CLAIM No 3YK60885

IN THE SHEFFIELD COUNTY COURT

BETWEEN:

CLAIRE ELIZABETH BAGGALEY

Claimant

And

CHESTERFIELD ROYAL HOSPITALS NHS FOUNDATION TRUST

Defendant

PLEASE NOTE

This judgement is sent to the parties by email pursuant to the provisions of CPR PD 40E.

I will make arrangements to hand judgement down formally at Sheffield County Court in due course.

I would be grateful if the parties would point out any errors in the judgement as soon as possible.

I would also be grateful if the parties could agree the terms of the final order within 21 days-so by 4pm on 13th June 2016.

If there is an issue on costs then a hearing should be arranged through the usual channels-unless the parties agree that costs should be dealt with on written submissions.

If all matters are agreed then the parties will not be required to attend when judgement is handed down.

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JUDGMENT

(1) Introduction

1. The Claimant is now 40 years of age having been born on **9th October 1975.** She brings this claim for damages for personal injury arising out of a breach of duty which occurred in **October 2007** when she contends that she was wrongly diagnosed as suffering from cancer. The Claimant's case is that the breach caused her to develop psychological symptoms and to develop Chronic Fatigue Syndrome (CFS) in **2009,** both of which continue significantly to affect her day-to-day life.

2. The Defendant:
   - 2.1 Admits that there was a negligent mix-up in the laboratory as a result of which the treating clinician, Mr Chadwick, was informed that abnormal (and potentially malignant) cells had been identified in the sample taken from the Claimant;
   - 2.2 Further admits that Mr Chadwick rang the Claimant to discuss the results in **October 2007**;
   - 2.3 Accepts that in the course of that telephone call Mr Chadwick informed the Claimant that the biopsy had shown some subtle abnormal cells that needed further investigation;
   - 2.4 Admits that it was reasonably foreseeable that such a breach would cause some psychological injury;
   - 2.5 Denies that the Claimant was told that she was suffering from cancer;
   - 2.6 Contends that the breach caused a relatively minor exacerbation in the Claimant's psychological symptoms, the balance of which are attributable to

her inherent psychological vulnerability and pre-existing psychological condition;

2.7 Denies any causal link between the Claimant's CFS and the breach on the basis that the Claimant:

.1 is not a reliable historian and was suffering from CFS symptoms even before the breach of duty; and/or

.2 would have developed CFS in any event as part of the evolution of her pre-existing psychological problems.

3. The extent of the gulf between the parties on causation is best shown by comparing the respective Schedules-the Claimant claims just over £725,000 + £48,000 for pain suffering and loss of amenity whilst the Defendant admits only a claim for pain suffering and loss of amenity valued at about £4,000 + some modest claim for care.

4. During the course of the trial I the witnesses of fact were:

4.1 The Claimant and her partner, Lee Broadbent who both gave oral evidence;

4.2 The treating clinician, Mr Chadwick, whose statement was agreed by the Claimant.

5. Each party called a Consultant Psychiatrist to give oral evidence:

5.1 Professor Morgan for the Claimant;

5.2 Dr Holden for the Defendant.

6. I am grateful to counsel for the helpful way in which they dealt with the issues which arise in this case and sorry that I have taken so long to provide a judgement.

(2) The issues

7. It is easy to state the broad issues in the case-namely (1) what injury did the Claimant sustain as a result of the Defendant's breach and (2) what compensation should the Claimant receive as a result of those injuries. However, it is rather more difficult to identify the factual disputes that I must resolve in order to reach a proper conclusion as to the injury sustained by the Claimant, before then assessing the appropriate compensation to be awarded.

8. In my judgment:

8.1 The first issue which I must decide is the precise nature of the breach, as this is relevant when determining:

.1 The Claimant's credibility or reliability as a witness; and

.2 The extent to which the Claimant was psychologically vulnerable;

8.2 I then look at the Claimant's medical history before the breach with a view to determining whether:

.1 as Dr Holden contends, the Claimant was suffering from a *persistent mixed anxiety and depressive disorder, more likely than not with elements of an anxious (avoidant) personality disorder to explain her persistent presentation*[1]; or

.2 as Prof Morgan contends, the episodes of anxiety, depression and stress reflected unusually challenging major life events which *engendered proportionate but intense bouts of anxiety and depression, representing adjustment reaction and not indicative of an endogenous proclivity to mental illness*[2];

8.3 Thereafter, I must look at the Claimant's reaction to the misinformation which she was given and the way her symptoms developed between that point and the date upon which she was diagnosed as suffering from CFS. In so doing it is important to determine:

.1 the extent of the symptoms from which the Claimant suffered; and

.2 the extent to which any such symptoms were caused by the Defendant's breach and in particular whether:

(a) as Dr Holden contends there was a continuation of her pre-existing anxiety and depressive disorder, anxious avoidant personality disorder and somatoform disorder of which the CFS is simply a continuation. In his view the index events have not changed the underlying conditions, merely *coloured their content*[3] and the Claimant's condition has waxed and waned as it would have done in any event; or

(b) as Prof Morgan contends, the Claimant suffered from Major Depression and CFS as a result of the misdiagnosis;

8.4 The next stage is to look at the Claimant's symptoms after she developed CFS to determine the extent of any injury attributable to the Defendant's breach;

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[1] See [A.285]

[2] See [A.286]

[3] See [A.291]

8.5 Finally, having determined the extent of the injury attributable to the Defendant's breach, it is necessary to determine the appropriate compensation that should be awarded in respect of that injury.

(3) The extent of the breach

9. In **July/August 2007** the Claimant found a lump on the left side of her neck. When this did not resolve she went to see her GP. Following a GP appointment on **22nd August** the Claimant was referred to the ENT department at Chesterfield Royal Hospital ("the Hospital") for investigation. The referral letter noted that the Claimant was a *very anxious lady,* that her grandmother and aunt had recently been diagnosed as suffering from cancer and that her medical history included polycystic ovarian syndrome (POS).

10. The Claimant was seen in the ENT department at the Hospital where examination revealed that the Claimant had a small, mobile, nodular swelling measuring 1cm x 1cm in the left lobe of the thyroid. The Claimant was then referred to Mr Chadwick, a General Surgeon.

11. Mr Chadwick saw the Claimant on **25th September** and undertook a fine needle aspiration for cytology.

12. Unfortunately there were problems with the way in which the laboratory handled this specimen. In simple terms two samples were tested with contradictory results- the initial sample showed benign thyroid cells whilst the second showed some *bizarre looking cells* which were thought, potentially, to represent metastatic cancer to the thyroid-possibly from a primary tumour in the breast or ovary. I shall refer to these results collectively as the first set of results. In due course further tests showed that the Claimant's nodular swelling was normal and that the unusual findings in the first set of results had been caused by a negligent mix-up in the laboratory.

13. Mr Chadwick felt that it was very unlikely that a 31-year-old patient like the Claimant would have developed the type of metastatic cancer suggested by the first set of results. He therefore arranged for the results to be discussed in a multi-disciplinary team meeting ("MDT").

14. In the meantime Mr Chadwick telephoned the Claimant on the **9th** or **10th October 2007**. The Claimant and Mr Chadwick give different accounts of the conversation:
    14.1 The Claimant states that Mr Chadwick told her that the report had identified *unusual cells*. She states that she asked whether the cells were cancerous and Mr Chadwick confirmed that they were and that he was confused because he had not come across such cells before in the thyroid. He explained that he was sending the biopsy to Sheffield for further examination;
    14.2 Mr Chadwick firmly denies that he informed the Claimant that she had cancer-firstly because he would never give such a diagnosis over the telephone and secondly because, on the information available in this case, there was no confirmed diagnosis of cancer. His evidence is that he informed the Claimant that there were some *subtle abnormal cells* that needed further investigation and that he was going to discuss the matter with his colleagues to decide on the best way forward.

15. Mr Chadwick wrote to the Claimant's GP on **10th October** stating:
    … her FNA has proved rather odd with some unusual looking pleomorphic cells which does raise the possibility of a malignancy in the dominant nodule. Nevertheless, the cytological appearances I gather are not absolutely typical of any primary thyroid lesion. A second opinion on the pathology has been sought at the central MDT in Sheffield before we decide what needs doing. I have spoken to the patient on the phone today to explain the reason for the slight delay in getting the FNA report and suggested I see her in clinic on Tuesday 23rd October …[4]

16. The next step was the MDT meeting on **15th October**. Mr Chadwick states that there was a consensus that the cells seen on the first set of results were highly suggestive of malignant cells but that there may have been a mix up in the laboratory because the results did not fit with the clinical picture.

17. The Claimant then saw Mr Chadwick in clinic on **23rd October**. The respective accounts as to what was said are as follows:
    17.1 Mr Chadwick states that he was careful to avoid concluding that the Claimant *had a malignancy* because the unusual results did not fit the clinical picture. He explained *the appearances on the cytology* to the Claimant and that further tests were required to exclude malignancy elsewhere. However, he states

[4] See [A.507]

that *at all times* he was careful to explain his doubts as to the cytology results and the fact that the abnormalities identified did not seem to relate to her[5];

17.2 The Claimant denies that Mr Chadwick raised the question of a possible laboratory mix up at this stage. She states that he informed her that the cells (presumably those which had been identified as unusual on Mr Chadwick's evidence and as malignant on the Claimant's evidence) were oestrogen based and therefore did not originate in the thyroid but must have travelled from somewhere else in the body. In her witness statement the Claimant recalls Mr Chadwick saying that he had dealt with only one similar case in which the cells had travelled from the ovaries. However, in her evidence she said that Mr Chadwick had given a detailed explanation about a lady who had suffered from breast cancer that had spread through her body hormonally. In any event she stated that Mr Chadwick carried out a thorough examination of her breasts, armpits, neck and torso and arranged for a further biopsy and a full body scan;

17.3 In his letter to the Claimant's GP following this consultation Mr Chadwick stated:

> The cytology has been reviewed in Sheffield and they agree that the features are very unusual indeed. The cells identified do not appear to be of thyroid origin and this raises the possibility of metastases from elsewhere. The cells were oestrogen receptor positive and the immunohistochemical profile would suggest possible origin from the breast or ovary. Another possibility which was entertained however was a mix-up of samples in the lab. I am certainly confident that these were accurately labelled when she attended the clinic
>
> … I have explained the concerns but also that there is no definitive proof so far that there is anything seriously amiss … I remain sceptical that this is metastatic disease to the thyroid from either breast or ovary[6] …

18. The Claimant states that when she went for the further tests the lady carrying out the testing told her that the tests were being carried out to see whether they could identify a (or the) primary source of cancer.

19. On **5th November** Mr Chadwick wrote to both the Claimant and her GP:

19.1 In the letter to the Claimant he stated that:

[5] Para 15 of his statement: [A.59]
[6] See [A.511]

> I have received most of the results back from the lab now regarding the thyroid nodule. So far, everything looks very encouraging and certainly there were none of the abnormalities of the cells which were seen on the previous sample. The scan of your the ovaries was normal.
>
> We still need to decide whether or not to do anything about the nodule in the thyroid and to checks on your thyroid function and an appointment has been sent out to you[7];

19.2 In the letter to the GP he explained that:

> The core biopsy actually shows a pretty benign thyroid follicular lesion. There was certainly no evidence of the previously seen features of the FNA
> I am sure that there must have been a mix up of samples in the lab explaining the previous findings[8].

