EMPLOYMENT TRIBUNALS

BETWEEN

Miss Clara Jennings **(Claimant)**	**and**	**Ms Davinda Kaur** **t/a Adhara Hair and Beauty** **(Respondent)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

REMEDY

Held at: **Birmingham**

On: **22 January 2018 (and 26 January 2018 in chambers)**

Before: **Employment Judge Coghlin and Mrs D Hill**

Representation:

Claimant: **Andrew Bousfield, counsel**

Respondent: **Ian Pettifer, solicitor**

JUDGMENT

The unanimous judgment of the tribunal is that the respondent is ordered to pay the following sums to the claimant:

1. **£19,566.81** by way of compensation for pregnancy discrimination, which includes (1) compensation for injury to feelings of £12,500; (2) compensation for other losses of £4,514.62; and (3) an uplift of 15%

pursuant to s207A of the Trade Union and Labour Relations (Consolidation) Act 1992; and

2. interest of **£2,437.02**; and

3. an award of **£468** pursuant to s38 Employment Act 2002.

REASONS

Introduction

1. By a written judgment with reasons dated 30 May 2017 and sent to the parties on 5 June 2017 ("the Liability Judgment") the tribunal held that the claimant succeeded with her claims of automatic unfair dismissal on pregnancy-related grounds and direct pregnancy and maternity discrimination. The matter now comes before the tribunal on the question of remedy.

2. In the week before this remedy hearing it became clear that one of the tribunal members who heard the matter at the liability stage, Mr Khan, would not be able to participate in the remedy hearing listed for 22 January 2018 and would not be available for any postponed hearing before late April 2018. Given the past delays in this case, the tribunal contacted the parties in advance of the hearing to inform them of the position and to enquire whether they were content for the remedy hearing to proceed with a panel comprising solely of the employment judge and one lay member, Mrs Hill, a course of action which is permissible under section 4(1)(b) of the Employment Tribunals Act 1996 provided that both parties agree. The parties were informed of the fact that Mrs Hill is taken from the tribunal's panel of employers' representatives. The parties confirmed their consent to that course of action. At the outset of the hearing I again raised the matter with the parties and they both again confirmed that they were content so to proceed.

3. As at the liability stage, the claimant was represented by Mr Andrew Bousfield and the respondent by Mr Ian Pettifer. The tribunal is grateful to them for their assistance and for their able representation of their respective clients. The tribunal heard oral evidence from the claimant, who adopted her schedule of loss (to which certain new documents were appended) as a witness statement, and relied on a further witness statement relating to the respondent's alleged failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the ACAS Code"). Reference was also made to some documents from the bundle of documents used at the liability hearing, and to the claimant's witness statement from that hearing.

4. The following remedy issues had been identified at the liability stage:

    a. What loss has the claimant suffered?

    b. Has the claimant taken reasonable steps to mitigate her loss?

    c. Should any award be adjusted pursuant to s207A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") on the ground that either party unreasonably failed to comply with a provision of the ACAS Code of Practice on Discipline and Grievances at Work?

5. There was also an issue about the injury to feelings which the claimant had suffered, and as to the award which should be made in that regard.

6. A further issue had also been identified at the liability stage of whether a costs award should be made pursuant to r76(4) of the 2013 Employment Tribunal Rules in respect of tribunal fees paid by the claimant. In light of the regime now introduced for the recoupment of fees following the decision in **R (UNISON) v Lord Chancellor** [2017] UKSC 51 the parties agreed that no order should be made by the tribunal under this heading, and accordingly the tribunal makes no such award.

7. The parties agreed that the amount to be awarded pursuant to section 38 of the Employment Act 2002 for the respondent's failure to provide a statement of employment particulars was £468, and the tribunal makes an award in this sum.

Further findings of fact

8. The tribunal makes the following findings of fact relevant to the question of remedy.

April to August 2016

9. At the time of her dismissal, which was communicated to her and took effect on 14 April 2016, the claimant was absent from work due to sickness and was being paid statutory sick pay (SSP) of £88.45 per week. Her "fit" note stated that her condition was "extreme lethargy and reflux". That fit note was due to expire on 19 April 2016, which would have at least broadly coincided with the end of her first trimester of pregnancy.

