THOMPSONS SOLICITORS

THE MOST EXPERIENCED PERSONAL INJURY FIRM IN THE UK

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Health and Safety News

incorporating Personal Injury Law Review

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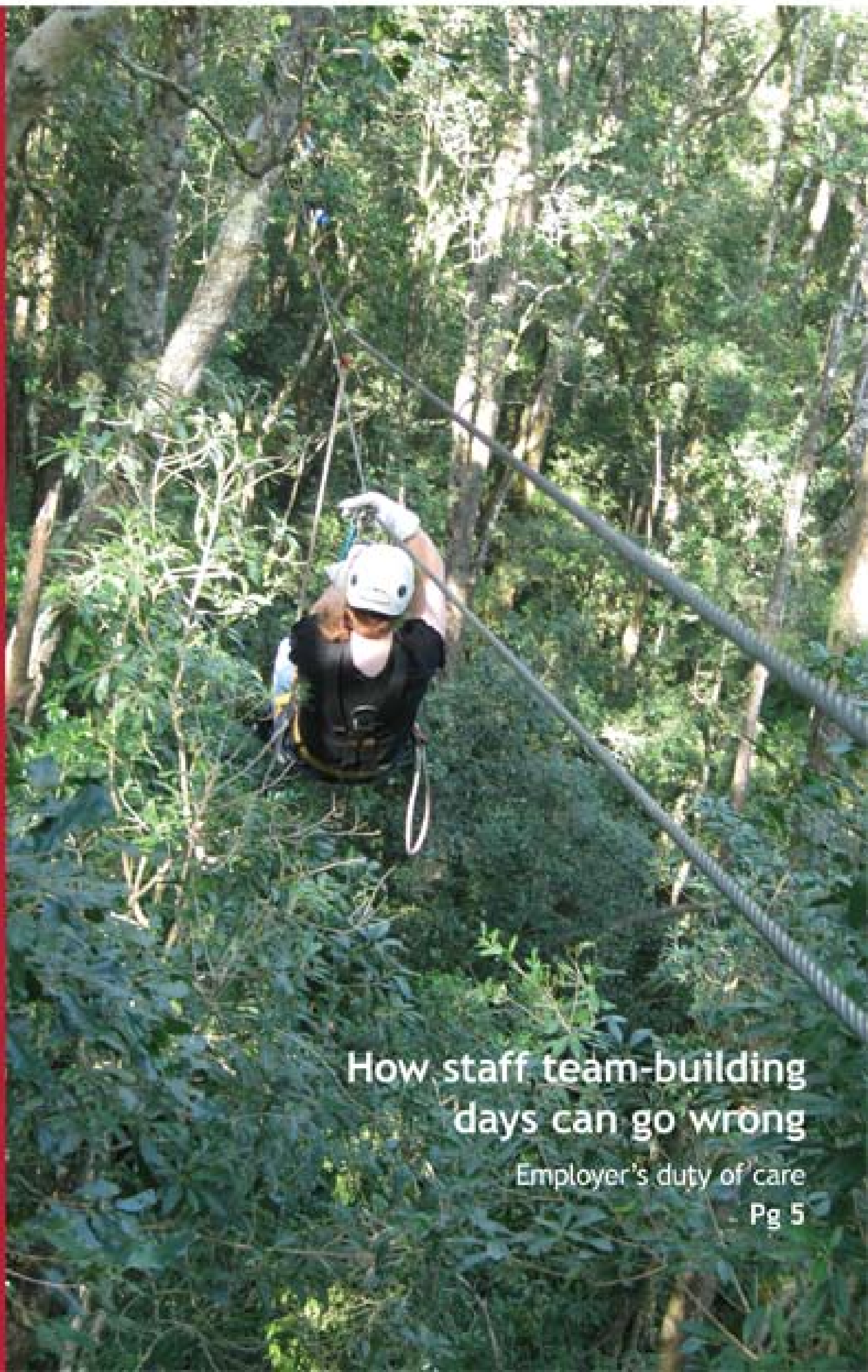

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Jackson recommendations would have an “adverse impact” on justice...Seven days is too long to report an accident...Rehabilitation is good for injured people...

