Peace Love and Understanding and Violence in the Workplace

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The greatest power in the world is that of the Soul. Peace is its highest expression. To attain peace, first we must acquire greater mastery over ourselves. We secure then an atmosphere of perfect peace, calm and goodwill that protects and fortifies ourselves and blesses others around us. - Mahatma Gandhi: Discourses on the Gita

Introduction: Definition & Incidence

Although initially it may seem at odds with the topic of this piece, the quote from Gandhi above is clear in context: knowledge has the power to enable us and our colleagues to make our way through difficult situations and, hopefully, to do so peacefully.

Although perhaps obvious, the HSE defines work related violence as:

"Any incident in which a person is abused, threatened or assaulted in circumstances relating to their work."

Based upon the Crime Survey for England and Wales for the year 2023/24, the HSE reported 642,000 incidents of violence at work; and that 279,000 adults experienced violence at work. That amounts to 1.1% of working adults and includes a range of injuries from scratches, cuts and bruises to concussion and stab wounds.

Further, the HSE looked at the '*Offender – Victim Relationship*'and concluded:

"The 2023/24 CSEW asserts that of all work-related violence the offender was unknown to the victim in 60% of incidents, whilst in 40% of incidents the offender was known to the victim. In cases where the offender was known, they were most likely to be a client or member of the public known through work."

In their October 2024 study '*Violence in the Workplace in the United Kingdom: Business and Individual Level Exposure*', Dr Vanessa Gash and Dr Niels Blom examined '*two nationally representative datasets, The Commercial Victimisation Survey (CVS) and the UK Household Panel Survey (UKHLS), to examine variance in the prevalence of workplace violence by industrial sector and occupational group*'.

They made the following key findings and recommendations:

Violent Crime on Business Premises

1.Using the Commercial Victimisation Survey we find 28% of businesses reported criminal victimisation on their premises in the past year, including 8% reporting violent victimisation (assaults, robberies, and threats).

2. Violent victimisation was most prevalent in the accommodation and food services sector, followed by wholesale and retail and the arts, entertainment and related services.

Employees' Experiences of Violence at Work

3. Using the UK Household Longitudinal Study we found 8% of employees had been threatened, insulted or physically attacked at work in the past year, evident in all sectors and occupational groups.

4. Violence at work was more common for public sector workers, as reported by employees.

5. The mental health impacts of workplace violence are considerable, and women were more likely to report feeling unsafe at work than men.

Just under 1 in 5 reported exposure to psychological violence and harassment; and 1 in 10 exposure to physical violence. Sadly, the study also identified that the figures are likely to represent an underestimate.

The study concluded with the following rather sobering paragraph:

"We conclude with a brief reflection on what these high rates of workplace violence, alongside widespread fears of violence, mean for workers in modern Britain. First, they suggest a pressing need for greater recognition of the problem for a significant proportion of workers in multiple different sectors. Second, they underscore the need for more effective policies to ensure violence minimisation in the workplace, not least given the associated risks to health of violence exposure. Finally, they raise the issue of the currently unknown effects of workplace violence on aggregate rates of productivity for the economy as a whole, and here we emphasise the need for further research on this issue."

The Nature of the Duty in Context

When acting for Claimants, I have often made the submission, usually in response to a suggestion of contributory negligence, that '*no-one goes to work and volunteers to be injured*'.

As closing submissions go it is designed to convey a simple legal truth that in a relationship where the duty to provide and maintain safe places of work is that of the employer, the burden of the non-delegable duty of care is an onerous one.

However, violence against and by employees is in a category that is probably more 'kinetic' than, say, risk assessing whether a piece of cutting equipment is properly guarded; scaffolding competently erected; or whether the workplace is noisy and/or dusty. After all, although it may be relatively straightforward to assess the potential for violence by a convicted armed robber, rhetorically, how might one survey one's own workforce to establish their propensity for violence against fellow employees or assess the risk from members of the public?

Although some working environments come with unpredictability as standard, this does not permit an employer merely to shrug its shoulders and suggest violence in these situations is an occupational hazard; rather, it reinforces the need to ensure that employees are given the best possible chance of staying safe and, regrettably, if it cannot be avoided, how to optimise outcomes for staff.

Of course, from the perspective of a Defendant, it is also crucial if there is to be any hope of defending a claim where reasonable practicability takes on a very real significance.

Vicarious Liability

As the cases demonstrate, especially those involving abuse, employees can act in ways that are repellent and clearly nothing to do with why they were employed.

