claim.

149. On the one hand where Employment Tribunal proceedings cause stress, or the stress associated with them prevents recovery, that can be said to flow naturally from the discriminatory act for which the employee seeks justice through the Employment Tribunal. On the other hand, if the

employee through a fixed but misguided assessment of the rights and wrongs of a decision in that litigation, suffers a reversal of their mental health, that seems to me to break the causation so that it is not in any way something that flows from the original discriminatory act.

150. An alternative way of looking at it would be to say that the Claimant becoming unwell and needing emergency treatment in April 2024 and his continual period of sickness absence from that date is genuinely severable harm from the relapse of Adjustment Disorder and Moderately Severe Depression from which he had been suffering from June 2017 onwards.

151. The expert evidence provides a reliable opinion about what would have happened had that particular episode not come to pass because the episode post-dates the expert evidence and was not anticipated by it. The Remedy Hearing would have continued, a resolution of the proceedings would have occurred in April 2024, the Claimant would probably have returned to work by, approximately, the end of 2024 and be looking forward to a recovery.

152. The Respondent is responsible for a deterioration in the Claimant's state of health and not for the entirety of the Claimant's illness. Furthermore, the substantive Screening and Immunisation role was available, and had been discussed with him by NO in a meeting on 27 March 2024. It is more likely than not that, had the deterioration in April 2024 not occurred, the Claimant would have been back at work for approximately six months by the time of the Remedy Hearing before me. On the basis of Dr Pettit's evidence, he would recover to the point where he was experiencing the same state of mental health that he had before he was removed from his post in 2017 by approximately a year or so after the April 2024 Remedy Hearing. That means around about the time of the Hearing before me in June/July 2025.

153. June 2017 to June/July 2025 is nevertheless a considerable period of time for the Claimant to have suffered and then recovered from a relapse of two mental health conditions. That is the extent of the personal injury that I need to assess and for which I need to award compensation.

154. I agree with the Respondent's argument that the injury based on those facts as found should fall within the moderate section of psychiatric damage in the Judicial College Guidelines (17th Edition) Chapter 4. Despite the relapse lasting in total for a total of eight years, while fluctuating over time and not preventing the Claimant from working throughout the entirety of that period, it cannot be said that it resulted in a permanent or long standing disability preventing a return to comparable employment. That is one of the hall marks of cases which fall in the moderately severe category.

155. By the time of the Hearing before me, had there not been the relapse which I have found was not causally linked with the Respondent's admitted conduct, I am satisfied that the Claimant would probably have recovered to

his baseline state of health. Nevertheless, the impact described falls towards the upper end of the bracket which ranges from £7,150 to £23,270; I award a sum of £20,000 under this head.

156. It is open to me to award interest on this sum and I should consider whether to do so. The acts which caused this injury took place between June 2017 and February 2019, although there was a continued failure to return the Claimant to his substantive role which prolonged or did not provide the circumstances within which the prospects of recovery were optimised. Following the TUPE transfer from the legacy employer to BC on 30 September 2021, it was in effect impossible to return the Claimant to his substantive role until more recent times. The Interest on Awards Regulations 1996 does not refer to compensation for persona injury but by analogy with an injury to feelings award, the starting point would appear to be that interest should be calculated from the date of the contravention to the calculation date. However, in the present case the contravention covers a period of time and, in the absence of grounds to think that the injury occurred on a particular date, choosing the mid-point between the earliest date and the last date would seem in keeping with the intention of the regulations.

157. The period covered by the events is 21 June 2017 – when he was removed from the role - to 7 March 2019 - when he was told he was not being returned to the S&I role. I consider that to award the Claimant interest from the mid-point between those two dates would unfairly over compensate him and cause serious injustice to the respondent. There are a number of reasons for this. First, the injury developed over a longer period than the acts themselves. It is more significant that I have taken the figures from the 17th Edition which (according to the introduction) was uplifted with reference to the RPI figure of 376.6 for August 2023. Had I been assessing compensation with reference to the Judicial College Guidelines figures for the date of the index events, the banding would have been different. That is the principle reason why I do not award interest from the midpoint – which is 30 April 2018.

158. I reject the Respondent's argument that it would be unjust to award interest on sums that the Respondent had offered to pay. The concession of liability was not made until June 2023. I have assessed the level of the award for personal injury to be higher than that admitted to by the Respondent. Although it is not the Respondent's fault that matters were not resolved in April 2024, neither is it the Claimant's; while his ill health from that point, or rather the deterioration in his ill health from that point may have broken the chain of causation or not be caused by the Respondent's acts, it seems likely that it was the result of the Claimant's pre-disposition to further episodes of Adjustment Disorder and not necessarily something over which he has any control. Overall it seems to me to be more unjust to the Claimant for him not to have interest assessed to include the period from April 2024 onwards than to the Respondent to restrict interest to a date prior to their offer to pay a sum for injury to feelings. I award interest from 31 August 2023, the date at which the

banding of awards was increased to take account of inflation because that increase is a fair assessment of the effect of delay in the claimant receiving compensation before that date. Interest represents the notional yield that money would have had had the Claimant received it at the date of the injury.

Adjustment to personal injury compensation

159. I need to go on to assess the prospects that an adverse work event would have happened in any event and that the Claimant would consequently have had a deterioration of his mental health as he has and as he did have in 2017.

160. There is more than one possible cause of adverse work events. These NHS entities are subject to restructure and reorganisation and that has been noted to be a cause of anxiety to the Claimant. While it is perfectly true that the allegations that the Claimant faced in the disciplinary investigation that started in June 2017 are accepted to have arisen from his disability and for the most part were not upheld, my understanding is that a small number were. There is a prospect that a non-discriminatory process would have happened in any event.

161. I also remind myself about the Claimant's protest at the meeting on 9 November 2023 as described by NO in his paragraph 42 of his first Witness Statement. It appears that in order to demonstrate that he was unwilling to discuss tasks that he might carry out in the role which he had agreed and was contracted to perform, and as an objection to not being permitted to return to the S & I Manager role, he placed black and yellow sticky tape over his mouth and refused to take any further part in the meeting. Furthermore, NO describes in paragraph 46 that the Claimant could behave in an unpleasant and argumentative manner during the discussions. A letter (at RB page 575) records NO's position that the issues faced by the Claimant did not justify his behaviour in that meeting.

162. Whether or not particular behaviours arise in consequence of a disability such as a mental health impairment, there are occasions in which it is legitimate for an employer to manage that behaviour and to challenge it appropriately in accordance with their Policies, showing due care and consideration for the employee about whom there is concern, as well as for others working alongside or with them who may find it distressing to be exposed to that behaviour. I can well imagine that legitimate grounds for reprimand or expressions of concern would have been likely to happen in any event given the Claimant's previous behaviour.

