EMPLOYMENT TRIBUNALS

Claimant: J Mayes

Respondent: The Carrbridge Centre Limited

HELD AT: Liverpool **ON:** 10 August 2026 (& in chambers on 26 August 2026)

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: unrepresented

Respondent: Mrs J Egan (trustee)
Mr R Merry (trustee)

RESERVED JUDGMENT ON REMEDY

(made pursuant to the Judgment on liability dated 27 April 2026)

The judgment of the Tribunal is that:

(1) The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

(2) The claimant would have been fairly dismissed in any event by 29 November 2024

(3) It is just and equitable to reduce the basic award payable to the claimant by **100**% because of the claimant's conduct before the dismissal.

(4) The respondent shall pay the claimant the following sums:

(a) A basic award of **£Nil**.

(b) A compensatory award of **£2,160.81.**

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

(5) 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 **£2,160.81**
b. The prescribed element is **£2,160.81**.
c. The period of the prescribed element is from **30 September 2024 to remedy judgment sent to the parties**.
d. The difference between (a) and (b) is **£Nil**.

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 decision arose from the remedy hearing which took place before me on 10 August 2026.

2. I had listed the case for a remedy hearing following the final hearing which took place on 30 and 31 March 2026. My decision was that the claimant's complaint of unfair dismissal was well founded and was successful. I dismissed the claimant's complaint that she was subject to detriments arising from a protected disclosure.

3. Because of the way both sides had prepared for the final hearing and considering the evidence that was available, I was unable to make any findings at the liability hearing regarding deductions/uplifts relating to the ACAS Code of Practice on Disciplinary and Grievance Procedures and/or *Polkey* as well as contributory fault. It was therefore necessary to consider these matters at the remedy hearing.

Issues

4. The decision on liability only determined the question of whether the complaints brought by the claimant succeeded or not. In the case of the successful complaint of unfair dismissal, the claimant conceded that she was no longer seeking reinstatement or reengagement and the focus would therefore be with financial remedy and 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?

Evidence used

5. Both parties remain without legal representation, and this presented several problems in terms of their preparation for the remedy hearing (as it had been the case for the liability hearing).

6. The claimant attended as a litigant in person and had provided a remedy statement.

7. A bundle had also been provided which contained Jane Egan's statement on behalf of the respondent and which was effectively a submission document. Within the bundle there was also the claimant's schedule of loss dated 30 September 2025, copies of various WhatsApp (or similar) messages involving the claimant and others and a signed and dated statement of Emma Bennett, (who did not attend the remedy hearing). Some other documents were included such as lists of proposed suitable alternative vacancies for the claimant post termination. It was primarily a respondent produced bundle, but the claimant had provided limited documentation for the actual hearing.

8. There was little evidence of pay such as payslips. However, there was little dispute regarding the calculation of these base figures. The real issue between

the parties was the duration of any compensatory award and the question of deductions regarding the claimant's conduct and mitigation of loss.

9. The claimant provided fit notes at the beginning of the hearing, and which required time for the Tribunal administration to print and copy the documents for use by the parties, the witness table and myself. They were added to the bundle as document 'C1'.

10. The remedy hearing proved to be a challenging one considering the way in which the parties had prepared for the remedy hearing, the piecemeal submission of documents on the day and the absence of legal representation on both sides. There was a noticeable level of unhappiness from both sides regarding their opponents, and I had to engage during the claimant's evidence because of the claimant's defensive approach to questioning. I also noticed that at times she displayed good recall of events when it concerned matters that were not negative towards her, but when questioned about messages that she had sent which were unfavourable, she would say she could not remember the incident in question.

11. I heard as much evidence as I needed from the claimant and proceeded to submissions from both sides. This was a challenging matter as well because when each party made their submissions, there were frequent interruptions from the other. This was not helpful and I needed to remind each that they must not speak when the other was presenting their case.

Findings of fact

12. 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.

13. 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.

<u>The claimant's fitness to work post dismissal</u>

14. The claimant provided the Tribunal and the respondent with copies of her Med 3 fit notes. They revealed a period of sign off from 2 October 2024 to 2 April 2025 by reason of anxiety and depression. She explained that from 3 April 2025 to the present day she no longer had to provide fit notes because the DWP took over management of her sickness absence. She remained unfit she said and was still subject to assessment.

