EMPLOYMENT TRIBUNALS (SCOTLAND)
Case No: 8001928/2024

Held in Glasgow on 1 July 2025

Employment Judge M Robison

Ms J Parry	**Claimant** **Represented by** **Ms A Lavery** **Law Student**
Lucky Little Stars	**Respondent** **Represented by** **Mr L Sidhu** **Owner**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim under section 18 of the Equality Act 2010 is well-founded and the respondent shall pay to the claimant the sum of **THREE THOUSAND TWO HUNDRED AND TWENTY POUNDS (£3,220.00).**

REASONS

1. The claimant lodged a claim in the Employment Tribunal on 21 November 2024 claiming discrimination because of pregnancy/maternity following the withdrawal of a job offer made by the respondent, who runs a nursery. The respondent entered a response resisting the claim.

2. At this hearing, the Tribunal heard evidence from the claimant, and for the respondent from Ms Michelle Brown, nursery manager.

3. The Tribunal was referred by the parties to a number of productions from two separate volumes of productions.

Findings in Fact

4. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved:

5. The claimant responded to an advert placed by the respondent on the recruitment web-site Indeed on 5 June 2024 for a nursery practitioner. The role was advertised as either full-time or part-time and pay was stated to be from £11.50 per hour.

6. The claimant was invited to an interview which took place on 9 July 2024 and which was conducted by Michelle Brown, nursery manager. At that interview the claimant raised the fact she had previously been in an abusive relationship which had resulted in a high volume of absences in a previous job. Michelle Brown said that she appreciated her honesty. Believing the claimant to have performed well at interview and that she deserved a second chance, she invited the claimant for a trial shift.

7. On 18 July 2024, the claimant attended for the trial shift. After consulting colleagues for feedback, Michelle Brown contacted the claimant by telephone to offer her the job, subject to disclosure and references, and asked her to attend at the nursery premises to complete paperwork.

8. The claimant understood that the position available was full-time.

9. The respondent's recruitment policy states that before an offer of employment is made, there will require to be two satisfactory references and an enhanced PVG check. It is stated that, "the nursery will pay for the employee's PVG at a cost of £18. The first part of the PVG will be completed together with the nursery manager and the new employee. The employee has the responsibility of completing their own part which is sent to their personal email via Disclosure Scotland. This can take up to four weeks to be processed".

10. The claimant attended the nursery on 24 July 2024 to complete the paperwork.

11. That paperwork consisted of an "application for employment" which the claimant completed by hand. That included her e-mail address which was stated to be [Claimant's Email address] . It included details of her work history. The claimant stated that she had been employed by ISS UK from September 2016 to March 2019 in a role cleaning and maintaining offices at BAE systems, with the reason for leaving as "started college". She attended college to complete an NC in 2018 and then an HNC in 2019 in child care practice.

12. The claimant also stated that she had been employed by West Dunbartonshire Council from October 2021 to May 2024 as an early learning and childcare officer with Linnvale Primary School and ELCC. She stated the reason for leaving as "job termination". For both of these jobs, the claimant required to be a member of the PVG scheme with Disclosure Scotland.

13. The claimant gave details of two referees. She stated these to be Lindsay Thomas of Linnvale, giving a telephone number and e-mail address. She advised Michelle Brown that the nursery was currently closed for the summer holidays, so that it might not be possible to get a reference until they returned. The second referee was Stephen Sproull, a supervisor at BAE Systems. She completed his telephone number but left his e-mail address blank because she did not know it.

14. The claimant confirmed that she was a member of the PVG scheme but left the section requesting a membership number blank, because she was not aware of it.

15. Michelle Brown also completed the relevant employer PVG application by accessing the Disclosure Scotland site on-line through their employer portal.

16. She invited the claimant to use her computer to complete the member's section of the on-line form, but she could not complete the membership number as she did not know it. Michelle Brown advised her to contact Linnvale Nursery to ascertain her registration number because she understood that the absence of the registration number might delay the processing of the application "by a couple of days".

17. Michelle Brown submitted that form and received an immediate acknowledgement from Disclosure Scotland. Michelle Brown had expected the claimant to receive a link in an e-mail to be sent to her to complete the final stages of the application herself. She told the claimant to look out for that e-mail because she knew that applicants have 14 days to complete their part.

