



EMPLOYMENT TRIBUNALS

Claimant: Ms R Malik

Respondents: 1. Mauricare Limited
2. Blossom Care Limited
3. Ms A Sachdev
4. Mr S Boodhoo
5. Blossom Care Home (Ravensthorpe) Ltd

Heard at: Leeds **On:** 21-22 September 2017

Before: Employment Judge Davies
Members: Mr A Ali
Mr J Howarth

Representation
Claimant: Mr Y Lunat, solicitor
Respondent: Mr M Cameron, solicitor

JUDGMENT

1. The Claimant's claims against the First, Second and Third Respondents are dismissed on withdrawal by the Claimant.
2. The Claimant's claim of unfair dismissal against the Fifth Respondent is well-founded and succeeds.
3. The Claimant's claims of maternity discrimination against the Fourth and Fifth Respondents are well-founded and succeed.
4. By consent the Claimant's claims of breach of contract (notice pay) and for pay in lieu of accrued holiday against the Fifth Respondent are well-founded and succeed.
5. The Fifth Respondent shall pay the Claimant a basic award for unfair dismissal of **£2129.09**.
6. The Fifth Respondent shall pay the Claimant a compensatory award for unfair dismissal of **£370** in respect of loss of statutory employment rights.
7. By agreement, the Fifth Respondent shall pay the Claimant **£2,220** damages for breach of contract (notice pay).
8. By agreement, the Fifth Respondent shall pay the Claimant **£962** in respect of accrued holiday pay.

9. In respect of the claims of maternity discrimination the Fourth and/or Fifth Respondent shall pay the Claimant the following sums for which they are jointly and severally liable:
- a. **£2903.02** compensation for loss of earnings plus interest (£2825 + £78.02); and
 - b. **£5,276.16** compensation for injury to feelings plus interest (£5,000 + £276.16).

REASONS

Introduction

1. These were claims of unfair dismissal and maternity discrimination brought by the Claimant Ms R Malik against a number of Respondents. The claims against the first three Respondents were withdrawn either before the start of the hearing or at the start of the hearing, and the claims proceeded against the Fourth and Fifth Respondents. The Fifth Respondent is Blossom Care Home (Ravensthorpe) Limited and the Fourth Respondent is Mr Salim Boodhoo, a director of that company. The Claimant has been represented before us by Mr Lunat and the Respondents by Mr Cameron. We were provided with an agreed bundle of documents and we heard evidence from the Claimant and from Mr Boodhoo.

The issues

2. The issues to be decided had been discussed at a preliminary hearing with Employment Judge Jones in June. The claims for notice pay and holiday pay were dealt with by consent. The Tribunal heard evidence relating to the unfair dismissal and discrimination claims and the issues to be decided in those claims were as follows:

Unfair dismissal

- 2.1. What was the reason for the Claimant's dismissal? Was the reason or principal reason a reason relating to redundancy or a reason relating to maternity?
- 2.2. If the reason for dismissal was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant?
- 2.3. If the Claimant was unfairly dismissed what is the chance, if any, that she would have been fairly dismissed in any event (and when)?

Discrimination

- 2.4. Was the Claimant treated unfavourably (by being dismissed) because she was exercising her right to ordinary maternity leave or had exercised it or because she was exercising or sought to exercise her right to additional maternity leave?
- 2.5. If so, what is the appropriate level of compensation?

Findings of fact

3. In June 2010 the Claimant started work at a care home called Vicarage House, which is also known as Blossom Care Home. We refer to it as Blossom Care Home. At that time she was employed by a company called Plus Care Homes which was owned by Ms Sachdev. That company operated three care homes, one of which was Blossom Care Home.

