EMPLOYMENT TRIBUNALS

Claimant: JKL

Respondent: Comfort Care Recruitment and Training Ltd

Heard at: Watford Employment Tribunal (In Public; In Person)

On: **5 February 2024**

Before: Employment Judge Quill; Ms Hancock; Mr Wharton

Appearances

For the Claimant: In Person

For the respondent: Mr Turpin, Litigation Consultant

JUDGMENT and reasons having been given orally on 5 February 2024, and written reasons having been requested at the hearing in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided

REASONS

Law

1. The purpose of compensation is to provide proper compensation for the wrong which we found the Respondent to have committed. The purpose is not to provide an additional windfall for the Claimant and is not to punish the Respondent.

2. Section 124 of the Equality Act 2010 ("EQA") states, in part:

> 124 Remedies: general
>
> (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
>
> (2) The tribunal may—
>
> (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
>
> (b) order the respondent to pay compensation to the complainant;
>
> (c) make an appropriate recommendation.

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

(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court … under section 119.

3. Section 119 of EQA states, in part

(2) The county court has power to grant any remedy which could be granted by the High Court—

(a) in proceedings in tort;

(b) on a claim for judicial review.

(4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

4. The loss must flow "directly and naturally" from the tort. There is no requirement that the loss should be reasonably foreseeable. Essa v Laing Ltd [2004] IRLR 313.

5. For financial losses, we must identify the financial losses which actually flow from complaints which we upheld. We must take care not to include financial losses caused by any other events, or losses that would have occurred any way.

6. For injury to feelings, we must not simply assume that injury to feelings inevitably flows from each and every unlawful act. In each case it is a question of considering the facts carefully to determine whether the loss has been sustained. Some persons who are harassed and/or victimised may feel deeply hurt and others may consider it a matter of little consequence and suffer little, if any, distress.

7. When making an award for injury to feeling, the tribunal should have regard to the guidance issued in *Vento v Chief Constable of West Yorkshire Police (No 2) [2003] EWCA Civ 1871*, *[2003] IRLR 102*, *[2003] ICR 318, CA*, and taking out of the changes and updates to that guidance to take account of inflation, and other matters. Three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury, were identified:

   a. The top band was (at the time) between £15,000 and £25,000. Sums in the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.

   b. The middle band was, initially, £5,000 and £15,000. It is to be used for serious cases, which do not merit an award in the highest band.

   c. The lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. Awards in this

band must not be so low as to fail to be a proper recognition of injury to feelings.

8. In Da'Bell v NSPCC (2009) UKEAT/0227/09, [2010] IRLR 19 the Employment Appeal Tribunal revisited the bands and uprated them for inflation. In a separate development in Simmons v Castle [2012] EWCA Civ 1039 and 1288, [2013] 1 WLR 1239, the Court of Appeal declared that - with effect from 1 April 2013 - the proper level of general damages in all civil claims for pain and suffering, would be 10% higher than previously. In De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879, the Court of Appeal ruled that the 10% uplift provided for in *Simmons v Castle* should also apply to Employment Tribunal awards of compensation for injury to feelings and psychiatric injury.

9. There is presidential guidance which takes account of the above, and which is updated from time to time. This claim is one which was issued in October 2022. The relevant guidance applicable to this claim is the fifth addendum which states:

> *In respect of claims presented on or after 6 April 2022, the Vento bands shall be as follows: a lower band of £990 to £9,900 (less serious cases); a middle band of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300.*

10. As part of the assessment, of financial loss flowing from a dismissal, the tribunal must take into account the chances that the Claimant would have left the Respondent's employment, even in the absence of contraventions of EQA. That includes the chances of voluntarily resigning, or of being dismissed, in such circumstances. Chagger v Abbey National plc Neutral Citation Number: [2009] EWCA Civ 1202. When making decisions on this aspect of the claim for financial loss, the principles of assessment of compensation for unfair dismissal cases set out by House of Lords in Polkey v AE Dayton Services [1987] IRLR 503, and the guidance expanded upon in subsequent cases, can be of assistance.

