Health&Safety news

Spring 2018 | issue 025

THOMPSONS SOLICITORS
STANDING UP FOR YOU

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Standing up for you

David Robinson, Thompsons Solicitors' Professional Support Lawyer for Personal Injury Litigation, considers the impact of bad weather on workplace health and safety

Dancing on ice

TRANSPORT CHAOS once again descended during the winter months, owing to snowfall and ice. The picturesque white scene soon turned into gridlocked roads, delayed trains, school closures and an increase in the risk of personal injuries.

Despite the regularity of the seasons, the turn in weather at winter often surprises many, and a lack of contingency planning leads not only to workers being exposed to more risk, but also to employers being exposed to more liability.

The risks

Just what are the likely risks? Slips are the obvious ones, but the risk needs to be more clearly analysed. *Where* this risk materialises, and at *what time* it is likely to materialise, are key. For instance, a main workplace car park where workers are known to arrive from 7am has an increased risk of slipping in snowy and icy conditions than an overflow carpark that is rarely used.

> *There can be no one-size-fits-all approach. Each case will turn on its own unique facts*

Other risks may include the transfer of snow indoors, leading to slips on wet floors. Another often missed risk assessment is for those who drive occasionally for employment purposes. Each workplace is different and the unique problems from snow and ice need to be identified and reflected in risk assessments.

Employers' legal duty

Employers have a duty to ensure that their employees are not exposed to foreseeable risks of injury, and that visitors are reasonably safe when on their premises. While this is a simple statement of the legal position, the issue of snow and ice can cause a storm among lawyers.

When assessing whether an employer has complied with its duty, principles of prevention need to be considered. Preventative measures often involve gritting, providing suitable matting indoors, signage, closure of buildings and premises (or parts thereof), the provision of alternative footwear, advice to employees and such like. Each preventative measure needs to relate to the nature of the specific risk identified rather than being generalist.

But just what is required, and what will be considered reasonable?

There can be no one-size-fits-all approach. Each case will turn on its own unique facts. However, to help illustrate some of the issues that might arise, it is helpful to look at what the courts have said.

- In 2016 the Supreme Court considered a claim for a home carer who slipped on ice on the path of a residential private dwelling she was required to attend. The employer had conducted a risk assessment of slipping due to inclement weather. However, the court held that this was not sufficiently specific and had not considered the provision of alternative footwear. The employer was found to be responsible.
- A holiday camp operator was not found to be responsible for injuries caused to a visitor who slipped on ice when it came before the court in 2015. The operator was responding to a sudden change in weather and had staff visibly gritting paths. The visitor walked beyond these staff and chose to walk on an untreated path.
  While the operator should not have had such a reactionary approach to the weather, and should have followed its policy, which involved checking the weather forecast in advance, the court held that it was the visitor's decision to walk on an untreated path and the operator had responded appropriately to the risks.
- A head teacher who assessed a footpath as being passable with care immediately before allowing a group of pupils and teachers to walk along it was not held as negligent when a teacher fell on that path. The mere presence of ice and the identification that injury *could* occur did not mean that the head teacher's assessment had been flawed. He himself had walked the length of the path immediately prior to the accident to assess it and no one else suffered injury, nor was there an accident history in relation to the location.

Each case involves specific circumstances that dictate its outcome. However, there are some practical tips that should be considered to help promote safety and reduce risk.

Avoiding injury and avoiding risk

You will all have heard the expression "failing to plan is planning to fail", but it couldn't be truer in this scenario. A clear policy that addresses what needs to be done in the event of bad weather will ensure that action is taken without delay. In addition, such a policy should also nominate someone to have responsibility for monitoring the weather.

This is not a difficult task, and someone can ensure that, the day before, weather and temperatures are checked via a number of online sources. Checking the

weather takes minutes (if not seconds) and can lead to action that will prevent employees and visitors being injured.

