



EMPLOYMENT TRIBUNALS

Claimant: Ms Mary-Ann Pearson

Respondent: Greenwood Academies Trust

Heard at: Bury St Edmunds (CVP) **On:** 4 February 2025,
chambers 26 February 2025 & 6 May 2025

Before: EJ Islam, TM Sarah Blunden and TM Anne Buck.

Representation

Claimant: Mr Maini-Thompson (Counsel)

Respondent: Mr Ogunshakin (Counsel)

RESERVED JUDGMENT ON REMEDY

1. The Tribunal awards the Claimant the following:

Basic award	14,789
Financial loss until remedy date inc pension loss (inc ACAS uplift and interest)	92,629.31
Loss of statutory rights	250
Loss of long notice period	250
Future loss inc pension loss	36,341.69
Injury to feelings (inc ACAS uplift and interest)	22,277.72
Grossing up element	81,646.66

Total	£248,184.38
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2. The Respondent is therefore ordered to pay the Claimant the total sum of £248,184.38.
3. The necessary sums have been awarded following grossing up and therefore may be subject to statutory deductions for tax and National Insurance.

REASONS

Background

1. The Claimant, Ms Pearson, was successful in her claims for unfair dismissal, wrongful dismissal and disability discrimination having given an oral judgment on liability on 21 November 2024. Written reasons were requested and provided to the parties dated 21 February 2025. Case management orders were set ahead of the remedy hearing scheduled for 4 February 2025.
2. A remedy hearing took place on 4 February 2025. Counsel for the Respondent made a late application for a postponement of the remedy hearing on the morning of the hearing, notice having been given of the intention to make the application at 17.10 on 3 February 2025. The basis of the application was a combination of asserting that the Claimant had not complied with the case management orders in engaging effectively with the Respondent ahead of the hearing in respect of matters such as working to agree a pension loss figure, nor had he had proper opportunity to consider the additional material to the remedy bundle. Additionally, Counsel for the Respondent said that a new solicitor had been recently engaged in the case, and he had limited interaction with those instructing him in preparing for the hearing today.
3. Counsel for the Claimant strongly opposed the application for a postponement. He argued that the real reason for the application was due to the disorganisation and lack of engagement by the Respondent solicitors. He submitted that the bundle is not a new one and contained the same information that was provided at the time of the substantive hearing back in October 2024, save for updated medical records which outlined the Claimant's medication and a letter consisting of two paragraphs from the Claimant's GP that were received last Friday. He argued that his instructing solicitor had updated the Respondent solicitor about the seeking of medical evidence on 11 December 2024 and the information was received late

due to NHS pressures and delays over the festive period. In relation to pension loss, Counsel submitted that the Respondent has failed to enter any correspondence to query the figures and that the working out of the figures have been provided in detail from the outset, back in October 2024.

4. The Tribunal refused the application for the postponement and concluded that there had been an unfortunate lack of engagement by the Respondent solicitors, conceded by Mr Ogunshakin and there had been ample time since the last hearing to prepare for the remedy hearing. The Tribunal did not consider there to be any fundamental breaches of the Case Management Orders. Given the length of time to prepare for the hearing the Tribunal did not consider it to be unfair to the Respondent to proceed with the hearing. To assist Mr Ogunshakin in his preparation, the Tribunal granted an adjournment until after the lunch break to allow him additional time to take instructions and to take the opportunity to speak to Mr Maini-Thompson to assist the Tribunal with what was agreed and what remained in dispute.
5. The hearing began substantively after the adjournment and concluded at the end of the sitting day. Judgment was reserved pending deliberations. Following initial deliberations on 26 February 2024, a request for further information from the parties was made about pension loss. Following the receipt of that additional information, the Panel reconvened to reach a decision on 6 May 2025. Unfortunately, it was not possible to reconvene any earlier than this date and our apologies are conveyed to the parties for the time it has taken to issue judgment.

Evidence

6. The following evidence was provided in relation to remedy:
 - a. Remedy bundle of 82 pages including schedule of loss, Claimant's witness statement, witness statement from Francis Pearson, the Claimant's son, employment salary information, pension calculations and medical information.
 - b. Amended schedule of loss dated 05.05.25
 - c. Ms Pearson gave oral evidence under oath in relation to remedy and was cross examined by the Respondent and asked further questions by the Tribunal.
7. The Tribunal also received written and oral submissions by Counsel for the Claimant and Respondent and received additional information about pension loss dated 27 March 2025.

Issues

8. The following matters in relation to the schedule of loss were agreed:
 - a. Basic award
 - b. Loss of salary from 27 April 2023 to 4 February 2025
9. The following matters were not agreed:
 - a. Loss of long notice period
 - b. Loss of statutory rights
 - c. Future loss
 - d. Non-financial loss
 - e. Aggravated damages
 - f. ACAS uplift
10. In respect of pension loss, Mr Ognunshakin took a neutral position and said that he left this matter to the Tribunal. He said that the suggested figure 'stands to reason based on the calculation' and that he did not dispute the 'common sense approach' of the Simple Method being adopted. No alternative figures were offered by the Respondent.

Submissions

11. Mr Maini-Thompson referred to his written submissions and highlighted the following points in summary:
 - a. The Claimant's career has been destroyed because of the negative reference stating that she has been dismissed for safeguarding concerns.
 - b. The negative reference presents a universal obstacle from obtaining any other employment.
 - c. There is no suggestion the Respondent would be willing to provide a neutral reference in light of judgment on liability and in any event a neutral reference would not take the Claimant very far.
 - d. The Respondent has not provided any evidence of other roles the Claimant could apply for. They have not demonstrated that this is a plausible route.
 - e. The Claimant is not likely to gain future employment in teaching sector again as she has a black mark on her record.
 - f. The Claimant should be compensated for career loss until the date she planned to retire.
 - g. The egg shell rule applies, the Respondent has to take the Claimant as they found her.

- h. The Respondent has not provided any evidence that the Claimant's multiple sclerosis is the primary reason she cannot move forward with work unrelated to the actions of the Respondent.
 - i. Aggravated damages should be awarded as the fundamental ingredients in the case of *Shaw* have been met.
 - j. The Claimant has tried to mitigate her losses.
12. Mr Ogunshakin made the following points in summary having referred the Tribunal to his earlier written submissions:
- a. Four of the references in the bundle do not provide the reason for dismissal as safeguarding and this is an important consideration.
 - b. The Claimant has failed to mitigate her loss.
 - c. It cannot be fair to speculate that if she had applied for roles out of the education sector that she would have received nothing.
 - d. The sad nature of her health condition is that she could still be at work or may have been signed off unable to work.

The Law

13. In accordance with s124(2)(b) of the Equality Act 2010, the remedy for discrimination may include an order to the Respondent to pay the Claimant compensation. Compensation is assessed in the same way as any other tortious claim and corresponds to the amount that can be awarded in the County Court. Such compensation can include damages for injury to feelings: s.119(4). The damages should place the Claimant, so far as is possible, in the position that they would have been in but for the discriminatory conduct.
14. Placing a Claimant in the position they would have been in but for the discrimination will entail an assessment of what might have happened but for the discrimination: see *Chagger v Abbey National Plc* [2010] ICR 397.
15. Where a Claimant has succeeded in complaints of unfair dismissal and discrimination the elements of the compensation inevitably overlap. In such cases, the Tribunal should award compensation under the discrimination legislation: *D'Souza v London Borough of Lambeth* [1997] IRLR 677.
16. The EAT case of *Armitage, Marsden and HM Prison Service v Johnson* [1997] IRLR 162 outlined the key points of principle in respect of awards for injury to feelings. These principles were approved in *Vento v Chief Constable of West Yorkshire Police (No. 2)* [2003] ICR 318, which also identifies three bands of injury to feelings awards, these being: 1) The top band is for the most serious cases,

such as where there has been a lengthy campaign of discriminatory harassment on the ground of a protected characteristic. 2) The middle band should be used for serious cases, which do not merit an award in the highest band. 3) Awards in the lower band are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

17. The Tribunal also considered the recent EAT authority of *Eddie Stobart Ltd v Caitlin Graham* [2025] EAT 14, particularly in respect to evidence of injury.
18. Awards for financial loss fall into two categories, loss up until the date of the relevant hearing and future loss. In relation to financial loss, the Claimant is under a duty to mitigate. The burden of proof is on the Respondent to show that the Claimant has failed in that duty. The question is not whether the Claimant has acted reasonably but whether he has taken reasonable steps to mitigate. It is not enough for a Respondent to show that there are reasonable steps which the Claimant has not taken; the Respondent must show that it was unreasonable for the Claimant not to have taken them, *Wilding v British Telecommunications Plc* [2002] ICR 1079 and *Cooper Contracting Limited v Lindsey* UKEAT/0184/15.
19. If the Claimant is successful in a claim for unfair dismissal they are entitled to a basic award, calculated in accordance with ss.119 - 122 Employment Rights Act 1996. In this case, the compensatory award for unfair dismissal will be covered by the award for financial loss in respect of the discrimination claim.
20. Tribunals have the power to uplift or reduce any award by up to 25% where there has been an unreasonable failure by a party to comply with the ACAS Code of Practice on Discipline and Grievances. See s.207A Trade Union and Labour Relations (Consolidation) Act 1992.
21. The EAT in *Slade and anor v Biggs and ors* [2022] IRLR 216 set out a four stage test to assist in assessing the appropriate uplift under s.207A which has been considered and applied by the Tribunal.
22. Additionally, Counsel referred the Tribunal to various authorities and legislative provisions in oral and written submissions of which were considered by the Tribunal including:
 - a. Long notice: *SH Muffet Ltd v Head* [1986] IRLR 488
 - b. Causation: *Ahsan v The Labour Party* EAT/0211/10
 - c. Egg-shell skull rule: *Olayemi v Athena Medical Centre and another* [2016] ICR 1074

- d. Damages arising from discrimination: *Essa v Laing Ltd [2004] ICR 746*
- e. Aggravated damages: *Commissioner of the Police of the Metropolis v Shaw EAT 0125/11*
- f. Interest: s139, s124(2)(b) EA 2010. Industry Tribunals (Interest on Awards in Discrimination Cases) Regs 1996
- g. Income Tax (Earnings and Pensions) Act 2003

Findings of Fact

Financial Loss up until Remedy Hearing

- 23. We make the following findings of fact based on the balance of probability from the evidence we have read and heard. We do not repeat all of the evidence here.
- 24. The Claimant's gross annual basis pay was £43,685.04, her gross weekly pay was £840.09 and her net weekly basic pay was £598.37. Her contractual notice period was one term. Her date of birth is 9 March 1970. Her period of service with the Respondent was between 1 June 2005 and 27 April 2023. She held 17 years of continuous service. She was 53 years of age on the effective date of termination which was 27 April 2023.
- 25. The Claimant was a member of the Teachers Pension Scheme (TPS). The scheme is a defined benefit scheme. The rate of the employer contribution was 23.68% of salary but increased from 1 April 2024 to 28.68% of salary.
- 26. The Claimant intended to work full time under September 2025 and then reduce to three days a week until she reached 60 years old. The intention behind her reduction in days was due to her being able to continue to work whilst managing her multiple sclerosis.
- 27. After her dismissal, the Claimant applied to 9-10 teaching agencies in order to seek a new role. Her applications were generally unsuccessful because they asked for a reference and her reference from the Respondent disclosed that she was dismissed due to safeguarding. The applications contained a section on safeguarding and the Claimant's applications would not progress once she completed that section. One agency said they would accept a personal character reference, and the Claimant asked a former colleague to do this. They agreed to do so but were told by the Respondent that they were not allowed to do so. The only agency the Claimant passed compliance for was Reed and that was because

they did not initially request a reference, this was only requested after interview. She did not reach the interview stage for other agencies.

28. Since her dismissal, the Claimant made more than 30 applications for work. The last application she made was before the substantive hearing in October 2024. She had applied for teaching roles and wider roles in education including as a learning mentor, SEND support and working in a college with adults. She expanded the geographical radius of her search to Milton Keynes, Rugby and Birmingham, although there were difficulties in her getting there. She explained that she started ticking the box which requested the reference for after having an interview. She had 10-15 interviews that were unsuccessful. She said that after one interview, she was escorted off site by the headteacher after having to share the reason for dismissal from the Respondent.
29. The Claimant received a contract for a teaching role after doing an interview and a lesson in a school. However, the offer was subject to a reference and so this opportunity did not progress any further. She explained that despite her efforts, nobody would employ her, and she felt like giving up as she had nothing to do with her life. She described reaching 'breaking point' many times.
30. The Claimant also considered other roles outside of teaching including in the Northampton Mental Health Service and as a probation officer but said she did not meet the criteria. She said that she continued to look for other work but that she did not meet the criteria and after each rejection she tried to identify roles aligned to her skills. She said there was nothing she could do other than customer service but that she couldn't do customer service.
31. The Respondent alleged that the Claimant had failed to mitigate her loss and that she had not actively considered roles outside of the education sector. The Respondent failed to produce evidence of alternative roles that the Claimant could have applied for.
32. In terms of the impact of the Respondent's actions towards her, she explained that her mental health had suffered. Medical evidence in the bundle demonstrates that the Claimant was diagnosed with depressed mood in May 2023. She was prescribed antidepressants in June 2023 and remains on this medication. She has a PHQ score of 22 indicating severe depression.
33. She said she was dismissed from the 'only thing I knew I could do'. Her son gave up a job role in America to support her and encourage her to get the help she

needed. She has been prescribed anti-depressants and said that she feels like she has no reason to get up in the morning. She told the Tribunal that she had gotten to 'this dark place too many times'. She explained that she had experienced suicidal thoughts and that she had nothing to look forward to in her life. Having been dismissed for safeguarding, she explained that she could not do anything with her life – even if she wanted to volunteer to read to children, she could not.

34. The Claimant explained that her marriage had broken down and that her husband has gone back to Jamaica. She explained that things had been very difficult, and she was not herself. She said that she was no longer a happy person. She was snappy, irrational and suffered serious mood swings which made her difficult to tolerate.

35. The Claimant said that she did not feel her mental health had improved since the judgment on liability but that she is hoping things will improve.

36. The Claimant explained that her health had deteriorated and that she no longer has her driving license since summer 2024. She said that she had considered supply teaching, but the logistics were not currently workable.

37. She explained that prior to this, after a conversation with her neurologist she had planned to work 3 days a week from September 2025 which would give her a day to rest between each day. She said that it could not be assumed that she was going to be unable to work because of her multiple sclerosis.

38. The Claimant had not secured alternative employment by the date of the remedy hearing.

Conclusions

39. The basic award was agreed between the parties and is calculated as **£14,789**.

40. The Respondent indicated at the outset of the hearing that that Claimant's loss of salary from 27 April 2023 to 4 February 2025, was agreed. However, proceeded in evidence and submissions to assert that she had failed to mitigate her loss. In any event, it is for the Respondent to show that the Claimant has acted unreasonably in failing to take steps to mitigate her loss. The Respondent provided no documentary evidence of roles that the Claimant could have applied for. We conclude that the Claimant did take reasonable steps to mitigate her losses between the date of her dismissal and the date of the remedy hearing. The burden

rests with the Respondent to demonstrate that there has been an unreasonable failure to mitigate and this has not been established by the evidence.

41. The Claimant's loss of salary from 27 April 2023 to 4 February 2025, is calculated at 92 weeks x £598.37 and amounts to £55,050.04. The Claimant's loss of pension contribution during the same period amounts to £20,150, calculated on the basis of the lower rate of 23.68% for 48 weeks and the higher rate of 28.68% for 44 weeks. Total loss for this period was **£75,200.04**.
42. The Tribunal also decided to award a sum of £250 for loss of statutory rights and £250 for loss of long notice period.
43. The Tribunal decided to award one year for future loss from the date of the remedy hearing. We did not consider that the Claimant should be awarded an award based on career loss, noting the exceptional situations in which that would apply. We accepted that the negative reference had acted as a barrier to alternative employment in the education sector but did not accept the submission that this would act as an ongoing universal barrier to employment in all sectors. We considered that a year would provide the Claimant with time to move on from the incident, noting that the Tribunal's finding on liability ought to limit the risk of a new employer forming a negative impression of the Claimant's character and ability.
44. In respect of career loss, the Tribunal noted the Claimant's oral evidence about her deteriorating health condition but was not provided with any independent medical evidence to demonstrate that her health had deteriorated to such an extent, as a result of the Respondent, that this meant she would be unable to work again. The Tribunal noted that the Claimant's solicitors had sought information from the Claimant's GP in advance of the remedy hearing asking the question '*Our client feels that she is unable to work again due to the stress that she has been put under, given her 17 years was ended with a summary dismissal...the Tribunal needs to assess how long the client is going to be out of work. The client suggests that she cannot work against due to the way she has been treated Please can you comment on this.*' [p37 Remedy Bundle]. In response, the Claimant's GP in a letter dated 28 January 2025 said '*She has been issued a sick note for stress on 30/06/2023 for 2 months*'. [p61 Remedy Bundle]. Indeed, the submissions ably advanced by Mr Maini-Thompson on the Claimant's behalf did not make the argument for career loss on this basis. As such, we have relied on the oral evidence of the Claimant who said that it cannot be assumed that her health issues including multiple sclerosis would mean she cannot work and that her intention was to continue work for a reduced number of days.

45. As such, future loss is calculated based on working full time until September 2025 and three days a week until 4th February 2026. 4th February 2025 until 1st September 2025 = 29.86 weeks at £598.37 totaling **£17,867.33** plus pension contributions calculated as **£7194.17** within the same timeframe. For the period of 1st September 2025 to 4th February 2026 based on three-day week £359.02, in addition to pension contributions of £144.56 a week, for 22 weeks and 2 days = **£11,280.19. Total future loss totals £36,341.69.**
46. In relation to the injury to feelings award, we note that the Claimant suffered an unfair discriminatory dismissal from a role that she loved and held for 17 years. This has had a severe impact on her mental health, her self-esteem, and has negatively impacted her family relationships, including causing the breakdown of her marriage. The Claimant was seeking an award for injury to feelings of £21,000. Having regard to the principles which provide guidance on the appropriate award, in addition to the recent EAT authority of *Eddie Stobart Ltd v Graham [2025] EAT*, we consider that the appropriate award is **£17,000** in the middle Vento band.
47. Having considered the principles in the case of *Shaw* and noting that aggravated damages are compensatory and not punitive, the Tribunal did not consider that aggravated damages should be awarded.
48. We find that the ACAS Code applied to the disciplinary proceedings the Claimant was subjected to and as per the written reasons which flowed from the Judgment on Liability, there were several serious and sustained breaches of the Code. Applying the relevant guidance in *Slade v Biggs*, we consider the appropriate uplift to the award is 15%. The effect of the uplift on the injury to feelings award is that it is increased by **£2550**. The effect of the uplift in the award for financial loss is that it is increased by **£11,280**.
49. Given our findings in respect of liability, considerations of Polkey and contributory fault do not apply.
50. The Tribunal awards interest in respect of the discrimination award. The rate of interest payable on awards stands at 8%. Interest should be calculated from the 'day of calculation'. For injury to feelings, this begins on the date of the contravention or act of discrimination complained of, through to the date of calculation. For other damages, interest is calculated from the mid-point, halfway through the period in question to the date of calculation. For injury to feelings this is 649 days at £4.28 interest a day ($8/100 \times 19550/365$), totaling **£2777.72**. For

financial loss this is 324.5 days at £18.95 interest a day ($8/100 \times 86480.04/365$), totaling **£6149.27**.

51. The amount claimed for notice pay had been struck out of the amended schedule of loss and therefore no award is made.

52. Following the *Gourley* principle, the Tribunal must gross up the Claimant's award to ensure that she is not put in a better or worse financial position is the dismissal had not occurred. Where the award will be taxed under s.401 ITEPA 2003, the Tribunal must gross up the part of the award which falls to be taxed. Compensation for injury to feelings also falls to be taxed to the extent the £30,000 tax free allowance is exceeded.

53. The amounts to be included are:

- a. Financial loss from date of dismissal to date of remedy hearing including pension loss: $£75,200.04 + £11,280 + £6149.27 = £92,629.31$
- b. Financial loss from date of remedy hearing to 4 February 2026 including pension loss: £36,341.69
- c. Injury to feelings: $£17,000 + £2550 + £2777.72 = £22,277.72$
- d. Total: £151,248.03 compensatory
- e. Plus basic of £14789: £166,037.03
- f. Total award exceeds £30,000 by £136,037.03 and this is the amount to be grossed up.

54. The total compensation that is taxable is £151,248.72. £30,000 less the basic award is the remaining tax-free amount, this amounts to £15,211. As such, the remaining **£136,037.72** is subject to grossing up. The calculation is presented in the Finlay table below.

Tax bands 25/26	Gross	Tax	Net
Personal allowance 0% Up to £12,570	12,570	0	12,570
Basic tax 20% £12,571 to £50,270	37,700	7,540	30,160
Higher rate 40% £50,270 to £125,140	49,730	19,892	29,838

Reduced personal allowance	25,140	12,570	12,570
50%			
Additional rate 45% Over £125,140	92,543.69	41,644.66	50,899.03
Total	217,683.69	81,646.66	136,037.03

Summary

55. The total compensation payable is therefore:

Basic award	14,789
Financial loss until remedy date inc pension loss (inc ACAS uplift and interest)	92,629.31
Loss of statutory rights	250
Loss of long notice period	250
Future loss inc pension loss	36,341.69
Injury to feelings (inc ACAS uplift and interest)	£22,277.72
Grossing up element	81,646.66
Total	£248,184.38

Approved by:

Employment Judge Islam

25 May 2025

JUDGMENT SENT TO THE PARTIES ON

9 June 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/