18. On 24 July 2024, Michelle Brown e-mailed Lindsay Thomas at Linnvale Primary requesting a reference for the claimant.

19. On 24 July 2024 at 17.36 Michelle Brown telephoned the claimant. She left a voice mail asking her to call back about her second referee, because she had realised that she did not have an e-mail address for him.

20. The claimant subsequently contacted Linnvale to make a request for her registration number which she assumed would be on her personnel file but was advised that they could not locate it.

21. On 29 July 2024, the claimant telephoned the respondent to advise that she had still not received the e-mail from Disclosure Scotland but was told that Michelle Brown was off.

22. The claimant called again on 30 July 2024 and was told that Michelle Brown was not available but that she would call her back.

23. On 31 July 2024 Michelle Brown returned the claimant's calls. The claimant advised Michelle Brown that she had still not received the e-mail from Disclosure Scotland. Michelle Brown advised her to look out for it and that she would keep an eye on hers e-mails and let her know if anything bounced back.

24. On 31 July 2024, Michelle Brown telephoned Stephen Sproull and left a voicemail requesting a reference for the claimant. Michelle Brown did not subsequently speak to Stephen Sproull.

25. On Friday 2 August 2024, at 17.19, the claimant contacted Michelle Brown and advised her that she was pregnant. Michelle Brown said that might change things. She said that she had to contact Mr Sidhu, the owner of the nursery, who was at that time on annual leave until 12 August 2024. She advised she would try to contact him and get back to her.

26. On 5 August 2024, at 14.55, Michelle Brown contacted the claimant to advise that the job offer was withdrawn. She said that this was because of a lack of consistency for the children because their key worker would be going on maternity leave after six months.

27. On 6 August 2024, the claimant contacted Disclosure Scotland's helpline to ask about the application because she had never received the e-mail which she was expecting. Disclosure Scotland confirmed by e-mail that same day that on 24 July 2024 a link was requested by Lucky Little Stars Nursery to be sent out to the following e-mail address: jemmaparry_x@hotmail.co.uk. That is not the correct e-mail address for the claimant, because it has an underscore rather than a hyphen. This explains why the claimant did not receive an e-mail from Disclosure Scotland as expected.

28. On 8 August 2024, the respondent received the completed reference request form from Lindsay Thomas, head teacher at Linnvale Primary School. She advised that she did not have access to the claimant's file because she was on annual leave, but confirmed that the claimant was absent for more than 20 working days in the session 2023/24 and similar in session 2022/23. She marked the claimant "poor" for punctuality and reliability, and stated that she would not re-employ the claimant.

29. The claimant was due to start employment on 12 August 2024, shortly prior to the end of the school holidays.

30. The claimant was shocked and incredulous that the job offer had been withdrawn because of her pregnancy. She communicated with friends through social media seeking assurance that her belief that this was against the law was correct. Her mental health suffered. The claimant was signed off as unfit for work from 22

August 2024 through to 14 January 2025 by reason of anxiety, stress, and complications in pregnancy.

31. Because of her financial circumstances, following the withdrawal of the job offer, the claimant required to move house to live with her aunt.

32. The claimant was due to commence maternity leave on 31 January 2025.

Tribunal's discussion and decision

Relevant law

33. Section 18 of the Equality Act 2010 relates to pregnancy and maternity discrimination in the employment context. It states that an employer discriminates against a woman if, during the protected period, that is from when the pregnancy begins until the end of any maternity leave, the employer treats her unfavourably because of the pregnancy or because she is exercising maternity leave.

34. Pregnancy need not be the sole reason or indeed even the main reason for the treatment, so long as it was the effective cause (*O'Neill v St Thomas Moore School* 1996 IRLR 372 EAT).

35. In such cases, no comparator is required, and the focus of enquiry is the reason why the claimant was treated the way she was treated. Was it because of pregnancy or maternity?

Was there unfavourable treatment because of pregnancy?

36. In this case, there is no doubt that there was unfavourable treatment, because the claimant's job offer was withdrawn. Ms Lavery argued that the failure of the respondent to allow the claimant sufficient time to obtain references and the PVG was a prior act of unfavourable treatment because of pregnancy.

