EMPLOYMENT TRIBUNALS

Claimants: Mr J Crayton
Mr T Jones

Respondent: Countess of Chester Hospitals NHS Foundation Trust

Heard at: Liverpool **On:** 16 June 2026
23 June 2026
(in chambers)

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimants: In person
Respondent: Mr Smith, Solicitor

REMEDY JUDGMENT

The judgment of the Tribunal is that:

1. The respondent is ordered to pay the first claimant £2121.85 net in compensation for wage loss.

2. The respondent is ordered to pay the first claimant £15,000 in compensation for injury to feelings.

3. The respondent is ordered to pay the second claimant £1439.17 net in compensation for wage loss.

4. The respondent is ordered to pay the second claimant £11,000 in compensation for injury to feelings.

REASONS

Introduction

1. Following a judgment given by the Tribunal on 8 April 2026 that the respondent had subjected the claimants to detriments because of protected disclosures, the Tribunal has determined the issue of remedy.

2. Since the liability judgment, the claimants have submitted new claims in which they complain about further detriments as a result of the protected disclosures. At the outset of this hearing, it appeared to the Tribunal that there was some overlap with the detriments about which the claimants complain in their new claims and the losses particularised at this remedy hearing.

3. The Tribunal determined that this remedy decision would only deal with losses attributable to the detriments determined in the liability judgment.

Evidence

4. The Tribunal heard evidence from the claimants. The claimants had each produced a separate witness statement. The respondent also referred to the witness statements prepared for the liability hearing.

5. The respondent had prepared a small remedy hearing bundle and the claimants were also taken to documents within the original liability hearing bundle.

Issues

6. The issues for the Tribunal to determine were as follows:

   6.1 Were the following losses attributable to the inappropriate interrogation and the removal of the first claimant's access to the mortuary:

      (i) loss of wages;

      (ii) loss of pension contribution;

      (iii) injury to feelings;

      (iv) personal injury;

      (v) aggravated damages; and

      (vi) ACAS uplift.

   6.2 Were the following losses attributable to the inappropriate interrogation of the second claimant:

(i) Loss of wages;

(ii) Loss of pension contributions;

(iii) Injury to feelings;

(iv) Personal injury;

(v) Aggravated damages; and

(vi) ACAS uplift.

6.3 If so, what is a just and equitable award of compensation for each claimant?

7. Both claimants accepted that they were unable to claim for a preparation time order. If the claimants want to seek a preparation time order, they should make a separate application to the Tribunal.

8. The claimants also accepted that they could not claim for a loss of employer pension contributions because, whilst they were off sick, they were never reduced to no pay and as a result, the employers' contributions continued to be paid at the normal rate.

9. In addition, the second respondent accepted that he did not have a claim for payment in lieu of unused annual leave because the respondent had in fact allowed him to use that annual leave.

Relevant Findings of Fact

10. At paragraph 103 of the liability judgment, the Tribunal determined that the claimants were inappropriately interrogated by their line manager about the anonymous complaint that had been made within a confidential complaint procedure concerning the practices in the respondent's mortuary.

11. At paragraph 106 of the liability judgment the Tribunal determined that this amounted to a detriment to the claimants as *"their identity had been revealed despite the freedom to speak up policy that anonymity would be preserved"*.

12. At paragraphs 112 – 114 of the liability judgment, the Tribunal determined that the respondent had removed the first claimant's access to the mortuary after the making of the protected disclosures and that:

"*the respondent had taken a view he was not safe to be in the mortuary. There was a lack of trust. The Tribunal has determined that the first claimant was reasonable to take this view, the fact it did not stop the first claimant doing his job on the day is irrelevant. The respondent was sending a message to the first claimant about the lack of trust and so therefore it is a detriment".*

First Claimant

13. The first claimant was absent as a result of work related stress from February 2024 until January 2025.

14. During this period of absence, the first claimant was prescribed anti-depressant medication and was subjected to inappropriate messages from his colleagues as a result of his access to the mortuary being denied.

15. In addition, after the first six months absence, the first claimant's pay was reduced to half pay.

16. The first claimant gave evidence that he had to return to work in January 2025 because of the reduction in pay and the loss of pay enhancements such as the weekend working uplift in wages.

17. The first claimant attended counselling during his absence between 8 May 2024 to 26 June 2024. Two of the sessions had to be cancelled by the first claimant because of childcare commitments.

