

Weightmans Guidance Note (Autumn 2017)

**A Brief Introduction to
Managing Stress in the Workplace**

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1) Introduction:

1.1) What is 'stress'?

a) The Health & Safety Executive ('HSE') defines stress as the "adverse reaction people have to excessive pressures or other types of demand placed on them". Stress will not normally amount to an illness in itself, although if it persists then it is likely to result in physical or mental illnesses such as heart disease, anxiety and depression.

b) Stress is unlike normal, healthy feelings of anticipation, nervousness and pressure that can contribute to effective performance. It is also more likely to be caused by external pressures which are placed on an employee rather than the demands of the job which are under the direct control of the individual concerned.

1.2) What are the common causes of stress?

a) Employees can experience stress as a result of factors both within and outside of the workplace, including:

- the nature of the work, such as a high pressure job or where the role is beyond the individual's capabilities, e.g. following a promotion or a change to the employee's duties and/or where there has been inadequate training;
- the volume of the work;
- working hours, e.g. where an individual works more than his or her contracted hours and/or takes too few breaks and/or fails to take his/her full holiday allowance;
- a restructure and/or redundancy programme, which is likely to be stressful even for those who succeed in retaining their job;
- environmental factors, e.g. where a noisy open-plan office is making it hard for people to concentrate;
- bullying or harassment by colleagues or third parties, which can lead to severe psychiatric harm;
- bereavement or the serious illness of a close relative;
- the breakdown of a personal relationship; and

- the economy and financial problems: employees' personal financial problems, often coupled with their fears about their job security, frequently impact upon their stress levels. This can be exacerbated where individuals are working longer hours, and thus risking stress through over-work, in a bid to show their loyalty and reduce the likelihood of being made redundant.

A combination of the above factors is likely to create a higher risk of stress and more severe symptoms.

b) Where an employee experiences stress, and even if his or her job is not the direct cause of it, then the stress is likely to have an impact on the employee's job performance. An employee's personal circumstances can often trigger stress where he or she has otherwise been able to cope well with the demands of the job. While there is often less that a line manager can do in terms of directly tackling the cause of the stress in such circumstances, the manager should still be sympathetic to the individual and take reasonable steps to assist him/her.

1.3) What are the common signs of stress?

a) Given that stress can result from single or multiple causes, which can be work and/or domestic-related, it can be difficult to identify staff who are under stress. Furthermore, any indications that a person is experiencing stress will vary according to how he/she reacts to it. However, typical signs of stress might include one or more of the following:

i) Work-related:

- declining/ inconsistent / poor performance
- lack of concentration / uncharacteristic errors
- loss of control over work
- indecision / poor judgment
- lapses in memory
- increased time spent at work to cope with the same volume of work
- failing to take breaks and/or annual leave entitlement;

ii) Behaviour-related:

- loss of motivation, commitment or confidence
- arriving late and/or leaving early
- taking extended lunches
- higher than normal levels of absenteeism
- reduced social contact with colleagues
- elusiveness/evasiveness
- displaying negative or depressive emotions;
- increased emotional reactions, e.g. crying / undue sensitivity/ over-reacting to problems
- temper outbursts/being argumentative
- irritability/mood swings
- nervous/'twitchy' behaviour
- personality clashes
- sulking/immature behaviour

- being unduly critical of others
- bullying or harassing others
- poor employee relations
- changes in eating or sleeping habits
- increased smoking, alcohol consumption or drug use

b) Line managers may become aware of stress through different means, e.g.:

- from personally observing the employee's behaviour at work, at a return-to-work interview following a period of sickness absence, or at an appraisal meeting;
- an employee's colleagues may report to the line manager that they believe that the employee is experiencing stress; and/or
- an employee may raise the issue of stress him- or herself, e.g. when explaining the cause of declining performance.

The key for the line manager is to be aware of changes to an individual's behaviour that are more than just a "one-off" incident. The line manager should act on any such changes promptly and encourage the employee to seek expert medical and other relevant advice.

