



GMB UNION GUIDE

Mental Health

SECTION ONE: WHAT IS MENTAL HEALTH? AND WHY IS IT AN ISSUE?

There are two very basic facts about mental health that explain why GMB has to challenge practice in the workplace:

- 1-in-4 people suffer from a mental health issue in any one year.
- 1-in-6 people at work are experiencing a mental health issue right now.

Everyone has mental health, just like we all have physical health. Sometimes we feel good and sometimes we feel poorly. Our mental health matters just as much as our physical health. Poor mental health has a massive effect on our ability to take part in our work and wider society. Mental health will rise and fall over our lifetime, with many different factors affecting our state of mind.

Like all health, mental health doesn't always stay the same but changes as life and circumstances change. Everyone has times when they feel stressed, in low spirits or scared. These are often temporary periods, but sometimes it can take much longer to recover. Some people who are diagnosed with mental health conditions have to learn to manage them for the rest of their lives. The key factors include:

- Work (or lack of)
- Money
- Housing
- Physical condition
- Education and training (or lack of)
- Family and relationships
- Cultural, religious and societal pressures
- Medical treatment

It is essential to understand that a diagnosis of a mental health condition does not mean someone will always be suffering from that condition. A person diagnosed with a serious mental health condition may have a very positive mental health state. Likewise, someone in a very poor mental health state may not have been diagnosed.

Because of this, GMB takes a whole-person approach to mental health – taking into account the circumstances, work environment and social issues alongside the presence or absence of a medical diagnosis.

The other key issue to overcome is the stigma surrounding mental health issues. At work, and in society generally it is often hard and uncomfortable to discuss how people are feeling. This can make it very difficult to identify the condition(s) that a GMB member is experiencing, and therefore the right support or adjustments that need to be made in the workplace.

To make sure GMB Health and Safety Reps can give the right advice and support, we first need to understand what we mean by mental health issues or problems.

WHAT ARE MENTAL HEALTH PROBLEMS?

We know that one in four people experience mental health issues at some point in their lives. These range from the everyday concerns that we all experience, to longer-term serious conditions. The majority of people who experience mental health problems can get over them or learn to live with them—just as with physical health problems. About one in a hundred people will experience severe mental illness.

‘Mental health problems’, ‘mental illness’ and ‘mental ill health’ refer a range of medically diagnosed clinical conditions, such as:

- depression,
- anxiety,
- psychosis,
- bipolar
- Schizophrenia.

Traditionally health professionals have split mental health symptoms into two groups:

- **neurotic:** which are related to depression, anxiety and panic, and are also known as ‘common mental health problems’, though this does not mean that they are less severe

than conditions with psychotic symptoms.

- **psychotic:** which are related to perceptions of reality and which may include hallucinations, delusions or paranoia, with the person seeing, hearing, smelling, feeling or believing things that no one else does. These symptoms are also known as ‘severe mental health problems’.

WHAT ARE THE MOST COMMON MENTAL HEALTH PROBLEMS?

COMMON MENTAL HEALTH PROBLEMS INCLUDE:

1. Anxiety

Everyone occasionally experiences anxiety—feelings of tension, uncertainty and fear. The uneasy feeling can be short term and mild, or prolonged and severe. If the anxiety remains severe for a longer period the person may feel like they have no control over their own life. This can lead to paranoia and panic attacks. One in ten people suffer from prolonged anxiety.

Anxiety is the primary symptom of a number of conditions, including:

- **Generalised anxiety disorder:** feeling anxious for a long time and often being fearful; not anxious about anything specific. This broad condition affects people in different ways.
- **Obsessive compulsive disorder:** which is detailed later in this section; and

- **Post-traumatic stress disorder:** developing strong feelings of anxiety after experiencing or witnessing something very traumatic. PTSD can cause flashbacks, where the individual affected relives the negative experience and feelings again and again.

People with anxiety disorders can experience a range of symptoms:

- feelings of fear or dread
- feeling tense or 'jumpy'
- restlessness or irritability
- dwelling on bad experiences
- being paranoid and expecting the worst to happen
- inability to concentrate or focus due to the mind racing
- sweating, tremors and twitches
- headaches, tiredness and disturbed sleep
- a pounding or racing heart
- shortness of breath
- stomach upsets and diarrhoea
- needing to urinate more frequently.

Treatment must be provided by a competent mental health professional. Treatment options include counselling/ talking therapies and medication.

2. Depression

Depression is the development of ongoing feelings of hopelessness,

sadness and helplessness. It can happen to anyone with around 1-in-10 people suffering from depression at any time. Depression can develop into physical effects such as disturbed sleep, lethargy or feeling achy or sore. Severe depression, known as clinical depression can be life threatening, as it can evolve into suicidal feelings. In many cases, people may not realise how depressed they are, especially if they have been feeling that way for a long while.

There are some specific types of depression:

- **Seasonal affective disorder:** Linked to darkness and light, this develops in the autumn and winter, when days are shorter and the sun is lower in the sky.
- **Post-natal depression:** It is estimated that as many as 85% of mothers experience the 'baby blues'. In most cases this goes away in a few days. Post-natal depression is much more severe. It can occur between two weeks and two years after the birth, and affects around 1-in-10 mothers.
- **Bipolar disorder:** See section later in this chapter.
- **Dysthymia/persistent depressive disorder:** This is longer term (2 years plus) mild-to-moderate depression. People with dysthymia often have symptoms for many years before seeking medical help. Often those

people believe that is just how life is for them, and never seek help or advice as a result.

Common symptoms of depression include:

- lethargy
- sadness
- lack of self-confidence and self-esteem
- inability to concentrate
- inability to enjoy life
- feeling guilty or worthless without good reason to
- feeling helpless and/or hopeless
- difficulty sleeping
- isolating yourself from others
- taking little interest in your work
- loss of appetite
- loss of sex drive
- physical aches and pains
- increased use of tobacco, alcohol or drugs
- suicidal thoughts
- self-harm.

