



EMPLOYMENT TRIBUNALS

Claimant: Mr D Cooper

Respondent: Sainsbury's Supermarkets Ltd (1)
Mr M Hourihan (2)

Heard at: Cardiff **On:** 30 May and 11 July 2025
(Chambers)

Before: Employment Judge R Brace
NLM: Mr M Lewis and Mr A McLean

Representation:

Claimant: Mr A Griffiths (Counsel)
Respondents: Ms K Minto (Counsel)

RESERVED REMEDY JUDGMENT

The unanimous judgment of the Tribunal is as follows:

The Respondent shall pay the Claimant the following sums:

1. Compensation for injury to feelings in the sum of £7,500;
2. Compensation for personal injury in the sum of £2,500; and
3. Interest on the awards calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination) Regulations 1996 in the sum of £1,852.08.

Reasons

Introduction

1. This was a remedy hearing, heard in person following a reserved judgment on liability being promulgated on 4 June 2024 and sent to the parties on 5 June 2024.

2. Save for the last act of discrimination relied on, that of failing to include the Claimant on an 'International Men's Day' post ("IMD post") that had been published internally on 'Yammer' and posted on LinkedIn on 18 November 2022, all other and previous acts complained of, from 3 August 2022 through to 29 October 2022, were not found to be unlawful acts of discrimination.
3. The Claimant's unfair dismissal following his dismissal for capability reasons on 26 May 2023, had also not been well-founded and had also been dismissed.
4. A preliminary hearing on case management for the remedy on the Claimant's successful complaints¹ had taken place on 3 July 2024 [58]. The parties had been directed in advance of that case management to seek to agree draft directions but had been unable to do so in relation to the necessity of expert evidence. With the consent and agreement of both counsel at that preliminary hearing, directions were given for the Claimant only to rely on expert evidence, the Respondent being unwilling to agree a joint expert and not wishing to rely on its own expert evidence.
5. Further remedy directions were given which included, at §21 of the case management order, directions for the parties to:
 - a) agree a draft list of issues for the remedy hearing;
 - b) exchange written submissions in relation to remedy; and
 - c) send to the Tribunal a (Word copy) of both the agreed draft list of issues and written submissions

Evidence

6. The Tribunal had before it a further statement in relation to remedy from the Claimant who was also subject to cross-examination, questions from the Tribunal and re-examination at this remedy hearing.
7. The Tribunal was also referred to a further 487 page bundle that had been prepared for the purposes of the remedy ("Remedy Bundle") and references to the Remedy Bundle are denoted by [] within these written reasons. Any references to the liability bundle documents are denoted by [Original]. The parties had agreed prior to the commencement of the remedy hearing that documents at [151-193] be excluded from the Bundle.

Schedule of Loss

8. The Claimant had been directed to provide a Schedule of Loss and various Schedules of Loss were included in the Remedy Bundle with the Claimant appearing to be claiming in excess of £760,000 [70].
9. The Schedule of Loss that the Tribunal was informed the Claimant did now rely on was included at [71] within the Remedy Bundle and whilst does indicate that the Claimant still sought total compensation in the sum of £767,048.90 [76], it was clear that the Claimant did now not claim that sum, but a compensatory award based on:
 - a) Financial losses amounting to £388,315.09 (before grossing-up) as follows:
 - i. To the date of the remedy hearing in respect of salary, bonus, company car, pension and life assurance cover amounting to £105,726.47;
 - ii. Following the remedy hearing for future losses for a further 18 months in the sum of £161,382.71; and
 - iii. Medical expenses in the sum of £1,972.00.
 - b) Non-financial losses of:

¹ Found to be an act of harassment (s.26 Equality Act 2010) and discrimination arising from disability (s.15 Equality Act 2010)

- i. injury to feelings in the sum of £20,000;
- ii. damages for personal injury in the sum of £40,000; and
- iii. interest in the sum of £4,000.

Submissions

10. The Tribunal had not received from either party either a list of issues or written submissions prior to the remedy hearing despite having agreed to this at the preliminary hearing on case management and having been contacted by the Tribunal administration on the direction of the employment judge prior to the hearing. The parties were asked to explain their failure to comply with directions.
11. Respective counsel could not and the parties' respective solicitors were directed to explain in writing why they had not complied. No adequate reason was provided. Time for complying with the order to provide written submissions was extended to 6 June 2025 and the parties were to confirm whether they wished to rely on additional oral submissions, in response or otherwise. A further day for deliberation on remedy was listed when the parties were informed that they may be required to attend to clarify written submissions. Neither party wished to make further oral submissions and were not required to attend.
12. The Claimant's and Respondent's written submissions are therefore incorporated by reference.

