



# Stress in the Workplace Check List

Collective **inspiration**

Lessons from Health & Safety Case Law No. 07b

In *Sutherland v Hatton and others* [2002], the cases of four separate claimants were heard by the Court of Appeal (CA) - details below. Three out of the four claimants were stripped of the damages they had been awarded in the first instance, and the CA laid down 16 “practical propositions” to be considered in injury claims arising from work-related stress.

## The Facts

### Hatton

The claimant in this case was a secondary school teacher who suffered from depression and a nervous breakdown and was initially awarded £90,765. The CA found that Hatton gave the school she worked for no notice that she was growing unable to cope with her work. She had suffered some distressing events outside of work, which the school could reasonably have attributed her absence to, particularly as other staff did not suffer from health problems as a result of restructuring in the school, and the fact that she did not complain. The court held that as teaching cannot be regarded as intrinsically stressful, the school had done all they could reasonably be expected to do. It was unnecessary to have in place systems to overcome the reluctance of people to voluntarily seek help.

### Barber

This case involved another teacher, employed by Somerset Council. In the first instance, Barber was awarded £101,042 damages, after reorganisation of the school increased his workload and led to his suffering from depressive symptoms and taking early retirement. CA noted that Barber was not the only teacher to have an increased workload, nor did he inform his employer of his depressive symptoms. It was held that the school did not breach its duty of care.

### Bishop

The claimant worked in a factory for 18 years, and was initially awarded £7000 damages after suffering from a mental breakdown and attempting suicide. In revoking the award, the CA noted that Bishop could not cope with restructuring of the company, while all his workmates could. Again, the claimant did not make his employers aware of his condition, or that his GP had advised him to change jobs. It was held that the work demands were not excessive, but that he was “set in his ways” and wanted his old job back.

### Jones

The claimant, an administrative assistant employed by the Sandwell Metropolitan Borough Council, was awarded £157,541 in the first instance, having suffered from anxiety and depression after a period of extreme overwork. Unlike the claimants in the above three cases, she had complained of her excessive workload to her manager, but she still received no help. The CA did not revoke her award, on the grounds that her employer knew of her excessive workload and it was reasonable to conclude that it was foreseeable that harm would result from the stress and from the employer’s breach of duty.

## The Law

The guidelines set up by the CA are as follows:

There are no special control mechanisms relating to work-related stress injury claims; ordinary principles of employers’ liability apply.

The “threshold” question is whether this kind of harm to this particular employee was reasonably foreseeable.

Foreseeability depends on what the employer knows or should know about the individual employee. Unless aware of a particular problem or vulnerability, the employer can usually assume that the employee can withstand the normal pressures of the job.

The test is the same for all occupations; no occupation is to be regarded as intrinsically dangerous to mental health.

Reasonable foreseeability of harm includes consideration of:

- the nature and extent of the work
- whether the workload is much greater than normal

- whether the work is particularly intellectually or emotionally demanding for that employee
- whether unreasonable demands are being made of the employee
- whether others doing this job are suffering harmful levels of stress
  - whether there is an abnormal level of sickness or absenteeism in the same job or department. The employer can take what the employee tells it at face value, unless it has good reason not to, and need not make searching enquiries of the employee or his or her medical advisors.
  - The employer can take what the employee tells it at face value, unless it has good reason not to and need not make searching enquiries of the employee or his/her medical advisors.
  - The duty to take steps is triggered by indications of impending harm to health, which must be plain enough for any reasonable employer to realise it has to act.
  - There is a breach of duty only if the employer has failed to take steps that are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of that harm, the costs and practicability of preventing it and the justifications for running the risk.
  - The employer's size, scope, resources and demands on it are relevant in deciding what is reasonable (including the need to treat other employees fairly, for example in any redistribution of duties).
  - An employer need only take steps that are likely to do some good; the court will need expert evidence on this.
- An employer that offers a confidential advice service, with appropriate counselling or treatment services, is unlikely to be found in breach of duty.
- If the only reasonable and effective way to prevent the injury would be to dismiss or demote the employee, the employer will not be in breach in allowing a willing employee to continue working.
- In all cases, it is necessary to identify the steps that the employer could and should have taken before finding it in breach of duty of care.
- The claimant must show that that breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress caused the harm; it must be linked with the breach.
- Where the harm suffered has more than one cause, the employer should only pay for that part caused by its wrongdoing, unless the harm is indivisible.
- Assessment of damages will take account of pre-existing disorders or vulnerability and the chance that the claimant would have suffered a stress-related disorder in any event.

## Further Reading

A leaflet published by the Health and Safety Executive, called "Health and Safety Law: What you should know", is available from the HSE website - <http://www.hse.gov.uk/pubns/law.pdf>.

Information on all relevant Health and Safety legislation can also be found on the HSE website. <http://www.hse.gov.uk>

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