

Foreseeability is key in claims for occupational stress

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The judgment last year of the High Court in *Piepenbrock v London School of Economics and Political Science* ('LSE'), confirms the importance of foreseeability as a barrier to Claimants' success in occupational stress claims. The case received considerable coverage in the press, but was at heart a traditional, if complicated and high value, claim.

The facts

The Claimant, a teaching fellow at LSE, brought a claim against his employer, alleging occupational stress. There were two alleged causes of the stress.

Firstly, he alleged that LSE were vicariously liable for the actions of a graduate teaching assistant who it was alleged had harassed him both in the United Kingdom and on a trip to the United States.

Secondly, he alleged that LSE had failed properly to handle the investigation which resulted when the graduate teaching assistant raised a complaint against the Claimant.

The Claimant sought damages of around £4million for the loss of his career, and general damages.

What was decided

The actions of the graduate teaching assistant did not amount to harassment as her actions were reasonable. Further, whilst the subsequent investigation by LSE was not perfect, any failings were not sufficiently serious to give rise to a foreseeable risk of injury.

The Claimant's claim therefore failed on foreseeability.

The Claimant sought leave to appeal which was refused by a single Judge of the Court of Appeal on 14th February 2019.

What we can learn

1. Employers are faced with an increasing burden of complaints and counter complaints by employees. It is rare to find an investigation where everything has been done perfectly. In particular, there can often be delays and procedural errors.
2. Further, the circumstances surrounding such complaints and counter complaints can give rise to heightened emotions in the workplace.
3. This combination can give rise to concerns about the defensibility of civil claims stemming from such situations. However, it has to be borne in mind that a Claimant must prove that whatever took place gave rise to a foreseeable risk of the kind of psychiatric injury that did in fact afflict that employee. Where there is no knowledge on the part of the employer of any particular vulnerability on the part of the employee (as was found here), then the employer can assume that the employee can withstand the normal pressures of the job. Mere foreseeability of 'stress at work', or even of 'anxiety' is not sufficient for a Claimant to succeed.

DAC Beachcroft acted for the successful Defendant in this claim.

Our EL / PL team deal with employers' liability and public liability claims on a regular basis. For more information or advice, please contact one of our experts.

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