Group condemns Jackson report

LORD JUSTICE Jackson’s proposals to reform civil litigation costs are “misleading and inconsistent with a fundamental principle of civil justice”, an independent panel of law academics has said.

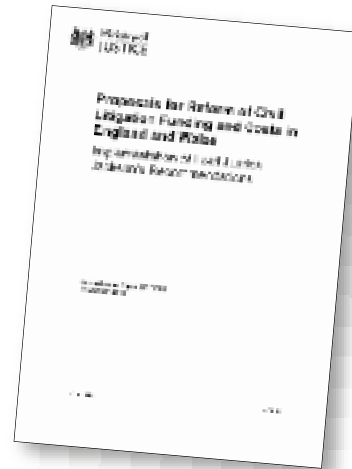
The Working Group on Civil Litigation Costs concluded that that there would be “an adverse impact upon access to justice” if the recommendations were implemented by the government.

A Ministry of Justice consultation on implementing the Jackson proposals (see Health and Safety News Spring 2010) ended in February.

The working group panel, which included Ken Oliphant of Bristol University, Keith Ewing of Kings College London and David Howarth from Cambridge, who was the Liberal Democrats’ shadow justice secretary until stepping down as an MP at the last election, said that the proposals would reduce the availability of legal services to injured people, while benefitting defendants in personal injury claims.

“In our view, implementing the core changes proposed by the Jackson Report creates a serious risk that claimants with genuine grievances will not be able to find a lawyer willing to take their case, especially claimants whose cases might need to go to trial,” the report *On a slippery slope – a response to the Jackson Report* says.

It also warns that health and safety will suffer.


Proposals for Reform of Civil Litigation Funding and Costs in England and Wales

“Ultimately, if injured persons are induced not to sue, or end up with lower damages because of less effective representation or the weakness of their bargaining position, this will negatively impact on health and safety because the legal sanction for causing injury unlawfully will be reduced.”

Thompsons Solicitors supported the report financially but had no editorial control.

To download a copy go to: www.etl.oeaw.ac.at

Back to work with rehabilitation

Thompsons has called on the government to put rehabilitation for injury victims at the heart of the review of civil justice.

A survey of Thompsons’ clients who received rehabilitation in the last year revealed a strong belief in its ability to get people back to work.

All respondents who had received rehabilitation while off sick said the treatment had helped them return to work earlier. The majority also said it had reduced the amount of assistance they needed with day-to-day tasks and helped them return to their leisure pursuits.

Everyone who responded said rehabilitation had aided their recovery, had been a positive experience and believed Thompsons should continue to press for rehabilitation for their clients.

However, neither the Jackson review of civil costs or the recently closed Ministry of Justice consultation on Jackson LJ’s recommendations addressed the issue of rehabilitation and the role it can have in helping the injured return to work.

Thompsons has written to justice minister Jonathan Djanogly urging him to ensure rehabilitation features in the debate about speeding up compensation claims and reducing costs. Some insurers are reluctant to accept rehabilitation or to offer interim payments to ensure rehabilitation can take place at an early stage. Further, some insurers seem to view rehabilitation as a means of getting injured people back to work, before they are fully fit.

Judith Gledhill, Thompsons head of personal injury said: “Our survey is evidence of the value of rehabilitation. While it should never be used to force injured people back to work too early, the reality is that it usually does reduce the amount of time an injured person is off work and the amount of help they need with day-to-day tasks.

“If all parties act within the spirit of the rehabilitation code and ensure claimants are offered and accept appropriate rehabilitation at an early stage, the outcome will generally be better for all involved. We are convinced that, for insurers, early rehabilitation will generally result in a reduction in the damages and costs paid, while the injured person will have the benefit of input and treatment from experienced healthcare professionals.

