IN THE EMPLOYMENT & EQUALITY TRIBUNAL **Case 21/20**

Dr Rosalind Ranson **Complainant**

V

Department of Health & Social Care **Respondent**

Hearing:
17th, 18th, 19th and 20th January and
27th, 28th and 31st March 2023.

Chairman: Mr Douglas Stewart
Ms Angela Main-Thompson OBE
Ms Linda Grady

DECISION

The unanimous Decision of the Tribunal is that Dr Ranson is entitled to be compensated for being unfairly dismissed due to her protected disclosures and is awarded compensation (gross) in the total sum of £3,198,754.00. Additionally, the DHSC must pay 70% of Dr Ranson's costs of the Liability Proceedings, still to be assessed.

- Dr Ranson was represented by Mr Oliver Segal KC with Ms Madeline Stanley, also of Counsel instructed by Ms Tina Wisener and Mrs Kate Kapp of Doyle Clayton, solicitors of Reading UK.

- The Respondent was represented by Mr Simon Devonshire KC and Mrs Kathryn Clough, Mr Jeremy Callin and Ms Julia Crellin of CallinWild advocates.

Introduction

1. By a Complaint dated 16th April 2021, Dr Ranson commenced proceedings in this Tribunal. The remedies sought were:

    I. An Order for re-employment and/or an award of compensation for Unfair Dismissal.
    II. A Declaration that she has suffered detriments for making protected disclosures and for compensation.
    III. An original claim seeking an award of 4 weeks' pay for failure to provide Dr Ranson with written particulars of employment was not pursued.

2. Dr Ranson's allegations were investigated and resolved during the long Liability Hearing that commenced in January 2022. This concluded in February 2022. The Liability Decision was published on 9th May 2022 and delivered a comprehensive conclusion in favour of Dr Ranson. The Tribunal determined that Dr Ranson had been unfairly dismissed on account of making protected disclosures (whistleblowing) and that she had also been unfairly dismissed irrespective of those protected disclosures. The issue of remedy was agreed to be determined at a subsequent Hearing if needed.

3. Now, at issue is the remedy of compensation. The original pleaded case for re-employment was abandoned.

4. This Decision concludes with a summary of all various elements included in the total sum awarded to Dr Ranson.

The Evidence - Witnesses

5. Dr Ranson gave evidence supported by her medical expert, Professor Tony Elliott and her pensions adviser, Mr Neil Taverner of Boal & Co.

6. The DHSC called the evidence of Mrs Teresa Cope, the Chief Executive Officer of Manx Care, a statutory board, distinct from the DHSC. Their medical expert was Dr Michael

Isaac. As to financial losses their expert evidence was given by Ms Alison Hollywood of Price Waterhouse Cooper plc (PWC).

7. Because a significant amount of confidential financial information was expected to be discussed relating to third parties, a protocol had been agreed in advance. Identities of certain individuals, not party to this litigation, were not to be disclosed during the Hearing and letters of the alphabet were to be used. Perhaps inevitably, but unfortunately, there was the occasional lapse when evidence was given but this Decision reflects the agreed abbreviations.

8. The long delay between the dates fixed for the Remedy Hearing in January 2023 and resumption at the end of March 2023 was because, although Professor Elliott had been aware of the January hearing dates since July 2022, he was unfortunately not available. This caused problems in finding new dates suitable for the Tribunal, Counsel for the parties and for both medical experts.

The Evidence

9. Dr Ranson had provided a substantial written statement that formed the basis of her evidence. This was dated 10th November 2022 (**Page 1894 et seq**). Also in evidence were her earlier statements. She was questioned at length by Mr Devonshire. There was nothing hectoring or untoward about the way that she was questioned. However, and perhaps inevitably, taking account of her health issues and some questions that took Dr Ranson back to a time in her life she would prefer to forget, it was necessary to take breaks for her to recover her composure. Additionally, during entirely proper exchanges between Mr Devonshire and Dr Isaac, it was necessary for Dr Ranson to take a break. This was because of Dr Ranson's obvious distress from listening to what the Tribunal considered to be gruelling evidence relating to her health, caused by the gross misconduct of the DHSC.

Dr Ranson's Case

10. Dr Ranson had been appointed as the Medical Director of the DHSC commencing in January 2020. She considered this made her the most senior medical doctor on the

Island. She had been offered a lower salary if she entered into an agreement other than for a fixed term. In the result, she negotiated and agreed a contract for a fixed-term of two years at £200,000 per annum plus the benefit of a pension. That contract ended on 26th January 2022.

11. When working as a GP in a London practice in 2008/9, Dr Ranson had been unable to continue because of stress other than as between herself and patients. She required medical support and was absent from work for six months but during this time, she was able to continue with her work for the General Medical Council. She has never again worked as a patient-facing GP. She experienced no recurrence of any work-related stress until the index events after joining the DHSC in 2020.

12. Before her commencement with the DHSC, Dr Ranson had tried to buy a property on-Island but had been unsuccessful. Instead, she and her husband moved into a rented property with an option to purchase. Almost as soon as her employment had started, the Covid pandemic spread from abroad and impacted the Island from March 2020. Events during her employment plus the demands of her role meant that by the time her contract expired in January 2022, she had not purchased a property. Since then, the option to purchase has been exercised and Dr Ranson's family is now rooted here.

13. Her husband, a barrister, is able to run his London practice from the Isle of Man. Their daughter, having finished University, has now obtained employment on the Island. Dr Ranson explained that living where she did, beside the sea, suited her because she loved swimming and did so every day. Her family were happy with the lifestyle. Based on the available evidence, they continue to own the former family home in south-east London.

14. In order to put the evidence in context, the case advanced by Dr Ranson (and as determined in the Liability Decision) was that, during 2020 and into 2021, following the humiliation, bullying, harassment and vilification that she endured from her employers, and from the CEO Miss Magson in particular, her health broke down. She was absent from work for six weeks commencing in March 2021.

15. Before then, from 8th December 2020, Dr Ranson had known that she would not be transferring to Manx Care on 1st April 2021 as had been mutually intended at the outset. What she did not know, until exposed by evidence available in the Liability Hearing, was that she was not being transferred because of false information given by Miss Magson to Mrs Teresa Cope and Mr Andrew Foster, the incoming CEO and Chairman of Manx Care. Knowing it to be untrue, Miss Magson had asserted that Dr Ranson had not wished to be transferred to Manx Care. She also informed them that Dr Ranson was not up to the job of Medical Director and was being performance-managed. In any formal sense, this also was untrue.

16. In consequence, as from 1st April 2021, when Manx Care came into being, Dr Ranson had been stripped of her role as Medical Director. By then, Dr A had been appointed to fill that role by Manx Care. On return to work after her illness, Dr Ranson only worked part-time for the DHSC in what was described as being "a shell" of her contractual role. This lasted from May 2021 until about October /November 2021, from when she was not required to attend work until her contract ended.

17. Her Complaint that started these proceedings was presented in April 2021 and during that year, the formalities advanced towards the Liability Hearing that commenced in January 2022. The Response (denying all liability) was dated 18th May 2021. Further comment is made on its tone and contents below. The process of disclosure of documents was far from smooth. It included contested arguments and ultimately bespoke contested Hearings during which Dr Ranson, represented by her husband, tried to secure a substantial number of undisclosed but material documents from the DHSC.

18. In the run-up to commencement of the Liability Hearing in January 2022, the Tribunal had to order a number of persons to swear affidavits and to be questioned about the documents they held and which were required to be disclosed. During this latter half of 2021, Dr Ranson had relied on her husband to handle the preparation for the January 2022 Hearing. Her evidence was that she could not cope with that. She had found dealing with the issues to be distressing and had relied on her husband's

support. He was handling the correspondence and documentation to be put in evidence and represented her at the essential pre-hearings.

19. Since January 2022, Dr Ranson has not worked and, as she currently feels, she believes she will never work again at the high level she had reached. But for the index events, she had intended and expected to continue to work until an otherwise planned retirement age of 72 in 2037. Her evidence was that her future lay on the Isle of Man but, given the circumstances in which her employment had ended, she now considered it impossible to contemplate working for the DHSC or, more appropriately, for Manx Care. She had abandoned the original pleaded case of seeking reinstatement, having come to understand the degree of animosity and reputational damage that had been generated.

20. Available evidence confirmed the adverse tax consequences if Dr Ranson and her husband were to lose Manx tax residency by returning to the UK. Her evidence was that her husband currently earns more than she did when she was being paid £200,000 per annum. With the UK's top tax rate of 45% compared to the Manx top-rate of 20%, the financial disadvantage was plain – this remaining so despite the announced recent slight increase in tax for persons in this high-income bracket announced in the Treasury Minister's recent Budget.

21. In October 2020, Dr Ranson had applied for the role of Chief Medical Officer for Scotland. She reached the final four candidates but in the end was not selected. At that time, Dr Ranson did not see a future for herself as the Manx Medical Director because of the ongoing issues caused by various persons, not least Miss Magson. This Scottish role commanded an advertised salary of £140,000, so that although it was a more significant job than Medical Director on the Isle of Man, the salary was considerably less.

22. Dr Ranson told the Tribunal that she expected to be able to negotiate that figure upwards if offered the job. Although less well-paid, that role would have been consistent with an upward career trajectory. She pointed out that she did not consider

£200,000 was out of the ordinary for an executive Medical Director and that the actual salary paid to appointees, in her experience, was often more than 40% above the advertised salary for the right candidate. When applying for the role on the Isle of Man in 2019, Dr Ranson had negotiated a much larger salary than the figure originally provided by the DHSC.

23. In January 2021, Dr Ranson had also applied for the role of Chief Medical Officer in New Zealand. She had not pursued this once she established the financial package. Finally, in July 2021, she had applied for the position of Medical Director at the BUPA Cromwell Hospital in London but had not even been interviewed.

24. In her November 2022 witness statement, (**page 1912, para 73**) Dr Ranson asserted that information that she was not competent and not up to the job of Medical Director was being widely disseminated in the UK and had been made to the Faculty of Medical Leadership and Management (FMLM) and most importantly to Mr Peter Lees, her Responsible Officer. There was, however, no evidence to sustain her belief that she did not get interviewed for the Cromwell Hospital role due to reputational damage.

25. The Tribunal did become aware that the outcome of the Liability Hearing had been published by the British Medical Association in the UK and the proceedings had been reported in The Guardian newspaper. Most publicity followed the publication of the Liability Decision in May 2022.

26. Dr Ranson had originally advanced her losses from January 2022 on the basis that she would have been earning at least £200,000 per annum as before or that she would have negotiated a 75% pay increase to £350,000 per annum. However, shortly before the commencement of the Remedy Hearing in January 2023, the claim for £350,000 per annum was abandoned in place of an alternative of £229,000 per annum, this latter figure being underpinned by an argument that this was the amount being paid to Dr A as the incumbent Medical Director at Manx Care.

27. As to why Dr Ranson had selected the age of 72 for retirement, she explained that, before starting her on-Island employment, she had discussed her pension position with the British Medical Association. She had been advised that, because of gaps in her employment when her role had not been pensionable (and thus creating no future pension benefit), she would need to work to the age of 72 to catch up. Her evidence was that she and her husband both enjoyed working and had fully intended to work to that age.

28. As further explained in this Decision, Dr Ranson's status as a GP is in jeopardy, something to be determined in or by March 2024. Her evidence was that she will lose her licence to be a GP and to avoid that stigma, she will have to surrender her licence. This issue is explored in depth later in this Decision and in particular at **paras 197 and 224**.

29. Dr Ranson, thus far, has had no medical treatment for her condition which has been diagnosed by the experts with somewhat different emphasis as explained in depth later. Her evidence was that she had not realised how unwell she was until she had read the medical evidence.

30. Dr Ranson is due to give evidence to the Independent Covid Review chaired by Ms Kate Brunner KC. Because of the significance of this to Dr Ranson's health and well-being, an approach was made to Ms Brunner to establish the format of her Review. Most helpfully, she replied by email on 30th March 2023. This is the likely process:

- Ms Brunner anticipated meeting with ex-Government employees between June and October 2023. She expected participation by such employees to be concluded by the end of October 2023.
- Ms Brunner's current intention is that such meetings will not be in public. The meetings will involve members of the Review Team and each witness. Ms Brunner explained that this will not be an adversarial process. It will be inquisitorial. She added: "I would not characterise questioning as cross-

examination, but there will be robust and probing questioning, and answers may be challenged where I consider that to be justified".

- Ms Brunner explained that she did not have powers to compel any witness to attend. However, Dr Ranson is to be one of a number of witnesses whose attendance she considered to be central to the effectiveness of the Review process. She retained discretion to advise Tynwald that a Statutory Inquiry should be held instead of a Review and she has explained that she would take that course if she considered that she could not obtain sufficient evidence without the use of powers to compel witnesses. A Statutory Enquiry would take significantly longer than a Review.

31. The health implications for Dr Ranson giving evidence are further considered.

32. To the Tribunal, a somewhat curious feature was, when an interim payment of £200,000 was offered by the DHSC's advocates, quite close to the Remedy Hearing, this was rather brusquely refused. The Tribunal noted that this offer represented a cushion against the lost income since January 2022.

The Respondent's Case

33. This can be put quite succinctly. The Respondent advanced these core issues:

I. The date of commencement of Dr Ranson's psychiatric condition. Whereas Dr Ranson's expert put this, at latest, as March 2021, the DHSC's expert considered the date to be about December 2021 / January 2022.

II. The nature of that condition.

III. At least to an extent, causation of that psychiatric condition which was suggested to have materialised only from December 2021 and to have been caused, to an extent, by the stress of litigation leading up to the Liability Hearing in January 2022. Additionally, the contention was that Dr Ranson's health will improve once the litigation is behind her – but it was not suggested that she would not continue to be suffering from work-related symptoms. It was emphasised that there was no suggestion by the DHSC or Dr Isaac that there was any deliberate attempt by Dr Ranson to falsify her medical situation to secure greater compensation.

IV. Would Dr Ranson have continued to work for Manx Care from January 2022 had she been transferred on 1st April 2021?

V. What salary would Dr Ranson have earned had she continued at Manx Care from January 2022?

VI. The Respondent did not accept that Dr Ranson would have worked until the age of 72, whether with Manx Care or elsewhere.

VII. The Respondent contended that, following medical treatment, Dr Ranson could work again in some capacity – something both medical experts agreed was essential to assist her recovery.

VIII. The Respondent disputed the timescale as to when, following medical treatment, Dr Ranson would have a potential earning capacity. This was a matter of disagreement between the medical experts.

IX. Mr Devonshire put in issue the extent to which the Tribunal could rely upon Dr Ranson's own summation of her symptoms as described to Professor Elliott in September 2022.

X. Underlying the serious financial issues arising from lost earnings and pension, was the regulatory issue of Dr Ranson's ability to be a practising doctor (GP), to be resolved by March 2024. The DHSC's case was that, with or without her GP status, Dr Ranson had the capability, after treatment, to develop a portfolio practice, a concept which is explored and later considered. In consequence, either way, the DHSC contended that Dr Ranson would have a significant ongoing earning capacity.

XI. Mr Devonshire urged on the Tribunal the significance of:

- Dr Ranson's 2020-21 Appraisal for the GMC.
- Dr Ranson's 2021/22 Appraisal for the GMC (and the circumstances in which both Appraisals emerged).
- The Psychometric Assessment by Dr Gray required as part of the job application process for the role of Chief Medical Officer of Scotland.
- Dr Ranson's capabilities during 2021.

The Medical Issues and Evidence

Professor Tony Elliott

34. Prof. Elliott had been a Consultant Psychiatrist since 1995. He interviewed Dr Ranson in September 2022. This had been using a video-link. At the time of the examination, he did not have certain documents and after sight of them, revised his opinion in the Joint Report – see further below.

35. Based on this consultation, Prof. Elliott summarised the symptoms as described to him by Dr Ranson (**page 963 18.49**) as follows:

> **"… Increasing symptoms of low mood, tearfulness, anxiety, physical symptoms of anxiety such as palpitations, flashbacks, nightmares, situation anxiety, avoidance of situations which were reminders of the index events, loss of interest in things in general, loss of confidence, being easily startled, being hypervigilant, intolerance of others, poor concentration, being jumpy, and sleep disturbance".**

36. Prof. Elliott had awareness of the findings of the Tribunal as to the mistreatment and had the description from Dr Ranson of the bullying and harassment that she had endured. Based on this, his opinion was that the symptoms **represented a Moderate to Severe Post Traumatic Stress Disorder (PTSD) (DSM V)**. (Diagnostic and Statistical Manual of Mental Disorders).

37. Prof. Elliott was aware that not all consultants in this speciality would agree that PTSD was the correct diagnosis. This was because Dr Ranson's experiences had not been physically life-threatening so that *de facto* PTSD could not be diagnosed. Prof. Elliott indicated that if his diagnosis of PTSD were not accepted, then his opinion would be that Dr Ranson's symptoms met the criteria for a **Moderate to Severe Depressive Disorder with PTSD features**.

38. Dr Ranson told Prof. Elliott (**page 950 – para 4.2**) that she believed herself to have been extremely competent and confident in her work and able to cope with significant stress.

39. Prof. Elliott considered that Dr Ranson's psychiatric disorder had affected her life in several ways. She had experienced significant psychological distress and continued to do so. This dated back, in his opinion, at least to March 2021 when Dr Ranson was first absent from work with ill-health. She was absent from work during the change to Manx Care and when Dr A officially commenced as the Medical Director.

40. Prof. Elliott (**page 967**) explained there were well-recognised treatments for PTSD which are often of considerable benefit. However, he specifically cautioned that any further significant delay in treatment made it more likely that Dr Ranson's disorder would be less responsive to treatment. He considered that, given the severity and chronicity of Dr Ranson's symptoms, he would recommend 20 – 25 sessions of Cognitive Behaviour Therapy.

41. Prof. Elliott also recommended further therapy of Eye Movement Desensitisation and Reprocessing (EMDR) involving a course of 10 – 12 sessions. This, he advised, is recognised as an effective treatment for PTSD.

42. Prof. Elliott also recommended that Dr Ranson take prescribed medication such as Venlafaxine or Sertraline. Such treatment may be required for at least 12 months and in higher doses than the usual antidepressant dose - but then gradually withdrawn. However, he pointed out that patients with less chronic histories are the most likely

to benefit but that about two thirds of patients will respond to some degree to such a course of treatment.

43. A further recommendation (**page 969 para 18.100**) was that Dr Ranson should seek urgent assessment and treatment with medication even while legal proceedings continue and before commencing any psychotherapy “as this has the best prospect of leading to a more immediate response and may enable her to gain more benefit from any psychotherapy in the future”.

