EMPLOYMENT TRIBUNALS

Claimant: Ms E Dixon

Respondent: Westminster City Council

Heard at: London Central (remote hearing) **On:** 8 September 2025

Before: Employment Judge B Smith (sitting with members)
Tribunal Member Carroll
Tribunal Member Shaah

REPRESENTATION:

Claimant: Did not attend
Respondent: Ms S King (Counsel)

REMEDY REASONS

Preliminaries

1. These reasons must be read in conjunction with the liability Reserved Judgment and Reasons dated 6 June 2025 (sent to the parties on 6 June, referred to hereafter as the 'Liability Judgment').

2. We did not consider that it was appropriate to make any recommendations given our findings in the Liability Judgment and the steps taken by the respondent (in particular, it's identification of indirect discrimination following the claimant's grievance and subsequent steps to reduce the risk of the relevant conduct being repeated).

Procedure, documents, and evidence heard

3. The claimant was unrepresented and did not attend the hearing. The respondent was represented by counsel. The hearing proceeded by determining the claimant's postponement application (which was refused). The Tribunal concluded that it was in the interests of justice to continue in the absence of the claimant's presence (in part because it had sufficient material to fairly determine remedy, in all the circumstances) and then heard submissions from the respondent. The Tribunal announced the outcome of the hearing and indicated that written reasons would follow given the claimant's absence.

4. The documents provided for the remedy hearing were in a bundle of 790 pages. This was created by the respondent after liaison between the parties between the end of the liability hearing and the remedy hearing. We were satisfied that this contained sufficient material to fairly determine remedy.

5. We also fully took into account a letter from the claimant's psychiatrist Dr Hakeem dated 3 September 2025. We did not consider that this was sufficient evidence to further justify an adjournment, taking into account the original decision of EJ Nicolle dated 29 August 2025 to refuse the claimant's earlier application to postpone the hearing and this additional evidence. The high point of this evidence was that the claimant had explained to her psychiatrist that she had been unable to prepare for the hearing because she could not suggest a sum for compensation without having figures to work from. We did not consider that an adjournment would remedy this issue given that it resulted from the claimant's position as a litigant in person as opposed to a medical issue that was likely to be resolved within a reasonable timeframe, applying all elements of the overriding objective and taking into account the relatively narrow issues to be determined at the hearing.

6. Although the claimant indicated by email dated 8 September 2025 sent at 8:15 in the morning that she was unable to participate and had provided evidence as to why, we do not consider this submission to be correct.

Although Dr Hakeem's letter indicated that the claimant had very low mood, given the claimant's long term health conditions (including a diagnosis of pain and anxiety) and the effects of her ADHD and autism, there was no sufficient link between this and Dr Hakeem's reasoning as to the claimant's alleged inability to participate in the hearing (namely her inability to calculate remedy without more 'concrete information'). Also, we took into account the fact that the claimant had not provided clear evidence that she was unable to prepare for the hearing for the material period between the final hearing and this hearing. The letter from Dr Hakeem does not clearly establish that this was the case, only that the claimant felt overwhelmed and anxious at present. Also, the claimant was in communication with the respondent about preparing the hearing bundle during the summer months which suggested that she did have at least some ability to engage in the preparation for the hearing.

7. Also, we took into account that the issues for the hearing were narrow. The claimant was only successful in one very limited aspect of her case. The principal evidence the tribunal required was about claimant's injury to feelinge but this had already been adduced in evidence to a significant degree in the liability hearing because it included evidence of allegations of harassment and it was a necessary element of that cause of action for the Tribunal to consider what the effect of the actions of the respondent was on the claimant. The preparation for the claimant would include her assessment and submission on to what extent the proven conduct caused or contributed her already established injury to feelings taking into account the elements of her claim that were not successful. However, she had ample opportunity to do this. In those circumstances, the overriding objective suggests that an adjournment was not appropriate, as opposed to in circumstances where a more involved hearing would be necessary.

8. We also took into account the claimant's email dated 31 July 2025 which omitted any reference to her being unable to prepare or participate in the hearing and simply requested an extension of time for the bundle to be agreed.

9. Also, the claimant's application, to the extent it is based on back pain, is not supported by evidence from her doctors about her back condition and prognosis. In the circumstances, we equally considered that Dr Hakeem's hope that the claimant's condition would be temporary was speculative and insufficiently supported by the evidence.

