EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Miss L Tamplin	AND	Dignity Pet Crematorium Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol (by video) **ON** 11 and 12 August 2025

EMPLOYMENT JUDGE J Bax

Representation

For the Claimant: **Mr Barrett (lay representative and Claimant's father)**
For the Respondent: **Ms J-M Scarborough-Lang (litigation consultant)**

JUDGMENT

1. The Respondent unfairly dismissed the Claimant.

2. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply in this case.

REMEDY

1. By consent, the Respondent is ordered to pay the Claimant ££7,683.33 in respect of her claim of unfair dismissal.

The Claimant's award for unfair dismissal is broken down as follows:

Basic Award:	£1,761.63
Compensatory Award	
Past Loss of earnings from 27 August 2024 to 26 October 2024: (This allows for the finding that the Claimant would have been fairly dismissed within 3 months of the date of her dismissal)	£5,921.70
Grand total of basic and compensatory awards	**£7,683.33**

Recoupment calculations

The Grand total	£7,683.33
The prescribed element	£5,921.70

The period of the prescribed element is 27 August to 26 October 2024

The excess of the grand total over the prescribed element is £1,761.63

REASONS

1. In this case the Claimant claims that she was unfairly dismissed. The Respondent initially contended that the reason for the dismissal was gross misconduct and that the dismissal was fair.

Background and issues

2. At the start of the hearing, it was confirmed that the Claimant's witness statement was the document into which she had inserted her appeal document and response to questions by Mr Leather. This was used as her witness statement in conjunction with her grounds of claim in box 8.2 of the claim form. It was confirmed that the additional witness statements she had attached were from people who would not be giving oral evidence and the Claimant asked for them to be taken into account. It was explained that limited weight could be attached to them on the basis that their evidence could not be tested.

3. The issues were discussed with the parties. The Respondent said it dismissed the Claimant by reason of misconduct. In closing submissions the Respondent sought to argue that the reason was also the Claimant's performance.

4. The Claimant challenged the fairness of the dismissal in relation to the reasons being false and it was just hearsay.

5. The Claimant challenged the procedure followed in relation to her father not being permitted to accompany her to the second disciplinary hearing.

6. The Respondent also asserted that if the Claimant was unfairly dismissed if it had followed a fair procedure the Claimant would have been dismissed in any event and that she had contributed to her dismissal by reason of culpable conduct.

7. After oral Judgment was given on liability, the parties agreed the remedy due to the Claimant, based on the reasons given in that Judgment.

The evidence

8. I heard from Miss Edwards and Ms Moynihan on behalf of Respondent. I also heard evidence from the Claimant.

9. I was also provided with a bundle of 186 pages, any references in square brackets are references to pages in the bundle.

10. There was a degree of conflict on the evidence.

The facts

11. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

12. The Respondent provides a pet cremation service.

13. The Claimant commenced employment with the Respondent on 1 August 2022 as Diary and Ashes Team Leader. On 14 August 2023 she became Front of House Team Leader.

14. The Employee Handbook included, in relation to the disciplinary procedure:

a. If misconduct was sufficiently serious to warrant only one warning, but not sufficiently serious to justify dismissal a final written warning would be issued and that the person would be warned that any further misconduct could result in dismissal.
b. The following matters were part of a non-exhaustive list of matters which could be regarded as gross misconduct:
    i. using threatening or offensive language or behaviour towards anyone.
    ii. Refusal to carry out reasonable duties or instructions.
c. At each stage of the disciplinary process was a right to appeal

People working for the Respondent

15. Mr Spurgeon was the owner of the Respondent.

16. Ms A Moynihan is now managing director of the Respondent, but at the relevant times was its People Manager.

17. Louise Edwards worked as business support for the Respondent.

18. M is the daughter of Ms Moynihan and was in the Claimant's team.

19. J was a member of the Claimant's team.

The Claimant's role

20. The Claimant's role, as a team leader, involved her undertaking 1:1 meetings and appraisals with team members. She was managing them day to day. The Claimant was meant to have a protected day every week for her to do Team Leader duties, I accepted that this was not always possible due to staffing shortages and demands on her time to work front of house dealing with clients.

21. The Claimant had never been a team leader or manager before in her working life.

The first allegations against the Claimant

22. On 9 January 2024, it was reported that the Claimant had been involved in a conversation about the termination of babies, which had caused offence to M. Ms Edwards was asked to conduct an informal investigation and she spoke to the people in the room at the time, including the Claimant. The Claimant was spoken to on 11 January 2024, in which, among other things, she said 'she had been talking to Ryan and had made a joke about bringing her daughter to Dignity and chucking her in a chamber. Ryan had

mentioned termination and she had said, 'like killing two birds with one stone.' M walked out at that point.' [p82-83]

23. Ms Edwards then fed back what was said to Ms Skinmore, the then COO, who spoke to the Respondent's HR provider, Citation, who were instructed to investigate the grievance raised by M.

24. I accepted Ms Moynihan's evidence that although her daughter had mentioned the incident to her, she had no involvement in the grievance investigation or subsequent disciplinary proceedings. None of the documents in the hearing bundle showed that she had any involvement. The Claimant did not accept that Ms Moynihan had no involvement but she was unable to adduce any evidence to show that Ms Moynihan had any influence in what happened.

25. On 22 February 2024, a meeting was held with the Claimant by Ms Clarke of Citation to discuss M's grievance against her. The Claimant provided her account. There was reference to a medical condition which would have been a sensitive subject for M.

26. On 7 March 2024, the Claimant was sent a letter informing her of the grievance meeting outcome and that she would be invited her to a disciplinary hearing.

27. On 8 March 2024, the Clamant was sent a letter inviting her to attending a disciplinary hearing on 12 March 2024. The following allegations were made:
    a. The Claimant had treated Miss Peters differently (with three sub divisions):
    b. Causing upset by the conversation in January.

