EMPLOYMENT TRIBUNALS

Claimant: **CX**

Respondent: **Secretary of State for Justice**

Heard at: Reading Employment Tribunal (by video)

On: 23-25 February 2026
3 March 2026 (in chambers)

Before: Employment Judge Annand
Ms Osborne
Ms Crosby

Representation
Claimant: In person
Respondent: Ms Hirsch (Counsel)

RESERVED REMEDY JUDGMENT

1. The Respondent shall pay the Claimant the following sums:

a) Compensation for past financial losses (20% of losses incurred): i) Loss of income and pension loss to the date of the hearing (£5,227.08) ii) Past medical expenses (£500)	£5,727.08
b) Interest on compensation for past financial losses calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: i) Interest on loss of income and pension loss to the date of the hearing (£980.69) ii) Interest on past medical expenses (£93.81)	£1,074.50
c) Compensation for future financial losses:	£5,705.77

i) Future loss of income and pension loss for 12 months (£4,465.77) ii) Future medical expenses (£1,240)	
d) Compensation for personal injury:	£14,500
e) Interest on compensation for personal injury calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996:	£2,720.44
f) Compensation for injury to feelings:	£17,500
g) Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996:	£6,555.07
Total:	**£53,782.86**

REASONS

Introduction

1. A remedy hearing was held in this case on 23, 24 and 25 February 2026. Following the liability hearing, the Tribunal upheld 6 of the Claimant's complaints of direct sex discrimination, 7 complaints of harassment related to sex, 4 complaints of direct discrimination related to her vegan beliefs and 4 complaints of harassment related to her vegan beliefs.

2. For the remedy hearing, the Tribunal were provided with the following:

   a) A remedy hearing bundle, 2619 pages.
   b) A supplemental remedy bundle, 448 pages.
   c) The Claimant's witness statement, 122 pages.
   d) The Claimant's supplemental witness statement, 7 pages.
   e) A report by Consultant Psychiatrist Dr Jacqueline Scott, 53 pages.
   f) The Claimant's response to Dr Scott's report, titled, "Addendum to Dr Scott's Psychiatric Assessment", 220 pages.
   g) The Claimant's further rebuttal of Dr Scott's report, 6 pages.
   h) The Claimant's skeleton argument, 31 pages.
   i) The Respondent's skeleton argument, 11 pages.
   j) The Respondent's skeleton argument appendices bundle, 111 pages.
   k) Witness statements from QX, TG, FJ, MS, and DP.
   l) The Claimant's index roadmap, 6 pages.

3. The Tribunal also had access to the liability hearing bundle (1910 pages) and the witness statements produced by the parties for the liability hearing.

4. The Tribunal spent the first day of the remedy hearing reading. On the

second day, the Claimant gave evidence and was cross examined by Ms Hirsch. The Claimant's witnesses, QX, TG, FJ, MS, and DP, did not attend the hearing or give evidence. On the morning of the third day, the parties made oral submissions, and thereafter the Tribunal deliberated. The Tribunal met again on 3 March 2026 to continue deliberating.

5. I apologise to the parties for the delay sending out this judgment. As will have been apparent to both sides, there was a very considerable amount of paperwork to be considered.

6. By the time of the remedy hearing, the Respondent's legal team had changed. The Respondent had instructed an external solicitors' firm for the remedy hearing and counsel for the Respondent had changed since the liability hearing. This was not an easy case to take over halfway through the proceedings. I am grateful to Ms Hirsch for the sensitive way in which she dealt with the Claimant in cross examination. I am grateful to Ms Hirsch and the Claimant for the helpful and professional approach they both took to the hearing.

Issues to be determined

7. In an earlier Schedule of Loss, which set out the Claimant's losses to February 2023, and which appeared in the liability bundle, the Claimant claimed £139,429.85.

8. After the liability hearing, the Claimant was ordered to provide an updated Schedule of Loss. In the updated Schedule of Loss, dated 3 November 2025, the Claimant sought £1.2 million to £1.6 million. The significant increase in the amount claimed was due to the Claimant anticipating that she may be unable to work again for up to 10 years. Her updated Schedule of Loss sets out various projections if she were unable to work for 5, 7 or 10 years.

9. The Issues for the Tribunal to determine were set out in a previous Case Management Order. They were as follows:

Financial losses

1. What financial losses has the discrimination caused the Claimant?

2. What, if any, financial losses are attributable to the acts of discrimination which the Claimant succeeded with?

3. Would the Claimant's employment have ended in any event?

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

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

Injury to feelings and personal injury

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

7. Has the discrimination caused the Claimant personal injury? Has it exacerbated a pre-existing condition? How much compensation should be awarded for that?

ACAS Code of Practice

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

9. Did the Respondent or the Claimant unreasonably fail to comply with it?

10. If so is it just and equitable to increase or decrease any award payable to the Claimant?

11. By what proportion, up to 25%?

Interest

12. Should interest be awarded? How much?

The factual background

10. The Claimant was employed by the Respondent between 16 November 2020 to 6 December 2021. She submitted her Claim Form on 19 March 2022. For the reasons set out in the liability judgment, the final hearing did not take place until 11-28 March 2025. The liability judgment was sent to the parties on 1 October 2025.

11. It is necessary to set out a summary of the medical evidence regarding the Claimant's previous medical history because the Claimant is seeking damages for personal injury. The Claimant's case is that her mental health has significantly worsened because of the discrimination that she suffered. The Respondent accepts that the Claimant's health did worsen and accepts that some award for personal injury is appropriate, but it says only a very small amount is attributable to the discrimination she suffered.

12. The Claimant is now 41 years old. She left formal education at 16 and attended college. She later worked in a solicitors' office for 6 months. She travelled extensively on her own. She also worked in restaurants and bars, but her main role was as a fitness instructor. She has run marathons and triathlons, and taught swimming classes.

13. For approximately 5 years between the ages of 19-24, the Claimant was in a relationship which was violent and controlling. She was subjected to some acts of domestic violence which required her to attend hospital, once in 2006 for sutures in the back of the head, and again in February 2027 for other injuries. On some occasions, she had called the police. She took a drug overdose on one occasion in August 2005. She was also binge-drinking over this period.

14. After that relationship ended, the Claimant entered a new relationship which lasted for approximately 10 years, but it was complicated because for some

of the time they were in a relationship her partner was married.

Medical evidence 2011-2020 (pre-employment with the Respondent)

15. In 2011, the Claimant saw her GP for low mood. She was referred to Time to Talk because she felt over the previous 5-6 years she had experienced a number of distressing events. At this time, the Claimant was exercising regularly and running marathons.

16. In July 2012, she reported to her GP that she felt very stressed and depressed. At that time, she was working in a pub and reported having some problems with alcohol. Her GP noted, “anxiety with depression” in her records. In November 2012, she asked to be referred to Time to Talk again. When the process started, it was noted her main issue was low self-esteem. The Claimant was referred for group therapy sessions and attended 4 out of 10 of the sessions. She said she felt unable to discuss some matters with strangers.

17. In June 2013, the Claimant’s GP recorded the Claimant was suffering with low mood, tearfulness, and insomnia. She had reduced her drinking to 6 units a week and was exercising regularly. At that time, she was working in a hairdresser and as a bar maid. She was diagnosed with depression. The following month, the Claimant reported being sacked from the hairdressing role. The Claimant tried taking Citalopram, but it gave her terrible itching. She had stopped taking the medication by the end of July and was feeling much better.

18. In March 2015, the Claimant saw her GP and reported feeling low in mood and wanting a referral to counselling. The Claimant had two weeks off work. She was working in a pub and in a gym. In July 2015, she told her GP she felt depressed and was feeling particularly ashamed about her relationship. It was noted she felt ready to try Citalopram again. In August 2015, her GP noted she had stopped taking the medication as it made her feel funny.

19. In February 2016, the Claimant saw her GP for low mood, reduced appetite and poor sleep. She started Sertraline and had two weeks off work for anxiety and depression. In July 2016, the Claimant was running 5 times a week and was still training for marathons. She was teaching as a fitness instructor. In August 2016, the Claimant said to her GP that she had suffered with depression on and off for years, linked to her relationships, and that it came in waves. She said she felt she needed counselling, but one to one counselling and not in a group. She reported that she liked her job teaching exercise classes and did not want to be off sick. In November 2016, the Claimant started on Sertraline again.

20. In January 2017, the Claimant reported to her GP that she felt better on 50mg of Sertraline but still a bit up and down. She agreed to try 100mg and trial it for 6 months.

21. In early 2018, the Claimant’s father passed away suddenly. She took a month off work. She reported to her GP that she was tearful and grieving. In April 2018, she suffered a burn to her leg on the way to work. She attended A&E and was admitted. The injury to her leg required two weeks off work. At this time, the Claimant was receiving counselling. Her

grandfather and her uncle died the following year.

22. In April 2019, the Claimant saw her GP again and reported that she was feeling awful all the time. She had by this time been having counselling for a year and a half. She was working as a yoga teacher and a swim instructor. She had stopped drinking alcohol. She was also having difficulty sleeping.

23. In September 2019, the Claimant reported to her GP that she would like to try antidepressant medication again. She started taking Citalopram again. Later in the month, she reported an improvement in her mental health. She was having private counselling still and planned to continue taking the medication.

24. In November 2019, the Claimant was signed off work for two weeks as she felt she could not go into work, which was unlike her. At this time, she was working as a group exercise instructor at a leisure centre. She reported having migraines on Citalopram. She is recorded as having told her GP that she had recently trained as a yoga teacher.

25. In December 2019, and January 2020, the Claimant was signed off work sick with depression. She reported to her GP that her relationship was in a very poor state at that time. She was issued with sick notes in February 2020 and March 2020.

26. In 2020, the Claimant stopped drinking alcohol altogether.

27. In March 2020, the Claimant reported to her GP that she had lost her job due to the Covid 19 pandemic. It was noted she was running regularly at this time. She was issued with a further sick note for mixed anxiety and depressive disorder and continued to be signed off sick throughout 2020. In April 2020, it was noted her relationship had ended.

28. In June 2020, the Claimant reported having difficulties sleeping. It was noted by her GP that she was taking 20mg of Citalopram a day.

29. In around August 2020, the Claimant moved to a new area and a new house.

<u>Medical evidence from November 2020 to December 2021 (during employment with the Respondent)</u>

30. In November 2020, the Claimant started working for the Respondent. Initially, she undertook a period of training to be a prison officer. She reported to her GP that she was running regularly. It was also recorded that she had not taken Citalopram regularly but had stopped and started. It was noted she was considering re-starting it.

31. On 13 May 2021, the Claimant saw her GP. It was noted her mood was up and down and she still got upset about the end of her long relationship. She also told the GP that one of the prisoners had tried to commit suicide and she had found this upsetting. The following week, she reported she had been up and down, which was not unusual for her, and she felt it stemmed from some childhood trauma. She referred to her work colleagues having said negative things about her which had made her tearful at times. She

was recorded as saying she would like to try counselling again.

32. In June 2021, the Claimant had a brief sexual relationship with someone unconnected to the proceedings. She described this as being short-lived and not distressing for her at all. It was just quickly apparent it was not going to go anywhere. By this time, she was taking 10mg of Citalopram a day.

33. On 31 August 2021, the Claimant contacted her GP. She referred to being unable to cope. It was recorded she had been crying at work and was not well supported at work. She referred to suffering with low mood and depression. She was given a sick note for 4 weeks. She described her workplace as toxic and said her colleagues and management could be abusive.

34. On 27 September 2021, the Claimant spoke to her GP and said she did not feel able to return to work. It was noted she was looking for another job.

35. In November 2021, the Claimant was recorded as telling her GP that she had returned to work but there was on-going stress at work. Her manager had said she would meet her but did not turn up.

36. On 6 December 2021, the Claimant was dismissed from her role with the Respondent.

Medical evidence from post-employment period

37. On 13 December 2021, the Claimant spoke to her GP. She complained of feeling depressed. She had a long-standing history of low mood but recently it had worsened. It was recorded that her triggers related to her previous relationships and loss of a pet. She reported being tearful all the time, anhedonia, feeling of worthlessness, and lacking in energy and motivation, along with other symptoms. The Claimant was referred to Mind Matters.

38. In January 2022, the Claimant was seen in the psychology clinic and referred for CBT. The Claimant also suffered a further bereavement when her grandmother died.

39. On 7 March 2022, the Claimant complained to her GP of low mood.

40. On 22 March 2022, the Claimant reported to her GP that she was experiencing hair loss. The Tribunal were provided with a significant number of photographs showing the Claimant's hair loss.

41. On 21 April 2022, the Claimant reported to her GP that she was suffering with heightened anxiety and depression since being sexually harassed and stalked by a senior member of staff from the prison that she was working at. She reported she had been given a written warning after she reported him and then was fired after being off work with stress sickness. She is recorded as saying this was making her feel really anxious and worried. She reported that she was having night terrors and that she thought she had PTSD. She was taking Duloxetine, was experiencing hair loss, night terrors, night sweats, and a loss of confidence. She was recorded as telling the GP that she was binge eating, this was new, and she felt she was developing an eating disorder.

42. By April 2022, the Claimant had changed to taking Mirtazapine 15 mg once a day.

43. At the end of April 2022, the Claimant was seen by the dermatology clinic. She reported suffering with hair loss for the past three months which she attributed to stress. It was recorded that, on examination there was thinning of the hair in the frontal aspect, but no pathology within the scalp. She was advised to try Minoxidil lotion for three months. In other records from this time, the Claimant was reporting a concern that the Duloxetine had possibly caused her hair loss.

44. In May 2022, the Claimant contacted her GP to obtain a sick note. She reported a concern that she was not tolerating any antidepressants well. She reported feeling low and depressed.

45. Over the summer, the Claimant had some sessions with Talking Therapies.

46. In August 2022, the Claimant reported to her GP she fell over while on holiday in Greece and hurt her ribs. She asked for a sick note and explained she had been on and off sick most of the year due to bereavements and work-related stress. She explained she had an Employment Tribunal and that mentally she was not well. She also said she had been advised that she had been overpaid by the Respondent in the amount of £11,000 and this had been very stressful.

47. In September 2022, the Claimant went to Peru. She suffered from food poisoning and altitude sickness. She reported to her GP that she felt hopelessness and helplessness and would like to try antidepressants again.

48. By December 2022, the Claimant had started taking Venlafaxine, 75 mg a day. She reported to her GP on 1 December 2022, that she felt Venlafaxine had improved her mood and she felt less anxious.

49. By mid-January 2023, the Claimant reported to her GP that although she had initially felt better on Venlafaxine, her mood had started to dip again and she was tearful, felt hopeless, and was emotional. It was agreed she would increase the dose of Venlafaxine to 150mg per day.

50. In January 2023, the Claimant was assessed by the Department for work and pensions as having limited capacity for work.

51. In February 2023, the Claimant saw her GP as she was concerned the increased dose of Venlafaxine was causing headaches. She was advised to reduce the dose to 75 mg per day. It was recorded that her mood was much the same, but she had not had any luck looking for a new job. A job as a swimming instructor had fallen through.

52. In mid-February 2023, the Claimant told her GP that she was having tearful days where she felt there was no point in living. She was struggling to get out of bed most days. She did not feel able to work. She also reported that reducing the dose of Venlafaxine had not improved her headaches and so it was agreed she would increase the dose up to 115.5 mg per day.

53. In March 2023, the Claimant reported to her GP an increase in the frequency of suicidal thoughts. She reported having put on quite a lot of weight and feeling very affected by the Employment Tribunal proceedings.

54. In May 2023, the Claimant went to Gibraltar. She suffered with vomiting and diarrhoea. She felt very unwell and had to come home early. In May 2023, the Claimant also saw a psychologist who recommended she have some blood tests for hair loss. She reported wanting to increase her dose of Venlafaxine.

