

POA Legal Report 2019



Introduction

In 2019, the POA legal scheme and Thompsons Solicitors secured more than £4.5 million 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.

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Union matters

Fight for Supreme Court appeal for contempt case

POA members took part in a national walk-out on 14 September 2018 and an HMP Liverpool walk-out over control and restraint on 21 February 2019, which caused the Secretary of State for Justice to take contempt of court proceedings against the POA, alleging it breached the 2017 permanent injunction.

The POA decided it needed to admit the contempt and would try to challenge the basis of the injunction and make a case for mitigation. Evidence was presented to the Divisional Court, which set out how the prison service and estate had been allowed to deteriorate over the past decade and that the job had become significantly more dangerous for both staff and prisoners. It was also explained that the government had broken the social contract by not providing adequate compensatory measures for removing the ability to take industrial action. The General Secretary of the TUC, Frances O'Grady, also provided evidence which emphasised the responsible way in which the POA approached these serious matters. It was also argued that a ban on industrial action breached human rights and that to enforce the injunction would be a further breach of such rights.

Despite this, the court imposed a fine against the POA of £210,000, warning that it considered the breaches to be very serious and that it would have imposed a custodial sentence had any individuals been named as defendants. Papers seeking permission to appeal have now been lodged with the Supreme Court.

Important victory for POA rights

Members at HMP Lindholme arrived at work to hear two of their colleagues had been previously assaulted the night before. They had long-held concerns regarding the safety of the prison and did not feel safe running a full regime that day, and therefore carried out a controlled regime.

The POA branch committee, supported by an NEC member, tried to engage with local prison management on behalf of the members, but were accused of unlawfully inducing industrial action by management. The Prison Service brought a claim against the POA for an injunction and damages.

The POA brought a counterclaim against the Prison Service for unsafe working conditions, including inadequate numbers of staff having to deal with high levels of drugs, weapons and assaults. It argued that in circumstances like those at HMP Lindholme, the POA must be entitled to advise members of their health and safety rights to take their concerns to management in order to get them resolved.

The POA made clear that its main objective in the litigation was to have a clear protocol which confirmed its right to advise members about their health and safety rights and to take these concerns to management without being accused of unlawfully inducing industrial action, and without facing an automatic application for an interim injunction.

The Prison Service ultimately agreed to a settlement with a protocol to be followed when members have urgent health and safety concerns. The protocol ensures that when members come to the POA with concerns, POA representatives

can advise members of their health and safety rights and duties and the Prison Service will not treat that as unlawfully inducing industrial action. The protocol also includes, for the first time, a legally binding commitment by the Prison Service that local management will meet POA officials to discuss members' urgent health and safety concerns and to try to resolve those concerns in good faith, so that the POA can ensure members' voices are heard.

The outcome ensured the main objectives for the POA and ensured the availability of a legally binding agreement setting out clear parameters which will enable the POA to advise and represent its members in similar circumstances in the future.

Employment rights

Member compensated over £25,000 for loss of earnings and pension

The member was employed as a Band 3 prison officer at HMP Featherstone. Because of pain in her hands, which was eventually accepted as a disability, the member was regraded to a Band 2 clerical role before she was able to secure another Band 3 non-operational role.

The defendant failed to pay her pay protection for the period that she was doing the Band 2 role.

An ETI was lodged and the matter settled under a COT3 for £25,355, which included loss of earnings and pension loss.

Additional Committed Hours pay secured for regraded member

The member was employed as a Band 3 prison officer at HMP Werrington. She was diagnosed with MS and regraded into a Band 3 business administration role.

Because she was regraded from an operational grade to a non-operation grade, she was still eligible to receive the unsociable hours worked allowance as marked time for two years.

However, the Additional Committed Hours (ACH) that she worked whilst she was a prison officer was not paid as marked time and therefore ceased from when she went into the non-operational role. It was argued that she was not entitled to the ACH payment.

An ETI was lodged and the matter settled under a COT3 for £2,500, which comprised of the payment of the ACH during the pay protection period.

Dispute over daily rate calculations

A member left employment at a time when she had accrued 23 days of annual leave and 94.37 hours of time off in lieu (TOIL). While the SPS accepted that she was due payment of this outstanding leave and TOIL, there was a dispute over the daily rate which was to be used in order to calculate her entitlement.

