



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Pasha

**Respondent:** Elaine Investment Management Ltd (1)  
Elaine Zhang (2)

**Heard at:** London Central                      **On:** 22 & 23 June 2017

**Before:**

**Employment Judge:** Ms H Clark  
**Members:** Ms K Dent  
Ms E Champion

**Representation**

**For the Claimant:** Mr Davey - Counsel  
**For the Respondents:** Ms Chute - Counsel

## JUDGMENT

The unanimous Judgment of the Tribunal is that

- (1) The First Respondent directly discriminated against the Claimant because of his race by dismissing him.
- (2) The Second Respondent harassed the Claimant because of his race.

:

Employment Judge Clark  
30 June 2017

# REASONS

## The Issues

1. The issues for determination by the Tribunal were identified at a closed preliminary hearing on 31<sup>st</sup> March 2017 as follows:
  - 1.1 Was the Claimant treated less favourably in being dismissed because of his race.
  - 1.2 Did the Second Respondent engage in unwanted conduct which had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him related to his race.

Ms Chute confirmed to the Tribunal that the Respondents do not pursue any contention that the alleged acts of harassment were out of time.

2. There were three main disputed allegations:
  - 2.1 In the first few days of the Claimant's employment that the CEO of the First Respondent, Ms Zhang, said they could work together as *"Indian, Chinese and Pakistanis people – we are all a bit crooked."*
  - 2.2 On 7th September 2017 in the course of the last telephone conversation between the Claimant and Ms Zhang, the latter said: *"You Pakistanis are completely useless. You are wasting my money and wasting my time"*.
  - 2.3 It is the Claimant's case that his dismissal was tainted by that characterisation, whereas the Respondents maintain he was dismissed in accordance with the terms of his contract for poor performance.
3. For the purposes of this hearing, the Tribunal heard oral evidence from the Claimant and the Second Respondent, who was assisted by an Interpreter provided by the Tribunal using the Mandarin language. There was a joint bundle of documents, to which documents were added on the second day of the hearing by agreement between the parties, relating to the date on which the Claimant was provided with a draft contract of employment and Employee Handbook and a number of emails sent by and to the Claimant in the course of his employment. The Tribunal is grateful for the oral submissions of both representatives.

## The Law

4. Section of 13 the Equality Act 2010 provides that a person discriminates against another if: *"because of a protected*

*characteristic, A treats B less favourably than A treats or would treat others*". In common with other discrimination strands, unlawful direct race discrimination relies on a comparison being made between a Claimant's treatment with that of another who does not share his race. Race can include colour and ethnic or national origins.

5. It is not always helpful to start with an inquiry as to whether the Claimant was treated less favourably than a comparator, but to focus on the reason why the Claimant was treated as he was. The use of a comparator can be a helpful way to cross check the reason for the treatment.
6. In recognition of the difficulties in proving unlawful discrimination cases, particular provisions are made in section 136 of the 2010 Act. The Tribunal notes the guidance concerning the operation of the burden of proof from cases such as *Igen v Wong [2005] IRLR 258* and *Madarassy v Nomura [2007] EWCA Civ 33* to the effect that it is unusual to find direct evidence of discrimination, which can depend on what inferences it is proper to draw from primary facts found by the Tribunal. Where the Claimant has proved facts from which conclusions could be drawn that an employer has treated the Claimant less favourably because of race, then the burden of proof moves to the employer. It is then for the employer to prove that he did not commit that act. In order to do so it is necessary for the employer to prove on the balance of probabilities that the treatment was not because of race. It requires a Tribunal to assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that race was not a reason for the treatment in question.
7. Simply acting unfairly or unreasonably is not sufficient to raise an inference of discrimination. Although, where an alleged discriminator has acted unreasonably or unfairly the Tribunal will want to know why he or she has acted in that way. Even if a cogent explanation is given, the Tribunal must be astute to the possibility that the alleged discriminator has been subconsciously influenced by unlawful discrimination.
8. Unlawful discrimination may not be the only or even the main cause of the Claimant's less favourable treatment. Whilst there needs to be a causative link to the less favourable treatment, it does not need to be the only or even the main reason for it (see the Equality and Human Rights Commission Employment Code paragraph 3.11).
9. Unlawful harassment occurs under section 26 of the Equality Act 2010 where an employer engages in "*unwanted conduct which had*

