EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101472/2022 & 4101245/2023

Held in Glasgow on 28 May 2025
and on 29 May 2025 (in Chambers)

Employment Judge Murphy
Tribunal Member A Grant
Tribunal Member I Ashraf

Ms E Whyte	**Claimant** **Represented by:** **Ms K Stein -** **Solicitor**
Falkirk Council	**Respondent** **Represented by:** **Mr M Briggs -** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

1. The claimant was unfairly dismissed. The respondent shall pay compensation for unfair dismissal in the total sum of **£41,704.89 (FORTY-ONE THOUSAND SEVEN HUNDRED AND FOUR POUNDS AND EIGHTY-NINE PENCE).** This sum includes a basic award of **£14,253.57 (FOURTEEN THOUSAND TWO HUNDRED AND FIFTY-THREE POUNDS AND FIFTY-SEVEN PENCE)** and a compensatory award of **£27,451.32 (TWENTY-SEVEN THOUSAND FOUR HUNDRED AND FIFTY-ONE POUNDS AND THIRTY-TWO PENCE).**

2. The respondent shall pay the total sum of **£17,415.26 (SEVENTEEN THOUSAND FOUR HUNDRED AND FIFTEEN POUNDS AND TWENTY SIX PENCE)** as compensation for the acts of victimisation which the Tribunal has upheld. This sum comprises an award for injury to feelings **of £14,000**

(FOURTEEN THOUSAND POUNDS) and interest thereon in the sum of **£3,415.26 (THREE THOUSAND FOUR HUNDRED AND FIFTEEN POUNDS AND TWENTY-SIX PENCE).**

REASONS

Introduction

1. A final hearing on liability took place in this case on 19-21 June and 2-4 October 2023. Judgment was sent to parties on 22 November 2023. The claimant was successful in a complaint of constructive unfair dismissal pursuant to sections 94-98 of the Employment Rights Act 1996 (ERA) and in relation to two complaints of victimisation pursuant to section 27 of the Equality Act 2010 (EA). A hearing on remedy took place on 28 May 2025 as an in-person hearing at the Glasgow Tribunal. The claimant (C) gave evidence which was taken orally.

2. We were referred to some but not all of the documents in a short inventory of productions prepared on behalf of C. Both Ms Stein and Mr Briggs gave oral submissions.

Issues to be determined

3. After a preliminary discussion, the issues for the Tribunal to decide were identified as follows:

<u>Unfair dismissal</u>

1. Ms Stein confirmed that C does not seek reinstatement or re-engagement.

2. The parties agreed that a basic award is payable to C in the amount of £14,253.57. Mr Briggs confirmed the respondent (R) does not seek a reduction in the basic award pursuant to section 122(2) of ERA (culpable conduct before dismissal).

3. If there is a compensatory award, how much should it be? The Tribunal will decide:

    a. What financial losses has the dismissal caused C?

b. Has C taken reasonable steps to replace her lost earnings, for example by looking for other jobs?

c. If not, for what period of loss should C be compensated? Ms Stein asserts she has done so and should be compensated to the date of the remedy hearing and 12 months beyond. Mr Briggs argues that C has unreasonably failed in her duty to mitigate and that the period of loss should be restricted to 6 months from the EDT (from 31 October 2022 to 30 April 2023).

d. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

e. Did the respondent (R) unreasonably fail to comply with it by delays in resolving grievances C brought? Ms Stein says there was unreasonable non-compliance. Mr Briggs disputes this.

f. If so, is it just and equitable to increase the compensatory award payable to the claimant? Ms Stein contends for an uplift of 25%. Mr Briggs disputes any uplift should be applied but, if there is an uplift, he argues it should be restricted to 10%.

g. Parties agree that the statutory cap applies and that, in this case, it is £27,451.32 (i.e. 52 weeks' pay calculated in accordance with sections 220-226 of ERA).

4. Mr Briggs confirmed that R does not seek a reduction to the compensatory award on the basis of alleged contributory conduct under section 123(6) of ERA nor on the basis that there is a chance C would have been dismissed fairly in any event (a **Polkey** reduction).

Victimisation

5. C does not seek economic losses arising from the established victimisation complaints.

6. What injury to feelings has the victimisation caused C and how much compensation should be awarded for that? C claims an injury to feelings

award of £18,000. Mr Briggs argues that this is too high and an award in the region of £12,000 would be appropriate.

7. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8. Did R unreasonably fail to comply with it by delays in resolving grievances C brought? Ms Stein says there was unreasonable non-compliance. Mr Briggs disputes this.

9. If so, is it just and equitable to increase the injury to feelings award payable to C? Ms Stein seeks an uplift of 25%. Mr Briggs disputes any uplift should be applied but, if there is an uplift, he argues it should be restricted to 10%.

10. Should interest be awarded? How much?

Findings in fact

4. The following facts, and any further facts set out in the 'Discussion and Decision' section, are found to be proved on the balance of probabilities or were agreed by the parties. The facts found are those relevant and necessary to our determination of the issues. Some findings in facts made following the hearing on liability are incorporated for ease of reference. The same abbreviations are used for the names of witness and others as set out in the Judgement on Liability. What follows is not intended to be a full chronology of events.

5. C was employed from in or around 2001 until her resignation took effect on 31 October 2022. She was employed latterly as a Senior Housing Needs Assessment Officer from around April 2014, and held this post until her employment terminated.

6. On 11 August 2021, C learned that a male colleague, SM, was on a higher grade than her. She raised an informal then a formal grievance about this matter. It was decided that the grievance would be adjourned pending a re-evaluation of C's role. The facts found in relation to this are set out fully in the judgment on liability. For present purposes, it suffices to record that this

grievance pre-dated and did not refer to subsequent acts of victimisation which have been found to be established.

7. On 30 September 2021, C was signed off sick with work-related stress. She remained off sick until 31 January 2022.

8. On or about 18 November 2021, LS told C's line manager to halt the re-evaluation process while C was off sick.

9. C returned to work on 1 February 2022 on a phased basis.

10. A telephone appointment with OH took place some time between 1 and 22 February 2022, and resulted in an OH report dated 22 February. The OH Advisor recorded in the report that C was experiencing symptoms of anxiety and stress and that putting the evaluation on hold negatively impacted C's mental well being and set back her recovery. It also recorded C had had a close family bereavement at the time. A stress risk assessment was recommended. It recorded that, in relation to the procedures at work, C described symptoms of feeling ignored, humiliated, undervalued and questioning her own capability due to loss of confidence and anxiety.

11. C went off sick again from 4 April until 6 May 2022. At this stage the job evaluation questionnaire had not been finalised or submitted. C had a further OH appointment on the day her sickness absence started, and a report was produced by the OH advisor the same day (4 April 2022). The resulting report recorded that C reported no improvement in her symptoms and that her work issues were still ongoing. She had commenced on some antidepressants but was yet to see the benefit.

12. On 19 April 2022, while off sick, C sent an email enquiry to the relevant specialist within R to ask about how her pension would be affected (which she said she planned to take at 60) if she were to reduce her hours to 30 hours per week over four days. There followed correspondence back and forwarded about the financial implications for C's pension.

13. C returned to work on 6 May 2022. She requested a reduction in her hours from 37 per week to 30 per week. Between 6 and 11 May 2022, C had a

return-to-work meeting with AA. AA told C that she would be placed on formal absence monitoring. C disputed this was appropriate in the circumstances and disputed that it was in accordance with R's policy.

14. On 11 May 2022, C had a meeting with AA and LS. During that meeting LS told C that she should not be administering the homeless appeals process. LS said that AA would do that work. C was unhappy about this. She protested that administering appeals was listed as part of her job description. LS said she had not seen C's JD. She said she believed that C may have dealt with appeals temporarily but that she should not have been doing so. C said she disagreed with the removal of these duties.

15. C was upset about the removal of these appeal duties. She believed it was in response to her raising grievances querying the equal pay issue and was designed to negatively impact on the evaluation of her post. She felt very confused, and that LS was being dishonest with her when LS said she didn't have her job description. She felt undervalued and insignificant and a strong sense that the removal of the duties was unjust and wrong. C had been dealing with the appeals since taking up her post in 2014 and, in having this work taken from her, she felt she was being treated differently. She felt frightened by this development.

16. On 27 May 2022, a Teams meeting took place between C and AA and HR. The purpose was to discuss concerns regarding C's absence levels. AA noted that C had met a trigger under R's policy and told C her absence would be monitored on a Stage 2 basis for a 6-month period. C said she did not accept this as she would not have been absent if the work-related issues had been addressed. C told AA that she felt she had returned to work too soon and that the ongoing issues had not been resolved. She said work-related concerns had caused her increased levels of anxiety and that until her outstanding grievance had been dealt with, her anxiety levels remained high.

