RM

EMPLOYMENT TRIBUNALS

Claimant: **Ms H Biggs**

Respondents: **A Bilborough & Co and Others**

Heard at: **East London Hearing Centre**

On: **19 and 20 May 2022**

Before: **Employment Judge Jones**
Member: **Ms M Long**

Representation
Claimant: Mr Peter Lockley (Counsel)
Respondent: Mr Matthew Curtis (Counsel)

RECONSIDERATION JUDGMENT having been sent to the parties on 23 March 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Tribunal apologises to the parties for the delay in the promulgation of these reasons. The delay was caused by a number of things including ill-health of the Judge, pressure of work, difficulty in the Judge being able to set aside time to write the judgment while continuing to hear and deal with other matters; and the complexity of the matters involved. The Tribunal intended to give these written reasons at the same time as the recent costs judgment but had insufficient time to do both.

2. The Claimant was successful in her equal pay complaint. She had been paid less than a named male comparator, in breach of the sex equality clause, between 2010 – 2015. The Claimant also succeeded in her complaint that her dismissal was discriminatory on the grounds of sex and automatically unfair as it had been done on the grounds that she made protected disclosures. The Tribunal also upheld complaints of unlawful sex discrimination, harassment and victimisation and detriment for making protected disclosures.

3. This was the Claimant's remedy hearing. As her remedy for her successful claim the Claimant sought the outstanding amount of equal pay (with interest), past and future loss of earnings, including loss of opportunity of a directorship and later consultancy at the corporate Respondent, injury to feelings, aggravated damages and other items of financial loss.

4. The Claimant was dismissed on 18 January 2018. The liability judgment was sent to the parties on 19 December 2020. By that time, the Claimant had secured alternative employment in the same industry. The Claimant had been employed by the Respondent for 13 years beginning 2004 and at the time of her dismissal, was 43 years old, having been born on 19 November 1974.

Law

5. In determining the Claimant's remedy, the Tribunal were referred to and consulted the following law.

Unfair Dismissal - Remedy

6. In a successful unfair dismissal claim where it is agreed by all parties that neither reinstatement nor re-engagement would be an appropriate or possible remedy for the Claimant, any award by the tribunal will be monetary. A remedy award in an unfair dismissal case is made up of two main elements: a basic award and a compensatory award.

Basic award

7. This is set out in ***Section 119 of the Employment Rights Act (ERA)*** and is calculated using a formula that relates to the age and length of service of the successful claimant. It is calculated in units of a week's pay up to a ceiling. If the amount of a claimant's week's pay exceeded that ceiling, then the amount of the award is restricted to it. It was agreed between the parties that the ceiling that applied in the Claimant's case was £489 per week.

8. A tribunal can reduce the basic award for contributory conduct, even if where that conduct did not contribute to the dismissal. Such a reduction can take into account conduct that was not known to the employer at the time (Section 122(2) ERA.

Compensatory award

9. The parameters of the compensatory award are set out in ***Section 123 of the ERA***. It is intended to compensate the claimant for losses arising out of the dismissal, so far as that loss is attributable to action taken by the respondent. It is not to be used to punish the respondent. Such losses as can be compensated would include not just wages lost due to being unfairly dismissed but also any additional benefits attached to the employment that had been lost. The compensatory award can take into account losses extending into the future. The Tribunal must rely on its relevant findings of fact in order to determine how much and for how long it would be just and

equitable to award to the claimant compensation for future losses.

ACAS uplift

10. Section 3 of the Employment Act 2008 contains provisions giving employment tribunals the discretion to vary awards for unreasonable failure to comply with any relevant Code of Practice relating to workplace dispute resolution. This is enshrined in section 207A and Schedule 2 to TULR(C)A (Trade Union and Labour Relations (Consolidation) Act 1992. The relevant code is the ACAS Code of Practice of Disciplinary and Grievance Procedures.

11. Section 207A(2) TULR(C)A provides that an employment tribunal may, if it considers it just and equitable, increase any award to an employee by up to 25% if it appears to the tribunal that the employer has unreasonably failed to comply with the ACAS Code on Disciplinary and Grievance Procedures.

12. The claimant is under a duty to mitigate her loss. In this case the Claimant found alternative employment soon after her dismissal but there are differences in the terms and conditions of that employment, which meant that the Claimant still suffered losses. The Claimant also claimed for future losses and for significant losses in terms of what she saw as her future prospects within the business.

Discrimination - Remedy

13. Section 124 of the Equality Act 2010 refers. The remedies a tribunal can award in a successful discrimination complaint are as follows:

    a. To give a declaration on the rights of the complainant and the respondent regarding matters to which the complaint relates;
    b. An order for compensation to the complainant - which can include payments under the headings of injury to feelings, aggravated damages and for pain, suffering and loss of amenity (personal injury) and interest; and
    c. To make appropriate recommendations – of steps that the employer must take within a specified period to obviate or reduce the effect on the complainant or any other person of any matter to which the proceedings relate. The Claimant in this case did not seek any recommendations.

