EMPLOYMENT TRIBUNALS

Claimant: **Ms. A Brooker**

Respondent: **The Nail and Beauty Zone Ltd**

Heard at: **London South by CVP**

On: **15th of April 2026**

Before: **Employment Judge McLaren**
Mr. G Anderson
Ms. V Gibbs

Representation
Claimant Mr. M Withers, Counsel
Respondent: Mr. M Lumsden, Director

REMEDIES JUDGMENT

The respondent shall pay the claimant **£50,013** made up of the following sums:

a) Compensation for past financial losses: £3,609

b) Interest on compensation for past financial losses calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: £344

c) Compensation for injury to feelings: £30,000

d) Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996: £5,714

e) Uplift on compensation of 15% for failure to comply with the ACAS code: £5,041

TOTAL £44,708 and after grossing up £50,013.

Reasons

Background

1. The liability hearing took place from the 10 - 14 November 2025 with the decision being sent to the parties on 2 December 2025. The claimant succeeded in a claim for discrimination arising from disability, indirect discrimination and for failure to make reasonable adjustments.

2. The liability hearing had been listed originally to include remedy. After the claimant had completed her evidence it became clear this would not be possible and therefore, once the decision was made, this further remedy hearing was required.

3. Following the judgment both parties have also made applications in the claimant's case for costs (made on 22 December 2025) and in the respondent's case for preparation time order (made on 30 December 2025). It was intended that these applications were also dealt with along with the remedy hearing. The matter was therefore listed for a one-day hearing for 16 April 2026.

4. Subsequently it proved impossible to address all matters because much of the time was taken up in dealing with the respondent's further application to postpone the hearing. The panel therefore unable to reach a decision and to give that decision orally on the day. As a result further in Chambers date was agreed. A separate listing will have to be made to deal with the issue of costs.

Correspondence from the parties

5. This is regrettably a case where the parties have sent in multiple pieces of correspondence and the employment tribunal has failed to respond to many of these in a timely manner, or at all.

6. Correspondence from the respondent began on 15 December 2025 when the respondent sent a letter headed Application For Reconsideration/Correction. This was addressed and a response sent. The letter also included a request for full written reasons for the preliminary applications made during the hearing. That has been addressed, albeit not until March and April 2026.

7. There then followed the costs/preparation time costs applications on 22 December and 30 December.

8. On 26 February 2026 (on a date which we now understand was while he was in Australia) Mr Lumsden made an application for the remedy hearing to be postponed. The claimant objected to this. Neither the paper file nor the electronic filing system record any further correspondence from the respondent on this point.

9. On 13 April 2026 Mr Lumsden contacted the tribunal again identifying that he had not received the full written reasons that had been requested. The

application stated that because the tribunal had not yet provided these reasons then the remedy hearing should be stayed in the interests of justice.

10. That application to postpone was referred to me on 13 April 2026 and the application was refused. Unfortunately, that decision was not sent to the parties by the tribunal's administration.

Application to postpone

11. as the hearing began on the 15th of April 2026, Mr Lumsden renewed his application to postpone on the grounds that he had set out in his February application. I explained the history as I have set out above. I confirmed that that application to postpone remedy hearing had been refused. The grounds on which had been made were essentially that it was an unnecessary expenditure of time and cost when there was an appeal pending and further that the respondent was not in a position to fully understand the remedy issue as it had not received the full written reasons for the preliminary applications.

12. I confirmed that having balanced the interests of both parties in accordance with the overriding objective I had concluded that a pending appeal was not a reason to delay remedy. That put the claimant in a position where litigation could not be finalised , particularly given the potential length of any appeal process. As far as written reasons were concerned while receiving written reasons for the preliminary applications might be relevant for the appeal on the respondent's inability to run the statutory defence, I was satisfied that the none of these were relevant to remedy. They simply have no bearing on the issues that are considered in remedy. That was not a reason not to proceed.

13. Nonetheless, Mr Lumsden reiterated his application. I explained that I was not going to hear it on the same grounds. He did then add one further ground.

14. The respondent's preparation time costs application sent on 29 December 2025 also gave a list of dates to avoid . That included this hearing date with the explanation that the respondent's representative was unavailable.

