



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Law

Respondent: The University of Cumbria

Heard at: Manchester Employment Tribunal
By Video Hearing

On: 13 September 2022

Before: Employment Judge Dunlop
Mr TD Wilson
Mr J Murdie

Representation

Claimant: In person

Respondent: Mrs M Steed (solicitor)

RESERVED JUDGMENT REMEDY (SECOND JUDGMENT)

1. The Tribunal orders the respondent to pay the sum of **£129,133.39** to the claimant in relation to the financial losses sustained by the claimant as a result of the respondent's acts of unfair dismissal and discrimination. The method of calculation of this sum is set out in our reasons below.
2. The Tribunal will assess the claimant's non-financial losses, and other outstanding matters, at a further Remedy Hearing.
3. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply.

REASONS

Introduction

1. Reference should be made to the Tribunal's liability decision, and first remedy decision, dated 19 April and 6 July 2022 respectively, for the relevant background to this matter.

The Hearing

2. The hearing today dealt with the calculation of financial losses sustained by the claimant as a result of the unfair dismissal and discrimination which we have found she experienced.
3. We were grateful to both parties for the comprehensive Schedule of Loss and Counter-Schedule which they had prepared. We heard evidence from Mrs Law and from Mrs Knox-Davies on behalf of the University, as well as detailed submissions from Mrs Steed and Mrs Law. We had regard to a 300-page remedy bundle prepared by the parties.

Findings of Fact related to Remedy

4. Mrs Law was 35 years old at the date of the remedy hearing. For ease, we repeat here findings made in the liability decision about her career background. She completed a BSc in Marine Biology in 2010. She followed this with an MRes in Applied Marine and Fisheries Ecology completed in 2011. Subsequently, she worked at Blackpool and Fylde College delivering undergraduate teaching on courses affiliated to the University of Central Lancashire before obtaining a series of Research Assistant and post-graduate researcher roles in her chosen field of Marine Science between 2012-2014. She then became a Student Liaison Officer at Lancaster and Morecambe College before obtaining the first of her roles with the University of Cumbria in 2015 as Collaborative Outreach Officer. She held this role, on a fixed term contract, from November 2015 to January 2017, when she moved into a role as a Data and Evaluation Manager, until March 2019. In March 2019 she took up her role as Academic Lead for STEM Outreach.
5. The funding for that role expired at the end of the academic year in July 2020 and she was made redundant. As we have found in earlier decisions, that dismissal was discriminatory and unfair. There was, however, a chance that she would have been dismissed in any event absent any discrimination or unfairness. We have assessed that chance as being 35%. We have also found that if Mrs Law had not been dismissed her role would not have continued in its existing form, but she would have continued in an academic role at the same grade. This would have happened either immediately or after a short period in a lower grade role. If the latter, she would have moved back to her existing grade within the two year pay protection period, so there would have been no detrimental impact on her pay.
6. Mrs Law has a husband and a young child. (She was due to commence maternity leave shortly after her dismissal.) The family was settled and committed to remaining in Cumbria. Living in a rural area is important to both Mrs and Mr Law. Mrs Law grew up in Cumbria and she has family ties in the area. Beyond that, she has a passion for the area which incorporates her professional interests in ecology and her drive to promote learning and opportunity (particularly within the sciences) for people in Cumbria. Mr Law is Scottish, and the couple also have family connections in Scotland.

7. Prior to the events giving rise to this case, Mr and Mrs Law had historically had very similar earnings. They had 'leapfrogged' each other by small amounts with each new role or pay increase over a number of years. Mrs Law was ambitious in her career and placed great importance on it. Both intended to continue to work full time and use nursery provision to enable them to do so. We find that this is what would have happened if Mrs Law had not been dismissed.
8. Mrs Law was a member of the Teacher's Pension Scheme, which is a defined benefit pension scheme. This was an entitlement which came in her last role with the university; her previous roles had come with membership of a less advantageous defined contribution scheme. Although Mrs Law had a small amount of service in the TPS final salary scheme, at the time of her dismissal she was accruing benefits under the CARE scheme. Under this scheme, Mrs Law accrued 1/57 of her annual salary as pension each year. Each year, the 'slices' accrued in previous years would be revalued to produce a final amount. Mrs Law is, and was, very informed about her pension situation. The opportunity to join the scheme was something she valued and the quality of pension provision would be an important factor in any future career decisions. We also find that Mrs Law would, throughout her career, have chosen to maximise her own contributions into any defined contribution scheme that she was part of.
9. Mrs Law has emphasised, and we accept, that opportunities for scientists in Cumbria are very limited. We accept that there are many fewer professional opportunities for those working in Higher Education (whether on the academic or administrative side of the sector) and living in rural Cumbria than there are for those living in or near urban areas with good transport connections and a multiplicity of such institutions such as Manchester/Liverpool, London, or Glasgow/Edinburgh. We also accept that equivalent roles in the private sector will be relatively rare in Cumbria.
10. Against this backdrop, Mrs Law invited us to find that she would have remained in employment with the respondent until her (agreed) retirement age of 68. Mrs Steed emphasised that 33 years is a long time, and that it would be unrealistic to find that Mrs Law would have remained in the employment of the university for so long. She raised several distinct arguments in support of this, which we address here:
 - 10.1 The possibility that Mrs Law would have moved to another university to further her career. We accept that an academic career will often involve such movement. We have also found that Mrs Law is capable and ambitious. We acknowledge that a move to a more research-intensive institution may have become a possibility, and that the advantages to her career over the negatives of moving away from Cumbria would have had to be considered seriously. We find there is a real possibility that Mrs Law would have undertaken such a move at some point in the future. Indeed, we consider that is the most likely scenario which would have prevented her from staying with the University until retirement. However, we do not believe that Mrs Law would accept such an alternative role if it did not offer an equivalent salary and, crucially, continued membership of TPS (or

equivalent) on at least as favourable a basis as she was entitled to in her role at Cumbria. We therefore find that any such possible move would not break the change of causation in terms of losses incurred.

