

A&L Goodbody

White Paper Conference

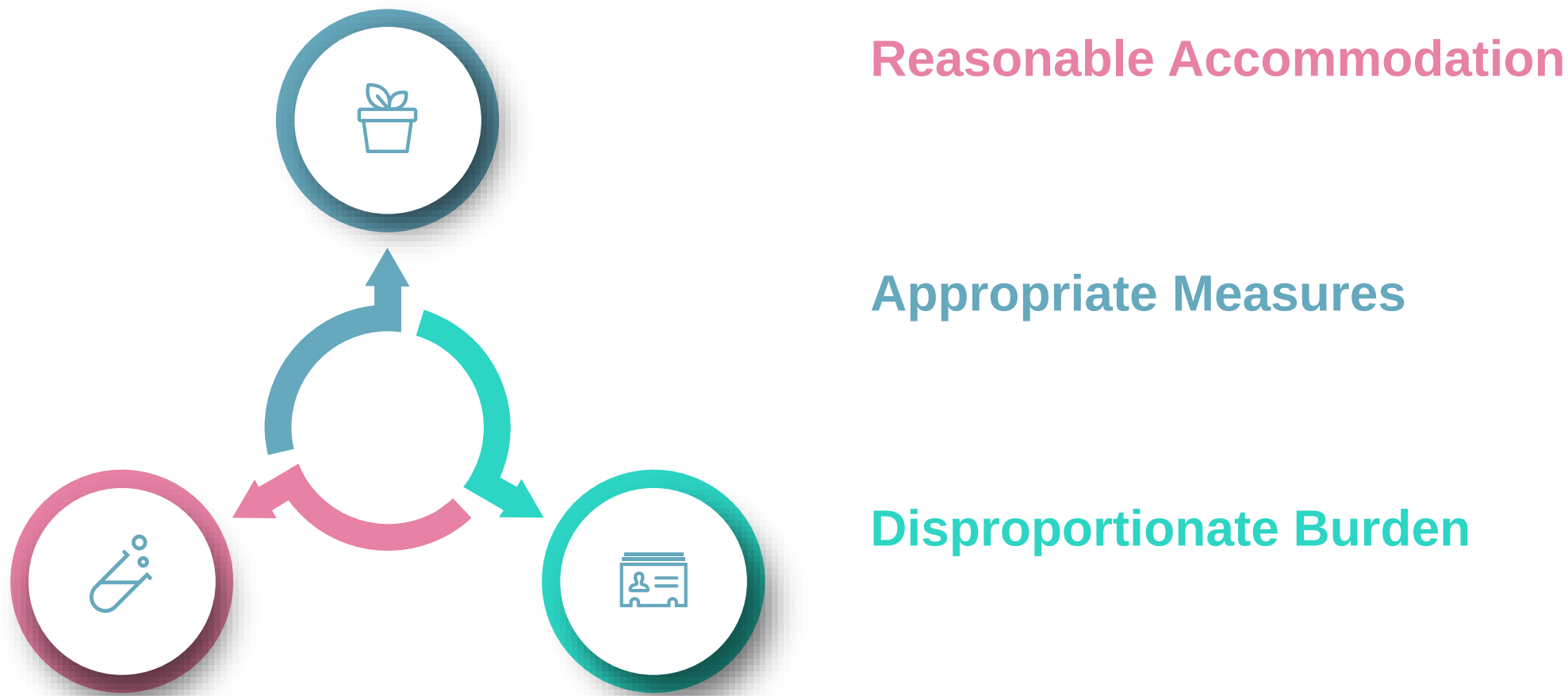
Managing Disability in the Workplace: Long Term Absence and Dismissal

Michael Doyle, Partner

4 December 2019

When diagnosis and time-frame for recovery are not certain, how many “*false dawns*” of a return to work do you allow a disabled employee who’s on long-term sick leave?