17. On 30 May 2022, C raised an informal grievance about subjection to formal absence monitoring among other matters arising from the treatment of her absence. The facts found in relation to that grievance are more fully narrated

in the Judgment on liability. For present purposes it is recorded that, in the grievance documentation, C did not raise concerns about the conversation with LS on 11 May 2022 when she was told she would no longer deal with housing appeals or the removal of that work.

18. On 31 May 2022, C completed a stress risk assessment. She recorded she was not clear about what her duties and responsibilities were and referred to it being suggested she was doing work she should not be doing during a grievance meeting. She recorded this caused a great deal of concern and made her feel very unsure about what she should be doing and what she should not be doing. She recorded *"the stress and anxiety I have suffered has been caused by the way in which a grievance submitted by me has been handled and the fact it has not been resolved... this has caused me to feel undervalued, humiliated, treated differently, unfairly."*

19. There was an informal grievance meeting on 16 June 2022. On 22 June 2022, the grievance manager, Ms Buchanan recommended C be placed on informal monitoring instead of formal monitoring.

20. On 28 June 2022, C intimated a formal grievance appeal as she was dissatisfied with the outcome to place her on informal monitoring among other matters. Her concerns about the removal of homeless appeals were not raised in the context of the grievance process.

21. On 1 July 2022, C's hours reduced to 30 hours per week.

22. On or around 22 July 2022, KG told AA not to speak to C. He did not tell AA not to communicate with other colleagues. The same day or soon after, AA told C that KG had instructed her not to speak with C. AA did not explain why not. At that time, C was aware R had received her Tribunal case and she believed that the instruction related to this. Neither KG nor LS contacted C to discuss the situation or the reasons for any instruction that AA ought not to speak to be speaking to C. AA defied KG's instruction and continued to be in contact with C and to speak to her.

23. C was shocked when AA told her about KG's instruction. Her anxiety increased and she felt scared. She felt that KG, the Head of Service, was a formidable person and this contributed to her feelings of fear. She wasn't in the office often but the instruction made her feel isolated and fearful that if AA wouldn't speak to her, she would have no one left to speak to at work. In fact, as before, AA defied KG's instruction and continued to talk to C. C felt distrustful towards R. Being informed that AA was instructed not to speak to her affected C's ability to sleep and her appetite.

24. In or around the end of July 2022, C suffered symptoms of chest pain and facial numbness causing her to attend hospital and her GP. Her doctor diagnosed that her symptoms were triggered by stress and anxiety.

25. On 4 August 2022, C was signed off sick again due to heightened anxiety. She remained off sick until 7 September 2022.

26. On 4 August 2022 (the same day she went off sick), there was a further hearing to consider C's grievance appeal regarding formal absence monitoring. On 15 August 2022, Ms Kerr issued her grievance appeal outcome letter. The grievance was not upheld. The informal monitoring commencement date was altered to begin from 6 May instead of 25 May 2022.

27. On 18 August 2022, C had a consultation with OH. She advised of the symptoms of chest pain and facial numbness which had led her to attend hospital a few weeks earlier. At that point, she was working from home. The OH Advisor recorded in the report: *"I understand her workplace issues remain outstanding and as such anxiety continues to fluctuate, and when she has to attend the office, she feels this exacerbates her anxiety.... she attended 6 sessions of cognitive behavioural therapy which she found to be beneficial".*

28. On 19 August 2022, C lodged a grievance appeal. She repeated her complaint that her earlier grievances from August and September 2021 were still not resolved. She asserted she was suffering long term health effects caused by obstructive and stalling tactics. She advised she disagreed with being placed on monitoring for her absence in the circumstances, whether

formal or informal in circumstances where, she alleged, the decline in her health had been caused by her employer. She did not refer in her appeal document to the removal of the homeless appeal duties or to KG's instructions to AA not to speak to her.

29. On or around 1 September 2022, during a conversation between AA and KG, C's name came up and KG said to AA: 'I've told you not to speak to Liz Whyte'. On the same day or soon after, AA called C, who remained off sick, and told her that KG had repeated the instruction that she should not speak to C. AA again ignored KG's instruction and continued to be in contact with C. C felt upset and anxious.