10. Having been dismissed, the claimant decided to start work on a self-employed basis, cutting clients' hair in their own homes. She began

this work on 28 April 2016 and continued until early June 2016 when she stopped due to feelings of low mood. During this brief period of self-employment she earned a net total of £496.

11. The claimant's evidence was that, had she not been dismissed by the respondent on 14 April 2016, she would have returned to work from the period of sick leave on 19 April 2016 when her fit note expired, and she would have continued to work until 13 August 2016, about two and a half months before her due date of 2 November 2016.

12. The respondent contended that the claimant did not show that she had ever regained her fitness to work after her dismissal, and argued that she would therefore not have received any pay (at least beyond SSP) had she remained in the respondent's employment during this period.

13. The tribunal found the claimant's evidence with regard to her fitness to work as of 19 April 2016 to be confused and contradictory. She maintained variously at different stages of her evidence that the extreme lethargy referred to in her fit note had, by 19 April 2016, got better, remained the same, and got worse. We concluded that the claimant was not in fact fit to return to work on 19 April 2016 and that she would not have been had she not been dismissed. However we note that as of 28 April 2016 she was in fact able to begin work on a self-employed basis. On the balance of probabilities we find that had she not been dismissed by the respondent, the claimant would have returned to work on or around 28 April 2016. In respect of the period from 14 to 27 April, therefore, her losses are confined to the loss of SSP at the rate of £88.45 per week.

14. The next question is whether the claimant would have remained at work, and therefore in receipt of full pay, throughout the ensuing period up to 13 August 2016, bearing in mind that she was, as things in fact transpired, unable to continue with her self-employed work beyond early-June 2016. The respondent's position is that the claimant has not proved her loss in relation to this period and that, on the contrary, the evidence suggests that the claimant would have had to take this time off even had she remained in the respondent's employment. For the reasons set out below we do not accept the respondent's contention on this point.

15. It is clear that the claimant was, understandably, shocked and affected by her dismissal. Her immediate reaction to learning of her dismissal, which she communicated to the respondent by text message on 14 April 2016, was that she was "very disappointed" and that she found it "disgusting" (page 266).

16. The claimant's GP records note that on the next day, 15 April 2016, she told her doctor that she was "upset as sacked by workplace due to pregnancy" (page 145).

17. On 12 June 2016 the claimant completed an HMRC form designed for applying for SSP, although, as the claimant told us, she was in fact using it in order to apply for a different benefit, ESA (page 142). The form contained a very small space to give details of the claimant's sickness, in which she wrote "Antenatal depression investigation" – there was no room for her to write anything else - and she indicated that her sickness had begun on 7 June 2016. A "fit" note was produced on 14 June 2016 which signed the claimant off for two weeks for "low mood – under investigation at hospital" (page 142). Deborah Johnson, a midwife, completed a note about the claimant on 14 June 2016 which recorded: "Feeling stressed and anxious. Recently lost her job, she claims she was sacked for being pregnant. Currently suing her boss. Tearful, anxious, smoking more, losing weight."

18. The referral did not ultimately result in a formal diagnosis of depression or antenatal depression (and Mr Bousfield did not suggest that this is a case where it would be appropriate for the tribunal to make an award for personal injury).

19. On the basis of this evidence, and on the claimant's oral evidence which in this respect we accepted, we concluded that the claimant's dismissal had had a real effect on her and had been a significant factor which led her to be unfit for work after early June 2016. It is true that the claimant made a reference in the HMRC form to possible "antenatal depression", but we do not accept the respondent's case that this means she would have been unfit for work even had she not been dismissed. On the contrary, we find on the balance of probabilities that had it not been for her dismissal and the effect which it had on her, the claimant would not have required this time off. We further accept the claimant's evidence that she would have continued to work for the respondent until 13 August 2016.

