

IN THE EMPLOYMENT TRIBUNAL

Claim No: 18010001/2020

AT BRISTOL

B E T W E E N :

MR FRANCES FARMER

Claimant

- and -

ETHICAL EARTH FOODS LTD

First Respondent

MRS PAMELA WILSON

Second Respondent

INDEX

	Description	Page
1	Employment Tribunal Judgment	1
2	Note of ET Reasons	2
3	Tweet	9
4	Claimant's Witness Statement	10
5	Claimant's Schedule of Loss	14
6	Report of Dr A. Nawbatt	16
7	Job Advertisements	19
8	Presidential Guidance – <i>Vento</i> Bands (Claims Presented on or after 6 April 2020)	22
9	Judicial College Guidelines – Ch 4, Psychiatric and Psychological Damage	24

MOCK EMPLOYMENT TRIBUNAL

Judgment

Claimant

Mr F Farmer

Respondents

Ethical Earth Foods Limited

Mrs Pamela Wilson

Heard by CVP (Bristol)

On: 25 October 2021

Before: Employment Judge (sitting alone)

Appearances

For the Claimant: Mr Nicholls, Counsel

For the Respondents: Dr Dhorajiwala, Counsel

JUDGMENT

1. The Claimant's claims of unfair dismissal, wrongful dismissal, direct sex discrimination (relating to his dismissal) and sexual harassment against the First Respondent are well founded and shall succeed.

2. The Claimant's claims of sexual harassment against the Second Respondent is well founded and succeeds.

IN THE EMPLOYMENT TRIBUNAL

Claim No: 18010001/2020

AT BRISTOL

B E T W E E N :

MR FRANCES FARMER

Claimant

- and -

ETHICAL EARTH FOODS LTD

First Respondent

MRS PAMELA WILSON

Second Respondent

PARTIES' AGREED NOTE OF JUDGMENT

1. I have now arrived at my decision and propose to deliver it now. The parties may request full written reasons if they wish.

Background

2. This is a claim for unfair and wrongful dismissal against the First Respondent, together with direct sex discrimination and sexual harassment against the First and Second Respondents.
3. The parties agreed to an EJ sitting alone conducting the hearing.
4. I was provided with an agreed bundle of docs and references to numbers within this Judgment relate to those page numbers.

5. The parties had agreed a list of issues [page 34-36] which were considered at the start of the hearing and were amended to include the claim of wrongful dismissal.
6. Evidence was heard from the Claimant himself, the Second Respondent, Ms Wilson, and Ms Earthy. An additional witness statement was submitted by the Respondents (for Ms J Goode) but as she did not attend to give sworn evidence, I gave it such weight as I considered appropriate.
7. The Tribunal ensured that each of the witnesses, who were all in different locations, had access to the relevant written materials which were unmarked. I was satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.
8. In coming to my decision I have considered:
 - a. The evidence contained in the hearing bundle;
 - b. The evidence of all the witnesses in the case; and
 - c. Submissions of the parties.
9. Before I deliver my substantive decision, I have concluded that it would be just and equitable to extend the time limit in order for the Tribunal to consider the complaints of sex harassment / discrimination, specifically in relation to the comments concerning 'man flu', that *prima facie* occurred outside the time limit for bringing a claim. In reaching this conclusion, I attach particular weight to the fact that the First Respondent has not identified any prejudice to its position – in fact it admits the factual basis for the claim.

Findings of fact (in brief)

