



Prosecutions

High Street Retailer Receives Record Fine Following Blaze

The high street retailer New Look has been fined £400,000 and ordered to pay £136,052 in costs after pleading guilty to serious breaches of the Regulatory Reform (Fire Safety) Order 2005 – the RRO.

It is the largest fine to date under the RRO.

London Fire Brigade prosecuted New Look following a serious fire at its Oxford Street store on 26 April 2007. Thirty fire engines and around 150 firefighters were needed to tackle the blaze and crews remained at the scene for the next three days.

The first call to the Brigade was from an office worker in an adjacent building. This delay meant that when crews arrived the fire had already developed and had broken through the second floor windows. Despite the building's fire alarm sounding, it was reset on at least one occasion.

Over 450 people evacuated from the store and surrounding premises. A significant amount of Oxford Street was closed to traffic and the public which resulted in businesses being closed for a further two days after the blaze.

Following the fire, the Brigade carried out several fire safety inspections at the premises and found a substantial number of breaches of fire legislation. The most serious of these was an inadequate fire risk assessment which was found to have a number of failures, including no record of appropriate fire procedures such as the correct one to adopt when the fire alarm is activated.

The RRO requires the responsible person (in a workplace, the employer) to carry out a suitable and sufficient fire risk assessment and act on its findings.

Another significant breach was the insufficient training of staff which led to a delayed evacuation of the premises and staff being ill-prepared to respond to a fire or fire alarm signal. Staff did not use the appropriate fire exits to evacuate the public which meant that approximately 150 people were evacuated through the main entrance which was directly underneath the fire on the second floor.

Other serious deficiencies included all of the basement fire exits being unavailable to members of staff and the public due to the failure of an interface between the swipe card system and the fire alarm. The swipe card system should have been connected to the fire alarm system and have deactivated the doors. The premises was also found to have significant storage in escape routes on all floors.

Sentencing of New Look took place at Southwark Crown Court on 25 November 2009 after they pleaded guilty to two breaches of the RRO.

Salus Be Wise

Health and safety law requires that a risk assessment is carried out in respect of any work processes in the workplace and to take or observe appropriate special, technical or organisational measures. If a health and safety risk assessment identifies that these processes are likely to involve the risk of fire or the spread of fire then this must be taken into account during the fire risk assessment under the Order and prioritise actions based on the level of risk.

The fire risk assessment aims to help in determining the chances of a fire starting and the dangers from fire that premises present to those using them and anybody in the immediate vicinity. The assessment method takes the same approach used in general health and safety legislation and can be undertaken as a separate exercise, or as part of a general risk assessment.

A fire risk assessment is an organised and methodical look at the premises, the activities carried out there and the likelihood that a fire could start and cause harm to those in and around the premises. The aims of the fire risk assessment are to:



- identify the fire hazards
- reduce the risk of those hazards causing harm to as low as reasonably practicable
- decide what physical fire precautions and management arrangements are necessary to ensure the safety of people in your premises if a fire does start.

Alert Inspector Spots Unsafe Scaffolding

The Health and Safety Executive (HSE) has prosecuted a building contractor after a safety inspector was lied to after he stopped to investigate unsafe scaffolding he was driving past.

The inspector was driving past the Coach & Horses Inn in Billingham, Lincolnshire, on 11 June 2008 when he saw three employees of Bracknell Roofing Co Ltd using an unsafe tower scaffold to repair a flat roof.

The roof and tower scaffold had no edge protection, inadequate boarding which was not properly attached and it was propped up on bricks and blocks. A manager had visited the site and allowed work to continue only 45 minutes before Mr Woods arrived and found dangerous safety defects.

Bracknell Roofing Co Ltd, of Suffolk Way, Sevenoaks, Kent, was fined £8,000 and ordered to pay full costs of £2,572.80 by Skegness Magistrates after pleading guilty to breaching Regulations 4(1) and 8b(1) of the Work at Height Regulations 2005.

News

HSE Agrees Proposals for New Tower Crane Regulations

Detailed recommendations for a statutorily-based tower crane register have recently been agreed by the Health and Safety Executive (HSE) Board following a three-month public consultation. The details will now be put to Ministers for approval.

The new Regulations are due to come into force in April 2010 and cover conventional tower cranes on construction sites.

