COMBINED CASES **Case Nos. 2401643/17**
2401644/17
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EMPLOYMENT TRIBUNALS

Claimants: 1. Mrs P Bhatia
2. Mrs B Booth
3. Mr N Asani

Respondents: 1. Dr Anant Prasad t/a Shanti Medical Centre
2. Dr Shaista Hanif t/a Shanti Medical Centre

HELD AT: Manchester **ON:** 10 and 11 January 2018

BEFORE: Employment Judge Franey

REPRESENTATION:

Claimants: Mr D Campion, Counsel
Dr Prasad: In person
Dr Hanif: Written Representations only

JUDGMENT

1. The complaint of unlawful deductions from pay pursued by each of the claimants is dismissed upon withdrawal by that claimant.

2. Each of the three claimants was unfairly dismissed by the respondents. The unfair dismissal complaints under Section 103A Employment Rights Act 1996 are well founded.

3. Each of the claimants was dismissed in breach of contract by the respondents and is entitled to damages for breach of contract representing a twelve week notice period.

4. The respondents are ordered to pay to the claimant **Mrs P Bhatia** the following sums by way of remedy:

Notice Pay	£ 2,807.04
Basic Award	£ 1,712.69
Compensatory Award	£18,775.34
ACAS uplift (not Basic Award)	£ 4,316.48
TOTAL	**£27,611.55**

5. The respondents are ordered to pay to the claimant **Mrs B Booth** the following sums by way of remedy:

Notice Pay	£ 3,420.36
Basic Award	£ 5,308.16
Compensatory Award (before grossing up)	£24,712.74
ACAS uplift (not Basic Award)	£ 5,626.62
Total before grossing up	£39,067.88
Added to compensatory award due to tax (grossing up)	£ 1,209.32
TOTAL	**£40,277.20**

6. The respondents are ordered to pay to the claimant **Mr N Asani** the following sums by way of remedy

Notice Pay	£ 5,288.64
Basic Award	£11,496.00
Compensatory Award	£52,226.33
ACAS uplift (not Basic Award)	£11,502.99
TOTAL	**£80,513.96**

7. Any further awards for Mr N Asani in relation to pension loss and grossing up due to tax will be considered at a further hearing in chambers on **28 February 2018** once the parties have had an opportunity to make written submissions.

8. The recoupment regulations do not apply to any of these awards.

REASONS

Introduction

1. These proceedings began with a claim form presented on 17 March 2017 on behalf of all three claimants complaining of unfair dismissal, of breach of contract in relation to notice pay and of unlawful deductions from pay. The claimants had been employed as reception staff at a medical practice in Bolton known as The Shanti Medical Centre. The respondent was named as The Shanti Medical Centre.

2. The essence of the complaint was that the claimants had each made a protected disclosure to the General Medical Council ("GMC") about one of the partners in the practice, Dr Hanif, and each of them had later been dismissed by Dr Hanif because of those disclosures. The other partner in the practice, Dr Prasad, had sought to re-instate the claimants on appeal but that had not been effective and an appeal against dismissal by Dr Hanif was rejected by an outside consultant. The dismissals were said to be unfair under Section 98 even if they were not by reason of a protected disclosure.

3. On 13 April 2017 Dr Prasad wrote to the Tribunal to say that he was supporting the case for unfair dismissal. He said his partner Dr Hanif had a personal agenda against those staff members.

4. Dr Hanif's position was set out in a response form lodged on behalf of Shanti Medical Centre the same day. It set out how a dispute between Dr Prasad and Dr Hanif had developed in which the claimants had sided with Dr Prasad and their complaints about Dr Hanif to the GMC had been orchestrated by him. It was denied that any protected disclosures had been made and asserted that there had been fair dismissals for gross misconduct for having made false and malicious allegations to the GMC. Implicitly the notice pay claim was also denied.

5. The matter was considered by Employment Judge Ryan at a telephone preliminary hearing on 26 May 2017. He identified an issue about whether Shanti Medical Centre was a legal entity. It subsequently transpired that the proper respondents were the two partners in the practice, and I substituted them as respondents in place of Shanti Medical Practice by order of 27 July 2017. They were identified as separate respondents (rather than together comprising a sole respondent partnership) because they took different positions in this litigation. It was common ground that they jointly employed the claimants. The partnership was not a

limited liability partnership and they would therefore be jointly and severally liable to pay any awards.

6. The case had been listed for a five day final hearing between 8 and 12 January 2018. An application for a stay due to High Court litigation between the respondents was refused by Employment Judge Howard in October 2017. On 14 November Dr Hanif indicated that she did not have legal representation for the hearing and would not be attending. As a consequence the time estimate was reduced to two days.

7. Instead of attending the hearing Dr Hanif submitted written representations contained in an email of 27 December 2017. I considered those representations, but I attached less weight to them than if she had provided a signed witness statement and/or attended the hearing to answer questions.

8. Dr Prasad did attend the hearing. He did not have representation. He confirmed that the witness evidence that he wished to give was contained in a letter of 15 December 2017 to the Tribunal in which he emphasised the position he had taken in earlier correspondence: he wholly supported the unfair dismissal and notice pay complaints.

Issues

9. I discussed the issues at the start of the hearing.

10. Mr Campion confirmed that the unlawful deductions complaints were withdrawn. They had been raised in order to protect the position of the claimants should it prove to be the case that Dr Hanif had not had authority to dismiss them. However, the partnership deed gave either partner authority to act alone by means of a dismissal for gross misconduct, and pragmatically Mr Campion confirmed that this argument was not pursued. It was therefore accepted that the claimants had been dismissed.

11. That left the issues to be determined as follows:-

(1) Had each claimant made a protected disclosure to the GMC by means of emails sent in the period between 20 April and 9 May 2016?

(2) If so, was each protected disclosure the reason or principal reason for the dismissal of each claimant, rendering that dismissal automatically unfair under Section 103A Employment Rights Act 1996 ("ERA")?

(3) If not, could the respondents show a potentially fair reason for dismissing the claimants, namely a reason relating to their conduct?

(4) If so, was each dismissal fair or unfair under Section 98(4) ERA?

(5) Could the respondents prove that the claimants had committed gross misconduct so as to entitle the respondents to terminate their employment without giving them notice as required by their contract?

Evidence

12. The claimants had prepared a bundle of documents running to over 350 pages. Any reference to page numbers in these reasons is a reference to that bundle unless otherwise indicated.

13. Each of the claimants had prepared a written witness statement, and answered questions from the Tribunal. Dr Prasad had an opportunity to question each of the claimants but chose not to do so.

14. Dr Prasad's evidence was contained in his letter of 15 December 2017. He had not prepared a witness statement. There was no challenge to the evidence he gave and no further points to be addressed to him. It was therefore not necessary for him to give oral evidence: his witness statement was taken as read.

15. Dr Hanif did not provide any witness evidence. However, I took account of the written representations on her behalf in the response form, and the contents of her email to the Tribunal of 27 December 2017.

Course of the Hearing

16. After reading all the witness statements, written representations and documents I heard oral evidence from each of the claimants. I then gave a brief oral judgment on liability.

