EMPLOYMENT TRIBUNALS

Claimant: Mr Q Qu

Respondent: Landis & Gyr Ltd

HEARD AT: Cambridge ET **ON**: 27th & 28th February 2017 and 1st March 2017.
Discussion days 2nd & 3rd May 2017.

BEFORE: **Employment Judge G P Sigsworth**

MEMBERS: Ms A Carvell
Mr G Briggs

REPRESENTATION

For the Claimant: Ms M Mallick (Counsel)

For the Respondents: Mr D Northall (Counsel)

REMEDY JUDGMENT

Our unanimous conclusions on the remedy issues that we have been asked to determine are set out in the Reserved Reasons below.

RESERVED REASONS

1. Following the liability hearing in 2016, the Tribunal concluded that the Respondent had unfairly dismissed the Claimant and that his dismissal was an act of unlawful victimisation, and that the failure to award the Claimant pay rises in 2013 and 2014 and to pay him reduced bonuses in those years were also acts of unlawful discrimination. This remedy hearing has been listed to determine the appropriate amount of compensation to be awarded to the Claimant and to provide the basis for

the calculation of this. The Claimant does not seek re-employment with the Respondent.

2. The Tribunal heard oral evidence from the Claimant, and from Mrs Lisa Graves, senior HR adviser, for the Respondent. There was a multi volume bundle of documents, to which the Tribunal was referred. The parties provided detailed and lengthy schedules/counter schedules of loss, and Counsel provided written skeleton arguments/submissions and made oral submissions at the end of the evidence. There was insufficient time at the end of the hearing for the Tribunal to reach a decision, and so judgment was reserved.

FINDINGS OF FACT

3. The Claimant was dismissed on 2nd November 2014. He had symptoms of work related stress and anxiety, and went to consult with his general practitioner. He was then signed off as not being fit for work for several months. He was put on anti-depressant medication, seemingly for his insomnia, of various different types (see below). He found temporary work between April and August 2015. He spent considerable time and effort looking for new work despite his ongoing mental health issues. In an 18 month period between the dismissal and May 2016, when he found permanent employment with Cosworth, he applied for nearly 150 jobs and registered with 39 employment agencies. These jobs were located in different parts of the UK and abroad. He is now 45 years old and his (recent) experience of employment is in a relatively specialist field of electronics engineering (hardware). He had eight face to face interviews and four telephone interviews. It is not contested by the Respondent that until he found his job with Cosworth, and indeed until the date of this remedy hearing, that he has failed to mitigate his loss. We find that he clearly did not so fail.

4. In April 2016, the Claimant obtained a permanent position as senior electronics engineer with Cosworth Electronics Limited in Cambridge. He has a salary of £45,000 per annum, and a 1% pension contribution from his employer. According to the Claimant, there is no bonus entitlement. However, he has other benefits, such as death in service benefit at four times his salary. Since starting that role he has not applied for any other job. The Respondent has provided a list of vacancies which they say the Claimant could and should have applied for, with salaries of up to and beyond £50,000 per annum. The Claimant says that many of these roles were not suitable for him, and has gone through the Respondent's schedule of jobs in some detail, identifying those that he says were not appropriate, and giving the reason why not. The Claimant further says that his continuing health issues mean that he is (with his employer's consent) currently working a four day week and using up annual leave, so being paid in full. However, the Claimant's personal circumstances which required this arrangement were not disclosed to us, and there has been no referral by his new employer to Occupational Health. The Claimant's contract of employment provides