14. The Court of Appeal gave guidance on the assessment of compensation for injury to feelings (ITF). In the case of *Vento v Chief Constable of West Yorkshire Police (No.2) EWCA Civ 1871* the Court set bands within which they held that most tribunals should be able to place their awards. The relevant bands for this claim of awards for injury to feelings of the most serious kind should normally lie between £25,200 - £42,000; for less serious cases between £8,400 and £25,200 and for one off acts of discrimination or otherwise, between £800-£8,400. The award for the most exceptional cases might be capable of exceeding £42,000.

15. Awards for injury to feelings are purely compensatory and should not be used as a means of punishing or deterring employers from particular courses of conduct. On the other hand, as stated in *Harvey*, discriminators must take their victims as they find them; once liability is established, compensation should not be reduced because (for example) the victim was particularly sensitive. The issue is whether the discriminatory conduct caused the injury, not whether the injury was necessarily a foreseeable result of that conduct. (*Essa v Laing* [2004] IRLR 313].

16. In making an award for ITF a tribunal needs to be aware of the leading cases. Much will depend on the particular facts of the case and whether what occurred formed part of a campaign or harassment over a long period, what actual loss is attributable to the discrimination suffered, the position and seniority of the actual perpetrators of the discrimination and the severity of the act/s that have been found to have occurred as well as the evidence of the hurt that was caused.

17. In respect of aggravated damages, the tribunal were aware of the case of *Armitage, Marsden and HM Prison Service v Johnson* [1997] IRLR 162. Aggravated damages may be awarded because of the lenient or favourable way in which an employer has treated the perpetrator of discrimination, for example promoting him before knowing the result of an inquiry into his conduct.

18. The Claimant referred to the case of *Commissioner of Police for the Metropolis v Shaw* [2012] ICR 464 in which the EAT clarified that an award for aggravated damagers was compensatory and not punitive and should be considered to be an aspect of injury to feelings. Aggravated damages may be awarded in three types of cases (i) where the manner in which the wrong was committed increased the claimant's distress; (ii) motive – where there is conduct '*which is evidently based on prejudice or animosity or which is spiteful or vindictive*' and this is apparent to the claimant; and (iii) subsequent conduct, including conduct of the litigation. The Claimant in this case was clear that she did not place any reliance on the Respondent's conduct of the litigation in pursuance of her claim for aggravated damages, as she preferred instead to leave any such issues for a possible application for costs later in the proceedings.

19. The Claimant also relied on the case of *Ms S Macken v BNP Paribas London Branch* (Case No. 2208142/2017 & Others) (4 October 2021, unreported), which had similar facts to the Claimant's case. There was a successful equal pay claim and successful complaints of sex discrimination and harassment. There was also a marked deterioration in the relationship between the parties after the claimant in that case raised concern as the inequality of pay. There were similarities between this case and *Macken* in the way that she was treated by the employer, over a sustained period. She had suffered a decline in her mental health after being subjected to discrimination. She was expected to take two-three years to recover her mental health, although a full recovery was unlikely. In that case, the tribunal awarded the claimant aggravated damages in the sum of £15,000. The Claimant submitted that the Tribunal should make a similar award in her case.

20. A tribunal has the power to award interest on awards made in discrimination cases both in respect of pecuniary and non-pecuniary losses. We refer to the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. We can consider it regardless of whether a party has asked us to do so although in this case both parties did refer to it in their submissions. The interest is calculated as simple interest which accrues daily. The current rate is 8%. For past pecuniary losses interest is awarded from the half-way point between the date of the discriminatory act and the date of calculation. For non-pecuniary losses such as injury to feelings, interest is calculated across the entire period from the act complained of to the date of calculation. The tribunal retains discretion to make no award of interest if it deems that a serious injustice would be caused if it were to be awarded but in such a case it would need to set out its reasons for not doing so.

Evidence

21. At the remedy hearing, the Claimant produced additional witness statements and gave live evidence. On behalf of the Respondent, the Tribunal heard from Ian Gooch, CEO of the 1st Respondent and had a witness statement from him.

22. The Tribunal came to the following conclusions from the evidence.

Findings of fact relating to remedy and Decision

In this section the Tribunal will go through the various elements of the Claimant's schedule of Loss, refer to the parties' submissions and/or evidence and give our conclusion and decision on each.

Basic Award

23. The Tribunal refuses the Respondent's invitation to reduce this sum.

24. In this Tribunal's judgment, there was scant evidence that the Claimant's conduct contributed to her dismissal. It is our judgment that the circumstances surrounding the investigation of the misconduct allegations made against the Claimant and the initiation of that process which resulted in her dismissal were tainted with the Respondent's ulterior motive, which was to ensure that the Claimant did not come back to work and ultimately, to dismiss her. Mr Barr effectively orchestrated the Claimant's discriminatory dismissal. He suggested to the Claimant's colleagues that she had been unfair to them and presented them with an opportunity to prevent her from returning to work and then took statements from them that confirmed his suggestions.