17. The hearing moved on to matters of remedy. I heard submissions from Mr Campion and Dr Prasad had the opportunity to make submissions too. With considerable assistance from Mr Campion I was able to make a determination of all matters relating to remedy by the end of the first day of the hearing. My conclusion on those matters was given orally and is recorded below.

18. Two matters were outstanding. The first was the appropriate approach to grossing up for the two claimants whose awards would exceed £30,000 (the amount which can be paid free of tax upon termination of employment). The second was the question of assessing the pension loss claimed by Mr Asani. Grossing up in Mrs Booth's case was not a significant matter and was addressed by a written submission. For reasons recorded in paragraphs 93 - 95 below in Mr Asani's case, however, these matters could not fairly be determined in the absence of Dr Hanif. By letter of 12 January 2018 the Tribunal informed the parties that they would instead be determined at a hearing in chambers on 28 February 2018 and set out the preparatory steps needed. A further remedy judgment with reasons for Mr Asani will be promulgated after that hearing.

19. For all other matters these reasons will firstly set out the law and facts relating to my decision on liability, and then address remedy in a separate section.

Relevant Legal Principles - Liability

<u>Part One: Protected Disclosures</u>

20. A protected disclosure is governed by Part IVA ERA of which the relevant sections are as follows:-

> **"s43A: in this Act a "protected disclosure" means a qualifying disclosure (as defined by Section 43B) which is made by a worker in accordance with any of Sections 43C to 43H.**
>
> **s43B(1): in this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following:**
>
> **(a) …**
>
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…**
>
> **(c) ……..**
>
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered…"**

21. In **Cavendish Munro Professional Risk Management Limited -v- Geduld [2010] IRLR 38** the Employment Appeal Tribunal decided that the disclosure has to be of information as opposed to the mere making of an allegation. Some concrete factual information must also be conveyed, even if it accompanies an allegation.

22. Whether a qualifying disclosure is protected depends largely on the identity of the person to whom the disclosure was made. The GMC is a person prescribed for these purposes under section 43F (it appears in the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014).

23. The requirement for a disclosure to have been made in good faith in order to be protected was removed with effect from 25 June 2013 by the Enterprise and Regulatory Reform Act 2013. That is now an issue which goes only to compensation (section 123(6A) ERA).

Part Two: Unfair Dismissal

24. Section 103A ERA deals with protected disclosures and reads as follows:-

> **"an employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".**

25. The reason or principal reason is derived from considering the factors that operate on the employer's mind so as to cause him to dismiss the employee. In **Abernethy v Mott, Hay and Anderson [1974] ICR 323**, Cairns LJ said, at p. 330 B-C:

> **"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."**

Part Three: Notice Pay

26. An employee is entitled to notice of termination in accordance with his or her contract (or the statutory minimum notice period under section 86 Employment Rights Act 1996 if that is longer) unless the employer establishes that the employee was guilty of gross misconduct. The measure of damages for a failure to give notice of termination is the net value of pay and other benefits during the notice period, giving credit for other sums earned in mitigation.

Relevant Findings of Fact – Liability

Background

27. Dr Hanif and Dr Prasad were General Practitioners in practice trading as The Shanti Medical Centre in Bolton. Their deed of partnership of 28 November 2013 appeared at pages 53 - 67. Clause 12.2.7 provided that neither could dismiss any employee without the prior consent of the other, save in cases of gross misconduct.

28. The claimants were long serving members of staff at the practice. Mr Asani had been employed since 1 December 2000. His job title was Office Manager (page 167). He was on a relatively high salary for a role of that kind in a GP practice, reflecting his wide range of responsibilities and his length of service. It was a full time role.

29. Mrs Booth and Mrs Bhatia were employed as reception staff, having started on 2 January 2004 and 10 December 2008 respectively. Mrs Booth worked 30 hours per week for the respondent. Mrs Bhatia worked 30.5 hours per week. The other members of staff included the Practice Manager Julie Whitehead, the Assistant Practice Manager Anita Grundy (from April 2014), and another receptionist Danielle Lomax.

30. The practice had a Whistleblowing Policy from September 2014 (pages 306 - 310) which made clear that workers who raised genuine concerns in the public interest would not be subjected to any form of detriment. There was also disciplinary procedure which appeared at pages 286 - 305 - incorporating the grievance procedure.

31. Dr Prasad and Dr Hanif had been partners since 2002, but from 2012 onwards their relationship began to deteriorate over disputes about finances and the running of the practice. The execution of the partnership deed in November 2013 was part of an attempt to resolve these differences but it was unsuccessful. Their dispute continued. Staff were caught in the middle.

GMC Complaints

32. On 20 April 2016 the Practice Manager Ms Whitehead made a complaint to the GMC about Dr Hanif. The details were summarised in a later GMC report at

page 142. Some of the matters raised were issues of management, but others related to clinical practice. They included the recording of inappropriate details in patient records, failure to record consultations and refusing to visit elderly patients.

33. At 7pm the same day Mr Asani made a complaint by email to the GMC (pages 93 - 95). This was said to be his protected disclosure. He had been keeping notes since late 2013 on the advice of the Practice Manager, and he drew on those notes to provide details of inappropriate and false entries on patient records made by Dr Hanif. He made thirteen specific allegations covering the period between October and April 2016. He said the specific details of the patients were available on request. He summarised it by saying that Dr Hanif had been guilty of "fraudulent practice and unprofessional conduct".

34. The following day Mrs Booth also emailed the GMC. Her email appeared at page 96. This was said to be her protected disclosure. It was a brief email in general terms. It concerned breaches of patient confidentiality by Dr Hanif. Her email said:-

> **"I have witnessed on many occasions her calling patients and talking about the consultation she has had with them, some very personal issues, sexual abuse, domestic violence, patients being gay. One recent occasion she has been talking about a work colleague who is also a patient here, she has been discussing her marriage to two members of staff** [and] **the concerns she has about her but never actually speaking to her. Encouraging patients to use another chemist. As long as I have worked here which is eleven years this doctor has always had a lot to say about patients, how they live and all the gossip from within the community. If I was not being loyal to Dr Prasad I would have given my notice in. She makes everyone feel on edge and inadequate and at times** [I have] **witnessed her bullying another member of staff. I would not like to think that my GP talks about me or my family like this after a consultation".**

35. After speaking to Ms Whitehead and Ms Grundy on 5 May, Mrs Bhatia made her own complaint to the GMC of 9 May 2016 at page 101. This was said to be her protected disclosure. She described it as an "official complaint" about Dr Hanif. She said:-

> **"… I have recently been made aware of the fact that Dr Hanif has consistently over the years I have worked there broken patient confidentiality regarding not only myself but an immediate family member. She has discussed highly sensitive information regarding myself and my under age daughter who was extremely vulnerable at the time. I was not made aware of this until quite recently and I am deeply shocked and angry.**
>
> **Information regarding my marriage breakup and highly sensitive information regarding my daughter has been gossiped about in reception in front of my colleagues and a waiting room full of patients. I understand that this happened on numerous occasions …. Dr Hanif has made nasty and vindictive comments about my decision to re-marry and have another child".**

36. Subsequently Mrs Bhatia's daughter made her own complaint to the GMC too (28 June 2016 - page 108).

37. Danielle Lomax also provided information to the GMC. It was summarised in the later GMC report at page 145. She alleged that Dr Hanif refused to see children as emergencies, and talked about patients and employees in reception, and signed vulnerable patients up to a particular pharmacy without their consent.

