



EMPLOYMENT TRIBUNALS

Claimants: (1) Miss N James
(2) Miss J Saine

Respondent: London and Quadrant Housing Trust

Heard at: East London Hearing Centre (in public)

On: 7, 8 and 9 May 2024

Before: Employment Judge Gordon Walker
Members: Mr S Woodhouse
Ms J Houzer

Appearances

For the claimants: Mr D Stephenson, counsel

For the respondent: Mr S Butler, counsel

JUDGMENT having been sent to the parties on 31 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimants presented claims of race discrimination to the Tribunal on 4 October 2022.
2. Following a liability hearing in January 2024, judgment was sent to the parties on 29 January 2024. The claims of direct race discrimination in relation to detriment A were well founded. All other claims were dismissed.
3. The remedy hearing took place on 7, 8 and 9 May 2024.

The issues

4. The agreed list of remedy issues is at pages 302-303 of the remedy bundle.

Procedure, documents, and evidence heard

5. The parties produced an agreed remedy bundle of 472 pages.
6. The Tribunal heard evidence from the claimants and, for the respondent: Miss Purbrick and Mr Kirk. All witnesses produced written witness statements.
7. The parties made oral closing submissions and referred to legal authorities.
8. Adjustments were made to accommodate the Miss Saine's health needs. Miss Saine was invited to request breaks as needed.

Findings of fact

9. We took all evidence that we were referred to into account. We only made findings of fact on those matters relevant to the agreed remedy issues. We reached our findings of fact on the balance of probabilities, based on the evidence. References in square brackets are to pages of the agreed remedy bundle.

Loss of a chance

10. We made findings of fact about the recruitment to the head of home ownership posts in our liability judgment Those findings of fact apply to this decision on remedy. Specifically:
 - 10.1 At paragraph 46 of the reasons, we found that the opinion formed by Miss Purbrick at the time the selection decisions were made was that Miss Panton and the claimants had pretty much the same employment history and, based on their interviews, and the fact they all came with the same evidence, she would not pick one over the other.
 - 10.2 At paragraph 49 of the reasons, we found that the decision who to appoint was made by Miss Purbrick. It was made not just on the application form, CV, and performance at interview, but on Miss Purbrick's view of who was suitable for the role.
 - 10.3 At paragraph 40 of the reasons, we found that the claimants provided additional information during their interviews which was not captured in Miss Purbrick's notes taken during the interviews.
 - 10.4 At paragraph 105 of the reasons, we found that the named actual comparators of Miss Allaband and Miss Bell were in materially different circumstances to the claimants, given their experience in home ownership.
 - 10.5 At paragraph 108.1 of the reasons, we found the claimants' performance at interview was very similar to Miss Alliband's.
 - 10.6 At paragraph 108.2 of the reasons, we found that the claimants had more management experience than Miss Allaband, and that this was a relevant factor, Miss Purbrick having said at the grievance

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investigation that she made decisions based on whether the candidates had enough leadership experience.

- 10.7 At paragraph 108.3 of the reasons, we found that Miss Purbrick did not adequately explain why Miss Allaband was appointed to one of the roles, whereas she did not appoint either the claimants or Miss Panton to the remaining vacancy.
- 10.8 At paragraph 110.2 of the reasons, we found that Miss Purbrick's decision that the claimants "*did not fit in*" and that she was "*not 100% sure*" was at odds with their performance at interview relative to Miss Allaband, and her statements that they were "*not not appointable*" and that their interviews were really good. Miss Purbrick took a risk with Miss Allaband, given her score to question four and her relevant lack of management experience. She did not afford that generosity of approach to the claimants.
- 10.9 At paragraph 110.4 of the reasons, we concluded that we were left with an inexplicable inconsistency in Miss Purbrick's approach to the claimants.
11. On 1 March 2022 Miss Panton was sent a letter entitled "*re promotion*". It said "*I'm pleased to inform you that you've been promoted to the post of aftercare manager, this will take effect from 21st of March 2022. Your full time equivalent salary based on 37.5 hours per week is £52,488 per annum within grade Dev New Grade 09*".
12. Miss Purbrick gave evidence at the Tribunal that, even absent the discrimination, she still would not have appointed the claimants. She said that Miss Alliband and Miss Panton would have been appointed.
13. The respondent submitted that Miss Panton's decision not to withdraw from the head of homeownership recruitment process evidenced her intention to accept such a post, if she had been offered it.

