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***Sutherland v Hatton*: A solution to Ireland’s Occupational Stress Question?**

The Irish Courts have not dealt with the issue of occupational stress claims in any great detail. However, in a recent UK decision, *Sutherland v Hatton*¹, where four separate appeals were joined together, the Court of Appeal took the opportunity to consider the question of such claims in depth. There has been a growing awareness of the issue since the English decision of *Walker v Northumberland County Council*² in 1995, where an employee successfully sued his employer for personal injury arising from two nervous breakdowns suffered as a result of workplace stress.³ It is a debate that has gripped both the National Authority for Occupational Health and Safety (HSA)⁴ in Ireland and the European Union, which has designated 2002 as ‘Workplace Stress Prevention Year’. While it is accepted that the prevention of stress is a valuable focus for the debate, there is no question that stress is an unavoidable element of most occupations, and in many cases does not lead to any adverse consequences. It is only when foreseeable injury arises as a result of occupational stress that an employer should face liability, but until this most recent decision there has been little judicial guidance in the area. The decision in *Sutherland* is valuable, as it lays down practical guidelines as to when liability may be imposed.

This article seeks to examine this decision in detail and to consider its merits for an Irish Court. While the article accepts the validity of the guidelines generally, it will be argued that they are nonetheless questionable in their employer bias. It will be further argued that the decision fails to adequately consider employers’ statutory and common-law obligations in this area and should be approached with care in an Irish context.

¹ *Sutherland v Hatton and other appeals* [2002] EWCA Civ 76, [2002] All ER (D) 53 (Feb).

² [1995] 2 ALL ER 737

³ See further, MacNamee M., ‘Mental and Emotional Stress in the Workplace, the Impact in Ireland of *Walker v Northumberland County Council*.’ (1998) 2(1) I.I.L.R.3. and, Dunne, M., ‘Employers’ Liability for Employee Stress’, 5(9) (2000), *The Bar Review*.

⁴ The National Authority for Occupational Health and Safety annual conference in March (5-6th) had as its theme, “Workplace Stress: it’s time for solutions.”

Introduction

While it is settled law that an employer will be liable for physical injury arising out of workplace accidents in cases where the employer has not acted as a ‘reasonable and prudent employer would’,⁵ the question of recovery for psychological damage has traditionally been more troublesome. In a recent Irish decision, recovery for post traumatic stress disorder (PTSD) arising out of a workplace accident was allowed.⁶ Other cases have incorporated an award of damages for ‘stress’, whereas the focus of the decisions was more generally on bullying⁷ or on unfair dismissal.⁸ The High Court recently lost an opportunity to decide on the issue, when the case of *Quinn v Servier Laboratories*,⁹ a case not unlike the English case of *Walker*, was settled out of Court. It is clear however that employers will not be able to avoid responsibility for injury merely because it is psychological. The Labour Court for instance, in *Saehan Media Ireland Limited v A Worker*¹⁰ stated that, “work related stress is recognised as a health and safety issue and employers have an obligation to deal with instances of its occurrence which are brought to their attention.” Also, in *Curran v Cadbury Ireland Limited*, McMahon J, stated that in *Walker*, “the English Courts imposed liability where the plaintiff foreseeably suffered a nervous breakdown because of unreasonably stressful working conditions imposed on him by his employer.” In considering the merits of the decision for an Irish Court, he further stated that, “There is no reason to suspect that our Courts would not follow this line of authority if it came before the Courts in this jurisdiction.” The finding in *Walker* is welcome but given the clear weight of evidence against the employer, is of use as a precedent in only the most straightforward of cases.¹¹ *Sutherland* reflects a more common scenario, where the facts are more complex, and the basis for liability more in need of a Court’s determination. It is to this case that we now turn.

⁵ *Bradley v CIE* [1976] IR 217 at 223.

⁶ *Curran v Cadbury Ireland Limited* [2000] 2 ILRM 343.

⁷ *Allen v Independent Newspapers* UD641/2000.

⁸ *Hyland v Bestfood Services* EAT 1999.

⁹ This case opened in the High Court in 1999 and settled during the course of the hearing. Quinn, a medical representative, suffered a nervous breakdown which he claimed was related to work related stress. Following his return to work, which saw him being given an even greater workload, he suffered another breakdown. It is speculated that the case settled for a six figure sum.

