

STRESS STRESS STRESS



Carole Spiers considers the business case for doing something about it

- A senior City partner of a law practice is in hospital following a heart attack arising from an excessively high personal workload within his firm
- A legal secretary bring a claim against her firm of solicitors for being bullied by her manager

Is it the responsibility of the individual to cope, come what may, or is it the duty of the practice to provide a safe and reasonable workplace ethos?

One should bear in mind that these employees are not only experiencing work-related stress; in addition to this, they may have pressures in their lives outside the workplace. Is the firm responsible if this is the case – if not, where and does one draw a line? Should the firm dispense with these employees' services and look for replacements – or is it worth considering providing a support service from within?

Consider the situation from the perspective of employees. Obviously, most would like to have the support of the firms for which they work. Do they receive it? Are they the lucky ones who are given help as and when needed and are recognised as the organisation's 'most valuable asset'? Or is it a black mark against them if they admit to having problems; will it increase their chances of being made redundant when the firm experiences restructuring?

One way to maximise business profits is through investment in human potential: the people who work there. Human beings are the main key to any successful business and the legal profession, in this respect, is no different to any other.

In a landmark case last February (*Chair of Governors at St Thomas Becket RC High School v Hatton*, CA 5 February 2002 EWCA CIV. 76), the Court of Appeal ruled that signs of stress in a worker must be obvious to their managers before the company can be successfully sued for negligence. The Court decided that employers should not have to pay damages for stress-induced psychiatric illness unless it was reasonably foreseeable that the worker would fall ill. On this basis, employers need take action only if there are plain signs of impending harm to health from job-related stress.

Stress is costing society as a whole £3.75 billion. (Source: Tackling Work Related Stress. HSE 2001). Today, employees may know more than their employers about their rights; compensation claims over issues ranging from unfair dismissal to harassment rose last year for the third successive year. Employers are often complacent about the risks of being hauled before an employment tribunal, but more than 128,400 people made applications for hearings in 2001 (a rise of almost 8.5% on the previous year). It is predicted that numbers will rise again this year.

Confidential counselling support

In addition the Court of Appeal judgement stated that "any employer who offered a confidential counselling service was unlikely to be found in breach of duty by the Courts."

How many law firms have such a service in place? Employees still feel that it is a sign of weakness to approach their employers if they are feeling under stress. They know that their managers will expect them to cope. So, notwithstanding the ruling in the Court of Appeal, employees may not feel very confident about talking to their employer. They may think that it will compromise their position, that it might be entered onto their personnel records and affect their chance of future promotion. So employees do their best to cope. They do their best to pretend that they do not need support. They do their best to cover up. But this may not help them in the long run – their absenteeism will be noticed and by then their problem may be worse.

The problem is where to draw the line between an employer's duty of care to its employees and the mental demands that an employee can reasonably place upon them. Different individuals have a differing ability to withstand stress. Some thrive on it whilst others eventually become unwell. Moreover, in contrast to a tangible or physical danger, it is often difficult to define exactly what an employer should be required to do to promote safeguards for their employees.

Men are far less likely than women to take their full annual leave. Two in every five

employees said they were too busy to take their full entitlement. A higher proportion will avoid taking time off when there is a risk of economic slowdown and restructuring. However, time away from work is generally acknowledged as essential for optimum performance and health and all employees should be encouraged to take their full leave entitlement.

Over the past 20 years, there has been a dramatic rise in the number of support agencies which offer help to people at work who suffer from depression and other illnesses brought on by stress; organisations such as the Samaritans, BACUP, Cruse, Families Anonymous, London Lighthouse and Relate, to name but a few.

The need for support amongst those who are likely to be, or are, affected by stress and undue pressure is underscored in the 1995 Health and Safety Executive guidelines, "Stress at Work: a guide for employers".

Many larger companies now have counselling services in place. Many provide Employee Assistance Programmes and have seen some very positive results. Staff who have taken advantage of these programmes have become more highly motivated and more productive, in addition to being able to handle stress better. For the smaller companies, an awareness of the facilities available, should staff require them, has proven beneficial.

It is important that neither staff nor management see it as a sign of weakness to ask for help.

First Contact Counselling Teams

One vital means of intervention is by setting up First Contact Counselling teams inside the firm. These teams would comprise a number of volunteers who would be trained in basic counselling skills and receive the necessary ongoing training. Such teams have been run very successfully for many years and form an essential part of the corporate culture of a number of organisations.

The Manager's role

More and more managers are faced with having to assist their staff with personal problems relating to their home life. Knowing how to approach and relate to an individual can be highly constructive and can produce an effective response. It is important that managers are trained to recognise signs and symptoms of stress in their workforce. The earlier these signs are recognised, the quicker any negative problems can be addressed; and the possible adverse impact on both the employee and their work, reduced.

Counselling is now commonly used in organisations as a means of tackling absenteeism; however, in order to render

this effective, counselling must address workplace issues as well as personal ones. Organisations which have instituted formal counselling services have reaped the benefits of higher motivation and morale, better stress management and a reduced likelihood of legal claims for negligence.

The Court of Appeal ruling stated that any employer who offered a confidential counselling service was unlikely to be found in breach of duty by the courts.

Managers should be able to recognise and identify stress on the ground floor. However, it remains a fact that many managers are in post because of their professional qualifications rather than their interpersonal skills.

It is vital, therefore, that managers listen to their employees – and not just 'put up' with them. Active listening is an essential managerial skill and should be a part of effective people management. It should be within the scope of any manager. Such skills are necessary in order to avoid formal disciplinary or tribunal routes which are likely to prove costly in terms of time and money. Such situations occur frequently when problems have got out of hand or ignored, when employees do not feel listened to, do not feel valued or recognised. It is very easy to say that listening is a soft skill. It has a hard edge. Doing it badly, or not at all, will result in lower productivity, morale and profitability.

Listening to employees and giving counselling support must become part of the corporate culture and company philosophy, as part of a preventative measure; and serious consideration must be given to the training required to raise awareness and identify stress. If these measures are not implemented, then businesses will find themselves filled with disillusioned, distrusting people who believe that their firms don't care; such employees will in time respond accordingly. ➤

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Further reading:

Chair of Governors at St Thomas Becket RC High School v Hatton, CA 5 February 2002 EWCA CIV. 76;
Kapadia v London Borough of Lambeth [2002] IRLR 14, Employment Appeal Tribunal;
Morgan v Staffordshire University, EAT, 2002 (Citations by courtesy of Pauline Hollands, Solicitor, of Browne Jacobson)

Next Month: Stress – A Legal Perspective: by solicitors Ray Silverstein and Pauline Hollands