Pay scale

14. The respondent has two pay scales: the main structure London pay scale and the development and sales pay scale.
15. The development and sales pay grades were brought in in 2017 / 2018. These different terms and conditions can have higher pay when compared to the respondent's standard terms, but the terms are less advantageous in other ways. Since January 2018 the respondent has been far less keen on having separate terms and conditions for different people within the business.
16. Miss Allaband and Miss Bell were placed on the main structure London pay scale in their new head of home ownership roles. The claimants say that they should in fact have been placed on the development and sales pay scale because they say these were developmental roles, and that, if the claimants had been offered the posts, they would have argued this point and would

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therefore have been placed on the development and sales pay scale. In support of their argument, the claimants rely on:

- 16.1 The grounds of resistance page 39 paragraph 14 of the liability bundle, which refers to the head of home ownership roles as being in the development and sales directive.
 - 16.2 The whistleblowing investigation report paragraphs 25 and 53 at pages 140 and 148 of the liability bundle.
 - 16.3 The grievance outcome letters dated the 20 April 2022 at pages 223 to 307 of the liability bundle.
 - 16.4 In oral evidence under cross examination Miss James also referred to the respondent's internal job vacancies list, and the fact that the team manager roles in the home ownership team were said to be on the Dev 10 grade.
17. We accept the respondent's submission that everybody in the homeownership team was on the London grade scale, with the exception of three individuals, who were not on the development scale but were on different scales, namely: the national grade 06 (which is the main scale without London weighting) and two employees who had their terms preserved under a TUPE transfer. This is corroborated by a document at page 100 the remedy bundle and the evidence of Mr Kirk.
 18. We accept the respondent's evidence that, although the homeownership team was moved to sit under the development and sales directorate, employees remained on standard terms. We also accept Mr Kirk's evidence that the reference in the internal vacancy list to the team leader homeownership roles being on the dev 10 grade was an error.

Starting salaries

19. The respondent's recruitment and selection policy [41 paragraph 5.5.4] states that, before making an offer, HR and the hiring manager will discuss the salary and benefits offered.
20. The respondent's written policy is for internal colleagues promoted into a higher graded role to be offered the minimum salary of the grade, or a 5% pay increase on their existing salary, whichever is the higher figure. The respondent does have the discretion to depart from this policy, where deemed appropriate.
21. Prior to their promotions, Miss Alliband's salary was £47,763.87 and Miss Bell's salary was £51,321.
22. On 14 March 2022 a job offer was made to Miss Alliband at £55,391, which was the bottom of the grade 11 London main scale, at the relevant time.
23. The respondent exercised its discretion to offer Miss Bell a larger salary of £58,160, to reflect her relative homeownership and leadership experience as compared to Miss Alliband.

Cost of living increases

24. Where appropriate, the respondent makes a cost-of-living increase to salaries in April of each year, which increases the salary range within the respective grades on the pay scales. In 2023 the increase was applied in September, but backdated to April.
25. In April 2022 there was a 4% increase. In 2023 there was a 4.5% increase or £1620, whichever was the highest amount [6]. In 2024 there was a 2.5% increase, or £1750, whichever was the highest amount [16].
26. The respondent says that the average cost of living increase between April 2011 and April 2023 was 2.5% [105] and it is therefore likely that future cost of living increases will be 2.5% per year. The claimants were not in a position to comment on what the likely future cost of living percentage increase would be.

Essential car user allowance

27. The second claimant receives an essential car user allowance of £1300 gross per annum [246]. The respondent submits that the head of homeownership roles do not attract this benefit. The respondent has not adduced evidence of this. The second claimant does not know whether the benefit would have been paid to her if she had been promoted to the head of homeownership role.

