

police health & safety matters

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Newsletter for the Police Federation

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PART OF SLATER & GORDON LAWYERS



Welcome to the Spring 2012 edition of Police Health & Safety Matters.

In this issue we review a number of recent cases and legal developments relevant to police officers. We look at Government plans to reduce health & safety regulation in the UK. We also look at plans to cut back on payments made by the CICA.

We review two Court of Appeal decisions which have implications for police officers. One deals with the legal duty of care expected of police officers during emergency response driving; the other deals generally with risks arising in employment involving work at the roadside.

We look at some recent cases we have been involved in, including claims arising out of training to deal with emotionally disturbed people.

We aim this newsletter at Health & Safety Representatives, but feel free to circulate to other Federation members who may find it useful. We certainly welcome any feedback or comments.

If you have any suggestions for topics that you would like to see covered in future issues then please do get in contact:

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Proposed reform of the CICA scheme

The Government have announced plans to reduce compensation awards paid out to victims of crimes of violence.

The likely result of these changes is that many Federation members injured when dealing with violent criminals may miss out on compensation payments altogether or see them reduced significantly.

The Lord Chancellor, Kenneth Clarke, has announced proposals to reform the Criminal Injuries Compensation Authority (CICA) Scheme. The Scheme, which has been in place since 1964, provides for compensation to be paid to victims of crimes of violence. Over the five decades it has been in place it has paid out millions of pounds in compensation to injured police officers.

Mr Clarke announced to the House of Commons that "compensation should be focused on those with serious injuries that have long term or permanent consequences".

Tariff Awards

The Scheme currently has 25 tariff bands ranging from £1,000 to £250,000. Different injuries have different tariffs. The proposal is to either remove or restrict

the lower 12 bands which cover injuries under £11,000, to reduce or remove awards for those with less grave injuries. He referred to injuries such as sprained ankles, broken toes or bruised ribs, "from which people tend to recover fairly quickly" as those being removed from the Scheme.

Minor Injuries?

When one looks at the detail of the injuries the Government now proposes to exclude it transpires that some are actually injuries that many would consider pretty significant. They include significant facial disfigurement, a fractured skull, loss of a finger and some permanent head injuries; all injuries most would see as far from minor or trivial.

Many would be surprised to hear that a child who suffers physical abuse of a serious nature resulting in wounds, burns or scalds would no longer be entitled to any compensation under the proposed new Scheme. Even victims of frequent repetitive and severe sexual assault and abuse over three years or more would have their awards dramatically cut from the current level of £8,200.

The likely result of these proposed changes will be that many police officers who suffer pretty unpleasant injuries that might cause problems for lengthy periods may now find themselves without any source of redress, or with reduced awards.

Government Plan to cut back on Health & Safety Legislation

The Government announce plans to overhaul health and safety regulation as part of their ongoing aim to reduce “burdens on business” and cut back on red tape.

The Government has announced that it intends to “scrap or improve 84% of health & safety regulation”. Following on from the Prime Minister’s recent declaration that health & safety legislation had become an “albatross around the neck of British businesses”, the Government has set out its intention to introduce legislation in 2012 so that health & safety legislation will no longer hold employers to be in breach of their duties in civil law where they have done everything that is reasonably practicable to protect their employees.

Health & Safety Review

Following the publication of Lord Young’s review of health & safety culture, ‘Commonsense, Common Safety’, the Government asked Professor Ragnar Löfstedt to review health & safety legislation with a view to easing the burden on business. Professor Löfstedt’s report entitled ‘Reclaiming Health & Safety for all’ was published in November 2011. No doubt to the dismay of some ministers the report concluded that UK health & safety legislation was broadly fit for purpose.

Whilst Professor Löfstedt identified a few statutory provisions he felt should be revised or repealed, but these were relatively obscure, and certainly of no significance to police officers. The only substantive legislative change he recommended was to withdraw certain strict liability provisions in the Regulations.

Strict Liability

At present there are a number of duties set out in health & safety regulations which are absolute duties. For example, the Work Equipment Regulations 1998 impart a duty to ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair. If an employee is injured because of defective work equipment then the employer is liable to pay damages for that

injury irrespective of whether they had a system of inspection and maintenance for the equipment in question.

