



EMPLOYMENT TRIBUNALS

Claimant: Ms B Mbonda

Respondent: Quarryfields Health Care Limited

Heard: in Sheffield

On: 21 July 2025 and, in chambers, on 4 September 2025

Before: Employment Judge Ayre
Ms N Arshad-Mather
Mr D Wilks

Representation

Claimant: Mr M Malik, counsel

Respondent: Mr S Irving, solicitor

RESERVED REMEDY JUDGMENT

The unanimous judgment of the Tribunal is that the respondent is ordered to pay the sum of £23,603.45 to the claimant by way of compensation for unlawful discrimination.

REASONS

Background

1. In a judgment delivered orally on 30 January 2025 and sent to the parties on 14 February 2025 ("the **Liability Judgment**") following a four day final hearing, the Tribunal found unanimously that the respondent discriminated against the claimant because of race by:

1. Failing to carry out a full and fair disciplinary process by failing to speak to other members of the nursing staff on shift who were black, and only speaking

to the white nursing staff;

2. Giving the claimant a final written warning on 20 July 2023; and
3. Failing to fully consider the claimant's position during the appeal process between 26 July 2023 and 12 September 2023 by –
 1. Failing to rectify the failings of the investigation and disciplinary processes; and
 2. Failing to take into consideration the video submitted by the claimant showing a white nurse sleeping at work.
4. The Tribunal dismissed a further allegation of discrimination relating to the conduct of the investigation between 14 March 2023 and 17 April 2023.

The Remedy Hearing

2. There was an agreed bundle of documents running to 231 pages. We heard evidence from the claimant and, on her behalf, from her daughter. The respondent produced a witness statement for Andrew Teare, Head of Recruitment of the respondent's parent company. Mr Teare was not called to give evidence, and no weight has been placed on his statement.
3. Both representatives produced written submissions, for which we are grateful. They supplemented their written submissions with oral submissions.
4. The Tribunal reserved its judgment and met in chambers on 4 September 2025.

The issues

5. The issues that fell to be determined at the remedy were agreed at the start of the hearing as being the following:
 1. What award should be made for injury to feelings? The claimant says £25,000, the respondent says £7,500;
 2. What award should be made for pension loss? The claimant says £1,318.57, the respondent says £0;
 3. What award should be made for loss of earnings? The claimant seeks £31,639.64 in respect of the period from 1 April 2023 to 3 June 2024. Mr Malik indicated that the claimant is not seeking any other award for loss of earnings. The respondent says £0;
 4. What award should be made for interest on injury to feelings and on loss of earnings;
 5. What award should be made for statutory rights? The claimant seeks £500;

and

6. Was there a breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures by the respondent? If so, should the claimant be awarded a 25% uplift in compensation?

Findings of fact

6. The following findings of fact are made on a unanimous basis.
7. The claimant was employed by the respondent from 1 August 2015 until 9 December 2023 when she resigned with immediate effect. In her resignation letter the claimant wrote:

"I have made this decision due to the ongoing unfair treatment I have experienced at Quarryfields. Despite my efforts to address these concerns, the situation has remained the same, making it untenable for me to continue in my role.

I have faced instances of reporting an assault on the 15 of May 2022 to you by email, which was never followed up by you. I tried to raise this again and my email was blocked. It was submitted again to HR, on the 6th of November by my representative Louise showing the attempts to send the complaint in and we have never received a response.

I complained to HR about the torture I received from you on the 30th of May 2023 in your office but this has never been addressed.

I have requested an outcome of the £100 investigation I was subject to, but never had the outcome. Also, the outcome of the open investigation is related to blood found on service user B.R. and floormat, but never had a response, throughout my tenure. These incidents have impacted my overall well-being. I must prioritize my well-being and seek a work environment that fosters fairness and support.

