mf

EMPLOYMENT TRIBUNALS

Claimant: **Miss S Miah**

Respondent: **Mantra Recruitment Ltd**

Heard at: **East London Hearing Centre**

On: **19 May 2017**

Before: **Employment Judge Ross**

Members: **Mrs W Blake-Ranken**
Mr C Wheeler

Representation

Claimant: In person

Respondent: Mr Morton (Solicitor)

JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

1. **It is ordered that the Respondent pay the Claimant compensation of £48,341.49 assessed as follows:**

   1.1. Injury to feelings £17,500

   1.2. Aggravated damages: £2,500;

   1.3. Loss of earnings: £15,761.73;

   1.4. Uplift on the award pursuant to section 207A Trade Union and Labour Relations (Consolidation) Act 1992: £8,940.43;

   1.5. Interest: £3,639.33.

REASONS

Issues

1. The following sub-issues were proposed as relevant, arising from issue 6 on the list of issues:

1.1. What pecuniary loss, if any, has the Claimant suffered caused by the acts of discrimination found proved?

1.2. What, if any, future loss has the Claimant suffered?

1.3. General damages:

(a) What award is appropriate given the injury to feelings suffered? This includes consideration of whether the degree of injury to feeling suffered puts the Claimant's case into the lower band, the middle band or the higher band of the bands set out in *Vento no.2.*
(b) What, if any, aggravated damages should be awarded?

1.4. Whether the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the ACAS Code") was relevant and, if so, whether it had been breached; and if so, whether the breach or breaches were reasonable; and if so, what uplift to the compensation was appropriate;

1.5. What, if any, interest should be awarded?

1.6. What, if any, grossing up is required to take account of taxation of the award?

2. In addition, the Tribunal considered what, if any, Recommendation was appropriate.

3. These issues were agreed by the parties.

Evidence and Procedure

4. In this case, the Tribunal's Judgment and Reasons were promulgated on 23rd February 2017. Case management directions required the parties to set out their cases in advance of the Remedies hearing: see paragraphs 1 and 2 of the Case Management Order provided with the Judgement and Reasons.

5. The Remedies hearing was originally listed for 31st March 2017. In the event, due to the illness of one Member, this was postponed to 19th May 2017.

6. The Claimant complied with the case management directions. The Respondent failed to do so, save that it provided a Counter-Schedule of Loss.

7. The additional documents that the Tribunal had before it at the start of this hearing were therefore as follows:

7.1. A further witness statement from the Claimant;

7.2. An updated Schedule of Loss;

7.3. A table (which we marked C1) which listed job applications made and the outcome of those applications;

7.4. A Counter-Schedule of Loss.

8. At the commencement of the hearing, Mr. Morton sought to rely on a P60 in respect of the Claimant, dated 5th April 2015. This had not been disclosed. The Respondent's case was that this showed that the loss of earnings claimed by the Claimant was inflated.

9. In addition, Mr. Morton presented the witness statement of Mr. Summogen which was before the Tribunal at the merits hearing. Eventually, despite his primary position being that we had already heard the relevant evidence from him, and after the Tribunal reminded him that we could not indicate what if any evidence he would need to call, he applied to call Mr. Summogen to give oral evidence. This was, he contended, so that the Respondent could adduce evidence that the Respondent ceased to provide any services at all since August 2016; and the only reason it was still in existence was to carry on a dispute with London Borough of Tower Hamlets and the NHS.

10. Mr. Morton applied to adduce the P60 document and this oral evidence of Mr. Summogen.

11. The Tribunal decided to extend time to permit the P60 in evidence. There was no real reason for non-compliance with the direction (and to say the Respondent did not know what the Judgement and Reasons said is not a good reason where professional advisers have been instructed from the outset). Relevance is the main rule of admissibility. At best, the P60 was of marginal relevance, because it did not include the Claimant's most recent earnings – that is, earnings in the months prior to September 2015, which are most probative in showing her earnings. Despite this, the Tribunal decided that it would be just to admit this evidence to further the overriding objective.

12. It is helpful to set the context for the application to admit the evidence of Mr. Summogen. On examining the List of Issues agreed with the parties at the commencement of the liability hearing, this states at paragraph 7: "*The Respondent …relies on the grounds of response submitted*." There was no evidence, no disclosure, and no mention, prior to start of the Remedies hearing, that the Respondent relied upon the alleged facts sought to be adduced. At the submissions stage of the liability part of the hearing, Mr. West had argued only that the Respondent was winding

down the Care side of the business and contended that the Claimant had not "*pushed the issue*" of alternative work.