1.4) The importance of effectively managing stress:

a) The impact of stress is significant for employers and employees alike, from a commercial, legal and moral perspective.

b) Commercial impact:

From a commercial perspective, the early identification and effective management of workplace stress is essential, given the detrimental impact on the employee, his/her colleagues and the workplace in general – thereby impacting upon productivity and competitiveness:

- Recent research indicates that that stress is now the most common cause of long-term sickness for both manual and non-manual employees:
 - The total number of working days lost due to stress in 2015/16 was 11.7 million days. This equated to an average of 23.9 days lost per case. (Working days lost per worker showed a generally downward trend up to around 2009/10; since then the rate has been broadly flat);
 - The total number of cases of work related stress, depression or anxiety in 2015/16 was 488,000 cases, a prevalence rate of 1,510 per 100,000 workers. The number of new cases was 224,000. The estimated number and rate have remained broadly flat for more than a decade;
 - In 2015/16 stress accounted for 37% of all work related ill health cases and 45% of all working days lost due to ill health;

- Stress is more prevalent in public service industries, such as education, health and social care, and public administration and defence;
- By occupation, jobs that are common across public service industries (such as healthcare workers; teaching professionals; business, media and public service professionals) show higher levels of stress as compared to all jobs;
- The main work factors cited by respondents as causing work related stress, depression or anxiety were workload pressures, including tight deadlines and too much responsibility, and a lack of managerial support
- The consequences of all of the above for employers are:
 - Lost working time and productivity;
 - Increased costs (including sick pay, overtime, agency workers fees, etc);
 - Detrimental impact upon the morale of the both the employee and his/her colleagues;
 - Fatigue; and
 - Poor judgment / bad decision making.

c) Legal impact:

From a legal perspective, if an employer fails to identify and manage stress effectively then this can result in a variety of claims, as explained below. Such claims typically prove both expensive and time-consuming to defend, and often detrimentally impact working relationships where the claimant remains an employee.

d) Moral impact:

From a moral perspective, employers should be seeking to proactively protect the health and well-being of their staff.

1.5) This guidance note explains the legal issues which can arise from workplace stress and provides some practical guidance for preventing, identifying and managing stress. This note is up-to-date as at **November 2017**.

2) The legal issues arising from stress in the workplace:

When dealing with stress in the workplace, there is a complex legal framework within which employers are required to act. This legal framework can be divided into the following areas:

- **Breach of contract:** an employee may have a claim for breach of an express and/or an implied terms of his or her employment contract in relation to stress resulting from an employer's failure to provide adequate safeguards in the workplace;

- **Unfair dismissal:** where stress results in an employee's dismissal, e.g by reason of sickness absence, poor performance and/or conduct, he or she will (subject to satisfying the qualifying criteria) have protection against unfair dismissal under the Employment Rights Act 1996. In addition, where an employer unreasonably fails to prevent or remedy stress factors in the workplace then an employee may have grounds for bringing a constructive unfair dismissal claim;
- **Disability discrimination:** where an employee's stress (and/or any related conditions) amounts to a disability under the Equality Act 2010, an employer will need to have due regard to the employee's protection against various forms of disability-related discrimination;
- **Other forms of discrimination:** in addition, an employer may be liable under the Equality Act 2010 where discrimination or harassment related to any other protected characteristic (e.g. age, race, sex, religion or belief) results in an employee's stress, anxiety or depression;
- **Protection from harassment:** under the Protection from Harassment Act 1997, an employee may also be entitled to protection against harassment which is unrelated to any protected characteristic;
- **Health and safety:** under the Health and Safety at Work etc Act 1974 and its related statutory instruments, employers have a duty to undertake risk assessments and manage activities to reduce stress at work;
- **Personal injury:** employers owe their employees a common law duty of care: a breach of that duty can result in a finding of negligence against the employer; and
- **Working time:** the Working Time Regulations 1998 impose various restrictions on the hours which employees can be required to work.

Further guidance about each of the above is available from Weightmans upon request..

3) Stress and disciplinary proceedings:

3.1) A common problem for employers is that of the employee who, on being told to attend a disciplinary hearing, absents themselves by reason of ill health, frequently citing stress as the cause. The employer is then caught in a dilemma:

- on the one hand there is a need to ensure that the disciplinary matter is dealt with without unreasonable delay, particularly if it is a serious case in which other employees' interests are involved;
- on the other hand, the employee may genuinely not be well enough to attend a disciplinary hearing.