18. By 26 June 2024 the counsellor reported that the first claimant wanted to finish his counselling sessions on a high, was taking part in fitness and social activities, but didn't want to go back to work. The counsellor noted that the first claimant felt in control by the end of that session.

19. The first claimant returned to work in January 2025 in his role as a porter working in the Accident and Emergency department. The first claimant gave evidence that his access to the mortuary continues to be denied. The first claimant has been told by his line manager that he cannot enter the mortuary until he has up to date training. The first claimant has complained that the training has been arranged on dates when he has childcare commitments.

20. The first claimant accepted in evidence that he spoke with his second line manager Clare Smith on 16 February 2024 the same day the mortuary access had been removed and reinstated.

21. The first claimant also accepted that on 21 February 2024, Clare Smith had spoken to the second claimant and informed him that the claimants' concerns were being taken forward and addressed with the individuals concerned as to the way they had handled the situation and the impact it had had on both of the claimants.

22. On 22 February 2024, the first claimant asked Clare Smith to make a referral to occupational health and how to seek support through the Employee Assistance Programme.

23. The first claimant accepted that he and the second claimant met with Clare Smith on 5 March 2024 to provide more detail about their upset and concerns.

24. The first claimant accepted that he met with Cathy Chadwick, the Chief Operating Officer, and Clare Smith on 20 March 2024. The first claimant also

accepted that during that meeting Cathy Chadwick informed him that she was reviewing the processes within the mortuary team.

25. The claimant was taken to a letter from Clare Smith taken dated 17 April 2024 in which she reassured the first claimant that the individuals had been spoken to about the way they had handled the situation.

26. In evidence, the claimant accepted that during her evidence at the liability hearing, Cathy Chadwick was able to tell the Tribunal about changes to processes that had been made as a result of the concerns raised by the claimants. The letter goes on to state that in March 2024, the claimants did not consider a return to work was possible.

27. In June 2025 the respondent provided an outcome to the grievance that had been raised by the claimants. Within the grievance outcome letter, the grievance manager recorded that the first claimant's access to the mortuary had been removed because the mortuary technician was acting out of concern for deceased patients.

28. As a result of that conclusion, the first claimant informed the respondent that he would not work in a patient facing role until that conclusion was removed from the grievance.

29. The respondent agreed to remove that conclusion in August 2025. However, the claimant was then subjected to an investigation for gross misconduct/insubordination. As a result, the first claimant was absent from work until November 2025.

30. The first claimant was fit to return to work in December 2025. However, the respondent placed the first claimant on paid special leave in December 2025 and January 2026 until the first claimant had received the correct training in order to return to his role.

31. The first claimant subsequently returned to work from his second period of sick leave in January 2026 back into his role as a porter in the Accident and Emergency Department.

32. It was the claimant's evidence that he continues to be the subject of rumours as a result of the continued restriction on his access to the mortuary.

33. It was the first claimant's evidence that the grievance outcome rubber stamped the removal of his mortuary access and that added to the original upset he felt when the access was first removed.

34. The first claimant informed the Tribunal that his relationship with his partner broke down in May 2024.

35. In April 2026, the first claimant received a first and final written warning following the outcome of the disciplinary investigation into the alleged gross misconduct/insubordination.

36. The first claimant has recently submitted a second claim alleging further detriments because of a protected disclosure in which he complains of:

    (i) On 9 April 2026, the receipt of the final written warning.

    (ii) On 19 January 2026 the respondent provided the outcome to the disciplinary investigation on the first day of the first claimant's leave in an attempt to restrict his right to an appeal.

    (iii) The respondent surveyed members of the department as to whether they would work with the claimants.

    (iv) False allegations of fraud and data abuse during the disciplinary investigation.

    (v) Threats to revoke the first claimant's childcare arrangements.

37. The Tribunal has determined that these matters are further alleged detriments which have yet to be established.

Second Claimant

38. The second claimant spoke with Clare Smith on 21 February 2024 in which she sought to reassure him that the claimants' concerns were being considered seriously and the individuals who had reacted to those concerns were being spoken to.

39. On 23 February 2024 the second claimant commenced a period of sickness absence as a result of anxiety/stress/depression and other psychiatric illnesses until 30 December 2024.

