Case No: 3205000/2021

EMPLOYMENT TRIBUNALS

Claimant: **Ms F Kaiser**

Respondent: **Khans Solicitors**

Heard at: **East London Hearing Centre**

On: **6 June 2024 and**
In chambers on 8 July 2024

Before: **Employment Judge Jones**
Ms P Alford
Mr K Rose

Claimant: **In person**
Respondent: **Ms Y Barlay (Litigation Consultant)**

RESERVED
REMEDY JUDGMENT

1. ***The Claimant is entitled to a remedy for her successful complaints of unfair dismissal and disability discrimination.***

2. ***Remedy***

3. **Unfair Dismissal Remedy**

Basic Award: **£305.20**

Compensatory Award

Loss of earnings - post dismissal	***£31,301.80***
Unpaid wages - prior to dismissal	***£6,705.92***
Unpaid sick pay	***£672.56***
Unpaid Commission – breach of contract	***£1,208.00***
Holiday Pay	***£3,121.20***
Loss of Pension	***£803.42***
Failure to provide written terms and conditions	***£1,220.80***

£45,033.70

4. Discrimination Remedy

- *Injury to feelings*	*£25,000.00*	
- *Aggravated damages*	*£5,000.00*	
		£30,000.00

5. ***Interest under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 at 8%=***

(1) Regulation 6(1)(a) interest on injury to feelings. Interest calculated from 3 December 2020 – 8 July 2024 (1313 days). The calculation is 1313 x 0.08 x 1/365 x 30,000 = £8,633.42.

(2) Regulation 6(1)(b) – interest on loss of income from date of dismissal to date of remedy hearing from 2 February 2020 and 8 July 2024 (1252 days). As this is a pecuniary loss, the calculation is from the midpoint. The sum is 1252/2 x 0.08 x 1/365 x £38,680.28 = £5,307.14.

(3) £8,633.42 + £5,307.14 = £13,940.56.

Interest on awards	*£13,940.56*

Total of £89,279.46 (305.20 + £45,033.70 + £30,000.00 + £13,940.56)

Grossing up: £16,141.18

6. Costs

7. ***The Claimant is entitled to her costs incurred in instructing Counsel to defend the Respondent's application to strike out her claim. Also, the Respondent's defence had no reasonable prospects of success and was conducted unreasonably.***

8. ***The Respondent is to pay the Claimant £3,600 costs.***

Total

9. ***The Claimant is entitled to a total remedy of £89,279.46 + £16,141.18 + £3,600 = £109,020.64.***

10. ***The Respondent is to pay the Claimant the sum of £109,020.64 forthwith as her remedy for her successful complaints of unlawful deduction of wages (including pension), a failure to make reasonable adjustments, harassment and discrimination arising from disability; failure to pay holiday pay, breach of contract, a failure to provide her with written terms and conditions of employment and automatic unfair dismissal.***

REASONS

The Claimant was successful in her claim as follows:

1. She succeeded in her complaints of disability discrimination, sex discrimination, automatic unfair dismissal, and her complaints that the Respondent failed to provide her with written terms and conditions and itemised pay slips. She also succeeded in her complaint of breach of contract. This was her remedy hearing.

2. This remedy hearing was first listed on 6 December 2023. That hearing had to be postponed on the Claimant's application as her brother died suddenly a few days before, following injuries received in a road traffic incident. The next listing was on 10 April 2024. This was postponed following the Respondent's application because of Eid. The notice of hearing for today was sent to the parties on 13 May. The Respondent applied on 18 May to have today's listing vacated because Mr Khan expected to be *'out of the country'* between 29 May and 13 June. That application was refused because this case was issued in 2021, concerned acts of discrimination and unfair dismissal which occurred in 2020 and 2021. The Claimant was a successful litigant who is entitled to a remedy for her successful complaints. Lastly, the Tribunal was concerned that if this matter was postponed, it was likely to be relisted at the end of the year, which would extend the period before the Claimant received her compensation.

3. The Tribunal decided to proceed with the hearing.

4. The Tribunal was informed at the start of the hearing that Mr Khan, the senior partner and owner of the Respondent, is in Pakistan and therefore unable to attend the hearing. The Tribunal instructed Ms Barlay to contact Mr Khan so that he could join the hearing as it was a remote hearing, conducted by CVP (Cloud Video Platform). After a break the Tribunal was informed that Mr Khan was unable to join the hearing because the *'internet is bad'* where he is. Mr Khan did not attend the hearing. We adjourned in the morning to allow Ms Barlay to speak to Mr Khan and ask him to attend as an observer. He declined to do so.

5. In the circumstances, the Tribunal decided to proceed with the hearing.

Evidence

6. The Tribunal heard from the Claimant in evidence. For the Respondent, the Tribunal heard from Julie Searles, the Respondent's People Systems and Compliance Manager and Tracy Walters, Employment Practice and Consultancy Lead. The Tribunal considered their evidence along with its liability judgment and the documents presented to it today in the bundles.

Law

7. The Tribunal had submissions from both parties. It considered the following law in reaching a judgment on the remedy to award the claimant for her successful complaints.

8. 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

9. 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 a 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 exceeds that ceiling, then the amount of the award is restricted to it. The tribunal can reduce the basic award in certain circumstances where it is expressly permitted by statute.

Compensatory Award

10. 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, such as pension contributions. The compensatory award can take into account losses extending into the future. The tribunal has to rely on its relevant findings of fact in order to determine how much and for how long it would be just to award to the claimant compensation for such future losses.

Mitigation of Loss

11. The claimant is under a duty to mitigate her loss. The tribunal would need to consider whether this has been done in deciding which losses will be compensated. This refers in particular to the duty on the claimant to make diligent searches for and secure alternative employment following dismissal.

12. The leading authority in this area, which has been confirmed in subsequent cases, is the case of *Gardiner-Hill v Roland Berger Technics Ltd 1982 IRLR 498.* In that case the EAT held that '*A claimant who has suffered by the wrongful act of another party is entitled to recover loss that flows from the wrongful act. The duty on the claimant is to take such steps as are reasonable in all the circumstances to reduce the loss he suffers from the wrongful act. In the present case therefore, the relevant question for the tribunal to ask was whether in all the circumstances, it was reasonable for the appellant to do what he did, i.e., set up in business on*

his own account rather than seeking employment by another person……in the absence of evidence to the contrary, there was no ground for saying that he erred or acted improperly or unreasonably in seeking to establish himself in an alternative business……..In order to show a failure to mitigate, what has to be shown is that if a particular step had been taken, the dismissed employee, after a particular time, on a balance of probabilities, would have gained employment. From then onwards, the loss flowing from the unfair dismissal would have been extinguished or reduced by his income from that other source. In fixing the amount to be deducted for a failure to mitigate, therefore, it is necessary for the tribunal to identify what steps should have been taken, the date on which that step would have produced an alternative income and, thereafter, to reduce the amount of compensation by the alternative income which would have been earned.'

