



# UK NATIONAL WORK-STRESS NETWORK NEWSLETTER

EUROPEAN AND UK HAZARDS CAMPAIGN

SUMMER 2002

## Foreseeable work-related illness and potential Litigation

### *The Impact of the Court of Appeal judgements*

The judgement of the Court of Appeal in 4 cases of stress-related illness caused by work factors, has placed many people on the back foot, and suggested that the focus of future thinking will be on the foreseeability of psychiatric illness. After the successes of Walker vs. Northumberland CC and similar out of court settlements, it is not surprising, and not particularly pleasing to be told that *'no job is intrinsically any more stressful than any other job'*.

That the employee must have registered all aspects of work-related stress with the employer, who must also have considered how foreseeable the illness might be, is also a worrying constraint.

Employers will need to be more aware of the risks facing employees, and employees will have to advise employers of any additional pressures they suffer. The court also suggests that employees will need to take more responsibility for their own well-being, and where s/he does not advise the employer, then negligence on the employer's part is not likely. Employers, however may not sit back and ignore work-stress situations. Risk assessments should be carried out, related to excessive pressures, the individual circumstances of the employee, high workload demand and whether there is any specific vulnerability exhibited.

The provision of counselling and advice services will

## Stress Essentials - Conference Report

*Engineering Employers Federation, London*

*St George's Day, 2002*

Invited interested parties assembled at the EEF London Headquarters for a day of presentations and discussion. The focus of the day was to enable the launch of the new EEF Stress guidance to its many affiliates, and to focus thinking of academics, consultants, trades unions and OH professionals on the implications of the Court of Appeal, and around the key development by HSE of Stress Management Standards for future implementation.

Ian Draper of UK National Work Stress Network and NASUWT was invited to attend, and the views of the network were raised in discussion. Our activity was highlighted in the Case Studies Report for delegates, and future contact with us should be anticipated.

The Conference was opened and chaired initially by Mick Clapham M.P. Chair of the OH Select Committee. He spoke of the huge costs to industry, employees and of course to GNP of work-related ill-health. He referred to the new EC work on stress (see later report), and to the need for development of Management standards and their application in the future as a preventive tool for work-related stress and psychiatric injury.

Speakers included Andrew Buchan QC; Sayeed Khan, head of OH at Rolls Royce; David Harrison of University of Birmingham, Jon Richards of UNISON, Liz Aram of The Forster Company, Steve Walker of EEF, Abdul Chowdry of HSC, Richard Ennals of UK Work Organisation Network, Dr Amanda Griffiths (Nottingham University) and Owen Tudor, HSC.

**Andrew Buchan** began by highlighting the key issues around the 4 cases considered by the Court of Appeal. He noted that three of the original four judgements were overturned, and outlined the key factors in each of those cases.

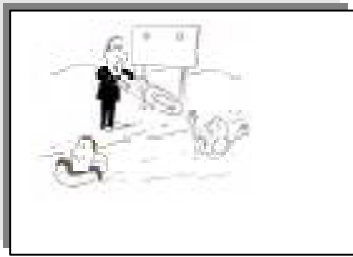
**Sayeed Khan** from Rolls Royce presented the work undertaken in the Jet Engines division at Bristol, focussing

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demonstrate that an employer's caring attitude, and will make him less likely to be in breach of duty, except where unreasonable demands can be proven.



Employers will need to minimise risks of occupational stress in their workplace. They can do so by regular assessment of workloads, providing real channels and opportunities for employees to raise problems that they

are experiencing, and by providing sympathetic support to those who are often absent from their work.

**Factors related to foreseeable injury**

These factors are set in groupings, related to the demands of the work done, and of the employee's circumstances.

- Nature of work carried out;
- Workload levels compared to the norm for the kind of job done;
- Specific intellectual or emotional demands;
- Demands as compared to others in similar jobs;
- Signs of stress from others in similar jobs;
- Levels of sickness absence in the specific employee's job or work area.

For employee circumstances, the following might be examined:-

- Any obvious signs of anticipated ill-health;
- Specific vulnerabilities of the employee;
- Previous similar suffering related to the work situation;
- Unusual Sickness absence patterns, and any possible links to the work situation.

The Court sets out that an employer can assume that an employee can cope, unless he has been advised accordingly. Intrusive in-depth enquiries are not expected, and information provided by employees should be taken at face value. The duty to act, may only arise where there is significant evidence that an employee is suffering, and the employer would act as a reasonable employer.