Health and injury to feelings

28. Prior to March 2022 the first claimant had taken minimal sick leave. She had been off for just four days between 2007 and 2022. On 9 May 2022 she had 56 days of absence due to stress, returning to work on 12 August 2022 [22].
29. On 22 March 2022 the first claimant approached her GP saying that she had been going through a really hard time at work in the last two weeks. She said *"this is affecting my sleep, I feel anxious and I am not able to concentrate on my work. I have been racially and unfairly discriminated at work. Trying to cope with this while functioning in my job"*. The first claimant was then seen by her GP later that day who recorded *"situation at work since 10 March 2022 racial discrimination during internal recruitment process at work, under investigation. Reduced sleep, tearful and emotional"*.
30. On 21 April 2022 the first claimant submitted another online communication to her GP reporting work related stress due to an ongoing grievance. She was seen by her GP later that day who recorded *"ongoing reduced sleep, mind is racing at night. Trigger stress at work, see previous consultation. Short term use of zopiclone to use alternative nights"*. Zopiclone 3.75mg tablets were prescribed.
31. The first claimant made another online communication on the 9 May 2022 saying *"I'm still having sleepless nights. I recently received death threats due to a work situation and I'm very tearful, withdrawn and do not feel supported in my job"*.

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32. On 10 May 2022 the first claimant reported in an online communication: *"I am still having sleepless nights and hasn't got any better since the tablets ran out. I dread turning on my computer due to unrealistic working responsibilities and demands"*. She was seen by her GP later that day who reported *"vertigo onset when having stressful situations at work. Ongoing insomnia"*. A repeat prescription of zopiclone was made.
33. On 16 May 2022 the first claimant made another online communication, reporting being off work since 9 May 2022 for work related stress and anxiety symptoms, *"this is due to a recent discrimination incident which I have been in to see the GP and pressures of my job role"*. A further fit note was issued following that communication, on 16 May 2022.
34. On 30 May 2022 there was another online communication, the first claimant said *"I'm currently off work due to work related stress and anxiety symptoms. Loss of hair since November 2021 very tearful in meetings since December 2021 due to pressures of my job role change in July 2021. On top of this I have been going through a grievance for discrimination recently"*.
35. On 27 June 2022 there was a further online communication where she reported *"I'm currently off sick due to workplace stress and anxiety symptoms. I cannot face going back to work. I feel anxious and get dizzy at the thought of returning to a role that has such a detrimental impact on my physical and mental health"*.
36. On 25 July 2022 there was another online communication requesting a fit note saying *"I have been off work due to work related stress anxiety burnout symptoms I'm waiting an occupational health appointment which is being scheduled by my employer"*.
37. The first claimant was seen by occupational health and they issued a report dated 26 July 2022. The advice was that the first claimant did not have what one would term a diagnosed medical or mental health condition. However she was experiencing a stress reaction.
38. Both in that report and in the following welfare review meeting of 8 August 2022 the first claimant did not refer to the discrimination or the interview process for the head of home ownership role. She said this was because she had been told not to speak about the grievance, and she was concerned that the occupational health report would go back to her manager. She said she was in the process of taking legal advice about the discrimination and did not want to jeopardise this.
39. After her return to work in August 2022 the first claimant did not see her GP again for stress type symptoms until 26 March 2024 when she made an online communication stating *"I think I'm having anxiety/ depression symptoms but have not been diagnosed before by a clinician"*. At the consultation later that day it is recorded *"here to discuss recent feeling, last two years being dealing with issue at work. Did get successful outcome. Still finding herself tearful from time to time. She's able to hide it from others"*.