13. The case of *Wilding v British Telecommunications plc [2002] EWCA Civ 349* is authority for the principle that although it is an employee's duty to mitigate their loss, the onus is on the employer as the wrongdoer to show affirmatively that the employee had acted unreasonably in respect of that duty.

14. The principle in *Wilding* was restated in the case of *Cooper Contracting Ltd v Lindsey UKEAT/0184/15 (22 October 2015, unreported.* The EAT emphasising that the burden of proof here is on the wrongdoer, not the employee. It also stated that what must be proved is that the claimant acted unreasonably and that what is reasonable or unreasonable is a matter of fact to be determined. The tribunal must take into account the views and wishes of the claimant, as one of the circumstances, although it is the tribunal's assessment of what is reasonable that counts. The tribunal should not apply too demanding a standard to the victim because they are, after all, the victim of a wrong. In a case where it might be reasonable for a claimant to have taken on a better paid job that fact alone does not satisfy the test. It would be an important fact that might assist the tribunal in assessing whether the employee acted unreasonably but in itself, it is not sufficient.

Discrimination remedy

As far as the remedy for the successful discrimination complaint is concerned: -

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

    i) To give a declaration on the rights of the complainant and the respondent regarding matters to which the complaint relates;

    ii) 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;

    iii) Make an appropriate recommendation – of steps that the employer must take within specified period to obviate or reduce the effect on

the complainant or any other person of any matter to which the proceedings relate.

Injury to feelings

16. The Court of Appeal has given guidance on the assessment of compensation for injury to feelings in the case of *Vento v Chief Constable of West Yorkshire Police (No.2)* [2002] EWCA Civ 1871. In that case, the Court set bands within which they held that most tribunals should be able to place their awards. Those bands have been amended through subsequent case law and more recently, in Presidential Guidance. The Guidance is updated annually so that awards for injury to feelings in exceptional cases for the year beginning March 2019 could be over £44,000. In cases of the most serious kind, the injury to feelings award would normally lie between £26,300 – £44,000. In the middle band, in less serious cases, the award would be between £8,800 - £26,300; while for less serious cases such as for one-off acts of discrimination or otherwise, the award would be between £900 - £8,800. We took this financial year because the Claimant's effective date of termination was 2 February 2021.

17. In the case of *De Souza v Vinci Construction (UK) Ltd* [2017] IRLR 785 it was held that the general 10% rise in the level of damages mandated for common law claims for personal injury should also be to awards for injury to feelings. The above bands already take that rise into account.

18. 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, 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 wrongdoer takes the risk that the wronged may be very much affected by an act of harassment because of their character and psychological temperament. 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 and *Olayemi v Athena Medical Centre* [2016] ICR 1074*,* EAT).

19. The matters compensated by an injury to feelings award encompass subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression (see *Vento* above*)*.

20. In determining how much to award for injury to feelings a tribunal needs to be aware of the leading, reported 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.

21. In *Alexander v Home Office* [1988] IRLR 190 the Court of Appeal (CA) said that:

"Awards should not be minimal, because this would tend to trivialise or diminish respect for the public policy to which the Act gives effect. On the other hand, just because it is impossible to assess the monetary value of injured feelings, awards should be restrained. To award sums which are generally felt to be excessive does almost as much harm to the policy and the results which it seeks to achieve as do nominal awards. Further, injury to feelings, which is likely to be of a relatively short duration, is less serious than physical injury to the body or mind which may persist for months, in many cases for life."

22. The Employment Appeal Tribunal (EAT) in *AA Solicitors Limited Trading as AA solicitors and another v Majid* UKEAT/0217/15/JOJ stated that they did not consider that analogies drawn from personal injury awards applying the Judicial College Guidelines were helpful when considering injury to feelings resulting from discrimination. They stated:

> *'in this jurisdiction, the governing authorities are Vento and the subsequent cases in which it has been updated and developed… [they] represent bespoke guidance tailored to this jurisdiction and this particular type of statutory tort, which is normally committed … by the doing of deliberate rather than merely negligent acts.'*

23. The EAT in *Taylor v XLN Telecom Ltd* [2010] IRLR 49 held that the calculation of the remedy for discrimination is the same as in other torts, and that knowledge of the discriminator's motives was not necessary for recovery of injury to feelings. The EAT nevertheless observed that the distress and humiliation suffered by a claimant will generally be greater where the discrimination has been overt, or the claimant appreciates at the time that the motivation was discrimination.

24. The following cases are taken from *Harvey on Industrial Relations and Employment Law* and provide some guidance to the Tribunal. The Respondent submitted that the award to the Claimant for injury to feelings (ITF) should be between the top of the lower band and the bottom half of the middle band of Vento. The Claimant sought an award from the top of the middle band.

<u>Relevant cases of middle and upper Vento band discrimination cases.</u>

25. In the sex discrimination case of *Newton v Dupont Teijin Films UK Ltd* (Thornaby on Tees) (Case Nos 2508033/07 and 2514086/07) (*19 October 2009, unreported*) the claimant worked in a male-dominated working environment manufacturing polyester film. Throughout her employment she was made to do more administrative and clerical tasks then the men. After 11 years as a process operator, she was transferred to a role in the laboratory without any consultation, without being given a job title or description and without it being clear what her duties would be and to whom she would report. She was not allowed to go on an NVQ fitting course. The claimant's annual performance review was amended without her knowledge and devalued her work on a three year project as *'typing up'* and inappropriately referred to her sickness absence for a hysterectomy which was used as a reason for giving her a low pay rise. The respondent failed to deal with her grievance which meant that she did not return to her

process operator role. The claimant was victimised because she had raised a grievance by having monthly line manager reviews imposed. This was a serious case, and the discrimination went on for a number of years. The effect on the claimant was substantial, making her extremely hurt and upset, less confident, unwilling to socialise and, in her view, changing her whole personality. She received £10,000 for injury to feelings and a further sum for personal injury.

