Advancing the mental health and wellbeing agenda:

A guide for senior leaders in the intellectual property profession

Contents

Foreword

It is my great pleasure to commend to you this mental health and wellbeing guide for senior leaders. This publication follows on from the excellent guide for patent and trade mark attorneys on protecting their mental health and wellbeing, and is intended to help senior leaders put in place measures to ensure that workplaces are mentally healthy.

Leadership is the defining factor in ensuring that the workplace is a safe, welcoming environment. We make adjustments to remove disadvantage due to disability, short term injury or physical illness; it's no different with mental health. We need to ensure that the workplace is a mentally safe space.

We can put in place systems, processes, checks and balances. If, however, there is not a culture of looking after each other and recognising that it is 'ok not to be ok', and to feel able to talk openly about that, we are not supporting the mental health and wellbeing of those we are responsible for leading or managing

As a leader, giving a small amount of your time to read this guide should make a significant difference to the way you and your people support each other. It will help you to prioritise your own wellbeing and understand how a firm, however large or small, can prioritise the mental health and wellbeing of all its people.

Lee Davies
CEO
Chartered Institute of Patent Attorneys

Introduction

"When bosses understand mental health issues — and how to respond to them — it can make all the difference for an employee professionally and personally. **This involves taking notice, offering a helping hand, and saying 'I'm here, I have your back, you are not alone.'**"
Harvard Business Review[1]

This guide provides information and guidance to those in senior leadership or supervisory roles in the patent and trade mark professions to help them to create a working environment that genuinely supports mental health and wellbeing.
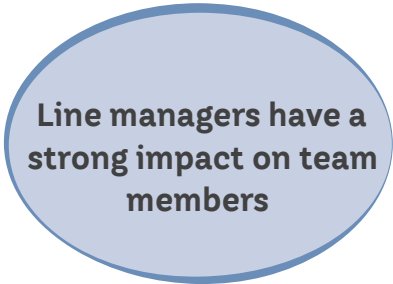
The case for supporting mental health in the workplace for business, financial and, importantly, ethical reasons is compelling.

People work better, are happier, more committed and more productive if their mental wellbeing is being cared for.

The 2018 and 2019 surveys[2] of the IP professions provide evidence of the kind of pressures patent and trade mark professionals are under. It is clearer than ever before that employers need to take positive action to support mental health and wellbeing in the workplace.

Full buy-in and lead from those in senior roles is essential in ensuring the success and sustainability of any initiatives introduced to support mental health and wellbeing in the workplace.

It is too early to assess the full impact of the Covid-19 pandemic on mental health. It seems inevitable that it will have had a major impact on many people, which will continue to be felt for some time to come. It is also likely that working patterns will not be the same post-Covid. This will call for new skills and ways of thinking about supporting staff mental health and wellbeing.

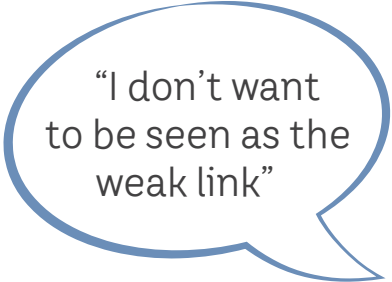**Line managers have a strong impact on team members**

Mental health risks for patent and trade mark professionals

Nature of the work

The work is often high pressure, time sensitive, competitive and with a global client base. It needs to be accurate, with no room for error. The work can be stimulating and rewarding. It can also be extremely stressful if not carefully managed and regulated. This can lead to an enhanced risk of developing mental health difficulties such as anxiety, depression or burn-out.

Personality types

People who are attracted to this work tend to be (without meaning to stereotype) intelligent, high achieving, perfectionistic, driven and conscientious.

"I don't want to be seen as the weak link"

There is a risk that without guidance or intervention, IP professionals might neglect their mental health in the attempt to maintain their high standards at all times and seek to achieve the impossible.

It is important to be able to recognise and monitor when these generally helpful traits can tip someone into overdoing it.
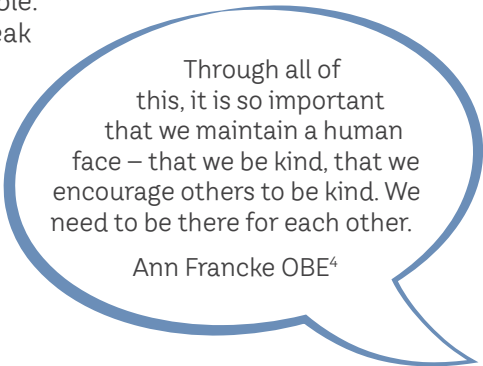
The importance of looking after your own mental health as a leader

As a senior leader, partner or supervisor of trainees, you are just as prone to develop stress, burn-out and other mental health difficulties as anyone else, if not more so. Nobody is immune.

It is important to attend to your own mental wellbeing and not see this as a luxury or a sign of weakness. Looking after yourself will ensure that you are effective, productive and make good decisions. If you can do this successfully, you will also be acting as a good role model. This will help demonstrate that you are not just paying lip service to any mental health initiatives you put in place.

- Read our *Protecting your mental health and wellbeing; a guide for patent and trade mark professionals*.[3] Be proactive in keeping yourself well.

- Think about who you go to if you are struggling at work? Can you talk to your manager or are you the 'boss'? If this feels difficult, try making use of peer support in or out (eg an external mentor or coach) of your organisation. If you haven't got these systems in place, it would be worth addressing this.

- Think about who monitors your workload. This can be hard to do for yourself, especially if you are the 'boss'. Make sure that you have systems in place to help you recognise when you are doing too much. This might well be someone outside work, such as a partner, family member or friend who can recognise when you are becoming stressed or taking on too much, although you might not agree. It is far better to act early than risk becoming overwhelmed or burnt out.

- Consider engaging with a coach, counsellor or another independent third-party advisor. Having someone to talk to completely freely is liberating and the value it adds is immeasurable. It can also be very beneficial to speak to someone at home (if possible) if you are starting to struggle.

> Through all of this, it is so important that we maintain a human face – that we be kind, that we encourage others to be kind. We need to be there for each other.
>
> Ann Francke OBE[4]

Creating a mentally healthy workplace: a 3-tier model

In order to create a fully 'mentally healthy' working environment, a holistic or 3-tier approach is effective. The three tiers are as follows:
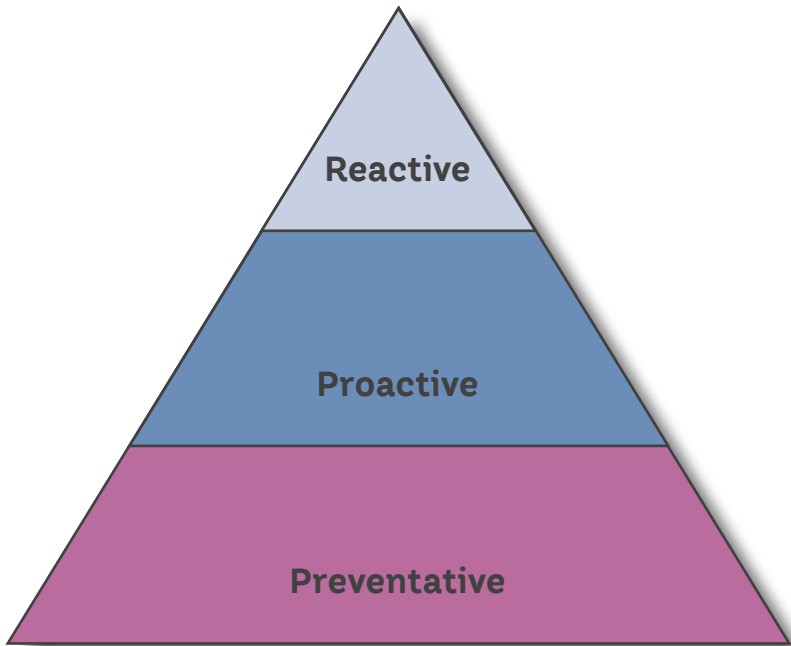
1. Preventative
Creating a culture that supports good mental health and wellbeing for everyone.

2. Proactive
This includes risk assessment and putting in place initiatives aimed at preventing mental health difficulties occurring or anticipating when they might arise (in both teams and individuals).

3. Reactive
Having the mechanisms in place (including training leaders) to support individuals who may be struggling with their mental health.

There is evidence that the highest returns on investment in mental health initiatives come from the preventive and proactive areas[5].

How to implement the 3-tier model

Tier 1: Preventative
Create a culture which supports good mental health and wellbeing for all staff

Challenge stigma

For senior leaders to do this effectively, you need to start with yourselves. How comfortable are you around mental health difficulties? What is your attitude to mental health? Start with conversations at senior management level. Is this something you feel is taboo? Is it OK for some people to develop mental health difficulties but not for you or others in positions of leadership?

Having clarified your beliefs and attitudes as individuals and as a leadership/ management team, you can tackle stigma in the rest of the organisation with honesty and authenticity.

When senior leaders can be open and genuine about their understanding and experiences of mental health difficulties, it gives the message that it is safe for others to admit they are struggling. Sadly, many people do not reveal that they have been having difficulties until a crisis point is reached. You should aim to help people address difficulties long before this happens.

Top down/bottom up approach

To change company culture, leaders need to take a 'top down/bottom up' approach. You need to believe in the importance of supporting mental health in the workplace and be ready to put adequate resources in place to support it. This also includes looking at policies and procedures and ensuring that the impact on the mental health of staff is considered.

It is also vital to get the views and suggestions from all staff members as well. What they see is important and helpful may be different from what you think. It is important to have consultations with as many people as possible – and genuinely take on board what they say.

Creating a mentally healthy workplace is everyone's responsibility; employers, managers and individuals.

Compassionate leadership[6]

Compassionate leadership is empathy plus action. This means that leaders need to listen, understand and empathise with their staff and then take steps to remedy the problem, where possible. It means that people are able to come clean about mistakes.

Compassionate leadership goes alongside authentic leadership, where leaders are honest and genuine, mean what they say and are transparent in their actions. This will build trust among employees.

"I've made a mistake and I'm still here"

Psychological safety[7]

To develop a culture that protects the mental health of all staff, you need to create psychological safety. This ensures that everybody feels safe and able to say what they think and feel without fear of being ignored, ridiculed, judged or held back in their career. It also means that staff will feel more comfortable about raising mental health concerns.

"I can't tell them how I'm feeling, it will have an impact on my career"
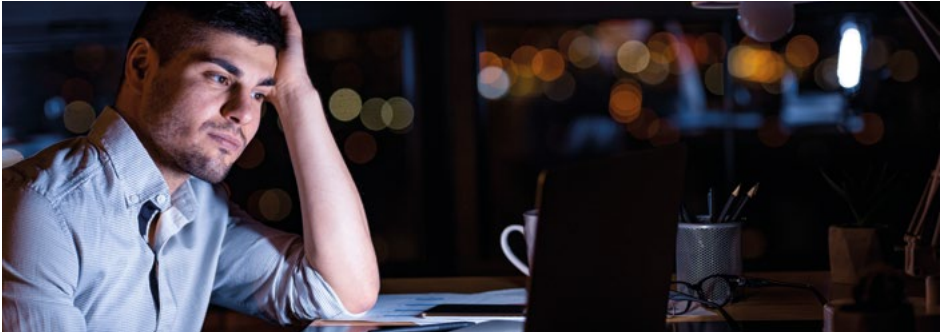
Tackle unhelpful cultural practices

There are many practices in the patent and trade mark professions, as in many others, that are part of the culture. They are seen as inevitable and go with the job. However, it may be worth questioning this and having the courage to explore whether these practices can be challenged and changed.

For example:

- **Working long hours and unrealistic deadlines**
  were two of the pressures cited in the Mental Health surveys of the IP professions 2018 and 2019[2]. When sustained over a period of time, this can run the risk of leading to severe stress, anxiety and burn out. Is the assumption that this goes with the job, that it's part of the culture and you just have to get on with it? Think about what you can do to change this.

> "Will I be judged negatively if I don't work the really long hours?"

- **Presenteeism**
  Is there an expectation that people should keep on working regardless of their mental and physical health? Is it seen as more trouble to take time off than to power on through, as the work will only pile up and make things worse?

> "I would not be able to pursue this career without the latitude to take sick days for mental health and flexibility in working hours"
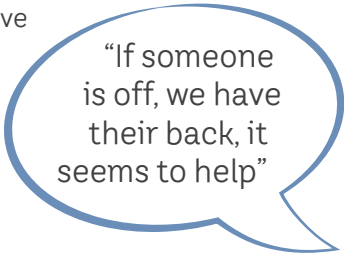
When people continue to drive themselves when they are physically or mentally unwell, their judgment becomes impaired, they are more prone to make mistakes and there is a greater risk of interpersonal conflict. This can end up being very costly[5]. They are also likely to become more seriously ill leading to taking more time off in the end.

- **Leavism**

    Do staff as a matter of course work longer hours than they should, including in the evenings, at weekends and when on holiday? Do they feel they have to be available 24/7, fifty-two weeks of the year?

    Evidence shows that people are more productive and less prone to become emotionally and physically exhausted when they take proper breaks[8]. If there is an unwritten rule that supports leavism, see what steps you can take to address this by actively discouraging people from working when they should be taking breaks.

> "If someone is off, we have their back, it seems to help"

Having identified unhelpful working practices, you need to put steps in place to make sure the necessary change in culture and behaviour happens.

It is a challenge to **bring about change** in these working practices. It requires a shift in attitude on how to be effective and productive. You will need the courage to believe that people work better when they have breaks and should be encouraged and enabled to take them. Leading by example is key. If staff see these changes in behaviour and values being lived by senior staff, it will give a strong message that this change in culture is genuine and meaningful.

Tier 2: Proactive

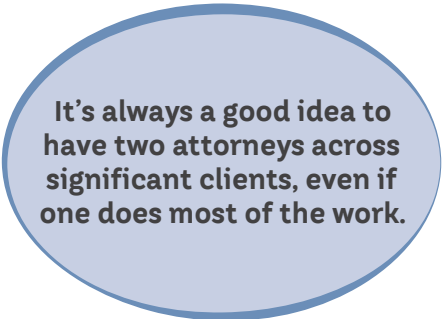### Develop mental health risk assessments and introduce proactive initiatives

Just as you take physical health risk assessments seriously[9] and you are already active in managing hazards, so you can take steps to:

Identify potential hazards

You can do this by looking at areas such as job design, work load, a person's vulnerability etc. to see if there is a risk to either the team or the individual. Be proactive in anticipating and mitigating. The HSE guidelines for managing stress in the workplace[10] can help with this.

For example:

- Make sure caseloads are never too high for any one person or team, including you.

- Put transparent measures in place to ensure colleagues' work will be managed while staff are on leave (or off sick), without putting extra strain on another employee. This is especially important in a profession where attorneys are often isolated and responsible for their own practice. Developing more of a team approach could be helpful.

- Have contingency plans in place in case people need to take their foot off the pedal sometimes. It is good practice to anticipate this and think about how you can redistribute work when necessary.

- Plan for back-up for each client or project. This is good business risk management and reassures the people doing the work. It can also be used as a selling point for clients.

> It's always a good idea to have two attorneys across significant clients, even if one does most of the work.

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Put in place proactive initiatives

Use existing evidence to anticipate where threats to people's mental wellbeing might lie and put in place initiatives to help minimise the impact. For example, certain groups[11] (e.g. young people, those from the BAME and LGBTQ+ communities, people with disabilities) are more vulnerable to experiencing mental health difficulties in the workplace.

What are you doing to make your workplace more inclusive and address everybody's mental wellbeing?

Have a staff mental health policy and plan

The Stevenson/Farmer review[12] has six core recommended standards, which form the basis for a mental health at work policy. You also need to have a plan outlining how the policy will be put in action, to identify which senior staff will take ownership and allocate sufficient resources to ensure sustainability. There is a sample policy template on the IP inclusive website[13] and a sample plan on the Charlie Waller Trust website.[14]
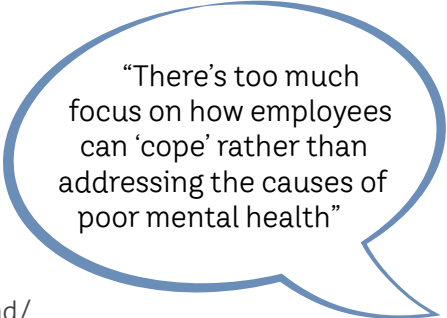
It is essential for a senior staff member ie partner/director to have responsibility for mental health and wellbeing so that it is embedded in all areas, policies and processes.

Tier 3: Reactive
Identify and look after the individuals who are struggling

How to recognise when someone is struggling

It is important for you to be able to recognise the signs that someone, including other senior leaders, is struggling with their mental wellbeing.

> "There's too much focus on how employees can 'cope' rather than addressing the causes of poor mental health"

It is important to know your colleagues and/or those you supervise well enough to recognise when their mood starts to change and/or they are behaving uncharacteristically. This might be more challenging when managing those who are working remotely.
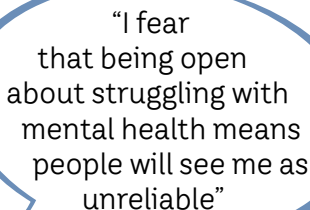
Routinely ask how people are in one-to-ones and appraisals. This opens up the opportunity for a discussion if you feel someone is starting to struggle.

Please see *Protecting your mental health and wellbeing; a guide for patent and trade mark professionals*[3] for more information on common mental health difficulties.

Sometimes people are very good at hiding their mental health difficulties. Or it may be that they think they are OK when it is obvious they are not. Learn to become alert to the warning signs. Don't be afraid to act on them if you have cause for concern. Be aware that fear of stigma might be preventing people from talking about it.

Remember that you are not a mental health expert and you may need to refer the person to someone with specialist expertise.

When and where to refer on, see page 18.

> "I fear that being open about struggling with mental health means people will see me as unreliable"

How to have a conversation about mental health concerns, including the importance of listening

- **If someone approaches you** make sure you listen carefully and take them seriously. Ensure they feel heard.

  Don't try to minimise their concerns or offer empty reassurance such as 'you'll be fine'. You don't know that and it just serves to shut the conversation down.

> "We could all do better to support each other through periods of mental ill-health but it can be difficult to start a conversation"

When you have listened, try and work together to address the concerns. Remember, compassionate leadership is about empathy and action.

- **If you notice that someone seems to be struggling** ask them how they are. Describe what you have noticed. Keep it factual rather than offering your opinion or interpretation.

  If the person is reluctant to talk or isn't prepared to see that there might be a problem, don't push it but don't leave it either. Make it clear that you are always there to talk. Remember, people will often say they are fine first time, so it is sometimes necessary to ask twice[15].

  Highlight any other sources of support e.g. the mental health pages on the IP inclusive website, Lawcare[16] or an Employee Assistance Programme, if you have one. Create another opportunity for a follow up.

- **Working remotely.** As you are less likely to have informal opportunities for chats, it is especially important to keep conversations going when working from home.

  Incorporate questions about people's wellbeing into all one-to-ones. You may need to put in more meetings, both team meetings and individual catch-ups. You may also need to become sensitive to different signs and signals e.g. behaviour/engagement in group meetings, time stamps on emails etc.

- **Protecting your boundaries.** Supporting people with mental health difficulties can be draining. Make sure that you look after yourself.

  Be clear about when you are and are not available. Be aware of your own limitations. If someone approaches you and it is not the right moment for you, explain why this is and arrange to talk another time.

  If you sense that it can't wait, then you will need to ask for time to make arrangements so you can give the person your full attention.

- **Confidentiality and record keeping.** Be clear of the need to maintain confidentiality and also when it might be necessary to break confidentiality, for example, if there is a serious risk of harm to self or others.

  Make a brief, factual record of conversations in line with GDPR and any local policies regarding collection and storage of personal information.

  Be clear and transparent at all times with the staff member about both confidentiality and data collection.

Putting in place effective measures to address the problems/how to help

Sometimes people just need to talk and feel heard and that is enough, along with regular check-ins. Other times, you may have to take further action e.g. referring them for more help, addressing workload, facilitating time off or putting in appropriate reasonable adjustments.

It's really helpful for supervisors to regularly check in with how someone is

If the problem is not work-related

- Allow the person to talk, listen carefully without judgement and don't make assumptions about what people need or will find helpful. Be guided by them, bearing in mind that often people who are struggling with their mental health may be so distressed and confused they are not really sure what they need.

- Time away from work may be helpful or it may not.

- What is important is that your staff member/colleague/those you supervise feel safe and comfortable talking to you and that they know that you will understand if they are having an 'off' day.

If the problem is work-related

- Listen carefully and without judgement.

- Don't rush in with solutions. Each person and each situation is different.

- The answer might be simple, for example a few days off (make sure someone is there to help with their caseload), a re-examination/re-allocation of workload or some extra resources.

- It might be more complex and involve managing sickness absence, return to work and/or putting in place reasonable adjustments.

- Don't forget that someone with a diagnosed and enduring mental health difficulty comes under the definition of a protected characteristic and might well be covered by the Equality Act 2010[17]. Employers also have a duty of care to look after their employee's physical and mental health, safety and wellbeing.[10]
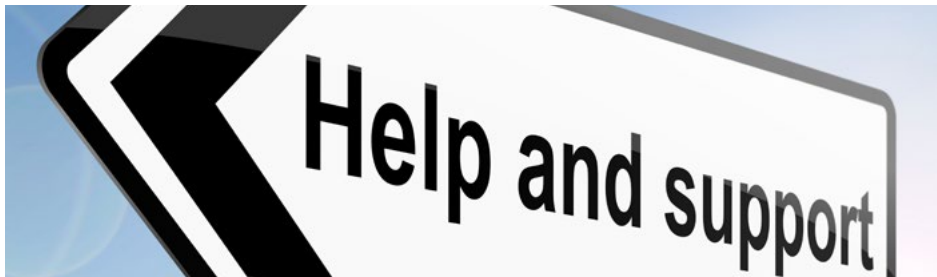
When and where to refer on

Although senior staff, leaders and supervisors are usually the people who will be looking after the day-to-day concerns of their staff, you are not meant to be mental health experts or therapists. It is essential to recognise your limitations and refer on to people with specific expertise when appropriate.

- Self-help: there is a wealth of general and specific self-help material available. For example, IP Inclusive has a range of resources and LawCare has information specifically designed for those in the legal profession. LawCare can also provide information about counselling.

- Recommend that the staff member contacts their GP, if they haven't already done so.

- If you have a Mental Health First Aider, they will be able to provide basic support and a listening ear. Remember that they are not mental health professionals or experts.

- Do you have an in-house Employee Assistance Programme (EAP) or access to a counselling service? If not, it may be that the firm will be willing to fund a course of time-limited counselling for an employee. See the British Association for Counselling and Psychotherapy (BACP) website[18] for guidance on this and be very clear with the person about the boundaries and limitations of what can be provided. As a guide, most EAPS will provide between three and six face-to-face sessions.

- If you have an HR and/or occupational health facility, you may want to make a referral if there is a question around fitness for work or if the person is taking an extended period of sickness absence.

> **If you feel there is a serious risk of suicide or a mental health crisis, call the emergency services as you would in any other health emergency. In these cases, it is far better to err on the side of caution. Discuss with another colleague if you are not sure.**

Next steps/quick wins

- Look after yourself. Make sure you are taking care of your own mental wellbeing and setting good examples to others.

- Put mental health and wellbeing on the next management board agenda and regularly after that.

- Get in touch with Jonathan's Voice or the Charlie Waller Trust for free resources, presentations and support in developing a mental health plan

- Remind colleagues about the excellent resources on the mental health pages of the IP Inclusive, Charlie Waller Trust and LawCare websites.

- If your organisation doesn't yet have any Mental Health First Aiders, consider training some of your staff.

- If you have Mental Health First Aiders (MHFA), check that colleagues know who they are and the MHFAs know about the IP Inclusive support network specifically for them.

In conclusion, working together to tackle mental health in the workplace will create a better future. In the same way that people expect to be kept physically safe at work, so we are increasingly expecting employers to look after our mental wellbeing. This is not just about adding things in but creating a total shift in the way we look at and approach our common workplace practices.

If companies have the courage to challenge the 'this is the way we've always done it' attitudes and practices, then real change can happen.

Change doesn't happen overnight but it is important to start somewhere and then keep going.

Further Information

The Stevenson/Farmer review Thriving at Work 2017[12] recommends the following six core standards:

1. Implement mental health at work plan
   - promotes good mental health of all employees
   - outlines the support available for those who may need it

2. Develop mental health awareness
   - by making information, tools and support accessible

3. Encourage open conversations about mental health and the support available
   - when employees are struggling
   - during the recruitment process
   - and at regular intervals throughout employment
   - offer appropriate workplace adjustments to employees who require them

4. Ensure good working conditions
   - a healthy work life balance
   - opportunities for development

5. Promote effective people management
   - regular conversations about their health and wellbeing with their line manager, supervisor or organisational leader
   - train and support line managers and supervisors in effective management practices

6. Routinely monitor employee mental health and wellbeing
   - by understanding available data
   - talking to employees
   - understanding risk factors

Useful resources

Jonathan's Voice
www.jonathansvoice.org.uk

Charlie Waller Trust
www.charliewaller.org

IP Inclusive
www.ipinclusive.org.uk

LawCare
Provides information and support on mental health and wellbeing in the legal community
www.lawcare.org.uk

Mental Health First Aid
https://mhfaengland.org/mhfa-centre/resources/address-your-stress/?resource_type_id=48b51c37-3ca5-e811-8147-e0071b668081

Wellbeing at the bar
www.wellbeingatthebar.org.uk/staying-well/ (online stories)

Business in the Community toolkits
www.bitc.org.uk/toolkit/mental-health-for-employers-toolkit/

ACAS
Gives employees and employers free, impartial advice on workplace rights, rules and best practice, including supporting mental health in the workplace
www.acas.org.uk/supporting-mental-health-workplace

Hub of Hope
A national mental health database, bringing help and support together in one place mental health network
www.hubofhope.co.uk

City Mental Health Alliance
www.citymha.org.uk/resources

Health and Safety Executive
www.hse.gov.uk/stress/index.htm

NHS guides
www.nhs.uk/oneyou/every-mind-matters/

Useful guides for NHS staff but with lots of useful transferrable ideas
www.people.nhs.uk/guides
www.nhsemployers.org/retention-and-staff-experience/health-and-wellbeing/taking-a-targeted-approach/taking-a-targeted-approach/mental-health-in-the-workplace

Chartered Institute of personnel and Development (CIPD)
www.cipd.co.uk/knowledge/culture/well-being/stress-factsheet

BUPA
Helpful information for line managers
www.bupa.co.uk/health-information/workplace-mental-health

Fit for Law
Free online course on developing emotional competence and professional resilience
www.open.edu/openlearncreate/mod/oucontent/view.php?id=140023

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8. Here's Why Psychological Safety in the Workplace Is Important – And How to Foster It, https://www.psychreg.org/psychological-safety-in-the-workplace
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13. IPInclusive, https://www.ipinclusive.org.uk
14. Charlie Waller Trust, https://www.charliewaller.org
15. Time to Change, https://www.time-to-change.org.uk/asktwice
16. Lawcare, https://www.lawcare.org.uk
17. Equality Act 2010, https://www.legislation.gov.uk/uksi/2010/2194/contents/made
18. British Association for Counselling (BACP), https://www.bacp.co.uk/

Jonathan's Voice was established in 2017 in memory of Jonathan McCartney who tragically and unexpectedly took his own life in October of that year at the age of 35. Jonathan was a UK and European patent attorney; a career he loved. The aims of Jonathan's Voice are to reduce the stigma associated with mental health and to empower people to speak up and reach out for help when they need it. We work with professionals in the intellectual property sector, and beyond, to raise awareness, provide guidance for individuals and support organisations to develop mental health and wellbeing practices in the workplace. For further information visit www.jonathansvoice.org.uk

"Speaking out for Mental Health"

Jonathan's Voice thanks all those in the intellectual property community for their considered responses to the initial questionnaire and for subsequent feedback which has been extremely valuable in informing the contents of this booklet.

Registered charity number: 1180424

The Charlie Waller Trust was set up in 1997 in memory of Charlie Waller, a young man who took his own life whilst suffering from depression. The Trust raises awareness of depression and other mental health problems, fights stigma, provides education and training to schools, universities, workplaces, GPs and nurses, and encourages those who may be depressed to seek help. Visit www.charliewaller.org for further information.

Registered charity number: 1109984