

The dangers when giving a reference

In *Pnaiser v NHS England and Coventry City Council*¹ the Employment Appeal Tribunal held that an Employment Tribunal erred in its approach when it found that a claimant had failed to establish a prima facie case of discrimination arising from disability, after a job offer was withdrawn following a negative verbal reference given by her former employer.

In this case, the claimant was a disabled employee. She had been a diligent employee for her former manager at the Council and received a positive appraisal. Unfortunately for the claimant, by reason of her disability, she was unavoidably absent from work for several months. She was later made redundant and signed a settlement agreement which included an agreed reference as part of its terms.

The claimant then applied for a job with NHS England. She was offered the job, subject to the receipt of satisfactory references, and accepted it. When the recruiting manager of NHS England requested a reference from the Council on NHS England's standard template, the claimant's former manager provided the reference which had been agreed under the settlement agreement. She did so under cover of an email offering to discuss the matter further. Noting the reference was not on the standard template; the recruiting manager of NHS England phoned the claimant's former manager and sought clarification.

The claimant's former manager did not provide a verbal reference in the same terms as the reference agreed in the settlement agreement. During the course of the telephone conversation, the claimant's former manager implied that the claimant's sickness absences had adversely affected her performance and that the claimant might struggle to cope with pressure. Following the verbal reference, NHS England withdrew the job offer from the claimant.

The Employment Appeal Tribunal held that unlawful discrimination had taken place by both the Council and NHS England.

Comment

This case highlights the dangers to employers and prospective employers when seeking and providing references and how important it is for employers to consider carefully the form of any agreed reference when entering into a settlement agreement. In this case, the former employer ought not to have departed from the reference which was agreed as part of the settlement agreement. Employers should be careful to ensure that they give true references that are not misleading or discriminatory. As a consequence, many employers have adopted a practice of providing a reference giving dates and position only.

¹ [UKEAT/0137/15](#)

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