



EMPLOYMENT TRIBUNALS

Claimant: Mr S. Wells

Respondent: Cranatt Construction Limited

RECORD OF A FINAL HEARING

Heard at: Bristol ET (in public, by CVP) **On:** 30 October 2025 & 2
December 2025

Before: Employment Judge Bowen
Tribunal Member Ms. J. Cusack
Tribunal Member Mr. H. Launder

Appearances

For the Claimant: Mr. K. Harris, Counsel
For the Respondent: Mr. N. Smith, Counsel

RESERVED REMEDY JUDGMENT

1. In respect of the claimant's successful claims, the respondent shall pay the him the grant total of **£72, 903.33** comprising of the following sums:

1.1. The respondent shall pay the claimant £3337.31 as damages for breach of contract. This figure has been calculated using net pay.

- 1.2. Unfair dismissal: £17,212.12 comprising of:
 - 1.2.1. Basic Award: £14,467.50.
 - 1.2.2. Loss of statutory rights £500.00.
 - 1.2.3. ACAS uplift 15 per cent £2245.12.

- 1.3. Disability discrimination:
 - 1.3.1. Compensation for past financial losses £21581.57 consisting of:
 - 1.3.1.1. Financial loss £17,152.20
 - 1.3.1.2. ACAS Uplift 15 per cent £2572.83
 - 1.3.1.3. Interest on compensation for past financial losses calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 £1856.54.

 - 1.3.2. Compensation for injury to feelings related to pre-termination discrimination: £6996.41
 - 1.3.2.1. £5000 compensation for injury to feelings;
 - 1.3.2.2. ACAS uplift at 15 % in the sum of £750
 - 1.3.2.3. Interest on compensation for past financial losses calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 in the sum of 1246.41.

 - 1.3.3. Compensation for injury feelings related to termination: £15195.25 comprising of:
 - 1.3.3.1. £11,000 compensation for injury to feelings;
 - 1.3.3.2. ACAS uplift at 15 % in the sum of £1650
 - 1.3.3.3. Interest on compensation for past financial losses calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 in the sum of £2545.25

1.4. Grossing up for tax: £8580.67. An additional sum is due to the claimant as provision for tax on the excess over £30,000.

1.5. The Recoupment Provisions do not apply.

REASONS

Introduction

2. By a claim form presented to the Tribunal on 18 August 2023, the claimant brought claims against the respondent arising from his employment. Having heard evidence and submissions between 4-7 November 2024 and following deliberation on 11 November 2024, we upheld the following complaints brought by the claimant:

(a) Unfair dismissal pursuant to s.98 Employment Rights Act 1996.

(b) Wrongful dismissal (failure to pay notice).

(c) Unfavourable treatment because of something arising in consequence of disability (s.15 EqA 2010) in relation to the following:

- (i) Requiring the claimant to lone work from the end of November 2022 to 31 March 2023.
- (ii) Failing to provide the claimant with assistance to fulfil his duties from the end of November 2022 to 31 March 2023.
- (iii) Mr. Powell accusing the claimant of not having his heart in the job on 20 February 2023.
- (iv) Suspending the claimant on 31 March 2023.
- (v) Alleging the claimant was responsible for the defects listed in the invitation to the disciplinary hearing letter dated 5 April 2023, and repeating those allegations in the disciplinary meeting on 12 April 2023.
- (vi) Subjecting the claimant to a disciplinary meeting on 12 April 2023.
- (vii) Dismissing the claimant on 26 April 2023.

3. We further found that no deductions would be made to the basic or compensatory awards in accordance with s.122(2) or 123(6) Employment Rights Act 1996 and that

there is no chance that had the claimant still been employed the respondent would have dismissed him.

4. A written judgment and reasons in respect of those matters were sent to the parties on 5 February 2025. A remedy hearing took place on 30 October 2025 where we heard evidence and submissions on remedy. That took the entire listing and there was insufficient time to deliberate or provide an oral Judgment on remedy and so it was reserved. The Tribunal met on the first available date to deliberate, which was 2 December 2025.

Issues

5. The claimant did not seek a recommendation at the hearing and nor did we consider this was a case where one would be suitable. The Respondent did not suggest that this was a case where a declaration alone would be appropriate, and we did not consider it was such a case given the claimant had suffered loss.
6. It had already been recorded in the list of issues for these proceedings, that the claimant did not wish to be reinstated and/or re-engaged to the respondent.
7. Therefore, the issues we had to consider were limited to the amount of a financial award.
8. Ahead of the remedy hearing, the claimant provided an updated schedule of loss (p.65-9). This contained a sum of £3500 for Aggravated Damages on the basis of the following (p.68):
 - (a) Findings of fact made by the Tribunal on liability in paragraphs 262, 264, 266 and 269;
 - (b) *“...the additional distress caused by the Respondent during the liability hearing when a morning was wasted after the Respondent’s Counsel identified that the Respondent’s witnesses had been collaborating with their evidence and solicitor”.*
 - (c) That the respondent’s appeal to the EAT and vacating the remedy hearing in March 2025 caused the claimant significant upset and distress. That the appeal

was never going to succeed the sift stage and the respondent had acted vexatiously and maliciously in having the May 2025 remedy hearing vacated. The schedule of loss referred to an email from the claimant's solicitor dated 15 April 2025 to support this and an alleged comment of the respondent's solicitor which was said to support it (dealt with in more detail below). It was averred that the appeal did not have any arguable grounds and that this was supported by the EAT's sift decision (p.96). This prolonged the pain and suffering experienced by the claimant by an additional 6 months.

9. The crux of the claimant's solicitor's email dated 15 April 2025 related to an alleged conversation with the respondent's solicitor, Mr. Sherborne. On the morning of the remedy hearing, Mr. Sherborne sent a witness statement (signed on that day) to the Tribunal rebutting the allegations of the claimant's solicitor and raising that she had referenced a without prejudice conversation that had taken place between them. The respondent's solicitor did not raise any concern with that correspondence having been sent to the Tribunal at that time. I confirmed to the parties that I had seen the email at the time of deciding to postpone the remedy hearing, which had originally been listed in May 2025 (unaware that there was any suggestion that it was without prejudice). The Tribunal members had obviously now become aware of it due to the issues arising on the morning of the hearing. In any event, the parties had included the correspondence in the remedy hearing bundle (p.71-2; 74- 76).
10. The claimant's counsel confirmed that the those instructing him did not accept that the comment was made in a without prejudice conversation. Given the dispute between the parties, the Tribunal asked how the parties proposed that we deal with this issue, whether it required tribunal determination and whether they were proposing to call evidence on it given that the two solicitors were in dispute and the claimant was seeking to rely on this matter in a claim of aggravated damages.
11. The respondent's counsel initially asked the Tribunal to determine admissibility of that correspondence as a preliminary issue.
12. The Tribunal asked about the suggestion that Mr. Powell had been "collaborating with" the respondent's solicitor, in the schedule of loss (p.68) and explained that the Tribunal had made no finding that was the case and reminded the claimant that the position he had taken at the liability hearing was:

“35. After considering the fullness of the evidence on this issue, Mr. Bignell confirmed that the claimant was not submitting that Mr. Sherbourne had intentionally sent the message to Mr. Powell (so as to interfere with his evidence) and the primary issue was around Mr. Powell and Mr. Tuckwell’s conversation.”

