Case Number: 2200341/2019

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mr Hong Lee		Institute of Directors

Heard at: London Central **On**: 22 and 23 April 2021

Before: Employment Judge Stout
Mr David Schofield
Mr Ian McLaughlin

Representations
For the claimant: Ms Elaine Banton (counsel)
For the respondent: Ms Sheryn Omeri (counsel)

REMEDY JUDGMENT

The unanimous judgment of the Tribunal is that:

(1) No order is made for re-engagement under s 166 of the Employment Rights Act 1996 (ERA 1996);

(2) If he had not been unfairly dismissed, the Claimant's employment would have terminated on 17 September 2020 in any event and he is not entitled to compensation beyond that date;

(3) The Claimant failed to comply with the duty to take reasonable steps to mitigate his loss and his compensation it is just and equitable for his compensation to be reduced by 20% from 2 April 2019;

(4) The Respondent must pay to the Claimant within 14 days of this judgment being sent to the parties a total of **£47,864.99** in compensation for unfair dismissal under s 123 of the Employment

Rights Act 1996, comprising a basic award under s 119 of the ERA 1996 of £1,640.63 and a compensatory award under s 123 of the ERA 1996 of £46,224.36.

REASONS

Background

2. This hearing was listed to consider remedy, following our judgment in this matter, promulgated on 29 January 2021 in which we found that:

    (1) The Claimant's claim for unfair dismissal under Part X of the ERA 1996 is well-founded;

    (2) The Claimant's claim for automatic unfair dismissal contrary to s 103A ERA 1996 is outside the jurisdiction of the Tribunal as it was not brought within the time limit in s 111 and is any event not well-founded and is dismissed;

    (3) It is not just and equitable for there to be any deduction from any compensation awarded to the Claimant for contributory fault;

    (4) It is just and equitable that there should be a 10% deduction to any compensation awarded to the Claimant for the period January 2019 onwards to reflect the chance that he could fairly have been made redundant in December 2018;

    (5) It is just and equitable that any compensation awarded to the Claimant should be uplifted by 25% under section 207A(2) of TULR(C)A 1992 to reflect the Respondent's failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

3. In our judgment on liability we further noted that we had heard evidence that in August 2020 the whole of the Respondent's finance team was contracted out (under a TUPE transfer) to a third party called Equium, who subsequently made the whole team redundant, apparently because they were transferring operations to Inverness. The Claimant told us that as a single man he would have been willing to move to Inverness. We canvassed the parties at the end of the hearing as to whether we should decide as part of the liability judgment what the percentage chance was of the Claimant being made redundant at that stage if he had not already been made redundant or dismissed fairly previously, but it became apparent from that discussion that the parties had not focused on this sufficiently as it was not one of the agreed issues (or a pleaded issue) and we therefore decided that this issue, if it is pursued, could be canvassed at the remedy stage.

The type of hearing

4. This was a remote electronic hearing under Rule 46 which took place on 22 and 23 April 2021. The form of remote hearing was V: Fully Video by Cloud Video Platform (CVP). A face to face hearing was not held because of the pandemic and the parties agreed that the case could be dealt with remotely.

5. The public was invited to observe via a notice on Courtserve.net. Some members of the public joined.

6. The participants were told at the outset that it is an offence to record the proceedings. The participants who gave evidence confirmed that when giving evidence they were not assisted by another party off camera, and that they had access to clean copies of the bundle and witness statements.

7. The hearing with the parties took nearly the two full days allotted, which left us with little time for deliberation and judgment. As a result, regrettably, there has been a delay in preparing this judgment for which we apologise to the parties.

The issues

8. The issues to be determined were agreed to be as follows:-

    (1) Should the Claimant be re-engaged with the Respondent pursuant to s 115 of the Employment Rights Act 1996 (ERA 1996)?

    (2) If it is not practicable to order re-engagement, what are the chances that the Claimant would have been made redundant in or around August 2020?

    (3) Has the Claimant failed to take reasonable steps to mitigate his loss?

    (4) To what compensation is the Claimant entitled?

9. There was also a costs application by the Claimant, but the Respondent has indicated that it may also make a costs application against the Claimant and in the end neither party pursued an application at this hearing, but both parties reserved their positions in that regard.

The evidence

10. We received witness statements and heard oral evidence from the Claimant and from the following witnesses for the Respondent:

(1) Mr Jeremy Warrilow (Membership Experience Lead for the Respondent);

(2) Mrs Jill Corfield (Head of People for Equiom);

(3) Ms Nia Griffiths (People & Culture Business Partner for the Respondent);

(4) Mr Jim Jordan (formerly of the Respondent, now of ZJB Consulting and Financial Solutions).

Matters previously dealt with in the liability judgment

11. We raised with the parties at the outset that paragraph 7 of Mr Jordan's statement appeared to be addressed to the question of whether the Claimant could have been dismissed fairly in any event for redundancy in December 2018. This was an issue that we determined at paragraphs 187-189 of our liability judgment and in the absence of an application for reconsideration (or a successful appeal and remittal) we cannot revisit those findings. We accordingly excluded paragraph 7 of Mr Jordan's statement.

12. In closing submissions, Ms Omeri raised another similar point (paragraphs 46-50 of her written submissions). She submitted that the Tribunal's conclusion at paragraph 186 of its liability judgment as to whether, if the Respondent had followed a fair procedure in dismissing the Claimant, it could fairly have dismissed him for conduct or some other substantial reason (SOSR) was *"necessarily provisional"*. She submitted that, since this is an issue going to remedy, in respect of which she submitted we had heard further evidence at this hearing, we should revisit that finding.

13. Ms Omeri did not, however, make an application for us to reconsider that judgment and we do not consider that it would be in the interests of justice for us to reconsider it of our own motion under Rule 70.

