EMPLOYMENT TRIBUNALS

Claimant: Miss G Raja

Respondents: (1) Starling Bank Limited
(2) Mr M Newman

Heard at: London Central
(by Cloud Video Platform)

On: 10 February 2023 and 17 and 18 April 2023 and 11 August 2023 (in chambers)

Before: Employment Judge Joffe
Mr M Simon
Mr D Clay

Appearances
For the claimant: In person
For the respondents: Ms R Tuck, King's Counsel

RESERVED REMEDY JUDGMENT

1. The respondents must pay the claimant £540,908.80 for past and future loss of earnings and other benefits.
2. The respondents must pay the claimant £15,000 for compensation for injury to feelings.
3. There is no award for aggravated damages.
4. There is no award for data breach.
5. The respondents must pay an uplift of 12.5% in respect of the respondents' failures to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures.
6. There is no discount for accelerated receipt.
7. The respondents must pay the claimant interest as follows:
   - On past loss of earnings and uplift: £26,595.97;
   - On compensation for injury to feelings and uplift: £4599.09.
8. The total compensation prior to grossing up for tax is £658,502.47.

9. The respondents must pay the claimant a total of £1,145,386.31, which is the above figure grossed up to reflect the tax to be paid by the claimant.
10. There is no preparation time order.

REASONS

Issues

1. The parties had largely agreed what issues the Tribunal was required to decide at the remedy hearing. The respondents had prepared a draft list and the claimant had added to that list. The list as amended seemed to us to reflect the issues which we had to decide albeit that some repetition and unnecessary elaboration had been introduced at points. There were some outstanding points of disagreement as to the drafting of the list which were not material. We have indicated in bold some additions by the claimant which introduced as if they were accepted potentially contentious points which the Tribunal was required to decide. In some cases the parties had not clearly stated the correct legal test and the test applied by the Tribunal is made clear in our Conclusions below. Because the hearing was extended beyond the original hearing date, the date of calculation for the purposes of interest also changed . With those caveats, the list is as follows:

   The claimant suffered discrimination because of something arising from disability contrary to section 15 EqA 2010, and a detriment short of dismissal contrary to section 44(1)(e) ERA 1996.

   Financial Losses:

   1. *The claimant's past loss of earnings.*
      a. *Would the claimant's employment with the respondent have come to an end lawfully at some point between her dismissal and the date of the remedy hearing, absent the unlawful discrimination found by the Tribunal to have occurred?*
      b. ***Is it necessary to consider the above (i.e. what would have happened absent of discrimination) given loss resulted directly and naturally from the respondents' discrimination, there is a paucity of evidence and the material reason for the dismissal was tainted with discrimination?***
      c. *Did the claimant suffer losses of earnings and benefits (including loss of employee shares, a new company wide employee benefit introduced by the respondent) caused by the discrimination found?*
      d. *If so, for what period and amount?*

   2. *The claimant's future loss of earnings.*
      a. *How long would the claimant's employment have continued had the unlawful discrimination not occurred?*
      b. *Had the unlawful discrimination not occurred, what future employment would the claimant have obtained and at what salary?*

c. *Has the claimant lost the opportunity to progress her career in banking?*
d. *How would the claimant have progressed in her career? Would she have progressed her career to head of legal and then general counsel as planned and what would she have been paid in those roles?*
e. *Do the principles, including career loss, stigma loss, loss of chance, as per Chagger v Abbey National apply?*
f. *How long will it take for claimant be put back in the position had the unlawful discrimination not occurred?*
g. *How long would the Claimant have continued in her role at the Respondent absent any discrimination?*

3. *Mitigation:*
   a. *Were the steps taken by the claimant to mitigate her losses reasonable?*
   b. ***Were the c.300 job applications since date of dismissal to date (including at a lower grade), self-employment via two businesses and other supplementary income, reasonable steps taking into consideration dismissal occurred at the peak of the pandemic?***
   c. *If not, from what date would she have been likely to find new employment at a similar rate of pay?*

Injury to feelings:

4. *What award is appropriate to compensate the claimant for the injury to her feelings caused by the discrimination found?*

Aggravated damages.

5. *Was there high handed, malicious or oppressive behaviour?*
6. *If so, what level of compensation is appropriate?*

Other losses:

7. *What other losses should be awarded:*
   a. *Handling of bundle re. claimant and her parents' data, in view of claimant's complaint upheld by ICO*
   b. *Company secretary qualification fees*
   c. *Pre-business start-up funds and expenses from claimant's own funds*
   d. *Earnings evaluation report fees*

Preparation time order:

8. *Is a preparation time order as per rule 75(2) The Employment Tribunal Rules of Procedure, Schedule 1 applicable based on the time spent by the claimant working on the case whilst not legally represented?*
9. *If so, what amount is appropriate?*

Interest on compensation:

10. What is the interest on claimant's losses up to the date of the remedy hearing? The date of the discrimination was 9 March 2020 and ET remedy hearing is on 10 February 2023 (3 years less 27 days = 1068 days). Is the mid-point therefore 534 days prior to the remedy hearing?

Interest on Injury to feelings:

11. Should the date of discrimination start from was 9 March 2020 or from the date of the first act?; the ET remedy hearing is on 10 February 2023 (three years less 27 days = 1068 days, at 8%.)

Interest on other losses/awards:

12. The interest runs from the mid-point date to the date of calculation.

ACAS Uplift.

13. Was there a relevant ACAS Code of Conduct which ought to have been used?
14. If so, was there a failure to use such a Code of Conduct?
15. If so, is it appropriate to increase any award and to what extent (up to 25%).

Recommendations

16. What recommendations the Tribunal should make regarding the respondents.

2. We note that there were many areas where the respondent did not mount a detailed challenge to the figures put forward in the claimant's schedule of loss.

Findings

The hearing

3. The remedy hearing was initially listed for one day. It rapidly became apparent that was insufficient time even for evidence and submissions to be completed and the matter went part heard for a further two days.

4. We had a remedy bundle of 750 pages and were also referred to documents in the original trial bundle of 1368 pages. We read those documents which we were taken to.

5. We heard further evidence from the claimant and from the second respondent and also from Mr Roundhill on behalf of the respondents.

6. Ultimately we had to reconvene in August 2023 to continue our deliberations. This was because, after our initial deliberations, it seemed to us that we required submissions on any discount for accelerated receipt, the incidence of tax on gross loss of earnings figures and how we should gross up the figure we arrived at for compensation to reflect the tax payable by the claimant. The parties made written submissions and neither party wished to make further oral submissions. The claimant added some further submissions on other matters which had already been fully canvassed with the parties and we did not take these into account in fairness to the respondent.

7. It is convenient to record our findings of fact under headings for the different issues which we had to decide together with relevant findings from our liability judgment.

How long would or might the claimant's employment have continued?

8. The respondents' case was that the first respondent would have dismissed the claimant lawfully for capability reasons within two months of her actual dismissal.

9. We made various findings of fact about the claimant's performance and the respondents' concerns about her performance as part of our findings on liability and it was necessary for us to consider the impact of these findings when looking at the issue of whether there would have been a non-discriminatory / otherwise lawful dismissal for capability.

10. Our primary relevant findings from the liability hearing were:

- Para 46:
  There was no good evidence that the claimant was not completing her tasks. It may be that the second respondent was hoping the claimant would build the

role in a way which did not happen but in the absence of documented meetings between the claimant and the second respondent, it is difficult for the Tribunal to have a sense of whether the second respondent was conveying to the claimant what his expectations were. It appeared from the claimant's evidence he was not doing so, and in the absence of any documentary evidence to suggest any substantial feedback, we concluded that he was not.

- Paras 48 – 50:
  On 30 December 2019, the claimant received a letter from Ms Boden about her salary increase:

  I would like to advise that in recognition of your outstanding contribution to Starling, your salary will increase to £76,000 with effect from the 1st of January 2020.
  Please be aware that all decisions affecting salary are made at the Company's discretion; this is not to be seen as setting a precedent and no future obligation should be understood from this.
  Please also be advised that matters relating to salary are confidential in nature and should not be discussed with other employees.
  Thank you for your hard work to date.

  49. The second respondent said that he gave all of his team a pay rise that year and had decided to review all salaries at the same time of year irrespective of when the person joined. He said that the claimant's increase was the lowest in team (apart from one person set a specific target which that person then met) and significantly less than a pro rated 5%. He said that the reference to 'outstanding contribution' was because it was a standard letter used for all employees receiving a salary increase.

  50. We did not see any letters for other employees which confirmed that the letter was a standard template. We could not understand why, if the claimant's performance had genuinely led to her receiving a reduced salary increase, the respondents took no care to convey that in the letter and or to convey to the claimant that there were issues with her performance. Ultimately, we were not able to accept that there were any significant performance concerns by December 2019. For convenience, we set out in a single section later in this Judgment, the chronology of performance concerns asserted by the respondents.
- Para 51:
  In January 2020, the claimant said that Ms Boden told her in conversation 'you are doing such a good job'. We were given no context for this remark and did not know what it referred to specifically but it seemed to us unlikely the remark would have been made in any context if the claimant's performance had been felt to be seriously of concern

- Paras 59 – 60
  59. In Ms Swain's witness statement, Ms Swain said that Ms Fox told her that her primary reason for leaving was that she found the claimant difficult to work

for. Ms Swain conducted an exit interview which was informal and no notes were taken.