Treatment can include counselling/talking therapies, prescription medication, brain stimulation therapy and light therapy.

3. Mixed anxiety and depression disorder

This is the most common mental health condition in the UK. More than 10% of the population will experience symptoms at some point. It is where the person displays symptoms of both anxiety and depression, but not to the degree that a specific diagnosis of either a depressive disorder or an anxiety disorder can be made.

Many people suffering from work-related stress display the symptoms associated with mixed anxiety and depression disorder. Treatment is typically medication to treat the depression, and counselling/talking therapies for the anxiety symptoms. However, some new antidepressants can treat both depression and anxiety.

4. Obsessive Compulsive Disorder (OCD)

OCD is one of the most misunderstood of all mental health conditions. Most people associate the condition with excessive cleaning and an obsessive need for tidiness. In actual fact, this involves upsetting and repetitive thoughts that come into the person's mind regardless of how ridiculous they may seem and no matter how hard the person tries to block them. Unlike in psychotic conditions, the person knows that the thoughts are their own. OCD is relatively rare, with only around 3% of the population experiencing the condition.

Compulsions are actions which people have to do frequently to reduce their

anxiety and stop the compulsive thoughts. Performing the compulsion usually stops the anxiety for a while, though the anxiety may worsen if the person is interrupted or believes they did not complete the act properly.

Common obsessions include:

- fear of contamination
- fear of causing harm to someone else or themselves
- an urge to cause harm to someone
- fear of behaving unacceptably – this may be in a sexual or religious way
- the need for symmetry or exactness.

Common compulsions include:

- checking
- counting or repeating a specific word or phrase
- cleaning
- dressing rituals.

Treatment for OCD is usually a mixture of counselling/talking therapies and prescription medication.

5. Phobias and panic attacks

These are a range of disorders that result in people becoming anxious in specific circumstances and situations, albeit ones that are not dangerous. The anxiety is disproportionate to the actual danger posed, but the situation is either completely avoided (such as fear of heights) or just about tolerated (such as fear of spiders). The

NHS estimates that 10 million people in the UK have common phobias such as heights or spiders, but that only around 2% of people go on to develop panic disorders.

There are three types of phobia:

1 Social or situational:

Anxiety about how the person is perceived by others, or the fear of being publicly humiliated. Common phobias in this group include fear of flying, going to the dentist, or entering tunnels.

2 Fears of specific things:

Common phobias include the fear of animals such as spiders or snakes; fear of environment features such as heights or falling into water; and physical things such as blood or sharp objects.

3 Complex phobias:

These are a combination of fears, often situational – fear of leaving home, or of being alone, or of confined spaces. Such complex phobias tend to be more draining on the sufferer than single phobias, as they are often constantly present in their lives (unlike say the presence of snakes).

People with phobias may experience panic attacks when they are exposed to the trigger for their phobia and cannot easily immediately get away.

Panic attacks and panic disorder

A panic attack is a sudden, severe and overwhelming attack of anxiety and fear. Symptoms include:

- Heart palpitations
- Sweating
- Trembling and feeling shaky
- Dry mouth
- Hot flushes
- Chills
- Shortness of breath
- Choking
- Chest pain
- Sickness
- Dizziness
- Numbness
- Pins and needles
- Feeling faint
- Fear of death
- Fear of insanity
- Feelings of abnormality, of being outside yourself.

Panic attacks often result in hyperventilation – breathing very fast, which can in turn cause the individual to faint. Once the person has become unconscious their breathing will normally go back to usual.

About one in fifty people go on to develop a panic disorder, where they frequently have serious panic attacks. As there is often no specific trigger for the panic attacks, sufferers may become embarrassed and stressed about attacks occurring, especially at work or in public.

Treatments depend on the severity of the condition. Phobias are usually treated by counselling/talking therapies with panic attacks and disorders treated by medication.

Anyone suffering a severe panic attack may need first aid provision, especially if they hyperventilate or faint.

SEVERE MENTAL HEALTH PROBLEMS INCLUDE:

1. Psychosis

Psychosis is when a person experiences things that are not real, and have altered perceptions about the environment around them.

Symptoms include:

- **Hallucinations:**
Hearing, seeing, smelling, feeling or tasting things don't exist.
- **Delusions:**
believing things that are clearly and demonstrably imaginary.
- **Mind racing:**
Thoughts jumping from idea to idea, making connections between tangents and otherwise unlinked concepts.

Psychosis is not in itself a mental health condition. Rather it is caused by other conditions. These range from other mental health condition such as severe depression or schizophrenia; physical illnesses such as brain disease or Parkinsons' disease; or as a result of drug and/or alcohol abuse.

People experiencing psychotic delusions usually do not believe that

the thoughts and experiences they have are their own. This is in contrast to OCD sufferers, who know they are having irrational thoughts but cannot easily control them.

Psychotic episodes are very rare, with less than half of 1% of people ever experiencing one. Even then, in 75% of cases, the psychotic condition is only temporary.

Treatment is extremely specialised, and depends on both the type of psychosis and severity of symptoms.

2. Bipolar disorder

Bipolar disorder is a condition where people experience extreme mood changes, from euphoria and mania to depression. Most people will generally have periods of stability between these highs and lows, but bipolar disorder can result in psychosis in some cases.

Most people with bipolar disorder experience periods of tremendous energy during euphoric highs, and extreme tiredness and lethargy during depressive lows.

