Health&Safety news

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Gerard Stilliard, head of personal injury strategy, explains the law when it comes to moving patients in care and the problems that arise when a patient falls injuring a carer

The perils and pitfalls of patient handling

MANY EMPLOYEES working in the nursing, healthcare and patient transport sectors sustain injuries as a consequence of assisting patients with mobility difficulties.

In many cases, such injuries are avoidable. While it is the responsibility of employers to make sure workers have the correct training, equipment and support to carry out their job safely, it is also important for the employees themselves to know what constitutes a safe system and place of work and how to hold employers to account when work is not safe.

The law on moving and handling

Although employers have a duty to provide their employees with a safe system of work, a safe place of work, appropriate equipment and adequate training, in the past there has often been very little training or guidance for staff on the safe moving and handling of patients; injuries to employees were all too often seen as an unavoidable hazard of the job.

Despite this decision, the drag lift continued to be widely used in a large number of hospitals for many years

The lack of adequate guidance, appropriate regulation and a laissez faire approach on the part of employers, meant that employees suffering injury struggled to recover proper compensation.

In the 1980s however, guidance (The Guide to the Handling of People: a systems approach, now in its 6th edition) was published.

This set out techniques for moving and handling people that were safer than those most frequently used and highlighted techniques that were dangerous both for the patient and their carers. One of the most hazardous handling techniques was the "drag lift".

This technique was regularly used in hospitals and other healthcare environments and caused significant numbers of injuries to both employees and patients. The technique involved nursing staff hooking their elbows under the armpits of a patient and lifting or dragging them up the bed, or from a bed to a chair to place the patient in a more comfortable position.

Those using this lift frequently suffered musculoskeletal injuries that largely went uncompensated. However, in 1982, a nurse who had been injured moving a patient from bed to chair using the drag lift was successful in a claim for compensation.

The judge found that the lift was unsafe and the employer was in breach of its duty of care to the nurse. But, despite this decision, the drag lift continued to be widely used in a large number of hospitals for many years.

Another major cause of injuries to those involved in the handling of people involves employees trying to save a falling patient. A significant percentage of nursing home residents will experience falls, as will many patients in hospital geriatric wards.

Ambulance personnel are also at risk

when accompanying the elderly to or from hospitals and nursing homes.

Where an elderly patient starts to fall, the normal reaction is to attempt to save them to prevent a potentially serious injury.

However, this instinct also increases the risk that both the patient and carer will be injured. For this reason, attempts to catch or break the fall of a patient should not be made as it can cause significant musculoskeletal injuries.

The official guidance is to attempt to control the descent of the falling patient. However, this should only be done where the descent can be safely controlled and much will depend on the height and weight of the falling patient and the position of the carer as the patient starts to fall.

If the patient is much taller or heavier than the nurse, the risk of injury increases. Again, in the past, injuries sustained by employees attempting to save a falling patient were considered unavoidable and training on how to deal with such situations was largely unavailable.

Thankfully, knowledge about the risks and techniques to be used in such situations gradually increased and all staff involved in the care of those at risk of falling should now be fully trained.

