



# EMPLOYMENT TRIBUNALS

**Claimant:** Jane Woodward

**Respondent:** Barnard Castle Town Council

## RESERVED JUDGMENT ON REMEDY

**Heard:** Remotely by Cloud Video Platform      **On:** 02 March 2021

**Before:** Employment Judge Sweeney

**Members:** Claire Hunter and Stuart Moules

**Representation:**

For the Claimant: Paul Clark, solicitor

For the Respondent: Amy Rumble, counsel

The unanimous Judgment of the Tribunal is as follows:

1. In respect of the complaint of **unfair dismissal** the Respondent is ordered to pay the Claimant a basic award of **£2,336.45**
2. In respect of the complaint of **disability discrimination** contrary to sections 20-21 Equality Act 2010, the Respondent is ordered to pay the Claimant compensation of **£52,727.01** consisting of:

<b>2.1</b>	<b>Injury to feelings</b>	<b>£15,000</b>
<b>2.2</b>	<b>Interest on injury to feelings</b>	<b>£2,350.68</b>
<b>2.3</b>	<b>Financial losses</b>	<b>£32,267.75</b>
<b>2.4</b>	<b>Interest on financial losses</b>	<b>£2,033.31</b>
<b>2.5</b>	<b>Grossed up figure on financial losses</b>	<b>£1,075.27</b>

3. The total amount payable to the Claimant is **£55,063.46**

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

## **REASONS**

### **The Hearing**

1. This remedy hearing was listed following promulgation of the Tribunal's judgment on 04 January 2021, in which it found in favour of the Claimant in respect of complaints of disability discrimination and unfair dismissal. Claimant and the Respondent were again represented by Mr Clark and Ms Rumble, respectively.
2. The Claimant gave further evidence as did Martin Clark, the current Town Clerk of the Respondent council. The Claimant attached a number of exhibits to her statement. In addition to those exhibits we were provided with a remedy bundle running to some 173 pages, which included a schedule of loss and a counter schedule of loss. However, on 01 March 2021, Mr Clark sent through an amended schedule of loss incorporating some of the figures taken from the Respondent's counter schedule. The amended schedule of loss referred for the first time to a claim for psychiatric injury.

### **The issues on remedy**

3. We discussed the main issues on remedy at the outset of the hearing, which were:
  - 3.1. What financial losses should the Claimant be compensated for and whether her financial losses should be assessed under unfair dismissal compensation (with the application of the statutory cap) or whether she should be awarded financial losses for discrimination. The Respondent's position was that the Claimant should be awarded no financial losses for the failure to make reasonable adjustments, with that being confined to non-pecuniary losses only. The Claimant's position was that her losses should be awarded as compensation for discrimination and not subject to the statutory cap;
  - 3.2. Whether the financial losses should involve any award in respect of the loss of a higher salary upon the Claimant completing and obtaining a 'CILCA' qualification;

- 3.3. What is the appropriate level of injury to feelings and/or damages for personal injury;
- 3.4. Should there be an uplift for unreasonable failure to comply with the ACAS Code of Practice;

**Findings of fact**

4. Having considered all the evidence before it (written and oral) and the submissions made by the representatives on behalf of the parties, the Tribunal finds the following facts.
5. The Claimant was 42 years of age as at the effective date of termination of her employment, by which date she had completed 4 years of continuous employment. She was paid as follows:
- |                           |               |
|---------------------------|---------------|
| 5.1.1. Gross weekly pay:  | £519.21       |
| 5.1.2. Net weekly pay:    | £421.05       |
| 5.1.3. Employer's pension | £99.16 a week |
6. At the date of dismissal, on 05 August 2019, the Claimant was on spine point SCP23. Had she remained in employment, in September of that year there was a chance of her progressing to SCP24. Progression to that pay point was not automatic. In the Claimant's case it was dependent on her completing and passing her CiLCA exams (which stands for 'Certificate in Local Council Administration').
7. Following her dismissal. the Claimant continued to struggle with the effects of depression and stress and anxiety. Her confidence and self-esteem remained very low. This continued throughout 2020. Whilst the Claimant had a pre-existing condition of depression and anxiety even before she commenced employment with the Respondent, the actions of the Respondent in excluding her and failing to lift the suspension by way of a reasonable adjustment (as set out in the liability judgment) exacerbated the effects of that pre-existing condition, and affecting her self-confidence and self-esteem to such an extent that she was unable to take up remunerative employment. This had begun well before her dismissal and we have noted in our liability judgment the occasions where the effects were drawn to the Respondent's attention. She was already in a fragile state by the time of the dismissal due to the way she had been treated by the Respondent.
8. In October 2019 the Claimant took on some voluntary work with a few organisations based in Barnard Castle. She volunteered with a community arts centre, 'the Witham', for about 4.5 hours a week. She volunteered 2 – 3 hours a week with the Barnard Castle Christmas Lights Committee, helping with general administration and fundraising activities. She also volunteered to work

