



Job Retention Practitioner's Handbook

Roger Butterworth, Dave Costello
Lorraine Looker, Heidi Cuming

Edited by Simon Francis
Foreword by Dame Carol Black



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The Job Retention Practitioner's Handbook

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by

Roger Butterworth

Dave Costello

Lorraine Looker

Heidi Cuming

Edited by Simon Francis

FOREWORD BY

Dame Carol Black

National Director for Health & Work

This Job Retention Practitioner's Handbook has been produced by Yorkshire and Humber Improvement Partnership and City and Hackney Mind – organisations dedicated to working with many partners, to safeguard the mental health and well-being of people in their communities.

People with mental health conditions remain among the most vulnerable in our society and the most threatened by exclusion, most tellingly from work. We cannot overstate the importance of enabling job retention for people with mental health problems and their families.

Job Retention plays a key role in our efforts to enable more people to be in work. We know that good work is an important factor both in safeguarding mental health and in aiding recovery. This brings duty and responsibilities to many agencies, in health, social care, criminal justice, and the independent and third sectors. I believe that this handbook can make an important contribution towards establishing best practice by each participant in this important field of activity.

This work is also an important reference for prospective GP commissioners in helping them both to understand the importance of Job Retention Case Management in mental health, and to establish meaningful performance criteria to monitor service delivery.

I am sure that this handbook will be of particular value to those already practising job retention, and those who are likely to be involved in this in the future. It should also be helpful as a quick reference guide to those involved in the job retention process, including human resources, line managers, trade unions and of course those people with mental health conditions whose employment is vulnerable through sickness absence.

Contents

Introduction	11
Section 1:	13
Background information	
What is case management?	13
The role and limits of a case manager	13
Key skills and knowledge base	14
What constitutes a positive outcome in job retention terms?	14
The social model of disability	15
The biopsychosocial model	15
The role of the GP in work retention	15
Section 2:	17
Meetings and assessments	
Meeting the client and the initial assessment	17
Working with the employer	19
Establishing contact	19
Meeting with the employer	20
Section 3:	21
Planning and action	
Establishing workplace modifications – reasonable adjustments	21
Access to Work	22
Designing a graded return to work plan	23
The back to work report	23
The return to work meeting	23
Facilitating naturally occurring support	24
In-work support – buddies	25
Healthy Work Plans	25

Section 4:	27
Supporting the individual	
– a holistic approach	
Maintaining mental health	27
Promoting stability	28
‘Light touch’ approaches to good mental health	28
Resilience and self-esteem	28
Working alongside therapy services	29
Cognitive Behavioural Therapy in job retention	29
Solution-focused approaches in job retention	30
<hr/>	
Section 5:	33
Supporting organisations	
– mental health promotion in the workplace	
Engaging with employers	33
Promoting the business benefits	34
Taking care of business	34
Workplace stress	35
Health and Safety Executive (HSE) – Management Standards	35
Familiarise yourself with available resources	36
<hr/>	
Section 6:	39
Bullying at work	
What is workplace bullying?	39
What can the job retention case manager do for their client?	40
What can the case manager do for the employer?	40
Do’s and don’ts	41
<hr/>	
Section 7:	43
Mediation	
What is mediation?	43
Why use mediation?	43
When to use mediation	44
The role of the retention case manager	44
Stages of mediation	45
<hr/>	
Section 8:	47
Employment law	
- the Equality Act 2010	
The Equality Act 2010	47
Who is a disabled person under the Equality Act 2010?	48
Definition of a disabled person	48
Different types of discrimination covered by the Act:	49
Employers’ knowledge	53
Can the employee still claim discrimination if the employer does not know about an employee’s disability?	54
Equality Act 2010: Employment Statutory Code of Practice	54

Section 9:	55
Employment law	
- taking legal action and other relevant legislation	
On what grounds can a person take their employer to an Employment Tribunal?	55
Bringing a claim in the Employment Tribunal	55
Compromise agreements	56
The role of the retention worker	56
Bullying and harassment at work: the legal position	57
Protection from Harassment Act 1997	57
Other legal obligations of employers	58
The Data Protection Act 1988	58
Health & Safety at Work Act 1974	58
Accessing legal help	58
Private solicitors	58
Law Centres Federation	59
Citizens Advice Bureau	59
Free Representation Unit	59
Bar Pro Bono Unit	60
Trade unions	60
Equality and Human Rights Commission	60
Other representatives	60
<hr/>	
References	61
<hr/>	
Further reading and useful resources	63
Background reading	63
Job retention	63
Support for individuals	63
Support for organisations – mental health in the workplace	64
Workplace bullying	64
Mediation	65
Employment law	65
Helplines and websites	65
<hr/>	
Acknowledgements	67
<hr/>	
Appendix 1	69
<hr/>	
Appendix 2:	71

Introduction

Work is generally good for health and well-being, and can play a positive part in the recovery process for people with mental health conditions. 'Good work', that is work which is healthy, safe and offers the individual some influence over how it is done, can bring a sense of purpose and belonging; financial security; social participation and increased self-esteem.¹ Unemployment can lead to poor mental and physical health, social exclusion and poverty.

Successive governments have launched a number of innovative initiatives aimed at helping people to retain their employment once they become unwell. Of particular note is the embedding of employment advisors within the Improving Access to Psychological Therapies (IAPT) services and the establishment of 'Fit for Work' pilot services.

The IAPT service model was first piloted in 2006 by the NHS in Newham and Doncaster and is now in the first wave of its national roll out across the NHS in England. These services aim to increase access to appropriate evidence-based psychological therapies for people with common mental health conditions, including depression and anxiety. This service now includes employment support; much of which focuses on helping people to maintain employment in times of increased psychological distress or to support a return to employment.

The Fit for Work service pilots have been set up in response to recommendations from Dame Carol Black (National Director for Health and Work) which were set out in her recent review of the health of Britain's working age population.² These services are based on a case-managed, multidisciplinary approach to job retention, and provide treatment, advice and guidance for people in the early stages of sickness absence.

This guide looks in depth at the Case Management model as it is applied to mental health. This model encompasses support, not just for those who are in the early stages of sickness absence, but for any individual who perceives their job to be at

risk due to mental ill-health. Early intervention is a key determinant in the success of this approach and forms the overriding principle behind the model. There are many reasons for this - early intervention increases the chance of there being a job to return to; means less disruption to social and work roles; will often shorten the duration of an illness and helps to prevent social and economic exclusion. Early intervention also benefits the employer by providing savings through lower employee turnover and increased retention (see Section 5).

Although the vast majority of work in the job retention field is done with people who have been diagnosed as having common mental health conditions, the key principles and practices apply equally to job retention with people with more severe mental health conditions.

This publication will provide people with essential information about the Case Management model of work retention and will be a handy reference to enable retention workers to work effectively in this challenging and important field. We would welcome any feedback from new or existing retention workers, people using retention services and any other interested parties.

As always, we have a keen interest in ensuring that the voice of clients is heard and so we have populated the text with illustrative quotes and case studies from people we support through our work.

SECTION 1:

Background information

What is case management?

Case management is a collaborative multidisciplinary approach in which the case manager acts primarily as an intermediary. It involves coordinating and fostering interactive and mutually cooperative relationships with a number of different agencies, including human resources, employers, trade unions and health professionals, with the aim of helping the client to meet their retention goals. These goals are based on a thorough assessment of the individuals' needs, desires and individual circumstances, which are then translated into a plan of action. Once implemented, it is essential that the case manager monitors progress and works together with the client to regularly evaluate and update this plan. Collaboration is key to success and the client must at all times be fully informed and actively involved in the process.

A key feature of case management is that it is flexible and responsive to individual need. It can be delivered through a range of mediums, including email, telephone consultations, text messages and one-to-one meetings. It can take place in a number of different settings and can be delivered by a range of people with different professional backgrounds. It also frequently involves flexibility in operating hours, as many people work 9-5 and will need some support out of office hours.

The role and limits of a case manager

Whilst in some cases the case manager is a clinician who may offer some form of treatment as part of the support package, for example Cognitive Behavioural Therapy (CBT), more frequently this is not the case. The key role of the case manager is

coordination of the rehabilitation plan. It is crucial that at all times they work within the limits of their own professional experience, skill set and qualifications. Regular supervision with a suitably qualified line manager will be helpful in this respect. Case managers should maintain a professional distance from the client and the approach should be objective and non-judgemental.

Key skills and knowledge base

In 2009 the Centre for Mental Health, with the Nottingham Institute of Mental Health's Employment Managed Innovation Network, published a paper outlining the skills and knowledge they believe are key in delivering successful job retention services in primary care settings. These findings were the result of a Delphi survey through which they consulted 80 experts in the field. The results highlight that retention workers need to have a diverse skills and knowledge base in which communication, negotiation, advocacy and conflict resolution skills feature highly, together with a good knowledge of the practical applications of relevant legislation. It is acknowledged that retention work is a relatively under-developed field that crosses traditional professional boundaries, and so very few retention workers will start out with the full set of skills and knowledge. Therefore the emphasis should be on effective and ongoing training and development.³

What constitutes a positive outcome in job retention terms?

People are sometimes confused about what constitutes a positive outcome in job retention. Job retention workers often say things like "I am not really sure how things are going. I have worked with 20 people so far but have only managed to help 60% of those to retain their employment".

Work can have many positive benefits and often contributes toward better mental health. However, this only applies to 'good' work, that is work where the individual feels safe, valued and where they have some control over the work that they do. We note though that some workplaces can be quite toxic and can have negative consequences for the person's mental health. In these circumstances the aim of the retention work is not always to help the person to retain their current job; leaving their workplace for another position in a healthier environment can also be seen as a very positive outcome. Similarly, many people work in healthy workplaces but, as is the case with many people experiencing mental health conditions, they may be underemployed or working in roles that are not commensurate with their skill and education level.⁴ In these cases, the individual may wish to drop out of work in order to retrain and/or to undertake voluntary work or work experience placements in a different field.

This pathway could also be seen as a positive outcome, as it is another route to helping the individual attain the best possible work-related outcome in their particular situation. Also re-deployment, transfer and negotiated settlements provide positive outcomes for the employee as this maintains the person's financial independence away from state support.

The social model of disability

The case management model of job retention challenges the view that potentially disabling conditions have to be 'cured' before normal life is resumed. It incorporates the social model of disability and is linked to the idea that often disabilities are as much, or more, to do with the barriers created by workplace systems and environments, as with individual's functional limitations.

The biopsychosocial model

In line with the biopsychosocial model, the case management approach should simultaneously consider biological factors, including diagnosis and treatments; psychological factors, the impact and perceived impact on mental health and wellbeing; and social factors including wider determinants such as family circumstances that can have a negative impact on health and well-being. These three factors are commonly interlinked. Underlying the case management approach is the idea that the support provided should be holistic.

The role of the GP in work retention

GPs can play a key role in work retention. Although traditionally GPs have not always had high expectations about the capacity of people with mental health conditions to retain or regain employment, evidence shows that this is gradually changing. GPs are increasingly beginning to recognise the positive role that work can play in the recovery process.⁵ This understanding is likely to be greatly enhanced by the government's delivery of a national education programme to GPs. This aims to increase their understanding of the positive benefits of work on both physical and mental health, and help them to manage work-related discussions with their patients.

