



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001751/2025

Held in Chambers on 15 June 2026

Employment Judge: M Kearns

Mrs J O'Donnell

**Claimant
Written submissions**

HBOS plc

**Respondent
Written submissions**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Rules 69 – 70 of the Employment Tribunal Procedure Rules 2024

The Judgment of the Employment Tribunal is that upon reconsideration in terms of rules 69 - 70, the original decision – sent to parties on 1 April 2026 - is confirmed.

REASONS

1. The Judgment sent to the parties on 1 April 2026 stated so far as relevant as follows:

*“Uplift for failure to comply with ACAS Code
112. The claimant also sought an increase of her award to reflect the respondents' failure to comply with the ACAS Code of Practice on Disciplinary & Grievance Procedures 2015 (“Code of Practice 2015”).
Section 207A(2) of the Trade Union & Labour Relations*

(Consolidation) Act 1992 provides that; "If, in the case of proceedings to which this Section applies, it appears to the employment tribunal that (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies; (b) the employer has failed to comply with that Code in relation to that matter, and (c) that failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25 per cent".

113. Section 207A(3) contains reciprocal provisions in relation to a failure by an employee to comply with a Code of Practice, in which case the tribunal may reduce an award by up to 25% if it considers it just and equitable to do so. It was not in dispute that the claim concerned a matter to which the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 ("CoP") applies. In relation to an employee grievance, the CoP states: "**32. Let the employer know the nature of the grievance.** If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance." Once the employer receives a grievance from the employee, paragraph 33. of the CoP provides: "**Hold a meeting with the employee to discuss the grievance** 33. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received." It appears to me that although the claimant indicated her intention to lodge a grievance, she did not in fact send in anything that set out the nature of the grievance in writing. Of course, the respondent ought – as a matter of courtesy - to have replied to her email and assisted her but their failure to do so is not a failure to comply with the Code. Ms Green testified that she did not receive the claimant's email. However, HR did appear to have done so as the claimant got a receipt (337). I concluded that the effect of the respondent's lack of response was to excuse the claimant in the circumstances from failing to proceed further, since she was quite reasonably awaiting a response from the respondent's HR department. However, I did not conclude that the respondent failed to comply in the circumstances."

The claimant's application for reconsideration

2. By email sent on 1 April 2026 at 18:24, the claimant applied for reconsideration of the Tribunal's judgment to the following extent:

"I write to request reconsideration of the Tribunal's decision not to award an uplift for failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Tribunal found that I had not submitted a grievance. However, I respectfully submit that this conclusion involves an error of fact and/or a misapplication of the

ACAS Code. At page 335 of the bundle - put to Kelly Green at cross examination, I sent an email stating: "I wish to lodge a formal grievance for maternity discrimination / discrimination and unfair treatment at work."

5

That email:

1. expressly identifies itself as a formal grievance
2. clearly sets out the nature of the complaint, namely maternity discrimination and unfair treatment
3. provides context, including my stress-related absence and treatment following my return from maternity leave

10

15

20

25

Under the ACAS Code, a grievance need only be in writing and set out the nature of the complaint. It does not require detailed particulars or supporting evidence at that stage. This grievance was sent to both Kelly Green and HR. Bundle page 335/336/337. In those circumstances, I respectfully submit that the Tribunal erred in concluding that no grievance had been raised. Alternatively, the Tribunal applied too high a threshold as to what constitutes a grievance for the purposes of the ACAS Code. Had the Tribunal accepted that a grievance was raised, it would then have been required to consider whether the respondent's failure to respond constituted an unreasonable failure to comply with the ACAS Code, and whether an uplift was appropriate. I therefore ask the Tribunal to reconsider its decision on this issue."

3. In an email dated 2 Apr 2026, at 17:36, the claimant stated:

30

35

40

"I write to provide a brief clarification in support of my application for reconsideration in relation to the Tribunal's decision not to award an ACAS uplift. At paragraph 30 of the Respondent's ET3 (bundle page 48), the Respondent states: "On 4th June 2025, the claimant submitted a formal grievance to the respondent via its internal complaints process. The claimant alleged she had been subject to maternity discrimination and unfair treatment at work. On 24th June 2025, the grievance was forwarded to the respondent's grievance team. However, the grievance team have no record of receiving the grievance." The Respondent therefore accepts that a formal grievance was submitted, and the dispute appears to relate to internal handling/receipt rather than whether a grievance was raised.