15. This application also identified that Mr Lumsden would be overseas on various dates. While he did not give this explanation to the tribunal at the time, we were advised by him that during his time in Australia (16 February to 13 April 2026) he was particularly busy with family matters. He had to deal with his mother's estate and matters arising from her death which took place at the end of 2025.

16. He also applied for a postponement because he told us that he was not available today. We made enquiries about this and he explained that he had a meeting with the bank tomorrow. While this was the annual review the company had been told a few days ago that there was a possibility that the bank would withdraw the overdraft facility . If that happened the company would have to go into administration and Mr Lumsden therefore needed to prepare.

17. Mr Lumsden also said he was not ready for today's hearing. We explored the chronology with him which is as follows. On 29 December he advised the Employment Tribunal that he was not available for a date which includes today's date. The letter listing this for hearing was sent out on 23 January 2026. Mr Lumsden told us that he did not originally notice the date at that time. He accepted that he had not written to the tribunal again letting them know that he could not do that date. He also accepted that he had made no reference to the date issue in the application he had made in February 2026. He told us that his

reasons for not doing so included that there are only so many times you could write to the tribunal and be ignored. In looking at the correspondence we can see that he only sent one letter after the notice of hearing. That was sent in February. We accept that there was no response from the tribunal to the February 2026 letter until earlier this week. The correspondence Mr Lumsden sent in December 2025 in so far as it related to the preparation time costs order had not been ignored, the costs matter were to be dealt with at this hearing and the request for corrections to the judgment was dealt with in March.

18. The claimant objected to the application to postpone on the basis it would add further delay to the final resolution albeit pending an appeal. Within the interests of justice that there be finality. This is a very late application by the respondent who had not identified this matter even earlier this week which would potentially have prevented the claimant incurring the costs of legal representation today.

Decision on postponement

19. While oral reasons were given for this decision during the hearing we nonetheless set out these reasons within this decision. We noted that remedy was originally intended to be dealt with in November 2025 and the schedule of loss had been provided to the respondent in August 2024.

20. While on 29 December 2025 the respondent did tell the Employment Tribunal he was not available for hearing on the 15 April 2026, he gave no reason for this and simply said he was not available. He has of course attended today and while he has something he wishes to do , namely prepare for a meeting tomorrow, he is able to attend today.

21. We also took into account the fact that after Mr Lumsden received the January listing letter with the date he did not raise any question about this with the Employment Tribunal. He had subsequent correspondence with the tribunal in February while he was in Australia and did not make this a ground for his application. He made no mention of his unavailability in his repeated application to postpone on 13 April i.e. two days ago. He has done so only today.

22. In terms of being ready, it is the tribunal's expectation that once the parties have been sent a notice of hearing unless and until the tribunal notifies them that date has been postponed, the parties should understand the hearing is going ahead and they should be prepared. There has been adequate time to prepare since the notice of hearing was sent. Further, the claimant is not intending to produce any new evidence today but to make submissions only on the findings of fact made in our decision.

23. We are conscious that any delay if matter were to be relisted would potentially be very lengthy and overall, looking at matters in the round and balancing the interests of both parties, we concluded that it is appropriate to go ahead. The prejudice to the claimant is greater than that of the respondent who has been on notice of the matters to be discussed today for a number of months.

24. Subsequently we noted that Mr Lumsden was able to make a very lengthy and detailed submission reading from a written document which had been carefully prepared. We are satisfied that the respondent was not prejudiced by the delay and was able to adequately deal with the matters raised by the claimant.

Additional written reasons

25. In further reviewing the correspondence following this hearing it is noted that written reasons were also requested for the respondent's application to admit as evidence the email response from Ms Johnson to the claimant dated 21 June 2023 to the claimant's pension email 20 June 2023. These are now set out below.

26. On the morning of 14 November 2025 Mr Lumsden made an application to admit additional evidence. This was something that had been referred to by Mr Withers as a missing document when he had been cross-examining Ms Johnson. The respondent had now located it and wished to admit it.

27. Mr Lumsden explained that it was an email addressed to the claimant and therefore he believed that the claimant should have disclosed this. The respondent had inadvertently missed it because it was part of two email chains that are in the bundle and its absence was not noticed. His application to include it now was made on the basis that it had been referred to as missing and he was therefore providing it. Mr Lumsden also submitted that the email is entirely consistent with the witness evidence given by Ms Johnson and the oral evidence that she gave.