15. No documents were provided from the DWP and the claimant said she could volunteer, managing 7 to 8 hours per week maximum, helping with coffee mornings and 'tots' groups. However, she asserted that she has not been able to look for work, she described feeling scrutinised by others and there were days when she could not open the door.

16. No medical evidence was available to support this and we were limited to the Med3 fit notes which expired on 2 April 2025.

The claimant's qualifications achieved while working for the respondent

17. She argued that as someone who worked in a community support role and who was still training when she was dismissed, she was not qualified to apply for the support worker jobs suggested in the remedy bundle by the respondent. She acknowledged she had received some training pre-dismissal such as relating to autism but did not consider herself qualified. This also applied to safeguarding and working with children and vulnerable adults, although she conceded that she understood 'grading profiles' to assess where a child is situated both emotionally and physically. The claimant also acknowledged she had briefly received domestic violence training and early health assessment training but argued that this was very basic.

Behaviour of the claimant shortly before and after the dismissal

18. The claimant was referred to a series of WhatsApp or similar messages dated from about 22 September 2024 and continuing until around 17 October 2024, (based upon the date marks that could be seen within the copies in the bundle), (pp21-49). Mrs Egan for the respondent asked the claimant if she confirmed that she was the person sending the messages and recorded on the left hand side of 'the chat' and that Barbara Boardman was the person whose messages were recorded on the right hand side (referred to by the respondent in Mrs Egan statement/submissions as 'B'), and from whose smart phone these copy documents had been copied for the remedy hearing bundle. The claimant said she did not have any recollection of the messages having been sent by her and added that *'Barbara Boardman was dismissed by the respondent for theft a couple of years before or earlier and did parcels for Covid in 2020-21'.* The claimant said that *'…I have no recollection [of those messages], I spent the majority of that time crying and in bed.'* No evidence was provided that would support what was quite a serious allegation against Ms Boardman and I was unable to accept that there was anything untoward about the way she engaged with the claimant during these messages available within the bundle.

19. The claimant was also taken to a document called a Volunteer Agreement with the community group 'Woodchurch Together' which was signed by her and was dated 15 September 2024 being several weeks before she was dismissed from her employment with the respondent, (p20). She confirmed that she had signed this document and she was *'…giving food to families at Fender Primary School* [understood to be close to where she lived] …*they asked me if I would help'.* She said that the organiser of this project Mo Cain had told the claimant that if she attended the site to carry out this activity, she would have to sign this form before doing so. While I considered that the claimant may have been required for insurance or regulatory purposes to sign the volunteer form, I noted that she did so while suspended from work and without having checked it would be acceptable for her to carry out this work during her suspension.

20. In terms of the WhatsApp messages, while the claimant disagreed that they had been sent by her to Ms Boardman, I noted that she was unable to recollect

them. It was difficult to see how on one hand she could deny knowledge of the exchanges taking place, while at the same time remembering that Ms Boardman was the person whose messages were recorded on the right had side. However, this is less important than the presentation and context of the messages on the left-hand side which on balance suggest that they were sent by the claimant on pages 29 to 49 of the bundle.

21. Firstly, I noted that the recipient of the left-hand side messages had on occasion replied by copying the original message. This included the name of the poster of the left-hand side messages, and this was 'Julie Brown'. This was the birth name of the claimant and consistent with the 'Julie Esther Brown' name recorded in the Med 3 documents (pC1) by her GP and using her home address identified within her claim form, (see p 31, p37, p39 and p47).

22. Secondly, I noted that in a message sent before 22 September 2024 and sent at 22:28pm, the claimant had messaged the recipient, *'Ok luv, Put a message up on group on tomorrow or something to call a meeting this week with a strong suggestion that everyone who is serious about this new community group please attend as we want to get up and running by next month x'.* Followed a moment later by *'I'm just fucked because I can't put my name behind anything yet ['unclear' emoji inserted] frustrating to hell x',* (p31). The recipient confirmed they would do as requested and provided positive affirmation in a couple of messages a minute later.