55. In June 2023, the Claimant told her GP she was finding the process of the Employment Tribunal very stressful as she was representing herself. She described it as always in the back of her mind. She said her mood dipped whenever she received any correspondence from the Tribunal. She was suffering with heightened anxiety and was fearful it would not get better. She planned to increase her Venlafaxine dose.

56. Later in the month, the Claimant reported she was feeling better on the increased dose of Venlafaxine. She reported that some days she would binge on sweets and she was not happy about this. She referred to putting on weight. By the end of June 2023, the Claimant reported to her GP that she was up and down and sometimes crying more. She was referred for EMDR therapy. The Claimant asked for a letter from her GP to help her move as she was feeling isolated where she was living.

57. In October 2023, the Claimant reported to her GP that she wished to increase her dose of Venlafaxine.

58. In October 2023, the Claimant spoke to Mind Matters. She referred to experiencing a sexual assault/incident in her home with a male supervisor from her previous work in the prison service. This had left her feeling vulnerable in her own home. She explained this event was a part of her Employment Tribunal and was a matter she was reporting to the police. It was agreed once the Tribunal process was over it would be helpful for the Claimant to refer herself to Mind Matters for a further assessment.

59. In November 2023, the Claimant reported to her GP her mood had dipped. She thought it related to the Tribunal process. She had increased her Venlafaxine to 150 mg per day.

60. In December 2023, the Claimant reported to her GP she was concerned about her eating as she was binge eating. This had been happening for the last two to four years. She said when trying not to drink alcohol she could binge on food instead. She referred to having been sober for four years but prior to that she was a binge drinker. She reported that she was making herself sick. The Claimant was referred to the eating disorder clinic.

61. In January 2024, the Claimant reported to her GP that she was still going through the Employment Tribunal process. She felt very stressed and depressed. She felt fearful about what might happen and about the person who had harassed her attending the Tribunal. She referred to having felt suicidal over Christmas. She reported wanting to move and start over again. She reported wanting to increase her antidepressant medication. The Claimant's Venlafaxine dose was increased to 225 mg per day.

62. In January 2024, the Claimant reported to her GP that she was dealing with the Employment Tribunal proceedings. She reported feeling exhausted, extremely anxious, and suffering with insomnia. She reported that she felt suicidal the week before but said she did not think she would act on it.

63. In the same month, the Claimant asked her GP for a further sick note. She explained she was in the middle of an Employment Tribunal process. Once it was over, she hoped to find a new job.

64. In May 2024, the Claimant reported to her GP that she felt unable to cope with the Employment Tribunal process. She said she could not return to work. She was on the maximum dose of Venlafaxine, which was not helping at all. She felt angry and horrible. Later in the month, she reported her concerns about a preliminary hearing in May 2024. She referred to being in a bad place, feeling really angry and miserable, and hating everyone and everything. She wanted to increase her Venlafaxine dose. She also reported to her GP that she was taking co-codamol daily for migraines.

65. On 9 July 2024, the Claimant reported to her GP that she did not feel great on the higher dose of Venlafaxine and wanted to return to 225 mg per day. It was recorded she said she felt there was little point in living.

66. In around August 2024, the Claimant moved house. She requested a new referral to the eating disorder clinic. She had been on the waiting list for eating disorder assistance where she had previously lived. She reported extreme depression and anxiety following a sexual assault in her last property. Later in the month, she advised her GP that she felt the Venlafaxine was helping a lot. She said she was worried about the Employment Tribunal proceedings and was looking forward to it ending.

67. In September 2024, the Claimant told her GP that her eating disorder was gradually getting worse and was exacerbated by the Employment Tribunal proceedings as well as difficulties she faced in her new housing.

68. In September 2024, the Claimant was reviewed regarding her eating disorder. She is recorded as saying it started in February 2020 when she quit alcohol. She started binge eating and then purging afterwards. She reported that she wanted to return to work but the Employment Tribunal was on-going. She was having difficulty concentrating and reported having binged nearly every day that week.

69. In September 2024, the Claimant asked if she could increase her Venlafaxine. She had reduced the dose earlier in the year but now wanted to increase it again. She said she was experiencing increased stress due to the Employment Tribunal process. The Claimant's Venlafaxine dose was increased to 225 mg per day. In September 2024, the Claimant asked to be able to attend visits with the DWP every three months rather than every month, which she felt was damaging to her mental health.

70. In October 2024, the Claimant reported to her GP that she was having difficulties in her new housing. The floor in the kitchen was rotten, and her foot had fallen through it. The Claimant reported she was undertaking CBT online and was finding it helpful.

71. In November 2024, the Claimant asked her GP if she could increase her Venlafaxine dose again. She referred to on-going difficulties with the Employment Tribunal process and her housing situation.

72. In December 2024, she also asked to be referred to a psychiatrist as she felt the medication she was taking was not helping. She reported her mental health was still not very good. She referred to the Employment Tribunal hearing in March 2025. The Claimant was informed later that month that the request for a referral to a psychiatrist was refused because she had an open eating disorder referral.

73. In January 2025, the Claimant was reviewed for depression. She referred to the fact that the hearing was due to take place in March. She is recorded as saying she found it traumatic going through all the paperwork. She referred to a lack of trust in men. She also mentioned the housing issues she faced and having difficulties with money. She said she thought increasing her medication may be helpful. It was planned she would increase her dose to 300 mg per day. She reported feeling sad all the time and low and that she did not see the point of getting out of bed most days. She said that coping with the stress of the Tribunal process was really affecting her mental health.

74. In January 2025, the Claimant was seen in the eating disorder clinic. She reported that her binge eating had started around 5 years ago at the end of her previous relationship. She is recorded as saying she had replaced binge drinking with binge eating. She reported purging as well, and linked it to poor self-esteem, emotional regulation and a means to punish herself. One of the factors that she said could trigger her to binge eat was the Employment Tribunal process. She referred to representing herself in an employment tribunal, which was having a significant impact on her mood and emotions. She had begun to develop obsessive behaviours all centred around her personal safety. She described herself as being in survival mode. She referred to having developed a hatred towards men and constantly having to check to ensure her doors were locked. The Claimant was told she met the criteria for treatment for bulimia nervosa and that she would be offered 10 sessions of CBT.

75. In February 2025, the Claimant contacted her GP and said her mental health was very poor. She referred to having been sent more correspondence regarding the Employment Tribunal which she said had made her feel so unwell. In the same month, the Claimant referred to being on 300 mg of Venlafaxine per day. She reported having five nights of terrible broken sleep and said she felt extremely anxious when she received emails about the Employment Tribunal process. She referred to the fact that she hated not working and looked forward to the Tribunal process being over when she could start to work again.

76. In March 2025, the Claimant was assessed again by the Department for work and pensions as having limited capacity for work.

77. In May 2025, the Claimant reported to her GP that she had felt very low representing herself at the Employment Tribunal the week before. She said she had felt better the following week, but it felt like everything was too

much.

78. In June 2025, the Claimant reported that the Employment Tribunal was continuing the following week and that she felt rubbish and that her life was not worth living.

79. In August 2025, the Claimant reported heightened symptoms of anxiety, irritability and low mood. She reported stress from waiting for the outcome of the Employment Tribunal process. She reported feeling ashamed for not working, and that she had to go to food banks as she could not afford food.

80. In September 2025, the Claimant reported struggling while waiting for the outcome of the Tribunal proceedings. She reported feeling rundown, depressed and her hair falling out again. She reported her mood being up and down. She reported wanting to have closure and hopefully compensation which she could use to fund hypnotherapy. It was noted she was on the highest dose of Venlafaxine. At the end of the month, she reported that she could not stop crying.

81. In mid-October 2025, the Claimant spoke to her GP and reported feeling very stressed. She was recorded as saying she had some success in the Tribunal but that the process had not ended. She reported feeling angry about the whole situation. She reported there was a further hearing in the Tribunal, and noted that she could not sleep, was mentally very unwell and felt she was cracking up. She referred to the fact that she had to disclose her entire medical history to the Respondent which was causing her to feel very upset.

82. By the end of October 2025, the Claimant was reporting further hair loss. At this time, she was not taking Duloxetine.

83. In November 2025, the Claimant was discharged by the Adult Eating Disorder team. The Claimant had attended 10 out of 10 of the CBT sessions for eating disorders, and two follow up sessions. When she had started, she was binging and self-inducing vomiting most days of the week. It was reported in the discharge letter that initially she made some progress, but then external stressors, namely the Employment Tribunal proceedings, impeded her progress. The frequency of bingeing and purging would escalate alongside the developments in the proceedings. It was noted the Claimant was motivated, but the external events would disrupt her progress. It was suggested she should return to therapy once the Tribunal process was complete and she felt ready.

84. In December 2025, the Claimant reported to her GP that she was very distressed to discover that the meeting she would have with Dr Scott would be recorded. She felt unable to cope and felt it was making her eating disorder much worse.

85. In December 2025, the Claimant had an assessment with Talking Therapies. She reported that her difficulties with symptoms of depression, anxiety, trauma related symptoms, and eating disorder behaviours was exacerbated by the Employment Tribunal and the psychiatric assessment for court. The advice was that in light of the on-going proceedings the Claimant may find it difficult to engage in short-term therapy and make

changes at that time. She was therefore discharged back to the care of her GP.

Universal credit, job applications and DWP assessments

86. Since November 2022, the Claimant has been in receipt of universal credit. She described this as being extremely upsetting and distressing for her. She has at times been unable to meet her basic living costs and the Tribunal saw evidence she had used food banks and crisis food vouchers.

87. In December 2022, the Claimant applied for the role of Cardiac Rehabilitation Exercise Instructor.

88. In January 2023, the Claimant was assessed by the Department for Work and Pensions (DWP) as having limited capability for work.

89. In January 2023, the Claimant applied for the role of Swim Instructor at a gym.

90. From September 2024, the Claimant was assessed by the DWP as having limited capacity for work and work related activity.

91. In November 2024, the Claimant applied for the role of trainee train driver.

92. In December 2024, the Claimant applied for the role of Performance Analyst.

93. In January 2025, the Claimant applied for the role of Customer Service Assistant on the platform with a railway company. She was offered an interview in February 2025.

94. In February 2025, the Claimant applied for the role of environment apprentice with a railway company. She also applied for the role of Customer Services Team Leader.

95. In August 2025, the Claimant applied for the role of Social Media Coordinator with the Human League.

Dr Scott's assessment

96. The Claimant saw Dr Scott for an assessment on 12 December 2025.

97. In her report, Dr Scott concluded that prior to commencing the role with the Respondent, the Claimant had a recurrent depressive disorder, generalised anxiety disorder, a harmful pattern of use of alcohol and when this was reduced, the emergence of bulimia nervosa.

98. Dr Scott described that in December 2025, the Claimant presented with a mild to moderately severe generalised anxiety and recurrent depressive symptoms, which were impacted by the Tribunal process. Dr Scott said the Claimant was at times coping better, but when dealing with the Employment Tribunal matters her anxiety and mood would worsen. She noted that the Claimant had been looking for work, and while she would remain vulnerable to deteriorations at times of stress, this would not be expected to be

prolonged.

99. Dr Scott stated in her report that while the Claimant had described her mental health as previously well managed, this was not reflected in her medical records, which reflected a recurrent history of depression, anxiety, and other psychiatric disorders. In terms of the cause, she reported this was likely to stem from childhood issues, being a victim of domestic violence, and a relationship which impacted negatively on her self-esteem.

100. Dr Scott noted the Claimant had previous absences from work for low mood and anxiety, including from the end of 2019 to November 2020. Dr Scott noted that the Claimant suffered "a gradual relapse in low mood and anxiety from the end of the spring 2021 onwards leading to the period of absence in August 2021. Her mental health further deteriorated following her dismissal and latterly, non-index stresses." (para 369).

101. Dr Scott concluded that all the Claimant's complaints to the Tribunal were "*all causal* triggers contributing to her initial mental health relapse in 2021, particularly in her low mood and anxiety" (para 369). She set out her view that had it not been for the Employment Tribunal process, after the Claimant's dismissal, her mental health would have been impacted for three months into 2022. She noted, "By this time, she would have reached her pre-incident mental health presentation." (para 370).

102. Under the hearing, "Apportionment", Dr Scott wrote, "In relation to attempting to apportion the impact of each of the allegations, on balance, and as a guide (as there is no scientific means of assessing this), it is likely each of the complaints broadly estimated at 10% each can be apportioned as impacting the deterioration in CX's mental health. This would therefore estimate within a range of 10-20% from the allegations found to well founded and successful and the remainder from not been well founded and dismissed." (para 374)

103. Under the heading, "Treatment", Dr Scott wrote that antidepressants will have some clinical benefit to the Claimant but that the conclusion of the Employment Tribunal case will be the main benefit that will improve the Claimant's mental health (para 375). She said that while therapy is beneficial, the Claimant may wish to wait for the stress of the employment tribunal process to subside, and then if she wishes to have more support, CBT or another type of relevant therapy would be reasonable. She suggested the Claimant would likely require 12-20 sessions which would cost between £120 to £190 per hour, which would support the impact on the mental health of the well founded and not well-founded complaints.

104. Dr Scott stated that in terms of employment, the Claimant was fit for employment but given the stress of the Employment Tribunal process that was likely to fluctuate. Once the litigation had concluded, she would be fit for employment. She concluded that the Claimant's long-term capacity for employment had not been significantly impacted by the index matters. It was noted that the Claimant has a chronic psychiatric presentation, and at times of significant relapse, this has and will continue to impact her employment capacity. She concluded this would have occurred even in the absence of the current employment matters. She noted she had suffered two depressive episodes and therefore has a more than 80% chance of

suffering a relapse in her condition. She noted that employment would be helpful for the Claimant's mental well-being.

105. The Claimant disagreed with aspects of Dr Scott's assessment. Although the Claimant agreed that she had a long-standing history of anxiety and depression, she argued that she had previously managed these such that she had been able to continue working and functioning. She argued that her mental health deteriorated significantly between November 2020 and December 2021, and thereafter.

106. The Claimant pointed to the fact that, prior to 2019, she had some short term absences from work. She said these were often due to periods of bereavement, and that on each occasion, she had been able to return to work. She accepts she had a period of time off work from November 2019, but this led into Covid 19, which was a difficult and highly unusual situation. However, she had felt able to retrain in a new career by October 2020. This was in marked contrast to her health after she worked for the Respondent. Since December 2021, she had only had one period of employment as a swim instructor for children. This had only lasted for a few weeks, and she had to stop because she kept crying during the lessons and did not feel she was able to safely look after children when in that state.

107. The Claimant also pointed to the significant increase in the number of times she contacted her GP after she stopped working for the Respondent compared to before, and she pointed to the increase in antidepressant medication. She argued that she has had a significant prolonged deterioration in her mental health after her employment with the Respondent.

108. The Claimant also argued that while the symptoms of bulimia nervosa had started when she stopped drinking alcohol in 2020, there had been an escalation in her symptoms, which she says was caused by the stress of the index events and the Tribunal proceedings.

109. Once the Claimant received Dr Scott's report, the Claimant wanted to arrange her own report. But it became clear that this would delay the proceedings and so instead, she compiled a detailed response to the report, titled Addendum to Dr Scott's report, which the Tribunal read and took into account.

The relevant law

110. Section 124(2) of the Equality Act 2010 states that if a tribunal upholds a discrimination claim, it 'may … (b) order the respondent to pay compensation to the complainant". The amount of compensation available corresponds to the damages that could be ordered by a county court in England and Wales for a claim in tort (section 124(2)(b) and (6) combined with section 119(2) and (3) of the Equality Act 2010).

