Case No. 1402955/2020
1404843/2020
1404750/2021

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms F Thorn	**AND**	**Nationwide Building Society**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT BRISTOL (BY CVP) ON 11 and 12 June 2026

EMPLOYMENT JUDGE J Bax

Representation

For the Claimant: Mr R Downey (counsel)
For the Respondent: Mr P Michell (counsel)

JUDGMENT ON REMEDY ON THE UNFAIR DISMISSAL CLAIM

The judgment of the tribunal is that:

1. **The application for re-instatement or re-engagement is dismissed.**
2. **No compensation is due to the Claimant in respect of both the basic and compensatory awards.**

WRITTEN REASONS

Background and preliminary matters

1. The Claimant brought claims of race discrimination and unfair dismissal. The liability in respect of those claims was decided at a hearing between 9 and 26 January 2023. A reserved Judgment was sent to the parties on 26 January 2023.

2. The claims under the Equality Act 2010 were dismissed. It was found that the Claimant had been unfairly dismissed. The Respondent admitted the

dismissal was unfair but argued that the Claimant still would have been dismissed if a fair procedure had been followed ("Polkey").

3. The liability hearing was heard by a full panel and the Claimant was represented by counsel. Since that hearing there have been numerous applications to reconsider the Judgment and in particular the Polkey findings. Those applications were dismissed. The Claimant has also sought to appeal the decision to the Employment Appeal Tribunal ("EAT"). It is understood that there is an outstanding rule 3(10) hearing in the EAT.

4. The Claimant has also presented further claims against the Respondent, which have been struck out by different Judges. She also applied to strike out the response in the current claim, which was heard and dismissed on 16 October 2025.

5. By reason of the reconsideration applications, appeals and other matters the remedy hearing has been delayed.

6. The remedy hearing was listed to take place on 16 October 2025, however that hearing was converted to a preliminary hearing only. At that hearing the following reasonable adjustments were agreed for the Claimant:
    a. The Claimant needs regular breaks and may need 10 minutes before responding to things so that she can process what she is asked to do.
    b. The Claimant to attend by video.
    c. As much as is reasonably possible shall be conducted in writing.

7. At the hearing on 16 October discussions included:
    a. One of the original Tribunal had retired and it was agreed the remedy hearing would be heard by the Judge sitting alone.
    b. The Claimant is seeking a compensatory award. She had received a redundancy payment and therefore would not be entitled to basic award in addition.
    c. She is seeking reengagement. The Respondent said that it opposed such a remedy on the basis that:
        i. It would need to work in human terms, given how the Claimant had conducted herself in this litigation and subsequent litigation and trust and confidence had completely broken down.
        ii. She would also need to explain what job she was seeking and there was a question as to whether there was a job.
    d. It was agreed that by way of a reasonable adjustment the evidence would be heard on the first day of the hearing, the parties would make written representations overnight. Deliberations would take place on receipt and a decision would be given in writing. (This was

changed at the remedy hearing due to the recent instruction of Mr Downey)

e. Directions were given, which included:
    i. The provision of a Schedule of Loss by the Claimant by 19 December 2025.
    ii. The Claimant to provide disclosure in relation to remedy by 19 December 2025
    iii. The Respondent to provide a counter schedule of loss by 30 January 2026
    iv. Exchange of witness statements by 10 April 2026.

8. At the hearing on 16 October 2025, the Claimant said, 'that trust and confidence had gone and the only reason reengagement was practicable was she was entitled to a large settlement. She was only seeking it to get fair settlement'. Further, in relation to reengagement she was seeking a fully remote role, working from the UK doing something similar to that which she did before. (See paragraphs 110 and 111 of the case management summary)

9. On 18 May 2026, the Claimant applied to postpone the remedy hearing, on the basis that the Respondent had not provided a counter-schedule of loss. The Respondent confirmed the same day it continued to rely on the schedule of loss it sent in September 2025 and attached it. The Claimant acknowledged there had been procedural slippage and said she had provided disclosure the previous year and further disclosure within the previous two weeks. The application was refused.

10. On 10 June 2026, the hearing bundle was sent to the Tribunal. Witness statements were exchanged late on that afternoon.

11. At the start of the hearing, it was explained Mr Downey had only been recently instructed by the Claimant. He received the hearing bundle the night before the hearing.

12. Clarification was sought from the parties in relation to the pay the Claimant had received in her employment with the Respondent and her subsequent employment, the employer pension contributions and medical insurance. Confirmation was also sought that the Claimant agreed the enhanced part the redundancy payment was £21,169 and the net value of the ex gratia payment was £17,753.34. The Claimant was asked to confirm whether it was agreed those figures should be deducted from loss of earnings. The Claimant agreed to send her Co-op contract to the Tribunal and Respondent.

13. Discussion took place about reinstatement and reengagement. The Claimant said that she was not seeking reinstatement, but was seeking reengagement.