60. We concluded that Ms Fox very likely told the claimant that she was leaving for the reasons the claimant recorded. She may well have told the second respondent and Ms Swain that she was unhappy about her relationship with the claimant. In the absence of any recording of concerns or investigation or discussion with the claimant, we were unable to conclude that any problem with the claimant's relationship with Ms Fox could fairly have been considered by the respondents to be the claimant's fault.

- *Paras 94 - 110.*

Performance concerns to January 2020

94. We heard evidence from both parties about what the respondents said were the concerns about the claimant's performance. Up until Janaury 2020, these were as below.

November 2019

95. The second respondent said that an email exchange which we were shown indicated a failure by the claimant to know and understand the identity of director. He said that there was a fundamental lack of knowledge or understanding of vital information; he said 'if I am honest I would say that from this point onwards I began to question whether she should stay with the bank'. He did not investigate the matter with her or raise his concern. The claimant said in evidence that she knew who the directors were as she included them in every set of board meeting minutes. Looking at the email exchange it appeared to us that the second respondent had misread a short email by the claimant which was a bit sloppily expressed but that she did know who the directors were and this would have been apparent if the second respondent had raised the matter with her.

96. We saw a redacted document produced by the respondents which looked like this:

…

97. Ms Yallop's evidence was that this document was created in late 2019, as part of a discussion about succession planning with Ms Boden and the second respondent. The second respondent did not recognise the document. It is a graph of employees' performance and attitude. It was said by the respondents to show that the claimant ('GR') was below average in relation to performance. We were not persuaded that was the case because the 'mid' in brackets seemed to suggest she was in the middle. Ultimately we did not feel we could derive very much from the this document, given how little we were told about how it was formulated and what information had fed into it.

December 2019 board minutes and feedback

98. The second respondent gave evidence that key policies for approval were not included in the minutes, timings did not add up and attendees were wrong. He said that he discussed these issues with the claimant, it appeared in early January. The claimant said that she did not recollect a discussion to that effect. We were shown a handwritten note made by the second respondent which records the issues. It was not part of the claimant's HR file. In evidence

the second respondent said that he wrote the issues on a piece of paper and then must have put the piece of paper in a drawer.

99. We accepted that the second respondent had some concerns about the minutes but we had no clear evidence as to whether those concerns were justified.

Reporting work in December 2019

100. The claimant had been assigned work on something called a close controllers report. The second respondent said that she did not progress the report and did not come back to him as her line manager to say either she did not understand the request or have capacity to complete it; she just did not do it or discuss it.

101. The claimant's evidence was that this report was not due until 31 March 2020. It was not a large piece of work and would not need to have been started by 9 March 2020. The second respondent did not raise the matter with her but she approached him about it in January and February 2020. She was told to concentrate on other matters. The work was 'on her radar' and in her calendar and would not have been forgotten.
102. We accepted the claimant's account. It was clear that the issue was not raised with the claimant at the time and it seemed improbable to the Tribunal that the second respondent would not have mentioned to the claimant an important piece of work which he genuinely felt was being neglected.

Errors in January 2020 board pack

103. There was a change to the name of the file references for some board papers made on the day of the board meeting which the second respondent said would reflect poorly on him as company secretary if they were not correct. He wrote to the claimant:
You just changed all the refs on my docs in the board pack? Change them back URGENTLY
104 .The claimant wrote back:
Sorry was going by your board approvals table I'll change now
105. The claimant's evidence was that she was trying to support with the board pack process by naming the electronic files so they aligned with references in the board approvals table. She did not change the documents themselves.
106. It appeared to the Tribunal that the claimant had attempted to take a proactive step which the second respondent felt was a wrong step. It was clearly something which irritated the second respondent at the time but it was not a large issue.

End January 2020 power of attorney document

107. The second respondent said that this should have been a very straightforward task but what the claimant produced was very poor; there were drafting errors and careless mistakes. He said that he took a significant

amount of time to go through the document with her to explain what was wrong.

108. The claimant told the Tribunal that the issues were with the existing template and the second respondent did not raise concerns with her.

109. Again, in the absence of documentary evidence, we concluded that the second respondent had been dissatisfied with the document but had not explicitly raised his concerns with the claimant and there was insufficient evidence before us to determine whether the concerns were significant.

110. Two other general performance matters were raised by the respondents. It was suggested that the claimant had failed to work on a company secretary handbook and failed to work on employee share schemes. There was such a paucity of evidence from the respondents on these matters, both of any deficiency and that any issue was raised with the claimant, that we were unable to conclude that there were any genuine significant performance concerns about these matters.

- Paras 120 – 127:. See in particular:

120. In early February 2020, the claimant was asked to work on a non disclosure agreement. The second respondent said that these were short documents which should have taken an hour but took the claimant several hours. When she did produce the NDA, there was no explanation or rationale for changes made to a template so the document was of little help. He said that in respect of a further NDA, she spent an entire day drafting one from scratch; he said that this showed a lack of awareness that they had precedents which meant an NDA could be prepared in around 15 minutes.
121. We heard evidence from the claimant disputing what the second respondent said in some detail. There were no documented concerns raised and ultimately all we could conclude on this issue was that the second respondent had had some concerns about the NDAs which were not raised and explored with the claimant but we could reach no conclusion that these were justified.

- Paras 128 – 141
- Para 212: *We looked carefully at factors which might shift the burden of proof:*
  -The second respondent's attitude to ill health and working from home. The claimant said that his failure to respond to messages showed he did not approve of and lacked sympathy for her health problems. We did not fully accept the second respondent's account that he trusted colleagues and was seeking not to pry into health issues. A total failure to respond to messages about ill health and the failure by a manager to express any concern or support to a subordinate on a significant number of occasions, seemed to us to be intended to discourage time off for ill health and working from home. The fact that he allowed working from home tacitly by not objecting to the occasions when the claimant worked from home to attend appointments did

not change our impression that he was seeking to discourage the requests by not acknowledging them.
- We considered that there was good evidence that the second respondent valued employees working long hours in the office. He was critical of the claimant for leaving work at the end of her contracted hours. That attitude seemed to us in these circumstances to align with an attitude of impatience with ill health absence.
- The second respondent's credibility was to some extent impaired for us by his improbable assertions about his memory. We did not accept his evidence about his notes of the dismissal meeting being almost verbatim and we were troubled by his assertions that he did not remember the claimant's references to asthma and the occasion on 4 March 2020 when she said that she had to go home to work due to her cough as compared with his apparently detailed recall of work issues.
- The lack of documentation at the time as to the reasons for deciding to dismiss the claimant and/or the discussions about her dismissal.
- The fact that the claimant passed her probation and was awarded a salary rise and the fact that the documents evidencing those events make no reference to any problem with her performance, but in fact suggest her performance is good. What happened in the chronology after that was that she began to have time off for ill health and began to request to work from home due to appointments.

- The total lack of any formal procedure in relation to the dismissal.

- Paras 215 / 216:
215. We then had to look at the respondents' explanation and consider whether we were satisfied that the somethings played no material part in the dismissal.
The respondents' explanation was that it was the claimant's performance which led to her dismissal. The lack of process related to the fact that the claimant had less than two years' service so there was felt to be no significant risk in dismissing her without a proper procedure.

216. We were not satisfied with the respondents' explanation, bearing in mind the contextual facts we have set out above. We accepted that the second respondent may well have had some concerns and criticisms of the claimant (which he did not raise properly or explore with her and as to the substance of which there is a paucity of evidence). We did not accept that they were of such significance that on their own they would have led to the claimant's dismissal at that point, particularly in view of the passing of probation and the salary rise. It appeared to us that the ill health absence and requests to work from home were part of a picture which included the claimant working her contractual hours and no more in the office and also a handful of work issues which together led the second respondent to decide that she was 'not a Starling person'.

11. In essence we accepted that the second respondent was critical of the claimant and had some performance concerns but these were not raised with the claimant and there was a lack of evidence as to their substance. We

concluded that they were not significant enough to have led to the claimant's dismissal on their own.

Further evidence from the second respondent at the remedy hearing

12. The second respondent's evidence was that, had he not dismissed the claimant on 9 March 2020, he believed that he would have undertaken a formal capability process in conjunction with the first respondent's People Team (HR function). He noted that the first respondent's capability process did not contain timescales but he said he believed that two months would have been more than sufficient to assess whether the claimant's performance had improved. He did not believe that the claimant's performance would have improved during this period, given her performance up to that point.

13. The second respondent also gave evidence as to how the company secretarial work was covered during the period after the claimant's departure. He said in general that the volume of work increased and asserted that the claimant would not have coped with the volume of work.

14. The second respondent's evidence was that he covered the claimant's work and that of Ms Fox himself up until 16 April 2020. He said that there was more work to do in that there were more board meetings. He said that the claimant took three days to do the minutes for each board meeting and would not have been able to complete this work in the initial period given the number of board meetings which took place. The second respondent had done the minutes himself for a little over a month.

15. The second respondent told the Tribunal that from 16 April 2020 much of the work the claimant had done was being carried out by an inexperienced member of staff, Ms Owen, with no company secretarial qualifications, who nonetheless worked to a higher standard than the claimant.