44. As at the date of the examination in September 2022, Prof. Elliott had concluded that on the balance of probabilities, without treatment, Dr Ranson’s symptoms were unlikely to resolve spontaneously over the foreseeable future. However, with treatment such as recounted above, Prof. Elliott indicated that approximately one-third of patients will show a significant response, one-third will show some response and one-third will show little or no response (**page 969 para 18.106**).

45. Prof. Elliott pointed out that it was well-recognised that pursuit of compensation claims may act as an unpleasant reminder of the traumatic events, making it difficult for the patient to put the episode in the past and to move on. Conclusion of the proceedings would be beneficial to Dr Ranson’s mental health.

46. Prof. Elliott could not contemplate Dr Ranson being able to return to her previous employment but he considered that “it could be argued that after treatment she may be able to return to a similar role for alternative employers.” (**Page 970 para 18.116**).

47. Prof. Elliott pointed to prior research demonstrating that clinical improvement does not necessarily result in full recovery of job performance. This was often due to residual effects of the mental disorder and associated functional impairments such as reduced concentration, decision-making and task performance. It had also been recognised that the functional requirements of work may be significantly more demanding than those in the home or community.

48. Prof. Elliott also pointed out (**page 971 at paras 18.131 and 18.132**) that research had shown that patients with prolonged psychological distress although "recovered" from symptoms, may still have a negative view of their capabilities and ability to work. Extended time off work has also shown the demoralising effect - such that the likelihood of workers returning to former employment after an absence from work decreases rapidly, the longer they have been away.

49. Having summarised these difficulties involving return to some form of work, Prof. Elliott noted the importance of returning to work in helping to reduce psychological distress. Employment would help shape Dr Ranson's self-perceptions because employment is likely to provide stability, routine and the built-in support group of co-workers, all of which can help minimise future psychological distress.

50. Accordingly, (**page 972 paras 18.134 and 18.135**) Prof. Elliott considered that, in principle, on the balance of probabilities and after treatment, employment would be beneficial and that Dr Ranson would be able to return to some form of medical role in the future but it would need to be "low stress" under supervision and without having to deal with the public directly.

51. Prof. Elliott accepted that there would be a range of opinion as to how long it would take to reach this stage. On the balance of probabilities, he considered it would be 3 – 5 years (**page 972 para 18.138**) *after the court proceedings have ended* and assuming effective treatment before Dr Ranson could return to some form of medical role. Initially, even then, this needed to be part-time working but increasing over 1 – 2 years to full-time (**page 972 para 18-139**).

Dr Michael Isaac

52. Dr Michael Isaac is a Consultant Psychiatrist & Neuropsychiatrist and he examined Dr Ranson on 15th November 2022, also doing so by video-link in a consultation lasting one hour. When questioned by Mr Segal, it emerged that, before the consultation commenced, Dr Isaac had not read the background medical and other material provided for him.

53. Dr Ranson explained to Dr Isaac (**page 983 – paragraphs 47 and 48**) that she had been "always absolutely fine" mentally and physically. She had developed "mild palpitations" before the index events but it was only during the index events that they became more serious … she had been off work with "stress years ago" when she was working both at the GMC and in general practice. She told Dr Isaac that she had no other symptoms and, after a short period, had simply continued working. She also told him that she had no formal psychiatric history, either in primary or in secondary care.

54. Dr Isaac accepted that if the Tribunal concluded that Dr Ranson's account of her history was reliable, then this described **major depressive disorder, single episode, moderate, without psychotic features** (**DSM-5-TR F 32.1**). Dr Isaac could not accept the diagnosis of PTSD where he considered that the initiating criterion is "exposure to actual or threatened death, serious injury or sexual violence".

55. Dr Isaac's diagnosis was of clinical depression and the symptoms amounted to a diagnosable psychiatric disorder. He pointed out that, although depression and PTSD are in some sense overlapping conditions, he considered it important to distinguish between them because that informed the best treatment.

56. Dr Isaac took issue with Prof. Elliott on the timeline of the developing medical condition. Prof. Elliott had considered that Dr Ranson had developed symptoms of depression, albeit mild, evolving towards the end of 2021 into the "moderate to severe" depression which pertained from at least the beginning of 2022. The reason that Dr Isaac differed was because of the job applications made at the end of 2020 and in early 2021 coupled with Dr Ranson's Appraisal of March 2021 (as explained in **paras 86-87** below).

57. In Dr Isaac's opinion, these factors, plus her job application to BUPA later in 2021, indicated a higher level of function about her affairs than would be expected if there were significant and untreated depression. Dr Isaac considered (**pages 990/991 – para 98**) that the fact that Dr Ranson had made the job applications during and up to the summer of 2021 suggested that she saw herself as capable of filling the roles if her

applications were successful. He also drew comfort from Dr Ranson's coherence in her 7th and 8th witness statements which he considered could not normally be associated with clinical depression.

58. Without ruling out the possibility that Dr Ranson experienced depressive symptoms, Dr Isaac could not confirm nor refute that her symptoms worsened during 2021. However, he did not consider them to have been sufficient to have exerted a significant adverse effect on her ability to function. Her subjective account of 2022 was compatible with the development of diagnosable depression, moderate in severity, when Dr Isaac saw her in November 2022.

59. Dr Isaac relied upon the medical history dating back to 2008/2009 as evidence of specific pre-index psychological vulnerability. He also considered that the heart palpitations from 2017 (or perhaps from 2019) were an important source of difficulty associated with continuing problems at work. He considered that this would have been an added source of anxiety for her, aggravating her problems. Not his diagnosis, but that of the cardiologist, was that the cause of the palpitations had a physical basis due to an abnormality in the conduction system in Dr Ranson's heart.

60. Dr Isaac considered (**page 991 – para 100**) that during the interview with Dr Ranson, she had been:

> **"Both angry and embittered by what she perceives as DHSC's conduct in the litigation. I have little doubt that she feels the burden of the present litigation and I agree with Prof. Elliott that until this litigation is concluded, it will be difficult for Dr Ranson to move on in her life".**

61. Dr Isaac recommended an approach involving antidepressant medication and psychological treatment but he did not consider that she would require psychiatric follow-up. He considered that antidepressants were likely to be effective and their usage could be managed in primary care. He considered Dr Ranson should be offered Cognitive Behaviour Therapy (CBT) involving up to 20 sessions with a report at around

the halfway stage as to efficacy and Dr Ranson's engagement with it. Because EMDR assumes the presence of PTSD with which he cannot agree, he could not therefore recommend EMDR.

62. Dr Isaac considered that, if Dr Ranson engaged with the recommended treatment, there was no reason why the prognosis should not be good and that Dr Ranson should, in principle, attain full remission of her symptoms. He considered her to have been under-treated. However he did not consider that she could be regarded as treatment resistant. He was therefore more optimistic than Prof. Elliott (**pages 991/992 – para 106**).

63. Dr Isaac considered that Dr Ranson had a 50% lifetime risk of relapse but that she would be at a high risk of relapse if she were to enter a similar professional milieu to that which pertained at the material time during the index events (**page 992 – para 107**).

64. Dr Isaac considered that there was no reason in principle why Dr Ranson could not work as a medical practitioner but it would be important to avail herself of local support mechanisms and he was not sure how diverse these were likely to be on the Isle of Man. He explained that there are well-established mechanisms for assisting doctors to return to the workforce. If she wished it to do it, then he would recommend that course of action. This is because he considered there to be no longer term psychiatric bar to this.

65. Dr Isaac pointed out (**page 992 – para 108)** that doctors with significantly more potentially disabling conditions including schizophrenia, bipolar affective disorder and addictive disorders can be and are successfully reintegrated into the medical workplace given appropriate support and motivation.

66. Dr Isaac highlighted (**page 992 – paragraph 110**) that there are many openings for senior doctors of Dr Ranson's experience. He pointed to the possibilities of:

- Medical leadership in a smaller-scale setting or
- A portfolio career incorporating clinical work, either patient-focused clinical care or assessments for, say DWP;
- Becoming a fee-paying Medical Member of the First Tier Tribunal Service (Health/Social Care/MHT), such an appointment being to the age of 70.
- The Medical Practitioners Tribunal Service (MPTS) of the GMC

67. Dr Isaac considered that these types of opportunities would be possible within 6 – 12 months of the end of the present case, assuming Dr Ranson engaged with the recommended treatment and was motivated enough to explore these possibilities (**page 992 – para 110**).

68. Dr Isaac, by an Addendum to his report, on 5th January 2023, corrected an error in his original December 2022 report where he had referred to having seen job applications when this was incorrect. He had now seen them but this (**pages 997 paras 6 – 7**) had not undermined their significance. He pointed out that:

> **"Considered in context, it was the fact that Dr Ranson felt able to make the applications (rather than their precise detail) which I considered and consider to have some clinical significance. I have since been supplied with full copies of the job applications disclosed by Dr Ranson. I have read these. They do not alter the conclusions expressed in my report".**

The Joint Report (page 3461 et seq)

69. This Decision is not going to set out the entire scope of the discussions between the experts leading to the Joint Report. The differences in emphasis between the experts are fully covered as and when required in the Conclusions being reached on the issues to be resolved. There are however a few significant points covered now.

70. When he had interviewed Dr Ranson and prepared his report in September 2022, Prof. Elliott had not seen:

- The GP records relating to 2008/9
- The job applications (Scotland, New Zealand and BUPA Cromwell)
- Dr Ranson's Appraisal in 2021.
- An undated Psychometric Assessment report of Dr Gray

71. In consequence, Prof. Elliott had to modify his previous report. Also now available was Dr Ranson's Appraisal of January 2022 which neither he nor Dr Isaac had seen.

Joint Report - Pre-Index Events Vulnerability

72. Based on the evidence originally available to him, Prof. Elliott had concluded there was no evidence of a pre-existing vulnerability. Because of production of the medical records of 2008/2009, Prof. Elliott had to revise his opinion and concluded that there was a pre-existing vulnerability. However, he pointed out that if Dr Ranson's report of her pre-index events functioning was true, then she had recovered and remained mentally well for many years prior to the index events.

73. As indicated above, Prof. Elliott accepted that if the criteria for PTSD had not been strictly met, then the symptoms still met the criteria for a Moderate to Severe Depressive Disorder with PTSD features (DSM V). Dr Isaac's opinion remained as stated in his report that there was evidence of pre-index psychological vulnerability, especially within a work setting that might have involved interpersonal conflict.

Joint Report - Nature of Psychological Symptoms following the index events

74. Prof. Elliott's opinion was that if the Tribunal found Dr Ranson's self-report to be true as described to him, then the symptoms can be classified as an initial Mild Post Traumatic Stress Disorder. In his opinion, over time, there was a worsening of her disorder to Moderate to Severe. Were the Tribunal to find that the criteria for PTSD were not strictly met, Prof. Elliott would revise his opinion and state that the symptoms met the criteria for a Moderate to Severe Depressive Disorder with PTSD features.

75. If Dr Ranson's account is accepted, Dr Isaac's opinion remains that Dr Ranson has described a major depressive disorder, single episode, moderate, without psychotic features – and with no PTSD diagnosis.

76. Both experts agreed that their diagnoses of clinical depression differ only to a degree and fall within a reasonable range of expert opinion.

Tribunal Observations regarding the Medical Issues

77. Both experts were agreed that Dr Ranson would benefit from a course of therapy but this could only commence once the litigation was concluded. The Tribunal's intent is to publish this Decision in early May 2023. Naturally, if either party chooses to seek a Review or to Appeal to the High Court, much longer timescales will be involved before the litigation is concluded.

78. The need for Dr Ranson to be involved in the Independent Covid Review was also a matter of dispute between the medical experts as to whether this would mean postponing commencement of medical treatment. Dr Isaac did not think it should stand in the way. Thus far, Dr Ranson has had no course of treatment for her psychiatric condition. In that respect, both experts agreed that the longer the delay before that commenced, the less successful the outcome might be.

79. Precisely what Dr Ranson could do following (successful) treatment was indeterminate. Dr Isaac considered that she might be able to return to work as a GP, a view not shared by Prof. Elliott.

80. The evidence, dating back to 2008/2009, was of Dr Ranson suffering from stress when working in a busy GP practice in London. Dr Ranson had not considered her work as a GP to have been stressful. Dr Ranson's evidence was that she had thrived on the challenges and issues in her work throughout her career. The stress suffered at that time had involved mistreatment from colleagues, (somewhat similar in headline terms to what happened when Dr Ranson was employed by the DHSC) – albeit the Tribunal has no evidence to compare the severity of the 2008/2009 situation in the workplace

to what happened on the Isle of Man. What happened in London was severe enough for Dr Ranson to need medical help and to be absent from work for some 6 months but she had been able to continue doing other work for the General Medical Council.

81. Since that 2008/2009 health problem (which had markedly similar effects upon Dr Ranson to those reported following mistreatment on the Isle of Man), Dr Ranson had suffered no similar health issues until those now being considered. She had continued in various roles until her appointment by the DHSC. She had, however, an ongoing heart condition involving palpitations, suffering these at times of stress.

82. Dr Ranson's evidence was that these palpitations were not a particular problem and certainly not one that would inhibit her intention to work until 72. Dr Ranson did not need to take prescribed beta-blockers as a norm but only when stressed. There was no medical evidence before the Tribunal to suggest any impairment to life expectancy.

Independent Documentary Evidence

Psychometric Assessment

83. In evidence was a Psychometric Assessment from Dr Ken Gray (**page 3081 et seq**). This was undated but can be assumed to have been completed either in or around November / December 2020. The Assessment was carried out as part of Dr Ranson's application for the role of Chief Medical Officer of Scotland.

84. Dr Ranson fared well in the Assessment Overview (**page 3083**). Following discussion of her management style, in favourable terms, Dr Gray concluded (**page 3085**) "that in reviewing Rosalind's results, there were no major areas of concern immediately evident to preclude her appointment as CMO." However, he did consider personal characteristics that required further consideration but which were not material to the issues in this Tribunal. He considered her strengths lay as an operational Medical Director. Overall, he concluded her suitable and "a very credible candidate for the appointment of CMO".

85. Perhaps more pertinently to this litigation was this observation:

"Though aesthetically and intuitively sensitive, she is also a resilient individual who displays a consistent temperament and is able to retain her composure even when under pressure. Rosalind can feel passionately about delivering ethical and medical excellence, but she retains a rational and calm manner lacking the volatility of the overly emotional individual. She is also self-assured and not given to worry without due cause".

The 2021 Appraisal (pages 2770 – 2777)

86. This Appraisal was carried out by Dr Kate Langford on 12th March 2021 as part of the GMC validation process. Dr Langford concluded in her Final Comments that "I have no concerns." This was immediately before Dr Ranson was signed off due to her health until May. Notes from the GP in London (**page 931/ 932**) suggest that Dr Ranson was signed off from about 18th March 2021. There are several entries for that day including advice regarding available online mental health resources with validated tools for managing anxiety, depression and insomnia.

87. In completing the information for this Appraisal, other than a reference to the challenging environment in meeting the pandemic at the same time as seeking to modernise and professionalise medical leadership and management, Dr Ranson mentioned nothing suggestive of any health issue. Indeed, Dr Langford noted there were "no risks posed by Rosalind's health" (**page 2774).**

The 2022 Appraisal (pages 2778 -2790)

88. This Appraisal was carried out on 19th January 2022 by Dr Langford, a date shortly before expiration of Dr Ranson's fixed-term employment contract. Dr Ranson described (**page 2785**) that her greatest achievement and career highlight was her leadership of the pandemic response in 2020. She indicated that she would like to write a book on medical leadership, which she believed deserved to be a speciality in its own right. She regarded her own expertise to be in medical leadership, as she had proved. She also mentioned that she had thought about becoming involved in undergraduate or postgraduate leadership training.

89. Consistent with the evidence during the Liability Hearing, Dr Ranson, when commenting on her well-being indicated that she had been at the highest and lowest of her entire career. Her answer as to the Health Statement was:

> **"I declare that I accept the professional obligations placed on me in Good Medical Practice about my personal health".**

Financial Experts

90. Both Mr Neil Taverner of Boal & Co and Ms Alison Hollywood of PWC in Belfast, were helpful to the Tribunal with their written reports and subsequent oral evidence. Mr Taverner's particular expertise is as an actuary whereas Ms Hollywood is a Chartered Accountant. Both were suitable to provide guidance.

91. Having prepared their initial reports, the experts had then discussed their conclusions and had summarised areas of agreement and disagreement. Ms Hollywood's report had included her opinion on loss of future earnings although her opinion had only been expected on pension loss. The joint report only considered future pension loss.

92. The experts went so far as they reasonably could but required findings by the Tribunal before they could reach any final conclusions on their calculations. In the event, it was possible for the Tribunal, together with the helpful input from both Counsel, to make the findings of fact required and then to go on to produce final calculations.

Mr Neil Taverner – Boal & Co

93. Mr Taverner's figures for pension loss were presented as alternatives. He had used a date of assessment of October 2022. That needed revision to coincide with the progress of the proceedings to ultimate appropriate date of calculation. Mr Taverner had calculated pension loss based both on an income of £200,005.21 per annum or an annual income of £350,000. At that time, Dr Ranson was still seeking an award based on having negotiated this higher salary from January 2022. That approach was abandoned by Dr Ranson in January 2023 and so the Tribunal has ignored Mr Taverner's calculation on this basis.

94. Mr Taverner provided figures based on the lower salary calculated to age 72 after deduction of tax. By adopting the discount rate currently used in England and Wales of - 0.25% (minus 0.25%) and adjusted for a female of the age of Dr Ranson, the multiplier he adopted was 18.696. His approach was based on the guidance document "Principles for Compensating Pension Loss" (4th Edition (3rd Revision) 2021). The suggestion in the Principles is that Employment Tribunals should apply the amended Ogden factors (which allow for future inflation) when considering pension amounts in today's terms. Mr Taverner had been provided with a letter dated 26th April 2022 from the Public Service Pensions Authority setting out details of Dr Ranson's preserved benefits in section 1 of the Isle of Man Government Unified Scheme (GUS).

95. Most pertinently, Mr Taverner pointed out that the methodology set out in the Principles involves an adjustment to the Ogden Tables because that adjustment is appropriate for dealing with pensions. The approach involves deriving the correct multiplier (at the appropriate discount rate) from the Ogden Tables but then deducting 2 years from the age of, in this situation, Dr Ranson. This was the approach he adopted.

96. Because the present situation was evolving, this Decision has not set out Mr Taverner's calculations.

Ms Alison Hollywood of PWC

97. Like Mr Taverner, Ms Hollywood had provided alternative calculations depending on annual salary. The Tribunal has not considered the calculation at £350,000. Like Mr Taverner, Ms Hollywood required factual guidance from the Tribunal. To the extent necessary, reference will be made to the evidence of both experts in the Closing Submissions by Mr Devonshire and Mr Segal.

The Joint Report

98. Both experts agreed that they needed more details from Dr Ranson as to the previous UK pension schemes and State Pensions because of the impact this would have on the annual net pension loss calculation.

