



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Freedman

**Respondent:** GES Limited

**HELD AT:** Liverpool

**ON:** 10 September 2026  
(and in chambers on  
24 September 2026)

**BEFORE:** Employment Judge Johnson

## REPRESENTATION:

**Claimant:** Gemma Freedman (claimant's wife)

**Respondent:** Edward Walker (litigation executive)

# RESERVED JUDGMENT ON REMEDY

(made pursuant to the Judgment on liability dated 10 April 2026)

The judgment of the Tribunal is that:

- (1) This remedy decision arose from the liability judgment dated 14 April 2026 which determined that the complaint of unfair dismissal is well-founded. This means that the claimant was unfairly dismissed.
- (2) The claimant would have been fairly dismissed in any event by 30 August 2024.
- (3) The respondent shall pay the claimant the following sums in relation to the successful unfair dismissal complaint:
  - (a) A basic award of **£1,898.78**.

- (b) A compensatory award of **£3,722.12**
- (4) The complaint seeking notice pay is well founded and the respondent must pay the claimant the sum of **£1,003.89**.
- (5) The complaint seeking unpaid annual leave entitlement (holiday pay), is well founded and the respondent must pay the claimant the sum of **£611.07**.
- (6) All other losses claimed by the claimant in his schedule of loss are not well founded, which means they are unsuccessful and cannot be recovered.

**Note** that these are actual the sums payable to the claimant after any deductions or uplifts have been applied.

- (7) The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:
  - a. The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is (£1898.78 + £3,722.12) = **£5,620.90**
  - b. The prescribed element is **£3,722.12**
  - c. The period of the prescribed element is from **5 July 2024 to date when the remedy judgment is sent to the parties**.
  - d. The difference between (a) and (b) is **£1,898.78**.
  - e. The balance to be paid to the claimant before the respondent has confirmed any deductions payable to the DWP from the prescribed element is ((d) Basic Award £1,898.78 + (4) Notice Pay £1,003.89 + Holiday Pay(5) £611.07) = **£3,513.74**

#### Recoupment of benefits

The award is subject to the application of recoupment provisions in accordance with the *Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 (SI 1996/2349)*.

### **Introduction**

- 1. This remedy hearing arose from the final hearing on liability which took place on 8, 9 & 10 April 2026. The claimant's complaint of unfair dismissal complaint was successful and would proceed to remedy with further evidence being required regarding the other complaints of unlawful deductions from wages and breach of contract/notice pay. A remedy hearing was originally listed for 20 August 2026, but was relisted to 10 September 2026, because the respondent's representative Mr Walker was unwell at the time.

### **Issues**

- 2. The decision on liability only determined the question of whether the complaint of unfair dismissal brought by the claimant succeeded or not, with notice pay and wages/holiday pay, remaining to be determined as follows:

#### Remedy for unfair dismissal

- a) If there is a compensatory award, how much should it be? The Tribunal will decide:

- (i) What financial losses has the dismissal caused the claimant?
- (ii) Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- (iii) If not, for what period of loss should the claimant be compensated?
- (iv) Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
- (v) If so, should the claimant's compensation be reduced? By how much?
- (vi) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- (vii) Did the respondent or the claimant unreasonably fail to comply with it?
- (viii) If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- (ix) If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
- (x) If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
- (xi) Does the statutory cap of fifty-two weeks' pay apply?
- b) What basic award is payable to the claimant, if any?
- c) Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

**Breach of contract**

- 3. What was the claimant's notice period?
- 4. Was the claimant paid for that notice period?
- 5. If not, can the respondent prove that the claimant was guilty of gross misconduct which meant that the respondent was entitled to dismiss without notice?