4. In July 2014 there was a transfer of the Claimant's employment from Plus Care Homes to Blossom Care Homes Limited, which was also owned by Ms Sachdev. The Fourth Respondent is the owner and director of a group of connected companies called the Mauricare Limited companies. In 2014 that group of companies took over one of the other care homes operated by Blossom Care Homes Limited, called Stonehouse Manor. After September 2014 the Claimant worked exclusively at Blossom Care Home.
5. It appears that in early 2016 Ms Sachdev decided to sell Blossom Care Home and a process of transferring that to the Mauricare group of companies began. As we understand it, in July 2016 Mauricare Limited bought Blossom Care Home from Blossom Care Home Limited. There was a series of transactions involving different companies, but by September 2016 a company called Blossom Care Home (Ravensthorpe) Limited, i.e. the Fifth Respondent, was the entity that owned and ran Blossom Care Home. The Fifth Respondent was the Claimant's employer at that stage. It was one of Mr Boodhoo's companies and a company of which he was the director.
6. The Claimant's most recent contract of employment was dated September 2015, when she had been promoted to be a manager at Blossom Care Home.
7. The summary of that rather complicated background is that the Claimant's continuous employment dated back to June 2010 and it was agreed by the parties that the Claimant's employer at the relevant time was the Fifth Respondent. We also note that at the time of the events with which the Tribunal was concerned, for regulatory purposes the Claimant was the registered manager of Blossom Care Home.
8. As part of the transfer of the business to the Fifth Respondent, in about March 2016 there was an application by Mauricare Limited to the Care Quality Commission ("CQC") to vary its registration to add Blossom Care Home as an additional location and to continue the Claimant's registration to manage the regulated activity at Blossom Care Home under a new owner. Because that application related not only to the registration of the home but also to the Claimant's registration as registered manager it was a joint application. In fact the Claimant was shortly to go on maternity leave. She took a period of accumulated annual leave and then formally began her maternity leave on 4 April 2016.
9. Whilst the Claimant was on maternity leave the CQC processed the registration application and as part of that both Mr Boodhoo and the Claimant were interviewed by the CQC in early September.
10. The CQC wrote a letter on 28 October 2016 setting out a notice of proposal to refuse the application to vary the registration by adding a new location and also to refuse the application to continue the Claimant's registration as registered manager under the new owner. A detailed letter was provided. It referred to concerns about a number of homes operated by the Mauricare group. As part of the discussion in that letter the CQC expressed concerns that Mauricare Limited had no suitable plan for managing the care home during the Claimant's extended maternity leave. They noted that she was not due to return to work until late December. They referred to the fact that Mr Boodhoo had shown them a proposal to recruit a new manager but recorded that he had not shared any plans about who was to manage the location in the interim. He had referred to a consultancy being involved but the CQC noted that the consultancy was not registered with them to manage regulated activities. Part of the letter dealt specifically with the appointment of a registered manager. The CQC

referred to an inspection in December 2014 when the service had been found to be “requiring improvement” and to a further inspection in mid-February 2016 when the service was found to be “inadequate.” By the time of the second inspection the Claimant had been the home manager for around five months. The CQC said that there had been a decline in the quality of care offered and that they were therefore concerned about the management of the regulated activity under the Claimant. They did not feel that she would be able to make the improvements to the service that would be required. They again referred to her maternity leave and to the arrangements for covering that. They referred to their interview with the Claimant on 2 September and said that they had found at that interview through her responses to the questions asked that she was unclear about making the necessary improvements that were required to ensure that the service would meet the regulations. That was why they had decided to issue a notice of proposal to refuse her application to continue her registration under Mauricare Limited.

11. In her evidence to the Tribunal the Claimant said that in February 2016 she was struggling to bring about improvements because of a lack of investment in the property by Ms Sachdev. She also said that when she spoke to the CQC in September 2016 she was unaware of the inspection report content and was not in a position to help them with how she would make improvements. No doubt that was part of the picture, but nonetheless the position was that as of the end of October the CQC were telling Mauricare Limited that they were not going to allow the Claimant to continue as registered manager under a new registration.
12. We have referred to what was apparently said about replacing the Claimant in the course of discussions with the CQC. On the first day of the hearing before this Tribunal Mr Boodhoo produced a document relating to that. It was on the headed paper of what appeared to be a recruitment agency called Liberty Care Solution Recruitment Agency. It referred to an unspecified job advertisement and then set out what appears to be a job advertisement for a care home manager to provide maternity cover. It was signed off, “kind regards Human Resource Department.” Mr Boodhoo explained that he had been asked (by his solicitor) to provide a copy of the advertisement that had been placed and that he had phoned the recruitment agency the previous night and told them he needed proof of the advertisement that had been placed. Clearly what was provided was not the actual job advertisement. The Tribunal was not provided with any emails or correspondence from the relevant time about the placing of an advertisement. We certainly were not shown copies of any job applications or any candidates put forward. In those circumstances it seemed to the Tribunal that we could not place any real weight on the document that Mr Boodhoo provided.
13. Doing the best we could with the CQC report and the rather vague account that was evidently given to them, it looked to the Tribunal as though Mr Boodhoo realised in his discussions with the CQC that he needed to satisfy them that appropriate management was in place during the Claimant’s maternity leave and that some steps were taken to try and reassure the CQC in that regard. The extent to which there was actually an intention to recruit somebody to cover the Claimant’s maternity leave is unclear.
14. Mr Boodhoo’s evidence about the job advertisement and how it had come about was one of a number of occasions on which his evidence seemed to the Tribunal to lack any clarity about what had been done, when and why. This seemed to us to reflect a business that was run with no clear records or audit trails of important decisions and we as a Tribunal had to do our best to work out what had happened in those

circumstances. Mr Boodhoo's oral evidence reflected that. We found it frequently unclear, inconsistent and contradictory. Fundamentally, on many issues he was unable to tell the Tribunal in clear terms what had been done, when and why.