The matter could not be resolved via ACS and a claim was lodged for the member at the employment tribunal.

The employer argued that to calculate the daily rate of pay, they could divide the annual salary by the total number of days in a year (365). Thompsons argued, however, that using this formula resulted in a significantly reduced payment of outstanding holidays. It was proposed that payments higher by several thousands of pounds could be achieved if the member's daily rate was calculated by taking annual salary and dividing this by the total number of available working days in the 12-month period (261) days. It was argued this would make more sense since the member worked a five-day week.

Ahead of the tribunal, SPS made an offer to fully settle the claim which the member accepted.

Member compensated with £7,500 for loss of earnings and pension

The member was employed by the Nottinghamshire Healthcare NHS Foundation Trust as a nursing assistant.

The member was dismissed by the employer on ill health grounds, having suffering significant stress in his personal life as well as having work absences due to injuries sustained in the workplace.

The employer resumed the final stage of the capability procedure and dismissed the member, even though at that time, the member had returned to work on normal duties and was in good health. It was therefore reasonable to conclude that he would have been able to provide effective and regular service for the foreseeable future. The member claimed that the dismissal was therefore unfair as it was outside the band of reasonable responses open to a reasonable employer.

An ETI was lodged and, on the morning of the final hearing, the employer accepted liability and the Tribunal ordered by consent that the member's complaint unfair dismissal succeeds. The employer was ordered to pay the member the sum of £7,500, which included compensation for loss of earnings and pension loss, and reflected that fact that the member had secured a new position on comparable terms shortly after his dismissal.

Maternity discrimination claim results in £10,000 for member

A POA member was employed at Littlehey Prison when she went on maternity leave. While on leave, she was not informed of any vacancies which cropped up for new roles.

Thompsons lodged a claim for maternity discrimination, securing a settlement of £10,000.

Member asked to reconsider position before being informed of end of contract

A member employed at HMP Winchester resigned from her position in February 2019 after she failed to negotiate suitable flexible working arrangements to support childcare needs.

The day following her resignation she met with the Deputy Governor and was asked to reconsider her resignation, which she then rescinded. On 6 March 2019 the member received a call from her Residential Governor advising that her resignation had been accepted and that her employment would end the following day as she had now worked her notice.

Thompsons submitted a claim for unfair dismissal and secured a settlement for £15,000.

Unlawful deduction from wages claim results in settlement

The member was employed by HMP Wandsworth from 10 April 2017 until 7 July 2018, at which point she resigned from her role.

At the point she terminated her contract, she was owed overtime, TOIL, as well as outstanding annual leave. Despite this, her employer failed to pay her for these hours, claiming she had no proof of the overtime worked.

Thompsons supported the member with a claim for unlawful deduction from wages and settled the claim for the amount owed, equating to £3,135.

Injuries at work

Prison worker unable to continue work awarded six-figure sum

A member suffered an assault in work resulting in physical and psychological injuries which inhibited him returning to his current places of work or obtaining other forms of employment.

Liability was admitted for the assault, but the cause was contested, as it was suggested that the member's injuries were not all caused by the attack.

The member claimed for loss of earnings and pension, as well as care needs and other heads of loss.

The defendant eventually settled for £500,000 before going to trial.

£200,000 settlement achieved following two assault incidents

A member sustained physical and major psychological injury after aiding colleagues who were being assaulted by a group of prisoners. The member's psychological symptoms culminated in a diagnosis of PTSD.

The member had also been assaulted by a different prisoner on another occasion. Following the procedure of "patting down" a prisoner, the member was punched in the face, causing physical and psychological damage, such as anxiety. The member confirmed that he still had the psychological symptoms by the time of his second assault, which meant that both claims for both incidents ran together.

A £200,000 settlement was achieved 3 weeks before a two-day trial, on the basis of a loss of earnings and pension for 10 years and to cover dental work and counselling.

Prison worker awarded £60,000 after multiple assaults

A member was awarded a £60,000 after being assaulted at work, a figure 40 times that originally offered by the defendant.

