EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Ms Joanne Millington	**v**	Forensic Access Limited

Heard at: Reading (by CVP) **On:** 22 April 2021 and 7 May 2021 (in chambers)

Before: Employment Judge Hawksworth
Mr D E Palmer
Mrs J Wood

Appearances
For the Claimant: Mr S Steen (solicitor)
For the Respondent: Mr P Livingston (counsel)

RESERVED REMEDY JUDGMENT

The unanimous decision of the tribunal is that the respondent must pay the claimant the sum of £91,540.40 comprising:

1. a basic award of £3,178.50;
2. £46,877.79 for financial losses (of which £5,576.27 is interest);
3. £20,637.95 for injury to feelings (of which £4,387.95 is interest);
4. £20,846.16 in respect of tax payable on the award ('grossing up').

REASONS

Claim, hearing and evidence

1. The claimant's claim form was presented on 26 April 2018 after a period of ACAS early conciliation from 5 March 2018 to 27 March 2018. The claimant complained of constructive unfair dismissal, direct sexual orientation discrimination and breach of contract/wrongful dismissal (non-payment of notice).

2. The liability hearing took place on 2, 3 and 4 March 2020, with a deliberation day on 5 March 2020. The claimant's complaints succeeded. The employer's contract claim was dismissed.

3. A remedy hearing took place on 22 April 2021 with a deliberation day on 7 May 2021, both by video. We heard evidence from the claimant and, on behalf of the respondent, from Mr Jon Blows, Finance Director. Both had produced and exchanged witness statements.

4. There was an agreed remedy bundle of 372 pages. References to page numbers in this judgment are references to that remedy bundle. The tribunal is grateful to the parties' representatives for the hyperlinked and carefully paginated electronic remedy bundle.

5. The tribunal reserved its judgment on remedy as there was insufficient time on 22 April 2021. A further deliberation day was needed. The employment judge apologises to the parties for the subsequent delay in promulgation of this judgment and reasons. This reflects the current pressures of work in the employment tribunal.

The Issues

6. The remedy hearing is for the tribunal to decide the compensation which the claimant should be awarded for unfair dismissal, wrongful dismissal (notice pay) and sexual orientation discrimination. The parties' representatives produced a helpful list of issues which set out in table form the specific points in dispute and the parties' position on each of these. The list of issues was updated after the first day of the remedy hearing.

7. The parties had produced updated schedules of loss and counter-schedules of loss which they also revised after the first day of the hearing.

Findings of Fact

8. We set out here our findings of fact from the liability judgment which are relevant to the remedy issues, together with the further findings of fact we have made.

Background

9. The claimant commenced employment with the respondent on 10 September 2012. We found that she was constructively dismissed by the respondent; her employment ended on 11 December 2017. At the time of her dismissal the claimant was 44. The claimant accepts that she was overpaid holiday pay in the sum of £1,657.07 at the time of her dismissal.

10. The parties agreed that at the time of her dismissal, the claimant's gross basic pay was £47,047.50. In addition to basic salary she worked regular overtime. She was a member of the respondent's pension scheme, to which the respondent contributed 7% of her salary per year. She was also entitled to healthcare cover.

The claimant's grievance

11. In our liability judgment, we found that the claimant made a grievance in a letter on 26 November 2017 and that her complaints concerned Mr Arend. We found that Mr Arend responded to the claimant's grievance in a lengthy meeting on 7 December 2017.

12. We found that the claimant was not given any notice of what the meeting was to be about or told about any right to be accompanied to the meeting. No written grievance outcome was sent to her and she was not given any right of appeal.

The impact on the claimant

13. The treatment to which the claimant was subjected at the meeting on 7 December 2017, including the comment about her sexuality which we found to amount to direct discrimination, were the last straw which led the claimant to resign. The claimant found the discriminatory comment to be hostile and upsetting. She referred to it in her resignation letter. We found that it was part of the treatment which led to her resignation, and that her resignation was a discriminatory constructive dismissal.

14. The claimant was devastated by the way she was treated at the 7 December meeting, including the comment about her sexuality. She lost the chance to pursue the business opportunity which she had identified and established with the respondent. She left her job and was isolated from colleagues, both at the respondent and at the university. She was unwell. She was signed off sick until mid-January 2018. She has ongoing health problems.