However, as *Trustees of the Barry Congregation of Jehovah's Witnesses v BXB* [2023] UKSC 15 shows, demonstrating that one's employees were acting beyond the scope of their employment is not out of the question even in the face of such terrible facts.

The Judgment represents an important distillation of the 21st century cases and Lord Burrows' five principles bear repeating:

"(i) There are two stages to consider in determining vicarious liability. Stage 1 is concerned with the relationship between the defendant and the tortfeasor. Stage 2 is concerned with the link between the commission of the tort and that relationship. Both stages must be addressed and satisfied if vicarious liability is to be established.

(ii) The test at stage 1 is whether the relationship between the defendant and the tortfeasor was one of employment or akin to employment. In most cases, there will be no difficulty in applying this test because one is dealing with an employer-employee relationship. But in applying the "akin to employment" aspect of this test, a court needs to consider carefully features of the relationship that are similar to, or different from, a contract of employment. Depending on the facts, relevant features to consider may include: whether the work is being paid for in money or in kind, how integral to the organisation is the work carried out by the tortfeasor, the extent of the defendant's control over the tortfeasor in carrying out the work, whether the work is being carried out for the defendant's benefit or in furtherance of the aims of

the organisation, what the situation is with regard to appointment and termination, and whether there is a hierarchy of seniority into which the relevant role fits. It is important to recognise, as made clear in Barclays Bank*, that the "akin to employment" expansion does not undermine the traditional position that there is no vicarious liability where the tortfeasor is a true independent contractor in relation to the defendant.*

(iii) The test at stage 2 (the "close connection" test) is whether the wrongful conduct was so closely connected with acts that the tortfeasor was authorised to do that it can fairly and properly be regarded as done by the tortfeasor while acting in the course of the tortfeasor's employment or quasi-employment…The application of this "close connection" test requires a court to consider carefully on the facts the link between the wrongful conduct and the tortfeasor's authorised activities. That there is a causal connection (i.e., that the "but for" causation test is satisfied) is not sufficient in itself to satisfy the test. Cases such as Lister *and* Christian Brothers *show that sexual abuse of a child by someone who is employed or authorised to look after the child will, at least generally, satisfy the test. But, as established by* Morrison*, the carrying out of the wrongful act in pursuance of a personal vendetta against the employer, designed to harm the employer, will mean that this test is not satisfied.*

(iv) As made particularly clear by Lady Hale in Barclays Bank*, drawing on what Lord Hobhouse had said in* Lister*, the tests invoke legal principles that in the vast majority of cases can be applied without considering the underlying policy justification for vicarious liability. The tests are a product of the policy behind vicarious liability and in applying the tests there is no need to turn back continually to examine the underlying policy. This is not to deny that in difficult cases, and in line with what Lord Reed said in* Cox*, having applied the tests to reach a provisional outcome on vicarious liability, it can be a useful final check on the justice of the outcome to stand back and consider whether that outcome is consistent with the underlying policy. What precisely the underlying policy is has been hotly debated over many years by academics and judges alike… At root the core idea…appears to be that the employer or quasi-employer, who is taking the benefit of the activities carried on by a person integrated into its organisation, should bear the cost (or, one might say, should bear the risk) of the wrong committed by that person in the course of those activities.*

(v) The same two stages, and the same two tests, apply to cases of sexual abuse as they do to other cases on vicarious liability. Although one can reasonably interpret some judicial comments as supporting special rules for sexual abuse, this was rejected by Lord Reed in Cox*. The idea that the law still needs tailoring to deal with sexual abuse cases is misleading. The necessary tailoring is already reflected in, and embraced by, the modern tests."*

Risk Assessment

Risk assessment remains the foundation upon which risks to workplace safety are identified and mitigated and violence at work is no different.

Whatever else is true about the impact of section 69 ERRA, 21 years' of jurisprudence was not about to the wiped away in respect of the obligation imposed by, amongst others, Regulation 3 Management of Health and Safety at Work Regulations 1999 (and its 1992 predecessor).