The Manual Handling Regulations

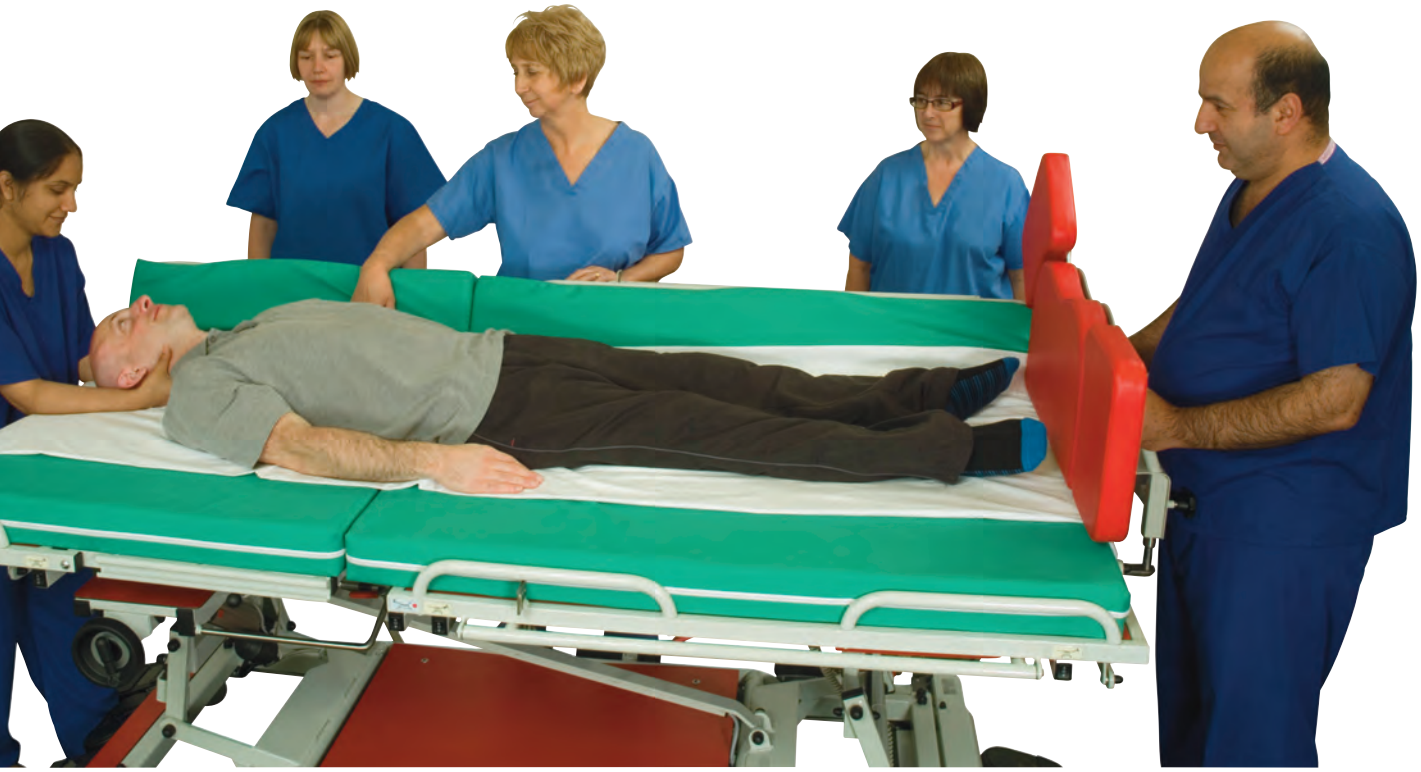
It was not until the implementation of the Manual Handling Operations Regulations 1992 (MHOR), that significant improvements to staff training were made and appropriate handling equipment such as hoists, electric carry chairs and electric beds were made more widely available.

These regulations set out factors that an employer must respect and questions to be considered when making an assessment of manual handling operations.

In essence, an employer, so far as is reasonably practicable, has to avoid the need for their employees to undertake any manual handling operations that involve a risk of injury.

Where it is not reasonably practicable, the employer must make a suitable and sufficient assessment of all manual handling operations and take appropriate steps to reduce the risk of injury to the lowest level feasible.

In addition, where practical, employers have to take steps to provide their employees



➲with information about the weight of the load to be lifted.

Following the implementation of the MHOR, there was a much greater use of hoists and other lifting equipment in hospitals and nursing homes. Reliance on nursing staff to undertake manual lifts of patients was reduced.

The employer must make a suitable and sufficient assessment of all manual handling operations and take appropriate steps to reduce the risk of injury

Staff received in-depth training and refresher manual handling courses were introduced. In many hospitals, a ward moving and handling co-coordinator makes sure that staff training is up-to-date, the most appropriate techniques are used and patients are properly risk assessed and their handling needs identified.

Unfortunately, changes to the legislation by the coalition government introduced in 2013 mean injured workers are no longer able to solely rely on breaches of the MHOR when bringing a compensation claim.

The injured person now has to go through the hoops of proving that the injury was foreseeable and that the employer should have taken steps to prevent the accident. The MHOR are, however, still in force and breaches potentially give rise to criminal sanctions.

As such, Thompsons will continue to refer to the MHOR when alleging negligence on behalf of an employee injured as a consequence of patient moving or handling.

Conclusion

Patient moving and handling continues to pose significant risks to those involved in the care of members of the public requiring assistance with their mobility.

With an ageing population, there will be an increased requirement for care for those with mobility problems. It is crucial that employers continue to provide appropriate equipment and extensive training for their employees to reduce the number of handling accidents and associated injuries.

However, where things go wrong and accidents happen, Thompsons has specialist lawyers with significant experience in patient moving and handling claims who will be able to assist the injured person in obtaining the compensation they are entitled to.