- 10.2 The possibility that Cumbria would stop offering the relevant courses, so she could not longer be employed. We consider this improbable. It appears that Cumbria continues to expand as an institution. We have found it likely (in earlier judgments) that Mrs Law would have ended up with a permanent lecturer role, which would have given her more security of employment. There is nothing specific to suggest that she would have been unable to achieve long service (like the examples of colleagues she gave) if that remained her wish as her career progressed. The only reason to give some weight to this factor is the very long period that Mrs Law has left in her working life. This means that there is more scope for circumstances to change across that time period.
- 10.3 The possibility that Mrs Law's pension entitlement would become less valuable. As discussed with the parties, we are prepared to take judicial notice of the fact that defined benefit pensions are financially burdensome and that there is a general (albeit slow) movement towards eroding the benefits they provide, including in the HE sector. We note that this is currently the subject of industrial unrest in the sector. We also acknowledge that change is most likely to affect new entrants and that that in itself is a reason why Mrs Law may have been (increasingly) strongly motivated to remain in her role at Cumbria. It is much more speculative to suggest that benefits are likely to be eroded for existing scheme members, although given Mrs Law's young age we must acknowledge that there is some possibility of some future reduction.
- 10.4 The possibility that Mrs Law would leave her job for family reasons. This does not relate to what actually happened (see below), but the possibility that the family would have made a decision to move (at some point) even if Mrs Law had not been dismissed from the University. Mrs Law appeared somewhat angry at the suggestion that it would have been her choice to 'follow' her husband. Her evidence is that that the move which did happen was, in effect, forced on the family due to the respondent's actions. We can understand that point of view and considered that some of the respondent's submissions skated close to stereotypical assumptions about what the priorities of women of Mrs Law's age might be. Those are the sort of assumptions which Mrs Law read into the comments made by Ms Lowthian at the time of termination of her employment. We are satisfied on the evidence that Mrs Law had worked extremely hard, following a somewhat circuitous route, to establish an academic career. Equally, we are satisfied about the strength of her commitment to Cumbria and the local area. Mrs Law was not going to choose to leave those things readily. The position that Mrs Law finds herself in now, and the decisions she has taken since, stem from the fact that she found herself without a job two weeks before her maternity leave was due to start. Whilst the

possibility that an employee may choose to leave her job for family reasons may be properly reflected in calculating future losses in some cases, each claimant must be assessed individually, and we are satisfied that it is a very weak factor in Mrs Law's case.

11. Overall, therefore, we consider that (absent the events in this case) the prospect of Mrs Law continuing to work for the respondent until retirement (including the possibility that she would move only to take up a role at another institution with equivalent pay and pension benefits) is 90%. We recognise that this is a high figure, particularly for a claimant who still has a long period of time until retirement. However, in our judgment it reflects the compelling evidence we have heard from Mrs Law about her intentions, as well as the fact that she worked in a sector where most major prospective employers would offer continued membership of the same pension scheme.
12. Immediately following her dismissal Mrs Law experienced a very difficult period as she developed pre-eclampsia and gave birth by emergency caesarean. Her mother was terminally ill and died in autumn 2020, around the same time as Mrs Law was preparing to submit this claim and coping with becoming a mother for the first time. Other members of staff from the university, including people who had been Mrs Law's colleagues, lived locally to her, and she found the idea of chance encounters with them distressing.
13. The university advertised a Zoology Lecturer role in February 2021 for the start of the academic year 2022. Mrs Law did not apply for that role as she felt unable to return to the university given the events surrounding her redundancy.
14. Mrs Law began actively looking for work in June 2021, although she had been 'keeping an eye out' before then. She subscribes to various e-bulletins relevant to her sector which carry recruitment advertisements. She has also regularly accessed relevant online job boards and has discussed potential opportunities with others in her network.
15. Mrs Law produced a spreadsheet of vacancies which appeared in the bundle. This shows around 60 jobs which she had identified between February 2021 and May 2022. However, they are not all jobs which she has applied for. In many instances the table has included a reason for not applying. These reasons include her desire not to return to the respondent (for jobs advertised by the respondent), jobs where Mrs Law considers her qualifications or experience are inadequate, jobs where the commute is too far, and jobs where the pay is too low. As shown on the spreadsheet, Mrs Law actually applied for around 14 of these jobs.
16. All of her applications to date have been unsuccessful. Some of the roles are remote. Mrs Law observed (we believe astutely) that the availability of remote working has brought more roles within her reach, but has also dramatically widened the field of candidates for such roles. She gave an example of a role she had applied for the Met Office, in respect of which she had received feedback that there were over 130 candidates. It is evident that the field of work she has chosen to specialise in is popular and competitive.