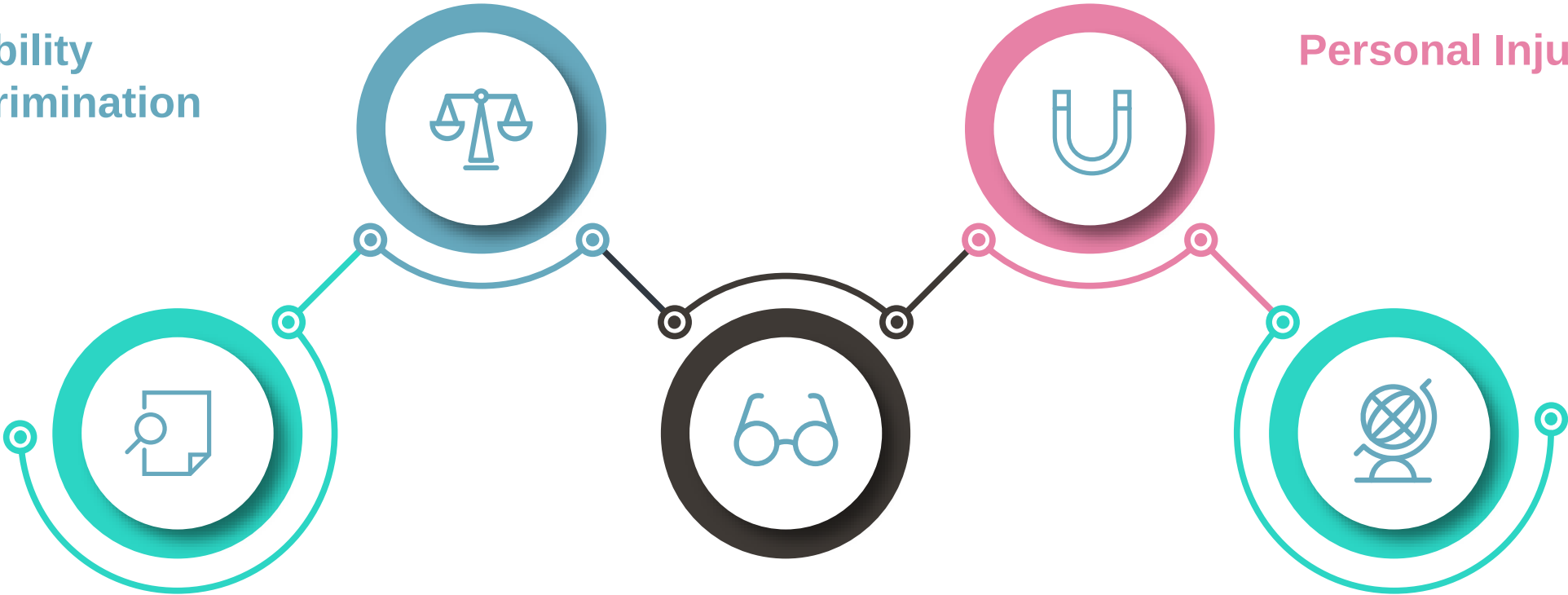




The Litigation Context – Potential Claims

Disability
Discrimination

Personal Injuries

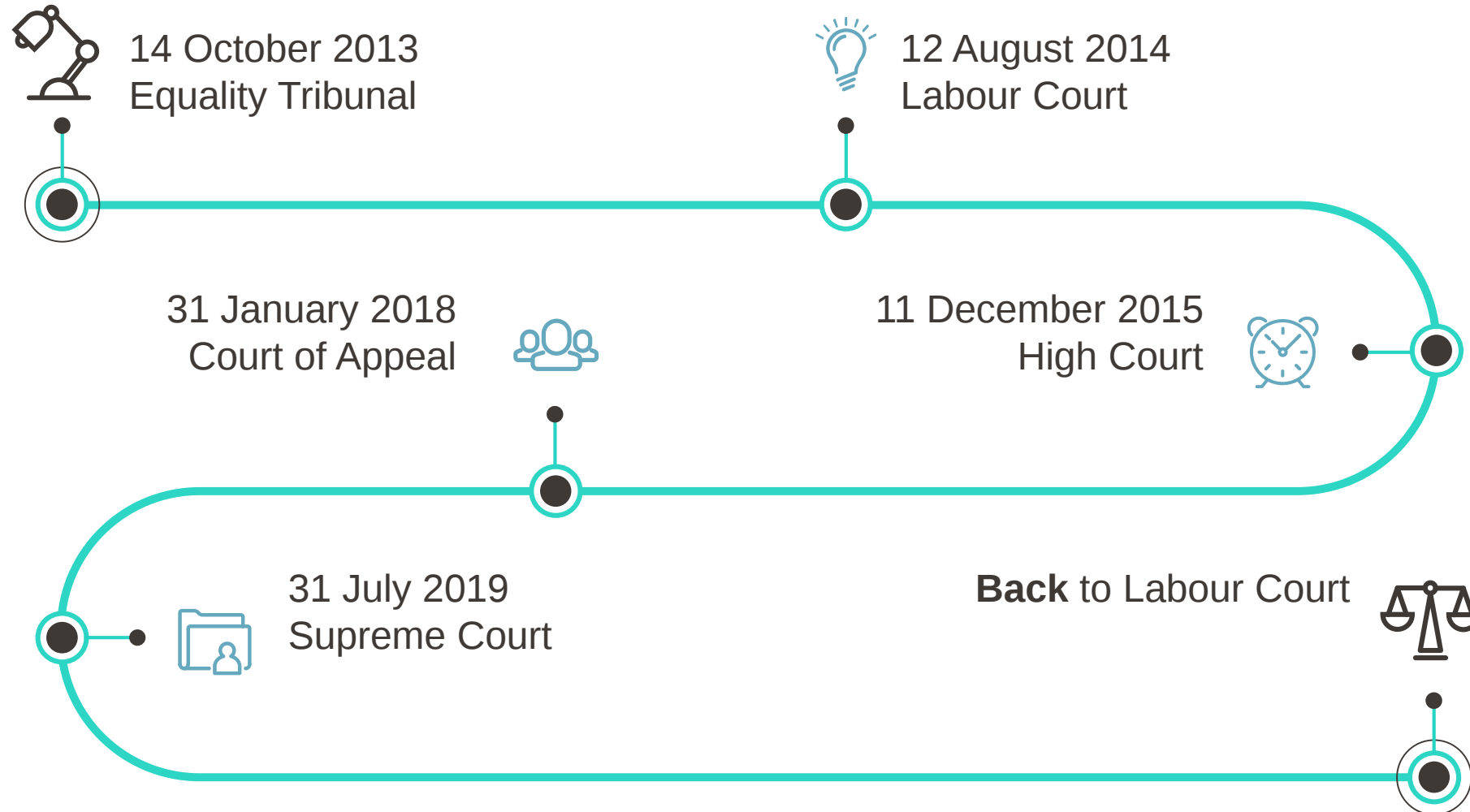


Discriminatory Dismissal

Breach of Contract

Unfair Dismissal

Nano Nagle v Daly



Supreme Court – Key Takeaways

REASONABLE ACCOMMODATION

Objectively evaluate appropriate measures to facilitate a return to work

REDISTRIBUTION

Consider the redistribution of both core duties and non-core tasks



MEDICAL ADVICE

Be fully informed by up-to-date medical advice

CONSULTATION

Though not necessarily mandatory, a “wise” employer will engage and consult with the affected employee

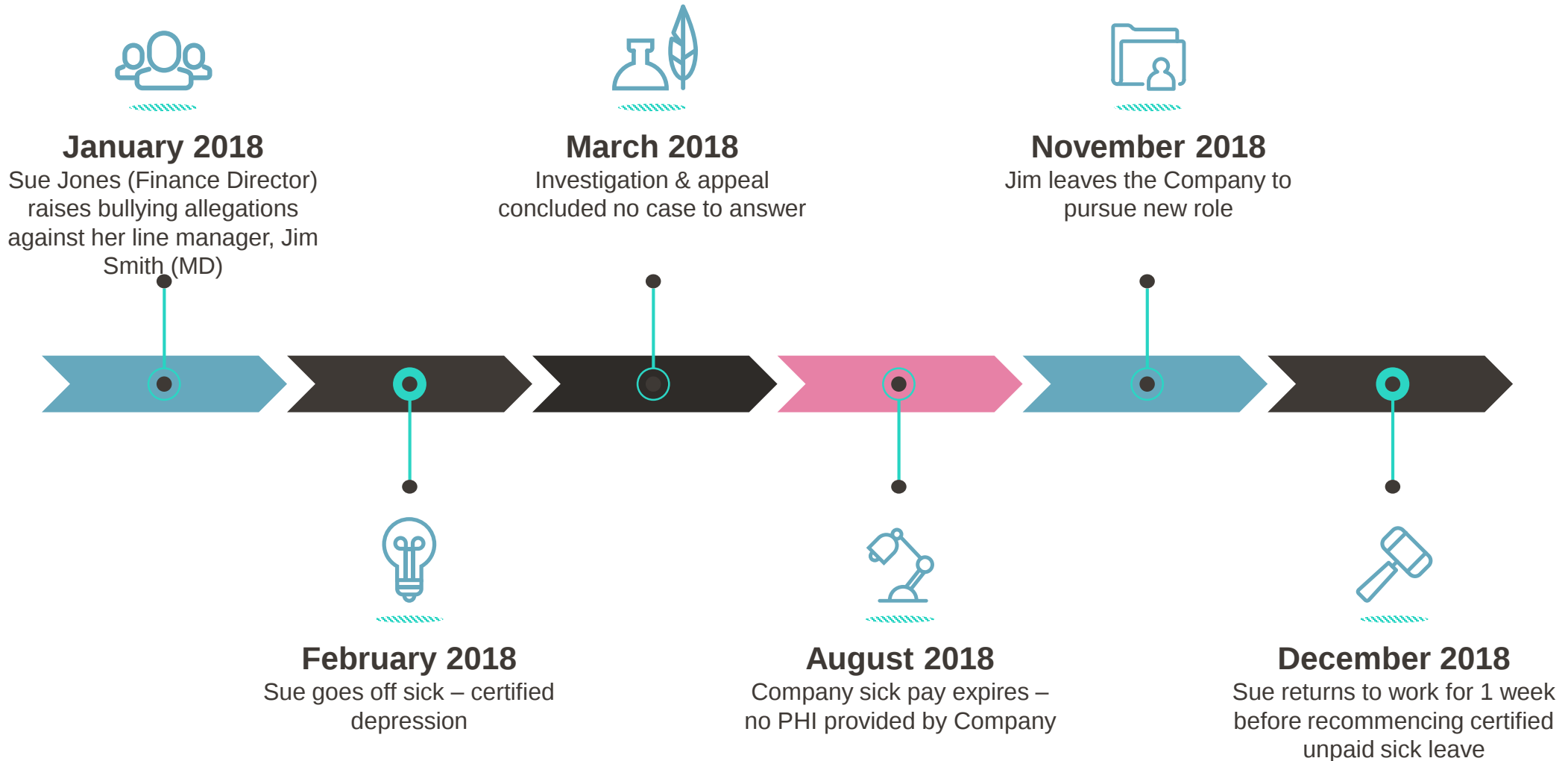
Recent Case Law



Pitfalls of Permanent Health Insurance

- McGrath v Trintech Technologies Ltd (2005) – court will enforce employer's right to terminate on notice where there is a good reason for the termination (e.g. redundancy)
- Awan v ICTS UK Limited (2019) – implied term to the effect that once employee entitled to payment of disability benefits under LTD scheme, employer cannot terminate on grounds of incapacity

Case Study



Case Study – Recent Events



January 2019

Company sought medical evidence re: Sue's prognosis – very little information



June 2019

New MD appointed – keen to hire permanent replacement Finance Director (Sue's role)



July 2019

Prognosis remains unclear – though Sue advises Company she is awaiting Consultant report & likely fit to return in 6 months



May 2019

Sue seen by Company's Occ Health provider
Report: uncertain when Sue will be fit to return



June 2019

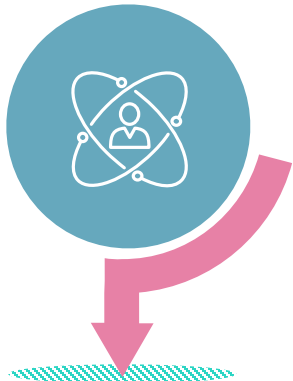
Company invites sue to meet with new MD – considering termination in light of absence duration and uncertain prognosis



August 2019

Company dismisses Sue on grounds of incapability
Company receives discriminatory dismissal claim

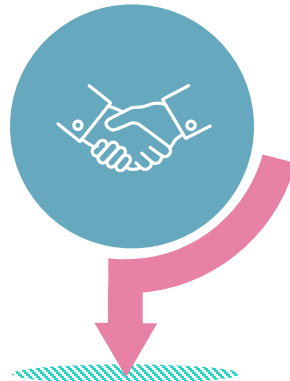
Case Study – key steps taken



01

Medical Advice

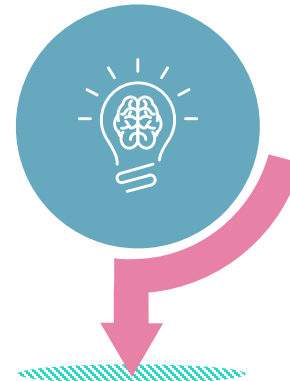
Regular medical
certs
Regular Occ Health
referrals
Inconclusive return
date
Specialist Opinion
awaited



02

Engagement

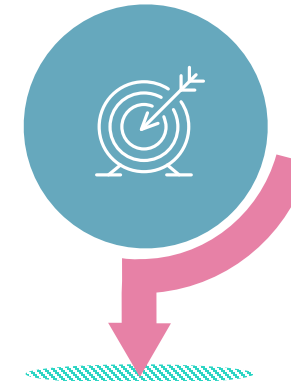
Met with Sue on
several occasions
during absence
Aware position
couldn't be held open
indefinitely
Advised of possible
capability dismissal



03

Reasonable Accommodation

Explored with Occ
Health
None could be
provided that would
materially impact
ability to return to
work



04

Dismissal Process

Fair procedures
Right to be
accompanied
Chance to influence
decision
Option of appeal

Why take action at all?



Business Impact

Employee's continued absence may impact ability to permanently backfill role



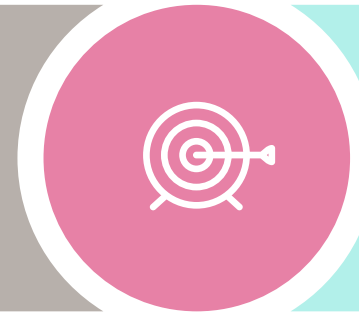
Benefit Accrual

Employee continues to accrue statutory annual leave



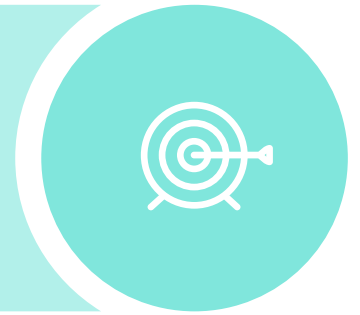
Paperwork

Ongoing administrative responsibility



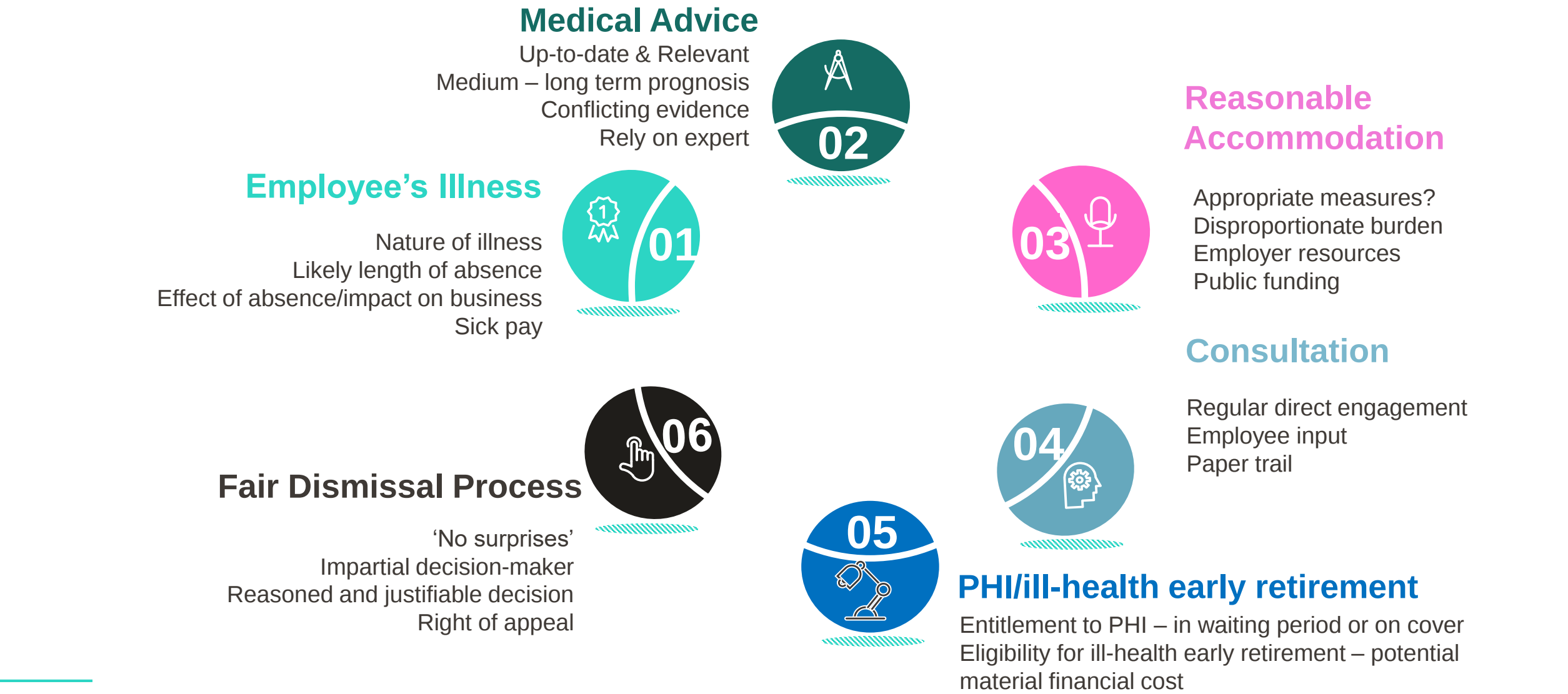
Litigation

Risk of disability discrimination claims



Costs

Potential financial cost depending on terms of employment contract / benefit arrangements etc.





Questions?



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