EMPLOYMENT TRIBUNALS

Claimant: **Miss. Holly Merriman**

Respondent: **Bugibba Independent Limited**

Heard at: **Midlands East Region via CVP**

On: **30th April 2024**
23rd May 2024 (In Chambers)

Before: **Employment Judge Heap**

Members: **Mr. M Alibhai**
Mrs. D Newton

Representation
For the Claimant: **Ms. A Amesu - Counsel**
For the Respondent: **Mr. K Limpert - Advocate**

RESERVED JUDGMENT

The Respondent subjected the Claimant to unlawful discrimination contrary to Sections 26(1), 26(3) and 27 Equality Act 2010 and they are Ordered to pay to the Claimant the total sum of **£31,410.91** made up as follows:

Financial losses (including interest)	**£ 6,001.55**
Injury to feelings (including interest)	**£25,409.36**
Total sum that the Respondent must pay to the Claimant	**£31,410.91**

REASONS

BACKGROUND AND THE HEARING

1. This Remedy hearing followed on from a Reserved Judgment on liability ("The Liability Judgment") in which we found in favour of the Claimant in respect of a number of her complaints advanced under Sections 26(1), 26(3) and 27 Equality Act 2010. The complaints that we found had occurred, amounted to harassment and victimisation and were done in the course of the perpetrators' employment were as follows:

1.1. That Oliver Horn had bear-hugged the Claimant, backed her into a corner and grabbed her bottom (paragraph 175 of the Liability Judgment);

1.2. That Mr. Horn called the Claimant a 'potwasher', made comments about her wages being less than his and said in terms that she needed to chew gum because her breath smelled (paragraph 179 of the Liability Judgment);

1.3. That Mr. Horn shouted at the Claimant on 28th March 2021, belittled her and called her names and shouted "Holly come the f*** here" and say "F*** you" (paragraph 181 of the Liability Judgment);

1.4. That the Respondent failed to deal with the incident between the Claimant and Mr. Horn on 28th March 2021 at an investigation meeting which had taken place (paragraphs 188, 189 and 196 of the Liability Judgment);

1.5. That the Respondent had held a meeting with the Claimant without prior notice in April 2021, failed to adequately investigate her complaints about Mr. Horn's harassment of her and failed to reach a conclusion on that complaint and pressurised the Claimant to forget the incident and move on (paragraphs 190, 191, 192 and 194 of the Liability Judgment);

1.6. That the Claimant had been accused by Matthew Bond, a director of the Respondent, of taking unauthorised absence (paragraph 198 of the Liability Judgment); and

1.7. The termination of the Claimant's employment (paragraphs 200 to 203 of the Liability Judgment).

2. The purpose of this hearing was therefore to deal with the remedy which it was appropriate to Order so as to compensate the Claimant for those particular complaints which we had determined to be well founded and which had accordingly succeeded.

3. We should observe that before this hearing there had been three further Preliminary hearings. The first of those took place to list a Remedy hearing and make Orders for preparation for the same. That was dealt with by this Employment Judge. At that time the Claimant was being represented by her sister, Ms. Deary, as she had at the liability hearing before us. During that Preliminary hearing Ms. Deary raised an issue as to the admissibility of some emails which were said by the Respondent to attract without prejudice privilege and which the Claimant wished to rely on in seeking an award of aggravated damages. It was determined that that matter needed to be dealt with by a different Employment Judge and the issue was determined by Employment Judge Fredericks-Bowyer at a further Preliminary hearing. The outcome was that some of the emails relied on were admitted into evidence by consent and others that the Claimant sought to rely on passing between her/Ms. Deary and Mr. Limpert who continues to represent the Respondent were not. We have accordingly not seen those latter emails.

4. Unfortunately, the Claimant's updated schedule of loss and witness statement still made reference to communications from Mr. Limpert in seeking aggravated damages despite the decision of Employment Judge Fredericks-Bowyer and also made reference to what happened during an earlier unsuccessful Judicial Mediation. We raised that with the parties at the outset of the hearing and Ms. Amesu who was by that time

representing the Claimant sensibly accepted that those matters could not and would not be relied upon.

