

Welcome to the Spring 2011 Edition of Police & Health & Safety Matters.

In this issue we look at a number of cases that we have been involved in where health & safety issues have arisen. We look at recent statistics revealing the amount of compensation that is paid out by Forces as a result of police dog bites.

We outline a further health and safety review commissioned by the Government and we also look at new guidance published by the CPS on health and safety prosecutions of police officers.

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 suggestions for topics that you would like to see covered in future issues then please do get in contact.

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Government Announcement: Further health & safety review.

Health and safety reviews are becoming rather like buses; nothing comes along for some years and then suddenly two arrive in quick succession.

Lord Young's review of health and safety, "*Common Sense, Common Safety*", was published late last year and reviewed in Issue 9 of Health & Safety Matters.

Following on from this the Department for Work & Pensions Minister, Chris Grayling MP has announced another review of health and safety legislation. Announcing the review Mr Grayling said that "sensible health and safety at work helps to maintain a healthy and productive work force and contributes to economic prosperity. The burden of health and safety red tape has, however, become too great, with too many inspections of relatively low risk and good performing work places, frequently poor health and safety advice to businesses from badly qualified consultants, and a complex structure of regulation".

Good Health and Safety, Good for Everyone

The Government has set out its plans in a document entitled "*Good Health and Safety, Good for Everyone*". This proposes a "lighter touch approach", concentrating efforts on higher risk industries and on tackling serious breaches of the rules. It identifies three key aspects where changes need to be introduced:

1. Proposals to clamp down on "rogue health and safety advisors" with the launch of an official register of Occupational Safety & Health Consultants
2. The introduction of a new health and safety framework that will significantly reduce the number of health and safety inspections carried out by the HSE, and

3. The simplification of health and safety legislation and regulation, to include the publication of guidance on health and safety legislation but also to involve a further review of the law in this area.

The Government has appointed Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College, London. The Government are looking to him to make recommendations to simplify the current rules with particular reference to eliminating duplication, inconsistencies and unnecessary rules. The Government have also expressly asked Professor Löfstedt to consider legal changes that would clarify the position of employers in cases where employees act in a grossly irresponsible manner.

Implications of review

Critics of the Government's proposals point to potentially negative implications for workers that could arise from a reduction in health and safety inspections. The Government's approach is concerned with easing the burden on business rather than doing everything possible to protect the health and safety of employees. Several observers have commented that the UK has an impressive health and safety record in comparison to other industrialised nations. Many have argued that this indicates that the legislation is working effectively and is a solution to a problem and not a problem in itself.

Professor Ragnar Löfstedt has been asked to prepare his report for publication in the Autumn of 2011.

New CPS Guidance: On heroic acts by police officers



The CPS has published new guidance on the circumstances in which it will bring prosecutions against the Police and Fire Service under the Health & Safety at Work Act 1974. The guidance explains that it is unlikely to be appropriate for a prosecution to arise where a police officer has acted heroically. Generally it would not be in the public interest to prosecute in such situations provided no one else was put at risk.

Arwel Jones, CPS Senior Policy Advisor said: "The purpose of this guidance is to clarify whether a police officer or a fire fighter could face a prosecution if, in the course of their duty, they put their lives in danger; for example while trying to save another".

Employee duty of reasonable care

Section 7 of the Health & Safety at Work Act 1974 places a duty on every employee to take reasonable care for the health and safety of themselves and others who may be affected by their acts. A failure to comply with this obligation can result in a criminal prosecution. The new guidance acknowledges that during an emergency police officers may act in a way which shows a considerable disregard for their own safety.

The guidance recognises that it is very difficult to envisage circumstances in which the public interest would be served by the prosecution of a police officer who puts their own safety at risk while carrying out a heroic act.

Government Response

Welcoming the guidance Policing Minister Nick Herbert said: "this new guidance marks the end of a culture where nonsensical health and safety rules stop police officers acting in the best interest of the public". Many Federation Health & Safety Leaders may be mystified as to the exact rules and legislation that the Minister had in mind here. Nonetheless, his comments do illustrate how politicised the issue of health and safety has become in the context of the Police Service.

It should be noted that the CPS Guidance stops short of signing up to the guidance document published by the Health & Safety Executive entitled "Striking the Balance". In his report "Common Sense, Common Safety" Lord Young endorsed this document and recommended that the HSE, ACPO and the CPS should consider further guidance to make it clear that police officers should not be at risk of investigation or prosecution under health and safety legislation if they have put themselves at risk as a result of committing an heroic act.