15. Mr Boodhoo explained in his oral evidence that initially he had appealed against the notice of proposal issued by the CQC but that that appeal had then been withdrawn. He explained that that was essentially the end of the line for any involvement by the Mauricare group in Blossom Care Home.
16. However, at around that time he became a director of Blossom Care Home Limited, which by default remained the registered operator of the home. It appeared to the Tribunal that the plan at that stage was to muddle along with Blossom Care Home Limited running Blossom Care Home. That company was still registered with the CQC to do so and the Claimant was still the registered manager with the CQC for that purpose.
17. The Claimant did not see the letter of 28 October 2016 at the time or indeed at any time before these proceedings. She did speak to Mr Boodhoo on the telephone and she understood from him that the application to transfer the registration had been unsuccessful. She thought that the reasons for that were all about problems that the CQC had identified in the other homes that were run by the Mauricare group. She did not know that part of the concern was about her personally as registered manager. She understood that the home could continue to operate under Blossom Care Home Limited and that she could continue to be registered manager under Blossom Care Home Limited. However, at that point she remained on maternity leave.
18. By this stage the local authority had put in place an embargo and were not taking up any more beds at Blossom Care Home.
19. On 29 November 2016 the Claimant emailed Mr Boodhoo and Ms Sachdev. She pointed out that her maternity leave was due to come to an end on 1 January 2017. She said that she intended to return to work soon after that but before doing so she wanted a return to work meeting. She asked them to let her know when would be suitable. Mr Boodhoo replied on the same day simply saying that he would be in touch. On 14 December 2016 the Claimant emailed him again to remind him about her request for a return to work meeting. In his oral evidence Mr Boodhoo accepted that he had done nothing between 29 November and 14 December 2016 to arrange a return to work meeting. When the Claimant sent her reminder he emailed her the same day suggesting 22 December 2016 to meet. It appears that he then sent a text message suggesting a different date, 21 December 2016. The Claimant responded to say that she was in London all that week and she asked him to give availability for the week commencing 26 December 2016. He replied on 20 December 2016 to say he would let her know next week. She replied suggesting that they could have a telephone meeting if he was not available and she let him know that she was not available to come in the first week of January. She also asked him to find out how much annual leave she had remaining.
20. Again it appears that Mr Boodhoo did not take any steps to re-arrange the meeting and it was left to the Claimant to send a further email on 29 December 2016. She set out the background and said that she was waiting for him to get in touch with her. She said that now because of childcare issues she wanted to book three weeks' annual leave from 2 January 2017 to 20 January 2017. She asked for Mr Boodhoo's availability to meet her any day after 8 January to discuss her return to work. Mr Boodhoo replied by email on 31 December 2016. He suggested he see her on 5

January, which of course was a date when she had indicated she was not available. He said, "As for holiday pay when did you actually book because there is no such record here?" In his evidence to the Tribunal Mr Boodhoo was not able to explain to what that referred, given that the Claimant did not appear to have made any request for holiday pay. Mr Boodhoo's email also referred to the Claimant's request for annual leave being at very short notice but the request was not in terms refused. Mr Boodhoo concluded, "We could do with meeting up with you and clarify issues face to face please as a matter of urgency." That was perhaps a surprising way for him to finish his email given that the Claimant had now for a month been trying to arrange to meet him.

21. The Tribunal considered Mr Boodhoo's approach to have been totally unacceptable. This was an employee who was coming to the end of her maternity leave. Proper arrangements should have been made to meet with her to discuss her return to work and how that would take place. It should have been given appropriate priority. Mr Boodhoo appears to have done very little and he was not able to provide the Tribunal with any explanation for that. He was asked why there had been the delay and he said in his oral evidence that he needed Ms Sachdev to be present because she knew all about the annual leave that the Claimant had taken. We have referred to the exchange of correspondence and it is clear that the question of annual leave arose late on. What the Claimant was initially asking for was a simple return to work meeting before the end of her maternity leave and Mr Boodhoo was quite simply unable to provide any plausible explanation of why there was a delay in arranging such a meeting.
22. In the event a meeting took place on 10 January 2017 at Starbucks. We were not provided with any minutes of that meeting. In his oral evidence for the first time Mr Boodhoo suggested that he might have kept minutes on his phone but again those minutes were not disclosed. That might be thought to suggest either that they did not exist or that they did not support his version of events. The Claimant and Mr Boodhoo agree that at the meeting on 10 January 2017 they discussed a number of the issues with Blossom Care Home, including the local authority's bed embargo and the concerns and problems with the CQC. However, they disagree about what else was discussed at the meeting. The Claimant said that the other thing that was discussed was her maternity leave. She requested to extend her maternity leave to 52 weeks to take her through to the end of March 2017. They discussed a gradual return to work and the fact that she intended then to take accrued annual leave at the end of her maternity leave. She said that they did not discuss anything relating to financial difficulties and that she was assured that the new employer had got everything under control. She said that Mr Boodhoo asked her to send him a written request to extend her maternity leave, which he said he would consider. Mr Boodhoo gave a different version of events. He said that at the meeting he explained the predicament they were in regarding Blossom Care Home. He said that he told the Claimant that the CQC were not allowing her to stay as registered manager and that they had to make economies because the home was not viable. He said that he told her that they intended to cover the management of the home via their managers at other homes while they tried to resolve the problem with the transfer of the operating licence. That meant that the post of manager was to be removed to save costs and her role was therefore redundant. They had no other manager vacancies and she expressed no interest in lesser positions so in the circumstances he confirmed the proposal to make the Claimant's role redundant. He said that he advised her that she would receive her full financial entitlement and that she indicated her understanding of the position.

