

Welcome to the Spring 2009 edition of Police Health & Safety Matters.

In this issue we highlight some of the problems experienced by police officers who are required to work at height. We also look at some recent developments in relation to the Working Time Regulations. We have taken a detailed look at the legal issues relating to accident reporting and highlight some of the difficulties we encounter when incidents are not recorded accurately.

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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Risks to Police Officers from Working at Height

The latest HSE statistics on accidents at work have again confirmed that the most frequent cause of fatal injuries is falling from a height. We are often involved in cases where police officers have been injured as a result of such falls. This does pose the question, are Forces giving proper attention to the risks faced by officers required to work at height?

The Work at Height Regulations 2005 require employers to do all that is reasonably practicable to prevent anyone falling from a height. Employers should avoid employees having to work at height where possible. Where working at height cannot be avoided the employer should use equipment or other measures to prevent falls. All work at height must be properly planned and organised and those required to do such work must be trained and competent.

In 2003 the HSE brought a prosecution against the Metropolitan Police Commissioner after one officer died when he fell through the roof on an industrial estate and another was injured falling through a garage roof. The prosecution was unsuccessful but it did at least require the Met to comply with a number of Improvement Notices and to examine their practices.

The HSE was heavily criticised for bringing the prosecution, but by doing so they at least demonstrated that they recognised that police officers are exposed to considerable risk from working at height.

This point is further underlined by the fact there have been other similar accidents since then.

Recent cases we have been involved in include:

- An officer who fell from a scaffold tower whilst cleaning a Police helicopter where there was no guard rail on the side of the platform where he fell
- An officer who fell from the back of a cross channel ferry whilst attempting to board it using a caving ladder during a marine training exercise
- An officer injured whilst jumping from a tower at the Gravesend Public Order Training Centre
- An officer injured during a rope work training session who fell onto a concrete surface after a colleague had failed to attach a harness properly
- Another incident during ropes training where an officer playing the part of an injured person was dropped by her colleagues when being lifted by rope

Common themes running throughout these cases are the lack of adequate assessment, planning and training. Such recurrent problems are a matter of serious concern given the potential for catastrophic consequences when things go wrong.

Spotlight on: Accident Reporting



There is much anecdotal evidence and some statistical information indicating that many accidents at work involving police officers go unreported. Near misses are rarely recorded. Here we focus on the law relating to accident reporting and consider some of the practical problems we have experienced when accidents have not been recorded properly.

RIDDOR

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) place obligations on employers, self-employed people and people in control of premises to record and report certain occurrences to the Health and Safety Executive (HSE). In other words, the Regulations require a Police Force to not only report relevant injuries involving police officers, but also those involving prisoners or members of the public injured on their premises.

Reportable Injuries

RIDDOR provides that the following occurrences must be reported:

- Work-related deaths
- Major injuries at work
- Injuries at work that result in the individual concerned being unable to work for more than three consecutive days
- Injuries to people not at work but on the employer's premises where they are taken from the scene of an accident to hospital
- Certain work-related diseases, and
- Dangerous occurrences where no injury resulted, ie a near miss

The relevant person, whether it be an employer, a self-employed person or a person in control of the premises on which the accident occurred, must notify the HSE "forthwith...by the quickest practicable means", and also send a report to the HSE within ten days. This should be done on the standard form issued by the HSE for this purpose, and may now be done on-line.

Injuries or death caused by a road traffic accident are not generally reportable.



"Major injuries"

The following are treated as major injuries that must be reported:

- Fractures, other than to fingers, thumbs and toes
- Amputation
- Dislocation of the shoulder, hip, knee or spine
- Loss of sight (temporary or permanent)
- Chemical or hot metal burn to the eye or any penetrating injury to the eye
- Injury resulting from an electric shock or electrical burn leading to unconsciousness, or requiring resuscitation or admittance to hospital for more than 24 hours
- Any other injury leading to hypothermia, heat-induced illness or unconsciousness, or requiring resuscitation, or requiring admittance to hospital for 24 hours
- Unconsciousness caused by asphyxia or exposure to a harmful substance or biological agent
- Acute illness requiring medical treatment, or loss of consciousness arising from absorption of any substance by inhalation, ingestion or through the skin
- Acute illness requiring medical treatment where there is reason to believe that this resulted from exposure to a biological agent or its toxins or infected material

"In our experience of dealing with claims for injured police officers, many problems are created by the lack of a proper record of an accident or injury."

