



EMPLOYMENT TRIBUNALS

Claimant

Mr Simon Strafford

v

Respondent

Syneos Health Commercial Europe
Limited

Heard at: Cambridge (by CVP)

On: 6 – 10 March 2023

Before: Employment Judge Tynan

Members: Mrs W Smith and Mr S Bury

Appearances:

For the Claimant: In person, supported by Mrs Strafford

For the Respondent: Mr M Humphreys, Counsel

JUDGMENT having been sent to the parties on 21 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant's claim was presented to the Employment Tribunals on 10 June 2021, following ACAS Early Conciliation between 7 and 10 June 2021. His complaints that he was discriminated against by reason of his disability are pursued under §.13, 15, 20 and 21 of the Equality Act 2010 ("EqA 2010"). The s.13 complaint was originally additionally pursued as a complaint of direct sex discrimination but that complaint is no longer pursued by the Claimant.
2. There was an agreed List of Issues. It is common ground between the parties that the Claimant was, at the relevant times, disabled by reason of anxiety, depression and ADHD. The hearing was held remotely by CVP as an adjustment for the Claimant. We additionally ensured that there were regular breaks in the proceedings and curtailed each sitting day to enable the Claimant to manage any symptoms of his disability.
3. We observe that the Tribunal must necessarily adjudicate the claim on the basis of how it has been brought and pursued rather than with regard to how the Claimant might have pursued his claim had he been legally advised in the matter. Whilst we are not obliged to slavishly adhere to the

List of Issues, in this case we are satisfied, having reviewed both the Claim Form and the record of the Case Management Preliminary Hearing on 15 March 2022, that the List of Issues accurately captures and reflects the entirety of the complaints raised by the Claimant which fall to be determined by the Tribunal. The List of Issues has provided a route road map to the Tribunal in reaching its findings and coming to a Judgment.

4. We also make the following preliminary observations:
 - a. Firstly, notwithstanding that the Respondent's knowledge of the Claimant's disability is a critical issue in this case - something we highlighted to the Claimant and Mrs Strafford, and Mr Humphreys also flagged very clearly a number of times during the hearing, as well as devoting quite an amount of cross examination time to - Mrs Strafford, who took the lead in cross examining the Respondent's witnesses, essentially failed to ask them any questions regarding their knowledge of the Claimant's disability, including why they might reasonably have been expected to know that he was disabled. The Respondent's witnesses' assertions that they were unaware of the Claimant's disability effectively went unchallenged, notwithstanding the Claimant's positive assertions of knowledge on their part.
 - b. Secondly, with the exception of Mr Khetani, the Respondent's witnesses were not asked questions regarding their awareness and experience of, or training in, diversity and inclusion. None of them were asked about their experiences of and attitudes towards workers with disabilities, particularly workers with mental health issues, including for example whether they regard such workers as less productive, more difficult to manage and/or more prone to sickness absence.
 - c. Thirdly, other critical issues in the List of Issues were not explored in cross examination, for example, the 'something' arising in consequence of the Claimant's disability that allegedly caused him to be treated unfavourably, the claimed PCPs and the claimed disadvantages potentially arising from them, or the adjustments that might reasonably have been made to address any disadvantages. Instead, the claim was effectively pursued as an unfair dismissal complaint notwithstanding the Respondent's lack of qualifying service in that regard and notwithstanding our reminders to the Claimant and Mrs Strafford that the Tribunal's focus was whether the Claimant had been discriminated against, rather than whether he had been treated unfairly. That is not intended as a criticism of the Claimant or Mrs Strafford, since it is common for unrepresented Claimants to focus on issues of fairness as they endeavour to navigate what is a difficult and technical area of the Law. The Straffords have an instinctive sense that the Claimant suffered an injustice, but in presenting the Claimant's case they have frequently strayed away from the critical issues recorded in the List of Issues, if indeed they have truly grasped the significance of those issues.
5. In terms of evidence in this case, we heard from the Claimant himself who

had filed a 64-page witness statement. We heard from four witnesses on behalf of the Respondent; they were:

- Sanjay Khetani, at the relevant time Regional Sales Manager for the South;
- Maria Gabriella Baldini, Recruitment Account Manager in Deployment Solutions;
- Kerry Bambrick-Sattar, Senior Director European Commercial Staffing and TSP; and
- Ewan Cuthbertson, Head of Deployment Solutions.

Each of them had made written statements.