5. We also raised with Ms. Amesu (who we should say had not prepared either the schedule of loss or witness statement) that the matters relied on by the Claimant as seeking an adjustment pursuant to Section 207A Trade Union & Labour Relations (Consolidation) Act did not appear to relate to breaches of the ACAS Code of Practice on Disciplinary & Grievance Procedures and whether any such breach was in fact claimed. Ms. Amesu confirmed that this was not advanced and that head of claim was accordingly abandoned.

6. The final Preliminary hearing again took place before this Employment Judge shortly before this hearing and at short notice. It was listed on the basis that Mr. Limpert had applied to postpone the Remedy hearing because he had another hearing personal to him on the same day which meant that he could not travel from London where he resides to Nottingham.

7. At that Preliminary hearing we reached an agreed compromise that the hearing would proceed wholly remotely by Cloud Video Platform ("CVP") with an extended break between 11.40 a.m. and 2.30 p.m. to enable Mr. Limpert to attend both hearings.

8. We should observe that we experienced some technical issues with the use of the CVP platform for one of the non-legal members and Mr. Limpert who both struggled to join the hearing. Whilst that caused some delay to the commencement of the hearing, we are satisfied that we were otherwise able to have a fair hearing and there was no impact on either party as a result of those technical difficulties.

THE PARTIES' RESPECTIVE POSITIONS

9. We set out here the respective positions of the parties on each of the heads of claim sought by the Claimant. We have done so only briefly but the parties can nevertheless be assured that we have taken into account all that they have set out in their helpful submissions and all that we have seen and heard in evidence before reaching our conclusions.

Compensation for financial losses

10. The Claimant seeks compensation for financial losses following on from her dismissal.

11. Those sums were unfortunately not set out in the Claimant's schedule of loss but we have done our best to calculate them accurately from the documents within the hearing bundle, further documents that were disclosed during the hearing itself following on from questions asked by the Tribunal and which were not objected to by Mr. Limpert. We were also assisted considerably in those calculations by the helpful submissions of Ms. Amesu.

12. The Claimant was not cross examined about any financial losses although Mr. Limpert did make submissions to suggest that the Claimant had not made sufficient attempts to mitigate her losses and that he found it staggering that it had taken her so long to find alternative employment. However, no roles were identified by the Respondent that it is said that the Claimant should and could have applied for.

Damages for injury to feelings

13. The Claimant's schedule of loss sets out compensation for injury to feelings within the middle band of the **Vento**[1] bracket and in the sum of £20,000.00.

14. Mr. Limpert contends that the effect of the discrimination which was made out should see injury to feelings sitting within the bottom **Vento** band and he made the suggestion at the invitation of Mr. Alibhai to address us on that point that an award of £4,000.00 would be appropriate.

15. As the Claim Form was issued on 27th July 2021 the Presidential Practice Direction issued on 26th March 2021 (the fourth addendum) is the appropriate one that we were required to consider and we have not heard any submissions otherwise.

Aggravated damages

16. The Claimant contends that there should be an award of aggravated damages in this case and relies on the following in support:

    - That the actions of Mr. Horn were not properly investigated;

    - That her complaints about Mr. Horn were not taken seriously; and

    - That the Respondent had made unjustified assertions that she had lied.

17. As we have already observed, the Claimant's schedule of loss included a number of issues which attracted – as determined by Employment Judge Fredericks-Bowyer – privilege. Given Ms. Amesu's sensible and helpful concession on this issue we have not dealt with those matters in our conclusions.

18. Mr. Limpert did not specifically address us on the question of aggravated damages nor did he cross examine in respect of that issue. We have assumed that the Respondent naturally opposes such an award and we have in all events reached our own conclusions in respect of that issue as to whether it is appropriate to make an award under that head of loss.

[1] **Vento v The Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871** as 'up-rated' by **Da'Bell v NSPCC [2010] IRLR 19 EAT.**

Interest

19. Ms. Amesu submitted that the Tribunal should award interest on financial losses and on injury to feelings at a rate of 8%.

20. Mr. Limpert did not address us on the question of interest but we deal with that matter in our conclusions below.

THE HEARING

21. We had before us a Remedy bundle agreed between the parties and were provided with some additional documentation during the course of the hearing from the Claimant which had been prompted by questions from the Tribunal and which was not objected to. In addition to the documentary evidence, we also heard evidence from the Claimant on her own account, from her sister, Kelly Deary, and from her Trauma Coach, Christiana Harrison.