16. The second respondent gave evidence that there were 47 board meetings and resolutions in the course of a year and that the claimant would have spent 3.5 days attending and writing up minutes for each of these. This would have amounted to 3.5 days of every week in the year when the claimant was not on leave and she would not have been able to fit in the other work required by the role.

17. Under cross examination from the claimant, it appeared that there was significant exaggeration in the second respondent's calculations. Even on his own evidence, not all of these were full board meetings; some were resolutions, It was also clear from documentary evidence that not all of these meetings were full half day meetings. Taking into account all of these factors, the time which would have been required to minute these meetings was very significantly less than the second respondent had suggested The claimant's evidence was that she would not spend the entirety of three days working on minutes even for a full board meeting but that that was the period over which

they would be completed, allowing time for executives to respond to her on points about which she had sought clarification.

18. The second respondent made repeated assertions that Ms Owen worked more quickly and to a higher standard than the claimant had done. We found this evidence problematic because it was clear that aspects of the second respondent's evidence were exaggerated The second respondent said in his witness statement that Ms Owen created 750 documents over a particular period. He had looked in a document folder for documents 'owned' by Ms Owen to arrive at this figure. He said in his evidence in chief that the search ignored documents which were created by others.

19. On cross examination by the claimant, however, the second respondent accepted that Ms Owen had not created various of these documents and said that in many cases she had taken documents created by others and put them into something else, such as a board pack. It was difficult to understand what he had intended the Tribunal to understand by the evidence in his witness statement, which gave a very different impression.

20. The second respondent repeatedly contrasted Ms Owen's performance with the claimant's but the difficulty was that his assertions about the claimant's performance were ones we had not found made out on the evidence we heard at the liability stage.

21. We found the second respondent's evidence about Ms Owen and her superiority to the claimant unmeasured, exaggerated and overall unreliable. Insofar as he was adducing evidence of the contrast between the two to support a case that the claimant's performance would have led ultimately to her lawful dismissal, we were unable to give it much weight.

22. We accepted the second respondent's evidence that the first respondent was experiencing significant growth and that the company secretarial team was also expanded. The second respondent started recruiting in early 2021; he appointed two individuals, one as a deputy company secretary and one as senior assistant company secretary. One started in September 2021 and the other in December 2021. One was employed on a salary of £120,000 and the other £100,000. Prior to that, the second respondent had enlisted more junior support for Ms Owen in the summer of 2021.

What would the claimant's earning levels have been if she had not been dismissed by the first respondent? What period will elapse before she matches those earnings?

23. It is relevant to record some facts about the claimant's background and career. She qualified as a solicitor in November 2010. She trained in a high street firm and worked in immigration, family, commercial property and wills. From 2013, she sought to move into banking work. She worked for various bodies including the Financial Ombudsman Service for relatively short periods of time and then joined Vanquis Bank in 2015 as a regulatory lawyer. In 2018 she moved to a role with a building society as a deputy company secretary

and solicitor. In May 2018 she started training for a company secretary qualification and left her role with the building society in March 2019 to concentrate on studying for an exam in June 2019. It was during this period when the claimant was taking what she described as 'study leave' that she applied for the role with the first respondent. She said that the relatively short period she had taken out of work occurred when the market was strong.

24. The claimant's intention in seeking a company secretary qualification was to progress towards general counsel and company secretary positions.

25. The claimant had commissioned a report from an employment consultant, Mr Paul Jackson, dated 16 October 2022. We saw Mr Jackson's report but did not hear oral evidence from Mr Jackson. Mr Jackson analysed the claimant's career and gave an opinion about her career trajectory absent the unlawful conduct of the respondents.

26. Mr Jackson also provided data taken from a number of sources as to earnings bands for solicitors in financial services roles, for in-house legal roles and for in-house legal and company secretarial roles. No challenge was made to the reliability of this data.

27. Mr Jackson expressed the opinion that, absent the claimant's dismissal by the first respondent, she would have been well-placed to develop her career and eventually progressed to head of legal and general counsel roles. He prepared a table projecting her career trajectory and earnings up to 2034.

28. The second respondent raised questions in his statement about whether Mr Jackson was an appropriate witness, however we did not understand from the submissions made on behalf of the respondents that there was a material attack being made on Mr Jackson's integrity and credibility as a witness. He does not have a particular specialism in the financial services sector.

29. The claimant adduced some evidence of approaches she received from recruiters for roles whilst employed by the first respondent. These included a head of legal role and roles around the £110,000 salary mark.

30. It was relevant to make findings as to what the claimant did after her dismissal to seek new work and replace her lost income.

31. We saw evidence of a large number of job applications (in the region of 300) made by the claimant since her dismissal. These were applications for a range of roles, including in house counsel roles, deputy company secretary roles and junior company secretary roles. Some roles were part-time and some were at a lower level of earnings than the claimant had enjoyed at the first respondent. The claimant has been invited to a very small handful of interviews in the period since her dismissal.

32. The claimant registered with a number of relevant recruiters specialising in the company secretarial sector and we saw documentary evidence of her approaches to recruiters.

33. The claimant was dismissed by the first respondent at the outset of the pandemic and discovered that there was little recruitment taking place. She found that some recruiters had been put on furlough.

34. The claimant obtained a voluntary company secretarial role for the Fostering Network in July 2020 to develop her skills and demonstrate that she was still undertaking company secretarial work.

35. As time went on, the claimant applied for roles with salaries as low as £40,000 per annum. On one occasion in July 2020, the claimant said that a recruiter quizzed her as to how she came to leave the first respondent. She said that she had been dismissed after raising a health and safety matter She told the Tribunal that she did not hear from that recruiter again.

36. In July 2020, the claimant started a business, L&GHub, marketing her services as a legal and governance consultant. She obtained her first client in November 2020. She continued to apply for employed roles.

37. In August 2020, the claimant attended an interview for an assistant company secretary role and was asked her reasons for leaving the first respondent. She was not successful at that interview.

38. During late 2020 and early 2021 the claimant made more direct applications as her attempts to obtain employment through recruiters had not been successful. The market remained poor into 2021.

39. In January 2021 the claimant was interviewed unsuccessfully for a head of legal position. She was asked about and disclosed how she came to leave the first respondent's employment.

40. On 8 April 2021, the respondents' solicitors sent hard copy documents in the claimant's case to the wrong person. That person contacted the claimant saying that it appeared that documents in the claimant's case had been muddled with documents in that individual's case during collation.

41. That same day the claimant was contacted about her case by a reporter at *The Lawyer*. The respondents were also contacted and, like the claimant, declined to comment about the case. There was reporting of the case thereafter and the articles led, the claimant says, to recruiters reviewing her LinkedIn profile. She believes that her failure to get some roles has been caused by potential employers finding these articles on an internet search of her name.

42. The claimant told us that in the sectors she was seeking work, unemployment and previous proceedings would both attract stigma.

43. In order to try and increase her earnings, the claimant started a law firm. She first got regulatory approval for her firm on 16 August 2021 and obtained professional indemnity insurance from 10 September 2021. She had developed a small stream of clients and had undertaken immigration work only although the firm advertised itself as conducting immigration and employment work. Evidence as to the claimant's earnings from this work and from her other business was provided in the bundle and not subject to challenge by the respondents.

44. The claimant told the Tribunal that setting up these businesses had involved her acquiring and instructing a variety of support staff (on a consultancy basis) and putting together necessary policies and procedures. She had obtained training on accounting matters to enable her to run the businesses. She has significant regulatory and accounting functions to undertake in respect of her firm as well as marketing and client acquisition and it is taking significant time and effort to run the firm and obtain work.

45. The claimant had also obtained a part-time law lecturing role at a university in London and we understood from Mr Jackson's report that she was earning approximately £12,000 net per annum for this work.

46. The respondents say that the data breach was accidental. The respondents' solicitors apologised to the claimant and explained that the data breach had come about because they had had a skeleton staff operating in the office to deal with hard copy documents for reasons related to the pandemic. Pages from the claimant's bundle had accidentally been included in a bundle for another matter. They arranged to collect the document from the individual who accidentally received them and reported the breach to the ICO.

Mitigation: other evidence

47. The respondents led evidence from Mr Roundhill, who is a chartered company secretary who runs a specialist recruitment consultancy for company secretarial and governance professionals. He said that the market he worked in had always been candidate led. He said that the market had slowed in February 2020 and that once lockdown occurred most permanent or interim vacancies were suspended or withdrawn and some recruiters went on furlough.

48. Mr Roundhill said that the market started to recover in late summer 2020. He said that the market in 2021 was 'buoyant and fast paced' and there was significant candidate movement. He said that in 2022 companies had been frustrated by the reduction in the availability of well qualified and experienced candidates. The shortage had increased salary demands by candidates. The

interim market had also increased as companies had to cover gaps when permanent staff left.

49. Ms Yallop, chief people officer of the first respondent, had prepared a review of the company secretarial market, which we were provided with. To prepare her review she had read a selection of articles written by specialist recruitment professionals. Her conclusion was that the market for deputy company secretary roles was depressed in 2020 but bounced back from 2021 onwards, with 2021 described by recruiters as an 'epic year'. Ms Yallop attached a table of jobs and job seekers for deputy / assistant company secretary roles in the Greater London area between March 2020 and early 2022. This showed an increase in vacancies over the period. It also showed that the ratio of job seekers (defined as people who had clicked on the advertised posts) was many times the number of roles available (job seeker numbers in the thousands whereas roles were in the tens, with a high of 115). She also included some salary survey figures from different organisations for deputy company secretarial roles.