10. The Claimant was employed by the First Respondent from 1 June 2010 until his dismissal on 15 March 2020.

11. The First Respondent is a retailer said to be committed to reversing climate change. It employs 1,200 people in a number of retail stores, including the Bristol store in which the Claimant worked. It has an Ethical Core Principles code which appeared at pages 37-38.
12. The Claimant was initially employed as a store assistant in the First Respondent's Bristol store until he was promoted to supervisor on 13/9/16. At all material times he was a supervisor. The manager of the store was Ms Wilson, the Second Respondent. The Claimant was the only male employee within Bristol store during all relevant times for his claim.
13. His contract of employment [pages 47-50] provides that the Claimant was entitled to 9 weeks' notice of the termination of his employment unless he had committed gross misconduct.
14. During his employment in Nov/ Dec 2019, it was accepted that the Claimant was referred to as having man flu on a few occasions by his colleagues.
15. On 8.3.2020, the Claimant posted a tweet stating: "*Global warming? What a load of nonsense! It's a complete scam and anyone who believes in this crap is a absolute moron!!*" It was seen by customers of the First Respondent and was forwarded on although it is unknown how many customers saw it.
16. On 15.3.20 the Claimant was called into a meeting without advance warning. He admitted posting the tweet, refused to take it down and was ultimately dismissed for gross misconduct, purportedly because of the tweet.
17. During the hearing, it was accepted that Ms Wilson said 'mansplaining'. The Claimant states that he was told to 'Man up' although Ms Wilson stated that she had said grow up - I accept the evidence of the Claimant in this regard.

18. The Claimant appealed on 16.3.20 and this was heard by Ms Earthy on 20.3.20 [page 63]. His appeal was dismissed.

Relevant law

19. [Omitted from this Note]

Conclusions

20. I heard submissions from both parties, which I do not intend to repeat here. In summary, I have concluded the following in relation to Mr Farmer's claim.

- a. Unfair dismissal: I conclude that the dismissal was unfair.
- b. Direct discrimination:
 - i. I conclude that the Respondent was subjected to direct discrimination, with respect to his dismissal.
 - ii. However, I do not accept that the references to 'man flu' during his employment, as well as being told in the course of his disciplinary to stop 'mansplaining' to Ms Wilson were acts of direct discrimination contrary to section 13 EqA 2010.
- c. Harassment: the references to 'manflu' during the Claimant's employment, as well as the suggestion that he was 'mansplaining' in the course of his disciplinary hearing constituted acts of harassment.

Unfair Dismissal

21. Having considered the witness evidence in particular, I conclude that the reason for the Claimant's dismissal was his sex and not his alleged conduct for reason of the tweet that he sent, it was therefore unfair.

22. I was not persuaded, particularly having heard the evidence of Evelyn Earthy in cross examination as to her own social media presence, which was clearly associated with

EEF, that EEF placed as much emphasis on their core values as they would have the Tribunal believe. Ms Earthy's own, very public, social media activity, contradicts EEF's alleged stance on environmental issues. When this is combined with the acts of harassment that I have found proven, and the fact that Mr Farmer was the only man employed by the First Respondent at the Bristol store, and the fact that he was largely excluded from meetings between the senior employees (despite the fact that he was a supervisor) an inference of sex discrimination arises which the First Respondent has failed to discharge.

23. Furthermore, there were substantial procedural failings in relating to the Claimant's dismissal:

a. At the disciplinary stage:

- i. The allegations against the Claimant were not communicated until the disciplinary meeting itself;
- ii. The Claimant was not provided with any written notice of the hearing, informed of any right to be accompanied until the hearing itself, or provided with any material to enable him to prepare for the hearing.
- iii. No witness evidence was provided to the Claimant.
- iv. The First Respondent failed to follow its own disciplinary procedure or the ACAS code of practice itself.

b. These procedural failings also in my view render the dismissal unfair. I do not accept that the appeal process was sufficient to adequately address or remedy the substantial procedural failings seen at the disciplinary stage.

Wrongful dismissal

24. I am satisfied that the Claimant was entitled to receive notice or PILON to terminate his employment in accord with his contract of employment. He had not committed gross misconduct and therefore, this claim succeeds.

Direct Discrimination

25. I have concluded that Mr Farmer was not directly discriminated in relation to the comments about him suffering from 'man flu', as well as by being told to stop 'mansplaining' in the process of his disciplinary hearing. For the reasons below, I conclude that these acts are well founded claims of harassment.

