

ESG in 3D: Social

The Starling Bank disability discrimination decision

11 November 2022

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Digest:

- Starling Bank Limited and their General Counsel have both been found guilty of disability discrimination.
- Conduct rules enforced by the FCA, PRA and SRA could mean that the decision of the Employment Tribunal is not the end of proceedings.
- The FCA, PRA and SRA have previously published extensively on the importance of EDI as features of firms' culture. Senior Managers' approach to EDI is a material factor for firms and regulators to consider when assessing their fitness and propriety. SRA Principle 6 requires solicitors to act in a way that encourages EDI.

Source/Context:

In September this year, the Employment Tribunals published its Judgment that Miss Raja, a former Deputy Company Secretary, was treated unfavourably and subjected to a detriment because she is disabled. Miss Raja was dismissed on the grounds of her performance.

The claim was made against both Starling Bank Limited and Miss Raja's manager, Mr Newman, a solicitor and Starling's Chief Administrative Officer, GC and Company Secretary. According to the Financial Services Register, he has been the bank's SMF24 (Chief Operations Officer) since 13 January 2020.

The Employment Tribunal relied on several factors to uphold the complaint of unfavourable treatment. These included:

- Mr Newman's attitude to ill health and working from home. The Tribunal did not fully accept his account that he trusted colleagues and was seeking not to pry into health issues.
- The Tribunal considered that there was good evidence that Mr Newman valued employees working long hours in the office. He was critical of Miss Raja for leaving work at the end of her contractual hours. That attitude seemed to the Tribunal to align with an attitude of impatience with ill health absence.
- Mr Newman's credibility was to some extent impaired according to the Tribunal by what they describe in the Judgment as his improbable assertions about his memory.
- The lack of documentation at the time as to the reasons for deciding to dismiss Miss Raja and/or the discussions about her dismissal.
- The fact that Miss Raja passed her probation and was awarded a salary increase and the fact that the documents evidencing those events make no reference to any problem with her performance, but in fact suggest her performance was good. What happened in the

chronology after that was that Miss Raja began to have time off for ill health and began to request to work from home due to appointments.

- The total lack of any formal procedure in relation to the dismissal notwithstanding that Miss Raja had less than two years' employment.

What does this mean for the FS and other industries?

The case shows how an employer should treat a disabled employee to minimise legal risk by complying with applicable laws and good practice. It should serve as a cautionary example to every employee who is subject to the SMCR or another regulatory regime.

There are a number of regulatory rules which could mean that the Employment Tribunal decision is not the end of proceedings in relation to this matter.

The SMCR has a carve out for GCs, but this is limited to the legal advice they provide to their employer.

Conduct rules apply to virtually all employees at firms authorised by the FCA alone, or on a 'dual' basis with the PRA, with specific rules for senior managers, and more detailed considerations as to the regulatory requirements for their 'fitness and propriety'.

The PRA and FCA have published extensively on the importance of EDI as features of firms' cultures and of their various HR (e.g. recruitment, retention, and incentivisation) processes.

Regulators have also made it clear that senior managers' approach to EDI issues is a material factor for firms and regulators to consider in ongoing assessments of managers' fitness and propriety.

For both private practice and 'in-house' solicitors, SRA Principle 1 requires conduct that upholds the constitutional principle of the rule of law, and the proper administration of justice.

Principle 6 requires solicitors to act in a way that encourages EDI. Solicitors can report themselves to the SRA or it can decide to investigate them of its own accord or because a complaint has been made by a third party.

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Contact



Raymond Silverstein

Partner

raymond.silverstein@brownejacobson.com

+44 (0)207 337 1021

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