

Hazards
c a m p a i g n

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HEALTH & SAFETY LEGAL UPDATE

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HMRC Delays

- Access to work history records kept by the HMRC is vital to a legal claim
- To correctly identify the employer/legal entity
- To confirm dates of employment
- So that correct ELI cover can be identified

HMRC

- Currently HMRC report over 12 months delay in provision of a HMRC schedule
- Records for periods of employment prior to 1997 stored on micro film
- Archaic and obsolete system means recovery is labour intensive and a difficult procedure
- HMRC report not enough machines to keep up with number of employment history requests

HMRC Delays

- These delays deny access to justice – cannot identify D and so cannot commence proceedings before limitation period
- Victim may die before the records are available to facilitate completion of investigation

HMRC Delays

- Currently applications for living claimants suffering asbestos related mesothelioma are fast tracked
- No fast track process for living claimants suffering other terminal conditions e.g. asbestos related lung cancer
- Posthumous claims on behalf of bereaved families who may be suffering financial hardship due to death of loved one deserve prioritisation
- Waiting up to 383 days

HMRC Response

- Flat refusal to explain what practical steps have been taken to resolve backlog
- HMRC says that there is a shortage of machines to read microfiche records
- Defendant insists on sight of HMRC before admit employment/ protocol period
- Fundamental dishonesty

HMRC – Campaign

- Irwin Mitchell campaigned several months with MPs, Parliamentary Treasury and Justice Select Committees
- Meeting of Treasury Select Committee 08 June 2016 Mr John Thompson, Chief Exec of HMRC said that the records were kept on microfiche up until 1970's
- This is not correct. We know that records were stored on microfiche until 1997 according to Alison Hilton deputy Director of HMRC

HMRC

- HMRC has to date not provided a list of conditions in respect of which request for records will be fast tracked
- HMRC has not explained how requests are to be prioritised
- Clear transparency around issue is required
- Urge you to bring the issue to the attention of your local MP- delays cannot continue
- Government need to adequately resource vital service

Case Law - Alfred Prater –v- British Motor Holdings Ltd (1) The Rover Company Ltd (2)

- June 2016 case heard Bristol County Court
- Panel beater at a Swindon car factory between 1958 – 1975
- Has scar tissue on the outer lining of lung
- Judge to decide whether D in breach of duty and if so whether that breach has resulted in injury complained of

Prater – the facts

- Worked as hands on panel beater
- % of panels would split or distort from heat of welding so would require repairs using asbestos
- He said he would take handfuls of asbestos out of hessian sacks – “looked like flour with bits in”
- Do this 2 to 3 times a day

Prater

- Place asbestos into a bucket of water and with a stick or screw driver mix it for 5 minutes
- When right consistency put some into a tin and from this take a quantity the size of a tennis ball and press onto the panel
- Allow to dry and then it would be filed or brushed off causing dust
- He says “you could see dust in the air”

Prater

- His head directly over the asbestos being mixed
- Others doing the same work nearby
- He could see dust in the air “like working in a haze”
- Cleaning off dust from work benches and floor 2 to 3 times a day
- No shower facilities
- No appropriate face mask
- Wore the same overalls all week

Prater

- No extraction and No warnings
- Judge accepted C evidence and said it was without exaggeration or emotion
- Factories Act 1937 and 1961 applied. S.47 (1) of the former and S.63(1) of the latter
- They state that – in every factory where process gives off dust or fume as to be likely to be injurious or offensive .. or any substantial quantity of dust ..all practicable measures to be taken to protect persons employed against inhalation

Prater

- D argued dust was not ‘substantial dust’
- D said in absence of quantitative measurements the interpretation of what is substantial quantity was subjective and prone to bias
- D said the levels were below ‘actionable’ levels

Judgment

- On issues of breach the Judge ruled in favour of C
- Said that was satisfied that the quantity of dust given off was substantial
- Accepted C evidence that dust was visible in the air

Was it Diffuse Pleural Thickening?

- D said not – medically examined C and said lung function tests inconsistent with DPT or asthma
- The area of folded lung that the C had was insufficient to cause a material loss of lung function or disability
- D diagnosed hyperventilation syndrome (HVS) (breathing in more air than needed)

Was it DPT?

- C re examined by his medical expert who refuted suggestion that this was HVS
- In cross examination D expert accepted that DPT can be caused by moderate to high levels of asbestos
- When asked why six consultants had not diagnosed C with HVS D expert said it was commonly missed

Was this DPT?

- Judge said on a balance of probabilities – yes
- Diagnosis was consistent with the asbestos to which C was exposed
- Current respiratory disability is 10% due to DPT and will increase by 5% over next 10 years
- Awarded provisional damages of £27,500

Smith –v- Portswood House Ltd

High Court April 2016

- Deceased was a wood working machinist in joinery shop 1973 – 1977
- Alleged exposure to asbestos dust
- Developed mesothelioma in 2013 and sadly died in 2015
- Alleged exposure occurred when deceased made fire doors containing asbestos
- He cut the doors on a wall saw connected to dust extraction system

Portswood – issues

- Court held that the relevant standard at the time was the Factories Inspectorate Data Note (TDN13)
- TDN13 sets limits for asbestos dust concentrations of 2 fibres/ml for a 4 hour time weighted average (TWA) concentration and 12 f/ml for a 10 minute TWA

Portswood – issues

- Dispute as to whether the TDN13 limit had been exceeded and whether the amount of dust given off was ‘substantial’
- D called 3 witnesses who said asbestos not used in manufacture of any item
- Court found that on occasions D did make fire doors containing asbestos and cut these with a wall saw

Portswood – issues

- Court found that the extraction system would have collected the dust
- And kept the dust levels below the concentrations specified in TDN13
- Therefore no breach of common law duty of care and no breach of s.63 Factories Act

Conclusion

- Hammer blow for Claimants
- Judge said that as regards the word “substantial” this meant more than merely “not negligible”
- There must be lots of dust and it must be substantial when given off and not merely an accumulation over a period

ANY QUESTIONS?

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