The dedicated officer was assaulted by a prisoner who should not have been in prison. The member lost trust in his employees following the incident, but still returned shortly after his assault. However, he later witnessed another colleague being assaulted and, as a result, the member suffered a severe psychological reaction, causing him to take a lengthy period off work.

The member was subject to a further assault in 2016, which retriggered the psychological conditions he's been managing.

The employees admitted fault for the original assault, but refused to accept psychological injury. The member was offered a number of offers, which in no way reflected the severity of the injury.

The night before the trial, the defendant made an offer of £60,000.

Prison officer punched repeatedly in the head

A member who was employed as a healthcare worker at a prison was assaulted during his employment, causing both physical and psychological injuries.

The prisoner punched the member repeatedly whilst he was pinned to a counter. He also sustained injuries to his arm whilst trying to protect himself from the blows. The prisoner also bit the member's thumb.

An admission of liability was received and, following the obtaining of medical evidence, Thompsons' negotiated a settlement of £20,000 for the member.

Member receives settlement after fire extinguisher incident

A POA member received a settlement of £5,500 after falling victim to a prisoner's actions.

The member was working when a prisoner took hold of a fire extinguisher and began discharging it, creating a slippery surface. While attempting to restrain the prisoner, the member slipped on the wet floor, causing multiple injuries to the ankle, neck and back, and a laceration to the head.

The member pointed out that the prisoner had arrived on the wing the day before this incident, and because of his behaviour, should not have been permitted outside of his cell. It was also suggested that the prisoner was able to pick up the fire extinguisher because there was not enough supervision at the medical hatch, where he had headed to collect medication.

Liability for the member was denied on the basis that this incident was unforeseeable and that the prisoner has been under proper supervision.

The matter was listed for trial, prior to which the defendant made an offer of settlement at £5,500.

POA member attacked by young offenders

A POA member suffered an assault by a young offender whilst working on detached duty, being punched in the jaw before other young offenders joined in the attack.

The defendant denied liability, saying this was a spontaneous act, and that the member was fully trained to deal with this. The member alleged, however, that these three young offenders should not have been allowed to be unlocked together and that he was not trained to deal with juveniles, as his normal place of work was the Immigration Removal Centre and not a Young Offenders Institute. He also alleged that a body camera or radio was not being used.

Prior to the trial, the defendants breached orders for disclosure of documents and required extensions of time to serve witness evidence. At trial, the member's case was agreed with, in addition to the fact that there were various breaches of duty. As such, the member was awarded £14,000.

Member injured during handcuff demonstration receives £10,000

A member undertaking a control and restraint training course noticed bruising and pain following a demonstration which required her to be put in handcuffs.

Liability was initially disputed, as it was claimed that the member volunteered to demonstrate and that the senior officers were suitably trained and followed the correct procedure, ensuring the handcuffs were not too tight.

There was no witness evidence from the event but statements from two witnesses confirmed they saw marks on the member's wrists.

Before trial, the member was made an offer of £10,000 which was accepted.

Prisoner designs makeshift weapon to attack POA member

A member working as a prison officer was attacked and assaulted by one of the inmates.

The inmate had created a weapon from a plug and flex from an appliance in his cell, and used it to hit the member in the face. The assault caused injury to his cheekbone and jaw, resulting in a black eye.

Following correspondence and negotiations, it was possible to negotiate a settlement of £3,760.

Open office door results in assault

A member was attacked by a prisoner when he was working in his office. Unbeknown to the member, the doors had been left open and the prisoner was allowed to gain injury, which resulted in the member being struck. The prisoner then attempted to restrain the member.

The member suffered pain and grazing to his left cheek and also had bruising to his eye. The physical symptoms resolved within seven weeks, but psychological symptoms including anxiety and depression lasted much longer. The member's psychosocial symptoms of these were mild to moderate for the first 12 months, with mild symptoms expected to resolve two and a half years. The claim was made on the basis of the reports prepared by a psychologist who had examined the member. In addition to this, there was a modest claim for expenses, which came to just under £300.

The member's employers, the MoJ, admitted liability but made derisory offers and so court proceedings were issued and a Part 36 offer was made on the member's behalf, in the sum of £6,250. Prior to the filing of their defence, the defendant accepted the offer.

