

## Supreme Court upholds Swansea prison employee right to damages

**The Supreme Court upheld the Court of Appeal's decision to allow a Swansea prison employee to claim damages against the Ministry of Justice after an inmate dropped a 25kg bag of rice on her, causing serious injury.**

The landmark case, brought by the Prison Officers Association (POA) and Thompsons Solicitors, will change the legal definition of 'employee' and the law around vicarious liability. Now, prisoners working in prisons alongside employees of the Ministry of Justice will be classed as an 'employee'.

In September 2007, prison catering manager Susan Cox was seriously injured at Swansea Prison as she supervised prisoners carrying food from a delivery van to the prison kitchen. As Susan was clearing a spillage caused by one prisoner, another failed to listen to her instructions to stop and subsequently lost his balance, dropping the heavy bag on her back.

The injury to Ms Cox's spine was so severe that she was unable to return to her job in the prison. Ms Cox sought legal advice from the POA, her union, who instructed Thompsons Solicitors to look into the case and seek compensation on her behalf.

The first court judgment in February 2013 ruled that prisoners performing job-like tasks in prisons could not be classed as employees, and therefore the MoJ did not need to pay compensation to Ms Cox. However, in a challenge brought by Thompsons and backed by the POA, the Court of Appeal unanimously overturned this judgment,

saying that the MoJ was vicariously liable for the prisoner's actions.

The MoJ appealed from the Court of Appeal to the Supreme Court, but lost in a unanimous judgment from five Supreme Court judges. They held that the prisoner's role at the time of the accident was more akin to an employee than a prisoner, and as a result the MoJ should pay compensation for the inmate's negligence and the injuries caused.

Retired POA member Susan Cox said: "I was in agony after the injury, and it forced me to medically retire from a job I loved. I am still suffering from long term, chronic pain that I am still medicated for.

"This has been a long, challenging process but I am glad we persevered. I would like to thank the POA and Thompsons for their unyielding support and efforts to ensure we got the right decision in the end."

General Secretary of the POA Steve Gillan said: "This was a significant day for prison workers across the UK – they are now legally protected when working alongside prisoners. We are delighted that this loophole has been removed from the law, and that the Ministry of Justice can no longer shirk responsibility for the injuries that happen in their prisons."

Catherine Cladingbowl of Thompsons Solicitors said: "It was clear to us that the Ministry of Justice should be held responsible for the prisoner's negligence, and the Supreme Court agrees. Prison employees' safety when working alongside prisoners will now have to be taken seriously."

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# Six-figure sum for slip on ice at work

**A MAN WHO** was seriously injured in a workplace fall secured a six-figure compensation payment with the help of Thompsons Solicitors and the POA.

The 48 year old ex-prison officer was on guard dog patrol at a prison when he slipped on a stretch of path which had not been gritted, fracturing his right foot.

## Two decade career

His two decade-long career was cut short after complications following his accident saw him medically retired from the prison service. The once-active dog handler has also been told by doctors that he is at a 25% risk of needing an amputation in future.

Prior to the accident, the man was a keen cyclist,

football player, cricketer and golf-lover. He now requires considerable care from his family

Working with the POA, Thompsons brought a case for damages against the Ministry of Justice which was heard at the London High Court. The Court ruled in favour of the POA member and ordered the MoJ to pay almost £500,000 in compensation to ensure the injured man's future care needs can be met.

"It is a bitter blow to suffer an injury that not only ended my career, but that was also entirely preventable," said the POA member.

"The MoJ has been shown to be responsible for the part they played in my injury and has, I hope, taken the point that neglecting the health and safety of prisoners and prison officers comes with a heavy price."

## Former prison officer awarded £140,000 compensation following six-year legal battle

**A FORMER** prison worker has been awarded £140,000 after a six-year legal battle with a prison service following an injury that ended her career.

While working at a London young offender's institute, the POA member had been restraining a prisoner after a fight had broken out.

The two prisoners involved in the altercation had been placed on "separate unlock", something the prison worker warned her colleague about, but the prisoners were still released at the same time.

As the fight broke out, the POA member fell onto a stairwell, bending her right hand forward. She instantly suffered pain and was taken straight to hospital.

She had a number of X-rays to identify the injury to her hand, and was eventually diagnosed with a neurological condition called complex regional pain syndrome. She was not able to move her right hand for a year.

## Pain to her hand

She returned to work on interim light duties after four weeks of recovery. However, her light duties meant that she still had to handle keys, despite the pain to her hand.

Unable to do the job on reduced duties, she was offered another position in the prison service by her employer but this would have reduced her salary by more than £10,000, which she could not afford to take and so her employment at the prison service ended.

Six years later she still experiences flare-ups and takes medication for the neurological symptoms.

After her accident she contacted the POA who instructed Thompsons Solicitors to investigate a claim on her behalf.

