

# Report to the Police & Crime Commissioner for Cleveland



## Exception Reporting of Civil Claims Cases

### **Background**

This report is being presented to the Police and Crime Commissioner following the settlement of a civil claim case that meets either of the following criteria:

- the case has been defended by the Force but has been lost;
- the amount payable in finalising the case is above the insurance 'excess' of the Force.

The Force has insurance in place to cover payments for civil claims cases with an 'excess' of £125,000. This means that where any claims are settled above this level the Force pays the first £125,000 of the claim. Any claims settled below this amount are funded from Force budgets.

The previous Police Authority routinely scrutinised the Force's civil claim statistics and directed the Force to take a more robust approach in defending claims.

All exception reports presented to the Commissioner will be included in the routine civil claim statistics reports that are presented to the Audit Committee on a six monthly basis.

### **Summary of the Case**

The Claimant pursued a claim for personal injuries sustained following a road traffic collision.

In summary, at approximately 01.20hrs on 22<sup>nd</sup> January 2011, a police officer was driving a police van east on Windsor Road, Saltburn, responding to a '0 Priority Incident.' The front seat passenger was a police sergeant. The road was a single carriageway with two lanes separated by a broken central white line and was subject to a maximum speed limit of 30mph. The van had emergency equipment activated – blue flashing lights, flashing headlights and sirens activated. As the officer drove along Windsor Road, near to the Windsor Hotel Public House, the Claimant ran out into the carriageway and into the path of the police van from the vehicle's nearside. The Claimant was struck by the police van on the vehicle's offside, in the opposite carriageway and came to rest on the opposite pavement.

The Claimant provided an MG11 Statement to Cleveland Police on 28<sup>th</sup> February 2011 in which he stated that he had no recollection of anything until he woke in bed at home 7 days post-accident. He described sustaining head injuries and multiple body injuries including a fractured pelvis. He also stated that he had suffered loss of taste, loss of smell and short term memory loss.

The police driver was interviewed under caution and described the emergency to which he was attending. He described being seven miles away from the scene and being aware that there were very limited officers in the area to attend. Just prior to reaching Saltburn he believed that the situation was calming down but then an assistance call had been made by one of the officers at the scene. In addition the officer was aware that a female had been injured. The officer stated that as he exceeded the speed limit on entering Windsor Road he constantly scanned for hazards prior to becoming aware of a group of people outside the Windsor Public House. As he approached, all the people were on the pavement and due to the fact that it was a long and clear road he could see that the group had noticed his emergency lights and sirens as they were looking at his vehicle. At the last minute the Claimant ran in front of his vehicle in what appeared to be a joking manner. The officer stated that he caused the van to brake heavily to avoid the Claimant but had been unsure as to whether the Claimant would have turned back or continued across the road and therefore was unsure where to attempt to steer the vehicle due to limited space being available.

In response to the question raised about the officer driving higher than the recommended 20mph above the speed limit, which then requires justification, the officer advised that he believed his speed was appropriate for the conditions at the time, that the vehicle remained in his control and that he was looking ahead and checking for hazards. When he noted the group of people, he established that there were no vehicles coming towards him and so he moved to the other side of the road to allow more space between the group and the police vehicle. Had he seen anyone from the group step onto the road he would have slowed the vehicle. However in this instance, the Claimant deliberately ran into the front of the vehicle and had he not done so, the collision would not have occurred.

The police sergeant who was the accompanying the police officer as a front seat passenger provided an MG11 statement confirming that he too believed that the speed was appropriate for the emergency due to the fact that there was no other traffic, pedestrians or hazards. He echoed the comments of the police driver and in particular stated that the Claimant was looking towards them as he ran out into the road without warning, with his hands in the air. He ran directly into the path of the police van which was on the far side of the road. He believed the accident was solely the fault of the Claimant's actions.

A number of witness statements were taken from friends and members of the public who witnessed the accident. Most confirmed seeing the blue lights. Some heard the sirens whilst many did not. No one could explain why the Claimant ran into the road, although one stated 'he just set off and ran blind into the road just as the van got level with us.'