28. Mr Withers objected to this for two reasons. It was in his submission that it was the respondent's document. It was sent to the claimant as an employee in 2023 and was not a document that she had retained post-employment. It was for the respondent to have discovered and disclosed this. The second reason is that inclusion now represented a major injustice to the claimant because the only two relevant witnesses for the respondent who could comment or be asked about this email and what it means had already concluded their evidence. If it was to be admitted he would need to take instructions and then potentially make an application to have both the witnesses recalled. It was his submission that it was now too late for this and it was a case of the respondent trying to make good errors in their inadequate disclosure having had the benefit of hearing him cross-examine on the point.

29. We refused the respondent's application to admit the document because on its own case, it simply supported evidence already given. If we admitted the document then not only would two respondent witnesses have to be recalled, but the claimant would also have to be recalled in order to be cross-examined on the point. This application was made at the beginning of the final day of the hearing and to permit it would mean that it would be impossible to conclude the case within the trial window. The matter would have to be relisted for some further days at prejudice to all parties. To do that was simply not proportionate.

Submissions on Remedy

The claimant's submissions

30. Mr Withers made submissions on various parts of the schedule of loss. Dealing first with financial loss he reminded us that we had found that the dismissal was discriminatory. The claimant was therefore entitled to claim financial loss arising from that dismissal. She had made great steps to mitigate her loss and therefore had total financial loss was £3609.33.

31. Regarding non-financial loss, we were reminded that we had found that there had been a failure to make adjustments, that there had been indirect discrimination and discrimination arising from disability and the dismissal itself had been an act of discrimination. We were asked to consider paragraphs 108

and 109 of our judgment and it was submitted that we had already made a finding of fact that the claimant suffered injury to feelings which had an extreme impact on her health and had led to her being signed off work for a period of time. We had also made a finding that claimant continued to be traumatised by what happened to her and we had noted that had not been challenged by the respondent.

32. It was submitted that this was a finding that the injury was so significant that it had an ongoing effect at least until November 2025. While the claimant had valued the injury to her feelings at the point between the top of the middle band and the lowest point of the top band that would not stop the employment tribunal from providing a higher award.

33. It was submitted that this was a case which was suitable for aggravated damages. It was submitted that the aggravation here arose from two things, the application of the PCP with the failure to make adequate adjustments to income targets and the respondent's conduct of the process. We were directed to paragraphs 89 to 95 of our decision where we had made findings as to the process.

34. We also directed to paragraphs 111 and 120 of our decision in which Mr Lumsden challenged the GP and the fit note. It was submitted that the respondent's actions were predicated on the disbelief of the nature of the claimant's disabilities. The claimant was asked for documentary proof of her disabilities and full medical records despite the fact that she had declared her disability on the joining form and her manager had agreed adjustments with her. The respondent continued to address "claimed" disabilities and its conduct of the disciplinary process and its challenge added to her distress.

35. We were asked also to consider the fact that the respondent put the claimant to proof as part of the Employment Tribunal proceedings in the form of a preliminary hearing to dispute disability, even though she had disclosed this on her joining form and had provided a consultant report and an educational psychologist report. We should consider that we had concluded the respondent had constructive knowledge of her disability from the start of her employment. The subsequent conduct was an aggravation of the claimant's distress.

36. Mr Withers later expanded upon this point in response to Mr Lumsden's submissions. He identified that the respondent had challenged the GP during the procedure and questioned their professionalism. In response to the claimant's grievance Mr Lumsden had referenced "claimed" disabilities. The tribunal's finding had been of constructive knowledge. It was also submitted that we should note that within the respondent's submissions Mr Lumsden suggested that the claimant was "weaponising" and "tactically deploying" her disability in bringing the proceedings.

37. It was further submitted that this was a case where the ACAS uplift should be considered. We were referred to paragraph 92 of our decision. The code was engaged by the disciplinary hearing but not followed. This is a fundamental part of the claim. Because the claimant's disability the impact of not following a fair procedure was significant. The effect of this default was egregious.

38. There was a second failure to engage with the code. The claimant submitted a written grievance and this was not properly investigated. We were referred to paragraphs 100, 103 and 106. We found the respondent did not allow the

claimant to pursue a grievance. The maximum 25% was requested because this was a wholesale departure from the ACAS code and had a significant impact on the claimant.