Smith LJ's approach in *Allison v London Underground* [2008] EWCA Civ 71 remains the guiding principle:

"57. How is the court to approach the question of what the employer ought to have known about the risks inherent in his own operations? In my view, what he ought to have known is (or should be) closely linked with the risk assessment which he is obliged to carry out under Regulation 3 of the 1999 Regulations. That requires the employer to carry out a suitable and sufficient risk assessment for the purposes of identifying the measures he needs to take to comply with the requirements and prohibitions imposed

upon him by or under the relevant statutory provisions. What the employer ought to have known will be what he would have known if he had carried out a suitable and sufficient risk assessment. Plainly, a suitable and sufficient risk assessment will identify those risks in respect of which the employee needs training. Such a risk assessment will provide the basis not only for the training which the employer must give but also for other aspects of his duty, such as, for example, whether the place of work is safe or whether work equipment is suitable.

58. … Risk assessments are meant to be an exercise by which the employer examines and evaluates all the risks entailed in his operations and takes steps to remove or minimise those risks. They should be a blueprint for action. I do not think that Judge Cowell was alone in underestimating the importance of risk assessment. It seems to me that insufficient judicial attention has been given to risk assessments in the years since the duty to conduct them was first introduced. I think this is because judges recognise that a failure to carry out a sufficient and suitable risk assessment is never the direct cause of an injury. The inadequacy of a risk assessment can only ever be an indirect cause. Understandably judicial decisions have tended to focus on the breach of duty which has lead directly to the injury."

As in all workplace safety situations, the starting point remains how one identifies and responds to the inevitable risks of dealing with a range of people from the captive to the shopping public.

There is clearly a sliding scale of obviousness when it comes to physical violence at work: prisons; policing; secure hospitals and psychiatric wards; domestic and residential care for the mentally unwell, the aged, and the infirm; and schools, especially those which cater for pupils with special educational needs.

However, we live in a world in which police officers and security guards are required at hospital accident and emergency departments; metal detectors are in schools; even librarians are to be given body-worn cameras (see here); and verbal and physical abuse of poorly paid retail staff is increasingly commonplace.

Therefore, if it wishes to avoid staff being injured or successfully defend any claims, any public facing organisation has to be able to demonstrate that it anticipated and addressed the risk of interpersonal violence against, and/or between, its staff.

Clearly the surveys set out at the top of this paper indicate that reported incidents demonstrate just over 1 in 100 working people are affected. However, there is no room for complacency. The problem is sufficiently serious to have prompted one MP to initiate a Private Members' Bill.

Liz Saville Roberts MP's bill seeks to amend the HASAWA 1974 to '*place a requirement on employers to take proactive measures to prevent violence and harassment in the workplace; to make provision for protections for women and girls in the workplace; and to require the Health and Safety Executive to publish a Health and Safety Framework on violence and harassment in the workplace, including violence against women and girls in the workplace*'. It is at the second reading stage. There is a focus on gender based violence within the bill, and it comes with a wide ranging proposal, namely that:

"It shall be the duty of every employer to prepare, and as often as may be appropriate revise, an assessment to identify potential risks of violence and harassment in the workplace and implement policies and procedures to eliminate these risks so far as is reasonably practicable."

Therefore, if one were in any doubt about the continuing importance of risk assessment, this ought to suppress those doubts.

In short, if an employer has not assessed the risks of violence faced by their employees, an early admission of breach of duty is probably advisable.

It is worth bearing in mind that the cases do reflect that, sometimes, there is nothing that can affect the outcome, as *Cunningham v Rochdale MBC* [2021] EWCA Civ 1719 ably demonstrates in relation to causation: despite being assaulted by the same pupil on a second occasion, the Court of Appeal concluded that the Claimant '*was unable to show that if there had not been any breaches of duty on the part of the school, the attack and Mr Cunningham's loss would have been avoided, and therefore causation is not established*' (per Dingemans LJ at §42).

Information, Education and Training

So, assuming the risks have been assessed, how does one mitigate the impact of workplace violence?

In the obvious environments in which employees are exposed to a risk of violence, such as those where custodians, care staff and educators deal with an identifiable population, it ought to be straightforward to provide, and provide access to, information regarding prisoners, patients and students.

Therefore, employees need to be provided with easily accessible, comprehensible and comprehensive records regarding the people in their purview.

Take for example a secure psychiatric provider: patients or service users should have running records detailing the ups and downs of each day they are cared for. It is burdensome and time consuming but crucial if the next person on shift is unaware of a trigger from earlier that day/week and wishes to avoid a painful confrontation.

Sometimes, this may have the advantage of satisfying two functions: record and risk assessment; after all, what better way to inform a staff member of the risks of volatility on the part of the patient/service user than by providing a comprehensive history?

There must be effective shift handovers and briefings. At the very least there should be a note, possibly on a whiteboard or chart in an office common to all staff and consulting that chart/note must be hardwired through training. Ideally, staff should be afforded the time to ensure this takes place before they are expected to start work; and shifts ought to be staggered to permit this whilst maintaining effective care of clients.

Clearly, despite ensuring good quality notes and briefings, if a patient/service user erupts then information alone may not prevent an assault.

Therefore, training must also be provided as a last resort against violence/injury. Again, using the mental health and special needs teaching world as examples, the challenge posed, whatever the setting, is to provide care that respects the freedom of the individual whilst maintaining the safety of care providers.

The common methodology adopted is some version of management of violence and aggression training. As the HSE has it:

Training in the prevention and management of violence or aggression can provide employees with appropriate skills to reduce or diffuse potential incidents. It should be available to all staff, including ancillary staff, such as cleaners and maintenance, and temporary or agency staff.

The right level will be identified through the risk assessment process. Basic training in the principles of managing challenging behaviour should include:

- *causes of violence*
- *recognition of warning signs*
- *relevant interpersonal skills, ie verbal and non-verbal communication skills*
- *de-escalation techniques*
- *details of local working practices and control measures*
- *incident reporting procedures*

Albeit pointing out the obvious, if there is a risk of being confronted by difficult and challenging behaviour staff should be given the skills to deal with it. Ignorance does not breed confidence and being defensive or 'matching' aggressive behaviour is not likely to defuse the situation, rather it may inflame tempers and make the matter worse.

De-escalation, escape and evasion should always be the initial response. In any environment where a need to restrain is likely, whether to prevent injury to others or the individual responsible, it goes without saying that training in restraint

techniques must occur.

This requires careful training which in itself can be hazardous (e.g. I have represented a prison officer who was injured by the actions of a trainer during some over-enthusiastic role play designed to equip him for restraining young offenders). Again, the rights of the individual must be balanced against the need to prevent injury and staff need to be well trained so that they can act rationally when confronted by the irrational.

An important thing to bear in mind about physical restraint is that it is exhausting: arm and leg locks designed to manage struggling people require skill and strength. Restraint is often a numbers game and, if it takes time to subdue an angry or frustrated person, staff need to be relieved and replaced until the crisis is averted.

It is also crucial to ensure staff understand the impact of restraint upon the person being restrained: the flight response is strong and there are well documented examples of the restrained suffering severe respiratory distress from positional asphyxia, dangerous increases in cortisol and death if held for too long.

Training of this type must also be regularly refreshed: challenging environments are exhausting for those who work within them; ideally training should become hard wired by repetition.

It appears that some employees who work in challenging environments are sometimes loath to report incidents, accepting some degree of injury as essentially part of the job. A recent piece published by the BMA included the following troubling passage:

"*Findings from the 2023 NHS Staff Survey revealed that 23% of respondents answered no when asked whether they or a colleague had reported the most recent incident of physical violence against them, with 43% responding that they did not report harassment, bullying or abuse at work.*"

This may be seen as misplaced stoicism and resilience since the reporting of incidents has a number of advantages and ought to be encouraged primarily to ensure employee safety in future: it adds to the wider understanding of the perpetrator's behaviour; informs whether there is a need to revise/alter risk assessments; and may point to learning that can inform future training. At the very least, it may serve to reassure both employee and employer that they did their best to avoid the situation and to avoid feelings of guilt about the need to, for example, restrain a vulnerable person.

Additionally, there is the added protection of the Assaults on Emergency Workers (Offences) Act 2018 which carries a maximum sentence of 2 years for those convicted. Clearly that depends upon the need to report incidents.

Before leaving the subject of education, some thoughts on online training: does it have a real pass mark? Can one simply scroll through in seconds? Is there a time lapse feature so that the employer can audit responses? Realistically, however good it is, how can it adequately prepare the candidates to handle real-life situations? A superficial internet search revealed that one can enrol in an online course for as little as £10.95.

Frankly such training is probably better than nothing, but when it comes to a claim reliant upon the principle of

reasonable practicability, it is likely to provide inadequate protection for both the individual and the potential defendant.

Personal Protective Equipment

This is clearly sector specific: the risks faced by a police officer dealing with a suspect wielding a firearm or a knife are obviously different to a nurse or healthcare worker dealing with a patient/service user who tends to scratch or bite.

At the risk of repetition, risk assessment and individual records should identify the general and the specific.

Again, if violence does erupt, it is crucial that employees can signal for help and can be quickly located: personal alarms/radios are essential and should, wherever possible, be linked to internal location systems which are obviously and prominently displayed for colleagues to see.

Challenges

Focussing upon the health sector for a moment, it is clear that staff retention is an issue.

In a piece filed on 11 November 2024, the Royal College of Nursing said this:

"The number of nursing staff quitting the profession early in England is rising at a huge rate, RCN analysis shows. Since 2021, the number of UK-educated nursing staff leaving the Nursing and Midwifery Council (NMC) register within the first 10 years of joining has increased by 43%, including a 67% rise in those leaving in the first 5 years.
By 2029, 11,000 nursing staff will have left the profession without spending a decade in the job, if the current rate continues…"

Likewise, according to a piece by Saoirse Mallorie for the King's Fund on 2 May 2024, turnover in the care sector was 28% and, as a generality:

The sector is also struggling to retain staff. Low rates of pay as well as challenging working terms and conditions – particularly for staff on the front line – all contribute to high turnover rates. It is essential that issues around pay, conditions and other factors that drive poor retention rates are addressed.

The relevance of this to the average health sector employer is that if one has a high turnover of staff, coupled with poor retention in any event, training is likely to be problematic: bank and agency staff may well have pertinent training from elsewhere but that is unlikely to absolve the employer of the obligation to ensure that whoever works under its roof is appropriately trained.

Ideally, if an employer is reliant upon agency staff drafted in at short notice, it may be preferable to re-deploy them to deal with more compliant patients/service users unless and until one can be satisfied that they have an appropriate suite of training qualifications, or one can provide training and instruction in house at short notice

Conclusion

Violence at work is on the rise despite being under-reported. The key to the security of staff at work is risk assessment, training and, sometimes, personal protective equipment. Sadly, there are systemic and chronic problems in the form of inadequate investment, low pay and poor conditions in some of the sectors most affected but, coming full circle, violence at work is not and ought not to be an occupational hazard for those who perform crucial roles.

Case Law Examples

Buck v Nottinghamshire Healthcare NHS Trust [2006] EWCA Civ 1576: An NHS trust was liable for injuries inflicted on nursing staff by a patient at a high-security hospital where it had not implemented a policy recommended by the Safety and Security in Ashworth, Broadmoor and Rampton Hospitals Directions 2000. Had a risk assessment of the patient been carried out in accordance with that policy, which would have led to her being assessed as presenting an exceptionally high risk of causing serious injury to others, she would have been confined in her room at night, with the result that the incident would not have occurred.

Hill v Ministry of Justice [2022] EWHC 370 (QB)

A recorder had been entitled to dismiss a prison officer's personal injury claim against the Ministry of Justice where he had been injured by a young offender prisoner. The duty to take reasonable care required the baseline risk to be addressed within a safe system of work, and the recorder had been entitled to find that there was no risk sufficiently above the baseline risk posed by many young offenders to require additional measures.

Lister v Hesley Hall Ltd [2001] UKHL 22: resident of home sexually abused by warden employed by HH. HH had undertaken to care for the resident children and had entrusted that obligation to the warden. The warden's torts were so closely connected with his employment that it would be fair and just to hold HH vicariously liable.

Cox v MOJ [2016] UKSC 10: catering manager at prison injured when a prisoner dropped a sack of rice on her. It was argued that the prisoner was not an employee. The SC rejected the argument and concluded that the activities of prisoners, who received a nominal wage, formed an integral part of the operation of the prison.

Mohamud v Wm Morrison Supermarkets Plc [2016] UKSC 11: employee assaulted petrol forecourt customer. Whilst it was a gross abuse of his position, and despite the apparent racist motivation, the SC concluded it was in connection with the business in which he was employed and concluded D was vicariously liable.

WM Morrison Supermarkets Plc v Various Claimants [2020] UKSC 12: aggrieved IT employee uploaded personal data onto a USB stick at work which he then uploaded onto a publicly accessible website. In a claim brought by the staff whose data he had shared, the Supreme Court ultimately concluded that the disclosure of the data did not form part of the aggrieved employees' functions.

Barclays Bank Plc v Various Claimants [2020] UKSC 13: doctor accused of sexual assaults whilst instructed by the Defendant to conduct pre-employment medical examinations. The doctor had been in business on his own account with a portfolio of patients and clients. The employer was not vicariously liable for his wrongdoing.