11. In making such an assessment the tribunal, there are a broad range of possible approaches to the exercise.
    a. In some cases, it might be correct to restrict compensatory loss to a specific period of time, because the tribunal has concluded that that was the period of time after which, following a non-discriminatory process, a non-discriminatory dismissal (or some other non-discriminatory termination) would have inevitably taken place.
    b. In other cases, the tribunal might decide to reduce compensation on a percentage basis, to reflect the percentage chance that there would have been a dismissal had a non-discriminatory process been followed (and acknowledging that, in the absence of the contraventions of EQA, as per the liability decision, there might have been an outcome other than termination).

12. EQA requires that tribunals apply the same rule concerning the duty of a person to mitigate their loss as to damages recoverable under the common law. Where the employee has mitigated, a tribunal should give credit for sums earned. Generally speaking, the obligation on a claimant is to try just

as hard to mitigate their losses (for example, to obtain a new job to replace all of the income that they would have received from the job with the respondent) as they would have tried had they had no expectation of receiving an award of damages or compensation from the tribunal.

13. So the approach is:
    a. Consider what steps it would have been reasonable for the claimant to have had to take to mitigate their loss;
    b. Ask if the claimant failed to take reasonable steps to mitigate their loss;
    c. Decide to what extent would the claimant have mitigated their loss had they taken those steps

14. It is for the Respondent to prove that the Claimant has unreasonably failed to take appropriate steps, and that – on balance of probabilities - had those steps been taken, then the losses would have been mitigated.

15. If it is appropriate to make a deduction for the employee's failure to mitigate their loss, the tribunal does not reduce the financial loss award that it would otherwise make by a percentage factor. The correct approach is to make a decision about the date on which the Claimant would have found work had they been acting reasonably to seek to mitigate their losses, and then make an assessment of what income they would have had from such work.

ACAS

16. The ACAS Code of Practice on disciplinary and grievance procedures must be taken into account by the employment tribunal if it is relevant to a question arising during the proceedings. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides.

> (2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
>
> (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
>
> (b) the employer has failed to comply with that Code in relation to that matter, and
>
> (c) that failure was unreasonable,
>
> the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

17. So, a failure to comply with a Code has to be an unreasonable failure for this provision to have effect. Some failures might not be unreasonable, and so that is one of the decisions the Tribunal has to make.

18. The correct approach is to first consider if there was an applicable code, and if so, decide if the party (in this case, the Respondent) had obligations under the code, and, if so, if it breached them. Then decide if that breach was

unreasonable. If so, then decide if there should be an uplift, and fix the amount.

19. The maximum is 25%, and that might be – but is not necessarily – appropriate in cases where there is a complete failure. However, taking into account whether there was partial compliance, and other relevant factors, including the Respondent's size and resources, and the reasons for the default, then the uplift (if any) can be fixed at any appropriate figure which does not exceed 25%.

20. The award must be proportionate. If the amount produced by the (provisionally) appropriate percentage would lead to an uplift which was disproportionately high, the Tribunal must reduce the award to an amount which is proportionate, so as to ensure that, in the words of the statute, the award is actually "just and equitable".

Hearing and Evidence

21. We made the findings of fact set out below. In doing so, we took into account the evidence that was presented at the remedy hearing on 5 February 2024, as well as that which we had already heard during the liability hearing. We had all the documents from the liability hearing available to us, and the bundle and statements were on the witness table.

22. In addition to the documents from the liability hearing, we were provided a remedy bundle of 127 pages (plus index). There were also 12 additional pages of Universal Credit statements from the Claimant. In breach of the orders, the Claimant had not sent these to the Respondent and (in breach of Rule 92) had sent them directly to the Tribunal without copying in the Respondent. We arranged for copies to be provided to the Respondent's representative and placed on the witness table.