for a five day working week, and no evidence has been provided to us of any agreed variation of that contractual provision. We find that this is an odd and unexplained situation, and we assume that the Claimant will continue in his new role and on full pay. When his holiday entitlement runs out, he will no doubt return to a five day working week, the Employment Tribunal proceedings being behind him by then. In considering the question of future loss, we find that the Claimant's performance at Landis & Gyr was not such as would have meant he would have been promoted. Although we found that continuing the PIP process was motivated by discriminatory considerations, that is not to say that there were not performance issues. We expressly concluded that the demotion was a possible alternative to dismissal. There were performance concerns and these were genuine. Further, no principal engineer post now exists to which the Claimant could be promoted. We also have in mind the Claimant's chequered employment history, whereby he had five jobs in six years before he went to Landis & Gyr. He had no previous employment for longer than two years. We also bear in mind Mrs Graves' evidence concerning the turnover of staff. Typically, electronics engineers move on from Landis & Gyr after five years to further their careers. The Claimant started his employment with the Respondent in 2011, and therefore on the law of averages could have been expected to leave in 2016, particularly if there was no prospect of promotion. In cross examination, the Claimant conceded that his health would be fully recovered in about three to four years time. That would give him further opportunity to seek more remunerative employment than he is in at the present time.

5. The Claimant gave evidence about the impact of the treatment of Landis & Gyr and the dismissal on his personal and social life, on his marriage and family. In Chinese culture, husbands are the main bread winners. There were arguments and friction between the Claimant and his wife and daughter. The Claimant is apparently blamed by them for losing his job, which has lead to his feelings of failure. He suffers from poor sleep leading to fatigue during the course of the day, and has memory loss and lack of concentration. He has lost interest in his hobbies. We have found that the PIP process lasted some 13 months. So far as the tasks given to the Claimant were concerned, he made improvements and then further tasks were added to the PIP assessment. Despite this, his appeals were dismissed and his dismissal appeal also failed. All this took its toll on the Claimant, and on 15th October 2014 he went to his GP with complaints of stress at work and his line manager bullying him and complaining that he felt unsupported. It is noted in the GP records that he was angry and sleepless at the injustice that he was facing (as he saw it). He was given medication (Zopiclone) for his insomnia.

6. We summarise the factual evidence of Mrs Lisa Graves, largely uncontested. The Claimant received a pay rise in January 2012 in line with the company percentage increase of 3%. His salary then remained at £46,500 per annum until the end of his employment. We concluded that the failure to award the Claimant further pay rises was an act of

victimisation. In January 2013, the pay review lead to a company wide increase of 3.5%, meaning that salary for the Claimant would have risen to £48,127. Then, in January 2014, there was a further 1.5% pay rise taking his salary to £48,850. There was then a pay freeze until 1st October 2015. The Claimant would then have received a pay increase of 2.5%. Employees will only receive a pay increase of more than 2.5% in exceptional circumstances, such as exceptional performance or taking on extra responsibilities. Any increase above 2.5% would have to be justified by the employee's line manager and approved by the head of function. We find that these circumstances would not have applied to the Claimant. There is no evidence that they would. On 1st July 2016, there was a further 2.5% pay rise, which would have taken the Claimant's salary to £51,300.

7. As far as pension is concerned, then at the date of dismissal the Claimant was contributing 9% per annum which the Respondent matched at also 9% per annum. We accept the Respondent's calculations at page 343 of the bundle. The Respondent's pension scheme was a defined contribution scheme, so the Claimant's loss is the loss of the Respondent's contributions to his pension. Bonus is calculated as a percentage of the employee's salary, usually 5%, but exceptionally up to 8%. It is based on company financial achievement and on personal incentive achievement. The Respondent had a life assurance scheme. So far as the Claimant is concerned, he can claim loss of this benefit from the date of the remedy hearing until he obtained employment with Cosworth, who have a better scheme. The Claimant chose not to opt into the private medical cover scheme of the Respondent, and therefore has suffered no loss and can be awarded no compensation for this. He also chose not to pay to opt into the health cash plan and the dental cash plan, so cannot be compensated for these items. Medical expenses were not a contractual benefit. The Claimant had two eye tests in 2011 and 2013, so is entitled to compensation for the loss of that benefit at some £18.75 per annum. The Claimant did not make use of the benefit of spectacles/lenses and so cannot be compensated for that. The Toshiba products benefit ceased in February 2016.

