

EMPLOYMENT EQUALITY ACT,1977

EQUALITY OFFICER'S RECOMMENDATION NO: 05/1999

PARTIES

An Employee

{Represented by Mr J Kehoe B.L. instructed by  
Gerard I Lambe Solicitors}

AND

An Employer

{Represented by Mr A Kerr B.L. instructed by  
the Chief State Solicitor's Office}

File No: EE 13/96

1 Dispute

1.1 This dispute concerns a claim by a complainant that her

employer discriminated directly against her because of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 and contrary to Section 3.

## **2     Background**

**2.1** The complainant is a civil servant and she is employed in the grade of Higher Executive Officer. She works in a regional office of a large government department. She commenced working in the Region in April 1994.

**2.2** The claimant maintains that the Department discriminated against her on the grounds of her sex. She identifies the date of discrimination as 7 September 1995 and has presented her claim under four headings:

1.     on her return from Maternity Leave she was not given back             her original post

2.     she was subjected to sexual harassment and obscene remarks

3.     an inaccurate recommendation was given to her in a promotion competition

4.     unacceptable position for the Personnel Officer to adopt             in relation to her complaints of sexually objectionable     and discriminatory remarks

**2.3** In March 1996 the claimant through her Union, the Public Service Executive Union, referred her claim of unlawful discrimination to the Labour Court. The Labour Court referred the dispute to an Equality Officer for investigation and recommendation. The Equality Officer received written submissions from both parties to the case.

At the end of June, 1997 the Equality Officer was informed that the claimant had changed her representation to a legal practitioner.

- 2.4** The Equality Officer held joint hearings with the parties on 25 November, 1997 and 13 May, 1998. Subsequent to the second hearing the Equality Officer received a further detailed submission on behalf of the claimant. This submission gave rise to further submissions from both parties. The last correspondence received in regard to the dispute was in October, 1998. The Equality Officer decided because of the sensitive nature of a substantial part of this case that the parties to the case should not be identified.

### **3 Summary of the Claimant's case**

- 3.1** The claimant commenced working for the Regional Manager in April 1994. She submits that despite the Regional Manager's traditional managerial style which frequently manifested itself in a condescending patronising attitude towards women she managed an amicable working relationship with him and was able to handle his sexism. She further submits that discriminatory treatment only began to affect her after it became known to the Regional Manager, in mid December 1994, that she was pregnant. She adds that it is reasonable to allege that pregnancy was the catalyst for the dramatic augmentation in his genderised prejudices to proportions that became obstructive, degrading and unendurably stressful.
- 3.2** The claimant submits that she is extremely upset at the tawdriness of dredging up dirt in the manner that the respondent has endeavoured to do so to mount a defence. She asserts that work difficulties in another region were

resolved entirely in her favour and that she agreed not to go to Personnel in the matter. She further asserts that she had a totally untarnished personnel record until she lodged this case for independent arbitration.

**3.3** The complainant alleges that the Department discriminated against her under four headings:

1. on her return from Maternity Leave she was not given back her original post

2. she was subjected to sexual harassment and obscene remarks

3. an inaccurate recommendation was given to her in a promotion competition

4. unacceptable position for the Personnel Officer to adopt in relation to her complaints of morally objectionable and discriminatory remarks

**(1) Not given her original post back after Maternity Leave**

**3.4** The claimant submits that she officially returned from Maternity Leave on 30 August 1995 and she was not given back her original HEO position. She asserts that this decision was not revealed until a meeting held on 7 September 1995. She further asserts that she was divested of all her major responsibilities and was given a very ambiguous job description, the bulk of which was work of an inferior kind, less challenging and fulfilling and previously done by a Staff Officer.

**3.5** The complainant states that prior to Maternity Leave she had

three strands of work, training, information and the assessment of the grants for the region. She explains that the grants aspect of her work was offered to her in early March 1995. She adds that at a meeting on 5 April 1995 with the Regional Manager, at which she attended with her Union representative, the Regional Manager conceded that he had appointed her in charge of the Grants work.

**3.6** On her return from Maternity Leave, the claimant advises, she was officially sidelined for the junior staff member and was at first appointed as training officer for the region plus two other regions, which the Regional Manager did without the consent of the other two Regional Managers. She states that "to supplement this, and keep me occupied, I would now assume duties previously performed by an S.O. who had moved to an outlying office. The latter would form the main corpus of my future duties. I would also, be assigned other 'Girl Friday' tasks by him as they cropped up from time to time."

**(2) she was subjected to sexual harassment and obscene remarks**

**3.7** Relations took a marked downward turn, the claimant submits, soon after mid December 1994 when it became known to the Regional Manager that she was pregnant, commencing with a remark, relating to work, that "after your bundle of joy arrives you won't be so pre-occupied with other matters." She adds that he continued to repeat a mantra to her that he would "knock the weight off me", this he would say whenever he came into her room to give her tasks to perform.

**3.8** The claimant explains if and when she objected to the Regional Manager's tiresome jibes he would use another one

of his sexist platitudes that he would like to throw a bucket of cold water over me every day. She asserts that the Regional Manager would not make such personalised, improper remarks to a male subordinate.

**3.9** The Regional Manager, the claimant states, made unwelcome remarks to her when she raised local management's oversight not to send her a notice of an Assistant Principal competition while she was on Maternity Leave. She advises on this occasion he said to her that he was amazed that having a child had not "quietened" her down and he added that as that had not "shut me up" nothing would. When she reminded him that she expected her old job back he mentioned that there were lots of "Girl Friday" tasks for her.

**(3) an inaccurate recommendation was given to her in a promotion competition**

**3.10** It is the claimant's contention that a poor rating in a recommendation for an internal Assistant Principal promotion competition, which took place while she was on maternity leave, was given to her by the Regional Manager in revenge for the fact that she did not take his abuse while she was pregnant, and as she had threatened an Equality case. She states that the Regional Manager informed her that he gave her a good overall recommendation except in the area of "interpersonal skills". She further states the Regional Manager was motivated by spite and he had no other means of doing her down in the recommendation as he recognises the fact that she is very capable in all areas of her work.

**3.11** The claimant points out that she was involved in staff training for the past two years and that most of her working life as an Inspector involved her directly and regularly

with members of the public which she performed to a very high level of satisfaction and excellence makes a nonsense of the Regional Manager's assessment of her "interpersonal skills". She maintains that there is nothing in her 15 year record to indicate that she has an "interpersonal skills" problem.

**3.12** The complainant submits that the oversight by her local management in sending her the promotion notice formed part of the general irrelevance she had been relegated to by her management commensurate with her pregnancy. She further submits that the three week delay in notifying her of the competition put her at an unfair disadvantage to prepare and compete.

**(4) unacceptable position for the Personnel Officer to adopt in relation to her complaints of sexually objectionable and discriminatory remarks**

**3.13** When the claimant complained to the Personnel Officer on 6 November 1995 about the various remarks of the Regional Manager towards her, she maintains that the Personnel Officer's response was the remarks of the Regional Manager must be regarded in the light of the "generation" of the person making them.

**3.14** On another occasion, the claimant states that in a conversation with the Regional Director he made it clear that he did not approve of the Regional Manager's behaviour. However, he indicated categorically that he was not prepared to censure him because of the proximity of his retirement.

**3.15** The claimant submits that it is totally unacceptable to her that management at the Regional Director's Office and at

Personnel should seek to excuse the Regional Manager's behaviour. She further submits that managerial indulgence has caused him to continue his reckless ways. She adds that the Department should not absolve managers from their responsibilities under equality legislation on the grounds of age.

#### **4 Summary of Respondent's case**

**4.1** The Department refutes the claimant's allegations of discrimination against her absolutely and completely. The Department's position is that the allegations of the claimant are untrue and represent a complete distortion of the facts by her in relation to management's dealings with her in the period since March 1995. The respondent argues that it is against a background of a history of ongoing difficulties with several members of management in the Department that the current allegations, which set out to associate all her difficulties with her pregnancy, have to be looked at.

##### **(1) Not given her original post back after Maternity Leave**

**4.2** In the first instance, the Department points out, it is management's prerogative to deploy staff as it sees fit, within reason and with regard to the needs of the service to be delivered, priorities, grade and such rules and agreement which exist. It adds that such reemployment is carried out in a reasonable and common sense manner.

**4.3** The Department submits that the Regional Manager did mention he was considering adding the Grants work to her other roles. After consultations with his Area Managers, the



Regional Manager decided in March 1995 to allocate this block of work to an Executive Officer who had been assigned to the regions early that year. The complainant may have misunderstood the position but the true position is that this block of new work was never allocated to her.

- 4.4 The work on the Grants was well under way, the Department states, when the claimant commenced Maternity Leave on 22 May 1995. The respondent maintains that the claimant had no role whatsoever in this work as it proceeded and she would have been unable to do this work as the period for processing the grants coincided with her Maternity Leave. It asserts that she had the same role, Training Officer and Information Co-ordinator (as required), before and after her Maternity Leave.

**(2) she was subjected to sexual harassment and obscene remarks**

- 4.5 The Regional Manager rejects completely these complaints against him. The allegations made by the claimant in submissions are considered by him to be a continuation of the vindictive and perverse series of accusations made against him by the claimant over the last year. The respondent points out that the Regional Manager and the claimant worked together, before he agreed to accept her into this region after a poor working relationship developed with her managers in another region.
- 4.6 In relation to the term "Girl Friday", the Department explains that it was used in a particular reference to an RDO query as to whether there was an officer available from the regions who could be deployed on a range of tasks in the RDO. The term was used by the Regional Manager to denote

the concept of someone deployed on a range of general duties.

- 4.7 The Department asserts that it is the Regional Manager's position that the claimant was never at any time - before her pregnancy, during her pregnancy or after her pregnancy - subjected to any obscene, lurid or offensive remarks or comments by him. The Regional Manager is adamant that he does not use obscene language or expressions.

**(3) an inaccurate recommendation was given to her in a promotion competition**

- 4.8 The Respondent describes the method of assessment adopted thus *"The assessment system for officers entering promotion competitions entails two officers, separately, on a prescribed form, reviewing the performance of a competing officer under a range of headings, rating the officer under each heading and then applying an overall rating to the officer. In the instance case the Regional Manager was the second officer and he accepted the ratings of the first officer"*.
- 4.9 The Department points out that the claimant was given an "average" rating for interpersonal skills. It contends that this must be accepted as a valid judgment of the assessing officers. The rating given to her ensured that she was admitted to the first round of interviews in the competition, however, she was not successful in progressing to the next round.
- 4.10 The Department maintains that the claimant's entire complaint in relation to the assessment at the Assistant Principal competition is considered unwarranted on the grounds that a correct process was followed, that the

Regional Manager was not the first assessing officer, did not interfere with the first officer's assessment and concurred with the "above-average" overall rating of the candidate.

**(4) unacceptable position for the Personnel Officer to adopt in relation to her complaints of sexually objectionable and discriminatory remarks**

**4.11** At the time of the claimant's telephone conversation with the Personnel Officer, 6 November 1995, the Department advises that the question of an accusation of sexual harassment by the claimant on foot of remarks allegedly made by the Regional Manager had not arisen. The Personnel officer responded in an informal way to an exploratory conversation about a series of grievances which the claimant articulated about her management. In the course of the conversation the Personnel Officer suggested that the Grievance Procedures might be a mechanism whereby the grievances which she had raised might be discussed, with a view to resolution.

**4.12** The Department submits that, in the handling of this type of enquiry, the Personnel Officer would have been most conscious of the provisions of the formal guidelines in relation to the allegations of sexual harassment and of the right of all parties to any dispute to be heard. The Department adds that it is fully satisfied that incumbent of the post of Personnel Officer is fully aware of the sensitivities of this type of complaint.

**4.13** The Department asserts that it is a fundamental distortion of what transpired in the course of the conversation which the claimant had with the Personnel Officer to contend, in

support of a case of unlawful discrimination on the basis of pregnancy, that the policy of the Department's management was to condone discriminatory or offensive language by male officers, regardless of age or status.

## **5 Conclusions of the Equality Officer**

**5.1** The complainant outlined in some detail her case of unlawful discrimination against the respondent in a document furnished with the initial submission received from her Union. The document presents her claim of discrimination under four headings:

1. on her return from Maternity Leave she was not given back her original post
2. she was subjected to sexual harassment and obscene remarks
3. an inaccurate recommendation was given to her in a promotion competition
4. unacceptable position for the Personnel Officer to adopt in relation to her complaints of sexually objectionable and discriminatory remarks

**5.2** The Department refutes the claimant's allegations of unlawful discrimination against her absolutely and completely. It submits that the fact that the complainant had ongoing difficulties with her management is not disputed. The Department contends that she now seeks to place those difficulties in a quite different context from that in which they happened.

**5.3** In arriving at my conclusions in this case I have taken into account all of the submissions, written and oral, made to me

by the parties to this dispute. I have considered the case, not only having regard to the 1977 Act, but also having regard to the Equal Treatment Directive and relevant case law. I propose to examine and to consider the evidence available to me under the four headings, submitted by the claimant, as to whether or not it establishes or infers unlawful discrimination under all or any of these headings.

**5.4** In the course of the investigation of this case the complainant's representation questioned the relevance to this dispute the respondent's allegation that the complainant had a history of ongoing difficulties with her management. I have given this matter careful consideration and it seems to me as the claimant alleges that the matters giving rise to the dispute before me occurred within a specific period of time, that my consideration of this claim should be confined to that span of time. I should add here that the complainant rejects that she is or was in any way to blame for any difficulties, past or present, with her management.

**5.5** I record hereunder some agreed facts in relation to the dispute:

the claimant commenced work in the region in April, 1994

the advertisements in relation to the Grants appeared between 9 - 12 March 1995

the official closing date for receipt of Grant applications was 26 April 1995

on 20 March 1995 a recently appointed A.P. was

assigned to the region

on 6 April 1995 a meeting between the claimant and the Regional Manager took place regarding an apology from her

work related matters arose at the meeting on 6 April 1995

an Executive Officer, began work on the Grants on 7 April 1995

the claimant went on maternity leave on 22 May 1995

the claimant returned from maternity leave on 30 August 1995

on 7 September 1995 the claimant, had a meeting with her AP and the Regional Manager on her work role

the referral form to the Labour Court gives 7 September, 1995 as the date of the alleged discrimination

- 5.6** The first issue I propose to consider is complainant's claim that **on her return from Maternity Leave she was not given back her original post.**

The claimant submits that she had three strands of work within the Region before she went on maternity leave, Training, Information and the assessment of Grants for the region. She maintains that after her maternity leave she was divested of all the main duties and responsibilities she had previously held. The respondent contends that her role before maternity leave was that of Training Officer and Information co-ordinator and that was the role she resumed

on her return to work.

**5.7** As it was not clear to me from the initial submission from the Department whether or not claimant was entitled to believe in early March, 1995 that the Grants work would be assigned to her I put this to the Regional Manager at the hearing held in November, 1997 and his response was that the claimant had no entitlement to consider that the Grants work would be going her way. The claimant maintained at the hearing that early on 3 March, 1995 the Regional Manager informed her that she was in charge of the Grants work. She added that late that same day he informed her that he recognised that there would be some difficulty filling in for her when she went on maternity leave but, nevertheless, he instructed her to read herself into the new role.

**5.8** I note that the claimant states that on foot of the Regional Manager's alleged instruction of 3 March, 1995, to prepare for the "Grants" work, she organised furniture etc. for the unit. I note that in support of this claim she presented an E mail message from Accommodation Section 2 which shows that she placed an order for 2 VDU chairs on 16 March, 1995 and that a further E mail message shows that 2 VDUs were installed in March 1995. In further support of her case here she submitted a copy of a document signed by two Service Officers in which they state that in March 1995 they moved furniture etc. for her; they remember the occasion because she was visibly pregnant at the time. The Regional Manager's recollection is that the floor space was redistributed in January 1995 for organisational purposes. I am not satisfied that a redistribution of floor space in January 1995 explains why the claimant was two months later actively involved in arranging the supply of furniture and equipment, at a time when she was some six months pregnant.

Having regard to the evidence available to me on this issue, it seems to me, on the balance of probability, that the claimant had reason to believe in early March 1995 that she had a role in the Grants work.

**5.9** Notwithstanding my believe, as expressed in the proceeding paragraph, the pertinent question to be addressed here is whether or not, in the weeks before her departure on maternity leave, the claimant had any real responsibility and/or involvement in the Grants work.

**5.10** In document received by the Equality Officer from the claimant in December, 1996 she states that at the end of March 1995 the Regional Manager "*indicated to me that that I would be assisted by ....., a newly appointed Executive Officer Inspector in the .....Region, whom he indicated would fill in while I was on maternity leave only.*" The claimant also maintains that a meeting on 6 April, 1995, attended by herself and a Union representative, the Regional Manager conceded that he had appointed her HEO in charge of the Grants and stated that "*I could do the more difficult cases and the EO was to do the simpler ones*". The evidence of the Executive Officer is that she officially started work on the Grants assessments on Friday 7th April, 1995. The Assistant Principal, who was recently promoted the grade, states that when he commenced work (20 March 1995) in the Region there was still some uncertainty regarding the arrangements for the administration of the Grants work but by mid April the position had been clarified in that the Regional Manager confirmed to him that this work would be managed by him (the AP) and the Executive Officer would be reporting directly to him in this regard.

**5.11** In support of the Department's case that the Grants work was



not part of her duties before she went on maternity leave the Assistant Principal pointed out, at the second hearing, that up the closing date for grant applications (26 April 1995) 217 applications were received and out of the 123 site visits involved the claimant carried out six of them. In relation to these six visits he states that they were all in the same area and they were carried out on 9/10 May 1995.

I note that it is not disputed by the claimant that these visits were carried out by her not because of the degree of difficulty attached to the applications but because they were all in the same general area. I further note that the Assistant Principal states that the claimant drafted her report of these visits using template forms which he maintains he set up with the Executive Officer.

The only other site visits involving the claimant occurred on 7 April, 1995 when she accompanied the Assistant Principal. I note that he states that these visits (and the visits on 13 April, 1995 which he carried out with the Executive Officer) were carried out in order to "*get the ball rolling*". I further note that the visits in which the A.P. was accompanied by the claimant, were some three weeks before the official closing date for receipt of the grant applications.

**5.12** In regard to how it came about that the claimant carried out the visits on 9/10 May, 1995, the Assistant Principal alleges that he allowed her to do these visits because she put it to him that it would look good on her Curriculum Vitae. I note that this allegation, which was also made by the Executive Officer, is rejected by the claimant.

I should state here that the evidence elicited in the course

of the investigation in relation to site visits is at variance with that of the Department case, as outlined at 4.4, wherein it is states that the claimant had no role whatsoever in the Grants work as it proceeded. I note that the Regional Manager stated at the second hearing held that it was only in the course of that hearing did he learn of the claimant's site visits

**5.13** I note that the claimant submits that *"by-mid May I was precluded medically from travelling alone in a car on long distances"*. This assertion, which was made for the first time in her submission of 17 June, 1998, refers to the week before she went on maternity leave (22 May, 1995), but does nothing to explain her overall low level of visits.

**5.14** In the course of the second hearing held the claimant presented written notes which purport to show her involvement in the grants work. At this hearing she stated that she found these notes in a folder and that she was not in a position to say that she put them on the files. In relation to "notes" the Executive Officer stated that the claimant never took a note for her in relation to the grants applications and that she found no evidence of any preliminary work done by the claimant on the files. I must state here that I found the evidence of the claimant in relation to her actual involvement in processing of grants did not approach the same level of detail as her evidence on other aspects of this dispute.

**5.15** I note that the Executive Officer states in a statement dated 22 July, 1998, that she personally processed in 1995 200 grants applications out of the total 217 and that of the remaining 17 the claimant processed six. I find support for the Department's case that the Grants work in the Region was

carried out by the Executive Officer under the Assistant Principal's management in a minute, dated 19 May, 1998, from the Assistant Principal of the Grants Section in the Department's Planning Unit, wherein he states *"assessments on the .....region grant applications were written at various dates from April, 1995 by ....(a)..... (with the bulk completed by end - July) and countersigned in bulk by ....(b)....(in August, judging by the sample I inspected)."*

(a) = the Executive Officer (b) = the Assistant Principal

**5.16** I note, in a document dated 17 June, 1998, which was after the second and final hearing, the claimant states inter alia *"...it was possible to edit my reports, remove my name and replace it with ....(b).. or ....(a).... name on any of the cases I dealt with."* The Department challenges the claimant's inferences that there was something untoward in the disturbance of information on her personal computer. In the absence of any real evidence from the claimant of wrong doing here by officers of the Department I dismiss her inferences out of hand.

**5.17** The claimant alleges that on her return from maternity leave she was also divested of her Information role and that her duties consisted of a very undefined training job and the post of a S.O. who had moved while she was on maternity leave. I note that the claimant describes her training role after maternity leave as "undefined", however, it appears to me on the evidence available, that her training role remained as it had been prior to maternity leave.

In relation to her Information role I note that references are made to Information seminars at two different locations in the weeks prior to her maternity leave. However, the

evidence available to me is that Information seminars arose infrequently. In these circumstances the evidence available to me is not such that I can make a finding that any change in her Information role was related to her pregnancy or her sex.

5.18 Having regard to the views I have expressed in paragraphs 5.7 to 5.16 I cannot hold the evidence establishes or infers that the claimant on her return from Maternity Leave was not given back her original post.

5.19 It is the claimant's contention that **an inaccurate recommendation was given to her in a promotion competition,** in particular under the heading of interpersonal skills, in respect of an internal Assistant Principal competition, which took place while she was on maternity leave. The claimant maintains the poor rating was given to her by the Regional Manager *"in revenge for the fact that she did not take his abuse while she was pregnant, and as she had threatened an Equality case"*.

5.20 In the course of my investigation of this aspect of the case I obtained from the Department copies of the assessment forms on the claimant in respect of promotion competitions since 1992 when her grade came within the general service grades of the Civil Service. I note that the claimant points out that a 1993 "internal" assessment form has not been produced by the Department. I consider for the purposes of my investigation there is no need to go beyond the assessments carried out in the Region i.e. 1994 and 1995, both of which involved the Regional Manager.

5.21 A comparison of the 1995 assessment form with the 1994 form shows that different "first supervisors" signed the forms and the Regional Manager was the signatory as the "second

supervisor" on both forms. I note that part two of the 1994 and the 1995 forms rate the claimant as being "Well qualified" for promotion and that the Regional Manager would be satisfied to accept her on promotion.

**5.22** I note that when part one of the 1994 and 1995 forms are compared they show that the claimant obtained identical ratings in 1995 under eight of the nine of the corresponding 1994 headings. The heading under which the rating is not identical "Quality of Work" the claimant received a "C" in 1994 and the higher rating of "B" in 1995. The 1995 form shows that the claimant under a new heading of "Judgment", was rated at "C".

I note that the claimant's arguments in relation to the 1995 recommendation focus on "interpersonal skills". However, the forms show that the claimant received a "C" rating under "Relationship with others", in 1994 and in 1995.

**5.23** As outlined in the previous two paragraphs, when the 1995 assessment is compared to 1994, they show that on both occasions the Regional Manager was the second officer, and that the 1995 assessment is broadly the same as that of 1994 and exactly the same under the heading of "Relationship with others". I therefore find that the complainant's claim that she was given an inaccurate recommendation by the Regional Manager *in "revenge for the fact that she did not take his abuse while she was pregnant and as she had threatened an Equality case"* is not sustainable. Accordingly, I cannot hold that a prima facie case of unlawful discrimination exists here.

**5.24** I note that the claimant alleges that a delay in receiving the notification of the competition put her at a

disadvantage and that the oversight in relation to the notification formed part of the general irrelevance she had been relegated to by management commensurate with her pregnancy. I accept the Assistant Principal's statement that his late handling of the notice was totally accidental and in no way deliberate. While his failure here was most unfortunate I cannot, however, attribute it in anyway to the claimant's pregnancy or her sex.

5.25 I consider that it is appropriate, before I consider the next issue, to point out that the investigation of the promotion assessments of the claimant shows up a major inconsistency in the Department's case. The respondent's first submission, as outlined at 4.8, states that:

*"The assessment system for officers entering promotion competitions entails two officers, **separately**, on a prescribed form, reviewing the performance of a competing officer under a range of headings, rating the officer under each heading and then applying an overall rating to the officer. In the instance case the Regional Manager was the second officer and he accepted the ratings of the first officer".*

In a written statement received from the Regional Manager contained in the respondent's second submission, which was subsequent to the first hearing at which the Equality Officer questioned the first supervisor's involvement in the 1995 assessment, the position was outlined as follows:

*"Agreement as to H.E.O. promotional ratings was usually arrived at by **discussion** between the Assistant Principal (Area Manager) and myself as Regional Manager. That was the procedure adopted, also in the*

*case of ratings given to the claimant in 1994 and in 1995."*

**5.26** The next issue I propose to address is the complainant's allegation that **she was subjected to sexual harassment and obscene remarks** by the Regional Manager during and after her pregnancy. The complainant asserts that the Regional Manager passed such remarks as "after your bundle of joy arrives you won't be so pre-occupied with other matters", that he would "knock the weight of me", "pushing out the child would quieten me down for life" and that he would have "girl Friday" tasks for her. The Department denies that the Regional Manager subjected the claimant to any obscene, lurid or offensive remarks or comments.

**5.27** The Labour Court has long held freedom from sexual harassment is a condition of work which an employee of either sex is entitled to expect and that it would treat any denial of that freedom as discrimination within the terms of the Employment Equality Act, 1977. Equality legislation has not defined what constitutes "sexual harassment" but it is usually accepted that it includes remarks of a sexual nature that are unwelcome and offensive to a recipient. In the present case I am satisfied that, if the remarks alleged to have been directed by the Regional Manager at the claimant in the course of her pregnancy and/or during/after her maternity leave, such remarks could reasonably be regarded as offensive to the recipient.

**5.28** I note that the claimant alleges that the remarks complained of either arose before, during or after her maternity leave. The claimant's evidence is that the remarks allegedly directed at her were largely made in the absence of witnesses and that she often objected to the Regional Manager about his

comments long before October, 1995, which is the time the Department claims that these allegations first arose.

**5.29** The claimant alleges that the Regional Manager during her pregnancy repeated a mantra to her that he would *"knock the weight of me"* and that she can recall on one occasion she objected to him about the comment. I note that the claimant at the second hearing stated that about a week before her maternity leave the Regional Manager passed the remark *"wait until you are lying down pushing out the child"*. I note that this was the first occasion that the claimant made a reference to *"lying down"*. The claimant also stated at the hearing that in the course of a conversation with the Regional Manager, when she brought her application for the AP competition, he remarked to her *"pushing out the child did not shut you up nothing would"*. I note that the claimant in her initial written submission in relation to this conversation states *"he once again expressed amazement that having the child had not 'quietened' me down adding that as that had not 'shut me up' nothing ever would"*.

**5.30** I note that the Regional Manager in a statement received before the second hearing in May, 1998, states:-

*"It is remarkable that when I met with .....and her Union Representative ..... on 6/4/95, to explain about her conduct, she made no mention of offensive language. Neither did she make any such accusations in her minute of 28th April. Again when she met with the Personnel Officer in September, 1995 she made no accusations - when she had every opportunity of doing so."*

I propose now to express my views on the issues raised here.



5.31 I note that the claimant states, contrary to what the Regional Manager asserts in the preceding paragraph, that at the meeting on 6 April, 1995 that the Regional Manager opined to the Union representative, *"I would be fine if I had a bucket of water thrown over me every day"*.

At the time of this meeting the complainant's Union representative was a member of the local branch of the complaint's union and by the time the second hearing took place, as I understand it, she was no longer actively involved in the union. I note that the Department stated that it informed her that her presence at the hearing was requested, however, she never attended it. As this individual's evidence was not available to me I do not propose to express a view here as to whose recollection in this matter is more likely to be the most accurate.

5.32 I note that the Regional Manager submits that the complainant's minute of 28 April, 1995 to him makes no accusation against him of obscene or offensive language to her. An extract of the minute as presented by the complainant follows:

*"The **unprecedented turn** you have taken against me, both in your personal dealings with me and in the way you have re-organised my work at this point in time has no logical explanation except to see it as connected to my present condition and my impending maternity leave. If that is so, and it would it would indeed appear to be the case, then there are **Equality** and **Sexist** issues involved that I would be very adamant to have aired at Personnel level or at whatever level it may be necessary to do so. Candidly, it is unacceptable to me to be*

**sidelined and undermined because I am due to have a baby.** Not alone is it objectively sexist, but it goes against all the legislative provisions of Equality within the civil service. (On a more human level, it is contemptible and craven to **suddenly** turn on a women member of staff in this state of vulnerability, especially given my past history, allied to the inauspicious forecast at the earliest stages on this occasion too. I deeply resent this unnecessary and inhumane hassle at this point in time. I would certainly not have expected it from you)."

5.33 The above extract was couched in general terms by the claimant. However, it is clear that the complainant raised the question of "**Equality** and **Sexist** issues" (her emphasises). I note that she states that the issues related to "both in your personal dealings with me" and the re-organisation of work. It seems to me that, while the phrase I quoted is not specific it does allege **equality** and **sexist** issues not related to the organisation of work.

5.34 The Regional Manager submits that the complainant made no accusations of offensive language to the Personnel Officer when she meet her in September, 1995. There no evidence before me that the Regional Manager has direct knowledge of this conversation. However, when I raised this matter with the claimant her response, as contained in a document received in 19 December, 1996, was that this conversation came about because she rang the Personnel Officer regarding a long standing transfer application from her.

5.35 On the evidence available to me, as highlighted in the preceding four paragraphs, I am satisfied that the

complainant was not silent in the relation to her allegations of offensive remarks in the period highlighted by the Regional Manager. Having regard to the fact that the complainant had a difficult pregnancy, together with difficulties with her work duties, and bearing in mind that in the course of the period in question she had periods of annual leave and maternity leave, I would not place any great relevance that she was not more specific in relation to allegations of sexist/abuse remarks until October 1995.

**5.36** In the course of the hearing in May, 1998 I put the various offensive remarks allegedly made by the Regional Manager to him. He was adamant that he did not direct any offensive remarks to the claimant. In relation to the remark "*pushing out the child*" he opined that this remark was open to a number of interpretation e.g. "*pushing out a pram*". I must state that I found it odd that he should offer an interpretation of a remark which he maintains he never directed at the claimant.

**5.37** I note that on 9 October 1995 a meeting took place between the Regional Manager and the claimant, and that a member of the staff attended at the claimant's request; at that time this individual was member of the national executive of the complainant's union. I consider that the following extract from a statement made by him, which he confirmed at the hearing on 13 May 1998, wherein he makes reference to the October meeting is relevant to the matter before me :-

*"He stated that she should keep it cool and that she should stand in a bucket of water. He said he could not inflict this women on someone else. ....I then asked him had he said like all women you jump to conclusions and pushing out the child would quieten her*

*down. He replied big deal."*

In a statement subsequent to the May, 1998 hearing the Regional Manager states that the individual who accompanied her at the meeting encouraged and prompted her to make complaints about him and that this individual attended the meeting in a personal capacity. I also note that the Regional Manager states that there are some factual errors in this person's statement.

**5.38** I note that the Regional Manager in his statement does not take issue that this person put it him that he had said to the claimant that "*pushing out the child would quieten her down*" and that his response was "*big deal*". I place no relevance on whether or not this person attended the meeting in a personal capacity or as a member of the union.

I note that the Regional Manager's evidence is that the accusations of obscene remarks first surfaced in October, 1995. In my opinion his response of "*big deal*" when confronted with remarks, which he contends were never uttered by him, is not the reply which could be reasonably expected from a person who claims he never made them.

I must state here I find no evidence that rises doubts in my mind as to the accuracy of the content of quotation in the preceding paragraph from the person who accompanied the claimant at the meeting with the Regional Manager.

**5.39** When facts are in dispute it falls on an Equality Officer to consider the totality of the evidence available to him/her on the subject matter and then decide on the balance of probability which version is more likely to be the most accurate.

I have given careful consideration to all the evidence available to me on the issue of offensive remarks and while I am satisfied that there are shortcomings in the cases presented by both parties to the case, it is my believe that the Regional Manager did direct offensive/abuse remarks at the claimant. I therefore find that the claimant was subjected to sexual harassment and that the Department is liable for same.

**5.40** The claimant's final complaint is that **the Personnel Officer adopted unacceptable position in relation to her complaints of sexually objectionable and discriminatory remarks.** The complaint here has its origins in a telephone conversation that the claimant had on the 6th November, 1995 with the Personnel Officer. I note that the Personnel Officer maintains that she *"responded in an informal way to an exploratory conversation about a series of grievances which Ms ..... articulated about her management"*. While I accept that the conversation was informal in nature the reality is that in the course of it the claimant alleged that a senior official directed objectionable remarks of a sexual nature to her e.g. *'pushing out the child would quieten you down'*. It seems to me, having regard to the fact that this officer was the Personnel Officer and that she would have or she should have realised that the remarks allegedly made by a senior official, if they were true, could be regarded by a recipient as objectionable and in those circumstances they could amount to sexual harassment.

**5.41** Notwithstanding that I have already found that the alleged remarks were directed at the claimant by the Regional Manager and that they constituted unlawful discrimination by Department I consider that the complaint here raises the

important question of an employer's responsibilities in relation to allegations of sexual harassment.

