

CII New Generation Programme 2013/2014

# Is stress the elephant in the boardroom?

Underwriting Faculty

Stephen Bridge [LV=]  
Tom Dilley [Ace]  
Chris Head [RSA]  
Nicola Holmes [Hiscox]  
Andrew McGuinness [SCOR]  
Stuart Runciman [Aviva]  
Vicky Search [NFU Mutual]  
Ryan Smith [Allianz]  
Katy Wiltshire [NFU Mutual]  
Rob Witts [UK General]

*“The group have identified an under-reported and under-researched issue which has the potential to significantly affect the liabilities of insurers. In doing so, you have shown the innovative and forward-looking approach which the industry needs from its next generation of leaders.”*

***Jonathan Evans MP, Chairman APPG Insurance & Financial Services***

# Contents

---

<i>Section</i>	<i>Page</i>
Foreword	
1 Executive Summary	4
1.1 Is Stress the Elephant in the Boardroom?	4
2 Introduction	5
2.1 What is Stress?	5
2.2 The Biology behind Stress	5
2.3 The Employer's role	7
2.4 How is Stress defined within an Insurance Contract?	7
3 The Current Landscape	8
3.1 Statistical Findings	8
3.2 Ominous historical precedents?	10
3.3 Chartered Institute of Personnel and Development	11
3.4 Charity	12
3.5 Private Healthcare	14
3.6 The Health and Organisational Reporting (THOR) Network gP	14
3.7 The Health & Safety Executive	15
3.8 Lloyds	16
3.9 ABI	17
3.10 Case Law	17
3.11 An American Perspective	19
3.12 A European Perspective	20
3.13 Unions	21
3.14 Solicitors	22
4 The Future	24
4.1 Social	24
4.2 Risk Management	25
4.3 Uniform Reporting	27
4.4 Industry Working Party	27
4.5 Impact following a change in legislation/government/judicial decision	28
4.6 Industry Wide Definition	29
4.7 Underwriting Stress	30
5 Conclusion	31
6 Recommendations	32
7 Bibliography	34

# Foreword

*“Is Stress the Elephant in the Boardroom? Well from an Insurance Industry perspective the risks from Stress certainly merit comparison with such a large beast, and there is a distinct lack of clarity with regard to what is being done in this area. So what is Stress? How is it caused? What is the legal position and how are insurers responding to the challenges presented?”*

*All these questions and more are considered in this excellent new report from the CII New Generation Underwriting Group. Looking at information from diverse sources, comparing the position globally and for the first time digging in to what the implications are and what is being done (or otherwise) in anticipation of the various routes this issue could take.*

*Insurers aren’t there to simply decide whether to pay or decline claims, we have a responsibility both to the regulator to keep abreast of possible future risks, and to our customers to help them prepare and understand the implications of risks & trends that we naturally see and have more information than they will at an early stage.*

*This report will make an interesting read to anyone with even a mild interest in the subject matter, and further makes some compelling recommendations that need to be seen by an even wider audience. I have no hesitation in recommending this report to you and encourage you to support the recommendations and ensure that whilst Stress may remain a large issue for us all, there is increased clarity & clear actions in its regard going forward.”*

David J Williams, Managing Director, Underwriting

AXA Insurance

# 1 Executive Summary

## *1.1 Is stress the elephant in the boardroom?*

---

With stress being the number one cause for employees being absent from work, the Underwriting Faculty of the CII New Generation Programme has reviewed the increasing threat of stress in the workplace to the insurance industry.

This paper goes into in depth detail, highlighting opinions and fact from a variety of different industries, sources and the groups own findings to put a 'stress-test' on how the insurance industry is defining stress and what it could be doing better.

Our industry is potentially sitting on a ticking time bomb, with many insurers not having in depth analysis of claims statistics for mental conditions, which past precedents with asbestos and industrial deafness claims shows can cause a great impact to insurers bottom line results.

This paper concludes what the insurance industry can do to help safeguard itself from this potentially catastrophic issue and also identify how this in turn could help the individual and society.

## 2. Introduction

---

### 2.1 What is stress?

---

According to the Health & Safety Executive, the formal definition of work related stress is:

*"The adverse reaction people have to excessive pressures or other types of demand placed on them at work."<sup>1</sup>*

Work based stress occurs when somebody is unable to cope with the demands made of them and may cause physical and mental illness to develop should these excessive demands be sustained over a significant period of time.

It is important to distinguish between stress and pressure. Pressure can be beneficial and motivate people to improved performance. There is a fine line between pressure and stress, the latter often occurring when the pressure becomes excessive.

### 2.2 The biology behind stress

---

In response to a pressure situation, the body reacts by secreting cortisol from the adrenal gland. This hormone causes the 'flight or fight' feeling caused by a 'trigger event' by diverting any available glucose directly to the brain which increases alertness.

The nervous system reacts by generating new useable energy from stored reserves diverting energy from lower priority activities, which maximises the energy available to those functions vital to survival in the face of the immediate threat.

This process may result in stress becoming evident. Cortisone is continually secreted during the period of stress which depletes the body's reserves and limits the supply available for normal use.

This can cause mental and physical difficulty, with effects including demotivation, collagen inhibition, insulin inhibition, memory impairment and damage to the immune system.

---

<sup>1</sup> HSE Website. <http://www.hse.gov.uk/stress/furtheradvice/whatisstress.htm> [Retrieved May 12, 2014]

Figure 1 below lists the physical effects of stress to the body.

	Normal (relaxed)	Under pressure	Acute pressure	Chronic pressure (stress)
<i>Brain</i>	Blood supply normal	Blood supply increased	Thinks more clearly	Headaches or migraines, tremors and nervous tics
<i>Mood</i>	Happy	Serious	Increased concentration	Anxiety, loss of sense of humour
<i>Saliva</i>	Normal	Reduced	Reduced	Dry mouth, lump in throat
<i>Muscles</i>	Blood supply normal	Blood supply increased	Improved performance	Muscular tension and pain
<i>Heart</i>	Normal rate and blood pressure	Increased rate and blood pressure	Improved performance	Hypertension and chest pains
<i>Lungs</i>	Normal respiration rate	Increased respiration rate	Improved performance	Coughs and asthma
<i>Stomach</i>	Normal blood supply and acid secretion	Reduced blood supply and increased acid secretion	Reduced blood supply reduces digestion	Ulcers due to heartburn and indigestion
<i>Bowels</i>	Normal blood supply and bowel activity	Reduced blood supply and increased bowel activity	Reduced blood supply reduces digestion	Abdominal pain and diarrhoea
<i>Bladder</i>	Normal	Frequent urination	Frequent urination due to increased nervous stimulation	Frequent urination, prostatic symptoms
<i>Sexual organs</i>	Male: Normal Female: Normal periods etc.	Male: Impotence (decreased blood supply) Female: Irregular periods	Decreased blood supply	Male: Impotence Female: Menstrual disorders
<i>Skin</i>	Healthy	Decreased blood supply, dry skin	Decreased blood supply	Dryness and rashes
<i>Biochemistry</i>	Normal – oxygen consumed, glucose and fats liberated	Oxygen consumption increased, glucose and fat consumption increased	More energy immediately available	Rapid tiredness

Figure 1<sup>2</sup>

<sup>2</sup> Melhuish, Andrew, 1978. Executive Health

### 2.3 The employer's role

---

All employers have a legal responsibility under the Health and Safety at Work Act 1974 and Management of Health and Safety at Work Regulations 1999 to ensure the safety and welfare at work of their employees including minimising stress in the workplace.

If an employer is found to be negligent and in breach of their duty of care to the employee then the company or the directors may be prosecuted and found liable for damages, with potential for unlimited fines and imprisonment of up to two years.

### 2.4 How is stress defined within an insurance Contract?

---

Workplace stress is normally covered under an Employers Liability insurance policy. For a successful claim to be made stress must be covered within the policy wording. Based on our research, 50% of insurers sampled specifically define mental injuries within their definition of injury. However, only one insurer specifically defines what types of mental injuries would be covered.

The typical policy wording states under definitions:

#### ***Injury***

*Bodily injury, death, disease, illness, mental injury or nervous shock.*<sup>3</sup>

Definitions found from alternative insurers are found in Appendix A.

Workplace stress is covered under this definition of mental injury provided that it can be proven that the employer acted negligently and therefore breached their duty of care to the employee as specified by the Health and Safety at Work Act 1974. For this criteria to be met, there must be a degree of foreseeability that the negligence may have resulted in mental injury and the stress must have caused a recognised mental injury.

---

<sup>3</sup> Allianz, Complete Business Insurance Policy Wording 2013, (<http://docs.allianzbroker.co.uk>) [Retrieved May 12, 2014]



# 3. The Current Landscape

Our sample of insurers are not recording data on stress. Previous failings to do so for other issues has caused problems for the industry as a whole. There is evidence to suggest that stress is a significant problem for UK industry and therefore likely to be an emerging insurance risk.

## 3.1 Statistical Findings

### 3.1.1 Stress Data

Fourteen insurance companies were contacted for data on psychological injuries. Of these fourteen, only three recorded or had the ability to extract management information on psychological injury claims. The data provided identifies post-traumatic stress disorder (PTSD) claims for private motor, stress claims under general commercial and standalone Employers Liability policies.

Our findings suggest insurers are experiencing an increase in the number of PTSD claims in private motor (Figure 2 below). This shows that the number of stress claims manifesting as a whole are on the increase. This could be for a variety of reasons, and unlike workplace stress claims, they are generally less likely to fail on foreseeability grounds. The number of PTSD claims has more than trebled within the timeframe, whereas the overall number of claims has remained fairly constant.