The Law

13. Section 124 Equality Act 2010 provides

124 Remedies: general

- (1) *This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).*
- (2) *The tribunal may—*
 - (a) *make a declaration as to the rights of the complainant and the respondent in relation to the matters 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 or 19A], 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.*

14. The Claimant must prove his losses and is under a duty to mitigate his losses. The burden of proof is on the Respondent to show that the Claimant has failed to mitigate his loss. The

aim is that 'as best as money can do it, the applicant must be put into the position she [or he] would have been in but for the unlawful conduct' (**Ministry of Defence v Cannock** [1994] ICR 918 and **Wilding v British Telecommunications Plc** [2002] ICR).

15. Financial losses are awarded on principles of tort to put a claimant back in the financial position he would have been in had there not been a breach of the Equality Act 2010. Losses are not awarded on just and equitable principles (**Hurley v Mustoe** [1981] IRLR 208 and **Hurley and Mustoe (No2)** [1983] ICR 422). There is no requirement for reasonable foreseeability in a claim within the employment tribunal and damages flowing '*directly and naturally*' from the wrongful conduct are awarded (**Essa v Laing Ltd** [2004] EWCA Civ 02). Such damages are limited by the failure to mitigate (**Chagger v Abbey National PLC and another** [2010] IRLR).
16. In relation to the claim of personal injury, we remind ourselves of the guidelines from the Court of Appeal in **Hatton v Sutherland and other cases** 2002 ICR 613, CA and **BAE Systems (Operations) Ltd v Konczak** 2018 ICR 1 CA as far as they apply to personal injury arising from discrimination claims.
17. Tribunals may but need not make separate awards for injury to feelings and personal injury and where separate awards are made, tribunals should be careful to avoid double recovery which is a danger particular where an award for pain, suffering and loss of amenity arising from psychiatric injury and an award for injury to feelings result from the same discriminatory act (recognised by EAT in **HM Prison Service v Salmon** 2001 IRLR 425 EAT).
18. The 'eggshell skull' principle applies to loss arising from discrimination – the discriminator must take the victim as she or she finds them. In essence, an employer may find themselves liable for damage that they consider far outweighs the seriousness of the acts of discrimination. The principle also applies to the duty to mitigate and a tribunal can take into account the claimant's pre-existing vulnerabilities when considering what was and was not reasonable.
19. In relation to damages for injury to feelings the EAT in **Prison Service and ors v Johnson** 1997 ICR 275 EAT gave guidance and summarised the general principles that underlie awards for injury to feelings: that awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party, should not be inflated by feelings of indignation at the guilty party's conduct, should not be so low as to diminish respect for the policy of the discrimination legislation and should not be so excessive that they might be regarded as untaxed riches. Awards should be broadly similar to the range of awards in personal injury case and tribunals should bear in mind the value in everyday life of the sum they are contemplating and the need for public respect for the level of the awards made.
20. We also consider the guidance on injury to feelings awards given by the EAT in **Eddie Stobart Ltd v Graham** 2025 EAT 14; and that the EAT noted that, the frequency and duration of the claimant's exposure to the discriminatory conduct are not the only measures that could support an inference of injury. The EAT indicated that relevant considerations include whether the discrimination was 'overt' with overt discrimination more likely causing distress and humiliation, the existence of ridicule or exposure, whether the discrimination reflected or expose an asymmetry of power, influence and information and that it may be helpful to consider the claimant's description of the injury, the duration of consequences, the effect on past, current and future work, the effect on personal life or quality of life.
21. We remind ourselves that when considering awards for injury to feelings, a tribunal's focus must be on the effect of the unlawful discriminatory treatment on the claimant, not on the gravity of the discriminatory acts of the respondent.

