

Mental Health and Performance

WHITE PAPER – DISMISSAL FOR HR CONFERENCE

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How do you tackle an ongoing performance situation where mental health:

- a) appears to be a contributing factor and;
- b) Turns into an actual factor because of the process you set in motion?



Agenda

Legal framework

- Definition of disability
- Disability discrimination
- Duty to make reasonable adjustments
- Litigation

Mental health appears to be a contributing factor

- Recognising symptoms of mental distress
- Conversational tips
- Balancing support with performance issues
- Ongoing support
- Case study

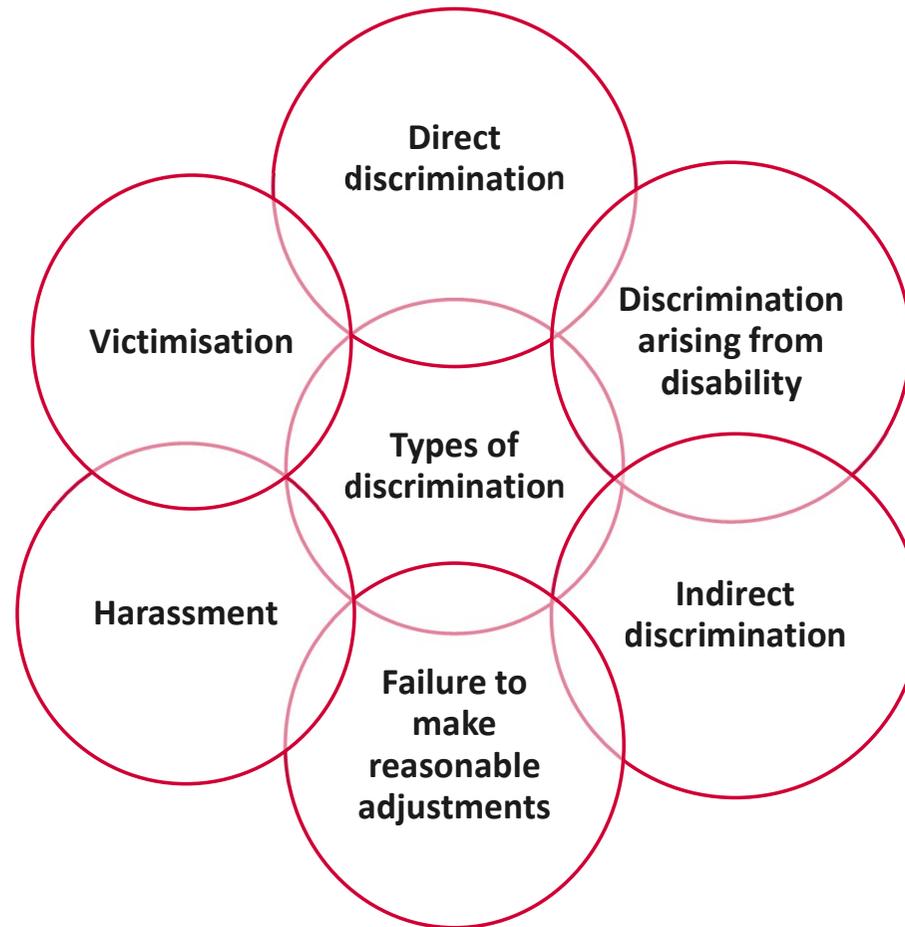
Mental health becomes an actual factor

- Managing performance where mental health is a factor
- Adjusting management processes
- Next steps

What is the definition of disability?

*“A person has a disability if that person has a physical or **mental** impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.”*

Disability discrimination in employment



The duty to make reasonable adjustments

- An employer's duty to make reasonable adjustments can arise where:
 - provision, criterion or practice applied by the employer puts a disabled person at a substantial disadvantage
 - a physical feature of the employer's premises puts a disabled person at a substantial disadvantage
 - a disabled person would, but for the employer's provision of an auxiliary aid, be put at a substantial disadvantage.
- For the duty to arise, the employee must be placed at a "substantial disadvantage" in comparison with persons who are not disabled. This is assessed objectively.
- The duty is only triggered once the employer knew or ought to have known about the employee's disability.
- The duty to make reasonable adjustments relates to what steps the employer takes or does not take, not what steps the employer considers.

The duty to make reasonable adjustments

Reasonable adjustments

- Providing information in accessible formats
- Allocating some of a disabled person's duties to another worker
- Transferring a disabled worker to fill an existing vacancy
- Altering a disabled worker's hours of working
- Assigning a disabled worker to a different place of work
- Allowing a disabled worker to be absent for rehabilitation, assessment or treatment
- Giving or arranging for training or mentoring
- Acquiring or modifying equipment
- Modifying procedures for testing or assessment
- Providing a reader or interpreter
- Providing supervision or other support
- Allowing a disabled worker to take a period of disability leave
- Participating in supported employment schemes
- Employing a support worker to assist a disabled worker
- Modifying disciplinary or grievance procedures
- Adjusting redundancy selection criteria
- Modifying performance related pay arrangements

Litigation

An Employment Tribunal claim could result in:

- An order to pay compensation – uncapped
- A recommendation made to reduce the adverse effect of the discrimination
- A declaration as to the rights of the employee
- Psychological injury leading to personal injury claims



Recognising symptoms of mental health disorders

Physical symptoms

Psychological symptoms

Behavioural symptoms

“Invisible” or “hidden” disabilities



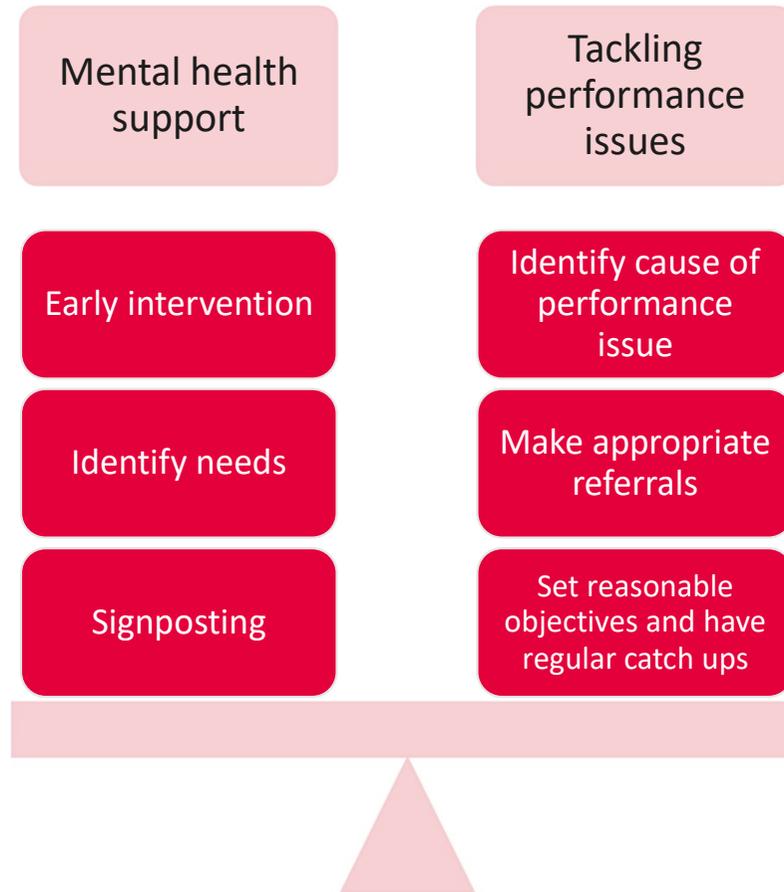
Mental health – conversational tips



- Speak calmly
- Avoid interruptions
- Don't be afraid of silences
- Maintain good eye contact
- Encourage the employee to talk
- Show empathy and understanding
- Focus on the person not the problem
- Avoid patronising responses or judgements
- Listen carefully and actively – clarify any points
- Ask simple, open and non-judgmental questions
- Avoid making assumptions or being prescriptive
- Follow up any actions or agreed plans in writing



Balancing mental health support with tackling performance issues



Continuing support

Crucial to facilitate an early conversation about the person's needs and identify/ implement appropriate support or adjustments

Treat employee in the same way you would treat someone with physical health problems

Address any areas for concern early (i.e. performance)

Make a plan of action

Regular catch-ups/supervision to review plan

Respond flexibly

Boundaries – know your role/limits and seek appropriate medical advice as needed

Managing performance where mental health is a factor



Performance management should be a positive and supportive process.



Encourage disclosure of mental health condition and deal with disclosure in a supportive manner.



Discuss potential adjustments and allow time for any adjustments to kick in.



Provide the employee with prior notice of the conversation.



Inform them of their right to have someone else present.



Clear and achievable goals.

Regular catch ups.

Adjusting management processes

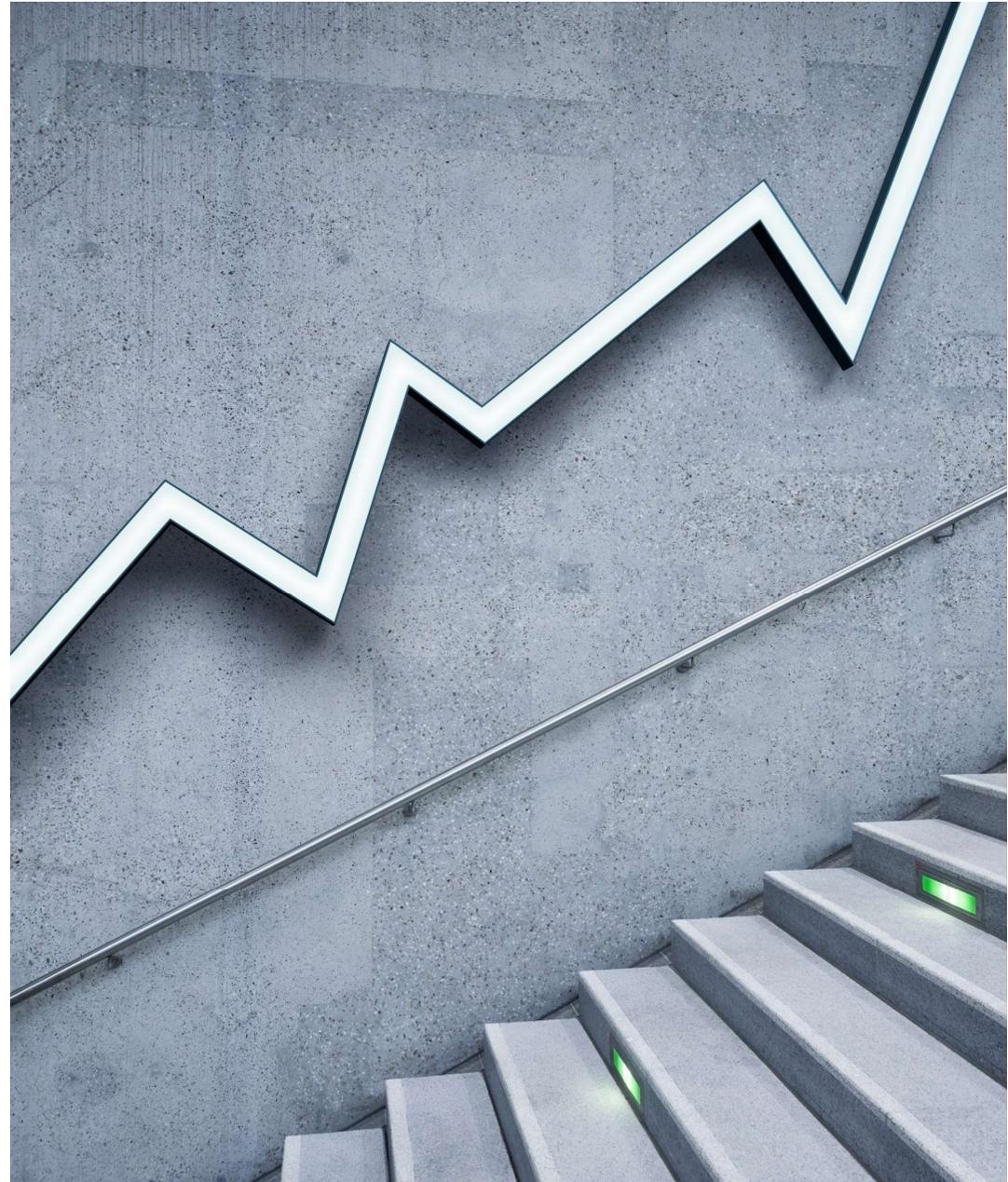
Be prepared to adjust management processes:

- Performance management
- Disciplinary
- Sickness absence
- Capability



Next steps

- Aim to help the employee to remain in or return to work
- Altering duties, working hours or place of work
- Trial periods
- Dismissal



Questions?

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