99. The experts were agreed they needed to determine which elements of the award would become taxable and require “grossing up”. This is dealt with in the award below.

100. Ms Hollywood made amendments to her calculations for pension loss. The experts agreed on the methodology for calculating annual gross pension loss.

101. The experts agreed to adopt the multipliers from the Principles of Compensating Pension Loss. Mr Taverner considered there were no material reasons pertinent to Dr Ranson for deviating from the approach in the Principles. However Ms Hollywood considered that the standard approach adopted for the average Complainant of an occupational pension scheme does merit further consideration by the Tribunal to reflect facts specific to Dr Ranson. Ms Hollywood did not accept use of a two-year reduction in Dr Ranson’s age when calculating pension loss when applying the Ogden Tables. This was because of the high-level of stress, that might impact on life expectancy. She considered this to be a matter for the Tribunal to determine, based on medical evidence.

102. There was a disagreement as to the approach to the discount rate. Mr Taverner had used the Ogden Discount Rate of - 0.25% which was as recommended in the Principles for Compensating Pension Loss. Ms Hollywood agreed to relook at these Principles. She considered that the Tribunal may award compensation based on a different discount rate compared to the statutory rate as fixed for England and Wales.

103. Mr Taverner contended that if a different Discount Rate were to be considered, then all components of it would need to be considered including assumed Investment Return and Investment Risk and the question of longevity. (Because, as explained below, the Isle of Man has mandated use of - 0.25% as the Discount Rate, the Tribunal considered that rate to be appropriate).

THE LAW

Employment Act 2006

- Section 49
- Section 50
- Section 51
- Section 55
- Section 56
- Section 64
- Section 71
- Section 72
- Section 111
- Section 113
- Section 115
- Section 118
- Section 133
- Section 134
- Section 135
- Section 136
- Section 137

- Damages (Personal Injury) Assumed Rate of Return Order 2020
- Judicial College Guidelines
- Ogden Tables (8th Edition)
- Principles for Compensating Pension Loss (4th Edition (3rd revision) 2021

Authorities / Cases Cited

- Armitage & Others v Johnson (1997) IRLR 162
- Banco de Portugal –v- Waterlows [1932] AC 452 at 506 HL
- Benchmark Dental Laboratories Group Ltd v Perfitt (EAT/0304/04)
- Blamire v South Cumbria HA (1993)PIQR Q1
- Blue v Ashley (2017) EWHC 1928 (Comm)
- British Telecommunications v Reid (2003)EWCA 1675
- Bullock v Atlas Ward Structures Ltd (2008) EWCA Civ 194
- Chagger v Abbey National (2009) EWCA Civ 1202 CA
- Citibank NA v Kirk (2022) IRLR 925
- City of Bradford Metropolitan Council v Arora (1991) IRLR 165
- Commissioner of Police for the Metropolis v Shaw (2012) ICR 464
- Da'Bell v NSPCC (2010) IRLR 19
- De Souza v Vinci Construction (UK) Ltd (2018) ICR 433
- Dunnachie v Kingston on Hull City Council (2005)1 AC 226
- Fourie v SK Formwork & Another CLA 2004/92
- Fyfe v Scientific Furnishings [1989] ICR 648, EAT
- Gardiner-Hill v Roland Berger Technics Ltd (1892) IRLR 498

- Gestmin SGSP v Credit Suisse (UK) Ltd & Anor (2013) EWHC 3560(Comm)
- Hakim v The Scottish TUC (2021) TKEATS /0047/19
- HM Prison Service v Salmon (2001) IRLR 425 EAT
- HSE v Jowett (2022)EAT 150
- Irani v Douchon (2019) EWCA Civ 1846
- Jefford v Gee 1970EWCA JO304-2
- Komeng v Creative Support Limited ((UKEAT) / 0275/18
- Kuddas v Chief Constable of Leicestershire Constabulary (2002) 2AC 122
- Lindsey v Cooper Contracting Limited UKEAT/ 0184/15/JOJ
- Mallett v McMonagle (1970) AC 166
- Marsch v Min of Justice (2017) EWHC 1040 (QB)
- McPherson v BNP Paribas (London Branch) (2004) ICR 1398
- Mickalak v West Yorkshire NHS Trust (Harvery Vol 3)
- Ministry of Defence v Cannock (1994) ICR 918
- Ministry of Defence v Fletcher (2010) IRLR 25
- Moorthy v Commissioners for HMRC TCO 3952
- Newman v Folkes (2002) PIQR QW2 QBD
- Norton Tool Co Ltd v Tewson (1972) ICR 501
- O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615, CA
- Polkey v AE Dayton Services Ltd (2007) UKHL 8

- R (on application of SS) v Sec of State for the Home Department) (2018) EWCA Civ 1391
- Roberts v Wilsons Solicitors & Others (2018) ICR 1092
- Rookes v Barnard (1964) AC 1129
- Rowlands v Chief Constable for Merseyside Police (2007) I WLR 1065 (CA)
- Sheriff v Klyne Tugs (Lowestoft) Limited (1999) ICR 1170
- Simmons v Castle [2012] EWCA Civ 1288
- Software 2000 Limited v Andrews(2007) ICR 825
- Sutton v Creechurch Capital Ltd 16/35
- Sutton v Creechurch Capital (Manx HIGH COURT on Appeal ORD 2018 /41)
- Vento v Chief Constable of Yorkshire Police (2003) ICR 318
- Virgo Fidelis Senior School v Boyle (2004) IRLR 268
- Wardle v Credit Agricole Corp & Investment Bank (2011) EWCA Civ 545
- Wilding v British Telecommunications plc (202) EWCA Civ 349
- Yerracalva v Barnsley Metropolitan Borough Council (2012) ICR 420
- Zaiwalla v & Co v Walia (2002) IRLR 697 EAT

The Issues to be Determined

Basic Award

104. The Basic Award for someone unfairly dismissed is not in issue. The calculation is explained below.

Compensatory Award

105. Dr Ranson did not claim a separate compensatory award such as would normally arise in a "normal" unfair dismissal claim. That would have involved losses sustained as a result of the dismissal However, to the extent that any loss flowed from the fundamental change in role comprising Dr Ranson's dismissal, this would duplicate the loss arising from her successful claims for whistleblowing detriment. That detriment stemmed from *inter-alia*, Miss Magson's unlawful conduct which had led to Dr Ranson not transferring to Manx Care from 1st April 2021.

Whistleblowing Detriment

106. In the Liability Decision, the Tribunal had no problem in determining that consequent upon Miss Magson misleading Mrs Cope and Mr Foster in October and / or November 2020, Dr Ranson did not transfer to Manx Care. Also in the Liability Decision, the Tribunal, while not concluding that continuity of employment was inevitable from the expiry of the two-year fixed term on 26th January 2022, was satisfied that was the likely position, an opinion that remains unchanged.

107. Mr Devonshire suggested that perhaps, at some point, Dr Ranson might have been fairly or unfairly dismissed by Manx Care. Similarly, Dr Ranson herself might have terminated her employment.

108. The detriment consequent upon Miss Magson's misconduct in misleading Mrs Cope and Mr Foster was not the only misconduct for which the DHSC was responsible. The Tribunal had found other whistleblowing instances which, Mr Segal rightly submitted, had a cumulative effect of detriment.

Non-Pecuniary Loss

109. Pursuant to section 71(2) of the Employment Act 2006, Dr Ranson, having made protected disclosures, is entitled to seek a Declaration from the Tribunal that her Complaint was well-founded. This the Tribunal now does.

110. Mr Segal submitted that this opened up the entitlement of the Tribunal to make awards of compensation on the same basis as if this were a discrimination claim – **Virgo Fidelis Senior School v Boyle**. This was not disputed by Mr Devonshire.

111. Dr Ranson has claimed non-pecuniary awards for:

a. **Injury to Feelings**
b. **Aggravated Damages**
c. **Personal Injury**
d. **Exemplary Damages**
e. **Costs**

Injury to Feelings

112. Mr Segal approached the awards of injury to feelings and Aggravated Damages separately. As indicated below, Mr Devonshire advocated a single lump sum to cover both possible awards.

113. For injury to feelings, Mr Segal relied on what are known as the **Vento** guidelines.

114. These guidelines laid down categorisation bands with a view to ensuring a consistent approach in awarding compensation. The current bands, as updated since originally laid down, are as provided by the Presidents of the English and Welsh and Scottish Employment Tribunals on 27th March 2020. The bands are now as follows:

Lower Band - £900-£9000 (Less Serious cases)
Middle Band - £9000-£27,000 (cases not meriting an award in the Upper Band)
Upper Band - £27,000 to £45,000 (the most serious cases)

Exceptional Band - exceeding £45,000 (the most exceptional cases)

115. Mr Segal submitted that an appropriate award for injury to feelings would be the sum of £40,000 being towards the upper end of the "most serious" bracket but not within the most exceptional bracket.

116. Under section 140(2) of the Employment Act 2006, Manx law requires that the award for injury to feelings is capped at £5,000. It has not been updated since then. The award in **Sutton v Creechurch Capital Ltd** had reflected the statutory cap, as approved by the Honourable Deemster Rosen on appeal. **Sutton** was pursued as an automatic unfair dismissal pursuant to sections 118 and 140 of the Act.

117. However, both Counsel were agreed that the present situation is different. Dr Ranson has claimed her losses pursuant to sections 64 and 72 of the Act relating to detriment. Different considerations applied under sections 64 and 72.

118. In the absence of any statutory cap, based on the severity of the injury to her feelings, this Tribunal is able to award Dr Ranson a sum consistent with the **Vento** guidelines. The rationale underpinning this award, as advanced by Mr Segal, is set out in the following paragraphs.

119. Mr Segal, in support of seeking £40,000, pointed out that the award should reflect more than just the failure to transfer to Manx Care. It should reflect the injury to feelings arising from the other eleven detriments to which Dr Ranson had been subjected.

120. Mr Segal considered that the period to be considered for injury to feelings should be assessed at a minimum of 4 years from March/April 2020 until the outcome of successful medical treatment in 2024.

121. Additionally, Mr Segal pointed to the effect on Dr Ranson of Miss Magson's "critical and controlling behaviour" during the period of employment so that the injury arose not only on or after termination of employment.

122. Mr Segal also pointed to the reputational damage as set out in Dr Ranson's witness statement and her distress at the Respondent's conduct. The Tribunal accept that there may have been some indeterminate degree of reputational damage both on-Island and in the UK but sufficient persuasive specific evidence was lacking.

123. In general, the Tribunal, not being immune to the headlines and comments about the litigation, considered, that on-Island, there has been more sympathy than hostility in the public domain. The resignations and early retirements of those criticised in the Liability Decision speak volumes as to the strength of public feeling supportive of Dr Ranson.

124. In her witness statement (**pages 1907/1908**), Dr Ranson drew attention to the perpetuation of a rumour that there was "another side" to the Dr Ranson situation – this being mentioned at a political level. She felt that the tide had been turning against her because of confusion as to whether she might have been involved in some type of scandal as hinted at by use of such terminology. The Tribunal accepted that hints or suggestions that there was "another side" to the story must have been distressing. No evidence has emerged in these Remedy proceedings of anything like that. In general, as Dr Ranson acknowledged, she has had "a huge amount of support".

125. The Tribunal also accepted that throughout most of her two years' employment and since then, Dr Ranson had good reason to feel distressed – not least from the basis of the defence in the proceedings as pleaded (substantially) by Miss Magson in the Response and her subsequent battles to get disclosure of documents.

126. Also pertinent, in Mr Segal's submissions, was the particular impact on Dr Ranson as a medical professional. The mistreatment sought to remove Dr Ranson's clinical and professional freedom. Dr Ranson considered that the impact of this to mean the end

of her career in medicine, at least as she had envisioned it. While the Tribunal needed no persuasion about the damage to Dr Ranson's career, it has not concluded that it is *inevitable* that she has no role still to play in medicine.

127. In the Liability Decision, the Tribunal had pointed to Dr Ranson's evidence that she had felt "broken and beaten" and that never in her career had she experienced such "hostility, marginalisation and humiliation". The Tribunal recalls the impact made by the evidence of the marginalisation which Dr Ranson had to endure, particularly from 8th December 2020 (when she was told she was not going to transfer to Manx Care). This continued at pace through until she fell ill in March 2021 and was absent for some six weeks.

128. Although up until the inception of Manx Care on 1st April 2021 was probably the time of the utmost humiliation, the evidence established that she continued to be mistreated following her return to work in May 2021. Dr Ranson was still under contract until 26th January 2022. She was therefore working in a hostile environment undertaking a different function from that which she had performed as Medical Director.

129. Slice-by-slice, her role of Medical Director had been taken away from her by 1st April 2021. Besides being humiliated in front of her colleagues, her humiliation was apparent up to and including high levels of Government and the Council of Ministers. Her office and other working conditions had been changed in an unacceptable and unkind manner. When Dr Ranson returned to work in May, she "had no office whatsoever" (**page 1902 - para 35**). Whilst at work, she had to face colleagues who were all aware that she had been singled out for not making the transfer to Manx Care. Dr Ranson's written evidence (**pages 1902 / 1903 -paras 35 and 36**) expanded on ongoing problems created by Miss Magson.

130. The approach to whistleblowing compensation has to be consistent with awards for discrimination. Authorities from England and Wales, such as **Komeng** and **Armitage** relied on by Mr Segal, provided useful guidelines as to the correct approach. The

award should be compensatory with no element of punishing the wrongdoer. Feelings of indignation ought not to inflate the award yet neither should the award be too low because that would diminish respect for the policy underpinning the anti-discrimination legislation. The award must ensure that such misconduct is seen to be wrong. Additionally, the award should bear some broad general similarity to those awarded in personal injury cases.

131. Tribunals are encouraged to consider the purchasing power of the sum awarded and, in that respect, it is recognised that, currently, the Isle of Man and the United Kingdom are both enduring a period of high inflation.

132. The Tribunal also took heed that, in her representations to Mrs Cope and Mr Foster, Miss Magson defamed Dr Ranson in suggesting, without justification, that not only was she not up to the job of Medical Director but also that she had not wanted to transfer. The latter, it was submitted by Mr Segal, was an outright lie as was revealed in the Liability Hearing. Both facets were damaging to Dr Ranson's future career and caused considerable hurt. During the Liability Hearing process (including disclosure of documents), besides in her evidence on oath, there was also an attempt by Miss Magson to cover-up her misconduct. This was bound to inflame justified injured feelings.

133. For the DHSC, Mr Devonshire submitted that because the Tribunal must not over-compensate by duplicating Aggravated Damages and injury to feelings, a single total award of £35,000 to £40,000 was appropriate.

134. Under section 72(2), the amount of compensation should 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 infringe the Complainant's right.

135. Besides therefore being empowered to award compensation for injured feelings, Mr Segal submitted that, in detriment cases, there was no principled basis on which to

exclude Aggravated Damages awards where there had been the relevant aggravating conduct. For injury to feelings, the Tribunal awards **£40,000**.

136. The Tribunal now turns to the issue of Aggravated Damages with emphasis on Manx law.

Aggravated Damages

137. Aggravated damages may be awarded as a separate head of award when the Respondent has acted in a high-handed, malicious, insulting or oppressive manner. Based on the findings in the Liability Hearing, the Tribunal considered this to be beyond argument, a view shared by Mr Devonshire who advanced no submissions to the contrary.

138. In **Sutton v Creechurch Capital Limited**, the Tribunal had awarded Mr Sutton £15,000 for Aggravated Damages. However, on appeal, His Honour Deemster Rosen considered that under the statutory sections relied upon, such an award was not appropriate. He therefore disallowed it. The learned Deemster drew support from the Supreme Court decision in **Dunnachie**, involving a Complainant who was not a whistleblower. Mr Segal submitted that the High Court in **Sutton** had correctly applied the provisions of sections 140 and 142.

139. However, both Leading Counsel agreed that the present situation is distinguishable from **Sutton** and that under sections 64 and 72, it is possible to award Dr Ranson Aggravated Damages.

140. Mr Segal submitted that in the present situation, and in assessing the award for Aggravated Damages, the Tribunal should consider:

   a. The manner in which the wrong was committed. In this respect, the Tribunal is mindful of the demeaning and spiteful way in which Dr Ranson was treated in early 2021 – involving the loss of her office, her status, dignity and stature even before 1st April 2021. This came on top of the deliberate action taken to ensure that Dr Ranson would not transfer to Manx Care on 1st April 2021. Without question all this behaviour increased Dr Ranson's distress.

b. The award for aggravated damage should consider motive because deliberate actions may or can cause more distress than inadvertent actions. The Tribunal was satisfied there was animosity and spiteful misconduct.

c. The Tribunal is entitled to consider subsequent conduct of the DHSC. In the present situation, the Response, as relied upon was a travesty of the truth. It had been drafted substantially by Miss Magson and was self-serving. Its grounds of resistance were deliberately false and unreliable. The Tribunal was satisfied that this subsequent misconduct is a factor, rightly to be brought into consideration. Even at the long Hearing in 2022, Dr Ranson had to endure false and misleading evidence on behalf of the DHSC which was bound to cause yet further distress.

141. Mr Devonshire submitted that a suitable award would be in the bracket of £35-40,000 to include injury to feelings.

142. The Tribunal accepted from the Employment Appeal Tribunal judgment in **MoD v Fletcher** (following **Zaiwalla**) that the manner in which litigation is handled can be a factor in awarding aggregated damages, if that were of sufficient gravity. However, the EAT had cautioned that care must be taken not to over-compensate and that Tribunals should consider the overall award for non-pecuniary loss. That was consistent with the warning in the Court of Appeal from Mummery LJ in **Vento** (**at para 68**) that overlap should be avoided. In effect, this involved not awarding a sum for injury to feelings plus Aggravated Damages and thereby awarding twice for the same loss. Yet this is not without seeming contradiction.

143. The decision in **Commissioner of Police for the Metropolis v Shaw** opined that it was *preferable* to wrap any element of aggravation into the award for injury to feelings.

Mr Devonshire opted for that route by suggesting a single award. Mr Segal opted to submit for distinct awards.

144. Mr Segal submitted that an award of £20,000 was warranted. In support, he highlighted the Respondent's misconduct and pointed to the evidence of Professor Elliott that Dr Ranson's perception of the litigation had been "a significant perpetuating factor in her ongoing psychological symptoms.

145. The Tribunal considered that, irrespective of the award for injury to feelings, an award of **£20,000** for Aggravated Damages was justified.

Personal Injury

146. Based on guidance from authorities in England & Wales, such as **Sheriff**, this Tribunal does have jurisdiction to award personal injury compensation in the particular circumstances of whistleblowing where the precedents consider that for detriment awards, the approach should mirror that for discrimination. There is no known High Court Manx authority on personal injury awards following whistleblowing. The Tribunal considers that following the England & Wales approach is appropriate.

