# Tribunal awards: 25% uplift on compensatory, injury to feelings and aggravated damages awards upheld by the EAT

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The EAT has upheld a tribunal's decision to uplift by 25% the compensatory award and awards for injury to feelings and aggravated damages for failure to comply with the ACAS Code of Practice.

**THE FACTS**

Mrs Biggs and Ms Steward were employed by a company which runs weddings and other events at venues. In 2017, they both became pregnant. As the employment tribunal later found, their employer, "found their becoming pregnant at roughly the same time as highly inconvenient", and "decided to dispense with [their] services and thus avoid the inconvenience of hiring temporary staff". The employer decided to engineer their departure from their employment by (among other things) failing to pay SMP and engineering a spurious TUPE transfer.

Mrs Biggs resigned and claimed constructive dismissal over the non-payment of SMP. Ms Stewart was dismissed for gross misconduct while she was recovering from the premature birth of her child. The tribunal described the disciplinary process as having been "entirely spurious and vindictive" and commented that her suspension and dismissal was "one of the most egregious acts of discrimination possible".

Ms Stewart and Mrs Briggs were both successful in their claims of unfair dismissal and maternity discrimination.

The tribunal made compensatory awards which included the maximum 25% uplift for breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures. It also made awards for injury to feelings, with £5,000 aggravated damages each. These awards were then uplifted by 25% to reflect breach of the ACAS Code.

In appealing the 25% uplift in the EAT, the former employer argued that the uplift was too high to be proportionate or acceptable. They also argued that uplifting both the injury to feelings and the aggravated damages awards by 25% was "double counting".

The EAT dismissed their appeals, holding that there was no obvious or significant double counting. It also held that the absolute value of the uplift was not so high as to be disproportionate, considering that when Parliament fixed the upper end of the uplift at 25% it must have anticipated that some awards would be made at this level.

**WHAT DOES THIS MEAN FOR EMPLOYERS?**

The EAT suggested that, in future, tribunals may choose to apply a four stage test when considering the effect of a failure to comply with the ACAS Code. This test is:

- Is the case such as to make it just and equitable to award any ACAS uplift?
- If so, what does the tribunal consider a just and equitable percentage, which must not exceed 25%, though it can equal 25%?
- Does the uplift overlap, or potentially overlap, with other awards? If so, what is the appropriate adjustment, if any, to the percentage of those awards to avoid double counting?
- Applying a final sense check considering whether the sum of money represented by the application of the percentage uplift is disproportionate in absolute terms and, if so, what further adjustment should be made?

This case also clarifies that awards for injury to feelings and for aggravated damages are taxable, and the tribunal should, therefore, gross up the awards to take account of taxation.

Slade and another v Biggs and others

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