22. The Court of Appeal in **Vento v Chief Constable of West Yorkshire Police (no 2)** 2003 ICR 318 CA gave specific guidance on the level of award and set down three bands of injury to feelings awards, including the range of award appropriate on the seriousness of the discrimination.
23. In respect of claims presented on or after 6 April 2023, the **Vento** bands, taking into account the Sixth Addendum to the September 2017 Presidential Guidance to take into account changes in the RPI All Items Index, are as follows:
 - a) A lower band of £1,100 to £11,200 (less serious cases);
 - b) A middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and
 - c) an upper band of £33,700 to £56,200 (the most serious cases) with the most exceptional cases capable of exceeding £56,200.
24. **Vento** also reminds us that after making an award for injury to feelings, the tribunal must stand back and have regard to the overall compensation figure to ensure that it is proportionate and not subject to double counting. The danger of double recovery also arises where a claimant claims an award for injury to feelings and personal injury.

Findings of Fact

25. The Claimant as at the date of this remedy hearing is 53 years old and he remains out of employment.

Claimant GP and OH records

26. The medical records from the Claimant's GP and occupational health ("OH") report were before us. We considered the GP notes from July 2022, when the Claimant first commenced sick leave up to just before the IMD posts, reflected the following, that on:
 - a) 26 July 2022, the Claimant was taking Propranolol, a beta-blocker used to treat blood pressure as well as anxiety with the Claimant receiving a fit note for anxiety [270];
 - b) 8 August 2022, he felt that his mental health had declined after he had met Matt Hourihan who had suggested an alternative position [269], an event that we had not found to be an unlawful act of discrimination;
 - c) 22 August 2022, the Claimant indicated that he was in a 'better place' after he had been off work, but was still struggling to motivate himself [269];
 - d) 7 September 2022, the Claimant had not improved as he had done previously and his dosage of the anti-depressant Sertraline (medication he had already been on for around 8 years [263], and beta-blocker Propanalol, were increased [269];
 - e) 14 September 2022, the Claimant's health had slightly improved with the increased dosage of his medication, but was still 'very tired' and 'fed up' with his Sertraline dosage increasing to 200mg [268];
 - f) 23 September 2022, a further Fit note was issued and by this time, the Claimant reduced his night-time Propanalol but was getting more anxious [267]; and
 - g) 29 October 2022, the Claimant was reporting that he was tired and weak with general aches and pains in his joints.

27. The Occupational Health report of 25 October 2022 indicated that the Claimant was currently not fit to return and that absence was likely to continue. The OH Adviser opined that it was '*hoped*' that the Claimant would improve within 6-8 weeks [194]. It was also their view that the Claimant had not developed a serious mental health problem but was displaying a psychological response to a combination of factors. We found that those medical records show a slight deterioration rather than an improvement in the Claimant's mental health in the period running up to the IMD posts but, due to the equivocal nature of the October OH Report, that there was no clear medical evidence at any stage prior to the IMD posts that the Claimant would be in a position to return to work; it was a hope only.
28. The medical records immediately after the IMD post were also considered.
29. The Claimant attended his GP on 21 November 2022, three days after the IMD posts [266], those notes reflecting the Claimant reporting symptoms of heightened anxiety. Despite the GP noting certain work-related matters, that work was '*causing him stress*', that the occupational health meeting had provided positive self-care advice but his '*employer doesn't want to listen not it*' and that he worked as a Sainsbury's manager, there is no reference to the IMD post or to anything particularly significant arising in work. The Claimant's Sertraline dosage was increased and an additional anti-depressant, Mirtazapine, was also prescribed at that consultation (as the Claimant had evidenced in his Disability Impact Statement).
30. The subsequent GP notes likewise make no reference to the IMD post, the GP notes from:
 - a) 5 January 2023, record that the Claimant was feeling '*slightly better*' and that the Claimant had also had a consultation with the mental health team; that he was going through grievance with his employer which was a stressful process and that he had engaged with a solicitor [264]; and
 - b) 3 March 2023, record that he had commenced counselling which he had found '*really helpful*' and was looking forward to his next session and that he was also doing online CBT, Cognitive Behaviour Therapy, following input from ARC, the local authority's community mental health provider [264].
31. The Claimant was referred by the Respondent to OH in March 2023 and, following a video consultation with the Claimant on 14 March 2023, the OH report of the same date indicated that the Claimant's estimated return to work at that stage was a further 8 weeks i.e. 15 May 2023 [198], advising that the Claimant seek a GP appointment for a medication review, that at that point the Claimant was engaging in weekly therapy and that return to work was subject to the Claimant's progress with therapy and response to treatment.
32. There is no indication that the Claimant was certainly now not going to be in a position to return to work or that the IMD post had now set back the Claimant such that any return to work would be delayed. Indeed again, the IMD post is not mentioned and again we found that this was likely because the IMD post was not at the forefront of the Claimant's mind at that point.
33. The Claimant further attended his GP on:
 - a) 22 March 2023, when the Claimant indicated that whilst counselling was helping, he did not feel he was recovering, still reporting symptoms of lethargy, low motivation and muscle pain as well as feeling useless;
 - b) 19 May 2023, when the Claimant indicated that he was '*no worse*' but was not really getting back to himself and felt he had '*plateaued*' [263]; and

