

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 17/1997

PARTIES

Ms. M Fleming
(Represented by the E E A)

AND

Dr. J. Maloney (Blackrock Clinic)
(with Hayes McGrath, Solicitors)

File No: EE 04/1996

1 Dispute

1.1 This dispute concerns a claim by Ms. Fleming that she was discriminated against by the respondent, Dr Maloney, at an interview for a part time post when she was asked discriminatory questions contrary to the terms of the 1977 Employment Equality Act.

2 Background

2.1 The prospective employer, Dr Maloney, and her husband work from a suite in the Blackrock Clinic. They employ a full time secretary and a part-time secretary whose hours are from 2 p.m. to 7 p.m. three afternoons a week. Dr Maloney had a vacancy to fill in relation to the latter position. The vacancy was advertised and the claimant applied for this job. She was called to an interview and she alleges that during this interview she was asked discriminatory questions relating to her domestic and family responsibilities.

2.2 After failing to secure an apology from the Respondent the claimant submitted this claim to the Labour Court who referred it to an Equality Officer for investigation and recommendation on 26th February, 1996. Submissions were received from the parties and a joint hearing was held between them on 13th May, 1997.

3 Summary of the case made by the claimant.

3.1 The claimant says that she applied for a job as a part time medical secretary in response to an advertisement in one of the national newspapers. She says she was interviewed for the position by Dr. Maloney and a man who did not introduce himself although the claimant understood that it was probably her husband. She says that the man conducted the interview for the main part while Dr. Maloney listened and asked a few questions herself. The claimant says that during the interview her reasons for taking voluntary redundancy from her previous job were questioned, and also what she had worked at in the meantime and what her reasons were for

looking for part time work at that particular time. She says that she explained her reasons for opting for the redundancy package, one of which was due to the fact that she wished to have more time off to spend with her child. She said that she had done a small amount of work for friends from home, as she had purchased a computer when she left work and that after a short break she says she intended to work part time. Due to other family circumstances she postponed looking for the part time work and had applied for a number of such jobs at the time of this interview.

3.2 The claimant says she was asked detailed questions by the man regarding who had looked after her child when she worked full time and who would do so in the future if she took another job. She says she told him that she had been looked after in a crèche which she still attended on a half day basis and this could be extended if she were working again. She alleges that he also asked if it would not be too late after 6 p.m. to expect a crèche to keep a child and she says that she responded by saying her husband would collect their daughter if she had to work after 6 p.m. She says he made a remark about having “one of those modern husbands”. She says the next question came from Dr. Maloney and alleges that she asked “What about the future, have you any plans for future family?” The claimant says she was absolutely astounded at being asked this question in an interview and says that she did not challenge it but answered by saying that she did not have plans at the moment but that in the future she would probably like another child.

3.3 The claimant says that she left the interview feeling angry and humiliated and with a sense that her privacy had been violated. She says that this was confirmed in discussion with others who were most surprised at the questions asked at the interview. The claimant alleges that she considered at the time there was no way she would get the job as it was obvious they did not want a married woman with a child who might just decide to become pregnant again in the future and cause them an inconvenience.

3.4 The claimant says she believes she was discriminated against because the employer had no right to ask her personal questions and in particular about future plans for her family. She pointed out that if she had a medical problem this could have upset her when asked this question at interview. She also argues that her arrangements for the care of her child were her business and had no bearing on her ability to perform the duties associated with the position being applied for. She

says that she was treated less favourably than a man because there is no way they would have asked the same questions of a man in a similar interview situation. She also alleges that she was treated less favourably than a female of a different marital status because she considers a single female would not have been asked similar questions either.

3.5 The claimant alleges that she was obliged to comply with an inessential requirement i.e. the provision of information regarding her personal life as stated above. She says that this bore no relation to her ability to do the job and that she had submitted a comprehensive curriculum vitae together with a relevant reference and assumed that it was on this basis that they had decided to interview her in the first place. The claimant says that she was appalled to be questioned in this manner by a woman at a time when equality in the workplace is so often in the news. She accepts that their line of questioning about her family was with a view to finding out how convenient her situation would be in relation to their needs. She says that she believes that a higher proportion of men would be able to comply with their requirements as men do not, generally speaking, have the same ties to family and would not generally be the one to be called should a child become ill and necessitate having to leave work and care for it. She says that a substantially higher proportion of single females would be able to comply with the requirements as they would be unlikely to be in a position where they would have ties of this sort which would require them to have regular hours etc.