People may experience one or more of the following manic symptoms:

- Extreme happiness and positivity
- Urgency and agitation
- Extreme irritability
- Racing thoughts
- Being distracted easily
- Little need to sleep

- Increased self-confidence and self-importance
- Poor judgement
- Greater risk taking
- Heightened sex drive
- Abusing drugs or alcohol
- Aggressive behaviour
- Sharper senses than usual.

The depression symptoms are similar to those detailed earlier in this chapter.

A medical diagnosis of Bipolar disorder is usually made after a minimum of two episodes in which a person's frame of mind and activity levels are significantly upset. Someone with undiagnosed bipolar disorder will typically experience one to two cycles a year.

There are several types of bipolar disorder:

1 Type I:

Primarily episodes of mania, with less frequent episodes of depression.

2 Type II:

Primarily episodes of depression, with less frequent periods of mania.

3 Cyclothymia:

Regular but less severe mood swings, but still affecting daily life.

4 Rapid cycling bipolar:

This is usually diagnosed if a person has frequent episodes in a 12-month

period. In rare cases, the change from mania to depression can occur monthly or even weekly.

Bipolar disorder is primarily treated through medication, usually antidepressants and/or antipsychotics. Other treatments include counselling/talking therapies and brain stimulation therapy.

3. Schizophrenia

Schizophrenia is a mental illness that upsets thought processes. It often manifests in people in their teens or early twenties. A diagnosis of schizophrenia means a person has shown symptoms for more than a month before they sought the help of a medical professional. These symptoms are classed as either 'positive' or 'negative'.

Positive symptoms are unreal or fantastic, and mirror those manic symptoms suffered by people with Bipolar disorder.

Negative symptoms reduce enjoyment in life, and may include these depressive symptoms detailed earlier in this chapter.

Other notable negative symptoms are:

- lack of motivation
- sluggish and lethargic
- not washing or cleaning
- becoming withdrawn and socially isolated
- low sex drive.

Treatment is usually a combination of antipsychotic medication, counselling/talking therapies and cognitive behaviour therapy (CBT).

OTHER TYPES OF MENTAL HEALTH PROBLEMS

1. Self-harming

Self-harming is a sign of mental health problems, rather than a mental condition in itself. Methods of self-harm include:

- cutting and slashing skins
- burning or scalding
- banging or scratching the body
- breaking bones
- hair pulling or picking skin
- self-strangulation
- self-poisoning
- Taking excessive levels of alcohol and/or drugs to hurt themselves.

Self-harming behaviour is not necessarily suicidal behaviour, but those who self-harm regularly are most likely to end their own life than someone who does not self-harm.

Treatment for self-harming forms part of the overall approach to the person's wider mental health conditions. It usually centres on counselling/talking therapies and cognitive behaviour therapy (CBT).

Further treatment may be needed to address the physical effects of self-harm, such as scarring or burn treatment.

2. Eating disorders

Eating disorders occur for many reasons, usually centred on a person's self-perception of their weight and body shape.

The two most common eating disorders are:

- 1 **Anorexia:** This is a severe mental health illness, where people severely reduce their body weight by extreme dieting, obsessively exercising, and using laxatives. Anorexia sufferers generally experience a negative self-image and very low self-esteem, and do not accept that they should eat more or gain weight. The combination of high exercise levels and minimal food intake mean they are often very tired, and suffer poor physical health.
- 2 **Bulimia:** this is one of the most common eating problems. Bulimia is typified by person overeating to excess (bingeing), then purging, either through making themselves vomit or taking laxatives. As a result, people with bulimia normally maintain their usual weight range, so they can hide their behaviour from others. People with bulimia believe they cannot control their eating, and have a negative self-image centred on their weight and body size.

Treatment for eating disorders focuses on counselling/talking therapies and cognitive behaviour therapy (CBT). Medication may be

needed for any physical harm caused by the pattern of bingeing and purging.

3. Attention deficit hyperactivity disorder (ADHD)

Attention deficit hyperactivity disorder (ADHD) is a relatively new condition. It is the collective name for a range of symptoms, including hyperactivity, impulsive behaviour and an inability to concentrate. There is no consensus on whether ADHD is a mental health or developmental condition, though present-day thinking is that adults can only have ADHD if it developed when they were children. There is no single definition of ADHD, and no one set of criteria for a diagnosis of ADHD.

Treatment for ADHD is currently primarily medication to control the hyperactivity, with behavioural therapy provided where appropriate.

4. Drug and Alcohol dependency

Substance abuse is the misuse of any drug that severely affects a person's physical and mental health. Alcohol dependence is the most frequent form of substance misuse at work, but any drug including legal highs, glue, anabolic steroids and aerosols falls into this category.

Most forms of substance abuse give the person a short-term feeling of happiness ('high'), but all cause long term harm to physical and mental health.

Substance abuse is often rooted in the person using drink or drugs as a 'crutch' or 'prop,' to help them through hard and emotionally difficult times. Work-related stress can often be a trigger, though dependency develops over a longer period when the situation doesn't change and the negativity remains.

There is clear linkage between substance abuse and wider mental health condition. More than 1 in 2 adults with alcohol dependency issues also self-identify as having mental health problems. In addition, it is estimated that between 1/2 and 1/3 of all people with severe mental health problems take mind-altering substances to problematic levels.

Substance abuse issues are normally treated by specialist drug and alcohol rehabilitation services. Treatment for substance abuse is complex and depends on the underlying issues that the person may have. This often includes medication, particularly if the person is withdrawing from an addiction; counselling/talking therapies, both short and long term; and periodic monitoring to ensure that progress is maintained.

5. Dementia

Dementia is a chronic and persistent condition that degrades memory, problem solving, perception and language. There may also be changes in behaviour, mood and personality. It affects 5% of people over 65, and one in 1,000 of people aged under 65 in the UK. Dementia is caused by damage to parts of the brain that deal with thought processes, resulting in the death of brain cells. It depends on the parts of the brain that are affected as to the symptoms that are displayed.