Member left with visible facial scar

An officer who was taking a prisoner from healthcare to segregation when the prisoner said he wanted to use the telephone. The member told the prisoner, who was on a two-man unlock, that he was not permitted to use it, resulting in the prisoner slamming his cell door and barging past the member's colleague and another officer, before assaulting the member.

The member was punched in the face, which he was not expecting as he was looking down and tucking cuffs into his trousers. After the member was hit, he backed off and other officers close by pushed the prisoner back into the cell and locked the door.

It was alleged that cameras – which were installed after the incident – may not have prevented the incident, but could have been a deterrent to prisoners.

The member also noted that the prisoner was transferred to Broadmoor a few weeks following the assault, and alleged that as a prisoner with poor mental health they should have been transferred earlier.

Liability for the incident was admitted. The member had sustained injury to his nose, causing a laceration which required glass-paper sutures. These healed within four weeks, resulting in a linear scar at the top of his nose measuring 0.75cm. Scarring was visible at conversation distance and would not be amenable to surgery. The member also suffered psychologically, with severe anxiety for three months because of stress caused by the incident. The member was referred to a psychologist via Occupational Health a month after the assault for two months of treatment.

The member's claim was settled for the sum of £3,500.

Pay out for operations officer who slipped

A member employed as an operations officer was answering an alarm in the female wing as two prisoners were fighting. She slipped on a wet floor into the prisoners who were fighting.

The member fell and sustained an injury to her left leg, causing a spiral fracture to her fibula and tibia. This required an operation with metalwork inserted into the leg, which has subsequently been removed.

Liability was not provided, although a premedical offer was made to the member in the sum of £5,000. The offer was discussed with the member and rejected.

A medical report was obtained from an orthopaedic surgeon which confirmed that the member had made a good recovery. The member also returned to work. The medical evidence was forwarded to the defendants and a further offer of £7,000 was made to the member, which was also rejected. A counter proposal was made with the advice that if they were not going to increase the offer, litigation would follow.

An increased offer of £10,000 was made to the member, which they accepted.

Member awarded £1,500 after injury at work

A member who was assaulted as he was moving a prisoner back to their cell sought legal support after suffering painful injuries.

The incident caused the member to suffer from a fractured humerus, which required surgery and took almost a whole year to heal. The member was also unable to work for nearly three months as a result of the injuries.

The member was awarded £1,500 in compensation following a successful application to the Criminal Injuries Compensation Authority (CICA).

Incident causing PTSD pays member over £6,000

A member was assaulted by an inmate who jumped on her from behind and, while doing so, smeared faeces in the member's face.

As a result of the assault, the member developed Post-traumatic stress disorder. She was signed off work for more than four months before making a brief return. However, her condition failed to improve, and she later retired from prison service on medical grounds. A consultant psychiatrist assessed the member and concluded she would suffer from a disabling psychological injury for anything from two to five years.

The case was taken to the CICA, who initially rejected the application. However, an application for a review of the decision led to it being overturned, securing £6,085 in compensation for the member.

Road traffic accidents

Passenger suffers soft tissue injuries and anxiety following crash

The member was a passenger in a vehicle subjected to a side impact from a negligent third party changing lanes.

The member sustained soft tissue injuries to his lumbar spine. A course of physiotherapy was needed and the member also suffered from mild travel anxiety. The prognosis period was for a full recovery to be achieved within three to six months of the date of accident.

The other driver accepted liability and after a first settlement offer was rejected, an improved offer of £3000 - with £410 for treatment and £2950 to the member - was obtained and accepted.

Uninsured driver leaves member with neck and back injuries

A member was a passenger when they were involved in a car accident. The proceeding driver attempted to overtake when it was unsafe to do so, striking the member's car forcefully. This caused the car to leave the road, proceed along a grass verge and hit a tree.

The offending driver turned out to be uninsured. The Motor Insurers Bureau admitted liability and agreed to deal with matters under the Uninsured Driver's Scheme. The member had sustained soft tissue injuries to her neck and back and was given a recovery period of around eight months.

The MIB eventually offered £3,200 which the member was keen to accept to draw a line under matters.