



SAFETY UPDATE

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NEWS

SUPREME COURT RULES ON HSE ENFORCEMENT NOTICES

Post service evidence can be used to support HSE notice appeals

The Supreme Court decision in the case of *HM Inspector of Health and Safety (Appellant) v Chevron North Sea Limited (Respondent) (Scotland) [2018] UKSC 7 On appeal from [2016] CSIH 29* has now been published.

The court confirmed that appeals can take into account additional evidence which has become available after the notice was served. The ruling should increase the chances of success when businesses challenge HSE notices and thereby avoid any unjustified reputational damage.

Response to court decision

HSE accepts the judgement of the Supreme Court whilst stressing that the appeal was not about regulatory process or the way HSE inspectors enforce but rather about the test which an Employment Tribunal must apply in considering an appeal against an Enforcement Notice. A spokesperson added:

"HSE notes the ruling clearly states that no criticism of the inspector or his actions in this case can be suggested, as inspectors often have to take decisions as a matter of urgency and without the luxury of comprehensive information."

The judgement also noted the important role played by prohibition notices in improving public safety by encouraging employers to have good systems in place to demonstrate that there is no material risk. This ruling will not affect the way HSE inspectors carry out their regulatory duties."

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HM Inspector of Health and Safety (Appellant) v Chevron North Sea Limited (Respondent) (Scotland)

Judgment date

08 Feb 2018

Neutral citation number

[2018] UKSC 7

Case ID

UKSC 2016/0166

Justices

Lord Mance, Lord Sumption, Lord Reed, Lord Hodge, Lady Black

MANUAL HANDLING MUST INVOLVE 'REAL RISK'

Court provides clarity on manual handling risk assessment rules

The Court of Appeal judgment in the case Stewart (now White) v Lewisham and Greenwich NHS Trust [2017] EWCA Civ 2091 has been published.

The claimant was a community midwife who suffered a back injury whilst lifting a "day to day" item of equipment. Her lawyers argued that the requirement for her to lift and carry the equipment involved a risk of injury and that a risk assessment should have been performed under the Manual Handling Operations Regulations 1992.

The appeal judges held that the trial judge's conclusion that there was "no real risk of injury" was a factual conclusion which he was entitled to reach on the evidence and that the Court of Appeal should not interfere.

'Real risk' of injury required

The Court of Appeal upheld that it was for the claimant to prove that the manual handling operation presented a 'real risk' of injury and that only once that 'real risk' had been demonstrated would the risk assessment obligation become applicable.

Philippa Luscombe, Partner at Penningtons Manches LLP commented:

MANUAL HANDLING



"Key factors in this case were that the box was not particularly heavy and had a handle, which the claimant did not use, that the box was frequently carried by staff and that no one had previously suffered such an injury."

CASES

TUBES FELL WHILST LIFTING OVER PERSONS BELOW

Lifting operations were not carried out in safe manner

A large construction company has been fined £40,000 after a workman was injured during an “unsafe lifting operation” in December 2015.

Westminster Magistrates heard that a pack of scaffolding tubes was being lifted by crane onto a platform which was two stories above the gantry below. The crane driver could not see the load and was being assisted by a slinger-signaller working from the platform.

The load made contact with the side edge of the platform and tipped, spilling scaffolding tubes onto the gantry, and injuring a scaffolder who was working there.

Prevent lifting loads over people

Existing measures to control access to nearby areas during lifting operations were enhanced following the incident.

The national contractor pleaded guilty to breaching Section 8(1) of the Lifting Operations and Lifting Equipment Regulations 1998 and was fined £40,000 and ordered to pay costs of £8,700.

Speaking after the case HSE Inspector Stephon Baker Holmes said:



“Construction companies should think carefully about how best to prevent loads being lifted over people who may be working in areas nearby.”

In some cases it may be possible to restrict access to a particular area while lifting operations are being carried out above.”

PUBLIC RISK COSTS CONTRACTOR DEARLY

Principal Contractor failed to assess and supervise work

A Principal Contractor has been fined £40,000 after a roller shutter door fell and damaged a market stall in Walthamstow, London in August 2016.

Westminster Magistrates heard that employees were removing a roller shutter door on the boundary of a site on when the door fell onto the pavement.

HSE investigators found that there was no risk assessment for the task of removing the roller shutter door. The regulator stressed the site manager was not on site when the incident occurred meaning that “there was no supervision of the workers”.

Plan, manage and monitor safe methods of working

The investigation also found that the site issues could have been rectified by appropriately planning, managing and monitoring of the construction work.

The company was found guilty of breaching Regulation 13(1) of the Construction (Design and Management) Regulations 2015 and was fined £45,000.

