

KN THE REGULATOR

The Kingsley Napley Regulatory Law Update

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Staying on the right side of the law

Policing the future with Regulation 13 of the Police Conduct Regulations 2003



Kingsley Napley

Staying on the right side of the law

Policing the future with Regulation 13 of the Police Conduct Regulations 2003



by Amy Street
Barrister, 3 Serjeants' Inn

Asfan Khan has no regrets about the Monday night in March 2007 when he and a male friend took a young woman from a nightclub back to her hall of residence, where he had sexual intercourse with her and his friend joined in. Even with hindsight he does not think it was a mistake to video his conquest on his mobile phone and later download the footage to his computer. Nor does he feel any remorse that his friend asked the woman, who was under the influence of alcohol, to say "I am not drunk". He would tell you it was "a private matter, a spur of the moment experience between consenting adults". And when the woman alleged to the police that she had been raped, Khan felt that he was the victim.

When charges against him were later dropped, rape prosecution statistics were the least of the concerns for the police and for the Chief Constable of Lancashire in particular. For Khan was one of his probationary constables and until then had shown all the signs of becoming a good officer.

The challenge of maintaining the confidence of the public despite conduct such as this is shared across the professions. It is most stark for the healthcare professions and the police, who deal with people at their most vulnerable. The police are in the early stages of a new phase in their regulation following the implementation of the Taylor reforms which introduced new rules governing performance and misconduct. But there is one tool which has long been available to Chief Constables and remains unchanged, namely the power to dispense with the services of probationary constables before they become confirmed as police officers at the end of their period of probation. This power is under Regulation 13 of the Police Conduct Regulations 2003 which states that "during his period of probation in the force the services of a constable may be dispensed with at any time if the chief officer considers that he is not fitted, physically or

mentally, to perform the duties of his office, or that he is not likely to become an efficient or well conducted constable".

The Chief Constable of Lancashire Police decided to dispense with Asfan Khan's services under Regulation 13. Khan unsuccessfully took a claim¹ to the High Court for judicial review of this decision. His case (decided in January 2009) has been followed by those of three other probationer constables – Ferriday² (May 2009), Verity³ and Kay⁴ (both July 2009).

Ten years since the last significant Regulation 13 case (Farmer⁵, from the Court of Appeal in 1999), four have come along at once. All of these cases build on the previous case law to give both senior officers and lawyers increasingly comprehensive judicial guidance on the use of Regulation 13. And chief officers can feel confident that provided they act fairly, the courts will give them a significant margin for discretion on the all-important question of whether a probationary police officer should be confirmed in office for up to thirty three years of service.

Legal teams challenging dismissals under Regulation 13 have tended to launch three lines

of attack: first on the reasons for the decision; second, on the failure to use the more rigorous misconduct procedures instead; and third, on unfairness in the Regulation 13 process. The quartet of cases in 2009 considers all three.

Reasons

The reasons for Regulation 13 dismissals have been attacked when they have been outside the probationer's work as a constable – for example, because they are based on the probationer's private life. The courts have rejected such arguments, emphasising that there are no artificial limits on the reasons which Chief Constables can take into account in exercising their wide discretion under Regulation 13.

Khan's lawyers argued that because the reason for his dismissal was sexual activity in a private place, it was an interference with his right to a private life under Article 8 of the European Convention on Human Rights. Such interference could not, they said, be justified under Article 8(2) because Regulation 13 did not make it clear that Chief Constables could take into account private sexual matters when dismissing probationers. Mr Justice Elias rejected these arguments, emphasising that Regulation 13 is broadly drafted because of the "multitude of fact situations" which could arise.

Privacy arguments were also raised by the legal team acting for Matthew Ferriday, another probationary constable who was arrested on suspicion of rape and attempted rape of two young women who stayed the night with him after an evening in a Cardiff nightclub. Again no charges were brought.

But the Chief Constable of Gwent Police dispensed with Ferriday's services under Regulation 13, taking the view that his actions that night demonstrated an unacceptable lack of judgment. There had also been three previous



incidents of concern: failing immediately to report the loss of his warrant card which was found in a university hall of residence; staying at a new address without permission from the force; and staying out late, in breach of a curfew, when recovering from a broken leg at a rehabilitation home. Ferriday lost his judicial review. His Honour Judge Jarman QC, said that the Chief Constable was perfectly entitled to take into account all four incidents. He also highlighted that sexual activity which results in complaints to the police is not wholly private.