39. We were also invited to award interest on the award based on the act of discrimination. It was noted that grossing up would be required if the amount awarded what is over £30,000.

The respondent's submissions

40. Mr Lumsden made very lengthy and detailed submissions with reference to a number of legal principles and case law. He submitted that there should be a nil award on all bases.

41. He submitted that there should be a 100% Polkey reduction because had a fair procedure been carried out he submitted that the claimant would have been dismissed for gross misconduct. He referred to evidence produced by Mr Woodhouse analysing blockage of hours for a 13 month period. In his submission this clearly demonstrated gross misconduct and the claimant's inability to recall this was not credible. This is a clear case on his account when dismissal would have been inevitable. He believes the misconduct had been proved from the forensic evidence that the respondent had, together with the claimant's admissions.

42. He also referred to later acquired evidence. He submitted that they were entitled to rely on this and pointed out that in paragraph 53 of the claimant's witness statement she admitted to deleting some diary blockouts. In his submission that on its own would have been enough to allow summary dismissal. He also made reference to the respondent being aware that the claimant had taken time away from work for personal errands which again indicated misconduct.

43. Mr Lumsden made a point about contributory conduct. He submitted that the claimant had contributed at a level of 100% to her own dismissal because she had manipulated blockage of hours for 13 months. This was culpable behaviour and should result in a 100% reduction to any award.

44. Mr Lumsden also asked us to take into account serious doubts about the claimant's credibility. His point was that the claimant had pursued a claim of whistleblowing based on a conspiracy which had not existed. In his view that destroyed her credibility. We should take this into account when considering the weight to be given to her evidence on the impact on her health and the level of her personal injury.

45. Mr Lumsden made a number of specific submissions on the injury to feelings being claimed. He told us that there was no right to an injury to feelings award under the Employment Rights Act. Such compensation can only be claimed in relation to disability and must be connected to the conditions on which the claimant was relying. His submission was that there was no causation shown between injury the claimant complains of and what occurred. The stress that she suffered was pre-existing.

46. He submitted that the tribunal must apply the apportionment principle as there were multiple causes of distress we must apportion the injury to feelings to the appropriate ones. In his submission none of this was a result of the

respondent's conduct but the claimant's reaction was because she was confronted with her own wrongdoing.

47. On a factual basis he submitted it was not possible to believe the claimant suffered from such significant injury to merit the amount she was claiming as she was able to secure new employment. That contradicted her claim that she was still impacted by what had happened when at the respondent.

48. In terms of the medical evidence Mr Lumsden criticised the claimant for not providing direct evidence of attempts to pursue for example therapeutic treatment and criticised the fact was no letter from her GP or from a consultant or psychiatrist or any other specialist. Had it been as serious as she was claiming there would be some evidence of this.

49. On the question of aggravated damages again this should be zero. The respondent's act was not malicious. They had acted professionally throughout and there was in any event no harm to aggravate because there was no injury to feelings.

50. On the ACAS code he submitted that it had been followed. If there were some defects would not be just and equitable to make an award. He also submitted that it was wrong in law to include an injury to feelings award as something to which an ACAS uplift could be applied.

51. On Mr Wither's specific submissions, he disputed the tribunal's decision as set out in paragraph 108 that there had been no challenge to the claimant's medical position. He said it was challenged and the claimant made some concessions.

52. Mr Lumsden also made the point a number of times that we should consider that this was a claimant who was seeing a conspiracy against her and that this would have had a psychological impact on her ability to perceive and to deal with other matters in the workplace. We should bear this in mind when considering the nature of the injuries as they would have a greater impact on somebody with this mindset.

53. Mr Lumsden made submissions that we should be careful not to do double counting and repeated that they were a small business. He accepted that the time the claimant's dismissal they had 200 staff and multiple premises.

Relevant Law

Discrimination awards

54. Injury to feelings awards compensate for non-pecuniary loss. Injury to feelings awards are available where a tribunal has upheld a complaint of discrimination. The award of injury to feelings is intended to compensate the claimant for the anger, distress and upset caused by the unlawful treatment they have received. It is compensatory, not punitive. It is not automatic.