40. Whilst the second claimant was prescribed anti-depressants, he informed the Tribunal that he was only able to take them for a matter of days before suffering some serious side effects and took the view that he could cope without them. The second claimant gave evidence that he attended the counselling sessions referred to in his GP letter but was unable to provide evidence of those sessions for the Tribunal.

41. The second claimant confirmed that he too returned to his role as a chargehand porter in the Accident and Emergency Unit and he too did not have access to the mortuary because of a training issue.

42. The second claimant gave evidence that he went off sick in June 2025 following the grievance outcome but was fit to return to work in December 2025. The second claimant was unable to do so until January 2026 after he had completed onboarding training. The second claimant was paid for the months of December 2025 and January 2026.

43. The second claimant resigned from his position as a chargehand in August 2025 and now performs duties as a porter.

44. The second claimant said he had to resign his role as chargehand because when the porters were asked whether they would work with the claimants, the answer was that they would, but not with the second claimant in the position of a chargehand porter.

45. The second claimant also accepted that he and the first claimant met with Clare Smith on 5 March 2024 and Clare Smith and Cathy Chadwick on 20 March 2024 and he received an identical letter offering reassurances to that which was sent to the first claimant.

46. However, it was the second claimant's evidence that it appeared to be lip service because nothing changed in the workplace and the grievance rubber stamped the actions of the mortuary technician.

47. The second claimant's relationship also came to an end as a result of his low mood during the first period of his sickness absence.

48. The second claimant has also issued a new claim in which he complains of the following:

    (i) Lockout from mortuary duties.

    (ii) Sabotage of reintegration training.

    (iii) Incitement of hostility.

    (iv) Institutional failure and cover up.

49. The Tribunal has determined that these matters are further alleged detriments which have yet to be established.

Respondents Policies

50. The respondent operates a policy of paying any employee basic pay whilst off sick. The terms and conditions of employment provide that an employee will receive full pay for the first six months, and half pay for the second six months. If an employee stays off for longer than twelve months, they receive no pay.

51. This means that if an employee works in a role that attracts enhancements, for example for weekend working, the enhancement will not be paid during their sickness absence.

52. The respondent also operates a policy that whilst off sick on full pay, full employee and employer contributions are payable to the occupational pension scheme.

53. If an employee is off sick for the second six months and reduced to half pay, the employer contributions remain payable at the normal rate. The employee contributions become payable as a percentage of the reduced pay.

Grievance

54. On 16 June 2025 the claimants were provided with the grievance outcome.

55. Part of the claimants' grievance was that they had suffered detriments as a result of making protected disclosures.

56. With reference to the detriments found by this Tribunal in the liability judgment, the respondent determined that the claimants had not been subjected to bullying and intimidation to reveal their identities and that the first claimant's access had been removed from the mortuary out of concern for deceased patients.

57. The grievance manager accepted that there had been a data breach during a Subject Access Request but that all other complaints were unsubstantiated.

58. Following this outcome the second claimant commenced a second period of sick leave from June 2025 until December 2025.

59. The first claimant subsequently took a second period of sick leave from September 2025 – December 2025 when he was notified that he was the subject of a disciplinary process for refusing to work in a patient facing role until the grievance manager had removed the conclusion about the concern for deceased patients from the grievance outcome.

Relevant Legal Principles

60. Section 49 of the Employment Rights Act 1996 provides:

> **"(1) where an Employment Tribunal finds a complaint under Section 48(1) well founded the Tribunal:**
>
> **(a) Shall make a declaration to that effect; and**
>
> **(b) May make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.**
>
> **(2) subject to subsections (5ZA), (5A) and (6), the amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances, having regard to:**
>
> **(a) the infringement to which the complaint relates; and**
>
> **(b) Any loss which is attributable to the act or failure to act which infringed the complainant's right.**
>
> **(3) The loss shall be taken to include –**
>
> **(a) Any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and**
>
> **(b) Loss of any benefit which he might reasonably expected to have had but for the act or failure to act.**

> **(4) In ascertaining the loss the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or, as the case may be, Scotland.**
>
> **(5) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall reduce the amount of compensation by such proportion as it considers just and equitable having regard to that finding"**

61. In the case of **Virgo Fidelis Senior School v Boyle (2004) ICR 1210 EAT**, the Employment Appeal Tribunal determined that a detriment suffered by whistleblowers is a very serious breach of employment rights similar to unlawful acts of discrimination. This is why section 49(2)(a) states that compensation must be just and equitable to the infringement to which the complaint relates.