Even if it had been wholly private, the case of *Pay v United Kingdom*⁶, decided by the European Court of Human Rights in September 2008, shows that interference with private life may be justified in order to maintain the public's confidence in the profession. This case concerned the dismissal of a probation officer who worked with sex offenders, after the Lancashire Probation Service discovered that he was involved in sadomasochism.

The theme of sexual activity continued with the case of probationer Mark Verity, but in a different vein. Before joining the North Yorkshire Police as a probationer, he was charged with ten counts of sexually touching children under the age of thirteen. Verity was acquitted by a jury, but the Chief Constable dismissed him under Regulation 13 because restrictions would have been imposed on his work for public protection reasons, and he was therefore "not likely to become an efficient... constable". Mr Justice Silber rejected Verity's claim for judicial review because the Chief Constable's decision was not irrational.

Regulation 13 v misconduct procedures

The Chief Constables who dismissed probationers Khan, Ferriday and Verity quite properly did not rely on disputed allegations. There was no proof that Khan and Ferriday had

committed rape. Rather, they were dismissed because they had displayed unacceptable lack of judgment in their conduct with vulnerable women. Verity had been acquitted of child sex abuse; but it was a fact that the force would restrict his duties because of the concerns that remained, albeit unproven.

The fourth case, concerning probationer Fiona Kay, made it clear that Regulation 13 is unsuitable where there are substantial disputes of fact. Kay was suspected of having made a false insurance claim while a probationer. Her main argument was that her case should have been considered not under Regulation 13, but under the misconduct procedures which provide protection such as legal representation, formal notice of the complaint, the requirement of a finding on the balance of probabilities and a right of appeal. Mr Justice Singer drew on the older Court of Appeal cases of *Carroll*⁷ (1994) and *Farmer* (1999) and decided that Chief Constables should not use Regulation 13 if there is such conflict over the facts that, out of fairness, the probationer must have the protection of the misconduct procedures.

Kay's judicial review succeeded because in her case there was such conflict over the facts, and the Chief Constable of Northumbria Police was therefore wrong to use Regulation 13. But the other three cases show that use of Regulation 13 is not ruled out because there are some disputed facts. The question is whether, if the disputed facts are excluded from consideration, the incontrovertible facts provide sufficient basis for dismissal under Regulation 13. If the decision whether to dismiss or not requires resolution of the disputed facts, officers must be given the protection of a full hearing to test the evidence.

Procedural fairness

There is no set procedure for a Regulation

13 dismissal and there is no requirement for evidence to be called at a judicial hearing, but principles of fairness do apply. In practice this means that the probationer should first know why Regulation 13 is being considered; second, understand the case against him; third be able to make representations to the decision-maker; and fourth, be told of the reasons for any decision.

As police forces reflect on the Independent Police Complaints Commissions's annual statistics for 2008/2009, some figures are bound to stand out. Quite apart from the 8% rise in complaints against the police as compared to the previous year, 55% of all officers complained about have less than ten years' service. Chief officers must work out how to improve the public's confidence in the lower echelons which represent the future of policing. As they do so, they themselves can be confident that Regulation 13 gives them the freedom they need to bring their experience robustly to bear in deciding which probationers should not be confirmed in office, so long as they abide by two rules: not to try to resolve undisputed facts outside the misconduct procedures and to be procedurally fair to the probationer in question.

Amy Street is a barrister at 3 Serjeants' Inn. She specialises in police law and medical law. In the case of Ferriday she was junior counsel (led by John Beggs QC) for the Chief Constable of Gwent Police.