20. The Claimant saw Mr Chadwick in clinic again on **13th November** to explain the results of the further investigations. Again I set out the respective accounts:
    20.1 Mr Chadwick states that he explained that there had clearly been an issue with the processing of the samples in the laboratory and that, in his view, the previous abnormality had all been due to a contamination of samples in the laboratory and the abnormal cells had not originated in her thyroid;
    20.2 In his letter to the GP dated **14th November** Mr Chadwick stated that the clinical picture of the nodule was consistent with a benign process and that, *I am sure therefore, that there must have been a mix up of samples in the pathology lab*[9];
    20.3 In her witness statement the Claimant agreed that she had seen Mr Chadwick on **13th November**. She stated that, although initially elated by the 5th November letter, she had mixed emotions by the time she went to the appointment as she was worried that the first set of results were correct and that the hospital was now mistaken in asserting that a mistake had been made. The Claimant accepted that Mr Chadwick had informed her that the lump had decreased in size and that this was a positive sign. Further, he said that the lump was not cancerous but was most likely to be a cyst. In response to a direct question Mr Chadwick had explained the presence of

[7] See [A.513]

[8] See [A.512]

[9] See [A.515]

cancer cells in the first set of result by saying that there had *most likely been a mix up in the lab*;

20.4 Further, in her witness statement the Claimant said that she felt numb and confused after this appointment and that she would cry most days because of worry. She was not able to believe what Mr Chadwick had said about the mix up in the lab and felt that the results of the second batch of tests could be a mistake. The Claimant felt that Mr Chadwick had not guaranteed that the first set of results had been the result of a mistake because he had only said that they were *most likely* due to a mix up in the lab;

20.5 However, somewhat remarkably, in evidence the Claimant said that she had not seen Mr Chadwick between **October and 18th December** and that it was only in **December** that he had first mentioned the mix up in the lab.

21. According to her witness statement the Claimant's concerns were such that she consulted her GP on **26th November** and **3rd December** when the GP notes record her as experiencing *worry ++.* As a result of her concerns the Claimant's GP arranged a further appointment with Mr Chadwick.

22. At that appointment on **18th December:**

22.1 Mr Chadwick states that he provided further reassurance that everything was fine. There was a detailed discussion and he *was left with a feeling that the Claimant was feeling much more reassured*;

22.2 In his post-consultation letter to the GP Mr Chadwick stated:

> I think there is no doubt at all that the cell block from the original cytology was mixed up with someone else's specimens in the lab. This is also consistent with the fact that her thyroid nodule was barely palpable so was resolving. I think after discussion we have been able to reassure her about this.

The letter went on to explain that Mr Chadwick had also allayed the Claimant's concerns about her lymph nodes and the feeling that she had a lump in her throat, with the latter being due to a combination of acid reflux and anxiety;

22.3 The Claimant accepts that Mr Chadwick reassured her and told her that the first set of results must have been down to a mix-up in the lab. In her statement the Claimant said she did not feel *entirely reassured* following the appointment and in evidence said that *it was quite reassuring* but that she

still remained anxious because she had not received 100% assurance that the advice that there had been a mix-up in the laboratory was not itself mistaken.

23. It is agreed that Mr Chadwick saw the Claimant at a further consultation in **January 2008**. There is no suggestion that any form of tumour/malignancy was investigated during this appointment. However, Mr Chadwick did ask the Claimant about her anxiety and recorded that her *mental state is much improved now*: see the letter [426]. Further, the Claimant's sensation of there being a lump in her throat had improved with Gaviscon and the nodule was no longer palpable.

24. I must now make some findings about these events. In my judgement:
    24.1 Where there is any difference between the evidence of the Claimant and that contained in Mr Chadwick's statement I must prefer the evidence of Mr Chadwick as the Claimant elected not to cross-examine Mr Chadwick and agreed his statement;
    24.2 Further, where Mr Chadwick's statement is supplemented by his contemporaneous letters I prefer the account set out in those letters to the evidence of the Claimant who is dependent on her recollection which I consider likely to be flawed given the lapse of time since these events and her emotional response to them;
    24.3 I find that the Claimant was never told that she **was** suffering from cancer. The high-point of what was said to the Claimant on **10th October** was that there were *subtle abnormal cells which required further investigation*;
    24.4 However, I can easily understand how a concerned patient might understand the phrase *abnormal cells* as a reference to cancer and an indication that she was, or at least might be, suffering from it. I would expect any patient to experience some heightened anxiety as a result and it has been conceded that it was reasonably foreseeable that the Claimant would suffer psychological injury;
    24.5 Further, it seems to me that there must have been a discussion about *malignancy* at the appointment on **23rd October** given that Mr Chadwick was seeking to undertake further tests to exclude malignancy. I can understand how this reinforced the Claimant's belief that that the first set of tests showed a malignant growth and heightened her anxiety;
    24.6 Further, when the second batch of tests were carried out, I find that the clinician responsible explained that they were being carried out to see

whether there was a primary tumour. Any patient undergoing such tests would be bound to be concerned as to the risk that there was such a tumour;

24.7 I am satisfied that Mr Chadwick mentioned the *possibility* of a mix-up in the laboratory even at the appointment on **23rd October** given that his (agreed) statement records that he expressed his doubts about the results *at all times*. Further, his contemporaneous letter shows that those doubts included a possible mix-up in the laboratory. However, I do not think that Mr Chadwick viewed this as the most likely explanation at this stage and I find that this was mentioned as no more than a possibility which did not make much impact on the Claimant. I am reinforced in this view by Mr Chadwick's letter to the GP where he mentions a mix-up as no more than a possibility and he seems very concerned to make clear that there had been no error on his part;

24.8 By **5th November** Mr Chadwick was firmly of the view that the abnormal findings in the first set of results were the result of a mix-up in the lab. However, that was only mentioned in the letter to the Claimant's GP and not in the letter sent to the Claimant by letter;

24.9 I am quite certain that Mr Chadwick explained his view about there having been a mix up in the laboratory during the consultation on **13th November**. The Claimant was simply wrong in her evidence that the matter was not mentioned until **December**-an assertion that contradicted her own witness statement. I find that when discussing the mix up Mr Chadwick did suggest that this was the *most likely* explanation. I reach that conclusion for two reasons-first, because I accept that it is a phrase which stuck in the Claimant's mind (according to her statement) and second because I consider that the general contents of Mr Chadwick's witness statement indicates that he is a cautious man who does not easily use absolutes. In the circumstances I consider that he qualified his view by such a phrase;

24.10 As soon as it became apparent that the Claimant was worried that there might be a continuing risk that she was suffering from cancer Mr Chadwick provided further reassurance in more absolute terms at the consultations in **December 2007** stating that *there is no doubt at all* that there had been a mix up;

24.11 I will deal with the Claimant's anxiety about what was said to her in more detail in due course. However, it is plain that her anxiety was *much diminished* by the consultation on **15th January 2008.**

25. Further, in my judgement, the Claimant's insistence that she was expressly told that she had cancer and her evidence before me that she did not receive any explanation about the possibility of a mix up at the laboratory until **December 2007** both raise doubts as to her reliability as a witness. I do not consider that she is deliberately misrepresenting what was said to her. I find that the Claimant honestly believes the account she now gives. I consider that her emotional response to these difficult situations has clouded her ability to remember them accurately. However, it is important to bear that in mind when considering the extent to which I can rely on her evidence in other areas.

26. Having set out my views as to what occurred at the time of breach I note that there was no formal misdiagnosis. However, for ease of reference during the course of the remainder of this judgement I shall refer to the breach as the *index misdiagnosis*.

(4) The Claimant's vulnerability before the material events

27. In my judgment the starting point it to look at the entries in the medical records and then consider the Claimant's evidence about the background circumstances giving rise to the consultations/symptoms. Once findings have been made about the Claimant's symptoms and the background factors responsible for them I must determine whether I accept the views of Prof Morgan or Dr Holden as to their significance and cause.

(4)(a) Early boyfriend problems

28. The Claimant consulted her GP on **15th January 1997** [A.490] complaining of relationship problems with her boyfriend. She was counselled and signed off work until **20th January**.

29. **1st October 1997** the Claimant again visited her GP [A.489] complaining about relationship problems-on this occasion that she had just split from her boyfriend and that she was very upset and not sleeping. She was given a sleeping pill, Temazepam, for a week. The Claimant was also seeking advice because she had had unprotected intercourse the night before.

30. On **15th January 1998** the Claimant consulted her GP about relationship problems because another relationship had gone sour. The records show that the Claimant's problems were discussed but no treatment was given.

(4)(b) The problems with work: 2001-2002

31. The Claimant first consulted her GP about problems with work on **17th January 2001**[10] when the note records *Stress related problem-rundown. Cannot face work, tires easily, tearful, makes mountains out of molehills—few weeks, hormones erratic—wants diff COC*[11]. There is no mention of bullying in this entry and it follows a consultation a week earlier on **10th January** where the Claimant complained of being *Tired all the time* and having been intermittently tired for the last few months.

32. The first mention of bullying at work comes on **5th March 2001** when the GP entry records *Stress related problem: lost gran and split relationship recently ? bullied at work*. The Claimant was counselled but returned to see the GP on a number of occasions about this subject.

33. I set the next relevant entries out in table form below:

Date	GP Entry	Comment
10.04.01	**[483]** Still feels intimidated and victimised at work by supervisor. The dept. manager has discussed the problem and decided no problem exists. Claire is well away from work-but distressed and upset before/during/after work—low and tearful—feels trapped and unsupported. Flu viral sx last week-lethargy, nausea and vomiting this week Counselled, problems needs resolving-consider joining union Provide sick note until resolved	2 week sick note issued
20.04.01	**[483]** Unhappy at work Has spoken to bosses by phone and her mum also explained how ill it is making her-C does not feel that any formal arrangements to protect her have been made	4 week sick note issued

[10] [A.484].

[11] Combined Oral Contraceptive

	Alleging occasional sexual harassment against a male worker and recurrent bullying from immediate boss and other colleagues- Causing panic attacks, insomnia and weepiness. Claire has no other sources of stress. Claire advised to seek legal/employment advice … before RTW … defer medication	
30.05.01	**[482]** Unhappy at work Longer away more she realises how unhappy and stressed she has been – feeling more like old self-more relaxed and confident-does not ever want to go back to the same and unsure if ever would change-has looked into tribunals etc. and would find more stressful-prefers to look elsewhere and have a new start … Much more relaxed and smiling	4 week sick note issued
06.07.01	**[482]** Unhappy at work Same could not ever return to the college-work have lost her personal effects when she tried to collect. Considering other work.	4 week sick note
16.08.01	**[482]** Unhappy at work New staff changes and contemplating RTW for new term is dealing with personnel Counselled must reach decision whether to leave or launch further formal complaints procedure	6 week sick note from 30th July
10.09.01	**[482]** Irritable colon (IBS)	
15.09.01	**[481-2]** **Date is approximate because it has been cut off by the hole punch** Unhappy at work More positive and due to meet personnel Counselled	Sick note for 3 weeks

05.10.01	**[481]** Unhappy at work Seems confident to go back with a new boss	Sick note to **8th October**
19.10.01	**[481]** Unhappy at work More subtle "bullying" by supervisor-personnel unable to intervene been off 1 week-upset again Either she fights her ground or moves on-counselled and advised.	**Had returned to work for about 1 week** 1 week sick note to **22nd October**
25.10.01	**[481]** Unhappy at work Every day got dressed and tried RTW-panic attacks and could not face it Lofepramine Tablets 70mg Advised discuss with CAB attend personnel with partner to review options	**First time that any prescription given rather than advice** Further sick note for 2 weeks
08.11.01	**[481]** Unhappy at work Feels much more relaxed on medication-considering formal grievance. Work have written re ? formal grievance or temporary transfer Counselled-intends to consider grievance procedure with James and CAB has requested a copy	Further 2 week sick note **Therefore returning to work about 22nd November**
07.12.01	**[480]** Unhappy at work Went back to work last week-been brilliant-working in the hairdressing saloon. Reports that Katie and Glenys still being horrible to her. On Friday she alleges that James (her partner) witnessed an incident. Claire found the two of them were looking into her personnel file and damaging it. Glenys allegedly came after her with clenched fists and was verbally aggressive. This has led onto a new grievance procedure She has also taped some of the alleged abuse Claire has been off work with a viral infection Telephone encounter …	
17.12.01	**[480]** Unhappy at work Filing a grievance, been off work since the 1st December Wishes to go back on wed. Restarting medication. Tcb after Christmas	**It is now apparent the C was at work for about 1 week after 22nd November before being absent with a virus and then a sick note for stress**