147. The subtle differences in approach between the two medical experts has already been considered.

148. Mr Segal submitted that the Tribunal should accept the evidence of Prof. Elliott that Dr Ranson suffers from PTSD and that this therefore warranted an award consistent with Chapter 4B of the 16^{th} edition of the Judicial College Guidelines.

149. Mr Segal submitted that Dr Ranson's medical condition fell within the category of *Moderately Severe Injury* of £23,150 to £59,860. This is because the present situation is of an injury with a prognosis of some recovery with professional help but which nevertheless has effects likely to cause significant disability for the foreseeable future. He pointed out that Prof. Elliott was not in a position to assess how far Dr Ranson will

recover, even with the recommended treatment. Her resilience has been permanently impaired and she remains at risk of a relapse in the event of exposure to future stress.

150. The Tribunal did not accept that Dr Ranson's medical condition amounted to PTSD. Even Prof. Elliott had backtracked to the extent that, if the Tribunal did not agree with that diagnosis, then Dr Ranson's condition met the criteria for a moderate to severe depressive disorder with PTSD features.

151. The Tribunal accept that diagnosis while not differentiating Dr Ranson's diagnosis as made by Dr Isaac. Ignoring terminology, both experts were considered by Counsel and the Tribunal to be substantially agreed on the injuries and their impact on her.

152. What was put in issue by Mr Devonshire was the extent to which Dr Ranson's evidence to Prof. Elliott (and elsewhere) was reliable. Dr Isaac had made clear that his opinion depended on what reliance the Tribunal placed on what she had told her own consultant.

153. As a starting point, the Tribunal repeats from the Liability Decision of 9th May 2022 that the opinion formed was that Dr Ranson was a reliable witness. The Tribunal does not resile from that view following the further Remedy Hearing. The description provided to Prof. Elliott in September 2022 is repeated as follows:

> **"… Increasing symptoms of low mood, tearfulness, anxiety, physical symptoms of anxiety such as palpitations, flashbacks, nightmares, situation anxiety, avoidance of situations which were reminders of the index events, loss of interest in things in general, loss of confidence, being easily startled, being hypervigilant, intolerance of others, poor concentration, being jumpy, and sleep disturbance".**

154. Based on Prof. Elliott's notes (**page 956 at para 10**), he asked Dr Ranson about any past psychiatric history and was told there was none. She had also denied any "other previous medical history". For whatever reason, Dr Ranson had not volunteered her

significant and material bout of work-related stress in 2008/2009. That stress had led to six months' work absence from the GPs' practice where she had then worked. However, during that time, she had been able to continue with her work for the GMC.

155. When examined by Dr Isaac in November 2022, he had asked Dr Ranson about her background and, *inter alia*, she had told him that "she had been always absolutely fine mentally and physically. She told me she had developed mild palpitations before the index events, but it was only during the index events that they became more serious. She told me that she had been off work with stress years ago when she was working both at the GMC and in general practice. She told me that she had no other symptoms and after a short period had simply continued working. She told me that she had no formal psychiatric history, either in primary or in secondary care."(**page 983 paras 47 and 48**).

156. That this information about 2008/ 9 was volunteered to Dr Isaac, retained on behalf of the DHSC, puts in context the failure to tell Prof. Elliott. There was no attempt with Dr Isaac to cover-up the 2008/9 stress incident. The way Dr Ranson regarded it was clearly explained and it was for Dr Isaac to explore further if he wanted – as he did. Based on the written evidence but, following both experts being cross-examined, there was no suggestion that in 2008/9, Dr Ranson had a psychological disorder. The existence of the 2008/9 stress situation was, in Prof. Elliott's opinion, that this history pointed to the present situation being harder to treat this time around.

157. It had not been straightforward for the DHSC to get Dr Ranson's historic medical records and the Tribunal had to intervene. When pressed for disclosure, Dr Ranson had wanted to disclose medical records dating back only 5 years (thus to 2017). That would have precluded disclosure of the events of 2008/9. An Application was made to the Tribunal for Dr Isaac to have access to Dr Ranson's medical records whether pre or post the Index events. The Occupational Health records were also sought.

158. Dr Ranson then removed the five-year limit anyway, subject to protection of irrelevant personal historic information. The Tribunal ordered this disclosure without the five-

year limit. The Tribunal's Order dated 1st December 2022 set out a route-map for ensuring no intrusion into personal and irrelevant details.

159. The Tribunal was later informed on behalf of the DHSC that the Occupational Health records were no longer an issue. At the Hearing, that proved to have been incorrect with Mr Devonshire submitting that the Occupational Health records for 2021 never were revealed.

160. The other dispute on documentation in December 2022 involved the DHSC seeking disclosure of Dr Ranson's job applications (Scotland and BUPA Cromwell Hospital). That application to the Tribunal had not mentioned the New Zealand job but had sought an Order for any other job applications. None of these had been volunteered by 1st December 2022, as they should have been. There was plain reluctance to share them with the DHSC. These were disclosable (and were ordered to be disclosed). As is now plain from this Decision, they were of significant value in helping to consider a complete picture of Dr Ranson's health and capabilities in 2020 / 2021.

161. This reluctance to reveal significant medical history and the failure voluntarily to provide the job applications did no credit to Dr Ranson, especially after her many complaints about non-disclosure by the DHSC relating to the Liability Hearing. Despite that reluctance and lapse, the Tribunal did not consider that this lessened the impact or reliability on the separate issue of Dr Ranson's description of her health issues as described to Prof. Elliott.

162. The Tribunal concluded that, after considering the opinions of both medical experts, Dr Ranson's medical condition would not have precluded her from being able to function to some extent during 2021. Prof Elliott testified regarding Dr Ranson's symptoms "waxing and waning" during 2021. Dr Isaac considered that it was possible to be suffering from depression but still have some ability to work.

163. Dr Ranson had self-referred to Occupational Health on 9th December 2020 (**page 852**). This was the day following the news delivered by Miss Magson that Dr Ranson was

not going to transfer to Manx Care. The reason for the self-referral provided by Dr Ranson was "cardiac arrhythmia – exacerbated by work." Dr Ranson, at interview by Dr Crofts on 14th December 2020 (**page 854**), mentioned her "work-related stress".

164. In the period leading up to her absence from work commencing later in March 2021, Dr Ranson had suffered a series of humiliating and demeaning experiences leading to her being absent until May. These she had summarised in her witness statement for this Hearing (**page 1901 et seq**). She described the situation leading up to March 2021 at paras 29 and 30 as follows:

> **"… The humiliation was given an added dimension when Miss Magson blamed me publicly and at high-profile meetings for mistakes which were not mine, but her own – as on 9th October 2020 in relation to the Serious Incident Report and the later unjustified criticism of me by the Speaker later that month; and then her "needless and vindictive" statements made about me at the meeting on 18th December in relation to the vaccine roll-out and the PGD.**
>
> **"Eventually, I believe when none of this succeeded in entirely breaking me, she stripped me of my clinical and professional freedom. The actions taken against me over a series of months in 2020 and 2021 culminated in the New Year of 2021 when I was stripped of my clinical and professional autonomy. There had been a gradual chipping away at me and my support structure and in early 2021 Miss Magson gave me a direct instruction that I was not to meet with my team, the flow of information to me was stopped and my team were removed. My clinical freedom and autonomy were severed through a direct instruction that if the clinical advisory group met we could only discuss what Mr Greenhow and Miss Magson dictated. I felt trapped, demeaned humiliated and targeted".**

165. This then was the build-up to the absence of work commencing in March 2021. Following her return in May 2021, Dr Ranson had then worked part-time in a significantly different role described as being "a shell" of what she had done

previously. Any inference that on her return, she had an easy ride because she was no longer fulfilling her former role, was entirely misplaced. In her statement (**page 1902/1903 – para 35**) she explained that had no office and no support. She had no PA and no team. All new recruits were informed that Dr Ranson was now line-managed by the newly appointed Director of Quality who had only started that year. Dr Ranson was given no strategic objectives and was made to feel that she was not needed and her views were disregarded.

166. The day before Dr Ranson was due to give evidence to the Public Accounts Committee, she discovered that the Attorney General Chambers had attempted to prevent her giving evidence (at all). This would have been in public. Instead, the PAC held the session in private.

167. From around October/November 2021, Dr Ranson had not attended work at all until the expiration of her contract in January 2022.

168. In connection with her summary given to Prof. Elliott, Dr Ranson explained (**page 1906**) that she had been so stripped of her dignity that she had been reluctant to seek professional psychiatric help. This was because she knew that medical reports would have to be disclosed to a wide range of people. In her November 2022 statement, Dr Ranson explained that she finds it extremely difficult to use words that come close to describing the impact that her employment had had on her. She considered that she has been unable properly to articulate this to anyone. She had been struggling and suffering from significant physical and psychological symptoms. These, she had tried to describe to Prof. Elliott.

169. Other documents (such as correspondence) created during 2021 were in evidence and Mr Devonshire highlighted them as showing Dr Ranson’s ability to perform. However, with Dr Isaac accepting an ability to function while still suffering from depression during that year, this reduced the force of Mr Devonshire’s submission.

170. In conclusion on this, the Tribunal considered it reasonable, on the totality of evidence, to conclude that Dr Ranson's description to Prof. Elliott, given in September 2022 was reliable, not least because it had suggested an increasing problem.

171. For reasons given later in this Decision, the Tribunal considered that the symptoms, mild at that stage, had commenced before the end of March 2021. This was consistent with the evidence of Prof. Elliott who considered that the "mild" condition had commenced by the end of 2020.

172. Prof Elliott (**page 971 – paras 18.123 -125**) also drew attention to research which had shown that "even a mild disorder was associated with poor work ability, and low confidence in managing health condition at work." Previous research had also shown "that it is less likely for patients to be able to return to any work after duration of sickness absence of greater than 12 months." Other previous research had also shown that "it is less likely for a patient to be able to return to work if they perceive that exposure to employers, colleagues or other aspects of work will lead to a relapse".

173. Mr Segal submitted there should be an award in the upper half of the bracket to reflect the intensity and gravity of Dr Ranson's medical condition, the impact on her day-to-day functioning, the effects on her family and the overall impact. He therefore submitted that the award for personal injury to Dr Ranson under this heading should be £56,000.

174. Mr Devonshire submitted that, based on the opinion of Dr Isaac, an award of about £30,000 was appropriate. Although the Tribunal had some reservations about aspects of Prof. Elliott's evidence, the panel did not accept the entirety of the conclusions of Dr Isaac either. On balance, the Tribunal preferred the evidence of Prof. Elliott including his diagnosis of moderate to severe depressive disorder with PTSD features. Dr Isaac had been somewhat discredited under cross-examination in these respects:

- **Unlike Prof. Elliott, Dr Isaac had not read the written materials he had been provided with before interviewing Dr Ranson. He did not cover the critical period between 8th December 2020 and the end of 2021.**

- **In his initial report Dr Isaac had repeatedly stated that he had read Dr Ranson's job applications of October 2020, January 2021 and July 2021 when this was incorrect.**

- **Dr Isaac's opinion was also based on the incorrect belief that Dr Ranson had been able to work full-time between May 2021 and January 2022. He accepted in cross-examination that he had evidently got this wrong and that this must affect his conclusion (in connection with Dr Ranson's health during this time).**

- **Dr Isaac had incorrectly assumed that the distress and anxiety as a result of the litigation had only occurred in 2022. The Tribunal had noted that, in the GP's records for 18th March 2021 (page 932), it was recorded that Dr Ranson had been seen by cardiology and treated with beta-blockers for palpitations "linked to anxiety".**

- **As Mr Segal submitted, and as the Tribunal has accepted, the issues regarding the litigation were described by Dr Ranson in her witness statement highlighting the distress and anxiety because of the way in which the DHSC had framed the Response and handled questions of disclosure. Additionally the witness statements had run a false case as to Dr Ranson's inadequate performance.**

- **Dr Isaac wrongly testified that Dr Ranson had been able to prepare her 7th and 8th witness statements during 2021 whereas these were prepared in the summer of 2022.**

- **At paragraph 19.1 of his Closing Submissions, Mr Segal summarised the somewhat confused and confusing evidence of Dr Isaac when being questioned as to Dr Ranson's clinical condition during 2021. It appeared that Dr Isaac ultimately accepted that Dr Ranson had suffered significant anxiety by March 2021 and he regarded anxiety and depression as two sides of the same coin. He could not say that there was no depression. As to Dr Ranson's statements of the DHSC's approach to the litigation during 2021, he indicated that it did not necessarily point to depression but did point to declining mental health.**

175. Taking all aspects into consideration, the Tribunal considers that an award of **£40,000** for personal injury is appropriate.

Exemplary Damages

176. Exemplary damages can be awarded where conduct is *oppressive, arbitrary or unconstitutional*. In **<u>Kuddas</u>**, Lord Nicholls considered that their role was "to punish and deter." In considering this element of the claim, the Tribunal was mindful of the appellate decision of His Honour Deemster Rosen in **<u>Sutton v Creechurch Capital Limited</u>**. The Tribunal had made Mr Sutton an award of Exemplary Damages. Based on the pleaded case and statutory sections relied on, the learned Deemster could not uphold that award. Previous England & Wales authorities had considered it essential for a servant or agent of Government to be involved as the Respondent. Creechurch had not come into that category.

177. Based on the different sections relied on by Dr Ranson (sections 64 and 72), both Leading Counsel agreed that the Tribunal was entitled to make an award against the DHSC as a public body. Section 64(1) deals with protected disclosures and detriment as follows:

“A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the worker has made a protected disclosure”.

178. Beyond question, Dr Ranson was categorised as a worker who had been subjected to detriment by actions of the DHSC.

179. Where a Complaint to this Tribunal is made under section 71, by reference back to section 64, then under section 72, the Tribunal must make a declaration (as it now does) that the Complaint was well-founded. The remedy then arises under section 72. Section 72(1) is material and provides as follows:

“Where the Tribunal finds a complaint under section 71 well-founded, it —
(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) 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”.

180. Mr Segal pointed out that the pre-conditions to make this award were not disputed by the DHSC However, Mr Devonshire (**Page 3405**) submitted that, despite the pre-conditions being met, it would be inappropriate to make an award.

181. The Tribunal considered that the rulings in the 9th May 2022 Liability Decision amply justified categorisation of Miss Magson’s misconduct (and to a lesser extent that of others) as being oppressive and arbitrary.

182. The purpose of an exemplary damage award is not to add substantially to the award for Dr Ranson but rather to show that the DHSC's misconduct had to be punished. Mr Segal submitted that an award of £5,000, would not demonstrate the degree of punishment that should be imposed on the DHSC. He urged an award of £100,000.

183. Mr Devonshire's submissions (**para 72 (7**) highlighted calls for moderation in awards for Exemplary Damages. He drew attention to the case of **<u>Michalak v West Yorkshire NHS Trust</u>**. Dr Michalak had been subjected to oppressive, arbitrary and unconstitutional actions. There had been a sham disciplinary process, acts of victimisation, exclusion from the workplace, lying and ultimately dismissal at the end of a 5-year period. Dr Michalak had suffered from PTSD, depression and anxiety. The overall award for racial and sex discrimination was very substantial (about £4.5 million). Of this, the exemplary damage award was only £4000.

184. The Tribunal agreed that a relatively nominal award does not *per se* punish a body like the DHSC. However, the Tribunal had decided on a relatively modest award of **£10,000** for Exemplary Damages. This was only because of the reasons to be explained below relating to the Tribunal's decision to make an award of costs against the DHSC. But for this costs sanction, this award would have been greater.

185. An exemplary damage award of £100,000, as submitted by Mr Segal, would undoubtedly punish the DHSC but would also enrich Dr Ranson. This award of £10,000 only benefits Dr Ranson to a much lesser degree. The very fact of making the award at all demonstrates that the Tribunal considered punishment was warranted for the oppressive, arbitrary or unconstitutional behaviour – amounting to gross misconduct.

186. To make an award for Exemplary Damages in a much more substantial sum than £10,000 plus a very large costs burden which is also awarded (this being, in effect, a punishment) would impact not just the DHSC but, in reality, Manx taxpayers and, in all probability, persons on hospital waiting-lists.

187. The Tribunal therefore awards **£10,000** as Exemplary Damages. Such an award is justified both on the basis of unreasonable conduct and false evidence.

Compensatory Award

188. There is no statutory limit on the amount of the award that the Tribunal is entitled to make when a litigant like Dr Ranson has succeeded in proving that her dismissal was consequent upon protected disclosures. The Tribunal now considers the very substantial losses which must inevitably follow and the findings of fact which underpin them.

Continuity of Employment

189. In the Decision following the Liability Hearing, the Tribunal concluded that had Dr Ranson been transferred to Manx Care on 1st April 2021, she would have continued in that employment. Dr Ranson's evidence was that she would not have wished to leave. The evidence of Mrs Cope, at the Liability Hearing, was that she considered that she could have had a good working relationship with Dr Ranson, had she ever been given the chance to do so.

190. The DHSC has submitted that the Tribunal should consider the principles arising under the **Polkey** decision which has been followed in this Tribunal on many occasions. Put simply, if a Complainant is unfairly dismissed but there were grounds for a fair dismissal, the Tribunal can take this factor into account. The principle may be applied where, but for the unfair dismissal, there is good reason to consider that the employment would foreseeably have come to a conclusion anyway. That chance has to be evaluated. Such an example might be if, almost immediately after the unfair dismissal, the Respondent business had collapsed financially and all employees were then redundant.

191. The reality of what happened is that Dr A had been appointed to the role of Medical Director and took on the role for Manx Care effective from 1st April 2021. He was still in post in January 2022. On that real-world basis, with Dr A in post, Manx Care had no

need for Dr Ranson. However, that situation ought never to have arisen. Dr Ranson should have continued seamlessly from 1st April 2021 with Dr A never being appointed.

192. Shortly before the Remedy Hearing was due to commence in March 2023, it became public news that Dr A was going to be seconded to an NHS Trust in the UK. According to the information given to the Tribunal by Mr Devonshire, Dr A had been approached to work for this NHS Trust. Mrs Cope had seemingly not wanted him to depart on secondment. In consequence, there was no suggestion or evidence that the role of Medical Director on the Island had become redundant. Dr A was wanted back here.

193. Mr Devonshire, pointing to the **BBC v Farnsworth** decision, submitted that at some point, Manx Care could have changed policy and determined that only a jobbing Medical Director was needed. That may have created a *bona fide* redundancy situation but this only added to the list of imponderables as to what may happen over the next fourteen years.

194. The Tribunal has no credible evidence of any basis that, had Dr Ranson been in post with Manx Care in January 2022, she would or could have been fairly dismissed. The Tribunal, in **paras 605-607** of the Liability Decision had emphasised the weight of solid evidence regarding Dr Ranson's ability. The Tribunal did not consider that the **Polkey** principle had any application on Dr Ranson's claim.