55. The general principles that apply to assessing an appropriate injury to feelings award have been set out by the EAT in Prison Service v Johnson [1997] IRLR 162, para 27:

> ● Injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award;

● Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches;

● Awards should bear some broad general similarity to the range of awards in personal injury cases – not to any particular type of personal injury but to the whole range of such awards;

● Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings;

● Tribunals should bear in mind the need for public respect for the level of awards made.

56. In Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102) the Court of Appeal identified three broad bands of compensation for injury to feelings. These bands are updated annually and at the date of dismissal were

● Upper Band £35,200 to £58,700 (the most serious cases);

● Middle Band: £11,700 to £35,200 (cases that do not merit an award in the upper band); and

● Lower Band: £1,200 to £11,700 (less serious cases).

These bands take account of the 10% Simmons v Castle uplift.

57. The claimant must prove the nature of the injury to feelings and its extent. Eddie Stobart Ltd v Miss Caitlin Graham [2025] IRLR 337 (EAT) re-emphasises that an award for injury to feelings is not automatic upon a finding of unlawful discrimination. The Employment Tribunal must identify evidence of actual injury suffered by the Claimant and must explain how that evidence justifies both the making and the quantum of any award. The evidence required need not be extensive or medical in nature. The Claimant's own evidence may suffice, but it must go beyond mere assertion. The Tribunal must be able to identify material from which it can properly find that the Claimant experienced hurt, distress, anxiety, humiliation, or similar emotional harm. Sparse evidence may justify a modest award, but the Tribunal must still articulate what injury it has found and why.

58. In order to be compensated for discrimination, it is necessary for the court or tribunal to be satisfied, on the basis of the evidence and its findings of fact, that the harm or injury suffered by the claimant was caused by the act of discrimination (Essa v Laing Ltd 2004 ICR 746, CA.)

59. The 'eggshell skull' principle applies to loss arising from discrimination. The principle is alternatively expressed by saying that the discriminator must take the victim as he or she finds him or her. This means that 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. So, depending upon the extent of an individual's vulnerability, employers may find themselves liable

for damage that they consider far outweighs the seriousness of the acts of discrimination that occurred.

Aggravated damages

60. These are available in discrimination claims. They are an aspect of injury to feelings, and are awarded only on the basis, and to the extent that the aggravating features have increased the impact of the discriminatory act on the claimant and thus the injury to his or her feelings. They are compensatory, not punitive.

61. In HM Land Registry v McGlue EAT 0435/11 Mr Justice Langstaff, then President of the EAT, provided the following summary on the nature and purpose of aggravated damages:

'A tribunal in examining whether there is a case for aggravated damages has to look first at whether objectively viewed the conduct is capable of being aggravating, that is aggravating the sense of injustice which the individual feels and injuring their feelings still further… Aggravated damages certainly have a proper place and role to fill, but a tribunal should also be aware and be cautious not to award under the heading "Injury to Feelings" damages for the self-same conduct as it then compensates under the heading of "Aggravated Damages".

62. Aggravating features may include:

● Where the act is done in an exceptionally upsetting way: Underhill P in Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT cites the phrase 'high-handed, malicious, insulting or oppressive' behaviour

● Motive: discriminatory conduct that is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is likely to cause more distress than if done without such a motive – for example as a result of ignorance or insensitivity. Naturally, the claimant has to be aware of the motive in question; and

● Subsequent conduct: for example, conducting the trial in an unnecessarily oppressive manner, failing to apologise, or failing to treat the complaint with the requisite seriousness.

63. Tribunals must beware the risk of double recovery, and consider whether the overall award of injury to feelings and aggravated damages is proportionate to the totality of the suffering caused to the claimant

ACAS uplift

64. An award for compensation can be increased or reduced, by up to 25%, if the employer has unreasonably failed to comply with a relevant code of practice relating to the resolution of disputes (see s207(A) TULRC(A) 1992).

65. These provisions apply to claims brought under any of the jurisdictions listed in Schedule A2 to the TULR(C)A, which includes proceedings brought under Ss.120 and 127 of the Equality Act 2010.

66. S.207A(2) and (3) allow for an adjustment if the tribunal considers it 'just and equitable in all the circumstances'. Tribunals are entitled to have regard to the overall size of the compensatory award when deciding what size an adjustment to order (Abbey National plc and anor v Chagger 2010 ICR 397, CA,).

