

## s.47B(2) Employment Rights Act 1996

“(2) . . . This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of [Part X])”.

## ***Timis v. Osipov* [2019] ICR 655**

Lord Justice Underhill, in the Court of Appeal, held that: *"It is open to an employee*

*[i)] to bring a claim under section 47B(1A) against an individual co-worker for subjecting him or her to the detriment of dismissal, i.e. for being a party to the decision to dismiss; and*

*[ii)] to bring a claim of vicarious liability for that act against the employer under section 47B(1B). All that section 47B(2) excludes is a claim against the employer in respect of its own act of dismissal"* (emphasis added): §91, Pages 683-4.

## 'amounts to'

It might be thought that it meant either of these things:

- a) where the elements of the claim of **an** unfair dismissal claim are found to be proven by a Tribunal such that the claim is upheld;
- b) where the substance of the claim is that, on its facts and however pleaded, it would be an unfair dismissal; or
- c) where the remedy for an unfair dismissal claim is in fact available to be awarded at a remedy hearing.

## s.18(7) Equality Act 2010

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

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

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