30. Also on 1 September 2022, LS sent C a reviewed version of the JEQ with her comments.

31. On Wednesday 7 September 2022, C returned to work. She had a discussion with LS. She told LS that she was really struggling, and she didn't see any way forward. LS said words to the effect: *"We've reduced your hours; we've referred you to CBT. What more could we do?"*

32. C worked a further two days until 9 September then finished for annual leave. While off, she reflected on the position. On 20 September 2022, she sent an email giving notice of her resignation to LS. On 27 September 2022, LS emailed C to the effect that her evaluation would be considered by the Grading Group on 26 October 2022. C and R agreed to extend C's period of notice to allow her to see what the conclusion of the Grading Group would be.

33. On 29 September 2022, C was invited to attend a grievance appeal hearing on 11 October (regarding the absence monitoring grievance). She declined the invitation.

34. On 26 October 2022, C received notification that her post had been considered by the Grading Group, and it had been decided it should remain at Grade H. On 28 October 2022, C intimated a grading appeal against this outcome.

35. On 31 October 2022, C's employment ended pursuant to her (extended) notice of resignation. She was 57 years old when her employment terminated. She resigned for the reasons set out in her resignation letter (reproduced at paragraph 131 of the Judgment on Liability). Had it not been for the events C complained about, she would have had no plans to leave her employment with R and would have remained in R's employment in her post until retirement.

36. C's gross weekly wage from R when her employment terminated (and on the date falling 12 weeks before her termination date) was £527.91. Her net weekly wage on these dates was £436.37.

37. Before her notice of resignation expired, on 7 October 2022, C had registered with NHS Scotland to be sent notifications of job opportunities.

38. C also looked for other work. In or about early February 2023, she applied to Cyrenians to the post of Falkirk Services Coordinator and progressed to interview but was unsuccessful. C's confidence and performance were negatively affected at the time by her anxiety for which she had been receiving treatment from her GP for some time.

39. In or around March 2023, C applied to a post with Barnardo's. Again, she progressed to interview but was unsuccessful.

40. In or around March 2023 C made an application to the Scottish Courts and registered to be kept notified of any vacancies. She was unsuccessful.

41. Around this time, C's job search and performance in interviews was affected by ongoing symptoms of anxiety, insomnia and not eating properly.

42. In the period between her dismissal and 27 April 2023, C undertook 80.2 hours of casual work at the rate of £11.11 per hour and received net income from this work of £979.90.

43. At some point between 31 October 2022 and 21 August 2023, a couple of positions in the Homeless Service of another local authority or authorities were advertised. C did not apply to either of these local authority positions in

her former Homelessness specialism because she was aware of considerable mutual connections between R and other authorities and she was anxious that she was unlikely to be offered a Homeless team post elsewhere because she feared conversations would take place between the Homeless Service senior managers at R and the recruiting local authority. She recalled an occasion when a colleague who had made a complaint about annual leave to R had applied to another post within R and was initially successful then had the offer withdrawn because, C believed, of internal communications from the individual's manager. C was extremely distrustful of R in the period following her dismissal and she feared that because of possible interventions from R's management, her job prospects in the Scottish local authority Homeless sector would be poor. She was also anxious about how she would characterize her reasons for leaving R on any application form to another local authority. She felt anxiety about the risks associated with being candid about this and also about the risks / propriety of being anything other than candid.

44. On 21 August 2023, C commenced employment at the Citizens' Advice Bureau. She was employed to work 17.5 hours per week. In the period from 21 August 2023 to the end of October 2023, C received net weekly wages of £297.37 (i.e. £1,288.53 net per month as per the agreed figure in C's schedule of Loss). She continued in the role and continues to be employed at the CAB at the date of the remedy hearing. From November 2023, C received slightly lower net weekly pay in this post of £228.36.

45. C did not thereafter, seek to find new employment. Her contract was extended and, as at the date of the remedy hearing, she hoped to continue to work in the same CAB role until her retirement which she envisaged would be some years ahead. At the date of the remedy hearing, C's health issues had substantially or wholly resolved, though from time to time, she feels that she is still affected by the trauma of her experience of the work issues which were the subject of her Tribunal claims. C lives in Falkirk and finds it triggering when she sometimes sees people from her former workplace.

Observations on the evidence

46. There was no material dispute between the parties on the primary facts. The dispute lay in the question of whether, based on those facts, C had discharged the duty to use reasonable endeavours to mitigate her loss.