on reception at the Teesdale Community Resources (TCR) Hub for about 4 hours a week.

9. That was about as much as the Claimant could manage to do at the time. She did not have the confidence to take on paid remuneration and certainly not in a full-time capacity. In January 2020 she was assessed by Department for Work and Pensions ('DWP') as having limited capability for work. In the work capability assessment questionnaire which she completed for the purposes of universal credit, the Claimant said among other things: '*...I have a case before an employment tribunal for unfair dismissal. My confidence and self esteem is shattered. I am struggling to deal with what has happened to me and my career. It has impacted massively on my health. I need time to heal and rebuild emotional strength....*'
10. The Claimant managed to secure a contract as a casual worker at the Witham in February 2020. Work was to be offered at the Witham's discretion and neither was obliged to perform or offer work. Any work offered would be at the rate of £9 per hour, which increased to £9.25 an hour. As at the date of this hearing, the Claimant had earned £622.60 through the Witham. She has been on furlough leave since 05 November 2020.
11. In the 18 months between her dismissal and the Remedy Hearing several job vacancies arose in parish councils in the local area. We accept the evidence of Mr Clark (the current Town Clerk for the Respondent) that the parish councils referred to in his witness statement advertised for town clerk positions. One of those posts was Mr Clark's former post at Evenwood & Barony Parish Council. We accept, and note that there was no suggestion to the contrary, that those roles were at substantially the same salary with substantially the same pension contributions as that which the Claimant had earned with the Respondent.
12. The Claimant did not apply for any of these vacancies. She did not apply for many jobs. She was not ready for this because of her health and any environment would have to be a supportive one.
13. On 26 November 2020, a local councillor at Lartington Town Council emailed Mr Peat offering the Claimant the role of Town Clerk. There was no requirement for a competitive interview. The job was hers if she wanted it. Ms Rowell's email demonstrated some empathy towards the Claimant, recognising that she had been through an awful time. It very much suggested that they would be supportive of her should she take up the offer. Ms Rowell suggested that the Claimant could speak to the chair of the council directly. It was also clear that Mr Peat knew councillor Rowell and would be able to reassure the Claimant as to what she was like as a councillor. Mr Peat talked this through with the Claimant. However, she declined the opportunity saying that it was too soon to be considered as clerk as her dealings with the Respondent were still affecting her.

14. At that date, the Claimant's dealings with the Respondent consisted of dealing with these employment tribunal proceedings. The liability hearing had finished on 09 November 2020 and the Claimant was waiting for the outcome of the case. The Tribunal's reserved was sent to the parties on 04 January 2021.
15. Mr Peat explained to Ms Rowell that the Claimant was to start working 10 hours a week at the Hub job and was also a casual duty manager at the Witham, noting that both had been supportive of the Claimant, helping to boost her self-confidence. Mr Peat asked to pass on the Claimant's thanks for considering her for a job that in other circumstances she would have been very pleased to accept.
16. That role, being a position of town clerk, would – we accept – have been on substantially the same remuneration, town clerk roles being paid according to a national pay scale.
17. In a letter dated 01 February 2021 from the Chief executive of the TCR Hub, Rachel Tweddle, she describes the Claimant as lacking in confidence. She also describes avoiding giving her tasks that might bring her into working closely with member or employees of the Respondent council, referring to it being 'plausible' that from time to time members of the council may work on joint projects with the Hub. She said that on occasion the Claimant has had to step back from an event or activity as she had not been ready or able to face anyone associated with that time in her life. Ms Tweddle expresses confidence that with time and the right support and nurturing, the Claimant will flourish in the workplace.
18. In a letter dated 02 February 2021, the Claimant's GP refers to her having been through the mill emotionally but that what sustained her was her resilience and determination to see matters through to a conclusion, which resulted in a largely satisfactory conclusion which has brought the Claimant some relief.
19. The Claimant's health had suffered during the period of her suspension from work and her emotional fragility, depression and anxiety continued beyond the dismissal and throughout the whole of 2020. These letters simply demonstrate that and they are written in support of the Claimant's position with a view to supporting her submissions on remedy.
20. However, they also show that the Claimant could work effectively and that her confidence was gradually building.