25. If the Claimant's colleagues were so distressed by her line management, it would be reasonable to expect that they would have raised grievances or brought complaints about her to the Respondent, well before Mr Barr's investigation. We were not told of any. If the Claimant had been treating staff in the way alleged in the statements Mr Barr gathered and produced

by Ms Trevett, it is highly unlikely that it would only be revealed to the Respondent at that time.

26. The Claimant may have had a firm management style, but that is not misconduct. Her management style suited the Respondent, which is why she was asked to deal with certain difficult individuals or situations, such as dealing with PS.

27. The Respondent referred in its submissions to paragraphs 342 – 345 of the liability judgment, which recorded the evidence produced by Mr Barr and Ms Trevett. During the disciplinary process the Respondent also alleged that members of staff left the Respondent's employment because of the Claimant's treatment. When the Claimant asked for evidence of that, none was forthcoming. We were not told of anyone who left because of the Claimant. It is likely that this is an example of an unsubstantiated allegation against her. After due consideration of all that evidence, the Tribunal concluded that in conducting his investigation, Mr Barr had specifically chosen to speak to members of staff who were likely to be displeased with the Claimant because she had taken them to task about their work. He did not speak to everyone in the claims team. He went through her appraisal files and chose those individuals about whom she had been critical. The Respondent used the Claimant as an '*enforcer'* and this was acknowledged by Mr Roberts (paragraph 723). The complaints were exaggerated and embellished to achieve the desired result. The actual written communication we had in the bundle between the Claimant and junior staff shows that she was a conscientious manager who gave feedback, assisted staff, asked questions of new staff and followed up with them on their work. In addition, she always reverted back to Steve Roberts for discussion and agreement on the way forward which each person she was managing (paragraph 724).

28. The Tribunal refers to paragraphs 725 and 726 of its judgment. It is possible that there were some tensions between the Claimant and other equally ambitious people in the office, such as CB but there was no finding from us that the Claimant was to blame or that she did anything that would make it just and equitable to reduce her basic award.

29. In the circumstances, the Tribunal makes no deduction from the Basic Award.

30. It was agreed between the parties that the Basic Award was in the sum of £6,846.00. This is 11 years' service at the maximum rate of £489 per week (1 week's wages), and 2 years' service at rate of 3 weeks' wages (1.5 x 2). That gives a total of 13 x £489 = **£6,846.00.**

Equal Pay

31. The Tribunal was disappointed to see that this aspect of the Claimant's remedy had not been settled before today although the corporate Respondent made a payment of £3,482 in October 2020, in satisfaction of this complaint. However, that payment did not take into account pension

contributions that the Claimant would have been entitled to over the relevant period, or interest. The Respondent had also made a deduction.

32. By the date of this remedy hearing, the parties had agreed that the outstanding amount was £3091.00. The Tribunal awards the Claimant **£3,091.00** in settlement of her equal pay complaint.

33. This amount will be subject to deductions of tax and national insurance through payroll.

Past Losses

34. After her dismissal, the Claimant secured a new position with Thomas Miller and worked there from April 2018 to the end of February 2021 as a Senior Claims Executive. Thomas Miller manages the UK P&I Club, which is larger than the London P&I Club managed by the corporate Respondent.

35. The Claimant earned £100,000pa at the start of her appointment and was earning approximately £105,062, by the time she left that role. In June 2019, the Claimant was awarded a bonus of £1,500 at Thomas Miller. In the following month, July 2019, the Claimant was awarded a £10,000 bonus and another bonus of £7,175 in July 2020. The Claimant received a car allowance of £5,400.

36. Whereas at the Respondent the Claimant would have been entitled to private medical and critical illness cover, there were no such arrangements at Thomas Miller, but the Claimant was paid bonuses at a level she readily agreed in the hearing that she was unlikely to have received had she remained at the Respondent. The pension contributions at Thomas Miller were at the rate of 12.5%.

37. The Claimant began her employment with Gard (UK) Ltd as a Senior Lawyer in the Defence and Charterers & Traders Team in March 2021. Her starting salary was £114,000pa. By the time of the remedy hearing, she was earning £117,500. At Gard the employer's contribution to the Claimant's pension is 12%.

38. The Claimant was dismissed in January 2018. At the end of the financial year 2017 – 2018, the Claimant earned £117, 423, which included a car allowance. The Claimant was paid 12 weeks' notice. At the time, the Respondent's contribution towards her pension was 9%.

39. The Claimant's past losses were calculated based on a comparison between her and KH's (her comparator in the Equal Pay claim) earnings from the end of her employment to today's date. That comes up to a total shortfall of £24,410. The Claimant would be entitled to interest on this amount as it is a loss arising from discrimination. Calculated at 8% = £4,171.00. (As set out on the Claimant's Excel spreadsheet – the period is 19 January 2018 – 19 May 2022 = 1582 days. The midpoint would therefore be 791 days. 0.08/365 x 791 = 0.173 x £24,410 = £4,171.00) The Claimant's net past losses = £28,581.00.

40. The Respondent did not challenge these calculations although it was the Respondent's position that the Claimant should have fully mitigated her losses within 12 months of her dismissal.