20. The respondent next argues that the claimant failed to take reasonable steps to mitigate her loss during this period. The respondent says that the claimant could have done more to find paid work. We do not accept that argument. Having lost her job, the claimant acted perfectly reasonably in seeking to work on a self-employed basis. She sought to build her new business up by word of mouth, through distributing flyers and through social media. Further, after she had decided on that course of building up self-employed work, we do not think she can reasonably be criticised for not then seeking further work on an employed basis: she acted reasonably in focussing on her self-employed work during this (relatively short) period.

14 August 2016 to 5 February 2017

21. The claimant was in receipt of Maternity Allowance during the period from 14 August 2016 to 1 May 2017 in the sum of £134.50 per week.

22. The claimant makes no claim for losses in the period 14 August 2016 to 5 February 2017 as she accepts that during this period she would not in any event have earned money working for the respondent had she not been dismissed.

23. The claimant's baby was born around the start of November 2016.

6 February 2017 to 1 May 2017

24. The claimant's period in receipt of Maternity Allowance ended on 1 May 2017. She began new employment with William Hill, away from the world of hairdressing, on 2 May 2017. This was and is better-paid than her work with the respondent had been, and so she makes no claim for loss of earnings in respect of the period from 2 May 2017 onwards.

25. The claimant's case is that, had she not been dismissed, she would have returned to work with the respondent on or around 6 February 2017. On balance we accept the claimant's evidence on that point.

26. However we find that during the period from 6 February 2017 to 1 May 2017 the claimant failed to take reasonable steps to mitigate her loss. During this period she applied for two roles, including the one with William Hill which she secured around early March to start on 2 May. She took no other steps to find work on a temporary basis to compensate for any loss of earnings which she was suffering. The claimant's evidence was that she was entitled not to look for work since she was on maternity leave. In one sense that was of course entirely her prerogative, but we do not think it is right that she should be able to claim losses from the respondent in respect of a period where she was not taking any real steps to mitigate her loss by looking for work to make good her immediate loss of earnings. The claimant could, for instance, have looked to supplement her earnings by cutting hair in clients' houses as she had done in the spring of 2016, or by renting a chair with a former colleague, Martha. Had she taken such steps we consider, doing the best we can in what we recognise to be an exercise which includes a significant element of conjecture, that the claimant would have earned somewhere in the region of £500, being a roughly equivalent total amount to that which she had earned in April – June 2016.

Hairdressing course

27. When she was dismissed, the claimant was undertaking a hairdressing course without cost to herself. By reason of the loss of her job, she was unable to complete that course. She claims the cost of £3,300 for

undertaking, in the future, an equivalent course (an NVQ Level 3 Diploma in Hairdressing).

28. We conclude that the claimant failed to prove that she will suffer any loss in this regard. We reach this conclusion for two reasons. First, it was the claimant's evidence (in her schedule of loss which as we have said she adopted as her evidence) that "the Claimant has now had to change career paths as she is afraid to work in a hairdresser's salon again". As we have noted, she is now in better paid work away from hairdressing. In light of this we are not satisfied that the claimant is in fact likely to undertake a hairdressing course in future. Second, the claimant told the tribunal that she did not know whether or not, if she did this course, she would have to pay for it: she accepted that grants might be available and she simply did not know whether or not they would be. As a result we conclude that the claimant has not proved this element of loss.

Injury to feelings

29. In **HM Prison Service v Johnson** [1997] ICR 275 the EAT gave guidance on the principles applicable to making awards for injury to feelings:

"(i) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.

(ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use the phrase of Sir Thomas Bingham M.R., be seen as the way to "untaxed riches."

(iii) Awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think this should be done by reference to any particular type of personal injury award, rather to the whole range of such awards.

(iv) In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.

(v) Finally, tribunals should bear in mind Sir Thomas Bingham's reference to the need for public respect for the level of awards made."

30. The tribunal takes into account the Court of Appeal's guidance as to the appropriate levels of injury to feelings awards in **Vento v Chief Constable of West Yorkshire Police (No. 2)** [2003] ICR 318. The figures referred to in that case now require to be updated to allow for the incidence of inflation since **Vento** was decided, and to take account of the 10% uplift in general damages which was introduced following the Court of Appeal's decision in **Simmons v Castle** [2013] 1 WLR 1239. In light of the Presidential Guidance issued in September 2017 in this area, the parties agreed on the figures which now apply by way of adjustment to the **Vento** bands and they are inserted in square brackets in the quotation below.