The case was contested by the prison service who denied liability until weeks before trial. Thompsons Solicitors pursued a claim on the basis that the prison service was liable for the negligent acts of the colleague who had failed to observe procedure following a fight involving prisoners, and, in so doing, led directly to the injury occurring.

## Fought my corner

A joint settlement of £140,000 compensation was agreed days before the case was due to go to court. The former prison worker said: "As a member of the POA, I had access to legal experts who fought my corner for years. Without the help of Thompsons Solicitors I really wouldn't have been able to keep going or believe that I had a chance of actually settling the case."

Glyn Travis, from the POA, said: "This case is a clear reminder of why being a member of a trade union is so important, especially when you're employed in frontline services. Our member was forced to leave her profession and fight for more than six years to receive the compensation she deserved."

# Prisons begin smoke-free switch

**FOLLOWING A long-running and vociferous POA campaign the government has finally listened and started the process of making all prisons smoke-free environments.**

On 29 September 2015, the Ministry of Justice announced it would be beginning the process of introducing a smoking ban in prisons in England and Wales.

A ban was introduced on smoking in all prisons in Wales from January 2016 and in four 'adopter' prisons in England (HMPs Exeter, Channings Wood, Dartmoor and Erlestoke) from March 2016.

It is anticipated that if this long overdue trial is successful the government will commit to a speedy roll-out of the policy nationwide.

## Passive smoking

The inhalation of second hand smoke is known as passive smoking and increases a non-smoker's risk of lung cancer by a quarter. It causes over 12,000 people in the UK to die from lung cancer, heart disease, stroke and the lung condition chronic obstructive pulmonary disease each year.

The POA campaign to secure the right to a smoke-free working environment has been going on for almost 10 years: the delegation at the POA's annual conference first

called for the introduction of a smoke-free prison estate in 2007.

In 2014, the National Offenders Management Service commissioned an independent study to investigate the pollution of the air in prisons due to second hand smoke and the effect on prison workers. The results were clear and showed there is no such things as a 'safe' level of exposure.

Gerard Stilliard, Head of Personal Injury Strategy at Thompsons Solicitors commented "It is almost criminal that successive governments have considered that what works elsewhere shouldn't apply to prisons. At last, thanks to sustained pressure from the POA, they have moved to institute a policy which is in the interests of prison officers, other prison staff and inmates and for which the evidence base is conclusive."

All members should act upon the POA circular 157/2011. Every incident of second hand smoke exposure should be reported promptly to the Governor and recorded as an entry in Occupational Health records using the forms provided by POA. By doing so the evidence will be generated which in time may prove essential to any member seeking to pursue a personal injury claim for prison service related second hand smoke exposure.

## Thompson's' Criminal Law work with the POA

**WE SUPPLY a number of Criminal Law services to POA members, as evidenced below:**

### Historic allegations of abuse

The Thompsons Solicitors Criminal Law Unit continue to represent 45 POA members who are subject to historic allegations of abuse, arising from their employment at former detention centres.

As a result of successful negotiations with the relevant police forces, the overwhelming majority of members have been dealt with as voluntary attenders for the purpose of their interview as opposed to being subject to arrest. Investigation files are currently with the Crown Prosecution Service and charging decisions are anticipated towards the end of the summer.

### Legal advice for 'Voluntary' interviews

We give advice on a regular basis to POA members who are called in for 'voluntary' interviews under caution with the police to justify their work whilst restraining/handling prisoners who then go onto to accuse them unjustly of assault.

We provide support and guidance through what is a traumatic and worrying experience and the vast majority simply never end up in court – but it takes a toll on the morale of prison officers who have the finger of blame pointing at them until they effectively show the police they have done nothing wrong!

One example of such a case is:

The Leeds office represented a POA member accused of assaulting an inmate at HMP Hull on 20 June 2014. The inmate had, had a violent outburst throwing a weapon at a female member of staff and it was decided that the inmate needed to be placed in isolation for both his own safety and for the safety of others. While the member was involved in restraining and escorting the inmate to the segregation block, the inmate accused him of an assault. Virtually the whole of the episode was captured on CCTV.

The member was suspended from work shortly after and initially interviewed under caution by the police. The member then had to wait a further six months before a decision was made by the CPS to take the matter to court on a charge of common assault. The member pleaded not guilty to the matter and the case against him was adjourned for a trial which was not heard until 26th of May as the CPS did not promptly comply with court directions to serve all their case and evidence that may have helped the member such as CCTV footage. Thompsons had to have the case listed a number of times prior to trial to allow this to happen. Eventually the trial was held on 23 May and, after hearing the Crown's case, the District Judge stated in open Court that the case against the member was so contradictory and unreliable that he did not need to hear from the member. He was found not guilty and left court "without a stain on his character".