14. Both parties were on notice at the liability hearing that the *Polkey* issues we dealt with at paragraphs 186-189 of the liability judgment were going to be dealt with at that hearing. Both parties put forward the evidence they wished to on those issues and made submissions on them and we reached our conclusions on them in our judgment. Those *Polkey* issues were quite separate to the further *Polkey* issues that have been identified above for consideration at this remedy hearing. The further evidence we have heard at this hearing (bearing in mind that we excluded paragraph 7 of Mr Jordan's statement as noted above) from Mr Warrilow, Ms Griffiths and Mr Jordan as to their dislike of the Claimant and their perceptions of his behaviour towards his colleagues has not been materially different to the evidence that they gave at the liability hearing. We have taken it into account in considering the issue of re-engagement (see below), but it is not 'new' evidence that could change

the conclusion we reached on the *Polkey* issues that we determined as part of the liability judgment.

15. In any event, the principle of finality in litigation is important. What Ms Omeri seeks to do in paragraphs 46-50 of her written closing submissions is to re-argue the merits of our decision as set out at paragraphs 186-189 of the liability judgment, with reference to evidence that either was before us at the liability stage or which does not meet the *Ladd v Marshall* test. That is not appropriate (cf the guidance of the Court of Appeal in *Ministry of Justice v Burton* [2016] EWCA Civ 714, [2016] ICR 1128). We are bound by our findings at paragraphs 186-189 of the liability judgment and have not revisited them as part of this remedy judgment.

The facts

16. We have considered all the oral evidence and the documentary evidence in the bundle to which we were referred. The facts that we have found to be material to our conclusions are as follows. If we do not mention a particular fact in this judgment, it does not mean we have not taken it into account. All our findings of fact are made on the balance of probabilities.

The TUPE transfer to Equiom

17. In the early part of 2020 the Respondent decided to contract out its finance function. It sought competitive tenders and Scarista Limited, which trades as Equiom and will be referred to as such in this judgment, was the successful bidder. The contract was awarded with effect from 1 July 2020. The Respondent and Equiom accepted that the *Transfer of Undertakings (Protection of Employment) Regulations 2006* (TUPE) applied to the transfer of the finance function to Equiom. There were at that time nine employees in the finance team: Chee Lam, Lydia Li, Scott Gregory, Andrea Ramirez, Monika Faria de Azevedo, Andrew Downey-Malmoureux, Leighan Folan, Angie El-Sarky and Jim Jordan. Mr Jordan and Ms de Azevedo took voluntary redundancy from the Respondent prior to transfer. The employment of the other seven employees transferred to Equiom on the TUPE transfer date, which was 7 August 2020.

18. Equiom had no requirement for additional employees as it planned to service the Respondent's contract with its existing employees. Equiom required all its employees servicing the Respondent's contract to be based in Inverness. All seven former employees of the Respondent were therefore placed at risk of redundancy. Six of them took voluntary redundancy (no doubt, as the Claimant suggests, because they did not wish to relocate to Inverness as was required by Equiom). The last of those voluntary redundancies took effect on 31 August 2020. One of those, Lydia Li, indicated a wish to relocate to Inverness. Her existing job of Finance Business Partner (she having by that time been promoted from Assistant Finance Business Partner in the circumstances we dealt with in our judgment on liability) was matched with

an Inverness Financial Controller position and Ms Li was pooled as part of a redundancy selection exercise with the Inverness employee in that position. Both pooled employees were scored against the Equiom standard scoring matrix by reference to their CVs and interviews. The scoring was done by assessors who worked in another part of Equiom's business who knew neither Ms Li or the Inverness employee. Ms Li scored 27 in that exercise, and the Inverness employee scored 39 and was selected.

19. Mr Lam did not take voluntary redundancy but sought suitable alternative employment with Equiom. There were no other vacancies at Finance Business Partner level in Equiom. One vacancy at Group Finance Business Partner level in another employing entity of Equiom's required experience of working multi-jurisdictionally and experience of leading teams of 20+. Mr Lam competed for that role with other candidates but was not successful and so was made compulsorily redundant on 17 September 2020.

20. Mrs Corfield explained in her evidence that part of the reason why neither Ms Li or Mr Lam were successful was because they did not have experience of the sort of work that Equiom does, which involves working across multiple clients in different businesses who operate different processes, using automation and Digital Assistants and scheduling tools and (in the case of the Group Finance Business Partner role) leading a pan-global team of 20+ and working in multiple geographical jurisdictions. This is very different to the work of the finance team at the Respondent, which involved working in a one-client manual environment. We accept Mrs Corfield's evidence on this and the preceding points because she appeared to us to be a reliable witness who gave us straightforward evidence, and (save in relation to her scoring of the Claimant's CV, which we deal with below) her evidence was not challenged by the Claimant.

21. Mrs Corfield had expressed the view in her witness statement that if the Claimant had still been employed in a Finance Business Partner role he would have been pooled with his counterpart at Equiom and would likely have scored lower for the same reasons as his former colleagues did. In the course of giving oral evidence, Mrs Corfield was presented with the Claimant's CV and undertook in the space of 5 minutes a table-top scoring exercise as a result of which she scored the Claimant at 27 as follows (each of the scores is out of 5, and Mrs Corfield's comments are in brackets):

    (1) Qualification – 5;

    (2) Post qualification experience ideally 4 year plus – 5 (Mrs Corfield had initially scored this as 4 having misunderstood the Claimant's date of qualification, but corrected it orally);

    (3) Client Relationship Management - 2 (Mrs Corfield based this on the Claimant's CV indicating little experience with external clients, over 50 stakeholders, but no mention of stakeholder management);

(4) Stakeholder Management - 3 (because the CV does not explain fully interactions with stakeholders);

(5) Staff Management - 2 (Mrs Corfield in this regard took into account the evidence she had heard that the Claimant did have management experience for 7 months at LegoLand although on his CV he had only mentioned management experience of a smaller team in another role);

(6) Professional communication style – 3 (because the CV was very much task-based, with little expansion);

(7) Demonstrable understanding of accounts processes - 4/5 (she indicated he had varied experience which shows understanding);

(8) Workload management and scheduling - 2 (no mention of time management and scheduling preparation no deadline adherence mentioned).

