



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Hussain

Respondent: City of Bradford Metropolitan District Council

HELD by CVP in Leeds **ON:** 3 to 5 January 2023

BEFORE: Employment Judge Wade

Members: Ms S Scott

Mr I W Taylor

REPRESENTATION:

Claimant: In person

Respondent: Ms Clayton, counsel

Note: A summary of these reasons was provided orally in an extempore Judgment delivered on 5 January 2023, which was sent to the parties on 6 February 2023. A request for the written reasons was received from the claimant on 9 February 2023. The reasons below, corrected for error and elegance of expression, are now provided in accordance with Rule 62 and in particular Rule 62(5) which provides: In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how the law has been applied to those findings in order to decide the issues. For convenience the Judgment given on 5 January 2023 is also repeated below:

JUDGMENT

- 1 The claimant's applications to amend/add to, her victimisation complaint are refused.
- 2 The claimant's victimisation complaint is dismissed.
- 3 The claimant's complaints of contraventions of Section 18 of the Equality Act 2010 succeed.

- 4 The respondent shall pay to the claimant the total sum of £7513.33 comprising £7000 of compensation for injury to feelings and £513.33 in interest.

REASONS

Introduction

1. These Equality Act proceedings were commenced by Mrs Hussain, a social worker, in 2022. They concern a reference given by her then manager Mr Singh and alleged conduct of his during a telephone call. The Tribunal has deliberated and reached a unanimous decision on all findings and conclusions.
2. We had a very helpful case management order identifying the claims to be decided. The Employment Judge had given permission for a victimisation complaint to be added, namely that a previous admission from the claimant's manager Mr Singh (that he had shouted in a call) had been resiled from in the respondent's grounds of resistance.

Amendment/Witness attendance

3. At the start of this hearing it was clarified by the claimant that she did not pursue that victimisation complaint; instead she pursued different victimisation complaints, namely that Mr Singh had said to Mr Farooq (his line manager) that he would amend a reference for the claimant and then not done so (1), and that the respondent had victimised her in its handling of the grievance and appeal (2).
4. The Tribunal refused this application to amend because the balance of prejudice lay overwhelmingly against the claimant. Granting the amendment would inevitably involve vacating the hearing to enable the respondent to plead to the new allegations and to adduce new witness evidence. That was not in the interests of justice, bearing in mind the case which had been prepared on both sides, and was ready to proceed. The claimant could, if so minded, present new claims, particularly about the latter events. As to a further different formulation of victimisation by Mr Singh, the case management orders had been sent to the parties on 12 August 2022, with a usual order that if the list of complaints was wrong or incomplete, the parties must inform the other side by 23 August 2022. Fairness involves fairness to both sides, and proportionality: while the claimant loses the opportunity to pursue a different victimisation point, it would not be fair to Mr Singh at such short notice to have him face a different allegation which might result in a finding of an Equality Act contravention by victimisation. Postponing to accommodate a different complaint is not proportionate in these circumstances.
5. The claimant also pursued a witness order in respect of Mr Farooq and the Tribunal encouraged the respondent to see if he was available to assist the Tribunal by voluntary attendance, and he was.

Issues and the law

6. There therefore remained two allegations of unfavourable treatment pursuant to section 18 of the Equality Act 2010, which provides:

18 Pregnancy and maternity discrimination: work cases

(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —

(a) because of the pregnancy, or

(b) because of illness suffered by her as a result of it.

(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

7. The issues were set out for us in Employment Judge Rostant's case management order and this case was, in truth, a dispute of facts. We consider the Employment Judge used "pregnancy" as shorthand for Section 18 above because the claimant's claim form attachment was clear that her case asserted she had been treated unfavourably because of all three matters –pregnancy (in the sense of past pregnancy), the exercise of her right to take maternity leave and pregnancy related illness. We therefore identify the issues to reflect the reality of the case as it had developed by today, excluding the victimisation complaint which was not pursued:
- 7.1. Did the claimant's line manager Mr Singh give her a negative reference (including in the sense that it was not made in good faith and/or did not reflect reality)?
 - 7.2. Did Mr Singh conduct himself as alleged in a telephone call on 11 February 2022?