23. We pause at that stage to note that Mr Boodhoo's explanation of the meeting in his witness statement did not have the ring of truth to it. It was in contrast to much of his oral evidence and it had the hallmarks of having been carefully written with assistance in advance of legal proceedings rather than actually reflecting what was said at the time. In any event before resolving the question of what was actually said at the meeting, it is relevant to look at the correspondence that followed.
24. In the early hours of 12 January 2017 the Claimant emailed Ms Sachdev and Mr Boodhoo. She set out a request to take her full entitlement of 52 weeks' maternity leave and return to work on 3 April 2017 and she said that she would like her outstanding annual leave to start on 4 April 2017 for 21 days. At approximately 5pm on 12 January 2017 Mr Boodhoo replied by email. He said, "Please find copy letters sent to you following our meeting on 10 January." He asked the Claimant to communicate in writing to the home address if she needed to get in touch and he told her that she needed to de-register herself as manager of Blossom Care Home Limited. He also concluded, "We have now received correspondence from CQC about their intent to de-register Blossom Care Home Limited. We will forward to you both the latter and the inspection report for your record.
25. The letter to which Mr Boodhoo referred at the start of his email was attached. It was a letter on its face dated 11 January 2017 and it had the subject "Termination of employment." It was addressed to the Claimant at her former address, from which she had moved some months earlier, something of which she had notified the Respondent. The letter said, "Thank you for taking the time yesterday and meeting with myself as previously arranged. As explained yesterday this has not been an easy decision but in view of the difficult and challenging circumstances the business finds itself we have had to have recourse to these measures and continue to explore ways to address the home's financial viability." The letter went on to refer to the issues with the CQC and the bed embargo and financial pressures. It referred to the payment of the Claimant's statutory maternity pay, which had expired on 2 January 2017. It referred to her annual holiday and said that as an exception they would consider paying this to her. It concluded, "As you indicated yesterday you will be considering advice. Please note we have no objection to this. We enclose a cheque for final settlement with a pay slip and we thank you once again for support and understanding and wish you well for the future."
26. The Claimant said that the first and only time she received that letter was when it was attached to Mr Boodhoo's email of 12 January 2016. She never received the hard copy that it was suggested had been sent to her former address. She responded on 18 January 2017 with an email attaching a letter of appeal against the termination of her employment. That letter simply said that she wanted to appeal against the decision because she did not agree to it and she found the reasons given were incorrect and unreasonable. She asked for an opportunity to discuss the issues in detail and wanted to know how the decision had been reached. She said that she wanted correspondence sending to her again at her current address and she said that that had been updated to them via email on 11 June 2016. She also asked for a copy of the employee handbook. She did not receive any reply.
27. The Claimant sent a further email on 2 February 2017 to Ms Sachdev and Mr Boodhoo. She asked for a response to her appeal. Mr Boodhoo replied to that email. He wrote, "Thank you for your email. A reply was sent to you by post. Our position remains no different to the meeting we had and letter you were sent. Please kindly refrain from communicating via mail as previously requested."

28. Mr Boodhoo was asked in his oral evidence what he meant in his email about a reply having been sent to the Claimant by post. He said initially that a reply had been sent to the Claimant's appeal by post. However, when pressed on that he accepted that he had not sent any reply to the Claimant's appeal. He told the Tribunal that he assumed Ms Sachdev had done so but when asked he accepted that he did not ask if she had and that he did not see any reply. In those circumstances the Tribunal could not see any basis for Mr Boodhoo telling the Claimant that a reply had been sent to her appeal by post.
29. Taking into account the correspondence that followed and the evidence we have heard the Tribunal accepted that the Claimant's version of what happened at the meeting on 10 January was correct. In reaching that view we took account in particular of the following matters:
- 29.1. For the reasons explored above, we found Mr Boodhoo to be evasive, inconsistent and lacking credibility generally in his evidence.
- 29.2. The Claimant's email sent in the early hours of 12 January 2017 about extending her maternity leave was consistent with her version of events that she had raised this at the meeting and had been asked to put it in writing.
- 29.3. The email from Mr Boodhoo on 2 February 2017 contained an assertion about a reply being sent to the Claimant by post for which there was no basis in fact. That seemed to the Tribunal to reflect a willingness on Mr Boodhoo's part to write letters that were not necessarily an accurate reflection of what had happened.
- 29.4. Although the Tribunal was somewhat surprised that the Claimant's appeal letter did not refer to the fact that her letter of dismissal had come as a shock, and that nothing of the kind had been said when they met on 10 January 2017, we accepted her explanation for that in oral evidence. She explained that once she received the dismissal letter she took advice from ACAS and the CAB and they advised her to write a letter of appeal.
- 29.5. One feature of Mr Boodhoo's letter of 11 January 2017 (which was drafted by him but emailed to and signed by Ms Sachdev) caused the Tribunal some pause for thought. That was the suggestion at the end of the letter that the Claimant had indicated at the meeting that she would be considering advice. We considered it unusual for such a reference to be made if there had not been discussion of the Claimant's dismissal on 10 January 2017. However, in view of her difficulties in arranging a meeting to discuss her maternity leave it seemed to the Tribunal that there were other possibilities. For example, the Claimant might have said at the meeting that she would be taking advice about her annual leave or her maternity leave. Another possibility is that this simply did not reflect the reality of what the Claimant had said at the meeting. In view of our other findings, that seemed to the Tribunal to be a plausible possibility.
- 29.6. Importantly, we took into account the fact that the CQC had by this stage written to propose de-registering Blossom Care Home Limited as provider for the home. In his evidence Mr Boodhoo told us that when he met the Claimant on 10 January 2017 he was not aware that the CQC had written in those terms to Ms Sachdev. He said that such a letter would go to her as the responsible person for the care home. That seemed likely to the Tribunal to be correct as a matter of fact. It was of course clear from the email that Mr

