



**Case No. 1301938/2019**

# **EMPLOYMENT TRIBUNALS**

**Claimant:** Mr S Pointon

**Respondent:** Alpha Omega Securities Limited

**Heard at:** Birmingham (By CVP)

**On:** 16 September 2021

**Before:** Employment Judge Self  
Mr P Tsouvallaris  
Mrs S Campbell

## **Appearances**

For the Claimant: Miss R Levene - Counsel

For Respondent: Mr S Redpath - Counsel

## **RESERVED JUDGMENT**

1. The Claimant is awarded £32,698.92 in respect of disability discrimination compensation.
2. The Claimant is awarded £7,104 in respect of unfair dismissal compensation.
3. The award is grossed up by £2425.73
4. The Total grossed up award payable by the Respondent to the Claimant is **£42,228.65**

# WRITTEN REASONS

1. On 18 March 2021 the parties were sent the Reserved Judgment on liability following a hearing that was held in Birmingham between 16 and 20 November 2020 followed by an in Chambers deliberation day on 26 February 2021. In that hearing the Claimant succeeded on a number of claims of disability discrimination namely discrimination arising from disability, failing to make a reasonable adjustment and harassment. In addition, the Tribunal found that the Claimant had been unfairly constructively dismissed.

2. The specific findings of discrimination are set out following paragraph 170 of the liability Judgment but in summary they are as follows:

## **a) Section 15 Claims**

- i) Requiring the Claimant to work out of hours on numerous occasions between January 2018 and May 2018;
- ii) Mr Lawson's aggressive behaviour on 6 March 2018;
- iii) The Claimant being put in charge on 10 May 2018;
- iv) Mr Taylor being aggressive towards the Claimant on 10 May 2018;
- v) Mr Taylor being hostile to the Claimant on 14 May 2018;
- vi) Sending a letter late on 5 June 2018;
- vii) The contact on 21 June 2018 when the Claimant was in hospital;
- viii) Failure to send SSP1 Form in a timely manner;
- ix) The Claimant's constructive dismissal.

## **b) Failure to make Reasonable Adjustments**

- i) Insufficient reduction of Claimant's workload;
- ii) Insufficient reduction of length of Claimant's working day;
- iii) Insufficient reduction of "out of hours" work;
- iv) Failing to liaise with Claimant's father when Claimant in hospital.

## **c) Harassment**

- i) Requiring the Claimant to work out of hours on numerous occasions from mid-February 2018 to May 2018;
- ii) Requiring the Claimant to work excessive hours on numerous occasions;
- iii) Mr Taylor being aggressive towards the Claimant on 10 May 2018;
- iv) Mr Taylor being hostile to the Claimant on 14 May 2018
- v) Sending a letter late on 5 June 2018
- vi) Mr Lawton's email of 5 June 2018
- vii) The contact on 21 June 2018 when the Claimant was in hospital;
- viii) Failure to send SSP1 Form in a timely manner.

3. At this remedy hearing the Claimant gave evidence and we considered the submissions of both counsel who attended.

4. The Claimant resigned on notice and the effective date of termination was 13 January 2019.

5. At the time of the actual resignation in November the Claimant remained unfit for work and unwell. He had had serious treatment months before and due to the stress and pressure the Claimant's GP had signed him off work with work-related stress and side effects of the treatment.

6. The Claimant spent some time throughout his notice period trying to get himself better and, in a position where he felt strong enough to go out and get another job.