6. There was a single Hearing Bundle comprising of 798 pages of documents. We heard about possible delays and disagreements regarding the contents of the Bundle and understand that there may have been frustrations on both sides which have added to the inevitable stress of the proceedings.
7. We return then to the question of the Respondent's knowledge of the Claimant's disability. Knowledge or otherwise of disability is a key issue in disability discrimination complaints; §.15 and 20 / 21 EqA 2010 are concerned with what knowledge is held within, and accordingly is to be imputed, across the employer's organisation. By contrast, where the employee's complaint is that they have been directly discriminated against contrary to s.13 EqA 2010, the Tribunal is concerned with the state of mind, and therefore the state of knowledge, of the alleged discriminator: in the case of the Claimant's s.13 complaint, that person is Ms Baldini. Knowledge of the Claimant's disability is not to be imputed to her, unless perhaps in turning a blind eye to his circumstances she betrayed a generally discriminatory mind set.
8. In Nagarajan v London Regional Transport [2000] 1 A.C. 501, Lord Nicholls, when giving Judgment in the House of Lords in an appeal in a race discrimination case under the Race Relations Act 1976, said,

"In every case it is necessary to enquire why the complainant had received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator"
9. Nagarajan was referred to subsequently by the Supreme Court, in R(E) v Governing Body of JFS [SCE 2010], when Baroness Hale observed,

"The distinction between the two types of why question is plain enough. One is what has caused the treatment in question and one is its motive or purpose. The former is important and the latter is not."
10. As regards the s.13 EqA 2010 complaint therefore, this Tribunal is concerned with the reasons why Ms Baldini acted as she did in relation to the Claimant. Did she mark him down following an initial screening

interview for another position because he was disabled?

11. In terms of the specific complaints we have to determine, the Tribunal is concerned with the Respondent's state of knowledge as follows:

14.1 As regards issue (B), which is the first of the Claimant's two s.20/21 EqA 2010 complaints, we are focused upon the period immediately following Mrs Strafford's cancer diagnosis, when the Claimant asserts that adjustments should have been made for him;

14.2 As regards issue (C), which is the second of the s.20/21 complaints, we are focused upon the Claimant's probation period, when the Claimant again asserts that adjustments should have been made for him. His probation period was notionally extended until 3 December 2020, though in fact it only continued until 17 November 2020 when Mr Khetani signed off the Claimant's probation period, even if there was a delay in communicating this fact to the Claimant;

14.3 As regards issues (J)(a) and (b), the allegedly unfavourable treatment complained of under s.15 occurred on 15 October 2020, being the date of the Claimant's probation review meeting;

14.4 As regards issue (M), the date of the allegedly less favourable treatment relied upon by the Claimant is 8 December 2020.

In summary, therefore, in terms of the s.15 and s.20/21 complaints the question is whether the Respondent knew, or could reasonably have been expected to know, that the Claimant was disabled on or before 17 November 2020 (or at the latest, 3 December 2020) and, in terms of the s.13 complaint whether Ms Baldini knew by 8 December 2020 that the Claimant was disabled. In paragraphs 2.1 c) to m) of his witness statement, the Claimant lists what he says were relevant disclosures of information to the Respondent such as to have put it on notice of his disability.

Findings of Fact and Conclusions as to the Respondent's Knowledge of the Claimant's Disability

12. Throughout 2020, the Claimant's wife's health had given increasing cause for concern. By the summer, her symptoms had changed and her health had declined. She had an appointment with her GP at 9.30am on 13 August 2020. Within two hours she was told that she needed to go to hospital immediately. Blood tests revealed that she had advanced cancer and required immediate specialist medical intervention. She began a course of chemotherapy almost immediately. As the Claimant understandably says in his witness statement,

"Our life had now changed forever and was thrown completely upside down."

13. A great many people recover from, or live successfully with, cancer. But whatever the prognosis, there can be no doubting the profound impact that

such a diagnosis will have, not only upon the person concerned but also upon their family and friends. Mrs Strafford's diagnosis could not have come at a worse time since the world was still in the grip of the Coronavirus pandemic. It would be a further four months before the first Covid vaccines would be administered in the UK.

