EMPLOYMENT TRIBUNALS

Claimant: Ms J Nnaji

Respondent: Spar UK Ltd

Heard at: Watford Employment Tribunal (In public; by video)

On: **17 and 18 February 2026**

Before: Employment Judge Quill (sitting alone)

Appearances
For the Claimant: Litigant In Person
For the Respondent: Ms J Duane, counsel

RESERVED REMEDY JUDGMENT

(1) The Respondent is ordered to pay the Claimant the sum of: **£61,989.47**

(2) That is the overall combined award made up of the following components

- (i) £278.65 unpaid expenses as per the liability judgment
- (ii) £161.86 for expenses seeking work
- (iii) £40.58 for interest on those expenses
- (iv) £320 for loss of statutory rights
- (v) £30,000 for injury to feelings and personal injury
- (vi) £7850.96 for interest on that award
- (vii) £20,672 for the costs of the surgery that the Claimant could not have on 13 February 2023
- (viii) £3200 for CBT treatment
- (ix) **MINUS** (£571 - £54.42) paid ex gratia on termination

(3) There is no award of compensation for the costs of medical reports.

(4) There is no ACAS uplift and no aggravated damages.

(5) There is no grossing up at present. If HMRC order that the Claimant must pay tax on any part of the award, there can be an application for reconsideration.

REASONS

Introduction

1. This was the remedy hearing which followed on from the liability judgment and the written reasons.

2. There was one witness on the Claimant's side, being the Claimant herself. The Respondent called 4 witnesses: Trudy Hills, Suzanne Dover, Louise Hoste, Steph Bateson.

3. The witnesses each gave oral evidence by swearing to the accuracy of their statements, and by answering questions from the other parties and the tribunal.

4. I had access to the document bundle (and witness statements) from the liability hearing. There was a remedy bundle of around 744 pages. Prior to the start hearing, each side submitted a skeleton argument.

5. After the evidence, I heard oral submissions, and also took account of the parties' written submissions.

Law

Introduction

6. The purpose of compensation is to provide proper compensation for the specific wrongdoing which, as per the liability decision, the Respondent committed. The purpose is not to provide an additional windfall for the Claimant and is not to punish the Respondent.

7. Section 124 of the Equality Act 2010 ("EQA") states, in part:

> **124 Remedies: general**
>
> (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
>
> (2) The tribunal may—
>
> (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
>
> (b) order the respondent to pay compensation to the complainant;
>
> (c) make an appropriate recommendation.
>
> (3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.

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

8. Section 119 of EQA states, in part

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

(a) in proceedings in tort;

(b) on a claim for judicial review.

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

(6) The county court … must not make an award of damages unless it first considers whether to make any other disposal.

9. When analysing and deciding what financial loss to award for a dismissal which has been found to be a breach of the Equality Act 2010, the Tribunal must ask itself what might have happened in the absence of such contraventions, and consider the possibility that there might have been a dismissal which was (not unfair and) not discriminatory and not an act of victimisation or harassment. See Chagger v Abbey National plc [2009] EWCA Civ 1202 (where it was said that: *The task is to put the employee in the position he would have been in had there been no discrimination; that is not necessarily the same as asking what would have happened to the particular employment relationship had there been no discrimination*)

10. In making such an assessment the tribunal, there are a broad range of possible approaches to the exercise.

10.1. In some cases, it might be just and equitable to restrict compensatory loss to a specific period of time, because the tribunal has concluded that that was the period of time after which, following a fair process, a fair and non-discriminatory dismissal (or other termination of employment contract) would have inevitably taken place.

10.2. In other cases, the tribunal might decide to reduce compensation on a percentage basis, to reflect the percentage chance that there would have been a dismissal had a fair and non-discriminatory process been followed (as well as acknowledging that such a process might have led to an outcome other than termination).

10.3. If a tribunal thinks that it is just and equitable to do so, then it might combine both of these: eg award 100% loss for a certain period of time, followed by a percentage of the losses after the end of that period.

11. For financial losses, the Tribunal must identify the financial losses which actually flow from complaints which were upheld. The Tribunal must take care not to include financial losses caused by any other events, or losses that would have occurred any way. In particular, where some complaints failed at the liability stage, the Tribunal must be careful not to award financial compensation based on losses which flowed (only) from the incidents/decisions for which there was no liability.

12. For injury to feelings, the Tribunal must not simply assume that injury to feelings inevitably flows from each and every unlawful act of discrimination. In each case it is a question of considering the facts carefully to determine whether the loss has been sustained. Some persons may feel deeply hurt and others may consider it a matter of little consequence and suffer little, if any, distress. Again, where some complaints failed at the liability stage, the Tribunal must be careful not to award injury to feelings based on the effect of the incidents/decisions for which there was no liability

Injury to Feelings

13. When making an award for injury to feeling, the tribunal should have regard to the guidance issued in Vento v Chief Constable of West Yorkshire Police (No 2) [2003] EWCA Civ 1871, [2003] IRLR 102, [2003] ICR 318, CA, and taking out of the changes and updates to that guidance to take account of inflation, and other matters. Three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury, were identified:

    13.1. The top band was (at the time) between £15,000 and £25,000. Sums in the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.

    13.2. The middle band was, initially, £5,000 and £15,000. It is to be used for serious cases, which do not merit an award in the highest band.

    13.3. The lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. Awards in this band must not be so low as to fail to be a proper recognition of injury to feelings.

14. In Da'Bell v NSPCC (2009) UKEAT/0227/09, [2010] IRLR 19 the Employment Appeal Tribunal revisited the bands and uprated them for inflation. In a separate development in Simmons v Castle [2012] EWCA Civ 1039 and 1288, [2013] 1 WLR 1239, the Court of Appeal declared that - with effect from 1 April 2013 - the proper level of general damages in all civil claims for pain and suffering, would be 10% higher than previously. In De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879, the Court of Appeal ruled that the 10% uplift provided for in Simmons should also apply to Employment Tribunal awards of compensation for injury to feelings and psychiatric injury.

15. There is presidential guidance which takes account of the above, and which is updated from time to time. This claim was presented on 17 April 2023. The relevant guidance applicable to this claim is the sixth addendum which states:

> *In respect of claims presented on or after 6 April 2023, the "Vento bands" shall be as follows: a lower band of £1,100 to £11,200 (less serious cases); a middle band of £11,200 to £33,700 (cases that do not merit an award in the upper band); and an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200 presented.*

16. The focus of the assessment has to be on the actual injury caused by the contravention of the Equality Act 2010 ("EQA"), not on an assessment of the seriousness of the contraventions. That being said, when the Tribunal is considering the evidence which it has received from the Claimant (and any other sources) about the actual injury to feelings, the Tribunal might find that the relative seriousness of the contraventions helps it to assess the reliability of the evidence about the asserted effects on the Claimant of the discriminatory conduct.

17. The type of thing that an injury to feelings award compensates for was summarised in Vento as: -

> An injury to feelings award encompasses subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.

18. Outside the field of discrimination, courts sometimes make awards for personal injury, including psychiatric injury.

19. In Essa v Laing [2004] IRLR 313, the Court of Appeal noted:

> 41……..Injury to feelings will most frequently occur, of course, without there being a psychiatric illness but both may result from the conduct complained of. They are different, as stated by Stuart-Smith LJ in Sheriff, but they are not, in my judgment, different kinds of damage in the sense contemplated in cases such as Hughes.
>
> 42 I agree with the analysis of s.57(4) by Stuart-Smith LJ in Sheriff, with the proviso that while there is a difference between 'injury to health or personal injury' and 'injury to feelings', the two are not inconsistent, may overlap and injury to feelings may contribute to injury to health. In *Vento v The Chief Constable of West Yorkshire Police [2003] IRLR 102* an award including sums for both psychiatric damage (clinical depression and adjustment disorder) and injury to feelings was upheld in this court, though that for injury to feelings substantially reduced. Giving the judgment of the court, Mummery LJ commented, at paragraph 63, that during the period of psychiatric disorder there must have been a substantial degree of overlap with the injury to the applicant's feelings. This approach does not support a conclusion that the damages are of a different kind.

20. When assessing the injury, the Tribunal also has to consider whether (i) any part of the injury was caused by something entirely different, and not by the

Respondents at all, or (ii) caused by the Respondents, but not by something for which a claim was brought, or (iii) caused by some act or omission, for which a claim was brought, but where the Respondents' conduct was not found to amount to a contravention of EQA. It is important to make sure not to award compensation for any such injury, and to only compensate for the injury caused by the complaints of breaches of EQA which we decided – at the liability phase - were successful. Coleman v Skyrail Oceanic Ltd [1981] IRLR 398

21. The claimant does not have to show they knew the treatment was connected to their protected characteristic in order to suffer injury to feelings for the discriminatory act. They only need to know they were subjected to the treatment. However, if the claimant was aware that their protected characteristic was a cause of the treatment they encountered, and especially where the conduct was overtly discriminatory, then that might assist them to show they have suffered serious distress and humiliation.

22. It is not necessary for the claimant to establish that the respondent could reasonably foresee that this type of injury would be suffered: Essa. The relevant question is whether the injury flows from the relevant discriminatory conduct.

Multiple contraventions, occurring on different dates

23. One question the Tribunal has to decide is whether each act of discrimination should attract its own award. In ICTS (UK) Ltd V Tchoula [2000] IRLR 643, that there were three separate incidents of victimisation. The EAT upheld the employment tribunal's decision to award one global figure for the totality of the injury saying:

> Experience of personal injury litigation leads us to believe that the global approach is permissible here. The question is how should the applicant be compensated for his injury to feelings flowing from the statutory tort? It is for the tribunal to determine the extent of the injury flowing from the unlawful acts of the respondent. That will lead to an overall figure for compensation.