13. The respondent’s counsel expressed concern that the claimant appeared to be reopening this issue to suggest Mr. Sherborne had colluded. The Tribunal reminded the claimant of the findings made in the liability judgment around this issue and confirmed that it had not made a finding of collusion with the solicitor.
14. As both parties had instructed different counsel to those whom attended the liability hearing, due to the issues arising, Employment Judge Bowen reminded them of her previous interactions with Mr. Sherborne as summarised in paragraph 31 of the liability judgment and confirmed the position had not changed. The parties were given time to take instructions and consult any authorities about the matter. Neither party raised any concerns and confirmed that they were content to proceed.
15. Mr. Harris took further instructions, following which he confirmed that the claimant was no longer pursuing a claim for compensation in relation to the alleged comment of Mr. Sherborne in relation to the appeal (as referenced in Ms. North’s email of 15 April). Mr. Harris confirmed that he was therefore withdrawing reference to the conversation between the solicitors evidentially. The parties therefore agreed that the Tribunal did not need to consider the contents of that email, the underlying conversation between the solicitors further or determine whether or not it was without prejudice.
16. Mr. Harris also confirmed that the claimant was not seeking to go behind our findings in the liability judgment in relation to any messages sent to Mr. Powell by Mr. Sherborne whilst he was on oath. Mr. Harris confirmed that the claimant was not pursuing an allegation that Mr. Sherborne had collaborated. It was therefore not necessary to hear evidence or make findings in relation to that point.
17. Mr. Harris confirmed that a broader submission about the way in which the Respondent had conducted itself at trial was relied on. He submitted that none of

the disruption caused by the Respondent at the liability trial ought to have happened, it was careless and placed additional stress on the claimant.

18. The parties were also given time to consider their positions and take instructions in light of the Tribunal now being aware of alleged without prejudice comments in the email correspondence. The Tribunal panel assured the parties that in deliberating that correspondence would be put to the back of our minds and not taken into consideration. Both parties confirmed that they were happy for Employment Judge Bowen and the Tribunal members to continue to hear the case and no application or objection was made.

19. The modified issues for us to determine were therefore as follows:

Remedy Issues

1. Wrongful dismissal

1.1. How much notice pay is the Claimant entitled to receive?

2. Unfair dismissal

2.1. What basic award is payable to the Claimant, if any?

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

2.2.1. What financial losses has the dismissal caused the Claimant?

2.2.2. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

2.2.3. If not, for what period of loss should the Claimant be compensated?

2.2.4. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent unreasonably fail to comply with it by refusing the claimant an appeal. If so is it just and equitable to increase any award payable to the Claimant and, if so, by what proportion up to 25%?

2.2.5. Does the statutory cap of fifty-two weeks' pay or £93,878 apply?

3. Discrimination

- 3.1. What financial losses has the discrimination caused the Claimant?
- 3.2. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 3.3. If not, for what period of loss should the Claimant be compensated for?
- 3.4. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 3.5. Should the Tribunal make an award for aggravated damages? If so, how much compensation should be awarded?
- 3.6. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
- 3.7. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the respondent unreasonably fail to comply with it by failing to offer the claimant an appeal? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?
- 3.8. Should interest be awarded? How much?

20. Insofar as the claimant was awarded more than £30,000 in compensation then the Tribunal needed to consider grossing up.

21. Finally, the Tribunal concluded that the claimant's dismissal was both unfair under the Employment Rights Act 1996 and an act of discrimination under the Equality Act 2010 ('EqA'). Insofar as the claimant's losses relate to his dismissal we have assessed those losses in relation to the principles of compensation for discrimination.

Procedure, documents and evidence heard

22. We were provided with the following documents for the remedy hearing:

- (a) Agreed bundle 100 pages (plus index);
- (b) Supplemental bundle produced by the Respondent 30 pages (plus index);
- (c) Claimant's witness statement;
- (d) Respondent's written submissions.

23. We were also referred to various sections of our judgment on liability dated 3 February 2025.

Late documents provided on 2 December 2025

24. The parties were informed that the Tribunal was meeting to deliberate on 2 December. That morning, the claimant's solicitor sent late evidence to the Tribunal, copying in the respondent's solicitor said to comprise of:

(a) A note from someone called Marlon Zoglowek dated 1 December 2025, of Molly Adele Limited containing figures relating to the claimant's income and expenses for the tax year 2023/4;

(b) Projected income for the claimant in this tax year said to be for assistance with grossing up.

25. There was no application to rely on the attached information and it was said just to be provided "*if it is assistance with the deliberations*". However the Tribunal interpreted it as an application by the claimant to rely on that information.

26. The respondent objected to this, its timing and submitted that the Claimant had ample time to prepare for the remedy hearing. It was also submitted that the information should not be admitted, it was late and not subject to test.

27. After careful consideration, we decided not to admit the late evidence. The claimant had been on notice of a remedy hearing for considerable time. There was an insufficiently clear explanation provided as to why it was not possible to obtain this earlier, so that it was before the Tribunal and disclosed to the respondent in good time in these proceedings. The information was not provided with a statement of truth, was not accompanied by any supporting information to support the figures asserted e.g. corroboration of the expenses incurred to as to verify figures and had not been subject to cross-examination. We considered that we would have questions about this information so as to understand it and considered it inevitable that the respondent would have wanted the opportunity to ask questions about it in cross-examination. Whilst we appreciated that there would be some prejudice to the claimant in not admitting the evidence, we were mindful that this ought to have been provided sooner and at least at the remedy hearing. The claimant has been legally represented throughout and that remains the case. The evidence had

concluded on 30 October and 2 December was a deliberation hearing only. We concluded that it would be grossly unfair to the respondent to admit this evidence and rely on it in these proceedings, and that the prejudice to the respondent outweighed any prejudice to the claimant in these proceedings. We therefore did not take that late evidence into account.

Evidence

28. During the remedy hearing we heard oral evidence from the claimant and he was subject to detailed cross-examination. We found the claimant to be a reliable witness. This does not mean that we have accepted everything that he said and we have explained this in more detail below.

29. The claimant relied on a schedule of loss claiming £83, 088.86. The claimant's counsel made oral submissions and the respondent's counsel provided written submissions which he supplemented orally during the hearing.

Relevant findings in the liability judgment

30. This remedy judgment must be read in conjunction with the entire liability decision and in light of our findings of fact in that decision. We were referred to that Judgment by both Parties during the course of the remedy hearing.

Findings of fact in relation to remedy

31. The claimant's employment with the respondent commenced on 8 May 2007 and ended on 26 April 2023.

32. It is agreed that at the time of his dismissal, his gross annual basic pay with the Respondent was £50,000. It is also agreed by the parties that this equates to £961.54 gross weekly pay, £745.60 net weekly basic pay and that the Respondent's annual pension contributions were £1276.74 (p.65). Weekly pension contributions were therefore £24.55.

33. The claimant was dismissed without notice. The parties agreed that his contractual notice period was one month.

26 April 2023 to 18 July 2023

34. The claimant's Site Management Safety Training Scheme ('SMSTS') and First Aid Certificates had expired during his employment with the respondent in or around November 2022. The claimant alleges that this was deliberate by Mr. Powell. The claimant did not explain why he considers that was deliberate, and we have not made any finding that there was any unlawful or discriminatory conduct in relation to this as part of the liability judgment. However, we accept that those certificates had lapsed.
35. The claimant's evidence is that while he could work for the respondent when the certificates had expired, he was initially unable to obtain new employment as a Site Agent or Site Manager because he did not have those certificates in place. We accepted the claimant's evidence that he needed to obtain these certificates to obtain a new role, and we have accepted the claimant's evidence that this is likely to have hindered the claimant in obtaining a new role immediately following his dismissal. We therefore considered what the claimant did to acquire those certificates.
36. The claimant completed the SMSTS course online on 20 May 2023 and the First Aid course on 18 July 2023. He could not tell the Tribunal when he applied for those courses, but said he had tried to do one straight away, and the SMSTS course lasted 5-6 weeks (for 1 day a week). The respondent contended that the claimant took too long to complete the courses, whereas the claimant told the tribunal that the courses undertaken were the first available to him.
37. To support its position, the respondent produced a 30-page supplemental bundle containing examples of available training and submitted that this supported that it is likely that other courses would have been readily available to the claimant immediately following his dismissal. That supplemental bundle included evidence to support SMSTS online training courses provided by CST Training for November and December 2025 and by HSS Training between November 2025-January 2026. In relation to First Aid training, the respondent produced examples of courses available from Safe Haven Training between October 2025 and January 2026 and St. John Ambulance between December 2025 and March 2026. The respondent did not produce any evidence of any other courses being available to the claimant between his dismissal and the courses he completed. We were not persuaded that the

number of courses provided illustrated that it was likely that was the case at the time the claimant was looking for courses. Therefore, we concluded that there was not evidence to show that the claimant could have attended another course sooner than he did. We therefore accepted the claimant's evidence that he attended the first available courses.