¹⁰ [1999] 10 ELR 41.

¹¹ The plaintiff, a social worker, had already suffered a nervous breakdown due to workplace stress. On his return to work he was allocated an even heavier workload and was not given extra help as had been promised. The Court found that the foreseeability test had been satisfied, on the basis of what has become known as the ‘second strike principle.’

Sutherland v Hatton

This case concerned appeals by four employers against earlier decisions where their respective employees had been successful in suing for injury arising from work related stress. Apart from the nature of the case the claims were otherwise unrelated, having taken place in four different counties. Of particular value was the varied range of employment covered by the plaintiffs in the decision. Mr. Bishop was a manual worker in a factory; Mrs. Hatton and Mr. Barber were secondary school teachers and Mrs Jones was an administrative assistant. The Court of Appeal (Brooke, Hale and Kaye LJJ) allowed the employers' appeals in three of the cases (Mr. Bishop, Mrs. Hatton and Mr. Barber) and dismissed the appeal of Mrs. Jones' employer but not "without some hesitation."

Nature of Psychiatric Illness:

While the Court accepted that occupational claims for psychiatric illness were the "new growth area", it highlighted significant differences between physical and mental disorders arising out of conditions in the workplace. Firstly, the Court pointed to the difficulty in diagnosing a psychiatric illness. The Court further pointed out that the causes of psychiatric illness may be difficult to discern. Unlike physical injuries, which may be easily attributable to an incident at work, the Court argued that psychiatric illnesses could be attributed to a myriad range of factors, in particular difficulties in an employee's personal life. Finally the Court argued that the appropriate treatment, or indeed the success of treatment undertaken for mental illness, is still a matter of medical debate.

In defining occupational stress the Court considered various definitions as provided by UK bodies working in the area of health and safety, and accepted that stress arises when there is a mismatch between the pressures of the job and the individual's ability to meet them. In this sense it mirrors the definition provided by the Irish Health and Safety Authority, which provides that, "workplace stress arises when the demands on a person exceed the capacity to meet them."¹²

¹² "Workplace Stress: Cause, effects, control." HSA guidance document.

Significantly, the Court rejected the contention, (as argued by counsel for the teachers), that some jobs are inherently stressful and more likely to give rise to psychiatric injury, stating that:

“The notion that some occupations are in themselves dangerous to mental health is not borne out by the literature to which we have already referred: it is not the job but the interaction between the individual and the job which causes the harm.”¹³

They also argued that requiring employers to conduct intrusive investigations into the mental well being of employees could be counter-productive, and could conceivably make those employees more vulnerable to demotions or dismissal. It was accepted by the Court however, that systems do now exist whereby employees could be given the option of accessing confidential services in order to discuss their problems at work. While not imposing a strict duty on employers to operate such a system any employer who did so, would be “unlikely to be found in breach of his duty of care towards his employees.”¹⁴

Essentially the judgment based the imposition of liability not on any special rules, but rather on the determination of the issue on the basis of the “ordinary law of negligence.”

Negligence Principles:

While the existence of a duty of care by an employer to his employees was not in contention, the Court stated that claims for psychiatric injury did give rise to some particularly difficult issues of foreseeability, the identification of a breach of duty and causation.

Foreseeability

The Court quoted with approval *Garrett v London Borough of Camden*¹⁵ where Simon Brown LJ observed that:

¹³ Para 24.

¹⁴ Para 17.

¹⁵ [2001] EWCA Civ 395 at para 63.

“Many, alas, suffer breakdowns and depressive illnesses...Unless, however, there was a real risk of breakdown which the claimant’s employers ought reasonably to have foreseen and which they ought properly to have averted, there can be no liability.”

Having already rejected the contention that there were any inherently stressful occupations the Court noted that being able to foresee which employees would suffer from stress had to be based on a subjective test, allowing for the employer’s knowledge of his employees and the nature of the work in question. In para 25 they state that:

“All of this points to their being a single test: whether a harmful reaction to the pressures of the workplace is reasonably foreseeable to the individual employee concerned. Such a reaction will have two components: (1) an injury to health; which (2) is attributable to stress at work. The answer to the foreseeability question will therefore depend on the inter-relationship between the particular characteristics of the employee concerned and the particular demands which the employer places on him.”

