



EMPLOYMENT TRIBUNALS

Claimant: Miss Tehmina Akhtar

Respondent: Calrom Limited

Heard at: Manchester

On: 10 December 2025

Before: Employment Judge Cookson
Ms Crane
Ms Doyle

REPRESENTATION:

Claimant: In person

Respondent: Ms Niaz-Dickinson (Counsel)

JUDGMENT having been sent to the parties on 10 February 2026 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This was a judgment given following a hearing to determine remedy following a liability hearing in 2024 which had resulted in a reserved judgment. In that judgment the Tribunal found the claimant's dismissal was unfair but importantly for remedy purposes we had accepted that that was a potentially fair reason for dismissal and none of the claimant's discrimination complaints were upheld.
2. Unfortunately, due to Tribunal workloads and backlogs, there was a significant delay in the written judgment being promulgated and sent to the parties after it had been prepared by the judge, and there was a further delay in the request for written reasons being sent to the judge. The Tribunal apologises for any inconvenience this has caused.
3. In determining remedy, the Tribunal considered:

- a. A witness statement received from the claimant
 - b. A bundle of documents relevant to remedy
 - c. Oral submissions from the parties
4. The claimant had prepared a schedule of loss claiming she had suffered loss of earnings significantly above the statutory cap. The respondent's counter schedule of loss acknowledged that the claimant would be entitled to a basic award which the parties agreed would be in the sum £8,565, but that compensation should be reduced to reflect the likelihood that the claimant would have been dismissed if the claimant's dismissal had not been unfair.
 5. In her schedule of loss the claimant had referred to various heads of award which can be relevant in discrimination complaints – injury to feelings, personal injury, aggravated damages and interest, which cannot be awarded in unfair dismissal cases. This was explained to the claimant. Those issues were not considered.

The Law

6. Section 123 of the Employment Rights Act 1996 provides:

123 Compensatory award.

(1) Subject to the provisions of this section and sections 124 124A and 126, 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.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

7. Accordingly, the starting point in assessing compensation for unfair dismissal is to ask:
 - a. What loss has the employee sustained?
 - b. Whether that loss was attributable to the conduct of the employer in dismissing the employee?
8. It will be usual to assess loss for:
 - a. Immediate loss of earnings;
 - b. Future loss;
 - c. Expenses incurred as a consequence of dismissal;
 - d. Loss of statutory employment protection rights;
 - e. Loss of pension rights.
9. The strict rules of causation and remoteness relevant in civil claims do not apply in the tribunal, nor do we need to adopt the approach of a skilled cost accountant or actuary. What we must do is assess the amount of compensation in accordance with s123 of the Employment Rights Act and explain the principles we have adopted.
10. After we have assessed the amount of loss, we considered what reductions should be made to that calculation. Reductions can be made on various grounds including:
 - a. Those which are 'just and equitable reductions'. This includes any reduction to reflect that the employee may have been fairly dismissed anyway. This is the so-called 'Polkey' reduction. A reduction also may be made to take account of the chance that the employee would have been dismissed for a reason only discovered by the employer post-dismissal.
 - b. For any conduct of the employee that contributed to the dismissal
 - c. Any adjustment to the compensatory award for breach by either party of the ACAS Code of Practice on Disciplinary and Grievance Procedures

and/or for any failure by the employer to provide a statement of employment particulars (pursuant to s 38 of the Employment Act 2002) is made before the reduction for contributory conduct. This is the order of adjustments and reductions applied pursuant to ERA 1996 s 124A when read with s 207A(5) of the Trade Union and Labour Relations Act 1992.

