

# POA Legal Report 2017



## Introduction

In 2017, the POA legal scheme, working with Thompsons Solicitors, secured over £2.9m in personal injury compensation for members and their families, at work and away from work. Some of the most significant cases of the year are summarised below.

# Contents

Professional Misconduct (PMC) report	4
Member acquitted of all charges	5
Prison officer found not guilty of charges	5
CCTV footage vital in finding prison officers not guilty	5
Extensive evidence used to prove innocence of POA representative	5
Evidence key to not guilty verdict	5
Prison officers defended against charges of Misconduct in a Public office	6
Member cleared after medication anomaly	6
Member found not guilty after being accused of planting weapon	6
Member cleared of criticism following inquest into prisoner death	7
Employment Rights	7
Member awarded voluntary severance package after direct disability discrimination case	7
Northampton prison officer successfully appeals unfair dismissal	8
Member compensated after unfair treatment by employers	8
Accidents and injuries at work	9
Member compensated after workplace assault	9
Member awarded damages after contracting tuberculosis from prisoner	10
Member attacked at work receives substantial damages	10
Nottinghamshire member secures damages after slip and fall at work	10
Employer ignores repeated warnings, resulting in serious injury to employee	11
Member who suffered multiple injuries at work secures damages	11
Member receives damages after prisoner attack	11
Damages received after prisoner assaulted prison officer	12

# Professional Misconduct (PMC) report

It has been a challenging but successful year for the PMC team in all offices and we have enjoyed our working relationships with the NEC, local branch officials and members.

The high level of assaults on staff and failure by the police and CPS to deal with these issues for members is a constant challenge. The NEC has instructed Thompsons to challenge decisions following complaints from members and branch officials. It was necessary to issue Judicial Review proceedings in one case whilst in others, challenges to the police were sufficient to ensure prisoners were appropriately prosecuted for their actions. The protocol on managing crime in prisons and recent guidance issued by HMPPS have proved very useful when members have been assaulted. We continue to monitor and challenge the failure of the police to prosecute acts of violence. That said, we accept that it is sometimes appropriate for an act of violence to be dealt with through the adjudication process.

One branch rightly raised concerns over the comments of a Judge about prison staff when sentencing a prisoner and this is still subject to the Judicial Ombudsman's complaints procedure.

In addition to this there has been an increase in the numbers of POA members required to attend Police Stations following allegations and subsequently referred to the courts. The majority of these are following a use of force. Thompsons are working with the NEC to review PSO 1600, a major piece of work which will, if accepted by the employer, provide better protection for members when the use of force is necessary.

Whilst there has been a reduction in the number of self-inflicted deaths in prison we have still monitored all investigations by the PPO and represented members when required in the Coroners Court.

Whilst every case Thompsons PMC team acts in receives a high level of attention there have been some particularly high profile cases in this reporting period. The NEC has supported members through providing indemnity for Crown Court contributions and ensuring members had the best possible representation. Cases at Woodhill, Nottingham and Medway all had successful outcomes following Court proceedings, but the stress which members and their families faced must never be underestimated.

The Police investigation into Historic Abuse cases at Medomsley and Kirklevington are continuing and unfortunately some current and former-POA members are facing prosecution. The POA supported these individuals during the investigation process. No doubt these historical investigations will continue throughout the prison service and other workplaces for many years to come.

Thompsons have been instructed to represent nurse members following complaints which have led to proceedings before their regulator, the Nursing and Midwifery Council {NMC}. This is a specialist area which requires continuing support for POA Nurse members as the NMC have wide and draconian powers to restrict practice or strike off members.

## **Member acquitted of all charges**

A BBC Panorama investigation led to a POA member and his colleagues being charged with misconduct in a public office and assault.

The member contacted the POA who instructed Thompsons Solicitors to defend the allegations. Given that there were significant potential ramifications, it became vital for Thompsons to review a significant number of hours of footage on behalf of the member. This enabled those present at the trial to view the unedited versions of the most important parts of the footage.

Witnesses provided evidence at the trial and the member was unanimously acquitted of all counts.

## **Prison officer found not guilty of charges**

An officer member was acquitted of all charges after he was accused of assaulting a prisoner. The accusation was not made by the prisoner, but rather by the officer's colleague. The prisoner vehemently refused to give evidence against the member. The colleague was then approached but refused to give evidence without the prisoner, resulting in the discontinuation of the case.