3.6 The claimant points out that she worked in a large financial institution for 15 years in a wide variety of areas and has worked in both small and large teams with both men and women as bosses. She claims that she has excellent administrative/secretarial skills and a lot of experience in dealing with people from all walks of life. She says she submitted an excellent curriculum vitae and reference with her application for this job and attended the interview in good faith. She says that her experience at the interview was not one she would like to repeat or that anybody else should be put through. She says she considers that the interview was conducted in a very unprofessional manner by a person of a respected profession.

3.7 The claimant says that at the end of the interview she was asked to telephone the secretary in two days time to find out if she had been successful or not in the interview. When she

did so, she was informed by the secretary that the position had been filled.

3.8 The claimant says that to further compound her upset by the interview procedure that upon receipt of letters from the Employment Equality Agency, Dr. Maloney denied all knowledge of the interview and consequently the claimant decided to pursue the issue to an Equality Officer under the Employment Equality Act 1977.

4 Summary of the case made by the prospective employer.

4.1 The employer says that both she and her husband work from a suite in the Blackrock Clinic. They employ a full time secretary who has worked with them for ten years and is responsible mainly for the work of Dr. Maloney's husband. She says that they also have a requirement for a part time secretary who is mainly responsible for her work and who is required to work three afternoons per week from 2 p.m. to 7 p.m.

4.2 The employer says that she is married with three children and has continued to work throughout her married life and says that she considers that she has a good understanding and sympathy for the problems faced by a working mother.

4.3 The employer says that following the resignation of the previous secretary a vacancy arose and she points out that the previous employee was married with two children.

4.4 The employer says that as the post was advertised as part time work she has found through experience that the usual applicants are married women with young children who only want to work on a part time basis because of family commitments. Her experience has also been that the one person without family commitments who accepted the post did so only on a temporary basis and continued to apply for full time appointments and left to take up a full time appointment.

4.5 The employer says she does not discriminate against females, married women or married women with families. She says that when she has advertised this post to date all applications have been female and the vast majority married. She claims that if she short lists a married woman in her thirties looking for a part time job it is almost certain that she would have a family. She says the fact that she short listed and interviewed Ms. Fleming, married and in her thirties as stated in her curriculum vitae would indicate that she does not discriminate in the manner alleged. The employer also claims that her secretary prior to July, 1995 and her current secretary are both married with families.

4.6 The employer says that the usual format of the interview would include a detailed discussion of the hours involved and she has found that these can cause a difficulty. She says she always enquires if there is a difficulty with late finishing and sometimes at this point the applicant realises that there is no real flexibility in the finishing hours and will indicate that they are no longer interested in the position. At that stage if they are still interested the employer says she discusses salary and potential starting dates. Normally a few questions arise at this stage and the interview would be followed by a few minutes discussion. The candidate is then asked to ring the office at a specified time for the results of the interview.

4.7 The employer says that in relation to this claim made by Ms. Fleming she can only answer in broad terms as she cannot remember the candidate. She says that if questions did arise about child minding arrangements, this would only have been in the context of emphasising that the work continued until 7 p.m. as this often creates difficulty. Any remark made about “modern husbands”, if such were made, would have only been a light hearted remark not to be taken seriously or to put the claimant at her ease.

4.8 The employer says that she did not ask the claimant if she was planning to have more children as the claimant seems to have interpreted. She argues that it is possible that she asked about her future plans but this would be in relation to whether she was going to stay in part time employment or seek full time employment. She says that during the course of an interview candidates may offer information about their families quite spontaneously and she says that any information obtained in these general discussions which often include plans for future family would not be used against the candidate in any way.

4.9 The employer says that the claimant was not selected for a second interview as there were better candidates and she eventually appointed a married woman who had a personal recommendation from a colleague in the clinic. The employer pointed out that she has had four married women part time secretaries and a single woman in this post in the period May 1993 to the current time.