62. A Tribunal award, however, should be compensatory and not punishment for the infringement. This means the nature of the infringement will have a bearing on the Tribunal's assessment that it is more likely that feelings will have been injured, rather than on the level of punishment that should be handed down to the respondent.

63. As a result of that determination, it is possible for claimants to pursue compensation for injury to feelings, personal injury and where applicable, aggravated damages.

64. In the case of **Roberts v Wilsons Solicitors LLP and others (2018) ICR 1092 CA**, the Court of Appeal determined that the word "attributable to" engaged the common law concept of the "but for" test.

65. The Court of Appeal determined that it is a question of fact whether a particular consequence or loss is attributable to the unlawful act or, to something else or to both and if so, to what extent.

66. A new intervening act can break the chain of causation. The Tribunal is required to take an assessment of the facts.

67. In the case of **McNicholas v Care and Learning Alliance and another (2024) ICR 45 EATS** the Employment Appeal Tribunal determined that a new act must be the sole cause of the loss, such that any prior wrongdoing is eclipsed and is not an effective or contributory cause in law.

68. If an act of a third party is a natural and reasonable consequence of the wrongful act, then it will not interrupt the chain of causation.

69. In the case of **Komeng v Creative Support Limited UKEAT/0275/18/JOJ**, the Employment Appeal Tribunal confirmed that any injury to feelings award must focus on the injury suffered by the claimant and not the Tribunal's view of the gravity of the acts performed by the respondent.

70. In the case of **Prison Service v Johnson [1997] IRLR 162**, the Employment Appeal Tribunal set out general principles to assist Tribunals in assessing injury to feelings awards. Those principles are as follows:

(1) Injury to feelings award should be compensatory and just to both parties. Such awards cannot punish the employer.

(2) Awards should not be too low that they would diminish the respect of the antidiscrimination legislation. Equally they should be restrained so as not to be excessive.

(3) Such awards should be similar to those awarded in personal injury cases.

(4) Tribunals are advised to take into account the value of the sum in everyday life.

(5) Tribunals need to consider the public respect for the level of awards made.

71. In the case of **Vento v The Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102** the Court of Appeal determined that:

"Injury to feelings awards can compensate for feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression."

72. The Court of Appeal also gave guidance on the bands of compensation that can be awarded for such injury to feelings as follows:

(a) A top band for the most serious cases where there has been a lengthy campaign of harassment;

(b) The middle band, to be used for serious cases which do not merit an award in the highest band; and

(c) The lowest band for less serious cases where there has been a one-off act.

73. Following subsequent case law, the President of the Employment Tribunal has issued Presidential Guidance on the applicable values to each band which at the time the claimants issued their claims on 9 May 2024 were as follows:

- Upper band - £35,200 to £58,700
- Middle band - £11,700 to £35,200
- Lower band - £1200 - £11,700

74. The value of any award in a particular banding will be calculated in accordance with the date on which the claim form was issued.

75. In the case of **Alexander v Home Office (1988) ICR 685, CA**, the Court of Appeal determined that aggravated damages are only appropriate if the respondent has behaved in a high-handed, malicious, insulting or oppressive manner when subjecting the claimant to a detriment.

76. In the case of **Boyle**, the Employment Appeal Tribunal determined that aggravated damages were appropriate where a Tribunal had found the respondent's investigation of the claimant's disclosure was a "travesty" and did not apologise to the claimant.

77. However, in the case of **Commissioner of Police of the Metropolis v Shaw (2012) ICR 464, EAT**, the Employment Appeal Tribunal reminded Tribunals that an award for aggravated damages is to compensate the claimant for additional stress caused by the manner in which the detriment occurred rather than punishing the respondent. A Tribunal must determine if the compensation for injury to feelings is proportionate to the suffering experienced by the claimant.

78. In the case of **Sheriff v Klyne Tugs (Lowestoft) Ltd (1999) IRLR 481** the Court of Appeal determined that a claimant can, in Employment Tribunal proceedings, recover compensation for a personal injury caused by a discriminatory act and the same applies in detriment cases.