Footnotes

- 1 *R(Khan) v Chief Constable of Lancashire* [2009] EWHC 472 (Admin)
- 2 *R(Ferriday) v Chief Constable of Gwent* [2009] EWHC
- 3 *R(Verity) v Chief Constable of North Yorkshire* [2009] EWHC 1879 (Admin) 2083 (Admin)
- 4 *R(Kay) v Chief Constable of Northumbria* [2009] EWHC 1835 (Admin)
- 5 *R v Chief Constable of British Transport Police, ex parte Farmer* [1999] COD 518
- 6 *Pay v United Kingdom* [2009] IRLR 139
- 7 *R v Chief Constable of West Midlands Police, ex parte Carroll* (1995) 7 Admin LR45

The Football Association Agent Regulations Policy, Recent Changes and the Future



by Angus McBride, Partner, Kingsley Napley

Are some businesses beyond regulation?

The efforts that have been made to regulate football agents demonstrate the role and impact of regulation in a high-income business environment where traditionally the end result is tantamount and little concern is shown for the potential risk of regulatory sanction. Furthermore, it illustrates the difficulty faced by a UK regulator, the Football Association (FA), acting under the guidance of an international regulatory body, the Fédération Internationale de Football Association (FIFA), to achieve real and effective change for the benefit of the game.

What is regulated?

Agents in football are regulated in relation to their work negotiating contracts and transfers on behalf of clubs or players. It is only agents licensed to undertake this work by the FA and FIFA, or solicitors or members of a player's family that can undertake this work for remuneration.

In order to become licensed it is necessary to satisfy a criminal records check and pass a notoriously difficult exam. Licensed agents are then governed by the Regulations issued by FIFA, which apply worldwide. National governing bodies are free to issue more stringent regulations, as seen by the FA in recent years, but this regulation is only enforceable in the country of origin.

Unlicensed agents are not allowed to perform regulated work and sanction is imposed against players and clubs who use them. However, the only sanction the FA can bring against the individual is to ban them from taking the exam for two years, which is of limited deterrent. Subsequently, it is estimated that only 25% of transfers worldwide involve a licensed agent.

Many agents in the game provide an essential service to players in an environment that is challenging and hostile. Many become close friends and confidants to the players and help them both professionally and personally throughout their careers. Others, probably a small percentage, are less scrupulous and provide a headache for the regulator.

After Lord Stevens' Inquiry into two years of Premier League transfers, there were a number of changes made to the Regulations by the FA for the purpose of protecting players and making payments transparent. However, these have slowly been undone and FIFA are now considering abandoning agent regulation altogether, believing it to be an unnecessary

administrative burden given the small numbers of licensed agents, and substituting it with an increased level of supervision for players and clubs.

The changes following the Stevens Inquiry

Three examples of the difficulties faced by the FA following the Lord Stevens' Inquiry are as follows:

1. Fronting

This is where unlicensed agents use solicitors, or other licensed agents, to effectively sign off the forms which must be submitted to the FA after every transfer, detailing the individuals involved in the transfer and the payments arising, despite not being directly involved. The FA announced a clamp down on this and a campaign to effectively clear out unlicensed agents from deals.

The difficulty the FA faced is one of policy. Was it wise for them to restrict access into the agents' profession? The current examination for agents has a very low pass rate and individuals who are able to command the trust of players consequently find themselves acting on their behalf without the necessary qualifications. It would surely be better to have them within the regulatory framework?

Therefore, although there is some restriction on "fronting", unlicensed agents continue to work within the regulated sector. Clubs and players are more interested in what they can bring than the possible consequences should the breach of Regulations be discovered.

2. Dual Representation

This is where agents with a representation contract with a player sign the forms to be returned to the FA as having acted for the Club and are then paid directly by the Club for bringing the player to them. This creates a clear conflict of interest and consequently, the Regulations were

amended to allow an agent to act for only one party in a transaction.

However, despite a laudable attempt by the FA, the blanket ban on dual representation has now been reversed and the current position is as follows:

- The agent and either the player or the club must have a validly executed written representation contract prior to any agency activity being carried out;
- The authorised agent may only act for one party to the transaction or contract negotiation save where the authorised agent and other relevant parties comply in full with the requirements regarding a player's consent.

Effectively, the requirements are that:

- The authorised agent obtains the player's prior written consent to his providing services to a club in relation to the player;
- The player signs the relevant consent disclosure form and is given an opportunity to take independent legal advice or advice from the PFA.