22. No witness evidence was called by the Respondent.

23. We were able to conclude the evidence and submissions late into the afternoon of the hearing but were unable to conclude our deliberations within the time remaining. We therefore reconvened the hearing in chambers for a further half day of Tribunal time on 23rd May 2024 for the panel to discuss the, then, draft Judgment and finalise the same.

THE LAW

24. The statutory provisions which are relevant to the issues before us are as follows:

25. Section 124 Equality Act 2010 deals with the ability of the Tribunal to make Orders where a complaint or complaints of unlawful discrimination have been made out. The relevant parts of Section 124 provide as follows:

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.

. . . . . .

(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 or the sheriff under section 119.

26. It is common ground that an Order for compensation under Section 124 Equality Act 2010 can include also include compensation for non-pecuniary losses such as for injury to feelings in respect of which reference needs to be paid to the **Vento** Bands. As we have observed above, the joint Presidential Guidance which was issued on 26th March 2021 is applicable to the award and the relevant part says this:

*"In respect of claims presented on or after 6 April 2021, the Vento bands shall be as follows: a **lower band of £900 to £9,100** (less serious cases); a **middle band of £9,100 to £27,400** (cases that do not merit an award in the upper band); and an **upper band of £27,400 to £45,600** (the most serious cases), with the most **exceptional cases capable of exceeding £45,600**".*

27. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 ("The Regulations") provide for interest to be awarded in respect of both financial and non-pecuniary loss flowing from acts of discrimination. The relevant provision for our purposes is Regulation 6 which provides as follows:

"(1) Subject to the following paragraphs of this regulation—
(a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;
(b) in the case of all other sums of damages or compensation (other than any sum referred to in regulation 5 and all arrears of remuneration, interest shall be for the period beginning on the mid-point date and ending on the day of calculation.
(2) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of the subject matter of the award, interest in respect of that part of the award covered by the payment shall be calculated as if the references in paragraph (1), and in the definition of "mid-point date" in regulation 4, to the day of calculation were to the date on which the payment was made.
(3) Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may—
(a) calculate interest, or as the case may be interest on the particular sum, for such different period, or
(b) calculate interest for such different periods in respect of various sums in the award, as it considers appropriate in the circumstances, having regard to the provisions of these Regulations".

Aggravated damages

28. Guidance in respect of when an award of aggravated damages is appropriate is given by the Employment Appeal Tribunal in **Commissioner of the Police of the Metropolis v Shaw [2012] IRLR 291**, the relevant extracts of which are as follows:

"Aggravated damages are thus not, conceptually, a different creature from "injury to feelings": rather, they refer to the aggravation – etymologically, the making more serious – of the injury to feelings caused by the wrongful

act as a result of some additional element. Indeed if this were not so, the fact that Scots law does not recognise aggravated damages as such would mean that substantially different remedies were available in identical cases north and south of the border, which is a state of affairs to be avoided if at all possible. As it is, however, as Judge Clark observed in ***Tchoula****,* loc. cit.*, whether a tribunal makes a single award for injury to feelings, reflecting any aggravating features, or splits out aggravated damages as a separate head should be a matter of form rather than substance.*

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 it 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*** *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, at paras. 32-33 (p. 543). There is thus in practice a considerable overlap with head (a).*

(c) Subsequent conduct. The practice of awarding aggravated damages 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 and Co. v Walia*** *[2002] IRLR 697 (though N.B. Maurice Kay J's warning at para. 28 of his judgment (p. 702)); and* ***Fletcher*** *(above). 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 v Reid****. A failure to apologise may also come into this category; but whether it is in fact a significantly aggravating feature will depend on the circumstances of the particular case. (For another example, see the very recent decision of this*

*Tribunal (Silber J presiding) in **Bungay v Saini** (UKEAT/0331/10/CEA).) This basis of awarding aggravated damages is rather different from the other two in as much as it involves reliance on conduct by the defendant other than the acts complained of themselves or the behaviour immediately associated with them. A purist might object that subsequent acts of this kind should be treated as distinct wrongs, but the law has taken a more pragmatic approach. However, tribunals should be aware of the risks of awarding compensation in respect of conduct which has not been properly proved or examined in evidence, and of allowing the scope of the hearing to be disproportionately extended by considering distinct allegations of subsequent misconduct only on the basis that they are said to be relevant to a claim for aggravated damages."*

FINDINGS OF FACT

29. We have confined our findings of fact in these circumstances to the areas of dispute between the parties and those facts which are relevant to the conclusions that we have reached on the question of remedy.