13. Having considered the application to adduce the evidence of Mr. Summogen, this was refused. The Tribunal considered whether to permit the Respondent to rely on this evidence, despite the lack of a further witness statement nor any disclosure, and decided that this was a step which would not further the overriding objective. We gave our reasons at the time. These were:

13.1. There was a specific direction as to filing of documents to be relied on and further evidence: see Paragraph 2 of the case management order. The Respondent had not complied with these orders. In the normal course, justice requires compliance with orders, but we have considered specifically all the factors within Rule 2 of Sch 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

13.2. Rule 2(a) provides that dealing with a case fairly and justly includes so far as practicable to ensure the parties are on an equal footing. The Respondent has had professional representation throughout the hearings. The Respondent's case was that Mr. Summogen did not see the Judgment and Reasons until today, which is why no evidence was filed. But the Judgment and Reasons were sent to his advisers, and we find that is no excuse. If such was an excuse, Employment Tribunal process could descend into chaos – with represented parties blaming their advisers for not doing routine things like passing on Judgments and Reasons. We find it difficult to believe the Judgement and Reasons were not passed on to the Respondent before now, because this Remedies hearing was originally listed in March 2017; and adjourned the day before. So we fail to see how Respondent would not know the Judgement or Reasons or the substance of them.

13.3. The Claimant is in person. She could have checked and investigated any evidence proposed to be adduced, even if served late. She cannot do this at the start of the Remedies hearing, if the evidence is admitted. Allowing such evidence would be unjust to her.

13.4. The Respondent's case is now different from that before us at the liability merits hearing: See para 15 of the witness statement of Mr. Summogen. This only states that staffing needs in the care sector were "falling". There is no mention of the alleged facts now sought to be adduced.

13.5. It was not proportionate to allow this evidence to be admitted. It was not just or proportionate to allow the Respondent to re-open evidential issues. This is particularly so where the Respondent had plenty of opportunity to put in evidence before now. In the liability hearing, the evidence of Mr. Summogen had been that if the Claimant came to the Respondent, it would have offered her other work as administrator role in NHS. There was no mention of all work stopping in August 2016.

13.6. There was a direction for a Counter-Schedule, which did not mention this alleged fact or calculate loss in reliance on such alleged fact.

13.7. The Respondent could have proved its case by documentary evidence. None was provided – save for the P60 relied on today. We find extraordinary no such documents were referred to today, even if not before the Remedies hearing.

14. We heard oral evidence from the Claimant. She verified her witness statement and her Schedule of Loss, and was cross-examined. It was never put to her that she did not earn the sums claimed in June, July and August 2015. Mr. Morton conceded as correct the average net fortnightly earnings figure in her Schedule at the submissions stage of the hearing – albeit relying on a much lower figure for average earnings said to be represented in the P60 dated 5.4.2015.

15. We found the Claimant to be an honest witness, whom did not exaggerate.

Findings of Fact

16. The Claimant earned an average of £434.79 per fortnight from the Respondent in the three months leading up to her dismissal. We find that these earnings would have continued to be made, but for the false allegations, her removal from all care work and her subsequent dismissal. We were provided with no evidence and no disclosure to show that the Claimant would or might have earned less after September 2015.

17. We found the Claimant's direct oral evidence coupled with the evidence showing her earnings in her bank statements far more persuasive than the P60, which only showed her earnings over the year to April 2015.

18. The Claimant had not worked since September 2015, when the Respondent stopped providing her with work.

19. After the acts of discrimination set out in our Reasons, the Claimant lost confidence in herself. She no longer felt confident looking after someone else. As a result of the discrimination suffered, she had very low self-esteem, from which she had not recovered. For that reason, she was unable to apply for care work jobs after her dismissal. We accepted her evidence on this point. Given the treatment proved, and seeing the Claimant give evidence, we found her evidence understandable and credible, and we accepted it.

20. The Claimant found that she was very emotional and became highly anxious over job interviews. She had to force herself to attend, and had to have a family member go with her. Having seen her distress when questioned about this in evidence, we can well understand that she would not have presented well in interviews.

21. From September 2015 to date, the Claimant has spent about three hours per day applying for jobs and handing out her CV in shops that are recruiting. She has attended the Job Centre and Work Programme once per week, spending one hour or more applying for jobs. She has about five interviews per month – although this varies.