22. Mrs Corfield accepted that had the Claimant been interviewed he would have had the opportunity, and may have managed to provide evidence, to increase those scores, but she did not consider that the Claimant's CV or the evidence she had heard from the Claimant in this hearing about his skills and experience affected what she had said in her witness statement as to her expectations that the Claimant would not have been successful in obtaining a role with Equiom had he transferred with other employees in August 2020 and that he would have been made redundant by Equiom by 17 September 2020 at the latest. We accept that her assessment in this regard was genuine and also reasonable and we find that it is likely that the scores would not have changed significantly if the Claimant had been interviewed. In this respect, we return to the question of the Claimant's evidence as to his skills and experience below, but he did not in the course of oral evidence add very much to what was in his CV and the most significant parts that he added related to his management of a team of 25+ at LegoLand for a period of 7 months, which evidence Mrs Corfield had in mind when carrying out the scoring exercise as she had heard that evidence and said she had taken it into account. Further, although Mrs Corfield carried out the scoring exercise very quickly at the hearing, we formed the view that she had still done it professionally, fairly and objectively and she was able, despite the speed at which she had done it, to give cogent explanations for why she had scored him as she had. Where she had made minor errors (for example as to his date of qualification), she readily accepted and adjusted her score.

23. More recently, Equiom has had more jobs available. It is a sizeable business, providing accountancy services round the world and Mrs Corfield gave oral evidence that the company often struggles to fill vacancies. Its current vacancies list, as sourced by the Claimant from their website, includes at least five finance roles, including an Accountant (for the Canada region but flexible as to work location), and Bookkeeper, Management Accountant and Senior Management Accountant (all based in Scotland).

The jobs currently available for the Claimant at the Respondent

24. Ms Griffiths gave evidence about jobs currently available at the Respondent that might be suitable for the Claimant. The Respondent does not have any kind of in-house finance function any more. The only roles currently available at the Respondent are as follows:-

    (1) *Partner Marketing Manager* – Ms Griffiths accepted that Mr Lee has knowledge of managing departmental budgets, forecasting and planning, but does not have the relevant experience in relationship management and marketing;

    (2) *Senior Branch Manager/Branch Manager* – Ms Griffiths considered that the Claimant does not have the required skillset and and experience in sales, marketing and social media, email marketing and event management;

    (3) *Strategic Account Manager* – Ms Griffiths considered that the Claimant does not have the requisite knowledge of sales, client and relationship management or professional experience in those areas;

    (4) *Senior Policy Adviser/Policy Adviser* – the role requires specialist knowledge in public policy development and advocacy, which needs to be evidenced through appropriate professional/academic qualifications or professional experience;

    (5) *Facilities Manager* – the role requires an understanding of health and safety legislation and experience of supervising on-site service partners, evidencedthrough appropriate professional/academic qualifications and experience.

25. The Claimant accepted that the only roles in which he was interested and/or for which he might be appropriate were the Senior Branch Manager/Branch Manager roles.

26. The Senior Branch Manager (East of England) role attracts a salary of £30,000-£35,000. It is not a finance role. The job specification indicates it is a managerial role focused on recruiting members for the Respondent and managing relations with members and communications, ensuring member engagement, maintaining member data and having responsibility for event management. The qualities required for the role are stated in the job description to be: inspiring people management, used to leading dispersed teams and working with volunteers; commercially astute decision-making; team player, who can build strong and effective relationships with internal and external stakeholders using a number of channels including social media; clear and precise communicator; motivated self-starter. It involves working with the Respondent's 'central team', which would include Mr Warrilow.

27. The Branch Manager roles are four roles attracting a salary of £23,000-£28,000. They are similar roles to the Senior Branch Manager role, but lower level as they report into the Senior Branch Manager and have responsibility for the Respondent's individual branches. They do not have managerial responsibility, but otherwise have much the same tasks and requirements. The Branch Manager job specification does not include the same text as the Senior Branch Manager regarding management of volunteers, but it does involve work with volunteers because it specifies that the individual should *"work with and support the Regional Chair, Vice-Chair and Regional Ambassadors"* and (in the bullet points) that the individual will work with the Branch Committee on event management. The Branch Committee, Regional Chair, Vice-Chair and Regional Ambassadors are all volunteers.

28. The Claimant gave oral evidence about his suitability for those roles. He has prior experience of managerial responsibility, having (as mentioned on his CV) managed a small team (of 3) in a finance department between July 2008 and December 2010 and also (as not mentioned on his CV) managed a team of 20-25 people while working for LegoLand Malaysia between July 2014 and January 2015. He had experience at the Respondent of working with Head Office and communicating with members: he occasionally interacted with members in the public areas at Pall Mall and on one occasion he had experience of member acquisition as he assisted with an enquiry about membership at the Respondent, which he referred to the sales team; he had occasional other interaction on member issues, and resolved a problem with the Client Relationship Management (CRM) system that was resulting in duplicate entries. His previous finance roles have been predominantly in the hospitality sector where event management is part of the organisation's activities. He personally has not worked as an event manager previously, although he has experience of organising both work social and personal social events. He repeated the evidence regarding his views of himself as a team player about which we made findings at paragraph 109 of the Liability judgment as follows:

> 109. … He considered it was unfair that he had been regarded as not being team player as in around August 2018 he had received a thank you note placed on the "wall of wow" on the fifth floor noticeboard and believed that he was the first member of the finance team to receive such recognition. In these proceedings, he has also pointed as evidence of being a 'team player' to the work that he did while supposed to be on holiday in Malaysia in January 2018.