    She was provided with fact finding notes from various staff members. The hearing was to be chaired by Mr Hindle of Citation to ensure impartiality and Ms Edwards would take notes. The Claimant was informed of her right to be accompanied.

28. On 12 March 2024, the Claimant attended the disciplinary meeting.

29. On 14 March 2024, the Claimant was informed of the disciplinary outcome by Ms Skinmore, who had made the decision. She was issued with a first and final written warning for 12 months. The outcome acknowledged that during the hearing Ms Clarke's son had entered the room and interrupted questioning but that there was no detriment.

30. Three of the allegations, including the conversation allegation, were upheld. It was noted the Claimant had said, that she probably did laugh, but had

also said she did not mean anything by it and it was just banter. She had accepted she was responsible for halting inappropriate conversations, but had not thought there was anything inappropriate. It was found that the comment was inappropriate, especially for a team leader, it was not deliberate or malicious. It was also found she was remorseful, was honest and had accepted responsibility and a character reference was taken into account.

31. She was informed if there was a repeat of that conduct or further misconduct in the next 12 months the warning would be taken into account when considering potential sanctions. She was informed of her right to appeal.

32. The Claimant did not appeal the decision. In oral evidence the Claimant said that she wanted to draw a line under the matter and did not want to cause further upset, given M was in her team.

Second disciplinary matter

33. There was an issue with the performance of one of the Claimant's team members, ("J").

34. On 15 April 2024, a Performance Improvement Plan (PIP) preparation meeting was held with the Claimant by Ms Moynihan, to discuss how to complete a PIP with J. The process was explained that it should not last longer than 4 to 6 weeks and there was a need to identify what support was needed and look at any re-training. The objectives had to be clear and measured weekly using a tracker. She was given a template.

35. Ms Moynihan had concerns about the Claimant's performance. On 19 July 2024, an investigation meeting was held with the Clamant by Ms Moynihan to discuss her concerns The Claimant did not want anyone to attend the meeting with her.

36. Discussion included the matters which were subsequently raised as allegations in the disciplinary proceedings. The following matters were of significance:
    a. Annual leave rotas: it was raised that annual leave cover had not been arranged when a team member was off and this had been previously spoken about in 1:1s. The Claimant said she had arranged cover in May. The Claimant said she did not have an issue with cover, but that she sometimes forgot to set reminders. In oral evidence the Claimant said that she thought this related to an incident when another team leader had forgotten she had arranged cover with him and she had not set a reminder to remind her colleague.

b. The Claimant had not spoken to J immediately after a team huddle and Ms Moynihan had to remind her an hour later. The Claimant said J had a list of 'pre-crems' and she thought she would pull him off to speak to him as the list got smaller.
c. J's PIP: No notes had been received or communication about it since it had been raised. The Claimant said J had been put on the PIP but was not on it anymore and J was doing better. When asked about the paperwork, the Claimant said that she did not know how to end the PIP. She was asked why she did not ask how to do it. In oral evidence the Claimant said she did not want to bother Ms Moynihan, who was busy. She told Ms Moynihan that she had another 1:1 with J and said that there could be another PIP.
d. 1:1s with the team were discussed and were expected every 4 to 6 weeks. The claimant said she had done them.
e. Appraisals were discussed. The Claimant said that she had done them and that she had a problem with scanning and asked if Ms Moynihan had them. In oral evidence, Miss Edwards accepted that the scanner on the Claimant's side of the building was problematic. The Claimant also said she had done work on the tracker and can update it if it was not up to date.
f. Team huddles were discussed. They were meant to be done weekly or fortnightly. The Claimant said she had got a bit behind and the last one was probably in June. Further with only two people in she had waited for more of the team to be involved. There was a problem with finding the time to do it.
g. The conversation with Mr Spurgeon. It was discussed that the Claimant had raised her voice to Mr Spurgeon in front of Mr Long, who was new and shadowing the Claimant. The Claimant said Mr Spurgeon was interfering with things he was out of touch with. She was completing notes on client, with the client, when there was screaming and shouting outside. Mr Spurgeon came in and said, 'don't you think you should go outside'. The client then left. Mr Spurgeon then came in with a dog which had been brought in early and asked who was dealing with it. The Claimant said she did not know on two occasions. He then got Mr Long to help remove the dog already in the room. Before the Claimant could get the previous client's pet out of the room, Mr Spurgeon brought the clients of the dog he had been referring to into the hallway. The Claimant said she may have raised her voice. He had been 'going on' and it had been busy.

37. The Claimant was asked to find various documents, which included:
    a. She was only able to find one team huddle for June and one for July and not fortnightly.
    b. In relation to 1:1s she found a typed one for J for January 2024 but it was not signed or responded to by him there were some which

were missing and others were not signed. There was only one for L, which was unsigned, two for M (one of which was unsigned) and two for T (one not signed).

c. There were no records on file for J's PIP.
d. Appraisals were missing for M and T. J's appraisal was not completed and was unsigned.
e. The appraisal tracker had not been updated since February 2024.

38. Ms Moynihan considered that it appeared: regular 1:1s were not happening, appraisals were missing, huddles were not happening fortnightly, daily mini huddles were not happening, management advice was not being followed when given, there were blocks in the diary, rotas were not clear and not all covers were in place.

39. On 12 August 2024, the Claimant was sent a letter inviting her to attend a disciplinary hearing on 15 August 2024, in respect of the following allegations:
    a. Not following Reasonable Management Requests, specifically not placing J on an official PIP when requested and no recorded paperwork trail/documentation of the PIP, PIP tracker or measurables recorded for J to address the concerns with his productivity.
    b. Not fully completing all team appraisals in the set timeframe, specifically T and J. Specifically, J's appraisal has only been handed to HR on 20th July 2024.
    c. Not managing the team appraisal objectives, specifically not recording measurables on the appraisal tracking sheet.
    d. Not conducting team huddles fortnightly, specifically only one held in Feb 2024, one in April 2024 and none held in June 2024.
    e. Not following the correct annual leave process specifically allowing a member of your team to take annual leave on 10th April 2024 which coincided to your day off as well as M's day off, leaving one member of the team on the front of house which was detrimental to the business.
    f. Not following the annual leave process whereby you authorised two members of your team annual leave on the same day being Saturday 10th August which also coincides with your day off, leaving one member of your team on front of house and no body to cover pre crems.
    g. Inappropriate conversations, specifically your conduct towards Kevin Spurgeon on Friday 12th July whereby you shouted at Kevin in front of a new manager Anthony Long.