22. The Claimant's attempts to find work were summarised in the table C1 that she had prepared. This showed that the type of jobs that she applied for were administrative and customer service jobs, and that she also applied for apprenticeships. We accepted her evidence as to the steps that she had taken to find work.

23. The oral evidence that she has not worked since September 2015 was corroborated by her bank statements in the bundle, which recorded her earnings from the Respondent and in a role she had held earlier in 2015 with Marks & Spencer. She had looked to re-apply to Marks & Spencer but they had not been recruiting in the area where she had worked before (Customer Service) and she did not pass the exams for the vacancies in the Bakery and Beauty sections.

24. All in all, the Tribunal found that the Claimant had taken reasonable steps to find alternative work after the Respondent stopped providing her with work. Save for applying for care work, it was not suggested by the Respondent that she could have taken any other steps.

25. We did not find, on the evidence before us, that the Claimant suffered psychiatric injury; we had no medical evidence to establish causation, even though the prescription of anti-depressants would lead to the inference that a depression-related impairment existed. We noted, also, that the Claimant did not claim psychiatric injury in her Schedule of Loss.

26. We recognised, however, that there is a difference between injury to feelings and personal injury. The Tribunal found that the Claimant suffered a serious degree of injury to her feelings, demonstrated by the above findings. There was no need for her to produce a medical report or GP letter in order to establish this fact.

27. We found that the treatment that the Claimant suffered had not just harmed her confidence in caring for people but removed it. Moreover, she had suffered a substantial loss of self-esteem and was afraid to attend interviews. We accepted that her self-esteem had dropped to the "*lowest possible level*". We found that the discriminatory treatment had affected the Claimant emotionally, which interfered with her sleep and caused her to be more easily distressed. The Claimant was still affected by the treatment.

28. We found, as the Claimant complained in her very short submission, that the Respondent did not take her case seriously, evidenced in these proceedings by the cavalier failings to comply with directions. But, as we noted in our Reasons following the liability part of the hearing, as a matter of substance, this was evidenced by the manner in which the Respondent treated her grievance and complaints about age discrimination.

29. Moreover, there was no evidence, either at the liability hearing or the remedies hearing, that the Respondent had given any thought to the relevant ACAS Code, a matter we return to below.

Submissions

30. The Claimant said little by way of submissions, asking the Tribunal to award what it thought right. She did not ask the Tribunal to make a Recommendation. Mr. Morton made oral submissions addressing the sub-issues outlined above, which we summarise below.

Sub-issue 1.1: Pecuniary loss to date

31. Mr. Morton had contended that the claimed net loss of £434.77 per fortnight was too great, given the P60, R1. He asserted, without producing any evidence that there were plenty of jobs in the field of care available to the Claimant, and that she had failed to mitigate her loss.

32. Given our findings of fact, we did not accept these arguments. We reminded ourselves of the law in respect of the duty to mitigate. This is well summarised in *Wilding v British Telecommunications Plc* [2002] ICR 1079:

32.1. it is the duty of the employee to act as a reasonable person unaffected by the prospect of compensation from their former employer;

32.2. the onus is on the former employer to show that the employee had failed to mitigate;

32.3. the test of reasonableness is an objective one based on the totality of the evidence;

32.4. the court or tribunal must not be too stringent in its expectations of the injured party (in that case, in respect of an offer of alternative work).

33. We concluded that the Claimant acted reasonably to mitigate her loss. The fact that the Respondent's treatment had left her in a position where she had been unable to get past the interview stage in her quest for work was entirely the fault of the Respondent. The Respondent failed to discharge the onus upon it, not least because it filed no evidence.

34. Since the last date that the Claimant worked for the Respondent (15.9.2015), there have been 87 weeks (the Schedule of Loss incorrectly calculates the number of weeks - probably because it was prepared prior to the postponement in March 2017 of this hearing). The Claimant's loss to date is:

87 weeks x £217.39 = £18,912.93

35. The Claimant has received Universal Credit over this period. The figure for this was £4,028.32 for a 16 month period when the Schedule of Loss was filed, and the Claimant stated she received about £250 per month. Doing the best we can, we assess the Universal Credit received by adding a further 2 months assessed at £251.77 per month. This produces a total for Universal Credit received of £4,531.66.