I am grateful for the positive experiences I have had with the service users during my almost nine years at Quarryfields. But despite this, the way I have been treated by colleagues, managers, and HR has meant I no longer have any trust and confidence in the organization. My mental and physical health has deteriorated as a result of your behavior toward me and I have no choice but to leave."

8. There is no mention of discrimination or of the disciplinary investigation and warning in the resignation letter. Instead, the claimant refers specifically to other matters in respect of which there is no finding of discrimination, such as the incident on 30 May 2023 and an investigation into a missing £100.
9. The claimant lost trust and confidence in the respondent following a conversation she had with Victoria Watson, the manager of Quarryfields, on 30 May 2023. During that conversation Victoria Watson told the claimant that she was going to report her to the Nursing and Midwifery Council and that the claimant should not practice any more. She also asked the claimant to resign with immediate effect and took her work keys off her. The claimant was extremely distressed by these events and did not

return to work, forming the view that the respondent wanted to get rid of her. This conversation had a significant impact on her mental health.

10. In November 2023 the claimant attended an absence review meeting with her manager. During that meeting there was a suggestion that the claimant be referred to Occupational Health, and the claimant was told that the respondent could terminate her contract. It was that meeting that triggered the claimant's resignation on 9 December.
11. The claimant suggested that she had put on a lot of weight as a result of the respondent's discriminatory conduct. The medical records before us however suggested that between April and October 2023 she had gained just 2 kilos.
12. The claimant claims a total loss of £14,636.32 net for the period between 1 April 2023 and 9 December 2023. That gives a weekly loss of £406.56 a week. The claimant's figures were not challenged by the respondent, and we accept that the claimant's net loss during that period was £405.56 a week, taking account of sick pay and salary received, national insurance and tax.
13. The claimant described being extremely distressed by the discrimination. However, on the evidence before us it is clear that other events, which were not discriminatory, were affecting her distress and her mental health. The claimant has suffered from anxiety and poor mental health for some time.
14. The evidence set out in the claimant's witness statement for the remedy hearing wasn't supported by the medical evidence in bundle before us, which showed a history of poor mental health and an increase in medication before the discrimination started. On 15 March 2023 the claimant had an appointment at her GP's practice. At that appointment she reported a history of stress at work, and having experienced another incident of ganging up and bullying at work the previous day. The claimant's medication, sertraline, was increased to 100mg. During the same appointment the claimant described an incident, which she said had taken place 3 to 4 months ago, when she "*got stressed out and ended up screaming when doing shopping*".
15. Moreover, the claimant's witness statement was not, in our view, entirely credible. For example, in her witness statement the claimant said that "*I even attempted to drive my car into the lake due to the stress I was put under by the Respondent as a result of the discrimination I faced*". In cross examination however, she accepted that this incident, and another incident when she had broken down whilst shopping, were not linked to the discrimination because they both happened before the discrimination occurred. It was difficult to distinguish between the effect on the claimant of non-discriminatory treatment, and of the discrimination.
16. In addition, the claimant said in her witness statement that her resignation was directly caused by the respondent's "*intolerable and discriminatory behaviour*". There is however no mention whatsoever of discrimination in her resignation letter, which was submitted almost three months after the last of the discriminatory acts.

