

SHOOSMITHS

Mental Health and Performance



Emma Morgan
PARTNER

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

- (1) Appears to be a contributing factor and
- (2) Becomes an actual factor because of the process you set in motion?

Emma Morgan
PARTNER



Recognising mental distress within your team

- Physical symptoms
- Psychological symptoms
- Behavioural symptoms

Balancing mental health support with tackling performance issues

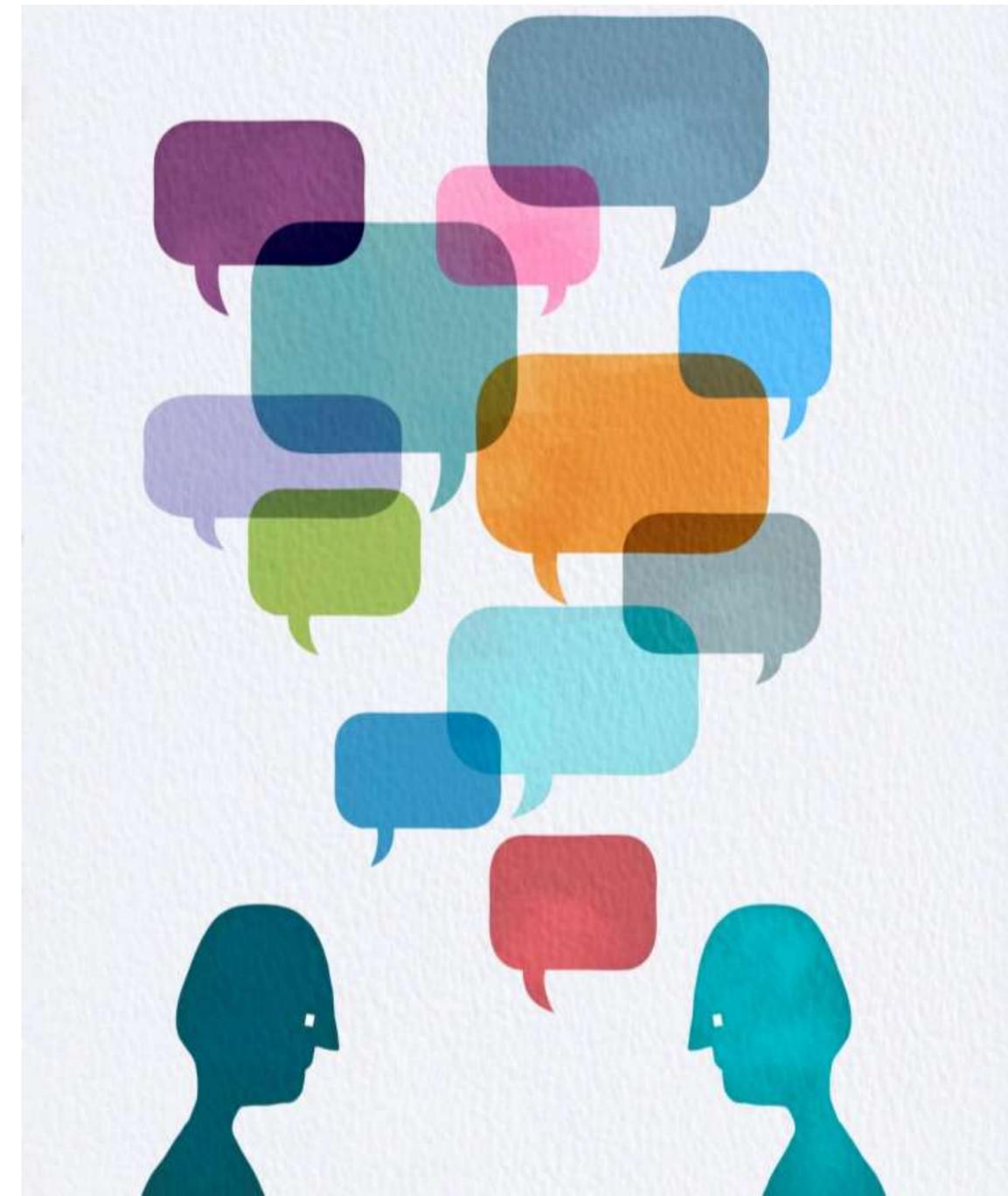
Step 1: Mental Health

- Early intervention
- Identify needs
- Make appropriate referrals / signposting



Mental health – conversation checklist

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



Ongoing 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
 - Signposting (internal/external)
 - Boundaries – know your role/limits
 - Seek appropriate medical advice



An overview of the law – “disability”

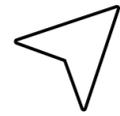
Step 2: Before moving onto performance consider the law protecting disabled people in the workplace

What is the definition of disability?