The register is in response to increasing public concern about tower crane safety. Eight people have been killed in incidents involving tower cranes since 2000, including one member of the public. Around 1,800 conventional tower cranes are thought to be operated in Britain, with around 1,300 in use at any one time.

The proposed regulations place the duty to notify on the employer and require notification of the relevant information within 14 days of thorough examination of the crane. Cranes erected prior to the regulations coming into force must be registered within 28 days. Registration may be done electronically via the HSE website.

Details that would have to be notified to the HSE are:

- the site address where the tower crane is being used
- the name and address of the crane owners
- details needed to identify the crane
- the date of its thorough examination
- details of the employer for whom the examination was made
- whether any defects posing a risk of serious injury were detected.

All details notified to the HSE would be contained in a register that will be open to public scrutiny. Registrations would be subject to an administration fee of £20.

The new registration site is scheduled to be launched on 6 April 2010.



A Third of Employees Incur Driving Offences at Work

The UK's small businesses are seeing a significant number of driving offences being committed by employees. In the last six months, a third (31%) of employees using a vehicle for work committed an offence whilst driving on the road, according to figures released recently.

It was also found that:

- 51% of the driving offences committed were due to speeding whilst 24% were due to drink/drug driving
- inappropriate insurance was the cause of 10% of offences
- a failure to pay fixed penalty notices affected one in six (16%).

Currently, more than one in three workers (35%) use their own car for business purposes, making it the most common form of business transport.

Case Law

Council Liable for Mesothelioma from Exposure to Asbestos from Broken Ceiling Tiles

This appeal case concerned a woman, Dianne Willmore, who was dying of mesothelioma, having been exposed to asbestos from broken ceiling tiles whilst a pupil at secondary school. The appeal was processed speedily because the Claimant was dying. Indeed, she died the day after the appeal had been heard and the decision announced. She was aged 49.

The key findings are outlined below:

Initial Hearing

At the original trial in Liverpool, it was held that Knowsley Metropolitan Borough Council, in its capacity as the local education authority, was liable on the basis that it (or its predecessor) had contributed materially to the Claimant's exposure to asbestos fibre whilst at secondary school, by failing to take suitable precautions.

Mrs Willmore's damages were agreed at £240,000 (prior to deductions), if liability could be established. In an earlier case in 2003 – Fairchild v Glenhaven Funeral Services Ltd – it was held that, in order to establish liability in mesothelioma cases, it is sufficient to show that exposure for which any one defendant is responsible has contributed materially to the risk. The issue, at the Liverpool trial, therefore, was whether Mrs Willmore could establish that the exposure had been significant.

When Mrs Willmore's condition was initially diagnosed, the suspected source of exposure was spoil heaps created as a result of the demolition of prefabs and a primary school in the road where she lived. However, when it became apparent that there was no evidence of asbestos in the spoil, suspicion then centred on the secondary school (known, at the time, as Page Moss Comprehensive) that Dianne Willmore had attended between 1972 and 1979, as its structure was known to have contained asbestos.

The Appeal

There is no contention concerning the issues outlined above. The deciding factor in granting the Defendant permission to appeal was a contention that the Judge's findings of fact were not sufficiently supported by the evidence. This contention was based on the Appellants' argument that the original finding confused exposure to asbestos fibres with exposure to risk and, in any case, failed to establish that the exposure had been any more than minimal.

The appeal was dismissed for a number of reasons. The contention that the original Judge had confused actual exposure with risk was dismissed on the basis that the wording of the original findings makes it clear that:



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- the Claimant was further exposed to the risk of asbestos fibres through her use of the girls' toilets at the school because the ceiling tiles were damaged and, on at least one occasion, damaged or broken tiles had been stored there
- the Claimant was exposed to a risk [from] asbestos fibres as a result of work carried out on the ceiling in the T-shaped corridor and the temporary storage of tiles (some of which were broken), damage to the ceiling tiles caused by the misbehaviour of pupils in pushing items up into the ceiling void, and vandalism to the girls' toilets in the Junior Block.

The key issue is that the Judge then states his reasons for concluding that these issues materially contributed to the Claimant's risk.