29. Ms Griffiths gave evidence about what the roles required and her view as to the Claimant's suitability for the roles. She was not seriously challenged so far as the requirements of the roles was concerned, and we accept her evidence on this, which was supported by the job specifications and was plausible in terms of what might reasonably be required for the roles. She was challenged as to her assessment of the Claimant's skills, experience and suitability for the roles. In this respect, we record at this point that we accept that her assessment of the Claimant represented her genuine view and was

professional, carefully reasoned and objective. We considered that Ms Griffiths had put to one side in making that assessment her personal feelings about the Claimant. Ms Griffiths said that although the Claimant had knowledge of the Respondent's branches from his work as a Finance Business Partner, the structure had changed since he was employed and his experience while at the Respondent was very different to doing the job of Branch Manager or Senior Branch Manager. She explained that she did not consider that the Claimant had experience of the core elements of the role, which in her view were people management, including leading teams and working with volunteers (who at the Respondent are professionals with day jobs who volunteer in their spare time for officer roles), and sales/marketing type activities to acquire members and ensure member engagement (including using 'soft-selling' techniques, social media and digital marketing tools). She said that the Claimant does not have experience of dealing with member communications generally. While working for the Respondent he had occasional contact with members in much the same way that she did in her job. So far as she was aware, he did not have experience of ongoing relationship management, or using social media in a work context. She said that the data management aspect of the role was more about ensuring compliance with data protection policies, rather than the technical aspect of how the CRM system works, which is what the Claimant is familiar with. She said that event management was important and required more than just administrative ability, the role required someone to work with the volunteers to develop engaging events, which required identification of inspiring speakers and experience of delivery of events, including online events which require specialised knowledge of how to use online platforms effectively for event purposes. She said that the Respondent needs someone in these roles who has experience working with volunteers, and being an inspiring people manager. She said that they need people who are passionate about the Respondent and what it does and who can advocate for it to the members and the volunteers. She does not consider that the Claimant has those qualities.

30. Mr Warrilow also gave evidence, which we accept, that event management at the Respondent is not purely a matter of administration or 'ticking off a list'. It requires identification of a good topic for the event, arranging the venue, marketing it, writing social media post about it, running the event, hosting it, which means knowing the subject and being able to present. He considered that running an event front of house was very different to the back of house administration and finance element.

31. Ms Griffiths was of the view that the Claimant could not reasonably be trained to undertake these roles. She gave evidence that the Respondent does not have the capacity to provide extensive on-the-job training to someone in those roles. The Respondent has made a number of redundancies since the Claimant was employed and has a 'slimmed down' workforce. We accept Ms Griffiths' evidence about the capacity of the Respondent to provide training, which was not challenged by the Claimant. The Claimant's case was that he would not need significant training because the nature of the roles was such

that he would need very little training. However, Ms Griffiths disagreed with this assessment and expressed the view that although the Claimant is familiar with the Respondent, he has no professional experience in roles of this type and would require training in event management, social media marketing, member communications and sales. We accept, and agree with, Ms Griffiths' evidence as to the need for the Claimant to have significant training before he could carry out these roles. He does not have professional experience in any of these areas.

The evidence about loss of trust and confidence and/or employee relations difficulties

32. In the course of these proceedings, the relationship between the Claimant and the Respondent has been acrimonious. The Respondent's witnesses maintained in their evidence on liability, and Mr Warrilow, Ms Griffiths and Mr Jordan have essentially repeated in their evidence for this hearing, that they did not regard the Claimant as a team player, that he was difficult to work with, that there had been a complete breakdown in working relations between him and Mr Gregory and (so far as Mr Jordan was concerned) that the Claimant's conduct regarding what Mr Jordan perceived to be a breakdown in working relations, and other matters, was sufficient to warrant dismissal. Our findings of fact in relation to all those matters are dealt with in our liability judgment. In broad terms, we accepted that the Respondent's witnesses perceptions of all these matters were genuine, but we also found that their perceptions were not reasonable and they had not handled their concerns about the Claimant's conduct and his relationship with Mr Gregory reasonably or fairly and had not given him a fair opportunity to remedy either his conduct or his relationship with Mr Gregory.

33. Ms Griffiths still feels personally that she does not wish to work with the Claimant again and would not wish to work with him again based on his behaviour towards her through the litigation. She said that she would consider leaving the Respondent's employment if he returned. She had been partly responsible for the litigation and thus had been dealing with the Claimant's correspondence. She is one of only two employees in the HR department and so it would be difficult for contact between her and the Claimant to be avoided were he re-engaged. We accept her evidence in this respect was genuine.

34. Mr Warrilow's evidence, consistent with the evidence he gave at the Liability stage, was that the Claimant was 'not a team player', and was detrimental to the team. In the year that he had worked with the Claimant there had been difficulties agreeing a way forward over monthly reporting and he did not consider it likely the Claimant could be improved in that regard. His view of the Claimant remained firmly negative. As at the liability stage, we accept that these are genuinely Mr Warrilow's views.

35. As to the Claimant's views, on 8 November 2018 when the Claimant appealed against the decision to dismiss he stated, having set out his grounds of appeal, under a heading *"A suggestion to enable us all to move on speedily"*, he wrote, *"I do accept, however, that it has become untenable for me to continue employment with IoD since as you will understand my own trust in the working environment is now severely compromised"*. He suggested that the Respondent withdraw the dismissal and accept his resignation.

36. The Claimant's evidence at this hearing was that he no longer feels he could not work at the Respondent, since most of the people with whom he previously had difficulties (including Mr Jordan, Ms Snape, Ms Taylor, Mr Morgan and Mr Gregory) have now left the organisation and he sees no reason why he could not start there afresh. We accept that the Claimant's evidence in this regard was genuine as that is how it came across to us, and it also makes sense that he would feel this way given that he did not when employed by the Respondent regard himself as not getting on with his colleagues, and there has now been a significant passage of time during which most of the key people have left.

37. We accept the Claimant's evidence in this regard even though correspondence in the bundle makes clear that the Claimant has considered the Respondent's conduct of these proceedings to be in many respects unreasonable and he has complained in bitter terms to the Respondent's solicitors in correspondence, including alleging that the Respondent has knowingly provided dishonest information and misled the Tribunal, and deliberately concealed information to cover up malpractice. These are serious allegations, but the Claimant did have good cause to feel animus towards the Respondent as he had, as we found, been unfairly dismissed. Having now succeeded in his principal claim against the Respondent, we accept that he would be willing and able to put these matters behind him. It does not follow, however, that we necessarily expect the Respondent's witnesses to be able to put these allegations behind them. We deal with this in our Conclusions below.

