By giving and working 7 month's notice employee had affirmed the contract

In Cockram v Air Products PLC, Cockram's contract required him to give three months' notice to terminate employment. He was unhappy that a grievance he had lodged about comments made to him by his line manager had been rejected. Cockram regarded both the line manager's and Company's conduct as wholly unacceptable and was so serious that he had no alternative other than to leave. He gave 7 months' notice saying that he had no other work secured to enable him to leave immediately and he needed to work for a reasonable period of time.

Upon leaving, Cockram lodged a constructive dismissal claim, but an employment tribunal struck out it out finding that he gave much longer notice than contractually required for his own financial reasons, and by giving long notice for his own ends rather than any "altruistic" (unselfish) reason he had affirmed the contract.

The EAT rejected Cockram's appeal. One of the elements in a constructive dismissal claim is that the employee must not delay too long in leaving, as a prolonged delay may be viewed as accepting the breach. The EAT rejected Cockram's argument that there was no limit on the length of notice that can be given and that post-resignation affirmation is excluded from constructive dismissal law. The question of affirmation of the contract is fact-sensitive. All the circumstances may be relevant, including the length of notice given and the reason why notice has been given. Therefore, the ET had been entitled to find that Cockram, by giving and working notice that greatly exceeded his contractual notice period, solely for his own financial reasons, had affirmed the contract.

The welcoming news for employers, as the EAT highlighted, is that if there was no limit on the period of notice that could be given, an employee could give many months' or even years' notice, in excess of their contractual notice period, but still retain the right to claim constructive unfair dismissal and that cannot be what Parliament intended.

No breach of duty to make reasonable adjustments to triggering system in attendance policy

In Griffiths v Secretary of State for Work and Pensions, the trigger point for a warning under the employer's attendance policy was eight working days of absence in any rolling 12-month period, whereupon individuals would be subjected to formal action. However, under the policy, if the employee is disabled, the trigger point could be increased as a reasonable adjustment. Griffiths suffers from post-viral fatigue syndrome and fibromyalgia, which had resulted in 62 days' continuous sickness absence and she was issued with a "written improvement warning" in accordance with the policy.

Griffiths raised a grievance, on the basis that as she was disabled, the employer was under a duty to make reasonable adjustments consisting of disregarding her 62-day absence period, thereby withdrawing the warning and increasing the number of days' absence that would activate the attendance policy in the future. The employer refused and Griffiths lodged a tribunal claim. The EAT agreed with the tribunal that Griffiths' claim for failure to make reasonable adjustments should be rejected.

First it was right that the provision criteria or practice (PCP) in this case, allegedly triggering the reasonable adjustment duty, was applying the attendance management policy which required attendance at work at a certain level in order to avoid receiving warnings and a possible dismissal.

Secondly, as to whether the duty to make reasonable adjustments arose, it has to be shown that the PCP puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled. So Griffiths, as a disabled person faced the same consequences as a disabled person if the policy was triggered meaning she cannot be at a disadvantage, let alone a "substantial" disadvantage.

Thirdly, although no duty arose, the adjustments sought by Griffiths would not have been reasonable because it would mean the employer having to disregard a long period of absence.

Employers should be very cautious about regarding this judgment as a green light for continuing to apply attendance trigger points across the board. If this case had been brought under the S.15, 'Discrimination arising from disability' provisions of the Equality Act 2010, would the result have been the same if Griffiths could show that she had been treated unfavourably because of something arising in consequence of her disability? If she could, then there is disability discrimination unless the employer can show that the treatment is justified in the circumstances. Decisions about how to treat an employee's absences resulting from a disability should be made taking all the surrounding circumstances into account.

Mental processes of those influencing the decision-maker must be considered in alleged discrimination

The EAT's decision in Reynolds v (1) CLFIS (UK) LTD (2) The Canada Life Group (UK) LTD (3) Canada Life LTD is of interest in terms of the approach to burden of proof in discriminations claims where a decision is alleged to be discriminatory and the decision maker has been influenced by others. In this case, 77 year old Dr Reynolds was the Chief Medical Officer. Canada Life's General Manager decided to terminate her consultancy agreement. A tribunal decided that the termination had not been because of Dr Reynold's age. In doing so the tribunal focused on the mental processes of the UK General Manager finding that he genuinely believed that Dr Reynolds was not providing the required level of support and that she would not make the necessary changes to enable her to do so.

Dr Reynolds appealed arguing that by focusing just on the mental process of the decision maker, the tribunal had erred because his decision was influenced by the views of other employees. The burden of proof was on the employer and her claim was against the employer as an organisation rather than just the individual decision-maker. The EAT agreed. It is for the employer to prove the decision was not tainted by discrimination and the employer is liable for the discriminatory acts of all its employees, so the tribunal should have considered the mental processes of all those employees who had significantly influenced the alleged discriminatory decision. Therefore, the case would be remitted to a different tribunal. From a practical point of view this case emphasises the needs for employers to keep records of everyone's input into selection, promotion, grievance, disciplinary, dismissal, etc., decisions.

Company signs an agreement with the EHRC to help raise awareness of equality and diversity

The Equality and Human Rights Commission has entered into a formal agreement with bookmakers Betfred, which aims to improve diversity and equality awareness among its 5,000 employees. The Company has was contacted by the Commission after an Employment Tribunal ruled against it in 2011 for failing to prevent the sexual harassment and subsequent victimisation of an employee. The Company has now taken steps to ensure that such matters do not occur again which include a full review of management practice in handling grievances and disciplinary proceedings, the rolling out of specific diversity training throughout the organisation, revising the staff handbook and a programme of activities designed to promote acceptance of a diverse workforce. The approach being taken serves as a reminder to all employers of some of the key elements in a best practice approach towards equality and diversity in the workplace.