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This month, in the run-up to UCU Congress 2011, we are focussing the newsletter on stress, the issue which remains the tertiary sector's biggest cause of work-related ill-health and absence. Our first article is a general overview of work-related stress, Item 2 is the latest factsheet approved by the NEC Stress and Bullying Working Group, posted on the UCU website at

http://www.ucu.org.uk/media/docs/8/h/10points_workrelatedstress.rtf

1. **Stress & bullying: an overview**

Stress-related illness and absence is the major health issue for staff in tertiary education. Your employer is required to protect his employees from conditions in the workplace that adversely affect their health and welfare. In order to do this, the employer is required to conduct risk assessments to identify the potential hazards in the workplace that could affect the health or safety of employees. Many employers don't do this to the standard required, which is "suitable and sufficient". A risk assessment should not only include those things that pose a physical danger to employees and others, but also cover what can be termed psychological or social hazards, and that would include behaviour that has the potential to harm an employees physical and/or mental health – excessive workload, long hours, workplace change, bullying and other stress factors can result in both of these.

The employer must assess the extent of the risk of harm, and then put in place measures to manage that risk to minimise (we would say eliminate, but the law doesn't go that far) the potential harm. This is a general duty imposed on employers, and the FE sector agreement on workload concluded in 2008 was based on employers conducting risk assessments to ensure workloads were not excessive and damaging, for example.

We cannot emphasise enough that stress and bullying aren't individual problems; where there is a culture of excessive workloads or bullying, everyone is affected - those who are directly affected, those who witness it happening and its effects or those who are

just generally aware of it. It should also alert institutional management to the fact that there is a problem, as should staff absences due to things that may be recorded on medical certificates as "Stress" or "Depression" or other similar terms. It becomes even more essential that senior management investigate cases where there is a clinical diagnosis such as depression or anxiety on a medical certificate, or someone is clearly attending a specialist or hospital consultant. One significant problem is that an institutional culture based on bullying often starts at the top, as many of you reading this will already know.

The Health & Safety Executive (HSE) produced a set of Stress Management Standards and a toolkit in 2003/04 designed to help employers meet their duty to assess stress factors as part of the overall duty to assess risk. The HSE toolkit has the status of guidance, so it isn't mandatory for employers to use these tools, but if they don't, they have to use other methods to investigate potential stress factors in the workplace. In 2007/08, the HSE initiated a mass "stress risk assessment" project in the UK, one strand of which was aimed at the tertiary education sector. This initiative was quite active for a couple of years, but has now trickled away into the sand.

The risk assessment duties include a duty to inform individual employees of the hazards the assessment has identified, and what has been done to protect that worker from the hazards and risks identified. Trade union representatives should be involved in the risk assessment process, offering constructive criticism and suggesting improvements where they believe risks have been missed, the level of risk incorrectly assessed, or the proposed protective measures to be inadequate.

The employer has to record the main points of the assessment - that makes it a document, and if a UCU safety rep asks the employer for a copy of that document, Regulation 7 of the Safety Reps & Safety Committees Regulations requires the employer to give them one.

Should anything happen to indicate that the risk assessment hasn't been suitable and sufficient - for example members of staff going off sick with a stress-related condition or illness - then the employer should review the assessment to determine what more needs to be done to protect employees from the causes of stress-related illness.

When members of staff do go sick, the medical certificate now contains a box where the GP or consultant can suggest workplace changes that would enable the employee to return to at least some element, if not all of their work. Even the Government's own work and health advisor, Dame Carol Black, in her speeches now tells the story of one GP who wrote in this box that the person could return to work provided that his supervisor was removed as his bullying was the cause of the patient's stress-related condition. Perhaps UCU reps should be advising members to ask their GP to put this on their medical certificate - so the employer gets more messages that they have a managerial problem to deal with.

There are no magic solutions to all this. Despite employers having a common law duty of care, and a statutory duty to protect the health, safety and welfare of staff, there is remarkably little statutory enforcement of these duties. It is estimated that only about 10% of workers who are injured or made ill at work get compensation via the civil routes, and most of those are trade union members, so most employers have little fear they will be called to account this way either.

