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Psychiatric Damage and Mental Illness

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Wednesday 7th March 2018

ANTI-DEPRESSANTS – THERE IS STILL A STIGMA

BBC Feb 2018

New #Headstogether &
#Mindcharity workplace health
initiative launched
Daily Mail Mar 2018

MENTAL HEALTH TRUSTS LEFT WITH LESS FUNDING THAN 2012

The Guardian Feb 2018

HEADLINE NEWS

ANXIETY

Report calls for better
mental health support in
the workplace

Thriving at Work: a review of mental health and
employers. Jan 2017

NHS TO LAUNCH NATIONAL
SCHEME TO TREAT VETERANS'
MENTAL HEALTH
The Telegraph Mar 2018

DEPRESSION



Reports

- *Five Year Forward View for Mental Health*, published by the NHS in February 2016.
- "*Thriving at Work: a review of mental health and employers*", commissioned by Theresa May in January 2017 and written by Lord Dennis Stevenson and Paul Farmer. The report puts the annual cost to the UK economy of poor mental health at up to £99bn, of which about £42bn is borne by employers.
- *Mental Health at Work Report 2017-* produced by Business in the

Community in partnership with YouGov.

Campaigns

- *Mind.org*
- *Time to Change* - end stigma and discrimination.
- *Heads Together* mental health campaign – Led by Duke of Cambridge.



Thriving at Work' Report – Government commissioned in January 2017

- **The Stevenson / Farmer Review of Mental Health and Employers:**
 - Published 26 October 2017.
 - Government commissioned independent review.
 - 15% of people at work have symptoms of an existing mental health condition.
 - 300,000 jobs lost annually due to mental ill health.
 - National focus on productivity makes this a priority issue.
 - Mental health core and enhanced standards and recommendations.
 - Poor mental health costs the UK economy up to £99 billion a year, £42 billion of which is borne by employers.
 - Analysis by Deloitte identified potential to generate a return to business of between £1.50 and £9.00 for every £1 invested.

'Thriving at Work' Report

- **Key findings:**

- Only 11% of employees discussed a recent mental health problem with their line manager.
- 50% of employees say they would **NOT** discuss mental health with their line manager.
- Only 11% of the top 100 companies in the UK have disclosed information about initiatives to support employee mental health in their annual reports.
- 4 in 10 organisations have policies or systems in place to support employees with common mental health illness [**Theresa May**: 'If you have a mental health problem, people are more likely to try to avoid you'].
- Only 24% of managers have received training on mental health at work
- 8 in 10 employers report no cases of employees disclosing a mental health condition.

Quote from MIND

- *“Mental health is still the elephant in the room in most workplaces – employees are reluctant to raise the subject for fear of discrimination, while managers often shy away from the subject for fear of making matters worse or provoking legal consequences. The culture of silence means that opportunities to support someone in the workplace are being missed, resulting in staff being off sick or falling out of the workplace altogether”*

Emma Momo, MIND

Mental Health – ‘Thriving at Work’ Report

- Sets out 6 “mental health core standards”
 1. Produce, implement and communicate a mental health at work plan.
 2. Develop mental health awareness among employees.
 3. Encourage open conversations about mental health and the support available when employees are struggling.
 4. Provide employees with good working conditions and ensure they have a healthy work life balance and opportunities for development.
 5. Promote effective people management through line managers and supervisors
 6. Routinely monitor employee mental health and well being.

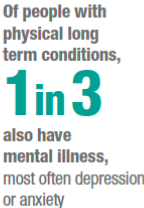
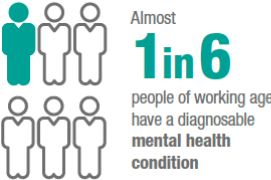
Mental Health Disorders - Statistics

- **Impact on the working age population:**
 - More than half of disabled people who are out of work had a mental health and/or musculoskeletal disorder as their main health condition: **Department of Works and Pensions, Department of Health.**
 - Economic cost of mental ill health – estimated at £70 billion or 4.5% of GDP: **OECD 2014.**
 - Lost working days due to mental health – £70 million: **CMO report 2013.**

