

## A Quality of Working Life Act

### Background

When the Labour Government took power in 1997, there were high hopes that we had a government committed to improving working lives. Yet most indicators show little if any progress in improving the quality of working lives. Many are static, a few have improved. Others have got worse. In comparison with other EU states, UK's record is better for some indicators but worse for many others.

More people are in work in UK than ever before: it is the government's aim to get 80% of people of working age into work and to increase the proportion of people who work beyond current retirement ages. Work lies at the centre of the government's strategy of social inclusion and reducing dependence on benefits. Yet the quality of working life is a matter of increasing concern.

The make-up of the economy has changed; with declining numbers of people in manufacturing and a huge increase in the service sector, and the kind of work people do has changed – with more people working with computers (half of all jobs) and in care and personal service roles. But this has not led to greater satisfaction with work (WERS). On some areas satisfaction continues to decline.

Not all the indicators are bad. Compared with many EU states more UK workers say they get job satisfaction and fewer report work stress. However in other areas our performance and employees' experience of work is worse than in comparable countries.

The expectation in the 1970s was that the new framework for health and safety legislation provided by the Health and Safety at Work Act would lead to effective measures to prevent occupational diseases.

It is clear now how wrong that assumption was. Effective prevention requires

- a clear legislative framework,
- clear regulatory duties for employers,
- vigorous inspection and enforcement.

Workers themselves are the key motivators if prevention measures are to be taken and followed through and

- need to be able to exert their rights through safety representatives, and safety committees, inspections, access to information and training.

As backdrop there must be

- consistent support from government
- investment in employees' training, skills and equipment and
- parallel action by insurers through a compensation system that is linked to prevention targets.

These preconditions have in general not been met. Where occupational health problems – consider back problems - have declined it has been through a combination of process change, prescriptive legislation, and

successful personal injury litigation. The Manual Handling Regulations alongside compensation cases for nurses' back injuries and a change in health service culture have cut back problems caused by lifting in the NHS. However the more common solution to this equation is that in sectors that refuse to invest in workers' health, where there is no prescriptive legislation and no personal injury litigation, ill-health caused by work becomes virtually the norm – take stress or repetitive strain injuries as examples.

The epidemic of stress at work is the evidence of how far deregulation of the workplace has impacted on workers' health. Occupational cancer cases, road deaths at work, and cases of heart disease caused by work, to name but a few, are uncoun ted. The occupational health establishment remains divided between those in a state of denial about common problems like stress and RSIs who believe the mantra that work is good for your health (in all circumstances), and those who have experience of illness caused by work at least 2 million people a year and probably closer to 5 million.

### **Occupational diseases**

Work continues to damage the physical health of workers. Indeed, 45% of workers think their health is affected by their work. Some health problems associated with manufacturing and primary industries have become less common; industrial deafness and coalminers' pneumoconiosis, for example, but other problems have taken their place. The government's occupational health targets were timid, yet they are unlikely to be achieved. They would still leave millions of people with their health damaged by work. Stress is reported by workers in every kind of job, and musculoskeletal problems are the most common reported health problem caused by work. The epidemic of hand-arm vibration syndrome is a reminder that manual work still exists and continues to cause rapid and permanent damage to people's health and livelihood.

Insecurity is great for people with health problems caused by work. Changes in the organisation of enterprises and the labour market have also impacted on workers' security. Insecurity can be defined in terms of the likelihood of job loss, or the consequences of job loss, or the unfairness of selection or of being personally (rather than collectively) at risk of job loss.

Workers are effectively no longer covered by Employers Liability Insurance in large sectors of industry or for many kinds of occupational disease. The number of cases of occupational disease is numbered in the millions, the number of claims in tens of thousands – and declining. There are several reasons for this; in mobile employment sectors where individuals may have had many employers, solicitors are reluctant to pursue civil compensation claims. In many sectors trade union membership – and access to free legal advice – is very low. The most common problems; musculoskeletal disorders and stress form a tiny minority of successful claims for occupational disease compensation and are seen by solicitors as unattractive cases for litigation. Progressive or cumulative conditions are now extremely difficult to pursue claims for.

IER has made the case for better regulation and enforcement to tackle the new epidemics of occupational disease.

### **Stress**

More than 20% of workers in UK say that they suffer from moderate to extreme stress. The government's guidance on stress – the Management Standards – defines the areas for action; the demands of work, control over demands, support, relationships at work, roles and change. Yet UK workers have suffered a greater increase in the demands of work than workers elsewhere in Europe, they have little effective control over their work, managers claim an improvement in relations with employees when workers state that there has been no improvement; a minority have any influence over changes planned at work; half will receive no prior notification of changes. There is little sign that the non-legislative approach taken by HSE with its Management Standards is having an effect.

Underlying the epidemic of stress is

- Loss of social support at work. More than 50% of consultation is done with individuals not through unions or collective structures. Workers are isolated even within teams.
- a breakdown in communication – with the decline in representative structures, and the assertion of business imperatives that managers suggest cannot be altered – so need not be discussed. One third are never or seldom consulted over changes in their working arrangements.
- Declining work-life balance. Almost 25% of requests for flexible working arrangements are turned down or not met in full. 75% of women who return to work early after having babies do so because they cannot afford additional maternity leave. It is certain that many requests are not made because the chances of a favourable answer are so low.
- a loss of control by workers over essential aspects of working life – like workpace and workbreaks, The majority of workers have little control over how fast they have to work and even less about the content of their work. (WERS)
- weakened employment protection so that people feel at risk of losing their jobs – and just as important, at risk of much greater financial losses than in the past if they do lose them (20% of the workforce at any time lacks the employment protection provided after one year of employment),
- greater vulnerability in the labour market because employers are reluctant to provide portable training and are able to discriminate against people with disabilities at recruitment with relative impunity
- the fundamental relationship between employers and employees; the duty of care, has broken down as work is contracted out to agency workers, or effective control is ceded to enterprises further up the supply chain so that responsibility for health and safety, training and sickpay is no longer clearly located.
- The duty of care is jeopardised for many workers on short-term contracts, because of company liquidation, and the cost of legal

representation. Employers no longer have to pay for the damage done to their employees' health through employers' liability insurance – which now bears no relationship to the actual cost of damage done.

- Unfairness in relationships is common – as the Department for Trade and Industry reported in its survey of Fairness at Work. A million people reported that they had been bullied at work at some time during the preceding two years.
- The highest level of dissatisfaction amongst workers is with the fairness of pay that they receive; a direct relationship with one of the major causes of physical illness at work; imbalance between the effort workers put in and the rewards they receive.

Stress is getting no better and may be getting worse. The worst off are certainly getting worse.

The continuity here – work continues to damage health – masks a fundamental change in the nature of work over the last 20 years. Employees have lost much of their voice, through the reduction of trade union membership – in the face of rapid changes in how businesses make their profits and the willing collusion of governments that have removed the protection of workers by law. This makes it impossible to discuss what needs to be done to safeguard workers' health without addressing the need for a new framework for employment rights.

To assess the need for new legislation and then to think about our response to that need, I have reviewed the current state of the psychosocial working environment (see appendix), and the likely success of HSE's Stress Management Standards (SMS) approach to improving matters.

We will need to look at how the psychosocial working environment affects mental and physical wellbeing in order to decide what kind of approach is required; that taken by the SMS or another with different scope and powers. I shall briefly describe past law that deals with stress and its causes, and also some recent proposals for changes in UK law, before describing an integrated approach and discussing some of the outstanding issues that surround it.

Changes in the way in which the economy works, the way managers manage, the state of the labour market and the impact of technology on work have impacted on the quality of working life. Workers' own expectations shape their response to these changes.

## **2. What is the quality of working life in the 2000s ?**

HSE's own survey of the Psychosocial Working Conditions in GB has followed trends in several aspects of workers' perceptions. 1/3 of those asked had discussed stresses of job with manager. 14% said that they were highly stressed by work.

**Demands:** higher for manual than non-manual workers. 50% pressured to work long hours and more than 30% had unreasonable time pressures.

**Support:** more satisfaction with peer support than manager support

**Relationships:** quite high levels of anger (30% sometimes angry with colleagues), and bullying (15% often or always bullied at work)

**Control and change:** more than half mention being consulted about change at work

**Roles** were generally clear.

No significant trends over the four years 2004-2007.

Some of these results were confirmed or amplified by other studies. DTI/BERRs **Fair Treatment at Work** reports show high levels of bullying and perceived unfairness at work. 1 million people said they had been bullied during the previous year. The DTI assessment of fairness is broader than HSE's; fairness about arrangements for people with illness, disability, or ageing were the main problems cited. Many people felt unable to do anything about it.

On **involvement/control**, the British Social Attitudes Survey found declining influence over proposed change in way their work is done; 40% + say they would have no say. The WERS study found that in two thirds of workplaces there was no engagement with workers on any issue. 18% negotiated over pay, 11% informed or consulted, 70% did not engage at all on pay. On all other headings there were lower levels of engagement.

There is strong evidence that differences between the experience of different groups within the workforce have widened; particularly in respect of pay. The various initiatives taken by the government on vulnerable workers shows an awareness of a widening gap in experience across many aspects of working life though none of the surveys I have seen has attempted to measure these.

Using working hours as one aspect of **work demands**; several surveys have found that weekly hours have fallen a little and that work-life balance arrangements have improved.

The European Foundation's series of European Working Conditions Surveys is helpful because it shows how the organisation of work has changed, over 15 years, as well as looking at how workers feel about their work. On most measures there have been relatively few improvements and in many respects working conditions are worse or no better than they were 15 years ago.

The workforce is on average older, with the well-known decline in the manufacturing workforce with a compensating increase in its productivity. There has been a big increase in use of computers from 30 to 47% of all jobs from 1990 to 2005.

#### **Negative changes have included:**

- Increase in performance targets, work intensity
- Decrease in autonomy – particularly on speed of work
- Decrease in learning new things, autonomous problem solving and quality control.
- Decrease in satisfaction

**Positive changes have included:**

- A small reduction in number of people working long hours – though this has been much more marked amongst men than women.
- Increase in part-time working, particularly amongst women, an increase in flexible working arrangements and a perceived decrease in Health and Safety risks particularly between 91 and 95
- Reduced discrimination at work (though evidence on this is mixed)
- More women in professional jobs
- In UK over the same period we know there has been a slight easing of the situation of older workers trying to get jobs.

The European Working Conditions Surveys tell us something that UK studies cannot. They show that there is no inevitability about these changes. Indeed one group of EU countries seems to have broken away from UK and other larger economies in developing a different set of working relationships. They have more autonomy at work, more teamwork, more consultation and flexibility over roles, and higher levels of technology (Scand and NL) when compared with UK and Ireland with less teamwork and consultation, and more top managers. This is not to say that these 'high performance' jobs are less stressful; some would argue the opposite, but there is evidence that we have choices – there are alternatives to the business and management practices that employers have adopted in UK.

### **3. The current regulatory approach: Stress Management Standards, ACAS, employment law**

The approach taken by HSE to tackling the increased reports of stress at work during the 1990s and the continuing high levels since 2000 is to set up voluntary management standards against which organisations' performance could be checked. The analysis was heavily influenced by the so-called Demand-Control-Support model of stress and to a lesser extent by research showing that change and insecurity had effects on health. The course of action taken by HSE was to consult on and publicise the standards, providing a set of standard assessment questionnaires to be used by employers. Encouragement to adopt these methods would start with areas thought to be high risk; education being a priority. Enforcement actions were not ruled out and have since ensued – though in small numbers.

HSE's own assessment of progress is that there is no evidence so far that there has been any improvement attributable to the SMS, but that none would really be expected because of a predicted delay between adoption of the SMS method and likely effects.

An alternative explanation that seems more plausible to me is that there has been a series of changes over the past 15 years as can be seen from the EWCS; in the business model, in management methods, in technologies employed at work, in workers' desires and perceptions, that outguns any kind of voluntary scheme of this kind. Labour's willingness to regulate in this area is limited. The early interventions; minimum wage legislation, dispute

resolution guidelines (Employment Rights Act), and the equal rights legislation that has been driven by EU directives have had a beneficial impact.

#### **4. The basics: what is stress ?**

To generate a new framework for interventions in this area and to assess the value of new regulations I want to go back first of all to what we understand by stress. It is not straightforward. Stress emerged from the use of physical ideas (stress and strain) to explain changes in how the body works in a number of exceptional circumstances. The adoption of psychological stress as an everyday term is fairly recent – 25 years ? We mean something both outside us and inside us and having both mental and physical effects on us.

#### **Bad stress and good stress**

As colloquially used people generally mean ‘bad stress’ when they use the word, but the older meaning (the mental and physical response to exceptional circumstances) still persists. When high status workers describe stress what they mean is that the demands of their job require high levels of alertness and responsibility but they do not mean this necessarily in a negative way – studies of their physiology and of the psychological effects of these high demands shows that if they have sufficient opportunities to take the necessary decisions this is ‘good stress’, if anything health-enhancing.

Stress can co-exist with feelings of wellbeing at work, or liking the job or of getting job-satisfaction. Why this is, is beyond the scope of this discussion. I am going to assume that the well-established ill-effects of a negative psychosocial working environment are sufficient to make the case for new controls, while recognising that most people would still rather work than not work and even to work in a stressful working environment rather than not to work at all.

#### **Silent stress**

There is no doubt that the people most likely to suffer physically and mentally from a poor psychosocial working environment are those who are least likely to talk about it. This is because when you ask someone whether they are stressed, there is no meter they can read; they have to compare; with their workmates, or with how they were last year, or with how they are in their homelife. For those with the worst working environment, stress is the norm – it has been, it is for their workmates and it’s the same in their neighbourhoods at night as it is in their jobs during the day.

My own experience of speaking to workers about their work is that the current understanding of stress and the way that it has solidified in the SMS is not the basis for a new accommodation of workers’ needs.

The SMS is based largely on a model of work as making cognitive demands on us – demands of intellectual function; thinking, knowing, deciding. What my patients describe is a mixture of cognitive and emotional demands. What are these emotions ?

#### **Anger**

They express anger about unfairness, their frustration at not getting the rewards from work that they deserve. Anger can be focussed on many aspects of work (it is measured in the SMS but only anger at work colleagues not at managers).

### **Fear**

Then there's fear; fear of changes at work, anxiety about the effects of illness, fear of individual violence or intimidation.

### **Frustration**

When expectations are not fulfilled and when there is an imbalance between effort put in and the rewards received, frustration and anger are a common response. Effort-reward imbalance is an independent contributor to stress at work. It probably reflects involvement from the fundamental 'seeking' systems in the brain that motivate all goal oriented behaviour.

### **Fairness and the need to belong**

Most people don't mind a physically or mentally demanding job – if it makes big demands, that could be tiring and they will need time to recover; what they object to is if the demands are unfair; that is more than they can cope with, more than other people they work with are having to deal with, more than they are used to, and more than is justified by the pay they receive. Anger at unfairness is another aspect of the emotional demands at work; frustration at unrewarded effort (the so-called effort-reward imbalance shown to increase risk of heart disease).

The concept of fairness is based on expectations of mutuality and reciprocity; belonging to a single group and exchanging equally, that is deeply based and rooted in our emotional systems of social belonging. What individual workers express in response to a breach of trust is a classic panic reaction to loss of belonging – the same in its origins as that seen in all humans and many other animals (the emotional systems in the brain are very ancient).

### **Care**

The last of the emotional systems I want to mention here is the key to the whole system; it is the expectation of and practice of care. Psychologists have recently discussed whether alongside the alertness response that generates fear and anger reactions, there is a biological need to tend or befriend in situations of stress. They have argued that this is stronger in women than in men. I suggest that the practice of care for others is fundamental for all of us. It is after all built into our common law; the duty of care, just as social belonging is built into legal notions of trust and confidence that appear in employment law.

### **Status and meaning**

There are also many other measures by which the psychosocial working environment can be assessed. Extremes of status (status envy, status syndrome) imply hierarchical power with low levels of control for many, potential for threat, lack of fairness in the division of rewards for work and lower levels of identification with the social group. Meaning takes into account



the value work has, its social value within and outside the workplace, and the satisfaction that it provides the individual worker as part of his or her value system or narrative. The importance of these concepts is the way they knit together the various qualities of healthy work.

### **5. Previous use of law in the field of stress at work**

The TUTB/REHS produced an extremely useful background document on existing legal instruments bearing on stress at work. The listed the Working Time Directive (93/104/EC, Maternity (Pregnancy at Work) Directive (92/85/EEC), The DSE Directive (90/270/EEC) and the Framework Directive itself (89/391/EEC). I think we could add to this list, the elements of the Work Equipment Directive (89/655/EEC) that deal with the ergonomic design of equipment.

In UK we also have the Harassment Act, and legislation on Flexible Working Arrangements as well as employment law on dispute resolution at work.

There has also been a series of proposals from trade unions that propose regulation of this area.

- The Dignity at Work Bill
- A right to train
- A right to flexible working
- A duty to have rehabilitation arrangements in place

A much more sophisticated duty of care to tackle risk of disease which needs to be strengthened because of the manifest failure of HASAWA and MHSWR to reduce the burden of occupational ill-health.

A number of proposals have been put forward by trade unions and others during the last five years, for legislation on Dignity at Work, on Directors Duties and on Better Jobs. Legislation that has been passed has not gone far enough has addressed flexible working arrangements, information and consultation, and discrimination on grounds of age, disability, etc.

The AMICUS Agenda for Better Jobs describes five areas;

- A safe and healthy workplace
- Control over the working environment
- Secure and interesting work (including support for skills and learning)
- Fairness and dignity at work
- And a trade union voice.

Below I have extended and filled out the AMICUS headings

- A safe and healthy workplace
  - To address specifically the causes of occupational stress
- Control over the working environment
  - To include control over working time
- Secure and interesting work (including support for skills and learning)
  - To include security against the consequences of job loss or work-limiting ill-health

- Fairness and dignity at work
  - Covering harassment, discrimination, bullying
- And a trade union voice
  - To specify areas on which workers will be represented and where co-determination, rather than negotiation or consultation are applicable.
  - To specify how representation will take place in small, mobile or fragmented workforces.

## **6. A Quality of Working Life framework**

I want to move on to the kind of proposals that a Quality of Working Life Act should include – not exhaustive – we are at an early stage in working out what we all want.

### **6.1 Care: the duty of care**

#### **6.1.1 Directors' duties**

The Health and Safety (Directors' Duties) Bill was promoted by TGWU in 2005. Duties include informing other directors of the health and safety performance of the enterprise and the effects on health and safety of decisions taken by them and a duty to take all reasonable steps to ensure that the company acts in accordance with the requirements of health and safety legislation.

<http://www.tgwu.org.uk/Templates/Campaign.asp?NodeID=91391>

**6. .2 Extension of Construction (Design and Maintenance) principles** to other sectors where main contractors or customers have a determining role in health and safety performance in supply chains and where agency workers are used.

**6.1.3 Employers' responsibility for the consequences of failure** to discharge the duty of care to be re-emphasised through improvements to employer liability insurance. Proposals for mutualising and regulating the role of insurers. Increase in the role of no-fault compensation and rehabilitation.

**6.1.4 Prevention services;** recasting of the duty to prevent harm to health at work in MHSWR to clarify issues of competence and management systems.

### **6.2. A definition of care**

**6. 2.1 Recognition and accommodation of workers' emotional and family needs (Work-life balance):**

#### **6.2.1.1 Right to work flexibly**

A right, extended to workers with children of all ages, carers, people with disabilities, etc

A right to telework

#### **6. 2.1.2 Working hours**

Removal of opt out

Clarify current inspection regime of HSE for working hours

**6. 2.2 A duty to provide rehabilitation services for workers with long-term and work-related health problems**

Rehabilitation leave

Prepared plans for return to work

**6.2.3 Specific measures to protect vulnerable workers;** part-time, short contract, agency workers with poor language skills or at risk of discrimination

### **6.3. Security at work**

#### **6.3.1 The right to learn; skill development and protection in the labour market**

Right to time off to train

#### **6.3.2 Dealing with change**

Consultation, Communication, influence and co-determination

#### **6.3.3 Extending working life**

A right to work beyond 65 unless business reasons can be presented against it.

#### **6.3.4 Dignity at work**

Extend the Protection from Harassment Act 1997

Adopt Dignity at Work Act (MSF 1997) cf Swedish Bullying at Work Ordinance i.e. introduce procedures

### **6.4. Control**

#### **6.4.1 Rights to co-determination**

Early and full disclosure of reorganisation plans with time limits

Codetermination on introduction of new equipment, working arrangements, etc

#### **6.4.2 Extending Safety Reps regulations to introduce co-determination on any aspect of working life that bears on physical or mental well-being**

Roving safety reps

Right to carry out confidential surveys

Rights to co-determination of risk assessment

### **6.5. Social bond: Fairness/rights to associate**

Little will be achieved to mitigate the effects of changes in working life that have occurred unless we reopen the space in which workers and employers meet to negotiate agreements on general standards and specific conditions of work.

6.5.1 Right to negotiate pay and rewards collectively.

6.5.2 Minimum wage ??

6.5.3 Equal treatment

6.5.4 Rights of association at work

6.5.5 A right to access mediation at work.

### **6.6. Labour Inspectorate**

Legislation to introduce a labour inspectorate with duties to inspect work practices and health and safety.

## **7. Outstanding problems to discuss**

The case for seeking new legislation in this area is not clear cut.

- Would we be more likely to achieve what we want by small additional bits of legislation than by putting everything under one heading ?
- Are the health grounds for these changes strong enough for us to succeed ?

- Should we divide our agenda for health and safety from changes in employment law and trade union rights in a different way ?

We can argue for a coordinated approach of the kind described without necessarily looking for new law that would cover the whole area. An argument for a coordinated approach is that one of the difficult things about negotiating on stress is that it is fluid – for the old left, it exhibits many of the characteristics of capital, that is of a particular kind of relationship between people at work, the people for whom they work, and the resources –financial and other that are used in their employment.

It is the interconvertibility of stress that reminds us that the fundamental relationships at work are very difficult to change. You can have anything you want if you are willing to sacrifice something else in order to get it.

- team work – yes, if you can work faster and more productively
- training – yes, if you pay back the cost if you leave too soon, or train at your own expense,
- freedom from bullying – yes if you accept our soft duress,
- security – if you become a company man or woman
- pay - we'll pay you more if you work more unpaid.

This is why we have to have a package of stress measures and head towards an entirely different model for working relationships.

We are in the classic deregulatory situation; voluntary measures such as advice and guidance – apparently intended to improve standards amongst motivated firms leads to a widening gap in workers' experience as the worst offenders ignore the advice or get worse. The workforce is sometimes described as having an hour glass shape with good conditions in well-run enterprises – some of them in the public sector and others in buoyant parts of manufacturing, while at the bottom there is a large unregulated sector, where conditions deteriorate; amongst agency workers and in supply chains; particularly in just-in-time subsidiaries (typically in the food industry) for example. Estimates for the number people working for agencies range from 600,000 to 1.5M.

The hourglass analogy may be too accurate. It feels as though workers in the upper part of the hourglass are falling inexorably into the lower one.

### **What can we do about this ?**

Our proposal for a new approach to regulating the quality of working life has come about for two reasons;

- the existing approach lacks the mechanisms required to be effective even in its own terms

but

- the damage done by work; its organisation, relationships and its physical characteristics, goes beyond anything that the HASAWA or Management Regulations were designed to prevent.