### **Relevant law**

### **Compensation for discrimination**

21. An award of compensation is to be assessed under tortious principles (sections 119(2) and 124(6) Equality Act 2010). This requires the tribunal to put the Claimant in the position, so far as is reasonable, that she would have been had the tort (or discrimination) not occurred: **Chagger v Abbey National plc** [2010] IRLR 47.
22. Only those losses caused by the unlawful act of discrimination are recoverable. If, for example, the individual would have lost their job at some point in any event, and if the discriminatory act has not altered their job prospects the losses suffered after that date would not have been caused by the discrimination.
23. There is one significant distinction between the compensatory principles applicable in discrimination and those in general tort namely that under general tortious principles losses that are too remote and unforeseeable are not recoverable. In discrimination, that principle does not apply. Any loss proved to flow directly from the discriminatory act will be recoverable: **Essa v Laing Ltd** [2004] I.C.R. 746, CA. In that case the Court of Appeal confirmed this distinction in the case of discriminatory harassment.
24. Non-financial losses are also recoverable in discrimination complaints. For example, injury to feelings awards and awards for psychiatric injury. A psychiatric injury is a person injury for which a claimant may claim damages.

### **Injury to Feelings**

25. This award is intended to compensate for the anger, distress and upset caused by the unlawful treatment they have received. It is compensatory, not punitive. Tribunals must focus on the actual injury suffered by the Claimant and not the gravity of the acts of the Respondent: **Komeng v Creative Support Ltd** (UKEAT/0275/18/JOJ). Tribunals have a broad discretion as to the level of award but must apply that discretion judicially according to general principles and guidelines. The general principles were stated by the EAT in **Prison Service v Johnson** [1997] IRLR 162, para 27. The sort of things compensated for covers feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression. There are well known 'bands' of awards known as the 'Vento' bands: **Vento v Chief Constable of West Yorkshire Police (No2)** [2003] IRLR 102: the top, middle and lower bands. The boundaries of the bands have been revised. As of March 2020, they were as follows:

25.1.1. Upper Band: £27,000 to £45,000;

25.1.2. Middle Band: £9,000 to £27,000;

25.1.3. Lower Band: £900 to £9,000

## Psychiatric injury

26. A tribunal may award damages for a personal injury where the damage has been caused by an act of discrimination.
27. There is no absolute requirement for medical evidence to establish a personal injury in employment tribunals. However, obtaining such evidence is always advisable: **Hampshire County Council v Wyatt** (UKEAT/0013/16).
28. Where there is a proven psychiatric injury, the Tribunal must approach the assessment of damages on the same basis a common law court in an action for personal injuries: **HM Prison Service v Salmon** [2001] IRLR 425. The Judicial College has published guidelines for the assessment of general damages in personal injury cases (the most recent being the 15<sup>th</sup> edition, November 2019). It identifies a number of factors which need to be considered when valuing claims of psychiatric injury and suggests four categories of award: less severe, moderate, moderately severe and severe.
29. Sometimes, issues may arise where a claimant has suffered an injury through multiple causes. In such cases, the tribunal will have to consider whether the harm is 'divisible' or 'indivisible'. Where harm is divisible – i.e. where different acts cause 'different' damage or 'quantifiable parts' of the damage – the tribunal is required to establish and award compensation only for that part of the harm for which the Respondent is truly responsible. Where the harm is indivisible – i.e. where multiple acts result in the same damage – any respondent whose act has been the proximate cause of the injury must compensate for the whole of it. The fact that others may have had a part to play in the injury is a matter for contribution (as between those actors) and not apportionment.
30. It is more likely that an injury will be held to be indivisible if the competing causes are closely related to the injury and it is difficult to separate out the consequences: **Olayemi v Athena Medical Centre & Anor** (UKEAT/0140/15, para 25). See also **BAE Systems (Operations) Ltd v Konczak** [2017] EWCA Civ 1188 on the question of indivisibility.
31. In **Prison Service v Beart (No2)** [2005] I.C.R. 1206, the Court of Appeal upheld the decision of the EAT that, in a case where there was clear evidence that the harm caused by pre-dismissal discrimination and of its ability on Ms Beart's ability to work beyond the date of her unfair dismissal, there was no reason why the chain of causation should be broken at that date (i.e. the date of dismissal). The decision of the EAT that in the case of statutory discrimination torts, an employer could not rely on its own wrong to secure a benefit and that an employer could not use an intervening act of unfair dismissal to limit damages flowing from earlier acts of discrimination.