Where these requirements are satisfied, the agent can act for both sides. The agents argue that part of the process and the deal is to effect facilitation between the two sides, which is a role they perform. The more cynical view is that this allows the club to pay the agent directly, meaning that there is no taxable benefit to the player. However, the Revenue have become wise to this process and in a dual representation situation it is likely that the payment by the club to the agent will be deemed to be a partial taxable benefit to the player.

3. Restrictions on Payments

The Regulations were amended after Stevens to stipulate that the agent's remuneration for acting for a player should be 5% of the player's salary to be paid by the player directly to the agent under the terms of their representation agreement. The purpose was to ensure that the player was aware that they were paying for the services that they were being provided by the agent, to ensure that some of the enormous figures paid by clubs to agents to facilitate transfers were controlled and to try to take the heat out of the agents' profession generally by restricting the flow of money to a number of highly paid individuals.

As a result of the relaxing on dual representation this has also fallen by the wayside. We are back to the days of payments of large lump sums by clubs to agents where the agent effectively represents

Abuse of Regulatory Process

A question of principle?



by Andrew Coleman, Barrister, 2 Hare Court

the player. As long as the player sees that the figure will be less on his tax bill, then he is liable to agree to this process. Indeed, the Regulations go even further in reversing the situation in that they allow the player to pay an authorised agent directly or the club to make a deduction in periodic installments from the player's net salary or the player may request and the player's club may agree that the club discharges the player's liability towards his authorised agent.

Conclusion

This is now a situation where the tail is wagging the dog. The FA has attempted to clamp down on the money coming out of football into the pockets of agents. FIFA have undermined the FA's position in stating that they will not support the changes that they have been making unilaterally. The FA is therefore left with a situation where, although they can effectively try to implement regulation, any appeals to the worldwide body would mean that the position will not be upheld.

There still exists a strong view that regulation of agents is necessary and it is suggested that the FA's position should be:

- To encourage the tax authorities to take a very real interest in the way in which transfers are undertaken;
- To encourage clubs and agents towards transparency in relation to payments stemming from contract and transfer negotiations;
- To outlaw dual representation;
- To ensure payment is made by players directly to agents whatever the practical difficulties for agents in getting paid in these circumstances;
- To make certain agents are honest, properly trained and obtain appropriate training on the Regulations;
- To ascertain that anyone who wishes to act for a player or club as an agent comes under the umbrella of the Regulations by means of proper training and relevant CRB checks, not by means of whether they have passed an exam primarily based around FIFA regulation which are in fact never enforced.

Many lawyers take the view that it is probably only the application of criminal law that will effect real change in the way in which football business is done. Perhaps in a game that is as rich and yet at the same time irresponsible, nothing will change until someone again decides that the whiff of criminality has become a stench.

An application to stay proceedings for abuse of process can function as an important check upon unfairness in regulatory enforcement where redress is otherwise difficult. Classically, a stay of proceedings may be granted either where a fair trial is impossible or where it is not fair for a matter to be tried.

Although the existence of a power to stay proceedings for abuse of process is clearly established in some regulatory tribunals (most notably, the GMC), in others it remains open to doubt. Harris and Carnes in *Disciplinary and Regulatory Proceedings* acknowledge the argument for saying that disciplinary tribunals have no such power, absent express provision in their rules. Nevertheless, they suggest that the power is a necessary corollary to a tribunal's duty to act fairly between the parties¹.

The Administrative Court has recently considered the principle of when an abuse of process jurisdiction may be implied within a statutory regime in *R. (on the application of Harpers Leisure International Ltd) v Chief Constable of Surrey*². The case concerned whether a licensing authority sub-committee had a power to stay proceedings but Charles J. considered the general principles applicable to all such creatures of statute.

Before turning to that question, the judge referred to the case of *Re Saluja*³ and specifically to paragraphs 44 and 45 of the judgment. There, Goldring J. decided that, because the Fitness to Practise Panel of the GMC applies the principles of criminal procedure, the effect of a stay should be considered under criminal jurisprudence. It is important not to confuse the effect of this passage. It deals with the nature of the power to stay, not its existence, and therefore does not connote that the use of criminal procedure determines whether there is such a power. Different disciplinary tribunals reference a wide range of jurisdictions in their evidential rules. The GMC rules relate to criminal courts, the NMC to civil and the GDC and GTC to none. The presence or absence of a power to stay, in otherwise similar systems, should not depend upon such vagaries.