Case Study

DESPITE SUCH guides as The Handling of People and the introduction of the MOHR Thompsons still receives instructions from carers, ambulance workers and members of the nursing profession who have sustained injury as a consequence of caring for vulnerable patients.

In a recent case, Thompsons acted for a home carer who was injured when helping a service user get out of bed. The service user was an elderly woman who had been discharged from hospital and was in a six-week rehabilitation period to enable her to continue living independently in her own home. She required four visits a day from her carer.

A risk assessment had been carried out on her return home and she had weekly reviews of her condition. Just before the carer's accident, there had been a recorded deterioration in the service user's stability making her unsteady on her feet.

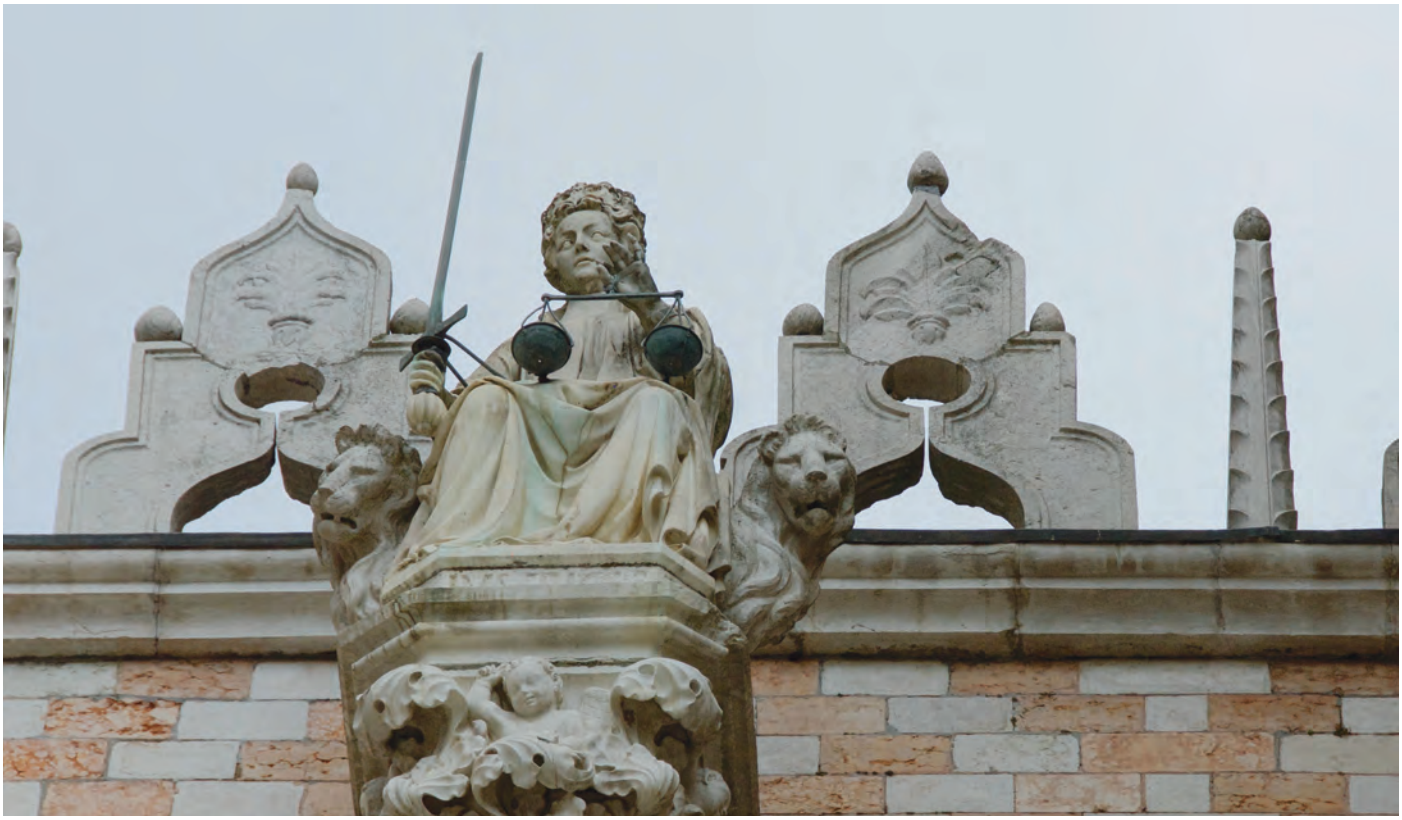
Notwithstanding this, it was the carer's job to try and assist in rehabilitation which involved encouraging the service user to be more mobile.

