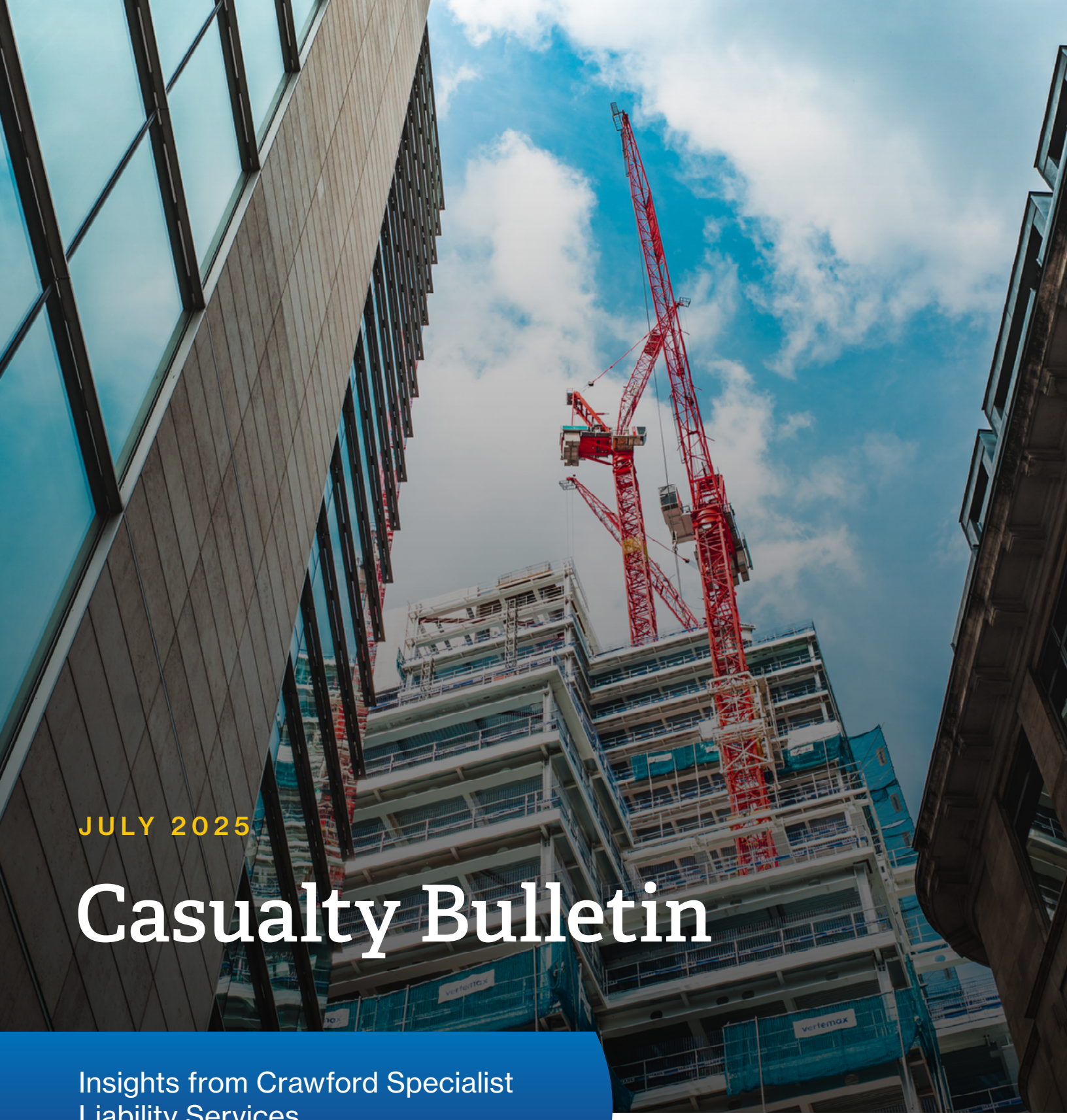

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Casualty Bulletin

Insights from Crawford Specialist Liability Services

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Introduction

In this edition of our Casualty Bulletin, we highlight three recent cases, two of which are in English jurisdiction, the other being a Scottish appeal case.