37. A number of key facts are disputed in this case, including the central facts relating to the reason for the withdrawal of the job offer.

38. The claimant's position is that the job offer was withdrawn because she had advised the respondent that she was pregnant. The respondent's position was that by 5 August 2024, no references had been received for the claimant and nor had the nursery received the claimant's PVG certificate, and that was the reason that the job offer was withdrawn.

39. The unsatisfactory reference, which was received from Linnvale Nursery, was received after the job offer had been withdrawn. In cross examination Ms Brown

confirmed that it had no bearing on her decision to withdraw the offer, but it had "made me realise that I'd made the right decision".

40. I have noted that, in regard to the interview process and the obtaining of the PVG, that recollections of the claimant and of Ms Brown differed in regard to some details.

41. I have accepted some of the evidence about what Ms Brown said in preference to that of the claimant because it seems the claimant had misunderstood what the position with regard to the application for the PVG certificate.

42. In particular, I accepted that on 24 July 2024, Ms Brown completed the employer part of the PVG and invited the claimant to complete her part on her computer.

43. The claimant was mistaken when she understood that Ms Brown had started the PVG process again because she had not been able to advise of the registration number. The evidence of Ms Brown on that matter was more plausible, that is that Disclosure Scotland would take more time to locate and check the details for the claimant in the absence of the registration number and there would be no requirement to start the process again because the claimant was already a member. The process was about confirmation that she had a valid PVG certificate and registration with the respondent.

44. I accept that Ms Brown contacted the claimant only after she completed the paperwork on 24 July 2024, when she realised that she did not have an e-mail for Mr Sproull, and that she left her a voice mail requesting that she get back about the second referee. I did not accept the claimant's evidence that there was a discussion on that call about "starting again" with the PVG registration not least because that call was only 12 seconds long, and in any event it is apparent that would not be necessary. That said, whatever message was left, it would appear that the claimant did not in fact return Ms Brown's call, at least until 29 July 2024.

45. I did not however accept Ms Brown's evidence that she had attempted to contact the claimant on a number of occasions to advise her to follow up on her references or the PVG. This is because of reliance on the phone records of both the claimant and the respondent for the relevant periods which were lodged.

46. I accept the claimant's evidence that she had left messages for Ms Brown, on 29 and 30 July, and these related to her concerns about not getting the e-mail from Disclosure Scotland.

47. Thus while Ms Brown said that she had spoken to the claimant "umpteen times" about the references and the PVG, she accepted, by reference to the call logs, that

she had in fact only spoken to the claimant on one occasion before the claimant phoned her on 2 August, and that was on 31 July. I accepted too that Ms Brown was returning the claimant's call (and as Ms Lavery pointed out, that was what was stated on the respondent's agenda).

48. I accept that the claimant did not speak to Ms Brown during telephone calls made by the claimant on 29 and 30 July. I accepted the claimant's evidence that she was advised that Ms Brown was not available, not least because these were calls of up to one minute duration (it being apparent that calls less than that duration are "rounded up" for the purposes of the call log of that particular phone provider). It follows therefore that there was no discussion during these calls advising the claimant to follow up with her references or her PVG.

49. In regard to Ms Brown's claims that she contacted the claimant on a number of occasions to follow up on the references and PVG, I have found that Ms Brown asked the claimant to contact her previous employer to find out the registration number, but that was when she was completing the paperwork. I have accepted that Ms Brown did call the claimant (on 24 July) to leave a voice mail relating to the second referee, but there was no follow up.

50. Further, Ms Brown accepted that the claimant had said (at the meeting on 24 July) that they may not be able to get a reference from Linnvale because it was closed over the summer. Accordingly, she was alerted to the possibility that there may be a delay in that reference at least coming through. As it transpired Ms Thomas confirmed that she was in fact on annual leave when she completed the reference on 8 August 2024.

51. There was no dispute that the claimant telephoned Ms Brown on Friday 2 August at 17.19 to advise that she was pregnant. Ms Brown said that she discussed the references and PVG during that call, but I did not accept that. If that was the case, then as Ms Lavery submitted, there would be no need for Ms Brown to call the claimant back on 5 August, except to let her know that her offer was revoked, and again there was no dispute that is what she did.

