

ADVICE FOR THOSE INJURED IN RECENT ADVERSE WEATHER

The recent Arctic weather conditions will no doubt lead to a spate of enquiries from those injured in some way through various different types of situations. This guidance is a brief summary of the various obligations that exist and the law that relates to highway authorities, water authorities, employers and occupiers.

If you are injured as a result of snow and ice on the highway

The duty of the highway authority is as set out in Section 111 of the Railways & Transport Safety Act 2003 which added to Section 41 of the Highways Act 1980. This imposes a duty on the highway authority to “ensure, so far as is reasonable practicable, that safe passage along a highway is not endangered by snow or ice”. What this amendment to the Highways Act has meant is that it is very difficult to pursue a claim against a highway authority for accidents that occur as a result of snow or ice on the road. It is likely that a highway authority will be able to argue that it took such steps as were reasonably practicable taking into account the conditions and resources available. In order to succeed in a claim against a highway authority an injured person needs to be able to prove that there was either an ineffective winter maintenance policy or that the highway authority failed to comply with its own policy. These cases are very difficult to pursue successfully.

Occupiers liability

Where you are injured as a result of slipping on snow or ice on private property other than the highway that is not part of the area where you work, a claim can be brought under the Occupiers Liability Act 1957. This creates a duty of care which is defined as “to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he was invited or permitted to be there”. The test is once again whether an occupier has taken such care to ensure that visitors are reasonably safe, but it is generally easier to pursue a successful claim for a breach of the Occupiers Liability Act than it is for a breach of the Highways Act.

Employer's liability

In the workplace there are many duties, including Regulation 12 of the Workplace Regulations 1992, whereby an employer is under a duty to ensure, so far as is reasonably practicable, that floors and traffic routes in the workplace are not uneven or slippery. An employer needs to ensure that they are adequately cleaned and free from obstructions or from any article or substance which may cause a person to slip, trip or fall. This applies to snow and ice and therefore a claim arising out of a slip at a place of work is more likely to be successful than a claim against a highway authority.

Water leaks

Many water pipes in the UK are crumbling. Although water authorities are now making a concerted effort to replace old water pipes, this reinstatement programme will take years to complete and in freezing conditions many of the old pipes are failing and this causes water leaks. Where water freezes it is particularly hazardous to road users. Section 209 of the Water Industry Act 1991 imposes a strict liability on water undertakers for escapes of water. Subsection 1 provides “where an escape of water,

however caused, from a pipe vested in a water undertaker causes loss of damage, the undertaker shall be liable except as otherwise provided in this Section for the loss or damage". It therefore follows that where an accident is caused as a result of a leaking water pipe there should be no difficulty in establishing liability.

Blocked drains on the highway

A claim can sometimes be made against a highway authority where an accident has been caused as a result of flooding due to drain deficiencies, failure to maintain gullies, poor drainage of ditches etc. In order to succeed in this type of claim the injured person must show that the road was dangerous for traffic. In other words, the road must be in a condition where it could reasonably be anticipated that persons using the highway might be injured. The injured person must also prove that the dangerous condition was due to a failure to maintain which can include a failure to repair. If there is a failure to maintain then the highway authority is liable, but can still escape liability if it can prove that it took such care as in all the circumstances was reasonable.

Police Officers injured in road traffic accidents on the highway whilst travelling at speed

The law relating to whether a Police driver can claim for injuries sustained as a result of an accident which occurred whilst he was driving a Police vehicle at speed is not altered in conditions of snow and ice. The law places a duty upon an individual driver to drive in such circumstances as are safe for the prevailing road conditions. It is no defence for an Officer to state that he had been requested to respond to an emergency and was therefore travelling in excess of the speed limit. If another driver is wholly or partly to blame for the accident then the Police driver can bring a claim against the other party. If there is no other vehicle involved but a Police driver loses control of his vehicle as a result of snow or ice on the road in circumstances where he has been travelling at speed then it is going to be difficult for him to be able to pursue a successful civil claim given the law as set out above in Section 111 of the Railways & Transport Safety Act 2003.

If any Officer has been injured as a result of recent Arctic weather and wishes to receive advice about pursuing a personal injury claim they should not hesitate to contact the Police Federation Claimline on 0800-9171 999.