## **CCTV footage vital in finding prison officers not guilty**

At the time of the incident, two prisoner officers restrained a prisoner after having a bucket of urine and faeces thrown over them. The prisoner had disobeyed reasonable and lawful requests to desist. The prison officers were then accused of assaulting the inmate.

CCTV footage of the incident was located and, as a result, unanimous not guilty verdicts were reached by the jury.

## **Extensive evidence used to prove innocence of POA representative**

A POA representative was accused of common assault and appeared in the magistrates' court. The Crown Prosecution Service (CPS) relied heavily on their expert during CCTV/body cam footage during the case. However, with a very comprehensive report compiled by an expert instructed by Thompsons and numerous supportive character references, the POA representative was found innocent of all charges after a two day trial.

## **Evidence key to not guilty verdict**

Six prison officers were interviewed about an alleged assault on a young offender, two of whom were summoned to court facing charges of actual bodily harm. The officers provided statements and witness evidence. In contrast, no evidence was offered by the CPS and, as a result, both officers received not guilty verdicts before the trial started in earnest.

## **Prison officers defended against charges of Misconduct in a Public office**

A prison officer was transporting a prisoner from their cell with two colleagues. Sadly, while in transit, the prisoner collapsed and subsequently died.

Charges against the prison officers were made on the grounds of misconduct in a Public Office. The prosecution stated that the officers knew or ought to have known that the prisoner was too unwell to travel, used unreasonable force in transporting the prisoner from his cell to the court vehicle and failed to ensure they were seen by an appropriate healthcare professional.

It was argued that there was no case to answer for the prison officers. The prison officers had taken the prisoner to healthcare professionals, who themselves had not communicated that the prisoner was unfit to travel. After the initial failure by the hospital to conclude that the prisoner should not be transported back to prison without vital medication, the judge concluded that it would be 'absurd and grossly unjust' for the prison officers to be punished for their actions.

All the prison officers were acquitted.

## **Member cleared after medication anomaly**

The member was working shifts at a psychiatric hospital after recently retiring from full-time work. During one shift, a medication anomaly was alleged and a few months later, the member failed a medication assessment. The case was referred to the Nursing and Midwives Council (NMC) and an Interim Conditions of Practice Order was made, imposing on the member restrictions against their activity.

The case went to a hearing, where the panel found there was no current impairment with the member.

The case has now been closed with no further action.

## **Member found not guilty after being accused of planting weapon**

The member had been charged, along with a fellow officer, with misconduct in a Public Office for planting an improvised weapon in the cell of a serving prisoner.

During the trial two of the member's colleagues gave evidence implying the member's involvement with the concealment of the weapon. However, after a four day trial, the jury unanimously decided the member was not guilty.

## **Member accused of mis-administration of medication**

The member was investigated for mis-administration of medication.

Given the early engagement on behalf of the member and evidence submitted by Thompsons Solicitors on behalf of the member, the case examiners found no case to answer and the member received a caution.

## **Member cleared of criticism following inquest into prisoner death**

The member was called to give evidence into the inquest of a prisoner who had committed suicide following allegations of bullying by other inmates.

Before the prisoner took their own life, the member had opened an Assessment, Care in Custody and Teamwork (ACCT) document.

The family of the prisoner took the position that a mental health worker should have been present when the member opened the ACCT document, or at the very least should have reviewed the prisoner and the ACCT plan shortly after the opening if they were not available at the time. It was also argued that there should have been a further review of the ACCT after the prisoner had been engaged in a violent incident.

The jury at the inquest did not criticise the member for opening the ACCT without the presence of a mental health worker. They had been told that no one was available to review the prisoner at the relevant time, and action had to be taken immediately to prevent further risk. The jury also concluded that a health worker being present would not have made a difference and there was no need for a further review following the violent incident.

The member came out of the inquest process without any significant criticism.

## Employment Rights

### **Member awarded voluntary severance package after direct disability discrimination case**

The member worked in a prison which had been selected for closure. The employer told staff that they would either be redeployed or receive a voluntary severance package ('VEDS').

The member had long-standing back injuries that amounted to a disability and, as a result, opted for the VEDS. She stated to her employer that the additional commute to a different location for work would exacerbate the pain caused by her disabilities.