11. Generally, there is a statutory cap which applies a financial maximum to the level of compensatory award which can be made by a tribunal (ERA 1996 s 124(1ZA)). That the cap is the lower of a set amount, varied each year by statutory order, or 52 weeks' gross pay. The maximum set cap applicable at the time of the claimant's dismissal was £93,878 but that was more than the value of the claimant's gross annual pay calculated using the statutory formula so the maximum amount the Tribunal could award in this case was 52 weeks gross pay, £44,145.19. There is no limit to the period over which the compensatory award may be assessed provided the award falls within the statutory cap.
12. In *Dunnachie v Kingston Upon Hull City Council* [2004] UKHL 36, [2004] IRLR 727 the House of Lords confirmed that an award for injury to feelings was not available under s 123(1) ERA 1996, which does not permit the recovery of non-economic losses. However, if the manner of the dismissal causes psychological injury, then the employee may be compensated for loss of earnings where that injury prevents them from looking for a new job: (*Devine v Designer Flowers Wholesale Florist Sundries Ltd* [1993] IRLR 517). The EAT confirmed that it may be just and equitable to make an award where the impact upon the employee's health is attributable to the action taken by the employer in dismissing the employee. The Tribunal must make an assessment based upon the evidence, of the period of unfitness that is attributable to the action taken by the employer, or which may have occurred anyway regardless of the dismissal. In *Devine*, the employee suffered anxiety and depression as a result of her dismissal. It is for the tribunal to decide how far an employee's losses are attributable to the employer's actions and decide what it is just and equitable to award in consequence. However, it is relevant to consider whether the employee may have become incapacitated anyway: *Dignity Funerals Ltd v Bruce* [2005] IRLR 189, CSIH.

Polkey reductions

13. The Tribunal can only award compensation to cover loss from the unfair dismissal, that is loss attributable to the employer's conduct and resulting from dismissal. This will include an assessment of what would have happened but for the dismissal and our assessment of the chance employment would have ended anyway.

14. A tribunal may find that if a fair dismissal procedure had been applied dismissal would have occurred in any event. If it is found that dismissal was inevitable, compensation can be reduced to nil or compensation may be limited to what the period during which employment would have been continued to enable a fair process, for example whilst a fair consultation process was undertaken.
15. If a tribunal considers that there is only a chance that dismissal would have occurred if there had been no unfairness, it may reduce compensation by a percentage to reflect its assessment of that chance.
16. It is for the employer to adduce evidence that dismissal might have occurred even if a fair procedure had been adopted, but where there is evidence before the tribunal enabling a so-called Polkey reduction, an assessment of the chance of dismissal should be undertaken.

The Software 2000 guidance

17. Helpful guidance was given by the EAT in *Software 2000 Ltd v Andrews* [2007] IRLR 568 (Elias P presiding) as to how to approach the task of assessing the chance of a fair dismissal, although there are elements of the guidance which is relevant to the law at the time on statutory procedures..
18. In paragraph 54 of the *Software 2000* judgment the EAT said this:

"(1) In assessing compensation the task of the Tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal.

(2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future.)

(3) However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made.

(4) Whether that is the position is a matter of impression and judgment for the Tribunal. But in reaching that decision the Tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just 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 have regard to the evidence.

(5) *An appellate court must be wary about interfering with the Tribunal's assessment that the exercise is too speculative. However, it must interfere if the Tribunal has not directed itself properly and has taken too narrow a view of its role.*

(6) *The ERA 1996 s 98A(2) and Polkey exercises run in parallel and will often involve consideration of the same evidence, but they must not be conflated. It follows that even if a Tribunal considers some of the evidence or potential evidence to be too speculative to form any sensible view as to whether dismissal would have occurred on the balance of probabilities, it must nevertheless take into account any evidence on which it considers it can properly rely and from which it could in principle conclude that the employment may have come to an end when it did, or alternatively would not have continued indefinitely.*

(7) *Having considered the evidence, the Tribunal may determine*

- (a) *That if fair procedures had been complied with, the employer has satisfied it—the onus being firmly on the employer—that on the balance of probabilities the dismissal would have occurred when it did in any event. The dismissal is then fair by virtue of s 98A(2).*
- (b) *That there was a chance of dismissal but less than 50%, in which case compensation should be reduced accordingly.*
- (c) *That employment would have continued but only for a limited fixed period. The evidence demonstrating that may be wholly unrelated to the circumstances relating to the dismissal itself, as in the O'Donoghue case.*
- (d) *Employment would have continued indefinitely.*

However, this last finding should be reached only where the evidence that it might have been terminated earlier is so scant that it can effectively be ignored.”¹

19. Elias P made it clear just how limited the scope is for tribunals to evade the task of making a Polkey reduction on the ground that determining what could or would have happened is just too speculative.