Another key initiative is the recent revision of the 'sick note' to enable GPs to provide better return-to-work advice for patients to share with employers. The revised medical certificate is called a 'fit note' and it is aimed at helping GPs to concentrate on what their patients can do as opposed to what they can't. The fit note represents a breakthrough in dealing effectively with sickness absence. It means that GPs can advise when the client may be fit

for work, suggest common ways to help them to return to work and give tailored information on how their condition will affect what they can do. For more information go to www.direct.gov.uk

KEY RECOMMENDATION

North Staffs. Fit for Work pilots have produced a 'stamp' which they have given to GPs in their catchment area – this prints their contact details on the fit note so the employer can then engage directly with the Fit for Work team.

SECTION 2:

Meetings and assessments

Each retention case is unique, so it is difficult to document a ‘typical’ case or series of events. Therefore it makes sense to look at the different elements in the process and to provide examples of different scenarios that may occur. The first stages – the meetings and assessments – are outlined in detail below. The subsequent steps – devising and implementing the back-to-work plan – are then outlined and discussed in Section 3: Planning and action. More specific aspects that relate solely to the client or their employer are covered in Section 4: Supporting the individual – a holistic approach and Section 5: Supporting organisations – mental health promotion in the workplace.

Meeting the client and the initial assessment

It is important to put the client at ease and to build a positive, therapeutic relationship with them. This involves the use of active listening skills, empathy, unconditional positive regard and a non-judgemental attitude. Recalling upsetting events at work may well be distressing for the client. The case manager should allow time to listen.

Before embarking on the assessment process the case manager will need to explain in detail the service that will be offered, so the client knows exactly what can and cannot be done to support them. It is useful for case managers to have an information leaflet to give to clients outlining this. A similar leaflet for employers will also be helpful.

Provide assurance that the service offered is transparent and that no action will be taken without their knowledge or prior approval. Often clients are very anxious about the prospect of a case manager contacting their employer, and they may not be happy for this step to be taken, especially in the beginning. This demands

trust, particularly if the client has not disclosed their mental health condition to their employer.

Documenting the client's story is a key part of the assessment process so it is really important that the case manager does not simply make it into a form filling exercise as this may create a barrier between them and their client. With the exception of collecting demographic data, the case manager should try to use open-ended questions and allow the client time to provide the necessary information. It may be necessary to set up further meetings.

The assessment should cover all aspects of the client's life that may be relevant to their current situation. In addition to collecting factual information about their current work situation and its history, it should include information on physical health issues, medication and treatments, psychological factors (the impact and perceived impact on mental health and wellbeing) and the social determinants that can have a negative impact on health and wellbeing, including their home or family situation, social networks and issues such as debt or housing problems. Included in this would be details of past and present coping strategies, support and interventions that have proved useful to the client and a discussion about the client's lifestyle, daily routines and interests and activities outside of work.

From a work perspective, it is important for the case manager to find out what the employer's knowledge of the client's illness is (if any). Explore any significant changes in their level of functioning: thinking or cognitive (reduced concentration or decision-making, preoccupation or negative thinking, errors), emotional or affective (anxiety, sadness, irritability) and behavioural (for example alcohol usage, self-medication, risk-taking, self-isolation, sleep changes). Find out whether there are any grievance and disciplinary processes underway. Performance issues and capability measures for example. If so, the client's job might be in jeopardy and the situation requires prompt attention. The case manager's engagement with the employer needs to be immediate in this situation. Also, if agreed, examine the client's sickness record, including the pattern and causes of sickness absence. Discuss the positive aspects of the client's work and discuss what the client sees as the main barriers to them remaining in, or returning to, work.

The case manager should always focus on identifying and highlighting positive aspects, such as existing abilities, talents, strengths, work achievements, friends and other social and formal support networks, and workplace support.

If there is a history of difficulties, and work issues have gradually worsened or become more complex over time, it may be useful to ask the client to draw you a timeline.

It is important that the contact details of all parties involved in the current situation are collected by the case manager. This may include human resources (HR), the

client's line manager, GP, trade union representative and relevant health professionals involved in a client's care. With a client's written consent any documentary evidence relevant to the case should be gathered, for example, copies of occupational health reports, the client's job description, supervision and appraisal notes (if relevant) and work contracts. All of this will enable a case manager to have a complete picture of the client's situation, before considering contacting or meeting their employer.

Working with the employer

The case manager should always strive to provide an impartial, objective and unbiased service. It is important to consider this when meeting with the client's employer. Be mindful of the fact that the employer may have been trying to contain what they feel is a difficult situation for some time and may well lack the necessary knowledge and understanding to fully support the client in their employment. It is useful to view the employer as a customer as well. There is much work that can be done with the employer. This is covered in more detail in Section 5.

Establishing contact

Before any meeting can be set up the case manager will need to gain consent from the client. A written proforma letter confirming their consent (signed by the client) should be sent to the employer, together with a letter outlining the case manager's service and the purpose of your involvement. A well-produced employer-focussed leaflet will help not only to clarify the case manager's involvement but to demonstrate professionalism. Employers are often fearful of the possibility of litigation, so it is also important that a case manager emphasises that the service offers a constructive, solution-based intervention and aims to help the employer and their employee to negotiate a positive resolution to the current situation - one, that is ideally acceptable to both parties. An introductory letter then enables the case manager to appropriately position the service and allows the employer time to consider their response. This should then be followed up by a phone call a few days later with the aim of securing a meeting with the relevant person and a visit to the workplace. The only exception to this is when there are time constraints, for example when the client is in immediate danger of losing their job. A case manager should also be mindful of who initial contact is made with and try and ensure that this is not someone the client is currently in conflict with.

There may be times when employers are less willing, for whatever reason, to engage directly with the service. In such instances a case manager may find that they have to work through another agency – perhaps supplying their findings and recommendations to the trade union in order for them to advocate on behalf of the client. A case manager might also find themselves accompanying a client to

an occupational health (OH) meeting, so that OH can in turn support the case manager's recommendations to the employer in their own report.

Meeting with the employer

The first meeting with the employer is really a fact-finding mission. The aim is to find out details of the situation from the employer's perspective and to carry out a workplace assessment. It is important that the employer is put at ease, and the case manager should try to make this meeting as informal as possible whilst still maintaining a professional approach. If appropriate, a case manager should ask if they can walk through the area where the client works, to enable them to be aware of the atmosphere and work culture. Use imagination, observation and listening skills to look for manageable solutions to any of the issues or barriers described by the client, being aware of any constraints regarding practicality, time and costs.

During the employer meeting try to gain a clear understanding of all the work-related issues that are relevant to the client's case. For example, what level of control does the client have over when, where and how their work is conducted: flexible working, breaks, autonomy of work practice and design. Find out whether there have been any relevant organisational changes such as new work practices or threats of redundancy. Examine the client's relationship with their colleagues, customers and managers, and what methods of supervision, feedback and appraisal are used. Also important are the intrinsic factors of the job, such as workload, demands and responsibility, team or lone working and any health and safety issues. Try to match the job description with the actual daily reality of the job, to see if they match up. A case manager should also clarify what support services are available to the client through their workplace, including an Employee Assistance Programme, workplace counselling or mediation services, occupational health, and establish what policies and procedures the employer has in place that are relevant to the client's case. Some examples of these are sickness and absence procedures; company phased return-to-work guidelines and policies on harassment and bullying.

After the meeting a case manager should consider all the relevant information and put it into context with other information. Are there any 'hidden agendas'? Is there a mismatch between what is being said and written and a case manager's own direct experience of the work environment? These issues can often be teased out once trust and rapport are established. Talking to the trade union representative can increase a case manager's understanding of issues or put them in context, such as there being a history of grievances against a particular line manager, or the client's department being a known organisational 'stress hotspot' due to bullying or excessive workload demands.

SECTION 3:

Planning and action

Once all the necessary information has been gathered it is time to translate it into action.

Establishing workplace modifications – reasonable adjustments

Generally workplace modifications refer to reasonable adjustments. The term ‘reasonable adjustments’ has been derived from the Equality Act 2010 - formerly the Disability Discrimination Act. Whilst only an Employment Tribunal can determine whether someone has legal protection under the Act, it is considered good practice for an employer to treat all employees with health conditions as if they were entitled to reasonable adjustments as defined by the Act. Further information can be found in Section 8. Workplace adjustments for mental health are often simple, practical and common sense changes to work practices or environments, most of which are about good people management and flexibility, and cost very little, if anything. It is usually about a cultural change to work, rather than a physical adjustment.

Although it is common to see lists of possible types of workplace adjustments in the Equality Act and other guidelines, there is no limit to the scope of adjustments that could be deemed helpful. Adjustments should be made on the basis of individual need and in response to the specific barriers and issues determined in the assessment phase. Reasonable adjustments are any actions a case manager and the client thinks of, which everyone agrees are reasonable to implement, to enable them to undertake their job role. The client will often be the expert on their condition, how it impacts on their job performance, and what helps to mitigate triggers for distress – so the client should always be consulted on appropriate workplace adjustments.

‘Reasonableness’ is a term used in the Equality Act. The main criterion used to assess this is whether the adjustment is likely to be effective and proportionate, given the costs involved, relative to the employer’s resources. Practicality and disruption

to business are also key. Larger employers will usually be expected to offer more versatility than smaller ones with fewer resources and relatively limited flexibility.

There is a useful exercise in Appendix 1, which will help a case manager to think in more depth about how to identify suitable reasonable adjustments with the client. Some questions that should be asked are: What symptoms and limitations is the client experiencing and how do they affect their performance? What specific tasks are difficult as a consequence? What accommodations and adaptations would help to reduce or eliminate these problems?

Workplace modifications might include moving the person's desk so it is in a more discrete position or providing a quiet room for someone to regain composure if they experience panic or distress. The role might be changed by removing the most stressful aspects of the job temporarily. Agreeing a phased return to work might also help, where the person returns on a part-time basis and gradually increases their hours to full-time. Other changes might involve the whole organisation, such as changes in policy: introducing flexible working, permitting home working for parts of the week, or providing stress management training for the workforce. Some modifications may involve a financial outlay, such as providing technological assistance, a laptop for home working or a digital dictaphone for recording minutes of meetings whilst concentration is impaired, and could involve providing extra assistance through a support worker. There is financial assistance available to cover the expenses of providing reasonable adjustments in the form of Access to Work.

Also consider increasing supervisory support and explore the idea of mentoring or buddying from a work colleague who can provide regular and low level support to help the individual with the emotional and practical implications of returning to work.

Access to Work

Access to Work is a government-funded initiative administered by the Department of Work and Pensions (DWP). It provides financial assistance towards the cost of workplace modifications and reasonable adjustments that are needed to enable disabled employees to function at work. Examples of what the fund might cover include the costs of a support worker, equipment needed at work, and assistance with travel costs if an employee is unable to use public transport. Currently there is very little take-up of this fund by people with mental health conditions.⁶ The government is currently looking at how best to ensure that Access to Work is more accessible to this group. These reforms include the provision of appropriate personal counselling services, including mediation or support, by a suitably qualified professional and providing employer education. For more information go to www.direct.gov.uk

Designing a graded return to work plan

It is often in everyone's best interests for the employer to agree to a graded or phased return to work. This typically may last for a period of 4-12 weeks, enabling the client to build stamina and confidence gradually and return to work sooner. For clients with mental health conditions, resuming a work role can be an important part of recovery, helping them to regain confidence and return to improved functioning. However, there needs to be both appropriate support and careful monitoring, to ensure returning to work too soon does not provoke a relapse.

The back to work report

After a case manager has completed the assessment phase and entered into discussions with all parties, progress can then be captured through a written report. This will help clarify roles and responsibilities and agreements can less easily be renege upon if they are circulated in electronic or hard copy. With large organisations, these reports need to be more detailed, covering all the elements identified in your assessments – the barriers, issues, recommended solutions and adjustments. For a smaller employer the report can be much simpler, for example, a local business will probably just need the essentials in bullet point or list form.

The return to work meeting

By the time everyone meets, all parties should have discussed and agreed the main issues concerning the back to work strategy. The meeting must not be contentious as this could be a major psychological setback for the client. The usual attendees will be: HR, the client's line manager, sometimes representatives of occupational health and the trade union, plus the case manager and the client. Here are some of the issues that should be covered, which can help the meeting run smoothly and successfully:

- *Location:* Sometimes it can be better for the client that the meeting takes place on neutral ground; either at the case manager's own offices or perhaps in a hired venue. Equally, it can be a significant step for your client to walk across the threshold of the workplace once again, and attend the return to work meeting in familiar surroundings. This needs to be discussed with the client, in order to determine what will be most helpful for them. All venues for meetings need to be completely confidential and free of disturbances.
- *Adjustments:* Discuss and fine tune agreements on workplace adjustments – related to functional issues, delegation of duties, extra supervisory support, equipment or additional training that needs to be purchased or arranged.

- *Monitoring:* Agree how this will take place. A case manager will need to monitor and review progress directly – perhaps by phone daily initially, then weekly, then gradually reducing, as the return to work plan progresses satisfactorily. The line manager / HR / work buddy will also have monitoring roles to play, and the case manager should ensure that all parties are also available to communicate with each other.
- *Review meetings:* A date should be fixed to review how the strategy is progressing and make further adjustments if necessary. These meetings need to be set at perhaps a four-week and eight-week interval according to need.
- *Disclosure:* Discuss who will be told what. Remember to emphasise that information about mental health is highly sensitive and confidential, so disclosure within the workplace should be kept to a minimum and consent from the client/employee should always be sought.
- *Set date for return:* Ensure that the line manager and key supporting colleagues are not on leave and are available on this date.
- *Identify initial work tasks:* Ensure there is no ambiguity and that the work to be undertaken is meaningful to the client and gives them sense of competency, clarity and control over how and when tasks are delivered.
- *Work environment:* Make sure the client's work station/desk is tidy and that others have not used it as a 'dumping ground'. This can be hugely symbolic to clients and can have an enormous impact on how valued and welcomed back they feel. With the client's permission, encourage the employer to clear any backlog of irrelevant e-mails so that they don't feel overwhelmed when they first open their inbox.
- *Training needs:* Identify training needs and briefing updates. If the client has been away for some months, they may benefit from a proper induction programme. If new staff have joined, ensure they are introduced.
- *Support:* Agree a system of ongoing in-work support (see below).
- *'Can attend for a cup of tea':* A way of saying that the client can call in socially to the workplace and informally meet up with colleagues, prior to the actual start date.

Facilitating naturally occurring support

Just as a wheelchair user may need a ramp to make the workplace accessible, so a person returning after experiencing depression or other mental health conditions may need appropriate psychological support. The process of recovery should be gradual, empowering and supportive, to build a client's confidence about returning to work. Attitudes of colleagues and managers will be crucial. It is important for social contact with work colleagues to resume prior to returning to work. A case

manager will have already established in their initial assessment with the client who their friends are at work. If they met up socially prior to the client's period of absence, then a case manager can encourage resumption of this contact. From this social contact the client will pick up all the news from the workplace – who has got promotion, who has had a baby, and so on. This will give important conversational leads for the client's first days back at work and help normalise their return.

In-work support – buddies

During the assessment process explore whether a work colleague, who the client has a good relationship with, could act as a buddy during the return to work phase. If so, it is a good idea to encourage the client to meet up socially with this person prior to their return. After meeting up, the workmate, with permission and due regard to confidentiality, can help deal with any attitudinal problems in the workplace and informally brief colleagues on the best ways they can support the client once they are back at work.

The client and the designated workmate might meet regularly, but informally, to discuss how things are going. The case manager can provide support, with the client's permission. If there is an issue concerning deterioration in the health of the client, particularly with fluctuating conditions such as bipolar disorder, then it is important that the workmate has a named person to contact such as the client's Community Psychiatric Nurse, Care Coordinator or family member.

The case manager and the client might want to make the workmate aware of the first signs of worsening mental health, so they can intervene early before they spiral out of control and into crisis. Advance statements: clear plans and wishes set out when a person is well are useful, and may include what the individual wants to happen regarding work if they become ill and also who to inform.

Healthy Work Plans

Retention workers commonly provide support to people who are not on sickness absence but who may be struggling at work and perceive their job to be at risk because of their mental health needs. The Healthy Work Plan is a simple communication tool which can be helpful in this respect. The aim of the plan is to open up a channel of communication between the employer and employee and to enable the employee to think in a structured way about how work might be affecting their mental health, what adjustments would benefit them and, importantly, how they would like their employer to respond to their mental health needs. A recommended plan was written by Laura Marmion, from East London NHS Foundation Trust, and Louise Innes, a former Employment Manager at City and Hackney Mind. It has successfully been piloted by City and Hackney Mind and is now routinely

used in both their employment support and job retention services. It has also been adapted to support students and volunteers with both physical and mental health issues. A copy of this plan can be found in Appendix 2.

SECTION 4:

Supporting the individual

– a holistic approach

In the previous section we looked at the process of using the information gathered at the assessment stage to design an initial back-to-work plan, which is agreed between the client and their employer. The wider back-to-work plan needs to go further than this, however, and include action that will help the client to cope with non work-related issues that may also be having an impact on their job performance and ability to cope at work.

Maintaining mental health

Surveys estimate that 17% of the working population regard their job as ‘extremely or very stressful’⁷ and stress is undoubtedly the source of many workplace disputes. However, people become unwell for a number of different reasons. Events in individuals’ personal lives can also impact and often work and home triggers for mental ill health can not be separated. For example, a Chartered Institute for Personnel and Development survey of employees found that for more than half of respondents (56%) the cause of mental distress was a combination of work and home pressures.⁸ Advice is freely available in the public domain about what we must do to take care of ourselves physically. However, what we all need to do to maintain good mental health and to better manage stress is far less well understood.

Mental health conditions are still a relatively taboo subject with the impact of stigma and discrimination being significant. It can be frightening for someone to have a first episode of stress, depression or anxiety, and they may worry whether they will ever recover. The case manager can make a big difference, giving hope and reassurance that most people make a full recovery, and that there is no reason why they should not do so too.

Promoting stability

It is not uncommon for clients to want to resign, as a reaction to a difficult situation. They frequently come into job retention services in crisis, and it is the case manager's role to help prevent them from taking any drastic action that they may later regret, encouraging them to consider a more measured response, having carefully thought about the full range of options. The case manager can help by engaging with the client, validating their experience, listening to and supporting them, and allowing them time and a safe space to speak about their difficulties. Advising the client about what to do, often recommending that they sit back and do nothing precipitous initially, other than concentrate on getting better, can be helpful too.

The case manager may need to develop an advocacy role. Having gained a clear picture of the client's situation, level of functioning and the presenting workplace issues, the case manager can engage with the employer on the client's behalf. This creates the much-needed opportunity for the client to now be relieved of the pressure, and begin to focus on getting well again. As they regain health and stability, the case manager can gradually return increasing levels of control and responsibility to the client.

'Light touch' approaches to good mental health

Much of the advice given to help maintain good mental health is common sense. As part of the individual assessment it is helpful to enquire about basic lifestyle choices and, if appropriate, make simple recommendations, for example on diet and exercise, sleep patterns and basic stress management techniques.

The Case Management approach should be holistic, taking into account the whole person and all of the factors that may be having a negative influence on the individual – not just the work-related ones. With this in mind, the case manager may need to refer them to a range of additional services, such as RELATE counselling, debt counselling or housing advice services.

This may be a good opportunity for the client to renegotiate boundaries in toxic relationships, to learn some assertiveness skills and to say "no" without guilt, to regain some work-life balance, to regain some quality time to reconnect with family and friends, hobbies and self. The case manager should offer support to help them realise these goals, as well as return to work.

Resilience and self-esteem

Resilience is our ability to positively manage difficulty and adversity. Studies indicate that we can improve our resilience by:

- Setting ourselves realistic goals
- Maintaining good relationships

- Accepting the things in life that can't be changed
- Looking for opportunities for self-discovery
- Taking care of our mind and body
- Paying attention to our needs and feelings
- Indulging in relaxing activities

Self-esteem is deeply entwined with resilience, and is derived primarily from the feelings and beliefs we have about ourselves in two key areas: that we are lovable or likeable, and that we are capable. It is likely that the client will have been damaged in one or both of these areas – nothing erodes self-esteem like being bullied or the belief that one has failed. If chronic work demands have resulted in a stress injury, it is important to encourage your client to understand that it is the situation that has failed them, not they themselves who are the failures. Reassure them that we all have our breaking points.

Working alongside therapy services

It is increasingly common to find integrated health and employment support in modern psychological therapy services – IAPT teams and Fit for Work services are two examples of this. These services seek to provide early intervention with common health problems and help with supporting an individual back to work. It is vital that clinical and employment teams work together. If a client has eight weeks of Cognitive Behavioural Therapy, and is only then referred to the employment support worker for help with getting back to work, the chances are that they will no longer have a job to return to. It is vital that employment and clinical teams work together to refer the client for employment support immediately. By working closely with the therapy team (with the client's permission), the case manager can also help to ensure that the coping strategies learnt in therapy have a practical application in the workplace.

Work-based issues can also be the sole cause of an individual's anxiety and depression. Therefore work retention does not always involve a formal psychological intervention.

Cognitive Behavioural Therapy in job retention

Cognitive Behavioural Therapy (CBT) is one of the current treatments of choice for common mental health conditions. Maximum benefit will be achieved if the therapeutic work is well integrated with the return to work issues (some presenting barriers may actually be caused or compounded by unhelpful thought processes).

A Dutch study, carried out in 2006 with a relatively small sample of self-employed people with work-related stress, anxiety and depression, found that CBT when delivered in combination with other individual and workplace interventions, had better results than when delivered as a stand-alone therapy.⁹

This is just one study, but it underlines the increasing view that delivering psychological interventions without some form of employment support will not deliver positive results for those people with common mental health needs.¹⁰

CASE STUDY

Joan was a caseworker within the Crown Prosecution Service. She had severe anxiety and a number of other health issues. Several months into her phased return, her supervisor felt it would be helpful to have an Individual Performance Review (IPR). On being given the results of this, Joan rang her job retention case manager in tears, explaining that she had been completely devastated by it. Her case manager asked her to bring the written IPR in for discussion at their next meeting. It transpired that 10 of the 12 points were very positive and her supervisor had noticed all the progress she had made in resuming her role. However, 2 points focused upon the need for Joan to be more methodical in putting her case notes away at the end of the day, and improving her time management for getting to court on time. The case manager was aware that Joan had been having CBT, and felt that this was a perfect example of catastrophising, that is, discounting the positive and magnifying the negative. She was able to feed back to her CBT therapist that this could be something to explore in more depth so that she was more able to see the balanced picture in future.

Solution-focused approaches in job retention

Solution-focused approaches fit very well with job retention. Like the fit note, they concentrate more on what an individual can do, and what is working, rather than on what the individual can't do. They are goal-orientated, and therefore go well with a coaching style of support, focusing on the future, rather than the past.

Distinction between problem focus and solution focus	
PROBLEM FOCUS	SOLUTION FOCUS
The past What's wrong? Blame Expert Deficits Complications Definitions	The future What's working? Progress Collaboration Resources Simplicity Actions

Solution-focused working is characterised by several key approaches:

- Instead of emphasising the cause of the problem or who is to blame, the focus is more on what the person is doing to move on from the problem, and what they are already doing that has helped.
- Instead of the advisor being in the expert role and trying to define the person's problem in order to understand it better, the person and the advisor work in collaboration to identify steps forward.
- Instead of focusing on a person's deficits, the advisor should highlight their personal resources: their skills, strengths and ways of coping.
- Instead of getting confused by complicated diagnoses, medical jargon and theoretical models, solution-focused approaches look for simplicity, seeking to identify where the person wants to be, how will they know when they get there, what the person is doing already and what they would be doing if they were a step closer.

Solution-focused approaches can also be used in discussions with employers, to shift the focus to how they can get the best out of their staff, rather than what problems staff are causing due to their health needs.

It is important to encourage your client to resume their life outside of work and to re-engage socially. This may mean telling the employer that you have set a programme for recovery with your client, some of which involves practical, physical, community-based activity, resuming hobbies and interests, getting exercise, and so on. Other work colleagues should not be surprised if they see them swimming down at the leisure centre, when they are supposed to be off sick. You should encourage your client to take an active role in their recovery, rather than hiding away. It should be time off to get well, not time off to be ill.

CASE STUDY

Brian worked in a high street bank in a small market town. After he went off sick with depression he became reclusive – afraid to bump into colleagues or customers in the street. After encouragement from his case manager Brian was able to pluck up courage to venture out; firstly, by making simple shopping trips, and then by contacting a friend, who helped him resume regular golfing matches at the local course. He began getting regular exercise, and reconnected socially with others. His work colleagues were briefed so they didn't think he was skiving, and understood this was part of his treatment. Having rediscovered his confidence with people Brian later successfully returned to work.

SECTION 5:

Supporting organisations

– mental health promotion in the workplace

The workplace assessment will help to identify where the individual needs support to help them to recover and also identify areas of improvement for the employer. Whilst it should be no different, the management of mental health conditions in the workplace raises different issues to those that arise when dealing with generally better understood physical health conditions (with the notable exception of other stigmatised conditions such as HIV). An individual disclosing a mental health condition runs the very real risk of experiencing stigma and discrimination, and can be met with responses ranging from misunderstanding and misinformation about what is helpful, to fear and explicit hostility. Supporting a client in job retention gives the case manager an opportunity to engage with their employer to offer some positive mental health promotion. This will be of benefit not just to the individual, but also to the employer and other employees.

Engaging with employers

Employers often underestimate the occurrence of mental health conditions among their staff. In the paper *Mental Health at Work: Developing the Business Case*, the Centre for Mental Health reported that nearly half of employers think that none of their staff will ever have a mental health condition.¹¹ Yet it has been estimated that nearly three in ten employees will have an issue arising from mental health in any one year.¹² It is worth pointing out to the employer that, even if they are not aware of who they are, a number of their current employees will be experiencing mental

distress. Additionally, people at all levels within their organisation are equally likely to have, or develop, a mental health condition and that 'presenteeism' (defined as the loss in productivity that occurs when employees come to work but function at less than full capacity because of ill health) actually costs businesses more in financial terms than sickness absence. Part of the reason for this is that presenteeism is more likely to occur in higher paid staff. The Centre for Mental Health calculates that absence costs UK employers £8.4 billion per year, while lost productivity through presenteeism costs £15.1 billion.¹¹

Use tact and diplomacy when working with employers, who, quite naturally, may be feeling defensive about the need for a case manager's involvement. The more a case manager is able to persuade an employer to take action to effectively address workplace stress and to effectively manage mental health in their business, the better it will be for not just the client, but for the whole team/organisation. This client is then less likely to be further stigmatised by being offered 'special treatment' that removes stress from their own workload, whilst increasing that of their demoralised work colleagues.

Promoting the business benefits

The employer's main concern is likely to be around business performance, so stress the fact that taking steps to minimise the negative effects of work on their employees can have huge benefits for their business. These include increased productivity, reduced sickness levels and savings from lower staff turnover, through reduced need to recruit and train replacement staff. Given the right support, many employees who have or develop mental health conditions will be able to retain their jobs and continue to function at a high level. The savings here are particularly salient when you consider the cost of training someone to replace a highly skilled and knowledgeable individual. Most support measures cost little or nothing to implement; investment in existing staff can have potentially large returns.

It is estimated that employers in Britain lose approximately £26 billion per year for the reasons listed above, which equates to £1,035 for every employee.¹¹ By taking steps to support employees who have mental health conditions and by safeguarding the mental health of all employees, they are also likely to see improved staff morale, fewer complaints from employees, fewer legal cases on the basis of discrimination and fewer grievances being lodged by their staff. Moreover, employers can save up to 30% of the costs of mental ill health to their workplace, by promoting mental well-being for all staff and supporting employees who become unwell.¹¹

Taking care of business

Mind is working with employers to help them improve mental well-being at work and reduce the costs of mental ill health to their business. Mind recommends a

three-stage approach to developing a comprehensive mental well-being strategy, which involves simple, practical steps to promote well-being, tackle the workplace causes of mental ill health and support staff who disclose mental distress. Mind's free guide for employers, *Taking care of business*, is available at www.mind.org.uk/work. A guide for small and medium-sized employers (SMEs), produced by Mind and the Federation of Small Businesses, may also be useful for local businesses.

Workplace stress

The Health and Safety Executive defines stress as “an adverse reaction to excessive pressures or other demands”. The International Labour Organisation defines it as “the harmful physical and emotional response that occurs when the requirements of the job do not match the capabilities, resources or needs of the worker”. Stress is closely linked with both worsening mental and physical health. The Health and Safety at Work Act (1974) is the foundation stone of the contract between employer and employee, stating that employers have a duty to take reasonable care of the health and safety of their employees. This duty of care extends beyond managing physical risk and includes protecting staff from foreseeable psychological injury too.

Health and Safety Executive (HSE) – Management Standards

HSE have designed a Management Standards approach to help employers to manage workplace stress. These standards are based on six areas of work that can lead to stress if not properly managed. These are:

- 1. Demands:** Includes issues like workload, work patterns, and the work environment.
- 2. Control:** How much say the person has in the way they do their work.
- 3. Support:** Includes the encouragement, sponsorship and resources provided by the organisation, line management and colleagues.
- 4. Relationships:** Includes promoting positive working to avoid conflict and dealing with unacceptable behaviour.
- 5. Role:** Whether people understand their role within the organisation and whether the organisation ensures that the person does not have conflicting roles.
- 6. Change:** How organisational change (large or small) is managed and communicated in the organisation.

(Reproduced from the HSE paper - How to tackle work-related stress: A guide for employers on making the Management Standards work)

The Management Standards approach is based on the familiar 'Five steps to risk assessment' model, requiring management and staff to work together. Broadly speaking these 5 steps are: identifying risks; gathering data; exploring problems and developing solutions; developing and implementing action plans; and monitoring and reviewing. The Management Standards and advice on their implementation can be found on the HSE website (www.hse.gov.uk). The HSE also produces other resources which are relevant to work including a stress policy, and a Line Manager Competency Indicator Tool, which is aimed at helping managers to assess whether they currently have the behaviours identified as effective for preventing and reducing stress at work. This tool is particularly relevant because line managers play a vital role in the management of stress in the workplace and its aim is to help managers reflect on their behaviour and management style.

Familiarise yourself with available resources

Being able to signpost an employer to, or to directly offer them, information and practical strategies and tools on managing stress and mental health is a key responsibility of a case manager. There is a list of website and resources at the end of this guide but as a starting point, in addition to the HSE website above, a case manager should look at signposting them to organisations such as national Mind who provide free online guides aimed at helping people to gain a basic understanding of different mental health conditions, as well as the employer guides mentioned above. Mind also offers training and a bespoke consultancy service, Mind Workplace. Other widely used resources include the *Line Managers' Resource: A practical guide to managing and supporting people with mental health conditions in the workplace* (Shift, 2009) and Mental Health First Aid (MHFA) training. MHFA training is an evidence-based initiative that is usually taught over two days, and aims to give everyone the knowledge and confidence to recognise the signs of poor mental health and encourages people to seek help. It covers the causes, symptoms and treatments of common mental health conditions and aims to give everyone the knowledge and confidence to recognise signs of mental health conditions, encourage someone to seek the right help, and to reduce the stigma around mental illness. For details of training in your area go to www.mhfaengland.org

Skills for Line Manager Training is an evidence based training package that enables Line Managers to better manage mental health at work. This practical one day course develops a broad range of skills around managing sickness absence and return to work, handling difficult conversations, and early recognition. For further information contact simonfrancis2009@hotmail.co.uk

It is also important for a case manager to familiarise themselves with any local services that provide mental health promotion, training or resources for employers,

such as local Mind associations around England and Wales. A good example of one such service is 'Mind Your Own Business' which is based in Yorkshire.

A GOOD PRACTICE MODEL

Mind Your Own Business is a 5-year project that is part of the Altogether Better portfolio of projects in Yorkshire and Humber funded by the Big Lottery Fund. NHS Rotherham delivers the project, with support from other partners.

The aim of the Mind Your Own Business project is to improve the mental well-being of those who live and/or work within Rotherham through targeted work with employers. Targeted employers will have an increased knowledge of mental health and its relevance to the workplace, will promote the mental well-being of their employees, will be better equipped to support staff who may be experiencing mental health conditions and will have a positive approach to employing people with mental health conditions.

Mind Your Own Business engages with local employers through the completion of a Mental Well-being in the Workplace Needs Assessment. This identifies both existing good practice and areas for improvement. Recommendations are made and additional support is offered based on this assessment.

The support provided includes training to increase the knowledge and confidence of managers in dealing with mental ill health in the workplace such as *Managing Mental Health: Skills for Line Managers*. See the list at the end of this guide for further information on these. Other examples of support that is provided to employers include information about local services, advice on mentally healthy policies or tools that can be used in the workplace, and resources that can be made available to employees to help them to improve their own mental well-being.

For further information contact
mindyourownbusiness@rotherham.nhs.uk

SECTION 6:

Bullying at work

Job retention case managers will frequently be called upon to support clients who are off sick as a direct result of perceived or actual bullying in the workplace. Try to approach things from a neutral standpoint and begin by clarifying what is actually happening in the situation. If the issue has arisen from misunderstandings and miscommunication then it is important to use conflict resolution and mediation skills to try and resolve the situation, or to explore the possibility of external mediation with the client.

One of the difficulties in approaching the problem of workplace bullying is that it may be hard to recognise, and its effects may often be attributed to something else.

What is workplace bullying?

- Unwarranted, humiliating, offensive behaviour towards an individual or groups of employees.
- Such persistently negative malicious attacks on personal or professional performance are typically unpredictable, unfair, irrational and often unseen.
- An abuse of power or position that can cause such anxiety that people gradually lose all belief in themselves, suffering physical ill-health and mental distress as a direct result.
- Workplace bullying can be regarded as the use of position and power to coerce others by fear, persecution or to oppress them by force or threat.

(Definitions from the Andrea Adams Trust)

Examples of bullying may include regularly and deliberately ignoring or excluding individuals from work activities; competent staff being constantly criticised, having responsibilities removed or being given trivial tasks to do; shouting at staff; and persistently belittling or harassing people in front of others or in private.

Bullying at work is not necessarily face-to-face. It may also occur in written communications, e-mail, phone, text and supervision methods such as recording

of downtime from work or the number of calls handled, if these are not applied to all workers.

Bullying and harassment make someone feel anxious and humiliated. Feelings of anger and frustration at being unable to cope may be triggered. Some people may try to retaliate in some way. Others may become frightened and demotivated.

Stress, loss of self-confidence and self-esteem caused by bullying at work can lead to job insecurity, illness, absence from work, and even resignation. In almost every case, job performance is affected and relationships in the workplace suffer.

“The bullying had got to the point where I felt too consumed and demoralised to go on fighting back. Going to work in that environment meant getting ill, I’d have panic attacks, be physically sick and I’d start to shake and stammer.”

What can the job retention case manager do for their client?

The client may not be aware how common the problem of workplace bullying is, nor that it is one of the leading causes of stress/ill health at work. This can often be a turning point for the client, as they begin to understand that there is nothing wrong with them and the behaviours exhibited towards them are not their fault.

Signpost the client to useful resources on workplace bullying such as the Andrea Adams Trust or the Bully Online website created by Tim Field.

Help the client to solicit the support of family and friends. Asking for support is not a sign of weakness; they may not be able to solve the problem, but they can provide a listening ear and help to maintain self-esteem.

Advise them to consult their doctor and assist them to access appropriate psychological therapy.

Suggest they keep a diary of everything that has happened and is happening to them at work. Asking the client to write down how they felt after each incident can often be cathartic for the client. It also ensures that a record is kept which may be useful in supporting the client to take formal proceedings.

What can the case manager do for the employer?

The employer may not even be aware of bullying in their organisation, let alone understand how to effectively deal with it. If the company has a HR department then it is likely that they will have a subscription to the Chartered Institute of Personnel and Development (CIPD) network (www.cipd.co.uk) and will have access to their resources including *Bullying at work: beyond policies to a culture of respect*. If the company does not have membership then it is worth suggesting this to them, as it is relatively inexpensive and offers a wide range of other useful HR resources as well.

Bully Online offer free advice and guidance on developing a policy to deal with bullying at work and creating an anti-bullying ethos (www.bullyonline.org/action/policy.htm).

ACAS (Advisory, Conciliation and Arbitration Service) has also produced a useful guide to help employers and line managers to tackle bullying in the workplace: *Bullying and harassment at work: a guide for managers and employers*. This advice leaflet is available free of charge from the ACAS website: www.acas.org.uk

Do's and don'ts

- When a case manager first makes contact with the employer, it is advisable not to speak to the line manager if they are involved in the bullying.
- Make contact with human resources or the union representative and try to find out if there are other cases of bullying or harassment.
- If witnesses are afraid to come forward, ask the trade union to conduct a confidential survey of other trade union members working in the same department.
- If the client wants a case manager to accompany them to an informal meeting or hearing but the employer will not allow it (only workplace colleague or union rep), then ask the client's GP to nominate you, citing 'reasonable adjustments' on psychological grounds.
- A case manager should always be mindful not to let their own personal feelings of injustice cloud their judgement.

A QUOTE TO BEAR IN MIND

"If the bullying becomes unbearable and your employer is doing nothing to combat the problem, then the most pragmatic thing is to change jobs. It is a POSITIVE decision not to have your career and life ruined and your health destroyed"

Tim Field, Founder of Bullyonline

CASE STUDY

Ravi, the deputy store manager had no history of stress or mental health issues. Within a few months of starting work at the new store, he began panicking at the thought of going into work each day. In the previous weeks, Ravi had started to feel as though his store manager was bullying him. He reported being overloaded with work, constantly criticised and undermined in front of junior colleagues. He was reluctant to follow the formal route due to the additional stress he felt this would invoke. At the point of referral Ravi had been signed off sick for two weeks for a stress-related illness.

The job retention advisor made contact with the store's Head Office and arranged a meeting with Ravi and a senior human resources manager. The issues were discussed in detail and together they brainstormed the most constructive way forward. It was decided a confidential survey would be carried out at the store to ascertain whether any other staff had been bullied. This was handled sensitively by the employer and the findings backed up Ravi's experience of working with the store manager. The manager was suspended, pending disciplinary action and Ravi was able to safely return to his store under a new manager. In the months that followed, the employer reported back that the sickness absence levels at the store had begun to decrease markedly and that the company would now be taking more positive action to deal with bullying in the company. Ravi was given his own store to manage the following year.

SECTION 7:

Mediation

What is mediation?

Mediation is a voluntary and confidential form of dispute resolution. An independent, impartial third party (the mediator) brings two sides together with the aim of reaching a mutually acceptable solution. The mediator, being neutral, gives no legal advice, but rather guides the individuals through the problem-solving process. Mediators do not make judgments or determine outcomes, they ask questions to help uncover underlying issues and problems, assist both parties to understand each other's positions and clarify options for resolving the dispute.

All discussions with the mediator or the other party are 'without prejudice', which means that nothing said can be referred to in any court action unless both sides agree to this.

Why use mediation?

Mediation is a process to help people to focus on the future instead of looking to the past. It is not about right or wrong or apportioning blame. Rather it focuses on collaborative problem-solving and on rebuilding relationships. It is optional so either side can withdraw at any stage in the process. It is empowering, and helps both parties to retain control over the outcome (unlike an Employment Tribunal where a judge ultimately determines the outcome). Mediation is most effective when used in the early stages of a dispute, before both sides become entrenched in their positions. If a dispute is settled early on there is less chance of the working relationship breaking down irrevocably. It is cheaper than putting a claim in to an Employment Tribunal and can be a lot less harrowing for someone who is already feeling under a lot of stress and who may be anxious and / or depressed. Mediation is also private and confidential - information shared is not disclosed to anyone, which also makes it a lot less stressful than the tribunal option where the general public are allowed to view the proceedings. It can potentially prevent problems from escalating into

legal cases. Moreover, Employment Tribunals do not resolve systemic problems at work that may underlie an individual dispute. Mediation is more likely to enable the employer to get beneath the problem and make changes to working practices that can benefit employees and the organisation long term. It can also be useful in terms of enabling the participants to learn vital skills that can help them to resolve future work-based problems.

When to use mediation

There are a number of different stages in the lifecycle of conflicts: the beginning (when incompatible goals become evident and parties either show overt signs or avoidance of conflict), early growth includes confrontation, polarisation of positions and seeking allies, and deadlock which is where communication ceases, parties apportion blame and a stalemate is reached. Resolution of conflict involves the acceptance that there is a problem and working collaboratively to seek a consensus agreement. It is important to note that conflicts do not tend to follow a set pattern and may escalate and de-escalate a number of times before a resolution is found. Although mediation is frequently more effective in the early stages it can still successfully be used at any stage in the conflict lifecycle, including after formal proceedings, such as grievances and disciplinaries, have taken place in order to help rebuild relationships.

The mediator will assess each situation on a case-by-case basis in order to make a judgement as to whether mediation is a suitable option. Mediation is often useful in cases where relationships have broken down and both sides actively wish to resolve the situation, as it helps each party to understand the other side's viewpoint and to re-evaluate their feelings towards each other. Cases of perceived bullying, harassment and discrimination can also be suitable for mediation although this requires careful consideration by the mediator as serious and clear cases of bullying, harassment and discrimination may need to be dealt with using more formal proceedings.

The role of the retention case manager

Sometimes the client has gone off sick as a result of a breakdown in work relationships. Many case managers undergo training as mediators, in order to better handle workplace conflict. These skills can be applied informally by acting as an intermediary between the parties with the consent of both sides. If that isn't possible – either case managers themselves or others don't believe they can be impartial – then the employer may have trained mediators within the organisation to call upon. Alternatively you can recommend external mediators such as ACAS (Advisory, Conciliation and Arbitration Service) and other local mediation organisations.

Having conducted a workplace assessment and established the possible need for mediation the case manager's role is to explore this option with their client and to

help them to understand what mediation is about. If the client decides that this is a viable option then they may wish the case manager to meet with their employer and propose this option to them. Again, it is important to note that in order for mediation to take place both parties need to be in agreement. The timing of mediation is crucial. Although not as traumatic as pursuing a tribunal claim, it remains a challenging process that will require some emotional resilience on the part of those involved. Sometimes it is possible to attend mediation sessions, with consent, providing emotional support and advocacy for the client.

Stages of mediation

The most commonly used model in the UK is the facilitative approach, in which the mediator actively guides the process. The model outlined below is taken directly from guidance entitled *Mediation: An employer's guide*, which has been jointly produced by the Chartered Institute of Personnel and Development (CIPD) and the Advisory, Conciliation and Arbitration Service (ACAS)

1 Separate meeting

- *First contact with the parties:* The mediator will meet parties separately. The aim of this first meeting is to allow each individual involved to tell their story and find out what they want out of the process.

2 Joint meeting

- *Hearing the issues:* The mediator generally brings the participants together and invites them to put their side of the story during a period of uninterrupted time. At this stage the mediator will begin to summarise the main areas of agreement and disagreement and draw up an agenda with the parties for the rest of the mediation.
- *Exploring the issues:* Having identified the issues to explore, the mediation is now about encouraging communication between the parties, promoting understanding and empathy and changing perceptions. The aim of this part of the meeting is to begin to shift the focus from the past to the future and to begin to look for constructive solutions.
- *Building and writing an agreement:* As the process develops the mediator will encourage and support joint problem-solving by the parties, ensure the solution and agreements are workable and record any agreement reached.

- *Closing the mediation:* Once an agreement has been reached, the mediator will bring the meeting to a close, provide a copy of the agreed statement to those involved and explain their responsibilities for its implementation. In some cases no agreement is reached and other procedures may later be used to resolve the conflict. However, nothing that has been said during the mediation can be used in future proceedings.

CASE STUDY

Janice had suffered from depression for a number of years. She worked as an NHS nurse. Due to workplace stress she had gone on reduced hours. Her colleagues resented this as it meant more work for them. Janice had a series of rows with colleagues resulting in her relapsing into depression. The job retention case manager identified that the Trusts' policy of not using agency nurses was the root of the problem. His workplace assessment was taken up by the Royal College of Nurses (RCN) and the policy was changed. The case manager conducted informal mediation with the parties. They recognised that external factors were to blame for their rows and united with the RCN. They successfully brought about the necessary changes. They were then reconciled and on the case manager's recommendation a work buddy was engaged for Janice, to provide support should there be future relationship issues.

SECTION 8:

Employment law

- the Equality Act 2010

Sometimes mediation and other forms of conflict resolution are either not possible because of the seriousness of the issues involved, have not been successful or the client or their employer does not want to pursue this option. In some cases the client may be considering taking legal action. It is important that case managers familiarise themselves with relevant employment legislation. The following sections are intended as a guide, suggested further reading can be found in the resources section.

The Equality Act 2010

The Equality Act 2010 updates, simplifies and strengthens previous legislation on discrimination and consolidates it into a single Act. It replaces the Disability Discrimination Act 1995 for any discrimination from 1 October 2010 onwards. The Act identifies the different strands of equality legislation as 'protected characteristics'. These are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

To qualify for protection under the Act, an individual must demonstrate that they are covered by a protected characteristic. In the majority of job retention cases the main protected characteristic a case manager will be working with is likely to be disability, although there may well be other relevant issues.

The Equality Act 2010 is designed to promote the rights of disabled people (and in some cases non-disabled people as well) and to protect them from discrimination in recruitment, arrangements for dismissal, terms of employment, promotion, transfer, training or receiving any other benefit offered to employees. All employers regardless of their size have to comply with the Equality Act, including providers of employment services, trade organisations and qualifying bodies. All employees and job applicants are covered by the Act including individuals on work placements and

vocational training, and contract workers. Anyone undertaking voluntary work is unlikely to come under the protection of the Act.

Who is a disabled person under the Equality Act 2010?

Some conditions such as HIV, cancer and multiple sclerosis, and in some cases sight impairments, automatically qualify people as being defined as disabled under the Act. People with severe disfigurements are also automatically covered by the Act so long as they meet the 'long-term' requirement. Some conditions are automatically excluded from protection under the Act.

Definition of a disabled person

A person has a disability for the purposes of the Act if they have a *physical or mental impairment*, which has a *long-term and substantial adverse effect on their ability to carry out normal day-to-day activities*.

Under the Act, a mental health condition can be counted as a *mental impairment* as long as it meets the defined criteria. Some people with a history of disability are also covered by the Act even if they have recovered (for example, a person who has had a mental health condition in the past).

It is also important to note that there is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause. The Act also encompasses specific learning difficulties, such as dyslexia. Recurring or fluctuating conditions that have had a substantial effect are covered even if the effect ceases, for example arthritis and recurrent depressive disorder, if the effect is likely to recur. Progressive conditions such as Systemic Lupus Erythematosus (SLE) are covered from the moment they lead to an impairment that has an effect on normal day-to-day activities, no matter how minor, if they are likely to have a substantial effect in the future.

Long-term means that the impairment has lasted, or is likely to last for, 12 months or for the rest of the individual's life.

A *substantial adverse effect* is something that is more than minor or trivial. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability, which might exist among the population. The effects of treatment, which eliminate or alleviate the effects of the impairment (but does not cure it) are discounted when making the assessment, for example it considers what the individual's depression would be like without anti-depressant medication or psychological therapy. This means that if someone is managing to carry out day-to-day activities with the help of medication or therapy then he or she may still have a disability – the court would look at what might happen without that medicine or treatment.

Normal day-to-day activities, for the purpose of the Act, are activities that are carried out frequently by most people. Activities that are only normal for certain individuals, for example playing the piano, are not included. Normal day-to-day activities might include walking, driving, cooking, lifting, writing, listening to conversations or music, reading and normal social interaction such as forming social relationships. This also includes activities that are relevant to working life.

Different types of discrimination covered by the Act:

1. Direct discrimination: This is when a person treats another less favourably than they treat others because of a protected characteristic. However, a non-disabled employee would not be able to argue that an employer had directly discriminated by treating a disabled employee more favourably than the employer treats a non-disabled employee, in order to achieve equality of opportunity.

Practical example - An individual with schizophrenia is offered a job, subject to satisfactory occupational health clearance. However, following receipt of a negative medical report from the employer's occupational health department, which was based on stereotypical assumptions about the effects of the condition, the job offer is withdrawn; this is likely to amount to direct discrimination.

2. Associative discrimination: This is a form of direct discrimination against someone because they *associate* with another person who possesses a protected characteristic.

Practical example – Alison works as a facilities manager and is looking forward to a promotion. However, after she tells her line manager that her mother, who lives at home, has had a stroke, the promotion is withdrawn because the line manager thinks that Alison will not have the time to concentrate on the new role due to her recent 'caring' responsibilities for her disabled mother.

3. Discrimination by perception: This is a form of direct discrimination against someone because others *think* that they possess a particular protected characteristic. It even applies if the person does not actually possess that characteristic.

Practical example – an employer dismisses a member of staff because they incorrectly think the employee has bipolar disorder. Even if the person does not have bipolar disorder (and so does not have a disability) this is likely to be direct discrimination by dismissing the employee.

- 4. Indirect discrimination:** This may occur when an employer applies an apparently neutral provision, criterion or practice (this includes conditions, pre-requisites, qualifications and formal and informal policies) which puts workers sharing a protected characteristic at a particular disadvantage.

Practical example – An employer introduces a policy that all employees must be able to start work at 9am. Although this may be applied to all employees equally it may disproportionately affect a person with a mental health condition whose medication may make them drowsy in the morning. Unless the employer can objectively justify the requirement to start at 9am this is likely to be indirect discrimination against the employee with the mental health condition because of disability.

- 5. Discrimination arising from disability:** This provision makes it unlawful for an employer to treat a disabled person unfavourably, not because of the person's disability itself, but for a reason arising in consequence of the person's disability. This only applies if an employer knows or could reasonably have been expected to know of the person's disability. The employer will not be treated as discriminating against that disabled employee if the employer is able to objectively justify it.

Practical example – An employer dismisses a worker because they have had three months' sick leave. The employer is aware that the worker has multiple sclerosis and most of the sick leave is disability-related. The employer's decision to dismiss is not because of the worker's disability itself. However, the worker has been treated unfavourably because of something arising in consequence of their disability (namely, the need to take a period of disability-related sick leave). The employer will be given an opportunity to try to justify its policy to dismiss a disabled employee.

6. Failure to make reasonable adjustments: The Equality Act 2010, like the Disability Discrimination Act 1995, imposes a duty on employers to make reasonable adjustments to premises or working practices to help disabled job applicants and employees. Failure to comply with this duty is a form of discrimination.

The duty to make reasonable adjustments will arise in the following circumstances, in each case the employer must take such steps to avoid disadvantage to the employee where:

- A provision, criterion or practice (including any formal or informal policies, rules, practices, arrangements or qualifications) puts a disabled person at a substantial disadvantage in comparison with those who are not disabled.
- A physical feature puts a disabled person at a substantial disadvantage in comparison with those who are not disabled.
- A disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with the non-disabled. An auxiliary aid is something that provides support or assistance to a disabled person, and this can include the provision of a specialist piece of equipment such as an adapted keyboard, or an auxiliary service, such as the provision of a support worker.

The duty to make reasonable adjustments only arises where the employer knows or ought reasonably to know of the disabled person's disability and the substantial disadvantage at which the person is placed.

A disabled person can request that reasonable adjustments be made, and it is advisable to help identify these with your client so they can advise their employer accordingly.

The duty to make reasonable adjustments applies to employers of all sizes, but the question of what is reasonable may vary according to the circumstances of the employer. The main criterion used to assess this includes whether the adjustment in question is effective in terms of preventing the substantial disadvantage; the costs involved in relation to the employer's resources; the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); its practicality; the amount of disruption it will cause to the employer's business; and the type and size of the employer.

Many reasonable adjustments do not involve a cost and are easy to implement, this is especially true for people with mental health conditions. For example,

measures such as allowing someone to take a break if they feel very stressed, using email if they find telephone conversations difficult, working flexible hours or making sure instructions are written down. Other examples of reasonable adjustments include making physical adjustments to premises, that is, providing ramps, widening doors and so on.

Practical example – If an employer is offering a job on a temporary basis and an adjustment will cost a lot of money or will take a long time to put into place, it may not be 'reasonable' for an employer to provide it. If, however, the person has worked for the employer for a long time and the employer is a large organisation, then the adjustment is more likely to be 'reasonable'.

- 7. Harassment:** This is unwanted conduct related to a protected characteristic such as a disability, which violates an individual's dignity by creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. In deciding the impact, the perception of the employee is considered. Other circumstances that may be relevant can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.

Practical example – an employee informs their manager that they need time off for a hospital appointment because of their disability. On their return, their manager publicly accuses them of missing work for no reason and therefore placing the rest of the team under pressure. This confrontation takes place in front of their office colleagues and they ignore the employee after this point.

It is unlawful under the Act for an employer to harass people because of an association with a disabled person or because they wrongly believe you to be disabled. It is possible for an individual to claim harassment for behaviour that they find offensive even if they were not the intended recipient of the conduct.

Practical example - Jim is frequently teased and humiliated about his disability by his line manager, Steve. Lee shares an office with Jim. Lee could claim harassment, even though he is not disabled, because Steve's behaviour has also created an offensive environment for Lee to work in.

An employer may also be liable for harassment of their employees or job applicants by third parties, such as suppliers or customers. The duty on employers

to prevent third party harassment arises where the employee or job applicant has been harassed by a third party on at least two previous occasions, and the employer is aware of the harassment but fails to take 'reasonably practical steps' to prevent harassment happening again. The third party does not need to have been the same on all three occasions.

- 8. Victimization:** An employer must not victimise an employee (or ex-employee) because they have complained about discrimination or helped someone else to complain or have done anything to uphold their own or someone else's equality right.

An individual can claim victimisation under the Act even when they do not have a protected characteristic.

Practical example – A line manager embarks on a campaign of bullying and harassment against an employee because he had complained that he had been discriminated against for failure to promote on the grounds of disability-related sickness absence. If this complaint was the reason for the bullying and harassment, this is likely to be victimisation.

Employers' knowledge

Except in limited circumstances, the Equality Act 2010 prohibits employers asking job applicants questions about their health and whether they have a disability prior to them being offered the job. Employers will still be entitled to question applicants about health after making a job offer, for example through a health questionnaire. This can be appropriate in order to discover whether any reasonable adjustments should be made for a disabled applicant, or to manage health and safety issues.

Once offered the job, a person is under no obligation to disclose details about their health or their disability unless asked directly. If they are required to complete a health questionnaire, whether they have to disclose the details of their disability will depend on the wording of the question. Whether or not someone considers themselves to be disabled is a subjective question and if the person believes they are not disabled they can answer 'no'. However, sometimes questions are specifically worded; "Do you have a mental health condition?" or "Are you receiving support for any condition from your GP?" In this case, the person should answer honestly and must declare their mental health condition as otherwise it raises questions about trust and is a potential breach of contract, and the person risks disciplinary action. If an individual is diagnosed with a disability whilst in a job, check the contract of employment to see if there is any obligation to inform the employer.

Can the employee still claim discrimination if the employer does not know about an employee's disability?

Even if the employer is not specifically told of an employee's disability, the employee may still bring a successful claim for discrimination. An employer will be deemed to have constructive notice of a disability where there is sufficient evidence – this could be recent fit notes citing depression, emotional distress in the workplace or altered behaviour at work. This is an extra hurdle for an employee who wishes to bring a claim, but sometimes it cannot be avoided, particularly if the employee did not recognise how unwell he or she was.

Equality Act 2010: Employment Statutory Code of Practice

This information is only to be used as a guide. For an authoritative, comprehensive and technical guide to the detail of law in relation to the Equality Act 2010 and employment a case manager should read the *Employment Statutory Code of Practice* which is available on the Equality and Human Rights Commission website: **www.equalityhumanrights.com**.

A copy of the Act itself is obtainable from: **www.legislation.gov.uk**. At the time of writing, there are some parts of the Act, for example positive action in recruitment and promotion, which have not yet been implemented.

SECTION 9:

Employment law

- taking legal action and other relevant legislation

On what grounds can a person take their employer to an Employment Tribunal?

There is a wide range of grounds on which an Employment Tribunal claim can be based, for example unfair dismissal (including constructive dismissal), failure to provide equal pay for equal value work, failure to pay remuneration whilst an employee is suspended for medical reasons and failure to allow time off to seek work during a redundancy situation. For a full list of jurisdictions go to www.employmenttribunals.gov.uk/FormsGuidance/jurisdictionList.htm.

Bringing a claim in the Employment Tribunal

It is advisable to raise a grievance clearly detailing the complaint. This will allow the employer the opportunity to resolve the issues without the need for legal redress. However, it is no longer a legal requirement to raise a grievance before lodging a tribunal claim. An individual must usually submit their claim to the Employment Tribunal within three months of the date their employment ended (in cases of unfair dismissal, for example) or the specific incidence, for example discrimination.

Practical example – an employer unlawfully discriminates against a worker.

The discrimination took place on 3rd March 2011. The worker must lodge their claim with the employment tribunal by 2nd June 2011 at the latest.

If a claim is brought after the relevant date has passed, the Employment Tribunal has discretion to determine whether it is 'just and equitable' to extend time, although this discretion is rarely exercised.

Compromise agreements

A compromise agreement is a legally binding agreement between the employee and the employer that sets out terms of an agreed settlement. These are often agreed following confidential discussions between the employer and the employee, or their respective representatives in difficult to resolve or complex cases. They might contain a confidentiality clause. The employee usually accepts a sum of money in return for agreeing to withdraw any current legal claims and/or agreeing not to bring any legal claims against the employer in the future. It is possible to negotiate an agreed reference as part of the compromise agreement, which may enable the client to move on. It is usual for the employer to contribute towards the employee's legal costs, as the employee must seek independent legal advice on the terms of the agreement.

The role of the retention worker

You do not have to be legally qualified to help your client in certain elements of their case, for example:

- helping to assess whether a client is likely to be covered under the Equality Act 2010
- identifying rights under UK employment legislation
- assisting with formal data access requests (such as the client requesting access to their personnel file at work)
- recommending and explaining reasonable adjustments
- providing emotional support or representation at employer meetings.

If a client is considering lodging a tribunal claim it is helpful to run through the advantages and disadvantages of this course of action, and to explore whether they might consider solution-focused alternatives, such as mediation. It is important to be realistic with clients and explain to them that poor treatment may not necessarily give rise to a claim.

Taking a claim to a tribunal can be stressful, unpredictable and often protracted, and demands tenacity so it is important to ensure that the client is aware of what is involved. They should consider whether they feel emotionally strong enough to cope with the process. If a client is considering lodging an Employment Tribunal claim, it may be worth them going to see a tribunal in action. Most Employment Tribunals are open to members of the public.

This chapter provides only a basic guide to a complex, ever-changing area of law. A case manager should always try to seek specialist advice on behalf of their client, and do so promptly to avoid missing the strict time limits for lodging Employment Tribunal claims.

Bullying and harassment at work: the legal position

There is currently no legislation that gives general protection from bullying and harassment in the workplace. It is possible to bring a complaint of bullying and harassment to an Employment Tribunal if the treatment is related to an individual's protected characteristic under the Equality Act 2010. Employers have a duty of care to all their employees. If mutual trust and confidence between employer and employee is broken, through bullying and harassment at work, then an employee may resign and claim 'constructive dismissal' on the grounds of breach of contract. Employers are usually responsible in law for the acts of their workers. Also, if someone brings a claim to the Employment Tribunal it is possible to include a claim for personal injury.

If a client has experienced bullying and harassment at work, and is bringing a claim in the Employment Tribunal for any of the reasons outlined above, it may be possible to bring a claim for personal injury if the bullying and harassment has caused a psychiatric or stress injury. The normal time limits for Employment Tribunal claims apply.

It is also possible to bring a claim to the County Court. However it is difficult to win a stress at work/psychiatric injury claim as a result of bullying and harassment at work. This is because the courts have stated that for an employer to be responsible for causing an employee psychiatric injury, the employer must have, or ought to have, foreseen that their behaviour would not only cause the employee to feel dissatisfied, frustrated, embarrassed or upset, but would in fact cause the employee to suffer a psychiatric disorder. As a result, it is almost always necessary for the employee to have had a prior absence with a stress-related/psychiatric condition before a court will accept that it was foreseeable that the bullying or harassment would result in a psychiatric/stress injury. The time limit for bringing a stress at work claim is normally three years from the date on which the individual became ill. In a County Court claim the employee will have to pay the other side's costs if their claim is unsuccessful.

Protection from Harassment Act 1997

This Act does not define harassment, so various situations in which an employee experiences alarm or distress may be covered. The types of claim that can be brought under this Act are much wider than those under the anti-discrimination legislation. However, Protection from Harassment claims are difficult to prove. To currently qualify for protection under this legislation an individual will need to show that in the course of their employment they have been harassed. The series of harassing acts must be regarded as oppressive enough to also give rise to a criminal sanction, thereby making the threshold of treatment to be regarded as harassment very high. It is not necessary for an individual to prove that they have suffered either a physical

or a psychological injury as a result of the harassment. You only need to prove that you have been harassed on at least two occasions.

Other legal obligations of employers

The Data Protection Act 1988

The Data Protection Act can be used to obtain information and evidence on discrimination in the workplace in order to identify potential cases or areas for action, and to help prove individual discrimination cases. Under the Act, workers have the right to see their personnel files and other information. Workers can access their own personal data, if they make a written request and pay a fee up to £10. This is called a data access request. Employers must comply within 40 calendar days at the latest from when they have received the fee. Repeated requests for access can only be made at reasonable intervals. The employer must not tamper with the information before disclosure, except to conceal identity where required.

Health & Safety at Work Act 1974

Employers have a duty to assess the risk of stress-related ill health arising from work activities, implement risk reduction measures and carry out health and safety training.

The issue of foreseeability in stress injury cases is important. If an employer fails to make the necessary adjustments following work-related stress, they leave themselves liable for a stress injury claim in the civil courts should the member of staff in question become unwell again following their return to work. The Health and Safety Executive can carry out their own assessments; implement their own risk assessment measures and serve 'Improvement Notices' and set deadlines. Non-compliance could mean the employer's premises being closed down because they are regarded as being 'unsafe'.

Accessing legal help

Private solicitors

If a client goes to a private solicitor they will need to consider how their legal costs will be funded. They will most likely pay an hourly rate, enter into a contingency agreement, have legal expenses insurance or the cost of preparing the case might be covered by the Legal Help scheme.

In Employment Tribunal cases, it is possible for solicitors to offer contingency fee agreements. The solicitor is paid a percentage of the settlement sum, which can be anything from 20% - 33%. This is not the same as conditional fee agreements, which are commonly known as 'no win, no fee', where the representative charges a

base fee plus an uplift in the event of success. Solicitors are sometimes reluctant to take on long expensive cases unless they are worth a lot of money and are likely to win.

Ask the client to check their household insurance policy as sometimes these policies cover the legal cost of pursuing a 'work dispute' claim in the Employment Tribunal. The insurers may try and insist on choosing a solicitor from their own panel; however your client does have freedom to select their own legal representative.

If the client is on benefits or low income and does not have much savings, they may be eligible for Legal Help. A solicitor with a Legal Service Commission (LSC) contract will prepare their case for free. The Government will pay the solicitor through the LSC. The client will help the solicitor to fill in a form about their finances and will need to bring documentary proof of income and main outgoings to the first meeting, for example benefits book, rent book and pay-slips.

It can be difficult to find a solicitor to undertake employment discrimination cases on Legal Help. Legal Help does not cover the cost of representation at the Employment Tribunal hearing. To find a list of local solicitors who undertake Legal Help employment work, consult Community Legal Advice by searching on their website or telephone 0845 345 4345, suggestions may also be obtained from your local Citizens Advice Bureau.

Law Centres Federation (LCF)

Law Centres generally offer free advice and representation to full legal standards. If the client is eligible, the law centre may ask them to fill in a Legal Help form. This gives the law centre some income. Many law centres will give free assistance, even if the client is not eligible. Not all law centres cover employment law, though most do. For contact details of local law centres, telephone LCF on 020 7428 4400 or check its website at www.lawcentres.org.uk

Citizens Advice Bureau

If there is no law centre in the client's area, the case manager might approach the Citizens Advice Bureau (CAB). CAB advisors vary in their level of expertise and how much help they can offer in case preparation. Only a few will be willing to represent clients at the tribunal hearing, but they may be able to refer their case to the Free Representation Unit. Some have Legal Advice Commission contracts to provide Legal Help.

Free Representation Unit (FRU)

FRU is an organisation of volunteer law students, barristers and solicitors who offer free representation at the tribunal hearing.

FRU can only be approached via a member organisation, for example a CAB, law centre or other organisation such as Mind. FRU representation depends on the level of demand and availability of representatives and the client may not find out whether they have representation until just before the hearing. FRU reps cover Greater London and Nottingham. For more details go to: www.thefru.org.uk

Bar Pro Bono Unit

Like FRU, the Bar Pro Bono Unit offers free tribunal representation for some cases. It cannot be approached direct - the client's case must be referred by a solicitor or advice agency. Representation is by volunteer barristers, although there is no guarantee that the client's case will be taken up. For more information go to: www.barprobono.org.uk

Trade unions

If the client is a member of a trade union, their membership fee entitles them to free legal advice from the union's solicitors. Referral is usually made through the Union's Regional Organiser. Some unions will not take a legal case if the client has not already been a member for at least six months before the problem arises.

Equality and Human Rights Commission

The EHRC may be able to provide advice and assistance on a discrimination claim through their helpline.

Other representatives

The Employment Tribunal does not require advisors and representatives to have any legal qualifications. The important thing is their level of knowledge and experience.

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12. Shift. (2009) *A practical guide to managing and supporting people with mental health problems in the workplace.* National Mental Health Development Unit.

FURTHER READING AND USEFUL RESOURCES

Background reading

Black, C. (2008) *Working for a healthier tomorrow: Review of the health of Britain's working age population*. TSO (The Stationery Office).

HM Government: Health, Work and Well-being Programme (2008) *Improving health and work: changing Lives. The Government's Response to Dame Carol Black's Review of the health of Britain's working-age population*. TSO (The Stationery Office).

HM Government: Health, Work and Well-being Programme (2009) *Working our way to better mental health: a framework for action*. TSO (The Stationery Office).

Job retention

Butterworth, R. (2009) *The 'what ifs?' of mental health job retention. A useful guide to common dilemmas faced by retention workers and suggestions for how to overcome them*. Available from the Centre for Mental Health website: www.centreformentalhealth.org.uk.

Centre for Mental Health (2009b) *Delivering Job Retention Services: A knowledge and skill set for employment advisory services located in primary care settings*. London: Centre for Mental Health.

Training

A 2-Day course in Job Retention Case Management delivered by Roger Butterworth & Dave Costello (contact: rogerbutterworth@hotmail.com for more details).

Support for individuals

Beating the Blues – Computerised CBT programme for depression (GP referral).

www.beatingtheblues.co.uk

Fear Fighter – Computerised CBT programme for panic and phobia (GP referral).

www.fearfighter.com

Living Life to The Full – a free website on CBT approaches set up by Dr Chris Williams.

www.livinglifetothefull.com

Mental Health Foundation – useful resources including free downloadable well being pod casts on stress, relaxation, nutrition, sleep, and so on. www.mentalhealth.org.uk

Mind infoline: 0300 123 3393 (Monday to Friday, 9am to 5pm) – the Mind information line service is run by a dedicated team of specialists, responding to more than 30,000 enquiries a year. Topics include types of mental distress, where to get help, drug and alternative treatments and advocacy. Mind's website has a range of advice guides and information about your nearest local Mind association: www.mind.org.uk

Books

'Stop Thinking and Start Living: Discover Lifelong Happiness', by Richard Carlson (2003). Element. (Self-help strategies for individuals recovering from depression)

'*Do One Thing Different: Ten Simple Ways to Change Your Life*' by Bill O'Hanlon and William Hudson O'Hanlon (2000). Harper paperbacks. (Practical DIY book about using solution-focused approaches to improve your life)

Support for organisations – mental health in the workplace

Chartered Institute of Personnel Development: www.cipd.co.uk

Employers' Forum on Disability: www.efd.org.uk

Health and Safety Executive: www.hse.gov.uk/stress

The Hub – employer focussed website: www.workplacementalhealth.co.uk

Mind guides for employers: www.mind.org.uk/work

Mindful Employer: www.mindfulemployer.net

NICE Public Health Guidance 22: '*Promoting mental well being through productive and healthy working conditions; guidance for employers*' www.nice.org.uk/PH22

Centre for Mental Health (2007) *Mental Health at Work: Developing the business case*. London: Centre for Mental Health.

Shift: Working it Out DVD – short training films for employers on managing mental ill health at work, comes free together with the Shift Line Managers' Resource pack and training notes. www.shift.org.uk/employers

Training

Impact on Depression - a proven work-based mental health training programme to help organisations reduce the impact of depression and anxiety at work. For more information call 0207 827 8301 or see www.impactondepression.co.uk

Mental Health in the Workplace: Skills for Line Managers – a 1 day training course set up and managed by YHIP and Charlie Waller Memorial Trust. www.yhip.org.uk

Mind Workplace and training – consultancy and training for employers on mental health, enhancing productivity by improving business practices. www.mind.org.uk/workplace

Workplace bullying

ACAS (Advisory, Conciliation and Arbitration Service) provide guides and advice for employers and employees on harassment and bullying in the workplace www.acas.org.uk

Bully Online: www.bullyonline.org

Trades Union Congress (TUC): www.tuc.org.uk

Workplace Bullying: www.workplacebullying.co.uk

Books

The Bully in Sight: How to predict, resist, challenge and combat workplace bullying by Tim Field (1996). Wantage, Oxfordshire: Wessex Press.

Bullying at Work: How to Confront and Overcome It. Andrea Adams and Neil Crawford (1992). London: Virago Press Limited.

Mediation

For Mediation Services go to the ACAS website: www.acas.org.uk

Training

Conflict Resolution/Mediation Skills for Job Retention Case Managers: a 2-day course conducted by Ruth Shakespeare & Roger Butterworth - contact ruth.shakespeare@talk.talk.net

Accredited Mediation Training: Professional Mediation Resolutions (PMR) Ltd – contact: www.workplacemediation.co.uk

Book

The Essential Guide Workplace Mediation and Conflict Resolution. Rebuilding Working Relationships. Nora Doherty and Marcelas Guyler (2008). Kogan Page.

Employment law

Helplines and websites

ACAS Helpline: 08457 474747

Bar Pro Bono Unit: www.barprobono.org.uk

Citizens Advice (CitA): For a listing of local CABs, see the website of the national organisation at www.citizensadvice.org.uk.

Community Legal Advice: (To find a list of local solicitors and law centres who do Legal Help employment work) www.clsdirect.org.uk or telephone 0845 345 4345.

Equality & Human Rights Commission: for information and guidance on discrimination and human rights issues - 0845 604 6610 (England), 0845 604 8810 (Wales). Specialist Advice Line for Advisors in Disability Discrimination: 0161 829 8303.

Free Representation Unit (FRU): www.freerepresentationunit.org.uk.

Law Centres Federation (LCF): For contact details of your local law centre, telephone LCF on 020 7428 4400 or check its website at www.lawcentres.org.uk.

Mind Legal Advice Service: 0300 466 6463 - information about mental health disability and discrimination.

Book

Employment Law: An Advisor's Handbook by Tamara Lewis (2009). Legal Action Group.

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Rotherham NHS Trust

Occupational Health, Mid Yorkshire NHS Trust

Primary Care NHS Newcastle

South Yorkshire Condition Management Programme

Employability, Essex

Islington Mind

Jobs in Mind, Camden

Amy Whitelock, Social Inclusion and Rights, National Mind

MCCH Enterprise, Kent

Mental Health Concern, Newcastle upon Tyne

Status Employment, Lambeth

Peter Christison Associates

APPENDIX 1

Exercise 1: Identifying reasonable adjustments in the context of work stress

Aims: To understand the links between work stress and reasonable adjustments, and to identify the adjustments that should be individually focused.

Do a stress audit on your own current job – which areas are particularly stressful? It may be helpful to check the HSE Management Standards Framework in Section 5 (Supporting Organisations – Mental Health Promotion in the Workplace).

- the demands of your job
- your control over your work
- the support you receive from managers & colleagues
- your relationships at work
- your role in the organisation
- change and how it is managed

Also identify and list below the aspects – roles, duties and interpersonal areas – of your job that give you a sense of competency, satisfaction, and autonomy. These are the elements in your job that could be important things to build a return to work plan upon and should certainly not be the things to be removed from your work when you first return.

1
2
3
4
5

Now imagine that you are returning to work following an episode of depression, which has necessitated an absence of 6 weeks. You may typically be feeling low in confidence and have difficulty concentrating, making decisions, and dealing with working under pressure. You may be experiencing poor sleep and feel worse in the mornings. You may find it difficult to estimate how well you are performing, and have a tendency to judge yourself harshly, or second-guess what others are thinking about you. You may find the commute to work exhausting, and have limited energy.

Given these limitations, what accommodations and workplace adjustments would you find helpful? Re-read through some of the types of adjustments listed in Section 3, and try to set out what would be most helpful in enabling you to return to your role?

List them here:

- 1
- 2
- 3
- 4
- 5

Remember, there is no limit to the type or nature of adjustments that you can request – the things that you find stressful in your job may be things another colleague thrives upon, so adjustments should always depend on the individual, and should never be presumed.

APPENDIX 2:

Healthy Work Plan

Purpose

The Healthy Work Plan has been designed to support employers and employees to communicate openly about the management of mental health in the workplace.

- This form does not replace existing policies within the organisation around absence, discrimination, disability or disciplinary action.
- This form serves to make clear appropriate actions to be taken by employer and employee in order to preserve and maintain the individual's mental health.
- This form clearly outlines an Action Plan in the event of the individual becoming unwell.
- This form has been developed/completed with the support of a mental health worker.

Confidentiality

Information provided on this plan must be treated as confidential, unless given written permission by the employee or anyone with the authority to do so. Breach of confidentiality is understood as giving identifying information to anyone who is not authorised to have that information.

Employer

I hereby agree that I have read and understood the above information on confidentiality and agree to keep the information provided on this form confidential and accessible only to those named below, on a 'need to know' basis.

Signature:
Print:

Access to this form

Copies of this form can be given to/ seen by:

Name:
Name:
Name:

The following are reasonable adjustments that help me stay healthy in the workplace:

The following can contribute to me becoming unwell, and this is how I manage them if I cannot avoid them:

The following are early warning signs of me becoming unwell and this is how I would like my employer to respond:

The following are definite signs that I am becoming unwell and this is how I would like my employer to respond:

If the employer is concerned about my mental health I give permission for them to contact:

Name:
Relationship to me:
Telephone number:
Name:
Relationship to me:
Telephone number:

If I do have to take time off work I would find the following useful:

Employer

I agree that the individual's needs have been discussed and we have decided on an appropriate course of action:

Signature:
Print name:
Date:

Employee

I agree that the above plan reflects my needs and wishes at this time:

Signature:
Print Name:
Date:
To be reviewed on:

Job Retention Practitioner's Handbook

About the Authors:

Roger Butterworth

Roger developed and co-ordinated award winning vocational services in Avon, and led a successful job retention pilot, supported by the NHS Executive and the DWP. He is now a national trainer in job retention case management and has trained over 2,000 people from 30 Health Trusts and voluntary organisations. Roger is an Associate of The Centre for Mental Health.

Dave Costello

Dave has worked as an Occupational Therapist for 20 years. He was the lead clinician in the job retention Avon Pilot, and co-delivers job retention training nationwide with Roger. He is a guest lecturer in Occupational Therapy with the University of the West of England, and remains involved supporting individuals to return to and remain in work.

Lorraine Looker

Lorraine works as a job retention advisor with City and Hackney Mind and has helped over 400 people retain their employment. She was a key member of the Social Exclusion Unit, Mental Health Service Users' Task Force 2005-9 and contributed to: 'Representing and Supporting Members with Mental Health Problems – a guide for trade union reps', produced by the TUC and Disability Rights Commission.

Heidi Cuming

Heidi has worked in the field of mental health for over 20 years and has spent the last 8 years establishing and managing a range of innovative employment support, training and education initiatives. These have included services tailored to the specific needs of young people and adults with a personality disorder; a building maintenance social enterprise; work retention and employer engagement services; and a number of basic skills initiatives. Heidi is currently Head of Education and Employment Services at City and Hackney Mind. She is also the author of Mental Health and Employment - A Mind to Work: a good practice guide.

Work is universally seen as an important tool in supporting people's mental health, but what happens when work itself impacts upon a person's wellbeing? City and Hackney Mind has brought together four of the leading specialists in the fields of mental health and employment, drawing on their vast experiences to produce the Job Retention Practitioner's Handbook.

The Job Retention Practitioner's Handbook is an excellent, timely contribution offering useful help and clearly structured advice for those working with that most valuable of all commodities - work itself. This essential guide, rich in relevant resources and appendices, represents a complex area of work about how to keep work. Backing up their logic with analysis, case histories and figures, the authors illustrate the stages of intervention and support which may ease the road ahead for both individual and small business in a variety of circumstances.

Laid out in clear and easy-to-read sections and packed with helpful definitions and examples, this guide gives a taster of the complexities and good practices of the case management approach to supporting people in work. This handbook provides templates and relevant recourses to support a healthy workplace, enabling the budding practitioner to provide effective support to both employers and employees.

This is the perfect starting point for those interested in maintaining people's health within employment, including clinicians, HR specialists and employment advisers. It also provides the framework for future commissioning, and as such should be seen as essential reading for current commissioners of services and the new GP consortiums.

"An excellent resource which covers every aspect of job retention case work"

Lead Vocational Specialist, South London & Maudsley NHS Foundation Trust

"A great piece of work"

Employment Lead, National Mental Health Development Unit

"What a fabulous resource!"

Director of Programmes & Performance, The Centre for Mental Health

"I have read your handbook - it's great, I wish I had it a year and a half ago!"

Primary Care Mental Health Worker, Newcastle upon Tyne

£9.99

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For better
mental health