17. In February 2022 Mr Law was offered a new job in South Ayrshire. This represented a significant salary increase for him, and, as Mrs Law was not in employment, the family took the decision to relocate. In that period Mrs Law has taken the main role in finding new rented accommodation and, subsequently, selling their house in Cumbria and buying one on Ayrshire. This has also involved making support arrangements for her father who is disabled and elderly. She has done this alongside caring for her child and undertaking this case as a self-represented litigant.
18. As a result of her move, the focus of Mrs Law's job-hunting activities has switched from Cumbria to Ayrshire. She continues to look for remote working opportunities, as she is again living in a rural area and opportunities within her field in the town of Ayr are very limited. She does not consider that she would be able to commute to Glasgow due to nursery opening hours.
19. The respondent made general submissions about the numbers of jobs available in various sectors that Mrs Law might be qualified for, and about the generally buoyant job market. We accept those submissions as far as they go, but we noted that there was no particular opportunity identified by the respondent that Mrs Law accepted would have been suitable but she had failed to apply for. Nor was there any such specific opportunity that the Tribunal was persuaded she ought to have applied for.
20. Mrs Law has obtained information about a MA in data analytics at the University of Aberdeen. She is an alumnus of that University, and the course would be studied remotely. She has told the Tribunal that she proposes to undertake that course if she is unable to quickly gain suitable employment. It would build her confidence and make her more employable in a different field. That is a field which the respondent and claimant agree offer strong employment prospects and could potentially lead to more lucrative future employment than her previous career.
21. The data analytics course would come with significant course fees. Mrs Law told us she has not accounted for these in the schedule of loss as she did not want to be obligated to do the course. We find it remains a possibility that she will undertake the course, but returning to study is not a course of action that Mrs Law has settled on at the present time.
22. We will return below to our conclusions as to Mrs Law's likely future loss against this factual background.
23. Mrs Law has not claimed any relevant benefits, so the award will not be subject to recoupment.

Basic Award

24. The parties agreed that Mrs Law was entitled to receive a basic award and that the correct calculation of this was £2,152.00. They further agreed that Mrs Law had in fact received a redundancy payment which exceeded this basic award by £772.38, and therefore that that amount fell to be credited against the financial losses sustained .

Past Losses

Net weekly pay

25. There was discrepancy in the parties' Schedules as to the appropriate net weekly pay value to be used for calculating financial losses. The respondent's value was based on the net figure shown on Mrs Law's payslips. Mrs Law's value was based on her gross pay net of tax and NI deductions, but did not discount for her student loan repayments or pension contributions.
26. We considered that the value of net pay used for the calculation should include the student loan repayment sums. The fact that those payments are not being made will mean the Mrs Law's debt is not reduced in this period and there will be more to pay when she regains employment. On the other hand, we consider that the pension contributions are factored in in the pension loss calculations which the parties have also addressed us on and that 'net' pay for the purposes of the compensatory award should therefore be net of those pension contributions.
27. Accordingly, the figure we have reached for net pay weekly is £511.48.

Calculation of past losses

28. The claimant's employment ended on date 31 July 2020. It was common ground that she had not secured any employment, nor had the benefit of any income, other than statutory maternity pay in the period between that date and today's hearing (13th of September 2022).
29. We calculate the losses sustained between those date (subject to any argument about mitigation) as follows.

31 July 2020 – 13 August 2020	2 weeks full pay	£1,022.96
13 August 2020 – 14 June 2021	Maternity period	

Credit is given for SMP, losses relate to occupational maternity pay which would have increased pay from 90% to 100% in first six weeks, and the provided half pay on top of SMP for next 12 weeks.

Loss of contractual maternity pay:

6 x 10% of £511.48 = £306.88
12 x 50% of £511.48 = £3,068.88

£3,375.76

30. After this period, Mrs Law would have been on unpaid maternity leave. There is a further discrepancy in the schedules as to when she would have returned to work. We accept Mrs Law's position that she would most likely have returned to work formally after ten months in mid-June 2021. This would allow her to use accrued leave, and benefit from income, over the quiet summer period, placing her in a good position for the start of the new academic year. We consider this to be more likely than the respondent's assumption that Mrs Law would have remained absent for the full one-year period.

31. We next have to consider losses from 14 June 2021 to 13 September 2022. In her calculations, Mrs Law gave credit for the full-time nursery place that would be required for her child. She has not taken up that place due to not being in employment, but her calculations recognise that that would have been an unavoidable expense associated with her previous intention of returning to work at the University. There might be arguments as to whether it is appropriate to discount the whole of that cost from Mrs Law's earnings, given that hers is not the only income in the household, but as both the parties have proceeded on that basis we also adopt it. We have used the agreed figure of £162/week for these costs.

32. Again, acting fairly and in the spirit of assisting the Tribunal, the respondent's calculations acknowledge a 3% increase which would have been applicable to the claimant's earnings from the start of the 2022 academic year. We have increased the net weekly pay by 3% to reflect this (appreciating that this is something of an approximation)

Weekly loss to 1 August 2022 = £511.48 - £162
= £349.48

59 x £349.48 = £20,619.32

Weekly loss post 1 August 2022 = £526.82 - £162
= £364.82

6 x £364.82 = £2,188.92

£22,808.24

Mitigation of Past Losses

33. We reminded ourselves of the law relating to mitigation of loss. The decision in **Wilding v British Telecommunications Plc 2002 ICR 1079** sets out certain principles which apply when considering what the claimant's duty to mitigate her loss entails, and whether there has been a failure to mitigate.

