



Mental Health

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The Question

"How do 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?"



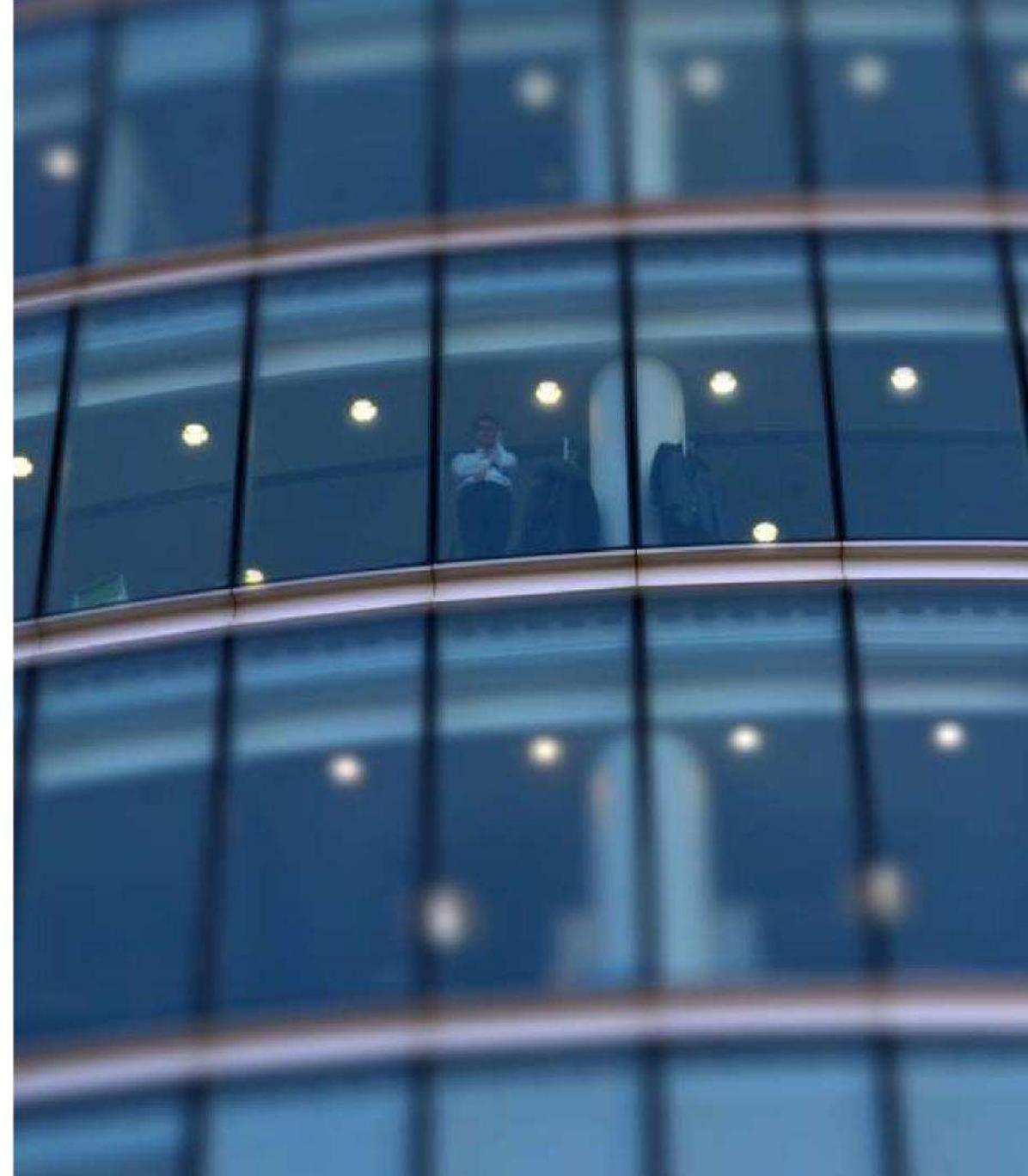
Impact of mental health in the workplace

- 15% of working-age adults were estimated to have a mental disorder in 2019*
- Globally, an estimated 12 billion working days are lost every year to depression and anxiety at a cost of US\$ 1 trillion per year in lost productivity*
- Mental illness is the leading cause of workplace absence - Responsible for 30% more absence than any other reason
- Decreased job performance - reduced motivation, impacting overall productivity and engagement
- Lower morale – employees carrying extra workload as a result of absences
- Staff turnover
- Customer satisfaction impacted
- Additional costs – sick pay, temporary cover etc.



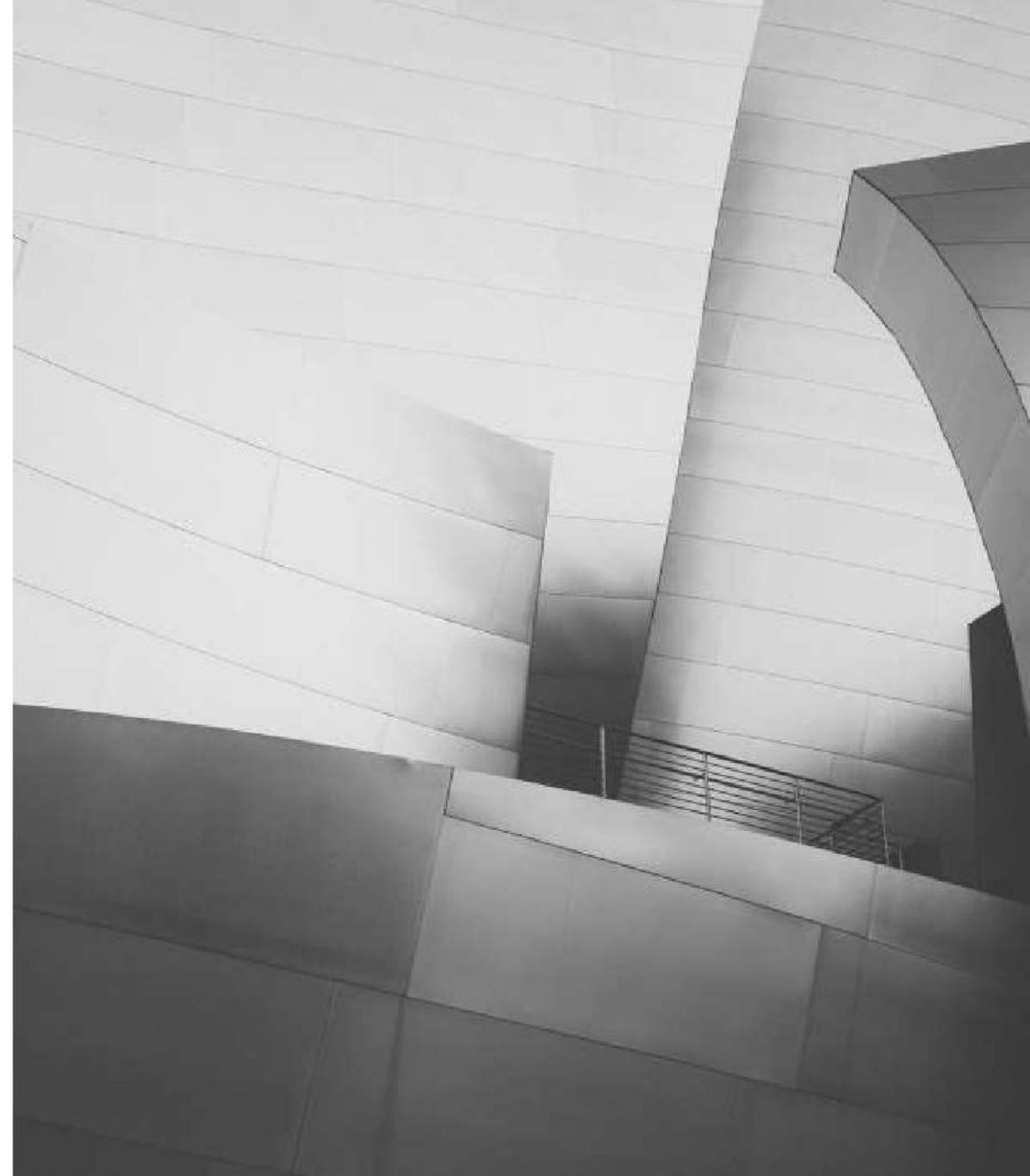
Managing the Situation

- Balance needs of individual with business needs
- Watertight procedure
- Occupational health
- EAP
- Reasonable accommodation considerations
- Absence management process
- Performance Management Plan



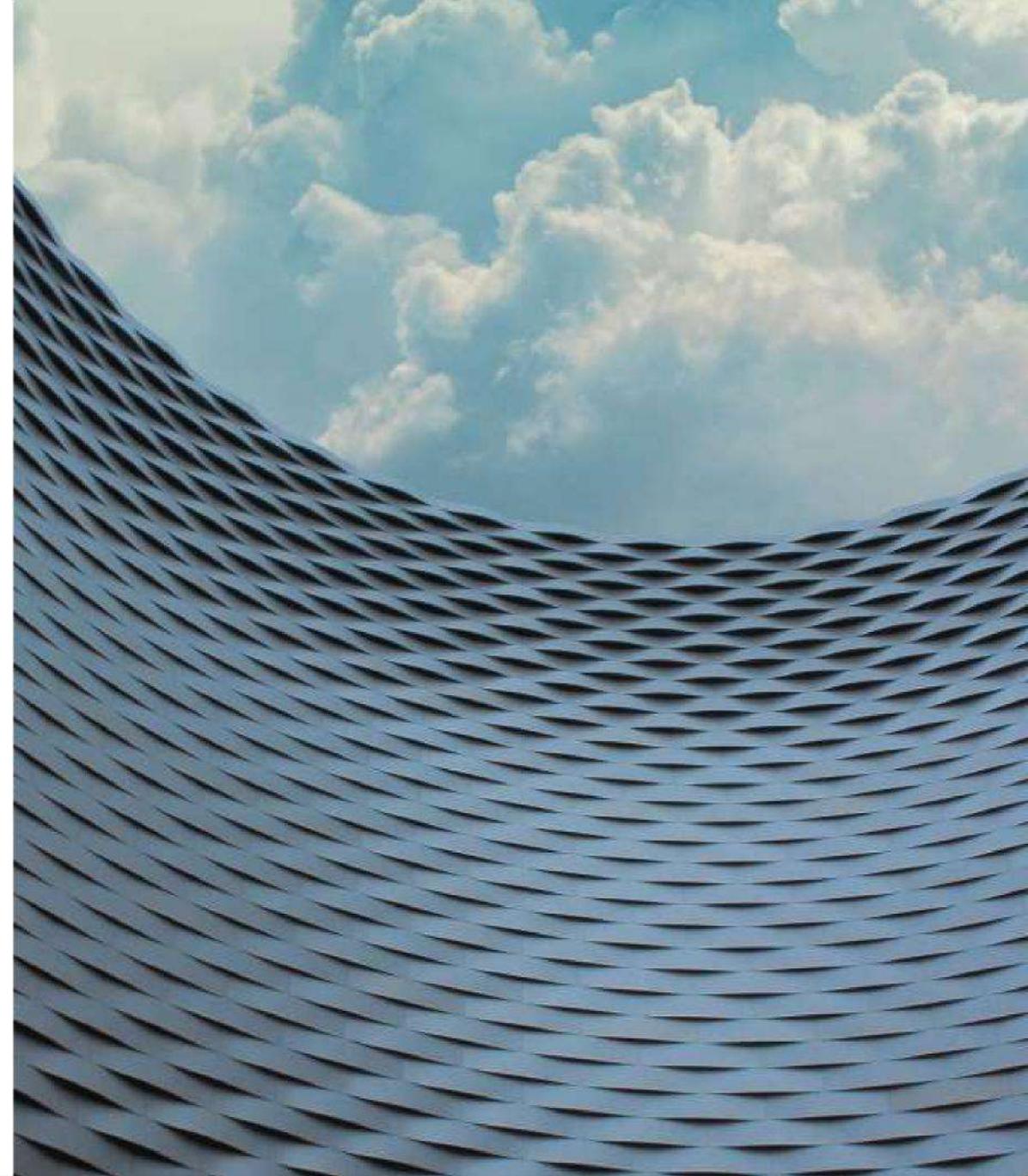
Concerns for the Employer

- Obligation to make reasonable accommodation
- Avoidance of a disability discrimination claim
- Fear of a stress claim
- How to communicate with the employee
- How to manage the processes and How to keep the processes moving



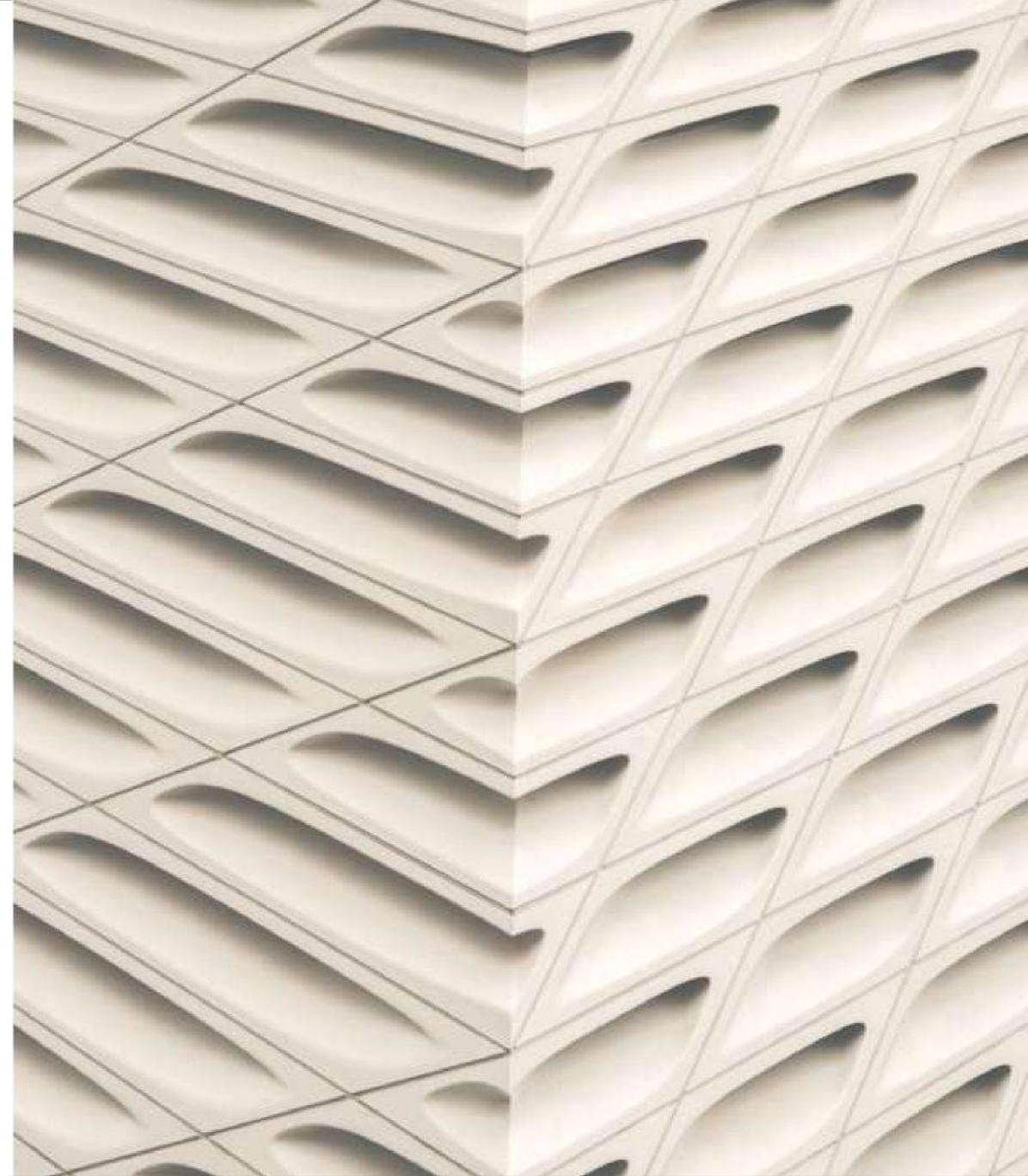
Occupational Health

1. Choose practitioner carefully
2. Carefully drafted questions
3. Right to know symptoms as they impact
4. Reasonable accommodation to allow process to continue



Knowledge of Mental Health

- Stress at work / personal injury / harassment/ disability discrimination claims
- Indirect discrimination and direct discrimination
- Employer's knowledge – actual, constructive, imputed



Stress

"Stress is not a disease or injury but it can lead to mental and physical ill health"

Health and Safety Authority

"reasonable to assume that being subjected to a disciplinary process...are events which might be accompanied by a certain degree of stress, they are events which are encountered in the normal course of the management of a business or organisation.

In the absence of any reason for a contrary conclusion, an employer is entitled to assume that an employee is able to withstand such stress."

Shortt V Royal Liver Assurance Ltd 2008

Ms B V A Newsagents and a Deli 2013

- Medical certificate stated that the complainant was suffering from 'work-related stress'.
- The respondent submitted that 'work-related stress' is not a disability within the meaning of the Acts.
- Adjudicator – *"In the context of these Acts, disability must be looked at 'in the round'. It cannot be reduced to a game of bingo where a complainant's doctor labels a condition on the medical certificate in a certain way and the disability provisions automatically apply and s(he) calls it something else and the disability provisions do not apply.*
- The complainant prior to the submission of the medical certificate, had told her employer that she was not sleeping and suffering panic attacks.
- *"Having received the medical certificate and in possession of this information, a prudent employer would have sought a second medical opinion before dismissing her. Later emerged that the sequelae of the complainant's condition reflected a serious disorder – anorexia nervosa. She remains under the care of a psychiatrist. Therefore I am satisfied that the complainant's condition is a disability within the meaning of Section 2 (e) of the Acts."*



Aoife McGarry v. Temperature Ltd (2024)

- Claimant suffered a family tragedy during her probation period. As a result, she had depression.
- She never informed her employer directly of this disability. However, she had informed the service desk manager about her mental illness.
- During a meeting, in which the Claimant was told her probation period was to be extended, she broke down. She left the meeting and was unable to continue working that day.
- She informed the Respondent by email that she had suffered a breakdown and was seeking medical attention. She also outlined several grievances she had in relation to tasks assigned to her.
- The Respondent dismissed her the following week, citing failure to provide sick certificates after a week of absence. No manager had contacted the claimant in relation to the sick cert.
- The Adjudicator found the dismissal “*was not reasonable by any objective standard*” and determined the Respondent had “constructive knowledge” of her disability.
- While the Complainant had not informed her employer that she had a mental health condition, she suffered a number of breakdowns in front of them and had been on sick leave previously. The adjudicator was satisfied that the Respondent had “*constructive knowledge that the Complainant had a condition, illness or disease which affected her thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour*”, which is provided for under the definition of disability. On that basis, he awarded €10,000 (4 months’ pay) under the Employment Equality Acts, noting Ms. McGarry found new employment within a month.
- This case underscores the importance of employers recognizing and accommodating disabilities, even if they only have “constructive” knowledge of them.



Stress Claim

- The employer obligation is to put in place systems of work which protect employees from hazards which could lead to mental or physical ill-health.
- Psychiatric injury claim:
 - Damage – **not** ordinary occupational stress
 - Causation
 - Foreseeability – knew or ought to have known
- Counselling - EAP



A Sales Representative v A Wholesaler

- Medical certificate stated that the complainant was suffering from ‘**stress**’ following one week of sick leave.
- HR manager asked what medication he was on – he said he was prescribed anti-depressant.
- **Not medically assessed on return to work.**
- Lost laptop a few weeks after return and did not immediately report the loss.
- Sales director and HR manager call during which employee breaks down and says he is depressed.
- At the end of the call he is **dismissed**.
- During appeal he said he felt that the company’s attitude towards him changed following his sick leave.
- WRC found that the dismissal, in reality, related to incapacity even though the company did not relate it to that. An individual may suffer discrimination because they are perceived to be less capable or dependable than a person without a disability.
- **“Unconscious or inadvertent discrimination”**
- ***"There is a particular stigma about psychiatric conditions in the workplace and regrettably the complaint was punished by the respondent for revealing the true nature of his condition."***



Processes

Absence Management

- HR2
- No pauses
- Occupational Health

Performance / Disciplinary Process

- HR1 plus "Officer"
1 from the Business
- Pause

The Magic Bullet?

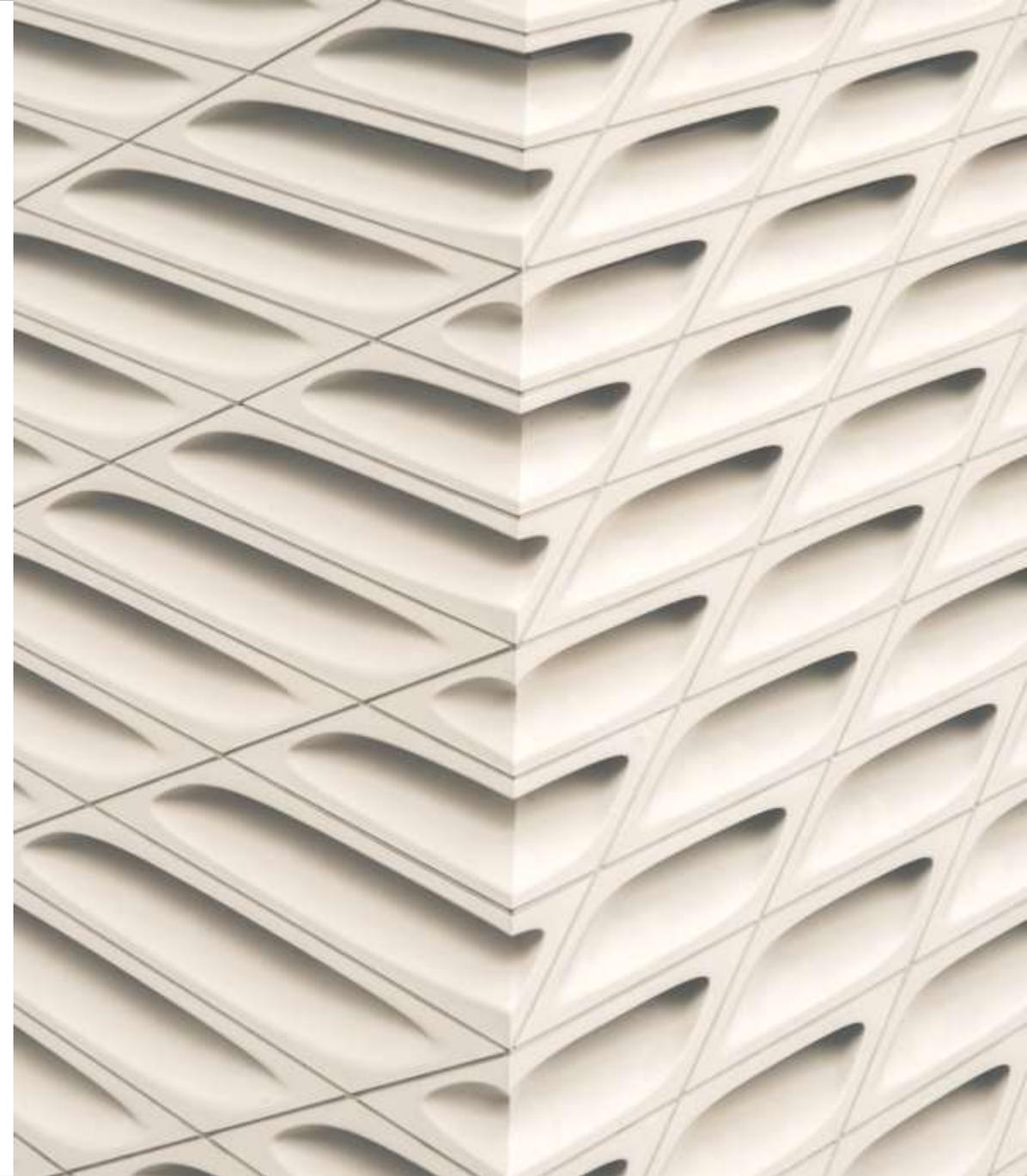
Health and Work Handbook by The Faculty of Occupational Medicine, the Royal College of General Practitioners and the Society of Occupational Medicine, with the support of the UK Department for Work and Pensions:

- *"It is likely that the effects of an unresolved dispute on the employee's mental health may be greater if the proceedings are postponed."*
- *An employee may be unfit for work but fit to engage with the management process.*
- *The doctor or nurse will have to assess whether attendance is likely to cause deterioration in the employee's mental health, for example if there is a significant risk of suicide".*



What adjustments can be made to the procedure:

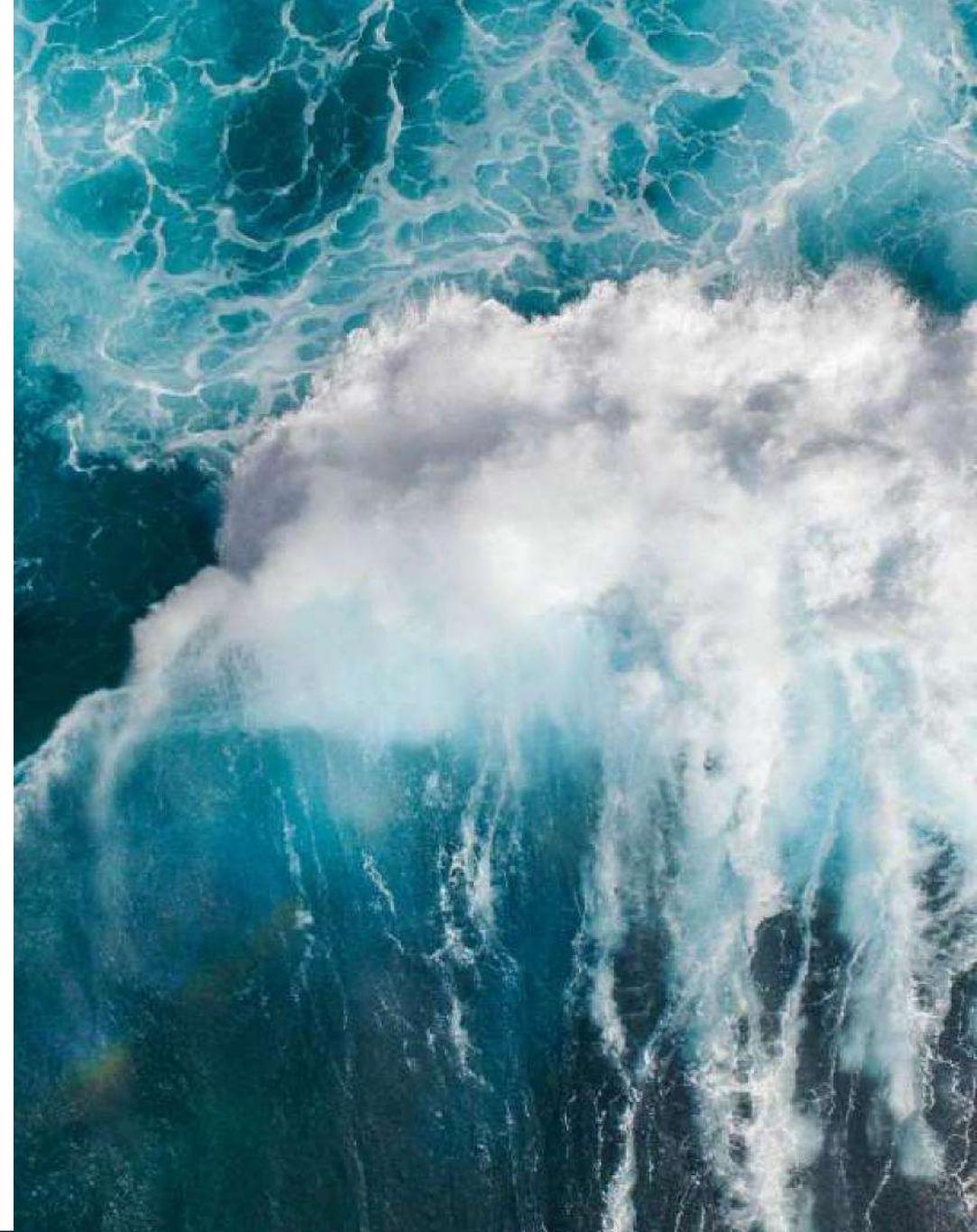
- Have the matter dealt with
 - in writing
 - over non standard period of time (e.g. two full days rather than one full day)
- Neutral venue
- Regular breaks
- Allowing a companion at the meetings outside of the usual employee/union official.



Protect and Promote Mental Health at Work

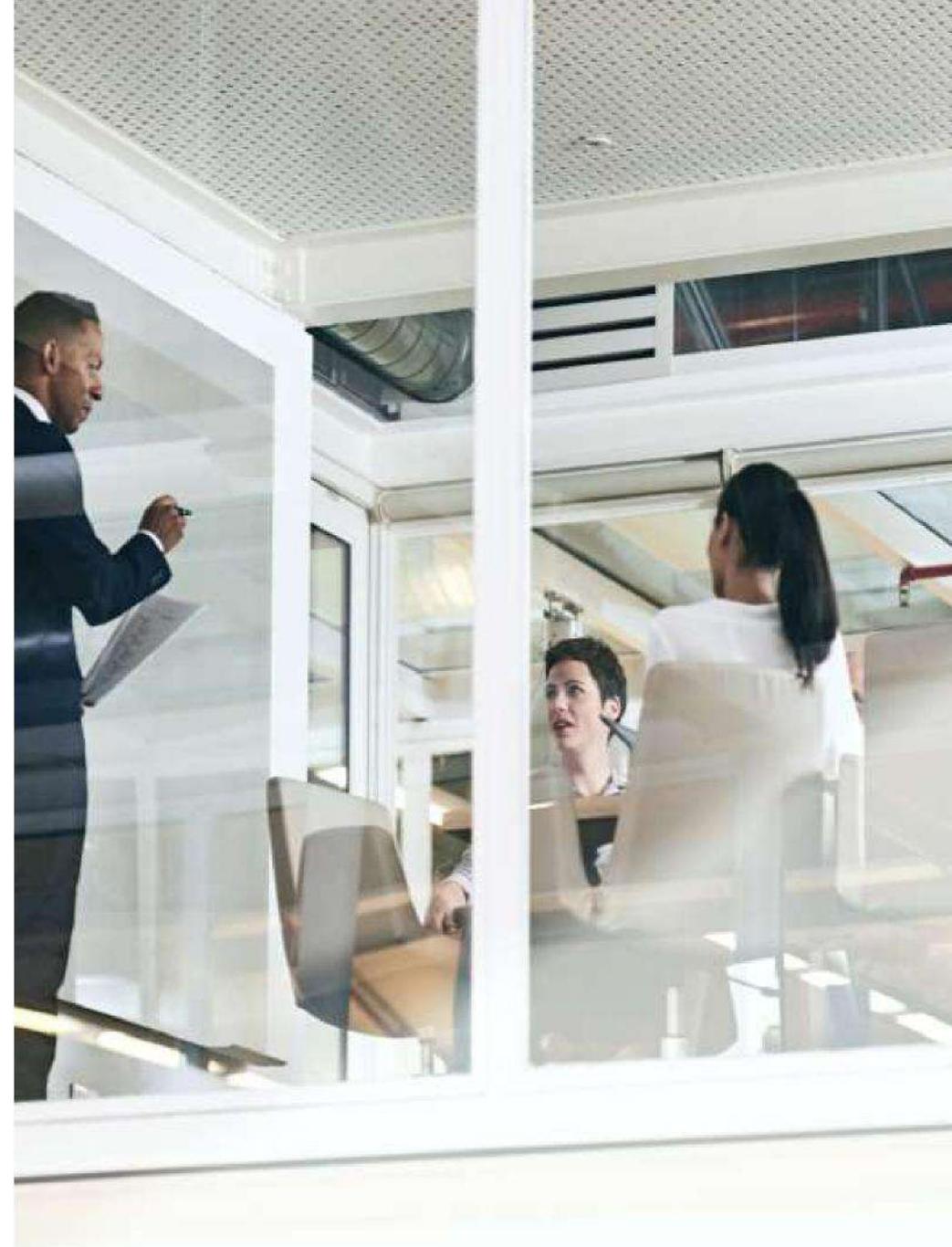
- **manager training for mental health** – help managers recognize and respond to supervisees experiencing emotional distress or workplace stress
- **training for workers** in mental health literacy and awareness, reduce stigma against mental health conditions at work; and
- **interventions for individuals** to build skills to manage stress and reduce mental health symptoms.
- **Reasonable accommodations**
- **Return-to-work programmes**

52% of companies are engaging in mental health awareness and/or stigma reducing activities in the workplace



Key Takeaways

- Proceed with care
- Process may not need to be delayed indefinitely or until employee recovers fully
- Consider obtaining medical report
- Employee though unfit for work may not be unfit to attend a disciplinary meeting or hearing
- Reasonable accommodations advisable
- EAP
- Wellbeing programmes
- The Reasonable Employer



Thank you

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