“We would welcome positive action by the government, as part of its response to the consultation on civil litigation funding.”

RIDDOR is a threat to efficient accident reporting

Health and Safety Executive proposals to extend the length of time an employee must be off work before a work-related injury needs to be reported will lead to employers failing to fully investigate accidents, Thompsons has warned.

The consultation on amending the RIDDOR regulations to extend the period from three to over seven days will exacerbate the already serious problem of employers under-reporting accidents.

Judith Gledhill, head of personal injury said: “Accidents are already seriously under-reported by employers, especially in non-unionised workplaces. The proposed change can only make this worse. It is inevitable that employers, buoyed by the reduced potential of litigation that the government’s proposed civil justice reforms will produce, will fail to fully investigate accidents where the employee was not off work for seven days. Less investigation means more workers injured when the same accident happens again.”

The consultation has been driven by the review of health and safety carried out for David Cameron by Lord Young last year (see Health and Safety News Autumn 2010). It closes on 9 May. The full consultation, *CD233 – Proposed amendment to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)* is available at: www.hse.gov.uk/consult/condocs/cd233.htm

Metalworking fluids induce lung disease

Karl De-Loyde tells the story of the world’s largest outbreak of occupational lung disease

AROUND EASTER 2003, some employees within the engine-making division of MG Rover (Powertrain) in Longbridge, Birmingham started to develop breathing difficulties.

They were suffering headaches, coughs, shortness of breath, fatigue and rapid weight loss. When they were signed off work they started to improve, only to deteriorate on their return to work.

Concerns were raised by the workforce, Unite, their union, and local GPs that their symptoms might be work related.

The Birmingham Chest Clinic, together with the Health and Safety Executive, undertook an investigation to establish the cause of the problem. By the summer of 2004, more than 100 employees had been diagnosed with work related respiratory disease.

Under the Control of Substances Hazardous to Health legislation (COSHH) an employer must prevent exposure to hazardous substances. Where prevention is not possible, exposure should be kept to a minimum and further safeguards are required such as machine design, extraction and ventilation, providing personal protective equipment and health surveillance.

Insufficient to comply

A starting point for an employer to comply with COSHH is the risk assessment. Powertrain appeared to consider that simply giving the safety data sheet for substances the new title of “Health and safety assessment for a substance at work” was sufficient to comply with their COSHH responsibilities.

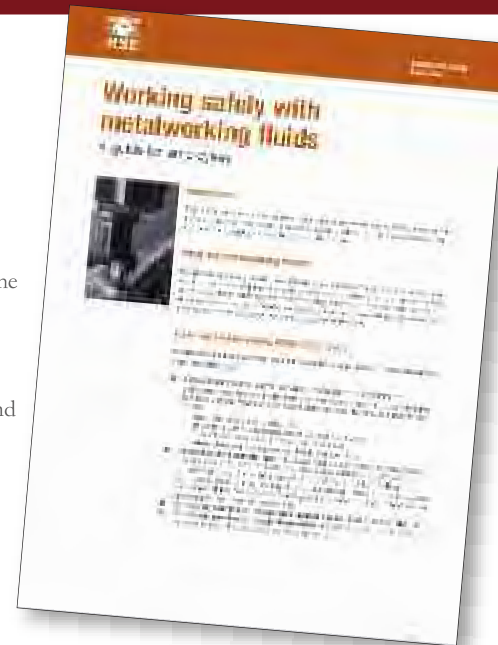
Not so. They should have considered what dangers the substance posed when in use rather than just as a neat fluid and how to control the growth of bacteria and so forth. ➲

To add insult to injury, when the works doctor expressed his concern that he thought the workplace was the most likely explanation for the workers' illnesses, and asked for further investigations to be undertaken, Powertrain dispensed with his services.

Investigations revealed that the metalworking fluids in many machines were heavily contaminated with bacteria and dead bacteria (Endotoxin). These harmful substances were released into the atmosphere during the machining processes and thereby entered the respiratory system.