    She was provided with the notes of the meeting on 19 July 2024 and informed of her right to be accompanied. She was also warned that, taking

into account the warning given in March, her employment could be terminated.

40. Ms Moynihan suggested in oral evidence that she had a statement from Mr Long about the conversation with Mr Spurgeon. There was not a statement referred to in the invitation to a disciplinary hearing and one was not provided to the Claimant before it. This was supported by the Claimant suggesting in her appeal that a statement was taken from him. I rejected Ms Moynihan's evidence that she took a statement from Mr Long. A statement was also not taken from J, in relation to the PIP.

41. On 15 August 2024, the Claimant attended the disciplinary hearing, which was conducted by Ms Moynihan. Ms Edwards took notes and the Claimant was accompanied by Mr Barnes.

42. Discussion included the following matters:

    a. J's PIP. The Claimant said:
        i. There was a misunderstanding as to what she had to do and she misunderstood there had to be final end to it. She thought she had done it correctly and did not want to bug Ms Moynihan. It was the first time she had done one.
        ii. She understood the importance of the paperwork.
        iii. She had completed the tracking template each day.
        iv. She did not know how it was completed and said there was no outcome to it. She had told J it was completed but she did not know if there was a record.
        v. The Claimant said she understood what the impact of poor performance could be on the business.

    b. Not completing all team appraisals. Discussion included:
        i. When asked why she had not completed appraisals for J or T in October 2023, she said she did not like the conversation because she did not want to call Ms Moynihan a liar.
        ii. She had struggled because she had never done appraisals before.
        iii. All of the forms had gone missing apart from T's.
        iv. In terms of tracking them she said that time went quickly and they had been short staffed and she had been unable to get away from front of house.
        v. She had not measured her team quarterly against their objectives because she was distracted to do something else.

    c. Not managing team appraisal objectives The Claimant said there had been other priorities and there was a lot to do front of house.

d. Not conducting team huddles. The Claimant said:
    i. She accepted they should be done fortnightly and they originally should be recorded on the huddle sheet and the last few on EOS.
    ii. She had not realised that it had not been 2 weeks between each one.
    iii. She could not remember why a huddle in June had not been recorded.
    iv. She did not think it would necessarily cause a problem because she discussed what was going on with the team daily.

e. Annual leave process and leaving the team with one person on 10 April:
    i. The Claimant accepted only one person from the team should be off at one time.
    ii. It was her day off that day, and Chris was covering front of house.
    iii. She also had an e-mail from Chris, confirming cover when there were two people off at the same time. She did not think J was front of house and therefore it did not matter if he was off too.

f. In relation to the inappropriate conversation, the Claimant said:
    i. She did not shout at Mr Spurgeon on 12 July. She may have raised her voice, however he was bugging them to deal with a client and he had a dog in his hands.
    ii. She thought he had handled it inappropriately.

Disciplinary outcome

43. On 27 August 2024, the Claimant was written to and informed of the disciplinary outcome. She was dismissed for misconduct with immediate effect and paid a month's pay in lieu of notice. She as informed of her right to appeal. The findings included:
    a. She had admitted not completing the PIP and she should have been honest and raised the matter immediately if she did not have clarity. There were no mitigating factors.
    b. She admitted not fully completing appraisals and she did not track them.
    c. She admitted to not always completing team huddles and failed to provide any mitigation.
    d. She had not followed the annual leave process and failed to provide mitigating factors.
    e. She admitted raising her voice in front of a new manager and should have had the conversation away from others.

f. The final warning was taken into account.

44. In cross-examination Ms Moynihan said that the rising of the voice was misconduct because it was in front of a colleague and a client could potentially hear. She could not remember what investigation she had done. There was not a statement from Mr Spurgeon or Mr Long before the Tribunal. I did not accept that a statement from Mr Long was sent to the Claimant at any stage.

45. Ms Moynihan also said that apart from the incident with Mr Spurgeon the allegations were more about the Claimant's performance and then tried to suggest it was both performance and conduct. In re-examination, Ms Moynihan said that failures to follow company policy and procedure were performance matters and the majority of the matters relied upon, fell under lack of performance. I accepted that the evidence given in re-examination was the view of Ms Moynihan and that she considered the matters relation to the management of the team were performance matters. She also said that the first warning was separate to the second warning. When asked why a warning had not been given about her performance, Ms Moynihan said that they followed the advice from an outsourced HR team.

46. On 2 September 2024, the Claimant sent a letter appealing against her dismissal, which included:

a. In relation to the PIP: She was given training on the day. She had no prior knowledge how to do it. She tried to learn as she went along. Ms Moynihan was constantly off sick.

b. In relation to completing team 1:1s: She had not had opportunity to arrange regular 1:1s due to the drop in staff numbers. She had a tracker for the PIP but it went missing, which was suspicious. The low staff levels had a significant effect on her duties. All appraisals were handed to Ms Moynihan in December 2023 and she suspected ulterior motives.

c. In relation to team huddles: Low staff levels and absences made it impossible to hold regular huddles. Team members were late. She prioritised clients.

d. In relation to annual leave: She had followed the process and had e-mails in support.

e. Shouting at Mr Spurgeon: Mr Long had confirmed she had not raised her voice, which they ignored. Mr Spurgeon made her job difficult by bringing in a client when she had not finished with the one she was with. She suggested a statement was taken from Mr Long.

f. She also detailed inappropriate behaviour by Mr Spurgeon.