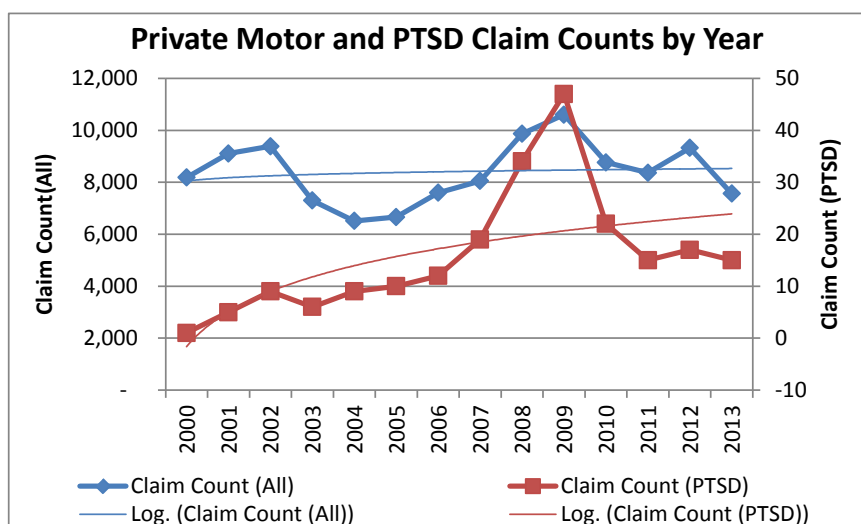


Figure 2

The costs associated with stress claims have increased as evidenced by Figure 3 below. This highlights that costs have increased dramatically over the last three to four years despite average claim costs remaining fairly stable, reflecting a larger increase in the volume of claims.



Figure 3

For commercial businesses the average cost of stress claims has increased at a higher rate than incurred costs as evidenced by Figure 4 below.

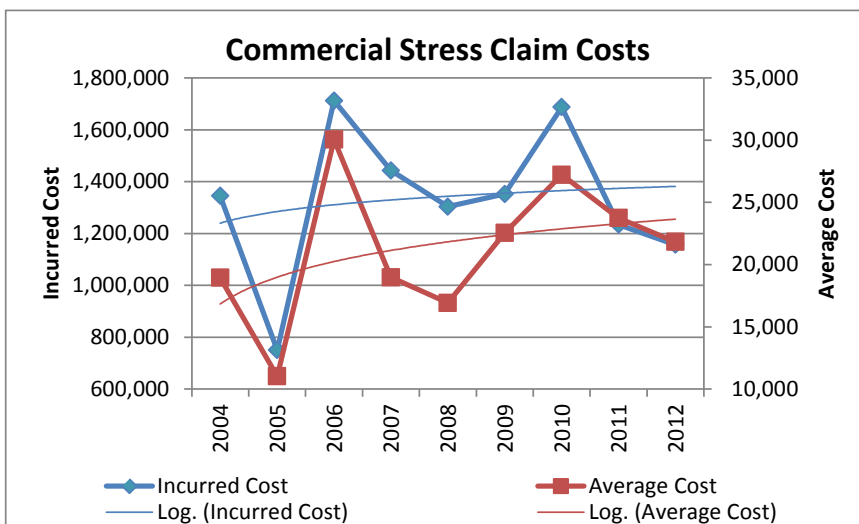


Figure 4

One insurance company, who was able to supply us with stress claims data suggested:

*“Stress claims have been around for many years (at least 20), well certainly in my view, injury caused by occupational stress has always been a relevant head of claim.*

*Clearly in a time of recession there is potential for increased pressure on employees and additional stress claims and the stats now suggest circa one in four for stress related illnesses.”*

### 3.1.2 The real issue

The limited data pool has highlighted a potential failing in the insurance market. Although the current level of claims does not cause significant concern, there is potential for a significant increase in frequency if there were changes in legislation, social attitudes or scientific studies linking the workplace to stress.

### 3.2 Ominous historical precedents?

The scarcity of data captured by insurance companies relating to the incidence of stress at work and its detrimental effect on mental health should not be considered a source of comfort. Stress at work is increasingly recognised as a significant societal and economic problem and the desire to better manage and mitigate its causes and consequences is likely to harden into determination. The Insurance industry has painful experience of how a change in public attitude or a change in law can have dramatic repercussions for claims frequency. The two examples below should act as a sobering reminder to insurance companies of the danger of failing to anticipate how the risk environment is changing.

#### 3.2.1 Whiplash

During the past decade the UK motor insurance industry has suffered from a huge increase in the frequency of whiplash claims fuelled by the compensation culture encouraged by the “no win, no fee” industry. In 2013 a staggering 20% of motor premiums related to whiplash claims as a result. Figure 5 below shows the number of UK motor accidents involving injury and bodily injury notified and settled claims between 2001 and 2011.

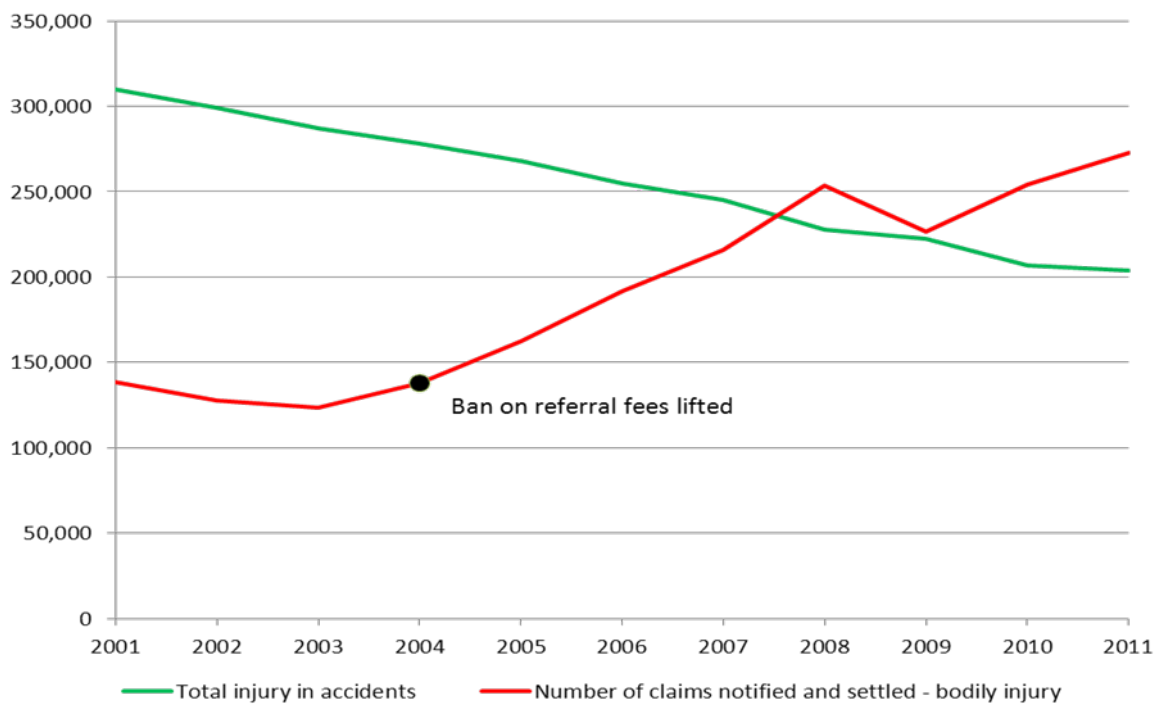


Figure 5<sup>4</sup>

In addition to regarding whiplash as a potential model of how stress claims trends may develop if this emerging risk is neglected, it is also worth considering the potential unintended consequences of recent government reforms designed to restrain the activities of the major beneficiaries of the “no win, no fee” industry. Should claimant solicitors and claims management companies suffer a major reduction in income, it is likely that they would seek new and more lucrative areas in which to operate. The difficulty in definitively proving mental damage may prove an attractive alternative to the similarly difficult to diagnose whiplash.

<sup>4</sup> Evans H, Launch of ABI quarterly average private comprehensive motor insurance premium tracker. ABI conference 27/01/2014

### 3.2.2 Asbestosis

Claims relating to disease caused by exposure to asbestos dust also provide a cautionary example of how a health risk that is underappreciated by society can cause a huge increase in claims frequency. In 1924 W E Cooke<sup>5</sup> published the first medical paper linking what would become known as asbestosis to exposure to asbestos dust. In response to improved medical evidence the UK Government introduced the Asbestos Industry Regulations in 1931 under a section of the Factory Act. But suspicions of the ill effect on health of working with asbestos had predated this paper and the original regulation proved inadequate to counter the risk. In the 1960s the relationship between mesothelioma and asbestos dust was first ascertained and the first successful personal injury claim for negligent exposure to asbestos succeeded in 1967. Figure 6 below shows the growth of subsequent similar claims (for those claims specifically where mesothelioma was mentioned) and shows that despite improved health and safety regulation, the number of claims continue to increase to the present day as the damage to health presents itself years after the exposure to asbestos.

#### Mesothelioma Insurance Claims Experience 1968-2008

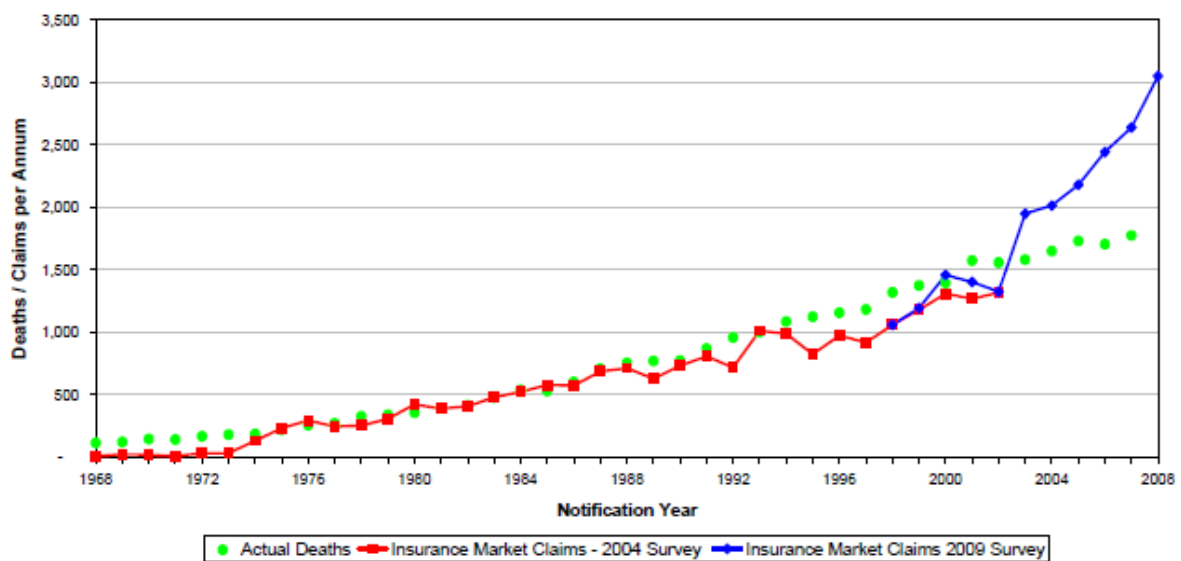


Figure 6<sup>6</sup>

Although it is certainly not inevitable that the frequency of claims resultant from stress at work will follow a similar trend as those for asbestos related claims (particularly as stress claims are not long tail) or whiplash claims, both provide examples of how the nature of a risk can be underappreciated by the insurance industry. The current dearth of data collected by insurance companies on stress related claims suggests that awareness of stress as an emerging risk is not as complete as it perhaps might be.