Impact of the discrimination on the Claimant

30. The Claimant commenced work with the Respondent on 21st October 2020 and continued in a decorator role until she was dismissed with effect from 9th May 2021. The decorator role that the Claimant was engaged in involved decorating or finishing doughnuts which had been prepared by the bakers employed by the Respondent. The Claimant's period of employment with the Respondent was therefore relatively short lasting just over 6 months but for a significant part of which was blighted with unlawful discrimination.

31. At the time of the events which we have found to be made out as acts of unlawful discrimination the Claimant was only 17 years of age or, in respect of events after March 2021, when she had only just turned 18.

32. The Claimant was not challenged in cross examination about any of the impact that she described in her witness statement that those acts of discrimination which we had found to be made out had had on her and indeed Mr. Limpert's cross examination of the Claimant was surprisingly brief. We accept the Claimant's evidence about that impact and make the following findings in that regard:

    a. That she had had previous issues with her mental health but had gone, because of her experience at the Respondent, from being someone who was bubbly and vivacious to a shell of her former self. That was also the unchallenged evidence of Ms. Deary who described her as having changed from being bubbly, bright and confident to a wreck who was nervous, anxious and withdrawn;

    b. That she had found herself introverted and anxious and constantly in tears and had had to go back on medication for her mental health;

    c. That she had found it difficult to tell her family that she had been dismissed by the Respondent and that she had felt shame,

embarrassed and a failure and blamed herself over what had happened and for not reporting what Mr. Horn had done earlier;

d. That she had been worried and "felt sick" about returning to the work environment and particularly was wary about working with men and had only applied to roles where there was likely to be a predominantly female team or where she could be reassured by her sister that she would not face any difficulties or had friends who already worked there;

e. That during one job interview that she had had she had broken down in tears;

f. That she had only begun to recover some confidence when she had come to set up her own dog walking business which had been almost three years after the initial events in question and following an approximate 12 month period of help from a Trauma Coach;

g. That her genuine feeling was that without the significant support that she has received from Ms. Deary she did not think that she would still be here; and

h. That the stress had also had a physical effect on her by aggravating the symptoms of fibromyalgia leaving her in what she described as unbearable pain.

33. In addition to the evidence of Ms. Deary and the Claimant as to the impact on the Claimant we also have support for that position from her General practitioner dated November 2021 which refers to the effects of what had happened at the Respondent as resulting in a deterioration of her mental health and a plummeting in her confidence (see page 55 of the hearing bundle). The impact is similarly supported by the evidence of Ms. Harrison who had been seeing the Claimant for trauma coaching for the last 12 months.

34. As set out immediately above for the last 12 months the Claimant has been having sessions with a Trauma Coach. Whilst Mr. Limpert contends that the Claimant's position could not have been so bad because there was a delay in her starting this treatment, we accept the evidence of Ms. Deary that the sessions were at some not inconsiderable cost but that they took that route when it became clear that the Claimant was not getting any better and the waiting time for counselling on the NHS was too long. Ms. Deary accordingly paid for those sessions because of the mental state that the Claimant was in and which was not improving.

Financial losses

35. The Claimant commenced work at a local pub called the Boathouse in or around August 2021 and continued in that position until approximately November or December 2021 before she left to undertake an apprenticeship, the details of which we come to below. The Claimant earned the sum of £496.82 working at the Boathouse.

36. We accept the Claimant's unchallenged evidence that even after commencing employment at the Boathouse she was still experiencing significant issues with her confidence and had to be put on quieter shifts

but then still had to ask friends or relatives to come in so that she had people present during her shifts. We also accept her unchallenged evidence that she struggled with authority figures finding it difficult to speak to her bosses and feeling vulnerable that she would be dismissed again.