23. Emma Bennett provided a signed and dated statement confirming that these copy messages were sent to her by Barbara Boardman for the period of 1 September to 27 January 2025, (p58). While she did not attend to give evidence, the claimant did not provide credible evidence challenging the provenance of the messages other than to make comments about Ms Boardman's antecedents without providing any evidence to support this. The claimant also referred to her Tribunal case within the messages (see below), and this further supported the respondent

24. There is a message which includes the statement, *'…if I do succeed to sue the Carrbridge they won't last long after that. I've a call with charity commission hopefully tomorrow sometime to blow the whistle…then the hub and the centre will be up for grabs so need to establish a working charity and apply to take it over',* (p21). The message thread which appears to be all linked then goes on to say *'I've got a no win no fee solicitor ready to go if ACAS do not get the right outcome. She has suggested claiming against employer and CEO separately in his professional capacity. Claims are Victimisation, unfair constructive dismissal (if I have to resign) on grounds that can be stated. Personal injury (anxiety stress mental health etc). and possibly more if solicitor gets hands on it',* (p22). Based upon the available evidence, on balance, I found that the claimant was the author of these messages (on the left-hand side of the page), and they were sent in September 2024. This was because they referred to matters that involved ACAS and the claimant had begun early conciliation on 10 September 2024 and referred to an internal process which would have been ongoing against her.

25. These messages continued on 25 September 2024 with the claimant sending a message at 19:01pm which included the following:

'How do [you] fancy sitting down next week and doing all documents to apply to apply to charity commission to get registered asap. I think I might have 1/2 trustees possibly so just need 1 more. Also if you're up to it contacting Magenta to enquire about the units on Hoole road what do you think xxx'

It was followed with an extract from a document which explained how to create a charity for registration, (p33).

26. On 30 September 2024, the claimant messaged, *'I got dismissed today for gross misconduct xx',* followed shortly by *'I'll be getting in to solicitor first thing in the morning xx'.* This related to her dismissal by the respondent, (p35). It also linked to the previous message regarding the *'no win no fee solicitor',* (see above). The claimant then turned her attention back to creating a charity with messages sent on 2 October 2024, (p36).

27. There then followed a message sent on 8 October 2024 at 12:16pm saying, *'Who's to say an up and coming community charity group cannot apply to the charity Commission to take over an existing charity [followed by a 'questioning' emoji].* There was then an incomplete message when asked what she meant by 'B' which began by saying *'If the Carrbridge is unsteady and failing in its purpose…'* I considered on balance that the claimant was the author of these messages and was involved in the plans to take over the respondent charity, (p38).

28. Then, on or around 10 October 2024, during a further conversation regarding being *'fully registered and [having] a facility to store foodbank crates…',* the claimant said, *'We'll just use the my Carrbridge email login to do referrals [followed by laughing with tears emoji]…they've only logged me out of main one xx'.* The respondent B from whose phone the messages were taken, replied:

'Ok hun and if you get caught, you can say well, I was the one helping the community obviously they're not going to carrbridge and they're still coming to me so I needed to do something', (p39).

On balance, I considered that the claimant had not lost all her access to the respondent's email accounts post dismissal and despite knowing she should not use them, she found it amusing and useful to take advantage of this omission, (p39).

29. There then followed a series of messages about securing property from Magenta to run a food bank followed by a pdf 'Anonymised Statement' sent by the claimant and B replied on 17 October 2024:

'Omg everyone I speak to wants Emma bennet gone x', (p43).

The claimant responded by saying:

''Keep hammering her down luv even though she doesn't really need our help to do that it seems she's quite capable [followed by three 'laughing with tears' emojis] xx".

To this, 'B' replied:

"We just need to keep doing wot we are doing in the end there will be nothing left for them xx".

While Ms Bennet did not attend the remedy hearing to give oral evidence and the respondent relied upon her signed and dated statement of 2 August 2026, (pp26-8), I accepted that the claimant did not provide any credible evidence undermining Ms Bennet's statement. The messages sent by the claimant clearly demonstrated a great deal of hostility towards Ms Bennet which was quite unpleasant. While I was unable to make findings about the false allegations which Ms Bennet referred to in her statement, the messages sent on 17 October 2024 about her, meant that on balance, the claimant held considerable ill will against Ms Bennet.

