POLICE Federation
HEALTH & SAFETY MATTERS

POLICE Federation | Russell Jones & Walker Solicitors

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Welcome to the Autumn 2008 edition of Police Health & Safety Matters.

In this issue we consider two recent Court decisions which provide guidance on the Work Equipment Regulations.

We also assess the new CICA Scheme which is about to be introduced. There is a look at some new Regulations dealing with working time and we turn our attention to the health and safety issues relating to police officers being injured by dogs.

We aim the newsletter at Health & Safety representatives, but feel free to circulate to any other Federation members who may find it useful.

We would welcome any feedback or suggestions for future editions. Please contact:

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THE 2008 CICA SCHEME

The health & safety aspects

There can be very few officers who have never been confronted by a violent aggressor, and there are far too many who have suffered serious injuries as a result. The CICA Scheme is an important means of redress for such officers. It was therefore a cause of some concern when the Government raised the possibility of injuries at work being removed from the CICA Scheme. A consultation document published in 2005 also mooted the removal of "minor" injuries from the Scheme. It appeared that the Scheme might be remodelled in such a way that it would significantly reduce or even remove the entitlement of police officers to recover compensation.

The new CICA Scheme has now been published and it will apply to all applications made from 3rd November 2008. Thankfully the Government found little support for major changes to the Scheme, and have simply revised the Scheme to clarify certain areas and to streamline some procedures. Here we look at the new Scheme and highlight some of the changes that have been made.

SCOPE OF THE SCHEME

The Scheme is intended to provide compensation for victims of violent crime. It also covers people injured whilst attempting to apprehend an offender although with the additional requirement that the applicant was taking an exceptional risk.

The CICA has always worked on the basis that an exceptional risk for a member of the public would not necessarily be exceptional for a police officer.

The basic criteria to be eligible to receive an award remain unchanged. The Applicant's own conduct, character and criminal convictions will be taken into consideration. The Applicant must report the crime to the police or other appropriate authority without delay. It has always been a requirement that the Applicant must co-operate with the CICA. The new Scheme now goes further and specifically requires the Applicant to respond to correspondence. An award can be withheld if an Applicant repeatedly fails to respond to communications from the CICA.

TIME LIMITS

The time limit for submitting an Application to the CICA remains at two years from the date of the incident. There has always been discretion for the Authority to allow an application to proceed out of time, but the rules in this respect have now been redrafted. Previously late applications would be considered if it was reasonable and in the interests of justice to do so. Under the new Scheme late applications will only be permitted if the Authority are satisfied that it is:

(a) practicable for the application to be considered; and
(b) where you could not reasonably have expected the Applicant to have made an application within the two year period.

These amendments will restrict the scope for late applications.

TARIFF AWARDS

The Scheme provides compensation for different injuries according to a tariff system. There is a detailed list of injury types with a fixed award for each. It had been thought that the Scheme might be revised so that any injuries that had an award of less than £2,000 would be removed. Fortunately this has not happened. In fact most of the tariff awards have remained unchanged and have not even been increased with inflation. The minimum award remains at £1,000. The maximum award that can be recovered for injuries and expenses remains at £500,000.

Some additional awards have been included to fill some gaps in the old tariff. For example, under the old scheme the tariff for brain injuries jumped from £44,000 for serious brain damage to £110,000 for very serious brain damage. This has now been revised so that there are various tariffs in between.

Another area where awards have been increased is for damage to teeth. This is probably to reflect the fact that most people who sustain damage to their teeth go on to incur substantial expenses for dental treatment. The Scheme will not cover these expenses unless they have been unable to work for 28 weeks. Rather than allowing all dental expenses it appears that they have decided instead to simply up the tariff levels.

Another amendment to the Tariff scheme is to break down the awards affecting hands and arms into dominant and non-dominant injuries. Previously there were fixed awards irrespective of whether this was your dominant hand. Now they have increased the awards for dominant hands and decreased the awards for non-dominant hands.

LOSSES AND EXPENSES

The provisions in the Scheme relating to compensation for loss of earnings and other expenses remain largely unchanged. A loss of earnings can be claimed only after the Applicant has been losing earnings for 28 weeks. It is only at that stage that the Authority will also consider any claims for expenses.

The changes that have been made relate really to more serious cases. Where an officer sustains serious injury they may require care and assistance from a family member or even a paid carer. The new Scheme redefines when claims for care will be considered. These are now limited only to those situations where care is required in connection with the Applicant's bodily functions or the preparation of meals or where they require supervision to avoid substantial danger to themselves or others. Claims for care will now be restricted only to very serious physical or mental injury cases.

APPEALS

If an Applicant is unhappy with an award made by the Authority they have the right for this to be reviewed. If they remain dissatisfied then they can request an oral appeal hearing. The time limits for submitting a request for a review or an oral appeal remain at 90 days from the date of the decision.

The new Scheme does include revised rules relating to oral appeal hearings. Previously these were dealt with by the CICA Appeals Panel. The new Scheme refers instead to a First-tier Tribunal rather than the Appeals Panel. The reason for this change in terminology is that the Panel has now been incorporated into the Tribunals Service. It is likely that the practices and procedures for appeals will remain largely unchanged. However, the detail for the procedures will be set out in the Tribunal's Rules and they have not yet been published.

THE WORKING TIME REGULATIONS

European Change unlikely to have much impact

The Working Time Regulations 1998 ("the WTR") define working time as:

(a) any period during which a worker is working, at his employer's disposal and carrying out his activity or duties,
(b) any period during which he is receiving relevant training, and
(c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement.

There have been cases involving the WTR and the Working Time Directive ("the Directive") on which it is based which have considered whether time spent on call falls within this definition.

The main cases are decisions of the European Court of Justice in Jaegar and SIMAP. These cases both involved doctors. The effect of the decisions was that time spent on call while on the employer's premises, even if sleeping or otherwise free, was held to be working time for the purposes of the Directive. It was however critical that there was a requirement at the relevant time to be at the employer's premises. Where this is not the case, the time is not working time.

These cases have little impact in the context of the police force as most "on call" arrangements do not involve a requirement to be on police premises.

However, the impact of the Jaegar and SIMAP cases has been very significant outside police service and particular in the healthcare sector, which has led to calls for the Directive to be amended.

This has led to an agreement between European Union ministers to amend the Directive. In relation to time spent on call, a distinction is to be introduced between "active" and "inactive" on call time. "Inactive" on call time will be time during which the worker has the obligation to be available at the workplace but is not required by his employer to carry out his or her duties. "Active" on call time will be time when the worker is working, and that will continue to be working time. Inactive on call time will not be working time unless national law or a relevant agreement provides otherwise.

The law is expected to change in 2010. While it will be necessary to consider the precise terms of the changes that are actually introduced, at present the changes are likely to have little impact in a police context.

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CLARIFICATION OF THE WORK EQUIPMENT REGULATIONS

Two recent appeal decisions have helped to clarify the nature and extent of the duties set out in the Provision & Use of Work Equipment Regulations 1998. It seems that they may also signal an important shift in the Courts' approach to health and safety legislation.

THE REGULATIONS

The Work Equipment Regulations set out obligations for employers in relation to the use of equipment by their employees at work. An employer is under a duty to ensure that all work equipment is safe and suitable. It must be properly maintained in good working order and staff must know how to use it safely. Problems have arisen in relation to various aspects of the Regulations, but particularly as to what is work equipment and the extent of the obligation to provide training.

WORK EQUIPMENT

The Regulations define work equipment as any machinery, appliance, apparatus, tool or installation for use at work. The accompanying guidance published by the Health & Safety Commission states that "almost any equipment used at work" is governed by the Regulations.

In the 2004 Court of Appeal decision of Hammond v. The Commissioner for the Metropolis work equipment was described as being the "tools of the trade". Many items of equipment used at work would not come within this description, and the scope of these Regulations remained somewhat unclear from this limited definition.

In the recent House of Lords decision of Spencer-Franks v. Kellogg Brown (2008) a far broader interpretation of work equipment was applied. The case involved a technician carrying out repair works on an oil rig. He was tasked with repairing a closer to a door in a control room. Whilst attempting to assess the level of tension on a linkage arm he turned a screw. This released the arm and it struck him in the face, knocking out four teeth. The question that arose was whether the door closer could be categorised as work equipment?

The Judges in the House of Lords found that interpreting the 1998 Regulations was not an easy task. Lord Hoffman cut through the complexity of the Regulations by saying that the approach was a simple one: "what is it for? If it is for use at work, then it is work equipment". Applying this test it was found that the closer was indeed work equipment as it was for the use of gaining entry to the control room for work purposes. Their Lordships explained that the correct approach is to consider whether the equipment performs a useful, practical function within and in relation to the purpose of the business. It was stressed that work equipment included items "for use at work" including clocks to let employees know the time, kettles to make tea or coffee and water coolers "at which they can drink and gossip".

The very restrictive interpretation of work equipment as "tools of the trade" has now been rejected. It would appear that pretty much every item in the workplace that has some purpose will be covered by these Regulations.

TRAINING

Many employees are injured not because there is anything wrong with the equipment that they are using but simply because they have not received adequate instruction to be able to use it in a safe manner. The extent of this obligation to provide training was highlighted in the recent Court of Appeal decision of Gower-Smith v. Hampshire County Council.

In this case a school caretaker was asked by the Deputy Head to take down a display from a notice board positioned over a doorway. The caretaker used a step ladder and was standing on the top level of the ladder when it became destabilised and he fell and fractured his skull.

A claim for damages was brought against the school. The school defended the claim, pointing to the fact that the Claimant had been advised not to use the top platform of a step-ladder. They referred to an induction sheet where a box had been ticked relating to the use of stepladders. They also relied upon the fact that the Claimant had been given a manual for him to look at when dealing with certain issues in his role as a caretaker. Notwithstanding these various efforts the Court found that the school had failed to comply with its obligations set out in the Work Equipment Regulations.

The Court recognised that one of the risks inherent in the use of stepladders is that they become unstable and are prone to overturn if not used at right angles to the work being carried out. It is essential that the stepladder is correctly positioned. The Judge found that the likelihood of this "classic stepladder accident" occurring and the risk of serious harm should it happen meant that there was a need for a higher standard of training. Whilst the Claimant was found to be partly responsible for the accident for using the stepladder in the way that he did, the school was still liable to pay compensation for his injuries for failing to provide adequate training.

The case is important because it confirms that the extent of the training required is determined by the extent of the risk of injury and the potential consequences if an accident occurred. Here the Court was not content to accept that the mere provision of a manual was sufficient to discharge the duty and the fact that a stepladder is an every day object that most people would consider themselves able to use without instruction did not mean specific instruction on the relevant hazards was not required.

CONCLUSION

What is interesting about these two cases is that they appear to show the Courts finally accepting and embracing the fundamental shift in the approach to health and safety that was brought in by the various workplace Regulations. The aim of the Regulations was to offer broad protection to employees, requiring employers to take practicable steps to prevent injury. Until recently the Appeal Courts often seemed to go out of their way to restrict the scope of these various Regulations. Now there appears to be a growing body of authority promoting this broad protection for employees.

HEALTH & SAFETY CASE WATCH

Here are some current examples of a few of the many cases we are involved in which rely upon breaches of Health & Safety legislation.

A police officer in Humberside was injured during an operation when working with the Marine Unit. The officers attended a bullfort in the Humber Estuary to search for contraband. The officer had to get from a small boat on to the steel access ladder on the fort. As he neared the top of the ladder it gave way and he fell sustaining injury. A claim was brought against Humberside Police. They denied any liability for the accident pointing out that they had no control over the premises and that the officer had been given sufficient training. The claim was based on failure to carry out a suitable risk assessment and a failure to provide suitable protective equipment, particularly a harness or lanyard. The Force eventually agreed to pay damages of £6,000 shortly before trial.

An Essex police officer was injured when he was bitten by a police dog. He was pursuing a suspect on foot, chasing after him down an alleyway. As he followed the suspect around the corner he was suddenly attacked by a police dog which had approached from a different direction. A dog handler, approaching from a different direction, had seen the suspect coming around the corner and had released his dog. The dog attacked the officer rather than the suspect. A claim was brought under the Animals Act alleging that the requirements of the Act were made out because the dog was exhibiting a characteristic only exhibited in certain circumstances, namely that they attack as trained to do when released after a suspect. Liability has been conceded.

An officer in West Yorkshire was injured when attempting to gain entry to some domestic premises by smashing a window with his truncheon. It was believed that an elderly gentleman was trapped inside the premises. The officer shouted through the letterbox but could hear only faint cries coming from within. He requested a method of entry kit be brought so that the door to the premises could be forced open. It transpired that the equipment was locked in a locker and nobody could find a key. Enquiries were made of another nearby station but their equipment was also missing. The officer decided that his only option was to smash the window with his baton. Whilst doing so he sustained a glass cut injury to his hand. A claim was brought on the basis that the Force had failed to make available appropriate work equipment and were in breach of the Work Equipment Regulations 1998. The officer did eventually recover compensation with primary liability being accepted, although a reduction was made because of his failure to wear gloves and for the manner in which he went about removing the glass.

DOG ATTACKS

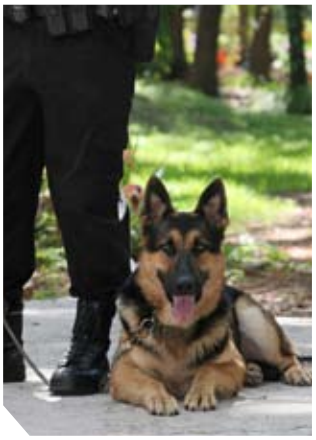
The health and safety issues

Dogs are a common cause of injury to police officers. Each year we receive about 40 or 50 instructions to act for police officers who have been injured by animals and the vast majority of these relate to dog bites. Here we consider the health and safety issues that arise in relation to dogs and what can be done to obtain compensation when an officer is injured in this way.

THE KEEPER'S LEGAL OBLIGATIONS

The owner of a dog owes a common law duty of care to anyone visiting their premises where it is foreseeable that they may be attacked or injured by the dog. If the owner is aware that their animal is prone to bite at certain times or in certain situations, then the law would expect them to take precautions to prevent such incidents from occurring. Similar obligations also arise under the Occupier's Liability Act 1957 which requires the occupier of premises to ensure that they are reasonably safe for visitors. If a dog on the premises creates a hazard to visitors then there is a legal obligation to restrain or control the animal. Where an officer is injured in this way or through negligence on the part of the keeper, they are entitled to claim damages from them for the injuries and losses arising.

Further obligations on the part of the keeper of a dog also arise under the Animals Act 1971. The Act is generally accepted as having been poorly drafted and the Appeal Courts have struggled to interpret what it was intended to cover. The Act sets out certain situations in which the keeper of an animal can be held strictly liable for damage caused by it.



POLICE DOGS

What is the position if an officer is injured as a result of being bitten by a police dog? Often officers are injured by police dogs during public order situations or where officers are pursuing or attempting to restrain a suspect.

Clearly police dogs need to be adequately trained and they must be competently controlled by their handlers. In such situations it may be that a claim can be brought against the Force for any negligence on their part. However, these incidents often occur without any neglect on the part of the Force. In these situations it could still be that the Force are liable to pay damages under the terms of the Animals Act.

CRIMINAL INJURIES COMPENSATION

Generally injuries caused by animals fall outside of the scope of the Criminal Injuries Compensation Authority Scheme. However, if a dog is deliberately set on an officer then this can amount to a crime of violence and the victim may be eligible for compensation under the Scheme.

It might also be possible to fall within the terms of the Scheme if the attack was the result of a dog owner's failure to control an animal which was known to be vicious towards humans. It would be necessary to show that the owner's lack of control amounted to recklessness. For example, there may be a situation in which a dog with a previous history of vicious behaviour was allowed out without any adequate restraint or in the charge of a child.