On the day of the accident, the service user appeared to be having a good day. She managed to get out of bed herself and supported herself with a walking frame. However, she unexpectedly fell backwards onto the carer, causing the carer to be pushed into a cupboard with the service user landing on top of her.

There was very little room in the patient's bedroom to manoeuvre the service user and there was not enough available space for the service user to stand alongside her carer.

While the room had been risk assessed by the carer's employer and passed as being acceptable, Thompsons argued that the risk assessment was not adequate.

At trial, the judge found that the employer was in breach of MHOR. The original risk assessment was not suitable as it had failed to take account of the clear deterioration in the service user's condition. Consideration should have been given to replacing the double bed with a single bed to improve space in the bedroom. The carer was awarded compensation.



Keith Patten, outlines the law when it comes to determining how much fault should be placed on someone claiming compensation

Apportioning blame

MOST PEOPLE will be familiar with employers' duties to look after the health and safety of their employees.

It is these duties that can lead to a worker who is injured at work being able to sue their employer for compensation, provided the employer is found to have breached the duty it owes. But it is important to appreciate that the obligation is not entirely one-sided.

Employees themselves have obligations to look after their own health and safety and if they fail to do so and are injured then the employer may seek to raise a defence called contributory negligence. This, if successful, might lead to any compensation for the injury being reduced.

How does contributory negligence work?

In deciding on an allegation of contributory negligence, the court will be asking itself two questions – firstly, whether the injured employee is at fault; and, secondly, whether that fault has contributed to the injury they sustained.

For example, let's imagine there is a small flight of stairs in a workplace. They have a handrail. Oil has been spilt on the stairs making them slippery.

An employee walking down the stairs, slips on the oil and falls, suffering injury as a result. Imagine, also, that she was not holding onto the handrail at the time. Now, to pursue a successful claim in the first

place, the employee may need to show where the oil came from, how it got onto the steps, how long it had been there and so forth.

But let us assume she can prove all those things, she may still face an allegation of contributory negligence from her employer.

How would the court decide that issue?

Starting with fault, the real question is whether the employee has been careless of her own safety. Here she may be vulnerable to a finding of contributory negligence because there is always a risk of falling on stairs, slippery or not. That is why handrails are provided, and not using the handrail might well be regarded as careless.

It can probably be seen from this that allegations of contributory negligence require a close consideration of the facts of the individual case

But everything will depend on the circumstances.

If, for example, she had no choice but to carry something down the stairs that needed both hands, so she could not have used the handrail, then she may not be found to have been careless.

She may still face an allegation that she was careless for not watching carefully where she was placing her feet.

But even if not holding the handrail is found to be careless, that may not be the end of the matter. The second question is whether or not her failure has contributed to her injury.

This will involve the court in trying to decide whether holding the handrail would have made any difference – if it decides she would have fallen anyway and suffered the same injuries anyway, then her carelessness will not have made any contribution to her injuries.

It can probably be seen from this that allegations of contributory negligence require a close consideration of the facts of the individual case, because small factual differences between cases might produce different outcomes.

What does the court do if it has decided the employee has been contributorily negligent?

Earlier I described contributory negligence as a defence, but it is not an all or nothing defence. Instead, it is what is known as an apportioning defence.

What the court will do if it decides there has been contributory negligence is to decide the percentage contribution the employee has made to their own injury and reduce their compensation by that same percentage.

So, imagine the injury is one for which the court might usually award compensation of £2,000, but it decides the employee was 25 per cent to blame for the injury herself. Instead of awarding her £2,000 it would reduce her compensation by 25 per cent and award her the balance, £1,500.

Because every case of contributory negligence is dependent to some extent on its facts it can be very difficult to predict what these percentage reductions will be. Experienced Thompsons' solicitors, who have seen many such cases, will be able to offer advice on what outcome is the most likely.

And that is also important because, although I have talked about decisions of the court, most cases never get to court. Most cases are settled before they go all the way and it is important to factor in to any settlement the risks of the court ultimately making a finding of contributory negligence in an appropriate case.

It is important for anyone injured in an accident to understand the possibility of an allegation of contributory negligence. It is true that sometimes employers make those allegations even if there was no real fault on the part of the employee.

