

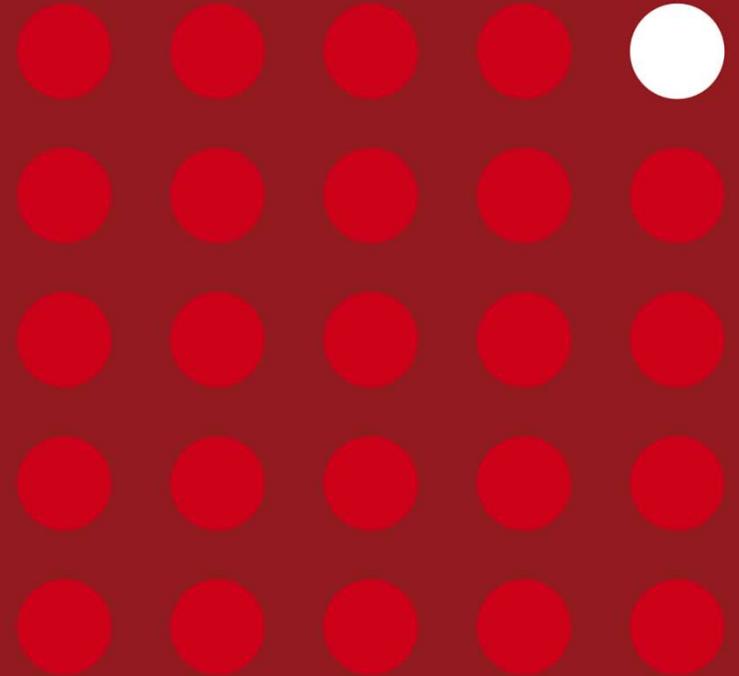
# White Paper Conference

How should you tackle an ongoing performance situation where mental health,

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

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### INTRODUCTION

- Mental health issues affect 1 in 4 people
- “A state of wellbeing in which every individual realises his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.”
- **76%** of organisations reported some stress-related absence, most commonly arising from heavy workloads and management style
- **Over a quarter** of individual staff said that work had a negative impact on their mental health.



## WHAT IS MENTAL HEALTH?

The Acas guide on reasonable adjustments for mental health explains that mental health includes ***‘emotional, psychological and social wellbeing. It affects how we think, feel and behave’.***

Mental health problems can:

- Happen suddenly due to an event in someone’s life
- Build up gradually over time
- Be hard to spot because everyone has different signs and signals
- Be hidden
- Fluctuate over time

***‘Everyone has mental health and will experience challenges regarding their mental well-being but not everyone will experience a mental illness’***

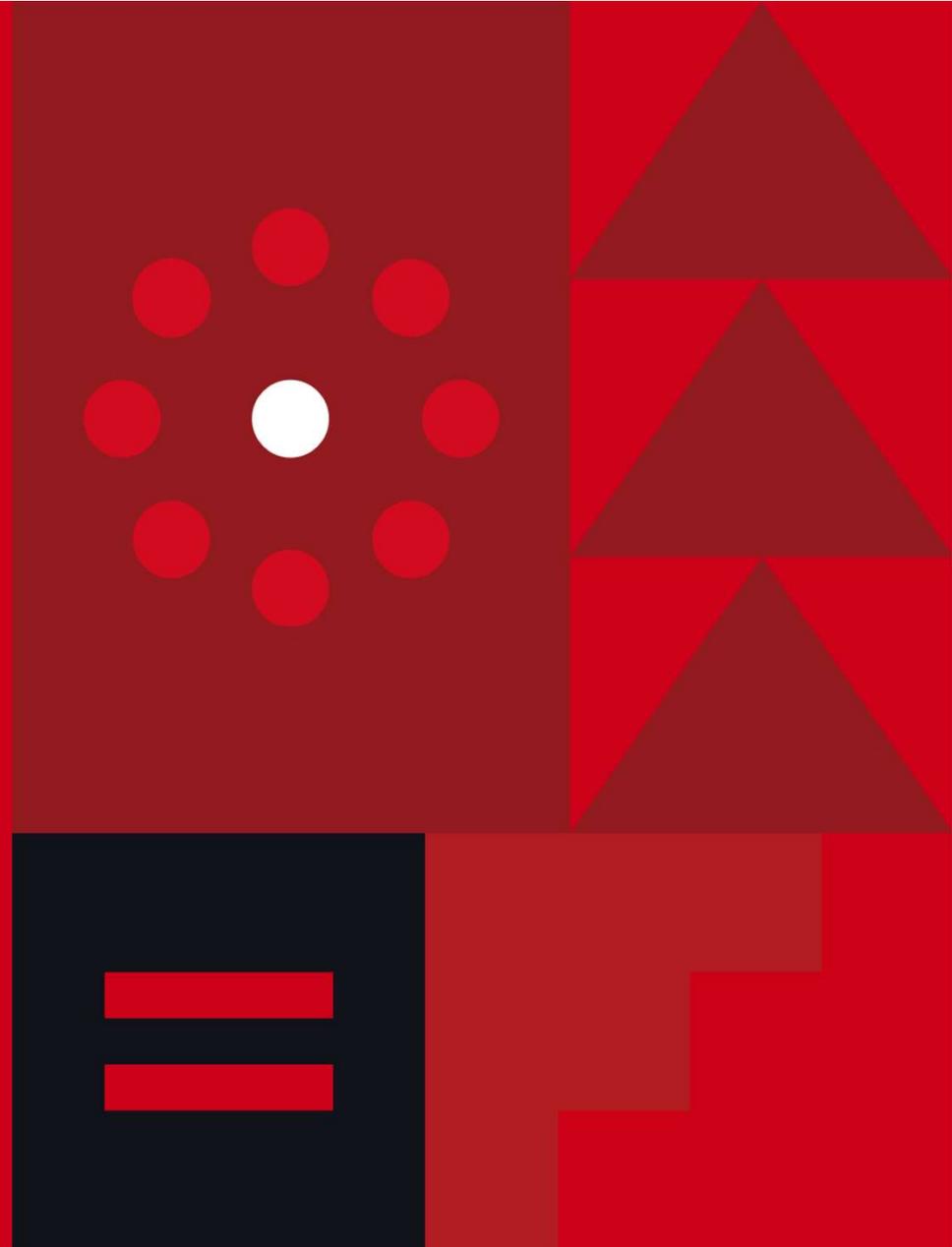
Cognito Health

## WHAT IS STRESS?

*'The adverse reaction people have to excessive pressures or other types of demand placed on them'*

The effects of stress may manifest themselves in mental conditions, such as anxiety or depression.

*'Stress is not classed as a medical condition. But it can still be serious and cause, or make worse, other mental health conditions'*



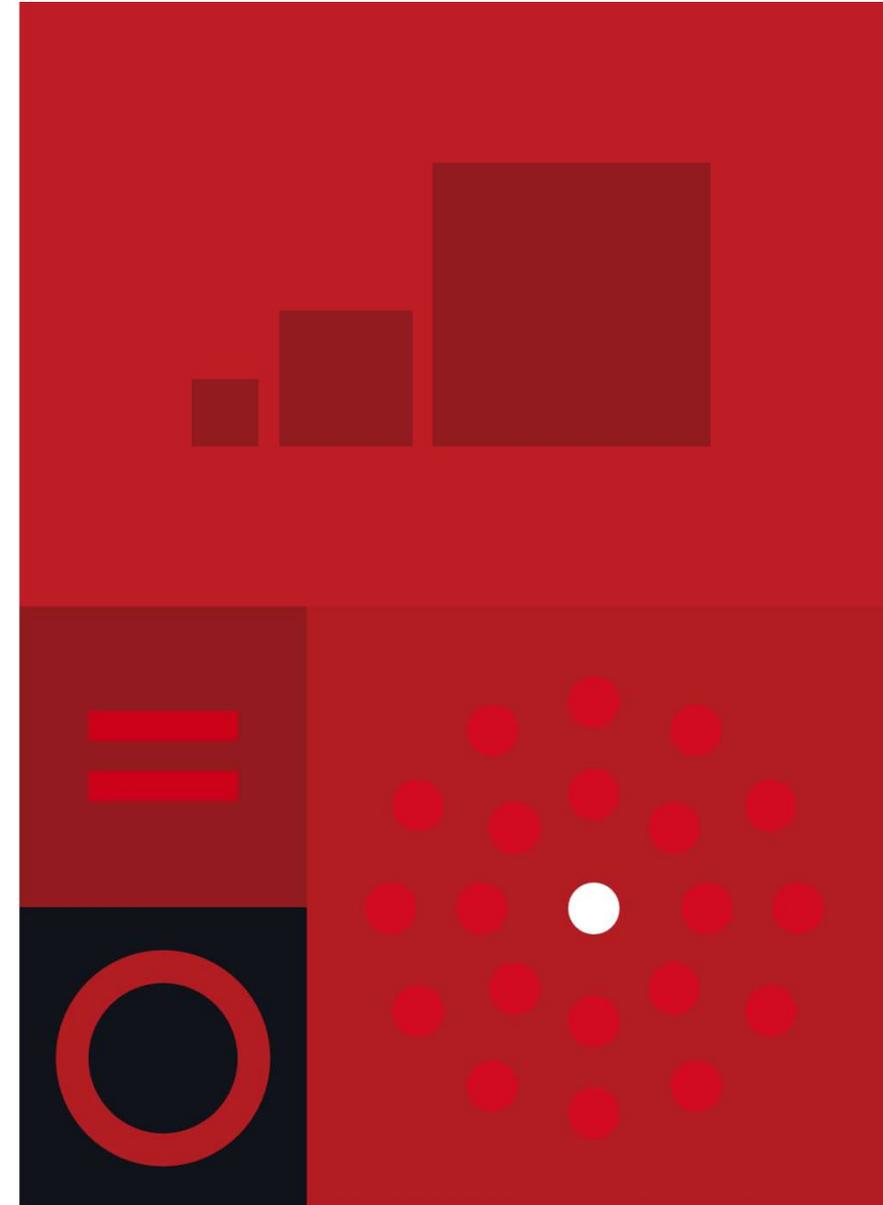
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## MENTAL HEALTH AND DISABILITY