Injury to feelings

50. The claimant told us that the unlawful acts we found had been deeply upsetting and painful. She ascribed some of her upset feelings to matters prior to her dismissal which were not substantive complaints, including the second respondent's treatment of her in relation to health matters.

51. The claimant was in a state of shock after she was dismissed. She told the Tribunal that she sat outside Liverpool Street Station crying uncontrollably. She felt she had lost her career and had undergone a gruelling litigation process.

Assorted other costs

52. The claimant was seeking business start-up costs which she provided evidence of in the bundle. These included SRA costs, professional indemnity insurance and so forth.

Submissions

53. We had detailed written and oral submissions from both sides and we considered these with care but refer to them below only insofar as is necessary to explain our conclusions.

Law

Compensation for financial loss in discrimination cases

54. The measure of loss is tortious with the effect that a claimant must be put, so far as possible, into the position that she would have been in had the act of

discrimination not occurred (Ministry of Defence v Cannock [1994] IRLR 509, De Souza v Vinci Construction UK Ltd [2017] EWCA Civ 879. Compensation for discrimination is uncapped.

55. Where the act complained of is a discriminatory dismissal, the tribunal will have to decide whether the complainant would have been dismissed in any event if there had been no discrimination (Abbey National plc v Chagger [2009] ICR 624).

56. The duty to mitigate loss applies.

Future loss

57. We were assisted by the summary of principles in Secretary of State for Justice v Plaistow UKEAT/0016/20/VP, per Eady J:

57. When considering compensation for loss of earnings, the ET is not making a determination of fact, as such; rather, it is required to make its best assessment as to what the position would have been, but for the unlawful conduct, having regard to all the material available (see Cannock at p 951). In Vento v Chief Constable of West Yorkshire Police (No. 2) [2003] ICR 318, the Court of Appeal explained the exercise thus to be undertaken by the ET, as follows:

"33. … this hypothetical question requires careful thought before it is answered. It is a difficult area of the law. It is not like an issue of primary fact, as when a court has to decide which of two differing recollections of past events is the more reliable.

The question requires a forecast to be made about the course of future events. It has to be answered on the basis of the best assessment that can be made on the relevant material available to the court. …

58. So, when assessing future losses, the ET is required to focus on the degree of chance; it is not engaged upon a determination on the balance of probabilities (see Abbey National plc v Chagger [2010] ICR 397, CA at paragraphs 76-78). In carrying out that assessment, the weight to be given to the material available will be for the ET, and will inevitably be case-specific. In Cannock, the EAT placed some emphasis on the statistical material available; in Vento (No.2), the Court of Appeal agreed such evidence could be relevant but also allowed that an ET might be "plainly and properly influenced by the impression gained by it in seeing [the Claimant] give evidence at the lengthy liability and remedies hearings" (paragraph 40, Vento (No.2)). In any event, where an ET properly undertakes the assessment required of it, its decision will not be susceptible to challenge unless it can be shown to be perverse: an appellate tribunal will not be entitled to interfere with the ET's conclusion simply on the basis that it would itself have reached a different conclusion on the same materials (see paragraph 38, Vento (No.2)).

60. Further guidance as to the approach to be adopted in assessing future loss of earnings was provided by the Court of Appeal in the case of Wardle v Credit Agricole Corporate and Investment Bank [2011] ICR 1290 (see the Judgment of Elias LJ, with whom the other members of the Court agreed). In submissions in the present case, both parties have referred to the summary of that guidance as set out in Harvey on Industrial Relations and Employment Law Division L [881.01], as follows:

"(1) 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;

(2) in the rare cases where a career-long-loss approach is appropriate, an upwards-sliding scale of discounts ought to be applied to sequential future slices of time, to reflect the progressive increase in likelihood of the claimant securing an equivalent job as time went by;

(3) applying a discount to reflect the date by which the claimant would have left the respondent's employment anyway in the absence of discrimination was not appropriate in any case in which the claimant would only voluntarily have left his employment for an equivalent or better job; and

(4) in career-long-loss cases, some general reduction should be made, on a broad-brush basis (and not involving calculating any specific date by which the claimant would have ceased to be employed) for the vicissitudes of life such as the possibility that the claimant would have been fairly dismissed in any event or might have given up employment for other reasons."

61. Although Elias LJ in Wardle opined that career-long-loss cases would be "rare", he made clear that was not because "the exercise is in principle too speculative":

"50. … If an employee suffers career loss, it is incumbent on the Tribunal to do its best to calculate the loss, albeit that there is a considerable degree of speculation. It cannot lie in the mouth of the employer to contend that because the exercise is speculative, the employee should be left with smaller compensation than the loss he actually suffers. Furthermore, the courts have to carry out similar exercises every day of the week when looking at the consequences of career shattering personal injuries. Nor do I accept a floodgates argument. The job of the courts is to compensate for loss actually suffered; if in fact the court were to conclude that this required an approach which departed from that hitherto adopted, then we would have to be willing to take that step.

53. Exceptionally, a tribunal will be entitled to take the view on the evidence before it that there is no real prospect of the employee ever obtaining an equivalent job. In such a case, the tribunal necessarily has to assess the loss on the basis that it will continue for the course of the claimant's working life. Chagger is an example of such a case. By the time the tribunal came to assess compensation in his case he had already been out of a job for some years. The evidence was that he had made every effort to obtain employment in his chosen field, having made countless applications for new employment. There was a suggestion that he had been stigmatised in the eyes of other employers as a result of the manner of his dismissal. He had taken reasonable steps to mitigate his loss by going into teaching. In these circumstances the Tribunal was entitled to conclude that he had suffered permanent career damage and should be compensated accordingly. Where such a loss is established, a tribunal has to undertake that task, however difficult and speculative it may be."

62. In Wardle, the ET had approached the question of future loss of earnings on a career-long-loss basis, but then reduced the overall sum that would otherwise have been due: first, to reflect its finding that there was an 80% chance that Mr Wardle would have left his employment after a further couple of years in any event; second, to reflect its finding that there was a 70% chance that Mr Wardle would have returned to equivalent employment after a further year. Given the latter finding, the Court of Appeal held that the ET had been wrong to approach compensation on a whole career basis but, even had it been entitled to calculate loss over Mr Wardle's whole career, observed that the ET would then:

"56. … have had to assess what the claimant would have been likely to earn over that period had he not been treated unlawfully compared with what he is now likely to earn. The difference would then be subject to reductions to reflect the vicissitudes of life (eg the possibility that he might have been fairly dismissed anyway or the risk that he would die or might have to retire early) …"

63. As Elias LJ concluded, that was not done by merely applying a reduction to reflect the ET's finding that there was a 70% chance of Mr Wardle's obtaining equivalent employment within three years: having recognised that Mr Wardle had a 70% chance of obtaining equivalent employment within three years, the ET's decision ought also to have allowed for the yet greater chance that he would mitigate his losses over the years that would then follow. On that basis, an ET would need to consider applying an upwards-sliding scale of discounts to sequential future slices of time, to reflect the progressive likelihood of securing an equivalent job over the years.

58. We note also the observations in Chagger which seem to us to have application to the facts of this case; we bear in mind that the fact that there has been a discriminatory dismissal means that the claimant is in the job

market as a time and in circumstances not of her own choosing. It is generally easier to obtain work from a position of employment. Employers may be reluctant to employ someone who has been out of the job market for a significant period. An employee may also be stigmatised by having brought proceedings, which may have an effect on her chances of obtaining future employment.

Mitigation

59. In Cooper Contracting Ltd v Lindsey 2016 ICR D3, EAT, Langstaff P summarised a number of principles drawn from the earlier case law that should be used to guide tribunals when considering whether there has been a failure to mitigate loss:

(1) The burden of proof is on the wrongdoer; a Claimant does not have to prove that he has mitigated loss.

(2) It is not some broad assessment on which the burden of proof is neutral. I was referred in written submission but not orally to the case of Tandem Bars Ltd v Pilloni UKEAT/0050/12, Judgment in which was given on 21 May 2012. It follows from the principle — which itself follows from the cases I have already cited — that the decision in Pilloni itself, which was to the effect that the Employment Tribunal should have investigated the question of mitigation, is to my mind doubtful. If evidence as to mitigation is not put before the Employment Tribunal by the wrongdoer, it has no obligation to find it. That is the way in which the burden of proof generally works: providing the information is the task of the employer.

(3) What has to be proved is that the Claimant acted unreasonably; he does not have to show that what he did was reasonable (see Waterlow, Wilding and Mutton).

(4) There is a difference between acting reasonably and not acting unreasonably (see Wilding).

(5) What is reasonable or unreasonable is a matter of fact.

(6) It is to be determined, taking into account the views and wishes of the Claimant as one of the circumstances, though it is the Tribunal's assessment of reasonableness and not the Claimant's that counts.

(7) The Tribunal is not to apply too demanding a standard to the victim; after all, he is the victim of a wrong. He is not to be put on trial as if the losses were his fault when the central cause is the act of the wrongdoer (see Waterlow, Fyfe and Potter LJ's observations in Wilding).