47. On 4 September 2024, the Claimant was sent a letter inviting her to attend an appeal hearing on 9 September 2024 with a consultant from Peninsula Face to Face, Mr Leather. She was informed of her right to be accompanied.

48. The hearing was conducted by correspondence. The Claimant explained that the first hearing had been stressful and when she was told she had to appeal to Mr Spurgeon she could not face sitting in front of him, Ms Moynihan and Ms Edwards, because they upset her so much.

49. Mr Leather sent the Claimant a list of questions which the Claimant answered and included:
    a. Jordan was put on a PIP, but the files seem to have gone missing .

    b. She wanted him to obtain details of the grievance raised against her by M.

    c. She gave details of people she did appraisals on, and said they were completed by December 2023 and they could corroborate it.

    d. She could not check for further documents because she did not have access to the computer system any longer and could not answer the question about annual leave.

    e. The owner had been recently reported in the Daily Mail in relation to his divorce proceedings and a reference to him being narcissistic.

    f. She had been given a secret Santa present of an anal butt plug and found it hard to believe it had come from the person who apparently gave it.

50. Mr Leather produced an appeal report, which was sent to Ms Moynihan. In the report he said that once he had received the Claimant's responses to the questions he would conduct any further investigation and then complete a report, which would contain a summary of findings and recommendations. It would then then be for the employer to review it and make any decisions. He said he spoke to Mr Long and statement was appended, however no appendices were provided to the Tribunal in the hearing bundle. The explanations were very brief.
    a. The point on the PIP was not upheld because it was a complaint.
    b. The point in relation to 1:1s did not relate to the allegations and was not upheld.

c. The point on appraisal was based on what the Claimant believed and no evidence had been provided of ulterior motives to substantiate it.
d. Her point on huddles was inconsistent with her earlier account that she did not realise a huddle was due and she had not provided evidence to support it.
e. In relation to following the annual leave process. No evidence had been adduced that the original finding was incorrect.
f. In relation to raising her voice. She had previously said she might have raised her voice. It was suggested by saying she would not have shouted was an inconsistent narrative. Mr Long said she had raised her voice.

It was recommended that the points of appeal were not upheld. The way in which the report was written suggested, in places, that Mr Leather decided some to the grounds should be dismissed, rather than offering options.

51. The Claimant rejected in cross-examination that her points of appeal were taken into account and said that Mr Leather hardly mentioned anything and only highlighted things in favour of the Respondent. The Claimant did not accept that she was sent a statement from Mr Long.

52. On 20 September 2024, the Claimant was sent a letter by Ms Moynihan informing her that her appeal had been dismissed. The letter did not attach the appeal report. Ms Moynihan took the decision and said she had taken into account what the Claimant had said. Ms Moynihan's evidence was that she had followed the guidelines and recommendations in the report. Ms Moynihan did not know whether the Claimant had sight of the statement from Mr Long. I was not satisfied the Claimant was sent the appeal report.

53. The Claimant's oral evidence on a number of occasions was that she thought she would have been dismissed at some point in any event. It was likely that she was struggling to cope with her role as Team Leader and was unable to undertake all the managerial tasks within her working week. This was in part due to time and staffing pressures, however I accepted there were a real and significant issues with her organisation of the tasks and working efficiently. She also very much enjoyed the front of house client facing aspects of her role.

The law

54. The reason for the dismissal in the grounds of claim was conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 ("the Act").

55. In closing submissions the Respondent said that the reason was misconduct and capability for performing work, which is also a potentially fair reason.

56. The Respondent referred me to Screene v Seatwave Limited UKEAT/0020/11/RN. In that case the dismissal letter said that the Claimant was dismissed for gross misconduct, however the pleaded reason in the Grounds of Resistance was capability. The Tribunal found that the reason was capability and that the dismissal was fair. There had not been an application to amend the response. At the appeal, the decision in Abernethy v Mott, Hay and Anderson [1974] ICR 323 was considered, in particular that the reason for the dismissal is the set of facts known to the employer which led to dismissal. The reason must also be the reason in existence at the time dismissal occurred. In Hotson v Wisbech Conservative Club [1984] ICR 859, it was held that the employer was not tied to the label and could say it was capability or run two reasons as alternatives. However where there is a shift by the employer of the label placed on the reason for dismissal, then there must be the fullest opportunity allowed to the employee to meet the circumstances that arise from the change, i.e. they must not be prejudiced. The EAT, in Screene, held that the label could be changed.

57. I considered section 98 (4) of the Act which provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".

58. I also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").

59. Compensation for unfair dismissal is dealt with in sections 118 to 126 inclusive of the Act. Potential reductions to the basic award are dealt with in section 122. Section 122(2) provides: "Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce the amount accordingly."

60. The compensatory award is dealt with in section 123. Under section 123(1) "the amount of the compensatory award shall be such amount as the

tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer".

61. Potential reductions to the compensatory award are dealt with in section 123. Section 123(6) provides: "where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

62. The starting point should always be the words of section 98(4) themselves. In applying the section the tribunal must consider the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

63. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances.

64. In cases involving dismissals for reasons relating to an employee's conduct, the tribunal has to consider the three stage test in BHS-v-Burchell [1980] ICR 303 (as to the first of which the burden is on the employer; as to the second and third, the burden is neutral): (i) that the employer genuinely believed that the employee was guilty of the misconduct alleged; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. The band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.

65. Crucially, it is not for the tribunal to decide whether the employee actually committed the act complained of.

66. The EAT in Sandwell & West Birmingham Hospital NHS Trust v Westwood UKEAT/0032/09 considered what constitutes gross misconduct at paragraphs 110 -112.