"65 Employment tribunals and those who practise in them might find it helpful if this court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury. (i) The top band should normally be between £15,000 [£24,347] and £25,000 [£40,595]. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000 [£40,595]. (ii) The middle band of between £5,000 [£8,115] and £15,000 [£24,347] should be used for serious cases, which do not merit an award in the highest band. (iii) Awards of between £500 and £5,000 [£8,115] are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 [£811] are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

66 There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case."

31. We find that the claimant's feelings were significantly injured by her discriminatory dismissal by the respondent. She found it, as she told the respondent, "disgusting". She suffered understandable feelings of upset, low mood, stress and anxiety, and injustice at her discriminatory treatment, at what was for her a time of vulnerability and uncertainty. It cast a pall over what should have been a happy time for her.

32. The respondent contended that this was a case which should fall within the lower **Vento** bracket, and indeed in the lower part of that bracket. We disagree. Although it was a one-off act, the claimant's dismissal was a serious matter with serious consequences for her. We regard this as a serious case and one which falls squarely within the middle **Vento** band.

33. On the basis of the evidence we have heard, and applying the guidance in **Johnson** and **Vento**, we consider the appropriate award for injury to feelings to be £12,500. We regard that as an award which is just and proportionate and properly compensates the claimant for the serious injury to her feelings which she has suffered.

34. The respondent noted that there had been a previously good and friendly relationship between the parties, and that the claimant accepted that the respondent had been "lovely" to her during her employment. We do not however regard that as a relevant consideration. There is no evidence that the nature of the prior relationship between the parties lessened (or for that matter worsened) the injury to the claimant's feelings when she was dismissed due to her pregnancy.

35. It was suggested on the respondent's behalf that she had apologised to the claimant and that this should go to reducing any award for injury to feelings. Reliance is placed on the final line of the dismissal letter: "It is with regret that this employment has not worked out and I do sincerely wish you all the very best for the future", and on the respondent's reply to the claimant's text of 14 April in which the claimant had expressed her disappointment and disgust at her dismissal: "I'm sorry you feel in this way and it is with regret that I have had to take the necessary steps." We do not regard either of these statements as amounting to an apology. Neither of them acknowledges, let alone apologises for, the discrimination to which the claimant was subjected. On the contrary, both of these statements formed part of an attempt to maintain an unwarranted justification for the termination of employment: namely the assertion that the "employment has not worked out", for reasons which were more fully set out in the dismissal letter and which the tribunal has largely rejected, and the suggestion that the "steps" – i.e. dismissal – had been "necessary". There is moreover no evidence to suggest that these expressions of regret materially reduced the injury to the claimant's feelings.

ACAS Code of Practice

36. The claimant asserts that any award should be uplifted by 25% pursuant to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") on the basis that there was a wholesale failure by the respondent to comply with the ACAS Code, and that such failure was unreasonable. It is not disputed by the

respondent that, if the ACAS Code applied, there was such an unreasonable failure.

37. The question, however, is whether the ACAS Code applies. The respondent submits that it does not, since the claimant's dismissal was not because of misconduct or poor performance (see paragraph 1 of the Code)[1]. This of course represented a stark change of position from that taken by the respondent at the time of dismissal, a change of position which the respondent contended that it was entitled to make in light of the tribunal's findings on liability. In essence, the point made on behalf of the respondent was that the tribunal here found that the respondent's alleged conduct and performance concerns were entirely fabricated, and that the Code does not apply in such circumstances. Carefully and skilfully though that argument was advanced by Mr Pettifer, we do not accept it.