15. Other consequences of the claimant's discriminatory dismissal also impacted significantly on her. In particular, details of the claimant's sexuality, which she had chosen to keep private, were widely published in the media after the liability judgment was entered onto the online register.

Earnings from alternative work

16. After her dismissal, the claimant had a small number of pre-arranged commitments. After that, until mid-January 2018, she was unfit to work because of ill health. She tried to secure alternative work during mid January/February 2018. She found some freelance work but was unsuccessful in securing a permanent role.

17. In March 2018 she decided to set up her own business with a business partner. In April 2018, the claimant was contacted by a consultancy who asked whether she would be interested in a possible role with them. The claimant did not follow this up because she had by then decided to set up her own business. She continued to apply for jobs (page 113) but was not successful in obtaining another job.

18. We find that the claimant's earnings from her business in each relevant tax year were as included in her updated schedules of loss, as set out below in table 1. We have set out the earnings in two parts (the first from 12

December 2017 to 5 April 2019 and the second from 6 April 2019 to 22 April 2021) for reasons we explain below.

Table 1: the claimant's earnings from alternative work			
Tax year	Gross earnings	Net earnings	
12 December 2017 to 5 April 2019			
2017-2018[1]	£3,062.00	£2,427.47	
2018-2019	£42,631.00	£39,368.36	
Total net			£41,795.83
6 April 2019 to 22 April 2021			
2019-2020	£48,667.00	£43,277.71	
2020-2021	£33,030.00	£29,937.23	
2021-2022[2]	£1,981.80	£1,796.23	
Total net			£75,011.17

19. The claimant looked for other jobs again at the end of 2019. She had two interviews but was not successful.

20. During the tax year 2019 to 2020 the company accounts recorded the sum of £13,500 owed to 'key management personnel' (page 86). We accept the evidence of the claimant that this sum was owed to her business partner and related to sums untaken during the year for cash-flow reasons. It was not an attempt by the claimant to supress her income from the company to maximise compensation in this claim.

21. We accept the claimant's figures for her earnings in 2020-2021. These were lower than the previous year because of a drop in business during the covid-19 pandemic.

22. The claimant's expenses associated with job-seeking were £1,925.92. The respondent accepts this figure.

<u>The claimant's employment if she had not been dismissed</u>

23. We accept that if the claimant had not been constructively dismissed, she would initially have remained working with the respondent. She had built up the veterinary business and was very engaged with that as well as with her work on the biology side of the business. We accept that the claimant would have remained in her role until 5 April 2019.

24. We consider that there is a possibility that after this date the claimant may not have stayed working with the respondent. By then she would have been with the respondent for seven years. She is a renowned expert in her field: she may have decided to move on to a new challenge, or she may have been headhunted. Alternatively she may have reviewed her options in March 2020 when the effects of the covid pandemic began, or when the management buyout of the respondent took place in September 2020.

[1] 2017-2018 is a part year: 114/365 days
[2] 2021-2022 is a part year: 16/365 days

These are possible factors which may have led to the claimant leaving her employment with the respondent, and there may have been others. We have reached the conclusion that there was a 50% chance that the claimant might have left her employment with the respondent after April 2019 for a number of possible reasons.

25. We have therefore considered the claimant's earnings from alternative work and notional earnings with the respondent if she had not been dismissed in two separate periods (the first from 12 December 2017 to 5 April 2019 and the second from 6 April 2019 to 22 April 2021 to reflect our findings on this issue. We accept that this element of the claimant's losses run to the date of the remedy hearing.

The claimant's earnings if she had not been dismissed

26. The claimant's main schedule of loss was prepared on the basis that in March 2018 her salary would have increased from £47,047.50 to £65,000. She based this on a salary figure which was included in a business case prepared at the time the veterinary business was being set up. The figure was illustrative and was not the subject of any formal agreement. In our liability judgment we found that in October 2017 the veterinary business was tracking behind forecasted sales for post-mortems and the CPD training course, a key revenue stream, had not yet started. Further, the proposed re-structuring of the veterinary business as a subsidiary company of the respondent did not take place. Against that background, we find that it is more likely that the claimant would have been awarded a cost-of-living rise in March 2018, rather than a substantial salary increase.