14. The parties agreed the following matters:

    a. The Claimant's weekly pay on termination of her employment with the Respondent was £930.94 gross, £714.10 net.
    b. The Claimant's weekly pay when working for the Co-Operative Bank was £865.38 gross, £670.16 net.
    c. The difference in net pay was £34.94 per week.
    d. If the Claimant continued to work for the Respondent she would have received a 4% pay rise in April 2022, increasing the net pay to £742.66. (The Judge calculated the gross pay would have increased to £968.18)
    e. In April 2022, the Claimant received a pay rise with the Co-Operative Bank increasing her net pay to £690.34. (The Judge calculated the gross pay would have increased to £891.44)
    f. The difference in net pay was £52.32 per week.
    g. The employer's pension contributions were: 13% with the Respondent and 10% with the Co-Operative Bank.
    h. The Medical insurance with the Respondent was agreed as having a taxable value of £495 per year.
    i. The net figure for the ex gratia payment was agreed as being £17,753.34.
    j. It was agreed that the basic part of the enhanced redundancy payment was £5,712. The enhanced part was £21,169. This was not subject to national insurance deductions, but it was subject to tax and part of it was untaxed.

15. At the start of the second day, the net figure for the enhanced redundancy payment was agreed between the parties, on a broad brush basis, as being £13,100.

Key findings in the liability Judgment.

16. The Claimant was employed by the Respondent between 1 September 2014 and 15 September 2021.

17. In April 2021, the Respdonent proposed a series of changes in its IT Service Delivery Function. The proposals included reducing the existing seven IT Operations Consultants to one. Fifty people were affected by the changes.

18. The Claimant attended consultation meetings on 13 and 18 May 2021.

19. Following scoring against the selection criteria, the Claimant was scored in second place and her colleague Mr Spencer was selected for the remaining Operations Consultant role.

20. The Claimant was given notice of termination on 28 July 2021.

21. The Claimant applied for the following roles:

    a. The delivery manager role was withdrawn and not filled.
    b. Two service designer roles. The Claimant had no service design experience and her CV was not geared towards the role and did not meet the minimum standard.
    c. Operations Team Manager.
    d. Senior Technology Governance & control Framework Consultant.
    e. Scrum Master.
    f. 3 Senior Change Manager 2.2 roles.
    g. Senior Delivery Manager.

22. The Claimant's suggestion that if she had been promoted she would not have been at risk of redundancy, was rejected as 10 people in lead roles were at risk of redundancy and there were only 4 lead roles available.

23. The Claimant's appeal was heard on 28 September 2021 and she was sent the outcome on 19 November 2021.

24. The findings in the appeal included that the information given to the calibration panel had not been fully anonymised. The Tribunal was satisfied that the calibration panel based the scoring on what the individuals had scored themselves and the evidence they provided. If the anonymisation had been conducted to satisfaction of the appeal panel there would not have been a difference.

25. It was found at the appeal that the Claimant should have been offered at least one interview for alternative roles. The scrum master role was specifically mentioned and it was also interpreted as possibly meaning the Operations Team Manager Role.

26. It was concluded that it was highly unlikely the Claimant would have been appointed to the scrum master role.

27. In relation to the operations Team Manager role, there were significant numbers of applicants for 4 roles and five interviewed were on the redeployment register. The successful candidates had been involved in planning and forecasting in previous roles and the Claimant's experience in forecasting was different. There was a dispute as to whether the Claimant met the minimum requirements. The Respondent proved it was highly

unlikely that if the Claimant had been interviewed she would have been appointed.

28. It was concluded that if the Claimant had been given an interview her chance of redeployment was no greater than 10%. It was concluded if a fair procedure had been followed there was a 90% chance that the Claimant still would have been dismissed.

The evidence

29. I heard from the Claimant. I heard from Ms Gash for the Respondent.

30. I was also provided with a bundle of 430 pages, any references in square brackets are references to pages in the bundle.

The facts

31. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

32. The appeal outcome letter dated 19 November 2021 [p397-398] included, "*…I have decided that your appeal has been upheld and the decision to end your employment by reason of redundancy … is rescinded. I have not considered reinstatement as you advised me when we met that you have secured a role with another organisation which has now commenced*."

33. The Claimant sent an e-mail on 22 December 2021, in which she asked why no remedy was forthcoming.

34. On 24 January 2022 (incorrectly dated 2021) [p169-170], the Respondent wrote to the Claimant following her appeal against dismissal. It said reinstatement had not been initially considered due to the Claimant's new role. She had said she secured new employment and wanted severance pay, service and leave to be corrected and she mentioned compensation. It noted that the Claimant had indicated at the appeal hearing she was not ruling out reinstatement or reengagement. An apology was offered for mistakes made. It was not thought reinstatement and reengagement was the right option and said that, "*The difficult reality is that the business only requires one Operations Consultant, and that role has been filled by someone else. All of the other roles you applied for have also been filed. In the context of you having secured a new position outside of Nationwide, we do not think it appropriate to consider displacing one of those individuals. On this basis we are not offering you reinstatement or reengagement as remedy*." A payment of £30,000 gross was made, which was calculated on

the basis of a difference in pay for four years between her job with Nationwide and her new job. It was acknowledged the dismissal was unfair.

