



EMPLOYMENT TRIBUNALS

Claimant: Dannielle Smith
Respondent: HealthRota Limited
Heard at: East London Hearing Centre
On: 04 December 2025 and 26 January 2026 (In Chambers)
Before: Employment Judge Illing
Members: Ms M Legg
Mr L O'Callaghan

Representation

Claimant: In person
Respondent: Mr M Curtis (Counsel)

JUDGMENT

The judgment of the Tribunal is that: -

1. The complaint of unfavourable treatment because of something arising in consequence of disability is well-founded and succeeds. The remedy for that unfavourable treatment is as follows:
 - 1.1. The Tribunal makes the following recommendations:
 - 1.1.1. Within 6-months of the Employment Tribunal making this recommendation, the Respondent's senior management team, will engage an independent and appropriately qualified person to provide them with formal diversity training, particularly in relation to disability and relevant decision making and reasonable adjustments.
 - 1.2. The respondent shall pay the claimant the following sums:
 - 1.2.1. Compensation for past financial losses: **£16,998.96**

- 1.2.2. Interest on compensation for past financial losses calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: **£1,613.26**
- 1.2.3. Compensation for injury to feelings: **£15,000**
- 1.2.4. Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: **£2,847.12**
- 1.3. The awards above are given as net payments. These are the amounts the Claimant is to receive. The respondent is responsible for any tax or national insurance payments as required.

REASONS

Procedural history

1. This is the remedy hearing further to the Claimant's successful claim for unfavourable treatment because of something arising in consequence of disability. This liability hearing was on 28, 29, 30 and 31 January 2025.
2. Further to the liability Judgment, case management orders were provided, which included Orders for the preparation of a medical expert report. These orders were sent to the parties on 10 February 2025.
3. A remedy hearing was listed for 02 July 2025. However, upon attending, the parties had not complied with the Orders for the instruction of a medical expert. Further to this hearing a preparation time order was made against the respondent, being the sum of £3,650, with a strike out warning. The remedy hearing was re-listed for 04 December 2025 and further case management orders were made.
4. The Parties were ordered to instruct a joint expert taking into account the contents of Civil Procedure Rule 35.10 and the guidance in *De Keyser Ltd v Wilson [2001] IRLR 324*.
5. In the case management orders as sent to the parties on 10 July 2025, the Parties were reminded that disclosure was an ongoing obligation and that should there be new evidence, including medical evidence, these must be disclosed by way of copy documents as soon as possible.
6. The issues to be determined are as follows:
 - 6.1. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
 - 6.2. What financial losses has the discrimination caused the claimant?
 - 6.3. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

- 6.4. If not, for what period of loss should the claimant be compensated?
 - 6.5. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
 - 6.6. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
 - 6.7. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
 - 6.8. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 6.9. Did the respondent or the claimant unreasonably fail to comply with it?
 - 6.10. If so is it just and equitable to increase or decrease any award payable to the claimant?
 - 6.10.1. By what proportion, up to 25%?
7. Should interest be awarded? How much?

The hearing

8. Remedy bundle of 314 pages and the liability bundle of 201 pages were provided. The remedy bundle included the medical report from Dr Natalie Brunt (Chartered Clinical Psychologist) and was dated 29 September 2025.
9. We heard evidence from the Claimant
10. We also heard evidence from Mr Julian Webb for the Respondent, in relation to the question of whether the Claimant's employment would have ended in any event, i.e. without the discriminatory conduct. This issue being:

Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

- 10.1. This was heard as a preliminary issue, but subject to any finding on personal injury. The decision was given orally and the written reasons are provided below.

Conduct of the Hearing

11. Conduct prior to the hearing:
 - 11.1. There was an issue arising as to the disclosure of documents for the medical expert. The Claimant did not disclose to the medical expert her full medical records as the records produced were redacted.
 - 11.2. The respondent requested copies of the unredacted copies but the Claimant refused stating that the respondent was too late.

- 11.3. The medical report had been sent to the respondent after 8pm on a working day. The report was opened the following day.
- 11.4. The Claimant asserted that the 14-day time limited started from the date on which the report was sent to the respondent.
- 11.5. The respondent asserted that the time limit started on the morning of the following day, being the first working time that it had had the report.
12. Whilst the parties did seek assistance from the Tribunal, regrettably the correspondence was not dealt with. Prior to the hearing, the Claimant had not disclosed her unredacted medical documents nor had she allowed the respondent to ask further questions of the medical expert as she said it was too late. The Claimant stated that the redacted information was not relevant.
13. The respondent sought the medical evidence and the further questions, because the redactions and surrounding information suggested an underlying relevant condition that they asserted the expert needed to take into consideration.
14. During cross examination the Claimant confirmed that she was willing to disclose her documents, but that the respondent was too late in requesting them.
15. Neither party made an application for further disclosure or otherwise at the start of the hearing.

Findings of fact

16. The Respondent is a company that creates e-rostering software in the healthcare sector. The company is building a software application which allows doctors and nurses to self-manage their working time based on the demand of the service for their speciality areas.
17. The Respondent is a startup company that was incorporated in March 2017. At the time of the commencement of the Claimant's employment, the company employed under 10 employees including the 5 original directors. At the time of the Claimant's dismissal, the company employed 12 employees, including directors.
18. The Respondent was a small company with no specialist HR support.
19. The Claimant was employed as a mid-level software developer from 27 June 2022 until her dismissal with notice that terminated her employment with effect from 14 October 2023.
20. With regards to the conduct of the hearing and the request by the respondent for unredacted medical documents and for further questions; we find that it was reasonable for the respondent to make these requests and it was fair and proportionate for the Claimant to comply with her ongoing obligation for disclosure.

Judgment and reasons as sent to the Parties dated 10 February 2025 ("the Judgment")

21. At paragraph 142 of the Judgment, we concluded that the Claimant was diagnosed with bilateral femoracetebular impingement ("the Impairment") on 25 September 2023, with the effect being present from September 2022. We

concluded that the Claimant was a disabled person due to the substantial adverse effect on her ability to carry out day to day activities from this date.

22. We concluded that the something arising in consequence of the disability was the pain level and other effects such as lack of sleep, which led to the Claimant's poor work performance.
23. The Judgment concluded that the Respondent acted in a discriminatory manner on 14 September 2023, the discriminatory actions being the dismissal, with notice, of the Claimant by meeting and an email of this date.
24. The Judgment held that the complaint of unfavourable treatment because of something arising in consequence of disability was well-founded and succeeded.