27. As to the level of cost of living rises, we find that the claimant's pay would have increased by 2% each financial year. The claimant's pay record (page 112) shows that she had pay rises in 2013, 2015 and 2017 and that (discounting a salary jump in 2013) these cost of living pay rises were of around 2% to 2.5%. In 2014 and 2016 she had no pay increase. We find that an annual increase of 2% as accepted by the respondent would have been more likely than the 3% suggested by the claimant in her alternative schedule. We have reached this decision because of the history of previous pay increases.

28. The claimant's updated alternative schedule of loss set out figures for notional gross and net pay with the respondent for each tax year from the date of dismissal to the date of the hearing. The figures include overtime, employer's pension contributions, and the cost of healthcare insurance. The respondent did not dispute the inclusion of pension contributions or healthcare. The respondent said that the claimant would not have worked overtime after April 2018. We accept the inclusion of overtime in the pay figures, as the claimant had a long history of working significant amounts of overtime for the respondent. The levels of work required for continuing to build the new veterinary business would have been likely to have led to the claimant working overtime, even if other staff had been taken on for the biology side.

29. The claimant's notional earnings figures were based on annual increases of 3%. In its updated counter-schedule, the respondent re-calculated the net figures based on annual increases of 2%. We have accepted that annual pay rises of 2% were more likely. We have therefore used the net figures from the respondent's counter-schedule. The claimant's notional net pay and benefits with the respondent are set out in table 2 (again set out in two parts, period 1 and period 2).

Table 2: the claimant's notional net pay and benefits with the respondent		
Tax year	Net earnings	
12 December 2017 to 5 April 2019		
2017-2018	£13,962.49	
2018-2019	£45,200.12	
Total net		£59,162.61
6 April 2019 to 22 April 2021		
2019-2020	£46,104.12	
2020-2021	£47,026.21	
2021-2022[3]	£2,102.65	
Total net		£95,232.98

The claimant's shares

30. In our liability judgment we recorded that it was intended that once it was established, the veterinary forensic division would be set up as a separate subsidiary company of the respondent. It was intended that the claimant would be a co-director of that separate company and that she would be given shares in it. The claimant claims £50,000 in respect of the loss of those shares. She bases this on the estimated turnover of the business and the commonly used valuation of a company of five times annual profit.

31. As we recorded in our liability judgment, the subsidiary company was never set up, no shares were issued to the claimant or to anyone and no valuation of the company is available. Mr Blows, the respondent's finance director, gave evidence about the current position of the animal forensics business. He joined the respondent in September 2020 and had no prior involvement with the respondent. He told us, and we accept, that the sales of the animal forensics business had dropped quite considerably from £50,000 in the financial year 2019/20 to £1,800 in 2020/21. He said, and again we accept, that the respondent had tried to sell the business but had not had any interest.

32. We considered whether the veterinary forensic division would have been in a stronger position if the claimant (and her colleague Dr Stoll) had not left the business. It may have been, but this is highly speculative and we did

[3] The respondent did not re-calculate the net figure for the part year 2021 to 2022 (16/365 days). We have accepted that losses run to the date of the remedy hearing and so we have calculated the part year 2021 to 2022 using the same approach as the respondent (previous net figure x 1.02).

not have sufficient basis on which to make an assessment of what the financial position of the veterinary forensic business would have been in those circumstances.

33. In our liability judgment, we made findings in respect of a separate share allocation to employees of the respondent which took place in around August 2017. These were shares in a company called Forensis. We found that the claimant was told on 24 August 2017 that she would receive an enhanced allocation of those shares. Because of her dismissal, she was not allocated any shares in Forensis.

34. The Forensis shares owned by the respondent's employees were all bought out at the time of the management buy-out on 1 September 2020. The value of the shares was recorded in the share sale agreement as £1,198.67 per share (page 185). We accept the respondent's evidence that most employees had been allocated three shares but some had received an enhanced allocation of four shares. This was clear from the share sale agreement. We find that the claimant would have been allocated four shares if she had not been dismissed.

The law

Compensation for discrimination

35. The remedy for complaints of discrimination at work is set out in section 124 of the Equality Act 2010.

36. Under section 124(2)(b), where a tribunal finds that there has been a contravention of a relevant provision, as there has been here, it may order the respondent to pay compensation to the claimant. The compensation which may be ordered corresponds to the damages that could be ordered by a county court in England and Wales for a claim in tort (section 124(6) and section 119(2)). There is no upper limit on the amount of compensation that can be awarded.