24. While a different approach might be appropriate in some circumstances, a global approach is likely to be correct in most cases.

Divisibility of Injury / Cause of the injury

25. In principle, there is a distinction between:

25.1. A claimant who has no pre-existing injury (before the relevant discriminatory acts), but – because of previous life events – has a greater than usual vulnerability to suffering severe injury to feelings (and/or psychiatric injury)

AND

25.2. A claimant who – because of previous life events – has suffered an injury (before the relevant discriminatory acts), and who suffers because the Respondents' wrongdoing exacerbates that injury.

26. In the former case, the Respondents would be liable for the entire injury which they have caused (so long as it is caused by the relevant contraventions of EQA). In the latter case, it might be appropriate to apportion the injury, so that the Respondents are only liable to compensate for the exacerbation.

27. That being said, the distinction between the two scenarios will be a fine line. The Tribunal will have to carefully consider – where available – any expert evidence.

27.1. If there is a rational basis to apportion the injury, it is incumbent on the Tribunal to do so and divide the injury between its causes.

27.2. However, where "there is simply no rational basis for an objective apportionment of causative responsibility for the injury" (Rahman v Arearose Limited [2001] QB 351), then the respondent is liable to compensate the claimant for the entirety of the injury.

28. In Olayemi v Athena Medical Centre [2016] ICR 1074, it was pointed out that:

> Where the respondent's wrongdoing was a material cause of the claimant's injury, it was no defence for the respondent to show that she would not have suffered as she did but for a vulnerability to that condition,

28.1. BUT also that, if the facts show that the claimant would have suffered the same level of injury in due course, in any event (because of a pre-existing condition, not caused by the Respondent), then that was a relevant factor to the determination of compensation.

28.2. AND, similarly, if the facts show that the claimant would have suffered some level of injury in due course, in any event (because of a pre-existing condition, not caused by the Respondent), but it can be shown that – because of the wrongdoing by the respondent – the injury was worse than it would otherwise have been, then that was also a relevant factor to the determination of compensation.

Personal Injury

29. Employment tribunals have jurisdiction to award damages for personal injuries caused by discrimination, as well as injury to feelings. Sheriff v Klyne Tugs (Lowestoft) Ltd [1999] IRLR 481.

30. A psychiatric illness might be have a large number of possible origins or specific causes. It might starts, or its progression might be affected, by matters (whether work-related or otherwise) that have nothing to do with the discrimination suffered.

Unless the claimant can demonstrate that the discriminatory acts actually caused the psychiatric damage there will be no compensation under this head.

31. In Thaine v London School of Economics UKEAT/0144/10, a tribunal awarded compensation for injury to feelings and personal injury. The EAT held that where an employee's psychiatric ill-health has been caused by a combination of factors, some of which amounted to unlawful discrimination, but others which were not, it had been open to the Tribunal to discount the employee's compensation by such percentage as reflects its apportionment of that responsibility. The argument that 60% had been too high on the facts was rejected.

32. The Judicial College Guidelines provide guidance on the appropriate levels of awards for pain, suffering and loss of amenity. The Guidelines draw a distinction between psychiatric damage generally (giving categories of appropriate levels of awards for 'Severe', 'Moderately Severe' and 'Moderate') and post-traumatic stress disorder (for which the relevant categories are 'Severe', 'Moderately Severe', 'Moderate' and 'Minor').

33. The Tribunal might decide to make a separate award, identifying that it is for the compensation specifically for the personal injury component. However, it would not necessarily be an error of law simply to take the personal injury into account, and make a global award for combined injury to feelings and personal injury. Either way, there must be no double recovery: HM Prison Service v Salmon 2001 IRLR 425.

Aggravated Damages

34. There can be an award for aggravated damages where the necessary factors have arisen. Where it arises, it is part of the overall award of compensation for injury to feelings. The award is made as a recognition that the existing injury to feelings has been aggravated further by factors which are in some way related to the act of discrimination but may not necessarily form part of the statutory tort itself.

35. In Alexander v Home Office [1988] 2 All ER 118, the court said:

> *compensatory damages may and in some instances should include an element of aggravated damages where, for example, the defendant may have behaved in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination.*

36. In Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT, the EAT undertook a review of aggravated damages. It stated that it may be appropriate to make an award of aggravated damages based on analysis of

36.1. The manner in which the discrimination was committed and/or

36.2. The motive of the discriminator and/or

36.3. The discriminator's subsequent conduct.

37. An analysis of these things might determine that there has been conduct which is capable of being "aggravating". However, the purpose of analysis is not to determine whether the discriminator acted so badly that they deserve some sort of punishment; it is to consider whether, because of the manner of the conduct, some further injury has been caused to the claimant.

Financial Losses

38. The tribunal must act rationally and judicially, when assessing what financial loss has actually been caused by the discrimination, and its approach will always need to be tailored specifically to the circumstances of the case in front of it. In particular, a different approach is required between cases where:

38.1. The claimant is still employed by the respondent

38.2. There was a discriminatory dismissal, which is one of the contraventions for which compensation is to be awarded

38.3. There has been a termination of employment, but that termination is not one of the contraventions for which compensation is to be awarded

39. If the discrimination or harassment has caused such serious psychiatric injury that the claimant is unable to work for a considerable period, the Tribunal will award financial compensation.

40. Where the loss covers the remainder of the complainant's career, a tribunal should apply the methods used to calculate future loss in personal injury cases, using the Ogden Tables: Kingston Upon Hull City Council v Dunnachie (No.3) 2004 ICR 227. However, that is only where the future loss could be career-long (or for a period comparable to that). If the case If the case is not one of career-long loss, financial losses are using the standard approach.

41. The chances of the employee leaving for fair and non-discriminatory reasons has to be taken into account if making a final award for a discriminatory dismissal (and awarding a loss based on a decision that, but for the discriminatory dismissal, the employee would have remained with the same employer until retirement date is justified only in exceptional circumstances). Whereas, where the issue is not that there was a discriminatory dismissal, but rather that the contraventions of EQA (as upheld by the Tribunal) have prevented the employee from working and being paid, the relevance of the issue of hypothetically remaining employed by the respondent, or else departing for fair and non-discriminatory reasons falls away. Whether having an employment contract with the respondent, or whether with another employer, or whether being unemployed, the claimant's assertion is that – because either (i) they are too sick to work at all or else (ii) they can only do fewer hours

and/or (iii) earn less per hour – the Respondents discrimination has caused an ongoing loss.

42. Sharma v University of Portsmouth [2025] EAT 19, discussed the correct approach when considering the hypothetical scenario of the discrimination/harassment not having occurred.

Mitigation

43. When assessing alleged loss of earnings, the Employment Tribunal applies the same rules concerning the duty of a claimant to mitigate their loss as apply to damages recoverable under the common law. Where the employee has mitigated, a tribunal should give credit for sums earned.

44. When assessing the amount of deduction for the employee's failure to mitigate their loss, the tribunal does not reduce the award that it would otherwise make by a percentage factor. The correct approach is to make a decision about the date(s) on which the Claimant would have found work (and/or work at higher income than they actually obtained) had they been acting reasonably to seek to mitigate their losses, and then make an assessment of what income they would have had from such work.

45. So the approach is:

45.1. Consider what steps it would have been reasonable for the claimant to have had to take to mitigate their loss;

45.2. Ask if the claimant failed to take reasonable steps to mitigate their loss;

45.3. Decide to what extent would the claimant have mitigated their loss had they taken those steps

46. It is for the Respondent to prove that the Claimant has unreasonably failed to take appropriate steps, and that – on balance of probabilities - had those steps been taken, then the losses would have been mitigated.

Other Financial Losses

47. In accordance with the usual principles of assessing damages for tort, the Tribunal can award compensation for additional expenses that the claimant incurred as a result of the contraventions of EQA. This might include costs of medical treatment, etc. It is for the claimant to prove the loss.

Accelerated Receipt

48. If compensating for future losses, the Tribunal must assess whether the claimant will be receiving a lump sum which is prior to much of the future loss actually being incurred. If so, a decision about how to account for that should be made.

Past losses

49. The Tribunal can award interest on awards made under EQA. This can be on the general damages (injury to feelings, personal injury, etc) as well as on the financial losses occurring prior to the remedies hearing. (No interest is applicable in relation to future loss).

ACAS uplift

50. The ACAS Code of Practice on disciplinary and grievance procedures must be taken into account by the employment tribunal if it is relevant to a question arsing during the proceedings.

51. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides

> (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%.

52. So, a failure to complain with a Code has to be an unreasonable failure for this provision to have effect. Some failures might not be unreasonable, and so that is one of the decisions the Tribunal has to make.

Unfair Dismissal

53. Section 123 of the Employment Rights Act 1996 ("ERA") provides tribunals with a broad discretion to award such amount as is considered just and equitable in all the circumstances, having regard to the loss sustained by the claimant because of the unfair dismissal. However, compensation for unfair dismissal under s.123(1) cannot include awards for non-economic loss such as injury to feelings (see the House of Lords decision in Dunnachie).

54. When assessing alleged loss of earnings, the Tribunal applies the same rules concerning the duty of a claimant to mitigate their loss as apply to damages recoverable under the common law. Where the employee has mitigated, a tribunal should give credit for sums earned.

55. When assessing the amount of deduction for the employee's failure to mitigate their loss, the tribunal does not reduce the award that it would otherwise make by a percentage factor. The correct approach is to make a decision about the date(s) on which the Claimant would have found work (and/or work at higher income than they actually obtained) had they been acting reasonably to seek to mitigate their losses, and then make an assessment of what income they would have had from such work.