Medical Report dated 29 September 2025

Documentary evidence

25. The Parties were ordered to obtain a joint medical expert report in order to instruct a single joint expert on the issue of psychological personal injury as alleged by the Claimant. The report was required to be prepared in accordance with the Civil Procedure Rule 35.10.
26. A medical report was obtained from Dr Natalie Brunt (Chartered Clinical Psychologist) dated 29 September 2025 and she provided a psychological assessment report. Dr Brunt conducted a video method interview with the Claimant on 29 September 2025 and the following assessments:
 - 26.1. A semi-structured clinical interview;
 - 26.2. Standardised psychometric tests of mood, anxiety and post-traumatic symptomatology; and
 - 26.3. A structured clinical interview in line with DSM-V criteria (American Psychiatric Association, 2013).
27. The report amounted to 65-pages and included the Claimant's GP and other relevant medical records, mitigation and tribunal documents.
28. The report included the following sections:
 - 28.1. Index Event – a single paragraph summarising the discriminatory conduct, being the dismissal by the respondent.
 - 28.2. Psychological Symptom Profile – this amounted to 29 paragraphs detailing what the Claimant reported or described to Dr Brunt, including the Claimant's psychological response to events after the discriminatory conduct, including the disclosure of emails prior to the dismissal discussing the Claimant's performance and the subsequent paranoia. A further event was also the Claimant's worry in relation to her financial position and withdrawal from friendships.
 - 28.3. This profile also detailed the report by the Claimant as to how the employment tribunal proceedings had caused her further stress and worry.

- 28.4. This profile reports the position from the Claimant's perspective and does not provide any conclusion at this stage of the report.
- 28.5. Medical records, supporting documentation and reported history – the medical records within the report amount to 15-pages and are copies from the original documents as provided by the Claimant.
- 28.6. The following is relevant in relation to these records:
- 28.6.1. There are significant redactions to the medical records provided.
 - 28.6.2. The medical records indicate an ongoing psychological condition although the details are mostly redacted.
 - 28.6.3. Dr Brunt has listed a chronological index of 23 personal injury documents / medical evidence to which she has referred.
 - 28.6.4. The medical record dated 03 September 2024 within the index are in fact GP records for the 06 October 2023 and 20 November 2023, both of which record that the Claimant is currently receiving CBT (Cognitive Behavioural Therapy) for PTSD (Post Traumatic Stress Disorder) and psychological treatment.
 - 28.6.4.1. The record of 06 October 2023 states "*currently she receiving CBT for PTSD*"
 - 28.6.4.2. The record of 20 November 2023 states *pt. is having psychotherapy treatment under NHS*".
 - 28.6.5. This single paragraph had the following statement:

Miss Smith reported that prior to the index events she had not experienced any psychological difficulties of significance.
 - 28.6.6. This paragraph also states:

She reported that since the index events she has received input from Psychiatry and is currently under a Consultant Psychiatrist.
 - 28.6.7. This paragraph summarises the psychological interventions to the Claimant, as reported by her to Dr Blunt, and with regards to interventions after the date of dismissal only.
- 28.7. Disability Impact Statement containing entries of significance – the whole statement is included within the medical report.
- 28.8. GP records with entries of significance – the following is relevant:
- 28.8.1. The records show that the GP record of 06 October 2023 is referred to in relation to the Claimant's medication only. The prior treatment for CBT for PTSD is not referred to by Dr Brunt.

- 28.8.2. The GP record of 20 November 2023 provides a fit note for 07 October to 17 December 2023. It does not refer to the ongoing treatment or prior diagnosis of PTSD.
- 28.8.3. Further fit notes are provided for the periods 15 December 2023 to 31 December 2023 and 01 January 2024 to 21 January 2024. These are one-month fit notes, with the GP anticipating the Claimant being able to work.
- 28.8.4. No further fit notes are disclosed or referred to in the medical report.

28.9. Medical records containing the following entries of significance:

- 28.9.1. A letter from Psychological Therapies Service (Waltham Forest) to patient; this confirms that the Claimant had been referred to this psychological service in January 2023 and was later assessed in March 2024 and was having weekly appointments.
- 28.9.2. These records are taken from the full set of disclosed medical records. They are redacted and refer to previous trauma and ongoing psychological treatment.
- 28.9.3. The CBT Therapist report of 26 June 2024 states that the Claimant was assessed and under treated from January 2023 onwards and that she was assessed with low mood at that time. This report identifies that the Claimants PHQ-9 score for low mood increased at the time of her dismissal.

28.10. Tribunal pleadings and correspondence – which are included in full.

28.11. Employment documents containing the following entries and correspondence of significance – this provides copies of emails between Mr Webb and the Claimant regarding her Impairment and are dated 20 March 2023 21 March 2023, 12 April 2023, 14 April 2023. All of these emails are directly between the Claimant and Mr Webb.

29. The report provides a summary that states the following:

Summary

I consider that Miss Smith is suffering from an Adjustment Disorder with mixed anxiety and depressed mood.

It is my opinion that on the balance of probability, but for the circumstances of the dismissal from her employment, she would not have developed this disorder. The factors most relevant in the causation of her presentation include:

- The sudden and unexpected nature of her dismissal, which came as a significant psychological shock;*
- The manner in which she later discovered that her employer had been discussing termination of her contract without her knowledge;*

- *The financial impact of her loss of earnings, particularly in relation to paying her mortgage and managing household commitments;*
- *The ongoing stress associated with employment Tribunal proceedings.*

Taken together, these events have, on the balance of probability, directly precipitated and sustained her adjustment disorder with anxiety and depression.

I consider that since Miss Smith obtained new employment and the financial strain she is under has eased somewhat, then she has experienced an improvement in her psychological difficulties.

If her current stressors (particularly the Tribunal proceedings) remain unresolved, her symptoms may persist and there is a risk of progression to a more enduring anxiety or depressive disorder.

Conversely, with the resolution of these stressors and the provision of appropriate psychological support, the prognosis is generally favourable.

I consider that, on the balance of probability, Miss Smith's Adjustment Disorder with mixed anxiety and depressed mood is likely to improve with the continuation of psychological and antidepressant treatment. She is currently prescribed antidepressant medication and has already engaged in around 10 sessions of psychological therapy, both of which are consistent with NICE guidance.

I recommend that Miss Smith completes a course of psychological therapy she is engaged in, typically 12 – 20 sessions in total. With the completion of therapy, continuation of antidepressant treatment as clinically indicated, and once the precipitating stressor has been formally resolved i.e. following the conclusion of Tribunal proceedings her prognosis is favourable, and her symptoms are likely to resolve within 6-months of conclusion of the proceedings.

On the balance of probability, it is my opinion that Miss Smith is currently disadvantaged in the employment market in respect of the type of work she was previously engaged with. This disadvantage arises from the manner in which she was dismissed, which has been judged discriminatory, and the psychological impact of that experience. While not indicative of a long term incapacity to work generally, the experience she underwent is likely to make reengagement in the same type of employment psychologically difficult and potentially retraumatizing.

