

# CIVIL ACTIONS AGAINST THE POLICE

Clayton & Tomlinson

Sweet & Maxwell, London, 2005

ISBN 0-421-630906

## Book review by Sally Ramage

### Introduction

This book is the first choice book for criminal law barristers and solicitors; police training establishments; lawyers employed by local authorities; regulators; civil rights non-governmental organisations; students; law lecturers and university reference libraries. It is compulsory reference material in any civil action against the police and it focuses on the interplay between civil and criminal law. There is detailed guidance on the most common torts - false imprisonment, malicious prosecution and misfeasance - and clear analysis of developing causes of actions against the police such as negligence, privacy, discrimination and claims under the Human Rights Act.

### Why a book about civil actions against the police?

Because there are a range of police problems that need addressing, such as excessive use of physical force; discriminatory patterns of arrest; patterns of harassment of the homeless, youth, racial minorities and gays, including aggressive and discriminatory use of the "stop-and-search" and overly harsh enforcement of petty offences; sometimes verbal abuse of citizens, including racist, sexist and homophobic slurs; discriminatory non-enforcement of the law, such as the failure to respond quickly to calls in low-income areas and half-hearted investigations of domestic violence, rape or hate crimes; illegal spying on political activists; employment discrimination in appointment of police officers, promotion and assignments, and internal harassment of minority, women and gay or lesbian police personnel; use of a "code of silence" or "sending to Coventry" and retaliation against officers who report abuse and/or support reforms; overreaction to gang problems, which is driven by the assumption that those who associate with known gang members must be involved in criminal activity including illegal mass stops and arrests, and demanding IDs from young men based on their race and dress instead of on their criminal conduct; lack of accountability, such as the failure to discipline or prosecute abusive officers, and the failure to deter abuse by denying promotions and/or particular assignments because of prior abusive behaviour; and crowd control tactics that infringe on free expression rights and lead to unnecessary use of physical force. Police have liability under the Animals Act 1971 section 2 (2) (b) if a claimant is bitten by a police dog.

### The book includes these important cases-

*Keegan v United Kingdom (App 28867/03) and Keegan v Chief Constable of Merseyside [2003] EWCA Civ 936*

Obtaining compensation in the European Court of Human Rights for breach of Article 8 and Article 13 following a police search. The court stated, "If the police actions which are the subject of civil proceedings were purportedly done under the authority of a search or arrest warrant, then procedural difficulties may arise".

*Reeves v Commissioner of Police of the Metropolis [2000] 1 A.C.360*

The House of Lords considered whether intentional conduct could be within the scope of 'fault' in the Law Reform (Contributory Negligence) Act 1945. The deceased deliberate act of suicide gave rise to a defence of contributory negligence at common law within section 4 of the Act. This appeal concerned a claim for damages against the Commissioner following L's death whilst in custody. It was held that due to the complete control exercised over prisoners in custody by the police, there existed an exceptional duty to prevent self harm.

*Desai v Chief Constable of West Midlands, The Times, May 9, 2000.*

The Court of Appeal accepted that a suspect who ignores clear warnings to come out or a dog will be sent to find him, only has himself to blame if he suffers injury as a result. More difficult questions arise when the dog is a police dog trained to act in an unusually fierce way, as in *Gloster v Chief Constable of Greater Manchester Police [2000] P.I.Q.R. P11*.

*Osman v UK [1999] 1 F.L.R.193*

A leading case in human rights law. This case involved a tragic set of circumstances in which the obsessive former teacher of a 15 year old boy, ultimately wounded

his pupil and killed the boy's father. The European Court of Human Rights stated that Article 2 places a positive obligation on the State "to take operational measures to protect an individual whose life is at risk from the criminal acts of another individual".

*Goswell v The Commissioner of Police, unreported, April 7, 1998, CA*

This case is an important authority on damages.

### **Legislation affecting civil action against the police**

The Serious Organised Crime and Police Act 2005 brought about a radical shake-up of the organisations and powers to fight major crime - most notably by creating the Serious Organised Crime Agency (SOCA). SOCA brought together the National Crime Squad, the National Criminal Intelligence Service, and parts of the customs and immigration authorities; it will have approximately 5,000 civilian staff with powers to arrest and carry out their own investigations. The Act overhauls the powers of the police officers contained in the Police and Criminal Evidence Act 1984 - in particular by introducing new 'supergrass' provisions dealing with the use of informant evidence. The Act introduces new public order offences in relation to harassment and protest. The Protection from Harassment Act 1997 is designed to tackle a wide variety of forms of harassment. In particular: Section 4 relates to putting people in fear of violence which applies if a person pursues a course of conduct which they know or ought to have known causes another to fear that violence will be used against them. Section 2 is a lower level offence where a person pursues a course of conduct which they know or ought to have known causes harassment. Section 5 relates to restraining Orders available from the criminal courts which prohibit further harassment or conduct which causes fear of violence. A breach of this order is a criminal offence. The Protection from Harassment Act 1997 had been used to protect employees and persons from harassment, notably in connection with work that has involved the use, or treatment, of animals. The Act was primarily intended to be used to combat "stalking" but the provisions are not limited to that conduct. The amendments introduced by section 115 of the Serious Organised Crime and Police Act 2005 aim to make the legal position clearer. Section 125 of SOCPA amends the 1997 Act by inserting a new subsection 1 of the 1997 Act and it also inserts a new subsection 3A.

Section 113 of the Serious Organised Crime and Police Act 2005 states that PACE is amended as follows:-

Section 8 {power to authorise entry and search of premises} is amended as provided in subsections (3) and (4); in subsection (1), subsection (15); subsection (6)...and SOCPA section 132, on demonstrating without authorization in a designated area also makes for more cases of civil action against the police.

### **New Police Complaint System**

The police operate on the principle that they can only carry out their duties if they have the agreement and support of the community. To ensure a good relationship between the police and the public, it is important that there is a fair and thorough system for complaining.

Since 1 April 2004 a new independent police complaints organisation has been in place, the Independent Police Complaints Commission. For the first time, police complaints can be conducted by independent investigation teams, people complaining have more rights and the whole complaints process now has stricter standards. Complaints can be made about police officers who neglect their duty; drink on duty; use racist behaviour or language; are involved in corrupt practices; use excessive force.

All these are essential reasons for this comprehensive volume, "Civil Actions against the Police".