35. The Claimant also received an enhanced redundancy payment of £26,881.

36. During the redundancy and notice period the Claimant applied for jobs externally. She had an interview with Baltimore bank. The Claimant was offered a job at the Co-Operative Bank ("Co-op") on 14 September 2021. The Claimant started work with the Co-op on 18 October 2021. She was out of work for 5 weeks. The role with the Co-Op had a salary of £45,000 per year which was less than she was paid by the Respondent.

37. When the Claimant started working for Co-op she stopped looking for new jobs, on the basis that she did not consider she needed to. She said in cross-examination that when making applications people would see her name and note her race and also that she was 50 years old and that was difficult for her to compete in the FinTech sector. She was cross-examined on the basis that if she had taken a lower role or was on a lower salary she could apply for other jobs, she responded by saying once she was at Co-op there was no need for her to go through the process again.

38. The Claimant was working for Co-op at the time of the liability hearing. The Claimant's evidence, which I accepted, was that at some point after the liability hearing she had a break down and was signed off work. The Claimant said that when she returned to work at the Co-op there had been a change of management and the new manager utilised her, like Ms Hogfress had done, and over worked her. She looked for internal roles and was blocked. She had a further breakdown and could not work and she went off sick in March 2024 and then went to Portugal. She went to Portugal to try and avoid suicidal thoughts. She said she was often distressed and her communications became haphazard. She suffered from insomnia and lost her confidence and sense of humour. When she returned to work she applied for other roles in other institutions.

39. In April 2025, the Claimant's employment TUPE transferred to Coventry Building Society. She resigned in August 2025. The Claimant says that she was subjected to race discrimination at Co-Op/Coventry and that she had been detrimentally treated for whistleblowing and was constructively dismissed. She has presented claims in the Employment Tribunal in relation to this. As far as the Judge is aware, those claims are ongoing. The Claimant accepted that the Respondent had nothing to do with her resignation, other than she had become aware of the law in her claims against it.

40. She was in receipt of jobseeker's allowance until December 2025 when she started undertaking work for Barclays, via Saphire DNP Limited, for which she was paid £500 per day.

41. In cross-examination it was put to the Claimant that at paragraph 51 of her witness statement she said that she recognised the passage of time and subsequent events may mean that compensation is now the only practical outcome and was asked if she was really asking for re-engagement. She responded by saying she wanted a job with the Respondent.

42. The Claimant accepted that at the hearing on 10 October 2025 the Respondent had said, in relation to re-employment, all trust and confidence had gone and she had responded she felt the same way. In cross-exanimation, the Claimant confirmed that was still true.

43. At paragraph 16 of her witness statement, she said she would never accept what had been done to her by the Respondent and no amount of money could compensate her for the loss of her good natured, happy go lucky self. She confirmed that it was 100% true and she would never lie about something like that, namely the discrimination.

44. The Claimant accepted that in her first claim, which she drafted herself, that she described the Respondent as institutionally racist. When asked if she maintained that view she said that there had been re-branding at the Respondent, which gave her hope and she believed there had been change.

45. The Claimant accepted that in her evidence to the Tribunal at the liability hearing she had said the Respondent was a white supremacist and there was a culture that celebrated whiteness. She accepted she had said Ms Hogfress was a 'racist and a horrible, horrible person' and she had made a similar comment about Ms Conwell. She also accepted describing Mr Thompson as a pathetic little child who was coercively controlled by Ms Hogfress.

46. The Claimant accepted that her race discrimination claims had been rejected, however she maintained they were factually correct. She said she had not been believed.

47. She accepted she had said in her reconsideration application of the liability judgment, in relation to the statistical data, *"… to evidence her strong assertions of an insidious and persistent culture of deprivation for employees who identify as BAME.*" She sought to strike out the response due to missing evidence and said that, "*The Claimant strongly suggests that this missing evidence, whether deliberate or unintentional, constitute an attempt by the Respondent to deceive the Tribunal*." She said the non-

disclosure of an e-mail chain was, an extremely devious act by the Respondent in that it conceals vital evidence from the Tribunal. She said the entire response should be struck out. She accepted she was saying that she considered the Respondent's behaviour was so bad the defence should be struck out. In the same application she also accused Ms Hogfress of perjury. The Claimant said in cross-examination that she maintained that view.

48. The Claimant brought a fifth claim against the Respondent in April 2023 for victimisation. That claim was struck out 14 July 2023 on the basis of estoppel and an abuse of process. The Claimant was ordered to pay the Respondent's costs of £14, 542.40. In cross-examination the Claimant said that she was victimised as a whistleblower and the things alleged in the claim happened.