56. So the approach is:

    56.1. Consider what steps it would have been reasonable for the claimant to have had to take to mitigate their loss;

    56.2. Ask if the claimant failed to take reasonable steps to mitigate their loss;

    56.3. Decide to what extent would the claimant have mitigated their loss had they taken those steps

57. It is for the Respondent to prove that the Claimant has unreasonably failed to take appropriate steps, and that – on balance of probabilities - had those steps been taken, then the losses would have been mitigated.

Adjustments to awards for unfair dismissal

58. S122(2) ERA states that where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

59. Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

60. In relation to compensatory award, S123(6) states that where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

61. Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

62. For conduct to be the basis of a finding of contributory fault under S.123(6) ERA, it must have the characteristic of culpability or blameworthiness. This was established in Nelson v BBC (No.2) 1980 ICR 110. The conduct must also have a causal link to the dismissal.

63. In Hollier v Plysu Ltd 1983 IRLR 260, the EAT said that the contribution should be assessed broadly and should usually fall within the following categories: wholly to blame (100 per cent); largely to blame (75 per cent); employer and employee equally to blame (50 per cent); employee slightly to blame (25 per cent). There would be a zero reduction where the Claimant has not contributed at all by blameworthy conduct.

Polkey

64. Section 123(1) provides tribunals with a broad discretion to award such amount as is considered just and equitable in all the circumstances, having regard to the loss sustained by the claimant because of the unfair dismissal.

65. As part of the assessment, the tribunal might decide that it just and equitable to make a reduction following the guidance of the House of Lords in Polkey v AE Dayton Services [1987] IRLR 503. For example, the tribunal might decide that, if the unfair dismissal had not occurred, the employer could or would have dismissed fairly; if so, the tribunal might decide that it is just and equitable to take that into account when deciding what was the claimant's loss flowing from the unfair dismissal.

66. The Polkey assessment will usually be concerned with facts and matters known to the employer at the time of dismissal, but it is not necessarily limited to such facts. The tribunal may have to take into account facts which the employer might have found out if it had acted fairly, and/or future events which may have occurred if the employer had acted fairly. Polkey requires an assessment of the chances of different scenarios unfolding rather than to make decisions, on the balance of probabilities as to what would/would not have happened.

67. In making such an assessment the tribunal, there are a broad range of possible approaches to the exercise.

67.1. In some cases, it might be just and equitable to restrict compensatory loss to a specific period of time, because the tribunal has concluded that that was the period of time after which, following a fair process, a fair dismissal (or some other fair termination) would have inevitably taken place.

67.2. In other cases, the tribunal might decide to reduce compensation on a percentage basis, to reflect the percentage chance that there would have been a dismissal had a fair process been followed (and acknowledging that a fair process might have led to an outcome other than termination).

67.3. If a tribunal thinks that it is just and equitable to do so, then it might combine both of these: eg award 100% loss for a certain period of time, followed by a percentage of the losses after the end of that period.

68. There is no one single "one size fits all" method of carrying out the task. In Software 2000 Ltd v Andrews and ors 2007 ICR 825, the EAT noted that the relevant principles included:

68.1. in assessing compensation for unfair dismissal, the employment tribunal must assess the loss flowing from that dismissal, which will normally involve an assessment of how long the employee would have been employed but for the dismissal

68.2. if the employer contends that the employee would or might have ceased to have been employed in any event had fair procedures been adopted, the tribunal must have regard to all relevant evidence, including any evidence from the employee

68.3. there will be circumstances where the nature of the evidence for this purpose is so unreliable that the tribunal may reasonably take the view that the exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on the evidence can properly be made. Whether that is the position is a matter of impression and judgement for the tribunal

68.4. however, the tribunal must recognise that it should have regard to any material and reliable evidence that might assist it in fixing just and equitable compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to make a deduction

68.5. a finding that an employee would have continued in employment indefinitely on the same terms should only be made where the evidence to the contrary (i.e. that employment might have been terminated earlier) is so scant that it can effectively be ignored.

69. The tribunal must act rationally and judicially, but its approach will always need to be tailored specifically to the circumstances of the case in front of it. When performing the exercise, the tribunal must also bear in mind that when asking itself questions of the type "what are the chances that the claimant have been dismissed if the process had been fair?", it is not asking itself "would a hypothetical reasonable employer have dismissed"? It must instead analyse what this particular respondent would have done (including what are the chances of this

particular respondent deciding to dismiss) had the unfair dismissal not taken place, and had the respondent acted fairly and reasonably instead.

70. As the EAT noted in Granchester Construction Ltd v Attrill UKEAT/0327/12.

> *we accept that the Tribunal's approach in looking at a reasonable employer rather than at the actual employer was in error and was likely to understate the extent of the deduction that fell to be made*.

71. If a tribunal is making award for losses which flow from an unfair dismissal, and also for losses which flow from breach of EQA, it must take care not to count the same loss twice.

Cases highlighted in the parties' submissions

72. I have taken account of all the submissions from either side, and my decisions on the disputed points is clear from the decisions/reasons set out below. It is not necessary that I comment on in detail on each of the cases that one or both of them have highlighted, the parties' submissions included references to, amongst other things, the following.

73. In Wilding v BT [2002] EWCA Civ 349, the court of appeal had to make a decision about alleged failure to mitigate in the following circumstances:

    73.1. On 21 January 1999, the Tribunal had decided in the claimant's favour that there had been discrimination and an unfair dismissal. But for the discrimination, the claimant's employment would not have terminated on the date that it did, because it would have been a reasonable adjustment to explore further options prior to taking the decision about whether to dismiss.

    73.2. On 15 February 1999 (so after the liability decision), the respondent had offered the claimant a job. After the initial offer, the employer had supplied the claimant with further information on 10 March and 29 April. The offer included details of back pay proposals.

    73.3. On 13 May 1999, via solicitors, the claimant rejected the offers, and gave reasons. The reasons included, amongst other things, that by appealing to the EAT (and by the comments made in the Grounds of Appeal), the employer had indicated that it did not accept the obligation to maintain the specific adjustments which the claimant required, and the claimant did not trust them to properly comply with their obligations in the future.

    73.4. The Tribunal decided the claimant had unreasonably refused the offer of further employment and that his loss of earnings should be assessed accordingly.

    73.5. The Employment Appeal Tribunal dismissed the appeal.

74. Unanimously, the court of appeal rejected the appeal. It does not necessarily follow that the EAT or court of appeal would have decided the mitigation argument the same way, but there was no error of law in Employment Tribunal's approach. Amongst other things, the court of appeal observed:

Paragraph 37

> (i) It was the duty of Mr Wilding to act in mitigation of his loss as a reasonable man unaffected by the hope of compensation from BT as his former employer; (ii) the onus was on BT as the wrongdoer to show that Mr Wilding had failed in his duty to mitigate his loss by unreasonably refusing the offer of re-employment; (iii) the test of unreasonableness is an objective one based on the totality of the evidence; (iv) in applying that test, the circumstances in which the offer was made and refused, the attitude of BT, the way in which Mr Wilding had been treated and all the surrounding circumstances should be taken into account; and (v) the court or tribunal deciding the issue must not be too stringent in its expectations of the injured party. I would add under (iv) that the circumstances to be taken into account included the state of mind of Mr Wilding

Paragraph 38

> … a claimant cannot recover damages for any loss which he could have avoided by taking reasonable steps to do so. Reference to objectivity does no more than emphasise that the duty is to act reasonably. But, at the same time, the tribunal must also consider 'all the circumstances'. These must inevitably be related to the individual conduct and circumstances of the particular claimant when faced with a choice as to whether or not accept an offer of re-employment. If an offer is made which is, on the face of it, suitable to a claimant who has expressed himself anxious to return to work as a means of mitigating his loss, and the offer is then rejected for reasons peculiar to the particular claimant, that is bound to involve investigation by the tribunal of whether, in the context of the claimant's circumstances and abilities, his refusal of that offer was reasonable or unreasonable. To this extent at least, the (subjective) reasons of the plaintiff in refusing the offer will fall to be examined in the light of the explanations which he gives. Indeed, in an appropriate case, they may critically affect the reasonableness or unreasonableness of his decision

Paragraph 55:

> … the principle set out by Lord Macmillan in Banco de Portugal v Waterlow and Sons Ltd [1932] AC 452, 506:
>
> > *"The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken."*
>
> In other words, it is not enough for the wrongdoer to show that it would have been reasonable to take the steps he has proposed: he must show that it was unreasonable

> of the innocent party not to take them. This is a real distinction. It reflects the fact that if there is more than one reasonable response open to the wronged party, the wrongdoer has no right to determine his choice. It is where, and only where, the wrongdoer can show affirmatively that the other party has acted unreasonably in relation to his duty to mitigate that the defence will succeed.

75. In paragraph 8 of her submissions, Ms Duane states:

> In Mabey Plant Hire Ltd v Richens, unreported 6.5.93, CA, the Court of Appeal decided that where an employee is unfairly dismissed and, before the assessment of compensation, obtains alternative employment which could have been permanent, but which ends for reasons unrelated to the first employer, the chain of causation between the dismissal by the first employer and the employee's future loss of earnings is broken.

76. I do not regard that summary as inaccurate, but I would add:

76.1. On the facts as found by the first instance tribunal, the claimant had obtained a "permanent" job (that is, not a fixed-term contract). The claimant was dismissed, either for conduct or some other substantial reason (personality clash), but not for any reason attributable to the respondent.

76.2. The first instance tribunal had been willing to allow (i) loss of the income from the old job for the period before the new job started (ii) losses during the new job, on the basis of its not paying as much as the job with the respondent and (iii) loss of the income from the old job for the period after the new job had ceased (though reduced by 50%). The latter was said to have been on the basis that the new job had not become permanent.