17. We have therefore treated the claimant's description of her injury with caution.
18. The claimant was off sick from March 2023 to December 2023, with the exception of a short period in May when she returned to work. Her absence after 30 May was however caused in no small part by an incident at work on 30 May which was not discriminatory.
19. In February 2023 the claimant was referred to NHS Doncaster Talking Therapies service. The records from that service record that the claimant "*reports past suicidal ideation of 'driving into a lake with my car' in February 2023 after a work investigation hearing*". They also note that the claimant had been taking Sertraline for 2 years, and had four sessions of CBT at the end of 2022. In October 2023 the claimant reported that her main problem was "*Depression due to bullying at work*" which she said had started in February 2023.
20. The medical records from NHS Doncaster Talking Therapies contained 'homework reviews' completed by the claimant. The review for 14th to 26th November 2023 shows that the claimant was engaging in normal day to day activities in November including spending time with her children, chatting, taking care of her children and grandchildren, food shopping, cleaning the house and cooking.
21. The medical records also record the claimant commenting that she had been assertive on 24 November by telling her manager that her manager's behaviour / bullying was what was affecting her mental health. The claimant also reported an improvement in her mood.
22. The medical evidence suggests that by November 2023 it was the perceived behaviour of Victoria Watson that was causing the claimant upset, but also that the claimant's mental health was improving. The claimant did not attend an appointment that had been arranged for 14 December, and her final appointment with Talking Therapies was on 23 December 2023. At that stage she was assessed as having minimal depression and anxiety, as feeling better since resigning and as planning to start a new job in January. There was no evidence before us to suggest that she was too unwell to work from January 2024 onwards.
23. Moreover, the claimant has been applying for other jobs for some time. She was offered another job in October 2023 but decided to stay with the respondent until December.
24. We find that the discrimination contributed to the claimant being off sick, but was not the sole cause. She was off sick for approximately four weeks before the discrimination started, and after May her absence was due to a combination of things, the most significant of which were the comments made by Victoria Watson on 30 May.
25. We accept that the discrimination did have an effect on the claimant. The claimant loved her job and had intended to stay with the respondent until she retired. Her daughter described her as being a shadow of herself for a period of time, and changes in her mood. Her children had to step in to support her.
26. The claimant suggested that she had experienced a significant weight gain as a result of the discrimination. We find that not to be the case. The claimant gained

just 2 kilos between April and October 2023, and told NHS Doncaster Talking Therapies in October 2023 that she had previously had four sessions of CBT with the NHS for eating behaviour and low mood.

The Law

Compensation for discrimination

27. Section 124 of the Equality Act 2010 (“**the EQA**”) sets out the remedies available in a successful discrimination claim. Section 124(2) provides that the tribunal may “*order the respondent to pay compensation to the complainant*”. Section 124(6) states that “*The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court...under section 119*”.

28. In **Ministry of Defence v Cannock and ors [1994] 918** the EAT held that the aim, when awarding compensation for discrimination, is to put the claimant into the position she would have been in ‘but for’ the unlawful conduct. The Tribunal must therefore consider what position the claimant would have been in had the discrimination not taken place.

29. Section 119 of the EQA contains the remedies available to the county court where it makes a finding of discrimination and includes, at section 119(4) the power to award compensation for injured feelings (whether or not it includes compensation on any other basis).

30. In determining the amount of injury to feelings, the tribunal must take account of the guidelines laid down by the Court of Appeal in **Vento v Chief Constable of West Yorkshire Police (No. 2) 2003 ICR 318**, as subsequently revised, and of the Presidential Guidance on Employment Tribunal awards for injury to feels and psychiatric injury, issued in September 2017 and subsequently updated.

31. The Vento guidelines, in summary, are that:

1. The top band applies in only the most serious cases, such as where there has been a lengthy campaign of harassment;
2. The middle band applies to serious cases that do not merit an award in the top band; and
3. The lower band applies in less serious cases, for example involving a one off or isolated act of discrimination.

32. The Presidential Guidance provides that for claims presented on or after 6 April 2023 the Vento bands are as follows: a lower band of £1,100 to £11,200 (less serious cases); a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200. These bands take account of the 10 per cent uplift set out in **Simmons v Castle [2012] EWCA Civ**

1288.

33. The Tribunal has considered the recent decision of the EAT in ***Eddie Stobart Limited v Miss Caitlin Graham [2025] EAT 14***, at paragraphs 30 to 52, which provides comprehensive guidance regarding injury to feelings awards.