49. The Claimant brought a sixth claim against the Respondent in September 2023 for indirect race discrimination and automatically unfair dismissal for whistleblowing. That claim was struck out on 22 October 2024 as an abuse of process. The view was also expressed that the claim had no reasonable prospects of success. EJ Murdoch said that the Claimant, "*cannot continue to act in abuse of process and avoid the financial consequences*." The Claimant was ordered to pay the Respondent's costs of £13,406.30. The Claimant had described the Respondent as not conducting itself in a manner fit for a high street bank. The Claimant explained, in cross-examination, that if services are being provided to the public in such a regulated industry they could not act in that way of covering up wrongdoing, lying, cheating and perjury.

50. The Claimant also accepted that she had said her barrister at the liability hearing had been a puppet of the Respondent. She said in cross-examination that she believed he had been doing what the Respondent told him to do, but she had no evidence of that. She said there was no other explanation.

51. In an e-mail dated 5 March 2025, the Claimant sought to reopen the original reconsideration application. Under a section saying, 'The Respondent is Deliberately misleading the Tribunal'*, she said "Nationwide has engaged in a systematic strategy of misrepresentation, perjury and evidence fraud*."

52. On 8 March 2025, the Claimant sent an e-mail to the Respondent's CEO attaching a press release which she said she was distributing. In the press release she said:

    a. The Respondent's defence in the Tribunal, "*is now under serious scrutiny as a 55-year old British Asian woman and whistleblower has* *presented clear evidence of perjury, misrepresentation and victimisation – amounting to corporate fraud*."

b. "*The whistleblower took over her own case in March 2023 and provided evidence of the perjury of key witnesses, including her senior managers*."
c. "*Not only did Nationwide easily manipulate the evidence, they conspired to hide my whistleblower status in order to deny me existing whistleblower protections. They also appear to have controlled my legal representation, ensuring that my case was weakened from within…*"
d. "*Things must change if we are to heal the racial rifts that plague the UK. We are marginalising ethnicities by not allowing them to be successful in the workplace*."

53. The Claimant said that at this time she was very ill and catatonic in Portugal and the only thing that was keeping her alive was the fight and she was not herself. She said that she wanted the CEO to help her. She added, "*I had no way of putting it right. I have to prove what this man Richard Brennan did to me. You did it before and now you are doing it again*." It was suggested to the Claimant that the press release was not rambling and she was asked if she stood by it. She responded by saying she would not have lied. The Claimant maintained that the witnesses had lied on oath and that could not change. She maintained her representative had been controlled by the Respondent.

54. The Claimant brought her 7th and 8th claims against the Respondent in March 2025 in relation to whistleblowing, a refusal to provide data and raising a Polkey defence to the original claim. Those claims were struck out due to being an abuse of process and having no reasonable prospects of success or seeking to relitigate matters already decided or which could have been brought in the original claim. EJ Livesey found there was a direct attempt to try and reopen the 2023 liability Judgment and/or the EAT's initial rejection of her appeal. He also found the Respondent was being unjustly harassed by the proceedings. It was found the claims were totally without merit. The Claimant was ordered to pay the Respondent's costs of £6,694.80. It was put to the Claimant that she was alleging the way that the Respondent had defended the claims was victimisation. The Claimant responded by saying what the Respondent was doing in this hearing was victimisation in terms of the way she had been cross-examined, which was on the instructions of Mr Brennan. She added, "*It is not over Mr Brennan*". She clarified this by saying there were appeals and the wrongs which had been done to her were matters of fact. She said, "*as long as I have no redress or apology I will not stop*." She said she would not spin a yarn and say she forgave them and she would hold them to account. Further, she was a whistleblower and she was not going to pretend to forgive them and

she would carry on. The Claimant also said when giving evidence that she would appeal anything.

55. The Claimant has not paid the costs orders.

56. The Claimant had previously said that she needed a fully remote role. At the hearing she said that she could work in Swindon a few days a week.

57. In re-examination, the Claimant was asked to explain why she believed she could return to work for the Respondent. She said that the legal department of the Respondent was very powerful but it was insular. She loved the people she worked with and still had friends there. She said it was the polices of HR and the legal department that was the problem. She did not think they would do it again. This evidence was at odds with the Claimant saying she would carry on and the matter was not over. It was also at odds with the Claimant saying there was no trust and confidence.

Evidence of the Respondent

58. I accepted that Ms Gash considered the comments made about the Respondent, as referred to above, were damaging to any future working relationship and that it showed and element of distrust.

59. Ms Gash accepted that ordinarily if an employee's redundancy was rescinded they would be reinstated. She accepted that a reason for allowing the appeal was that the Claimant should have been interviewed for other roles.

60. I accepted that in the 2021 change programme, the roles were changed and the role the Claimant had was no longer there. Following the Claimant's departure, the Respondent has undergone a further change programme in 2025, which impacted the IT Consultant Role. The department is still in existence and Ms Gash did not know whether the Claimant would be able to do roles within it, but she maintained there were no vacancies. I accepted that there are no vacancies available on the basis of the role and skills the Claimant had at the time she worked for the Respondent.