38. The GMC made Dr Hanif aware of the complaints. From early August 2016 onwards there appeared to be a change in her attitude towards the claimants. She sent an email of 9 August at page 134 to the three claimants and Ms Lomax alleging that they had been guilty of "continual blatant insubordination" and that their attitude was now affecting patient care. She sought to remind them they were employees of the partnership and not of the other partner Dr Prasad.

39. Mrs Booth in particular responded to this and there was an email exchange between herself and Dr Hanif which ran into early September (pages 234 - 243).

40. The GMC issued its decision on 18 October 2016. It decided to take no further action against Dr Hanif. The GMC report appeared at pages 142 - 150. It summarised the allegations made by Mrs Whitehead and the additional complaints received from the claimants and Ms Lomax. There were complaints from others recorded too. Some further evidence had been received by email and feedback obtained from NHS England about the practice. The decision of the GMC included the following:-

> **"It is apparent that the allegations in this case, which span a four year period, have arisen against the backdrop of an acrimonious partnership dispute between Dr Hanif and** [Dr Prasad]. **It is clear that this situation has led to a difficult working environment for the staff at the practice which has undoubtedly served to fuel the many complaints made by the staff against Dr Hanif. As case examiners we must consider whether the various allegations as outlined meet the realistic prospect test both on an evidential basis and also in terms of their seriousness …"**

41. After reviewing the different types of allegations the case examiners concluded as follows:-

> **"We recognise the significant impact that the ongoing partnership breakdown has had on the staff at the practice and that this appears to have been a catalyst for the numerous complaints made against Dr Hanif. We note however that our investigation has not identified any wider employer concerns; there is no evidence of any third party investigations or inquiries; and Dr Hanif has no previous fitness to practice history. We find that the allegations are not capable of meeting the realistic prospect test and would not justify a formal warning. The case can be closed with no action".**

Disciplinary Proceedings

42. On 31 October 2016 Dr Hanif wrote to each of the claimants in virtually identical terms inviting each of them to a different disciplinary meeting. The allegation was put as follows in each of the letters (e.g. page 207):-

> **"At this meeting the question of disciplinary action against you will be considered with regard to the false and malicious allegations made by you in correspondence to the GMC. These have been shown to have no basis. I enclose copies of your (and your**

> **colleagues') correspondence. I also enclose the summary of the result of the GMC investigation.**
>
> **The possible consequences arising from this meeting could be dismissal. I will also be seeking a civil action against you regarding the defamatory nature of the false allegations made".**

43. This correspondence came to the attention of Dr Prasad and on 7 November 2016 he wrote to each of the claimants (e.g. page 208) to say that the letter from Dr Hanif was total nonsense. His letter to the claimants said:-

> **"Dr Hanif has no authority whatsoever to dismiss anybody from the practice but herself. I have built this practice for the last 30 years, and have absolutely no doubt about the professionalism or ethical manners of my staff. Frankly speaking I am proud of all of you. Hence you do not have to attend the meeting with Dr Hanif as she has no right to call any meeting without my permission.**
>
> **I appreciate the difficulties you have been through** [during] **the last two years and I am fully determined to put an end to this as you will know about shortly. At the same time I will give a word of honour that your jobs are secure. Soon you will not have to put up with the difficulties. Some of you have heard from Dr Hanif that she will stop you from getting paid, hence, I can assure you will all be paid".**

44. On 11 November 2016 Dr Hanif contacted the claimants (e.g. page 209) saying:-

> **"The advice you have been given that you do not need to attend the meeting is entirely false and a misrepresentation. As your employer I have the authority to call you for a disciplinary meeting and if the outcome is a finding of gross misconduct, to dismiss you. This does not require the agreement of both partners".**

45. Having considered this correspondence and taken advice from their union, the claimants indicated that they would not attend the disciplinary hearings. Each of those hearings took place before Dr Hanif in the absence of the claimant and the outcome was confirmed by dismissal letters issued by Dr Hanif on 30 November 2016. The dismissal letter for Mr Asani appeared at pages 179 - 180, and that for Mrs Bhatia at pages 211 - 212. The dismissal letter for Mrs Booth did not appear in the bundle but I inferred that it was in the same terms as the other two. Apart from the dates for the proposed disciplinary hearings and the precise allegations made against the GMC, the letters were in identical terms. After summarising the allegations made by each claimant Dr Hanif went on as follows:-

> **"Following a lengthy investigation carried out by the GMC, the allegations made by you and your colleagues have been found to have no basis. I have no case to answer. I have previously sent you copies of the judgment by the GMC in relation to your particular allegations following the investigation.**
>
> **The nature of each and every one of your allegations was therefore purely malicious and vexatious. Your intention was to destroy my professional reputation. I consider your actions so serious that they have led to a total breakdown of trust that should exist between employer and employee. I consider your conduct to be gross misconduct and serious insubordination.**

> **As such I can confirm that your employment with Shanti Medical Centre is terminated with effect from the close of business on 30/11/16".**

46. The letter ended by giving each claimant the right of appeal.

47. Dr Prasad wrote to the claimants the same day. The letter he wrote to Mr Asani appeared at page 181. His letter said:-

> **"I am writing further to the events of November 30 2016 at Shanti Medical Centre where Dr Hanif has written to you to dismiss you from employment at the practice.**
>
> **Thank you for the letter received from your union - UNISON. I agree that you have been unfairly, unreasonably and maliciously dismissed.**
>
> **Please disregard all the actions taken by Dr Hanif and Mrs Anita Grundy as this decision was taken without my authority and I categorically do not agree with this. I do not agree that there has been any gross misconduct in your situation and understand that you were raising genuine concerns about Dr Hanif for which you are now being penalised.**
>
> **I would like to clarify that you are not dismissed and are continuing in employment at the practice. Please continue to report to work as scheduled.**
>
> **Sorry for the inconvenience caused by this situation".**

48. Relying on this assurance the claimants attended for work on Thursday 1 December 2016 as usual. After an embarrassing dispute in front of patients they were turned away. Ms Lomax was not dismissed by Dr Hanif.

Appeals

49. Mr Asani and Mrs Bhatia submitted their appeals on 1 December at page 184 and 210 respectively. They were in the same terms. The letters of appeal asserted that they had made a protected disclosure to the GMC and been dismissed because of it. There had been no investigation in accordance with the ACAS code of practice, and Dr Hanif had been biased. It was also asserted that Dr Hanif had no authority to dismiss the claimants and therefore the dismissals should be rescinded.

50. The same day solicitors instructed by Dr Hanif, Fieldfisher in Manchester, wrote to the claimants. Their letters were effectively in identical terms. They appeared at pages 182 - 183, 213 - 214 and 261 - 262. The letters asserted that the GMC had found there was no evidence to support the complaints made, that the complaints were malicious, that Dr Hanif did have authority to dismiss for gross misconduct, and that the dismissals were effective.

51. Mr Asani contacted the GMC at this stage. He was concerned at the suggestion that the GMC had found that the claimants had made false complaints. His email was not in the bundle but the reply from the GMC Investigation Officer Mr Stone of 2 December 2016 appeared at page 157. His email said:-

> **"At no point have we said that you or any of your colleagues were lying or that we didn't believe your concerns. We simply could not gather enough evidence to justify taking action on Dr Hanif's registration. I can assure you that the investigation process could not have moved any quicker than it did".**

52. Dr Prasad held appeal hearings on 5 December 2016 and re-instated the claimants. He confirmed these decisions by emails of 8 December 2016 (e.g. page 188).

53. However, this came to the attention of Dr Hanif and on 6 December at 6.22 am she emailed the claimants (page 185 - 186) to confirm that they remained dismissed because Dr Prasad did not have authority to overturn her decision to dismiss for gross misconduct. She said she was arranging an independent Appeal Officer to hear the appeals which had been lodged. It was subsequently confirmed that the appeals would be heard by an independent Human Resources Consultant, Jennifer Platt. That was confirmed by letter of 28 December 2016 (e.g page 217 - 218).

54. Mrs Booth confirmed her appeal in an undated letter at pages 259 - 260, although making clear that she had already attended an appeal hearing on 5 December and did not believe that the further appeal was valid.

55. For the purposes of the appeal hearing before Ms Platt Dr Hanif asked two other members of staff to provide statements.

56. The Practice Nurse Sarah Rostron provided a brief statement at pages 277 - 278. She had only been employed since 2 November 2016 and her statement added nothing to the issues.

57. However, the Assistant Practice Manager Miss Grundy provided a statement (unsigned) at pages 279 - 285 which gave her perspective going back to 2014. She said that both partners had done things she did not agree with but her job was to run the practice; this had proved impossible due to the fact that the staff would only do what Dr Prasad said. She suggested that there had been many examples of where she had tried to implement changes but was overruled by Dr Prasad. At page 282 the following passage appeared:-

> **"The situation escalated around May 2016 when the staff informed me that they had reported Dr Hanif to the GMC.**
>
> **I asked why and they said that they had lots of evidence but that as "I was clearly on her side" they had taken the decision not to tell me very much. I explained that although I understood some of their concerns I did not think that this was appropriate and would not be a part of it. I said that none of the reasons they gave me were sufficient to get her struck off which they said was their intention".**

58. The claimants and their union representatives attended their appeal hearings before Miss Platt on 27 January 2017. The hearings were conducted at the offices of Fieldfisher who were acting for the practice on the instructions of Dr Hanif. Ms Platt had previously been a solicitor with Fieldfisher.

59. The appeal hearings were brief. The notes for Mr Asani appeared at pages 192 - 193, for Mrs Bhatia at page 220, and for Mrs Booth at pages 271 - 272. The claimants had each prepared a statement of case (e.g. page 219) which asserted that there had been no gross misconduct, that the dismissals were by reason of whistle blowing, and that there had already been a valid appeal. At the hearings the claimants through their trade union representative confirmed that the statements represented the full extent of their participation. Ms Platt had not been provided with a copy of the confirmation from Dr Prasad of the appeals conducted in December, and nor did the claimants provide her with copies of those matters after their appeal hearings.

60. The decision of Ms Platt on each appeal was set out in a letter of 7 February 2017 to each claimant (pages 194 - 197; 221 - 224 and 273 - 276). The letters were understandably in very similar terms. Ms Platt said:-

> **"I have been instructed by Dr Hanif with the knowledge of Dr Prasad who I have contacted and who confirms that he awaits my decision in relation to your appeal. I therefore understand that I have the authority of both Dr Hanif and Dr Prasad to issue a decision".**

61. The letters went on to explain that Ms Platt had intended to conduct a complete re-hearing of the disciplinary issues but had been unable to proceed on that basis because the claimants were not willing to participate beyond what was in their written statements. Accordingly her decision had been based on the correspondence regarding the disciplinary hearing, the correspondence with the GMC and the GMC decision, the appeal correspondence with Dr Hanif and the statements of Sarah Rostron and Anita Grundy. Even though those latter two statements post dated the dismissal decision they were admissible because it was to be a re-hearing.

62. On the basis of that material Ms Platt rejected the appeals. She found Ms Grundy's statement consistent with the documentary evidence and noted that the claimants had not presented any evidence. She said that the GMC had found that the allegations were not supported by credible evidence and there was no basis to interfere with Dr Hanif's conclusion that the allegations were malicious and vexatious, intended to destroy her professional reputation, and constituted gross misconduct. Ms Platt had been presented with no evidence to support the contention that these had been protected disclosures. Dr Hanif had authority to dismiss for gross misconduct. The dismissals were upheld.

Submissions

63. There was no need for oral submissions at the hearing. The position of the claimants was abundantly plain from the witness statements, documents and their oral evidence; Dr Prasad supported their case, and the position of Dr Hanif was evident from her written submissions. I will nevertheless summarise briefly the position each party took.

<u>The claimants</u>

64. The claimants' case was that their disclosures to the GMC had been protected disclosures. They all contained information which the claimants reasonably believed tended to show a breach of the legal obligations of a doctor to keep accurate clinical records and to preserve patient confidentiality. Contrary to the belief of Mrs Grundy, they had not been lodged with a view to getting Dr Hanif struck off but because they were genuine concerns about how she was operating. It was clear that those disclosures were the sole reason for the dismissal according to Dr Hanif's dismissal letters. The respondents had failed to prove gross misconduct and therefore the claimants should succeed both on automatic unfair dismissal and on notice pay.

Dr Prasad's position

65. Dr Prasad's position was made clear in his letter of 15 December 2017 and earlier correspondence: he regarded the claimants as unfairly dismissed and did not consider they had been guilty of gross misconduct.

Dr Hanif's position

66. Dr Hanif's position was clearly explained in her email of 27 December 2017 to the Tribunal. She said that the claimants had tried to make her life as difficult as possible for several years as a consequence of having sided with Dr Prasad in the dispute between the partners. They resisted efforts to improve the management of the practice. They actively obstructed efforts to improve matters and refused to do any training. Against that background their complaints to the GMC could be seen as malicious and without any basis. They were made because the staff believed they would get rid of Dr Hanif from the practice. If there had been genuine concerns they could have been raised with the Practice Manager or the Clinical Commissioning Group. Their false allegations had destroyed trust and confidence and therefore there was no entitlement to notice pay. Further, these were fair dismissals by reason of gross misconduct. The decision to dismiss them could be taken by one partner in the situation of gross misconduct, and the appeal had been dealt with by an independent third party. Dr Hanif submitted that the complaints should be dismissed.

Discussion and Conclusions - Liability

Notice Pay

67. The first matter I addressed was the complaint of breach of contract in respect of notice pay pursued by each claimant. The claimants would be entitled to notice of termination unless the respondents could prove that the claimants were guilty of gross misconduct. This was a decision for me to make based on the evidence presented in this hearing.

68. I had evidence on affirmation from each of the claimants. They all confirmed that the contents of their written witness statements were true. They answered questions from the Tribunal and supplementary questions from Mr Campion.

69. There was no sworn evidence from the respondents to set against this. Dr Hanif did not attend the hearing and supplied an email as written representations. There was an unsigned statement of Anita Grundy in the bundle but Anita Grundy was not called as a witness.

70. Dr Prasad's witness statement was accepted and taken as read but supported the claimants' case that there had been no gross misconduct.

71. I asked the claimants about the passage in Anita Grundy's statement indicating that their intention in making the complaint had been to get Dr Hanif struck out. Each of them said this was not the case. Their intention had been to bring to light genuine concerns about how Dr Hanif was behaving. The fact that such complaints could be brought to the GMC was conveyed to them by the Practice Manager Mrs Whitehead. I accepted that evidence and found as a fact that the claimants did not raise these complaints in order to get Dr Hanif struck off, or to get her removed from the practice, but because they genuinely believed that she was operating in a way which was professionally improper.

72. I noted also that the GMC outcome did not provide support for the conclusion that the allegations were false. The GMC "realistic prospect" test had two dimensions: firstly, whether the allegations were serious enough to warrant action on the doctor's registration, and secondly whether the allegations were capable of proof. The allegations of breach of confidentiality failed both limbs of that test, as did the allegations of poor clinical practice. The seriousness of the allegations about poor clinical practice had to be seen in the context of an absence of any concerns by NHS England, no evidence of any third party investigations or enquiries, and the absence of any previous fitness to practice history for Dr Hanif. There was no finding by the GMC that the allegations were false (as Mr Stone said in his email at page 157). The most that could be said is that on the evidence presented to the GMC the case examiners did not consider that it could be proven to be more likely that they happened than that they did not. That was a fine distinction, but an important one.

73. Putting that material together I was satisfied that the claimants made the complaints to the GMC in good faith because they genuinely believed that there were matters of real concern about how Dr Hanif was operating. In my judgment this was not gross misconduct. The complaints in relation to notice pay therefore succeeded.

Unfair Dismissal – Protected Disclosures?

74. The first issue in the unfair dismissal complaint was whether the claimants had each made a protected disclosure to the GMC. The core of the denial that there was any protected disclosure was an allegation that the disclosures were not made in good faith. Strictly speaking that was relevant only to remedy. The

requirement that a disclosure be made in good faith was removed from the public interest disclosure provisions of the ERA in June 2013. Given that it was acknowledged that the GMC was a prescribed person, the issue for me was whether the disclosures by the claimant met the three different elements found within Section 43B(1).

75. The first was a requirement to disclose information as opposed to making a bare allegation. Mr Asani's email of 20 April 2016 contained a host of information. There was also plainly factual information contained in Mrs Bhatia's email of 9 May 2016 about discussions by Dr Hanif regarding her and her daughter.

76. The position was less clear in relation to Mrs Booth's email of 21 April 2016. It was briefer than the other emails. However, I was satisfied it did contain information. That information included that Dr Hanif had discussed with two members of staff the marriage of a work colleague who was also a patient at the practice (i.e. Mrs Bhatia) and that she had seen Dr Hanif talking about consultations she has had with patients including discussing personal issues such as sexual abuse, domestic violence and sexual orientation. Although couched in general terms, that was information.

77. The second question was whether the claimants reasonably believed that the information tended to show a breach of a legal obligation. I was satisfied that the claimants each genuinely believed that the information contained in their disclosures was true. It was largely based upon first hand knowledge. I was also satisfied that each of them reasonably believed that it tended to show a breach of a legal obligation, namely the obligation of confidentiality which arises under the common law. Disclosure of patient information (particularly sensitive information) without consent is likely to be a breach of the Data Protection Act 1998 too.

78. The third element is whether the claimants reasonably believed that their disclosures were in the public interest. This was not a situation where the concerns about how Dr Hanif was operating affected only employees at the practice. It was information about a wider set of people: patients of the practice. It might also affect future patients if the conduct continued unchecked. The GMC is a public body charged with regulating the medical profession on behalf of the public. I was satisfied that the claimants reasonably believed that it was in the public interest to make the GMC aware of what they believed to be breaches of confidentiality by a General Practitioner.

79. For those reasons I concluded that each of the claimants had made a protected disclosure to the GMC.

Unfair Dismissal - Reason

80. That took me to the reason or principal reason for dismissal. That is a question of identifying the set of facts or beliefs in the minds of the decision maker which caused her to dismiss the claimants.

81. In this case there was no doubt that it was the disclosures to the GMC which caused Dr Hanif to dismiss the claimants. Although she believed that they were not protected disclosures, on the evidence before me she was wrong about that. Her mistaken belief did not assist her: see the decision of the Court of Appeal in **Beatt -v- Croydon Health Services NHS Trust [2017] ICR 1240**.

82. It followed that these dismissals were unfair because the reason or principal reason for each dismissal was that each of the claimants had made a protected disclosure to the GMC. The decision to dismiss the claimants contravened Section 103A ERA.

83. The remainder of these reasons is concerned with remedy in those successful complaints.

Remedy Decision - Notice Pay

84. I had evidence on affirmation from each claimant about his or her employment position after dismissal and the efforts to find work. There was no evidence from which I could conclude that the claimants had failed to take reasonable steps to find other work after their dismissals. I found as a fact that they had mitigated their losses.

85. I also found as a fact that none of the claimants had secured alternative employment within twelve weeks of their dismissal with effect from 30 November 2016. The details of the work they found and when are recorded below.

86. Finally, I accepted the evidence of the claimants that each of them was entitled to a twelve week notice period.

87. On that basis I awarded each claimant twelve weeks' net pay as compensation for not being given contractual notice of the termination of his or her employment. The calculations were as follows.

88. For Mrs Booth net weekly pay was £285.03 and I awarded her £3,420.36.

89. For Mrs Bhatia net weekly pay was £233.92, and I awarded her £2,807.04.

90. For Mr Asani net weekly pay was £440.72 and I awarded him £5,288.64.

91. For reasons set out in paragraphs 108 – 114 below I decided that these awards should be increased by 20% due to an unreasonable failure by the respondents to comply with the ACAS Code of practice.

Remedy Decision - Unfair Dismissal

92. The claimants confirmed through Mr Campion that they were not seeking an order for re-instatement or re-engagement. I very much doubt such an order would

have been practicable in any event. Accordingly it was a question of determining the appropriate basic award and compensatory awards for unfair dismissal.

93. With the assistance of Mr Campion and Dr Prasad I was able to make a determination on all matters relating to remedy during the hearing save for two matters affecting Mr Asani alone. They were the calculation of compensation for pension loss, and the appropriate grossing up of any award to be made to him to take account of the impact of taxation.

94. The pension loss issue arose because Mr Asani had been a member of the NHS defined benefit scheme during his employment with the respondent. That appeared to be a final salary scene rather than a Career Average Revalued Earnings (CARE) scheme. As recorded below, he had found new employment with a different GP practice by the time of the hearing and had rejoined that scheme, but it was anticipated that there would be a loss accruing to him upon retirement because his salary in the new role was much lower than it had been with the respondents. Any pension based upon final salary would therefore be lower than if he had remained in employment with the respondents.

95. After consideration Mr Campion confirmed that Mr Asani wanted this loss to be assessed using the complex actuarial method envisaged by the Presidential Guidance on pension loss issued in August 2017, rather than a simpler contributions based method. There was insufficient time to consider this on the first day of the hearing so it was agreed that Mr Asani would through his representatives provide a calculation of what he considered to be the appropriate figure for pension loss, together with his proposal for grossing up given the other awards which had been confirmed orally during the hearing. I directed that any such submission should be copied to the respondents. As Dr Hanif had not been present at the hearing I also directed that she should indicate upon receipt whether she wished to make submissions on pension loss and grossing up for Mr Asani. If so I would be prepared to allow her more time to do that. By email at 6.10 pm on 10 January 2018 Dr Hanif confirmed that she would be grateful for further time to consider those submissions and to respond, and I decided that it would be appropriate for her to have until 16 February 2018 to respond on the question of pension loss for Mr Asani. Accordingly this judgment deals with all aspects of remedy save for pension loss and grossing up for Mr Asani: that will be the subject of a further written judgment with reasons once Dr Hanif has responded to the claimant's submissions and I have made a decision in chambers on 28 February 2018.

96. The remainder of this judgement will consider the basic award for each claimant, and then the compensatory award. There were four issues common to the compensatory award which can be considered together: an ACAS uplift, good faith, awards for loss of statutory rights, and **Polkey**. I will then consider the individual circumstances of each claimant before confirming the awards made for financial losses.

Basic Awards

97. The basic award is a mathematical formula set out in Sections 119 - 122 of the Act. Each claimant is entitled to a week's pay for each full year of employment, increased by 50% for each of those years in which the claimant was aged 41 or older. The application of that formula to the monthly wage figures set out in the Schedules of Loss resulted in the following awards.

98. Mrs Booth was entitled to sixteen weeks at £331.76 per week, making an award of £5,308.16.

99. Mrs Bhatia was entitled to seven weeks at £244.67 per week, making a total basic award of £1,712.69.

100. Mr Asani was entitled to twenty four weeks at £479 per week, making a total basic award of £11,496.00.

101. There were no adjustments appropriate to the basic award. The claimants had not been guilty of any conduct which warranted a reduction under Section 122(2). Any uplift pursuant to a failure to follow the ACAS Code of Practice is applied only to the compensatory award (section 124A).

Compensatory Awards - General

102. The compensatory award is governed by Sections 123 - 124 of the Act. By section 124(1A) there is no cap on that award in a s103A dismissal. The primary provision is Section 123(1) which provides that:-

> **"The amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer".**

Compensatory Awards - Good Faith

103. Section 123(6A) of the Act provides that in a protected disclosure dismissal, the Tribunal may, if it considers just and equitable in all the circumstances, reduce any award made to the claimant by up to 25% if it appears to the Tribunal that the disclosure was not made in good faith. I considered this point because it was clear that Dr Hanif regarded the disclosures to the GMC as made in bad faith. That was supported to some extent by the statement from Anita Grundy that the claimants had made the disclosures in order to get Dr Hanif struck off. The onus is on a respondent to prove a lack of good faith if it is asserted (**Bachnak v Emerging Markets Partnership (Europe) Limited UKEAT 0288/05)**

104. I put what Ms Grundy said to the claimants when they gave their evidence to my hearing. Each of them denied that that had been their intention. Their evidence was that they made the disclosures because they were genuinely concerned about Dr Hanif's behaviour, and the disclosures were made to the GMC because Mrs Whitehead suggested that was the appropriate course of action (having done so herself as well). Mr Asani explained how his concerns about Dr Hanif had gone

back some time and he had first gone to Mrs Whitehead about them in 2013. Mrs Booth said she had never discussed her intentions with Anita Grundy but her intention was to draw matters to the attention of the GMC because she was very concerned that Dr Hanif was discussing the personal problems of a patient. Mrs Bhatia was influenced by her own distress at finding out that she and her daughter had been the subject of breaches of confidentiality.

105. I accepted this evidence and I was satisfied that the purpose of the disclosures to the GMC was to bring matters to light with Dr Hanif's professional regulator. Their disclosures were made in good faith. Accordingly no reduction in the compensatory award was appropriate.

Compensatory Awards - Loss of statutory rights

106. These were all long serving claimants who would take two years in their new employment to build up employment protection rights again. The Schedules of Loss sought an award for loss of those statutory rights equivalent to two weeks' gross pay subject to the statutory cap. I noted that the Employment Appeal Tribunal said that such an approach was permissible in **Countrywide Estate Agents and Others -v- Turner EAT/0208/13** (see paragraphs 26 and 27), and I was content that that such an award was just and equitable having regard to the loss which these claimants had sustained through being dismissed from their respective employment.

107. I therefore awarded Mrs Booth the sum of £663.52, Mrs Bhatia the sum of £489.34, and Mr Asani the sum of £978.00 as compensation for loss of statutory rights.

Compensatory Awards (and Notice Pay) - ACAS Increase

108. Mr Campion argued that there should be a 25% increase to the appropriate elements of these awards pursuant to Section 207A Trade Union and Labour Relations (Consolidation) Act 1992 because the respondents had unreasonably failed to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. That provision authorises an increase of up to 25% if just and equitable to make such an increase where the employer unreasonably failed to comply with the code. Complaints of breach of contract and of unfair dismissal appear in Schedule A2 to the 1992 Act, although the uplift in relation to unfair dismissal is restricted to the compensatory award by virtue of Section 124A of the Act.

109. Mr Campion argued that there was a failure to comply with the general provisions found in paragraph 4 of the code. He said there was no consistency in the treatment of the claimants and Ms Lomax because she was not dismissed even though she complained to the GMC, and that there was a failure to investigate the matter before bringing disciplinary charges against the claimants for having made false allegations. He also said that the letter inviting them to a disciplinary hearing did not explain why it was considered their allegations were false. There had also

been a fundamental breach of the requirement that different people carry out the investigation and the disciplinary hearing, because Dr Hanif had "investigated" the matter and also decided to dismiss. Finally he submitted that there had been no impartial appeal under paragraph 27 because Ms Platt used to be an employee of the solicitors instructed by Dr Hanif on behalf of the practice and there had already been an appeal before Dr Prasad. In any event Ms Platt had misconstrued the GMC outcome. Because there had been so fundamental a failure to provide procedural fairness he sought the maximum uplift of 25%.

110. Dr Prasad chose not to make any submissions on this issue.

111. I did not regard the consistency point as showing any unreasonable failure to comply with the ACAS code. The claimants believed that Ms Lomax had been retained because the practice needed someone in a receptionist type role in order to carry on functioning. It was evident from the GMC report that her complaints were less far reaching than those made by the claimants. As to the investigation point, it seemed to me that even though the ACAS code envisages that in some cases there may be a disciplinary hearing without an investigation, in this case a number of the allegations made to the GMC were capable of checking against the relevant patient records. There were also patients and relatives who could have been contacted to verify some of the allegations made. Effectively the "investigation" was simply Dr Hanif forming a view that these allegations against her were unfounded and then inviting the claimants to a disciplinary hearing without explaining that. That seemed to me to be an unreasonable breach of the ACAS code of practice, resulting from the failure of Dr Hanif to appreciate that she could not possibly be impartial in this situation. She was a witness as well as the decision maker. As Mr Campion submitted, a reasonable step would have been to have instructed an independent third party to investigate the allegations to see the evidential basis for them before a decision was taken as to whether to proceed to a disciplinary hearing.

112. In relation to the appeal it seemed to me there was no failure to comply with the ACAS code of practice. Although Ms Platt was formerly employed by Fieldfisher and no doubt paid by the respondents' practice for her work, it seemed to me to be a reasonable step to bring her in at that stage.

113. However, the fundamental flaw with the appeal was one which also affected the disciplinary process overall: the mixed messages given to the claimants about what was happening. The purpose of the ACAS code of practice is to ensure a fair procedure so that employees know what the allegations are against them, have a chance to have their say and are given the right to an appeal if they disagree with the outcome. In this case there was a series of mixed messages given by the respondents. They included the disciplinary invitations of 31 October being countermanded by Dr Prasad on 7 November; the dismissal letters of 30 November being countermanded by Dr Prasad the same day to say that the claimants were still employed, and Dr Prasad's appeal decisions in early December being ignored by Dr Hanif and a further appeal held before Ms Platt. From a procedural point of view this left the claimants in an impossible position. In my judgment it was just and equitable to uplift these awards by 20%.

114. I considered it just and equitable to make that increase taking account not only of the fact that this was a small employer but also of the other awards made to the individuals. I acknowledged the fact that the principals were themselves in a very difficult position because of their ongoing dispute, and for that reason I did not consider that the maximum uplift was appropriate.

Compensatory Awards - Contributory Fault

115. Section 123(6) empowers the Tribunal to reduce the compensatory award where it finds that the dismissal was caused or contributed to by any action of the claimant. Such action must be culpable, blameworthy or otherwise unreasonable in order for a reduction to be appropriate.

116. In these cases I was satisfied that there was no action by the claimants which fell within this definition. Their complaints to the GMC were made in good faith and by way of raising a genuine concern.

Compensatory Awards - **Polkey** Reduction

117. The obligation to award such compensation as is just and equitable can in some cases mean that compensation should be reduced if, for example, employment would have ended in any event after a relatively short period. This can be for reasons related to the events which have given rise for dismissal, or for wholly unrelated reasons. This is commonly termed the "Polkey reduction" because of the decision of the House of Lords in **Polkey -v- A E Dayton Services Limited [1988] ICR 142** in which the principle was applied to redundancy dismissals which were procedurally unfair.

118. Neither of the respondents suggested here that there should be any **Polkey** reduction but it was appropriate for me to consider it in any event.

119. I was satisfied that nothing the claimants had done could have resulted in a fair dismissal.

120. I was also satisfied that there was no evidence before me from which I could conclude that had it not been for this unfortunate episode their employment would have come to an end in any event. Although Dr Prasad and Dr Hanif's dispute remains live, and is the subject of pending High Court litigation, it seemed to me that the worse case scenario is a dissolution of the partnership but that there will continue to be a GP medical practice at the Shanti Medical Centre even if the partnership behind it changes. In such a situation the employment of the claimants is unlikely to be affected because of the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006. In any event that remains a matter of speculation: there was no evidence as to a date for the dissolution of the partnership or any prospect thereof.

121. Accordingly I was satisfied that there were no circumstances here which could lead me to the conclusion that the employment of any of these claimants would be terminated fairly in the foreseeable future in any event. No **Polkey** reduction was appropriate.

Compensatory Award - Mrs Booth's Financial Losses

122. On the basis of the evidence I heard from Mrs Booth I found the facts relevant to remedy to be as follows. Mrs Booth was working 30 hours per week with the respondent. For personal reasons she did not want to do any more hours. After dismissal she tried to find work but was unsuccessful until she found a new job at Farnworth Health Centre with effect from 3 May 2017. That was initially 18 hours per week and then went up to 22 hours per week. That job continued until 2 November 2017 when she left employment. Her primary reason for leaving was that the commute to work was unsustainable. Because of heavy traffic she was having to spend 40 minutes to and from work.

123. She found a new job relatively quickly. She began work at a different Medical Centre on 20 November 2017. However, that job only lasted a month or so. She was not finishing work until 6.30 pm and she had to pay £8 for car parking every day that she worked.

124. I accepted Mrs Booths' oral evidence that she thought it would be up to two months before she could find another job. She would not be able to work more than 30 hours per week. She anticipated that the rate of pay would be the same as she had received from her last job, meaning a net loss of each week of £97.23.

125. On the basis of those findings of fact I made the following awards to Mrs Booth for financial losses as part of the compensatory award.

126. I made no award for the first twelve weeks after she was dismissed because this was covered by the notice pay award.

127. There was then a period of nine weeks with no employment before she started at Farnworth Health Centre. Her net weekly pay from the respondents was £285.03. I awarded her £2,565.27 for this period.

128. While employed by Farnworth Medical Centre on average she was earning £160.44 per week, a shortfall of £124.59 each week for a 26 week period. I awarded her £3,239.34.

129. For the further period of unemployment between 2 November and 19 November 2017 I awarded her two weeks' net loss in the sum of £570.06.

130. During her further employment at a different Health Centre between 20 November and 22 December 2017 she was earning £187.80 per week, which was a weekly loss of £97.23. I awarded her four weeks of that loss in the sum of £388.92.

There was a further 2.5 weeks of unemployment between 23 December and thehearing on 10 January 2018 for which I awarded her £712.58.

131. This meant that the total award of compensation for past loss of earnings for Mrs Booth was the sum of £7,476.17.

132. That left the question of future loss. I accepted her evidence that it would take two months for her to find another job. That warranted an award of 8 weeks at £285.03 per week in the sum of £2,280.24.

133. Mr Campion sought an award of three years future loss. It was clear that the hourly rate paid by the respondents was higher than the going rate for the work in other medical practices in the area. There was no suggestion that Mrs Booth had skills which could enable her to find a better paid job in a different area of work. She was an experienced medical receptionist. I accepted that in reality she would not be able to find better paid employment as for personal reasons she was restricted to working no more than 30 hours per week. I therefore awarded her losses to take her through to January 2021, a total of 147 weeks, on the basis that during that period she would be in work but earning £97.23 less each week than she would have been earning with the respondents. That sum came to £14,292.81.

134. The discount rate for an award of this kind currently stands at - 0.75% if the Tribunal applied the discount rate applicable in personal injury cases. As it is a negative discount rate this would result in a higher award to compensate for the decreasing spending value of the award if safely invested over the next three years. Mr Campion did not seek any adjustment to reflect the negative discount rate. Accordingly I awarded Mrs Booth the sum of £14,292.81 to represent her losses between March 2018 and January 2021.

135. This meant that the total award of future loss for Mrs Booth was £16,573.05.

136. As this award exceeded £30,000 I invited Mr Campion to address the question of whether it should be grossed up to reflect the impact of tax. He did so by way of a written submission. Of my award, £9,067.88 will be taxable. Mrs Booth has other income in this financial year and is expected to find work again by mid-March at the same rate of pay. This suggests income of £7,269.38. Her personal allowance is £11,500. Of that allowance, £4,230.62 remains available. Accordingly of this award £4,837.26 will be taxed at 20%. I therefore awarded an additional £1,209.32 as an amount which it is just and equitable to award to ensure Mrs Booth receives the right net amount after tax.

<u>Compensatory Award - Mrs Bhatia's Financial Losses</u>

137. I heard evidence on affirmation from Mrs Bhatia in support of her Schedule of Loss. She was employed for 30.5 hours per week by the respondent at a rate of £8 per hour. However, that was an unusual arrangement in which her working pattern was configured to enable her to comply with her primary caring responsibilities for

her young daughter. She would not be able to work shifts which were not child friendly.

138. After her dismissal Mrs Bhatia was unable to find any work until obtaining employment with The Deane Medical Centre from 2 May 2017. That was 25 hours per week. It was a Locum Receptionist position which came to an end in early September because the practice wanted to reduce her hours to 10 hours per week and to change her shift pattern to unsociable hours. She had no choice but to leave at that stage with effect from 4 September 2017. She was then without employment until 1 November 2017 when she began employment with Dr Sidda at the Water Meetings Health Centre. This is employment as a Medical Receptionist for 20 hours per week at minimum wage of £7.50 per hour.

139. Mrs Bhatia does not anticipate any increases in her rate of pay unless the national minimum wage increases. She does not expect ever to be able to obtain a rate of pay at the same rate as she was earning with the respondents. The jobs in question are all paid at national minimum wage, and she would not be able to do the same number of hours unless the new employer was able to accommodate her childcare obligations as the respondents had been able to do.

140. I accepted this evidence and assessed compensation accordingly.

141. I made no award for the first twelve weeks after dismissal because that was covered by notice pay. After that first twelve weeks there was a further period of ten weeks without employment until 2 May 2017, which at £233.92 per week made a total award of £2,339.20.

142. Whilst employed by Dean Medical Centre between 2 May and 4 September 2017 the claimant was suffering a net weekly loss of £60.84. That is an eighteen week period justifying an award of £1,095.12.

143. There was then a further eight week period of unemployment at a weekly loss of £233.92, making an award of £1,871.36.

144. Between 1 November 2017 and 10 January 2018 the claimant had a ten week period of loss at the rate of £83.92 per week, making a total of £839.20.

145. The award for past loss of earnings to this hearing was therefore £6,144.88.

146. In relation to future loss Mr Campion also urged me to award three years of loss because there was in reality no prospect of getting into a role which paid the same as Mrs Bhatia had received from the respondents. That was because of her childcare commitments and the different rate of pay. He accepted, however, that the minimum wage was going to increase in April 2018 to £7.83 per hour. Any further increases are a matter of speculation at present.

147. I was satisfied that this submission was well founded. Even if the minimum wage rate caught up to the rate of £8 per hour by the respondents, there was no

prospect of Mrs Bhatia being able to increase her hours to 30.5 per week whilst maintaining her childcare commitments. I therefore decided to award Mrs Bhatia twelve weeks of loss at £83.92 representing the period before the national minimum wage increase, and then 144 weeks at £77.32 per week. These total £1,007.04 and £11,134.08 respectively, making a total award of future loss in the sum of £12,141.12.

148. Even with the ACAS uplift this award fell below the figure of £30,000 and therefore no grossing up was appropriate.

Compensatory Award - Mr Asani's Financial Losses

149. Mr Asani was the most senior of the three claimants, employed as Office Manager. His gross annual pay with the respondent was just under £31,400. This was a high salary for his role to reflect his length of experience and the many other responsibilities he had taken on. It was more than GP practices of that kind would ordinarily pay an Office Manager. That was recognised by Dr Hanif in her written submission of 27 December 2017 where she said that he was on a salary "way beyond anything he could expect anywhere else". He was also loyal to Dr Prasad and had no intention of leaving Dr Prasad's employment.

150. Mr Asani was born in August 1959 and was aged 57 when dismissed at the end of November 2016. As a member of the NHS Superannuation Scheme (a defined benefits scheme) he intended to retire at age 66. That would be in August 2025. I found as a fact that he was not looking to leave the employment of the respondents whether by way of a change of career or otherwise but intended to carry on working for Dr Prasad's practice until he retired. There was no indication of any health issues or other factors which might have caused him to leave that employment prematurely.

151. After dismissal he was unable to find work until 1 March 2017 when he secured a position as Assistant Office Manager at The Deane Medical Practice. This was a full time role just as his role with the respondent had been, but his salary with The Deane Medical Centre was a lot lower. From the respondents he had paid £440.72 per week net but from The Deane Medical Centre his net weekly income was £325.51, a loss of £115.21 each week. He was able to resume membership of the NHS Superannuation Scheme.

152. I made no award for past losses in the first twelve weeks following dismissal because these were covered by his notice pay award. That left him with one week of unemployment for which I awarded £440.72. From 1 March 2017 to 10 January 2018 he was losing £115.21 each week which over a forty five week period resulted in an award of £5,184.45. This made a total for past financial losses of £5,625.17.

153. In relation to future loss it seemed to me that this was one of those exceptional cases where it was clear that the claimant's weekly loss would continue until his retirement age in August 2025. He had left stable employment in an NHS Medical Practice but then found equivalent stable employment in a different practice. There was no evidence suggesting that he would have left his job with the respondent prematurely or that he had plans to do so with The Deane Medical Centre. His membership of the NHS Defined Benefit Scheme was a positive disincentive to leave either role. Further, I was satisfied that there was no realistic prospect of him securing a better paid job which would remove any loss of earnings. The acknowledged fact was that the respondents were paying him significantly more for his role with them than he would be able to obtain anywhere else. Accordingly I was satisfied on the balance of probabilities that Mr Asani would suffer a continuing loss of earnings until he retired.

154. From January 2018 to August 2025 was a period of 7.6 years or 396 weeks. He would lose £115.21 in each of those weeks in that period. There was no evidential basis to conclude that his pay with the respondents would have increased, but nor any basis to conclude that his pay with The Deane Medical Centre would increase. I therefore awarded him the sum of £45,623.16.

155. I invited Mr Campion to make submissions about the effect of the negative discount rate with a view to any increase he might seek on this figure but he declined to do so. I therefore awarded that figure by way of future loss of earnings.

156. Hs pension loss and grossing up for tax will be considered in due course.

Recoupment of State Benefits

157. None of the claimants claimed any state benefits which would give rise to recoupment in this case.

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Employment Judge Franey

19 January 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

24 January 2018

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 2401643/2017, 2401644/2017 & 2401645/2017

Name case(s):	of	Mrs P Bhatia Mrs B Booth Mr N Asani	v	1. Dr Anant Prasad t/a Shanti Medical Centre 2. Dr Shaista Hanif t/a Shanti Medical Centre

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: 24 January 2018

"the calculation day" is: **25 January 2018**

"the stipulated rate of interest" is: 8%

For the Employment Tribunal Office