Harassment

26. I have concluded that the Claimant was harassed in relation to the 'manflu', 'man-up' and 'mansplaining' comments for the following reasons:

- a. I do not accept Ms Wilson's evidence that she did not tell the Claimant to 'man up' in his disciplinary hearing, and have made a finding of fact to the effect that she did make such a comment, which is of a similar character to the other comments made.
- b. With respect to 'man flu', it was accepted by the First Respondent that their employees did make these comments. I do not accept that this was merely good-natured banter.
- c. In relation to 'mansplaining', I accept the First Respondent's evidence that there is a degree of nuance that must be applied when considering a term such as this, not least due to historical or institutional dynamics that exist between men and women.

27. I conclude that the use of all three terms, constituted unwanted conduct. I find that it is clear that these terms constituted treatment related to the Claimant's sex, and

had the effect of creating an offensive and humiliating environment for the Claimant.

28. This concludes my decision. I will now hear submissions from the parties on how to proceed with the issue of remedy.



Follow

Frances Farmer

@FranFarmer1985

Avid politico, work @EthicalEarthFoods in Bristol

Trump 2020 speaking truth to the world!!

Bristol

Joined October 2010

313 Following 65 Followers

Not followed by anyone you're following

Tweets

Tweets & replies

Media

Likes



Frances Farmer @FranFarmer1985

Global warming? What a load of nonsense! It's a complete scam and anyone who believes in this crap is a absolute moron!!

12:00 PM · 08 Mar 2020

Thread



Frances Farmer @FranFarmer1985

Global warming? What a load of nonsense! It's a complete scam and anyone who believes in this crap is a absolute moron!!

12:00 PM · 08 Mar 2020

2 Retweets 5 Likes



Simon Green @SimonGreenEarth

Replying to @FranFarmer1985

This is TOTALLY unacceptable, especially from an employee who works at @EthicalEarthFoods?? Very disappointing to read



8

17



Femi Stephens @FemiLondon77

Replying to @FranFarmer1985

This is so irresponsible! I thought climate change mattered to @EthicalEarthFoods. Boycotting.

16

109

393



Tweet your reply



IN THE EMPLOYMENT TRIBUNAL

Claim No: 18010001/2020

AT BRISTOL

B E T W E E N :

MR FRANCES FARMER

Claimant

- and -

ETHICAL EARTH FOODS LTD

First Respondent

MRS PAMELA WILSON

Second Respondent

WITNESS IMPACT STATEMENT OF FRANCES FARMER

I, Frances Farmer of 21 Standon Way, Bristol, Avon, BS1 5TS will say as follows:

1. I make this witness statement in support of my claim for compensation. My witness statement for the merits hearing in October 2021 sets out the circumstances of my employment and termination.
2. Since I was dismissed on 15 March 2020, I felt like my world had collapsed. I was knocked really low because of it. Even when I told people I had been unfairly dismissed, you could see a question in their eyes.
3. My depression (which I have suffered with on and off for a number of years) got a lot worse and I was unable to function. I didn't know what to do with myself. I wasn't sleeping, washing or eating properly. I stopped contact with my friends and family and

became really reclusive. The only person I was able to see was my elderly nan (who is 96 years old), who I have visited once a week since I left school. For ten years or so I would drop food round to her, do odd jobs around the house and keep her company. She doesn't have any social contact apart from me and no other family, so I just had to keep this up.

4. My GP diagnosed my depression when I attended for an appointment at the end of March 2020 – apart from visiting my nan, this was the first time I had left my house since I had been dismissed. I was diagnosed with depression and prescribed antidepressants. I hadn't previously used antidepressants since I was at school. I have since taken an anti-depressant tablet in the morning and during the day, and a sleeping tablet in the evening. Without medication I wouldn't be able to cope.
5. Even with medication, I was very lethargic and struggled to do normal things. I couldn't go shopping or even concentrate on the television. I had previously liked walking in our local area and the countryside around, but I lost all interest in that.
6. I started drinking heavily for a while shortly after I was dismissed - drinking to forget really - but advice from my GP and online counselling from a local counselling service has helped me, and I no longer rely on alcohol to self-medicate. I have been teetotal since September 2020.
7. In December 2020, after the Tribunal hearing, my GP started to reduce my dose of antidepressants. I do fear I will still have to take medication for a long time.
8. I have reviewed the medical report prepared by Dr Andrew Nawbatt and I agree his diagnosis and prognosis, i.e. that I suffered with severe depression until September 2020

and my symptoms are now moderate and slowly improving. I do not know when I will be back to “normal”, but I do not disagree with Dr Nawbatt’s estimate that I will have recovered within a year of the remedy hearing.