The Government has endorsed Professor Löfstedt’s recommendation that these strict duties should now be removed. The proposal is to limit these duties so that the employer can defend such cases if they show that they took all reasonably practicable precautions.

Reduced Right to Damages

In practice these changes will restrict circumstances in which employees will be eligible to recover compensation. For example, if a police officer is riding a bicycle provided by their Force and they are injured because the frame snaps, at present they would have an automatic entitlement to compensation for any injuries sustained. Under the proposed reforms the Force could escape liability if they could show that they had inspected and maintained the bicycle so far as it was reasonably practicable to do so.

Conflict With European Law

The detail of the proposed changes has not been published but one area that will need to be looked at carefully is the potential conflict between UK legislation and European law. Most of the key health & safety Regulations in the UK are derived from EU Directives. The Government cannot impose changes to UK health & safety Regulations where the effect would be to provide a different legal duty to that set out in a European Directive. There is potential for considerable legal argument in the future should there be possible conflicts between the duties set out in the European Directives dealing with health and safety and any revised UK Regulations.

EU Heading in a Different Direction

The future direction of health & safety legislation in the UK is difficult to predict. Whilst on the one hand the Government talk of reducing health and safety regulation, the reality of most health and safety legislation is that it now originates in Brussels not Westminster. Whilst the U.K. Government talk of cutting back on regulation it may well be that the European Parliament will be going in a different direction.

Plans are currently afoot to impose a new EU Musculoskeletal Directive. This is intended to amalgamate the duties set out in the Manual Handling Regulations and the Display Screen Regulations. The aim is to create a set of rules designed to prevent musculoskeletal disorders such as back pain and repetitive strain injuries. Early drafts of the Directive include a requirement that psychosocial factors such as stress be taken into consideration when assessing the risk of injury. This is potentially a far wider legal obligation to protect the wellbeing of employees than that set out in the current Regulations.

Trial Judge Critical of Emotionally Disturbed Person Training Exercise



We have recently acted in two cases that have highlighted shortcomings in training exercises designed to teach officers procedures for the containment of an emotionally disturbed person (EDP).

At a trial for a claim brought by a West Midlands officer the Judge was critical of the Force’s EDP training procedure. The officer had been injured whilst undertaking the role of an emotionally disturbed person and brought a claim for damages against the Force.

Altered Training Venue

Previously the training had taken place in a relatively small room where it was generally possible for one or two shield parties to contain the EDP. The training was thought to be physically exhausting but was relatively straightforward and had not given rise to any history of problems. The trainers subsequently decided to change the training seemingly to make it more realistic. A new training suite was put together which consisted of a much larger room. The greater space in the new room made it much easier for the EDP to evade containment. This resulted in three shield parties being required to box in and contain the EDP.

Roadside dangers: HSE prosecution

A recent Appeal case has drawn attention to the dangers faced by police officers and others who have to work on the roadside.

Police officers frequently attend the scene of accidents on busy roads. In doing so, their work puts them in what is potentially a very dangerous situation. Over the last few years there have been a number of fatalities and several very serious injuries involving police officers injured at the roadside when attending accident scenes. A recent Court of Appeal decision has provided important guidance on the duties arising under the Health & Safety at Work Act 1974 for those employers whose workers are exposed to such hazards on the roads and at the roadside.

Fatal Accident

In the case of *Rv. Tangerine Confectionery Limited and Veolia BS (UK) Ltd* the Court of Appeal reviewed the general principles arising in any health and safety prosecution under the 1974 Act. The defendant waste and recycling company, Veolia, had been fined £225,000 after a worker had been run over and killed when carrying out a refuse collection. The worker, Mr Griffiths, had to gather litter from the grass verge at the side of a dual carriageway. He was required to walk along picking up litter whilst a colleague drove a pick up vehicle just behind him. As the pick up vehicle tried to negotiate a post on the verge, it was hit from behind by a lorry causing it to be shunted forwards and to collide with Mr Griffiths. Mr Griffiths sustained fatal injuries and the driver of the pick up vehicle was seriously injured.

