



# EMPLOYMENT TRIBUNALS

**Claimant:** Joanne Hammond  
**Respondent:** St Jude's Care Limited  
**Heard at:** Southampton  
Employment Tribunal  
**Before:** Employment Judge Mr. M. Salter

## JUDGMENT (including decision on Reconsideration)

### Introduction

1. I have before me today written submissions on behalf of both the Claimant and Respondent addressing three separate matters:
  - a. The size of any uplift under s207A for breach of the ACAS Code
  - b. Whether I should exercise my discretion under s12A Employment Tribunals Act 1996 and impose a financial penalty upon the Respondent; and
  - c. Whether I should reconsider the duration of the Claimant's Compensatory Award.
2. I will deal with each in turn, after I address the Reconsideration applications

### Reconsideration Applications

3. I should state that I consider the Respondent's submissions on the size of any ACAS Uplift to be an application to reconsider my judgment on this point. I consider that it would be in the interests of justice to reconsider this owing to the confusion over the submissions on this point.
4. I also considered that it would be in the interests of justice to reconsider the duration of the Claimant's Compensatory Award.

5. Both parties agreed that a hearing was not needed for the reconsiderations and have provided helpful submissions which, being in writing, I do not set out here.

S207A TULR(C)A

6. I set out my reasons for an uplift of 15% at paragraphs 118-122 of the Judgment. I have reconsidered my assessment of the Respondent's failures and consider that the original assessment of 15% is appropriate in this case for the reasons I set out in those paragraphs. The Respondent's failings were considerable and weighty and included dismissing the Claimant for a reason not discussed or advanced in any meeting and for which she was never notified, this is a clear breach of the Code.
7. Whilst there was a procedure adopted by the Respondent, and so an uplift at the upper end of the permissible range is not appropriate, I consider that it is just and equitable to make an award to the Claimant of a 15% uplift.
8. The original decision is confirmed.

S12A Financial Penalty

9. In my judgment at paragraphs 141-144 I set out why I considered that the power contained within s12A(1)(a) and (b) of the Employment Tribunals Act 1996 had been satisfied.
10. I now come to consider my discretion as to whether I should make such an award.
11. I have not heard any evidence of the employer's ability to pay (s12(2)).
12. I have considered the size of the Respondent, the severity of the breach, the fact that the rights breached are well-known and pivotal rights of employees (as opposed to some esoteric and/or minor rights); I have borne in mind the behaviour of the employer set out in the judgment, in particular for dismissing for dishonesty (in itself a very serious matter, but aggravated when the same had never been canvassed with the Claimant. Against these aggravating factors I have weighed the fact that the Respondent does not have a dedicated HR function and the points raised in the Respondent's written submissions. However, even without a dedicated HR function and even accepting advice from an external source, I consider that a penalty is appropriate in these circumstances.

13. It seems to me that it would be plain to any reasonable employer that dismissing someone for allegations of dishonesty that were never raised or canvassed with her is fundamentally unfair and is one of the most serious breaches of the principles of fairness there can be.
14. Having considered that I should exercise my discretion and having made a financial award in this matter, s12A(4) and (5) require me to order the Respondent to pay a financial penalty of 50% of the amount of the award I have made. I have set out the total award in paragraph 146 of my judgment. 50% of that award exceeds the cap imposed by s12A(5)(b) and so the penalty shall be £5,000.00.

Duration of Compensatory Award

15. I considered that a six-month period of loss was appropriate for the Claimant in the circumstances of this case and having heard submissions from both parties at the tribunal. For the reasons given in my judgment I considered that the appropriate period of time after which the claimant could reasonably be expected to have obtained equally remunerative employment would be six-months.
16. I have received submissions from both parties as to my assessment of this period, have considered the points they raise, but do not consider that I should reconsider my original decision on this matter. I have arrived at this conclusion as I am satisfied that it is just and equitable to award the claimant six months lost earnings. She was dismissed for dishonesty related matters, about which I have made findings, she would therefore find it difficult to obtain employment than if she had been dismissed for speeding.
17. I have considered Mr. Andrews assertions of other care workers being employed by other agencies after being dismissed for dishonesty but, though I was provided with no details on these, did consider it as a relevant factor in my assessment.
18. The original decision is therefore confirmed.

\_\_\_\_\_  
Employment Judge

Date \_\_\_\_\_

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

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