9. I appreciate that Dr Nawbatt says I could have returned to some part-time work in September 2020, but I really couldn’t. Since the Covid 19 pandemic I’ve continued to visit my nan on a weekly basis and drop food around to her and (even though I know I wasn’t meant to) I would sit in her front garden and talk to her and give her some company. I was the only person she would see week to week. If I’d got a job, I would have been terrified of catching Covid and passing it on to my nan. It would have killed her. She was vaccinated in early March 2021 and I’m very relieved that we can both be more relaxed now.
10. Since her vaccination, I’ve started looking around for jobs but there doesn’t seem to be much available, and I’m still suffering with depression and loss of motivation. I’ve also spent my whole working life in a retail environment – but I now find it difficult to go inside shops. I think it reminds me of the trauma of being discriminated against at Ethical Earth Foods. I would really struggle to work in a shop again after the treatment I received.
11. I’ve been thinking about what else I could do, as I do realise that getting back to work would be the best thing for me. I did a job evaluation assessment at the Job Centre and it suggested maybe I should go into hospitality because I’m a friendly guy and I like working with people. I think this looks like a good plan, but hospitality has been badly hit by Covid and there are not many jobs around, even though I’ve been trying my best to find something.

12. I don't think I am likely to find a part time job until things get back to normal with Covid around May/early June 2022, if I am fortunate enough to find a job. I also agree with Dr Nawbatt that it would be about six months of part-time work before I am able to return to full-time work.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: *Frances Farmer*

Dated: *20 October 2021*

IN THE EMPLOYMENT TRIBUNAL

Claim No: 18010001/2020

AT BRISTOL

B E T W E E N :

MR FRANCES FARMER

Claimant

- and -

ETHICAL EARTH FOODS LTD

First Respondent

MRS PAMELA WILSON

Second Respondent

**CLAIMANT'S SCHEDULE OF LOSS
-TO ESTIMATED HEARING DATE: 25 October 2021-**

Key Data:

Date of Birth: 10.6.1985
State of Employment: 1.6.2010
Effective Date of Termination: 15.3.2020
Gross weekly pay: £600
Net weekly pay: £402

		TOTALS
Basic Award		
Age at EDT	35	
Years' Service	9	
Multiplier	9	
Sub-Total		£4,725.00
Compensatory Award (Past Losses)		

No of weeks (inclusive of nine weeks' notice)	84	
Past Net Loss of Earnings	£33,768.00	
Amounts received	£0	
Sub-Total		£33,768.00
Compensatory Award (Future Losses)		
No of weeks	52	
Future Loss	£20,904.00	
Amounts received (assumed) Assume from 30 wks until the start of part-time work at c. £200pw (25.05.2022); and then 26 wks until the start full time work at c.£402pw (25.11.2022).	£5,200.00	
Sub-Total		£15,704.00
Other Financial Losses		
Loss of Statutory Rights	£500	
CBT x 10 sessions	£600	
Sub-Total		£1,100.00
Non-Financial Losses		
Injury to feelings Mid-Vento band (top)	£27,000	
Personal injury JC Guidelines, Ch 4(A)(c), Moderate Severity (mid-band)	£11,700	
Sub-total		£38,700.00
Failure to comply with ACAS Code: 25% uplift on £93,997		£23,499.25
<u>GRAND TOTAL</u>		<u>£117,496.25</u>

MEDICAL REPORT OF DR ANDREW NAWBATT PREPARED ON

MR FRANCES FARMER

21 Standon Way
Bristol, Avon,
BS1 5TS

DoB: 15.6.1985

Date of Report: 7 July 2021

This Report has been prepared for the designated Court or Tribunal and will deal with causation, condition and prognosis

Requested: By the Claimant's Solicitors

Date of Consultation: 5 July 2021

Methodology: Interview, Clinical Examination and review of General Practitioner and Hospital Records

Curriculum Vitae: Dr Nawbatt qualified from Guys Hospital Medical School in 1987. He underwent specialist psychiatry training before obtaining Fellowship of the Royal College of Psychiatrists in 1995. He undertook fellowships in General Adult Psychiatry and Older Persons Psychiatry in 1996 and 1998.