Risks Arising from the Work

The company were prosecuted under the 1974 Act for failing in their statutory duties to protect the health and safety of both their employees and non-employees (Mr Griffiths was an agency worker and was not employed by the company). The company argued they were not guilty of any offence as the risks here derived from the ordinary use of the road and not the work. They claim that the accident was caused by inattentive or careless driving rather than their own activities. In rejecting these arguments the Court of Appeal held that it was unhelpful to introduce a separate test examining where the risk derived from. In any event, the defendant's activities and undertaking put its employees and



agency workers in the path of oncoming traffic as they collected litter from a busy road, clearly a risk therefore arose directly from their roadside jobs. The position was not altered by an independent driving error which also contributed to the accident.

Dangers Faced by Police Officers

Whilst this case does not relate specifically to police officers, the Judgment does resolve various general issues about the duties arising under the Act and how a Court should approach these. In particular it emphasises the importance of employers carrying out thorough risk assessments. In the context of police work this makes it plain that a Police Force should assess the risks arising from officers working at the roadside dealing with accidents. A Force must put in place a safe system of work to ensure, so far as is reasonably practicable, the health and safety of officers who have to attend accidents.

The dangers Federation members face in working at the roadside are unfortunately all too familiar for those of us who deal with accidents and injuries for police officers. We have recently had to issue High Court proceedings on behalf of the fiancée of a Kent police officer killed when he was struck by a car whilst putting out cones to divert traffic on the A249 at Sittingbourne following an earlier accident. This follows on from a number of other fatalities in similar circumstances in recent years including officers in Essex, Dorset and Cambridgeshire.

During the training exercise a shield party of trainees, having realised how easy it was for the EDP to out manoeuvre them, ran into the room and knocked the officer to the ground causing her injury.

Denial of Liability

The Force denied liability for the accident, arguing that this was appropriate and necessary training. We alleged that the training had not been organised in a safe manner and, in particular, the Force had failed to carry out a proper risk assessment after the new training room was introduced. It was also alleged that the trainees had been over zealous when they should have been specifically instructed to act in a controlled manner.

In a Judgment given in February 2012 the Court rejected the Force's arguments and found for the officer in full. The Judge held that the trainees should have been properly cautioned not to run at the EDP.

Further Accident

In a second claim a Staffordshire officer was also injured on the same day. During the EDP containment exercise she had to play the role of the link officer working with two shield officers. Another shield party was called in to assist

with the containment. They rushed into the room and directly into collision with the officer. One of their shields struck the officer on the wrist causing a fracture. A claim was put to Staffordshire Police raising similar allegations. The Force disputed liability but then agreed to pay damages on a full liability basis a week before a trial was due to commence.

Safety in Training

Both of these cases illustrate the importance of risk assessment in police training. For police training to be effective a balance must be struck between the need for the training to be realistic if it is to be effective, with the need to protect the health and safety of the officers taking part. Careful thought and consideration is required to get this balance right. Both of these accidents occurred after a training venue had been completely redesigned. The failure to properly consider the risks arising from the new venue lead immediately to injuries which could otherwise have been avoided if the officers had been properly warned and briefed on the potential hazards.

Emergency response driving: Standard of Care



The recent Court of Appeal decision in *Rebecca Ann Smith v. The Chief Constable of Nottinghamshire* has cast the spotlight on the issue of police officers driving at speed in response to emergency calls in busy urban areas.

Pedestrian in the Road

Rebecca Smith was 16 years old when she sustained catastrophic injuries after being hit by a police car being driven at speed in central Nottingham. The police driver was responding to an emergency call following a report of an assault. He was driving on a road which has various pubs and clubs in the vicinity where there were likely to be people under the influence of alcohol. Rebecca Smith, who had been drinking, ran onto the road just beyond a junction. She was hit by the police vehicle which had just passed through a red light at the junction travelling around 45 – 50 mph in a 30 mph zone. The evidence demonstrated that the police driver had only slowed by a few miles per hour at the junction whilst making sure it was clear.

Apportionment of Blame

At the initial High Court trial the Judge found that the police driver had driven too fast but that he was only 25% to blame. The Judge attributed 75% of the fault to Miss Smith for crossing the road without checking it was clear when the police vehicle, which had its siren and blue lights activated, would have been clearly visible and audible.

On appeal the Court of Appeal overturned the apportionment of liability so that two-thirds of the blame was attributed to the police driver and only one-third to the injured pedestrian. The Court stressed that a police vehicle being driven at high speed in an urban area can become a “dangerous weapon”. A police officer is required to keep a proper look out in accordance with the speed they are travelling.

Force Policy

The Court of Appeal placed particular emphasis on Nottinghamshire Police’s Pursuit Driving Policy which states that the standard of driving must be “beyond reproach”. It also warns officers that they should never assume that other road users or pedestrians will hear their siren.

The Court of Appeal have set a high standard of care for police drivers. The decision contrasts with earlier judgments which had stressed the onus on pedestrians and other road users to follow the advice given in the Highway Code and to keep out of the way if a police vehicle approaches with flashing blue lights and sirens.

Health & Safety Case Watch

Here we look at a number of recent cases that we have been involved in where we have relied upon breaches of Health & Safety law when acting for police officers.

Dog Bite

We were recently successful in recovering damages at trial for a Nottinghamshire police officer who was bitten by a police dog during a search for a suspect. The Claimant gave evidence that he had shouted out to a dog handler to tell him he was heading in the wrong direction while pointing him in the direction of the suspect. The officer then stood still with his arms tucked into his chest so that the police dog would run straight past him. Unfortunately the dog trotted over to him, nuzzled his nose under the officer’s arm to release this from his body and then bit his arm.

Nottinghamshire Police disputed liability but the Judge found that the dog handler had been negligent in that he had failed to control his dog. The Judge sidestepped the trickier issue as to whether the Force was strictly liable under Section 2 of the Animals Act and we therefore still await a definitive Judgment as to whether this particular statutory provision does give rise to strict liability where a police dog bites an officer whilst on duty.

Rescuer Claim

A West Yorkshire police officer has recovered just under £300,000 as a result of chronic physical and psychological damage caused by his involvement in attempting to rescue the victim of a road traffic accident. The defendant motorist had rowed with his wife and subsequently got drunk. He got into his car and in a highly emotional state he drove off the road and collided with a tree. Our client was one of the first to attend the scene and was injured whilst attempting to rescue the defendant from his burning vehicle. The case proceeded on the basis that it was a foreseeable consequence of the defendant’s careless and reckless driving that he may require the assistance of the Emergency Services to rescue him. The claim was disputed throughout with the defendant’s insurers arguing that the officer was simply doing his job but damages were then agreed prior to trial.

Animals on the Highway

A Derbyshire officer recovered damages of £225,000 after sustaining a serious knee injury as a result of being dragged approximately 100 metres along a dual carriageway by a horse. The horse had strayed onto the road and the officer and her colleague were attempting to use a rope and a by-line to catch it. The officer had not been provided with any equipment or training to deal with such a situation.

The issue in this case was the extent to which the Force should have prepared for such an eventuality. The Force argued that it was very rare for animals to stray on the road and officers to be required to deal with this and they had not therefore implemented any training or procedures for these circumstances. We were able to produce evidence to show that the Fire Brigade in the area had policies in place for these situations. Expert evidence revealed that the cost of providing training was relatively low. There was also evidence to show there had been several occasions in the year before the accident when officers had had to deal with animals that had strayed on to the highway. The Force eventually agreed to make a full payment in settlement of the claim.

Motorcycle Equipment

A Cambridgeshire officer recently recovered damages of £1,750 for friction burns sustained after he came off his motorcycle. The allegation related to inadequacies with his motorcycle clothing which failed to provide sufficient protection from an abrasion injury. Reliance was made upon the Personal Protective Equipment Regulations.

Similar issues arise in a claim we are dealing with on behalf of a Sussex officer which is currently proceeding to the Court of Appeal. An officer sustained an injury to his ankle when he had an accident during an off road motorcycling course. He had been provided with standard motorcycle boots. It is alleged that he should have been provided with motocross boots. It was our case that such boots would have prevented or reduced the extent of his ankle fracture. At trial the Judge rejected the argument that the Force were in breach of their statutory duty to provide suitable personal protective equipment under the PPE Regulations. The Court of Appeal are now being asked to assess whether the Force had complied with the relevant statutory duties which required them to show that they properly assessed the risks and then provided protective equipment to deal with the identified risks that are not otherwise controlled.

Please feel free to discuss your own position and concerns.
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