30. On 18 October 2024 at 10:16am, the claimant messaged to say that Carrbridge was folding, followed by a lengthy message which concluded with a belief being expressed that the trustees of Carrbridge were *'dodgy'* and *'that place got destroyed because of mismanagement and mud slinging and we need to be better than that',* (p45). The claimant sent a message at 18:03pm on an unidentified date referring to *'my employment court thing on 4th March this year…*' and concluding with *'…I just want fairness and justice for being dismissed for gross misconduct for attending a meeting…'* and she seemed to be asking B to assist in providing witness evidence. The date corresponds with the preliminary hearing of 4 March 2025 before me and refers to the same facts as before me at the final hearing.

31. Based upon the evidence that I heard from the claimant and the available documentation within the bundle, I was able to conclude that the claimant was involved in a project to set up a rival charity to Carrbridge. The claimant had issues with Carrbridge's performance and was looking to take over the charity or their area of operations before her dismissal on 30 September 2024. Moreover, she continued to operate in this way following her dismissal and the various WhatsApp messages which I concluded were sent by her represented an active campaign against the respondent which would have been inconsistent with the role of an employee, had the claimant remained in post.

Law

32. 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

33. 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).

34. 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).

35. For dismissals in the year beginning on 6 April 2024 the statutory cap on a week's gross pay was £700.

36. 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 that 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

37. 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.

38. Calculation of loss of earnings falls into two categories: *Immediate loss of earnings* and *Future loss of earnings.*

39. 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.

40. 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 that 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.

41. 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.

42. A percentage increase of 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.

43. 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 the claimant's dismissal.

44. 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.

45. 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. A claimant is expected to mitigate their loss and a deduction in compensation can be made if they have not fully done so.

46. 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.

Discussion

47. This was a remedy hearing where none of the relevant matters such as failures of the ACAS Code of Practice, application of Polkey and/or deductions for contributory fault could not be identified as part of the decision on liability as is often the case. Consequently, these matters needed to be considered as part of the remedy hearing.

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

    a) Age at commencement of employment: 45
    b) Age at the effective date of termination: 48
    c) Date of commencement of employment: 4 January 2022
    d) effective date of termination (EDT): 30 September 2024
    e) completed years of service at EDT: 2 (two)
    f) gross week's pay at EDT: £1040.40 per month (parties agreed). A week's pay is therefore (£1040.40 x 12 / 52) = £240.09
    g) net week's pay at EDT: £1040.40 per month (parties agreed). A week's pay is therefore £240.09.
    h) hours worked per week: 20 (twenty)

<u>Basic award</u>

49. The basic award is calculated based upon the two 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 £240.09. Consequently, 2 x £240.09 x 1 ½ = £720.27.

50. However, 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 to do so to the extent that I feel appropriate.

51. The real issue in the decision to dismiss the claimant was her attendance at the Woodchurch Hotel as discussed in the reasons provided with the reserved judgment on liability. My decision was that insufficient evidence available to the dismissing manager Mr Merry to persuade me that at the claimant had done more than attend the meeting. While some disciplinary concerns may have arisen regarding her attendance at such a meeting when she was an employee of the respondent, but this did not amount to something that could reasonably be considered as gross misconduct where dismissal would be a reasonable response, (see paragraphs 84 and 87 of the reserved judgment on liability).

52. 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.

53. In terms of what information was available at the disciplinary hearing, I had concluded within the reserved judgment on liability that the claimant had attended a public meeting in the Woodchurch Hotel where individuals were plotting against the respondent. I considered that while not gross misconduct, it could have been less serious misconduct *'…about the perception of the claimant attending such a meeting without the formal agreement of management given the overlap between her work responsibilities and her interest as a local Woodchurch resident',* (para 87 of reserved judgment).

54. While this was not a finding made by Mr Merry and did not cause or contribute to the claimant's dismissal in terms of the decision that he reached, this was an unnecessary consideration within the discretion provided by section 122(2).

55. I concluded that the claimant's attendance at the meeting and her failure to consider the potential conflict of interest with her role as an employee would have involved serious misconduct. This would have resulted in a modest reduction of 20 % of the basic award, which is what I would have considered just and equitable under section 122(2). The claimant was reluctant to discuss the meeting at the Woodchurch Hotel and challenged its relevance during the investigation meeting on 12 September 2024. There was evidence about antagonism regarding the respondent at the meeting and which raised concerns about the claimant being present. While the claimant accepted her attendance, her failure to understand the potential conflict and her unwillingness to be open about the meeting and what was discussed during her interview, led to the matter proceeding to a disciplinary hearing, (see paras 38 and 39 of reserved judgment).