34. The five key points of principle were established by the EAT, nearly 30 years ago, in **Armitage, Marsden and HM Prison Service v Johnson [1997] IRLR 162** (at paragraph 27):

- (1) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award
- (2) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained and not excessive.
- (3) Awards should bear some broad general similarity to the range of awards in personal injury cases.
- (4) In exercising their discretion in assessing a sum, Tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.
- (5) Finally, tribunals should bear in mind the need for public respect for the level of awards made.

35. These principles were approved by the Court of Appeal in ***Vento v Chief Constable of West Yorkshire Police (No.2) [2003] IRLR 102***, which further said this (at paragraphs 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."

36. When deciding the amount to award for injury to feelings, the tribunal must focus on the effect of the discriminatory act upon the particular claimant, not the manner of the discrimination.

Uplift for unreasonable non-compliance with the ACAS Code

37. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") gives Employment Tribunals the power to increase or decrease compensation payable to an employee in certain circumstances. It applies to proceedings under any of the jurisdictions listed in Schedule A2, which includes complaints of discrimination at work under the Equality Act 2010.

38. The relevant part of section 207A states as follows:

"(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%."

39. The term "relevant Code of Practice" includes the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) ("the ACAS Code") which was produced under the authority given to ACAS by section 199 of TULRCA and subsequently approved by the Secretary of State and by Parliament in accordance with section 200 of TULRCA.

40. The ACAS Code contains the following relevant provisions:

"1. This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

- Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however,*

the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.

4. *...whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:*

- *Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.*
- *Employers and employees should act **consistently**.*
- *Employers should carry out any necessary **investigations**, to establish the facts of the case.*
- *Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.*
- *Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.*
- *Employers should allow an employee to **appeal** against any formal decision made...*

40. *Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.”*

Interest

41. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 give Employment Tribunals the power to award interest on awards made in discrimination cases. The Tribunal is required to consider whether to award interest, even if the claimant does not include a sum for interest in her schedule of loss.

42. Under Regulation 3 interest is calculated as simple interest that accrues from day to day, and the current rate of interest is 8%. Interest on awards of injury to feelings runs from the date of discrimination to the ‘calculation date’ on which the tribunal makes its decision on remedy. Interest on other awards of compensation for discrimination, such as compensation for loss of earnings, runs from the midpoint between the date of discrimination and the calculation date.

Submissions

43. We summarise briefly below the principal points made by the parties in submissions. The fact that a particular point is not mentioned does not mean it has not been considered.

Claimant

44. Mr Malik submitted, on behalf of the claimant, that:

1. There has been a pattern of unreasonable conduct and discrimination by the respondent;
2. The claimant felt significant emotional and psychological distress which required medical attention, and had gained 10 kilos in weight;
3. The claim falls into the middle Vento band as it involves repeated acts of discrimination over a prolonged period of time;
4. The reason the claimant was off work sick was because of the disciplinary allegations;
5. If it weren't for the discrimination she suffered, the claimant would not have had any time off work for stress and would still have been working for the respondent as she wished to retire there;
6. The first act of discrimination was 17 April 2023;
7. The fact that there is no mention of discrimination in the resignation letter does not mean that discrimination wasn't a key factor in her resignation. Discrimination was the fundamental reason she resigned;
8. The claim for loss of earnings is not too remote; and
9. There was a breach of paragraph 4 of the ACAS Code in that the investigation was not fair. The failings in relation to the ACAS Code justify a 25% uplift in the award.

Respondent

45. Mr Irving submitted, on behalf of the respondent, that:

1. The claimant's evidence on injury to feelings is inconsistent and undermined by both her actions and her medical records;
2. The claimant referred to being damaged and 'going through hell' after a meeting with Victoria Watson on 30 May 2023. That meeting was not an act of discrimination;
3. The claimant had an existing mental health condition, having been prescribed anti-depressants for 2 years prior to the discrimination;
4. The claimant's weight gain was not causally linked to the acts of discrimination;