11.01.02	**[480]** Unhappy at work Making progress-Katie is leaving and Glenys has been more reasonable-grievance proceeding was off with virus and did not rtw as developed a head cold Discard original med 5 never submitted	**Sick note 3rd December to return to work on 9th January.**
31.01.02	**[479]** Unhappy at work [A problem about lifting]	**C appears to have returned to work but had 3 days off with an URTI due to return after week end** Therefore returned for 2 to 3 weeks
08.02.02	**[479]** Unhappy at work Paperwork has arrived for grievance hearing in 2-3 weeks Glenys put in a grievance against Claire as well but then withdrew it Tearful and stressed Mum and dad both ill Starting new studies **Lofepramine tablets** Counselled	**New sick note issued 31st Jan to 8th Feb 'flu** **Medication prescribed for stress**
26.02.02	**[479]** Unhappy at work Had formal grievance last week-took week off verdict at the end of this week	**Sick note for stress 1 week**
06.03.02	**[479]** Unhappy at work Verdict went heavily against Claire and very upset-feels unfair decision and unfair process Counselled could seek legal advice or could accept the decision and RTW. Prefers latter, continue same medication and see 4w	**Sick note stress with rtw 18th March** Therefore has been off from about mid February to 18th March Has worked for about 6 weeks since **April 2001**

34. The Claimant explained that the problems at work arose after (1) a colleague was promoted to supervisor and (2) a re-organisation that meant that she was required to carry out work for 2 departments. Her supervisor, who only worked in 1 department, did not really understand that someone else was giving the Claimant work. The Claimant felt stretched between two masters and that she was burning

herself out, whilst her supervisor felt that the Claimant was not pulling her weight. As a result the supervisor began leaving the Claimant memos pointing out the work that needed doing. The Claimant found the memos threatening and felt that this conduct amounted to bullying. The Claimant then referred to an incident in which she returned to the office and found her supervisor and another rifling through her files. The Claimant challenged them, asking what they were doing. The supervisor raised her voice and became hostile. In evidence the Claimant said that it was this incident that prompted her to launch a grievance, which is consistent with the entries in the GP notes for **7th** and **17th December 2001**.

35. The Claimant also stated that one of the male workers was always bringing up sexual innuendoes in the office. As I understood her evidence these comments were generally not aimed directly at the Claimant-it was simply that she was uncomfortable with the general sexual references in his conversation. However, the Claimant did refer to an incident in which this man brought a tray back from a meeting and placed it on her breasts making a rude comment as he did so. This is consistent with the GP entry for **20th April 2001**.

36. It follows from the analysis of the GP records that the Claimant was consulting her GP about problems at work for about 12 months and that between **mid-April 2001** and **mid-March 2002** the Claimant was only at work for about 6 weeks.

(4)(c) The period between April 2002 and the first pregnancy

37. The Claimant consulted her GP in **November 2002** with pre-menstrual syndrome, the symptoms of which were said to be fluctuating mood which was worse with irregular periods, neck pain and tension type headaches.

38. In **January 2003** the Claimant saw her GP with Polycystic Ovary Syndrome, the symptoms of which were *facial hair, greasy skin irregular dysmenorrhea*. As a result the Claimant was referred to the Gynaecological Department at the Defendant's hospital.

39. In **October 2003** the Claimant complained to her GP that she was struggling with pre-menstrual syndrome and she was not coping at work but she felt unable to take time off given her previous sickness absences. She was noted to be *weepy* and

distressed and felt that no one was listening to her. She was *very distressed crying, shouting*.

40. The Claimant was again *very tearful* when she saw her GP in **January 2004** about her POCS-although work was not mentioned on this occasion.

(4)(d) The first pregnancy to birth

41. The Claimant saw her GP at the beginning of **March 2004** when the notes record that she had taken 2 weeks off work because she felt generally unwell and tired. This seems to have been attributable to a combination of the pregnancy and the stress of splitting from her partner and having to decide whether to go ahead with the pregnancy. The Claimant was issued with certificates for general debility from **23rd February to 22nd March**.

42. On **20th April** the Claimant saw her GP complaining of headache and mentioned stress at work. She was described as *well in self* and advised that this was a tension headache and was reassured.

43. On **29th June** the Claimant consulted her GP for advice because she was in fear for her own safety. Bruises were noted on her arms and there was a history of her ex-boyfriend having been violent towards her.

44. On **2nd July** the Claimant was described as *struggling at work stress and hassle … tearful and frightened re* return to work. She was counselled that her health and that of the baby would benefit from time away from work. She was issued with a sick note for 3 weeks from **28th June**. When seen on **21st July 2004** the Claimant was said to feel *very well.* However, she was not ready to go back to work and was said to be *stress ++ with work and ex-partner*. A sick note was given until the Claimant left work on maternity leave.

45. In evidence the Claimant explained that there had been problems with her ex-partner contacting her at work. However, I do not consider that this can be the full explanation for the work related stress recorded in the GP notes at this time. In particular: (1) it does not account for the GP's use of the phrase *stress **with** work,* (2) it would not explain why the Claimant was so concerned about returning to work

before the birth of her baby and (3) it would not explain why the Claimant was so worried about returning to work after the birth of her baby as set out below. Therefore, I do not consider that I can rely on the Claimant's evidence as to the underlying cause of these problems. In my judgement the second batch of GP consultations for work related stress must have arisen from problems with relationships at work (whether fresh or continuing) and not simply as something that was ancillary to the break up from her boyfriend.

(4)(e) Post birth until index events

46. Following the birth of her baby in **September 2004** the Claimant visited the GP surgery on a number of occasions that suggested that she was stressed. I summarise the entries in the notes:

46.1 **29th November:** the Claimant was reviewed and found to be very tearful. She had a difficult home situation because she was living with Ruby in a tiny room at her parents' house. Further, she was very concerned about Ruby's health-although on examination Ruby appeared a healthy baby;

46.2 **1st December:** the Claimant consulted the GP because she and Ruby were suffering with a respiratory infection. She was noted to be anxious. At a follow up consultation in **December** the Claimant was further reassured and no abnormality was detected;

46.3 **9th December:** the Claimant consulted the GP for what is recorded as a *stress related problem.* The Claimant, who was living in a single room at her parents', had fallen out with her mother and had arranged admission to a women's refuge. The Claimant was noted **not** to be clinically depressed but to be a *timid unassertive personality and copes poorly with stress.* The GP decided to defer any prescription for anti-depressants;

46.4 **11th April 2005:** this was the next consultation at which any stress related problem was recorded. However, it appears that the Claimant's concern was that she and Ruby were suffering from diarrhoea. The Claimant was noted to be *tearful at times* when she came for a follow up consultation on **18th April** and a possible diagnosis of IBS was considered;

46.5 **20th April:** The Claimant was noted to have attended the emergency GP centre the previous evening claiming that Ruby was unwell. However, the consultation had lasted for 90 minutes and its main focus was that the Claimant was finding it very difficult to manage being the mother of a young baby. The Claimant was to be assessed by the GP on **20th** and the GP

recorded her previous assessment that the Claimant was stressed and needing support but **not** depressed needing medication;

46.6 **6th September:** the Claimant was not seen by her GP about this subject until September. By this stage she was coping well with Ruby and the only stress factor appeared to be the prospect of returning to work, her maternity leave being about to expire. The Claimant stated that she was afraid to go back and felt *panicky and tearful about returning*. There was an issue with maternity pay which had to be repaid if the Claimant did not return. The Claimant informed the GP that she would be fine if she did not have to worry about work and the GP agreed to sign her off work with stress for 1 month on the understanding that the Claimant must resolve the situation;

46.7 **23 September:** the Claimant was involved in an RTA as a result of which she developed a modest whiplash injury and sustained a facial laceration.

46.8 **28th September:** it was noted that the Claimant had consulted a solicitor who advised that the previous grievance had not been handled properly and that the Claimant might have an employment claim. The employer had made a financial offer to resolve any claim on the basis that the Claimant left work. The GP advised that it was not in the Claimant's interests to become embroiled in a lengthy dispute and issued a further sick note for 4 weeks. The Claimant appears to have accepted that offer fairly shortly thereafter and there is no further mention of work stress;

46.9 **November 2005** the Claimant saw a plastic surgeon with a view to surgery to revise the facial scar consequent upon the road traffic accident. The consultant wrote to the GP stating *it is quite clear talking to this lady that she is anxious and in her mind the scar and the effects that she feels it has is all out of proportion to its actual appearance*. *I feel strongly that if any treatment were indicated would require counselling. Surgery is not the answer*. There is no further mention of any problems with the scar and the accident does not feature again in the notes, apart from the Claimant investigating the possibility of some physiotherapy as a result of some suggestion to that effect being made by the medical expert in the PI claim.

47. Therefore there does not seem to have been any significant consultation between **November 2005** and her attendance at the GP surgery on **10th October 2006**. The Claimant was attending a contraception appointment at which she described a history of classical migraines and explained that she got mild headaches and

occasional flashing light and had an episode of facial numbness associated with headache. The Claimant was asked to attend for review with another GP, Dr Fordham. This took place on **17th October** at which her POCS and migraine were discussed in the context of her contraceptive requirements. As a result the Claimant was prescribed metformin for her POCS. This was then reviewed on **11th December** and the does of metformin was increased.

48. There was a consultation in **January 2007** for acute tonsillitis at which the Claimant was also complaining of a problem with her left ear. On **1st** and **2nd February 2007** the Claimant was in contact with the surgery over a complaint of severe pain in her left ear and appears to have behaved somewhat strangely on attending the surgery and refusing to wait and then when contacted by the surgery she refused to re-attend. The Claimant was prescribed codeine for her ear and indicated her intention to change GPs as a result of the way in which she was treated.

49. The Claimant moved to the **Whittington Moor Surgery** on or about **21st February 2007**. The Claimant seems to have had a general review on **3rd May 2007** when her POCS and the problems in her left ear were discussed. It was noted that the Claimant felt tired and was concerned about her blood sugar and that, although her ear was much better, it still felt wet and a bit itchy.

50. The Claimant was seen again on **14th June** and **15th June**. At the first appointment the problems with her ear were investigated further. On examination the ear was found dull with no light reflex and the eardrum was stuck down over the ossicles. There was no sign of infection, wax or otitis externa. It appeared that the Claimant's father had the same problem and was encouraged to use a nasal spray and the Claimant was recommended to do so and use steam. On the following day at a POCS review the Claimant was somewhat tearful and was concerned that her food cravings were connected to her POCS-her weight was noted to be 71kg.

(4)(f) Assessing the expert evidence

51. **Generally:**

    51.1 **Dr Holden** considers that the Claimant was repeatedly presenting with psychological symptoms indicative of a persistent mixed anxiety and depressive disorder with elements of an anxious (avoidant) personality

disorder to explain her persistent presentation. He considers that the problems were constant with the only thing changing within her mental state being the subject of her worries and fixations. In addition he stated that the Claimant suffered from a somatoform disorder manifesting itself as irritable bowel syndrome and other unexplained medical symptomatology;

51.2 **Prof Morgan:** accepts that there is a past history of depression, anxiety and distress. However, he contends that the history reflects unusually challenging life events-the work place bullying and the problems with her partner. In his view these engendered proportionate but intense bouts of anxiety and depression, representing adjustment reaction **but not** indicative of an endogenous proclivity to mental illness;

51.3 I test the respective theses against the clinical history identified in the medical notes and summarised above.

52. **The early boyfriend problems:**

52.1 Prof Morgan regards these incidents as perfectly normal transient responses to difficult circumstances. He does not consider that they are evidence of a particular vulnerability;

52.2 Dr Holden contends that these are examples of the Claimant's anxiety and depressive disorder because it shows that she is seeking medical treatment for ordinary life events;

52.3 I accept that they break up of a relationship is stressful and that a number of people might well consult their GP about it. On the other hand I think it is unusual for someone to do so;

52.4 This does not means that the Claimant was suffering from active psychological illness at the time but, in my judgement, these consultations are (at least) examples of the Claimant's psychological vulnerability.