- 7.3. (It is accepted that the alleged conduct, if it took place, took place during the protected period).
- 7.4. Was the unfavourable treatment because of pregnancy, the exercise of her right to take maternity leave and/or pregnancy related illness.

Evidence

8. We have had a very helpful file of papers of around 500 pages provided by the parties and there were some additions to that from the claimant permitted at the beginning of the hearing. It was evident that there have been some difficulties in locating documents and emails during disclosure.
9. We have also heard oral evidence from Mrs Hussain on her own behalf. She had presented two very considered witness statements and she gave oral evidence, and was cross-examined by Ms Clayton. We then heard from witnesses on behalf of the respondent: Mr Singh who was here and present, and also video link evidence from Mrs Collingwood, Mr Singh's manager in 2018 who subsequently left the respondent, Mrs Hadwen, the manager of the post to which the claimant had successfully applied, Mr Farooq, Mr Singh's manager in February 2018, and Mr Jandoo, Mr Singh's friend.

Directions and approach to making findings of fact

10. The Tribunal's approach to making findings of fact includes giving ourselves the following directions. Firstly, we ask whether the account given is consistent with the contemporaneous material. That contemporaneous evidence often includes social media, text messages, and similar kinds of material. There was not a great deal of that material in this case but there was some. We also ask, is the account consistent with subsequent investigations or witness statements? In this case we have had the grievance investigation notes from the respondent's own investigations. We ask what evidence is there from witnesses about the parties' demeanour and conduct at the time, both before and after any allegations? What evidence is there about the way that the parties behaved towards each other generally?
11. In this case we had the benefit of the WhatsApp messages between the claimant and Mr Singh, her manager throughout their line management relationship. We observed in those messages a great deal of warmth. They were ordinary, friendly manager to team member communications and they were very frequent. They appeared to be a major tool for management including case load instructions. There was no evidence at all of a problematic relationship in those exchanges and there is nothing in them to indicate Mr Singh bore the claimant ill will in connection with her pregnancies; there was, however, plenty of communication indicating his need for staff to attend work and complete their work, including wishing to understand the claimant's whereabouts and when she might be attending to a task or attending the office.
12. We also make our own assessment of parties when they are giving evidence: what impression do they make on us when they are asked questions and how do they

deal with those questions. In this case we have had the protagonists Mr Singh and the claimant here to be asked questions by the Tribunal and Ms Clayton.

13. We also assess how reliable witnesses are in their telling of the chronology - what do they remember, what do they concede, what does that tell us? When we make initial assessments during evidence, we then have to check or verify that against all the other material. We guard against the impressions that witnesses make having too much of a bearing on our findings - nervous witnesses can sometimes be telling the truth and very confident witnesses can sometimes be lying. Common sense and research tell us that is the case. We also bear in mind that one untruth told does not necessarily mean the entire account is untrue. People often do deny reprehensible conduct. Skilled cross-examination and questioning can make a witness seem far less reliable than they otherwise would have been.
14. This was a hearing in which we had an accomplished advocate doing her very best for her client and a non-lawyer doing her very best for her own case. We also bear that difference in mind when we assess the evidence.

Findings of fact

15. Bearing those matters in mind and taking into account all the evidence that we have heard, the findings that we have made include a great deal of matters which are not in dispute. The respondent's chronology latterly provided and the claimant's chronology provided at a much earlier stage of the proceedings are helpful when amalgamated. That is attached as we indicated it would be if reasons came to be requested.
16. The claimant was an experienced social worker. She had worked for five years or so in that capacity before her first maternity in late 2015. She joined Mr Singh's team in 2017 as a "maternity cover" post. She had worked for approximately a year by the summer of 2018 in his team. During that time regular supervision meetings took place.
17. The claimant also had four absences during that time, two of which were in fact one period when back problems arose after a road traffic accident whilst working. In the summer of 2018, Mr Singh reviewed the absence record and sent the claimant an email to which he attached a "return to work" meeting note and target for attendance saying the target was to have fewer than this number of absences in the next period. He did not meet with her to discuss that. It was light touch management in the knowledge that the claimant was to go on maternity leave later that year.
18. In the spring of 2018 the claimant had had some holiday to Pakistan. Immediately before that there was an Ofsted inspection looming for the department and all notes and so on had to be brought up to date. The claimant and other colleagues were allocated overtime to ensure that was complete, in the claimant's case before she went on leave.