14. The further context, then unknown to the Respondent, was that the Claimant has ADHD, a condition that he states shaped his early years, albeit that was only formally diagnosed in 2018 when he was prescribed Lisdexamfetamine. ADHD affects the brain's ability to control thoughts, emotions and behaviours. Those with ADHD, as with Autism, Asperger's Syndrome and other neuro-diverse conditions, are at increased risk of anxiety and depression. The Claimant refers in his witness statement to increased symptoms of anxiety and depression from his late teens. Many years later in adult life, the Claimant sought therapy, as a result of which he was recommended anti-anxiety medication. We note, according to the Claimant, that he did not tell his wife of his mental health issues during the first 13 years of their marriage. That reinforces the view we have separately come to as to the limits of the Claimant's natural inclination to share personal information about himself with others.
15. Although the Claimant had already booked 13 and 14 August 2020 as annual leave, he contacted Mr Khetani first thing on 14 August 2020 to share the devastating news about his wife. When he received an 'out of office' response from Mr Khetani, he forwarded his email to Graham Booth, the Regional Sales Manager for the North. He wrote,

"My wife got her blood test results back yesterday and rather ironically, we would have preferred a confirmed diagnosis of T2DM, instead she was told she has leukemia!!!

Devasted doesn't even come close to how we took the news.

Considering the challenges (which I won't bore you with) we have faced over the years we've married, this was not in the plan. Just when you think life has thrown what it can at us, it seems that it wasn't quite enough!!

We are waiting for further tests to get a staging, she started chemo last night, and is being monitored as her blood pressure is high due to her blood being loaded with WBCs.

At the moment I honestly don't know what to do, but I do need to let you know."

(page 166 of the Hearing Bundle)

16. If, in referring to challenges that he and his wife had faced over the years and / or to what life had thrown at them, the Claimant had in mind his own mental health issues and struggles, this was certainly not apparent on the face of the email or in a follow up email to Mr Booth sent at 9.07am the same day. Nor, in our judgement did his emails put the Respondent on enquiry. The only health issues alluded to concerned Mrs Strafford. Whilst neither email was lengthy, they included personal information regarding Mrs Strafford's diagnosis, including that she had commenced chemotherapy and had high blood pressure which was being monitored. To the extent the Claimant referred to himself, he spoke of his (and his

family's) devastation, that he did not know what to do and that he was in a daze. These were all natural and entirely understandable responses to the news, but which of themselves gave no indication to the Respondent that he had mental health issues, let alone mental impairments which were having a substantial and long-term and adverse impact on his ability to carry out day-to-day activities.

17. On receipt of the Claimant's email on 14 August 2020, Mr Booth immediately brought Mr Bambrick-Sattar and Ms Debbie McKeown, a Human Resources Business Partner, into copy, the latter presumably from an HR welfare perspective. Mr Bambrick-Sattar emailed the Claimant at 9.59am on 14 August with a supportive message in which he referred to his own family's experience of cancer. In that context he wrote,

"We share your anxiety"

This was plainly a reference to the worry and anxiety that result when a loved one falls ill. It was not, as the Claimant suggests in his witness statement, evidence that Mr Bambrick-Sattar knew he had an anxiety disorder and therefore was disabled.

18. Mr Bambrick-Sattar encouraged the Claimant to make use of the 'Employee Assistance Programme' and confirmed that he was immediately authorising that day and the following Monday, 17 August 2020 as compassionate leave. It is a small point, but we consider that Mr Bambrick-Sattar would have authorised paid sick leave if he had believed the Claimant to be unwell, whether by reason of a disabling condition or otherwise.
19. In personal message 'chats' with a colleague, Kate Hart, on 17 August 2020, the Claimant said it was an emotional roller coaster and that his anxiety was through the roof (page 181). Whilst the Claimant does not rely upon this private exchange of messages as affixing the Respondent with knowledge of his disability, it is consistent with his other language at the time, all of which denoted shock and worry, rather than the news having a specific adverse impact upon him by reason of anxiety, depression, ADHD or any other disabling condition.
20. We regard other personal message chats with Neil Holbeche, another colleague, in the same way. Indeed, when Mr Holbeche told the Claimant not to come back to work for at least two weeks, notwithstanding the Claimant told him,

"Underneath it's a fucking mess"

he went on to say to Mr Holbeche that he did not have sufficient annual leave to be able to take time off as suggested. The Claimant himself seemingly did not regard it as a personal sickness issue at the time, even though Mr Holbeche was encouraging him to see his GP.

21. The same day, 17 August 2020, the Claimant was in contact with Mr Khetani. In a message to Mr Khetani sent at 12.23pm he wrote,

“Hi Sanjay, this has hit us hard. Her diagnosis was not favourable as we hoped. It is more advanced so requires much stronger chemo. Additionally, having some mental health issues already, this has completely thrown me into a tail spin – I’m not in a good place. It would help if my compassionate leave can be extended. That’ll give me some time to tap into the Syneos benefits that are available, help my kids and naturally help my wife who right now is my single priority.” (page 139 of the Hearing Bundle)

The Claimant did not say whether any mental health issues were his or his wife’s, the nature of them or how long standing they were. The Claimant asserts that any reference by an employee to their mental health is sufficient to put their employer on enquiry. We do not accept that as a proposition. As we observed in the course of the Hearing, mental health is an intrinsic part of everyone’s general health, and along with their mental wellbeing, can and does fluctuate. In the experience of this Tribunal, mental health and mental wellbeing are now increasingly openly referred to and discussed in the workplace. In our judgment, everyday general discussions of health issues, including mental health, do not of themselves affix employers with knowledge of mental health impairments that qualify as disabilities under the Equality Act 2010 or necessarily put employers on enquiry. An employer must, of course, take a proactive approach. The question, in each case, is whether the facts and circumstances then known, disclosed or apparent ought reasonably to put the employer on further enquiry, bearing in mind in this regard that any impairment must have a substantial and adverse long-term effect on a person’s ability to undertake day-to-day activities before they will be considered to be disabled.

22. In our judgement, the Claimant’s message to Mr Khetani on 17 August 2020 can only reasonably be considered both in the context of Mrs Strafford’s news and the Claimant’ other messages with Mr Booth and Mr Bambrick-Sattar on 14 August 2020, into which Mr Khetani had been copied, and which together did not mean that the Respondent could reasonably be expected to know that the Claimant was disabled by reason of anxiety, depression, ADHD or otherwise. In our judgement, the Claimant’s messages merely indicated that the Claimant was in a state of understandable shock and distress, and struggling to come to terms with Mrs Strafford’s dreadful news.
23. The Claimant had further leave booked on 20 and 21 August 2020. He left a voice message for Mr Khetani on Monday 24 August 2020, albeit which Mr Khetani seems to have been unable to hear due to background noise and so he asked in a message to the Claimant that the Claimant call him. The Claimant responded a little later to say that he was on the telephone to Macmillan and that he then had a GP appointment.
24. In his witness statement, the Claimant states that he was receiving counselling from Macmillan. We find that he did not share that additional information with Mr Khetani. If, as the Claimant now states or implies, he discussed with Macmillan the specific impact that his wife’s diagnosis was having upon him as someone with anxiety, depression and ADHD, any such discussion remained within the privacy of the counselling interaction.

We find it was not shared with Mr Khetani or anyone else within the Respondent's management hierarchy, or its HR Team. From the Respondent's perspective, it was entirely to be expected that the Claimant might be in contact with Macmillan, given Mrs Strafford's cancer diagnosis. That contact with Macmillan did not indicate that the Claimant was disabled or, in our judgement, put the Respondent on further enquiry.

25. As regards the fact that the Claimant had a GP appointment, of itself that would not, in our judgement, put an employer on notice of a disability. In the context of our findings so far, nor was it an additional piece of information that ought reasonably to have put the Respondent on enquiry, even if it might have prompted some form of follow up in terms of the Claimant's welfare or even simply warranted a basic expression of concern or empathy from Mr Khetani. In any event, even if it could be said that further enquiry was warranted, the Fit Note issued by the Claimant's GP on 24 August 2020 (page 594 of the Hearing Bundle) addressed any questions that might otherwise have reasonably arisen in the Respondent's mind.
26. There are five key points to note in relation to Fit Note. Firstly, it certifies the reason for unfitness as being stress and an adjustment reaction; it does not refer to any of the three mental impairments that mean the Claimant was disabled within the meaning of EqA 2010. Secondly, the Claimant was certified for just three days; such a short period of incapacity would not obviously have put the Respondent on notice of an impairment with potentially substantial and long term adverse effects. Thirdly, the GP's additional comments in the Fit Note reinforce that the Claimant's brief incapacity was fundamentally an understandable and entirely unexceptional reaction to Mrs Strafford's cancer diagnosis. Fourthly, the GP specifically referred to the Claimant having a fractured toe, but did not identify any other relevant medical conditions or considerations. Fifthly, the GP struck through the boxes on the Fit Note that might otherwise have been completed if there was a recommended need for adjustments. This was at a time when the Claimant now asserts that the duty to make adjustments had been triggered; his GP, who would have had a good understanding of the Claimant's medical history and current situation, either from his direct knowledge of the Claimant or from access to his patient records, thought otherwise.
27. The Claimant alleges that he had a detailed discussion with Mr Khetani on the morning of 24 August 2020. We have re-read what is said by the Claimant at paragraph 4.1b of his witness statement with a view to understanding his specific evidence as to what was allegedly discussed with Mr Khetani on 24 August 2020, specifically whether the words, "*where I told him*", is referring to their telephone conversation that day or to his message to Mr Khetani on 17 August 2020 already referred to (page 1339 of the Hearing Bundle). We conclude that in this part of his witness statement the Claimant is referring to the latter and, accordingly, that at its highest his evidence is that he alluded to this message when he spoke to Mr Khetani on 24 August 2020. That the Claimant regards his message of 17 August 2020 as providing a detailed account of his pre-existing mental health issues reflects his otherwise significant reticence about sharing information about himself with others, including as we have already noted