61. Ms Gash accepted the Claimant had the right to bring claims about discrimination. She denied the Respondent's position on practicability of reinstatement was because she had exercised those rights.

62. Ms Gash accepted the Respondent was a large organisation. She accepted her witness statement had not addressed whether the people against whom the Claimant alleged perjury would be able to work with her. She considered that the allegations were made against individuals and the organisation as a whole.

63. The Respondent has a policy of working in the office at least 2 days a week, unless special circumstances apply [p387]. Ms Gash accepted that reasonable adjustments could constitute special circumstances.

The law

Re-instatement and Re-engagement

64. The Claimant in this case seeks an order for re-instatement or re-engagement under s. 113 of the Employment Rights Act 1999 ("ERA").

65. An order for re-instatement requires a respondent to treat a claimant in all respects as if she had not been dismissed (s. 114 (1)). It is an order which requires an employer to put her back into precisely the same job with the same employees as before (British Airways v Valencia [2014] IRLR 683) Upon making such an order, a tribunal must specify amounts payable by a respondent in respect of pay, privileges, benefits and pension rights which she may have lost in the interim. The order must also specify the date by which it has to be complied with. Such an order therefore effectively requires a claimant to be restored to her original job and receive back pay and benefits from the date of dismissal (s. 114 (3))

66. The factors which determine whether an order for reinstatement ought to be made are those set out within s. 116, which provides:

116.— Choice of order and its terms.
(1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account—
(a) whether the complainant wishes to be reinstated,
(b) whether it is practicable for the employer to comply with an order for reinstatement, and
(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.
(3) In so doing the tribunal shall take into account—
(a) any wish expressed by the complainant as to the nature of the order to be made,
(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and
(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.
(5) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.
(6) Subsection (5) does not apply where the employer shows—
(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or
(b) that—
(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and
(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

67. Practicability is the most important factor to consider. The circumstances of each case must be considered and take a broad common sense view (Meridian Ltd v Gomersall [1977] ICR 597). A tribunal has to consider the effect of such an order upon the respondent's business; for example, whether it might lead to industrial unrest or potential overmanning such that a redundancy situation might arise. A tribunal ought to ignore the fact that a respondent has engaged a permanent replacement unless it can show that it was either not practicable for the claimant's work to have been done without engaging a permanent replacement or that the replacement was engaged after a reasonable lapse of time, without the respondent having known that reinstatement or re-engagement was being sought. (s. 116 (5) and (6)). Practicable here means capable of being carried into effect with the success (Coleman-v-Magnet Joinery [1974] ICR 25). At the current stage this involves making a prospective judgment, on a neutral burden of proof as to the practicability of compliance.

68. In Port of London Authority v Payne [1994] ICR 555 , the Court of Appeal held, "*The industrial tribunal, though it should carefully scrutinise the reasons advanced by an employer, should give due weight to the commercial judgment of the management unless of course the witnesses are disbelieved. The standard must not be set too high. The employer cannot be expected to explore every possible avenue which ingenuity might suggest. The employer does not have to show that reinstatement or re-engagement was impossible . It is a matter of what is practicable in the circumstances of the employer's business at the relevant time*."

69. The question has recently considered in The British Council v Sellers [2025] EAT 1, in which it was held:

"45. Practicability is a question of fact for the ET, to be determined at the date when it is making the order, which may require it to deal with circumstances that are different to those that prevailed at the date of dismissal. Determining practicability requires, however, a real world assessment of that which is practical, not simply that which is possible: Rao v Civil Aviation Authority [1992] ICR 503 EAT at p 513 (affirmed by the Court of Appeal at [1994] ICR 495), and it has been seen as "contrary to the spirit of the legislation" to make an order for re-instatement (or re-engagement) which would result in a redundancy process or significant overmanning (Cold Drawn Tubes Ltd v Middleton [1992] ICR 318 EAT), albeit that this will always be a question to be determined on the specific facts of the case in question (hence the decision of the EAT in Highland Fish Farmers Ltd v Gavin Thorburn and anor UKEAT/1094/94, upholding the ET majority decision in that case).

46. Moreover, although it is undertaking an objective assessment, the ET must keep in mind that the relationship has to work in human terms, considering the question of re-employment from the perspective of that particular employer (Kelly v PGA, per Underhill LJ at paragraph 69). Although this is often phrased as an issue of trust and confidence (whether that is on the part of the employer, see Central & North West London NHS Foundation Trust v Abimbola UKEAT/0542/08, or the employee, see Northman v London Borough of Barnet (No. 2) [1980] IRLR 65), the real point is that it is unlikely to be practicable to order that an employee returns to work for an employer where such confidence is absent (again see per Underhill LJ in Kelly v PGA). Where an employer genuinely and rationally believes it can no longer have confidence in the complainant as one of its employees (whether that is because of the view it has formed about the complainant's ability to do the work, or because it believes they have acted in a way that means they can no longer be trusted), that will be a relevant consideration in determining practicability: United Lincolnshire Hospitals NHS Foundation Trust v Farren [2017] ICR 513 EAT at paragraph 40; approved by the Court of Appeal in Kelly v PGA. It will not, however, be sufficient for the employer to simply assert a lack of confidence: practicability will not be determined on the basis of emotion, assertion, or speculation, and the ET will scrutinise whether the stated belief is genuinely and rationally held. (Farren, paragraph 42). That said, the focus at this stage is not on the process by which a particular decision was reached, but on the material before the ET, which will enable it to assess whether re-employment is likely to be effective."