163. It is difficult to assess the likelihood of the Respondent having to take proportionate steps in respect of concerns about the Claimant's behaviour had the removal of him from his role in June 2017 and the delay of the disciplinary investigation not happened. Doing the best I can, I consider that there was a 40% chance that a similar adverse work event would have happened. That might have been non-discriminatory proceedings

taken in respect of a reduced number of the same allegations. However, I think it more likely that a similar adverse work event would have been something completely different.

164. Based on Dr Pettit's opinion evidence, in that event there would be an 80% chance that the Claimant would have experienced exactly the same mental health problems that he experienced caused by the admitted conduct. I should say that I consider there was a 40% chance of an adverse work event happening at some point during the relevant period. This means that a deduction of 80% of 40% should be made from the compensation for personal injury, or a deduction of 32%.

Injury to Feelings

165. There is a considerable risk of overlap in this case between personal injury damages and an award of compensation for injury to feelings. Problems sleeping, difficulties with concentration, reduction of interest in activities and disengagement from the family are all part of the symptoms of the Depressive Disorder which has been compensated for above.

166. The respondent argues that there was no intentional discriminatory conduct and that it has done its best to rectify the situation, in particular, once NHSE became the claimant's employer following the TUPE transfer in October 2021. This can only be tangentially relevant to my findings and conclusions on injury to feelings. In general, the nature of the act may lead to an inference that the asserted injury to feelings is improbable or exaggerated but if the injury to feelings is proven then it is not relevant to assessment of compensation that discrimination or harm were not intended. There has been no apology, so far as I have been told.

167. In CSOL para.92 they set out aspects of the claimant's behaviour which they argue I should have regard to. Ms O'Halloran argued that the general principles of an award of compensation for injury to feelings is that it should be just to both parties. The point appeared to be that in some instances the claimant's behaviour was reported as aggressive and frightening; that he was an employee whose psychiatric conditions were causing behavioural issues which any employer might struggle to manage.

168. To the extent that this attempts to justify conduct which amounted to the discriminatory acts themselves, this seems to me to risk going behind the concession. There is also a risk that acceding to the submission undermines the principle that damages for injury to feelings should be compensatory. Just as I need to guard against feelings of outrage at the actions of the respondent influencing the award, I need to guard against sympathy toward them doing so. The conduct referred to dates from before September 2016 (LB page 1310, LB page 2987-8 & LB page 2994). I reject this submission as likely to lead me into error.

169. In oral evidence EF spoke about the claimant's recent attendance at church in answer to my questions. She said that he used to have a

passion for everything and recently had sometimes attended church as previously – at the urging of his children. See RWB page 73 para.22.

170. The claimant's own account of his feelings and emotions is heavily influenced by his conviction that he experienced bullying at the hands of his pre-June 2017 line manager. He has also been through the traumatic arrest and the 2015 suspension which have had a detrimental effect on his psychological well-being and, no doubt, feelings of anger, hurt pride and upset (see his description of injury to feeling caused by a "discriminatory campaign starting from 2015 and climaxed in 2019 (over 4 years) when I was refused return to my substantive role" (RWB page 47 para.104).

171. Furthermore, some matters in the claimant's statement ("frog matched (*sic*) out of office, called names and all contacts withdrawn" RWB page 50 para.104) which have been urged upon me by EF in her closing submissions (CSUB page 51 & 52) I discount as likely to be exaggeration.

172. I think it can be said that feelings of hurt, pride and anger are properly injured feelings distinct from the personal injury which I have outlined above. In LWB page 204 para.378 he describes his shock at being removed from his substantive role on 21 June 2017 saying he was "devastated". Contemporaneous documents illustrate the depth of his feelings at the time – see RB page 367 when on 13 July 2021 the claimant pointed out to HR that "by law" he was still the S&I Manager and he considered he had suffered an injustice. That, in my view, is a sense of hurt caused by the wrong which is separate from the effect on his mental health.

173. I also take into account the evidence that the Claimant was more heavily involved in supporting his older children in their educational pursuits formerly than he is now and feels a sense of shame and disengagement from the family. I accept that there has been a detrimental effect on relationships within the family as a result of that disengagement which is additional to the stresses caused by poor mental health. The claimant says that EF has, in the past, said she wanted to leave him because of the stress caused by his ill health. An element of injury to feelings needs to compensate him for that stress to the extent that it was caused by the admitted conduct.

174. He fears that his ability to succeed in interviews has been adversely affected by ill health and the periods of time out of the workplace. The chronology of interventions by GH show that he benefited from training when preparing to return to the workplace. He describes job interviews he attended in 2020 (RWB page 42) and not performing well. The reasons for that might overlap with the personal injury claim but the fear that he would not perform well and the anxiety about how to support his family does not. I do not accept that he has suffered permanent career damage by reason of the admitted conduct. However, in the period in 2019 to 2022 when he was carrying out some work activities but not in a permanent role

feeling anxious that his prospects might be affected falls within injury to feelings.

175. When there has been shown to be injured feelings extending over a number of years caused by acts which themselves stretch over a 21 month period, one would expect to look to the middle Vento Band to provide an appropriate level of compensation. However, in this case the risk of duplication due to the nature of the personal injury as detailed above means that I am considering an award at the bottom end of the Middle Band, or the top end of the Lower Band. That is not because I consider this to be a less serious case but because I consider that the injury to feelings are less serious in the context of concurrent personal injuries of the kind described. I award the sum of £8,000 for the injury to feelings which I have found to be separate to the personal injury complaint.

176. In relation to this head of loss, I see no reason to depart from the usual practice of calculating interest from the midpoint of the relevant acts: that is at 8% from the midpoint between 21 June 2017 and 7 March 2019 – namely 30 April 2018. That is principally because the Vento band is fixed with reference to the date of presentation of the claim and does not take account of the effect of inflation thereafter.

177. The assessment of the amount of any adjustment to take account of the chance that the harm would have happened in any event is necessarily imprecise because of the number of variables in a case such as this. It seems to me that a 32% reduction for the likelihood that the events were an adverse work event triggering personal injury, should not be applied to injury to feelings. What is being compensated for is the sense of hurt and anger as a result of the acts and part of that is knowing that you have experienced discrimination. The basis for the reduction of personal injury compensation under the Chaggar principles was that a different non-discriminatory event might have occurred and, if it did, there was expert evidence of an 80% chance that it would cause the same personal injury. The injury to feelings would need to be reduced if there was an identifiable or rational basis to assess the prospect that the act which caused the injury (removing the claimant from the S&I team and not returning him through the course of a protracted procedure) would have occurred in any event or that the claimant would experience injury to feelings from a non-discriminatory act. I am not satisfied that the is an evidential basis for either such conclusion.