10. We also considered that there was a need for financial certainty to the parties, including the respondent, and were conscious of the additional time and cost to the respondent that an adjournment would entail if a postponement was to be granted. We gave some weight to this given the lengthy nature of the proceedings, and the fact that any remedy was subject to a reasonably high interest rate.

11. The claimant did not prepare a witness statement for the hearing contrary to the remedy orders dated 6 June 2025.

12. The respondent did indicate that the claimant had suggested in inter-party correspondence that she was seeking additional medical evidence in respect of remedy, but the claimant did not adduce this evidence and did not request a postponement or variation to the case management orders for that purpose. In any event, the claimant plainly had sufficient time between the remedy case management orders dated 6 June 2025, sent to the parties on 17 June 2025, to obtain any evidence she might have relied on.

13. The claimant was given an opportunity to attend the hearing, having been informed that the postponement application had been refused (by email at 10:52) and also a telephone message was left by the clerk that the hearing would resume at 11:00am. We also record that the claimant did not attend the hearing to make the postponement application herself, but she did have a full opportunity to do so, the hearing being by remote video hearing.

14. In the above circumstances, we concluded that it was in the interests of justice to proceed in the claimant's absence. As set out below, there was sufficient material in the remedy bundle (in particular, from our existing

findings already made on the evidence whilst the claimant was present and represented by experienced specialist counsel) to properly make a determination on remedy. Also, a postponement would be contrary to the overriding objective.

Liability Judgment

15. The following determinations from the Liability Judgment are particularly relevant to our decisions on remedy.

16. The successful element of the claim of harassment was Allegation 45, namely that on 24 February 2023, the claimant was not shortlisted for a role in Public Health, the shortlisting having been conducted using factors not listed in the advertisement or job description and leaving the claimant with concerns about the fairness of the process.

17. The claimant's other claims (direct disability discrimination; unfavourable treatment because of something arising in consequence of disability; failure to make reasonable adjustments; and other elements of harassment) were not successful. However, it is clear from the Liability Judgment (mainly on the basis of the claimant's evidence, supported by relevant written materials) that the claimant found a lot of the events and aspects of her time at the respondent highly upsetting. However, the only injury to feelings we can make an award for is in respect of the single isolated element of the harassment claim (subject to questions of divisibility, as outlined below).

18. Paragraphs in the Liability Judgment which amount to findings that the claimant was upset about matters (but ultimately these did not amount to discrimination) include: [131] - the claimant not getting any of the Public Health roles she applied for (save in respect of the successful element of the harassment claim); [137] - the claimant not getting a placement in Public Health; [142], [150], and [165] - the claimant reading emails and other documents about her following her DSAR request; - [171] the claimant found it upsetting (generally) not being accepted into Public Health as part of the Covid response; [221] - the claimant was upset to a significant degree because the only posts suggested by the respondent during February and March 2022 were ones which did not meet the minimum eligibility criteria

for the Faculty of Public Health; [225] - the claimant was upset by the ongoing work situation and Ms Anderson not taking specific steps to find the claimant additional work in April 2022; [237] - the claimant was significantly upset because of the events around reasonable adjustments; [288] - interactions that raised the possibility of the claimant working elsewhere triggered an intense emotional reaction from the claimant; [292] - the claimant found it upsetting to be locked out of her work IT account; and [298] - the claimant later finding out about vacancies for roles she might have wanted was distressing.

19. It is also relevant that during the claimant's maternity leave her mental health declined, and she felt alone, had lost her purpose, and was unable to function on anything other than a basic level: [207]. The chronology of the claimant's mental health and conditions was also relevant our findings below, such as the claimant commencing maternity leave in early 2021 and the events between then and the conduct which was subject to the successful element of the harassment claim.

20. It is therefore important in understanding our decision on remedy that the claimant had found very many things upsetting and difficult, but these did not amount to discrimination and these feelings should not attract a remedy.