Employees had previously complained about the misty environment and a pungent ammonia type smell – often associated with sulphate reducing bacteria – but nothing had been done about it.

The factory contained over 160 machines and wash machines, all using metalworking fluids. Some of the machines were single sump; others were fed by huge reservoirs of fluid.



Working safely with metalworking fluids

Employer denies wrongdoing

Notwithstanding this damning evidence that it was in breach of health and safety regulations, Powertrain denied they had done anything wrong. They maintained that they had at all times complied with their obligations while, at the same time, they sought to blame their fluid supplier (Houghton Plc) if anything was found to have been amiss.

Given the fiercely contested litigation, expert evidence had to be obtained from a variety of disciplines including respiratory medicine, occupational hygiene, microbiology and epidemiology. The expert evidence revealed how easily metalworking fluids can become contaminated and pose a risk to health, both in terms of skin irritation (dermatitis) and lung disease.

Thompsons acted for all of the claimants, instructed by Unite, under a group litigation order (a class action) and have secured settlement with damages of approximately £1 million.

As a result of this outbreak, the HSE has now changed the guidance it provides to users of metalworking fluids.

And with the assistance of Unite, benefits legislation has been changed so employees and former employees diagnosed with extrinsic allergic alveolitis, having worked in an occupation associated with exposure to metalworking fluids, can apply for industrial injuries disablement benefit.

What are the legal requirements?

Both you and your employer have responsibilities to make sure the risks to your health from metalworking fluids are properly controlled.

Your employer must:

- assess the risks to your health and decide what precautions are needed
- tell you about the risks and precautions necessary to protect your health
- prevent your exposure to substances hazardous to health or, where this is not reasonably practicable, ensure that your exposure is adequately controlled
- ensure that exposure control measures are followed at all times, and regularly checked and maintained, and that safety procedures are observed
- monitor your exposure and carry out appropriate health surveillance, where the assessment has shown this is necessary
- train you in the use of control measures and any personal protective equipment which is required.

You must:

- co-operate with your employer
- make full use of any control measures, use personal protective equipment and report any defective equipment
- attend and participate in health surveillance programmes at your workplace, where appropriate.

Extract from the Health and Safety Executive's: Working safely with metalworking fluids A guide for employees www.hse.gov.uk/pubns/indg365.pdf

As a result of this outbreak, the HSE has now changed the guidance it provides to users of metalworking fluids

HOW TEAM-BUILDING DAYS CAN GO WRONG

Team-building and fun days may help to promote better team working, but **Judith Gledhill** looks at how far an employers' duty of care extends

EMPLOYERS HAVE long recognised the value of encouraging employees to join the works football, softball and other teams and to participate in activities and events that promote team working. However, what happens when team building exercises or other sporting activities go wrong and participants are injured?

Will an employer or games organiser be found to be responsible and ordered to pay compensation?

The concept of "duty of care" has long been established. Even before the famous 1932 case of **Donoghue -v- Stevenson**, involving a Mrs Donoghue who became ill after swallowing a snail contained in a bottle of ginger beer manufactured by Mr Stevenson, it was accepted that certain classes of individuals owe a duty of care to others.

If the court finds that one party has a duty of care to a second party, and if the second party is injured as a consequence of the negligence or breach of statutory duty of the first party, the courts may well find the first party to be responsible for the injuries and award compensation.

An employer has a duty of care towards his employees. Employers must take reasonable care to protect their employees from foreseeable harm. This duty of care cannot be delegated to another person or organisation.

How far does this duty extend when employees are engaged in team building days or work fun days? Will an employer be liable to compensate his employees injured when participating in such activities?

A recent Court of Appeal decision explores the extent of the employer's duty while taking account of the importance of promoting the social value of such activities.

Diving head first

In the case of **Uren -v- Corporate Leisure UK Ltd (1) and the Ministry of Defence (2)**, the claimant suffered serious injuries when he dived head first into an inflatable pool during a "health and fun day" held at RAF High Wickham. Mr Uren hit his head on the base of the pool, broke his neck and was rendered tetraplegic.