CCTV footage from a nearby public house showed the Claimant as part of a group, prior to the accident. He was seen to be walking around in the road prior to returning to the group and standing on the pavement. As the group's attention was drawn to the road, presumably to the police van with emergency equipment activated, the Claimant accepted a cigarette and then looked in the direction of the police vehicle. He then ran to two males standing on the pavement, looked towards the approaching police vehicle, then pushed through the two males and ran into the carriageway to cross the road. As he made it to the offside of the road he was struck by the offside of the police vehicle. The CCTV showed that the Claimant was in the carriageway between 1 and 2 seconds prior to the collision.

As mentioned above the Claimant had no recollection of the accident. When shown the CCTV footage of the incident he stated that he could not recall crossing the road and

believed that he may have wanted to see his friend on the other side of the road or may have wanted to use his telephone in private. He claimed that there would have been a reason for him to cross the road and that he would not have set off if he had anticipated that he would not have made it to the other side.

The internal investigation into the collision established that there was significant impact damage to the police vehicle, that all the emergency equipment had been working correctly and that there were no apparent defects which would have affected the officer's ability to control the vehicle. The investigation established that the officer reacted at approximately 0.6 seconds to the Claimant running in front of him and that this reaction time was better than average. The IDR showed that the police vehicle had been maintaining a speed of between 71-74 mph.

Although trained police officers have an exemption from various aspects of road traffic legislation, there remains a statutory requirement to maintain safety margins. Legal exemptions for police do not include driving at speed or in a manner which is dangerous, nor driving in a manner which would amount to driving without due care and attention. Driver training courses provided oral guidelines that when carrying out a response to an incident, officers would travel with emergency equipment activated and restrict their speed to 20mph over the speed limit. This could be exceeded but would be for the officers to justify.

In this instance the police response trained driver was driving to an emergency and the emergency-warning equipment was activated. He was in excess of the speed limit for a lawful purpose. It was considered that he was aware of his surroundings and the potential for hazards as shown by his response to the Claimant running into his path. Had the officer taken the reaction time normally afforded to drivers it is reasonable to assume that the police van would have collided with the Claimant before having the opportunity to brake. The Investigating Officer considered a major contributory factor for this collision as being the deliberate act of the Claimant seeing the oncoming police vehicle and running out in front of it. These actions left the officer with no time to avoid the collision regardless of the speed involved.

The matter was referred to CPS to consider whether any charges were to be brought against the officer. No criminal charges were brought against the officer.

## **Summary of the Outcome**

In January 2014, the Claimant issued proceedings against Cleveland Police stating whilst he was a pedestrian crossing the road the accident occurred as a result of the negligence of the police officer. Negligence was based on the speed the police vehicle whilst being driven in a built up area with pedestrians present and whilst being driven on the wrong side of the road. In addition, it was alleged that the Force was negligent for reasons which included failing to change the grade of the incident, poor radio equipment and lack of written guidance regarding driving speeds to emergency calls during driver training.

A number of medical reports were received from the Claimant's solicitors.

One report described permanent and obvious scarring to the face, permanent loss of smell and taste, permanent poor short-term memory.

Another described orthopaedic problems sustained whereby the Claimant could have been disadvantaged as a result of the old fractured pelvis should he engage in heavy manual work on a frequent basis.

A further report from a neurological surgeon reported the Claimant's memory problems as indicative of brain injury. These symptoms included problems in respect of multi- tasking, poor concentration, memory issues, problems with higher executive functioning etc. He also reported a 3-4% increased risk of the Claimant developing epilepsy. Going on to give the opinion that had the Claimant been hit at a lower speed the injuries could have been less severe, he remarked that the claimant should be considered disabled under the terms of the Disability Discrimination Act and Equality Act 2010.

In addition to the claim for personal injuries, the Claimant claimed various financial losses (Aids, Clothing, Medical Treatment, Travel, Care and Assistance, Loss of earnings, Loss of Pension Benefits) and an award reflecting the disadvantage he would face finding a job on the open labour market.

Liability was agreed out of court on a 50/50 basis whereby the Claimant conceded 50% contributory negligence. The agreement reflected the risk to the Chief Constable because of the speed of the Police vehicle. The agreed payments were as follows:

Damages -	£57,500 (50% of £115,000)
Third Party Costs -	£75,000
Hospital charge-	£ 585
<u>Defence Costs -</u>	<u>£25,879.69</u>
Total	£158,964.69

As the total paid in respect of damages, defence costs and claimant's costs exceeded the insurance excess of £125,000 the Force paid the total sum of £125,000 and the remainder was paid for by the insurer.

**Iain Spittal**  
**Chief Constable**