Causation and key principles

111. In *Ministry of Defence v Cannock and ors* [1994] ICR 918 EAT, the EAT commented "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". This

means that tribunals must ascertain the position that the claimant would have been in had the discrimination not occurred or ask what loss has been caused by the discrimination in question.

112. When considering the assessment of compensation for discrimination, tribunals are often required to make findings as to which of a number of injuries or harms were actually caused by the wrongful actions of the respondent. This exercise in divisibility is required where harm suffered by the claimant is partially caused by extraneous factors other than the discrimination for which the respondent or co-respondents have been found liable (*Thaine v London School of Economics* [2010] ICR 1422, EAT).

113. In *Essa v Laing Ltd* [2004] ICR 746, CA, the Court of Appeal confirmed that compensation for an act of direct discrimination should cover all harm caused directly by the act of discrimination, whether or not it was reasonably foreseeable. It held that in negligence and other common law tort cases, the defendant is liable unless the damage differs in kind from what was foreseeable. But it is the kind of damage, and not its extent, that is important. As to the question of whether the kind of damage suffered must be reasonably foreseeable, the Court of Appeal held that, although there is a difference between physical or psychiatric injury on the one hand and injury to feelings on the other, the two are not so unlike as to be of a different kind for the purposes of the test of reasonable foreseeability. Thus, since injury to feelings was a reasonably foreseeable result of the discrimination, it followed that damages in respect of psychiatric injury were not too remote to be recoverable.

114. The 'eggshell skull' principle applies to loss arising from discrimination. The discriminator must take the victim as he or she finds him or her. Even if the victim is unusually sensitive or susceptible, and the level of damage or loss sustained is therefore worse than it would have been for another individual, the discriminator will be liable for the full extent of the damage, loss or injury, so long as it can be shown that this flowed from the act of discrimination.

115. In *Southern v Britannia Hotels Ltd and anor* ET Case No.1800507/14, the claimant was awarded £19,500 for acts of harassment relating to her sex, which she suffered over a period of eight months. The employment tribunal considered that the nature of the harassment concerned was not the very worst of its type. However, the claimant was a highly vulnerable person. She was 22 years old and she had a long history of mental ill health. The harassment was committed by her manager, who held a position of power over her, and although the employer had the means and opportunity to address the problem, it had failed to do so.

116. The eggshell skull principle also applies to the duty to mitigate. In other words, in considering a respondent's contention that the claimant has failed to take reasonable steps to mitigate his or her loss, a tribunal will take into account the claimant's pre-existing vulnerabilities when considering what was and was not reasonable.

117. Where the discrimination exacerbates or accelerates the effect of a pre-existing condition, awards for injury to feelings and personal injury should reflect only the exacerbation or acceleration and require that a tribunal isolate the harm caused by the discrimination in question from pre-existing

damage to the claimant's health or livelihood or harms that may have been caused by entirely non-tortious actions on the respondent's part.

Types of loss

118. Compensation for discrimination can be divided into financial and non-financial loss. Financial loss covers earnings and pension benefits. Non-financial loss covers personal injury, injury to feelings and aggravated damages.

Past loss

119. Claimants are able to seek to recover past losses, which are losses that have already flowed from the act or acts of discrimination.

120. The Employment Protection (Recoupment of Benefits) Regulations 1996 SI 1996/2349 ('the Recoupment Regulations') do not apply to discrimination cases (Regulation 3 and Schedule 1 to the Regulations). However, claimants ought to give credit for such payments in that the value of the payments is deducted when assessing the claimant's compensation. A claimant should not receive more compensation than would put him or her in the same financial position as he or she would have been in had the discrimination not occurred.

121. In *Olayemi v Athena Medical Centre and anor* [2016] ICR 1074, EAT, the issue was whether an employment tribunal had been right to deduct Housing Benefit from a claimant's loss of earnings award in a sex discrimination case. Before the EAT, the claimant relied on *Savage v Saxena* [1998] ICR 357, EAT, in which a majority of the EAT held that Housing Benefit should not be deducted from an unfair dismissal compensatory award. Allowing the claimant's appeal, the EAT noted that the Housing Benefit (General) Regulations 1987 SI 1987/1971 enabled reassessment and 'claw-back' of Housing Benefit in the event of an award in respect of loss of earnings from employment, to avoid double recovery. Therefore, the tribunal should not have reduced the claimant's compensation for loss of earnings by the amount of Housing Benefit she had received following her dismissal. The EAT did acknowledge that, unless a claimant was still in receipt of benefits, the statutory provisions provided no active mechanism by which the local authority would be informed that the claimant had received an award from which 'claw-back' could be made. However, the EAT was of the view that this did not alter the legal position. If benefits received by a claimant can be recovered by the state from a subsequent award of damages, those benefits ought not to be deducted from the award itself.

Compensation for discriminatory acts that contribute to a dismissal

122. In *Reynolds and ors v CLFIS (UK) Ltd* [2015] ICR 1010, CA the claimant claimed that her consultancy arrangement had been ended because of her age. The decision to terminate the arrangement was made by senior manager, Mr Gilmour. However, the Employment Tribunal found that he had been influenced by a presentation given by Mr McMullen and Mr Newcombe. In the presentation a number of deficiencies had been identified in the service provided by the claimant. The Tribunal found that the principal

reason for the termination was the employer's unhappiness with the service that the claimant provided, rather than her age. In reaching this conclusion they considered only Mr Gilmour's mental processes. The claimant appealed to the EAT on a number of grounds, including the ground that the Tribunal misdirected itself that it was only necessary to consider Mr Gilmour's mental processes, when his decision had been based on a presentation made by Mr McMullen and Mr Newcombe. The EAT allowed her appeal. The Respondent appealed to the Court of Appeal. The Court of Appeal held that there was no error by the Tribunal in only considering Mr Gilmore's motivation. The Court of Appeal commented that Dr Reynolds could have claimed the giving of the presentation was discriminatory, that the employer was liable for that discriminatory act, and she could have claimed losses arising from the termination of her consultancy arrangement, since the presentation caused or contributed to that decision. However, Dr Reynolds had not put her case this way in the Employment Tribunal and so the Tribunal could not be criticised for not having considered this argument.

123. The Court of Appeal commented in *Timis v Osipov* [2018] EWCA Civ 2321, at paragraph 49, "In so far as CLFIS is significant in the present case, it is because it confirms that in principle, where a prior detriment has caused a worker to be dismissed, he or she can recover in respect of losses caused by the dismissal as compensation for the consequences of the original detriment, subject to any issue about remoteness."

Future loss of earnings

124. If the losses are continuing at the date of the tribunal hearing, an employment tribunal may have to try to predict how long the claimant's losses will continue. If, at the time of the hearing, the claimant is unemployed, the tribunal will have to consider the period of time it is likely to take him or her to get another job of equal value to the role from which the claimant was dismissed.

125. The tribunal's assessment will be based on findings of fact and will then go on "to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice" (*Software 2000 Ltd v Andrews* [2007] IRLR 568).

126. In *Stroud Rugby Football Club v Monkman* UKEAT/0143/13/SM, the EAT commented that the assessment of future loss is a "rough and ready matter. It always has been and it always will be".

127. In exceptional cases a tribunal may be able to award whole career loss. Such cases are rare and only suitable where there is no real prospect of an employee ever obtaining an equivalent job. Otherwise, a tribunal should stick to the usual approach, suitable for the vast majority of cases, of assessing when it is likely that an employee will get an equivalent job (*Wardle v Credit Agricole* [2011] EWCA Civ 545 and *Lennon-Knight v Yakira Group Ltd* UKEAT/0186/16).

Chance of dismissal

128. Employment tribunals may also need to consider whether, were it not for the discrimination, there could have been a non-discriminatory dismissal at

the same time, or whether there would have been a non-discriminatory dismissal at some point in the future. The chance that the claimant could or would have been dismissed or resigned in any event, with no discrimination, can be recognised by making a proportionate reduction in compensation for future loss. This entails making an assessment of the percentage chance of such an event occurring and adjusting compensation accordingly.

129. The basic principle of assessing the chances of a lawful dismissal, in the context of unfair dismissal, is set out in *Polkey v AE Dayton Services Ltd* [1988] ICR 142, HL. The House of Lords established that where a dismissal was procedurally unfair, but the employer could show that there was a significant chance that, had it followed a fair procedure, it would have dismissed anyway, compensation could be reduced accordingly.

130. In *O'Donoghue v Redcar and Cleveland Borough Council* [2001] IRLR 615, CA, the Court of Appeal held that an employment tribunal, having found an employee to have been unfairly dismissed on sex discriminatory grounds, was entitled to deploy Polkey-type reasoning to limit the period of loss. On the evidence, the tribunal concluded that the employee would have been lawfully dismissed within six months in any event.

131. In *Abbey National plc and anor v Chagger* [2010] ICR 397, CA, the Court of held that if there was a chance that, apart from the discrimination, the claimant would have been dismissed in any event, that possibility had to be factored into the measure of loss.

132. In *KJ v British Council* [2026] EAT 46 the EAT held that an employment tribunal's decision to make a 35 per cent Chagger deduction could not stand where it had not correctly assessed the chance the employee would have resigned absent the discrimination.

Mitigation of loss and retraining costs

133. Claimants are under a duty to mitigate their loss. Compensation may be decreased if a claimant has reduced, or could reasonably have been expected to reduce, his or her losses. It is for the employer to show that the claimant has failed to mitigate his or her loss (*Ministry of Defence v Hunt* and ors [1996] ICR 554, EAT).

134. In *Citibank NA v Kirk* [2022] EAT 103 the EAT adopted in relation to compensation for discrimination the principles set out by the EAT 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.

135. It may be reasonable for a claimant to seek to mitigate his or her loss by retraining, where he or she has failed to find suitable alternative employment (*Orthet Ltd v Vince-Cain* 2005 ICR 374, EAT and *BMB Recruitment v Hunter* EATS 0056/05).

Personal injury

136. Employment tribunals have jurisdiction to award compensation for personal injury caused by unlawful discrimination (*Sheriff v Klyne Tugs (Lowestoft) Ltd* [1999] ICR 1170, CA). Claimants can claim damages relating to psychological injury for discrimination as a separate head of loss in its own right. However, given the risk of double recovery, tribunals must be clear about what is compensated as injury to feelings and what amounts to personal injury.

137. In *Hatton v Sutherland and other cases* [2002] ICR 613, CA, Lady Justice Hale stated that, in any case where it is established that a ‘constellation’ of different symptoms suffered by the claimant stems from a number of different extrinsic causes, a sensible attempt should be made to apportion liability accordingly. She also set out 16 different “practical propositions” relevant to determining whether an employer is liable for the personal or psychiatric injury suffered by the claimant.

138. Propositions numbers 15 and 16 addressed the position where the causes of the harm are multifarious but some of which are not due to the wrongful act of the employer, and where a claimant is predisposed to injury by a condition that was not caused by the employer’s wrongdoing. Proposition 15 states where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered that is attributable to its wrongdoing, unless the harm is truly indivisible. It is for the employer not the claimant to raise the question of apportionment. Proposition 16 states that the assessment of any damages or compensation should take account of any pre-existing disorder or vulnerability and of the chance that

the claimant would have succumbed to a stress-related disorder in any event.

139. In *Thaine v London School of Economics* [2010] ICR 1422, EAT, the EAT expressly approved and applied propositions 15 and 16. In that case, an employment tribunal awarded compensation for psychiatric ill health as well as for injury to feelings and loss of earnings after upholding the claimant's complaint of sexual harassment. However, in light of Hale LJ's propositions, it discounted the overall compensation award by 60 per cent to reflect the fact that there had been a number of 'concurrent causes' for the claimant's ill health for which the employer was not liable — namely, issues in her personal life and incidents of sexual harassment that she had suffered, or perceived herself to have suffered, but for which LSE was not responsible. The claimant challenged that discount on appeal but the EAT endorsed the tribunal's approach. It held that an employer should not have to compensate a claimant for his or her injury in its entirety when the harm for which it was responsible was just one of many causes of the ill health.

140. In *BAE Systems (Operations) Ltd v Konczak* [2018] ICR 1, the Court of Appeal explained that proposition 15 applied where the injury concerned had multiple causes, one or more of which were attributable to the employer's wrongful acts, but one or more of which were not. The proposition stipulated that in such a scenario the employer should only be required to pay compensation for personal injury for that proportion of the harm attributable to its wrongdoing, unless the harm was truly indivisible. Underhill LJ stressed that such apportionment is concerned not with the divisibility of the causative contribution but with the divisibility of the harm. In other words, the question is whether the tribunal can identify — however broadly — a particular part of the suffering that is due to the wrong of the tortfeasor (discriminator), not whether it can assess the degree to which the wrong caused the harm. However, while in some cases divisibility may ultimately prove impossible, the message of Hatton was that even psychiatric harm may be divisible, in which case 'sensible' efforts should be made by tribunals in an attempt to do this.

141. Proposition 16, on the other hand, stipulated that assessment of damages should take account of any pre-existing disorder or peculiar vulnerability, and of the chance that the claimant would have succumbed to a psychiatric disorder regardless of whether the tortious act had been committed. This proposition should be applied where the claimant had a pre-existing vulnerability which was not a cause of the injury in itself but which might have led to a similar injury even if the wrong had not been committed. The Court of Appeal recognised that there might be cases where both propositions applied.

142. In *Konczak* the Court of Appeal held that there was medical evidence supporting the employment tribunal's conclusion that the claimant had only developed a diagnosable illness after the manager's comment. In his view, that conclusion had not been perverse. It was not an affront to justice, when affixing the respondent with full liability for this, to ignore the claimant's history of stress and problems at work for which the employer bore no responsibility or legal liability. The basic rule was that a wrongdoer had to take his victim as he found him. This was not inherently unjust, as the effects of that rule were mitigated by Hale LJ's propositions 15 and 16. However,

proposition 15 required a finding that the injury in question was indeed divisible, and the tribunal was unable to make such a finding here. It had been unable to distinguish between tortious and non-tortious harms. The tribunal's full award of compensation, containing as it did no apportionment or discount, therefore stood.

143. The Court of Appeal's decision in *Konczak* confirms that the propositions set out by Hale LJ apply to cases where a claimant's complex history indicates that he or she has suffered workplace stress or other psychiatric injury as a result of a mix of tortious and non-tortious conduct by the respondent. In such cases, the tribunal is to do its best to achieve an apportionment as between those harms and to reflect this in the amount of compensation it awards. Furthermore, if the evidence shows that the claimant, prior to the respondent's wrongdoing, was already mentally vulnerable or had a pre-existing mental health condition, then the tribunal should apply an appropriate discount to the compensation awarded to reflect the chance that the harm or injury would have occurred even if the wrongdoing had not occurred.

144. In *Olayemi v Athena Medical Centre and anor* [2016] ICR 1074, EAT, the employment tribunal found that the claimant had been subjected to a campaign of harassment related to her sex, culminating in her dismissal. She suffered from post-traumatic stress disorder (PTSD) as a result of that harassment. The tribunal awarded her compensation, including awards for injury to feelings and personal injury, and sums in respect of past and future losses. It made a 12.5 per cent deduction from the awards for personal injury, past loss and future loss on account of the fact that the claimant had suffered a previous episode of PTSD which had ended earlier, for reasons unrelated to the discrimination found. The tribunal relied on a medical report which stated that 'the previous history of PTSD will have contributed to the tune of 10–15 per cent towards the causation of the present episode'. On appeal, the EAT held that the 12.5 per cent reduction could not be justified. The tribunal had not explained why it considered that the previous episode of PTSD was a material cause of the more recent episode, as opposed to merely rendering the claimant vulnerable or susceptible to a further episode. If an employee has a predisposition to a psychiatric condition, that is not the same as having caused that condition. If the claimant had not been discriminated against, some other trigger would have been required to cause her to relapse into illness, but no other trigger was suggested to be in play at the relevant time.