Miss Smith gave a coherent and credible account of events and a range of psychological responses she has experienced since that time. The narrative of reported difficulties seemed in my opinion to be credible and commensurate to the index events, and I have no reason to believe that there was any exaggeration or fabrication of symptoms.

Miss Smith's reporting and medical records suggest that she is not more vulnerable to the effects of psychological trauma than most.

30. There is a paragraph summarising Dr Brunt's findings of the psychometric tests applied to the Claimant on 29 September 2025.
31. Dr Brunt does not provide any other discussion or reasoning for her findings within the summary other than as detailed above.

Oral evidence

32. In oral evidence the Claimant stated the following:
- 32.1. The Claimant was unclear in answering questions in cross examination whether she had told Dr Brunt that she had not experienced any psychological difficulties of significance prior to her dismissal, or not.
 - 32.2. The Claimant stated that she could not remember Dr Brunt asking her whether she had had prior psychological difficulties.
 - 32.3. When directed to the sentence in the report that reads “*Miss Smith reported that prior to the index events she had not experienced any psychological difficulties of significance.*” the Claimant stated that this could be read two ways but was unable to explain that second reading.
 - 32.4. The Claimant accepted in evidence that the medical reports were redacted and that the Respondent had requested unredacted copies. This request was made on the 14 October 2025. The medical report had been provided on the evening of the 30 September. The Claimant stated that she refused to disclose the unredacted documents as the request for these and further questions for the expert were made after the 14th day following the provision of the medical report. The parties had sought guidance from the Tribunal, but these applications were regrettably not progressed.
 - 32.5. Both parties confirmed prior to the hearing that they were ready to proceed.
 - 32.6. In cross examination the Claimant confirmed that she had not been asked for the redacted documents by the expert.
 - 32.7. When asked if Dr Brunt had asked the Claimant if she had had prior psychological issues prior to the dismissal the Claimant replied that she would need to know what Dr Brunt meant by significant.
 - 32.8. The Claimant confirmed that she had made the redactions prior to disclosure of the medical documents and GP records and when asked if anyone knew what was under the redactions, the Claimant stated that “*its implied from what’s left around it.*”
 - 32.9. The Claimant confirmed that the expert’s summary does not include any reference to any pre-existing condition or past difficulty or vulnerability. She stated in evidence that if Dr Brunt was in any doubt regarding the outcome, she would have expected her to ask for the original documents.
 - 32.10. The Claimant admitted that she was receiving talking therapy from April 2023 in relation to a previous trauma. The condition being treated was PTSD from a trauma in 2003 – 2006. The Claimant admitted that this was not the first time she had received treatment for this previous trauma. This treatment had started in 2016 as the Claimant was not ready prior to this date.
 - 32.11. The Claimant confirmed that she continued to have PTSD symptoms, affecting her mental health, from 2016 but to a lesser extent. She

confirmed that the treatment was in regard to her ability to form relationships.

- 32.12. The Claimant was asked if she had told the expert that she had had a prior PTSD diagnosis and she confirmed that she could not recall that she had specifically told her this.
 - 32.13. The Claimant accepted that PTSD is a significant injury but that she did not think that it was relevant or significant to her.
 - 32.14. The Claimant accepted in cross examination that it was important for the expert to understand her past psychiatric history in order to comment on the extent of the psychiatric injury as a result of the dismissal.
 - 32.15. The Claimant also accepted that it was important for the expert to understand how she was affected, her treatment and if it was successful for any prior condition.
 - 32.16. The Claimant accepted that she had had treatment for low mood with anti-depressants prior to her dismissal.
33. The Claimant had refused to allow the respondent to ask further questions as the request was a day late.
 34. The Claimant did not raise a question herself regarding the medical report including the following:
 - 34.1. That the statement by the expert that the Claimant had stated that there was no previous psychological difficulty of significance.
 - 34.2. That the Claimant was no more vulnerable to the psychological trauma than most.

The injury

35. The claimant says that she was deeply distressed immediately following her dismissal. The claimant did take time off work, and the Tribunal was shown medical evidence to demonstrate the extent of her injury.

Findings of fact regarding the personal injury and expert report

36. Having regard to the medical report and the oral evidence of the Claimant, we make the following findings:
 - 36.1. We reviewed the report and heard evidence from the Claimant. Additionally, the Claimant did not raise questions of the expert in relation to this statement regarding no prior psychological difficulties and she was unable to explain how this statement could be read in any other way than its common-sense interpretation. We find that the Claimant did tell Dr Brunt that prior to the index events she had not experienced any psychological difficulties of significance and this is recorded in the medical report, which was written contemporaneously to the interview.
 - 36.2. That the Claimant had suffered PTSD from trauma in 2003 – 2006, that she had had treatment in 2016 and was currently undergoing treatment for this from April 2023 onwards.

- 36.3. That the Claimant had redacted her medical documents and failed to disclose to the expert any detail of the redaction, despite these being psychological and in relation to her prior trauma and PTSD diagnosis.
- 36.4. The emails as disclosed within the medical report are directly between the Claimant and the Respondent, there are no hidden emails or evidence of discussions behind the scenes as asserted by the Claimant. The evidence as considered at the liability hearing provided emails between the Claimant's manager and / or directors regarding her performance. No reason for the disclosure of these documents was provided other than they were disclosed as part of the Tribunal process following the Tribunal's orders. We find that the respondent was obliged to produce these documents and was not at fault for doing so.
- 36.5. The discussion with Dr Brunt does detail the Claimant's concerns for events following her dismissal, including her financial worries and the stress of the tribunal proceedings.
- 36.6. The Claimant's fit notes record that the Claimant was signed as unfit for work from 07 October 2023 – 21 January 2024.
- 36.7. The medical records show that the Claimant was being treated for low mood prior to her dismissal and that following her dismissal it had become more significant.
- 36.8. The medical records are not discussed nor are they linked to the summary of findings, i.e. Dr Brunt's opinion.
37. The respondent raised issues with the Claimant regarding the medical report during cross examination. The disputed points being specifically in relation to the Claimant reporting to Dr Brunt that she had not experienced any psychological difficulties of significance prior to the dismissal. Issue was also raised in relation to Dr Brunt's finding that "*she is no more vulnerable to the effects of psychological trauma than most.*"
38. Issue was also raised regarding the redacted documentation and the failure to disclose unredacted copies.
39. The medical records as repeated with the medical report indicate that the Claimant was undergoing psychological treatment for a psychological condition (low mood) prior to the discriminatory act. The medical reports evidence that the discriminatory act, on the balance of probabilities, caused a worsening of the Claimant's condition. We find that this prior existing condition was relevant to the evaluation of the Claimant's claim for personal injury.