### 3.3 Chartered Institute of Personnel and Development (CIPD)

The Chartered Institute of Personnel and Development (CIPD) was unavailable to comment on stress at work, however, they provide useful insight through a Factsheet on their website.

<sup>5</sup> Cooke WE. Fibrosis of the lungs due to the inhalation of asbestos dust. BMJ 1924;ii:147

<sup>6</sup> Institute and Faculty of Actuaries, UK Asbestos Working Party Update 2009, 2009 GIRO paper

A particular area of interest is a set of behaviours indicating signs of stress. The CIPD states the first signs that indicate an employee might be suffering from excessive pressure or stress are changes in behaviour or performance at work:

<p>Work performance</p> <ul style="list-style-type: none"> <li>• Declining/inconsistent performance</li> <li>• Uncharacteristic errors</li> <li>• Loss of control over work</li> <li>• Loss of motivation/commitment</li> <li>• Indecision</li> <li>• Lapses in memory</li> <li>• Increased time at work</li> <li>• Lack of holiday planning/usage</li> </ul>	<p>Regression</p> <ul style="list-style-type: none"> <li>• Crying</li> <li>• Arguments</li> <li>• Undue sensitivity</li> <li>• Irritability/moodiness</li> <li>• Over-reaction to problems</li> <li>• Personality clashes</li> <li>• Sulking</li> <li>• Immature behaviour</li> </ul>
<p>Withdrawal</p> <ul style="list-style-type: none"> <li>• Arriving late to work</li> <li>• Leaving early</li> <li>• Extended lunches</li> <li>• Absenteeism</li> <li>• Resigned attitude</li> <li>• Reduced social contact</li> <li>• Elusiveness/evasiveness</li> </ul>	<p>Aggressive behaviour</p> <ul style="list-style-type: none"> <li>• Malicious gossip</li> <li>• Criticism of others</li> <li>• Vandalism</li> <li>• Shouting</li> <li>• Bullying or harassment</li> <li>• Poor employee relations</li> <li>• Temper outbursts</li> </ul>
<p>Other behaviours</p> <ul style="list-style-type: none"> <li>• Out of character behaviour</li> <li>• Difficulty in relaxing</li> <li>• Increased consumption of alcohol</li> <li>• Increased smoking</li> <li>• Lack of interest in appearance/hygiene</li> <li>• Accidents at home or work</li> <li>• Reckless driving</li> <li>• Unnecessary risk taking</li> </ul>	<p>Physical signs</p> <ul style="list-style-type: none"> <li>• Nervous stumbling speech</li> <li>• Sweating</li> <li>• Tiredness/lethargy</li> <li>• Upset stomach/flatulence</li> <li>• Tension headaches</li> <li>• Hand tremor</li> <li>• Rapid weight gain or loss</li> <li>• Constantly feeling cold</li> </ul>

Figure 7<sup>7</sup>

The CIPD believes the starting point for effective prevention of stress is good people management – employers should pay attention to job design and work organisation, training management at all levels to support employee engagement and well-being.

### 3.4 Charity

Many UK charities focus on the issue of stress and offer support to sufferers. Mind focuses its resources on the protection and provision of advice to those with mental health issues such as stress, as well as lobbying governments and local authorities on their behalf. Emma Mamo, Head of Workplace Wellbeing at Mind comments:

*“Most jobs have an element of pressure and, in small doses, it can be positive – increasing alertness and helping us [to] meet deadlines. But long term exposure to pressure can lead to stress which can both cause and*

<sup>7</sup> CIPD Website\_- <http://www.cipd.co.uk/hr-resources/factsheets/stress-mental-health-at-work.aspx> [Retrieved July 24, 2014]

*worsen mental health problems. Recent research by Mind found that work was the biggest cause of stress in people's lives with one in three people (34 per cent) saying their work life was either very or quite stressful, more so than debt or financial problems or health. Research from the Chartered Institute of Personnel and Development (CIPD) shows that stress is now the number one cause of sickness absence in the UK, even more so than musculoskeletal problems."*

A CIPD Survey in October 2011<sup>8</sup> highlights that stress is the number one cause of long-term sickness absence for both manual and non-manual employees. Further research by Mind identified that British businesses lose an estimated £26 billion each year in sickness absence and lost productivity. With greater awareness and mental health support, Mind indicates businesses could save one third of these costs –equating to £8 billion a year.

In order to raise awareness, Anxiety UK has been working closely with industries over the last 40 years to support and promote issues regarding anxiety disorders within the UK. Anxiety UK sees stress within the workplace as a continual concern with no evidence that the problem is likely to reduce. Increasingly companies are approaching them for help and using some of the many services offered by the Charity. Anxiety UK has also found that many companies do not have a specific stress policy in place and use external providers for Employee Assistance Programmes (EAP) but often only due to mandatory obligations.

CEO of Anxiety UK, Nicky Lidbetter, has found that employees are cautious about using the EAP systems in place, feeling that their problems may be communicated to their employers and reduce the likelihood of progression within their companies. This leaves the EAP systems being under-utilised and can, in some cases exacerbate the initial cause of the problem. Despite this, the stigma previously attached to stress has improved in recent years. Nicky Lidbetter also believes that during the economic down turn there has been a new tranche of incidents of stress within the workplace with concerns of job security becoming more prevalent.

Emma Mamo of Mind comments:

*"It might not be that stress is increasing, but simply that more people are being open about talking about their wellbeing, which is a good thing. But we know that the recession has also played a part, and since 2008 we increasingly hear from people concerned about sources of stress at work such as poor relationships with colleagues and managers, excessive workloads, long working hours and threat of redundancy."*

Mental health issues are not just an employment issue. The number of high profile cases of depression and stress, such as England cricketers Marcus Trescothick and Jonathan Trott<sup>9</sup> or German footballer Robert Enke<sup>10</sup>, highlight the issues at hand and that there is a need for the work to be completed.

There are also several initiatives to help raise awareness of stress, such as Mental Health Awareness Week<sup>11</sup> run by the Mental Health Foundation and National Stress Awareness Day<sup>12</sup> in November. These initiatives and

---

<sup>8</sup> ISMA website - <http://www.isma.org.uk/about-stress/facts-about-stress/#.U9DhhtRwbc>. [Retrieved June 13, 2014]

<sup>9</sup> BBC Website - <http://www.bbc.co.uk/news/business-25316690>. [Retrieved July 26, 2014]

<sup>10</sup> Daily Telegraph - <http://www.telegraph.co.uk/sport/football/8792439/Tragedy-of-goalkeeper-Robert-Enkes-secret-struggle.html>. [Retrieved July 26, 2014]

<sup>11</sup> Mental Health website - <http://www.mentalhealth.org.uk/our-work/mentalhealthawarenessweek>. [Retrieved June 13, 2014]

<sup>12</sup> ISMA website - <http://www.isma.org.uk/about-national-stress-awareness-day-nsad/#.U9Di-NRwbc>. [Retrieved June 13, 2014]

the work that charities such as Mind and Anxiety UK do are serving to raise awareness and provide support. This makes it all the more important that insurers address the issue to avoid the insurance industry being too slow to respond.

### 3.5 Private Healthcare

---

With the number of private healthcare policies purchased in the UK keeping a steady level during tough economic climates<sup>13</sup>, it is clear that society as a whole is becoming more conscious of overall wellbeing, as in past recessions this could have been one of the first cut backs in the family budget. This when coupled with the fact that mental illness in the workforce cater for more days leave at work than any other factor, would indicate that perhaps even on a sub-conscious level society is becoming more aware of stress in the workplace. This increase has caused many private healthcare providers to review the reasoning for the change in consumption and a survey conducted in 2012 by Friends Provident highlights that nearly a third of the UK workforce has admitted to calling into work sick for a day due to stress issues<sup>14</sup>. Furthermore, a third of the people surveyed by AXA Healthcare found that work was the root cause of the stress<sup>15</sup>.

According to Bupa<sup>16</sup>, one of the key causes of the issue within small businesses is that many business owners would not be able to recognise mental health issues, and are scared to discuss their employees' mental health issues. Bupa also released figures, of the circa 52 million adults in the UK, two thirds of these people are prone to stress. Of this, 44% admit to being stressed, with that figure dropping to 6 million people for those feeling sustained periods of stress for longer than a year. Therefore suggesting almost one in ten people in the UK feels stressed for more than a year, with 18% stating that working life is the proximate cause.

### 3.6 The Health and Organisational Reporting (THOR) Network gP

---

THOR has been running since 1989, launched to improve the collection of data from GPs relating to stress related illnesses. THOR was established to assess the extent and nature of work related ill health seen in general practice. The data THOR collates is accurate, since they are capturing this directly from GPs on a referral basis with between 250-300 GPs reporting into THOR.

A patient will visit their GP with the symptoms of stress or anxiety, aggravated by their employment. The GP reports this to THOR on a wholly non patient identifiable basis. The GP will report the diagnosis, age, gender, employment industry, sickness issues and any specific problems i.e. bullying in the workplace.