Aggravated Damages

178. Here the respondent's argument that there was no intentional discrimination is relevant. I have found that to be the case in relation to the indirect discrimination complaint.

179. I also accept that the acts of removing the claimant from his post in June/July 2017 and informing him in about February 2019 that he would

not return to it were not intentionally discriminatory. The 25 allegations have not been the subject of detailed scrutiny at a liability hearing and only 5 were said at the time to involve a case to answer. Nevertheless, the evidence is that reports had been made which needed to be investigated. There were failings in relation to removing the claimant from his role, the disciplinary process and the decision not to return him to it which mean that the respondent rightly admitted liability. However the fact that there was third party pressure and reports which merited investigation causes me to be satisfied that the legacy employer did not intentionally discriminate. The claimant has alleged that it was not third party pressure but the acts of colleagues from the legacy employer (LWB page 208 para.385) but this not is evidence I think right to accept when the respondent has been unable to challenge it.

180. I accept that there is insufficient evidence to found a conclusion that the conduct of the legacy employer in relation to the index events was high-handed, malicious or based on prejudice or any spiteful or vindictive motive. The conduct of the present Respondent, the employer since October 2021, has been to work hard to try to re-introduce the Claimant into the workplace. That was, initially, successful. They have conceded liability and sought to work with the claimant to alleviate the effects of the discriminatory conduct.

181. Furthermore, aggravated damages are to compensate the claimant for additional injury. The description in the claimant's remedy statement (RWB page 51 para.106) relies upon the detrimental impact on his mental state because of the ongoing legal proceedings. I have accepted when assessing personal injury that stress from the litigation process which impeded recovery flowed directly from the discriminatory acts themselves, up to the point where his reaction to the mistaken belief that the respondent was trying to go behind its concession caused a sudden deterioration in his psychological state. That being the case, the detrimental effects of the proceedings have already been compensated for within the compensation for personal injury.

182. He argues that the lack of prompt acceptance of the fact of disability should lead to an award of aggravated damages. However, the description of the time period he means relates to an alleged lack of support for him with his illness in 2015 to 2017 – not during the litigation (RWB page 53). In some cases, the allegedly aggravating feature is, in reality, part of the admitted conduct "branded aggressive for disability related conduct" (RB page 2096) not identifiably different conduct.

183. For all those reasons, I dismiss the argument that compensation for aggravated damages should be awarded.

Exemplary Damages

184. To succeed in his claim for exemplary damages, the claimant has to show that compensation is insufficient to punish the wrongdoer for oppressive arbitrary, or unconstitutional action or conduct calculated to make a profit.

185. In the section of the Schedule of Loss covering exemplary damages (RB page 2098) the claimant cites the tribunal's letter of 18 May 2023 (RB page 1513).

186. It is not the case that a judge has found the respondent's conduct of the litigation to be vexatious, malicious and unreasonable. RB page 1513 is a letter from the tribunal warning the respondent that their apparent failure to comply with orders for an exchange of witness statements meant the employment judge was thinking of striking out the response on one of the grounds set out in what is now rule 38(1)(b), (c) or (d) of the Employment Tribunal Procedure Rules 2024. The response was not struck out. The claimant has an outstanding application for a preparation time order for time spent as a litigant in person in circumstances where (he alleges) the conduct of the litigation has been unreasonable. I do not consider that the letter at RB page 1513 is evidence of conduct which should sound in aggravated or exemplary damages. In any event, it is something which is likely to be discussed when the preparation time order is argued which is the correct way to address a complaint that there has been unreasonable conduct of the proceedings. The same is true of time the claimant says he spent checking to ensure that the Respondent had not excluded relevant documents from the hearing file (RWB page 55 para.106.

187. The claimant also cites the Verita reports which set out the results of research into the culture of the institution of the legacy employer. The initial report was dated July 2021. It states that bullying and harassment remains a major concern for staff in the region and "appears to have become a chronic issue" with staff reporting "colleagues spreading gossip or making false accusations … and being ignored, excluded or marginalised." No doubt this evidence would have been deployed had liability been contested if it was relevant to do so. I reject the apparent argument that it supports a finding that the circumstances for an award of exemplary damages exists.

188. The other point referred to in the Schedule of Loss is an alleged inaccuracy in the ET3. Even if correct, that falls far short of the sort of behaviour which merits an award of Exemplary Damages. No award is made under that head.

Financial Loss

189. The parties' primary arguments on financial loss are found in the Schedule of Loss (that as at 13 June 2025 is at RB page 2080) and Counter Schedule of Loss (as at the date of the adjourned 2024 Remedy Hearing RB page 1670) but the supporting analysis is elsewhere in the hearing file.

Past Loss of Earnings (1): reduction of salary

190. In order to explain my conclusions on this head of loss, I need to set out some more detail about Case No: 3312367/2023 which is between the present parties, was presented on 25 October 2023, but which it was decided should proceed separately from the present claim (see the orders of Judge Laidler of 6 January 2025 RB page 1875). It is scheduled for a preliminary hearing on 17 October 2025.

191. The claimant states in the 2023 claim that, from 2017 onwards, he has been underpaid because he was not in fact paid an uplift awarded following an unrelated successful pay appeal. Whether that unauthorised deduction from wages claim can proceed is to be considered within the 2023 claim. For present purposes it is important to note that any sums claimed from that alleged unauthorised deduction do not flow from the admitted conduct in the present case. For context, the respondent's position on this issue as they understand it (bearing in mind that it dates from decisions and acts of the legacy employer) are set out in CSOL paras. 61 to 71.

192. In the updated Schedule of Loss for the June 2025 hearing (RB page 2082) the claimant has calculated an alleged reduction of salary due to sickness absence caused by the discriminatory acts of £12,297.83 from April 2018 to March 2019. The detailed calculation is at RB page 2199. In the final column on RB page 2199 the methodology appears to be the difference between the total salary paid between April 2018 and March 2019 taken away from the "Agreed Salary". The claimant then states two figures he says are the "Salary Deficit" of £11,621.38 and the "Real Total Salary Deficit" of £12,297.83. His sickness absence started on 22 March 2018 and he was declared fit to return on 26 February 2019. In the event, he did not return to work until June/July 2022 but those 11 months is the period during which he was on reduced pay because of sickness absence. The contractual sickness pay arrangements meant that reduced pay started in September 2018.

193. He also claims the following:

193.1. From April 2019 to March 2020 a salary deficit of £469.04 gross of tax and NI: (RB page 2083 and 2200) – however, this appears to be due to the alleged underpayment from 2017 onwards which is the subject of the 2023 claim.

193.2. From April 2020 to 31 March 2021 a salary deficit of £4,305.71 gross of tax and NI: (RB page 2084 and 2200). This likewise appears to be said to be due to the alleged underpayment which is the subject of the 2023 claim.