He was appointed Consultant at Southampton General Hospital in 1999, where he is currently the lead clinician for General Adult Psychiatry. He has written a number of peer reviewed publications on Depressive/Anxiety disorders, and is a member of the British Psychiatry Society.

I Instructions

1. My written instructions are to produce a report to provide my opinion to deal with the psychological effect on Mr Farmer of the termination of his employment in or around 15 March 2020. I am asked to address what psychological injury he has suffered, if any, and what his current condition and future prognosis may be relative to a potential return to employment.

II History of symptoms and impact of dismissal

Presenting Complaint

2. Mr Farmer tells me he was a Supervisor at Ethical Earth Foods until he was dismissed on 15 March 2020. Since he was dismissed, he records feeling that his world had ended and that his mood suffered as a consequence. He felt people did not believe his explanation that he had been unfairly dismissed, which made his mood worse.
3. He felt increasingly unable to function, and this impacted his normal activities of daily living. He complained of the following symptoms over the weeks and months following his dismissal:

- a. He found it difficult to wash and dress himself appropriately, lacking the motivation to do so;
 - b. He lacked the motivation to prepare or cook proper meals, relying on junk food when he remembered to eat. His appetite deteriorated.
 - c. He lacked confidence in social situations, retreating into his home and not engaging in usual social activities.
 - d. He lost interest in hobbies and activities; he found it difficult to concentrate on watching television, and stopped outdoor exercise completely.
 - e. His sleep was disturbed: he found it increasingly difficult to fall asleep at night, and when he did so he would wake intermittently and struggle to return to sleep. He felt fatigued and lacked energy during the day.
 - f. He resorted to increased drinking of alcohol as part of self-medication.
4. He described his mood during this period as continually depressed, with reduced self-esteem, lack of self-confidence and continued thoughts of failure and hopelessness.

Relevant Past Medical History

5. Mr Farmer informed me that he has a history of mild depression in the past, for which he has been treated with medication a number of years ago. He has not had any recurrences of depression over the last few years.
6. I have reviewed Mr Farmer’s past medical records, which accord with the history he has given.

Treatment and progression of symptoms

7. At the end of March 2020, Mr Farmer sought help from his GP, who made a diagnosis of depression. He was prescribed an anti-depressant Citalopram at the dose of 40mg OD to treat his symptoms. He was further given advice from his GP about lifestyle changes, and directed to an online counselling service “*Mind*”.
8. Mr Farmer reported a gradual improvement in his symptoms in late 2020 following a sustained period of time engaging in treatment. Mr Farmer’s anti-depressant medication was reduced in December 2020 to 20mg OD.

Current Condition

9. Mr Farmer reports ongoing symptoms of low mood, including a lack of self-worth, low self-confidence and intrusive thoughts. His sleep is improving but is not yet back to baseline. Overall, however, his symptoms have improved since March 2020. Mr Farmer has yet to return to work, and he reports his attempts to do so have been hampered by the current Covid-19 pandemic. However, he reports that since his grandmother received her Covid-19 vaccine in early March 2021, he has felt more comfortable applying for jobs.

III Examination

10. Examination was conducted remotely by Zoom, in light of the current government restrictions following the Covid-19 pandemic. I do not consider this has any effect on my psychiatric examination, which involves primarily history taking.
11. Mr Farmer was overall cooperative and pleasant to examine. He appeared to demonstrate a flat affect, with reduced eye contact and poor variation on vocal tone. His answers to questions were well formed, but short.
12. In addition to the careful history outlined above, he undertook objective tests to ascertain his current mood. On a PHQ-9 Depression Test Questionnaire, which is the current clinical standard for diagnosis of low mood in the UK, Mr Farmer scored 12 out of 27, which indicates a moderate depressive episode.