19. In the summer of 2018 there were also some practice issues raised with the claimant during supervision including the need to address note taking and record keeping and generally “pull her socks up”. The claimant did her best to address them at that time. They had come to light as a result of external scrutiny and a review by senior managers which was communicated to Mr Singh by Ms Collingwood, his manager at the time.
20. There are two parts to the supervision meetings which the claimant undertook with Mr Singh. The first short part includes generic discussion of how the social worker is, their “time off in lieu” recording, any imminent holiday and so on. The second lengthy part is the rehearsal of case details, and practice and action items in relation to each of the children or families that are being worked with by the social worker - their caseload.
21. The latter material is also uploaded on to the case management system and is accessible to other practitioners. It is part of the clinical practice and record keeping of those social workers and others involved in their work with children and families. The claimant could access those clinical supervision notes in relation to all those families from home on the case management system. She therefore knew that regular supervision meetings had taken place with Mr Singh. However, his writing up of the separate employee records included an error in that he wrongly identified the claimant’s surname in those records as “Shah” and he did not send them to the claimant with any regularity. Whilst on maternity leave the claimant could not access the personal part of her supervision records which would contain any information about, for example, areas in which she needed to improve or discussions about her personal practice. Her position that the supervision records did not relate to her (because they had the wrong name on) was established to be wrong, because the caseload was clearly hers.
22. The July 2018 performance issue was that improvement was required in some respects and that that was addressed at the time. Miss Collingwood’s position was that she respected Mr Singh’s decision not to proceed further with attendance management procedures either – saying – we agreed to leave this, didn’t we – or words to that effect. They were not raised again formally for the remaining period under Mr Singh’s management.
23. In September 2018 the claimant was allocated a permanent contract in Mr Singh’s team, and although there was a complaint and later enquiry about a particular family and decision at this time, the claimant’s practice was not singled out for criticism, albeit there were acknowledged difficulties with a decision made at a higher level.
24. Miss Collingwood, in her statement signed in December 2022, says that the claimant was not a team player when she had experience of her as Mr Singh’s manager, from September 2017 to September 2018. She says she was “tricky” and kept herself to herself and did not support colleagues. There was no contemporaneous evidence before the Tribunal, for example, in Mr Singh’s supervisions with Miss Collingwood or email communications between them, to support the extent of her damning criticism of the claimant in her witness

statement. A similar damning view was not present in the communications between the claimant and Mr Singh.