(8) The test may be summarised by saying that it is for the wrongdoer to show that the Claimant acted unreasonably in failing to mitigate.

(9) In a case in which it may be perfectly reasonable for a Claimant to have taken on a better paid job that fact does not necessarily satisfy the test. It will

be important evidence that may assist the Tribunal to conclude that the employee has acted unreasonably, but it is not in itself sufficient.

Injury to feelings

60. The Tribunal has the power to award compensation to an employee for injury to feelings resulting from an act of discrimination by virtue of sections 124(5) and 119(4) of the Equality Act 2010.

The purpose of the award is to compensate the complainant for the anger, upset and humiliation caused by the discrimination.

As set out in Prison Service v Johnson [1997] IRLR 162:

- Awards should be compensatory and just to both parties;
- Awards should not be too low as this would diminish respect for the anti-discrimination legislation;
- Awards should bear some broad general similarity to the range of awards in personal injury cases;
- 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 need for public respect for the level of awards made.

61. In determining the amount of the award, we are required to follow the *Vento* guidelines in place at the date of presentation of the claim. These were:

Lower band: £900 - £9,000

Middle Band: £9,000 - £27,000

Upper band £27,000 – £45,000.

62. We can also gain some assistance from quantum reports in cases considered by other tribunals. The respondents referred us to the following summaries from *Harvey*:

Ms C Nicholson v Desire Cakes and Shakes Ltd (Leeds) (Case no 1802349/2021) (26 July 2021, unreported) — ITF £5,000

N, a store operator in a dessert shop, paid £150 weekly, was diabetic and unable to take her midnight insulin injection at work due to the conditions in which the medication had to be stored. After 2½ months' employment, arrangements the respondent had deployed to get her home after her shift finished at 11pm failed resulting in her being admitted to hospital.

She returned to work the next day, but the transport arrangements failed again.

Later that day she was dismissed by text message stating: 'Cheryl I am sorry I can't offer you any more shifts, I tried to call you and so did Asad. Due to you needing to leave early, leaving staff alone to clean and making other staff uncomfortable. I think you need to find a job more suitable to your health requirements.' The tribunal held that this dismissal was a case of direct disability discrimination.

N was distressed and embarrassed to be sacked in this way, having had an exemplary work record throughout her life and was prescribed anti-depressants for a period by her GP.

Taking account of this but factoring in the fact that she had only three months' service, had been able to quickly recover and secure alternative work, but was now unable to work for reasons unrelated to her dismissal, the tribunal concluded that an award at about the midpoint of the lower Vento scale was appropriate.

Bainbridge v Atlas Ward Structures Ltd (Hull) (Case No 1800212/2012) (19 June 2012, [2012] EqLR 842) — ITF £6,000

The claimant was a welder whose wife was disabled. He suffered disability discrimination by association when he was selected not to have his temporary contract renewed because of the amount of time he had taken off at short notice to look after his wife. This was essentially a one-off act of discrimination but with serious continuing consequences. It added to the claimant's already difficult domestic circumstances a level of financial burden and worry which considerably increased his stress levels. That affected his self-confidence and eating and sleeping patterns although he did not require medical assistance. An award at the upper end of the lower adjusted Vento band was appropriate.

Aggravated damages

63. We were much assisted by guidance in Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT:

Criteria. The circumstances attracting an award of aggravated damages fall into the three categories helpfully identified by the Law Commission: see para 16(2) above. Reviewing them briefly:

(a) The manner in which the wrong was committed. The basic concept here is of course that the distress caused by an act of discrimination may be made worse by it being done in an exceptionally upsetting way. In this context the phrase "high-handed, malicious, insulting or oppressive" is often referred to (as it was by the tribunal in this case). It derives from the speech of Lord Reid in Broome v Cassell & Co Ltd [1972] AC 1027 (see at p 1087G), though it has its roots in earlier authorities. It is there used to describe conduct which would justify a jury in a defamation case in making an award at 'the top of the bracket'. It came into the discrimination case law by being referred to by May LJ in Alexander v Home Office [1988] ICR 685 as an example of the kind of

conduct which might attract an award of aggravated damages. It gives a good general idea of the territory we are in, but it should not be treated as an exhaustive definition of the kind of behaviour which may justify an award of aggravated damages. As the Law Commission makes clear an award can be made in the case of any exceptional (or contumelious) conduct which has the effect of seriously increasing the claimant's distress.

(b) Motive. It is unnecessary to say much about this. Discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive say, as a result of ignorance or insensitivity. That will, however, only of course be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate the injury: see Ministry of Defence v Meredith [1995]IRLR 539, 543, paras 32—33. There is thus in practice a considerable overlap with head (a).

c) Subsequent conduct. The practice of awarding aggravated damage for conduct subsequent to the actual act complained of originated, again, in the law of defamation, to cover cases where the defendant conducted his case at trial in an unnecessarily offensive manner. Such cases can arise in the discrimination context: see Zaiwalla & Co v Walia [2002] IRLR 697(though NB Maurice Kay J's warning at para 28 of his judgment (p 702)) and Fletcher [2010] IRLR 25. But there can be other kinds of aggravating subsequent conduct, such as where the employer rubs salt in the wound by plainly showing that he does not take the claimant's complaint of discrimination seriously: examples of this kind can be found in Armitage, Salmon and British Telecommunications plc v Reid [2004] IRLR 327.

…

23 How to fix the amount of aggravated damages. As Mummery LJ said in Vento v Chief Constable of West Yorkshire Police [2003] ICR 318,331—332, paras 50—51,'translating hurt feelings into hard currency is bound to be an artificial exercise' Quoting from a decision of the Supreme Court of Canada, he said: 'The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. 'Since there is no sure measure for assessing injury to feelings, choosing the 'right' figure within that range cannot be a nicely calibrated exercise'. Those observations apply equally to the assessment of aggravated damages, inevitably so since, as we have sought to show, they are simply a particular aspect of the compensation awarded for injury to feelings; but the artificiality of the exercise is further increased by the difficulty, both conceptual and evidential, of distinguishing between the injury caused by the discriminatory act itself and the injury attributable to the aggravating elements. Because of that artificiality, the dividing line between the award for injury to feelings on the one hand and the award of aggravated damages on the other will always be very blurred, and tribunals must beware of the risk of

unwittingly compensating claimants under both heads for what is in fact the same loss. The risk of double-counting of this kind was emphasised by Mummery LJ in Vento; but the fact that his warnings not always heeded is illustrated by Fletcher. The ultimate question must be not so much whether the respective awards considered in isolation are acceptable but whether the overall award is proportionate to the totality of the suffering caused to the claimant.

24 Relationship between the seriousness of the conduct and the seriousness of the injury. It is natural for a tribunal, faced with the difficulty of assessing the additional injury specifically attributable to the aggravating conduct, to focus instead on the quality of that conduct, which is inherently easier to assess. This approach is not necessarily illegitimate: as a matter of broad common sense, the more heinous the conduct the greater the impact is likely to have been on the claimant's feelings. Nevertheless it should be applied with caution, because a focus on the respondent's conduct can too easily lead a tribunal into fixing compensation by reference to what it thinks is appropriate by way of punishment or in order to give vent to its indignation Tribunals should always bear in mind that the ultimate question is what additional distress was caused to this particular claimant, in the particular circumstances of this case, by the aggravating feature(s) in question, even if in practice the approach to fixing compensation for that distress has to be to some extent arbitrary or conventional

64. In Zaiwalla & Co v Walia [2002] IRLR 697, the respondent's conduct of its defence attracted aggravated damages. The Tribunal had found:

When she took tribunal proceedings a monumental amount of effort was put into defending those proceedings. That exercise was of the most inappropriate kind, attacking the applicant in relation to her personal standards of professional conduct and holding a series of threats over her head which would be daunting to any individual, let alone to someone about to embark on a legal career having difficulty obtaining a training contract. The defence of these proceedings was deliberately designed by the respondents to be intimidatory and cause the maximum unease and distress to the applicant. There is no other way of describing it.

Failure to follow 2009 Acas Code of Practice 1 on Disciplinary and Grievance Procedures.

65. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 enables an employment tribunal to adjust the compensatory award for an unreasonable failure to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures. The award can be increased or decreased by up to 25% if it is just and equitable in all the circumstances.

66. We should ask ourselves the following questions:

a. Is the claim one which raises a matter to which the Acas Code applied?
b. Has there been a failure to comply with the Acas Code in relation to that matter?
c. Was the failure to comply with the Acas Code unreasonable? (Rentplus UK Ltd v Coulson [2022] EAT 81)?
d. Is it just and equitable to award any Acas uplift?
e. If so, what do we consider a just and equitable percentage, not exceeding 25%?
f. Does the uplift overlap or potentially overlap with other general awards such as injury to feelings; if so, what in our judgment is the appropriate adjustment if any to the percentage of those awards in order to avoid double counting?
g. Applying a final sense check, is the sum of money represented by the application of the percentage uplift disproportionate in absolute terms and, if so, what further adjustment needs to be made? (Slade v Biggs [2021] EA-2019-00678)

Interest

67. Interest is payable on any compensation we award for discrimination pursuant to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 (SI 1996/2803). It is ordinarily calculated in accordance with those Regulations, although the Tribunal does have a degree of discretion to calculate interest by reference to periods other than those set out in the Regulations in exceptional cases. For injury to feelings awards, the interest is calculated from the date of discrimination. For other awards, interest is calculated from the midpoint between the date of discrimination and the date when compensation is calculated. The current applicable rate of interest is 8% per annum.