53. **The work related stress:**

53.1 In his report Prof Morgan stated that the Claimant was affected by a transient period of work related stress, measured in weeks rather than months. In his view *this was time limited and with spontaneous recovery*: see [68] para 3.15;

53.2 In cross-examination he accepted that his report (at para 3.15) had understated the extent of the work related stress. However, he maintained that that the degree of understatement was not significant. He explained that the Claimant experienced significant transient stress when at work but that

this abated when she was off. Therefore, he argued that the clinically significant stress was present only for the few weeks that the Claimant was at work and not when she was at home. Therefore the Claimant had not experienced clinically significant symptoms over a period of years;

53.3 It was further pointed out to Prof Morgan that there had been a recurrence of work place stress in **July 2004** and that this had been maintained until, or at least had re-emerged at, the point at which the Claimant was due to return to work after her maternity leave such that she entered into a Compromise Agreement with her employer and did not ever return;

53.4 Prof Morgan accepted that the Claimant had therefore experienced stress at work over a 4 year period. However, he argued that:

.1 (As set out above) the experience of stress had been limited to the periods when the Claimant was at work;

.2 The first period of work related stress had resolved when the two individuals primarily responsible had left;

.3 The second period did not cause significant absence and had to be viewed in the light of other problems;

.4 Therefore there was not a continuous sustained period of work related stress;

.5 Although his report was not as *nuanced* as he would like he remained of the view that the work related stress was transient and not clinically significant;

53.5 Dr Holden argued that *work related stress* is not a diagnosis in itself but that the history showed that a phobic anxiety about work which continued over about a year in the first instance and then re-emerged and continued such that it was present before and after the Claimant's maternity leading ultimately to her leaving employment;

53.6 Dr Holden conceded that he (and the court) were dependent on the Claimant's evidence about the extent of the conduct that gave rise to the bullying. He posed a rhetorical question asking whether the Claimant's symptoms were due to an underlying illness or due to bullying at work such that a person of normal fortitude would have reacted in this way. Further, Dr Holden contended that the Claimant's anxiety was present throughout the first period but waxed and waned in intensity as she was faced with the prospect of returning to work. He contends that this approach also applies to

the second period which, in his view, shows that the Claimant was suffering from a continuing condition;

53.7 In my judgement the allegations of bullying made by the Claimant against her supervisor are relatively mild in that they chiefly revolve around the use of memos requiring her to meet deadlines and only one occasion when her supervisor raised her voice to the Claimant-that being the incident over the files. However, many stress/bullying claims arise when a difficult atmosphere has been created by a combination of numerous minor problems and that atmosphere then becomes increasingly unpleasant and ultimately intolerable. Further, there are allegations of sexual harassment here. Whilst the allegations made by the Claimant are probably near the bottom of the range of such allegations, the matters about which the Claimant complains do amount to sexual harassment and any such harassment should properly be regarded as significant;

53.8 I do not regard it as unusual for an employee to have been absent over the period between the date at which problems arose and the resolution of a grievance. However, a significant proportion of employees would not have been absent throughout the period and the Claimant's anxiety reaction to the relatively mild problems is an illustration of her vulnerability;

53.9 Therefore, I agree with Prof Morgan to the extent that the Claimant's reaction in **2001-2002** was not wholly disproportionate to the external stressors to which she was subject. However, I do not accept that this represents a brief period of *a few weeks* or that it can be proper to regard the Claimant as subject to significant stress only when she was at work. It seems to me that Dr Holden's view that the Claimant was anxious throughout this period is a more accurate reflection of the picture that emerges from the medical notes. In my view, the Claimant would not have needed to be absent from work for all but a few weeks of a 12 month period in the absence of such continuing anxiety;

53.10 I accept Prof Morgan's evidence that the problems with work in **October 2003** should be seen as the result of the Claimant's pre-menstrual syndrome as this is consistent with the GP notes. Further, the PMS was viewed as physical in origin rather than a somatoform disorder by the treating clinicians and I am not prepared to find that it was other than physical in origin here. However, I note the Claimant's behaviour at the GP surgery in **October 2003** (when she was *crying and shouting*) appears an extreme

reaction and further suggests that she was particularly anxious and highly vulnerable to stress.

53.11 In my judgement there is no evidence of any real trigger for the second episode of work related stress in **2004-2005**. I do not accept the Claimant's evidence that it related to problems caused when her ex-boyfriend tried to contact her at work. That explanation is not consistent with the stress being recorded as work-related, nor is it consistent with such stress continuing once he was out of the picture. There is evidence that the Claimant was seeking advice as to the way in which her grievance had been dealt with but it is not clear what grievance is being referred to here as the only grievance mentioned by the Claimant was that which was resolved during the course of her first absence with work related stress;

53.12 As this second period of workplace stress started before the Claimant's maternity leave and is mentioned in the notes as soon as it was necessary for her to consider a return to work after that maternity leave I do not consider that it can or should be regarded as a brief transient period of stress. The symptoms were maintained even though the Claimant never returned to work;

53.13 Therefore, in my judgement, the Claimant was subject to at least two periods of prolonged anxiety about work during **2001-02** and **2004-05**.

54. **POCS:**

54.1 Dr Holden and Prof Morgan agreed about the symptoms which lead to a diagnosis of POCS and that the Claimant had reported such symptoms to her GP;

54.2 In his report Dr Holden suggested that these symptoms might be psychosomatic: [241]. However, when pushed in cross-examination he was not prepared to go beyond saying that it was *possible* that the symptoms were psychosomatic;

54.3 Prof Morgan explained that POCS had been the subject of his doctoral thesis at Cambridge and Dr Holden recognised Prof Morgan's expertise in this field. Prof Morgan did not accept that the condition was psychosomatic. He considered that it was a physical condition-a view consistent with the consultant gynaecologist who treated the Claimant. Prof Morgan explained that patients suffering from POCS were often found to be suffering from

depression and that it was not clear whether that depression was the result of hormonal changes associated with the condition or as a reaction to the virilising symptoms associated with POCS;

54.4 I accept Prof Morgan's evidence about this condition and regard any depression suffered by the Claimant as a result as linked to her POCS.

55. **Stress and the baby:**

55.1 I do not regard it as surprising that the Claimant consulted her GP in **early 2004** after she discovered that she was pregnant, had split from her partner and was deciding whether or not to keep the baby. I agree with Prof Morgan that these were stressful events that might well have troubled even someone of normal fortitude;

55.2 I accept the Claimant's evidence that, after Ruby was born, she was living in particularly difficult conditions with her mother and I do not find the Claimant's attendance at her GP in **November** and **December 2004** as in any way exceptional given her domestic circumstances;

55.3 I firmly reject Dr Holden's suggestion that the Claimant's problems were her own fault. I think what Dr Holden meant was that somewhat better advance planning might have enabled the Claimant to make better arrangements for herself and her baby. However, I am not in a position to make findings about the Claimant's preparations and, more importantly, this case is not about her ability to plan for her future but her psychiatric health;

55.4 Therefore, whilst there is no doubt that the Claimant was suffering from anxiety and depression in **March 2004** and **November/December 2004** I regard such symptoms as the type of response that would have been expected even in a person of reasonable fortitude. Therefore, I do not think that it goes to show that the Claimant was suffering from a continuing and established anxiety and depressive disorder;

55.5 The Claimant gave a 3-week history of diarrhoea in **April 2005**. Dr Holden made the point that this cannot have been the result of infection/food poisoning because the stool sample was clear. It seems to me that this is an example of the Claimant's extreme worry giving rise to the IBS/diarrhoea type symptoms. Therefore, I am driven to the conclusion that this attendance was stress related;

55.6 This is consistent with the entry in the GP notes for **20th April 2005** when the Claimant showed a degree of anxiety when faced with the ordinary

problems of looking after a baby far in excess of that which one would have expected in a person of normal fortitude;

55.7 In my view these attendances tend to show that the Claimant was highly vulnerable.

56. **May 2005** to **August 2007:**

56.1 Work: September 2005

.1 It should be noted that Ruby was now 1 year old and that the Claimant was reported as coping with her well;

.2 However, I have already explained my view that the Claimant's anxiety about work does not fit with Prof Morgan's analysis that the Claimant's symptoms were always a reasonable response to stressful events;

.3 In my judgement many mothers find the decision to return to work after maternity leave difficult. However, most do not need to consult their GP about it;

.4 Therefore this is an example of the Claimant suffering from enduring anxiety in circumstances where there has not been a good explanation for the condition;

56.2 The scar: November 2005

.1 The Claimant was involved in a road traffic accident. It is to be noted that she did not suffer any obvious psychological/psychiatric reaction to this;

.2 However, the Claimant did seek advice from a plastic surgeon who found her level of anxiety to be disproportionate to the injury;

.3 I agree with Dr Holden that this is a further example of the Claimant becoming overly anxious. However, that is some way from finding that the Claimant was suffering from active psychiatric illness at the time of the index events;

56.3 October 2006:

.1 There is a considerable gap to **October 2006** at which point the Claimant saw her GP for migraine;

.2 Dr Holden suggested that this was a somatoform disorder. However, the difficulty with this argument is that the GP notes record the classic symptoms of migraine. When this was put to Dr Holden in cross examination he accepted that this was probably the result of an adverse reaction to Dianette, a drug which the Claimant had been prescribed;

.3 Therefore, this condition is not an further illustration of psychogenic illness;

56.4 January 2007:

.1 The Claimant consulted the GP with tonsillitis and earache. Dr Holden again argued that this was a somatoform disorder;

.2 The difficulty with Dr Holden's argument on these points was that the GP found exudative tonsils and reddening in the ear;

.3 Therefore I do not think that this was a somatoform illness. The most that can be said is that the Claimant was tearful which shows her vulnerability;

56.5 February 2007:

.1 It is then necessary to consider Dr Holden's view that, even if they were organic in origin, the ear problems were maintained as a result of somatoform factors;

.2 I am firmly of view that the otalgia was physical in origin and the notes record that there was evidence of resolving infection. Therefore this does not fit with a somatoform presentation;

.3 However, the Claimant's reaction to difficulties in being seen at the surgery- walking in, insisting on being seen and then tearfully refusing to go to the surgery and then moving GP as a result confirms her tendency to over-react to difficult situations;

56.6 June 2007:

.1 The Claimant seems to have had an initial consultation with her new GP at which she discussed her various on-going problems;

.2 The problems with her ear appeared to be resolving;

.3 The Claimant did become tearful while discussing her PCOS but there is no suggestion that this reaction was excessive;

56.7 August 2007:

The Claimant was understandably anxious when she consulted her GP with a lump on her neck that ultimately led to her referral to Mr Chadwick.

57. It follows from the analysis set out above that I cannot wholly accept the analysis of either expert. I consider that Prof Morgan has significantly underestimated the extent of the Claimant's work related anxieties and downplayed the degree to which

she was emotionally vulnerable and likely to experience anxiety when subject to the degree of stress which would not normally produce such symptoms. On the other hand I reject Dr Holden's analysis of somatoform presentation-the only area where that might be right is the IBS/diarrhoea symptoms in **April 2005**. Further, it seems to me that it is critical to Dr Holden's thesis that the Claimant was subject to an active anxiety and depressive disorder for at least the substantial period leading up to the index events. As far as I can see there was a considerable period between **Autumn 2005** and **August 2007** where the Claimant was generally psychologically well save for her overreaction to events at the GP surgery in **2007**. In the circumstances I reject the suggestion that the Claimant was suffering form an active psychological illness during this period.

