

5 EASY WAYS TO LOSE A HAVS CASE

Jayne Adams

The Ropewalk Chambers

Nottingham

Legislative Framework

- The basic outline historically :-
- DD43
- BS 6842
- HS (G) 88
- The Manual Handling Regulations 1992
- Workplace (Health, Safety and Welfare) Regulations 1992

- Armstrong v British Coal Corporation
(1998) CA (Civ)
- Allen v British Rail Engineering Ltd QBD
(2001) ICR 942
- Brown v CORUS UK Ltd [2004] EWCA 374

Basic Rules Historically

- Below 1 m/s² A8 – acceptable
- Above 2.8 m/s² A8 - liable
- Between 1 m/s² and 2.8 m/s²
 - Instruction
 - Warning
 - Health surveillance

Now

- Control of Vibration at Work Regulations 2005
- Management of Health and Safety at Work Regulations 1999
- Daily Exposure Limit Value $5 \text{ m/s}^2 \text{ A8}$
- Daily Exposure Action Value $2.5 \text{ m/s}^2 \text{ A8}$
- BUT must in any event be as low as reasonably practicable

- In reality, even with the new Regulations, the steps that require to be taken and the potential for downfall are the same

So, where does it go wrong?

Generally it can be dealt with in 5 headings

Lack of policy

Lack of documentation

Lack of education

Lack of communication

Lack of implementation

Lack of Policy

- If you use vibrating tools, you must have a policy for dealing with risk - even if ultimately the decision is that there is no risk
- Once a policy is developed, utilise it – and make sure the work force know what it is

Subsidiary point to that

- If we warn the workforce we will encourage claims
- If there is a risk, there is no alternative to instruction, warning and health surveillance

Lack of Documentation

- The “ I know we had a survey carried out in 1994 which was OK but we cannot find it now” argument
- Similarly risk assessments
- It does not matter what you have done or considered doing if you have not documented it. You cannot win!

Lack of Education

- This applies not only to the workforce but particularly to the foremen, shift supervisors, production managers and first aid
- Everyone has to know what the policy is and appreciate what they each have to do to comply with it.

Lack of Communication

- The big problem
- Health surveillance
 - ensure it happens regularly
 - Follow the recommendations
 - But don't be afraid to challenge or question it, whilst still doing as recommended

- Communicating Occupational Health findings to the foreman
- Communicating reports to the foreman to Occupational Health
- More cases are lost by symptoms being reported and there being a delay before any action is taken than anything other cause

Lack of Implementation

- The “ We have everything in place but we were short staffed and had production targets” argument
- If the policy is in place, it must be followed at all times
- More importantly, the foreman or shift supervisor must know it has to be followed at all times

- It does not matter how good you normally are, or how carefully you have planned, if it is not actually carried out on the ground – again you will lose

Final Plea

- When litigation arises, please make sure there is someone who understands both the factory floor process, the pressures of the job and the policy in place to give evidence
- Otherwise we risk the lawyers refrain
“Call a foreman, lose a case”