

Welcome to the Spring 2010 Edition of Police & Health & Safety Matters.

In this issue we report on a number of cases that we have recently dealt with or are currently involved in concerning health and safety issues. Firstly, we review an important Court of Appeal decision which considered the extent to which an employer can be held liable for the acts of his employees. Then, following on from one of the coldest winters for many years, we look at some of the legal issues relating to the hazards created by snow and ice. We also take a detailed look at the difficulties faced in trying to hold an employer liable to pay compensation for work-related stress.

This newsletter is written for 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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Vicarious liability:

Court of appeal expands the scope of employer's vicarious liability

An employer is responsible for damage caused by the negligence of his employees acting in the course of their employment, known as "vicarious liability".

The key issue in determining vicarious liability is establishing whether the employee was acting in the course of their employment when the damage occurred. The theory is that the employee must be doing their job when they cause the harm. A recent Court of Appeal decision illustrates just how far the Courts are prepared to stretch this concept in finding an employer liable for the harm caused by their employees.

In the Course of Employment

The case of *Maga v. Trustees of the Birmingham Archdiocese of the Roman Catholic Church* was brought by the victim of sexual abuse by a priest in the 1970s. The priest in question had abused a number of boys and the Catholic Church had previously paid damages to other Claimants as a result. But the Claimant in this case was not a Catholic and had no active involvement with the Church. The claim was therefore disputed on the basis that the priest had not been acting in the course of his employment when he abused the boy.

The Court of Appeal held that the abuser's employment as a priest, with particular responsibility for youth work, enabled him to hold a special role within the community with trust, responsibility and moral authority. His position also provided him the opportunity to draw the Claimant into his abusive orbit by inviting him to attend functions on church premises. The legal test is whether the assaults were sufficiently closely connected with the abuser's employment for it to be fair and just to hold the employer liable.

This case illustrates just how elastic the concept of acting in the course of employment can be. Historically the Courts considered whether an employee had acted in an authorised manner whilst carrying out an authorised activity, and subsequent cases extended the concept further to apply a test of close connectivity to employment. The current case extends this further as the link between the priest's work and his abusive actions was at best oblique.

Vicarious Liability and Police Officers

Vicarious liability is relevant to many of the cases we deal with for police officers. If an officer is a passenger in a car crashed because of a colleague's negligent driving then a claim can be brought against the Chief Constable as the employer. This broad interpretation of vicarious liability increases the scope for injured officers to recover compensation for accidents at work.

A recent practical example was a claim for a Cambridgeshire officer who was tripped by her mentor when she was a probationer. Her evidence was that he would frequently trip her as a running practical joke. On this occasion she fell sustaining a serious hand injury which required a number of surgical procedures. We argued successfully that the officer who caused the injury was acting during the course of his employment as part of his role as a mentor.

Snow & Ice:

Snow & Ice: The Legal Duties



The arrival of spring this year has been more welcome than usual given that we have just come through one of the coldest winters for many decades. The icy weather and substantial snowfalls throughout the country created significant hazards for pedestrians, cyclists and motorists. Here we consider the legal duties relating to snow and ice and the problems that they cause.

Snow and Ice in the Workplace

An employer has a legal duty to ensure that the workplace is safe. There is also a more specific duty set out in the Workplace (Health, Safety and Welfare) Regulations 1992 for an employer, so far as it is reasonably practicable to do so, to keep every floor and traffic route in the workplace free from obstructions or substances which may cause a person to slip, trip or fall. Snow and ice would certainly amount to such a substance and there is therefore a legal duty for an employer to put in place arrangements to minimise the risks such conditions can create.

It is important to point out that the employer's duty to deal with snow and ice is not an absolute duty. If an employee slips on an icy footpath it does not automatically follow that the employer has breached their statutory duty and must pay compensation to that employee. The duty is limited to an obligation to minimise risk only as far as it is reasonably practicable to do so. The way the Courts have approached this issue has really been primarily a question of priorities. The employer would be expected to prioritise main routeways, entrances and exits and also particular hazards such as steeply sloped traffic routes.