8. The Claimant did not have any contractual right to overtime. Exceptional payments will be made on occasion, and indeed were paid to the Claimant during a shutdown period over Christmas one year. Contractually, the Claimant was required to work such hours as may be necessary to complete his duties and not receive any additional remuneration for that. The Claimant says that he worked overtime on occasion, for example on the Laing project, but received time off in lieu for this rather than payment. We find that he is not entitled to any compensation for loss of overtime, as he would not have been paid for such in the normal run of things. As far as promotion is concerned, then no senior electronic engineers have been promoted, including those in the Claimant's team during his employment. Further, there is now no role of principal electronics engineer. We find that the Claimant would

not have been promoted at Landis & Gyr (during the period of future loss that we award him – see below).

9. The Claimant makes a claim for aggravated damages in the context of his injury to feelings claim. We refer to our original liability decision for the facts that might support such a claim. We find that there was a high handed approach by Mr Whittaker and Mr Knight in the appeal process, because they brushed aside entirely the Claimant's complaints of continuing victimisation of him by Mr Lee. The same can be said of Mr Bennett in the dismissal appeal. We also find that, so far as motive is concerned, that Mr Lee had animosity towards the Claimant because of the complaints of victimisation which was very significant in the context of the PIP process. The Claimant was greatly upset by that 13 month process and the nature of it and the way it was conducted by Mr Lee and others. As he saw it (with justification), he made progress and improvements during the PIP process, yet the goal posts were constantly moved. Even at the dismissal appeal stage, new allegations were put in by Mr Bennett.

10. The Claimant also pursues an uplift to his award for breaches of the ACAS code in relation to the grievance process. He says that the Respondent failed to arrange a formal meeting to hear his grievances about further victimisation by Mr Lee and the PIP process, or allow him to appeal against any finding that was made, or to stay the capability proceedings pending resolution of his grievances, or at least deal with them concurrently within the process. So far as Mr Bennett's conduct of the appeal is concerned, then we refer to paragraphs 3.14 and 6.7 of our original decision.

MEDICAL EVIDENCE

11. We were shown medical reports from Dr Michael Cliffe, consultant clinical psychologist, on behalf of the Claimant, who has produced three such reports. There was also a report for the Respondent from Dr Ravi Mehrotra, consultant psychiatrist. A further report on the Claimant's medication was obtained on behalf of the Claimant from Dr Lisa Brownell, consultant psychiatrist. There was also a report from the Claimant's GP, Dr John Szekely, dated 30th October 2016. We have also seen the Claimant's medical records. We make this general comment about the medical evidence. There are substantial conflicts between the doctors about the nature and severity of the Claimant's mental health condition. None of the doctors have attended to give evidence, and therefore we have had no questions for or cross-examination of the doctors to assist us. We are not medically qualified, and we therefore have a difficult task in resolving the medical issues.

12. Dr Cliffe's first report of 9th November 2015 was obtained at a time when the Tribunal had not delivered its Judgment on liability. Unfortunately, Dr Cliffe was not provided with the Claimant's medical records, and therefore made the assumption that there was no evidence of any major

mental health issues prior to the Claimant's dismissal from the Respondent. This was wrong, as the Claimant was involved in a road accident in March 2006 and suffered a head injury and whiplash injuries. In June 2006, it was noted that he had a post traumatic stress injury with moderate to severe depression. Dr Cliffe's diagnosis in November 2015 was of major depressive order and anxious distress, but no PTSD. The likely cause was the work environment. The outcome of the Tribunal was of overarching importance to the Claimant's recovery. Dr Cliffe reported again on 6th January 2016, again prior to the liability outcome or to the Claimant obtaining permanent employment. Dr Cliffe said that the Claimant would not be able to find employment because of his mental health within two years of the report. Dr Cliffe was entirely wrong about this, as the Claimant found permanent employment within 3 or 4 months of that report. Again, Dr Cliffe viewed the causation entirely to be the employment situation with Landis & Gyr. In his third report of 1st December 2016, Dr Cliffe disagreed with Dr Mehrotra (see below), and maintained his original diagnosis. His opinion was that the Claimant's symptoms were of severity far exceeding the criteria for an adjustment disorder, as diagnosed by Dr Mehrotra. Since the road traffic accident in 2006, Dr Cliffe viewed the Claimant as being vulnerable to worry about his work performance and his ability to provide for his family which was central to his self esteem. The treatment at Landis & Gyr caused these worries to re-surface and the major depressive disorder was caused by the index events with the background vulnerability. Dr Cliffe's view was that the Claimant's mental health had an affect on his ability to work since he had been dismissed by the Respondent, and he continued to worry about his work performance, suffered poor concentration, and fatigue. He had memory problems, anxiety and low mood.