In the first case, the court had to consider whether a construction worker's actions had contributed towards a serious head injury when he fell from an unprotected mezzanine platform, despite him having no recollection of the accident.

We also report on a case where the Employers Liability (Defective Equipment) Act 1969 was discussed and the meaning of equipment under that Act.

Finally, in a judgment which will be of interest to commercial and private landlords, the Sheriff Appeal Court considered a landlord's potential liability when a child fell into a bath containing extremely hot water.

As always, we hope the selected cases are of interest and would welcome any feedback.

LEE V KRAUD AND MICHAEL FLETCHER/ JASON WRIGHT (T/A SHEERLINE PLASTERING) (2025)

Contributory Negligence, Fall from Height

The claimant, Charles Lee, was a self-employed plasterer who had worked in the industry for over 17 years.

The first defendant, Mr Kraud, was acting as project manager on his own new build housing property and had engaged the second defendants (who traded as Sheerline Plastering) to plasterboard and skim the interior of the property. Mr Lee had been subcontracted by Sheerline and was due to start on the day following the incident.

However on his way home from another job, Mr Lee called into the property to check that materials had been delivered in readiness for the next day. He helped a labourer to move some plasterboards from ground level up to a mezzanine floor. Mr Lee was then left alone and started moving the boards around the mezzanine, when he fell around 2.5 meters from an unguarded edge, sustaining serious injuries including a traumatic brain injury and fractures to the face, nose and ribs.

Mr Fletcher of Sheerline was prosecuted by the HSE for various breaches of the Work at Height Regulations 2005. He pleaded guilty due to the lack of any guarding or crash decks around the mezzanine level and was fined £2000. Primary liability was admitted by all defendants shortly before the first trial at Chelmsford County Court.

Damages were awarded but there was a one third reduction for contributory negligence on the basis that Mr Lee had failed to exercise reasonable care for his own safety. It should have been obvious that there was no guarding on the edge of the mezzanine and there were no crash mats below the unprotected edge. Mobile scaffold towers had been in place earlier in the project, but they have been removed so that the underfloor heating could be installed. The accident occurred before the mobile towers could be reinstated.

Mr Lee appealed the finding of contributory negligence, arguing that he had no recollection of the accident due to retrograde amnesia and the first instance decision was flawed as the Judge could not say that he had acted carelessly if the precise circumstances of the accident were unknown. Mr Lee was working alone, hence there were no witnesses.

The burden rests with the defendant to prove contributory negligence. However, on the available evidence the Judge had been entitled to conclude that Mr Lee had failed to exercise reasonable care. Although the precise details of how the fall occurred were unknown, the Judge was entitled to draw a reasonable inference that Mr Lee must have failed to exercise reasonable care for his safety. There was an obvious and foreseeable risk of falling, even if the precise mechanism of Mr Lee's fall could not be determined.

The appeal was therefore dismissed and damages were reduced by one third.

Comment

It is for the defendant to establish that the claimant has acted without reasonable care for their own safety, but this case does show that courts are willing to make reductions in damages for contributory negligence where the danger was obvious. We should not therefore assume that arguments of contributory negligence are futile, even where a claimant has suffered serious injuries and the defendant is clearly at fault.

CHUHAN V DECHERT LLP (2025) (BRISTOL COUNTY COURT)

Definition of Work Equipment under the Employers Liability (Defective Equipment) Act 1969

The claimant was employed as an Associate Solicitor by the defendant, an American law firm. When she pulled a door handle to leave the staff cafe, the handle detached and struck her head.

A serious head/brain injury was alleged and the claim for loss of earnings was in excess of £1 million.

It was alleged that the door and handle were "equipment" under the Employers Liability (Defective Equipment) Act 1969 and as such the employer had a strict liability as the accident occurred due to a defect which was due to fault by a third party.