The ultimate aim of THOR is to use the data collated to calculate incidence rates and highlight the issues of stress and anxiety related illnesses. Funded by the HSE, THOR is classed as a national statistic. It releases its annual statistics to the HSE. However it does have its limitations. To be qualified as a GP to report such data to

---

<sup>13</sup> Mintel, Private Medical Insurance Report November 2013

<sup>14</sup> Friends Life Group research study, Financial Crisis Has Increased Stress Levels, November 2012

<sup>15</sup> Axa Healthcare - <https://www.healthinsurancedaily.com/health-insurance/product-area/occupational-health/article431650.ece>. [Retrieved July 10, 2014]

<sup>16</sup> BUPA survey - <http://www.bupa.co.uk/jahia/webdav/site/bupacouk/shared/Images/for-testing-only/stress-infographic.JPG>. [Retrieved July 10, 2014]

THOR, GPs have to take an occupational six month course. So whilst the data is more accurate since it is captured from GPs directly, this is offset by the fact that only 4% of all GPs have completed the diploma. Thus, the working group has accurate data but only of a limited sample group. THOR believe stress is a growing issue and one which organisations need to work together on to improve. Our research provides the following, highlighting the increase of stress as an issue in society, and the workplace more specifically.

- Stress accounts for approximately one quarter of the days lost in UK from employment<sup>17</sup>.
- Mental ill health accounted for almost one-third of the total diagnoses.
- For mental ill health diagnoses, GPs mainly reported stress, and anxiety/depression.
- Mental ill health is responsible for most work related sickness absence, with over half of these cases issued with sickness certification making up over half of the total days certified.
- Mild mental health disorders have also been shown to be responsible for the most days certified from all GP consultations (around 40%).

Work related mental ill health, although difficult to diagnose specifically, has been increasing in reported incidence which may reflect a reduction in the stigma associated with stress. This, along with personal factors such as employee motivation may cause long periods of absence. Public sectors and financial services have the highest proportions of stress absence.<sup>18</sup>

### 3.7 The Health and Safety Executive

---

The Health and Safety Executive (HSE) report on ‘Stress and Psychological Disorders in Great Britain’ every two years obtaining data from the Labour Force Survey, Office of National Statistics and THOR.<sup>19</sup> New data is due in Autumn 2014 and whilst there is no evidence to suggest a rise in reported incidents of stress in the workplace Paul Buckley, Lead Statistician on the topic for the HSE, predicts that the number of incidents is unlikely to fall.

After a steep increase in reported incidents in the 1990s the number has for some years remained constant with approximately 200,000 new cases every year. The HSE see this as a success story as it suggests that actions they have taken following targets set in 2000, have helped to ensure that there has been no further increases during this time.

Their website<sup>20</sup> receives approximately 60,000 views per month and not solely from Great Britain but from countries all over the globe suggesting that workplace stress is a global issue and not purely a domestic one.

Inevitably the work that the HSE undertakes requires funding and as they are only able to prosecute under criminal law the burden of proof required to make a conviction beyond all reasonable doubt is very high. This

---

17 Health and Safety Executive. HSE statistics—key figures

18 Industrial employment of the population of combined output areas (England, Scotland, and Wales) compared to those represented by THOR-GP practices

19 [www.hse.gov.uk/statistics](http://www.hse.gov.uk/statistics)

20 [www.hse.gov.uk/stress](http://www.hse.gov.uk/stress)



means that it is particularly difficult to prosecute a company for this type of claim as stress is a personal condition and the root cause of the condition is not easily identifiable i.e the juice is not worth the (effort to) squeeze. Often evidence is limited to the information that can be provided by the patient and whilst there are a number of symptoms associated with stress there are no clinical ways of testing for it. In view of this the HSE has now moved away from the prosecution of such cases.

We asked David Palferman, Senior Psychologist for the HSE, what this meant for the future and how the HSE would be likely to respond. He advised that the HSE see that primary intervention is the key. They work closely with their external stakeholders, promoting proactive risk management. Their website is extremely useful as it provides templates for a stress policy as well as useful guidance on recognising symptoms early, identification of successful management of stress within a company and case studies on how stress can be managed. Whilst prosecution is not their primary concern at the moment, Palferman also predicts that in view of the hidden costs of stress including lost days at work, the focus will have to return to this topic.

### 3.8 Lloyds

---

Lloyds run a wellbeing policy of which stress forms a prevalent part. They run studies into what increases and reduces stress within Lloyds. Lloyds is currently striving towards a standard of excellence, working in collaboration with the Charter of the City of London.

Lloyds is proactively working towards focusing on health, as opposed to safety which they feel as a physical measure is adequately dealt with. Lloyds state they are in the lower quartile of stress related illnesses compared to other City institutions, and are currently working on trends themselves as regards stress related illnesses. Lloyds comment accurate data on stress is difficult to collate though so it is very much a work in progress. Only one in ten people affected by stress actually cited stress as their reason for their absence from work – further evidence that it is tough to move away from the stigma connected to the illness. Lloyds aims to, and feels businesses and corporations can, work together to promote staff wellbeing, tackle the causes of stress and support staff who are suffering from such an illness. Lloyds feels managers and insurers can make a difference through relevant training that recognises the signs of mental illness and promotes early intervention. Clear policies need to be implemented to reduce the issue and the knock on effects. Lloyds promotes the following and feel insurers can contribute positively to this:-

- Increasing mental health literacy.
- Creating a culture of openness.
- Enabling the right steps to be taken by employers.
- Influencing providers and policy makers.
- Reducing the stigma of mental ill health.

### **3.9 Association of British Insurers (ABI)**

---

After discussing stress with the ABI we received the following comment;

*"To date we have not undertaken any work to examine stress."*

It would therefore appear that at this moment in time, stress and stress related claims are not on the agenda for the ABI.

### **3.10 Case Law**

---

Stress in isolation, is not actionable at common law – the claimant must have suffered a recognisable psychiatric injury such as depression, anxiety or an adjustment disorder. Work related stress claims typically arise from:

- Work Overload.
- Bullying/Harassment/Discrimination.
- Dismissal and/or the manner of dismissal.
- The vast majority of claims are for purely psychological injuries but are often combined with a physical element such as stress induced heart attack.

The normal principles of negligence and Employers Liability (EL) apply to stress claims: the claimant must show the existence of a duty of care, a breach of that duty and injury as a result of that breach.

To establish a breach of duty, the claimant must prove that the risk of injury arising was reasonable foreseeable. This requirement is a heavy burden which limits the number of successful stress claims.

#### **Insurance Position**

Stress claims are usually short tail in nature, which means that claims are usually made during the term of the policy or shortly after the policy has expired. Usually the EL insurer on risk at the time of diagnosis handles the claim, but this may differ if another insurer has a significantly larger potential exposure.

It is contrary to public policy for insurance to cover intentional acts by the policyholder. Therefore if bullying/harassment is carried out by a CEO, Partner or Director (or “controlling mind” of the company) then EL insurance would not respond.

In addition, claims under the Protection from Harassment Act 1997 for stress, distress and upset are unlikely to be covered unless it has led to a psychological injury.

Statutory breaches of regulation may lead to fines and/or prosecution (and would indicate a civil claim is likely to be successful certainly on breach of duty) but would again not be covered under insurance due to public policy considerations.

Employment Tribunal claims do not require evidence of psychological injury. Where there is no evidence of such injury, a normal EL policy would not respond but there may be cover under an Employment Practices Liability (EPL), Directors and Officers (D & O) or legal expenses insurance policy. EL Insurers are likely to want to be involved and/or kept informed in cases that include injury as any finding of a tribunal would be classed as a finding of fact, relevant to any subsequent litigation. Also, damages for personal injury can be awarded by the tribunal and these would be payable under the EL policy.

### Walker v Northumberland 1995

This case is notable as one of the first successful claims for work related stress. Mr Walker was employed by Northumberland County Council as a senior social worker. His workload gradually increased to such an extent that he suffered a nervous breakdown. He was diagnosed by his GP who recommended time off work to recover. It was agreed that steps would be put in place to allow the claimant to come back to work which we subsequently not followed through by the council. This subsequently forced him to have a relapse and a claim was successfully brought against the council, as it could be foreseen that this would cause a mental illness.

The case highlights the need for employers to be fully aware of when and why employees are diagnosed with work related stress, and to be vigilant and caring in managing employee rehabilitation on their return to work.

It could be argued that there is an increasing common law duty of care to protect more vulnerable employees, such as those who have suffered a nervous breakdown and/or stress related illness, over and above the rest of the workforce.

### Hatton v Sutherland 2002

This case deals with the question of reasonableness in relation to harm from work related stress.

The CA ruled that the general principle to be adopted was that employers should not have to pay compensation for stress-induced illness unless it was reasonably foreseeable. Employers are normally entitled to assume that employees are able, physically and mentally, to withstand the normal pressures associated with their work, except where they are aware of a particular problem or vulnerability, such as a previous stress related absence.

In deciding whether a risk is foreseeable or not, the following factors need to be taken into account:

- the nature and extent of the employee's work - is the workload greater than that normally expected for this type of job?
- signs from the employee themselves of impending harm to their health from work related stress - has the employee previously suffered any stress related harm, for example as in the case of Walker?

The CA set out a number of factors, which must be taken into account by the courts once it has been established, on the balance of probabilities, that it was reasonably foreseeable that an employee would suffer harm as a result of work related stress. A full list of these can be found under Appendix B.

The CA ruling places more responsibility on the individual employee to let their employer know if they are suffering from symptoms of work related stress, rather than leaving it totally to the employer to identify whether or not they are a stressed employee.

However, this proviso doesn't take away the employer's legal duty to take proactive measures, such as stress risk assessments, to identify stress risk factors in the workplace, and to implement control measures to minimise such risks by adopting the stress management standards.

There are various other aspects of case law that are relevant to this that can be found in Appendix C.

### Protection from Harassment Act 1997

The Protection from Harassment Act 1997 (PHA), which was originally intended to prosecute stalking has had its scope increased to include other types of actions. It is increasingly employed in bullying claims and is a criminal act. There must be at least two incidences of harassment (not necessarily by the same party if the harassers are working with a common purpose), which are connected in type and context so that they can properly be characterised as a course of conduct.

The fewer the incidents and the further apart in time, the less likely they are to amount to a course of conduct. Two random acts, by two different people, at different times, with no connection between them, cannot amount to a course of action.