"[110] … In our judgment the question as to what is gross misconduct must be a mixed question of law and fact and that will be so when the question falls to be considered in the context of the reasonableness of the sanction in unfair dismissal or in the context of breach of contract. …

[111] Gross misconduct justifying dismissal must amount to a repudiation of the contract of employment by the employee: see Wilson v Racher [1974] ICR 428, CA per Edmund Davies LJ at p 432 (citing Harman LJ in Pepper v Webb [1969] 2 All ER 216, [1969] 1 WLR 514 at 517) "Now what will justify an instant dismissal? – something done by the employee which impliedly or expressly is a repudiation of the fundamental terms of the contract" and at p 433 where he cites Russell LJ in Pepper (p 518) that the conduct "must be taken as conduct repudiatory of the contract justifying summary dismissal". In the disobedience case of Laws v London Chronicle (indicator Newspapers) Ltd [1959] 2 All ER 285, [1959] 1 WLR 698 at p 710 Evershed MR said "the disobedience must at least have the quality that it is 'wilful': it does (in other words) connote a deliberate flouting of the essential contractual conditions". So the conduct must be a deliberate and wilful contradiction of the contractual terms.

[112] Alternatively it must amount to very considerable negligence, historically summarised as "gross negligence". A relatively modern example of "gross negligence", as considered in relation to "gross misconduct", is to be found in Dietman v LB Brent [1987] IRLR 259, [1987] ICR 737 at p 759."

Reasonable responses

67. I have been asked to consider the fairness of the sanction imposed in this case. I am not permitted to impose my own view of the appropriate sanction. Rather, I had to ask whether it fell somewhere within the band of responses available to a reasonable employer in the circumstances (Foley-v-Post Office, HSBC-v-Madden [2000] ICR 1283).

68. An employer should consider any mitigating features which might justify a lesser sanction and the ACAS Guidance is also useful in this respect; factors such as the employer's disciplinary rules, the penalty imposed in similar previous cases, the employee's disciplinary record, experience and length of service are all relevant. An employer is entitled to take into account both the actual impact and/or the potential impact of the conduct alleged upon its business.

69. Section 98 (4)(b) of the Act required me to approach the question in relation to sanction "*in accordance with equity and the substantial merits of the case*". A Tribunal is entitled to find that a sanction *is* outside the band of reasonable responses without being accused of having taken the decision again; the "*band is not infinitely wide*" (Newbound-v-Thames Water [2015] EWCA Civ 677).

Previous Warnings

70. It is not usually appropriate for a tribunal to reopen the circumstances which led to an earlier warning which an employee may then have been found to have breached, leading to his dismissal. An employer is entitled to rely upon a final warning provided that it was issued in good faith, that there were at least prima facie grounds for issuing it and that it had not been manifestly inappropriate to do so (Davies-v-Sandwell MBC [2013] EWCA Civ 135). There generally need to be exceptional circumstances before the tribunal should be prepared to go behind an earlier disciplinary process, but it nevertheless has to consider the issues identified in Davies before that decision can be made.

71. The Court of appeal held that: (1) the broad test laid down in s. 98(4) ERA is whether it was reasonable for the employer to treat the conduct reason, together with the circumstance of the final written as sufficient to dismiss the Claimant; (2) it is not the function of the Tribunal to reopen the final warning and rule on the issue raised by the Claimant as to whether it should have been issued, the function is to determine whether it was a circumstance which a reasonable employer could reasonably take into account in the decision to dismiss; and (3) it is relevant for the Tribunal to consider whether the final warning was issued in good faith, whether there were prima facie grounds for following the final warning procedure and whether it was manifestly inappropriate to issue the warning. They are material factors to determining the reasonableness of the decision to dismiss. It was also held that the requirement in Stein v Associated Dairies Limited [1982] IRLR 444 and Tower Hamlets Health Authority v Anthony [1989] IRLR 394 that there be either bad faith, an oblique or improper motive or that it was manifestly inappropriate to give the warning shows that what is intended is a restrictive approach.

72. If, on the facts, a tribunal was to consider that a previous sanction may have been grossly inappropriate, it should be prepared to hear evidence surrounding the issuing of that earlier warning and decide for itself whether that was, in fact, the case.

73. In Wincanton Group plc v Stone [2013] IRLR 178 the EAT summarised the general principles to be applied as to the relevance of earlier warnings when determining fairness of dismissal as:

(1) the tribunal should take into account earlier warnings issued in good faith;
(2) if the tribunal considers that a warning was issued in bad faith, it will not be valid and cannot be relied upon by the employer to justify any subsequent dismissal;
(3) where a warning was issued in good faith, the tribunal should take account of any relevant proceedings, such as internal appeals, that may affect the validity of the warning, and give them such weight as it considers appropriate;
(4) the tribunal may not 'go behind' a valid warning to hold that it should not have been issued or that a 'lesser category' of warning should have been issued;
(5) the tribunal will not be going behind the warning where it takes into account the factual circumstances giving rise to it. There may be a considerable difference between the circumstances giving rise to the first warning and those considered later. Just as a degree of similarity will tend in favour of a more severe penalty, so a degree of dissimilarity may, in appropriate circumstances, tend the other way;
(6) the tribunal may also take account of the employer's treatment of other employees since the warning was issued. This may show that an employer has subsequently been more or less lenient in similar circumstances; and
(7) the tribunal must remember that a final written warning always implies, subject only to any contractual terms to the contrary, that any subsequent misconduct of whatever nature will usually be met with dismissal, and only exceptionally will dismissal not occur.

74. If, on the facts, a tribunal was to consider that a previous sanction may have been grossly inappropriate, it should be prepared to hear evidence surrounding the issuing of that earlier warning and decide for itself whether that was, in fact, the case.

Capability

75. As with the position in respect of conduct dismissals, an employer does not have to prove that the employee was, in fact, incapable of performing his or her job in order to satisfy a tribunal that the dismissal was fair. The test is whether the employer had an honest belief in the employee's incapability which was based upon reasonable grounds.

76. In performance cases of this sort, an employee needs to have been provided with an adequate and clear explanation as to why he or she was considered to have been failing in the role. Adequate warning, with targets and opportunities for improvement, needs to have been given. Sometimes further training can be appropriate. This was explained in James v Waltham

Holy Cross [1973] ICR 398. Providing a reasonable opportunity to improve was identified as important in Polkey-v-AE Dayton Services [1988] ICR 142. What is reasonable will vary from case to case.

