

Welcome to the Winter 2011 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 involving health and safety issues. We also look in detail at Lord Young's report on health and safety and compensation culture. There is an update on a new scheme to compensate UK nationals who are victims of terrorism when in other countries. We also examine the most recent HSE statistics on UK accidents and ill-health at work.

We aim this newsletter at 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.

Richard Geraghty - R.M.Geraghty@rjw.co.uk

Please copy any comments to Paul Lewis, Secretary of the JCC Health & Safety Sub-Committee: paul.lewis@polfed.org

Lord Young's Review: A review of health & safety

Lord Young of Graffham recently published his report on health & safety. He had been tasked by the Prime Minister to review the operation of health & safety laws and the growth of a compensation culture. The report, entitled "Common sense, Common Safety", is perhaps surprising more for what it does not say than for the actual recommendations he makes.

In the build up to the publication of this report many of Lord Young's comments suggested that he was going to be proposing a major overhaul of health & safety legislation. He promised a bonfire of the "elf & safety" laws brought in by the previous Government.

In fact, Lord Young's report does not actually suggest any substantive changes to existing health & safety legislation. The report instead makes a number of relatively low key suggestions, such as simplified risk assessment forms to be published for low hazard workplaces and accreditation of health & safety consultants.

Another surprising omission from the report is a failure to recommend any substantive change to the application of health & safety legislation to the Emergency Services. In his comments prior to publication Lord Young appeared to be firmly of the view that this was an area where the law required substantial change. In an interview with The Times in June 2010 Lord Young said that "children are dying because of health & safety". He claimed that health & safety was being used as an excuse for inaction by the Police. He even went so far as to claim that the Police would stand by whilst somebody died. These comments also followed on from earlier suggestions by the Conservative party advocating the removal of the Police from health & safety laws.

The report merely suggests that the HSE, ACPO and the CPS should consider further guidance to ensure that police officers and fire fighters should not be at risk of investigation or prosecution when engaged in the course of their duties if they put themselves at risk as a result of committing a heroic act. Lord Young specifically supports the approach set out in the "Striking the Balance" guidance document published by the HSE.

One can only assume that after making his comments about the Police, Lord Young had an opportunity to reflect upon the realities (rather than the myths and misinformation in the media) of health & safety legislation and police work. No doubt he also took on board powerful submissions advanced by representatives from the Police Federation with whom he consulted prior to publication.

Many Federation members will be mightily relieved that the protection offered to them by health & safety legislation will not be removed. Police officers are frequently required to act in difficult and urgent situations. It is vitally important that they have the training and equipment they need to be able to do this often hazardous work. To reduce the legal protection offered to police officers always seemed to those of us familiar with the risks that come with the work to be a move in the wrong direction. After all, it is those who do dangerous work who really rely upon health & safety measures to protect life and limb on a daily basis.



Lord Young's Report: Summary

Summary of the main recommendations in Lord Young's report, "Commonsense, Common Safety"

Low Hazard Workplaces

- Risk assessment procedures for low hazard workplaces such as offices, classrooms and shops should be simplified. The HSE should create simple interactive risk assessments for such work environments and make these readily available
- The HSE should create check lists to enable businesses operating in low hazard environments to monitor their compliance with the Regulations
- Employers should not be required to carry out risk assessments for employees working from home in a low hazard environment
- Self employed people in low hazard business should be exempt from risk assessments.

Raising Standards

- Health & Safety Consultants should be professionalised with qualification requirements and accreditation to professional bodies
- A web based directory of accredited Health & Safety Consultants should be established.

Compensation Culture

- A simplified claims procedure for personal injury claims should be introduced similar to that already in existence for road traffic accidents where the claim is worth under £10,000. Legal costs for such claims should be fixed
- The claims procedure for road traffic accident claims should be increased for all claims worth up to £25,000
- There should be restrictions on the operation of referral agencies and the payment of referral fees and on legal advertising
- Clarify (through legislation if necessary) that people will not be held liable for any consequences due to well-intentioned voluntary acts on their part.

