

# Health and Safety Bulletin

## Vicarious liability

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### Useful contacts:

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In technical terms, vicarious liability is a *legal doctrine assigning liability for an injury or loss to an entity that did not cause the injury, but who had a legal relationship to the person who did act negligently(!)*

This has implications in terms of health and safety, because some harmful incidents that occur as a result of a work activity, are caused by the negligent acts of employees – and, as a result of vicarious liability, employers are responsible for the negligent acts of their employees as long as they are acting within the scope of their employment. For example, if an employee driving a company vehicle drives negligently during a work-related journey and causes an accident, any person injured could put in a claim against the individual who was driving or against their employer.

The main cause of argument within the definition is that the negligent act is within the “scope of employment” - and not during what is termed “a frolic of their own” and case law is continually refining our understanding of how vicarious liability is applied.

### Recent case law

- *Cox v Ministry of Justice* [2016] - the claimant was a catering manager in a prison and her duties involved all catering matters at the prison including overseeing the kitchen, where about 20 prisoners worked under her supervision. In 2007, whilst working in the kitchen with the prisoners and a catering assistant, she instructed four of the prisoners to carry supplies upstairs to the kitchen stores. One of the prisoners dropped a sack of rice and whilst she was bending down to deal with it, another prisoner tripped carrying two further sacks and one of the sacks landed on her back causing her injury. It was accepted that the prisoner had been negligent and the claimant contended that, even though the prisoner was not technically an employee, the prison assigned the work to the prisoner and therefore the prison service was vicariously liable. The case was heard in the County Court, the Appeal Court and then the Supreme Court – the claimant won
- *Shelbourne v Cancer Research UK (CRUK)* [2019] – the claimant attended a Christmas party held at CRUK's offices organised by a group of volunteers within CRUK. CRUK hired two door staff for the party, primarily to stop employees and guests accessing the office's laboratories. A visiting scientist (not employed by CRUK), who worked at the offices attended the party and chose to lift several members of staff up over the course of the evening. He attempted to pick up Mrs Shelbourne, slipped, and dropped her resulting in Mrs Shelbourne sustaining a serious back injury. Mrs Shelbourne sued CRUK for negligence and she suggested that CRUK were likely to benefit from the party in terms of morale. She also suggested that the scientist was acting within the field of activities by mixing with others at the party under the influence of alcohol. The Court disagreed with the Claimant in that CRUK had a limited role with the organisation of the party and that the scientist's relationship with CRUK was limited to his research

### Conclusion

Unlike in a criminal law defence, where the employer can demonstrate that all reasonably foreseeable risks were identified and all reasonably practicable controls put in place, vicarious liability is strict – the organisation is liable for any act of their employees carried out in the course of their employment.

In order to reduce the risk of employee negligence and the costs that may result from them, employers need to consider how employee behaviour could lead to a negligent act and what measures can be implemented to control this behaviour – this could be included in the risk assessment process.

## Recently issued health and safety information:

- HSG248: Asbestos: The Analysts' Guide  
<https://www.hse.gov.uk/pubns/books/hsg248.htm>
- HSE noise exposure calculator updated  
<https://www.hse.gov.uk/noise/calculator.htm>
- HSE Annual Science review 2021  
<https://www.hse.gov.uk/research/review.htm>
- Ansell guide for PPE for electrical risks  
<https://www.ansell.com/gb/en/industrial/safety-briefing/emea/electrical-gloves>
- Construction site evacuation safety  
<https://iosh.com/resources-and-research/resources/construction-site-evacuation-safety/>
- Keeping workers safe on towers: a manager's responsibilities (webinar)  
<https://pasma.co.uk/keeping-workers-safe-on-towers-a-managers-responsibilities/>

## Free COVID-19 training

Opinions on whether we are managing COVID risks effectively seem to change weekly or even daily, but there is now free training developed by the World Health Organisation, supported by IOSH available on the OpenWHO online learning platform at <https://openwho.org/courses/COVID-19-and-work>.

The course includes modules on infection prevention and control at the workplace, how to respond to an outbreak and carrying out a workplace COVID-19 risk assessment – it takes about two hours to complete and if you complete the graded assignments, you can obtain a record of achievement at the end of the course.

## Case Law update

*This bulletin's main article on vicarious liability has focused on how whether an employee is acting within the scope of their employment is important. This case law update explains the background to a criminal case where a fatality that occurred at a workplace was ruled as "not at work"*

This case arose after a 16-year-old apprentice fell through a fragile roof.

The incident occurred during a lunchbreak. The apprentice had been playing football in the yard with other apprentices and employees. When the ball was kicked on to the roof, he pulled a scaffold tower used in the factory to the front of the building and used it to access the roof so he could retrieve the ball. Unfortunately, the roof was fragile and he fell 5.3m through a skylight, suffering fatal injuries.

The employer was prosecuted under section 2 of the Health and

Safety at Work etc. Act, 1974 (HASWA), for failing to control the risks to health, safety and welfare at work and Regulation 8 of the Management of Health and Safety at Work Regulations 1999 (MHSWR) for failing to prevent employees from accessing dangerous areas unless they have received suitable training.

The employer successfully argued that s2 HASWA did not apply because the apprentice was not at work, even though they had a rule prohibiting the playing of football on the site which was never enforced. The HSE admitted they were disappointed with this outcome.

The company had no signs warning the roof was fragile and had allowed the platform that was used to access the roof in an area where anyone could access it. The were found guilty under MHSWR and fined **£7,000** with **£17,376** costs.

## About Clwyd Associates...

We are a management consultancy, focusing on health and safety, and SAP based in the Midlands.

We employ consultants with at least 15 years practical experience backed up by recognised professional and academic qualifications - ensuring our clients receive first class service.

We have been supporting many of our clients with their COVID-19 risk assessments and briefing the findings to their employees, so please contact us if you need help.

Clwyd Associates Ltd  
[www.clwydassociates.co.uk](http://www.clwydassociates.co.uk)



## Life Shavers campaign

New Zealand may be many miles away, but they appear to have similar problems to the UK in convincing workers that facial hair significantly reduces the protection offered by close fitting face masks.

To get the message across they have launched a life shavers campaign – it includes a number of posters that are free to download and a video.

The website also has a series of comprehensive

FAQs – covering the challenges workers raise.

The information is all free to download at <https://www.worksafe.govt.nz/topic-and-industry/work-related-health/life-shavers>



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