38. The claimant had asserted, in paragraph 7 of his witness statement, that his attempts to secure new employment were also hindered by the "*permanent stigma of having been dismissed for gross negligence*". He likened this to having a sign above his head, making it almost impossible to attract employment without asking him why he left his last employment before dismissing his application.

39. We accepted that a dismissal of a site manager for gross negligence, in the building industry, is likely to stigmatise an individual and lead to concerns about their reputation and ability. The Tribunal accepted that insofar as the claimant had informed a new employer of the reason for his dismissal that it is likely to have resulted in them not offering him employment. We rejected the assertion that it was akin to having a sign above the claimant's head, because a prospective employer would only have known about the reasons for his dismissal, if the claimant (or someone else) told them. We accept that if asked, the claimant felt he needed to be honest about the reason given for his dismissal and that this is entirely appropriate. However, the claimant had not referred to any material examples of this happening in his witness statement, such as a specific job role or who it was with or when. When challenged on this in cross-examination, the claimant suggested he had explained the circumstances of his dismissal to 5 or 6 prospective employers. When it was pointed out to him that the details of that had not been provided, the claimant stated that that was because stigma was not the issue but the lack of training. Overall, we found the claimant's evidence on stigma and the impact on his ability to secure a new role was vague. We were not persuaded that this had prevented him from securing new employment before he went on to do so with Kenham Building Limited.

40. In cross-examination, the claimant suggested that he had waited to see if he would be reinstated following his appeal. The appeal took until 20 June 2023 to deliver and we have made findings about that in the liability judgment. Given the manner in which the claimant had been treated by the respondent, we found his assertion

surprising and lacking in credibility. We did not accept that this explained any delay in attaining alternative employment, and we found the relevance of this was also entirely unclear to the claimant's explanations around job searches.

18 July 2023 to 29 August 2023

41. The claimant applied for jobs after completing both courses. In particular, the claimant applied for the following roles:

- (a) Site manager with WG Carter on 26 July 2023;
- (b) Site manager with Kenham Building Limited ('Kenham') on 22 August 2023;
- (c) Site manager with Cotswold Builders on 23 August 2023.

42. We were provided with documentary evidence which showed that the claimant had applied for various roles. The claimant's evidence was that he went to an interview with Kenham as well as two further interviews, but could not recall who they were with. He told the Tribunal that he was asked why he had been dismissed at those 2 interviews and told them gross negligence, giving the details of the allegations the respondent had made. The claimant stated, that he did not hear any further on those 2 interviews and suspected it was because of that. The claimant stated that he does not know for sure either way. The Tribunal accepted the claimant's evidence that this had all happened. As to the reason he did not hear further, whilst the Tribunal was prepared to accept in principle, that the reasons given for the claimant's dismissal are likely to put off prospective employers, we were not persuaded that was the cause on the evidence. We found there was a lack of detail to support the claimant's position, were not given sufficient evidence to support that this is why he did not hear further on the 2 interviews he referenced, and we have therefore not accepted the claimant's contention.

43. Following interview, the claimant was offered a role with Kenham on 23 August 2023, which he accepted, starting a few days later on 29 August. We accepted the claimant's evidence that Kenham is a London-based builder but that the role that he applied for, and was offered, was based on a site in Gloucestershire. The claimant lives in Gloucestershire. The claimant was engaged by Kenham on a self-employed basis.

44. We accepted the claimant's evidence that he had intended to return to employment and that he had taken this self-employed role so as to get back to work and hoped to attain a reference and improve his self-esteem by doing so. We accepted that he

had also considered the role with Kenham to be temporary because it was to work on a project in Gloucestershire until completion, which is where he lives and that he would not have wanted to work in London for Kenham, due to the distance from home. In addition, we were provided with email correspondence in relation to his recruitment, between Kenham and the claimant's recruitment agent Spencer Wade (p.7-11). That correspondence includes references to the claimant being engaged to work on a "project" (p.8), references to "...duration of the contract...just for this contract rather than a "permanent" position?" (p.10) and makes reference to "...once we have delivered the project next year, we can review to a PAYE position if he wants?" (p.10). We concluded that this all supported that the claimant and Kenham had intended his engagement to be until the project was delivered the following year. We concluded that the correspondence supported that Kenham was open to making his role permanent (including on an employed basis). However, that was not a certainty but was going to be subject to review. We concluded that this all supported that the role was temporary and not a permanent position.

Engagement with Kenham

45. The claimant's remuneration with Kenham was £55, 000 per annum on a self-employed basis. The claimant was therefore responsible for his own tax payments after deduction for any appropriate business expenses. The claimant had not submitted a tax return for the 2023-4 tax year at the time of the remedy hearing. The claimant told the tribunal that his accounts were with his accountant.
46. The claimant continued to work for Kenham until administrators were appointed on 9 January 2024 and Kenham went into liquidation (p.22). We found that there was no evidence that the liquidation was the fault or responsibility of the claimant, and he was only on notice of it in the first week of January.
47. During the claimant's engagement with Kenham between 29 August 2023 and 9 January 2024, his total earnings amounted to £21,047.24 gross.

Bronchiectasis

48. In December 2023, the claimant suffered a recurrence of bronchiectasis and on 6 February 2024 he was prescribed steroids and an inhaler for that condition (p.28-9). In his witness statement, he had stated that this limited his ability to work full-time for a period. Which we accepted. In cross-examination, he stated that this condition

did not stop him from applying for new job roles as he had bills to pay and needed to work. On the basis of the claimant's evidence, we also concluded that this had no impact on his steps to obtain employment.

January to May 2024

49. The claimant told the Tribunal that, between January and May 2024, he had applied for around 50 jobs, online or using Reed. A significant number of applications and enquiries were made in January and February 2024 and had been included in the bundle (p.30-9).
50. Some of those applications state that the process had not been completed. However, there were not any copies of applications included in the bundle for March or April 2024.
51. The claimant was invited for an interview on 9 April 2024 with Harris Evolution (p.40). The claimant was offered permanent employment, with Zota Construction of Cirencester as a Site Manager, on 30 April 2024 (p.42). The claimant accepted the position and commenced employment on 7 May 2024 (p.41-42).
52. The claimant was challenged by the respondent in relation to the lack of evidence to support that he had applied for 30-50 jobs and in relation to March to May 2024. The claimant stated that he had provided his solicitors with everything he had, but not all of it could be included in the bundle because of page limits. The claimant was not able to explain why any other job applications had not been disclosed to the respondent. Nor was it clear to the Tribunal why an agreed list of job applications could not have been agreed or an application made to increase the bundle page limits. Later in the hearing, Mr. Harris on instructions confirmed that the claimant had misunderstood what he had been asked to provide and interpreted it as the most recent job applications. The Tribunal asked what was meant by that, and Mr. Harris confirmed that related to those included in the bundle. Overall, taking into consideration the claimant's evidence before the Tribunal, we believed the claimant's evidence that he had applied for jobs regularly throughout the period of January until he secured the role with Zota commencing on 7 May 2024. In the absence of full records, we were not persuaded that this was specifically 50.