Relevant Law

Unfair dismissal compensation

47. An award of compensation for unfair dismissal consists of a basic award and /or a compensatory award.

48. The formula for calculating the basic award is prescribed by legislation.

49. The compensatory award is such amount as the Tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the employee as a result of dismissal insofar as attributable to actions of the employer. The compensatory award is to be assessed so as to compensate the employee, not penalise the employer and should not result in a windfall to either party (**Whelan v Richardson** [1998] IRLR 114).

50. An unfairly dismissed employee is subject to a duty to make reasonable efforts to obtain alternative employment to mitigate her losses and sums earned will generally be set off against losses claimed (**Babcock FATA v Addison** [1987] IRLR 173).

51. On the matter of mitigation in Employment Tribunal claims, in **Singh v Glass Express Midlands Limited** UKEAT/71/18, HHJ Eady summarised the principles laid down by the EAT in **Cooper Contracting Ltd v Lindsay** UKEAT/0184/15 as follows:

    a. The burden of proof is on the wrongdoer; a Claimant does not have to prove they have mitigated their loss.

    b. It is not some broad assessment on which the burden of proof is neutral; if evidence as to mitigation is not put before the ET by the wrongdoer, it has no obligation to find it. That is the way in which the burden of proof generally works; providing information is the task of the employer.

c. What has to be proved is that the Claimant acted unreasonably; the Claimant does not have to show that what they did was reasonable.

d. There is a difference between acting reasonably and not acting unreasonably.

e. What is reasonable or unreasonable is a matter of fact.

f. That question is to be determined taking into account the views and wishes of the Claimant as one of the circumstances but it is the ET's assessment of reasonableness - and not the Claimant's - that counts.

g. The ET is not to apply too demanding a standard to the victim; after all, they are the victim of a wrong and are not to be put on trial as if the losses were their fault; the central cause is the act of the wrongdoer.

…

h. In cases in which it might be perfectly reasonable for a Claimant to have taken on a better paid job, that fact does not necessarily satisfy the test; it would be important evidence that may assist the ET to conclude that the employee has acted unreasonably, but is not, in itself, sufficient.

52. The duty is to act as a reasonable man would do if he had no hope of receiving compensation from his employer (per **Donaldson J in Archibold Freightage Ltd v Wilson** [1974] IRLR 10).

53. It may not be unreasonable for an employee to take himself out of the job market to pursue training or study or to set up his own business. However, it will be appropriate for the Tribunal to consider whether that is a matter of personal choice and whether the loss may be considered to be too remote a consequence of the dismissal (**Simrad Ltd v Scott** [1997] IRLR 147, EAT, **Hibiscus Housing Association Ltd v McIntosh** UKEAT/0534/08). It is similarly a matter of fact and degree for the tribunal to determine whether and whether and when it becomes unreasonable for an employee to decide not to consider lower paid or lower skilled employment in a different sector. It may

not be unreasonable for an employee to lower their sights immediately, but may become so in time, depending on the circumstances.

54. In an unfair dismissal case, where it appears to the Tribunal that an employer has unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance, the tribunal may, if it considers it just and equitable in all the circumstances, increase any award to the employee by up to 25%. It may likewise reduce any award where there has been an unreasonable failure to comply on the employee's part (s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA"). The relevant provisions are as follows:

> *(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%.*

55. Schedule A2 to TULRCA lists jurisdictions including complaints of unfair dismissal which the Tribunal has jurisdiction to hear under section 111 of ERA and complaints of victimisation which it has jurisdiction to decide under section 120 of EA.

Victimisation compensation

56. Where there is a breach of the EA, compensation is considered under s.124 which refers in turn to section 119. That section includes provision for injury to feelings. The focus is on the actual injury suffered by the claimant and not the gravity of the acts of the respondent (**Komeng v Creative Support Ltd** UKEAT/0275/18/JOJ).

57. The eggshell skull principle of delict applies. A perpetrator of prohibited conduct under the EA must take their victim as they find them. Provided there is a causal link between the losses and the prohibited act, the employer must meet them (**Olayemi v Athena Medical Centre and another** [2016] ICR 1074). It is no defence for a respondent to show that a claimant would not have suffered as she did but for a vulnerability to a pre-existing condition.

58. Three bands were set out for injury to feelings **in Vento v Chief Constable of West Yorkshire Police (No 2)** [2003] IRLR 102 in which the Court of Appeal gave guidance on the level of award that may be made. The three bands were referred to in that authority as being lower, middle and upper, with the explanation that the top band should be awarded in the most serious cases, such as a lengthy campaign of harassment; the middle band should be used for serious cases not meriting the highest band; and the lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence.