Ongoing employment

40. The Claimant was successful in her claim for an enhanced Personal Independence Payment (for both the daily living and mobility components) and she confirmed in oral evidence that this was because of her Impairment and her mental health. She accepted that she had used the findings of the Tribunal following the liability hearing as part of her application process.

41. We find that the Claimant's inability to work and her receipt of benefits was, on balance, primarily because of her Impairment.
42. The Claimant was employed by the respondent following an offer on 04 May 22. Mr Nunn had interviewed the Claimant and she was engaged on a lower salary than advertised as he did not believe that she had the technical skills required.
43. The Claimant has the Impairment of bilateral femoracetabular impingement which is a deformity of both hip joints. Because of this Impairment, she suffers from pain and this impacts her ability to sleep.
44. On 15 Dec 22 the Claimant received a pay rise to reflect that she had achieved the minimal level required by the role.
45. In January 2023, the Tribunal found that the Claimant was assigned a more complex task and that her work grew in complexity.
46. During a meeting in March 2023 the performance issues were raised with the Claimant including that tasks had been taking too long and that she needed to ask for help sooner. The Claimant also accepted that she had been struggling and not been on form but had tried to give Mr Webb context about pain and sleep being factors.
47. We found previously, in relation to performance the following:
 - 47.1. That performance concerns were raised in March 2023.
 - 47.2. That the Claimant accepted that she had performance issues and had been struggling.
 - 47.3. No specific support or Performance Improvement Plan was put in place.
48. We also found that in September 2023 the Claimant attended an orthopaedic specialist and confirmed that the pain was getting worse and affecting her daily activities.
49. Further to our findings, we concluded that the Claimant's performance was, at least in part, affected by her pain level and the impact on her sleep.
50. The Claimant accepted that her performance had been impacted, but she stated that this was due to the effects of her impairment.
51. We found that at the point of dismissal, the Claimant was unaware of the performance issues upon which the respondent relied upon.
52. In evidence Mr Webb for the Respondent, accepted that the R should have provided a performance improvement plan and an occupational health review.

Oral evidence

53. The Claimant accepted that her undated disability impact statement as prepared for the full merits hearing in January 2025 was correct at that time. This confirmed that she had had a steroid injection in June 2024 but did not identify any improvements to her Impairment or associated pain and sleep issues.

54. In evidence the Claimant accepted that the disability impact statement was true at this time. She confirmed that her condition was degenerative and that it would get worse, although this was not a linear progression
55. The Claimant also stated that her condition had now improved with treatment, including different pain medication, sleep medication and two steroid injections. She also stated that had the respondent conducted an Occupation Health review and a performance improvement plan, she would not have been dismissed.
56. The Claimant also confirmed that there was no medical evidence in the bundle in relation to these improvements.

Findings of fact of conduct after the discriminatory act

57. The Claimant is seeking aggravated damages, it is therefore for the Tribunal to determine the facts after the alleged discriminatory act.
58. The discriminatory act is the dismissal of the Claimant.
59. The Claimant asserts that the Respondent acted in the following manner, which has aggravated her injury:
 - 59.1. The manner in which it conducted the tribunal proceedings including delays to disclosure, the failure to obtain the medical report and its actions resulting in the adjournment of the July 2025 remedy hearing.
60. We have found that the respondent did act in a manner that resulted in the adjournment of the July 2025 remedy hearing. As a consequence the respondent was ordered to pay the Claimant's preparation time costs.

The law

Injury to feelings

61. By section 124(2)(b) Equality Act 2010, the remedy for discrimination may encompass an order by an Employment Tribunal that the respondent pays compensation and we are obliged to consider injury to feelings as we have upheld a complaint of discrimination of something arising from the Claimant's disability.
62. We are mindful that the award is intended to compensate the claimant for the anger, distress and upset caused by the unlawful treatment they have received. It is compensatory, not punitive.
63. The general principles that apply to assess an appropriate injury award are set out by the EAT in ***Prison Service v Johnson*** [1997]IRLR 162 para 27. These are:
 - 63.1. *Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.*
 - 63.2. *Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the*

other hand, awards should be restrained, as excessive awards could, to use Lord Bingham's phrase, be seen as the way to untaxed riches.

- 63.3. *Awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think this should be done by reference to any particular type of personal injury award; rather to the whole range of such awards.*
- 63.4. *In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.*
- 63.5. *Finally, tribunals should bear in mind Lord Bingham's reference to the need for public respect for the level of awards made.*
64. These principles were approved by the Court of Appeal in **Vento v Chief Constable of West Yorkshire Police (No.2)** [2003] IRLR 102, which further said this (at paragraphs 50 and 51):

“It is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury. In these circumstances an appellate body is not entitled to interfere with the assessment of the employment tribunal simply because it would have awarded more or less than the tribunal has done. It has to be established that the tribunal has acted on a wrong principle of law or has misapprehended the facts or made a wholly erroneous estimate of the loss suffered. Striking the right balance between awarding too much and too little is obviously not easy.”

65. At paragraph 65 of **Vento**, the Court of Appeal then set out the bands for which its judgment is best known.
66. As the Court of Appeal said of the Vento bands in **Kemeh v Ministry of Defence** [2014] IRLR 377 (at paragraph 54):

“they are designed to ensure a measure of consistency and fairness in the way in which tribunals approach their task”, before adding the essential reminder that “the aim is to compensate for genuinely injured feelings, not to punish an employer for bad management or poor personnel practice”.

67. We have also considered ***Eddie Stobart Ltd v Miss Caitlin Graham [2025] EAT 14***. It is for the Tribunal to give consideration to the evidence of injury and the relationship between the manner of discrimination and the severity of the injury.
68. The EAT in ***Eddie Stobart Ltd and Shakil v Samsons Ltd [2024] EAT 192*** has identified further relevant principles:
- 68.1. Tribunals must assess the actual impact on the claimant;
 - 68.2. Overt discrimination is likely to heighten the level of injury to feelings;
 - 68.3. Concern about the respondent's ability to pay is not relevant;
 - 68.4. The respondent's conduct in defending the claim in an inappropriate manner can increase the level of injury to feelings;
 - 68.5. In cases of pregnancy discrimination, concern for an unborn child can increase the level of injury to feelings.
69. When quantifying an award for injury to feelings, we must focus on the effect of the discriminatory act on the Claimant and look to compensate for the injury suffered not the manner of the discrimination.
70. This claim was issued on 19 January 2024. The relevant Vento bands (***Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871***) for this claim are the 2023 – 2024 values, which are:
- 70.1. Lower Band: £1,100 – £11,200 for "*less serious cases, such as where the act of discrimination is an isolated or one-off occurrence*".
 - 70.2. Middle Band: £11,200 – £33,700 for "*serious cases, which do not merit an award in the highest band*".
 - 70.3. Upper Band: £33,200 – £56,200 for "*the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race*". Only in "the most exceptional case" should an award for injury to feelings exceed the top of this band.
71. These figures have taken the 10% uplift for inflation into account. ***De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879***. We have also taken into account the Presidential Guidelines relevant to discrimination compensation.
72. The effect of the discrimination on the Claimant is important and we have considered the following cases:

Base Childrenswear Ltd v Otshudi [2019] WLUK 722

- 72.1. In ***Base Childrenswear Ltd*** the EAT held that in deciding whether the case should fall within the low or middle **Vento** bracket, a tribunal might consider it relevant to have regard to whether the discrimination was a one-off act or part of a continuing course of conduct. Each such assessment had to be fact and case-specific.
- 72.2. The Tribunal must also remind itself that it had to have regard to the effect on the employee. The Tribunal should also be careful to separate out those elements, essentially events post-dismissal, that may otherwise be

taken into account under other heads of loss. The purpose of this being to properly consider the impact on the employee of the discriminatory act. In this case, the EAT held that the Tribunal had not erred in determining that this case fell within the middle **Vento** band. An award of £16,000 for injury to feelings was upheld by the EAT, which was in the middle of the middle **Vento** band at the relevant time.

- 72.3. There was also a £3,000 award for injury to feelings and £5,000 (reduced to £4,000 on appeal) for aggravated damages in relation to the failure by the respondent to respond to the grievance, the change to its response to the Tribunal claim where the response initially stated that the dismissal was by reason of redundancy and changing this to suspected theft, the failure to disclose documents and the failure to apologise regarding the change in response.

Salter v Imperial College Healthcare NHS Trust UKEAT/0122/14 (15 June 2015, unreported)

- 72.4. In *Salter* the EAT held that following a single act of discrimination on the grounds of race, an award by the Tribunal within the lower band of the **Vento** bands was within the level of awards that the Tribunal could properly make. The Tribunal awarded the Claimant the sum of £6,000 for injury to feelings. This was, in 2015, at the top of the lower **Vento** band. There was no award for personal injury or aggravated damages.

Personal Injury

73. We have had regard to the Judicial College Guidelines 17th Edition in relation to the Claimant's claim for personal injury.
74. We have also had regard to the medical evidence and medical report and the Claimant's oral evidence.
75. The Tribunal is mindful that whilst claimants can claim damages for personal injury caused by unlawful discriminatory acts including detriment for whistleblowing (*Sheriff v Klyne Tugs (Lowestoft) Ltd [1999] IRLR 481* and *Virgo Fidelis Senior School v Boyle [2004] IRLR 268*), it must also consider and endeavor to identify where injury to feelings ends and physical and psychiatric injury starts to avoid double counting.
76. We have considered the causes of the injury and whether we need to consider whether the harm is "divisible" or "indivisible".
77. Divisible Harm is where different acts cause different damage, or quantifiable parts of the damage. In these cases, we must determine and award compensation only for that part of the harm for which the respondent is truly responsible.
78. Indivisible Harm is where multiple acts result in the same damage, usually either:
- 78.1. Monocausally: where all of the acts operate in the same way to cause the damage, only one act could have actually caused the damage, but it is impossible to tell which of them was the actual cause; or

- 78.2. Multicausally: where a single condition or harm is caused by a combination of separate acts or factors. For example, where the cumulative effect of their separate acts crosses a threshold that gives rise to that damage, or distinct acts combine to produce a single form of damage.
79. If the harm is indivisible, any respondent whose act has been the proximate cause of the injury must compensate for the whole of it.
80. The question of whether an injury is divisible or not is a matter of evidence, but it is, *'more likely that an injury will be held to be indivisible if the competing causes are closely related to the injury and it is difficult to separate out the consequences'* (***Olayemi v Athena Medical Centre & Anor*** UKEAT/0140/15, paragraph 25).
81. The above cases of ***Konczak*** and ***Olayemi*** have considered the difficult issues of causation where the claimant has a pre-existing psychiatric condition that is not attributable to the respondent's discriminatory treatment. The following principles apply:
- 81.1. The Claimant must show that the respondent's wrongdoing was a material cause of their psychiatric condition.
- 81.2. Any pre-existing condition suffered by the Claimant may be taken into account by the Tribunal by way of a reduction to any award of compensation to take into account of any risk that the claimant may have suffered from the further psychiatric condition in any event because they were vulnerable.
- 81.3. The respondent may argue that there is some other material cause beyond vulnerability, but it is not a defence for them to progress this argument unless the resultant harm from this other material cause is truly divisible.
- 81.4. Where the resultant harm is truly divisible, the tribunal must estimate and award compensation for the part of the harm for which the respondent is responsible.
82. If the question of divisibility arises the Court of Appeal in ***BAE Systems (Operations) Ltd v Konczak*** [2017] EWCA Civ 1188 provides the following:
- 82.1. *Where the harm has more than one cause, a respondent should only pay for the proportion attributable to their wrongdoing unless the harm is truly indivisible.*
- 82.2. *The burden is on the employer to raise the issue of apportionment.*
- 82.3. *Tribunals should try to 'identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrong, and a part which is not so caused.' The tribunal should see if it 'can identify, however broadly, a particular part of the suffering which is due to the wrong'.*
- 82.4. *Where such a 'rational basis' can be found, the tribunal should apportion accordingly, even if the basis for doing so is 'rough and ready'.*

- 82.5. *Any such assessment must consider any preexisting disorder or vulnerability, and account for the chance that the claimant would have succumbed to the harm in any event, either at that point or in the future.*
- 82.6. *In cases of psychiatric injury, careful evidence should be obtained from experts, particularly in relation to the likelihood of suffering the harm in any event.*
- 82.7. When it comes to the assessment of damages in relation to a proven psychiatric injury, tribunals are *'obliged to approach the assessment of damages for psychiatric injury on the same basis as a common law court in an ordinary action for personal injuries'* (**HM Prison Service v Salmon** [2001] IRLR 425).
83. In considering the Judicial College Guidelines, we have considered the following when considering the Claimant's psychiatric injury:
- 83.1. the injured person's ability to cope with life and work;
- 83.2. the effect on the injured person's relationships with family, friends and those with whom he comes into contact;
- 83.3. the extent to which treatment would be successful;
- 83.4. future vulnerability;
- 83.5. prognosis;
- 83.6. whether medical help has been sought;
- 83.7. whether the injury results from sexual and/or physical abuse and/or breach of trust; and if so, the nature of the relationship between victim and abuser, the nature of the abuse, its duration and the symptoms caused by it.
84. We have also considered the 4 categories of award as follows:
- 84.1. Less Severe: between £1,880 and £7,150. Where the claimant has suffered temporary symptoms that have adversely affected daily activities;
- 84.2. Moderate: between £7,150 and £23,270 as a result of the discrimination, marked improvement has been made by the date of the hearing and the prognosis is good;
- 84.3. Moderately Severe: between £23,270 and £66,920. Moderately severe cases include those where there is work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment. These are cases where there are problems with factors 1 to 4 above, but there is a much more optimistic prognosis than severe.
85. Severe: between £66,920 and £141,240. Where the claimant has serious problems in relation to the factors at 1 to 4 above, and the prognosis is poor.
86. The tribunal is also mindful that injury to feelings and psychiatric injury, whilst separate heads of loss, do overlap. If there is overlap, any award should be reduced to reflect this.

