

## Personal Injury



## Assaults on prison officers – establishing liability for negligence in inherently dangerous workplaces

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*Hill v MoJ* [2022] EWHC 370 (QB) concerned an appeal against the order of Recorder Bright QC dismissing a personal injury claim brought by Mr Hill. The judgment of Cotter J, dismissing the appeal, provides some useful guidance as to the sorts of considerations and factors relevant to establishing negligence on the part of the MoJ in such circumstances and more broadly in relation to employees such as firefighters, police officers, ambulance technicians and others whose occupations in the public service are inherently dangerous.

The case concerned a spinal injury suffered by Mr Hill in March 2015 in the course of his duties as a probationary prison officer at HMYOI Brindford. Mr Hill was instructed to escort two young offenders on his own from an adjudication at the segregation unit back to their cells. When they reached the first cell, one of the prisoners assaulted Mr Hill by deliberately pushing into him so that both prisoners could barricade themselves into the cell.

Cotter J noted that the prison services fell within the category of occupations that are sometimes described as carrying an “unavoidable” level of risk. In the Judge’s view, the problem with use of the term “unavoidable” is that it fails to recognise that changes, for example to public attitude or through invention or progress, may alter the question of what is reasonable such that different steps should be taken to address a risk of injury.

In his view, a better analysis would be that the risks in question can only be wholly eradicated by measures which would be either impracticable and/or unacceptable to the public generally and /or unlawful (or in breach of a duty owed to relevant individuals such as pupils, patients or prisoners) and/or too costly to be met by public funding. He drew a contrast with risks that may be avoided in the American penal system by way of measures that would not be acceptable in this country.

As to establishing liability, the common law principles applicable to occupations which are inherently dangerous and carry with them a background or base level of risk, are the same as those applicable in any other type of occupation - the starting point is that the MoJ owed the same duty of care towards its employees as does any other employer: see *King v Sussex Ambulance NHS Trust* [2002] EWCA Civ. 953 per Hale LJ at para 21.

The MoJ, like any other employer, owed Mr Hill a duty to take reasonable care to provide safe equipment and a safe system of work, which includes assessing the tasks to be undertaken, training in how to perform those tasks as safely as possible, and supervision in performing them. As to the standard of care, the MoJ’s conduct (as with any employer), is to be judged by the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know: see *Stokes v Guest Keen and Nettlefold (Nuts and Bolts) Ltd* [1968] 1 WLR 1776. However, unlike other employers, what is reasonable may have to be judged in the light of the service’s duties to the public and the resources available to it to perform those duties *King v Sussex Ambulance NHS Trust* [2002] EWCA Civ. 953 per Hale LJ at para 23.

Focusing on the facts, the necessary and routine movement of young adult prisoners, the Court noted that it carried a “baseline risk of violence and disruptive behaviour which varies with the individual or individuals concerned”. It was a “real” risk which was addressed by the general systems in operation including the reduced staff/inmate ratio. What Mr Hill had to establish was “a risk, sufficiently above the baseline/constant risk posed by many young offenders and

addressed by the “usual” systems in operation, to require additional steps/measures; here using two officers rather than one or escorting the prisoners one at a time”.

Mr Hill was unable to do so despite findings that the inmate was a volatile, impulsive, manipulative and troubled young man who could be violent. He represented an increased risk over the average prisoner, being in the most violent/disruptive 25% of prisoners. There was also evidence of him posing a risk to prison staff, including an alert dated 25th June 2014 headed “risk to staff...threats to assault staff using a weapon”. All such cases turn on their facts and future cases are likely to be distinguishable. This decision does however point towards a higher hurdle than some might have expected in relation to establishing liability.

Further helpful guidance in relation to such occupations can be found in the following cases where primary liability was established:

- *Lloyd v Ministry of Justice* [2007] EWHC 2475 (QB): a prison officer was violently attacked by a prisoner with a history of violence and assaults on other officers. It was held that the MoJ was negligent in failing to inform the claimant accordingly and thereby failed to provide him with a safe system of work.
- *Cook v Bradford Community Health NHS Trust* [2007] EWHC 2475 (QB) a health care assistant employed on a psychiatric ward was attacked by a patient with a known history of unpredictable and violent behaviour. The claimant had entered an open seclusion area to provide refreshments for designated carers. Concurrently, the patient was given permission to go to the toilet. As the patient entered the observation area, he unexpectedly punched the claimant in the face.
- *Buck v Nottinghamshire Healthcare NHS Trust* [2006] EWCA Civ 1576 the claimants were injured when attacked by an “exceptional patient” even by the standards of high security hospitals and who posed an “exceptional risk”

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*John Platts-Mills is a natural and persuasive advocate, with a busy court and tribunal based practice. As well as running his own portfolio of cases he is regularly instructed as junior to more senior juniors and silks in Chambers. He has developed a busy Fast Track and Multi-Track practice. He has particular expertise, and interest, in cases involving vulnerable road users, including: motorcyclists, cyclists and pedestrians.*