



Personal protective equipment recent case law

This briefing looks at a recent Court of Appeal decision on a personal protective equipment claim made against a council. The Court of Appeal has laid down guidance on complying with the Personal Protective Equipment Regulations 1992 which has implications for other councils. It is provided to local authority chief executives, council leaders and all APSE contacts.

Key issues

- Court ruling on suitability of PPE provided by a local authority
- Details of the legal case
- Summary of regulations and Court of Appeal guidance
- Implications to other local authorities

1. Introduction

In 2006, Mr Threlfall, a street scene operative at Hull City Council who was a member of a team working on the gardens of unoccupied council houses sustained a serious injury to his left hand when a sharp object within a black plastic bag of rubbish penetrated his glove and severed an artery and tendon. The gloves were standard issue, provided to all street scene operatives and were not cut resistant. The council had provided the gloves in an attempt to comply with the Personal Protective Equipment Regulations 1992 and had carried out a written risk assessment in relation to strimming and garden clearance. However, the assessment dealt only with the general risks of carrying out the garden work and did not consider the risk of laceration from sharp objects or the need for suitable protective gloves. The council said that the risk of laceration was very low and the gloves provided were adequate to meet that risk.

Mr Threlfall alleged that the gloves were not suitable and took the case to court. This briefing paper looks at the legal case, the regulations and the implications to other councils of the guidance lay down by the Court of Appeal in October 2010 as part of this case. This paper is not intended to be (and should not be used as) legal guidance.

2. The legal case

The claim failed at the trial and the first appeal. The trial judge rejected the claim as Mr Threlfall failed to look inside the bags before lifting them, agreed with the council that the risk of injury was 'very low indeed' and held that there was no duty to provide highly protective gloves (taking into account that these gloves had been used for many years without incident). The appeal judge upheld the decision, finding that the standard gloves were appropriate and 'standard is not an absolute duty to prevent injury'.

However, in October 2010, the Court of Appeal (CA) disagreed on the grounds that the gloves were not suitable where there was a risk of laceration. The CA argued that effectiveness is at the heart of suitability; *"if equipment is effective, it will be suitable...but if it is not effective it could not possibly be suitable"*. Therefore, equipment will not be suitable unless it is effective to prevent or adequately control the risk, so far as is practicable. It should either prevent injury from happening at all, or protect the worker from significant injury.

The CA found that the standard issue gloves were not effective because the supplier of the gloves had described them as being suitable for minimal risks only and the court found that the risk of laceration was more serious than that. They argued that the risk assessment should have dealt specifically with the risks of laceration and the type of gloves required in light of that risk. Therefore, the council was under a duty to provide suitable protective equipment in the form of gloves.

3. The regulations and Court of Appeal guidance

The regulations from the [Personal Protective Equipment Regulations 1992](#) are as follows:

Personal Protective Equipment (PPE) is defined as *'all equipment (including clothing affording protection against the weather) which is intended to be worn or held by a person at work and which protects him against one or more risks to his health or safety'*, e.g. safety helmets, gloves, eye protection, high-visibility clothing, safety footwear and safety harnesses.

Regulation 4(1) requires employers to ensure that suitable personal protective equipment is provided to his employees who may be exposed to a risk to their health or safety while at work except where and to the extent that such risk has been adequately controlled by other means which are equally or more effective.

Regulation 4(3) states that PPE shall not be suitable unless:

- it is appropriate for the risk or risks involved and the conditions at the place where exposure to the risk may occur;
- it takes account of ergonomic requirements and the state of health of the person or persons who may wear it;
- it is capable of fitting the wearer correctly, if necessary, after adjustments within the range for which it is designed;
- so far as is practicable, it is effective to prevent or adequately control the risk or risks involved without increasing overall risk;
- it complies with any enactment (whether in an Act or instrument) which implements in Great Britain any provision on design or manufacture with respect to health or safety in any relevant Community directive listed in Schedule 1 which is applicable to that item of personal protective equipment.

Regulation 6 imposes an obligation on an employer to carry out an assessment to determine whether the personal protective equipment he intends will be provided is suitable.

The Court of Appeal in this case found that Regulations 4 and 6 of the PPE Regulations 1992 should be considered together. Regulation 4 sets out the requirement to provide PPE and includes guidance on what is suitable. At the heart of suitability is effectiveness at preventing or adequately controlling risk of injury. Regulation 6 requires the employer to carry out a risk assessment to determine whether the proposed PPE is suitable.

The suitability of any protective equipment must be judged at the time when the equipment is provided and although regulation 6 is important as a guide as to the steps to take in deciding whether the equipment is suitable, it does not define suitability. To do this, the employer needs to look to regulation 4(3).

4. APSE comment

Therefore, this guidance provided by the Court of Appeal decision could be interpreted as no matter what PPE is provided, it will be deemed insufficient if a significant injury occurs (this should have either been prevented or reduced). This will, for employers, make claims from PPE provision more difficult to defend and may also require a review of current risk assessments (to consider if the PPE is suitable against each sub-paragraph of regulation 4(3) above). The assessment may call for a need to change PPE provided to employees. This could be costly for councils to fully implement at a time when budgets are reducing by around 30%. APSE would urge its membership to consider this new guidance in both ensuring that councils aren't breaching the regulations and in ensuring the safety of employees.

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