If an employer can enable employees to work flexibly at times of bad weather, perhaps from home, this can almost fully negate the risks, or at least significantly reduce them. Of course there is a blurring into employment policies and careful consideration will need to be given, and not all work-types are suitable for such flexible working. However, at least considering it, and documenting the reasons for a decision, is relevant to any assessment.

Understanding the key routes that employees and visitors use is an important factor in any assessment, and those primary ➲

> when snow and ice comes, employers should not run around shouting "Don't Panic!"

routes should always be addressed first. There is little point in gritting the paths in an enclosed courtyard when employees begin arriving early in the workplace carpark and have an icy path to negotiate to reach the building entrance. Emergency exit routes should be treated as a primary route and treated or gritted as a priority.

The notion of the workplace does not simply relate to an employer's physical buildings. Some employees work in the community and, while it is not always practicable to assess every location, wider principles of prevention can be applied that include provision of appropriate footwear, for example.

In this day and age of technology, warning and advice messages can instantly be communicated to employees when bad weather hits, reminding them of the content of risk assessments and the principles of prevention. It sounds so easy, but often these simple steps are not even considered.

To quote from Lance Corporal Jones from Dad's Army, when snow and ice comes, employers should not run around shouting "Don't Panic!" Instead, they should see it coming, have a procedure and follow steps that have been considered and assessed on a balmy spring day!

Philip Liptrot, Thompsons Solicitors' fatal accident specialist, discusses the law surrounding dangerous dogs and other animals

When animals attack

THE VAST majority of animal cases that Thompsons deals with involve people who have been bitten by dogs. However, we have also seen people injured by other animals, including horses and cows.

These cases can be difficult to win.

I will explain why this is and what evidence we need to increase the chances of securing compensation for those who sustain long-lasting physical and psychological injuries, as well as loss of earnings.

The law

In most cases, the relevant law is contained in the Animals Act (AA) 1971 and, where a dangerous dog is involved, the Dangerous Dogs Act (DDA) 1991 and 1999. Claims can be brought in common law negligence, that is, when it can be proven that the animal's keeper (defined as the owner of the dog, or the head of the household if the owner is under 16 years of age) created a foreseeable risk of injury and failed to take reasonable steps to reduce that risk.

Dangerous Dogs Act 1991 and 1999

S.1 of the DDA 1991 prohibits any of these dogs: Pit Bull terrier, Japanese Tosa, Dogo Argentino and Fila Brasileiro. It is a criminal offence to own or keep any of these dogs unless it is on the index of exempted dogs.

S.3 of the DDA 1999 made it an offence to own a dog of any type or breed that is dangerously out of control in either a public place or private place in which it is not permitted to be.

If you are injured by a dangerous dog, as described above, you should succeed in a claim for compensation.

If the keeper of any sort of dog has been prosecuted under s.3 of the DDA 1999 and they knew that the dog had behaved similarly in the past, it is also likely that you should succeed. These cases are, however, few and far between.

Animals Act 1971

Section 2(1) of the AA 1971 relates to dangerous species. A claim will automatically succeed if it is possible to show that the animal is not commonly domesticated in the British Isles and is either likely to cause severe damage if unrestrained, or if the damage which it does cause is severe. Again, these cases are very rare.

The majority (99%) of cases involve Section 2(2) of the AA 1971. It is therefore worth setting that section out in full:

2(2)(a) the damage is of a kind which the particular animal, unless restrained, is likely to cause – or if caused is likely to be severe *and*

2(2)(b) such likelihood is due to the characteristics of the particular animal not normally found in animals of the same species, or not so except at certain times or in certain circumstances *and*

2(2)(c) that those characteristics were known to the keeper

Let us take someone being bitten by a pet dog (not a dangerous dog) as an example.

> The majority (99%) of cases involve Section 2(2) of the AA 1971. It is therefore worth setting that section out in full

➲ S.2(1) of the AA 1971 would not apply as the pet is not from a dangerous species of dog.