**Unlawful deduction from wages**

- 6. Were the wages paid to the claimant upon termination of employment less than the wages he should have been paid?
- 7. Was any deduction required or authorised by statute
- 8. Was any deduction required or authorised by a written term of the contract?
- 9. Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

10. Did the claimant agree in writing to the deduction before it was made?
11. How much is the claimant owed?

### **Evidence used**

12. The claimant gave witness evidence in support of his claim for the losses described within his schedule of loss. He also produced a supplemental statement dealing with mitigation of loss.
13. The respondent had obtained a witness statement from the claimant's former line manager John Hayes. However, he did not attend the hearing and the statement although dated and with his name typed at the end, was not signed with a physical signature or 'e signature'. Therefore, this witness statement was limited in terms of the evidential value that it could provide.
14. The claimant had provided an updated schedule of loss dated 6 August 2026. I noted that some of the losses claimed appeared not to be valid losses arising from the complaints brought. Moreover, some of the losses appeared to be too remote from the actual dismissal which is the source of this claim and which I determined took place on 5 July 2024.
15. The respondent had produced a final remedy hearing bundle which was used during the hearing, and which ran to 236 pages. The parties appeared to have agreed its contents, and it consisted of the pleadings, the claimant's disclosure documents, the respondent's documents and remedy documents including my judgment and reasons on liability, the schedule of loss and the claimant's remedy witness statement.

### **Findings of fact**

16. The parties should note that the Tribunal's findings of fact do not seek to deal with every point where the parties disagree, simply what is relevant to the issues which the Tribunal is being asked to consider. If the discussion of an incident or point is not referred to within these findings, it does not mean that it has not been considered by the Tribunal, simply that it is not relevant to the issues and the findings that we are required to make.
17. In terms of the findings that we make, the Tribunal has reached its decision on what it considers to be on balance of probabilities the most likely way/reason in which an incident arose.
18. There was no dispute that the claimant was aged over 40 years when he was dismissed on 5 July 2024 and he had worked continuously for the respondent for a period of more than 3 years by this date, with his employment commencing on 12 December 2020. His gross pay at the time of his dismissal was £421.95 per week.
19. I accepted following the liability hearing that the respondent had decided to dismiss the claimant on 5 July 2024 following a meeting with Colliers who managed the Cherry Tree Shopping Centre in Liscard. Colliers had decided

that they did not want the respondent to allow the claimant to return from his enforced absence.

20. The respondent was unable or unwilling to offer the claimant alternative work at other sites that they managed and decided that they could rely upon the claimant's resignation letters of either 11 or 12 June 2024. However, as I concluded within my reasons following my judgment on liability, neither party was seeking to end the employment relationship following Mr Hayes' meeting with the claimant on 12 June 2024. Although the claimant was not suspended, he was told to remain at home by Mr Hayes on investigation while matters were resolved in the workplace.
21. In effect this meant that the claimant was suspended, although without pay. This meant that by the time he was told of his dismissal on 5 July 2024, he had been without wages since 10 or 11 June 2024. Nonetheless, as I explained in the liability judgment reasons (paragraph 32), following his meeting with Mr Hayes, *'...the claimant's letters were at this stage being treated by the respondent as grievances. This meant that no action was being taken by the respondent to act upon the notice of resignation.'*
22. The reason behind the decision of the respondent that the employment relationship should come to an end was *'...that the client (i.e. The Cherry Tree/Colliers) felt that the working relationship could not be repaired and they would not permit the claimant to return to his place of work'*, (paragraph 37). This meant that the respondent was being placed in a position where the claimant could not be allowed to continue working at his designated place of work. However, I expressed concern in my liability judgment that no evidence was presented by the respondent of the attempts that had been made by them to persuade Colliers to revise their decision and it appeared that they offered little more than acquiescence at the meeting, (paragraph 76).
23. I explained in the liability judgment that the respondent wrongly relied upon the claimant's resignation for the ending of the employment relationship. But I also accepted that a reasonable employer could have concluded that there was a substantial reason for terminating an employee's contract of employment later. This was because of Collier's decision regarding the claimant being prevented from returning to The Cherry Tree, (paragraph 77). For the claimant to be fairly dismissed for some other substantial reason would have required additional time for the respondent to have notified him and to have carried out a process regarding further engagement with Colliers and consideration being given to alternative vacancies in other locations. My conclusion was therefore that the claimant could have been fairly dismissed by the respondent at a later date. This will be considered further in the Discussion section below as part of the application of Polkey. This will also include consideration regarding the application of deductions or uplifts in relation to the ACAS Code of Practice and contributory fault.
24. The claimant however, also claimed that in addition to unfair dismissal, remedy is also sought in relation to breach of contract and holiday pay/wages. In his of notice pay, the claimant's contract of employment provided within section 11.1 of that document to *'b) One week for each completed year of continuous employment up to a maximum of 12 weeks' notice after 12 years*

*continuous employment.*’ The claimant had completed 3 years of continuous employment by the time his employment ended as he had not been able to remain in employment until 12 December 2024, when the fourth anniversary of starting employment was reached. In any event, the claimant was entitled to three week’s notice for the total completed years of employment when his dismissal could have fairly taken place. Mr Walker on behalf of the respondent in his submissions confirmed that they did not resist an award for notice pay and argued that it should be limited to three years, (see Discussion below).

