# EMPLOYMENT TRIBUNALS

**Claimant:** Professor Tanweer Ahmed

**Respondent:** United Lincolnshire Hospitals NHS Trust

**Heard at:** Nottingham (on the papers)

**On:** 5 June 2025

**Before:** Employment Judge Victoria Butler
**Members:** Ms L Lowe
Mr K P Chester

# RESERVED REMEDY JUDGMENT

The unanimous decision of the Tribunal is:

1. The uplift to be applied for breach of the ACAS Code of Practice on disciplinary and grievance procedures ("the Code") is 10%.

2. There is no discount for accelerated receipt.

# REASONS

## Background

1. This case has a long history which we summarise for ease.

2. The final hearing to determine liability was heard between 21 March 2022 and 1 April 2022. We reserved our decision, and the Claimant was successful in his claims of direct race discrimination, victimisation, and unfair dismissal. His claim of harassment failed.

3. A remedy hearing took place was between 11 March 2024 – 15 March 2024 and we convened on 22 April 2024 to conclude our deliberations.

4. We agreed with the parties that we would confine our decision making at that stage to injury to feelings and determining the principles and '*shape*' of the Claimant's losses. This was to allow them opportunity to agree quantum, in particular pension loss which involved complex calculations.

5. We awarded the Claimant £33,000 in respect of injury to feelings and determined that his financial losses should be assessed up to 31 July 2024.

**Figures agreed before this hearing**

6. The Claimant received £100,000 from the Respondent on account of remedy on 8 August 2023, before the remedy hearing.

7. He received a further £33,043.38 in July 2024 representing the award for injury to feelings and interest.

8. The parties subsequently agreed the following amounts:

| | |
|---|---|
| Basic award: | £11,287.50 |
| Loss of statutory rights: | £500 |
| Loss of salary: | £163,834.20 (being the net amount) |
| Loss of pension: | £80,410.00 (being the net amount) |

**The preliminary hearing on 20 March 2025 and the consent judgment**

9. The parties attended a preliminary hearing by telephone on 20 March 2025 before the Employment Judge to discuss how the remaining issues of the ACAS uplift and interest would be determined. The parties agreed that they could be dealt with on the papers, and they were ordered to make submissions in advance.

10. I also proposed to issue a consent judgment for the agreed amounts and gave the Respondent a short period of time to advise if it objected.

11. On 25 March 2025, the Respondent confirmed it had no objections to the issue of a consent judgment which the Employment Judge duly issued and was sent to the parties on 31 March 2025.

12. On 9 April 2025, the Respondent applied for the consent judgment to be set aside because the judgment did not make it explicit that the amounts payable were the net amount, no discount for accelerated receipt was applied and the judgment did not address the payment of £100,000 paid to the Claimant on account of his losses.

13. On 29 April 2025, the Employment Judge wrote to the parties asking the Respondent to confirm the grossed-up figures and how it wanted the payment on account to be reflected in the judgment. She also asked the parties to make submissions on accelerated receipt.

**Accelerated receipt**

14. The Respondent has subsequently conceded that no percentage reduction should be made. No final compensatory award has been made yet and the award represents losses already suffered given the assessment date was 31 July 2024.

**The law**

15. An assessment of an uplift for a failure to comply with the Code must be undertaken in accordance with s.207A Trade Union and Labour Relations (Consolidation) Act 1992 which provides:

> *(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.*
>
> *(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—*
>
> > *(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,*
> >
> > *(b) the employer has failed to comply with that Code in relation to that matter, and*
> >
> > *(c) that failure was unreasonable,*
>
> *the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.*
>
> *(3) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—*
>
> > *(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,*
> >
> > *(b) the employee has failed to comply with that Code in relation to that matter, and*
> >
> > *(c) that failure was unreasonable,*
>
> *the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.*

16. We were referred to the following cases: Secretary of State for Justice v Plaistow UKEAT/0016/20/VP: Wardle v Credit Agricole Corporate and Investment Bank [2011] ICR 1290; and University of the Arts London v Rule UKEAT/0245/10/CEA.

**Submissions**

*The Claimant's submissions*

17. The Claimant submissions initially deal with his disagreement with our initial remedy findings. No formal application for a reconsideration was made at the time albeit the Claimant did ask for a reconsideration in response to the Respondent's application for a reconsideration of the consent judgment. This was not in itself a reconsideration of our remedy decision but rather a dispute about the figures the parties had agreed themselves.

18. The Claimant says that the uplift should be 25%. In summary, he draws our attention to the failings of the disciplinary process which we identified in our liability judgment. He still maintains that he would be working as a Chief Executive in the NHS had the Code been followed, despite our remedy findings to the contrary.

19. He describes the impact on his health and that he suffered a mini stroke in April this year.

20. The Claimant also refers to a breach of the ACAS *guidance* on disciplinary proceedings, but this does not attract an uplift for any breach thereof. Further, he makes submissions in respect of a breach of the Code in respect of grievances, but we made no findings about that.

21. In terms of breaches of the Code, he relies on the biased investigation report, delay and consistency of treatment and refers to the relevant paragraphs in our judgment.

22. In response to the Respondent's request for details of his earnings for the 2025/26 financial year (so it can calculate the grossed-up figures), the Claimant explains that he receives payments from two pensions totalling £32,750 p/a which is his primary source of income. He has started his own consultancy business for which he cannot provide an estimated income and has invested in property from which he expects to receive an income between £7,500 - £9,000.

23. The Claimant remains optimistic about finding alternative employment after accepting redundancy from Sheffield Hallam University but suggests a realistic total annual income of around £65,000 p/a.

*The Respondent's submissions*

24. The Respondent explains why the consent judgment should be reconsidered for the reasons explained above.

25. It submits that any uplift should be limited to 10% and reminds us of the following: i) an uplift should not lead to a disproportionate award; and ii) the Claimant should not benefit from double recovery given he has already received £33,000 for injury to feelings arising from the disciplinary process. It says that an uplift of 10% would fall in the same bracket of injury to feelings which is consistent with the guidance in *Wardle*.

26. It asks us to confirm that the award for injury to feelings was for pre-dismissal discrimination.

27. It also provides the calculations for interest on the awards made which are as follows:

    i) An outstanding amount of interest on the injury to feelings award of £108.41.

    ii) Interest on the award for loss of earnings of £22,949.38 and pension loss of £14,312.98.

28. The total outstanding interest is therefore £37,370.77.

**Conclusions**

29. Our liability judgment dated 28 June 2022 should be read in conjunction with these reasons.

**ACAS uplift**

30. We have had regard to the following paragraphs in which we made express findings that the Code was breached because of delay:

    Para 283:

    Given these factors, we are entirely satisfied that the Respondent failed to follow a reasonable investigation. Rather, it was one-sided and not '*a full and reasonable investigation'*, as required by the Respondent's own investigation protocol. Furthermore, it was in breach of the ACAS Code of Practice (the ACAS Code") which provides "*It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case."* Notably, Mr Brassington at the appeal stage upheld the Claimant's ground of appeal that the delays were unacceptable.

    Para 286:

    The hearing itself took place almost eighteen months after Ms Ayre's initial complaint, again in breach of the ACAS Code which provides "*Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions".*

31. In summary, we found that the investigation was in breach of the Code because of bias and the delays.

32. We were critical of the disciplinary hearing because it was set up in favour of the Respondent's witnesses who were encouraged to attend and briefed beforehand whereas the Claimant's witnesses were not. Mr Thompson, who was representing the Claimant, was not able to question witnesses directly and his submissions were cut short, so he had to send them by e-mail after the hearing. The Respondent did not act consistently in its treatment of the Claimant in direct contradiction to the Code which provides that employers and employees should act consistently. It also curtailed the number of witnesses he wanted to call in breach of paragraph 12 of the Code which provides that "*The employee should be given a reasonable*

*opportunity to ask questions, present evidence and call relevant witnesses"*.

33. We were also critical of the appeal because the appeal officer failed to read key documents and investigate the consistency of treatment ground.

34. We are satisfied that in all circumstances the Respondent breached the Code as identified above and it is just and equitable to award an uplift.

35. However, we have had regard to the fact that the Respondent complied with the necessary elements of the Code. It carried out an investigation, the Claimant was notified of the allegations against him, was given the right to be accompanied at the disciplinary hearing and the right to appeal.

36. Whilst there were glaring flaws in that procedure, this is not a case where there was a wilful disregard of the Code or a deliberate attempt not to comply with it, and we have not made any findings in that regard.

37. We have also borne in mind that we awarded the Claimant injury to feelings of £33,000 which was in the top band of the Vento guidelines in force at the time. This award was made because of the way the disciplinary procedure was handled in a biased, unbalanced, and inconsistent way which we found amounted to discrimination. We refer to paragraph 97 of our remedy judgment:

> We primarily focus on the injury caused during the disciplinary process which occurred over a period of nine months. We accept the Claimant's evidence of the hurt, humiliation, distress and upset that each step of the process had on him which he describes in his witness statement at paragraphs 69 – 96. In turn, this led to his mental health deteriorating during this period and experiencing "*thoughts of being better off dead*", "*worsening mood*", "*depressive symptoms, lack of motivation, difficulties with relationships, low self-esteem*". He was also prescribed medication and attended therapy. We have no reason to question the Claimant's account of his mental health which is clearly documented in the bundle and the Respondent did not seek to challenge it.

38. As such, the Claimant has already been compensated for his injury caused by those failings and he should not benefit from double recovery. For the parties' benefit, we confirm that the award for injury to feelings was made for pre-dismissal discrimination.

39. Nonetheless, the purpose of the uplift is punitive so we cannot find that it is just and equitable to not apply one at all.

40. We are satisfied that 10% is just and equitable given the technical breaches of the Code, namely the substantial delays in the process. We do not award any higher than that because the Respondent did comply with the Code, albeit over a protracted period and did not wilfully disregard or attempt not to comply with it.

41. We are satisfied that such an uplift reflects all the circumstances of the case given the award already made for injury to feelings. We are also satisfied that an uplift of 10% is not disproportionate in absolute terms given the extent of those delays.

**Interest**

42. The Tribunal disagrees slightly with the interest figures calculated by the Respondent. It calculates the amounts due as follows (using an assumed award date of 17 May 2024):

*Loss of earnings*:

£163,834.20 x 0.08 x 529/365 = £18,995.76

£63,834.20 x 0.08 x 283/365 = £3,959.47

*Pension:*

£80,410 x 0.08 x 812/335 = £14,310.77

43. Including the outstanding amount of interest for the award for injury to feelings of £108.41, the total interest due is **£37,374.41**.

**Next steps**

44. The consent judgment dated 28 March 2025 is set aside so all matters can be dealt with in one judgment. It is in the interests of justice to do so to ensure proper calculation and payment to the Claimant.

45. The Respondent has committed to providing the grossed-up figures within 7 days of receiving this judgment. To bring finality to this litigation, further orders accompany this judgment to ensure the Claimant receives his compensation without further delay.

**Approved by:**

**Employment Judge Victoria Butler**

**Date: 25 June 2025**

Sent to the parties on

...25 June 2025.....

For the Employment Tribunal

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