193.3. From 1 April 2021 to 31 March 2022 he states that there was a salary surplus which he proposes to deduct from the sums otherwise owing. The amount of the surplus is said to be £2,544.23 gross (RB page 2084 and 2201). He has calculated that presuming

that he should have been paid at the higher rate; the rate that he contents in the 2023 claim was the correct rate.

193.4. He claims a sum of £5,443 (point e) on RB page 2084) however he alleges that this is due because of his then line manager's alleged acts of discrimination, bullying and intimidation. For reasons I explain above, those are not and have never been within the scope of the core allegations in this claim and therefore I do not award these as they do not flow from the admitted conduct.

193.5. He claims loss of income of £25,725.30 net (RB page 2085 point f)) together with interest on that sum for May 2024 to May 2025. However, the payslips for that period RB page 1965 to 1978 show that he was paid the same basic pay and London weighting in March 2024, April 2024 and May 2024, then received a payrise increase to the Basic in June to August 2024. It was in September 2024 and October 2024 that he had deductions due to being on SSP. The issue there is whether the sickness absence in 2024 flows directly from the unlawful discrimination by the respondent.

194. In the 13 June 2025 Schedule of Loss the claimant asserts that all these sums are because of long-term sickness linked to the discrimination.

195. The previous Schedule of Loss is at RB page 1686 and it is sometimes necessary to cross-refer to that to understand the respondent's Counter Schedule of Loss because the section numbering was amended in the final draft for the hearing before me. That reordering appears to be because, in his most recent Schedule of Loss, the Claimant has partly separated out the alleged underpayment due to an allegedly incorrect rate of pay (referred to as the Pay Deficit complaint) which is the subject of the 2023 claim.

196. The respondent's position is that they admit that the claimant's sickness absences between April 2018 and March 2019 were caused by the delay in concluding disciplinary proceedings which is part of the admitted act of indirect disability discrimination. They argue that the appropriate award of compensation for this is £11,150.95 (RB page 1673). Their case is that the claimant was paid in full from April 2019 to March 2020 including applicable pay rises. Furthermore:

196.1. In RSUB para.34, they state that the claimant was on full pay throughout 2020; there is a tension between that and para.34 CSOL RB page 1674. However, they stated that he was certified unfit for work due to PTSD June to November 2020 and they argue that the expert medical evidence does not support a conclusion that PTSD is attributable to the admitted conduct.

196.2. They argue that despite the 2019 removal from post, that admitted act of discrimination does not appear to have caused financial loss because the claimant worked effectively in the role he started for the present respondent in July 2022 until Spring 2023.

196.3. They argue that the deterioration of the claimant's health from that point on is not attributable to the unlawful acts and therefore loss of earnings when the claimant was put onto reduced pay during subsequent sickness absence does not flow from the acts for which the respondent is responsible.

197. The respondent's analysis of the pay 1 April 2024 to 31 May 2025 is at RB page 1979.

198. There were the following periods of sickness absence:

198.1. 20 March 2018 to 26 February 2019 (RB page 291);

198.2. 7 April 2020 to 16 December 2020 (RB page 291);

198.3. 9 January 2021 to 31 January 2021 (RB page 291);

198.4. Although seeking employment in 2021 the claimant was not certified fit to work until May 2022 in preparation for a return to work in the Senior Project Manager role in June/July 2022. He therefore appears to have been on sickness absence throughout 2021 until mid 2022;

198.5. 1 December 2023 to 19 January 2024 (RB page 1372 & 1373);

198.6. 19 April 2024 to date.

199. These are my findings about the causes of the claimant's sickness absence.

199.1. Dr Pettit's evidence (RB page 936 para.7.17) was that work related stress was the cause of the relapse of depression in 2017. In fact he had relatively few days' sickness absence in 2017; the long period of sickness absence due to poor mental health was from 22 March 2018 to 26 February 2019 (RB page 291). The respondent accepts that was due to the delay in resolution of the disciplinary proceedings.

199.2. There were further periods of sickness absence 7 April 2020 to 16 December 2020 and from 9 January 2021 to 31 January 2021. The respondent argues that the medical certificates from June to November 2020 cited PTSD which was not caused by the admitted conduct. RB page 1274 is dated 3 June 2020 and certifies the claimant unfit due to PTSD until 8 August 2020. RB page 1305 is dated 2 November 2020 and certifies the claimant unfit due to PTSD between 15 September and 15 November 2020. However, other medical evidence from that time (such as the OH reported based on an assessment on 7 July RB page 1282 and the treatment notes at RB page 1284) paint a far more nuanced picture than is possible in a medical certificate. His generalised anxiety had not subsided, he had moderate to moderately severe depression and

the OH report in particular emphasises that the ongoing perceived conflict with his employer as perpetrating his generalised anxiety disorder. The OH specialist assesses AB as unfit to work and makes no attribution as to which underlying mental health condition is responsible for the unfitness.

199.3. I have found (para.107 above) that the lack of current substantive post in April 2020 was still causally linked with the admitted conduct and that and his ongoing grievance about those issues were "significant impactors on his low mood and anxiety". The admitted conduct remained a material influence on the psychological harm the claimant suffered through the period of those absences. I also refer to my findings in paras.110 and 111 above.

199.4. I am satisfied that sickness absences through 2020 and 2021 continued to be caused by the admitted conduct. The claimant's state of health fluctuated in this period and the stress of the Employment Tribunal proceedings caused some deterioration in his health in the run up to the Remedy Hearing scheduled for April 2024. However, up until April 2024, the harm caused by the stress of enforcing his rights cannot logically be separated from the harm caused by the admitted conduct.

199.5. My conclusion is that, had there not been the step change in mental health due to the claimant's mistaken perception that the Respondent was going back on a concession (the effects of which they are not responsible for), he would have been fit to return to work by October 2024, based on Dr Pettit's opinion. Therefore, any loss caused by sickness absence up to April 2024 can be regarded as caused by the admitted conduct.

199.6. From that date there was an intervening cause of more serious deterioration in health for which the respondent is not responsible.

200. The parties have analysed the payslips by tax year. The sums claimed as loss of earnings for all bar the tax periods 1 April 2018 to 31 March 2019; 1 April 2020 to 31 March 2021; 1 April 2021 to March 2022 and 1 April 2024 onwards are, when analysed, said to be caused by actions which are not the subject of this litigation. They are either said to be caused by the line manager's alleged acts of bullying or harassment (which Judge Tynan did not permit to be added by amendment) or the miscalculation of pay for several years for a reason unrelated to the admitted discrimination. That alleged unauthorised deduction from wages is the subject of a separate claim. He should only be compensated for any reduction in salary due to sickness absence caused by the admitted conduct.