87. Again, we have considered **Basewear Childrenswear Ltd and Salter**, the Tribunal must direct itself to ensure that any total award is considered, including both Injury to Feelings and Personal Injury and whether, on the facts of the case, any award is not manifestly excessive. When considering the claim in respect of personal injury, the Tribunal must also be mindful not to allow double recovery for factors taken into account under other heads. Additionally, the Tribunal must consider whether the evidence of discriminatory acts that have caused the Claimant to suffer that personal injury.

Aggravated damages

88. In considering whether to make an award for aggravated damages, the Tribunal must have regard to matters after the discriminatory act, in this case, the Claimant's dismissal. These are not included in the initial assessment of Injury to Feelings or Personal Injury and should consider whether the Claimant's injury has, in fact, been aggravated.

Financial Loss

89. Any award of compensation will be assessed under the same principles as apply to torts.
90. The central aim is to put the claimant in the position, so far as is reasonable, that he or she would have been had the tort not occurred (**Ministry of Defence v Wheeler [1998] IRLR 23** and **Chagger v Abbey National plc [2010] IRLR 47**).
91. We are mindful that the sum is not determined by what the tribunal considers just and equitable in the circumstances as it would do in an unfair dismissal award (**Hurley v Mustoe (No 2) [1983] ICR 422**), only those losses caused by the unlawful act will be recoverable. For example, where an individual would have lost their job at some point in any event, and if the discriminatory dismissal they have suffered has not altered their job prospects, the losses suffered after the date when the individual would have been dismissed anyway have not been caused by the discriminatory dismissal.
92. Further, in the general law of tort losses that are too remote and unforeseeable will not be recoverable.
93. The types of financial loss that are recoverable are in general the same as for an unfair dismissal compensatory award and will include the value of lost earnings and benefits. The calculation of the financial losses the claimant has suffered will also be broadly similar to awards for unfair dismissal are the 'old job' facts and the 'new job' facts.
94. We need to compare the financial benefits had the claimant not been treated unlawfully with the financial benefits the claimant has been able to obtain or will be able to in the future (**Chagger**). Including the following:
- 94.1. whether the employment would have terminated anyway,
 - 94.2. whether the individual would have been promoted or received a pay rise,
 - 94.3. what employment has been or will be obtained,

- 94.4. what the financial rewards will be and whether these will increase to meet the losses currently being suffered at some point in the future.
- 94.5. We can also take into account the chance of the original employment not continuing, and the chance of any particular employment arising in the future.

Adjustments to a discrimination award

95. A discrimination award can be subject to adjustments including the following:
 - 95.1. Possibly contributory conduct.
 - 95.2. Failure to comply with the ACAS Code of Practice;
 - 95.3. Interest can be added to the awards for injury to feelings, personal injury, aggravated damages and the award for financial loss;
 - 95.4. Where a dismissal is both discriminatory and unfair, the tribunal should make the award for compensation under the discrimination legislation, but may also make a basic award (see *D'Souza v London Borough of Lambeth* [1997] IRLR 677).

Interest

96. An award of interest on an award is at the discretion of the Tribunal.
97. Reg 6(1)(a) of the Industrial Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 provides that the period over which interest accrues begins with the date of the discrimination and ends on the date the tribunal calculates compensation. We find that this period is 15 September 2022 to 27 January 2025, which is a period of 866 days.
98. Interest is calculated as simple interest accruing from day to day (Reg3(1)) at an interest rate of 8%.

Submissions

99. The oral and written submissions were taken into account by the Tribunal.

Remedy

Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

100. The Claimant is no longer employed by the respondent and has asked that the Tribunal make a recommendation to require that the Directors of the Respondent participate in Disability Awareness training.
101. We conclude that it would be fair and proportionate to require the respondent to undergo appropriate equality and diversity training at the most senior level of the organisation. We make the following recommendation:
 - 101.1. Within 6-months of the Employment Tribunal making this recommendation, the Respondent's senior executive team, including the Board, will engage an independent and appropriately qualified person to

provide them with formal diversity training, particularly in relation to disability and relevant decision making and reasonable adjustments.

What financial losses has the discrimination caused the claimant?

102. The Claimant was dismissed on 14 September 2023 and started new employment on 15 October 2024. This amounts to a total of 397 days, or 56-weeks' and 5-days of unemployment.
103. The Parties agree that the weekly net earnings were £713.74.
104. The Claimant claims that her pension contributions were £154.35 per week. Having heard from the Parties it was agreed that the weekly net contribution was £52.89 per week.
105. The Claimant also claims the following financial losses which are agreed:
 - 105.1. Costs of seeking new employment of **£25.20**
 - 105.2. Medical costs for prescriptions of **£107.90**.
106. There is no loss of Statutory Employment Rights as this was not an unfair dismissal claim and the Claimant did not have the required 2-years' of service.

Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

107. The Claimant obtained further work and began on 15 October 2024.
108. The respondent has not provided evidence as to further mitigation efforts that could and should have been taken by the Claimant.
109. The Claimant has provided evidence and oral testimony to detail her attempts to seek employment.
110. The Claimant was signed off sick from 07 October 2023 until 21 October 2024.
111. Subject to any findings for personal injury and whether there was a chance that her employment would have ended in any event, the Claimant has found part time employment from October 2024. We are satisfied that her endeavours were reasonable.

What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

112. We have found that the distress to the claimant was immediate and significant and it affected her and her confidence severely and continued to impact her.
113. We have considered the actual injury suffered by the claimant and have arrived at what we consider is a just award to her. The injury to the Claimant is evidenced in her medical records and fit notes confirming she was unfit to work. This is not "*scant*" evidence and we have found that the Claimant was impacted, to her detriment, immediately following her dismissal for a period of time.
114. We have taken note that the Claimant remained signed as unfit for work for a period of 3-months, following which no further fit notes were disclosed.