Section 1 of The Act states (emphasis added):-

> *"...where*
>
> *(a)an employee suffers personal injury in the course of his employment in consequence of a defect in* ***equipment provided by his employer for the purposes of the employer's business;*** *and*
>
> *(b)the defect is attributable wholly or partly to the fault of a third party (whether identified or not),*
>
> ***the injury shall be deemed to be also attributable to negligence on the part of the employer*** *(whether or not he is liable in respect of the injury apart from this subsection),"*

Essentially, an employer is liable under the Act if an employee suffers injury due to work equipment which is defective and the defect is due to fault by a third party (for example due to a manufacturing or maintenance error), even if the employer could not have done anything to prevent the incident.

The claimant accepted that there was no negligence on the part of the employer. The door was installed around 13 years before the incident and was used hundreds of times per day. It was regularly inspected by the maintenance team and no issues had been identified prior to the incident.

The Act states, *"Equipment includes any plant and machinery, vehicle, aircraft and clothing"* and the Court had to determine whether the handle and door could be construed as work equipment.

It was held that the door was not work equipment within the definition of the Act. Although the definition refers to plant and machinery, vehicles, aircraft and clothing, this is not an exhaustive or exclusive list. However, the judgment states there were *"intrinsic difficulties with describing a plain and ordinary door used in an office building as "equipment"*.

Furthermore, the equipment had to be provided for the purposes of the employer's business, namely the provision of legal services. It could not be said that an ordinary door was equipment provided to the claimant so that she could carry out legal services.

The Court also considered health and safety regulations to determine if the door was part of the fabric of the building and referenced that Regulation 18 of the Workplace (Health Safety and Welfare) Regulations 1992 imposes specific duties on an employer to maintain doors and gates.

These regulations provided further evidence that a door should be considered part of the workplace and not work equipment, hence the Provision and Use of Work Equipment Regulations 1998 could not apply. The claim was therefore dismissed and the employer was not strictly liable under the Act.

Although the claim failed on first argument, the judgment also considered whether the handle became detached due to fault by a third party. The claimant argued that it had been negligently installed, or negligently maintained at some point in the past, as the incorrect screws were used. Engineering experts were appointed by both claimant and defendant and on this occasion the Judge accepted that the defendant's argument was more persuasive.

Therefore, even if he was wrong (for example on appeal) and the door should be considered as work equipment, it had not failed due to fault by any party and the claim would therefore have failed on this second limb.

Comment

Following the implementation of Section 69 of the Enterprise and Regulatory Reform Act 2013, a claimant can no longer rely on a breach of statutory duty under the Health and Safety at Work etc Act 1974 and subsequent regulations. The claimant must show that the employer has been negligent, whereas previously they only had to demonstrate that the work equipment was defective despite there being no negligence or fault on the part of the employer.

Regulation 5 of the Provision and Use of Work Equipment Regulations 1998 states *"Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair."* The employer is in breach of Regulation 5 if the work equipment is defective, even if they have taken all reasonable precautions, such as carrying out regular maintenance and inspections.

For example, in ***Stark v Post Office (2000)***, a postman was injured when the front brake of his delivery bicycle failed. Although the Post Office regularly maintained the bike and the brake failed due to a latent defect, they were nevertheless liable as there was breach of Regulation 5 and the claim therefore succeeded.

That is no longer the position and it is increasingly common for a claimant to allege a breach of the Employers Liability (Defective Equipment) Act 1969 where the injury occurred due to defective equipment. However, the Act does not impose absolute liability on the employer – the claimant must still demonstrate that the equipment was defective due to fault on the part of a third party. There will be no liability on the employer if the equipment has failed due to general wear and tear, which could not have been prevented by maintenance or inspection.

NM V TO (2025) SHERRIFF APPEAL COURT, SCOTLAND

Landlord's Duty to Tenant, Secondary Victim

The pursuer (claimant) who was anonymized as NM in the proceedings, appealed against the first instance decision, where the case against her landlord (TO) had been dismissed.