201. I go onto calculate the amount of any past loss of earnings between **1 April 2018 and 31 March 2019.**

202. The claimant's claimed gross figure for 1 April 2018 to 31 March 2019 £12,297.83 presupposes that he is correct that he should have been paid

at a higher rate. That is what he means by the "Real Total Salary Deficit" (RB page 2199). Excluding the still disputed question of the so-called Pay Deficit, the claimant's gross figure is the "Salary Deficit" of £11,621.38. He proposes giving credit for a subsequent overpayment of £2,544.23 in the year April 2021 to March 2022. He claims interest.

203. By contrast, the respondent states (CSOL para.34 RB page 1674) that the claimant's pay was reduced to half pay in the period October 2020 to January 2021 due to sickness absence but he received an over payment in February 2021 which partly repaid that sum. In relation to the overpayment, there is no employer's contract claim. There may be a contractual right to off-set sums which have been overpaid. The respondent have not included it in their arithmetic. Within the litigation, I do not see that there is a legal basis for me to deduct it from the losses. I am assessing compensation for lost earnings due to ill health which was caused by discriminatory acts. The alleged overpayment is not replacement earnings which should be deducted in mitigation of the loss.

204. In principle, the respondent accepts that loss of earnings in that period flow directly from the admitted conduct. However, they calculate the amount of that loss to be £11,150.95 with reference to RB page 710. They were not the claimant's employer at the relevant time and are working backwards from available documentation. That page does not show exactly how they reach the total they propose. The figures for Basic Distributed NHS pay appear to be:

Tax Period (payslips at RB page 813 and following)	**Actual Pay (not including sick pay): £**	**Full Pay: £**	**Difference: £**
6 2018 (September)	3,022.56	4,030.08 (based on prev. 3 months basic)	1,008.24
7 2018 (October)	2,015.04	4,030.08	2,014.68
8 2018 (November)	2,015.04	4,098.58 (other years show pay rises in tax period 08 and tax period 01 2019 onwards show this monthly figure. An annual basic of £49,183)	2,083.18
9 2018 (December)	2,015.04	4,098.58	2,083.18
10 2018 (January)	2,049.29	4,098.58	2,049.29

(arrears) 11 2018 (February)	222.62 2,049.29	4,098.58	2,049.29
Total difference			**11,289.08**
Late payment of arrears			(222.62)
Total reduction while on sick pay			**11,066.66**

205. On the other hand, RB page 2199 (once one ignores figures which are irrelevant to the issues in the case) sets out a calculation for more months than those during which the claimant was on sickness absence. On the face of it, the claimant has used the correct figures but his result is undeniably sightly different. He has calculated an annual figure – which means there is a prospect that the difference in arithmetic is due to an irrelevant factor which has not been identified but which does not flow from the unlawful acts.

206. For that reason, I prefer the above calculation based on figures from the payslips. The claimant has shown financial loss for this period due to reduced pay when he was on sick leave of £11,066.66.

207. Although the Respondent asserts in the CSOL that the sum admitted to be owing for 1 April 2018 to 31 March 2019 has been paid in full, in fact they accepted in the closing submissions that it had not been transferred into the claimant's bank account until 27 June 2025. It may be, as Ms O'Halloran said, that initial authority for that payment was made a long time ago and some internal procedures held up the transfer. Nevertheless, it was only during the remedy hearing. Furthermore, EF's explanation causes me to think that there is little transparency about exactly what has been transferred to the claimant. It is said on the Claimant's behalf that there was a gross payment of £12,032.51 and a net payment of £7,553.00. Why the gross payment should be more than the admitted £11,150.95 is unclear.

208. Nevertheless, I accept that it appears that the respondent has transferred the £11,150.95 gross of tax and national insurance in respect of loss of earnings admitted to be payable and did so on 27 June 2025. If either party subsequently locates evidence that it was a different gross figure then they can apply for a reconsideration.

209. Interest should be added to that from the mid-point between 1 September 2018 and 28 February 2019 (1 December 2018) which covers the period of the loss as the losses were caused relatively evenly over this period. It will be calculated at the judgment rate of 8% until the date when it was paid by the respondent (RSUB para.54.c.) namely 27 June 2025. That is 2399 days at £2.42 per day or £5,818.94. Although the Interest on Awards Regulations 1996 provides in reg.6(1)(b) for interest to be calculated from

the mid-point between the date of the contravention and the date of calculation, in the present case that would cause serious injustice to the claimant because he has been deprived of this money since, at the latest, 28 February 2019. It is not a case where losses have accrued evenly over the period covered by the interest calculation.

210. I turn next to findings about whether any loss has been shown for **1 April 2020 to 31 March 2021**. If loss of earnings due to sickness absence can be shown in this period, the claimant has shown that the cause of that loss was the admitted conduct.

210.1. The respondent accepts that the claimant suffered a deduction from wages when his pay was reduced to half pay October 2020 to January 2021 but allege that that was part repaid by an over payment in February 2021 leaving a gross underpayment in that financial year of £3,991.39.

210.2. The claimant alleges that there was a gross under payment of £4,305.71.

210.3. I calculate the gross underpayment to be **£3,772.29** calculated as follows from the payslips at RB page 843-850):

Month	**Basic (£)**	**Salaried paid (incl SSP) (£)**	**Reduction**
October	4,266.67	2,765.34	
November	4,266.67	2,133.34	
December	4,266.67	2,133.34	
January	4,266.67	2,133.34	
Total	17,066.68	9,165.36	7,901.32
LESS overpayment in February 2021			(4,129.03)
Reduction in salary			**3,772.29**

211. Next, these are my findings about **1 April 2021 to March 2022**.

211.1. The respondent accepts that there was a deduction from salary in April 2021 of £2,546.24 gross. The payslip (RB page 851) shows he received £1,720.43 basic pay and £219.10 SSP whereas his gross monthly pay would have been £4,266.67. That is a reduction of £2,327.14 – the difference between the respondent's figures and mine appears to be that I consider SSP should be included as

reducing the loss of earnings as he would not have received it had he not been certified unfit to work.

211.2. The respondent then argues that that was partly offset by an over payment in May 2021 of £1,582.80 gross. I agree there was an overpayment of that amount in that month.

211.3. Finally, they point to an overpayment in September 2021 (CSOL para.46 & 47). If you add the Basic Pay Adjustment and Basic Pay Arrears and subtract the SSP pay adjustment (which logic suggests is connected with a salary adjustment covering a period of sickness absence) the overpayment is £4,956.09. They argue that as this equates "almost exactly to the underpaid salary from the period October 2020 – January 2021 … and April – May 2021" they should not be ordered to pay anything further in respect of those periods.

211.4. The claimant has given credit for overpayments but the arithmetic does not produce exactly the same figures. I have confirmed the respondent's figures with reference to the payslips.