58. Therefore when considering the question of vulnerability and the comments of the experts in their Joint Statement at [288] I find that:
    58.1 in **2007** the Claimant was a highly vulnerable and fragile lady who was susceptible to developing anxiety related symptoms;
    58.2 the Claimant was not *a cracked egg* in Dr Holden's (inelegant) phrase but, contrary to Prof Morgan's view, the Claimant did have an egg-shell skull (or personality) that was very likely to crack in the future.

(5) The competing arguments about causation

59. I then turn to the competing arguments about the cause of the Claimant's symptoms following the index misdiagnosis.

60. In his initial report Prof Morgan argued that:
    60.1 For the initial period between the misdiagnosis and clarity as to misdiagnosis in **December 2007** the Claimant experienced a normal adjustment reaction to what she believed to be a life threatening diagnosis (which he compared to the reactions that the Claimant had experienced before the index misdiagnosis);
    60.2 It was after the nature of the mistake had been clarified (which Prof Morgan gives as **December 2007**) that the Claimant developed a Major Depressive illness of moderate severity;
    60.3 But for the major depressive illness the Claimant would have continued to experience fluctuating labile mood in response to the vagaries of life;

60.4 CFS is characterised by severe disabling fatigue and included other symptoms such as musculoskeletal pain, sleep disturbance, impaired concentration and headaches. Before diagnosing CFS such severe disabling symptoms must be present for between 3 and 6 months;

60.5 Psychological factors provide a substantial contribution to some cases of CFS and they can be prominent exacerbating factors even if not directly causal;

60.6 In the circumstances the Claimant's CFS was predominantly precipitated by the index misdiagnosis.

61. Prof Morgan's diagnosis was made on the basis of the account given to him by the Claimant where she described her symptoms as follows:

61.1 She was *on the cusp of acceptance and readjustment to the challenging diagnosis of cancer when she faced the suggestion of an incorrect diagnosis. Whist she became aware of this in* ***November 2007,*** *it was in meeting her surgeon in* ***December 2007*** *that she properly confronted it at a psychological level*;

61.2 Thereafter she became preoccupied with the thought that she did have cancer and that the mistake was in telling her that she did not;

61.3 She became increasingly tearful and distressed and preoccupied with thoughts of cancer and death;

61.4 Her mood continued to decline with evidence of anhedonia, anergia amotivation, loss of concentration, tearfulness and thoughts that life was not worth living;

61.5 She lost volition and drive and would stay in her pyjamas all day long;

61.6 By **May 2009** she felt so unable to function that she consulted her GP;

61.7 She forged a new relationship with Lee (the report implies that was started after **May 2009**) who bore the brunt of her emotional lability;

61.8 The Claimant was drinking 2 bottles of wine a day 2x or 3x a week;

61.9 By late **2009** the Claimant developed multiple fatigue related symptoms at a stage of relative quiescence in her depressive illness.

62. In the joint statement Prof Morgan considered that the Claimant's narrative to him was consistent with the available external records.

63. In cross-examination Prof Morgan accepted that the Claimant's account to him involved her suffering from significant depression from about **December 2007**

through to the development of CFS and said that (on her account) she had been paralysed by fear of cancer throughout **2008.** He accepted that the Counselling records (for **Summer 2009**) were not consistent with the Claimant being depressed at that point and that a Counsellor would be expected to notice such depression-although Prof Morgan pointed out that the record available in the trial bundle was unusually brief and he relied on the Claimant's explanation that the Counsellor had concentrated on her financial problems.

64. Prof Morgan did not accept that previous comments about tiredness were consistent with a long standing CFS.

65. The Claimant saw Dr Holden in **December 2014**-some time after the material dates for the development of her symptoms. Dr Holden recorded the Claimant telling him that she was fit and well and happy before the index misdiagnosis. She told him that her anxiety began after the initial abnormal mistake and had never gone away, such that she thought all the time *they have made a mistake*. She complained of significant headaches and persistent deep down depression which was no longer particularly prominent.

66. Dr Holden's theory was that the Claimant was suffering from:
    66.1 A mixed anxiety and depressive disorder before the index misdiagnosis which continued thereafter with different focal points for the anxiety which was always going to be present;
    66.2 Anxious avoidant personality disorder;
    66.3 A somatoform disorder-based on her IBS, other unexplained symptoms and possibly her POCS.

67. Given my findings in relation to the Claimant's symptoms before the index misdiagnosis I cannot accept Dr Holden's primary theory, as I do not consider that there was a continuous anxiety and depressive disorder.

68. During the course of argument I suggested to Mr Feeny that I might reject Dr Holden's view as to the Claimant's earlier condition and he responded that:
    68.1 Prof Morgan based his conclusions on the Claimant's account of her symptoms after the index misdiagnosis. If I rejected that account, which Mr Feeny contended was inconsistent with the contemporaneous notes, it would

fundamentally undermine Prof Morgan's thesis and I would have to reject his evidence about the cause of the CFS. He further supported that by arguing that Prof Morgan conceded in cross-examination that his view depended on my finding that the Claimant's evidence was accurate rather than the information which appeared in the clinical notes;

68.2 In any event, were I to find that the Claimant was an extremely vulnerable personality before the index misdiagnosis (rather than suffering from an established anxiety and depressive disorder) then it was more likely that the development of the CFS was attributable to that underlying vulnerability rather than to any psychological illness caused by the index misdiagnosis. Mr Feeny contended that there was not much to choose between an established mild condition which was quiescent and a high degree of vulnerability and that Dr Holden's theory could therefore "fit" with the latter finding.

69. Mr Baker on behalf of the Claimant:

69.1 Reminded of the relevant test for causation, namely that he had to establish on balance of probability that the index misdiagnosis caused or contributed to the development of the Claimant's CFS;

69.2 Argued that the Claimant was complaining of psychological symptoms in **May 2009** and when receiving counselling and in **December 2009** which represents the period when she was complaining to her GP of widespread fatigue and joint pain given the entries for **July** and **November 2009**. He contends that these fit well Prof Morgan's argument about a psychological contribution to the development of the Claimant's CFS and to the material contribution made by the index misdiagnosis.

(6) The Claimant's condition between October 2007 and the diagnosis of CFS

70. I turn to look at the Claimant's symptoms between **October 2007** and the diagnosis of CFS to determine to what extent those symptoms provide a platform for the views expressed by the experts.

71. The Defendant contends that the Claimant's evidence about her symptoms cannot be relied on and indeed invites me to find that the Claimant is deliberately lying. The Defendant's attack is two pronged and involves:

71.1 An allegation that the Claimant has exaggerated the extent of her enduring anxiety and depression following the index misdiagnosis; and

71.2 An allegation that the Claimant has deliberately concealed a pre-existing history of enduring fatigue.

72. I will look first at the general symptoms/depression and any link to the diagnosis of CFS and then consider the history of enduring fatigue separately.

(6)(a) Depression and the diagnosis of CFS in 2010

73. I look first at the symptoms that the Claimant experienced between **2007** and **2010.**

74. I have already mentioned the evidence in the GP records during this period that the Claimant was being treated by Mr Chadwick. I accept the Claimant's evidence about not wanting to be alone following the index misdiagnosis. I consider that the GP letter of **6th December 2007** accurately identifies her symptoms and concerns and I find that she became *incredibly anxious*. I accept the Claimant's evidence that she became extremely worried that she might have cancer and that her worries became focused upon what would happen to her daughter, Ruby, if she died. Further, during this period, the Claimant's reaction substantially affected her ability to cope with life generally and she went to stay with either her mother or her sister. I further accept that after the consultation with Mr Chadwick in **November 2007** the Claimant began to focus upon the risk that the error was not in finding the cells in the first place but in telling her that the finding itself had been a mistake. The extent of her concern is supported by the entry in the GP notes for **3rd December** and the subsequent letter to Mr Chadwick that, in turn, led to the consultation on **18th December**.

75. However, the letter from Mr Chadwick following the appointment on **15th January 2008** is plainly material when considering the development of her symptoms. Although he was not seeking directly to assess the Claimant's psychological state at that appointment his comment that her mental state was *much improved* must have been based on a discussion with her about the material issues. Although such a finding is inconsistent with the account given by the Claimant to Prof Morgan (when she said that her symptoms became worse after **December 2007**) I regard the contemporaneous comment by Mr Chadwick as more likely to be an accurate reflection of the Claimant's state of mind. However, one must bear in mind that this does not mean that the Claimant had fully recovered as she had been significantly affected by the index misdiagnosis.

76. It is then necessary to determine to what extent the Claimant continued to suffer from active depression as a result of the index events or at all.

77. The next significant GP consultation after **15th January 2008** is on **1st April 2008** when the Claimant was seeking contraceptive advice because she was about to embark on a relationship with a new boyfriend, who I find must have been Lee Broadbent.

78. On **18th April 2008** Mr Chadwick saw the Claimant and his letter stated *She feels very well and is even managing to lose some weight recently. I have therefore reassured her …* I note that in **May 2008** Mr Chadwick was satisfied that the Claimant's under active thyroid was being properly managed.

79. The next consultation of note was on **10th December 2008** when the Claimant consulted her GP because she was worried about the lymph nodes in the side of her neck. She was reassured that there was nothing of note to be found. Although there was an understandable reference to the previous referral to Mr Chadwick there is no mention of the adverse psychological reaction she experienced.

80. On **6th March 2009** the Claimant was injured in a fall at home in which she sustained soft tissue injuries. When seen in the orthopaedic department at the Defendant hospital the Claimant was said to be a *very pleasant lady*, her symptoms were modest and settling and she was discharged. There was no mention of any anxiety or depression.

81. On **1st April 2009** the Claimant saw her GP and was complaining of being tired which seemed to be related to a failure to take her thyroid medication. There was no mention of being tired or unable to sleep due to her worries arising out of the index misdiagnosis.

82. However, on **8th May 2009** the Claimant was noted to be *TATT* (i.e. tired all the time). The notes go on to state, *no energy, difficulty getting out of bed, sleepy, gaining weight, no interest in things, unhappy low mood. Feels isolated, single mum, partner but he has not ties, money worried with bank. Still worried by "cancer scare". No thoughts of harm. Tearful …Sounds depressed .*

83. On review 1 week later on **15th May** the GP noted:

> She has symptoms that would fit with moderate depression but I think that part of her problem relates to coping with life in general. In 2008 she went through a very stressful experience … She feels isolated at home

84. As a result the Claimant was referred for Counselling to Tony Armitage. The only notes dealing with the Claimant's attendance at counselling are at [432]. However, this seems to be a summary only of the consultations and it may well be that some original notes have been lost. I summarise [432] below and insert the relevant GP appointments so that the chronological progress can be seen:

23.06.09	Counselling: Attended assessment appointment, described recent events and some personal family history, agreed to follow up arranged (Other Episode)
15.07.09	Counselling-general … Attended appointment, good progress (Other episode)
30.07.09	Counselling general … Attended excellent progress
16.07.09	Arthralgia of unspecified site comes and goes. Worse towards the end of the day Wrist MCPs middle and ring. Soles of the feet notices swelling too. Nothing at the moment and nothing to see either. Has this a month but similar in the past too. Mum has RA and OA …
30.07.09	[Discussion about weight and POCS]
08.10.09	[The Claimant failed to attend an appointment with Tony Armitage for the second time and was discharged]
04.11.09	Pain in joint-arthralgia/myalgia. Her mum has RA/OA and there is a strong FHx of arthritis. She gets episodes of joint swelling or aching where can hardly walk but on and off. Aches everywhere. o/e no

	swelling in hands and feet (but she feels that they are swollen, tender in all fibromyalgia trigger areas. Doesn't sleep well, gets quite low/stressed at times. Discussed fibromyalgia and she felt it sounded like her symptoms …
16.11.09	Fibromyalgia. Inflammatory markers normal, good result from amitriptyline, pain worse with movement
01.12.09	Lump on neck-lymph node R side of neck has been troubling her since problems began with thyroid lump and then miss diagnosed as Cancer. No apology from hospital-certainly not mentioned in letters that an apology was made. Is still having flashbacks and bad dreams about dying and leaving her daughter. Has become very anxious and feels that she cannot trust anyone. For USS neck to reassure benign nature of lump
15.03.10	Fatigue, arthralgia, swollen glands and sore throats. Symptoms on and off but mainly on since 19. Too tired to do ironing, household chores etc. 1 child, Ruby. Heard about CFS, seems to fit the picture as well as fibromyalgia …
26.04.10	Patient reviewed: read the CFS leaflet and it sounds just like her symptoms she feels. Her main symptoms are fatigue, arthralgia, swollen glands and sore throats. She is often too tired to do the ironing and the household chores. Any exertion means that she can be overwhelmingly fatigued afterwards.