Police Dog Bites : Cost forces thousands in compensation



It has been revealed that Police Forces in the UK have paid out over three quarters of a million pounds in compensation to people bitten by police dogs during the last three years.

A Freedom of Information request submitted on behalf of the BBC has revealed that £770,000 was paid in compensation to people bitten by police dogs. Greater Manchester Police have paid the most compensation with a total outlay of £180,000. The second highest total was for the Metropolitan Police who had paid out £95,000. Data provided by 43 Forces reveals that 2,725 suspects were bitten by police dogs. A further 196 police staff were bitten and 155 other members of the public. The Force with the highest recorded number of dog bites was West Midlands with 644 reported incidents. Eight Forces reported more than 100 dog bites over the last three years.

Cases involving police officers

These figures do however draw attention to the health and safety hazards arising from working with such potentially dangerous animals. We deal with many cases where police officers have been injured by police dogs. Many such attacks leave the injured officers badly scarred. Some claims for compensation are founded on allegations of negligence where there is an element of fault on the part of the Force or a dog handler.

But most of these cases are brought under the strict liability provisions set out in the Animals Act 1971. This Act sets out certain circumstances in which the keeper of an animal can be held liable for any injury caused by their animal. The drafting of the relevant section has caused problems over the years and the Appeal Courts have repeatedly attempted to clarify what the legislators intended. The Act provides that the owner of an animal is liable to pay damages if it causes harm because of a characteristic which, whilst not normally found in such animals, was known to be a characteristic of this particular animal in certain circumstances.

The argument with police dogs is that they are trained and encouraged to be aggressive and to attack. Therefore, when an officer is bitten by a police dog, the argument is that the Force must pay compensation as the requirements of the Act are met as the incident was caused by known characteristics of the dog. However many Forces dispute that this is the correct interpretation of the legislation.

There are conflicting authorities from the Courts as to the exact position with police dogs under this Act, and as things stand the law does require clarification. Currently we are pursuing an appeal on behalf of a Hampshire officer bitten by a police dog. Hopefully his case may help to bring some clarity to the precise legal position with police dog bites.

Personal protective equipment: Important new guidance from the court of appeal



The Court of Appeal has provided helpful guidance on the legal duties imposed upon employers by the Personal Protective Equipment Regulations. Most police officers do not need to be reminded of the importance of having suitable personal protective equipment (PPE) whilst at work and for them these Regulations provided vital legal protection against the hazards they will face in their work.

The Case

The case of *Threlfall v. Hull City Council* did not involve a police officer but rather a Council worker who was employed to clear rubbish from Local Authority housing. He severed an artery and tendon on one of his fingers when he picked up a rubbish bag containing debris cleared from a garden. He was wearing a pair of standard issue gardening gloves made from cloth and suede, and sued his employers on the basis that he should have been provided with suitable PPE which should have involved cut resistant gloves.

The Council disputed liability, saying they had carried out a risk assessment but had not identified any risk of such injury. They felt that the gloves provided were suitable and sufficient. In the High Court the judge agreed with them and so Mr Threlfall appealed.

The appeal decision?

The Court of Appeal found that the obligation to provide suitable protective equipment went hand in glove with the requirement to carry out a suitable risk assessment. The risk assessment should illuminate the risks to which the employer should have been directing his mind. The Court of Appeal found that on this occasion the risk assessment was "manifestly defective" as there was a clear and obvious risk of laceration involved in the work.

The Court of Appeal explained that once a risk has been identified then the obligation to provide personal protective equipment came into play. It was only if the risk was de minimis or so trivial that it could be ignored. The employer is under an obligation to provide suitable PPE to deal with any the identified risk unless the risk has been adequately controlled by other means.

The Court of Appeal then went on to discuss what amounted to "suitable" equipment in this context. It was made clear that "effectiveness is at the heart of suitability". When an employer considers whether PPE is suitable they have to ask themselves, "does this proposed item of equipment prevent or adequately control the identified risk of injury?"

Applying these principles to the case in question, the Court of Appeal explained that the Claimant had been injured whilst wearing ordinary gardening gloves. A risk assessment should have identified the risk of cuts from sharp objects and this risk should have been taken into consideration when they were deciding upon the type of gloves to be provided. Accordingly they found that the Council had breached its statutory duty to provide PPE because the gloves did not adequately prevent laceration injuries.

Impact for officers

The approach to these Regulations adopted by the Court of Appeal will be of considerable assistance to claims brought on behalf of police officers. In any claim where an officer has been injured because their PPE did not protect them the Court will have to start from the point of view of considering whether the equipment in question, be that a stab vest, a helmet or police boots, adequately controlled the identified risks it was designed to protect against.



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Health & Safety:

Case Watch



Here we look at some of the cases we have been involved in recently where we have relied upon breaches of health & safety legislation when acting for police officers.

Rooftop Pursuit



Damages have been recovered on behalf of a Metropolitan Police officer who sustained fractures to several of the vertebrae in his lumbar spine when he fell through a roof whilst chasing a suspect. The suspect had climbed on to the roof of a garage workshop and the officer was chasing after him. Whilst running across a flat roof a section collapsed beneath the officer causing him to fall several metres to the floor below. The roof was made of corrugated material that was only 5mm thick, in poor repair and had been painted over which gave it the appearance of a solid material such as concrete. The claim was put to the owners of the premises on the basis that the building was unsafe. They admitted liability and we were ultimately able to negotiate a settlement for damages of £20,000 for the officer who has been able to return to full operational duties.

Dog Bite



A Cambridgeshire officer was injured when searching for two suspects who had carried out an armed robbery. The officer in question was a firearms officer who was following behind a dog handler who was tracking with his dog.

Two males approached who were initially thought to be the suspects, and were confronted by the dog handler and his dog. They were then identified as undercover police officers engaged in the same search. The dog handler pulled back the police dog but it then attacked and bit our client. The claim has been put to Cambridgeshire Constabulary on the basis that they are strictly liable under the terms of the Animals Act because it is a known characteristic of police dogs that they will be aggressive and may attack in such circumstances.

There have been many other similar claims over recent months. A North Yorkshire officer recovered £3,500 when he was attacked by a police dog during the course of an operation to arrest a suspect. Another North Yorkshire officer recently recovered £3,000 in similar circumstances.

Cannabis Factory



A Greater Manchester officer is pursuing a claim against his Force as a result of injuries sustained when he received an electrical shock whilst taking part in an operation to dismantle a cannabis factory. Cannabis factories require a lot of electricity and this particular factory had substantial electrical wiring connected. The officer was injured after he cut through a wire that remained live despite the earlier assurances from an engineer.

Police Training Exercise



A Merseyside officer is pursuing a claim for burns to her face following a training exercise that involved her throwing petrol bombs. The officer was in full riot gear, wearing a riot helmet and flash hood. She was advancing in a group of officers when one of the petrol bombs was thrown into the air. It seems that the petrol bomb glances off a shield or helmet of another officer before landing on our client, engulfing her in flames. Although the instructors used fire extinguishers in an attempt to douse the flames she still sustained facial burns. The claim has been put to the Force on the basis of issues about the PPE provided but also because of the system for putting out the fire. There was a particular criticism with the fact that the fire extinguishers were sprayed from foot to head which effectively fanned the flames. If the extinguisher had been operated in a downwards direction then this would arguably have reduced the risk of injury.

Slipping Accident in Windsor Castle



A Metropolitan Police Officer is pursuing a claim against the Royal Household for an injury that he sustained whilst he was stationed at Windsor Castle. The officer slipped whilst walking on a path in the castle grounds which had become slippery due to a build up of algae and slime. It was argued that the castle amounted to his workplace and that the Workplace Regulations applied. It was alleged that the defendants were in breach of Regulation 5 which provides that the workplace must be maintained in an efficient state and in good repair. It was also alleged that they were in breach of Regulation 12 which requires any traffic routes to be kept free from substances which might cause a person to slip. Liability has now been conceded by the defendants.

Baton Injury



An officer has recovered damages of £7,500 in an out of Court settlement after he fractured his arm during a baton refresher training course. The officers were required to strike a mannequin dummy. A system had been devised so that two officers would run quickly towards the dummy before performing simultaneous strikes. It was argued that this training was inherently dangerous because if one officer carried out a strike before the other it exposed his or her colleague to a risk of tripping and falling over the dummy that had just been knocked to the floor by their colleague.