Sometimes employers do that to intimidate people in the hope they will accept lower settlements. That is why Thompsons' advice in these situations is important – Thompsons will be able to advise on which allegations should be rejected entirely and which need to be taken seriously.

The Trade Union Bill is a vindictive and ideological attack on workers' rights says Richard Arthur

Eroding workers' rights

AFTER ONLY a few months in government on their own, the Tories have wasted little time in revealing their contempt for the trade union movement.

Eroding workers' rights, slashing public services and tax cuts for the rich have always been Tory policies. But the Trade Union Bill is the most vindictive, spiteful attack on unions, and those they represent, for decades and goes further than even Mrs Thatcher dared to go.

Conservative MP David Davis has stated his opposition saying that the Bill is like something from a Franco-style dictatorship. When Tory MPs are defending unions and are worried about civil liberties, warning bells should be ringing in all our heads.

The Bill, in seeking to reduce the amount of facility time provided to union representatives, has worrying implications for the safety of workers. Less facility time means reps' ability to stand up for union members who face dangers in their place of work would be undermined and they would be less able to ensure that employers don't turn a blind eye to basic and essential, health and safety requirements. That arguably infringes EU law.

Part of the Bill attacks the power of trade unions requiring any ballot on strike action to not only need a 50 per cent majority in favour, but also requiring a turnout of at least 50 percent. Any ballot will be required to receive a 40 per cent majority among all eligible voters in some public services, including health and education.

Despite the fact that nearly half of the cabinet, including education secretary Nicky Morgan and work and pensions secretary Iain Duncan-Smith, would not have been elected had the general election been fought on these terms, they are quite happy to impose it on workers who are driven to take action against an employer who has treated them with disdain and unfairness.

Some of the most malicious aspects of this Bill are the new provisions on picketing. With no regard to civil liberties the government seeks in the Bill to undermine the democratic right to protest. Trade unions organising pickets will now have to nominate a picket supervisor who is familiar with the statutory code of practice and is seen as a mediator between the picketers and police.

And social media surrounding the strike will have to be disclosed (in advance) to the police. The moves are not just an invasion of civil liberties and go to the heart of the right to protest, they are also a massive waste of police time in a period where police budgets are being cut left, right and centre.

With no regard to civil liberties the government seeks in the Bill to undermine the democratic right to protest

This Bill is calculatingly divisive and immoral. It will attack the rights of ordinary workers across the country, yet again with this government, putting the interests of big business ahead of the employee.

Since our foundation, Thompsons has been committed to the labour movement and we remain dedicated to championing the rights of working people. We will stand shoulder to shoulder with our fellow trade unionists as they oppose even more attacks from the Tory government.

What are the rights of someone harmed by dust or chemicals at work? Marion Voss says they are not straightforward

What to do after a chemical injury

IN UK LAW, when bringing a personal injury claim against anyone for fault, it is necessary to prove that an injury has actually been caused.

Just because the workplace conditions are unacceptable and your employers or another person is at fault, for not looking after your safety, it does not automatically follow that damages are payable.

There are no punitive payments in English law when bringing a personal injury claim and it is necessary to prove that an injury occurred as result of your employer's conduct.

How to prove an injury has been caused by work

If you are affected by the behaviour of others at work or suffer an accident which has been caused by someone else's fault you need, if you are going to get an award of compensation, to show via medical evidence that the actions complained of have caused you pain, suffering and loss of amenity.

It's also important that you can medically illustrate that the injury was caused by work and that requires records of the injury occurring and a medical link confirmed by the medical expert in your case.

Your medical expert will need to show the time and place that the injury occurred was connected to your suffering and injury.

Whenever a doctor suggests you have a work-related condition, it is important to seek legal advice immediately

To assist the medical expert it's important that your injuries are recorded both at work and with your GP.

Recording your injury

It's advisable to see your GP to explain the nature of your symptoms in sufficient detail so an independent court expert could conclude they are related to work.

Sometimes OHS referral can assist with this recording and the department can arrange testing, for example lung tests throughout the day to illustrate any deterioration in lung function caused by work as variations are observed.

Some symptoms caused, for example by carbon monoxide poisoning, require reporting symptoms of a mild continuous nature.

It is important to keep a diary, recording your symptoms to assist the court expert concluding a link between work and exposures and your injury.