I note that the Labour Court in its determination in DEE1092 (an employer and an employee) stated that the Court

*"will take into account steps taken by employers to eliminate and prevent sexual harassment in the work place."*

The determination goes on to state:

*"Whilst accepting that an employer cannot guarantee total prevention of harassment, the Court will look for and take note of what steps have been taken. The adoption of a Code of Practice, the adoption of a policy statement on the prevention of sexual harassment, the existence of guidelines as to how all staff should behave, and the establishment of clear grievance procedures, all constitute the kind of 'reasonable steps' which employers should adopt and which will be accepted by the Court as evidence of the employer's bona fides in this type of dispute. Clearly, information about steps must be widely circulated in the place of work and information on the Employer's attitude to acts of sexual harassment made available to all staff."*

**5.42** I note that the respondent submits that there are in place "Guidelines for dealing with sexual harassment" and that every serving officer of the Department was issued a copy of them in April, 1991. I further note the employer maintains that posters on sexual harassment were issued to every office of the Department for display. I note from a

document, presented at the second hearing, that the Department of Finance distributed posters on sexual harassment on 18 September, 1995 to all Departments, with a request that they be displayed as widely as possible.

The complainant states that she never received a copy of the guidelines and that she never saw a poster on the subject of sexual harassment on display in her building. I accept that the claimant either did not receive the guidelines or alternatively if they were issued to her she has no recollection of receiving them. I note that if there was a poster on display in her building it went on display sometime after 18 September, 1995.

**5.43** I note that the guidelines and code of practices in relation to sexual harassment are not covered by statute, however, in my view this does not diminish an employer's obligation in this area. It seems to me that the value of "guidelines" are limited if all employees are not in receipt of them and if they are not periodically re-circulated. In my opinion there is an onus on an employer, regardless of whether or not guidelines/procedures are in place, not to ignore an allegation of sexual harassment even if the allegation is not a formal complaint.

**5.44** The question I must address and answer here is whether or not the Personnel Officer took "reasonable steps" on foot of her knowledge of alleged obscene remarks by an officer of the Department to another officer of a lower grade. The Personnel Officer's response to the claimant's various complaints was to refer her to the grievance procedures as a possible way to resolve the grievances.

**5.45** I note that the Personnel Officer despite being 'most

*conscious of the formal guidelines in relation to Sexual harassment and the rights of all parties to any dispute to be heard'* did not on the occasion of the telephone conversation of 6 November, 1995 or in her minute of 12 January, 1996 to the claimant, point to the existence of these particular guidelines and procedures. The Personnel Officer's minute was in response to an E mail of 4 December 1995 from the claimant in which she sought the official personnel line *inter alia* on "*Does Personnel advocate condoning comments about child birth and pregnancy as functioning as a punitive measure to 'quieten' women*".

It is my opinion that the Personnel Officer did not take "reasonable steps" in relation to a possible case of sexual harassment.

**5.46** In addition to her complainants against the Personnel Officer the claimant also complains about the Regional Director's attitude in this matter. I note that when the claimant outlined briefly her position to him, he supported her application to move to a new area of work. I recognise that the Regional Director saw this move as a possible resolution of the difficulties. I further note that the complainant maintains that she acquainted the Regional Director on 9 October, 1995 about the alleged obscene remarks from the Regional Manager. At the second hearing held, in relation to this dispute, the Regional Director stated that he had some recollection of remarks being raised but at that time the complainant's placement in the new area was the focus of his attention.

**5.47** I recognise the Regional Director got actively involved in the matter of her placement in a new area and that he offered mediation. However, in my opinion he was remiss in



that he ignored an allegation that offensive remarks of a sexist nature were directed at a member of staff by a senior official of his staff.

**5.48** Having regard to the views I have expressed in relation to the complainant's claim that the Personnel Officer adopted unacceptable position in relation to her complaints of sexually objectionable and discriminatory remarks I find that her claim is justified.

**5.49** In summary, I found on the evidence available to me that

(1) the claimant returned to the position she held before she went on Maternity Leave.

(2) a prima facie case of unlawful discrimination does not exist in relation her promotion recommendation.

(3) the claimant was subjected to sexual harassment and that the Department is liable for same.

(4) the Personnel Officer adopted an unacceptable position in relation to the claimant's complaints of sexually objectionable and discriminatory remarks.

**5.50** I have found as summarised above in favour of the claimant under headings (3) and (4). I am satisfied that they do not constitute separate counts of unlawful discrimination. In my opinion (4) follows from (3) and my finding under these headings should be regarded as one count of unlawful discrimination. However, when I address the question of remedy I will take into account the views of the Labour Court as expressed in its determination DEE1092 referred to at paragraph 5.41.

## **6     Recommendation**

**6.1** In view of my conclusions in the proceedings paragraphs, I find that the claimant was discriminated against in terms of Section 2(a) of the Employment Equality Act, 1977 and that the discrimination constituted a breach by the respondent of Section 3 of the Act.

I recommend that the respondent pay the claimant the sum of £6,000 in compensation for the distress suffered by her as a result of the discrimination.

I also recommend that the respondent's Personnel Branch

ensures that the posters, referred to in the course of this investigation, are actually on display in the various Offices of the Department. I further recommend that the respondent should include the Guidelines for dealing with sexual Harassment in any Personnel Information pack issued to its employees and that the said guidelines be available on a staff information programme, if one exists, on the respondent's computer system.

Jim Clerkin,  
Equality Officer.  
24th February, 1999.