70. I noted that in paragraph 42 of Farren it was said that the assessment can also involve consideration as to whether a Respondent has made good its case that trust and confidence could not be repaired.

71. I recognised that it will be rare for orders of reinstatement or reengagement to be made in circumstances where the relationship of trust and confidence has broken down between the employer and employee (see Wood-v-Crossan [1998] IRLR 680. Nevertheless, the matter is to be judged in a common-sense fashion and the tribunal has to determine whether the employer’s stated loss of trust is both genuine and based on rational grounds.

72. If a tribunal decides not to order reinstatement, it must go on to consider the potential alternative of re-engagement (s. 116 (2)). The same factors apply as under s. 116 (1) (see sub-section (2)).

73. Such an order requires a respondent, or a successor or associated employer, to re-engage a claimant in employment comparable to that from which he/she was dismissed or other suitable employment (s. 115 (1)). In making such an order, a tribunal has to specify the identity of the employer, the nature of the employment, the level of remuneration, any amount payable by the Respondent in respect of any benefit and/or pay which the Claimant would have received but for the dismissal, any rights and privileges which must be restored and the date by which the order has to be complied with (s. 115 (2)). It is generally considered inadvisable for a tribunal to award re-engagement to a specific job, as distinct from the identification of a broad type of employment. Similarly, an order for re-engagement cannot be upon terms which are substantially more favourable than those of the claimant’s former job.

74. The date at which practicability for re-engagement is to be assessed is the date when such reengagement would take place (Rembiszewski v Atkins Ltd EAT 0402/11).

Compensatory award

75. Compensation for unfair dismissal is dealt with in sections 118 to 126 inclusive of the Act.

76. The compensatory award is dealt with in section 123. Under section 123(1) "the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer".

77. The losses can only be considered as part of the compensatory award if they are attributable to the employer's conduct and result from the Claimant's dismissal. The award is compensatory and not a punishment for the employer. Non-economic loss is excluded (Dunnachie v Kingston upon Hull City Council [2004] ICR 1052.

78. In Gardiner-Hill v Roland Berger Technics Ltd [1982] IRLR 498, EAT, the EAT said that where there is a substantial issue as to failure to mitigate, an employment tribunal should ask itself:

    (i)what steps were reasonable for the claimant to have to take in order to mitigate his or her loss;
    (ii)whether the claimant did take reasonable steps to mitigate loss; and
    (iii)to what extent, if any, the claimant would have actually mitigated his or her loss if he or she had taken those steps.

79. The burden of proof of a failure to mitigate is on the Respondent.

Conclusions

Reinstatement and reengagement

80. The Claimant's clear position was that she did not want to seek reinstatement but was seeking re-engagement.

81. A significant part of the Claimant's submissions referred to the internal appeal and the decision to rescind the reason of redundancy but not reinstate her and that this was not a normal course of events. Further, that she had always sought the remedy of reinstatement. Submissions were made in relation to that the Respondent had not properly considered undertaking further consultation or enquiries as to whether she could be redeployed into an alternative role at that time. It was said this was relevant as to context. The time at which to assess the issue of re-employment is at the time of the remedy hearing. It appeared that this could also be an attempt to relitigate the earlier findings at the liability hearing.

82. The Claimant was dismissed by reason of redundancy. The number of people undertaking her role was reduced from 7 to 1. The remaining role was filled as part of the redundancy process. I accepted that because there was a redundancy exercise to reduce headcount, it was not reasonably practicable for the Respondent to arrange for the Claimant's work to be done without engaging a permanent replacement. The work needed to be undertaken, however only one person was needed to do the work of seven

people. This was not a case of someone replacing the Claimant's role in its entirety. The Claimant's role was not replaced by engaging a permanent replacement, her role was removed. Since the termination of the Claimant's employment in September 2021, the Respondent has undergone further changes impacting the IT Consultant role. I accepted that there were no vacancies in relation to the Claimant's role she did at Nationwide and there are not any similar roles available. I accepted that there was not a vacant role into which the Claimant could be reinstated.

83. I accepted the Claimant's position that special circumstances, in relation to remote working, could include reasonable adjustments, however the Claimant also said that she could work in Swindon a few days a week. The point in relation to fully remote working was not of particular significance.

84. A significant argument by the Respondent was that it had a genuine and rational belief that there is insufficient trust and confidence for re-employment to likely be a success.

