

# Occupational Stress

An overview of the issues surrounding claims based on stress caused in the workplace

## Overview

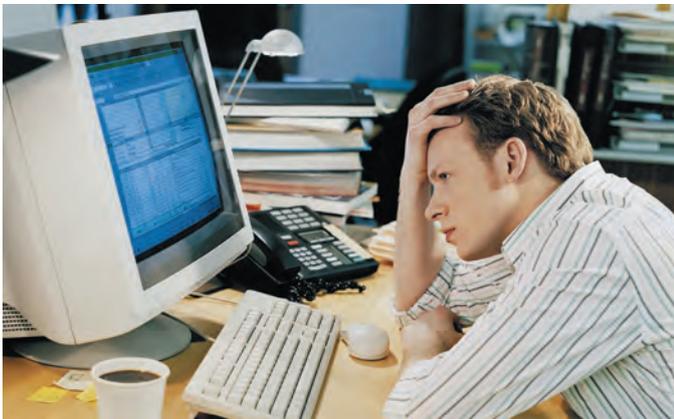
Recent years have seen a dramatic rise in people making personal injury claims based on psychological problems caused by stress at work. The problem is, it is very difficult to prove employers' legal liability in such cases. Two cases in particular have raised important issues surrounding such claims: the House of Lords decision in *Barber v Somerset County Council* on 1 April 2004, and the decision of the Court of Appeal in *Hatton* in 2005. This factsheet takes into account both of these crucial developments.

## Occupational stress

It is important to recognise that most work is stressful from time to time, to some degree. So to claim damages for work-related stress you must suffer a recognised psychiatric injury.

## Employer(s) responsibility

Employers have a duty of care to look after the health, safety and welfare of their employees. This includes both physical and mental welfare.



## Pursuing a claim for damages

Unless you have a claim based on the Harassment Act (see later), for your claim to stand a chance of success, the following four criteria must be met:

- **Condition.** A recognised psychiatric illness (injury) must have been suffered
- **Causation.** The psychiatric injury must, on balance, have been caused by the exposure to the stress of the employment and not from other stress factors such as matrimonial issues, moving house, problems with children or bereavement. Furthermore, the opinion of a consultant psychiatrist will be needed to decide whether work has increased the risk of mental injury
- **Foreseeability.** You will need to prove that your employers should have foreseen the risk of your suffering from mental illness. This is a difficult thing to establish, and several cases at the Court of Appeal have failed on this point. The requirement to show there was a foreseeable risk of injury was underlined in *Hartman v South Essex Mental Health NHS Trust* in 2005

- **Negligence.** You must be able to prove that the injury was the fault of the employer, and could have been avoided. For instance, doubling the workload of an employee without providing additional support or resources could well mean that the employer has failed in their duty of care.

## Recent landmark cases

In a number of judgments culminating in the decision in *Hatton v Sutherland*, the Court of Appeal underlined the importance of foreseeability in personal injury claims arising out of stress at work.

The important question that must be satisfactorily answered is: *could the employer reasonably have foreseen that an employee would suffer from mental injury as a result of the work that he/she was asked to perform?*

In the case of *Hatton v Sutherland*, the Appeal Court placed the burden of proving this on the shoulders of the employee. In brief, the following principles emerged:

- The individual is in charge of his/her own mental health
- The individual can gauge whether the job was doing him/her any harm
- The individual can then do something about it.

The fact is, employers can effectively sit blinkered to the health of their employees; it is up to the employee to make it obvious that there was "a sufficient indication of impending harm to health arising from stress at work which was plain enough for any reasonable employer to have realised, so as to trigger a duty to do something about it" (LJ Hale in *Sutherland v Hatton* 5/2/02).

In essence this means that being laid-back, not bursting into tears, or shouting "I need some help" could prove that the injury was not foreseeable to the employer because the Courts say that foreseeability is "to a large extent a matter of impression".

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## Case study

Mr Barber v Somerset County Council:

Barber v Somerset County Council, was the first occupational stress case to go to the House of Lords. Mr Barber was a teacher. Following the restructuring of the work at his school he found that he was suffering from “work overload” and couldn’t cope. He went to his General Practitioner, had three weeks off work with stress, and highlighted his condition to a number of members of the school’s management team. The majority of the House of Lords, led by Lord Walker, decided that the school had a duty to investigate Mr Barber’s condition in July 1996, after the meetings described above. Effectively the school was aware of the risk of harm to the health of their employee, and by failing to investigate or act the school breached its duty of care towards Mr Barber.

Lord Scott was the one Judge who disagreed, upholding the view of the Court of Appeal that “They are all adults. They choose their profession”. His Lordship felt that shifting the burden back on to the shoulders of the employer was imposing too high a duty of care. Although Mr Barber won, this was a “borderline” case as far as the breach of duty of care was concerned. Notably, Mr Barber had returned after the summer vacation and spent two months “communicating nothing” to his employers before suffering his breakdown.

### What can be learnt from the Barber case?

- The most important issue in these cases remains the foreseeability of injury due to stress
- Each case is judged on its individual facts
- An employer is obliged to stay up to speed with the knowledge of occupational stress as it develops
- Once aware of an employee’s condition, an employer has a duty (which may differ in intensity) to investigate and act, in an attempt to stop the condition getting worse
- An employee does not have to be forceful in his complaints, because at the time he/she may be ill
- Complaints should be listened to sympathetically and not “brushed off”
- If an employee has had a period of sick leave due to stress or mental injury this needs to be taken seriously by his employer
- An employer has a duty to consider how they can improve the working situation in relation to the employee, even to the extent of paying for additional temporary staffing.

### Key issues

Mr Barber’s was classed as a ‘borderline’ case; it is still the employee’s duty to raise issues relating to their mental health with the employer to ‘give notice’ that they’re in difficulty.

If the employee neglects to do this, the case will almost certainly fail. This is precisely what happened in the most recent decision of the Court of Appeal, the case of Hartman v South Essex Mental Health and Community Care NHS Trust in 2005.

### Bringing a case based on the Harassment Act

In contrast, bringing a case through the Protection from Harassment Act 1997 means that foreseeability of harm doesn’t have to be established. The House of Lords in *Majrowski v Guy’s & St Thomas’ NHS Trust* made it possible for those who are harassed at work to succeed in a claim for damages.

Harassment is not specifically defined, but behaviour that is: “oppressive & unacceptable”, “genuinely offensive”, and calculated to “cause distress” can provide grounds for a claim.

#### To be relevant, this kind of behaviour must:

- Occur on at least 2 occasions
- Be targeted at the claimant
- Be calculated objectively to cause distress
- Be objectively judged to be oppressive and unreasonable.

It will be interesting to see how ‘harassment’ is interpreted by the lower courts as more cases are brought, but we suspect it will not be widely defined. Conduct bordering on criminal conduct will probably have to be established.

Please note that this factsheet is only a basic guide to an uncertain area of law. The best course of action is to start by seeking specialist advice relating to your own individual circumstances.



Please feel free to discuss your own position and concerns.  
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