53. The claimant left his role with Zota on 29 August 2025 because he felt that he was being allocated only smaller, lower profile projects. The claimant stated in his witness statement that this led him to question whether his dismissal from the respondent was affecting his trust in his ability to manage major contract. We accepted that the claimant's evidence that he felt this way.

54. During his employment with Zota (7 May 2024 to 29 August 2025) the claimant earned £52,112.99 net. Zota's employer pension contributions amounted to £1651.05 in the same period (£110.07 per month) p.67-8.

Impact of discrimination on the claimant

55. We accept the claimant's evidence that the claimant was devastated, shocked and humiliated by his dismissal and the respondent's discriminatory treatment towards him. We accepted that the claimant felt isolated from longstanding friendships with his colleagues and friends.

56. We have already made findings in relation to the claimant's suspension on 31 March 2023 in paragraphs 111-112 of the liability judgment. We have already found that the suspension letter informed the claimant that he was not permitted to enter any work site, or contact staff other than via Mr. Powell. However, we were not taken to any evidence to support that his former colleagues/friends were told not to speak to him by the respondent (or otherwise) and we reject that assertion.

57. We accept the claimant's evidence that after his employment with the respondent ended, he started to feel stressed and suffered from some anxiety, intrusive thoughts and struggled to sleep. However, the claimant did not take us to any medical evidence such as GP notes or otherwise to support this impact. The claimant told the tribunal that he did not seek medical assistance because he feared being labelled with a mental health condition that might affect future employment. We accepted that is what the claimant thought.

58. We accepted the claimant's evidence that even after securing new employment with Kenham and Zota that the impact of the respondent's discriminatory treatment had impacted his confidence and led to self-doubt.

59. Whilst we accept that the litigation has prevented him achieving disclosure, given the Tribunal's liability judgment, the EAT's rejection of the respondent's appeal and

the findings made, we consider that any impact on the claimant must thereafter have been much more limited over time. We do not accept that in light of our findings in the liability judgment, which is published, that there is an ongoing reputational harm to the claimant because of the respondent's treatment.

60. We also accepted that the sudden loss of income and the need to secure a new role, following the claimant's dismissal, put pressure on him financially and caused strain and arguments at home.

61. We accepted that this litigation has added to the claimant's distress and that he found the employment tribunal proceedings and liability hearing distressing.

62. The claimant told the tribunal that he was accused of dishonesty in the liability hearing and that had an impact on him. He told the Tribunal that he felt that Counsel was accusing him of lying. Although the claimant was subject to cross-examination by the respondent at the liability and remedy hearing, where his evidence and credibility was challenged, we did not consider that this was unusual or in any way conducted inappropriately or unreasonably. Further, we acknowledge that a barrister is obliged to put their client's case. A respondent is entitled to robustly defend proceedings. That is the nature of litigation.

63. The claimant told the Tribunal that the respondent's witnesses speaking whilst Mr. Powell was on oath had resulted in a waste of tribunal time which had made it take too long, that he felt the respondent had been spiteful and had programmed to delay the litigation. We have considered this further in our conclusions below.

Appeal

64. The respondent appealed the liability decision of the Tribunal submitting grounds dated 14 March 2025 (p.86-95) and applied to vacate the remedy hearing which was originally listed on 21 May 2025. That application was granted by EJ Bowen (p.83). HHJ Caspar Glyn KC, concluded at the EAT sift stage, that the notice of appeal disclosed no reasonable grounds for bringing the appeal and confirmed his reasons in writing on 23 June 2025 (p.96-100). No further action was taken in relation to the appeal.

Legal principles

65. In respect of successful complaints of unfair dismissal a claimant may be entitled to a basic award under s.118(1)(a) of the Employment Rights Act 1996 ('ERA') and compensatory award under s.118(1)(b) ERA.

66. The basic award is a statutory formula calculated under the provisions of s.119 ERA.

67. In respect of a compensatory award, s.123 ERA provides that, the tribunal shall award, "*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*".

68. Pursuant to s.124 Equality Act 2010 (EqA):

124 Remedies: general

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The tribunal may—

(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

(b) order the respondent to pay compensation to the complainant;

(c) make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect [on the complainant]¹ of any matter to which the proceedings relate.

...

(5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).

(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by [the county court] or the sheriff under section 119.

69. Section 119 EqA provides:

...(2) The county court has power to grant any remedy which could be granted by the High Court—

(a) in proceedings in tort;

(b) on a claim for judicial review.

...

(4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)...

70. In relation to compensation, the aim is that *'as best as money can do it, the applicant must be put into the position she [or he] would have been in but for the unlawful conduct'* (per **Ministry of Defence v Cannock and ors 1994 ICR 918, EAT** at 517).

71. There should be no double recovery in the compensation awarded for loss suffered (**Al Jumard v Clwyd Leisure Ltd [2008] IRLR 345, EAT**).

72. Tribunals should have regard to the principle of totality, i.e. to ensure that the total award of compensation, made under various heads of loss, remains just and appropriate:

"Tribunals [should] ... 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 chances which have been assessed." (Ministry of Defence v Cannock [1994] IRLR 509, EAT, per Morison J at para 132).'

73. There is no requirement that the loss suffered be 'reasonably foreseeable'; compensation can be awarded in respect of all harm that arises naturally and directly from the act of discrimination, at least in cases where the discrimination was deliberate and overt (**Essa v Laing [2004] IRLR 313, [2004] ICR 747, CA and Abbey National plc and Hopkins v Chagger [2009] IRLR 86, [2009] ICR 624, EAT**).

74. The amount of compensation may be reduced if the claimant has mitigated their loss, or has failed to take steps which would have led to a reduction in the loss suffered. In ***Citibank NA v Kirk [2022] IRLR 925*** the EAT adopted in relation to compensation for discrimination the principles set out by Langstaff P in relation to compensation for unfair dismissal in ***Lindsey v Cooper Contracting Ltd UKEAT/0184/15*** (22 October 2015, unreported):

- (1) The burden of proof in relation to mitigation is on the wrongdoer.
- (2) If evidence as to mitigation is not put before the employment tribunal by the wrongdoer, it has no obligation to find it.
- (3) What has to be proved is that the claimant acted unreasonably; they do not have to show that what they did was reasonable.
- (4) There is a difference between acting reasonably and not acting unreasonably.
- (5) What is reasonable or unreasonable is a matter of fact.
- (6) In determining reasonableness the views and wishes of the claimant should be taken into account as one of the circumstances, although it is the tribunal's assessment of reasonableness and not the claimant's that counts.
- (7) The tribunal is not to apply too demanding a standard of the victim; after all, they are the victim of a wrong. They are not to be put on trial as if the losses were their fault when the central cause is the act of the wrongdoer.
- (8) The test may be summarised by saying that it is for the wrongdoer to show that the claimant acted unreasonably in failing to mitigate.
- (9) In a case in which it may be perfectly reasonable for a claimant to have taken on a better paid job, that fact does not necessarily satisfy the test. It will be important evidence that may assist the tribunal to conclude that the employee has acted unreasonably, but it is not in itself sufficient.

75. An employer's liability for the loss suffered by an unfairly dismissed employee does not necessarily cease once an employee commences new employment of a permanent nature at a salary equivalent to or higher than that which the employee previously employed (***Dench v Flynn and Partners 1998 IRLR 653, CA***). In ***Dench***, which was an unfair dismissal case, the Court of Appeal indicated that this was particularly so where the new employment appears to be permanent when it commenced but which, through no fault of the employee's, proves to be of only a short duration (***Dench, paras 19-22***). The Court of Appeal ruled that, in such a case,

the reason why any subsequent employment did not last will be an important consideration.