56. This is not the end of this matter, however. This is because I can consider the claimant's conduct which had taken place before the dismissal and which was not available during the disciplinary process. I concluded in this remedy hearing that the claimant was responsible for sending numerous WhatsApp messages to a person named 'B' and which were supplied to Ms Bennet. The claimant was dismissed on 30 September 2024 and some of the messages sent before this date.

57. The claimant appeared to have anticipated an Employment Tribunal claim during September 2024 and referred to contacting ACAS as well as a solicitor and outlining potential complaints that could be brought. But she also sent a message on 25 September 2024 at 19:01pm proposing to apply to the Charity Commission to register a charity and to enquire with the Magenta Housing Association about units on Hoole Road, close to the respondent's premises. This message provided an extract from a document which explained how to create a charity for registration, and I concluded that regardless of her unhappiness with the disciplinary process, the claimant was heavily involved in a proposal to create a rival charity competing with the activities of the respondent. This was a clear breach of trust and confidence. Consequently, activities of this nature strike at the heart of the employer and employee relationship and it is in the interests of justice to apply a reduction of 100% to the basic award in this case.

Compensatory award

Loss of earnings and mitigation of loss

58. The claimant's net weekly pay was agreed at £240.09. Her schedule of loss was relatively old and prepared 12 months post EDT on 30 September 2025 and not only claimed 12 months loss of earnings for 'past losses', but also 'future losses' of 6 months which would have taken her to 31 March 2026. The claimant claims a loss of £1040.40 net pay per month which with the total 18 months loss of earnings would have amounted to £56,181.06.

59. While the claimant could potentially have claimed from the EDT to the date of remedy as her Immediate loss of earnings, the statutory cap limiting a compensatory award to 12 months pay or £37,454.04 would apply. However, this will be considered below once the final compensatory award figure has been calculated.

60. In terms of loss of earnings, the claimant asserted in her schedule of loss for the compensatory award that *'I am still seeking work, I have been unable to find a permanent job. I am currently volunteering my services within my local community to serve the public'.* Under the heading 'Other benefits', she stated that she was *'Currently claiming universal credit and actively seeking employment'.* The claimant did not seek to correct this statement from 30 September 2025, and I noted that this was made following the expiry of the available fit notes on 2 April 2025.

61. The claimant did not provide details of the DWP's role in managing her benefits since this date and I had no evidence to before me to suggest that the claimant was unable to seek work after 2 April 2025 and she confirmed she was not in receipt of any disability related benefits where a long term health condition became a disability impairment. She confirmed in her schedule of loss that her monthly benefits consisted of Universal Credit of £1139.11, which appeared to exceed the net monthly pay agreed at £1040.40.

62. At its highest, the claimant was able to identify a loss of earnings which suggested that she could have found alternative employment within a reasonable period following her dismissal. Allowing for her period of sickness

absence, the claimant should have been available to look for work from 3 April 2025.

63. I recognised that the claimant might have been looking to find alternative work while progressing towards the end of her fit note period, but would not have been able to work until they expired, this would have meant that even if she was fully seeking to mitigate her losses by finding alternative employment at a similar level of pay to her work with the respondent, a little time would have been required for her to begin such work.

64. The claimant provided limited evidence regarding mitigation of loss arguing that she could not work, while confirming that some work had been carried out in the community helping with groups. Moreover, the WhatsApp messages sent after her dismissal displayed considerable resourcefulness and commitment towards setting up a rival charity to the respondent and this was not consistent with someone who would struggle to find alternative work quickly if they genuinely wished to mitigate their loss.

65. While attempts to establish an alternative charity or working within the community are commendable, that cannot be allowed to distract a claimant from finding alternative employment if they wish to seek an award for post dismissal loss of earnings. I must accept the impact of the Med3 fit notes, but once they expired, my findings were that the claimant could and should be expected to find alternative paid work at a similar or higher level to that earned with the respondent.