115. Additionally, the Claimant has averred that the discriminatory conduct has caused such injury to feelings as to impact on her ability to return to work in the same industry. No evidence was provided to support these assertions.
116. The Claimant asserted in her written evidence that the discriminatory conduct has impacted her personal life, impacting relationships and her day-to-day activities. No evidence was provided to support these assertions.
117. We have endeavoured to determine an award that is not too low nor too high, i.e. to strike a balance and we have considered relevant cases, with the awards being uplifted to give figures that are relevant today.
118. Whilst the discrimination was a one-off occurrence, it resulted in the Claimant's dismissal and had an immediate and lasting effect on her. We have taken the Claimant's assertions at their face value with regards to the impact of the dismissal on her returning to the industry and the impact on her personal life.
119. We have also found that the following are facts that evidence the immediate and significant effect on the Claimant following the discriminatory act:
 - 119.1. The medical evidence shows that the Claimant's prior low mood deteriorated immediately after her dismissal and she was signed as unfit for work from 07 October 2023 to 21 January 2024.
 - 119.2. We have previously found that the Claimant was unaware of the performance issues prior to her dismissal and that the dismissal itself was a shock to her.
120. Having considered all of the above, we conclude that the Respondent's actions caused an injury to the Claimants feelings.
121. In considering the amount of the award to make to the Claimant, we have had regard to **Vento; Eddie Stobart; Base Childrenswear Ltd and Salter**.
122. We distinguish this case from **Base Childrenswear Ltd** and **Salter** in that whilst both identify single acts of discrimination by the Respondent, the impact of the discriminatory act on the Claimant was less severe than the impact in **Base Childrenswear**, but more severe than the impact in **Salter**.
123. We find that an award at the lower end of the middle **Vento** band is appropriate.
124. The claimant issued her claim in January 2024 and the relevant Vento bands are:
 - 124.1. Lower band £1,100 - £11,200
 - 124.2. Middle band £11,200 – £33,700
 - 124.3. Upper band £33,700 - £56,200
125. The Claimant was dismissed. Whilst this was a one-off incident, it caused her significant distress and impacted her mental health for the period 07 October 2023 to 21 January 2024. We therefore conclude that an award of the sum of **£15,000** is just and equitable in all of the circumstances.
126. We are satisfied that this award will compensate the Claimant for the anger, distress and upset caused by the unlawful treatment she has received. We are

satisfied that this award is compensatory for the Claimant and not punitive to the Respondent.

Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

127. Having considered the documentary and oral evidence from the Claimant we conclude the following:
 - 127.1. That the medical report was prepared without full disclosure of a relevant prior psychological injury.
 - 127.2. That the Claimant did not disclose the prior injury to the expert during the interview or otherwise. Nor did she raise questions following receipt of the report to ensure that the report was accurate.
 - 127.3. In failing to raise questions, the Claimant has accepted the expert's findings that she had had no prior psychological difficulties of significance and that she was no more vulnerable than most.
 - 127.4. The expert was required to provide a report to determine the extent of the psychological injury (if any) caused by the discriminatory conduct of the Respondent. The expert has not evaluated the Claimant's prior history as this was not fully disclosed to her and she has acted in reliance on the Claimant's assertion that there was no prior psychological difficulty of significance.
 - 127.5. In failing to provide full documentation, and in the expert failing to request these and / or question the Claimant in relation to the prior PTSD diagnosis which was under treatment at the time of the Claimant's dismissal, i.e. the index event, the expert has not evaluated the extent of the psychological injury caused by the respondent's conduct.
 - 127.6. We have considered the four bullet points provided by Dr Brunt as her evaluation:

The sudden and unexpected nature of her dismissal, which came as a significant psychological shock;

- 127.6.1. The evidence for this is the medical evidence of a worsening of the Claimant's previous condition of low mood and the Claimant's own explanation to Dr Brunt.
- 127.6.2. We found previously, in relation to performance that performance concerns were raised in March 2023 and that the Claimant accepted that she had performance issues and had been struggling because of her Impairment, but not solely due to her Impairment.
- 127.6.3. Without a full and transparent process, any dismissal will be a shock and unexpected. Dr Brunt has held that the Claimant was no more vulnerable than anyone else but has not taken the prior diagnosis into account in making this finding.

The manner in which she later discovered that her employer had been discussing termination of her contract without her knowledge;

127.6.4. The evidence provided shows emails between the Claimant and Mr Webb. We have not been taken to evidence of discussions regarding the Claimant's termination without her knowledge.

127.6.5. Evidence of any discussion between the Claimant's manager and / or any directors would have been required disclosure as part of the Tribunal process. No evidence to suggest any ulterior motive has been put forward or evidenced. We have found that this disclosure was after the discriminatory act and not an act for which the respondent is at fault. In any event, it would be reasonable for the respondent's manager and / or directors to be discussing performance related matters.

The financial impact of her loss of earnings, particularly in relation to paying her mortgage and managing household commitments;

127.6.6. We were not taken to any documents to indicate these concerns other than the discussion of these between Dr Brunt and the Claimant. It is reasonable to expect that these would be real and genuine concerns for the Claimant after being dismissed.

The ongoing stress associated with employment Tribunal proceedings.

127.6.7. We were not taken to any documents to indicate these concerns other than the discussion of these between Dr Brunt and the Claimant. It is reasonable to expect that these would be real and genuine concerns for the Claimant after being dismissed.

127.6.8. The Tribunal's previous decision has highlighted where the respondent has not acted in a prompt manner to comply with the Tribunal's orders and as a consequence this resulted in the postponement of the July 2025 hearing. The respondent was ordered to pay costs and we have found that they have complied with the Tribunal's orders subsequently.

127.7. We have reviewed the medical evidence within the medical report and the concluding summary. We are not satisfied that the summary provided explains the link between the medical documents and the findings specifically the link to a newly identified condition being an Adjustment Disorder, alongside mixed anxiety and depressed mood.

127.8. The Claimant's medical documents, and the contents therein, are not discussed within the medical report.

127.9. We have found, and the Claimant has accepted, she had a prior psychological condition. We have found that in the absence of this being expressly evaluated and either excluded or included, it is a relevant condition.