37. The aim of compensation is that 'as best as money can do it, the [claimant] must be put into the position she would have been in but for the unlawful conduct' (*Ministry of Defence v Cannock and ors* 1994 ICR 918, EAT). In other words, the aim is that the claimant should be put in the position she would have been in if the discrimination had not occurred. This requires the tribunal to look at what loss has been caused by the discrimination.

38. Loss may include past and future financial losses and injury to feelings.

39. When the claim relates to a discriminatory dismissal, the tribunal must consider the likely chance that the claimant would have continued in her employment if not for the discriminatory dismissal. The Court of Appeal in *Vento v Chief Constable of West Yorkshire Police* (No.2) [2003] IRLR 102 confirmed that this requires an assessment of a chance (based on material available to the tribunal, including the use of statistical information) as to

the probability of an employee remaining in the service of the employer on a long-term basis. Such an assessment of chance involves a forecast about the course of future events, and so it should not be approached as if the tribunal were making a finding of fact based on a balance of probabilities.

40. Matters which arise out of the act of discrimination and are consequential on it are relevant to the enquiry into the extent of the claimant's injury to feelings (*British Telecommunications plc v Reid* IRLR 327 CA).

41. When making awards for non-pecuniary losses, the tribunal must keep in mind that the intention is to compensate, not punish. It must also take care not to conflate the different types of award nor to allow double recovery (*Base Childrenswear Limited v Ostshudi* UKEAT/0267/18).

Unfair dismissal compensation

42. Section 118 of the Employment Rights Act 1996 provides that compensation for unfair dismissal consists of:

    a) A basic award; and
    b) A compensatory award.

43. The amount of the compensatory award is such amount as the tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the claimant in consequence of the dismissal, in so far as that loss is attributable to action taken by the respondent (section 123(1)).

Mitigation of loss

44. It is for the respondent to show that the claimant has failed to mitigate her loss. The claimant does not have to show that what she did was reasonable, rather the respondent has to show that the claimant acted unreasonably. There is a difference between acting reasonably, and not acting unreasonably (*Cooper Contracting Ltd v Lindsey* [2016] ICR D3, EAT). The test of unreasonableness is 'an objective one, based on the totality of the evidence' (*Wilding v British Telecommunications plc* [2002] ICR 1079).

45. There may be more than one way to mitigate losses which is not unreasonable. It may not be unreasonable for a claimant to mitigate her losses by setting up her own business. In *AON Training Ltd (formerly Totalamber plc) and another v Dore* 2005 IRLR 891, CA, the Court of Appeal accepted that it is a matter of fact for the tribunal whether it is a reasonable form of mitigation for an employee to set up her own business.

Acas Code of Practice on Grievance and Disciplinary Procedures

46. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides:

> *"If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—*
>
> *(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,*
> *(b) the employer has failed to comply with that Code in relation to that matter, and*
> *(c) that failure was unreasonable,*
>
> *the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%."*

47. Section 207A applies to proceedings listed in Schedule A2, which includes claims for discrimination at work, unfair dismissal and breach of contract. Section 124A of the Employment Rights Act 1996 provides than any adjustment under section 207A shall be to the compensatory award, not the basic award.

Conclusions

48. We have applied these legal principles to the facts as we have found them, to determine the claimant's remedy. We have started by assessing financial losses and non-pecuniary losses to be awarded as part of the uncapped discrimination complaint, then considered whether any additional award needs to be made in respect of the unfair dismissal and notice pay complaints.

Mitigation

49. We are satisfied that the claimant did not unreasonably fail to mitigate her losses. There may have been more than one way for her to mitigate her losses, but it was not unreasonable for her to set up her own business. She is a recognised expert in a very specialist area. It was reasonable for her to expect that her business would be successful, as it has been. She continued to search for jobs while setting up her business.

50. There has been an impact on the claimant's earnings because of the pandemic, however we do not consider the claimant's mitigation of her losses to have been unreasonable.

Loss of earnings to date of hearing

51. We have considered the claimant's loss of earnings for the period from the date of dismissal to the date of the hearing in two separate periods.