23. The Claimant had not prepared a new witness statement for the remedy hearing (notwithstanding the contents of the case management orders sent to parties in preparation for this hearing) and instead proposed to rely on the witness statement that was her evidence in chief at liability hearing. Liability Bundle page 70; Remedy Bundle 117. She gave evidence on oath. Her evidence-in-chief was supplemented by responding to the judge's questions. She was then cross-examined, and answered questions from the panel.

24. During the Claimant's oral evidence, she accepted that she had been in receipt of Universal Credit since not long after the termination of her employment with the Respondent. She said expressly that she was confused by the dates, and it was clear to the panel that that was the case. In particular, we could see that some of her answers were misattributing to 2023 (in September of which, the liability hearing took place) events which we knew (and had already decided) actually took place in 2022 (in September of which, she was dismissed by the Respondent).

25. For that reason, and without objection from the Respondent, we took the Claimant up on her suggestion that she could look at her phone during her evidence and give more accurate information about benefits than she was able to do from memory alone. She read out the amounts paid to her in every month from August 2022 onwards, and gave the breakdowns for particular months. We allowed the Respondent's representative the further opportunity to cross-examine following the provision of this oral evidence.

26. The Respondent called no new witness evidence for this remedy hearing.

Facts

27. It is not necessary for us to quote extensively from the liability decision. We draw on the findings of fact we made then, and from our conclusions at that stage, when making our further findings at this stage.

28. We draw no adverse inferences from the Claimant's breach of the orders. In particular, we are satisfied that her failure to disclose all of the relevant Universal Credit documents was not an attempt to mislead the Tribunal or the Respondent. We are satisfied that the Claimant genuinely (and honestly) made a mistake about what documents she was required to disclose. Her schedule of loss prepared in advance of the liability hearing (Liability Bundle page 49; Remedy Bundle page 111) declared receipt of Universal Credit. She made no deliberate attempt to persuade the Tribunal or the Respondent that she did not get Universal Credit until around 10 or 11 months after the termination.

29. More generally, we observed at the liability hearing that the Claimant was finding the litigation process difficult. That was still true at this remedy hearing. She had not updated her schedule of loss, and it did not, for example, include any sum for (alleged) injury to feelings. The Claimant stated that she was content for the Tribunal to make the remedy decision based on the evidence, and that was her genuine opinion. She answered all questions to the best of her ability, but clearly struggled to cast her mind back and to recall which events happened on which dates, and/or in which sequence.

30. The Claimant had illness after Friday 2 September 2022, as discussed in detail in the liability decision. She produced a GP Fit Note to the Respondent dated 6 September 2022. [Liability Bundle 122.] This signed her off as unfit to work for a month.

31. There were further periods when she was unfit for work as certificated by her GP. These were 4 October 2022 to 4 November 2022 and then 3 November 2022 to 15 December 2022.

32. Liability Bundle 130 to 131 were consecutive entries from the Claimant's GP notes from September 2022 to February 2023. There was no further fit notes

after the one issued on 3 November, because the next entry was 10 February.

33. In the meantime, however, the Claimant had been referred to the local NHS trust (Central And North West London NHS Foundation Trust) and specifically to the CNWL Talking Therapies Service – Brent. That referral, on 9 September 2022 (Liability Bundle 124) was made because the Claimant required an urgent referral as a result of events at work.

34. It is important for us to seek to distinguish between the consequences of the physical attack on the Claimant by Ugo (which was not one of the contraventions of EQA for which we are compensating the Claimant) and the consequences of the EQA breaches as set out in the liability judgment.

35. As confirmed by the GP notes themselves, and as confirmed by the GP letter dated 27 February 2023 (Liability Bundle 129) when the Claimant sought assistance from the GP on 6 September 2022, it was not (only) because of the physical assault (though that was mentioned), but it was because of the sexual harassment by Mr Ozour. (See also paragraphs 96 and 221 of liability reasons).

