EMPLOYMENT TRIBUNALS

Claimant: Miss Y A Mohamed

Respondents: (1) Puorandokt Dalipour
(2) Parveen Dalipour

HELD AT: Manchester **ON:** 29 & 30 November 2016
1 December 2016; 2, 3 & 6 March 2017
20 April 2017

BEFORE: Employment Judge Holmes
Mr J Roberts
Ms B Hillon

REPRESENTATION:

Claimant: In person
Respondent: Mr J Frederick, Consultant

RESERVED JUDGMENT

It is the judgment of the Tribunal that:

1. The claimant was dismissed by reason of her pregnancy , and hence was automatically unfairly dismissed.

2. The claimant's dismissal was an act of discrimination on the grounds of her pregnancy or maternity leave.

3. The claimant is entitled to a remedy. The tribunal finds that the respondents failed to follow the relevant provisions of the ACAS Code of Practice, and the claimant is awarded an uplift of 10% upon her compensatory and discrimination awards.

4. In relation to the unfair dismissal, the tribunal awards as follows:

Unfair Dismissal:

Basic Award	Nil
Compensatory award	£250.00
Uplift – 10%	£ 25.00

Total:	**£ 275.00**

5. In relation to the discrimination claims, the tribunal makes the following awards:

Discrimination

Loss of earnings	£ 8,743.94
Injury to feelings	£13,200.00
Total:	£21,943.94
10% uplift	£ 2,194.39
Total:	**£24,138.33**

6. The tribunal awards interest on the awards for discrimination as follows:

Loss of earnings	£8,743.94
Injury to feelings	£13,200.00
Total Interest:	**£2,630.91**

7. The claimant's complaint of breach of contract is well founded and succeeds. The respondents are ordered to pay her two weeks notice in the sum of **£224.00.**

8. The claimant's complaint of failure to make a payment in lieu of untaken holiday at the termination of her employment having been satisfied, any other holiday pay claim that the claimant seeks to make is dismissed.

9. The claimant paid the issue fee of **£250**, which sum the respondents are order to pay her pursuant to rule 76(4) of the 2013 rules of procedure.

REASONS

1. The claimant brings claims of unfair dismissal, breach of contract, failure to pay holiday pay, and discrimination on the grounds of her maternity. She has been, and remained, unrepresented throughout the proceedings. The respondents have been represented by Mr Frederick, a consultant.

2. The hearing commenced on 29 November 2016, and continued on to 30 November 2016 and 1 December 2016. It could not be concluded within that timeframe , and was further postponed to 2 March 2017. On 1 December 2016 the tribunal granted an application by the claimant to add a claim that she had not been paid the correct amount of SMP. The tribunal, however, reconsidered that judgment, and revoked it, for reasons set out in its judgment sent to the parties on 8 December 2016. The tribunal, however, took the opportunity to make further case management orders for the resumed hearing, whereby the claimant would provide further

information for remedy, and the respondents would clarify their case on unfair dismissal, ***Polkey*** and contribution.

3. Consequently, the hearing resumed on 2, 3 and 6 March 2017, with closing submissions on 20 April 2017. The tribunal reserved its judgment , which is now given. Following the conclusion of the hearing the tribunal discovered that the claimant had sent an e-mail to the tribunal on 19 April 2017, to which she attached certain documents which had not hitherto been before the tribunal. As they appeared to cast light on what may be the date on which any dismissal occurred, they were sent to the respondents' representative for comment, and to ask if he required the claimant to be re-called and questioned about their contents. He replied on 27 April 2017, indicating that he did not require a further hearing , and accepting (or appearing to) that the claimant's employment ended at the latest on 9 August 2015.

4. The claimant gave evidence, but called no witnesses. The two respondents, who are sisters, also gave evidence, and called Mrs Debbie Baxter as their witness. There was an agreed Bundle, and further documents were produced during the course of the hearing. As the respondents do not speak good English, an interpreter assisted them before the tribunal .

5. Having heard and read the evidence, and considered the submissions of both parties, the tribunal finds the following relevant facts:

5.1 The respondents are sisters, originally from Iran. They live in Manchester now, with their brother, Mohamed (also "Rezza" or "Raisa"), who is severely disabled, and who needs the assistance of carers round the clock.

5.2 Funding for the care of the respondents' brother is provided by Manchester City Council, via direct payments from the Individual cash Budget Scheme , but they do not have any direct involvement, and do not employ any carers. Support and assistance to the respondents is provided by the Council, hence Mrs Baxter's involvement with the respondents. She , and other colleagues carrying out such roles, was referred to as "broker" for such services.

5.3 The claimant (who is also known as "Nada") was first employed by the respondents to provide care to Mohamed Dalipour as a Personal Assistant from 22 July 2013. Her employment is recorded in a Personal Assistant Payroll Information Form (page 51A of the Bundle) in which Mohamed Dalipour is shown as the employer (the respondents have not taken any point in these proceedings that they were not, by the time of the matters complained of, the claimant's employers) , and the claimant's employment is recorded as having commenced on 22 July 2013. She was initially to provide 15 hours of care per week.

5.4 No other contractual documents, or any written statement of particulars of employment, were ever issued to the claimant.

5.5 Initially the claimant's employment went well, with no issues.

5.6 On 10 June 2014 the claimant was feeing unwell and was vomiting. She went to her doctors on 13 June 2014, who told her that she was pregnant, and

gave her a fit note saying that she was not fit for work, until 23 June 2014. This was a complete surprise to the claimant, who had been undergoing fertility treatment.

5.7 On 21 June 2014, however, it seems that the claimant went to work, but she felt unwell whilst at work. She told Parveen Dalipour about this, and was told to go home and rest. On 23 June 2014 she was no better, and went to the doctor again . It was then that she was advised that she was suffering hyperemesis (an extreme form of morning sickness and nausea) of pregnancy . She was given a fit note dated 25 June 2014, with this diagnosis, for the period from 23 June 2014 to 7 July 2014 (page 52 of the Bundle).

5.8 The claimant provided this sick note to the respondents, who therefore around this time, knew that she was pregnant. At page 53A of the Bundle is a copy with (probably) Parveen's handwriting upon it, with the date 23/6/2014 written on, and the words "pay to be with payslip" also added. The tribunal takes this to be a note of advice that Parveen had received about how sick pay or maternity pay was to be paid.