52. We have first looked at the period from the date of dismissal to 5 April 2019. We have found that the claimant would have remained employed by the respondent during this date. We have found that the claimant's net loss

of salary, overtime, benefits and pension for this period was £59,162.61 (table 2).

53. From this the holiday overpayment of £1,657.07 must be deducted, together with the claimant's net earnings from alternative employment which we have found were £41,795.83 (table 1).

54. The claimant's net financial losses for this period after mitigation are therefore £59,162.61 less overpaid holiday pay of £1,657.07 and earnings in mitigation of £41,795.83. In total this is £15,709.71.

55. We next look at the period from 5 April 2019 to the date of the hearing on 22 April 2021. We found that there was a 50% chance that the claimant would have left her employment with the respondent during this period.

56. The claimant's net loss of salary, overtime, benefits and pension for this period was £95,232.98 (table 2). Her earnings in mitigation of those losses were £75,011.17 (table 1). Net loss of earnings for this period is therefore £20,221.81. This figure is reduced by 50% in light of our finding that that there was a 50% chance that the claimant would have left her employment with the respondent during this period. This gives net losses for this period of £10,110.91.

57. Total loss of earnings for the period from dismissal to the date of the hearing are £15,709.71 plus £10,110.91 = £25,820.62.

Shares and other losses

58. We do not make any award in respect of the possible loss of shares in the veterinary forensic business. No shares were ever issued, the business today is not in a strong financial position, and we did not have sufficient evidence to enable us to make a finding that the position would have been different had the claimant not been dismissed.

59. We found that the claimant would have been allocated four shares in Forensis if she had not been dismissed. The claimant has lost the value of those shares which is £4,794.68.

60. The respondent accepted that the claimant had incurred £1,925.92 in job search expenses.

61. We also make an award of £500 in respect of loss of statutory rights. This award is compensation for rights lost as a consequence of dismissal Although the claimant is now self-employed and will not regain the employment protections she had with the respondent, if she did ever take up employment in the future she would have to earn employment protections again (*Cooper Contracting Ltd v Lindsey*, paragraphs 32 and 33).

62. As set out below, the claimant's financial and related losses total £33,041.22.

Table 3: Summary of financial losses	
Loss of earnings	£25,820.62
Loss of Forensis shares	£4,794.68
Job search expenses	£1,925.92
Loss of statutory rights	£500
Total	£33,041.22

63. The claimant did not make any claim for future financial loss.

Injury to feelings

64. We have considered the Vento bands for awards of injury to feelings. The 23 March 2018 Presidential Guidance on injury to feelings provides that for claims presented on or after 6 April 2018, as the claimant's was, the lower band is £900 to £8,600 (less serious cases); the middle band £8,600 to £25,700 (cases that do not merit an award in the upper band); and the upper band £25,700 to £42,900 (the most serious cases), with the most exceptional cases capable of exceeding £42,900.

65. The claimant said that the award ought to be £25,700, at the top of the middle band. The respondent invited us to make an award of £2,000, towards the bottom of the lower band. The respondent said that the claimant was subjected to one act of discrimination, and the fact that this act led in part to the claimant's constructive dismissal did not create another act. The respondent submitted that this was therefore a 'less serious case' where the unlawful treatment was an isolated or one-off occurrence.

66. This is a case in which describing the discrimination as a one-off act does not provide the full picture (*Base Childrenswear Limited v Ostshudi*, paragraph 36). It was an act of discrimination which gave rise to a discriminatory constructive dismissal. We have concluded that the injury to feelings award should reflect the fact that the act of discrimination contributed to the claimant's constructive dismissal. We have found that the discriminatory dismissal had a significant impact on the claimant. It impacted on her health and her career. It also impacted on her private life. We can take into account the impact of matters which flowed from the discriminatory dismissal, and these include the publication of the details of the claimant's case after the judgment. This is a factor which impacts all claimants in employment tribunal proceedings to varying extents, but in the claimant's circumstances, because she regarded her sexuality as a private matter and details about this were widely published following the liability decision, it had a considerable effect on her. This effect was consequential on the act of discrimination because of sexual orientation and the discriminatory dismissal.