13. Dr Mehrotra's report is dated 29th September 2016. On examination, Dr Mehrotra did not find the Claimant clinically depressed or suffering significant anxiety levels and objectively he was not cognitively impaired. The present low mood complaints were commensurate with his social circumstances in regard to his marital relationship and the financial position of the family. The low mood would not justify a diagnosis of depression. Dr Mehrotra's diagnosis was an adjustment disorder, mixed anxiety and depressive reaction. Adjustment disorders are states of emotional disturbance interfering with social functioning and performance, and arise in a period of adaptation to the consequences of a stressful life event. The onset of the mental health issues occurred within one month of the occurrence of the stressful event or life change and the duration of symptoms did not exceed approximately 6 months. This is characteristic of an adjustment disorder. The Claimant was able to return to work in May 2015 which would be atypical in a case of severe depression. The extent of ordinary social and work activities is often used for general guidance as to the likely degree of severity of depression. The Claimant reported good self care, he managed most activities of daily living and his was interested and actively pursuing employment opportunities. The ICD 10 documents that in moderate depression the individual has considerable difficulty in continuing work,

domestic or social activities. In severe depression, the individual can only manage these to a very limited extent. Dr Mehrotra noted that the Claimant did not benefit from two courses of therapeutic doses of anti-depressant medication, and anti-depressant medication does not help in adjustment disorder. Dr Mehrotra's view was that the prognosis was good, and psychiatric treatment was essentially not required. The Claimant did not attend his GP during periods of employment in April and until June 2015 and from April 2016 to early September 2016. This would be highly unusual in severe continuing treatment resistant depression.

14. Dr Brownell does not support the Claimant's case that medication was prescribed as an anti-depressant. The various types of medication he had over time were primarily prescribed for insomnia. Dr Brownell undertook a full review of the medical records. She noted that attendance at the GP became far more infrequent from February 2016 and was connected with anxiety caused by the ongoing Tribunal litigation. Dr Brownell does not make any diagnosis, as that was not the function of her report. She noted, however, that because of the Claimant's road traffic accident and his moderate to severe depression at that time, for which he received treatment until the end of 2009, he was vulnerable to the development of a depressive episode in the future or to develop psychological symptoms in response to stressful life events.

15. Dr Szekely, the Claimant's GP, disagrees with Dr Mehrotra's diagnosis. Dr Szekely believed that there was mixed anxiety and depression and generalised anxiety disorder. Symptoms included sleep disturbance, tiredness, lack of motivation, loss of self worth and suicidal ideation. Dr Szekely confirmed that the Claimant had been prescribed with Mirtazapine, Zopiclone and Amitriptyline in the past to help him with his sleep. Recently, the GP had prescribed Quetiapine which seemed to have helped the Claimant with his sleeping difficulties. We note that the Claimant's own evidence to us at this hearing was that he would be back to full health in three to four years.

THE LAW

16. The Claimant seeks his financial loss remedy under Equality Act 2010, rather than under Employment Rights Act 1996, because of the more favourable regime in relation to discriminatory dismissal, as there is no cap on the losses that he can recover. However, the basic award still falls to be calculated under section 119 of Employment Rights Act.

Section 124 Remedies: general

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1) (the jurisdiction to determine complaints relating to a contravention of Part 5 – work).

(2) The Tribunal may:-

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

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

(c) make an appropriate recommendation.

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

Section 119(4) provides that an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

By *Sheriff v Klyne Tugs (Lowestoft) Ltd [1999] IRLR 481, CA*, an employment tribunal has jurisdiction to award compensation by way of damages for personal injury, including both physical and psychiatric injury, caused by the statutory tort of unlawful discrimination.