41. It is this Tribunal's judgment that these are net losses, taking into account the Claimant's reasonable expectations that had she remained in employment with the Respondent, she was likely to be earning more than KH, since by the time of her dismissal, she was outperforming him. The calculations take into account the pension losses associated with the pay. Although the pension contributions at her new employers both Thomas Miller and Gard – are generous, the Tribunal was not told of the rate of the Respondent's pension contributions over the relevant period and so we are unable to compare and determine whether that element removes any losses.

42. The Claimant mitigated her loss by securing a comparable role within three months, with a similar business. As soon as it became apparent that opportunities to progress at Thomas Miller were limited, the Claimant managed to secure another position and move on. It is for the Respondent to show that the Claimant has failed to fully mitigate her loss and the Respondent has failed to do so. The Claimant, as the sole breadwinner in her family, was keen to mitigate her loss and did so as soon as she was able. She gave evidence of her search for employment after a difficult and upsetting dismissal and we accept that she made as much effort as we would have expected. In this Tribunals' judgment, she has done all she could to be able to mitigate her losses.

43. This element addresses her loss of earnings, by a comparison of her actual wages in the period, with the actual wages of her comparator, KH, who as of today's date continues to be employed by the corporate Respondent. The Claimant was subjected to discriminatory treatment by the Respondent, while doing her job. This was because she queried her earnings, when she found out that she had been appointed to the same job as KH but was paid less. This caused her to be subjected to discriminatory treatment. The Claimant's losses under this heading could possibly be more than she has claimed given that at the time of her dismissal she had been outperforming KH. The claim is for a net loss figure of £28,581.

44. The Tribunal accepted the Claimant's figures presented to us and it is our judgment that the tax estimated for the relevant years was appropriate. The Claimant gave meticulous calculations, using spreadsheets, which the Respondent had sufficient time to consider and challenge.

45. This Tribunal awards the Claimant her past losses. It is also, as already said above, appropriate for her to be awarded interest as her dismissal was automatically unfair and discriminatory.

46. The Claimant is awarded a total of **£28,581** as net past losses.

47. Whilst employed by the corporate Respondent, the Claimant received a tax-free benefit of £243 per month by way of childcare vouchers. The Claimant

lost the tax credit during the 12-week notice period at the rate of £97.20 per month = (£97.20 x 3) a loss of £291.60.

48. There were subsequently changes in the childcare voucher scheme so that when the Claimant began her employment with Thomas Miller, the benefit was reduced. The value of the loss is £47.20 per month which equals £566.40per annum. Over 4 years from the date of her dismissal the loss is of £2,265.60. With added interest at the rate of 8% = 0.173 x £2,265.60 = £391.95. The total amount due to the Claimant for losses relating to the reduction in childcare benefit is therefore £391.95 + £2,265.60 = £2,657.55

49. The Claimant is awarded **£2,657.55** for this element of loss.

50. The Claimant was also entitled to be awarded the cost of counselling for her sons to address the impact of her stress disorder on her. This was for three sessions. In the liability judgment that Tribunal confirmed that the Claimant had suffered from a stress disorder caused mostly by her treatment by the Respondent. She was not disabled in accordance with the definition in section 6, Equality Act 2010 because the disorder did not last 12 months and was not likely to do so but it was our judgment that she did have the condition. The Respondent must reimburse the Claimant for this expense, which was warranted only because of the way in which the Claimant was treated, and the disastrous effect that treatment had on her for a short period of time.

51. By the date of this hearing, the Respondent had paid the Claimant the sums of £227 and £71 for counselling for her children but was resisting her claim for interest on those sums. The interest claimed is of **£38.41** and **£12.28**. The Tribunal awards the Claimant those sums.

52. The Claimant will also be awarded the sum of **£450.00** + **£77.85** interest for loss of statutory rights. This reflects the fact that she will need to work at least 2 years at a new employer before she has security in that employment and the right not to be unfairly dismissed.

ACAS

53. The corporate Respondent failed to follow the ACAS Code of Practice on grievance procedures. Mr Barr should not have dealt with the Claimant's grievance against Mr Roberts. We refer to paragraph 782 of the liability judgment.

54. We award the Claimant an uplift of 15% for this.

Future Loss

55. The Tribunal's purpose in determining the remedy due to the Claimant arising out of the discriminatory treatment by the Respondent is to seek to place her in the position that she would have been in had the unlawful conduct not occurred. We had to ask ourselves what would have happened in the scenario where no discrimination or detriment had occurred.

56. The Claimant's claims for future loss could be broken down into the following issues for the Tribunal. The Claimant firstly submitted that she would have continued to work as an Associate Director until Mr Roberts' retirement, that she would have succeeded him to the Board and remained on the Board until her retirement and then finally; that she would have enjoyed a lucrative consultancy arrangement with the corporate Respondent following her own retirement.

57. The Claimant was asking the Tribunal to conclude from the evidence, that Mr Roberts' role was likely to continue to exist in the future - following his retirement; that the role would exist in its current form with a like-for-like replacement; and that she would be the person the Respondent would choose as the like-for-like replacement.