Discount for accelerated receipt

68. Tribunals like civil courts should consider making a discount to reflect the fact that a claimant who receives compensation for future losses as a lump sum may be able to invest that sum and achieve an additional benefit: Bentwood Brothers v Shepherd [2003] IRLR 364. There is no consensus as to how any discount rate should be calculated. The Ogden tables are not often appropriate and require cautious use in employment cases.

69. The discount rate set in personal injury cases under section 1 of the Damages Act 1996 is currently - 0.25%. There is a government review of that rate which is ongoing.

Tax

70. When making an award of compensation, the Tribunal must take account of tax payable on the various elements of the award. It may therefore be necessary, in accordance with the principles in British Transport Commission v Gourley [1955] 3 All ER 796, once the amount of the award has been calculated using net figures for earnings and pension loss to 'gross up' the award so as to ensure that the claimant is not left out of pocket when any tax required to be paid on the award has been paid. Tax is not payable on general damages for personal injury or injury to feelings awards relating to pre-termination discrimination.

71. The first £30,000 of sums awarded in consideration or in consequence of, or otherwise in connection with the termination of employment is not taxable (section 401 ITEPA 2003).

Costs and preparation time orders

72. The Tribunal Rules enable a represented party in employment tribunal litigation to make an application for a cost order and an unrepresented party to make an application for a preparation time order.

73. The test which the tTibunal must apply is the same in both cases and can be found in Rule 76. The relevant parts of the rule for the purpose of this hearing are 76(1)(a) and (b) which say:

A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted.
(b) any claim or response had no reasonable prospect of success

74. The Tribunal must consider an application in two stages:
- we must first decide whether the threshold test is met, i.e. has the relevant party acted vexatiously, abusively, disruptively or otherwise unreasonably;
- if we are satisfied the test has been met, we should then decide if we should exercise our discretion to award costs.

Each case depends on the facts and circumstances of the individual case.

75. The value of a costs order is determined by Rule 78(1) which says:

"A costs order may—

(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out

either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles"

76. Awards are intended to be compensatory, not punitive (Lodwick v Southwark London Borough Council [2004] IRLR 554). This means that where costs are claimed because a party has acted unreasonably in conducting a case, the costs awarded should be no more than is proportionate to the loss caused to the receiving party by the unreasonable conduct. In other words, the party is entitled to recover the cost of any extra work that had to be undertaken because of the unreasonable conduct. The causal relationship between the conduct and the costs should not be subject to very minute analysis: Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA

No reasonable prospects

77. The EAT in Radia v Jefferies International Ltd EAT 0007/18 gave guidance on the approach to costs applications under this limb. It emphasised that the test is whether the claim had no reasonable prospect of success, judged on the basis of the information that was known or reasonably available at the start. The Tribunal must consider how, at that earlier point, the prospects of success in a trial that was yet to take place would have looked. It should take account of any information it has gained, and evidence it has seen, by virtue of having heard the case, that may properly cast light back on that question, but it should not have regard to information or evidence which would not have been available at that earlier time. The mere existence of factual disputes in the case, which could only be resolved by hearing evidence and finding facts, does not necessarily mean that the tribunal cannot properly conclude that the claim had no reasonable prospects from the outset, or that the party could or should have appreciated this from the outset. That still depends on what the party knew, or ought to have known, were the true facts, and what view the party could reasonably have taken of the prospects of the claim in light of those facts.

Conclusions

Would the claimant's employment have ended in any event?

78. The respondents' case was that the claimant's employment would have ended in any event, probably within two months of the date of dismissal, by reason of her poor performance.

79. We have set out above in some detail the findings we made at the liability stage on the issue of performance concerns. Some salient features were that the claimant passed her probation and received a pay rise with no issues being raised with her. None of the concerns the second respondent told us about were raised with the claimant as performance issues or documented as such. We expressed some concerns about the reliability of the second respondent's evidence.

80. We were provided with the first respondent's performance management procedure. It was titled 'Disciplinary and Capability Procedure' and in spirit and structure was simply a disciplinary procedure which also referred to performance issues. It was not tailored to a performance management process by having timescales or targets for improvement and there was no reference to training. There was a series of 'penalties' in the form of warnings leading to dismissal.

81. Had we considered that performance management was likely to have eventuated, a fair process would in our view, have included an informal stage lasting perhaps three months, followed by a formal process, if there was no improvement, leading to dismissal in about six months if there was no improvement thereafter.

82. However, we had to give very careful consideration to the question of whether there would have been such a process, or any lawful process, absent the discrimination we found. This was a difficult exercise. We accepted that the second respondent had some concerns about the claimant's performance but, given what we considered to be his exaggeration of those concerns for the purposes of his evidence to the Tribunal, and the lack of any objective evidence of the concerns, we did not find it possible to accept that they were of great significance. Because no concerns were raised with the claimant, we similarly had no evidence which suggested that she would not have responded to and addressed the concerns, had they been raised.

83. The second respondent said that the volume of work increased during the pandemic and the claimant would not have coped. The evidence showed that he had increased the number of people undertaking the work over the period substantially so it was difficult to assess how much more work the claimant herself would have had to contend with, if any, in terms of overall volume. The evidence the second respondent gave about how much minuting of meetings would have been required seemed to us to be exaggerated and unreliable.

84. The other evidence we had was that the claimant had passed her probation and not had any performance concerns raised with her. We had no evidence to suggest that she had had performance issues in other roles, although we accept that different roles have different demands and a person can perform well in one role and struggle in another. Nonetheless, we could see from the claimant's career before and after her dismissal by the first respondent significant evidence of hard work, resilience and adaptability.

85. As enjoined by the authorities, we have to make a decision on what we think would have happened based on such evidence as we have. On these facts and given the lack of evidence produced by the respondents, we concluded we could not properly find that there was any realistic chance that, absent the

unlawful discrimination, the claimant would have been dismissed for poor performance. No other reason for a potential dismissal of the claimant was put forward by the respondents; the evidence was that the company secretarial function and team grew significantly so there was no prospect that the claimant's role would have been redundant.

86. We therefore calculated the claimant's past and future losses on the basis that she would have remained in the first respondent's employment until she made a voluntary move to another role.

Mitigation

87. There was no dispute between the parties as to the circumstances in the market at the point when the claimant began looking for a replacement role. The pandemic had just started and the market was severely depressed. It did not bounce back significantly until 2021.

88. The respondents argued that the claimant had behaved unreasonably because she had not sought to nurture a relationship with a recruiter and had not sought to send covering letters with her CV, which they suggested would have given her applications a better chance. It was not entirely clear to the Tribunal what it was the respondents said the claimant should have done to better foster relationships with recruiters. There was a suggestion in Mr Roundhill's witness statement that she had not got back to Mr Roundhill when he contacted her about a role but he fairly accepted that that was not correct when the claimant drew his attention to correspondence which showed that the claimant had arranged a telephone call with him, which had taken place.

89. To a degree, the respondents were relying on circumstantial evidence. The claimant had not managed to secure more than a handful of interviews in what eventually became a buoyant market. She must therefore have been taking an unreasonable approach.

90. The claimant's evidence was that she was in contact with recruiters in addition to the written communications which were in the bundle. At times the recruiters were on furlough. She had never previously sent covering letters with her CV, which was very detailed, nor had anyone suggested that she should do so. The particular recruiter she was applying for a role through would send some covering information about a candidate when putting a candidate forward for a role; that would be discussed with the recruiter. We could see ample evidence in the bundle that the claimant was maintaining contact with recruiters.

91. Mr Roundhill did not give evidence that there was something amiss with the claimant's approach. There was no suggestion by the respondents that there

were roles that the claimant could and should have been applying for that she had not applied for.

92. It seemed to us that we had no evidence that the claimant's approach to her applications was unreasonable and we had significant circumstantial evidence as to why she had not been successful that seemed to us more cogent than a bare allegation that she must have been going about her applications the wrong way. She was dismissed at a time when the market was very poor; she was then out of a job altogether and no doubt would have been less attractive to employers by virtue of that period of unemployment once the market picked up. Her circumstances when she had obtained the role with the first respondent were not comparable; although she was out of a role at that time, she had deliberately taken herself out of the market to achieve qualifications; the market at the time was buoyant. When asked by some potential employers about her short service with the first respondent, she felt obliged to say that she had been dismissed after raising a health and safety matter. By April 2021, the proceedings had been in the press and a potential employer doing an internet search on the claimant would have discovered that she was bringing proceedings against the first respondent and that the respondents' defence to the claim including criticism of her performance. We accepted that this information would have been likely to deter a proportion of employers.

93. We concluded that not only was the claimant not unreasonable in how she went about mitigating her loss, she was doing her best in difficult circumstances.

94. Given the claimant's ongoing lack of success in obtaining employment, it was also not unreasonable for her to seek to use her skills in the two businesses she set up and to undertake part-time law lecturing.

