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PRESS RELEASE

£9,500 award in gender discrimination decision

Helen Wilson, a care worker from Belfast, has been awarded £9,500 by the Industrial Tribunal. The Tribunal found that she had been subjected to unlawful sex discrimination by her previous employers, the Provincial Care Agency, Carryduff, because of their delay in providing her with a reference after she resigned from her post and their treatment of her while she was seeking the reference. The Equality Commission supported Mrs. Wilson in bringing her case to the Tribunal.



Helen Wilson (42) had been working as a domiciliary care worker for the Provincial Care Agency, Carryduff for over a year before she went on maternity leave in December 2008. When she returned to work in August 2009, the childcare arrangements she had made almost immediately fell through and, when she was unable to agree a suitable shift pattern with her employer, she had to resign from her job. When she explained that she would have to resign if she they did not offer her suitably timed shifts, she was told "this is what happens when you have babies".

Mrs Wilson immediately sought and found a job offer which allowed her to make suitable arrangements for her baby. For the post she was offered there was a legal requirement that she provide detailed references from her most recent employer. The Provincial Care Agency failed to provide this in spite of repeated requests and she was unable to take up the job. When she contacted a manager at the Agency to explain that

she needed the reference she was told, "You are the big girl who wanted a baby and did not want to work".

The Tribunal has found that the Provincial Care Agency delayed and prevaricated in providing a reference despite numerous requests made by Mrs. Wilson, by the company who were offering her the new job and, on Mrs. Wilson's behalf, by the Citizens' Advice Bureau. The Tribunal found that the Agency did this in the knowledge that Mrs. Wilson would be unable to obtain employment without a reference; and that it was as a direct result of their behaviour that Mrs. Wilson was deprived of this job opportunity.

The Tribunal ruled that this constituted sex discrimination in that it related to the fact that Mrs Wilson had a baby. They also found that the agency treated Mrs Wilson less favourably than a male worker to whom they had provided a reference, and that this was also sex discrimination.

Helen Wilson said that she was pleased the Tribunal had upheld her complaint and had recognised she had been treated badly. "Because of the delay in giving me a reference I was twice denied the opportunity to take up posts which I had been offered. At that time, with a young child and in need of a job, this was very stressful and distressing. I am glad that the Tribunal has marked the injustice of treating someone in this way just because they have had a baby."

Eileen Lavery, Head of Strategic Enforcement for the Equality Commission, said the decision demonstrates that employers can be held to account if they unlawfully discriminate against people who have left their employment. "The Tribunal found that the delay and the hostility Mrs. Wilson experienced when seeking a reference was because she had a baby and childcare responsibilities. That is an unacceptable attitude for any employer to adopt, and this award emphasises that it is also unlawful."

"Employers should note that in all their dealings with employees, during and after their period of employment, they should treat people fairly and without discrimination on grounds of their sex or because they are pregnant or have children. The Equality Commission provides free advice for all employers on equality of opportunity and anti-

discrimination law." The Tribunal awarded £6,000 for the injury to Mrs. Wilson's feelings and a further £3,500 damages for what they described as "a deliberate attempt on the part of the respondents to discredit the claimant, to humiliate her before the tribunal and to sully her reputation."

ENDS

Notes to editors

- In the year ended 31 December 2010, the Equality Commission's legal advice line took 857 enquiries on the grounds of gender (26% of total enquiries). Of these, at least 68% were to do with employment.
- Around 37.5% of the newly supported cases last year were gender-related, our second largest ground for complaint in the year 1/1/2010 - 1/1/2011.
- The statistics reveal that the three biggest issues for women in 2010 were pregnancy/maternity, equal pay and harassment/work environment. Pregnancy/maternity was the biggest single cause of complaints at 136 (15.87%).
- The Commission is currently funding 16 legal cases involving gender.

For your convenience, the conclusions of the Tribunal and a note on remedies are attached.