36. A letter from CNWL Talking Therapies Service (authored by a High Intensity CBT Therapist) was sent to the Claimant and her GP on 24 November 2022. (Liability Bundle 126). This gave details of the Claimant's appointment on 24 October 2022. The letter accurately conveyed information which the Claimant had supplied on 24 October 2022, and our finding is that these were the Claimant's genuine opinions and emotions:

> You described going through a really difficult, traumatic event at the work place, Since then you stated you have been struggling with flash backs, nightmares, low mood and anxiety. You reported feeling traumatised, experiencing strong physical symptoms and constantly feeling on edge. You reported as a result of what happened, you have lost interest In doing things, You reported you stay at home most of the time and avoid doing things. You reported constantly overthinking and struggling to find a new work place.

37. The clinician had performed some tests, and drawn up some scores. The letter advised that, in the clinician's opinion, the Claimant was suffering from severe levels of depression and severe levels of anxiety.

38. The Claimant had not been receiving treatment prior to that date, but a plan for Cognitive Behavioural Therapy ("CBT") was discussed. In particular, the Claimant was to go on a waiting list for it.

39. A further letter, dated 10 February 2023, from the Trust to the Claimant's GP is page 128 of liability bundle. This was from an assistant psychologist and our finding is that it contains an accurate summary of the Claimant's state of mental health at the time:

> [JKL] has been attending sessions of guided self-help whilst on the waiting list for CBT with the CNWL Talking Therapies Service Brent. In her last session, she reported that she was bothered by thoughts that she would be better off dead or of hurting herself in some way, on more than half the days over the last two weeks.
> [JKL] will continue to be offered sessions of treatment with the CNWL Talking Therapies Service Brent. However, I would also invite you to monitor her risk. If at any time you feel that [JKL's] symptoms have worsened, and she requires urgent help or support, please refer her to secondary care mental health services via the Single Point of Access (SPA) on …

40. As per the letter, in the two weeks prior, the Claimant had often had thought of thinking she would have been better off dead, or of harming herself. We are satisfied that the sexual harassment, and the dismissal, were a very significant cause of these feelings. In other words, 5 months later, the Claimant was still suffering severe effects which were caused by the EQA contraventions which we found had occurred.

41. We also take into account the whole of the GP letter of 27 February, which, amongst other things, stated:

> She was seen by Dr Telfer here for a review consultation on 17/02/2023 as a result of this letter. During the consultation she reported poor sleep, reduced appetite, stress, and low mood. Dr Telfer discussed options for managing this and [JKL] was started on a course of Mirtazapine 15mg, once per day, at night. Mirtazapine is a medication used to treat depression and anxiety.

42. Our finding is that the contraventions of EQA as per the liability decision (three acts of harassment of a sexual nature, plus the dismissal, which was a further act of harassment and an act of victimisation) were a significant contribution to the Claimant's mental health, as set out in the medical evidence in the bundle. We accept that some contribution was also made by what Ugo did on 2 September 2022 (as described more fully in the liability decision). There is no later medical evidence in the bundle. However, that medical evidence does make clear that the Claimant was not expected to improve instantaneously after 27 February 2023, and we find that she did not do so.

43. The effects have continued, and the Claimant has not yet completely recovered as of the dates of the liability hearing in September 2023 (so a year after leaving the Respondent's employment) or this remedy hearing (almost 17 months after leaving).

44. In oral evidence, the Claimant stated that one of the effects is that she is fearful of returning to a workplace where there are men. That is not expressly mentioned in the medical evidence and is not in the Claimant's written statement. The Respondent invites us to reject this assertion on the basis that it is inconsistent with the fact that she has applied for jobs (and had first done so by no later than November 2022) in places where men work. However, we believe the Claimant's oral evidence on this point. It is consistent with comments in the medical evidence (including that she was suffering from flashbacks and staying at home most of the time, and

struggling to find a new workplace). Furthermore, it is not inherently implausible and the fact that the Claimant has, in fact, applied for jobs at places were men work is simply a reflection of the fact that almost every work place does have men in it. The fact that it has not proven impossible for the Claimant to make those applications does not imply that she has lied or exaggerated when describing this aspect of the injury to feelings.