33.1 The claimant is under a duty to make reasonable efforts to mitigate the losses flowing from dismissal and to do so unaffected by the hope of compensation;

33.2 Where the employer wishes to argue that that there has been an unreasonable failure to mitigate the burden is on the employer to show this;

33.3 It is not enough for the employer to show that the it would have been reasonable for the claimant to do X or Y in order to mitigate loss, the employer must show that it was unreasonable for the claimant not to have done X or Y;

33.4 In assessing whether a claimant has behaved unreasonably the test is an objective one to be applied following consideration of all the evidence.

34. Mrs Steed argued that, acting reasonably, Mrs Law would have begun to mitigate her loss by today's date, albeit that she accepted that Mrs Law was not

required to actively seek work during what would have been her maternity period.

35. We were satisfied that Mrs Law has acted reasonably to attempt to mitigate her loss up until today's date. She commenced maternity very shortly after her dismissal (and had been ill even before her maternity period started). We accept that it was reasonable for her not to look for work until around June 2021. Although that strictly discounts the roles which were advertised by the respondent, we also find it was reasonable for Mrs Law to take the view that she did not wish to return to employment with the respondent in all the circumstances.
36. In the period after June 2021, Mrs Law has applied for a number roles, as noted above. In applying for these roles, she has had regard to her specialism, qualifications and experience. She has taken the view, reasonably, that she wishes to continue in the career which she has commenced. She has also had regard to the cost of child-care and taken the view that, at least at this stage, she is unwilling to apply for roles which would leave her out of pocket after paying nursery fees. (We note that several of the roles which she has applied for are nonetheless lower paying roles than the one that she held with the respondent).
37. We consider that Mrs Law was entitled for that initial period to focus on roles which were remote or locally based. The oft-cited principle that "a tortfeasor must take their victim as they find them" applies just as much to an employer who discriminates against someone who lives in a rural area with little suitable employment opportunities as it does to an employer who discriminates against an employee who happens to be susceptible to psychiatric injury.
38. However, keeping in mind the principles set out in **Wilding**, we take the view that if an initial job search was fruitless, there would come a point where an employee acting reasonably would have to consider either changing their career options in order to stay in an area such as Cumbria, or, alternatively, to consider relocating in order to pursue the career of their choice.
39. Of course, what happened in this case was the relocation for other reasons to South Ayrshire.
40. It was suggested by Mrs Steed that this was something which might have happened anyway, and that we should take account of the possibility of Mrs Law choosing to 'follow' her husband in limiting her losses. We accepted Mrs Law's evidence that the family had considered itself permanently settled in Cumbria, and that the relocation to South Ayrshire had been a direct result of the events in this case, both from a financial perspective, but also because Mrs Law felt very uncomfortable continuing to live in a small village which was also home to many of her former colleagues. We do not accept, therefore, that this move was one which acts to end the losses flowing from Mrs Law's dismissal.
41. As we have said in the findings of fact above, we are satisfied that there were a number of things going on in Mrs Law's life during the last twelve months. Although the move was completed relatively recently, Mrs Law had been looking for jobs in South West Scotland for some months, in anticipation of moving. Again, bearing in mind the situation she was in, we find that Mrs Law

has done enough to demonstrate reasonable efforts to mitigate her loss during this period. Her spreadsheet demonstrates that she has put time and effort into the task, that she has looked widely and that she has thought creatively about the sort of 'sideways' move she would be equipped to take.

42. In those circumstances, we reject the suggestion that there has been a failure to mitigate prior to the date of today's hearing.

Future Losses

43. The next question which arises, is when, and to what extent, will Mrs Law be able to mitigate her future losses. We must assume that she will continue to take reasonable steps to do so.

44. Mrs Law's Schedule of Loss proceeded on the basis that it will take her one year from today's date to find work. Having found work, she assumes that she will earn at the same level as she was earning in Cumbria. She has continued to give credit in all her calculations for the cost of childcare which she acknowledges she would be sustaining if she had continued in her role at Cumbria.

45. However, although Mrs Law's schedule projects a very limited future loss of earnings, she has taken the view that her future role is likely to be in the private sector with a much poorer pension provision. The Schedule therefore provides for a very significant amount of pension loss. In attempting to quantify that loss, Mrs Law has performed a careful and thorough calculation, using the method set out in the *Employment Tribunals Principles for Compensating Pension Loss, Fourth Edition (Third Revision) 2021*.

46. Mrs Steed's counter-schedule of Loss presents a different scenario. She suggests that the claimant should already have started the data science course, and that, having done so, she could expect to move into a permanent job in January 2023, at which point all future losses (in relation to both earnings and pension) would be extinguished. On this basis (proceeding on the assumption that we didn't find a failure to mitigate and therefore end the losses running at an earlier date) Mrs Steed allows for a further 15 weeks of future loss only.

47. Our findings do not fit exactly with either of those scenarios. We find that, acting reasonably, Mrs Law is most likely to find a new job more quickly than she has envisioned. With the move behind her, and having tried unsuccessfully to find work in her preferred fields, we consider that it is appropriate for her to broaden her search into more general science, business and administration work. To be clear, we cannot (and do not) say that she *must* do so - that is a matter for her. However, we find that it would be reasonable to expect her to do so and therefore not reasonable to expect the respondent to pay damages based on a continued job search focusing on a relatively small number of roles which Mrs Law considers will develop her career as she would have wished.