45

This submission to HR was in addition to the initial Grievance that was emailed to Kelly Green I respectfully submit that this further supports my position that the Tribunal erred in finding that no grievance had been submitted, or in concluding that the threshold for the ACAS Code had not been met. I therefore ask that this point be taken into account when considering my application for reconsideration."

The respondent's submissions in response

4. The respondent submitted the following written submissions:

5 *"The Respondent respectfully submits that the application for reconsideration should be refused for the reasons set out below.*

10 *Rule 70 of the Employment Tribunal Procedure Rules 2024 permits reconsideration of a judgment only where it is necessary in the interests of justice to do so. That is a high threshold. A reconsideration application is not an opportunity for a dissatisfied party to re-argue points already considered and determined by the Tribunal at the substantive hearing. The Claimant has identified no new evidence and no error of law. She is, in substance, inviting the*
15 *Tribunal to revisit a factual assessment already made on evidence that was before it. That is not a proper basis for reconsideration.*

20 *The Tribunal considered the evidence in relation to the grievance and concluded that, although the Claimant indicated her intention to lodge a grievance, she did not in fact send in anything that set out the nature of the grievance in writing. It followed that, whilst the Respondent ought as a matter of courtesy to have replied to the Claimant's email and assisted her, the failure to do so did not constitute a failure to comply with the ACAS Code of Practice on*
25 *Disciplinary and Grievance Procedures 2015 ("the Code"). The Code provides at paragraph 32 that an employee raising a formal grievance must do so in writing and that the written communication "should set out the nature of the grievance." The Tribunal's finding that the Claimant's email did not fulfil that requirement was a factual assessment plainly open to it on the evidence.*
30

35 *Having had the opportunity to review the email in full, the Respondent makes the following specific submissions as to why the Tribunal's finding was correct. The email, sent on 4 June 2025 at 09:38 to Kelly Green and HR, was headed "Formal Grievance - Maternity Discrimination / Discrimination / Unfair treatment at work" and stated: "I wish to lodge a Formal Grievance for Maternity Discrimination / Discrimination and Unfair treatment at work." The Claimant places considerable weight on the word "Formal" in the*
40 *subject line and opening sentence. However, the label a party attaches to a document is not determinative of whether that document satisfies the requirements of the Code. The question is whether the email in fact set out the nature of the grievance in writing, as paragraph 32 requires. It did not.*

45 *The most telling feature of the email is the use of the words "I wish to lodge." That language is prospective. It expresses an intention to raise a grievance, not the raising of one. This is entirely consistent with the Tribunal's finding that the Claimant "indicated her intention to*

lodge a grievance." This is not a semantic point. A statement that a person intends to raise a grievance and an actual written grievance setting out its nature are conceptually and practically distinct, and the Code requires the latter. The email to HR generated an automatic acknowledgement, but the terms of any grievance were not attached or sent, and neither party did anything to take the matter further thereafter.

Beyond the language of intention, the email identifies three broad category labels, namely "maternity discrimination," "discrimination," and "unfair treatment at work," but sets out no particulars whatsoever. It does not identify any specific act or omission complained of, when any such act occurred, which individuals were involved, or what the Claimant sought by way of resolution. Broad category labels are not equivalent to setting out "the nature of the grievance." A grievance meeting cannot meaningfully be convened, and an investigation cannot properly be undertaken, on the basis of three unparticularised labels, however sincerely felt the underlying concerns were. The contextual statements in the email, namely that the grievance related to "Recoveries Commercial Banking," that the Claimant was not emailing her Line Manager as advised by the union and ACAS, and that she was signed off sick due to stress, provide some background but do not supply the substance of the grievance that the Code requires.