76.3. While the EAT decided that there had been an error of law in relation to the third of these periods, its decision was that the matter should be remitted.

76.4. The court of appeal came to the conclusion that, on the facts as found by the tribunal, the only correct decision was that (i) in relation to the earnings from the new job, the respondent was not liable to compensate the claimant for the loss of those earnings following the dismissal from the new job and (ii) had the new job continued, then there would potentially have been ongoing losses – the difference between the pay in the new job compared to the job with the respondent – and potentially the claimant could still recover something for those losses for the period after the new job came to an end.

77. I do not regard Richens as setting down a principle that goes any further than that, when assessing losses, the Tribunal must carefully find the facts. As well as assessing what would have happened to the job/pay with the respondent but for the unfair/discriminatory dismissal, the Tribunal has to assess what the claimant did earn from other employment. Possible scenarios include:

77.1. The claimant has had no replacement income at all, and seeks past and future loss. If the Tribunal decides that, because of a failure to mitigate, there is a point in time (before the remedy hearing) from which the respondent is no longer liable for the losses, then that speaks for itself in terms of future loss. The future loss will be nil. However, where the Tribunal decides that there was no such unreasonable failure to mitigate, then the Tribunal makes a decision about how much future loss to award, on the assumption that the claimant takes reasonable steps to secure a new job (paying at least as much as the old job) as soon as possible.

77.2. The claimant has some replacement income, but seeks past and future loss because of the difference between the old job and the replacement. This could be lower basic salary, lower bonus, less overtime, pension, more associated expenses (commuting costs, perhaps, or in this case childcare) or perhaps less opportunities for promotion and advancement. Effectively, this requires the same analysis as the preceding sub-paragraph but in relation to each specific sub-category of loss. Is the loss because of unreasonable failure to mitigate? If not, what should be the award for the future, on the assumption that the Claimant will be taking reasonable steps to mitigate as soon as possible.

77.3. The claimant had some replacement income, but that new job has ceased before the remedy hearing. The reason for the cessation will be crucial. If it was only ever intended to be short term, then the fact that it ended without renewal might be no reason at all that the claimant cannot rely on the fact that they became unemployed following the cessation of that new job as part of their argument for remedy. However, just as in the previous two sub-paragraphs, issues of alleged failure to mitigate have to be considered. Depending on the specific circumstances, the fact that the claimant obtained a new job (albeit only for a limited period of time) might help to refute assertions that they were not doing their best to replace the income that they had lost from the respondent OR it might assist the respondent to show that there was an unreasonable failure to mitigate. In any event, where the claimant lost the new job because of their own behaviour, then the respondent usually will not have to compensate for the sums that the claimant could have earned in the new job if they had not been dismissed from it.

78. I agree with paragraph 25 of the Respondent's submissions to the effect that, as well as the principles about the duty to mitigate applying to efforts to obtain income from new work, they can also potentially apply to a failure to obtain state benefits.

79. The Claimant relies on Ministry of Justice v Parry UKEAT/0068. Paragraphs 41 to 45 discuss Polkey and Software 2000, and re-emphasise that where the dismissal is unfair: (i) the claimant should not be awarded zero for loss of income merely because it was more likely than not that they would have been dismissed had there

been a fair procedure and (ii) the claimant should not necessarily be awarded the entire loss of income merely because it was more likely than not that they would NOT have been dismissed had there been a fair procedure.

80. Ministry of Defence v Cannock and ors 1994 ICR 918, discussed a number of important principles which have been discussed above, including about the approach to assessing the period for which future loss will be awarded, and about how to approach the assessment of the chances of various possible scenarios for future career progression.

Findings of Fact - General Comments

81. I do not need to quote extensively from the liability decisions and reasons. The parties already have those in writing and I have taken those decisions and reasons fully into account when deciding each of the remedy issues.

82. The hearing last June/July had been intended to deal with remedy issues as well as liability. One of the reasons that it did not do so is that the Respondent alleged that the Claimant had not given full disclosure. It did not assert that it had other documents to disclose.

83. At the end of the liability hearing, I made orders for the Claimant to disclose documents.

84. The Claimant has not disclosed to the Respondent an unredacted version of her contract of employment for her work after leaving the Respondent. She claimed to me in the remedy hearing that this was in line with what a judge had said at a preliminary hearing. As I said at the time, I infer that she is referring to EJ Boyes and the hearing on 5 October 2023. However, I am satisfied that the Claimant understood that the orders for disclosure which I made 21 months later superseded anything that the Claimant was told in October 2023. My orders were specific to the remedy issues that I had to determine and specific to what the Claimant had heard the Respondent say to me about the documents which the Claimant had in her possession (the Respondent believed) which had not been disclosed as of July 2025.

85. The terms and conditions of the Claimant's new employment were potentially relevant. (The Claimant's position being that she did not redact anything that was relevant). Likewise any written correspondence between the Claimant and the new employer about potential renewal or non-renewal of the fixed-term contract was relevant. My finding is that the Claimant probably had documents in her possession that ought to have been disclosed but which were not disclosed.

86. The Respondent disclosed a number of documents for the remedy hearing to the Claimant. Some were disclosed in November 2025. My finding is that the Claimant

is correct and some were not sent to her in advance of the exchange of witness statements. Paragraph 25 of the orders of EJ Boyes made clear that the Respondent was asserting, as of October 2023, that it had disclosed all its documents. In July 2025, the Respondent did not tell me that that information was now out of date. The orders for disclosure (sent to parties on 7 August 2023) had not been revoked or varied. I do not accept that the Respondent had a good faith reason for the lateness of its disclosure. The Respondent claimed that since I set no dates for it to disclose documents to the Claimant, then doing so when it sent the draft remedy bundle to the Claimant was appropriate. That is plainly not correct. As I have already said (and I do not blame counsel at the liability hearing or at the remedy hearing for this), at the end of the liability hearing the Respondent complained about the Claimant's lack of disclosure but did not reveal its own; that is the only reason that specific dates for it to send further documents to the Claimant were not set.

87. The flaws in the parties' disclosure have been taken into account when making the findings of fact for the remedy hearing.

88. The Claimant suggested at the start of the remedy hearing that some of the items of the Respondent's disclosure at the remedy stage ought to have been disclosed prior to the liability hearing. She also said that, had that happened, then the questions she put at the liability hearing might have been different, and, therefore, the outcome might have been different. As I said at the time, the purpose of the remedy hearing was not to revisit, or reconsider, or vary any of the liability decisions. The method to challenge those decisions would have been by a reconsideration application and/or appeal to EAT. That applies to both sides, however. In other words, the Respondent disclosed documents, gave witness evidence and made submissions at the liability hearing about the reasons for the Claimant's dismissal and the alleged fairness of the procedure (including about what information was given to the Claimant, and about why that was fair and reasonable). It was not open to the Respondent at this hearing to ask me to decide that other factors, apart from the redundancy situation set out in the liability decision, were the reason for the dismissal.

89. The Claimant had been given permission to rely on expert evidence. She had instructed solicitors to assist with that. The Respondent had put forward a number of questions for the experts and had asked for a copy of the instruction letters. The questions had not been answered (the Claimant said they were excessive and had asked for them to be reworded) and no copy of the instruction letter had been provided to the Respondent (the Claimant said her solicitors had done this, and she did not have a copy). I have taken these points into consideration when assessing the expert's report.

90. There was agreement between the parties that the correct total for the unpaid travel expenses was £278.65. (On the Claimant's case, there should also have been interest, but I reject that argument).

Discussion

91. No basic award is payable because the Claimant received a redundancy payment, and because I accepted that the reason for dismissal was actually redundancy.

92. Paragraphs 386 to 392 of the liability reasons described the successful complaint of breach of contract in relation to unpaid travel expenses. The sum for that is £278.65. This was not a contravention of the Equality Act 2010 ("EQA") and no interest is awarded.

Earnings while working with the Respondent

93. The Claimant states the correct figures were: £1282.70 (gross) and £922.00 (net).

94. The Respondent says the correct figures were: £1286.15 (gross) and £851.02 (net).

95. The Claimant's payslips were in the liability bundle at [Bundle L883] for February 2023 and [Bundle L885] for July 2022. In the remedy bundle at [Bundle R211], there was a summary which the Respondent said was accurate of pay for the period June 2020 to May 2021.

96. The difference between the gross weekly figures suggested by the parties is simply that the monthly gross was £5573.33 (£66,880 per year) and the parties have used slightly different calculation method to convert to weekly. The Respondent's method of dividing the annual rate by 52 is acceptable and so my finding is that the gross weekly rate was £1286.15.

97. The best guide to the net figure, on the evidence presented by the parties is the July 2022 payslip.

98. The deductions that month were:

98.1.	Tax	£1124.06
98.2.	Employee National insurance	£453.92
98.3.	BUPA	£84.66
98.4.	Employee pension contribution	£222.93.

99. The year to date column implies that these amounts were in line with the period April to June 2022 as well.

100. The Claimant did not have an increase in gross basic salary (according to the February 2023 payslip). I note (as mentioned in the liability decision) that £84.66 was taken for BUPA in February 2023 as well (and the year to date column implies that was typical).

101. The deductions from the July payslip are a more reliable guide because the February payslip includes £16,720 as payment in lieu of notice, adjustments to salary to reflect leaving part way through the month, holiday pay, etc, and the tax and NI figures take account of those out of the ordinary adjustments.

102. Thus my finding is that, for a typical month, the Claimant's net earnings were £5573.33 and the aggregate of the deductions mentioned above was (£1124.06 + £453.92 + £84.66 + £222.93) £1885.57.

103. Therefore her net monthly figure was £3687.76. Multiplying by 12 and dividing by 52, her net weekly figure was £851.02 (when taking account of all the deductions) and £902.46 (deducting BUPA but not pension) and £922.00 (which is the gross, less tax and NI, but ignoring pension and BUPA deductions).