48. As part of this conclusion, we note from cross examination that Mrs Law has, for the moment, ruled out commuting to Glasgow due to the constraints of nursery hours. Again, that is a matter for her. However, we consider that acting reasonably to mitigate her loss in circumstances where the family had taken a (reasonable) decision to relocate to South Ayrshire would also involve taking

steps to ensure that she is in a position to apply for jobs based in south/central Glasgow, at least on a 2/3 day per week basis. For example, this might have involved moving closer to a train station, further north to be closer by road, and/or investigating the possibilities for childminders as well as nurseries with fixed hours.

49. We consider that a broader job search, including roles based in Glasgow for at least a portion of the week, would most likely result in Mrs Law finding an acceptable role by the end of January 2023. In reaching this conclusion we take account of the fact that the job market is currently strong in most sectors. However, we also have regard to the fact that Mrs Law has been out of the job market for a significant time, and may have to move to a role in which she has limited direct experience. For the purposes of our calculations, we consider that the role she initially finds will be paid at £25,000 per annum, and will have only minimum pension benefits.
50. Moving forward in time, we are confident that Mrs Law will re-establish herself in her career, whether that is in her current field or in another field, and will ultimately find employment which either matches or exceeds her expectations at the University. We find that a just approach is to base her losses on a three-year period spent in this initial job. Beyond that three-year period, we are satisfied that she will either move into a job with equivalent pension provision (particularly given that pension provision is important to her) or, perhaps if remaining in the private sector, she will increase her earnings sufficiently to compensate for the reduced value of her pension entitlement. This reflects the premium which she places on financial security, as well as her skills and abilities. We also find that Mrs Law will make the maximum permitted employee contribution into any future pension scheme, and that (as she has told us) she will favour maximising the annuity value of her pension pot, and so will not draw down any lump sum on retirement.
51. We acknowledge that the scenario described does not take account of the possibility of Mrs Law taking up Masters in Data Science. Although we accept that the £25,000 interim payment made by the respondent would have enabled her to start the course from a financial perspective, we do not consider it was unreasonable for Mrs Law to wait to do so until the move was complete. It would be a reasonable step for her to take in the near future, equally, continuing to seek a job and not incurring significant fees to undertake another MA when she already has a qualification at that level would be equally reasonable. If Mrs Law was to undertake the MA then she would be worse off in the short term than we have predicted – she would incur course fees and a delayed start to her earning. In the medium term, however, we consider that she is likely to progress to a better paid job more quickly than we have accounted for. In the circumstances, we are therefore content that the basis for calculation we have set can stand as a fair approximation of likely losses, even if Mrs Law takes the alternative route of undertaking the MA. We are satisfied it does justice between the parties in a realistic, albeit broadbrush, way.

Losses to 31 January 2023

20 x £364.82 = £11,674.24

£7,296.40

Losses 31 January 2023 – 31 January 2026

£25,000.00 gross = £480.77 per week
£401.71 net (Scotland, using online take home pay calculator)
£239.71 (after childcare costs)

156 x £239.71 = £37,394.76

£37,394.76

Pension Loss

52. Our starting point in calculating pension loss are the conclusions set out above.

53. The effect of our conclusions is that Mrs Law has lost the benefit of five years and five months membership of the Teacher's Pension Scheme which she was a member of through her employment with the University. We consider that this length of time, along with the high probability we have found that Mrs Law would have continued in the scheme to retirement, means that the 'complex loss' approach set out in the *Principles for Compensating Pension Loss (2021)* document ("The Principles") is appropriate.

54. We pause here to note that both parties' submissions were based on The Principles. Neither has sought to adduce expert evidence, despite the significant sums claimed and the fact that there is an intention to do so in relation to personal injury.

55. Both parties had also separately calculated pension loss under 'past losses' and 'future losses'. However, all pension loss is future loss and we have done one calculation taking into account all of the losses sustained by Mrs Law in view of our findings above.

Old job facts and withdrawal factor

56. A significant amount of Mrs Steed's cross examination was devoted to attempting to establish that there should be a high withdrawal factor, representing the possibility that Mrs Law would, at some point before her designated retirement age, leave the scheme in any event. We refer to our findings of fact at paragraph 10 above. Weighing into account the factors we have found to be relevant, and the low probability we attach to each of them, we concluded that there was a 90% chance that Mrs Law would remain in her role (or at least in the scheme) until retirement. The appropriate withdrawal factor for the old job is therefore 10%.

57. We are reassured in our selection of a low percentage withdrawal factor by the fact that Mrs Law's pension calculations (and ours) work on the basis that, had she remained at the university, she would not be promoted above her present grade. We consider that any underestimate in reaching the withdrawal factor is countered by an equivalent underestimate which results from discounting all possibility of promotion.