*the purpose or effect of violating a Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him"* and that conduct is related to a relevant protected characteristic. An isolated act of harassment is capable of satisfying this definition.

### Findings of Fact

10. The First Respondent is a Company involved in property management and development. It is controlled by the Second Respondent, Ms Zhang, who set it up in 2009 when she came to the UK from China. She is its Director and CEO. Since its inception, staff have been recruited from around the world, which has made for a racially and religiously diverse work force. The Employee Handbook included both equal opportunity and diversity and bullying and harassment policies.
11. The Claimant was living in Dubai prior to his employment with the First Respondent, but wanted to return to the UK to be near two of his daughters, who live here. He needed to secure employment before making the move. The Claimant is a Chartered Accountant with an impressive CV and over 30 years' experience working in banking finance and real estate management, including over 15 years for Citibank and as a Group Chief Financial Officer for companies involved in real estate development in Dubai. He is a British Citizen of Pakistani national origin.
12. The preliminary stages of the recruitment exercise were conducted by Recruitment Consultants, Aston Tate, and the Claimant appears to have been one of three short-listed candidates. The Second Respondent says that the other two candidates were white British. The Claimant travelled to the UK from Dubai for three interviews – the first with an HR Intern of the Respondent, then the CFO and finally, a 90-minute interview with the Second Respondent, Ms Zhang, who is the CEO and main shareholder of the First Respondent.
13. The Claimant's interview with Ms Zhang was conducted at the Arts Club in Mayfair on the 9<sup>th</sup> June 2016. English is not Ms Zhang's first language and, although she conducted the Claimant's interview in English and could converse with her English-speaking staff, she also relied to some extent on her Assistant to translate for her.
14. Neither the Claimant's interviews nor his induction day took place in the office at 2 Windmill Street, London at which he was to work, but in the basement of the building. The Claimant was both surprised by the fact that the office was quite small and that there appeared to be fewer staff than he was expecting. At the time he was engaged there were a total of 6 members of staff but he had gained the impression there were around 20. An email he received from an HR Intern of the First Respondent referred to the Company's "*projects and planning applications*" whereas there was really only one potential application and one project which needed real input.

15. Although it was hoped by Ms Zhang that the Claimant would be able to take over the role of CEO in due course, he was offered the role of Managing Director within a couple of hours of his interview with Ms Zhang. He was sent a written offer of employment, which included a draft contract of employment and the Employee Handbook on the 13<sup>th</sup> June 2016. He was offered and accepted a salary of £125,000 plus the potential to earn a profit-related bonus. Whilst the Claimant was looking to receive a higher salary and did not like the discretionary nature of the bonus, he said that Ms Zhang had confirmed verbally that he would get a 10% bonus at the end of the year plus any value he created in the business. The Claimant considered that it was standard in the business world that what was written in the contract did not necessarily match what was agreed verbally and so expected to receive a 10% bonus on top of his salary. However, he accepted the role on the 20<sup>th</sup> June 2016 on the basis of the written documentation, which made it clear (at section 11) that the bonus was discretionary and not payable after termination of employment. The Claimant started work on the 15<sup>th</sup> August 2016.
16. The Respondents owned and managed residential property at 54 Portland Street, the Company's office premises at 2 Windmill Street (which had tenants on two of the upper floors) and a hotel property at Lancaster Gate. In May 2016, there was also another property in Charlotte Street which was sold. No maintenance was required for the Portland Street premises, so the primary property which needed input was the hotel premises at Lancaster Gate. Ms Zhang was hoping to obtain permission for a change of use from a hotel to residential and the plan was then to sell the building. There was one tenant in the property, an artist, who had a gallery there. Ms Zhang was advised that he should be given notice to quit to enhance the prospects of obtaining the change of use permission the Respondents sought. Some maintenance was required on that property, but until the planning issues were resolved, there was no need to undertake any redecoration of the premises.
17. The Claimant's employment was subject to a probationary period of 6 months and it was an express term of his contract that his employment could be terminated with immediate effect within the first month of employment with written notice (paragraph 14). Ms Zhang claimed in evidence that she made sure the Claimant was aware of this at their interview on the 9<sup>th</sup> of June. She originally suggested that the Claimant had been sent the contractual documentation prior to his interview with her and that she had, therefore, just reminded him of the no notice provision. However, on further questioning, she said she was unsure as to when the contractual documentation had been sent to the Claimant. Checks were made overnight and it was conceded that the Claimant was not sent the contract prior to interview.
18. The Tribunal considers it highly unlikely that Ms Zhang would have expressly drawn the Claimant's attention to the lack of security in his role at his interview (and, by definition before he had been offered it).