79. The 17th edition of the Judicial College Guidelines (the version applicable when the claimants submitted their claims) for the assessment of general damages in personal injury cases provides that the following factors should be taken into account when calculating compensation for a personal injury:

a) the injured person's ability to cope with life and work;

b) the effect on the injured person's relationships with family, friends and those with whom he comes into contact;

c) the extent to which treatment would be successful;

d) future vulnerability;

e) prognosis;

f) whether medical help has been sought;

g) whether the injury results from sexual and/or physical abuse and/or breach of trust; and if so, the nature of the relationship between victim and abuser, the nature of the abuse, its duration and the symptoms caused by it.

80. The guidance suggests 4 categories of award:

1) Less Severe: between £1,880 and £7,150. Where the claimant has suffered temporary symptoms that have adversely affected daily activities;

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;

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 a) to d) above, but there is a much more optimistic prognosis than Severe;

4) Severe: between £66,920 and £141,240. Where the claimant has serious problems in relation to the factors at a) to d) above, and the prognosis is poor.

81. The Principles for Compensating Pension Loss 2021 establish that it is only possible to recover pension loss incurred as a result of non-payment of employer contributions. This is because an employee is entitled to be compensated for a loss of a remuneration package. Employee contributions arise from the payment of a remuneration package and therefore once the employee has been compensated it is up to the employee to make up the missed employee contributions.

Submissions

Claimants' submissions

82. The claimants submitted that all they ever wanted was for the respondent to listen to their concerns so that the practices within the mortuary could be improved.

83. The claimants said they were at a loss as to why the respondent reacted in the way that it has.

84. The claimants submitted that their calculations were based on a gross monthly average figure provided by the respondent.

85. The claimants maintained that they were not subjected to one-off incidents but rather an interrogation over 2 days and denial of access to the mortuary for a number of hours.

86. The claimants submitted that they had been in receipt of medical treatment for a number of months, despite not having suffered any issues with mental health prior to the behaviour of the respondent.

87. The claimants submitted they should receive an aggravated damages award because of the way the mortuary technician reacted and the subsequent findings of the grievance process.

88. The claimants also contended that they should receive a separate award for personal injury despite a lack of expert evidence.

89. The claimants submitted that there should be an ACAS uplift because the mortuary technician was not called as a witness during the liability hearing.

Respondent's submissions

90. The respondent submitted that the claimants had exaggerated about the medical treatment required during their respective sickness absences and there was no evidence to support a separate award for personal injury.

91. The respondent maintained that the evidence provided by the claimants was about the impact of all of the alleged detriments and not limited to those established at the liability hearing.

92. The respondent submitted that the detriments established at the liability hearing were short lived and the claimants had attempted to exaggerate the duration during this remedy hearing.

93. The respondent contended that the real cause of the claimants' upset was the delay in the grievance process.

94. The respondent submitted that the claimants should receive an award for compensation for injury to feelings in the lower band.

95. The respondent maintained that the figures provided by the respondent should be used for the calculation of wage loss.

96. However, the respondent's primary position is that the established detriments did not cause the claimant's sickness absence. In the alternative the respondent submitted that the medical evidence did not support the duration of the absence.

97. The respondent submitted that the absence caused by the outcome of the grievance was too remote and should not factor into the assessment of any award.

98. The respondent maintained that the award for pension loss should only reflect the loss of employee contributions.

99. The respondent contended that the Tribunal had not made findings which would support a separate award for aggravated damages.

100. The respondent submitted that the claimants had not provided any evidence that the respondent had not followed any relevant disciplinary or grievance procedure such that an ACAS uplift was appropriate.

Discussion and Conclusions

Medical Evidence

101. The Tribunal was not provided with the claimants' medical records. Instead, the claimants produced letters from their respective GPs which set out their view of why the claimants were off sick during this period and the impact that work related issues had upon their health.

102. It is clear from the evidence, that the first claimant was taking medication until at least October 2024 and whilst the counsellor records that he was coping well, the claimant's GP was not in a position to sign him fit to work until January 2025.

103. Similarly, the second claimant's GP, did not sign him fit for work until January 2025. Whilst the second claimant stopped taking his medication after a few

days, he attended counselling and was clearly unfit to return to work until his GP deemed him fit to do so.

104. The Tribunal has determined that the first period of sick leave for each claimant was attributable to the detriments caused by the protected disclosure.