85. In summary the medical notes suggest a picture whereby:
    85.1 The Claimant made a good recovery from the anxiety sustained after the index misdiagnosis and was able to start a new relationship in **Spring 2008**;
    85.2 There was some understandable concern about the discovery of a lump in the next in **December 2008** but there is no record of the Claimant mentioning

any continuing anxiety about cancer as a result of the index misdiagnosis or at all;

85.3 Following the Claimant's fall in **March 2009** she starts to suffer from tiredness which is first noted in **April 2009**-although that seems to be connected to her thyroid medication;

85.4 This is followed by a further mention of tiredness on **1st May 2009** when the Claimant also mentions her worries over the index misdiagnosis for the first time in nearly 18 months, concerns which are mentioned again in the follow up appointment two weeks later. In my judgement the GP's note that the Claimant had difficulty coping with life in general fits well with the finding that she was an extremely vulnerable personality. Further, when viewed as a whole, I consider that the Claimant's complaints in **May 2009** were directed at new concerns which had begun to trouble her since her fall in **March** with the concerns about the cancer diagnosis forming part of the background rather than being the primary focus of the Claimant's concerns which was on her isolation, her concerns about her position as a single mother, her relationship and her money worries-no doubt due to Lee Broadbent no longer being in work after the early part of **2009**. No particular importance seems to have been attributed to the concerns about the index misdiagnosis, which seems to have more historical than current significance-for example there was no mention of continuing nightmares or loss of sleep, which one would have expected to have been recorded if present. In my judgement the *cancer worries* were certainly not central to her presentation as I would have expected them to be if her account to Prof Morgan was accurate;

85.5 The problems experienced in **May** lead to Counselling in **Summer 2009** which appeared to go well-so well that the Claimant did not feel it necessary to continue;

85.6 |The Claimant developed pains in her joints by **16th July 2009** but these seem to have been present for about a month before the consultation. However, the Claimant describes symptoms significantly less marked than the description given in evidence about her Norfolk holiday;

85.7 Despite the counselling going well the Claimant continued to develop pains in her joints and fatigue which had both become quite marked by **November 2009** and which were diagnosed as CFS in **March/April 2010;**

85.8 The Claimant's worries about the index misdiagnosis were mentioned in **December 2009** when the Claimant was concerned about a lump on her neck. This is the only the third mention of the misdiagnosis during the period between **January 2008** and **April 2010** when the diagnosis of CFS is made. Further it is the only mention of the misdiagnosis between the period of counselling and **April 2010**;

85.9 The treating clinicians do not appear to have identified any particular link between the misdiagnosis and the CFS or recorded the Claimant as asserting any such link.

86. I then compare the impression given by the medical notes to the evidence given by Lee Broadhead. He explained that he met the Claimant in about **April 2008** and that their relationship had developed in the normal way. There had been a sexual relationship and he had gone to work-working shifts at TM Developments in Dronfield. Although he said in his witness statement that the Claimant had telephoned him at work about nightmares connected with the index misdiagnosis, in cross-examination he stated that the Claimant had not mentioned the matter much during **2008** and said that she had done so only 2 or 3 times-although he explained that by saying that perhaps it was because they were just getting to know each other and the Claimant was therefore reluctant to discuss the topic. Further, in cross-examination Lee Broadbent accepted that when the Claimant went to her mother's during the day it was because she wanted help with Ruby rather than because of any particular concerns over the misdiagnosis.

87. Lee Broadbent then explained that in **2009** he and the Claimant began to argue and she became increasingly unable to cope. He said that, although he was not sure what the Claimant's problem was at first, he came to believe that it was connected to the misdiagnosis-although he could not explain **why** he believed this. He said during this period he and the Clamant talked about things more as they had got to know each other better and she would talk about the index misdiagnosis. However, he accepted a suggestion from Mr Feeny that they would talk about that *infrequently*. He also accepted that they discussed it when she had a lump, as that would bring the matter back into the Claimant's mind.

88. I note that the evidence from Lee Broadbent is broadly consistent with the medical notes and suggests no particular concerns as to the Claimant's psychological health

in **2008.** It would also be consistent with relationship problems developing at or about the time of the fall in **March 2009** with those relationship concerns then being central to the psychological problems experiences in **May 2009**.

89. I then move to the Claimant's account.

90. In her witness statement the Claimant puts forward the following account:
    90.1 During **2008** she felt depressed a lot of the time but tried to hide it as much as she could;
    90.2 Even before **October 2008** she had no energy and felt sleepy a lot of the time, had nightmares and hallucinations and would ring Lee at work in the middle of the night;
    90.3 By **May 2009** she was tired, teary, suffering from low mood and struggling to cope. She said that she did not want to go out socially or see friends and was worried that this was affecting her relationship with Lee. She said that she was referred for counselling but that it was of no assistance and that the only place she felt happy was when visiting her parents;
    90.4 In the **Summer of 2009** she had gone to Norfolk with Lee and the children and found that it was painful to move such that she would just lie on the beach-she struggled to get out of bed or walk;
    90.5 Lee had to assist around the home and therefore did not look for work until **April 2010** (he had left his job in **Dronfield** in **October 2008** and left his replacement job in **early 2009**);
    90.6 In **September 2009** she had started a course in Children's Learning and Development which involved attending College on Wednesday morning and a placement 1 day a week at Ruby's school. She really enjoyed the time spent on placement but became increasingly unable to cope with the work and had to stop in **early 2010**;
    90.7 In **November 2009** she consulted her GP about the joint pains and the swelling. She said she was very low/depressed and having nightmares about dying. She was too tired to help with household tasks because of trying to study and on bad days was unable to get out of bed-struggling to open her eyes;
    90.8 In **March 2010** she was she was no longer able to help around the house and arranged an appointment with her GP.

91. In evidence the Claimant confirmed her statement and said that:

91.1 she fell in love with Lee during **2008** and that it was a good year, although she still thought about the misdiagnosis *deep down* and that she *held everything inwards* as she tried to *forget and get on with things*;

91.2 she explained that things had gone downhill in **2009**. The Claimant did not accept that the counselling had been helpful. She stated that the questions she was being asked were not helping her and that it was drawing attention to areas which she was not strong enough to cope with at the time. The Claimant explained that she had financial problems and that the Counsellor had given good advice on financial matters, suggesting that she contact an Advice Centre where the woman she was dealing with helped her to get a plan and pay off her debts. The Claimant said that she had explained a little about the misdiagnosis and been advised to write asking for an apology. However, she did not want to open up about that and *just wanted to curl up in a ball*;

91.3 the Claimant accepted that the GP notes for **November 2009** did not mention anything about the cancer scare and accepted that the cancer scare was not *looming large* in her mind when she consulted her GP. However, when answering questions about the consultation in **December 2009** where she had mentioned that she was having flashbacks and bad dreams about dying the Claimant said that she had always been worried about the possibility of cancer and that she checked herself all the time.

92. It is then necessary to consider what findings I make as to the Claimant's evidence that she was suffering from anxiety and depression.

93. I find that the Claimant was honest when giving contemporaneous descriptions of her symptoms to the treating clinicians-although even then I consider that there was a tendency to exaggerate the extent of the symptoms. Further, I find that the Claimant was someone who would seek medical advice if she felt that she was suffering from a problem. This is borne out by the number of times the Claimant consulted her GP in the period before the index misdiagnosis. Further, I note that the Claimant had no difficulty or embarrassment in explaining her psychological symptoms to her GP in the period up to the end of **2007**.

94. It follows that I do not feel that I can rely on the Claimant's witness statement or her evidence (or indeed her account to Prof Morgan) about the events that occurred between **2008 – 2010** where that evidence contradicts the contents of the medical notes. I prefer to rely on the contemporaneous notes.

95. In the circumstances I find that on the balance of probabilities:

95.1 The Claimant suffered from marked anxiety and depression following the index misdiagnosis, which caused her to make significant changes to the way in which she managed her life and made her reliant on her family at least until the consultation with Mr Chadwick in **December 2007**. Thereafter the symptoms gradually abated such that she was much improved by the consultation with Mr Chadwick in **January 2008**;

95.2 By the time the Claimant met Lee Broadhead in **April 2008** she had substantially recovered from the anxiety and depression consequent on the misdiagnosis. In my view such a finding is consistent with:

.1 The failure to mention any continuing problem to her GP;

.2 Her general readiness to embark on a relationship in **2008** and the development of that relationship which both she and Lee Broadbent agree was happy during **2008;**

.3 Lee Broadbent's evidence that the Claimant had only mentioned the matter to him 2x or 3x during **2008**;

.4 Mr Chadwick's letter in **April 2008** recording that the Claimant felt very well;

95.3 None of the above factors are consistent with the Claimant becoming obsessed by fears of death and suffering a significant depressive illness immediately after **December 2007**;

95.4 Following her fall in **March 2009** the Claimant failed to take the medication prescribed for her hypothyroidism and began to feel tired all the time which was identified at the GP consultation on **1st April 2009**;

95.5 However, by **May 2009** the Claimant was experiencing difficulties in her relationship with Lee Broadbent. She had been caught up with a number of problems-including money worries, feeling isolated, gaining weight and being tired all the time. The cancer scare was mentioned but does not seem to have been central to the Claimant's worries or symptoms in the first consultation with the GP and although it is mentioned more fully in the second I do not consider that it was central to the Claimant's problems;

95.6 In **July 2009** the Claimant's physical problems increased. However, I do not consider that they were as marked as the Claimant suggests in her statement/evidence. There is a significant difference in the level of symptoms described to the GP between **July** and in **November**. If the symptoms were as serious in **July 2009** as she portrayed them in evidence then I consider that she would have described them to her GP at that stage. Further, during the Autumn term the Claimant was at College and doing a work placement at her daughter's school which strongly suggests that any joint pain/tiredness was not that significant in **September 2009**;

95.7 Therefore, I consider that the Claimant's physical symptoms were not that as severe as she contends in **July** but gradually deteriorated to the level described in the GP notes by **November**;

95.8 As the Claimant herself said in evidence, she was not particularly concerned with the problems of the index misdiagnosis when discussing her problems (namely the aches and pains then being described as arthralgia/fibromyalgia) with the GP in **November**;

95.9 I accept the Claimant's evidence that she did not raise her concerns about the index misdiagnosis with the Counsellor in the sessions between **July** and **October.** In my judgement the Claimant did not do so because she did not think that they were central to her psychological problems at the time. The counselling helped her to resolve the other matters causing her low mood which is why the counsellor concluded that progress was excellent and why the Claimant felt well enough to discontinue counselling and take up education/work placement;

95.10 I reject the Claimant's evidence that she was not prepared to discuss the index misdiagnosis with the Counsellor. She had always been prepared to discuss her concerns with those responsible for helping in the past. It follows that any continuing concerns about the misdiagnosis were not sufficient to prevent her making excellent progress with the Counsellor and feeling sufficiently well to discharge herself;

95.11 The fact that the Counsellor recorded that the results were excellent indicates that the Claimant had made a good recovery from the psychological problems that were concerning her. Therefore, I do not consider that the Claimant had any significant concerns about the index misdiagnosis-although I find that some degree of worry about the index misdiagnosis was likely to surface if she faced similar problems in future;

95.12 It was only in **December 2009** when she found a lump that the Claimant's concerns about the index misdiagnosis (briefly) became central to the problems that she was raising with the GP;

95.13 I accept that the Claimant rang Lee Broadbent at work on a couple of occasions to tell him that she had had a nightmare about dying. However, I think this likely to have been around the time of the consultation with her GP in **December 2009** when the Claimant was worried about a lump and mentioned such nightmares to the GP;

95.14 Any concerns about the index misdiagnosis slip back into the background during **2010** and are not mentioned when the Claimant sees her GP in **March** and **April**;

95.15 In the circumstances, whilst there was some mention of the index misdiagnosis it was only playing a central role in **December 2009** when it was relevant to the medical problem she faced (the lump). Certainly the Claimant did not see the index misdiagnosis as central to the problems that she was experiencing in **2008-2010**;

95.16 It follows that I reject the wholly different account the Claimant gave to Prof Morgan in which the index misdiagnosis and the worries about death came to dominate her thoughts from **December 2007** onwards and were responsible for a Major Depressive disorder which continued to the development of the CFS.