25. The claimant had two spells of pregnancy related illness in 2019 - both several weeks - and then went off on maternity leave in the latter part of 2019. In March 2019 the claimant's performance figures had slipped because she had taken three weeks' annual leave (that was recorded as a discussion in supervision).
26. In September 2019 a last supervision took place before the commencement of the claimant's maternity leave with her second child. That supervision described the need to hand over the claimant's case load to a new social worker coming on board and for the claimant's cases otherwise to be redistributed (as the claimant had no doubt picked up cases for a maternity cover when she joined the team).
27. The consequence of the claimant's second and third maternity leaves, ill health (both the claimant and Mr Singh), and holiday, was that between September 2019 and December 2021 there were only two days in November 2020, and a week or so in the Spring of 2021 when they were both physically present at work. In that two years the claimant probably attended work for four weeks or so in total. They did, however, communicate by "WhatsApp" in that period in their usually friendly fashion.
28. The claimant did not discuss with Mr Singh her application to join a different team in December 2021, before making the application, and the team had staffing issues - it was short of staff. Her new post was to commence when she returned from maternity leave and was 30 hours as opposed to a full time, and she was looking forward to being able to take that up on her return to work. The offer required a reference. She sent Mr Singh a WhatsApp message on 23 December 2021 to tell him she had been successful and they agreed they would catch up in 2022. They then exchanged messages about her leave and sickness details and on 4 January Mr Singh messaged to say that there were a lot of discussions about staffing and the claimant's news was public.
29. The claimant had given Mr Singh as her primary referee. She plainly saw their working relationship as unproblematic and was expecting an ordinary and positive reference as a result of putting him forward. The reference involved completing a pro forma. Mr Singh completed it on 4 February.
30. In the pro forma the referee was required to use a scale from poor to excellent. Mr Singh assessed as "good": quality of work, application of skills, ability to work without supervision, relations with others, flexibility, honesty and integrity, discretion and communication skills. He assessed her as average in relation to timekeeping and attitude to work; in relation to attendance she was attributed by him as being "poor". The form required him to give reasons for the average or poor categories. He said this: "Salma had long periods on sick leave and generally was sick a lot. I believe her attitude to work lacked commitment and her timekeeping was hit and miss."
31. As to confirming her reason for leaving he said he had not spoken to her for some time as she had been on Mat Leave. In answer to the question: what would you see as the applicant's key strengths he said: "*Salma swings in roundabouts re her commitment to the job or at least that was my impression - overall she lacked a degree of commitment. This may be different in her role as SSW given the differing*

demands may suit her and she may come back to work with a different mind set. Salma can formulate relationships, the role of SSW may fit this model for her. Salma is able understand the dynamics to family life”

32. He said he knew of no reason **not** to employ the claimant and he offered to discuss these matters further with the recruitment panel. He also said, in answer to the question, “would you re- employ this person?”, “no”.
33. There is nothing in the WhatsApp exchanges between the claimant and Mr Singh at the time, which indicated he may not be able to provide the best reference for her. When asked by the claimant if he had done her reference, he sent a “thumb’s up” emoji. In fact there was nothing in their communications to prepare her for what then ensued. The performance matters tackled in the summer of 2018 had not developed into any formal procedures, nor were they significant enough for Mr Singh to consider that was necessary, albeit his manager had considered that perhaps attendance procedures might be necessary. That had not taken place.
34. On 7 February Mrs Hadwen, who was the recruiting manager, had a telephone call with Mr Singh which she documented in contemporaneous notes. She was surprised by the comments that he made in that conversation and documented them just as she heard them. We considered her a witness of truth. She decided to note them in an email to take stock of matters and indeed she capitalised a comment, “SLIPPERY”, as Mr Singh’s description of the claimant, which Mr Singh did not recall making. We find that he did use that word - we are confident accepting Mrs Hadwen’s evidence albeit Mr Singh does not recall it. It is also not dissimilar to Ms Collingwood’s description of the claimant as, “tricky”.
35. There were further comments which are even more damning of the claimant than the documentary reference, saying she had, “no commitment to work, no sense of organisation, and her priorities are her”. He also said that, “she has been off sick a lot.” That view was genuinely held by Mr Singh, taking into account the sickness absence which had been documented and evidenced by the claimant as maternity related, as well as that which was not. That is plain to see when he says, “last sick leave was pregnancy related so did not go as trigger points or on MSS”. The claimant’s pregnancy related absence record over the course of his line management of her was clearly in his mind when he gave the reference.
36. The claimant was then informed verbally by Mrs Hadwen that the offer was being withdrawn because of the reference given. The claimant had very little information about it and believed it to be a mistake. There had already been a mistake in the recruitment process in that she had been sent the wrong communication to identify she had not been successful, and to another candidate that they had been successful when they had not. This was genuine clerical error, but having had that put right, the claimant believed the reference must also be a mistake.
37. Mrs Hadwen was not able to tell the claimant the contents of the reference because it had been given in confidence; she did not give her any indication of how bad it was, but simply that the offer was withdrawn because it was negative or words to that effect. She also mentioned sickness because she felt she had to say something. She asked the claimant if she and Mr Singh got on well and the claimant replied in the affirmative. The claimant asked if she could call her manager to sort

it out and Mrs Hadwen confirmed she could and did the claimant have his number. The claimant then did so, asking for the post to be held for her while she did so.