His reasoning was based on evidence given to the effect that mesothelioma can occur following low-level exposure and that, in order to constitute a significant risk, the level of asbestos fibres in the air in the vicinity of the girls' toilets merely needed to be in excess of that commonly found in buildings and the general outdoor environment. Thus, the situation in the aforementioned building was such that it must have materially increased the risk to the Claimant.

In considering the appeal, it was held that no error in the Judge's approach to resolving the question of whether or not the Claimant's exposure had been material or minimal could be discerned – hence the decision that the appeal should be dismissed.

It should be noted that Lord Justice Sedley's reasons for arriving at this decision are somewhat lengthy and, in order to gain a full appreciation of the case, it would be desirable to read them in full. For the purpose of this brief summary, however, it was not considered practicable to reproduce them here.

Case Law Judgment on Exaggerated Claim for Injuries

The Court of Appeal (Civil Division) has given its judgment in the case between Martine Widlake (the claimant) and BAA Ltd (the defendant). The issue concerned an exaggerated claim for injuries. It was held in the Supreme Court of Judicature Court of Appeal.

The original judge accused the claimant of abuse of the judicial process and ordered that she pay BAA's costs. The Court of Appeal judge's order for the claimant to pay costs was overturned and a no costs order was put in its place.

Background

The court heard in *Widlake v BAA* that the claimant was employed by BAA Ltd as a security guard at Stansted Airport when she fell down a staircase because of a loose rider beneath the top step.

She suffered bruising to her back, legs and elbow and BAA accepted liability.

She had initially pleaded her claim at £163,000 and at the High Court trial in November 2008; Widlake reduced her claim for loss of earnings to £24,000. Her claim for pain and suffering remained at £11,000.

The claimant alleged that as a consequence of the accident she had continued to suffer from significant symptoms in her back and that prior to that event she had not suffered from low back pain.

However, having carried out covert video surveillance, the defendants made a payment into court of £4,500 pursuant to the Civil Procedure Rules (CPR). No further payment or counter-offer was made.

Judge Seymour QC said that Widlake had 'deliberately concealed' her previous history of back pain from her medical experts in the hope of increasing the amount of compensation. There were inconsistencies between her complaints and what was seen on surveillance footage.

As a result, he awarded Widlake £5,877.71 for personal injury but accused her of setting out to abuse the judicial process and refused to award her the costs she would normally receive for exceeding the CPR payment, and instead ordered that she pay the defendant's costs.



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The claimant appealed against the award of costs against her.

The Judgment

At the Court of Appeal, Lord Justice Ward considered if the misconduct was so outrageous that a penalty should be imposed upon the offending party.

Given the original judge's findings of dishonesty, it may be appropriate that a party could be deprived of costs by way of punitive sanction.

He sounded a word of caution though that there is a considerable difference between a concocted claim and an exaggerated claim and judges must be astute to measure how reprehensible the conduct is.

Lord Justice Ward said defendants were used to coping with 'false or exaggerated claims' and had a defence in the form of the CPR payment into court.

The fact the defendant did not make a high enough offer and the claimant made no attempt to negotiate counted against them.

The appeal judge concluded that the starting point should be that the claimant should get her costs because she exceeded the payment in. An order for costs against the claimant was less justified where the defendant failed to make a 'proper' CPR payment.

Implications

The courts will look at the 'totality' of a claim when deciding on what costs order to make.

This case highlights the importance of obtaining and considering carefully all pre-accident medical notes and records and comparing them with what is reported by a claimant in witness statements and when being examined by experts

Guidance

HSE Guidance on Whole Body Vibration in Quarries

The Health and Safety Executive (HSE) has published an [information sheet](#) that explains the risk of developing back pain from whole-body vibration (WBV) and how exposure can be reduced. This guidance should be read in conjunction with INDG242(rev1) Control of back pain risks from whole body vibration.

Background

Whole body vibration is the vibration and shock felt when sitting or standing on a vehicle or machine travelling over rough ground, or when working in close proximity to powerful machinery.

The Control of Vibration at Work Regulations 2005 (the Vibration Regulations) require the risks of WBV to be controlled through a combination of:

- identifying sources of exposure and possible exposure controls
- minimising exposure by maintaining and modifying machinery
- training operators to ensure the effectiveness of controls.

This legislation sets both an exposure action value (EAV) which is the amount of daily exposure to WBV above which specific action is necessary to reduce risk and, an exposure limit value (ELV) that should not be exceeded.