‘The question is not whether the tribunal can predict with confidence all that would have occurred; rather it is whether it can make any assessment with sufficient confidence about what is likely to have happened, using its common sense, experience and sense of justice. It may not be able to complete the jigsaw but may have sufficient pieces for some conclusions to be drawn as to how the picture would have developed. For example, there may be insufficient evidence, or it may be too unreliable, to enable a tribunal to say with any precision whether an employee would, on the balance of probabilities, have been dismissed, and yet sufficient evidence for the tribunal to conclude that on any view there must have been some realistic chance that he would have been.

¹ 21. References in (6) and (7)(a) to s 98A are a reference to ERA 1996 s 98A which was in force when the judgment in *Software 2000 Ltd* was delivered. Section 98A of the ERA 1996 was repealed by s 1 of the Employment Act 2008. The guidance in (6) and (7)(a) is no longer applicable and the Tribunal considered that the correct approach was to assess the chance of dismissal across the whole spectrum from zero to 100% and reduce compensation to reflect that chance (if any).

Some assessment must be made of that risk when calculating the compensation even though it will be a difficult and to some extent speculative exercise.'

Our decision

20. We had received a written statement of evidence from the claimant, but we agreed with Ms Niaz-Dickinson's submission that this document is perhaps better regarded as written submissions. It contains little in the way of evidence. However, we had made factual findings in our reserved liability judgment which inform this decision. In any event the factual position in this case can briefly be summarised.
21. The claimant has not returned to paid employment since her dismissal. She has not returned to work in the UK and continues to live in Pakistan. She has trained to become an SRT (Spiritual Response Therapy) practitioner but has not yet begun to earn any meaningful income from that. The claimant told us that as a result of her unfair dismissal she has been made unwell and that has affected her ability to mitigate her loss, and her ability to travel to the UK for work.
22. Ms Niaz-Dickinson argued that we should reject any suggestion that it was the claimant's unfair dismissal which had caused the claimant to become unwell and that had meant she had been unable to seek employment. She invited us to pay careful attention to the factual findings made at the liability stage about the reasons why the claimant had not returned to the UK at the end of a career break from September 2020 to 31 August 2022 which had followed a period of furlough, in particular in relation to the claimant's health before dismissal.
23. The Tribunal made key findings in our liability judgment. The reason the claimant had given us for not returning to the UK to enable her to return to her post at the end of the career break was her continued mental health issues and her general anxiety disorder. The claimant's evidence at the liability stage was that she had been discriminated against because the respondent had refused to make reasonable adjustments for her by allowing her to work from home in Pakistan rather than return to the UK. The Tribunal had accepted the claimant's evidence that her health at the time had meant she was unable to travel to the UK before she was dismissed. However, we also concluded that working from home in Pakistan was not a reasonable adjustment. That discrimination complaint was not upheld. In unfair dismissal terms we concluded that the respondent was entitled to conclude that the claimant could not work from home in Pakistan, that had not been unfair. However, it had acted unfairly in the way the claimant had been dismissed.
24. That finding is crucial to our assessment of the likelihood that the claimant would have been dismissed in any event even if a fair procedure had been followed.
25. The Tribunal agreed with respondent's counsel's argument that what the claimant told us in support of her claim for compensation was inconsistent with the evidence that we have heard of the liability stage and is inconsistent that the findings that were made as a result. Significantly the Tribunal received no

medical evidence on which we could base any finding that the claimant's inability to return to work as a Dot.Net Developer from September 2022 was caused or materially influenced by her unfair dismissal. That was important because the evidence the claimant had presented us at liability was that that was she was unwell before her dismissal.