195. Mr Devonshire drew attention to **Abbey National v Chagger**. This considered a variation on **Polkey.** Based on **Chagger,** the issue was whether at some point, Dr Ranson would have been lawfully dismissed. The Tribunal accept that during the Remedy Hearing, Mrs Cope testified that Dr Ranson was not, from her perspective, an ideal fit for the post of Medical Director for Manx Care. Neither would Dr Ranson have been her first choice to be Medical Director. Mrs Cope made clear that this was in no way to denigrate Dr Ranson's talents or to resile from her evidence at the Liability Hearing that she could have worked well with Dr Ranson.

196. Accepting the evidence of Mrs Cope that Dr Ranson was not her idea of an "ideal fit" is not the same as evidence that termination of Dr Ranson's employment, fairly or unfairly, was either imminent or even likely. On the evidence, the Tribunal cannot make a finding that, if Dr Ranson had been employed by Manx Care in January 2022, she would have then lost her job imminently or at all except if neither party had compromised on salary. Based on the high degree of respect that Dr Ranson commanded (see the following paragraph), there is no basis beyond speculation that a point would have been reached where Manx Care might have determined to terminate Dr Ranson's employment.

197. In evidence at the Liability Hearing, there was an anonymous survey about Dr Ranson called the **360-Colleague Feedback Summary of March-June 2021.** This was part of a routine appraisal process. Containing only *de minimis* adverse comment, there were several pages of praise of the highest order as to her ability. A selection of quotes was included in the evidence before the Tribunal. These came from a cross-section of persons working in the sector. Here is a very brief extract from these paragraphs:

> **"Dr Ranson's highest score was 98%. The lowest was 72%. As to Peer Average involving ten categories of abilities for assessment, five results were over 80% with two over 90%".**

198. Dr Ranson might have left Manx Care at the expiration of her fixed term in January 2022 or quite imminently thereafter if she and Mrs Cope had failed to agree on a financial package. In general though, Dr Ranson had no wish to leave the Island. In her evidence, Mrs Cope made clear that there were budgetary constraints when negotiating salary. That might have led to a breakdown in negotiations if Dr Ranson had insisted on holding out for an uplifted salary of considerably more than £200,000 per annum.

199. The evidence made plain that securing a better paid role in the UK was not going to be easy (**page 1822**). Ambition to advance career progression may have motivated Dr Ranson, *at some point*, to make a move even at the cost of a net, after tax, financial

loss overall both for herself and her husband. The evidence before the Tribunal (**page 1827**) included the type of salaries being paid for comparable roles that Dr Ranson might have applied for. Actual salaries being paid in the UK were not (bar one) greater than £200,000 per annum. Of seven identified Medical Directors/Chief Medical Officers, the range was from £149,375 up to £170,000. Only the Chief Medical Officer for England, Sir Christopher Whitty was paid more in 2020 than Dr Ranson at £205,000 and £210,000 (**page 1822**).

200. Possibly, such high-level roles, though at lower salaries, may have been perceived by Dr Ranson as a good career move to satisfy her ambition. The tax burden for high earners in the UK is significantly more (20% approx here compared to 45% across). On Dr Ranson's evidence, Dr Falkowski earned more than his wife. Such a career move, without negotiating a much larger salary package, would have left Dr Ranson and her husband considerably worse off due to the adverse tax rates.

201. As Mr Devonshire submitted, when Dr Ranson moved to the Island, she was not certain that she would stay. She had ambitions to go for a Chief Medical Officer role perhaps even after two years. However, after enjoying the benefits of the very favourable tax regime for a couple earning somewhere over £400,000 per annum, a reality check of the net benefit of an upward career move would have presented a potential significant shackle for them both. That Dr Ranson was alert to this tax benefit was apparent when she decided not to proceed with her New Zealand job application.

202. By the date of this Remedy Hearing, over three years after coming to the Island, it had become apparent that Dr Falkowski could run his barrister practice from here. The whole family was here. Those factors are also as likely to have been material when reconsidering what was best for the family after January 2022. The Tribunal do not think it can be assumed as a given that a move for career advancement would have occurred soon or perhaps even at all. It is only when the stark reality of the actual hard cash net income benefit of living here is calculated that couples can reach a considered opinion of the merits of a return to the UK. That is apart from the raft of other tax benefits that would be lost by returning to the UK.

203. Mr Segal submitted that the Tribunal could assume that, if Dr Ranson left the Island, her salary would have been at least the same. The Tribunal could not accept this. Firstly, the earnings of those in top UK roles were, bar one, lower than Dr Ranson was earning. Secondly, even if, to take a hypothetical example, Dr Ranson replaced Sir Christopher Whitty at over £200,000 per annum, because of tax, both she and her husband would have been worse off.

204. This leads the Tribunal into the topic of salary negotiation.

Dr Ranson's salary from 26th January 2022

205. Although in the mathematical computations for compensation, the precise figure will be used, at this stage, for simplicity, rounded figures will be referred to. On that basis, Dr Ranson was earning £200,000 per annum plus pension. Her claim as advanced until very close to the commencement of the Remedy Hearing in January 2023 was on the basis that she would have been able to negotiate a 75% increase up to £350,000 per annum. That position was abandoned in January 2023 but instead, an alternative figure of £229,000 per annum was advanced. Accordingly, the Tribunal had to decide only as between the gross figures of £200,000 and £229,000 per annum as the multiplicand for calculating earnings losses since January 2022.

206. The Tribunal did not think that Mrs Cope would have offered a lower salary than £200,000 per annum. As to paying £229,000 per annum, Mrs Cope's evidence was that she would not have agreed to pay that. That stance may have prompted Dr Ranson's departure as indicated above.

207. The Tribunal did not consider that the arguments advanced by Dr Ranson for being paid £229,000, as payable to Dr A, were apposite. There were specific differences in the role as it had evolved for Dr A. It was not comparing like with like.

208. Looked at in the round, the Tribunal considered that the most probable outcome from January 2022 was that Dr Ranson would have remained employed at £200,000 per annum.

Duration of Employment to Age 72?

209. Dr Ranson's case was based on the premise that her and the family's future lay on the Isle of Man. She and her husband had purchased a property here. Her evidence was convincing that she and her husband enjoyed working and that she would have expected still to be working to the age of 72.

210. Apparently, before moving to the Isle of Man, Dr Ranson had taken some advice regarding her pension position. Because, for some years, she had not made pension contributions in the UK, the advice given was that she would need to work to age 72 to secure what she would otherwise have got at an earlier age. There was no such evidence available to the Tribunal but the Tribunal have no reason to disbelieve Dr Ranson in this respect.

211. Based on the totality of the medical evidence, there was no factor in Dr Ranson's medical records suggesting any shortened life expectancy. For the purposes of calculating the earnings loss, the Tribunal has accepted Dr Ranson's evidence and has adopted her retirement age as 72. However, the Tribunal was receptive to Mr Devonshire's submission that Dr Ranson may have retired sooner.

212. For the purposes of calculation of wage loss from January 2022, the Tribunal has used the base (gross) figure of £200,005.21 per annum and calculated to the age of 72. However, the correct approach when applying the Ogden Tables (starting at para 214 below) is to calculate wage loss using net of tax figures and the multiplicand, net of tax, is £146,010.28. Grossing up for tax comes subsequently.

213. As is known to all lawyers involved in computing future loss claims, this is not an exact science. Fortunately, there is abundant legal precedent about how to approach something which is, inevitably, unpredictable. Because of the imponderables, the Tribunal will use a recognised mechanism to reflect some of the significant uncertainties in Dr Ranson's future.

Ogden Tables

214. The Ogden Tables, now in their 8th Revision, provide the benchmark for how to evaluate the correct figure for future loss of earnings. The pension approach is slightly different as explained below (**see paras 335 – 337**). Put simply, with Dr Ranson now aged 58 following her birthday in January 2023, it is not as simple as multiplying her net annual loss of earnings by just under 14 years till her 72nd birthday. The figure has to be discounted because Dr Ranson will receive a very large sum of money as a lump sum. Had she been working and earning £200,000 per annum, she would not have had all this money at once. Dr Ranson, once in receipt of this substantial sum providing compensation for her lost earnings, will immediately have the advantage of being able to invest it and get some rate of return on it.

215. To achieve, fairness to the paying party, the Ogden Tables take account of other of life's future chances to determine what multiplier is actuarially correct to adopt for someone of 58 expecting to earn an income until 72. This calculation varies depending on what is known as the *discount rate*.

The Discount Rate

216. Whereas historically, the correct discount rate was a legal battleground, it is now barely controversial. Multipliers are calculated by reference to an annual assumed interest rate after tax and inflation. This is called the Discount Rate.

217. The Discount Rate, statutorily laid down to be used in England & Wales, is – 0.25% (minus 0.25%). The Isle of Man has fixed this rate from 2020 through the Damages (Personal Injury) (Assumed Rate of Return) Order 2020. This is the *current going rate* and the Tribunal has accepted that it should be applied.

218. Although this calculation is made net of tax, as is the pension calculation, the final award must be grossed up and, pursuant to the Practice Note from The Treasury 204/18, Dr Ranson must report the receipt, and the DHSC must report the payment, of the ultimate award.

Dr Ranson's Earning Capacity and GP Licence

219. A significant part of the dispute during the Remedy Hearing has been over what Dr Ranson may yet be capable of earning and from when and until when. Resolution of this issue has involved consideration of the disputed medical evidence, the oral evidence and other contemporaneous and material documents put in evidence.

220. The starting point is that Dr Ranson's evidence was that she does not think that she will ever work again as a Medical Director or otherwise at that high-level. She considers that she will not be able to remain on the medical register because of the requirements that need to be met by March 2024.

221. Between the end of this litigation and March 2024, the Brunner Investigation will be running. The Tribunal later explains the issue of revalidation. The Tribunal, as explained in various further paragraphs, has concluded that Dr Ranson is very unlikely to meet the requirements and pre-conditions for revalidation next March. She will therefore lose her GP's licence.

222. Dr Ranson's evidence was that she does not currently have the resilience to achieve the pre-conditions by March 2024. Her evidence on Day One (**para 59**) of the Remedy Hearing explained that she had done no CPD because she has been unable to. She had not been reading journals and could not bear their sight. Essentials to achieve validation are her Appraisal and the need to undertake the CPD and Quality Improvement to satisfy her Responsible Officer of her fitness to practice.

223. Instead of being able to work on these areas in preparation over twelve months, the medical treatment itself will last six months, at best, commencing from say May 2023. Prof Elliott thought it would last twelve months. The Brunner Investigation will be hanging over Dr Ranson until perhaps October or later. The Tribunal consider it too demanding to cram the validation prerequisites into such a short period - even assuming Dr Ranson has recovered after six months. Dr Ranson's evidence (**Transcript - Day Two – para 38**) was as follows:

"You can't just conjure up all of the material in a week or something. The whole intention of it is that it is material collected over a year. It's substantial and it's a portfolio of evidence".

224. Mr Segal submitted that, on the expert evidence, neither consultant considered validation was achievable. Because of that, to avoid the stigma of having it compulsorily removed, Dr Ranson will surrender her licence. Dr Isaac considered that to be reasonable. Dr Isaac referred to special efforts to get doctors with serious psychiatric conditions back into the medical workforce after treatment. The inference was that there may be more flexibility in respect of the revalidation process than Dr Ranson believed but his evidence for that was not definitive or otherwise substantiated.

225. Mr Devonshire addressed this (**para 61** in his Closing Submissions). There was logic in his submission that there *ought* to be some flexibility available to enable Dr Ranson's Responsible Officer to permit more time beyond the extension that Dr Ranson has obtained until March 2024. However, there was no evidence that this was permissible and Mr Devonshire's submission pointed to nothing that undermined Dr Ranson's case. It added no more to Dr Isaac's evidence involving different situations.

226. The Tribunal could not conclude on the evidence that Dr Ranson had adopted a strategy of ensuring she did not get revalidated or otherwise not trying to do so. That would have been a failure to mitigate her loss (although the DHSC's argument was that Dr Ranson's earning opportunities would not be impacted). Dr Ranson's case, as finally presented, was that she expected to work again if the medical treatment was successful. Therefore, the Tribunal considered that Dr Ranson would have understood that it was in her own interests to have negotiated a longer extension or dispensation if feasible.

227. The Tribunal could not accept that Dr Ranson's inability to cope during 2023 / 2024 with this revalidation process could reasonably be held against her as being a failure to mitigate her loss. Her witness statement (**pages 1909/1910**) explained how, before

the index events, she had envisaged a possible future for herself involved in medical leadership. Without being registered as a GP, her evidence was that "this will likely be the end of my career".

228. Dr Ranson pointed out that she had stopped being a GP (in the patient-facing sense) some years ago. That had not been a career that she had planned to continue. If at some later stage, having surrendered her licence, Dr Ranson felt well enough to become licensed once again, she explained that this could only be as a GP. That would involve taking exams in General Practice, retraining in General Practice and then undertaking supervised clinical practice as a GP.

229. Regaining her licence like that, would qualify Dr Ranson for a GP's role for which she had demonstrated no wish to pursue. She had not worked as a GP since 2009. Even had she somehow been able to retain or obtain her licence, Dr Ranson did not consider that she would be well enough to work as a GP. Neither did she want to. Additionally, as explained elsewhere in this Decision, the Tribunal accepted that the stress of practising as a GP was likely to place Dr Ranson's health at risk. As such, the Tribunal did not consider there was any realistic chance of Dr Ranson later seeking to become licenced once again.

230. Dr Ranson also explained that there would be no route for her to regain her licence as a "Medical Leader" because it is not a GMC recognised speciality.

231. Additionally, if she regained her licence, she explained that it would be "vanishingly unlikely" that she could secure a position in medical leadership after a period of not working through ill-health for two years and having previously lost her licence.

232. Dr Isaac had experience with treatment of other doctors who had suffered mental health issues, some more serious than that of Dr Ranson, who had gone on to make a full recovery and restore a career. The Tribunal knows no reason to doubt that evidence but the Tribunal must consider the specific situation of Dr Ranson who,

beside her mental health issues, is now more likely to be well-known in NHS circles as a whistleblower who had sued her former employer.

233. In this respect, Mrs Cope's evidence pointed to the NHS being a "relatively small world with close connections". Even though Dr Ranson has been proved to be thoroughly justified in whistleblowing, that is not an asset or advantageous when seeking employment in the NHS. As Mrs Cope admitted: her preference would be to appoint a candidate without a history of mental health and who had not sued a previous employer.

234. Because of Dr Ranson's mental health issues caused by the DHSC, the Tribunal was satisfied that in her present low state of mind, it is understandable that she has a wholly negative view of her future. That is because the future, which she had expected on coming to the Island, has been destroyed. However, both Prof. Elliott and Dr Isaac agreed that it would be good for Dr Ranson's road to recovery for her to start working again. In his Closing Submissions, Mr Segal accepted that, subject to successful medical treatment, Dr Ranson would still return to some form of work and have an earning capacity.

235. Besides the issue of when it would be appropriate for Dr Ranson to commence earning some money once again, there was a more fundamental difference between the experts as to what type of employment/earning capacity would be possible. These issues have moving parts which will now be considered.

Commencement of Psychiatric Injury Condition

236. In his Closing Submissions, Mr Devonshire placed great store on the "objective data-points" such as known or probable facts and contemporary documents against which the recollections of Dr Ranson could be tested. (**Para 12**). He made this point:

> **"This does not necessarily involve imputing bad faith to anyone. Rather it recognises the inherently malleable nature of memory and the distorting biases imposed on recollection and testimony by the litigation processes and**

the natural desire to maintain a case theory. This is something that has been increasingly acknowledged in the more recent jurisprudence on the proper approach to judicial fact-finding".

237. In this respect, the Tribunal has already drawn particular attention to the independent Appraisals, the job applications and the Psychometric Test. Mr Devonshire drew attention to the observations of Leggatt J (as he then was) in the 2013 decision of **Gestmin**. Truncated and distilled these were some significant points then made by Mr Justice Leggatt (now Lord Leggatt in the Supreme Court):

- **Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs.**

- **The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events.**

- **The strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.**

- **"The best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and**

events. Above all, it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on their recollection provides any reliable guide to the truth".

238. Mr Devonshire also drew attention to other observations from Leggatt J involving employment cases (**para 14** of his Closing Submissions). Again, Mr Justice Leggatt was concerned about the fallibility of memory and the frailty of honest belief.

239. The Tribunal accepted the force of Mr Devonshire's point. The Tribunal did weigh the contemporaneous documentary evidence against the self-reports made by Dr Ranson - but also against the opinions of both medical experts. Ultimately, after giving evidence to the Tribunal in person, they both agreed that, despite this other evidence of Dr Ranson's ability, that did not mean that she had not become a victim of a psychiatric disorder during 2021.

240. Additionally, in this respect of determining the credibility of Dr Ranson's health in and about Spring 2021, as will be seen (**para 259 below**), the Tribunal was able to place great weight on the evidence of both Mrs Cope and Miss Magson. They were both concerned about Dr Ranson's obvious health issues at around this time. The Tribunal, as explained below, was also able to draw upon the events of March 2020 as comparison, such events having been recited in the Liability Decision.

241. Mr Devonshire also drew attention to Dr Ranson having believed that she would have been able to negotiate a salary of £350,000 per annum in January 2022. Although the Tribunal had considered the rationale for securing a pay increase to £350,000 to be implausible, this had not been a figure that Dr Ranson had simply dreamed up. She had explained why and how such a figure could be justified. However, the Tribunal accepted it was unrealistic for Dr Ranson to have believed that she could have negotiated a 75% increase. It was no surprise to the panel when, belatedly, that figure was abandoned.

242. Mr Devonshire was also critical of Dr Ranson for her allegations against Ministers and politicians. In issues that needed to be determined before the Remedy Hearing, the Tribunal had previously expressed its views on them. It had refused to make extensive Witness Orders, up to and including against the Chief Minister. However, the Tribunal had to bear in mind that Dr Ranson was and is suffering from a depressive disorder. Because the position was not tested in cross-examination of the medical experts, the Tribunal is not making a finding of fact on this but it seems at least plausible that Dr Ranson's judgement and perspective, in this respect, was flawed because of her psychiatric condition.

243. Mr Devonshire was also critical of Dr Ranson for not expanding and explaining her rejection of the conclusions in the EXPOL report. This Decision returns to the topic of EXPOL much later (**para 369 et seq**).

244. The Tribunal had to decide, as a significant feature, the date of commencement of Dr Ranson's medical disorder. Was it in Autumn 2020 or around the end of 2021 / beginning of 2022? The earlier it started, in Prof. Elliott's opinion, the more difficult it became to expect Dr Ranson to respond to the types of treatment that are agreed in principle to be necessary.