85. The Claimant brought four further claims against the Respondent after the liability Judgment was given in January 2023. All of those claims were struck out as an abuse of process and at least 3 of which were also struck out on the basis they had no reasonable prospects of success. Costs orders against the Claimant have been made in respect of all four claims. The Claimant has not discharged the costs orders. I accepted that the Claimant was seeking to further the litigation against the Respondent and the reasons why they were struck out meant they had insufficient merit and were abusing the process of the Tribunal. It was found, in those cases, that the Claimant was seeking to relitigate matters or litigate matters she should have brought as part of the claims heard in 2023. This was something which tended to suggest that the Claimant did not accept the decision in 2023. The Claimant was seeking to relitigate past matters and the tenor of her evidence before the Tribunal was that she was going to continue to pursue those matters until she felt she had appropriate redress. The most recent strike out Judgment held that the Respondent had been harassed by the Claimant. This supported the Respondent's contention that it believed it was damaging to trust and confidence and that it had done so.

86. Further the Claimant made a number of comments during the litigation about the Respondent, describing it as a white supremacist, calling some employees racist and describing one as a pathetic child. She also accused the Respondent of perjury, misrepresentation and mishandling of evidence. She provided a press release to the Respondent, which she intended to release. She has suggested her barrister at the liability hearing was working under instruction of the Respondent. Such actions and comments are something which could cause employees of the Respondent to mistrust the Claimant and seriously adversely affect working relationships. The Claimant

still maintained that there had been perjury, misrepresentation and mishandling of evidence. The Claimant effectively submitted that such comments were made in the heat of litigation and such comments were likely. I rejected that submission, the Claimant, following the liability decision has embarked on a series of new claims, all of which have been struck out and made numerous applications for reconsideration, which have been dismissed. It was relevant to take into account that the Equality Act claims were dismissed and there have been repeated challenges to those findings and overt criticism of the Respdonent within them. It was difficult to see, when she held such strong convictions, how she was able to trust the Respondent, particularly when she said it was still true that she had viewed all trust had gone.

87. It was also apparent from the Claimant's oral evidence that she still considered she had been wronged. The claims of discrimination and whistleblowing in all 8 claims have been dismissed. The Claimant said she had to prove what had been done to her and suggested that the Respondent defending the remedy hearing was a continuation of it. She said as long as she did not have redress or apology she would not stop. She maintained she would carry on. It is not just people with whom the Claimant would work that need to be taken into account. It is also the relationship with the organisation as a whole. There was significant distrust and misgiving on the part of the Claimant. It was also apparent that unless the Claimant got what she wanted, she would not stop what she was doing. This was at odds with her evidence in re-examination. I concluded that the evidence given in cross-examination was an accurate reflection as to how the Claimant feels.

88. The Claimant submitted that the Respondent was a large organisation and it would be surprising if she could not be accommodated within it, so she did not come into contact with the people she complained about. The Respondent is a large organisation, however the Claimant has made accusations against HR, the legal department and the Respondent generally. It is not only her relationship with colleagues which is relevant but that with the organisation as a whole. Her claims involved allegations of discrimination against managers in the chain of command. I accepted that the Respondent proved it had a genuine belief that the Claimant's relationship had deteriorated to such an extent that there was a significant and real lack of trust and confidence between them. The comments made by the Claimant during evidence that the matter was not over were extremely strong support for the Respondent's belief that the situation would continue into the future.

89. I was satisfied that taking these matters together, the Respondent established that it genuinely and rationally believed that it could no longer have trust and confidence in the Claimant as one of its employees and it

could not be repaired. I also was satisfied that the Claimant did not have trust and confidence in the Respondent.

90. In the circumstances I was satisfied that it was not practicable for the Respondent to comply with an order of reinstatement. For the same reasons, I was satisfied it was not practical for the Respondent to comply with an order of re-engagement.

91. No order for reinstatement or reengagement was made.

Compensatory award

92. The Claimant argued that there was no evidence that showed, if she had not been made redundant, that she would not have worked until her retirement age of 67. She submitted that she should be compensated for that period on the basis of the Polkey finding and allowing for the mitigation she had achieved. The Claimant submitted that the Respondent had not discharged its burden in relation to mitigation of loss.

93. The Claimant obtained a new job quickly, albeit at a lower salary. I accepted that this was a mitigation of her loss.

94. However, if the Claimant wanted to have the same level of remuneration as when she worked for the Respondent there was an ongoing duty to reasonably mitigate her losses.

95. The difference between the Claimant's gross weekly pay when working for the Respondent and when she started work for the Co-op was £65.56 a week or £3,409.12 a year. The difference in net pay was £34.94 a week or £1,816.88 a year.

96. The employer's pension contributions when working for the Respondent were £121.02 per week and for the Co-op were £86.54 per week. This is based on gross pay. There was a difference of £34.48 a week or £1,792.96 a year.

97. The medical insurance had a value of £495 a year and was only applicable to the Respondent. This had a value of £9.52 per week.