145. In *First Great Western Ltd v Waiyego* EAT 0056/18, an employment tribunal upheld the claimant's disability discrimination claim. It awarded non-pecuniary losses of £22,000 in respect of psychiatric injury and £19,800 for injury to feelings. The tribunal specifically found that psychiatric injury had been caused by the failure to help facilitate access to the CBT. On appeal, the respondent contended that, in awarding such high sums, the tribunal had erred by not recognising or giving sufficient weight to the fact that the claimant suffered from a pre-existing psychiatric condition which had been caused by two earlier traumatic incidents in respect of which she had failed to establish discrimination for which the employer was liable. The EAT held that the tribunal had been clearly aware that the claimant had pre-existing mental health problems. It was the case that the respondent had to take the claimant as it found her. Undoubtedly, she was particularly susceptible to

harm to her mental state, but she was also a good subject for CBT, which had delivered solid benefits for her in the past and had enabled her to recover and maintain good work attendance for a substantial period of years. The tribunal's reasoning for finding that the respondent's failure to provide the required reasonable adjustment had itself caused psychiatric injury was entirely sound.

146. In *A and anor v C Ltd and ors* [2025] EAT 165, the EAT held that the tribunal had applied the wrong test of causation by asking whether B's psychiatric damage was 'solely or mainly attributable' to the discriminatory treatment. Having identified multiple potential causes, the tribunal should have adopted the approach set out in *Olayemi.* This meant that the tribunal needed to assess whether the discriminatory treatment (or parts of it) had contributed to a deterioration in her mental health to some percentage degree, or whether that treatment exacerbated the effects of the PTSD as a latent pre-existing condition, or whether she was simply peculiarly vulnerable, and tipped over by that cumulative treatment.

147. The danger of double counting was recognised by the EAT in *HM Prison Service v Salmon* [2001] IRLR 425, EAT, where it acknowledged that, although the two awards are distinct in principle, they are not easily separable in practice because it is not always possible to identify when the distress and humiliation suffered as a result of unlawful discrimination becomes a recognised psychiatric illness. The EAT saw nothing wrong in practice with tribunals treating the personal injury as having been compensated for under the heading of injury to feelings, as long as the tribunal identifies those aspects of the victim's medical condition that the injury to feelings award is also intended to cover. Moreover, where separate awards are made, a tribunal must be aware of the risk of compensating the victim twice for the same suffering.

Injury to feelings

148. In *Prison Service and ors v Johnson* [1997] ICR 275, EAT, the EAT summarised the general principles that underlie awards for injury to feelings:
    - awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party
    - an award should not be inflated by feelings of indignation at the guilty party's conduct
    - awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches
    - awards should be broadly similar to the range of awards in personal injury cases
    - tribunals should bear in mind the value in everyday life of the sum they are contemplating, and
    - tribunals should bear in mind the need for public respect for the level of the awards made.

149. In *Vento v Chief Constable of West Yorkshire Police (No.2)* [2003] ICR 318, CA, the Court of Appeal set down three bands of injury to feelings award, indicating the range of award that is appropriate depending on the seriousness of the discrimination in question. Injury to feelings

encompasses ‘subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on’.

150. In *Eddie Stobart Ltd v Graham* [2025] EAT 14 the EAT noted that, although the top Vento band refers to a ‘lengthy campaign of discriminatory harassment’, and the bottom band refers to an ‘isolated or one-off occurrence’, there are many factual possibilities in the territory in between. The frequency and duration of the claimant’s exposure to the discriminatory conduct are not the only measures that could support an inference of injury. Relevant considerations include:
    - whether the discrimination was ‘overt’. Overt discrimination is more likely to cause distress and humiliation
    - the existence of ridicule or exposure. Discrimination played out in front of colleagues or for others to see might well cause greater harm. It might provide a reasoned basis for inferring as a fact the seriousness of the injury suffered, especially in respect of compensable feelings of humiliation
    - whether the discrimination reflects or exposes an asymmetry of power, influence and information. In some cases, that could be manifested in disciplinary threats that create worry, or in exclusion that causes isolation.

151. The EAT considered that the following may be helpful to consider:
    - the claimant’s description of the injury. Tribunals should be ready to scrutinise apparent stoicism with as much care as apparent upset; for some individuals, stoicism is the ‘refuge of the inarticulate’. Equally, tribunals should take claimants as they find them, considering whether there is any fragility that makes them more vulnerable to upset or means that the experience is more impactful upon them
    - the duration of consequences. A claimant’s upset may be fleeting, or it may be long lasting, and much may depend on his or her levels of fortitude and resilience
    - the effect on past, current and future work. It may be relevant to consider the extent to which a claimant’s self-esteem was bound up in his or her occupational life, which differs from person to person. An evidenced wish to leave an enjoyable and fulfilling line of work owing to discriminatory treatment can properly inform the tribunal’s assessment of the hurt caused
    - the effect on personal life or quality of life. 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 may, in appropriate cases, be helpful, such as from a family member.

152. In *Komeng v Creative Support Ltd* EAT 0275/18 the EAT emphasised that, when considering awards for injury to feelings, a tribunal’s focus most be on the effect of the unlawful discriminatory treatment on the claimant, not on the gravity of the discriminatory acts of the respondent.

153. In *Al Jumard v Clywd Leisure Ltd and ors* [2008] IRLR 345, EAT, the EAT ruled that where unlawful discrimination has occurred in respect of two or more different grounds (i.e. protected characteristics), the compensatory

award for injury to feelings should be assessed in respect of each discriminatory act.

154. In *Vento v Chief Constable of West Yorkshire Police* (No.2) [2003] ICR 318, CA, the Court of Appeal stressed that there is considerable flexibility within each of the three compensation bands, so allowing tribunals to fix what they consider to be fair, reasonable and just compensation for injury to feelings in the particular circumstances of each case. Furthermore, common sense required that regard should be had to the 'overall magnitude of the sum total of the awards of compensation for non-pecuniary loss made under the various headings of injury to feelings, psychiatric damage and aggravated damage'.

155. The conduct of the respondent, including defending the claim in an inappropriate manner, can increase the level of injury to feelings (*Commissioner of Police of the Metropolis v Shaw* [2012] I.C.R. 464).

Aggravated damages

156. The Court of Appeal in *Alexander v Home Office* [1988] ICR 685, CA, held that aggravated damages can be awarded in a discrimination case where the defendants have behaved 'in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination'.

157. In *Commissioner of Police of the Metropolis v Shaw* [2012] ICR 464, EAT, the EAT identified three broad categories of case:

- where the manner in which the wrong was committed was particularly upsetting. (i.e. 'high-handed, malicious, insulting or oppressive manner')
- where there was a discriminatory motive — i.e. the conduct was evidently based on prejudice or animosity, or was spiteful, vindictive or intended to wound. Where such motive is evident, the discrimination will be likely to cause more distress than the same acts would cause if done inadvertently.
- where subsequent conduct adds to the injury — for example, where the employer conducts tribunal proceedings in an unnecessarily offensive manner, or 'rubs salt in the wound' by plainly showing that it does not take the claimant's complaint of discrimination seriously.

158. In *Commissioner of Police of the Metropolis v Shaw* the EAT was of the view that aggravated damages are an aspect of injury to feelings and should be dealt with as a sub-heading under the same head of loss to avoid over-compensation. He noted that aggravated damages are compensatory only and should not be awarded to punish the respondent.

159. In *Wilson Barca LLP and ors v Shirin* EAT 0276/19 the EAT agreed that the employment tribunal had been entitled to find that the employer's actions towards the claimant were not only insulting but also oppressive, and that an award of aggravated damages was therefore potentially open to it. However, it held that the tribunal had failed to explain both why making an ordinary injury to feelings award was insufficient to compensate the claimant for any aggravating features and how the conduct giving rise to the award

of aggravated damages had increased the impact of the discriminatory act on the claimant.

160. In *Zaiwalla and Co and anor v Walia* [2002] IRLR 697, EAT, the EAT upheld an award of £7,500 for aggravated damages in a case where the employment tribunal found that the employer's solicitors had put a 'monumental amount of effort' into defending the proceedings to an 'inappropriate' extent. It further found that the defence of the proceedings was 'deliberately designed… to be intimidatory and cause the maximum unease and distress to the claimant'. This was an exceptional case, and cases where an award of aggravated damages will be made in respect of such behaviour would be few and far between.

ACAS Code of conduct

161. Employment tribunals have the power to increase or decrease awards for compensation by up to 25 per cent in cases where there has been an unreasonable failure, by either party, to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures.

162. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), states at subsection (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 per cent.'

163. Tribunals are concerned with substantive compliance with the requirements of the Code. In *Rentplus v Coulson* [2022] EAT 81, the EAT held that pretending to apply an appropriate procedure will not amount to compliance.

164. It was confirmed in *Slade v Biggs* [2021] EA-2019-00687 and *Secretary of State for Justice v Plaistow* [2021] UKEAT/0016/20, that the award has both compensatory and punitive elements.

165. In *Rentplus v Coulson*, the EAT suggest Tribunal's should ask the following questions:

1) Is the claim one which raises a matter to which the ACAS Code applies?
2) Has there been a failure to comply with the ACAS Code in relation to that matter?
3) Was the failure to comply with the ACAS Code unreasonable?
4) Is it just and equitable to award an uplift because of the failure to comply with the Code and, if so, by what percentage, up to 25%?

166. In *Slade v Biggs*, the EAT suggested a Tribunal should consider the following questions:

1) Is the case such to make it just and equitable to award any ACAS uplift?
2) If so, what does the ET consider a just and equitable percentage, not exceeding although possibly equalling, 25%?

3) Does the uplift overlap, or potentially overlap, with other general awards, such as injury to feelings and, if so, what in the ET's judgment is the appropriate adjustment, if any, to the percentage
4) Applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the ET disproportionate in absolute terms and, if so, what further adjustment needs to be made?

The Tribunal's findings

What financial losses has the discrimination caused the Claimant? What, if any, financial losses are attributable to the acts of discrimination which the Claimant succeeded with? Would the Claimant's employment have ended in any event?

Loss of income and pension loss

167. In the Claimant's updated Schedule of Loss, the Claimant has claimed her past loss of income from the date of her dismissal to the date of the remedy hearing. From this she has deducted the amount received in Universal credit payments and her income as a part-time swimming teacher (£626.99). The Claimant also claimed pension loss. She claimed an employer contribution of 26.6%.

168. The Respondent's initial position regarding the Claimant's claim for past financial loss, as set out in the Respondent's skeleton argument, was that as the Claimant had not succeeded with her claim relating to her dismissal, the Respondent was not liable for her loss of earnings that flowed from her dismissal.

169. During the hearing, the Tribunal asked if the Respondent's position was that even if the Tribunal found that the discriminatory acts had an impact on the Claimant's performance, which in turn resulted in or contributed to her dismissal, the Tribunal could not as a matter of law award her loss of income. The Respondent was directed to paragraph 647 of the liability judgment which noted:

"The Tribunal understood that part of the point that the Claimant was making in her statement was that had she not been subjected to sexual harassment, her performance would not have been adversely affected, and then she would not have been dismissed. The extent to which RX's behaviour may have been the reason, or one of the reasons why her performance suffered, which led to her dismissal, is a matter which may be relevant to the Claimant's remedy award. However, for the purposes of considering the claim for direct sex discrimination, in respect of the allegation made against Governor Frost, the Tribunal needed to consider if Governor Frost would have treated a hypothetical male comparator in the same way or whether she would have treated him differently."

170. Initially, the Respondent was of the view that the Tribunal could not award loss of income even if they concluded that the allegations which were upheld had impacted the Claimant's performance and this in turn had led to her dismissal. However, in the course of the remedy hearing, Ms Hirsch revised her view and said that she accepted that legally this was a permissible course of action for the Tribunal to take (which the Tribunal considered to

be correct given the principles as set out in *Reynolds and ors v CLFIS (UK) Ltd* and *Timis v Osipov* above) but she said the Tribunal should not reach this conclusion on the facts. In essence, the Respondent's argument was that the Claimant was not suited to the role and there were ample findings that supported this.

171. The Respondent's position was that the Claimant would have been dismissed at the same time she was dismissed even if she had not been subjected to sexual harassment and direct sex discrimination by RX, harassment related to her vegan beliefs and direct discrimination related to her vegan beliefs by Officer Connolly, and even if CM Henderson had not failed to take action in November 2021 regarding RX.

172. The Tribunal concluded that the discriminatory acts for which the Respondent were held liable did have an impact on the Claimant's performance at work, which contributed to her dismissal.

173. In reaching this decision, the Tribunal took into account that by mid-April 2021, the Claimant was sending RX messages and emails asking him to stop contacting her, particularly at work (paras 55-57 of the liability judgment). By mid- May 2021, the tone of the emails had changed, and she was being more emphatic about wanting RX to stop contacting her ("You don't let up do you? I really need some space from you, please stop contacting me. I am feeling really crap again and you are certainly a contributing factor." – para 74 of the liability judgment). The Tribunal also took into account our previous finding that RX sent the Claimant a large number of emails to her work email address to try to pressurise her into agreeing to meet up with him again even after he had left - even after she had asked him to stop. It is highly likely these events would have affected the Claimant's performance at work.

174. In addition, the Tribunal took into account the fact that the Claimant raised the issue of RX's behaviour towards her with CM Henderson on 19 May 2021, such that CM Henderson asked if it needed to be reported or escalated. The Claimant raised this just after she had been required to attend a meeting with three Line Managers to discuss her performance. This suggests the Claimant was raising this matter with CM Henderson because of a concern that her performance had been affected by the events that occurred with RX.

175. The Tribunal also took into account the fact that towards the end of May 2021, the Claimant was sending a series of messages to RX in which she was asking him to never contact her again, saying it was like having a stalker, and referring to his messages as constant and incessant. The Claimant then raised RX's behaviour with CM Henderson again in June 2021, which suggested it was still causing her considerable concern. Again, the Claimant raised her concerns about RX's behaviour towards her when CM Henderson was raising an issue regarding the Claimant's performance with her (para 103 of the liability judgment). Similarly, the Claimant raised the issue of the way she had been treated by RX when she appealed the performance warning (paras 139 and 148 of the liability judgment) and when she met with Governor Frost on 2 December 2021 and faced dismissal for performance issues (para 185 of the liability judgment). It was apparent to the Tribunal that, throughout the year, the Claimant was saying to her former

employers that she felt his behaviour had affected her performance at work.

176. Later in the year, in November 2021, when the Claimant returned to work after being off sick, she referred to contacting the police once she had seen that RX had emailed her while she was off work (para 169 of the liability judgment). She asked for help from Governor Carbone to block his emails and raised her concerns about RX with both CM Henderson and Governor Carbone.

177. Considering the overall pattern of behaviour the Claimant was subjected to, and the fact the Claimant repeatedly raised her concerns, the Tribunal considered it was very likely that the Claimant's performance at work was adversely affected by RX's behaviour towards her. The Claimant was new to the role and still in her probationary period. She had only just finished her training when RX began to subject her to harassment. RX was senior in rank to the Claimant and had considerably more experience. In these circumstances, the Tribunal found it would have been unusual if the Claimant's performance at work had not suffered, given what she was dealing with.