The Claimant denies that there was any such discussion. Emphasising the precarious nature of the employment being offered, particularly to someone who was relocating to the UK for the role, would have rung alarm bells in any experienced employee's mind and the Tribunal does not accept Ms Zhang's evidence in this regard.

19. Although Ms Zhang corrected her initial evidence to the effect that she had specifically drawn the Claimant's attention to this provision in the contract at interview, this was done after it was pointed out to her how unusual it would be to send a detailed contract prior to an interview. This was one of a number of occasions that Ms Zhang's evidence lacked credibility.
20. Ms Zhang travels a lot, so of the three weeks during which the Claimant was employed by the First Respondent, she was only in the office for 7 or 8 days. When she was travelling, she expected to be kept informed by the Claimant as to what he was doing. It is common ground that they had at least daily contact. However, there is a dispute as to the timing and frequency of that contact.
21. On one of the first days of the Claimant's employment, he was very shocked by an exchange with Ms Zhang. The latter commented to him that Pakistanis, Indians and Chinese were able to work together because they were all "*crooked*". The Claimant prides himself on his integrity, which is essential for an Accountant and took exception to it. The Respondents denied that any such remark was made and it was put to the Claimant in cross-examination that this conversation did not take place.
22. In oral evidence, Ms Zhang accepted that she had made a comment to the Claimant about "*Indians, Pakistanis and the Chinese*" sharing a common characteristic, which she described as "*flexibility*". This was in distinction to, for instance, the British, who she described as "*direct*." She said that her English was not sophisticated enough to understand a word such as "*crooked*". This alternative form of words was not put to the Claimant in cross-examination (and was not asserted in the pleadings or Ms Zhang's witness statement). In explaining what she meant by "*flexible*" Ms Zhang gave the example of a museum shutting at 3pm, but that in India, Pakistan or China, staff would keep it open beyond 3pm on the payment of a "*tip*".
23. The Claimant corrected Ms Zhang's characterisation of Pakistanis and explained he was a man of integrity. He did not make any formal complaint about it, as he was wanted the role to work. It was not his style to make a complaint, although he accepts that there was a grievance policy and procedure, which was outlined in the Employee Handbook and referred to in his contract. He told the Tribunal that there was a lot riding on this job and he wanted to make a success of it. Although he was taken aback by Ms Zhang's remark, he thought he would try to make the best of it.
24. It is clear from the Employee Handbook that Ms Zhang likes to keep very firm control of her staff – there were a number of examples in the

Handbook as to how employees should behave and what permissions they need from her, including a requirement that they converse in English unless she gave permission otherwise. Employees were required to call Ms Zhang “CEO” or “Boss”. The Claimant’s contract of employment contained provisions permitting percentage salary reductions to be made on days where the Claimant was late, left early or took more than his 1 hour lunch break.