105. Both claimants took a second period of sick leave. The first claimant's second period of sick leave occurred after he became the subject of a disciplinary investigation. The first claimant's second period of sick leave was not attributable to either detriment caused by the protected disclosures. The second period of sick leave was attributable to the first claimant's decision to not work in a patient facing role until the respondent had removed a reference to patient concerns from the grievance outcome.

106. The second claimant's second period of sick leave occurred as a result of the respondent's rejection of the claimants' entire grievance. This outcome clearly prolonged the second claimant's injury to feelings about the detriment.

Wage loss

107. The burden of proof is on the claimants to establish that any wage loss claimed, is attributable to the detriments.

First claimant

108. The first claimant claimed that his sickness absence was caused by the six alleged detriments. The Tribunal has found that two of those detriments occurred. Therefore, the first claimant's sickness absence between February 2024 to January 2025 was not wholly attributable to the detriments caused by the protected disclosure.

109. It was the first claimant's evidence that 90% of his upset was because of the removal of his access to the mortuary.

110. However, the Tribunal has determined that it was clear from the evidence given by the first claimant during the liability hearing and the remedy hearing that all of the alleged detriments contributed to his upset and absence from work.

111. As a result, the Tribunal has determined that the first claimant should receive compensation for a third of the wage loss incurred between February 2024 to January 2025 to reflect that two out of the six detriments were found to have been caused by the protected disclosure.

112. The claimants have produced Schedules of Loss based on figures provided by the respondent of their average pay and the use of payslips to show what they actually received during this period.

113. The respondent has produced two detailed spreadsheets to show what was actually received each month by the claimants during this period and what they should have received had they remained in work (including

enhancements). Both sets of figures rely on the claimants' payslips and what they actually received.

114. As the respondent has set out each monthly figure, as opposed to the claimants' average figures, the Tribunal has used the respondent's figures to work out the loss.

115. From the period of March 2024 to January 2025 the first claimant was paid £14,440.78. Had the claimant been in work he would have received £20,806.96. This equates to a net loss for that period of £6,366.18.

116. However, in accordance with section 49(2) and **Roberts**, because the Tribunal has only found that a two of the six alleged detriments complained of occurred because of a protected disclosure, the claimant is entitled to compensation for that period of £2,121.85. (£6366.18 x 33.33%).

117. The Tribunal has determined in accordance with the Principles for Compensating Pension Loss 2021 that the first claimant has not suffered any pension loss because the respondent continued to make full employer contributions to the first claimant's pension scheme.

118. As a result of the compensation award for wage loss, the first claimant will now be in a position to make additional contributions to his pension scheme to top up the reduced employee contributions made whilst he was in receipt of reduced pay.

Second claimant

119. The second claimant alleged that he had been subjected to four detriments because of a protected disclosure. The Tribunal found that one of those detriments was because of the protected disclosure. The second claimant agreed in evidence that the value of his claim at the outset, was based on the Tribunal determining that all four detriments had occurred. The second claimant to his credit, accepted that any compensation should now reflect the one detriment which the Tribunal determined had occurred because of a protected disclosure.

120. During the first period of absence the second claimant received £14,835.13 in wages. If the second claimant had been in work, he would have received £20,591.83. The loss during that period equates to £5,756.70. However, in accordance with section 49(2) and **Roberts,** because the Tribunal has determined that only one of the alleged detriments was caused by the protected disclosure, the claimant is entitled to 25% of that loss which equates to £1,439.17.

121. The Tribunal has determined in accordance with the Principles for Compensating Pension Loss 2021 that the second claimant has not suffered any pension loss because the respondent continued to make full employer contributions to the second claimant's pension scheme.

122. As a result of the compensation award for wage loss, the second claimant will now be in a position to make additional contributions to his pension scheme to top up the reduced employee contributions made whilst he was in receipt of reduced pay.

123. The Tribunal has not been provided with evidence as to whether the second claimant suffered wage loss during his second period of absence and therefore has not made any award for wage loss during this period.

Injury to Feelings

124. The claimants began proceedings in May 2024. Therefore, the applicable figures for this type of award are those from the financial year 2024 to 2025.