Polkey

77. The decision in Polkey-v-AE Dayton Services [1988] ICR 142 introduced an approach which requires a tribunal to reduce compensation if it finds that there was a possibility that the employee would still have been dismissed even if a fair procedure had been adopted. Compensation can be reduced to reflect the percentage chance of that possibility. Alternatively, a tribunal might conclude that a fair of procedure would have delayed the dismissal, in which case compensation can be tailored to reflect the likely delay. A tribunal had to consider whether a fair procedure would have made a difference, but also what that difference might have been, if any (Singh-v-Glass Express Midlands Ltd UKEAT/0071/18/DM).

78. It is for the employer to adduce relevant evidence on this issue, although a tribunal should have regards to any relevant evidence when making the assessment. A degree of uncertainty is inevitable, but there may well be circumstances when the nature of the evidence is such as to make a prediction so unreliable that it is unsafe to attempt to reconstruct what might have happened had a fair procedure been used.

79. In Software 2000 Ltd v Andrews [2007] IRLR 568, the EAT reviewed the authorities and gave the following guidance regarding the correct approach to 'Polkey' and in particular the difficulties inherent in what is a predictive exercise:

'(1) In assessing compensation the task of the Tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal.

(2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future.)

(3) However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole

exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made.

(4) Whether that is the position is a matter of impression and judgment for the Tribunal. But in reaching that decision the Tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

(5) An appellate court must be wary about interfering with the Tribunal's assessment that the exercise is too speculative. However, it must interfere if the Tribunal has not directed itself properly and has taken too narrow a view of its role".

Contribution

80. I was invited to consider whether the Claimant's dismissal was caused by or contributed to by her own conduct, within the meaning of s 123 (6) of the Act. In order for a deduction to have been made under these sections the conduct needs to have been culpable or blameworthy in the sense that it was foolish, perverse or unreasonable. It did not have to have been in breach of contract or tortious (Nelson-v-BBC [1980] ICR 110).

81. I applied the test recommended in Steen-v-ASP Packaging Ltd [2014] ICR 56; I have had to;
(i) Identify the conduct;
(ii) Consider whether it was blameworthy;
(iii) Consider whether it caused or contributed to the dismissal;
(iv) Determined whether it was just and equitable to reduce compensation;
(v) Determined by what level such a reduction was just and equitable.

82. I also considered the slightly different test under s. 122 (2); whether any of the Claimant's conduct prior to his dismissal made it just and equitable to reduce the basic award, even if that conduct did not necessarily cause or contribute to the dismissal.

Conclusions

The final written warning

83. The Claimant sought to challenge the final written warning. In order for the Tribunal to go behind the final warning, it would be necessary for the Claimant to show that it was issued in bad faith. It was apparent from the Claimant's interview that she said she had made a joke about putting her daughter in the chamber. There was evidence before the Respondent that showed the Claimant had been involved in the conversation. A full procedure was followed, using an external HR organisation, which made findings. I accepted that Ms Moynihan had no involvement in the grievance or disciplinary processes. There was no evidence to suggest that there had been bad faith towards the Claimant, who was the senior employee involved. A full process with an opportunity to appeal had been adopted. The Claimant did not appeal the decision. In the circumstances I was satisfied that the final written warning was issued in good faith and it was not manifestly inappropriate. Accordingly this was not a case in which it could be reopened.

The reason for dismissal

84. The reason the Respondent gave to the Claimant on dismissal, was that she was dismissed by reason of her conduct. That was the position it maintained in its Grounds of Resistance. During cross-examination, Ms Moynihan she said that the majority of the reasons for dismissal were related to the following of procedures and policies. In answer to a question from the Judge she said that this was a matter of performance and conduct, however when questioned in re-examination, she said they were matters of performance only. I accepted that the view Ms Moynihan had at the time in relation to all of the allegations, apart from that involving Mr Spurgeon, were that they related to the Claimant's performance in her role. The Claimant had not completed the PIP for J in the manner requested and it was found she had not evidenced the measurables. There was no finding that she had deliberately failed to follow management requests in relation to the PIP, however it was found that the Claimant should have sought assistance.

85. I accepted, in relation to the allegation involving Mr Spurgeon, misconduct that was the reason Ms Moynihan had in mind.

86. At the time of the dismissal the Respondent said the reason was misconduct for all allegations and this was repeated in the Grounds of Resistance. The Respondent, without making an application to amend, said in closing submissions that the label could be changed, relying on the case of Screene. It was apparent from the nature of the allegations and what was discussed during the internal processes that allegations about the way the Claimant conducted her management activities, i.e. in relation to all allegations, apart from the conversation, related to the quality of the Claimant's work and whether it was being completed properly. The Claimant had defended the allegations against her internally and at the hearing

before the Tribunal, on the basis that she had been trying her best and that the reasons were staff shortages and lack of time. With reservation, I concluded that although there had been a shift in stance, the Claimant had been defending the claim on this basis and therefore the Respondent could argue the point.

Allegations against the Claimant, with the exception of the conversation with Mr Spurgeon

87. At the time of the dismissal there were capability issues involving the Claimant. The PIP had not been completed properly, appraisals were missing, 1:1s had not occurred or were not recorded, team huddles were not taking place and there was a significant issue with not recording what had happened. There was no evidence to support that the Respondent had removed or moved files from the Claimant's computer and I did not accept that it had done such a thing. It was apparent from the issues the Claimant described, in relation to lack of time and time management, that she was struggling to do all of her duties and it may have been human error on her part.

88. The matters raised by the Respondent were serious. Having a paper trail is important because it protects the Claimant and Respondent if a team member subsequently challenges what happened. It can then provide an explanation and show what happened with contemporaneous documents. The work was not being done as the Respondent wanted or expected. I was satisfied that the Respondent had in mind that in respect of those matters that the Claimant's performance as a team leader was lacking.