37. The Claimant was also in receipt of Universal Credit between August 2021 and November 2021. The total sum that she was paid in Universal Credit during those periods was £792.51 (see page 13 of the Remedy bundle). During the time that she was claiming that benefit it is clear from her Universal Credit journal that she was actively seeking alternative employment when she was able to do so. There was no cross examination in respect of the issue of mitigation of loss although as we have already observed Mr. Limpert did make submissions that he found it staggering that the Claimant had not obtained alternative employment before she did.

38. The Claimant left the Boathouse to undertake an apprenticeship with Pawsome Days which was, as we understand it, a role working with dogs and exercising them. The Claimant held a paid apprenticeship there (having previously undertaken a month unpaid apprenticeship during which time she was still working at the Boathouse). Her apprenticeship ran between January 2022 and October 2023.

39. After leaving Pawsome Days in October 2023 the Claimant set up her own self-employed business dog walking and pet sitting having gained qualifications in animal care and welfare and canine first aid. That was set up in November 2023 and she has earned the sum of £6,070.70 from that business, albeit that includes some deposits of 50% which are taken for future bookings.

40. We accept the Claimant's evidence that it was around that time that she left Pawsome Days and set up her own business that she has begun to feel more positive and more like her old self and that she is taking steps forward such as taking her driving test and is learning to trust people again. It is clear that the effects of the trauma coaching that the Claimant has had have been significant in her progress and enabling her to see that she should not blame herself for what had happened. However, we accept the evidence of Ms. Harrison that the Claimant will need to continue to have this therapy for at least 12 months after the conclusion of the Tribunal process and use the techniques that she has been taught, particularly around the anniversaries of the events in question.

CONCLUSIONS

41. Insofar as we have not already done so, we turn now to our conclusions in relation to each of the heads of remedy sought by the Claimant.

Financial losses

42. The Claimant had calculated an average of her wages, including an increase which she received upon turning 18 years of age in March 2021, at page 6 of the Remedy bundle. The monthly average pay was identified as being £830.000. Neither the Claimant nor Ms. Deary who had undertaken that calculation were cross examined about it nor did Mr. Limpert suggest in his closing submissions that there was any error about

how that sum had been reached. We accordingly accept it as being accurate.

43. There was an error in the Claimant's schedule of loss in that it set out loss of earnings over a period of 8 months which was the commencement of the Claimant's apprenticeship at Pawsome Days but did not take into account her earnings from the Boathouse. Unfortunately, the Remedy bundle did not contain those payslips and we have had to base our assessment as to the Claimant's earnings during that period from some extracts from her online banking provided during the hearing and the figures provided by way of deductions from her Universal Credit receipts during the relevant period.

44. Having been dismissed by the Respondent in May 2021 the Claimant had a period of 8 months before she commenced her apprenticeship at Pawsome Days. During that time she would have earned the sum of £6,640.00 if she had still been working for the Respondent. The Claimant's earnings from the Boathouse equated to the sum of £496.82 and she claimed Universal Credit in the sum of £792.51 during the relevant period and both of those fall to be deducted. The Claimant's financial losses over the relevant period were therefore in the sum of £5,350.67.

45. We should say that there is what was referred to as a discrepancy in the schedule of loss in the sum of £384.00 which it is said should be added to the Claimant's financial losses. That was not referred to in evidence at all and only in closing submissions from Ms. Amesu.

46. We did not have any documentation to evidence the discrepancy or any clear details about what it was said to be other than a difference in salary over an unspecified period of time after the Claimant began working at Pawsome Days. Accordingly, we do not feel that we are able to include that within the Claimant's losses as we simply do not have any evidence on this point or sufficient information to ascertain how it has been calculated. Whilst it is correct to say as Ms. Amesu points out that Mr. Limpert did not cross examine on this point, we still need to be satisfied that that loss arose in order to make it just to award it and we cannot be satisfied on that for the reasons that we have already said.

47. We do however consider it appropriate that we award the other financial losses in full. Whilst we have noted Mr. Limpert's submissions about mitigation, the Claimant was not cross examined about that nor has the Respondent led any evidence about roles that it is said that the Claimant could and should have applied for. We also take into account that the Claimant was struggling with her mental health and a fear of returning to the workplace because of what had happened to her whilst in employment with the Respondent and accordingly applied for the roles that she would feel safer undertaking.