67. In Wardle v Crédit Agricole Corporate and Investment Bank 2011 ICR 1290, CA, the Court went even further, holding that an employment tribunal's failure to have regard to the size of the award when considering the appropriate uplift was an error of law.

68. In Slade and anor v Biggs and ors 2022 IRLR 216, EAT, the EAT cautioned that while 'wholly disproportionate sums' must be scaled down, those who pay large sums should not inevitably be given the benefit of a non-statutory ceiling which has no application to smaller claims.

69. The uplift, if applied, is not confined to any particular head of compensation. It may apply to the whole or part of the compensatory award, including financial loss and any award for injury to feelings, provided that the loss arises out of conduct to which the Code is relevant.

Interest

70. A tribunal is able to award interest in discrimination claims brought under the EA 2010 as part of its award of compensation, to compensate for the fact that compensation has been awarded after the loss compensated for has been suffered.

71. The tribunal may award interest for past financial loss; injury to feelings; aggravated and exemplary damages and physical and psychiatric injury. rate of interest is 8%.

72. The period of calculation of interest on an injury to feelings award is from the date of the act of discrimination complained of until the date on which the tribunal calculates the compensation (see Reg 6(1)(a) IT(IADC) Regs 1996).

73. The period of calculation for all other sums is from the mid-point of the date of the act of discrimination complained of and the date the tribunal calculates the award (Reg 6(1)(b) IT(IADC) Regs 1996). The mid-point date is the date half way through the period between the date of the discrimination complained of and the date the tribunal calculates the award (Reg 4 IT(IADC) Regs 19.

Response to the Respondent's submissions

74. While Mr Lumsden asked us to vary our findings of fact and challenged various points based on revisiting the evidence, we are not able to make a remedy decision by reconsidering or re-deciding any matter of fact already made. To the extent that Mr Lumsden challenges the finding that we made ,for example at paragraph 108, these are not matters that can be re-litigated as part of the remedy hearing.

75. Mr Lumsden asked us to reduce the claimant's compensation to nil based on Polkey i.e. a fair procedure would have made no difference and also because of contributory conduct. The claimant was not dismissed for conduct. In circumstances where a respondent carried out a wholly unfair procedure, gives a final written warning and demotes, it cannot argue that had it followed a fair procedure it would have provided a harsher penalty and dismissed. There can be no question of any such Polkey deduction.

76. His argument is also predicated on his assertion ,as referred to above, that the conduct had been proved, whereas this was not our finding. While Mr Lumsden relied on evidence that came to light after dismissal as he is entitled to, none of

this was of course put to the claimant, as it should have been if he wished to rely on this, during the cross-examination.

77. Mr Lumsden also made a number of statements about the events and evidence we had heard which contradict the evidence that he gave previously. For example he told us in his submissions that Mr Woodhouse's analysis was not available until after the dismissal, whereas at the time he said it was available and they had not shared it because they did not want the claimant to have the opportunity to further delete records. We simply do not and cannot accept that any such conduct was proved. That was not a finding made. We re iterate this was not a conduct dismissal. We have not found any evidence of misconduct on the claimant's part.

78. In terms of contributory conduct, section 123 (6) ERA 1996 does not apply to discriminatory actions. One cannot apply fault in discrimination cases. Even if it were possible, we cannot accept Mr Lumsden's argument that in some way the claimant's absence was because she had to face up to her own culpable conduct and that absence led to her dismissal and therefore there is a causative link between her conduct and the dismissal.

79. Mr Lumsden is incorrect on his assertion that the ACAS uplift does not apply to discrimination awards.

80. We heard his challenge to the medical evidence and his submission that there was no report showing psychiatric injury, but the claimant is not bringing a personal injury claim. We were provided with medical evidence and the claimant's evidence which was challenged via cross examination and reached our conclusions on that basis.

Conclusion on remedy

81. We have considered our findings of fact and the submissions made by both parties. Applying the relevant legal principles to those findings of fact we have reached the following conclusions.

Financial loss

82. We concluded at paragraph 172 that the dismissal was because of the claimant's absence. We set out that we were satisfied the absence was in consequence of the claimant's disability because she was dismissed for absence which arose from two of her disabilities.