5. The appropriate Vento band is the lower band, reflecting that whilst there was distress it was not prolonged or as severe as alleged;
6. The claimant was absent from work from 15 March 2023 with work related stress, well before any act of discrimination;
7. The final act of discrimination was the appeal outcome on 12 September 2023, approximately 3 months before the claimant's resignation;
8. The claimant's resignation was not causally linked to the discriminatory acts, but rather her ongoing absence and other workplace issues including the long standing inter personal conflict with Victoria Watson;
9. The claimant was offered a new role in October 2023, after the last act of discrimination, but she chose not to take it;
10. The resignation letter did not mention discrimination, but did mention 3 other incidents;
11. Any claim for ongoing loss of earnings is too remote; and
12. Any ACAS uplift should be modest, in the region of 10%;

Conclusions

46. The following conclusions are reached on a unanimous basis, having considered carefully the evidence before us, the relevant legal principles, and the submissions of the parties.
Injury to feelings.
47. When deciding the amount to award for injury to feelings, we have considered the period of time during which the discrimination occurred. The start of the discrimination was 17 April 2023 when the claimant sent an email to Ms Swift asking why all of the staff on the shifts in question had not been questioned. Ms Swift did not respond to that email or interview other members of staff. The appeal hearing was 16th August, and the appeal outcome was sent to the claimant approximately 4 weeks later, on 12 September 2023.
48. The discrimination therefore took place over a period of approximately five months, between April and September. Throughout that period of time the claimant was off work sick, although her period of sickness absence began before the discrimination did.
49. The claimant returned to work briefly in May but was then off sick again until her employment terminated in December. The cause of her absence from May onwards was largely due to the behaviour of Victoria Watson on 30 May.
50. There is no doubt in our view that some of the claimant's distress and mental

illness was due to previous issues and/or conflict at work, an underlying mental health condition for which she was already receiving treatment, and the incident with Ms Watson on 30 May 2023. None of these factors were discriminatory.

51. The incidents described by the claimant of considering driving her car into a lake and experiencing a meltdown whilst shopping both occurred sometime prior to the discrimination. The claimant has a history of mental illness which predates the acts of discrimination. She was off sick from 15 March 2023, which was right at the start of the investigation, and more than a month before the first act of discrimination.
52. That being said, a tortfeasor must take their victim as they find them. Whilst the discriminatory acts were just a part of what was happening to the claimant, we accept that the discrimination did exacerbate her existing mental illness.
53. We have reminded ourselves that injury to feeling awards are compensatory and not punitive and that they need to be of such a level as to reflect the seriousness of unlawful discrimination. The Tribunal's role is to 'do its best' on the evidence before it to make a sensible assessment of the hurt feelings suffered by the claimant arising from the acts of discrimination.
54. In this case there were several acts of discrimination involving two different people (the disciplinary and appeal hearers) over a period of approximately 5 months, resulting in some exacerbation of an existing mental health condition.
55. The claim form was presented on 17 October 2023. The Vento bands at the time were £1,100 to £11,200; £11,200 to £33,700 and £33,700 to £56,200.
56. There is some evidence before us to suggest that the claimant's already poor mental health was affected by the acts of discrimination. The claimant was however already off work due to mental health issues for a month before the discrimination occurred. After May 2023 a significant cause of her poor mental health was the incident with Victoria Watson which was not discriminatory.
57. The discrimination ended in September 2023 and by November the claimant was reporting to NHS Doncaster Talking Therapies that she was feeling much better and anticipated starting work again in January 2024.
58. In the circumstances, we find that an award towards the lower end of the middle Vento band is appropriate. There were several acts of discrimination, spanning a 5 month period, and involving more than one person. We award the claimant £15,000 compensation for injury to feelings.

Pension loss and loss of earnings

59. In considering what award to make for loss of earnings and loss of pension, we have reminded ourselves that the correct approach is to assess what the claimant would have received by way of earnings and pension contribution had she not been discriminated against.

60. This is a case in which there are multiple contributing factors to the claimant's period of absence. These include her existing poor mental health, events at work which occurred prior to the discrimination and, from 30 May 2023, the incident with Victoria Watson.