7. We are satisfied from the evidence that the Claimant is somebody who wishes to work when he can and is prepared to work hard when called upon and when fit and able. There were times when he attended work whilst seriously ill when he would have been perfectly entitled not to do so on health grounds.
8. In January 2019 the Claimant got a job as a General Manager for Hops & Barley. He worked from 14 January 2019 until mid-October 2019 and during that period we were told he earned £14,931.88 net which is reflected on the pay slips but we have an incomplete set as they only extend to the end of July. The Claimant's pay slips, such as we had, were set out between pages 138 and 142.
9. The Claimant also started a counselling course. The Claimant had started a Level 2 Introduction to Counselling Course in September 2018, which was a 10-week evening course. The Claimant told us that he enrolled on this, not to explore becoming a counsellor, but because his personal therapist had suggested it would likely help his mental state at the time. The course encouraged individuals to spend time looking at themselves and developing coping strategies. It was only as the Claimant came towards the end of this course that he thought this could be a career for him. The Tribunal are satisfied and find that the Claimant's interest in this line of work was created by the experiences caused by his cancer as opposed to his experiences within the workplace. The Tribunal considers it likely that the Claimant would have followed this path even if he had remained at the Claimant and there had been no discrimination.
10. The Claimant stated that the reason he wanted to do the degree was to help and learn more about himself. The Claimant left Hops & Barley and thought about what he wanted to do in the future and decided that he wanted counselling to be his future career and he enrolled on a full-time, 3-year BSC Honours Degree under the University of Derby, run by Cheshire College South and West in Crewe. The course started in September 2019 and is due to end in May 2022.
11. The Claimant has undertaken an unpaid placement as part of his course which started in February 2021 at a Hospice in Stoke-On-Trent and he currently carries this out on Monday every week. He undertakes the work involved with this course and the connected placement, at the same time as working with Pathways.
12. The Claimant has also undertaken work as a Security Officer for a company called GSS based at Bentley Motors in Crewe, using his security license. This was on a zero hours contract, but with an agreement of 4 X 12 hour shifts per week, for as long as the contract with Bentley continued. When this ended, the Claimant was kept on by GSS and did regular hours covering holidays and sickness. If the hours were short, he travelled to help them out with alternative contracts. However, as a result of the pandemic, his hours within this role were affected and the Claimant had to look elsewhere for work.
13. The Claimant's pay slips are contained at pages 143-159 of the bundle and he earned a total of £19,378.27 net during his time doing that job.
14. In addition, the Claimant, in September 2020, obtained a licence to work as a self-employed Taxi Driver. He started driving for Mycab and then Westside Taxi's. All earnings in these roles were paid to him on a gross basis and he asserts that he received a total of £5,590.78.
15. At the end of June 2021, the Claimant managed to get a part-time job with Pathways CIC, who are a social enterprise. He is currently employed by them as a Health & Employment Link Worker on a contract which was initially due to expire in October 2021, but since has been extended until the end of March 2022. The Claimant has earned a total of £2,105.16 to the date of his statement (160 and 161) and anticipated that he would receive £242.90 per week going forward until at least March 2022, based on the pay from them to date

16. The Claimant told us that he felt hurt and upset at the way he was treated, mainly by Mr Lawson and Mr Taylor, through what must have been a very hard period of his life. The Claimant, belatedly in oral evidence, stated that since leaving the employ of the Respondent he found it very difficult to trust the companies and the people he worked for. He stated that he feared he would be treated in the same way as he was at the Respondent.
17. He asserted that he had struggled to hold a job down over a period of time due to his lack of confidence and that he did not believe that he could hold a senior manager role due to how he was treated by the Respondent.
18. The Claimant stated that the Respondent's actions had impacted on his life adversely by way of stress, anxiety and pressure placed on him by them. He had continued to have personal counselling up until just before the hearing and now, as part of his course, the Claimant does a personal development session each week. The Claimant's course leader stated that in her opinion having closure on this matter would have a profound positive effect on the Claimant and his mental health. He stated that 90% of his personal development sessions cover what happened at the Respondent and the impact that the prolonged litigation is having on the Claimant and his family.
19. The Claimant explained that having to go to Tribunal was extremely difficult for him and that throughout the process, he felt as though the Respondent and their (former) representatives did all they could to try and prevent him from going through with it. He told us he received support at home from his family, and his solicitors told him that his case had merit, but even so it was difficult to carry on.
20. The Claimant explained that this was not a case he had pursued for the money, as he had managed to set himself up in a job pretty quickly after he resigned but it was about holding the Respondent accountable and to find that a Tribunal would say that the way he was treated was unfair and discriminatory and that they should have handled the matter much more sensitively and in a much better way.
21. The Claimant explained that his confidence has taken a massive hit, by the course of events prior to his resignation and the subsequent Tribunal proceedings and that this has had an impact on relationships, both at work and in the Claimant's personal life as well.
22. The Claimant told us that the conduct towards him made him feel belittled, utterly worthless and completely deflated at a time when his family and him were going through an incredibly sensitive and emotional time. He tried as hard as he could to remain in work and do what he could, but he struggled and felt like he was not supported in the slightest by the Respondent and the management team in particular. The Claimant asserted that he was treated in the opposite way by being made to feel as though he was not doing enough and that he was a burden upon them. He could not sleep and felt completely stressed out about his inability to work at the level expected of him by the Respondent and keep up with the constant, unreasonable contact from them.
23. The Claimant explained that he still felt a lot of anger, resentment and deep upset at the way the Respondent treated him and there was a continuing adverse impact.