245. On 26th August 2020. Dr Ranson's cardiologist in London had noted, in connection with the palpitations, that Dr Ranson had been suffering from stress linked to the Island's Covid response. The Tribunal had abundant evidence of behaviour that Dr Ranson had endured since March 2020 of being subjected to humiliating, infuriating and frustrating behaviour at work - as included in the Liability Decision.

246. In October 2020, Dr Ranson had applied for the post of Chief Medical Officer for Scotland, a post which had unexpectedly become available. Dr Ranson explained in her oral evidence that she had made the job application in October 2020 "in desperation" (**Transcript Day One para 35**). In her witness statement, she had described how the application had been made "before the unlawful actions to me in this case had taken anything like their full toll".

247. At that stage in October 2020, despite what she had been going through, Dr Ranson had felt well enough to apply for this prestigious post. As part of the process, she was interviewed on-line (this being during the Covid pandemic). She also had to take a Psychometric Assessment. Based on the assessment by Dr Gray, she had presented well. Although not selected, Dr Ranson reached the final four.

248. On 8th December 2020, Miss Magson had met Dr Ranson and informed her that she would not be transferring to Manx Care on 1st April 2021. As recounted above, Dr Crofts at Occupational Health had noted that Dr Ranson had suffered reported palpitations and stress. Dr Crofts gave her advice to take a break if she felt stressed.

249. On 16th January 2021 Dr Ranson had applied for the post of Chief Medical Officer in New Zealand. Following investigation, it did not progress because of the financial package as confirmed. It was evident from Dr Ranson's email dated 31st January 2021 that she was sensitive to the beneficial tax rate on the Isle of Man because she specifically mentioned that her Manx package was taxed at the maximum rate of 20%.

250. In July 2021, Dr Ranson had applied for the post of Medical Director at the BUPA Cromwell Hospital in London (**pages 3061 – 3063**). She did not get an interview but it was not until 11th November 2021 that she received notification that her application would not be progressed. No reason was given. There was no evidence to support Dr Ranson's opinion that she had not progressed because of reputational damage.

251. The DHSC's case, supported in his written report by Dr Isaac, was that the significance of these three applications lay in Dr Ranson's belief that she was up to the job if appointed. In her evidence (**Transcript Day One para 57**), Dr Ranson had testified that she had thought these jobs might be feasible and that they were "aspirational". She had later realised they were completely unachievable in the state that she was in.

252. Dr Isaac accepted that someone who had not been diagnosed as depressed, and who was untreated, might wrongly anticipate that the symptoms would quickly pass. This

was consistent with Dr Ranson's attitude that, until she had read the medical evidence, she had not appreciated just how ill she was.

253. The Tribunal had other evidence of Dr Ranson's ability to communicate in a professional manner during 2021. For example, she wrote comprehensively and persuasively about her problems to Minister Ashford on 4th March 2021. This was in terms akin to a protected disclosure but not relied on as being such. What help Dr Ranson may have had with that letter or the subsequent letter before action dated 22nd March 2021 was not evidenced. Her April 2021 Complaint was drafted by Mr Simon Cheetham QC.

254. Mr Devonshire **(at para 25 (vi) of his Closing Submissions)** pointed to the Appraisal for 2020-21 dated March 2021. That month, Dr Ranson had been signed off work. At this time, Miss Magson had suggested that Dr Ranson refer herself to Occupational Health. This she did. Dr Ranson said that she had raised her stress with Occupational Health but it had not been recorded. Normally, an Occupational Health report would be in evidence. It was unfortunate, even if only for completeness, that this report was not available to the DHSC and to the Tribunal.

255. Mr Devonshire also referred to the positive tone of the subsequent January 2022 Appraisal for year 2021-22. He also highlighted the positive terms of Dr Gray's Psychometric Test. However, against the weight of Mr Devonshire's points, Dr Isaac had accepted in his oral evidence that Dr Ranson's application for the CMO Scotland job and her participation in the interview process had not at all undermined his diagnosis of depression in March 2021.

256. Neither did Dr Isaac consider that the New Zealand or BUPA Cromwell applications were particularly relevant. In particular, when testifying about the July 2021 BUPA Cromwell Hospital application, he accepted that Dr Ranson making this application was not inconsistent even with severe depression. He explained: "it tells you nothing about level of function". However, Dr Isaac's original medical opinion after seeing Dr

Ranson in November 2022 was that the psychiatric condition had not commenced until about December 2021/ January 2022.

257. Mr Devonshire also drew attention to Dr Ranson's approach to the Regional Medical Director of North-West England in June 2021. This was with a view to joining an MD Group (**page 2792**). In July 2021, Dr Ranson had also attended a Young People Safeguarding Level 3 course followed by other training in August (**page 2795**). She had also been sitting on a committee chaired by Miss Magson and had undertaken other administrative work until November 2021.

258. Against all this, the evidence heard in the Tribunal from the medical experts did not determine that what Dr Ranson was capable of managing during 2021 was inconsistent with a mental health condition of depression or depressive disorder.

259. In the Tribunal's opinion, most cogent about the impact on Dr Ranson's health was the evidence of Miss Magson and Mrs Cope. On 11th February 2021, Miss Magson (**Liability Bundle page 3174**) had described how Dr Ranson had been shaking. That had prompted the reference to Occupational Health. Mrs Cope (**page 1791 at para 11**) described how when she had first met Dr Ranson (2021) she had "sometimes appeared shaky and frail and did not seem to me to be emotionally resilient".

260. Prof. Elliott had noted that Dr Ranson had told him that she had been "shaky" at times (**page 953 – para 6.19**) and in her evidence, Dr Ranson had described her problems of shaking because of the effects of the stress and the litigation process. All the panel members had witnessed Dr Ranson shaking and struggling with her water-glass during the Hearing in 2022 and again in 2023.

261. The Tribunal placed significant reliance on this independent evidence of the breakdown in Dr Ranson's health in Spring 2021. After all, some 12 months earlier, Dr Ranson had stood on the public platform in the face of the media and had spoken about the Covid pandemic as the DHSC's Medical Director. Such had been her

performance, that she had been invited to do a further presentation on 25th March 2020 together with the Chief Minister.

262. Dr Ranson had then been wrongly prevented from appearing at the last minute – in circumstances described in considerable detail in the Liability Decision (**see paras 212-214**). Immediately following that public presentation when she had been prevented from appearing, Dr Ranson had spoken to the Chief Minister and to Minister Ashford. She had briefed them on what she had been going to say. They then invited her to appear on the following day to make that presentation. However, as recounted again in the Liability Decision, there followed manoeuvring behind-the-scenes deliberately to prevent Dr Ranson from making any public presentation.

263. Had Dr Ranson appeared to the Chief Minister and to Minister Ashford to be *shaky and frail* in March 2020, Dr Ranson would not have been put on the public platform and nor would she have been subsequently invited to reappear. In the Tribunal's opinion, commencement of Dr Ranson's problem cannot be blamed on the litigation.

264. Mr Segal submitted that the psychiatric disorder commenced in March 2021, when Dr Ranson went absent through ill-health. The Tribunal agreed and could not accept that the disorder had only commenced in December 2021 / January 2022.

265. Litigation is always stressful for the parties to a greater or lesser degree. From the moment that the false and inflammatory Response was served, through to Dr Ranson's inability to get documents from the DHSC, such misconduct was bound to cause anxiety, frustration and stress. To get to the truth of the matter, she needed full disclosure of documents and she was being baulked. Ultimately, the Tribunal ordered that witnesses be cross-examined regarding documentation in advance of the Liability Hearing.

266. The Tribunal accept that the litigation and the way it was conducted exacerbated Dr Ranson's mental health problems. Without the mistreatment at work there would have been no proceedings to endure.

267. Overall, the Tribunal preferred the evidence of Prof. Elliott as bolstered by the admission / concession of Dr Isaac about Dr Ranson's health during 2021. In consequence, the Tribunal concluded that the starting point for the psychiatric condition should be regarded as no later than March 2021.

When will Dr Ranson return to gainful employment?

268. The position is not clear. The first hurdle to overcome is completing the medical treatment successfully. The Tribunal accept the evidence of Dr Isaac that, notwithstanding Ms Brunner's Independent Covid Review, the recommended medical treatment could commence after this litigation but during the Brunner Review. The format for Ms Brunner's Review has already been outlined earlier in this Decision. Based on Ms Brunner's explanations of how it will proceed, the Tribunal did not think it would be unduly stressful for Dr Ranson. Indeed, having the chance to explain her viewpoint in a non-public and impartial forum may be something that Dr Ranson will find therapeutic - but that is only speculation on the part of the Tribunal.

269. As to the duration of the medical treatment, there was a difference between the opinions of the experts. Dr Elliott considered this would take 12 months which would perhaps last until mid-summer 2024. His concern was that Dr Ranson's mental health issues dated back to March 2021 and before. The earlier they had started, the more difficult became the effectiveness of treatment and the prospects for remission.

270. Dr Isaac's approach was more optimistic. He thought that six months would suffice for the treatment but he had used his starting-point for the mental health condition as December 2021/ January 2022. He had yielded on that opinion, to some extent, in cross-examination and the Tribunal did not accept his starting dates. Dr Isaac also thought the effectiveness of the treatment should be assessed half-way through.

271. The Tribunal preferred the caution expressed by Prof. Elliott. That evidence alone suggested why it would be very difficult for Dr Ranson to cope with her medical treatment and go through the pre-conditions to keep her licence in March 2024. There

was then the further dispute on how long it would be before Dr Ranson could return to some kind of work.

272. Prof. Elliott's written report advised it would be 3 – 5 years ***after*** the court proceedings had ended (and assuming effective treatment) before Dr Ranson could return to some form of medical role. That was based on Dr Ranson's medical condition having started in March 2021 (as the Tribunal have accepted). Had the condition only commenced in December 2021 / January 2022, then, he considered a return to work could happen in 1 to 3 years.

273. Dr Isaac considered that Dr Ranson could start to develop a portfolio practice six to nine months after the end of the litigation. On this aspect, of the conflicting medical evidence, the Tribunal considered that, in stating 3-5 years, Prof. Elliott was unduly pessimistic and perhaps influenced by his PTSD diagnosis which the Tribunal did not accept. Contrastingly, the Tribunal considered that Dr Isaac was overly optimistic with his prediction of six to nine months after the litigation – this possibly even being before the end of medical treatment.

274. The Tribunal consider it to be reasonable to conclude that Dr Ranson could start creating a portfolio practice in the range of 1 to 3 years after successful medical treatment. That would (hopefully) occur in mid-2024.

What Roles might Dr Ranson fulfil?

275. Based on the Tribunal's finding that by March 2024, Dr Ranson will have had to surrender her licence to prevent the stigma of having it compulsorily removed, this impacted on the range of job opportunities. Without a licence, Dr Ranson was more pessimistic about suitable opportunities than Dr Isaac or as submitted by Mr Devonshire.

276. Mr Devonshire's submission was that, in reality, the range of opportunities would not be much changed by having no licence. He urged that Dr Ranson does not need to

secure validation to develop a portfolio career (at least) given her years of experience and that she will still have an earning capacity.

277. On the (now rejected) assumption that Dr Ranson remained licenced after March 2024, Dr Isaac considered that she would be able to work as a GP if she wished but under conditions that would not stress her. (**Page 3466 at para 9.3** and **page 992 at para 108**). Mr Segal submitted that stress was inherent in the life of a practising GP. Prof. Elliott did not agree that Dr Ranson could work as a GP. Neither did the Tribunal.

278. The Tribunal noted that Dr Ranson's stress problems in 2008/2009 and again in 2020/2021 had involved interpersonal relationships with colleagues rather than as between doctor and patient. Prof. Elliott could not contemplate Dr Ranson being able to return to her previous employment but he considered that "it could be *argued* (emphasis added) that after treatment she may be able to return to a similar role for alternative employers". (**Page 970 para 18.116**). The Tribunal concluded that this would mean becoming a Medical Director and most probably, but not inevitably, in the UK. The significant word here was "*argued*" as explained below. Dr Ranson contended that no such roles would be open to her if not licenced.

279. The Tribunal was surprised that Prof. Elliott could even foresee as an *arguable* possibility that Dr Ranson might work anywhere in future as a Medical Director. The surprise was because the overall thrust of his report and his subsequent oral evidence was guarded about Dr Ranson's future. For example, Prof. Elliott considered that **(see page 972 paras 18.134 and 18.135**), in principle, on the balance of probabilities and after treatment, Dr Ranson would be able to return to some form of low stress medical role under supervision and without having to deal with the public directly.

280. The Tribunal's surprise at this even being *arguable* was also fortified by the opinion expressed by Dr Isaac. Dr Isaac considered that Dr Ranson had a 50% lifetime risk of relapse but that she would be at a high risk of relapse if she were to enter a *similar* (emphasis added) professional milieu to that which pertained at the material time during the index events (**page 992 – para 107**). The key word here is "*similar"* because

that precludes working elsewhere than the Isle of Man in high-level roles such as a Medical Director or Chief Medical Officer.

281. Other of Dr Isaac's suggestions were that Dr Ranson could still get a senior post with a substantial earning capacity. He considered that, following treatment, and the conclusion of the litigation, there would be no reason in principle why Dr Ranson could not work in medical practice or at a leadership level. The Tribunal has already rejected the reality of Dr Ranson returning to become a GP in a general practice.

282. Depending what Dr Isaac meant regarding an opportunity at leadership level, the Tribunal viewed that opinion with caution. Dr Ranson feared that without her licence, her status would not permit her to obtain any medical leadership roles. That would be unfortunate given Dr Ranson's wide and deep experience. There was no independent evidence on whether Dr Ranson is right on this or was being unduly pessimistic.

283. Even assuming that a leadership role was offered to Dr Ranson despite being unlicenced, the concept of being a leader/ influencer in high medical circles sounded to be demanding and stressful. Leadership goes with roles of Medical Director or Chief Medical Officer. There would be the high risk of relapse as warned by Dr Isaac. If, however, leadership meant Dr Ranson undertaking a role lecturing about it, to undergraduates or similar, (something that had attracted Dr Ranson anyway), the Tribunal considered this would be less stressful and might be a feasible opportunity in future.

284. In the Tribunal's opinion, more realistic than accepting that Dr Ranson would be able to be a leader as a Medical Director or Chief Medical Officer, was the concept of a portfolio career and lecturing on leadership might be some part of that. That route could also mean that Dr Ranson would gradually raise her profile, whether from writing the book that she had planned and / or from sitting on committees where there was a collegiate rather than a confrontational relationship.

285. There was clear evidence of roles available where there would be less pressure on Dr Ranson compared to the well-paid salaried jobs that would create stress. Dr Isaac suggested a portfolio career might involve these:

- Locum or sessional work as a GP. (On the evidence that Dr Ranson will have no licence, this door is closed).

- Medical leadership in a smaller-scale setting. (Dr Ranson's evidence appears to have ruled this out because she would have no licence).

- Clinical work, either patient-focused or clinical care.

- Clinical assessments for, say, Department for Work & Pensions.

- Becoming a fee-paying Medical Member of the First Tier Tribunal Service. This could be Health or Social Care or a Mental Health Tribunal, such an appointment being to the age of 70. (In regard to this, Dr Ranson considered that practising doctors want licenced doctors to sit on a panel of their peers. Mr Segal pointed out that without a licence, this would not be open to Dr Ranson. Dr Isaac was aware that retired medical practitioners did sit on the Mental Health Tribunal (although the Tribunal doubted that particular Tribunal would be suitable for Dr Ranson) – but the others might be).

- The Medical Practitioners Tribunal Service (MPTS) of the GMC. (Mr Segal pointed to Dr Ranson's evidence that being unlicenced would be a problem. He also submitted that such work was available for perhaps only twenty days per annum).

286. It had also been submitted on behalf of the DHSC that Dr Ranson might be appointed as a non-executive director of an NHS Trust. The evidence suggested this paid up to £10,000 per annum. Dr Ranson considered that such an NHS Trust would be looking

to people from within the community. The Tribunal was not completely sold on that bearing in mind the composition of the Board of Manx Care which includes a number of non-Manx residents. The Isle of Man may be different to the situation in the UK where it may be possible to appoint the appropriate mix of individuals from the (larger) local communities.

287. The DHSC submitted that Dr Ranson might undertake short-term roles such as Interim Hospital Manager. At a high level, Mr Segal considered that being a Hospital Manager goes back to the problems of needing to be licenced and of the stress in a medical leadership role. Alternatively, Mr Segal said that a role of Hospital Manager might be much more junior, being non-medical but managerial – and based in the UK. Mr Segal submitted that Dr Ranson should not have to accept such a role to mitigate her loss.

288. Mr Segal was dismissive of the suggestion that Dr Ranson might be suited to a role of an Executive Director of Public Health. It requires formal qualifications and experience that Dr Ranson does not have. Mr Segal pointed to the current Government advert for a Director of Public Health for which Dr Ranson is not qualified.

289. In summary, Mr Segal submitted that, once Dr Ranson is well enough, she will not wish to remain idle and will want to perform some work but that the likelihood is that it would be either unpaid or paid at a very much lower level than she would have been earning.

290. Dr Ranson testified that, in the past, she had undertaken provision of expert opinions which paid well at £350 per hour. There was no evidence as to whether she could be expected to cope with the stress of cross-examination in contested proceedings or how often she might expect to be retained. Mr Segal submitted that it was unlikely that she would now be offered such opportunities when she is not practising in full-time medicine.

291. Dr Ranson pointed to the type of portfolio career enjoyed by Sir Jonathan Michael since his retirement from NHS employment. He wrote the Independent Review of the

Isle of Man Health & Social Care system. This was a formidable project and following writing his report, Sir Jonathan has had an ongoing advisory role. There was no evidence about Sir Jonathan's NHS career or whether he has retained a licence as a Consultant Physician. The Tribunal did not consider that drawing comparisons was straightforward.

292. Dr Ranson had sat on the Commission of Human Medicine but her evidence was that she had been appointed because she was considered to be a GP expert. Each expert represented an area of medical practice to sit on the Committee on Safety of Medicines. Without the status and having been not working for some lengthy period of time, she was not optimistic about securing an appointment. That was also Dr Ranson's opinion regarding any opportunity with NICE – the National Institute for Health & Care Excellence.

293. The Tribunal considered that the flexibility of a portfolio career was the most likely way ahead for Dr Ranson. Mr Devonshire's Closing Submission made clear that the DHSC's position was that, even without her licence, this was no reason to preclude a portfolio career. Given her great experience before joining the DHSC, the Tribunal accepted the advice from the medical experts that developing this type of portfolio practice made good sense. However, without a licence, the range of opportunities and the consequent remuneration may or will now be much reduced. However, as submitted on her behalf, the Tribunal accept that Dr Ranson will find some suitable opportunities, assuming successful medical treatment.