After the hearing, HSE inspector Sarah Robinson commented:



"Those in control of work have a responsibility to plan, manage and monitor safe methods of working. There was no risk assessment or method statement for the task of removing this roller shutter door and it is fortunate that no one was injured."

HOMES FIRM FINED £1/2M OVER DUMPER DEATH

Developer and contractor failed to manage people and plant interface

A national housebuilder and a civil engineering sub-contractor have been fined a total of £800,000 after the death of a pedestrian struck by a reversing site dumper on a new homes project in August 2013.

Liverpool Crown Court heard how 67-year-old Henry Jones was walking across the construction site in Knotty Ash when he was struck by a reversing dumper truck and crushed beneath the rear wheels of the vehicle. The civils firm failed to provide a banksman or employees on site trained in the role and the vehicle was not fit to be used on site.

Traffic poorly managed across site

HSE investigators found that the developer made no provision to maintain separation of vehicles and pedestrians. Traffic management "across the entire site was poorly managed" and an "underlying cause" of the accident.

The Principal Contractor pleaded guilty and was fined £500,000 and ordered to pay costs of £101,000. The contractor was fined £300,000 and ordered to pay costs of £17,000.

Speaking after the hearing, HSE inspector Jacqueline Western said:



"Mr Jones' death could easily have been prevented if both the principal contractor and the sub-contractor had implemented safe systems of work and ensured that health and safety documentation was communicated and followed. Both parties failed to do this."

FALLING SCAFFOLD CLIP STRUCK PASSER-BY

Firm failed to follow risk assessment and method statement

A scaffolding contractor has been fined £160,000 after a scaffold 'clip' fell approximately 20m striking and injuring a member of the public walking below on 20th March 2017.

Westminster Magistrates Court heard that the injured person was walking along Upper Street in Islington, London when he was struck on the head by the falling clip.

He sustained numerous cuts to his head and face, a broken nose and a severely bruised skull.

The contractor from Kent pleaded guilty to breaching Section 3(1) of the Health and Safety at Work Act 1974. The company was fined £160,000 and ordered to pay costs of £7,059.08 and a victim surcharge of £170.

Risk assessment not followed

Speaking after the hearing, HSE inspector Sarah Robinson commented:

"This incident could so easily have been avoided by simply carrying out correct control measures and safe working practices. On this occasion the company did not follow their own risk assessments or method statements."

HSE guidance HSG151 Protecting the public: Your next move which provides advice, especially for those designing, planning, maintaining or conducting on-site work, to prevent risks to those off-site.

CLEANING ASBESTOS CEMENT ROOF CAUSED DANGER

High pressure jet washing spread asbestos fibres around premises

A manufacturing company and contractor have been prosecuted after failing to prevent exposure of workers and others to asbestos whilst cleaning an asbestos cement roof in September 2016.

Greater Manchester Magistrates' Court heard that the work to clean the roof was unnecessary and had not been agreed in advance with the landlord of the property.

HSE investigators found that the contractor had failed to identify the risks involved. There were insufficient measures put in place to prevent exposure to asbestos when using an industrial high-pressure jet washer to clean a fragile asbestos cement roof. Asbestos was subsequently found in debris around the premises.

Suitable contractor not selected

The main contractor failed to select a suitable contractor and did not monitor or supervise the work being carried out on the roof. The company should have employed a specialist contractor with access to specialist cleaning equipment and was fined £8000 for breaching Section 3(1) of the Health and Safety at Work etc. Act 1974.

Speaking after the hearing HSE inspector Lisa Bailey said:

The screenshot shows the top of an HSE document. At the top left is the HSE logo. To the right, it says 'Health and Safety Executive'. Below the logo is a dark grey box with 'a12' in large white text and 'asbestos essentials' in smaller white text below it. The main title of the document is 'Cleaning weathered asbestos cement (AC) roofing and cladding'. Below the title, there are sections for 'Non-licensed tasks', 'Essential information', 'What this sheet covers', 'Preparing the work area', and 'Equipment'. The 'Essential information' section contains a list of other sheets to read: 'em0 Risk assessments and plans of work', 'em1 What to do if you discover or accidentally disturb asbestos during your work', and 'em2 Information'.

"The case highlights the importance of following the advice and guidance that is freely available from HSE to prevent the risk of exposure to asbestos to members of the public and workers. If the appropriate control measures had been taken then workers and members of the public would not have been put at risk"

DAREDEVIL' SCAFFOLDER LANDS IN DOCK

Former HSE Inspector snaps dangerous working practices at 60 feet

A 28-year-old scaffolder has been sentenced after working at height without suitable and sufficient safety measures in place in June 2017.

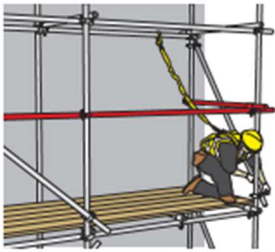
Greater Manchester Magistrates heard how the scaffolder was witnessed erecting scaffold in an unsafe manner without edge protection or a harness attached to any part of the scaffold or building.