178. Similarly, the Tribunal also found that Officer Connolly's behaviour towards the Claimant had an impact on her performance. It was the Claimant who requested mediation with Officer Connolly. On 31 May 2021, the Claimant asked to move from working on J Wing, due to his behaviour (paragraph 99 of the liability judgment). She referred to not wanting to dread coming into work and not feeling comfortable working on J Wing full time anymore. She subsequently asked to move to a different prison. As set out in paragraph 115 of the liability judgment, immediately after the mediation, she wrote: "I feel the last few months have taken their toll and I would like a fresh start, where I will know not to be myself at work and be away from all the stress that I am feeling here at Send." She said she did not feel that she could work in a toxic environment for much longer without it having a lasting impact on her health. She later submitted a CPIR in which she described how difficult she found working with him and her feeling that she had to constantly watch her back and that she felt like leaving her job because of him (see para 122 of the liability judgment).

179. In light of this evidence, and the conclusions reached by the Tribunal regarding Officer Connolly's behaviour towards the Claimant – in particular, the type of language he used – the Tribunal found it was likely that Officer Connolly's behaviour (which overlapped in time with RX's behaviour) also had an impact on the Claimant's performance.

180. Overall, the Tribunal concluded that both RX's treatment of the Claimant and Officer Connolly's treatment of the Claimant had an impact on her performance, which in turn led to her dismissal.

181. The Tribunal then considered how likely it was that even if the Claimant had not been subjected to the discriminatory acts which the Tribunal upheld, that the Claimant would still have been dismissed for failing her probationary period on 2 December 2021.

182. The Tribunal concluded there was an 80% chance that even without the discriminatory acts, the Claimant's employment would have terminated on

2 December 2021 in any event.

183. In reaching this decision, the Tribunal concluded that the Claimant was not well suited to the role of Prison Officer. The Claimant accepted herself that she often doubted if she was suited to the role (para 80 of the liability judgment).

184. The Claimant did not seem to be well suited to the role for a range of reasons. Firstly, she came into the role with ideas of being able to assist the prisoners by teaching them yoga. This was a laudable aim, but quite different to the reality of what life inside a prison entailed. The Claimant described herself in her witness statement for the liability hearing as a "free spirit", but the role of prison officer often required her to subject the prisoners to control and restraint, and she witnessed acts of intentional self-harm and attempted suicides. The Claimant also clearly struggled when the prisoners were abusive to her. These events took an emotional toll on the Claimant. On 13 May 2021, the Claimant saw her GP. It was noted her mood was up and down and she still got upset about the end of her long relationship. She also told the GP that one of the prisoners had tried to commit suicide and she had found this upsetting. The Claimant reported to Dr Scott that she experienced flashbacks and nightmares of seeing people in prison when they had self-harmed including a time when a woman had flicked blood. In light of the Claimant's medical history, there was a risk she would not be able to tolerate working in a prison on a long-term basis.

185. Secondly, the Claimant also clearly found the culture of the prison, and particularly the practice of colleagues reporting each other by way of CPIR reports to be difficult. When the Claimant spoke to Governor Frost on 2 December 2021, she said it was the worst place she had ever worked. She noted people constantly made reports about her, and accused her of things, and her face did not fit from day one. The Tribunal understood why the Claimant would have found it difficult to have discovered that her colleagues had, for example, reported her about some photos she had posted on Facebook several years previously. These were not however discriminatory acts which were upheld by the Tribunal, but part and parcel of life in the prison environment.

186. Thirdly, and most importantly, the Tribunal concluded that not all of the performance concerns about the Claimant arose because of the discrimination the Claimant suffered. A range of different members of staff reported the Claimant for a range of different performance issues. Some of those concerns, such as being distracted and failing to lock a door, being late back from lunch due to having a therapy session, or spending too much time on the computer on non-work matters, are the type of performance concern that would likely arise because someone was being subjected to discriminatory conduct (i.e. being distracted or forgetful). Other issues were not so obviously linked to the impact of discriminatory acts and are more indicative of an inherent unsuitability for the role. For example, there were issues with the Claimant's professional boundaries with prisoners, and concerns about her making inappropriate comments to some of her colleagues. Concerns were raised about the fact she had been reluctant to intervene to deal with an argument between two groups of prisoners. These types of performance concerns suggest that she simply was not suited to the role.

187. Taking each of the factors listed above into account, the Tribunal reached the view that there was an 80% chance the Claimant would have been dismissed on 2 December 2021 in any event for failing her probation.

188. The Tribunal concluded there was a 20% chance that if the discriminatory events had not occurred, the Claimant would have been able to better respond to the criticisms levelled at her regarding her performance, and she would have been able to improve enough to have remained in employment. The Tribunal took into account CM Henderson's positive interim probationary review, which in July 2021 suggested CM Henderson believed it was possible for the Claimant to become "a very well rounded officer" (see paragraph 119 of the liability judgment). The Tribunal accepted the discriminatory acts had a profound impact on the Claimant's confidence and self-esteem, and concluded that if they had not occurred, she would have been likely to have had more resilience and therefore a greater chance to address the performance issues raised with her.

Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job? If not, for what period of loss should the Claimant be compensated?

189. By the time of the remedy hearing, in February 2026, the Claimant had not obtained a new role. She had been a swimming instructor, teaching children, for a short period of time in March 2022, but she had to stop because she kept crying during the lessons. She did not feel she was able to safely look after children at that time.

190. Although she had applied for a few roles (set out above at paras 86-95), the Claimant's case was she had not been well enough to work as demonstrated by her medical evidence from December 2020 onwards as set out in her GP records and the finding that she had limited capacity for work.

191. The Respondent argued that if the Tribunal were to award damages for loss of income it should only be until the end of March 2022. In support of this argument, the Respondent relied on Dr Scott's report.

192. Dr Scott's view, as set out under the heading, "Employment" was that in December 2025, the Claimant was fit to work but given the on-going stress of the employment tribunal that would be likely to fluctuate and that the Claimant would be fit to work once the current litigation was concluded. She noted, "Employment is also helpful for her mental well-being. There is no indication that she would not be fit for work following conclusion of current employment matters."

193. The Respondent however pointed to a separate part of Dr Scott's report, which was titled, "Causality", where Dr Scott had written,

> "Following CX's dismissal in December 2021, the employment tribunal stress impacted her mood and anxiety in 2022. In the absence of the employment tribunal, her mental health would likely on balance have been impacted until leaving employment, likely therefore for up to 3 months into 2022 (as she was dismissed in December 2021). By this time, she would

have reached her pre-incident mental health presentation (i.e. November 2020)." (para 370 of Dr Scott's report).

194. The Tribunal found this paragraph, along with some other parts of Dr Scott's report, difficult to understand. It states that if the Claimant had not commenced Employment Tribunal proceedings, her mental health would have been impacted "until leaving employment", which was December 2021, but the sentence then continues, "likely therefore for up to 3 months into 2022". Dr Scott says by this time the Claimant would have reached her pre-incident mental health presentation. While not very clear, Dr Scott seemed to be saying had the Claimant not taken Employment Tribunal proceedings, by March 2022, the Claimant's mental health would have returned to the same state it was in before she started working for the Respondent in November 2020. This suggests she concluded after March 2022, the significant and lasting deterioration in the Claimant's mental health was caused solely by the Employment Tribunal proceedings. Dr Scott did not however offer any reasons which explained how she reached this conclusion.

195. The Respondent therefore argued that if the Claimant had not commenced Employment Tribunal proceedings, the Claimant would have been well enough to find work from March 2022, and so any loss of income after that date is not attributable to the discrimination, but to the stress of the Employment Tribunal process. The Respondent did not rely on any other arguments related to mitigation, other than this one part of Dr Scott's report. They did not produce any evidence of suitable vacancies, which they say were advertised roles which the Claimant could have applied for.

196. The Tribunal was not persuaded by the Respondent's argument for a number of reasons.

197. First of all, if it was Dr Scott's opinion that the Claimant would have been fit to work from March 2022, were it not for the Employment Tribunal proceedings, the Tribunal would have expected Dr Scott to have made this explicitly clear in the section marked "Employment". The Tribunal also expected Dr Scott to explain why she reached this conclusion such that the Tribunal was able to understand her rationale.

198. Secondly, the Tribunal was not able to agree with Dr Scott's conclusion that were it not for the Employment Tribunal proceedings, the Claimant's mental health would have returned to its pre-incident level by March 2022, because that did not seem to be consistent with what was recorded in the Claimant's GP records. As set out above, on 21 April 2022, the Claimant reported to her GP that she was suffering with heightened anxiety and depression since being sexually harassed and stalked by a senior member of staff from the prison that she was working at. She reported she had been given a written warning after she reported him and then was fired after being off work with stress sickness. She is recorded as saying this was making her feel really anxious and worried. She reported that she was having night terrors and that she thought she had PTSD. She was taking Duloxetine, was experiencing hair loss, night terrors, night sweats, and a loss of confidence. She was recorded as telling the GP that she was binge eating, this was new, and she felt she was developing an eating disorder. This entry in the Claimant's GP records occurred *after March 2022*.

199. The Claimant's ill health, at the end of April 2022, cannot have been solely caused by the stress of the Employment Tribunal proceedings, given all that had happened was the Claimant had put in her claim form. Further, what was reported to the GP in April 2022 was that the cause of her anxiety was RX's behaviour towards her and her dismissal. Pre-November 2019, the Claimant had not reported to her GP that she had suffered hair loss, night terrors or night sweats. Nor had she reported to her GP that she was binge eating. While the Tribunal accepted that in other documents the Claimant was recorded as saying she had begun to binge eat in 2020, when she had stopped drinking, the first time the Claimant told her GP about the binge eating was in April 2022, which was consistent with what the Claimant told the Tribunal – that the frequency of the binge eating worsened after the Claimant's employment with the Respondent.

200. It was apparent to the Tribunal that the Claimant's mental health was significantly worse after her period of employment with the Respondent. The chronology above shows a marked deterioration in the Claimant's mental health from August 2021 to date. The Tribunal certainly accepted that the Claimant had found the Employment Tribunal process extremely stressful and had reported this to her GP numerous times over the years of litigation, but the Tribunal had very significant reservations about finding that this was the sole cause of her significant mental health deterioration from March 2022 to February 2026.

201. In order to have been persuaded that were it not for the Employment Tribunal proceedings, the Claimant would have been fit to work by March 2022, the Tribunal would have needed to have understood what Dr Scott's reasons were for reaching this conclusion, particularly in the face of such extensive GP notes which set out a very significant period of ill health for the Claimant consisting of hair loss, a worsening eating disorder, increased references to suicidal ideation, and a marked increase in anti-depressant medication (in terms of the length of time it was taken for and repeated increases in the dose) and other treatments. While the GP records suggest the Employment Tribunal proceedings were a considerable cause of stress for the Claimant, this was not the only factor referred to. By way of example, when discharged from the eating disorder clinic, the letter to her GP, dated 11 November 2025, noted: "Unfortunately, external circumstances impeded [CX's] progress. She has been involved in an employment tribunal with her former employer, and the stress this placed her under, *as well as the emotional difficulties arising from her past employment* were continuing reoccurring themes during our work together" (p170 – emphasis added).

202. The Respondent accepted at the remedy hearing that some parts of Dr Scott's report were not very clear. The Respondent's position was however that her expert report was the best evidence that the Tribunal had to go on. However, at this stage, the Tribunal is considering if the Respondent has proved, on the balance of probabilities, that the Claimant had failed to mitigate her loss. For the reasons given above, the Tribunal did not find this part of Dr Scott's report was persuasive, and the Tribunal was not persuaded by the Respondent's argument that the Claimant should only be awarded her loss of income to March 2022 because if she had not taken Employment Tribunal proceedings, her health would have returned to its pre-incident level, and therefore she could have worked from that point on.

203. On the basis of 1) the medical evidence presented by the Claimant in the form of her GP notes and other medical records (such as the discharge letters from the Eating Disorder clinic), 2) the fact she was assessed by the DWP as having limited capacity for work, and 3) her own evidence to the Tribunal orally and in her witness statement, the Tribunal concluded that the Claimant's health was such that she was unable to work from the end of her employment in December 2021 to the date of the remedy hearing in February 2026.

204. As the Tribunal found there was an 80% chance the Claimant would have been dismissed in any event, even if the discriminatory acts had not occurred, the Tribunal awarded the Claimant compensation of 20% of her income and pension loss from the date of her dismissal to the date of the remedy hearing in February 2026.

Future Loss of income

205. In her Schedule of Loss, the Claimant set out various different scenarios regarding future loss of income. She set out options if she were to be unable to work for a further 5 years, 7 years or 10 years. There was however no medical evidence which suggested the Claimant was likely to be unfit to work for 5 years, 7 years or 10 years.

206. As noted above, Dr Scott stated: "In relation to her fitness for employment she is in my opinion fit for employment however given the ongoing stress of the employment tribunal this will likely fluctuate. She would be fit for employment once the current litigation is concluded" (para 380).

207. Dr Scott also concluded that the Claimant's "long-term capacity for employment has not been significantly impacted by the index matters. She is a lady with a chronic psychiatric presentation and at times of significant relapses, this has and will continue to impact her employment capacity and would have done so, even in the absence of the current employment matters. She has suffered more than two depressive episodes and therefore has a more than 80% chance of suffering a relapse in her depressive condition."

208. The Tribunal considered it is unlikely that once the Employment Tribunal proceedings conclude, the Claimant will be able to start in a new role straight away. The Claimant has been out of work for a very lengthy period of time and is likely to need support returning to work. Dr Scott's report indicated if the Claimant felt she would benefit from further therapy (which the Claimant clearly does think she will benefit from), then 12-20 sessions of CBT or other relevant therapy would be beneficial. The eating disorder clinic has also suggested the Claimant could be re-referred for further treatment once the Employment Tribunal process had concluded.

209. The Tribunal thought it was likely the Claimant would need a period of time to recover, and have the further recommended therapy or treatment, before being able to deal with the pressures of a new role. The Tribunal also considered that the Claimant would be unlikely to be able to find a new role straight away, given that she has not worked for over 5 years.

210. Overall, the Tribunal found that the Claimant will be able to start work again in 12 months. The Tribunal considered this was a realistic amount of time in which the Claimant should be able to have the necessary course of therapy, recover from the exacerbation to her mental health caused by the discrimination and the stress of the proceedings, obtain further support regarding her eating disorder, and find, apply for, interview for, and obtain a new role.

211. The Tribunal reached the conclusion that the Claimant will be fit to start work in a year, on the basis that 1) the Claimant indicated to her GP a number of times that she hoped to be able to start work again once the Employment Tribunal process had concluded, 2) she will have the benefit of a further 12-20 therapy sessions, 3) the Claimant has the benefit of supportive family members, and 4) there was no medical evidence which suggested she will be unfit for work for a lengthy period in the future.

212. The Tribunal found the Claimant would be unlikely, within 12 months, to find a role of equal value to the role she was performing for the Respondent, particularly in terms of the employer pension contribution. The Tribunal thought it was more likely that the Claimant would be able to find work of a similar nature to the type of work she did before she started working for the Respondent, such as working as a swim instructor. The Tribunal recognised that this was unlikely to be as well paid as her role with the Respondent or have an equal pension. However, as the Claimant has be awarded 20% of her loss of income and pension loss, the Tribunal concluded that she was likely to be able to find a role in which she earned more than 20% of her annual salary with the Respondent and which entailed a pension contribution that is 20% of the Respondent's contribution, and therefore at that point her losses would cease.

<u>The calculation for past loss of income and pension loss</u>

213. The Claimant's basic annual gross salary with the Respondent when she was given a contract in February 2021 (after she had completed her training) was £22,851 (£19,531 base pay and £3,320 for unsocial working hours – p128 of the liability hearing bundle). The Claimant's last day of service with the Respondent was 6 December 2021. She was paid 5 weeks of notice pay, which means she was paid until 10 January 2022. The period between 10 January 2022 and 25 February 2026 is 4 years, 1 month and 15 days or 49.5 months.

