



EMPLOYMENT TRIBUNALS

Claimant: Miss A Collick

Respondent: British Telecom Plc

UPON APPLICATION made by letter dated 4 January 2023 to reconsider the judgment dated Date under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing, BY CONSENT, the reserved judgment on remedy dated 21 December 2022 is varied as follows:

RECONSIDERED RESERVED JUDGMENT ON REMEDY

1. The claimant is not entitled to a basic award having received an enhanced redundancy payment.
2. The total gross award payable to the claimant is £137,929.25. This is made up as follows:
3. The respondent shall pay the claimant the sum of £48,421.39 compensation for financial loss under S124 (2) EQA 2010;
4. The respondent shall pay the claimant the sum of £25,000 injury to feelings award;
5. The respondent shall pay the claimant the sum of £3693.15 interest under s139 EQA 2010;
6. The sum to be grossed up is £77,144.54 which equates to £60,814.83 in respect of tax payable on the award.

REASONS

Background and Introduction

1. This remedy hearing was listed following the reserved judgment on liability dated 3 May 2022, sent to the parties on 4 May 2022. The unanimous decision of the Tribunal following a liability hearing in February and March 2022 was that the claimant had been unfairly dismissed and that she had been subjected to direct sex discrimination contrary to section 13 of the Equality Act 2010, specifically that her selection for redundancy, hence her dismissal was discriminatory.

2. A preliminary hearing took place on 15 June 2022 and orders were made to ensure the parties were ready for the remedy hearing. At that stage the claimant sought re-engagement under s116 (2) ERA 1996.
3. There was an agreed bundle of 497 pages. The Tribunal heard evidence from the claimant, and on behalf of the respondent, Ms J Tait and Mr A Neale.
4. The Tribunal had ordered a series of rolling disclosure of vacancies between 13 July 2022 and subsequently on 3 August 2022, 24 August 2022 and 14 September 2022. On 20 June 2022, pursuant to the Tribunal's case management orders, the respondent had written to the claimant confirming their position was to resist re-engagement on the basis that it believed there had been a breakdown in the relationship of trust and confidence which would make it impracticable for the respondent to re-engage the claimant. The position remained to be the case as at the start of the remedy hearing. Following receipt of this letter, Mr Beese had written to the Tribunal expressing bemusement at the respondent's continuing disclosure vacancies given that the respondent had stated they intended to resist re-engagement. Mr Beese asserted it was extremely disingenuous of the respondent to send the list of jobs knowing full well there was no chance of the claimant obtaining one.
5. On 12 September 2022, Judge Moore reviewed the file ahead of the remedy hearing and noted the correspondence above. The remedy hearing had been listed to ensure there was sufficient time to deal with re-engagement however in light of the correspondence Judge Moore wrote to the parties and asked the claimant to confirm within 7 days whether she was still seeking re-engagement given the respondent's stance and the comments in Mr Beese's email. Judge Moore explained that even though the respondent had stated they were resisting the engagement the current orders in respect of disclosure vacancies remained in place and accordingly the respondent were correct to say that they must still comply with those orders for disclosure.
6. On 17 September 2022, Mr Beese confirmed by email that the claimant was still seeking re-engagement.
7. There was an agreed list of issues for the remedy hearing in the bundle. Following the Tribunal's preliminary reading of the witness statements, the Tribunal noted that the claimant had not dealt with the issue of re-engagement in her witness statement. This matter had been highlighted by Mr Goodwin in his list of issues and it was unclear whether or not re-engagement was still pursued. After discussion parties on the morning of 4 October 2022, Mr Beese confirmed that the claimant was no longer pursuing re-engagement and therefore this issue fell away. The claimant had not indicated whether she was interested in any of the vacancies that have been disclosed and therefore the Tribunal had no evidence before them upon which they could have determined whether to order re-engagement, in any event, in particular there were no job descriptions or terms and conditions for the multiple vacancies that had been disclosed.

8. Mr Goodwin confirmed that the respondent was not pursuing a reduction to the compensatory award under the **Polkey** principles.
9. On 5 October 2022 the Tribunal gave outline oral findings of fact. The Claimant's schedule of loss had sought future loss until the end of October 2023. The Tribunal had concluded that in light of our findings of fact, that this potentially did not reflect a reasonable period of future loss as it was limited to the end of October 2023. We referred the parties to the decision in **Acetrip v Dogra Ltd UKEAT/0238/18** and invited further submissions from the parties as we were considering awarding loss beyond what was claimed in the schedule of loss.
10. This led to the claimant being recalled to give further evidence. Such further evidence as it relevant is set out in our findings below. The decision was reserved after final further submissions.