61. In ***Hatton v Sutherland and other cases [2002] ICR 613***, Lady Justice Hale, as she then was, in the Court of Appeal, commented that where a claimant's symptoms stem by a number of different causes, a 'sensible attempt' should be made to apportion liability between those different causes. She suggested that an employer should only pay for that proportion of the harm that is attributable to its wrongdoing.

62. In ***Thaine v London School of Economics [2010] ICR 1422*** an Employment Tribunal found that an employee's ill-health had been caused not just by unlawful discrimination, but also by other factors including depression, her mother's ill-health and the end of a relationship. The Tribunal reduced her compensation by 60% to reflect the fact that, in the Tribunal's view, the discrimination had caused 40% of the losses. That decision was upheld on appeal, with the EAT commenting that, where more than one event had caused harm to a claimant, there was no reason why the employer should be responsible for the entirety of the losses, rather the employer should only be liable for the consequences of its unlawful acts.

63. In this case, we find that the employer was partly responsible for the claimant's loss of earnings and employer pension contributions between 17 April 2023, when the discrimination started, and the 9 December 2023, when the claimant resigned. Given the number of other factors affecting the claimant's mental health, we find that the employer is 25% responsible for the claimant's lost earnings and employer pension contributions during that period.

64. The claimant claims loss of earnings and pension after her employment ended, through to the date upon which she started her new job in June 2024. We make no award for financial losses after the termination of the claimant's employment because the losses are, in our view, too remote. We cannot conclude, on the evidence before us, that the claimant resigned because of the discrimination. Rather she resigned because of a number of other work-related matters including, in particular, the way that she was treated by Victoria Watson. There is no mention of discrimination in her letter of resignation, and she remained employed for almost 3 months after the last act of discrimination. On the claimant's own evidence, it was the meeting in November to discuss her sickness absence that triggered the claimant's resignation.

65. We find that the claimant's net loss of salary between 17 April and 9 December, a period of 33 weeks and 5 days, using the weekly net salary of £405.56, was £13,706.88 ($406.56 \times 33 = 13,416.48$ plus $5/7 \times 406.56 = 290.4$).

66. We reduce the net salary loss of £13,706.88 by 75% to reflect the fact that the discrimination, in our view, was only 25% responsible for the claimant's

absence from work during that period. This results in an award of £3,426.72 for loss of earnings.

Loss of pension

67. There was insufficient evidence before us for us to conclude with certainty what the employer's pension contributions were. We have therefore applied the minimum employer contribution of 3%. 3% of £3,426.72 is £102.80. We make an award of £102.80 for pension loss in respect of the period from 17 April 2023 to 9 December 2023.

Loss of statutory rights

68. The claimant asks the Tribunal to make an award of £500 for loss of statutory rights. We decline to do so.

69. An award for loss of statutory rights can be made in unfair dismissal claims. There has been no finding of unfair dismissal in this case (nor indeed any complaint of unfair dismissal) and there has been no finding that the dismissal itself is discriminatory. We have not been taken to any authority that suggests we have the power to make an award for loss of statutory rights in a discrimination claim.

70. No award is made for loss of statutory rights.

ACAS uplift

71. The parties agree that there was a failure by the employer to follow the ACAS Code of Practice and that an uplift is appropriate. The claimant says the uplift should be 25%, the respondent says 10%.

72. We find that there have been several breaches of the ACAS Code by the respondent:

1. The respondent failed to carry out all necessary investigations to establish the facts of the case by:
 1. not interviewing the black members of staff on shift at the relevant time; and
 2. failing to investigate the allegations of discrimination made by the claimant;
2. The respondent also failed to act consistently by taking no disciplinary action against the white nurse who was clearly visible sleeping at work on a video (paragraph 78 of the Liability Judgment).
3. The respondent failed properly to inform the claimant of the basis of the problem and give her the opportunity to put her case, as Ms Payne, the

dismissing manager, relied on matters which had not formed part of the allegations or been put to the claimant (paragraph 60 of the Liability Judgment).