67. We also have in mind the fact that other issues which were not part of or consequential on the discrimination contributed to the claimant's injured

feelings, for example actions by the respondent prior to the act of discrimination, and we have not taken those into account. Neither have we considered any injury to feelings arising from the failure to respond in writing to the claimant's grievance or offer an appeal, because we consider those issues separately in relation to the failure to comply with the Acas Code.

68. Having considered those factors, we have decided that the appropriate award for injury to feelings in the claimant's case is an award in the lower half of the middle Vento band. The claimant is awarded £13,000 in respect of injury to feelings.

Failure to follow Acas Code of Practice

69. We explained in paragraph 159 of our liability judgment that we would consider the Acas Code of Practice on Disciplinary and Grievance Procedures at the remedy hearing.

70. The Acas Code of Practice on Disciplinary and Grievance Procedures applies to the claimant's complaints (discrimination, unfair dismissal, breach of contract), and her claim concerns a matter to which the code applies (a grievance complaint).

71. The claimant left the respondent's employment about two weeks after she made her grievance. Neither the Acas Code nor the Acas Guide which supplements the Code deal expressly with the question of whether the Code continues to apply where an employee leaves her employment after making a grievance, but before the grievance procedure has been concluded. In section 295 of the Trade Union and Labour Relations (Consolidation) Act, the legislation under which the statutory code is made, an employee is defined for the purposes of the act as "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment". The definition in the enabling legislation suggests that for the purposes of the Code, an employee includes a former employee, and therefore that the requirements of the Code continue to apply where the employee leaves her employment before the grievance procedure has concluded. This interpretation is supported by the decision of the EAT in *Base Childrenswear Limited v Ostshudi* in which an employment tribunal had ordered an increase in an award arising from failures to comply with the Acas Code which occurred after the employee had left their employment. Although this point was not specifically considered in the appeal, the EAT considered whether the tribunal's aggravated damages award included an element of double counting with the uplift for the breach of the Acas Code, and in doing so did not suggest that the Acas Code did not apply.

72. We have therefore concluded that the Acas Code applied to the claimant's grievance and that it continued to apply after she left the respondent's employment.

73. The respondent failed to comply with the Acas Code when it dealt with the claimant's grievance of 26 November 2017. The respondent failed to:

    73.1. provide a written response to the claimant's grievance (a breach of paragraph 40 of the Code); and
    73.2. afford the claimant a right of appeal (a breach of paragraphs 40 and 42 of the Code).

74. We find that the respondent's failure to follow the Acas Code in these respects was unreasonable, even taking into account the fact that the claimant left the respondent's employment some two weeks after making her grievance complaint. The respondent breached the Code in relation to those elements which are intended to enable the employee to understand the response to their grievance, and to have it reconsidered. The respondent's failure to carry out those steps in the claimant's case meant that, although a meeting was held, overall the respondent failed to respond properly and fully to the claimant's grievance. The basic requirements of fairness which the Code provides were not met.

75. We have found that the respondent has failed to comply with the Acas code and that those failures were unreasonable. This means that sub-sections 207A(2)(a) (b) and (c) are met.

76. We have therefore considered whether it is just and equitable to increase the claimant's award. We are mindful of the risk of double recovery arising from any overlap with the injury to feelings award, and have excluded the respondent's failure to provide a written response to the grievance and the failure to allow the claimant an appeal from our consideration of the claimant's injured feelings. In our assessment under section 207A, we consider that the breaches of the Acas Code meant there was a failure to respond properly and fully to the claimant's grievance. It is just and equitable to increase the claimant's award by 25%.

77. The total award for financial loss before the uplift is £33,041.22. After the 25% uplift this is £41,301.52.

78. The total award for injury to feelings before the uplift is £13,000. After the 25% uplift this is £16,250.

Interest

79. We award interest on the awards for past financial loss and injury to feelings.

80. The financial loss award relates only to past financial loss, there being no future loss claim. Interest on financial loss is payable at a rate of 8% from the midpoint of the period which runs from the date of the discrimination to the date of calculation. The act of discrimination took place on 7 December 2017.

Table 4: interest on past financial loss	
Interest start date	7 December 2017
Date of calculation	22 April 2021
Number of days	1,232
Number of days to midpoint	616
Daily rate of interest	0.08 x £41,301.52/365
Total interest calculation	616 days x daily rate of interest
Total interest	£5,576.27

81. The interest on this element of the award is £5,576.27.

82. Interest on injury to feelings awards is payable at a rate of 8% for the whole period from the date of the discrimination to the date of calculation.