59. In **De Souza v Vinci Construction (UK) Ltd** [2017] IRLR 844, the Court of Appeal suggested guidance be provided by the President of Employment Tribunals as to how any inflationary uplift should be calculated in future cases. The Presidents of the Employment Tribunals in England and Wales and in Scotland thereafter issued joint Presidential Guidance updating the **Vento** bands for awards for injury to feelings. In respect of claims presented **on or after 6 April 2022** (but before 6 April 2023), the Vento bands include a **lower** band of **£990 - £9,900;** a middle band of **£9,900 - £29,600;** and a **higher** band of **£29,600 - £49,300.**

60. As mentioned, s.207A and Schedule A2 of TULRCA have the scope, in principle, to apply to complaints of victimisation under the EA.

61. The Tribunal may include interest on the sums awarded and should consider whether to do so without the need for any application by a party in the proceedings. If it does so, it shall apply a prescribed rate. The rate of interest in Scotland is prescribed by legislation and is currently 8% (The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996).

Submissions

62. Both Ms Stein and Mr Briggs gave oral submissions. The entire content of both submissions has been carefully considered and taken into account in making the decisions in this judgment. Failure to mention any part of these submissions in this judgment does not reflect their lack of consideration. The submissions are addressed in the 'Discussion and Decision' section below, which sets out where the submissions were accepted and where they were not with the reasons for this.

Discussion and decision

Constructive unfair dismissal

63. The basic award is agreed to be £14,253.57.

64. With respect to the compensatory award, we begin by identifying the period of loss. C was 57 on the EDT. Had it not been for her constructive unfair dismissal, she would have remained in R's employment in her post until retirement at 60 or beyond. There was no evidence before us that her employment would, in any event have been cut short for other reasons.

65. The period of loss can, however, be restricted if it is found there has been a failure to mitigate. Mr Briggs argues that it should be so. He says there was a considerable passage of time when there didn't appear to be many steps taken by C to find other work. He said it was unclear from C's evidence in chief what vacancies had been applied for. Mr Briggs submitted that it would be reasonable to restrict the period of loss to 6 months in the circumstances. Ms Stein said that C had worked after her employment with R ended and continues to do so. She said C had done as much as she possibly could to find new work.

66. We were not persuaded that R has discharged the burden upon it to prove that C acted unreasonably in relation to her efforts to mitigate in the period until she secured new employment with the CAB on 21 August 2023. We remind ourselves that it is not for C to prove that she mitigated her loss. The only evidence before the Tribunal of jobs which it was said C might have applied for but did not was evidence given by C about a couple of positions in local authorities' Homeless Services. We accepted, on balance, her explanation that she did not apply to these local authority positions in her former Homelessness specialism because she was aware there were considerable connections between R and other authorities. We accept C was anxious that she was unlikely to be offered a post because, she feared, negative communications from R to the managers in the recruiting authorities would undermine her prospects. We do not make any finding that such negative communications actually took place or that they would have done so, had C applied.

67. However, we accept that in C's mind this was a risk. We accepted her evidence that she recalled an occasion when a colleague who had made a complaint within her own team subsequently had an internal job offer withdrawn. C was extremely distrustful of R at the material time. She was still experiencing symptoms of anxiety and insomnia at the time. She was also anxious about how she would characterize her reasons for leaving R in an application to another local authority. In all of the circumstances, including C's reduced confidence, her distrust of R and her health issues, we were not persuaded she acted unreasonably in declining to pursue applications to the local authority Homeless Service posts.

68. Unable initially to find a job with comparable income / seniority, C ultimately decided to take some low paid casual work in the period to April 2023. She was subsequently successful in finding a post with the CAB in August 2023.

69. Having regard to all of the circumstances, we were not satisfied that C acted unreasonably in relation to seeking new employment or that her approach became so 6 months after the termination date (at the end of April 2023). We reminded ourselves that we should not apply too demanding a standard to the

victim of the wrongdoing. R put no evidence before us of any specific positions in that period which it said C ought to have applied for but unreasonably failed to do so.

70. We turn to the period from and after 21 August 2023 to the date of the remedy hearing. C had been employed by R to work 30 hours per week with net weekly pay of £436.37. There was a continuing loss of earnings after she was employed by CAB where she worked 17.5 hours per week with net weekly pay of £228.18 per week from November 2023 (following slightly higher wages in September and October of £297.37 p.w). As at the hearing date, C had no ongoing health issues of the sort and level she had experienced in the period immediately following her resignation from R.