214. Over the course of 2021, the Claimant's net monthly pay fluctuated significantly, because for some months the Claimant was working an excessive amount of overtime, and some months the Claimant did not work any overtime at all. If the Claimant had remained in employment with the Respondent, it is likely she would have worked some overtime each month, but not as much as she was working in May or June 2021, as she was working an unsustainable amount of overtime in those months. To calculate a fair average net monthly pay, the Tribunal added the net salary received by the Claimant each month over the year of 2021 (as shown on her payslips) but not counting the salary payments she received in October and November 2021, as in those months she was being paid sick pay. In addition, the Respondent's documentation shows the Claimant may have been overpaid slightly in October 2021, so this month was also not relied

upon for that reason. The total net pay the Claimant received from January to December 2021 (less the payments in October and November 2021) was £23,437. Divided by 10 months, this gives an average basic net salary of £2,343 per month. 20% of £2,343 is £468.60 per month. £468.60 multiplied by 49.5 months is £23,195.70.

215. In terms of pension loss, the Claimant's payslips show an employer contribution of 26.6%, which raised to 27.1% in November 2021. The total employer pension in the year to date in her December 2021 payslip was £5,412. By March 2022, the year-to-date figure was £6,508. The monthly contribution for the final few months of payslips was £547 per month. 20% of £547 is £109.40. £109.40 multiplied by 49.5 months is £5,415.30.

216. As a result, 20% of the Claimant's loss of income and pension loss from 10 January 2022 to 25 February 2026 is £28,611.

217. In terms of mitigation, the Tribunal has offset from this figure the amounts the Claimant has received in income and from Universal Credit. In line with the case law above, the Tribunal has not offset the amounts received as Housing Benefit. The Claimant started receiving Universal Credit payments in November 2022, and it is understood, she received additional payments for being assessed as having limited capacity for work and work related activity from September 2024 onwards.

218. Universal credit payments for someone single and over 25 between November 2022 to March 2023 were £334.91 per month. From April 2023 to March 2024, they were £368.74 per month. From April 2024 to March 2025, they were £393.45 per month, and from April 2025 to February 2026, they were £400.14 per month.

219. It is the Tribunal's understanding that between November 2022 and March 2023, the Claimant received £1,674.55 (£334.91 per month for 5 months). Between April 2023 and March 2024, the Claimant received £4,424.88 (£368.74 per month for 12 months). Between April 2024 and March 2025, the Claimant received £4,721.40 (£393.45 per month for 12 months). Between April 2025 and February 2026, the Claimant received £4,401.54 (£400.14 per month for 11 months). This comes to a total of £15,222.37.

220. The Tribunal had some difficulty working out how much the Claimant received as additional payments for having been assessed as having limited capacity for work and work related activity. Initially, the Claimant was assessed as having limited capacity for work, and it does not appear she therefore received an additional payment at that time. It appeared to the Tribunal from the documents provided by the Claimant in the bundle, the Claimant received an additional £423.27 per month when assessed as having limited capacity for work and work related activity from 1 September 2024. If that is correct, and if the Claimant has received that amount continuously from September 2024 to date, then between 1 September 2024 and 25 February 2026 (17 months and 24 days) the Claimant has received £7,534.56.

221. The Claimant also received £626.99 in income for being a swimming instructor in March 2022.

222. The total amount to offset from the Claimant's losses is therefore £15,222.37 plus £7,534.56 plus £626.99 which comes to £23,383.92.

223. Therefore, the financial compensation for the period 10 January 2022 to 25 February 2026 (£28,611), less the amounts received by the Claimant in this period (£23,383.92), is £5,227.08.

Interest

224. The interest on financial losses is calculated over the period between a) the mid-point between the discriminatory act and the remedy hearing, and b) the date of the remedy hearing.

225. The discriminatory acts that were upheld occurred between 1 February 2021 and 10 November 2021. The date in the middle of this period is 22 June 2021.

226. Between 22 June 2021 and 25 February 2026 is 1710 days. Divided by 2 is 855 days. 22 June 2021 plus 855 days is 23 October 2023. This is the midpoint date.

227. Interest has therefore been calculated at a rate of 8 percent between 23 October 2023 and 25 February 2026. Interest at a rate of 8% on the amount of £5,227.08 from 23 October 2023 to 25 February 2026 is £980.69. £5,227.08 plus £980.69 equals £6,207.77.

228. The Claimant is awarded **£6,207.77** for past loss of income and pension loss, and interest.

Future loss of income

229. To work out the Claimant's future loss of income and pension loss from 26 February 2026 for a period of 12 months, the Tribunal multiplied the monthly income loss figure of £468.60 by 12, which came to £5,623.20. The Tribunal also multiplied the employer pension contribution of £109.40 by 12, which equals £1,312.80. These two figures together come to £6,936.

230. From this, the Tribunal deducted the Claimant's anticipated Universal Credit payments for March, April and May 2026. It is anticipated the Claimant will receive the amount awarded in compensation from the Respondent by the end of May 2026, and thereafter she will have too much money in her account to qualify for further Universal credit payments.

231. The Universal credit payments for March, April and May 2026 are likely to be £2,470.23 (£400.14 x 3 plus £423.27 x 3). £6,936 minus £2,470.23 is £4,465.77. As this is compensation for future loss of income it does not attract interest.

232. The Claimant is awarded **£4,465.77** for future loss of income and pension loss.

Reconsideration

233. The Tribunal has had to work out these calculations as best it can from the information in the bundle. Neither party addressed the Tribunal on the figures, as the remedy hearing was focused on broader arguments. In the event that either party considers these calculations are not correct, whether in relation to the Claimant's income with the Respondent, or how much she has received in Universal credit payments, or in respect of any other matter related to the calculations, they have the option of applying for reconsideration.

Injury to feelings and personal injury

What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that? Has the discrimination caused the Claimant personal injury? Has it exacerbated a pre-existing condition? How much compensation should be awarded for that?

234. The Respondent accepted that the Claimant was entitled to an award for personal injury. It was accepted the actions for which the Respondent was found liable worsened the Claimant's mental health.

235. The Respondent said the award should fall within the Judicial College Guidelines 'Moderate' category for "Psychiatric Damage Generally". The description for this category is as follows: "While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good. Cases of work-related stress may fall within this category if symptoms are not prolonged." The recommended bracket for an award in this category is £7,150 to £23,270. The factors at (i) to (iv) are as follows:

    (i) the injured person's ability to cope with life, education, and work;
    (ii) the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;
    (iii) the extent to which treatment would be successful;
    (iv) future vulnerability;
    (v) prognosis;
    (vi) whether medical help has been sought.

236. The Respondent did not accept the Claimant's injury fell at the top end of the 'Moderate' bracket, but to assist the Tribunal, the Respondent used the top end of the bracket and proposed an award of £3,562.50, which was based on the Tribunal awarding 15% of the amount at the top of the moderate bracket (£23,270).

237. In terms of the proposed category ('Moderate'), the Respondent's submission was based on Dr Scott's findings that were it not for the Employment Tribunal proceedings, then by March 2022 the Claimant's health would have returned to the state it was in before the Claimant was employed by the Respondent. In terms of the proposal that the Respondent should be liable to pay 15% of the personal injury award, this was based on the conclusion in Dr Scott's report regarding apportionment.

238. Dr Scott's report stated under the heading, "Apportionment":

"In relation to attempting to apportion the impact of each of the allegations, on balance, and as a guide (as there is no scientific means of assessing this), it is likely each of the complaints broadly estimated at 10% each can be apportioned as impacting the deterioration in CX's mental health. This would therefore estimate within a range of 10-20% from the allegations found to well-founded and successful and the remainder from not been wellfounded and dismissed."

239. The Claimant did not make submissions about the specific category in the Judicial College Guidelines, but she pointed to the extensive medical evidence (summarised above) about her poor mental health since December 2021. In her Schedule of Loss she noted:

"Clinical psychiatric injury (ongoing depression, anxiety, depressive disorder and diagnosed in January 2025 - bulimia nervosa) resulting from discrimination, harassment, and managerial inaction. Estimated value: £25,000."

240. In reaching our decision, the Tribunal considered each of the factors set out in the Judicial College Guidelines.

(1) The injured person's ability to cope with life, education, and work

241. The Tribunal concluded that the Claimant's ability to cope with life and work has been significantly impaired since December 2021. Her mental health started to deteriorate whilst she was still employed by the Respondent, as demonstrated by the fact she was signed off work from 30 August to 9 November 2021, and the GP entries in that period.

242. The Tribunal found that the Claimant's mental health and her ability to cope with work was profoundly worse in the period after her employment with the Respondent than in the years before. In the years before she was employed by the Respondent, she had periods of time off work, but they were of shorter duration, and after each period of absence she returned to work. Before the Claimant started working for the Respondent, she was signed off work from November 2019 until November 2020. However, the majority of this absence was in 2020 when the country was facing a pandemic and periods of lockdown. These were not normal circumstances. The Claimant was also dealing with the loss of her grandfather, and as she explained to the Tribunal, she was supporting her grandmother and other members of her family for part of the year. The Tribunal also took into account that although she was signed off for a year, by November 2020, she was able to start in the role with the Respondent, which involved working in a new environment, and which required several months of training.

243. Since the Claimant's employment with the Respondent ended, she has only been able to work as a swimming instructor for a few weeks in March 2022. The Tribunal accepted her evidence that she had to stop working in that role because she frequently became tearful at work. That is consistent with what she was reporting to her GP at that time about the state of her health. Since November 2022, she has been assessed as having limited capacity for work by the DWP. It is understood that since September 2024, the Claimant has been assessed as having limited capacity for work and work related activity.

244. The Claimant's difficulty coping with life from December 2021 to the date of the remedy hearing is well-documented in her GP records. In particular, it is clear that the Claimant's eating disorder, which she first reported to her GP in April 2022, has very significantly worsened. There are also various entries in the GP's notes about the Claimant's desire to increase her medication, and references to intense anxiety, depression, not being able to cope, and at times, suicidal thoughts.

245. The Claimant's antidepressant medication has repeatedly increased over the period December 2021 to February 2026.

246. Since the Claimant's employment with the Respondent ended, the Claimant has experienced two periods of hair loss. The first was shortly after her dismissal in December 2021 and the other period was in `September 2025. The Claimant believes this is stress related. Although there is no medical evidence which confirms that the hair loss was stress related, the Tribunal accepted this was the most likely explanation, given the two episodes of hair loss occurred in the months after her dismissal and in the months after the final hearing in the Employment Tribunal. The Claimant's hair loss has caused the Claimant considerable anxiety and has affected her confidence and desire to socialise.

247. The Claimant also reported that she had a significant loss of libido, weight gain, a lack of motivation, and significantly diminished enjoyment of life. She has repeatedly reported to her GP periods of poor sleep. The Claimant set out in her witness statement that she had been unable to continue to live independently and has had to live with family members.

248. The Tribunal accepted the Claimant's evidence about her ability to cope with life and work between December 2021 and February 2026. The Claimant's account to the Tribunal was consistent with what was recorded in her medical documents and other documents in the bundle.

(2) The effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact

249. The Claimant has clearly benefitted from having supportive friends and family. However, the Claimant's deterioration in her mental health has resulted in her having more arguments with her family. The Claimant also has an increased distrust of men, which has resulted in her avoiding relationships with men.

250. The Claimant described being socially isolated and feeling unable to socialise. Again, this is consistent with what has been recorded in her medical records.

(3) and (4) The extent to which treatment would be successful/ future vulnerability/ prognosis

251. Dr Scott's report suggested the Claimant could benefit from therapy if she found it useful.

252. Dr Scott also set out her view that the Claimant's long-term capacity for employment has not been significantly impacted by the index matters. She

has “a chronic psychiatric presentation and at times of significant relapses, this has and will continue to impact her employment capacity and would have done so, even in the absence of the current employment matters.” Dr Scott’s opinion was that the Claimant was fit to work in December 2025, but that would fluctuate until the Employment Tribunal process was over, and then the Claimant would be fit to work.

253. As set out above, the Tribunal has concluded the Claimant is likely to be fit to work by February 2027.

254. In terms of prognosis, Dr Scott noted, “She has suffered more than two depressive episodes and therefore was at more than 80% chance of suffering a relapse in her depressive condition.”

(5) Whether medical help has been sought

255. As will be clear from the description of the Claimant’s evidence above, the Claimant has sought a range of different types of medical help. She has seen her GP very regularly.

256. The Claimant has tried a range of different types of therapy on the NHS and different types of anti-depressant medication. She has also tried adjusting the dose of her medication a number of times. The Claimant engaged with the eating disorder clinic and attended all the sessions she was offered by them. In December 2024, she asked to be referred to a psychiatrist but that was refused because she had an open referral to the eating disorder clinic.

257. The Claimant also funded some private therapy sessions while she was still working for the Respondent.

258. The Claimant explained she would like to undertake hypnotherapy, but this was not available on the NHS, and she could not fund this herself. She is recorded as saying to her GP in September 2025 that she hoped to be in a position to fund a course of hypnotherapy when she received compensation for the claims she succeeded with.

<u>Tribunal’s conclusions on personal injury</u>

259. Overall, the Tribunal concluded that the Claimant’s personal injury did not fall within the ‘moderate’ category but fell within the ‘moderately severe’ category.

260. The moderately severe category commentary states, “In these cases there will be significant problems associated with factors (i) to (iv) above, but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.” The recommended bracket is £23,270 to £66,920.

261. The Tribunal rejected the Respondent’s argument that the moderate

category was the correct category. There had not been a “marked improvement” by the time of the final hearing or the remedy hearing, and the symptoms were “prolonged”.

262. The Respondent’s argument was based on Dr Scott’s conclusion that the Claimant would have returned to her pre-incident state of health by March 2022 had it not been for the Employment Tribunal proceedings. As set out above, the Tribunal were not persuaded by this part of Dr Scott’s report because there were no reasons given for this conclusion. The Tribunal did not understand why she had reached this conclusion despite the Claimant’s extensive mental health difficulties, hair loss, severe exacerbation of her eating disorder, and the significant increases in her medication.

263. The Tribunal did accept that the Claimant had found the Employment Tribunal process extremely stressful, and her GP records show that her symptoms increased when there were hearings or deadlines in the Tribunal. There is no doubt that the process exacerbated her deterioration in her mental health. Her increased stress and her feeling of being unable to cope with the stress are well documented. However, the Tribunal thought it was unlikely that the Claimant would have returned to her pre-incident level of mental health by March 2022 were it not for the Employment Tribunal process.

264. In March 2022, the Claimant had to stop working as a swim instructor as she was not coping at work. By that time, the Claimant had submitted her claim to the Employment Tribunal, but that was all that happened in terms of the proceedings. It would seem unlikely the Claimant’s inability to return to a role she had previously performed could be attributed to the stress of the Employment Tribunal, and not the discrimination she had suffered in her previous place of work.

265. Similarly, when she put in her Claim Form, she wrote, “I am finding it hard to hold down a job now, I can't sleep, I am on anti-depressants and struggling to build relationships anywhere because of my issues with trust now.” These symptoms could not be attributed to the stress of the Employment Tribunal. This entry does not seem to be consistent with the suggestion her health would have been at pre-incident level in March 2022 where it not for the Tribunal proceedings.

266. The following month, on 21 April 2022, the Claimant reported to her GP that she was suffering with heightened anxiety and depression since being sexually harassed and stalked by a senior member of staff from the prison. She reported she was “newly” binge eating. As noted above, the Claimant explained she had started binge eating in 2020 when she stopped drinking alcohol, but it was not as regular or severe as it was after her employment with the Respondent ended.