5.9 On 29 June 2014 the claimant was admitted to hospital, with serious issues related to her pregnancy. She kept the respondents informed of her condition.

5.10 The claimant remained unfit for work. She continued to obtain fit notes covering her absence. She submitted these to the respondents' accountants, Percy Westhead.

5.11 Having come out of hospital, the claimant was re-admitted on 12 July 2014. The respondents were told about this.

5.12 The respondents were concerned as to how care for their brother would be maintained whilst the claimant was off work. The claimant did not want to let them down, so she arranged for a family member, her aunt, Omar Abdillahi Mohamed, to meet the respondents, and offer her services to stand in for the claimant.

5.13 The respondents found Omar acceptable, and she started to work for them around July 2014. A payslip has been disclosed in respect of Omar's employment dated 20 July 2014.

5.14 In the meantime, unbeknownst to the claimant, the respondents had actioned service of a P45 , terminating the claimant's employment, dated 11 July 2014 (pages 62 to 63 of the Bundle). .

5.15 The claimant first discovered that this P45 has been issued around 30 July 2014. She contacted Jenny Tuddenham the duty broker at Manchester City Council (see page 65 of the Bundle) to find out what was going on, and said that she had been sacked whilst off work sick. This message was relayed to Debbie Baxter, who then looked into the matter, and rang the claimant later that day. A note of the conversation is at page 66 of the Bundle. The claimant told Debbie Baxter that she was pregnant , and that she felt she was being

discriminated against because of this. She could not get SSP from the respondents.

5.16 Debbie Baxter made enquiries and tried to get hold of the respondents that day , but without success. She did meet them on 8 August 2014, and discussed the situation with them. She advised them to revoke the P45 and reinstate the claimant.

5.17 On 12 August 2014 Debbie Baxter spoke to Simone Allen from Percy Westhead about the claimant's entitlement to SSP.

5.18 The claimant attended her doctor's on 17 September 2014, and obtained her MATB1 certificate, in which the expected week of confinement was the week of 25 January 2015.

5.19 The claimant continued to be signed off work as unfit, and obtained a series of fit notes (pages 51 to 61 of the Bundle) , the last of which on 13 October 2014 was for 4 weeks, taking her to 11 November 2014.

5.20 Debbie Baxter made enquiries into the SSP position, and noted that the respondents could not reclaim any SSP that they paid from HMRC. As the respondents could not afford to pay the claimant sick pay, and pay for her replacement (her aunt) , Debbie Baxter sought additional funding to enable sick pay to be paid to the claimant. She discussed this with Janet Harrison by e-mail on 17 October 2014 (page 71 of the bundle). In her e-mail she said:

"The PA has produced another sick note for 4 weeks, and my instincts is [sic] *she wont return to work until after her baby is born."*

5.21 There ensued e-mail communication between Debbie Baxter and Simone Allen as to the claimant's entitlement to SMP. Debbie Baxter was also taking advice from an insurance company, "FISH" , presumably in relation to employment law issues, and was of the belief that if the claimant stayed off sick in the 12 weeks prior to the 15 weeks before the baby was born, she would not qualify for SMP.

5.22 The claimant during this time was in frequent telephone contact with Debbie Baxter. She was receiving no money, and was seeking information for the Jobcentre as to her entitlements.

5.23 On 22 October 2014 Debbie Baxter had another conversation with the claimant, and discussed her entitlements to SSP and SMP. She suggested she contact the DWP to see what her entitlements were. A note of her conversation, and the actions she took is at page 76 of the Bundle.

5.24 Debbie Baxter subsequently secured the additional funding for the claimant's sick pay, and it was paid to the respondents for payment to the claimant.

5.25 The clamant obtained and sent to the respondents an SMP1 form. This is to be completed by the employer to enable the employee to claim SMP. The

form was printed off, from the date upon it, on 29 October 2014. A version of it is at pages 78 to 81 of the Bundle.

5.26 Around this time the claimant was advised that she needed proof that she was still employed, and hence a letter dated 6 November 2014 (page 82 of the Bundle) was prepared by Debbie Baxter. It is unclear how this would help the claimant, as it makes no reference to her, but was prepared as a result of a visit by Debbie Baxter to the respondents on 6 November 2014. The respondents had by then . received the MAT1B and the SMP1 forms, and the latter was completed by Pourandokht Dalipour. Debbie Baxter notes this meeting at page 83 of the Bundle.

5.27 The claimant went to the Jobcentre around this time, and on 10 November 2014 rang Jenny Tuddenham, who passed on her enquiry to Debbie Baxter. The claimant was being told that she was not entitled to any maternity pay, and need a form from her employer. In another call the following day, again to Jenny Tuddenham, the claimant asked for a letter to confirm her employment.

5.28 Simone Allen of the accountants sent an e-mail on 11 November 2014 (page 75 of the Bundle) to Debbie Baxter and Jenny Tuddenham of the Council. This helpfully set out the history as she saw it from when the P45 was issued on 11 July 2014. She too had been contacted by the claimant, and set out in this e-mail what she understood her entitlements to be, or to be likely to be. She had by then received the MAT1B form from the claimant.

5.29 Around this time the respondents paid the claimant her sick pay by cheques, which she collected from them. Confirmation of payment of SSP is contained in payslips dated 12 October and 9 November 2014 at page 111 of the Bundle.

5.30 A letter dated 25 November 2014 (page 87 of the Bundle) was prepared by Pourandokht Dalipour and signed by her on 5 December 2014 confirming the employment of the claimant by her, on behalf of her brother.

5.31 On 5 December 2014 the claimant saw the respondents. She told them she would be back after her maternity leave in November 2015. She was told by one of them that they did not want her back because she would have a baby. She had a similar conversation on 9 December 2014.

5.32 The claimant started, as far as she was concerned, her maternity leave on 10 November 2014. The respondents were aware of this, the tribunal finds. That is apparent from another document, again only in the Bundle produced by the claimant , downloaded from the GovUK website , entitled “Maternity and paternity calculator for employers”. It bears a date on the top left hand corner of 20/11/2014. It has boxes to be completed, from which calculations of an employee’s entitlements can be made. In the box headed “Leave” the start date has been completed as 10 November 2014.The document carries on to state that the employee is not entitled to statutory maternity pay because she had not worked for the employer before 26 April 2014. This was not, of course, correct. It appears to have informed, or led to, a box being ticked on the SMP1 form (again disclosed in the claimant’s Bundle, but not included in

this iteration in the respondents') giving the reason why the claimant could not be paid SMP as "You were not employed by me for long enough". Quite who did this, whether it was one of the respondents, or someone on their behalf, is unclear, but the tribunal is satisfied that it was not the claimant, and it clearly was incorrect. The tribunal is satisfied that the respondents knew that the claimant was starting her maternity leave on 10 November 2014.