NM was a tenant at TO's residential property between March 2017 and November 2018. On 12 April 2018, NM returned home from a hospital appointment where her newly born daughter had been receiving treatment. She left her daughter sleeping downstairs and made her way up to the first-floor bathroom where she filled the bath with hot water. Her daughter started crying and in NM therefore went downstairs, leaving the bath unattended.

NM also had two boys aged 4 and 6. They had been left alone upstairs whilst she attended to her daughter. NM said that she heard a commotion, followed by screaming. She saw them at the top of the stairs, both soaking wet. The boys had been fighting and one had fallen into the bath, which was described as "scalding" in the judgment. NM brought a claim, alleging that she was a "secondary victim" who had suffered psychiatric injury as a result of seeing her son injured after falling into the bath.

The first instance decision dismissed NM's claim. Although she had made several complaints about the heating system during her short tenancy, there was nothing to indicate that she was concerned about the temperature of the water. The property had been built in 1995 and as it had not been refurbished, the Building (Scotland) Regulations 2004 did not apply.

Consequently, the judge found that the temperature of the water, which was 55°C, was standard for a property of that age and did not constitute a danger. The property was not in a state of disrepair.

Even if the water temperature did constitute a hazard, TO as landlord did not have any actual or deemed knowledge of the "defect" and could not be liable under the Occupiers Liability (Scotland) Act 1960.

The Sheriff held that the cause of the accident was NM's failure to supervise the children and warn them of the danger, which was a *novus actus interviens,* i.e. a new and intervening act which broke the chain of causation.

Furthermore, the Sheriff stated that even if liability and causation have been established, a 75% reduction for contributory negligence would have been applied to reflect NM's actions.

Dismissing NM's appeal, the Sherriff Appeal Court held that the first instance decision was factually correct and could not be interfered with. Hot water had to be stored at 60°C to prevent Legionella and in buildings constructed prior to 2004, a discharging water temperature of 55°C was entirely normal.

Any psychological injury resulted from NM filling the bath with very hot water then leaving two young children unsupervised. These factors and not solely the lack of supervision, created a new and intervening event which broke the chain of causation even if any have established that the property was in a state of disrepair and the landlord was aware of the defect.

Comment

In claims for psychological injury, claimants are either primary or secondary victims. A primary victim is one who has suffered physical injury or, if they have not suffered any actual physical injury, had a reasonable belief that they were at risk of serious harm.

A secondary victim is an individual who suffers psychological injury without any direct physical injury, as result of either witnessing an incident where another person is either injured or there was a genuine and significant risk of that person suffering serious injury.

A primary victim can recover damages for proven psychiatric injury, but limitations are placed on who can recover damages as a secondary victim. As a general rule, a secondary victim can only recover damages if they have "close ties of love and affection" with the primary victim and witnessed the incident or the immediate aftermath of the incident, as per the well-known case of *Alcock v Chief Constable of South Yorkshire Police [1992]* following the Hillsborough tragedy.

In the above case, NM was a secondary victim but as she had close ties of love and affection with the child who suffered the injury, she could potentially recover damages.

However in what seems to be a commonsense judgment, the Sheriff Court and subsequently the Sheriff Appeal Court, found that NM was to blame for her psychiatric injury as it resulted from her actions which lead to witnessing the aftermath of her son falling into the bath.

About the author

As Technical Director, Craig has overall responsibility for the technical output at Crawford Specialist Liability Services in the UK.

He has worked in the insurance industry for over 35 years and specialises in personal injury claims for 30 years. Originally from Newcastle upon Tyne, he worked in London, Dublin and is now based in Manchester.

His area of expertise is in high-value and complex personal injury claims including catastrophic injuries and fatal incidents as well as bullying, stress and harassment cases. He has experience in claims arising from manufacturing, construction, social housing, sports/leisure and travel industries including accidents abroad. Craig also handles claims in Northern Ireland and Scottish jurisdictions.

Craig delivers training and technical sessions both within Crawford and externally, as well as issuing technical bulletins covering recent case law and court judgments.

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