The employer allowed many of their employees to avoid redeployment and take a VEDS payment for reasons far less serious than the member. Despite this, the member's appeal was refused.

The member contacted the POA and Thompsons, and a claim for direct disability discrimination was made.

The case was successfully settled for the amount of the original VEDS package.

## **Northampton prison officer successfully appeals unfair dismissal**

A Northampton prison officer settled a significant case for unfair dismissal and disability discrimination against the Secretary of State for Justice, with the help of the Prison Officers' Association (POA) and Thompsons.

The member was forced to work on a sex offenders unit at HMP Woodhill, despite an agreement that she should not be asked to do so due to pre-existing health concerns.

The member, who had worked as a prison officer since 2002, was permanently restricted from working at the unit following a recommendation from Occupational Health in 2013. This recommendation was reiterated in 2016.

The Deputy Governor of Woodhill requested that the POA member work in the unit multiple times from October to December 2016 owing to a shortage of staff. It was made clear that formal disciplinary action would be taken against her should she refuse.

The prison officer suffered anxiety attacks, bouts of physical illness and an exacerbation of symptoms of depression which were caused by the requests.

After an extended period of sick leave, the member declared she wanted to return to work in April 2017, either in her previous role as a prison officer which would not require her to work in the sex offenders unit or as an operational support grade.

They were told there were no other jobs on offer, even though there were similar jobs being advertised on the civil service website at the time. They were subsequently dismissed on the grounds of 'medical inefficiency'.

The member contacted the POA, who instructed Thompsons to represent them in Tribunal claims for unfair dismissal and disability discrimination (including discrimination arising in consequence of disability, failure to make reasonable adjustments and victimisation). Thompsons were able to recover significant compensation as a result of the prison service's treatment of the member.

## **Member compensated after unfair treatment by employers**

Thompsons put forward a case for damages on behalf of a POA member who suffered work-related stress caused by their employer.

The member was working as a prison officer when they were suspended on two occasions: once following an incident involving a prisoner and again after verbal confrontation with a member of the public. The member had a history of stress and contacted the POA, who instructed Thompsons to investigate his case. Both suspensions took an unreasonable amount of time to investigate. With the first suspension, the defendant had even failed to follow the correct procedure.



The employer argued that the member's unrelated personal problems were the sole cause of his current stress related systems. The member's legal team argued that even without these personal issues, the treatment by his employers would still have caused the injuries, which had resulted in so much damage to the member that they were unable to return to work once the suspensions had been lifted.

The member's legal representatives presented strong supportive evidence on their behalf from the union representative.

The member was awarded £50,000, showing the importance of good witness evidence.

## Accidents and injuries at work

### **Member compensated after workplace assault**

A POA member has been awarded £56,500 after suffering a workplace assault.

The member was taking food to a prisoner in his cell while working as a prison officer in the healthcare wing of HMP Birmingham. As he opened the cell door, the prisoner attacked him with broken glass.

The incident caused severe lacerations to the member's left arm which required surgery. Following the surgery, he was left with permanent scarring as well as drastically reduced strength and movement in his left arm. The member was also diagnosed with post-traumatic stress disorder (PTSD) after suffering nightmares and flashbacks to the assault.

It was alleged that the prisoner had obtained the broken glass from a television set in his cell which he had smashed about three days prior to assaulting the member. Following this earlier incident, the prisoner, along with their cell, should have been searched more thoroughly to ensure that no potential "weapons" had been hidden.

Medical evidence was sought from a consultant plastic and hand surgeon and a consultant clinical psychologist. The medical evidence was supported by another prison officer who was with the victim at the time of the assault.

The defendant did not serve any witnesses or medical evidence, and eventually admitted full liability for the incident.

### **Member awarded damages after contracting tuberculosis from prisoner**

A POA member who contracted tuberculosis after exposure to a prisoner with the infectious disease has secured more than £27,000 in compensation.

While working as a prison officer, the member had been exposed to the infected prisoner 10 minutes before an examination by the prison doctor revealed there was a risk they may be suffering from the disease.

The defendant was found to be in breach in relation to disclosure of their own medical evidence and, as a result of the expert work of his union's legal service, the member was compensated.