In *Essa v Laing Ltd [2004] IRLR 313, CA*, a Claimant who is the victim of direct discrimination is entitled to be compensated for the loss that arises naturally and directly from the wrong. It is not necessary for the Claimant to show that the particular type of loss was reasonably foreseeable.

In *Wardle v Credit Agricole Corporate and Investment Bank [2011] IRLR 694, CA*, it was held that it is generally only in rare cases that it is appropriate for a court to assess an individual's loss over a career lifetime, because in most cases assessing the loss up to the point where the employee would be likely to obtain an equivalent job fairly assesses the loss. In the normal case, if a Tribunal assesses that the employee is likely to get an equivalent job by a specific date, that will encompass the possibility that they might secure the job earlier or later than predicated. A Tribunal should only assess loss on the basis that it will continue for the course of the Claimant's working life where it is entitled to take the view on the evidence before it that there is no real prospect of the employee ever obtaining an equivalent job.

17. In *HM Prison Service v Salmon [2001] IRLR 425, EAT*, it was held that, in principle, injury to feelings and psychiatric injury are distinct. In practice, however, the two types of injury are not always easily separable, giving rise to a risk of double recovery. In a given case, it may be impossible to say with any certainty or precision when the distress and humiliation that may be inflicted on the victim of discrimination becomes a recognised psychiatric illness such as depression. Injury to feelings can cover a very wide range. At the lower

end are comparatively minor instances of upset or distress, typically caused by one off acts or episodes of discrimination. At the other end, the victim is likely to be suffering from serious prolonged feelings of humiliation, low self esteem and depression; and in these cases it may be fairly arbitrary whether the symptoms are put before the Tribunal as a psychiatric illness, supported by a formal diagnosis and/or expert evidence.

The well known *Vento* bands of compensation for injury to feelings were updated in *Da'bell v NSPCC [2010] IRLR 19, EAT*, and further updated in *Simmons v Castle [2012] EWCA CIV 1039, CA*. The middle band is now between £6,600 and £19,800.

We were referred to the case of *Commissioner of Police of the Metropolitan Police v Shaw [2012] IRLR 291, EAT,* for guidance on how to assess aggravated damages. The circumstances attracting an award of aggravated damages fall into three categories. First, the manner in which the wrong was committed. Second, motive. Third, subsequent conduct. So far as the manner in which the wrong committed is concerned, then the basic concept here is that the distress caused by an act of discrimination may be made worse by being done in an exceptionally upsetting way. In this context the phrase "high handed, malicious, insulting or oppressive" is often referred to – it gives a good general idea of the kind of behaviour which may justify an award, but should not be treated as an exhaustive definition. In so far as motive is concerned, then discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. With regards to fixing the amount of aggravated damages, the dividing line between the award for injury to feelings and the award of aggravated damages will always be very blurred. Tribunals must be aware of the risk of unwittingly compensating Claimants under both heads for what is in fact the same loss.

CONCLUSIONS

18. Having regard to our findings of fact, applying the appropriate law, and taking into account the submissions and schedules of the parties, we have reached the following conclusions:-

    (1) The first point to note is that the Claimant has produced four schedules of loss over time. The first schedule was submitted on 5th May 2015, and claimed loss only to the end of 2015, with no suggestion of career loss nor even loss for an extended period. The second schedule of loss was submitted on 7th September 2015, when the Claimant had not obtained permanent employment. It contained the following statement:-

> "The Claimant believes it will take two years to obtain work of the same earning capacity as his previous employment, although he is willing to undertake casual work."

However, by the time that the Claimant submitted his third schedule of loss, on 6th January 2017, he had of course won part of his case at the liability hearing. He now submitted a claim for a career loss until retirement at the age of 70, in the sum of £866,000. His total claims were in the region of £1.5 million. That schedule was updated in the fourth schedule of 2nd February 2017. It seems to us that there has been a certain opportunistic ramping up of the Claimant's claims.

