

***Hatton v Sutherland* [2002] EWCA Civ 76 [2002] PIQR P241**

The key law is that of *Hatton & Sutherland*.

The Facts of This Case

The *Hatton* case involved four employers appealing against the findings of liability for four employees who had psychiatric illnesses caused by stress at work. Two of the employees, Mrs Hatton and Mr Barber, were teachers in secondary schools. Mrs Jones was an administrative assistant in a local authority training centre and Mr Bishop was a raw materials operative in a factory. The Court of Appeal allowed the employer's appeals in three of the cases *Hatton, Barber and Bishop* in a composite judgment reported as *Hatton v Sutherland* 2002 All ER 1.

Essentially the Court laid down 16 practical propositions to provide guidance as to the principles applied in occupational stress claims which are laid out below. Mr Barber appealed. The House of Lords (Lords Bingham, Steyn, Scott, Rodger & Walker) endorsed the principles laid down by the Court of Appeal in *Hatton* describing them as "*a valuable contribution to the development of the law.*" (Lord Walker)

The Key Law - 16 Practical Propositions

Sixteen propositions to summarise the law on liability for illness induced by occupational stress from paragraph 43 of the judgment of Hale LJ:

(1) There are no special control mechanisms applying to claims for psychiatric (or physical) illness or injury arising from the stress of doing the work the employee is required to do. The ordinary principles of employer's liability apply.

(2) The threshold question is whether this kind of harm to this particular employee was reasonably foreseeable: this has two components (a) an injury to health (as distinct from occupational stress) which (b) is attributable to stress at work (as distinct from other factors).

(3) Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large. An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability.

(4) The test is the same whatever the employment: there are no occupations which should be regarded as intrinsically dangerous to mental health.

(5) Factors likely to be relevant in answering the threshold question include:

(a) The nature and extent of the work done by the employee. Is the workload much more than is normal for the particular job? Is the work particularly intellectually or emotionally demanding for this employee? Are demands being made of this employee unreasonable when compared with the demands made of others in the same or comparable jobs? Or are there signs that others doing this job are suffering harmful levels of stress? Is there an abnormal level of sickness or absenteeism in the same job or the same department?

(b) Signs from the employee of impending harm to health. Has he a particular problem or vulnerability? Has he already suffered from illness attributable to stress at work? Have there recently been frequent or prolonged absences which are uncharacteristic of him? Is there

reason to think that these are attributable to stress at work, for example because of complaints or warnings from him or others?

(6) The employer is generally entitled to take what he is told by his employee at face value, unless he has good reason to think to the contrary. He does not generally have to make searching enquiries of the employee or seek permission to make further enquiries of his medical advisers.

(7) To trigger a duty to take steps, the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it.

(8) The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the costs and practicability of preventing it, and the justifications for running the risk.

(9) The size and scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable; these include the interests of other employees and the need to treat them fairly, for example, in any redistribution of duties.

(10) An employer can only reasonably be expected to take steps which are likely to do some good: the court is likely to need expert evidence on this.

(11) An employer who offers a confidential advice service, with referral to appropriate counselling or treatment services, is unlikely to be found in breach of duty.

(12) If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job.

(13) In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care.

(14) The claimant must show that that breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm.

(15) Where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing, unless the harm is truly indivisible. It is for the defendant to raise the question of apportionment.

(16) The assessment of damages will take account of any pre-existing disorder or vulnerability and of the chance that the claimant would have succumbed to a stress related disorder in any event.