Bonus while with the Respondent

104. The February payslip shows that some time between August 2022 and January 2023, the Claimant had received a bonus of £7000 gross.

Pension while with the Respondent

105. According to the July 2022 payslip, the "Employers Pens" was £588.09 that month and the year to date figure, for the period 6 April 2022 to 31 July 2022, implies that was typical.

106. I comment that the Claimant's arithmetic is (more or less) correct. £558.09 is 10.55% of £5573.33.

107. The Respondent's document at [Bundle R211] shows employer contributions of £300 per month for June 2020 to April 2021 (and £320 for May 2021) and that would be 6% of gross salary. I do not place a lot of weight on this document as I have insufficient information about its creation, and about why it is limited to these particular months.

108. However, I accept the accuracy of the information on [Bundle R436]. The sum shown on the payslips "Employers Pens", despite the implication that it is (only) the employer's pension contribution, is actually the aggregate of the Claimant's contribution and the employers. So the Respondent's actual contribution was £588.09 - £222.93 = £365.16. [C's contribution being 4% of her gross and the Respondent's contribution being about 6% of gross but with an additional sum of around £30.76 being the Respondent's NI saving passed back to the Claimant.]

109. Multiplying £365.16 by 12 and dividing by 52 gives a weekly employer contribution of £84.27 and my finding is that that is the actual figure which the Respondent was paying while the Claimant was SPM.

Chances of what would have happened in the absence of discrimination and unfair dismissal

110. One possibility is that the Claimant would have left the Respondent's employment in the absence of discrimination and unfair dismissal. Based on the liability decision, that would have meant some combination of the decision to dismiss being taken later than Friday 10 February 2023 and/or the dismissal being with notice rather than payment in lieu of notice.

111. Another possibility to be considered is that the Claimant would have ceased to be Strategy and Planning Manager (SPM) and would have become Trade Planning Controller (TPC).

112. Another possibility to be considered is that the Claimant would have ceased to be SPM and would have become Marketing Campaign Manager (MCM).

113. Based on the liability decisions, even in the absence of discrimination or unfairness, there was zero probability of the Claimant remaining as SPM. That post was being deleted from the structure. See the liability decision as a whole, including, for example, paragraphs 271.5 and 274.3 and 274.4.

114. For any of the 3 possibilities:

    114.1. Going from SPM to not working for the Respondent at all

    114.2. Going from SPM to TPC

    114.3. Going from SPM to MCM

    I have to make decisions about (assess the chances) of the change happening on particular dates, and factor that in to the calculation of the Claimant's losses. In particular, I also need to assess the losses from the BUPA coverage being cancelled from the date set out in the liability decision.

115. However, subject to the termination date issues, if, in the absence of discrimination and unfair dismissal:

    115.1. The Claimant would have gone from SPM to not working for the Respondent at all, then the discrimination and unfair dismissal has not caused a loss of the remuneration she was receiving from the Respondent

    115.2. The Claimant would have gone from SPM to TPC, then her ongoing losses are calculated based on the remuneration of the TPC post (not the

remuneration of the SPM post, even though TPC potentially paid more than SPM)

115.3. The Claimant would have gone from SPM to MCM, then her ongoing losses are calculated based on the remuneration of the MCM post (not the remuneration of the SPM post, even though MCM was significantly less than SPM)

116. Subject to the date of termination, The aggregate chance of one of those 3 things happening around February to May 2023 is 100%, because my decision is that there was no other possibility at that time. That being said, had the Claimant moved to either TPC or MCM, there was also a finite chance that she would leave that role at some point in time, and I have to factor that in as well.

117. My decision is that, even in the absence of discrimination and unfair dismissal, there was a 0% chance of the Claimant being appointed as TPC by the Respondent. There would have been an interview with Ms Dover and Simon Mitchell, who was Head of Trading at SPAR (UK) Ltd. There is a 100% likelihood that this would have been arranged either very late January 2023, or no more than a few days after 1 February 2023. At the latest, it would have been around 5 February 2023 when other interviews took place, give or take a day or two for the Claimant to be well enough to attend.

118. There is a 100% chance that the Claimant would have been unsuccessful following the interview. This is because, in the absence of discrimination or unfair dismissal, notwithstanding the Claimant's contentions that she had past experience that was – in her eyes - effectively equivalent to, or similar to, what the Respondent was seeking, the Respondent was actually seeking a proven track record in buying or trade planning which the Claimant did not have. As Ms Dover puts it in her statement, "*The Claimant did not have this level of commercial experience, and while she demonstrated other strengths, these did not align with the core requirements of the role*". There is a 0% chance that the Respondent would have decided otherwise even if they had interviewed the Claimant.

119. So the Claimant's losses are to be measured against the chances of her becoming MCM in the absence of discrimination and unfairness.

120. As set out in the liability reasons the Respondent did offer the Claimant the post. Based on the findings of fact made, paragraph 274.5.2 recorded my decision that the Respondent made an offer which was sufficiently clear that the Claimant could have said "I accept" and there would have been a binding contract. Paragraph 274.5.3 records that, had the Claimant said or done something equivalent to saying "I accept" then she would have become MCM manager on the terms which were offered. Those terms included (i) immediate move from SPM to MCM (no notice period) and (ii) a trial period, at the end of which either party could decide that the

trial had not worked out and that the Claimant would be redundant (from the SPM post) after all.

121. So one thing to be considered is: What are the chances that the Claimant would have accepted the MCM post in the absence of discrimination and unfairness? This also involves assessment of whether the terms of the offer, for example, regarding start date would have been different in the absence of discrimination and unfairness.

122. Another thing to assess is the chances of the trial being successful / unsuccessful in the absence of discrimination.

123. I take into consideration everything that I decided in findings of fact and the analysis, including the comments at paragraphs 274.5.4 to 274.5.10.

124. I take into account that the Claimant's argument is that she effectively said "yes" to the job at the time, but subject only to her contention that the Respondent should give her notice to terminate the SPM contract and that the MCM contract would start at the end of that notice period.

125. I take into consideration the facts as found between paragraphs 241 to 243 of the liability reasons. An offer was made. It was not accepted.

126. My decision is that, by 22 March 2023 (at the latest), the Claimant did not want the MCM post. Had she wanted it, she could have simply said so outright. She queried why she should have to return the PILON. Had she wanted the job, she could simply have asked the Respondent to calculate an appropriate sum which netted off the PILON against what she would have earned but for the dismissal. Furthermore and in any event, the Claimant did not say that she accepted the MCM post backdated to 13 February (which was the offer made by Lee Johnson on behalf of the Respondent). My decision is that she also did not unequivocally say that she would be willing to accepted it with effect from 22 March (or any other date) either.

127. Based on the Claimant's submissions (apart from the fact that she did not wish me to make the findings of fact mentioned in the previous paragraph), she effectively asks me to decide that what she said in March, which was after the discrimination and the unfair dismissal, is not a good guide to the likelihood of her accepting the MCM post.

128. My decision is that, in the absence of discrimination and unfair dismissal, there is an 80% chance that the Claimant would have accepted the move to the MCM post, on the terms on which it was offered in February. That is, the move would have occurred (subject to trial period) with effect from 1 March.

128.1. My decision that the date would have changed to 1 March is not an exact science because it is an assessment of what would have happened if the Respondent had not been so fixated on Friday 10 February / Monday 13 February. It was only fixated on those dates because of the Claimant's planned surgery. A non-discriminatory approach would have allowed the Claimant a little bit longer to make up her mind (taking into account that she only received the contract on 8 February, and that the Respondent did not have someone else lined up to start as MCM straight away if the Claimant did not take the job). However, I do not regard it as discriminatory or contributing to unfair dismissal that the Respondent wanted the contract variation to MCM to take place sooner than 13 May 2023. In the absence of discrimination, and taking account of the Claimant's surgery, my assessment is that there is a high chance that the Respondent would have been willing to push the date back a bit. As per [Bundle R312], the Respondent appointed an MCM (by offer made on 24 March 2023) to start with effect from 2 May 2023. Had the Claimant accepted the role, the Respondent would have had to wait until the Claimant's return from sickness for her to start the duties. However, if the Claimant was not going to accept, then the Respondent wanted to know that sooner rather than later so that it could appoint someone else.

128.2. My decision that there is a 20% chance that the Claimant would have ultimately said "no" is partially based on the fact that the Claimant strongly disagreed with the decision that she not be appointed as TPC and that she strongly asserted that she should not be moved to MCM without being given 3 months notice from the SPM post, and that, when offered the MCM post within what would have been a notice period (had the Respondent dismissed with notice on 10 February, instead of with PILON), the Claimant declined the offer. (The Claimant does not accept that she declined the offer, but even on her own case, she did not accept it by the deadline). Although I do accept that refusing the actual offer in March (after the events of 10 February and 13 February in particular) is different to refusing a hypothetical offer made in the first half of February, but with time to consider until (say) 28 February, there was enough push back in her correspondence at the time to satisfy me that there was not a 100% chance of the Claimant taking the MCM post, even if the Respondent had been willing to compromise slightly on the start date.

129. My assessment is that, had the Claimant agreed to move to MCM, then there is an 80% chance that the trial would have been successful. Any chance of the Claimant deciding that she would prefer redundancy is already taken into account in what I have said in the previous paragraph. However, there is a non-zero chance that the Respondent would have been dissatisfied with the trial period and would have – for reasons that did not amount to discrimination or to unfair dismissal – have

ended the trial on the basis that the Claimant was dismissed by reason of redundancy.

