

**The UK National Work-Stress Network, Conference 2010**

## **PERSONAL INJURY CLAIMS FOR OCCUPATIONAL STRESS & HARASSMENT**

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### **Session Plan:**

- Introduction
- The law on claims for personal injuries caused by stress at work
- Case Studies
- Break
- The law on claims for harassment
- The overlap between personal injuries and employment law
- Your experiences
- Questions

### **Introduction: How big is the problem of stress at work?**

- HSE estimates 425,000 employees suffered from work stress that they felt impacted upon their health in 2009/10.
- HSE estimates 9.8 million working days lost in 2009/10.

### **Introduction: Why is the problem not taken more seriously?**

- Bottom line – because there has been only a small prospect of facing claims from employees.
- Compare with the effectiveness of '6 pack' regulations of 1992:
  - The Management of Health & Safety at Work Regulations
  - Manual Handling Operations Regulations
  - Display Screen Equipment (DSE) Regulations
  - Workplace (Health, Safety and Welfare) Regulations
  - Provision and use of Work Equipment Regulations
  - Personal Protective Equipment (PPE) Regulations

### **Personal Injuries Claims for Stress at Work**

- Walker v Northumberland County Council (1995)
- Hatton –v- Sutherland (2002)
- The 16 ‘Hatton Propositions’.

## **Are the Hatton Propositions Still Good Law?**

Proposition 3 - An employer is usually entitled to assume that the employee can withstand the normal pressures of the job...

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Proposition 6 - The employer is generally entitled to take what the employee tells him at face value.

### **Are the Hatton Propositions Still Good Law?**

- Proposition 11 - An employer who offers a confidential advice service (with potential for referral to counseling & treatment) is unlikely to be found in breach of duty.

### **Are the Hatton Propositions Still Good Law?**

- Proposition 15 - Where the harm has more than one cause, the employer should only pay for that proportion attributable to him, unless the harm is truly indivisible.

### **Are the Hatton Propositions Still Good Law?**

- Proposition 4 - There are no occupations which should be regarded as intrinsically dangerous to mental health.

## **Are the Hatton Propositions Still Good Law?**

Proposition 2 - The injury to the particular employee must have been reasonably foreseeable.

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Proposition 7 - It must be plain enough to the reasonable employer to realise they should do something about an impending harm to health.

### **Summary: What an employee needs to prove:-**

1. Their employer owed them a duty of care;
2. They suffered a recognised psychiatric disorder;
3. The employee's psychiatric disorder/illness was foreseeable to their employer;
4. The employer was in breach of their duty to the employee in some way;  
and
5. The employee must show that their employer's breach of duty caused or materially contributed to the psychiatric illness that the employee suffered.

# CASE STUDIES

**Discuss in groups**

Break

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**BREAK**

### **Claims for Harassment.**

- The right to bring this claim comes from the Protection from Harassment Act 1997.
- Anti-stalking legislation
- Contains both criminal and civil sanctions.

### **Claims for Harassment.**

There must be conduct which occurs on at least two occasions;

Which is targeted at the victim;

Which is calculated in an objective sense to cause alarm or distress;

Which is objectively judged to be oppressive and unacceptable;

What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs; and

A line has to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: 'torment' of the victim, 'of an order which would sustain criminal liability'.

## Claims for Harassment.

- Majrowski –v- St. Thomas NHS Trust (2006)
- Employer held Vicariously liable for the acts of their employee.

## Recent Cases – How Serious Does the Conduct Have to Be?

Conn –v- Sunderland City Council (2008)

Ferguson –v- British Gas (2009)

Dowson & 5 Others –v- Chief Constable of Northumbria Police (2010)

## Why Claim for Harassment rather than Stress at Work?

- Limitation.
- Foreseeability requirement.
- Level of compensation.
- Diagnosis.
- Claim for both in some circumstances.

**Can an employee bring a claim for both a personal injury and in the Employment Tribunal**

- Unfair Dismissal & Wrongful Dismissal
- Discrimination

# DISCUSSION & QUESTIONS