#### **Discrimination Compensation**

24. **Section 124(2)(b) of the EqA 2010** states that the Tribunal may order the Respondent to pay compensation to the Claimant. In ***Chapman v Simon [1994] IRLR 124***, the Court of Appeal emphasised the importance for tribunals to consider only the acts of which complaint is made when faced with the task of deciding whether an unlawful act of discrimination had taken place and the same principle must apply to any assessment of compensation for discrimination i.e. the loss must be attributable to the specific act that has been held to constitute discrimination.

25. By way of overview, the following principles can be said to underpin the approach to compensation for all forms of unlawful discrimination including the disability discrimination in this case:
- a) The measure of damages is the same as it would be before an ordinary court, and in particular the tribunal can award a sum for injury to feelings.
  - b) There is no upper limit on the amount of compensation that can be awarded.
  - c) In effect, the complainant is to be put into the financial position they would have been but for the unlawful conduct of the employer (***Ministry of Defence v Cannock [1994] ICR 918***).
  - d) Unlike the approach in tort, however, there is no requirement that the loss suffered be 'reasonably foreseeable'; compensation can be awarded in respect of all harm that arises naturally and directly from the act of discrimination, at least in cases where the discrimination was deliberate and overt (***Essa v Laing [2004] IRLR 313***).
25. Where compensation is ordered, it is to be assessed in the same way as damages for a statutory tort (***Hurley v Mustoe (No 2) [1983] ICR 422, EAT***),
26. Where compensation is awarded, it is on the basis 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 of the employer. (***Ministry of Defence v Cannock [1994] IRLR 509, EAT, per Morison J at 517, [1994] ICR 918, EAT***).
27. It is important that tribunals have regard to the principle of totality, i.e. to ensure that the total award of compensation, made under various heads of loss, remains just and appropriate.
28. The 'eggshell skull' principle also applies in cases of unlawful discrimination: a discriminator must take their victim as they are. That means that the wrong-doer takes the risk that the wronged may be very much affected by an act of harassment, say, by reason of their own character and psychological temperament. Provided the losses claimed can be shown to be causally linked with the unlawful act, the respondent must meet them.
29. The test of reasonable foreseeability is not applicable to limit the wrongdoer's liability. For the statutory tort of unlawful discrimination, it is enough to show a causal link between the unlawful act and injury on the part of the victim, at least where the form of unlawful discrimination is direct and intentional harassment on prohibited grounds.
30. **Section 124(6) EqA** states that the measure of damages is to be the same as that adopted by the ordinary courts of the appropriate jurisdiction, which means that the tribunal is entitled to make an award for injury to feelings. It is convenient to consider separately the treatment of pecuniary and non-pecuniary losses.
31. The first element of pecuniary losses is past loss which in this case is loss from the date of dismissal to the date of the remedy hearing / Judgment. Such pecuniary losses may include full or partial loss of earnings (including any overtime), to be assessed net of tax, and also other benefits associated with the employment. Although the date when this Order is finally sent out cannot confidently be predicted all calculations are made on the basis that it is sent out on 10 November 2021.
32. From these sums need to be deducted monies received by the Claimant by way of mitigation of his losses. Compensation may be decreased under this head not only by such sums as the complainant has actually received but also by such amount as that complainant could reasonably have expected to receive had they taken all reasonable steps to mitigate their loss. A failure to mitigate needs to be demonstrated on the evidence and the burden falls upon the Respondent. If there is such evidence then the question for the employment tribunal is not simply whether the complainant acted reasonably but whether by taking the course they did, they took all reasonable steps to mitigate their losses (***MOD v Cannock [1994] IRLR 509***),