267. The Claimant’s account to the Tribunal regarding her binge eating is consistent with the fact that she did not mention it to her GP until 21 April 2022. She is recorded as saying on that date she was concerned “she was developing an eating disorder”. This is consistent with the fact it had worsened. The Claimant’s GP records show she had (and still has) a very candid relationship with her GP. She spoke to her GP regularly. If the Claimant had been regularly binge eating to the point of it being an eating

disorder between 2020 and April 2022, it is likely that the Claimant would have told her GP of her concerns in that period.

268. The Tribunal did not find that the worsening in the Claimant's eating disorder symptoms by April 2021 can be attributed solely to the stress of the Employment Tribunal process when all that had happened by this time was that the Claim Form had been submitted.

269. In addition, in May 2022, the Claimant reported RX's actions to the police. Her report did not just relate to the sexual intercourse which took place in April 2021. The Claimant also referred to the fact he had accessed her details at work without her consent, and the fact she felt he had "stalked" her. The fact the Claimant reported this matter to the police at this time does not suggest that her feelings about having been discriminated against by RX had lessened by this time. This suggests she was still feeling very strongly about what had occurred, including some of the matters the Tribunal has now found amounted to harassment. This does not seem to be consistent with Dr Scott's conclusions that if the Claimant had not instigated proceedings in the Employment Tribunal, her mental health would have returned to its pre-incident level by March 2022.

270. These are just a few examples of why the Tribunal was not persuaded to accept Dr Scott's conclusion that if the Claimant had not instigated proceedings in the Employment Tribunal, her mental health would have returned to its pre-incident level by March 2022, but the main reason the Tribunal did not agree with this conclusion is that Dr Scott did not explain this finding. The Tribunal did not know the reasons why Dr Scott had reached this decision, given the lack of explanation in her report.

271. The Tribunal considered the analysis above (see paras 241-258 above) showed "significant problems" with the relevant factors, and particularly her ability to cope with work and life. The Tribunal however concluded the award should be towards the lower end of the moderately severe bracket because while it was accepted that the discrimination had exacerbated the Claimant's health such that she had suffered from a lengthy period of very poor mental health, the Tribunal did not find that the exacerbation would be permanent. In addition, the Tribunal was careful to discount the effects of the Employment Tribunal process on the Claimant's mental health.

272. The Tribunal found that even without the Employment Tribunal process, the impact of the discrimination on the Claimant's health would still have been extensive. It was evident to the Tribunal, from the evidence presented at the liability hearing, the Claimant has been very affected by the way she had been treated by RX and Officer Connolly and felt badly let down by CM Henderson for her lack of action in November 2021. She was off work for over three months whilst employed by the Respondent. The Claimant's eating disorder symptoms worsened shortly after her employment ended. She suffered her first period of hair loss. She started taking anti-depressant medication and has repeatedly increased the dose. The Tribunal did not consider that the continuing deterioration in her health after March 2022 was caused solely by the Tribunal process, but considered it was caused by a combination of the discrimination she had suffered and the stress of the Tribunal process.

273. The Respondent's argument appeared to be that it was not appropriate for the Tribunal to take into account the effects of the Employment Tribunal process when deciding the appropriate initial amount to award (before apportionment), rather that this being a factor that was taken into account when considering apportionment. The Tribunal concluded it was probably legally permissible to do it either way (as what matters is that the personal injury award reflects the damage caused by the discriminatory acts that were upheld, and not personal injury caused by other factors) but chose to adopt the method the Respondent proposed.

274. If the Tribunal had not discounted the effects of the Employment Tribunal process it would have considered an award of between £37,000 to £40,000 would have been appropriate. As the Tribunal was careful not to take the exacerbation caused by the Employment Tribunal process into account, it considered an amount towards the lower end of the moderately severe category was more appropriate. The Tribunal also concluded that the lower end of the moderately severe category was appropriate because although the Claimant has been unable to work for the last 5 years, the Tribunal has concluded that within a further year, the Claimant should be able to return to employment.

275. As a result, the Tribunal decided that the appropriate award for personal injury was close to the bottom of the moderately severe bracket. The Tribunal concluded that £29,000 was the appropriate amount. This is only slightly higher than the top of the moderate category which the Respondent used in its proposed calculation. The Tribunal decided this was an appropriate amount in light of the fact that the Tribunal did not agree with Dr Scott's conclusion that the Claimant's health would have returned to pre-incident levels by March 2022 were it not for the Employment Tribunal process but also taking into account that it needed to discount the exacerbation to the Claimant's mental health caused by the Employment Tribunal process.

<u>Apportionment – Proposition 15</u>

276. In terms of apportionment, the Tribunal was not persuaded by the Respondent's argument that the Respondent should be liable for 15% of the total personal injury award.

277. The Respondent proposed 15% based on Dr Scott's conclusions that 10-20% was appropriate. Dr Scott's comments on apportionment are set out above at paragraph 238.

278. The Tribunal struggled to understand this part of Dr Scott's report. The first sentence of the report suggested an apportionment of 10% per allegation, but the second sentence suggested a range of 10-20% overall. This does not make sense as the Claimant succeeded with more than two of her allegations. She also succeeded with more than two types of claim, and so the Tribunal really was not sure what Dr Scott meant.

279. The Respondent accepted it was not a particularly clearly written part of the report but said it was the best evidence the Tribunal had on this issue. Again, the Tribunal were not persuaded to accept Dr Scott's conclusion in circumstances where (leaving aside the issue of how it had been written)

the Tribunal simply could not understand how she had reached that conclusion.

280. The Respondent's submissions were that any award for personal injury should be reduced by 85% to reflect the fact that 1) a considerable amount of the Claimant's allegations of discrimination were not upheld, 2) the Claimant had the perception that she had been sexually assaulted at home, and the sexual intercourse which occurred between RX and the Claimant in April 2021 was not a part of the allegations in the Tribunal, and 3) the impact of the dismissal on the Claimant.

281. This was slightly different from what was understood to have been set out in Dr Scott's report, which appeared to be recommending 10-20% purely on the basis of the allegations that had been upheld compared to the allegations that had not been upheld in the Tribunal.

282. From the evidence presented in the liability hearing, it was clear that not all the allegations pursued by the Claimant in the Tribunal (those that were upheld and those that were not) were of equal seriousness, and they had not all had the same impact on the Claimant. The allegations against RX and Officer Connolly were much more serious, and had a much greater impact on the Claimant, than the majority of the allegations against CM Henderson.

283. The Tribunal did not find that the allegations that the Claimant was subjected to harassment by RX or subjected to crude derogatory and discriminatory language by Officer Connolly could be said to have had the same or similar impact on the Claimant as the allegations about CM Henderson's line management, such as emailing the Claimant her details, not meeting the Claimant at the gate, or meeting her in a café while she was off sick. These allegations were obviously not as serious. It was not clear to the Tribunal that Dr Scott had appreciated this important distinction.

284. The Tribunal accepted the Respondent's argument that it was appropriate to apportion some of the impact on the Claimant's mental health to her feelings about the act of sexual intercourse which occurred in April 2021. The Claimant's view that she had been sexually assaulted had clearly contributed to the deterioration in her mental health, given the Claimant had reported the matter to the police. The Claimant also described to Dr Scott that she had flashbacks about it occurring. However, the Tribunal did not think it should apportion a substantial amount for this, because the Claimant had reported to the police it was consensual. Part of the report was explaining her unhappiness about how the situation had been engineered by RX. The Claimant was also reporting to the police her concern that RX had, in essence, abused his position, by taking her phone number from the work system when she had called in (which was an allegation of discrimination that was upheld) and had contacted her incessantly after she had slept with him (which was an allegation of discrimination that was upheld).

285. The Tribunal also accepted the Respondent's argument it was appropriate to apportion some of the impact on the Claimant to the allegations which she believed had merit, but which were not upheld. However, the Tribunal did not agree with Dr Scott that a range of 10-20% was appropriate. The

Claimant succeeded with the far more serious allegations, with the exception of the allegation relating to her dismissal.

286. Overall, the Tribunal considered that the discriminatory acts that were upheld caused 50% of the personal injury the Claimant has suffered. The Tribunal considered the majority of this was attributable to RX's discriminatory acts. While the Claimant suffered significant injury to feeling because of Officer Connolly's discriminatory acts, the Tribunal did not find that the Claimant's mental health would have significantly deteriorated because of Officer Connolly's comments alone. The Tribunal did take into account that Officer Connolly's comments occurred at the same time as the Claimant was being subjected to harassment by RX, and the two together would have made her workplace environment extremely difficult to tolerate. However, the Tribunal found RX's harassment was significantly more serious, and had a significantly worse impact on the Claimant, than Officer Connolly's comments.

287. The Tribunal found that the other 50% of the personal injury the Claimant has suffered was attributable to the Claimant's feelings about the act of sexual intercourse which occurred in April 2021, and the other allegations, which were not upheld, including the dismissal of the Claimant.

288. Therefore, the Tribunal awarded the Claimant, £14,500 for personal injury.

289. The Respondent did not make any submissions regarding proposition 16 or suggest that the Claimant's personal injury would have been caused by another identifiable event. The Tribunal did not identify another event which could have caused the Claimant to have suffered the same deterioration in her mental health. As a result, the Tribunal did not make a reduction to the award for personal injury on that basis.

Interest

290. Interest on personal injury is calculated from the mid-point between the discriminatory act and the remedy hearing (in this case 23 October 2023), and the date of the remedy hearing at a rate of 8% per annum.

291. The interest on £14,500 is £2,720.44, and therefore the total personal injury award plus interest is **£17,220.44.**

Injury to feeling

292. In respect of an award for injury to feeling, the Respondent suggested an overall award of not more than £9,000 (the top of the lower band in 2021). The Claimant's Schedule of Loss claimed the maximum award available, which she set out as being £60,700 (the top end of the upper band in 2025).

293. As the Claimant submitted her Claim Form on 19 March 2022, the applicable bands for the injury to feeling awards, are those set out in the Presidential Guidance on injury to feeling bands, dated 26 March 2021. The guidance says the bracket for the lower band is £900 to £9,100, the middle band bracket is £9,100 to £27,400, and the upper band bracket is £27,400 to £45,600.

294. The Tribunal considered that the overall award for injury to feeling for all the discriminatory acts that were upheld would properly fall in the middle band in this case. However, in line with the case of *Al Jumard v Clywd Leisure Ltd and ors*, as the unlawful discrimination that was upheld related to two separate protected characteristics, and related to different events, the Tribunal assessed the award for injury to feelings in respect of each set of discriminatory acts separately.

Vegan belief allegations - Officer Connolly

295. In reaching its decision about how much to award the Claimant for injury to feeling, the Tribunal was careful to avoid double counting. In order to ensure that no double counting occurred, the Tribunal considered what amount they would have awarded the Claimant for the emotional distress, humiliation, stress, and anxiety of having been subjected to the comments made by Officer Connolly up to the point when the Claimant was signed off work in July 2021.

296. The Tribunal did not take into account the Claimant's period of absence from work between July and November 2021, and the impact of her health thereafter. The Tribunal considered the Claimant's absence from work marked the start of her mental health deteriorating and considered that period of time, and the time after her dismissal, was compensated by the award for personal injury.

297. In reaching its decision the Tribunal took into account that some of the comments were of a sexual nature (suggesting to the Claimant she could not be a vegan because she must engage in oral sex), and some were terms that were sexist and derogatory ("drippy vegan cunt"). These overtly discriminatory comments also occurred in the context of other sexual remarks having been made to the Claimant (Officer Connolly's reference to having a nine inch penis). This was not an allegation of discrimination that the Claimant complained about, but the Tribunal found this comment had been made by Officer Connolly when he first met the Claimant. The Tribunal accepted the Claimant's evidence that she set out in her witness statement for the liability hearing that the impact of the combination of Officer Connolly's comments and RX's behaviour meant she did not feel safe anywhere at work.

298. The Tribunal also accepted the Claimant's evidence that she set out in her witness statement for the liability hearing that she found Officer Connolly's comments humiliating, insulting, and distressing. She referred to feeling ridiculed, often being brought to the point of tears and leaving the office to go to the bathroom to cry.

299. In terms of the impact on the Claimant, the Tribunal took into account the evidence, set out above, that it was the Claimant who requested mediation with Officer Connolly, asked to move from working on J Wing, said she dreaded coming into work and did not feel comfortable working on J Wing due to his behaviour. She subsequently asked to move to a different prison due to stress. She raised a concern that she could not tolerate the toxic environment for much longer without it having a lasting impact on her health. She wrote she was considering leaving the role altogether because of Officer Connolly's actions. In addition, the Tribunal took into account the

finding that Officer Connolly's behaviour towards the Claimant had impacted her performance.

300. The Tribunal concluded Officer Connolly's discriminatory acts had a significant impact on the Claimant. In light of the fact that the injury to feeling award was limited to the impact on the Claimant's feelings in the period February 2021 to the end of July 2021, the Tribunal concluded an award in the lower band was appropriate. The Tribunal decided to award £7,500, given that the Claimant had wanted to move role, move prison, and even leave the role altogether as a result of Officer Connolly's actions.

Harassment related to sex/direct sex discrimination – RX and CM Henderson

301. The Tribunal applied the same approach set out above, to avoid double counting, to the discriminatory acts committed by RX. When deciding how much to award for injury to feeling, the Tribunal did not take into account the Claimant's absence from work from July to November 2021, or the impact on her mental health after her dismissal. This was because the Tribunal has compensated the Claimant for the impact on her mental health with the award for personal injury. As a result, the Tribunal considered what was an appropriate award for the injury to feeling caused to the Claimant by RX's actions between March 2021 and December 2021 but discounting her period of absence from work.

302. In reaching a decision, the Tribunal took into account the Claimant's evidence regarding the effects of RX's behaviour on her feelings in that period. She described in her witness statement for the liability hearing that his behaviour had been incredibly intimidating. She said she felt stalked and harassed on a daily basis. The Claimant described feeling fearful for her safety because RX knew where she lived. She described feeling relentlessly pursued by RX and described his conduct as being derogatory. In respect of the incessant messaging after the Claimant had asked RX to stop contacting her, the Claimant wrote:

"I went through a series of emotions during this time: pleading / being angry/ upset / begging him to stop contacting me. I left him voicemails to "fuck off and leave me alone", telling him I would have to report him to his line manager, his boss, the police and his wife… Following these messages, RX still refused to respect my wishes, and he went ahead and contacted me at work, which made me feel threatened and unsafe."

303. The Tribunal accepted the impact of RX's actions on her feelings were as described in her evidence. The Tribunal also concluded, based on their own observations of the evidence presented at the liability hearing, that the Claimant's confidence at work was significantly impacted. The Tribunal formed the impression that by the time the Claimant met with Governor Frost on 2 December 2021, she was worn out and ground down by what she had been through. She appeared to accept her dismissal as inevitable and had run out of steam.

304. The Tribunal concluded that the allegation against CM Henderson that was upheld should not significantly increase the award of injury to feelings. The Claimant felt disappointed and badly let down, but this was largely due to

the Respondent's wider failure to take action (which was regrettable but the other failures to act were not allegations that were upheld).

305. The Tribunal concluded that that an award for injury to feelings should be in the bottom end of the middle bracket. The Tribunal only concluded it should be at the bottom end of the middle bracket because the Tribunal limited the award for injury to feeling to the period March to December 2021 and discounted her absence from work. The Tribunal had taken the impact on the Claimant in that period into account when deciding the appropriate level of personal injury. If the Tribunal had not made a separate award for personal injury, the award for injury to feelings would have been significantly higher.

