How important are occupational health reports?

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In Gallop v Newport City Council, the Court of Appeal found that employers cannot necessarily say they did not know that an employee was disabled even though Occupational Health had diagnosed the employee as not disabled.

Mr Gallop worked for the Council, and over the course of a few

years was signed off work for stress. He was referred to Occupational Health on several occasions, who concluded that although Mr Gallop had stress related symptoms, he had no signs of clinical depression. Mr Gallop lodged a grievance that the Council had not taken sufficient steps to ensure his health and safety at work, which was rejected by the council on the basis that they had removed some of his duties and arranged a phased return to work. Mr Gallop was later dismissed for bullying and brought a claim for failure to make reasonable adjustments for his disability. The council argued that it had not failed in its duty to provide reasonable adjustments because Occupational Health had advised that Mr Gallop was not disabled.

The Court of Appeal found that the council could not deny knowledge of Mr Gallop's disability by unquestioningly adopting OH's advice. The case has been remitted back to the Tribunal to determine whether the council had actual or constructive knowledge of Mr Gallop's disability.

While employers may find determining disability tricky and want to rely on an Occupational Health medical report, they must remember they cannot outsource its responsibilities.

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