4.10 The employer says that the claimant was not rejected on the basis of her sex, marital status or family responsibilities.

5 The Equality Officer's Conclusions

5.1 I have taken into account all the submissions both written and oral made to me in the course of my investigation into this claim.

5.2 The claimant alleges that she was asked discriminatory questions at an interview held by Dr Maloney. These related to her family commitments and to her future plans with regard to having more children. Dr Maloney says that while she does not remember the particular interview the questions asked were necessary to ensure that a prospective employee was aware of the difficulties attaching to the finishing times which are rigid. She also says that any questions she would have asked of interviewees with regard to their future plans were in respect of whether or not they intended to return to full time working and not in relation to their family planning.

5.3 I consider that the issue for consideration in this case is whether or not the alleged questions were asked, whether they constituted discrimination against the claimant by the respondent and whether or not the claimant would have been successful at the interview if they had not been asked.

5.4 There is a direct conflict of evidence in this case. I note that the claimant alleges that she was asked discriminatory questions at the interview. On the other hand the respondent says that she could not identify this particular candidate from the remainder of the interviewees, has no records of the proceedings but says that she did not ask the questions complained of.

5.5 In relation to the allegation that discriminatory questions were asked of the claimant I note that the respondent has no recollection of either the interview or the interviewee and that she pointed out that they interviewed twelve applicants. She argues that she and her husband always use a similar format when conducting interviews and would not ask the questions as alleged by the claimant. The respondent does not have a record of what transpired at the interview. I note that the claimant has a clear recollection of the interview and subsequently made notes about what happened at it. I note that the question that the claimant found most offensive i.e. her plans with regard to future family followed a discussion led by Dr Maloney's husband regarding the claimant's childcare arrangements. The claimant says she answered the respondent's question to the best of her ability. While the respondent argues that the claimant must have misinterpreted the question, I consider that if this were the case this was not pointed out to her by the respondent who claims that this question (which she disputes) was aimed at finding out whether or not applicants were prepared to continue in part time employment or to resume full time employment.

I accept the claimant's statement that this question was asked of her and that the two interviewers accepted this information from her without pointing out to her that that this was not the answer that they required.

The 1977 Act prohibits discrimination by prospective employers. Section 3 says that

“ a person who is an employer.....shall not discriminate againsta prospective employee in relation to access to employment“.

Section 2 of the Act prohibits direct or indirect discrimination as follows

“.....discrimination shall be taken to occur

(a) where by reason of his sex a person is treated less favourably than a person of the other sex

(b) where because of his marital status a person is treated less favourably than another person of the same sex

(c) where because of his sex or marital status a person is obliged to comply with a requirement ...which is not an essential requirement for such employment”.....

As a consequence I consider that this question (or discussion) discriminated against the claimant as it arose from her marital status and was a subject that would not be raised with a male or a single female. I further consider that the matter bore no relation to the performance of an individual for the post advertised. I accept that there were probably no male or single female applicants for the post however I consider that the respondent discriminated against the claimant when she asked her or allowed her to be asked discriminatory questions which would not be asked of a male or a single female.

In summary I find that the claimant was asked a question (or questions during this discussion) that discriminated against her.

5.6 The claimant has also argued that she was well qualified for the post and claimed that were it not for the fact that she was discriminated against she would have been successful. I note that the claimant did not have experience as a medical secretary. I further note that the vacancy was filled by a woman of the same marital status as the claimant. I am therefore satisfied that based on her experience and also with reference to her marital status that the claimant was not discriminated against when she was not appointed to the post of part time secretary.

6 Recommendation

6.1 In view of my conclusions above, I find that Dr Maloney discriminated against Ms Fleming in terms of Section 2 of the Employment Equality Act 1977 and contrary to Section 3 of that Act when she asked her discriminatory questions at an interview. However I find that no evidence was presented to show that Ms Fleming would have been offered the position had she not been asked these questions. Accordingly I recommend that Dr Maloney pay Ms Fleming the sum of £300 in compensation for the distress suffered as a result of the discrimination.

Mary Solan Avison
Equality Officer

23 June 1997