26. In the race discrimination case of *Olayemi v Aspers (Stratford City) Limited* (Case No 3200825/17) *(27 June 2018, unreported)*, the claimant was awarded the sum of £10,000 for injury to feelings. The facts can be summarised as follows: -

    26.1. The claimant's dismissal from his post as a security guard in a casino was found to amount to direct race discrimination – his complaints that the extension of his probationary period and not being afforded access to a training course amounted to discrimination were dismissed. The claimant was said to have *'inevitably suffered a sense of injury to himself and his sense of wellbeing*' as a result of the discrimination, and this affected his ability to sleep, and he suffered some headaches. His injury to feelings did not however impair his ability to look for work or take up work.

    26.2. The ET found that the appropriate award was within the mid Vento band, but at the lower end of that band and awarded £10,000.

27. See also the case of *Somers v Buckland Care Ltd t/a Consort Care* (Plymouth) (Case No 1701331/07) (*29 July 2009, unreported*) in which the claimant was awarded the sum of £11,000 for injury to feelings as well as aggravated damages of £5,000. The claimant, who was a care assistant with seven years' service was discriminated against in a disciplinary process for allegedly being asleep on duty, by being suspended unnecessarily for over four weeks, by the investigation being unfairly handled, by being given a final, rather than first, written warning and by only being allowed 24 hours to appeal rather than the contractual five days. She was also refused a week's paid holiday. She suffered long term and severe injury to feelings over two years beginning with incredulity that race could have been a motivating factor and ending with clinical depression. The tribunal held that on the basis of what happened and the effect on the claimant this was a middle band event.

28. The aggravated damages related to the respondent's successful efforts to prevent the claimant from gaining new employment. They had been responsible for the claimant losing two jobs in two years by their responses to reference requests.

29. We considered the case of *Obikwu v British Refugee Council* (Bury St Edmunds) (Case No 1502553/06) (*18 May 2009, unreported*) in which the claimant was awarded the sum of £15,000 for injury to feelings. He was also compensated for personal injury caused by the respondents.

30. The claimant was racially discriminated against in a flawed and discriminatory redundancy selection process. The respondent's manager subconsciously tended to favour her ongoing small team of individuals with whom she had a good and friendly working relationship and a number of whom were excluded from the selection process. The claimant's sleep was affected, he had mood swings, his self-esteem and confidence were damaged and his relationship with his family affected. The effect on him was more acute because there was a total failure by the respondent to offer any form of apology to him at any time.

31. The case of *Base Childrenswear Ltd v Otshudi UKEAT/0267/18 (28 February 2019, unreported)*, in which the claimant was awarded £16,000 for injury to feelings; £3,000 for personal injury and £4,000 as aggravated damages.

32. In relation to the award of £16,000 injury to feelings award for the act of dismissal, the EAT rejected an argument that any 'one off act' must fall within Vento band 1 and stated that *'the question is what effect the discriminatory act had on the claimant'.*

33. The last case we considered was that of *Anderson v (1) Kelly Marie Ltd t/a Shout Hair; (2) McClymont (London Central) (Case Nos 2203932/20, 2302061/21) (28 June 2022, unreported)*. A was dismissed on grounds of something arising from her disability. Having never been dismissed before, A was devastated and shocked by the sudden nature of her termination. Work was something that assisted in the maintenance of her mental health. Following her dismissal, the claimant felt lost, suffered a panic attack that day and a second within a week. She also took an overdose six weeks after her dismissal, although this was also in part caused by her universal credit underpayments and earlier workplace tensions.

34. A sum of £17,550 was awarded for injury to feelings – an award towards the top end of the middle band was appropriate. Discounting any injured feelings arising from difficulties with her universal credit and earlier workplace tensions unconnected with the discrimination, the discriminatory dismissal nevertheless had a number of serious effects on A's mental health.

35. We considered the upper Vento band case of *Scanlon v Redcar and Cleveland Borough Council* (Newcastle upon Tyne) (Case No 2510997/04) (*16 November 2009, unreported*). The claimant was the Equality Officer for the Council. She was victimised by the Chief Executive by being subjected to disciplinary proceedings and being dismissed because she had alleged that the Council was in breach of its equality in employment policy and discrimination law in an appointment that was made. There were a series of acts or omissions in the disciplinary process (including refusing to grant a right of appeal) which were either in breach of contract, unlawful or otherwise inappropriate. These events took place over a prolonged period of 17 months and that exacerbated the adverse impact on the claimant. She suffered considerable distress, and her health was detrimentally affected. The most serious impact was the loss of the claimant's career which was attributable to the act of summary dismissal. The appropriate award was £17,500 which was up rated by inflation of 119.55% since *Vento*.

36. Lastly, we considered the case of *Ms S Macken v BNP Paribas London Branch* (London Central) (Case Nos 2208142/2017, 2205586/2018 and 2201492/2019) (4 October 2021, unreported) – ITF £35,000 (see also PI, AD, Uplift and CE at paras [1162], [1209], [1259.01] and [1325] respectively). M, a member of the respondent's 'Prime Brokerage Division', received typically £40,000 less salary each year and approximately 20% of the bonuses over a four-year period to that received by her comparator.

37. M was subjected to a number of instances of sex discrimination and harassment including the leaving of a witch's hat on her desk by a colleague and demeaning phrases from her superior which were parroted to her by colleagues. After M raised concern as to inequality of pay there was a rapid deterioration in the respondent's behaviour towards her, including being subjected to unfair poor performance reviews and threats to her job. Following the liability hearing, the tribunal became aware the respondent had previously also given M's comparator a pay rise but done this by way of a 'Special Allowance' rather than base salary increase due to M having raised a grievance, as part of a clumsy attempt on the part of the respondent to manipulate pay comparisons. This subsequent conduct was held to add to M's injury.

38. M had been unable to work since July 2018 as a result of a decline in mental health due to the discrimination. M's prognosis anticipated an initial deterioration after the resolution of the dispute followed by a gradual improvement in symptoms over a two-to-three-year period with treatment, though a full recovery was unlikely. The chances of a full cognitive recovery were 70%. The facts of the case warranted an award in the middle of the upper *Vento* band at £35,000. M had experienced discrimination over a number of years and, as a result of trying to raise concerns, she began to be treated very badly from 2014 but such treatment became 'much more extreme' from March 2017. The assessment of the injury to feelings excluded the impact of the lack of equal pay since an injury to feelings award is not available in relation to equal pay.