However, in relation to s.2(2)(a) of the AA 1971, a dog bite is likely to be a severe injury and therefore, regardless of the severity of the actual injury, the test will be met. In relation to s.2(2)(b) of the AA 1971, domesticated dogs do not normally bite people and therefore we would succeed under this section also. Finally, we would need to show that the keeper of the dog was aware of the characteristic to bite people.

Potential defences could include the injured voluntarily taking a risk, although this is less likely to succeed in employment situations, and trespassing if the animal was not being kept to specifically guard the property, or if it was, it was reasonable to do so.

The main difficulties in these cases are in securing sufficient evidence about the dog's history, as well as actually getting any compensation awarded from the dog's owner who may not have the money to pay.

So again, looking at the pet dog example, in most personal injury cases the identity of the defendant is not normally difficult to establish. It could be, for example, an employer, or the driver of a car in an accident. However, with dog bites, unless the keeper is known to the victim or the incident took place at the keeper's property, it can be a problem to identify the owner, and without that information the claim won't even get off the ground. It is therefore important to obtain this information from the keeper themselves or someone who knows them. They are, however, not obliged to provide the information.

> *"With dog bites, unless the keeper is known to the victim or the incident took place at the keeper's property, it can be a problem to identify the owner"*

If the defendant's identity and contact details are known, a claim for compensation can be made. Unless we obtain an admission of liability, however, we must have evidence that the dog had exhibited this sort of behaviour before and that the keeper was aware of it. If the keeper is not known to the victim we will generally have to rely upon the defendant admitting to this, which is unlikely, or the victim finding witnesses to the dog's previous behaviour (and the keeper's knowledge of it) which is not straightforward. It may be worthwhile reporting the incident to the police and asking them if they are aware of any previous reports on file.

Even if we know the identity and whereabouts of a defendant, and we have evidence to support that this dog had done this sort of thing before, and the defendant was aware of it, there can still be practical difficulties in obtaining compensation.

In most personal injury claims, we can usually find an insurer to pay compensation and legal costs if we win. While many pet owners have insurance to pay vet bills if the animal becomes ill, very few may have insurance to cover them if a claim is made against them because their pet injures someone. It is unusual for normal household insurance to cover these claims. Consequently, we can face the prospect of trying to pursue a claim against someone who does not have the means to pay compensation and legal costs.

In those circumstances, it is unlikely that we would recommend issuing court proceedings, as you might end up with a piece of paper showing you have got judgement, but you will have spent a lot of money getting it and it will be worthless. It is therefore imperative that we establish that an insurance policy exists at the outset of the claim or the dog's keeper has sufficient funds.

In summary, if you are bitten by a dog then we would generally need the following in order to investigate a case for compensation:

- Identity and contact details of the dog's keeper
- The keeper to have a relevant insurance policy in place at the time of the injury *and*
- The dog is a dangerous dog as defined by the Dangerous Dogs Act or evidence that the dog has exhibited similar behaviour in the past and the keeper is aware of it.

> *"Fortunately, injured workers who pursue claims through their unions can rest assured that their cases will be handled by the most competent personal injury lawyers"*

Employers' liability

If part of your job involves working with animals, or you come across animals in your job on a regular basis (for example, if you deliver mail door to door) and you are injured, then it can be easier to obtain compensation, as normally there will be employers' liability insurance in place. The usual obligations on an employer will also apply, such as the ➲

requirement to risk assess the job and take reasonable steps to reduce the risk of being injured.

Cases involving horses

Injuries caused by horses are the second most common type of animal injuries that we see and the injuries that can be the most serious. The same legal principles apply but their application can be complicated. We may need expert evidence to prove whether a behaviour that was the cause of the injury is not normally found in the horse generally or that it is not normally found except in particular circumstances.