## Interest

32. A tribunal may award interest on awards of compensation in discrimination claims in respect of past financial loss and injury to feelings and awards in respect of psychiatric injury. Interest is calculated as simple interest: Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Regulation 3(1). The current interest rate is 8%. Interest is awarded on injury to feelings awards from the date of the act of discrimination complained of until the date on which the tribunal calculates the compensation (regulation 6(1)(a) of the 1996 Regulations). Interest is awarded on other awards from the mid-point of the date of the act of discrimination and the date of calculation (regulation 6(1)(b)).
33. The Tribunal must consider whether to award interest without the need for any application in the proceedings (regulation 2(1)(a) – see also **Komeng v Creative Support Ltd** (UKEAT/0275/18/JOJ). Where it considers that serious injustice would be caused if interest were to be awarded it may calculate interest for such different period or calculate interest as it considers appropriate in the circumstances having regard to the provisions in the Regulations.
34. Recoupment provisions do not apply to compensation for discrimination.
35. Where an award will attract a tax liability on the claimant who receives the award, the award will be increased to reflect the net sum the Claimant ought to receive – referred to as ‘grossing up’. This is necessary to compensate for the true net loss. Grossing up will apply to awards where section 401 ITEPA 2003 operates to tax the sum in the claimant’s hands. That provision applies to payments received directly or indirectly in consideration or in consequence of, or otherwise in connection with – among other things – the termination of a person’s employment. The recipient enjoys a tax-free amount of £30,000 in any particular tax year and pays tax on sums in excess of that figure.

#### **Submissions on behalf of the Claimant**

36. Mr Clark initially suggested that the Respondent had conceded at the liability hearing that the Claimant had taken reasonable steps to mitigate her loss. Ms Rumble did not accept there had been any such concession. In any event, Mr Clark confirmed that he was not pursuing this point.
37. Mr Clark contended that the Claimant should be compensated under discrimination principles for the losses flowing from the act of discrimination, namely the failure to make the reasonable adjustment of lifting her suspension and returning her to the workplace. Her subsequent unfair dismissal could not break the chain of causation. C suffered losses as a result of that failure; the fact that the financial losses did not start until the subsequent dismissal did not mean that they did not flow from that act of discrimination. He reminded the Tribunal of its findings in relation to the exclusion and isolation of the Claimant and that these facts were all linked to the unfairness of the dismissal.



38. He maintained that the medical evidence was clear in that the Claimant's mental health deteriorated from the point at which she was dismissed and continued during this period of exclusion and isolation leading up to the dismissal. He pointed to the fact that the Claimant had raised this a number of times during her suspension.
39. He submitted that the medical evidence was consistent with her own evidence as to her inability to work at a certain level due to the effect of the discrimination on her confidence. Her financial losses flowed from that act of discrimination, irrespective of the dismissal, which – relying on the case of **Beart** – would not act as a barrier to recovery of those losses. He relied on the principles of recovery as discussed in **Essa v Laing**. The loss need not be foreseeable provided that the loss is caused by the prohibited conduct, although in this case the losses were foreseeable. He submitted that there is sufficient evidence to demonstrate that the Claimant's losses were caused by the failure to make reasonable adjustments – it was the continued, discriminatory exclusion of her from the workplace that led to the deterioration in her health which continued beyond the unfair dismissal: had they made the adjustment, Mr Clark Submitted, the Claimant would have returned to work and would not have been dismissed. He relied on the Tribunal's findings to this effect.
40. Mr Clark submitted that there should be an uplift to reflect unreasonable failure to comply with the ACAS Code, but only if the Tribunal were to award the Claimant losses for unfair dismissal under a compensatory award. If the Tribunal were to award her ongoing losses for the failure to make reasonable adjustments, then no ACAS uplift applied.
41. As to mitigation of losses, he contended that the Respondent had failed to show that the Claimant had taken reasonable steps to mitigate her loss.

