

December 2008 - January 2009

Front Line

Avon and Somerset Police Federation Constables Newsletter



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Please forward your questions via your federation rep. or direct by email to pbudd@avsomfed.org

SE5A

Apologies for the delay in this issue coming out to you. Changing jobs within the organisation initially reduced the amount of time I can dedicate to producing this newsletter. I will try and do better in the future. There has been much talk about policing pledges nationally in recent months but I remain unconvinced of what they will actually achieve. We are making promises to the public and laying down specific time frames for dealing with issues. Why do we as a service keep making these promises. There was a time when we just did the best we could in the most timely fashion. This was just getting on with it not talking about it. In my experience broken promises are a cause of many of our complaints and I fear that this latest desire of the government to pressure forces in the guise of 'improving standards' may make matters worse by raising expectations too high. The majority of the public have little interest in these pledges in my opinion. All the public want is a confidence that if they have the necessity to call the police in a time of need that we deploy to assist them as best as we can. If it is an emergency then clearly in as quick a time as possible. If the matter is of a less urgent nature then the desire is for us to attend, show an interest and assist as best as we can to resolve their issue. As a service we must stop being directed to make promises to appease a small minority of 'voters' and cater for the majority of the public that we endeavour to serve.

Does a majority of the public we serve in any particular area care about who their local officers are and how to contact them individually? I don't think so unless it is to discuss a particular case of course. Like everyone else, myself included I only hope that in my time of need I have an ability to contact the police, communicate my problem, and get support - everything else seeks to divert attention from this basic function.

Paul Budd
Editor

*Cover picture by: Sean McCreadie
PSU officers preparing for a days duty.*

Policing Pledges

p2

There is currently a lot of talk about the policing pledges.

Data Protection Updates

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Each officer has been emailed a copy of their personal data that we hold, you?

Constables Board Contact Details

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Details of the current Constables Board.

Video Clips On The Internet

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What are your rights as regards video and photos of you appearing on the internet.

PNB 23rd January Update

p6

An update on some of the topics discussed at PNB including on call allowance.

Searching Prisoners

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Nationally a number of incidents have come to notice in custody resulting in 'near misses'.

Your Letters

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Travel insurance and what happens to TOIL if its not used by 2011.

DEBT MANAGEMENT ADVICE

Are you under financial pressure due to mounting debt and see no way forward? You are not alone, it is a growing problem and we are getting more calls each week. Don't bury your head in the sand and ignore the issues, deal with them sooner rather than later. Contact the Police Federation for advice and we can put you in touch with a local consultant who may be able to assist you. Telephone 01275-878854.

FEDERATION WEB SITE TOP SEARCH PHRASES

1. **CRTIP** - Register in the forums for latest news.
2. **Insurance** - Visit the services/insurance area for details.
3. **Travel** - Visit the services/insurance for certificate.
4. **Refreshments** - Check the 'FAQ's Other' section.
5. **Key Worker** - Visit the Financial Services page.

Join the forums to keep updated with regular news:

<http://forums.avsomfed.org/ucp.php?mode=register>

THE VIEWS EXPRESSED IN THIS PUBLICATION ARE THE VIEWS OF THE ARTICLE AUTHORS AND THEY ARE NOT NECESSARILY THE SAME VIEWS AS THE AVON AND SOMERSET POLICE FEDERATION.

Data Protection Updates

By the time that you receive this newsletter you should have all received a data protection email. The police federation are not supplied with any personal information from the force and as such it is down to the office to keep your records updated. It has been apparent from the recent diary distribution and subsequent enquiries that many officers have moved districts and departments and not updated their records. In the past we used to send out a request in a paper format but clearly if you had moved on then the document never reached you. It was towards the end of last year that the most recent document was sent out to you but to be quite

frank the return rate on the document was very poor.

In relation to the email you have received attached to it is a 'pdf' document containing personal details that we hold for you. We require any amendments to be made to the form and for it to be returned to the office at your earliest convenience. Please sign and date the form and return either by fax, or by the internal email system. From time to time we need to contact officers in a variety of ways to forward documentation and messages for ongoing claims and other related matters. To this end having details of home email addresses and personal mobile contact numbers is useful for us to

contact officers who may be away from the workplace. We do not disclose this information to anyone else and it will only be used for police federation purposes to assist you.

Your details can be updated using our website at any time using the 'contact us - update details' section. This is particularly important when beneficiary details change for purposes of the group insurance scheme and death benefits that are payable in the event of death of members. The short message is this - keep us updated with your details as and when they change and we will be in a better position to assist you when the need arises. Thank you.