83. We are satisfied therefore that the financial loss the claimant suffered flows from the discriminatory conduct. The claimant made early efforts to mitigate her loss and was successful in doing so. She is seeking £3609.33. We accept her calculation and make this award for financial loss. This includes elements of loss of pension benefit and loss of statutory rights. We have not therefore awarded a separate basic award.

84. The Recoupment regulations do not apply to this award.

Non-financial loss

Injury to Feelings

85. We made findings at paragraph 108 that the claimant felt so humiliated, stressed and concerned about her treatment and the disregard for her

disabilities that the situation had an extreme impact on her health. She was unable to return to work and was signed off by her GP. We found that she was still traumatised by what happened to her even in November 2025. She still suffers from panic attacks. What happened to her continues to significantly impact on day-to-day life.

86. This finding was based on the medical evidence that we heard and our assessment of the witness evidence that we heard. We have therefore accepted that the claimant has provided evidence of the nature of the injury to feelings and its extent. That extent is significant. It led to a period of immediate absence and continues to impact on her day-to-day life

87. At paragraph 109 we recorded that the GP set out the sequence of events noting the claimant has a disability, in particular dyslexia. Disability in stressful situations, namely the meeting on 4 December, made that disability worse. We found that the absence was in consequence of the claimant's disability. There is a clear causal link between the discriminatory acts and the impact on the claimant's dyslexia in particular.

88. We balance our finding of ongoing harm against the fact that the claimant was able to secure employment and continues, as far as we understand it to be in work today. Given the ongoing harm we consider that an award in the middle band of Vento is appropriate. We have concluded that is not appropriate to take this into the upper band because the claimant is able to continue working. The claimant has requested £35,200.

89. While it is always difficult to assign a precise financial value to injury to feelings balancing our clear findings of ongoing trauma and panic attacks against the fact that the claimant is able to continue working we conclude that an appropriate award is £30,000.

Aggravated Damages

90. We must first consider whether the respondents' conduct, objectively viewed, has aggravated a sense of injustice which the claimant felt and in did her feelings still further.

91. We made findings of fact at paragraph 112 that the claimant's GP was deeply offended by the tone of correspondence from Mr Lumsden and his accusations. In a similar way at paragraph 120 we found that Mr Lumsden continued to be critical of the GP in correspondence with the claimant. While this is on its face is directed at the GP, we find that on an objective basis that Mr Lumsden's challenge to the information her GP was providing about her health was likely to aggravate the claimant's sense of injustice. We find that this conduct amounts to high-handed or oppressive behaviour and is capable of being an aggravating feature.

92. We found at paragraph 70 that adjustments to financial targets were common for others. It was not discussed with the claimant despite the respondent having constructive knowledge of the claimant's disability. We found at paragraph 100 that in response to the claimant's disabilities Mr Lumsden was still referencing claimed disabilities. We found that even though the claimant was an employee who had completed her initial paperwork indicating she had a disability that nonetheless the respondent asked her for detailed medical information (paragraph 104) which it appears that those in the respondent were not even

sure they had read. We find that this treatment of the claimant was done an exceptionally upsetting way and was high-handed and oppressive behaviour.

93. We note the claimant's submission that despite all this evidence, the claimant was then still put to the cost and expense of a preliminary hearing to determine whether she was disabled. Nonetheless, we do not take that into account in our considerations. While we are inclined to think it should have been apparent to the respondent that dyslexia at least is a disability, this is an unrepresented respondent and we give it the benefit of the doubt that the respondent may not have understood the impact of this challenge.

94. We do take into account though Mr Lumsden's continued description of the claimant's disability and his comments about what is in effect improper use of it to gain advantage by weaponising it to bring proceedings. On an objective basis we consider that conduct is likely to aggravate the claimant's sense of injustice. We also conclude that this subsequent conduct is an aggravating feature.

95. We conclude that the matters set out above were acts carried out by the respondent in an aggravating manner which on an objective basis did aggravate the claimant's sense of injustice. We conclude that this is a case in which aggravated damages could be awarded.

96. We are conscious that we must beware the risk of double recovery, and consider whether the overall award of injury to feelings and aggravated damages is proportionate to the totality of the suffering caused to the claimant.

97. In this case we conclude that the overall award of injury to feelings sufficiently compensate the claimant for conduct. We make no separate award.