Don't forget, your GP and Hospital consultant will need clear advice about your work-related exposures, any exposures to heavy dust and chemicals to assist in reaching the conclusion that your symptoms are work related.

Whenever a doctor suggests you have a work-related condition, it is important to seek legal advice immediately as you only have three years to take steps to bring a personal injury claim once you are aware of a work related cause for your medical condition.

Other evidence

It is important to be clear and certain about the symptoms you are suffering, recording your symptoms, discussing them with your family and friends and considering why you think there is a work link and that you can provide such evidence to assist in a work related link been established.

Speaking to your union rep and recording clear accurate descriptions of your symptoms will all assist in ensuring that the court can determine that you are suffering from a work-related condition and that you have suffered symptoms as a result.

Conclusion

There is no automatic right to compensation if you work in an unsafe negligent working environment even if you are exposed to hazardous dust and chemicals, even if someone is at fault.

It is important to provide strong evidence of some symptoms suffered as a result of such fault in sufficient detail to link your medical condition to your negligent working environment to entitle you to claim compensation.

Catherine Cladingbowl looks at the case of Susan Cox -v- the Ministry of Justice which has now gone to the Supreme Court

Are prisoners employees?

A KEY AND very current application of the law on vicarious liability, where an employer can be held vicariously liable for the actions of someone operating under their management, has recently been heard at the Supreme Court.

This case is also an important test of how the law is applied when a person who is not strictly thought of as an "employee" is involved.

Mrs Cox was employed by the Ministry of Justice (MoJ) as a catering manager at HM Prison Swansea. In 2007 she was involved in an accident when supervising prisoners who were unloading supplies to the kitchen from a delivery vehicle.

The trial judge in the first hearing of the Cox case refused to find the relationship between the prison service and the prisoner was one of employment

As she was bending down to clear up a spillage of rice, a prisoner, Prisoner A, dropped a heavy sack full of rice he was carrying onto Mrs Cox's back and neck.

The spillage of rice was caused by another prisoner, Prisoner B, who had dropped a sack of rice while attempting to manually carry three 25kg sacks from the ground floor of the prison to the first floor. He had been instructed to carry the sacks manually as the lift was not working.

Mrs Cox noticed the spillage and instructed the other prisoners, including Prisoner A, to stop work until the spillage had been dealt with. However, these instructions were ignored and the prisoner lost his balance and dropped the sack, leading Mrs Cox to suffer agonising pain in her spine.

Mrs Cox, through her union the Prison Officers' Association and with the support of Thompsons, issued proceedings against the Ministry of Justice on three bases.