Other Premises

Police officers are often required to visit many different premises during their duties and would be exposed to risks of slipping on ice whilst doing so. The Occupiers Liability Act 1957 imposes an obligation upon the occupier of any premises to take care to see that visitor will be reasonably safe in using the premises. Arguably this duty would include an obligation to clear snow and ice in some circumstances.

A Court would assess the extent of a land owner's duty to clear snow or ice on their premises by reference to the nature and extent of the risk and the type of premises in question. A Court is unlikely to find that the owner of an ordinary domestic house is legally obliged to clear a pathway at the front of the property of snow unless there is some particular hazard that they were aware of. However, the owners of large public premises such as shopping centres or sports facilities would be obliged to take some steps to reduce the risk of visitors slipping on ice.

Frozen Water Leaks

Many water pipes in the UK are crumbling. Water authorities are now making a concerted effort to replace old water pipes but this reinstatement programme will take years to complete. In freezing conditions many of the old pipes fail and subsequent frozen water leaks can leave the roads in hazardous conditions.

The Water Industry Act 1991 imposes a strict duty on water undertakers for escapes of water. A water company is liable to pay compensation to anyone injured as a result of a hazard created by a leaking pipe.

Snow and Ice on the Highway

The Highways Act 1980 includes an obligation on the Highways Authority to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.

Local authorities and the Highways Agency are responsible for many thousands of miles of roads and pavements.

The duty is not an absolute duty; it is limited by the concept of reasonable practicability. It does not require them to ensure that every inch of the highway is cleared and gritted whenever there are icy weather conditions; they must however prioritise key routes and have an effective system to deal with icy weather conditions. Assessing whether a Highways Authority has complied with its legal duty is usually a question of considering whether the policy was sufficient and effective and, more usually, whether they had complied with it.

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Potholes

One of the lasting legacies of the freezing conditions of the last winter has been a dramatic increase in the number of potholes in the roads. Potholes can damage vehicles but also create tripping hazards for pedestrians and can create real dangers for cyclists.

The duty imposed on the Highway Authority by the Highways Act 1980 encompasses both the road and the pavement, and must therefore be safe for pedestrians as well as cyclists and motorists.

It is important to be aware that not every defect with the highway is considered legally unsafe. A degree of unevenness or irregularity is tolerated. The Courts have been unwilling to set down fixed measurements for the size of a defect that gives rise to a breach of the legal obligation to maintain the highway. Different standards also apply to different areas, with a lower standard applying to rural roads than to urban ones. However, generally a pothole that is deeper than an inch is likely to be considered a danger.

Even if a highway is defective, it does not follow that the Highway Authority is automatically liable to pay compensation to someone injured as a result if they have in place a reasonable system of maintenance and inspection that is adhered to. Potholes can arise over a short period of time. If a Highway Authority can show that they inspected that area of road on a regular basis and that they have carried out repairs when required, then they will not be held legally liable for a pothole that arose between inspections.

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.

Police Horses



A mounted officer with the Metropolitan Police sustained a serious leg fracture when she was thrown from her horse when it bucked whilst on patrol. The horse was a young animal that was not yet fully operational. The horse bucked and threw the officer after being spooked by being enthusiastically approached by members of the public. A claim has been brought against the Metropolitan Police on the basis that they are strictly liable to pay compensation under Section 2 of the Animals Act 1971, which provides that the keeper of an animal is strictly liable for any damage caused in certain circumstances including damage caused by an animal owing to a circumstantial characteristic, which is known to the keeper and is likely to cause severe harm. This case is being advanced on the basis that a young horse is likely to buck when spooked and that this is a characteristic which is likely to cause serious harm.

Police Dogs



We have recently issued court proceedings on behalf of a Hampshire Officer who was attacked by his police dog. Our client was one of a number of officers called to a school where there had been a suspected break in. On sighting some suspects on the premises he released his dog, who reacted by attacking his handler rather than the suspects. This claim is also being brought under section 2 of the Animals Act arguing that it is a known characteristic that German Shepherds attack in certain circumstances. Whilst German Shepherds do not normally attack people as a matter of course, when in intercept/attack mode or otherwise agitated they will do. Liability is disputed by Hampshire Constabulary and the proceedings are continuing towards trial.

