

### Welcome to the Autumn 2009 Edition of Police & Health & Safety Matters

In this issue we report on a variety of very different accidents that we have recently dealt with or are currently involved in. We have looked at the HSE's statistics for work-related ill health and injury for 2008/2009. We also consider a recent High Court case that could be the first indication of the extent to which the Compensation Act may limit circumstances in which a Police Force can be held liable to pay compensation to injured officers.

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

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

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### Health & Safety: Statistics

The Health & Safety Executive (HSE) has published its statistics on Work-Related Health & Safety in Great Britain for 2008 – 2009. These provide a useful background for any analysis of ill health and injury in the workplace.

An estimated 1.2 million people reported ill health during this period which they attributed to their work. The most commonly reported illness types were musculoskeletal disorders and stress.



180 workers were killed in accidents at work during the last year. This is a significant reduction from previous years as over the last few years the total number of deaths has tended to be between 220 and 240. The most common cause of these fatal accidents was a fall from height. Several Federation Reps have recently raised concerns

over issues relating to officers working at height, especially in relation to ropes access training. Clearly these national statistics underline the seriousness of this issue.

The overall number of accidents and injuries reported under RIDDOR fell slightly to just over 130,000. Around 40% of these were caused by handling, lifting or carrying. Just under 25% of these injuries were due to slipping or tripping.

An astonishing 29.3 million working days were lost during the last year to work related ill health or workplace injury. The majority of these were due to musculoskeletal disorders and to stress.



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## Desirable Activity: The Compensation Act



Here we consider a recent Court decision involving the Compensation Act and consider whether this Act might provide Police Authorities with a new defence against many claims for damages brought by injured officers.

The High Court has recently handed down judgment in a case brought by an electrical engineer who was injured in Iraq in 2003. A Landrover in which he was travelling was blown up by an improvised explosive device. The claim was brought against the employers and the Ministry of Defence but it is a decision which could have much wider implications for cases involving police officers. It has already been suggested that this case provides a "get out of jail free" card for the MOD and clearly it could have similar implications for claims brought by police officers after they have been injured at work.

The Claimant, Mr Hopps, was an electrical engineer employed by Mott MacDonald. He was involved in work rebuilding the electrical power system and power stations in Iraq. Security for engineers such as Mr Hopps was provided by the Ministry of Defence. He was injured when travelling in a Landrover Discovery between sites in Basra. Mr Hopps sustained serious injuries when the vehicle was hit by an explosive device.

Mr Hopps brought his claim alleging that his employers and the MOD were negligent in failing to provide adequate protection against such attack. In particular, it was suggested that he should have been transported in an armoured vehicle.

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The judge dismissed the case, finding neither the MOD nor the employers liable to pay compensation. In doing so, the judge had considered Section 1 of the Compensation Act 2006. Section 1 states that when a court is assessing whether a defendant has been negligent or in breach of a statutory duty they may take into consideration whether the imposition of such a duty might prevent a desirable activity being undertaken or discourage persons from undertaking functions connected with a desirable activity.

The court found that the reconstruction of Iraq which Mr Hopps was involved in was a "desirable activity" for the purpose of the Compensation Act 2006. The judge took into account the possible deterrent effect a finding of liability might have on such activities in the future. The judge also felt that the Compensation Act applied to Mr Hopps' claim even though he was injured 3 years before the Act came into force.



This is the first time that Section 1 of the Compensation Act 2006 has been explicitly referred to by a judge in dismissing a claim based on an alleged breach of a duty of care. However, it is unlikely to be the last. Moreover, it seems that this is an issue which is highly likely to arise in claims brought by police officers. There can be no doubt that many activities connected with police work and various activities undertaken by police officers can all be categorised as desirable activities. Police Forces may now look to rely upon Section 1 of the Compensation Act as a defence to many cases, arguing that a court should not find them liable for some injuries as to impose such obligations could have a negative impact upon the manner in which police work is carried out.

## Section 1 The compensation act: The background



A few years ago there was something of a media outcry over what was thought to be Britain's growing compensation culture. The Government commissioned the Better Regulation Task Force to look into this. They published a report in 2004 which concluded that the compensation culture was really a myth. However, they found evidence that many people perceived that such a culture existed. It was suggested that this perception of a compensation culture was having a negative impact on socially desirable activities which were being discontinued for fear of litigation. It was largely in response to this that the Government introduced Section 1 of the Compensation Act. The provision was intended to contribute to an awareness of what the law actually provided. It was not intended to alter the standard of care already required by the law.

# Health & Safety: Case Watch



Here we highlight some of the recent cases that we have been involved in which we rely upon breaches of health and safety legislation:

## Pigeon Fanciers' Lung



We have been instructed to act on behalf of a Metropolitan Police Officer who has been diagnosed as suffering from Extrinsic Allergic Alveolitis, a condition also known as Pigeon Fanciers' Lung. Our client is a Traffic Officer

who reports that for many years there was a problem with pigeons nesting in the roof of his traffic garage. The pigeons would defecate on the police vehicles and in the premises. The condition can be caused by exposure to pigeons and it is thought that it relates to breathing in dust from dried pigeon faeces. The claim is being pursued on the basis of negligence on the part of the force for failing to provide a safe place of work as well as allegations under the Control of Substances Hazardous to Health Regulations 2002.

## Open Windows



We were recently successful in recovering damages for an Officer who worked in a joint project with a Local Authority. He was walking past a Portacabin on the authority's premises where a window had been left open to allow

a pipe from an air conditioning unit to vent externally. The top of the window protruded several inches into a walkway at head height. Our client struck the top of his head on the edge of the window sustaining a deep laceration. The Local Authority eventually conceded a breach of the Workplace Regulations once proceedings had been issued. Damages were eventually agreed with some reduction for contributory negligence on the part of the Officer for failing to look where he was going.

## Training Bag Injuries



We are currently acting for 4 Officers in Suffolk who each sustained either hand or wrist fractures when striking a piece of equipment known as a 'Wavemaster Training Bag' during Officer Safety Training. The device is a type

of punch bag which the Officers were required to hit. The force has denied liability for the injuries on the basis that they claim the equipment was suitable. However, we are progressing with these cases on the basis that they are breaches of the Personal Protective Equipment Regulations and the Work Equipment Regulations. In particular, we are alleging that the equipment was not being used in a safe manner nor with the necessary protective equipment. The manufacturer's instructions have a clear safety warning which states that boxing gloves or hand wraps should be worn when using the training bags. None of the Officers had any form of hand protection.

We are also involved in claims for West Midlands Officers who sustained wrist injuries when striking another item of training equipment which has a plastic torso.

## S.P.E.A.R. System



We have recently been instructed to advise 3 Officers who were injured on separate occasions during Officer Safety Training where the S.P.E.A.R. system was being used.

The technique in question involved an Officer running towards the "criminal". On one occasion this caused an Officer in South Wales to be knocked to the floor. He had no protective equipment and no matting was in place and he sustained a fractured elbow. In another claim an Officer in Avon & Somerset was struck by the Officer using the S.P.E.A.R. technique which caused him to suffer a fractured rib. In a third claim an Avon & Somerset Officer injured his shoulder when he was pushed to the floor. In each of these cases issues arise as to the extent to which the training was being conducted in a safe manner and the degree to which sufficient protective equipment had been provided.

## Police Dog Training



We are currently dealing with a claim for an Essex Officer who sustained arm injuries when attacked by a police dog during a dog trial. He was only provided with a protective sleeve for one arm. However, the dog attacked the Officer's unprotected arm. The claim was put forward on an allegation that there was a failure to provide suitable protective equipment in breach of the PPE Regulations. Primary liability has now been conceded by Essex Police.

In another similar claim an Officer was injured when running with a Schutzhund Sleeve. When the police dog was released it jumped at the Officer knocking him to the ground and causing him to fracture his shoulder. The Schutzhund Sleeve is designed for a situation where the individual stands still and braces himself against the dog attack. A claim has been put to the force on the basis that it is not appropriate to run whilst wearing such heavy and awkward equipment, as the Schutzhund Sleeve has to be held close to the chest, creating an awkward unbalanced running action. Court proceedings are ongoing in respect of this accident where liability is in dispute.

# Health & Safety: Case Watch Continued...



## Method of Entry



A Thames Valley Officer was injured during a raid on domestic premises. 'Method of Entry' trained Officers had forced open the door to the property with an enforcer ram. Our client was one of the Officers that then had to make their way into the property at speed. As he made his way towards the door he was pushed from behind by another Officer causing him to fall and sustain lacerations to his hand when it was caught on glass in the door.

The claim was put to the force on the basis that they were vicariously liable for the negligence of the Officer who pushed against our client causing him to fall. Allegations were also raised on the basis that there was no personal protective equipment provided. Thames Valley Police have conceded liability.

## VOSA Weighbridge



A West Yorkshire Officer was injured when using a weighbridge owned by VOSA. Police Officers have access to the site. To get onto the premises you have to pass through a set of industrial metal gates which are kept locked with a sliding bolt. Whilst attempting to unlock the door, the bolt suddenly released, trapping the Officer's left thumb in the mechanism. A claim was brought against VOSA on the basis that their premises were unsafe and in breach of the Occupiers Liability Act. The claim settled for £2,800.00.

## Drug Raid



A Nottinghamshire Officer was injured during a search of a property known to be used by drug users. Whilst examining a bag, he sustained a needle stick injury from a hypodermic needle. The Officer had been provided with some latex

gloves which provided no protection against sharp instruments such as needles. The claim was brought alleging a failure to provide adequate personal protective equipment. This specifically stated that Officers should have been provided with turtle skin utility gloves as it was foreseeable that there were likely to be used needles within the premises. Liability was admitted and damages of £3,000.00 were recovered.

## Safety Mats in Training



A Derbyshire Officer has received compensation after he was injured whilst taking part in a self defence training course. The Officer was required to sit astride a colleague who was lying on his back on a 6ft by 3ft mat. The other Officer had to use a pelvic thrust to push away our client. Our client was thrown off to one side and landed on his chest beyond the mat striking the hard wooden floor.

Allegations were raised in respect of the inadequacy of the matting and the excessive degree of force used by the other Officer.

## Working at Height



A Metropolitan Police Officer was injured whilst policing the New Year's Eve celebrations in Trafalgar Square. He was working as a spotter on a podium which consisted of 15ft high scaffold tower. The Officer had to make his way down from the podium in order to arrest a suspect. Whilst descending the podium ladder, his baton became caught on one of the rungs. He fell injuring his arm. We allege that being required to descend a ladder with bulky, dangling equipment does give rise to a risk of this becoming caught in the rungs. Another Officer has also reported that their baton became caught in a similar manner whilst using the tower on the same day. The force denies liability on the basis that they had carried out a risk assessment and provided some training. We are alleging that the force were in breach of the Work at Height Regulations and the Work Equipment Regulations. The claim is continuing.