76. The issue of determining whether an original employer remains liable for the loss which continues after a second dismissal was also considered in ***Aegon UK Corp Services Ltd v Roberts [2009] IRLR 1043***, through the provisions of a compensatory award for unfair dismissal under s.123 Employment Rights Act 1996. A dispute arose on appeal as to the Tribunal's calculation of pension loss. In that case, the Tribunal concluded that employment with the second employer was intended to be permanent. The Court of Appeal endorsed the principle established in ***Dench*** and its application to causation in relation to the different aspects of a remuneration package (para 18-19).
77. An award for injury to feelings should compensate for the employee's injury rather than seek to punish the tortfeasor (***Prison Service v Johnson [1997] IRLR 162***).
78. When assessing injury to feelings it is necessary to consider what injury to feelings has been caused by the discriminatory act, as opposed to a non-tortious reason (***Coleman v Skyrail Oceanic Ltd [1981] IRLR 398***). Where there are multiple causes of injury some of which are tortious and some which are not, Tribunals should try to identify a rational basis on which the harm suffered can be apportioned between a part caused by the employer's wrongdoing and a part which is not so caused (***BAE Systems (Operations) Ltd v Konczak [2018] ICR 1 at para 71 - 72***).
79. In ***Vento v Chief Constable for West Yorkshire Police (No2) [2003] ICR 31 para 65*** the Court of Appeal identified three broad bands of compensation for injury to feelings award as follows: the lower band for less serious cases, the middle band for serious cases that did not merit an award in the upper band and the upper band for the most serious cases.
80. In accordance with the Sixth Addendum to the Presidential Guidance in respect of 'Employment Tribunal awards for injury to feelings and psychiatric injury following ***De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879*** in respect of claims presented on or after 6 April 2023, the Vento bands should be as follows:
- "2. In respect of claims presented on or after 6 April 2023, the "Vento bands" shall be 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.”

81. In *Eddie Stobart Ltd v Graham [2025] IRLR 334 at 52* Judge Barry Clarke gave guidance that the following matters were relevant aspects of evidence of injury to feelings, but he indicated this it was not a 'checklist':

(1) The claimant's description of their injury – what they actually say. The tribunal should scrutinise apparent stoicism with as much care as apparent upset. Independent evidence on the impact on health may sometimes be appropriate but in most cases the tribunal will be relying on the claimant's account.

(2) The duration of the consequences of the discrimination. There may not be a linear recovery path; there may be an acute stage, a recovery stage, and residual symptoms. Tribunal should consider how long injured feelings may continue to last, as well as how they are being manifested. In a serious case, or where there may be future vulnerability, prognosis will be relevant.

(3) The effect on past, current and future work. The discriminatory treatment may have affected the claimant's current enjoyment of their work, or have lessened their ability to look back warmly upon their past experiences at work, or have made them less likely to remain in the same line of work in future. It may be relevant to consider the extent to which their self-esteem was bound up in their occupational life, which differs from person to person. An evidenced wish to leave an enjoyable and fulfilling line of work due to discriminatory treatment can properly inform the tribunal's assessment of the hurt caused.

(4) The effect on personal life or quality of life. Whether the treatment has adversely impacted personal relationships, private activities, hobbies and the like – sometimes called a “loss of amenity”. If a tribunal does consider this, it will be helpful to survey an evidential landscape comparing the claimant's life before and after the discrimination. A third-party view, such as from a family member, may in appropriate cases be helpful.

82. In *Eddie Stobart Ltd v Graham at 43-44*, Judge Barry Clarke noted that although the manner of discrimination is neither determinative of, nor a proxy for, the seriousness

of the claimant's injury, the manner is a tool by which the tribunal can properly draw an inference of secondary fact as to the injury suffered by a claimant when, as often happens in such cases, there is little else to go on. He went on to give a useful list of aspects of the manner of discrimination that might be relevant to support inferences of injury at **45-48**: frequency and duration of the discriminatory conduct, whether the conduct is overt (because more upset was likely when the victim had understood at the time that the motivation was discriminatory), the existence of ridicule or exposure, and instances where the discriminatory conduct reflects or exposes an asymmetry of power, influence or information such as when disciplinary threats are made or there is exclusion that causes isolation.

83. HHJ James Tayler has also provided recent guidance as to the steps to be taken when making an award for injury to feelings in ***Shakil v Samsons Ltd [2025] IRLR 252 at 20***:

- (1) identify the discriminatory treatment for which an award of injury to feelings is to be made;*
- (2) hear evidence from the claimant about any injury to feelings caused by the discriminatory treatment;*
- (3) make findings of fact about the injury to feelings suffered by the claimant because of the discriminatory treatment;*
- (4) identify the relevant guidelines applicable to the award;*
- (5) state the band the injury to feelings award falls within;*
- (6) explain why the injury to feelings falls within that band;*
- (7) explain where within the band the injury to feelings award falls and why the specific award was made.*

(iii) Personal injury.

84. A summary of the legal principles in relation to aggravated damages was provided in ***Commissioner of Police of the Metropolis v Shaw [2012] ICR 464 paras 13-28***.

85. The circumstances giving rise to an award of aggravated damages falls into three broad categories per ***Shaw para 22***:

- (a) the manner in which the wrong was committed – where the act of discrimination was done in a ‘high-handed, malicious, insulting or oppressive manner’ (*Broome v Cassell & Co Ltd* [1972] AC 1027);
 - (b) motive – where the conduct is based on prejudice or animosity or is intended to wound;
 - (c) subsequent conduct – where the case at trial or after the act of discrimination is ‘unnecessarily offensive’.
86. Aggravated damages should only be awarded to the extent that the relevant conduct increased the injury to the a claimant’s feelings (*HM Prison Service v Salmon* [2001] IRLR 425, EAT).
87. If the reason the tribunal is considering making an award for aggravated damages relates to the behaviour of the respondents' representative, it should (a) first consider whether to make a costs award instead; and (b) only make an aggravated damages award if there was hurt caused to the claimant(s) additional to that which would have occurred in any event by a legitimate and robust defence of the claim, and (c) only make such an award that would compensate for the hurt caused by the conduct that went beyond that which would have been acceptable per *Munchkins Restaurant v Karmazyn* UKEAT/0359/09.
88. Pursuant to s207A Trade Union and Labour Relations (Consolidation) Act 1992 in proceedings which are listed under Schedule A2 of that Act (which includes claims under s.120 of the Equality Act 2010):
- “(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%.”*
89. In *Rentplus UK Ltd v Coulson* [2022] EAT 81, HHJ Tayler, said as follows (para 19):

“Section 207A TULR(C)A can be broken down into a number of components, although there is, no doubt, some degree of overlap between them, and it is always important to consider a statutory provision as a whole: a. Is the claim one which raises a matter to which the Acas Code applies b. Has there been a failure to comply with the Acas Code in relation to that matter c. Was the failure to comply with the Acas Code unreasonable d. 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, up to 25%.”

90. In ***Lawless v Print Plus (Debarred) UKEAT/0333/09 (20 May 2010)*** Underhill P held that the following would be relevant:

*“(3) Although the phrase “just and equitable in all the circumstances” connotes a broad discretion, the relevant circumstances must nevertheless be confined to those which are related in some way to the failure to comply with the statutory procedures: see *Aptuit* at paragraph 47.*

*(4) The circumstances which will be relevant will inevitably vary from case to case and cannot be itemised, but they will certainly include: (a) whether the procedures were ignored altogether or applied to some extent (see *Virgin Media Ltd v Seddington & Eland UKEAT/0539/08*, at paragraph 20); (b) whether the failure to comply with the procedures was deliberate or inadvertent; and (c) whether there are circumstances which may mitigate the blameworthiness of the failure. Those factors are sometimes embraced under the labels of the “culpability” or “seriousness” of the failure.”*

91. The ‘Acas Code of Practice on disciplinary and grievance procedures’ provides that the Code is designed to ‘help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace’ (para 1). The Code also provides that;

(a) Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code. (para 3)

(b) Paragraph 4 provides a basic principles of fairness. This includes that employers should carry out any necessary investigations, to establish the facts of the case; inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made; allow accompaniment at any formal disciplinary meeting and allow an appeal.

