

# White Paper Conference

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If - as is increasingly common - an employer maintains full pay for an employee through cancer, why not offer the same in mental health situations?

\*\* Do policies of this type - whether formal or informal - leave you open to challenge?

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# Issues

- Is there really discretion?
- Any restriction on discretion?
- Could the exercise of discretion be discriminatory?

# Is there really discretion?

- Terms of the contract
- Custom and Practice
- “reasonable notorious and certain”

# Discretion

- The employer must not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee
- *Transco v O'Brien 2002* – must not be capricious

# Discrimination

- Sex Discrimination/Age Discrimination
- Disability Discrimination
  - Direct Discrimination
  - Failure to make reasonable adjustments
  - Discrimination arising from disability

# Conclusions

- Option A – remove all discretion
- Option B – retain discretion within a framework/guidelines
- Option C – carry on and take the risk

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