48. To the financial losses of £5,350.67 over the relevant period we add interest in accordance with Industrial Tribunals (Interest on awards in discrimination cases) Regulations 1996. The appropriate rate is 8%. We see no reason to not to award interest nor any reason to detract from the standard rate of 8%. Mr. Limpert had heard Ms. Amesu's submissions on that point but made none to the contrary.

49. The Claimant was dismissed with effect from 9th May 2021 and interest therefore begins to run from the midpoint between that date and the date of our determination of the issue of remedy on 23rd May 2024. That is a period of 1,111 days and therefore the mid point from which we should award interest is over a period of 555 days. The interest on the Claimant's financial losses therefore equates to £650.88.

Total for financial losses including interest: £6,001.55

Injury to feelings

50. We deal firstly with the question of injury to feelings. It is without doubt that the Claimant has been deeply affected by the acts of discrimination that we found to have been made out in the Liability Judgment. That needs to be reflected within the level of award for injury to feelings to be made.

51. We accept the submissions of Ms. Amesu that this is a case which sits in the middle band of **Vento**.

52. It was a serious case with profound effects on the Claimant which have only begun to resolve themselves almost three years after the events in question and with the Claimant having to take medication for her mental health and have trauma coaching. In addition to the evidence that we have heard during this hearing we observed first hand the impact that matters had had at the liability hearing when the Claimant was frequently visibly distressed and often in tears.

53. We do not accept the submissions of Mr. Limpert that this is a lower band case. That overlooks completely the Claimant's evidence and that of Ms. Deary as to the impact on her – none of which was challenged at all in cross examination and which we have set out in our findings of fact above – and the fact that these were serious matters which included the Claimant being dismissed for having reported the fact that she had been the victim of sexual harassment and having that complaint swept under the rug without any action being taken in respect of it.

54. Applying the proper Practice Direction that middle band is from £9,100.00 to £27,400.00. We are satisfied that the middle band is appropriate for the reasons that we have already given and taking into account the following:

    a. The Claimant's unchallenged evidence and that of Ms. Deary as to the impact that the acts of discrimination had on her and that she had gone from being bubbly and confident to a shell of her former self with that state of affairs continuing until almost three years after the events in question;

    b. That what Mr. Horn had done initially in touching the Claimant as he did amounted to a sexual assault for which the Claimant had come to blame herself and had to seek trauma counselling to resolve;

    c. That instead of protecting the Claimant who was the victim in what had happened to her with Mr. Horn, he was favoured and no appropriate action was ever taken in respect of what he had done;

d. That the situation was in fact compounded by the Claimant having been dismissed because she had raised the fact that she had been sexually harassed. Dismissal is by any stretch a serious matter, particularly in circumstances such as this, and which has led to the Claimant harbouring fears of having her employment terminated in later roles which she had found;

e. That at the time that the majority of the incidents occurred the Claimant was aged only 17 years of age and only 18 years at the time that she was victimised by the Respondent. Whilst she might previously have been confident, she was nevertheless by reason of her age vulnerable and rather than dealing with the complaints that she had made properly the Respondent did entirely to the contrary and punished her for them;

f. The Claimant's experiences have led her to have a lack of trust in men and in authority figures which have blighted her ability to obtain employment and to trust new employers; and

g. That what has happened to the Claimant led to a deterioration in her mental health and physical health, resulted in her having to take medication and have therapy and had blighted what should otherwise have been a happy period in her life for almost three years.

55. For all of those reasons we are satisfied that this is a case which falls within the middle band and certainly not the lower band as contended for by Mr. Limpert.

56. We then have to decide where in the middle band this case properly falls. Taking into account the relevant Presidential Guidance and the figures reflected within that for the higher band we are satisfied that the Claimant's injury to feelings award should fall towards the middle of that bracket and that an award of £20,000.00 as contended for by the Claimant is an appropriate one in the circumstances, taking into account the severity of the discrimination which we have found to be made out and the impact that it has had on her.