25. On 5 July 2024 when the claimant was informed that his employment had ended, he argued that he was still owed statutory sick pay for the period of March 2024 when he was absent from work. Mr Hayes in his email of 17 July 2024 acknowledged this omission and he concluded by saying, *...I sincerely apologise for the oversight on your sick pay from March, I appear to have missed the message. I can confirm that this has been sent on for payment and you will receive the monies owed*, (p190). The claimant had provided evidence of the sickness absence within his supplementary claimant bundle at pages C37 and C36 revealing a Med3 fit note and an absence caused by stress at work from 27 February to 21 March 2024. The respondent’s payslips did not support payment of SSP during the remaining period of the claimant’s employment Mr Hayes did not provide evidence confirming that the promised SSP had been made. On balance, I concluded that the claimant had not received the SSP that he was entitled to, but for reasons explained in the Discussion section below, there are difficulties in terms of the Tribunal’s jurisdiction to deal with this complaint.
26. The claimant did argue that he was also owed holiday pay to the date he was informed his employment ended on 5 July 2024 which amounted to 9.13 days outstanding. The claimant was not challenged regarding this loss during cross examination and the respondent’s payslips provided did not explain how and what annual leave entitlement remained payable and whether it had indeed been paid, (p99). On balance, I concluded that the claimant had not received the holiday pay that he was entitled to.

## Law

27. Unfair dismissal remedy is considered within Chapter II of the Employment Rights Act 1996 (ERA). Relevant in this case is the section dealing with compensation and in particular the basic award and the compensatory award as well as the application of any relevant deductions.

### Basic Award

28. Section 119 ERA 1996 explained that the basic award is calculated by determining the period of continuous employment from the date of commencement of service until the effective date of termination and identifying completed years of service during this period, (discounting any part years for the purpose of this calculation).

29. From this, the calculation of remedy is 1 ½ weeks' gross pay for each year of employment where the claimant was not below the age of 41 and The number of completed years of service is in this case gives a multiplier of 1 week's pay or 1 ½ week's gross pay, (for each year of employment in which a claimant was not below the age of 40 and which applies in this case when considering the claimant's age when she began working for the respondent).
30. For dismissals in the year beginning on 6 April 2024 the statutory cap on a week's gross pay was £700.
31. A basic award can be reduced for contributory conduct (section 122(2) ERA 1996) with the amount of reduction being what the Tribunal considers 'just and equitable'. It should be noted that this discretion is broader than the contributory conduct provision for the compensatory award, (see below), because it can consider conduct not known to the employer at the time. The basic award is not subject to adjustments relating to the application of the ACAS Code of Practice or Polkey.

### Compensation Award

32. Section 123 ERA 1996 provides that the Tribunal may award such an amount as it considers just and equitable in all the circumstances having regard to the loss sustained by the claimant in consequence of the dismissal insofar as that loss is attributable to the actions of the employer.
33. Calculation of loss of earnings falls into two categories: *Immediate loss of earnings* and *Future loss of earnings*.
34. An immediate loss of earnings is the loss suffered between the effective date of termination and the date of the remedies hearing. It is calculated based on net earnings following the deduction of tax and national insurance.
35. The future loss of earnings is for the period from the date of the remedies hearing where no alternative job has been found or the earnings are less valuable than the claimant's employment with the respondent. It is based upon the number of weeks for which the loss is expected to continue. A broad brush approach is used by Tribunals when calculating this loss.
36. In terms of adjustments to the compensatory award a Polkey deduction can be made representing the chance that the claimant may have been fairly dismissed in any event.
37. A percentage increase or deduction up to a maximum of 25% to reflect an unreasonable failure by employer or employee to comply with the ACAS Code of Practice on Disciplinary and Grievance procedures.
38. A percentage reduction can be made for any contributory conduct on the part of the employee where their conduct was culpable or blameworthy and caused or contributed to the claimant's dismissal.
39. An award for the value of statutory rights lost can also be awarded to compensate for the employee for having lost upon their unfair dismissal the

minimum two years continuous employment thereby allowing them to claim unfair dismissal and/or statutory redundancy payments. Typically, this is an award of between one week's pay or £250 to £500.