- (c) The key aspects to handling disciplinary issues in the workplace are set out at paragraphs 5-31 which cover the above principles in more detail. This includes that:
- (i) In misconduct cases, where practicable, different people should carry out the investigation and disciplinary meeting (para 6);
 - (ii) Written notification that there is a disciplinary case to answer which contains sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting and that it would “normally be appropriate” to provide copies of evidence with the notification (para 9);
 - (iii) At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this. (para 12)
 - (iv) Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct. (para 23)
 - (v) An impartial appeal, conducted wherever possible, by a manager who has not previously been involved in the case. (para 27)

92. Tribunals are entitled to have regard to the overall size of the compensatory award when deciding what size an adjustment to order.

93. In accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 a Tribunal may make an award of interest on sums

awarded in discrimination cases. The rate of interest provided for under Reg 3(2) is currently 8%. For injury to feelings awards, it should be calculated from the date of the act of discrimination complained of ending on the day on which interest is calculated by the Tribunal (Reg 6(1)(a)). For awards for past financial loss, interest is awarded from the date half way between those two dates (Reg 6(1)(b) and Reg 4(2)). Different dates can be used if there would otherwise be 'serious injustice (Reg 6(3)). No award of interest can be made in relation to losses which will arise after the day of calculation, such as future loss of earnings (Reg 5).

94. Financial loss is generally calculated after tax deductions i.e. net of tax (e.g. ***Baillon v Gwent Police EAT 0354/14***).

95. The issue of how tax affects compensation for discrimination was expressly considered by the EAT in ***Yorkshire Housing v Cuerden UKEAT/10397/09*** (a case under the DDA 1995), where the following guidance was given for the assessment of compensation for discrimination:

“injury to feelings and personal injury awards that related to an employer's discriminatory conduct pre-dating the termination of employment (in that case, a failure to make reasonable adjustments), are not termination payments and are therefore not taxable and, hence, not subject to grossing up;

an award of compensation for loss of pension rights on termination of employment is not a payment to a beneficiary out of a pension scheme falling under s 407 ITEPA 2003 and therefore should not be grossed up;

when grossing up an award, account must be taken of the employee's personal allowance and the standard rate for the year in which the employee received the compensation award, so that an assessment of a flat rate of 40% on the whole of the award would not be correct.”

96. The relevant provisions that deal with taxation of payments on the termination of employment are the Income Tax (Earnings and Pensions) Act 2003 and in particular sections 401, 403 and 406. HMRC has provided guidance in respect of the taxation of termination payments that deals with this issue (EIM12965).

97. An award for lost earnings following dismissal may suffer tax where the employee did not serve a full period of notice, in which case the portion that represents basic pay for the notice period will be taxed under the Income Tax (Earnings and Pensions) Act 2003 (IT(EP)A) s.402–402E as 'post employment notice pay'.
98. Tax is most likely to be payable on awards exceeding £30,000 pursuant to s.401 and 403 of IT(EP)A.
99. Awards of compensation in excess of £30,000 shall be grossed up to account for income tax and national insurance contributions liability (***British Transport Commission v Gourley [1956] AC 185***).
100. In relation to injury to feelings awards, s.406(2) of IT(EP)A provides that they are taxable insofar as they relate to a dismissal. Such awards should therefore be grossed up to tax account of tax. However, injury to feelings awards in respect of pre-termination discrimination (short of dismissal) are not subject to tax and should therefore not be grossed up.
101. Where an injury to feelings award relates to compensation for both pre-termination discrimination and a discriminatory dismissal the Tribunal should apportion it between pre-dismissal conduct and dismissal (***Wealmoor Ltd v Poniatowski 2025 EAT 48 para 3***).

Conclusions

Notice pay

102. The complaint of breach of contract in relation to notice pay is well-founded.
103. It was agreed that the claimant was entitled to 1 months' notice. His net weekly pay when employed by the respondent was **£770.15** (detailed calculation for this figure is set out below).
104. We concluded that the claimant was entitled to an award in the sum of **£3,337.31** in respect of notice pay.

105. This figure has been calculated using net pay. However, the Tribunal has grossed up the total awards as set out below. It is likely that the claimant will have to pay tax on notice pay, as Post Employment Notice Pay pursuant to s.402-402E IT(Ep)A.

Unfair dismissal

What basic award is payable to the Claimant, if any?

106. The parties agreed that a basic award in the sum of **£14,467.50** was due to the claimant.

If there is a compensatory award for unfair dismissal under the ERA, how much should it be?

107. There was no dispute between the parties that a sum of **£500** was appropriate in respect of a loss of statutory rights and that is awarded.

108. We have found that the claimant's dismissal was also an act of discrimination. We have therefore proceeded to assess his other losses on the basis of discrimination law principles. In those circumstances the statutory cap on compensation does not apply. We have considered all further losses through that prism.

Discrimination

What financial losses has the discrimination caused the Claimant?

109. It was agreed that the claimant's net weekly basic pay when he worked with the respondent was £745.60. It was agreed that the respondent's annual pension contributions were £1276.74 which we calculated as £24.55 per week (dividing it by 52).

110. The claimant's net weekly remuneration when he worked for the respondent was therefore **£770.15**.

111. We concluded that the claimant's claim for loss of statutory rights in the sum of **£500** was reasonable.

112. The claimant had included a claim for expenses incurred in undertaking the SMSTS and First Aid courses (including materials) which he said was in the sum of £697.25. No invoices or documentary evidence of those payments were provided to support the figures claimed. It was incumbent on the claimant to do so, to prove the sum claimed. There was no explanation for his failure to do so. We have therefore decided not to make any award in respect of those expenses.

Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

113. The burden of proof is on the respondent to show that the claimant has failed to take reasonable steps to mitigate his loss (*Citibank v Kirk* and *Lindsey v Cooper*). We conclude that the respondent has not shown that the claimant has acted unreasonably in failing to mitigate his loss.

114. Immediately following his dismissal until 18 July 2023, the claimant took steps to obtain his SMSTS and First Aid qualifications. We accepted the claimant's evidence that he needed these qualifications to secure employment as a Site Agent or Site Manager and that applying for roles which were the same as or similar to his role with the respondent was credible.

115. We also accepted that the courses completed were the first available to the claimant. Whilst the respondent had provided evidence of courses in 2025 there was no evidence whatsoever to show alternative, earlier courses were in fact available to the claimant, at the relevant time. The respondent's disclosure did not show that the claimant had acted unreasonably.

116. Once the claimant had completed both courses on 18 July 2023, there was a slight delay before he applied for new roles, the first of which was on 26 July 2023. However, we did not consider the delay of 8 days was unreasonable. We are satisfied that the claimant applied for jobs until he was offered the role with Kenham.

117. There was no evidence of any alternative roles that were suitable for the claimant, that he could have applied for (and did not), or what the salary was for such roles between his dismissal and commencing his new role with Kenham. We were not persuaded that the claimant had acted unreasonably.