The formal enforcement of statutory duties is disgracefully limited, and as cuts bite into the HSE's budget, can only get worse, not better. Already universities are seen as low

risk workplaces, so not a priority for regulatory inspection, and pro-active inspector visits by HSE Inspectors has been reduced by 11,000 a year - a fact announced by the junior minister responsible, Chris Grayling on the 21st March 2011.

On top of that, the HSE will only take a very limited enforcement approach to stress-related illness - they will enforce the duty to assess risk, and require employers to act on such an assessment, but that's it. There is no question of a criminal prosecution of an employer by the HSE for causing a stress-related injury because the necessary standard of proof - beyond reasonable doubt - is not possible in these cases, or so the legal experts say. So the worst the employer can expect from the legal system is to get stung for a civil compensation settlement for any injury caused if it can be shown that "on the balance of probability" - a lower standard of proof - what happened at work caused or exacerbated the injury sustained. In most cases compensation payments in successful claims will be paid by the institution's insurance provider, and not the employer directly.

To tackle stress in the workplace and protect our members and others from the effects on their health, we are forced back onto our own resources and organisation. There are a number of things that UCU reps should do to start the process of tackling work-related stress.

First, ask your employer for the record of the risk assessment that was done on your own job and on the jobs of the staff you represent. Under the SRSC Regulations they have to give you a copy of that document (see above). Then work with members to review the assessment and identify any weaknesses, hazards missed, levels of risk inappropriately assessed and inadequate control measures proposed. Where you believe the assessment is not suitable and sufficient you should request the employer to do a thoroughgoing review of the assessments with a view to resolving any obvious weaknesses and problems.

Secondly, look at the institution's policy and procedures on stress and workplace bullying. They should contain a procedure that protects a complainant from victimisation, ensures staff are adequately represented, and provide a zero tolerance statement. You can assess how successful they are in their delivery of protection for employees. Sickness absence figures will show how many employees are off work with a stress-related condition, which is one reasonably good indicator that a problem exists, and that policies and procedures aren't working well. Then senior management can be asked how well the policy is implemented and monitored, how they deal with formal complaints, and how they act to ensure the policy is effective. If your employer doesn't have such policies and procedures, then UCU locally needs to start insisting they develop them in discussion with the unions.

Thirdly, start to investigate the extent of the problem and launch a campaign. UCU has bullying and violence survey questionnaires on the website that could help that can be accessed from <http://www.ucu.org.uk/index.cfm?articleid=2424> and a wider stress questionnaire in the stress toolkit at <http://www.ucu.org.uk/index.cfm?articleid=2562> You can also use the questionnaire in the HSE toolkit - that has the advantage of being developed by experts and being independent, so less open to criticism of bias. <http://www.hse.gov.uk/stress/standards/downloads.htm> As above, analyse sickness absence figures by number, reason for absence and staff location

Reps should involve as many members as possible in such a campaign, actively encouraging others to complete and return questionnaire, let the union know about any problems, developing a collective opinion that something needs to be done and then

proposing a programme of action so that the employer is in no doubt about the strength of opinion.

Fourthly, we need to establish that stress is an industrial relations matter and will only be effectively dealt with by a collective bargaining approach, as should many other workplace safety, health and welfare issues. Stress should be a standing agenda item for the joint safety committee, and reports made regularly to the formal employer, the governing body of the institution. Senior managers are accountable to the employing body just as much as any other employee. UCEA has issued guidance to all universities on their health, safety and welfare responsibilities, Leading Health & Safety at Work, available from their website at

http://www.ucea.ac.uk/objects_store/leading_health_and_safety.pdf The advice this document outlines applies as much to governing bodies of FE colleges as universities.