39. In a few of the cases referred to above, the Tribunal has awarded aggravated damages as well as a sum for injury to feelings. 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. In *HM Prison Service v Salmon* [2001] IRLR 425 aggravated damages were awarded and the EAT held that this was appropriate in circumstances where the employer had treated a complaint about harassment in a trivial way. It was also stated in that case that where awards are made for both PI and for ITF the tribunal should make it clear what sums are attributable to which, in order to avoid double counting.

Interest on discrimination remedy

40. 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 must consider whether to award interest, without the

need for any application by either party in the proceedings. The interest is calculated as simple interest which accrues daily. Since 1993 the rate has been 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 (Regulations 4 and 6(b)). For non-pecuniary losses interest is calculated across the entire period from the act complained of to the date of calculation (Regulations 4 and 6(a)). 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.

Costs

41. Rule 76 of the Employment Tribunal's 2013 Rules of Procedure provides that a costs or time preparation order may be made and a tribunal shall consider whether to do so, where it considers that:

    (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

    (b) any claim or response had no reasonable prospect of success.

    (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.

42. The procedure for making a costs application is set out at rule 77;

    "A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application."

43. The Claimant's application was made in her bundle and statement for today's hearing. The Respondent had the opportunity to question her about it in the hearing and to make submissions.

44. The Tribunal has to take a structured approach to considering costs applications. In the case of *Millan v Capsticks Solicitors LLP & Others* UKEAT/0093/14/RN the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3-stage exercise, paraphrased as follows:

    1. Has the putative paying party behaved in the manner proscribed by the rules? We need to make findings of fact on their conduct (76(1)(a); or on their understanding of the strength of the case if the application is on the grounds of 76(1)(b).

2. If so, the Tribunal must then consider whether to exercise its discretion as to whether or not to make a costs order, (it may take into account ability to pay in making that decision).

3. If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may take into account the paying party's ability to pay).

Decision

45. We drew the following conclusions from the evidence we heard today and had in mind the findings that we made in the liability hearing.

46. The Tribunal was mindful that it can only award the Claimant compensation for the successful elements of her claim. The Claimant succeeded in her complaints of discrimination arising from disability (see paragraph 267 - 290 of the liability judgment), failure to comply with a duty to make reasonable adjustments (paragraphs 291 – 310 of the liability judgment), harassment related to disability (paragraphs 311 – 321 of the liability judgment), automatic unfair dismissal (paragraphs 335 – 347 of the liability judgment), unauthorised deduction from wages (paragraphs 348 – 351), breach of contract (paragraphs 352 – 354 of the liability judgment), failure to pay holiday pay (paragraphs 355 – 357), breach of the rights to written terms and conditions and to itemised payslips (paragraphs 358 – 365).

47. The Claimant began her employment with the Respondent on 1 April 2019. She was keen to become a qualified solicitor. She was honest and upfront with the partners that the fact that she was bankrupt from her divorce, might affect her path to being admitted to the roll of solicitors. She asked them to hold off signing a training contract until she could sort out the issue with the Law Society. They agreed. After they knew that she could not start her training contract straightaway, the Respondent wrote to the Claimant to inform her that she would be caseworker, on a wage of £8.21per hour (National Minimum Wage), working a 35-hour week. The Respondent never paid her those wages, although, it is our judgment that she worked in excess of those hours. The Claimant has had her confidence damaged as a result of the way she was treated by the Respondent. In contrast to how she felt when she first began working for the Respondent, she does not believe that she will qualify now, although we hope that she will, after sufficient time is passed.

48. At the remedy hearing, she told her that even the thought of preparing for the hearing was upsetting to her and she was glad that she never has to talk about all of this again. The thought of this hearing and having to go over everything that happened to her while she was at the Respondent, made her physically ill.

49. While working for the Respondent, the Claimant used her contacts in the local community to refer work to the firm, for which it was agreed that she would be paid commission. The Respondent failed to do so. At the liability hearing, Mr Khan challenged the amount of commission that the Claimant claimed as owed to her, in the documents she submitted to the Tribunal.

He also told stated that he had access to all the files she referred to and would be able to challenge her specific claims. In today's hearing, Ms Barlay had not been given the information and therefore could not challenge the Claimant's claim. The Tribunal refused her application for a further adjournment to address the matter. The Claimant submitted a detailed claim for outstanding commission as her breach of contract claim, since the liability hearing in May 2022. Mr Khan has had sufficient time in which to put his position in response, to the Claimant and the Tribunal. The Claimant has made her case for these payments. She has provided detailed information on each client matter, including details of deposits paid and the work done on the file. The Respondent would have been in no doubt what matters were being referred to, which is likely to be why the Respondent did not ask her for further details about her breach of contract claim. Ms Barlay did write to the Tribunal to request an order that the Claimant be made to produce evidence about her efforts to mitigate her loss. The Claimant provided her documents in a bundle for today's hearing. Ms Barlay did not renew her application.

50. The Claimant was subjected to disability discrimination, sex discrimination, harassment and automatic unfair dismissal because she pursued her statutory rights. She was subject to unauthorised deduction of wages and breach of contract after she introduced clients to the business and worked on those and other files. The Respondent failed to provide her with a statement of terms and conditions of employment and itemised payslips.

51. The Tribunal calculates the remedy due to the Claimant as follows:

52. The Claimant's start date was 1 April 2019. Her effective date of termination was 2 February 2021. The Claimant's gross weekly pay per week £305.20. This is because she was paid the National Minimum Wage, which was increased to £8.72 per hour from 1 April 2020. Her net weekly pay per week would have been £277.54. Her gross daily pay per day would have been £61.20 (net was £55.51).

53. The Claimant's date of birth was 15.02.1976, which means that she was aged 45 at the date of the termination of her employment by Mr Khan, on behalf of the Respondent.

Automatic Unfair Dismissal

54. As paragraph 346 of the liability judgment confirms, this Tribunal's judgment is that the Claimant was automatically unfairly dismissed contrary to section 104 Employment Rights Act 1996 because she advocated for her right to be paid the National Minimum Wage (NMW) for the hours worked. Although the Respondent agreed to pay her the NMW, she was frequently not paid at all or paid less than the NMW, from her start date on 1 April 2019 to the date of the termination of her employment.

Basic Award

55. The Claimant was employed for 1 year and therefore her Basic Award is one week's wages: £305.20 x 1 = **£305.20**.

Compensatory Award
Losses from 3 February 2021 – 31 March 2024

56. The Claimant's pay would have increased in line with the NMW. This means that it would have been £8.72 from 1 April 2020, £8.91 from April 2021, £9.50 from April 2022 and £10.42 from April 2023.

57. We reproduce the Claimant's table in her schedule of loss here as it shows the calculation of her loss of wages from the date of dismissal to this remedy hearing.

Date	**NMW Rate**	**Hours**	**Weekly Gross Pay**	**Monthly Gross Pay**	**Amount of Loss (gross)**	**Amount of Loss (net)**
3rd February 2021 – 31st March 2021 (8 weeks)	£8.72	35	£305.20	£1,326.09	£2,448.16	£2,204.32
1st April 2021 – 31st March 2022	£8.91	35	£311.85	£1,351.35	£16,216.20	£14,689.18
1st April 2022 – 31st March 2023	£9.50	35	£332.50	£1,440.83	£17,290.00	£15,779.60
1st April 2023 – 31st March 2024	£10.42	35	£364.70	£1,580.36	£18,964.32	£17,046.00
				Total of Loss	**£54,918.68**	**£49,719.10**
				Pension loss (3%)		**£1,647.37**

58. The Claimant was paid the sum of **£1,121.70** in lieu of notice by the Respondent. £49,719.10 + £1647.37 = £51,366.47 – 1,121.70 = **£51,244.77.**

Mitigation of loss following dismissal

59. The Respondent failed to produce information on any jobs they contended that the Claimant should have applied for and been able to secure.

60. The Claimant began employment with Perduco Law a few months after her dismissal, on 19 April 2021 as a caseworker/paralegal, with a salary of

£27,500per annum. This was also fulltime work, as the Claimant had done for the Respondent. She worked remotely. Unfortunately, the Claimant was only able to work until 21 May. She had to stop because of ill-health. The Claimant continued to experience excruciating pain in her neck and shoulders. The Claimant also continued to suffer from arthritis and spondylitis. She was also suffering from the stress and anxiety caused by her not being paid and not being able to get things for her children. She experienced low mood because she believed that her dream to become a solicitor was never going to happen. The Respondent promised to help her submit her application for her casework to be considered as meeting the training contract criteria. They failed to do so, even though she was told that Marie would assist her with it.

61. The Claimant earned £1,600 from Perduco Law but she had to replace a keyboard to a laptop as she accidentally spilt coffee on a keyboard and was told that she had to replace it. Her total earnings from Perduco Law was a net sum of **£828.97.**

62. Even though the Claimant has not been employed since leaving Perduco Law in May 2021, she has earned commission payments as she has an arrangement with another firm of solicitors, which enables to get paid commission for the clients she refers to them. When her Schedule of Loss was drafted the Claimant had earned £17,114 in commission. The Claimant's evidence was that she had earned a further £2,000 since then. Her total income for the period is therefore £19,114 + £828.97 = **£19,942.97**.

63. The Claimant's arrangement with that law firm continues.

64. In the Claimant's bundle for today was a letter from her GP practice dated 28 April 2022, in which it was stated that her mood was very low and that this stemmed from problems at her employment which had an adverse effect on her existing medical problems and caused her pain to flare up. The Claimant was prescribed anti-depressants and painkillers. It was noted that she had been suffering with suicidal ideation.

65. The Claimant has a gynaecological procedure planned for July this year. The hospital appointment letter was in the bundle of documents. There was also correspondence from the hospital and consultant showing that the Claimant has had significant gynaecological issues which has led to the appointment.

66. A letter from a consultant in January this year referred to the Claimant having low mood, among other health issues. The Claimant's evidence to us was that the way she was that the Respondent's decision to terminate her employment affected her health and had a knock-on effect of the heath of her children.

67. It is this Tribunal's judgment that the Claimant has mitigated her loss. Although she is presently not working, she did find a job a few months after her dismissal but the trauma from working with the Respondent caused her to lose it. She is still dealing with her existing medical conditions and the mental effects of her treatment at the Respondent. At the same time, through her contacts in her community, the Claimant has managed to make

referrals to a local solicitor which has allowed her to earn in the form of commission payments.

68. In the circumstances, the Respondent has failed to show that the Claimant did not mitigate her losses.

69. The Claimant's net loss of wages between the date of her dismissal and the date of the remedy hearing was £49,719.10 + (pension loss) £1,647.37 = £51,364.55. Her income for that period is £19,942.97. Her net loss of wages for that period is therefore £51,244.77 - £19,942.97= **£31,301.80**.

Loss of wages pre-dismissal

70. The Claimant was told in her letter of appointment dated 19 March 2019 from the Respondent that she would be paid the National Minimum Wage (NMW). She never agreed to be paid below the NMW. In those circumstances, her net monthly salary until 31 March 2020 should have been £1,245.18 (8.21x 35 x 52\12). The Claimant's net monthly salary from 1 April 2020 until 2 February 2021 should have been £1202.66.

71. Between 1 April 2019 and 2 February 2021, the Claimant was never paid her full wages. This is addressed in paragraphs 111 and 351 of the liability judgment. The Claimant presented the Respondent with an Excel spreadsheet showing how much she was owed on 4 June 2020. This is referred to in paragraph 73 of the liability judgment. At the time, the Claimant was owed £5,274.86. The Respondent did not pay her and did not query the amount. The updated Excel spreadsheet is on page 136 of the liability judgment.

72. Mr Khan and the Respondent did not challenge the amount stated as owed by the Claimant in any substantive way. Although Mr Khan stated at the liability hearing that he did not think that she was owed as much as she claimed, he had not been through the figures and checked them against his records. The Claimant also sent the Excel spreadsheet to Marie.

73. The Claimant succeeded in her complaint of unauthorised deduction of wages. The Claimant worked every week, over 35 hours each week for the Respondent. The Claimant was employed between 1 April 2019 and 2 February 2021. That is 91 weeks. The Claimant was entitled, under the letter of appointment sent to her on 19 March, to be paid the sum of £1,245.18gross and £1,131.38 net per month.

74. The Claimant received £16,769.46 from the Respondent over the course of her employment whereas the net sum that should have been paid to her should have been £23,475.38. The Claimant relies upon the schedule set out at Schedule 1 of her Schedule of Loss. The Claimant is entitled to the sum of £6,705.92. The Respondent is to pay any tax on this payment of unauthorised deduction of wages.