45. The Claimant has not worked since leaving the Respondent's employment.

46. When working for the Respondent, her contract specified £27,000 per year. We accept the figure from the Respondent's counter-schedule that the net amount would be equivalent to £430.43 per week.

47. The Claimant was supposed to be paid monthly. She was paid for July and August. As far as we are aware, she was paid her correct contractual entitlement for each of those months (and, even if there was any underpayment in those months, our decision is that that was not because of any of the contraventions of EQA which feature in the liability judgment).

48. The Claimant was not paid at all for September 2022, even for the part of the month that she was an employee, and our decision is that the non-payment for the whole of September (including the failure to pay for the period in which she was an employee) is a loss flowing from the harassment and victimisation, and, in particular, from the Respondent's decision to dismiss the Claimant in the circumstances set out in the liability decision, in response to her emails which alleged and described sexual harassment.

49. Starting from September 2022, and to the date of the remedy hearing, the Claimant's Universal Credit payments have been as follows:

Pay Date	**Assessment Period**	**Amount**
07.10.2022	September 2022	£1217.41
07.11.2022	October 2022	£1217.41
07.12.2022	November 2022	£1217.41
07.01.2023	December 2022	£1217.41
07.02.2023	January 2023	£1571.69
07.03.2023	February 2023	£1571.69

07.04.2023	March 2023	£1571.69
07.05.2023	April 2023	£1661.65
07.06.2023	May 2023	£1776.19
07.07.2023	June 2023	£1776.19
07.08.2023	July 2023	£1776.19
07.09.2023	August 2023	£1776.19
07.10.2023	September 2023	£1776.19
07.11.2023	October 2023	£1776.19
07.12.2023	November 2023	£1785.95
07.01.2024	December 2023	£1831.50
07.02.2024	January 2024	£1831.50
estimated	1 to 5 February 2024	£315.78
TOTAL		**£27,668.23**

50. We have estimated the payment (that will be made in March) for the first five days of February 2024 based on the assumption that the monthly amount will remain £1831.50 (£1831.50/29 x 5). For all the other months, the assessment period is from the first day of the month to the last day of the of the month.

51. Immediately prior to the periods listed in the table above, the Claimant received £966 (for assessment period 1 to 31 July 2022) and £984.21 (for assessment period 1 August to 31 August 2022). For those months, DWP appear to have treated her earnings from work as being £250.80 and £768 respectively. On the face of it, that is a lot less than we would have expected based on a gross annual salary of £27,000 (so £2250 per month gross). For net loss, the Claimant's estimate of her monthly net salary was £1820 and the Respondent's was £1865.20. We do not find that the Claimant

deliberately under-declared her income, and we note her explanation that the Respondent failed to provide payslips. However, it is clear that her actual Universal Credit entitlement for those months would have been less than the payments received had the calculation been based on take home in excess of £1800 for each of the months in question.

52. The Respondent invites us to decide that the fact that the Claimant's Universal Credit assessments show income of £170.55 each month (described in boilerplate text as for "*Other income: We take money off your payment for other income that you have. For example, pensions and educational grants*.") means that we should infer that the Claimant is actually studying. We accept the Claimant's evidence on oath that she is not studying in the current academic year, and that she has not been undertaking any period of training or study since the end of her employment. The Claimant's opinion is that DWP must still be treating her as if she still receiving the grant that was applicable for the course that she took which ended shortly before starting work with the Respondent, even though she has had no payments since the end of the course. Regardless of whether she is right or wrong about that, our finding is that: (i) the £170.55 does not represent earnings from any job; (ii) the £170.55 is not a sum which mitigates the Claimant's losses (as it was included in her Universal Credit assessments during her employment as well as after).