36. The Claimant's pecuniary loss to date is therefore: £14,381.27.

1.2. Future Loss

37. The Tribunal recognised the difficulty that the Claimant had had seeking work. But from the knowledge and experience of the Members from both sides of industry (to which the Employment Judge was indebted for their good sense in this and other areas of the assessment of compensation), there are currently more vacancies available for the Claimant to apply for, even if the care sector is excluded from consideration.

38. The Tribunal recognised the Claimant's loss of confidence and esteem. It considered that its Judgment and Reasons should have gone some way to restoring these essential requirements for any young person seeking work. The Tribunal had taken the Claimant's complaints seriously, and reached its findings, which in essence upheld the Claimant's grievance and complaints.

39. The Tribunal considered that the Claimant had relevant work experience, such as with Marks and Spencer as well as a record of work with the Respondent.

40. On balance, the Tribunal concluded that the Claimant would be able to find work with equivalent earnings or better after a further two months. We recognised that this exercise is not an exact science. We had no specific evidence of the job market and heard evidence only from the Claimant. We gave her evidence due weight and applied the knowledge and experience of the Tribunal to reach our figure.

41. This means that the Claimant's future loss is £1,884, calculated as (£217.39 x 52)/12 x 2, less £503.54 Universal Credit to be earned over this two month period.

42. Our assessment of future loss is therefore £1,380.46.

1.3. General damages:

(a) Injury to feelings award

43. Before we assessed injury to feelings award in this case, we directed ourselves on the law as follows, particularly taking into account *HM Prison Services and others v Johnson* [1997] IRLR 162 and *Alexander v Home Office* [1988] 190:

(i) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.

(ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to "untaxed riches." Tribunals should bear in mind Sir Thomas Bingham's reference to the need for public respect for the level of awards made.

(iii) Awards should bear some broad general similarity to the range of awards in personal injury cases.

(iv) In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.

(v) The severity of the treatment can be even more important than the time over which the treatment continued.

(vi) Where there are a number of allegations of discrimination, a global award covering all the proven acts of discrimination can usually be made. This is a sensible means of avoiding double-counting or over-compensation.

(vii) If the injury to feelings is attributable to factors other than the discrimination which has been proved, the Tribunal should compensate only for effects of the proven discrimination.

(viii) The award for injury to feelings is not susceptible to uniform scientific quantification, but depends on the good sense and experience of tribunals.

44. Mr. Morton admitted that the bands for compensation proposed in *Vento v Chief Constable of West Yorkshire Police (No. 2)* IRLR 102 CA, in which three broad bands of compensation for injury to feelings were established, required a 10% uplift due to *Simmons v Castle* and RPI increases (as explained in *Da'Bell v NSPCC* [2010] IRLR 19).

45. Mr. Morton accepted that re-stating the guidance in *Vento* with updating for inflation and a *Simmons v Castle* [2013] 1 WLR 1239 increase of 10%, produced the following approximate broad bands:

"(i) The top band should normally be between [24,000] and [£40,000]. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race ... Only in the most exceptional case should an award of compensation for injury to feelings exceed [£40,000].

(ii) The middle band of between [£8,000] and [£24,000] should be used for serious cases which do not merit an award in the highest band.

(iii) Awards of between [£1,000] and [£8,000] are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. …"

46. The Respondent's original case was that the award in this case fell into the lower half of the lower band, although Mr. Morton provided little by way of submission to support this, save that the Claimant had failed to adduce any medical evidence and,

he contended there were only two or three incidents here. Perhaps, having heard and seen the Claimant in evidence, like us, he recognised that the Respondent's argument was unsustainable, because he went so far as to argue that any award should be limited to the top level of the lower band.

47. The Tribunal started its assessment by recognising what discriminatory treatment had been found proved. Each of the allegations found proved were caused wholly by age discrimination, save that in respect of complaint 2.1, age was a very significant cause, but not the whole cause, of the treatment.

48. With the greatest of respect to Mr. Morton, we considered that we had to start by examining what effect the treatment found proved had on the Claimant, rather than by trying to categorise her case into a band: a like-for-like comparison between one case and another is very unlikely to be possible, because cases such as this are fact-sensitive. The point of the exercise is to assess the severity of the injury to the Claimant's feelings, and then to consider which of the three broad bands the case falls within. We reminded ourselves that we are considering compensation of the Claimant, not punishment of the Respondent.

49. The Tribunal accepted the Claimant's evidence as to the effect on her of the treatment. We made the findings of fact set out above.

