

'Police Dog Bites Police Officer'

Some time ago, a trial was adjourned by the Judge for further enquiries to be made.

The trial was a civil trial involving a police officer who had been bitten during the course of his duties by a police dog at a public order incident.

The trial Judge had specifically adjourned the trial for enquiries to be made whether police dogs are trained not to bite police officers. Not surprisingly, the reply came back that whilst it is accepted that police dogs might be slightly more intelligent than the average dog, their intelligence does not go so far as to differentiate between a police officer and a suspect, dressed in jeans and t-shirt and waving a large stick.

As a result, police officers still get bitten by police dogs and whilst on occasions it is nothing more than a relatively minor bite which might be uncomfortable for some weeks, on occasions the injuries are severe, in particular where they involve bites to the arm, wrist and elbow, and ragging occurs, tearing ligaments and resulting in extremely painful and permanent injuries.

The majority of claims, given the very nature of the incident, are against the Chief Constable/Commissioner. Allegations are therefore raised that the dog handler did not control his dog appropriately. On some occasions the allegations are not founded. In others they have some basis in fact.

Unfortunately, the liability arguments are not as straightforward as establishing that a car drove into the back of the vehicle, where the driver must be negligent and therefore responsible for the accident. In dog bite cases, consideration must be given to the particular law involving animals and to what extent this applies.

The Animals Act 1971 is the applicable statute. Other than arguments of common law negligence which are alleged against the dog handler in failing to control his dog in circumstances where he should have done so, the applicable allegations will be under the Animals Act and the subsequent case law.

The particular core case which is now referred to as the case involving animals from which all other cases flow is that of *Mirvahedy v. Henley* decided by the Court in 2003.

The case deals with the normal characteristics of an animal. It accepts that injuries do occur as a result of encounters with animals. In particular the Court is looking to see whether it can be established that the injury occurred as a result of a characteristic which is not normally found in the animal in question and in addition, that the particular characteristic which led to the injury occurring meant that the injury itself was likely to be severe.

The particular issue that arises in relation to police dogs is that by their very nature, whilst German Shepherds which are used predominantly as police dogs and are generally guard dogs (this applies equally to any other dog which might be used in such circumstances), they are not necessarily attack dogs.

They are trained as police dogs however, specifically to attack. Indeed the training involves a degree of agitation so that they are encouraged to reach a state where they are more likely than not to bite. Although the training does not necessarily lead to the bite as being the end point, ultimately this likely to be the end point of training with the bite being used to control the suspect.

The case of *Mirvahedy* makes it clear that strict liability would attach where a guard dog bites. Although there is no clear case law, the argument is also that a police dog falls within category and that where the police dog is in attack or intercept mode, the police dog is therefore agitated and therefore when in such a state more likely to bite which this is not the normal characteristics of such a dog (to guard rather than to bite).

In addition, given the nature of the training, the police dog is trained to bite and to hold the suspect until a command is given. By its very nature therefore, this bite is going to be more than just a "nip".

The severity of the bite depends in itself to a large extent on where the police dog holds the suspect. If it is on the fleshy thigh, the bite might not be particularly severe. If it is close to the wrist and damages ligaments or tendons and if an element of ragging is involved, the severity of the bite will naturally increase.

Whilst there is no guarantee that a claim will succeed, the case law nevertheless supports arguments that the Force will be vicariously liable for the actions of the police dog.

What would be very helpful to establish in addition, is that the dog handler did not control his dog in such a way as to avoid an injury occurring. This would require a Court to assess whether the circumstances indicate that insufficient control was maintained over the police dog, knowing full well that unless control is kept, the police dog would then be at risk of biting others present at the scene other than just the suspect.

If whilst chasing a suspect, control of the police dog is lost and the dog then turns from the suspect and attacks a police officer instead, there are likely to be very good arguments that the Force should be responsible for the injuries sustained.

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