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

An overview of the law – disability discrimination

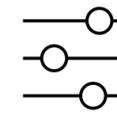
Types of disability discrimination:



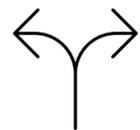
Direct
discrimination



Discrimination
arising from disability



Failing to make
adjustments



Indirect
discrimination



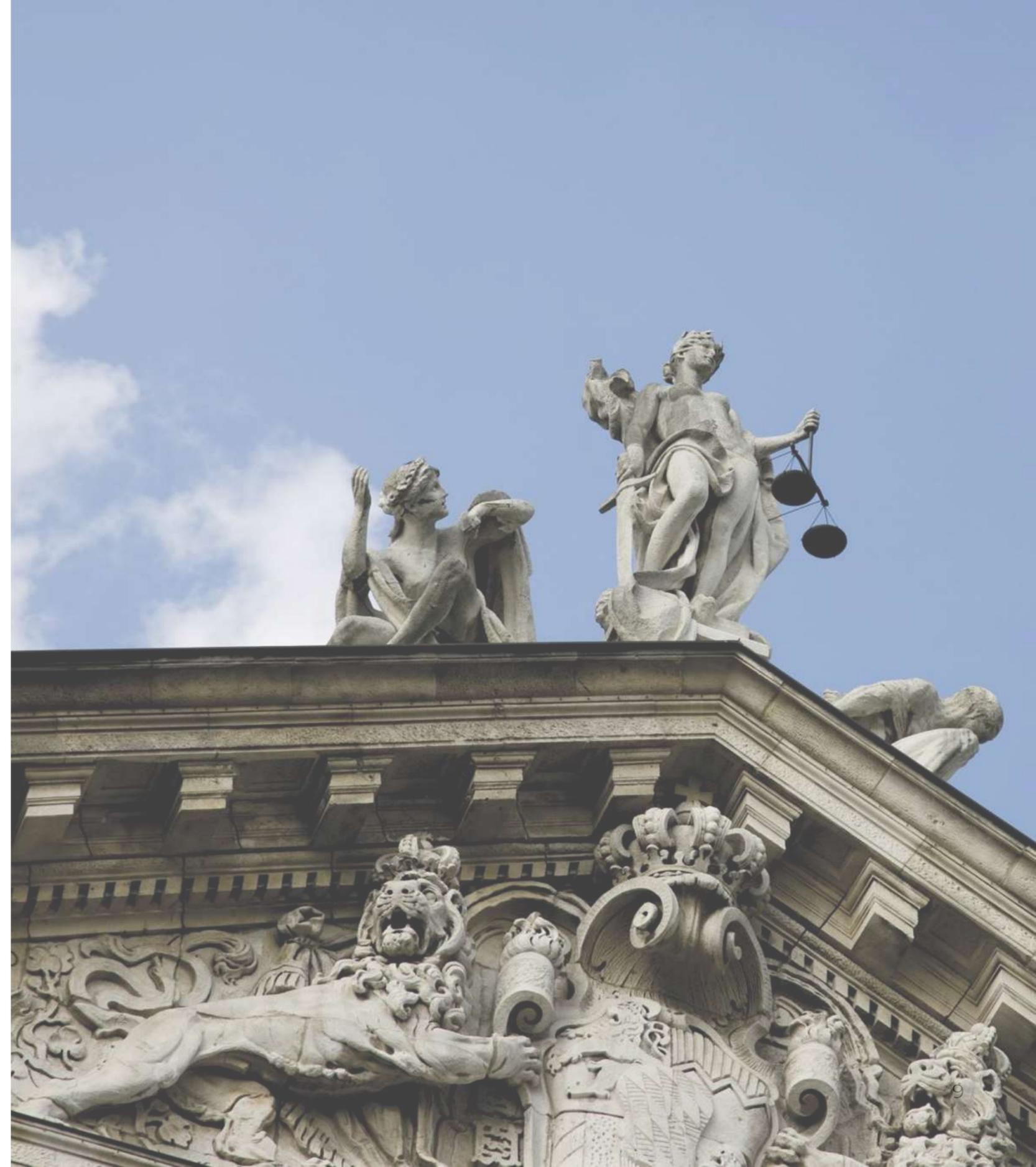
Harassment

An overview of the law – tribunal claims

What happens if you commit
disability discrimination?

An Employment Tribunal claim that could result in:

- An order to pay compensation - this is uncapped so awards may be large
- Make a recommendation - aimed at reducing the adverse effect of the discrimination on both the employee and the wider workforce
- Make a declaration as to the rights of the employee

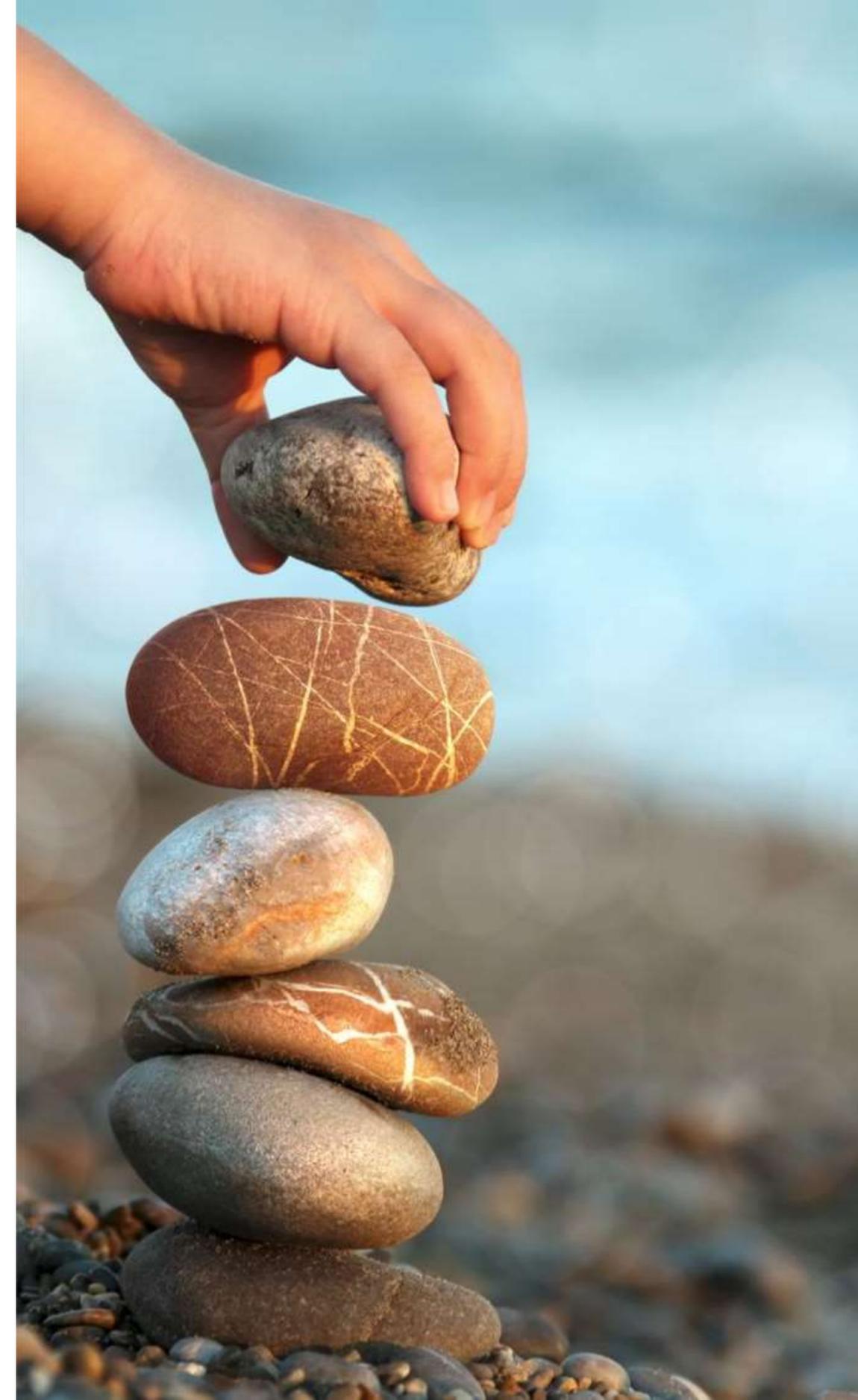


An overview of the law – the duty to make reasonable adjustments

The duty to make reasonable adjustments

Examples of what a “Reasonable Adjustment” might include:

- Making adjustments to premises
- 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

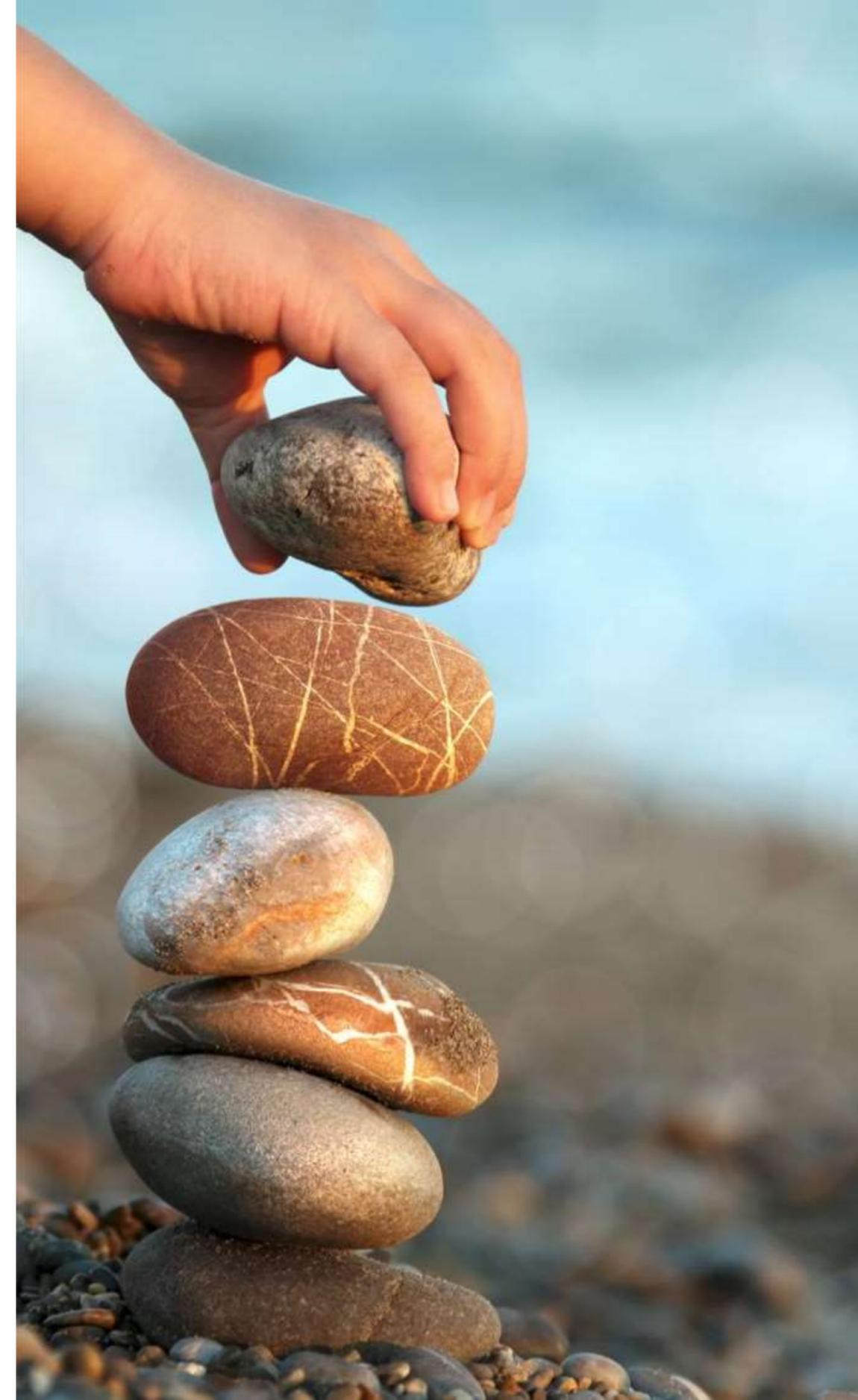


An overview of the law – the duty to make reasonable adjustments

The duty to make reasonable adjustments

Examples of what a “Reasonable Adjustment” might include (cont.):

- 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



An overview of the law – personal injury and psychological injury claims

The Health and Safety Executive defines work-related stress as: “stress that is caused or made worse by work. It simply refers to when a person perceives the work environment in such a way that his or her reaction involves feelings of an inability to cope. It may be caused by perceived or real pressures/ deadlines/ threats/ anxieties within the working environment.”

Work-related stress tends to lead to psychological injuries at work such as:

- Post-traumatic stress disorder (PTSD)
- Occupational stress
- Depression
- Anxiety

→ Can lead to claims for compensation





Managing performance where mental health is a factor

- 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

What next?



Dismissal



Be careful to consider applicable law



Have all internal policies been followed?



Alternative duties?