



EMPLOYMENT TRIBUNALS

Claimant: Miss A Afzal
Respondent: Inspiralis Limited

Heard at: Norwich Employment Tribunal by CVP
On: 22 June 2026
Before: Employment Judge M Magee
Representation:
Claimant: Mr Maqbool (Lay representative)
Respondent: Mr Bush (Counsel)

RECONSIDERATION JUDGMENT

1. The tribunal's judgment of 1 May 2025 is revoked.

RESERVED JUDGMENT

2. The Tribunal does not have jurisdiction to consider the Claimant's claim of unfair dismissal as she does not have sufficient service to bring a claim. The Claimant's claim for unfair dismissal is not well founded and is dismissed.

RECONSIDERATION REASONS

1. A preliminary hearing was held on 1 May 2025 to determine the question of whether Miss Afzal had sufficient continuity of employment to entitle her to bring a claim for unfair dismissal against the respondent.
2. The original preliminary hearing was heard at Norwich Employment Tribunal on 1 May 2025. Miss Afzal was represented by Mr Maqbool, Lay Representative. The Respondent was represented by Mr Bush. No oral evidence was given. I heard submissions from the parties.
3. Miss Afzal commenced her employment on 4 October 2022. Her contract provided for 1 months notice.
4. Miss Afzal was given verbal notice of termination on 4 September 2024, confirmed in writing on 5 September 2024. The grounds of resistance and skeleton argument filed by the respondent prior to the hearing proceeded on the basis that the effective date of termination was 3 October 2024.
5. Just prior to the preliminary hearing Mr Bush served a new skeleton argument asserting that the effective date of termination was 4 September 2024.
6. The Tribunal gave the claimant some time to consider this skeleton argument and Mr Maqbool indicated that he was content to proceed with the hearing. The claimant subsequently made an application for reconsideration on the basis that, given the late change of position, she had been unable to adduce evidence in support of the effective date of termination being 3 October and had been unable to research the law in order to meet the amended case presented by the respondent.
7. I heard submissions in respect on reconsideration on 22 June 2026 from Mr Maqbool for the claimant and Mr Bush for the respondent.
8. The respondent's pleaded case was that the effective date of termination was 3 October 2024, which would give Miss Afzal two years' continuity of employment. The respondent's initial skeleton argument accepted that the effective date of termination was 3 October. It was only on the morning of the hearing that the respondent adopted a new position.
9. Mr Bush submitted that it was not a new position, but the tribunal concludes that it was. Although the primary facts relied upon by the respondent did not change, the respondents legal analysis of the effect of those facts altered fundamentally. What had been treated as an agreed fact became a contested matter by dint of a very late change of position by the respondent.
10. The tribunal gave Mr Maqbool 20 minutes to consider the position, after which he agreed to continue with the case. Mr Maqbool's position is that, he not being legally qualified, did not fully appreciate the effect of the respondent's change of position. Had he done so, he would have sought time to call further evidence on the effective date of termination and do further legal research on the matter.
11. The tribunal has in mind the overriding objective, in particular to put the parties on an equal footing, to deal fairly. Further the tribunal has regard to the principle of natural justice that a party is entitled to know the case that it has to meet.
12. The claimant was not professionally represented and it was not unreasonable for Mr Maqbool not to have fully appreciated the consequences of the respondent's change of position. Having heard submissions today, it is clear that Mr Maqbool did not appreciate the consequences. Accordingly it is unnecessary in the interests

of justice that the claimant have the opportunity to meet the case as newly presented by the respondent on the morning of the hearing.

13. The tribunal accordingly revokes its judgment of 1 May 2025 and went on to hear evidence and submissions as to whether the claimant had sufficient continuity of employment to entitle her to bring an unfair dismissal claim.

REASONS

Introduction

1. Miss Afzal ("The Claimant") brought claims for unfair dismissal and notice pay, against her former employer, Inspiralis Limited ("The Respondent").
2. There was a preliminary hearing on 1 May 2025 to determine whether Miss Afzal had sufficient continuity of employment to bring an Unfair Dismissal Claim. That judgement is revoked, together with the associated full reasons.

The Hearing

3. The hearing was heard at Norwich Employment Tribunal on 22 June 2026. Miss Afzal was represented by Mr Maqbool, Lay Representative.
4. The Respondent was represented by Mr Bush. Dr Bush attended on behalf of the company.
5. Both parties referred me to the bundle prepared by the Respondent, consisting of 141 pages. In addition the claimant referred to four other documents, a list of issues, a chronology, a witness statement from the claimant and written submissions. Further, Dr Bush produced an email which she stated recorded her script for the meeting of 4 September 2024.
6. Both Miss Afzal and Dr Bush had prepared witness statements. Miss Afzal gave evidence for the claimant. Dr Bush gave evidence for the respondent. I heard submissions from the parties. Mr Ata Ur Rehman prepared a witness statement(116) on behalf of the claimant but did not give evidence.

Issues

7. Did Miss Afzal have sufficient continuity of employment so as to entitle her to bring a claim of Unfair Dismissal?
8. In particular:
 - a. Was Miss Afzal dismissed with notice or with immediate effect and being paid in lieu of notice?
 - b. Was the respondent entitled to pay Miss Afzal in lieu of notice?
 - c. What was Miss Afzal's effective date of termination?

Findings of Fact

9. Miss Afzal commenced her employment on 4 October 2022. Her contract provided for 1 months notice.

10. Clause 9.4 of her contract states: *"The company may terminate this agreement without cause upon one month's written notice to the employee. If the company requests the employee will continue to perform his/her duties and will then be paid his/her salary up to the date of termination...."*

11. On 4 September 2024 Miss Afzal attended a meeting with Dr Bush around midday. In that meeting she was given verbal notification of termination of her employment.

12. There is a dispute between the parties as to what was said at the meeting of 4 September, and in particular whether Dr Bush dismissed Miss Afzal with notice or summarily with pay in lieu of notice.

13. Dr Bush stated that she dismissed Miss Afzal summarily on 4 September with pay in lieu of notice (125-131). Dr Bush produced an email that she had sent to herself on 3 September 2024 at 15.41, entitled "Amna Meeting 04/09/24, with notes for what she was to say in the meeting. She stated that she had drafted that with legal advice as an aide memoire. The parts highlighted in yellow were to ensure that she mentioned them. That included the mention of pay in lieu of notice. In it she wrote *"....we have decided to let you go.... As we are coming to 2 years of employment with us, the business needed to review its position. We are going to pay you your notice in lieu of you working your notice period so you can go home when we are done here and take the time to find another job."*

14. Miss Afzal produced her handwritten notes of the meeting of 4 September (115). It records:

"Attendance

- 6 months off sick
- April – family take care
- More admin work
- 1 month notice

Decision is based on last 6 months review/2 years work

Part of the reason

Accumulation of reason

Lab work productivity

CV willing – HR

6 weeks ago decision made"

15. Miss Afzal stated that she was not told that she was dismissed with pay in lieu of notice on 4 September. She states that she was expressly told that she would work her notice.

16. Miss Afzal worked for a number of hours on 4 September after the dismissal meeting.

17. Mr Rehman stated that the claimant told him of her dismissal on 4 September at 7pm. She told him that she had been dismissed for poor productivity and sickness

absence. Miss Afzal told him that she had been told that her employment was being terminated with one month's notice. At no point did Miss Afzal mention that she had been summarily dismissed or dismissed without notice. He understood that Miss Afzal would be working through her notice period.

18. On 5 September, Miss Afzal attended work and stated that she was waiting for her termination to be given in writing. There was a discussion between Dr Bush and Miss Afzal. Miss Afzal says that Dr Bush told her in that meeting that she would be paid in lieu of notice.

19. At Miss Afzal's request, Dr Bush sent Miss Afzal a letter dated 5 September by (53) by email at 16.46, which stated with reference to the meeting of 4 September:

"..we have taken the decision to terminate your employment with immediate effect... You will receive any pay owed up to the date of termination including any accrued but not taken holiday pay.... Further we will pay you one month's pay in lieu of notice, subject to the usual deductions for tax and NI purposes."

20. At paragraph 17 of her witness statement Miss Afzal stated that she understood the phrase "with immediate effect" in the dismissal letter to mean her notice was starting immediately, rather than being summarily dismissed without notice.

21. On 5 September at 22.18 (55), Miss Afzal emailed Dr Bush in respect of the termination letter, stating that the termination was unfair and that she would be challenging it. She stated:

"1. Payment in Lieu of notice. There is no mention if payment in lieu of notice in my contract...you cannot enforce this option without my agreement.

3. Forced Leave without notice. Yesterday and this morning, I was instructed to to leave work without being given any formal written notice. I find this to be unfair. I do not wish to accept payment in lieu of notice and would prefer to work through the one-month notice period as stated in my contract.

4. Willingness to work. I am available and willing to work during my notice period....

5. Request for revised letter. I respectfully request that the "payment in lieu of notice" clause be removed from the termination letter...."

22. On 6 Sep 2024 at 07.49 (56) Dr Bush stated that she had revoked the PILON clause and agreed to Miss Afzal working her notice.

23. On 8 September 2024, Miss Afzal emailed Dr Bush and requested garden leave and requested a revised termination letter (59).

24. The revised letter without a PILON clause was issued by Dr Bush on 12 September (60), placing Miss Afzal on gardening leave until 3 October 2024.

25. The tribunal has to determine the issue of what was said at the meeting of 4 September 2024. The respondent had taken legal advice as dismissal in the context of Miss Afzal's pending accrual of two years continuity of employment. Dr Bush's notes that she used for the meeting, were drafted with the benefit of legal advice. They specifically refer to "paying you your notice in lieu of you working your notice period". This section is highlighted in yellow, supporting the conclusion that Dr Bush expressly referred to those words.

26. Miss Afzal's note simply refers to 1 month's notice. It is silent as to whether that was to be worked or paid. The meeting was a surprise to Miss Afzal. She stated in evidence that she had an understanding of pay in lieu of notice only after she received the

letter of 5 September. Her email of 6 September (57) makes clear that she sought written advice from the Citizens' advice Bureau after receiving the dismissal letter. Dr Bush's account is consistent with the wording of the 5 September dismissal letter, that Miss Afzal agreed was clearly stated that she would be paid in lieu of notice. It is further consistent with what Miss Afzal stated Dr Bush said to her in the meeting of 5 September, that she would be paid in lieu of notice. I therefore conclude that Dr Bush communicated to Miss Afzal on 4 September 2024 in line with her notes for the meeting that "We are going to pay you your notice in lieu of you working your notice period so you can go home when we are done here and take the time to find another job."

27. It seems that Miss Afzal did not fully appreciate the effect of what was said until it was confirmed in writing the next day. What she conveyed to Mr Rehman on 4 September reflected her genuine understanding of what she had though had been said to her.

28. In respect of the meeting of 5 September 2024, it is clear that Miss Afzal's recollection of that meeting is not fully accurate. She states at paragraph 16 of her witness statement that she challenged Dr Bush's right to pay her in lieu of notice at that meeting. That however is inconsistent with her evidence that she only understood the effect of pay in lieu of notice provision after getting advice from ACAS, following receipt of the dismissal letter.

Law

29. Section 86 of the Employment Rights Act 1996 ("the Act") states:

(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

(a) is not less than one week's notice if his period of continuous employment is less than two years,

30. Section 97 of the Act states:

(1) Subject to the following provisions of this section, in this Part 'the effective date of termination'—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(2) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (1)),

for the purposes of sections 108(1), 119(1) and 227(3) the later date is the effective date of termination.

31. Section 108 of the Act states that the right to claim Unfair Dismissal is dependent upon the Claimant having the qualifying period of continuous employment:

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two years] ending with the effective date of termination.

32. Section 210 of the Act defines how the qualifying period is to be calculated:

- (1) *References in any provision of this Act to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.*
- (2) *In any provision of this Act which refers to a period of continuous employment expressed in months or years—*
 - (a) *a month means a calendar month, and*
 - (b) *a year means a year of twelve calendar months.*

33. **Cosmaceuticals v Parkin (UKEAT/0049/17/BA)**, is a decision of the Employment Appeal Tribunal which addresses the question of the effect of immediate termination upon subsequent actions. Paragraph 28 of that judgment states *“If there is an effective dismissal then there can be no subsequent placement on gardening leave or of giving notice, the employment contract has already come to an end.”*