58. The Respondent fiercely contested these issues in the remedy hearing.

59. The Claimant made detailed submissions on her position at Gard and her earlier position at Thomas Miller which can be summarised as follows: that she is presently performing a technical role that, although it has a comparable salary, does not present the same opportunities for promotion to director or even to manager-level as her role at the corporate Respondent. It is her case, and although the Respondent challenged this, we conclude that it is highly likely that those companies, like the corporate Respondent; are more likely to promote longstanding employees who are known to the company, to their potential subordinates, to clients and to the members of the relevant Club. The Claimant moved from Thomas Miller, where she was paid generous bonuses but where she assessed that there was little prospect of being given more management responsibility to Gard which manages a larger portfolio so where there are likely to be at least, better prospects of diversification of work.

So, what of her prospects at the Respondent, if there had been no discrimination?

60. We find that Steve Roberts is likely to retire in the Spring of 2024, on or around his 60th birthday. The corporate Respondent's Service Agreement showed that previous Directors have all retired from their Directorships no later than their 60th year. The last person to retire, Lance Johnson, did so in February 2007. The Respondent consolidated the work to the 2 remaining claims directors, Mr Barr and Mr Roberts, instead of replacing Mr Johnson. Mr Gooch is right that this practice of directors retiring at 60 is not enforceable in employment law as it could be seen as age discrimination, but it is our judgment that the written Service Agreement gives a strong indication of what is likely to happen with this Respondent.

61. The first question is whether Mr Roberts' specific role would exist in the same way after he retires. The Respondents submitted and Mr Gooch gave sworn evidence of changes within the industry that require the corporate Respondent to restructure in order to survive, of developments in the business that have reduced the priority of Greek business; and rising general costs pressures. The Claimant did not dispute the Respondent's assessment of the situation but did suggest that the total effect of all those matters was unlikely to have such a drastic effect on the Respondent's

business as portrayed. The Respondent's evidence was that as a result of all those changes/pressures, it could decide to continue with only one Director and not replace Mr Roberts. Mr Gooch's evidence was that many of the twelve other IG P&I Clubs adopt a structure with only one director dealing with claims. For example, at the West of England Club there is one Chief Claims Officer; at the Standard Club there is one Director of Claims; there is one Chief Claims Officer at Assuranceforenigen Skuld; and there is one Head of Claims at Steamship Mutual. He told us that all of these are larger Clubs with more claims to manage than the corporate Respondent.

62. This was one of the first matters we found difficult to conclude with any certainty. The Respondent could continue with one Director or equally, could replace Mr Roberts with the Claimant, or with another Associate Director being promoted to fill his position. In our judgment, given what we heard at the liability hearing, it is highly likely that the Greek fleets will continue to be important to the corporate Respondent's business, even if the business in the Asian markets continue to grow.

63. The Claimant believed that she would succeed Mr Roberts to the Board, instead of anyone else in the business. The first part of her claim under this heading was for lost earnings over this intervening period, May 2022 – Spring 2024. This was a total of £9, 615.00. She also claimed for the loss of opportunity of a directorship in the sum of £2.67m, covering a maximum period of 16 years up to her retirement age, and loss of opportunity of a consultancy after retirement in the sum of £335,458.

Directorship

64. The Claimant was doing well at the corporate Respondent in her role of Associate Director. She took on the task of managing staff and the corporate Respondent and her line manager, Mr Roberts were happy for her to deal with junior staff, new staff and at least 1 member of staff where there were concerns over performance. The Respondents clearly saw a future for her in the business as evidenced by the decision to pay for her to attend the MBA course (liability judgment para 40). The Respondent continued to support the Claimant's desire to continue with other modules in the MBA course and Mr Roberts confirmed to his fellow Directors that it was of potential value to the business (paragraph 79). Mr Roberts confirmed to the Claimant as early as 2016 that he saw her as a strong claims Associate Director and her added strengths were her interests in management skills and practices. He also referred to JP in the Greek office as someone who had the complete claims skillset on the team. (Paragraph 114).

65. In 2016, the Claimant was keen to get some clarity about her future prospects in the business and paragraph 121 of the liability judgment sets out her conversations with Mr Gooch about her prospects and in particular, in relation to the operating officer role they had discussed. Mr Gooch was receptive and made some notes about it which he sent to the other Directors. Nothing further was done on that proposal.

66. Sometime before any of this had solidified, the Respondent decided to step back from it and instead, at the end of that year, the Claimant was subjected to the disastrous appraisal process. It is our judgment that this was due to discriminatory reasons rather than because of any misconduct or lack of ability on the Claimant's part. The Claimant was described as *'overly ambitious'*, which we decided was only said because of her sex and not because her ambition was a flaw.

67. Barring the discriminatory treatment that she was subjected to - in relation to her desire to sit on an industry subcommittee, in the appraisal process, and in the objectives that she was set after the appraisal - it is likely that the Claimant would have continued to progress within the company and would have been in a good position to be considered for the directorship on Mr Roberts' retirement.