294. As has been evident since the pandemic, the facility of communicating, whether to the UK, or beyond, by use of Zoom or Microsoft Teams has grown exponentially. While therefore some of the potential opportunities may require Dr Ranson to travel to the United Kingdom, some gainful opportunities may be available without leaving the Island.

295. The Tribunal considered that, having now made the Isle of Man the family home, Dr Ranson and her family cannot be criticised for failing to return to the United Kingdom

in order to mitigate her loss by working from there. Whether Dr Ranson may have returned to the UK but for the index events is a different issue. However, Dr Ranson did indicate that, after successful treatment, if there were work available that meant travelling to the UK, on a less regular basis, then she would undertake such travel.

296. There was no evidence before the Tribunal as to whether the former London home is to be sold or to remain for whenever any of the family visit London – or whether it has been or will be rented out. If Dr Ranson, once recovered, is offered the chance to sit on a Committee or Commission in London, the fees generated will be offset by the cost of travel and the cost of staying there if there is no London home available. Similarly, if Dr Ranson were offered an opportunity of that ilk based in Manchester, the cost of travel and accommodation would erode the value of the fees earned.

297. Dr Ranson explained that the opportunity to be appointed to a collegiate Committee or Commission role typically came from "a tap on the shoulder" rather than from proactive approaches. Dr Ranson told the Tribunal that she did not feel ready to start any such approaches as yet. That was understandable. However, the Tribunal considered it was important that, once successful treatment has been concluded (or perhaps even before conclusion), those who Dr Ranson is aware make the *shoulder-taps* are alerted that Dr Ranson is back in the marketplace and interested in such opportunities.

298. With a 50% risk of a relapse, the Tribunal considered it would be unreasonable to make a set-off to Dr Ranson's projected lost earnings by reference to any consistent high earning capacity, such as up to £150,000 per annum plus pension as submitted on behalf of the DHSC (see further, below). This risk of a relapse assumes that, even in the first place, she is successful in overcoming her present ill-health following treatment.

299. In considering the position of mitigation, the Tribunal took particular heed of a line of consistent authorities. The burden of proving failure to mitigate her loss rested on the DHSC. More importantly, the authorities make clear that the burden on Complainants,

like Dr Ranson, to behave reasonably is not high because the other party is the wrong-doer – see **Fyfe v Scientific Furnishings**.

300. In **Banco de Portugal v Waterlows,** the House of Lords determined that the measures a damaged litigant may be driven to adopt to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty.

301. Potter LJ, in the Court of Appeal judgment in **Wilding,** emphasised that the Court or Tribunal deciding mitigation must not be "too stringent" in its expectations of the injured party. Mr Segal drew attention to the judgment in **Lindsey** of Mr Justice Langstaff, the President of the EAT. In his list of points providing guidance on mitigation, he included this (point 7):

> **"The Tribunal is not to apply too demanding a standard to the victim; after all, he is the victim of a wrong. He is not to be put on trial as if the losses were his fault when the central cause is the act of the wrongdoer".**

How much might Dr Ranson earn?

302. This remains an imponderable. Some imponderables cannot be resolved by simple mathematics. The Tribunal concluded that, on the balance of probabilities, Dr Ranson will never again work at Medical Director or Chief Medical Officer level.

303. Without her licence to continue as a GP, the Tribunal considered that Dr Ranson still ought to be able to develop a portfolio career with some variable annual income, perhaps even increasing after a few years. But this can only be speculation when medical treatment has yet to commence.

304. At **page 3395**, Mr Segal introduced some figures as to what Dr Ranson might earn from a combination of portfolio roles. These were put forward for illustrative purposes only. There was no explained rationale to what these roles might be or how or why the figures were considered to be reasonable. That is not intended as a criticism of Mr

Segal or Dr Ranson. It simply shows the supervening difficulty in predicting the unpredictable. Mr Segal emphasised that it was not accepted that the following underlying assumptions are correct. He had advanced what follows as a possible hypothetical position. The assumptions advanced are:

- **Dr Ranson successfully undergoes medical treatment.**
- **The medical treatment is successful within the envisaged timescale.**
- **Dr Ranson is able to find paid alternative roles and**
- **Dr Ranson thereafter suffers no periods of relapse after mid-2024.**

305. Subject to those assumptions, net of tax, Mr Segal suggested these figures:

- **2025 (age 60) - £5000**
- **2026 (age 61) - £10,000**
- **2027 (age 62) - £20,000**
- **2028 (age 63) - £40,000 (and continuing to the age of 72).**

306. Mr Devonshire's Closing Submissions had noted that whereas Dr Ranson's claim had originally been advanced on the basis that she doubted she would ever be well enough to work again, that position had been modified, consistent with the above calculations regarding potential earning capacity.

307. The DHSC's contention was that Dr Ranson would or could attain an ultimate earning capacity of £150,000 per annum plus £91,000 pension. The suggested progression was as follows:

- **Year 2 - £25,000 gross - £21,000 net**
- **Year 3 - £66,000 gross - £47,000 net**
- **Year 4 - £100,000 gross - £67,000 net**
- **Year 5 - £150,000 gross plus NHS pension at £91,000 pa - net.**

308. The Tribunal could not accept that this type of progression was likely and certainly at the top levels, on the evidence, it was considered to be most unlikely. Firstly, with high earnings goes high stress. As otherwise explained in this Decision, the range of higher paid roles, portfolio-based or otherwise, are more limited on Dr Ranson's arguments.

309. The Tribunal could not determine that it would be *impossible* to earn £150,000 plus pension. However, to achieve that level of income, on the range of opportunities open to her, Dr Ranson would likely have to spend considerable amounts of time in the UK or even move there. Her health would be exposed to a 50% (at least) risk of relapse.

310. To earn at this high level in the UK would create a significant tax disadvantage. Despite being Island-based, spending too long in the UK exposes Manx residents to the UK's HMRC for tax liability. If over 183 days in a year are spent in the UK, the Manx fiscal advantage is lost. Additionally, persons who have left the UK, like Dr Ranson, may also fall foul of HMRC's 90-day tax rule for time spent there.

311. The DHSC had put in evidence a variety of job opportunities and fee rates (**page 777 et seq**) as examples of what Dr Ranson might reasonably apply for, when and if recovered. The Tribunal accepted there are a wide range of opportunities linked to the NHS but it is not possible for the Tribunal to determine suitability. That depends on duration of role, location, salary and the value that Dr Ranson could bring. To achieve an income from a portfolio also involves dovetailing different roles, something much easier to achieve when based in, say Central England or perhaps London rather than the Isle of Man.

312. The Tribunal concluded that it was not feasible to plump for annual figures or to speculate on career or earning progression (if it happened at all and continued unhindered by a health relapse). A further imponderable was the potential cost of earning money. Besides the shadow of adverse tax implications, the Tribunal were also alert to potential travel and accommodation costs.

The Multiplicand / Multiplier and More

313. Mr Devonshire submitted alternative ways in which a Tribunal might approach the present position where there are various imponderables. One was **Blamire**.

314. The Tribunal was not attracted to the **Blamire** approach. On reviewing the various authorities, the Tribunal considered that approach to be an outlier, albeit that it has been followed, not least in **Irani**. That is not to say that using it would be unreasonable when faced with imponderables.

315. In **Blamire**, a conventional multiplier / multiplicand approach had produced an award of over £100,000 but the judge reduced the lost earnings and pension to £25,000 to include handicap on the labour market. In **Irani**, the conventional multiplier / multiplicand approach produced an award of about £1.25 million and the judge awarded £400,000.

316. As an alternative, Mr Devonshire pointed to this approach: after application of the multiplier/multiplicand, it is permissible to apply a percentage contingencies discount. This would reflect the uncertainties. Indeed in **Irani**, the judge at first instance indicated that had he not adopted the **Blamire** approach, he would have applied a discount of 50%. Had that approach been adopted, it would have gained the approval of the Court of Appeal if the only issue had been one of uncertainty rather than wholesale insufficiency of evidence.

317. A further alternative pointed to by Mr Devonshire is to adjust the multiplier to reflect the uncertainties, consistent with the decision of **Newman**. Mr Newman sustained serious injuries when aged 36 and was 41 at the date of trial. There was some dispute about the extent of the head injury. Mr Newman had worked but there was difficulty regarding loss of earnings, both past and future. He had never bothered with paying tax or national insurance and had little cogent evidence of his earnings. He had made a living trading cars or closing timeshare deals or selling mobile phones. Mr Justice Garland, reflecting the uncertainty of the former occupation, reduced a multiplier of 16.612 down to 12, based on working to the age of 65.

318. These alternative approaches were consistent with the observations of the Employment Appeal Tribunal in **Hakim**. The Tribunal considered that this Scottish decision was less helpful because the main focus was on failure to mitigate, something that is not a core issue compared to Dr Ranson's intended career path and her future notional career path. The Honourable Lord Summers quoted, with approval, the judgment of Mr Justice Browne-Wilkinson (as he then was) in the English decision of **Gardiner-Hill v Roland Berger Technics Ltd**. Lord Summers regarded that decision as authority that it is inappropriate when dealing with the failure to mitigate damages to reduce the amount by a percentage.

319. Use of the percentage approach is permissible where the Tribunal lacked evidence of the prospects of alternative employment or of the wages that such employment would attract or where it was not possible to be satisfied that the employee, would on the balance of probabilities, regain employment but that some reduction should be made for that prospect.

320. Mr Devonshire referred to the **Cannock** decision which in turn applied the House of Lords benchmark decision of **Mallett v McMonagle** in 1970. As Mr Devonshire put it, "in a case where a long career is lost, the Tribunal is compensating the loss of a chance against an uncertain future prognosis." In the **Mallett** case, Lord Morris said (paragraph 173):

> **"In cases such as that now considered it is inevitable that in assessing damages there must be elements of estimate and to an extent of conjecture. All the chances and the changes of the future must be assessed. They must be weighed not only with sympathy but with fairness for the interests of all concerned and at all times with a sense of proportion".**

321. In the Employment Appeal Tribunal, in **Cannock**, (**page 397** – **page 951 of Decision**) Mr Justice Morrison said this (when considering what the chances were that, had the Complainant being given maternity leave and then an opportunity to return to work, would she in fact have returned):

"The answer to it is not … a question of fact at all. It is not a question of seeing and believing, or not believing what the particular applicant says she would have done. She, like everyone else, is entering into the realm of conjecture and speculation. Her evidence, often given many years after the event, as to what she says she would have done had she been given maternity leave is always relevant, but by no means determinative. It is merely one piece of the relevant material, although it is evidence of a self-serving nature. The question is to be answered on the basis of the best assessment that the Industrial Tribunal can make having regard to all the available material".

322. Mr Devonshire was not forcefully pressing for a **Blamire** approach. He pointed out that the authorities made clear that starting with the multiplier / multiplicand approach was preferable. The Court of Appeal decision in **Bullock** emphasised the normal starting point as being use of the multiplier/multiplicand and that even where there were uncertainties about the future, that did not justify departing from that method. **Blamire's** broad-brush approach was suitable only where there was really no alternative.

323. Summarising the uncertainties - "the chances and the changes", the Tribunal considered the following:

a. Would Dr Ranson have worked until 72 or would she have retired earlier as Mr Devonshire submitted?

b. Would her employment have continued with Manx Care until the age of 72, as Dr Ranson expected?

c. Might Manx Care have terminated Dr Ranson's employment at some point between January 2022 and 2037, whether fairly or unfairly?

d. In what circumstances might that employment have been terminated (and when)?

e. Would Dr Ranson's health, had there been no index events, have permitted her to continue working to 72 at Manx Care or elsewhere?

f. Will Dr Ranson be able, from a health standpoint (taking account of the effect of the index events), to continue working to the age of 72?

g. What is the risk of a relapse in her medical condition given the more likely future involving a (perhaps less pressurised) portfolio practice?

h. How much more limited is the range of job opportunities for Dr Ranson without her licence?

i. But for the index events, might Dr Ranson's ambition have attracted her to leave Manx Care for another comparable role?

j. If the answer is yes to the preceding question, taking account of fiscal considerations, might Dr Ranson have been earning net of tax more or less than her erstwhile Manx salary?

k. Ignoring the index events but bearing in mind the 2008/9 past medical history, what would the chances be of a relapse in her health condition while seeking to work to 72?

l. In that situation, what range of employment offers might then have been available to her and with what benefit financially taking into account the significant fiscal disadvantages for herself and her husband of moving back to the UK (or perhaps elsewhere)?

m. When will Dr Ranson's treatment be concluded?

n. Will that treatment succeed in enabling Dr Ranson to return to gainful employment – probably off-Island (but perhaps some or most being handled by remote working)?

o. From what date might gainful employment commence in the range of 1-3 years from the end of the litigation?

p. What type of role(s) in a portfolio practice would be suitable while mitigating the risk of relapse in Dr Ranson's health condition?

q. From when might Dr Ranson be well enough to take on increased roles or graduate to working full-time given the disputed medical evidence?

r. What income (net of expenses of earning it) might Dr Ranson achieve from a portfolio practice initially and as she developed it?

s. Would developing a portfolio practice to achieve any substantial earning capacity mean that more than 90 nights per annum had to be spent in the UK and cause adverse tax consequence?

t. For how long would Dr Ranson have continued with a portfolio practice?

324. As has been discussed, based on the medical and other evidence, it has been possible to answer some of the issues on the balance of probability. ***This was not a situation where there was no evidence***. Rather, the evidence was helpful but only to the extent of highlighting the uncertainties and the chances and changes that make a strict application of the Ogden Tables inappropriate.

325. The totality of uncertainties means that it would be unreasonable to assume that Dr Ranson would have worked to 72 and at her contractual rate of pay at £200,000 per annum plus pension. Mr Devonshire submitted it was more likely that Dr Ranson

would have retired in her mid-sixties but there was no evidence to sustain that suggestion. It is true however, that Dr Ranson will get a State Pension at 67.

326. The Tribunal accepted that, in the counter-factual situation, if Dr Ranson had voluntarily made a career move, she may have done so at a higher income though the evidence of a higher income after tax and moving was never likely to be easy – absent perhaps if she had chosen to develop a high-level profile portfolio career – akin to that of Sir Jonathan Michael. In that respect, Dr Ranson's evidence did not clearly suggest that was what she had that in mind. Her focus appeared to be writing her book and developing a career profile in lecturing around the topic of medical leadership.

327. Assuming Dr Ranson responds to treatment and is able to return to work part-time and then to full-time, what annual income might be generated from a portfolio practice can only be speculation. There was no solid basis. It may fluctuate and may never rise above £20,000 per annum. Alternatively, it may be considerably more. In between these imponderables and other uncertainties lies the fundamental problem in assessing compensation.

328. As to lost earnings, these are also now calculated based on the findings of fact made:

- Gross Annual Basic Pay: £200,005.21
- Net Weekly Basic Pay: £2,807.89
- Net Annual Basic Pay: £146,010.28
- Complainant's DoB: 15/01/65
- EDT: 26/01/22
- Complainant age at EDT: 57
- Complainant Age at Decision
  58 years and 107 days
- Total Service: 2 Years
- Number of weeks from
  EDT to 2nd May 2023: 66

329. **<u>Basic Award</u>**

2 years' service capped at £544 pa: **£1,088.00**

330. **<u>Loss of net earnings to 2nd May 2023</u>:**

66 weeks x £2,807.89: **£185,320.74**

331. **<u>Loss of Statutory Rights</u>** **<u>£350.00</u>**

TOTAL PAST LOSS **£185,670.74**

332. **<u>Future Loss of Earnings</u>**

<u>(subject to adjustments explained below)</u>

For a female age 58 years and
107 days and calculated to
age 72 at - 0.25%.
Applying Ogden Additional
Table (8th Edition) gives a
Multiplier of 13.37*
At annual net pay of £146,010.28 = **£1,952,157.44**

***Figure reached by interpolation of Tables
14 and 16 and adjusted by 107/365th.

<u>Adjustment to Future Earning Loss</u>

333. Mr Devonshire drew the Tribunal's attention to the decision of the Employment Appeal Tribunal in **<u>HSE v Jowett</u>**. This involved assessment of the chance of that Claimant remaining in his role. The decision included these observations:

> **"It will be incumbent upon the Employment Tribunal determining remedy in this case to assess how long the Claimant would have remained in post, absent the established discrimination; and if there were a material chance/realistic prospect that he would not have stayed in post for the entirety of the period for which he claims loss of earnings, to apply a**

percentage reduction to the award for future loss that it would otherwise make".

334. Taking that guidance and all factors into account, and consistent also with the EAT decision in **Software 2000 Ltd v Andrews**, relied on by Mr Devonshire, the Tribunal considered that the correct approach was to apply the Ogden Tables multiplier / multiplicand for future loss of earnings but then to reduce the headline figure by **25%** to reflect the non-exhaustive uncertainties and in particular:

a. The duration of employment with Manx Care.
b. The possibility of retirement before 72.
c. Dr Ranson's immediate health issues.
d. Dr Ranson's risk of a future relapse.
e. The speculation elements of when, how much, where and in what capacity Dr Ranson might later be able to earn.

- **Net Award: 75% of £1,952,157.44 = £1,464,118.08**

Pension Loss

335. Besides the lost earnings, Dr Ranson lost the value of the pension that she would have continued to build whilst employed by Manx Care from January 2022. After considering the approaches of Mr Taverner and Ms Hollywood, the Tribunal preferred the approach of Mr Taverner. He relied on the *Principles for Compensating Pension Loss* as previously mentioned. The Tribunal accept that the correct approach is for the multiplier for pension loss to be established by reference to the Ogden Tables +2 years.

336. The pension loss raises a different issue. Based on the finding that Dr Ranson will (subject to successful medical treatment) develop a portfolio career, working on that basis, she will not or is unlikely to have any pensionable employment. Accordingly, the Tribunal sees no basis to reduce the multiplier / multiplicand by the same percentage but does consider that a reduction of **10%** is reasonable given other prevailing uncertainties including whether Dr Ranson would have worked to 72 at £200,000 per annum.

NB: On 25th April 2023, the Clerk to the Tribunal received a request from Dr Ranson's solicitors that the award for pension loss be calculated on a provisional basis only. This was because of an inconsistency in data provided by the Pensions Authority on 26th April 2022. That point was known to the Tribunal because it was referred to during the evidence. On 23rd March 2023 (some 11 months later) Dr Ranson had written to the Pensions Authority to get the position reconsidered. The answer is not expected from the Pensions Authority until after this Decision.

