

Duty of care is supreme, but to employees or shareholders?

Analysis Frances Gibb, Legal Editor

António Horta-Osório's leave of absence because of stress puts his bosses at Lloyds in one of the worst positions an employer can face.

There is an immediate tension between conflicting duties: Lloyds has a duty to its shareholders to keep the show on the road. At the same time, it has a duty to any employee suffering from work-related stress — and that extends to finding out the cause and not exacerbating it by suggesting it may be looking for possible successors.

Ronnie Fox, an employment law specialist at the City law firm Fox, said: "The safest thing for any employer to do is to act on medical advice. If that indicates that the person is going to be away for a considerable period of time, it may be sensible to look for a successor. If it is likely to be short-term, it will have to try to cope."

Andrew Burns, an employment law barrister at Devereux Chambers, warned that the company had a duty of care to its employees under health and safety legislation. "[Mr Horta-Osório] still has his job and it could be expected that after an appropriate break and, if necessary, treatment, then he will resume his post. So anything that suggests he will be replaced could be seen as a breach of trust and confidence." The company should

be very cautious, he said, about making public statements indicating that it thought he might not return. "It might be six weeks or it might be six months," he said.

"Unless the employer knows that this person has decided not to come back, it can only look to providing a temporary replacement — because the job still needs to be done and business is being damaged by the person not being there."

Under the law, employers have a duty to take reasonable care to ensure the health and safety of employees. If someone suffers from work-related stress and the employer could have prevented it, they might be found negligent — with no limit on the compensation that might be paid out.

Acas has estimated that every case of stress, depression and anxiety leads to an average of 29 days off work, so there is a good business — and pastoral — case for bosses to ensure the mental and physical well-being of workers.

And that must not be jeopardised by any need to keep the company going. With the sudden absence of an employee at the highest level, the answer — according to Ivor Adair, an employment lawyer with Russell Jones & Walker — is to have a strategy in place. Anyone can become ill — a company simply needs a designated understudy ready to step in from the wings.