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40. On 27 March 2024 the claimant was written to by Greenwich time to talk to arrange a date and time for an initial assessment appointment with a therapist.
41. On 8 April 2024 she saw her GP who described the problem as depression, recording that the first claimant was "*racially discriminated two years ago and has been going through a tribunal. Was off work for three months in 2022. Was successful at the tribunal, has left the workplace on the 8th of March. Whenever she thinks about it she feels like she has still lost. When she talks to anyone about it she gets upset. Hard to get up in the morning, loss of motivation, loss of energy, always tearful, low in mood, wants to try medication. We spoke about sertraline*". Her GP prescribed sertraline 50 milligram tablets, one to be taken each day.
42. As is evidenced by the GP records and also the first claimant's unchallenged evidence in her witness statement, she has, since March 2022, suffered sleep disturbance, nervousness, anxiousness, and difficulties with shortness of temper i.e. snapping at her children and family. She said the grievance outcome made her feel utterly and completely let down, humiliated and betrayed. She felt ashamed and embarrassment. She drew an analogy with a very one-sided breakup. She found everyday tasks hard going. She had dizzy spells. She had hair loss and started taking a supplement called biotin every day. Although her hair loss had started at the end of 2021, it was at a lesser level such that it was not noticeable to her hairdresser in her appointment in December 2021, whereas when she went to the hairdresser in June 2022, her hairdresser remarked that she lost a significant amount of hair. She is frequently tearful and her mood is very low. The grievance appeal outcome made her feel completely betrayed.
43. The second claimant was diagnosed with endometriosis in 2005. The second claimant has produced an article about the link between endometriosis and stress. This states that "*anecdotally many people report that lifestyle issues that increase inflammation such as drinking too much alcohol or experiencing high levels of stress may make symptoms worse*". The article states that "*endometriosis is itself stressful with 68% of people with endometriosis reporting moderate or high levels of stress. This increase in stress due to endometriosis symptoms may then further accelerate endometriosis. The cycle can make it difficult to disentangle whether endometriosis causes or results from stress*". The second claimant has experienced more flares in her endometriosis since 2022 [178 to 206]. The second claimant says the biggest flare trigger for her is when she is highly stressed.
44. The second claimant was diagnosed with adenomyosis in April 2022. She has two fibroids that have increased in size since June 2022. Since 2022 she suffers from hypertension. The second claimant attributes these conditions to stress.
45. The second claimant says that the cause of her stress is the discrimination. We accept that the discrimination caused her stress. We find that she was also subject to stress due to unrelated issues at work, as evidenced by her GP records and what she said to occupational health and in the welfare

meetings with the respondent. Further, we find that the claimant's underlying and deteriorating health conditions must themselves have caused her some stress, although we accept that she had adjusted her life to manage her symptoms.

46. We accept the evidence in the second claimant's witness statement that following the discrimination she had feelings of low self-esteem, worthlessness and worry about the situation and her career. She had difficulty sleeping. She felt the matter was intensely humiliating. She was signed off work from her GP from 9 June 2022 until August 2022 with work related stress. The second claimant sought counselling, the records of which she has disclosed. These indicate that she spoke to a therapist on 22 April 2022 where she reported issues about the recruitment of the head of home ownership role. It records "*client said three people that didn't get the job, client said we're all mixed race, said it got her thinking*".
47. The second claimant had welfare meetings on 9 June 2022 and 20 July 2022. At the 20 July 2022 meeting the second claimant stated "*I think with my grievance outcome I'm still not happy with it so it is playing on my mind*". The response from Natasha Pencheon, HR advisor, was "*I'm sorry to hear that, but I cannot comment because whilst there is an empathetic side to me who wants to get into detail I can't*" [118]. The second claimant said that in light of this, and what she had been told before about keeping the grievance process confidential, she felt she could not disclose issues about the discrimination to the respondent. She says this explains why she did not refer to the discrimination in any further detail in her welfare meetings or to the occupational health therapist.
48. The second claimant had a period when she moved to half pay for her sick pay due to absence because of her underlying health conditions.