40. There is a limit upon the number of week's pay that can be calculated which is the lower of £115,115 or 52 week's pay, (for claims made after 6 April 2024 but before 5 April 2025). A claimant is expected to mitigate their loss and a deduction in compensation can be made if they have not fully done so.
41. Unfair dismissal awards are subject to recoupment by the DWP in respect of the income element of benefits. This involves the Tribunal ordering that the prescribed element (wages related element), of any award are held back in the respect of the award for the prescribed period of the effective date of termination to the remedy hearing. Once the respondent has obtained confirmation of what sums should be repaid to the DWP, the balance of the prescribed element will be paid to the claimant.

#### Breach of contract/Wrongful dismissal

42. The Employment Tribunals Extension of Jurisdiction Order 1994 provides that proceedings for breach of contract may be brought before a Tribunal in respect of a claim for damages or any other sum (other than a claim for personal injuries and other excluded claims) where the claim arises or is outstanding on the termination of the employee's employment.
43. A claim for notice pay is a claim for breach of contract; Delaney v Staples 1992 ICR 483 HL.
44. In Neary v Dean of Westminster [1999] IRLR 288, it was held that conduct amounting to gross misconduct justifying summary dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment.
45. In cases of wrongful dismissal, it is necessary for the Respondent to prove that the Claimant had actually committed a repudiatory breach of contract. See: Shaw v B & W Group Ltd UKEAT/0583/11.

#### Unlawful deduction from wages

46. Section 13 of the Employment Rights Act 1996 ('ERA') provides that a worker has the right not to have their employer make an unauthorised deduction from their wages.
47. The exceptions are where a deduction is required or authorised by a statutory provision or a relevant provision of the worker's contract or where the worker has previously given in writing their agreement to the making of the deduction.
48. Section 14 ERA provides that section 13 does not apply where the deduction is made by the employer to reimburse an overpayment of wages.

Caselaw referred to by the parties in submissions

49. The parties both made reference to case law during their submissions and I considered these authorities insofar as they were relevant to my decision making. The following were relevant:

Mr Walker (respondent)

- i) Tarzi v Securitas Security Services Limited [2014] UKEAT/0535/13 – where a client bans a security company's employee from their site and there can be a fair dismissal on some other substantial grounds depending upon the steps taken to find alternative employment.

Mrs Freedman (claimant)

- ii) Henderson v Connect (South Tyneside) Ltd [2010] IRLR 466, the focus of section 98 ERA is on the question of whether it was reasonable for the employer to dismiss and not the fairness of the third party client's decision not to allow them to work on their business. If the employer has done everything they can to avoid or mitigate the decision including trying to persuade the client to change their mind or find alternative work, any eventual dismissal may be fair. The outcome may remain unjust, but that is not the fault of the employer.
- iii) Wilding v British Telecommunications plc [2002] EWCA Civ 34 – the ultimate question for a Tribunal when considering whether an employee had mitigated their loss, is whether the employee acted unreasonably (in all the circumstances), in turning down the offer.
- iv) Nelson v BBC (No2) [1980] ICR 110 – considering amongst other things, how a Tribunal should approach contributory fault which in brief was, a) was there conduct by the employee that was culpable or blameworthy, b) whether that conduct caused the dismissal and c) whether it is just and equitable to reduce the employee's remedy award.
- v) Polkey (see above), was also referred to along with Software 2000 Ltd v Andrews and others [2007] IRLR 568 in relation to the EAT guidance in Software 2000 where the following principles (amongst other things), are stated: a) the task of the Tribunal is to assess how long the employee would have been employed but for the dismissal, b) while the employer must argue how and when a fair dismissal would have occurred but the Tribunal may consider all the evidence, c) where the evidence or lack of evidence creates too much uncertainty a Tribunal may decline to make a prediction, d) even though speculation is involved the Tribunal must consider the evidence available. e) The Tribunal may then determine whether i) had a fair process been complied with the dismissal would have occurred in any event, ii) the chance of dismissal was less than 50% and if so compensation should be reduced accordingly, iii) employment would have continued for only a limited period or iv) employment would have continued indefinitely,