Conclusions

56. In the light of the established law and the guidance the Tribunal concludes that the claimant has proved facts from which the Tribunal could draw an inference of discrimination. The facts proven to the Tribunal include the following:-

The claimant by reason of childcare responsibilities arising following a period of maternity leave was forced to resign from her employment with the respondents without notice.

On tendering her resignation, Mrs Fitzpatrick commented to the claimant "this is what happens when you have babies".

On 10 December 2009 when the claimant contacted Mrs Fitzpatrick for the purposes of securing a reference Mrs Fitzpatrick acted with hostility towards the claimant and commented "You are the big girl who wanted a baby and did not want to work".

The first, second and fourth named respondents delayed and prevaricated in providing a reference to the claimant despite numerous requests from the claimant, from Jark, despite approaches from the CAB and in the knowledge that the claimant would be unable, by reason of statutory requirements to obtain employment without a reference from the respondents.

As a direct result of the respondents' behaviour the claimant was deprived of a job opportunity with Jark.

The respondents did not explain to the claimant or to any of her prospective employers and particularly Faith House that information additional to the factual reference would be supplied orally if requested.

The respondents applied the requirement in the claimant's case that "face to face" contact was required to secure a reference in circumstances where this requirement was not universally applied and was not applied in the case of Mr Paul Girvan who is a comparator for the purpose of this case.

57. Having found facts from which the Tribunal can draw an inference the burden of proof moves to the respondents.

58. By way of explanation for their treatment of the claimant it is the respondents' case that their policy regarding references was universally applied, the policy was that factual references were provided following "face to face" contact with the employee seeking it. It is their case that a reference was provided to the claimant on 4 December 2009 following such contact and that otherwise there was no delay in providing a reference.

59. The Tribunal accept that the respondents' policy of providing only factual references was universally applied and despite the fact that the claimant lost the opportunity for employment with Faith House, the Tribunal finds that this was unrelated to the claimant's sex and so did not amount to sex discrimination contrary to the provisions of the 1976 Order. Neither does it amount to discrimination under the Maternity and Parental Leave Regulations 1999. Having said that, the Tribunal notes with concern that the respondents' policy of providing only factual references was and remains contrary to the purpose of the regulations and is inconsistent with their own policy on recruitment.

60. The Tribunal find that the requirement for "face to face" contact for the purposes of securing a reference was not universally applied. In making this finding, the Tribunal have evaluated the evidence generally in relation to Mr Girvan's case, the equivocal evidence of Mrs Fitzpatrick in this regard and have drawn an inference from this and from the failure on the part of the respondents to call Mrs McKeever who could have put the matter beyond doubt.

61. For reasons already given the Tribunal finds that there was delay in providing the claimant with a reference and that delay was by reason of her sex in that it related to the fact that she had a baby. In these circumstances no comparator is required. The Tribunal bases this finding on the evidence generally and relies particularly on the comments made by Mrs Fitzpatrick [paras 12 and 32 refer]. Furthermore the Tribunal draws an adverse inference from the respondents equivocal, evasive and inconsistent

replies furnished to notice for information and proffered in evidence to the Tribunal. The evidence referred to earlier that there were four Helens in the employment of the first named respondent is a prime examples of such equivocation. Examples of numerous contradictions and inconsistencies in the respondents' evidence are recorded in the preceding paragraphs.

62. Returning to the issues identified in this case in summary the Tribunal finds as follows:-

1. The respondents subjected the claimant to a detriment contrary to Article 8(2) of the Sex Discrimination Order (Northern Ireland) 1996 by their delay in providing her with a reference and by their treatment of her as she sought to obtain a reference.
2. The respondents treated the claimant less favourably than Mr Girvan contrary to the Sex Discrimination (Northern Ireland) Order 1976.
3. The respondents did not treat the claimant less favourably on the grounds that she exercised her right to maternity leave contrary to Article 5A of the Sex Discrimination (Northern Ireland) 1976. The claimant was subjected to less favourable treatment on the grounds that she had a baby and associated childcare responsibilities.