Reportable diseases

If an employer is notified by a doctor that one of his or her employees is suffering from any of the diseases set out in the Regulations then they must report it to the HSE. The employee must also be involved in specified types of work, so not all diseases set out in the Regulations will apply to police officers. The extensive list includes the following:

- Certain poisonings
- Some skin diseases such as occupational dermatitis
- Various types of cancer
- Some biological infections such as hepatitis, tuberculosis and anthrax
- Certain musculoskeletal conditions associated with repetitive movements

Recording, Monitoring & Health Surveillance

As well as placing an obligation on employers to report certain occurrences to the HSE, the Regulations also oblige employers to make their own record of those occurrences. The following details must be recorded:

- The date and method of reporting
- The date, time and place of the event
- The personal details of those involved, and
- A brief description of the nature of the event or disease

This obligation is important as the record produced may assist in investigating liability for the incident in question at a later date. The record must be kept for three years.



The Management of Health and Safety at Work Regulations 1999 require employers to assess how effectively they are controlling risks and to develop a positive health and safety culture. Employers are expected to monitor accidents so that lessons can be learnt. They are also required to ensure that employees are provided with appropriate health surveillance so that adverse health effects can be identified at an early stage and further harm prevented.

Practical Difficulties

In our experience in dealing with claims for injured police officers, many problems are created by the lack of a proper record of an accident or injury. These include:

Industrial Injuries Disablement Benefit – This benefit can be recovered by an officer who has been injured in an accident at work which has caused the necessary degree of disability. The DWP must be satisfied that an accident took place. They will contact the Force seeking confirmation of what happened. If the accident was not reported it is likely to lead to difficulties in obtaining this benefit, particularly if the application is being made a long time after the event.

Injury Pension – Where an officer has been retired on medical grounds because of an injury on duty they would usually be entitled to an Injury Pension (on top of their Ill Health Retirement Pension). If the accident was not reported at the time or if the injury was not accurately recorded it can cause difficulties in demonstrating that the injury occurred when the applicant was on duty.

Civil Claim – Accident report forms are an important part of the evidence in many civil claims for damages. In these claims it is necessary to prove what happened in an accident and the extent of any injury it caused. The accident report form is usually the first record of what happened and such contemporaneous evidence is often given a lot of weight by a court. The absence of such a report or an inaccurate description of what happened can result in difficulties in proving the claim. In such claims we may need to prove facts such as whether there was liquid on the floor where an officer slipped, or which part of the body was recorded as having been injured at the time. Often an officer's ability to recover substantial sums of compensation can turn on just a few words in an accident report form and it is important that these are completed accurately.

Update on: Working time – Compensatory rest



Regulation 24 Working Time Regulations 1998 ("the WTR") deals with compensatory rest.

It provides:

- Where for specified reasons, including an exclusion under regulation 21 or modification or exclusion because of a workforce agreement
- A worker is required by the employer to work during a period which would otherwise be a rest period or rest break
- The employer "shall wherever possible allow him to take an equivalent period of compensatory rest"

The concept of compensatory rest is not a straightforward one. The WTR/Directive give little indication as to how it is applied.

The EAT considered compensatory rest in a decision about rest breaks for security officers in the case of *The Corps of Commissionaires Management v Hughes*.

see http://www.employmentappeals.gov.uk/PublicUpload/08_0196rjfhLBCEA.doc

The case involved rest breaks (which are intended to fall within working hours) rather than daily rest (which is between shifts). The meaning of compensatory rest is however likely to be found to be the same regardless of whether the issue arises in relation to a rest break or a rest period.