57. We are satisfied that that award for injury to feelings is sufficient and appropriate to compensate the Claimant for the upset caused by the acts of discrimination made out and as dealt with within the Liability Judgment whilst reflecting on what that amount means to the Claimant in real terms.

58. We add to that sum interest in accordance with Industrial Tribunals (Interest on awards in discrimination cases) Regulations 1996. Again, the appropriate rate is 8% and we see no reason to not to award interest nor any reason to detract from the standard rate of 8% as we have already observed in the context of financial losses.

59. As set out in the Liability Judgment the date on which the first act of discrimination occurred could not be precisely ascertained and the best that we could say was that it was in late December 2020 or early January 2021. We have adopted the later point in time and doing as best we can given the uncertainty of the date have elected to use 6th January 2021 as the appropriate point to calculate interest from.

60. We therefore award interest from the period 6th January 2021 to 23rd May 2024 which amounts to 1,234 days at a rate of 8%. The amount of interest therefore equates to the sum of £5,409.36.

Total for injury to feelings including interest: £25,409.36

Aggravated damages

61. We turn then to the question of aggravated damages. As we have observed above, the Claimant now relies on three matters in support of her contention that she should be awarded aggravated damages. We can deal with the first two of those matters in short course because they were allegations that we found to be made out as complaints of unlawful discrimination.

62. The third matter relied upon is the assertion that the Respondent's position had been that the Claimant had lied about what she contended had occurred with Mr. Horn in the course of these proceedings.

63. As set out above, the grounds upon which aggravated damages can be considered is highlighted in **Commissioner of the Police of the Metropolis v Shaw [2012] IRLR 291**. The three categories which might attract an award of aggravated damages fall into:

(a) The manner in which the wrong was committed;
(b) Motive; and
(c) Subsequent conduct.

64. It is clear that the act relied upon as justifying an Order for aggravated damages must of itself be a discriminatory act to fall within that first limb. That is clear from the reading of that first limb and the reference to the word "the wrong being committed". Particularly, as set out in **Shaw** when considering that particular limb, we note the following:

"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…."

65. **Shaw** therefore makes plain in that regard that the first limb is talking about an act of discrimination and that act having been made worse by the conduct of the perpetrator. In those circumstances, the act relied upon as evidencing an aggravated feature must of itself be a discriminatory act. The first two matters relied upon by the Claimant fall into that category.

66. We are satisfied that the acts of discrimination which are relied upon were serious matters. The Claimant had made a serious complaint of sex discrimination against an – albeit not by much margin – older male employee. She was entitled to have that properly and appropriately investigated and resolved. That simply did not happen and the Respondent plainly favoured Mr. Horn which was demonstrative from their actions of the pre-meeting that Mr. Pointon had with him and him being accompanied to the April 2021 meeting by another director. The Claimant was then pressured to agree to move on despite the serious nature of what she had reported. We are satisfied that that did amount to a situation which could be said to be high handed, malicious, insulting, oppressive or

similar. However, we are ultimately satisfied that the Claimant can be adequately compensated for all the hurt, aggravation and damage to her health by the injury to feelings award that we have made in this case in respect of those particular matters without there having to be a separate award for aggravated damages.

67. However, the same cannot be said to be the case in respect of the third strand relating to subsequent conduct of or on behalf of the Respondent that the Claimant had lied. That would fall into the third limb in **Shaw**.

68. The main problem in relation to any award under this head, however, is that we have heard no evidence about it. It was not anything that the Claimant referenced in her witness statement as that focused on the conduct of Mr. Limpert which it is now accepted attracted privilege and in respect of which we cannot therefore stray. Whilst Ms. Amesu urged us not to hold any deficiencies in the Claimant's witness statement against her because until now she had not had legal representation, she was not asked any supplemental questions about that position either and we have no evidence at all that she was caused additional upset by this matter nor, if she was, to what extent that might have been the case. Absent that evidence we cannot simply assume that because people generally may be affronted at suggestions that they have not been truthful that the Claimant was impacted or if she was to what degree. We therefore find ourselves unable to make any conclusions in that regard nor make an award as to aggravated damages.

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Employment Judge Heap
Date: 23rd May 2024

JUDGMENT SENT TO THE PARTIES ON

....14 May 2024.....

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FOR THE TRIBUNAL OFFICE

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