CONSTABLES REPRESENTATIVES

Video Clips Of Officers On The Internet

The publication of video clips of police officers on websites such as YouTube is increasingly common. This gives rise to a number of questions about the legal position and our lawyers have been asked to prepare a FAQ sheet.

What areas of law are relevant?

If officers are concerned that video clips portray them in a way which harms their personal or professional reputation, the law of defamation could be applicable. If officers feel that the publication of a video clip amounts to an invasion of their privacy, the developing law in this area may be relevant.

DEFAMATION

An officer concerned about a publication on the internet which damages his or her reputation would have a possible claim for defamation. A defamatory publication on the internet is a libel (as distinct from the spoken word which is a slander). This gives rise to a number of questions:

Is the footage defamatory of the officer?

The meaning of the video clip must be defamatory of the officer to give rise to a claim. This means that the footage must lower the officer in the estimation of right thinking members of society generally.

Is the officer identifiable from the footage complained of?

No claim can be brought unless the officer is clearly identifiable from the video clip. That does not necessarily mean his or her image has to be shown, but it must be possible to prove that any allegations complained of refer to him or her.

What do the images say about the officer?

The meaning attributable to the footage is the meaning which would be reasonably understood by an ordinary person using their general knowl-

edge and common sense. Sometimes a seemingly innocuous publication will carry a defamatory meaning to people who possess some special knowledge based on particular facts known to them but not to the general public. This is called an "innuendo" meaning and such meanings can be particularly relevant to the technical and complex area of policing.

What defences might defeat a libel claim?

If the publisher of the offending video clip can prove that the meaning conveyed by the footage is true in substance and in fact, this amounts to a complete defence known as 'justification'.

This defence exists because clearly a claimant should not be entitled to compensation for damage to a reputation which he does not in fact possess. A further defence is that of 'fair comment' which protects honest expressions of opinion on issues of public interest. If, for example, a police officer featured in a video clip broadcast on the internet is the object of criticism which is clearly expressed as an opinion and not an assertion of fact, then the defence could be raised successfully if a fair minded person could honestly share the comments expressed on the basis of true and proven facts. The defence can be defeated if it is possible to show that the defendant acted maliciously. For the purposes of libel law, this means proving that the publisher knew the publication was false, or was reckless whether or not it was true, or had a dominant improper motive for publication. A further important and technical defence is that of 'qualified privilege' which protects certain publications irrespective of whether they are true or fair provided they were not motivated by malice. Qualified privilege can cover many different circumstances, but in rela-

tion to the posting of video clips on the internet, it is most likely to arise where a potential defendant claims that the footage was published pursuant to a legal, social or moral duty on a matter of public interest, to an audience who had a corresponding duty or interest in receiving the information. It would need unusual circumstances for this defence to be raised successfully in relation to video downloads where no obvious duty exists, and where access to the downloads is likely to be available to the world at large through the global nature of the internet. As with fair



comment, a qualified privilege defence can be defeated if the claimant can provide the defendant acted maliciously.

Who is responsible for the publication?

The individual who took the footage and made it available for download on the internet can be liable for defamation. However, often it is not possible to identify the person responsible because the material will have been posted anonymously or the individual will have used an alias. In such circumstances it may be possible to obtain their details from the website administrators, but that is by no means certain. Unless the identity of the individual who posted the offending material can be ascertained, no claim against them can realistically be pursued. In addition, even if the poster of defamatory material can be

identified, there may be commercial reasons which dictate that legal action against him may be futile.

Internet Service Providers

("ISPs"), who enable the information to appear on the internet, can also be held liable for defamatory publications. ISPs are not expected by the law to be aware of all the content which is on the websites that they facilitate. Due to the sheer volume of material they cannot practically be expected to police every item which appears. Consequently, the law will only hold an ISP liable after they have first been notified of a defamatory posting which they then fail to remove.

Can I get the video clip removed?

As a first practical step, a letter or email demanding removal of the offending material should be sent to the website featuring the video clip, to the ISP, and, if appropriate, also to the poster of the material. If the website and ISP are UK based, they will normally oblige (at least in the short term while they investigate the matter) to avoid the possibility of legal action. The situation is somewhat different if the website and the ISP are based outside the England & Wales jurisdiction. In such cases, although our law of defamation will apply to the publication of the material when it is downloaded in this jurisdiction, those responsible are likely to be in jurisdictions where the defamation laws are very different. Inevitably, taking action to deal with publications which emanate from overseas is more complicated and expensive (not least in relation to the service of proceedings). The large international companies such as YouTube and Google tend to be quite responsive to legal concerns.

However, small foreign-based ISPs present greater problems and to pursue one of these may be both frustrating and costly.