89. However, having the reason is not sufficient. It must be based on reasonable grounds and following a reasonable investigation and procedure. There was no evidence in the hearing bundle of 1:1 meetings with the Claimant when her performance was discussed. There was a lack of documentary evidence showing what the Claimant had done or was being asked to do to improve.

90. There was no evidence before the Tribunal that the Claimant had been informed of the performance issues and warned that if things did not improve that she could be dismissed. The Claimant was not given an opportunity to improve, with measurable objectives over a reasonable period of time and with measurable targets.

91. Although it was clear the Respondent had performance concerns, it must follow a reasonable and fair procedure in order to dismiss for capability. It was relevant that the Claimant was not a senior manager and was inexperienced, this was not the type of case in which it could be legitimately

said that she should have known better and been performing, which might be the case with a senior and experienced manager.

92. The Respondent treated those performance issues as misconduct allegations in the disciplinary proceedings and as consequence did not adopt a procedure which would be normally expected for capability.

93. The Respondent had informed the Claimant of what it was concerned about and gave her opportunities to explain at the investigation, disciplinary and appeal stages. She was also informed of her right to be accompanied.

94. Although I was satisfied that the Respondent had a genuine belief that these were performance issues, I was not satisfied that a reasonable employer would have moved straight to dismissal and its actions fell outside of the reasonable band. Accordingly I was not satisfied the Respondent had given the Claimant a reasonable opportunity to improve, with measurable objectives and warned her as to the potential consequences if she did not.

95. In the circumstances I was not satisfied that a reasonable employer would have used the process the Respondent did and such an employer would have warned the Claimant and given her an opportunity to improve. I was therefore satisfied that the decision to dismiss on the grounds of capability was procedurally unfair and fell outside of the range of reasonable responses.

96. In relation to whether the allegations were misconduct, Ms Moynihan's evidence to the Tribunal was that they were performance related. As held in Sandwell &West Birmingham Hospital, for it to be misconduct, the disobedience must have at least the quality that it is wilful or connote a deliberate flouting of the essential contractual conditions or very significant negligence. The Respondent did not adduce evidence that it considered the Claimant had wilfully refused to follow management requests or deliberately flouted procedures. Ms Moynihan's evidence was that it was really performance. Even in relation to the PIP allegation, there was not a finding that the Claimant had refused to do it or deliberately not follow what was expected. The Claimant explained what happened and her reasons as to why it had happened. No statement was taken from J in relation to the PIP.

97. I was not satisfied that the Respondent genuinely believed that these allegations constituted misconduct. Instead they believed that her performance was lacking and she was not able to do the job she was employed to do.

98. Accordingly I was not satisfied that a reasonable employer would have dismissed the Claimant, in respect of these allegations, on the basis of

misconduct. The decision therefore fell outside of the range of reasonable responses.

99. In relation to the final warning, the warning related to misconduct and not performance. For the warning to be taken into account it would need to relate to capability, which it did not. Accordingly, I was satisfied that a reasonable employer would not have taken the warning into account when deciding what it should do in relation to the Claimant's performance.

The incident involving Mr Spurgeon

100. The Claimant accepted that she may have raised her voice to Mr Spurgeon in front of another manager. I accepted that the Respondent considered that this was misconduct, given that Mr Spurgeon was the owner of the business and the Claimant had raised her voice.

101. In terms of the process followed, the Claimant was informed of the allegations and given an opportunity to respond at the investigation, disciplinary and appeal stages. She was also informed of her right to be accompanied. Her right is only to be accompanied by a colleague or Trade Union representative.

102. In terms of the investigation, a statement was not taken from Mr Spurgeon, setting out what he said had occurred or his concerns about it. Also at the investigation and disciplinary stage, a statement was not taken from Mr Long. Those were the people, who in addition to the Claimant, were present at the time of the allegation. An employee is entitled to know the case they have to meet. The Claimant had explained that she was very busy and that Mr Spurgeon had been interfering and was causing more difficulty for her. The only evidence was that the Claimant may have raised her voice and there was no evidence of her saying anything abusive or of a derogatory nature. The Respondent, to carry out a reasonable investigation, must look for evidence which explains what happened, this is not just restricted to its version of events.

103. At the time of the dismissal, the only evidence given to the Claimant was her own investigatory interview, in which she had explained the pressure she was under and she might have raised her voice. That pressured situation was something which a reasonable employer would have considered was mitigation. I was not satisfied that the Respondent had conducted a reasonable investigation at the point it dismissed the Claimant and a reasonable employer would have obtained and provided to the Claimant, statements from Mr Spurgeon and Mr Long.

104. The Respondent took into account the final written warning. It was relevant to consider that the Claimant was warned that any further

misconduct could result in dismissal. It was also relevant to consider that the matters for which the warning was given, were different to the incident involving Mr Spurgeon.

105. It was relevant to consider whether the consequences of the warning implied that any subsequent misconduct would result in dismissal and it is only in exceptional cases that dismissal would not occur. In the present case the misconduct at its highest was the raising of a voice. This was against a background of a difficult and pressured situation for the Claimant. The Respondent adduced no evidence from Mr Long or Mr Spurgeon about the incident. There are a range of reasonable responses and dismissals can fall outside of that range. Even though the Claimant had a final warning, a reasonable employer would have considered that the incident with Mr Spurgeon fell at the lowest possible end of misconduct and for which there was mitigation. A reasonable employer, considering this issue in isolation, was highly unlikely to consider it would warrant formal disciplinary action. In the circumstances I was satisfied that a reasonable employer would not have taken into account the final written warning.

106. The Claimant appealed. The Respondent asked Peninsula Face to Face to conduct the appeal. The appeal was conducted on paper. The report said that it was a recommendation only. It was unfortunate that Mr Leather was not called to give evidence. The report gave very little explanation for the rationale for the conclusions. It did not set out that the Claimant's explanations about time pressures and staff shortages could be mitigation. It also made a comment that the Claimant said, 'she may have raised her voice' and she 'did not shout' was an inconsistent narrative, when a natural reading of the documents could also suggest she was saying the same thing. There was no explanation as to this.