He brought a claim for compensation against the MoD and the organisers of the tournament, Corporate Leisure (CL) alleging they had been negligent and were in breach of their duty of care towards him.

Mr Uren argued that both defendants had failed to take reasonable care to ensure that the games were played in a safe fashion. He alleged that, had a proper risk assessment been carried out, the hazards inherent in the game would have been identified and proper instructions would have been provided by both defendants concerning how the participants should enter the pool.

CL had carried out risk assessments on the activities, but the risk assessment of the pool game made no reference to the methods of pool entry. The trial judge held that this risk assessment was inadequate.

The RAF had also carried out a risk assessment. However, their employee assumed that CL was responsible for the safety of the events and prepared an assessment without knowing how the pool game was to be played, let alone considering how the participants should enter the pool.

The trial judge found that it was not open to the MoD to leave the preparation of the risk assessment to CL. He found this risk assessment was "fatally flawed".

Despite his findings on the risk assessments, the judge found that the risk of "serious injury" to the participants was not great and, bearing in mind the "social benefit" of the game, the defendants had not been in breach of their duty of care to the claimant.

How far does this duty extend when employees are engaged in team building days or work fun days?

The judge went on to say that a balance had to be struck between the level of risk and the benefits the activity conferred. As the risk of injury was small, the claim failed.

Mr Uren appealed arguing that, had proper risk assessments been undertaken, both the MoD and CL should have foreseen that participants might enter the pool head first and that serious injury could occur. He argued that guidance should have been given on the correct means of entering the pool and that head-first entry should have been forbidden.

Establishing liability

On Appeal, Lady Justice Smith found there could be cases where the failure to carry out a proper risk assessment could indirectly cause an injury. If the claimant could prove this, they would succeed in establishing liability.

She highlighted the fact that risk assessments are an important feature of the health and safety landscape and that they should be seen by employers as a "blueprint for action", an active and living document whereby employers should consider the risks and implement safeguards.

Importantly, Lady Justice Smith stated: "Sometimes the failure to undertake a proper risk assessment can affect or even determine the outcome of a claim and judges must be alive to that and not sweep it aside."

She went on to criticise the trial judge's approach to the balancing exercise he had undertaken when considering the risks of the pool game on the one hand and the social benefit of the game on the other.

Comment

THE IMPACT of the social value argument should not be underestimated. It is clear that judges will be slow to find employers liable for minor injuries resulting from accidents during team building and other social activities relating to the workplace.

In the recent case of The Scout Association -v- Mark Adam Barnes, the judge found against a claimant who had suffered injury while playing a game in the dark during a session with his local scout group, saying: "It is not the function of the law ... to eliminate every iota of risk or to stamp out socially desirable activities."

The claimant actually won that case on a majority finding in the Court of Appeal on the basis that there was no need or increased social value in the game by playing with the lights turned off.

The message is however clear: social activities are seen to be beneficial and judges will think long and hard before finding employers responsible if things go wrong.

While accepting the social value of the game, Lady Justice Smith found that she could not be satisfied that the trial judge had reached a sound conclusion when he held that the game as played carried only a very small risk of serious injury.

Turning to the risk assessment undertaken by the MoD, she confirmed that the common law duty of care of an employer to an employee cannot be delegated.

She found that the duty to undertake a risk assessment was so closely related to the common law duties of employer to employee that it would be "remarkable" if the requirement to undertake a risk assessment could be delegated but the general responsibility for safety could not.

As such, Lady Justice Smith held that the trial judge was clearly right to hold that the duty to undertake a risk assessment by an employer is non delegable.

Mr Uren's appeal was accordingly allowed and his case has now been sent back for re-trial by a different High Court judge, with Lady Justice Smith directing that the issues in the action should be limited to the question of the degree of risk of serious injury entailed in the game as played and whether that degree of risk was acceptable in view of the social value of the game.