When he did turn to the question of principle, Charles J. plainly disagreed with the 'necessary corollary' approach. His view was that, although the duty to act fairly clearly engaged Article 6 of the European Convention on Human Rights, it did not mean that a power to stay for abuse must be available. Rather, detailed examination of the statutory provision is necessary to see whether an implied power can be construed. What is important is to have regard to the underlying

purpose and the scheme of the statutory provisions⁴.

The licensing authority had a specific statutory power to stop proceedings which were not relevant or were repetitive, frivolous or vexatious. The judge found that to be a powerful point against the existence of a general power to bring proceedings to a grinding halt. He also relied on a provision that no determination of the sub-committee should have effect until the end of the period for appealing or the disposal of any appeal. That particular provision, however, which is common in regulatory rules, could be argued to be more relevant to a civil-style stay than a criminal one.

The judge listed some other questions raised as an approach to statutory construction:

- Do the express powers of the Act lead to a conclusion that the implied powers contended for must be implied in order to enable the authority to carry out its express function?
- Would it defeat the intention of Parliament if the power was not implied?
- Is the integrity of the regime sufficiently protected by other powers?
- Can the power be complied with without difficulty?

While those may all be relevant questions, a tight focus on the underlying purpose of the relevant legislation could justify the existence of a power to stay across a broad range of disciplinary tribunals. All systems of professional regulation have similar aims: to protect the public from harm or loss, to uphold standards of conduct and performance and to maintain public confidence in the profession. It is therefore likely that the underlying purposes of the various statutes establishing disciplinary tribunals are comparable across different regimes.

So, in the absence of any specific power to stop proceedings, such as that granted to the licensing authority, it is arguable that the established existence of an abuse of process jurisdiction at the GMC can be extended by analogy to other professional regulators. The role of the GMC as a leading regulator in the field is useful in this regard. A careful application of the principles set out in *Harpers Leisure* could result in its practice being more widely applied.

Andrew Colman is a leading member of 2 Hare Court's Professional Discipline Group, in which area he practises exclusively.

Footnotes

- 1 5th edition (2009) paragraph 10.50, p.162
- 2 [2009] EWHC 2160 Admin
- 3 [2007] 2 All ER 905
- 4 Paragraphs 18-20

Regulating Accountants A New Age?

by Gavin Irwin, Barrister, Dyers Chambers

In the May 2008 edition of *The Regulator*, we discussed the proposed changes to the Accountancy and Actuarial Discipline Board's (the Board) Accountancy Scheme pursuant to their review and consultation paper of January 2008. After a series of delays, the Board published their Feedback Statement on 29 October 2009.

The Board will meet on 14 January 2010 and expect to agree the new Scheme, with immediate effect, on that date. However, the draft protocol, which governs the exercise of the Board's powers to manage preliminary enquiries before the instigation of proceedings, remains contentious.

The Board undertook its review of the Accountancy Scheme in the aftermath of the *Mayflower* case¹ with the subsequent aims and objectives:

- to ensure the continued provision of "a demonstrably fair, independent and expert system for investigating and, where appropriate, hearing significant public interest disciplinary cases" (AADB Aims and Objectives); and,
- to uphold the principles of fairness, transparency and proportionality, which are considered to be the hallmarks of effective, independent regulation.

The broad thrust of response to the consultation was that many of the proposed procedural changes were welcome but a number of important issues had arisen. The most significant criticisms were as follows:

- **Expanding the scheme:** the proposed 'misconduct' test introduced the concept of strict or no-fault liability. Without a triviality clause or the inclusion of the words 'serious' or 'significant' to qualify misconduct, it was felt that the proposal was tantamount to adjudicating by hindsight and reliant on public opinion;
- **Lowering the bar:** the proposed test blurred the distinction between the importance of guidance to professionals and the minimum standards to be expected of professionals;
- **Unfair and unworkable costs regime:** the proposed test for awarding costs to the successful respondent, in the event of misfeasance on the part of the Board, was not in line with similar tests deployed by other

regulators, for example the 'vexatious, frivolous and unreasonable test'² and that contained in *Paul Michael Baxendale-Walker v Law Society*³;