for at least 13 years with his wife. The message of 17 August 2020 does not include detail of pre-existing mental health issues. We find that the Claimant did not share any further details with Mr Khetani during any telephone call they had on 24 August 2020. We are supported in that conclusion by the dearth of information in the Claimant's witness statement and in his evidence at Tribunal as to what was allegedly discussed between them, as well as Mrs Strafford's failure to cross-examine Mr Khetani on the matter. We refer to paragraph 4.3 a) of the Claimant's witness statement. It is notable that in a detailed 64-page statement, there is no meaningful evidence on this critical issue, instead merely a single line assertion of a disclosure. We further note in this regard the disparity between paragraph 4.3 b) of the Claimant's witness statement and his message to Mr Khetani in which he neither informed Mr Khetani that he was booked to have therapy, or that the GP appointment was to discuss an increase of the dosage of his anti-anxiety medication. The Claimant's GP records for that day are not available in the Hearing Bundle, but we would have expected the Fit Note already referred to, to have identified the Claimant's anxiety disorder if that was the focus, or even just one of the focuses, of the consultation that day and the Claimant's medication dosage was adjusted as a result. It is curious that a fractured toe was worthy of note, but not any anxiety disorder.

28. In the course of his closing submissions, Mr Humphreys made various submissions regarding the Claimant's credibility. We consider there to be some weight in what he said. Whilst we certainly do not suggest that the Claimant has set out to lie or to mislead this Tribunal, the fact he was prepared to accuse Mr Khetani, Ms Baldini and Ms Bambrick-Sattar respectively of fraud, lying and collusion, each very serious allegations, without proper grounds or evidence to do so, and to maintain those allegation even when it should have been obvious to him in the course of cross examination, as it was to the Tribunal, that they could not in fact be sustained, inevitably means that we are unable to accept the Claimant's evidence uncritically. As to what was allegedly disclosed and discussed with Mr Khetani on 24 August 2020, we reject the Claimant's evidence, such as it is. But we also reject without hesitation any suggestion that Mr Khetani was guilty of fraud, that Ms Baldini lied and that Ms Bambrick-Sattar engaged in collusion.
29. The next alleged disclosure relied upon was on 2 September 2020. It is necessary to have regard to events on 1 September 2020 for the full context. Mr Khetani had a relatively informal return to work discussion with the Claimant on 1 September 2020. His notes of their discussion came to light by chance after disclosure had taken place in these proceedings. The notes are not of the highest quality, having been scribbled on a lined notebook or pad. However, we have no reservations as to their provenance. It is irrelevant, as Mrs Strafford began to suggest during her cross-examination of Mr Khetani, that they may not have fully, or entirely accurately, captured her medical situation. What we think is relevant is that they are focused entirely upon Mrs Strafford's situation. There is no reference in the notes to any health issues affecting the Claimant, the only allusion to his health being a footnote to the effect that his Fit Note may not have been signed. The notes evidence to us that upon the Claimant's return to work on 1 September 2020, the situation as

described by him since 14 August 2020, and reasonably understood by the Respondent, was unchanged.

30. When, on 2 September 2020, the Claimant wrote in a message to Mr Khetani,

“Simon, having a bad morning. I’ll be on the phone to Macmillan” (page 139 of the Hearing Bundle)

he plainly was not disclosing to Mr Khetani that he was disabled. In our judgement, neither of themselves nor in combination with what he had previously said, including the day before to Mr Khetani on his return to work, were Claimant’s comments such as to reasonably put the Respondent on enquiry.

31. The Claimant alleges that he raised his health issues with Mr Khetani and Mr Booth during a probationary review meeting on 15 October 2020. He deals with the meeting in section 6.6 of his witness statement. As with his alleged disclosure on 24 August 2020, the absence of any specific detail in his witness statement is striking. Once again, there is merely an assertion of a disclosure, namely,

“Note, this was by now at least the fourth time I had disclosed my mental health directly to Mr Khetani”.

Noting the absence of any further specific testimony to support the assertion, we have weighed in the balance that the Respondent itself has no notes of the meeting, assuming any were kept by Mr Booth. On Mr Khetani’s account, the Claimant became emotional during the meeting, but said this was with reference to his difficult family circumstances. That is, of course, entirely consistent with what we have already found he had been expressing to Mr Khetani and to others over the previous few weeks. It would have been surprising if he had not shown emotion at work, given the pressure and stress he was then under. In our judgement, his display of emotion in the particular circumstances did not put the Respondent on enquiry.

32. Mr Khetani sent a short email to Ms McKeown early the following day confirming his meeting with the Claimant. The email is at page 218 of the Hearing Bundle. Mr Khetani also wrote a detailed letter to the Claimant which confirmed the outcome of their discussion (pages 220 – 221 of the Hearing Bundle). The email refers to the Claimant’s recent family news but nothing more. Given that Mr Khetani was receiving HR input to his management of the situation, this would have been an obvious moment for Mr Khetani to have noted any health issues that had such been raised or alluded to by the Claimant in the course of their discussion. Mr Khetani’s letter to the Claimant makes no mention of health issues impacting the Claimant, let alone an underlying condition. Once again, the focus is on the Claimant’s difficult family situation and the objectives against which the Claimant would be measured during his extended probation period.

33. In both the letter of 16 October 2020 and his covering email to the Claimant, Mr Khetani said they would discuss the objectives weekly for

what support and coaching the Claimant needed. If the Claimant believed that he was disadvantaged by reason of his disability, this would have been the obvious time for him to raise the matter and for Mr Khetani to have documented any discussions and agreed adjustments.

34. We refer to Mr Khetani's concluding comments in his letter of 16 October 2020,

"I acknowledge that the circumstances of your starting in your new role have been unique [this, we find, being a reference to the Coronavirus pandemic] and I would like to thank you for the progress you have made to date. I have every confidence that you will achieve the objectives for the job role over the coming weeks." (page 221 of the Hearing Bundle)

Those comments, particularly Mr Khetani's expression of confidence in the Claimant, do not indicate someone who was reacting negatively to a recent disclosure of a disability (or to his own assessment that the Claimant may be disabled). Nor do they indicate he wanted to secure the Claimant's removal from the business because, as Mrs Strafford belatedly asserted in closing (but failed to explore in her cross examination of Mr Khetani), he believed that the Claimant may become difficult to manage or a burden on the business.

35. There was every reasonable opportunity for the Claimant to highlight to Mr Khetani, alternatively to Mr Booth, Mr Bambrick-Sattar or Ms McKeown if he felt the letter was an inaccurate or incomplete record of what had been discussed on 15 October 2020, specifically that it had failed to capture a significant discussion regarding the Claimant's mental health issues. The Claimant's window of opportunity to comment on the letter was not a narrow one. Mr Khetani initially dated the letter incorrectly, something that was picked up some weeks later by Ms McKeown. Even when Mr Khetani re-issued the letter to the Claimant on 10 November 2020, with the benefit of a further four weeks of reflection, the Claimant did not question its accuracy or suggest it was incomplete.
36. We find that the Claimant did not disclose his disabilities to Mr Khetani or Mr Booth on 15 October 2020, nor did he say or do anything during the meeting that of itself or in combination with any other facts or circumstances put the Respondent on further enquiry. The identified performance concerns were not such, in our judgement, to reasonably cause the Respondent to re-evaluate their understanding of the situation, or make enquiries of the Claimant's health.
37. The Claimant contacted Emma Surrey in UK HR Support Services on 16 October 2020, asking what the process was to place on file a confidential, unofficial complaint,

"...about the behaviour of my manager with regards to my mental health and its relationship to my performance" (pages 216 – 217).

In our judgement, that indicated that a manager's conduct within the work place was potentially adversely impacting their line report's wellbeing and performance. It was not a disclosure of a disability, nor in our judgement,

did it put the Respondent on immediate enquiry. In any event, the matter was not within Ms Surrey's area of responsibility. In so far as it highlighted a relationship conflict and potential welfare issue, we are satisfied that Ms Surrey handled the matter correctly by asking the Claimant to liaise with Ms McKeown. 12 days elapsed before the Claimant took the matter further with Ms McKeown.

38. In his list of alleged disclosures, the Claimant refers to a telephone call with Ms McKeown on 28 October 2020. There is no evidence regarding any call in the Claimant's witness statement that we can identify. In particular, we have re-read section 6.8 of his statement. In the absence of any oral or documentary evidence before the Tribunal, there are simply no materials from which we might make any specific finding in that regard.
39. We refer to the emails that passed between the Claimant and Ms McKeown between 28 October and 11 November 2020 at pages 209 – 216 of the Hearing Bundle. The Claimant's expressed concerns in those emails were said to relate solely to the meeting of 15 October 2020. At Tribunal, as with other elements of the claim, this issue was presented and cross examined on the basis that the Claimant had been treated unfairly. There is no reference to any health issues affecting him in the Claimant's initial contact with Ms McKeown, or any reference to reasonable adjustments and nothing at all as regards the Respondent's management of the period immediately following Mrs Strafford's cancer diagnosis.
40. Within an hour of his first email to Ms McKeown, the Claimant had received a friendly, supportive and informative response from Ms McKeown which concluded,

"I am happy to talk this through with you to better understand your concerns and what you would like to achieve. Let me know if you would like to do this and I can set up a call."

The Claimant responded positively a few days later and further emails ensued in which they sought to identify a mutually convenient time to talk.

41. However, on 5 November 2020, entirely unprompted, the Claimant wrote,

"Hi Debbie,

I have reflected on the situation and for now I am going to concentrate on passing my probation because that is my priority. Thank you for your help to date.

Kind regards..." (page 211 of the Hearing Bundle),

42. To her credit, Ms McKeown did not simply let the matter rest there. She wrote in response,

"Of course it is your decision but I would advise you to raise any concerns you have with Sanjay if you can. It is difficult to retrospectively address issues and I am concerned that you believe they will influence whether you pass your probation period, or not."

43. In his initial lengthy response on 5 November 2020, the Claimant referred to his wife's health situation. He went on to refer to the extension of his probation period and complained that account had not been taken of the

"extenuating circumstances of my wife's diagnosis". (page 211 of the Hearing Bundle)

Whilst he referred to the diagnosis as being devastating to himself and their children, there was no reference to his own health situation or that it had been triggered by his wife's news. Once again, the Respondent was not on enquiry in terms of any disability.

44. Ms McKeown continued to be friendly and supportive in her response on 11 November 2020. She again suggested a call and this prompted another reasonably lengthy response from the Claimant. We are concerned with the first substantive paragraph of that response, at page 209 of the Hearing Bundle. The Claimant wrote,

"I am happy to talk to you about this as I do feel that the impact this has had on my pre-existing mental health challenges (which Sanjay was made aware of on 24 August) has been quite considerable."

We have already set out why we conclude that he did not make Mr Khetani aware of his pre-existing mental health challenges on 24 August 2020.

45. Once again, Ms McKeown responded promptly to the Claimant, asking him if he was available for a call and proposing that the call take place two days later, a Friday, alternatively the following Monday. The Claimant expressed a preference that they speak on the Friday. There is no further evidence available to us in the Hearing Bundle to indicate whether they did in fact speak and if so, what the outcome of any discussion was. Ms McKeown did not give evidence to the Tribunal. The Claimant's witness statement is entirely silent on the matter.

46. The Claimant's email of 11 November 2020 did not disclose that he was disabled for the purposes of the Equality Act 2010. But, in our judgement, it did put the Respondent on further enquiry. Having by then disclosed existing mental health challenges, notwithstanding his ongoing natural reticence to disclose or discuss personal health related issues in any detail with others, we conclude that the Claimant would have disclosed further details of his long standing health issues to Ms McKeown provided that any conversation was handled in a sensitive and supportive manner (as we consider it would have been by Ms McKeown). The Respondent has ready access to an established Occupational Health Provider for Occupational Health advice and support. Indeed, we were given to understand in the course of the Claimant's evidence that employees may even be able to self-refer. The emails we have seen from Ms McKeown evidence that she is an experienced and proactive HR professional. We conclude that had she made contact with the Claimant on Friday 13 November 2020, or early the following week, she would have referred him for an Occupational Health Assessment. That process would have taken a little time because she would, of course, have needed to secure the

Claimant's informed consent and completed a detailed referral. It is also quite possible that advice and input would have need to be sought from the Claimant's GP.