53. The Claimant applied for around 4 to 6 jobs in the care/health sector, including via TRAC. Only one rejection email is in the bundle (Liability bundle 125) and is from 15 November 2022, but we do accept that there were other applications too.

54. She also went through the initial stages of police recruitment, but was unsuccessful (in around May 2023, to best of the Claimant's recollection, though she is not certain). DWP made some suggestions to her, and for one of those, she declined to pursue it as she did not think she would be able to fulfil the management functions required for that particular job.

55. For the Universal Credit payments relating to 2022, there was no allowance/amount in the category

> **Limited capability for work and work-related activity**
>
> You said your health affects you at work or prevents you from working

56. As we have said already, however, from mid-September 2022 to 15 December 2022, the Claimant's GP had accepted that she was not fit for work.

57. From January 2023 onwards, DWP has accepted, and made allowance in the Claimant's Universal Credit, that the Claimant's health affects her ability to work. We accept, therefore, that the Claimant's health has had an effect on her ability to look for work, and to find work that she might be able to

undertake. She was not completely incapable of applying for jobs, and she did apply for some.

Analysis and conclusions

Has the Claimant acted reasonably so as to mitigate the losses

58. We are not persuaded by the Respondent that the Claimant has acted unreasonably and that she has failed to take reasonable steps to attempt to mitigate the financial loss.

59. We have taken into account that, as per the findings of fact above, she has not applied for many jobs in the 16 or 17 months since leaving the Respondent's employment. We have also taken into account that from the end of employment to 15 December 2022, her GP did not regard her as fit for work, and that from 1 January 2023 onwards, DWP has accepted that her health limits her ability to work. In those circumstances, we do not regard the low number of applications as unreasonable.

60. The Respondent invites us to decide that (i) some part of the Claimant's mood or feelings was caused by the difficulties in finding work and (ii) that this was (therefore) not something for which the Respondent was liable to compensate the Claimant. Even if that argument was accepted (and we comment on it below in relation to injury to feelings) it would not demonstrate that there had been an unreasonable failure to mitigate her losses.

61. We make no reduction to the financial losses that we would otherwise award for the period up to today's date for past financial loss, as result of alleged failure to mitigate.

Chagger

62. In the liability reasons, we set out at length what the Respondent had asserted about the Claimant's alleged attendance and lateness. We rejected the Respondent's argument that it had previously given the Claimant any warning for those matters, or that those matters had been raised as a cause of concern prior to the dismissal. Similarly, we were not persuaded that there was any chance that the Claimant would have been disciplined or dismissed for alleged bullying (taking into account the lack of evidence that there had been complaints and taking into account that there was evidence that Mr Ozour was informing the Claimant that she needed to be strict).

63. The Claimant did nothing to encourage the harassment by Mr Ozour. There is a finite chance (and she discussed this in her evidence at the liability hearing) that Mr Ozour's conduct towards her would have caused her to resign had she not been dismissed. However, that is not the type of non-discriminatory termination of employment which should be taken into account

when assessing the chance that her loss of income from the employer might have occurred in any event, even in the absence of contraventions of EQA. In the hypothetical alternative scenario of resigning in response to (or partially in response to) the harassment of a sexual nature, she would still have had the opportunity to ask a tribunal to compensate her for loss of earnings.

64. Our findings at the liability stage were, and still are at this stage, that the Claimant was keen to make the employment opportunity with the Respondent work out well for her. She was willing to stay late to get the job done. She was willing to be as diplomatic as possible, rather than confrontational, when seeking to make Mr Ozour aware that his advances were not welcome and his feelings were not reciprocated. Had the sexual harassment ended, then we are satisfied that the Claimant would have remained in employment (rather than resigned) and that the Respondent would have had no fair and non-discriminatory reason to dismiss her.

65. We take into account that the Claimant's was very upset by Ugo's conduct on 2 September 2023. However, we are satisfied that, following a period of sickness absence, perhaps, and if the Respondent had not been motivated to victimise the Claimant or subject her to harassment as per section 26(3) EQA, the Claimant would have resumed her duties in due course.