The damage could be the result of a number of factors:

- A medical condition such as a brain tumour, Parkinson's disease or Huntington's Disease;
- A head injury;
- Infection;
- Vitamin B deficiency;
- Excessive alcohol abuse.

The most common form of dementia is Alzheimer's disease. This is primarily caused by the aging process, though no one knows exactly what causes dementia. It is known that vascular dementia, where reduced blood flow kills brain cells, is the key cause of most forms of dementia. As a result, most types of dementia cannot be cured. In some cases, Vitamin B deficiency can be treated, and some serious head injuries do heal, but in most cases the effects are permanent.

Treatment for dementia therefore centres on adjusting to the symptoms. There is no medication that will reverse the symptoms, though some medicines may slow the onset of symptoms, especially in the early stages.

A 2014 report by the Alzheimer's Society found that nearly 90% of employers anticipate dealing with increasing dementia at work as retirement ages rise. However, the report also showed that employers are unlikely to make reasonable adjustments to allow those with dementia to keep working. Instead, most employers would either seek termination of employment on capability grounds, or offer early retirement.

WHAT MAKES MENTAL HEALTH A GMB ISSUE?

Mental health is an issue that cuts across a whole range of GMB activities:

- **health and safety;**
- **equality issues;**
- **ill health;**
- **learning and training;**
- **conduct;**
- **performance management;**
- **workplace relationships;**
- **workplace democracy**

Almost all of us will know someone at work with a mental health condition of

some kind. There are GMB members in every branch and at every workplace affected by mental health problems.

Understanding the issues facing people with mental health problems, and the need for employers to make reasonable adjustments in the workplace to accommodate them is vital for GMB Health and Safety Representatives.

GMB members with mental health conditions may:

- Encounter discrimination at work
- Be perceived negatively because of their condition (mental health stigma)
- Feel unable to tell their employer, colleagues or GMB about their condition
- Not understand their rights at work
- Need help in negotiating adjustments to their work
- Be bullied or harassed because of these issues

In all of these instances, GMB is there to ensure that GMB members are not alone in dealing with their issues at work. There may be common issues arising which can create a collective campaign to raise awareness of mental health conditions, and fight against discriminatory behaviours where they exist. GMB members with mental health conditions and issues will feel more supported if there is open support from their GMB Health

and Safety Representative and their GMB branch to tackling mental health at work.

GMB is continually campaigning for better policies on sickness absence management and disability, regular monitoring of mental health levels, mental health and stress risk assessments and proper joint training for managers and GMB members on mental health issues. It is critical that GMB is there to represent and win for GMB members with mental health issues who want to keep working but face huge challenges in doing so.

GMB also has a vital role to play in resisting Government austerity policies that result in increased stress and mental health issues whilst cutting back on mental healthcare provision. As the NHS budget is cut in real terms each year, Mental Health Trusts are losing specialist nurses with the vacancies never filled. These are critical roles that need specialised training, so each nurse who moves on leaves a number of patients with complex mental health issues who will not get the support that they need.

SECTION TWO: WHAT DOES THE LAW SAY?

There are two specific pieces of legislation that cover mental health at work. The Equality Act 2010; and the Health and Safety At Work Act 1974. The Equality Act 2010 protects people from being discriminated against due to disability; the Health and Safety at Work Act 1974 places a duty on the employer to protect the mental health of anyone who works for them.

Mental health problems are covered by disability under the Equality Act. In Northern Ireland, it is the Disability Discrimination Act 2008 (DDA) that is in force, rather than the Equality Act.

This guide will only cover the Equality Act and Health and Safety at Work Act. Detailed advice and guidance on the situation in Northern Ireland should be sought from GMB's North West and Irish Region.

1. THE EQUALITY ACT 2010

The Equality Act 2010 protects people who have or have had a disability in the past. This includes protection where they are perceived to have a disability or are associated with a disabled person. Under the Act, a person is deemed to have a disability if they have physical or mental impairment which has “a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities”.

The Act does not define impairment but it can include the effects of or symptoms of any condition or illness, including the side effects of any medication or treatment.

The other key word in the law is “substantial”. This means it is more than trivial, and therefore has a pronounced effect on the ability to do daily tasks. Working out whether the impairment has a substantial adverse effect means comparing the way the person carries out an activity with the impairment and the way they would carry out the activity without the impairment. It is about their capability, not a comparison with any other person.

“Long-term” is also defined, and means likely to or has lasted for 12 months or more. This can include unstable or periodic conditions such as depression.

Day-to-day is not defined in the Act, nor is there a list of capacities that may be affected. What should be assessed is what the person cannot do, not what they can do.

An Employment Appeal Tribunal case in 2004 identified that the question is not whether the illness is likely to recur but whether at some stage the substantial adverse effect on normal daily activities will recur.

To help decide this, the Tribunal identified five questions:

- 1 Was there an impairment at some stage?
- 2 Did the impairment have a substantial adverse effect on the applicant’s ability to carry out normal day-to-day activities?
- 3 Did the impairment cease to have a substantial adverse effect on the applicant’s ability to carry out normal day-to-day activities, and if so, when?
- 4 What was the substantial adverse effect?
- 5 Is that substantial adverse effect likely to recur?

The UK Government Office for Disability Issues Guidance lists the following specific mental health conditions as being covered by the Act:

- Anxiety
- Low mood
- Panic attacks
- Phobias
- Unshared perceptions
- Eating disorders
- Bipolar affective disorders
- Obsessive compulsive disorders
- Personality disorders
- Post-traumatic stress disorder

- Some self-harming behaviour
- Depression
- Schizophrenia

The Act does not cover addiction to drugs or alcohol, aside from where addiction to prescription medication results from treatment of a condition listed above. GMB Health and Safety Representatives will therefore need to ensure that drug and alcohol abuse is covered in any mental health policy negotiated.

