EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121879/2018

Held in Edinburgh on 17, 20-23 January, 26-27 November, 1-3, 7-10 & 13 December 2020

Employment Judge Sangster
Tribunal Member Lawson
Tribunal Member Watt

Mr A Shah	**First Claimant** **Represented by:** **Mrs D Reynolds** **Solicitor**
Mrs S Shah	**Second Claimant** **Represented by:** **Mrs D Reynolds** **Solicitor**
Dunfermline Mosque & Islamic Centre	**First Respondent** **Represented by:** **Mr A Khan** **Solicitor**
Mr A Mohammed	**Second Respondent** **Represented by:** **Mr A Khan** **Solicitor**
Mr M Sharif	**Third Respondent** **Represented by:** **Mr A Khan** **Solicitor**
Mr M Akbar	**Fourth Respondent** **Represented by:** **Mr A Khan** **Solicitor**
Mr M Irshad	**Fifth Respondent** **Represented by:** **Mr A Khan** **Solicitor**

Mr M Ramzan **Sixth Respondent**
Represented by:
Mr A Khan
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

- The First Claimant was unfairly dismissed. The respondents are ordered to pay to the First Claimant the sum of **£21,320.88** by way of compensation. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this award;

- The First Claimant experienced harassment related to religion during his employment. The respondents are liable for this and are ordered to pay the First Claimant the further sum of **£3,000.00,** plus interest of **£640.44** by way of compensation for injury to feelings;

- The respondents made an unauthorised deduction from the First Claimant's wages and are ordered to pay the First Claimant the gross sum of **£1,100.00**, in respect of the amount unlawfully deducted;

- The respondents were in breach of contract by dismissing the First Claimant without notice. The respondents are ordered to pay the First Claimant the sum of **£1,811.95** as damages for breach of contract;

- The First Claimant's remaining claims for direct discrimination because of race and disability, harassment related to religion and for holiday pay do not succeed and are dismissed;

- The respondents made an unauthorised deduction from the Second Claimant's wages in relation to holidays and are ordered to pay the Second Claimant the gross sum of **£220.00**, in respect of the amount unlawfully deducted;

- The respondents were in breach of contract by dismissing the Second Claimant with only one week's notice. The respondents are ordered to pay

the Second Claimant the sum of **£333.33** as damages for breach of contract; and

- The Second Claimant's remaining claims for direct discrimination because of her husband's race and disability and unauthorised deductions from wages in relation to pay arrears do not succeed and are dismissed.

REASONS

Introduction

1. The First Claimant presented a complaint of unfair dismissal, direct discrimination because of race and disability and harassment related to religion and belief. The Second Claimant brought claims of direct discrimination because of her husband's race and disability and her association with him. Both claimants also brought claims for notice, holiday pay and arrears of pay. The respondents admitted that the First Claimant had been dismissed, but stated that the reason for dismissal was SOSR, which is a potentially fair reason for dismissal. The respondents maintained that they acted fairly and reasonably in treating redundancy as sufficient reason for dismissal. The respondents denied that the claimants had been discriminated against and that any further sums were due to them.

2. The claimants gave evidence on their own behalf and led evidence from:

    a. Iftikhar Choudhary (**IC**), former member of the First Respondent; and

    b. Khalid Hussain (**KH**), former member of the First Respondent.

3. The respondents led evidence from:

    a. The Second Respondent, Ajaz Mohammed, Chair of the First Respondent;

    b. Miss Iffat Rafeeq (**IR**), former teacher at Kirkaldy Mosque and self-employed teacher in Islamic studies and women's health and wellbeing; and

    c. Mr Mohammed Hammad (**MH**), former Imam of Kirkaldy Mosque.

4. The parties agreed a joint bundle of documents extending to 395 pages, in advance of the hearing. A further 4 documents were added during the course of the hearing.

5. The case was initially set down for 6 days in January 2020. At lunchtime on the 5th day, during cross examination, the First Claimant became unwell and was taken to hospital. The case accordingly did not proceed for the remainder of that day or on the 6th day. It was identified that 11 further days would be required to complete the hearing. Appropriate dates were identified in June 2020, but these could not take place due to the COVID-19 pandemic. It was canvassed with parties whether the remainder of the hearing could take place remotely, by CVP, but this was not possible for the respondent. The hearing accordingly continued on the first available dates for an in person hearing.

Issues to be Determined

6. It was agreed at the outset of the hearing that the issues to be determined were as noted below.

7. In relation to both claimants, the identity of their employer: was it the unincorporated body, acting through its management committee; or the incorporated body Dunfermline Islamic Centre Limited?

First Claimant

8. The issues to be determined in relation to the First Claimant were:

*Direct discrimination because of race - s13 Equality Act 2010 (**EqA**)*

9. Did the respondents subject the First Claimant to the following treatment?

   a. Calling the First Claimant a Shi'a Muslim;

   b. Telling the First Claimant that Pakistani people should go back to their own country;

   c. Calling the First Claimant an extremist and accusing him of preaching extremist views and opinions;

d. Accusing the First Claimant of discriminating against non-Pakistani Muslims;

e. Soliciting from the community written statements against the First Claimant stating a-d above;

f. Telling to First Claimant to stay on his own masala and not to encroach on those of others;

g. Stating that the First Claimant's qualifications were not fit for purpose and not worth the paper they are written on;

h. Stating or causing to be stated to the First Claimant and/or the community that it was necessary for the Iman to be British born and to be fluent in English;

i. Releasing CCTV footage of the First Claimant on 24 May 2018 on social media;

j. Releasing the First Claimant's expired disciplinary warning;

k. Not investigating or dealing with the First Claimant's complaints of insulting and abusive treatment and instead degrading him at a grievance meeting on 8 May 2018;

l. Accusing the First Claimant of 6 counts of misconduct and inviting him to a disciplinary hearing to take place on 24 May 2018;

m. Cancelling the First Claimant's sponsorship on 23 May 2018 deliberately and without cause or justification, other than to terminate the First Claimant's employment;

n. Dismissing the First Claimant because the respondents wished to cater for the advancement of youth and have a British born fluent English speaking Imam in order to achieve this; and

o. Airing CCTV footage of the First Claimant and handing out copies of the First Claimant's warning letters at a meeting on 30 June 2018.

10. If so, was that treatment '*less favourable treatment*', i.e. did the respondents treat the First Claimant less favourably than they treated, or would have treated others ("comparators") in not materially different circumstances?

11. If so, was this because of the First Claimant's race?

Direct discrimination because of disability - s13 EqA

12. Was the First Claimant a disabled person in accordance with the EqA at all relevant times because of stress, anxiety and depression?

13. If so, did the respondents subject the First Claimant to the following treatment?

    a. Telling the First Claimant not to disclose details of his illness;

    b. Requiring the First Claimant to work excessive hours;

    c. Requiring the First Claimant to attend meetings with little notice with individuals the First Claimant complained of being insulting and abusive towards him;

    d. Not referring the First Claimant to occupational health; and

    e. Dismissing the First Claimant.

14. If so, was that treatment '*less favourable treatment*', i.e. did the respondents treat the First Claimant less favourably than they treated, or would have treated others ("comparators") in not materially different circumstances?

15. If so, was this because of the First Claimant's disability?

Harassment related to religion & belief – s26 EqA

16. Did the respondents engage in the following conduct?

    a. Calling the First Claimant a Shi'a Muslim;

    b. Calling the First Claimant an extremist and accusing him of preaching extremist views and opinions;

c. Accusing the First Claimant of discriminating against non-Pakistani Muslims;

d. Soliciting from the community written statements against the First Claimant stating a-d above;

e. Telling to First Claimant to stay on his own masala and not to encroach on those of others;

f. Stating or causing to be stated to the First Claimant and/or the community that it was necessary for the Iman to be British born and to be fluent in English;

g. Stating that the First Claimant's qualifications were not fit for purpose and not worth the paper they are written on;

h. Releasing CCTV footage of the First Claimant on 24 May 2018 on social media;

i. Releasing the First Claimant's expired disciplinary warning;

j. Accusing the First Claimant of 6 counts of misconduct and inviting him to a disciplinary hearing to take place on 24 May 2018;

k. Not investigating or dealing with the First Claimant's complaints of insulting and abusive treatment.

17. If so was that conduct unwanted?

18. If so, did it relate to the protected characteristic of religion or belief?

19. Did the conduct have the purpose or (taking into account the First Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the First Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the First Claimant?

Time Limits

20. Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the EqA? If not should time be extended on a "just and equitable" basis?

Unfair dismissal

21. What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent's position was that the First Claimant was dismissed for some other substantial reason.

22. If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

Unauthorised deductions from wages

23. Is the First Claimant owed notice pay?

24. Is the First Claimant owed arrears of wages?

Second Claimant

25. The issues to be determined in relation to the Second Claimant were:

Direct discrimination because of race - s13 EqA

26. Did the respondents subject the Second Claimant to the following treatment?

    a. Sending WhatsApp messages of an intimidatory and threatening nature;

    b. Not investigating or dealing with unacceptable language being directed at the Second Claimant by children attending a Quran class;

c. Sending text messages of an intimidatory and threatening nature; and

d. Dismissing the Second Claimant.

27. If so, was that treatment '*less favourable treatment*', i.e. did the respondents treat the Second Claimant less favourably than they would have treated others ("comparators") in not materially different circumstances?

28. If so, was this because of the First Claimant's race?

Direct discrimination because of disability - s13 EqA

29. Did the respondents subject the Second Claimant to the following treatment?

a. Sending WhatsApp messages of an intimidatory and threatening nature;

b. Not investigating or dealing with unacceptable language being directed at the Second Claimant by children attending a Quran class;

c. Sending text messages of an intimidatory and threatening nature; and

d. Dismissing the Second Claimant.

30. If so, was that treatment '*less favourable treatment*', i.e. did the respondents treat the Second Claimant less favourably than they would have treated others ("comparators") in not materially different circumstances?

31. If so, was this because of the First Claimant's disability?

Unauthorised deductions from wages

32. Is the Second Claimant owed notice pay?

33. Is the Second Claimant owed holiday pay?

Issues Arising in the Course of the Hearing

34. On discussing the issues to be determined, Mrs Reynolds for the claimants confirmed that the First Claimant was no longer pursuing a claim for holiday

pay and the Second Claimant was no longer pursing a claim for arrears of wages.

35. At the outset of the hearing, Mr Khan for the respondents requested strike out of the discrimination claims on the basis that they were insufficiently specified. Mrs Reynolds for the claimants opposed this. She referred to the fact that the particulars of the claims had been discussed at a case management preliminary hearing on 22 February 2019 and it had been agreed that she would provide further particulars of the claimants' claims within 28 days of the date of that hearing, which she did. Despite the respondent having been permitted a period of 14 days to respond to those further and better particulars, no response had been received whatsoever and this was the first occasion she was learning of any dissatisfaction with the further particulars provided. Following an adjournment, the Tribunal confirmed that the application for strike out was refused, on the basis that the Tribunal felt there was sufficient detail, in the ET1 and further and better particulars, for the respondents to understand the case being advanced. Alternatively, if it was felt that further detail was required, there had been ample opportunity to request that following the provision of the further and better particulars in March 2019, prior to the commencement of this hearing in January 2020.

36. In submissions, Mr Khan for the respondents conceded that at all material times the claimants were employed by the unincorporated organisation (the First Respondent) acting via its executive committee (the Second to Sixth Respondents) rather than Dunfermline Islamic Centre Limited, as had been alleged in the ET3 and at the case management preliminary hearing held on 22 February 2019. The Tribunal agreed with the concession and determined that the First to Sixth Respondents, as stated above, are the correct respondents to the proceedings.

Findings in Fact

37. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.

38. The First Respondent was an unincorporated organisation and registered charity (charity number SC041444). The object of the First Respondent according to its Constitution was to *"promote and advance the Religious and Cultural education of Muslims according to the Ahle-Sunna-Wal Jama't Hanafi Brelvi school of thought in the city of Dunfermline and the surrounding area."* This was done principally through the operation of the Mosque and Islamic Centre in Dunfermline.

39. The Mosque and Islamic Centre are separate and have separate entrances, with the Mosque being downstairs and the Islamic Centre being upstairs. The Mosque is used solely for prayers and is a sacred place. The Islamic Centre is used for teaching, community events and meetings of the Dunfermline Community Ladies Group.

40. The Second, Third, Fourth, Fifth and Sixth Respondents (the **Individual Respondents**) formed the executive committee of the First Respondent during the claimants' employment. They held the position of Chairman, Treasurer, Vice Treasurer, Vice Chairman and Secretary respectively.

41. The First Claimant was born in Pakistan and his nationality is South African. The First Claimant's first languages are Punjabi and Urdu. He also speaks English and Arabic. He first started working as an Imam in 1997. He is a Hafiz of the Quran, meaning he has memorised the text in its entirety, and a Qari (qualified teacher).

42. The claimants and the Individual Respondents are Sunni Muslims and follow the denomination of Ahle-Sunna-Wal Jama't Hanafi Barelvi (the **Denomination**).

43. Like other Sunni Muslims, the followers of the Denomination base their beliefs on the Quran and Sunnah, but several beliefs and practices differentiate Hanafi Brelvi from other denominations. The Denomination is named so because the founder, Maulana Ahmed Raza who was born in 1856 and died

in 1921, in an Indian city named Baans-Barelvi. Maulana Ahmed Raza Barelvi was a follower of the classical Hanafi school of thought. Followers of the Denomination believe in the celebration of the birth of the Prophet Muhammad, with a public celebration of his birthday (a Mawlid), standing up and sending Blessings on the Prophet Muhammad and believing that the Prophet Muhammad physically made the night journey to Allah Almighty (the incident of Miraaj). They believe in sending Blessings (Salaam) to the Prophet before or after the call for prayer (Azaan). The Denomination practices dhikr.

44. In or around 60 days prior to 22 June 2012 the First Respondent advertised with the Job Centre, for a period of 60 days, the position of "IMAM WITH THE KNOWLEDGE OF URDU LANGUAGE". The advert stated:

'The main duties will be to lead the 5 daily Prayers, children's Arabic classes, Lead Friday (Jumah) prayers and Funeral Services, Taraweeh prayers during Ramadan. Religious guidance. The job is a very specialist post and cultural needs as well as Religious needs will have to be addressed by the Imam, it is not the kind of job that a person could possibly do without the proper understanding of the Urdu language and also the Arabic language which is used in prayers and Quran recitation. THE IMAM MUST BELONG TO THE DENOMINATION OF THE "AHLE SUNNAT WAL JAMAAT HANAFI BARELVI" SCHOOL OF THOUGHT"" (the **Job Description**)

45. No applications were received from a British citizen.

46. The Second Respondent spoke with a contact sometime after 22 June 2012 and the First Claimant's name was shared with him. There followed two telephone interviews with the First Claimant, one of which was conducted by the Second Respondent. At least part of the telephone interview between the First Claimant and the Second Respondent was conducted in English (a minimum of fifteen minutes) to allow the Second Respondent to assess the First Claimant's English-speaking abilities.

47. Following these telephone interviews, the First Claimant provided the First Respondent with a copy of his CV which included details of his BA and MA degrees from institutions in Pakistan. The First Claimant also provided evidence of his qualifications including certifications from The National Recognition Information Centre for the United Kingdom confirming the specific qualifications held by the First Claimant were deemed to be comparable to specific British qualifications.

48. Sometime thereafter, the First Claimant was invited to deliver a speech at the First Respondent's Mosque. The First Claimant delivered this speech in Urdu.

49. Subsequently, the First Respondent made an offer of employment to the First Claimant, which the First Claimant accepted. On 18 December 2012, the First Claimant moved to the UK and his employment commenced.

50. The First Claimant's role as Imam principally involved leading each of the five daily prayers and conducting children's classes from 5pm to 7pm, Monday to Friday inclusive. He was latterly paid £19,976.32 per annum, gross. This was paid in weekly intervals, on Friday of each week, in arrears. £100 was deducted from his wages each week, as rent for the accommodation provided to him by the First Respondent. He was entitled to 28 days' holiday each year, with the holiday year following the calendar year. His notice entitlement was one month.

51. The First Claimant was initially employed on a Tier 5 visa (religious worker) in the name of the First Respondent, commencing 1 December 2012 . Thereafter, he was employed on a Tier 2 visa (Minister of Religion), again in the name of the First Respondent, commencing 1 October 2013 and ending 30 September 2016. The First Claimant's employment continued on a Tier 2 visa until his termination of employment. The Job Description appeared on the Certificate of Sponsorship Details in respect of both visas.

52. The First Claimant reported to the Second and Third Respondents. The Third Respondent attended the Mosque for all prayers, every day, other than in exceptional circumstances. The Second Respondent generally only attended on a Friday.

53. The first year of the First Claimant's employment was effectively a trial period. He was engaged on a fixed term contract. The respondents were satisfied with the First Claimant's performance by the end of that period. They were aware that the First Claimant was not fluent in English, but were content that they were able to converse with him in English, which they were not able to do with their previous Imam.

54. Thereafter, the First Claimant was employed by the First Respondent on a fixed term contract from 1 October 2013 to 30 September 2016 (the **Second Contract**). The Second Contract was signed by both the First Claimant and the Second Respondent on 1 November 2013.

55. Clause 4.2 of the Second Contract stated:

"It is an essential condition of your engagement as Imam that you communicate with the congregation and students in English. You will use all reasonable endeavours to learn the English with a view being able to communicate proficiently and exclusively to the congregation and students. You will be subject to performance reviews with regard to this particular aspect. Should the Management Committee of the Centre decide at any time that your proficiency in the English language is lacking, it reserves the right to subject you to disciplinary proceedings in respect of your capability to carry out the functions of your role."

56. Appendix 1 to the Second Contract was titled 'Job Responsibilities' and lists three 'Overall Objectives' and six sub-headings under 'Key Responsibilities'. Appendix 2 was the First Respondent's 'Disciplinary Procedure'. Each contract of employment issued to the First Claimant had Appendices 1 and 2 attached.

57. Sometime after the First Claimant commenced employment with the First Respondent he received a further document titled 'Imam's duties'. It set out a further 11 duties.

58. From the commencement of his employment with the First Respondent, the First Claimant delivered the sermon on a Friday, prior to Jummah prayers, in Urdu. Following discussion with the Second Respondent, it was agreed that the First Claimant would deliver the first 20-25 minutes in Urdu, followed by 5-10 minutes in English. This proved difficult for the First Claimant and it was subsequently agreed that he could read the English section of the sermon from an ipad.

59. In January 2014 the Second Claimant, together with her children, joined the First Claimant in Dunfermline. The claimants, together with their children, moved in 119 Woodmill Road, Dunfermline, which was owned by the First Respondent. The address of the First Respondent and the First Claimant's place of work was 125 Woodmill Road, Dunfermline.

60. On 4 February 2015 the First Claimant received a written warning. As at the date of the First Claimant's dismissal, the written warning had expired.

61. At an engagement party on 22 November 2015 Saghir Ahmed, at that time a committee member of the First Respondent, and the First Claimant had a disagreement which was never resolved.

62. On 19 April 2016, the First Claimant visited his GP complaining of fatigue. It was noted that this *'coincides with a challenging prayer routine – late prayer at sunset 22:00 – often not getting to bed until 00:00 and rises for morning prayers at 04:00. 4 hours sleep at most. Struggles to sleep during the day – busy life – priest and children. No depression. Acknowledges busy stressful role. No physical symptoms other than over…No other symptoms on enquiry…Fatigue may well be related to lack of sleep…*'

63. On 17 April 2017 the Dunfermline Islamic Centre Limited (**DIC Ltd**) was incorporated. The officers were the Second to Sixth Respondents, plus one further individual. The Articles of Association confirmed that DIC Ltd had the same object as that of the First Respondent, as set out in its constitution.

64. In or around June or July 2017, IR sought permission for her organisation, Dust to Diamonds, to hold an event utilising the First Respondent's Islamic Centre for the attendees to stay overnight. The Second Respondent agreed to this, on behalf of the First Respondent. The event was for around 30 women, from both the community and England, who were invited to attend some or all of the planned events over the course of Friday 16, Saturday 17 and Sunday 18 August 2017. As part of this, on Saturday afternoon, there would be an event at Silversands beach, weather permitting. The intention was that the group would participate in prayers before leaving and immediately on their return. At the beach there would be poems, songs and recitals. The event was initially named a 'Beach Mawlid'.

65. When the First Claimant learned of the Beach Mawlid he was unhappy with the fact that it was to take place on the beach. He felt that a Mawlid, being a sacred event to celebrate the birth of the Prophet Muhammad, should only take place in the Mosque. The First Claimant and the Second Respondent discussed the matter. The Second Respondent stated to the First Claimant that there was nothing to prevent the event proceeding: the Second Respondent was aware that MH had discussed this matter with his father, a Mufti, who had no concerns in relation to this proceeding, and that MH and IR had attended many Beach Mawlids in the past. The Second Respondent indicated that he would not change his mind: he had already granted permission for the event to proceed and he was content for it to do so, notwithstanding the First Claimant's objections. He stated that he felt the First Claimant's views could be seen as extreme and that the First Claimant should stay on his own 'masala'. The First Claimant understood that this meant he should keep his opinions/advice to himself.

66. The Second Respondent did however agree that the event should be renamed. The Second Respondent discussed this with IR and the event was subsequently renamed 'the Dervish Retreat', as a result of the concerns raised by the First Claimant. In all material respects however, it remained unchanged from the event originally agreed between the Second Respondent and IR.

67. By letter dated 11 August 2017, OSCR confirmed to the Second Respondent, in his capacity as director of DIC Ltd, that on the basis of the information provided to them, DIC Ltd would pass the charity test and it would therefore be eligible, in principle, to be registered as a charitable company in Scotland. It was confirmed that OSCR would complete the decision-making process to enable DIC Ltd to be placed in the Scottish Charity Register and a charity number would be issued once specific information and documentation was provided to OSCR.

68. The Dervish Retreat took place from 16 – 18 August 2017 as planned. Whilst the First Claimant and the Second Respondent had disagreed about whether it should take place, they did not discuss the matter again and both moved on, without ill feeling.

69. On 1 September 2017 an Assistant Imam, Habibur Rahman Khan (the **Assistant Imam**) commenced employment with the First Respondent. The Assistant Imam was a fluent English speaker. He was born and educated in the UK. He was still a student and worked for the First Respondent on a part time basis. He was engaged as the executive committee of the First Respondent wanted to have a fluent English speaking Imam who could engage the younger members of the community. The Second Respondent recognised that the First Claimant would not reach a level of fluency in English to enable him to do so. He also wished the Mosque to cater for all members of the community and felt that delivering sermons in English would assist in doing so. The First Claimant and the Assistant Imam had a good working relationship. From the commencement of his employment he began

delivering the sermon before Friday prayer in English on a regular basis, generally on 3 out of every 4 occasions. Until this point, the First Claimant had delivered these, mainly in Urdu.

70. By letter dated 19 September 2017, OSCR confirmed to the Second Respondent, in his capacity as director of DIC Ltd, that DIC Ltd had been entered in the Scottish Charity Register that day and accordingly had charitable status from that point onwards. The letter also stated:

"Next Steps
This charity has been set up to replace [the First Respondent], SC041444. You have advised us that Dunfermline Islamic Centre, SC041444 intends to wind up and transfer the assets and liabilities to [DIC Ltd], SC047755. [The First Respondent], SC041444 should now apply to OSCR for consent to wind up."

71. On 1 October 2017 the First Claimant collapsed at home and was later admitted to Victoria Hospital suffering from pleurisy/pleuritic chest pain and atypical chest pain. He was discharged the following day and returned to the Mosque to lead prayers later that day. This was not related to the stress, anxiety or depression which the First Claimant subsequently experienced. He was not experiencing symptoms of those conditions at that time.

72. On 5 October 2017 the Second Claimant commenced employment with the First Respondent. Her ability to work in the UK was dependent upon her husband's visa. Her role with the First Respondent was to teach the children's classes. She worked from 5pm to 7pm, Monday to Friday. She was paid £100 gross per week in relation to this. The Second Claimant received a contract of employment that was incorrect in a number of material respects (for example start date, job title, duties, hours of work). Notwithstanding this, the Second Claimant and the Second Respondent signed the contract of employment on 5 October 2017. The contract of employment confirmed that the Second Claimant was entitled to one month's notice of the termination of

her employment and 28 days paid holiday per annum, with the holiday year following the calendar year. The contract of employment confirmed that holidays could not be carried over from one holiday year to the next.

73. On 2 November 2017 Saghir Ahmed posted a message on Facebook stating, among other things:

"*This is a public warning against the imam of Dunfermline Central Mosque…For the past two years there has been an ongoing issue within our mosque which the committee has constantly kept quiet so that the public can't find out…This imam cannot call himself an imam because he is a liar, a hypocrite and a very evil man.*

The fault lies also lies with the committee members who I have constantly complained to and they have done NOTHING about this matter. They have just tried to keep it hush hush to save them getting a bad reputation…

…we cannot read namaz behind such a man. This is simply because the committee want to turn a blind eye on this matter and keep turning the blame on me."

74. On a number of occasions in the period from 22 November 2015 to 4 November 2017, Saghir Ahmed publicly called the First Claimant a Shi'a Muslim. This was reported to the First Claimant.

75. By letter dated 4 November 2017 the Second Respondent, on behalf of the First Respondent, informed Saghir Ahmed of his dismissal as a committee member of the First Respondent. In his letter he referred to their *'various discussions regarding the Imam issue'* and the fact that the First Respondent's constitution clearly states that no member of the committee will cause friction or disharmony.

76. By letter dated 9 November 2017 Mrs Mareeha Javed, Saghir Ahmed's daughter, made a complaint to the Second Respondent about the First Claimant and provided two anonymous witness statements. This included allegations that the First Claimant had bullied and harassed children in his class and had, prior to June 2014, hit his own daughter during a class.

77. By letter dated 15 November 2017 the Second Respondent replied to Mr Ahmed's letter of 9th November 2017 stating:

"there have been numerous times that we have given you verbal warnings about your behaviour towards the Imam. You have made slanderous comments about the Imam that are totally wrong, offensive and totally unacceptable.

You have at various times accused Shah Sahib of being a Shia but have never provided any evidence to this effect.

At a recent wedding you attended…you insulted and slandered the Imam in front of various people who were present on your table and again accused him of not being a Syed and that you had evidence to prove this, you also said that the Imam has a "a dog in his heart".

A few weeks back on a Jumma you swore and slandered the Imam outside the Mosque…"

78. By letter dated 15 November 2017 the Second Respondent replied to Mareeha Javed's letter of 9th November 2017 stating,

"…I would first ask you why it has taken you 3 years to make a complaint about an issue that was witnesses by your Sisters so long ago?

The timing of this complaint, coinciding with your Fathers dismissal from the committee and the fact that the witnesses are your own sisters questions the validity and motivation of your accusations."

79. The matters concerning both Saghir Ahmed and Mareeha Javed were considered resolved and at an end by the Second Respondent as at 15 November 2017. In relation to both matters, the respondents had adopted an approach which was supportive of the First Claimant. It appeared that there was a good working relationship between the First Claimant, the First Respondent and the First Respondent's executive committee at that stage.

80. On 25 January 2018 Derek O'Rourke passed away. He was the father of Aysha Claire O'Rourke, a revert and attendee of the First Respondent. Mr O'Rourke was a non-Muslim. Sometime after his passing, a friend of Aysha Claire O'Rourke and member of the community posted on social media that, *"So what [Ms O'Rourke] is going to do instead for is she is going to do a khatam some time prob around march where we can get together for her dad aswell."* A khatam is a Muslim blessing for the deceased. A khatam cannot be held for a non-Muslim. When the social media post came to the attention of the First Claimant and the Second Respondent, both stated a khatam could not be held for Derek O'Rourke. The Second Respondent agreed however that the Islamic Centre (not the Mosque) could be used to hold a gathering for the female community to show support for Aysha Claire O'Rourke. A khatam was not held. The Second Claimant was invited to attend the gathering, but did not do so.

81. KH had started attending the Dunfermline Mosque regularly in September/October 2017. Shortly after doing so, he asked how he could become a member of the First Respondent's management committee, as he wished to become more involved in the local community through the Mosque. A number of months later, he was provided with forms to become a member of the First Respondent, but no information as to how to join the committee. On researching he discovered that the current members of the committee had

been in place for around 10 years and elections had not been held in that period.

82. On 16 March 2018 Mr Shamas Uddin, a member of the First Respondent and leader of the Dunfermline Older Peoples Association, and IC spoke to the Second Respondent and requested that the sermon before Friday prayers be delivered in Urdu rather than English. He said that he, and a number of other Elders, were not enjoying the English sermons and preferred it when the First Claimant delivered these in Urdu. The Second Respondent informed them that he would discuss this with the other members of the committee, but there may be a delay in providing the response, as some were in Pakistan at the time.

83. On 23 March 2018 KH and the Second Respondent spoke in the prayer hall of the Mosque about the sermon before Friday prayers being delivered in Urdu. KH felt that the wishes of the elders should be respected and that the majority of the attendees at Jummah prayers were Urdu speakers. He stated that the Assistant Imam was not fully qualified and was inexperienced. The Second Respondent explained that this was not correct and that he felt it was appropriate for the sermon to be in English to ensure that younger members of the community and those who were not Pakistani would be able to understand also. The meeting ended acrimoniously.

84. KH wrote to the Second Respondent and the other Individual Respondents on 25 March 2018. His 5 page letter referred to the events of 23 March 2018 and the request for the sermon at Jummah prayers to be delivered in Urdu. He also raised his concerns about the constitution of the committee, the lack of elections and lack of transparency in relation to the committee's decisions and decision making process. He requested that a meeting be held at which these concerns be addressed.

85. KH also sent a copy of his letter to the respondents to the elders and other members of the community, under the cover of a letter of the same date

addressed to 'Fellow Muslim Elders, Brothers, Sisters, sons and Daughters'. At the start of the letter he stated that *'I…have taken it upon myself to approach our mosque committee members with issues that have been surfacing and causing ill feelings for sometimes amongst the users.'*

86. By letter of 26 March 2018 the Second Respondent set out in writing for Shamas Uddin his response to the request made on 16 March 2018 and 23 March 2018. It included the feedback from the committee of the First Respondent which ran to some 23 points, explaining why the committee felt that it was appropriate to continue delivering the sermon in English.

87. KH sent a further letter to the Individual Respondents on 1 April 2018. It ran to 13 pages. KH highlighted that he had been provided with a copy of the letter dated 26 March 2018 addressed to Shamas Uddin and responded, in detail, to each of the points raised in that letter. Within the letter KH criticised the Second Respondent and the operation of the First Respondent by the committee, referring to their actions as *'brainwashing, dictatorship and intimidating behaviour'.*

88. By letter dated 2 April 2018 Shamas Uddin replied to the Second Respondent's letter of 26 March 2018 and repeated the request for the sermon before Friday prayers to be in Urdu, on the grounds that:

"It has come to my attention lately that the English sermons are causing people some difficulty. Over the last few weeks, I have myself experienced a lesser enjoyment of hearing the Jummah sermon in English. With this in mind, the vast majority who attend the sermon from start to finish or attend as early as possible, are mainly the elderly Pakistani Muslims, many of who seem to be attending later and later each week. My point of speaking to you last Friday was simply to request, if possible, that we have the Jummah speech in Urdu, as the majority of the people attending this are senior citizens and feel more at ease having this done in Urdu.'

He suggested a number of options as a compromise, including that the first 30 minutes be conducted in Urdu with the next 30 minutes being conducted in English.

89. By letter dated 6 April 2018 the Second Respondent responded to KH. The letter extended to 17 pages. Within the letter he repeatedly asked KH whether he alone was responsible for his actions and behaviour. For example:

"were you coerced or instructed to behave in this manner and make wild accusations? Were you misinformed by someone else about how our committee operates and how decisions are made? If that be the case we can certainly overlook your behaviour as you have clearly been manipulated by another individual/s for their agenda".

90. The Second Respondent also stated in his letter:

"…in the UK the government has also recommended (which could soon become mandatory) that all mosques in the UK must have a British born fluent English speaking Imam, which we have complied with and correctly recognised that the younger generation need a British born Imam to tackle cultural issues, we are not here to create a Pakistani mosque in a Scottish city…

Urdu is the language of Pakistan as a country and English is the language of Britain as a country…we DO NOT reside in Pakistan. We reside in the UK!...

A Muslim is a Muslim first and as a British Muslim we speak English…Another reason for our decision is looking to the future as we have not only the 2nd generation but 3rd and 4th generation born British Muslims who will require English speaking Imam and Takreer so they too gain the benefits of the teachings of our beloved prophet (PBUH)…

We also have many future projects on the go which include getting more young Muslims to come to the mosque and Urdu Takreer is an obstruction to many so we have to consider these facts. Cater to a few Elders making unreasonable selfish demands or make decisions based on what serves the entire community long term?...

We are all free to make choices in life, where we live and what we feel is a good quality of life, if you don't want British born children who will speak English as a first language then you have the right to choose to not live here…

…we have visited and consulted many mosques across the UK and they also under government guidance, now have English speaking Imams delivering takreer in English. The fact it could be mandatory to have a British born English speaking Imam is why many mosques have also switched to English sermons…

To clarify your insult further, if we compare like for like qualification as a British standard then the English speaking Imam is actually more qualified as his qualifications are recognised within the UK. The Urdu speaking Imams qualifications would be not recognised by British standards and many agree are not even worth the paper they are written on, here you have done us a favour in highlighting that we need to ask the Urdu speaking Imam to gain further British qualifications and to ask if he would be willing to attend University and gain a British degree…

To also make you aware the Urdu speaking Imam was instructed many times to learn English and to learn the skills required to meet his contractual obligations and remit which he has failed at meeting and yet you slander the English speaking Imam? Very strange and curious behaviour…

We cannot aim for a future if we do not embrace new technology usage and how the world works today; he is also currently doing a degree in Islamic Studies at Edinburgh University and shall continue to enhance his studies

long into the future and from that perspective this a great investment for us and our children and grandchildren should he remain Imam at the Mosque…

English wins every time as we reside in the UK and not Pakistan…

Is your request that only Pakistanis should be catered for?...

We have many ongoing and future projects planned and in carrying out our internal review of what work needs done and how we prioritise and become even more efficient and effective we concluded we need to recruit and bring in far more talented young people with specific skillsets to better serve the community and Mosque. We need educated, talented and skilled people".

91. Notwithstanding the terms of his letter, on 6 April 2018, the Second Respondent announced that the sermon prior to Friday prayers would be 15 minutes in Urdu (conducted by the First Claimant) and 15 minutes in English (conducted by the Assistant Imam). This effectively resolved the concerns which had been raised in relation to the sermons being principally conducted in English.

92. The First Claimant was not involved in the meetings about the language of the sermons, or in drafting any of the correspondence in relation to this.

93. During April 2018, KH shared with the First Claimant the content of the letter from the Second Respondent dated 6 April 2018, stating to him *'I have respect for you, but you don't know what they are saying about you in letters'.*

94. The First Claimant was extremely upset by the terms of the Second Respondent's letter. He raised this with the Second Respondent, stating that he felt insulted. The Second Respondent apologised to him, explained that he had been irritated by the terms of the letter from KH and stated that he felt that KH was trying to cause a division between them.

95. On 30 April 2018, the First Claimant attended his GP and raised with them, for the first time, that he felt that he was suffering from work related stress. His GP recorded as follows *'Significant work stress. Local Imam, challenging situation with local community leadership, feels unsupported and used by them for their own gain reportedly unrespected. On work permit – has apparently been threatened they will cancel contract and he will lose permit. Feels frustrated. Long chat. Stress causing neck pain. Advised by friend to seek acupuncture.'* Other than neck pain, no particular symptoms of work related stress were recorded in the First Claimant's medical records. The First Claimant was referred for acupuncture and this took place three days later.

96. By letter dated 1 May 2018, HMRC informed DIC Ltd of its PAYE reference number.

97. On a date shortly before 5 May 2018, the First Claimant stated to the Second Respondent that a child in the Quran class had sworn at the Second Claimant. The child was the Third Respondent's grandson. The Second Respondent informed the First Claimant that this was an extremely sensitive situation, given that the child's mother cleaned the mosque and his grandfather was the Treasurer and a key committee member.

98. On 5 May 2018 the child's mother, Tara Sharif, sent a WhatsApp message to the Second Claimant stating that the Second Claimant had lied about the incident and indicated that she may report matters to the police.

99. On or around 5 May 2018 the Second Claimant replied by text message to the child's mothers, stating that she had not said anything untrue and that she perceived the message as an attempt to intimidate her and as a threat.

100. The Second Respondent investigated the alleged conduct of the Third Respondent's grandson by speaking to the boy's parents, who were adamant that he had not sworn at the Second Claimant and reviewing the CCTV footage, which had no audio. He did not however speak to the Second

Claimant about what had occurred and did not inform the First or Second Claimant that he had conducted any sort of investigation, or the outcome of this, which was that the allegation could not be validated.

101. On 8 May 2018 a meeting took place in the Mosque. The Second, Third and Sixth Respondents were present, along with the First Claimant, KH, IC, Shamas Uddin, Saeed Akbar and his father, Ali Akbar (both members of the First Respondent). The subject matter of the meeting was a comment allegedly made by the First Claimant concerning Saeed Akbar, which the First Claimant denied making. During the meeting, the First Claimant continued to deny that he had made the comment, as alleged, and refused to apologise for doing so. He swore on the Quran that he had not done so. During the course of the meeting the First Claimant disclosed personal information concerning the Third Respondent's marriage to those present. He stated he had been told this information by Ali Akbar. The Second and Third Respondents responded to the disclosure of this information in an angry manner, indicating that the First Claimant should not have done so. The meeting ended with the First Claimant apologising to Mr Akbar on the basis he was the same age as the First Claimant's father and Islam requires respect to be shown to elders.

102. The Third Respondent was irate and incandescent that his personal information had been disclosed by the First Claimant.

103. On 8 May 2018 Mr Saeed Akbar presented to the Second Respondent a written complaint from himself and his father about the First Claimant. He felt that the dispute had not been resolved by the meeting which had taken place earlier that day. He also referenced the First Claimant breaching confidentiality. He stated within the letter that he had never attended any committee meetings, nor had he made any mention of being interested in serving on the committee.

104. On 10 May 2018 the Third Respondent presented to the Second Respondent a written complaint about the First Claimant. It stated

"I would like to place on record my profound disappointment with our Imam… following the events of 8th May but also due to events over the past couple of years. Despite several verbal and written warning spanning a very lengthy period of time, [the First Claimant's] behaviour continues to fall well below what you would reasonably expect of an individual holding the prestigious role of Imam in a major mosque…I firmly believe that the time for decisiveness action has arrived, and it is incumbent upon us as the stewards of this institution, the committee members of Dunfermline Islamic Centre, to show courage and conviction in our beliefs. I believe that [the First Claimant's] position as Imam is now untenable…On the 8th of May [the First Claimant], in order to vilify a highly respected and pillar of the community, Mr Ali Akbar, referred to a very personal and highly sensitive matter that was shared with [the First Claimant] in the upmost confidence. This absolute betrayal of trust was motivated by a desire to shroud the matter at hand, which was an accusation of dishonesty on the part of [the First Claimant]. Frankly, by his attempt at deflection in front of several witnesses, [the First Claimant] has brought the Dunfermline Islamic Centre into disrepute…For the future well-being of our community, in order to avoid unhappiness and discord, I urge you and the committee to carefully consider the evidence before you, and do the right thing, which is to dismiss [the First Claimant] at the earliest opportunity, and in accordance with his employment contract"

105. On or prior to 11 May 2018 there took place an emergency committee meeting of the First Respondent, to discuss the First Claimant's actions in publicly disclosing personal information in relation to the Third Respondent's marriage. The Third Respondent remained extremely angry at the situation, indicating to the committee that this amounted to gross misconduct and the First Claimant must be dismissed as a result. The decision was taken to suspend the First Claimant due to his breach of confidence and invite him to a disciplinary hearing.

106. On 11 May 2018 the First Claimant was orally informed that he was suspended from work due to his breach of confidence. At the same time he was informed that someone had made a complaint to the police that the First Claimant hit his daughter in the Mosque in 2015 and the police and a social worker were waiting to speak to the First Claimant.

107. On or around 11 May 2018, the Second Respondent posted on the Mosque's WhatsApp group that the First Claimant had been suspended.

108. On or around 13 May 2018 KH started a petition which he discussed with members of the community, requesting that they become signatories to the petition. At least 65 community members did so in the period from 13 to 31 May 2018 inclusive. The petition was entitled *'Save our Imam and Save our Mosque'*. It stated that the signatories fully supported the First Claimant in his role as Imam and called for him to be reinstated. It also called for the immediate termination of all committee members, the formation of a new interim committee and elections for new committee members within three months. The Individual Respondents became aware of the existence of the petition, and the fact that KH was seeking to garner support for the First Claimant from the community, on 13 or 14 May 2018. The petition was however never presented to them.

109. By letter dated 14 May 2018 the First Claimant was informed of the terms of his suspension in writing. He was informed that he was suspended on full pay, pending the outcome of an investigation into allegations of misconduct at work. The letter also stated *'I would also like to confirm that you are not permitted, at this stage, to contact any of the Mosque's employees, or committee members save to liaise with us in respect of this process. You are also not permitted to discuss your suspension, the terms or your suspension or any details of the investigation with any employees or member who attends the Mosque. You are also not permitted to post any information regarding the above on any social media platform. Should you breach the terms of your*

paid suspension as outlined in this letter, this may lead to formal disciplinary action.'

110. The First Claimant consulted his GP again on 14 May 2018 and his medical records reflect a diagnosis of *'ongoing significant work related stress'*. It was noted that sleep, appetite and concentration were all poor and that the First Claimant was tearful during the consultation. The First Claimant explained to his GP that he was very anxious about the situation at work, as his visa was due to expire in September 2018 and he could apply for indefinite leave to remain in the UK at that point. If, however, he became unemployed prior to then, he would require to leave the country.

111. The First Claimant attended Jummah prayers on 18 May 2018 at the Dunfermline Mosque. He arrived shortly before Jummah prayers commenced, stood at the back of the hall throughout and left immediately after.

112. On 18 May 2018 KH and IC approached the Second Respondent before Jummah prayers and asked to address the congregation. The request was refused. Matters escalated. The police were called. After Jummah prayers everyone was asked to move upstairs to the Islamic Centre, where the police facilitated a meeting. During the meeting, KH called for the First Claimant to be reinstated. The Second Respondent disclosed to those present that the First Claimant had a police investigation against him, but stated that he would be reinstated if he was cleared in relation to that.

113. By letter dated 22 May 2018 the First Respondent invited the First Claimant to attend a disciplinary hearing on 24 May 2018 to consider 6 allegations of alleged misconduct, as follows:

    a. *'It is alleged that your conduct, in carrying out your duties Imam to Dunfermline Islamic Centre is in breach of the Centre's Disciplinary Policy and Child and Vulnerable Adult Protection Policy. As such, it is alleged that you have verbally abused children when teaching the*

children, the Qur'an, causing the children to become extremely upset and distressed, when under your care;

b. *It is alleged that you have failed to represent the Centre in a professional and ethical manner at all times, by allegedly promoting a divisive culture within the Centre, whereby non-Pakistani Muslims feel discriminated against, shut out and excluded from the Centre. It is alleged that you have failed to acknowledge the diverse congregation of the Centre and as such, allegedly failed to promote and maintain and "Model Mosque and Islamic Centre"*

c. *It is alleged that you are preaching extremist Muslim views to the Centre's worshippers, which are in direct conflict with the inclusive culture the Centre stands for, in the Dunfermline community;*

d. *It is alleged that you have allegedly failed to retain the confidential and personal information shared by worshippers on the Centre, to you as their Imam, by highlighting personal and confidential matters with the congregation;*

e. *It is alleged, on 18th May 2018 you breached the terms of your suspension, by attending the Mosque with Khalid Hussein and others and allegedly caused a deliberate disruption to prayers, centred around your suspension from your position as Imam. It is alleged that your contact at the Mosque on the 18th May 2018 was allegedly malicious to the Mosque, worshippers and the junior Imam leading prayers;*

f. *It is alleged that you have breached the term of mutual trust and confidence that exist between you and the employer in consequence of the foregoing allegations.'*

114. Enclosed with the invite to the disciplinary hearing were the following documents, which it was stated would be considered at the disciplinary hearing:

a. A copy of the First Claimant's contract of employment including all appendices (Job Responsibilities, Disciplinary Procedure, Grievance Procedure & Child and Vulnerable Adult Protection Policy);
b. The letter dated 9 November 2017 from Mareeha Javed to the Second Respondent;
c. The letter dated 8 May 2018 from Saeed Akbar to the Second Respondent;
d. The letter dated 10 May 2018 from the Third Respondent to the Second Respondent;
e. A letter dated 11 May 2018 from Ms Ruksana Sultan Lloyd (the Sixth Respondent's sister) addressed 'to whom it may concern' in which she raises concerns about the First Claimant;
f. A further letter from Saeed Akbar to the Second Respondent, dated 19 May 2018, raising further concerns about the First Claimant;
g. A letter dated 19 May 2018 from Mr Niaz Mohammad (the Second Respondent's brother) to the Second Respondent and the First Respondent's committee members in which he raises concerns about the First Claimant;
h. A letter dated 20 May 2018 from Aysha Claire O'Rourke addressed 'to whom it may concern' raising concerns about the First Claimant; and
i. A letter dated 20 May 2018 Mr Asif Tariq (Vice Secretary of the First Respondent) addressed 'to whom it may concern' raising concerns about the First Claimant.

115. The letters of complaint at parts e-i above were requested by the Second respondent to strengthen the case against the First Claimant. The individuals who supplied them were close friends or family of the committee, or committee members themselves. The allegations within the letters had not been investigated in any way and, in a number of instances, they amounted simply to assertions, rather than factual allegations.

116. The First Claimant consulted his GP immediately following receipt of the letter dated 22 May 2018 from the First Respondent. His medical records reflect a

diagnosis of '*work related stress/anxiety/depression'* and state that the First Claimant reported symptoms of *'not sleeping, poor appetite and unable to conc. No DSH/suicide. Not wishing to interact preferring to be alone. Tearful. Home life fine – lives with wife and 4 children – all supportive but sad as feels making them sad. Feels unable to continue with duties at Mosque and req sick note tearful throughout.'* He was certified as unfit to work for 4 weeks and prescribed medication.

117. The First Claimant responded to the First Respondent's letter inviting him to a disciplinary hearing on the same day. The First Claimant raised concerns at the treatment he had received from the committee members, their families and some Mosque users. He stated that he had depression and that his admission to hospital in October 2017 had been anxiety related. He stated that he was not fit to attend the disciplinary hearing due to occupational stress, depression and anxiety and enclosed the statement of fitness to work from his GP, certifying him as unfit to work from 22 May to 19 June 2018, as a result of work related stress and depression. He stated that he would attend the disciplinary hearing when his health was stable and he was able to do so.

118. The Second Respondent sought advice from an HR consultant immediately following receipt of the letter from the First Claimant. He was informed that it was not appropriate to proceed with the disciplinary hearing given the First Claimant's ill health and instructed that the First Respondent should wait until the First Claimant's health improved, before proceeding with the disciplinary hearing.

119. On 23 May 2018 the Second Respondent completed and submitted the UK Visas & Immigration 'Sponsor Change of Circumstances – Submission Sheet'. The Submission Sheet requires the 'type of change' to be selected along with the category of 'supporting evidence' being submitted in support of the type of change. Options for the 'type of change' on the Submission Sheet included a category entitled 'merger/de-merger/take-over/acquisition/ sale of business' within which there is an option to select 'evidence of TUPE

transfer or similar provisions, including full details of all sponsored migrants transferring'. Another option for the 'type of change' was 'surrender whole licence'. If this is selected the person completing the Submission Sheet is directed that they should provide the 'reason(s) for surrender or dormancy'. The Second Respondent completed the form indicating the 'type of change' as 'surrender whole licence'. The reason for surrender of licence was stated to be 'no longer wish to sponsor non-EEA migrants.' By completing the Submission Sheet in this manner, the First Respondent's Sponsor Licence, enabling the First Respondent to employ the First Claimant, and consequently the Second Claimant also, was surrendered with immediate effect.

120. On 24 May 2018 the 'DCM Ladies' social media group released CCTV footage of the First Claimant in the Mosque. This had been provided to them by the Second Respondent, in an attempt to discredit the First Claimant. This was due to the fact that the Second Respondent was aware that KH had been seeking to garner support for the First Claimant from the community, for example by way of the petition he organised.

121. On 25 May 2018, again in an attempt to discredit the First Claimant, the Second Respondent sent the same CCTV footage of the First Claimant to Bajo Sumaira M stating:

"This is the Imam roasting some senior namazee last year for which he received a final warning. It's just to let you see a side of him that we have seen too often."

The Second Respondent felt this was warranted to try to address the division which was now present in the community in relation to the suspension of the First Claimant and seek to justify the respondents' position.

122. On 1 June 2018, P45 forms for the First Claimant and Second Claimant were processed and submitted to HMRC, confirming that their employment with the First Respondent had terminated on 23 May 2018.

123. By letter dated 1 June 2018 the Ramsay Partnership, on behalf of the First Respondent, invited the First Claimant to a hearing on 6 June 2018, to be chaired by the Second Respondent. The letter stated that the purpose of the hearing was to *"discuss the possible termination of [the First Claimant's] employment due to the fact that the [First Respondent] surrendered its Sponsorship Licence on 23 May 2018 (please see attached evidence of its submission in this regard). It is a criminal offence for an employer to employ a person who is subject to immigration control and who is not legally entitled to work in the United Kingdom…You should be aware that your employment may be terminated in consequence of the licence having been surrendered."*

124. Also on 1 June 2018, the Second Respondent wrote to OSCR, requesting permission to wind up the First Respondent, following their correspondence to him which was sent over 8 months earlier, on 19 September 2017.

125. The First Claimant was in Bristol staying with a Mufti on the day the letter of 1 June 2018 was delivered to his home address. This was on or around 7 June 2018. Both claimants' P45s were delivered at the same time. The correspondence was opened by the Second Claimant, who took pictures of the correspondence and sent them to her husband. Upon receipt of the letter, the First Claimant telephoned the Second Respondent. He was informed that the sponsorship licence had been surrendered as the executive committee had taken the decision that they no longer wished to employ him as Imam. He asked for the decision to be reconsidered and explained that he only had three months left before he could apply for permanent residence in the UK. He asked to meet with the executive committee to discuss matters with them. The Second Respondent stated that he would discuss matters with the committee and, if they were willing to meet with him, he would let the First Claimant know. In addition, the Mufti with spoke with the Second Respondent on the telephone. He also asked that the decision be reconsidered. The

Second Respondent stated that this was not possible, as the First Respondent had ceased trading on 1 June 2018. That was not however in fact the case. The First Respondent was still trading at that point.

126. The First Claimant did not hear back from the Second Respondent in relation to his request that the executive committee meet with him.

127. The First Claimant was underpaid the sum of £1,100 in the period from March to May 2018. The First Claimant did not receive any notice pay on the termination of his employment. He was entitled to 5 weeks' notice. His weekly pay at that time was £384.16 gross/£362.39 net.

128. The Second Claimant received one week's notice pay on the termination of her employment. She was entitled to one month's notice under her contract of employment. She had not taken any annual leave during her employment, but received no holiday pay on the termination of her employment. Her contract of employment confirmed that she had an entitlement to 28 days' holiday per annum, with the holiday year following the calendar year. It also stated that holidays could not be carried over from one year to the next. There were 20.5 weeks in period from 1 January to 23 May 2018. She accrued an entitlement to 11 days'/2.2 weeks' holiday in that period. Her weekly pay was £100.

129. By letter dated 21 June 2018 OSCR replied to the Second Respondent's request of 1 June 2018 to wind/up dissolve the First Respondent. The outcome of the request was:

"This consent is subject to the following conditions:

The Office of the Scottish Charity Regulator (OSCR) gives consent to your proposal to wind up or dissolve [The First Respondent] (SC041444) and transfer the assets and liabilities to [DIC Ltd], SC047755.

What you should do next

- *Notify OSCR within three months of the wind up/dissolution being completed. The charity will not be removed from the Register, and will remain accountable to OSCR, until it notifies OSCR that the wind-up/dissolution has been completed.*
- *Complete the attached Appendix 1 declaration and send (or e-mail) it to OSCR and provide the evidence that all assets and liabilities have been transferred from this charity to [DIC Ltd], SC047755 as follows…*

How will incorporation be presented in the financial accounts?

Under new accounting requirements there is no need to prepare two separate sets of accounts when changing to a SCIO…allows merger accounting to be used. This means that the charity prepares the accounts to their usual year end date and the transactions for the unincorporated charity and the SCIO are 'merged' together to produce one set of accounts that show the transactions for both the old and new charities throughout the accounting period".

130. On 30 June 2018 a meeting of the Ladies Group took place at the First Respondent's Islamic Centre. This was arranged by the Third Respondent's wife, who was also irate at the First Claimant publicly disclosing information in relation to matters involving her marriage, during the meeting on 8 May 2018. The Second Claimant was in attendance. The CCTV footage of the meeting on 8 May 2018 was shown during the meeting and copies of the First Claimant's expired written warning, dated 4 February 2015, were circulated to those present. This was done in an attempt to discredit the First Claimant. The Second Respondent set up the laptop for the Ladies Group meeting on 30 June 2018, he provided Mrs Sharif with the CCTV footage from the meeting on 8 May 2018 and provided his wife with the First Claimant's expired written warning. The written warning was also subsequently shared on social media on 23 July 2018.

131. On/around 27 July 2018, the First Claimant was informed that no criminal proceedings would be brought against him in relation to the allegation which was made to the police on/around the time of his suspension.

132. On 10 August 2018 there was a meeting of DIC Ltd at the Mosque. In attendance were the Individual Respondents. Mr Mohammed Miah, who was appointed as director of DIC Ltd on 6 August 2018, was not in attendance. The Second Respondent reported that:

"[the First Respondent] would soon be getting dissolved as OSCR had given permission for this to go ahead…[DIC Ltd] has now taken over from the previous organisation. The properties… had all been transferred over and registered to [DIC Ltd] on 18/07/18…all other Assets & Liabilities have also been transferred over to [DIC Ltd]. All funds in [the First Respondent] have been transferred over to the Bank of Scotland, [DIC Ltd] bank account on 08/08/18 and the old Clydesdale Bank account has been closed."

133. The employment of the First Respondent's only remaining employee, the Assistant Imam, had been transferred to DIC Ltd by this point.

134. On 9 September 2018, the claimants were informed that the no further social work involvement was required following the child protection complaint made on/around the time of the First Claimant's suspension.

135. On 16 June 2019 Aysha Claire O'Rourke put a post on her Facebook page in relation to the claimants' daughter and an incident which had happened at her school. That prompted a discussion via comments on Facebook in relation to the post. The comments were abusive and derogatory towards the claimants and their family. The individuals who participated in the discussion were not employees or committee members of the First Respondent.

136. DIC Ltd appointed a new Imam of the Dunfermline Mosque in June 2019. He was born in Germany and educated in Pakistan. He speaks Urdu and English. The Assistant Imam's fixed term contract ended in October 2019.

137. The First Claimant has not been able to undertake any paid employment since the termination of his employment with the First Respondent. UK Visas and Immigration have indicated that they wish to know of the outcome of these proceedings, before making a decision on whether to grant a further visa for the First Claimant. He has however been offered a position, which he will take up as soon as he is permitted to do so.

138. The Second Claimant, whose ability to work in the UK is determined by her husband's ability to do so, has similarly not been able to undertake any paid employment.

139. The claimants have no entitlement to, and have not received, any benefits.

140. The First Claimant has developed depression and PTSD symptoms related to his employment, its termination and his subsequent inability to undertake paid employment. He remains under the care of his GP and continues to take medication. He had a heart attack on 13 August 2020, but has recovered from that and would be able to undertake work.

141. The claimants and their 4 children were evicted from the property which they occupied, which had belonged to the First Respondent, in September 2019.

Claimants' submissions

142. Ms Reynolds, for the claimants, helpfully lodged a written submission. This extended to 23 pages.

143. She stated that the First Claimant fell into three specified racial groups as follows

a. Non-British nationality (not British born and not a British citizen);
b. Pakistani national origin; and
c. Ethnic origin as an Ahle-Sunna-Wal Jama't Hanafi Barelvi Muslim.

144. She relied upon the cases ***Orphanos v Queen Mary College*** 1985 IRLR 349, HL and ***Mandla and anor v Dowell Lee and ors*** [1983] ICR 385 in relation to this.

145. She stated that the First Claimant was subjected to direct discrimination because of his race. The case of ***Watt (formerly Carter) v Ahsan*** [2007] UKHL 51 was relied upon in support of her position that, as no appropriate real comparator can be identified, the Tribunal could consider the treatment of the Assistant Imam to infer how a hypothetical comparator would have been treated. Each assertion of less favourable treatment on the grounds of race was addressed. It was submitted that the respondents did not have non-discriminatory motives for their actions and inferences should be drawn from issues such as the concerns raised by the First Claimant in relation to the Beach Mawlid, the blessing for a non-Muslim, the engagement of a British-born Assistant Imam who could engage the youth and deliver sermons in English and the respondents belief that the First Claimant was working with KH against the interests of the Mosque.

146. She stated that the First Claimant had a disability, namely stress, anxiety and depression and was subjected to direct discrimination because of this. The respondents knew that the First Claimant was a disabled person at all material times. In the alternative, the respondents knew or ought to have known from 22 May 2018, when the First Claimant provided a fit note stating that he was unable to work due to anxiety and depression. Again, in the absence of an appropriate real comparator, the Tribunal could consider the treatment of the Assistant Imam to infer how a hypothetical comparator would have been treated. Each assertion of less favourable treatment on the grounds of disability was addressed. It was submitted that the respondents did not have non-discriminatory motives for their actions.

147. In relation to the claim of harassment on the grounds of religion and belief, the First Claimant is a Sunni Muslim who follows the denomination of Ahle-Sunna-Wal Jama't Hanafi Barelvi. This is his religion. It was suggested that the First

Claimant was recognised as having a conservative view of his religion and this should be assessed as a separate religious belief. Each assertion of harassment related to religion was addressed. It was submitted that inferences should be drawn from issues such as the concerns raised by the First Claimant in relation to the Beach Mawlid, the blessing for a non-Muslim, the engagement of a British-born Assistant Imam who could engage the youth and deliver sermons in English and the respondents belief that the First Claimant was working with KH against the interests of the Mosque.

148. It was submitted that the dismissal of the claimants amounted to direct discrimination on the grounds of race and/or disability. In the alternative, the dismissal was unfair: the reason for the First Claimant's dismissal was not that the respondents were not permitted to employ the First Claimant, as a result of the surrender of the First Respondent's sponsorship licence, but rather it was because the respondents did not wish to employ the First Claimant and therefore took the opportunity to dismiss him in a manner that they believed was easier and quicker than dealing with a disciplinary hearing and the First Claimant's disability. Alternatively, it was due to undue pressure from the First Respondent's committee members and/or third parties. If the First Claimant was dismissed for SOSR, it was substantively and procedurally unfair.

149. The Second Claimant was discriminated against on the grounds of her husband's race and disability. Each assertion of less favourable treatment on the grounds of race was addressed.

150. Within the written submission was a list of matters which the claimants asserted did not appear to be disputed by the respondents. This was accepted by the respondents, subject to two minor points.

Respondents' submissions

151. Mr Khan for the respondents also helpfully lodged a written submission. This extended to 44 pages.

152. He submitted that the Tribunal should disregard the First Claimant's evidence as he stated it was given dishonestly and that he was obstructive, evasive and

obfuscatory. He stated that the evidence led by the respondents should be preferred.

153. The First Claimant was dismissed due to a genuine belief that he was not entitled to work in the UK because the sponsorship licence attached to the First Respondent had been surrendered. This was a potentially fair reason for dismissal, namely some other substantial reason. The respondents acted reasonably in dismissing the claimant for that reason. The decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt. It was accepted by the respondents that the Second Respondent's understanding that the First Claimant's employment could not be transferred to DIC Ltd was in fact not correct. Notwithstanding this, given that his belief was genuinely held at the time, this could still amount to a substantial reason justifying dismissal. The cases of ***Bouchaala v Trusthouse Forte Hotels Ltd*** [1980] IRLR 382 and ***Klusova v London Borough of Hounslow*** [2007] EWCA Civ 1127 were referred to.

154. The majority of the discrimination claims brought are time-barred. The timing of each alleged incident was addressed. Any incidents which were established were not linked. They were isolated and unconnected acts by different people, in different places, over a period of time. There is no basis upon which it could be said to be just and equitable to extend time.

155. The respondents accepted that the First Claimant had the protected characteristics of race and religion, but not that he was a disabled person. In relation to disability, the First Claimant did not meet the four requirements contained in section 6 EqA at the time of the alleged discriminatory acts and the respondents had no knowledge of any medical condition which could amount to a disability. ***IPC Media Ltd v Millar*** [2013] IRLR 707 was referred to. No prima facie case of discrimination could arise unless it is shown that the Second Respondent knew about the First Claimant's history of ill-health: he could not be influenced (consciously or unconsciously) by something of which he was unaware.

156. The respondents denied that they had treated the claimants less favourably as a result of the First Claimant's race or disability. It was submitted that the claimants have not proved sufficient facts to shift the burden of proof. The cases of ***Efobi v Royal Mail Group Ltd*** [2019] EWCA Civ 18, ***Igen v Wong*** [2005] ICR 9311, ***Madarassy v Nomura International plc*** [2007] ICR 867 and ***Laing v Manchester City Council*** [2006] ICR 1519 were referred to. Each alleged act of direct discrimination was addressed in relation to this.

157. A decision can be tainted by discrimination, but not amount to direct discrimination because of a protected characteristic, where the protected characteristic is established as a reason for less favourable treatment, but not as one that had a significant influence on the outcome (***Swiggs & Others v Nagarajan*** 1999 UKHL 36). In relation to each of the alleged acts of direct discrimination because of race/disability, there is a genuine explanation which is unrelated to race. In the alternative, a reason linked to race/disability does not appear to have been the sole reason. Each alleged act of direct discrimination was addressed in relation to this.

158. In relation to the harassment claims, harassment should be assessed both subjectively and objectively. Context is key when it comes to complaints of harassment. In considering whether someone has been harassed, Tribunals should look at the perception of the individual and the other circumstances surrounding the offending conduct, before determining whether it is reasonable for the person to have been offended in the circumstances. The Tribunal were referred to ***Pemberton v The Right Reverend Richard Inwood*** [2018] Civ 564 CA and ***Evans v Xactly Corporation Limited*** UKEATPA/0128/18/LA. Each assertion of harassment related to religion was addressed, with reference to these points.

159. Employers have no liability under EqA for failing to prevent third-party harassment: see ***Unite the Union v Nailard*** 2018 EWCA Civ 1203 and ***Bessong v Pennine Care NHS Foundation Trust*** [2020] IRLR 4. Any potentially discriminatory acts committed by individuals who were not employees or agents of the respondents cannot be laid at the feet of the respondents. If that is not accepted, the respondents rely upon the statutory

defence set out in section 109(4) EqA. ***Canniffe v East Riding of Yorkshire Council*** [2000] IRLR 555 was relied upon in relation to this.

160. It was a genuine occupational requirement that the First Claimant be able to speak English. This requirement was objectively justified.

161. The claimants have not done enough to mitigate their losses. While the First Claimant stated that he cannot get another job until his Visa status has been determined, he is the master of his own destiny in this regard. He has chosen to litigate, which has prevented his visa renewal. Alternatively, he could have returned to South Africa to seek employment there, but failed to do so. It is accordingly not just and equitable to make any compensatory award. In addition, it is not clear whether he has been in a position to undertake any work, given his ill-health.

162. The Tribunal also consider the effect of Polkey, as it relates to the First Claimant's Visa status and whether the respondent should have followed a fair procedure in relation to the First Claimant's dismissal on the grounds of SOSR. The First Claimant could not work because the respondents had surrendered its sponsor ship license. It would have made no difference at the employer adopted a fair procedure. Further, it would've made no difference to him finding another job because he could not work due to ill health. Any compensation should accordingly be reduced to nil.

163. Little or no evidence has been led in relation to injury to feelings, so no award should be made. If an award is made, it should be at the lower end of the Vento scale.

Relevant Law

Unfair Dismissal

164. S94 ERA provides that an employee has the right not to be unfairly dismissed. It is for the respondent to show the reason (or principal reason if more than one) for the dismissal (s98(1)(a) ERA) and that this could justify dismissal. 'Some other substantial reason of a kind such as to justify the dismissal of an

employee holding the position which the employee held', is one of the permissible reasons for a fair dismissal (section 98(1)(b) ERA).

165. If satisfied of the reason for dismissal, it is then for the Tribunal to determine, the burden of proof at this point being neutral, whether in all the circumstances, having regard to the size and administrative resources of the employer, and in accordance with equity and the substantial merits of the case, the employer acted reasonably or unreasonably in treating the reason as a sufficient reason to dismiss the employee (s98(4) ERA). In applying s98(4) ERA the Tribunal must not substitute its own view for the matter for that of the employer, but must apply an objective test of whether dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer.

Protected Characteristics

166. Section 4 EqA provides that disability, race and religion or belief are protected characteristics.

Disability Status

167. Section 6(1) EqA provides:

A person (P) has a disability if —

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

168. Schedule 1 of the EQA contains supplementary provisions in relation to the determination of disability. Schedule 1, paragraph 2, EqA provides:

2(1) The effect of an impairment is long-term if-

(a) it has lasted at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of life of the person affected.

169. The '*Guidance on matters to be taken into account in determining questions relating to the definition of disability'* (the Guidance) does not itself impose legal obligations, but the Tribunal must take it into account where relevant (Schedule one, Part two, paragraph 12 EqA).

170. The Guidance at paragraph B1 deals with the meaning of '*substantial adverse effect'* and provides:

'The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.'

171. Paragraphs B4 and B5 provide that:

'An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effect on more than one activity, when taken together, could result in an overall substantial adverse effect.

For example, a person whose impairment causes breathing difficulties may, as a result, experience minor effects on the ability to carry out a number of day-to-day activities such as getting washed and dressed, going for a walk or travelling on public transport. But taken together, the cumulative result would amount to a substantial adverse effect on his or her ability to carry out these normal day-to-day activities.'

172. Paragraph B1 should be read in conjunction with Section D of the Guidance 15, which considers what is meant by 'is normal day-to-day activities'.

173. Paragraph D2 states that it is not possible to provide an exhaustive list of day-to-day activities.

174. Paragraph D3 Provides that:

'In general, day-to-day activities are things that people do on a regular or daily basis, and examples include shopping, reading and writing, having a

conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.'

175. D16 provides that normal day-to-day activities include activities that are required to maintain personal well-being. It provides that account should be taken of whether the effects of an impairment have an impact on whether the person is inclined to carry out or neglect basic functions such as eating, drinking, sleeping, or personal hygiene.

176. In ***Goodwin v Patent Office*** [1999] IRLR 4, the EAT held that in cases where disability status is disputed, there are four essential questions which a Tribunal should consider separately and, where appropriate, sequentially. These are:

a. Does the person have a physical or mental impairment?
b. Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?
c. Is that effect substantial?
d. Is that effect long-term?

177. The burden of proof is on a claimant to show that he or she satisfies the statutory definition of disability.

Direct Discrimination

178. Section 13(1) EqA provides that:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

179. The basic question in a direct discrimination case is: what are the grounds or reasons for treatment complained of? In ***Amnesty International v Ahmed*** [2009] IRLR 884 the EAT recognised two different approaches from two House of Lords authorities - (i) in ***James v Eastleigh Borough Council***

[1990] IRLR 288 and (ii) in ***Nagaragan v London Regional Transport*** [1999] IRLR 572. In some cases, such as ***James***, the grounds or reason for the treatment complained of is inherent in the act itself. In other cases, such as ***Nagaragan,*** the act complained of is not inherently discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in ***R (on the application of E) v Governing Body of the Jewish Free School and another*** [2009] UKSC 15.

180. The Tribunal should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions) – as explained in the Court of Appeal case of ***Anya v University of Oxford*** [2001] IRLR 377.

181. In ***Shamoon v Chief Constable of the RUC*** [2003] IRLR 285, a House of Lords authority, Lord Nichols said that it was not always necessary to adopt a sequential approach to the questions of whether the claimant had been treated less favourably than the comparator and, if so, why. Instead, they may wish to concentrate initially on why the claimant was treated as they were, leaving the less favourable treatment issue until after they have decided on the reason why the claimant was treated as they were. What was the employer's conscious or subconscious reason for the treatment? Was it because of a protected characteristic, or was it for some other reason?

182. The ***EHRC: Code of Practice on Employment (2011)*** states, at paragraph 3.5 that *'The worker does not have to experience actual disadvantage (economic or otherwise) for the treatment to be less favourable. It is enough that the worker can reasonably say that they would have preferred not to have be treated differently from the way the employer treated – or would have treated – another person.'*

183. For direct discrimination to occur, the relevant protected characteristic needs to be a cause of the less favourable treatment *'but does not need to be the only or even the main cause' (*paragraph 3.11, ***EHRC: Code of Practice on Employment (2011))***. The protected characteristic does however require to have a '*significant influence on the outcome'* (***Nagarajan v London Regional Transport*** 1999 ICR 877).

Harassment

184. Section 26(1) EqA provides as follows:

> ***'*** *(1) A person (A) harasses another (B) if—*
>
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
>
> *(b) the conduct has the purpose or effect of—*
>
> *(i) violating B's dignity, or*
>
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.'*

185. Section 26(4) EqA provides that:

> *'(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
>
> *(a) the perception of B;*
>
> *(b) the other circumstances of the case;*
>
> *(c) whether it is reasonable for the conduct to have that effect.'*

186. There are accordingly 3 essential elements of harassment claim under section 26(1), namely (i) unwanted conduct, (ii) that has the prescribed purpose or effect and (iii) which relates to a relevant protected characteristic.

Burden of proof

187. Section 136 EqA provides:

'If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision.'

188. There is accordingly a two-stage process in applying the burden of proof provisions in discrimination cases, explained in the authorities of ***Igen v Wong*** [2005] IRLR 258, and ***Madarassy v Nomura International Plc*** [2007] IRLR 246, both from the Court of Appeal. The claimant must first establish a first base or prima facie case of direct discrimination or harassment by reference to the facts made out. If the claimant does so, the burden of proof shifts to the respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the complaint should be upheld. If the explanation is adequate, that conclusion is not reached.

189. In ***Madarassy***, it was held that the burden of proof does not shift to the employer simply by a claimant establishing that they have a protected characteristic and that there was a difference in treatment. Those facts only indicate the possibility of discrimination. They are not of themselves sufficient material on which the tribunal "could conclude" that on a balance of probabilities the respondent had committed an unlawful act of discrimination. The tribunal has, at the first stage, no regard to evidence as to the respondent's explanation for its conduct, but the tribunal must have regard to all other evidence relevant to the question of whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the claimant or the respondent, or whether it supports or contradicts the claimant's case, as explained in ***Laing v Manchester City Council*** [2006] IRLR 748***,*** an EAT authority approved by the Court of Appeal in ***Madarassy***.

Liability of Employers and Principals

190. Section 109 EqA provides as follows:

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

(3) It does not matter whether that thing is done with the employer's or the principal's knowledge or approval.

191. In ***Unite the Union v Nailard*** 2019 ICR 28, the Court of Appeal held that s109(2) applies only where *'the agent discriminates in the course of carrying out the functions he is authorised to do'.*

Unlawful deductions from wages

192. Section 13 of the Employment Rights Act 1996 provides that an employer shall not make a deduction from a worker's wages unless:

a. The deduction is required or authorised by statute or a provision in the worker's contract; or

b. The worker has given their prior written consent to the deduction.

193. Section 13(3) ERA provides that '*Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated … as a deduction made by the employer from the worker's wages on that occasion'*.

194. Wages are properly payable where a worker has a contractual or legal entitlement to them (***New Century Cleaning Co Limited v Church*** [2000] IRLR 27).

Discussion & Decision

Unfair Dismissal – First Claimant

195. The Tribunal referred to s98 ERA, which sets out how a Tribunal should approach the question of whether a dismissal is fair. There are two stages: firstly, the employer must show the reason, or principal reason, for the dismissal and that it is one of the potentially fair reasons set out in s98(1) and (2). If the employer is successful at the first stage, the Tribunal must then determine whether the dismissal was fair or unfair. This requires the

Tribunal to consider whether the employer acted reasonably in dismissing the employee for the reason established.

196. The Tribunal first considered the reason for the First Claimant's dismissal. Assessing this involved considering the subjective state of mind of the employer. As Cairns L J stated in ***Abernethy v Mott, Hay and Anderson*** [1974] IRLR 213, (subsequently approved by Viscount Dilhrone and the House of Lords in the case of ***Devis v Atkins*** [1977] ICR 9620):

'A reason for the dismissal of an employee is set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee. If at the time of his dismissal the employer gives a reason for it, that is no doubt evidence, at any rate as against him, as to the real reason, but it does not necessarily constitute the real reason. He may knowingly give a reason different from the real reason out of kindness or because he might have difficulty in proving the facts that actually led him to dismiss; or he may describe his reasons wrongly through some mistake of language or of law.'

197. The respondents asserted that the reason for the First Claimant's dismissal was their belief that the First Claimant was not entitled to work in the UK, because the sponsorship licence had been surrendered. The respondents asserted that this amounted to some other substantial reason to justify the dismissal of an employee in the same position as the First Claimant. This is a potentially fair reason under s98(1)(b) ERA. The Tribunal were not satisfied that the reason asserted by the respondents was the true reason or operative cause for the First Claimant's dismissal. The Tribunal found instead that this was a pretext for the real or principal reason for the First Claimant's dismissal, which was the respondents' view that the First Claimant had acted in breach of confidence on 8 May 2018. The Tribunal reached this conclusion for the following reasons:

a. Prior to 23 May 2018, there had been no urgency in progressing the plan to move from an unincorporated to an incorporated organisation:

DIC Ltd was incorporated on 7 April 2017 and awarded charitable status on 19 September 2017. No action was then taken until 1 June 2018, when the Second Respondent applied to OSCR for consent to wind up the First Respondent and transfer the assets and liabilities to DIC Ltd. The Second Respondent had no way of knowing when that consent would be granted, following his request. It could have been weeks or months. No action could be taken to wind up the First Respondent and transfer assets until that consent was obtained. In fact, consent was granted on 21 June 2018 and, while there were no timelines imposed for the transfer of assets thereafter, the First Respondent transferred its properties and bank account to DIC Ltd on 18 July 2018 and 8 August 2018, respectively.

b. Given those findings, the suggestion that it was imperative that immediate action required to be taken on 23 May 2018 was not credible. The Second Respondent's evidence was that he was exploring how to transfer the sponsorship licence from the First Respondent to DIC Ltd on that date, but he was informed that it was not possible to simply transfer the licence. Instead, a new sponsorship licence would require to be sought in the name of DIC Ltd. The Tribunal did not accept the Second Respondent's evidence in this regard for a number of reasons:

    i. The Tribunal did not believe the Second Respondent would be actively seeking to transfer the sponsorship licence for the First Claimant at a time when the First Claimant had been invited to a disciplinary hearing which could result in the termination of his employment;

    ii. It was quite clear from the Sponsor Change of Circumstances – Submission Sheet, which the Second Respondent completed on 23 May 2018, that changes such as 'merger/de-merger/take-over/acquisition/ sale of business' were envisaged and there was an option for the Second Respondent to provide 'evidence

of TUPE transfer or similar provisions, including full details of all sponsored migrants transferring'. It was therefore patently clear to the Second Respondent that it was in fact possible to transfer a sponsorship licence when an individual transfers, under TUPE, from one organisation to another;

iii. The Second Respondent could not explain why, if he was indeed exploring how to transfer the sponsorship licence and believed that the sponsorship licence could not be transferred, he did not simply apply for a new sponsorship licence for the First Claimant in the name of DIC Ltd and transfer the First Claimant to the new organisation when that was obtained;

iv. The Second Respondent could not explain why it was imperative that immediate action required to be taken on 23 May 2018 and why he felt, on that particular day, that he required to surrender the sponsorship licence with immediate effect, knowing this would necessitate the summary termination of the employment of the First Claimant and, as a consequence, the Second Claimant.

c. Instead, considering the timeline, the Tribunal concluded that the set of facts or beliefs which caused the First Claimant's dismissal was that Third Respondent was 'livid' and 'incandescent' at the fact that the First Claimant had disclosed personal information concerning his marriage during the meeting on 8 May 2018. That was the sole reason for the First Claimant's suspension and the sole reason the Second Respondent then sought to build a case against the First Claimant by asking friends and family who spoke to him to provide additional statements of complaint in writing. These, along with a complaint which had been raised in November 2017, but dismissed as being without foundation at that time, were then, without investigation, relied upon in inviting the claimant to a disciplinary hearing. When the Second

Respondent was advised that the disciplinary hearing would require to be postponed indefinitely, until the First Claimant's health recovered, an alternative route, as a pretext for proceeding with the dismissal of the First Claimant as soon as possible, was found.

198. In light of the above, the Tribunal concluded that conduct was the reason for the First Claimant's dismissal. Whilst this was not the reason asserted by the respondents at the hearing, this is a potentially fair reason for dismissal under s98(2)(b) ERA.

199. The Tribunal accordingly moved on to consider whether the dismissal was fair or unfair under s98(4) ERA. Where an employee has been dismissed for misconduct, in addition to considering the procedure adopted by the employer, in accordance with the Acas Code, the case of ***British Home Stores v Burchell*** [1978] IRLR 379, sets out the questions to be addressed by the Tribunal when considering reasonableness. These are as follows:

i. whether the respondent genuinely believed the individual to be guilty of misconduct;

ii. whether the respondent had reasonable grounds for believing the individual was guilty of that misconduct; and

iii. whether, when it formed that belief on those grounds, it had carried out as much investigation as was reasonable in the circumstances.

200. The Tribunal was mindful that it should not consider whether the claimant had in fact committed the conduct in question, as alleged, but rather whether the respondent genuinely believed he had and whether the respondent had reasonable grounds for that belief, having carried out a reasonable investigation.

201. The Tribunal concluded that the Second Respondent did have a genuine belief that the claimant had committed misconduct and that there were reasonable grounds for this belief: the Second Respondent had been present when the First Claimant disclosed information in relation to the Third Respondent's marriage, so had personally witnessed this. There was

however no investigation into this. Instead, the Second Respondent merely collated and provided letters of complaint in relation to the events of 8 May 2018 and attached these to a disciplinary invite letter. The Second Respondent, as a witness to the events forming the principal reason for dismissal, was not impartial.

202. In relation to the procedure adopted, the Tribunal found this to be grossly inadequate. The First Claimant was invited to a disciplinary hearing in relation to numerous unsubstantiated allegations, which had not been investigated. The disciplinary hearing was to be held by the Second Respondent, who had witnessed at least one of the events complained of. The First Claimant indicated that he was unfit to attend the disciplinary hearing on the date proposed. Rather than wait until the First Claimant was able to attend to answer the allegations, the respondents sought another way to dismiss the First Claimant, doing so the day after he was invited to a disciplinary hearing by voluntarily surrendering his sponsorship licence and using that as a basis for proceeding to dismiss the First Claimant.

203. The First Claimant was not given the opportunity to respond to the allegations at the disciplinary hearing, nor was he provided with the opportunity to appeal. The procedure adopted by the respondent was neither fair nor reasonable. The lack of any procedure fundamentally undermined the fairness of the First Claimant's dismissal.

204. The First Claimant's dismissal accordingly fell outside the range of reasonable responses available to a reasonable employer in the circumstances.

205. For the reasons stated above the Tribunal conclude that the respondent acted unreasonably in treating the First Claimant's conduct as a sufficient reason for dismissal. No reasonable employer would have dismissed the First Claimant in these circumstances. The First Claimant's dismissal was accordingly unfair.

Disability Status

206. The Tribunal considered was whether the First Claimant was a disabled person in terms of section 6 of the EqA.

207. The First Claimant's position is that he was, at the relevant times, a disabled person as a result of suffering from stress, anxiety and depression.

208. Whilst the First Claimant asserted that his admission to hospital with chest pains in October 2017 was related to stress, anxiety or depression, the Tribunal did not accept this was the case. There was absolutely no medical evidence presented to the Tribunal to support this assertion. The First Claimant had no history of these conditions and there was no mention of stress, anxiety or depression in the First Claimant's GP records, which were produced to the Tribunal, in the period from 2013 to April 2018.

209. The Tribunal noted that the First Claimant first contacted his GP in relation to stress related symptoms on 30 April 2018. At that point he was diagnosed with work related stress. He consulted his GP again on 14 May 2018 in relation to the same issue and again on 22 May 2018, when his diagnosis was altered to 'work related stress/anxiety/depression'.

210. The Tribunal accepted that the First Claimant had a mental impairment from 14 May 2018 onwards. He was diagnosed with work related stress on 30 April 2018 and anxiety and depression on 22 May 2018. The Tribunal was satisfied that anxiety and depression are impairments, as defined by section 6(1) of the EqA, and that the First Claimant was displaying symptoms of this from 14 May 2018 onwards, prior to his formal diagnosis on 22 May 2018. The First Claimant accordingly had a mental impairment from 14 May 2018 onwards.

211. The Tribunal found that this mental impairment had an adverse impact on the First Claimant's ability to carry out normal day-to-day activities. His medical records demonstrate that, from 14 May 2018, he was not sleeping

properly, he had poor appetite and was unable to concentrate. He was not able to have a conversation with his GP without crying. By 22 May 2018, he had also withdrawn from social activities, was certified as unfit to carry out any work and was prescribed medication.

212. The Tribunal was satisfied that from 14 May 2018, individually and cumulatively, adverse effects on the First Claimant's ability to carry out day-to-day activities were substantial: they were not minor or trivial.

213. The Tribunal was not however satisfied that, at the relevant times (namely from 14 May 2018 to the point of the First Claimant's dismissal on 23 May 2018), the effects of the mental impairment were long-term. They had not lasted at least 12 months and no evidence whatsoever was presented to the Tribunal to suggest that, at relevant times, the effects of the mental impairment were likely to last for at least 12 months. The First Claimant has therefore not discharged the burden on him of showing that the effects of his mental impairment were long-term.

214. The Tribunal accordingly found that the First Claimant was not a disabled person in terms of section 6 of the EqA at the relevant times. As a result of this finding:

a. The First Claimant's claims of direct discrimination because of disability do not succeed; and

b. The Second Claimant's claims of direct discrimination because of her husband's disability do not succeed.

Liability for Acts of Third Parties

215. The Tribunal noted that a number of the instances of less favourable treatment and harassment asserted by the claimants involve individuals who were not employees of the First Respondent or members of the First Respondent's executive committee. In particular Saeed Akbar, Niaz

Mohammed, Aysha Claire O'Rourke and Tara Sharif. It was not in dispute that these individuals were not employees of the First Respondent. There could accordingly be no liability for their actions on the part of the First Respondent under s109(1) of the EqA.

216. The First Claimant, KH & IC all asserted that Saeed Akbar was a member of the First Respondent's executive committee in that he was the Assistant Secretary. The First Claimant indicated that Saeed Akbar held himself out as the Chair's Assistant Secretary and had been referred to as such in an article published in the local press. The respondents accepted that there had been an article stating this, but stated that this was an error. The Tribunal accepted this to be the case and that Saeed Akbar was not, at any stage, a member of the First Respondent's executive committee, nor was he authorised to act on behalf of the First Respondent at any stage. The Tribunal noted that he was not named as being a member of the executive committee in the First Respondent's constitution and other individuals already occupied the roles of Secretary and Vice Secretary of the First Respondent. Similarly, he was not named as a director of, or holding any position in, the incorporated organisation DIC Ltd. In addition, in what he thought would be private correspondence between himself and the Second Respondent, dated 8 May 2018, Saeed Akbar stated that he had never attended any committee meeting and had made no mention of being interested in serving on the committee.

217. It was not in dispute that Niaz Mohammed, Aysha Claire O'Rourke and Tara Sharif were not members of the First Respondent's executive committee.

218. The Tribunal accordingly concluded that the First Respondent could not be liable for any actions of Saeed Akbar, Niaz Mohammed, Aysha Claire O'Rourke or Tara Sharif under s109(1) of the EqA.

219. In submissions it was asserted for the claimants that the respondents could still be liable for unlawful discriminatory acts committed by third parties as the Second Respondent's inaction in the face of third-party harassment itself

amounted to an unlawful act given the case of ***Unite the Union v Nailard*** [2018] EWCA Civ 1203. The Tribunal did not accept this to be the case. That case confirmed that it is *not* enough simply that an individual fails to deal with harassment by third parties, unless there is something about that individual's own conduct which is related to the protected characteristic. It is not sufficient to ask whether some other, prior, conduct by someone else is related to the protected characteristic. In any event, this would not create liability on the part of the First Respondent for the actions of the third party, but instead the failure to take action, if related to the protected characteristic, would amount to a discriminatory act in itself.

220. In light of these findings, the Tribunal concluded that any claims based on alleged acts on the part of Saeed Akbar, Niaz Mohammed, Aysha Claire O'Rourke or Tara Sharif should be dismissed, as the respondents could not be held liable for their actions.

Protected Characteristic of Race

221. The First Claimant's position was that he fell within the following racial groups:

a. Non-British nationality (not British born and not a British national);
b. Pakistani national origin; and
c. Ethnic origin as an Ahle-Sunna-Wal Jama't Hanafi Brelvi Muslim.

222. The Tribunal accepted the First Claimant's position in relation to nationality and national origins, but found that Ahle-Sunna-Wal Jama't Hanafi Brelvi Muslims do not constitute a separate ethnic group. Rather, they are a religious group.

223. The leading case on what constitutes an ethnic group is ***Mandla and anor v Dowell Lee and ors*** [1983] ICR 385. In giving the leading speech, Lord Fraser quoted with approval the New Zealand case of ***King-Ansell v Police*** 1979 2 NZLR 531, NZCA, in which Judge Richardson said: *'[A] group is*

identifiable in terms of its ethnic origins if it is a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what in biological terms is a common racial stock. It is that combination which gives them an historically determined social identity in their own eyes and in the eyes of those outside the group. They have a distinct social identity based not simply on group cohesion and solidarity but also on their belief as to their historical antecedents.'

224. The Tribunal accepted that the Denomination has a long history with a geographical origin. There is however a distinction between a group of people who trace their descent from a common geographical origin (who could be regarded as an ethnic group) and a group who trace their belief to a common origin (who could not). The Denomination is an evangelical faith which can trace their belief to a common origin. Their history is a history of the spreading of that faith. The Denomination is not spread and grown through migration of the people who first shared it however and followers of the Denomination cannot trace their decent to a common geographical origin.

225. For these reasons, the Tribunal found that the First Claimant's claims of direct discrimination as a result of his asserted ethnic origin as being an Ahle-Sunna-Wal Jama't Hanafi Brelvi Muslim cannot succeed and should be dismissed.

Direct Discrimination because of Race – First Claimant

226. The Tribunal considered each allegation of direct discrimination, considering whether the alleged treatment occurred, whether it amounted to less favourable treatment and if so, what the reason for that treatment: was it because of race? The Tribunal reached the following findings in relation to each alleged act of direct discrimination.

a. **Calling the First Claimant a Shi'a Muslim.** The Tribunal found that this treatment occurred: the First Claimant was called a Shi'a Muslim

by Saghir Ahmed on a number of occasions in the period from 22 November 2015 to 4 November 2017. At that time, Saghir Ahmed was a member of the management committee of the First Respondent. He was dismissed as a member of the management committee of the First Respondent as a result a number of matters, including making these comments in relation to the First Claimant. The Tribunal found however that these comments were not made because of the First Claimant's race, but rather because of his religion as a Sunni Muslim. The treatment accordingly did not amount to direct discrimination because of race.

b. **Telling the First Claimant that Pakistani people should go back to their own country.** The First Claimant alleges that this comment was made by Saeed Akbar on 4 May 2018. As set out above, the Tribunal found that the respondents cannot be held liable for the actions of Saeed Akbar.

c. **Calling the First Claimant an extremist and accusing him of preaching extremist views and opinions.** The First Claimant alleges that this was said to him by the Second Respondent during discussions in relation to the Beach Mawlid/Dervish Retreat in August 2017. The Tribunal did not accept this position. As set out in the findings in fact above, the Tribunal found that the Second Respondent stated to the First Claimant that his views in relation to the Beach Mawlid could be seen to be extreme, not that the First Claimant was an extremist or that he preached extremist views and opinions. If the Second Respondent had felt that the First Claimant was an extremist or that he preached extremist views and/or opinions, he would not have been retained in his position as Imam. The Third Respondent attended the Mosque for all prayers and would have been in a position to know with certainty whether the First Claimant was preaching extremist views. If he had been the Tribunal were confident he would have been disciplined or dismissed for doing so.

The First Claimant also asserts that he was called an extremist and accused of having extremist views by Saeed Akbar and Niaz Mohammed. As set out above, the Tribunal found that the respondents cannot be held liable for the actions of Saeed Akbar or Niaz Mohammed.

The letter, dated 22 May 2018, from the Second Respondent to the First Claimant, inviting the First Claimant to a disciplinary hearing, repeated the allegations made by Saeed Akbar and Niaz Mohammed, namely that it was alleged that the First Claimant was *'preaching extremist Muslim views to the Centre's worshippers'*. The Tribunal found that the sole reason the Second Respondent did so was to build a case against the First Claimant to ensure his dismissal following the events of 8 May 2018. The treatment of the First Claimant was accordingly not because of the protected characteristic of race.

d. **Accusing the First Claimant of discriminating against non-Pakistani Muslims.** The First Claimant alleges that these comments were made by Saeed Akbar on 8 May 2018 and by Niaz Mohammed on 19 May 2018. As set out above, the Tribunal found that the respondents cannot be held liable for the actions of Saeed Akbar or Niaz Mohammed.

The letter, dated 22 May 2018, from the Second Respondent to the First Claimant, inviting the First Claimant to a disciplinary hearing, repeated the allegations made by Saeed Akbar and Niaz Mohammed, namely that it was alleged that the First Claimant was *'promoting a divisive culture within the Centre, whereby non-Pakistani Muslims feel discriminated against, shut out and excluded from the Centre'.* The Tribunal found that the sole reason the Second Respondent did so was to build a case against the First Claimant to ensure his dismissal following the events of 8 May 2018. The treatment of the First Claimant was accordingly not because of the protected characteristic of race.

e. **Soliciting from the community written statements against the First Claimant stating a-d above**. The Tribunal found that the Second Respondent did solicit from the community written statements against the First Claimant stating b-d above. The Tribunal however had no hesitation in finding that the sole reason the Second Respondent did so was to build a case against the First Claimant, to ensure his dismissal following the events of 8 May 2018. The treatment of the First Claimant was accordingly not because of the protected characteristic of race.

f. **Telling to First Claimant to stay on his own masala and not to encroach on those of others.** The Tribunal accepted that, in/around August 2017, the Second Respondent informed the First Claimant, when discussing the Beach Mawlid/Dervish Retreat, that he should stay on his own 'masala'. The Tribunal did not accept that this amounted to less favourable treatment: others whose advice/opinions had been considered but not accepted would be treated in the same way, including the Assistant Imam. The Tribunal also found that the reason the Second Respondent stated this to the First Claimant was not because of the First Claimant's non-British nationality or his Pakistani national origins. The treatment of the First Claimant was accordingly not because of the protected characteristic of race.

g. **Stating that the First Claimant's qualifications were not fit for purpose and not worth the paper they are written on.** The Tribunal found that this treatment occurred: the Second Respondent stated in his letter to KH of 6 April 2018 that *'…if we compare like for like qualification as a British standard then the English speaking Imam is actually more qualified as his qualifications are recognised within the UK. The Urdu speaking Imams qualifications would be not recognised by British standards and many agree are not even worth the paper they are written on, here you have done us a favour in highlighting that we need to ask the Urdu speaking Imam to gain further British qualifications and to ask if he would be willing to attend University and*

gain a British degree.' The First Claimant was informed by KH, during April 2018, of the comments made by the Second Respondent. The Tribunal found however that these comments were not made because of the First Claimant's nationality (non-British) or national origins (Pakistani), but rather because the First Claimant had not obtained his qualifications in the UK. Clearly an individual who is Pakistani or non-British could obtain qualifications in the UK, so these factors were not a cause of the less favourable treatment asserted. The claim before the Tribunal was one of direct discrimination, not indirect discrimination. The treatment did not amount to direct discrimination on the grounds of race.

h. **Stating or causing to be stated to the First Claimant and/or the community that it was necessary for the Iman to be British born and to be fluent in English.** The Tribunal found that the Second Respondent did state to the community that it had been recommended, and may become mandatory, for the Mosque to have an Imam who was British born. He stated this in his letter of 6 April 2018. The Tribunal found however that these comments were not made because of the First Claimant's nationality (non-British) or national origins (Pakistani). Someone who is not British can still be born in the UK. Place of birth is not determinative of nationality or national origins. The claim before the Tribunal was one of direct discrimination, not indirect discrimination. The treatment did not amount to direct discrimination on the grounds of race.

The Tribunal found that the Second Respondent did state to the community that it had been recommended, and may become mandatory, for the Mosque to have an Imam who was fluent in English. He stated this in his letter of 6 April 2018. The Tribunal found however that these comments were not made because of the First Claimant's nationality (non-British) or national origins (Pakistani), but rather because the First Claimant was not a fluent English speaker. Someone

who is non-British can still be fluent in English: numerous countries have English as their first language. Similarly individuals with Pakistani national origins can be fluent in English. The claim before the Tribunal was one of direct discrimination, not indirect discrimination. The treatment did not amount to direct discrimination on the grounds of race.

i. **Releasing CCTV footage of the First Claimant on 24 May 2018 on social media.** The Tribunal found that the Second Respondent released CCTV footage of the First Claimant to a member of DCM Ladies Group on 24 May 2018 (who in turn posted it on the DCM Ladies Group chat) and then to Bajo Sumaira M on 25 May 2018. The Tribunal however had no hesitation in finding that the sole reason the Second Respondent did so was to discredit the First Claimant and sully the First Claimant's name, to seek to justify to the community the decision to suspend and thereafter dismiss the First Claimant. The treatment of the First Claimant was accordingly not because of the protected characteristic of race. Rather, it was because of the respondents' belief that the First Claimant had breached confidentiality in relation to the Third Respondent.

j. **Releasing the First Claimant's expired disciplinary warning.** The Tribunal found that the Second Respondent provided his wife with the First Claimant's expired disciplinary warning. She provided copies of this to the ladies present at the Ladies Group meeting on 30 June 2018 and it was subsequently shared on social media on 23 July 2018. The Tribunal however had no hesitation in finding that the sole reason the Second Respondent did so was to discredit the First Claimant and sully the First Claimant's name, to seek to justify to the community the decision to suspend and thereafter dismiss the First Claimant. The treatment of the First Claimant was accordingly not because of the protected characteristic of race. Rather, it was because of the respondents' belief that the First Claimant had breached confidentiality in relation to the Third Respondent.

In relation to this matter and the matter addressed immediately above at point i, whilst the Tribunal did not find that they amounted to direct discrimination because of race, the Tribunal wished to record that they felt that the actions of the Second Respondent were totally reprehensible. This was particularly so, given that the Tribunal's conclusion that the respondents' actions were in fact motivated by their dissatisfaction at a breach of contract on the part of the First Claimant.

k. **Not investigating or dealing with the First Claimant's complaints of insulting and abusive treatment and instead degrading him at a grievance meeting on 8 May 2018.** The First Claimant had raised with the Second Respondent prior to 5 May 2018 that a child in the Quran class had sworn at the Second Claimant. The investigation was not, in the Tribunal's view, particularly robust, and it would have been helpful for the Second Respondent to have informed the claimants that their concerns were being considered or investigated, and the outcome of that. The Tribunal found however that this was due to the fact that the allegations involved the Third Respondent's grandson and the sensitivities in relation to that. It was not because of the First Claimant's race. The treatment of the First Claimant was accordingly not because of the protected characteristic of race.

The meeting on 8 May was not a grievance meeting. The meeting was arranged to discuss the concerns raised by Saeed and Ali Akbar. The Tribunal accepted that the First Claimant had been asked to apologise and stated that he was unwilling to do so. To resolve matters, parties were asked to swear to their position on the Quran, with matters then being left in the hands of God. It was this treatment which the First Claimant stated was degrading. The reason for this was however entirely unrelated to the protected characteristic of race. The treatment of the First Claimant was accordingly not because of the protected characteristic of race.

l. **Accusing the First Claimant of 6 counts of misconduct and inviting him to a disciplinary hearing to take place on 24 May**

2018. The Tribunal found that the First Claimant was accused of 6 counts of misconduct and invited to a disciplinary hearing to take place on 24 May 2018. The Tribunal had no hesitation in finding that the sole reason for this was to build a case against the First Claimant to ensure his dismissal following the events of 8 May 2018. The treatment of the First Claimant was accordingly not because of the protected characteristic of race. Rather, it was because of the respondents' belief that the First Claimant had breached confidentiality in relation to the Third Respondent.

m. **Cancelling the First Claimant's sponsorship on 23 May 2018 deliberately and without cause or justification, other than to terminate the First Claimant's employment.** It was not in dispute that the First Claimant's sponsorship was cancelled on 23 May 2018. The Tribunal found that this was done deliberately and without cause or justification, other than to terminate the First Claimant's employment. The Tribunal however had no hesitation in finding that the sole reason for this was to ensure the dismissal of the First Claimant, as swiftly as possible, following the events of 8 May 2018 and the advice received, on 22 May 2018, that the respondents would require to wait until the First Claimant's health improved before proceeding with the disciplinary hearing. The treatment of the First Claimant was accordingly not because of the protected characteristic of race.

n. **Dismissing the First Claimant because the respondents wished to cater for the advancement of youth and have a British born fluent English speaking Imam in order to achieve this.** The Tribunal found that the First Claimant was dismissed solely due to the events of 8 May 2018. He was not dismissed because the respondents wished to cater for the advancement of youth and have a British born fluent English speaking Imam in order to achieve this. The Assistant Imam was recruited in September 2017. The Tribunal found that the respondents had no plans to dismiss the First Claimant prior to the

incident on 8 May 2018. He was dismissed as a result of that conduct, not to cater for the advancement of youth and have a British born fluent English speaking Imam. The Tribunal accordingly did not accept that the conduct alleged was established.

o. **Airing CCTV footage of the First Claimant and handing out copies of the First Claimant's warning letters at a meeting on 30 June 2018.** Whilst the Second Respondent provided the CCTV footage to the Third Respondent's wife, and written warning to his wife, and set up the laptop so that the CCTV footage could be shown, he did not show the CCTV footage or hand out copies of the First Claimant's warning letter at the meeting on 30 June 2018. Those who did so were not employees of the First Respondent, nor were they acting as agent for the First Respondent, as principal. The respondents accordingly cannot be held liable for these acts. Even if this is not correct, the reason for the treatment was to discredit the First Claimant and sully the First Claimant's name, to seek to justify to the community the decision to suspend and thereafter dismiss the First Claimant. The treatment of the First Claimant was accordingly not because of the protected characteristic of race. Rather, it was because of the belief that the First Claimant had breached confidentiality in relation to the Third Respondent.

227. In light of the above, the First Claimant's claims of direct discrimination because of race do not succeed and are dismissed.

Harassment related to Religion – First Claimant

228. The First Claimant is a Sunni Muslim who follows the denomination of Ahle-Sunna-Wal Jama't Hanafi Barelvi. That is his religion. The Tribunal did not accept, as first suggested in submissions for the claimants, that the First Claimant should be recognised as having a conservative view of his religion and this should be assessed as a separate religious belief. That had not been asserted in the ET1, further particulars or agreed issues. It did not form part of the case which the respondents required to meet.

229. The Tribunal considered each allegation of harassment, considering whether there was unwanted conduct, whether the conduct had the proscribed purpose or effect and, if so, whether it related to religion or belief. The Tribunal reached the following findings in relation to each alleged act of harassment.

a. **Calling the First Claimant a Shi'a Muslim.** The Tribunal found that this conduct occurred: the First Claimant was called a Shi'a Muslim by Saghir Ahmed on a number of occasions in the period from 22 November 2015 to 4 November 2017. At that time, Saghir Ahmed was a member of the management committee of the First Respondent. He was dismissed as a member of the management committee of the First Respondent as a result a number of matters, including making these comments in relation to the First Claimant. The Tribunal found that these comments were made because of the First Claimant's religion as a Sunni Muslim. The Tribunal accepted the evidence of all witnesses, other than the Second Respondent, that comments of this nature would be highly offensive to any Sunni Muslim. The Tribunal was accordingly satisfied that the comments had the proscribed purpose and effect and related to religion. The treatment therefore amounted to harassment related to religion, contrary to s26 EqA. The First Respondent is liable for the acts of Saghir Ahmed under s109(2) EqA, given Saghir Ahmed's position as a member of the First Respondent's executive committee at the time the comments were made.

b. **Calling the First Claimant an extremist and accusing him of preaching extremist views and opinions**. The First Claimant alleges that this was said to him by the Second Respondent during discussions in relation to the Beach Mawlid in August 2017. The Tribunal did not accept this position. As set out in the findings in fact, the Tribunal found that the Second Respondent stated to the First Claimant that his views in relation to the Beach Mawlid could be seen to be extreme, not that the First Claimant was an extremist or that he

preached extremist views and opinions. If the Second Respondent had felt that the First Claimant was an extremist he would not have been retained in his position as Imam. The Third Respondent attended the Mosque for all prayers and would have been in a position to know with certainty whether the First Claimant was preaching extremist views and opinions. If he had been, the Tribunal were confident he would have been disciplined or dismissed for doing so. The First Claimant has accordingly not demonstrated that there was unwanted conduct in this regard.

The First Claimant also asserts that he was called an extremist and accused of having extremist views by Saeed Akbar and Niaz Mohammed. As set out above, the Tribunal found that the respondents cannot be held liable for the actions of Saeed Akbar or Niaz Mohammed.

The letter, dated 22 May 2018, from the Second Respondent to the First Claimant, inviting the First Claimant to a disciplinary hearing, repeated the allegations made by Saeed Akbar and Niaz Mohammed, namely that it was alleged that the First Claimant was *'preaching extremist Muslim views to the Centre's worshippers'*. This was unwanted conduct. The Tribunal was satisfied that, whilst the comments did not have the proscribed purpose (the purpose was to build a case against the First Claimant to ensure his dismissal following the events of 8 May 2018), they did have the proscribed effect. The Tribunal found the comments were related to religion. It is clear from the words used that this was the case. The conduct therefore amounted to harassment related to religion, contrary to s26 EqA.

c. **Accusing the First Claimant of discriminating against non-Pakistani Muslims**. The First Claimant alleges that these comments were made by Saeed Akbar on 8 May 2018 and by Niaz Mohammed on 19 May 2018. As set out above, the Tribunal found that the First

Respondent cannot be held liable for the actions of Saeed Akbar or Niaz Mohammed.

The letter, dated 22 May 2018, from the Second Respondent to the First Claimant, inviting the First Claimant to a disciplinary hearing, repeated the allegations made by Saeed Akbar and Niaz Mohammed, namely that it was alleged that the First Claimant was *'promoting a divisive culture within the Centre, whereby non-Pakistani Muslims feel discriminated against, shut out and excluded from the Centre'*. This was unwanted conduct. The Tribunal was satisfied that, whilst the comments did not have the proscribed purpose (the purpose was to build a case against the First Claimant to ensure his dismissal following the events of 8 May 2018), they did have the proscribed effect. The Tribunal found however that the comments were not related to religion. Rather, they were related race - namely nationality or national origins. This is clear from the words used. The conduct therefore did not amount to harassment related to religion, contrary to s26 EqA.

d. **Soliciting from the community written statements against the First Claimant stating a-d above**. The Tribunal found that the Second Respondent did solicit from the community written statements against the First Claimant stating b-c above. The Tribunal were however entirely satisfied that the sole reason the Second Respondent did so was to build a case against the First Claimant to ensure his dismissal following the events of 8 May 2018. This was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion. In light of this, the Tribunal did not consider whether the conduct had the proscribed purpose or effect.

e. **Telling to First Claimant to stay on his own masala and not to encroach on those of others**. The Tribunal accepted that, in/around August 2017, the Second Respondent informed the First Claimant, when discussing the Beach Mawlid, that he should stay on his own 'masala'. The Tribunal did not accept that this amounted or could

amount to unwanted conduct. The Tribunal also found that the conduct was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion. In light of this, the Tribunal did not consider whether the conduct had the proscribed purpose or effect.

f. **Stating or causing to be stated to the First Claimant and/or the community that it was necessary for the Iman to be British born and to be fluent in English**. The Tribunal found that the Second Respondent did state to the community that it had been recommended, and may become mandatory, for the Mosque to have an Imam who was British born. He stated this in his letter of 6 April 2018. The Tribunal accepted that this amounted or could amount to unwanted conduct. The Tribunal found however that the conduct was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion. In light of this, the Tribunal did not consider whether the conduct had the proscribed purpose or effect.

   The Tribunal found that the Second Respondent did state to the community that it had been recommended, and may become mandatory, for the Mosque to have an Imam who was fluent in English. He stated this in his letter of 6 April 2018. The Tribunal accepted that this amounted or could amount to unwanted conduct. The Tribunal found however that the conduct was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion. In light of this, the Tribunal did not consider whether the conduct had the proscribed purpose or effect.

g. **Stating that the First Claimant's qualifications were not fit for purpose and not worth the paper they are written on**. The Tribunal found that this conduct occurred: the Second Respondent stated in his letter to KH of 6 April 2018 that *'…if we compare like for like qualification as a British standard then the English speaking Imam is*

actually more qualified as his qualifications are recognised within the UK. The Urdu speaking Imams qualifications would be not recognised by British standards and many agree are not even worth the paper they are written on, here you have done us a favour in highlighting that we need to ask the Urdu speaking Imam to gain further British qualifications and to ask if he would be willing to attend University and gain a British degree.' The First Claimant was informed by KH, during April 2018, of the comments made by the Second Respondent. The Second Respondent's actions in this regard were unwanted conduct. The Tribunal was satisfied that, whilst the comments may not have the proscribed purpose (as they were not made directly to the First Claimant), they did have the proscribed effect. The Tribunal found however that the conduct was entirely unrelated to the protected characteristic of religion. The conduct therefore did not amount to harassment related to religion, contrary to s26 EqA.

h. **Releasing CCTV footage of the First Claimant on 24 May 2018 on social media**. The Tribunal found that the Second Respondent did release CCTV footage of the First Claimant to a member of DCM Ladies Group on 24 May 2018 (who in turn posted it on the DCM Ladies Group chat) and then to Bajo Sumaira M on 25 May 2018. The Tribunal found that the sole reason the Second Respondent did so was to discredit and sully the First Claimant's name, to seek to justify to the community the decision to suspend and thereafter dismiss the First Claimant. Accordingly, whilst the actions of the Second Respondent amounted to unwanted conduct, that conduct was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion. In light of this, the Tribunal did not consider whether the conduct had the prescribed purpose or effect.

i. **Releasing the First Claimant's expired disciplinary warning**. The Tribunal found that the Second Respondent provided his wife with the First Claimant's expired disciplinary warning. She provided copies of

this to the ladies present at the Ladies Group meeting on 30 June 2018 and it was subsequently shared on social media on 23 July 2018. The Tribunal found that the sole reason the Second Respondent did so was to discredit and sully the First Claimant's name, to seek to justify to the community the decision to suspend and thereafter dismiss the First Claimant. Accordingly, whilst the actions of the Second Respondent amounted to unwanted conduct, that conduct was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion. In light of this, the Tribunal did not consider whether the conduct had the proscribed purpose or effect.

j. **Accusing the First Claimant of 6 counts of misconduct and inviting him to a disciplinary hearing to take place on 24 May 2018**. The Tribunal found that the First Claimant was accused of 6 counts of misconduct and invited to a disciplinary hearing to take place on 24 May 2018. The Tribunal found that the sole reason for this was to build a case against the First Claimant to ensure his dismissal following the events of 8 May 2018. Accordingly, whilst this amounted to unwanted conduct, that conduct was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion. In light of this, the Tribunal did not consider whether the conduct had the proscribed purpose or effect.

k. **Not investigating or dealing with the First Claimant's complaints of insulting and abusive treatment**. The First Claimant had raised with the Second Respondent prior to 5 May 2018 that a child in the Quran class had sworn at him and the Second Claimant. The investigation was not, in the Tribunal's view, particularly robust, and it would have been helpful for the Second Respondent to have informed the claimants that their concerns were being considered or investigated and the outcome of that. This was however due to the fact that the allegations involved the Third Respondent's grandson and the sensitivities in relation to that. Accordingly, whilst this amounted to

unwanted conduct, that conduct was entirely unrelated to the protected characteristic of religion and could not therefore amount to harassment related to religion.

230. The Tribunal accordingly found that two instances of harassment were established, namely a. and b. above. The remaining claims of harassment related to race do not succeed and are dismissed.

231. The Tribunal considered the respondents assertion that the claims are time-barred. The Tribunal noted that, in relation to point a, the comments made by Saghir Ahmed were made in the period between 22 November 2015 to 4 November 2017 and, in relation to point b, the letter from the Second Respondent was dated 22 May 2018. The First Claimant initiated early conciliation on 22 August 2018. This proceeded until 22 September 2018 and the ET1 was lodged on 21 October 2018. Given that early conciliation was not commenced within the 3 month primary limitation period for either claim, there is no extension of the requisite time limits for either claim as a result of the early conciliation regime. The claims are accordingly submitted over 9 months out of time (at least) for claim a. and 2 months out of time for claim b.

232. The Tribunal has a wide discretion to allow claims to proceed, notwithstanding the fact that they are not submitted within 3 months of the date of the act to which the complaint relates where the Tribunal is satisfied that they are submitted within *'such other period as the employment tribunal thinks just and equitable'* (s123(1)(b) EqA). The Tribunal found that the First Claimant's position was precarious at best during his employment, with his income and that of his wife, dependent upon his continued employment, and his family living in accommodation linked to his employment. The Tribunal was satisfied that the First Claimant was unlikely to raise proceedings during his employment as a result of these factors and noted that he raised matters within the requisite period following his dismissal in relation to that claim (taking into account the extension as a result of the early conciliation regime). The Tribunal considered the prejudice each party would suffer as a result of allowing or refusing an extension of time. The Tribunal noted that the First Claimant would be denied a right of recourse and the respondents were able to respond to the

allegations levelled against them, notwithstanding the fact that they were raised outwith the requisite time period. Taking into account the prejudice which each party would suffer as a result of refusing an extension of time and having regard to all the circumstances, the Tribunal was satisfied that it was appropriate to extend time to allow the claims to proceed.

Unauthorised Deductions from Wages/Wrongful Dismissal – First Claimant

233. The First Claimant's position, that he was underpaid £1,100 in the period from March to May 2018 and that he did not receive a payment in lieu of notice on the termination of his employment, was not challenged in cross examination or submissions by the respondents. The Tribunal accordingly find as follows:

    a. The respondents made an unauthorised deduction from the First Claimant's wages. The First Claimant is entitled to the gross sum of £1,100, in respect of the amount unlawfully deducted; and

    b. The respondents were in breach of contract by dismissing the First Claimant without notice. The First Claimant is entitled to the sum of £1,811.95 as damages for breach of contract.

Direct Discrimination because of Race – Second Claimant

234. The Tribunal considered each allegation of direct discrimination, considering whether the alleged treatment occurred, if so, whether it amounted to less favourable treatment and if so, what the reason for that treatment: was it because of race? The Tribunal reached the following findings in relation to each alleged acts of direct discrimination.

    a. **Sending WhatsApp messages of an intimidatory and threatening nature**. This claim actually referred to Facebook messages, rather than WhatsApp messages and related to those prompted by the post from Aysha Claire O'Rourke on 16 June 2019. As set out above, the Tribunal found that the First Respondent cannot be held liable for the actions of Aysha Claire O'Rourke. This also applies to the others who

participated in the discussion, none of whom were employees or committee members of the First Respondent.

b. **Not investigating or dealing with unacceptable language being directed at the Second Claimant by children attending a Quran class**. The First Claimant had raised with the Second Respondent prior to 5 May 2018 that a child in the Quran class had sworn at him and the Second Claimant. The investigation was not, in the Tribunal's view, particularly robust, and it would have been helpful for the Second Respondent to have informed the claimants that their concerns were being considered or investigated and the outcome of that. This was however due to the fact that the allegations involved the Third Respondent's grandson and the sensitivities in relation to that. It was not, in any way, because of the First Claimant's race.

c. **Sending text messages of an intimidatory and threatening nature.** This claim referred to the text message sent from Tara Sharif on 5 May 2018. As set out above, the Tribunal found that the respondents cannot be held liable for the actions of Tara Sharif.

d. **Dismissing the Second Claimant**. The Second Claimant was dismissed on 23 May 2018 as a result of her husband's dismissal and the fact that her right to work in the UK was dependent upon his visa. The reasons for the First Claimant's dismissal are set out above. The Tribunal found that his dismissal was not because of his race. Likewise, the Second Claimant's dismissal was not because of her husband's race.

Unauthorised Deductions from Wages – Second Claimant

235. The Second Claimant's position, that she was underpaid in relation to her holiday notice entitlement and holiday pay, was not challenged in cross examination or submissions by the respondents. The Tribunal accordingly find as follows:

a. The respondents made an unauthorised deduction from the Second Claimant's wages in failing to pay her in respect of her accrued but untaken holiday entitlement on termination. She was entitled to payment in respect of 11 days' accrued holiday entitlement, namely £220; and

b. The respondents were in breach of contract by dismissing the Second Claimant with only one week's notice, rather than her contractual entitlement of 1 month's notice. The Second Claimant is entitled to the sum of £333.33 (£433.33 less £100 paid) as damages for breach of contract.

Calculation of Compensation - Unfair Dismissal

236. The respondents did not challenge the schedule of loss presented by the First Claimant, or seek reductions in relation to any award made, other than in relation to mitigation and as set out below under 'Polkey'.

Polkey

237. The respondents did not argue that the First Claimant would have been dismissed in any event on grounds of misconduct. They did not satisfy the Tribunal, the onus being on the respondents to do so, that on the balance of probabilities dismissal would have occurred in any event. When asked about what would have happened if the disciplinary hearing proceeded, the Second Respondent stated that he could not say what the outcome would have been. For these reasons, the Tribunal did not feel that a reduction to any award, on the basis of Polkey, was appropriate.

Contributory conduct

238. The respondents did not assert that any awards made should be reduced on the grounds of contributory conduct. Notwithstanding this, the Tribunal was mindful of its obligation to consider this issue, even though it was not expressly raised by the parties (***Swallow Security Services Ltd v Millicent*** UKEAT/0297/08).

239. The Tribunal accordingly considered

a. whether the First Claimant's conduct before the dismissal was such that it would be just and equitable to reduce the basic award (s122(2) ERA); and

b. whether the First Claimant's dismissal was to any extent caused or contributed to by the actions of the First Claimant such that it would be appropriate to reduce the compensatory award by a proportion which the Tribunal considers is just and equitable, having regard to that finding (s123(6) ERA).

240. From the evidence before the Tribunal, the Tribunal determined that the First Claimant did disclose personal information in relation to the Third Respondent's marriage during the meeting on 8 May 2018. This information had been given to him by a third party. Given his role as Imam, he ought to have kept this information confidential. He should not have disclosed this during the meeting on 8 May 2018.

241. Taking into account the First Claimant's conduct before the dismissal the Tribunal concluded that was just and equitable to reduce the basic award by 50%.

242. The Tribunal then considered whether the First Claimant's dismissal was to any extent caused or contributed to by the actions of the First Claimant. In reaching a conclusion on this point the Tribunal considered whether the Claimant's actions were culpable or blameworthy. The Tribunal found that the First Claimant's disclosure of personal information in relation to the Third Respondent was culpable and blameworthy conduct and that it did contribute to the First Claimant's dismissal. The Tribunal do not consider that evidence was presented to support a conclusion that this conduct, by itself, would necessarily have warranted the dismissal of the First Claimant for gross misconduct. The Tribunal found however that it did significantly

contribute to the respondents' actions. The Tribunal accordingly find that it would be just and equitable to reduce the compensatory award by 50%.

Mitigation

243. The respondents submitted that the First Claimant had not done enough to mitigate his loss of earnings, or that he was unable to do so due to ill health. There was no evidence to support a conclusion that the First Claimant was unable to undertake work. The Tribunal accepted the First Claimant's evidence that UK Visas and Immigration have refused to grant a further visa for the First Claimant, pending the outcome of this case, but that he has been offered a position which he will take up as soon as he is permitted to do so. In the circumstances, the Tribunal was satisfied that the First Claimant has taken reasonable steps to mitigate his loss. The Tribunal did not accept the respondents' assertion that the claimants should have returned to South Africa to look for work there and that the claimants have acted unreasonably in not doing so. The claimants have four children who attend school in Scotland. It was reasonable for the First Claimant to await the outcome of this case, and the subsequent decision of UK Visas and Immigration, before considering alternative options. The Tribunal accordingly did not accept that the First Claimant had failed to take reasonable steps to mitigate his loss.

Basic Award

244. Given the First Claimant's age at the date his employment terminated (45 years' old), length of service (5 years) and gross weekly salary (£384.16) the First Claimant's basic award is £2,689.12. In light of the conclusions in relation to contributory conduct above, this is reduced to £1,344.56.

Compensatory Award

245. The Tribunal accepted that the First Claimant had not worked since the termination of his employment, over 2.5 years' ago. Even taking into account the 50% reduction to any compensatory award, as set out under 'Contributory Conduct' above, his losses from the expiry of his notice entitlement well exceed

the statutory cap on compensatory award for his case, which is limited 52 weeks' gross pay, namely £19,976.32. The Tribunal determined that it was appropriate to make a make a compensatory award at this level.

Calculation of Compensation – Harassment related to Religion

246. There was little/no evidence before the Tribunal from the First Claimant in relation to injury to feelings as a result of the comments made by Saghir Ahmed.

247. In relation to the terms of the letter dated 22 May 2018, it is clear that the First Claimant was upset by this. He attended his doctor that day and was certified as unfit to work and prescribed medication. The comments which have been found to amount to harassment related to religion were one of a number of allegations contained in that letter, which were upsetting to the First Claimant.

248. In the circumstances, the Tribunal was satisfied that an award at the lower end of the lower Vento band was appropriate, namely £3,000, plus interest from 22 May 2018 to the calculation date, at the prescribed rate of 8%.

Employment Judge: Mel Sangster
Date of Judgment: 20 January 2021
Entered in register: 21 January 2021
and copied to parties