(2) We conclude that the Claimant is not entitled to compensation for career loss. This is not one of those rare cases referred to in *Wardle*. The Claimant now has a similar permanent job to the one that he had at Landis and Gyr, that of senior electronics engineer. His employment may or may not be as secure as it was at Landis and Gyr, but it is difficult to reach any conclusion on this. We do not know enough about the circumstances of the Claimant's current employer, Cosworth. However, we do take into account the Claimant's employment history, which was that he only had two years maximum in any job before he arrived at Landis & Gyr, and had five jobs in six years. We note Mrs Graves' evidence that electronics engineers tend to move on after five years at Landis & Gyr in order to further their careers. This is quite likely to have happened with the Claimant as he would not have been promoted at Landis & Gyr as there was no promotion opportunity for him there. Further, we note that the Claimant himself said that he would be back to full health within three to four years, and therefore could be expected to find commensurate employment with that at Landis & Gyr. We find that the Claimant's evidence as to why he was now only working four days per week unpersuasive, and not definitively linked to any health issues. We really cannot say why that is the position, and we believe that it is unlikely to continue that way for long. We believe that, once proceedings are concluded, the Claimant will make a good and quick recovery and the medical evidence suggests that the prognosis is good. There are jobs out there, and the Claimant has not applied for any since getting his job with Cosworth. Although we do not necessarily blame him for this, the fact is that, as he not tested the water, he cannot say that he cannot find better employment than he has at Cosworth. At one time the Claimant's own assessment was that he would fully mitigate his loss within two years of the effective date of termination. That concession is of evidential value. Doing the best we can, we conclude that the Claimant will be able to fully mitigate his loss in three years time and should be compensated on that basis. We therefore award him three years loss of net earnings and benefits from the date of remedy hearing, as well of course as the uncontested past financial loss.

(3) As far as pay rises are concerned, we accept the Respondent's figures on this. There is no evidence that the Claimant's performance was exceptional – we refer to the evidence of Mrs Graves, and also to our findings at the liability hearing about his performance. The figures for past and future loss should be based on that evidence. The Claimant would have earned bonus of £2,742.55 in June 2013 but received only £2,532.59, and so suffered a short fall of £209.96. In June 2014 he would have earned £1,836.48 but received only £1,296.19, and so suffered a short fall of £540.29. We take the average of the bonuses that should have been paid in June 2013 and June 2014 to assess the likely bonus to be paid in June 2015 and June 2016, say £2,289.51 for each of those years.

(4) The Claimant must give credit for earnings from his temporary employment and he has not given full credit for his wife's earnings. Looking at the accounts, we believe that we should add £936 to £11,092 to give a total of £12,028 for earnings from temporary employment which must be deducted from the past loss figure. Also, earnings from the Cosworth employment to the date of the remedy hearing must be credited. The past loss figure of 122 weeks should be calculated on the basis of the Respondent's figures for pay rises; in other words, their figures for earnings the Claimant would have received at any given time in that 122 weeks.

(5) So far as pension loss is concerned, then we assess this on the basis of the employer contributions in this defined contribution scheme. We do not make any complex pension calculations. The Claimant must give credit for pension contributions received in his current employment. The Claimant is not entitled to any loss of earnings in relation to overtime payment (see paragraph 8 above).

(6) So far as past loss of death in service cover is concerned, then the Claimant is not entitled to this as he has not suffered the loss, as he has not died. This is a contingent benefit, and that contingency has not occurred. The same would go for any medical insurance, but the Claimant is not entitled to compensation for this anyway, as he did not subscribe to it with the Respondent. Again, the loss of the benefit of discounted products is contingent (on his use of it), and the Claimant did not at any time make use of this benefit and therefore cannot be compensated for the loss of it. He is entitled to the cost of any eye tests that he would normally have had, but not for spectacles or lenses as he never took advantage of that benefit.