52. The claimant's position is of course supported by the time line, as emphasised by Ms Lavery. The claimant completed the paperwork on 24 July. While there were clearly issues with references and the PVG, the claimant had phoned on 2 August which is a Friday and the time of the call was 17.19, shortly prior to the nursery closing. Ms Brown said that the call was primarily about following up on references and the PVG, and that she asked the claimant to call back about it, and the claimant had said that she would look into it by speaking to the second referee and finding out about the PVG e-mail. I did not accept that evidence primarily because there

was less than one working day between that request and Ms Brown telephoning the claimant (at 14.55 on Monday 5 August) to advise that the employment offer was withdrawn. Further, only eight working days had elapsed since the PVG application for the job was submitted to Disclosure Scotland.

53. The only conclusion to reach then from the facts is that Ms Brown was very quick to withdraw the offer, and that withdrawal came only three days after the claimant had advised her that she was pregnant.

54. Yet the circumstances here suggest that Ms Brown should have waited longer, and that the delay in references and the PVG being provided was explained by a number of factors. This is leaving aside the fact that the wrong e-mail address was given to Disclosure Scotland.

55. Ms Lavery relied on the respondent's recruitment policy to support her submission that the reason for the withdrawal was not the delay in obtaining the PVG certificate or the references. That indicated that it could take up to four weeks for a PVG certificate to be issued. While Ms Brown suggested in evidence that this related to new applications only, the time between the completion of the application (24 July) and the revoking of the offer (5 August) was very much shorter than that. Further I noted that in preparation for this hearing, the claimant through her representative also contacted Disclosure Scotland who confirmed that "we aim to complete 90% of valid applications within 14 working days". Further, at the very least Ms Brown was aware that the claimant had not received the e-mail from Disclosure Scotland and that it may take longer where the claimant did not know her registration number. With regard to the references, it might be expected that Ms Brown would wait longer because she knew that Linnvale nursery was closed; and she had not spoken to Mr Sproull but only left his a voicemail a few days before.

56. All this points to the fact that Ms Brown terminated the claimant's employment because she advised her that she was pregnant.

57. Even if any failure or delay in obtaining references or the PVG contributed to any decision of Ms Brown's to revoke the offer of employment, as noted above, if the pregnancy is a contributing or influencing factor of the treatment, that is the effective cause, then that will amount to pregnancy discrimination.

58. As Ms Lavery argued, at the very least the respondent's decision to curtail the amount of time given in regard to obtaining references and the PVG certificate, was an act of unfavourable treatment which was because the claimant had advised that she was pregnant.

59. Ms Lavery also referenced facts upon which she relied to shift the burden of proof. However I have come to the view that this is one of those cases, referenced by the Supreme Court in *Hewage v Grampian Health Board* 2012 UKSC 37, where there is no need to resort to the burden of proof provisions because I am in a position from the evidence heard to make positive findings in support of the claimant's submissions.

60. Given the findings in this case, I conclude that pregnancy was the main reason that the offer of employment was revoked. I therefore find that the claimant was discriminated against because of her pregnancy, contrary to section 18 of the Equality Act 2010.

Further observations on the evidence

61. An unusual feature of this case related to the position with Mr Sproull, who was originally expected to give evidence. While undertaking research in preparation for this hearing, the claimant contacted Mr Sproull, with the intention of calling him to give evidence. It transpired that the claimant's aunt, with whom she now lives, had been in a relationship with Mr Sproull and had lived at the same address with him. When this matter was raised with the claimant by Mr Sidhu, she advised that he no longer lives at the same address and that she had never lived in the same house as him while he lived there with her aunt. She advised that Mr Sproull had assisted in getting her employment at BEA Systems. The claimant confirmed that in fact her aunt had contacted Mr Sproull about the reference question. Mr Sproull offered to send an e-mail, and was given the claimant's e-mail address.

