

# How do you manage an Employee whose stress is driven by underperformance?

Stuart Neilson  
Pinsent Masons LLP



Pinsent Masons

# Stress in the Workplace - Context

- 526,000 workers recorded as suffering work related stress, depression or anxiety in 2016/17
- 12.5 million working days lost
- ACAS Guide
- Health and Safety Executive
- Risk Assessment
- A disability?

# Scenario

- Amalgamated Widgets Limited
- John Smith – Finance Administrator DOC 1 July 2012
- Promoted – April 2016 – Finance Manager
- Reports to Jane Brown – Head of Finance – respected/hard working – does not suffer fools
- Last 12 months – intermittent absences – stress/anxiety
- Performance issues
- Head of Finance wants you to sort it

# Risk Factors

## Wider Risks

- Impact on team/others
- Performance of Team
- Errors/mistakes
- Head of Finance position

## Particular Risks

- Unfair Dismissal
- Personal Injury Claim
- Disability Discrimination

## Risk to Individual

- Occupational Health Report

# Disability Discrimination

- A physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities.
- J -v- DLA Piper UK 2010
- Herry -v- Dudley Metropolitan Council 2016
- There may **not** be a disability under the Equality Act 2010.

# Duty to make Reasonable Adjustments

- **Around role**
  - Duties
  - Redistribute Work
  - Mentoring/counselling – Croft Vets –v- Butcher 2012
  - Sabbaticals/leave
- **Around Alternative Employment**
  - Duty to consider – Awojobi –v- London Borough of Lewisham 2017
  - Dickins –v- O2 plc 2008
  - The original role?
- **Around Process**
  - Trigger points – Griffiths –v- Secretary of State for Work & Pensions 2015

# Route to Dismissal

## Capability Dismissal - Absence

- Level of absence
- Nature of role
- Impact on business/others
- Prognosis – medical input
- Warnings/adjustments
- ACAS Code – not applicable

## Capability Dismissal - Performance

- Performance Improvement Plan
- Timescales, warnings, adjustment
- Process

# Practical Issues

- Grievance – bullying and harassment by Jane Brown
  - Jinadu –v- Docklands Buses Limited 2014 – no duty to postpone
- Protected Conversation?
- Without Prejudice Conversation?
- A pragmatic approach?

# *Keeping Up to Date*

## ***Employment Law +***

Knowledge. **Training**. Tailored for **you**.

***[www.pinsentmasons.com/  
employmentlawplus](http://www.pinsentmasons.com/employmentlawplus)***



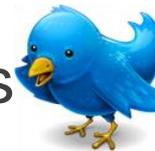
# Questions?

Stuart Neilson

[stuart.neilson@pinsentmasons.com](mailto:stuart.neilson@pinsentmasons.com)

follow us on  
**twitter**

@Emp\_Law\_Plus



Pinsent Masons LLP is a limited liability partnership, registered in England and Wales (registered number: OC333653) authorised and regulated by the Solicitors Regulation Authority and the appropriate jurisdictions in which it operates. The word 'partner', used in relation to the LLP, refers to a member or an employee or consultant of the LLP, or any firm of equivalent standing. A list of the members of the LLP, and of those non-members who are designated as partners, is available for inspection at our registered office: 30 Crown Place, London, EC2A 4ES, United Kingdom. © Pinsent Masons 2017.

For a full list of the jurisdictions where we operate, see [www.pinsentmasons.com](http://www.pinsentmasons.com)