For liability to attach, the alleged harasser must know or ought to know, that the behaviour in question amounts to harassment. The test is objective i.e. would an ordinary, reasonable person think that the course of conduct amounted to harassment?

There are 5 main differences to a negligence claim:

- Breach of the PHA leads to civil and criminal liability.
- The court may award damages for anxiety caused by the harassment. The claimant is not required to show they have suffered a psychiatric injury (therefore if harassment has occurred it will follow that an award will be made for the anxiety/upset caused).
- The claimant does not need to prove that an injury was foreseeable.
- Taking all reasonable steps to prevent the claimant from suffering harassment provides no defence; the employer is vicariously liable for bullying carried out by its employees.
- The claimant has six years to bring proceedings, however there is no discretion to waive the limitation period.

### *3.11 An American Perspective*

---

The American Institute of Stress states that numerous studies show that job related stress is a major cause of stress for American adults and that this has also progressively escalated over the past few decades.

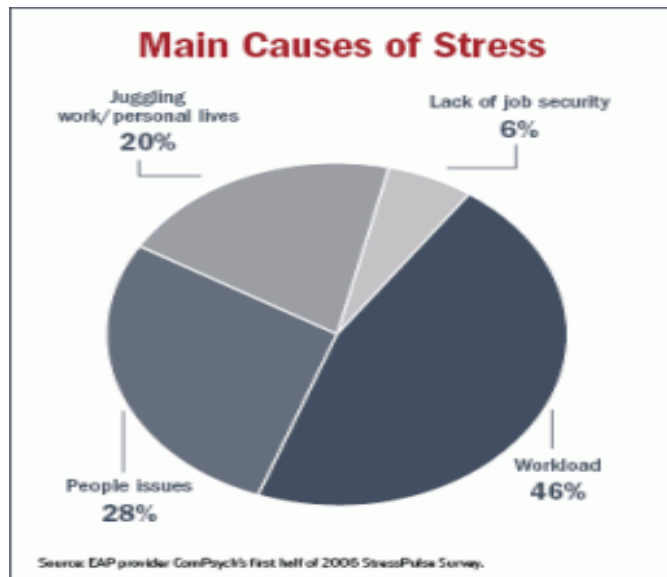


Figure 8

However, the institute insists it is often asked to compile a list of the most and least stressful occupations, as there is a perception that some jobs are more stressful. However, the institute insists it is not a certain job that causes stress, it is the person fit for that environment.

*“It is not the job but the person-environment fit that matters. Some individuals thrive in the time urgent pressure cooker of life in the fast lane, having to perform several duties at the same time and a list of things to do that would overwhelm most of us — provided they perceive that they are in control. They would be severely stressed by dull, dead end assembly line work enjoyed by others who shun responsibility and simply want to perform a task that is well within their capabilities.”<sup>21</sup>*

### 3.12 A European Perspective

Research into how insurers in Europe define and handle work related stress claims, has highlighted the fact that as in the UK, standardised definitions and protocols for stress don't appear to exist.

The increase in work related stress claims was highlighted by EU department the European Social Partners in 2004. In addition to the health of workers, the department estimated that the cost of stress to business across Europe was €20 billion per annum<sup>22</sup>. As a result, an agreement was reached to provide employers and workers with a framework to enable them to identify and manage problems caused by stress. A standard definition of stress was reached which is as follows;

*“A state, which is accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them.”*

<sup>21</sup> <http://www.stress.org/workplace-stress> [retrieved May 2014]

<sup>22</sup> [www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/stressatwork.htm](http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/stressatwork.htm) [Retrieved May, 2014]

*Stress is not a disease but prolonged exposure to it may reduce effectiveness at work and may cause ill health.”<sup>23</sup>*

In addition to defining stress, the European Social Partners stated that if work related stress is identified, the employer is responsible for eliminating or reducing the stress.

Whilst the framework was rolled out to 21 EU Member States, Iceland and Norway in 2004, a report published in 2011 showed that 11 Member States, Iceland and Norway progressed with the initiatives, a further seven Member States made progress towards implementing the framework but no progress was noted in the remaining ten Member States. The report concluded that sufficient progress hasn't been made to protect European workers from work related stress.

A French insurer commented that since 2005 companies have had an obligation on not only the means to prevent stress, but also on the effects of stress. This particular insurer has provided two day training courses to assist all managers in dealing with stress, including how to detect stress and how to deal with stress. In addition, employees are offered a helpline for free and confidential advice – this was found to be the case with the majority of insurance companies contacted with a request for stress data.

### 3.13 Unions

---

The Trade Union Congress' (TUC) 2010 survey of their safety representatives (reps) found that stress is by far the most common health and safety problem at work. Nearly two thirds of reps say that stress is in the top five of problems faced by the workforces they represent. Stress is more prevalent in larger workplaces and is most common in London – 70% of reps in the capital cite it as an issue.

Last year the TUC published a ten point manifesto on Health & Safety. Point three stated that occupational health should have the same priority as injury prevention, providing an insight into what the Union's thoughts are regarding stress related illness:

*“A few years ago the HSE undertook a number of interventions around preventing occupational health issues such as stress, back injuries, RSI, and bullying. These had the support of trade unions and they were having a significant effect in ensuring that employers addressed these problems. An example is the Stress Management Standards which showed clearly how to reduce the burden that stress has on workers. However, in the last few years work on this seems to have stopped completely. This is despite the evidence that stress is a growing concern during the current economic recession, with some estimates suggesting an increase of 40%*

*Unfortunately, very few workers have access to a fully comprehensive occupational service. A 2012 TUC survey showed that even amongst larger private employers and the public service less than half of workers had access to rehabilitation if they were injured or ill, and only 54 per cent had any form of health surveillance. For workers in small companies the position is even worse. It has been estimated that less than 10 per cent of workers have access to a fully comprehensive occupational health service through their employer. Many European countries have much better provision than the UK and several countries place a legal requirement on employers to provide an occupational health service.*

*Trade unions want strong regulation aimed at preventing stress, musculoskeletal disorders, bullying and violence with more emphasis on occupational illnesses in enforcement. Unions also believe that all workers should have free access to both health surveillance and comprehensive occupational health provision, either*

---

<sup>23</sup> [www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/stressatwork.htm](http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/stressatwork.htm) [Retrieved May, 2014]

*through a public body set up for that purpose or from services provided through the NHS. The savings to the economy by providing this would greatly exceed the cost as it would both reduce sickness absence as well as help prevent people becoming dependant on benefits.”*

All trade unions consistently survey their members for their views on workplace stress. The 2013 Unite Stress Survey's headline results showed 71% of respondents were not aware of a Stress At Work strategy in their workplace, whilst 77% felt stressed at work and 66% suffered from symptoms caused by stress in their workplace.

Professor Phil Taylor of The University of Strathclyde, researched and published a report for the Scottish Trades Union Congress, which focused on the Finance and Insurance sectors and the negative effects on the workforce of the use of Performance Management to force workers to fit a one size only model. Showing union concerns with occupational health within our own industry.

In September 2013 UNISON launched a campaign, Cut Stress Not Jobs, in response to the work pressures their members were facing with government cuts.

Borne out of similar individuals from the main unions, the UK National Work-Stress Network is committed to the eradication of the causes of work related stress and associated illnesses. It campaigns to advance this aim through its involvements with the Hazards Campaign; and in conjunction with the TUC, European organisations, within UK Trades Union structures.

The Network calls for:-

- Employers, Company Directors and managers at all levels to acknowledge their duty of care and for their acceptance of their health and safety responsibilities to the workforce;
- Legislation and enforcement procedures to outlaw all forms of workplace stress, bullying and victimisation; and to ensure full corporate liability for workplace injury;
- The creation of a caring, supportive workplace culture with 'Dignity at Work' for all and for worker sensitive procedures for all.

The network holds an annual conference to highlight and discuss the issue. During the 2013 conference, Susan Murray, Unite National H&S Adviser, outlined the unions view of how H&S should be approached and highlights the importance of TU safety reps; stress management; robust risk assessment process; full reporting and recording of all injuries, illnesses and near misses – including stress.

All the major unions are putting a lot of effort into ensuring that their safety reps are equipped to identify stress, offer support, and to help prevent stress.

### **3.14 Solicitors**

---

Roddy Macleod who is the stress, bullying & harassment partner at Weightmans LLP, specialises in occupational stress, work related stress, bullying, harassment and violence at work claims. He has been very vocal in terms of raising awareness of stress claims in the workplace and recently wrote an article in the POST Insurance magazine to enforce this message further.

*"There has been an increase in stress claims in the workplace as awareness around mental illnesses has grown. More claimant solicitors are entering this specialist area post the Jackson reforms and advertising is increasing for stress claims.*

*Increasingly we see a claim for mental trauma tagged on to a claim for a physical injury to increase the amount of damages that could be claimed for. The contention that a mental illness is stopping a claimant from returning to work and so forming the basis for loss of earnings for the rest of their lives can clearly lead to a sizeable increase in damages. All sides need to be 100% clear that the mental condition at the heart of a claim is properly medically assessed.*

*Stress claims previously brought in employment tribunals are now being brought as personal injury claims which attract the payment of costs and thus increase the cost of settlements."*<sup>24</sup>

For Roddy the increase in claims is not just a recent trend. Roddy has seen the rise of workplace stress claims for a number of years and published an article in 2008 commenting:

*"The issue of occupational stress continues to loom large in employers' liability claims. Employers must remain aware of the need to manage this risk and must be prepared to give urgent attention to employees complaining of stress related symptoms."*

Roddy is in complete support of our paper and wants to raise awareness in the insurance industry to demonstrate that stress related claims are increasing, and this will continue if companies are not made more aware of this. What impact will the increase in stress related claims have on UK insurance companies and the welfare of British society?

---

<sup>24</sup> Post Magazine, Issue April 2014, Claimant Solicitors Accused Of Fuelling Workplace Stress Claims



# 4. The Future

---

## 4.1 Social

---

The social stigma of suffering from stress often results in a reluctance to acknowledge the problem and seek help. Consequently many sufferers delay seeking proper treatment and often only do so following a period of absence from work. This delay in treatment can exacerbate symptoms and prolong recovery. Neil Shah of The Stress Management Society asserts that early diagnosis can significantly reduce the severity of symptoms which often means that counselling and cognitive behavioural therapy are often more appropriate treatments rather than use of medication.

The Stress Management Society conducted a survey in 2009 which advised:

*“78% of the general working population claimed that stress was affecting their health, mood and sleep. 61% had not done anything about it”.*<sup>25</sup>

The possible future implications of this statistic are dramatic, particularly if the stigma associated with stress were to be reduced. Should even a minority of these silent sufferers of stress feel newly able to openly seek treatment, the effects could be felt across a diverse range of economic sectors and societal groups. Possible consequences include that the number of NHS referrals related to stress would increase, placing an increased strain on NHS resources, which is currently estimated at £2 billion annually.<sup>26</sup> It is difficult to anticipate the net impact on the NHS, however, because this increased demand might be mitigated by the lower cost of earlier intervention and other potential benefits including a reduction in stress related conditions such as heart attacks. Another positive change could be increased productivity if the rate of absenteeism in the workplace were reduced. A similar and related benefit may be a reduction in “presenteeism” - when an employee feels compelled to attend work despite being in an unfit state and is incapable of undertaking their work to their full capacity.

In order to assess the likelihood of the stigma of stress persisting, it is worth considering efforts to improve public and societal understanding of the subject and attempting to understand why stress is a taboo subject in many work places. Recent media coverage includes a documentary made by Andrew Flintoff for the BBC in January 2012 in which he interviewed numerous high profile sports stars who suffered from depression or anxiety disorders often attributable to their work. Press commentary on the documentary often focused on the public’s lack of awareness of the scale of the problem and frequent shock that such outwardly successful and famous people had secretly suffered from various forms of stress.

It is likely that the reluctance of the sport stars interviewed in the programme to admit that they suffered from stress, was motivated by fears that are more widely held in society. Many reported that stress is perceived as a weakness and that it was feared that admitting to this weakness may jeopardise their jobs. An ancillary concern is that admitting to stress may imperil any prospects of promotion as it is often believed that with greater seniority comes an associated increase in responsibility and an increased risk of suffering from stress

---

<sup>25</sup> Stress Management Society website -<http://stressmanagementsociety.com/files/Corporate-Wellbeing-Solutions.pdf>

<sup>26</sup> Daily Telegraph website - <http://www.telegraph.co.uk/health/3257875/Stress-due-to-mounting-debt-costs-NHS-millions.html>

as a result. These perceptions are often false and if the condition is properly managed, an increase in pressure may not prove detrimental to health. As many people that suffer from stress attempt to hide their condition and so do not receive proper management of potential mental health consequences, managers may not be aware that the employee needs support and may continue to increase the pressure. It is worth noting that Andrew Flintoff and the people that he interviewed only felt comfortable discussing the condition after retirement.

The word 'stress' is overused and has become an umbrella term for a variety of conditions not necessarily properly defined as stress. A common misnomer is to use "stress" when describing a pressurised environment, but this usage dilutes the medical meaning by association with a less serious situation.

According to Hans Selye in his book *Stress in Health and Disease* stress is:

*"... associated with a great variety of essentially dissimilar problems, such as surgical trauma, burns, emotional arousal, mental or physical effort, fatigue, pain, fear, the need for concentration, the humiliation of frustration, the loss of blood, intoxication with drugs or environmental pollutants, or even with the kind of unexpected success that requires an individual to reformulate his lifestyle. Stress is present in the businessman under constant pressure; in the athlete straining to win a race; in the air traffic controller who bears continuous responsibility for hundreds of lives; in the husband helplessly watching his wife's slow, painful death from cancer; in a race horse, its jockey and the spectator who bets on them"*<sup>27</sup>

The key phrase is "essentially dissimilar problems" which lends credence to the proposition that the seriousness of medical stress is diminished by association with other meanings. If stress is currently considered to describe numerous un-related problems, it is essential that a definition of medical stress is agreed in order for it to be possible to insure against. A common, industry-wide definition would be beneficial.

## 4.2 Risk Management

---

### 4.2.1 HSE Management Standards & Risk Assessment

HSE has developed Management Standards to help employers measure their performance in managing the key causes of stress at work and identify areas for improvement. The Standards consider the demands made on employees, the level of control employees have over their work, the support employees receive from managers and colleagues, the clarity of an employee's role within the organisation, the nature of relationships at work and the way that change is managed.

The HSE suggest a risk assessment approach to ensure that the standards are met. The following should be addressed prior to implementation:

- Secure senior management commitment.
- Secure commitment from employees and their representatives.
- Set up a steering group.
- Develop a project plan.
- Secure adequate resources, in particular staff time.
- Develop a communications and employee engagement strategy.
- If appropriate, develop an organisational stress policy.
- Record what has been done.

---

<sup>27</sup> Selye H. *Stress in health and disease*. London: Butterworth, 1976

A simple risk assessment approach should then be adopted which should incorporate the following:

- Identify the risk factors – Demands, Control, Support, Relationships, Roles and Change
- Who can be harmed and how - consider data available, carry out analysis comparing performance against the Management Standards, identify underperformance and record
- Evaluate the risks – consult employees and work in partnership, address issues, feed-back results to stakeholders, record.
- Record the findings – agree an action plan for implementation of solutions, share the action plan, start implementing, and record.
- Monitor and review – monitor against the actions plan, evaluate effectiveness, decide what further action is needed.<sup>28</sup>

These risk assessments should become standard procedure and be regularly updated, to ensure that these measures are implemented throughout an organisation, specifically, that all levels of management work on their implementation rather than it becoming an exercise of which only senior management take any heed.

Many consultancy firms now offer “Business Stress Risk Reviews” which offer an independent view of the organisation’s ability to tackle stress and which suggests improvements where appropriate.

#### **4.2.2 Stress Management Policy**

The work described above should translate into a company’s written stress management policy. All staff should be aware of this policy which should be easily accessible to all. Management should also be responsible for its implementation.

#### **4.2.3 Stress management, counselling, occupational health or other outsourced services**

There are numerous third party providers of counselling, occupational health services and employee wellbeing services. They also often arrange services such as relaxation aids or discounted access to leisure facilities.

#### **4.2.4 Activities and events**

Companies should provide regular activities or hold events highlighting the impact of stress and how to better cope. In large organisations this could take the form of road shows highlighting the services available to employees.

#### **4.2.5 Promote self help**

Not all organisations have the resources to pay for outsourced counselling and wellbeing services. There are, however, numerous charities that offer support and advice on dealing with stress which employees should be made aware of (see section 3.4).

#### **4.2.6 Employee representatives**

Employers should recognise that employees find it difficult to speak to management about work related stress, regardless of how progressive the company’s attitude to the subject. Employees in all parts of the organisation

---

<sup>28</sup> HSE Website <http://www.hse.gov.uk/STRESS/standards/step1/index.htm>

could be given training in stress awareness, management and resilience. Often a colleague is in an excellent position to identify the problem.

### 4.3 Uniform reporting

---

Claims codes are used by insurance companies to categorise claims. Proper coding of claims is essential in order to be able to carry out worthwhile analysis of claims data. However, in our research we have found that uniform claims coding is not consistently used to identify stress claims. The result is that it is impossible for insurers to analyse trends in stress related claims.

The few insurers that do code for stress typically record details in the following format:

- 'Type of injury' e.g. Stress
- 'Detail broken down further' e.g. bullying, over worked, sexual harassment

The above formatting is also of use for solicitors, where similar coding of data they hold allows more efficient liaison with insurers. It is important for solicitors to receive instruction from an insurer regarding a stress claim as early as possible. Roddy MacLeod of Weightmans LLP has arranged uniform reporting with all of his insurer clients, varying on a client by client basis. However, this enables Weightmans to analyse their data regarding stress claims in the same manner as other types of claims, making it possible to identify trends.

This system provides a useful example for insurers, who often fail to properly capture stress claims data in a useful format.

### 4.4 Industry working party

---

One of the recommendations of this report is that the Insurance industry needs to be proactive in the management of workplace stress.

Useful progress could be made in this ambition by the assembly of an industry working party, an initiative which is supported by the CII. This could then lead on to a cross industry working party<sup>29</sup>. Advantages of this approach would include:

- The improvement in coordination and integration by spanning industry boundaries and reducing the production cycle time in new product development. Inter-disciplinary consideration of potential new insurance products could allow unforeseen deficiencies to be rectified before product launch.
- Bringing people together from different disciplines can improve problem solving and lead to more thorough decision making.
- The teams foster a spirit of cooperation that can make it easier to achieve customer satisfaction and industry goals at the same time.
- A single coherent and therefore more persuasive argument can be made by industry on subjects that would require the lobbying of government or regulators.

---

<sup>29</sup> Aviva website - <http://www.aviva.com/media/news/item/report-of-insurance-industry-working-group-5086/>

Another advantage of establishing a working party would be access to expertise from outside of the industry to achieve a more holistic approach to the subject. The Insurance Industry Working Group (IIWG) that reported on medium and long-term challenges in 2009 was co-chaired by Alistair Darling MP, then Chancellor of the Exchequer. This gave the industry access to Government opinion on the subject and furthered harmony of purpose between the industry and Government.

#### **4.5 Impact following a change in legislation/government/judicial decision**

---

The Department of Health has funded the “Time to Change” campaign which is aimed at removing stigma and discrimination that nine out of ten people report facing after being diagnosed with a mental health illness. Many people report that the social stigma can be more difficult to deal with than the psychological injury and that this stigma hinders recovery. The campaign has been run by the charities Mind and Rethink Mental Illness since 2007.

There are some indications that enforcement of existing anti-discrimination laws has prompted companies to focus more on their diversity policies and ensuring equal pay. More progress in this regard should make it much more difficult for employers to make redundant employees that have suffered a psychiatric injury following stress at work because the condition is classed as a disability for the purposes of the Discrimination laws. It should be noted, however, that progress in this regard is limited. Only 20% employees that are away from work for more than three months do not return to the same employer which demonstrates that more needs to be done to protect the employment rights of those that are forced into absence from work as a result of mental illness.<sup>30</sup>

##### **4.5.1 Working Time Regulations 1998**

Under these regulations an employer may not require an employee to work more than 48 hours a week without their written consent. As such it is often pleaded in work overload claims. *Hone v Six Continents Retail Ltd 2005* suggests that whilst a breach of the regulations is one factor to be considered, it does not on its own satisfy the test for foreseeability. Should the courts change this view, and place more emphasis on the regulations when considering foreseeability this is likely to result in a higher volume of successful claims.

##### **4.5.2 Apportionment**

In *Hatton 2002* guidance was issued that apportionment should take place for psychiatric injury cases with more than one cause, such as when a claimant suffers simultaneously from stress at work and the breakdown of a marriage. Expert evidence needs to be obtained to establish the correct apportionment. This was disputed by the decision in *Dickins v O2 plc* where the judge considered that the psychiatric injury is non-divisible. Therefore where the defendant’s breach has made a material contribution to the injury (i.e. more than minimal) but it is not scientifically possible to exactly quantify that contribution, the injury is treated as indivisible and damages should not be apportioned. It was accepted, however, that there may be a reduction in some heads of damage for future risks of non-tortious loss.

This highlights the potential risks of courts reversing earlier decisions.

##### **4.5.3 HSE Guidance**

*The HSE Guidance Managing the Causes of Work related Stress: A step by step approach using the Management Standards (HSG 218)* set out a ‘Five steps to risk assessment model’. This guidance is not onerous for employers, requiring only that evidence is produced that a satisfactory risk assessment is carried out.

---

<sup>30</sup> Health at work – an independent review of sickness absence, Dame Carol Black and David Frost CBE, November 2011 (Source: The 2011 CIPD Absence Management Survey in partnership with Simplyhealth.)

Employee appraisals and regular one-to-one meetings may be sufficient to meet this requirement if they consider the subject of stress.

#### 4.5.4 Qualified one way costs shifting

“Qualified one way costs shifting” (QOCS) was introduced for personal injury claims in April 2013. Under these rules the vast majority of claimants for personal injury, included those from stress at work, would not be exposed to the risk of paying the defendants costs if their claim is unsuccessful. The only exception to this would be if the claim were found to be fundamentally dishonest. This change is unlikely to be relevant for stress claims that relate to workload or traumatic events (unless the traumatic event was staged or fabricated or for harassment/bullying or wrongful dismissal type claims) due to the difficulty in showing these claims to be dishonest. It is possible that the QOCS system could lead to an increase in stress at work claims as solicitors seek areas of personal injury law with higher returns(although risks are also higher). Previously the difficulties in obtaining after the event - legal expenses insurance for these difficult cases and the potentially large exposure to adverse defendant’s costs was a significant barrier to bringing these types of claims that has now been largely removed.

#### 4.5.5 Reporting of Injuries, Diseases and Dangerous Occurrences Regulation (RIDDOR) 2013

RIDDOR reportable incidents are described as an accident is a separate, identifiable, unintended incident, which causes physical injury. This specifically includes acts of non-consensual violence to people at work.<sup>31</sup> Under the regulations, any incident that causes an employee to be absent from work for more than seven days would have to be reported to the HSE.

The regulation does not currently involve the reporting of mental illnesses, such as stress, therefore the HSE would not be duty bound to investigate workplaces where these occurrences are happening.

If there were to be an amendment to the rule then this could see the HSE taking a much more proactive role in the management of stress. This in turn would put a spotlight on industries and employers who are having high levels of employee absenteeism through stress, and this in turn would see procedures being put in place to safeguard the individual from harm.

If there were to be problem industries, then this would lead to a great deal more information from the HSE, which insurers could use when assessing their underwriting strategy and the actuarial pricing analysis.

#### 4.6 Industry Wide Definition

---

Workplace stress is usually covered under the Employers Liability section of an insurance policy. For a successful claim to be made it must be covered in the policy wording. Few insurers adequately define what particular injuries would be covered.

In order to properly tackle the emerging risk of stress, it is recommended that a standardised, insurance industry-wide definition be agreed. This would allow uniform claim reporting of stress and hugely improve the quality of claims data available. As previously mentioned this will allow the insurance industry to become proactive in dealing with the potential emerging risk of stress.

Properly defining stress to the mutual satisfaction of all involved is a significant undertaking and will require the input and agreement of mental health experts and key stakeholders within the Insurance Industry.

We suggest that this should form part of the main agenda for the cross industry working party.

---

<sup>31</sup> HSE Website - <http://www.hse.gov.uk/riddor/key-definitions.htm> [Retrieved September 15, 2014]

## 4.7 Underwriting stress

---

There is currently insufficient data for meaningful actuarial analysis in order to price for stress exposure. Perhaps the best underwriting approach would be to assist policyholders in mitigating the exposure. It is recommended that risk management is highlighted by including questions on stress in standard information disclosure documents (proposal forms/risk presentations etc).

Questions could include:

- Have you adopted the HSE Management Standards and carried out a risk assessment relating to stress at work (whether directly or through engaging the services of a third party firm)?
- Do you have a stress management policy?
- Do you engage the use of third party service providers for counselling and/or occupational health services?
- How else do you highlight the issue of stress at work to employees and/or how they can access advice and support?

This would produce useful information regarding the proposer's attitude to stress at work risk and also allows insurers the opportunity to offer to assist those clients with poor stress policies. Actions could include offering value-added services such as access to occupational health service providers or firms able to assist with carrying out a risk assessment and report.

Merely asking the questions would at least highlight insurer's concern and interest in stress to clients and may prompt greater concern from policy holders. These measures may assist in mitigating this emerging risk and avoid the obligation of potentially vast future claims liabilities.

## 5. Conclusion

---

Based on the findings of this report we conclude:

- Work based stress occurs when an individual is unable to cope with the demands that they are put under, and this continued state of mind can cause both physical and mental illness to develop.
- All employers have a legal responsibility under the Health and Safety at Work Act 1974 and Management of Health and Safety at Work Regulations 1999 to ensure the health, safety and welfare of their employees at work, including ensuring that exposure to stress is minimised within the workplace.
- Workplace stress is usually covered under the Employers Liability (EL) section of an Insurance Policy. For a claim to be made it needs to be covered within the wording of the policy. The normal principles of negligence and EL apply: the claimant must show the existence of a duty of care, a breach of that duty and injury as a result of that breach. As mentioned in this report few insurers define what particular injuries would be covered and as a result there is a scarcity of data relating to the incidence of stress at work and its detrimental effect on mental health.
- Stress at work is increasingly recognised as a significant societal and economic problem and the desire to better manage and mitigate its causes and consequences is likely to harden into determination. The Insurance Industry has had a painful experience of how a change in public attitude, a change in legislation/law, or under-appreciation of risk can have dramatic repercussions for claims frequency. The two examples of Asbestosis and Whiplash should act as a sobering reminder to insurance companies of the danger of failing to anticipate how the risk environment is changing. There is a history of the Insurance industry being reactive to changes.
- A CIPD Survey in October 2011 highlights that stress is the number one cause of long-term sickness absence for both manual and non-manual employees. A recent report shows that stress related incidents cost the NHS £2 billion a year. There is no easy cure for stress and delaying its treatment increases the overall cost.



## 6. Recommendations

---

The authors of this report have observed that stress could potentially be a problem that impacts on insurers, companies and individuals if better management is not taken of this growing problem. There are more absences in industry from stress than for any other type of injury or illness.

To address the issue, the authors are making the following recommendations to the Insurance Industry:

- Industry working party

To be proactive in the management of workplace stress, an industry working party backed by the CII would provide the industry with an opportunity to assess the best way to manage the issue and to manoeuvre a change in the way the Insurance Industry looks at stress in the workplace. The Working Party could combine expert key stakeholders within the Insurance Industry and later incorporate expertise from outside the Industry to provide a holistic approach to the subject.

- Standard definition of stress

A standard definition of stress should be implemented industry-wide since few insurers define what particular injuries would be covered for a workplace stress claim under the Employers Liability section of an Insurance Policy. By having a standard definition industry-wide will ensure that currently a vague understanding of what is covered for a client will change into a clearer transparent definition of what is covered from a claims perspective for clients. This should assist with a smoother claims handling process for the Insured, allowing the ability for better service. The benefit for insurers will be uniform claims reporting categories which will enable insurance companies to spot trends quickly and react to potential growth of claims, explained in more detail below. The standard definition of stress is key to the agenda for the industry working party.

- Uniform reporting

Uniform claims coding should be applied to stress claims to allow for data on stress claims to be collated, trends identified and any impact analysed. This would help the Industry to better predict and manage their exposure. The uniform reporting approach should be agreed between solicitors and insurers to ensure reporting is as detailed as the insurer requires and for efficient instructions between both parties. Furthermore, as knowledge of stress in Insurance companies is relatively limited, stress champions within claims teams are recommended in order to gain expertise. Again this is key to the agenda for the industry working party.

- RIDDOR reportable

Stress incidents that keep an employee off work for more than seven working days are not currently RIDDOR reportable. Industries that are particularly high hazard with many stress claims perhaps do not receive the attention they deserve to prevent them, and getting these types of occurrences investigated, will help the individual in these problem industries. Our recommendation would be to make stress incidents RIDDOR reportable on stress related absences.

- Education and risk management

The industry should have a key role in the education of stress, not just through risk management advice but by contributing in a wider context. The industry should be playing a role that is more than just a means of transferring risk, but having an active contribution in making people's lives better.

We believe the following could help in achieving this ambition:

Competitions – providing support, awards or funding to reward innovative approaches to stress management and or awareness

Dedicated funding – well advertised specific fund allocated to stress projects. Groups and or charities could apply for funding for specific projects (consideration given by Working Party)

Standard risk survey – producing a standard risk survey which can be used as part of the risk survey process, or produce one that employers can use free of charge

Research and studies – providing some form of support to research, possibly through educational establishments

Support to charities – preferred charity partner on stress, whether linking in with CII or ABI, helping to raise funds and promotion

Social Media – gaining support from industry stakeholders to use their expertise on exploiting social media for education and awareness

Bringing just a few of these ideas to light will show society how the industry cares and is determined to bring a meaningful improvement to people's lives.

# Bibliography

---

1. HSE website - <http://www.hse.gov.uk/stress/furtheradvice/whatisstress.htm> [Retrieved May 12, 2014]
2. Executive Health, book by Andrew Melhuish, 1978
3. Allianz Complete Business Insurance Policy Wording 2013, (<http://docs.allianzbroker.co.uk>) [Retrieved May 12, 2014]
4. Evans H, Launch of ABI quarterly average private comprehensive motor insurance premium tracker. ABI conference 27/01/2014
5. Cooke WE. Fibrosis of the lungs due to the inhalation of asbestos dust. *BMJ* 1924;ii:147
6. Institute and Faculty of Actuaries, UK Asbestos Working Party Update 2009, 2009 GIRO paper
7. CIPD Website - <http://www.cipd.co.uk/hr-resources/factsheets/stress-mental-health-at-work.aspx> [Retrieved July 24, 2014]
8. ISMA website - <http://www.isma.org.uk/about-stress/facts-about-stress/#.U9DhhtRwbc> [Retrieved June 13, 2014]
9. BBC website - <http://www.bbc.co.uk/news/business-25316690>. [Retrieved July 26, 2014]
10. Daily Telegraph website - <http://www.telegraph.co.uk/sport/football/8792439/Tragedy-of-goalkeeper-Robert-Enkes-secret-struggle.html>. [Retrieved July 26, 2014]
11. Mental Health website - <http://www.mentalhealth.org.uk/our-work/mentalhealthawarenessweek>. [Retrieved June 13, 2014]
12. ISMA website - <http://www.isma.org.uk/about-national-stress-awareness-day-nsad/#.U9Di-NRwbc>. [Retrieved June 13, 2014]
13. Mintel Private Medical Insurance Report November 2013
14. Friends Life Group research study, Financial Crisis Has Increased Stress Levels, November 2012
15. Axa Healthcare - <https://www.healthinsurancedaily.com/health-insurance/product-area/occupational-health/article431650.ece>. [Retrieved July 10, 2014]
16. BUPA survey - <http://www.bupa.co.uk/jahia/webdav/site/bupacouk/shared/Images/for-testing-only/stress-infographic.JPG>. [Retrieved July 10, 2014]
17. Health and Safety Executive. HSE statistics—Key Figures
18. Industrial employment of the population of combined output areas (England, Scotland, and Wales) compared to those represented by THOR-GP practices
19. HSE website - [www.hse.gov.uk/statistics](http://www.hse.gov.uk/statistics) [Retrieved May 12, 2014]
20. HSE website - [www.hse.gov.uk/stress](http://www.hse.gov.uk/stress) [Retrieved May 12, 2014]
21. AIS website - <http://www.stress.org/workplace-stress> [Retrieved May 1, 2014]
22. Eurofound website - [www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/stressatwork.htm](http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/stressatwork.htm) [Retrieved May 28, 2014]
23. Eurofound website - [www.eurofound.europa.eu/pubdocs/2012/58/en/1/EF1258EN.pdf](http://www.eurofound.europa.eu/pubdocs/2012/58/en/1/EF1258EN.pdf). [Retrieved May 28, 2014]
24. Post Magazine, Issue April 2014, Claimant Solicitors Accused Of Fuelling Workplace Stress Claims
25. Stress Management Society website -<http://stressmanagementsociety.com/files/Corporate-Wellbeing-Solutions.pdf> [Retrieved July 26 2014]
26. Daily Telegraph website - <http://www.telegraph.co.uk/health/3257875/Stress-due-to-mounting-debt-costs-NHS-millions.html> [Retrieved July 10, 2014]

27. Stress in Health and Disease, book by Hans Selye. London: Butterworth, 1976
28. HSE - <http://www.hse.gov.uk/STRESS/standards/step1/index.htm> [Retrieved September 15, 2014]
29. Aviva website - <http://www.aviva.com/media/news/item/report-of-insurance-industry-working-group-5086/> [Retrieved May 12, 2014]
30. Health at work – an independent review of sickness absence, Dame Carol Black and David Frost CBE, November 2011 (Source: The 2011 CIPD Absence Management Survey in partnership with Simplyhealth)
31. HSE Website - <http://www.hse.gov.uk/riddor/key-definitions.htm> [Retrieved September 15, 2014]

# Appendix

---

## Appendix A – Industry Injury Definitions

### Ace

#### **Bodily Injury**

Means bodily injury to an **Employee** and includes

a) death illness and disease

b) mental injury anguish or nervous shock sustained by any **Employee** as a result of actual or threat of bodily injury death illness or disease

### Allianz

#### **Injury**

Bodily injury, death, disease, illness, mental injury or nervous shock.

### Axa

#### **Injury**

Bodily injury death disease illness or nervous shock

### Brit (as was)

#### **Injury**

means bodily injury, death, disease (or sickness), illness, nervous shock or mental injury.

### Covéa Insurance

#### **Bodily Injury**

Bodily injury including death, illness, disease, mental injury, mental anguish or nervous shock but not defamation.

### Hiscox

#### **Bodily injury**

Death or any bodily or mental injury or disease

### Groupama

#### **INJURY**

bodily injury death illness disease or shock causing bodily injury

### LV=

#### **INJURY**

Bodily injury death illness or disease

[NIG](#)

**Bodily Injury** - shall include death disease illness mental injury mental anguish or nervous shock.

[NFU Mutual](#)

**INJURY**

Bodily injury, death, disease, illness and/or medically recognised psychiatric injury.

[RSA](#)

Injury shall mean

**Section 1**

bodily injury death disease or illness

**Sections 2 and 3**

bodily injury death disease illness wrongful arrest or false imprisonment

[Sterling](#)

**Bodily injury**

death, injury, illness, disease or shock

[Policy Wordings were unavailable from the following insurers:](#)

Aviva  
Chubb  
Zurich  
QBE

## **Appendix B – CA Factors in Deciding whether a Risk is Foreseeable**

- Employers are only in breach of their duty of care if they fail to take reasonable steps to prevent employees suffering as a result of work related stress (that is, fail to follow the stress management standards).
- Where an employee wants to remain in a stressful job, and the only alternative is dismissal or demotion, then the employer is not in breach of duty in allowing that employee to continue in the post.
- Indications of impending harm to health must be plain enough for any reasonable employer to realise and subsequently take action to alleviate the stressful situation.
- When considering what actions are reasonable for an employer to take to further reduce the risk of harm from work related stress, the size and resources of the employer's organisation may be taken into account, together with the size of the risk to health, the gravity of the impending harm, the cost of preventing the harm, and any justification for taking the risk.
- It's not enough for the claimant (injured person) to show that they are suffering harm as a result of work related stress; they must be able to demonstrate that their injury/illness was caused by the employer's breach of their duty of care by failing to take reasonable steps to protect the employee.
- No type of work may be seen as intrinsically dangerous to mental health.
- If an employer offers a confidential stress counselling service for employees who experience stress at work, which includes referrals to treatment services, they will be unlikely to be found in breach of their duty of care to protect against workplace stress. (This has been qualified by later judgments.)
- The amount of compensation payable will be reduced to take account of pre-existing conditions, or the chance that the employee would have suffered mental illness in any event.

## Appendix C – Case Law

### **Intel Corporation UK Ltd v Tracy Ann Daw (2007)**

It was initially considered that an employer who offered a confidential counselling service would be absolved of all liability, although in Intel Corporation UK Ltd v Tracy Ann Daw (2007) the Court of appeal stated that providing a counselling service should not be regarded as a panacea by which employers could discharge their duty of care in all cases.

The key issue is foreseeability and a claimant must show that an employer was on notice of impending psychiatric harm, and failed to take any preventative action.

The claimant was suffering a chronic stress-induced depression due to overwork. She suffered an initial breakdown in 2001 and was therefore known to be vulnerable. Her workload changed and she made at least 14 written and verbal representations to her line manager about her workload, but no action was taken. It was not possible to reduce the claimant's workload as there was a shortage of staff. It was held that the further psychiatric injury was foreseeable as the employer was on notice of the claimant's vulnerability.

There are a number of common factors in all cases where a claimant establishes a liability. They are:

- An employee with a known psychiatric vulnerability.
- A subsequent increase or failure to reduce workload.
- Specific complaints by an employee or absence due to stress before the 'foreseeable' psychiatric injury is sustained.

### **Young v The Post Office (2002)**

The High Court awarded a former Post Office worker nearly £94,000 in damages after suffering a stress related illness that the court found was caused by his work. Young, a workshop manager at a Post Office depot in Scarborough, suffered a breakdown in May 1997 as a result of overwork and lack of training on new systems. After four months absence, he returned to work, with Post Office managers promising flexible working arrangements to allow him to gradually take on his normal work. Seven weeks later however he went off sick again with depression. The court heard that managers had failed to implement the measures they had promised and as a result Young's illness recurred. The court found that the first breakdown could not have been foreseeable to Young's managers. However, when he returned to work there was a good chance his health would suffer if circumstances did not change. Hearing the case, Lord Justice May said 'Mr Young had already suffered from psychiatric illness and his employers knew this, in my view it is entirely foreseeable that there might be a recurrence if appropriate steps were not taken when he returned to work'. Young was awarded £93,880 in damages plus costs.

### **Green v Deutsche Bank (2006)**

The High Court awarded a former Deutsche Bank worker £828,000 in damages following what the judge described as a relentless campaign of mean and spiteful behaviour by colleagues. Helen Green, a high flyer at the bank, was admitted to hospital suffering a major depressive illness as a result of a three-year campaign of bullying. This included amongst other things, ignoring her, laughing at her when she walked by, making lewd comments, and hiding her post. Green raised the problem with her manager and HR department but her complaints were ignored.



In judgement, Mr Justice Owens described the behaviour as 'oppressive and unreasonable' adding that 'line managers knew or ought to have known what was going on. They collectively closed their eyes to what was happening, no doubt in the hope that the problem would go away.'

He identified that 'there were obvious steps that could have been taken. It ought to have been made clear that such behaviour was simply unacceptable, and those involved warned that if they persisted, disciplinary action would follow. By whatever means, the bullying could and should have been stopped'. The size of the damages awarded reflected the courts view that Green would never again work in a job that paid as well as she had been at the bank.