26. The Tribunal did not doubt that the claimant's dismissal had caused her some stress and upset, that is common when someone is dismissed, but we had not received any evidence to support a conclusion that the claimant's health had been significantly harmed to the extent that before dismissal she was able to work and after her unfair dismissal she was no longer able to work. The evidence at the liability stage had been that the claimant had significant mental health issues and as result would only be able to return to work with day-to-day family support. That was part of her explanation for not travelling back to the UK at the required time because her evidence had been that she needed the continued support of her parents and she would need the support of her parents, not only to travel to the UK, but also to live in the UK.
27. Ms Niaz-Dickinson argued that we could be satisfied that the claimant would not have returned to the UK in any event because at no time since her dismissal has she returned to live and work in the UK. We did not accept that was told us what would have happened if the respondent had followed a fair procedure because if the respondent had followed a fair procedure before deciding to dismiss, for example by allowing her to take some of her accumulated leave as we identified in our liability judgment at paragraph 77, the claimant would have been able to return to the UK with a job to return to, not coming to the UK on a speculative basis to look for employment to mitigate her loss.
28. The Tribunal had to speculate, based on our findings of fact, about what would have happened if the respondent acted fairly. The first question is whether the claimant would in fact have travelled back to the UK if the respondent had allowed her more time after taken the firm decision that it would not allow her to work from home in Pakistan.
29. We examined the evidence we had about happened in the summer of 2022 when the claimant knew her career break was coming to an end. We found as a finding of fact at the liability stage that no visa application had been made for the claimant's parents. To some extent the claimant tried to revisit that finding in her submissions to us and rightly it was pointed out by the respondent's counsel that she was not entitled to do that. In any event it remained the fact that there is no evidence that any visa application had been submitted for the claimant's parents, and no evidence that this had ever gone beyond the enquiry stage. We had no evidence to suggest that the claimant's parents would in fact have sought and obtained visas to travel to the UK. It would have been reasonable the respondent to give the claimant some time to arrange travel after being told about the firm decision not to allow the home working she wanted but the respondent could not have been expected to wait many months for a decision to be taken on the claimant's parents visas. If a fair procedure had been followed the claimant would still not have been able to travel back to the UK with her parents.

30. In her submissions the claimant referred us to evidence, which was in the liability bundle, but which was not referred to her in her cross-examination answers about travel arrangements at the liability hearing nor in questions put to the respondent's witnesses. That is evidence that she had had discussions with her brother about travelling to Europe with him in September 2022. The claimant suggested that if she had had adequate warning from the respondent she could have made arrangements to return to the UK by travelling with her brother.
31. However, we also concluded that this was inconsistent with the evidence we had heard at the liability stage. The claimant's evidence at the liability stage was that she would need family support not only for travel purposes, but also for day-to-day life in the UK. Her brother did not have a visa to live and work in the UK. He was to travel to Europe but not to live in the UK. The claimant had given us evidence at the liability stage about the support she would need to travel and live in the UK to explain why she had not returned at the end of her career break and why she had sought to work from home in Pakistan. The degree of support that the claimant described as requiring if she were to return to the UK demonstrated to the Tribunal that the claimant's health pre-dismissal was sufficiently fragile and any recovery so precarious, that even if the respondent had acted fairly there was no prospect that the claimant would not have been able to return and live independently in the UK.
32. We also considered the fact that the claimant did not seek any continued employment as a Dot.Net Developer but applied for a course to retrain as an SRT practitioner on the day of her dismissal. We noted that the claimant had told that she was not well enough to continue working in the IT field. The claimant may be right about that, but we do not accept that was as a result of her unfair dismissal.
33. The consequence of that conclusion is stark. We concluded that the respondent was entitled to insist that the claimant's job was done in the UK. If the respondent had acted fairly it would have explained this clearly to the claimant and allowed her time to respond to the decision before dismissing her, for example by taking some of her accrued holiday, or by extending the career break on an unpaid basis for a further short period of time. The dismissal was unfair because the claimant had been presented with an impossible fait accompli which the claimant could not comply with in the time available. However, the career break was due to come to end. The respondent was entitled to decide that if the claimant's employment with it was to continue she had to come back to work.
34. We concluded that if a fair process had been undertaken this would have been completed in a very short period of time because we concluded that the only way the claimant would have continued working for the respondent was if it allowed her to work from home in Pakistan, and there was no chance of that. We agreed with Ms Niaz-Dickinson's submissions that if that consultation had taken place, the claimant would have continued to make representations about that being something the respondent should do as reasonable adjustment. We are confident about that because that has continued to be the claimant's case on remedy despite the fact we made as findings of fact that the respondent had