The Claimant's efforts to mitigate his loss

38. The Claimant gave evidence that he had tried to find alternative employment since being dismissed. Between November 2018 and April 2020 he applied for 92 jobs, but obtained only one interview.

39. Some of those jobs were jobs for which he did not fulfil what appeared to be crucial elements of the people specification (such as not being able to speak Russian, or Spanish, or not having extensive management experience, etc). However, the Claimant gave evidence that one of the roles for which he did not fulfil the person specification (the job at BT) was the one for which he obtained an interview. All the roles were ones that he considered he stood some chance of getting.

40. The Claimant gave evidence that for some roles (he estimated about 10-15) he had to complete online forms which asked the question 'have you been dismissed', to which he had to answer 'yes' without being able to give any details. He believed that this had disadvantaged him in his search for jobs. Most of the jobs for which he applied were not affected by this, however, and in many cases it was the Claimant who was approached by recruiters who had seen his CV online.

41. Some of the jobs the Claimant applied for were IT roles, but most were finance roles.

42. The Claimant is fluent in Cantonese, Mandarin, Bahasa Malaysia and Chinese dialects (as well as English) and has previously worked in Hong Kong. However, the Claimant has not sought employment in Hong Kong, despite his stated willingness to the Tribunal in these proceedings to relocate anywhere as a single man.

43. The Claimant confined his own searches to permanent roles, but would have considered non-permanent roles had they been offered to him. He has not explored the option of providing accountancy services through a company, even though that is something he did in the past.

44. On 22 May 2019, notes of the Claimant's counselling session included the following:

> Client said he had been feeling low because he felt he had not been achieving anything in his life, due to the fact that he wasn't working, because he was embroiled in the trial with his previous employers. We looked into this together and found out that he was making headway with his case due to the research and hard work he had been putting into it, so he discovered that whilst the kind of achievements he was used making had changed, due to the case being a priority and him being unemployed, he was in fact achieving something in life. We also spoke about how he could find and make time to do the things he used to enjoy but had stopped.

45. Ms Omeri put to the Claimant in cross-examination that this entry showed that he was prioritising his tribunal claim over seeking work. The Claimant said that he made the tribunal case a priority because there was no one else to help him so he had to help himself. In re-examination, he explained that although he was working hard on his case, he had also continued looking for work. We consider that Ms Omeri is placing too much weight on the counsellor's note, which does not say that the Claimant was focusing on his case and not looking for work. Our reading of the note is that the first sentence does not say that he was *"wasn't working because he was embroiled in the trial with his previous employers"* – there is an important comma between 'working' and 'because', and the reference later in the note to the Claimant being *"unemployed"* makes clear that, as the Claimant explained at this hearing, he was in May 2019 both seeking work and working on his case.

46. In August 2019 the Claimant was offered a part-time book-keeping/finance job to work in a start-up through a recommendation by a former colleague. This is his current employer AJ International Trading Ltd, with whom he continues to work, earning £350 per quarter.

47. The Claimant continued his job search until lockdown in March 2020 and after that he stopped looking for employment. He said that recruitment consultants who he had signed up with (about 10-15 in total, although he had not mentioned them in his witness statement) told him that the market was 'dead'. The Respondent submitted that we should not accept the Claimant's evidence that he had signed up with recruitment consultants because he had not mentioned it in his witness statement, but we do accept his oral evidence in that regard as it appeared to us to be genuine as well as plausible and the Claimant's witness statement bore all the hallmarks of being something he prepared himself with minimal if any advice. Contrary to Ms Omeri's submission, it is also plausible that the Claimant would not know exactly how many he had signed up with.

48. On 1 December 2020 the Claimant wrote to the Tribunal and the Respondent indicating that he wished to claim reinstatement or re-engagement if successful. Thereafter, he appears to have pinned his hopes on that and, once successful at the liability stage in these proceedings, expected the Tribunal at this hearing to make an order for reinstatement or re-engagement so that he has not continued applying for jobs. In particular, he did not apply for any of the jobs available with either Equiom or the Respondent because he considered he could be awarded them through this Tribunal without the need to compete.

49. In recent months, however, the Claimant has taken on a voluntary trustee role with a local charity, Healthwatch City of London which he hopes will differentiate him in the job market.

50. Mr Jordan gave evidence based on his own experience that although there was a pause on recruitment generally when lockdown hit, since September 2020 the market has really picked up and recruitment consultants that he has been speaking to describe the market as 'buoyant'. That accords with his own experience that within 4-6 months of taking voluntary redundancy in August 2020 (following a break) he has been able to secure nearly full time work with four small-to-medium-size enterprises who have been looking for additional financial guidance, in particular in relation to forecasting in the light of Brexit and Covid. He has done that by providing services through a company and signing up to an agency that places Chief Finance Officers / Finance Directors with Companies. He accepted that he is in a better position than the Claimant with regards to the job market given that he is more senior and has not been dismissed.

51. Ms Griffiths adduced evidence that on three major job search sites, there are between 700 and 2,300 jobs currently being advertised in the UK for Finance Business Partner roles earning £60,000. The ONS statistics provided by both sides indicate that although unemployment figures (and numbers of

unemployed people per vacancy) increased at the start of lock-down, they are now decreasing again and are still lower than what they were in 2013-15.

Conclusions

Re-engagement

The law

52. Sections 112, 113, 115, 116 and 117 provide as follows:-

> **112.— The remedies: orders and compensation.**
>
> (1) This section applies where, on a complaint under section 111 , an employment tribunal finds that the grounds of the complaint are well-founded.
>
> (2) The tribunal shall—
>
> (a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and
>
> (b) ask him whether he wishes the tribunal to make such an order.
>
> (3) If the complainant expresses such a wish, the tribunal may make an order under section 113.
>
> (4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126 to be paid by the employer to the employee.
>
> **113. The orders.**
>
> An order under this section may be—
>
> (a) an order for reinstatement (in accordance with section 114), or
>
> (b) an order for re-engagement (in accordance with section 115), as the tribunal may decide.
>
> **115.— Order for re-engagement.**
>
> (1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.
>
> (2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—
>
> (a) the identity of the employer,
>
> (b) the nature of the employment,
>
> (c) the remuneration for the employment,

(d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,

(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(f) the date by which the order must be complied with.