If correspondence fails to get defamatory footage removed, one

can consider legal action. The commercial and practical factors will now assume great importance when conducting the cost/benefit assessment of whether to proceed. The scope and seriousness of, and the damage caused by, the defamatory material will be key considerations. A claim may not be worth pursuing for pragmatic and cost reasons, even where the allegations are appalling, for example if the offending material was posted by an anonymous individual hosted by a South American ISP which has only attracted a handful of hits.

Is there a limitation period for legal action?

Yes – one must take Court action within 1 YEAR from the date of publication of defamatory material. However, on the internet, each time a video clip is downloaded for viewing it constitutes a fresh publication and consequently renews the limitation period. Inevitably, however, a new item tends to be viewed more frequently in the days or weeks immediately after it first appears, and in defamation law, one is expected to take action promptly against an attack on one's reputation.

PRIVACY

What is the applicable law?

Article 8 of the European Convention on Human Rights states: "Everyone has a right to respect for his private and family life, his home and his correspondence".

What constitutes an invasion of privacy?

To determine whether an individual's privacy has been breached, the Court will apply a two stage process:

1. First, it must identify whether an individual has a reasonable expectation of privacy in the given circumstances.
2. If the answer to that question is yes, the Court must then consider and balance other Convention exceptions and rights such as public interest and the right to freedom of expression in order to reach its decision.

Can a police officer filmed on duty claim an invasion of privacy?

When an officer is on duty, he or she is a public servant who is at all times accountable to the general public. For this reason, an officer filmed in such circumstances would not normally enjoy an expectation of privacy and could not therefore claim that the subsequent publication of video footage on the internet constituted a misuse of his or her private information. The legal position might be affected if the footage is accompanied by derogatory text or commentary which may then give rise to a claim for defamation.

Can footage of a police officer filmed off duty amount to an invasion of privacy?

If footage of an officer who has been filmed while off duty is featured on a website, the situation is likely to be different. The Court will first consider whether it is reasonable for the officer to believe that the matter was private and whether there was a public interest in publishing the material on the internet. Thereafter the Court will consider whether there is anything to justify the publication, in particular, the Article 10 right to freedom of expression. Each case turns on its own facts and requires a Court to seek to balance the individual's right to privacy against the other Convention rights.

What action can be taken if a police officer believes his or her privacy has been breached by internet video footage?

A breach of privacy gives rise to a civil claim which is pursued by action through the Courts. A high profile recent example is the case successfully brought by Max Mosley against the News of the World over the material which was published in the newspaper and on its website about his S&M activities in a private Chelsea flat. If an officer becomes aware that private material might be published before it actually appears then, depending on the evidence, there may be grounds to seek an injunction to prevent it being shown.

PNB Meeting 23rd January 2009 - Highlights

On Call

Two PNB Technical Working Group meetings have taken place so far, with a view to reaching agreement on this issue, prior to its return to full PNB. We are asking for a change to Regulations & Determinations to recompense police officers asked to perform on call duties. Agreement on this is extremely close but the Staff Side will not accept anything less than a nationally agreed sum that recognises the amount of times officers are required to perform on call duties. This issue is not just about financial recompense, we want to make Forces consider the need for having 'on call' staff, and consider providing sufficient resources to ensure that officers have their work life balance catered for. The Official Side have asked for more time to consult with their members. The next Technical Working Group meeting takes place on 10th February 2009. Staff Side have given them until the conclusion of that meeting to reach agreement or we will be registering a failure to agree and going to PAT as of 11th February. Both the Official Side and Staff Side have given their chief negotiators the mandate to make an agreement so that this can be finalised on 10th February if possible and therefore remove the need to wait for the April PNB for sign off. In conclusion either we have agreement for a national On Call payment system by the conclusion of the meeting on 10th February or the matter will go to the Police Arbitration Tribunal for a decision. Watch this space.



Special Priority Payments

Agreement was reached in PNB to tweak the Special Priority Payment Scheme to give Forces the ability to make the payments to officers either on an annual basis, or on a monthly basis. Staff Side continue to oppose the claim by the Official Side to increase the SPP up to £8,000 for the Workforce Modernisation sites and although the Official Side are disappointed in this they have decided for the issue to remain on the table for future discussions but not to pursue it further at this time.

30+ Scheme

A report into the future of the scheme was recently published by the NPIA and disappointingly the NPIA failed to consult with the Police Federation prior to publishing. The report states that the 30+ Scheme will come to an end on 31st March 2010. We made clear our feelings of disappointment at PNB, and surprisingly, the Official side supported our view. Both Staff Side and the Official Side believe this is short sighted, bearing in mind the proximity of the Olympics in 2012. We will be raising our concerns with anyone of importance that will listen.

