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**Rebecca Pritchard**

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**From:** David Bulpitt  
**Sent:** 30 September 2014 12:46  
**To:** 'Philip Johnson' [REDACTED]  
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Hi Phil

Quite interesting this one

David

## Legal Update for FMA SG Meeting 19 September 2014

### Pensions Ombudsman Case - Mr Joseph Arrabali

This is a very useful case. Even though it deals with the firefighters pension scheme, the provisions are the same as the police pension schemes insofar as the definition of "police duty" is concerned. This case concerned a firefighter who was at work. He had spent some time in the work gym. Following his work-out he went to get a drink of water. He slipped, lost his balance and his hand went through a plate glass window causing permanent nerve and ligament damage. All these activities were authorised and were part of Mr Arrabali's working day. Mr Arrabali argued that this was "an injury received by a person without his or her default in the execution of his or her duties as a regular firefighter". If they were, he would have been entitled to the firefighters version of an injury award.

The Pensions Ombudsman reviewed the authorities brought to his attention by the parties and concluded at paragraph 32 of his judgment:

*"I do not doubt that it was permissible for him to train in the gym, and to seek a drink, and to walk to the kitchen to get it, but I do not consider that any of this conduct, even though expressly or implicitly authorised, can be categorised as carried out in the exercise of his duties as a firefighter. It was conduct that he carried out of his own volition, whilst on duty. Therefore, its outcome does not fulfil the definition of a qualifying injury."*

Surprisingly, the Fire Authority did not bring certain cases to the Pensions Ombudsman's attention, which also make the distinction between merely being "at work" and "in the execution of duty" - arguably better than the cases the Ombudsman was invited to consider. Arguments that events at work should be regarded as an injury on duty usually arise where there is a psychological reaction to some event or events "at work" but not associated with operational policing.

I have summarised below the key cases dealing with claimed psychological injuries on duty below.

There is no doubt that how an officer is treated by his force is capable of amounting to police duty for the purposes of the Regulations. To satisfy this test the management action must be extreme. In the case of *McCullough -v- Police Service of Northern Ireland*. Judge Sir Liam McCollum concluded at paragraphs 28 to 30 of the Judgment:

"[28] If the applicant's adverse reaction was to the legitimate exercise of the management function by Dr Drennan then in my view she has not suffered 'an injury'.

[29] If on the other hand Dr Drennan had pursued an unreasonable campaign of harassment or maintained an unreasonable level of criticism and this had affected the applicant's health then she could legitimately claim an injury on duty.

[30] For the exercise of procedures of management including discipline in a police force to be deemed to cause injury or disease of the mind it would have to be established that some injurious element was involved in that procedure beyond the normal stress that might be caused in the course of the imposition of any management requirement."

Unless there is some injurious element in any management requirement imposed on the pensioner, the pensioner's problems are the result of his adverse reactions rather than police duty in law. To put the matter into context, the Court of Appeal has considered this issue in the case of *Re Staritt's Application for Judicial Review; Re Cartwright's Application for Judicial Review* [2005] NICA 48. The Appellants in that case were suffering variously with "management induced stress", As it was put in respect of Chief Inspector Cartwright in that

case:

" Her divisional commander received a written statement from her dated 13 May 2000 in which she said that she could not continue to perform her duties as a Chief Inspector in her present working environment. She explained that over the past few months she had been subjected to extreme stress, anxiety and humiliation and embarrassment because it was brought to her attention that junior subordinates and civil staff within Urban Traffic were aware that complaints were made against her during ongoing proceedings at the Industrial Tribunal. This was sent to the Personnel Branch with an 'injury on duty' report dated 5 June 2000 completed on her behalf by Superintendent Lecky."

Both the High Court and the Court of Appeal found the claims that this amounted to police duty for the purposes of the Regulations unarguable.

In the case of *Lothian and Borders -v- McDonald* [2004] SLT 1295 SLT [2005] SCLR Lord Reed concluded at paragraphs 99 to 102 that:

"it appears to me that a distinction can be drawn, and ought to be drawn, between stresses encountered while the officer is at work which arise out of the execution of his duties as a constable (such as attending the scene of a crime, questioning witnesses, and arresting suspects), and stresses which are experienced while at work but do not arise out of the execution of his duties (although they may be connected with his duties). An officer who feels stress while at work because he thinks that he is in a dead-end job (as in Clinch), or because he thinks that he is being 'marginalised' (as in Ward), or because he thinks that his abilities are not being recognised, or because he thinks that his work is undervalued, or because he thinks that he ought to be allowed to attend conferences instead of carrying out routine duties (as in the present case), does not suffer stress as a result of anything arising out of the execution of his duties, but as a result of his feelings about the duties to which he has been allocated or his concerns about the progress of his career.

.....something external has to impact on the claimant while he is carrying out his duties. It would not be enough that the claimant experienced a feeling or emotion (such as disappointment, as in Clinch, or a perception of being undervalued, in the present case) contemporaneously with the carrying out of his duties, even though that feeling or perception might be connected with his duties. In Clinch, for example, disappointment at being in a dead-end job and failing to obtain promotion was not sufficient, since the cause of the disappointment was not anything which happened in the course of the officer's execution of his duty, but rather his failure to succeed in obtaining other duties. In the present case, Dr Brown has not identified any event which caused the respondent's perception that his abilities were not recognised, and so forth; nor, in consequence, has he determined whether any such event arose in the course of the respondent's execution of his duty as a constable.

These conclusions are supported, as it seems to me, by considering the intention of the legislation and the meaning, having regard to that intention, of the words used. To describe depression caused by being required to patrol the beat instead of attending conferences, for example, as an injury received in the execution of the officer's duty as a constable, appears to me to be an affront to common sense. That an officer who becomes depressed because he feels that his abilities entitle him to different work should be entitled to an award for an 'injury received in the execution of duty', in the same way as an officer traumatised by such events as the Dunblane shootings or the Hillsborough disaster, or an officer made mentally ill by the cumulative impact of the stressful incidents with which officers regularly have to contend in the execution of their duties, is in my opinion neither just nor reasonable, and was not the intention of the legislation.

stress due to unhappiness at the way the officer's career was going and that being undervalued are not in the execution of duty...."

In the case of *R (oao Edwards) -v- Police Medical Appeal Board* [2005] EWHC 1780 (Admin);

*[2005] All ER (D) 215 (July)* the following was rejected as an injury on duty by Sir Richard Tucker:

"The event which precipitated Mr Edwards depressive illness was the notification in 1994 that in accordance with the new Force tenure policy, he was to be transferred from CID duties back to uniform duties. The manner in which this was communicated to him caused him anger and distress but this was a secondary matter. If the subject matter of the communication had been different then it would have been unlikely to have caused a depressive illness.

(B) The Claimant's 'loss of tenure and transfer back to uniform duties' did not arise in the execution of the Claimant's duty. It was the application to him of a management process to which he was 'subject by virtue of being a Police Officer within the Authority.'

It is not the reaction of the Pensioner which is the issue, rather, it is whether the actions of management are so bad as to justify a conclusion that they amount to police duty such as to entitle the SMP to conclude that the Pensioner has been injured on duty.

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