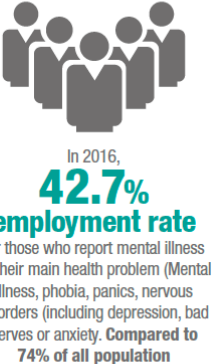
Mental Health Disorders - Statistics



Health and Work Spotlight on Mental Health



Work can be a cause of stress and common mental health problems: in 2014/15 9.9m days were lost to **work-related stress, depression or anxiety**



Sources: Adult Psychiatric Morbidity in England, 2007; Health and wellbeing at work: a survey of employees, 2014; Cimpean & Drake 2011; Naylor et al 2012; OECD, 2014; Labour Force Survey, various years

Mental Health Disorders - Positives

- “Good” work and paid employment → advantageous for mental wellbeing:
Waddell & Burton 2006.
- People unable to work – majority indicate working leads to better health:
McManus et al 2012.

Mental Health Disorders – Economic Impact

- Mental health issues (including stress, depression, anxiety and more serious conditions, e.g. manic depression and schizophrenia) – resulted in 15.8 million working days lost: Sickness Absence in the Market Place 2016/2017.
- During the period 2014 – 2017:
 - Most common reason for writing a fit note: mental health **or** a behavioural condition.
 - Fit notes written for anxiety and stress related conditions by GPs increased by 14%: **Primary Source Domain, NHS Digital 2017.**

Mental Health Disorders – Assessment

- Critical role to be played by the close liaison of Occupational Health (OH) professionals and mental health professionals
- Comprehensive occupational assessment:
 - a) Understands the individuals and their strengths and weaknesses;
 - b) Nature of the workplace and demands of the job; and
 - c) The desired outcome for both individual and employer.
- What is the key test?
 - Specialist and trained medical assessment will be the critical step through to diagnosis and appropriate treatment plans.

Mental Health Disorders - Measurements

- Specialist assessment and accurate diagnosis is assisted by measurement of change over time in patients.
- Change gauged by using standardised psychological health measurement tools, such as: PHQ9 (Patient Health Questionnaire) GAD7 (Generalised Anxiety Disorder Assessment).
- **Classification of common psychiatric disorders**
 - *ICD: volume 10*
[by WHO International Classification of Disease]
 - *DSM – 5th Volume*
[by US psychiatry specific Diagnostic and Statistical Manual]

Mental Health Disorders – Main Conditions

Adjustment disorders

‘Extreme’ short and medium term reactions to stressful events. They occur more commonly in people with other mental health vulnerabilities and usually resolve within months of the stressor ceasing.

Depression

Clinical depression is a potentially disabling but often eminently treatable common mental disorder. Often categorised as mild, moderate or severe. Individuals experiencing mild depression can usually continue with their normally pattern of life without substantial impairment.

‘Traumatic’ disorders (PTDs)

The majority of people who experience traumatic events recover well and without the need for any formal health care assistance – even if they experience short term distress. A minority will develop more persistent disorders (including PTSD and other anxiety disorders).

Mental Health Disorders – Main Conditions

Chronic Mixed Anxiety and Depression

This results in low mood, sadness and very real distress about the features of normal life. This is a widely experience problem and it is important not to resort to overly medical solutions. If symptoms become severe enough then there can be impairment of normal daily activities.

Bipolar Affective Disorder (also known as Manic Depression)

This disorder along the schizophrenia, is often termed a serious mental illness (SMI) fully characterised by episodes of depression, mania or a mixture of both.

Schizophrenia

This is also a chronic SMI that causes a range of different psychological symptoms. This can include hallucinations, delusions and muddled thoughts. It is a psychotic illness although the exact cause is unknown.

Acute Psychotic Disorders

Whilst all psychotic disorders are SMIs, not all are enduring. Psychoses are normally transient and can occur as a result of extreme stress or be brought about by illicit drug use.