66. In terms of the claimant's skills and abilities, the claimant downplayed her competencies while conceding in evidence that she had in fact considerable training connected with working with children and vulnerable adults and several years relevant experience as well. She provided no evidence of applying for Support Worker or similar roles and simply argued that she was not competent for them. She did not convincingly explain why she was not competent. Considering the evidence provided in the bundle by the respondent regarding Support Worker vacancies, I would have expected the claimant to at least have shown evidence of making applications and if unsuccessful, explaining why this was the case. In the absence of this evidence, I could only conclude that the claimant failed to mitigate her losses and once her Med 3 fit notes expired, she could have found alternative work as a Support Worker within a month of 3 April 2025. This means she could have secured alternative work as a similar level of pay to that with the respondent by Monday 5 or Tuesday 6 May 2025, (given that the Monday was the May Day Bank Holiday).

67. Applying the claimant's net weekly wage of £240.09 and the period of 31 weeks (from 1 October 2024 until 5 May 2025), I concluded the claimant would have been entitled to an Immediate Loss of Earnings of £7,442.79.

Reduction by reason of 'Polkey'

68. Another circumstance where the Tribunal can make a reduction on just and equitable grounds arises from section 123(1) where an unfairly dismissed employee could have been dismissed fairly at a later date or if a proper procedure had been followed. Following the decision in the case of *Polkey v*

AE Dayton Services Limited 1988 ICR 142 HL, Tribunals may consider whether a fair procedure would have resulted in a fair dismissal at a later date and may impose a deduction to the loss of earnings award made in relation to this. This requires the Tribunal to determine whether ultimately, the unfair dismissal made no difference to the claimant's employment with the respondent and consider the percentage chance or timescale when a fair dismissal could have taken place.

69. The burden of proof is on the respondent, and I considered that in preparing for the remedy hearing, they had produced considerable evidence primarily in the form of WhatsApp messages from the claimant, which had not previously been available to the Tribunal. They argued that this demonstrated the claimant's activities seeking to set up an alternative charity to the respondent and even considering taking over the respondent charity. In her submissions for the respondent, Mrs Egan explained the serious concerns regarding the claimant's activities and how easy it would have been for suppliers to withdraw funding to the respondent if there was evidence of it being undermined. The respondent's Trustees were aware of concerns raised regarding the meeting at the Woodchurch Hotel at the end of August 2024 and Mrs Egan and they had to be taken seriously.

70. The claimant's reply was focused upon the respondent failing to obtain CCTV evidence of the claimant's attendance at the Woodchurch Hotel but did not address me upon her activities regarding the creation of a new charity and the messages she had sent on this subject.

71. However, even when allowing for the unhappiness of an employee being subject to a disciplinary process and the animosity this might cause them have against an employer, the claimant behaved in a way that would have undermined the trust and confidence that an employer would have in an employee.

72. The claimant was messaging about establishing a rival charity in September 2024 and even though she was under investigation for the attendance at the Woodchurch Hotel amongst other things, the messages did not suggest contrition or reflection that her actions may have been inappropriate. The respondent did not at the disciplinary hearing have evidence of gross misconduct in relation to the allegation of aiming to remove management of the respondent and acquiring the use of their Hoole Road Hub from Magenta Living housing trust, (see para 42 of the reserved judgment). They had not carried out a sufficiently thorough investigation by the time of the disciplinary hearing and were not in a position to make the finding of gross misconduct and dismiss the claimant.

73. Nonetheless, following the anonymous allegations that had been made about the meeting at the Woodchurch Hotel and reference to the claimant's attendance and comments, the respondent had reasonable grounds to investigate the claimant. Had their investigation been more thorough and time had been taken to ensure that sufficiently wide enquiries had been made, it is likely that they would have had evidence available to support a finding of gross misconduct and for the claimant to be fairly dismissed.

74. The respondent was a small organisation with limited resources, but given its financial circumstances, it is likely that those involved could have concluded this process relatively quickly. Questions were being raised about the claimant and her behaviour on WhatsApp was such that she continued to plan the creation of a rival charity in Woodchurch, considered how it could take over the respondent and was prepared to use her access to a respondent email address that had not been closed to her post dismissal. These actions took place during October 2024 following her dismissal and I concluded that even if the respondent had not proceeded with the disciplinary hearing on 25 September 2024, or postponed it and make further enquiries, it was likely that more significant evidence of inappropriate conduct would have become available.