In FE there is an agreement with the AoC on Stress at http://www.ucu.org.uk/media/docs/4/4/feagrstr_1.doc and on Harassment and Bullying at <http://www.ucu.org.uk/media/docs/4/l/feagrhar.doc>

Fifthly, it is important to ensure that employers respond to demands for reasonable adjustments, and adjustments to deal with mental health issues are as important as physical ones. The determination of what reasonable adjustments are necessary to enable someone to return to work should involve the person who needs them, their union reps, their GP or other health advisor(s) and anyone else who can offer appropriate information - a counsellor, for example. It should not be just a managerial decision-making process. For the latest guidance see <http://www.equalityhumanrights.com/advice-and-guidance/>

In adopting a wider perspective, UCU nationally has established a stress and bullying working group to make recommendations to the NEC. So far, approval has been given to formalise a bi-ennial stress survey to monitor the overall situation; develop regional and local campaigning, and to target worst offenders by naming and shaming institutions that don't perform to our required standard. We will publicly recording cases brought to our notice, and offer constructive criticism of employer policies and procedures where we find them; reporting cases where the HSE has taken action against an employer, and reporting successful compensation claims.

We have a long way to go. To reiterate what we said above, we are forced to rely on our own resources and organisation. This is a notoriously difficult area in which to enforce improvements, but the evidence so far suggests that, if UCU doesn't organise effectively at the workplace to tackle these problems, they will remain unresolved. Those who rely on the statutory enforcement agency or the employer's goodwill to deal with stress and bullying related issues will be disappointed. If we continue to deal with this as individual casework, local reps will be overwhelmed. We have to deal with these issues as collective problems occasioned by an employer whose management behaviour isn't being controlled effectively.

2. 10 points on work-related stress; a checklist

A quick checklist for UCU representatives on things to do to ensure your employer takes appropriate action on the causes of work-related stress. The 2008 UCU survey showed that levels of stress in FE and HE were worse than comparable occupations and below HSE

targets. The survey results for Further, Higher and Prison Education are available here <http://www.ucu.org.uk/index.cfm?articleid=2132>

Don't allow your employer to dilute the issue by including external factors – we are here concerned with those factors at work, under the employer's control that collectively affect employees; not factors related to a specific individual. Stress is an issue that should appear on the main bargaining agenda, not sidelined as a peripheral or safety committee only issue.

Finding out about stress

- 1 Ensure basic risk assessments are properly conducted, and include the identification of stress-related issues as one element.
- 2 Where the basic assessment indicates there is or may be a problem, conduct a specific stress risk assessment to determine more fully the extent and causes of work-related stress. The HSE Indicator Tool produces convincing data, and is independent. UCU can help you set this up. <http://www.hse.gov.uk/stress/standards/downloads.htm>
- 3 Ensure that trade union reps are involved in the risk assessment process, to monitor and constructively criticise the process, ensure all risks are identified and proposed control measures appropriate.
- 4 Identify where workers are already suffering from work-related stress. Ensure employers collect and present sickness absence figures in ways that enable any absence "hot spots" and causes to be identified. Encourage everyone to record accurately the reasons for absence – some are reluctant to have "work-related stress" or "stress-related illness" as a cause on a medical certificate.
- 5 Encourage employees to report stress-related issues to both the union and the employer. Ensure the employer has a non-threatening procedure and environment for such reports. Consider establishing a special procedure for this if necessary, as many employers have for reporting bullying. Focus groups are the forum suggested by the HSE - there should be trade union input into focus group meetings.

Taking action over stress

- 6 Establish a stress management steering group as the HSE recommend. Ensure this has full trade union involvement, not just a token presence. Make sure that the employer permits union reps sufficient time-off from their day job to not only attend group meetings, but to do the necessary associated work between meetings.
- 7 Use the steering group to oversee the whole stress identification and management process, and to ensure the trade unions participate fully in identifying and prioritising problems, and to agree appropriate action plans to monitor the situation and eliminate and manage the causes of stress.
- 8 Ensure the steering group makes regular reports to both senior management and the joint safety committee, and that the safety committee makes appropriate reports and recommendations to the employer (the governing body of the institution) on measures necessary to eliminate and reduce the causes of stress.
- 9 Aim to eliminate the causes of stress wherever possible, rather than just reduce or manage the risks. If necessary, emphasise the risk element of the risk – cost balance that employers may use if they argue their actions are "reasonably practicable", and limit the action they take as a result.

10 Ensure that risk assessments are reviewed when stress related illness or absences are reported. The assessment may well have under-estimated the risk or failed to identify a stress factor, so it will not be suitable & sufficient.

This factsheet is available at http://www.ucu.org.uk/media/docs/8/h/10points_workrelatedstress.rtf

3. Back to Basics: Workplace Inspections

Branches and LA's should review how they organise themselves to take full advantage of the safety rep functions given under the SRSC Regulations. As we reported in H&S News 43 in November last year, the 2010 TUC survey revealed that less than half of the safety reps who responded undertake the 4 workplace inspections a year that the SRSC Regulations permit. This is perhaps THE key safety rep function, sending as it does, clear messages to members that we are active in the workplace and can be seen to be so, and to the employer that we intend to undertake the full range of functions given to reps by the Regulations.

The SRSC Regulations permit reps to undertake the following inspections:

- An inspection of the workplace or any part of it that has not been inspected during the preceding 3 months (Regulation 5(1))
- Where there has been a substantial change in the conditions of work, or where there has been new information published by the HSE (Regulation 5(2))
- Following a notifiable accident, dangerous occurrence or case of notifiable disease (Reg 6(1))
- Inspect and take a copy of any document the law requires an employer to keep (Reg7(1))

The guidance also recommends that, where the representative has drawn a matter to the employer's attention and remedial action has been taken, reps should be allowed to re-inspect to satisfy themselves that the action has been taken. (Guidance Paragraph 58(a))

UCU guidance at

http://www.ucu.org.uk/media/docs/7/d/hsfact_workinspect_approach.doc and for more help contact the UCU Health & Safety advice line at jbamford@ucu.org.uk

The HSE model inspection report form is at

<https://www.hse.gov.uk/forms/incident/f2533.pdf>

4. Government axes safety inspections

Continuing its assault on the enforcement of health & safety legislation, the Government has confirmed that agriculture, quarries and health and social care are to be excluded from proactive HSE inspections, despite acknowledgement that they remain comparatively high-risk sectors. Proactive inspections will also be withdrawn from what government has identified as lower-risk industries, including transport, postal and courier services, local authority-administered education and some manufacturing. They had already stated that schools, shops and offices are considered to be low risk workplaces and shouldn't be priorities for enforcement agencies.

The DWP has approved plans for proactive inspections to fall by a third – around 11,000 inspections a year. It also outlined proposals for the HSE to recover the costs of its inspection and investigation activity,

A key aspect of this will involve extending the principles of cost recovery, already well-established in the offshore and nuclear sectors, to others. It is proposed that the HSE will recover all of the costs of an inspection or investigation at which a serious, material breach in standards is diagnosed, and a requirement to rectify (i.e. an enforcement notice) is formally made, together with the cost of any follow-up work. Some believe that a move towards cost recovery could mean HSE go into workplaces with the intent of issuing an enforcement notice.

A review of H&S regulation is to be carried out, the purpose of which is to recommend how it can be simplified with a view to scrapping “unnecessary rules” which put an “unnecessary burden” on business. It will be chaired by Professor Ragnar Löfstedt, a specialist in risk management and communication at King’s College London, and will also recommend changes aimed at clarifying the legal position of employers in cases where employees act in a grossly irresponsible manner. There will be a token trade unionist on the review’s advisory panel. See <http://www.dwp.gov.uk/docs/lofstedt-tor.pdf> for more detail.

Chris Grayling, the junior minister apparently believes that protecting the health and safety of people at work is a burden, which stifles business and holds back economic growth, while imposing a burden of needless bureaucracy. Lord Derby said something similar during the parliamentary debate on the proposed Factories Act of 1833. Predictably, employers have welcomed this, whilst trade unions and the TUC; H&S specialist lawyers, personal injury solicitors and the Hazards Campaign have all criticised the proposed reduction in HSE activity.

In announcing the review, the Government says it is committed to “a continuing programme of modernisation of regulatory approaches and cooperation between regulators to provide a consistent and proportionate approach for business”. We are not quite sure what “modernisation” means in this context, and we have never been clear about the meaning of “a proportionate approach”; surely the law is enforced or it isn’t. This suggests that modernisation means permitting employers to behave in a criminal manner without restraint.

Read the DWP document at <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf>

5. Employee Engagement Task Force launched

Wellbeing, engagement and resilience, the unholy trinity that seems to studiously ignore the statutory duties imposed on employers to ensure the health, safety and welfare of employees is moving ahead with its manipulative agenda. The government has launched the “employee engagement task force” led by the Government-sponsored, industry led Task Force – including the Chair, David MacLeod and Deputy Chair, Nita Clarke. MacLeod and Clarke were commissioned by former BIS supremo Lord Mandelson in 2008 to investigate employee engagement. Dame Carol Black is a member of the Task Force.

The aim of the Task Force is to ensure that a range of practical opportunities are made available for organisations wanting to learn about engagement. It will aim to share good practice, generate debate and offer support via a new website. The Task Force will also

tackle key issues identified in the MacLeod Review

(<http://www.bis.gov.uk/policies/employment-matters/strategies/employee-engagement>) such as the barriers to wider adoption of engagement, how to harness engagement for innovation and how to maintain morale through difficult challenges such as downsizing.

At the launch David Cameron said that he knew this Task Force would “help people improve their wellbeing”; while his employment relations minister said “it was essential that there was a committed and involved workforce that were all pulling in the same direction”.

The Task Force will collaborate with academics, think tanks and practitioners (of what we are not sure). It will report back in 2012 on the strategies it recommends that organisations should adopt to promote best practice and learning. We await their report with interest.

6. Enquiry into H&S in Scotland

The Commons Scottish Affairs Committee has launched an inquiry into health and safety in Scotland. A National Audit Office report recently confirmed the cost of workplace accidents in Scotland was around £187m last year and there more serious injuries and deaths than in England and Wales. See

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/news/hse-terms-of-reference/> for more detail of the areas the committee is concerned about.

The Committee has called for written evidence from interested parties on any, or all, aspects of the inquiry by **Thursday 16 June 2011**. The Committee will be arranging public oral evidence sessions later. Scottish LA's or reps may want to have a say.

7. More HSE news

a) Link to the HSE enforcement databases

The HSE website had a direct link to the Enforcement databases, which were part of its “Name and Shame” strategy – to allow the public to see which employers had been prosecuted, or had an enforcement notice issued against them. It disappeared over the weekend 14th – 15th May. You may remember that a couple of years ago, the telephone numbers for the local HSE offices also disappeared, and were never replaced. If you want to find the databases now, they are available at

<http://www.hse.gov.uk/enforce/index.htm> The new dispensation appears to be no name and shameless.

b) InfoLine to close

The HSE's Infoline helpline ceases operation on 30th September. After that, there will no longer be a point you can telephone for information about health and safety standards and requirements. Infoline is currently the only place you can get the local HSE office number, so when it ends, that should ensure the HSE bunker is inviolable. We suggest that anyone who telephones Infoline on 0845 345 0055 should express regret and concern to the staff member who answers the call. The line tells you that calls are recorded – so someone in senior HSE management might just pick up the message that lots of trade union safety reps are unhappy about this development. The HSE headquarters telephone number is 0151 951 4000

8. UCU Congress fringe meetings

There are two health and safety fringe meetings at Congress this year. The Stress and Bullying Working Group meeting is on Sunday lunchtime, with NEC member Phillip Burgess and Julian Stanley from Recourse (formerly CUSN). The fringe is part of the emerging UCU campaign to protect members from stress and bullying.

Hilda Palmer, Chair of the national Hazards Campaign has agreed to come and run the Bodymapping fringe, at lunchtime on Monday 30th May. Bodymapping is a powerful worker-oriented participatory research tool that safety reps can use to reveal the harm work is doing to our bodies. The collective body map can show the impact of the factors in workplace that make us ill or injure us such as workloads, excessive hours, computer use, teaching, bullying and violence, in a way that prevents individual victimisation. Body mapping outcomes can then be part of the campaign to take action to make the workplace safer and healthier. Bodymapping was developed in part by the ILO.

Contact UCU Health & Safety Advice

UCU Health & Safety Advice is provided by the Greater Manchester Hazards Centre, and is available for 3 days each week during extended term times. The contact person is John Bamford: (e) jbamford@ucu.org.uk (t) 0161 636 7558

**Visit the [UCU Health and Safety web page:](http://www.ucu.org.uk/index.cfm?articleid=2132)
<http://www.ucu.org.uk/index.cfm?articleid=2132>**