38. The application of the Code was considered by the EAT (Keith J presiding) in **Lund v St Edmund's School, Canterbury** [2013] ICR D26 at paragraphs 11-17:

> "11 We turn to the other reason which the tribunal gave for denying Mr Lund an uplift on his award, namely that his dismissal was for "some other substantial reason". The tribunal's reasoning, in view of what it had said in para. 47 of its original judgment, must have been that because the Code of Practice did not apply to a dismissal for "some other substantial reason", Mr Lund's claim could not have concerned a matter to which the Code of Practice applied as required by section 207A(2)(a) for the tribunal's power to increase Mr Lund's award to be triggered.
>
> 12 It is necessary here to say something about the Code of Practice . Para. 1 of the Code explains what the Code is all about:
>
> "This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.
>
> • Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should be followed, albeit that they may need to be adapted.

[1] The respondent's counter-schedule of loss suggested that the reason was in fact capability, but that suggestion, which the tribunal found difficult to understand, was not pursued in oral submissions.

• Grievances are concerns, problems or complaints that employees raise with their employers.

The Code does not apply to redundancy dismissals or the non renewal of fixed term contracts on their expiry."

So although there are particular situations to which the Code does not apply – dismissals for redundancy and the non-renewal of fixed-term contracts on their expiry – it is intended to apply to those occasions when an employee faces a complaint which may lead to disciplinary action or where an employee raises a grievance. If the employee faces a complaint which may lead to disciplinary action (whether because of his misconduct or his poor performance), the Code applies to the disciplinary procedure under which the complaint is to be investigated and adjudicated upon. Of course, the outcome of the disciplinary procedure may not result in the employee's dismissal at all. Or it may result in his dismissal which on analysis turns out not to be a dismissal for his misconduct or poor performance but a dismissal for something else. The important thing is that it is not the ultimate outcome of the process which determines whether the Code applies. It is the initiation of the process which matters. The Code applies where disciplinary proceedings are, or ought to be, invoked against an employee.

….

16 Whether the disciplinary procedure was actually invoked by the School is a moot point. But if the tribunal had misunderstood the School's case, and if it should have found that the School had not got round to invoking the disciplinary procedure, the question would then have been whether the disciplinary procedure ought to have been invoked. There is only one possible answer to that question. However you look at it, Mr Lund's conduct had been called into question – whether that conduct related to his dissatisfaction with the computer system or to the aspects of his behaviour which his colleagues found difficult and unhelpful. It should have been apparent to the School that once his conduct had been called into question, *and* crucially that it was thought that his conduct might lead to his dismissal, the disciplinary procedure should have been invoked, even if the School ultimately decided that Mr Lund was to be dismissed for what the tribunal found to be a non-disciplinary reason. That is what distinguishes the present case from *Ezsias v North Glamorgan NHS Trust [2011] IRLR 550*. In *Ezsias*, the Trust never contemplated dismissing Mr Ezsias for the conduct on his part which had caused the breakdown in the working relationships between him and his colleagues. In the present case, that was clearly in the

> contemplation of the School, even if it ultimately decided to dismiss him for a reason which the tribunal found did not relate to his conduct.
>
> 17 That is why, in our view, the tribunal was wrong to conclude that Mr Lund's claim did not concern a matter to which the Code of Practice related. His claim concerned the conduct on his part which led the School to consider whether he should be dismissed, even if it was not his conduct but the effect of his conduct (whether on his relationships with his colleagues or the School's belief about his commitment to the School) which was the ultimate reason for his dismissal."

39. The tribunal has also considered the subsequent case of **Phoenix House Ltd v Stockman** [2017] ICR 84 (EAT) which does not in our view cast doubt on Keith J's reasoning as set out above.