Findings of fact

11. We set out as follows a list of agreed facts between the parties.
 - a) Gross annual salary £38,000
 - b) Net monthly pay £2033.14
 - c) Net weekly pay: £470
 - d) Effective date of termination (EDT) 30 November 2020
 - e) Claimant's date of birth: 29 January 1976
 - f) Claimant's age at EDT: 44
 - g) Total continuous service: 25 years
12. When her employment was terminated the Claimant received an enhanced redundancy payment of £43,311.84 (after deductions). This included a statutory redundancy payment of £11,567. The Claimant therefore has no entitlement to the basic award of £11,567 (as confirmed and agreed by the Claimant in her Schedule of Loss).
13. The parties had agreed a gross monthly salary of £3008.34 however this was incorrect. The gross monthly pay was £3166.67 which was subject to a smart pension deduction of £158.33. Therefore the correct gross monthly salary is £3166.67 and the correct gross weekly salary is £730.77.
14. The following facts are found by the Tribunal on the balance of probabilities.
15. The claimant had been employed by the respondent since she was 19 years old and had 25 years service. At the time of the claimant's dismissal, she did not have any specific engineering qualifications and managed a team of radio rigging engineers. Prior to this role, before April 2019, she had only undertaken 2 previous roles in the 25 years she was employed by the respondent. The first was when she first started as a consumer sales adviser thereafter she was seconded to the trade union as a union branch secretary.
16. We accepted the claimant's evidence that but for her dismissal she intended to remain in employment with the respondent until retirement. The respondent is a large employer with a very stable business offering

employees attractive benefits and salary. The claimant already had 25 years service and had no reason to look elsewhere for work. She received a good salary given her employment background and geographical location of Cornwall.

17. We accepted Mr Neale's evidence as follows. The respondent's Field sector is going through a period of transformation and there is a redundancy situation. As a result the respondent is no longer actively recruiting Patch Managers which was the claimant's previous role at Level D. In addition, the respondent is no longer recruiting D1 or C3 grade roles. They are moving onto a system called workforce 2020 which will involve introducing more technician roles which are entry-level. The main recruitment available in the field sector at present is this technician grade in the starting salary for that role is £27,000 per annum. The respondent is not currently hiring in the Devon and Cornwall area as it is an area which is over resourced for feature workloads.
18. Mr Neale was asked a supplementary question about a new announcement relating to the claimant's former team. This evidence was not in his witness statement and there are no documents before us regarding this matter. He told the Tribunal that the claimant's former radio and rigging team was due to undergo a further restructure which was announced the week prior to this remedy hearing. When the claimant was made redundant the geographical patches and radio rigging team managers were reduced from 6 to 5 with the claimant being the manager that was selected for the redundancy. Mr Neale told the Tribunal that the proposal was a further reduction from 5 to 3 managers with new geographical patches of North, Central and South. This new structure is expected to be in place by 1 December 2022 with a last day of service for the two managers selected for redundancy being 31 December 2022.
19. Mr Neale was asked about the letter from the respondent stating they resisted re-engagement and considered there was a breakdown of trust and confidence (see paragraph 4). Mr Neale told the Tribunal he had not had any input into writing this letter and if the claimant wanted to apply for a vacancy he would be willing to interview her. Ms Tait was also unable to assist the Tribunal with who within the respondent had decided the claimant's re-engagement should be resisted and the reasons why it was considered there was a breakdown in trust and confidence.
20. We had sight of the vacancies that have been produced by the respondent in compliance with the Tribunal orders between 13 July and 14 September 2022. These were vacancies where homeworking was available and all vacancies in the Devon and Cornwall area within band D and member grade C to C3 and D1 which was the grade range in respect of the claimant's previous role. There were a significant number of vacancies. There were 32 pages of vacancies with each page containing approximately 90 to 100 vacancies. For reasons of proportionality we are unable to address each vacancy and whether it would have been suitable generally, in terms of mitigation. Not all of these positions would be suitable for the claimant. However there were roles such as apprentice HR consultants, learning leadership and talent professionals that were potentially suitable given the claimant's background as a former union branch secretary.

21. Ms Tait told the Tribunal that for roles outside the Field Sector, they are being moved to hubs where employees will be required to spend three days minimum at each hub location. The nearest hub to the Claimant would be Bristol. We made previous findings of fact regarding the Claimant's willingness to travel and adapt (see paragraph 51 of the liability judgment). We find that a requirement to travel or relocate or stay within the Bristol area for 3 days per week would not have prevented the claimant from applying for any suitable non Field based role. On the evidence before us we find there was a 75% chance that the claimant would have remained in employment until her retirement age but for her discriminatory dismissal. We have reached this finding based on her employment history, being a long standing employee with few job changes and the likelihood chance of being made redundant in the future given the multiple vacancies available within the respondent. We also take into account the claimant's willingness to relocate and learn new skills as well as accept a lower grade role.

Benefits whilst employed by the respondent

BT Broadband and BT Sport

22. The claimant was entitled to free broadband and discounted BT TV which included free BT sport. We accepted the claimant's evidence that an equivalent package on the open market would cost £40 per month.