47. We do not lose sight of the fact that the country entered a second national lockdown on 5 November 2020, even if people were then a little more familiar with 'the drill'. This was a well-resourced employer operating in the medical and life sciences sectors. Whilst we believe that many employers would not have been in receipt of Occupational Health support and guidance until 2021, given the knowledge, experience and resources of this particular employer, Ms McKeown's pro-active approach and that the Claimant is likely to have been prioritised given Mrs Strafford's situation, we conclude that the Respondent would have been in possession of an Occupational Health Assessment and any other relevant medical information, together with more comprehensive information from the Claimant himself regarding his situation, within four weeks of 13 November 2020, namely by 11 December 2020 and that by this date the Respondent ought reasonably to have made an informed assessment, and therefore known, that the Claimant was disabled. That is after the dates of the various matters about which the Claimant makes complaint in his section 15 and 20/21 EqA 2010 complaints.
48. We turn then to the question of Ms Baldini's knowledge or otherwise of the Claimant's disability. She was not part of the Respondent's HR Team as the Respondent's recruitment function operates separately to it. Ms Baldini is not an HR professional and we do not attribute to her an understanding or awareness of HR issues that she does not possess. The Claimant's complaints concern her assessment of him following an initial screening interview conducted by her on 8 December 2020. Although she produced a more detailed report on the Claimant and the other candidates at a later date, her initial assessment of them, which resulted in the Claimant's application not being forward to the client for consideration, was undertaken on 8 December 2020. In so far as the Claimant complains that he was marked down by Ms Baldini, we must first determine whether she knew he was disabled on that date, such that his disability may have influenced her thinking and assessment of him. Her assessment, which was referred to extensively in the course of the Hearing, is confirmed in an email sent by Ms Baldini at 8.04pm on 8 December 2020 (page 273 of the Hearing Bundle). Notwithstanding the Claimant had, by then, begun to open up a little more than before regarding his health situation, this had only been in confidence to Ms McKeown rather than to others. We have explained already why we reject the Claimant's allegation that Ms Baldini lied and the impact in terms of the Claimant's credibility. Ms Baldini was an honest and credible witness. We accept her evidence that the Claimant did not disclose to her on 8 December 2020 that he was disabled, or provide information to her that led her to conclude that he was or might be disabled.
49. In paragraph 7.8.1 of his witness statement, the Claimant does not make a positive case in relation to Ms Baldini. His limited direct evidence is that he told Ms Baldini on 8 December 2020 that he was in distress. He infers that Mr Khetani made Ms Baldini aware of his disability. For the reasons already set out, Mr Khetani was not in fact then aware that the Claimant

was disabled and, accordingly cannot have been the source of any knowledge on the part of Ms Baldini. We note that there was no disclosure of health issues in the Claimant's email exchanges with Ms Baldini prior to the 8 December 2020 interview and nothing in the Claimant's job application or in the subsequently documented record of his interview responses that indicated any health issues on his part. To the extent there is any material evidence on the issue, we essentially only have Ms Baldini's evidence at paragraph 12 of her witness statement. Whilst there is a potential dispute between the parties as to how the issue of Mrs Strafford's ill health came to be discussed on 8 December 2020, i.e. whether the Claimant immediately began to talk about it or it arose more naturally in conversation, we accept Ms Baldini's evidence that the Claimant merely spoke about the stress he was then under as a result of his personal circumstances, and that those circumstances were described by the Claimant, and understood by Ms Baldini, as relating to his wife's ill health. We are satisfied that there was no indication and certainly that Ms Baldini did not understand that the stress being referred to was suggestive of a disability, or evidence of a stress reaction linked to an underlying disability. There was, we find, certainly no mention to Ms Baldini of anxiety, depression, ADHD or any other mental health impairment, about which she remained in the dark. In our judgement, Ms Baldini did not know, believe, suspect, or have reason to believe or suspect, that the Claimant was disabled. Whatever her reasons for assessing the Claimant as she did in terms of his candidacy, and however hotly contested her assessment may be, it was nothing whatever to do with the fact that the Claimant was disabled as Ms Baldini was entirely ignorant of his disability.

50. Given our various findings and conclusions, the Respondent did not know and, in the case of his s.15 and s.20/21 EqA 2010 complaints, could not reasonably be expected to have known, that the Claimant was disabled during the relevant period of time to which his complaints relate. In the circumstances his claim shall be dismissed in its entirety.

Employment Judge Tynan
Date: 25.04.2025

Judgment sent to the parties on
26.04.2023

GDJ
For the Tribunal office