- (but (iv) can only apply where evidence of a later dismissal is so scant that it can be ignored).
- vi) Hollier v Plysu [1983] IRLR 260 – which considered when a Tribunal's decision regarding contributory fault can be interfered with upon appeal (Court of Appeal considering an EAT decision to reduce the ET's award of 75% contributory fault).
  - vii) Scope v Thornett [2007] IRLR 155 – A Tribunal will almost inevitably be involved in some speculation when considering future loss of earnings and should not be expected to opt out of this decision making because the task is a difficult one. Some clarity is required however, in explaining why a loss was limited to a particular period.

## Discussion

50. In terms of basic data used in calculations, the following information was relevant and not in dispute:

- a) Age at commencement of employment: 47
- b) Age at the effective date of termination: 51
- c) Date of commencement of employment: 12 December 2020
- d) effective date of termination (EDT): 5 July 2024
- e) completed years of service at EDT: 3 (three)
- f) gross week's pay at EDT: £421.95
- g) net week's pay at EDT: £334.63

### Notice pay

51. As explained above, the claimant was entitled to one week's pay for each completed year of service. I concluded that the claimant had completed three years of service by the time he would have been fairly dismissed and he was entitled to 3 week net pay of ££334.63 per week, making a total award of (3 x £334.63) = **£1,003.89**.

### Holiday pay/wages

52. I concluded that the claimant had not been paid his outstanding SSP for the period in March 2024 when he was signed off sick with stress at work. However, while SSP constituted wages under section 27(1) ERA, Employment Tribunals have no jurisdiction to hear disputes regarding entitlement to these payments brought as an unlawful deduction from wages claim. This is because such disputes fall under the exclusive jurisdiction of HMRC and this was confirmed in the case of Taylor Gordon and Co Ltd (t/a Plan Personnel) v Timmons 2004 IRLR 180, EAT.
53. However, as described above, I was persuaded that the claimant was entitled to 9.13 days outstanding and untaken annual leave. I calculated the daily rate as being a fraction of net pay (£334.63 per week) rather than gross pay and considered the correct daily rate to be £66.93. Therefore, applying the multiplier of 9.13 days, I arrived at a figure of (£66.93 x 9.13) = **£611.07**.

Basic award

54. The basic award is calculated based upon the three years completed service multiplied 1 ½ gross week's pay (as the claimant was aged over 40 during the whole of her employment with the respondent). A week's gross pay was agreed at £421.95. Consequently,  $3 \times £421.95 \times 1 \frac{1}{2} = \text{£1898.78}$ . This figure was agreed by the parties.
55. The respondent has submitted that the Tribunal should consider reducing this award because of the claimant's conduct. This involves the application of section 122(2) ERA 1996 where the Tribunal considers the conduct of the claimant before the dismissal. If I am satisfied that it is just and equitable to reduce the amount of the basic award, I may do so to the extent that I feel appropriate.
56. I noted that unlike reductions for the compensatory award (section 123(6)), it is unnecessary that the claimant's conduct should have caused or contributed to the dismissal. However, the conduct must have taken place before the claimant's dismissal, and I needed to take care to avoid relying upon findings made in relation to the claimant's conduct post dismissal.
57. The respondent's decision that the claimant's employment be ended was asserted in Mr Hayes' email of 17 July 2024 when he referred to the acceptance of his notice of resignation on 11 June 2024. However, the email goes on to refer to the meeting with Colliers on 21 June 2024 when the claimant's issues with Gordon Smith who is the Manager of Operations at the Cherry Tree Centre were discussed. A fundamental problem identified by Mr Hayes was that there was *'...a clear issue between yourself [the claimant] and the Police. As liaising with the Police is a big part of your role, this presents an issue'*. The email then goes on to say, *...our client now feels that the relationship between you both cannot be repaired which means another site/role would need to be considered'*, (p190).
58. However, the secondary argument advanced by the respondent in this case is that had they not relied upon the claimant's resignation emails, they would have dismissed for some other substantial reason rather than proceed with a disciplinary process relating to conduct. Consequently, even if there were conduct matters which they could have considered, their alternative case is that they would not have chosen to do so. Mr Walker's argument is that without the claimant being able to resume work at the Cherry Tree and suitable alternative work not being available, his employment would simply have been terminated because there was nowhere, he could work. The dismissal had a fair process been followed, would have been a practical matter of whether or not the claimant could continue to be employed rather than his conduct had rendered him unemployable.
59. In conclusion, I was not aware of any other significant conduct issues during the months of June and July 2024 that should affect the basic award. The matter identified by the client regarding the claimant's relationship with the Police was not supported by meaningful evidence from the respondent demonstrating