#### **Submissions on behalf of the Respondent**

42. Ms Rumble contended that there was no evidence, or at any rate, insufficient evidence to establish a psychiatric injury. This had not been foreshadowed in the original schedule of loss (which referred only to injury to feelings). She noted that no distinction was drawn between the amount claimed for injury to feelings in the original schedule of loss (£17,500) and in the revised schedule of loss which sought the same amount for injury to feelings and psychiatric injury.
43. Ms Rumble contended that the Claimant should be compensated for her financial losses under unfair dismissal principles and that there was no financial loss arising from the failure to make reasonable adjustments. Her financial losses were, she submitted, attributable only to her dismissal, this being a divisible act from the earlier act of discrimination and that any award of financial compensation was subject to the statutory cap for unfair dismissal (in the

Claimant's case, 1 year's salary). Ms Rumble further submitted that the Claimant had acted unreasonably in rejecting the offer of a job at another parish council which would, on her evidence, have paid her the same as she had been earning with the Respondent.

44. As for injury to feelings, Ms Rumble contended that the appropriate award should be lower Vento, in the region of £5,000 and even if against her on this, it should be pitched no higher than top of lower or bottom of middle Vento.

### **Discussion and conclusion**

#### **Basic award: unfair dismissal**

45. The Basic Award was agreed as **£2,336.45**.

#### **Financial losses – whether to be assessed as unfair dismissal compensation or compensation for discrimination**

46. We agree with Mr Clark that the Claimant's financial losses flowed naturally from the failure to make reasonable adjustments. We also agree that the Respondent cannot escape liability for those losses which flow naturally from that failure by relying on its own subsequent unfair dismissal of the Claimant: **Beart v Prison Service** The financial losses sustained by the Claimant may have started with and after her dismissal but they were a proximate and direct consequence of the failure to make reasonable adjustments. Had the Claimant not been a disabled person, suffering from anxiety and depression and had her health not deteriorated as a result of her continued discriminatory suspension and exclusion from the workplace, then she may well have been in a position after dismissal to take up remunerative employment. But she was not. Her confidence and anxiety was so badly affected by her treatment that she was unable to work and that continued for some time, while she sought to regain her strength and her confidence. It cannot be right – and is contrary to principle and authority – that a tortfeasor may benefit from his own subsequent wrongdoing. The Respondent cannot limit its liability for financial losses flowing from the discrimination by relying on its own unfair dismissal of the Claimant.

47. Therefore, we have assessed the Claimant's financial losses from the date of dismissal on tortious principles and without application of any statutory cap. In light of Mr Clark's submission, we have not gone on to consider any ACAS uplift.

48. We had to consider what the financial losses were and how long they had continued and whether they may continue into the future. The Respondent will be liable for such ongoing losses unless and until the Claimant has mitigated those losses or to such date when the Tribunal concludes that she ought reasonably to have mitigated them. We agree with Ms Rumble, that the

Claimant has failed to mitigate her losses from early January 2021. We conclude that the Claimant did not act reasonably in failing to take up the offer of employment within local government. She has been working locally and coming into contact with local personalities, volunteers and councillors. She has shown that, albeit by way of volunteering, she is able to work in the local community. The Claimant is very capable and intelligent.