Mitigation of loss

49. Since the outcome of the head of home ownership recruitment process, the claimants have not applied for internal promotions. The second claimant started an application for lettings operations manager in February 2024 but did not finalise and submit her application. She considered applying for the voids operations manager role in November 2023, but was advised by her line manager that she would not be shortlisted for the role as she lacked the necessary experience.
50. The first claimant has made one unsuccessful external application (in January 2024). The second claimant has not made any external applications.
51. The respondent has produced a list of internal vacancies from 3 February 2022 until 13 March 2024 at grade 10 and above. The respondent has not provided the essential criteria for these roles. The roles are in business areas including technology and legal. The respondent has not said whether the claimants met the essential criteria for any of these roles, such that they would at least have been shortlisted and invited for interview, had they applied.

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52. The respondent has produced evidence of external vacancies from around April 2024 which start at page 267 of the remedy bundle. Mr Kirk broadly accepted under cross examination that most of these external adverts were unsuitable for various reasons such as the essential requirements of the role, the geographical location, or the likely hours that would be required. The respondent submits that this evidence is a snapshot of the sort of roles that would have been available externally had the claimants mitigated their loss in searching for external roles.
53. The claimants say that they have been restricted in their ability to apply for roles because of:
- 53.1 Their initial focus on the grievance process;
 - 53.2 Their health; and
 - 53.3 The impact of the discrimination on their self-confidence.
54. Initially the claimants did not apply for roles because they were focussing on the grievance and appeal process. They hoped that, following the grievance, the selection process for the head of homeownership roles would be carried out again. The grievance outcomes were communicated by letter on 21 April 2022. The grievance appeal outcomes were communicated on 30 May 2022.
55. The claimants were absent on sick leave until August 2022. We accept that they were too unwell during this period to make job applications. Thereafter, although they returned to work, both claimants remained unwell with stress and, for the second claimant, her underlying health issues.
56. We accept that the claimants' confidence was knocked by the discrimination and, given that the discrimination was in relation to a recruitment process, this affected their ability to apply for roles.
57. The first claimant took voluntary redundancy. The consultation process concluded in mid-November 2023. The respondent does not challenge the first claimant's evidence that she took voluntary redundancy because of the discrimination. The first claimant's effective date of termination was 8 March 2024. She was required to work her notice period. The first claimant started her job search in January 2024. She enrolled in a career service on 1 March 2024 and signed up for job alerts through Indeed website and uses Reed to search for jobs. She confirmed under cross examination that she believes it will take 9-12 months from the start of her job search to secure alternative employment, which she believes will be at a salary of £40,000 to £45,000.
58. The second claimant did not take voluntary redundancy. She remains working for the respondent. She says the primary reason for this is because of the flexible working that the respondent provides. She needs this flexibility, given her health conditions and to care for her 16-year-old daughter, as a sole parent.
59. At around the time of her application for the head of homeownership role, the second claimant made a number of applications for similar roles. She says that this resulted from a positive appraisal with her line manager who

encouraged her to apply for promotion and advised her that she would need to look outside of her own department to find promotion. Since March 2022, and her unsuccessful application for the role of head of homeownership, she has not made any applications for roles, due to her health and the impact of the discrimination on her self-confidence.

60. The second claimant has not researched any external vacancies. She says that, given her health, she does not have the capacity or capability to do this, and she is particularly concerned that she would not be given the same flexibility that her health needs require if she were to move to another employer.

Legal principles

61. Section 124 Equality Act 2010 states:

124 Remedies: general

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The tribunal may—

- (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*
- (b) order the respondent to pay compensation to the complainant;*
- (c) make an appropriate recommendation.*

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect [on the complainant] of any matter to which the proceedings relate

(4) Subsection (5) applies if the tribunal—

- (a) finds that a contravention is established by virtue of section 19[or 19A]3, but*
- (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.*

(5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).

(6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by [the county court] or the sheriff under section 119.

(7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation [...], the tribunal may—

- (a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;*
- (b) if no such order was made, make one.*

62. Section 119(4) Equality Act 2010 states:

119 Remedies

(4) An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

63. The fifth amendment to the presidential guidance on injury to feelings states at paragraph 2:

In respect of claims presented on or after 6 April 2022, the Vento bands shall be as follows: a lower band of £990 to £9,900 (less serious cases); a middle band of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300.