Insurance

- Insurance companies should cease the current practice that requires businesses operating in low hazard environments to employ Health & Safety Consultants to carry out full health & safety risk assessments. Where consultants are used they should be qualified
- There should be consultation with the insurance industry to ensure that worthwhile activities are not unnecessarily curtailed on health & safety grounds. Legislation should be considered if the industry is unable to draw up such a code.

Education

- The processes undertaken by schools and other similar organisations before taking children on trips should be simplified
- A single consent form covering all activities a child may undertake during his or her time at school should be introduced
- A simplified risk assessment for classrooms should be introduced.

Local Authorities

- Officials who ban events on health & safety grounds should put their reasons in writing
- Citizens should have a route for redress should they wish to challenge the decision of a local official to refuse a matter on health & safety grounds
- Citizens should be able to refer unfair decisions to an Ombudsman with a fast track process being implemented to enable decisions to be overturned quickly.

Health & Safety Legislation

- The HSE should produce a clear separate guidance under the Code of Practice focused on small and medical businesses engaged in lower risk activities
- The current raft of Health & Safety Regulations should be consolidated into a single set of accessible Regulations.
- The UK should take the lead in co-operating with other member states to ensure that EU Health & Safety Rules for low risk businesses are not overly prescriptive, are proportionate and do not attempt to achieve the elimination of all risk.

Other Recommendations

- The current requirements upon employers to report accidents and injuries should be reduced and the current Regulations should be reviewed by the HSE
- Food Safety and Health & Safety Inspectors in Local Authorities should be combined
- The Adventure Activities Licensing Authority should be abolished and there should instead be a Code of Practice put in place.

Victims of Terrorism: Overseas compensation scheme



New legislation has been introduced which includes long awaited provision for a new compensation scheme for victims of terrorism when they are overseas.

For many years victims of terrorism and other crimes of violence have been able to obtain compensation for their injuries from the Criminal Injuries Compensation Authority (CICA). However, that scheme is restricted only to incidents that take place within the U.K. The Crime & Security Act 2010 provides for a new scheme to be implemented to compensate U.K. residents who are the victims of terrorism when they are in other countries.

The Victims of Overseas Terrorism Compensation Scheme is intended to apply to those injured on or after 18th January 2010. At this stage the details of the Scheme have not yet been published but it is anticipated that it will be similar to the existing CICA Scheme.

Earlier this year the previous Government also announced that victims of terrorist attacks before the 18th January 2010 may also be eligible for ex-gratia payments even though they would not be covered by this Scheme. So far no details of these payments have been announced.

It is worth noting that a U.K. resident injured because of a criminal injury in another EU country on or after 1st July 2005 can apply for compensation from that country. Guidance is available from the CICA as to how to go about applying to the country in question.

There are also schemes available to victims of crime in some other countries outside of the EU. For the most part these are developed countries in the Western World such as the USA and Germany, but there are schemes even in relatively poor countries such as Colombia, the Philippines and Trinidad & Tobago. Details of international schemes are available on the CICA website.

Compensation Culture: Myth or reality?



In his introduction to Lord Young's report David Cameron writes that "a damaging compensation culture has arisen". Lord Young himself has also spoken of this "compensation culture that so bedevils us". In his many public proclamations Lord Young has spoken about curbing the compensation culture that has gripped Britain. But is this really the case? Are we really in the grips of a compensation culture with massive awards being dealt out for minor accidents?

Lord Young's brief to review health & safety and compensation was very similar to that given by the previous Government to the Better Regulation Task Force in 2004. They concluded that the idea of a compensation culture was in fact a myth. Whilst there was a perception that the Courts were regularly awarding large sums of money to people suing the Police, schools and the like for health & safety breaches, the reality was actually very different and there were significant legal hurdles that had to be overcome before any entitlement to compensation could arise. Awards of compensation were generally much lower than people perceived them to be. And the number of claims being dealt with by the Courts had fallen rather than risen.

Lord Young does acknowledge in his report that the compensation culture he speaks of is more a matter of perception than reality. But he has also chosen to perpetuate many of the myths surrounding health & safety legislation. It is unfortunate that Lord Young did not seize the opportunity to clear up the myths that shroud the reality of an important area of legal protection given to workers and their essential right to redress where their health is damaged because these legal duties have been breached by their employers.