RIGHTS AND DUTIES UNDER THE EQUALITY ACT 2010

It is illegal under the Act to:

- discriminate against a worker because of a mental disability or
- fail to make reasonable adjustments to accommodate a worker with a disability.

The Act defines a number of types of discrimination:

- **Direct**—where an employer, because of someone’s disability, treats them worse than they treat or would treat others.

The unfavourable treatment does not have to just be connected to a person’s own disability; it could be because someone is associated with a person with disability, such as a carer.

The unfavourable treatment does not have to just be connected to a person’s own disability; it could be because the employer believes that they are disabled even if they are not.

- **Indirect**—where an employer applies a policy, procedure or practice that is discriminates against anyone with disabilities. The employer can legally justify indirect discrimination if it is a “proportionate means of achieving a legitimate aim”. There is no definition of legitimate aim in the Act but it could include:

- the health and safety of staff or people using a service
- the business needs of the employer or service
- needing to make a profit.

Proportionate means that there should be a fair balance between the employer’s needs and the rights of the disabled person. The burden is on the employer to show that the unfavourable treatment was objectively justified.

DISCRIMINATION ARISING FROM DISABILITY

This is where a disabled person is given adverse treatment because of something connected to their disability. As with indirect discrimination, the employer can claim that the treatment was ‘proportionate to achieving a legitimate aim’. The employer can also claim in their defence that they didn’t know (or couldn’t reasonably be expected to know) that the person was disabled. However, the employer should take reasonable steps to explore with the worker whether any difficulties are

because of the consequence of a disability.

FAILURE TO MAKE REASONABLE ADJUSTMENTS

An employer has a duty to make 'reasonable adjustments' – changes that make it easier for the disabled person. The Act does not provide a specific list of adjustments, but common changes include:

- changing equipment
- providing aids – including extra support and equipment
- changing the location of work
- changing policies and procedures
- allowing extra time off work
- allowing flexible working
- changing the worker's role or parts of the workers' role
- offering counselling/talking therapies or mentoring.

When deciding what is reasonable, an employer can take into account:

- the size of the organisation and its financial situation
- the cost of making the change
- how helpful the adjustment would be to the individual
- how practical it is to make the change.

The employer cannot charge the worker for making the changes.

HARASSMENT

This is unwanted behaviour relating to a person with a disability. The behaviour results in creating an environment which is:

- hostile,
- intimidating,
- offensive,
- humiliating or
- degrading

The behaviour therefore violates the dignity of the person with a disability.

VICTIMISATION

The Act protects people from being victimised if they make allegations about discrimination. The protections extend to anyone who supports them in making their allegations, such as a GMB Health and Safety Representative. A detriment is defined as 'something that the individual affected might reasonably consider changes their position for the worse.'

2. THE HEALTH AND SAFETY AT WORK ACT 1974

Section 2 of the Health and Safety at Work Act 1974 places a duty on the employer to protect the health and safety of anyone who works for them. This includes both physical and mental health, though it is only the risks caused by work activity that the employer can and must control. In practice, the employer will primarily be concerned with managing work-related stress.

WORK-RELATED STRESS AND THE LAW

There is no specific legislation covering stress at work, though GMB has long campaigned for specific regulations covering stress management.

A 2010 employment appeal tribunal ruling determined that stress itself does not fall under the disability criteria in the Equality Act 2010, due to the short length of the ill health. In practice this means that adverse reactions will need to be 'long term' – more than 12 months before falling under the Equality Act 2010.

However, the Management of Health and Safety at Work Regulations 1999 requires employers to carry out suitable and sufficient risk assessments. The employer must then identify and implement actions to prevent or to reduce risks. This includes risks to mental health.

The Enterprise and Regulatory Reform Act 2013 amended the Health and Safety at Work Act 1974 so employees now have to prove that the employer was negligent and that the negligence caused the injury.

To prove negligence, the GMB member will need to demonstrate their claim passes five key tests:

- 1 the employer had a duty of care towards them;
- 2 the employer did not take reasonable care to fulfil the duty;

- 3 the employer's actions actually caused any injury;
- 4 the harm from the actions was foreseeable; and
- 5 the negligence resulted in actual physical, mental or financial damages to the person.

The Safety Representatives and Health and Safety Committee Regulations 1977 give safety reps the right to investigate and tackle workplace stress. This includes the right to:

- inspect the workplace
- investigate potential hazards
- talk to GMB members
- be consulted about the employer's health and safety arrangements.

SECTION THREE: YOUR ROLE AS A GMB REPRESENTATIVE

Representing GMB members with mental health issues is one of the hardest things any GMB representative can do. Employers are often ignorant, aggressive in their approach, or unhelpful in their attitudes. The members themselves may be angry, upset and frightened. It can be emotional and challenging, but the rewards of a job well done cannot be measured.

It is critically important to remember your role as a GMB rep. You are there to give representation to our members on employment issues, and to signpost GMB members to qualified competent medical help, whether it is their GP, or specialist mental health provider. It is not your role to offer counselling/talking therapies or medical advice. You cannot solve the GMB members' mental health issues, but you can help them to get the specialist support that they need.

CASES RELATED TO MENTAL HEALTH ISSUES CAN BE CHALLENGING. IT IS IMPORTANT THAT:

- Both you and your members understand your role – what you can and can't do
- You agree who is involved in the case and confidentiality boundaries

- You agree an action plan with the GMB members
- You maintain detailed and confidential case notes
- You understand the GMB member's mental health condition and how it affects the way the case is handled
- You negotiate reasonable adjustments needed to participate in informal and formal meetings with your employer
- You discuss and agree any additional support for the GMB member
- You identify any external support that may be available.

1 You notify your GMB Regional Organiser, as the issue may develop into a discrimination case.

Your initial role should be to:

- Listen and take note of the GMB members' concerns, letting the GMB member guide the conversation. Offer initial advice only as the action they are seeking may not be immediately clear.
- Outline how the issue can be taken forward with the employer, either through existing grievance procedures or health and safety avenues.
- Provide GMB representation at any formal or informal meetings the GMB member has, particularly grievance or disciplinary hearings.

- Consider whether there is a wider issue in your workplace that may affect other GMB members.
- Involve others when needed. This may include escalating the matter to your GMB Regional Organiser or Regional Health and Safety Officer; the employer’s occupational health provider or Employee Assistance Programme; or other external sources of assistance wherever appropriate.
- Understand your limitations and competence. Assess whether you need help from your GMB branch, Region or National Office.

Sometimes the GMB member will not want to take matters further, but will be glad to have spoken to GMB. This is perfectly within their rights, which is why discussion and consultation are so important before agreeing on a course of action. In the same way, GMB is not obligated to support GMB members who reject competent advice offered in good faith.

HANDLING EXTREME REACTIONS

It is very rare for GMB members to react badly, but you should be prepared for difficult conversations, which may include threats to self-harm or for the GMB member to kill themselves.

There is no easy way to deal with situations like this, but the most important thing is to be compassionate, and to make sure

that the GMB member urgently receives specialist help.

The mental health charity Mind provides guidance on how to help someone who is suicidal. The key messages are:

- Always take the threats seriously
- Try not to act shocked and actively demonstrate that you are concerned
- Try to identify where proper support can be accessed – encourage the GMB member to call the Samaritans (116 123), NHS Direct (111), or contact their GP. If you are close to a hospital they can go to the Accident and Emergency (A&E) Department.
- Do not handle the situation by yourself

You must make sure you inform someone else in the GMB branch or Regional/National Office as this is a difficult situation for you to handle alone.

LOOKING AFTER YOU AS A GMB REPRESENTATIVE

It is perfectly natural for you to worry about your GMB members’ health. You may well offer more support initially than you can manage in the longer term. You may want to share your personal contact details, but make it clear that there will be times when you are not available, such as evenings and weekends.

If the GMB member does self-harm or threaten suicide, you may feel a range of emotions. It is natural to feel guilty, upset or angry with the person who is considering ending their life. You may feel that what is going on for the person is in some way your fault. If you do feel like this, you must talk to someone you trust about how you feel. GMB will always give you the support you need in such situations, so make sure you contact GMB to discuss your circumstances and to get help.

It's understandable that you may blame yourself, but there is only so much help, advice and support that you can give. Talking about how you feel doesn't make you a weak person. Not being able to resolve a GMB member's mental health issues doesn't make you a bad representative. You can only do your best. It is absolutely vital that you look after your own health. If you don't want to speak to GMB about the emotions you may be experiencing, there are other options for support:

- talk to a friend or family member;
- seeking professional advice or counselling/talking therapies;
- go to a support group or get support from a carer's organisation

Your role is to ensure their issue is not being caused or made worse by work, and whether changes or reasonable adjustment may enable them to continue to work. In your role as GMB

rep you can raise with the employer any adjustments that may be needed.

Be honest – if you do not know what to say to that person about their health or how to respond – say so. No one can expect you to be an expert on mental health. It is much better to be upfront about your competence and limitations than raise false expectations on what you can do.

The GMB member needs to know you are there to support them at work, but they may need to guide you in understanding their condition and issues. Don't be afraid to talk to the GMB member about the language they want to use to describe their mental health. The member may well talk about themselves in ways that cause offence if said by others. This is often a method of coping with expected stigma from colleagues. Just because someone describes themselves as 'mad', it doesn't mean that they want other people to refer to them like that.

It may be difficult for the GMB member to explain what their issues are, and what they want you and GMB to do. It may take time for you to listen and understand where they are coming from. Try to avoid leading the GMB member by suggesting or defining what the problem is. This may undermine the GMB members' confidence in the process. The crucial thing is to listen to the GMB member and base your analysis on their responses, rather than making

assumptions on what their health issues are from your own experience or what you have picked up from the media.

You must avoid giving advice or your opinion on the GMB member's health or the strength of their case. You are not in a position to judge their state of mind. If the GMB member themselves states that they are not well, it is right to encourage them to seek medical advice. GMB Health and Safety Representatives are not medical professionals, and it is not appropriate to offer direct medical diagnosis or advice.

Bear in mind that some mental health conditions might make it hard for the GMB member to make consistent decisions, or to consider options on an even keel. However, not all disagreements will be due to their mental health condition. It is therefore vital to keep notes to outline and clarify decisions and next steps.

You must also maintain the GMB members' confidentiality at all times, particularly if you receive any medical information which the GMB member may wish to share. Representing GMB members on mental health issues almost always involves handling sensitive information which is given in strict confidence.

This raises a number of issues about handling any case, especially around storing information, and the location of meetings of a sensitive nature. Any

well negotiated trade union facilities agreement should address these issues, and GMB Health and Safety Representatives should have access to facilities such as a locked office space and use of the employer's network and email servers as part of their role.

Almost all casework will involve handling and processing data of some description, whether printed materials or electronic documents. All such records must be kept securely, either in a locked cabinet, on an encrypted memory stick, or in a password protected cloud storage system such as DropBox.

REPRESENTING GMB MEMBERS WITH MENTAL ILL ISSUES IN DISCIPLINARY PROCEDURES

The development of a mental health condition may result in a GMB member being disciplined at work. Under the Equality Act 2010, the employer must not discriminate against a disabled person in the way it develops any procedure or follows the disciplinary process. This includes an employer's procedures for dealing with both conduct and capability. Changes to disciplinary procedures to accommodate workers with mental health conditions would be a good example of reasonable adjustments under the Act.

When GMB members with mental health problems are subject to disciplinary action, GMB representatives should ask a number of key questions:

- Is the member’s mental health problem the true reason for disciplinary action? This could be direct discrimination.
- Does the employer see the GMB member’s behaviour as a disciplinary issue?
- Does the GMB member have mitigating factors due to their mental health condition?
- Does the employer accept that the GMB member has a mental health condition, and as such is covered by the Equality Act 2010?
- Is the GMB member being disciplined for attendance or sickness absence issues due to their mental health condition?
- Has the employer made reasonable adjustments? Do they actually benefit the GMB member?
- Would the disciplinary process treat the member differently if they did not have a mental health condition? This could be indirect discrimination.

An employment appeal tribunal judgement in 2014 determined that for an employer to dismiss on grounds of gross misconduct, there must be blame on the part of the employee. It is important for employers to take mitigating circumstances into account, such as the employee’s mental health.

The employer should question whether the employee had committed the

misconduct deliberately and knowingly, being fully aware of their actions and the consequences. The EAT suggested that employers should ask “Does the employee’s mental health problem affect their ability to control their actions?”.

The tribunal decision confirms that employers should consider reasonable adjustments to support people at work, even if their behaviour would normally be classed as gross misconduct.

GMB NEGOTIATING ON REASONABLE ADJUSTMENTS

The starting point is to ask the GMB member if they require any adjustments. It may not be obvious, and letting them explain what they want will help them to feel in control of the process.

The GMB member does not legally have to tell the employer that they have a disability. However, if a GMB member wants their employer to make reasonable adjustments then the GMB member should inform the employer. Otherwise, the employer can claim that they were not aware of any disability.

Where the GMB member has identified that they may need mental health support, and has made the employer aware, GMB representatives can ask the employer to make reasonable adjustments such as:

- Providing specific or adapted equipment

- Adjusting working hours
- Allowing more frequent breaks than others:
- Providing mentoring
- Rearranging work duties, by giving tasks to colleagues and assigning new work, so long as the member agrees.
- Giving additional training
- Redeployment into a different role

Any proposed adjustments must be endorsed by the GMB member before they are put to the employer. Such changes need to be carefully negotiated to ensure that colleagues are not disadvantaged and any new arrangement is agreed by all parties, particularly the GMB member. The adjustments do not need to be expensive or complicated, and may only be needed temporarily.

It is however crucial that specialist advice is sought when agreeing workplace adjustments, so that there is a good understanding of the individual's specific requirements.

Sources of advice and information on what adjustments may be required and for how long include:

- the GMB member;
- their GP, potentially through information given in the Fit for Work Statement ('Fit Note');
- Specialist mental health support the individual may be receiving;

- occupational health provider; and
- other union reps, who may have examples of good practice.

At all times, the duty to determine reasonable adjustments lies with the employer.

Changes to safety and or occupational health policies should include:

- Information regarding training of staff including those with management or oversight responsibilities on managing disability. This must identify behaviours which may indicate a mental health condition.
- Disability awareness training for all employees.

NEGOTIATING ON WORK-RELATED STRESS

Your employer has a legal duty to manage and reduce the risk to mental health caused by work-related stress.

As there are no specific regulations on managing stress, the employer has a free hand on how they tackle the issue. They must assess the risk to workers of developing stress, and implement control measures to ensure the risk is reduced to the lowest level achievable with the resources that they possess.

In practice, the best way to assess the issue is to use the HSE's Stress Management Standards. These are voluntary, but provide a clear framework for assessing causes of

stress and identifying concerns. The six management standards are:

1. Demands

This includes workload, work environment and work patterns.

The accepted standard is that employees indicate that they are able to cope with the demands of the job; and systems are in place, at a local level, to respond to any individual concerns.

To achieve this, your employer should provide workers with adequate and achievable demands in relation to the agreed hours of work. It should ensure that peoples' skills and abilities are matched to the job demands and that jobs are designed to be within the capabilities of the worker.

Management should ensure that any concerns that employees have on their work environment are addressed.

2. Control

In effect, how much say the worker has in the way they do their job.

The accepted standard is that a worker can have a say about the way they do their work, and systems are in place to respond to their concerns.

To achieve this, where possible, workers should have control of the pace of work and employees are encouraged to use their skills and initiative when doing their job; workers are encouraged to develop new skills to help them with challenging aspects of work; Workers are consulted over their work patterns, and have a say when breaks can be taken.

3. Support

This includes the encouragement, sponsorship and resources provided by the organisation including line management and colleagues.

Workers should be able to demonstrate that they receive adequate information and support from superiors and fellow workers; and systems are in place to deal with individual concerns.

To achieve this, your employer has policies and procedures in place to properly support workers; systems are in place to enable and encourage managers to support staff; systems are in place to enable and encourage workers to support their colleagues; workers know what support is available and how and when to access it; workers know how to get the necessary resource to do their job; and workers receive regular and constructive feedback.

4. Relationships

This includes promoting positive working attitudes to avoid conflict and dealing with unacceptable behaviour.

The accepted standard on this is that workers indicate that they are not subject to unacceptable behaviour, such as bullying at work; and systems are in place to respond to individual or collective concerns.

To achieve this, your employer must promote positive behaviour at work to avoid conflict and ensure fairness; workers share information relevant to their work; The employer has agreed

procedures and policies in place to prevent or resolve unacceptable behaviour; systems are in place to enable and encourage managers to deal with unacceptable behaviour; and systems are in place to enable and encourage workers to report unacceptable behaviour.

5. Role

This is where people understand their role within an organization, and management ensures that there are no conflicting roles.

For this standard workers indicate that they understand their role and responsibilities; and systems are in place to respond to individual concerns.

To achieve this, the organisation ensures that the different requirements it places on workers are compatible, and provides information to enable workers to understand their role and responsibilities; the employer ensures that, as far as possible, the requirements it places upon workers are clear; and systems are in place to enable workers to raise concerns about any uncertainties or conflicts they have in their role and responsibilities.

6. Change

How organisational change is managed and communicated in the organisation.

The accepted standard is workers indicate that the organisation engages them frequently when undergoing any organisational change;

and systems are in place to respond to individual concerns.

To achieve this, the employer provides workers with timely information to enable them to understand the reasons for proposed changes; the employer ensures adequate worker consultation on changes and provides opportunities for workers to influence proposals; workers are aware of any possible impact of any changes to their jobs. If necessary workers are given training to support any changes to their job; workers are aware of timetable for changes; and workers have access to relevant support during changes.

GMB along with many other unions believes a seventh factor should also be measured. This is 'Fairness', which tests the degree to which all workers are treated equally, and the mechanisms by which justice at work is decided and administered.

GMB Health and Safety Representatives should always encourage their employers to use the Stress Management Standards as the basis for assessment. This gives a consistent approach which can be followed across businesses and organisations.

GMB must be involved in the introduction of the standards at every stage. Without proper consultation and involvement from GMB the standards are unlikely to reduce work-related stress.

NEGOTIATING A MENTAL HEALTH POLICY

Working with management and Occupational Health staff to improve health and safety standards can be particularly beneficial when dealing with mental health issues. A joint committee off the main Health and Safety Committee can assist with working together.

If the employer does not believe that mental health is a workplace health and safety issue it will be difficult to make any improvements. Even if there is a paper policy and risk assessments these could just be paying 'lip service'. Getting the employer to work with you can prove difficult. You need to find your allies within the workplace; these could include Occupational Health staff or even Human Resources – arrange to meet with these people to discuss how to move forward on mental health issues.

There are a number of elements to negotiating a mental health policy. Your action plan should include implementing a mental health and stress audit; developing specific stress and mental health policies; and stress risk assessments.

A Mental Health and Stress Audit

A mental health and/or stress audit is designed to measure levels of stress within a particular group of employees or across the entire organisation. The Audit is a tool used to identify and manage workplace stress and mental

health issues. It is a three staged approach:

Stage One identifies the presence or absence of known causes of workplace stress by interviewing a representative sample of employees within the organisation using an audit tool.

Stage Two investigates in more detail the main areas of concern in order to identify the specific risks to mental health and generate practical risk reduction interventions.

Stage Three evaluates the impact of the interventions and risk reduction strategies.

Audits can be done by in-house experts such as Occupational Psychologists however, most organisations do not have this in house expertise and may have to call on external stress audit providers.

Whilst a stress audit is not a legal requirement, it can be a useful tool to establish the causes of workplace stress and help employers comply with the legal requirements to carry out risk assessments.

If an audit is carried out, GMB Health and Safety Representatives should be fully consulted on the implementation of such an audit. Audits should focus on the organisational factors which cause stress rather than individual factors.

Mental Health/Stress Policy

Workplace policies on stress and mental health are a good starting point. These can be two separate policies, or a single mental health policy with a focus on stress. A good policy should contain the following:

- A written commitment from the employer stating that he/she recognises mental health as a health and safety issue and is committed to preventing workplace stress.
- A clear definition of mental Health issues beyond stress and anxiety.
- Links to other policies and procedures, such as:
 - performance management
 - disciplinary
 - capability
 - sickness absence
 - grievance
 - drugs and alcohol
 - bullying and harassment
 - flexible working
 - disability leave
 - career breaks
 - training and development
- An outline of systems in place to prevent and reduce mental health risks and workplace stress e.g. risk assessment and bullying and harassment policies, and compliance with legislation.
- An outline of the responsibilities for all levels of managers and supervisors within the organisation alongside a commitment to train all managers and supervisors in good management techniques.
- A commitment to that recruitment and selection activities will support and provide reasonable adjustments for applicants with mental health issues.
- An outline of the role and functions of GMB Health and Safety Representatives and the Health and Safety Committee in relation to mental health issues.
- An outline of the role and responsibilities of Human Resources and Occupational Health in relation to managing mental health issues and stress risks.
- A list of key contacts internal and external to the employer, who can be contacted for advice or support.
- Be signed by the Employer.
- Apply to everyone in the organisation.

GMB Health and Safety

Representatives must be consulted on the contents of any stress policy and have the opportunity to comment and make suggestions for change.

COLLECTIVE ACTION

There are a number of things that you can do collectively in your workplace to take a stand on mental health issues. Mental health and stress

referrals should be tracked by the workplace Health and Safety Committee, and increases should be raised for investigation. You should raise this collectively with the employer (being mindful of individual confidentiality), seeking to identify and tackle the root causes.

You could also consider running a mental health awareness campaign. There are events each year such as World Mental Health Day, Mental Health Awareness Week, and European Depression Day that activities can be organised around.

GMB HEALTH AND SAFETY REPS CHECKLIST

.....
Does management acknowledge that mental health is a workplace issue? Yes No

.....
Are there workplace policies on mental health and stress? Yes No

.....
Do risk assessments include stress risk assessments? Yes No

.....
Are GMB Health and Safety Reps involved in the risk assessments? Yes No

.....
Does management use the HSE Stress Management Standards? Yes No

.....
Is there an open and transparent procedure for raising concerns? Yes No

.....
Does the employer make reasonable adjustments for any worker with a mental health condition? Yes No
.....

This list is not exhaustive and there may be a need to raise other concerns with management or involve your GMB Regional Health & Safety Officer.

