

Number 8

## Harassment, Violent Residents and Visitors: Protecting Staff

Successive crime surveys have shown a dramatic increase in the number of work related incidents of violence. The 1996 British Crime Survey confirmed that health professionals are at a higher risk from work related violence than the general population.

In October 1999 the Department of Health launched the *NHS Zero Tolerance Zone Campaign* to send out the message to the public that violence against staff working in the NHS will no longer be tolerated. However, staff in care homes are often just as likely to suffer harassment or violence.

### Legal Duty

Employers are under a common law duty of care for the health and safety of their employees and also a statutory duty under section 2 of the *Health and Safety at Work Act 1974*. In practice this means that employers are required to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees.

### Risk assessment

In order to comply with their statutory and common law duties employers must carry out risk assessments and monitor and record violent incidents in order to identify appropriate preventative and protective measures which can be taken. Employers should also keep systems of work, the design of the working environment, staff training and emergency procedures constantly under review.

In carrying out risk assessments it is suggested that the following steps should be undertaken:

- An assessment of the elements which could contribute to a risk of violence, including the cumulative effect of these elements. This will involve consideration of the employer's record of incidents. It is therefore vital that the methods of reporting and recording incidents are adequate.
- Potential assailants should be identified. These may include residents, their relatives and friends. Risks from particular groups, such as the mentally ill, should be considered.
- Particular activities which might present a high risk of violence should also be considered. These might include administering medication or delivering unwelcome information.
- Those members of staff who are at highest risk should be identified. This part of the assessment will assist in determining the level of staff training required. It should be borne in mind that violence does not have to be physical: continued exposure to verbal abuse can create high levels of stress and anxiety.

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- Once the potential hazards and those who may be harmed have been identified it is necessary to consider whether the precautions in place are adequate or whether additional precautions are necessary.
- In considering ways of avoiding or reducing risks it will be necessary to look at the workplace itself and working arrangements and also the system of sharing information about patients, the response to incidents and the incident recording system.

## Working environment

Obviously a care home, and in particular the waiting area, needs to be open to the public. This increases the risk of violence against staff. There are, however, steps that can be taken to reduce the risk such as:

- Careful positioning of entrances, good lighting and possibly CCTV monitoring systems.
- Preventing impatience and irritation by having a reception desk or area which is easily identifiable, accessible and properly staffed.
- Maintaining a comfortable environment and ensuring that people using the home have sufficient personal space.
- In designing rooms, careful consideration should be given to the selection of furniture and fittings to reduce the risk of these being used as “weapons”. Other considerations are the ease with which staff can escape from the rooms, the provision of panic buttons and the need for easy communication between staff whilst still retaining privacy for residents.

## Criminal Actions

The Police are responsible for investigating crimes and will charge offenders when there is sufficient evidence to do so. Alternatively the Police may decide to issue a warning or to formally caution an individual. A caution is sometimes given where an offence has been committed but the Police decide not to prosecute because that person has admitted the offence and agreed to be cautioned. In deciding whether a caution is an appropriate response the Police will consider the seriousness of the offence and/or relevant factors such as the offenders previous record. Records of all cautions for reportable offences are entered onto the database of the Police National Computer. Previous cautions would be a factor in any Police decision whether to prosecute in future. In addition a previous caution may be cited in Court and could increase any sentence received for a further offence.

If the Police decide to charge someone, the case is passed to the Crown Prosecution Service (CPS). CPS lawyers are governed by the Code for Crown Prosecutors. All cases have to be reviewed to make sure that they pass the two tests set out in the Code. The first is the evidential test, namely whether there is sufficient evidence for there to be a realistic prospect of a conviction. Criminal cases have to be proved beyond reasonable doubt so there must be clear and reliable evidence that the offence was committed. In the case of an assault it is necessary to prove that the offender either meant to harm someone or knew that his or her behaviour created a risk of harming someone but nevertheless carried on.

If the evidential test is satisfactory then the second test, the public interest test, is applied. The Code sets out public interest factors in favour of prosecution and states that “a prosecution is likely to be needed if ... the offence was committed against a person serving the public (for example a police or prison officer or a nurse)”.

All criminal cases begin with a hearing in a Magistrates Court. Assault cases are then dealt with either in the Magistrates Court or the Crown Court. The most serious charges of assault are dealt

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with in the Crown Court where there are greater powers of punishment. Some cases can be heard either in the Crown Court or the Magistrates Court with the alleged offender having the choice as to where the case is heard. However, in such cases Magistrates have to be satisfied that their powers of punishment are sufficient before they agree to hear the case.

In order to help Magistrates decide whether to hear a case, guidelines<sup>1</sup> have been issued by the Lord Chief Justice. These guidelines set out the factors that make a case more serious. In relation to cases involving violence one of these factors is "serious violence ... caused to those whose work has to be done in contact with the public or who are likely to face violence in the course of their work".

In sentencing an offender Magistrates have guidelines<sup>1</sup> issued by the Magistrates' Association available to them. These guidelines also make it clear that an assault is made more serious if the victim is a person who is assaulted whilst serving the public. The Lord Chancellor has said that the Criminal Justice system needs to act as a deterrent to those who might consider attacking NHS staff and that it is entirely legitimate for Magistrates to respond to such assaults by imposing a sentence with a deterrent component.

## Compensation

Magistrates can award compensation for personal injury, loss or damage up to a total of £5,000 for each offence. However, compensation can only be awarded if the offender has the means to pay.

Another way of seeking compensation is through the Criminal Injuries Compensation Scheme. Under this scheme it is possible to apply for compensation if an individual has been injured because of a crime of violence.

A further way of obtaining compensation would be to pursue a separate claim for damages for personal injury in the Civil Courts.

## Private Prosecutions

If the CPS and Police decided not to prosecute, a private prosecution could be brought. However, if the CPS has chosen not to proceed because of insufficient evidence to secure a conviction, then it is likely that a private prosecution would also fail. Therefore if a private prosecution is being considered, the exact reason why the prosecution has been discontinued by the prosecuting authorities should be ascertained.

It should also be borne in mind that private prosecutions are slow and expensive. In considering whether to bring a private prosecution the impact on the staff involved and, in particular, of having the prospect of giving evidence in Court hanging over them for some time, should be considered. Some staff may want the matter pursued vigorously whilst others might want to forget about the whole thing. The morale of staff should, therefore, be considered.

## Injunctions

The use of injunctions in relation to aggressive residents or visitors is a further type of action to be considered. Injunctions may pose ethical problems as a resident requires care, but can be useful for violent or difficult relatives or visitors.

An exclusion injunction basically excludes the individual named in the injunction from entering a specified premises or vicinity or sometimes from approaching a named person.

<sup>1</sup> National Mode of Trial Guidelines 1995

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Injunctions can be costly but where particular individuals are continually pestering and disrupting staff they may be worth considering. If an individual is attending the home and is asked to leave and refuses to do so, he becomes a trespasser. If he is not prepared to leave in response to verbal persuasion, the Police can be called to remove him. Strictly speaking it is lawful for such a person to be physically removed by an employee, provided that no more force is used than the occasion requires. However, calling the Police would avoid a possible allegation of assault being made against the employee who tried to remove the patient against his will. Police attendance is also useful to ensure that a member of staff is not placed at risk in trying to remove the trespasser. Furthermore, if the trespasser resists in the presence of the police officer, it constitutes a breach of the peace and the police officer would have a power of arrest.

The chances of an application for an injunction being successful will be enhanced if full records have been made of all relevant incidents. The receptionist, security officer or other relevant employee should record the date, time and place of any incident, together with details of the individuals involved and what occurred between them. Full details of witnesses must be recorded as well. The record entries should be made either during the incident or as soon as possible after the incident.

An injunction can be obtained either under common law or under the Protection from Harassment Act 1997.

## Protection from Harassment Act 1997

Under this Act it is a criminal offence to harass an individual or put them "in fear of violence" on more than one occasion. A conviction for such an offence under the Act could lead to imprisonment and/or an unlimited fine. As mentioned above, the Act also provides for restraining injunctions. If the harasser breaches the terms of the injunction he or she would be guilty of a criminal offence. Claims under the Act can be brought either by the Police, by the individual or the employer on behalf of all staff.

## Summary

Staff subjected to abuse and attacks should be fully supported by their Employers. They should be kept informed of the progress of any investigation and prosecution and, should the Police and the CPS decide not to take the matter further, the staff involved should be informed of this and the reasons for the decision. Consideration should be given to lessons to be learned and to the possibility of a private prosecution or civil action, always bearing in mind the needs of the staff.

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For more information on Care Home Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7227 7282, or email: [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

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