ACAS uplift

98. The Code Of Practice applied both to the disciplinary meeting which took place on 4 December 2023, and to the claimant's grievance which she submitted on 11 December 2023.

99. In relation to the disciplinary meeting we noted at paragraph 92 that the respondent carried out no proper investigation there was no investigation into whether a previous final written warning had been given, which it had not, there was no right to be accompanied , there was no advance notice of the subject matter, none of the documents that Mr Lumsden was referring to were provided to the claimant, either in advance or at the time. We concluded that there was no attempt to follow the ACAS code of practice.

100. In relation to the grievance at paragraph 107 we identified that Ms Johnson, who was the apparent decision maker on postponing the claimant's grievance, was unable to explain why the company felt they could subsequently invite the claimant to a meeting at which she was dismissed when she was still signed off sick, but could not invite her to a grievance meeting because she was off sick when the claimant had made it clear she wanted the grievance procedure to continue. We also found at paragraph 124 that the company had not pursued the claimant's grievance. We found it had taken no steps to resolve the position at all. It postponed the meeting the claimant wanted to the course of action that it wanted.

101. We had concluded in the liability judgment that there was no attempt by the respondent to follow the ACAS code in relation to the disciplinary procedure and it made an active choice not to pursue claimant's grievance. Its failure to do so had a particular impact on this claimant because of her disability. The claimant simply could not account for the blocked time without being given the information. We have found that the claimant's absence following this disciplinary meeting arose in consequence of her disability. There is a direct causal link between the failure to follow the ACAS code and the claimant's illness and then her ultimate dismissal.

102. We conclude that there was an unreasonable failure to follow the ACAS Code , both in relation to the disciplinary matter and the claimant's grievance.

103. We must then consider on a just and equitable basis the appropriate award. The maximum percentage is 25% but we must consider carefully the appropriate percentage on a just and equitable basis. We must also take into account the total size of the award made.

104. We take into account that this is a comparatively small family run business, although at the relevant time it had 200 staff and was operating from multiple premises.. We also note at paragraph 95 that this is not an isolated incident of the respondent ignoring ACAS.

105. Balancing those factors and taking into account the total size of the award made we conclude that an uplift of 15% is appropriate. The uplift is applied to the whole of the compensatory award including financial loss and the award for injury to feelings as we have concluded that the loss arose out of conduct to which the code is relevant.

Interest

106. To calculate the interest on injury to feelings award we must determine the date of the acts of discrimination complained of. We made findings that the respondent dismissed the claimant as an act of discrimination. We found that the respondent discriminated against the claimant in relation to not adjusting her income targets which occurred on 4 December 2023 we found there was a failure to make reasonable adjustments which impacted the meeting on 4 December 2023. We are therefore calculating the date of the discrimination as that date, that is the date of the first act of discrimination as the dismissal also flowed from that.

107. The award is calculated from 4 December 2023 until the 24 April 2026. That is 869 days.

108. To calculate the appropriate period for financial loss we need to take the midpoint that is the date half way through the period from the date of discrimination on the date the tribunal calculates the award. That would be a period of 435 days.

Tax and grossing up

109. As the amount of compensation awarded in total will exceed £30,000, grossing up will be required. After the hearing we ask for and were provided with information from the claimant as to her current financial position. From that we find that she is likely to earn £36,768 within the tax year. Taking into account her personal allowance this means that any tribunal award over £30,000 of up

to £10,801 will need to be grossed up at 20%. Any tribunal award above that will need to be grossed up at 40%.

The calculation

Item	**Calculation**	**Amount in £**
Financial loss		3,609
Injury to feelings		30,000
ACAS uplift at 15% on the compensation awarded	36,009 ×15%	5,041
Interest on injury to feelings	(869/365) × 0.08 x 30,000	5,714
Interest on financial loss	(435/365) x 0.08 x 3,609	344
		Total 44,708(not grossed up)
Grossing up the amount over £30,000 (£14,708) to take into account the claimant's tax position	10,801 must be grossed up at 20% 10,801 ÷ 0.8 3,907 must be grossed up at 40% 3907 ÷0.6	13, 501 6,512 total 20,013 – 14,708 = 5,305.
		Total 50,013

110. The claimant is accordingly awarded £50,013 for the reasons set out above

_____F McLaren _____

Employment Judge McLaren

Date: 24 April 2026

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