(3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

116.— Choice of order and its terms.

(1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—

(a) whether the complainant wishes to be reinstated,

(b) whether it is practicable for the employer to comply with an order for reinstatement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

(a) any wish expressed by the complainant as to the nature of the order to be made,

(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Subsection (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

117.— Enforcement of order and compensation.

(1) An employment tribunal shall make an award of compensation, to be paid by the employer to the employee, if—

(a) an order under section 113 is made and the complainant is reinstated or re-engaged, but

(b) the terms of the order are not fully complied with.

(2) Subject to section 124, the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.

(3) Subject to subsections (1) and (2), if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—

(a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126), and

(b) except where this paragraph does not apply, an additional award of compensation of an amount not less than twenty-six nor more than fifty-two weeks' pay,

to be paid by the employer to the employee.

(4) Subsection (3)(b) does not apply where—

(a) the employer satisfies the tribunal that it was not practicable to comply with the order.

(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

> (8) Where in any case an employment tribunal finds that the complainant has unreasonably prevented an order under section 113 from being complied with, in making an award of compensation for unfair dismissal it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

53. The parties are agreed that no question arises of re-engagement by Equiom notwithstanding the TUPE transfer: in that respect *Dafiaghor-Olomu v Community Integrated Care and anor* [2018] ICR 585 is binding: an outsourcing of a function to a contractor does not result in a change in ownership of 'the undertaking' (or part of it) so as to bring the contractor within the definition of 'successor employer' in s 235 of the ERA 1996. Nor is Equiom an 'associate employer' under s 231.

54. Under section 116, the Tribunal has first to consider whether an order for reinstatement is appropriate (i.e. an order under s 115 to reinstate the dismissed employee to their old job). That is not sought in this case, so the first question for us is whether to make an order for re-engagement and, if so, on what terms (s 116(2)). In so doing, we must take into account the matters in sub-s (3), i.e.

(a) any wish expressed by the Claimant as to the nature of the order to be made, and

(b) whether it is practicable for the Respondent to comply with an order for re-engagement.

55. We do not have to consider s 116(3)(c) which applies where the complainant caused or contributed to some extent to the dismissal because we found that he did not: see paragraph 179 of the liability judgment.

56. It has been held that *"practicable"* for the purposes of s 116(3)(b) means more than merely possible but *"capable of being carried into effect with success"*: *Dafiaghor-Olomu v Community Integrated Care* [2018] ICR 585 at [22]. The question of reasonable practicability is to be considered as at the date of the hearing on a prospective and provisional basis: *Scottish Police Services Authority v McBride* [2016] UKSC 27, [2016] ICR 788. The Supreme Court gave guidance as follows:

> 37. At the stage when it is considering whether to make a reinstatement order, the tribunal's judgment on the practicability of the employer's compliance with the order is only a provisional determination. It is a prospective assessment of the practicability of compliance, and not a *797 conclusive determination of practicability. This follows from the structure of the statutory scheme, which recognises that the employer may not comply with the order. In that event, section 117 provides for an award of compensation, and also the making of an additional award of compensation, unless the employer satisfies the tribunal that it was not practicable to comply with the order. Practicability of compliance is thus assessed at two separate stages—a provisional determination at the first stage and a conclusive determination, with the burden on the employer, at the second: Timex Corpn v Thomson [1981] IRLR 522 , 523–524 per Browne-Wilkinson J and Port of London Authority v Payne [1994] ICR 555 , 569 per Neill LJ.
>
> 38. Thus in Ms McBride's case, the employment tribunal, when considering whether to make the order for reinstatement, did not need to reach a concluded view on whether Ms

> McBride would accept her continued exclusion from the excluded duties and avoid confrontation with her employer on that issue. It was sufficient if the employment tribunal reasonably thought that it was likely to be practicable for the employer to comply with the reinstatement.

57. In deciding whether to make an order for re-engagement, we must consider the effect that such an order would have on the Respondent's business. If such an order would lead to industrial unrest, it should not be made: *Coleman and Stephenson v Magnet Joinery Ltd* [1974] ICR 25.

58. Likewise, an order for re-engagement will not be practicable where it would lead to a redundancy situation or to significant overmanning: *Cold Drawn Tubes Ltd v Middleton* [1992] ICR 318 at 324A-B.

59. Where the employer has *rationally* lost trust and confidence in the employee, that is likely to make an order for reinstatement or re-engagement impracticable: see *Wood Group Heavy Industrial Turbines Ltd v Crossan* [1998] IRLR 680 and *United Distillers & Vintners Ltd v Brown* (EAT/1471/99) at [14]. Likewise, an employee who makes serious allegations against their employer in the course of proceedings might make it not reasonably practicable to order reinstatement or re-engagement: *Oasis Community Learning v Wolff* (UKEAT/0364/12) at [44].

60. It is, however, permissible for a Tribunal to impose conditions on any order for reinstatement or re-engagement so as to reduce the likelihood of any problems. In *Oasis Community* the EAT (Underhill J presiding) found that it was lawful for the Employment Tribunal to include in its order of re-engagement a requirement or term that 'The Claimant will at all times during his employment with the Respondent…strictly comply with the Respondent's procedures relating to disciplinary and grievance matters and any whistleblowing policies. He will comply with all reasonable management instructions during the course of that employment'. The EAT expressed the provisional view that, although elaborate terms of this kind are unusual and should be adopted only with caution, they could not see why they should be outside the powers of the Employment Tribunal to impose stating at [39], *"Sensible creativity, in a case that really calls for it, should not be discouraged"*.