125. The case of **Vento** established that there were three bands of award which have subsequently been updated each year. The bandings that were applicable in this financial year were as follows:-

(i) Lower band £1,200 to £11,700 (less serious cases);

(ii) Middle band £11,700 to £35,200 (cases that do not merit an award in the upper band);

(iii) Upper band £35,200 to £58,700 (the most serious cases).

126. In the case of **Komeng**, the Employment Appeal Tribunal determined that such an award will focus on the actual injuries suffered by a claimant and not the severity of the acts complained of.

127. This sentiment is reflective of the case of **Johnson** which set out the principles for assessing such awards. Firstly, any award must be compensatory and not punitive. This ensures that the focus is on the actual injuries suffered as opposed to the acts of the respondent.

128. Equally, the second factor is that awards should not be too low to reflect the seriousness of the subject matter, but equally not too excessive such that a claimant would be overcompensated.

129. Thirdly, the Tribunal should be conscious that any award should be similar to that awarded in personal injury cases in which a claimant also receives a general damages award.

130. Fourthly, the Tribunal has to take into account the every day value of an award and fifthly, members of the public must have respect for the level of awards that are made.

131. The case of **Vento** established that upper band awards are made in the most serious cases, for example where there has been a lengthy campaign of treatment. **Vento** established that a middle band award can be used for serious cases which do not merit an award in the highest band. The lower band awards are for less serious cases where the acts complained of are isolated or a one off occurrence.

Impact of detriments on claimants

132. The Tribunal determined at paragraph 106 of the liability judgment that both claimants were subjected to inappropriate interrogation by their line manager. The Tribunal accepted the evidence of Cathy Chadwick that the actions of the line manager were inappropriate. The Tribunal did not determine that this took place over two days.

133. The Tribunal did not determine that the suggestion to attend a meeting with the mortuary technician amounted to a detriment or that the claimants' line manager conducted a witch hunt to find out who had made complaints about mortuary practices.

134. The Tribunal did determine that the removal of the first claimant's access to the mortuary for a period of hours was a detriment. The first claimant complains that this detriment caused the smear campaign which has culminated in messages and rumours about the reasons for the claimant's restrictions in that area.

135. Albeit that the Tribunal determined at paragraph 128 of the liability judgment that this detriment was not because of a protected disclosure, it is clear that the impact of those messages and any subsequent rumours in the workplace on the first claimant prolonged the first claimant's injury to feelings about the detriment of the removal of the first claimant's access to the mortuary.

136. However, the Tribunal has not seen any evidence that the second claimant has been subject to receipt of such messages or rumours.

137. The Tribunal understands that since the second claimant returned to work from sickness absence, he has been unable to access the mortuary because of a training issue.

138. It is clear from the medical evidence that both claimants suffered mental upset and depression as a result of the detriment(s).

139. Both claimants have given evidence about the breakdown of their relationships following the making of the disclosures and the respondent's reactions to those disclosures.

140. Whilst both claimants were in receipt of medication and received counselling, they were recovering by mid 2024 and fit, in accordance with their GP's fit notes, to return to work in January 2025.

141. It is not possible to recover different compensation for the same injury. The Tribunal is not satisfied that the claimants have proven that they suffered a separate personal injury, that is distinct from their injury to feelings as a result of the detriments.

142. The evidence provided suggests that the medical impact on the first claimant had begun to resolve by June 2024. In addition, the medical impact on the second claimant, had begun to resolve when he took himself off medication

after a few days due to side effects. The second claimant felt able to cope without the medication.

143. Clearly, both claimants were unfit to return to work until January 2025 and there was a lasting upset about the way they had been treated but the Tribunal has determined that this did not amount to a separate personal injury for either claimant. This continued upset can be compensated for within the award for injury to feelings.

144. Any award must compensate for the injury suffered and must not punish the respondent for the act which caused the injury. The Tribunal is mindful that the claimants' upset was about all of the alleged detriments. The Tribunal has assessed the level of compensation on the detriments caused by the protected disclosure.

First claimant

145. The first claimant has claimed for an award in the upper band. The Tribunal has determined that the first claimant should be compensated for injury to feelings in the middle band. The detriments occurred within 24 hours of each other. The access to the mortuary was reinstated on the same day and by 20 March 2024 the claimant had met with both Clare Smith and Cathy Chadwick and been assured that action would be taken.

146. However, the respondent did reject the claimants' grievance about the detriments, and this compounded the first claimant's injury to feelings about the detriments.