Step 1: Identify net pension income at retirement age but for dismissal

58. Neither party appears to have taken steps to obtain a projected pension income for Mrs Law from TPS if she had continued in the scheme until retirement. Instead, each provided estimated figures and invited us to determine the correct approach.
59. Both parties have used a salary of £39,745 as the starting point for this calculation, which was the anticipated top salary band for Grade 7 in 2023/23.
60. If Mrs Law had not been dismissed then at her retirement she would have been a member of the scheme for 36 years and 10 months. Using that information figures, and a 1% revaluation figure, Mrs Steed produced a gross pension income of £27,748.00 per annum.
61. This calculation does not take account of the compound impact of the revaluation process (whereby earlier 'slices' of accrued entitlement to benefit are revalued each year, as well as the salary figure itself). This corresponds with the approach taken in the worked examples in The Principles, for reasons set out at paragraph 5.55(e):
- “The figures in our examples do not account for the compound impact of annual CPI revaluation of all the slices of earnings – not just those banked before dismissal, but also those that would continue to be banked if dismissal had not occurred. In times of low inflation, the impact of this revaluation is likely to be so limited as to fall within the margins of error attributable to all the other presumptions, predictions and estimations about the future that the Tribunal is having to undertake. We do not recommend that a Tribunal routinely makes an adjustment for CPI revaluation, but a claimant is free to undertake any calculation (if necessary, with expert assistance) and seek to persuade the Tribunal it is appropriate to include the result.”*
62. Mrs Law has performed a compound calculation which does take account of the on-going revaluation of each 'slice'. She has assumed an annual salary increase of 1% (the same as Ms Steed's calculation) and a pension increase rate of 1.95%. She has selected the latter figure as it is the median of increases in the scheme from 2012/13-2021/22. We accept Mrs Law's submission that we are no longer in the “*times of low inflation*” referenced by The Principles, although we obviously cannot predict whether that change is short-term or will become entrenched. With that in mind, and considering the principles envisage the possibility of a claimant carrying out their own revaluation calculation and it being open to the tribunal to accept that, we consider that Mrs Law's approach represents a more just and equitable estimate of losses than does Ms Steed's.
63. We have, however, amended the spreadsheet provided by Mrs Law to incorporate the 'missed' slices of pension accrual which the parties had accounted for in their past loss calculations. The figures we have inserted are in bold in the version of the spreadsheet annexed to this Judgment. We have used 8 months of salary for the 2020-2021 financial year (as Mrs Law was in employment, and accruing pension entitlement for the first four months of this year). Because the pay award for these periods is known, there is no need to apply the 1% uplift. Similarly, we have been able to use actual increase rate figures from the TPS information at page 53 of the remedy bundle, rather than Mrs Law's predicted figure of 1.95%.

64. These changes result in an increase in the projected annual pension from £37,128.39 on Mrs Law's calculations, to £40,272.85 on ours.
65. As noted above, we have found that it would be just and equitable to apply a 10% withdrawal factor to this whole amount, reflecting the possibility that Mrs Law would have left her job (and therefore the scheme) and/or that her entitlement to benefits under the scheme would have been reduced. This gives a figure of £36,245.56.
66. Finally, we also have to add to this projected figure, the secured pension entitlement that Mrs Law has already accrued in the scheme. This is shown as £970.50 on the TPS documents. That is not subject to a withdrawal factor, as that entitlement has already accrued. This makes the total projected annual pension £37,216.06.
67. Using the HMRC tax calculator (taking account of the fact that Mrs Law would be over state pension age and so not paying NICS, and assuming she will be living in Scotland) gives a net pension income of **£32,195.08**.

Step 2: Calculating likely net pension income in light of dismissal

68. We have allowed three elements for this calculation:
- 68.1 The net pension of £970.50 that Mrs Law had already accrued in the TPS CARE scheme (we have discounted other entitlements accrued pre-dismissal in both elements of the calculation).
 - 68.2 The deemed figure that will be produced from a basic, auto-enrolment defined contribution pensions scheme which Mrs Law will be a member of for three years from 31 January 2026 on the facts found above.
 - 68.3 The deemed figure that will be produced from Mrs Law rejoining the TPS scheme on 31 January 2026 and continuing in that scheme (subject to the same withdrawal factor of 10%) until retirement.
69. In relation to the second element, we have used a calculation from the NEST website based on three years of contributions with Mrs Law contributing 9.6% (as she has stated would be her intention) and her employer making a minimum 3% contribution. This results in an annual pension of £1,180.00 (again, using Scottish tax rates).
70. In relation to the third element, by removing the initial lines of the CARE accrual spreadsheet, we have calculated the accruals which would take place following Mrs Law's rejoining of the scheme from 31 January 2026 (the earnings for the financial year 2025-2026 are reduced, reflecting our findings that Mrs Law would be working for only the final two months of this financial year). This gives a predicted pension from future TPS employment of £32,303.64 pa. Reducing this by the 10% withdrawal factor gives £29,073.28.
71. Adding together these three elements of Mrs Law's projected pension income results in a gross annual figure of £31,223.78. Using the HMRC calculator gives a net income of **£27,461.18**.

Step 3: Net annual loss of pension benefits (“multiplicand”)

72. Calculating the different between the two net pension income amounts above: £32,195.08 - £27,461.18 = **£4,733.90**

Step 4: Identifying the multiplier

73. The parties agree that the appropriate multiplier is 25.74, using the Ogden Tables with a discount rate of 2.5% and applying the 2-year adjustment.

Step 5: Present capital value of loss

74. £4,733.90 x 25.74 = **£121,850.59.**

Step 6: Lump sum position

75. Both parties proceeded on the assumption that Mrs Law would not access a lump sum on retirement. We proceed on the same basis, which is in accordance with our findings of fact above. This means there is no additional calculation to be done at this stage.

Step 7: Grossing Up

76. A grossing up calculation is carried out below.

Summary and totals

77. In addition to the sums awarded above, we award **£500.00** in respect of loss of statutory rights. This forms part of the compensatory award in respect of Mrs Law’s unfair dismissal claim. The other losses are awarded as compensation for discrimination (being the act of dismissal). They are not also awarded as compensation in respect of the unfair dismissal claim, in order to avoid double recovery.