130. Given the length of time that the consultation had lasted by 10 February, even in the absence of discrimination, including hypothetically having a meeting on 8 February with the Claimant's union representative in attendance, the Respondent could – in the absence of discrimination or unfairness – have reached the position by 10 February 2023 that it was going to issue a notice of dismissal to give 3 months notice, to expire on 10 May 2023. That could have been done on the basis that discussions about possible alternative employment could continue during the notice period, but on the basis that the Respondent had, by this stage, made its final decision to implement the new structure and – therefore – to delete the SPM post from the structure (and to recruit to TPC and SPM posts, amongst other things.)

131. It is slightly hypothetical as to what would have happened in the absence of discrimination. However, I have considered the likelihood of the Respondent deciding to delay the decision to issue notice until a later date. I assess the chance of that happening as zero. Thus, in the absence of discrimination, the Respondent would have issued the Claimant with notice of dismissal, but would have made clear that the notice would have been cancelled provided the Claimant agreed to move to the MCM post (or, hypothetically, to some other post, although in reality there were none). As I have said above, I have made the assessment that the Claimant would have been allowed the rest of February 2023 to agree to commence in MCM with effect from 1 March 2023 in this hypothetical scenario.

132. Had the Respondent dismissed the Claimant with notice from the SPM post, that would have made no difference to the Respondent's appeal decision. There is still a 100% chance that the appeal would have failed in so far as it either sought to be reinstated to SPM or to be appointed to TPC.

Future Career Prospects had the Claimant been confirmed as MCM after the trial

133. I have noted what the Claimant says in paragraphs 22 to 25 of her witness statement. However, that is simply speculation as to what would have happened to the MCM post and/or applications for transfer to other roles.

134. The Respondent deleted the post of Marketing Director around September 2023. The Claimant therefore would not have been promoted to that specific position even had she become MCM.

135. As per [Bundle R388], I accept that the MCM post was £49,500 in 2023, increasing to £51,975 from 1 May 2024 and £53,015 from 1 May 2025. There was a 10% bonus. Since the Claimant was offered £50,000 (see [Bundle L625], and the liability reasons), her starting salary would have been about 1% higher, and that would have carried through in the subsequent increases, but the evidence does

not persuade me that, had the Claimant been in the role, then the annual increases would have been higher than the 5% and 2% shown on [Bundle R388].

136. I will discuss the Claimant's future earnings capacity when addressing the expert report and the personal injury arguments. However, in terms of the counter-factual about what the Claimant's long term earnings would have been if she stayed with the Respondent, having become MCM in around March/May 2023, I do not find that she would have received a significant pay jump from the starting salary within the next year or two.

137. I note that [Bundle R683] contains a short email sent on 20 January 2026 (so 6 months after the liability hearing and less than a month before the remedy hearing. This evidence is insufficient to persuade me that there is a 100% chance that the MCM role would have ceased in 2026 had the Claimant been appointed to it in 2023. However, in light of my decisions on other issues, that makes no difference to the overall decisions about the assessment of the Claimant's compensation.

Stigma / Effects of the Respondent's actions on future employment prospects

138. I am not persuaded that the fact that the Claimant was terminated from the Respondent's employment, on the purported grounds of redundancy, has disadvantaged the Claimant in the job market.

139. The full details of the reorganisation are as set out in the liability reasons. It was not the Claimant's post only that was affected, even though the deletion of the other posts was done without other compulsory redundancies. Furthermore, and in any event, the Respondent offered the Claimant a post in the new structure.

140. Thus, to the extent that the Claimant argues that prospective employers would infer that the Respondent wanted to get rid of her, and be less likely to employ her at all, she has not proven that.

141. To the extent that the Claimant argues that prospective employers would infer that the Respondent did not think that she was doing a good job as SPM, and be less willing to employ her in a similar role, she has not proven that either. However, even if that was true, it would not be a loss caused by the unfair dismissal or the discrimination. There would have been no relevant difference between a fair dismissal and what actually happened in terms of the attitude of prospective employers.

142. The Claimant was appointed to a new role with a different employer in May 2023.

New role. Panasonic.

143. The Claimant commenced in new employment on 1 May 2023. The Respondent accepts that the following figures are accurate for the 11 months to 31 March 2024.

143.1.	Gross	£48,615.05
143.2.	NI	£4009.19
143.3.	Tax	£7884.03

144. Thus, for those 11 months, the Claimant's net earnings were £36721.83, which is equivalent to £770.39 per week.

145. The Claimant says that the pension contributions were £2430.78 for those 11 months, so £51 per week.

146. The first payslip (pay date 25 May 2023) is in the bundle at [Bundle R216] and subsequent payslips are set out in date order behind that.

147. The contract for the new job, heavily redacted, is in liability bundle at [Bundle L983].

Gross Salary

148. The starting salary was £66,735 gross per annum. This is less than the gross in the SPM role (£66,880). However, it is significantly more than the £50,000 gross that the Claimant would have been receiving had she been in the MCM post.

149. The MCM post potentially had a non-guaranteed bonus of 10% to go with it, which would mean an aggregate of £55,000 gross.

Hours

150. The contractual hours were 37.5 per week. These included starting no earlier than 8am each day and finishing no later than 5.30pm. In the contract with the Respondent Bundle 328], the hours of work were stated to be fixed as 9am to 5pm with an hour for lunch. So the Panasonic work was an extra 2.5 hours per week, but my inference is that the start/finish time were flexible. (Since the Claimant has redacted the relevant clause, I cannot be certain; however, even allowing for lunch breaks, starting 8am every day and finishing 5.30pm every day amounts to more than 37.5 hours per week).

151. On the assumption that the MCM hours were similar to SPM hours, the Claimant's new hours were 7.14% more than the MCM hours.

152. The Panasonic pay [£66,735 per annum] is about 21.3% higher than the MCM package [£50,000 per annum plus 10% bonus].

Holiday

153. With the new employer, holidays were 34 days per year (26 plus bank holidays). With the Respondent, the entitlement was to 33 days in total (25 plus 8 bank holidays).

Pension / Life Assurance

154. The contract described that pension details were in another document. Life Assurance was offered.

Health care cover

155. There was health care cover, but it did not cover the surgery which the Claimant needed because that was a pre-existing condition.

Duration

156. It specifies an end date of 31 October 2023, at clause 2.

157. On the Claimant's case, the fixed-term contract was renewed, and it eventually came to an end on 21 March 2025. She says there was nothing that she could have done to obtain a further extension.

Childcare costs

158. I accept the Claimant's evidence that she had agreed a flexible working arrangement with the Respondent and was usually able to leave the office around 3.30pm and to perform some of her hours working from home.

159. On the Claimant's case, while working for the Respondent, the flexible working arrangement meant that she did not have regular child care costs. She accepts that the flexible working had only been informally agreed and could be withdrawn/cancelled by the Respondent requiring her to revert to the terms of the contract.

160. I accept the Claimant's evidence on oath that she was not able to work from home for Panasonic.

161. The Claimant accepted that, while working for the Respondent, she had occasionally made payments to her child's school for after hours childcare. She maintained that (i) that she had tried to get evidence from the school but without success and (ii) that she could not tell from her own records – bank statements, for example – what payments she made for this and when, because those did not specify the purposes for which particular payments were made and (iii) it was done on comparatively rare occasions, such as when she was delayed in traffic for example and was not a regular piece of expenditure.

162. I am not satisfied with this explanation. The Claimant was paying for child care at least some of the time while working for the Respondent. She sought to claim from the Respondent for the childcare costs while working for Panasonic. The onus is on the party claiming a loss to be able to prove the loss. In these circumstances, the potential loss attributable to the matters for which the Respondent was liable

was NOT simply the full childcare costs she had to pay while working for Panasonic. It would have been the extra amount which was the difference between the childcare costs while working for the Respondent and the childcare costs while working for Panasonic. I accept that the Claimant is a litigant in person, but I do not consider it to be a particularly complicated exercise to look for details of when she had to pay charges to a child care provider. I am satisfied that there would have been at least some records available to her. The fact that, on her case, it was a service that she used as and when required, rather than regularly, makes it – in my assessment – more likely, not less likely that she would have had some written communication to her telling her what hours she was being charged for, what the charge was, and when she had to make payment by.

163. The document at [Bundle R154] shows the Claimant specifically asking for the charges she had to pay to the Breakfast and afterschool club charged for the period 13/02/2023 to 11/07/2025. She asked for the information on Friday 22 August 2025 and got the reply on 27 August 2025. I am satisfied that if the Claimant had asked for the charges for an earlier period (from September 2023 onwards, or September 2022 onwards, for example) she would have received a similarly prompt reply. I am not satisfied from the evidence provided that there were no charges at all from before 13 February 2023. Indeed, on the Claimant's own account there were some charges.

164. I do think it plausible that, in term time, because the Claimant had to work later in the office with Panasonic than she did for the Respondent, she might have had to pay more to the school than she had to pay previously.

165. However, the Claimant has not proven the specific amount of the difference. A full year's charges for September 2023 to July 2024 were £3940.50. However, some proportion of that would have been payable anyway, even had the Claimant still been working for the Respondent, and the Claimant has failed to prove the (average) amounts that she paid prior to 13 February 2023. As I have said, my finding is that it was not zero. I am not persuaded that it is negligible and nor do I think that I should simply take a guess.

166. In all the circumstances, including the fact that the Panasonic job paid a lot more than the MCM job, I am not persuaded that the additional amounts (if any) that the Claimant had to pay to the Breakfast and Afterschool Club from 13 February 2023 onwards, compared to the period before that date, are such that the Claimant has suffered a loss.