66. We make no reduction to the financial losses that we would otherwise award on account of the chance of the Claimant's employment terminating in the absence of the contraventions of EQA identified in the liability judgment.

Period of financial loss

67. As discussed in the findings of fact, we have no up to date medical evidence. We do accept that DWP still currently regard the Claimant's ability to work as being impaired by ill-health.

68. As an industrial jury, we are entitled to, and do, take into account that employees in the care industry (including at managerial level) are in high demand. There are not too few jobs to go round; it is the opposite.

69. We are satisfied that once the Claimant is fit enough to make a number of job applications, she will be appointed fairly quickly to a job which matches the income she had with the Respondent (£27,000 gross per annum).

70. Doing the best we can with the available information, our assessment is that after 26 weeks from today, the Claimant will have sufficiently recovered that she has been able to apply for enough jobs, and to have been made an offer, and to have completed vetting, such that she will have completely replaced her loss of income from the Respondent.

ACAS Uplift

71. Both the grievance section and the disciplinary section of the "ACAS Code of Practice on disciplinary and grievance procedures" have to be considered in this case.

72. It is true that, as per liability bundle page 121, the Claimant was invited to a meeting. The invitation was 5 September 2022, and the meeting was to be 7 September 2022. We quote from it at paragraph 94 of liability reasons and (in paragraphs 93 to 95) explain why we rejected the claims that there had been an earlier invitation. In paragraphs 96 to 100, we noted that the Claimant did not attend the meeting, and we comment on why that was.

73. This meeting was to discuss the 2 September 2022 incident. The Claimant's (alleged) role in that incident was one of the (purported) dismissal reasons. Thus, to the extent that there was a meeting offered to discuss that issue prior to dismissal, there was partial compliance with the Code.

74. The breaches of the Code would still include:

    a. Of paragraph 7 and/or 10, that an investigatory meeting should not by itself result in disciplinary action or else that the right to be accompanied should have been mentioned if it was intended as a disciplinary meeting

    b. Of paragraph 9, that if there was a disciplinary case to answer, the employee should be notified of that fact (and of details) in writing

75. However, in the event, the Claimant's dismissal letter purported to rely on various other matters, such as alleged bullying and "making false allegations of sexual harassment". There was a complete failure to invite the Claimant to any meeting to discuss those allegations.

76. There was also a complete failure to offer an appeal against dismissal. As per the liability reasons, we rejected the claim that there had been previous warnings.

77. The failures to follow the ACAS code in relation to the (alleged) disciplinary reasons for the dismissal was unreasonable, even for a small employer. The Respondent had over 100 employees working in a regulated sector, and better practice than this could be reasonably expected. Further, at the liability hearing, Mr Ozour claimed that the Respondent did have employment policies, and that it followed them.

78. In addition, the Claimant's email of 12 September, discussed in detail in the liability reasons, fell squarely within the definition in paragraph 1 of the introduction to the Code:

> Grievances are concerns, problems or complaints that employees raise with their employers.

79. There was a complete failure to follow the Code to handle this. The Claimant was simply dismissed.

80. The Respondent's failures to follow the Code were unreasonable, and an uplift is appropriate in all the circumstances.

81. We have noted that the Claimant seeks a 10% uplift, rather than the maximum 25%. We would have been likely to award less than the maximum - even had it been requested - to take account of the Respondent's size, the fact that the Claimant was in her probation period (and had worked there for a fairly short period of time) and the fact that there was an invitation to a meeting (albeit not to discuss the grievance, and albeit not to discuss all of the matters later described in the dismissal letter).

82. We have considered whether, taking into account that the Claimant is a litigant in person, we should, of our own initiative, award an uplift that is higher than 10%. We have decided not to do so. The 10% uplift is just and equitable and that is what we award.