118. The claimant then secured alternative employment and income with Kenham commencing on 29 August 2023.
119. We are therefore satisfied that the claimant took reasonable steps to try and replace his earnings by seeking new employment from his dismissal until 29 August 2023. We are also satisfied that these losses directly and naturally flowed from the respondent's discrimination.
120. On the basis that we have awarded compensation of 1 months' notice pay in respect of breach of contract, we concluded that compensation for loss of earnings should commence from 25 May 2023 so as to avoid double recovery.
121. Between 25 May 2023 and 28 August 2023 there were 95 days. The claimant did not receive any mitigation income during this period.
122. Between 29 August 2023 and 9 January 2024 (133 days), the claimant worked for Kenham on a self-employed basis. The respondent did not argue that the claimant's acceptance of this role was unreasonable and we did not conclude that was the case.
123. We have concluded that the role with Kenham was a temporary role, only for the length of a project, which was to be completed in 2024 after which Kenham did not have a role in Gloucestershire. The claimant lives in Gloucestershire and it is not unreasonable for him to seek to obtain a job within a reasonable distance of that location. For the avoidance of doubt that would not, in our judgment include working in London. Unfortunately, in any event, the claimant lost his job with Kenham because it went into liquidation which was no fault of his own, whatsoever. By that time, the claimant had only worked for Kenham for just over 4 months. We therefore concluded that the claimant's role with Kenham did not end the respondent's liability for loss of remuneration (**Denham** and **Aegon**). We therefore concluded that he would be awarded loss of earnings during that period on the basis that the loss continued to arise naturally and directly from the respondents discrimination.

124. However, the income that the claimant received would need to be deducted from any compensation as mitigation received. The claimant earned £21,047.25 gross from Kenham.
125. There was a dispute between the parties as to what (if any) reduction should be applied to that figure to reflect the claimant's net income during that period. Mr. Harris submitted that the claimant's solicitor had deducted 20 per cent in the schedule of loss as an estimate, but that no figures could be provided in support. We were told that the claimant's accounts were with the accountant and had not been filed. The claimant did not give evidence about his income or tax liability for that period beyond referring to a phone bill and expenses including a van. We found that evidence to be entirely vague and unsubstantiated by any documentary or other evidence. We found that evidence to be unreliable.
126. The respondent submitted that the entire amount should be deducted as mitigation income, for lack of evidence and on the basis that there was insufficient evidence to support that any tax had or would be paid by the claimant.
127. We bore in mind that the claimant needed to prove his losses. We were surprised that the claimant was not able to provide any clarity on his accounting (whether it had been finalised or not, he ought to have records of expenditure for example) and none was disclosed ahead of the remedy hearing.
128. We preferred the respondent's submissions on this issue. The claimant, who is legally represented, ought to have provided and disclosed evidence, supported by documentation to assist the Tribunal on this issue at the remedy hearing. He did not do so, and we had no confidence as to the claimant's tax liability or business expenditure. Nor were we persuaded that a 20 per cent reduction was accurate or fair. It was not supported evidentially. Therefore, we concluded that the full £21,047.25 shall be taken into account as the claimant's mitigation during this period.
129. In January and February 2024 the claimant applied for a significant number of jobs. We could not be entirely precise on the number but accepted that this was likely to be around 30 and was supported by the documentary evidence in the bundle. We have accepted that the claimant also applied for roles in March and April 2024.

We could not be certain as to the number and accepted that the applications were fewer in number during that period. We were not provided with any evidence of the job market or any other roles that were available at this time, which would have been suitable for the claimant, that he did not apply for. We therefore were not persuaded that the claimant had acted unreasonably between 9 January and April 2024.

130. The claimant received a job offer on 30 April 2024 and we concluded that it was entirely reasonable for him to stop looking for jobs on that date even though he did not start the new role until 7 May 2024. We concluded that the claimant had taken reasonable steps to try and mitigate his loss during this period from 9 January until he commenced new employment on 7 May 2024. He did not receive any income during that period. We therefore concluded that he would be awarded loss of earnings during that period on the basis that the loss continued to arise naturally and directly from the respondent's discrimination.

131. Between 10 January 2024 and 7 May 2024 there are 118 days.

132. On 7 May 2024, the claimant attained new employment with Zota. We concluded that the claimant had at that point started to fully mitigate his losses. There was no suggestion that the role with Zota was intended or was temporary and the claimant worked there until his resignation in August 2025. We therefore concluded that the respondent's liability for loss of earnings ended on 7 May 2024.

If not, for what period of loss should the Claimant be compensated for?

133. In light of our findings of fact and conclusions above, the claimant will be compensated for losses between 26 May 2023 and 7 May 2024 but must give credit for mitigation received. In reaching that conclusion we have considered all of the relevant circumstances and set out our reasons above.

What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

134. We have set out above our findings in respect of the injured feelings that the claimant suffered after the discriminatory treatment that he was subjected to by the respondent which culminated in his dismissal.

135. Our findings of discrimination, which resulted in upholding complaints of discrimination in the liability judgment relate to both pre-termination discrimination and a discriminatory termination of employment.
136. The are of the view that the impact on the claimant can be divided into three broad categories: the stress, upset and anxiety he suffered because of the discrimination that he was subjected to from late November 2022 his suspension on 31 March 2023 (approximately 4 months); the stress, upset and anxiety he suffered because of his suspension, disciplinary proceedings and dismissal which was discriminatory. We also accepted that having to seek justice in litigation prolonged the stress, upset and anxiety that the claimant suffered. While the effects of these different causes did overlap in time, we are satisfied that they each had an impact on him at different times.
137. The claimant was a longstanding employee, who following a change of management was subjected to discrimination over a 4 month period. Whilst we accepted that all of the discriminatory treatment of the claimant was stressful and had an impact on him, we considered that the most acute stage of the discriminatory treatment related to the claimant's suspension, disciplinary proceedings and dismissal. The claimant had 15 years' service and had held a senior role. The disciplinary allegations were central to his professionalism and reputation. We accepted that the way in which the claimant was treated was humiliating and traumatic for him. His dismissal meant that he was removed from his longstanding employment including connections with colleagues/friends. The claimant's dismissal was immediate, leading to a sudden loss of income which put pressure on him financially and caused impact on his family life.
138. This all had an impact on the claimant's mental health including feeling stressed, anxiety, intrusive thoughts and difficulty with sleep. Although we accepted the claimant's evidence that he was reluctant to tell professionals how he felt or to document his mental health difficulties, we found the fact that he did not need to seek medical support, also reflected that the symptoms were not so severe that he needed additional assistance or treatment. We do not accept that this means he did not experience the described impact on his mental health at all and we found his evidence as to the impact on his mental health to be persuasive overall.

139. We have also accepted that even when the claimant secured new employment, that the impact of the respondent's discriminatory treatment impacted his professional confidence. Whilst the claimant stated that he still experiences that impact, we consider that any impact following the securing of new roles would likely have been much more limited than the initial period up to 29 August 2023. Further, in light of our findings in the liability judgment, which is published online, we do not accept that there is any ongoing reputational harm to the claimant in light of our findings.

140. Overall, we therefore concluded that the claimant's injury to feelings was not trivial or minor but has been substantial.

141. The claimant claimed his award for injury to feelings should be in the middle Vento band (as updated in the Presidential Guidance) (specifically £16,000). The respondent argued that it should be in the lower middle band but did not concede £16,000.

142. We agreed with the parties that the middle Vento band was appropriate in this case (£11,200-£33,700).

143. We have concluded that the appropriate award is **£16,000 comprising of:**

- (a) £5000 in respect of pre-termination discrimination;
- (b) £11,000 in respect of discriminatory termination of employment.

Should the Tribunal make an award for aggravated damages? If so, who much compensation should be awarded?

144. The basis on which the claimant was seeking an award for aggravated damages was as follows:

- (a) The conduct of the respondent's witnesses at the final merits hearing namely, Mr. Powell and Mr. Tuckwell whom had a conversation whilst Mr. Powell was on oath.

(b) The claimant being accused of lying in cross-examination at the liability hearing.