where it was acknowledged that the claimant's decision not to pursue a career after having her child might have been entirely reasonable but may not have amounted to the taking of all reasonable steps to mitigate her loss.

33. In **Wardle v Credit Agricole Corporate and Investment Bank [2011]** EWCA Civ 545, the Court of Appeal gave the following guidance to tribunals having to assess future loss of earnings after a discriminatory dismissal:
- a) Where it is at least possible to conclude that the employee will, in time, find an equivalently remunerated job (which will be so in the vast majority of cases), loss should be assessed only up to the point where the employee would be likely to obtain an equivalent job, rather than on a career-long basis, and awarding damages until the point when the tribunal is sure that the claimant would find an equivalent job is the wrong approach;
  - b) In the rare cases where a career-long-loss approach is appropriate, an upwards-sliding scale of discounts ought to be applied to sequential future slices of time, to reflect the progressive increase in likelihood of the claimant securing an equivalent job as time went by;
  - c) Applying a discount to reflect the date by which the claimant would have left the respondent's employment anyway in the absence of discrimination was not appropriate in any case in which the claimant would only voluntarily have left his employment for an equivalent or better job; and
  - d) In career-long-loss cases, some general reduction should be made, on a broad-brush basis (and not involving calculating any specific date by which the claimant would have ceased to be employed) for the vicissitudes of life such as the possibility that the claimant would have been fairly dismissed in any event or might have given up employment for other reasons.
34. In assessing future loss, a tribunal will have to make decisions about the chances that employment would have continued had the discrimination not taken place. It is important that this is done by reference to calculating the percentage probabilities, and not on a simple balance of probabilities.
35. Non-pecuniary damages available consist of, inter alia, Injury to Feelings. The Court of Appeal has given guidance upon the assessment of compensation for injury to feelings. **In Vento v Chief Constable of West Yorkshire Police (No 2)**, Mummery LJ delivered a judgment which summarised and restated the relevant law. Following on from the guidance given in that case and in particular that Injury to Feelings awards should be considered in light of the three bands of compensation set out in that case there is now annual guidance issued by the Presidents of the Employment Tribunals uprating the bands for inflation. This claim involves discriminatory acts found following a Claim brought on the 10 April 2019 and consequently the relevant Presidential Guidance is the Third Addendum which sets the Vento bands as follows:
- a) a lower band of **£900 to £9,000**, for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence;
  - b) a middle band of **£9,000 to £27,000**, for cases that do not merit an award in the upper band; and
  - c) an upper band of **£27,000 to £45,000**, for the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race;
  - d) the most exceptional cases might be capable of exceeding **£45,600**.
36. It should be noted that these figures include the **Simmons v Castle** uplift. Although this Guidance is not binding, employment tribunals must have regard to it and we can see no reason why the Guidance should not be followed in this case and neither party invited us to use any other basis for calculating the appropriate award.
37. As for the precise level of an award under this head, much will obviously depend on the facts of the case, which, in turn, will depend upon the evidence given.