The latest national statistics from the Labour Force Survey on self-reported work-related illness and injury were published recently by the Health & Safety Executive.

These provide statistics on work-related illness and injury in Great Britain which have been reported by employees for the period June 2008 to 2009.

The key points from this statistical information include:

- 1.2 million people who worked during the last year were suffering from an illness they believe was caused or made worse by their current or most recent work. Over half a million of these were new cases
- 246,000 non fatal reportable injuries occurred. This equates to a rate of 870 injuries per 100,000 workers
- 29.3 million working days were lost overall through workplace illness and injury. This equates to 1.2 days per worker.

Full details of the statistics are available from the Health and Safety Executive and are published on their website at www.hse.gov.uk/statistics.

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.

Tasar Injury



A Dorset officer is pursuing a claim for damages after she was shot in the arm by a colleague using a tasar gun. The incident occurred when she was dealing with a violent confrontation in a town centre. She was attempting to restrain a suspect who was resisting arrest when

she was hit by the tasar in the arm when her colleague missed his intended target. The claim has been put to the Force on the basis that they are liable for the failure of their officer to operate a safe system of work in that he discharged the weapon when it was unsafe to do so as he did not have a clear and unimpeded view of the intended target.

Horse Riding Accident



An officer from the Mounted Branch in the Metropolitan Police was injured when she was thrown from her horse after it suddenly reared up whilst out on patrol. It is suggested that there had been previous incidents of the animal having a tendency to rear up on its

hind legs. A claim is being pursued against the Metropolitan Police on the basis that the officer was injured because of their negligence in that they continued to use an animal that had shown itself to be unsuitable, and also on the basis that they are liable under the terms of the Animals Act 1971. The Act imposes strict liability on the keeper of animals where it causes injury because of a characteristic that was known to the keeper, even though that characteristic is not typical of the species.

Injury During Public Disorder



A Metropolitan Police Officer was injured when he was hit in the face by a brick that was thrown during a serious public disorder incident that occurred at a Chelsea match involving rival groups of fans. The officer had been provided with public order kit but had been specifically

told not to put on his helmet. Even after quite serious fighting and disorder had broken out he had still not been permitted to put on his helmet when the incident occurred. As a result the brick hit him in the mouth causing serious dental injuries that would have been prevented had he been wearing his helmet. A claim has been put to the Metropolitan Police alleging negligence and a breach of the Personal Protective Equipment at Work Regulations. Liability has now been admitted.

Officer Safety Training



A South Wales Officer sustained injury during Officer Safety Training and whilst practising the SPEAR technique. He was acting the part of the assailant and threw a "dummy" haymaker punch towards the Officer who then adopted the SPEAR stance and pushed

him firmly backwards. As a result he fell to the floor sustaining a fracture. The case was defended all the way to a trial on the basis that it was not intended that the assailant would be pushed to the floor as a result of the push so no floor matting or better quality PPE was required to cushion a fall. The case was pursued on the basis that whilst it may not have been intended that the assailant would fall to the floor, that was clearly a foreseeable risk. If officers are to be pushed back steps should be taken to guard against the risk of falling to the floor and sustaining injury. The Judge agreed and the case was successful at trial. Forces will often defend Officer Safety Training accidents on the basis that there is a need for training to be realistic. That may be so, but the safety of Officers cannot be ignored when planning such training creates risk.

Unsatisfactory Repairs In Police Stations



A Nottinghamshire officer was ascending some steps in his station. The stairs were covered in lino tiles which had been loose for some time. The tiles had been reported on several occasions and had been repaired with masking tape. The masking tape and tiles had

lifted on the edge of the steps, creating a tripping hazard. As our client ascended the steps, his boot became caught in the loose tape and he fell, sustaining personal injury. The officer sustained injuries to the ligaments in his left shoulder. Total settlement of the case was £2859.30.

Baton Injury



A South Yorkshire officer was with colleagues dealing with a public order incident when he was struck by his colleague's baton. The claim was progressed on the basis that the baton was drawn in a careless/reckless manner. The claim was put to the force

on the basis that they were vicariously liable for the officer's negligence. Liability was contested. We commenced court proceedings and the matter was listed for trial. The force solicitors finally conceded liability and the case was settled in the sum of £2,500.