21. Our findings relevant to the proven conduct were as set out between [254] and [266]. Findings we have already made on the evidence include:

    a. If the essential criteria had been advertised then the claimant could have tailored her application more to the criteria and make an interview under the disability confident scheme more likely: [254];

    b. The respondent investigated following the claimant's complaint, made a finding of indirect discrimination; and steps were taken to ensure it was not repeated: [255];

    c. The claimant found this to be particularly upsetting, including being extremely distressed (albeit about her situation generally): [256];

    d. The reason why the claimant was not ultimately successful was because it was a position that required experience that the claimant

did not have as a matter of fact, and as a matter of fact the evidence strongly suggested that the claimant lacked the relevant experience for the role: [257];

e. The claimant was offered additional support in the form of a mentor within public Health in March 2023 to support development areas but this was rejected by the claimant's email dated 16 March 2023 [258];

f. We concluded that this amounted to a humiliating environment in the highly fact specific circumstances of the case [261]; and

g. We also concluded that it was unintentional: [263] (although we remind ourselves that it is not culpability of the respondent that we must assess, rather it is the injury to feelings which occurred).

Discrimination

(i) Principles

22. Applying Sharma v University of Portsmouth [2025] EAT 19:

(i) The Tribunal is empowered to order payment calculated on a tortious basis and an award for injury to feelings;

(ii) The burden is on the claimant to prove loss and injury;

(iii) The task of the Tribunal was, as best it could, to put the claimant in the position in which they would have been but for the discrimination which it had found to have taken place;

(iv) The Tribunal was required to envisage a hypothetical world in which the discrimination it had identified had not taken place and ask what would have happened, and in relation to a claim for loss of earnings, what the claimant would have earned, before comparing that with her current position;

(v) The award is not constrained by reasonable foreseeability, but it should compensate the claimant for the losses which flowed directly and naturally from the tortious acts;

(vi) However, the Tribunal is also required to consider the chances that the claimant's losses would have been sustained in any event, or as a result of the lawful conduct of the respondent, or would not ultimately have been sustained, and to make deductions accordingly; and

(vii) The Tribunal's task of assessing future loss necessarily involved a degree of speculation, doing the best it can, based on the evidence which it has.

23. Applying Ministry of Defence v Cannock we also must '*not simply make calculations under different heads, and then add them up. A sense of due proportion, and look at the individual components of any award and then looking at the total to make sure that the total award seems a sensible and just reflection of the changes which have been assessed.'* There must also be no double recovery or double counting.

(ii) Injury to feelings

24. Applying Armitage and ors and HM Prison Service v Johnson [1997] IRLR 162: 1) awards for injury to feelings are compensatory and just to both parties; feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award; (2) awards should not be too law or excessive; (3) they should bear some broad general similarity to the range of awards in person injury cases; (4) Tribunals should remind themselves of the value in everyday life of the sum they have in mind; and (5) Tribunals should bear in mind the need for public respect for the level of awards made.

25. In Vento v Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102 at [50] and [51]:

'It is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms.

Translating hurt feelings into hard currency is bound to be an artificial exercise. Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury. In these circumstances an appellate body is not entitled to interfere with the assessment of the employment tribunal simply because it would have awarded more or less than the tribunal has done. It has to be established that the tribunal has acted on a wrong principle of law or has misapprehended the facts or made a wholly erroneous estimate of the loss suffered. Striking the right balance between awarding too much and too little is obviously not easy.'

26. Applying Vento, above, the focus must be on the claimant's injury and not the manner in which it was caused. The top band should be awarded in the most serious cases. These might involve a lengthy company of discriminatory actions. The middle band should be used for serious cases which do not merit an award in the highest band. Awards in the lower band should be use for less serious cases where the act of discrimination is isolated or one-off.

27. Where there are multiple causes and or contributors to injury to feelings the Tribunal must consider whether the injury is divisible or not. In Sienkiewicz v Grief (UK) Ltd [2011] 2 AC 229 at [90] it was held that '*Where the disease is indivisible…a defendant who has tortiously contributed to the cause of the disease will be liable in full. Where the disease is divisible…the tortfeasor will be liable in respect of the share of the disease for which he is responsible.'* An essential feature of an indivisible injury is where there is no rational basis for an objective apportionment of causative responsibility for the injury: Rahman v Arearose Limited [2001] QB 351. Applying BAE Systems (Operations) Ltd v Konczak [2017] EWCA Civ 1188, the following propositions apply:

(i) if the harm has more than one cause, a respondent should only pay for the proportion attributable to their wrongdoing unless the harm is truly indivisible;

(ii) the burden is on the employer to raise the issue of apportionment;

(iii) Tribunals should identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrong and a part which is not so caused;

(iv) where a rational basis can be found the Tribunal should apportion accordingly, even if the basis is rough and ready; and

(v) this assessment must consider any pre-existing disorder or vulnerability, and account for the chance that the claimant would have succumbed to the harm in any event, at that point or in the future.