5.33 Thereafter the claimant had no further contact with the respondents, or Debbie Baxter for while. Her baby, Sofia, was born on 27 January 2015.

5.34 The claimant had wanted to use her holiday entitlement whilst on maternity leave. If she could do so, this would have the benefit of her being paid during that period. In April 2015, therefore, she contacted the respondents by phone to ask about this, and to see if she could be paid her holiday pay. She had apparently asked if she could carry over unused holiday before she started maternity leave, and had been told that she could not.

5.35 Around this time, on 14 April 2015, Debbie Baxter went to see the respondents and discussed this telephone call. Her notes are at page 88 of the Bundle. The respondents told her that they were under the impression that her employment with them had ended, though quite why they should have thought that is unclear. Debbie Baxter said she would discuss this with Simone Allen. Nothing further was done about this, and neither the respondents nor Debbie Baxter (nor Simone Allen) contacted the claimant to tell her whether she was or was not any longer employed by the respondents.

5.36 The claimant next applied in August 2015 for benefits, in the form of Income Support. She went to the Jobcentre, and was told that she needed to establish that she was employed . The claimant, by e-mail of 19 April 2017 , but not brought to the attention of the tribunal in the final hearing on 20 April 2017 produced further documents. They relate to a decision by the DWP on 4 September 2015 not to award her Income Support, and her attempts to get the decision reconsidered. In these documents, which are:

Letter from the DWP dated 4 September 2015 – rejecting her application

A Mandatory Reconsideration Notice dated 15 September 2015

A handwritten letter from the claimant to the DWP seeking a reconsideration dated 22 September 2015

In these documents the claimant is recorded as having made a claim for Income Support on 10 August 2015.She has given, in her handwritten letter, and as recorded in the information she provided to the DWP when making the claim that she was employed as a support worker (wrongly said to be with Manchester City Council) until 9 August 2015.

5.37 She rang the respondents, on or around 9 August 2015. In this telephone call she was told that she did not work for them any more. The DWP were unaware that she was no longer employed, and would not pay her any benefits. There has been some uncertainty in this case as to when the

claimant was told that she was no longer employed by the respondents. From this correspondence the tribunal is satisfied that it was most likely to have been on 9 August 2015.

5.38 On 9 September 2015 a DWP employee, Scott , rang Debbie Baxter following the claimant giving him information about her employment, and her telephone number. He wanted confirmation that the claimant was still employed. She told him that she thought the respondents had ended her employment. Her note of this discussion is at page 89 of the Bundle.

5.39 The claimant rang the respondents on 22 September 2015 to find out what the position was . In that conversation she was told that they did not want anyone who had a baby, and she would want to get pregnant again in 5 months.

5.40 On 24 September 2015 the claimant rang Debbie Baxter again, as the respondents would not speak to her. She told Debbie Baxter that she was going to speak to a solicitor, as she had been off sick and then was on maternity leave. Debbie Baxter asked her if she had kept in contact with the respondents and informed them of her intentions. The claimant said she had not received her P45, and needed it. Debbie Baxter said she would speak to the respondents. Her note of this conversation is at page 91of the Bundle.

5.41 The claimant continued to press for her P45 so she could claim benefits. At page 93 of the Bundle is an e-mail chain from 7 October to 13 October 2015, between Cynthia Carter, Simone Allen and Debbie Baxter, which records the claimant's requests for her P45, and for the reason why she was dismissed.

5.42 On 28 October 2015 Debbie Baxter visited the respondents again and discussed the claimant's situation. She asked them why the claimant's employment had been ended , and they told her that it was because she was unreliable, and had left their brother without support "on several occasions" when she failed to turn up for work. They also said that she did not keep in touch with them or update them during her period of sickness. She advised them that the claimant had asked for a letter explaining their reasons, and she agreed to type one up for them to sign. She subsequently did so. Her note of this meeting is at page 95 of the Bundle.

5.43 The letter which Debbie Baxter drafted, and the respondents signed, is at page 96 of the Bundle. It reads:

"Your employment was ended for the following reasons,

There was occasion when you failed to turn up for our shift with our brother Rezza. You did not contact us to notify you would not be in work and were uncontactable by telephone.

This lead to Rezza being without support for a period of time.

When you went on sick leave, you failed to maintain contact with us or update us on a regular basis.

Your employment was ended as you have proven to be unreliable"

5.44 This was signed by both respondents, and dated 1 November 2015. It was sent to the claimant.

5.45 A P45 was then issued (pages 97 to 99 of the Bundle) in which the leaving date is given as 9 November 2015.

5.46 The claimant's aunt, Omar Abdillahi Mohamed, continued through this period to provide care for the respondents' brother, and her payslips have been disclosed.

5.47 Prior to the period of her sickness absence in June 2014, the claimant was working around 64 hours per month. After the birth of her baby her intention was to return to work on 8 November 2015, and work 25 hours per week. She intended to place her baby in nursery two days a week and have her cared for by grandparents for the other three days.

5.48 The claimant has not since found work, being available to work part – time only, and having made a number of job applications unsuccessfully.

5.49 The claimant enjoyed her work with the respondents, and was very upset to lose her job. She struggled for money, and had difficulty in obtaining benefits, not least because of the lack of any formal documentation about her dismissal from the respondents, until they wrote on 1 November 2015 and then issued a further P45.

6. Those then, are the relevant facts. There were times when the evidence on both sides was very unclear and unsatisfactory, due , doubtless, in no small part to the parties all being from overseas, and English not being their first language. That said, whilst some of her testimony did not fully tally with documents in terms of dates, the claimant's evidence was much more consistent, and clear, than that of both of the respondents. Where the two conflicted, the tribunal preferred the evidence of the claimant. Further, whilst the evidence of Debbie Baxter was helpful in terms of helping to establish a timeline, and she had prepared some contemporaneous documents, her witness statement stopped with events up to the end of December 2014, and was wholly silent upon other events in which she was subsequently involved in 2015, and which were highly relevant to the issue of whether there had been a dismissal, and if so, when, and for what reason.