34. Further it states at paragraph 17:

*“17. Where there is a summary dismissal in circumstances in which the employee ought to have been given notice - so, where it is not a case where the employer would have been contractually entitled to dismiss without notice - the effective date of termination for the purposes of section 97 remains the date of the summary dismissal; see as explained by the EAT in **Robert Cort & Son Ltd v Charman [1981] IRLR 437** (albeit then referring to the statutory predecessor to section 97): When dismissed without the appropriate contractual notice, the employee cannot insist on being further employed: as from the moment of dismissal, his sole right is a right to damages and he is bound to mitigate his damages by looking for other employment. We therefore consider it to be a legitimate use of words to say, in the context of s.55, that the termination of the contract of employment ‘takes effect’ at the date of dismissal, since on that date the employee’s rights under the contract are transformed from the right to be employed into a right to damages.”*

35. And further at paragraph 26:

Hogg v Dover College and Alcan Extrusions: Thus, where an employer makes clear it is withdrawing the contract of employment - even if purporting to replace it with a new contract - that is the communication of a dismissal for the purposes of section 95(1)(a) ERA.

36. In **West v Kneels [1996] IRLR 430** stated that that the computation of the period of notice of termination of employment given orally excluded the day on which the employee had actually commenced work.

37. **Adams v GKN Sankey 1980 WL (1980)** is authority for the proposition that the phrase “pay in lieu of notice” is not determinative of whether a dismissal is summary or not. The wording of the entire document needs to be construed to determine the meaning.

Conclusions

38. Both parties agree that Miss Afzal was told that she was dismissed on 4 September.

39. The wording used by Dr Bush was “We are going to pay you your notice in lieu of you working your notice period so you can go home when we are done here and take the time to find another job.”

40. The wording I conclude was clear that Miss Afzal's contract was terminated immediately. The situation here is distinguished from the case of *Adams v GKN Sankey* above as nothing was said to create the impression that Miss Afzal was given one month's notice from the date of being informed of the dismissal. It is a communication that she will be paid "in lieu of notice" ie instead of notice. The tribunal concludes that the dismissal was immediate with payment in lieu of notice.

41. If that analysis is incorrect then, the situation was further clarified by the conversation with Dr Bush on 5 September and the letter of dismissal. Miss Afzal says that Dr Bush told her on 5 September that she was to be paid in lieu of notice.

42. The letter of 5 September is unambiguous. It states: *"..we have taken the decision to terminate your employment with immediate effect... You will receive any pay owed up to the date of termination including any accrued but not taken holiday pay.... Further we will pay you one month's pay in lieu of notice, subject to the usual deductions for tax and NI purposes."*

43. The letter expressly makes it clear that termination is "with immediate effect". Miss Afzal clearly understood it to be so, given her objection the same day to summary dismissal and pay in lieu.

44. Had the dismissal on 4 September been on notice, then it would be superceded by the dismissal without notice on 5 September.

45. It was argued on behalf of Miss Afzal that the contract did not permit a PILON clause. In my opinion, the employment contract at 9.4 does permit a PILON clause to be used as it is only upon request the employee is required to work notice. The alternative is anticipated within the provision, namely that the employee is not required to work and will be paid in lieu.

46. In accordance with the principal set out in **Robert Cort v Charman [1981] IRLR 437** above an employee's cause of action lies in damages for a breach of a contractual notice term. A breach of the notice provision by the employer would not prevent dismissal being effective but merely provide Miss Afzal with a right to claim damages for breach of contract. It cannot, and does not in my opinion, extend the effective date of termination to the end of the contractual notice period, when the dismissal was expressly immediate and without notice.

47. I find that there was an effective dismissal on 5 September with immediate effect. The employment contract was ended as of that date. Following the authority of **Cosmaceuticals v Parkin above**, the contract came to an immediate end as of that date. As such, the subsequent actions did not, and could not, change that position as the contract had already ended.

48. Whilst the contract came to an end on 5 September, for the purposes of section 108, by virtue of Sections 86(1) and 97(2) the effective date of termination is one week after 5 September 2024, namely 12 September 2024. Miss Afzal would have had to have been employed until 3 October 2024 in order to have accrued two years' continuity of employment.

49. Accordingly, I find that Miss Afzal had NOT been employed by the Respondent for at least two years when her employment ended.

50. In such circumstances, Miss Afzal has no right to bring a claim for unfair dismissal as she does not have two years' continuity of employment. Accordingly the tribunal does not have jurisdiction to hear her claim for Unfair Dismissal.

OFFICIAL

Case No: 3311803/2024

Approved:

Employment Judge **M Magee**

Date. 14 August 2026

JUDGMENT SENT TO THE PARTIES ON
25 September 2026

FOR THE TRIBUNAL OFFICE

Notes

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