

# STRESS UPDATE

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# Causes of Action

- Negligence and breach of statutory
- Protection from Harassment Act and bullying claims.

# Hatton v Sutherland [2002] 2AER

- Case provided some general guidance in relation to stress claims.
- Foreseeability depends on what the employer knows (or ought reasonably to know) about the individual employee.

Barber v Somerset County Council  
[2004]2AER 385 House of Lords stated that the Court of Appeal's guidance in Hatton was useful but that it was not binding.

# Case Law Post Hatton & Barber

- Provision of Counselling Services  
In *Daw v Intel Corporation (UK) Limited* 2007 EWCA Civ 70
- Working Time Regulations  
*Hone v Six Continents Retail Limited* [2005] EWCA Civ 922
- *Sayers v Cambridgeshire County Council* [2006] EWHC 2029
- Management of Health & Safety at Work Regulations 1999  
*Paterson v Surrey Police Authority* [2008] EWHC 2693

# Case Law Post Hatton & Barber

- Physical Injury
- Harding v P B Estate Company Limited 2005  
EWCA Civ

# Apportionment

## Hatton v Sutherland

- Lady Justice Hale: *“where the harm suffered has more than one cause, the employer should only pay for that apportionment of the harm suffered which is attributable to his wrong doing unless the harm is truly indivisible”*.

## Dickins v Oz

- Lord Justice Sedley : *“...is that in a case which has had to be decided on the basis that the tort has made a material contribution and where the injury is indivisible, it will be inappropriate simply to apportion the damages across the board”*.
- Who is right?

Justification for Apportionment was provided by Lord Hoffman in Corus v Barker:

*“apportionment would smooth the roughness of the justice which a rule of joint and several liability create...the Defendant should not be liable for more than the damage which he caused”.*

# Bullying/The Protection from Harrassment Act 1997 (P.F.H.A)

- The Act allows the Claimant to recover damages without having to provide that an injury was foreseeable.
- The limitation period for claims under the Act is six years.



# What behaviour constitutes harassment?

- Conn v Sutherland [2007] EWCA Civ 1492.  
The Court of Appeal held that harassment under the PFHA had to be serious enough to justify “a criminal sanction”.

However, employers where there is a sustained campaign of bullying difficult to argue that there was not a breach of duty