78. Having regard to the findings above, the following sums therefore represent the total loss to the claimant.

Total past losses:	£27,206.96
Total future loss of earnings:	£44,691.16
Total pension loss:	£121,850.29
Loss of statutory rights:	£500.00

Total: £194,248.41

79. Applying a 35% Polkey deduction as found in our previous Judgment reduces this sum to **£126,261.47.**

80. We considered applying a discount for accelerated receipt in respect of future loss of earnings. We decided not to do so on the following basis:

80.1 It was not a matter addressed by the parties;

- 80.2 The sums awarded in respect of future loss of earnings are a relatively modest part of the overall award, and are broadly commensurate with the sums awarded for past loss;
- 80.3 Given current economic volatility, with regard to both interest rates and inflation (including wage inflation), it is impossible to make a robust prediction as to the extent to which Mrs Law will be better/worse off receiving this sum as a lump sum, as against receiving an equivalent sum in earnings over the three-year period we have identified.
81. The next adjustment to be made would be in relation to Mrs Law's argument that the respondent failed to comply with the ACAS Code of Practice. As we have said, this will be determined alongside the non-financial elements of the award at a later date. In the event that we determine that any adjustment should be made, we will reflect any consequences for this calculation in the overall amount awarded at the next hearing. We consider it would be wrong to delay (potentially for many more months) Mrs Law's access to the compensation which we have found she is entitled to in order to finalise the calculations at one time.
82. Giving credit to the respondent for £772.38 excess redundancy payment (this comes after the **Polkey** adjustment as per **Digital Equipment Co v Clements (No 2) 1998 ICR 258**) results in an adjusted figure of **£125,489.09**.
83. As we are dealing with compensation under the Equality Act 2010, we must consider whether to include an element of interest on the past losses sustained by Mrs Law ((Employment Tribunal (Interest on Awards) Regulations 1996). Having considered this, we have declined to award interest in respect of past financial losses as this is a relatively minor part of the award, there has been no reduction for accelerated receipt in respect of future earnings and the judgment interest rate far exceeds commercial interest rates in the intervening period. We consider that this would represent a windfall to Mrs Law. (The same considerations do not necessarily apply to whatever award may be made in the future for non-financial damages, and the parties will be free to put forward arguments as to the appropriate treatment of interest on that occasion.)

Grossing Up

84. We expect that Mrs Law will receive payment of the sums awarded at today's hearing during this tax year, and will receive payment of sums awarded at the next remedy hearing (now scheduled for May 2023) during the next tax year. It is therefore appropriate to conduct two separate grossing up exercises to ensure that the claimant is fully compensated in respect of her losses. The first exercise (set out below) will take account of the provision for a £30,000 tax free termination payment. As such a payment can only be made once, the second exercise will not take account of a tax-free sum.
85. Sums excluded from grossing up = £30,000.00 (maximum tax-free termination payment) - £2,924.38 (redundancy payment already made) = £27,075.62.
86. The claimant has no other income to take into account in the current tax year. That leaves £98,413.47 to be subject to grossing up, as follows:

Case No: 2415967/2020

Band	Rate	Amount	Cumulative amount	Tax
0-12,570	0%	£ 12,570.00	12570	£ -
12571-14732	19%	£ 2,161.00	14732	£ 410.59
14733-25688	20%	£ 10,955.00	25688	£ 2,191.00
25689-43662	21%	£ 17,973.00	43662	£ 3,594.60
43663-15000	41%	£ 54,751.47	98413.47	£ 22,448.10

£ 28,644.29

87. The total award payable for financial losses is therefore:

£27,075.62 (tax free sum payable)

+£127,057.77 (taxable sum payable, to result in a net figure of £98,413.47)

-£25,000.00 (interim payment made by respondent following first remedy hearing)

Grand Total: £129,133.39

Next steps

88. The parties will be notified separately of the date for the next hearing, to deal with the remaining remedy issues.

Employment Judge Dunlop

Date: 14 October 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

21 October 2022

FOR EMPLOYMENT TRIBUNALS



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2415967/2020**

Name of case: **Mrs C Law** v **The University Of
Cumbria**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 21 October 2022

the calculation day in this case is: 22 October 2022

the stipulated rate of interest is: **8% per annum**.

Mr S Artingstall
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:

www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.