Underpayment 2020 – 2021	3,772.29	
Underpayment in April 2021	2,327.14	
Total underpayment 2020 – 2022		6,099.43
Overpayment in May 2021	1,582.80	
Overpayment in September 2021	4,956.09	
Total overpayment		6,538.89
Difference		**(439.46)**

211.5. There therefore seems to have been an overpayment by the end of September 2021 of £439.46. I have considered how to deal with this overpayment. On the one hand, the interest calculated on the underpayment from 2018 – 2019 is quite a substantial sum of money. If, 31 months into that period of interest the sum outstanding were reduced by £439.46 that would reduce the respondent's liability. On the other hand, there was an underpayment between October 2020 and January 2021 which was not fully rectified until September 2021. The simplest and fairest solution, in my view, is to award no interest on the loss of earnings

in 2020 to 2021 and 2021 to 2022 but allocate that £439.46 as broadly representative of any interest.

212. In relation to the sickness absence from **April 2024 onwards**, I refer to my conclusions about the causes of sickness and poor mental health over the relevant period. The significant deterioration of the Claimant's health in April 2024 was caused by his disappointment about the decision of the Laidler Tribunal (para.137 above) and his continual period of sickness absence since April 2024 was caused by that which is something for which the respondent is not liable. Any loss of income caused by sickness absence during which the claimant was paid less than full pay from April 2024 onwards does not flow from the admitted conduct. The Claimant has not shown that such losses (section f) on RB page 2085 within 13 June 2025 Schedule of Loss) were caused by the discriminatory acts.

213. The claimant has not shown that the other sums claimed for unpaid wages on RB page 2082 to 2085 1.a) to f) flow directly from the admitted conduct. It is implicit in the statement below the tramlines at the top of RB page 2086 that the sums on that page and RB page 2087 are not argued to have been caused by the discriminatory acts to which the respondent has admitted in these proceedings.

Past Loss of Earnings (2): other causes of loss prior to Remedy Hearing

214. The claimant argues that he has been caused financial loss for the following reasons:

214.1. Removal from work in Ebola support (RB page 2087 point 1));

214.2. Inability to work in Covid-19 support (RB page 2088 point 2));

215. The claimant states that he was engaged in extra weekend shifts supporting the government efforts to combat the spread of Ebola and was unable to continue with this when he was suspended in 2015. The respondent states that this is not within the scope of the present claim as his inability to do that work because he was suspended predates the admitted conduct and was not caused by it.

216. I agree with the respondent on this point. The admitted conduct starts with the removal from the S&I team in June 2017. The sums claimed by the claimant (RB page 2088) make clear that this opportunity is said to have been denied him in the period July to December 2015. The alleged loss was not caused by the acts of the respondent which have been admitted to be unlawful.

217. In relation to Covid-19 support, the claimant states (RWB page 39 para.94.2) that he suspended Covid-19 regional cell work he was giving in 2018 due to a breakdown in health. However, this must be an error in the date, not least because – as is well known – the particular coronavirus was identified in 2019 (hence the name) and the impact on the U.K. started in 2020. He supports his argument with reference to 2020 emails (e.g. RB

page 319). That email exchange provides some evidence that he had completed week and weekend shifts supporting Covid-19 efforts.

218. In principle, since I have found that sickness absence during 2020 and 2021 were due to mental health problems which were caused by the admitted conduct, if the claimant can show loss from that sickness absence, then he should be compensated for it. He was paid full pay by the respondent in that period (subject to the arguments which are part of the 2023 claim) so suffered no loss of salary. The question is whether he can show he would have been paid for COVID-19 cover and how much.

219. On CSUB page 50 para.e) the claimant outlined that he had earned £862.81 net in April 2020 (RB page 834) and £1,196.79 net in May 2020 (RB page 836. He argues that he would have earned an average of £1,029.80 per month each month until September 2021. The respondent's response to this is in CSOL paras. 74 to 76 (RB page 1679). They say that there is no reliable evidence that the claimant was unable to perform these duties; I disagree – there is evidence that he was unfit to work 7 April 2020 to 16 December 2020 and from 9 January 2021 to 31 January 2021. Then they say there is no reliable evidence that they would have been provided to him or that such work would have been available in months following May 2020. The respondent has not adduced primary evidence of the work allocated to employees of the legacy employer such as the claimant in the relevant period.

220. The evidence of the claimant that the work would have been available is consistent with the generally available information about the government's response to the coronavirus pandemic in terms of restrictions on the public. The situation fluctuated geographically and from time to time. There is no explanation from the claimant about why he did not do this work once he was fit to work from February 2021 onwards. Nevertheless I am persuaded from his evidence of the work that he did do that it is more likely than not that he would have made himself available and would probably have been allocated Covid-19 support work in the months June 2020 to January 2021. I award 7 months at £1,029.80 under this head. That is £7,208.60. After January 2021, I find that he probably chose not to put himself forward.

221. I award interest on that loss from the midpoint between 1 June 2020 and 31 January 2021 which is 30 September 2020. From then to 29 September 2025 is 5 years. The annual amount of interest on £7,208.60 at 8% is £576.69 making interest of £2,883.44.

Future Loss of Earnings/Career Progression

222. The claimant argues strongly in his witness statement that he is, as he puts it, "a damaged man for life" and gives evidence about the difficulty he has in applying for work because of prejudice against the mentally ill and an inability to perform well (RWB page 42). This is in the first witness statement, prior to the episode of ill health during the April 2024 Remedy

Hearing. However, it is contradicted by the expert evidence that the claimant would ordinarily be expected to recover to the point where he could return to work by October 2024. Furthermore, I must be careful not to award sums against the respondent for losses which are due to the claimant's underlying condition rather than to the aggravation of his Anxiety Disorder which is the injury that they are responsible for.

223. I accept the evidence of NO that the Band 8A Screening & Immunisation manager role is available to the claimant now (see para.88 above and RB page 1805 - 1806) and that means that, had he recovered as expected by Dr Pettit, he would probably be in a substantive role and suffering no financial loss for which the respondent is liable.

224. It follows from my findings and conclusions on the causes of the claimant's present period of mental ill health that it is not caused by the admitted conduct. No loss of earnings after April 2024 is caused by the admitted conduct and there is no award for future loss of earnings.

225. The claimant has argued that the admitted conduct has caused loss of career progression. In CSUB page 17 the assessment of his potential in appraisals is emphasised. The argument is that he would have progressed had it not been for the ill health caused by the admitted conduct and he should be compensated for that.