Table 5: interest on injury to feelings	
Interest start date	7 December 2017
Date of calculation	22 April 2021
Number of days	1,232
Daily rate of interest	0.08 x £16,250/365
Total interest calculation	1,232 days x daily rate of interest
Total interest	£4,387.95

83. The interest on this element of the award is £4,387.95.

Unfair dismissal compensation

84. The claimant is entitled to a basic award of 6.5 weeks pay, capped at £489 per week which is £3,178.50. No Acas uplift or interest is payable on this award.

85. The claimant's award for her discrimination complaints includes the compensation for financial loss which she would have received in a compensatory award, and for loss of statutory rights. To avoid double recovery (compensating for the same losses twice) no compensatory award is made.

Compensation for breach of contract

86. The claimant was dismissed without notice and was entitled to three months' notice. However, the claimant's discrimination compensation includes pay for the period which would have been the notice period. Again, to avoid double recovery, no compensation is awarded in respect of the notice pay complaint.

Summary

87. A summary of the award with interest but before grossing up for tax is at table 6.

88. Having reached our conclusions, we stepped back and considered the overall award for non-pecuniary losses. We need to ensure that the sums

awarded are appropriate and not excessive, that they are compensatory not punitive, and that we are alert to the risk of double recovery. We are satisfied that the award is at the appropriate level.

Table 6: Summary of award with interest		Totals
Financial loss	£41,301.52	
Interest on financial loss	£5,576.27	
Total financial loss		£46,877.79
Injury to feelings	£16,250.00	
Interest on injury to feelings	£4,387.95	
Total injury to feelings		£20,637.95
Basic award		£3,178.50
Total award before tax		£70,694.24

Taxation

89. Finally, we have conducted a 'grossing up' exercise to calculate the tax which is likely to be payable by the claimant on her award. This is to ensure that the claimant is properly compensated, because the figures used for losses are net figures which do not take into account the amount of tax which she will have to pay on the award. The assessment of the tax payable in the grossing up exercise is an estimate on broad lines (*British Transport Commissioner v Gourley* [1955] UKHL 4).

90. As the award relates to termination of employment, it is taxable pursuant to section 401 and section 403 of the Income Tax (Earnings and Pensions) Act 2003. The first £30,000 of the award can be paid without deductions. The claimant has not received any other termination payment in respect of this employment, and so the full £30,000 is available. The total award before tax is £70,694.24, of which £40,694.24 is taxable.

91. In her schedule of loss, the claimant estimated that in the 2021/2022 tax year, after taxation of her other income, she would have half of the 20% tax band remaining (£18,850 of the band). We accept this estimate. We assume that the claimant has the standard personal allowances and will not have any other taxable income from other sources.

92. The grossing up calculation is set out in table 7.

Table 7: Grossing up for tax				
Tax rates (£)	Other income	Taxable tribunal award		
	Gross	Gross	Tax	net
Personal allowance (0%) to 12,570	12,570			
Basic rate (20%) 12,571 to 50,270 used on other income	18,850			
Unused basic rate (20%) band 31,420 to 50,270		18,850	3,770	15,080
Higher rate (40%) 50,271 to 150,000		42,690.40	17,076.16	25,614.24
Totals	**£31,420**	**£61,540.40**	**£20,846.16**	**£40,694.24**

93. The amount to be added to the claimant's award in respect of tax payable on the award so that after tax the claimant receives broadly the net sum we have awarded is £20,846.16.

94. The total award to the claimant is set out below.

Table 8: Summary of award with interest and tax		Totals
Financial loss	£41,301.52	
Interest on financial loss	£5,576.27	
Total financial loss		£46,877.79
Injury to feelings	£16,250.00	
Interest on injury to feelings	£4,387.95	
Total injury to feelings		£20,637.95
Basic award		£3,178.50
Total award before tax		£70,694.24
Grossing up for tax		£20,846.16
Total award including interest and tax		£91,540.40

Employment Judge Hawksworth

Date: 14 July 2021

Sent to the parties on: 19 July 21

For the Tribunals Office

Public access to employment tribunal decisions:
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