IV Opinion and Prognosis

13. In my opinion, Mr Farmer suffered a significant deterioration in his mood as a result of his dismissal in March 2020. This amounted to a reactive relapse of his depression. On the basis of Mr Farmer's reported symptoms from early March 2020, which are reasonable in the circumstances, I would grade his condition at the time as a severe depressive episode, per ICD-10 diagnostic criteria.
14. These symptoms gradually improved with treatment from his GP. In my opinion, his severe depressive episode lasted for a period of 6 months until around September 2020. After this time, his symptoms improved quite substantially but he continued – and continues – to suffer with a moderate depressive episode. I consider that it is likely Mr Farmer's depression will resolve entirely once the litigation is concluded and he has obtained new employment. My best estimate is that such a recovery will be complete within 6 months of the conclusion of the litigation itself.
15. In respect of Mr Farmer's ability to return to work, in my opinion Mr Farmer's mental state was improved such that he could have returned to part-time work in September 2020, with full-time work 6 months thereafter. I consider that employment will help improve Mr Farmer's symptoms of depression.

V Statement of Truth

16. I am an expert in the field of psychiatry and I have been requested to provide a statement. I can confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand my duty in compiling this report is to the court.


Signed: *DR NAWBATT* Dated: 8 January 2021

Job Adverts


Bristol (+ 5 miles) – Hospitality Roles


Search as of 10 June 2020


Hospitality

Bar Team Member  **PREMIUM** New

Found on our partner site Caterer.com

 Cathay, BS1 1HQ


 Competitive


 Stonegate Group

Today


Stonegate Group


If going the extra mile for someone comes naturally to you, you could be a natural fit with us!
It is strengths like these that we look for in our ...


 Save

Bar Team Member  **PREMIUM** New

Found on our partner site Caterer.com

 Ashley Down, BS7 8PE


 £8.36 per hour


 Stonegate Group

Today


Stonegate Group


Are you awesome...? We have awesome drinks that need serving to our awesome guests. We
have Cocktails in cans to Peppermint Tea, Healthy Smoothies to ...


 Save

Food & Beverage Assistant  New


Found on our partner site Caterer.com

 Bristol, Avon, BS2 0GS


 Competitive Salary

 Leonardo Royal St Pauls

Recently




... team who work together to provide wonderful **hospitality** to our guests. We set
high ... employees Have a genuine interest in providing **hospitality** to our customers To be able
to ...

 Save

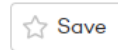
Food And Beverage Supervisor PREMIUM

Found on our partner site Caterer.com

-  Patchway, BS32 4JF
-  Competitive Salary
-  DoubleTree by Hilton Bristol North
- Recently







Do you want to excite the world of **Hospitality**? We bring together a portfolio of Hotel ...



New

Retail Stores

Shift Manager (21 to 30 hours, Bedminster/Horfield) FEATURED

-  BS3, Bristol, BS3 4EG
-  Competitive Salary + Benefits
-  Part Time
-  LIDL
- Recently







Find out more below and apply for a career a **Lidl** less ordinary. Please note that your ...



New

Store Manager FEATURED





-  Westbury Park, BS6 7SL
-  From £22,000 to £26,000 per annum
-  Permanent
-  Job Board Direct
- Posted 17 days ago



Bike **Retail** - **Store** Manager Bristol Full-time hours: Tuesday - Sunday Expected start date: ... Our client is looking for a Full Time **Store** Manager for their Electric Bike **store** in ... They will be moving to our new flagship **store** and head office in Clifton, Bristol within ... T...



Store Assistant FEATURED

-  BS3, Bristol, BS3 1JA
-  9.55 - 10.57 GBP
-  Permanent
-  Aldi Stores
- Recently



At **Aldi**, you'll never find yourself bored and twiddling your thumbs on the till as a Store ...