Social value

Where does this lead employees who wish to participate in sporting activities and team building or other work-related fun days? Employers have a non-delegable duty of care to their employees. They must ensure that the activities are properly risk assessed, appropriate safeguards put in place and guidance given.

However, when undertaking the risk assessment, employers are entitled to consider the social nature of the game and to carry out a balancing exercise looking at the degree of risk of injury to the participants in the activity as against the social value of the game.

If there is a social value in the game being played or activity undertaken then, so long as the risk of serious injury is small, an employer may well avoid liability.

It appears from this judgment that, had Mr Uren simply sustained a fractured wrist as a consequence of diving into the pool head first, it is unlikely that his employer or the contractor would have been criticised, even though the risk assessment that was undertaken was palpably insufficient.

What about employees injured while participating in a works football match or other sporting activity? In the case of **Barnes -v- Chief Constable of Sussex Police Force and Equion Services**, the claimant, a policeman on a residential training course, was engaged in a game of football and was the victim of a heavy tackle. The tackle knocked him into some benches in a sports hall and he suffered injury.

The occupier of the sports hall was sued on the basis that the benches should not have been present in the gym. The employer was also sued for failing to ensure that the benches were moved and on the principle that they were vicariously liable for the actions of their employees.

The judge found that the occupiers of the gym were not liable to compensate the claimant on the basis that it was not hazardous for the benches to be stored in the gym.

The judge also dismissed the action against the employer on the basis that the football game was not part of the course and was not something for which the employer should be held liable, even though the claimant had pointed out the fitness, bonding and residential element of the game.

No mention was made of the social value of the game as the judge effectively held that the employer did not have a duty of care to the claimant while he was playing football.

The value of a risk assessment and knowing the law

Risk assessments prevent accidents, writes **Ben McBride**, and the Court of Appeal has confirmed it

In 2003/2004 falls from height caused 67 fatal accidents at work in Britain and nearly 4,000 major injuries. They were the single biggest cause of workplace deaths and one of the main causes of major injury at work.

The Young review of health and safety (see Health and Safety News Autumn 2010) made much of risk assessments being a burden on business. The Health and Safety Executive has already responded by consulting on "simplified" risk assessments for "low risk" workplaces such as offices and shops.

But a recent Court of Appeal ruling in a case involving a fall from a ladder in a shop underlines how simple risk assessments and attention to legal duty go to the heart of the prevention of accidents, no matter what the workplace or perceived level of risk of the task.

In **Bhatt -v- Fontain (2010) EWCA Civ 863 CA**, the court was asked to decide if the action of an employee, in climbing a ladder when it was not footed, absolved them of liability for the fall that the employee then suffered.

The accident

The employer had bought a garage, in part as new premises for his stock. He scoured the workplace for somewhere to store hundreds of lightweight spoilers for Audi bumpers and eventually settled on some loft space.

He appeared to be someone who was very conscientious about health and safety. He regularly contacted the Health and Safety Executive about safe practice and was very aware of the danger of work on ladders.

> Devising complex rules and procedures to try to avoid injuries being caused by a risky system of work will not prevent accidents

He had introduced a strict system for accessing the loft, which was restricted to three well-trained workers: one to foot the ladder, one to access the loft and one to receive goods passed down.

The system was spelled out to the workers in great length and included instructions on how to complete each stage, right from how to switch the loft light on. The types of ladder used were carefully considered too.

However, one of the employees went ahead and tried to access the loft on his own without a colleague to foot the ladder. He fell and was injured and pursued a claim for personal injury which was strongly defended by his employer's insurer.

The injured man freely admitted at trial that, had the ladder been footed, he would probably not have fallen. The defendant effectively argued that was the end of the case.

They said the instructions issued about accessing the loft amounted to a safe working practice and, had the claimant followed them, no accident could have occurred. So the accident was entirely his fault. The claimant argued that this was the wrong way to approach the Work at Height Regulations.

Regulation 6(2) of the Work at Height Regulations [2005] states: "Every employer shall ensure that work is not carried out at height where it is reasonably practicable to carry out the work safely otherwise than at height."