25. The Claimant’s working hours were between 9am and 6pm. Ms Zhang says she required the Claimant to clock in with her at 9am and also contact her at 6pm at the end of the day. She complains that he failed to do so. The Claimant denies that he was required to do this and the Tribunal accepts his evidence. In the Tribunal’s experience, it is unusual to expect such a senior and highly paid employee to clock in and out every day.
26. Although Ms Zhang makes various complaints about the Claimant’s work (that he was too slow, his typing was not up to speed and he did not have the experience of refurbishing hotels that he claimed on his CV), with one exception, none of these complaints were documented or evidenced in any way apart from through Ms Zhang’s oral or written evidence.
27. The exception relates a handwritten note prepared for Ms Zhang by the Claimant giving the former details of a flight which was booked in her name to and from Lisbon. The note was brief as it only contained the booking reference, and flight times and dates, but Ms Zhang could not understand why the Claimant had not simply forwarded her these details either as a screenshot or a photograph. As far as Ms Zhang was concerned, this demonstrated that the Claimant was a slow, inefficient worker. She also suggested that his typing speed was slower than he had claimed. Whilst the Claimant accepts that he is a two-finger typist, he can do so quickly and, in any event, he was not engaged primarily as a typist.
28. Ms Zhang explained that she would send the Claimant a number of voice messages in day, but the Claimant would be slow to respond to them so she would have to chase him up. Although there is no written record of Ms Zhang alerting the Claimant to his poor performance or reminding him of tasks he had forgotten, Ms Zhang said that some of these were in voice messages. These messages were not produced to the Tribunal.
29. It was common ground that there were at least daily email, voice mail and message exchanges between the Claimant and Ms Zhang, although no such evidence was included in the agreed bundle of documents. On the second day of the hearing, a number of emails were produced by the Respondents on the basis that they constituted the sum total of all the email correspondence generated by the Claimant during his three weeks of employment. Ms Zhang had been unable to discuss the case overnight with her staff as she was in the middle of her evidence, so her Assistant apparently printed off all the Claimant’s emails. Ms Zhang explained that the Respondents have

external IT support providers who could retrieve any information from the Company's computers, although there was no indication that these external providers had produced the Claimant's emails overnight.

30. Whilst Ms Zhang asserted in her evidence that all the Claimant's emails had been produced, the Claimant denied that he had only sent 13 emails and received 21 emails in a three-week period and that he had copied Ms Zhang into a number of emails which had not been produced. Ms Zhang told the Tribunal she did not read her emails and where she needed to, her Assistant would translate them for her. As Ms Zhang was not involved in the process of obtaining the emails, the Tribunal is unable to rely on her evidence to the effect that her Assistant printed out all the emails sent and received from the Claimant's email account at the First Respondent. In any event, there appeared to be some surprising omissions in the emails provided.
31. In the course of the Claimant's role, he had to communicate with tenants in the Respondents' properties, architects and builders. For instance, it was agreed that the Claimant had to negotiate with the artist who worked in the Lancaster Gate property to ensure he moved out, also with English Heritage and a Company in Birmingham from which the Claimant ordered a letter box on Ms Zhang's instructions. None of these communications were included in the emails produced by the Respondents on the second day of the hearing. Whilst some of the Claimant's communications would have been over the telephone, the lack of any emails passing between the Claimant and a number of key personnel it is accepted he was dealing with regularly is odd. So much so that the Tribunal accepts without hesitation the Claimant's evidence the Respondents' printout of his emails is incomplete.
32. In addition to e-mail contact, the Claimant explained that Ms Zhang would call the office between 5 and 10 times a day and he would explain to her what he was doing. He said that he quickly assessed that Ms Zhang needed to be kept informed and so he would copy her into any emails concerning significant things he was doing.
33. On 7<sup>th</sup> September 2016 at around 5pm the Claimant had a telephone conversation with Ms Zhang during which they discussed her request of him to source a particular letter box for the hotel property in Lancaster Gate. Although the letterbox had been ordered, it had not arrived, to Ms Zhang's frustration. They also discussed the eviction of the artist tenant in that building. The Claimant sensed Ms Zhang's frustration over the telephone, which culminated in her saying that "*you Pakistanis are completely useless. You are wasting my money and wasting my time.*" She then asked for the phone to be passed to the Office Manager, John White, who she instructed to dismiss the Claimant. Apart from denying the offending phrase, Ms Zhang accepts the Claimant's chronological account of their telephone call at around 17.00 and his dismissal by letter at 17.30.