Boodhoo sent on 12 January 2017 that by then he was aware of the proposal to de-register Blossom Care Home Limited. It seemed to the Tribunal that something quite significant had changed between the meeting on 10 January 2017 and the letter that was sent to the Claimant informing her of her dismissal. The significance of it was that until the CQC wrote in those terms, it appeared to Mr Boodhoo that they could carry on operating Blossom Care Home under the Blossom Care Home Limited registration with the Claimant as registered manager. While doing so, they could try and arrange a transfer of the licence to one of the Mauricare group of companies. Now that course of action was problematic, because the CQC were proposing to take away the current registration with the Claimant as registered manager. The Claimant's usefulness became less at that stage, because there was a real risk that Mr Boodhoo and Ms Sachdev were not going to be able to continue to operate Blossom Care Home under the existing registration, with the Claimant as registered manager.

30. For all of those reasons, the Tribunal preferred the Claimant's version of events about what happened. We found that there was no discussion of dismissal at the meeting of 10 January 2017. It happened as the Claimant had described and after the meeting, as she had been invited to, she requested to extend her maternity leave in writing.
31. After the meeting Mr Boodhoo discovered that Blossom Care Home Limited was at risk of being de-registered. The Tribunal found that this was what prompted him to write the letter terminating the Claimant's employment. This was sent to her by email out of the blue on 12 January 2017.
32. Despite the Claimant's requests no appeal against her dismissal was allowed.
33. The Claimant did receive a pay slip towards the end of January, which purported to provide her with redundancy pay of £769.22 gross. Tax and national insurance had been deducted from that although they are not normally deducted and the net amount paid to her was £570.91. The Claimant's statutory maternity pay ran out on 2 January 2017.
34. Following its notice of proposal on 9 January 2017, Blossom Care Home Ltd made representations on 3 February 2017, seeking to persuade the CQC not to cancel its registration. An inspection visit took place in March 2017. However, the CQC decided to go ahead with the proposal and cancelled Blossom Care Home Limited's registration. That took effect on 2 June 2017 and the home ceased to operate on 29 June 2017.
35. Mr Boodhoo was asked in his oral evidence when a decision was taken to dismiss the Claimant and why. His evidence was again unclear and inconsistent. Initially when asked more than once by the Employment Judge he said that the decision had been taken by him and Ms Sachdev in early December 2016. That was inconsistent with his previous evidence that when the Claimant was trying to arrange a return to work meeting at that time the only issue he needed Ms Sachdev there for was to deal with outstanding annual leave or holiday pay. In re-examination he suggested that the decision to dismiss the Claimant had been taken in the new year, in January 2017. He was also asked about the reason for dismissing the Claimant and he said repeatedly that it was because there was no money. The home had no money and this was a redundancy. At no stage did he say that the Claimant was dismissed for capability or because of the concerns on the part of the CQC.