38. In *Alexander v Home Office* [1988] IRLR 190, CA, it was said that:

***"Awards should not be minimal, because this would tend to trivialise or diminish respect for the public policy to which the Act gives effect. On the other hand, just because it is impossible to assess the monetary value of injured feelings, awards should be restrained. To award sums which are generally felt to be excessive does almost as much harm to the policy and the results which it seeks to achieve as do nominal awards. Further, injury to feelings, which is likely to be of a relatively short duration, is less serious than physical injury to the body or mind which may persist for months, in many cases for life."***

39. Awards for injury to feelings should be purely compensatory: it would be wrong for such awards to be used as a means of punishing or deterring employers from particular courses of conduct. On the other hand, discriminators must take their victims as they find them: once liability has been established, compensation should not be reduced because (for example) the victim was particularly sensitive. The issue is whether the discriminatory conduct caused the injury, not whether the injury was necessarily a foreseeable result of that conduct.
40. This approach may mean, however, that a more resilient Claimant might receive a lower award, see ***Komeng v Creative Support UKEAT/0275/18 (5 April 2019, unreported)***. On the other hand, this ensures that focus is on the injury actually suffered by the claimant and not on the behaviour of the employer.
41. Employment tribunals have the power to award interest on awards made in discrimination cases, both in respect of pecuniary losses and non-pecuniary losses
42. The regulations governing the award of interest in such cases are the ***Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996***. **Reg 2(1)** requires tribunals to consider whether to award interest on compensation in discrimination cases, regardless of whether or not either party has asked it to do so.
43. The interest is to be calculated as simple interest, which accrues daily (**Reg 3(1)**). In England and Wales, interest is fixed for the time being by s 17 of the Judgment Acts 1838 and the current rate is 8 per cent.
44. For past pecuniary losses that accrued on a regular basis, such as loss of salary, interest is awarded from the half-way point between the date of the discriminatory act and the date of calculation. For non-pecuniary losses, the award is for the entire period from the act complained of to the date of calculation (**Reg 6(1)**). The employment tribunal retains a discretion, however, to award interest or not to do so and to calculate interest as it considers appropriate, having regard to whether, in any particular case, a 'serious injustice' would be caused if interest were to be awarded (**Reg 6(3)**). Where a tribunal decides not to award interest or to otherwise depart from the method of calculation provided by the regulations, however, it should provide its reasons for not doing so. We can see no reason why interest at the prevailing rate should not be awarded especially in light of the time that has passed since the discriminatory acts.
45. So far as taxation is concerned the rules to be applied are those imported from the law of tort. The general principle can be stated simply: the claimant is to be awarded the sum of money that will put them in the same position as they would have been in had the tort not been committed. That means that income tax should be considered in assessing damages for either actual or prospective loss of earnings, see ***British Transport Commission v Gourley [1956] AC 185, HL***.
46. Thus, where a tribunal makes an award of compensation for unlawful discrimination the incidence of tax will need to be considered in two ways. First, compensation for loss of income

will need to be calculated on a net basis as it would have been subject to deductions for income tax and employee's National Insurance contributions had it been paid in the course of the claimant's employment. Second, where the compensation itself will be taxed as is most likely the case in respect of awards exceeding £30,000 (***Income Tax (Earnings and Pensions) Act 2003 ss 401 and 403*** – the award should be 'grossed up' so that the claimant is not in a worse position (by effectively having paid tax twice on the same sum) after receiving the award, ***Shove v Downs Surgical plc [1984] IRLR 17***.

47. An amendment to **s 406 ITEPA 2003** which stipulates that although 'injury' includes psychiatric injury, as from the 2018/19 tax year it does not include 'injured feelings'. For that reason, compensation for injury to feelings counts towards the £30,000 and will be taxable to the extent that it exceeds this sum. However, there is an important exception where the compensation is for injury to feelings perpetrated during employment – such compensation does not fall to be taxed either as an emolument of employment or as a termination payment under s 403.