68. In his meeting with TT, Mr Roberts stated that *'Turning the clock back HB was the person I thought would be in the succession plan -that was the confidence I once had in her. If I were knocked over by a bus, I thought of the Greek Claims Team, she was the most suited to replace me.'*

69. The Claimant's skills were recognised as part of the appraisal process: that she saw the Club as a business and looked beyond her claims' role. We also noted that when Mr Roberts decided, on the Claimant's return from holiday in April 2017, that he no longer wanted her to take files with her to Mr Barr's line management, it was not because he was worried about her conduct of the clients' matters. It was because he did not want the work that he had spent years building up and his contacts with the Greek members of the Club to go to another Director.

70. However, the Claimant was not the only Associate Director in the business and unlikely to be the only person in line to take over from Steve Roberts, if she had remained in employment and if he retired in the Spring of 2024, as expected.

71. Of the other employees who might be considered for the role, if the Respondent was going to replace Mr Roberts on a like-for-like basis, the Claimant noted in her 4th witness statement that KH had been promoted to Corporate Counsel in 2021, which indicates that it is likely that he is being put into a position where he could be promoted to Director in due course. The Respondent submitted that in addition to him, there were other possible candidates who would have been considered, in addition to the Claimant such as JP, who operates out of the Greek office and who Mr Gooch stated was in Mr Roberts' succession plan, and others in Asia, since the Respondent's business out there has increased in the intervening period.

72. We find that it is likely that most of the London Club's business will continue to be in Europe and in particular, the Greek market although its business in Asia has grown over the last few years.

73. Most of the P&I Club's business as an insurer was in the Greek market, which Mr Roberts looked after. This was also the area that the Claimant was most familiar with as she worked with him. She was known to the ship

owners and the other people with whom the Respondent did business in that area. The Greek market represented at least half the corporate Respondent's business and the rest was from the rest of the world – and was looked after the other Director, Ian Barr.

74. The Claimant did not dispute the Respondent's assertion that the P&I Club's business had grown exponentially in Asia although she maintained and it is likely that most of its business was still in Europe and in particular, the Greek market. Mr Gooch's evidence was that the Greek business has been and remains an important part of the Club's business. The Club has also seen growth in the fixed premium business, which mostly comes from other markets, other than Greece.

75. We also conclude that there is a need to diversify as the Club has faced adverse trading conditions in 2019/2020 and 2020/2021 policy years and an increase in claims in 2021/2022, mostly made up of claims involving Covid-19. According to Mr Gooch, the impact of these negative developments was that it became necessary for the Board of the company to decide to levy what are known as 'Supplementary Calls' on the mutual membership. This action was announced in a Circular to Members, in October 2021. This was serious and the first time the company had taken such action since the global financial crisis in 2008. It is also an unusual step in the P&I market. The other issue highlighted by Mr Gooch in his evidence was the impact of the potential merger of two members of the International Group of P&I Clubs (IG). The Respondent is one of 13 members of the IG. The Claimant is employed by one of the bigger members. The proposed merger could affect the Respondent's share of the market. According to Mr Gooch, this could result in increased pressure to drive down costs and increase efficiencies, which could filter down into the Respondent needing to make different arrangements in how it handles claims in the future so that it does not simply replicate the past.

76. We conclude that it is likely that the Respondent will restructure the business on Mr Roberts' retirement. The Respondent may choose not to replace him and to deal with the management of the Greek fleet in a different way or may replace him. It could be that, as the Claimant submitted, the fact that she is no longer employed would be the most likely reason for not replacing Mr Roberts, as the other employees lacked the level of experience/expertise, but it is more likely that there are other suitable employees within the Respondent's business who could take over from him. KH could step into the role. Although the Claimant was told that she was outperforming him, that does not mean that it is certain that he would not have stepped up his performance in the intervening period. JP is based in Greece and from what we were told, she is and has always been a strong contender for a bigger role/promotion within the Respondent. The Tribunal agrees that the other candidates referred to by Mr Gooch were more junior, apart from RBR, also based in Greece, who also clearly has a bright future within the business.

77. The Claimant contended that there was potential for her to have become a Board member through an alternate route, by taking up the operating officer role which she had been in discussion with Mr Gooch about, before the

events that led to her dismissal. Mr Gooch had been in discussion with the Claimant about this, but it had not gone further than him sending notes of their discussion to the Board. We had no sense of how soon it was intended that this role would become a reality or whether the Respondents were also considering other ways of handling the work that had to be done. For the Claimant, those discussions reveal a concrete plan but that does not mean that there was such a plan and nothing that we heard during the liability hearing suggested that to us.

78. In conclusion, the Claimant had been with the corporate Respondent for 13 years, she had indicated that she wanted to progress within the company and the Directors were interested in continuing those discussions with her. She was capable and had completed an MBA and was keen to manage junior staff. She was not the only person to do so, and we held in the liability judgment that, despite being reluctant on occasion, KH also managed junior staff. It is likely that JP also managed junior staff in Greece.