(6)(b) The onset of being tired

96. The GP notes show entries which mention fatigue before on:

96.1 **10th January 2000:** where the Claimant is said to have complained that she was tired all the time and had poor energy having been intermittently tired for the last few months;

96.2 **17th January 2000:** this was the first mention of stress related problems and being unable to face work. The Claimant is recorded as saying that she *tires easily*;

96.3 **1st March 2004:** the Claimant was complaining of being generally unwell and tired;

96.4 **22nd August 2007:** the Claimant was noted to have a lump on her neck and to be having hot flushes and feeling tired;

96.5 **29th October 2007:** tests showed hypothyroidism with marked weight gain and tiredness;

96.6 **6th December 2007:** in the GP letter to Mr Chadwick the Claimant was noted to be complaining of being progressively unwell for about a year and getting progressively tired. She also complained that there had been a delay in finding a solution to her tiredness and diagnosing her hypothyroidism;

96.7 **1st April 2009:** C is recorded as being *tired all the time* and having no energy. However, the notes record that she had failed to take her hypothyroid medication;

96.8 **8th May 2009:** I regard this as the start of a series of consultations in which the Claimant complained of tiredness culminating in the diagnosis of CFS in early **2010**;

96.9 **15th March 2010:** the GP notes record [416] as follows:

> Fatigue, arthralgia, swollen glands and sore throats. Symptoms on and off but mainly on, since aged 19 …

When asked about this entry the Claimant stated that she had not considered it before and that she had suffered from tiredness and sore feet when on her feet all day at work when she was 19.

97. **The application for benefit:**

97.1 The Claimant made an application for benefit some time just after the birth of her baby on **9th August 2011** and the handwritten application is in the bundle at C[596];

97.2 The form states:

> I have a illness called ME. And was diagnosed last year, March time, 2010. Although my condition had been there for a while. It took the doctors a while to understand and diagnose what was wrong with me. I also have an underactive thyroid caused by a immune disease, Thyroiditis. I have had symptoms for years but over the past 3 to 4 years they have become worse.

97.3 The Defendant points out that the Claimant's hypothyroidism had been well controlled since **2008** (apart from the apparent increase in tiredness in early **April 2009** which the Claimant and her GP linked to that condition). Therefore, D contends that the reference to symptoms being present for 3 to 4 years and becoming worse could not be to that condition. It could only be a reference to the CFS;

97.4 It follows that there are two possibilities, either:

.1 The Claimant had been suffering from increasing tiredness for 3 to 4 years which she had not told her GP or the medical experts about; or

.2 The Claimant was exaggerating her CFS-like symptoms in the application for benefit and proving an inaccurate historian.

98. I regard the complaints of tiredness in **2000** as discrete, relatively short-lived and of a very different magnitude to those complaints made in **2009**. I do not regard the complaint of tiredness in **March 2004** when the Claimant discovered that she was pregnant, as surprising or likely to be part of any wider picture. The complaints in **2007** appear to be connected to the Claimant's hypothyroidism and the complaint of tiredness in **April 2009** was also viewed by the GP as attributable to the Claimant's failure to take her medication for that condition.

99. Therefore I do not think that there is any evidence that the Claimant was suffering from significant tiredness whether from the age of 19 or over the 3 to 4 years before the claim for benefit in **Autumn 2011**. Although the statements made by the Claimant at [416] and C[596] form part of the documentary evidence notes they are inconsistent with the contemporaneous notes for the period to which the Claimant was then referring. I prefer to rely on the notes for the material time as evidence of her condition at each point. Therefore, I do not consider that that either the entry at [416] or the entry at C[596] demonstrates that the Claimant is now dishonestly concealing a significant history of tiredness. In my view they are but further examples of her unreliability as a historian.

(7) The progress of the Claimant's symptoms

100. I consider it sensible to examine the progress of the Claimant's condition after the onset of CFS before returning to the medical evidence as to causation because the nature and extent of her symptoms is relevant both to her credibility and to any link between her CFS and the index misdiagnosis.

101. I set out the entries from the clinical notes which I consider to be material (but do not include all such notes):

Date	Entry	Page
21.06.10	GP Note: *Depression … and anxiety attacks. Been worsening over several months. Relationship breaking down … would*	[415]

	like medication	
26.07.10	GP Note; *Depression interim review-by telephone. Feeling much better*	[415]
23.09.10	GP Note: *wanting to try for another child*	[414]
20.12.10	Letter: Claimant is 7 weeks pregnant	[413]
19.01.11	GP Note: seen in gynaecology clinic. No mention of CFS or index misdiagnosis. Advised to increase thyroid medication.	[412]
21.02.11	GP Note: *worried breasts larger since pregnant, right medial breast slightly more red for last 8w no infection or lumps.* No mention of CFS or index misdiagnosis	[412]
01.03.11	GP Note: letter on Claimant's behalf about her incapacity to attend a gym because of her CFS	[412]
21.04.11	GP Note: Breast examination because of concern about a lump. Noted that would be reviewed in obstetric clinic	[411]
31.05.11	Claimant is referred from obstetric clinic and seen in the breast clinic: *She is a known hypothyroid patient on Thryroxine, she is also known with polycystic ovarian disease. Otherwise she is fit and healthy with no known drug allergies*	[411]
17.08.11	GP Note: Birth of second child, Elise	[411]
22.09.11	GP Note: Contraceptive advice	[410]
10.10.11	GP Note: Claimant worried about her thyroid medication	[410]
28.11.11	GP Note: *Tiredness-had 3 heavy periods … worried ME returning*	[600]
19.12.11	GP Note: *Depressed mood-since finding breast lump during pregnancy has struggled with mood following incident previously when erroneously told she had breast cancer*	[601]

11.02.12	GP Note: traumatic left hallux from ill-fitting trainers	[602]
14.02.12	Examination by Prof Morgan: The Claimant informed Prof Morgan that conceiving her second child had led to *some degree of improvement in symptoms of both depression and chronic fatigue*. However, she was disappointed at the extent of the improvement during pregnancy. She described the fatigue syndrome as stable but said that there had been a *significant deterioration in her mood with continued sleep disturbance anhedonia tearfulness and preoccupation with health related concerns, though not to the nadir to which she had sunk* The Claimant scored a maximum of 14 on a fatigue score	
31.05.12	GP Note: *… widespread joint pains, not just back. Feels flare up of CFS*	[602]
07.08.12	GP Note: … *Depression interim review-knows citalopram is helping, but still low and anxious*	[603]
05.11.12	GP Note: *Depression interim review-much better on 40mg …*	[604]
16.01.13	CBT Notes: *Presented with symptoms of depressive disorder alongside general anxiety/ME. Tearful, lack of motivation, tiredness and low self-esteem and poor view of the future. Angry and frustrated. Seeks reassurance from partner, … not to be alone over eats (increase) in body weight feels vulnerable*	[585]
12.02.13	CBT Notes: *Has been physically unwell … managed to control her urges to consume extra food on some occasions …*	[585]
20.02.13	CBT Notes: *… significant improvement in general mood*	[586]
27.02.13	CBT Notes: *General mood remains stable … discussing future activities and planning reengagement into phased work*	[586]

06.03.13	CBT Notes: *Mood maintained … to include swimming and socialising*	[586]
17.04.13	CBT Notes: *Mood remains stable. Reports significant improvement in personal relationship with partner*	[587]
14.05.13	CBT Notes: The Claimant managed to drive to the consultation	[587]
03.07.13	CBT Notes: *Reports significant improvement in both general mood and activity level*	[588]
13.09.13	CBT Notes: *… Has achieved almost all personal goals. Mood stabilised. Increased activity levels and motivation. Planning to return to work in near future … Discharged*	[588]
15.10.13	Examination by Prof Morgan The Claimant described her CFS as being a lot better but continuing with episodes persisting but being less frequent and less prolonged. The Claimant described herself as holding a positive frame of mind with a substantial reduction in her nervous symptoms of anhedonia, anergia and pessimistic cognitions	
04.12.13	GP Notes: Breast lump	[606]
03.02.14	GP Notes: Abdominal pain … *Admits was drinking a bottle of wine a night but has reduced this doesn't drink every night*	[607]
24.04.14	GP Notes: Medication requested *feels as if ME is flaring up*	[609]
15.09.14	Examination by Prof Morgan Prof Morgan described the Claimant's symptoms as improved and *sub-clinical*	[108]

03.11.14	GP Notes: *History: known to have ME. At the moment has flare up affecting right shoulder. No trauma to shoulder. Says symptoms typical of ME flare up. Associated lethargy.*	[610]
02.12.14	Examination by Prof Morgan The Claimant described a significant worsening in her CFS despite continued improvements in her depression.	
17.12.14	Examination by Dr Holden	
12.03.15	GP Notes: Found lumps in right breast	[610]
20.04.15	GP Notes Low back pain	[611]
07.01.16	GP Notes: *Acute sinusitis had for 2 and a half weeks with cough and sore throat-says in bed all over Christmas, dis have a stomach bug and cold before this which she feels triggered her ME. Says felt tender over sinuses worse on bending forward*	[616]
12.01.16	GP Notes: *…. Sinuses much improved … Claire feels in hindsight that antibiotics were probably not needed and feels it was the ME causing the symptoms. Claire wanted tis specifically put on her records*	[616]

102. In my view it is significant that:

102.1 there is no mention of any concerns about the index misdiagnosis when undergoing CBT. In cross-examination Prof Morgan said that he would have expected some investigation of the cause of the depression on assessment even though the emphasis would have been on helping the Claimant to focus on what she could do. Therefore, in my judgement the failure to mention the

index misdiagnosis supports the Defendant's argument that the index misdiagnosis was not a material cause of the Claimant's illness at this stage;

102.2 the only mentions of the index misdiagnosis in the GP notes (rather than the reports prepared for the litigation) occur when there is a provoking factor such as a breast lump;

102.3 the notes suggest that the CFS symptoms tend to wax and wane rather more than is accepted by the Claimant. On a number of occasions she is concerned about the ME symptoms returning-which suggests that they had not been present before-or at least not present to a significant degree. For example there is no mention of her CFS problems during pregnancy with Elise but in **November 2011** the Claimant refers to tiredness and her ME returning. This indicates that the CFS problems improved rather more in pregnancy that the Claimant suggested to Prof Morgan;

102.4 the Claimant's CFS deteriorated between seeing Prof Morgan in **September 2014** and **December 2014** when she was due to see Dr Holden. It also deteriorated over **Christmas 2015**, shortly before trial. In my view this is consistent with anxieties about the litigation acting as a maintaining factor as suggested by Dr Holden.

(8) Causation revisited

103. It follows from my findings in relation to the Claimant's symptoms before the index misdiagnosis that I cannot accept Dr Holden's view that the Claimant was suffering from an active psychiatric condition before the index misdiagnosis. However, I have also found her to be significantly more vulnerable than suggested by Prof Morgan given the extent to which she had suffered from anxiety and depression in the period before the index misdiagnosis.