Conclusion on re-engagement

61. We consider that it is not practicable to order re-engagement in this case. This is for two principal reasons as follows:-

62. First, the Senior Branch Manager/Branch Manager roles available are not suitable for the Claimant. We agree with the Respondent's witnesses that the Claimant does not have the necessary professional experience for those roles and would require significant training which it is not reasonable to expect the Respondent to provide. We are also not satisfied that there is sufficient likelihood that even with training the Claimant would be appropriate for those roles. We share Mr Warrilow's view that the Claimant is wrongly regarding these as basic administrative positions that could be effectively

filled by anyone with ad hoc experience of organising the occasional work or personal socal event. However, that is not the nature of these roles, either as they appear from the job descriptions, or as Mr Warrilow and Ms Griffiths have described them as being in practice. It is apparent that the jobs require a range of people-focused soft skills as well as professional-level social media and other skills of which the Claimant has no previous work experience and has demonstrated no particular aptitude. Re-engaging him to any of these roles would, in our judgment, be setting him up to fail. We have considered whether this is one of those cases where, as suggested in *Olumo*, we might make an order for re-engagement in order to 'see how it goes'. However, we do not consider that would be appropriate. This is not in our judgment a finely balanced judgment. The roles are clearly unsuitable and it is not practicable for the Claimant to be re-engaged to them.

63. Secondly, we found in the liability judgment that the Respondent's witnesses perception of the Claimant's poor conduct towards colleagues and breakdown in working relationships with the Claimant was genuine, but not reasonable and they had not handled their concerns about the Claimant's conduct and his relationship with Mr Gregory reasonably or fairly and had not given him a fair opportunity to remedy either his conduct or his relationship with Mr Gregory. In the light of the authorities we have set out above, especially *United Distillers & Vintners Ltd v Brown*, the fact that we considered the Respondent's genuine perceptions were not reasonable or, to use the language of that case, were 'irrational' suggests that this is not a case where we should regard the the Respondent's witnesses' view of the Claimant as being a factor that in and of itself makes it 'not practicable' to re-engage. This is especially so given that most of the key players have now left the Respondent.

64. However, the position has moved on somewhat from the matters that we were considering at the liability stage. The parties have been engaged in protracted and acrimonious litigation, in the course of which the Claimant has levelled some serious allegations against the Respondent, which Ms Griffiths at least has had personally to deal with and she now feels that she could not work with him and would consider leaving. That is not quite 'industrial unrest', but it is something close to it. In any event, she is one of only two employees in the HR department and it is inevitable that she would have to work with the Claimant if he were re-engaged. If the Claimant were re-engaged to one of the roles which we have found are not suitable for him and for which he would require significant training, he would also in all likelihood require significant HR involvement. In those circumstances, a poor working relationship with Ms Griffiths is going to make re-engagement even more impracticable.

65. We therefore find that it would not be practicable to make an order for re-engagement.

Polkey: *what are the chances that the Claimant would have been made redundant in or around August 2020?*

66. We consider that if the Claimant's employment had continued beyond the December 2018 redundancies (a chance that we put at 90% for the reasons set out in paragraph 189 of the liability judgment), he would then have transferred to Equiom on 7 August 2020 with his colleagues. The Respondent submitted that its liability should end there as that is when it ceased to be the Claimant's employer, but that is wrong on principle: damages for discrimination are assessed on the tortious principle. The Respondent is liable for the Claimant's losses flowing from the dismissal. Those losses do not stop as at 7 August 2020 because like his colleagues, as a result of the application of TUPE, his employment would have continued beyond that date and so his losses flowing from the dismissal also continue beyond that date.

67. However, we consider that thereafter the Claimant's fate would have been the same as Ms Li's and Mr Lam's. Although the Claimant was more senior to Ms Li, she scored significantly less than the Equiom employee against who she was matched and we do not think, given the differences between the experience of the Respondent's employees and that of Equiom employees, the result would have been significantly different for the Claimant. The fact that Mrs Corfield scored the Claimant the same as Ms Li when she carried out the table-top scoring exercise supports this conclusion. Given the Claimant's character we would have expected him also to try for the more senior role as Mr Lam did, but the Claimant is junior to Mr Lam and if Mr Lam did not get that job, the Claimant would not have got it either. It follows that he would, like Mr Lam, have been made redundant on 17 September 2020.

68. The evidence is such that we can be certain that this would have been the outcome. It follows that the Claimant cannot recover any losses going beyond that date.

Did the Claimant fail to take reasonable steps to mitigate his loss prior to 17 September 2020 such that his compensation prior to that date should be reduced?

69. We find that the Claimant for the most part took reasonable steps to mitigate his loss between November 2018 and April 2020. Between November 2018 and April 2020 he applied for 92 roles, which equates to about 5 a month on average which is in our view a reasonable number in principle, particularly given that he had adopted the approach (which is one reasonable way seeking work) of placing his CV on sites where it might be seen by employers or recruitment consultants so that when he was invited to apply for jobs there was at least a reasonable prospect that he might succeed. We place little weight on the numbers of jobs that are now being advertised on job sites as these do not relate to the period with which we are concerned and we are not in a position to make an assessment of what proportion of those jobs were truly available or likely to be appropriate for the Claimant.

70. We also consider that the range of jobs the Claimant applied for was broadly reasonable: he did not confine himself to finance roles but also included some

IT roles, which was a reasonable step given his skills and experience. We do not consider it was unreasonable for him to try for some jobs for which he did not wholly fulfil the person specification. As he observed, for one such job he actually got an interview: not fulfilling the person specification is not always a barrier to appointment. We do not consider that he acted unreasonably in not pursuing the option of providing services through his own company as that would have been unlikely to make any significant difference: whatever his employment status, he would still have to be successful in getting a job from someone.

71. It was also reasonable for him to accept the part-time role that he did in August 2019 and, having done so, we would have expected him thereafter to have found it easier to find further work as having a job, albeit a part-time one, would counteract to some extent the effect on his job prospects of having been dismissed. We also accept that it was reasonable for the Claimant to confine his search to the United Kingdom during this period, notwithstanding his language skills and international background. Moving country is a big step even for a single person with an international background such as the Claimant.