40. We do not regard the respondent's position as tenable. The logic of the respondent's position is inherently unattractive. An employer who has genuine concerns about the conduct of an employee, but then fails to follow the procedure and effects a dismissal which is tainted by discrimination and/or unfairness, is subject to a potential liability for an uplift of up to 25%. By the logic of the respondent's argument, however, an employer which concocts entirely fictitious conduct concerns and dismisses for wholly different reasons (for example, a dislike for the individual on grounds of race) would not be liable to any such uplift and so would be in a better position. We do not think this can have been the intention behind the Code. The answer seems to us to lie in Keith J's reasoning: the question is not what is the actual reason for dismissal but whether the individual faces allegations of misconduct or poor performance which might lead to a disciplinary sanction. In our view it cannot make a difference whether those charges are or are not well-founded. A key purpose of the Code is to enable the employee who is at risk of a disciplinary sanction or dismissal the chance to answer those allegations, and to have a fair chance to influence the outcome, including perhaps by clearing his or her name or by dissuading an employer from adopting a particular sanction. That applies just as much with regard to an employee whom the employer knows to be innocent of the allegations which the employer seeks to rely on. That employee should be entitled to demonstrate their innocence and to prevent the potentially unjust outcome which faces them.

41. Here, the dismissal letter expressly set out allegations of "frequent, unplanned absences", the claimant being "unreliable" and having an "unacceptable attendance record", and her alleged "failure to follow proper absence reporting procedures", matters which the respondent expressly identified as matters of "performance and conduct". The letter went on to say that the claimant arriving at work with her children was "conduct which is … entirely unacceptable". Those allegations,

whether true or not, were all plainly allegations of either conduct or poor performance. They are matters which in our view were plainly intended to attract the operation of the ACAS Code.

42. Further, the respondent's contention does not engage with the fact that, in paragraph 76 of the liability judgment, the tribunal found that in dismissing the respondent did take into account some non-pregnancy-related matters, including the disruption caused on 26 March 2016 when the claimant brought her children to work (see further paragraph 46 of the liability judgment). Given the respondent's categorisation of this as a conduct issue, this is a matter which in our judgment should by itself have attracted the operation of the ACAS Code.

43. We conclude that the ACAS Code applied in this case, and it should have been followed. There is no dispute that there was here a wholesale failure to follow the ACAS Code. This failure related to every stage of the process: there was no proper investigation (paragraph 5 of the Code), the claimant was not afforded the right to a hearing or to answer the allegations against her (paragraphs 9-17), and there was no right of appeal (paragraph 26-29). Further we consider that failure to be unreasonable and indeed the respondent realistically has not suggested otherwise.

44. We consider that it is just and equitable to make an uplift in the claimant's award under section 207A TULRCA. As to the level of such an uplift, we bear in mind that its nature is that of a punitive sanction (see per Mitting J in **Phoenix House Ltd v Stockman** [2017] ICR 84 at [21]). The claimant has already been compensated for her losses by other parts of the award. We take into account the fact that the respondent is an experienced manager, and that she had access to human resources advice. On the other hand, she is a small employer with limited administrative resources, and she is also an individual rather than a large corporation. We also bear in mind the size of the total award which the tribunal is making as a whole, which, for an employer who is not a large corporation, is significant. Taking all these matters into account we consider that it is just and equitable to apply an uplift of 15%.

Interest

45. Interest is payable on an award for discrimination pursuant to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. The parties agreed on the applicable rates of interest on the different elements of the awards namely a factor of 14.36% in respect of the award for injury to feelings and 7.18% in respect of the other elements of the award.

Calculations

46. The tribunal awards the following sums.

47. Financial losses:

    a. 14 April 2016 to 27 April 2016: 2 weeks at £88.45 = £176.90.

    b. 28 April 2016 to 13 August 2016 (15 weeks and 3 days) at £234 net per week and £33.43 net per day = £3,610.29.

    c. 6 February 2017 to 1 May 2017 (12 weeks and 1 day) at £234 net per week and £33.43 net per day = £2,841.43. Less £2,114, being £1,614 Maternity Allowance and £500 in sums which should have been earned by way of mitigation. Total £727.43.

    d. Total: £4,514.62.

    e. Applying 15% uplift: £5,191.81.

48. Injury to feelings: £12,500 plus 15% uplift: £14,375.

49. Interest:

    a. Financial losses: £5,191.81 x 7.18% = £372.77.

    b. Injury to feelings: £14,375 x 14.36% = £2,064.25.

50. Award pursuant to s38 Employment Act 2002: £468.

51. No separate award is made for unfair dismissal since all such losses are already covered by the award for discrimination.

Employment Judge Coghlin

26 January 2018