98. The difference in the Claimant's remuneration, taking into account pay, employer pension contributions and health insurance was as follows:

(1) On the basis of gross pay: £5,697.08.
(2) On the basis of net pay: £4,104.84.

99. The Claimant did not seek to make any further applications for better paid jobs until after the liability hearing, when she started having problems with her line manager at Co-op.

100. The Claimant had a break down following the liability hearing. She was unsuccessful in the discrimination element of her claim. During the remedy hearing she referred to this as not being believed. The Respondent properly conceded the dismissal was unfair and it successfully defended the discrimination claims. The Respondent was also successful in its Polkey argument. The psychological reaction of the Claimant was to the outcome of the hearing it was not something which could be reasonably attributed to the dismissal, it occurred a year and half before.

101. The Claimant explained that her problems at Co-op started after her break down and she accepted that the Respondent had no involvement in the matters she said gave rise to her alleged constructive dismissal. She said those matters involved race discrimination and whistleblowing detriment. The Claimant resigned, however that is not something which can be reasonably attributed to the dismissal. It is not something which is just and equitable to hold the Respondent responsible for and to say that lack of earnings is something it should compensate the Claimant for.

102. The Claimant's breakdown in her mental health and the events leading to her resignation at Co-op were intervening events.

103. I was satisfied that the Respondent proved that the Claimant should have started looking for a better paid job after she started work at Co-op. She cannot accept a lower paid job and expect to be paid the difference without seeking to improve her position. The difference in gross pay for the Claimant, including pension contributions and medical insurance was £5,697.08. An employee needs a reasonable period of time to settle in before looking for a new job. In the present circumstances it would be reasonable to allow a period of about 6 months before such a search started. If the Claimant wants to seek to recover the difference she needs to mitigate her loss. I was satisfied that the Claimant did not start looking for new roles whilst working at Co-op until the relationship with her manager became problematic. I was satisfied that the Respondent proved that the Claimant had failed to mitigate her losses by not trying to find an alternative role sooner. It was a reasonable step she could have taken.

104. There is not a precise science to the amount of time it should have taken the Claimant to find a new role. The Claimant could have looked for roles within the same sector both internally and externally. I took into account the points the Claimant made about her name and age and that she said that made it more difficult for her to get a job. The Claimant was able to secure the Co-op role before the end of her notice period. The notice

period was 9 weeks. The difference between the salaries at the Respondent and Co-op was not large. The Claimant had also secured the Barclays role in 2025. Taking all matters in into account, a reasonable period of time would have been 6 months to secure a role that paid her the same as when she worked for the Respondent.

105. In the circumstances the Claimant should have found a better paid alternative role within 12 months of starting at the Co-op. Her recoverable losses therefore ended on 18 October 2022.

106. The Claimant's losses were therefore as follows:

107. Losses between 15 September 2021 and 17 October 2021:

a.	Net pay: 5 * £714.10 =	£3,409.12
b.	Pension contributions 5 * £121.02 =	£605.10
c.	Medical insurance 5 * £9.52 =	£47.60
d.	Total losses to 18 October 2021 =	**£4,061.82**

108. The losses between 18 October 2021 and end of March/beginning of April 2022 (23 weeks) were as follows:

a.	Difference in net pay 23 * £34.94 =	£803.62
b.	Difference in pension contributions 23 * £34.48 =	£793.04
c.	Medical insurance 23 * £9.52 =	£218.96
d.	Total =	**£1,815.62**

109. The losses between end of March to 18 October 2022 (29 weeks) are as follows:

a.	Net pay 29 * £52.32 =	£1,517.28.
b.	Pension contributions 29 * £36.72 (see below)	£1,064.88
c.	Medical insurance 29 * £9.52	£276.08
d.	Total	**£2,858.24**

{The pension loss was based on the difference between 13% of £968.18 (£125.86) and 10% of £891.44 (£89.14)}

110. Loss of statutory rights in the sum of **£750**

111. The total losses before deductions were: **£9,485.68**

112. It was then necessary to deduct the net value of the enhanced redundancy payment and ex gratia payment, i.e. £30,853.34. This was greater than the Claimant's recoverable losses and therefore the compensatory award was reduced to zero. It was unnecessary to apply the Polkey deduction.

113. It was agreed no basic award was due because the Claimant had received a redundancy payment.

114. Accordingly, the claim for reinstatement or reengagement was dismissed. The Claimant is not entitled to a basic or a compensatory award and no such award is made.

115. For completeness, the Claimant's suggestion that she should be awarded losses until her retirement date was totally without merit. She was seeking 10 years future loss based on losses from the last 12 months, which included a significant period of sickness absence and having no employment. The Claimant had been undertaking some work and there was a lack of appreciation as to the need to mitigate her loss and for how long a reasonable period of loss would be.

Approved by
Employment Judge J Bax
Dated: 13 June 2026

Sent to Parties on
24 June 2026

Jade Lobb
For the Tribunal Office