34. Ms Zhang explained that she simply asked Mr White to dismiss the Claimant by letter, but when questioned as to how Mr White would have known to put the reason for dismissal in the letter, she stated that Mr White rang her back to ask for this information. She was in China at the time and responded to him in another telephone call.
35. Half an hour later, the Claimant was handed a letter of immediate dismissal signed by Mr White suggesting that the Claimant was being dismissed "*by reason of poor performance.*" The letter indicated that the Claimant would be paid one week's pay in lieu of notice in accordance with an unidentified clause of his contract. The Claimant was advised of his right to appeal his dismissal, which he initially exercised.
36. It is clear from the correspondence following his dismissal that the Claimant was very exercised by the fact that the Respondents withdrew their offer to pay him one week's pay in lieu of notice, which had been included in his dismissal letter in error. The Claimant did not have the right to such a payment under his contract, but considered he was entitled to it as it appeared in the notice of dismissal.
37. The Claimant did not make any complaint concerning his two allegations of racial harassment during the currency of his employment or in the correspondence which followed it. A contemporaneous complaint of discrimination can lend credibility to such a claim and the lack of one can indicate the opposite. The Tribunal accepts the Claimant's explanation for failing to complain about Ms Zhang's initial remark about Pakistanis being "*crooked.*" It was very early days of a job which he wanted to succeed, so his pragmatic response to the remark was entirely understandable. His failure to complain about Ms Zhang's final remarks to him or raise them at all in correspondence after his employment ceased is not quite as easy to understand. The Claimant explained that he did not want to start detailing an account of what took place in his employment to someone he had never met. He was also clearly focused at that point on the withdrawal of the offer of notice pay. He described himself as a positive and practical person who preferred to move on and get on with his life.
38. Although the Claimant took the opportunity to appeal, when he was offered a date for the appeal and it was explained to him that a newly recruited member of staff, Mr Hussain, would hear the appeal, the Claimant decided not to go through with it. He said that this was because he wanted to meet with Ms Zhang and air his grievances and ask why he was terminated. He felt it was pointless to have a conversation with a lawyer who had not been in the Company at the same time of the Claimant.
39. Whilst proceeding with the appeal might not have reversed Ms Zhang's decision, in the Tribunal's view, the Respondents should not be criticised for providing the opportunity to appeal to an independent person. It is more usual that an employer is criticised for the

opposite, namely where the person who made the substantive decision to dismiss also hears the appeal.