107. Mr Leather said that he had obtained a statement from Mr Long, however he did not ask the Claimant to comment on it and it and the other appendices were not included in the bundle for the Tribunal hearing. The Claimant had no recollection of seeing a statement from Mr Long. It was not apparent from the documents or Ms Moynihan's witness statement that the report was sent to the Claimant. I was not satisfied that the Claimant saw Mr Long's statement or the report. A reasonable employer would have ensured that she had seen the report and all of its appendices.

108. The appeal was decided by Ms Moynihan, who decided to dismiss the Claimant. This was effectively asking her to mark her own homework. No real explanation was given as to why someone else could not have made the decision. There were other senior managers, or the appeal decision itself could have been outsourced.

109. In the circumstances I was not satisfied that a reasonable procedure was followed. The Respondent did not initially carry out a reasonably thorough investigation, by not interviewing all relevant people. Any further investigation at the appeal stage, the contents which are unknown to the Tribunal, was not referred to the Claimant before a decision was taken. The reasoning behind the appeal recommendations provided very little explanation and did not explain why the Claimant's points were not valid in a way which could be reasonably understood.

110. In the circumstances I was satisfied that the dismissal was procedurally unfair and that in the circumstances the decision to dismiss fell outside of the range of reasonable responses.

Would the Claimant have been dismissed in any event or did culpable conduct contribute to it

111. The Respondent had concerns about the Claimant's performance. Documentary evidence had not been provided in relation to 1:1s it had with the Claimant and it was therefore necessary for me to do the best I could on the information provided.

112. There were a large numbers of concerns about the Claimant's performance which were legitimate and meant that the Respondent did not have a proper paper trail. It was apparent from the Claimant's evidence that the part of her role she most enjoyed was dealing with clients. The Claimant said that she did not have time to do the administrative and team leader parts of her role and that they were understaffed. It appeared that the majority of the issues were caused by the Claimant's organisation and efficiency of carrying out her tasks. Notes can be taken and immediately uploaded and team huddles need not take that long. There appeared to be a real issue with the way that the Claimant recorded what had been happening. This was in part caused by her desire to be helping the clients of the Respondent, which would have drawn her away from her team leader roles, rather than getting the team to undertake the client facing tasks.

113. The Claimant also acknowledged that it was likely that she would have been dismissed at some point in any event.

114. If the Respondent had followed a fair capability process, the Claimant would have been put on a PIP and given a reasonable opportunity to improve. On the basis of the evidence presented it was highly likely that at the end of the PIP she would have been given a warning and then faced a further capability hearing. On the basis of the evidence before me, it was highly likely that the Claimant's organisation and efficiency issues would have remained and she would have still been under the same time pressures. The Respondent needed a team leader who could carry out their

tasks efficiently. I therefore concluded that the Respondent had proved that the Claimant would have been fairly dismissed at some point in relation to her capability. Taking into account the length of time for a PIP to be concluded and for her to be given a warning and a fair process to be followed, I concluded that the Claimant would have been dismissed three months later and that her losses ended at that point.

115. If I was wrong about the taking into account of the final written warning, there were still significant procedural failings. For the Respondent to follow a fair procedure I was satisfied that it would have taken an additional four weeks.

116. In relation to contributory fault, I was satisfied that the Claimant had raised her voice and that she should not have raised her voice to someone in authority. It was relevant that she was in a difficult situation and under pressure. There was no suggestion of anything unpleasant or abusive or insulting being said. In the circumstances and in the light of my findings as to whether a reasonable employer would have dismissed her I was not satisfied that it was just and equitable to reduce her compensation further.

Remedy

117. The parties agreed what the remedy should be, in the light of the findings on liability. It was agreed that the Claimant should be paid a basic award of £1,761.63 and a compensatory award for loss of earnings of £5,921.70 net.

118. The Claimant started receiving universal credit towards the end of the 3 months period after her dismissal and the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply in this case.

119. Included in the award which the tribunal has ordered the Respondent to pay the Claimant there is a sum of £5,921.70 in respect of her pay from the day she was dismissed until the judgment. If she keeps the universal credit she has received up to to-day, she will be better off than if she had been at work, she will have made a profit as a result of the award. The Government would like its money back. The way the Government gets it back is through the Recoupment Regulations.

120. The Respondent must retain that part of the award which relates to the Claimant's loss of earning up to the Judgment (it is called the Prescribed Element and is £5,921.70) until the Respondent receives from the Department for Work and Pensions a Notice. The Notice will either require the Respondent to pay all, or part, of the Prescribed Element to the Department, or tell the Respondent that it does not require any payment.

When the Respondent receives the Notice the Respondent must pay to the Department for Work and Pensions the sum specified in the Notice and the balance should be paid to the Claimant. The rest of the award, over and above the Prescribed Element, which amounts to £1,761.63, is due to Claimant straight away.

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Approved by
Employment Judge J Bax
Dated 27 August 2025

Judgment & Reasons sent to Parties on
2 September 2025

Jade Lobb
For the Tribunal Office

ANNEX TO THE JUDGMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit and Income Support

The tribunal has awarded compensation to the claimant but not all of it should be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit or Income Support which it paid to the claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the respondent usually within 21 days after the tribunal's judgment was sent to the parties.

The tribunal's judgment should state the total monetary award made to the claimant and an amount called the prescribed element. Only the prescribed element is affected by the recoupment Notice and that part of the tribunal's award should not be paid until the recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the DWP sends the recoupment Notice, the respondent must pay the amount specified in the Notice by the department. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Department informs the respondent that it does not intend to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the DWP. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the DWP in writing within 21 days. The Tribunal has no power to resolve such disputes which must be resolved directly between the Claimant and the DWP.