38. In those circumstances, taking into account all of the evidence that we have heard but particularly the contemporaneous messaging, we consider it highly unlikely that the claimant opened her telephone call to Mr Singh by ranting at him, which was his evidence. It is simply not likely and we do not accept that happened.
39. The most likely account of the start of that call is the claimant's. She set that out in an email within an hour or so of the call, and she gave a broadly consistent account when asked about it in a subsequent grievance investigation. We find this happened: she started the call asking Mr Singh about the reference (because that was the purpose in ringing and she believed it to be a mistake) and she asked what had been written and she told him that the job had been withdrawn because of it; he replied giving some details of his reference including that she was not committed; she asked what he meant or how he justified it or words to that effect and he said, "how could you be committed if you had had one child after another"; she said, "you can't say that"; and he replied, shouting, "I can do what the fuck I want, I'm the manager".
40. The claimant began that call **before** 4pm on Friday 11 February. Mr Singh's friend, Mr Jandoo had arrived at Mr Singh's house at around 4pm and let himself in because the door was open. They were due to go shopping together, which they did every few months. Mr Jandoo saw Mr Singh on the telephone in the kitchen and went into the living room instead, and Mr Singh having acknowledged him went back to the kitchen to continue the call. Mr Jandoo was waiting for Mr Singh for six or seven minutes, he recalls. In these circumstances we find that the remarks above were made, but were not heard by Mr Jandoo, either because they occurred before he arrived, or because he could not, in truth hear every word, being in a different room. We accept his evidence that he could hear a female voice raised or shouting, because by the time he arrived the claimant was terribly upset - he describes that as angry but overhearing is largely a matter of volume and the two are often similar. It is also likely that he heard Mr Singh saying he would stand by the reference, and the claimant challenging him about that and what he had said, and being upset, to the point where he ended the call.
41. Mr Singh's remarks are regrettable and perhaps surprising for a manager of his experience, but he had said regrettably frank things to Mrs Hadwen on 7 February when he was under no pressure. In his conversation with the claimant he was being challenged by her. We consider he did respond in this way under pressure and in the heat of the moment. He may well have calmed somewhat given Mr Jandoo's arrival, but equally wanted to end matters because the call had deteriorated. We consider Ms Collingwood's evidence that she could not imagine Mr Singh saying such things, both because he was supportive and protective of pregnant colleagues and because of his professionalism. We weigh her support for him, and do not doubt that at work he did provide that support, but ultimately we have concluded that this is an example of a loss of patience, in particular circumstances, three years after Ms Collingwood stopped managing him, with a team which was losing people: he was speaking the truth as he saw it and in frustration, which was

that the claimant had rarely been at work because of two pregnancies in quick succession.