79. We reiterate the relevant parts of paragraph 597 of the liability judgment. We are not able to say with any certainty whether the Claimant was the person who should be the next Director as we do not know in detail, the skills and abilities of the other employees who are just as likely to be equally qualified/skilled and who also had long service with the Respondent.

Would she have stayed in the role for 11 or 16 years as claimed?

80. The Tribunal considered this to be a speculative aspect of the remedy claim. This presupposes that all things would stay the same and that the Claimant's needs and wants would remain the same. It is highly possible that even if she were made a director that the business would have changed so drastically after Mr Roberts' departure or because of the Covid-19 pandemic or other unforeseeable event, that she would decide to leave the business and do something else after a shorter period of time. Nothing stays the same for 11 or 16 years. Although this was not something that the Respondent submitted, the Tribunal noted for instance, that over that length of time, the Claimant's children would have become independent, thereby giving her more freedom to choose how to spend her time.

81. The Respondent submitted that there are a number of changes taking place within the industry and within the business, which might mitigate against her staying in the role for the length of time proposed.

Consultancy

82. The Claimant has demonstrated that previous Directors had been offered and accepted consultancy roles upon stepping down from the Board at age 60. The Respondent submitted that such arrangements are not always offered to claims Directors. LJ, the most recent Director to retire, was offered a consultancy in respect of Far East marketing. The other 2 consultants were offered consultancies after retirement, in their area of expertise. The Respondent submitted that it has sufficient claims managers and would not need/require a consultant in this and would be unlikely to need one in the future.

83. Mr Gooch's evidence was that no director had ever had a full-time consultancy. The Claimant based her figures on the earnings from consultancy of PH, a former CEO, who was not an ex-claims Director. His consultancy work focussed on International Group affairs and at the start – was also aimed at supporting Mr Gooch in his new role of CEO.

84. We find that it is unlikely that even if she was offered a consultancy role and accepted it, that she would be paid the amounts claimed.

Conclusion

85. We can see why the Claimant believes that she would be the most likely person to be appointed as a director to replace Steve Roberts on his likely retirement in Spring 2024. That was her belief during her employment as she saw that as her best opportunity for progress and promotion within the business. This was reinforced by the statements that Steve Roberts made to TT during their meeting, when she was investigating the process leading up to the Claimant's dismissal/dealing with her appeal.

86. We had some sympathy for the Claimant's position in that regard and we acknowledged in the liability judgment that her appropriate ambition to progress to the post of director contributed significantly to the situation that developed and her experiencing discriminatory treatment by the Respondent since they were opposed to it.

87. However, there are a few factors which have been submitted to us today which go against the Claimant's certainty, and which mean that we judge that we cannot order that which she seeks:

88. Mr Roberts' retirement is projected for Spring 2024. The Respondent's case is that he is not going to be replaced and that Respondent is going to go down to one director. There are other companies within the group, doing similar business, who have one director. It is a distinct possibility that the Respondent will take this route.

89. If that happens, which from today's evidence and submissions, which the Claimant was not in a position to challenge, there will be no director role for the Claimant to be slotted in to.

90. Even if there were a director role, there are other employees with an equal chance of being appointed to it. The Claimant had a belief that she was the strongest candidate for the role across the whole business. The evidence was that she was a strong candidate but that there were others, with different strengths, such as KH or JP, who would have competed quite strongly with her for the role.

91. The Tribunal was encouraged today by the evidence from the Respondent that the majority of equally excellent candidates who could be considered for the role, like JP, who we were told at the liability hearing was very good at her job; and others, are all women. This is a hopeful sign that the

Respondent will in future be promoting on merit and not based on sex. This also means that the Claimant would not have been a definite shoe-in to replace Mr Roberts, if the Respondent decided that it would keep the structure as it was during her employment.

92. We took into account the corporate Respondent's proposals to restructure the client, the P&I Club and the outlined changes in terms of the merger of other companies within the Group and the way in which that might affect the industry.

93. Although she strongly refutes this as a possibility, the Claimant may also have left the Respondent of her own accord, either on Mr Roberts' retirement or soon after, especially if the business changed beyond all recognition and she did not like how the Respondent was dealing with his legacy or the Greek claims work.

94. For all of those reasons, it is this Tribunal's decision to decline the invitation to award the Claimant compensation for the loss of opportunity of becoming a director or a consultant. This Tribunal considers that there are too many variables to consider and determine with any certainty to be able to predict even the percentage chance of the Claimant becoming a director and even more uncertainty in relation to a consultancy. This would require us to project 11 or 16 years into the future. Covid-19 is an example of a completely unpredictable event which nevertheless affected all business and all industries across the world. We consider that it would be too speculative to make an award for loss of the directorship, which we judge is more likely that the consultancy, which seems remote in time and difficult to predict from here.

95. We do award the Claimant the sum of **£9,615.00** for the lost earnings over the intervening period between the date of the end of the lost wages and Steve's retirement. We do not speculate on the Claimant's bonus for 2023/2024. We award the amount in the spreadsheet.