Control measures

The action required to control WBV is determined by the degree of WBV risk associated with work activity. This guidance allocates common machinery and tasks to predicted exposure groups:

- Group 1 - WBV unlikely to be a risk. Exposure is likely to be below the EAV (0.5m/s² A(8)) with no significant shocks. As a result, low-cost vibration-reduction measures and management of WBV will reduce maintenance and the likelihood of back pain
- Group 2 - exposure to WBV must be managed. Exposures are likely to exceed the EAV on some days, but shocks are expected to be small. The risk of back pain from WBV is likely to be low and is more likely to be caused by other factors. Low-cost vibration-reduction and management controls only are likely to be required
- Group 3 - WBV is likely to cause back pain. Exposures are likely to be much higher than the EAV and/or result in large shocks; hence effective engineering and management controls are required. In addition, health monitoring is recommended to confirm that the risk from WBV is under control
- Group 4 - exposure to WBV must be restricted as far as is reasonably practicable. To comply with the ELV (1.15m/s² A(8)) restrictions must be imposed on how long people can be exposed to WBV.

In practice, introducing controls to reduce the risk of WBV involves:

- taking precautionary measures
- selecting suitable machinery
- ensuring appropriate construction and maintenance of haul roads
- appropriately maintaining and adjusting operator/driver seats
- introducing management controls and monitoring
- controlling exposure durations on high-risk tasks, namely dozing, scraping, hauling in articulated dumpers on rough tracks and, possibly, grading activities.

It should be noted that a transitional period permits machinery to continue in use until July 2010 with operators exposed in excess of the ELV, so long as exposure is reduced so far as is reasonably practicable.



Reports

Health and Safety Statistics 2008/09

The Health and Safety Executive (HSE) has published its 2008/09 statistics indicating that there has been a significant reduction in the numbers of people killed, injured or suffering work related ill-health in the period.

Work-Related Ill Health

In the last 12 months an estimated 1.2 million workers suffered from an illness believed to be caused or made worse by their current or past work. 551,000 of these were new cases.

The total number of mesothelioma deaths has increased from 153 in 1968 to 2,156 in 2007 with 1,812 deaths among men. The annual number is predicted to peak over 2,000 by 2016. Other occupational cancers and lung diseases such as past exposure to asbestos account for thousands more.

Male deaths under 55 have been falling since the mid 1990s.

Workplace Injuries

There were 180 workers killed at work, a rate of 0.6 per 100,000 workers. Of the main industrial sectors, construction and agriculture have the highest rates, accounting for 53 and 26 fatalities, respectively.

Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR), 131,895 injuries occurred to employees, a rate of 502.2 per 100,000 employees.

According to the Labour Force Survey (LFS), 246,000 reportable injuries occurred, a rate of 870 per 100,000 workers.

Working Days Lost

29.3 million days were lost overall (1.24 days per worker), 24.6 million due to work-related ill health and 4.7 million due to workplace injury.

Enforcement

In 2008/09, 1,245 offences were prosecuted by the HSE and the Office of Rail Regulation (ORR). Of these, 1,104 were completed, resulting in 860 convictions (78%). ORR accounted for 14 offences, all resulting in convictions.

A total of 329 offences were taken by local authorities, resulting in 309 convictions, a rate of 94%.

Convicted organisations received fines totalling £12.4 million, with average penalties of £14,614 per breach and £20 606 per case (figures exclude ORR).

Health and Safety Targets: Progress

Targets were set under Revitalising Health and Safety for workplace health and safety by the government and the Health and Safety Commission in 2000 to achieve specific percentage reductions in fatal and major injuries, work-related ill health incidence and working days lost by 2010, to reduce:

- the incidence rate of work-related ill health by 20% between 1999/2000 and 2009/10; the pro-rata target for 2008/09 is an 18% reduction. Despite substantial improvements since the base year, progress is probably not on track to meet this target
- the incidence rate of fatal and major injury by 10% between 1999/2000 and 2009/10; the pro-rata target for 2008/09 is a 9% reduction. Progress is on track to meet this target
- the number of working days lost per worker due to work-related injury and ill health by 30% between 2000-02 and 2009/10; the pro-rata target for 2008/09 is a 27% reduction. Progress is probably on track to meet the target.