40. The Tribunal found the Claimant to be a straightforward and reliable witness, whereas there were a number of doubts about the evidence of Ms Zhang. For example, her evidence that she specifically discussed the Company's ability to dismiss the Claimant without notice in the first month of his employment at his interview was not credible. Her initial suggestion that a contract and Employee Handbook had been provided to the Claimant before his interview was implausible and turned out to be mistaken. She also suggested that the Claimant was unemployed at the time he secured the job with the First Respondent, even though the documentation clearly confirmed that the Claimant had to give 1 month's notice in his existing role in Dubai (whereas the other two short-listed candidates were immediately available). Ms Zhang suggested that the Claimant had a strong Pakistani accent and had told her in interview that he was from Pakistan. The Tribunal was unable to discern that the Claimant had any marked accent and accepts his evidence that his heritage was not discussed at interview. Giving evidence via an interpreter can be more challenging than giving evidence in a first language, but even allowing for this, the Tribunal found Ms Zhang to be an evasive witness.
41. The Tribunal does not understand why Ms Zhang's acceptance that she made some sort of comment about "Indian, Pakistanis and Chinese" people sharing a common characteristic was neither in the Response Form or her witness statement and it was not put to the Claimant in cross-examination. This gave the impression that it was something that only occurred to Ms Zhang in the course of giving her evidence.
42. In deciding whether Ms Zhang did link the Claimant's national origins with his being allegedly "*completely useless*" in the course of her final conversation with him on the telephone, the Tribunal takes account of the fact that, on her own evidence, Ms Zhang had expressed a generalised conclusion about people from India, China and Pakistan in mid August. Whilst she may not have regarded her statement as derogatory, it betrays a way of thinking which ascribes characteristics to people in accordance with racial stereotypes rather than based on their individual merits. If this is taken together with the generally unsatisfactory nature of her evidence and the fact that the Tribunal found the Claimant to be a compelling witness, the Tribunal is satisfied that Ms Zhang did say to the Claimant, "*you Pakistanis, you are completely useless and you are wasting my money and wasting my time*" immediately prior to giving John White the instruction to dismiss him.

## Conclusions

43. Having accepted that Ms Zhang made the two comments about “Pakistanis” which were clearly directed at the Claimant’s heritage, the Tribunal turns to the legal effect of those comments.
44. Even on the Ms Zhang’s own evidence, she was engaging in racial stereotyping in her conversation with the Claimant in the early days of his employment. Whilst Ms Zhang associated herself with the stereotype she ascribed to the Claimant as “Pakistani” in the comments she partially admits, that does not mean it was not harassing in nature. Whilst the Tribunal accepts that this comment did not have the “purpose” of violating the Claimant’s dignity or creating a degrading or offensive environment for him, it certainly had that effect. He reasonably perceived it to be an attack on his integrity. Whilst the Claimant did not complain about it at the time, for reasons which are understandable given he wanted his new role to be a success, it was clearly an unwanted characterisation and he found it insulting. Linking an attack on integrity to the Claimant’s national origins is most clearly an act of racial harassment. The offending remark was made in the course of Ms Zhang’s role as CEO. The Tribunal is, therefore, satisfied that the Second Respondent harassed the Claimant related to his race. The Claimant did not make a separate claim against the First Respondent in relation to racial harassment, although it appears from the evidence that the Company would also have been vicariously liable for Ms Zhang’s behaviour.
45. Although potentially out of time as an isolated act, this comment was followed by another, similarly derogatory remark by Ms Zhang about “Pakistanis” on 7<sup>th</sup> September 2016, which the Tribunal is satisfied formed part of a continuing course of conduct on the part of the First Respondent’s CEO towards the Claimant.
46. Turning to the second comment, which was the last thing Ms Zhang said to the Claimant before his dismissal, “*You Pakistanis are completely useless. You are wasting my money and wasting my time*”: immediately after this statement, Ms Zhang asked for the telephone to be passed to John White, who was instructed to terminate the Claimant’s employment with immediate effect. It is unusual in the Tribunal’s experience to have a statement drawing such a clear link between an employee’s race and their capabilities. It is difficult to see how this characterisation did not infect Ms Zhang’s decision to dismiss the Claimant. It was also another act of racial harassment for the reasons set out in paragraph 44 above.
47. Whilst the Tribunal does not doubt that Ms Zhang took issue with aspects of the Claimant’s work and was frustrated that things were not progressing as fast as she wanted (whether in relation to the letterbox, the planning issues, eviction of the artist or the Claimant’s use of a pen rather than a camera to transcribe flight details), it is impossible to compartmentalise how far her dissatisfaction was purely with his work and how far her view was infected by her stereotyping of the Claimant in accordance with her perception of his race and that “*Pakistanis are completely useless*”.