75. Consequently, even allowing for the additional time that would be required for a reconvened or new disciplinary process to continue, this would have been concluded by the end of November 2024 at the very latest. Given the available evidence of the WhatsApp messages both pre and post dismissal, it is highly likely that the claimant would have been dismissed for her actions which would have wholly undermined the respondent's trust and confidence in her as an employee. She would have been summarily dismissed by Friday 29 November 2024 and it is therefore just and equitable to reduce the loss of earnings compensatory award to two months, or more accurately, 9 weeks pay. Applying the net weekly wage of £240.09, the claimant's loss of earnings award should be reduced to £2,160.81.

ACAS increase/reduction under section 124A Employment Rights Act 1996

76. I have also considered whether the compensatory award should be increased or reduced because of an employer or employee's failure to comply with the ACAS Code of Practice relating to Disciplinary and Grievance Procedures. This adjustment can be as much as 25% depending upon whether or not it is just and equitable to make this adjustment.

77. This was a claim where this ACAS Code applied as it arises from a dismissal of the claimant for reasons relating to conduct.

78. In terms of whether or not there was a failure to comply with the ACAS Code, there was an investigation where the respondent sought to interview the claimant and establish the facts. No disciplinary action took place at this meeting although I had some reservations regarding the way in which the investigating manager raised the matter of the Woodchurch Hotel meeting without any warning. However, she did not consider any disciplinary action and referred the matter to a disciplinary hearing on another date. The claimant's suspension was not inappropriate and was a neutral act and I do criticise the respondent for taking this step and the disciplinary process was not overly prolonged.

79. The claimant was notified of the disciplinary hearing before Mr Merry, was warned of the allegation, evidence was enclosed and she was informed that she could be accompanied. The claimant was permitted to make representations; written reasons were given for the decision to dismiss and an right of appeal was allowed.

80. I considered that overall, there had not been any failure to comply with the ACAS Code. There was a concern regarding the way in which the investigation had been sprung the Woodchurch Hotel incident upon the claimant, but the matter proceeded to a later disciplinary hearing occurred later, allowing the claimant to consider this matter further. Indeed, she confirmed attending the meeting in question. I therefore concluded that there was no unreasonable failure to comply with the ACAS Code and it is not just and equitable to make an uplift to the claimant's compensatory award. I did not consider that the claimant had failed to comply with the Code herself during the disciplinary process and it is not necessary to consider this matter further.

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

81. 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. Consequently, unlike the deduction within the basic award above, I cannot consider the claimant's WhatsApp messages which were not available to the dismissing manager Mr Berry at the disciplinary hearing.

82. In reality, the only conduct that I can consider here is the claimant's attendance at the residents meeting at the Woodchurch Hotel where the respondent was undermined by some of those present. As I have already explained in the reasons to the reserved judgment on liability, this was not a matter of gross misconduct that could justify dismissal but would have been a lesser form of serious misconduct. However, this was not a finding made by Mr Berry at the disciplinary hearing and in relation to this loss, I decided it would not be just and equitable to make a deduction.

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 - £2,160.81
    b) Prescribed period – EDT (30 September 2024 until the date when the remedy judgment is sent to the parties).
    c) Total Award – (Basic Award £0 + Compensatory Award) - £2,160.81
    d) Balance - £0 (nil)

Therefore, the whole 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.

Conclusion

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

(6) The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

(7) The claimant would have been fairly dismissed in any event by 29 November 2024

(8) It is just and equitable to reduce the basic award payable to the claimant by **100**% because of the claimant's conduct before the dismissal.

(9) The respondent shall pay the claimant the following sums:

(c) A basic award of **£Nil**.

(d) A compensatory award of **£2,160.81.**

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

(10) 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 **£2,160.81**
b. The prescribed element is **£2,160.81**.
c. The period of the prescribed element is from **30 September 2024 to remedy judgment sent to the parties**.
d. The difference between (a) and (b) is **£Nil**.

Approved by: EJ A Johnson

Employment Judge Johnson

28 August 2026

Judgment sent to the parties on:

13 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/

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **6015910/2024**

Name of case: **J Mayes** v **The Carrbridge Centre 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: 13 October 2026

the calculation day in this case is: 14 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.