42. The claimant then called both Mrs Hadwen and Mr Farooq. Mr Farooq remembered that she had relayed to him both the swearing comment, and the children comment. She was extremely upset in both conversations. She was sufficiently upset that having told her mother and husband about the language used, she blocked Mr Singh that same night shortly before 5 o'clock as a contact in her WhatsApp message application. It is very plain in these circumstances that what had taken place in that call was not ordinary, nor was it frank, honest communication between a manager and a member of their team in which the claimant was in the wrong for being upset and/or ranting at Mr Singh such that he had to end the call – which was Mr Singh's case. His conduct included swearing and reference to the claimant having children linked to her lack of commitment, which was the cause of the claimant's upset.
43. It is regrettable that there was no contemporaneous documentation by Singh or Mr Farooq of Mr Singh's recollection (or for that matter Mr Jandoo's) at the time - mid February 2022 - when clearly Mr Singh knew there was an allegation to be answered and it was an allegation of some seriousness that needed to be addressed quickly. Mr Farooq plainly thought he had brokered a solution which would not require formal processes, despite what he had heard. For whatever reason there was no early documentation of Mr Singh's evidence. When Mr Singh came to provide his statement for the grievance investigation he was doing so some three months later, and in circumstances where he had been provided with the claimant's account of that call.
44. We have made findings which are broadly speaking to accept the claimant's account of that conversation and that it included the alleged remarks. In doing so we do draw on all the tools that are available to us, announced at the beginning of this judgment. The Tribunal is not a forum which, like an employer, can duck making a finding about these matters. We have to make a finding of fact on the allegation before us. We do so, doing our best, as a panel of three, all with different experiences of life, and we draw on those experiences. That said, we do not have a recording of the call. We do not apply a "beyond reasonable doubt standard", because, plainly, there is room for doubt in these circumstances when the communications between the two had previously been good. Nevertheless, we have to make a finding and we do so for the reasons that we have explained.
45. Matters evolved after that call of course. Mr Farooq talked to Mr Singh, who denied the swearing and children comments but accepted he may have raised his voice, but was initially persuaded by Mr Farooq, reluctantly, to amend the reference. However, Mr Singh then found a supervision note from the summer of 2018, and then decided he stood by his reference and would not amend it nor apologise.
46. The respondent did then take steps to rectify matters for the claimant. It gave the claimant the opportunity to find a different referee, which she did, and he provided her with a positive reference in all respects. That enabled her to be re-offered that post and to confirm her in that post. It then dealt with her grievance through its ordinary grievance process, albeit the appeal was still outstanding by the autumn

of 2022. In May 2022 both the claimant and Mr Singh were interviewed giving them both the opportunity to set out their account of events.

Conclusions

47. We then apply the law to the facts, the first question for us which is properly set out and addressed by Ms Clayton - whether there has been unfavourable treatment or detriment of Mrs Hussain in two respects. The first is of course the nature of that call and the comments made to her, and the second is in relation to the reference that was given.
48. On our findings Mr Singh's comments made in that call were unfavourable treatment. It is self-evident that to make a remark of the kind about her commitment to the role was both unfavourable and because of her taking of maternity leave on a third occasion. That is self-evident in the comment that was made, in the context of Mr Singh's management of the claimant over the undisputed aspects of the chronology. Ms Clayton, perhaps wisely in these circumstances, did not seek to argue that to denigrate commitment of a colleague by reference to her decisions to have children was not unfavourable treatment, because it was a fair comment, for example. This Section 18 allegation succeeds.
49. As far as the reference is concerned, we have to ask ourselves whether the claimant's taking of maternity leave/pregnancy/pregnancy related illness was an effective cause of the contents of that reference. Much was made during questioning of the claimant of her professional practice – putting to her did she form relationships with children, did she complete case records in a timely fashion, did she attend to her duties as a social worker in the way that she should, and so on. In short, concerns about her practice were put to her.
50. Those matters were not indicated as poor by Mr Singh in his reference. He was concerned with three aspects of her attributes as a member of staff which were less than good: attitude, timekeeping and attendance.
51. One has to make an assessment of that reference in the round, but Mr Singh's assessment of attendance as poor was plainly influenced by the time that she had not been present in the workplace, which was substantial but arose as a result of some intermittent sickness absence which appears in the chronology, much longer maternity related sickness absence, and her taking two maternity leaves. This is apparent in his later conversation with Mrs Hadwen when maternity related sickness is specifically mentioned and not in a way that suggests Mr Singh discounted it.
52. Were some critical aspects of that reference influenced or because of her exercising her right to maternity leave and pregnancy related illness? Yes, they were, in our judgment – the "poor" reference for attendance and "average" for commitment: so much so that he articulated his feelings about it in that phone call with the claimant and in a call with Mrs Hadwen. As far as the broader criticisms of the claimant explained to Mrs Hadwen, we find that those matters were views genuinely held by Mr Singh albeit they were not expressed to the claimant.
53. To address Ms Clayton's submission, that to express genuinely held, good faith views, cannot be detrimental treatment contravening Section 18, because many matters were unrelated to pregnancy/maternity and were justified by Mr Singh's experience of the claimant. We have concluded he was speaking freely and from

the heart. Genuine views (if negative) are always going to be deeply upsetting to hear, from a manager who does not hold one in the high esteem that perhaps one would wish to be held. That is going to be deeply upsetting, and not necessarily discriminatory.