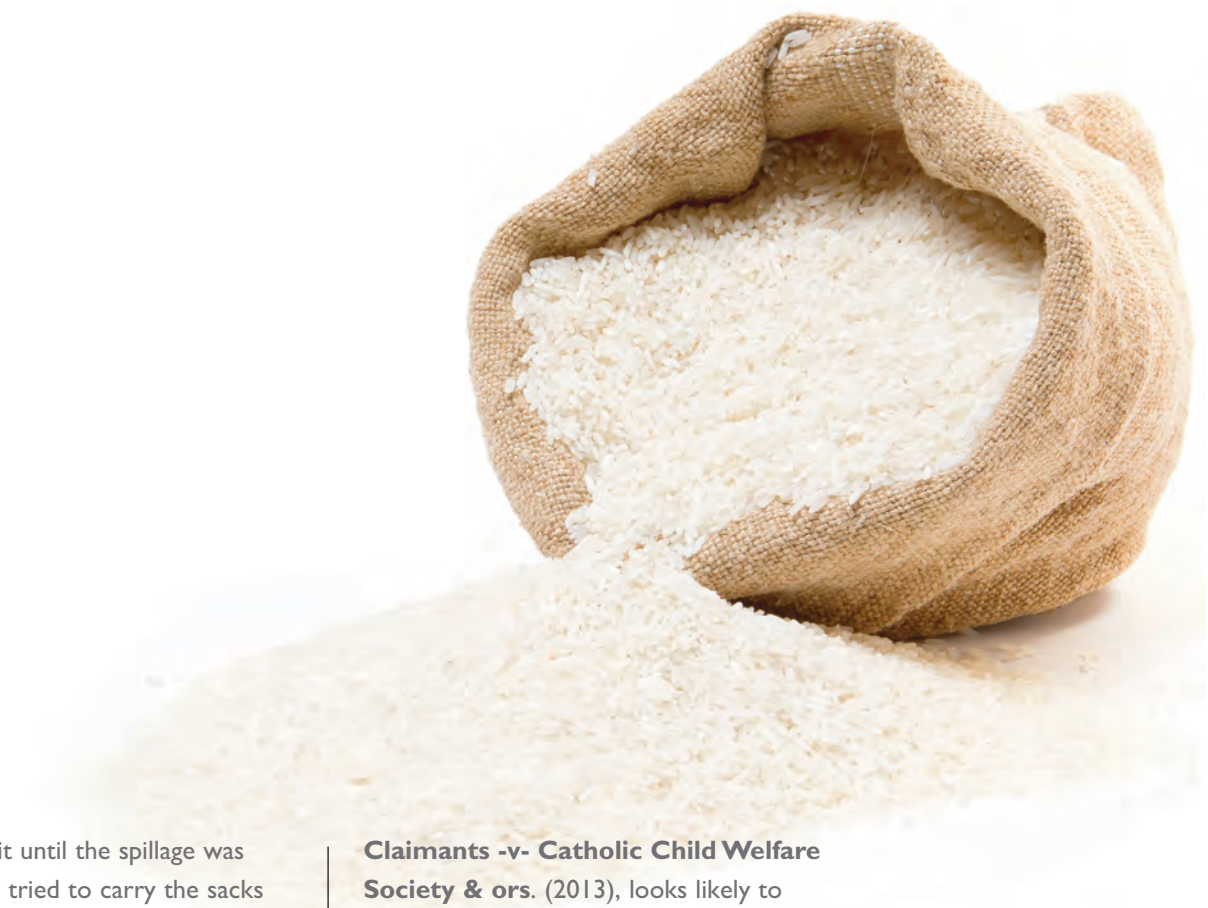
First, it was argued that the MoJ was vicariously liable for the negligence of the prisoner. Second, that it was in breach of its personal duty to Mrs Cox as her employer to take reasonable care for her safety by providing a safe place of work, a safe system of work and appropriately trained staff and equipment.

Third, that the MoJ was in breach of its statutory duty for failing to keep the lift in proper repair.

Initially, the trial judge rejected Mrs Cox's claim on the basis that Prisoner A and the other prisoners' work was not akin to "employment" according to the usual definition. The work undertaken was not carried out for commercial advantage or to further the business undertaking of the prison or the MoJ.

Therefore, as the relationship was not akin to employment, the MoJ could not be held vicariously liable for the prisoner's actions.

The judge stated that "The failure to train Prisoner A was not of causal relevance to the accident. The simple position is that Prisoner A disobeyed an



instruction to wait until the spillage was clear and thereby tried to carry the sacks past, and almost over, the claimant. This was both disobedient and foolish..."

However, Mrs Cox proceeded to take the case to the Court of Appeal on the basis of her first two claims: that the MoJ was vicariously liable and that it had made a breach of its personal duty of care to her.

This time, the court unanimously found in favour of Mrs Cox on the first count, stating that the relationship between the prisoner and the MoJ was one of employment due to the fact that, by assigning Prisoner [A or B] to the activity of transporting supplies, the Ministry had created the risk of a problem being caused by him.

In transporting the supplies he was performing a task that was essential to the running of the prison and helping to "defray…. the expense to the State caused by prisons". In effect, the appeal court interpreted the prisoner's activity as being analogous to employment.

This case has now been seen by the Supreme Court and we keenly await the final decision which, along with **Various Claimants -v- Catholic Child Welfare Society & ors**. (2013), looks likely to establish for some time the law on vicarious liability and what is considered a relationship of 'employment'.

The trial judge in the first hearing of the Cox case refused to find the relationship between the prison service and the prisoner was one of employment, firstly, because employment was not the relationship's primary purpose and secondly, because the parties had not formed the relationship voluntarily (one party, of course, was a prisoner).

However, the appeal court's ruling makes it clear that the law on this type of relationship is not so clear cut; the element of control within the relationship does not, in and of itself, necessarily determine whether it is to be described as employee-employer or otherwise.

The appeal court's ruling makes it clear that the law on this type of relationship is not so clear cut

The case also tells us that vicarious liability may require the payment of compensation to be borne by the defendant with the greatest means to provide it – here the prison service rather than the individual prisoner.

Health and Safety News aims to give news and views on developments in health and safety issues and law as they affect trade unions and their members. This publication is not intended as legal advice on particular cases.

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