50. We noted that the Claimant's grievance about the discriminatory treatment was ignored, and turned against her, leading to her not receiving work and being dismissed. Despite her emotional state, the Claimant had the stress of bringing Employment Tribunal proceedings.

51. We took into account that the Claimant had lost confidence in her abilities and suffered a severe drop of self-esteem, causing her anxiety when seeking new employment.

52. The Tribunal considered that the treatment of the Respondent, in not dealing with the grievance and denigrating the Claimant's abilities, was highly offensive.

53. This was not a case where the period of the treatment was particularly relevant, given the facts, but nor could it be said that this was a case where there was one (or even two) isolated incidents. We considered that there were serious incidents, which were of a piece, or a pattern. We considered the treatment of the Claimant degrading, albeit not the most serious treatment of its type.

54. Taking into account the findings of fact set out above, and the findings within our earlier set of Reasons, the Tribunal concluded that this was a serious case. This was apparent from the Claimant's evidence.

55. Recognising that this was a case within the middle bracket of the *Vento* guidelines, we went on to consider how serious it was. We could not help but accept that the hurt caused had continued up to the date of the hearing. Some claimants may have been more robust; but the tortfeasor must take their victim as they find them. This Claimant was sorely affected by the discrimination.

56. We did consider the range of personal injury awards, for injury that continued over a period of, say, one and a half to two years. We recognised that this would likely to be above £10,000.

57. We recognised that we should avoid the risk of double compensation, by recognising that the complaints of harassment and direct discrimination both relate to the same detriment.

58. We considered the award and any appropriate link to the earning capacity of the Claimant. If this suggested link is inflexible, there is a risk that young persons will always do worse in age discrimination awards than older persons, because young people may have a lower earning capacity. This would possibly entrench, rather than diminish, inequality and it seems hardly fair, because older workers will have more experience and may be able to bounce back from discriminatory treatment more quickly and easily than a young person such as this Claimant. In any event, in this case, the Claimant had been unable to find fresh work for more than eighteen months due in large part to the injury to her feelings.

59. Balancing all the factors referred to above, we concluded that it would be just to award £17,500 for injury to feelings. We considered that, if the facts in this case were known, such an award would serve to promote, rather than diminish, public confidence in this form of justice.

(b) *Aggravated damages*

60. We raised with the Claimant whether she sought aggravated damages, after her submission that her case had not been taken seriously by the Respondent. The Claimant asked the Tribunal to consider awarding such damages.

61. We asked Mr. Morton whether aggravated damages were appropriate, given the findings in this case. He said that he could not comment on the conduct of Mr. West, who conducted the liability hearing, without investigating further; and that if there was an administrative failure by his firm, it was not malicious or an attempt to make the position worse for this Claimant. If it was a failing of the Respondent, he said, it was up to the Employment Tribunal to determine whether it was a suitable case for aggravated damages.

62. The Tribunal directed itself that aggravated damages are compensatory; they are not to be awarded as punishment. We directed ourselves to the guidance in *Commissioner of Police for the Metropolis v Shaw* [2012] IRLR 291. We noted that the features which may attract an award of aggravated damages included:

62.1. The manner in which the wrong was committed, and whether the Respondent had behaved in a “high-handed, malicious, insulting or oppressive manner”, or otherwise with contumelious conduct.

62.2. The Respondent’s subsequent conduct, including their treatment of the complaint, any failure to apologise and any unwarranted conduct during the litigation.

63. The Tribunal concluded that it was appropriate to award aggravated damages in this case for the following reasons:

63.1. The Respondent's managers did behave in an insulting manner after the Claimant complained of age discrimination. Her complaint was ignored, whereas the complaints drummed up by the perpetrators were acted up, without any proper investigation.

63.2. The Respondent's managers stereotyped the Claimant and her abilities as a young person. This was also insulting.

63.3. The Respondent's approach to the complaint and this Employment Tribunal case was, as the Claimant rightly noted, completely unwarranted. At no time had the Respondent taken her complaints or this case seriously. We found that the Respondent had fabricated documents, managers had not told the truth, and the Respondent relied upon untruthful evidence before the Tribunal.

64. The Tribunal was mindful of the need to avoid double-counting. We recognised that the Claimant had been substantially compensated for her loss by our award for injury to feelings.

65. Doing the best we could, and mindful of the need to ensure that awards are not so low as to diminish respect for the system of justice, we concluded that an award of £2,500 in aggravated damages was appropriate.

