

## McLaughlin v Charles Hurst Ltd

- Marie-Claire McLaughlin was employed since July 2012
- She averaged 47.8 hrs/week including Saturday mornings
- She had absences due to depression and panic attacks
- She asked to reduce her hours to 40 per week because of her disability's impact on her and her colleagues
- She believed it would help her cope and improve her performance
- It took 14 months to consider and implement adjustment

### **The tribunal found that:**

- Her request was not considered in an appropriate manner, with little or no focus on her needs
- The treatment compounded and exacerbated her pre-existing condition
- When the adjustments were put in place, she found it much easier to cope and had little or no absence from work
- Compensation: £11,840.00

## Garner v West Yorkshire Police

- After a six-week absence due to stress and insomnia, Mr Garner had a return-to-work interview conducted by a Sergeant
- When discussing how to inform colleagues of his return to work, the Sergeant commented Mr Garner had been absent because he “went a bit doolally f\*\*\*\*\*g tap” (Army slang for 'lose one's mind') and mentioned “One Flew Over the Cuckoo's Nest”
- Mr Garner claimed disability harassment (unwanted conduct related to disability that has the purpose (intentionally) or effect (unintentionally) of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual)
- Unintentional conduct: tribunal must decide if it is reasonable to conclude that the definition of harassment has been met, considering the 'victim's' perception and the other circumstances of the case

### **The tribunal upheld disability harassment claim:**

- Comments were made without the intention of causing offence, however, the context was important, i.e. the Sergeant determining how his return to work would be communicated

- Mr Garner perceived the Sergeant's remarks as being derogatory and negative about his stress-related illness
- As this made him feel awkward and uncomfortable, it was reasonable to find that the definition of harassment had been satisfied
- The employer did not take reasonable steps to prevent discrimination – last equal opportunities training was in 2006
- NB: Return to work interviews: care about choice of words, up-to-date training is needed

### **Rev Irvine v Gloucestershire Hospitals NHS Trust**

- Rev Irvine was a hospital chaplain who developed depression
- After 4 years complaints about “inappropriate behaviour” from staff & patients
- He went off sick and OH report stated his disability impaired his judgement
- He was disciplined for inappropriate behaviour and was given final warning letter stating repeat of behaviour would mean dismissal
- Further complaints received 2 years later
- He was suspended pending OH referral, which stated “with appropriate treatment he could make full recovery”
- Following OH report, he went off sick
- 3 months later diagnosis of “atypical depressive condition” and OH advised he would remain off for at least a further 2 months

#### **Actions taken by employer:**

- HR Manager and OH doctor met Rev Irvine and his wife
- HR Manager told him:
  - There must be a “robust” return to work
  - He must show he could “hack” the job
  - If not he would be dismissed
- Discussions on return to work failed
- He resigned

#### **The tribunal found:**

- The initial suspension justified.
- The meeting with Rev Irvine and his wife amounted to less favourable treatment and failure to make reasonable adjustments:
  - Acknowledging that Rev Irvine's disability had caused his behaviour

- Allowing time for treatment/therapy as advised
- Exploring a gradual return to work
- The total award made was £66,797, in part made up of:
  - £20,000 injury to feelings, £8,000 for personal injury and £29,853 for future loss

## Hall v IBC Vehicles Limited

- Mr Hall had post-traumatic stress disorder and depression
- Over the years adjustments were made to accommodate his condition
- Following an anxiety attack Mr Hall acted in an intimidating manner (crying, shouting and throwing things)
- Found guilty of gross misconduct and dismissed
- Mr Hall was very upset and took a case under DDA

### **Tribunal findings:**

- The tribunal found it “odd” that Mr Hall was accommodated for several years but on this occasion the investigation/disciplinary process was handled in an unyielding manner
- The employer should have considered lessons from his treatment and depression over the years
- Tribunal found that the DDA should have been considered rather than applying normal disciplinary rules
- A medical report suggested that Mr Hall’s condition was exacerbated by the employer’s conduct
- £5,000 personal injury and £10,000 injury to feelings

**NB:** Tribunal stated that employees’ stress levels must be recognised and ways to manage, eliminate or reduce this should be implemented