Bonus

23. The claimant's contract of employment referenced a discretionary bonus which would be paid in line with the rules of the bonus scheme. Those rules were not before us. The contract of employment stated that the potential bonus for the year 2019 would be 10% of the claimant's salary. The claimant's schedule of loss had sought loss of bonus in the sum of £2500 per annum reflecting the bonus she had received previously. The bonus was based partly on company performance and partly on annual performance review. The claimant had been rated as "good". It was calculated as follows; salary x 10% x business score x performance. Someone with an average good rating would therefore receive 3% of their salary.

24. In 2021 no bonus was paid under the discretionary scheme because of the pandemic. All staff at management grades received a pandemic bonus of £1000 and £500 in shares. Had the claimant not been dismissed she would not have received this bonus.

25. The respondent led no evidence on what the 2022 bonus was for employees that would have been in an equivalent position to the claimant.

Share plans

26. The claimant's contract of employment provided that she could participate in any plans which were open to all BT employees. The claimant along with other employees had been given £500 worth of shares by the CEO. There was no evidence when these shares were given only that as a result of the condition they had to be kept for 3 years (whilst remaining employed), the claimant lost the shares when she was dismissed. We did not have any

information on the current value of the shares.

Company car

27. The claimant had been provided with a Vauxhall Vectra 1.6 diesel car which was 12 months old. The claimant was permitted to use the car for personal reasons and was deducted £90 per month for that personal use.
28. The claimant sought compensation for the loss of a company car at £300 a month which was the cost of an equivalent car on finance having regard to the same make model and year. Ms Tait's evidence was that the car was provided on a business needs basis and the respondent could remove it typically with one to three months notice. She did not know if any of the other radio rigging managers who remained employed had had their cars removed.

Pension ("old job facts")

29. The Respondent closed its defined benefit scheme, the BT Pension Scheme (BTPS), on 30 June 2018 of which the Claimant was a member. Upon its closure she was joined to the BT Retirement Saving Scheme (BTRSS) on 1 July 2018 which is a defined contribution scheme. No further benefits accrued in the BTPS on and after 1 July 2018 and the final salary for benefits under the BTPS was paid to the Claimant on 30 June 2018. The Claimant sustained no pension losses in relation to the BTPS which was closed more than 2 years before the Claimant's employment ended on 30 November 2020.
30. All future pension benefits from 1 July 2018 onwards relate to the BTRSS, which is the correct scheme to assess any pension loss. The rate of employer contributions was 10% of pensionable salary with a temporary extra 2% up to 30 June 2026, which was part of the BTPS closure agreement.
31. The gross weekly pension loss is calculated to be £87.70 (12% of £38,000 = 4560 / 52).
32. The respondent operated a generous death in service scheme. This provided that in the event of the claimant's death whilst employed by the respondent the benefit would be a payment equivalent to 10 times her annual salary. The claimant had produced unchallenged evidence from a well-known online insurance comparison site which showed that an equivalent policy would cost £40 per month.

Pension with new employer ("new pension facts")

33. The claimant received a number of different pensions in her roles after her dismissal. These varied considerably which is unsurprising when considering the different sectors the claimant worked in. At Cornish Gems the claimant was enrolled into the People's Pension which had an employer contribution rate of 3%. At HMCTS this was much higher @ 26.6% (being a public sector role) albeit as the role was temporary, the claimant received a rebate of her contributions. Nonetheless this provides useful evidence of a typical public sector role pension available to employees in the claimant's

geographical area. We did not have any evidence before us of a typical pension level for engineering roles at entry level.

34. The claimant's current pension with Countrywide is a Nest pension scheme. The employer contribution is 3%. There is a significant disparity between the level of employer contributions in her new role compared to the level with the respondent (a difference of 9% up to 30 June 2026 and then 7% thereafter).
35. Between April and September 2022 (6 months) the total employer contributions in the claimant's new job amounted to £225.34 based on the total contributions shown on the pay slip at page 492. This equates to an average weekly contribution of £8.67.
36. There is no equivalent death in service benefit with her new pension.

Employer Pension contributions in employment between dismissal and date of remedy hearing

- ONS - £0
- Cornish Gems - £149.10
- HMCTS - £0
- Countrywide - £225.34
- Total = £374.44

Future pension loss

37. There is an ongoing gross weekly pension loss of £79.03 (£87.70 - £8.67).

Mitigation

38. Following the claimant's dismissal, she started looking for work in December 2020. A 2nd national lockdown had commenced on 5 November 2020 ending on the 2 December 2020 with England returning to the 3 tier system of restrictions. A third national lockdown commenced on 6 January 2021 with a stay-at-home order remaining in place until 29 March 2021. Non-essential retail, hairdressers and public buildings reopened on 12 April 2021.
39. The claimant struggled to find work during this period. She found the list of jobs available on job websites for telecoms or managerial roles were becoming smaller. The claimant applied for universal credit/jobseekers' allowance as she had no income. There was evidence in the bundle that the claimant had been applying for jobs in a variety of roles during December and January 2021 and secured a number of interviews but was ultimately unsuccessful.
40. We had evidence that the claimant had applied for multiple roles across different sectors including HR / ER roles, Health and Safety type roles and entry level trainee engineering roles. The salary details for the roles were limited but we could see that a trainee engineer role salary was typically

around £23,000 - £26.000 pa.

41. The claimant received the sum of £817.85 jobseekers' allowance for a period of 11 weeks between January and March 2021¹.
42. In March 2021 the claimant commenced employment with the Office for National Statistics. This employment continued until 30 April 2021 during which time the claimant earned the net sum of £1631.27.
43. The claimant also worked as a housekeeper for Cornish Gems which a holiday home company between 3 April 2021 and 31st of July 2021. During this time she earned the net sum of £2180.01.
44. The claimant secured employment with HMCTS between 2 August 2021 and 17 September 2021. The net pay earned was £2303.57.
45. The claimant began to work in a different role for Cornish Gems between 18 September 2021 and 31 January 2022. Her net pay during this period was £7102.68.
46. On 1 February 2022 the claimant commenced her current role as a trainee estate agent for Miller Countrywide estate agency. In this employment the claimant earns the sum of £17,500 gross annual salary. The claimant's contract provides that she is on probation for 6 months. The claimant has not yet been informed whether she has passed a period of probation as her manager is absent from work and she has not had a probation meeting. There have been no concerns raised previously about her performance. If the claimant passes her probation, she will not receive an increase in pay. She is going to commence training as a sales valuer once her manager returns from her leave of absence and this will take two years. Once she is qualified as a valuer she can earn an additional 5% commission. The claimant currently earns commission. If the client purchases a property claimant will receive 5% of the commission that the company will receive. The claimant intends to build a career in estate agency as she believes there is a strong potential to gain new skills and undertake training however this is currently on hold due to the position of her manager being unwell.
47. The claimant has not made an active decision to have a career change but has embarked on a new career in estate agency because she had to look at other options. The claimant has applied for numerous roles in trainee type positions in telecoms, engineering, HR/ER and management and has not been successful to date.
48. In the eleven months after her dismissal the claimant applied for 5 different engineering roles based in Cornwall. She subsequently continued to apply for trainee engineering roles and widened her search geographically for example she applied for a role in Colchester in March 2021. The claimant did not restrict her search to Devon and Cornwall.
49. The Tribunal was taken to a number of roles that the respondent has included in the bundle to assert that the claimant had not mitigated her loss. We find that these roles were not suitable for the claimant for the following

¹ Recoupment does not apply as the award is made under the Equality Act 2010 rather than ERA 1996

reasons. In respect of the electrical engineer vacancy in Plymouth this attracted a salary of between £30- £35,000 per year but required the applicant to be a qualified engineer. In respect of a role for a microwave engineer, this was based in Plymouth and attracted a salary of up to £45,000 per annum. However this role also required the applicant to be an experienced engineer. The person specification stipulated that the applicant had had a technical degree in electrical engineering with a microwave bias physics or similar. The claimant had none of these qualifications.

50. We also found that it was not reasonable to assert that the claimant should have applied for the suggested vacancy of Assistant Chief Engineer at Babcock International. This role, whilst attracting salary of between £53,020 - £64,883 per year required a qualified and experienced chartered engineer with experience of submarine operations refits and overhauls and experience of strategic weapon systems. The claimant did not have these qualifications or experience,

51. It was put to the claimant that she had adopted a “scatter gun approach” to her job applications. We reject this. The claimant had applied during the period up to the remedy hearing for multiple roles across multiple sectors in attempt to mitigate her loss. We find it was not unreasonable for the claimant to have widened her search given her financial circumstances, the situation with the job market and the pandemic particularly relation to the geographical location whereby the claimant lives and also that she did not have any formal engineering qualifications. The claimant intends to remain in her current role upskilling to become a valuer albeit she does not rule out further attempts to secure a better paid role as was evidenced by recent applications also for trainee engineering roles showing a willingness to relocate.

52. The earnings at Miller Countrywide from commencement of employment to 30 September 2022 are as follows

Date	Gross	Net
28/2/22	2333.33	1987.61
31/3/22	1458.33	1302.17
29/4/22	1563.33	1281.10
31/5/22	1543.75	1268.70
30/6/22	1610.91	1354.51
29/7/22	1543.75	1298.51
31/8/22	1564.36	1353.14
30/9/22	1611.90	1384.98
Total	13229.66	11230.72
Average monthly	1653.71	1403.84
Average weekly	381.63	323.97

53. We accepted the claimant's evidence that the housing market in Cornwall had significantly slowed down in the past few months.

Loss of chance

54. Whilst we did not doubt the evidence given by Mr Neale in supplementary questions regarding a restructure of the claimant's team, we decline to take

that into account and deduct a percentage for loss of chance of the claimant remaining in her former role with the respondent, but for the discriminatory dismissal. There was no supporting documentary evidence to show the factors that would determine who would remain after the restructure and we had no way of assessing any loss of chance. The evidence was given in supplementary questions and the claimant had no prior notice this evidence would be led or an opportunity to properly challenge it.