95. We found no failure by the claimant to mitigate her losses.

Future losses

96. The claimant was not asking the Tribunal to award career long losses. Instead she put forward a case that it would take her at least ten years to replace her lost earnings. She put forward an account of what she considered her career trajectory would have been had she remained in the first respondent's employment and an account of what she considered her actual career trajectory would now look like, based on her continuing to develop the businesses which she had started. The two trajectories were set out as a table in Mr Jackson's report.

97. The second respondent commented in his witness statement that the career path the claimant put forward for herself was unrealistic. He pointed to the fact that she was earning £76,000 in 2020, when she had qualified in 2010 as a

solicitor. That level of earnings is not in the bracket for 10 years qualified solicitors in the data put forward by the claimant. He said that the claimant was not therefore on a trajectory towards the sort of earnings put forward in Mr Jackson's table.

98. That observation ignores the fact that the claimant had been pivoting from one type of legal career to another. She had not started her legal career in regulatory, banking or company secretarial work but in a range of high street matters. It seemed to the Tribunal likely that this would have depressed her earnings expectations as compared with candidates who had greater experience in financial services / company secretarial work but that there was no reason to believe that she would not be able to aspire to the better remunerated positions once she was established on her new path.

99. Mr Jackson's evidence, which he took from published sources, about earnings in the sectors where the claimant had been intending to continue her career, was not challenged by the respondents. Although Mr Jackson's expertise is not in the legal or financial services sector, that would not have affected his ability to analyse and collate published data from those who are expert in those fields.

100. A question for us was whether the trajectory posited by Mr Jackson was a realistic one. He credited the claimant initially with fewer than her actual years of PQE, which seemed to us to fairly reflect her change of career path. In his table he treated her as if she were a solicitor with 4 – 6 years PQE in 2020 in 'fintech' and then projected her salary increasing in line with PQE until 2023/2024 when he projected that she would be in a head of legal role. He then projected her increasing her salary in such a role and achieving a general counsel role in 2026/2027 and moving up within the earnings bracket for that role over the remainder of the projected period of loss.

101. The respondents essentially pinned their case on two submissions: that the claimant would have been dismissed for poor performance and that she had failed to mitigate her loss. The respondents did not make any detailed submissions about what the claimant alleged would have been her career trajectory although, as we have observed, the second respondent gave his view in evidence that she was not on that kind of career path and counsel for the respondents described her assertions about her career path as 'fanciful'.

102. It was put to the claimant that she had had various short term roles in the past. The claimant's evidence was that she had moved as part of her strategy to move into financial services work. She had never been dismissed but had moved to acquire further skills.

103. We noted that the claimant had been interviewed for a head of legal role. We also bore in mind the salaries the first respondent has had to pay to new staff in the company secretarial function since the claimant's departure.

104. It seemed to us, doing our best with what are inevitably speculative matters and bearing in mind that the claimant has shown considerable determination and fortitude in her approach to her career but also that she has not followed a conventional path in the areas she was seeking to progress in, that the following projections as to the claimant's future salary had she not been dismissed fairly reflected the uncertainties:

a) 2020 – 2021: Claimant's existing salary of £76,000 plus 10% benefits;
b) 2021 – 2022: Salary rise to £85,000 plus 10% benefits;
c) 2022 – 2023: Salary rise to £90,000 plus 10% benefits;
d) 2023 – 2024: £110,000 plus 10% benefits
e) 2024 – 2025: £110,000 plus 10% benefits;
f) 2025 – 2026: £110,000 plus 10% benefits;

Mr Jackson's table suggested that the claimant would have achieved a head of legal position by 2023 at a minimum salary (taken from the published data) of £115,000. The figure of £110,000 seemed to us to reflect the possibility that she might have achieved such a role by this stage but that she might not have. She might nonetheless have improved her salary either at the first respondent or by a move. We bore in mind what Mr Roundhill told us about the market from 2021 onwards with candidates able to command 20% increases in their salaries to move position.

g) 2026 - 2027 – 2033 - 2034: £145,000 plus 20% benefits.

This salary was the median of head of legal salaries. We considered that this figure reflected a fair average of the different possibilities. There was some chance we considered that the claimant would progress to a general counsel role, a good chance that she would achieve a role at head of legal level and some chance that she would not progress to either level. The figure of £145,000 is intended to encompass those possibilities. We have also depressed the figures to take account of vicissitudes, ie the figure would be higher had we not included a discount for the possibility that the claimant's career might have come unstuck for some other reason over the period. 'Benefits' was used by Mr Jackson to describe pension contributions, health insurance and bonus and we use it to cover the same areas of loss.

<u>What the claimant will actually earn over the ten year period</u>

105. We had evidence from the claimant of her actual earnings and the difficulties she had had in establishing her businesses and obtaining clients. Mr Jackson had projected earnings from these businesses over the period until 2034. The

respondents had not suggested in submissions that these figures were unrealistic. In the absence of any challenge and any other basis for projecting the claimant's earnings, we have accepted the figures although it appeared that they did not fully take account of the claimant's earnings from her part time lecturing. Mr Jackson's report was prepared in October 2022 at which point the claimant was doing some casual lecturing, bringing in about £4000 per annum according to the claimant's accounts.

106. At the time he prepared his report, Mr Jackson reported that a part-time lecturer role for two days per week had become available which would bring in approximately £1000 per month. We understood the claimant's evidence to be that she had been successful in obtaining that role and so we have added a further £8000 to the net yearly income projected by Mr Jackson.

107. In doing the calculations on the basis outlined we have borne in mind the need to take into account other possibilities and general life vicissitudes, per Plaistow and consider that these are fairly reflected in the limited period of loss and the approach we have taken to yearly loss figures. We accepted the claimant's account that her dismissal, given in particular its timing, had effectively set her back many years from the career path she was pursuing.

108. The Table below represents the figures we were able to assess. We did not hear any oral submissions from the parties as to how to calculate the incidence of tax and National Insurance on the gross figures in cases where Mr Jackson had not calculated the net sum and we asked for further submissions which we discuss below. The Table includes calculations based on our conclusions on the appropriate way to calculate net earnings.

Table of past and future loss of salary and benefits

NB: the claimant presented her losses on the basis of financial years rather than as a weekly loss figure and the respondents did not put forward an alternative method

of calculating the loss over longer periods so we have adopted the claimant's methodology.

Year	Basic salary if no unlawful dismissal	Benefits if no unlawful dismissal	Total net	Claimant's actual net salary and benefits	Difference
2020/2021	£76,000	10%	£51,178		£51,178
2021/2022	£85,000	10%	£62,797		£62,797
2022/2023	£90,000	10%	£65,918	£30,000 from dismissal to date of hearing	£35,918
2023/2024	£110,000	20%	£79,259.40 + £11,000 = £90,249.40	£23,000	£67,249.40
2024/2025	£110,000	20%	£90,249.40	£28,000	£62,249.40
2025/2026	£145,000	20%	£94,803.40 + £14,500 = £109,303.40	£33,000	£76,303.40
2026/2027	£145,000	20%	£109,303.40	£38,000 plus 10% benefits = £41,800	£67,503.40
2027/2028	£145,000	20%	£109,303.40	£48,000 plus 10% benefits = £52,800	£56,503.40
2028/2029	£145,000	20%	£109,303.40	£58,000 plus 10% benefits = £63,800	£45,503.40
2029/2030	£145,000	20%	£109,303.40	£78,000 plus 20% benefits = £93,600	£15,703.40
2030/2031	£145,000	20%	£109,303.40	£98,000 plus 20% benefits	0
2031/2032	£145,000	20%	£109,303.40	£118,000 plus 20% benefits	0
2032/2033	£145,000	20%	£109,303.40	£138,000 plus 20% benefits	0

Total: £540,908.80

Netting down gross salary and benefit figures

109. The respondents submitted that we should make use of the tables in the Employment Tribunals Remedies Handbook. The claimant argued that we should make use of a calculator function on a website called ListenToTaxman. This was a commercial website not connected with HMRC or any government department and we were not able to form a judgement as to its reliability.

110. We therefore used the tables in the Employment Tribunal Remedies Handbook 2022 - 2023; on occasions we have had to calculate a figure for net income where the salary figure we were considering fell between two figures in the table. There would be no tax on the employer pension contributions which formed part of the 'benefits' in the table so we have allowed for tax on 50% of the benefits, to reflect tax on bonus and health insurance. We did not have sufficient evidence to make a more precise calculation.

Injury to feelings

111. We bore in mind that we were awarding compensation for injury to feelings arising from the two matters we found to have been unlawful, not the earlier incidents the claimant gave evidence about, although they are part of the context for the dismissal.

112. A very significant feature of the claimant's injured feelings was the fact that she lost her job at what would have been the worst possible time in recent history and was presented with grave difficulties in obtaining new work at that extremely stressful and difficult time. We bear in mind that the claimant was very shocked, having had no warning that the second respondent was unhappy with her work. The manner of the dismissal was not pleasant, in particular the description of the claimant as 'not a Starling person'. The claimant was also, as described above, thrown severely off course in her chosen career.

113. We did not consider that the lower band cases cited by the respondents had all or most of those more serious features. Cases involving dismissals with serious consequences were more commonly found in the middle Vento bracket. This case was not, we considered, towards the top of that bracket; the claimant did not for example report the kinds of psychiatric consequences which were commonly seen in cases higher in the band. It did however seem to us to fall squarely within the middle of the bracket and we considered that the appropriate award under this head was £15,000.