71. We acknowledge that the burden of proving a failure to mitigate lies with R and that that we should not apply too stringent a standard on C in assessing the question of mitigation. However, there was no evidence that, in this period, C took steps to find better paid employment or supplementary employment or additional hours from CAB and we have found as a fact that she did not. We acknowledge that the duty is to act as a reasonable man would do if he had no hope of receiving compensation from his employer (**Archibold Freightage**). It is perhaps understandable that, having secured alternative employment and settled into the role, C has chosen not to search for other opportunities with a view to fully replacing the income she has lost. We are satisfied that this choice was not unreasonable for an initial period after C's employment with CAB began. No doubt she required to learn the role, settle in and develop her experience and confidence. We accept it was not unreasonable for C to focus her energies for some time on making a success of her new job. We also accept that it took some time for C to rebuild her confidence and for the symptoms of anxiety to abate.

72. However, as time drew on, we consider whether the decision to remain with the CAB on a reduced working week became a matter of personal choice. Given her express hope to work in the same role until retirement years down the line set out in the Schedule of Loss (SOL), we conclude that this indeed became a matter of preference. After a year in the CAB post, we find that her

continuing loss which was £208.19 per week became too remote from the dismissal to be recoverable as a loss sustained in consequence of the dismissal which was attributable to action taken by R. By that stage, we find that it had become C's personal choice to remain in a lower paid post, working fewer hours.

73. We therefore assess the period of recoverable loss (subject to the statutory cap as discussed below) to be the period from 31 October 2022 to 21 August 2024.

74. That is a period of 94.3 weeks. C's loss of earnings from R in that period is before credit is given for mitigation: 94.3 weeks x £436.37 = £41,149.69.

75. Credit requires to be given for sums earned in mitigation in that period. C earned £979.90 (net income from casual work) in the period up to 21 August 2023. In the period from 21 August 23 to 31 October 2023, she earned £2,577.06 net. In the period from 1 November 2023 to 21 August 2024 (9.7 months), C earned 9.7 x £988.82 (net monthly wage) = £9,591.55. The total sum earned in mitigation during the period of loss is, therefore, £979.90 + £2,577.06 + £9,591.55 = £13,148.51.

76. The total loss of earnings is, therefore, £44,149.68 LESS £13,148.51 = £31,001.17 (net).

77. In her SOL, C indicated she was seeking considerable pension losses and an uplift of 25% on her losses for what Ms Stein asserted was a failure to progress her grievances in a timely manner, stated in the SOL to be a breach of the ACAS COP.

78. However, there was agreement that the statutory cap would be applied as the last step and that the cap in this case is £27,451.32. In those circumstances, Ms Stein refrained from leading evidence on complex pension calculations and the submissions she made on asserted breaches of the ACAS COP were made not directed at the capped constructive unfair dismissal complaint but at the compensation sought for the victimisation complaints (discussed below).

79. The total compensatory award, by operation of the statutory cap, is 52 weeks' gross pay, namely £27,451.32. The total award for unfair dismissal (basic plus compensatory) is £14,253.57 PLUS £27,451.32 = **£41,704.89.**

Victimisation

80. Ms Stein seeks an award for injury to feelings in the sum of £18,000. Mr briggs argues this is excessive and the award should be restricted to £12,000.

81. Ms Stein said that symptoms of stress and anxiety affect C to the present day. She said that C had shown remarkable resilience and spirit. She said that R's treatment had reduced C's confidence. She said there was little she could say about Vento. She said the sum sought of £18,000 sat at the lower end of the middle band of Vento which (she asserted) goes up to £36,000. On that basis, she described C's claim for £18,000 as modest.

82. Mr Briggs said the award sought was high. He observed there had been two findings of victimisation and said that R recognised that an award would be due, but he said it should not go above £12,000. He said the Tribunal had heard evidence about C's mental health before the breaches of the EA occurred and noted her decision in April 2023 to seek reduced hours stemmed from this and pre-dated the breaches.

83. The middle band of the **Vento** for claims presented at the applicable time was not £18,000 to £36,000 as Ms Stein contended. The top of the middle band only increased to £36,000 under the Presidential Guidance in respect of claims presented between 6 April 2025 and 5 April 2026. The **Vento** bands at the material time were as set out in paragraph **59**, with the middle band ranging from £9,900 to £29,600. Neither party in this case argued that the injury to feelings award should sit in the lower or upper **Vento** band.