Regulations & Determinations

There are a number of outstanding PNB agreements awaiting inclusion in Regulations & Determinations. Amongst them is the Temporary Salary/Temporary Promotion – 56 days issue. It appears the reason for it not being in Regs is that there are still some technical difficulties with the associated pension issues. The Pensions Working Group is working to resolve these difficulties. Until the issues are resolved the Regulations & Determinations can not be updated. The Staff Side Secretary (JCC General Secretary) is aware of this and raised the issue that some forces (including some in our region) will not comply with the PNB Agreement until it is Regulations. Clearly this is unsatisfactory but everything will be done in order to get the Agreement into Regs.

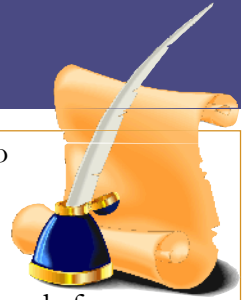
Nationally a number of incidents have come to notice whereby officers have failed to properly search detainees, resulting in near miss incidents in Custody Suites.

Whilst the federation are currently seeking a change in Legislation to allow those detained but not arrested to be searched we would emphasise the necessity of officers conducting a thorough and methodical search of all detainees.

Information is also sought in relation to the amount and type of training given to officers in relation to search techniques.

Should you have any further examples of near misses relating to poor searching technique or any training information, we would be obliged if you could forward them to us so that we can forward them to the national forum.

YOUR LETTERS...



What on earth does the SPP paragraph mean in the latest constables newsletter?

Name Supplied

Ed. A member of ACPO wanted the allowance increased, and I would guess this would be to make some less attractive projects and schemes for officers to apply for more attractive. The view is not shared by all of ACPO who would rather see the allowance scrapped as it is divisive. There is no more money in the pot so by increasing the amount the number of recipients would be reduced and I am sure this would be to the detriment of many front line staff across the country that currently get it. The matter has been tabled at PNB and will now be discussed but with the wider view of those on the PNB not really in favour of this I do not expect it to remain on the agenda for long. I hope that makes things clearer.

Can you confirm that toil in excess of 50 hours will be disregarded if it has not been used, apparently this was agreed with the Federation. What is the situation for TOIL over three months old?

Name Supplied

Ed. You can be assured that there is and never has been any such agreement. The Force recognise that a number of Officers have large amounts of TOIL which continues to increase and they are keen to address the situation. The aspiration is to reach a situation that by 2011 officers will have been afforded the opportunity to reduce TOIL balances below 50 hours. Officers are encouraged to utilise TOIL owed to them when possible and managers (particularly resource departments) need to actively try to accommodate requests to reduce TOIL balances if at all possible. Police regulations are clear and make it clear that in the case of Constables and Sergeants who work overtime they elect whether they wish to receive payment at the appropriate enhancement or TOIL. TOIL accrued should be taken within a three month period but if it is not then it should revert for payment. The reality is of course that it is not reverted for payment but allowed to stand as it is financially advantageous for the organisation. TOIL cannot however be simply disregarded but must either be taken or paid. There is nothing to stop an individual electing payment for TOIL that is in excess of three months old. The situation for Inspectors and Chief Inspectors is different in so far that they cannot be paid for overtime worked. We have been assured throughout our discussions with the Force that there is no intention to disregard or expunge TOIL for any of the federated ranks but rather a desire to manage levels down during the next two years. We are aware that Officers within the Bristol District may find this particularly difficult to do judging by the continual circulations listing dates well into the future when no time off will be permitted. We raised this difficulty during our discussions with the Force and were assured that the importance of facilitating this reduction in TOIL would be pressed to ensure it happened.

I am trying to access and print out the travel insurance certificate ready for my holiday but cannot access it. I have gone to services and then group insurance but clicking on ins cert does not take me anywhere other than a blank screen. Please help. Many Thanks.

Paula

Ed. In order to view many documents on the website Adobe Acrobat reader software needs to be installed on the computer you are trying to read the document with. The insurance certificate is also a document that requires this. Make sure you have the latest copy installed. There is a link to the Adobe Acrobat reader software on the documents page, <http://www.avsofmed.org/documents.html>

I have just booked a holiday and I understand that I am entitled to free travel insurance through the federation. Can you advise what I need to do to ensure that I am covered.

Andy

Ed. Travel insurance comes free with the 'group life' insurance scheme. You cannot have travel without the other. Check your payslip and establish if it shows 'ASGIS', if it does then you are a subscriber. The certificate and details can be printed from the website.

Questions can be directed by email to pbudd@avsofmed.org or via your local federation reps.