For example, bolting is a behaviour generally found in horses and therefore you would assume that someone injured because a horse bolted would not recover compensation under s.2(2)(a) of the AA 1971. However, in **Mirvahedy -v- Henley** (Court of Appeal 2003), expert evidence that showed horses only bolted in "particular circumstances," such as in response to a shock, was accepted by the court, and the injured person obtained compensation under s.2(2)(b) of the AA 1971.

In **Freeman -v- Higher Park Farm** (Court of Appeal 2008), a horse bucked and threw its rider. It was found that bucking was a *normal* characteristic in horses (therefore no breach of s.2(2)(a) of the AA 1971) and there was no expert evidence to show that this was the case "in particular circumstances" (s.2(2)(b) of the AA 1971) so the claim failed.

Criminal Injuries Compensation Authority (CICA)

An application to the CICA (a government body that provides compensation to victims of criminal injuries) may be successful if the animal was being used with intent to cause injury. An application must be received by the CICA within two years of the incident. This can be done online and further information can be found at: **www.gov.uk/government/organisations/criminal-injuries-compensation-authority**

Conclusion

If you are injured by an animal you should try to obtain the following information before seeking legal advice:

- **Name and address of the animal's keeper (and insurance details where possible)**
- **Name and contact details of witnesses to the incident**
- **Name of contact details to any previous similar behaviour exhibited by the animal**
- **Breed (of dog)**
- **If reported to the police, contact details of the police officer and incident number.**

Court proceedings must be started within three years of the date of the incident, otherwise a court is unlikely to hear your case.

David Robinson, Thompsons Solicitors' Professional Support Lawyer for Personal Injury Litigation, discusses the occupational hazards of flour in the food industry

Occupational hazards of The Great British Bake Off

LEAVING ASIDE the BBC to Channel 4 switch controversy for the Great British Bake Off, the show's success has inspired bakers, young and old, across the country. However, industrial baking is far less idyllic than the leafy surroundings of Berkshire where the show is currently filmed. There is an underreported illness that impacts on a significant UK food industry workforce.

There are approximately 200-300 new cases of occupational asthma reported by chest physicians each year, but the Health and Safety Executive considers this may be an underestimate of the true scale of the condition[1]. The second most prevalent cause, behind isocyanates (chemicals contained in many construction products like paints, glues and flooring), is flour exposure.

The food and drink industry accounts for 19 per cent of UK manufacturing, with a turnover of over £97 billion and a supply chain employing almost four million people[2]. Flour is widely used in the production of a range of family favourites, ranging from bread, cakes, quiches, pizzas, sausage rolls, pancakes, Yorkshire puddings and much more. The number of food workers who are exposed to flour dust is significant.

Such is the level of concern that, on the first working day of 2018, the Health and Safety Executive issued a stern warning to employers: "*Companies and people working in food manufacturing are being told they must pay closer attention to how they manage workplace health risks or face serious penalties*[3]."

So, how can employers ensure that they are protecting their employees, and how can health and safety representatives promote the issue with employers?

> *"An employer needs to undertake regular health surveillance and monitoring so they can understand the levels at which they are exposing employees"*

Health surveillance

The workplace exposure limit for flour is $10mg/m^3$, and employers must reduce exposure to flour dust as far below that level as reasonably practicable. An employer therefore needs to undertake regular health surveillance and monitoring so they can understand the levels at which they are exposing employees to flour dust. Such health surveillance could include a scheduled programme of assessment of workers by a qualified and competent occupational physician or nurse, combined with workplace questionnaires.

> *"A good employer, wanting to avoid litigation, will engage with a union and work with them to identify and eradicate potential hazards"*

It must be remembered that the whole purpose of health surveillance is not simply to tick a box to say it has been done, but rather to seek to detect conditions early, collect relevant data, evaluate hazards and evaluate control measures. Evaluation is an essential part of health surveillance and must be carried out with the aim of remedying any concerns.

