

Absence management - EAPs and mental health

In the wake of court cases highlighting the fact that EAPs are not a panacea for discharging duty of care, Madeleine Davies assesses what employers can do to address mental ill-health in the workplace



Features

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When Baroness Hale stated in 2002 that an employer offering a confidential advice service, with referral to appropriate counselling or treatment services, was "unlikely" to be found in breach of duty of care, she sentenced herself to regular appearances in promotional material for employee assistance programmes (EAP). However, since the publication of her 16 propositions for stress cases, case law has underlined the fact that employers overestimate the protective power of EAPs at their peril. Notably, in the case of *Intel v Daw*, the Court of Appeal explicitly warned employers that such services are not "a panacea" for discharging their responsibilities.

This case, and that of *Dickins v O2*, highlight that the solution to workplace stress and mental ill-health does not lie in any one product. Intermediaries who specialise in advising employees in this contentious area are acutely aware that the tools they broker must sit within a wide package of care.

While this package will look different for every employer, there are fundamental principles that should guide advice.

MONITORING

"There is not an easy, off the shelf answer to this," says Mike Blake, group sales manager of PMI Health Group, the specialist insurance adviser. "Each employer needs to look at their own situation and stresses in their workplace." He argues that intermediaries should see their role as part of an overall picture, linked closely to occupational health, and tell an "integrated story".

Insights from intermediaries suggest that this story must start with monitoring absence and return to work rates. It is estimated that 40% of days off work are accounted for by mental health problems, at a cost of £8.4bn a year. According to the Sainsbury Centre for Mental Health at any one time one worker in six will be experiencing depression, anxiety or stress-related problems. Yet employers vastly underestimate the incidence of mental ill-health among their staff. According to a survey carried out by the Shaw Trust nearly half of senior managers think that none of their staff will ever have a mental health problem and over two thirds put the rate at less than one in 20.

"It's the ones that need it most that don't use it [absence management]," says Steve Ellis, head of group risk at national specialist intermediary Premier Choice Group. "It's concerning that small employers have the attitude that it won't happen to them."

He describes EAPs as a "first line of defence pre-absence" and stresses that early intervention is paramount. He particularly likes cash plan provider BHSF's absence management platform (ARC) as a means of helping employers to manage absence consistently across staff.

"I'm noticing more and more in certain industries where people feel threatened for their jobs – finance, building sector and manufacturing – there are more issues," he says. "In the last three weeks I've had three separate conversations with clients where they have members of staff under disciplinary, sending in sick notes citing stress."

Steve Herbert, head of benefits strategy at national IFA Origen, agrees that, without monitoring the incidence of ill-health among employees, employers will struggle to effectively support staff.

However, he acknowledges that such packages are a rarity in the UK. This is borne out by a recent study carried out by the Mental Health Foundation which found that most organisations had poor long-term sickness absence recording systems where data was not organised by illness type or length of sick leave, making records difficult to access and monitor".

TRAINING

Identifying cases of mental ill-health and its impact on an organisation is one thing, responding appropriately is another. Professor Michael O'Donnell, chief medical officer at disability insurer Unum, describes the lack of communication between managers and HR as "the biggest gap right now".

The Mental Health Foundation's *Returning to Work* report highlights that line managers are unsure of how to establish contact and provide support for employees on sick leave for fear of being accused of harassment. Ironically, employees have been found to perceive this lack of contact as evidence that they are not valued by their organisation. The report concludes that "both line managers and colleagues had little understanding about depression, often stigmatising and over generalising as a result".

This is a familiar story for intermediaries, who are nevertheless taking action to address it. Dave Middleton, client relationship director at national employee benefit consultants Portus Consulting, says the firm can partner with third party providers to arrange workshops and training for line managers. Eugene Farrell, business manager at employee support provider AXA ICAS, has observed an increase in enquiries about the organisation's mental health awareness training. These courses can be bought off the shelf and are facilitated by a trained mental health professional. Farrell also argues that EAPs can offer line managers important help in dealing with employees with mental health issues.

"If they are not quite sure what schizophrenia is, or they have a misconception, or a concern, they can talk with a mental health professional about that," he explains.

ACCESS TO CARE

While the incidence of mental ill-health is high, the proportion of those affected actually receiving treatment is low. The Department of Health's Improving Access to Psychological Therapies (IAPT) programme was established to address the fact that only a quarter of the six million people in the UK suffering from depression and anxiety disorders are in treatment. The integration between employers, insurance companies, occupational health and the NHS in delivering mental health services is a complex one.

THE BUSINESS COST OF MENTAL ILL HEALTH AT WORK

£15.1bn Reduced productivity at work

£8.4bn Sickness absence

£2.4bn Staff turnover

Source: The Sainsbury Centre for Mental Health

THE EXTENT OF THE STIGMA

92% believe admitting to having a mental illness would damage someone's career

56% would not employ the best candidate for a job if they had a mental illness

17% of these respondents consider that mental illness would make an employee unreliable

10% believe that they would be blamed if the employee took time off sick

15% believe that they would not work as well as other employees or that other employees would react negatively towards the employee

Source: "Time to Change" campaign poll of 2,081 adults, August 2009

"The problem is that it is not just a simple off the shelf package; it needs to be locally tailored and that doesn't exist," says Dr Doug Wright, head of clinical governance at Aviva UK Health. He argues that local employers need to understand local provision of mental health treatment and to integrate benefits with it. Furthermore, he feels that some insurers have yet to deliver the right model of care.

"The employer does not understand the health needs of the workforce, so you tend to go for generic solutions like private medical insurance (PMI) and EAPs," he says. "That's a very crude tool."

Dr Wright would like to see something comparable to Back Up – the programme Aviva developed to manage back and neck pain PMI claims – developed for mental health. Designed with rehabilitation provider HCML, Back Up combines an in-depth assessment with dedicated case management and a personalised rehabilitation plan. Where the customer is part of a group scheme, the case manager can also work with their line manager to advise how they can be helped at work.

Dr Wright also sees close parallels between mental illness and musculoskeletal problems and compares the traditional model for managing the latter – GP referral to a physiotherapist or to a specialist – with the "crude tools" of EAP access and PMI psychiatric cover. "It's about individual assessment and case management," he argues.

While there are signs that PMI providers are starting to address mental ill-health – CIGNA HealthCare promotes cognitive behavioural therapy to its members, who can claim for it providing it is recommended by a GP or occupational health professional – it does not appear to sit as comfortably within the PMI arena as it does within income protection (IP).

"The employer does not want to provide a service that is fixing something that might not have anything to do with them," says Dr Wright.

Alistair Sclare, director of healthcare at Groupama Insurances, believes that there are "a significant proportion of employees who can take advantage of the law and the employer," arguing that the latter can be a "soft target" when it comes to identifying the cause of mental ill-health. Nevertheless, it is "increasingly common" for Groupama to receive requests for referral to a counsellor (which it will consider providing that a consultant makes the recommendation). Sclare has also noted requests from brokers to add a facilitation service to schemes, whereby Groupama will arrange access to counselling for members on an ad-hoc basis, a "more selective and cost effective way of purchasing that treatment".

Of course, EAPs often include access to face-to-face counselling and this is welcomed by intermediaries. Dave Middleton feels that EAPs have been poorly communicated and have been pigeon-holed as "just a stress line". He also suggests that smaller companies may benefit from arranging better access to broader occupational health.

For smaller companies, perhaps unable to afford IP, Steve Ellis of Premier Choice Group suggests putting a cash plan in place, including access to an EAP and face-to-face counselling.

RETURN TO WORK

If PMI providers are still developing their proposition for tackling mental ill-health, intermediaries are confident of the role of IP. An obvious advantage of having the benefit in place is that the provider has an incentive to intervene early and prevent a short-term absence becoming a long-term claim. A specific advantage for employers is the support that a provider can offer in facilitating discussions between the employee and line managers.

The value of this should not be underestimated. Research from the Mental Health Foundation suggests that the return to work is fraught with difficulty for both employees and their managers, with both sides feeling ill-equipped to discuss problems and challenges along the way. According to the organisation's research, employers perceive employees with depression and anxiety as more difficult to adjust back to work than those with physical illnesses, because problems are intertwined with work-related stress, perceptions of bullying or poor working conditions.

"When people go off sick, it is often when we find that the line manager has not been in contact with the employee," says Unum's Professor Michael O'Donnell. "Rehab staff can act as a go between so that they can discuss what can be discussed with the employee, for example."

While Origen's Steve Herbert acknowledges that it can take "a couple of big court cases to go horribly, horribly wrong to make people sit up and take notice," intermediaries may welcome the renewed emphasis on mental health in the workplace from both the government and the third sector (see Mind comment, right). It presents a real opportunity to knit together a package that does more than tick boxes, but improves the lives of both employers and employees, from reducing costly sickness absence to improving relationships between line managers and their staff. As Mike Blake points out: "Employers are looking for advice and it is too easy to throw a product at the problem."

THE LEGAL PERSPECTIVE

TIM RANGLES SENIOR EXECUTIVE AT LAYTONS SOLICITORS, SPECIALISES IN EMPLOYMENT LAW AND RESOLVING DISPUTES

"EAPs are a cost efficient way of providing good support to employees but they are not a replacement for management taking an interest in what is going on. Judges will consider whether the mental health harm suffered by an employee was reasonably foreseeable and if it was, whether the employer made a reasonable response. Too many companies looked at Baroness Hales' Proposition 11 and felt that providing an EAP was all they needed to do in order to discharge their duty of care. That is not how it works or how it was meant to work."

THE MENTAL HEALTH CAMPAIGNER PERSPECTIVE

EMMA MAIMER SENIOR POLICY AND CAMPAIGNS OFFICER AT MIND, LEADING MENTAL HEALTH CHARITY

"There is a widespread misunderstanding about how many people are living with a diagnosis of mental illness. That is true of employers. There is so much stigma that most people don't talk about it, so employers don't think it is a problem. People do experience high levels of bullying and discrimination when it is known that they do have a diagnosis. The Time to Change campaign is addressing that, and will include a Time to Challenge component where we will be taking forward legal test cases for people who have experienced discrimination. A common theme for people is the issue of disclosure. We have people who have only secured a job when they have not mentioned their mental illness, which is why Mind wants to prevent the misuse of pre-employment questionnaires. With EAPs, access to counselling is a good thing but it can't be the only thing. For example, men might not want to access support in that way. Good provision should include promoting wellbeing, tackling stress and supporting those who are experiencing mental distress. Adjustments that employers can make include offering employees the option to work flexi-time, to work from home or to have increased supervision."