The EAT were robust about the obligation applying to the employer and commented:

"We do not think that merely allowing a security person to take his previously arranged rest periods after his shifts would be compensatory. The Concise Oxford English Dictionary defines "compensate" as "balance the bad effect ... make up for...". It is difficult to see how a decision which results in the claimant not receiving anything other than his existing right to rest between shifts giving any more rights to the claimant than he previously enjoyed could be a compensatory benefit for the loss of a rest period."

This clearly implies that compensatory rest must be something additional to the rest entitlement that would arise in any event. However, the EAT also found that (unless it arises under terms and conditions) there is no right to be paid for compensatory rest.

This decision improves the position of representatives in calling for compensatory rest where members are not able to take rest breaks or rest periods.



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:

A Metropolitan Police Officer sustained burn injuries to his feet when taking part in public order training at which petrol bombs were being thrown. It appears that there were small holes on either side of his boots which allowed the heat to penetrate within his public order boots and cause injury. In this claim we are relying upon a breach of the strict duty in the PPE Regulations to ensure that all protective equipment is maintained in working order and good repair.

A Humberside Officer was injured whilst taking part in a public order training exercise. She was hit on the head by a wooden block thrown by a colleague playing the role of a rioter. A claim was brought on the basis that there had been a breach of the PPE Regulations because she had only been provided with a hard hat rather than a full PSC helmet. Further allegations were raised in respect of the inappropriate nature of the blocks and the inadequate instruction given by the trainers. The claim eventually settled in the sum of £30,000.00 a week before it was due to go to trial.

A Cambridgeshire Officer was injured when he was leaving a portacabin where he was working. The steps immediately outside of the portacabin had been removed by builders in the period between when he last entered the building and when the accident occurred. A claim is being pursued on the basis that there is a breach of Regulation 12 of the Workplace Regulations which requires all traffic routes to be properly constructed and a breach of Regulation 13 which requires measures to be taken to prevent falls.

We are involved in 2 linked cases for Suffolk Officers injured during Officer Safety Training. In both accidents they sustained hand injuries after being required to repeatedly strike a floor-mounted padded block. These claims have been brought on the basis that the training was unsafe. We are alleging that that this particular equipment was not suitable for being used in this manner - contrary to the Work Equipment Regulations - and that officers should not be striking the pads repeatedly at full force.

A Lincolnshire Police Officer was injured during a diving operation. He sustained his injury whilst climbing out of a muddy riverbank. The claim was brought raising allegations that the operation had not been properly risk assessed and that no suitable equipment had been provided to assist the Officer in exiting from the river. The claim was successful at trial with the Judge awarding the Claimant damages subject to a small deduction for contributory negligence.



Five Dorset Officers were injured during a training exercise to practice the use of an incapacitant spray. The trainer sprayed the Officers with the live spray rather than the inert replacement that was supposed to have been used. Each of the Officers had to endure a prolonged and unpleasant period of symptoms caused by the spray.

A Dog Handler in Essex sustained a hand injury requiring surgery after he was struck by a broken glass bottle at a public disorder incident at an illegal rave. Essex Police have admitted a breach of the Personal Protective Equipment Regulations on the basis that the Dog Handlers were not called to a pre-incident briefing nor advised or given the opportunity to put on protective gear prior to deploying into a violent incident.

A claim on behalf of a Hampshire Officer was recently successful where he had fallen from a police bicycle that he was riding in pursuit of some suspects. The accident occurred when he turned abruptly. An allegation was raised that the Force failed to provide adequate training and instruction on the use of a bicycle in such circumstances. The Force accepted liability and have subsequently introduced bicycle training.

A Humberside Officer was injured when he sustained a needle stick injury from a hypodermic needle left in the door compartment of a police van. The needle had probably been confiscated from a drug user and then simply thrown aside in the vehicle. The Force accepted responsibility for the injury on the basis that they were vicariously liable for the negligence of the Officer who had failed to follow health and safety procedures in disposing of the needle.