**Duty to act**

The summation also noted that employers should not be assumed to be in breach of duty, where they are alleged to have failed to take reasonable preventative steps. Factors that should be examined include:-

- The extent of the risk of injury;
- The level of injury itself;
- The costs and practicability of prevention;
- The steps which any reasonable employer might have taken; and
- The likely success rate of such steps.

Additionally, employers may be expected to have:-

Offered and provided counselling and treatment services, would not be in breach of duty, unless they had placed excessive demands upon that employee;

Employers are not expected to demote or dismiss the individual employee, in order to remove the causes of stress, allowing a willing employee to continue the work will not place the employer in breach of duty.

**Cause and injury**

The court sets out 16 key principles to be applied to cases:-

- 1) No specific control measures apply, the normal principles of employer liability are key factors.
- 2) Initial question is whether the employee's injury was reasonably foreseeable, and attributable to work factors.
- 3) Foreseeability depends upon what the employer already knows about the employee's susceptibilities. Employers can normally be expected to assume that employees can withstand 'normal' pressures at work.
- 4) No occupations are intrinsically more stressful.
- 5) Questions relating to application of control measures include:-
  - a) Nature and extent of work done, whether it is especially demanding, whether the demands are reasonable and whether there are any abnormal levels of absence from work.
  - b) Signs of impending harm to the employee and any specific vulnerabilities exhibited by him.
- 6) Employer takes information at face value and need not make any specifically intrusive enquiries.
- 7) Indications of harm must be clear enough for any employer to see.
- 8) Breach of duty occurs only if employer has failed to take reasonable steps in the circumstances, bearing in mind the level and gravity of harm, costs of practicable prevention and justification of the risk.
- 9) Size and scope of the business, resources, demands, interests of other employees.
- 10) Employer steps expected can only be required to do some good.
- 11) Offers of support and counselling will mean employer unlikely to be in breach of duty.
- 12) If only reasonable step is dismissal employer not in breach if allows willing employee to continue.
- 13) Necessary to identify steps taken or could have taken, before declaring breach of duty.
- 14) Breach of duty must be clearly shown to have materially contributed to the harm suffered.
- 15) Where there are multiple causes, the employer is responsible only for that part which is under his actions.
- 16) Pre-existing conditions will affect the assessment of damages and compensation.

on the provision of good OH support, worker involvement, the need for manager training and leadership from the top of the company throughout all line manager levels.

**Jon Richards**, UNISON outlined work recently undertaken in 3 NHS Trusts under the guidance of Amanda Griffiths and colleagues. Publication of the report is anticipated soon, and the interventions and support measures will provide a model of risk management approach in one area of Public Sector, where stress levels are high.

**David Harrison** outlined the programme of work undertaken at Birmingham University, involving all levels of employee, and focussing on internal surveys to identify the key problems in the workforce.

**Liz Aram**, examined the successful support work carried out in a range of workplaces, and Steve Walker presented the EEF new guidance. **Abdul Chowdry**, Commissioner with responsibility for Stress in the SHC programme, outlined his desire to see partnership and collaborative work being the obvious route, rather than heavy-handed enforcement, backed up by detailed regulation, which might not now be enforceable.

A short period of discussion followed before workgroups began to examine basic cause and effect issues and the requirements of **Management Standards**.

Feedback on **Management Standards** covered the following key areas:-

- Leadership and Commitment
- Audit of systems, policy and procedures, taking note of confidentiality's, transparency, ownership and empowerment of employees to speak out
- Interventions and responses
- Plain language
- Enforcement to underline process
- Survey and screening follow-up
- Manager training
- People issues are central to good function
- Requirement to put civil liability into H&S legislation, especially re Working Time Directive
- HSE Upper Limb Disorder booklet sets out a good set of standards:-
  - Work-life Balance, Well-being Projects
  - Acknowledge that there ARE some inherently stressful jobs
  - ACoP and Legal framework;
  - best practice standards; listening and communication skills;;
  - consultation; guidance on risk assessment; support in difficult times; how to consult; monitor and review

protection from the law; use systems to promote business objectives;

- core OH provision, and c.f. Swedish models; NHS+ and PCT interventions?;
- Absence management, partnerships; HSE roles, advisory and enforcement
- fit for purpose; user requirements to be met; address main causes; descriptors; define responsibilities; clarity of underlying principles; communications, involvement, evidence; measurement of results; effective outcomes, employer organisations to lead empowerment; free, capable and willing to do it; team sprints;
- greater awareness in public sector = translate to private sectors;
- logical comparisons; monitoring absence; good models

The day concluded with an acknowledgement that amongst a broad audience, there was general agreement about the central principles required to ensure that work-related stress is acknowledged, recognised, and that managers and organisations have a key role to play in its eradication and treatment of the causes, symptoms and effects.