(7) Expenses. The Claimant claims his expenses in obtaining legal advice and assistance in the recent schedule. Clearly, this claim falls within the definition of 'costs' under rule 74 of the ET Rules of Procedure 2013, and must be claimed in accordance with those Rules. The Claimant is entitled to recover his reasonable expenses

incurred in seeking work, in the total sum claimed of £1,193 75. We do not award the Claimant the medical expenses claimed, although they may form part of the expenses or disbursements that would fall under the costs regime of the Rules of Procedure, provided there is sufficient evidence in support. However, the Claimant has been taking medication for his mental health condition caused by the Respondent's discrimination and so is entitled to the cost of this - £327. We make no award for the future cost of medication, as it is by no means clear that the Claimant will require it.

(8) The Claimant makes claims under the heading: Legal Costs and Medical Costs. These are in reality claims for expenses or disbursements under the costs regime of the Rules of Procedure, as they relate to the obtaining of expert evidence for the purposes of the litigation, and for the Claimant's travel and associated expenses in seeing his union and legal advisers and attending Tribunal hearings, as well as his loss of earnings (or holiday entitlement) because of days off to prepare for and attend the hearings. Therefore, we do not award them. However, the Claimant is entitled to his Tribunal fees in the sum of £1,200, and we award him these.

(9) The basic award can be calculated arithmetically. We believe that it is 4 times £464 equal to £1856. The loss of statutory rights is appropriately in the sum of £400.

(10) We conclude that the Claimant has suffered personal injury as a result of the discrimination of the Respondent, and that he should be compensated for this. Further, we conclude that such award should be a separate award from that for injury to feelings. The medical evidence clearly indicates that he suffered a distinct and diagnosable mental health injury. There is a dispute between, in particular, Dr Cliffe and Dr Mehrotra as to the severity and nature of it, which we have found difficult to resolve for the reasons that we have set out above. Having regard to the description of moderate psychiatric damage in the Judicial College guidelines for the assessment of personal injury, we conclude that the Claimant suffered/continues to suffer from moderate damage/depression as a result of the discrimination of the Respondent. The appropriate band is £5,500 to £17,500, including the *Simmons v Castle* 10% uplift. We note Dr Mehrotra's view of the apportionment as 75/25. However, the home life issues that caused the Claimant mental health problems were directly related to his dismissal. Doing the best we can, we make an award of £11,500, in the middle of that JC guidelines band.

(11) So far as the *Vento* award is concerned, then the Claimant gave evidence about his seriously hurt feelings, caused by the unlawful victimisation of Mr Lee in the PIP process over a quite lengthy period of time of at least 13 months. Mr Lee was motivated by the

complaints of race discrimination made against him, and that was an aggravating factor because he showed animosity towards the Claimant. Further, the failure of Mr Whittaker, Mr Knight and Mr Bennett to investigate the genuine and reasonable complaints of continuing victimisation by the Claimant was high handed and is another reason for awarding aggravated damages here. However, we note the case law and we do not separate out the awards, but make an all-in award that is at the top of the middle *Vento* band or at the bottom of the top band - namely £21,000.

(12) This is a case where an ACAS uplift might normally be appropriate in respect of the failure to investigate the Claimant's grievances in the PIP process. However, we have already additionally compensated the Claimant by way of aggravated damages for the injury to his feelings specifically related to that lack of investigation. To award an ACAS uplift in this respect would be over-egging the pudding, and we do not think it is appropriate to do so. We note that, per section 207A(2) of TULR(C)A 1992, such uplift should only be made if we consider it just and equitable in all the circumstances to make the award. Because of this (in effect) double recovery point, we do not think it would be just and equitable to make any uplift, and we decline to do so.

(13) Statutory interest is payable on relevant awards, and the parties will no doubt be able to calculate and agree this.

(14) We have not made precise calculations as to the different heads of the compensation. We leave this to the parties, on the basis of the findings and conclusions that we have made. They have sufficient information from us on which to make these essentially arithmetical calculations, and we see no reason at all why the parties cannot agree them. Once the parties have agreed the figures, we expect them to come back to us and then the Tribunal will make an order that the Respondent pay the agreed compensation. The parties must provide a final figure and also give full details of the make up or breakdown of that final figure. We give the parties 28 days from the date that the decision is sent to them to come back to the Tribunal with this.

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Employment Judge G P Sigsworth, Cambridge.
Date: 1 June 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS