

Stress in the Workplace



The following material represents an informed opinion on the impact and interpretation of the relevant legislation. It is not meant to be an authoritative interpretation of the law, nor should it be taken as such. For detailed advice on specific issues please seek appropriate professional advice.

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Stress in the Workplace



Legal Overview

“In the context of stress at work resulting in a breakdown an employer will only be liable if he ought reasonably to have foreseen and ought properly to have averted that breakdown. He is entitled to assume that an employee can withstand the normal pressures of the job but the duty to safeguard an employee from impending harm to health arising from stress at work is triggered by any contrary indications that would be clear to a reasonable employer.”

The Hon Mr Justice Henriques from his judgment in ‘Garrod v North Devon PCT’

An employer’s obligations relating to stress at work comes under the auspices of the UK’s Health and Safety legislation. Most employers consider this legislation to only cover the prevention of physical harm caused by unsafe working practices, but it also applies to the prevention of psychological injury arising from stress at work.

The main duties are set out in:

- The Health & Safety at Work, etc Act 1974:
 - The duty to provide and maintain plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health (S2 (2)(a))
 - The duty to ensure , so far as is reasonably practicable, employees’ health and safety by providing instruction, training and supervision (S2 (2)(c))
 - The duty to maintain, so far as is reasonably practicable, a working environment that is safe and adequate as regards facilities and arrangements for employees’ welfare (S2 (2)(e))
 - Where there are 5 or more employees, the duty to draw up a written policy statement on health and safety at work and bring it to the attention of employees (S2 (3))

- The Management of Health & Safety at Work Regulations 1999
 - Every employer shall make a suitable and sufficient assessment of (a) the risks to the health and safety of his employees to which they are exposed whilst they are at work (Reg 3(1)).
 - Every employer has a duty to take into account employees' capabilities as regards health and safety when entrusting tasks to them (Reg 13(1)).

The 1999 Regulations are quite significant in that they impose the duty to risk assess jobs - something most employers are familiar with. However, these risk assessments should include an analysis of the risks to employees' psychiatric health caused by stress at work.

It is worth remembering that protecting employees from workplace stress is not an exact science. No matter what an employer does there will be some employees who experience stress related problems due to their own personal characteristics. All an employer can really do is demonstrate what steps they have taken to reduce the risks to employees - in exactly the same way as they would in assessments relating to potential physical harm.

Where an employer does identify risks any measures adopted to deal with them must be implemented on the basis of the following principles:

- Avoiding the risks entirely;
- Evaluating those which cannot be avoided;
- Combating the risks at source;
- Adapting the work to the individual;
- Adapting to technical progress;
- Replacing the dangerous by the non (or less) dangerous;
- Developing a coherent overall prevention policy;
- Giving collective protective measures priority over individual measures.

This explicit H&S background is also reinforced by the courts in their ability to award damages to employees who have suffered psychological injury arising from stress at work (subject to the injury being reasonably foreseeable and the employer having done nothing (or little) to prevent it).

It is worth bearing in mind that claims for damages arising from stress are made through the civil courts as personal injury claims. The courts therefore have a broader and indeed different remit to the Employment Tribunals and their tests on what they look at and what damages they can award.

In addition to the above, employees who develop illnesses as a result of their stress could come under the protection of the Disability Discrimination Act 1995. This means that any action to deal with those individuals should ensure that the employer's obligations under that Act are met.

What is Stress?



The word is frequently used in conversation but there are many definitions of what stress actually is:

“a state which is accompanied by physical, psychological or social complaints or dysfunction and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them.”

European Social Partner Agreement on Workplace Stress

“the way you feel when you’re under too much pressure”

NHS Direct Website

“the adverse reaction people have to excessive pressures or other types of demand placed on them”

HSE - “Tackling Stress: The Management Standards Approach” (2005)

“When the demands and pressures placed on individual workers do not match the resources which are available, either from the organisation or within the individual, stress can occur and endanger that person’s health and well-being”

London Hazards Centre - “Hard Labour” (1994)

The common theme from the above is that stress is not itself a disease - it is an individual’s reaction to external pressures. Being stressed can bring on medical conditions such as depression, and its symptoms can include medical problems like eczema or ulcers.

The HSE have identified a number of behaviours and symptoms associated with stress in the workplace, which can be grouped under 4 main headings:

1. Behavioural Symptoms

- Irritability
- Frustration & aggression
- Difficulty in making decisions or concentrating
- Paranoia
- Fear
- Tearfulness

2. Physical Symptoms

- Tiredness
- Insomnia
- Ulcers
- Eczema & other skin problems
- Headaches
- High blood pressure

3. Long Term health Problems

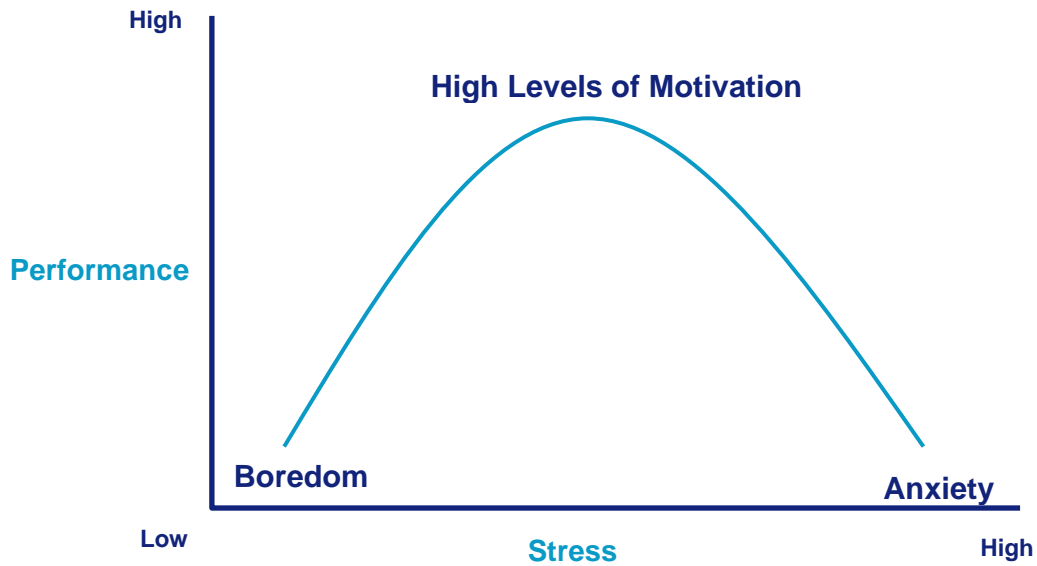
- Depression & other psychiatric illness
- Heart disease
- Strokes
- Diabetes
- Arthritis
- Asthma

4. Organisational Symptoms & Difficulties

- Dwindling productivity
- Poor performance
- High absence levels
- High staff turnover
- Poor morale
- Increased accident rates
- Legal claims for psychiatric injury

Any of these symptoms could give rise to an employer having to deal with an employee through their disciplinary procedure (which in turn could make things worse). However, unless the situation is handled properly then the employer is only dealing with the symptoms, not the underlying cause (and indeed may make the situation worse).

However, it is worth remembering that not all stress is bad. Moorhead and Griffin (academic commentators on management and organisational issues) argued that a certain amount of stress is required to get the best from employees, as per their model below:



The trick for employers is to be able to identify when the balance has tipped the wrong way for employees and to do something about it.

Why Tackle Stress?



“stress is the new back-pain”

Anon

Depending upon the preferred source of data Stress is now either the biggest or second biggest cause of absence from work in the UK (sources: *The Stress Management Society* and *James Tighe’s report on stress for BBC Health*).

Figures provided by the HSE and quoted by commentators on the subject state that:

- Stress affects 1 in 5 of the working population;
- Work related stress accounts for over a third of all new incidences of ill health;
- Each case of stress related ill health leads to an average of 30.9 working days lost;
- 13.4 million working days were lost to stress, depression and anxiety in 2001, 12.8 million in 2004/5;
- Work related stress costs society approximately £3.8 billion a year (at 1996/97 prices).

When faced with the problems caused by higher absence rates, increased recruitment costs due to higher turnover and a reduced level of productivity most employers would agree that there is a need to tackle stress in the workplace.

For those still in doubt there is the added incentive that a failure to tackle the problems could result in (potentially very large) claims for damages from employees who suffer psychiatric injury as a result of their employer’s inaction. Combined with the high financial costs of the legal fees and the adverse publicity generated by such cases this should be a big enough carrot for even the most obstinate employer!

Employer Liability



The question of an employer's legal liability for psychiatric injury is well documented in the many cases which emanate from the courts each year. The basic principles were established in the leading cases of *Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd* in 1968 and in *Barber v Somerset County Council* from May 2004.

The Barber case in particular is used as a leading authority because of the detailed judgment made on the extent of the Council's actions. It is particularly relevant here as the House of Lords overturned a Court of Appeal decision, finding that an employer was liable for an employee's psychiatric illness brought on by work-related stress. In that case the employer was **in breach of its duty of care in failing to make inquiries about the employee's health on his return from time off work for stress and depression and in not reducing his workload.** In essence, the employer did not do enough find out about Mr Barber's condition/illness or to help him.

Generally, employers are entitled to operate under the principle that:

“Unless he knows of some particular problem or vulnerability, an employer is usually entitled to assume that his employee is up to the normal pressures of the job.”

Lord Walker in the House of Lords judgment in Barber v Somerset County Council.

However, as with issues relating to pregnancy and disability, an employer is not entitled to rely on the fact that they were not expressly told of a problem or vulnerability if they could have reasonably deduced that there was a problem from the facts before them. This was the point established in 1968:

“the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know”

Swanwick J in the Court of Appeal judgment Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd

In instances where an employee is no longer capable of carrying out the role they are employed in then it is open to an employer to dismiss:

“where an employee is liable to develop some illness if he carries out the job which he is employed to do, the employer owes him a duty of care not to continue to employ him to perform that job..... But such a duty would have to mesh with the provisions of the relevant employment contract regulating sickness absences and ill-health retirement.”

Lord Rodger in the House of Lords judgment in Barber v Somerset County Council.

This remains the case, **even if the employer is directly responsible for the illness in the first place** (*Royal Bank of Scotland plc v McAdie*).

The issue for any court or tribunal becomes the reasonableness of the dismissal in terms of the procedure followed and the reason. Employers are advised to ensure that they follow robust capability dismissal procedures and get as much information from the employee and the medical profession as they are able before making any final decisions, particularly as the DDA might apply.

It will be difficult for any employer to defend a claim for stress related damages if they have done little or nothing to address and alleviate the problem at the time. However, it is very easy for employers to defend such claims if they have been proactive, have taken appropriate steps and, where appropriate, preventative measures.

Identifying the Causes of Stress



There are seven broad categories of risk factors which can give rise to work related stress, although there are areas of overlap within them:

1. Culture

Employees should feel comfortable in highlighting any problems they are experiencing with regard to stress at work (or indeed any other issues). There should be open and regular communication and employees should understand where their jobs fit in.

Where the culture does not tolerate stress, or sees it as an 'excuse' rather than a problem will not only create a more stressful environment (where failure is not an option) but will be in an indefensible position in the face of any legal claim.

2. Demands

The key issues are whether or not there is too much or too little work for the individuals involved and whether or not they are capable of doing what is asked of them. Steps to minimise the risk of stress in this areas include training staff adequately and ensuring that they can voice any concerns about their workload.

This is a particularly vulnerable area for staff who receive work from a variety of sources (e.g. secretaries). Conflicting demands and tight deadlines can cause even the most competent of employees to suffer from stress.

3. Control

Those with little or no control over the way that work is carried out are the most likely to suffer from stress. The HSE recommends that employers should create a supportive environment and ensure that their staff understand how their work fits in with the aims of the organisation.

4. Relationships

This relates to the social and professional conduct of the staff at work. Employers should have a bullying and harassment policy which is supported by management.

Bullying and harassment may itself lead to other types of claims (constructive dismissal, discrimination, personal injury, etc) which will create their own difficulties for employers.

5. Change

Employers who explain the need for change, consult, operate an 'open door' policy and provide assistance to those affected are likely to minimize the detrimental impact of any changes on their employees.

6. Role

Stress within a role can be caused by the individual having received contradictory expectations about the role (i.e their definition of the role is quite different to that of their manager) or by having no clear picture of what their work objectives or what the expectations of their managers are.

7. Support, Training & Factors Unique to the Individual

Proactive employers will not employ a one size fits all approach to the way work is organised. Employee's personal styles, strengths and weaknesses need to be considered. Employees should be properly trained, supported, and should be encouraged to take their rest breaks and holidays.

The key theme through all of the issues identified above is one of communication. Employers who have good communication policies in place will face fewer difficulties than those who do not. In addition, they will have the opportunity to deal with incidences of stress at a much earlier stage and will have a better chance of preventing any serious problems arising.

The HSE also suggests that employers should promote a healthy work life balance for employees. This does not mean allowing more time away from work - a situation which could just allow work to pile up awaiting the individual's return. A succinct definition of what work life balance actually is was put forward by Linda Holbeche - *"Most people believe their work and life to be in balance if they can exercise some control over their time and workload"* (*The High Performance Organisation*, 2005)

The HSE have produced a set of Management Standards relating to stress, and put their approach to these standards forward as a model for employers. A copy of these standards is included at Appendix 1 of this document. It is yet to be seen whether following their advice rigidly is an absolute defence against claims, but it will no doubt prove a very powerful argument against litigation. Employers wishing to compare themselves to those standards can download and complete a survey which will provide general pointers on areas for improvement in their organisation. Those Companies looking for more tailored advice will find a range of options available to them (Googling the word "stress" produces 2.2 million results!).

All of the above, and indeed all of the guidance on stress for employers, relates to the causes of stress stemming from the workplace. This will not always be the case. Some employees will be

stressed as a result of issues in their personal life and will bring those stresses to work with them.

In situations like that whilst issues at work may exacerbate their stress they will not be the root cause. This does not negate the need for employers to take steps to support the individuals concerned, but it does reduce the amount that may be achievable by the company.

According to Business Link the most common 'external' causes of stress are:

- Relationship difficulties / divorce
- Serious illness in the family
- Caring for dependants such as children or elderly relatives
- Bereavement
- Moving house
- Debt problems

Other causes include

- Health problems not linked to work (e.g. obesity, time of life, etc)
- Family conflict
- Dependency issues (alcohol, drugs, nicotine, etc)
- Being the victim of crime

The list could go on. Employers will have no control over the causes or solutions to these problems. As long as they are handled with tact and sensitivity within the workplace there is no reason that a balance between the needs of the individual and the needs of the business cannot be struck.

Dealing with Stress



When faced with stress claims from employees the first question when deciding what to do about them has to be:

Is the root cause of the stress something at work or something in the employee's personal life?

The answer to this can only be found through discussion with the individual and, where access has been granted, through asking their GP.

In cases where a sick note appears with the word "stress" on it employers should contact the individual at the earliest opportunity to both have the preliminary conversation about the causes and to alert them to the fact that you will be seeking permission to approach their GP. Employers who have Occupational Health provisions should make a convenient appointment for the employee as soon as is reasonably practicable.

If the stress is NOT work related....

Establish what help, if any, can reasonably be provided to the individual. This will depend largely upon the circumstances and could involve anything from a temporary change in workload or start times through to some reasonably managed time off work.

It is important that some help is offered because whilst the original stress was not work related employers will not want to be held culpable for aggravating the original condition. Additionally, any failure to support the employee through a short term problem may lead to that employee deciding to leave and seek alternative employment.

If the stress IS work related....

The first and most obvious point to make is not to panic, but the following steps should be taken promptly.

1. Establish the root cause.

This will mean getting into a dialogue with the employee about what they think has caused the absence. You will also need to obtain access to GP records and arrange for a referral to any occupational health provider.

The root cause of the stress may not be the incident which caused the absence (it may be a straw that broke the camel's back scenario) so employers will need to be prepared to probe more deeply than the individual was initially prepared to go. Any probing of this type needs to be done gently and sensitively to ensure that the situation is not made worse!

2. Write to the GP (and/or any other medical specialist involved).

You must ask specific questions about the causes of the stress, when it was first diagnosed and whether or not the employee has any previous history of stress.

The employee's history of stress related absences will be of interest to the courts of the issue is litigated at a later stage. It is also important for an employer to understand if the employee is particularly susceptible to stress.

3. Whilst waiting for the GP's response, investigate the issues raised by the employee thoroughly.

It will be useful to establish:

- Was the individual overloaded with work or were they doing the same or less than everyone else?
- Did anything happen around the time of the absence (appraisal interview, rows with colleagues/manager, major deadline missed, etc)?
- Was the individual fully trained to do the job?

The investigation should be warts and all. If something has gone wrong then any attempt to cover it up will only increase any award that could be made by the courts. Employers will be treated more leniently where they have been seen to deal effectively with the cause of the stress.

Ultimately the purpose of the investigation is to try and establish where the fault appears to lie - was the individual simply unable to cope with the normal pressures of the role or did the employer cause the absence.

4. Inform your insurance company of the absence, the reported reason for it and the results of your investigation so far.

Then keep them updated.

5. When you have all of the information, establish what really can and can't be done.

Is the root cause of the stress work related because it was caused by one (or more) of the contributing factors discussed earlier or because the employee simply could not do the job being asked of them?

Employers need to decide what is and is not practicable in dealing with the cause of the stress. What needs to be done will differ for different cases, but some obvious adjustments could be:

- Job redesign
- Change location/team/environment
- Adjust working times/hours
- Change jobs

Where the absence has been triggered by some form of discrimination, bullying or harassment then disciplinary action should be taken against the perpetrator(s).

6. Maintain a regular dialogue with the employee.

The outcome of the investigation and the report from the GP should be used as discussion points with the employee with a view to establishing what can be done to alleviate the situation and get them back to work.

7. Make a decision about whether or not the employee will be able to return to work.

This is not always about whether or not they will be medically fit. There will be occasions where the employee will not recover within a timescale that is acceptable to the employer.

Useful Contacts

Probity HR Ltd	www.probityhr.com
Health & Safety Executive	www.hse.gov.uk
NHS Choices	www.nhs.uk/magazines/workplacehealth
NHS Direct	www.nhsdirect.nhs.uk
Gipping Occupational Health	www.gipping.co.uk
Stress Management Society	www.stress.org.uk



Who are we?

Probity HR Ltd specialises in providing HR support and employment law advice. Our services include an advice helpline, contracts, policies & procedures, handbooks and training.

We provide practical advice and reliable business support across all areas of employment law and employee relations including dismissal, discipline, redundancy, immigration & legal working, discrimination, maternity and holidays (to named but a few).

The organisation was established as a direct response to a lack of affordable, quality support available to the SME sector. Since then PHR has gained a reputation for providing value for money support business's trust.

Testimonials from past and present clients can be found on the portfolio page of the website at www.probityhr.com

Appendix 1

The Management Standards for Work-related Stress

(taken from the HSE Publication "Tackling Stress: The Management Standards Approach")

Demands

Includes issues like workload, work patterns and the work environment

The standard is that:

- employees indicate that they are able to cope with the demands of their jobs; and
- systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved:

- the organisation provides employees with adequate and achievable demands in relation to the agreed hours of work;
- people's skills and abilities are matched to the job demands;
- jobs are designed to be within the capabilities of employees; and
- employees' concerns about their work environment are addressed.

Control

How much say the person has in the way they do their work

The standard is that:

- employees indicate that they are able to have a say about the way they do their work; and
- systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved:

- where possible, employees have control over their pace of work;
- employees are encouraged to use their skills and initiative to do their work;
- where possible, employees are encouraged to develop new skills to help them undertake new and challenging pieces of work;
- the organisation encourages employees to develop their skills;
- employees have a say over when breaks can be taken; and
- employees are consulted over their work patterns.

Support

Includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues

The standard is that:

- employees indicate that they receive adequate information and support from their colleagues and superiors; and
- systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved:

- the organisation has policies and procedures to adequately support employees;
- systems are in place to enable and encourage managers to support their staff;
- systems are in place to enable and encourage employees to support their colleagues;
- employees know what support is available and how and when to access it;
- employees know how to access the required resources to do their job; and
- employees receive regular and constructive feedback.

Relationships

Includes promoting positive working to avoid conflict and dealing with unacceptable behaviour

The standard is that:

- employees indicate that they are not subjected to unacceptable behaviours, eg bullying at work; and
- systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved:

- the organisation promotes positive behaviours at work to avoid conflict and ensure fairness;
- employees share information relevant to their work;
- the organisation has agreed policies and procedures to prevent or resolve unacceptable behaviour;
- systems are in place to enable and encourage managers to deal with unacceptable behaviour; and
- systems are in place to enable and encourage employees to report unacceptable behaviour.

Role

Whether people understand their role within the organisation and whether the organisation ensures that the person does not have conflicting roles

The standard is that:

- employees indicate that they understand their role and responsibilities; and
- systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved:

- the organisation ensures that, as far as possible, the different requirements it places upon employees are compatible;
- the organisation provides information to enable employees to understand their role and responsibilities;
- the organisation ensures that, as far as possible, the requirements it places upon employees are clear; and
- systems are in place to enable employees to raise concerns about any uncertainties or conflicts they have in their role and responsibilities.

Change

How organisational change (large or small) is managed and communicated in the organisation

The standard is that:

- employees indicate that the organisation engages them frequently when undergoing an organisational change; and
- systems are in place locally to respond to any individual concerns.

What should be happening/states to be achieved:

- the organisation provides employees with timely information to enable them to understand the reasons for proposed changes;
- the organisation ensures adequate employee consultation on changes and provides opportunities for employees to influence proposals;
- employees are aware of the probable impact of any changes to their jobs. If necessary, employees are given training to support any changes in their jobs;
- employees are aware of timetables for changes;
- employees have access to relevant support during changes.