serious conduct issues. Consequently, I am not persuaded that it would be appropriate to reduce the basic award in accordance with section 122 ERA.

Compensatory award

Loss of earnings and mitigation of loss

60. The claimant's net weekly pay with the respondent was £334.63. He claimed a loss of earnings from the date of termination, which was 5 July 2024 and continuing until 20 August 2026, which was the original listed date for the remedy hearing. He calculated a net loss of £30,230.74 once post termination earnings had been deducted from Asda and Mitie of £7,417.53.
61. The statutory cap that applies to compensatory awards under section 124(4) ERA will be considered below, (if appropriate). However, it is necessary first of all to examine the question of whether the award for a future loss of earnings should be reduced to reflect the chance that the claimant would have been dismissed fairly in any event in accordance with the principles set out in Polkey v AE Dayton Services Ltd [1987] IRLR 50 (HL).
62. Firstly, I considered in circumstances where a fair process occurred, would it have affected when the claimant would have been dismissed? I had determined that the respondent decided to rely upon the claimant's resignation email of the 11 June 2024 when deciding that his employment had ended on 5 July 2024. However, I acknowledged in my liability judgment that difficulties had arisen between the client and the claimant and that these difficulties would likely have placed the respondent in a position where termination for some other substantial grounds would have been a real possibility. This could be a potentially fair reason providing the respondent acted reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant.
63. Following the meeting on 21 June 2024, a reasonable employer would have been expected to engage the client in some further discussions to see whether the decision could have been rescinded or varied to mitigate the damage to the claimant's position. However, having considered the evidence before me, there was little or no challenge by the respondent before they made their decision to dismiss on 5 July 2024. Instead, the respondent seemed to have reached for the earlier resignation emails as a way of avoiding *a some other substantial reason exercise*. This would have involved discussion with the claimant, the client and if no return to the Cherry Tree was possible, consideration of alternative vacancies. This could have been done quickly had the respondent behaved proactively, but from the available evidence, for the period from 21 June to 5 July 2024, they instead looked at how the employment relationship could be ended and opportunistically relied upon the now *stale* resignation emails.
64. An exchange of several emails took place between the (now dismissed) claimant and the respondent on 12 and 17 July 2024 when Mr Hayes informed the claimant that an impasse had been reached.
65. A reasonable respondent would have been expected to make further enquiries with the client and while this could have been done shortly after 21 June 2024,

any delay in doing so rested with them rather than the claimant. I accepted that ultimately there was little or no prospect that the respondent could have persuaded their client to allow the claimant to return to the workplace, but a reasonable employer would have engaged with the client for a period before reaching this conclusion. Consequently, they would have had to inform the claimant that he could no longer work at the Cherry Tree but considering their initial failure to engage with the client, that process would have taken until 26 July 2024, (i.e. 3 weeks post actual notification of dismissal).

66. But even if no return to the Cherry Tree was possible, the respondent employed security staff across several sites. Some consultation and consideration would therefore have been expected to see what suitable alternative posts/locations might have been available and to discuss them with the claimant. This could even have been with an agreement that the claimant could try out a location before committing to it.
67. In his email of 5 July 2024, Mr Hayes simply said to the claimant that *'[u]fortunately, we do not have any suitable vacancies at this time'*, (p197). However, he did not explain what enquiries had been made, whether there were no vacancies and if there were some available, why they were not suitable. On 23 July 2024, after his employment had ended, the claimant was offered by the respondent alternative employment as a relief officer, on a zero hour contract, supporting sites in Liverpool, Haydock and St Helens. While these locations were in the Liverpool City Region, they were not in the Wirral where the claimant had been working, and which was close to his home. The claimant said that this was not suitable because of geography and it being zero hours, but it did suggest that jobs were potentially available.
68. I concluded that on balance, had the claimant been taken through a process on some other substantial grounds, it would have taken some time to resolve the issues between the client, the respondent and the claimant. Assuming that the client could not have been persuaded to allow the claimant to return to the Cherry Tree by 26 July 2024 as described above, a reasonable employer would then have considered potential redeployment if suitable jobs had become available. If he was still employed, the claimant would have been expected to have been allowed a little time to consider possible roles, be deployed on relief work in the interim. Unlike actual the offers made on 23 July 2024, they would have been proposed while the claimant was still employed, albeit without a fixed workplace. While still employed, it is likely that he would have been more amenable to consider them.
69. My conclusion was though that the claimant would have been unable or unwilling to accept what vacancies were available. I did not hear evidence of credible opportunities relatively close to his home in Wallasey being available to offer at this time. Therefore, I determined that without suitable vacancies being agreed, the claimant would have been fairly dismissed 3 weeks after 26 July 2024. This would be 16 August 2024. This later date would have been the effective date of termination in a fair dismissal on some other substantial grounds. This would make a compensatory award loss of earnings of (£334.63 x 6) = **£2,007.78**.

70. Because the claimant was told not to come into work from 12 June 2024 and therefore was not paid between then and 5 July 2024, an additional 3 weeks and 1 day are added to the 8 week period beginning on 5 July 2024. This makes a further award for loss of earnings of (£334.63 x 3.2 weeks) = **£1,070.82**.
71. The claimant could also claim the employer contributions for his pension of **£61.13** per month which over 8 weeks plus 3.2 weeks, would have amounted to £14.11 per week x 11.2 weeks = **£158.03**.
72. There can be no award for future losses on this basis beyond 16 August 2024 and it is not just and equitable to make any awards for any of the losses described as 'Consequential Losses' totalling £15,645.00.
73. At this point, the total compensatory award would have been (£2,007.78 + £1,070.82 + £158.03) = **£3,236.63**

ACAS Code of Practice on Disciplinary and Grievance Procedures (s124A ERA 1996)

74. This then brings me to the question of ACAS uplifts or deductions under section 124A ERA. In paragraph 83 of my liability judgment, I observed that while the ACAS Code of Practice on Disciplinary and Grievance Procedures specifically excludes dismissals relating to redundancy and termination of fixed term contracts, it is silent as to its application in cases where some other substantial reason would be the potentially fair reason behind a decision to dismiss as described above.
75. The case law on the subject is somewhat mixed in its decision making. In Phoenix House Ltd v Stockman & Anor UKEAT/0264/15/DM the EAT held that the disciplinary section of the ACAS Code does not apply to dismissals for some other substantial reason where '*misconduct is not alleged and capacity is not in issue*'. Mitting J rejected the provisional view expressed by Laing J in Hussain v Jury's Inn Group Ltd UKEAT/0283/15/JOJ where they said that there were '*pointers in both directions*' on this issue, holding that '*clear words in the Code*' were needed for the ACAS adjustment to apply, and this was not the case in dismissals for Some Other Substantial Reason, (SOSR).
76. In an *obiter* judgment (i.e. observations made by the Judge not forming a necessary part of that court's decision), of Rentplus v Coulson [2022] EAT 81, the EAT considered that the Code was likely to apply to SOSR dismissals where a breakdown in working relationships results from the response of the Claimant's fellow employees to their alleged misconduct or poor performance. The EAT stressed, however, that this was only a provisional view.
77. In this case, the decision made on 5 July 2024 arose from concerns raised previously by the client about the claimant's conduct and its effect towards others. Although the respondent did not propose to take disciplinary action against the claimant, the claimant's behaviour in the workplace relating to his relationships with the Police and Gordon Smith gave a 'flavour' of potential conduct issues, (even if conduct was not relied upon by the respondent and insufficient evidence is available confirming it as a serious misconduct or worse). Under the circumstances, the way in which the respondent reached out to rely upon the earlier resignation was motivated by its frustration with the

claimant's behaviour and they saw it as an opportunity to avoid any process. Nonetheless, I considered that the potential conduct issues meant that the ACAS Code of Practice was relevant in this case and could be applied.