75. The Respondent is to pay the Claimant the sum of **£6,705.92**.

76. The Claimant is also entitled to full pay for the period she was off sick. The Claimant was off sick between 11 December 2020 and 2 February 2021. It is unlikely that the Claimant would have been off sick if the Respondent had

complied with its duty to make reasonable adjustments. The Claimant had been able to work with her disabilities so it is unlikely that on their own they would have caused her to be off sick. The incidents that led up to her being off sick were Marie's decision not to allow the Claimant to attend the training on the new software. The letter from Marie in November purporting to offer her a new contract for less money than had been offered to her in March 2019, which also told her that the Respondent believed that she had been self-employed to that date. It is likely that this was when she realised that she was not going to get paid.

77. The Claimant had been asking for a computer with a bigger screen to help her do her work and to ease the discomfort caused by the Glaucoma and dry eyes. This had not been forthcoming. All of those factors contributed to her going off sick, including the anxiety and depression that she had been diagnosed with since 2018, which became worse in this period. The Claimant also contracted COVID-19 in December.

78. It is likely that the Claimant would have been off with COVID even if the Respondent had treated her well, paid her wages in full and on time and made the necessary adjustments. The Claimant contracted COVID at the end of December 2020.

79. The Claimant was only paid SSP during the time that she was off sick. She was paid £109.40per week, which is a reduction of £168.14 from her full weekly net wage. The Tribunal will award the Claimant the difference between SSP and her full wage for 4 weeks. £168.14 x 4 = **£672.56.**

80. The Respondent is ordered to pay the Claimant the total sum of = **£31,301.80** + **£6,705.92 + £672.56 = <u>38,680.28</u>** as the total loss of wages**. This is the Claimant's total compensatory award.**

Breach of contract - unpaid contractual commission

81. Although the Claimant was never given written terms and conditions of employment by the Respondent when she became employed, she was given a letter of appointment on 19 March 2019. In that letter, Mr Khan wrote the following:

> "*We will also pay you 20% commission on clients you introduce. This will be on the net profit costs i.e. excluding VAT billed and received. You will pay your own tax on the commission you earn as a self-employed person. Alternatively this can be added to your salary and tax will be deducted under the PAYE scheme in the usual way."*

82. Despite this clear agreement, the Respondent failed to pay the Claimant the commission she is owed. At the liability hearing, Mr Khan stated candidly that the Claimant was owed commission. Once again, he has not provided his version of the amount of commission the Respondent say she is owed.

83. In today's hearing, Ms Barlay was not able to provide any more detail on the Respondent's position on the commission to the Tribunal as it appeared she had not been given instructions on the issue. She applied for an adjournment to allow this to be obtained. However, the Tribunal noted that

at the initial liability hearing, Mr Khan told us that he had the information readily available so that he could check and verify the work the Claimant had referred to the business, whether those clients had paid their bills and whether, as a consequence, she was owed commission. He told the Tribunal that he would be able to check the position on commission, but he believed that the Claimant was not owed any commission. That was in 2022. In its submissions, the Respondent stated that the Claimant was owed a total of £474.00 as outstanding commission. It did not state which case/s she had earned that commission related to. It has known about the Claimant's claim for outstanding commission since this case was issued in 2021. In the circumstances, the Tribunal refused the Respondent's application as it would cause delay and because it is in keeping with the overriding objective to proceed with the evidence and information that we had in the hearing.

84. In contrast, the Claimant's claim for outstanding commission is detailed, clear and consistent. There are 6 matters/cases that the Claimant claims commission on. These are the same matters she referred to in the liability hearing. The Claimant has set this information out in an appendix to her schedule of loss. The Tribunal notes that there are the same names of cases she has always claimed commission on. She has given credit for commission already paid to her. She set out in relation to each case - when the case started, the issue the firm dealt with for the client and the payments made by the client. She gave us further details in the hearing. The Tribunal are not repeating the names of the clients here, because it is not necessary to do so since the Respondent also has the client records and the schedule prepared by the Claimant. In the circumstances, the confidential information relating to the Respondent's clients does not need to be referred to in a public judgment.

85. The Tribunal prefers the Claimant's evidence on this as she has been consistent in her claim and we have found the Claimant to be credible, throughout this case. The Respondent did not contest this part of the case in any detail. In contrast, we have found the Respondent's evidence unreliable in this case in relation to most of the Claimant's claim.

86. In this Tribunal's judgment, the Claimant is owed commission on 6 matters and the sum total due to her is **£1,208.00**. The Respondent is ordered to pay this sum to the Claimant as her remedy for her successful complaint of breach of contract.

Holiday pay

87. The Respondent failed to pay the Claimant any holiday pay. The Claimant was employed for 22 months and 1 day. The Claimant did not take any holidays while employed by the Respondent. She worked through the lockdown associated with Covid-19.

88. The Claimant was entitled to 51 days annual leave over total period of her employment. 51days x £61.20per day = £3,121.20.

89. The Respondent is to pay the Claimant **£3,121.20** as her remedy for her successful complaint of failure to pay holiday pay.

Pension

90. The Respondent paid the Claimant £44.96 pension but did not continue to pay her anything towards her pension. The Claimant is entitled to 3% of her gross wages as a contribution towards her pension. She was employed for almost two years which means that she has lost these contributions towards her pension.

91. The Claimant's contract with the Respondent was that she would be paid £8.21per hour (NMW). As we stated above, her annual gross pay for that year (2019 – 2020) would have been £8.21 x 35 hours per week x 52 = £14,942.20. 3% of £14,942.20 = £448.26.

92. For the second year, 2020 – 2021, the Claimant's should have earned £8.72per hour (NMW). £8.72 x 35 x 43.7 (up to 2 February) = £13, 337.24. 3% of £13,337.24 = £400.12.

93. The total pension payment due to the Claimant as her remedy is £848.38 less the £44.96 already paid. The Claimant is entitled to £803.42.

94. The Respondent is ordered to pay the Claimant the sum of **£803.42** as her outstanding pension employer contributions.

Failure to provide written terms and conditions of employment

95. Paragraphs 358 – 361 of the liability judgment refers. The Respondent did not provide the Claimant with written terms and conditions of employment.

96. The Tribunal considered whether to award the Claimant two weeks or four weeks wages for this breach. The claim was for four weeks' pay and the Respondent submitted that we should award two weeks.

97. As submitted by the Claimant, the Tribunal considered that this was a firm of solicitors who gave employment advice to members of the public. It is also a fact that the Respondent first tried to give the Claimant written terms and conditions of employment in November 2020, which was some 19 months after she started and was not a written record of terms they had agreed. The failure to provide the Claimant with written terms and conditions was upsetting to the Claimant and she frequently asked the Respondent for assurances about her terms and conditions. From 6 April 2020, the right to written terms and conditions of employment has been a right employees have from the 1st day of their employment.

98. The Tribunal's decision is to award the Claimant four weeks because the Respondent, a firm of solicitors, failed to provide the Claimant with written terms and conditions of employment. The award is 4 x £305.20 = **£1,220.80,** which is the remedy due to the Claimant.

The Respondent's failure to provide itemised payslips

99. The Tribunal declares that the Respondent failed to provide the Claimant with itemised pay slips. The Respondent paid the Claimant sporadically and

with differing amounts. The Claimant was continually worried about her finances.

100. It was not until she asked to be furloughed that she became aware that she was not on the Respondent's PAYE scheme, which added to her stress and anxiety.

101. The Respondent breached their duty to provide the Claimant with itemised payslips.

Uplift for failure to follow the ACAS Code of Practice

102. The Respondent's defence to this claim was that the Claimant was dismissed for redundancy. The ACAS Code of Practice does not apply to redundancy dismissals. See section 1 of the ACAS Code of Practice 1 Code of Practice on Disciplinary and Grievance Procedures (2015).

103. The Respondent gave no evidence of any process it applied in assessing caseworkers to decide who would be made redundant. We did not have any evidence of any procedure and there were no consultation meetings with the Claimant.

104. It is our judgment that she was dismissed because she informed the Respondent the previous day of a diagnosis she had received of spondylitis and because she continued to ask for her wages.

105. However, as the reason given for the dismissal was redundancy, the ACAS Code of Practice does not apply.

106. The Tribunal does not give the Claimant an uplift.

Injury to feelings

107. In terms of hurt feelings, this Tribunal finds that the Claimant was known to the Respondent as she had previously worked with them as a paralegal in 2013 and 2014. Since her employment began on 1 April 2019, she trusted the Respondent and continued working there even though she was never paid her full month's wages. She was also keen to qualify as a solicitor and they had promised to help her do so by certifying to the volume, breadth and quality of the work she did for the practice. For her part, despite her disabilities and the pain and discomfort that she felt most of the time; the Claimant worked hard, did everything she was told to do, went to the office on weekends and worked late into the evenings, hoping that this would all lead to her eventually achieving her goal of becoming a solicitor.

108. Unfortunately, for their part, the Respondent treated her poorly by discriminating against her because of her disabilities. The Respondent failed to comply with the duty to make reasonable adjustments. It also harassed the Claimant, mainly through Marie's actions. The Respondent also discriminated against her because of something arising from her disability. Lastly, the Claimant's dismissal was partly due to her informing the Respondent that she had another health condition and therefore

because of disability, and partly because she was consistently advocating for her statutory rights as an employee.

109. Similar to *Olayemi* above, the Claimant in this case, inevitably suffered a sense of injury to herself and her sense of wellbeing and suffered from a deterioration in her mental health, as a result of the discrimination and the discriminatory dismissal. As a result of the treatment and her experiences at the Respondent, she has given up her dream of becoming a solicitor.

110. In setting the level of injury to feelings we had in mind the above cases and conclusions. We considered all the cases referred to above. We note the level of injury to feelings in the case of *Base Childrenswear Ltd v Otshudi UKEAT/0267/18 (28 February 2019, unreported)*, in which the claimant was awarded £16,000 for injury to feelings; £3,000 for personal injury and £4,000 as aggravated damages. This was for what could be described as a 'one off act' but which had a devastating effect on the claimant in that case.

111. In this case, the Respondent's treatment of the Claimant caused her upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness and exacerbated stress and depression. The Respondent did so over an extended period of time.

112. The Respondent's treatment of the Claimant had a *'serious and substantial effect'* on her. In such a case, an award in the upper end of the middle Vento band is appropriate.

113. In the circumstances, it is our judgment that an award at the top end of the middle band of Vento is appropriate in this case. It is our judgment that the Claimant is entitled to an award of **£25,000** for injury to feelings**.**

Aggravated damages

114. The Claimant applied for aggravated damages in this case, which the Respondent defended.

115. The Tribunal considered whether this was appropriate.

116. The most serious aggravating factor here is that the discriminator is a firm of solicitors. This is a business that represents and advises members of the public on employment law issues.

117. The Claimant was discriminated and harassed against by the Respondent's practice manager/consultant and therefore a person with some influence and power within the business. The Claimant spoke to the senior partner, Mr Khan about the adjustments that she needed. She also spoke to Ms Junkerre and others, to no avail.

118. All the Claimant's complaints were treated in a trivial way. There has been no information given to the Tribunal on what steps have been taken to address Ms Junkerre's treatment of the Claimant or whether there has been an investigation.

119. Lastly, it is the senior partner in the Respondent, Mr Khan, a solicitor, who decided to terminate the Claimant's employment when she told him that she had just been diagnosed with another health condition.

120. It is this Tribunal's judgment that it is appropriate to make an award for aggravated damages in sum of £5,000 to the Claimant.

121. The Respondent is ordered to pay the Claimant the sum of **£5,000** as aggravated damages.

Interest payments

122. As the Claimant has been successful in her complaint of disability discrimination, she is entitled to interest on her whole remedy.

123. Firstly, to calculate interest on the Claimant's loss of wages, the Tribunal applied the following formula. There are 1252 days between 2 February 2020 and 8 July 2024. As this is a pecuniary loss, the calculation is from the midpoint. The sum is 1252/2 x 0.08 x 1/365 x £38,680.28 = £5,307.14.

124. Secondly, to calculate interest on the sum due to the Claimant as compensation for her injury to feelings. The Claimant was excluded from the Clio training on 3 December 2020, because Marie considered that she was off sick too much. It is the Tribunal's judgment that this was the earliest act of discrimination in the list of issues. The sum for injury to feelings and aggravated damages is 3 December 2020 – 8 July 2024. Calculating interest over that period is a total of 1313 days.

125. The sum is 1313 x £0.8 x 1/365 x £30,000 = £8,633.42.

126. The Claimant is entitled to a total interest payment of £5,307.14 + £8,633.42 = **£13,940.56.**

127. The Claimant is entitled to the following:

Basic Award	£305.20

Compensatory Award

Loss of earnings - post dismissal	£31,301.80	
Unpaid wages - prior to dismissal	£6,705.92	
Unpaid sick pay	£672.56	
Unpaid Commission – breach of contract	£1,208.00	
Holiday Pay	£3,121.20	
Loss of Pension	£803.42	
Failure to provide written terms and conditions	£1,220.80	
		£45,033.70

Injury to Feelings	£25,000.00
Aggravated Damages	£ 5,000.00

Interest	£13,940.56	£43,940.56

The total is: **£89,279.46**

128. The sum will have to be grossed up to ensure that the Claimant gets this amount after any liability to the HM Revenue and Customs, is satisfied.

129. The sums are as follows: -

130. In the tax year 2024 – 2025, it is likely that the Claimant will continue to refer work to the firm of solicitors as part of her consultancy business. Between May 2021 and July 2024, the Claimant earned £19,114.00 as commission from her referrals. That is over a period of 3 years. The Claimant has earned approximately £6,333 per annum.

131. The personal allowance is £12,570. The relevant tax bands are 0% up to £12,750. Between £12,750 - £37,700, the relevant tax band is 20%. Between £37,700 - £125,140, the relevant tax band is 40% and any earnings over £125,140 is taxed at 45%.

132. The total amount payable to the Claimant is £89,279.46. According to section 401 of the Income Tax (Earnings and Pensions) Act 2003, the first £30,000 of any award on termination of employment is tax free. The revised total that will be subject to taxation is therefore £59,279.46.

133. The Claimant's expected income is £6,300 this financial year. The balance left from her personal allowance will therefore be £12,570 - £6,300 = £6,450.00 Taking £6,450.00 from £59,279.46 leaves £52,829.46 to be taxed.

134. £12,751 – £37,700 = £24,949 x 0.20 = £4,989.80. The balance of £27,880.46 will be subject to the 40% tax rate. That will be £27,880.46 x 0.40 = £11,152.18. The total amount of income tax payable will therefore be £4,989.80 + £11,152.18 = **£16,141.18.**

135. The total amount due to the Claimant is as follows:

Basic Award:	£305.20
Compensatory Award	£45,033.70
Injury to feelings	£25,000.00
Aggravated damages	£5,000.00
Interest on awards	£13,940.56

Total of £89,279.46
Grossing up: £16,141.18

136. The Claimant is entitled to a total remedy of £89,279.46 + £16,141.18 = £105,420.64.

Costs

137. We follow the structured approach referred to above, in the case of In Millan v Capsticks Solicitors LLP & Others UKEAT/0093/14/RN.

138. At the time the Claimant brought these complaints on 11 July 2021, the Respondent knew that she was owed some wages and some commission. Mr Khan admitted this in the liability hearing. At the same time, he instructed Counsel to make an application to strike out her claim, at the first preliminary hearing.

139. The Claimant was a legal caseworker but mainly in the area of family law. She was not qualified nor was she experience in employment law. When EJ Moor stated that the next preliminary hearing would consider the Respondent's applications, she became afraid that her case might be struck out. She sought specialist legal advice from Ms A Pitt in respect of the preliminary hearing on 15 March 2022. EJ A Allen recorded in his minutes of that hearing, the following: - *The Respondent encouraged me to strike out all of the claimant's claim or in the alternative to make deposit orders in relation to all of her claim, which I did not do".* The Claimant successfully resisted the Respondent's application.

140. At the start of the liability hearing in May 2022, the Respondent again informed the Claimant that it was going to make an application for her claim to be struck out because she failed to comply with Tribunal orders. The Claimant became very worried about that possibility. The Claimant instructed Counsel, Mr Bletchley to appear at the Tribunal to resist the strike out application as she did not believe that she had the expertise herself to do so. Mr Bletchley attended. At this Tribunal noted in its record of that hearing, the Respondent was also in breach of Tribunal orders. The Respondent had excluded relevant documents from the Tribunal. The Claimant had been late with serving her witness statement but that had been caused by her battle with the Respondent to get the relevant documents included in the bundle.

141. The Claimant had been in contact with the Respondent throughout the preparation of the case and had been actively pursuing her case. It was not appropriate to strike out her claim.

142. The Respondent would have been aware that the Claimant was a disabled person and disabled by way of mental impairments as well as physical impairments.

143. The Respondent would also have been aware on both occasions that it applied to strike out the Claimant's claim, that she was owed wages, that she had never been paid a full month's wages and she was owed commission. The Respondent would also have been aware that there was no redundancy situation when she was dismissed.

144. We take into account that the Respondent is a firm of solicitors and that the main partner dealing with this case, was a solicitor who advised clients on employment law matters and would therefore have some specialist knowledge.

145. Taking all those facts into consideration and all the findings of fact set out in the liability judgment, the Respondent has conducted their defence of this case unreasonably by causing the Claimant to worry about her case being struck out and to have to incur expenses to ensure that did not happen.

146. Ms Barlay submitted that this was the normal cut and thrust of litigation. We disagree. The Respondent were entitled to defend the parts of the claim where there was some question of the strength of the claim or where they disputed facts. But, the Respondent applied to strike out the claim where the allegations were clear and they knew that at least the money claims and the dismissal complaint had some prospects of success.

147. It is our judgment that the Claimant has only claimed for the costs directly associated with the applications to strike out and not because of the whole defence. She has not applied for her own costs.

148. The costs of seeking advice on dealing with applications to strike out flow directly from the Respondent's applications. The Respondent is a firm of solicitors and so the Claimant felt that she would not be able to defend this on her own, especially as it was personal to her.

149. It is this Tribunal's judgment that we are going to exercise our discretion to make a costs order in this case in relation to the legal costs that the Claimant incurred to resist the applications to strike out her case.

150. The Claimant was not familiar with employment tribunal proceedings and did not know whether the Tribunal would listen to her or if Mr Khan's experience and knowledge would mean that she would lose.

151. On 12 May, once the Tribunal refused the Respondent's application, the Claimant asked Mr Bletchley to leave and continued to present her case. She did incur unnecessary expenses.

152. It is our judgment that the Respondent should reimburse the Claimant for the sums she paid to Ms Pitt and to Mr Bletchley.

153. The Claimant provided the Tribunal with copies of the invoices. The sum paid to Ms Pitt was £650.00. the Claimant has asked to be reimbursed for £600. The second invoice is from Mr Bletchley and was for £3,000. The Respondent made no submission to the Tribunal about not being able to pay.

154. The Respondent is ordered the Claimant the sum of £3,600 as costs.

155. The Respondent is to pay the Claimant the sum of £105,420.64 + £3600 = **£109,020.64** forthwith.

Employment Judge Jones
Date: 14 August 2024