### **Member attacked at work receives substantial damages**

A POA member was responding to a request for assistance from colleagues during an incident at the hospital where he worked. As he opened the door, he was violently attacked multiple times by a patient with a chair leg.

As a result, the member suffered multiple physical injuries to his head and neck, and was diagnosed with PTSD and reactive anxiety.

The member, with the support of the POA and Thompsons, secured £85,500 in damages for his injuries.

### **Nottinghamshire member secures damages after slip and fall at work**

A member secured £55,000 in compensation after suffering injury in a slip, trip and fall at work.

At the time of the incident, the member was carrying out his day-to-day working duties in his wing of the prison. As he walked off a flight of stairs, he stepped on a folded wet floor sign which was visually obscured by the final step. As he did so, the sign moved under his foot, causing him to slip and fall.

The member sustained a severe injury to his right knee, which significantly impacted upon his ability to work and his personal life.

The member contacted the POA legal service who instructed Thompsons to make a claim on his behalf. The case was made that his employer had breached workplace safety standards as the sign was a hazard and shouldn't have been placed in an obscure position.

## **Employer ignores repeated warnings, resulting in serious injury to employee**

While employed as a prison officer, a POA member cycled to and from his work and used the employee locker room, which was only accessible via a particular staircase. A number of employees had repeatedly complained to the employer about the bird droppings on the stairs which presented a daily health and safety risk.

Despite these complaints, the employer failed to remove the source of the problem and took minimal steps to alleviate the issue.

One day while using the staircase, the member slipped on the bird droppings and fell to the bottom of the steps. As a result, both his kneecaps became dislocated and he eventually required the assistance of pain specialists and psychiatrists.

His case was investigated by the POA and Thompsons. The employer initially denied liability, but eventually accepted an element of contributory negligence, which saw the member compensated with an award of £150,000.

## **Member who suffered multiple injuries at work secures damages**

While working as a prison officer at HMP Brixton, a POA member was violently assaulted by a prisoner which resulted in severe injuries to her back, legs, chest and ribs, as well as psychological injuries. Medical evidence from an Accident & Emergency (A&E) consultant and a psychiatrist was used in the case. Despite the defendant denying liability throughout the case, Thompsons and the POA secured her £25,000 in damages.

## **Member receives damages after prisoner attack**

A member has been awarded damages after a preventable incident in their place of work caused psychological harm.

The member was moving a prisoner who had recently transferred from another prison. The prisoner had a history of violence, aggression and indiscipline against prison officers, however this information was not made available to the member beforehand.

When the member entered the prisoner's cell, the prisoner grabbed them in a headlock and began to choke them. The member suffered psychological injuries as a result and needed one month off work.

After their return, the member was tasked with handling another prisoner, which led to them being dismissed for gross misconduct. The member then approached the POA who instructed Thompsons Solicitors to investigate a claim for compensation.

Thompsons argued that, had the member been provided information about the prisoner's violent track record from the outset, the original situation would have been handled differently and the attack on the member would not have occurred. Medical experts at the trial also agreed the member was suffering from PTSD caused by the attack, which influenced his behaviour in the second incident and ended his employment.

It was successfully proven that there was a link between the member not being given the correct information in the first place to them eventually losing their job.

A claim was made for loss of past and future earnings, and the member successfully recovered damages of more than £190,000.

### **Damages received after prisoner assaulted prison officer**

The member was handcuffed to a prisoner and escorting them to the prison reception area so that they could be transferred to a more secure prison. While doing so, the prisoner assaulted the member by punching them on the right side of their head, knocking them unconscious and causing them to fall to the ground.

The member sustained three fractures to his left ankle when he fell to the ground, a cut to his right ear and bruising and swelling to the right side of his face. He also sustained significant psychiatric injuries of PTSD and depression. He was unable to return to working in a prison environment and his employment was terminated.

The prisoner being escorted had a history of aggressive and unacceptable behaviour.

A claim was made alleging an unsafe system and place of work. A significant factor in the assault was that despite the known aggression from the prisoner and the decision that he be escorted with three officers, he was only cuffed by one arm to the member in question. Following the assault, prisoners are now double cuffed when being transferred.

Liability was disputed and the defendant challenged the member's medical evidence. Eventually the claim was settled for the sum of £215,000.