HSE Management Standards – ‘How to Tackle Workplace Stress’ INDG 430 (October 2009)

- **Six management standards**
 1. Demands (of a job)
 2. Control
 3. Support
 4. Role
 5. Change
 6. Relationships

HSE 'How to Tackle Workplace Stress'

Five critical steps:

1. Identify the stress risks factors;
2. Decide who might be harmed and how;
3. Evaluate the risks;
4. Record the findings and develop action plans;
5. Monitor and review

HSE Booklet 'Emergency Measures'

- Sets out the symptoms of impending breakdown
- HSE website: www.hse.gov.uk: ('Stress')

The Nature of the Problem

- **What is the distinction: Stress v. psychiatric injury?**
 - Normal rules of occupational health and claims liability apply?
 - No special control mechanisms for psychiatric (or physical) illness or injury arising from the stress of doing the work the employee is required to do.
 - Stress is not an injury or medical condition in itself.
 - Liability for DESTRUCTIVE occupational stress.
 - This includes '*an excess of demands beyond an individual's ability to cope*' (HSE's original definition).
 - Now updated: "It is when we experience TOO MUCH PRESSURE and FEEL UNABLE TO COPE that stress can result" (HSE INDG420 October 2009).

Duty – at what level is it set?

- Ordinary principles of employer liability apply
- Key issues
 1. Employer is only in breach of duty if he or she has failed to take steps reasonable to the circumstances, bearing in mind the magnitude of the risk, the gravity of the harm which may occur, the costs and practicality of preventing harm and the justification for running the risk.
 2. Scope of the employer's operation, its resources and the demand it faces are relevant in deciding what is reasonable.
 3. An employer can only reasonably be expected to take steps that are likely to do some good (e.g. allowing the person to work from home).
 4. An employer who offers a confidential advice service with a referral to appropriate counselling or treatment services has previously been viewed as unlikely to be found in breach of duty
 5. If the only reasonable and effective step would have been to dismiss or demote an employee, the employer has previously been viewed as not in breach of duty in allowing a willing employee to continue work.
 6. In all cases it is necessary to identify the steps which the employer both could and should have taken before finding him or her in breach of his or her duty of care

Causation and Foreseeability

- **Key Issue:**
 - Whether the kind of harm done to this particular employee was reasonably foreseeable, NOT whether PSYCHIATRIC INJURY was foreseeable in a person of reasonable fortitude.
- **Two components:**
 1. An injury to health (as opposed) to occupational stress.
 2. Attributable to stress at work (as distinct from other factors).

Development of the Legal Context

From 1995 a series of cases provided guidance in this area.

- The judiciary started to expand the boundaries of the employer's duties towards health and safety.
- Extreme work-based pressures and excessive workloads led to an introduction of a general duty to protect the health and safety of the employee.
- Certain early cases caused employers concern at the degree of their potential liability should they fail to deal with workplace stress claims in an appropriate manner.
- Cases such as Walker, Johnston, Ingram and Barber prompted concern amongst employers that the Court decisions seemed to have created a wide scope of potential legal liability, given the growing awareness of workplace stress.

Breakthrough Cases

Walker -v- Northumberland County Council [1995]

- First successful 'second breakdown' case to be publicised.
- Increasing workload, nervous breakdown, upon his return promised assistance given but quickly withdrawn and continued increase in workload led to a second breakdown.
- Employer aware of employee's vulnerability and second breakdown was reasonably foreseeable.

Ingram -v- Worcester County Council [2000]

- Out of Court settlement reached at a level of £203,000.
- Clear that the employer had failed to take reasonable care of the employee who had suffered severe and lengthy periods of stress in the workplace and had also been undermined by senior management.

Post *Hatton* Developments

In *Hatton* the Court of Appeal set out what is now **post-Barber -v- Somerset County Council** acknowledged to be practical guidance, although not of statutory force.

- Ultimately **MUST** be foreseeable that injury may result if the employer does, or fails to do, something which might cause or contribute to an injury occurring.
- The Court indicated that: “foreseeability depends upon what the employer knows (or ought reasonably to know) about the **INDIVIDUAL** employee. Because of the nature of mental disorder it is harder to foresee than physical injury but may be easier to see in a known individual than in the population at large”.
- In addition, the working conditions and demands of the job are relevant considerations too.
- What matters is how small the risk should have appeared such as to excuse an employer from not reacting to it, or reacting only to the factually insufficient degree it did.

Barber –v- Somerset County Council [2004]

- Court of Appeal allowed the employer's appeal.
- Reference made to recognition by the Court of Appeal that *the causes of mental illness will often be complex and depend upon the patient's personality and a number of factors in a patient's life, and that it is not easy to predict who will fall victim, how, why or when.*
- This therefore leads to:
 - a) Overworked people having different capacities for absorbing stress, and different breaking points; and
 - b) Senior employees usually having quite strong inhibitions about complaining about overwork and stress, **EVEN IF IT IS BECOMING A THREAT TO THEIR HEALTH.**

Guidance

Guideline (12) is:

“if the only reasonable and effective step would have been to demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job.”

Withers -v- Perry Chain Company Limited [1961] 1WLR

Coxall -v- Goodyear Great Britain [2002] EWCA Civ 1010

Dickins -v- O₂: Employee being required to decide if he/ she continues in a specific job is ill conceived and contrary to Hatton and Barber. Requires a more pro-active not re-active approach from employers.

Also European Legislation – stresses adapting the work to the individual.

Causation Guidance

In **Hatton** the last three guidelines related to causation:

Guideline 14:

“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 has caused the harm”.

Guideline 15:

“Where the harm suffered has more than one cause the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing, unless the harm is truly indivisible. It is for the Defendant to raise the question of apportionment”.

Causation Guidance

Guideline 16:

“The assessment of damages will take account of any pre-existing disorder or vulnerability and of the chance that the Claimant would have succumbed to a stress-related disorder in any event”.

Malcolm -v- Broadhurst [1970]

Page -v- Smith [1995]

(No difference in principle between eggshell skill and an eggshell personality.)

Mather -v- BT Plc [2000] Scots CS 141: Before a psychological illness could sound in damages, the illness must have been caused by the breach of duty concerned and not by what MIGHT HAVE HAPPENED after the breach of duty had come to an end.

Employment / Personal Injury – DUAL FOCUS

Manda -v- USB AG [Central London County Court 16 June 2016]

- Employer applied to strike out an employee's claim for damages for personal injury.
- Principle of RES JUDICATA (finality in litigation).
- Principle of ABUSE of PROCESS.
- The case failed in part because it was withdrawn and it was dismissed on withdrawal.
- BUT it had been inadequately pleaded, the Tribunal had an opportunity to adjudicate on it and despite the fact that the County Court proceedings had been pleaded differently, this was in effect a revival of an extinguished right of action.
- The Tribunal had jurisdiction in respect of the disability discrimination allegations, including the jurisdiction to award compensation for personal injury in respect of any such discrimination.

Employment / Personal Injury

Johnson -v- Unisys Limited [2001] (HL)

Allen -v- Independent Newspapers Limited – (unreported – EAT)

Brown -v- Ventelo Telecommunications Limited – (unreported – EAT)

- Extent to which a stress related injury incurred during a period of employment may be taken into account when assessing financial loss attributable to a dismissal under the Unfair Dismissal Act 1977.
- Particular focus on amounts to be included within calculations of the compensation award and potential loss of earnings.

Employment / Personal Injury

- Melville -v- Home Office
- Wheeldon -v- HSBC
- Dickins -v- O₂ Plc
- MacLennan -v- Hartford Europe Limited
- Deadman -v- Bristol City Council
- Yapp -v- Foreign and Commonwealth Office
- Bailey -v- Devon Partnership
- Daniel -v- Secretary of State
- Easton -v- B&Q
- Carigor -v- Dawson
- M Konczac -v- BA Systems (Operations) Ltd
- McDade -v- Critchlow

Questions



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