Injury to Feelings

55. The liability judgment contains some findings in respect of the claimant's injury to feelings. See paragraphs 67, 71, 72, 98, 128. The claimant had considered from the outset of the redundancy announcement that she would not receive a fair procedure. Her grievance where she raised concerns of direct sex discrimination was ignored. She suffered a discriminatory dismissal. Following the claimant's dismissal, she felt lost and alone and it felt strange for her not to be able to do her job any more. Employment with the respondent was all she had even known. She undertook some voluntary work with the local museum to try and improve her mental health as since her employment was terminated she had lost her confidence. The claimant had felt like a failure and lost some of her ability to conversing interact with people. The loss of her job along with the impact of the lockdown left the claimant feeling isolated vulnerable and alone.

56. After the claimant succeeded with her claim, she felt hopeful she would be allowed to be re-employed by the respondent as this had been her stability and constant for the past 25 years. However the letter from the respondent referenced in paragraph 4 above (in which they informed the claimant and the tribunal they would resist the engagement of the claimant on the basis there had been a breakdown in the relationship of trust and confidence which would make it impracticable for the respondent to re-engage the claimant) caused the claimant further distress. It made the claimant realise that she was not wanted at the respondent and she experienced feelings of upset and considered it disrespectful for them to say they had lost trust and confidence in her.

57. The loss of the claimant employment at BT resulted in her losing a sense of purpose and happiness as she was doing something she loved. She has found it extremely difficult to find it again elsewhere.

The Law

58. S124 EQA 2010 provides:

124 Remedies: general

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The tribunal may—

(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

- (b) order the respondent to pay compensation to the complainant;
- (c) make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect [on the complainant] of any matter to which the proceedings relate

59. S124(6) provides that the amount of compensation which may be awarded corresponds to the amount which could be awarded by the County Court under S119.
60. The Claimant is under a duty to mitigate her loss and the burden of proof is on the Respondent to show the Claimant has failed to mitigate her loss. **Ministry of Defence v Cannock [1994] ICR 918** and **Wilding v British Telecommunications Plc [2002] ICR 1079**. The aim is that 'as best as money can do it, the applicant must be put into the position she [or he] would have been in but for the unlawful conduct' (**Cannock**), which is also authority for the principle that the Tribunal should not simply make calculations under different heads, and then add them up. A sense of due proportion is required and to look at the individual components of any award and then looking at the total to make sure that the total award seems a sensible and just reflection of the chances which have been assessed (per Morison J at para 132).
61. The Court of Appeal gave guidance to Tribunals when assessing future loss of earnings after a discriminatory dismissal in **Wardle v Credit Agricole Corporate and Investment Bank [2011] EWCA Civ 545**. 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.
62. In **Vento v Chief Constable of West Yorkshire Police (No.2) 2003 ICR 318, CA**, the Court of Appeal gave specific guidance on how employment tribunals should approach the issue. There are three broad bands when assessing the compensation for injury to feelings and within which band the compensation should fall.
63. In respect of claims presented on or after 6 April 2020, the Vento bands shall be as follows: a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases), with the most exceptional cases capable of exceeding £45,000.
64. **Prison Service and Others v Johnson [1997] ICR 725** provided the following guidance when assessing discrimination awards; such awards were compensatory and should be just to both parties, compensating fully without punishing the tortfeasors while not so low as would diminish respect for the policy of the anti-discriminatory legislation; that awards should bear some broad general similarity to the range of awards in personal injury

cases and in exercising their discretion tribunals should remind themselves of the value in everyday life of the sum they had in mind by reference to purchasing power or earnings and should bear in mind the need for public respect for the level of awards made.

Interest

65. The Equality Act 2010 ('the EA (2010)') s.139(1) provides for interest to be awarded on discrimination compensation in regard to past losses and injury to feelings (interest cannot be awarded for unfair dismissal awards). Where the tribunal is concerned with a sum other than injury to feelings, it is required to identify a 'mid-point date'. This date is halfway between the date of which the act of discrimination occurred and the date on which interest is calculated. The interest is then calculated from the mid-point date to the award date.
66. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 provide the power to award interest on awards made in discrimination cases. Under Reg 2(1) a tribunal is required to consider whether to award interest even if the claimant does not specifically apply for it. The current rate is 8%.

Accelerated receipt

67. **Bentwood Bros (Manchester) Ltd v Shepherd 2003 ICR 1000, CA** provides that the Tribunal should apply a deduction at an appropriate rate to take into account the fact that the claimant has the benefit of immediately receiving money that he or she would otherwise have had to wait for. This applies to future loss. **In Benchmark Dental Laboratories Group Ltd v Perfitt EAT 0304/04** the EAT held that it would be good practice for a Tribunal to adopt the rate prescribed for use in personal injury cases set by the Lord Chancellor pursuant to s.A1 of the Damages Act 1996. From 2 September 2022 the rate is 1.75%.

Conclusions

68. In this claim the claimant succeeded in both her unfair dismissal claim and discrimination claim. We make the following awards under the discrimination legislation as such no statutory cap or recoupment applies.

Pecuniary Loss – period of immediate and future loss of earnings

69. We conclude the Claimant took reasonable steps to mitigate her loss in her efforts to secure alternative employment for the reasons set out in paragraphs 38-51 above. The claimant has, in our judgment taken all reasonable steps to search for alternative work. She has tried to secure engineering roles but when this has proved not possible it was reasonable to have widened her search to different sectors and ultimately accept permanent and stable employment in a new trainee role as an estate agent.
70. Having regard to the guidance in **Wardle** in assessing what period of loss should be awarded to the claimant, we have concluded that it is more likely than not that by the end of December 2024 the claimant is likely to be in an equivalently remunerated job (including benefits) either in her existing role

as an estate agent, an entry level engineering role or another role (as she has been applying for). We note that the claimant has secured two public sector roles (albeit temporary). The reason we have settled on this date is that by this point the claimant will have been trained as a valuer and be in a position to be earning 10% commission in addition to her salary and furthermore is more likely than not to have secured higher paid employment if the pay in her current role does not increase. This is by no means certain given the uncertainty around the housing market at this time however we are mindful we should not be awarding future loss to a point in time where we can be certain an equivalent role would be obtained. If this was the case the period would be much longer given the efforts the claimant has made to mitigate her loss yet only managed to secure a much lower paid role without the benefits she enjoyed whilst employed by the respondent. We consider it to be just and fair to award beyond the amount claimed in the schedule of loss based on our findings of fact in this case. If we had ended the loss at October 2023 this would not be based on our findings of fact but because that was the loss claimed in the schedule which would be for an arbitrary reason not based on our findings of fact.

Pension contributions and death in benefit

71. Our findings of fact are that the claimant will experience a significant disparity between her employer pension contributions between her old and new job. This would be 9% up to 30 June 2026 then 7% thereafter if the claimant remains in her existing role where she receives a 3% employer contribution.
72. The Claimant sought pension losses to 30 June 2026. The respondent submitted this should be limited to loss up to the remedy hearing.
73. Whilst we consider the claimant is likely to mitigate her salary and benefit losses by December 2024 we do not find this to be the case in respect of her pension loss, given the more generous level of employer contribution enjoyed whilst employed by the respondent which has not been replicated in any of the claimant's positions since her dismissal save a temporary role with HMCTS where it was more favourable. Her new job has a 3% employer contribution rate. The claimant submitted in her schedule of loss that she would secure equivalence by 30 June 2026, acknowledging this would take longer than mitigating her salary loss and we agree that this should be the appropriate period of loss. The evidence before us in respect of the other pension schemes the claimant had been enrolled in were typical of the lower level pension contributions in these types of sectors and the difficulty that will be experienced in securing a future role matching the respondent's more generous contributions. However we also balanced the availability of public sector roles in the claimant's geographical area and that she had secured two such roles previously and may do so again. Taking a broad brush approach, we have decided that a longer period of loss is appropriate in respect of pension loss and in all the circumstances, including the mitigation evidence before us in the bundle, the geographical location of the claimant, her qualifications and experience and the job market we award pension loss to the date sought by the claimant that is 30 June 2026.
74. With regards to the death in benefit loss, we did not have any evidence from either party as to how typical a rate of 10x annual salary is and therefore

had to apply our industry and employment knowledge as a panel and conclude that we consider that this is a career loss situation, such a generous benefit not having come before this Tribunal before. We have balanced the fact that her current pension scheme offers no death in benefit service with our knowledge that other schemes often do offer such benefits but at a much lower multiplier usually between 1 – 3 times the annual salary. It is arguable that this should be a factor we take into account when deciding whether to then award a career loss amount, as the claimant may secure alternative employment with such a benefit albeit at a much reduced multiplier.

75. The claimant had provided evidence that a life insurance policy providing the nearest equivalent cover to the death in benefit for ten times her salary with the respondent (so £380,000) cost £40 per month. If she secured a role in the future offering say a death in benefit of 3 x her salary she would still have a shortfall of cover of 7 x her salary. We therefore apply the longer date for mitigation in respect of the pension loss to the death in benefit loss up to 30 June 2026 @ £40 per month as we think it unlikely that the claimant will secure an alternative role proving a death in benefit for the same reasons as set out in the paragraph 73 above as to when she would secure an equivalent pension.

76. Thereafter until retirement we make an award as follows.

77. We find the claimant is more likely than not to secure employment with a death in benefit provision of 3x her salary from 1 July 2026. This leaves a 70% loss to be compensated. We acknowledge this is a complicated conclusion but consider it is just and equitable to both parties to approach it in this way. It would not be just to simply award career loss for this benefit if we think it more likely than not that the claimant will secure a role with some death in benefit in the future.

