

Company Director fined by the Royal Court for health and safety failings

Introduction

John Paul Horgan, the sole Director of Unit 6 Joinery Ltd (Unit 6), was fined £10,000 and ordered to pay costs of £2,500 by the Royal Court on 16 February 2018 after both he, and the Company, pleaded guilty to offences under the Health and Safety at Work (Jersey) Law 1989 (HSW Law).

Mr Horgan was individually prosecuted and fined for a breach of Article 23 of the HSW Law on the basis that the offences committed by the Company were done so with his consent or connivance of, or were attributable to, his neglect in his role as Company Director. The Court was minded, on this occasion, not to impose a fine on the Company, which had been dissolved by the time of the sentencing.

This case reflects the Court's increasing scrutiny of the role Company Directors play in actively managing health and safety, and the need for all Directors and Senior Managers to understand and acknowledge the extent of their responsibilities under the HSW Law.

Background

The prosecution arose from an accident to an 18 year old apprentice joiner employed by Unit 6, who sustained serious injuries when he fell approximately 3 metres through an open stairwell onto a concrete floor below whilst working on a construction site at 'Woodville', La Rue de la Hague, St Peter.

Although Unit 6 was predominantly a joinery and woodworking business, employees were intermittently required to work on a construction project being carried out at Woodville, Mr Horgan's private residence. The construction project was being carried out under the name of a separate, non-employing, company owned by Mr Horgan, and involved the renovation and extension of the main house at Woodville as well as the demolition of a separate greenhouse, adjacent store and the construction of two new dwellings with associated parking and landscaping.

The accident

On the morning of the accident, the first day any work had been carried out on site for several weeks, Mr Horgan instructed the nominated foreman, an employee of Unit 6, to arrange for a new access to be provided to the first floor of one of the new dwellings, and to install insulation to the internal first floor ceiling rafters. Two other employees of Unit 6 were instructed to assist, before Mr Horgan left site to go to the joinery workshop.

During the course of the morning several sheets of plywood which had been used to cover a stairwell opening at first floor were removed, whilst insulation was being installed to the ceilings within the same area. No steps were taken to prevent people falling over the edge of the floor and down the open stairwell opening. Instead there was simply a reliance on employees being given verbal warnings to 'stay away from the open stairwell'. Unfortunately, the complete inadequacy of this approach to managing the risk of a fall from height was realised when one of the operatives inadvertently put his foot over the open edge of the floor and into the stairwell void, causing him to overbalance and fall to the ground below.



View from first floor



View looking up from the ground floor

Findings of the investigation

The investigation identified a number of matters which were considered contributory factors to the accident occurring:

- a fundamental failure to assess and control the risks associated with construction activities, which fell outside the company's core business, despite previous advice from the Inspectorate on the need to do so
- an associated failure to provide suitable training, instruction and supervision to employees carrying out high risk construction activities
- a failure to properly assess, manage and control the well-recognised risks of work at height
- a failure to assess and address the additional support and level of supervision typically required for a young and inexperienced person, particularly within the high risk construction environment

The prosecution

The Company pleaded guilty to a breach of Article 3 of the HSW Law for failing to ensure, so far as was reasonably practicable, the health and safety of employees, in particular:

- a failure to carry out a suitable risk assessment of the work being carried out
- a failure to ensure a safe system of work
- a failure to provide suitable information, instruction, training and supervision to employees

Mr Horgan pleaded guilty to a breach of Article 23 of the HSW Law Article, which states that where an offence is committed by a body corporate (ie the company in this case) and it is committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other similar officer, that person as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

In broad terms, this means that where it can be shown that a company has committed an offence under the HSW Law, and a director or other senior officer

- could reasonably have taken steps to avoid the offence within their role, responsibilities and scope of functions, and/or
- was personally responsible for matters relating to the offence (eg had personally instructed, sanctioned or encouraged activities which significantly contributed to the offence), and/or
- failed to heed previous advice/ warnings

consideration is likely to be given to the obligations imposed by Article 23 as part of the investigation, and as in this case, that director or senior officer being prosecuted and fined as an individual.