(In addition, one issue that should always be considered at this initial stage is whether the stress caused or contributed to the misconduct? Expert Occupational Advice should be sought and, if it transpires that the stress pre-dated the misconduct and was likely to have been a mitigating factor, then the employer must give due weight to this. Indeed, in some cases it may be appropriate to deal with the issue as a capability rather than a disciplinary matter).

3.2) If the employee is likely to be absent for more than a short period then the employer should, subject to obtaining the employee's consent, obtain medical advice as to whether the employee is fit to attend a disciplinary hearing and, if not, when they are likely to be. The fact that an employee is unfit for work does not necessarily mean that he or she will also be unfit to participate in the disciplinary proceedings. The DWP's Health and Work Handbook states that:

"... It is likely that the effects of an unresolved dispute on the employee's mental health may be greater if the proceedings are postponed. An employee may be unfit for work but fit to engage with the management process. The doctor or nurse will have to assess whether attendance is likely to cause serious deterioration in the employee's mental or physical health, for example if there is a significant risk of suicide."

3.3) Medical advice about the employee's fitness to participate in the disciplinary process should be obtained from either the employee's own GP or from the employer's Occupational Health Physician (OHP). In either case, the employee will need to consent to being assessed by the GP or OHP, although sick employees who repeatedly and unreasonably refuse to provide the necessary consent can be fairly dismissed, as shown in *Elmbridge Housing Trust v O'Donoghue* [2004]: in this case the Court of Appeal held that the employer, which had repeatedly extended the deadlines set for the employee to provide her consent for a medical report over a number of months, had acted reasonably when it concluded, on the strength of the evidence available, that the employee was not capable and could therefore be dismissed for incapacity.

3.4) An OHP is likely to determine the employee's fitness to attend by reference to the following questions:

- Does the employee have the ability to understand the allegations made against them?
- Does the employee have the ability to distinguish right from wrong?
- Is the employee able to instruct a friend or representative to represent their interests?
- Does the employee have the ability to understand and follow the proceedings, if necessary with extra time and a written explanation?

3.5) An OHP is likely to recommend a postponement of the disciplinary process if attendance is likely to cause a serious deterioration in the employee's mental or physical health, e.g. because the employee has severe depression (especially if there is a risk of suicide) or because he/she has only recently started taking anti-depressants. In many cases, however, an OHP is likely to recommend going ahead, although possibly with certain adjustments, e.g.:

- Holding the disciplinary interview at a neutral venue or at a location near to the employee's home;
- Allowing the employee to be accompanied by a family member as well as his/her union or workplace representative;
- Allowing the employee to participate remotely, i.e. in writing or via video or telephone.

3.6) An OHP will often explain to the employee that seeking to prolong the process by postponing the hearing is not without its own risks to mental health. This may have the effect of persuading the employee to attend the hearing. If not, there is no way to compel their attendance and the employer may have to proceed by some other means. The employer may decide that the matter can wait, but should ensure that matters are not allowed to drag on if the predicted return date is constantly being extended. Sometimes, in stress-related cases, employees or their GPs will assert that no return to the workplace is possible while disciplinary proceedings are "hanging over their head". In this case it is worth emphasising that fitness to work and fitness to attend disciplinary hearings are not the same thing, and to seek the involvement of an OHP if this has not been done already.

3.7) Things may easily reach the point at which no further delay can be withstood, bearing in mind that the ill employee may not be the only individual with an interest in the matter being resolved, and that the memories of witnesses may fade with time. In these situations, the employer must take a decision. In a minor case, it may decide simply to let matters drop in the interests of rehabilitating the employee as soon as possible. However, if the matter is more serious, the employer may have to find alternative means of proceeding. Ultimately, unless alternative arrangements can be reached, the need for a timely resolution may compel the employer to hold a disciplinary hearing in the employee's absence and make a decision on the basis of all the evidence available. The employee would still have the right to appeal the decision and a full rehearing could be held at that stage if requested and appropriate.

4) Practical guidance on avoiding stress in the workplace:

4.1) Introduction:

Research suggests that many organisations still have a culture in which individuals feel inhibited from discussing stress-related problems, fearing that this will be seen as a sign of weakness. However, given the significant commercial and welfare impact of stress on the workplace, it clearly makes sense for employers to adopt measures aimed at both preventing stress and, where it does occur, being supportive of individuals who are experiencing stress.

4.2) Preventing Stress:

The following steps should help to reduce the risk of stress arising and, where it does occur, enable managers to try to nip problems in the bud via the provision of early support:

a) Develop a culture that reduces the likelihood of stress among the workforce, such as changing from a culture that blames to one that supports individuals with stress, or from one that encourages presenteeism to one that discourages long hours and excessive workloads.

b) Maintain good communication:

- *Encourage communication within the team*: where employees feel that they can discuss problems with their colleagues/managers then this can help to reduce the risk of stress. Such dialogue can be facilitated by holding regular team meetings and encouraging staff to approach their manager and colleagues informally with any issues that they have. In addition, employees could also be encouraged to contact a nominated person trained in stress management where they feel unable to talk to their line manager;
- *Establish regular one-to-one meetings between managers and staff*: establishing scheduled, regular meetings with team members will enable line managers to maintain an up-to-date understanding about each employee's workload and any problems that they have. In addition, such meetings should enable managers to get to know their team members better, so that changes in their normal behaviour are easier to spot;

c) Recruit / promote employees who have the right skills to perform the role: when recruiting or promoting, line managers should consider what the duties of the job will entail and what skills and experience the successful candidate will need. This will help to ensure that the right person is recruited/promoted to the job, so the job-holder does not feel out of his or her depth.

d) Provide clear and regularly updated guidance about job roles and responsibilities: employees are less likely to feel stressed if they clearly understand the expectations of them when performing their role. Such guidance should be provided when an employee starts a new role or takes on new responsibilities, and should be updated on a regular basis so as to take account of any changing demands;

e) Provide proper training: employees should be properly trained, on an ongoing basis, to equip them with the knowledge and skills to properly perform their roles. Managers should conduct regular reviews to identify training needs for their team members and employees should be involved in identifying their own training needs. Training is particularly important for employees who have additional responsibilities following a promotion.

f) Regularly monitor and review performance:

- *Regularly monitor work levels to ensure that employees are not over-stretched*;
- *Prioritise workloads and appropriately delegate duties* so as to avoid placing unreasonable demands on employees. Identify individuals and groups who are likely to be affected by particularly heavy workloads and long working hours, and take steps taken to minimise these potential stressors and their effects. Efforts should be made to change workplace cultures that favour excessive workloads and hours;

- *Ensure that individuals take proper breaks*: managers should check that employees are not regularly working long hours and that they take regular breaks. Managers should themselves set a good example in this regard as many employees will be influenced by what they observe;
- *Conduct regular performance reviews*: line managers should carry out regular formal performance reviews with each team member, thereby enabling any concerns to be raised by either party at an early stage so that they can be addressed promptly. This process should include setting clear, achievable objectives for the individual.

g) Be alert during periods of change / undertake consultation: periods of change, e.g. a restructuring project, are likely to be stressful for many employees. Line managers should therefore consult employees and their representatives about organisational changes and other changes which might reasonably cause stress and anxiety amongst staff, keeping employees well informed and encouraging them to raise any concerns.

h) Act promptly: line managers should take immediate action when they suspect that an individual is stressed or when an employee informs them that he or she is experiencing stress. This should help to avoid the problem escalating. The line manager should seek support from HR if in doubt.

i) Provide resources to help employees manage their own stress and adopt lifestyles that help to minimise it, such as encouraging physical activity, healthy eating, awareness of stressors and coping strategies;

4.3) Managing Stress:

In reality, employers are unlikely to be able to prevent stress arising in some cases, however good their stress prevention methods may be. As such, it's important to establish practical measures to enable stress to be managed effectively when it does arise, which might include:

a) Obtain senior management backing for the introduction and ongoing support of the organisation's stress management measures;

b) Develop and regularly publicise a stress management policy (as per paragraph 4.4 below). The policy should make it clear that this is an issue that the employer takes seriously and should provide guidance to employees about how to deal with the effects of stress and how to raise these concerns within the workplace. The policy should be publicised when it is introduced and regularly thereafter. The policy should cover legal compliance issues and good practice considerations;

c) Undertake regular stress audits and risk assessments: organisations should keep themselves aware of likely stress-related problems through the analysis of absence records, by encouraging individuals to report situations and problems, through routine risk assessments and, where relevant, stress audits of particular groups or the workforce as a whole;

d) Educate and motivate line managers: it is crucial in the effective management of stress that line managers are competent in their roles and have the skills and knowledge to manage stress in respect of themselves and their teams. The commitment of managers to stress management should be obtained, and they should be trained about detecting the early signs of stress and of ways of effectively tackling it;

e) Provide access to expert medical and other support, e.g. via:

- an employee assistance programme;
- occupational health advisers;
- the provision of independent confidential counselling;
- wellbeing specialists; and
- cognitive behavioural therapy (CBT) practitioners;

f) Manage stress-related sickness absence effectively:

- *Early intervention during absences*: stress-related absences from work need to be identified as soon as possible in order to improve the speed and likelihood of a return to work. There should be regular, sensitive communication with absent employees, visits to their home and encouragement for them to visit the workplace;
- *Conduct effective return-to-work interviews* with individuals on their return from a stress-related absence, identifying stressors and ways of reducing their impact;
- *Formulate and implement rehabilitation plans* for employees on stress-related absences, particularly long-term absences, on a case-management basis with the involvement of the employee, their line manager, HR, occupational health or other advisers, and other stakeholders. Rehabilitation measures might include a phased return to work, the use of flexible working options, a change of role or location or access to counselling during working hours.

g) Be supportive: individuals seeking help for a stress-related problem should be given moral and practical support. Help should be tailored to individual circumstances, within an overall policy framework to ensure fair and consistent treatment of staff;

4.4) Adopting an anti-stress policy:

a) An anti-stress policy is a statement explaining not only an employer's attitude to stress (whether resulting from acts inside or outside the workplace) but also setting out the action which it undertakes to protect the mental well-being of its staff, to prevent stress and mental health problems at work and how it will deal with any problems that may arise.

b) An effective anti-stress policy should provide:

- Advice on the measures which the employer takes to monitor and, where necessary, eradicate the effects of stress at work. Such measures should include:

- Including stress in risk assessments, explaining how stress risks are going to be assessed, how they will be carried out and who will be responsible;
 - Explaining the role and expectations of managers and supervisors. For a policy to be effective, managers need to be trained to assess and manage the risks of stress on an ongoing basis. Employers need to be clear about what they require managers to do and how they will be enabled to do it;
 - Training both managers (who will implement the policy) and staff (to raise awareness and develop skills).
- Clear and open channels of communication and effective methods of investigating reported workplace incidents or behaviour giving rise to stress;
 - Reference to the following policies (which an employer should therefore have in operation):
 - Sickness absence policy (containing appropriate procedures for managing stress-related absence);
 - Capability procedure (to manage, where appropriate, those whose workloads are causing difficulties);
 - Anti-bullying and harassment policy (a potential cause of stress);
 - Grievance procedure (for those who wish to make complaints about stress-inducing behaviour);
 - Disciplinary procedure (to deal with those members of staff who are conducting themselves so as to cause stress or who act in contravention of the stress policy itself); and
 - Flexible working policy (a potential means of reducing workplace stress).
 - Internal and external sources of support for employees suffering from stress. Internally, these may include an on-site occupational health department or medical adviser, provision of training and workshops on work/life balance and the avoidance of stress, facilitating mutual support groups (encouraging staff to informally support each other) as well as providing support for managers through human resources. Externally, employers may instruct medical specialists and provide employee assistance programmes (EAPs), telephone helplines and advice clinics; and
 - Scope for reasonable adjustments to job roles and/or working conditions to accommodate disabled employees and/or reduce causes of stress, where possible and necessary.

c) Employers will need to have effective means / resources for supporting any commitments which they make as part of the anti-stress policy. It is important to ensure that an employer who adopts this policy provides the necessary resources to support it, e.g.:

- Are commitments reflected in the employer's practice? Does it have an anti-bullying and harassment policy, disciplinary policy, capability procedure and flexible working policy? Does it apply them meaningfully?
- Does the employer undertake risk assessments and do they address workplace stress issues?
- Does the employer apply an effective appraisal and staff development procedure?
- Does the employer provide an occupational health service and/or any other forms of support available to staff?
- Does the employer provide training for all staff and particularly for those managers who might be called on to deal with stressed staff on identifying the signs and dealing with cases of stress?

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