62. Mr Sproull sent an e-mail direct to the claimant on 27 January 2025 which stated as follows, "I was a Supervisor for EMCOR working on behalf of BAE Systems from May 2015 until Feb 2020. Jemma Parry joined our team around 2016 as a domestic cleaner. Jemma was employed in BAE Systems for around 3 years before leaving to start a child care course at Clydebank College. I can confirm I received a call around July/August 2024 from Lucky Little Stars Nursery in relation to a reference for a job Jemma applied for as a child care assistant/nursery teacher. I was asked the typical questions. The questions asked were - how long Jemma worked for BAE Systems, her work ethic, reasons for leaving etc. I recall the ladies name to have been Michelle, who identified herself as the Manager for Lucky Little Stars Nursery. If you require anything further please do not hesitate to contact me".

63. The respondent was however adamant that Ms Brown had not spoken to Mr Sproull.

64. The claimant through her representative confirmed that they would not call Mr Sproull to give evidence after all. This was because she accepted, having seen Mr

Sproull's phone records, that no such call had apparently been made to him by the respondent. Accordingly she did not dispute the respondent's position, that is that no reference was ever received from Mr Sproull.

65. Mr Sidhu argued that this all casts doubt on the claimant's honesty. It is certainly a very odd situation, and it is difficult to understand why Mr Sproull would have written such an e-mail if he had not in fact spoken to Ms Brown.

66. Ms Lavery, in support of her submission that the Tribunal should accept that the claimant was credible on this matter, pointed out that it was the claimant who had pressed for Mr Sproull's outgoing telephone records to be produced. Indeed, I note from the file that the claimant's representative made an application for a third party order on 29 March 2025 for Mr Sproull's phone provider to provide his call logs for the relevant period. That application was initially refused, it having been understood Mr Sproull was to be called to give evidence. Ms Lavery asked for that decision to be "reconsidered", advising that this related to incoming calls and since the call was disputed, such records would represent the best evidence. The order was then granted and the records produced. These revealed that there was only one incoming call to Mr Sproull from the respondents, which aligned with their own records, that is that Ms Brown left a voice mail on 31 July 2024 at 12.24.

67. The claimant therefore had no option but to accept that no such call had been made, although she could not offer any explanation for the e-mail from Mr Sproull.

68. It also transpired that the respondent had made a request, very shortly prior to the final hearing, for a witness order for Mr Sproull, but no up to date address was supplied, and no witness order was issued.

69. In the end, in any event, this line of enquiry was what might be described as a "red herring" or irrelevant distraction, because it did not relate to any evidence which was material to the ultimate decision. In so far as it was relevant to the claimant's credibility, I accept that the claimant was a credible witness and that this did not cast doubt on my conclusions relating to her credibility given the circumstances.

70. I do observe that, although those phone records were sent in to the Tribunal but not in fact lodged with other productions, there is no record of the respondent having contacted Mr Sproull on any previous occasion. This tends to contradict the evidence of Ms Brown (which I did not in any event accept) that she had called him several times prior to leaving the voicemail on 31 July, and her explanation that these did not record on the respondent's phone records because the calls had not been answered.

71. There was also the matter of the conversation on social media between the claimant and a Louise Stirling, whom I understood to be employed by the nursery. I heard no evidence from the claimant about that exchange. Ms Brown was asked about the exchange, and said she had told Ms Stirling to desist, although Ms Stirling was defensive of the nursery's position. There was a discussion in submissions about whether Ms Stirling was a relative of the claimant. I gave little weight to this document, which I did not in any event consider to be relevant, except to note that it tended to corroborate the findings in fact that I have made in any event.

Remedy

72. The claimant lodged a schedule of loss setting out compensation claimed and calculated on the basis of working 40 hours per week and being paid £11.50 per hour, and a proposed start date of 12 August 2024.

73. Mr Sidhu in submissions addressed the schedule of loss. There was a suggestion from Mr Sidhu that any job offer would have been part-time. The claimant's evidence was that she understood that the job would be full-time, and if there had been any suggestion that it was part-time should could not have accepted it given her financial circumstances. Ms Brown in evidence appeared to suggest that it might have initially been part-time but that it would be full-time once the numbers increased, as I understood it when the schools went back, but that was the week the claimant was due to start. I accepted that claimant's evidence that the role would be full-time from the outset, that is from 12 August 2025.

74. With regard to the hourly rate, although Mr Sidhu said no rate had been agreed, and Ms Brown confirmed that, I noted that the advert stated that the rate of pay would be "from" £11.50 per hour. Accordingly, I accept that the claimant would be paid at least £11.50 per hour. That would result in gross payment of £460 per week and, according to the claimant, a net weekly payment of £399 per week.