New

Driving

Multi Drop Delivery Driver Class 2 New

- 📍 Staple Hill, BS16
- £ £28,000 per annum depending on experience
- 🕒 Permanent
- 🏢 Chapple Jenkins Ltd
- 📅 Recently



Multi Drop **Delivery** Driver (Class 2) Chapple & Jenkins is a fast-growing, regional ... As a Multi Drop **Delivery** Driver, the role includes, but is not necessarily limited to, the ... and counting all stock with the customer when the **delivery** is made. There will be some ... It is necessary to...

☆ Save

Van Delivery Driver - £100 per day - Pucklechurch

- 📍 BS16, Bristol, BS16 9QH
- £ £100 - 130 per day
- 🕒 Permanent
- 🏢 XLSS
- 📅 Posted 37 days ago

XLSS

What You'll Bring At least 12 months of **delivery driving** experience. Current UK **driving** ...

☆ Save

Courier Delivery Driver PREMIUM New

- 📍 BS3, Bristol
- £ Competitive
- 🕒 Contract
- 🏢 Hermes
- 📅 Recently



Local Courier **Delivery** Driver - self employed We are looking for reliable local drivers in ... you'll collect your parcels from the local Hermes **Delivery** Unit in the morning (in more ... a valid MOT and SDP insurance, a full valid UK **driving** licence, the right to work in the ...

☆ Save



TRIBUNALS
JUDICIARY

JUDGE BRIAN DOYLE
PRESIDENT
EMPLOYMENT TRIBUNALS
(ENGLAND & WALES)



**EMPLOYMENT TRIBUNALS
(SCOTLAND)**
Judge Shona Simon
President

PRESIDENTIAL GUIDANCE

**Employment Tribunal awards
for injury to feelings and psychiatric injury following
De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879**

THIRD ADDENDUM TO PRESIDENTIAL GUIDANCE ORIGINALLY ISSUED ON 5 SEPTEMBER 2017

1. This Third Addendum updates, but does not otherwise replace, the Presidential Guidance originally issued on 5 September 2017 and the First and Second Addenda subsequently issued on 23 March 2018 and 25 March 2019, which remain relevant to claims presented before 6 April 2020. The Third Addendum takes into account changes in the RPI All Items Index released on 25 March 2020.¹

2. In respect of claims presented on or after 6 April 2020, the Vento bands shall be as follows: a **lower band of £900 to £9,000** (less serious cases); a **middle band of £9,000 to £27,000** (cases that do not merit an award in the upper band); and an **upper band of £27,000 to £45,000** (the most serious cases), with the most **exceptional cases capable of exceeding £45,000**. NB these bands take account of the 10 per cent *Simmons v Castle* uplift.


3. In respect of claims presented in Scotland, the bands remain subject to paragraph 12 of the Presidential Guidance issued on 5 September 2017.

¹ The Presidents remain aware of the shortcomings of the Retail Prices Index as a measure of inflation. They will consider at the relevant time any future change to the appropriate index of inflation that might be adopted in the Judicial College *Guidelines for the Assessment of General Damages in Personal Injury Cases* and/or by section 34 of the Employment Relations Act 1999. See:

<https://www.ons.gov.uk/economy/inflationandpriceindices/articles/shortcomingsoftheretailpricesindexasameasureofinflation/2018-03-08>.



Judge Shona Simon
President (Scotland)



Judge Brian Doyle
President (England & Wales)