64. When assessing and valuing non-pecuniary loss, we had regard to **Prison Service v Johnson** [1997] IRLR 162 at paragraph 27; the fact that the injury must be caused by the discrimination: **Coleman v Skyrail Oceanic Ltd** [1981] IRLR 398 at paragraph 13; and that the award should compensate the claimants' injuries and not punish the respondent: **Ministry of Defence v Cannock** [1994] IRLR 509. We also had regard to **BAE Systems (Operatoins) Ltd v Konczak** [2017] IRLR 893 which provides guidance on causation and apportionment in circumstances where there are multiple causes and pre-existing vulnerability.
65. The law on loss of a chance is set out in **Shittu v South London & Maudsley NHS Foundation Trust** [2022] EAT 18 at paragraphs 98-103.
66. The law on mitigation of loss is summarised in **Cooper Contracting Ltd v Lindsey** UKEAT/0184/15 at paragraph 16. We also had regard to **Software 2000 Ltd v Andrews** [2007] ICR 825, at paragraph 54
67. On recommendations, we had regard to **Lloyds Bank Plc v Mrs S Hill** KEAT/0173/19/LA.

Conclusions

Loss of a chance

68. We conclude that Miss Allaband, the claimants, and Miss Panton all had an equal chance of being offered and appointed to the head of home ownership roles.
69. That conclusion follows from the findings of fact and conclusions in our liability judgment. Specifically:
- 69.1 It was the opinion of Miss Purbrick that she would not pick one candidate over the other, between the claimants and Miss Panton;
- 69.2 The claimants' performance at interview was very similar to Miss Allaband's;
- 69.3 The claimants had more management experience than Miss Allaband;
- 69.4 Miss Purbrick did not adequately explain why Miss Allaband was appointed to one of the roles, whereas she did not appoint the claimants or Miss Panton;

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- 69.5 Miss Purbrick took a risk with Miss Allaband and she did not afford the same generosity of approach to the claimants.
70. We find that, if Miss Panton had been offered the head of homeownership role, she would have accepted it. That is consistent with the fact that Miss Panton did not withdraw from the recruitment process and, in fact, attended an interview on 9 March 2022, eight days after she was sent the offer letter for the other role. We have taken into account that the head of home ownership role was a more senior role at two grades above the role that Miss Panton was offered, albeit that the starting salary was similar.
71. We conclude, as was accepted by the claimants, that Miss Bell would always have been appointed to one of the head of homeownership roles, given her experience in home ownership and her managerial experience.
72. We conclude that there was no chance that Mr Perkins would have been appointed to one of the head of homeownership roles, given his lack of leadership experience.
73. We do not accept the submission of the respondent that because Miss Allaband was not an appropriate comparator for the direct discrimination claim, that means she had a greater chance of appointment. Our conclusions about the actual comparators were on a different legal issue. Just because there was a material difference for those purposes, does not mean there was a different chance of being appointed.
74. We placed no weight on the evidence of Miss Purbrick as to whom she would have appointed, absent the discrimination because:
- 74.1 Our liability finding was that Miss Purbrick acted unconsciously. We conclude that she was not in a position to provide reliable evidence on what she would have done had she not been subject to such unconscious bias, because she was unaware of her biases;
- 74.2 Given our finding of direct discrimination about the acts of Miss Purbrick, it is hardly surprising that her evidence was self-serving on this issue. Nobody wants to acknowledge that they have discriminated against others because of race.
75. Taking all of these matters into account, we conclude that there was a 50% chance that each of the claimants would have been appointed to one of the head of home ownership roles. There were effectively four candidates of equal merit (the two claimants, Miss Alliband, and Miss Panton) competing for two vacancies.

Salary

76. If the claimants had been appointed to the head of homeownership roles, they would have been placed on the London main scale. That is consistent with what happened to Miss Bell and Miss Allaband. We conclude that the London main scale is the correct scale for those in the homeownership team.