84. We focused on the actual injury suffered. The removal of the appeal duties on 11 May 2022 left C feeling upset, confused, undervalued and with a strong sense injustice that she was being treated differently. Her feeling that this related to her outstanding grievance and grievance appeal dating back to August / September 2021 (protected acts) also left her feeling frightened.

85. We acknowledge it was not an isolated act but proved to be part of a (relatively small) series of acts that have been established. The others are the two occasions in July and September 2022 when C's line manager informed her she had been instructed not to speak to C by the Head of Service, albeit on both occasions AA defied the instruction and continued to speak to C. The knowledge of these instructions to AA caused C to feel shocked, scared and isolated. We accept that she experienced a heightening in her anxiety symptoms for which she had already been in receipt of medical treatment (for reasons which have not been found to be breaches of the EA). We accept that the victimisation acts contributed to or aggravated pre-existing problems with sleeping and appetite. We recognise, however, that they were not causative of the symptoms of anxiety and stress which were already problematic for C. We observe that she herself in documentation she authored and in OH consultations before and after the victimisation acts consistently substantially attributed her mental health symptoms to her outstanding unresolved grievances (and JES) as opposed to the established acts of victimisation.

86. Taking all relevant factors into account, we determined that this case falls at the top end of lowest quartile of the middle band and we award the sum of **£14,000** in respect of injury to feelings (globally in relation to all of the established breached of the EA).

ACAS uplift on the injury to feelings award

87. Ms Stein said the Tribunal should apply an uplift to the injury to feelings award for R's unreasonable failure to apply with the ACAS COP. She asked for an uplift of 25% to be applied. She said that grievances needed to be dealt with fairly and promptly and without delay. She said R had not shown it had done so. She referred to various parts of the Judgment on Liability where the Tribunal had found there had been delays in the procedure.

88. Mr Briggs acknowledged that the claim for an uplift was competent in as much as victimisation is one of the types of complaint listed in the schedule to TULRCA but he did not see how the victimisation had anything to do the COP.

In any event, if an uplift were applied, Mr Briggs submitted it is not a flat rate tax and the correct approach would be to start at 10% and, only if there were aggravating factors, to increase it from there (**Wardle v Credit Agricole Company and Investment Bank** [2011] ICR 1290). He said there were no aggravating factors in this case which would warrant an increased uplift.

89. Under s. 207A (2)(a), the question of an uplift only arises if it appears to the Tribunal that the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies. C brought no grievance about the matters which have been found to be acts of victimisation in this case. It does not appear to us that the ACAS COP on Disciplinary and Grievance Procedures applied to the matters which founded the successful victimisation complaints. We, therefore, award no uplift to C's compensation for her victimisation complaints.

Interest on the injury to feelings award

90. We were not addressed on the question of interest in submissions. The Tribunal is required, irrespective, to consider whether to award interest without the need for an application by a party (Reg 2(1), Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996). The acts found to be victimisation date back approximately three years. The delay in compensation has meant a lack of opportunity to invest the funds and accrue interest at the time the injury to feelings was suffered in 2022. It is within the judicial knowledge that there has been relatively high inflation over the ensuing period, with today's prices eating into the value of the award. The annual Joint Presidential guidance on the **Vento** scale goes some way to redressing the issue, but in a case like this one where a **Vento** award is not made until around three years after the dates of presentation of the claims it can only partially do so. In all of the circumstances we decided it would be just and equitable to award interest in this case at the prescribed rate of 8%. We have calculated this in accordance with Reg 6 of the Interest Regs from the date of the first contravention on 11 May 2022.

91. The calculation day is 29 May 2025. The period of interest is 3 years and 18 days. The yearly rate of interest is 8%. Therefore, interest accrues at the rate of £1,120 per annum and £3.07 per day. Interest is simple, not compound. The total interest on the injury to feelings award is therefore (3 years x £1120 = £3,360) + (18 days x £3.07 = £55.26) = **£3,415.26.**

92. The total compensation for injury to feelings including interest is. Therefore, £14,000 + £3,415.26 = **£17,415.26.**

Conclusion

93. The Tribunal orders R to pay compensation for C's unfair dismissal in the sum of £41,704.89 (the sum of the basic and compensatory awards).

94. The Tribunal orders R to pay C compensation for injury to feelings in relation to the established acts of victimisation in the sum of £17,415.26 (inclusive of interest).

Date sent to parties **11 June 2025**