- c) 14 July 2023, when he requested a letter from the GP indicating that his anxiety qualified as a legal disability.
34. No other GP notes were available before us in the Remedy Bundle and those that were provided end with the 14 July 2023 entry. No explanation was provided on why the Claimant's medical records from that date have not been provided. Again, no reference is made to the IMD posts.
35. Whilst we accept that these were just notes from the GP only and not a full reflection on what was discussed, it was with some surprise that we found that no reference was made in those notes to the IMD post and/or the impact of those posts had on the Claimant, despite specific references being made to work-related issues.
36. The Claimant gave evidence in his remedy statement that his anxiety had been heightened by the post and his live evidence was that he was '*confident*' that he had mentioned it to his GP. We found that had any specific work-related concern been raised by the Claimant to the GP, it was more likely than not that the GP would have noted it in the same way that the GP had regularly referenced work, including his position, his OH referrals and later his grievance and had noted the Claimant's meeting with Matt Hourihan on 8 August 2022 [269]. The Tribunal found that it was more likely than not that, that had the Claimant spoken of the IMD post and the impact of that, this would have been reflected in those notes. It was not.

Disability Impact Statement

37. We then considered the Claimant's Disability Impact Statement, prepared on 15 August 2023 at the outset of this litigation and prior to the liability judgment [205]. We were taken again to that statement on cross-examination at the remedy hearing and in particular to §36 where the Claimant had indicated that his symptoms of anxiety had worsened when he had met his line manager on 5 August 2022, an event that we had not found to be discrimination on the grounds of disability.
38. The IMD posts had been made on 18 November 2022 and whilst we were not taken to direct evidence of the exact day that the Claimant had become aware of them, we found it likely that this would have been by 21 November 2022. That day the Claimant attended his GP and in contrast to the reference that the Claimant had made to his 5 August 2022 meeting within his Disability Impact Statement, the Claimant did not indicate that his prescription of Mirtazapine on 21 November 2022, was as a result of any particular exacerbation of his symptoms following the IMD post.
39. No other specific evidence is given in that particular statement on how the Claimant felt, after the 18 November 2022 LinkedIn and internal posts within that Disability Impact Statement.

Liability Statement and Judgment

40. We reminded ourselves of various sections within the Claimant's Liability statement as to the impact of the post in which he had evidenced that it had caused him '*angst*' in having to field questions from friends and colleagues and connections on LinkedIn and that he had felt excluded '*humiliated*' and violated by the posts². This had been reflected in the reserved judgment at §255-§263.

Expert Report

41. The Claimant attended an assessment on 3 September 2024 with Dr Hussain Farooq, Consultant Psychiatrist instructed by the Claimant. His instructions were included in a letter

² CWS§129

from the Claimant's representative dated 21 August 2024 [210]. His report was provided on 6 September 2024 [218]. A summary of his opinion was at §4 of his report [222]. He made the following conclusions, that:

- a) The Claimant had from July 2022, pre-dating any alleged act of discrimination and when he first went off sick, been suffering from a mental disorder;
- b) The IMD post caused an exacerbation of his symptoms by 25%-50%;
- c) He felt let down by the litigation process;
- d) The post being mentioned on the internet maintained the Claimant's embarrassment and he continued to think about it but that did not meet the criteria for a mental disorder;
- e) The Claimant had made a considerable improvement in his psychological symptoms from the date of the IMD post to 3 September 2024 (date of assessment);
- f) He would benefit from a further 10-12 sessions of psychological therapy;
- g) With treatment, the prognosis for a considerable recovery was estimated to be between 6-18 months (with and without treatment respectively,) from September 2024; and
- h) The Claimant would benefit from the litigation ending.

