



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Rodin

**Respondent:** Dhillons Management Services Limited (1)  
DMS1 Limited (2)

**Heard at:** London South Croydon by CVP

**On:** 16 August 2021

**Before:** Employment Judge Sage  
**Members:** Mr. P Adkins  
Ms D. Sanderson

## Representation

Claimant: In person

For the First Respondent: No attendance

For the Second Respondent: Ms R Sandhu Director

**JUDGMENT** having been sent to the parties on **18 August 2021** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

*Requested by the Respondent*

1. By a claim form presented on the 14 February 2018, the Claimant claimed unfair dismissal, pregnancy and maternity discrimination, notice pay, holiday pay and arrears of pay, breach of contract and a failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations. The Claimant was employed by Dhillons Management Services Limited as a Trainer, she was based in Northfleet in Kent and spent her time travelling between Domino pizza stores run by the franchise holder. The Claimant went on maternity leave on the 19 June 2017 with a proposed date of return on the 19 March 2018. The Claimant was notified on the 25th of September by Mr. J Dhillon that he would let her know what had happened to Dillons Management Services Limited. She was contacted on the 26 September 2017 and informed that the company had closed down, but she would be re-employed on her return

from maternity leave by a new company, Dhillons Management Services Limited 1, and that business was still continuing under the new company. The Claimant's contract was terminated without notice on the 30th of September 2017 when she was served with a P45. The Claimant did not receive any statutory maternity pay after August 2017.

2. The Claimant maintained that in September or October 2017, the pizza business franchise of the First Respondent was transferred to the Second Respondent who retained and operated the same business from the same location using the same personnel and therefore there was a transfer of an undertaking. The Claimant stated that as there was a transfer of an undertaking there was an obligation to inform and consult long enough before the transfer takes place and there was a failure to inform and consult by the First and the Second Respondent . The Claimant maintained that there is joint liability on both the First and Second Respondent in respect of the failure to inform and consult.
3. The Claimant asserted that pursuant to regulation 7 of the transfer of undertakings regulations the liabilities of the transferor will transfer to the transferee so any claims against the First Respondent will transfer to the Second Respondent including the non-payment of statutory maternity pay any award for pregnancy or maternity discrimination and the non-payment of wages and holiday pay. The Claimant stated that she was informed by the First Respondent that it did not close down its business and it remained trading.
4. The Claimant asserted that she was continuously employed by the First Respondent for at least 26 weeks by the end of the qualifying week which was on or around February 2017 which qualified the Claimant for maternity pay . The Claimant was entitled to 39 weeks maternity pay the first six equal to 90% of her average pay and the remaining 33 weeks at £140.98. The Claimant received maternity pay from the 19 June to the end of August totalling £2280.33. There was 8 weeks due to be paid at the rate of £140.98 leaving the period from the 26 September 2017 to the end of the maternity pay period due and owing.
5. The Claimant asserted that non-payment of her statutory maternity pay amounted to an unlawful deduction from wages.
6. The Claimant stated that it was unlawful discrimination to treat her unfavourably for taking maternity leave or being pregnant under section 18 of the Equality Act . The Claimant stated that it was not clear why she was not transferred to the Second Respondent but as all other employees transferred it appeared to be directly linked to her maternity leave. The Claimant stated that she was treated unfavourably as a result of pregnancy or because she exercised her right to ordinary or additional maternity leave . The Claimant asserted that she was dismissed by the First Respondent or alternatively by the Second Respondent because she was on maternity leave and consequently this was unfavourable treatment contrary to section 18. The Claimant claims both loss of income and injury to feelings .

7. The Claimant asserted that her dismissal was automatically unfair as it was as a result of her pregnancy or maternity leave.
8. The Claimant also claimed that at the date of termination she had accrued 8 days of annual leave which equated to a total sum of £590.24.
9. The First Respondent presented an ET3 on the 17 April 2018 which denied that there had been a transfer of a business. It was stated that the companies listed on the claim form either did not exist or they were not controlled or owned by Mr Gurjeet 'Jit' Dhillon (who completed the response form). It was stated that the Claimant "*decided to leave without notice and my business is still here and trading and nothing has been sold and transferred*". He went on to state that the Claimant was "*requested to come back and decided not to*".
10. An ET3 was presented on behalf of the Second Respondent completed by Ms Sandhu which was received by the Tribunal on the 6 June 2019. It was stated that the Claimant was never employed by the Second Respondent and the first time that they heard about this claim was when they received the letter from the Tribunal dated the 15 May 2019. It was stated in the ET3 that the First Respondent was a company providing management services to various companies but it '*ceased trading and the company was dissolved*'. Ms Sandhu then stated that she '*decided to set up a similar business with a better structure and better goals*'. She denied that any assets transferred from the First to the Second Respondent. She stated that the Second Respondent did not hold any assets as they '*supply a simple management service out of our office*'. Ms Sandhu denied that the majority of people transferred, she said the majority of people working for the First Respondent left and moved on to other businesses so there could not be a TUPE transfer. It was denied that the Second Respondent could be held responsible for any debts and liabilities from the First Respondent. This was stated to be a false claim.

### **Previous hearings in this case**

11. There have been a number of hearings in this matter and to provide a comprehensive background into the history of this case, I will provide details of those hearings. The first hearing was on the 21 May 2018 before Employment Judge Harrington, at that time the First Respondent on record were Dhillons Management Services Limited and Dhillons Management Services Limited (1). The Claimant attended this hearing however the First Respondent did not. In this hearing the issues were identified and the matter was listed for a hearing on the 3-5 of September 2018. Unfortunately that hearing did not take place due to lack of judicial resources.
12. The case was then listed for a full merits hearing on the 20 March 2019 before a full tribunal presided over by Employment Judge Pritchard. Again the First Respondent did not attend. During this hearing Employment Judge Pritchard joined what was then a third company called DMS1 Limited (which is now the Second Respondent). It was recorded in this hearing that the First Respondent had been dissolved and the Second Respondent (Dhillons Management Services (1) Limited) did not seem to

exist as a legal entity. The Second Respondent was therefore removed from the proceedings leaving only two Respondents.

13. The ET1 was served on DMS1 Limited, now the Second Respondent, and the ET3 was received by the Tribunal on the 6 June 2019.
14. There was a third case management hearing listed for the 26 March 2020 before Employment Judge Phillips by telephone. There was no attendance by either the First or the Second Respondent. The Claimant attended this hearing. Orders were made in this hearing for documents to be disclosed and for a bundle to be agreed. The order was sent to the parties on the 9 June 2020.
15. There was a hearing before a full tribunal on the 10 September 2020 presided over by Employment Judge Balogun. There was no attendance by either the First or Second Respondent. The Claimant's claims succeeded.
16. The Second Respondent then presented an application for a reconsideration on the 26 September 2020. This was heard by Employment Judge Balogun and was granted. The Second Respondent was represented by a solicitor at this hearing. The matter was listed for one day on the 16 August 2021. The parties were ordered to exchange documents by the 21 June 2021 and for the Respondent to prepare an agreed bundle for the hearing which was to be sent to the Tribunal 2 days before in a pdf.
17. The Second Respondent failed to produce an agreed bundle but provided a witness statement with two documents attached. The Claimant produced a witness statement and exhibited a number of payslips from those she worked with. No other documents were produced.

**The Second Respondent's failure to attend the afternoon of the hearing on the 16 August 2021.**

18. Ms Sandhu attended and gave evidence and we refer to that evidence below. However whilst the Tribunal were in chambers, a message was relayed from the Second Respondent to say that Ms Sandhu would not be attending the Tribunal in the afternoon to hear the outcome. The Tribunal were not asked for a postponement by the Second Respondent and there was no indication that Ms Sandhu was unwell or unable to attend. It was also noted that evidence was given from a hotel at Heathrow Airport. In the light of the conduct of the First and Second Respondents in this case and taking into account the significant delays, the Tribunal took the decision to deliver the decision on liability and remedy in the absence of the Respondent.

**Witnesses**

The Claimant

Ms Rajbinder Sandhu for the Second Respondent

**The Issues**

Unauthorised deductions from wages under section 23 of the Employment Rights Act 1996:

The Claimant alleges that she has suffered the following deductions:

19. She was not paid maternity pay after the end of August 2017.
20. She was not paid her annual leave in the sum of £885.36 totalling of 12 days unpaid holiday.
21. The Claimant was not paid accrued but untaken annual leave at the date of dismissal in the sum of £590.24 in respect of approximately 8 days.
22. The issue for the tribunal is whether the Claimant has suffered any or all of these deductions and if so in what sum?

Maternity/ Pregnancy discrimination under section 18 of the Equality Act 2010

23. Was the Claimant dismissed by the Respondent whilst on maternity leave? The Claimant stated that she contacted Mr Dhillon and he told her to go to the job centre, she then reported back to him what was said (that they could not pay her maternity pay or a maternity allowance). He said that he would call her back, however he did not.
24. The Claimant was emailed her P45 on the 30th of September 2017.
25. The Claimant was not paid her maternity and holiday pay.
26. Was the Claimant's employment transferred to the Second Respondent from the First Respondent?
27. Has the Claimant shown facts from which the tribunal could conclude , in the absence of another explanation that the alleged treatment above if proved was unfavourable treatment because of the Claimants pregnancy?

Claims under the Transfer of Undertakings

28. Was there a relevant transfer from the First Respondent to the Second Respondent, was it an economic entity which retained its identity or was it a service provision change?
29. Was the Claimant employed immediately before the transfer, or would have been so employed had she not been dismissed?
30. Was the sole or principle reason for the dismissal the transfer under regulation 7?
31. In September 2017 did Mr. Dhillon from the First Respondent inform the Claimant that the Second Respondent would take over the business and her employment? Did he inform the Claimant that she would be re-employed by the a new company on her return from maternity leave? Did the First Respondent therefore fail to comply with the requirements set out in regulations 13 and 14 of the regulations?

Unfair dismissal under section 99 of the Employment Rights Act 1996 and the Regulation 20 of the Maternity and Parental Leave Regulations 1999.

32. Was the Claimant dismissed?
33. If so was the reason or principle reason for the Claimants dismissal connected with her pregnancy, or with the fact that she had given birth or that she availed herself of the benefits of ordinary or additional maternity leave?
34. If so, what remedy should be awarded.

**Findings of Fact**

35. This is a case where only two documents were provided by either Respondent which will be referred to as R1 and R2 which were appended to the statement provided by Ms Sandhu (which will be referred to later). The Claimant produced a number of payslips from the Second Respondent of those she said were assigned to the same franchise and who transferred to the Second Respondent from the First Respondent. The absence of documentary evidence before the Tribunal made the fact finding exercise in this case difficult. The tribunal had to rely on the few documents that had been provided which are referred to in these findings and on the written and oral testimony of the two witnesses before the tribunal.
36. The First Respondent was a company that managed HR activities over a number of franchise operations, including Dominos Pizza, Costa Coffee and others. There was contradictory evidence as to what happened to the company. There was a Companies House search in the Tribunal file which confirmed that this company was dissolved on the 15 January 2019. The two directors on the register for the First Respondent were Gurpit Dhillon and Manga Dhillon.
37. The Claimant was employed by the First Respondent from the 9 May 2016 as a Trainer earning £25,000 per annum. She stated that she had worked on the Domino's Pizza contract for 16 years and latterly was employed by the First Respondent from May 2016. The Managing Director of the Company was Mr. Gurjeet Dhillon and the Regional Manager was Vijay Chauhan. The Claimant became pregnant on the 5th of October 2016 and informed the Office Manager (Ms Sandhu) of her pregnancy on the 5 January 2017, she then sent this information to the Regional Manager and Managing Director on the 24 April 2017. The Claimant was absent on maternity leave from the 19 June 2017 with an expected date of return to work of the 19 March 2018.
38. Ms Sandhu confirmed in cross examination that she had been employed as the Office Manager of the First Respondent however in her statement she said that she was employed as an HR manager. Ms Sandhu told the tribunal that she was employed by the First Respondent from January 2014 to the 31 July 2017. She stated that she was dismissed on the 31

July 2017 and confirmed in answers to the tribunal's questions that there had been no consultation with any of the staff before they were dismissed.

39. The Claimant told the tribunal that in September 2017 her statutory maternity pay was late so she contacted the Regional Manager and he told her that he would investigate and get back to her. After not hearing from him for 2 days she then called him and he told her to contact the Managing Director. The Claimant then contacted Mr Gurjeet Dhillon. After three days he reverted to the Claimant and told her that the company had 'closed' and her last two months of statutory maternity pay would be sent to her bank account. The Claimant also told the Tribunal that he advised her to go to the job centre for any 'future money' as the Company was now closed (see paragraph 5 of the Claimant's statement).
40. The Claimant attended the job centre to be told that they were unable to assist as she was already on maternity leave and the First Respondent should pay her. After going to the job centre and discovering that they could not assist her with a claim for the rest of her maternity pay, she reverted back to Mr Dhillon. Although Mr Dhillon told her that he would look into the matter, he failed to respond to any of her subsequent calls or emails. The Tribunal find as a fact that what he had told the Claimant about the Company being 'closed' was not consistent with his account on the ET3 presented on the 17 April 2018, when he stated that the First Respondent was 'not closed and was still trading'. Unfortunately as Mr Gurjeet Dhillon did not attend this or any previous hearing and provided no documentary evidence to the Tribunal, this account could not be challenged. However the Tribunal find as a fact and on the balance of probabilities that the Claimant's evidence was consistent with Ms Sandhu's evidence on this point, that the First Respondent had ceased trading by the 31 July 2017 and those working on the Domino's contract had been dismissed.
41. A payment was transferred to the Claimants bank account of £1117.78 but it was not accompanied by a pay slip. This sum was the equivalent of two months statutory maternity pay.
42. Ms Sandhu was asked in cross examination about paragraph 5 of her statement where she stated that the mistake in the payment of the Claimant's maternity leave was rectified and it was accepted that her maternity pay for September and November was missed by the First Respondent. Ms Sandhu stated that she was not involved at this time and she '*wrote what I was told*'. Ms Sandhu confirmed that she was given instructions by 'the office'. Ms Sandu did not clarify who told her this but the Tribunal find as a fact and in the absence of any consistent or credible evidence from the First Respondent that it was Mr Gurjeet Dhillon.
43. The Claimant was sent her P45 which stated that the termination date was the 30 September 2017 and the name of the employer was the First Respondent. The P45 was not accompanied by a letter explaining the reason for dismissal. The Claimant was provided with no information in relation to the work that she was employed to do for the First Respondent that was being continued by the Second Respondent as the Claimant confirmed that she was told that she would be re-employed by them after

her return from maternity leave. The Second Respondent did not put to the Claimant an offer in writing to work for them after the 31 July 2017.

44. Ms Sandhu's evidence was that the First Respondent was dissolved on the 15th of January 2019 after which all employees were made redundant (paragraph 7 of her witness statement). This was consistent with the entry on the Companies House register. Although Ms Sandhu's statement went further to state that "the employees were made redundant" she confirmed that they did not receive any redundancy payments. No details were provided as to who was made redundant, what work they were assigned to carry out or how many employees were made redundant.

**Evidence in relation to the set up and structure of the Second Respondent.**

45. Ms Sandhu's evidence to the Tribunal was that she set up the Second Respondent and looking at Companies House, it showed that DMS1 Limited had been registered on the 4 November 2016 with Mr Manga Dhillon as the sole Director. Mr Manga Dhillon then resigned on the 1 June 2017 and Ms Sandhu was appointed as Director on the same day. Mr Manga Dhillon is Ms Sandhu's father in law and the 'former owner of the First Respondent' and as we have found as a fact above at paragraph 36, one of the Directors of the First Respondent (paragraph 8 of Ms Sandhu's statement) he is also the franchise holder of Domino's Pizza. Ms Sandhu stated that she did not transfer any assets and "*there was no intention for the First Respondent to retain any parts of its identity*".
46. Ms Sandhu in her statement at paragraph 8 said that she decided to set up her own business after the First Respondent ceased trading, and she was advised by the First Respondent's accountant to take over an existing but dormant Company DMS1. The Tribunal conclude that this also corroborated the Claimant's evidence as to what she had been told by Mr Gurjeet Dhillon in September 2017 that the Company had closed which we take to mean had 'ceased trading'.
47. The Tribunal noted that in the Second Respondent's ET3 it was stated that it was decided to set up a '*similar business with a better structure and better goals*'. The work being carried out by the Second Respondent was described by Ms Sandhu at paragraph 9 of her statement as 'providing human resources services to a number of clients', including Domino's Pizza, Costa Coffee and others. Ms Sandhu told the Tribunal that she did not transfer any business assets from the First Respondent. However she confirmed in cross examination that she renegotiated the lease that had been held by the First Respondent and continued to operate from the same premises. She confirmed that the Second Respondent operated out of the same offices and purchased all the furniture and office equipment that she said had been 'kept' by the Landlord. She stated that this equipment was acquired by the Second Respondent from the Landlord. The Second Respondent produced a document which was marked R2 dated the 1 June 2018 showing the purchase of goods left on site for £3928.73 and the invoice showed rent being paid from the 1 June 2018, on the premises previously leased by the First Respondent (although the Tribunal did not see evidence of the transfer of the lease).



48. The staff worked on the same contracts and provided the same services to a number of franchises and this work continued without interruption. It was not disputed that they retained a contract with Dominos and Costa Coffee and although Ms Sandhu stated at paragraph 9 of her statement that she negotiated new arrangements with the existing clients and took on some new clients, there was no evidence of this before the Tribunal and no evidence that the nature of the work changed.
49. Ms Sandhu in her evidence in chief at paragraph 3 stated that the First Respondent employed 20 people, one of whom was the Claimant. This evidence did not appear to be consistent with her evidence at paragraph 8 of her statement which referred to the document referred to as R1 which was a list of *'former employees of the First Respondent who were offered a role'* at the Second Respondent. She stated that this list only reflected 31% of the staff. The document at R1 showed a list of 29 names and if this only reflected 31% of the total headcount of those employed by the First Respondent, that meant that there were considerably more than 20 employees employed by the First Respondent prior to it ceasing trading. She also confirmed in cross examination that the staff that were offered a role with the Second Respondent did not stop working. The evidence from the Second Respondent showed that they had 30 people on the payroll but she denied that they transferred across; her evidence was that she "got together with a few other people and set up my own business".
50. Ms Sandhu was asked in cross examination whether all the people who had been assigned to work on the Domino's Pizza contract had transferred across to the Second Respondent. Her answers given in cross examination was that *"not everyone moved"* and then clarified that *"a lot more than 5 people moved"*. Ms Sandhu then stated that she *"selected the best people, we also asked the Claimant if she wanted a role and she declined. There were about 30 people not 5"*. She confirmed in her statement at paragraph 8 that those who were offered work with the Second Respondent were provided with new contracts and did not retain their continuity of employment or any other statutory rights. The Tribunal therefore find as a fact that Ms Sandhu's evidence at paragraph 3 about the number of people employed by the First Respondent was inaccurate and the consistent evidence was that considerably more than 30 people had been employed by the First Respondent but of those only 30 transferred across from the First to the Second Respondent.
51. The Claimant put to Ms Sandhu that all the colleagues that she had worked with on the Dominos contract had transferred and are still employed by the Second Respondent, working in the same roles. The Claimant identified Mr Chauhan the Operations Manager, Mr Kumar, Mr Tyagi, Ms Sandhu and Mr Akhlaq. Although this was denied by Ms Sandhu, the Tribunal saw payslips for all of these employees dated the 10 September 2017 produced by the Second Respondent, which was shortly after the Second Respondent took over the business from the First Respondent. The Tribunal find as a fact that five people that were assigned to the part of the business employed to work on the Domino's pizza contract to provide HR support and advice, transferred from the First Respondent to the Second Respondent and those people continued to be

employed to provide those same services to the client on behalf of the Second Respondent. It was also noted from R1 that Ms Sandhu and Mr Gurjeet Dhillon retained their Dominos pizza email addresses (as did eight others on the list). The Tribunal further find as a fact that as the staff were dismissed on the 31 July 2017 the date of the transfer was the 1 August 2017.

52. The Claimant accepted that she was offered a new contract with the Second Respondent but she refused the offer because if she did so she would relinquish all her statutory rights. The Claimant said that she felt that this was an organisation she could no longer trust after the way she had been treated.
53. Ms Sandhu told the tribunal that the Claimant resigned from her role with the First Respondent and this was also pleaded as a defence in the First Respondent's ET3. There was no credible evidence before the tribunal to suggest that that was the case. Ms Sandhu was unable to provide any email or written evidence to suggest that the Claimant had offered her resignation and she described her understanding of this as "well known talk in the office". This was denied by the Claimant. The Tribunal find as a fact that in the absence of any evidence to support the First or the Second Respondent's claim that the Claimant resigned we prefer the evidence of the Claimant on this point.
54. As the First Respondent has failed to provide any evidence to the Tribunal as to the reason for the dismissal and did not inform the Claimant of the reason (and in the absence of any evidence to suggest that she resigned), we conclude on the balance of probabilities that the reason for dismissal was twofold. Firstly it was to prevent her transferring across with her statutory and contractual rights under her existing contract; including the right to receive statutory maternity pay for the rest of her maternity leave period. Secondly the reason or principal reason was because she was entitled to take and remain on maternity leave and to receive maternity pay in respect of that leave. We took into account that the Claimant was specifically told by Gurjeet Dhillon to go to the job centre for the rest of her maternity pay which we felt to be a major factor in the reason why she was dismissed when she was. It was also noted that she was told that she would be offered a role with the Second Respondent after her maternity leave, which suggested that they wished to avoid transferring the Claimant's maternity leave rights across. We therefore conclude that this was unfavourable treatment because of pregnancy to be dismissed whilst on maternity leave and was connected to her pregnancy or to her right to receive maternity pay.

**The Claimant's evidence in relation to injury to feelings.**

55. The Claimant told the Tribunal that after learning of her dismissal and after the First Respondent refused to communicate with her about the payment of the rest of her maternity pay, she became depressed and was constantly crying and stressed. She stated that her daughter also started crying constantly and this was due to her milk flow reducing. She attended her GP and was prescribed sleeping tablets and was told that if things did not improve, she would be placed on anti-depressants. The Claimant

stated that this was the worst time in her life as she was not able to enjoy her baby daughter. She stated that the sleeping tablets helped her to sleep but her milk production did not improve, this adversely impacted on her depression. After 6 months of suffering depression she was prescribed anti-depressants and she was referred to a psychiatrist and had 10 sessions to assist her in managing her illness. The Claimant in answers to the Tribunal's questions confirmed that she was firstly prescribed Ciprolex but this adversely affected her breathing. She was then prescribed Sertraline 50 mg for the first two months which was then increased to 100 mg.

56. The Claimant told the Tribunal that she had secured another role in February 2019 earning £25,000 per annum.

**Closing submissions**

**The Respondent's submissions** were oral and were as follows:

57. I hope that you can see there is no TUPE transfer. One business closed and another one opened. There was no link and no connection. Other people aside of 30 could raise a complaint. I understand the Claimant's frustration. She went to the job centre. Her solicitor gave her false hope. All the medications started after she sought legal advice.
58. It is unfair, why should I pick up the bill? Imagine it was the other way around? I hope you can see.
59. I was asked about Statutory Maternity Pay, before the Company closed everything was paid. She was paid everything, this has no relevance to my company nor something I should have to deal with. The last time the Claimant went to a hearing it went in her favour. She was offered like this big payment. I am in no position to make any big payments.

**The Claimant's submissions** were also oral and were as follows:

60. I had been employed by the First Respondent, I had an interview with Gurjit and Baldip, who is Ms Sandhu's husband and brother. I had to submit papers with the Office Manager. It was the same structure and same management, nothing changed. The company was then dissolved. Ms Sandhu's email did not change. I say there was a transfer. I also referred Ms Sandhu to the payslips, she stated that she could confirm that they worked with me when I was dismissed, they transferred to the Second Respondent. Ms Sandhu was the owner and her father in law is the managing director. The same people were there and I was told that nothing had changed.
61. The Second Respondent is trying to get away because they were doing it for so long. They are now trying to do it with DMS1.
62. No bundle was produced and there was no offer from their side.

63. The discrimination claim – the problem came when I was on maternity leave, they could not transfer me because of the maternity leave. This is discrimination. Jit (Gurjeet Dhillon) said I could work for the new company but I would lose my maternity pay and my benefits. There was no way they wanted to help me. When I went to the job centre I tried to talk to them but there was no way I was going to get a reply. Anyone on maternity leave is entitled to their maternity pay.

## **The Law**

### **Employment Rights Act 1996**

#### **13 Right not to suffer unauthorised deductions**

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

#### **27 Meaning of “wages” etc**

(1) In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including—

- (a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,
- (b) statutory sick pay under [Part XI](#) of the Social Security Contributions and Benefits Act 1992,
- (c) statutory maternity pay under Part XII of that Act,
- [(ca) [statutory paternity pay] under Part 12ZA of that Act,
- (cb) statutory adoption pay under Part 12ZB of that Act,]
- [(cc) statutory shared parental pay under Part 12ZC of that Act,]
- [(cd) statutory parental bereavement pay under Part 12ZD of that Act,]
- (d) a guarantee payment (under section 28 of this Act),

#### **[99 Leave for family reasons**

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a prescribed kind, or
- (b) the dismissal takes place in prescribed circumstances.

(2) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

(3) A reason or set of circumstances prescribed under this section must relate to—

- (a) pregnancy, childbirth or maternity,
  - [(aa) time off under section 57ZE,]
  - [(ab) time off under section 57ZJ or 57ZL,]
- (b) ordinary, compulsory or additional maternity leave,
  - [(ba) ordinary or additional adoption leave,]
  - [(bb) shared parental leave,]
- (c) parental leave,
  - [(ca) [paternity leave]],
  - [(cb) parental bereavement leave,] [or]
- (d) time off under section 57A;

and it may also relate to redundancy or other factors.

## **Equality Act 2010**

### **18 Pregnancy and maternity discrimination: work cases**

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably—

- (a) because of the pregnancy, or
- (b) because of illness suffered by her as a result of it.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

- (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
- (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

### **39 Employees and applicants**

(1) An employer (A) must not discriminate against a person (B)—

- (a) in the arrangements A makes for deciding to whom to offer employment;
  - (b) as to the terms on which A offers B employment;
  - (c) by not offering B employment.
- (2) An employer (A) must not discriminate against an employee of A's (B)—
- (a) as to B's terms of employment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by dismissing B;
  - (d) by subjecting B to any other detriment.

## **Transfer of Undertakings (Protection of Employment) Regulations 2006**

### **3 A relevant transfer**

- (1) These Regulations apply to—
- (a) a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;
  - (b) a service provision change, that is a situation in which—
    - (i) activities cease to be carried out by a person (“a client”) on his own behalf and are carried out instead by another person on the client's behalf (“a contractor”);
    - (ii) activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person (“a subsequent contractor”) on the client's behalf; or
    - (iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf,

and in which the conditions set out in paragraph (3) are satisfied.

(2) In this regulation “economic entity” means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

[(2A) References in paragraph (1)(b) to activities being carried out instead by another person (including the client) are to activities which are fundamentally the same as the activities carried out by the person who has ceased to carry them out.]

- (3) The conditions referred to in paragraph (1)(b) are that—
- (a) immediately before the service provision change—
    - (i) there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;
    - (ii) the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and
  - (b) the activities concerned do not consist wholly or mainly of the supply of goods for the client's use.
- (4) Subject to paragraph (1), these Regulations apply to—
- (a) public and private undertakings engaged in economic activities whether or not they are operating for gain;
  - (b) a transfer or service provision change howsoever effected notwithstanding—
    - (i) that the transfer of an undertaking, business or part of an undertaking or business is governed or effected by the law of a country or territory outside the United Kingdom or that the service provision change is governed or effected by the law of a country or territory outside Great Britain;
    - (ii) that the employment of persons employed in the undertaking, business or part transferred or, in the case of a service provision change, persons employed in the organised grouping of employees, is governed by any such law;
  - (c) a transfer of an undertaking, business or part of an undertaking or business (which may also be a service provision change) where persons employed in the undertaking, business or part transferred ordinarily work outside the United Kingdom.
- (5) An administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities is not a relevant transfer.
- (6) A relevant transfer—
- (a) may be effected by a series of two or more transactions; and
  - (b) may take place whether or not any property is transferred to the transferee by the transferor.
- (7) Where, in consequence (whether directly or indirectly) of the transfer of an undertaking, business or part of an undertaking or business which was situated immediately before the transfer in the United Kingdom, a ship within the meaning of the [Merchant Shipping Act 1995](#) registered in the United Kingdom ceases to be so registered, these Regulations shall not affect the right conferred by section

29 of that Act (right of seamen to be discharged when ship ceases to be registered in the United Kingdom) on a seaman employed in the ship.

#### 4 Effect of relevant transfer on contracts of employment

(1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

(2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer—

- (a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and
- (b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

(3) Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.

[(4) Subject to regulation 9, any purported variation of a contract of employment that is, or will be, transferred by paragraph (1), is void if the sole or principal reason for the variation is the transfer.

(5) Paragraph (4) does not prevent a variation of the contract of employment if—

- (a) the sole or principal reason for the variation is an economic, technical, or organisational reason entailing changes in the workforce, provided that the employer and employee agree that variation; or
- (b) the terms of that contract permit the employer to make such a variation.

(5A) In paragraph (5), the expression “changes in the workforce” includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).



(5B) Paragraph (4) does not apply in respect of a variation of the contract of employment in so far as it varies a term or condition incorporated from a collective agreement, provided that—

- (a) the variation of the contract takes effect on a date more than one year after the date of the transfer; and
- (b) following that variation, the rights and obligations in the employee's contract, when considered together, are no less favourable to the employee than those which applied immediately before the variation.

(5C) Paragraphs (5) and (5B) do not affect any rule of law as to whether a contract of employment is effectively varied.]

(6) Paragraph (2) shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.

(7) Paragraphs (1) and (2) shall not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection with it of an employee who informs the transferor or the transferee that he objects to becoming employed by the transferee.

(8) Subject to paragraphs (9) and (11), where an employee so objects, the relevant transfer shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.

(9) Subject to regulation 9, where a relevant transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under paragraph (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

(10) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (9) in respect of any failure by the employer to pay wages to an employee in respect of a notice period which the employee has failed to work.

(11) Paragraphs (1), (7), (8) and (9) are without prejudice to any right of an employee arising apart from these Regulations to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer.

## **7 Dismissal of employee because of relevant transfer**

[(1) Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee is to be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

(2) This paragraph applies where the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer.

(3) Where paragraph (2) applies—

(a) paragraph (1) does not apply;  
(b) without prejudice to the application of section 98(4) of the 1996 Act (test of fair dismissal), for the purposes of sections 98(1) and 135 of that Act (reason for dismissal)—

- (i) the dismissal is regarded as having been for redundancy where section 98(2)(c) of that Act applies; or
- (ii) in any other case, the dismissal is regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(3A) In paragraph (2), the expression “changes in the workforce” includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).]

(4) The provisions of this regulation apply irrespective of whether the employee in question is assigned to the organised grouping of resources or employees that is, or will be, transferred.

(5) Paragraph (1) shall not apply in relation to the dismissal of any employee which was required by reason of the application of [section 5](#) of the Aliens Restriction (Amendment) Act 1919 to his employment.

(6) Paragraph (1) shall not apply in relation to a dismissal of an employee if the application of section 94 of the 1996 Act to the dismissal of the employee is excluded by or under any provision of the 1996 Act, the 1996 Tribunals Act or the 1992 Act.

### **13 Duty to inform and consult representatives**

(1) In this regulation and regulations [13A,] 14 and 15 references to affected employees, in relation to a relevant transfer, are to any employees of the transferor or the transferee (whether or not assigned to the organised grouping of resources or employees that is the subject of a relevant transfer) who may be affected by the transfer or may be affected by measures taken in connection with it; and references to the employer shall be construed accordingly.

(2) Long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees, the employer shall inform those representatives of—

- (a) the fact that the transfer is to take place, the date or proposed date of the transfer and the reasons for it;
- (b) the legal, economic and social implications of the transfer for any affected employees;
- (c) the measures which he envisages he will, in connection with the transfer, take in relation to any affected employees or, if he envisages that no measures will be so taken, that fact; and
- (d) if the employer is the transferor, the measures, in connection with the transfer, which he envisages the transferee will take in

relation to any affected employees who will become employees of the transferee after the transfer by virtue of regulation 4 or, if he envisages that no measures will be so taken, that fact.

[(2A) Where information is to be supplied under paragraph (2) by an employer—

(a) this must include suitable information relating to the use of agency workers (if any) by that employer; and

(b) “suitable information relating to the use of agency workers” means—

(i) the number of agency workers working temporarily for and under the supervision and direction of the employer;

(ii) the parts of the employer's undertaking in which those agency workers are working; and

(iii) the type of work those agency workers are carrying out.]

(3) For the purposes of this regulation the appropriate representatives of any affected employees are—

(a) if the employees are of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union; or

(b) in any other case, whichever of the following employee representatives the employer chooses—

(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this regulation, who (having regard to the purposes for, and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the transfer on their behalf;

(ii) employee representatives elected by any affected employees, for the purposes of this regulation, in an election satisfying the requirements of regulation 14(1).

(4) The transferee shall give the transferor such information at such a time as will enable the transferor to perform the duty imposed on him by virtue of paragraph (2)(d).

(5) The information which is to be given to the appropriate representatives shall be given to each of them by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the trade union at the address of its head or main office.

(6) An employer of an affected employee who envisages that he will take measures in relation to an affected employee, in connection with the relevant transfer, shall consult the appropriate representatives of that employee with a view to seeking their agreement to the intended measures.

- (7) In the course of those consultations the employer shall—
- (a) consider any representations made by the appropriate representatives; and
  - (b) reply to those representations and, if he rejects any of those representations, state his reasons.
- (8) The employer shall allow the appropriate representatives access to any affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.
- (9) If in any case there are special circumstances which render it not reasonably practicable for an employer to perform a duty imposed on him by any of paragraphs (2) to (7), he shall take all such steps towards performing that duty as are reasonably practicable in the circumstances.
- (10) Where—
- (a) the employer has invited any of the affected employee to elect employee representatives; and
  - (b) the invitation was issued long enough before the time when the employer is required to give information under paragraph (2) to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this regulation in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.

- (11) If, after the employer has invited any affected employees to elect representatives, they fail to do so within a reasonable time, he shall give to any affected employees the information set out in paragraph (2).
- (12) The duties imposed on an employer by this regulation shall apply irrespective of whether the decision resulting in the relevant transfer is taken by the employer or a person controlling the employer.

### **13A Micro-business's duty to inform and consult where no appropriate representatives**

- (1) This regulation applies if, at the time when the employer is required to give information under regulation 13(2)—
- (a) the employer employs fewer than 10 employees;
  - (b) there are no appropriate representatives within the meaning of regulation 13(3); and
  - (c) the employer has not invited any of the affected employees to elect employee representatives.

(2) The employer may comply with regulation 13 by performing any duty which relates to appropriate representatives as if each of the affected employees were an appropriate representative.]

## 15 Failure to inform or consult

(1) Where an employer has failed to comply with a requirement of regulation 13 or regulation 14, a complaint may be presented to an employment tribunal on that ground—

- (a) in the case of a failure relating to the election of employee representatives, by any of his employees who are affected employees;
- (b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related;
- (c) in the case of failure relating to representatives of a trade union, by the trade union; and
- (d) in any other case, by any of his employees who are affected employees.

(2) If on a complaint under paragraph (1) a question arises whether or not it was reasonably practicable for an employer to perform a particular duty or as to what steps he took towards performing it, it shall be for him to show—

- (a) that there were special circumstances which rendered it not reasonably practicable for him to perform the duty; and
- (b) that he took all such steps towards its performance as were reasonably practicable in those circumstances.

(3) If on a complaint under paragraph (1) a question arises as to whether or not an employee representative was an appropriate representative for the purposes of regulation 13, it shall be for the employer to show that the employee representative had the necessary authority to represent the affected employees [except where the question is whether or not regulation 13A applied].

[(3A) If on a complaint under paragraph (1), a question arises as to whether or not regulation 13A applied, it is for the employer to show that the conditions in sub-paragraphs (a) and (b) of regulation 13A(1) applied at the time referred to in regulation 13A(1).]

(4) On a complaint under paragraph (1)(a) it shall be for the employer to show that the requirements in regulation 14 have been satisfied.

(5) On a complaint against a transferor that he had failed to perform the duty imposed upon him by virtue of regulation 13(2)(d) or, so far as relating thereto, regulation 13(9), he may not show that it was not reasonably practicable for him to perform the duty in question for the reason that the transferee had failed to give him the requisite information at the requisite time in accordance with regulation 13(4) unless he gives the transferee notice of his intention to show that fact; and the giving of the notice shall make the transferee a party to the proceedings.

(6) In relation to any complaint under paragraph (1), a failure on the part of a person controlling (directly or indirectly) the employer to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.

- (7) Where the tribunal finds a complaint against a transferee under paragraph (1) well-founded it shall make a declaration to that effect and may order the transferee to pay appropriate compensation to such descriptions of affected employees as may be specified in the award.
- (8) Where the tribunal finds a complaint against a transferor under paragraph (1) well-founded it shall make a declaration to that effect and may—
- (a) order the transferor, subject to paragraph (9), to pay appropriate compensation to such descriptions of affected employees as may be specified in the award; or
  - (b) if the complaint is that the transferor did not perform the duty mentioned in paragraph (5) and the transferor (after giving due notice) shows the facts so mentioned, order the transferee to pay appropriate compensation to such descriptions of affected employees as may be specified in the award.
- (9) The transferee shall be jointly and severally liable with the transferor in respect of compensation payable under sub-paragraph (8)(a) or paragraph (11).
- (10) An employee may present a complaint to an employment tribunal on the ground that he is an employee of a description to which an order under paragraph (7) or (8) relates and that—
- (a) in respect of an order under paragraph (7), the transferee has failed, wholly or in part, to pay him compensation in pursuance of the order;
  - (b) in respect of an order under paragraph (8), the transferor or transferee, as applicable, has failed, wholly or in part, to pay him compensation in pursuance of the order.
- (11) Where the tribunal finds a complaint under paragraph (10) well-founded it shall order the transferor or transferee as applicable to pay the complainant the amount of compensation which it finds is due to him.
- (12) An employment tribunal shall not consider a complaint under paragraph (1) or (10) unless it is presented to the tribunal before the end of the period of three months beginning with—
- (a) in respect of a complaint under paragraph (1), the date on which the relevant transfer is completed; or
  - (b) in respect of a complaint under paragraph (10), the date of the tribunal's order under paragraph (7) or (8),

or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

[(13) Regulation 16A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (12).]

## **16 Failure to inform or consult: supplemental**

(1) Section 205(1) of the 1996 Act (complaint to be sole remedy for breach of relevant rights) and [sections 18A to 18C] of the 1996 Tribunals Act (conciliation) shall apply to the rights conferred by regulation 15 and to proceedings under this regulation as they apply to the rights conferred by those Acts and the employment tribunal proceedings mentioned in those Acts.

(2) An appeal shall lie and shall lie only to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in any proceedings before, an employment tribunal under or by virtue of these Regulations; and [section 11\(1\)](#) of the Tribunals and Inquiries Act 1992 (appeals from certain tribunals to the High Court) shall not apply in relation to any such proceedings.

(3) “Appropriate compensation” in regulation 15 means such sum not exceeding thirteen weeks' pay for the employee in question as the tribunal considers just and equitable having regard to the seriousness of the failure of the employer to comply with his duty.

(4) Sections 220 to 228 of the 1996 Act shall apply for calculating the amount of a week's pay for any employee for the purposes of paragraph (3) and, for the purposes of that calculation, the calculation date shall be—

(a) in the case of an employee who is dismissed by reason of redundancy (within the meaning of sections 139 and 155 of the 1996 Act) the date which is the calculation date for the purposes of any entitlement of his to a redundancy payment (within the meaning of those sections) or which would be that calculation date if he were so entitled;

(b) in the case of an employee who is dismissed for any other reason, the effective date of termination (within the meaning of sections 95(1) and (2) and 97 of the 1996 Act) of his contract of employment;

(c) in any other case, the date of the relevant transfer.

## **Conclusions**

The unanimous decision of the Tribunal is as follows:

64. The first issue for the tribunal is whether there was a relevant transfer which would either be an economic entity which retains its identity or in the alternative a service provision change.

65. Firstly the Tribunal considered the guidance provided in the case of *Cheeseman v Brewer Contracts Limited* 2001 IRLR 144 EAT where it was confirmed that the Tribunal must consider whether there is an economic entity in existence which is a stable economic entity which is an “*organised grouping of persons and assets enabling (or facilitating) the exercise of an economic activity that pursues a specific objective*”. It also stated that a Tribunal must consider whether it is “*sufficiently structured and autonomous*” but it will not necessarily have sufficient tangible or intangible assets. In that case it was clarified that an “*organised grouping of wage earners who are specifically and permanently assigned to a common task may, in the absence of other factors of production, amount to an economic activity*”. An organised grouping of resources will be evident where there is an organised grouping of resources comprising of

physical and intangible assets (for example goodwill), workforce, premises, customers and operating systems.

66. From the evidence before the Tribunal it was seen that there was a stable economic entity. We saw the economic entity being the contract to provide HR services to the Domino's Pizza franchise. The Claimant produced consistent evidence to show that a total of six people (including the Claimant) were assigned to work on that contract and they were employed by the First Respondent immediately before the transfer and then were employed by the Second Respondent from the 1 August 2017. It was confirmed by Ms Sandhu that the work continued uninterrupted and was being performed by the same employees. The entity was therefore an organised group of a number of employees (including the Claimant) who were assigned to work on that contract with the specific objective of providing HR services. The evidence also corroborated that there was an economic entity as some of the staff retained their email addresses (including Gurjeet Dhillon and Ms Sandhu), the good will of the contract transferred as well as the office furniture and the lease of the premises.
67. The second issue for the Tribunal is to consider whether the entity retained its identity in the hands of the transferee. In the Cheeseman case above, it was confirmed that the *"decisive criterion for establishing the existence of a transfer is whether the entity in question retains its identity, as indicated, among other things, by the fact that the operation is actually continued or resumed"*.
68. From the evidence before us we conclude that the entity retained its identity in the hands of the transferee. The entity comprised of five people who worked with the Claimant prior to the transfer and continued to carry out the same work, without interruption for the Second Respondent. The Claimant was also offered work with the Second Respondent, which she declined. Although Ms Sandhu referred to the changes she made post August 2017 (the date of the transfer) there was no evidence to suggest that those changes were more than merely procedural in nature in relation to software that was used. We have found as a fact that the work remained the same before and after the transfer and was carried out by the same employees for the same client.
69. The guidance contained in the Cheeseman case also confirmed that in a labour intensive sector that *"an entity is capable of maintaining its identity after it has been transferred where the new employer does not merely pursue the activity in question but also takes over a major part, in terms of their numbers and skills, of the employees specifically assigned by its predecessor to that task."* The Tribunal was reminded in the guidance provided in that case that it was important to consider all the factors in the case. Of the factors that are important are whether customers are transferred and the *"degree of similarity between the activities carried out before and after the transfer."* We have concluded above that the activities carried out by the staff assigned to the contract continued, and they were to manage HR activities after the date of the transfer. There was no evidence to suggest that the activities changed either in terms of the service provided or the manner of delivery of those services. The



Second Respondent provided no evidence to suggest that the service provided after the transfer was different to that carried out prior to the transfer.

70. Although the Second Respondent's evidence was that there was no transfer of assets the tribunal's findings of fact conclude otherwise. We have found as a fact that the lease held by the First Respondent was acquired by the Second Respondent. The Second Respondent also purchased the office equipment and although this purchase was conducted via a third party, this was not seen to be significant. Although the Second Respondent told the Tribunal that she renegotiated contracts with the clients, she produced no evidence of this. What was consistent was that the service provided by the Second Respondent was the same before and after the transfer, namely managing HR services to the same franchise before and after the transfer and those services were provided by the same people from the same office and in some cases using the same email addresses.
71. The Tribunal also took into account that the absence of a contractual link between the First and Second Respondent is not conclusive. Although Ms Sandhu told the Tribunal that she negotiated the purchase of the office equipment from the landlord, this was not a significant factor in the factual matrix of the case. No evidence was provided in relation to the negotiations with the landlord and the invoice dated 2018 provided little assistance in determining the significance of this transaction as at the date of the invoice.
72. The Tribunal also considered the evidence of Ms Sandhu that there was no intention for the First Respondent to 'retain any part of its identity' (paragraph 8 of her statement). However the issue of whether there is a relevant transfer will depend on the facts of the case and after applying the required multifactorial approach, not on the intention of the parties. On the facts we have concluded that there was a relevant transfer of an economic entity that retained its identity. The intention of the parties may only be relevant where there is a service provision change. However no evidence has been provided by the Second Respondent as to why in this case and on the facts that the transfer of undertakings provisions should not apply, apart from the bald assertion in her statement that "there was no intention for the First Respondent to retain any part of its identity". The Tribunal has concluded on all the facts that there was a transfer of part which was focussed on the delivery of HR services to Dominos pizza. We have concluded that this part retained its identity.
73. The facts before the tribunal reflect that the Second Respondent acquired all of the First Respondent's assets via a third party, in August 2017. The Second Respondent continued to work on the contracts that had previously been held by the First Respondent. All the work continued without interruption and the staff assigned to work on those contracts continued to carry out that work for the Second Respondent. We conclude therefore that the economic entity retained its identity and transferred from the First Respondent to the Second Respondent. The clients' work and the goodwill of those contracts transferred across to the Second Respondent. The persons assigned to the Dominos pizza contract continued to provide

the same service to that client using the same assets and worked out of the same office. The Tribunal therefore conclude that the economic entity retained its identity and there was a relevant transfer from the First to the Second Respondent on the 1 August 2017.

74. Even if the Tribunal is wrong on the issue of whether there was an economic entity that retained its identity, we also conclude that what transferred could amount to a service provision change. The activity performed before the transfer was fundamentally and essentially the same as that performed after the relevant transfer for the reasons stated above. If it was the intention of the parties to avoid a relevant transfer clear evidence has to be shown why a relevant transfer has not taken place. We have concluded on all the facts that the activity continued to be carried out before and after the transfer for the same client. There has been no credible or consistent evidence produced by the First or Second Respondent to show that on the facts this was not a service provision change
75. Other factors considered to be highly relevant in this case was that the Director of the First Respondent was also the franchise owner of Dominos Pizza. Mr Manga Dhillon had previously set up the company that later became the Second Respondent. Ms Sandhu was also advised by the First Respondent's accountant to set up the Second Respondent using this company and the transfer of this company took place on the 1 June 2017, before the First Respondent ceased trading. This evidence suggested that steps were being taken to transfer the assets and staff from the First to the Second Respondent long before any staff were dismissed. Mr Manga Dhillon only resigned as Director when Ms Sandhu had become a Director. The two companies were created and under the control of members of the same family. The client was also a franchise owned by Mr Manga Dhillon. It was inconceivable that they did not have full knowledge of the fact and the reason for the transfer from the First to the Second Respondent and of the measures that they intended to take as a result of the transfer.
76. We conclude on the facts this was a transfer of part and we concentrated on the Domino's franchise work. We did so as this was the only evidence before us. Had we been provided with any evidence by the First or Second Respondent about the number of people they employed prior to the transfer and the contracts they were assigned to, we may have been able to conclude that there was a transfer of all staff on the 1 August 2017 or at some later date. However it has not been possible to come to a conclusion on any contracts apart from the work conducted for Dominos pizza. We conclude that the Claimant was assigned to this work immediately before the transfer which was found as a fact to be on the 1 August 2017.
77. The Tribunal then considered Regulation 4(2) which states that an employee will transfer across to the transferee "*with all the transferor's rights, powers, duties and liabilities under or in connection with any such contract...*", this would include rights to take maternity leave and to be paid maternity pay whilst on leave. Regulation 4(3) defines those who are employed immediately before the transfer as someone who is "*employed*

*immediately before the transfer, or would have been so employed if he had not been dismissed in the circumstances described in Regulation 7(1)..”*. We conclude that the Claimant was employed immediately before the transfer and was dismissed on or after the 30 September 2017. The First Respondent has failed to show a fair reason for dismissal nor has it been shown that the dismissal was not on the grounds of the transfer.

78. The Second Respondent’s evidence was clear that everyone was dismissed by the First Respondent and then the Second Respondent ‘picked the best’ employees and offered them new contracts. The Second Respondent confirmed that the Claimant was offered a contract after she had been dismissed. Those who were subsequently employed by the Second Respondent lost their rights to continuity of service and to other accrued statutory rights.
79. The Tribunal conclude from the facts that the Claimant was assigned to the organised grouping of employees (or the service provision) immediately before the transfer. The First and Second Respondent provided no evidence of why the Claimant was dismissed when she was. There was no letter setting out the reason for dismissal. What was also clear was that the Second Respondent approached her after she had received her P45 with a view to taking her back to perform the same role that she had previously held with the First Respondent. There was no documentary evidence of the offer that was made. On the evidence therefore we conclude that the sole or principal reason for the dismissal was the transfer and is therefore unfair. However as the Claimant had not been employed for two years this did not entitle her to claim ordinary unfair dismissal under Regulation 7.
80. The Claimant has argued in the alternative that the dismissal was automatically unfair under section 99 of the Employment Rights Act 1996. We have concluded that the Claimant was dismissed by the First Respondent and we have also concluded that the reason or principal reason was due to the fact that she was absent on ordinary and additional maternity leave. We reached this conclusion because the First Respondent has provided no evidence as to why she was dismissed when she was, during her maternity leave. The consistent evidence was that she was told to go to the job centre to claim her benefits. The Claimant reported back to the First Respondent on what she had been told by the job centre and after hearing this, they had no further discussions with the Claimant and sent her a P45. It was also made clear to her that she would be offered a role with the Second Respondent after the end of her maternity leave. The Tribunal conclude therefore that the reason for dismissal was due to her taking maternity leave and being absent on that ground. We conclude therefore that the dismissal is automatically unfair.
81. The tribunal must then consider the Claimant’s claim under section 18 of the Equality Act. Neither Respondent has shown a potentially fair reason to dismiss the Claimant. We again refer to our findings of fact about the dismissal and the discussions that took place around the non-payment of her maternity pay. Under the burden of proof provisions in the Equality Act the Claimant must show facts from which a Tribunal could conclude (in

the absence of an explanation by the employer) that she has been treated less favourably on that ground. The Claimant has shown that at the time of her dismissal, she was on maternity leave. She was dismissed without notice. She was provided with no reason for the dismissal and the First Respondent failed to respond to any attempts made by her to discuss the matter. She was also told that she could return to her role but only after her maternity leave. We conclude that this was a detriment and the burden of proof shifts to the First Respondent to show that the dismissal was in no sense whatsoever on that ground. As the First Respondent failed to provide any evidence to the Tribunal as to the reason for dismissal and the Second Respondent also provided no evidence as to why the First Respondent dismissed the Claimant (despite Ms Sandhu being the Office Manager and HR person for the First Respondent immediately prior to the transfer); we conclude that the Claimant's claim on this ground is therefore well founded. It is concluded that the Claimant was discriminated against contrary to section 18 of the Equality Act by being dismissed without notice and being told to claim her maternity pay from elsewhere.

82. Having heard the evidence in this case we also conclude that the Claimant is owed statutory maternity pay. We have considered the Claimant's detailed schedule of loss which has been before both the First and Second Respondent for some considerable time. The Second Respondent did not challenge the calculation of the sums due to the Claimant in cross examination. In the absence of any credible challenge to the Claimant's evidence we conclude that the Claimant is owed the sum of £3524.50. Although this was a debt owed by the First Respondent as we have found there to be a relevant transfer, all debts and liabilities owed by the First Respondent to the Claimant transfer across to the Second Respondent under Regulation 4 and is payable by them.

83. The tribunal reached the same conclusion in respect of the Claimant's claim for annual leave due and owing. There was no challenge to the Claimant's evidence on this point, that she had accrued annual leave and had not been paid for that leave. The Claimant was not cross examined on her evidence and the Second Respondent produced no evidence to suggest that she was not owed this sum of money. Again we concluded that the First and Second Respondent had been in possession of the Claimant's schedule of loss for a number of years and had this been disputed, the evidence should have been produced and put to the Claimant in cross examination and should have been referred to in Ms Sandhu's statement. It was also considered to be highly relevant that Ms Sandhu had been the Office Manager in 2017 and had been the HR manager for the First Respondent and she would have been in possession of this information prior to the transfer. The tribunal also considered that the work undertaken by the First and Second Respondent was to advise on HR functions, they were not an unsophisticated organisation, there was no excuse for not knowing the law. Therefore the tribunal accept the consistent evidence of the Claimant as set out in her schedule of loss and we award to the Claimant the sum of £1475.60.

84. As we have found this to be an automatically unfair and discriminatory dismissal we award to the Claimant a basic award under section 99 of the Employment Rights Act of £480.76.
85. We also award to the Claimant loss of earnings for 46 weeks, which we calculate to be the sum of £16,970.32.
86. Turning to the claim for injury to feelings, we noted the evidence given by the Claimant to the tribunal. She stated that she was informed that she had no job during her maternity leave and this had a detrimental and adverse impact upon her health and well-being and this adversely impacted her ability to feed her child, which caused additional distress. We accept the Claimant's evidence that she was prescribed antidepressants after six months and took time to recover. We found the Claimant's evidence to be consistent and credible and we considered that her evidence reflected a level of distress that was serious. We conclude that that distress was worsened by the First Respondent failing to contact the Claimant or to provide her with any means to access the rest of her maternity pay. This came at a time where the Claimant was vulnerable and through no fault of her own faced difficult financial circumstances which were outside of her control.
87. We also took into account that the way in which the First and Second Respondent defended the claim added to this injury. The ET3 presented by the First Respondent stated that the Claimant "decided to leave without notice..". There was no evidence to suggest that this was the case. This evidence was repeated in Tribunal by Ms Sandhu and when she was asked about this she said it was "talk in the office" but no credible evidence was advanced on this point. By making assertions that were untrue and without foundation, attempting to show the Claimant to be an unreliable witness, we conclude that this further compounded the distress to the Claimant. It was also suggested by Ms Sandhu in her statement that the Claimant had been "sold a dream" by her solicitor and she had attended therapy in order to have back up for a "big payday". We have found as a fact above that the Claimant's evidence was consistent and credible when compared to that of Ms Sandhu. The accusation that this case was somehow exaggerated was a matter that caused the Tribunal to conclude that the injury to feelings payment should reflect this additional level of distress caused by the manner in which the claim was defended. We conclude therefore that the Claimant shall be awarded the sum of £12,500 injury to feelings.
88. Lastly turning to the claim for failure to inform and consult. As we have found as a fact that there was a relevant transfer from the First Respondent to the Second Respondent and it was accepted by Ms Sandhu that there was no information and consultation process undertaken by the First Respondent or by the Second Respondent before or after the relevant transfer. It was found as a fact that 30 staff transferred across from the First Respondent to the Second Respondent, however the Tribunal had no reliable evidence as to exactly how many employees were employed by the First Respondent. There was no evidence that any steps were taken to inform the employees of the fact of the transfer or the effect this would have on their contracts of employment or on any measures to

be taken after the transfer. The Second Respondent has provided no reason as to why no steps were taken to undertake this process. There was no evidence to suggest that there was a defence to this; there was no evidence of special circumstances that made it impossible to inform and consult. The tribunal also noted that the First and Second Respondents were largely operated and controlled by members of the same family as we have found as a fact above, it would be inconceivable that the Respondents would not have known who was transferring, what was being transferred and the terms on which that transfer would have taken place.

89. There was no defence to the failure to inform and consult and there was no evidence to suggest that it would not be possible to carry out this exercise and no defence to the total failure to do so. We therefore award to the Claimant 13 weeks gross pay amounting to £6240.

90. All the sums referred to above are not subject to recoupment.

Employment Judge **Sage**

Date: 15 September 2021