



Established by Act of Parliament

Police Federation of England and Wales

15-17 Langley Road Surbiton Surrey KT6 6LP
Telephone 020 8335 1000
Fax 020 8335 1011 (Vice Chairman's Office only)
Email alang@jcc.polfed.org

From the Vice Chairman's Office

Our Ref: AG/AM Your Ref:

9th August 2006

The Rt Hon The Lord Goldsmith QC
Attorney General
Attorney General's Chambers
9 Buckingham Gate
London SW1E 6JP

Dear Lord Goldsmith

The Police Federation of England and Wales is a staff association which represents 140,000 police officers up to and including the rank of chief inspector.

The Metropolitan Police Authority, in its letter to you on the 4th August 2006 made representations about the decision by the Crown Prosecution Service to prosecute the Metropolitan Police Service (MPS) as a result of an investigation into the death of Jean Charles de Menezes on 22nd July 2005. Whilst it is not appropriate for us to comment on this decision it concerned us that the MPS used this as an opportunity to ask for "a further urgent review of the application of the Health and Safety at Work Act 1974 to operational policing".

You may find the following helpful to recap on the current position regarding the application of health and safety law to the police. The EC Framework Directive (89/391/EEC) was intended to apply to police officers, but the Management of Health and Safety at Work Regulations 1992, which implemented the Directive, did not include officers within its scope since they were not employees. For the same reason, they had been excluded from the protection of the Health and Safety at Work Act 1974 (HSW Act).

The Police (Health and Safety) Act 1997 was subsequently introduced in order to correct the anomalous position of police officers by treating them as employees of their chief officer for the purposes of health and safety legislation, including the HSW Act and subordinate legislation. The Home Office, which led on the 1997 Act, was able to establish that the qualification "so far as is reasonably practicable" in the HSW Act would allow chief officers to

take the special risks of policing into account when deciding what health and safety measures they needed to put into place.

Following the prosecution by HSE of the then Commissioner of the Metropolitan Police and his predecessor in 2003, Lord Harris of Haringey, then Chair of the Metropolitan Police Authority tabled a number of questions in the House of Lords relating to the prosecutions. In one of these questions he asked the Government "How they propose to take forward the debate on the extent to which the requirements of health and safety legislation should be permitted to fetter the duty of police officers to preserve life". [PQ HL 3718]

In her written answer, Baroness Hollis said "Health and safety legislation requires employers to safeguard the health and safety of police officers and other affected by their work so far as is reasonably practicable. This allows Chief Constables to take full account of the inherent risks in some police work when deciding what safeguards are needed. There is no question of health and safety legislation fettering police duties to preserve life."

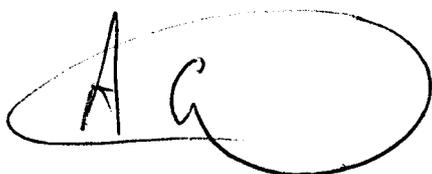
The Metropolitan Police Authority's current request for you to initiate an urgent review of the application of the HSW Act to operational policing appears to be seeking to revisit the issues originally raised by Lord Harris, and we hope that, for the same reasons, the Government will feel that a review is not justified.

If there were any doubts remaining about the application of the Framework Directive to police officers, a judgement from the European Court of Justice in January this year (Case C-132/04 Commission of the European Communities v Kingdom of Spain) confirmed that the police fall within the scope of the Directive.

Since the Police (Health and Safety) Act 1997 came into force, our experience has been that compliance with health and safety law complements efficient and effective policing which we deliver to our communities and it has greatly improved the safety of the 140,000 police officers whom we represent. However, it is clear that the Metropolitan Police Authority regards the application of health and safety law to operational policing as a problem rather than a potential benefit and, with that in mind, the Police Federation would be strongly opposed to the urgent review which the Authority has requested.

I am happy to meet with you to further discuss any of the issues raised if you wish.

Yours sincerely,

A handwritten signature consisting of the letters 'A' and 'G' in a cursive style, enclosed within a hand-drawn oval.

Alan Gordon
Vice-Chairman.

cc: Lord Hunt of Kings Heath – Dept for Work & Pensions
Bill Callaghan – Health & Safety Commission