- **Unnecessary costs regime:** the changes to the Board's powers to manage investigations under the auspices of the Disciplinary Decisions Committee (DDC), to act as a check and balance against unnecessary and/or excessive and unwieldy investigations at the point of the decision as to whether to lay a complaint were sufficient to manage excessive and spiraling costs;
- **Stymying co-operation:** the lack of guidance around regulatory investigations where there may be parallel or contemplated criminal investigations under Section 507, Companies Act 2006, (knowingly or recklessly causing false, misleading or deceptive information to be included within an auditor's report), created circumstances where the Board's overarching aims and objectives were undermined.

The following compromise has been reached with regards the definition of misconduct: "Misconduct means an act or omission or series of acts or omissions, by a Member or Member Firm which falls short of the standards of professional conduct reasonably to be expected of a Member or Member Firm.

Misconduct includes, but is not limited to, failure to comply with:

- any relevant law, charter, by-law, rule, or regulation; or
- any applicable accounting, auditing, ethical or other standard;

[other than a failure which is trivial,] to the extent that such failure falls short of the standards of professional conduct reasonably to be expected of a Member or Member Firm.

In considering whether there has been a failure to comply with any applicable accounting, auditing, ethical or other standard, regard shall be had to any relevant guidance."

Further, with regards the award of costs to a successful respondent:

"Accordingly the Board proposes that the disciplinary tribunal's discretion to award costs in favour of a successful respondent shall be restricted to circumstances in which the decision to bring or pursue a formal complaint was 'unreasonable' in the sense that no reasonable body properly directing itself would have pursued the same matter (the *Wednesbury* sense)."

The Board accepted many of the suggestions made by the profession and the business community. Consequently, the seismic changes presaged by the consultation have receded. However, perhaps predictably, the impact of the aftershock will fall on Members and Member Firms. Why? The costs of administering the Scheme are set to rise, principally as a result of requiring the DDC to consider the desirability of a hearing – thereby adding an additional step to the disciplinary process. How will such costs be met? By increased subsidy from Members and Member Firms. The quid pro quo? Increased public confidence in the profession.

The Board deals with 'events of low probability', that is, few cases will be brought under its aegis and, whilst difficult to quantify accurately, the Board predicts that many of the changes to the Scheme will have little discernible effect on core costs. The same cannot be said of the impact on the successful respondent where the Board has not behaved unreasonably.

In May 2008, the Board was involved in five ongoing investigations. In December 2009, it was involved in eleven. In March 2009, the Executive Council found that there was no realistic prospect of any adverse finding in the Emerging Business Trust investigation. Consequently, the investigation was closed. It remains to be seen whether the new Scheme will usher in a new era of increased numbers of adverse findings and decreased numbers of exonerations.

Gavin Irwin is a barrister in private practice at Dyers Chambers. He has a wealth of experience in all aspects of business crime and is recommended in the 2009 and 2010 editions of Chambers and Partners.

Footnotes

- 1 www.frc.org.uk/aadb/tribunal/pub1248.html
- 2 Financial Services and Markets Act 2000, paragraph 13 of Schedule 13 and Rule 21 of the Financial Services and Markets Tribunal Rules 2001 SI 2001 No 2476
- 3 [2007] EWCA Civ 233

SIA: A Consultation on the Licensing Framework: A Brief Overview

Elinor Jenkins, Kingsley Napley

The Security Industry Authority (SIA) is a regulatory body created by the Private Security Industry Act 2001. The SIA describes their main functions as:

- The compulsory licensing of individuals undertaking designated activities within the Private Security Industry; and
- Managing the Voluntary Approved Contractor Scheme, which measures private security suppliers against independently assessed criteria.

In essence, the aim of the SIA is to reduce criminality and to raise standards within the industry. The current licensing system operates on a sector specific basis. Many licence holders may work across different sectors and consequently hold multiple licences.

The activities currently licensed by the SIA are as follows;

- Manned guarding including:
 - Cash and valuables in transit;
 - Close Protection;
 - Door Supervision;
 - Public Space Surveillance (CCTV);
 - Security Guarding.
- Immobilisation, restriction and removal of vehicles including wheel clamping.
- Key Holding.