54. However, in Equality Act cases the Tribunal has to take into account both conscious and subconscious processes of the mind. We have found remarks of the kind made by Mr Singh to the claimant **after** he had had the undisputed conversation with Mrs Hadwen. Those remarks suggested, as to commitment, that it was the claimant's second maternity leave while working for him (necessitated by a third child), which was in his mind. We have to ask ourselves whether subconsciously or consciously the claimant's maternity leave/pregnancy related ill health were an effective cause of the damning nature of the reference that was given, acknowledging that attendance and commitment were not the only damning parts of it. Taking into account the way that it was explained in his oral conversation with Mrs Hadwen and in his remarks to the claimant, in our judgment the claimant established that the Section 18 matters were an effective cause and that allegation succeeds also.

Remedy

55. In these circumstances we come to consider remedy in this case. Mrs Hussain has indicated to us this afternoon that she has not had legal advice, but she has had some assistance in preparing this case and that was her basis to claim £11000 as an injury to feelings award. She did not seek any other remedies, but we informed the parties that we would, in the ordinary course, award interest if we came to make an injury to feelings award.
56. We give ourselves the direction that Equality Act injury to feelings awards are to compensate the injured party, not to punish the respondent. We must focus on the extent of upset, emotional distress, anxiety, strain and so forth caused by the contraventions (rather, for example, than the respondent's policy of maintaining the confidence in the reference and not providing it until these proceedings, or the aspects of the views of Ms Collingwood and Mr Singh which were expressed and are hurtful, but not contraventions).
57. Assessing the injury to feelings to the claimant, the context is that on one day, 11 February 2022, the claimant made a call expecting to find that a decision about a reference and the withdrawal of a job offer was a mistake; instead she had the unpleasant experience that we have found to be a contravention, through a short telephone conversation with Mr Singh. She also experienced received from him a reference which had discriminatory elements. Through these proceedings she has come to know the extent of that reference, including the favourable parts.
58. It strikes us as artificial to separate the matters, in reality. Together, given the claimant's knowledge at the time they caused significant injury to her feelings on that day. She was very upset and shaken by it at a time when she was looking forward to returning to work to a new post on fewer hours.
59. We take into account that other subsequent events have made matters worse. When an early solution could perhaps have made them better. The experience of seeking the disclosure of the reference itself, because it was not provided through the grievance process has caused additional strain, as has Mrs Hadwen's record

of her conversation with Mr Singh, and the distressing evidence of Ms Collingwood's views about her. The latter was not expected, and had to be rebutted by emails that she was able to find which were supportive of her practice.

60. Mr Farooq's early solution, an apology from Mr Singh and withdrawal of the reference would no doubt have lessened the impact of that day, but we have to assess matters on the basis of what did happen. The context includes an otherwise friendly, supportive, strong and helpful line management relationship, and the maternity related content of the reference and call was an aberration on the part of Mr Singh, who had had no training on reference giving.
61. Happily the claimant was able to know at the earliest opportunity that Mr Keenan's reference was such that her new job was reinstated, and she has since returned to work and started enjoying that role working for Mrs Hadwen.
62. The claimant has also been able to maintain professional relationships with others within the respondent, notwithstanding the grievance process did not deliver the outcome she sought, and she has been able to continue her career. That is not to say that there was not impact on her daily life while still on maternity leave, and feeling she was fighting a battle with her employer which took time away from her family.
63. Taking all these matters into account we have assessed the injury to the claimant's feelings at £7000, globally in respect of both contraventions. We also add interest to that of £513.33 which is based on 11/12^{ths} of a year's worth of interest. That is from February of 2022, until January 2023, the date of this hearing. That is not a precise calculation in terms of days, but it is just in all the circumstances of this case to adopt that broad brush approach, given the time. That gives a total of £7513.33 and that is what our Judgment will record.