36. The Tribunal has to find as a matter of fact what the reason or principal reason for the Claimant's dismissal was and in view of the evidence we make the following findings.
37. First, the Tribunal did not accept that the reason or principal reason for the Claimant's dismissal was redundancy. There was no convincing or persuasive evidence before us that the Fifth Respondent's requirement for a manager of Blossom Care Home had ceased or diminished. It seemed to us that the one thing that the Fifth Respondent did need at this care home was a manager. Mr Boodhoo did not suggest that the home did not need a manager. Instead he gave extremely vague evidence about the management arrangements that were in place. The Tribunal found that there were no sensible arrangements for management in place to cover the Claimant's maternity leave. Plainly the home needed a manager for regulatory as well as ordinary operational reasons. In any event, even if the need for a care home manager had ceased or diminished, we would have expected some consideration to have been given to whether the Claimant could be put into a different post, whether she could cover the role of someone who was on long term sick leave and so on. There was simply no evidence of any type of redundancy thought process being gone through. The Fifth Respondent did not advance the case that there was a redundancy because intended to cease carrying on business at Blossom Care Home. It is clear that it sought to persuade the CQC not to cancel the registration after it had dismissed the Claimant. For those reasons, we found that redundancy was not the reason or principal reason for the Claimant's dismissal.
38. At the same time, the Tribunal was not persuaded that the principal reason for the Claimant's dismissal related to her maternity leave. She had been on maternity leave for a long time. If the mere fact of her taking maternity leave was the reason for getting rid of her it seemed to the Tribunal that at the very latest the letter from the CQC on 28 October 2016 would have provided the perfect excuse to do so. That was not done. The evidence did not support a finding that the Fifth Respondent had been advertising to replace the Claimant in September. The comments in the CQC letter about advertising for a replacement seemed to us simply reflect the fact that Mr Boodhoo had been telling them what he thought they wanted to hear, to try and deal with his registration difficulty. It did not seem to the Tribunal that there was actually any attempt to replace the Claimant whether temporarily or permanently. Furthermore, the Fifth Respondent needed a registered manager for Blossom Care Home and the registered manager under the Blossom Care Home Limited registration was the Claimant. That was a reason for continuing to employ her, because it was the only basis on which the home could continue to operate at that time.
39. Equally, the Tribunal did not find that the reason the Claimant was dismissed was because she indicated that she wished to exercise her right to additional maternity leave on 10 January 2017. That would not have cost the Fifth Respondent anything, because the Claimant's right to maternity pay had been exhausted. There was no indication that the Respondents were concerned about getting the Claimant back into the business or having proper management arrangements in place. On the face of it, there might appear to be a coincidence in timing between the Claimant requesting the extension to her maternity leave and the date on which she was dismissed, but that was not the only thing that happened in that time frame. The other crucial thing was that the CQC notified Ms Sachdev that they were proposing to de-register Blossom Care Home Ltd as provider for the home. From that point, the Tribunal found that the writing was on the wall for the continued operation of this

care home, certainly with the Claimant as registered manager, and she was no longer useful to the Respondents in that respect.

40. In the light of all those matters, the Tribunal found that the principal reason for the Claimant's dismissal was that in view of the recent steps taken by the CQC it was becoming apparent that muddling along with the Blossom Care Home Ltd registration with the Claimant as registered manager while trying to arrange a transfer of the operating licence was not going to be viable. The approach taken appears to have been to make representations to the CQC on the basis that there was or would be a new manager and, if that was unsuccessful, to cease to operate the home.
41. The question whether the dismissal was discriminatory also calls for factual findings from the Tribunal. The Tribunal has to find whether the fact that the Claimant had exercised or was exercising her right to maternity leave was an effective cause of her dismissal. We find as a matter of fact that it was an effective cause.
42. It seemed to the Tribunal that the fact that the Claimant was on maternity leave and was out of the business fundamentally meant that it was easier to dismiss her and in our view if the Claimant had not been out of the business on maternity leave but had been in post working as the registered manager she would not have been dismissed. While the change in the CQC's stance towards Blossom Care Home Ltd with the Claimant as registered manager was the principal reason for her dismissal, the fact that she was on maternity leave was also an effective cause. In making that finding, the Tribunal noted that the Claimant was not dismissed face to face but in writing and that once she had been dismissed Mr Boodhoo essentially refused to engage with her. He refused to meet with her to discuss her dismissal at all. In his submissions, Mr Cameron posed the hypothetical question, "What would have happened in this business if the Claimant had not been on maternity leave?" He submitted that inevitably, in view of what the CQC said, the Claimant would have been dismissed. But the Tribunal did not accept that submission. Importantly, it was not the evidence Mr Boodhoo gave. But, in any event, having seen and heard him give evidence, the Tribunal did not accept that if the Claimant had been in the business Mr Boodhoo would have taken proper procedural steps either to address shortcomings in her work or to remove or replace her as registered manager.

Legal principles

43. So far as unfair dismissal is concerned, the Employment Rights Act 1996 provides, in s 98, so far as material as follows.

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) relates to the conduct of the employee,
- (c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