## **Conclusions**

### **Injury to Feelings**

48. The Claimant contended that the correct figure for Injury to Feelings was £30,000. This is in the middle of lowest quartile of the highest band. The Respondent placed the correct loss as being £12,500 which is at top end of the lowest quartile of the lowest band. In our view, as is often the case, the Claimant's position was excessive and the Respondent's figure fell short.
49. This was discrimination that had taken place over about nine months. It was characterised by a blindness from the Respondent in respect of the Claimant's disability and a failure to appreciate the assistance which the Claimant needed and the fact that he quite simply was not fit to be at the beck and call of the Respondent seven days a week and late at night and early in the morning as had been the case hitherto.
50. For compensation purposes the Claimant is taken as he is found. We find that the Claimant was a robust character able to work on doors as security in the past and able to deal with the rough and tumble of the security industry generally. He would have been at a diminished level of robustness during the course of the discrimination having been told that he was going to have to undergo a second bout of highly invasive and unpleasant treatment. Despite that he sought to remain at work because he is at heart a worker and also because of the situation he found himself in re sick pay and on economic grounds.
51. Although he would have been quite entitled to have been resting up away from work it was clear that his efforts at work were not appreciated by Mr Lawson and in particular by Mr Taylor. The harassment which the Claimant sustained and in particular the hostility from Mr Taylor which caused the Claimant to leave work for good was highly unpleasant. Even then when the Claimant had made it quite clear that he needed rest during his treatment the Respondent continued in their disregard for the Claimant's welfare.
52. We did find that some of the matters that the Claimant complained about and which he told us affected him were not discriminatory and also we found that there were occasions when the Claimant had exaggerated the effect of a situation or what had actually happened. Whilst we broadly accept the Claimant's account of the effect of the conduct upon him, we do consider that there is an element of exaggeration in what he describes. We also note that he was able to return to work and hold down a managerial role by the January after he had been constructively dismissed and whilst we do not doubt that there was residual distress etc as to the way he had been treated from that point on and during the litigation that needs to be seen in the context of a man capable of and in full time gainful employment.



53. For those reasons we do not consider that the Claimant falls within the Top Vento band. We are entirely satisfied that this is a Middle band Vento case and that the conduct and the effect it had on the Claimant places it in the middle of the upper half of that band. The figure we award for Injury to Feelings is **£22,500**. We have considered that this sum is reflective of the effect on the Claimant and that is a figure that is wholly justifiable taking into account the totality of our findings.
54. £22,500 would yield interest at £1,800 per annum or £4.93 per day at 8%. The Claimant's employment terminated on 13 January 2019 and this Remedy hearing has been handed down on or around 10 November 2021. That is 1032 days and interest is awarded in the sum of **£5087.76**.
55. We next consider the pecuniary loss. The Claimant mitigated his loss immediately by obtaining suitable alternative work. Even though it was at a lesser rate of £26,000 we consider that, considering the Claimant's health and the promptness with which he got the role i.e. immediately, it was appropriate mitigation as at the date he got it. The Claimant, of course, would have an on-going duty to mitigate his losses by seeking out better paid work. His evidence was that he did not believe that he could cope with a managerial job that would pay the same. We do not accept that that was on account of the discrimination however but was caused by still recovering from his cancer. We have no medical evidence to support the effect of the discrimination on the Claimant on an ongoing basis or that it would cause restrictions on his capacity to work at all or on his capacity to work in certain roles.
56. Even though there is no evidence of the Claimant taking additional steps to find better paid work over 2019 we are satisfied that had an opportunity come available he would have taken it and so take no issue on his mitigation of loss until such time as he resigned from his employment with Hops & Barley. We do consider however that if the Claimant had have looked assiduously for a role in the security industry or similar sector, he would have found one by October 2019 some 9 months or so after the Effective Date of Termination. We are supported by the fact that the Claimant got a job immediately that paid him almost three quarters of his salary.
57. In his witness statement the Claimant gives no explanation at all for why he resigned his employment in October. It is clear that he was considering going to full time education on account of his interest in counselling and the Claimant told us in evidence that his employer reneged on a commitment which would allow him to do both. Even in his evidence the Claimant was vague as to his reasons for resigning and we have seen no written evidence in support, such as a resignation letter etc.
58. Whilst we found the Claimant's reasons for resigning perfectly understandable in that he wished to move forward with his interest in counselling and, from a choice perspective, that was his prerogative. Having said that we do not consider that resigning from a secure job amounts to a reasonable mitigation of loss and we cannot see that there is any basis upon which compensation can continue to accrue after that date. We reject any suggestion that the choice was caused in any way by the discrimination and reiterate our finding that the Claimant's interest in counselling was caused by his experiences as a cancer sufferer.
59. Taking those findings into account the Claimant is entitled to the difference in earnings from 14 January to the date of his resignation in mid-October, a period of 9 months.
60. The Claimant has produced some but not all pay slips. We are not satisfied that the pay slips show the correct levels of tax payable and the Claimant will have had to account for tax payments owing at some point. We know that the Claimant had a gross salary of £35,000 whilst working for the Claimant and £26,000 whilst working for Hops and Barley or £2916.67 pcm. There is a pay slip that shows that the Claimant was paid a net sum of £2592.94 for that month but for some reason no PAYE is showing.