27 March 2020

4

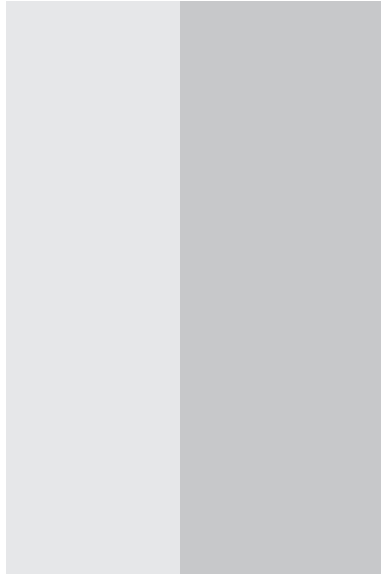
Psychiatric and Psychological Damage

This chapter covers those cases where there is a recognizable psychiatric injury. In part (A) of this chapter some of the brackets contain an element of compensation for post-traumatic stress disorder. This is of course not a universal feature of cases of psychiatric injury and hence a number of the awards upon which the brackets are based did not reflect it. Where it does figure any award will tend towards the upper end of the bracket. Cases where post-traumatic stress disorder is the sole psychiatric condition are dealt with in part (B) of this chapter. Where cases arise out of sexual and/or physical abuse in breach of parental, family, or other trust, involving victims who are young and/or vulnerable, awards will tend to be at the upper end of the relevant bracket to take into account (A) (vii) below.

(A) Psychiatric Damage Generally

The factors to be taken into account in valuing claims of this nature are as follows:

- (i) the injured person's ability to cope with life, education, and work;
- (ii) the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;
- (iii) the extent to which treatment would be successful;



- (iv) future vulnerability;
- (v) prognosis;
- (vi) whether medical help has been sought;
- (vii) Claims relating to sexual and physical abuse usually include a significant aspect of psychiatric or psychological damage. The brackets discussed in this chapter provide a useful starting point in the assessment of general damages in such cases. It should not be forgotten, however, that this aspect of the injury is likely to form only part of the injury for which damages will be awarded. Many cases include physical or sexual abuse and injury. Others have an element of false imprisonment. The fact of an abuse of trust is relevant to the award of damages. A further feature, which distinguishes these cases from most involving psychiatric damage, is that there may have been a long period during which the effects of the abuse were undiagnosed, untreated, unrecognized, or even denied. Awards should take into account not only the psychiatric effects of the abuse on the injured party but also the immediate effects of the abuse at the time that it was perpetrated, including feelings of degradation. Aggravated damages may be appropriate. Cases of prolonged and frequent physical and sexual abuse of a child over many years by a person in a position of trust, involving penetrative violation, are likely to fall into (A)(a) or (B)(a) and reflect aggravated damages, leading to an award towards the top end of the bracket.

(a) Severe

In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor.

£46,780
to £98,750

with 10% uplift

**£51,460
to £108,620**

(b) Moderately Severe

In these cases there will be significant problems associated with factors (i) to (iv) above but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.

£16,270
to £46,780

**£17,900
to £51,460**

(c) Moderate

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

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

£5,000
to £16,270

**£5,500
to £17,900**

(d) Less Severe

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

£1,310
to £5,000

with 10% uplift

**£1,440
to £5,500**

(B) Post-Traumatic Stress Disorder

Cases within this category are exclusively those where there is a specific diagnosis of a reactive psychiatric disorder following an event which creates psychological trauma in response to actual or threatened death, serious injury, or sexual violation. The guidelines below have been compiled by reference to cases which variously reflect the criteria established in the 4th and then 5th editions of *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR and DSM-5). The symptoms may include nightmares, flashbacks, sleep disturbance, avoidance, mood disorders, suicidal ideation, and hyper-arousal. Symptoms of hyper-arousal can affect basic functions such as breathing, pulse rate, and bowel and/or bladder control.

(a) Severe

Such cases will involve permanent effects which prevent the injured person from working at all or at least from functioning at anything approaching the pre-trauma level. All aspects of the life of the injured person will be badly affected.

£51,070
to £85,880

**£56,180
to £94,470**

(b) Moderately Severe

This category is distinct from (a) above because of the better prognosis which will be for some recovery with professional help. However, the effects are still likely to cause significant disability for the foreseeable future. While there are awards which support both extremes of this bracket, the majority are between £24,540 and £31,660 (**£26,990** and **£34,830** accounting for 10% uplift).

£19,750
to £51,070

with 10% uplift

£21,730
to £56,180

(c) Moderate

In these cases the injured person will have largely recovered and any continuing effects will not be grossly disabling.

£6,980
to £19,750

£7,680
to £21,730

(d) Less Severe

In these cases a virtually full recovery will have been made within one to two years and only minor symptoms will persist over any longer period.

£3,370
to £6,980

£3,710
to £7,680