44. Redundancy is defined by s 139 of the 1996 Act. In broad terms, an employee is dismissed for redundancy if the dismissal is attributable to the fact that the employer has ceased or intends to cease to carry on the business for which the person was employed (s 139(1)(a)) or to the fact that the requirements of the employer's business for employees to carry out work of a particular kind have ceased or diminished or are expected to do so. The category of "some other substantial reason" ("SOSR") for dismissal is a catch-all. The employer must show that the reason is potentially a fair one within s 98(1)(b), i.e. that it could, but not necessarily that it does, justify dismissal. Considerations of reasonableness then fall to be considered under s 98(4). In order to amount to SOSR, the reason must be substantial and genuine.
45. The reason or principal reason for dismissal is a question of fact to be determined by a Tribunal as a matter of direct evidence or by inference from primary facts established by evidence. The reason for dismissal consists of a set of facts which operated on the mind of the employer when dismissing the employee. They are within the employer's knowledge. Under the Employment Rights Act 1996, it is for the employer to show the reason or principal reason for the dismissal.
46. If the reason for dismissal was a potentially fair reason, the Tribunal must then decide whether the employer acted reasonably in all the circumstances. In a redundancy process, that will usually involve carrying out a fair process, including warning and consultation, and looking for alternatives to dismissal. Where the reason is SOSR, depending on the nature of the reason, some kind of fair process is likely to be required.
47. Pregnancy and maternity discrimination are governed by s 18 Equality Act 2010. Under section 18(4) an employer discriminates against a woman if it treats her unfavourably because she is exercising, is seeking to exercise or has exercised the right to ordinary or additional maternity leave.
48. The burden of proof in discrimination cases is dealt with by s 136 Equality Act 2010. Well-known guidance was given by the Court of Appeal in *Igen Ltd v Wong* [2005] ICR 931 and the Tribunal also had regard to the recent consideration of that case in *Efobi v Royal Mail Group Ltd* [2017] EAT. In essence, the guidance outlines a two-stage process. First, there must be facts from which the tribunal *could* conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the complainant. That means that a reasonable tribunal could properly so conclude, from all the evidence before it. The second stage, which only applies when the first is satisfied, requires the respondent to prove that he did not commit the unlawful act.

49. The guidance in *Igen* and *Madarassy* was expressly approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054. However, as the Supreme Court made clear in *Hewage*, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other: *Hewage* at para 32.
50. In asking why the employee received unfavourable treatment, it is necessary to consider whether it was because of a protected characteristic or was for some other reason. In cases where the reason for the unfavourable treatment is not inherently discriminatory, it is necessary to explore the mental processes of the employer, to discover what facts operated on his or her mind: see *R (E) v Governing Body of the Jewish Free School* [2010] IRLR 136, SC. It is not necessary for the protected characteristic to be the only or even the main cause of the treatment; it must be an effective cause of it.

Application of legal principles to facts

Unfair dismissal

51. Against the detailed findings of fact above, we can deal briefly with the issues in this case. The first question is, what was the reason for dismissal. That has been dealt with in the findings of fact. The reason or principal reason for dismissal was not redundancy and it was not maternity related. It was the proposal by the CQC to de-register Blossom Care Home Ltd, for which the Claimant was registered manager, and a decision that her services could or should be dispensed with in those circumstances.
52. In principle, that was in the Tribunal's view potentially capable of being a fair reason for dismissal. It might have been arguable that in view of the CQC's stance, the it was reasonable, in order to try and secure the home's future, to bring in a new manager in whom the CQC had confidence.
53. However, even if this were a potentially fair reason for dismissal, the Fifth Respondent rightly accepted that it could not argue that it acted reasonably in dismissing the Claimant given that absolutely no process whatsoever had been followed and no right of appeal had been afforded. This was perhaps all the worse given that this was an employee who was on maternity leave, who had tried for a month to arrange a return to work meeting before finally attending what she thought was such a meeting, only to be told in a letter out of the blue that her employment was being terminated. After that her former employer simply did not engage with her. It must be the case and we find that dismissal was not in all the circumstances reasonable and the Claimant's claim of unfair dismissal therefore succeeds.

Maternity Discrimination

54. That brings us to the question of discrimination. There is no dispute that the Claimant was treated unfavourably by being dismissed. Further, that was done by Mr Boodhoo who was plainly acting as the agent of the Fifth Respondent. Both the Fourth and Fifth Respondents are therefore appropriate respondents to this part of the claim.
55. The decisive issue in this part of the claim is whether the unfavourable treatment was done because the Claimant was exercising her right to maternity leave. That, too, has effectively been answered by the Tribunal's findings of fact. For the reasons

explained in the findings of fact, the Tribunal found that the fact that the Claimant was on maternity leave was a part of the reason why she was dismissed. She would not have been dismissed if she had been in the business and attending work. Her absence on maternity leave was therefore an effective cause of her dismissal and her claim of unfavourable treatment because she was exercising her right to maternity leave therefore succeeds.