167. The bundle contained a document headed "Private Childcare Contract & Service Agreement". On its face, it was a contract between the Claimant on the one hand, and two other people on the other hand (the Claimant's mother and grandmother). The document states that the Claimant will pay £70 per day childcare (Monday to Friday). It suggests that the hours are 7.30am to 5.30pm in school holidays. The

commencement date is stated to be 1 April 2023 and the signatures are dated around 5 March 2023.

168. I accept the Claimant's account that she created the document by using an online service. Her oral evidence was that this was not the first time such a document had been created.

169. The Claimant did not disclose the document to the Respondent prior to the June/July 2025 hearing, despite the fact that that was intended to be a hearing which dealt with remedy as well as liability.

170. At [Bundle R153], there is a schedule of the amounts that the Claimant says she paid.

    170.1. Every week day in the period 8 July 2023 to 3 September 2023 is counted as being a date for which the Claimant paid £70. So the total amount is £2800.

    170.2. The period 18 December 2023 to 9 January 2024 is said to be 23 weekdays (so £1610). By my count, there would be 18 to 22 December, 27 to 29 December and 2 to 5 January and 8 and 9 January, which is 14 days.

    170.3. The schedule also includes 13 days in April 2025, which is after the end of the Claimant's employment with Panasonic.

171. On the assumption that the representation being made is that the childcare costs are for when the Claimant was at work, then it presumably follows that the Claimant is representing that she had no time off at all on the days on which she is seeking these payments of £70 per day.

172. My decision is that the Claimant is not entitled to be compensated by the Respondent for any of the sums shown on [Bundle R154] that the Claimant says that she paid to her mother and grandmother for the school holidays. I am not satisfied that there was a relevant difference between the period before the dismissal and after the dismissal for the days of the school holidays in terms of the Claimant's own availability to provide child care, and thus the need to make arrangements.

173. In any event, similarly to the Breakfast and Afterschool Club, if the Claimant was paying her mother and grandmother prior to 13 February 2023, she has not proven the amounts she was paying to them. If she was not paying them anything prior to 13 February 2023, then she has not proven the amounts shown on Bundle R154 are caused by the discrimination or unfair dismissal.

<u>Job Search Expenses</u>

174. I do not think it is reasonable for the Respondent to pay for the costs of a printer. In terms of toner and paper, I am not satisfied that all of the paper and toner for which the Claimant seeks payment was used on job applications.

175. I am not allowing anything for what the Claimant describes as "mileage" and nor am I allowing for toll costs, because these are avoidable.

176. Subject to Polkey, I allow:

176.1.	Linkedin membership	£104.98
176.2.	Uber	£41.73
176.3.	Public Transport	£89.40
176.4.	Parking	£16.80

177. That comes to £252.91

Not having surgery in February 2023 / Not having surgery before remedy hearing

178. The Respondent's contraventions of EQA directly caused the state of affairs by which the Claimant did not have the surgery on 13 February 2023.

179. The Respondent's decisions meant that she could not have it under the BUPA policy. [The Respondent charged her for the provision of that policy for the whole of February 2023; however, even if they had not done so, that would not change the fact that the discriminatory decision to dismiss her with effect from 10 February 2023 directly caused the fact that she was unable to have the surgery on 13 February 2023.]

180. To the extent that the Respondent argues that the Claimant has failed to mitigate her losses by not making other arrangements to pay for the surgery, it has failed to prove any unreasonableness on the Claimant's part, and it has failed to prove that she could have paid for it, or had it done under a different policy.

181. To the extent that the Respondent argues that the Claimant has failed to mitigate her losses by not seeking to have the surgery done by NHS, the Respondent has failed to prove that the Claimant would have been able to have the surgery done on NHS prior to the remedy hearing date.

182. Part of the Claimant's compensation needs to reflect the financial loss which she suffered. One measure of compensation might have been to assess what the cost of paying privately would have been on 13 February 2023 and then award interest from that date. If the Claimant had actually paid for the surgery, then the most appropriate assessment would be to take the actual cost to the Claimant and then award interest from the date she paid the invoice.

183. However, the evidence presented has instead given estimated costs of the surgery in 2026. That is a reasonable method of assessment. It does mean that the Claimant should not get interest as well, because she has not incurred the out of pocket expense yet. However, to have the surgery she will have to pay 2026 prices, not 2023 prices.

184. I do not award anything separate for iron infusions. The evidence does not persuade me that the Claimant had them from 13 February 2023 to the remedy hearing (and the Claimant does not claim that she did) or that she will need to pay for them prior to the earliest date on which she can have the surgery. To act reasonably to mitigate the losses, she should arrange the surgery as soon as possible. [For the avoidance of doubt, if the Claimant chooses not to have the surgery, that is a matter for her. The award of compensation is not conditional upon her actually going ahead with the surgery. I am simply saying that I am not satisfied that there is a proper basis for awarding the costs of iron infusion on the basis of that being necessary between now and when the Claimant does have the surgery. I might have ordered – instead - the costs of iron infusions between now and the date on which surgery on the NHS could take place, but, having accepted the Claimant's argument that she should receive compensation based on the theory that she will pay privately for the surgery, I am not additionally awarding sums based on the theory that there will be a significant delay until the surgery takes place.]

Expert Report / personal injury / injury to feelings

185. I agree with the Claimant that the car accident she had in early 2023 played no significant part in any psychological problems that she had later on.

186. My finding is that there were disputes and disagreements between the Claimant and her husband that pre-dated any of the matters for which the Respondent is liable. My finding is also that the Claimant did not disclose this to the expert.

187. Section G of the remedy bundle contained the expert evidence.

188. There was report of Dr Alison Conning, M.A., M.Phil., Ph.D Consultant Clinical Psychologist dated 27 November 2025.

189. Section 2 summarises the instructions received. Section 3 summarises the documents considered. There was a video call with the Claimant on 29 October 2025.

190. Section 5.02 refers to something which happened after the Respondent refused to postpone the meeting until (or hold a new meeting at which) the Claimant's union representative could attend, but which predates the other discrimination. Sections 5.05 to 5.14 show that Dr Conning took the physical disabilities (which predated

the discrimination) into account. That is, she was aware of the dates of the relevant matters.

191. The report identified that the Claimant was suffering from severe depression. Dr Conning's assessment was that the Claimant was suffering from clinically significant distress relating to traumatic events she has experienced.

192. Section 8 deals with causation.

193. In 8.01, I recognise the description of the Claimant's interactions with Ms Gilmore-Gauci. However, based on the Claimant's evidence to the Tribunal (and the Respondent does not dispute the dates, merely the Claimant's characterisation of what happened and why) the disagreement between the Claimant and Ms Gilmore-Gauci occurred in 2022. Further, the Claimant did not successfully prove any breach of the Equality Act 2010 ("EQA") in connection with Ms Gilmore-Gauci's involvement in the redundancy process.

194. 8.01 also mentioned that the Respondent refused to refer the Claimant to Occupational Health and sent a contract to the Claimant on 8 February requesting a signature by 10 February.

195. I note what is said in 8.02 and 8.03 and 8.04.

196. Paragraph 8.05 states:

> 8.05 It is my opinion that as a result of her treatment by Spar, including denial of her required operations, Ms Nnaji is suffering from Major Depressive Disorder with anxious distress.

197. I note 8.06 to 8.13, where the expert refers to DSM-5 (APA, 2013) diagnostic criteria for Major Depressive Disorder and explains why the Claimant meets the definitions and why the expert does not believe the symptoms to be attributable to something other than the Respondent's conduct.

198. Section 9 suggests that the Claimant will require 20 sessions of therapy. Section 10 suggests that, after such treatment, there will be a risk of recurrence. The report comments that relapse rates can be around 36 to 39% but better than that with treatment. For the Claimant, the report states:

> Ms Nnaji has been depressed since 2023, she has prominent anxiety and severe symptoms. These characteristics increase her vulnerability to relapse in the future.

199. Sections 14 also summarises the prognosis.

200. There was also the report of Mr MK Oak MBBS, ChM, MPH, MSc (Med Sci), Consultant Obstetrician and Gynaecologist.

201. I note the full contents of the report, including about the growth of the fibroid and the effects of that on the Claimant. Section 1.4 of the report refers to the documents received and 1.5 refers to the meeting with the Claimant on 23 October 2025.

202. I note, and defer to the expert's opinion that, Mr Oak believe that there was no prospect of (part of) the surgery being done on the NHS in the foreseeable future. (Paragraph 2.14)

203. Section 5 describes the effects on the Claimant of (i) the condition and (ii) the delay in the surgery.

204. I note his answers at 7.4.2 and 7.4.3.

205. My finding is that his comments at 6.2 are not saying that, because of the delays caused by the Respondent there is a 30% chance that further surgery will be required. Rather he was simply saying that there is a 30% chance that further surgery will be required, and he does not say that this risk would have been lower if the surgery had taken place in February 2023.

206. Overall, it is clear from his report that his recommendation is for the surgery to take place sooner rather than later, and that he assess that the delay from 2023 has had significant effects on the Claimant because, assuming that the surgery is successful, she has not had the beneficial effects of successful surgery from 2023.

207. I note and take into account the periods of absence / fit notes towards the end of the Claimant's employment with the Respondent. These were discussed in the liability reasons and are alluded to by Dr Conning.

208. I note that the Claimant was able to start work in May 2023 and to keep that job for almost two years. That employment came to an end because job availability, not because of the Claimant's health.

209. I note that the Claimant says that she alters her route to avoid passing Spar outlets. That is one example of her saying that the psychological effects are ongoing.

<u>Aggravated Damages</u>

210. The Claimant says that she was caused additional injury to feelings by the Respondent's application to postpone the remedy hearing.

211. As stated in the correspondence, I was not available for both days in December. I suggested reducing to one day (being unaware that the Respondent had more witnesses than had been mentioned to me in July 2025) but that unless both parties agreed to that, I would postpone and relist.