- 127.10. In applying the principals summarised in *Olayemi* we have endeavoured to determine whether the respondent's discriminatory act was the material cause of the Claimant's mental health condition and / or whether there was another material cause. If so, the Tribunal must consider whether the causes are truly divisible or not.
- 127.11. The difficulty the Tribunal faces is the inconsistency between the following:
- 127.11.1. The medical records, GP letters etc, are redacted but remaining details identify that the Claimant had a psychological difficulty prior to her dismissal.
 - 127.11.2. The Claimant has admitted that she has suffered from PTSD for which she was receiving treatment prior to her dismissal.
 - 127.11.3. The Claimant has admitted, and the records evidence, that the Claimant was suffering from low mood prior to her dismissal.
 - 127.11.4. Within the Psychological Symptom Profile of the medical report, there is no reference to any psychological difficulty or treatment prior to the dismissal.
 - 127.11.5. The medical report states that the Claimant reported that prior to the dismissal she had not experienced any psychological difficulties of significance.
 - 127.11.6. The medical report also states that the Claimant is no more vulnerable to the effects of psychological trauma than most.
- 127.12. There is inconsistency between the medical records identifying an individual with ongoing psychological difficulties and a medical report that identifies the Claimant as an individual with no vulnerabilities. The report states "*but for the circumstances of her dismissal from employment, she would not have developed this disorder.*" The disorder being Adjustment Disorder, alongside mixed anxiety and depressed mood.
- 127.13. Whilst the Tribunal must consider the chance that the Claimant may have suffered some other cause to trigger the condition, for example she was undergoing medical investigations in relation to the Impairment and the Claimant had a prior diagnosis of PTSD, we are in difficulty where it appears that material facts have not been taken into account or reviewed and discounted with an explanation.
- 127.14. We conclude that the expert did not provide an analysis with reasoning to determine and support her conclusions within the summary of her report. In drawing this conclusion, we cannot give weight to this report or the findings within it.
- 127.15. The Claimant was signed as unfit for work from 07 October 2023 – 21 January 2024. She was under psychological treatment prior to her dismissal and subsequently. We have reviewed the experts report and

the medical evidence as disclosed and we are not satisfied that the Claimant has discharged the burden of proof. We conclude that the respondent's wrongdoing, i.e. the dismissal, was not the material cause of the Claimant's current psychological condition.

128. The discriminatory conduct by the Respondent was the one-off act of dismissing the Claimant during a meeting on 14 September 2023.
129. The Claimant stated that she was upset and distressed by the dismissal and the manner of it. This included being upset because she was unable to say goodbye to her team members.
130. The medical evidence shows that the Claimant's prior low mood deteriorated immediately after her dismissal and she was signed as unfit for work from 07 October 2023 to 21 January 2024. Whilst we are satisfied that the Respondent's actions caused an injury to the Claimant's feelings, we are not satisfied that this amounted to a personal injury.

Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

131. In submissions the Claimant asserts that her impairment was now improving and that if the respondent had implemented an Occupational Health (OH) report and Performance Improvement Plan or process (PIP), she may never have been dismissed.
132. The respondent asserted that the Impairment was only part of the reason for the performance issues. The Claimant's ability to perform the role continued to be impacted by her difficulties sleeping and pain, which in turn affected her concentration and communication skills.
133. Turning to the Claimant's Impairment; it is not disputed that the Claimant has not provided evidence of any improvement to the Impairment. She confirmed that there was no evidence in the bundle. Taking the Claimant's evidence at the highest, the first reference to treatment is within the disability impact statement and is the reference to a steroid injection and other treatment in June 2024. There is nothing in relation to any improvement that this or other treatment may have made.
134. It is also accepted that the Claimant's impairment is a chronic condition that will get worse.
135. The information given by the Claimant in re-examination was the first indication that the something arising from the Claimant's impairment, i.e. the pain and impact on sleep, had shown improvement.
136. Even if we take the Claimant's evidence at its absolute highest, there is no indication of any improvement to her impairment and / or the associated pain and sleep issues until after June 2024.
137. We have found that the performance issues for the Claimant were "in part" due to her impairment and / or the something arising from it.

138. We have found that the respondent failed to implement an appropriate OH review and Performance Improvement Plan and the respondent has accepted this.
139. Taking this all into account, with regards to the Claimant's impairment, we conclude that at the very highest there was no improvement to it until after June 2024.
140. With regards to the performance issues, we have previously concluded that this was only in part due to the Impairment or the something arising from it.
141. We now address the question of whether the Claimant's employment would have ended in any event. This takes into account our conclusion that the Claimant has not suffered a personal injury because of the actions of the respondent as detailed above.
142. The Claimant was dismissed in September 2023 and the improvement found to be after June 24. This is some 9-months later.
143. Had the respondent acted reasonably and obtained an OH report and implemented a Performance Improvement Plan, a reasonable time frame might be 3-months to allow for improvement. However, we are satisfied that there is a requirement to add in additional time in the Claimant's circumstances to consider and / or make reasonable adjustments for the Claimant's Impairment and we conclude that the Claimant's employment would have ended after a period of 6-months.
144. The Claimant was dismissed on 14 September 2023 with notice. Given our conclusion we determine that had an OH report and Performance Improvement Plan been properly put into place, the Claimant's employment would have ended in any event by 13 March 2024.
145. The Claimant was dismissed on 14 September 2023 and paid for 1-month in lieu of notice. The Claimant's losses from 14 September 2023 to 15 March 2024 will take this into account.
146. The period of 14 September 2023 – 15 March 2024 is 26-weeks. The Claimant's financial losses amount to 22-weeks, which is the sum of (£713.74 + £52.89) x 22 = **£16,865.86 net**

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

147. The Acas Code of Practice on Disciplinary and Grievance Procedures do not apply. This is a claim for discrimination for something arising out of disability, not an unfair dismissal claim.

Should interest be awarded? How much?

148. We find that it is just and proportionate for interest to be applied to the awards to the claimant.

Financial losses:

149. The Claimant's financial losses amount to (£25.20 + £107.90 + £16,865.86) = £16,998.86

150. The appropriate rate of interest is 8% per annum calculated daily.
151. The period of interest is from the date halfway between the 14 September 2023 and today, being 26 January 2026. This is a total period of 866 days. Interest therefore applies for 433-days.
152. The daily rate of interest is $(£16,998.86/365) \times 0.08 = \mathbf{£1,613.26}$

Injury to feelings:

153. The Claimant's Injury to Feelings award is £15,000.
154. The appropriate rate of interest is 8% per annum calculated daily.
155. The period of interest is from the date of the discriminatory act until 26 January 2026, this amounts to 865-days.
156. The daily rate of interest is $(£15,000/ 365) \times 0.08 = £3.29$ per day.
157. The interest for 866-days is **£2,847.12**

Aggravated damages

158. The factors referred to by the Claimant include the manner in which the respondent has conducted these proceedings, including delays with disclosure and a failure to prepare a medical report resulting in the July 2025 hearing being adjourned.
159. Following the July 2025 hearing, the respondent was ordered to pay the Claimant costs, by way of a preparation time order.
160. There has been no further default by the respondent and we conclude that it is not fair or proportionate to award aggravated damages.

**Employment Judge Illing
Dated: 6 February 2026**