78. Under these circumstances, because of the confusing way in which the termination arose, but noting that the respondent avoided any procedure to end the claimant's employment, I concluded that the ACAS Code of Practice did apply. Accordingly, an **uplift of 15 %** should be made to the compensatory award under section 124A ERA.

79. In terms of uplift therefore, 15% of the £3236.63 compensatory award is £485.49. This increases the compensatory award to (£3236.63 + £485.49) = **£3,722.12.**

Contributory fault (section 123(6) Employment Rights Act 1996)

80. I have a duty to consider contributory conduct and whether the dismissal was caused or contributed to by any action of the claimant. This must be conduct known to the respondent when the dismissal took place.

81. The decision to dismiss the claimant did arise from the issues with the Police at the Cherry Tree and the issues that the Cherry Tree/Colliers in turn had with him. In this case, no disciplinary process arose from the behaviours identified. The respondent in its alternative submission argued that the claimant had been dismissed for some other substantial reason and that did not argue that he would have been dismissed had they not accepted his resignation. Applying this argument, the claimant would have been dismissed, but in circumstances where there is a significant overlap between the factors considered in making a Polkey deduction and when making a deduction for contributory conduct.

82. Considering this overlap, my conclusion was that it was not just and equitable to make a finding of contributory conduct. While as described above, there was the flavour of a conduct issue in the background to this matter, the respondent did not adopt a disciplinary investigation which revealed significant misconduct. To impose a reduction for contributory fault would risk penalising the claimant twice because of the potential fair dismissal by 16 August 2024. This means that no adjustment takes place to the compensatory award regarding contributory fault.

Loss of statutory rights

83. I accepted that the claimant by being unfairly dismissed lost the accrued service which entitled her to bring a claim for unfair dismissal or to secure a statutory redundancy payment. However, because I have concluded in the Polkey section of these reasons (above), that the claimant would have been fairly dismissed later in any event, no award can be made.

Recoupment (Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996)

84. The DWP is entitled to recover the value of income related benefits paid to the claimant during the period of loss of earnings awarded by the Tribunal. Because

the loss of earnings of award was made in this remedy decision, the respondent must hold back that figure until the value of any benefits are known that need to be repaid to the DWP from the remedy figure. Consequently, the following figures are relevant:

- a) Prescribed element – loss of earnings - £3,722.12
- b) Prescribed period – EDT (5 July 2024 until the date when the remedy judgment is sent to the parties).
- c) Total Award – (Basic Award + Compensatory Award) - £5,620.90
- d) Balance - £1,898.78

Therefore, the whole compensatory award must be retained by the respondent until they are aware what portion if any, should be repaid to the DWP. Any balance can then be sent to the claimant by the respondent. However, there are other losses not subject to recoupment, and these are considered below.

## Conclusion

85. The outcome of this remedy hearing is as follows:

- a) The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.
- b) The claimant would have been fairly dismissed in any event by 16 August 2024
- c) The respondent shall pay the claimant the following sums:
  - (i) A basic award of **£1,898.78**.
  - (ii) A compensatory award of **£3,722.12**
  - (iii) Notice pay of **£1,003.89**
  - (iv) Unpaid annual leave entitlement of **£611.07**

**Making a total sum of £7,235.86**

**Note** that these are actual the sums payable to the claimant after any deductions or uplifts have been applied.

- d) The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:
  - a. The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is **£5,620.90**
  - b. The prescribed element is **£3,722.12**.
  - c. The period of the prescribed element is from **5 July 2024 to remedy judgment sent to the parties**.
  - d. The difference between (a) and (b) is **£1,898.78**
  - e. The balance to be paid to the claimant is £1,898.78 + £1,003.89 + £611.07 = **£3,513.74**, (with £3,722.12 being retained).

Approved by: EJ A Johnson

**Employment Judge Johnson**

**24 September 2026**

Judgment sent to the parties on:

2 October 2026

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For the Tribunal:

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**Notes**

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at [www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2404812/2024**

Name of case: **Mr C Freedman** v **G E S Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 2 October 2026

**the calculation day** in this case is: 3 October 2026

**the stipulated rate of interest** is: 8% per annum.

For the Employment Tribunal Office

**ANNEX TO THE JUDGMENT  
(MONETARY AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

**The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.**

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.