Risk assessment and control measures

Risk assessments, taking into account any updated advice from the Health and Safety Executive, should be regularly undertaken. The risk assessments should identify potential sources of risk of injury and apply principles of prevention to either eradicate the risk or control and reduce it.

When using flour there are a number of processes that increase the risk of exposure, including opening and emptying bags, disposing of used bags, sieving, dough making and dusting tasks.

Employers are expected to systematically assess their individual processes to identify the points at which exposure is potentially dangerous.

Some control measures that could be applied include:

- Cleaning using wet methods rather than sweeping
- Dust extraction equipment
- Respiratory protective equipment for employees
- Modified work processes (including commencing mixing slowly until wet and dry ingredients are combined)
- Adequate training to ensure employees roll bags downwards and therefore away from themselves
- Use of dredgers or sprinklers to spread flour.

Training and consultation

Training is inextricably linked with many of the control measures identified above. An issue that can be commonly missed by employers is, simply, who to train. It should be obvious that those who work with manufacturing processes should be trained, but those involved with cleaning and maintenance should not be forgotten as they are also exposed to risk.

Management cannot simply sit in an ivory tower and assume that everything is working according to plan. They should have systems to regularly engage with staff so they know what is happening on the factory floor.

Given that individual employees may be reluctant to raise health and safety concerns themselves, having a genuinely open forum in which people can do so, or designated health and safety representatives who are more than just management stooges, can be effective to understand the concerns of those who work with any potentially dangerous substance.

Crucially, of course, there is a significant role for unions, and their health and safety representatives. A good employer, wanting to avoid litigation, will engage with a union and work with them to identify and eradicate potential hazards. An employer who chooses to ignore trade unions or fails to take up offers to work with them will have an extra hurdle to clear within any litigation.

Early reporting of symptoms

It is important for employees to be vigilant. Early identification and reporting of symptoms can not only reduce the severity of individual problems but can also prevent systemic problems impacting on the wider workforce.

Some early warning signs include itching, sneezing, runny noses, shortness of breath, coughing, tightness in the chest area and a wheeze[4]. These are not the only symptoms, and not everyone will exhibit all of them.

Many of the symptoms might be seen as simply part of a common cold, however, if symptoms persist for more than a couple of weeks, medical advice should be sought. When speaking to their GP, employees who suspect there is a work related cause

to their symptoms should make the medical practitioner aware of their working history. Workers may want to keep a diary of their health so that they can report an accurate picture of their symptoms to their doctor.

The wisdom and experience of Mary Berry may no longer be part of the ingredients of The Great British Bake Off, but her words can resonate with employers: "*if you follow a good recipe you will get success*". If employers are able to follow a clear recipe for managing their health and safety, logically assessing risks and seeking to reduce them as far as reasonably practicable, they should have the success of a healthy and, hopefully, happy workforce.

[1] http://www.hse.gov.uk/Statistics/causdis/asthma/index.htm

[2] https://www.fdf.org.uk/statsataglance.aspx

[3] http://press.hse.gov.uk/2018/hse-food-manufacturing-inspections-target-the-causes-of-workplace-ill-health

[4] https://www.asthma.org.uk/advice/understanding-asthma/types/occupational-asthma

Standing up for **injured and mistreated** trade union members

"Thompsons understood the financial uncertainty I faced after I was forced to retire following my accident. They worked in partnership with my trade union to ensure I was properly compensated, which meant I had peace of mind and could focus on my rehabilitation."

Robert Warren,
Thompsons' accident at work client

As the UK's leading trade union law firm, Thompsons Solicitors offers specialist and bespoke legal services to trade union members and their families. In the year of the TUC's 150th anniversary, we remain committed as we have been since our own creation in 1921 to the trade union movement and are proud to have never worked for employers or insurance companies.

Health and Safety News aims to give news and views on developments in health and safety issues and law as they affect trade unions and their members. This publication is not intended as legal advice on particular cases.
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