



# Advice from Alan

## Constructive dismissal claims

*by Alan Knowsley, consultant, Rainey Collins Lawyers*

If an employer's behaviour leaves an employee no other reasonable

option but to resign, this can amount to a constructive dismissal and result in awards of compensation. An example of this was where an employee brought a constructive dismissal claim against their employer in the Employment Relations Authority (ERA).

The employee was subjected to an overly invasive interview being asked about their mental health diagnosis, treatment, and medication. The employer did not meaningfully address the employee's concerns as to why so much information was required. The employee raised concerns about their co-worker's coughing in the office being too loud and distracting. Instead of sufficiently addressing the issue, the employer threatened a disciplinary action for bullying. The employer initiated a performance management process and restructured the role without consulting the employee. The employer failed to clarify the requirements and performance indicators of the role, which caused stress to the employee. In response, the employer requested further mental health information from the employee and raised doubts about

the employee's capacity to perform their duties.

When the employment relationship broke down, the employer refused to attend mediation or enter into any settlement with the employee unless they received a medical certificate that the employee was capable of understanding the terms of the settlement. The toxic work environment, the lack of support, and refusing to engage in mediation led the employee to resign.

The ERA held that the employer had an obligation to address the employee's concerns quickly and it failed to do so when the employee raised legitimate concerns about the interview, coughing, and performance management process. The employer further aggravated the situation by refusing to engage in mediation on the basis of the employee's mental health.

The ERA ordered the employer to pay \$40,000 in compensation to the employee for making them feel discriminated for their health issues, and for causing significant psychological harm.

This case highlights the importance of employers acting in good faith and adequately addressing their employees' concerns.