226. Based upon my earlier conclusions, the argument would have to be that the claimant would have progressed in the period up until April 2024 and that there is a shortfall in his earnings up to that point because of the admitted conduct. I consider the prospect of career progression to be too remote for it to be safely concluded on the evidence available to me that it was caused by the claimant's ill health. Not only is there no specific evidence of posts for which he might have applied and wished to apply for but the National Health Service reorganisations have impacted more on legacy employer than some other entities and will do in the future. There are uncertainties completely separate to the circumstances of the present claim which mean that it would be unsafe to conclude that any particular losses due to stunted career progression were caused by the admitted conduct. Furthermore, I accept the evidence of NO that the opportunities for career development were, in fact, limited in the Band 8A S&I Manager role.

227. There remains for me to decide whether it is just & equitable for there to be a deduction from the past loss of earnings to take account of the prospect that there would have been an event in that period which caused equivalent harm. I have made a 32% deduction from compensation for personal injury but that was caused over, in total, an eight year period.

228. It is a slightly different evaluation when the loss of earnings awarded cover discrete periods due to sickness absence in March 2018 to February 2019 and April 2020 to January 2021. However, the assessment of the chance

that there would have been an event in the period which caused equivalent harm (which I put at 40%) is necessarily imprecise.

229. I have considered whether a different factor should be applied to the loss of earnings to take account of that chance. I have decided that the same factor should be applied; it is just & equitable that there should be some reflection of the prospect the loss would have been suffered in any event and no weighty reason to conclude that different factors would lead to a different assessment of the risk. The fact that the loss was incurred in two discrete periods is not, in itself, a reason to assess risk differently.

Mitigation/Failure to Mitigate

230. The respondent argues (RSUB 54.a.) that there is evidence that the claimant started a business in November 2015 (LB page 4043 within notes of therapy sessions). In the claimant's closing statement (CSUB page 60) it is stated that two were "kick-started but did not progress before they were shutdown. No income was gained." One is said to be linked to an investment club of which AB and EF are members.

231. In respect of the investment club, even had this produced income it would not have been alternative income to that which he would have earned had he not been sick. He would likely have been involved in such an investment club in any event. I accept AB's evidence that no income was earned from the other two business and am not persuaded that there has been a material failure to disclose evidence in relation to this.

232. The losses for which I award compensation are in the period February 2017 to April 2024 and are due to the claimant's inability to work because of poor mental health. There are no sums for alternative earnings to be deducted which relate to that period.

233. Although the claimant has disclosed ESA Benefit (RB page 2103) that relates to 2025 and not to the period in question.

Reduction in EF's earnings

234. EF is a specialist oncology nurse. AB and EF's fourth child was born in 2019 and in October 2019 she began to plan her return to work from maternity leave. She has produced emails between her and her employer about this subject (RB page 1858 onwards). It appears that in early October (RB page 1860) she met with her employer about "the option of coming back to the ward with some flexibility because of my little one".

235. Her oral evidence was although she did not mention the impact of her husband in the emails she had done in the conversations. She said that she told them that she needed to be more present in the family because "of what I'm going through at home" and that was not just about the baby. She explained that AB had always been helping but things had changed since 2015 and the employer stopping him working and not returning him to work; there had been changes in his behaviour which meant that she

could not carry on as she was. She meant working full time, as she had done prior to maternity leave for her fourth child.

236. Her fourth child is special needs although I have scant, if any, information about what impact that has on the caring responsibilities of his parents.

237. The claimant decided to reduce her working hours to 2 long days a week. Her working hours reduced to 28.75 with effect from 6 January 2020 (RB page 1863).

238. There is a difference between AB's evidence about this and EF's. Her own expressed reasons are a need for her to take on more domestic responsibilities because a consequence of AB's poor health is that he has taken a less active role in the care of the family. The claim is for the reduction in family income caused by EF's reduced hours because that is said to be caused by AB's ill health which, in turn, is argued to be caused by the admitted conduct. AB's evidence (WB page 59) is that she has reduced work to part-time support him and he is claiming for his wife's past care for him – not to replace care he provides to their children or around the house.

239. Given EF's own evidence, I reject the claimant's evidence that she reduced her hours to care for him. Had that been the case, one would have expected to see in the witness statements details of the care that she is providing for AB which would otherwise be provided by a paid professional. I prefer her evidence (RWB page 73 para.22) which includes that "my last child is autistic, so the burden of my husband not helping at home made it extra difficult to continue working full time."

240. If AB had engaged outside help at a financial cost to him to carry out domestic work he had otherwise done and could show that was caused by the unlawful acts then, in principle he could claim for that. I see no reason in principle why he cannot claim that where that work is being done by his wife but, in order to do that she has forgone earned income so that the family income is reduced then he is liable to be compensated. The key question is what is the cause of the loss.

241. Although this is a different chain of causation than that set out in the Schedule of Loss it is the same loss said to have been suffered. Has the claimant shown that cost to him represented by the loss of his wife's income directly flowed from the personal injury he suffered during the period 2017 to April 2024 (when his personal injury was no longer caused by the admitted conduct of the respondent)?

242. Although the documentary evidence in the form of emails with EF's employer do not refer to her husband's condition, I found her oral evidence to be persuasive. I'm satisfied that she did give the challenges she faced at home in broad terms as reasons why she would struggle to return full time when she discussed changing her hours with her employer. Those were all reasons why she reduced her hours. However, I am not satisfied that the claimant's inability to help at home to the extent that it required EF

to reduce her working hours was materially influenced by poor mental health attributed to the admitted conduct.

243. If you look at his state of health over the period from April 2020, he returned to work on a phased return in June/July 2022 and succeeded in that role until late 2023 or Spring 2024. The respondent's unlawful acts are not responsible for AB's continuing poor mental health after April 2024 in any event. Although he was only certified fit to return to work in the new role in May 2022, his health was improving by early February 2021 and his inability to return to work for the legacy employer was connected with the ongoing work disputes. I would need clear evidence that his health prevented him from helping around the home from April 2020 onwards in the light of that improved situation.

244. There AB's challenge is that his evidence about the reason why his wife reduced hours conflicts with hers. He says that she needed to care for him. Ultimately it is for the claimant to show that the financial loss is caused by something which flows directly or is materially caused by the unlawful acts of the respondent and I am not satisfied that he has done so. No loss under this head has been shown.

245. Furthermore, it seems to me that there is a relatively high likelihood that EF would have returned on reduced hours in any event because of the responsibility of a fourth child and the additional burden of caring for a special needs child.

Cost of Treatment and Travel to Treatment

246. The claimant has claimed for the cost of treatment. This is on three grounds: treatment with Trauma Informed Therapy which started on 10 February 2025 at a cost of £5 per week; Travel to Greenwich Centre and expected private treatment and management estimated to cost £13,000.00.

247. I reject this aspect of the claim. The expert evidence is that the impact on the claimant's health for which the respondent is liable would have subsided by October 2024. The claimant's continuing need for treatment after that date – whether the future private treatment or the Trauma Informed Therapy he is presently undergoing – is not caused by the respondent's acts.