HSE found that his employer had taken reasonable steps to avoid working unsafely at height. He was well trained, experienced, and had the correct equipment available to him. He was accompanied by a trainee scaffolder at the time and so was setting an unsafe example.

Suspended prison sentence

The scaffolder from Blackburn pleaded guilty to breaching Section 7(a) of the Health and Safety at Work etc. Act 1974 and was sentenced to 26 weeks in prison, suspended for one year and 100 hours of community service. He was also ordered to pay costs of £500.

Speaking after the hearing, HSE inspector Seve Gomez-Aspron said:



- Scalloiders' guardrails should be installed on all lifts where the lift height is greater than 950mm (i.e. progressive bricklayers' lifts 1.35- 1.5 metres).
- When it is necessary to reach below a single guardrail scalloiders must be clipped on to the highest available anchor point (e.g. when being braced or handling materials below the height of the single guardrail see Figure 12).
- When raising or lowering materials scalloiders should be clipped on or create a safe handling platform with double guardrails, including stop ends so that there is no gap greater than 470mm through which a scalloider could fall (Figure 13).
- When moving, raising or lowering platform boards, working less than 1 metre from an exposed edge or outside of guardrail fall protection, where exposed to a risk of a fall, scalloiders must be clipped on (Figure 14).
- The working platform should be fully boarded out, without gaps through which a person could fall, except when access is required to a ledge below the lift for attaching fall arrest equipment. If one board may be omitted for ease of access to the ledge as an anchor point (Figure 14).

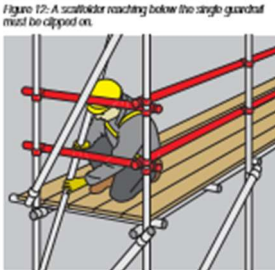


Figure 13: Safe handling bay. This illustration shows a scalloider using a safe handling bay with double guardrails (including stop ends) for raising or lowering materials, without the need to be clipped on.



Figure 14: Fully boarded platform with a maximum of one board gap (225mm) may be permitted only if required to access the ledge below the platform as an anchor point.

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"This case highlights the importance of following industry guidance in order to erect scaffolding in a safe manner, which does not cause risk to members of the public and workers using the scaffold. It also serves to remind employees that they have a duty to look after themselves."

INEXPERIENCED WORKER FELL DURING MINOR WORKS

Insufficient precautions for both edge and fall protection

A construction firm has been prosecuted after a worker was seriously injured when he fell through the fragile roof of a farm building that was due to be demolished in February 2016.

Liverpool Magistrates' Court heard how an inexperienced labourer was asked to assist in minor roof work. He stood on a fragile skylight panel and fell to the concrete floor below, sustaining head and chest injuries.

Fragile surfaces remain a 'major problem'

HSE investigators established that the roof work was not properly planned and, as a result, insufficient precautions were taken including the provision of both edge and fall protection.

The investigation also found that the company failed to provide sufficient instruction and training for the inexperienced worker.

The contractor from Warrington, pleaded guilty to breaching Regulations 4 and 9 of the Work at Height Regulations 2005 and were fined £3,000 and ordered to pay costs of £5,256.45.

HSE inspector Grayam Barnes said after the hearing:



"Work at height, and in the vicinity of fragile surfaces remains a major problem in the construction sector and must be properly controlled to avoid unnecessary injuries to workers."

FALL THROUGH ROOF ON OVER-ROOFING PROJECT

Two contractors fined for WAH 2005 and CDM 2015 offences

A specialist industrial roofing contractor and a sole trader have been prosecuted after a workman fell through a fragile rooflight whilst carrying out roofwork on an industrial estate in north London.

Westminster Magistrates' Court heard how the company and contractor were installing a new industrial roof over the existing asbestos cement roof.

During the work the workman stepped backwards onto a neighbouring unit and fell through a fragile roof light suffering serious injuries.

'Sadly' another fall through a fragile roof

HSE investigators that found the companies failed to take suitable measures to prevent persons falling whilst working at height.

The principal contractor from Essex pleaded guilty to breaching Regulation 6 (3) of the Work at Height Regulations 2005 and was fined £8,000 and ordered to pay costs of £4,278. The employer pleaded guilty to breaching Regulation 15 (2) of the Construction (Design and Management) Regulations 2015 and was fined £1,500 and ordered to pay costs of £2,000.

Speaking after the hearing HSE inspector Jack Wilby said:

"This is sadly another incident involving someone falling through a fragile roof and it is lucky that the injuries were not more severe."

"This incident highlights the importance of planning work at height and putting in place suitable control measures, including those preventing or managing access to fragile roofs."