Additionally, the Claimant expressly stated that the grievance was "not intended to change the outcome of her redundancy" and that she would be unable to continue to work in that area. The grievance procedure exists to enable employers to investigate and, where possible, remedy the employee's concerns. The Claimant was not seeking that outcome.

A further and important point not addressed in the Claimant's applications is the timing of the grievance. The email was sent at 09:38 on 4 June 2025. The Claimant's employment was due to terminate on 6 June 2025, only two days later. The Code contemplates a genuine process: receipt of the written grievance, a formal meeting convened without unreasonable delay, an investigation, a response, and a right of appeal. None of those steps could have been completed within two days. By the time even an acknowledgement could have been issued, the Claimant's employment had ended. The Claimant had been aware of her concerns since at least her return from maternity leave in November 2023. She received formal notice of redundancy on or about 5 March 2025, with employment due to end on 6 June 2025, and had been signed off with work-related stress from 17 March 2025 until the expiry of her notice. There is no explanation for why the grievance was raised on the penultimate working day of her employment rather than at any earlier point during the preceding months. The Code

requires employees to raise matters "without unreasonable delay." Raising a grievance in those circumstances cannot satisfy that requirement, and it would be neither just nor equitable, within the meaning of section 207A(2) of the Trade Union & Labour Relations (Consolidation) Act 1992, to impose an uplift on the Respondent for failing to complete a process which was, by reason of the Claimant's own timing, entirely incapable of being completed.

As to the Claimant's reliance on paragraph 30 of the Respondent's ET3, that reliance is misconceived. The ET3 stated that on 4 June 2025 the Claimant submitted a formal grievance via the Respondent's internal complaints process, alleging maternity discrimination and unfair treatment, and that on 24 June 2025 the grievance was forwarded to the grievance team, who have no record of receiving it. The Claimant argues that this amounts to an acceptance that a formal grievance was submitted and that the only live issue was one of internal handling. That submission cannot be sustained. A narrative description of events in a pleading does not constitute a concession on a question of legal sufficiency. The ET3's reference to a "formal grievance" reflects the Claimant's own characterisation of the email in her subject line; it is not an admission that the email met the requirements of paragraph 32 of the Code. The Tribunal was plainly aware of the email at bundle pages 335-337, assessed for itself whether it satisfied the Code, and concluded that it did not. The passage in the ET3 adds nothing to the evidence that was before the Tribunal, and the ET3 passage itself records that the grievance team have no record of receiving the grievance, which is consistent with the Tribunal's findings.

For completeness, even if the Tribunal were to accept, which is not conceded, that the 4 June 2025 email constituted a sufficient written grievance under the Code, it would not be just and equitable to award an uplift. The grievance was raised two days before the Claimant's employment ended, affording the Respondent no realistic opportunity to convene a meeting, investigate, respond, or offer an appeal. The Claimant's own email stated the grievance was not intended to change the outcome of her redundancy. Neither party did anything to take the matter further after the email was sent, and the Claimant did not follow up, supply particulars, or chase a response after her employment ended. In addition, the Claimant received an enhanced redundancy payment of £45,080, of which £30,000 was paid tax free and the remainder was subject to tax. In those circumstances, it would not be just and equitable to increase any award by a further 25%.

For all of the foregoing reasons, the Respondent respectfully submits that the Tribunal's original finding on the ACAS uplift issue was correct and should stand, that the 4 June 2025 email, read in full, confirms rather than undermines the Tribunal's conclusion, and that

the Claimant has identified no error of law, no error of fact, and no new evidence that would justify reconsideration. The application for reconsideration should accordingly be refused.