78. The claimant's normal retirement rate with the respondent would have been 65 years old which is 955.6 weeks from the date of the remedy hearing until her 65th birthday. We consider it more likely than not that the claimant will secure a pension with some death in benefit provision but never at a multiplier of 10x. From 1 July 2026 to the claimant's 65th birthday we make an award of £28 per month representing the estimated cost for securing a death in benefit policy to top up the amount insured by 7x her salary and then deduct 25% representing a withdrawal factor to take into account that likelihood of the claimant not remaining employed until retirement.

BT Broadband and TV

79. The claimant has lost this benefit due to the discriminatory dismissal. We accepted her evidence that an equivalent package would cost £40.00 and award her this head of loss until 31 December 2024.

Bonus

80. The respondent submitted that the Claimant should not recover anything for loss of bonus as it was discretionary and therefore there was no guarantee of an award. It could of course be said equally there was no guarantee there would not be an award. What would have settled the matter for the

respondent was if they had called evidence to deal with this head of loss but they did not. For example, they could have called a witness or produced documents to explain what was the actual position for equivalent employees following the dismissal. We accepted that no bonus was paid in 2021 because of the pandemic. We would have expected to see evidence about what the claimant's colleagues had or had not received in 2020 and the 2022 expected position but the respondent led none. Therefore, on the basis the claimant had received £2500 in 2019, was performing at a "good" standard, there was nothing to suggest her performance would have deteriorated, we award the claimant loss of bonus in the sum of £2500.00 per year up until 31 December 2024 (minus 52 weeks for 2021 when no bonus would have been paid).

Loss of shares

81. But for the discriminatory dismissal, the claimant would not have lost her shares. We award the claimant the sum of £500 in respect of this loss based on the amount she should be awarded to buy equivalent shares as to the amount lost.

Company car

82. The respondent submitted that the claimant was not entitled to a car allowance and so should not be awarded any loss for the use of the car. In our judgment it does not matter that the claimant did not receive a car allowance. She was provided with the use of a company car and that was a benefit to the claimant. She was permitted to use it for personal reasons and as such did not have to incur the expense of running her own car. But for the discriminatory dismissal she would have continued to enjoy that benefit. Ms Tait suggested it could be withdrawn at any time but again there was no evidence before us of similar withdrawals of cars from other colleagues. Based on the claimant's evidence that to lease an equivalent model will cost £300 we award her this head of loss until 31 December 2024.

Calculations

Salary

83. From date of dismissal 30 November 2020 to the date of the remedy hearing (4 October 2022) equates to 96.1 weeks.

Gross weekly loss during this period = £70,227 (96.1 * £730.77)

Net weekly loss during this period = £45,167 (96.1 * £470.00)

Less income from new employment:

Employer	Net earnings
ONS	1631.27
Cornish Gems	2180.01
HMCTS	2303.57
Cornish Gems	7102.68
Miller Countrywide	11230.72

Total	24448.25
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Less net PILON and enhanced redundancy payment £43,311.84.

Less JSA £817.85

Net loss of salary date of dismissal to date of remedy hearing = - **£23,410.94**
(£45,167 - £24448.25 – 9500- 43,311.84 – 817.85)

Benefits

84. Loss of tax deductible benefits should be calculated net and are subject to grossing up. The immediate loss of benefits is set out in this table (based on 96.1 weeks save for the bonus loss based on 44.1 weeks as no bonus was paid in 2021). Where sums are awarded for losses that were not a tangible tax deductible benefit when employed with the respondent, they are awarded as a global sum and will fall to be grossed up as will be subject to tax for exceeding £30,000.

Benefit		Multiplier	Total
Broadband/BTTV	£40 per month	£10 weekly	£961
Bonus	£2500 p.a or £48.08 weekly	£48.08	£2120.33
Company car	£300 per month £69.23 per week	£69.23 weekly	£6653.08
Death in service	£40 per month	£10 weekly	£961.00
Total loss of benefits to hearing date			10,695.41

We award the claimant £100 in respect of expenses incurred for applying for jobs including travel, stationery and stamps. £100

Loss of shares £500.00

Loss of Statutory rights £500.00

Loss of pension £8053.53²

Total pecuniary loss to remedy hearing
(- **£23,410.94 + 10695.41 + £100 + £500 + £500 + £8053.53**)

-£3562.00

Future loss

85. Future loss of salary

Date of remedy hearing to end of future loss (5 October 2022 – 31 December 2024) equates to 116.6 weeks.