## Events Diary

**September 6<sup>th</sup> to 8<sup>th</sup> 2002 UK Hazards Conference at UMIST, Manchester**  
**Bookings via GMHC on 0161-953 4017**

**October 14<sup>th</sup> - 19<sup>th</sup> 2002 - European Week of Safety - Theme = Stress**

**September 19<sup>th</sup> to 21<sup>st</sup> - 9<sup>th</sup> European Hazards Conference, Denmark (preliminary information only)**



## Brussels warns UK over working hours

The TUC says many employees work too many hours. Many UK workers may face a shorter working week, after the European Commission ordered Britain to close loopholes in labour laws. Brussels has opened legal action against Britain in a drive to force it to implement measures contained within a landmark EU employment directive.

### **Average working hours per week:**

**UK: 43.6**  
**Greece: 40.8**  
**Spain: 40.6**  
**Portugal: 40.6**  
**Austria: 40.2**  
**Sweden: 40.1**  
**Germany: 40.1**  
**Ireland: 40**  
**Luxembourg: 39.7**  
**France: 39.6**  
**Finland: 39.3**  
**Netherlands: 39**  
**Denmark : 38.9**  
**Italy: 38.5**  
**Belgium : 38.4**

*Source: Workplace Employee Relations Survey 1998*

The proceedings followed a complaint from Amicus, Britain's second biggest union, that the UK government had "unlawfully and inadequately" implemented measures limiting the working week to 48 hours. Serious concerns were also raised about British employees' rights to shift breaks and holidays.

### **Business anger**

The commission's decision was welcomed by Amicus general secretary Roger Lyons as a "historic victory for British workers". But employers' organisations warned that fully implementing measures within the EU's working time directive would erode the competitiveness of UK firms. "Business will be deeply concerned about the Amicus action," said John Cridland, deputy director general of the CBI. Britons currently work 43.6 hours a week, compared with a European average of 40.3 hours.

### **Opt out clause**

Brussels is believed to have given the government two months to comply fully with the working time directive,

which Tony Blair's administration signed up to soon after coming to power in 1997.

The directive says employees cannot be forced to work more than 48 hours a week, although certain professions, including some healthcare workers and the media, are exempted. When the move was agreed, the UK obtained a special dispensation to allow people to volunteer to work longer than 48 hours if they wished.

But Amicus said the UK Government was not doing enough to enforce the directive and a full investigation into the complaint is now under way. The government said it was considering the complaint before responding to the "threat" of so-called infringement proceedings, which could see the government taken to the European Court of Justice, in Luxembourg.

## Work Positive Campaign

A new initiative to combat stress in the workplace has been hailed as "long overdue" by unions. The Work Positive campaign, which is being launched by health bodies in Scotland and Ireland, aims to help employers and staff reduce anxiety levels. An estimated five million workers suffer from stress across Britain. The latest initiative is targeted at small and medium-sized firms.

It includes advice packs which highlight the legal obligation which companies have to provide health, safety and welfare to their employees. The campaign also aims to encourage employees to take responsibility for tackling stress at work. Ian Tasker, a spokesman for the Scottish Trades Union Congress (STUC), said the move was "long overdue". He added: "There's nothing unions can do to force employers to tackle stress at work. "We've got to the stage where employers don't recognise that stress at work is an illness and they've got to act on this issue.

"We'll be sending the packs on to our opposite numbers in England and Wales." The scheme is a joint project between the Health Education Board for Scotland (HEBS) and the Health and Safety Authority (HSA) Ireland, who will start to distribute the packs next month.

### **Dye technology**

There is a growing body of evidence that links mental stress in individuals with coronary artery disease. Stress constricts blood vessels and raises blood pressure and heart-rate, increasing the demand for oxygen. Heart muscle may not get enough blood - a condition known as ischaemia.

US researchers using an imaging method in which red blood cells are labelled with dye looked for pumping abnormalities in the heart which are a clear sign of ischaemia. A total of 196 patients were included in the study, all of whom had 50% narrowing of at least one major artery or a previous heart attack. The patients were given a psychological stress test in which they were asked to talk for five minutes on an assigned topic. Abnormalities in the heart's pumping ability were detected in 20% of the patients during the test.

These patients were found to have a 2.8 times higher death rate than those without the abnormalities over the following five years.



Dr David Sheps, from the University of Florida Health Sciences Centre in Gainesville, said: "This adds to a growing body of evidence that links mental stress and bad outcomes in individuals with coronary artery disease."

#### **Other factors**

A spokesman for the British Heart Foundation indicated that recent figures suggest that people with work stress, depression, lack of support or an angry personality may be more at risk of developing coronary heart disease. "Stress may also cause people to take up poor lifestyle habits such as smoking or eating bad foods.

"There is evidence that for patients who already have heart disease, stress at work or in the home can bring on angina or even, very exceptionally, a heart attack.

"Although the results are interesting and may help explain a link between stress and CHD, it is a small study focusing specifically on heart patients.

"Further research is needed to establish how the body reacts over time in people who have not yet developed CHD."

## **Stressed Nations?**

British workers are less likely to be stressed than many of their Western counterparts, but they react to it more strongly, a report has suggested. Research into stress levels in 15 developed countries found that the UK has among the highest levels of stress-related absenteeism, and more workers planning to leave their jobs because of stress.

But the study found that workers in the UK were less likely to feel stressed all the time than workers in most other countries. France, Canada and Sweden had the highest stress levels, with the most relaxed workers living in Denmark, Switzerland and the Czech Republic.

#### **Financial damage**

The research, for the Royal Economic Society, found most stressed workers blamed long hours for their condition. Good relations with colleagues and management, as well as a feeling that a job was "useful to society", were likely to see stress levels fall, the research said.

"What employees and government must come to realise is that work-related stress could inflict serious financial damages on individual firms and the economy in general," said the report's co-author Dr Rannia Leontardi.

"The emerging evidence indicates that work-related stress is a serious noxious characteristic of the working environment, impairing employee performance through staff turnover and absenteeism." The research suggested cutting stress levels could stop 530,000 employees taking sick days off, and keep 1.3m in jobs they would otherwise leave.

## **Spied On By Bosses?**

Health boards have been instructed by the Scottish Executive to produce plans on the surveillance of staff.

Unions have reacted with anger, accusing government ministers of talking about freedom of information while health chiefs are creating a system for covert surveillance.

A spokesman said the new regulations were necessary to

ensure any surveillance is done properly. An office wall-clock could house a tiny TV camera. NHS Lanarkshire documents say there has been hardly any secret surveillance of health staff until now. But the proposals, could mean health staff could have their telephones tapped, emails intercepted and letters opened. They could also be spied on at home and watched in their cars.

Informants could be paid to give information about colleagues or be encouraged to make friendships first in order to gather information.

Jim Devine, of UNISON, said that several health boards had similar proposals. "This is not a charter to prevent thieves, this is something much, much more sinister. It smacks of a big brother, one party state keeping their eyes on what the staff and what the workforce are doing. It is totally unacceptable."

The document says: "Surveillance is used by a range of government departments and public authorities to protect people from harm and to prevent crime." Authorisation for surveillance must come from the chief executive.

It also discusses how some surveillance operations might work, using terms, straight out of a spy film, like handlers and controllers. Staff could be watched without their knowledge. The executive said health boards had been given guidance on the laws so that any covert surveillance is properly controlled and the rights of staff were protected.

## **Hazards Website**

**The Hazards Website [www.hazards.org](http://www.hazards.org) <<http://www.hazards.org>> has been updated**

**Get a life! Union tools to ensure your job doesn't take over your life.** Union resources from the UK, Canada, USA, Australia and elsewhere on how to negotiate a more humane, less hazardous way to work.

[More <http://www.hazards.org/getalife>](http://www.hazards.org/getalife)

**The union effect: Safety is better organised.** How and why trade unions deliver safer workplaces, including details of innovative union safety rep initiatives including "roving" and regional reps and new style global agreements including health, safety and environmental clauses.

[More <http://www.hazards.org/unioneffect>](http://www.hazards.org/unioneffect)

**Women and work hazards.** Union, academic and campaign resources on gender and workplace health.

[More <http://www.hazards.org/women/index.htm>](http://www.hazards.org/women/index.htm)

**Smoking, drink and drugs.** Resources, news and links on smoking, drugs and alcohol policy and practice at work.

[More <http://www.hazards.org/workstyle/index.htm>](http://www.hazards.org/workstyle/index.htm)

**Do-it-yourself workplace research.** Resources on participatory research methods and on trade union safety training and education.

[More <http://www.hazards.org/diyresearch/index.htm>](http://www.hazards.org/diyresearch/index.htm)

## Work can be fatal

It's official: work can be fatal - and, according to a United Nations report, it brings about more death and suffering than wars or drug and alcohol abuse combined. More than two million people die from work-related accidents or disease every year - equivalent to one death every 15 seconds - the UN's International Labour Organisation reported.

Two years ago, the figure was just 1.2 million.

The ILO named agriculture, construction and mining as the three most dangerous occupations in the world.

The total is now three times the annual number of deaths in wars every year (650,000), or the equivalent of a September 11 tragedy every day. It also exceeds deaths from alcohol and drug abuse combined.

The ILO said exposure to dust, chemicals, noise and radiation was causing cancer, heart disease and strokes.

Some 350,000 people died from fatal workplace accidents every year, and hazardous substances claimed 340,000 lives.

**Asbestos** was responsible for 100,000 deaths. The ILO accused wealthy countries of exporting the problem.

"Industrialised countries are exporting their hazards to developing countries," said the ILO's Jukka Takala. Problems had been "moved to the South, where labour is not only cheaper but less protected", she said.

## TUC welcomes European plan to fight stress and RSI

TUC has welcomed the European Commission's five year plan for health and safety published on 11<sup>th</sup> March, but warns that it will require a serious commitment from Governments and real money for implementation.

The plan proposes legislation on RSI and discussions with employers and unions on ways of reducing stress at work. TUC General Secretary John Monks said: 'The Commission knows that if Europe doesn't take action over the epidemics of the new economy - stress and RSI - then our chances of global economic success are doomed to be short-lived. A modern economy doesn't have to mean driving the workforce into the ground with mental or physical strain, and unions are ready to work in partnership with employers and the Commission to put this plan into effect.'

The Commission's plan, was presented to a special EU conference in Barcelona on 22-23 April at which AMICUS and TUC member of the Health and Safety Commission Maureen Rooney represented TUC. She said: 'I warmly welcome the priority which the Commission has given to women's health and safety. With women's participation in the economy growing all over Europe, we cannot afford to ignore the injuries and illnesses suffered in silence by so many women at work.'

A detailed TUC briefing on the European Commission's plans is available on the TUC website. The Commission text is available in English at

[http://europa.eu.int/eurlex/en/com/pdf/2002/com2002\\_0118en01.pdf](http://europa.eu.int/eurlex/en/com/pdf/2002/com2002_0118en01.pdf)

## Workplace bullying fuels NHS jobs crisis

Unison claims that unless health chiefs act to stamp out harassment of health workers, staff shortages will increase. The warning follows a survey which found one in ten workers employed in Lothian Region hospitals claimed to have been bullied or harassed in the past year. Victims were unwilling to report problems because they feared nothing would be done or they would be branded "troublemakers".

The survey showed that more than half of staff were stressed in their jobs, mostly swamped by heavy workload. Politicians warned that patients would undoubtedly suffer if bullying made an already "absolutely urgent" recruitment crisis in Edinburgh worse. Health chiefs, pledged to take complaints "very seriously". However, Mick McGahey, Unison Branch Secretary at Lothian Primary Care NHS Trust, said: "I think the situation is actually worse than it seems from the survey. Clearly the Trust will try and get the best findings out of the report, because they are responsible for how people feel. However, if they don't act soon they will suffer the consequences. People will not work for them."

One former NHS trainee, who quit after claiming to have suffered racial discrimination by more senior staff at city hospitals, today said he was "shocked, but not surprised" by the extent of bullying problems. The worker said: "In my experience the authorities were disorganised, complacent and unsupportive. They are keen to produce new initiatives, but it remains to be seen whether they will actually do anything to improve things."

More than 6000 NHS Lothian staff answered the survey of workplace standards to find out what they thought of working conditions. One in ten reported bullying or harassment in the past year, generally verbal intimidation. But 59 per cent did not report such incidents. Just over 50 per cent felt stressed at work, with 82 per cent blaming excessive workload.

David Bolton, trust director of primary and community service development, said the overall picture of the trust as shown in the survey was "pretty positive". However, he added: "We take all allegations of bullying and harassment very seriously and will be discussing this at the next board meeting."