(c) The respondent's appeal to the EAT in relation to the liability decision.

145. Firstly, in relation to the actions of Mr. Powell and Mr. Tuckwell, we have made extensive findings about this in the liability judgment paragraphs 28-45. It was entirely appropriate for the respondent's counsel to draw this to our attention. Witnesses discussing evidence on oath is a very serious matter and inevitably this resulted in a haemorrhage of tribunal time to consider that issue. However, we concluded that whilst this should not have happened, the loss of time was practically absorbed by the Tribunal conducting its deliberation on another date and delivering a reserved judgment. We accept that this resulted in a delay to the communication of the Tribunal's decision. Whilst we do accept that the discussion with Mr. Powell whilst he was on oath should not have happened at all, and is likely to have caused the claimant some stress, we did not consider that an award for aggravated damages was engaged.

146. In relation to the cross-examination of the claimant: We did not consider that any questions put to the claimant were inappropriate by counsel. Whilst we appreciate that the respondent did challenge the claimant's evidence, that is the nature of litigation and a party is entitled to cross-examine witnesses. Whilst it might be distressing for the claimant to be challenged, we did not consider that an award of aggravated damages should be made.

147. Finally, in relation to the respondent's EAT appeal, it is important to acknowledge that it is an essential feature of justice that a party is entitled to appeal the decision of the Employment Tribunal. Whilst we accept that the EAT rejected the appeal grounds at the sift stage, in quite acute terms, we do not consider that it would be appropriate or fair for this Tribunal to conclude that the grounds were baseless. The respondent was entitled in principle to seek an appeal of the liability decision, and notwithstanding the EAT's comments on rejection at the sift stage, we are not persuaded that that an award for aggravated damages should be made.

148. Therefore, we have decided that no award for aggravated damages would be made.

Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

149. We have accounted for the impact of the discrimination within our award for injury to feelings above. We were not provided with any medical evidence to support a separate award for personal injury and this was not set out in the schedule of loss. We therefore do not make a separate award for personal injury.

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures ('the Code') apply?

150. There was no dispute that the Code applies.

If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

151. The claimant contended that an uplift of 15 per cent should be applied and the respondent contended that 10 per cent was more appropriate.

152. We had made extensive findings of fact around the disciplinary procedure undertaken by the respondent in our liability judgment. We consider that the following findings of fact were relevant (with reference to paragraphs of the liability judgment):

- (a) At the material time, the respondent had 15 members of staff in total and used sub-contractors as specialist labour (para 53);
- (b) At the time of the claimant's dismissal the respondent had 3 site agents namely, the claimant, Mr. Woods and Mr. Gardner. Ms. Fowler acted as a link between the site managers/agents and Mr. Bacon and Mr. Powell (para 54);
- (c) We noted that the respondent is clearly a small employer with no substantial HR resources. Mr. Powell referred to the fact that the respondent was taking legal advice during the disciplinary hearing process (para 267).
- (d) When the claimant was suspended on 31 March 2023 he was provided with a letter detailing the same. The letter did not set out the factual details of the reasons for the suspension but stated that there was to be an investigation into the allegations which may amount to gross negligence in relation to posing a risk to the company and its reputation, a failure to act appropriately and with

sufficient skill which had repeatedly cost the respondent large sums of money (para 112);

- (e) The disciplinary meeting invite set out the factual allegations, potential outcomes including dismissal without notice and was accompanied by some of the evidence (para 113-115);
- (f) A disciplinary meeting took place and was conducted by Mr. Powell (117-128). The claimant's explanations were not investigated (para 127, 261) and there was predetermination (for example 128, 261-2, 265, 266).
- (g) The evidence collated following the disciplinary hearing was not provided to the claimant for him to comment on before he was dismissed (para 264, 133, 135 and 138).
- (h) Mr. Powell heard the claimant's appeal and it was agreed to be a paper exercise (para 145-7).
- (i) There was a lack of independence (para 269).

153. Whilst we took account of the small size and limited administrative resources of the respondent we concluded that it had failed to comply with the code in that;

- (a) It did not carry out necessary investigations to establish the facts of the case (para 4). We concluded that the respondent had not properly investigated the claimant's explanations;
- (b) There was a lack of independence in the process in that Mr. Powell investigated, held the disciplinary and heard the appeal (para 6 and 27);
- (c) The respondent did not send all of the written evidence collated to the claimant (para 9);
- (d) The decision was pre-determined which contravenes the requirements of para 18.

154. We concluded in all of the circumstances that the respondent's failure was unreasonable notwithstanding its size and administrative resources. Accordingly, we were persuaded that the respondent had unreasonably failed to comply with the Code. This is not a case where there is a total failure to comply with the code but the breaches in this case were substantial. We concluded that it was just and equitable in all of the circumstances to apply a 15 per cent uplift in these proceedings.

Should interest be awarded? How much?

155. We have concluded that an award of interest is appropriate in this case and have awarded interest at the level of 8 per cent in accordance with Regulation 3 as cited above.

156. In relation to injury to feelings, relating to the claimant's dismissal, the day of calculation is 30 October 2025 (date of remedy hearing), the date of the discrimination complained of is 26 April 2023 (the date of the dismissal). This is a period of 918 days.

157. In relation to injury to feelings, relating to pre-termination discrimination, the day of calculation is 30 October 2025. The acts of discrimination took place from late November 2022 up to the disciplinary hearing on 12 April 2023. This was a 5 month period and therefore, so as to avoid serious injustice, we have taken the date of the discrimination approximately halfway through that period for the date of discrimination namely, 14 February 2023. This is a period of 989 days.

158. In relation to past financial loss suffered by the claimant, on the basis that this loss flows from the claimant's dismissal for which we have calculated the midpoint date as 28 July 2024 (469 days).

159. For compensation over £30,000 we have grossed up.

Calculation

160. We have calculated the award as follows:

	<u>Calculation</u>	<u>Total</u>
<u>Notice pay</u>		
1 months' notice from 26 April 2023 to 25 May 2023	£3,337.31	
Total notice pay:		£3,337.31

Unfair dismissal – ERA

Basic award	£14,467.50
Loss of statutory rights	£500.00
ACAS uplift 15 per cent	£2245.12

Total UDL: **£17,212.12**

Discrimination

Financial losses: 25 May
2023 to 7 May 2024

Weeks	49.6
Weekly net pay:	£770.15
Loss for period:	£38,199.44
Total income received:	£21,047.24
Total loss for period:	£17, 152.20
ACAS Uplift 15 per cent:	£2572.83

**Total compensation for
past financial loss:** £19,725.03

Interest on financial
losses:

Period: 26/5/2023 to 28/7/2024

Days: 347 days

Annual interest rate: 8 per cent

Total interest in financial
loss: £1856.54

Total compensation for financial loss: £21581.57

Injury to feelings

Pre-termination discrimination £5,000.00

ACAS Uplift 15 per cent £750

Period: 14/2/2023-30/10/2025

Days: 990

Annual rate of interest 8 per cent

Interest on pre-termination injury to feelings award £1246.41

Total compensation for pre-termination injury to feelings award: £6996.41

Injury to feelings in relation to termination £11,000.00

ACAS Uplift 15 per cent £1650

Period: 26/4/2023-30/10/2025

Days: 919

Annual interest rate: 8 per cent

Interest on termination injury to feelings award **£2545.25**

Total award £15, 195.25

**Award for injury to
feelings re Termination:**

**Total award (before
grossing up):** **£64, 322.66**

Grossing up balance of **£34, 322.66**
total award exceeding
£30,000: namely

£35, 404.92 x 100/80 **£8,580.67**

**Total award to be paid to
the claimant including
grossing up:** **£72, 903.33**

Employment Judge Bowen
(Approved)
30 January 2026

Sent to the parties on
13 February 2026