The employer is not expected to act unless there is a clear signal that the employee will suffer harm as a result of occupational stress. Here the burden placed by the Court on the employer is significant. They state that merely being overworked is not enough to impose liability on the employer:

“More important are the signs from the employee himself.....If the employee or his doctor makes it plain that unless something is done to help there is a clear risk of a breakdown in mental or physical health, then the employer will have to think what can be done about it.”

The employer is entitled to take what he is told by his employee at face value. Unless there are ‘good reasons’ to do so, an employer would not be expected to make searching inquiries of his employee or his medical advisors as to the potential for any type of mental breakdown.

Breach of Duty of Care

The employer will not necessarily be found in breach of his duty of care for failing to act, even where a real threat of harm is foreseeable. An employer will only have to take any steps which are reasonable in the circumstances, which in turn will depend on the magnitude of any risk involved, the gravity of the threatened injury, the cost and practicalities of preventing the harm and any justifications which may exist for running the risk. As the Court states, “in every case it is necessary to consider what the employer not only could but should have done....the employer can only reasonably be expected to take steps which are likely to do some good.”¹⁶ In most cases the only options available will be to demote or to dismiss an employee. Demotion may not be within the employer’s means. As for dismissal, the Court refused to place such a responsibility on the employer, arguing that, “it has to be for the employee to decide whether or not to carry on in the same employment and take the risk of a breakdown in his health or whether to leave that employment and look for work elsewhere before he becomes unemployable.”¹⁷

Causation

The Court also stressed the importance of satisfying the principle of causation. Citing *Wilsher v Essex Health Authority*¹⁸ and *Bonnington Castings v Wardlaw*¹⁹ with approval, the Court stated that where there are several possible causes of the harm, in addition to occupational stress, “the claimant may have difficulty proving that the employer’s fault was one of them.....However, the employee does not have to show that the breach of duty was the whole cause of his ill-health: it is enough to show that it made a material contribution.”²⁰ In this sense, it would correspond with existing causation principles, and the ‘material element and substantial factor’ test, promoted by cases such as *Lambton v Mellish*.²¹

¹⁶ Para 34.

¹⁷ *Ibid.*

¹⁸ [1988] AC 1074.

¹⁹ [1956] AC 613.

²⁰ Para 35.

²¹ [1894] 3 Ch 163.

Apportionment

The Court went on to explain the apportionment of blame where there were a number of different *extrinsic* causes for the employee's injury. In such an event the Court advises that an attempt should be made to apportion liability accordingly, stating that the 'analogy with the polluted stream is closer than the analogy with the single fire.' There are clearly practical difficulties in succeeding in such a division, but the issue will be for the defendant, rather than the plaintiff, to raise in any particular case. As with other incidents of tortious liability, where the cause of the harm is truly indivisible, any tortfeasor who has made a material contribution is liable for the whole of the damage caused. He can of course later seek a contribution from other joint or concurrent tortfeasors for the amount of their contribution.

As to the remoteness of the damage for which a defendant can be held liable, the principle of the egg-shell skull rule, well established in other areas of tortious liability,²² is clearly one which the Court finds has no place in the area of psychiatric injury. As the Court explains:

“Where the tortfeasor's breach of duty has exacerbated a pre-existing disorder or accelerated the effect of pre-existing vulnerability, the award of general damages for pain, suffering and loss of amenity will reflect only the exacerbation or acceleration.”²³

Application to Facts

Mrs. Hatton:

Mrs. Hatton was a school teacher from 1989 until October 1995, when she was signed off work due to 'depression and debility' and did not return. The trial judge, noting that the school had neither a policy on stress nor a system of checks to monitor employees at risk of stress related injury and found in favour of the plaintiff. The appeal Court overturned this finding, stating that the case was one which failed on the issue of foreseeability.

Having rejected the contention that teaching was an inherently stressful job, in which damage ought to have been foreseeable (as argued by the plaintiff's counsel), the

²² See further in this respect, McMahon & Binchy, *Law of Torts*, 3rd ed., (Dublin: Butterworths, 2000), at pp. 93 et seq..

²³ Para 42.

Court held that the plaintiff's absences alone, and the nature of her workload, would not lead a reasonable employer to conclude that injury was foreseeable.

In this case, the employee's workload had not significantly changed over the years, she had never complained about her workload, and her absences, frequent from 1989 to the time of her breakdown, were easily attributed to personal reasons. They further stated however, that in the event that the foreseeability threshold had been satisfied there would still be questions to answer on the issue of causation, given the stressful nature of the plaintiff's private life. The Court found that an argument could be made that the breakdown would have occurred in any event, and that the employer would not have been in a position to prevent it. To support this finding they pointed to the fact that the plaintiff had divorced in 1989, that she was a single mother with two children and that she had been the victim of an assault.

This finding raises serious questions as to the stringent test to be satisfied by a plaintiff in a particular case. It also raises serious questions as to issues of privacy, and the extent to which an employer should be able to investigate the personal lives of employees in the apportionment of blame.

While the ultimate finding of the appeal Court itself is not in question, it is peculiar that no reference was made to the employer's general duty of care to provide a safe place and system of work, or indeed to statutory obligations to have a safety statement that incorporates a risk assessment of the workplace. None of this seemed to be in place in the school.

Mr. Barber:

Mr. Barber was an experienced maths teacher, who had worked for his employer, a comprehensive school, from 1984 until November 1996 when he was signed off work by his doctor, who diagnosed depression brought about by his workload.

Unlike the case of Mrs. Hatton there were clear medical indications that all was not well. He worked approximately 61-70 hours a week and while his employers agreed that this was excessive, it was common practice given the pressures the school was under at that time. From 1995 the extent of his workload was causing significant problems, resulting in his taking three weeks off in May 1996 due to depression and stress. He had also complained on three occasions from May to July 1996 to his supervisors about his workload and its effects on his health. The response to his complaints was largely unsympathetic, the advice to him being 'to prioritise' more

effectively. Finding in favour of Mr. Barber, the trial judge was again critical that there had not been a policy on stress in place, and no steps taken to follow up Mr. Barber's complaints or the reason for his absence. The Court of Appeal overturned the finding of the trial Court, being swayed by the argument by the defendant's counsel that the foreseeability test had not been satisfied.

As explained by the Court,

“It is difficult indeed to identify a point at which the school had a duty to take the positive steps identified by the [trial] judge. It might have been different if Mr. Barber had gone.... at the beginning of the autumn term and told [his employer] that things had not improved over the holidays.it is expecting far too much to expect the school to pick up the fact that the problems were continuing without some such indications.in our view the evidence, taken at its highest, does not sustain a finding that they were in breach of their duty of care towards him.”²⁴

It is submitted that this was a particularly stringent application of the Court's guidelines to the facts of the case. Applying the two-step approach to foreseeability, as outlined above, it is clear that the injury was brought about by stress caused at work. It is further submitted that his employers ought reasonably to have foreseen the possibility of such an eventuality given his absence in May, and his complaints prior to the summer holidays. There was no action whatsoever taken by his employers in response to his complaints or his earlier absence, and no attempt to tailor his workload to meet his ability. In fact, following the summer holidays, it was clear that the new acting headmaster had concerns as to Mr. Barber's health as he had asked a colleague to 'keep an eye' on him, but had not sought to do anything further. Much of the Court's findings seemed to focus on the fact that Mr. Barber had not spoken in detail to his employers about the nature of the effect the overwork was having on his health. To place such a burden on an employee is surely to expect too much. Employees will traditionally be wary of being seen as not able to cope, and also wary of exposing themselves to the stigma of mental imbalance. In the area of physical injury, such a

²⁴ Paras 57 – 59.

failure on the part of an employee would hardly support a finding of employee contributory negligence, let alone absolve the employer entirely of liability.²⁵ The Court, it is respectfully submitted, erred in placing such a burden in this instance.

Mrs. Jones:

Mrs. Jones was employed by Sandwell local authority, at Sandwell College, from 1988. She had a period of absence from work in 1991 when she was diagnosed with depression and with having a ‘vulnerable personality.’ She left this section of the local authority and in 1992 was employed as an assistant at a local authority training centre. In 1995 she again left on sick leave suffering from anxiety and depression. She was made redundant in December 1996 and sued for injury arising from occupational stress. The trial Court found in her favour, swayed by the evidence of overwork and a category of complaints. On appeal the Court accepted that she had been overworked. The personnel officer himself had admitted as much stating that “it was a calculated gamble to expect one person to do the job of two or three.”²⁶ Despite this the Court questioned whether her breakdown had been foreseeable given that she had not been off sick during the period in question. The Council had argued that they knew nothing of the 1991 breakdown and while the Court was not entirely convinced of the Council’s ignorance on this point they did not presume such knowledge. The appeal Court criticised the trial judge for not clearly separating the issues of causation, foreseeability and breach of duty. The Court however was willing to accept that,

“...unreasonable demands are relevant to the question of foreseeability. Placing unreasonable demands upon an employee and then responding in an unreasonable way to the employee’s complaints about those demands are among the factors to be taken into account in deciding whether the employer knew or ought to have known that the pressures of the job were causing occupational stress.”

²⁵ See for instance *Allen v Ó Súilleabhán* High Court 28 July 1995, where a 25 year old student midwife sustained a serious back injury when holding the leg of a woman who was giving birth. Although aware at the time of the strain which she was subjecting herself to no liability attached to her from her actions as it was felt that it would have been extremely difficult for a student midwife to interrupt or complain during the procedure.

²⁶ Para 180.

Mrs. Jones in this case had repeatedly met with her supervisors outlining complaints as to overwork and the effect it was having on her health.

Ultimately finding a breach of duty the Court quoted with approval the finding of Lord Slynn in *Waters v Commissioner of Police of the Metropolis*²⁷:

“If an employer knows that acts being done by employees during their employment may cause physical or mental harm to a particular fellow employee and he does nothing to supervise or prevent such acts, when it is in his power to do so, it is clearly arguable that he may be in breach of his duty to that employee. It seems to me that he may also be in breach of that duty if he can foresee that such acts may happen and if they do, that physical or mental harm may be caused to an individual.”²⁸

In this case it was clear that had the employer ceased to place excessive demands on Mrs. Jones, her illness might have been avoided. The appeal Court found in the plaintiff’s favour with reluctance, on the basis that no clear medical evidence was forthcoming to validate her claim.

Mr. Bishop:

The complainant worked for the defendant company from April 1979. In 1992 an American company took over the company and reorganised the way work was done. Although most people coped well with the changes, Mr. Bishop, who was meticulous by nature, found the changes stressful and complained on numerous occasions. This appears to have been discussed by his supervisors. For a period of approximately three weeks, he was absent due to neuroasthenia (fatigue), for which he submitted sick notes. He returned to work and suffered a breakdown on February 24th 1997. The trial judge stated that the GP’s note should have sent ‘alarm bells ringing.’ In particular, he was critical of the lack of training for employees on coping with stress and stated that “in the 1990’s properly responsible companies ought to have been aware of the factors leading to cause stress.”

However, the appeal Court disagreed, and argued that the sick notes, were ‘a shallow foundation’ for a finding of liability. Again no reference was made to statutory or

²⁷ [2000] 4 ALL ER 934, at 938c.

²⁸ Para 208.

other obligations on an employer to have in place preventative measures to cope with stress.

Suitability for an Irish Court?

The decision in *Sutherland* is welcome, in that it clearly recognises a duty of care in respect of mental injury arising in the workplace. There are however, two main arguments for proceeding with caution before considering it as a precedent to be followed by Irish Courts. It is curious in the first instance that there is no reference in the appeal decision to the statutory provisions which impose a *preventative* duty on an employer in protecting against injury arising from workplace conditions. Secondly, the strictness of the criteria imposed under the common law of tort in this decision does not sit readily with that already decided by the Irish Courts in cases dealing with mental illness.

Statutory Duty

What is striking about this case is the appeal Court's complete disregard for the trial judges' arguments that an employer owes his employee a duty to have in place a policy to *prevent* injury arising out of workplace stress. This is a duty not based on some fanciful ideals of employer behaviour but one firmly rooted in legislation. Section 2(2), of the Health, Safety and Welfare at Work Act 1974 in the United Kingdom states that:

“It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.the matters to which that duty extends include in particular –

- (a) the provision of systems of work that are, so far as is reasonably practicable, safe and without risk to health.”

Furthermore in the Management of Health and Safety Regulations 1992, an employer is required in section 3(1) to:

“...make a suitable and sufficient assessment of—

- (a) the risks to the health and safety of his employees to which they are exposed whilst they are at work....

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.”

While the trial judges referred critically to the absence of any preventative policy, the appeal judges make no reference to such an obligation in any of the above cases. Rather, they state that any employer who has a policy would be unlikely to be found in breach of his duty.²⁹ Given the specific nature of such an obligation in Irish law,³⁰ (also referred to in *Curran v Cadbury*), it is unlikely that an Irish Court would, or could, overlook such an obligation quite so readily.

Nature of Duty in Tort

Secondly, in respect of the reliance on the tortious duty, it is submitted that the nature of the duty imposed on the employee in this case is a reflection of the general trend by the judiciary in Britain to take a dim view of mental illness, a tendency which is not a feature of the Irish Courts.³¹ While we do not have any significant Irish decisions dealing with injury arising from occupational stress, decisions dealing with post traumatic stress disorder (PTSD) in the workplace can provide some guidance in this area. In the case of *McHugh v The Minister for Defence, Ireland and the Attorney General*,³² for instance, the employee, a soldier in Lebanon, suffered from PTSD arising from a number of workplace incidents. Of relevance in this case was the Court's findings in relation to the extent to which an employee can be held accountable for their own injuries. Budd J, in the High Court, accepted that while the plaintiff did not himself complain of having suffered from stress, "on proper inquiry being made by his officers, the extent and seriousness of the plaintiff's symptoms would have become apparent." Rejecting the argument of the defendants that the plaintiff himself ought to have sought medical help, Budd J went on to state that, "an individual who is suffering from stress often tries to suppress this and is not aware of the fact that he is suffering from a medical condition." This finding is also reflected in the field of physical injury, in cases such as *Allen*, discussed above. The finding is in stark contrast to the *Sutherland* cases, where the Court rejected the need for an

²⁹ See above under *Nature of Psychiatric Illness*.

³⁰ In Ireland the duty to protect an employee's mental health is contained in the Safety, Health and Welfare at Work Act 1989, and in the General Application Regulations of 1993. Section 12 of the Safety, Health and Welfare at Work Act 1989, as amplified by the General Provisions Regulations 1993, requires a written safety statement, identifying any risks which may put employees in danger of injury. Injury in this case is defined in section 2 of the Act as "any disease and any impairment of a person's physical or mental condition." Section 6(2)(a) also requires that the employer provides as far as is reasonably practicable "the provision of systems of work that are planned, organised, performed and maintained so as to be, so far as is reasonably practicable, safe and without risk to health."

³¹ McMahon & Binchy, *Law of Torts*, 3rd ed., (Dublin: Butterworths, 2000), at pp. 461 *et seq.*

³² 2001 1 IR 424.

employer to make inquiries in the absence of clear medical evidence or evidence from the employee that he is suffering from stress. This conclusion not only conflicts with Irish caselaw, but also ignores the real difficulty an employee might have in exposing himself to the stigma of being unable to cope. As argued in *McHugh*, it may also be more difficult for an employee to recognize the signs of severe stress. An employer, as an objective observer and as someone with personal knowledge of the employee, should surely be held responsible for at least being aware of the possible dangers.

Conclusion

It is submitted that the guidelines provided for the Court are partially flawed, in the sense that they impose a disproportionate burden on an employee to be the primary protector of his own health and safety in the workplace. Such a requirement has long been abandoned in the sphere of physical injury. The acceptance of such a requirement also ignores the statutory duty imposed by both the UK and Irish legislature to carry out a risk assessment in the workplace, (which includes a risk of stress related injury), and the duty to take action to remove such risks as far as is reasonably practicable. While it is accepted that there are clear issues of foreseeability to be addressed and that employers cannot be expected to be mind readers, evidence of overwork and clear complaints by an employee of injury to health should be sufficient to warrant a response from an employer. The absence of any response or at a minimum a policy to deal with stress in the workplace should, in such a case, provide a clear basis for the imposition of liability. Existing caselaw in Ireland in the sphere of PTSD suffered by employees, would not support the adoption of the case of *Sutherland* in its entirety by Irish Courts. It also raises questions as to issues of privacy, given the possibility of the consideration of an employee's personal life in determining the cause of stress in the first instance. This principle, combined with the rejection of the egg-skull rule, provides a powerful means for an employer to avoid liability.

The case however, should not be seen as a basis for immunity for employers in occupational stress cases. Despite the arguably high standard of proof to be satisfied by the employee, the case recognises potential liability for an employer in this area and encourages, even if it does not require, a prevention policy to be put in place.