Stress in the Workplace
– Irish High Court endorses UK Decisions

Brian Morgan Solicitor advises that the jurisprudence in the UK on occupational stress has been formally adopted as a result of the recent High Court Decision of "McGrath v Trintechnologies Limited"

In a previous article "**Stress in the workplace** -**Employers should be alert to the Claims which can arise,**" I advised that employers had a duty to their employees to take reasonable care for their safety at work and that this included a duty to take reasonable care for their safety from mental, psychological or psychiatric injuries that emanate from workplace stress, harassment and bullying. I referred to the House of Lords Decision in the case of **Barber v Somerset County Council [2004]** where the House of Lords overturned the Court of Appeal dismissal of Mr. Barber's appeal. The Court of Appeal had ruled that a teacher in the school who had developed symptoms of depression and had returned to work after illness only after three weeks had not brought to the attention of the School Authorities that his illness was continuing. The Court of Appeal ruled in the circumstances that the School Authorities could not have been expected to realise that Mr Barber was still in difficulty. For this reason, his illness was "not reasonably foreseeable" and his employer was not in breach of its duty of care towards him when it failed to take steps to prevent him developing further illness. The House of Lords disagreed and by 4:1 majority allowed Mr Barber's appeal. According to the House of Lords the mental breakdown that Mr Barber had suffered had been brought about by the pressure and stresses of his workload and the employer was in breach of its duty to protect his health and safety. The school ought to have taken proactive steps to reduce Mr. Barber's work related anxieties by, for example, making sympathetic enquiries and reducing his workload.

I pointed to the fact that employers would now need to be more alert to signs of mental illness and to keep up-to-date with the latest advice on handling workplace stress to be able to discharge a duty of care. I outlined that in the Irish case of **Curran v Cadbury (Ireland) Limited** McMahon J, with regard to another UK case , **Walker v Norththumberland County Council** said *"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".* I wondered whether this dictum would also now apply to the adoption of the reasoning of the House of Lords in the **Barber** decision.

In the case of **McGrath v Trintechnologies Limited** Laffoy J. set out a detailed analysis of the relevant legal principles relying significantly on the decision in **Hatton v Sutherland** and **Walker**, stating:

"The effect of the decisions of the Court of Appeal and the House of Lords in the Hatton/Barber cases is to assimilate the principles governing an employer's liability at common law for physical injury and for psychiatric injury where an employee claims that the psychiatric injury has resulted from stress and pressures of his/her working conditions and workload. In my view, there

is no reason or principle why a similar approach should not be adopted in this jurisdiction. I consider that the practical propositions summarised in the judgement of the Court of Appeal in the Hatton case are helpful in the application of legal principle in an area which is characterised by difficulty and complexity, subject, to the caveat of Lord Walker in the Barber case – but one must be mindful that every case will depend on its own facts."

The plaintiff in that case had commenced working for the Defendant in April of 2000 on project-based work, which frequently necessitated him travelling abroad. During his employment he suffered physical ill health due, at least in part, to ailments he had contracted during some of the foreign assignments. In January 2003 he took a placement in Uruguay, which came to an end in June of 2003. During his time in Uruguay the Plaintiff claimed he was subjected to serious work related stress and pressure which, he claimed, resulted in psychological injury. When he returned from Uruguay in June of 2003 he took certified sick leave. He was made redundant in September of 2003.

The medical evidence presented to the Court both by the Plaintiff and the Defendant was complex and inconsistent. It was common case that the Plaintiff had suffered from depressive incidents before the commencement of his employment with the Defendant but this had never been disclosed to the Defendant. Ultimately Laffoy J. accepted that the Plaintiff had established that he suffered from what she called "a recognised psychiatric illness". The Plaintiff's case was that he had suffered from stress as a result of the manner in which he had been treated by his employer during his time in Uruguay. There was evidence of a number of crises having occurred during this time which he had to manage. There was evidence of an acrimonious relationship between him and his immediate boss.

While ultimately the plaintiff's case failed on the issue of foreseeability, Laffoy J. did apply the propositions as laid out in the UK Cases to the facts of this case. As readers will see, there is now a formal endorsement of the principles set down in the UK caselaw and an indication that in the future these UK principles will be followed in the Irish Courts.

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In the previous article in June 2004, I outlined the fact that the Court of Appeal decision in **Donaghy v Kingston upon Hull City Council 2004 IOLR 287** held that damages could be awarded for injury to feelings and psychiatric damage. I pointed to the fact that the employer had appealed the decision to the House of Lords and the judgement was awaited at that time. Employers will be happy to note that the High Court has since heard the appeal and that it was found that damages for non-economic loss (such as injury to feelings and psychiatric damage) could not be awarded by a tribunal in a claim for unfair dismissal. Employers can now breath a sigh of relief!

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