96. We also award the Claimant reimbursement of the loss of tax-free childcare vouchers up to her youngest son's 15 birthday, on 20 September 2022, which comes to **£283.20.**

Injury to feelings

97. In dealing with this element of compensation, the Tribunal is considering a time span beginning in 2013 and continuing until the judgment was given in 2020. The Respondent delayed in making any payments towards satisfaction of the Claimant's equal pay claim until October 2020, after the Tribunal's instruction at the preliminary hearing, that it should do so.

98. We considered that the persons who discriminated against the Claimant were senior within the Respondent and that she succeeded in her complaints against the 2nd and 5th Respondents, who were directors. We also judged that this business employs lawyers and that the Respondents would have had the benefit of legal advice at any point in their relationship with the Claimant, should they have chosen to avail themselves of it.

99. The impact of the discrimination on the Claimant has been profound and we heard evidence today from her on this. By all accounts it had a devastating effect on her mental health, so much so that her children needed counselling so that it did not also affect them. This is a professional and capable woman who was good at her job and who was keen to progress within the business and who was capable yet, found herself being treated in a discriminatory way because she insisted on being treated fairly and being given answers to her legitimate questions. She pursued legitimate matters. It was not a betrayal of the Respondent to ask about her pay or that of her comparator or to ask to be paid equally or given a good reason for the difference.

100. Asking to be paid the same as your colleague who is doing the same work is not something that should upset an employer or make it take against you at all or to the extent that it caused this employer to take against this employee. It is our judgment that this is what happened to the Claimant and what should not have happened. This was based on the fact that she was a woman as well as her protected disclosures.

101. The other stressors the Claimant faced, which the Respondents referred to in their submissions, such as marital breakdown and being a sole parent; were stressors that the Claimant had been living with for some time and which she had made accommodation with. They had not made her ill, or breakdown at work or be unable to go to work. At times covered in the liability judgment, the Claimant's symptoms were severe enough to require medication, but she refused it because she chose not to and because of her family history with anti-depressants.

102. The discrimination the Claimant suffered affected her ability to drive, caused or contributed to palpitations, breathlessness, stress, depression and anxiety. She experienced sleep problems and difficulty with memory and concentration.

103. The injury to feelings were caused by the discriminatory state of affairs that existed at the Respondent in relation to the Claimant. The Respondents were well aware of the existing stressors in the Claimant's life at the time.

104. It is this Tribunal's judgment that the Claimant suffered severe injury to feelings as a consequence of the acts of discrimination we judged to be well founded. It is also our judgment that any impact on her health and wellbeing that is solely attributable to non-discriminatory acts are minor and negligible.

105. We therefore award the Claimant injury to feelings at the top band of Vento in the sum of £40,000. It is our judgment that all aggravating features are covered in this award for injury to feelings.

106. By the time the Tribunal reached this decision and delivered its judgment, it was late in the day. After discussion with the parties, it was agreed that the parties would work out the grossing up figures on the remedy judgment and send this to the Tribunal so that it could be inserted in the judgment that would be put on the record. There were some errors in the first iteration of

the judgment but after a reconsideration, the correct remedy judgment was promulgated on 23 March 2023.

107. The Tribunal's judgment is that the Claimant is entitled to the following remedy:

Basic Award: - £489.00pw x 11 (11 years under 41)	- £5,379.00
-£489.00pw x 3 (2 years over 41)	- £1,467.00
	£6,846.00
Compensatory Award: -	
Equal pay claim:	**£3,019.00**
Past lost wages: £24,410 + interest of £4,171=	**£28,581.00**
Reduction in childcare voucher benefit = £2,265.55 + 392	**£2,657.55**
Interest on the cost of counselling for children	**£38.41**
Interest on the cost of travelling to meetings	**£12.28**
Loss of statutory rights: 450.00 + £77.85 interest	**£527.85**
Future loss of earnings	**£9, 615.00**
Future loss of tax-free childcare vouchers	**£283.20**
Total compensatory Award:	**£44,734.29**
	£51,580.29

ACAS uplift of 15% for breaches of the ACAS Code of Practice (only on Compensatory Award):

£44,734.29 x 15% **£6,710.14**

Total: **£58,290.43**

Discrimination

Injury to feelings + (£40,000 plus compound interest as agreed) [pre-termination £32,650 and post-termination £21,190] **£53,840.00**

ACAS uplift of 15% for breaches of the ACAS Code of Practice:

£53,840.00 x 15% = £8,076 = **£61,916.00**

The total award due to the claimant before grossing up is **£120,206.43**

The sum awarded as compensation for the successful equal pay claim will

be paid through the respondent's payroll and taxed accordingly.

£120,206.43 less £3,019.00 = £117,187.43. The first £30,000 will be tax free. The parties have calculated that the amount to be added by way of grossing up is £38,653.98.

Interest has been added to each element above in accordance with the Employment Tribunals (Interest on Awards in Discrimination cases) Regulations1996 at the rate of 8%, compounded.

The Claimant's total award for her successful claims is £120,206.43 + £38,653.98 = **£158,860.41**.

The Respondent is ordered to pay the Claimant the sum of **£158,860.41.**

Employment Judge Jones

20 December 2023