Therefore, the claimant argued, it was no defence to say that the accident would have been avoided if the instructions for use of the ladder had been strictly followed. He should not have been on a ladder in the first place.

His departure from the prescribed practice was precisely the sort of behaviour invited by the lengthy complex and makeshift system and the likelihood of this happening reinforced the need for a safe means of storage or access to have been provided.

This is an important point that runs through health and safety and personal injury law. Devising complex rules and procedures to try to avoid injuries being caused by a risky system of work will not prevent accidents.

Human error does happen. The essence of health and safety law at work is to have a system of risk assessment to avoid the risk in the first place. If an employer cannot reasonably do that, they should minimise the risk by other means.

Work at Height Regulations

The Work at Height Regulations have a simple structure. Carry out a risk assessment to:

- avoid work at height where possible and
- use work equipment or other measures to prevent falling where it is not.

The same principles cover the regulations for manual handling and tripping hazards.

The judge who first heard the Bhatt case ruled he should decide if working at height could, as far as reasonably practicable, have been avoided.

He concluded that the bumpers could have been stored elsewhere off premises, or sold off.

To put them in the loft was to make a saving for want of obvious storage space. That was a business decision which, in terms of the regulations, had to be set against the fact it created a need to work at height.

He said: "To say that because [the defendant] had too many goods and that was the only place they could store them and therefore it was not reasonably practicable to carry out the work otherwise than at height seems to me to be a non-starter."

The defendant appealed on the grounds that this ignored the needs for a small business that had devised a perfectly safe way to access, very occasionally, some dwindling stock for a short time.

The Court of Appeal agreed that the regulations and not the claimant's conduct should be the starting point. The hierarchy of the regulations were clear that work at height should first be avoided if possible.

The CA also agreed with the first judge that the defendant's search for other possibilities was far from exhaustive. Indeed the defendant had found ground level space to store the spoilers in after the accident.

So the defendant had not avoided work at height as far as was reasonably practicable and there was a breach of duty of regulation 6(2) of the regulations.

Lord Justice Richards said: "What happened is the very kind of event that the regulations are aimed at preventing. [The defendant's] failure to follow the prescribed procedure when doing work he should not have been required to do at all ... does not mean that the accident was caused by him alone. It goes only to contributory negligence."

Inevitably there will be cases where a ladder does reasonably have to be used to access stock stored at height. On that issue, the Court of Appeal also upheld the trial judge's finding that, if stock were stored in a loft and work at height could not be avoided, then the risk could be reduced at a cost of a few hundred pounds by installing a fixed loft ladder.

The failure to install a safer alternative to a movable ladder, was a breach of Regulation 7(2) of the regulations – provision of work equipment.

In the specific area of working with ladders, the regulations state that a ladder should only be used for work at height if that work cannot be avoided, if a risk assessment under regulation 3 of the Management of Health and Safety at Work regulations 2003 has demonstrated that use of more suitable work equipment is not justified because of the low risk, *and* either the short duration of its intended use or existing features of the site cannot be altered.

Risk assessments

If a workplace inspection reveals any foreseeable risk of injuries, then that implies the risk has not been avoided.

It is not enough for an employer to say that something is an obvious risk that can be avoided if the employee is careful. That applies to leaving a big, bright box in the corridor (**Burgess -v- Plymouth CC (2005) EWCA Civ 1659**), to telling someone to ask for help if they think a load seems too heavy and to instructing an employer to get someone to foot a ladder if they use it.

The essence of risk assessments and the law is to look for the danger and remove it in the first place.

Comment

The judgment should empower safety representatives and injured parties' lawyers.