104. It is then necessary to consider whether the expert evidence supports a finding that the Claimant's reaction to the index misdiagnosis made a material contribution to the onset of her CFS and further depressive illness.

105. As I have already explained that Prof Morgan's conclusion that the index misdiagnosis contributed to the onset of the CFS was made on the basis of the explanation set out in his report. However, for the reasons set out above I do not consider that the Claimant's account to Prof Morgan accurately reflects the symptoms that she suffered. On balance I do not consider that the Claimant is

deliberately lying when giving that history but I am firmly of the view that her evidence is wholly unreliable where it conflicts with the notes. Therefore, rather than the Claimant's depressive symptoms deteriorating after **December 2007** I consider that they largely improved-certainly in the medium term.

106. This is particularly significant as Prof Morgan found that the Claimant experienced a normal adjustment reaction to the index misdiagnosis up to **December 2007** and only developed a Depressive Illness of Moderate severity connected with the index misdiagnosis immediately **after** that point: see his report paragraphs 7.6 and 7.7 [77].

107. I therefore do not consider that Mr Morgan's primary thesis on causation can be supported on the findings that I have made.

108. I must then determine whether:

108.1 Prof Morgan's evidence supports any secondary argument on causation; or

108.2 As Mr Feeny contends on his secondary argument, the Claimant (as n highly vulnerable personality) developed another anxiety and depressive disorder which was of relatively short duration with any mention of the index misdiagnosis thereafter being in the context of situations attributable to other life events or when the Claimant had discovered a lump when (it is agreed by Prof Morgan) she would have been anxious in any event.

109. Mr Baker argued that, even on the notes:

109.1 the Claimant was suffering from depression in **May 2009** to which the index misdiagnosis contributed;

109.2 the psychological problems endured because the Claimant was undergoing Counselling through **Summer/early Autumn 2009;**

109.3 the Claimant mentioned the index misdiagnosis and her fears of cancer in **December 2009**;

109.4 the symptoms of CFS were developing in this period from **July 2009** to **March/April 2010**;

109.5 Therefore there must be a causal link.

110. The problem for Mr Baker's secondary argument is that Prof Morgan did not give that evidence. In the Joint Statement he did not see any significant difference

between the Claimant's account to him and the account in the available external records: see [292]. He modified that view somewhat in the course of cross-examination, accepting that the notes were not consistent with the narrative she gave of constant health anxiety throughout **2008** and having been paralysed by fear of cancer during that period. However, his view did depend on accepting her account of the build up of her symptoms and upon the Claimant having been preoccupied with the index misdiagnosis.

111. In my judgement having rejected the evidence about the way in which the Claimant's symptoms developed there is not sufficient evidence from Prof Morgan to find a causal link between the CFS and the continuing anxiety and depression and the index misdiagnosis.

112. In my view it is more likely that:

112.1 The Claimant developed an anxiety and depressive illness following the index misdiagnosis (as both experts agree);

112.2 The Claimant recovered from that episode within a fairly short period being substantially recovered by **January 2008** and more or less fully recovered by **April 2008**;

112.3 When presented with similar situations, i.e. when she found lumps, the Claimant would have been anxious in any event (as both experts agreed). Recalling the index misdiagnosis was part of this anxiety and may have led to some limited increase in symptoms at the time of such anxieties;

112.4 The anxiety and depression with which the Claimant presented in **May 2009** was the result of other life events on her highly vulnerable personality-as her GP put it *part of her problem relates to coping with life in general*. Whilst the Claimant mentioned her problems following the index misdiagnosis and her concerns when experiencing new symptoms this was not central to her presentation and (on her own evidence) was not mentioned when she underwent counselling;

112.5 This anxiety and depression and the other episodes of such anxiety and depression recorded in the Notes were not driven by the index misdiagnosis but by the effect of other life events on her vulnerable personality;

112.6 It follows that the index misdiagnosis did not (on balance of probabilities) materially contribute to the development of the Claimant's CFS. The CFS may have been related to the Claimant's psychological problems but given my

findings about the cause of those psychological problems it was not causally linked to the index misdiagnosis;

112.7 More importantly I do not accept that there is any or any sufficient evidential basis upon which to find that any modest increase in the level of the anxiety experienced by the Claimant when finding lumps made a material contribution to the development of the Claimant's CFS.

113. Therefore I find that the Claimant has failed to establish a causal link between the index misdiagnosis and the significant depressive illness/CFS from which she suffered.

(9) Damages

114. **Pain, suffering and loss of amenity:**

114.1 In the circumstances the Claimant is entitled to compensation for the significant anxiety and distress that she experienced between the index misdiagnosis and **January 2008** and the modest residual symptoms;

114.2 Doing the best I can and looking at the **JC Guidelines** I consider that the claim comes into the upper end of the *Less Severe* category and I therefore award the sum of **£4,750** under this head of claim.

115. **Care:**

115.1 I have accepted that the Claimant suffered from considerable anxiety and distress in the period between **October 2007** and **January 2008** and that she relied on her family for support;

115.2 There were some more limited symptoms in **early 2008**;

115.3 The parties agreed past care in the sum of £35,000 if causation was established. However, no agreement was reached on the figure for care if I found causation not to be established;

115.4 On this basis I must do the best I can on the information available;

115.5 In my judgement the hourly rate should be the basic rate rather than the aggregate rate given the family nature of the care being provided. Further it should be discounted by 25%;

115.6 The Defendant's care expert allows 1.8 hours a day for 83 days up to **31st December 2007** and 7 hours a week thereafter;

115.7 The Claimant's expert allows 4 hours per day up to 12th November and 3 hours a day thereafter;

115.8 Doing the best I can in all the circumstances I allow an average of 3 hours per day for the period to **31st December 2007** and, consistent with my findings that the Claimant continued to improve and was essentially well by **April 2008** I allow an average of 1 hour per day for the period to **30th April**;

115.9 This produces the following calculation:

.1 10th October to 31st December: 83 days x 3 hours x £6.29 x 75% = £1,174.66;

.2 1st January to 30th April 2008: 120 days x 1 hour x £6.59 x 75% = £593.10;

.3 **Total = £1,767.76**.

116. **Travel:**

I allow £9.60 for the additional trips to Chesterfield Hospital for unnecessary tests and additional appointments with Mr Chadwick.

117. Therefore I award:

117.1 PSLA: £4,750;

117.2 Care: £1,767.76;

117.3 Travel: £ 9.60;

117.4 **Total: £6,527.36**.

118. Interest is due on general damages at 2% from the date of service of the Claim Form.

119. Interest on care and travel should be calculated at ½ the prevailing special account rate from date of index misdiagnosis to **30th April 2008** and at the full special account rate thereafter.

120. I would be grateful to counsel if they would calculate the sum due by way of interest on this basis.

(10) Damages if causation had been established

121. For the sake of completeness I consider the question of damages on the basis that causation had been established. Given that this is unnecessary on my findings I set out my views fairly briefly.

122.**PSLA:**

122.1 Even if I found causation to be established I would have felt compelled to find that the psychological symptoms were modest between **January 2008** and (at least) **May 2008**. Further, I consider that the CFS symptoms did not become marked until **November 2009** and that they have waxed and waned over the period since they began;

122.2 Further, I consider that the Claimant's symptoms are likely to improve significantly once the litigation is over. I reach that conclusion because even Prof Morgan considers that there are likely to be lesser care needs and a capacity to return to work eventually-his formerly more optimistic perspective was altered because of the relapse between **September 2014** and **December 2014**. In my view that relapse and the relapse over **Christmas 2014** were examples of the litigation coming to the forefront of the Claimant's mind and thereupon leading to an exacerbation in her condition;

122.3 In my judgement any CFS symptoms are likely to resolve fairly quickly after the litigation but are likely to become more pronounced should the Claimant suffer from increased anxiety in future;

122.4 On this basis I take the view that the appropriate award for pain suffering and loss of amenity would be in the region of **£30,000**.

123.**Past Care:**

This was agreed in the sum of **£35,000.**

124. **Past Loss of earnings:**

124.1 Mr Baker accepts that the Claimant would not have gone back to work until **2010**. I consider that a sensible reflection of the difficulties the Claimant would have encountered in balancing child-care and work given her psychological vulnerability and the problems suffered at work in the past;

124.2 It seems to me that the Claimant would have looked for a part-time job limited to school terms and that such employment would have been difficult to find;

124.3 Further the Claimant would have taken full maternity leave in the period leading up to and following the birth of her second child, Elise. I think it unlikely that the Claimant would have returned to employment until Elise started school. On that basis the Claimant's period in work would have been

limited to that between Ruby starting school and any maternity leave with Elise;

124.4 Taking a broad-brush approach I allow **£5,000** net for this period.

125. **Past Travel:**

This was agreed in the sum of **£200**

126. **Past Medical Expenses:**

These were agreed in the sum of **£1,700**.

127. **Future Loss: Care:**

127.1 Both experts agree that excessive care is counter-productive and would prevent the Claimant gradually rebuilding her own skills and independence;

127.2 The parties helpfully agreed that if care was required the cost of providing it would be:

.1 £3,120 pa on a gratuitous basis;

.2 £5,585.08 pa if it was provided professionally;

127.3 I think it likely that such care as the Claimant requires will be provided by a partner or family member in the short term. If care were required over a longer period there would be a risk that the Claimant might separate from her partner and/or that the Claimant's mother would not be able to provide support and assistance;

127.4 I note that Mr Baker for the Claimant limited his claim to multiplier of 10 for any care claim given the difficulty in predicting what might happen thereafter;

127.5 It seems to me that I must take a broad-brush approach to the issue. I allow a full care claim for 1 year and thereafter allow a further 3 years purchase to deal with those times when the symptoms increase;

127.6 This amounts to **£12,480**.

128. **Future loss of earnings:**

128.1 In my view the Claimant would have looked to return to work in about **September 2016** when Elise was of school age;

128.2 I think it likely that the Claimant would have looked for part-time school term-time work so that she did not have to cope with practical difficulty and expense of childcare. [I note that in **Autumn 2009** the Claimant was

investigating carrying out that type of work, spending a day a week in her daughter's school];

128.3 I think such earnings unlikely to have exceeded £12,000 pa net as I do not consider that she would have qualified as a teacher and at best she would have obtained work as a Teaching Assistant;

128.4 I think it right to allow a 2 year period for the symptoms to settle and for the Claimant to find work;

128.5 Thereafter there are likely to be periods when she cannot work as a result of her symptoms and there will be some prejudice on the labour market. However, the Claimant would always have been vulnerable to anxiety related absences and those absences alone may have led to some loss/prejudice;

128.6 Doing the best I can I allow 2.5 years loss of net earnings for the prejudice/future loss in addition to the 2 years for work search;

128.7 On that basis I award **£54,000.**

129. **Aids and equipment:**

This is agreed at **£3,730**.

130. **Future medical treatment:**

130.1 I do not consider that the Claimant requires the type of complex treatment identified in the report from Prof Morgan;

130.2 However, the Claimant may well benefit from some form of CBT or Counselling;

130.3 Doing the best I can with the figures I award the sums agreed in the Schedule namely £1,050 and £1,200 making a total of **£2,250;**

130.4 I do not consider that any other future treatment is required.

131. This amounts to a total award of **£144,360.**

132. In the circumstances I have not calculated the claim for interest but see no reason why it should not have been awarded on the same basis I have identified in relation to the award that I have made.

(11) Conclusion

133. For the reasons set out there will be judgement for the Claimant in the sum of **£6,527.36** + interest to be calculated on the basis set out above.

134. I would be grateful if the parties would draw up an appropriate order. If there is an issue on costs I invite the parties to consider whether they wish that matter to be dealt with by way of written submissions and if not to let me know and arrange a date for any such issue to be determined.

7th June 2016

HH Judge Mark Gargan