Calculations of Financial Loss

83. In principle, the calculation would be:

> [Earnings from the Respondent] plus [Universal Credit entitlement while employed by the Respondent] minus [[Universal Credit entitlement while unemployed]

84. However, it up to the Claimant to prove her losses, and, on the evidence provided, we have not been satisfied that she would have had any Universal Credit entitlement while employed. Her monthly gross income from the Respondent would have been £2250, and it has not been proven to our satisfaction that this would not have eradicated any ongoing entitlement had she remained in employment and once the DWP was in full possession of her income details.

85. Taking into account that the Claimant was not paid at all for September 2022, we assess that (but for the contraventions of EQA) for the period 1 September 2022 to 5 February 2024 (74 weeks and 5 days), the Claimant would have been paid by the Respondent (at £430.43 per week) the net sum of £32,159.27.

86. The aggregate of her Universal Credit for that period is was £27,668.23.

87. Thus her financial loss to 5 February 2024 was (£32,159.27 - £27,668.23 =) £4491.04.

88. Her current Universal Credit is £422.65 per week. Thus, the Claimant's ongoing weekly loss is (£430.43 - £422.65 =) £7.78. For 26 weeks, therefore, her future financial loss is £202.28.

Interest on Past Financial loss

89. We award interest at 8%.

90. The past loss is £4491.04, which is £4940.14 after the 10% uplift is added.

91. We take the midpoint of when the September 2022 salary should have been paid and the date of the remedy hearing, and therefore award 255 days interest.

92. The interest calculation is: 0.08 x £4940.14 x 255/365 = £276.10.

Injury to Feelings

93. We have set out above, in the findings of fact, our decisions about the effects of the contraventions of EQA on the Claimant. She suffered a significant injury, including having thoughts about whether life was worth living, and whether she should self harm.

94. Even just on the basis of the medical notes and letters in the bundle, the effect was still very significant in February 2023 (so 5 or 6 months later), but we are satisfied that the effects last longer than that, and that the Claimant has not yet completely recovered. There is not sufficient medical evidence to persuade us that she will never recover, or that we should make a separate and additional personal injury award.

95. Ugo's actions on 2 September 2022 contributed to the above-mentioned injury to feelings. We must seek to discount that part of the injury. As per the findings of fact, we are entirely satisfied that both the sexual harassment, and the dismissal (each of which were contraventions of EQA for which the Claimant is entitled to received compensation) played a significant part in the injury to feelings.

96. Furthermore, the additional injury (if any) caused by the stresses and strains of looking for work (not something which the Claimant placed great weight

on, but something raised by the Respondent) is still a loss which flows from the contraventions of EQA. She was not placed in that position by something other than the dismissal which we found to be a breach of EQA.

97. The Respondent has not sought to argue that an award in the lower Vento band would be appropriate. It argues for an award towards the lower end of the middle band. (£15,000 is the figure it mentions in the counter schedule, but we have not treated that as a concession that at least £15,000 should be awarded).

98. Our assessment is that the Respondent's suggestion is too low. However, we do not consider that an award in the Upper Vento band would be appropriate.

99. We have no detailed expert evidence about how long the Claimant will continue to be affected, but we have decided that the Claimant is likely to have recovered sufficiently to obtain and start a new job within 6 months.

100. If there were no other contributory factor to the Claimant's proven injury to feelings, other than the contraventions of EQA, an award nearer to the top of the middle band (which is from £9,900 to £29,600 for the year in question) might have been appropriate. However, in all the circumstances, and applying a reduction to take into account the contribution made by Ugo's actions on 2 September 2022, we believe that an award above the mid-point (£19,750) of the middle band is appropriate, but only slightly above that. Our assessment is that £21,000 is the appropriate sum.

101. With 10% uplift, that comes to £23,100.

102. We award interest from the dismissal date to the remedy hearing date (510 days) at 8%, and that interest is therefore £2582.13.

Employment Judge Quill

Date: 8 February 2024.

Reasons sent to the parties on

.21 February 2024.....

.....
For the Tribunal office