Wet Floors



A West Yorkshire Officer who was a member of the Counter Terrorism Unit based at Leeds Bradford Airport slipped on a wet floor in the baggage hall, sustaining a shoulder injury. The airport denied liability under the Occupiers' Liability Act arguing that they had sub-contracted the cleaning of the baggage hall to a reputable cleaning company. The cleaning company denied liability on the basis that the floor was in the process of being cleaned when the accident occurred and that appropriate signage had been put up to warn of the slipping hazard. The matter proceeded to Trial at Leeds County Court where the Judge accepted the officer's evidence and found that the cleaning company was entirely to blame. Damages in excess of £9,000 were awarded.

A Cambridgeshire Officer was injured when she slipped on a wet floor in a police station. The floor had been cleaned by contract cleaners but no warning signs had been erected. Liability was

established against the Force who were in breach of their non-delegable duty of care to provide a safe place of work and their statutory duty set out in the Workplace Regulations to keep all traffic routes free of substances likely to cause someone to slip. The case settled shortly before Trial, damages being agreed for just over £190,000.

Police Van



A West Yorkshire Officer was attempting to pull herself into a public order van by holding the side of the stanchion between the main sliding door and the front passenger door when a colleague jumped in and shut the door on her hand. A claim was brought alleging that there were no handles for the officers to pull themselves in with or to hold on to. It was also argued that the Force were vicariously liable for the actions of the officer who failed to observe that the door was not clear before slamming it shut. The injured officer received compensation with a 25% deduction for contributory negligence for not looking where she was putting her hands.

Drugs Raid



A Nottinghamshire Officer was injured whilst taking part in a drugs raid. The incident occurred when he entered the property and stepped on a piece of debris that had come off the door that had been broken down by the Method of Entry Officers. The officer sustained a serious ankle injury. Numerous issues were raised including the fact that the officer had not been adequately briefed and had been included on the call at the last minute. Criticisms were also made of the overall organisation of the operation and, more specifically, the failure to provide an adequate dragon light or other lighting for the dark entrance to the property. The Force in this initially admitted liability but then withdrew the admission after proceedings had been issued. The claim eventually settled for £60,000 on the day before trial.

Obstruction to a Traffic Route



A Hertfordshire Officer successfully recovered compensation in excess of £20,000 after injuring her back when she tripped on a sports bag that had been left on the floor by a colleague. The officer was escorting a prisoner to an interview room when she tripped over the bag which had been left at the side of a desk protruding into a traffic route. The claim was brought on the basis of a breach of the duty in the Workplace Regulations to keep traffic routes free from obstacles likely to cause someone to trip or fall in a traffic route.

In another similar claim in West Yorkshire an officer tripped and injured his shoulder when he tripped over a colleague's PSU bag which had been left on the floor. Here the claim was progressed using a number of allegations including a failure on the part of the Force to provide adequate storage space at the station for officers to keep their PSU bags. Liability was admitted and damages of £1,250 were paid.

Stress in the workplace

Is it all getting too much for you?



Recent years have seen a dramatic rise in the number of police officers seeking advice about claims for stress at work. Stress is one of the most common causes of sickness absence from work in the police force. There can be no doubt that police work can be very stressful, yet there are severe legal hurdles that need to be overcome in order to recover damages. This article explores the Courts' approach to these cases and will highlight the essential ingredients needed for a valid claim.

What does stress mean?

It is important for any Claimant to establish that they have suffered from a recognised psychiatric illness. Occupational stress is not a psychiatric disorder and it is only where the Claimant has developed such a disorder that a claim for damages can be made – diagnosis by a GP will not suffice. Police Officers are often reluctant for such a diagnosis to be made fearing that it will impact on their career, but without a psychiatrist confirming the presence of a mental disorder no claim can be pursued.

What causes stress at work?

Stress can be caused by any number of factors. The most common are having too much work, long hours, monotonous work, lack of control over work activity, confusion or conflicting roles, poor communication, a culture of blame, difficult working relationships, bullying or frequent change or instability.

Employer's Liability for Stress-Related Injury

There are 3 legal requirements which must each be established before a court will find a Chief Constable liable to pay compensation to an officer suffering from a psychiatric illness caused by stress at work:

- That it was foreseeable that the officer was at risk of mental breakdown because of their work
- That the employer was in breach of its duty of care to prevent such foreseeable injury by failing to take reasonable precautions to prevent such illness, and
- Psychiatric injury occurred as a result of the stress at work.

The primary difficulty in proving such cases is usually in establishing that mental breakdown was foreseeable to the employer. It is difficult to prove that an employer knew what was going on inside an employee's head unless the employee specifically warned them of their concerns. For obvious reasons, most officers do not complain to their superiors that they fear they are at risk of mental injury because of their work.

Discipline Cases

If a claim for stress arises from the circumstances of an Officer's arrest, the subsequent investigation is generally barred from being pursued as a civil claim. This principle was established in the case of Calverley & Others v. The Chief Constable of Merseyside (1989), where Officers were prosecuted and dismissed, and then reinstated on appeal. They claimed compensation against the Force for the anxiety, stress and financial loss caused by the prolonged and mishandled proceedings, but the court rejected that such proceedings could give rise to a risk of injury and found that such claims were contrary to public policy.

Stress arising out of the horrific nature of work itself

We have seen numerous examples of Officers who have suffered psychiatric breakdown as a result of witnessing horrific events, or involvement in disturbing investigations. The courts do not recognise, however, that some roles in the police force are uniquely stressful and that those officers who find their mental health suffering as a result are rarely compensated. In fact, in Sutherland v. Hatton (2002), the Court of Appeal held that no single occupation was intrinsically damaging to health. A court must instead find that it was foreseeable that an individual employee was at risk of mental breakdown before a duty of care arises.

Confidential Welfare Services

The Court of Appeal also found in the Sutherland Case that an employer who offers a confidential welfare counselling service to employees who fear they may be suffering from harmful levels of stress is unlikely to be found liable to pay compensation for work-related stress. Most forces do offer such services. Although a subsequent decision has confirmed that such confidential counselling services should not be considered as a panacea to work-stress claims, it does add an additional barrier to many cases where such facilities were open to the officer to take up if they chose.

Work Overload Claims

These claims are common but very difficult to succeed with. An Officer would need to be able to prove that the psychiatric harm they suffered from was foreseeable to their employer. Establishing foreseeability depends on what an employer knew or ought to have known about an individual employee.

The Courts will look at the nature of the job, whether unreasonable demands had been placed on the Officer and problems experienced by others doing similar work. But what is most important are the signs of impending mental breakdown coming direct from the Officer. If the only remedy to an Officer's condition is dismissal, an employer will not normally be held to be liable for allowing a willing employee to continue in the job.

Even if injury was foreseeable, a Claimant must still identify the steps their employer could or should have taken to stop their condition developing which were likely to do some good.

Bullying and Harassment Claims

Claims for bullying and harassment at work can potentially be brought in both negligence and under the Protection from Harassment Act 1997. Claims brought under the Act have the advantage that foreseeability of injury does not have to be proven. However, the Courts have adopted a very restrictive approach to the concept of harassment. The conduct complained of must be extreme, stopping little short of what would amount to criminal behaviour. It must be established that the conduct (on more than one occasion) was oppressive and unreasonable.

Generally claims for bullying are very difficult to prove. What one party perceives as bullying another will consider firm management. Unless it is possible to establish with evidence that an officer was being subjected to a campaign of bullying which was likely to cause mental breakdown, the claim would be unlikely to succeed.

Summary

Stress cases are common but notoriously difficult to succeed with. Most cases fail due to the lack of foreseeability. This remains an uncertain and difficult area of the law and is likely to continue to be so for many years to come.