*"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 P's ability to carry out normal day-to-day activities". [Section 6\(1\), EqA 2010.](#)*

### *Acas Reasonable Adjustments Guide.*

This observes that making reasonable adjustments for mental health, even where the employee is not disabled within the EqA 2010 definition or does not recognise their condition as a disability, can help employees to stay in work while recovering from or managing a mental health condition.



## REASONABLE ADJUSTMENTS

- Section 20 EqA 2010 imposes a duty on employers to make reasonable adjustments to working practices to help disabled employees.
- The duty can arise where a disabled person is placed at a substantial disadvantage by an employer's provision, criterion or practice (PCP) or physical feature of the employer's premises.
- An employer is not obliged to make adjustments unless it knows or ought to reasonably know the individual is disabled and likely to be placed at a substantial disadvantage because of their disability.
- What is reasonable?

## REASONABLE ADJUSTMENTS FOR MENTAL HEALTH

### *Acas Reasonable Adjustments Guide.*

- Changing someone's role and responsibilities.
- Reviewing working relationships and communication styles.
- Changing the physical working environment.
- Policy changes.
- Additional support.

### *Acas Managing Stress Guide.*

An employee should consider the wellbeing of the employee and balance that against the need not to delay a procedure unnecessarily.

Employers should also consider how they can provide support to avoid causing more stress, for example, by allowing them to be accompanied at a meeting when there is no right to be.

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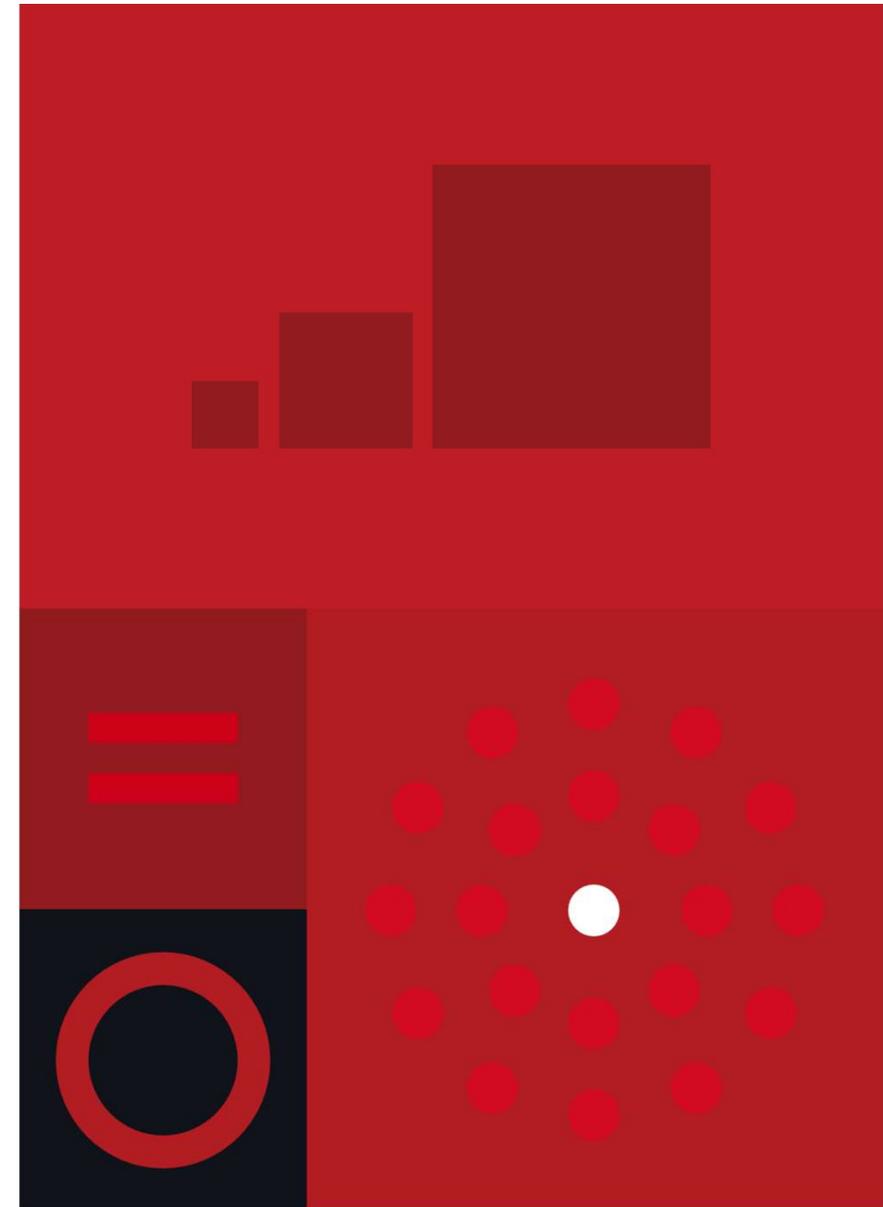
### DISCRIMINATION ARISING FROM DISABILITY

Under [section 15 EqA 2010](#) 'discrimination arising from disability' occurs where both:

- **A** treats **B** unfavourably because of something arising in consequence of B's disability.
- **A** cannot show that the treatment is objectively justified as a proportionate means of achieving a legitimate aim.

There were two distinct steps to the test to be applied by tribunals in determining whether discrimination arising from disability has occurred. [Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14.](#)

- Did the claimant's **disability** cause, have the consequence of, or result in, "something"?
- Did the employer treat the claimant unfavourably because of that "something"?

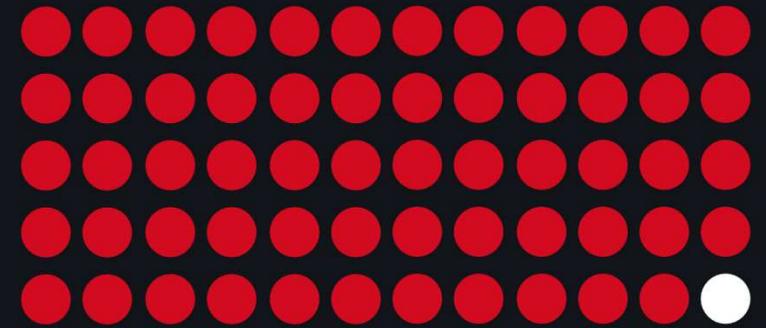


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### PERFORMANCE MANAGEMENT PROCESS

*Mental health appears to be a contributing factor*

1. Try and establish whether mental health problems are a contributing factor to the poor performance in question.
  - Consult with the staff member
  - Seek information and support from organisations e.g. Mind
  - Seek medical advice e.g. GP or OH
2. Investigate the performance concerns
3. Flexible procedures
4. Reasonable adjustments and review
5. Provide support or training
6. Are dismissal/warnings appropriate and can they be objectively justified if the individual has a disability?



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## PERFORMANCE MANAGEMENT PROCESS

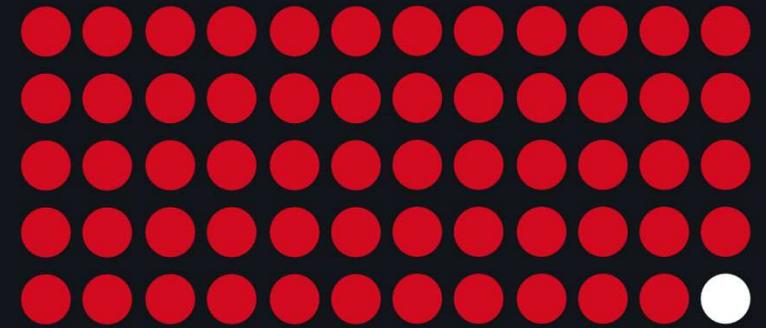
*Mental health as an actual factor because of the process*

- Seek medical advice to understand the nature and prognosis of their condition as well as what support and adjustments should be put in place.
- Performance / absence management process.

### ***McAdie v Royal Bank of Scotland [2007] EWCA Civ 806***

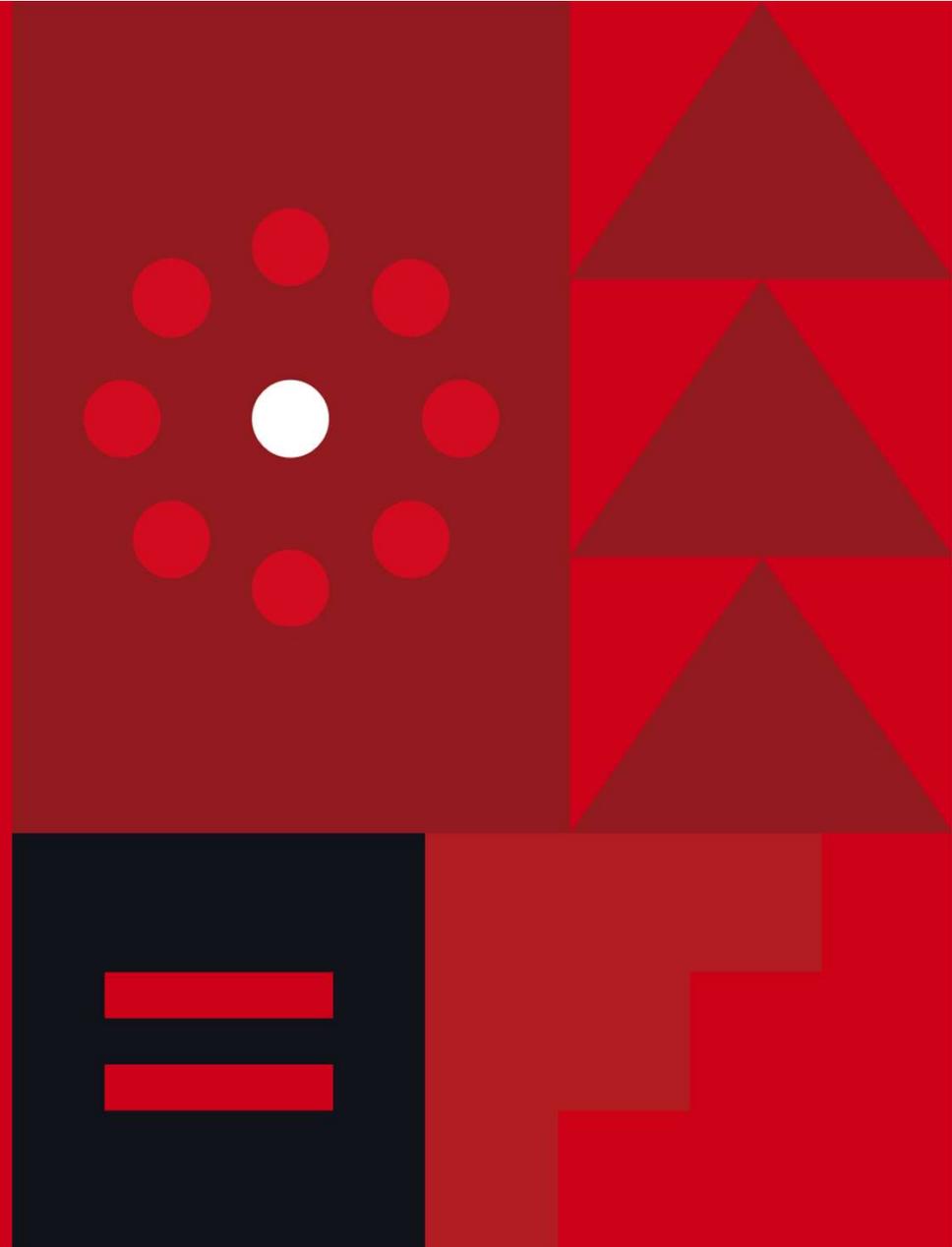
> The significance of the employer causing ill health.

Where the employer is responsible for the employee's ill-health, it should normally make more effort to find alternative employment for the employee or put up with a longer period of sickness absence than would otherwise be reasonable.



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Any Questions?





## Contact us

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