147. The first claimant has not been subject to a lengthy campaign of treatment such that he is entitled to an award in the upper band. A middle band award reflects that this is a serious issue during which the claimant raised concerns in a confidential process and his identity was inadvertently revealed by a process of elimination as opposed to a direct breach of confidentiality.

148. The Tribunal repeats its findings that removal of the first claimant's access to the mortuary did indicate to the claimant that he was no longer trusted by the respondent.

149. The Tribunal has determined that the first claimant should receive £15,000 in compensation for injury to feelings. The Tribunal has not reduced this amount to take account of those acts which the Tribunal did not find were detriments caused by a protected disclosure. Instead, this is the amount that the Tribunal has determined reflects the injury to feelings suffered by the first claimant as a result of the two detriments caused by the protected disclosures.

Second claimant

150. The second claimant has claimed for an award in the middle band. The Tribunal has determined that the second claimant should be compensated for injury to feelings in the lower band. The second claimant was subject to one

detriment as a result of the protected disclosure in which he was inappropriately interrogated by his line manager. Unlike the first claimant the second claimant did not have his access to the mortuary removed and did not provide evidence that his injury to feelings were compounded by being subject to derogatory messages from his colleagues.

151. However, the respondent did reject the claimants' grievance about the specific detriments established and this compounded the second claimant's injury to feelings about the detriment.

152. Whilst the Tribunal has determined that the second claimant should receive an award in the lower band, in order to reflect the impact of the detriment on the second claimant, his health and his life, the Tribunal considers that he should receive £11,000 in compensation.

153. Similarly, the Tribunal has not reduced this amount to take account of those acts which the Tribunal did not find were detriments caused by a protected disclosure. Instead, this is the amount that the Tribunal has determined reflects the injury to feelings suffered by the second claimant as a result of the detriment caused by the protected disclosure.

Aggravated Damages

154. The Tribunal has not made an award for aggravated damages. The claimants had not provided evidence to prove that either of the detriments were done in a high handed, malicious or oppressive manner in accordance with **Alexander**.

155. An aggravated damages award is part of the injury to feelings award. The Tribunal is satisfied that the injury to feelings compensation award made reflects the upset experienced by the claimants.

156. The Tribunal has determined the actions of the claimants' line manager were inappropriate.

157. The first claimant's mortuary access was removed by the mortuary technician to restrict his access to that area.

158. The mortuary technician admitted during the grievance investigation that he had been hot headed and it had been a knee jerk reaction. Whilst the Tribunal did not hear evidence from the mortuary technician, taking into account the contemporaneous evidence given during the grievance investigation, the Tribunal was not of the view that the mortuary technician's actions were pre-meditated and it was not his intention to be high handed, malicious or oppressive.

159. The mortuary technician only told the first claimant's line managers that he had restricted the access and immediately reinstated it when told by the management to do so which is reflective of his statement that it had been a knee jerk reaction.

ACAS Uplift

160. The Tribunal has not made an award of an ACAS uplift because there is no evidence that the respondent has failed to follow the correct disciplinary or grievance procedure in this case.

161. The claimants' complaint was that the respondent failed to produce the mortuary technician to give evidence at the liability hearing. This is not a breach of either of those procedures for which an ACAS uplift award is available.

162. If the claimants want to seek a remedy for the respondent's conduct in responding to these claims, they should consider making an application for a Preparation Time Award in accordance with the Employment Tribunal Rules of Procedure 2024.

Interest

163. Whilst interest is payable on any injury to feelings award if a complaint has been made under Section 124 of the Equality Act 2010, it is not available to compensation for injury to feelings as a result of a detriment caused by a protected disclosure. There is no reciprocal provision within the Employment Rights Act 1996. Therefore, the claimants will not be entitled to interest on either the injury to feelings award or the past financial loss.

Approved by:
Employment Judge Ainscough
10 August 2026

JUDGMENT AND REASONS SENT TO
THE PARTIES ON

4 September 2026

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990
ARTICLE 12

Case numbers: **2403670/2024 & 2403674/2024**

Name of cases: **J Crayton** v **Countess of Chester Hospitals NHS Foundation Trust**
T Jones

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 4 September 2026

the calculation day in this case is: 5 September 2026

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

For the Employment Tribunal Office