APPENDIX 1

PENSION RE-VALUATION CALCULATION SPREADSHEET

Calculation of defined benefit pension at retirement

Tax Year	Salary with 1% Increase (a)	1% salary increase (b) (b = a * 0.01)	1/67th of salary (c) (c = a * (1/67))	Cumulative pension	Pensions Increase rate at 1.95% (median from 2012/13-2021/22)
2020/2021	£23344.87	N/A	£409.68	£409.68	£8.98
2021/2022	£38017.00	N/A	£888.98	£1083.48	£6.42
2022/2023	£39745.00	£397.45	£697.28	£1786.18	£8.93
2023/2024	£40142.45	£401.42	£704.25	£2499.37	£48.74
2024/2025	£40543.87	£405.44	£711.30	£3259.40	£63.56
2025/2026	£40949.31	£409.49	£718.41	£4041.37	£78.81
2026/2027	£41358.81	£413.59	£725.59	£4845.77	£94.49
2027/2028	£41772.39	£417.72	£732.85	£5673.11	£110.63
2028/2029	£42190.12	£421.90	£740.18	£6523.91	£127.22
2029/2030	£42612.02	£426.12	£747.58	£7398.71	£144.27
2030/2031	£43038.14	£430.38	£755.06	£8298.04	£161.81
2031/2032	£43468.52	£434.69	£762.61	£9222.45	£179.84
2032/2033	£43903.21	£439.03	£770.23	£10172.52	£198.36
2033/2034	£44342.24	£443.42	£777.93	£11148.82	£217.40
2034/2035	£44785.66	£447.86	£785.71	£12151.94	£236.96
2035/2036	£45233.52	£452.34	£793.57	£13182.47	£257.06
2036/2037	£45685.85	£456.86	£801.51	£14241.03	£277.70
2037/2038	£46142.71	£461.43	£809.52	£15328.26	£298.90
2038/2039	£46604.14	£466.04	£817.62	£16444.77	£320.67
2039/2040	£47070.18	£470.70	£825.79	£17591.24	£343.03
2040/2041	£47540.88	£475.41	£834.05	£18768.32	£365.98
2041/2042	£48016.29	£480.16	£842.39	£19976.69	£389.55
2042/2043	£48496.45	£484.96	£850.81	£21217.05	£413.73
2043/2044	£48981.42	£489.81	£859.32	£22490.11	£438.56
2044/2045	£49471.23	£494.71	£867.92	£23796.58	£464.03
2045/2046	£49965.94	£499.66	£876.60	£25137.21	£490.18
2046/2047	£50465.60	£504.66	£885.36	£26512.75	£517.00
2047/2048	£50970.26	£509.70	£894.22	£27923.96	£544.52
2048/2049	£51479.96	£514.80	£903.16	£29371.64	£572.75
2049/2050	£51994.76	£519.95	£912.19	£30856.57	£601.70
2050/2051	£52514.71	£525.15	£921.31	£32379.58	£631.40
2051/2052	£53039.86	£530.40	£930.52	£33941.51	£661.86
2052/2053	£53570.26	£535.70	£939.83	£35543.20	£693.09
2053/2054	£54105.96	£541.06	£949.23	£37185.52	£725.12
2054/2055	£54647.02	£546.47	£958.72	£38869.36	£757.95
2055/2056 (partial to Dec)	£36795.66		£645.54	£40272.85	

APPENDIX 2 PENSION RE-VALUATION CALCULATION SPREADSHEET (NEW JOB)

Calculation of defined benefit pension at retirement

Tax Year	Salary with 1% increase (a)	1% salary increase (b) (b = a * 0.01)	1/67th of salary (c) (c = a * (1/67))	Cumulative pension	Pensions increase rate at 1.86% (median from 2012/13-2021/22)
2020/2021	£0.00	0	£0.00	£0.00	£0.00
2021/2022	£0.00	£0.00	£0.00	£0.00	£0.00
2022/2023	£0.00	£0.00	£0.00	£0.00	£0.00
2023/2024	£0.00	£0.00	£0.00	£0.00	£0.00
2024/2025	£0.00	£0.00	£0.00	£0.00	£0.00
2025/2026	£6626.04	£66.26	£116.25	£116.25	£2.27
2026/2027	£40153.79	£401.54	£704.45	£822.97	£16.05
2027/2028	£40555.33	£405.55	£711.50	£1550.51	£30.23
2028/2029	£40960.88	£409.61	£718.61	£2299.36	£44.84
2029/2030	£41370.49	£413.70	£725.80	£3069.99	£59.86
2030/2031	£41784.19	£417.84	£733.06	£3862.91	£75.33
2031/2032	£42202.04	£422.02	£740.39	£4678.63	£91.23
2032/2033	£42624.06	£426.24	£747.79	£5517.65	£107.59
2033/2034	£43050.30	£430.50	£755.27	£6380.51	£124.42
2034/2035	£43480.80	£434.81	£762.82	£7267.75	£141.72
2035/2036	£43915.61	£439.16	£770.45	£8179.93	£159.51
2036/2037	£44354.76	£443.55	£778.15	£9117.59	£177.79
2037/2038	£44798.31	£447.98	£785.94	£10081.32	£196.59
2038/2039	£45246.30	£452.46	£793.79	£11071.70	£215.90
2039/2040	£45698.76	£456.99	£801.73	£12089.33	£235.74
2040/2041	£46155.75	£461.56	£809.75	£13134.82	£256.13
2041/2042	£46617.30	£466.17	£817.85	£14208.79	£277.07
2042/2043	£47083.48	£470.83	£826.03	£15311.89	£298.58
2043/2044	£47554.31	£475.54	£834.29	£16444.76	£320.67
2044/2045	£48029.85	£480.30	£842.63	£17608.06	£343.36
2045/2046	£48510.15	£485.10	£851.06	£18802.47	£366.65
2046/2047	£48995.25	£489.95	£859.57	£20028.69	£390.56
2047/2048	£49485.21	£494.85	£868.16	£21287.41	£415.10
2048/2049	£49980.06	£499.80	£876.84	£22579.36	£440.30
2049/2050	£50479.86	£504.80	£885.61	£23905.27	£466.15
2050/2051	£50984.66	£509.85	£894.47	£25265.89	£492.68
2051/2052	£51494.51	£514.95	£903.41	£26661.98	£519.91
2052/2053	£52009.45	£520.09	£912.45	£28094.34	£547.84
2053/2054	£52529.54	£525.30	£921.57	£29563.75	£576.49
2054/2055	£53054.84	£530.55	£930.79	£31071.03	£605.89
2055/2056 (partial to Dec)	£35723.59		£626.73	£32303.64	