42. Within §13 of the report, Dr Farooq also commented on the Claimant's mental state at assessment confirming that in his opinion the Claimant had made '*a considerable (approximately 60%) improvement in his psychological symptoms by the time of the assessment.*'

43. In November 2024, in response to additional questions from the Claimant's instructing solicitor [252], Dr Farooq responded as follows:

- a) the Claimant had been suffering from a psychiatric condition from 26 July 2022 when he first took absence from work i.e. before any conduct which the Claimant relied on as amounting to discrimination, of either Adjustment Disorder of Mixed Depressive and Anxiety Disorder (§4.1 [255]);
- b) whilst the condition had probably remained the same between 26 July 2022 and 17 November 2022, albeit with some fluctuations in severity, there had been no apparent significant improvement with psychotropic medication provided by his GP in this period (§4.1.1 [255]);
- c) he was still suffering from this condition on 17 November 2022, just before the IMD post §4.1.2 [255];
- d) There did not appear to be any indication that the Claimant was suffering from a mental disorder at the time of his assessment on 6 September 2024 (§4.2[255]);
- e) The psychological symptoms the Claimant was experiencing at the time of the assessment related to the IMD were still troubling him and the Claimant would still benefit from psychological treatment for those.

44. Again in response to further questions from the Claimant's legal representatives, Dr Farook reported the following on 11 March 2025 [347], that:

- a) it was probable that the majority of the Claimant's psychological difficulties were prior to the IMD post and that those difficulties resulted in the Claimant developing a psychiatric condition;
- b) Difficulties as a result of the IMD post resulted in an exacerbation of his condition, and not the development of a new condition and therefore would be expected to be less in comparison; and

- c) The lack of specific reference to the IMD post suggested that the exacerbation *'leans towards the lower percentage'* but that further enquiries needed to be made as to why he had not mentioned this to the GP, referencing the brevity of some GP consultations.

Claimant Remedy Statement

45. The Claimant had within his remedy statement referred to being concerned that he would never be able to recover to the extent that he could pursue a career at a level he was at prior to his dismissal and due to his *'anxiety being heightened by the post'* he had to seek a higher level of medical support and was prescribed the additional anti-depressant on 21 November 2022³. In the same section of his remedy statement, the Claimant also referenced the fact that shortly after the IMD posting he had submitted his grievance and, in relation to the protraction of that process (which did not form part of the Claimant's complaints) that it *'maintained my anxiety affording me no opportunity to recover'*.
46. In relation to the IMD posts themselves, the Claimant spoke of colleagues seeing the post on Yammer and that the Yammer post had remained visible for 42 days, but friends, associates, family members and LinkedIn connections seeing the LinkedIn post. The Claimant considered that even if he made a full recovery, that it would be *'unwise'* to return to a high profile, high pressure environment.
47. The Claimant has not obtained any form of alternative employment since the termination of his employment with the Respondent. Indeed, the Claimant confirmed in live evidence that whilst he has looked at job adverts, he has not applied for any alternative employment. He considers it *'unwise'* to look for alternative employment in a comparable position. He considers that he has taken steps to mitigate his financial exposure by selling his house and living with his parents.
48. We found that this position on alternative employment prospect, was not supported by his own medical expert, Dr Farooq who confirmed that the Claimant was no longer living with a recognised disorder by September 2024, having approximately 60% improvement in his psychological symptoms by the time of the assessment. On that basis, whether the exacerbation was 25% or 50% or somewhere between, due to the 60% improvement of his symptoms assessed by Dr Farooq, we found at the very least any exacerbation would have dissipated, but moreover that it was more likely than not, that the Claimant was in a better state of mental health by September 2024 than he had been before he had commenced his sick leave in July 2022.
49. The Claimant further asserted that his GP continues to sign him off as being unfit to work, but there was no evidence of this in the Remedy bundle. Indeed, save for the report from Dr Farooq [213], no medical records for the Claimant since July 2023, the entry of 14 July 2023 being the last [263], have been provided.
50. Further at §11 of his remedy statement, the Claimant complained of not having received an apology from either of the respondents in relation to the IMD posts despite his grievance on the specific issue having been upheld. We accepted that this was likely to prolong the Claimant's negative feelings irrespective of the outcome of the internal grievance and indeed Tribunal proceedings.
51. The Claimant evidences that his health massively deteriorated after reading the IMD post, something that he had not said in his original liability statement. The Claimant was cross-examined on whether that was in fact correct, with the Tribunal being reminded that throughout the liability evidence the Claimant had continually voiced that he had not been supported, a viewpoint that we had not agreed with in our liability findings and judgment. It

³ CRemedyWS\$9

was also put to him that he exaggerated, again being reminded that in our own liability judgment, we had also found the Claimant had tended to exaggerate.