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77. If the claimants had been appointed to the head of homeownership roles, the respondent would have applied their standard and written policy when determining the correct starting salary.
78. Whilst Miss Purbrick made an exception in relation to Miss Bell, Miss Bell was in a different position to the claimants, given her relative experience. We have found that the claimants were in an equivalent position to Miss Allaband. Whilst they had more managerial experience, she had more experience in home ownership.
79. We conclude that the respondent would have treated the claimants in the same way that they treated Miss Allaband in respect of the policy as to starting salary.
80. Given the claimant's respective salaries in March 2022 and how those related to the salary at the bottom of the grade 11 London main scale, the first claimant would have received a 5% pay increase on her existing salary, whereas the second claimant would have been placed at the bottom of that pay scale.
81. We conclude that cost of living increases would have been made at 4.5% for the 2023/24 financial year and thereafter at £1750 for each of the relevant subsequent financial years, consistent with the 2024 cost of living increase.
82. There is no evidence that the second claimant would have received a car allowance in the head of home ownership role. It is for her to prove her loss. We conclude that there was no such allowance payable in the head of homeownership role.

Injury to feelings and health of the first claimant

83. The first claimant had an acute period of injury to feelings for five months up to August 2022. She went to her GP on a number of occasions complaining about the effect of the discrimination. She was signed off as unfit for work.
84. We do not accept the respondent's submission that, because she also mentioned other stressful events at work, that the discrimination was not the cause of her stress and injured feelings at this time. She was able to cope with stress before, as evidenced by the fact that she did not visit her GP or take time off work until after the discrimination.
85. We reject the respondent's submission that the first claimant's failure to mention the effect of the discrimination in her welfare meeting or to occupational health means that this was not the cause of her injured feelings at the time. We accept the first claimant's explanation that she was told to keep the matter confidential. This is consistent with the approach of human resources when the second claimant raised the matter in her welfare meeting.
86. From August 2022 to March 2024 the first claimant was able to attend work and did not seek medical assistance. However, she continued to suffer from

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injured feelings which impacted on her mood, her confidence and self-esteem as detailed in the findings of fact.

87. Since March 2024 the first claimant has seen her GP about depression symptoms and has been prescribed antidepressants and received talking therapies. We conclude that this was for a number of reasons, including the tribunal process which the claimant referred to when speaking to her GP, and her recent voluntary redundancy which she also referred to. We accept that there has been further injury to her feelings during this period. However we do not make a separate award for personal injury. The first claimant has not provided medical or other clear evidence to demonstrate causation. In any event, there would be a significant overlap between injury to feelings and personal injury of this nature and it is incumbent upon us to ensure that there is no double recovery.
88. Taking all of these factors into account we conclude that the injury to feelings is in the middle Vento band and that the appropriate award is £20,000.

Injury to feelings and health of the second claimant

89. As with the first claimant, the second claimant had an acute period of injured feelings for the initial five months until August 2022 when she returned to work.
90. We reject the respondent's submission that this was not principally about the discrimination because the second claimant did not refer to it repeatedly in welfare meetings or to occupational health. We accept the second claimant's evidence, consistent with the notes of the welfare meeting, that she had been told to keep the matter confidential.
91. After the initial five month period, the second claimant was able to return to work. However, her injured feelings continued. She suffered from low confidence and low self-esteem and low mood, as detailed in the findings of fact.
92. We accept that the discrimination caused the second claimant to suffer from increased stress. We accept that stress can be a cause of flare ups of endometriosis. The second claimant did not provide medical evidence on which we could fairly and properly conclude that her flare ups and additional medical conditions were caused by the discrimination. We conclude that she had other causes of stress at the time, including her job and her health. We do not therefore make a separate award for personal injury. However, we do take into account the stress caused by the discrimination, and the potential impact of this on the endometriosis, when assessing her injury to feelings.
93. It follows from our conclusion on causation of personal injury that we do not make an award for the period when the second claimant was on half pay due to sickness absence. She has not proven that this was caused by the discrimination.
94. We conclude that the injury to feelings falls within the middle band and this is assessed at £20,000.