Remedy

56. The parties agreed that the basic award payable to the Claimant was £2,129.09. The sums payable for her breach of contract claim and by way of holiday pay were also agreed. The parties also agreed that, since Blossom Care Home ceased operating on 29 June 2017, that should be the latest cut-off date for the Claimant's loss of earnings. The issues to be determined by the Tribunal were therefore:
- 56.1. What is the chance, if any, that the Claimant would have been fairly dismissed in any event?
 - 56.2. For what period (up to 29 June 2017 at the latest) is it appropriate to compensate the Claimant and what were her losses during that period?
 - 56.3. What is the appropriate level of compensation for loss of statutory employment rights?
 - 56.4. What is the appropriate level of compensation for injury to feelings?
 - 56.5. Should compensation for loss of earnings be awarded under the heading of unfair dismissal or discrimination?
57. The Tribunal made the following further findings of fact.
- 57.1. The reason the Claimant asked on 10 January 2017 to extend her maternity leave to April was not because she did not intend to return to work until then. It was because she had been trying to arrange a return to work. In order to do that she needed to plan childcare, and that called for agreement with her employer about when she would return to work. When that was not in place at the end of December she asked to take three weeks' annual leave. However, it was clear to her that that was not going anywhere. She looked on the gov.uk website and realised that she would be better off exercising her right to maternity leave than trying to negotiate an agreement to take annual leave. However, it was her intention to use the time to agree her return to work arrangements, put in place child care and then return to work. She intended to return to work as soon as those discussions and arrangements had been put in place.
 - 57.2. The Tribunal accepted that evidence without hesitation. It was supported by the fact that, after she was dismissed, the Claimant started looking for work promptly and started a new job on 13 March 2017. The Tribunal found that, if she had not been dismissed, she would have returned to work after four weeks, i.e. on 13 February 2017.
 - 57.3. From 13 March 2017 onwards the Claimant has been earning £305 net per week. Her earnings at the Fifth Respondent were £370 net per week.
 - 57.4. The Claimant undoubtedly suffered injured feelings as a result of her dismissal. However, her witness statement for these proceedings covered a number of matters that pre-dated her dismissal, and made clear that there was more than one cause of her anxiety and upset at that time. She was still

suffering the effects of a bereavement, she was a new mother and was experiencing some marital difficulties and money worries at the time. The Tribunal has to separate out the injury to feelings caused by the dismissal. We were quite satisfied that the dismissal itself did cause specific injury to the Claimant's feelings. It happened at a time when she was already feeling anxious and upset and was experiencing personal difficulties. The loss of her job was particularly upsetting in those circumstances. Furthermore, it came out of the blue when she was expecting to return to work. It caused her further anxiety about money, and it affected her self-confidence, especially given that she was a new mother. She felt the dismissal deeply because she had been in this country for six years and had worked her way up to a manager's position, establishing a career for herself. Ms Sachdev had been a family friend. The dismissal had an impact on her social life and family life.

- 57.5. On the other hand, she had obtained a new job within two months and was able to apply for numerous jobs before that date. She attended a number of interviews. Her new job has a lower salary and status, but it is not of a wholly different category. Further, her upset about the loss of her job must be tempered by the knowledge that she would have been dismissed in any event on 29 June 2017, when Blossom Care Home closed.
58. It is not necessary to refer to the legal principles in detail. They were not in dispute. We do record that the Tribunal had regard to the *Vento* guidelines as recently updated.
59. We deal with the issues in turn. First, the Tribunal found the submission that the Claimant would have been fairly dismissed in any event to be wholly lacking in reality. All the evidence about how these companies were run is wholly inconsistent with the idea that Mr Boodhoo would have operated a fair process either to address shortcomings in the Claimant's performance or to dismiss her and replace her with a new registered manager. The Tribunal found that there was no chance that she would have been fairly dismissed in any event.
60. In those circumstances, we found that the Claimant would have returned to work on 13 February 2017 and would have been dismissed with effect from 29 June 2017. That is a period of 20 weeks. She would have earned £7,400 during that period. In fact she earned £4,575. The difference is £2,825. Interest is payable on that sum, calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations. The Tribunal calculated the mid-point from the act of discrimination to the date of calculation as being 126 days. Interest of 8% per annum for 126 days amounts to £78.02.
61. The Tribunal considered that the appropriate compensation for loss of statutory employment rights was £370, i.e. one week's pay. This is a valuable right. The Claimant had worked for the Fifth Respondent for six years. She will now have to work for two years before she secures the most valuable of those rights again. In those circumstances, the £300 suggested by the Fifth Respondent would not be adequate compensation. The Tribunal considered that a week's pay would be more appropriate.
62. The appropriate level of compensation for injury to feelings is £5,000. This case falls into the lower band, but in the upper part of it. Although this was a one-off act of discrimination, it had ongoing consequences, and came at a time when she was already upset and anxious, and affected her self-confidence as a new mother. The

Tribunal is concerned with the particular injury to feelings suffered by this Claimant. Focussing only on the injury arising from her dismissal, the level of hurt feelings was substantial and remains, to some extent, ongoing. At the same time, it was not such as to prevent her from applying for, securing and starting new employment. That, together with the knowledge that her employment would have ended in June 2017, lessens the degree of upset. Taking all those factors into account, £5000 is the appropriate level of compensation.

63. Interest is also payable on that sum. For injury to feelings, interest covers the whole of the period since the discriminatory act, i.e. 252 days. At the rate of 8%, that amounts to £276.16.
64. The Tribunal had no hesitation in finding that it was appropriate for the compensation for lost wages to be awarded as compensation for the discriminatory dismissal. The act of discrimination was the Claimant's dismissal. Both the Fourth and Fifth Respondents are liable for that under the Equality Act 2010. There is no principled basis for saying that they should not be liable for the losses that flow from it.

Employment Judge Davies

Date: 6 October 2017