
No breach of duty in assault of employee

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Should an employer face liability for injuries suffered by an employee assaulted by a service user to whom the employee was providing care? This question arose in a recent claim which proceeded to trial before HHJ Freedman, *Shaw v Northumberland County Council*.

The Claimant was engaged to provide care and support to service users who attended a horticultural skills unit at which therapeutic activities were offered. She noticed a service user who had moved toward the school's perimeter fence, and, as the service user was hard of hearing, touched him gently on the shoulder in order to attract his attention and suggest that he return to the unit. Without warning, the service user struck out at the Claimant and threw a mug into her face, causing her facial and psychological injuries. The Claimant presented a claim on the basis that her employer had breached its duties to her and had not provided her with sufficient training.

The claim was defended to trial at which the Claimant conceded, in evidence, that the incident occurred very quickly and without warning, and that she had been trained in intervention techniques, albeit she asserted that she had not received adequate training as she had not been trained in dealing with an assault coming from the side.

At trial, the judge decided that it was not foreseeable that the service user would act in a violent manner in response to his being touched on the shoulder (there being no history of violent behaviour in the 11 years he had been attending the unit), and that the incident was unforeseeable. He concluded that the Claimant's training had been adequate, and, in any event, as the Claimant had not perceived a risk of violent response when she touched the service user on the shoulder, the provision of further training would not have prevented the incident.

The claim was dismissed.

This claim is a helpful reminder that incidents can occur, and that their occurrence is not evidence of breach of duty. Whilst the incident was unpleasant for the Claimant, the fact that she suffered injuries does not establish her entitlement to compensation.

DAC Beachcroft represented the Defendant in this claim.

Our EL / PL team deal with employers' liability and public liability claims on a regular basis. For more information or advice, please contact one of our experts.

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