48. Without doubt, a statement immediately proceeding a dismissal which links a person's race with the reason for their dismissal is sufficient to discharge the evidential burden that the First Respondent's decision to dismiss was, in part, because of the Claimant's national origins. It is then necessary to consider whether the First Respondent has discharged the burden of proving that the Claimant's Pakistani heritage played no part in his dismissal.
49. Given the complete lack of any documentary or other external evidence of the Claimant's alleged failings, the lack of any specific detail as to areas in which he fell short and the generally unsatisfactory nature of Ms Zhang's evidence, the Tribunal cannot be satisfied that race played no part in Ms Zhang's decision. The reasons given for the Claimant's dismissal by Ms Zhang included his typing speed, which she could not quantify and seems an extraordinary reason to dismiss a Managing Director earning £125,000 per annum, even one without a personal assistant. The Respondents also cited a perceived lack of experience in hotel decoration. Given that Ms Zhang accepted that the Lancaster Gate property had not reached the stage of needing decoration, it is unclear to the Tribunal how Ms Zhang assessed that the Claimant did not have the experience he claimed to have had on his CV (which she claimed to have limited ability to read). The Claimant's experience included the development of the Dubai Intercontinental Hotel and the Respondents did not specifically challenge this claim.
50. The Tribunal accepts that Ms Zhang was frustrated that the Claimant handwrote her flight details for her, rather than forwarding a screen shot of those details. Although a relatively trivial issue, it illustrated a difference in approach between Ms Zhang and the Claimant. The Tribunal does not accept that the Claimant was required to report in to Ms Zhang at 9am in the morning and 6pm in the evening when she was not in the office.
51. Ms Zhang suggested to the Tribunal that she knew that the Claimant was of Pakistani heritage at interview, the implication being that she had positively appointed someone of Pakistani heritage, therefore, that could not have influenced her decision to dismiss him. Quite apart from the fact that the Tribunal does not accept that the Claimant's heritage was discussed at the interview, it is perfectly possible to hire an employee in full knowledge of their race, but still treat them less favourably because of it.
52. Ms Zhang expressly linked the Claimant's perceived negative abilities at work to his national origins, which are an immutable characteristic. Such a mindset limits an employee's ability to change in circumstances where "*all Pakistanis are completely useless.*" If the Claimant's perceived poor performance was ascribed to his race by Ms Zhang, as it was, it would follow that he would be unlikely to improve given the chance, because his competence was linked to something which would not change with time, training or experience. That is why it is impossible to separate Ms Zhang's racially offensive remark from her decision to dismiss the Claimant. The Tribunal does

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not suggest that Ms Zhang set out to dismiss the Claimant simply because he was of Pakistani national origin, but that her decision to dismiss him was influenced by racial stereotyping. The Tribunal does not consider that Ms Zhang would have stereotyped British or Chinese employees in a similarly negative way. Ms Zhang did not regard her comment about Pakistani and Chinese people being “*crooked*” as necessarily a negative thing.

53. Whilst the Tribunal accepts that there were a number of considerations operating on Ms Zhang’s mind when she dismissed the Claimant, including the fact that dismissing him within a month of his start date would avoid the 25% fee otherwise payable to the Recruitment Consultants, her stated reason for dismissal was inextricably linked to his race, which constitutes less favourable treatment because of his race for the purposes of section 13 of the Equality Act 2010.

54. The Claimant was in a vulnerable position contractually as he had relocated from Dubai to a role from which he could be dismissed without notice in the first month or on one week’s notice in the first 6 months. Had it not been tainted by discrimination, the First Respondent could have terminated the Claimant’s employment on the flimsiest of grounds without financial penalty. To allow the decision to be infected by negative stereotyping converted a lawful dismissal to an unlawful one.