73. The failure to comply with the ACAS Code was, in the view of the Tribunal, unreasonable. Ms Payne appeared to be placing responsibility for not interviewing other people on the claimant (paragraph 66 of the Liability Judgment) and told the Tribunal that interviewing other employees would not have changed the outcome (paragraph 68). The procedural failings by the respondent were considerable, as set out in the Liability Judgment.

74. That being said, there was some procedure followed by the respondent in investigating the disciplinary allegations. Different managers dealt with the investigation, disciplinary and appeal. The claimant had the right to be accompanied, was informed of decisions in writing, and had the right of appeal. There were, in our view, considerable steps taken by the respondent to comply with the ACAS Code.

75. The EAT has suggested that Tribunals take the following approach when considering uplifts (see **Rentplus v Coulson [2022] EAT 81** and **Slade v Biggs [2021] EA-2019-000687-VP**) and ask the following questions:

1. Is the claim one which raises a matter to which the ACAS Code applies? We find that it is, because it involves disciplinary proceedings.
2. Has there been a failure to comply with the ACAS Code in relation to that matter? For the reasons set out above, we find that there was such a failure.
3. Was the failure to comply with the ACAS Code unreasonable? For the reasons set out above and in the Liability Judgment we find that it was.
4. Is it just and equitable to award an uplift because of the failure to comply with the ACAS Code and, if so, by what percentage?

76. In the circumstances we consider that an uplift of 10% is just and equitable. We apply the uplift to all elements of the award as follows:

1. Injury to feelings £15,000: 10% uplift is £1,500 giving a total of £16,500;
2. Loss of earnings £3,426.72: 10% uplift is £342.67 giving a total of £3,769.39; and
3. Pension loss £102.80: 10% uplift is £10.28 giving a total of £113.08.

Interest

77. We award interest on the compensation for discrimination calculated at the interest at the rate of 8%. Interest on the compensation for financial losses runs from the midpoint between the date of the discrimination and the date upon which interest is calculated. Interest on compensation for injury to feelings runs from the date of the discrimination until the date upon which interest is calculated, which is 4 September 2025.

78. The period of discrimination was from 17 April 2023 to 12 September 2023. We find that it would be just and equitable to award interest from the midpoint between 17 April 2023 and 12 September 2023, which is 30 June 2023.

79. There are 797 days between 30 June 2023 and 4 September 2025. We then calculate the midpoint between 30 June 2023 and 4 September 2025 and find that to be 398 days after 30 June 2023.

80. Interest on compensation for financial losses arising from the discrimination is therefore calculated for the period of 398 days at 8%. The total compensation for financial losses before the addition of interest is £3,882.47 (3,769.39 plus £113.08). Interest on this amount is calculated as follows: $398 \times 0.08 \times 1/365 \times, 3,882.47$ giving total interest on financial losses of £338.68.

81. On the injury to feelings award interest runs from the date of discrimination, which for these purposes is 30 June 2023, through to the calculation date of 4 September 2025, a total of 797 days. Interest on the injury to feelings award is calculated as follows: $797 \times 0.08 \times 1/365 \times 15,000$, giving a total interest of £2,882.30.

Total award :

82. The total award to the claimant is as follows:

1. Injury to feelings:	£16,500;
2. Loss of earnings:	£3,769.39;
3. Pension loss:	£113.08
4. Interest on financial loss:	£338.68
5. Interest on injury to feeling:	£2,882.30
6. <u>Total award:</u>	<u>£23,603.45</u>

83. There is no grossing up as the total award is less than £30,000. The respondent is therefore ordered to pay the sum of £23,603.45 to the claimant.

Approved by:

Employment Judge Ayre

Date: 30 September 2025

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

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

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>