212. In fact, one day would not have been enough and even with two days for evidence and submissions, it was necessary to reserve the judgment. There is no proper basis for an award of aggravated damages.

Analysis and Conclusions

213. My decision is that the Claimant has suffered no financial loss of earnings from the discrimination and unfair dismissal. There was a 100% chance of her ceasing to be SPM and a 100% chance of her not being appointed TPC. Thus, even in the absence of discrimination and unfair dismissal, if she remained as an employee of the Respondent, it would have been in the role of MCM.

214. That was up to £55,000 gross per year, for 35 hours per week. Even assuming there were any extra child care costs at all (which has not been proven), those additional child care costs (as well as the fact that the Panasonic job was 37.5 hours, not 35) do not mean that there was an overall financial loss given the difference in pay between the Panasonic job and the MCM.

215. The Respondent's pension contributions were 6% of gross (plus pay the employee the NI saving). Even assuming that pension contributions were made on the bonus, that would be £3300 per year (plus NI saving). The NI saving for SPM was £30.76 per month, so £369.12 per year. So, at most, the pension contributions from the Respondent for the MCM post would have been £3669.12 per year. So this would have been £64.79 per week compared to the £51 per week which Panasonic paid. However, taking account of the overall remuneration package being significantly higher, I am not satisfied that there is a proven loss.

216. I accept the Claimant's evidence that she was not eligible for state benefits, and I would not have decided that there was a failure to mitigate there.

217. For the rejection/nonacceptance of the MCM role when offered in March 2023, and whether that was a failure to mitigate:

    217.1. The Claimant appealed against the dismissal and made some criticisms of the way the appeal was dealt with at the final hearing in June/July 2025. Had the appeal been partially upheld, then the effect might have been (in theory) that she stayed as SPM or was appointed to TPC.

    217.2. However, either she wanted the appeal to potentially result in her being appointed to MCM (on her terms, at least, so after 3 months notice from mid-February 2023) or she was not willing to consider MCM at all. If she was potentially willing to take up the MCM post if that was the appeal decision, then her replies to the offer in March were not clear enough, and if she was not willing to take up the MCM role at all, then her replies to the offer in March were not clear enough about that either.

217.3. The Respondent had said that it did not regard the post as "suitable alternative employment." That is the Claimant was free to reject the offer and still be paid redundancy pay. The Claimant actually complained about that stance and the Claimant argued that it was a suitable vacancy for her.

217.4. Given my decision that there is no loss of earnings, it is academic to some extent. However, the Claimant's position is not wholly dissimilar to that of Mr Wilding in the case cited in the law section. The Claimant, like Mr Wilding, was not offered her old job back, but was offered something which – based on what she had said on other occasions – was something that the Respondent should have offered earlier. (I do not ignore the dispute about start date in MCM role). However, when it was offered, she did not take it.

217.5. Had the Claimant rejected the MCM role for the reasons that the Respondent said it was not suitable (being lower pay / status) then the rejection of the MCM role would not have been unreasonable failure to mitigate.

217.6. However, on these specific facts, I would have treated the rejection of the MCM role as an unreasonable failure to mitigate. However, it does not make a difference because the Claimant actually did fully mitigate her losses (for 2023) by taking up the Panasonic job.

218. The Respondent has proven that, during the period that the Claimant was working for Panasonic, she unreasonably failed to mitigate her losses by applying for permanent work.

219. I take into consideration that, on the Claimant's case, she has been hampered by the psychological effects of the Respondent's discrimination. However, she did find a job quickly and she could have carried on applying for jobs regularly. I do not necessarily accept that she was told by recruiters that her departure from the Respondent caused a stigma. In any event, if she was told that it would be hard for her to find a job, that is a reason to make lots of applications, not a reason to make very few. She did make very few and the Respondent has convinced me that a reasonable person, seeking to replace the full benefits package that they had while working for the Respondent, would have made many, many more applications in 2023 and 2024, and would have been appointed to a new permanent post before the Panasonic contract ended.

220. For the expenses of the job search, the Claimant started work with Panasonic on 1 May 2023. I am satisfied that she incurred £252.91. Ignoring the fact that the Claimant did, in fact, succeed with the Panasonic post, in the absence of the discrimination and unfair dismissal, there was a 64% chance of carrying on working for the Respondent (80% chance of the Claimant taking the offer of a trial period in the MCM post, and 80% chance of the trial being successful) and a 36% chance of becoming unemployed. So there is a 36% chance that the Claimant would have

had to spend the £252.91 on a job search in any event. I award her 0.64 x 252.91 which is £161.86 for expenses.

221. For the expenses, I award interest of 8% from 1 April 2023, which is the notional date by which all of those expenses must have been incurred. This is 1144 days. So interest at 8% is: 0.08 x 1144/365 X £161.86, which is £40.58.

222. I would award £500 for loss of statutory rights. That is also reduced to 64% to take account of the chance of a fair dismissal, so is £320.

223. For injury to feelings, there is the injury caused directly by the treatment set out in paragraphs 2 and 5 of the liability judgment. There is also the injury to feelings caused by the fact that the Claimant could not have the surgery on 13 February 2023.

224. Based on the Claimant's evidence, and the reports of the two experts, I am satisfied that the injury to feelings was significant and long lasting.

225. I must not, and do not, award the Claimant any compensation for her dissatisfaction with Ms Gilmore-Gauci's role in the initial stages of the consultation. Likewise, the analysis of the list of issues in the liability reasons discusses various matters which caused upset to the Claimant at the time, but which did not succeed as discrimination complaints. I must ignore the effects of those things too.

226. In terms of the Claimant's physical condition, the Respondent did not cause that. However, because of its discriminatory actions, the Claimant has had the pain and discomfort set out in Mr Oak's report for the last 3 years. There was no certainty that all the symptoms would be completely resolved by the surgical procedure. However, Mr Oak and the Claimant's treating clinicians agree that the surgery is necessary and appropriate.

227. Having carefully considered the report of Dr Conning, and what I know of the instructions and sources of information, I am persuaded that this is a case in which the Respondent's discriminatory conduct has been proven to have caused a personal injury and that I should award something for the medical treatment that is mentioned by Dr Conning. I must make an appropriate award which avoids double recovery.

228. Judicial College Guidance suggests.

> The factors to be taken into account in valuing claims of this nature are:
>
> (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.

(a) Severe

In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor.

£72,440 to £152,900

(b) Moderately Severe

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.

£25,190 to £72,440

(c) Moderate

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.

£7,740 to £25,190

(d) Less Severe

The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Cases falling short of a specific phobia or disorder such as travel anxiety when associated with minor physical symptoms may be found in Chapter 14: Minor Injuries.

£2,040 to £7,740

229. The Claimant has been able to work without her personal injury preventing that and so she would not fall into severe or moderately severe. Given the duration of the injury, and what the Claimant says about flashbacks, and the experts' opinion, I do not think it falls within "less severe". The award should be in the range for "moderate".

230. In terms of the Vento bands, this is very plainly not a "lower band" case in all the circumstances. Even taking account of the personal injury aspect, I do not regard this as an upper band case, taking account of the Claimant's ability to work and generally to conduct her affairs, including this litigation. Because of the personal

injury aspect, an award that is towards the higher end of the middle Vento band is appropriate.

231. The middle Vento band is £11,200 to £33,700 and the range for a "moderate" psychiatric injury is £7,740 to £25,190. Taking account of the full effects of the discrimination, the appropriate award in this case is £30,000.

232. There is interest from 10 February 2023 to 18 May 2026. That is a period of 1194 days. So simple interest at 8% per annum is 0.08 x 1194/365 x £30,000, which is £7850.96.

233. The evidence does not satisfy me that, because of the psychological injuries identified in Dr Conning's report, or the physical illness identified by Mr Oak, or otherwise, that the Claimant will not be able to work full-time in the future, in work similar to that which she did for the Respondent, or at a similar rate of pay. I am not satisfied that she will require personal care services.

234. The cost of the surgery is awarded at £20,672 as per the Claimant's estimates. There is no interest on this.

235. I award the costs of 20 CBT appointments at an estimated £160 per appointment, so £3200. There is no interest on this. This takes into account some initial treatment, and the risks of there being a need for further treatment in future. It also takes into account that some assistance via the NHS appears to be available based on what the expert says about the GP notes.

236. The Claimant seeks the costs of the medical reports. That is not a head of compensation for these contraventions of EQA. For the Claimant to obtain an order that the Respondent reimburse those costs, there would need to be a successful costs application.

237. There is no basis for an ACAS uplift. The Respondent dealt with the Claimant's grievance appropriately by dealing with the points she raised as part of an appeal against the dismissal. There was nothing unreasonable about that approach, and the Claimant had the chance to make all her points and she got a written response.

238. There is also no basis for the Claimant's compensation to be reduced on the basis of alleged breach of ACAS code. The Claimant put her concerns clearly in writing to the Respondent as set out in the liability reasons. Amongst other things, she tried to arrange to be accompanied at meetings, but she attended meetings in any events during employment. After employment, she engaged with the appeal officer in writing. If I did think that there was a failure by the Claimant to comply with the requirements of the ACAS code, then I would rule it not unreasonable given the documented illness at the time. However, there was no failure by the Claimant to comply with the Code.

239. The Respondent paid an extra £571 on termination and it seeks to have credit for that amount. It also charged her £84.66 for BUPA despite terminating her employment on 10 February. If seeking credit for the £571, it should also give the Claimant credit for 18/28 x £84.66 (£54.42). So the compensation is reduced by £571 - £54.42 which is £516.58.

Employment Judge Quill

Approved Date: 18 May 2026

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
19 May 2026

FOR EMPLOYMENT TRIBUNALS