Mitigation of loss

95. We reject the respondent's submission that the claimants have acted unreasonably in relation to their job searches, such that they have failed to mitigate their loss.
96. Whilst we note that the first claimant has made only one job application, and the second claimant has made no applications, there are a number of factors which lead us to conclude that the claimants have not acted unreasonably by failing to apply for alternative roles. Specifically we have taken into account the following matters:
- 96.1 It was reasonable for the claimants to wait until the conclusion of the grievance and appeal process, given that the outcome of that process may have been to restart the head of home ownership recruitment process.
- 96.2 It was reasonable for the claimants not to make job applications when they were unfit to work.
- 96.3 From August 2022 the claimants continued to suffer from injured feelings which affected both their confidence in their ability to apply for roles and their trust in the internal recruitment processes. Given the nature of the discrimination we conclude that it was reasonable for the claimants to find applying for jobs a triggering and upsetting matter at this time.
- 96.4 Both claimants required flexibility which was afforded to them by the respondent to accommodate their health and caring requirements. It was not unreasonable for them to seek to retain employment with the respondent in those circumstances. The first claimant had a long employment history with the respondent.
- 96.5 We are not satisfied that there were any internal vacancies that the claimants had a realistic chance of being appointed to even if they had applied.
97. Looking at the period from the voluntary redundancy of the first claimant, we note that she was required to work her notice period and that her employment terminated in March 2024. As evidenced by her GP records, this was a time where she was experiencing symptoms of depression which required medication and counselling. We conclude that applying for just one role during this time was not unreasonable in the circumstances.
98. Taking the above into account, we conclude that the claimants have not failed to mitigate their loss.

Future period of loss

99. It will take both claimants some time to secure a role at the level and pay of the head of homeownership posts.

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100. We conclude that the situation is more difficult for the first claimant, given that she is now out of work and does not have access to the respondent's internal recruitment processes. We note that it is the policy of the respondent to recruit internally first where possible.
101. Taking into account their skills and experience, we conclude that the first claimant will find a role at the head of homeownership level by the end of September of 2025 and that the second claimant will find an equivalent role either internally or externally by the end of March 2025.

Redundancy payment

102. The first claimant received a redundancy payment in the sum of £47,572.21 gross. The net figure paid to the claimant was £40,191.76.
103. We conclude that, if the discrimination had not occurred, the first claimant would not have taken voluntary redundancy.
104. Following our conclusion on loss of a chance, there is a 50% chance that she would have remained in her existing role and a 50% chance that she would have been promoted to the head of home ownership. We have taken this into account when making our calculations:
 - 104.1 We have awarded the first claimant 50% of the salary difference between her existing role and the head of home ownership role.
 - 104.2 After the effective date of termination, we have awarded her 100% of her existing salary and have given credit for the redundancy payment.

Net pay

105. The respondent in their counter schedules has applied a 58% reduction to gross figures to give the net amount. We conclude that this is not the correct figure. Using the online tax calculators (listen to the tax man) we have applied a 71% figure instead.

Pension

106. The parties agree that the correct approach to pension loss is 6% of the gross loss. We have made the awards on that basis.

Interest

107. Interest is payable at 8%.
108. For injury to feelings awards this is paid from the date of the act of discrimination complained of, and ending on the day on which the employment tribunal calculates the amount of interest.
109. For all other awards, interest is awarded for the period beginning on the 'mid-point date' and ending on the day of calculation.

Grossing up

110. The parties agreed the figure for grossing up.

Calculations

111. The calculations are set out in the judgment.

Recommendation

112. The claimants sought recommendations which we declined to make as we concluded that they would not obviate or reduce the effect on the claimants. Diversity training for Miss Purbrick would not reduce the effect on the claimants, given that they do not work in her directorate or team. We conclude that a Tribunal ordered apology would not have the necessary effect on the claimants as it would not be a genuine or heartfelt apology.

Employment Judge Gordon Walker
Dated: 19 June 2024