52. However, we accepted that the Claimant's psychiatric health did deteriorate immediately after the IMD post and accepted the opinion of Dr Farooq that the Claimant was suffering from either an Adjustment Disorder or Mixed Depressive and Anxiety Disorder from 26 July 2022 when he first absented himself from work and that this condition did fluctuate over the period from that date to October 2022, when the IMD posts were made. We also accepted his opinion as set out in his report that IMD post did not cause any new psychiatric condition but exacerbated that existing condition.
53. We therefore found that the harm caused by that one last discriminatory act was the exacerbation of the Claimant's pre-existing mental health condition.

Conclusions

54. The Claimant in this case had a documented history regarding his mental health which he had historically managed with medication. The Claimant's own expert had opined that the Claimant had a pre-existing condition of either Adjustment Disorder or Mixed Depressive and Anxiety Disorder pre-dating the period that the Claimant's discrimination claims arose.
55. The Tribunal had found that a single act, the IMD post posted on Yammer and on LinkedIn in November 2022 constituted unlawful disability discrimination
56. The Claimant's expert identified that this was not a new psychiatric injury but a worsening of his symptoms, an exacerbation of that pre-existing condition. We concluded that the one discriminatory act that the Respondent had been found liable, caused that exacerbation relying on the expert evidence from the Claimant's psychiatrist.
57. Although the Claimant was vulnerable due to his pre-existing condition, the Respondent is liable for the full extent of the injury caused by that one discriminatory act. Applying the eggshell skull rule, and the fact that he was more susceptible did not reduce that liability, the Respondent must take the Claimant as they found him. We concluded however that an award of general damages for pain, suffering and loss of amenity should only reflect that exacerbation (**BAE Systems** §60).
58. The medical opinion from Dr Farooq, which we accepted, was that the discriminatory act was responsible for an overall deterioration in his mental health of between 25-50%. Therefore we concluded that damages should be apportioned accordingly.
59. We concluded that the extent of the exacerbation was on balance more likely than not to be at the lower end of the assessment made by Dr Farooq of a 25% exacerbation. We would repeat that at the liability stage of this case we had considered the Claimant to be an individual with a tendency to exaggerate. That view was consolidated at the remedy stage, with the Claimant repeating in live evidence that the IMD posting was the '*straw that broke the camel's back*' yet no reference to this in his witness statements (liability or remedy). We also noted the lack of emphasis on the IMD post within his liability statement, and no reference to the impact of this post within any of the GP notes nor, more significantly in the OH Report of March 2023 whereas the Claimant within his remedy statement emphasised the impact of the IMD post.
60. We considered JC Guidelines (17th Edition) and considered that the Claimant's psychiatric damage generally was not in the Moderately Severe Category (b), as had been submitted by the Claimant, but fell within the Less Severe (c) category (as an exacerbation of an existing condition,) or the lower end of a Moderate range but with a discount of 75% being applied for the exacerbation only. This was taking into account that:

- a) the IMD posts had impacted on the Claimant in the period following their publication, on the Claimant's relationship with friends and work colleagues but that this would have reduced as time progressed, particularly after the post had been removed;
 - b) the Claimant had found the 12 sessions of counselling that he had received in 2023 helpful, and that he had reduced his medication over the course of that year;
 - c) Dr Farooq's assessment was that as at September 2024 the Claimant was not suffering from a mental disorder; and
 - d) His prognosis was that the Claimant had made a considerable improvement in his psychological symptoms to 3 September 2024 (60%); and
 - e) that with treatment, the prognosis for a considerable recovery from September 2024 was estimated to be between 6-18 months (with and without treatment respectively).
61. Based on the range set out in the JC Guidelines 2017, we concluded that at best this placed the Claimant at the low end of the Moderate Category (c), at around £10,000 with a 75% discount for the exacerbation of an existing condition such that an award of £2,500 was appropriate for the personal injury that he had suffered.
62. We did consider it appropriate in this case to make a separate award of injury to feelings, an injury which we considered did extend beyond the Claimant's anxiety and depressive disorder and had continued beyond the period when his expert considered that he no longer had a psychiatric injury.
63. Whilst we had indicated in our liability judgment that intent would be an important factor when assessing compensation⁴, when it came to our own consideration of remedy, we did not consider that it was necessary to look at inference of damage or that intent was any relevant consideration in light of the report from Dr Farooq. We accepted that the Claimant had believed that there was purpose behind the postings, irrespective of our findings regarding lack of intent.
64. We took into account that the Claimant's feelings of humiliation and offence had not been assuaged by either the grievance outcome or the outcome of the liability judgment particularly as the Claimant has not received an apology, albeit the posts had been removed within 42 days.
65. We considered that a one off act such as the postings caused the Claimant embarrassment and humiliation that continued until the outcome of the liability judgment. However, he has now had the outcome of the liability judgment and the posts have been removed for some time.
66. We considered that the discriminatory postings would have resulted in a separate injury to the Claimant's feelings which we assessed would place him towards the top of the lower band of **Vento** and justified an award in the region of £7,500. In reaching this decision, we considered the similar employment tribunal cases that the Respondent's had provided in their written submissions.
67. We stood back and satisfied ourselves that we had not fallen into the trap of 'double-counting' when making an award for personal injury and injury to feelings.
68. Finally, turning to the claims for financial losses, we again noted that Tribunals may award the same as compensation is awarded in the county court and the proper measure is to put the Claimant back into the financial position he would have been in if unlawful act of discrimination had not taken place. The Claimant has recovered from his psychiatric injury

⁴ Liability Judgment §258 (**Eddie Stobart Ltd v Graham**)

through past treatment, including the course of counselling sessions received through his GP practice, and we did not consider that the cost of future private counselling would be losses flowing directly from the unlawful act of discrimination. We therefore decline to make a further award for any further private counselling.

69. We were not persuaded by the Claimant that the loss of earnings and other financial losses claimed were caused by the single act of discrimination for which the Respondent had been held accountable. We agreed with the Respondent, that the Claimant's arguments that but for the exacerbation in his mental health the Claimant would not have lost his job, was predicated on the assumption that he would have gone back to work within 4-6 weeks if the IMD posts had not been posted. We had not been persuaded that we had any evidence of this as:
- a) The OH Report of October 2022 being equivocal and couched in terms that the Claimant's anticipated return to work was only 'hopeful'; and
 - b) We had no medical evidence to assist what the position would have been had the IMD posts not been made, Dr Farooq not having been asked the question/not having dealt with such an issue and not dealing with the issue of whether posts extended the length of the symptoms.
70. We concluded that there was no evidence to persuade us that the Claimant's financial losses flowed directly and naturally from the unlawful act of discrimination and concluded that the pecuniary loss claimed was not caused by the act of the Respondent, as a consequence of the IMD posts.
71. In any event, even if we are wrong in that conclusion, we would have been satisfied that the Respondent had demonstrated that the Claimant had not mitigated his losses. The Claimant had been on a pathway to recovery in the lead up to the September 2024 expert assessment, such that by September 2024 he no longer had a psychiatric injury. He also had a 60% recovery of his symptoms by that point, symptoms that he had been living with prior to the unlawful act of discrimination in October 2022 and indeed prior to on sick leave in July 2022. His mental health was, by the latest September 2024, such that this would not have prevented him for looking for work. On cross-examination, the Claimant had confirmed that he had not looked for any alternative employment which the Respondent relied on in its own submissions.
72. We therefore make an award of total compensation to the Claimant in the sum of £10,000. We also considered that it was appropriate to add interest at the rate of 8%⁵, which we have applied to the:
- a) £7,500 award of injury to feelings, for the entirety of the period between the date of the unlawful act on 18 November 2022 to the date of the judgment of 11 July 2025 ("Calculation Date")⁶, a total of 967 days and amounting to £1,585.88; and
 - b) £2,500 award of personal injury, for the period commencing at the mid-point⁷ between the date of the unlawful act of 18 November 2022 to the date of the judgment, a total of 484 days and amounting to £266.20.

Employment Judge R Brace
Date 14 July 2025

⁵ Employment Tribunal (Interest on awards in Discrimination Cases) Regulations 1996

⁶ Regulation 6(1)(a)

⁷ Regulation 6(1)(b)

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JUDGMENT SENT TO THE PARTIES ON
16 July 2025

Kacey O'Brien
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS