



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Z Fatima

**Respondent:** Mediscan Diagnostic Services Ltd.

**Heard at:** Manchester

**On:** 25-30 April 2024  
3 June 2024 (in chambers)

**Before:** Employment Judge Barker  
Ms L Atkinson  
Ms J Whistler

## REPRESENTATION:

**Claimant:** In person, with the assistance of Mr Ejaz Ahmed, interpreter

**Respondent:** Miss A Sola-Ogunniyi, solicitor

## RESERVED JUDGMENT

1. The complaint of unfair dismissal is well-founded. Mrs Fatima was unfairly selected for redundancy and dismissed because of her pregnancy.
2. The complaint of maternity discrimination is well-founded and succeeds.
3. The complaint of victimisation is well-founded and succeeds.
4. The complaint of breach of contract by reason of a failure to pay notice pay is well-founded and succeeds.
5. The complaint of breach of contract by reason of a failure to pay mileage is well-founded and succeeds

### Preliminary Matters and the issues for the Tribunal to decide

1. Mrs Fatima brings claims for automatic unfair dismissal by reason of pregnancy, automatic unfair selection for redundancy because of her pregnancy, wrongful dismissal, direct sex discrimination, and pregnancy and maternity discrimination.

2. She alleges she was selected for redundancy and dismissed because of her pregnancy. She also alleges that the respondent failed to carry out a pregnancy risk assessment under regulation 16 of the 1999 Management of Health and Safety at Work Regulations 1999. She also claims for a breach of contract for a failure to pay mileage properly incurred. She also claims for a failure to pay her notice pay.
3. Mrs Fatima provided us with a witness statement and also gave us evidence under oath during the hearing. Dr Eshan was originally the only witness put forward by the respondent to give evidence, but following the claimant's amendment application Mrs Khan was also permitted to give evidence on the issue of victimisation. The respondent's solicitor had prepared a bundle of documents for the Tribunal.
4. Each party provided us with brief closing statements, for which we were grateful. A list of issues had been agreed at a previous case management preliminary hearing, which we have used and updated as agreed with the parties.

#### **Amendment application to add claims of victimisation, s27 Equality Act 2010**

5. During the hearing it became apparent to the Tribunal panel that Mrs Fatima also wished to complain about victimisation as part of these proceedings. The Tribunal was aware that in the period from 3 October 2023 to shortly before this hearing, Mrs Fatima was in correspondence with the Tribunal to ask to include such a claim, but she did not specifically label it as a "victimisation" claim. The respondent was not aware of the initial letter dated 3 October 2023 but was subsequently copied in to replies from Employment Judge Allen in December 2023 and Employment Judge Tobin in April 2024 that told Mrs Fatima that she should be specific about which claim she wished to bring. Prior to the hearing Employment Judge Tobin thought Mrs Fatima was complaining of defamation and told Mrs Fatima that this did not fall within the jurisdiction of the Tribunal.
6. Mrs Fatima does not have the benefit of legal representation and in her correspondence struggled to explain her victimisation claim. English is also not her first language. However, during this hearing we had the assistance of Mr Ahmed to interpret for her.
7. During Mrs Fatima's cross examination, it became apparent that her complaint was that Mrs Khan, her line manager, had provided her with an unfair reference, which she thought was deliberately and unfairly negative because Mrs Fatima had issued an Employment Tribunal claim. She also wished to complain to the Tribunal that Mrs Khan, when asked by Mrs Fatima to improve the reference, had said to her that "*don't expect a good reference after everything that's happened between us*".

8. Mrs Fatima first saw this reference in early October 2023 and complained to the Tribunal about it immediately afterwards.
9. It cannot therefore have been said to be presented late as although the time limit for presenting such a claim had passed Mrs Fatima made her application to the Tribunal to include it within a matter of days of her becoming aware of the alleged victimisation.
10. The reference is before the Tribunal and is unequivocally negative about Mrs Fatima's performance and attitude. It states that she had a substantiated disciplinary sanction against her during her employment with the respondent which Mrs Fatima says was incorrect. No disciplinary sanction had been imposed on her at the time she was made redundant.
11. Mrs Fatima had understood in 2022 that had her reference was not good enough for her to secure permanent employment with the NHS and telephoned Mrs Khan to ask her if her reference could be improved. She told the Tribunal that Mrs Khan said to her on the telephone words to the effect that "*don't expect a good reference after everything that's happened between us.*" The Tribunal notes that Mrs Fatima's claim form was issued to the Tribunal on 9 January 2021 and the particulars of claim refer specifically to behaviour by Mrs Khan .
12. It therefore became apparent to us that Mrs Fatima's application to amend which had not been formally refused by the Tribunal fell to us to decide as a preliminary issue. We spoke to Mrs Fatima about this issue, about when she first became aware of it, and what evidence we might need to see and hear to decide the issue. We also heard from the respondent's representative in reply about the consequences for the respondent of allowing the amendment.
13. Applying the guidance to Tribunals in the cases of *Selkent Bus Company Limited v Moore [1996] ICR 836* and *Vaughan v Modality Partnership UKEAT/0147/20/BA* we considered the overall effect on the parties and the practical consequences of refusing or allowing such an amendment as well as the balance of justice and prejudice to both parties.
14. We considered the evidence that the respondent had notice of Mrs Fatima's complaint to the Tribunal since January 2021, had been on notice since December 2023 that Mrs Fatima was complaining about her reference and furthermore had procured the attendance of Mrs Khan at the Tribunal over lunch on the second day We also considered the potential merits of the claim and we did not consider that it had no or little reasonable prospects of success. The balance of prejudice to Mrs Fatima in rejecting her application to include a complaint about her reference was therefore greater than the prejudice to the respondent in allowing it given that Mrs Khan was able to answer some questions by way of examination-in-chief from her representative in order to deal with the allegations about the conversation over the telephone in 2022 and

the reasons for the terms of the reference given by her for Mrs Fatima's future employment.

15. Mrs Fatima was therefore allowed to present a claim under section 27 of the Equality Act 2010 which was that, because she did a protected act, which was bringing proceedings to this Tribunal, Mrs Khan provided her with a negative reference that caused her significant distress and difficulties in securing alternative employment and caused financial losses. It is the respondent's defence to this claim that the reference was accurate and given without malice and was a reflection of Mrs Fatima's performance while employed at the respondent. This has been considered by the Tribunal when assessing the victimisation claim.
16. During the discussions with the parties as to whether to allow Mrs Fatima to add a claim of victimisation to the proceedings, the Tribunal discussed with the respondent what action it would wish to take to defend this new allegation. The Tribunal noted that as Mrs Khan was in the Tribunal, she could give evidence about the issue of the reference under oath. It was also noted by the judge that in fact Mrs Khan was the primary witness to a number of the other existing allegations made by Mrs Fatima. We had been surprised that there were not more witnesses put forward by the respondent and assumed that due to the passage of time that they were not available, but clearly Mrs Khan was. It was therefore all the more surprising that she had not already provided a witness statement.
17. Following an adjournment to take instructions, the respondent indicated that they would like Mrs Khan to replace Dr Eshan as the respondent's primary witness and could produce a witness statement for her overnight between day 2 and day 3 of the hearing. We noted the disadvantage that this would cause to Mrs Fatima in needing to read a new witness statement and prepare to cross-examine a new witness at such short notice. Mrs Fatima would need an adjournment to the hearing on day 3 to do so. We also noted that Mrs Khan could have been put forward as a witness many months earlier given that she was an important figure in the claimant's claims. On balance therefore, considering the respondent's failure to put Mrs Khan forward any sooner, given the disadvantages to the claimant and the potential delay to the proceedings, the respondent was not allowed to put forward Mrs Khan instead of Dr Eshan. Her evidence was limited to providing the Tribunal with evidence only about Mrs Fatima's reference and her reasons for writing it in the way that she did.
18. These proceedings have a long history before the Employment Tribunal. The claim form was issued on 9 January 2021. The claim was initially rejected because the name on the ACAS early conciliation certificate was that of the respondent, whereas the ET1 named Dr Eshan, the CEO of the respondent company. Following a preliminary hearing before Employment Judge Shotter in August 2021 the matter was set down for a reconsideration of the decision to

reject the claim. There was a final hearing at which neither party attended, and judgement issued and judgement reconsidered and the case reinstated in August 2023 with case management orders to prepare for this hearing.

19. The parties did not cooperate with one another to prepare for the final hearing and the respondent's current representatives only came on the record in March 2024. Nevertheless, we note that the respondent had a representative for some months at the start of the proceedings and a representative for approximately two months leading up to this hearing. Nevertheless, the respondent chose only to provide one witness in its defence that being Dr Eshan.
20. Mrs Khan, Mrs Fatima's line manager, had not been called as a witness although she attended from lunchtime on day two and did give evidence as indicated above. The other HR managers for the respondent being Huma Wasat and Mr Rizvi were not called as witnesses and have provided no written statements for the Tribunal to consider.
21. We also note that the bundle, when provided by the respondent, only ran to 144 pages. The evidential documents only amount to approximately 60 -70 pages. There was therefore a marked absence of contemporaneous evidence from the respondent.
22. We consider that the respondent has likely failed in its duty to disclose relevant documents necessary for these proceedings that are in their possession or control to support its case, such as-
  - a. Disciplinary records
  - b. Consultation meeting records for redundancy
  - c. Policies and procedures
  - d. Evidence of the reduction of the business from 200 staff to approximately 10 and when this happened
  - e. Patient satisfaction forms
  - f. Records of conversations between Mrs Fatima and clinical staff, including sonographers
  - g. Conversations between HR and Mrs Fatima over timekeeping
  - h. Records of the dispute over Mrs Fatima's mileage claims
23. We consider it important to state that the respondent's solicitor present at this hearing had, we find, not been fully instructed by Dr Eshan. It was clear as the hearing progressed that documents and information were being provided to her by Dr Eshan at the same time as they were being provided to the Tribunal. She is not, in our view, to be blamed for the lack of disclosure and the disjointed presentation of the evidence as it was apparent to us that she had not been given full instructions or given full access to the respondent's documents.
24. Our observations on the evidence provided by Dr Eshan are that it was clear to us as a panel that he was not involved in the day-to-day management of the

staff in the Mediscan business. Indeed, he acknowledged as much several times during the hearing. We understand from Dr Eshan that as well as running the Mediscan business, which operated both in the UK and overseas, he is also an NHS consultant, qualified in three different specialisms and a lecturer at a local university. We find that it was simply not possible in these circumstances for him to be fully involved in day-to-day management of the respondent.

25. However, it was clear that he was directly and fully involved in the decision to downscale the respondent's business, a decision that the respondent says was the sole reason for the claimant's redundancy. He nevertheless provided the Tribunal with very little evidence in his witness statement about what happened to reduce the business in size, in terms of what the pools for selection were, which locations were closed when, what happened to the other health care assistants that worked alongside the claimant. This information was only given in answer to questions from the panel, and even then it was given to us in a discursive manner without clear and specific detail.
26. It is also clear to us that despite his lack of detailed involvement in the management of Mrs Fatima, he considered himself the best and only person to attend the Tribunal on the respondent's behalf. It was not clear how he thought he might be able to provide the kind of detailed day to day information required by the Tribunal to determine complex claims of the kind presented by Mrs Fatima.
27. It did not assist the Tribunal in our findings of fact that when asked for the respondent's account of key events in Mrs Fatima's employment that Dr Eshan recalled in very general terms what he assumed must have happened in relation to Mrs Fatima. For example, Dr Eshan's evidence to the Tribunal was that there had been a number of conversations with Mrs Fatima about her attitude, attendance and punctuality in the early months of her employment. He told the Tribunal that he had had a conversation with Mrs Fatima where he had advised her that her attitude needed to change if she was to successfully settle into the company. It was Mrs Fatima's evidence that this conversation did not happen with her but that Dr Eshan was confusing Mrs Fatima with one of the two other nurses that had joined the company from Saudi Arabia with her at the same time. We prefer Mrs Fatima's evidence in this regard, including for the fact that there are no contemporaneous records of any of these conversations.
28. The list of issues for the Tribunal to decide was discussed and amended during the hearing, when the issues were clarified and to take account of Mrs Fatima's successful application to add a victimisation complaint. This List is attached to the back of this judgment.

## **Findings of fact**

29. Mrs Fatima was recruited by the respondent to work as a healthcare assistant ("HCA") and nurse, having worked as an endoscopy nurse in Saudi Arabia. She is a Pakistani national. Their evidence was that they recruited her to assist sonographers in clinics. The respondent's intention was for her to complete the exams required to register as a nurse in the UK with the NMC, including the OSCE (Objective Structured Clinical Examination). The claimant's husband and two young children travelled to the UK with her. Mr and Mrs Fatima agreed that Mrs Fatima would be the primary earner for the family. Their continued presence in the UK depended on her retaining her right to work and live in the UK, connected to her employment at the respondent. This put Mrs Fatima and her family in a vulnerable position.

### **Mrs Fatima's contract of employment and start date**

30. Mrs Fatima's contract of employment was negotiated in Saudi Arabia directly with Dr Eshan. Her offer letter and contract of employment contain a start date of July 2019, but it was the respondent's case that this was for the purposes of obtaining a work visa and that her actual start date of employment was not until November 2019.

31. It was Mrs Fatima's evidence that she arrived in the UK on 16 October 2019 and attended the office the next day to sign paperwork and complete her registration. Mrs Khan's evidence was that she only did rotas from the start of the month to the end of the month and that she would not have put Mrs Fatima on a rota any earlier than that because it would have disrupted the arrangements that she had made with the various clinical and healthcare staff.

32. We note that the respondent could have provided evidence of the rota from October and November 2019 but has failed to do so. The respondent's evidence is confused and contradictory on this issue. Various dates from 19 July (in Dr Eshan's witness statement,) 17 October (when she joined the company according to the ET3) and the end of November when she was given a full clinic (also in ET3) were given, but we prefer the evidence of Mrs Khan when giving oral evidence under oath about when the rotas were drawn up and when Mrs Fatima would have started work. On the balance of probabilities, we accept that Mrs Fatima attended the office on 17 October but did not start work until Monday 4 November 2019.

33. Mrs Fatima was based in the respondent's clinics in the Greater Manchester area in Bolton, Bradford and Wigan. She was expected to be fully mobile to travel to and from clinics during the working day. Mrs Fatima is a diabetic and so requires regular breaks during the working day to attend to her blood sugar and insulin levels. We accept Mrs Fatima's evidence that she worked long hours each day and worked six days per week. We accept that she struggled to take lunch breaks as she was expected to travel between clinics at this time. We accept that this was particularly difficult for her because of her diabetes.

34. Mrs Fatima told the Tribunal that she was told she was entitled to claim mileage payments for the travel she did between clinics. Dr Eshan accepted that this was the case, but he told the Tribunal that Mrs Fatima never made any mileage claims. Mrs Fatima disputes this. She told the Tribunal that she made a number of claims but that the respondent ignored them. She no longer has the paperwork to substantiate these claims. The respondent has failed to disclose this information, which is likely in its possession or control. However, as the respondent does not dispute Mrs Fatima's entitlement to mileage payments, this claim succeeds in principle subject to an assessment at the remedy hearing as to how much money is owed to her for this.
35. Mrs Fatima complains that she was not paid overtime despite working considerably in excess of her contractual hours. Mrs Fatima's case is that the contract she signed in Saudi Arabia set her weekly working hours at 45 hours per week 6 days per week. Mrs Fatima's evidence to the Tribunal was that in fact her average weekly working hours were between 50 to 60 hours per week and that on 2 occasions she worked for 13 days without a day off. The respondent's case is that her contract of employment states that she has weekly working hours of 37.5 hours per week. Mrs Fatima said that she had no sight of the version of the contract containing the lower weekly working hours until the start of these proceedings. We accept Mrs Fatima's evidence in this regard.
36. Given that the respondent must pay to sponsor each employee to bring them to the UK, for this to be financially viable as a business model, we find on the balance of probabilities that the nurses/HCAs who were being sponsored to work in the UK by the respondent will have worked considerably longer hours than nurses and HCAs in other workplaces in the UK did, including working six days per week. If the respondent's HCAs worked 37.5 hours per week, five days per week, given the cost of sponsorship there would be little financial incentive to the respondent to go to the trouble and cost of sourcing HCAs in Saudi Arabia and elsewhere and paying the sponsorship fee for their visas.
37. In any event we accept the respondent's evidence that the contract contains no right to overtime and Mrs Fatima is therefore not entitled to be paid any extra wages for time spent over her contractual working hours. However, we find that on the basis of the evidence before us that the respondent likely had little regard for the limits set down in the Working Time Regulations 1998.

### **Mrs Fatima's conduct at work**

38. The respondent's evidence to the Tribunal is that they received a lot of negative feedback about Mrs Fatima on their patient feedback forms. Mrs Khan told the Tribunal that patients complained that they could not understand her accent. The respondent now says that it took this into account in deciding to dismiss



Mrs Fatima. However, we note that the respondent took no formal action to address this alleged poor feedback with Mrs Fatima. They have also produced no evidence about these supposed negative forms for us to consider. We also have no evidence about how this compared with other members of staff. We note that the claimant's contract had a probationary period, which expired without the respondent taking any action. Had the patient feedback and other issues been as severe as the respondent now suggests, they had the option of terminating her contract during the probationary period and they did not.

39. The respondent alleges that there was conflict between Mrs Fatima and other members of the clinical team. In the absence of any contemporaneous evidence, we do not accept that Mrs Fatima was the sole or principal cause of this conflict. If she had been we would have expected the respondent to have taken some documented action against her to resolve the situation or to have recorded these incidents and they did not. There would, we find, have been some evidence of management action whether formal or informal if Mrs Fatima's behaviour had been as bad as the respondent suggests.
40. Mrs Khan's evidence was that she had to attend the office to sort out a dispute between Mrs Fatima and Dr Fatima and that this was an exceptional situation, and it was highly unusual for her to have to do so. In this case we would have expected at the least some record of this incident to have been on Mrs Fatima's file and to have been reported to Dr Eshan. There was no such evidence before us.

### **Alleged unauthorised absence**

41. The respondent also alleges that the claimant took unauthorised holiday or was away from the workplace as a result of unauthorised absence. This arose in connection with Mrs Fatima asking for time off to study for the OSCE exam.
42. A condition of Mrs Fatima's visa was she had to sit the OSCE exam within 3 months of the start date of employment. Her evidence, which we accept, was that she repeatedly asked to take some time off to study but that this was not granted and her requests were ignored by Mrs Khan. Given the importance to her whole family of her remaining in the UK, we accept that the apparent requirement of the visa to sit the OSCE in time was something that was of grave concern to Mrs Fatima.
43. As February 2020 approached, Mrs Fatima had been at work for 3 months. She had failed to secure time off to study. Having failed to secure a response from Mrs Khan she emailed Dr Eshan directly. Both Dr Eshan and Mrs Khan told the Tribunal that Mrs Fatima should not have done this. Mrs Khan, we find took exception to Mrs Fatima going above her to Dr Eshan and Dr Eshan took exception to being bothered by an HCA with a holiday request. Dr Eshan disputed that the conditions of Mrs Fatima's visa included the requirement to sit

the OSCE within 3 months, but we have been provided by Mrs Fatima with a copy of an information sheet from the UK government and accept that she was not unreasonable in interpreting the visa requirement in this way. We do not accept that she did anything wrong in emailing Dr Eshan with her request.

44. Dr Eshan replied to Mrs Fatima's request the same day as follows

*"Dear Zoia you have official 28 holidays you can take holidays no one is stopping you apply to HR they will grant you I have copied to Huma, tell her the days when you want."*

45. The respondent's evidence to the Tribunal is that Mrs Fatima took 28 days leave and that this was unauthorised. We find that there were 18 working days between 26 February to the start of national lockdown on 23 March 2020, if we apply the terms of Mrs Fatima's contract that the respondent says were operational of five days per week. Mrs Kahn's evidence was that a maximum of 5-7 days would be granted. We accept that more than this was not the norm at the respondent's workplace but there is no evidence before us that Mrs Fatima ought to have known that, given that she had only worked for them for less than 4 months at the time of her request. Dr Eshan will not have intended to give the freedom to Mrs Fatima that his email appeared to do, but she quite reasonably concluded from it that this gave her permission to take as much of her year's annual leave as she needed to in order to prepare for the exam. We find that she reasonably thought that this gave her the freedom to ask Huma Wasat as Dr Eshan had given her his consent and that her absence was not unauthorised.

46. We note that we have no evidence as to how Mrs Fatima's allegedly unauthorised absence was handled at the time by the respondent particularly by her line manager Mrs Khan, who was copied into Dr Eshan's email. Were this to be treated as unauthorised absence, we would have expected to have been given some evidence of Mrs Fatima's leave being cancelled and her being called back to the clinic, but no evidence of this is before the Tribunal. There is no evidence whatsoever that the respondent took any action against Mrs Fatima for her absences at the time.

47. For reasons unknown to us and which were not clarified by the respondent, the issue of unauthorised absence was resurrected on 2 September 2020, by a new HR manager Mr Rizvi who arranged a meeting with Mrs Fatima in September 2020. Mrs Fatima attended the meeting, but Mr Rizvi did not attend because he was isolating due to Covid. No further meeting was rearranged. Mrs Khan told us that she understood that the disciplinary process had begun but was never notified about its conclusion. It is therefore surprising that she wrote in unequivocal terms in Mrs Fatima's reference that there had been substantiated disciplinary action taken against Mrs Fatima as she had no knowledge of the same and did not take steps to find out.

## **Notification of pregnancy and pregnancy risk assessment**

48. On 23 October 2020 Mrs Fatima notified the respondent that she was pregnant. She informed her line manager Mrs Khan verbally. Mrs Khan wrote to Dr Eshan and Mr Rizvi to notify them of the same. Mrs Khan told them in her email that Mrs Fatima had requested part-time working and to be kept on furlough and /or to be allocated clinics closer to home.
49. Mrs Fatima's evidence is that she did not ask for part time working but did ask to be allocated work closer to home, partly because of her diabetes. We accept her evidence in this regard. We find that Mrs Khan made an assumption that Mrs Fatima would want part-time work as she was expecting a baby, but Mrs Fatima was the primary earner for her family and so we accept that she did not want to reduce her income.
50. We have no recorded answer from Dr Eshan, but on the balance of probabilities we find that Mrs Khan and Dr Eshan spoke about it. The email includes Dr Eshan and we find that his opinion was sought. Even though the email is addressed to Mr Rizvi the HR manager, it is directed to Dr Eshan. It is clear Dr Eshan made all the main decisions about contract changes and changes to working hours.
51. Mrs Fatima was given a copy of the working rota on 23 October 2020, which showed her working days, hours and locations until December 2020. She came out of the Furlough scheme on 26 October 2020 and returned to work that day. The respondent was obliged to do a risk assessment as Mrs Fatima was now a pregnant member of staff and the respondent knew she was pregnant on 23 October 2020. However, Mrs Fatima attended work, during the Covid pandemic while pregnant and having diabetes, between 26 to 31 October for 6 days with no risk assessment having been done.
52. The respondent attempted to persuade the Tribunal to accept that its generic data collection for its workers during Covid was suitable as a pregnancy risk assessment. However, this was done earlier in 2020 before the claimant was pregnant and was not a risk assessment which dealt with the assessment of and mitigation of risk to pregnancy workers.
53. The claimant was returned to being on furlough after 31 October 2020, to minimise the risk to her health from Covid. She was therefore only paid 80% of her salary until her dismissal.

## **Redundancy and dismissal**

54. It was Dr Eshan's evidence to the Tribunal that as a result of the Covid pandemic, the respondent's business reduced in size dramatically. He told the

Tribunal that by September 2020 he had started the process of making reductions in the number of staff in the business, starting with non-clinical staff such as those in marketing and business development. He said that between then and now he had reduced the business from over 200 staff to about 10, but he did not provide us with any details as to who was made redundant when, what pools for selection were used or what alternative employment was considered. The only evidence provided to us as to how the redundancy exercise was carried out across the wider business was an incomplete table dated September 2020, but clearly containing information filled in after that date.

55. The table showed a list of staff members made redundant. The first one to be made redundant was a non-clinical staff member who was full-time, the business development manager. Of the next seven staff to be made redundant, two were in administration. This accords with Dr Eshan's evidence about making non-clinical staff redundant first. However, of the other five members of staff to be made redundant, all were HCAs, so clinical staff. All of them were part-time. One of them was pregnant. This accords with the evidence Dr Eshan gave to us in answers to the panel's questions, which was that he made part-time members of staff redundant in priority to full-time members of staff as he believed they could better cope with the loss of earnings than full time members of staff. This is a surprising admission, and one which suggests unlawful discrimination against part-time members of staff. None of the first 8 members of staff to be made redundant were recently appointed. This suggests that Dr Eshan was not correct in his evidence at the start of the hearing that they had operated a "last in first out" method of selection.
56. Of the next five members of staff to be made redundant, two were pregnant. This includes Mrs Fatima. We have no evidence from the respondent as to what the roles of the other four were, or whether they were full-time or not, or whether they were recently appointed. We have no further contemporaneous evidence at all as to what happened in the subsequent stages of the redundancy process.
57. On the evidence before us, five of the first eight members of staff to be made redundant out of approximately 200 members of staff were clinical part-time staff, despite Dr Eshan telling the Tribunal that he prioritised non-clinical staff first. We find that he in fact made part-time staff redundant as a priority. He understood, wrongly, that the claimant had asked for part-time working because of her pregnancy.
58. Mr Rizvi emailed Mrs Khan on 28 October to ask "*what are your requirements for Zoia Fatima*". Mrs Khan's reply on 29 October was "*I don't need her I'm overstaffed*". Mr Rizvi replied "*We will see what can be done for her*".
59. Mrs Khan had a large group of HCAs doing the same or a similar job to Mrs Fatima in the same or similar locations who, had this been a fair redundancy

selection exercise ought to have been considered alongside Mrs Fatima if Mrs Khan's business area was overstaffed. It is clear that they were not, and that Mrs Fatima was singled out for redundancy by Mrs Khan and/or Dr Eshan in priority to the rest of the HCAs managed by Mrs Khan.

60. In the circumstances, we find that Mrs Khan and Dr Eshan spoke at some point between 23 October and 29 October, and they decided that Mrs Fatima should be dismissed. Although Mr Rizvi replied to Mrs Khan's email on 29 October, we find that Mr Rizvi had no authority to redeploy her, and the decision had already been taken by Dr Eshan and Mrs Khan.
61. On 3 November 2020, Mr Rizvi wrote to notify Mrs Fatima she was at risk of redundancy. The letter indicates that there will be a consultation process, but we find that there was no intention on the part of the respondent to engage in any meaningful consultation process. The letter refers to the respondent's standard selection criteria. There was no evidence of any redundancy policy document, selection criteria document or anything similar before the Tribunal.
62. Dr Eshan's evidence was that the selection criterion applied was last in first out when he first addressed the Tribunal on this issue. Subsequently he told the Tribunal that the criteria were around job role in that he dispensed with the services of non-clinical staff first such as admin and marketing and those who had disciplinary issues. He also told the Tribunal that he selected part time workers in preference to others as they would be able to withstand the loss of salary better than full time workers.
63. The respondent now seeks to say that there were disciplinary issues involving Mrs Fatima clashing with other members of staff. As has been noted by us before, the respondent could have disciplined or even dismissed the claimant during her probationary period for this but did not do so. We do not accept that such disciplinary issues existed as the respondent alleges, on the balance of probabilities. Mrs Fatima was never given information about any complaints or issues with her attitude regarding her work ethic. A meeting was arranged to deal with her annual leave absence, but Mr Rizvi had not attended and it was not rescheduled.
64. We conclude the trigger for her redundancy selection was the notification of her pregnancy and the perception that she wanted to go part time, and for no other reason.
65. There was a meeting on 9 November 2020 between Mrs Fatima, Mrs Khan and Mr Rizvi. There are no notes of this meeting. We find there was no meaningful consultation about the redundancy process and instead Mrs Fatima was told she would be dismissed in that meeting. She was told to return to "your country" and work in a government hospital and to send the respondent copies of her return airline tickets. We accept that she found her treatment by the respondent

to be extremely distressing and stressful. This was particularly difficult because she was pregnant.

66. The claimant's letter of dismissal was dated 16 November 2020 and it set her termination date at 30 November 2020. The letter gives her a right of appeal but when she tried to appeal, Mr Rizvi did not allow her to do so. We accept her evidence that Mr Rizvi told her "*it's better for you to leave the country*" and that he asked her to send him copies of the airline tickets when they did. Mrs Fatima was told by him that there was no need to send an appeal, as they had already decided she was redundant and that she would get confirmation soon.

67. It is the respondent's case that the claimant is not entitled to three months' contractual notice pay as she did not complete her probationary period. By any assessment of her start and end date this is not correct, we find. Even taking the later date of 4 November 2019 as her start date, the letter of termination dated 16 November 2020 puts her date of termination as 30 November 2020. She had therefore completed more than 12 months service so was no longer in her probationary period and is entitled to her contractual notice of three months.

### **Provision of a reference for Mrs Fatima**

68. We accept that the claimant did a protected act by complaining to this Tribunal about maternity and sex discrimination in January 2021. Her claim form mentions Mrs Khan individually and makes allegations against her.

69. We also accept that the reference Mrs Khan provided for Mrs Fatima, a copy of which was before us in evidence, was both highly unfavourable and also wholly inaccurate. Mrs Khan wrote that there were substantiated disciplinary proceedings against Mrs Fatima. Mrs Khan accepted in evidence that she did not know whether the disciplinary proceedings that were started in September 2020 were ever completed, let alone substantiated against Mrs Fatima. This meant that the claimant's reference was inaccurate and misleading.

70. Mrs Khan also scored the claimant very poorly on a series of criteria to do with her job performance, such as teamwork, communication, timekeeping and so on. There is no credible or contemporaneous evidence before the Tribunal that Mrs Fatima was found to have had these issues during her time at the respondent.

71. We accept Mrs Fatima's evidence that when she telephoned Mrs Khan in late 2022 to ask her if she could improve her reference, as it was in danger of losing her a much-wanted role with the NHS, Mrs Khan said words to the effect of "*don't expect a good reference after everything that's happened between us*" and that this was a reference to these Tribunal proceedings.

### **The Law**

72. In the case of ***Selkent Bus Company Limited v Moore [1996] ICR 836*** the Employment Appeal Tribunal (“EAT”) set out the test to be applied by a Tribunal in deciding whether to exercise its discretion to grant an amendment. It said the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The EAT in *Selkent* also set out a list of factors which are certainly relevant, which are usually referred to as the “*Selkent* factors”. In brief they are:

- a. The nature of the amendment i.e. whether the amendment sought is one of the minor matters or is a substantive alteration pleading a new cause of action;
- b. The applicability of time limits. If a new complaint of cause of action is proposed to be added by way of amendment it is essential for the Tribunal to consider whether that complaint is out of time and if so whether the time limit should be extended; and
- c. The timing and manner of the application. An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the rules for making amendments, but delay is a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made (for example the discovery of new facts or new information).

73. In the case of ***Vaughan v Modality Partnership UKEAT/0147/20/BA*** the EAT reminded parties and Tribunals that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The exercise starts with the parties making submissions on the specific practical consequences of allowing or refusing the amendment. That balancing exercise is fundamental. The *Selkent* factors should not be treated as if they are a list to be checked off.

74. A dismissal is automatically unfair if it is for one of the specific reasons set out in the Employment Rights Act 1996. Section 99 Employment Rights Act 1996 provides that a dismissal will be automatically unfair if

- a. the reason (or principal reason) for it is of a prescribed kind, or it takes place in prescribed circumstances, and
- b. the reason or circumstances relate to those including pregnancy, childbirth or maternity; ordinary, compulsory or additional maternity leave.

75. The Employment Rights Act 1996 also provides that a redundancy dismissal is automatically unfair if the employee was selected for redundancy and dismissed for an automatically unfair reason.

*105.— Redundancy.*

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

*(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,*

*(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and*

*(c) it is shown that any of subsections [ (2A) to [(7N)] applies.*

76. In the case of pregnant employees, the relevant section is not s105 Employment Rights Act 1996 but in Regulation 20(2) and (3) of the Maternity and Parental Leave Regulations 1999, which states:

*Reg 20 (2) An employee who is dismissed shall also be regarded for the purposes of Part X of the 1996 Act as unfairly dismissed if–*

*(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;*

*(b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and*

*(c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).*

*(3) The kinds of reason referred to in paragraph (1) and (2) are reasons connected with–*

*(a) the pregnancy of the employee.....*

77. These provisions effectively provide that it is automatically unfair to select an employee for redundancy for a reason connected with the pregnancy of the employee and/or the fact that the employee took or sought to take ordinary or additional maternity leave.

78. For an automatically unfair dismissal complaint to be made out, a Tribunal must be satisfied that the employer's sole or principal reason for dismissal (or selection for redundancy) was the prohibited reason relating to pregnancy or childbirth. Thus, if that prohibited reason played a part in the dismissal/selection for redundancy but was not the primary reason for it, the claim will not succeed. By contrast, the approach to the 'reason why' question in discrimination cases, (as stated in *Nagarajan v London Regional Transport 1999 ICR 877, HL*) is that discrimination will be made out where the protected characteristic had a significant influence on the outcome.



79. However, not all pregnant employees dismissed as redundant will automatically succeed in a claim of unfair dismissal or discrimination. An employee will not succeed if she is selected for redundancy for a reason that is genuinely unconnected with her pregnancy. (*Maksymiuk v Bar Roma Partnership EATS 0017/12*)
80. The burden of proof is on an employee without two years' service to prove on the balance of probabilities that the reason for their dismissal is an automatically unfair one (*Smith v Hayle Town Council 1978 ICR 996, CA*). Once an employee has presented some evidence that she was dismissed for the prohibited reason, it is up to the employer to produce evidence to the contrary.
81. Selection of a woman for redundancy for a reason related to pregnancy will also constitute discrimination under s18 of the Equality Act 2010, which provides that an employer discriminates against a woman if it treats her unfavourably during the protected period of her pregnancy because of the pregnancy, because she is on compulsory maternity leave, or because she is exercising or seeking to exercise (or has exercised or sought to exercise) the right to ordinary or additional maternity leave.

*S18 (2) A person (A) discriminates against a woman if, in [or after] the protected period in relation to a pregnancy of hers, A treats her unfavourably—*

- (a) because of the pregnancy*
- (b) .....*

82. Section 18(7) Equality Act 2010 states that section 13 of the Equality Act 2010 (sex discrimination) does not apply to treatment of a woman which is in the protected period and is because of her pregnancy. The "protected period" is set out in s18(6) and begins when the pregnancy begins and ends either when she returns to work after maternity leave or at the end of the period of two weeks beginning with the end of the pregnancy.
83. S27(2) Equality Act 2010 states that bringing any legal proceedings under the Equality Act 2010 will fall within that section and count as a "protected act". To succeed in a claim of victimisation the claimant must show that he or she was subjected to a detriment because of doing a protected act or because the employer believed the claimant had done or might do a protected act. Where there has been a detriment and a protected act, but the detrimental treatment was due to another reason, such as absenteeism or misconduct, a claim of victimisation will not succeed.
84. A person claiming victimisation need not show that less favourable treatment was solely because of the protected act. If protected acts have a 'significant influence' on the employer's decision-making, discrimination will be made out.

A significant influence is an influence which is more than trivial (*Nagarajan v London Regional Transport 1999 ICR 877, HL, Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA.*)

85. The burden of proof in discrimination cases is set out in s136(2) and (3) Equality Act 2010. Once there are facts from which a Tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof is then on the respondent to prove a non-discriminatory explanation. Tribunals will only need to apply the provisions of S.136 if they are not in a position to make clear positive findings based on the evidence presented as to whether there has been discriminatory treatment and about the putative discriminator's motives for subjecting the claimant to that treatment.
86. *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA* — the outcome at the first stage will usually depend upon what inferences it is proper to draw from the primary facts found by the court or tribunal. Whenever a tribunal has decided to draw an inference that has enabled the claimant to show a prima facie case of discrimination, it must uphold the complaint of discrimination unless the respondent can prove a non-discriminatory explanation (S.136(2)).
87. A respondent's inconsistent, untruthful or inaccurate evidence could lead a tribunal to draw an inference of discrimination so that the burden of proof shifts to the employer. A tribunal can draw inferences from the fact that there are inconsistencies in the employer's explanation (*Veolia Environmental Services UK v Gumbs EAT 0487/12.*)

## **Application of the law to the facts found**

### **Breach of contract – notice pay and mileage claims**

88. We therefore find that Mrs Fatima's claim for breach of contract is well founded in that her probationary period ran from 4 November 2019 for 12 months and she remained in employment until dismissed on notice following a meeting on 9 November 2020. Her letter of dismissal of 16 November 2020 states that her employment is to terminate on 30 November 2020. Although it is the respondent's case that they had a number of reasons to terminate her employment during the probation period or extend her probation, we find that they never did so. Mrs Fatima therefore completed her probation period and is entitled to three months' notice according to the terms of her contract of employment.
89. The respondent accepted that Mrs Fatima was entitled to be paid mileage incurred in the performance of her duties from office to clinic and between clinics at 25p per mile if travel was over 20 miles, according to clause 25 of her contract of employment. The respondent accepted this during the hearing but

in their closing submissions argued that Mrs Fatima was not entitled to mileage payments. The respondent's case is inherently contradictory. The respondent's argument in closing submissions that there is no contractual entitlement is incorrect on the face of the contract and in the light of the respondent's concessions during the hearing. We find that the claimant was entitled to claim mileage payments in accordance with the terms of her contract.

90. Mrs Fatima submitted to the Tribunal that, in the light of the clauses in her contract that require her to repay a penalty of £6000 to the respondent if she resigns within the first three years and given that she was dismissed by them within the first three years that that penalty should be imposed on a reciprocal basis on them. This is not a term of the contract agreed between them or any other agreement and the Tribunal has no jurisdiction to impose such a penalty.

### **Automatic unfair dismissal/unfair selection for redundancy**

91. We accept the respondent's evidence that there was a redundancy situation at the time of the claimant's dismissal, in that the respondent needed to reduce its workforce because of business pressures due to the Covid pandemic.

92. The burden of proof is on Mrs Fatima, as she is without two years' service, to prove on the balance of probabilities that the reason for her selection for redundancy is an automatically unfair one (*Smith v Hayle Town Council*). Once she has presented some evidence that she was selected for the prohibited reason, it is up to the respondent to produce evidence to the contrary.

93. Our findings of fact show that the claimant was given a rota, drawn up by Mrs Khan, on 23 October 2020 showing her dates, times and locations of work up to December 2020. It was clear that the respondent did not consider her to be at risk of redundancy on 23 October 2020, or at any point up to December 2020. She notified the respondent of her pregnancy on 23 October 2020. By 29 October Mrs Khan informed Mr Rizvi that she had no need for Mrs Fatima as she was overstaffed. The claimant was not put in a pool of other HCAs to be selected fairly according to objective criteria. She was singled out from the other HCAs for dismissal within a few days of informing the respondent of her pregnancy. No reason was given to Mrs Fatima for her selection for redundancy other than the needs of the business. We note from the rota that in the claimant's area of the business there were dozens of HCAs. We have no evidence as to how quickly these other HCAs were made redundant. What is clear is that the claimant was singled out from these others within a very short time of informing the respondent of her pregnancy.

94. We find that the claimant has provided some evidence that she was selected for redundancy because she was pregnant. It is up to the respondent to produce evidence to the contrary. We find that they have failed to do so. The reasons provided by the respondent either lack credibility or are indicative of

discrimination. The reasons to do with her performance and attitude are not supported by any contemporaneous evidence. They were not discussed with her in the meeting on 9 November 2020.

95. The reasons given by Dr Eshan include that he made part-time staff redundant first. The mistaken belief of the respondent that the claimant wanted part time work is because she informed them of her pregnancy and they assumed that as she was pregnant, she wanted to be part-time. We do not accept therefore that the reasons provided by the respondent amount to evidence that the claimant was not selected because of her pregnancy. We find that she was selected because of her pregnancy.

### **Maternity/pregnancy discrimination**

96. For the reasons set out above in relation to unfair dismissal, we find that the claimant has established facts from which we could conclude that she was treated less favourably because of her pregnancy, in that she was selected for redundancy and dismissed.
97. It is therefore for the respondent to establish that the reason for her selection for redundancy and her dismissal was not because she was pregnant. For the reasons set out above they have failed to do so. We find that she was treated less favourably because she was pregnant. This is direct discrimination on the grounds of pregnancy.

### **Failure to carry out a risk assessment**

98. It is clear that the respondent carried out no specific risk assessment for the claimant once they were aware that she was pregnant. She worked without the risk assessment for 6 days and was then placed on furlough and was made redundant shortly afterwards. Had a risk assessment been carried out it may not have been necessary to place Mrs Fatima on furlough, or she may have been given the requested alteration to her hours or working conditions, including her place of work.
99. We find that the failure to carry out a risk assessment and the placing of the claimant on furlough is part of Mrs Fatima's complaint of less favourable treatment on the ground of her pregnancy, in that she only received 80% of her salary while on furlough and during her notice period. She therefore suffered avoidable financial losses as a result.

### **Victimisation**

100. In relation to the preparation of Mrs Fatima's reference, had the inaccuracy in the reference been solely to do with the disciplinary outcome, it may have been possible that this was an error, or carelessness on the part of

Mrs Khan. However, the assessment of Mrs Fatima's performance is universally very critical and negative, as described above. Mrs Fatima also consistently and credibly described her conversation with Mrs Khan in late 2022 in which she said that Mrs Fatima could not expect a good reference because of what had gone on between them. By that stage, the Tribunal proceedings had progressed significantly. We find that Mrs Khan took great personal exception to Mrs Fatima having brought a claim in which she was mentioned. We find that she did not consider that Mrs Fatima had any right to complain about her treatment by the respondent. Mrs Khan's evidence was that she did not take the issuing of the claim personally, but the highly critical terms of the reference suggest otherwise. We note that Mrs Fatima has provided to the Tribunal two very complementary character references from her new employers which do not accord with Mrs Khan's description of Mrs Fatima in work.

101. We therefore find that this was an act of victimisation by Mrs Khan in retaliation for Mrs Fatima having issued ET proceedings in which Mrs Khan was named. Had Mrs Fatima's performance been so comprehensively below standard, we find that the respondent would have taken action while she was in her probationary period. Furthermore, we find that there would have been evidence of this poor performance,
102. Even when cross examined on this, Mrs Khan's evidence was that they had poor patient feedback forms about Mrs Fatima's communication, but no copies were these were before us. She gave evidence about Mrs Fatima's disputes with various members of staff, but again these were not supported by any documentary evidence. By contrast Mrs Fatima's statement of support from the NHS trust is highly complementary about Mrs Fatima's teamworking and interpersonal skills. It also refers to a highly positive reference from Mrs Fatima's other employer, the care home. Therefore, we prefer Mrs Fatima's evidence which was that these issues were not raised with her at the time and she was shocked to receive such a poor reference from the respondent. The terms of the reference were unlawful victimisation.
103. It is apparent from Mrs Fatima's evidence that the respondent's actions have had catastrophic consequences for her physical and mental health and her financial situation. Furthermore, as she was a migrant to the UK, and the main earner for her husband and young children, the consequences have been catastrophic for them as well. She did not have recourse to public funds and was pregnant and seeking work at the same time. The impact of the discriminatory dismissal was then compounded by the reference which was inaccurate and highly damaging to Mrs Fatima's attempts to find work. At the forthcoming remedy hearing, the Tribunal will hear evidence from Mrs Fatima as to the impact of the respondent's actions on her health, finances and her feelings.

104. The Tribunal is concerned that the respondent has not fully appreciated the seriousness of their obligations to Mrs Fatima. They have demonstrated a cavalier attitude to the litigation to date and we would not expect his to be repeated at the remedy hearing.

105. A case management hearing has been listed to make orders to prepare the parties for a remedy hearing to decide on the claimant's compensation. Mrs Fatima will have the assistance of an interpreter at the case management hearing and the remedy hearing. The parties will be separately notified of the dates arranged for these in due course.

**Employment Judge Barker**  
**21 June 2024**

Reserved judgment sent to the parties on:  
25 June 2024  
For the Tribunal:

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

### **Public access to employment Tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-Tribunal-decisions](http://www.gov.uk/employment-Tribunal-decisions) shortly after a copy has been sent to Mrs Fatima(s) and respondent(s) in a case.

### **Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

## **Claimant's Complaints and Issues**

### 1. Automatically Unfair Dismissal (s99 Employment Rights Act 1996)

1. Was the reason or principal reason for dismissal Mrs Fatima's pregnancy? If so, Mrs Fatima will be regarded as unfairly dismissed.
2. Was Mrs Fatima dismissed by reason of redundancy?
3. Was Mrs Fatima unfairly selected for redundancy because of her pregnancy? Was there an individual in the same undertaking in a similar position who was not dismissed? (s105 ERA)

### 2. Wrongful dismissal / Notice pay

- a. What was Mrs Fatima's notice period? Mrs Fatima's contract of employment says 3 months
- b. Was Mrs Fatima paid for that notice period?

### 3. Direct sex discrimination (Equality Act 2010 section 13) and in the alternative section 18(7))

- a. The protected characteristic relied upon is pregnancy.
- b. What are the facts in relation to the following allegations:
  - i. Was Mrs Fatima selected for redundancy on the 3 November 2020, and
  - ii. Was Mrs Fatima dismissed on 30 November 2020 because she was pregnant?

### 4. Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)

- a. Did the respondent treat Mrs Fatima unfavourably by doing the following things:
  - i. Was Mrs Fatima selected for redundancy on the 3 November 2020, and
  - ii. Was Mrs Fatima dismissed on 30 November 2020
- b. Did the unfavourable treatment take place in a protected period?
- c. If not did it implement a decision taken in the protected period?
- d. Was the unfavourable treatment because of the pregnancy?

### 5. Victimisation (Equality Act 2010 section 27)

- a. Did Mrs Fatima do a protected act as follows:
  - i. Bring Employment Tribunal proceedings against the respondent in January 2021;

- b. Did the respondent do the following things:
  - i. Providing Mrs Fatima with an unfavourable reference for her role with the NHS;
  - ii. Say to Mrs Fatima in a telephone call in late 2022, "*don't expect a good reference after everything that's happened between us*"
- c. By doing so, did it subject Mrs Fatima to detriment?
- d. If so, has Mrs Fatima proven facts from which the Tribunal could conclude that it was because Mrs Fatima did a protected act or because the respondent believed Mrs Fatima had done, or might do, a protected act?
- e. If so, has the respondent shown that there was no contravention of section 27?

6. Regulation 16 1999 Regulations claim.

- a. Did the respondent fail to take action under Regulation 16 Management of Health and Safety at Work Regulations 1999? Did the respondent fail to carry out a COVID risk assessment for Mrs Fatima who was pregnant before she was taken off furlough on the 26 October to 31 October 2020?
- b. Had the respondent carried out a risk assessment would Mrs Fatima have been retained on furlough or other changes implemented?
- c. Does Mrs Fatima's claims of sex and pregnancy discrimination succeed on the basis that her working conditions had not been adjusted in compliance with Reg 16(2)?

Remedy for discrimination and victimisation

- a. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on Mrs Fatima? What should it recommend?
- b. What financial losses has the discrimination caused Mrs Fatima?
- c. Has Mrs Fatima taken reasonable steps to replace lost earnings, for example by looking for another job?
- d. If not, for what period of loss should Mrs Fatima be compensated?
- e. What injury to feelings has the discrimination caused Mrs Fatima and how much compensation should be awarded for that?
- f. Has the discrimination caused Mrs Fatima personal injury and how much compensation should be awarded for that?
- g. Is there a chance that Mrs Fatima's employment would have ended in any event? Should their compensation be reduced as a result?



- h. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- i. Did the respondent or Mrs Fatima unreasonably fail to comply with it?
- j. If so is it just and equitable to increase or decrease any award payable to Mrs Fatima?
- k. By what proportion, up to 25%?
- l. Should interest be awarded? How much?

## **6. Breach of Contract**

- a. Did this claim arise or was it outstanding when Mrs Fatima's employment ended?
- b. Did the respondent do the following:
  - i. Require repayment of a bond or similar money?
- c. Was that a breach of contract?
- d. How much should Mrs Fatima be awarded as damages?

Updated 30 April 2024