



## £30k award after employer's adjustment of sickness absence trigger ruled inadequate

An Employment Tribunal has upheld a tribunal claim for unfair dismissal and disability discrimination brought by an employee at the Department of Work and Pensions. The employee, Ms Powell, was dismissed after her sickness absences exceeded her trigger point under the Department's sickness absence policy.

Ms Powell had worked for the Department for 34 years. She was disabled, and also suffered from other health problems that did not amount to a disability under the Equality Act 2010. Because of this, she was frequently off sick. The Department's sickness absence procedure provided that formal disciplinary action would be considered for any employee who had eight days' absence (or four spells of absence) within a rolling 12 month period.

The Department knew that Ms Powell was disabled, and therefore sensibly considered making an adjustment to this trigger point in her case. They concluded that some of her absences were caused by her disability, and decided to increase the normal eight day trigger to 12 days in Ms Powell's case. In addition, the Department's policy stated that "*dismissal decisions should not turn on a disabled person going a day or two over their trigger point*".

Ms Powell's sickness absence breached this increased trigger point by a few days, and she was dismissed. She brought claims of unfair dismissal and discrimination arising from a disability. The Tribunal upheld her discrimination claim and found that the Department should have given her more time to improve her attendance. They also highlighted procedural flaws in the dismissal appeal process that led to a finding of unfair dismissal.

Dealing with sickness absence cases is doubtless one of the trickiest tasks for HR and employment lawyers, partly because it is so difficult to compare the circumstances of different employees to establish safe rules of thumb. We should therefore tread carefully in drawing specific conclusions from this case - for example, about the proper adjustment to make to a trigger point in a sickness absence policy.

However, the case does stand as a useful reminder of the importance of following your own published procedures, and also of tending

towards a more generous approach to employees than you might be tempted to take. Here, the Tribunal clearly looked unfavourably on the dismissal of an employee of 34 years' standing for the sake of a few days of absence. It would not have been difficult or costly for the Department to have allowed Ms Powell a little more time to improve her attendance record, or to dismiss her fairly and lawfully if she had failed to do so.