Employment Judge JM Wade

Date 31 March 2023

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Relevant Chronology combining both claimant and respondent information

February 2010	The claimant Hussain started working for Bradford Metropolitan District Council. This was her first qualified Social Worker role. The
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claimant started working within the Children and Families Team in Keighley until May 2013.

May 2013

The claimant then moved to the Children and Families Team in Bradford and was managed by Mark Keenan until July 2017.

The claimant gave birth to her first child and took 9 months' maternity leave.

December 2015

July 2017

The claimant interviewed and secured a temporary (12- month maternity cover) position within the Looked After Children's service. Mr Singh managed the claimant from July 2017 until 15th May 2022.

The following are documented in that first year under his management:

24.10.17 C on sickness leave – cold and flu

19.1.18-28.1.18 C on sickness leave – back problems – RTA

30.1.18-2.2.18 C on sickness leave – back problems – RTA

23.5.18-25.5.18 C on sickness leave – bowel issues

6.6.18 email from Mr Singh to C raising issues about C being contactable [489]

7.6.18 supervision record [278]

26.6.18 email from Emma Collingwood to C and Mr Singh re. C's work with a family [490]

6.7.18 supervision record [288];[300]

23.7.18-27.7.18 C on sickness leave – respiratory issues

30.7.18 RTW note emailed following viral infection [55/[[493]

8.8.18 supervision record [313]

21.8.18 email from Mr Singh to Ms Collingwood – agree to see how performance issues pan out [496]

4.9.18 supervision record [327]

10.9.18 C secured permanent role in Mr Singh's team [62]

26.11.18 supervision record [342]

The claimant suffered a miscarriage. The claimant informed Mr Singh as she was advised by the doctors to take some time off.

January 2019

12.2.19 supervision record [356] The claimant's performance figures were very good and to be kept up to date.

19.3.19 supervision record [372] - the claimant had been on leave for three weeks and was playing catch up with her performance

The claimant informed Mr Singh she was pregnant.

10.4.19 supervision record [386]

March 2019

17.4.19-19.4.19 C on sickness leave – bowel issues/ pregnancy related

The claimant given a sick note due to suffering from Hyperemesis gravidarum.

The claimant returned to work.

7th May 2019

The claimant signed off from work due to pregnancy related sciatica.

1st July 2019

The claimant returned to work.

12th August 2019

7.10.19-11.11.19 C on annual leave

6th September
2019

The claimant started her maternity. Her due date was 24th November 2019 .

17th November
2019

The claimant returned to work following her 12- month maternity leave. The claimant informed Mr Singh she was pregnant with her third child.

16th November
2020

The claimant was on annual leave accumulated during maternity leave

19 November
2020 to 4
December

The claimant informed Mr Singh she was unwell due to pregnancy related sickness.

The claimant was then signed unfit to work until 7 March 2021

10/11th December
2020

Absence for pregnancy related complications.

Third child born. Third maternity leave commenced.

1 April to 13 May
2021

The claimant applied for a post as Supervising Social Worker in the Fostering Service.

14th May 2021

December 2021

21st December
2021

The claimant was interviewed for that post.

23rd December
2021

The claimant was successful in securing the post, subject to further checks and one reference as an internal candidate.

1 January 2022

Mr Singh was asked to provide a reference

4 February 2022

Mr Singh provided a reference for the claimant (first allegation of unfavourable treatment)

11th February
2022

The claimant received a TFC from Vera Hadwen (Fostering Manager). Her job offer withdrawn subject to the reference received by Mr Singh.

The claimant contacted Mr Singh to enquire about the content of the reference (second allegation of unfavourable treatment).

The claimant contacted Farooq Umar (Mr Singh's Manager) to report her concerns. Mr Farooq informed the claimant that he would look into the concerns she had raised.

The claimant contacted Vera Hadwen- outlining the above – Vera suggested the claimant send her alternative references.

18th February
2022

Mr Keenan provided a reference for the claimant and her job offer was reinstated.

26 May 2022

The claim was presented.