306. The Tribunal concluded the appropriate award for the injury to feeling the Claimant suffered for harassment while at work by RX (discounting her period of absence from work) was £10,000.

307. In order to ensure the overall award was appropriate and proportionate, the Tribunal considered the total awarded for personal injury (£14,500), and injury to feeling (£7,500 and £10,000), which comes to £32,000. The Tribunal considered this was an appropriate award overall, in light of the profound impact the discriminatory acts have had on the Claimant's health, ability to work, and her ability to cope with life.

Interest

308. Interest on non-pecuniary loss is calculated from the date of the discrimination (22 June 2021 – the midpoint in the time period of the allegations) to the date of the remedy hearing at a rate of 8% per annum. The interest on £17,500 is £6,555.07, and therefore the total injury to feeling award plus interest is **£24,055.07.**

ACAS Code of Practice

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the Respondent or the Claimant unreasonably fail to comply with it? If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

309. In her skeleton argument, the Claimant argued that there should be an uplift for the Respondent's failure to follow the Acas Code in respect of her grievance. She said there had been a "failure to handle grievances promptly or fairly".

310. The Respondent argued that the only finding which the Acas Code of Practice could apply was the finding regarding the failure of CM Henderson to take action against RX in November 2021 when the Claimant reported RX's further email of October 2021. However, the Tribunal pointed Ms Hirsch to the findings regarding the Claimant's grievance (paragraphs 188 to 196 of the liability judgment) and the fact her grievance had related both to sexual harassment by RX and the failure of CM Henderson to take action.

311. The Tribunal had some reservations about the manner in which the grievance was dealt with. For example, the grievance was concluded

without Governor Bell speaking to RX. She does not appear to have interviewed either CM Henderson or Governor Carbone either but just looked at the paperwork. The Tribunal did bear in mind that Governor Bell had not been provided with all of the evidence which the Tribunal was presented with such as the text messages and emails from RX. Although, as the emails were sent from RX to the Claimant's work email address it would seem likely these could have been obtained if there had been the will to look for them.

312. It appeared to the Tribunal that the aim of the investigation was to reach the conclusion that CM Henderson and Governor Carbone had reacted appropriately to the information they had been given by the Claimant. The Tribunal found it difficult to see how Governor Bell was able to conclude that both CM Henderson and Governor Carbone could have been said to have reacted appropriately, when neither of them did anything until mid-November 2021 when it was clear the Claimant was going to escalate the matter.

313. Part of the reason why the Tribunal did not find it was a particularly satisfactory process was because it had expected that when a probationary officer is telling their employer they have been subjected to harassment by a more senior and considerably more experienced member of staff, that would warrant a more thorough investigation than was undertaken in the Claimant's case.

314. Despite these reservations, the Tribunal was not however able to reach the conclusion that there was a breach of the Acas Code. The Respondent did follow the steps set out in the Code in the sense that the Claimant was invited to attend a meeting. Some investigation was undertaken. She was provided with an outcome. The outcome was provided within a reasonable time frame. Although the Tribunal did not find the Respondent's investigation was particularly satisfactory, the Code does not impose any particular standards of investigation for a grievance. Similarly, although the Tribunal did not agree with the outcome or the extent of the investigation undertaken, it was not able to identify a specific breach of any of the particular provisions of the Code. As a result, the Tribunal did not award an uplift for a failure to follow the Acas Code.

Other types of compensation claimed by the Claimant

Aggravated damages

315. The Claimant asked the Tribunal to make an award of £20,000 for aggravated damages. The Respondent argued that the Tribunal should not make an award for aggravated damages in this case. The Respondent argued that the litigation had not been conducted by the Respondent in an oppressive manner or in any manner which justified aggravated damages. The Respondent stated that to the extent that the discriminatory acts that were upheld were deliberate or high-handed those were intrinsic features of the liability findings and are compensated for by the award of injury to feeling. If the Tribunal disagreed, it would need to set out why the basic injury to feelings award would not suffice.

316. The Claimant's skeleton argument pointed to the Respondent's procedural failings as aggravating features of this case. The Claimant relied on the fact that the Respondent had disclosed 571 pages of CPIRs the day before the final hearing started on 10 March 2025. In addition, the Claimant relied on the mishandling of her Occupational Health report referrals, and she was aggrieved by the requirement to allow the Respondent to review highly sensitive material. In addition, the Claimant set out that initially the in house solicitor acting for the Respondent, Ms Bruce, had disputed whether the copies of the text messages between her and RX should be added to the bundle, on the basis that the text messages could have been from anyone. Finally, the Claimant felt it was aggravating that RX had been granted anonymity.

317. The Tribunal accepted that the Respondent's late disclosure of documents the day before the final hearing had been particularly stressful for the Claimant, particularly because she was representing herself. However, the Tribunal were able to make accommodations so that the Claimant was able to review the additional documents before the evidence started. Therefore, the additional stress of this late disclosure was fairly short lived.

318. In addition, the Tribunal could see how from the Claimant's perspective it would have felt quite hostile for Ms Bruce to initially dispute whether the text messages should be added to the bundle, on the basis that they could have been from anyone, particularly as the Respondent could have simply checked with RX if he accepted they were from him. It was however clear that this matter was resolved ahead of the hearing because the text messages were included in the bundle.

319. The Respondent's failure to get an updated Occupational Health report before dismissing the Claimant, due to a mistake made by CM Henderson regarding the type of report that was requested, is not something that the Tribunal would award aggravated damages for.

320. As the Claimant was claiming an award for personal injury, it was appropriate that she disclose her medical records to the Respondent. That is a standard part of the process and was not specific to the Claimant's circumstances. Even though the Claimant found this upsetting, it was the inevitable consequence of her decision to pursue a claim for personal injury.

321. Finally, the Tribunal granted an anonymity order in this case for RX. While the Claimant may feel aggrieved by that decision, it was a decision made by the Tribunal and not something that arose from inappropriate conduct by the Respondent. The Respondent was entitled to apply for such an order, but it was the Tribunal's decision whether it was appropriate to grant it.

322. The Tribunal concluded that the Employment Tribunal process had been particularly stressful for the Claimant. It is not an easy task for a claimant to represent themselves, particularly when the other party has legal representation. However, the Tribunal did not find that the Respondent's conduct in the litigation had added to the Claimant's injury. The Tribunal did not find that the Respondent had acted in an offensive manner or rubbed salt in the wounds. To the contrary, the Tribunal found the Respondent's barristers dealt with the Claimant in an appropriately sympathetic manner during the hearings. The late disclosure of documents and disputes about

the relevance of evidence are part and parcel of proceedings. While not ideal, this is not conduct that is sufficiently aggravating to justify an award of aggravated damages.

323. Following the guidance in the case of *Shaw,* the Tribunal did consider that the wrongs committed by RX were particularly upsetting in that they had a sexual motive. The Tribunal accepted that this type of discrimination has a greater effect on claimants than other non-intentional types of discrimination (for example, a failure to make reasonable adjustments). However, the Tribunal found the majority of the award for personal injury was in relation to the impact of RX's conduct on the Claimant in terms of her health, and taking the award for personal injury and the additional award for injury to feeling (in respect of RX's conduct), the Tribunal considered the Claimant had been adequately compensated for the impact of his behaviour.

Therapy and related costs

324. The Claimant set out that she was seeking sums for therapy costs already incurred. In the liability bundle, there was evidence that between July and September 2021, the Claimant had 8 sessions of online therapy at a cost of £400. The Claimant also gave evidence to the Tribunal that whilst employed with the Respondent she had two additional one-off sessions of therapy at a cost of £50 each.

325. The Tribunal accepted that these costs were incurred and arose as a result of the discrimination that the Claimant suffered at work. Therefore, the Tribunal awarded the Claimant £500 for the costs of therapy already incurred.

326. The Claimant also set out in her Schedule of Loss costs for other therapies which totalled approximately £12,500. At the hearing, the Claimant explained the majority of these costs were a yoga retreat that her mother had paid for (£9,000) and various supplements, vitamins, shampoos, and hair treatments that she had already paid for.

327. The Tribunal did not award the Claimant compensation for the additional therapies claimed under this heading because the Tribunal did not feel able to conclude that either the yoga retreat or the various hair treatments were costs that were "reasonably incurred". In other words, the Tribunal did not have evidence that suggested that these treatments were likely to improve the Claimant's mental health condition or her hair loss. This was in contrast to the therapy that the Claimant had paid for whilst employed by the Respondent. Talking therapy is a well recognised treatment for mental health conditions. The fact that the Claimant's GP considered therapy was likely to be beneficial for her is demonstrated by the fact that she was referred for therapy through the NHS. In addition, Dr Scott recognised in the report that therapy was likely to be beneficial.

328. The interest from the mid-point to the date of the remedy hearing, on the amount of £500, is £93.81. This comes to a total of £593.81.

329. The Claimant is awarded **£593.81** for past loss.

Future therapy costs

330. The Claimant's Schedule of Loss set out a claim for EMDR, hypnotherapy, nutrition therapy for her eating disorder, general nutrition therapy, acupuncture, mental health retreats, hair clinic treatments, PRP hair treatments, reflexology and hair growth devices. She set out projections on the basis of needing these therapies for 5 years, 7 years or 10 years.

331. The Respondent argued that even without the index events the Claimant would have needed therapeutic intervention. However, in light of Dr Scott's recommendation, which suggested 12 to 20 sessions of therapy at a cost of £120 to £190 per hour, the Respondent offered to cover the costs of 50% of 16 sessions (the midpoint between 12-20) at a rate of £155 (the midpoint between £120-£190). This amounted to £1,240. The Respondent offered to cover 50% of the costs as a gesture of goodwill and to save time and deal with cases efficiently.

332. The Tribunal were not presented with any medical evidence which suggested the Claimant would need an extensive range of different types of therapy, for 5 years, 7 years or 10 years, as a result of the discriminatory acts the Claimant suffered.

333. The Tribunal was also not presented with any evidence from which they could conclude that the general nutrition therapy, mental health retreats, hair clinic treatments, PRP hair treatments, acupuncture, reflexology, and hair growth devices were reasonably required. The Tribunal were not able to conclude that any of these treatments were likely to result in an improvement to either the Claimant's mental health condition or her hair loss.

334. The Tribunal accepted that the Claimant would benefit from a course of 12-20 therapy sessions. Dr Scott suggested either CBT therapy, or another relevant type of therapy as determined by the Claimant and a therapist, would be reasonable. The Tribunal concluded the Claimant could chose whichever therapy she thought would be most beneficial to her, whether it was EMDR, CBT or hypnotherapy. The Tribunal therefore considered an award of 50% of the total cost of 16 sessions at a cost of £155 each, so a total of £1,240. The Tribunal awarded 50% of the costs on the basis of its finding that the discriminatory acts accounted for 50% of the personal injury the Claimant had suffered.

335. The Claimant is awarded **£1,240** for future costs.

IVF Costs

336. The Claimant set out in her Schedule of Loss, a claim for 3-4 rounds of IVF. The Claimant set out in her skeleton argument that she was seeking this compensation because she is currently unable to have sexual relations or pursue a romantic relationship with a man, directly due to the trauma caused to her by RX, and the Respondent's failures to protect her. She was claiming IVF costs because she wished to have children independently.

337. The Respondent's position was that the loss of trust in men arose in response to her past relationship history. The Respondent referred to Dr Scott's report which stated, "There is no evidence of PTSD or other trauma

related symptoms. There is no rational requirement for IVF due to the index allegations and any preference is not due to psychiatric disorders".

338. The Tribunal found that the discriminatory acts the Tribunal had upheld against RX had likely increased the Claimant's distrust of men. However, the Tribunal was not presented with any evidence which suggested that the distrust in men was likely to endure such that she would be unable to have a relationship in the future. The Tribunal did not find that there was a sufficient causal link between the discrimination and the Claimant's desire to have children now and independently, such that it would consider it reasonable to award costs for IVF treatment. The Tribunal did however take into account the Claimant's increased distrust in men, and her fears and worries about how this may impact on her plans to start a family, when deciding the appropriate amount to award for both personal injury and injury to feeling.

Re-training costs

339. The Claimant claimed £53,105 for retraining costs. This was for the cost of a new laptop and software, a camera, camera lens, and camera equipment, general, travel and other academic costs, and course tuition fees for 3 years.

340. The Tribunal were not persuaded to award the Claimant the costs for re-training. The Claimant had only been in the role of prison officer for a little over a year. She has only applied for a small number of jobs since she left that role.

341. This is not a case where the Claimant had worked for many years in the same sector or type of role, and having lost that role in circumstances where she cannot return to a comparable role, she needs to retrain to find a new role. This is also not a case where the Claimant has applied for many jobs and has been unsuccessful in finding a role and so seeks to persuade the Tribunal that her only option is to retrain. The Claimant was able to find a new role as a swimming instructor just shortly after she left the Respondent. This suggests she is likely to be able to return to the type of work she did before she was employed by the Respondent. Alternatively, the Claimant can seek a further entry level role in a new area (a role similar to the role with the Respondent, but not in the prison sector).

342. The Tribunal was not persuaded the Claimant will need to retrain as a result of the discriminatory acts she suffered.

Costs - Litigant in person preparation time

343. The Claimant applied for an order for costs. She applied for 2,290 hours at a rate of £45 per hour, totalling £103,050.

344. The Respondent set out in its skeleton argument that there was nothing in the Respondent's conduct of the case which would justify an award of costs against the Respondent. The Respondent suggested on the contrary, the Claimant's approach to the litigation had forced the Respondent to incur hugely disproportionate costs itself.

345. The Claimant has not put forward a basis on which she says costs should be awarded.

346. Under Rule 74 of the Employment Tribunal Procedure Rules 2024, the Tribunal may make a costs order or a preparation time order on its own initiative or on the application of a party. Under Rule 74 (2), the Tribunal must consider making a costs order or a preparation time order where it considers that a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted, or because any claim, response or reply had no reasonable prospect of success, or because a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins. Under Rule 74 (3), the Tribunal may also make a costs order or a preparation time order on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.

347. The Tribunal did not find that any of the grounds for making a preparation time order were made out in this case. The Respondent has not acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings have been conducted. As set out above, there was an issue with the last minute disclosure of a large number of documents the day before the final hearing, and the Claimant has told the Tribunal about an issue with Ms Bruce initially disputing whether the text messages between the Claimant and RX should be put in the bundle. The Tribunal did not however conclude these issues amounted to unreasonable conduct such that would warrant a costs order to be made against the Respondent.

348. Even if the Tribunal had found the Respondent had acted unreasonably regarding the late disclosure of documents, the Tribunal would not have exercised its discretion to make a costs order in any event. It is not intended to be a criticism of the Claimant, but there has been a significant amount of additional work for the Respondent (which will have increased its costs) because the Claimant has submitted some very lengthy documents to the Tribunal. As noted, this is not a criticism of the Claimant, who has simply been doing her best to represent herself. However, the Tribunal would not have made a costs order in these circumstances because the Tribunal accepts the Respondent's costs are likely to have been higher than normal in a case of this length and complexity.

Grossing up

349. The Tribunal has awarded the Claimant compensation that exceeds £30,000. However, the Tribunal has not grossed up this figure to take account of any potential tax liability because the award for personal injury and interest do not attract tax. Once the award for personal injury and interest is deducted from the total amount awarded, the remaining figure is £36,562.42. Of this amount, the first £30,000 is understood to be tax free and the remainder would fall within the Claimant's personal tax allowance. Therefore, the Tribunal has not grossed up the overall award for tax liability as it is understood that the Claimant will not owe any tax on the amount received.

Approved by:

Employment Judge Annand

29 April 2026

JUDGMENT SENT TO THE PARTIES ON 29 April 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/