61. We are not satisfied that the payslips are a proper basis for considering what the proper net pay would or should have been and there will probably have been rebates / additional amendments to tax later on. With that uncertainty we consider that the best way of calculating what the Claimant's proper monthly net pay would be is to use an online calculator and that shows what the correct net monthly pay should be with tax and national insurance. That shows that the net monthly pay whilst working for the Respondent would have been £2,277.99 and the net monthly pay for Hops and Barley would have been £1767.99 a difference of £510 pcm.
62. The period of loss on our findings above are 9 months which gives a net loss of earnings of £4,590.
63. In respect of interest £4590 at 8% provides a figure of £367.20 per annum or £1.01 per day. Adopting the mid-point (516 days) we come to a figure for interest of £521.16.
64. The total compensation for the disability discrimination is:

<b>Past Loss</b>	<b>£ 4,590.00</b>
<b>Interest</b>	<b>£ 521.16</b>
<b>Injury to Feelings £22,500.00</b>	
<b>Interest</b>	<b>£ 5,087.76</b>
<b>Total</b>	<b>£32,698.92</b>

#### **Unfair Dismissal Compensation**

65. As previously stated, the weekly gross pay for the Claimant was £516.31, that exceeds the statutory maximum which at the material time was £508. The Claimant had 13 years' service which was agreed between the parties and the Liability judgment is amended to reflect that. The Basic Award is **£6,604**.
66. Any compensatory award would reflect that already awarded in the discrimination claim but the Tribunal does award **£500** in respect of the Claimant's loss of statutory rights.
67. The total unfair dismissal compensation is **£7,104**.
68. Finally, we need to consider the impact on taxation. We take into account that the Basic Award is already calculated on a gross basis but need to deal with the £32,698.92 awarded for discrimination and the £500 compensatory award for unfair dismissal. We use the methodology set out at Example 2 of page 36 of the Employment Tribunals Remedy Handbook as we consider that is the correct way to approach grossing up:

Basic Award	£ 6,604.00
Injury to Feelings	£27,587.76
Compensation for Financial Loss	£ 5,511.16
Tax Free Element	£30,000.00

Calculation	
Basic Award	£6,604.00

Amount of compensation up to	
£30,000 tax free element	
£30,000 - £6,604.00 -£5,511.16	£17,884.84

Amount of Injury to Feelings Award	
That needs to be taxed	
27,587.76 - £17,884.84 =	£9,702.92

Grossed up compensation of  
£9702.92 = £9702.92 divided by  
0.8 £12,128.65

Grossing up figure to be added to  
Award **£2,425.73**

Total grossed up award **£42,228.65**

69. The Claimant told us in his witness statement that this claim was not about the money but in effect to show that individuals did not have to be treated in the way that he was. He is, however, entitled to compensation as set out above.
70. In the event that either party have any issues with the arithmetical calculations set out above then they should raise those issues in writing as soon as possible so that any issues can be reconsidered at the earliest opportunity.

Employment Judge self  
11/11/2021