² £87.70 x 96.1 weeks = £8427.97 - £374.44

Gross weekly loss during this period = £85,207.79 (116.6 * £730.77)

Net weekly loss during this period = £54,802.00 (116.6 * £470.00)

Minus mitigation (based on average net weekly salary see paragraph 52 above of £323.97 x 116.6 = 37,774.90): £54,802 - £37,774.90 = **£17, 027.10**

Future loss – benefits

Benefit		Multiplier	Total gross
Broadband/BTTV	£40 per month	£10 weekly	£1166.00
Bonus	£2500 p.a	£48.08	£5606.13
Company car	£300 per month £69.23 per week	£69.23 weekly	£8072.22
Death in service ³	£40 per month	£10 weekly	£5631.98
Total future loss of benefits			£20476.33

(Future loss – death in benefit

5.10.22 – 30.6.26 = 194.6 weeks @ £40 per month / £10 per week = £1946.00

1.7.26 – 29.1.2041 = 760.6 weeks @ £28 per month / 6.46 per week = £4914.64

x 75% = 3685.98

Total loss for death in benefit

£5631.98)

Future pension loss (4.10.22 – 30.6.2026 = 194.6 weeks x 79.03⁴) = £15379.24

Total future pecuniary loss (£17027.10 + £20476.33 + £15379.24) =
£52,882.67

Total pecuniary loss (-£3562 + £52,882.67)

£49,320.67

Accelerated receipt

86. The respondent has submitted that there should be a deduction for accelerated receipt of future losses and we agree, applying 1.75% which equates to £899.28. The total future pecuniary loss is therefore **£48,421.39**.

Non pecuniary loss

87. Injury to feelings

88. The claimant submitted that her injury to feelings fell within the medium Vento band at £25,000. The respondent submitted that it fell within the higher end of the lowest band.

³ This has a longer period of loss see paragraph 74 - 78

⁴ See paragraph 37

89. The focus of the award should be on the claimant's injury to feelings rather than the discrimination acts. It is however useful to remind ourselves of those in the context of the findings of fact on the injury to feelings. This was a claim where the Tribunal found there was a pre determined decision to retain a male employee in the redundancy selection process and this was because of the claimant's sex. Two male comparators were found to have significantly greater effort put into retaining them into the business than the claimant. The respondent's insistence that there was no role to be fulfilled (Satcoms) was untenable and undermined their credibility. There was a deliberate decision to curtail the claimant's notice period so she would not be a priority candidate for the Satcoms role. The claimant's grievance where she formally alleged different treatment due to gender were not taken seriously nor were they responded to. The claimant was prevented from appealing contrary to all stated policies.
90. None of the respondent's witnesses were able to explain why the respondent had taken the formal position that they resisted re-engagement and had lost trust and confidence in the claimant. Neither Mr Neale or Ms Tait had provided instructions to write that letter and Mr Neale had headed up the Claimant's department. Mr Neale told the Tribunal he would have interviewed the claimant had she applied for a role. This had understandably caused the claimant further distress and a lack of any explanation as to why this was the case added to those feelings. The claimant was not at fault; she had been selected for redundancy she had a good work record and there was no reason other than the fact she had brought these proceedings that the Tribunal could understand why trust and confidence could have been lost. We have taken this conduct into account when assessing the injury to feelings.
91. This was not a claim where there was a one off incident. Having regard to the course of events and the claimant's evidence on how this impacted upon her (see findings of fact set out at paragraphs 55 - 57 above which also references our relevant findings in the liability judgment), we consider that the injury to feelings in this case fall at the top of the middle band and award injury to feelings in the sum of £25,000. The claimant was significantly impacted by the discrimination.

Interest

92. Interest is to be awarded on past financial loss and injury to feelings. As the past loss is a negative figure no interest is applicable.
93. The interest rate to be applied is 8%. The period of calculation for injury to feelings award is from the date of the act of discrimination (30 November 2021) until the date the Tribunal calculates the compensation (5 October 2022) which is 674 days.
94. We award interest in the sum of **£3693.15**.
95. $(674 \times 0.08 \times 1/365 \times 25,000)$

Grossing up

96. Based on the information provided to the Tribunal as agreed by the parties, using the tax rates for the tax year 2022/2023, the relevant calculation is as follows.

Tax Band	Amount within band	Gross Up	Tax
Basic 20%	£2,513.33	£3,141.67	£628.33
Higher 40%	£5,615.00	£9,358.33	£3,743.33
Additional 45%	£68,986.21	£125,429.25	£56,443.16
Total	£77,114.54	£137,929.25	£60,814.83

97. The awards that are required to be included for the purpose of grossing up are the compensatory award and injury to feelings and interest. The total amounts to £77,144.54.

98. The claimant benefitted from a tax free threshold of £30,000 in November 2020. The sum to be grossed up is therefore £77,144.54.

99. As of 31 August 2022 the claimant had earned £9438.00 in the current tax year. We invited the claimant to provide updated gross earnings prior to promulgation but none were forthcoming. Accordingly we have assessed the tax position as at 23 March 2023.

100. The Respondent shall pay the claimant the sum of £137,929.25. The income tax deducted through PAYE is £60,814.83. The net amount the claimant receives after tax is then £77,114.54 to account for grossing up.

Employment Judge S Moore

Date: 23 March 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 4 April 2023

FOR EMPLOYMENT TRIBUNALS Mr N Roche