Aggravated damages

114. We were asked by the claimant to consider a list of what she said were aggravating features. We set these out with our conclusions below.

The evidence the respondents gave about how a company secretarial assistant came to be recruited

115. This was a matter we dealt with at the liability stage. We did not accept the respondents' evidence that the claimant suggested hiring an assistant some time after she started her employment and that the respondent acceded to the request to support the claimant's performance but concluded that, as the claimant said, there had been a plan to recruit an assistant from the outset of the claimant's employment.

116. In many if not most cases, the Tribunal will reject some of the evidence of one or both of the parties. The fact that evidence has been rejected is not of course of itself sufficient to give rise to aggravated damages. It was not the view of the tribunal that Ms Yallop and the second respondent had deliberately fabricated this account to attack the claimant's performance. We considered instead that they had not looked into the matter very carefully before giving the evidence they gave and that that evidence reflected wishful thinking as to what the course of events had been rather than conscious or deliberate dishonesty.

The respondents' evidence as to why Ms Fox left the respondents' employment

117. We accepted the evidence of the respondents that Ms Fox had made reference to her relationship with the claimant as being a reason why she was leaving but we also found that, in the absence of any investigation into the matter, the respondents could not fairly have concluded that problems with the relationship were the claimant's fault.

118. We could see nothing improper about the respondents adducing this evidence, which formed part of the respondents' account of the reasons for the claimant's dismissal. Although we rejected the respondents' case ultimately, it was not offensive or improper to pursue the defence. We did not find that this evidence was 'malicious' as the claimant suggested.

Conduct of litigation: attempted non-inclusion of documents without good reason

119. This was a matter the claimant included in her written submissions. We could not tell what the complaint was, by reference to the pages in the bundle she referred to and were unable to make any findings about the complaint.

Court order non-compliance, not sending bundle on time

120. Our attention was not drawn to any delays which went beyond unfortunate but reasonable and explicable hiccups in the litigation process.

Amended bundle without explanation or prior disclosure of documents. Including new documents without correct dates (May 2019 when it was in fact 2021)

121. This related to the addition of some six pages of documents and what appears to have simply been an error in the dating.

State of hearing bundle: (despite prior requests to rectify)

122. This complaint related to the fact that the pdf numbers on the electronic bundle did not match the hard copy page numbers because documents had been inserted into the bundle after it was first paginated. Unfortunately the Tribunal panel has seen many bundles where this is an issue, particularly as parties and their representatives have adjusted to the more widespread use of electronic bundles. We had no evidence to suggest that the respondents' representatives compiled the bundle in this way deliberately to inconvenience the claimant or the Tribunal.

[Respondents' representatives'] introduction of further documents a few hours prior to exchange of WSs regarding J Roundhill and board minute extracts

123. We could not see any evidence that this was anything out of the ordinary in terms of the conduct of litigation. It is not uncommon for parties to produce further documents after the original date for disclosure. The claimant did not say that she was materially prejudiced by the late disclosure.

2R's attempts to call into question Mr Jackson is unjustified, particularly the factually incorrect challenging of the number of reports he has produced along with other comments such as 'based in the North of England'

124. The second respondent had, as we have commented above, conducted a critique of Mr Jackson's expertise and background in his witness statement. His purpose was clearly to call into question the quality of Mr Jackson's

evidence. Most of his points could perfectly properly have been explored with Mr Jackson in cross examination had Mr Jackson been called as a witness.

How many other recruiters have been contacted and alerted to the proceedings, given the Rs have been in touch with J Roundhill. 1R has contacted recruiters C was in contact with and by her own admission she spoke 'directly to those professions.'

125. We understood the claimant's concern that Mr Roundhill, a recruiter with whom she had had professional contact, was called to give evidence. Ms Yallop had spoken to recruiters in preparing her report about the state of the market for the purposes of the proceedings. However, we simply had no evidence that the respondents had bad-mouthed the claimant to recruiters or had done anything to damage the claimant's position in the marketplace.

Appropriateness of J Roundhill as a witness and incorrect information deeply distressing

126. The respondents were entitled to call evidence as to the state of the market and a recruiter with expertise in that market was an obvious person to call. Mr Roundhill did give evidence that he had no record of further contact from the claimant but he readily conceded that he must have done when she took him to the relevant documents. He said he had not been able to find any further emails when he looked on his own system. Again, this seemed to be an example of sloppiness on the part of the respondents rather than a concerted effort to mislead.

127. We could not see that any of these matters amounted to conduct of the proceedings in an unnecessarily offensive manner. We certainly found no conduct which could be characterised in the way the conduct of the proceedings in Zaiwalla & Co was characterised. We did not make an award of aggravated damages.

Acas uplift

128. It was common ground between the parties that the Acas Code applies when an employer considers that an employee is poorly performing. There was a wholesale failure to comply with the Code in terms of notification, accompaniment, warnings, meaningful discussions and so forth.

129. The respondents suggested that the failure was not unreasonable because the claimant did not have two years' service. However, the Code and the principles enshrined in the Code are not limited in their application to employees who have unfair dismissal rights. The fact that some employers treat the Code as something which can be dispensed with when they believe the risks are low because an employee cannot bring an unfair dismissal claim does not mean that they act reasonably in doing so.

130. We bear in mind that this is a well-resourced employer with a dedicated HR function which ought to have known better. The treatment of the claimant was

not only unreasonable and unfair, it was damagingly poor in terms of the shock to the claimant of her entirely unheralded dismissal at the start of a global pandemic. The decision to disregard the Code was clearly deliberate given HR involvement and we could discern no mitigating factors.

131. Whilst we considered that 25% would fairly reflect the total failure by the respondents and our disapproval of the consequences of that failure, we bore in mind that there was some overlap with the injury to feelings award (which took into account the effect on the claimant's feelings of the failure to follow the Code or any reasonable process) and had regard to the overall size of the award. We concluded that 25% of what is already a large figure was disproportionate and we awarded 12.5% under this head.

Assorted costs relating to the claimant's businesses

132. Given the evidence we had that the claimant's earnings from her businesses, which are the figures we set off against what she would have earned had she not been dismissed, were figures which were net of costs and expenses, we concluded that awarding a separate figure under this head would have amounted to double recovery.

133. The claimant asked for the cost of Mr Jackson's report, however this was properly to be regarded as an issue for costs rather than an issue of compensation, as the report was obtained for the purposes of the litigation.

134. The claimant asked for compensation from the respondents' representatives for damage caused to her by the data breach. We considered we had no jurisdiction to award compensation in relation to the data breach and in any event we had not heard a claim in relation to the data breach.

Accelerated receipt

135. The Ogden tables did not seem to us to be apt for use in a case like this in which the claimant does not have an impairment which limits her from working in her chosen field and she has losses which span a limited period of her overall career.

136. The position we faced is that in PI cases there is a modest negative discount rate at present. We take judicial notice of the facts that interest rates are currently high but so is inflation and that the PI discount rate is under review. In the circumstances, it seemed to us that there was no rational basis on which we could select any discount rate and we have accordingly not applied one.

Interest

137. There was no dispute between the parties as to the applicable principles. In accordance with those principles, we calculated interest on past financial

losses of £172,309.46 plus uplift (at 12.5%) of £23,538.69 for a total of £193,848.15.

138. The midpoint between the date of dismissal and the calculation date of 11 August 2023 was 23 November 2021. Interest at 8% per annum from that date until the calculation date (a total of 13.72%) is £26,595.97**.**

139. We calculated the interest on injury to feelings and uplift (a total of £16,785) from the date of dismissal until the date of calculation at 8% per annum for a total of 27.4%. Interest on injury to feelings was therefore £4599.09.

Grossing up for tax

140. Total compensation before grossing up is calculated as follows:

Past and future losses: Total: £540,908.80

Uplift on past losses £23,538.69

Injury to feelings £15,000

Uplift on injury to feelings: £1785

Interest on past losses: £26,595.97

Interest on injury to feelings: £4599.09

Uplift on future losses: 12.5% x £368,599.34 = £46,074.92

Total before grossing up: £658,502.47

141. A calculation was then done based on the method described at page 36 of the Employment Tribunal Remedies Handbook:

To gross up:

Deduct £30,000 tax free sum

= £628,502.47

The amount taxed at 20% = £30,160. Grossed up = 30,160 /0.8 = £37,700

Higher rate tax paid on next 112,300 gross which is £67,380 net, so next £67,380 / 0.6 = £112,300

The remainder is £628,502.47 - £30,160 - £67,380 = £530,962.57 which has to be grossed up to reflect tax at 45% : £530,962.47/0.55

= £965,386.31

So total after grossing up = £965,386.31 + £30,000 + £37,700 + £112,300

= £1,145,386.31

Preparation time order

142. In support of this application, the claimant did not point to any specific unreasonable conduct of the proceedings on the part of the respondents which might have led to a preparation time order.

143. Although the respondents were not successful in their defence of these claims, we do not conclude that they had no reasonable prospects from the outset. The defences were arguable. Although on a careful analysis of the evidence we found the claimant successful on two claims, in respect of three other claims she was not successful.

144. We made no preparation time order.

Employment Judge Joffe
12/09/2023

Sent to the parties on:

12/09/2023

For the Tribunal Office: