

M5X02249: Legal, Ethical and Professional Issues in Mental Health

Week 3: Morning lecture

The Law and Mental Health in the Workplace

- Statistics on mental health in the workplace:
- One in six workers suffer from anxiety, depression and unmanageable stress each year.
- 74% of people with a mental health problem for more than a year are out of work.
- 55% of those with depression or anxiety for more than a year are out of work.
- 49% of workers would not be comfortable disclosing a mental health issue at work.
- Workplace mental ill-health costs employers around £26 billion per year.
- In 2015, 18 million days were lost to sickness absence caused by mental health conditions.
- Those with a severe and enduring mental illness are exposed to premature mortality rates of up to 15-20 years.
- In January 2017 the Prime Minister commissioned a review by Lord Stevenson and Paul Farmer (CEO of Mind, and Chair of the NHS Mental Health Taskforce) into workplace mental health support: The Stevenson/Farmer Report.

The Equality Act (2010)

- The Equality Act became law in October, 2010. It replaced previous legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995) and ensures consistency in what employers and employees need to do to make their workplaces a fair environment and comply with the law.
- Under the act there are nine protected characteristics:
- Age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- Discrimination can occur for one protected factor or a number of unrelated factors.
- Each of the nine protected factors are served by guiding rules under the Equality Act. There are exceptions to the rule and employers are expected to make `reasonable adjustments` in order to avoid discriminating against an individual.
- Under the Equality Act, there are four types of discrimination:
- Direct discrimination, indirect discrimination, harassment and victimisation.
- Discrimination is most likely to occur in three areas- advertising and recruitment, workplace policy and workplace practice.

Where does Mental Illness stand?

- You're disabled under the Equality Act 2010 if you have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities.
- A progressive condition is one that gets worse over time. People with progressive conditions can be classed as disabled. However, you automatically meet the disability definition if you're diagnosed with HIV infection, cancer or multiple sclerosis.
- Certain conditions are not covered by the Act: addiction and dependency, hay-fever, arson, theft, being abusive or exhibitionism.

The Health and Safety at Work Act (1974)

- General duties of employers to their employees.
- It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.
- Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular—
 - the provision and maintenance of plant and systems of work...;
 - arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - the provision of such information, instruction, training and supervision...;
 - so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health...;
 - *the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.*

The Stevenson/Farmer Report (2017)

- The UK faces a significant mental health challenge at work. There are more people at work with a MH condition than ever before, with 300,000 people with a long term MG problem losing their job each year and 15% of people in work having an existing MH condition.
- The annual cost to employers is between £33 and £42 billion, between absenteeism, lower productivity and sickness cover.
- The annual cost to the Government is between £24 and £27 billion between benefits, falls in tax and NHS costs.
- Therefore the cost to our economy as a whole is between £74 and £99 billion per year.

Report continued...

- Deloitte`s analysis of case studies exploring investments in improving MH show a consistently positive return on investment, findings which are also supported by academic studies.
- The Lancet has also published findings from an Australian Fire Service which reported that manager MH training programmes lead to a significant reduction in work-related sickness absence.
- Our position (S & F) is that we all have mental health which fluctuates between thriving, struggling and being ill. An individual can have a serious problem, but with the right support can still thrive at work.

Report continued...

- We need to become a society where we all are aware of our own and others` MH and how to cope. It is everyone`s responsibility.
- The vision is that in 10 years time:
 - All employees will have good work which contributes positively to their MH.
 - Everyone will have the knowledge, tools and confidence to look after ourselves and others.
 - All organisations will be equipped with awareness and tools to address and prevent work related MH and to support individuals, even through recruitment and accessing timely help.

How will this be achieved?

- This report sets out `Mental Health Core Standards` - a framework for actions that all organisations can implement quickly. The `evidence based` standards are:
- 1. produce and implement a MH at work plan
- 2. develop MH awareness among employees
- 3. encourage open conversations
- 4. provide good working conditions for a work life balance
- 5. promote effective people management
- 6. routinely monitor employee MH

Ambitious `enhanced` standards:

- For leading organisations:
- Increase transparency and accountability
- Demonstrate accountability
- Improve the disclosure process
- Ensure provision of tailored in house MH support and signposting

The role of the Public sector:

- The Public Sector is ideally placed to lead the way, employing over 5.4 million people.
- Three of the largest employers are:
 - The NHS
 - Education
 - Civil Services
- There are areas of the public sector that we know are at the highest risk of stress and trauma and particular focus needs to be directed here.

The role of the Government:

- The Government need to do more to make it simple for people to disclose and seek help.
- They should provide support and online information and develop incentives for driving the implementation of the core standards.
- They should set out clear expectations of employers through legislation and make statutory sick pay more flexible.
- There is a significant role for the NHS to support workplace MH by ensuring support is accessible, high quality and fits around work.

Conclusions from the Report:

- 13 Recommendations for Employers
- 7 Recommendations for the Public Sector
- 20 Recommendations for the Government

Thriving at work

The Stevenson / Farmer review
of mental health and employers



Work related stress- what the law says

- This guide sets out four steps to the law in relation to work related stress.
 - 1. Identifying a Problem
 - 2. Preventing Harm
 - 3. Protecting Individuals
 - 4. Managing the Workplace
- Each of the four steps contain:
 - A) legal principles
 - B) core duties
 - C) employer actions

A) Legal principles

- HSW- Health and Safety at Work
- PHR- Protection from Harassment
- EQ- Equality Legislation
- WTR- Working Time
- CSR- Consultation with Employees and Safety Representatives
- CLN- Current Law Negligence

Identifying a Problem

- Legally:
 - Identification of significant / foreseeable risk to health
- Duty to prevent foreseeable harm
- Consider physical or mental impairment that effects long term work
- Consult with employees on H&S matters
- Proactivity is necessary in:
 - Identify risk in workplace
 - Identify sources of stress
 - Look for signs of harm
 - Consider existing health needs of staff
 - Expect that employees can cope with demands of work

Preventing Harm

- The legal principles:
 - Prevent injury
 - Limit employee hours
 - Under the core requirements, there are 6 points which guide behaviour. In addition there are four areas which employers can implement to reduce work related stress.

Protecting Individuals

- A) your duty to identify risks to employee health
- B) your duty to prevent harm to an employee that is foreseeable and work related
- C) your duty to consider any measurement of illness that impacts on their ability to work
- D) consult with professionals on issues of H&S

Managing the Workplace

- Duty to protect against harassment in the workplace
- Protecting disabled employees from discrimination, harassment and victimisation
- To use all available resource to prevent harassment, discrimination and prejudice.

Stereotyping, stigma, prejudice and discrimination in the Workplace

- Stereotyping:
- Stigma:
- Self-Stigma (Self fulfilling prophecy):
- Prejudice:
- Discrimination:

Where does current stigma and discrimination arise from?

- As a result of neuroscience and the development of modern advancements, psychiatry has resulted in strong endorsements of biological causes of MI.
- This has also led to the development of many psychopharmacological and physical interventions as treatment options.
- There is an assumption that this will lead to increasing social acceptance for MI, but the reality is very different (Angermeyer & Matschinger, 2005) as in fact, society has become less tolerant. WHY?

Attribution theory and Genetic Optimism

- According to attribution theory, notions of guilt and responsibility are beyond an individuals control.
- This is all well and good, but it also assumes that the person is not able to become well. (Corrigan & Watson, 2004).
- In addition, genetic optimism the idea that effective treatments will be developed and as a result social rejection will be reduced has not worked. Instead, individuals as perceived as being different and has led to an `us` and `them` divide. This has resulted in a persistent and severe level of stigma (Phelan, 2005).

Mental Health Illness and Supported Employment

- We are now moving onto look at supported employment-placing individuals in places of work that is of direct interest to them.
- The aim is NOT to protect people, but rather to provide `in vivo` support.
- This works best where the community endorse support for sufferers but not where stigma is obvious.

Findings from studies

- People with MI experience significant barriers to employment, despite the evidence that shows they want to work, they are able to work and that work benefits their mental health. Their work is often terminated without their consent.
- Many employers are unaware of the workplace support that is available. A scoping study revealed that in those situations where staff were supported, the following mechanisms were used:
 - Staff training in supporting an individual.
 - Support worker/job coach.
 - Flexible/reduced working hours.

The need for workplace accommodations

- Results of a scoping paper (McDowell and Fossey, 2015) illustrated that the most common needs of people with MI at work were weekly meetings, exchanging tasks, individualised courses and quieter workspaces.
- In addition, extra time to learn, modified job instruction, extra training on the job, work from home, peer support, slowed work pace, change of role or duties and a job coach were all identified as ways of supporting individuals with MI.
- The outcomes and costs associated with these findings were surprising: although findings are limited, studies do reveal that individuals with 5 or more accommodations remained in work at no greater direct cost to the organisation!

So... over to you: papers for reading:

- 1. Mindfulness based intervention: a randomised controlled trial
- 2. Green space and mental health
- 3. Mindfulness and an online intervention
- 4. Open employment for people with experience of mental illness