28. Taking into account our findings outlined above, we considered that the injury to feelings sustained by the claimant fell into the lower Vento band. The injury to feelings which arose from this single and distinct act of harassment, in the circumstances as they were, was not so minor that we felt that an award at the very bottom of the range would be sufficient to properly compensate the claimant. This is the case given that it happened in a particular context of unsuccessful job applications (see Liability Judgment at [262]) which informed our earlier decision that it had the statutory effect of harassment. Equally, the injury to feelings from this conduct (as distinct from how the claimant felt about other things) was limited such that it did not warrant an award at the upper end of the lower band, or the middle band. This was a single event that caused some injury to feelings for the claimant that was neither very minor nor more serious. Accordingly, we awarded the claimant £5,000 for injury to feelings.

29. To be clear, to the extent of considering how the claimant felt at that time about other things which were either not work-related and or were not as a result of a successful claim, we were satisfied that the claimant's overall state of mind and feelings was divisible. The claimant's evidence about each event suggested that it had distinct effects of upset and that is what

we have reflected in our award. We could also rationally separate how the claimant felt about this particular job application from her feelings before it happened, in part by looking at the chronology (noting her deteriorated mental state beforehand). We did not conclude that the evidence here was of someone with indivisible injury to feelings where there was no rational basis for apportionment, taking all the circumstances and findings of the Liability Judgment into account. Overall, we felt that the evidence did show a clear level of upset and degree of distress to the claimant from this particular incident and it is by reference to that we have awarded the claimant compensation.

Psychiatric injury

30. It is necessary for the Tribunal whether a proven psychiatric injury suffered through multiple causes is divisible or not. Where the injury is non-divisible, and it is materially contributed to by the respondent's unlawful act, it is liable for all the injury. However, if the injury is divisible, the respondent is liable only for the part the Tribunal can apportion on a rational basis. It is more likely that an injury is indivisible if the competing causes are closely related to the injury and it is different to separate the consequences: Olayemi v Athena Medical Centre & anor UKEAT/0140/15. The propositions from Konczak (above) are repeated.

31. We also took into account Hatton v Sutherland and others [2002] ICR 613 CA, including proposition 15 (points (i) and (ii) above) and proposition 16 (point (v) above).

32. The tortfeasor also takes the claimant as they find them.

33. We did not make any award for psychiatric injury. This is because we did not conclude that there was any sufficient evidence that the conduct of the successful claim caused or contributed or was otherwise attributable to the claimant's mental health state as psychiatric injury afterwards. To the extent that the claimant's feelings were injured by the specific event, this is reflected in the injury to feelings award. It is also clear on the chronology that the claimant's mental state had deteriorated significantly before the discrimination took place, and given the other (non-discriminatory) things

which cause her upset, sometimes significant upset, we consider that the effects of the specific conduct which was discriminatory was immaterial to the claimant's overall mental health state afterwards (as distinct from the injury to feelings already compensated).

(iii) Financial losses

34. The Tribunal must assess the chance that a loss would have occurred irrespective of the discriminatory act: Chagger v Abbey National plc and another [2009] EWCA Civ 1202 CA.

35. We did not consider that there were any evidenced financial losses arising from or otherwise attributable to the successful claim. In particular, our findings about the claimant's suitability for the role are such that there is no evidenced material chance that the claimant would have in fact got the role even if the discrimination had not taken place.

(iv) Interest

36. Interest is awarded applying the Employment Tribunal (Interest on Awards in Discrimination Cases) Regulations 1996. Applying Regulation 6:

> *(1) Subject to the following paragraphs of this regulation -*
>
> > *(a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;*
> >
> > *(b) in the case of all other sums of damages or compensation (other than any sum referred to in regulation 5) and all arrears of remuneration, interest shall be for the period beginning on the mid-point date and ending on the day of calculation.*
>
> *[…]*
>
> *(3) Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award,*

serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may –

(a) calculate interest, or as the case may be interest on the particular sum, for such different period, or

(b) calculate interest for such different periods in respect of various sums in the award,

as it considers appropriate in the circumstances, having regard to the provisions of these Regulations…

37. We calculated that there were 927 days between the date of the harassment (24 February 2023) and 8 September 2025.

Approved by:
Employment Judge B Smith
18 September 2025

SENT TO THE PARTIES ON

26 September 2025

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FOR THE TRIBUNAL OFFICE