1.4. Whether any breach of the ACAS Code; and if so, what uplift should be awarded?

66. The Respondent argued that because there was no Unfair Dismissal claim, there could be no uplift under section 207A Trade Union and Labour Relations (Consolidation) Act 1992. Mr. Morton complained that if the law were otherwise, there would always have to be an uplift in a situation of a discriminatory dismissal.

67. We find that this analysis is wrong in law. There is nothing in section 207A TULR(C)A 1992 nor the ACAS Code which limits the uplift provisions to those who have the minimum qualifying service to bring an unfair dismissal claim. Mr. Morton overlooked that a claim for unfair dismissal, where the reason is tainted by discrimination, requires no period of qualifying service.

68. We note that the Code commences as follows:

"1. This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

- Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.

- Grievances are concerns, problems or complaints that employees raise with their employers."

69. We concluded that the ACAS Code was engaged in two ways and should have been taken into account. First, the Claimant raised a grievance and complained about the treatment that she had received. Second, the Claimant was, in effect, dismissed due to allegations of poor performance and alleged misconduct. She was not given any further care work, or other work, and subsequently had her employment terminated.

70. In respect of the size of the uplift, we directed ourselves to the guidance in *Chagger v Abbey National* [2010] ICR 397 at paragraph 102. Thus:

70.1. The uplift is a punitive sanction; it operates as an incentive to encourage parties to make use of the ACAS Code.

70.2. The percentage to be awarded must be proportionate to the breach.

71. The Tribunal found that the Respondent had failed to follow the ACAS Code at all in respect of the Claimant's grievance. There was no formal meeting with the Claimant in respect of her grievance, in breach of paragraphs 33-34 of the ACAS Code, and nor was she offered such a meeting or the chance to be represented.

72. The Respondent failed to consider any investigation at the time, before reaching its conclusion, contrary to paragraph 34. The outcome of the grievance was, in effect, to refuse to offer her further work, and then to terminate her employment.

73. There was no offer of an appeal against the grievance finding. The Claimant was stereotyped as a young person not able to deliver care services.

74. Given the wholesale failings in its approach to dealing with the Claimant's grievance, the Tribunal found that these breaches were egregious ones, which were all unreasonable.

75. The ACAS Code requires grievances to be taken seriously. The Code is designed to ensure fairness. In this case, however, the Claimant's complaint was not taken seriously but dismissed out of hand.

76. We concluded that in this case the maximum uplift of 25% was appropriate, given the wholesale breaches in respect of those provisions relating to the grievance procedure which should have been adopted and the cavalier disregard for procedure as a whole. We could see no mitigation whatsoever for the Respondent.

77. In respect of the disciplinary or capability aspects of the allegations, had we been required to consider this, we would have concluded that the maximum uplift of 25% was appropriate in any event, given the wholesale breaches of the ACAS Code and the cavalier approach to procedure.

78. We note that this Respondent was not a small but a medium size employer. It should have been able to inform itself of the requirements of the ACAS Code and the

generally accepted standards of a fair procedure in respect of grievance and disciplinary or capability matters.

79. The value of the uplift of 25% is £8,940.43.

1.5 Interest

80. In terms of interest, we are satisfied that it would be just to order interest to be paid on the award in this case to ensure that the Claimant is fully compensated for her loss.

81. We have calculated the interest on the pecuniary loss of earnings from the mid-point of that loss to date at 8%. This calculation is:

(43.5 weeks/52weeks) x 14,381.27 x 0.08 = £962.41.

82. The interest on the injury to feelings and aggravated damages awards is payable from the point of the acts of discrimination. In this case, we assess this as being from the point at which no further work is provided to the Claimant (which was 15.9.15), even though, strictly speaking, this was only the culmination of earlier acts of discrimination.

83. The interest on this award is £2,676.92 calculated as follows:

(87 weeks/52 weeks) x 20,000 x 0.08 = £2,676.92.

84. The total interest payable is thus £3,639.33.

1.6. Grossing up

85. In terms of grossing up, having considered the relevant law carefully, we decided that this did not apply in this case. All the acts of discrimination occurred well before the Claimant's dismissal. The injury to feeling occurred during the Claimant's employment, not by her dismissal.

Recommendation?

86. Given that the Claimant did not seek any Recommendation, the Tribunal decided not to make any Recommendation in this case.

Employment Judge Ross

6 June 2017