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## "Stigma Damages" awarded in an unfair dismissal case

The Employment Appeal Tribunal (EAT) has given guidance as to when "stigma damages" may be awarded to a claimant where their dismissal has made it difficult for them to find another job.

### Damages for unfair dismissal

Damages for unfair dismissal are usually calculated against a statutory formula of a basic award and an award of damages calculated according to a claimant's loss of earnings (subject to a statutory cap). However in exceptional circumstances, the Tribunal has the power to award damages where the manner of dismissal affects a claimant's on-going employment prospects. This is known as "stigma damages". Below we discuss a case where the EAT has given guidance as to the circumstances where such awards may be made.

### The Facts

Ms Brown worked as a care home worker for Careham Hall. She was automatically unfairly dismissed during her notice period amid allegations that she had mistreated residents. She claimed that her Careham Hall had prevented her from seeking alternative employment by giving her an unfavourable reference. She brought a claim for unfair dismissal, including a claim for stigma damages. (This dismissal was under the now repealed statutory dismissal procedures).

### The Decision

The Tribunal found that even if Ms Brown had not been unfairly dismissed, her employer would still have given her an unfavourable reference. Therefore, the Tribunal said, it was not the case that the difficulties she had in seeking new employment were as a result of the unfair dismissal. The difficulties Ms Brown was experiencing were because of the reference her employer had given her and therefore it could not award her compensation. Ms Brown appealed to the EAT.

The EAT agreed with the Tribunal and held that stigma damages will only be awarded where the employee's difficulty in finding new employment were attributable to the dismissal not for any other reason, for example, a bad reference.

### Practice Points

This case raises two important issues for employers. Firstly, employers should remember that compensation for unfair dismissal is not just limited to a measurable sum based on losses of earnings or a basic award. Compensation may be increased in circumstances where its actions affects the future employment prospects of the claimant. Employers should be aware of their own process and procedures when terminating employment to ensure fairness overall and compliance with the rules of natural justice as well as ACAS guidance.

Secondly, this case raises issues of references. Employers should consider carefully the references they write for employees and ensure that references are controlled centrally to avoid managers writing references which do not

reflect the employer's position. In discrimination cases, references (or failing to provide a reference) in circumstances where allegations of discrimination have been raised, have been held to equate to a victimisation claim. Even though the claimant in this case was unsuccessful, she could still have potentially brought a claim in the county or high court if there reference were a misrepresentation of the facts. References should be a fair, true and accurate reflection of a person's employment and should not refer to information about allegations which have not been proved or facts which are misleading. Sometimes the phrase 'less is more' is sometimes true.

Consistent with our policy when giving comment and advice on a non-specific basis, we cannot assume legal responsibility for the accuracy of any particular statement. In the case of specific problems we recommend that professional advice be sought.

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