248. It is possible that some of the claimant's journeys to Greenwich Centre have been caused by the respondent's acts. The documentary evidence suggests that he was seeing them for CBT in 2016 - before the index events so he may have visited Greenwich Time To Talk for treatment because of the exacerbation of Anxiety Disorder triggered by removal from the S&I team in Juen 2017. However, the global figure of 70 visits claimed clearly covers a longer period – possibly both before and after the period which my assessment needs to focus on.

249. I reject this claim for travel costs because the claimant has not produced evidence to support a conclusion that particular travel costs flow from the acts for which the respondent is liable.

Loans & Life Insurance

250. The claimant argues that he has suffered consequential loss as he was unable to meet loan repayments because of unpaid wages caused by long-term illness.

251. I do not award anything under this head. I have accepted that any sickness absence prior to April 2024 was caused by the admitted conduct (including where the claimant's initial recovery had stalled or relapsed because of the stress of employment tribunal proceedings to enforce his rights). However he did not exhaust his entitlement to full pay as contractual sick pay by the absences in December 2023 through to the end of January 2024 (RB pages 884 & 885). He started his present sickness absence by a certificate issued on 17 April 2024 but did not have a reduction in salary until September 2024 (RB page 1970).

252. The first reason why this head of loss fails is that the claimant has not shown that the reduction to half pay by way of sick pay in October 2018 to February 2019 caused additional interest or penalties to be payable. That is the only period of reduced salary caused by the admitted conduct. He has not shown the asserted loss. RWB page 58 para.109 produces no documents to link the alleged missed payments to the loss of income which the respondent is liable to compensate the claimant for. Furthermore, the account he gave Dr Pettit which is recorded in para.6.43 (RB page 927) is that his accounts were frozen following the 2015 arrest which meant that he had been unable to pay back a loan taken out at this time and that caused a poor credit rating. Evidence in the Remedy Hearing file points to reasons other than reduced company sick pay having caused financial embarrassment. This reinforces my view that there is insufficient evidence that any loss caused by impecuniosity is something for which the respondent is liable.

253. In the second place, the award of interest is designed to compensate the victim for the interest which would have been earned by the sum that they have been deprived of. To award interest on a debt which would have been repaid had they been paid the money at the time would be double recovery.

254. A different type of alleged loss is the asserted increased premium on life assurance which the claimant alleges he would pay as a result of his medical condition. He has provided no evidence of any actually increased premium. I reject that claim.

Pension Loss

255. I am satisfied that the claim for pension loss is based on a misunderstanding. The claimant argues (RWB page 57 para.108 and

following) that, since his income has been affected by the admitted conduct, his pension would also be affected. In the first place, the reduction in income is only due to the application of the contractual sick pay scheme and is on a much smaller scale that the asserted loss of earnings claim – as set out in my findings above. However, it is more fundamental that the claimant presupposes that his pension is a contributory scheme.

256. In fact, he is a member of a defined benefit scheme. Once an employee retires and is able to access the benefits under the pension scheme the payments are worked out on the basis of pensionable annual salary and pensionable length of service and not the monthly contributions which are noted on their payslips. I accept the evidence of LM that if an individual is off sick, their pension is unaffected because if is their years of continuous service and the annual salary for the role which determines their pension, not the amount of pay the individual has in fact received.

257. There is no loss in respect of pension.

258. A different argument was put forward in closing speeches on behalf of the claimant (CSUB p.61). There it was argued that the claimant's career progression has been adversely affected which would have a negative effect on his pension. I have rejected that argument. The evidence does not show that this is something caused by the unlawful acts. Therefore the claimant has not shown that he will suffer diminution in future pension benefits as a result of reduced career prospects caused by the acts of the respondent.

ACAS Uplift/reduction

259. The conduct relied on in RB page 2102 (in the Schedule of Loss) and RWB page 61 para.113 is "removal from substantive role against contractual agreement and when no disciplinary procedure or sanctions were applied". The claimant describes the removal of him from his substantive role as a sanction without a disciplinary process as there was an investigation only and no disciplinary hearing. He argues that this was a breach of para.7 of the ACAS Code of Conduct on disciplinary matters and that there was no notification of any disciplinary case contrary to para.9 of the ACAS Code.

260. I have not heard oral evidence from the respondent on this. There is an unsigned witness statement in the liability witness bundle from the individual who wrote on behalf of the respondent refusing the request for the claimant to return to his substantive S&I role in February 2019 but as it is unsigned there is insufficient basis to accept it as hearsay evidence of what he would say had he been called. The recipient of the letter was not a proposed witness for the liability hearing. The respondent argues that this is not a breach as they did not convene a disciplinary hearing; they argue that the reasons of the legacy employer for removing the claimant from

post were the refusal of the respondent to permit him to return which is not a disciplinary matter.

261. I do not share that view. The legacy employer chose not to convene a disciplinary hearing because of their view that it was not in the claimant's interests because of his ill health. The immediate cause for him not returning to post may have been that the respondent did not agree for him to return but the underlying reasons were matters for which the respondent ought to have brought disciplinary action and contemplated disciplinary action. Therefore the Code is engaged.

262. However, the reasons why the legacy employer did not convene the hearing were concerns about the claimant's health. It is questionable whether this amounts to an unreasonable failure.

263. Furthermore, I do not think it just & equitable to award an uplift on compensation for personal injury, injury to feelings and loss of earnings because of these alleged failures. This is because there is likely to be double counting of compensation when the matters said to amount to a breach of the ACAS Code of Conduct are the acts for which compensation is being awarded. The purpose of the uplift is also to reflect the consequences of a relevant failure in the context of all the circumstances. The consequences that he was refused permission to return to post were not caused by the lack of disciplinary hearing but by the allegations having been made. In all those circumstances, I do not think it just & equitable to award an uplift under s.207A TULRCA.

264. The claimant is still in employment and the discrimination occurred during employment. Compensation for general damages caused by that discrimination would not, as I understand it, be subject to income tax but, if the parties consider that a grossing up calculation should be calculated they should write to each other and the tribunal with a calculation of tax no later than **13 October 2025.**

265. The calculation and arithmetic which flows from those conclusions is set out in the judgment. I have given credit for the payment of £11,150.95 gross (which was paid after deduction of tax and national insurance). The length of time which this claim has taken to resolve means that some of the interest payments are comparatively large but the fact remains that the claimant has been seeking compensation for all of that time. I have taken care to avoid duplication of awards as between personal injury and injury to feelings. In all those circumstances I do not consider the award needs any further adjustment or can be regarded as disproportionate to the harm caused.

Approved by:

Employment Judge S George

Date: …29 September 2025……..

Sent to the parties on: 29 September 2025

For the Tribunal Office.

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