been entitled to conclude that home working from Pakistan was not feasible and this would not have a reasonable adjustment. If a fair procedure had been followed it would have become apparent within weeks or even days that the position between the parties was irretrievable. The respondent would not have agreed to the claimant working from home from Pakistan and the claimant would not have travelled back to the UK. The termination of the claimant's employment was inevitable.

35. We accepted Ms Niaz-Dickinson submission that if there had been any extension to the claimant's employment after the career break this would either have been on the basis she would have been allowed to take some of her accumulated holiday at the start of her official return to work (see para 77 of the liability judgment) or it would have been unpaid. The claimant was paid in lieu of accrued leave on termination. If a fair procedure had been followed the amount of the accrued leave would have been reduced by the extension or the extended period would not have been paid. In other words, the absence of a fair procedure did not make any financial difference to the claimant.
36. The claimant has also referred to various other expenses in her statement and schedule of loss and says she would be compensated for those. These include various expenses she says she incurred because of her poor mental health which she blames on the respondent such as the costs of therapy and expenses in terms of damage to her UK property from that standing empty. However, we do conclude that those are not losses which flow from the unfair dismissal. The property costs flow from the fact the claimant returned to Pakistan in 2020 and did not live in her house in the UK for a long time. The claimant gave us evidence at liability that the reason she returned to Pakistan in the first place during the covid lockdown was her poor mental health. The claimant had not presented evidence to show that the financial loss claimed for the cost of therapy, self-help books and so on flowed from her unfair dismissal as opposed to that underlying poor mental health.
37. Accordingly, we concluded that having regard to the amount of compensatory award we should award which is 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, that amount is nil.
38. in light of that it was not necessary for us to determine any uplift to compensation for failure to follow the ACAS Code of Practice.
39. There was one final matter. The claimant argued that we should award her a sum to reflect she had not received a flight allowance which she argued she fact that we have not made any financial award. The claimant was entitled to be paid a basic award in the amount agreed between the parties.
40. The other thing she has raised appears to be connected with potential uplift for a financial award which of course falls away. There is one matter though which perhaps falls outside that, the claimant had referred to being entitled to a flight allowance in her schedule of loss which she says she became entitled to after fifteen years' service. The claimant told us that this entitlement had crystallised

before her dismissal, on the anniversary of her fifteen years' service in July 2022. Ms Niaz-Dickinson argued that if there was a legal complaint about that it should have been pursued as a claim for an unlawful deduction from wages or breach of contract claim. We agreed with that submission. The loss of this benefit was not a loss which flowed from the unfairness of the dismissal. It is not a claim which was identified in the original claim form, and it had been identified as an issue at any earlier stage in the proceedings. This was not a claim which was before the Tribunal.

Employment Judge Cookson

22 May 2026

REASONS SENT TO THE PARTIES ON

9 July 2026

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FOR THE TRIBUNAL OFFICE

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