49. We conclude that the Claimant has been in a bit of a comfort zone, for want of a better phrase. That is not a criticism of her – given her experiences that is understandable and it was most probably necessary to enable her to regain her confidence. She had become comfortable with what she was doing and the people surrounding her and with these proceedings yet to be completed, she was not willing to leave that comfort zone. It is rare, in the Tribunal's judgement, for an opportunity to come as the 'Lartington' opportunity did. The job came to her. She did not have to go looking for it and the way in which the approach was made revealed a prospective employer that showed some insight into her recent difficulties and fragility.
50. The Tribunal considered that the Claimant could have taken the role at the very least on a trial basis and that it would have been reasonable to expect her to do so. Given the very supportive and understanding tone of the email, it was clear to the Tribunal – and ought to have been reasonably clear to the Claimant - that this would have afforded a perfect opportunity to her to get back into the workplace at the same level and continue to build on the good work she had been doing to date in regaining her confidence. There is no reason to suppose that any contact with councillors Blissett and Mooney would not have been managed by those in Lartington. To say that it is 'plausible' that the Claimant may come into contact with them is not a reasonable basis for rejecting an opportunity such as this. We made no findings as to the conduct of any other councillor and some councillors within the Respondent were supportive of the Claimant's position. She lives and wishes to work within that local community. It was, in our judgment, not reasonable to refuse the offer of employment in these circumstances in a different parish on the basis that she 'might' come into contact with some of those from the Respondent council. We accept the evidence of Mr Clark, and there was no suggestion to the contrary, that had the Claimant accepted this, she would have earned the same or very nearly the same salary.
51. When the Claimant was made aware of the opportunity in Lartington, these proceedings had just concluded and the Tribunal had yet to promulgate its judgment. Had she responded positively to the Lartington approach, it is likely that the Claimant would have entered into discussions with a view to commencing employment early in the new year. We conclude that the Claimant would reasonably have been entitled to wait until the conclusion of these proceedings in early 2021 before taking up that employment and that Lartington would most probably have been receptive to this. Judgement was sent to the

parties on 04 January 2021. We are confident that the judgment on liability would have acted as a boost for the Claimant and she ought reasonably to have been in a position to take up employment, at the very least on a trial basis, by 11 January 2021. Therefore, we limit her financial losses flowing from the discrimination and her subsequent dismissal to 11 January 2021. By that date, the Respondent has satisfied us that the Claimant should have been able to fully mitigate those losses.

52. The financial losses for which the Claimant is to be compensated are: basic salary and pension loss and loss of the chance of securing a higher salary for completion of CILCA. The parties agreed that this should be assessed as the loss of a chance. While failure cannot be ruled out, we conclude that the chances that the Claimant would have completed and passed CILCA were high – we assess it at 80%. As discussed, the Claimant is a capable and intelligent individual. We allow for a 20% chance that she might not have completed the qualification by September 2019. This reflects the possibility that all was not well in terms of relationships within the office, as we have set out in our liability judgment and in light of that there must be a chance that the Claimant might not have completed and/or performed to the best of her abilities.

53. There is no dispute as to the amount of the pension contributions or net pay.

54. As we have assessed the Claimant's financial losses as compensation for discrimination the recoupment provisions do not apply. However, the income she received through benefits and other income from the date of dismissal must be offset against her losses.

### **Non-financial losses**

55. We do not award any compensation for psychiatric damage. There was simply insufficient evidence of a personal injury (as opposed to injury to feelings). Although there is no rule or requirement that a claimant must adduce medical evidence to claim an award for personal injury, it remains the case in these proceedings that there was no specific medical evidence adduced of a personal injury or as to the cause of that personal injury. The Tribunal would have been greatly assisted had there been such evidence. The Tribunal was troubled that a claim for psychiatric injury arose extremely late in the day. It also noted that there was no reference by Mr Clark to the judicial college guidelines despite this being identified by Ms Rumble. We further noted that Mr Clark did not seek any additional sum in respect of psychiatric injury. He sought an award for injury to feelings of £17,500 which sum did not change despite the addition of psychiatric damage to the schedule of loss.