7. At the outset of the hearing the tribunal raised with the respondents' representative the issue of dismissal. Dismissal appeared to be admitted in the response (as originally pleaded, and as amended), but Mr Frederick, in the first part of the final hearing, did not so concede, on the basis that there was, arguably, a resignation by conduct on the part of the claimant. That was probably based upon the claimant's witness statement, and, in particular, her account of the events of August 2015, and her involvement with the Jobcentre at that time. It could have appeared that she had been looking for other employment at that time. This section of her statement is rather unclear, but she has since given evidence and explained what she meant. In the light of this evidence , (and in any event, even if the claimant was considering taking up other employment at that time, that, in itself, is unlikely to

amount to a resignation) , the respondents were invited to reconsider their position on the issue of dismissal. The tribunal identified that remaining issues would then be:

a) was the dismissal automatically unfair, as being for a reason relating to pregnancy, childbirth or maternity?

b) was the dismissal also an act of discrimination?

c) should there be any reduction in compensation for unfair dismissal on the basis of ***Polkey*****?**

d) should there be any reduction in compensation for unfair dismissal on the basis of the claimant's conduct?

e) Is the claimant entitled to any arrears of holiday pay?

8. In relation to ***Polkey*** , although pleaded in para. 52 of the amended response, this plea was not further particularised. Similarly, contributory fault is pleaded at para.53, but this too was not particularised. Consequently if these alternative pleas were to be maintained, the tribunal required and ordered further particulars of them. The respondents' representative by e-mail to the tribunal of 1 March 2017 replied.

9. In that reply, firstly, the respondents maintained that the claimant was not dismissed, but the employment ended "as the claimant did not return to work". In the alternative, if there was a dismissal, the claimant was dismissed due to her conduct on or about 28 October 2015, and reference is made to page 95 of the Bundle. This somewhat ambiguous assertion must be to the case note at page 95 Bundle, in which Debbie Baxter records a visit to the respondents on that date, and the reasons that the respondents that stated to her as being that the claimant was "unreliable and left Mr Dalipour without support on several occasions". On this basis the respondents also disputed the entitlement to notice pay as the claimant resigned.

10. In relation to unfairness the respondents accepted that there were "procedural failings", but contended that such were not to render the dismissal unfair taking into account the size and communication difficulties of the respondent.

11. The document goes on to argue for a ***Polkey*** reduction on the grounds of :

1. The claimant's failure to provide sick notes to the respondents;

2. The claimant's failure to make regular contact during her sickness absence;

3. The claimant's failure to inform the respondents when she would be going on maternity leave, and when she would return;

4. Neglect of her duties – leaving the client unattended and without care.

The respondents relied upon the same particulars in support of a reduction for contributory fault.

Submissions.

12. The parties made submissions. They were made orally. For the respondents, Mr Frederick went first. He conceded there had been a dismissal in August 2015. The evidence was that in April 2014 the respondents spoke to Debbie Baxter about their concerns with the claimant, but were advised not to say anything as she was pregnant. It is correct that thereafter in a telephone call in August 2015 Parveen did tell the claimant that she was no longer required. The claimant knew that , and (as can be seen from page 89 of the Bundle) then sought JSA. There are also references (page 43 of the Bundle) to the claimant seeking work. The effective date of termination was therefore some time in August, though the exact date was unclear. He referred to page 91 of the Bundle, and the note of the conversation on 24 September 2015. The claimant was talking of seeing a solicitor. The ET1 was at the end of November 2015, so the unfair dismissal claim may be out of time.

13. In terms of a reason for the dismissal, it was conduct, or some other substantial reason, the respondents feeling that the claimant was too unreliable to be allowed to look after their brother. Their concern is shown in the letter of 1 November 2015, page 96 of the Bundle. The tribunal had heard their evidence, and bearing in mind the need for 24 hour care, the claimant did give cause for concern when she did not turn up for work, and was not contactable. She failed to make contact for periods of time, and when off sick sent her sick notes to the accountants, so the respondents did not know the position. Between July and September 2014 , into October, there were no calls to the respondents. Any employer would form the view that the claimant was unreliable.

14. There was a concern too that the claimant did not inform the respondents of the start of her maternity leave, and the date she planned to return. He referred to page 43 of the Bundle. The claimant says she called the respondents and told them when she was going to return to work, and told them she was starting her maternity leave on 10 November 2014. The respondents' position is that she had to notify them when she was coming back. The manner she went about this was inappropriate, and gave the respondents grounds for thinking she was unreliable.

15. The claimant said that she had agreed her maternity leave, and would also take her annual leave at the end of this. If that was so , she would not return until December 2015. The evidence suggests that she sought to take her annual leave in April 2015, and so had come off maternity leave in March 2015. There was no agreement to this.

16. The evidence that the respondents had been presented with a form for SMP purposes is not notification of the start of maternity leave , maternity pay and maternity leave are different things.

17. The claimant was guilty of serious conduct and was liable to some disciplinary sanction, the respondents were relying upon her unreliability as conduct or some other substantial reason. The dismissal was nothing to do with her pregnancy, that was coincidental. The comments that the claimant alleged were made about her having a baby were not put to the respondents in cross – examination. Pregnancy did not feature in their thinking. The respondents were concerned for the claimant when she was sick during her pregnancy.

18. If the holiday pay claim was pursued, the claimant has been paid for the amount outstanding on termination.

19. In respect of the fairness of the dismissal, whilst it was not ideal, the respondents had a genuine belief in their reasons, and were not aware of the explicit language that they should have used. English is not their first language, and they have very limited experience of employment law, and very limited resources.

20. In the alternative, if the dismissal was unfair, Mr Frederick argued for a ***Polkey*** reduction, pleaded in the response .

21. He accepted that notice pay had not been paid, and that the respondents would have to be entitled to dismiss without notice for it not to be payable.

22. The claimant made her submissions. She started by referring to the respondents' evidence about the dismissal, and paras. 14 and 19 of Parveen's witness statement. The dismissal was in August 2015, and her claim was in time. She told the respondents that she was going to return to work , but was then told that she was no longer employed.

23. The respondents had never told her that her "duty was wrong", as she put it, and she did everything to be a good employee. Why had they not told her in April 2014 when they said she did not turn up for a shift? She has no recollection that they ever did. She was still carrying out her duties after she was pregnant and would say her dismissal was because of that. Why did they take so long to tell her, waiting until August 2015 ? If she was not a good worker, or was unreliable, why would they accept a family member to take her place when she was ill ?

24. The respondents did not give her a letter (referring to page 96 of the Bundle) until November 2015, why not in August? They knew they had to pay her holiday pay, but no payment was made upon her leaving the employment.

25. She had never received any verbal or written warning, and she sent in all her sick notes to the accountants.

26. She took the tribunal to page 122 of the bundle, the GovUK document which sets out when she planned to start her maternity leave. She told the respondents when she was taking her leave and when she was coming back. They have changed their story. She referred to pages 68, 78, 81, and 81a, which was signed, and show that the respondents knew what her dates were. She showed them everything relating to her maternity leave and pay.

27. The letter at page 87 showed that she was still employed then, as at 5 December 2014. The respondents could have said then if they did not want her. She felt this was unfair and had to call Debbie Baxter, as she was told to call her.

28. In relation to page 96, the letter of 1 November 2015 she questioned why this was so long after the call in August. She had been given two P45s, felt swept under the carpet , and had been caused 4 months of upset.

29. She had been told that they did not want her to work because she had a baby and she apologised if she did not put this to the respondents but this was her first time in a court.

30. The Employment Judge then raised with the claimant her holiday pay claims, and clarified whether she accepted that she had been paid (albeit after the claim form was issued) her holiday pay for the 2015 holiday year. She confirmed that she had.

31. He also queried why she had sought 12 weeks' notice pay. She agreed that this was not an express term, but considered that it would be reasonable. Mr Frederick agreed that none had been paid.

Discussion and Findings.

13. The tribunal has first had to decide whether there was a dismissal. This has not been a difficult decision, and the tribunal is disappointed that the respondents have not seen fit to admit that there was a dismissal. This was originally admitted, but then denied, and despite the evidence that emerged in the hearing, the respondents continued to deny dismissal, although in his closing submissions Mr Frederick then again conceded that there had been . The tribunal is quite satisfied that there was a dismissal. Firstly, the respondents had dismissed the claimant once, in 2014 , when they issued a P45. Secondly, and more pertinently, when the claimant telephoned the respondents in August 2015 she was clearly told that her employment had ended. Everything she did at that time, and her DWP documentation clearly establish that she was of the view that her employment had been ended, even if the respondents then failed to clarify the position until Mrs Baxter helped them draft the letter of 1 November 2015.

14. In terms of the legal means of termination of employment , there are only three ways that the employment relationship can be ended by the parties. One is by mutual agreement , which this clearly was not, and the other two are termination by either the employee or by the employer. The crucial question is who ended the relationship? If it is the employee there is no dismissal, but a resignation, if the employer does, there is a dismissal. The tribunal has no doubt that it was the respondents who, in the telephone call made to them on 9 August 2015, ended the employment relationship. That was a dismissal.

32. In those circumstances , the next question is was there a potentially fair reason for dismissal, the burden of proving which is upon the respondents. In terms of the respondents' reasons for the dismissal that the tribunal has found to have occurred, the tribunal now examines them, in order to determine whether there was any fair reason, and further, whether the reasons advanced are the real reason or whether the reason, or, if more than one, the principal reason, for her dismissal was her pregnancy and recent childbirth.

33. A prime difficulty for the respondents here is that they have changed their position so often in this case. They have vacillated as to whether there was or was not a dismissal, and further, they have vacillated on the reasons for any dismissal. The original case advanced in the ET3 was that the respondents believed that the claimant was not coming back. That was at one time advanced as an argument that

there was no dismissal, but the tribunal has not so found. In any event, para.8 of Parveen's witness statement says, in relation to the issuing of the P45 in July 2014, that this was done because the claimant had introduced her aunt as "her replacement" and that she believed therefore that the claimant was not coming back. Whilst the respondents have tried to argue that the issuing of the P45 was an error, and not a dismissal, the tribunal does not accept that. Parveen's statement rather confirms that it was a dismissal, and gives a reason for it.

34. Thereafter, in 2015, when the claimant seeks to return to work, she is told that she cannot do so. At that point the alternative plea advanced for not letting her do so is her conduct, some 14 months previously, in leaving their brother Mohamed alone one day, such that they could not trust her, and had deliberately delayed telling her this until after she had had the baby. Even here the respondents' account has been inconsistent. They told Debbie Baxter on 28 October 2015 (page 95 of the Bundle) that the claimant was unreliable, and had left their brother without support "on several occasions". In evidence this emerged as one occasion , around April 2014. It is also of note that when discussing this, and writing, through Debbie Baxter, to the claimant the letter at page 96 of the Bundle giving the reasons for her dismissal, it is alleged that she had failed to maintain contact or update the respondents when she went on "sick leave". The claimant's sick leave , of course, had ended on 10 November 2014, and she was thereafter on maternity leave. The respondents make no mention of maternity leave, which the tribunal finds significant, and indicative of a desire to avoid any reference to maternity leave, and related matters.

35. The tribunal does not accept this either, and considers it an after the event and specious attempt to justify the dismissal. Whilst the respondents have suggested that they discussed the claimant's failure to provide care for their brother with Debbie Baxter before she went on maternity leave, and claim that she told them to leave it until she had returned , because she was pregnant, Debbie Baxter's evidence does not corroborate this. The respondents, in the view of the tribunal have failed to establish a potentially fair reason for dismissal, and it will be unfair.

36. That leaves the question of whether the claimant's dismissal was by reason of, or principally by reason of, her pregnancy and/or maternity leave.

37. As the claimant has qualifying service, she has no burden of establishing that the reason for her dismissal was the automatically unfair reason of her pregnancy. Rather, the burden is upon the respondents to show that it was not. The tribunal's unanimous view is that the respondents have failed to do so. Having failed to establish a potentially fair reason, the inference arises that the reason was the claimant's pregnancy, or matters connected with it. The respondents have relied upon shifting, inconsistent, and unconvincing reasons for her dismissal, which they have at one time admitted, and then denied even occurred. It is not, in our view without significance that their first reaction to her sickness absence due to pregnancy in July 2014 was to issue a P45. Debbie Baxter rescued them from that, but in the tribunal's view it is a highly significant fact. The tribunal is therefore satisfied that the respondents have not discharged the burden upon them of proving that pregnancy was not the reason, or principal reason for her dismissal, and she was unfairly dismissed on that ground. Once that is established as the reason, issues under s.98

as to fairness in all the circumstances do not require consideration, as the dismissal is automatically unfair.

38. That finding disposes of the unfair dismissal claim, but for completeness, if not automatically unfair by reason of pregnancy , the tribunal would have found that the dismissal was unfair under ordinary principles. If not pregnancy, then the respondent has failed to establish any other potentially fair reason, and even if it could, such as conduct, there is no way in which to dismiss someone 14 months after one alleged instance of misconduct, which has never even been raised with them, and with no procedure whatsoever , could ever be regarded as fair. Similarly the allegations, if such be the right term, that the claimant failed to keep in contact with the respondents can hardly be seriously considered to amount to any form of misconduct, particularly when the claimant was no longer on sick leave, but had started her maternity leave, during which there was no obligation whatsoever upon her to keep in touch with the respondents, are equally specious and weak, and could not begin to justify a conduct dismissal. Finally, whilst noting the plea of the size, lack of resources and language difficulties of the respondents, the tribunal would not have found those sufficient to prevent a finding that this was an unfair dismissal on ordinary s.98 principles in any event. They were employers, and ,whatever their limitations, they had obligations, and access to assistance from Manchester City Council, and , it appears, a form of employment insurance, which they used on several occasions.

39. Finally, in relation to any time limit issues, the claimant presented her claim form on 5 January 2016. She started ACAS early conciliation on 5 November 2015, i.e with 3 months of the effective date of termination, 9 August 2015. The early conciliation certificate is dated 5 December 2015.The effect of the “stop the clock” provisions is that , as the primary limitation period of 8 November 2015 expired during the period between the start of early conciliation (Date A) and the date of the certificate (Date B) , any claim in relation to any dismissal before 6 August 2015 would be out of time, but any thereafter is within time. As the tribunal is satisfied that the date of termination was 9 August 2015, the claim is within time.

Contribution and Polkey

40. Turning to the respondents’ alternative arguments, it is correct that , notwithstanding a finding of automatically unfair dismissal, a respondent can argue for reductions in compensation on the basis of both contribution and ***Polkey*** (see ***Audere Medical Services Ltd. v. Sanderson UKEAT/0409/12***) . That said for the reasons set out above in relation to the prospects of any potentially fair reason being established, the tribunal is equally satisfied that no reduction in the compensation payable to the claimant should be reduced either for contribution, or on the basis of ***Polkey*** . In order to establish contribution the respondents would have to prove that the claimant had actually been guilty of some serious form of misconduct, that it contributed to her dismissal, and that it would be just and equitable to make any reduction to reflect that contribution. The respondents fail on all three elements. They have failed to prove that the claimant actually abandoned their brother on any occasion (their case having varied from this happening on more than one occasion, to it only happening once) , the tribunal does not accept that that was, in any event, something that contributed to the dismissal in August of the following year, and even

if it were proved, and it did so contribute, it would not be just and equitable to make a reduction for conduct that was so stale, and was never put to the claimant until (long) after her dismissal. Similarly, with any ***Polkey*** reduction the respondents have failed to adduce any evidence to show what a fair procedure would have led to. The total absence of any procedure, and the respondents' continued lack of consistency as to whether there ever was a dismissal, and if so what the reasons for it were, preclude any sensible assessment of the chances of a fair dismissal being carried out.

Notice Pay.

41. The claimant claims notice pay, her dismissal having been without notice. The respondents' case on this (as per the particulars submitted on 1 March 2017) is simply to deny there was a dismissal. No alternative case of the respondents being entitled to dismiss without notice is advanced, and, frankly, none could be. Any conduct that even remotely could have justified summary dismissal, the alleged abandonment of Mr Dalipour, occurred so long before the dismissal that the respondents would have lost any right to dismiss summarily for such conduct, even if proven, which it has not been. This claim too succeeds. The notice period, however, cannot be the 12 weeks the claimant contends for, but the statutory minimum period of 2 weeks.

Remedy.

(i)Unfair Dismissal.

(a)Basic Award.

42. The claimant would be entitled to a basic award, calculated at one week for every year of service at the date of her dismissal, which was just over two years after she commenced employment, and so would be two weeks' pay. The problem, however, that arises is that in calculating the rate at which the basic award is to be paid, the tribunal has to apply Chapter II of the ERA , as to how to calculate a week's pay for these purposes. For these purposes the relevant period is the 12 weeks preceding the termination of employment. The tribunal is required to take the average remuneration payable under the contract over that period in calculating a week's pay. The difficulty here is that for those 12 weeks (i.e those preceding the dismissal on 8 August 2015) the claimant was receiving no pay at all. It may have been the case that she should have been receiving SMP, but she was not. Whilst the tribunal did at one point consider whether she could seek to claim those payments, it determined that it could not do so. It may well be that the claimant should have been entitled to SMP, but she did not get it. Whether she would have been entitled is a moot point, but in the circumstances the tribunal has to find that the applicable rate of a week's pay in the 12 weeks preceding the dismissal was nil, and there can be no basic award.

(b)Compensatory Award.

43. During the adjournment the tribunal sought from the claimant further details of her claims from the point of view of remedy. The claimant had submitted a Schedule of Loss dated 29 November 2016, and the claimant supplemented this by a further

Statement dated 29 January 2016, but received on 2 March 2017 . The tribunal is also in possession of the details of the hours worked by her aunt, and her earnings. What it needed was evidence from the claimant of what hours she would have worked after the birth of her child. She has now provided these details, and her evidence is that she intended to return to work on 9 November 2015, initially for 25 hours per week. Thereafter she intended to put her child in nursery for two days a week, and have grandparents look after her for the other three days. She has not yet found alternative employment, finding it hard to do so. She has been receiving tax credits and child benefit.

44. Turning to the claimant's losses, therefore , the tribunal assessed them thus. She was working .. hours per week before she went off work with pregnancy related illness. She says that she would have returned to work in November 2015 . The rate of pay at that time (as paid to her aunt) would have been £7 per hour . The tribunal must next decide for what period the claimant should be awarded her loss of earnings. This is a difficult assessment, and the tribunal must partake in a degree of speculation. The claimant has a young child, and her earning capacity is limited, in terms of mitigation of loss, and equally she would not be likely to have worked for the respondents to the same extent as she did previously.

45. The claimant's rate of pay when she ceased work in 2014 , initially when ill, and then on maternity leave , was £7 per hour. (The payslips produced are very confusing because they have a column where the "rate" is expressed as £7.20, but the actual payments are at the rate of £7 per hour, and, further, whilst, in the claimant's case they were monthly, they make reference to "summary this week".). Whilst the claimant was working 124 hours per month, 31 hours per week, in early 2014, this went down to 62 or 64 hours per month from April 2014 until she ceased work in July 2014. If she had returned in November 2015, the rate would still have been £7.00 per hour, and this is the rate at which the claimant's aunt was paid.

46. Had the claimant returned in November 2015, for 25 hours per week, therefore her earnings would have been:

25 x £7 = £175.00

47. Doing the best it can, therefore, the tribunal considers that the period for which it would be a reasonable to award loss of earnings would be 18 months (78 weeks) from November 2015 . This is because .there must be some uncertainty over whether, and for how long the claimant would have remained in the employment of the respondents. She had, after all, only been employed by them since 2013, and to award compensation for loss of earnings beyond May 2017 would be to assume a stability in the employment situation that would not be appropriate. The claimant was born on 15 May 1990. She was thus 25 on 15 May 2015. The National Minimum Wage, however, rose in April 2016 to £7.20 per hour, for employees over 25, and has remained at that rate to date.

Her Loss of earnings therefore

74 weeks @ £175.00 per week	£12,950.00
4 weeks @ £180.00 per week	£ 720.00

Total: £13,640.00

It is to be noted that this period of loss does not start until after the end of the notice period discussed below, so there is no double recovery.

48. There is authority , ***D'Souza v London Borough of Lambeth [1997] IRLR 677*** , however, that where a claim succeeds on the basis of both discrimination, and unfair dismissal, compensation for the dismissal should be awarded under the discrimination head of claim. Thus the tribunal will not award these sums by way of the compensatory award, but will do so under the discrimination claims. Further, given the cap on the compensatory award of 12 months' pay, this approach more fully compensates the claimant.

30. There is, however, one element of the compensatory award that does not fall under the discrimination compensation, and that is loss of statutory rights, an amount to reflect that the claimant will take some two years now to acquire some important employment protection rights. That is traditionally a figure with some connection to a week's pay, and in this instance, the tribunal considers that to award two weeks pay, £250, would be appropriate.

(ii)Breach of Contract.

49. For some reason the claimant's Schedule of Loss seeks a notice period of 12 weeks. This is not correct. There is no express contractual term to that effect, and the statutory provisions of one week for every year of service under s.86 of the ERA apply, giving the claimant who was dismissed on or about 8 August 2015, and had been employed since 22 July 2013 an entitlement to two week's notice. By the provisions of s.88(1)(c) an employee who is absent from work during the notice period by reason of pregnancy or childbirth is entitled to be paid their notice pay. This is in contract to the basic award position, which is calculated differently as discussed above.

50. By the time the claimant was dismissed, however, her hours had already gone down to 16 hours per week, at £7 per hour. On that basis her week's pay would be £112.00, and hence two weeks would be £224.00.

(iii)Discrimination.

51. As discussed above, the tribunal proposes to award the claimant's loss of earnings under this head of award. The calculation carried out above is the starting point.

52. The claimant's only current income, it seems, certainly as at 2 March 2017 is child benefit and child tax credit. The former, the tribunal understands , is payable whether a parent is working or not, and hence should not be deducted from any loss of earnings sustained by the claimant. The position in relation to the latter, however, is less clear. If the claimant were receiving income support , or any other benefit to which she was entitled by reason of her status as unemployed, any such sums would be deductible, as they mitigate the loss of earnings. The position with child tax credits is less clear cut, as it seems that it is possible to receive child tax credits

when working, but the amount of such credits would be affected by the amount that was earned.

53. The position is very unclear, but the tribunal considers that, on the face of it, apart from child benefit, any sums the claimant does receive by way of benefits should be deducted from her loss of earnings. If she wishes to contend that they should not, or should not be in full, the burden is upon her to produce evidence and argument to the tribunal to establish that such deduction is not appropriate. The tribunal's position therefore will be to deduct the child tax credits from the loss of earnings calculation, and award the net sum thereby arising. As the rate of child tax credit is £62.77 per week (see the claimant's e-mail of 2 March 2017), the calculation is:

74 weeks @ £175.00 per week	£12,950.00
4 weeks @ £180.00 per week	£ 720.00
Total:	£13,640.00
Less 78 x £62.77	£ 4,896.06
Total loss of earnings:	**£ 8,743.94**

54. The claimant is also entitled an award for injury to feelings. The claimant was dismissed whilst on maternity leave in circumstances which caused her, as she has said .. upset and disappointment. The fact the respondents have sought justify the dismissal (which they have also both denied and conceded in the course of the proceedings) by specious allegations of misconduct going back 14 months is an aggravating feature. In terms of where the claimant's injury to feelings sits in the ***Vento*** guidelines , the tribunal considers that it is within the middle band. That band, before the uplift required since the Court of Appeal judgment in ***de Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879*** was £6,000 to £18,000. The tribunal would assess the claimant's entitlement to mid-way between those two points, at £12,000, which with the 10% uplift to be applied following ***de Souza*** makes an award of **£13,200.00.**

Uplift.

55. The claimant in her Schedule of Loss seeks an uplift for failure to follow the ACAS Code of Practice. This, of course, arises under s.207A of the 1992 Act, as set out in the Annex hereto. In her Schedule she seeks an uplift of 10%, because the respondent did not inform her she had a right of appeal. That is, with respect, generous to the respondents who carried out no procedure whatsoever, let alone failing to advise the claimant of any right of appeal. Mr Frederick did not address this issue in his submissions, but the claimant has clearly sought an uplift. Whilst the tribunal is satisfied that there has been a wholesale failure of the respondents to follow the ACAS Code , or follow any form of procedure, it is still a matter for the tribunal's discretion as to whether actually to award any uplift. Whilst it can be said that these are very small employers, in effect, two person carrying out functions for their disabled brother, with limited English, and no resources, the tribunal notes that they had the services of an accountant, and access to advice from Ms Baxter and

Manchester City Council. The latter even went so far as to draft a "reasons for dismissal" letter for them. Quite why, when there had already been an erroneous P45 issued the year before, Ms Baxter did not do more to ensure that the respondents complied with some form of procedure is a matter for her and the respondents, but the tribunal cannot overlook entirely the failure of the respondents to carry out any form of procedure at all. Given, however, that the claimant has only asked for a 10% uplift, and to reflect some mitigation of the uplift that might otherwise be appropriate due to the respondents' resources and other limitations, the tribunal will indeed award the lower uplift of 10%.

56. The uplift can be applied to both the unfair dismissal compensatory award and the injury to feelings award for the discrimination. The tribunal sees no reason not to do so.

The holiday pay claim.

57. This is a difficult claim, as the claimant, not being represented , has not been able to articulate very clearly. The claimant has sought to recover sums due in relation to untaken holiday not only in relation to the termination of her employment, but also in previous years of her employment. She contends that she was not allowed to take holiday, or at least, all her holidays, during the time she worked for the respondents. This is a difficult area , legally, and is the very issue that will be consider by the European Court of Justice in ***King v Sash Windows C-214/16*** , the legal issues having been referred to the ECJ by the Court of Appeal following its judgment.

58. What is clear (and was accepted at para. 56 of the amended response, at page 50 of the Bundle) is that the claimant was entitled to pay in lieu of untaken holiday at the end of her employment. That ended on or about 9 August 2015, and the claimant had taken no holiday during the preceding year. That claim, however, though made in the claim form, has been satisfied, in respect of the 2015 holiday year , by a payment made after the commencement of the claims.

59. In relation to the other claims she seeks to make, regardless of the uncertain state of the law as to whether or not they are legally sustainable, they give rise to some factual issues, as to whether the respondents did or did not permit the claimant to take holiday. These are, the tribunal considers, new claims. They are not contained in the claim form (in section 9.2 the claimant sets out her holiday pay claim as being "5.03 weeks", and she claims £625.52. There is no mention of any claim going back further than the holiday year in which her employment ended.

60. In her witness statement (pages 40 to 44 of the Bundle) she similarly makes no mention of not being allowed to take holidays during her employment. To pursue the issue , therefore of whether, in addition to the holiday pay outstanding on termination in relation to the preceding holiday year, the claimant can also seek to recover pay in respect of untaken holiday in the previous years raises new, and complex legal and factual issues. The claimant would need to amend to bring those claims, as they were not within her claims as originally presented. They are unparticularised, and contentious. Whilst the claimant did not expressly seek permission to amend to bring those claims, the tribunal has considered whether she should be granted permission to amend to do so. In doing so, the tribunal applies the

well – known principles of ***Selkent Bus Co. v Moore [1996] ICR 836*** . In terms of the manner and timing of the application, it is clearly very late, as the new claims only emerged in the course of the evidence, once the hearing had started. If granted amendment would open up new factual disputes, and the claims have not been set out in any detail – e.g. when the claimant sought to take holiday, who, when and how she was prevented etc. The respondents would be prejudiced, in having to deal further with these issues, and the legal basis for the claims is not yet established. It is likely that any determination would have to be stayed pending the judgment of the ECJ. Finally, the claims, if permitted, and successful, would add only a small part to the claimant's existing and more substantial complaints. The loss of the chance to bring such claims, therefore, would be of only minor consequence to the claimant. For all those reasons, given that these additional holiday pay claims are not before the tribunal, and the tribunal would not exercise its discretion to permit amendment to add them, they are dismissed.

s.38 Employment Act 2002.

61. No written particulars of employment complying with s.1 of the Employment Rights Act 1996 were provided to the claimant and the tribunal would be entitled to make an additional award pursuant to s.38 of the Employment Act 2020 of 2 or 4 weeks pay. As, however, the amount of such an award would be nil , for the same reasons that the basic award is nil, no award is made.

Summary.

62. In summary, therefore, the tribunal's awards are:

Unfair Dismissal:

Basic Award	Nil
Compensatory award	£250.00
Uplift – 10%	£ 25.00
Total:	**£ 275.00**

Discrimination

Loss of earnings	£8,743.94
Injury to feelings	£13,200.00
Total:	£21,943.94
10% uplift	£ 2,194.39
Total:	**£24,138.33**

The claimant is entitled to interest on the discrimination awards, under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations

1996. In relation to the injury to feelings award, by Reg. 6(1)(a) the relevant period is from 8 August 2015 to 14 July 2017, a period of 706 days, at a rate of 8% Thus, the interest is:

Injury to Feelings - £13,200.00 x 8% = £1,056.00 per annum

706 days therefore £2,042.56

In relation to the loss of earnings element, by Reg. 6(1)(b) interest is taken from the mid – point between the date of discrimination and the calculation date. The date of discrimination, however is earlier than the claimant's losses started, which did not start until the date she would have returned to work, 8 November 2015. The tribunal considers that there would be serious injustice if the earlier August date was taken, and hence, pursuant to Reg. 6(3) , will take the November date as the start date. 8 November 2015 to 14 July 2017 is 614 days, and hence taking a mid – point produces 307 days.

Loss of Earnings - £8,743.94 x 8% = £699.51 per annum

307 days therefore £ 588.35

Total Interest: **£2,630.91**

63. Finally, the claimant has paid tribunal fees for the issue of her claim in the sum of £250, (but not the hearing fee, for which she obtained remission) and she is entitled to recover this too from the respondents.

Employment Judge Holmes

Date: 14 July 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 July 2017

FOR THE TRIBUNAL OFFICE

ANNEX

THE RELEVANT STATUTORY PROVISIONS

Unfair Dismissal – Employment Rights Act 1996.

98 General

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

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

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

> *(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
>
> *(b) relates to the conduct of the employee,*
>
> *(c) is that the employee was redundant, or*
>
> *(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*

(3) (N/a)

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

> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case.*

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, or

(d) time off under section 57A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under subsection (1) satisfies subsection (3)(c) or (d) if it relates to action which an employee—

(a) takes,

(b) agrees to take, or

(c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this section may—

(a) make different provision for different cases or circumstances

(b) apply any enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this section.

Pregnancy/maternity discrimination : 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.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or

(b) it is for a reason mentioned in subsection (3) or (4).

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2400097/2016

Name of case(s): Miss Y A Mohamed v
1. Puorandokt Dalipour
2. Parveen Dalipour

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 19 July 2017

"the calculation day" is: **20 July 2017**

"the stipulated rate of interest" is: 8%

MISS K MCDONAGH
For the Employment Tribunal Office