It illustrates that a reasonable risk assessment, complying with clearly set out law:

- **should prevent an accident in the first place; and, if it does not**
- **the legal argument should not focus first on the victim's actions leading up to and allegedly "causing " the accident but rather the employer's decision at risk assessment stage and whether that led to the accident; and that**
- **a well put legal case and well informed Judge should establish judgment for the injured party.**

When the gloves are on

Keith Patten considers an important legal development in the battle over the provision of personal protective equipment

Rocket science it isn't, but the Court of Appeal (CA) has made an important point in over-turning the decision in the case of **Threllfall -v- Hull City Council** (see Health and Safety News Autumn 2010) that, in applying a set of regulations, it is important to consider what those regulations actually say.

It is a significant ruling for the operation of the Personal Protective Equipment (PPE) at Work Regulations (1992).

Mr Threlfall suffered a serious cut to his finger as he cleared bags of rubbish from the garden of an empty council house – a task that was part of his job.

He was unable to identify what it was in the bag that had cut him, but it was accepted by the council that sharp objects were sometimes found in bags of rubbish. Mr Threlfall was wearing gloves supplied by his employer. These were described as ordinary gardening gloves and were not cut resistant.

He lost his claim initially because the judge decided that the risk of sharp objects, although admitted, was very low and therefore the council did not need to provide better gloves to deal with what was a fairly remote risk.

This decision seemed to be an application of an old fashioned test from the law of negligence and to largely ignore the greater level of protection provided by the PPE regulations.

The CA agreed.

The Regulations

The key obligation under the regulations is that every employer "shall ensure that suitable personal protective equipment" is provided to their employees who are exposed to "a risk to their health and safety while at work" unless the risk was so trivial it could be ignored.

This obligation came into effect in this case because the risk of laceration by sharp objects, although unlikely, was not trivial if it were to occur.

So the question then was what was "suitable" personal protective equipment.

In defence, the council sought to argue that the gloves provided were suitable because they protected against all risks that were reasonably likely to occur. The CA rejected this approach.

The Court of Appeal decision

It may be an obvious point, that in applying a set of regulations it is important to consider what those regulations actually say. But it is a point that employers and courts would do well to remember.

The PPE regulations trigger the employer's duty to act whenever there is a risk of injury that is not trivial, even if it is not all that likely. Once it was accepted that sharp objects could sometimes be found in the bags, the council was obliged to do something to protect against that risk. What they needed to do was to provide gloves that were "suitable".

In deciding what was suitable, the employers should have looked to their risk assessment. A risk assessment had been carried out but it had not even considered the risk of laceration from sharp objects, merely the more general risk of garden clearance.

The risk assessment should have considered what the risk was and should have addressed what kind of gloves would have been effective to guard against that risk, which in this case would have been cut resistant gloves, readily available on the market, albeit at greater cost.

As Lady Justice Smith made clear in her judgment, effectiveness is central to the issue of suitability. Put another way, a pair of gloves that were not effective in guarding against the accepted risk could not be suitable.

What does this mean?

The PPE regulations being applied in this case are not the easiest to understand. But the CA has made it clear they require a step-by-step approach. If there is a residual risk that is more than trivial, the employer is obliged to provide protective equipment effective in dealing with that risk.

In deciding what is effective, it must carry out a focused and proactive risk assessment. It cannot decide to ignore a recognised risk merely because it is not all that likely to occur.

Once again, the key to this decision is the importance of risk assessment. Lady Justice Smith has been critical in a previous case of a "tick-box" approach to carrying out risk assessments. What risk assessments should be are a "blueprint for action".

The Court of Appeal decision has confirmed that the regulations do indeed provide protection to workers which is more extensive than that provided by the old law of negligence. They have not, however, imposed absolute liability on employers. It still cannot be said that the mere fact that the accident occurred shows that the employer must have failed to provide effective protective equipment.

The assessment is not done with the benefit of hindsight.

The question is what risks were known about (or should have been known about) at the time, and whether the equipment offered effective protection in the light of those known risks. What the decision is, however, is a welcome confirmation that regulations, and the risk assessments they require, are to be taken seriously by both employers and courts.

> The decision is a confirmation that the regulations are to be taken seriously by both employers and courts

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This publication is not intended as legal advice on particular cases.

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