56. We have carefully considered the effects of the discriminatory treatment on the Claimant. In our judgement the appropriate level of award is **£15,000**. From our findings of fact in this and in the liability judgment, it is clear that the effect of

the discrimination on the Claimant has been significant. We refer back to our findings that she begged to be allowed back to work (paragraph 58); that she made the Respondent aware of her distress (paragraphs 62, 107, 109) and our conclusion at paragraph 308 of the liability judgment. The Respondent's failure caused her significant distress and substantially eroded her confidence in her own abilities and in local authority employment, which has taken some time to recover and is still in the process of recovering. Her anxiety levels increased during the period of her suspension and exclusion of work to the extent that she suffered panic attacks and required an increase to her anti-depressant medication. The suspension continued for a period of months during which time the Claimant felt isolated and unsupported. She had made it clear to the Respondent that she needed to be in work as a support mechanism. The Respondent was aware of her anxieties yet continued to suspend her without good reason and then dismissed her. In our judgment an award of £15,000 reflects the significant impact the discrimination has had on the Claimant and it is at a level which does not diminish respect for the policy of the legislation or could be regarded as excessive.

### Financial losses and award of compensation

57. The Claimant is awarded her net loss from the date of dismissal of 05 August 2019 up to 11 March 2021, being 83 weeks.

Net weekly pay	£421.05 x 83	= £34,947.15
Pension contributions	£99.16 x 83	= £8,230.28
CILCA salary increase	£11.86 x 83 x 80%	= £787.50
Loss of statutory rights		= £350
Total:		£44,314.93

#### Less income received:

Witham contract	£622.60
JSA	£1,629.09
Universal Credit	£9,795.49
Total:	£12,047.18

Total net financial loss: **£32,267.75**

### Interest

58. We must consider whether to award interest to the awards for financial loss and for injury to feelings. We consider it appropriate to do so. As set out above the calculation of interest for financial losses differs from that in the case of non-financial losses in that the mid-way point between the date of discrimination (in

this case 18 March 2019 – as per our conclusion in paragraph 307 of the liability judgment) and the date of calculation (02 March 2019). However, in keeping with the compensatory principles of awarding interest, as the financial losses did not commence until the Claimant's dismissal we consider it appropriate to take the date of 05 August 2019 for the purposes of calculating the mid-way point.

59. Therefore, the interest calculation is as follows:

**59.1. Injury to Feelings**

59.1.1.	Award: £15,000	
59.1.2.	Discrimination date: 18 March 2019;	
59.1.3.	Calculation date: 02 March 2021;	
59.1.4.	Interest rate: 8%	
59.1.5.	No of days` 715	
59.1.6.	Interest = $715 \times 0.08 \times 1/365 \times £15,000$	= <b>£2,350.68</b>

**59.2. Financial losses**

59.2.1.	Award: £32,267.75	
59.2.2.	Discrimination date adjusted to 05 August 2019;	
59.2.3.	Calculation date: 02 March 2019;	
59.2.4.	Interest rate: 8%;	
59.2.5.	No of days 575;	
59.2.6.	Interest = $575/2 \times 0.08 \times 1/365 \times £32,267.75$	= <b>£2,033.31</b>

60. Adding the interest to the injury to feelings, that results in an award for injury to feelings of **£17,350.68**. That award is free of tax in that it is not an award in connection with the termination of her employment but is in respect of the act of discrimination by failure to make reasonable adjustments on 18 March 2019.

61. Adding the interest to the net financial losses for discrimination following loss of employment produces a figure of **£34,301.06** (£32,267.75 + £2,033.31)

**Grossing up**

62. The above award in respect of financial losses – albeit flowing from the discrimination of the Respondent – arise from the loss of employment on 05 August 2019. Therefore, the sum will be subject to taxation. Section 401 ITEPA 2003 operates to tax this sum in the Claimant's hands as it is received directly or indirectly in connection with the termination of her employment. To that extent the Claimant will be taxed to the extent that the award exceeds £30,000. To avoid disadvantage the Tribunal has grossed up that amount which exceeds £30,000. The Claimant's marginal tax rate is 20%.

63. Grossing up £4,301.06 = £5,376.33.

64. This brings the total financial award to **£35,376.33**.

### **Summary**

65. The Claimant is awarded the following awards:

65.1.	£2,336.45	Basic Award unfair dismissal
65.2.	£17,350.68	Injury to feelings
65.3.	£35,376.33	financial losses
65.4.	<b>£55,063.46</b>	Total amount payable to Claimant

**Employment Judge Sweeney**

23 March 2021