The Tribunal was unaware from submissions on Dr Ranson's behalf that they might be expected to proceed in this way. CallinWild, on behalf of the DHSC refused to agree to the request. By their email, also of 25th April 2023, the reasoning adopted was as follows:

I. **"Evidence and submissions in this case have now closed. Indeed, the Tribunal hopes to produce its final judgment (in the interests of both parties) in early May.**

II. **The 'inconsistency' your email identifies has been known to your client since April 2022. Moreover, Mr Taverner identified the same issue in his report (produced in September 2022), which was predicated on the basis that your client was entitled to two years pension under the GUS. PwC proceeded on the same basis, as did the calculations the experts agreed in their joint statement.**

III. **In effect, your client seeks to reopen an area of factual enquiry that had previously been agreed between the parties, in respect of an issue she could have explored well in advance of the commencement of the Remedy Hearing in January 2023 (and indeed 6 March 2023, the date of the further letter to which you refer). This issue was not flagged before the resumed hearing in March 2023 or canvassed in submissions.**

IV. **It is simply too late for your client to reopen areas of factual enquiry, and the Tribunal should make its findings on the basis of the evidence it has heard to date".**

The Tribunal agreed with the points made by CallinWild. The issue was historic and could and should have been resolved in good time for either the January 2023 commencement or certainly by the resumption in late March 2023.

The following figures for pension loss are therefore not provisional.

<u>Lost pension Jan 2022 to 2nd May 2023</u>

66 weeks at £50,424.95 per annum	**£64,000.89**

<u>Future Pension Loss</u>

For a female aged 58 years and
107 days calculated to
age 72 at -0.25% and applying
Ogden Table (8th Edition) adjusted by
Age deduction of 2 years pursuant to
the *Principles* gives a
Multiplier of *16.52.

At annual net pension of £50,424.95 =	**£833,020.17**

*****Figure reached by interpolation of Tables
30 and 32 and adjusted by the Principles
and by 107/365th.

Award for Net Future Pension Loss	
90% of £833,020.17 =	**£749,718.15**

Manx State Pension

337. On 25th April 2023, the Clerk was informed that the parties had agreed the basic approach to loss of State Pension. Because of uncertainty as to the future growth rate

of Class 3 NI contributions, the agreement was that the Ogden Tables should not be applied. The agreed approach was as follows:

£824.20 (contribution for 2022/23) + 8 x £904.80 (contributions for 2022/23 to 2030/31) = £8,062.60

338. This calculation was subject to any other adjustments that the Tribunal might make for uncertainties. The shorter the period, the less the uncertainties that may prevail. Any adjustment would not be substantial in the overall scheme of this award. Taking into account the issue regarding the Class 3 NI contributions, the Tribunal has decided to make no reduction and awards **£8,062.60**.

Cost of Medical Treatment

339. The Tribunal considered that the expenses reasonably essential to ensure the best chance of recovery were as follows:

- Prof. Elliott recommended 20 – 25 sessions of Cognitive Behaviour Therapy at £160 each thus costing £4,000. Dr Isaac thought a shorter course would suffice and suggested up to 20 sessions with progress to be reviewed half-way through. The Tribunal considered it appropriate to err on the cautious side and to award sufficient to pay for the longer treatment to ensure the best chance of recovery.

- Prof. Elliott recommended Eye Movement Desensitisation and Reprocessing (EMDR) involving a course of 10 – 12 sessions at a cost of £1,920. This is recognised as an effective treatment for PTSD. The need for this was challenged by Dr Isaac. The Tribunal did not consider that the PTSD diagnosis was appropriate and so therefore neither will this treatment be necessary. That does not prevent Dr Ranson having such treatment at her own expense but the Tribunal does not think the DHSC should pay for this.

- Prof. Elliott advised that Dr Ranson should take prescribed medication such as Venlafaxine or Sertraline. Such treatment may be required for at least 12 months. The cost of monitoring the medication is claimed at £2,000. Dr Isaac agreed with the need for medication.

340. The Tribunal therefore awards **£6,000**.

Interest

341. Interest must be added in accordance with the rates applicable in the High Court of the Isle of Man for special damages. A significant judgment was from His Honour Deemster Kerruish in **Fourie**. This considered the material factors and the decision in **Jefford v Gee**, itself a benchmark judgment from the Court of Appeal delivered by Lord Denning.

342. Mr Devonshire accepted the approach on interest as determined in this Tribunal in 2018 in the **Sutton** case. That decision was consistent with **Fourie**. What was then said was that although the approach in England, Wales and Scotland suggested a rate of interest of 8% was the norm in similar situations involving Protected Disclosures, there was no evidence that the High Court or Tynwald had moved to that rate.

343. The Tribunal adopted the rate of 4% which was then the recognised current rate in the High Court. The Employment Tribunal (interest on Awards) Order 1992 only concerns computation of interest on a final decision whereas the present computation concerns interest forming *part of* the Decision.

344. Interest does not arise on the future loss element. For past pecuniary losses, interest at 4% is awarded from the half-way point between 26th January 2022 to the date of calculation.

345. Interest arises firstly on these elements of the award:

a.	Injury to Feelings:	£40,000
b.	Aggravated Damages:	£20,000
c.	Exemplary Damages:	£10,000
		£70,000.00

From 26th January 2022 (EDT) to 2nd May 2023 (462 days) at 4%:	**£3290.95**

d.	Past Losses	£185,320.74
e.	Personal Injury	£40,000.00
		£225,320.74

From mid-point date to 2nd May 2023 (231 days) at 4%	£5,704.00
	£231,024.74

TOTAL INTEREST: £5,704.00 +
£3290.95
£8,994.95

SUMMARY

346. The TOTAL AWARDS are as follows:

a.	Basic Award	£1,088.00
b.	Loss of Statutory Protection	£350.00
c.	Personal Injury	£40,000.00
d.	Injury to Feelings	£40,000.00
e.	Aggravated Damages	£20,000.00
f.	Exemplary Damages	£10,000.00
g.	Cost of Medical Treatment	£6,000.00
h.	Lost State Pension	£8,062.60
i.	Lost Earnings to Date	£185,320.74
j.	Lost Pension to Date	£64,000.89
k.	Lost Future Earnings	£1,464,118.08
l.	Lost Future Pension	£749,718.15
m.	Interest on Award	£8,994.95

TOTAL AWARD £2,597,653.20

Grossing Up

347. The Practice Notes from The Treasury PN 204 / 18 and PN 203/18 are applicable.

- The Personal Injury award of £40,000 is not taxable.
- The taxable figures to be grossed-up for tax purposes as follows:

a.	Basic Award	£1,088.00
b.	Loss of Statutory Protection	£350.00
c.	Injury to Feelings	£40,000.00
d.	Aggravated Damages	£20,000.00
e.	Exemplary Damages	£10,000.00
f.	Past Loss of Earnings	£185,320.74
g.	Past Pension Loss	£64,000.89
h.	Future Earnings Loss	£1,464,118.08
i.	Future Pension Loss	£749,718.15
j.	Medical Treatment	£6,000.00
k.	Lost State Pension	£8,062.60
l.	Interest	£8,994.95

Total Before Grossing-Up: £2,557,653.20

- From this taxable sum of £2,557,653.20

  Deduct tax free allowance - £30,000.00

  Net £2,527,653.20

- Deduct Personal Allowance * £NIL

  Net £2,527,653.20

- The Standard Tax Rate is 10%
- The Higher Tax Rate is 20%

  The Higher Rate is payable at £6,500

  Thus:

- Tax added at Standard Rate: **£650.00**
- Tax added at 20% on balance of £2,527,653.20

minus £5,850 =	£2,521,803.20	
divided by 0.8% =		**£3,152,254.00**
Add Back		**£5,850.00**
Add back Personal Injury Award		**£40,000.00**
TOTAL GROSSED UP AWARD		**£3,198,754.00**

*__Following the March 2023 Budget the Tribunal's assumption is that for Dr Ranson, the former Personal Allowance has been reduced to zero.__

COSTS – The Liability Proceedings

348. Making an award of costs in this Tribunal is far from the norm. Whereas regularly in the High Court, "costs follow the event" meaning that the loser is likely to be ordered to pay the costs of the winner, very rarely does a winner in this Tribunal get any contribution towards the costs of the proceedings. The power is available but is used most sparingly. In effect, when an order for costs is made, it is because of gross misconduct.

349. The Tribunal can make an award of up to £2,000 under Rule 40 (10) (a). However, a detailed assessment can be ordered under Rule 40 (10)(b) and Mr Segal has applied for this. That assessment can be made in the High Court or can be made by the Chairman of this Tribunal following the same principles as would be adopted in the High Court.

350. In accordance with Rule 40 of the Employment & Equality Tribunal Rules 2018, Mr Segal set out a summary of the law and the factual basis on which Dr Ranson had made an application for costs up to the conclusion of the Liability Decision of 9th May 2022. Costs can be awarded when a party has, in defending the proceedings, acted:

Vexatiously, abusively, disruptively or otherwise unreasonably. Alternatively the discretion can be exercised when a party has made a false or exaggerated allegation.

351. The Tribunal considered that the proceedings were conducted unreasonably and involved a false allegation (and indeed more than one).

352. Based on the **MacPherson** decision, the Tribunal should consider the gravity, nature and effect of the proposed paying party's conduct. Pursuant to the **Yerracalva** decision, the Tribunal should look at "the whole picture" of what has happened.

353. The Tribunal upheld Dr Ranson's application for costs. However, the panel did not think it reasonable to order costs relating to the subsequent Disclosure Proceedings – see further below (**para 368 et seq**). No request for costs was made regarding the present remedy proceedings.

354. In looking at the "whole picture" of the conduct of the liability proceedings, undoubtedly there were serious shortcomings. Documents were being disclosed before, during and even after the close of evidence, some of them very material and deliberately withheld. That aspect is part of the whole picture but there were other much more serious elements that underpin the Tribunal's decision to award costs to Dr Ranson.

355. The basis of Mr Segal's application went beyond the well-flagged problems over documentation. He pointed to the overall unsatisfactory manner in which the DHSC's case had been run and in particular referred to:

a) The unreasonable way in which the DHSC had defended the proceedings. Mr Segal put it bluntly – that the DHSC's case had been based on a lie. This involved falsely alleging that Dr Ranson knew her employment would end at the expiry of her two-year fixed term contract and that she had been retained within the DHSC because of her regulatory skills, this not being true either.

b) Dr Ranson had prepared for the Hearing based on the pleaded case which the DHSC wished to amend at the Hearing to plead that Dr Ranson had not been transferred to Manx Care because of alleged under-performance. Although the amendment had not been permitted, the DHSC had been permitted to pursue this line of argument – to the disadvantage of Dr Ranson.

c) Meeting a dishonestly presented case (dating back to the Response prepared in substance by Miss Magson) inevitably added to Dr Ranson's burden in preparation and also caused her particular distress.

d) Mr Segal pointed to the Tribunal's findings as to the truth of what Miss Magson had said - firstly about events at the time that later featured in the proceedings and also concerning the veracity of Miss Magson's evidence on oath in the Tribunal. But for the underlying falsities, for which Miss Magson as CEO was responsible, Mr Segal submitted that the Respondent should not have defended the proceedings.

356. The Tribunal bore in mind that for a significant part of 2021, Dr Ranson did not have external legal representation. The Tribunal has given no consideration of the costs position under Rule 40 for when Dr Ranson was a litigant in person or was being assisted by her husband.

357. The original Complaint lodged in April 2021 had been drafted by Mr Simon Cheetham QC (as he then was). This could only have followed extensive input from Dr Ranson. Thereafter, Dr Ranson was without legal representation, seemingly until quite close to the commencement of the Liability Hearing in January 2022. Since then, Dr Ranson has had the backing of the BMA. Fortunately, Dr Ranson's husband is a practising barrister and during 2021, he was able to assist and support his wife with the burdens of preparation.

358. It is beyond the knowledge of this Tribunal whether the BMA is entitled to recoup its costs out of the award of compensation. By ordering the DHSC to pay costs of the

Liability Hearing, the Tribunal appreciates that this may be of direct value to Dr Ranson either because she can keep the award, wholly or in part, or (perhaps) more probably, the award will lessen the burden of what she would otherwise have to pay her legal team out of her compensation.

359. The Tribunal has no detail of how much the costs will be. The Liability Hearing lasted ten days. Additionally, there were preliminary Hearings on the usual issues needing attention in a complex case but particularly there was an unusual amount of Tribunal time involved dealing with contested applications surrounding (non)-disclosure of documents by the DHSC.

360. With such a long Hearing and over 6,000 documents in evidence, the Tribunal (including two former practising UK solicitors) can readily anticipate that Dr Ranson's legal costs will be considerable.

361. Mr Devonshire submitted it would not be appropriate to make any costs award at all or certainly only a proportion. Mr Devonshire accepted that whilst there does not have to be a direct causal connection between unreasonable conduct and costs, it is not to say that causation is irrelevant and any costs order should reflect the effect of the impugned conduct and in an appropriate case, a percentage approach may be justified. He pointed to the decision in **Yerracalva**.

362. In opposing the application, Mr Devonshire's main thrust was honed to the criticisms regarding disclosure. Correctly, he pointed out the shortcomings and criticisms made by the Tribunal about that aspect. However, he did not mention the aspect which the Tribunal considered more important relating to the central role played by Miss Magson.

363. Taking the whole picture into account, the Tribunal has determined that the DHSC must bear a proportion of the costs incurred by Dr Ranson of the Liability Proceedings. It is understandable (but not excusable) for an unrepresented litigant from a small business to defend his position in this Tribunal in what proves to be an indefensible

manner and probably not be ordered to pay any costs. It is however inexcusable for a Chief Executive such as Miss Magson to mislead both the Tribunal and Dr Ranson. The case on liability was fought tooth and nail by the DHSC on a false basis to the substantial detriment of Dr Ranson and at the expense of taxpayers on the Isle of Man.

364. Miss Magson knew that the denials of liability in the Response contained assertions and allegations that were untrue. She knew or should have known and understood that the way she had drafted the Response was unsustainable. She knew or should have known that her pleaded arguments could never survive scrutiny once the documents which needed to be revealed were in fact disclosed.

365. Dr Ranson will have a heavy burden of paying her own costs from her compensation relating to the Disclosure Proceedings and additionally relating to this Remedy Hearing and for preparation. The Tribunal is not making any award of costs in her favour in those respects.

366. As to her costs of the Liability proceedings, the Tribunal did not consider that Dr Ranson should recover 100%. Even if the DHSC case had contained *bona fide* but ultimately unsuccessful cornerstones, Dr Ranson would have had to incur quite considerable costs which, as a norm, would not be recoverable at all.

367. The Tribunal has concluded that Dr Ranson should recover **70%** of those legal costs once assessed or agreed. For the avoidance of doubt, given the circumstances in which this costs order is appropriate, the Tribunal consider that the assessment of 100% must be on an indemnity basis (as opposed to a party-and-party basis) and only after that assessment has been made should the 30% reduction be applied.

Disclosure Proceedings Costs

368. As summarised in the Liability Decision, the Tribunal accepted that there were serious shortcomings in the disclosure process and that a number of these needed to be further investigated. However, since then, Dr Ranson's legal team has been unable to substantiate all the allegations that they had advanced.

369. One consequence of the criticisms of documentation levied on behalf of Dr Ranson was the appointment of EXPOL by the DHSC to investigate the allegations of "concocted documents." Their report was produced to the Tribunal in November 2022 and during 2023 has been released to the Manx public, under a Freedom of Information Request. This was in advance of the conclusion of the Remedy Hearing.

370. From almost as soon the EXPOL report became available, the Tribunal was informed that Dr Ranson did not agree with the conclusions. Thereafter, it was apparent from her evidence in this Tribunal in January 2023 that she did not agree with the outcome, at least to some extent. Inter alia, she did not consider EXPOL to be independent. However, her witness statement never set out any reasoned attack on the conclusions. It did not point out why she stood by her allegations that all or some of the documents were concocted. She gave no evidence to expand on her rejection of any of the conclusions.

371. Because of the influence on potential issues of Exemplary Damages and costs, the Tribunal had anticipated that, because the conclusions of the EXPOL report were controversial or disputed, there would have been a request on Dr Ranson's behalf for a Witness Order (or Orders) for cross-examination of EXPOL officers at the Remedy Hearing. That did not happen.

372. The appeal process last year regarding documentation issues was heard by the learned First Deemster. He rejected the appeal but in his judgment, he had cautioned against the Tribunal taking on too much of an investigatory role. It was therefore not considered to be the role of the Tribunal of its own initiative to require attendance of the personnel behind the EXPOL Report, even though the Tribunal had expected this to happen.

373. In the event, Dr Ranson's team did not seek to call anybody involved with preparation of the EXPOL report. However, in his Closing Submissions, Mr Segal alleged quite detailed and serious shortcomings about the conclusions of no improper concoction. Mr Segal still maintained that some of the documents were concocted - to the extent

that he encouraged this Tribunal to refer the allegations of concocted documents to the Isle of Man Constabulary for further investigation.

374. While the Tribunal had hoped and expected to have the issue of the alleged concoctions tested and resolved, this was not possible. Without questioning the appropriate witnesses, as Mr Segal had the chance to do by seeking witness orders against the authors of the EXPOL report, it would be quite wrong for this Tribunal to come to any conclusions one way or the other - let alone to refer the matter to the Isle of Man Constabulary. There remains nothing to stop Dr Ranson referring the matter to the Constabulary herself.

375. As to costs of the Disclosure proceedings, Mr Devonshire submitted that he was disadvantaged by lack of awareness that Mr Segal would be seeking those costs. Nothing turns on that because the Tribunal has not awarded such costs in any event.

Closing Remarks

376. The Tribunal would like to place on record their appreciation of the diligent input from both Leading Counsel as supported by their respective legal teams. The spirit of cooperation on administrative issues has led to the orderly process of the Remedy Hearing with the documentation in excellent order.

Provisional Hearing Date

377. Although a provisional date of 6th June 2023 has been fixed for further submissions, this was based on the potential need for the Tribunal to await further input from the financial experts. In the event, the Tribunal considered that, with the helpful data already available from them, plus the Schedules of Loss, it was possible to publish what is intended now to be a final Decision.

378. In order to expedite publication, and to avoid the cost and delay of that 6th June Hearing, the Tribunal has calculated the lost earnings and lost pension by application of certain multipliers using the Ogden Tables and the Principles. While these calculations are believed to be correct, liberty to apply is granted to both parties under Rule 39 of the

Employment & Equality Tribunal Rules 2018 should any *de minimis* fine-tuning of either multiplier be needed and for the resultant loss figures to be adjusted. Similarly, if any slight adjustment is needed to the grossing-up calculations, liberty to apply is granted to both parties. Any such submissions should be provided within 14 days of publication of this Decision. This is irrespective of the entitlement of either party to seek a Review or to Appeal to the High Court.

379. **THE TOTAL GROSS AWARD AS CALCULATED ABOVE IS £3,198,754.00.**

Dated this 2nd day of May 2023

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Douglas Stewart
Chairman