75. In evidence, the claimant confirmed that she was likely to have gone on maternity leave at the end of January 2025. She sought compensation only until that date, which from 12 August 2024 is a period of 25 weeks.

76. In regard to mitigation of loss, the claimant was, following the revocation of the offer of employment, signed off as unfit to work with anxiety and stress. She attributed this to the way that she had been treated. Ms Lavery argued that there was a causal link between her treatment and her absence on sick leave. The claimant said in evidence that she has suffered from anxiety and the loss of the job offer, when she was pregnant, meant that her mental health deteriorated and heightened her anxiety. As a result of not getting the job, her financial circumstances meant that

she had to move house and she went to live with her aunt who was able to help her deal with her anxiety and stress.

77. I accept that as a result of the respondent's actions, the claimant's underlying stress resurfaced and that she became ill such that she had to be signed off work. In the circumstances, I accept that the claimant could not otherwise have mitigated her losses.

78. Notwithstanding the above, I must take account however of the known fact that after the decision was made, the respondent received a negative reference for the claimant, specifically the referee said that they would not employ the claimant again.

79. I take into account the evidence of the claimant that in her interview she raised the issue of her previous absences and explained that these would not continue because she was no longer in an abusive relationship. I noted Ms Brown's evidence that she believed that people should get a second chance, and that is why she called her for a trial shift.

80. However, I must take account of the fact that any job offer which may have been forthcoming would have been subject to two satisfactory references. Leaving aside the fact that no second reference was ever apparently produced, the reference which was provided could not be said to be satisfactory.

81. Further, I take account too of Ms Brown's evidence that, in light of the reference she had received, she believed that she had made the right decision.

82. On balance the balance of probabilities, I take the view that the job offer would have been withdrawn given that negative reference. That is, I consider it to be more likely than not, despite Ms Brown's assertion regarding giving people a second chance, that the job offer would have been withdrawn following receipt of the unsatisfactory reference just three days later.

83. Accordingly, I find that there was no loss of earnings in this case, because the job offer would have been withdrawn for other reasons in any event.

84. The claimant sought injury to feelings at the top of the lowest Vento band. At the relevant time the lower band was between £1,200 and was £11,700, that is for "less serious cases" as set out in the seventh addendum to Presidential Guidance on awards for injury to feelings originally issued 5 September 2017.

85. I take account of the following when assessing the amount of injury to feelings to award:

a. The claimant's mental health suffered as a result of the withdrawal of the job offer;
b. This was compounded by the fact that the claimant was pregnant;
c. The claimant was incredulous that an offer of employment would be withdrawn simply because she was pregnant, which she believed to be against the law;
d. The claimant was not aware that the respondent had received an unsatisfactory reference until it was referenced in the ET3, lodged December 2024;
e. The claimant believed that it was as result of the withdrawal of the job offer that she had to move because of her financial circumstances;
f. The claimant's strong belief that she had been discriminated against and that she had missed out on employment further impacted on her mental health such that she was signed off with stress and anxiety;
g. The claimant thought that she was going to get a "second chance", having been honest about her previous absence record and having explained that this was the result of an abusive relationship, which included her former partner locking in the house to prevent her from getting to work on time;
h. In all likelihood the job offer would have been withdrawn because of the unsatisfactory reference shortly after it was in fact withdrawn because of pregnancy.

86. In the circumstances, I conclude that an award at the lower end of the lowest Vento band is appropriate, although not at the very lowest. Although it is a single act, withdrawing a job offer because an applicant is pregnant is a serious and overt form of discrimination, and awards that are too low risk diminishing respect for anti-discrimination legislation. I take account too of the fact, given annual increments, that even less serious cases could then attract an award of up to £11,700.

87. In the circumstances, I conclude that an appropriate award for injury to feelings is £3,000. Awards of injury to feelings attract interest at 8% from the date of the act of discrimination. A daily rate of interest would be £0.66 per day, which for 335 days totals £220.00.

Conclusion

88. There having been a breach of the Equality Act 2010 in this case, the respondent must pay to the claimant the total sum of £3,220.00.

Date sent to parties **30 July 2025**