The SIA have recently launched a Consultation on the Licensing

Framework emphasising that with the increase in the regulation of sectors, the current system needs to be more 'flexible, simplified, future-proofed and continue to follow the principles of good regulation'.

The following issues were highlighted with regards to the current licensing regime:

- A licence holder may have to display more than one licence simultaneously;
- Unless multiple licences are applied for together, there is the potential for an increased level of administrative work in having to complete an application form for each sector;
- A multiple licence holder will face increased costs, in so far as fees for each additional sector licence.

Consequently, the SIA are currently considering two options:

- Option 1** Introducing a new licensing framework with a single generic licence card covering any licensable activity which the holder is qualified to undertake; or
- Option 2** Leaving things as they are

Option 1 A Single Licence Framework

The features of a single licence framework would be as follows:

- Designated licensable activities would remain the same, however the licence would be generic;
- All licence cards would look the

same and would continue to function as a visible means of public reassurance;

- Specific information about the licensable sector or the activity the holder is able to undertake would not be displayed on the licence card. The publicly available register of licence holders contains this information;
- The new regime would decrease the dependency upon the licence card itself.

Regulatory Issues

The Consultation suggests that a single framework regime would simplify and reduce the existing regulatory burdens upon licence holders.

Impact upon Licence Holders

The Consultation advises that the main impact of the implementation of a single licence regime would be that licence holders would no longer have to incur the costs of multiple licences.

Furthermore, licence holders would be able to build up sector competence over time without having to apply for separate additional licences.

Option 2 Leaving things as they are

By maintaining the current system, the regime of having a licence for each specific sector would continue

and the public register of licence holders would continue to provide the definitive record of licensing.

Regulatory Issues

The Consultation emphasises that whilst there would be no impact on the SIA's regulatory priorities, this system does not complement the way licence holders work in the Private Security Industry in the most effective way and does not simplify the existing regulatory burdens upon the licence holder.

Impact upon Licence Holders

In maintaining the status quo licence holders would not be affected.

The Consultation paper refers to the Hampton Principles of Good Regulation and advises that proposals contained within the Consultation paper for a single licence framework will be considered within the context of these principles.

The Consultation advises that the aim is to produce regulation that is;

1. Easy to understand and simple to follow;
2. Complements, not complicates, the way people work; and
3. Keeps the UK competitive.

The Consultation paper can be viewed at www.the-sia.org.uk

Foundation school body fined after student loses six fingers and both thumbs in art class

Lettie Smythers, Kingsley Napley

A foundation school's governing body has been fined £16,500 for breaches of health and safety law after a pupil's hands were severely damaged by plaster of Paris.

The sixth former was left with only two fingers after using plaster of Paris to make a cast of her hands in an A-Level Art and Design class. Unaware of the chemical reaction causing extreme heat which occurs when plaster of Paris is mixed with water, the student placed her hands directly in the substance in order to make the cast. The chemical reaction between the substance and the girl's hands meant that her fingers were so severely burned that they had to be amputated.

On 12 October 2009, the Governing Body of the Giles School of Church End, Old Leake, Boston, Lincolnshire, was fined £16,500 and ordered to

pay £2,500 costs at Boston Magistrates Court. They pleaded guilty to breaching both section 3(1) of the Health and Safety at Work Act 1974 and regulation 3(1)(c) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

Section 3(1) of the Health and Safety at Work Act 1974 states that employers should conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in their employment who may be affected thereby are not exposed to risks to their health and safety. In this case, a risk assessment for the handling of hazardous substances had not been carried out, the class pupils had not been told by their teacher of the potential dangers of plaster of Paris and the pupils had not been instructed to wear gloves or other protective equipment when handling the substance.

In addition, the school's governing body did not report the incident. The Health and Safety Executive was told by the plastic surgeon who treated the burns. Regulation 3(1)(c) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 states that when any person not at work suffers an injury as a result of an accident arising out of or in connection with work and that person is taken from the site of the accident to a hospital for treatment in respect of that injury the enforcing authority should be notified by the quickest possible means and subsequently, a report should be sent to the authority detailing the incident.

This case has received widespread press coverage and prompted a general drive for better health and safety awareness at independent schools.

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