72. However, we do consider that it was unreasonable for the Claimant not actively to seek temporary positions. This would potentially have widened the pool of suitable roles and it is generally easier to secure a temporary role than a permanent one. Even taking account of the effect of the dismissal on his job prospects, we would have expected a search for temporary work to have yielded some work so that after about 6 months of unemployment he might have expected to have obtained an average of the equivalent of a day a week of temporary work at his previous rate of pay.

73. Ordinarily, the fact that the Claimant stopped looking for work after March 2020 would mean that he should recover nothing beyond that date, but the evidence before us from the Claimant and Mr Jordan is that during that first part of lockdown between April 2020 and September 2020 the market was in practice ‘dead’ and ‘there was a pause on recruitment’. We therefore consider that what would have happened during this period, on average, if the Claimant had been seeking temporary work is that he would have continued to obtain the equivalent of a day a week of temporary work at his previous rate of pay.

74. We therefore consider that the Claimant’s compensation should be reduced by 20% from April 2019 onwards to reflect what the position would likely have been if he had taken all reasonable steps to mitigate his loss.

Compensation: basic award

75. The Claimant was born on 9 October 1976. He was 40 when he started employment on 17 October 2016 and 42 when his employment terminated on 2 November 2018. Under s 119 ERA 1996 he is entitled to 1 week’s pay

for each complete year of employment between the ages of 22 and 40 and 1.5 week's pay for each complete year of employment when he was 41 or over, so 2.5 weeks' pay in the Claimant's case. Gross pay is taken for this purpose, with the maximum amount being agreed by the parties to be £525 per week, so the basic award is £1,312.50. We decided that the Claimant was entitled to a 25% uplift under s 207A(2) of TULR(C)A 1992, so the total basic award is **£1,640.63**.

Compensation: compensatory award

76. For the reasons set out above and in our liability judgment we have found that:-

    (1) The Claimant should be awarded 90% of his losses between 2 November 2018 and 1 April 2019 (21.4 weeks);

    (2) Between 2 April 2019 and 17 September 2020 (76.6 weeks) he should be awarded 70% of his losses (i.e. 20% failure to mitigate deduction plus 10% *Polkey* reduction);

    (3) Thereafter, no loss; and,

    (4) The award should be uplifted by 25% under s 207A(2) of TULR(C)A 1992.

77. As to the amount of the losses, the parties are agreed that the Claimant suffered net weekly losses of £796.62 (net pay), plus £92.31 (employer's pension contribution at 8%), i.e. £888.93 per week. So the total loss of earnings is (£888.93 x 21.4 x 90%) + (£888.93 x 76.6 x 70%) = £17,120.79 + £47,664.43 = **£64,784.43**.

78. The employee pension contribution is not counted for this purpose as that is (or should be) paid by the employee out of net pay. If we have misunderstood in this respect, and the employee contribution referred to in the Claimant's schedule of loss has not been counted in net pay, then the weekly loss figure would fall to be increased by the amount of that contribution. It is immaterial whether the employee contributions were voluntary: the question is what money from the Respondent has been lost by the Claimant, whether he received it into his bank account each month or paid it voluntarily into his pension. If an adjustment to the award we have made is required as a result of this issue, the parties should seek a reconsideration (if they cannot reach agreement).

79. The health care benefit is not recoverable because an employee is not entitled to receive compensation in respect of life insurance, or other insurance, for a period following dismissal during which he or she did not take out replacement cover and the risks insured did not occur: *Knapton v ECC Card Clothing Ltd* [2006] ICR 1084 at [31] – [32].

80. No separate compensation for holiday pay is required as that would double-count the salary losses.

81. We make no additional award in respect of the Claimant's loss of his right to be accompanied to a disciplinary hearing. The Claimant in the Schedule of Loss appears to be seeking to make a claim under s 11 of the Employment Relations Act 1999 (ERA 1999), but no such claim was made in the claim form or identified in the list of issues. There is in any event no breach of the right under s 10 of the ERA 1999 unless the worker has requested to be accompanied at a hearing (s 10(1)(b)). The Claimant did not make any request in relation to the disciplinary hearing. The failure to allow the Claimant an opportunity to be accompanied to that hearing was a breach of paragraph 10 of the ACAS Code of Practice and is compensated for by the uplift that we have awarded.

82. We do, however, make an award to the Claimant of **£250** representing the loss of the statutory right to claim unfair dismissal.

83. From this compensation for financial loss, we deduct the sums earned by the Claimant in mitigation, which we estimate to be £1,400 (c 1 year at £350 per quarter), and £6,372.96 pay in lieu of notice.

84. This gives a total financial loss of **£57,261.47**.

85. To that we apply the 25% ACAS uplift, giving a total of **£71,576.84**.

86. Even without grossing up for tax, this exceeds the statutory cap for the Claimant of 52 weeks' net pay which the Respondent calculates (and we agree, subject only to the point about employee pension contributions we have noted above) to be **£46,224.36**. The parties are agreed that we do not gross up this figure: see ERA 1996, s 124(5) and *Hardie Grant London Limited v Aspden* (UKEAT/0242/11). So this is the final amount of compensation that we award the Claimant.

Overall conclusion

87. The unanimous judgment of the Tribunal is that:

    (1) No order is made for re-engagement under s 166 of the ERA 1996;

    (2) If he had not been unfairly dismissed, the Claimant's employment would have terminated on 17 September 2020 in any event and he is not entitled to compensation beyond that date;

    (3) The Claimant failed fully to comply with the duty to take reasonable steps to mitigate his loss and his compensation it is just and equitable for his compensation to be reduced by 20% from 2 April 2019;

    (4) The Respondent must pay to the Claimant within 14 days of this judgment being sent to the parties a total of **£47,864.99** in compensation for unfair dismissal, comprising a basic award under

s 119 of the ERA 1996 of £1,640.63 and a compensatory award under s 123 of the ERA 1996 of £46,224.36.

Employment Judge Stout
21 June 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

21/06/2021

FOR THE TRIBUNAL OFFICE