5 *The Respondent confirms that they are content for the issue to be determined without a hearing.”*

The claimant's further submissions

10 5. On 6 May 2026 at 09:51, the claimant sent in further submissions responding to the respondent's written submissions in the following terms:

15 *“I write in response to the Respondent's submissions regarding my application for reconsideration. I respectfully maintain that my application is not an attempt to re-argue matters already determined, but rather to address a point which I believe was not fully considered, namely whether some level of uplift under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 may have been appropriate in light of the Tribunal's own findings.*

20 *The Tribunal expressly found that the Respondent ought to have responded to my email and assisted me. That finding indicates that there was, at least to some extent, a failure in the handling of my grievance. My application invites the Tribunal to consider whether, in light of that finding, it was just and equitable to make no uplift at all.*

25 *I acknowledge the Respondent's position regarding the content and timing of my email. However, I respectfully submit that these factors go to the extent of any uplift, rather than whether an uplift should have been considered at all. The ACAS Code does not require perfection in the drafting of a grievance, and my email was clearly titled as a formal grievance and identified the nature of my concerns, namely maternity discrimination, discrimination, and unfair treatment. Further, while the Respondent places weight on the timing of my email, I would submit that this does not remove the obligation to engage with a grievance or respond appropriately, particularly where the Tribunal has already found that the Respondent ought to have done so.*

30 *In those circumstances, I respectfully submit that the question of whether some uplift, even if modest, was appropriate may not have been fully addressed in the judgment, and that it is in the interests of justice for that limited issue to be reconsidered.”*

Discussion and decision

45 6. The ACAS Code of Practice on Discipline and Grievances at Work (2020, not 2015) provides at paragraph 32 that an employee raising a formal grievance must do so in writing and without unreasonable delay. The

written communication "*should set out the nature of the grievance.*" Under paragraph 1 of the Code of Practice, grievances are: "*concerns, problems or complaints that employees raise with their employers*". The conclusions in paragraphs 112 and 113 of the judgment set out above were based on the following findings in fact at paragraph 45:

"45. On 4 June 2025, the claimant emailed Kelly Green and HR stating that she wished to lodge a grievance about her treatment since her return from maternity leave (J335 – 6). Ms Green did not receive the email sent to her. Although the claimant's email to HR was automatically acknowledged (J337), it was not followed up. The claimant's email (335) gave her personal email address and asked that future correspondence be sent to her at that email address. The terms of the grievance were not attached or sent. The claimant did not hear further about the email from either Kelly Green or HR. Neither she nor the respondent did anything to take it further."

7. With regard to the claimant's application for reconsideration dated 1 April, I respectfully disagree with the claimant's submission that the email to Ms Green dated 4 June 2025 (J335) "expressly identified *itself* as a formal grievance" (my emphasis). My understanding of the documentary evidence (J335) was – as the respondent submits – that the language the claimant used: "*I wish to lodge a formal grievance.*." was prospective. That is, it indicated her wish or intention to lodge a grievance. The respondent was represented at the hearing by a very experienced advocate and I was assisting the claimant with her evidence in chief by ensuring that she introduced into evidence any documents she wished the tribunal to be referred to. I can see from my notes of the hearing that I asked the claimant whether the grievance itself was in the bundle of documents and that she answered: '*I did not do because I had not collated the grievance as yet*'.

8. I also respectfully disagree with the claimant's submission that her email "*clearly sets out the nature of the complaint...*". The claimant's maternity leave had ended in September 2023 and she had returned to work in November 2023. The email was sent in June 2025, two days prior to her effective date of termination of employment listing three headline types or broad categories of grievances. I agree with the respondent that the finding that the claimant's email did not fulfil the requirement to set out the nature of the grievance [i.e. the nature of her concern, problem or complaint] in writing was a factual assessment plainly open to the tribunal on the evidence.

9. With regard to the claimant's point about the respondent's statement in the ET3. I accept the respondent's argument that it was not a concession on the legal sufficiency of the claimant's email. In any event, the claimant did not make this submission at the hearing.

10. I have carefully considered the claimant's arguments. However, for all the reasons set out by the respondent in their written submissions in paragraph 4 above, I have come to the conclusion that the judgment on this point should be confirmed. Even if I *had* found there was a failure to comply with the Code of Practice in this case, I would not have found it was unreasonable for the purposes of section 207A(2)(c) Trade Union and Labour Relations (Consolidation) Act 1992 given the timing of the claimant's correspondence, the prospective nature of the language, giving the impression that it was a declaration of intent and the fact that – for whatever reason – Ms Green did not receive the claimant's email of 4 June 2025.

Date sent to parties

19 June 2026