

*Working hard to make it easier*



Pinsent Masons

# “Here Today and Tomorrow?”

Pinsent Masons’ Employment Law Workshop

CIPD Scottish Conference – Friday 12 March 2010



Pinsent Masons

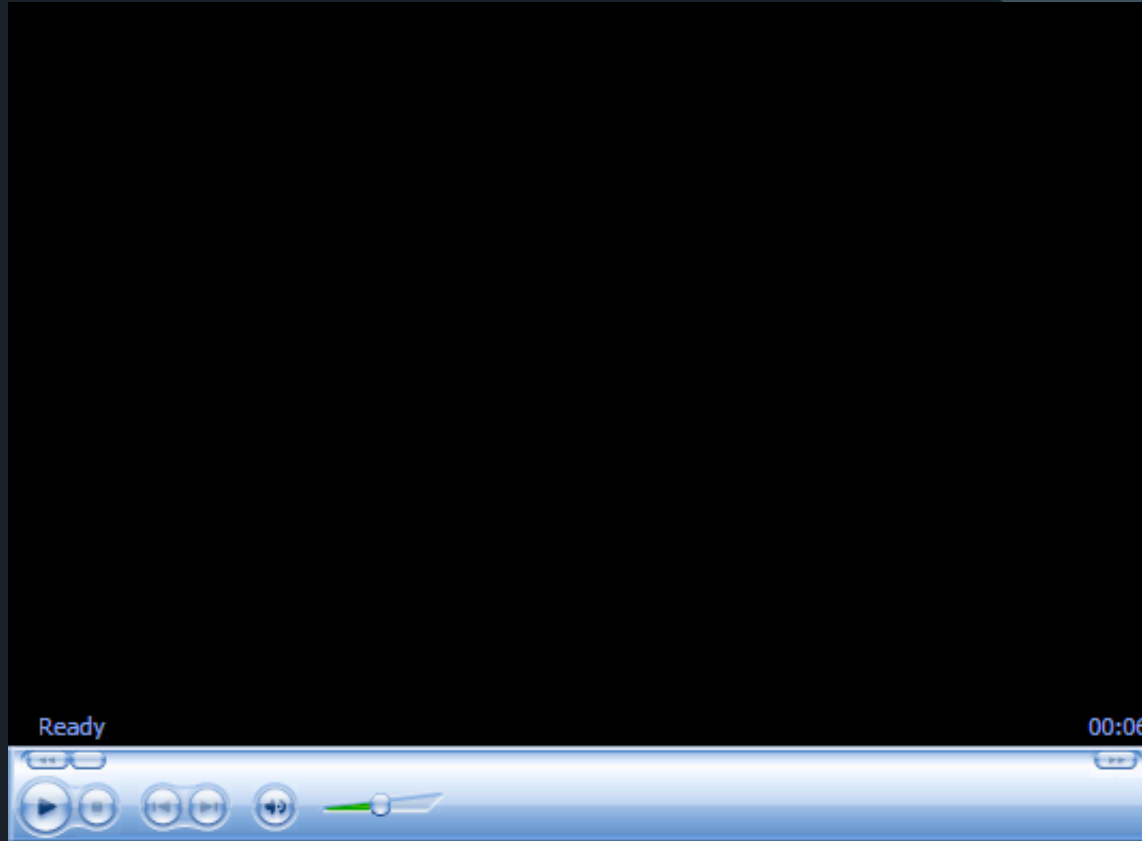
*Working hard to make it easier*

# “Angels & Demons”

*Working hard to make it easier*



Pinsent Masons



*Working hard to make it easier*

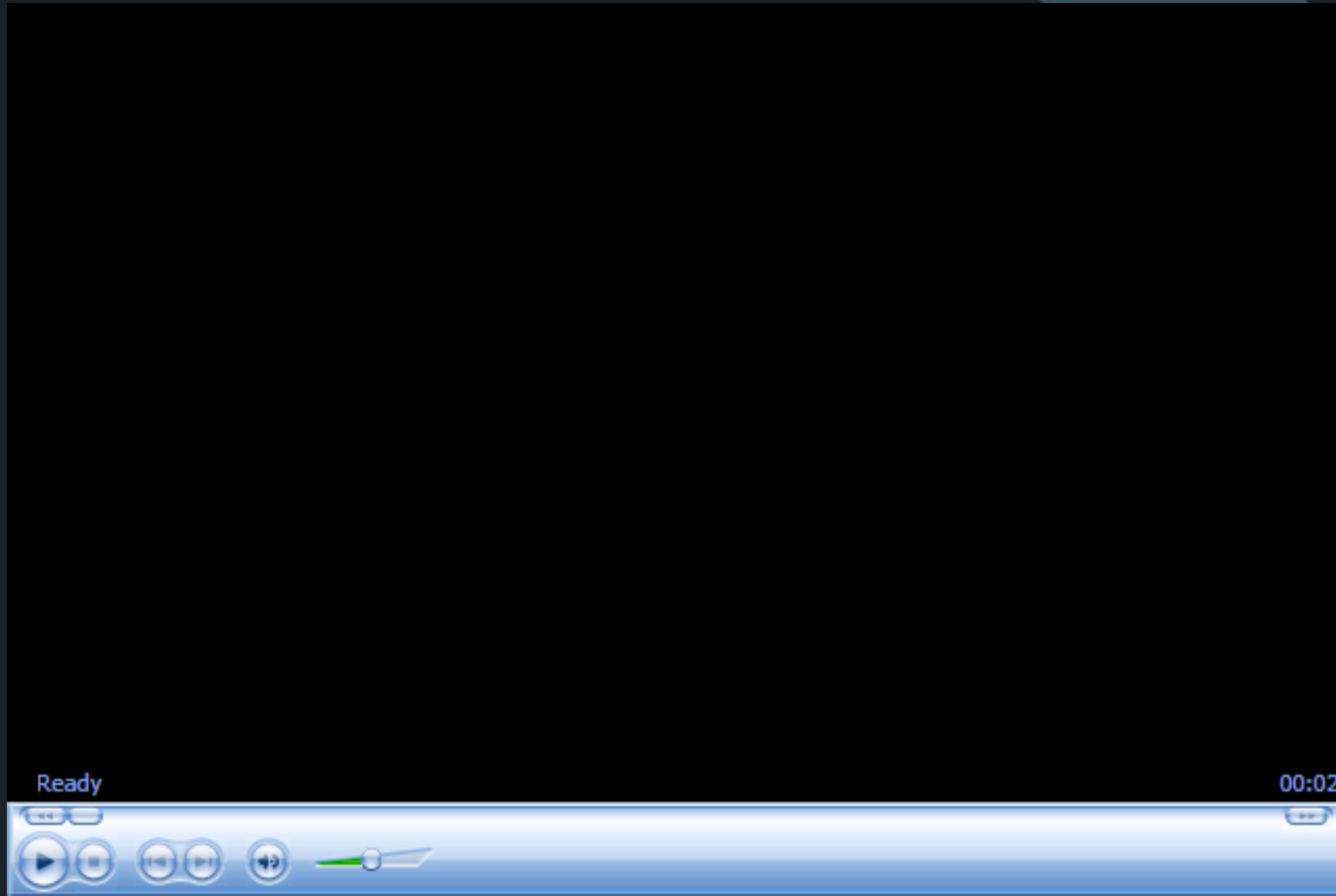
  
Pinsent Masons

# “Angels & Demons”

*Working hard to make it easier*



Pinsent Masons



*Working hard to make it easier*

  
Pinsent Masons

# “Angels & Demons”

*Working hard to make it easier*



Pinsent Masons

**“Dr Does-Little”**

*Working hard to make it easier*



Pinsent Masons

# Sue Downs – Stress / Anxiety

- One prior occasion of absence for mental health reasons
- Condition getting worse, linked to work
- Symptoms include disturbed sleep, constant tiredness, anxiety and inability to concentrate
- Prescribed anti-depressants
- Possible alcohol problem

# Ian Fraud – Bad back

- Car accident resulting in 2 days off work
- Recurrent pain since then
- No identifiable physiological cause of the problem
- Affects his ability to walk and carry
- Condition improved by medication
- Possibly exacerbated by leisure activities

# Miss Spell - dyslexia

- Clear medical diagnosis
- Existing for some time
- Has developed coping strategies
- Impact on ability to read and write accurately
- No time off sick
- Difficulty remembering long lists of instructions
- Now threatened with performance management

# Ms Moody – ‘women’s troubles’

- PMS – loss of concentration and motivation
- Tiredness and bad moods
- Moderate pain for 2 – 3 days each month
- Usually controlled through medication
- Sometimes needs time off

# Obtaining medical consent

- Consent is required for a medical examination
- Ask for specific consent in writing
- Check employment contracts and handbook – have you set the expectation / imposed a contractual requirement?
- Remember the Access to Medical Reports Act applies to health professionals treating the employee

# Dealing with refusal of consent

- Disciplinary action?
- Damage to psychological contract and employment relationship
- Only use in extreme cases
- Explain to the employee that the medical is for their benefit as well as yours (the doctors could come up with suggestions that would be helpful to them)
- Warn that if there is no medical evidence you will go ahead and make a decision without it.

**“Beyond Reasonable Doubt”**

*Working hard to make it easier*



Pinsent Masons

# Key Points to Consider

- Effectiveness and practicability of the adjustment
- If it will be easy/difficult to implement the adjustment
- Cost of the adjustment
- Operational disruption caused by the adjustment
- Financial situation of the employer
- Size of the employer
- Co-operation of the employee

# Scenario 1 - Claire

- Cashier at high street bank
- Suffers from Crohn's disease
- 'Flare-ups' cause exhaustion & fatigue in the morning
- Needs frequent loo breaks. Cubicles not private, gaps above & below partitions & poor ventilation, causes her embarrassment.
- **Is it reasonable to:**
  - Allow her to start work later? What if this would require the employer to employ another cashier to help with the morning rush?
  - Agree to her request to extend partitions from ceiling to floor in one of the cubicles and designate it for her private use?

# Scenario 2 - Michelle

- Supermarket supervisor
- Absent for 4 months – depression, triggered by separation from husband
- Previous depressive episode in 2006 following death of her mother
- Struggles to leave the house and maintain contact with outside world, even to attend her GP for sick notes/medication
- Not kept in contact with line manager and failed to respond to requests to get in touch. This is a breach of the company's sickness absence reporting requirements
- **Is it reasonable to adjust the requirements of the sickness absence reporting procedure?**

# Scenario 3 - Glen

- 1 of 10 IT support workers
- Employer needs to reduce headcount from 10 to 5
- Employer to competitively interview for the 5 remaining roles
- Glen is absent from work as he undergoes treatment for lung cancer and cannot attend a competitive interview
- **It is reasonable to 'ear-mark' one of the 5 available roles for Glen without putting him through a competitive interview process?**

# Scenario 4 - Leo

- Retail worker
- Suffers from condition that causes pain, fatigue and muscle stiffness
- Requested various adjustment to role, including additional breaks, variety of duties and to refrain from repetitive tasks
- **Is it reasonable for the employer to move Leo to another store where it will be easier to make the required adjustments?**

# Scenario 5 - Terri

- Works in commission based insurance sales
- Targeted to achieve a certain number of sales each month
- Suffers from chronic fatigue syndrome - symptoms include extreme tiredness, muscle pain & headaches
- Sometimes has difficulty concentrating on work as she is so tired
- Often needs to take days off work each month in order to rest
- This results in her failing to meet her sales quota each month, which affects her commission
- **Is it a reasonable to adjust her sales/performance targets to take into account the effect of sick leave/fatigue?**

# “Washing Line”

*Working hard to make it easier*



Pinsent Masons

# Scenario 1 - Kevin

- Starts new role – completes new starter form. Ticks box that states he has no medical conditions and doesn't consider himself to have a disability
- In role for 6 months when he goes off sick
- Submits 4 week sick note stating 'low mood'
- Does not return to work when sick line expires and does not contact line manager
- Invited to attend disciplinary meeting to discuss unauthorised absence – fails to attend
- Employer dismisses him in his absence
- Later transpires he has bipolar disorder. This was not known to his employer when he dismissed him.

# Scenario 2 - James

- Carpenter – works for a theatre
- Has a condition that has resulted in him losing some of his manual dexterity
- High risk surgery may help – he refuses this
- Occupational health says employer has done all that it can for James – his GP disagrees
- Employer carries out tests to check his performance – he underperforms & is dismissed
- Employer preferred the opinion of occupational health over that of James' GP

# Scenario 3 - Karen

- Off work for disability related reasons for 6 months
- Occupational health report says she is making a good recovery and is expected to be fit to return to work in 4 to 6 weeks
- Employer dismisses Karen on grounds of capability 3 weeks later

# Scenario 4 - Marie

- Absent for 12 months with bad back
- Refuses to attend an appointment with occupational health
- Refuses to give consent for her employer to access her medical records
- Employer dismisses her on the basis of the information it has available to it

# Scenario 5 - Alastair

- Has tourettes syndrome
- Previously had no control over it – could not leave the house, affected his day to day life
- Has now devised a regime that has been very successful in helping him to managing it, but he has occasional flare ups
- During an unexpected flare-up, he uncontrollably shouts obscenities at a colleague in front of customers
- He is dismissed

# *Working hard to make it easier*

LONDON DUBAI BEIJING SHANGHAI HONG KONG SINGAPORE  
OTHER UK LOCATIONS: BIRMINGHAM BRISTOL EDINBURGH GLASGOW LEEDS MANCHESTER

Pinsent Masons LLP is a limited liability partnership registered in England & Wales (registered number: OC333653) and regulated by the Solicitors Regulation Authority. The word 'partner', used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm who is a lawyer with equivalent standing and qualifications. A list of the members of the LLP, and of those non-members who are designated as partners, is displayed at the LLP's registered office: CityPoint, One Ropemaker Street, London, EC2Y 9AH, United Kingdom.

We use 'Pinsent Masons' to refer to Pinsent Masons LLP and affiliated entities that practise under the name 'Pinsent Masons' or a name that incorporates those words. Reference to 'Pinsent Masons' is to Pinsent Masons LLP and/or one or more of those affiliated entities as the context requires. For important regulatory information please visit: [www.pinsentmasons.com](http://www.pinsentmasons.com).

© Pinsent Masons LLP 2008



Pinsent Masons

[www.pinsentmasons.com](http://www.pinsentmasons.com)