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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**11/03/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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STEPHEN FENWICK

Plaintiff

and

MARK LYONS t/a LYONS TRANSPORT

Defendant

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Mr Brian Fee KC with Mr Martin McDonnell (instructed by Patrick Fahy & Co, Solicitors) for the Plaintiff
Mr Plunkett Nugent (instructed by Conor Sally & Co, Solicitors) for the Defendant

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ROONEY J

Introduction

[1] The plaintiff was born on 18 June 1975. He is now aged 48 years old.

[2] The plaintiff has a valid Heavy Goods Vehicle (HGV) licence. The plaintiff claims that the defendant operates a transport and haulage business. From 2015, the plaintiff alleges that the defendant employed him on a casual basis, usually between 1-3 days, to transport trailered loads using a tractor unit (hereinafter a "truck") supplied to him by the defendant. The arrangement was that the defendant would contact the plaintiff to do certain jobs. At all times, the plaintiff would take instructions from the defendant. On completion of the job, the defendant would pay the plaintiff either by cheque or in cash.

[3] On 19 March 2018, the defendant contacted the plaintiff by text and asked him whether he would be able to take a "load from Belfast to Enniskillen [and] then a load back to [the] yard." The plaintiff replied to the text indicating that he was available. The defendant sent a further text requesting the plaintiff to arrive at 8:30am and that he would provide further details.

[4] The initial instructions given by the defendant to the plaintiff were that he was to collect a load of maize and deliver it to a specified address in Enniskillen. Then on 20 March 2018 the plaintiff claims that the defendant told him to collect a truck from the defendant's yard and then drive to the premises of TJ Booth & Sons outside Ballygawley to collect a trailer. The plaintiff was further instructed to take the trailer to Carlingford docks and arrange for the trailer to be loaded with grain. Thereafter, the plaintiff was to bring the trailer back to TJ Booth & Sons and then return the truck to the defendant's premises.

[5] An exchange of texts on 20 March 2018 between the plaintiff and the defendant confirmed that the grain was for TJ Booth & Sons together with details of the customer's full address including postcode.

[6] On 21 March 2018, the plaintiff arrived at the defendant's business in Omagh and picked up the truck. Significantly, the plaintiff states that at no time prior to 21 March 2018 or when he collected the truck, was he informed by the defendant that the truck was owned by Toptranz European Ltd (hereinafter "Toptranz") and that it was this company which directly employed the plaintiff to carry out the tasks previously communicated to him by the defendant. As far as the plaintiff was concerned, similar to previous occasions, he was employed by the defendant, received his instructions from the defendant and expected to be paid by the defendant.

[7] On 21 March 2018, the plaintiff collected the truck from the defendant's business premises. The plaintiff's evidence was that there were a number of trucks at the said premises together with workmen whom he believed were employed by the defendant. The plaintiff then drove to TJ Booth's premises and connected a trailer to the truck in compliance with the defendant's instructions.

[8] On arrival at Carlingford docks, the plaintiff proceeded to the weighbridge. The court was provided with the weighbridge docket, which specified the date (21.3.2018), the registration number of the tractor (B9822 BA), identification of the trailer (LT110); the customer (ADM Arkady Ltd): destination (TJ Booth); product (distillers mazury); haulier (Lyons Haulage).

[9] At the docks, the plaintiff parked the truck and went to remove the tarpaulin from the top of the trailer so as to facilitate the loading of the grain. Normally, the tarpaulin is rolled back from the top of the trailer using a handle fixed to the tarpaulin mechanism. However, at the docks the plaintiff discovered that the handle for the tarpaulin mechanism was missing and the rollover bar for holding the tarpaulin in place was damaged. The plaintiff attempted to devise another method to wind back the tarpaulin. Initially, he undid the ratchet straps at the side of the trailer and attempted to physically pull the tarpaulin to one side. This did not work. The plaintiff then got into the interior of the trailer itself and attempted to push back the tarpaulin from the inside. Again, this did not work as he was unable to reach the

tarpaulin. The plaintiff then got out of the interior and surveyed the exterior of the trailer. Three ladders were fixed to the exterior of the trailer and the plaintiff climbed up the central or middle ladder. In his efforts to forcefully pull, push and manually handle the tarpaulin, he lost his balance and fell approximately seven feet to the ground below.

[10] Following his fall, the plaintiff suffered a comminuted and markedly displaced fracture to the left patella with lateral dislocation. The plaintiff also suffered injury to his back. The plaintiff's injuries will be discussed in more detail below.

The plaintiff's claim

[11] In a carefully constructed statement of claim, it is alleged that at all material times the plaintiff was employed by the defendant and that due to the negligence and breach of statutory duty of the defendant in the course of the said working operations and, in particular, the plaintiff's attempts to manoeuvre the said tarpaulin into position, he was caused to fall and suffer severe and permanent personal injuries.

[12] The pleaded breaches of statutory duty include a failure to comply the provisions and requirements of the Workplace (Health, Safety and Welfare) (Regulations) (NI) 1993; the Management of Health and Safety at Work Regulations (NI) 2000; the Work at Height Regulations (NI) 2005 and the Road Vehicles (Construction and Use) Regulations 1986. The relevant statutory provisions will be considered in more detail below.

[13] In the defence, the defendant denies that he employed the plaintiff, and denies that the plaintiff was in the defendant's care and control. The defendant further denies that he entered into a contract with the plaintiff or engaged him to do any work. The defence specifically pleads that there was no legal relationship between the plaintiff and the defendant and, accordingly, the defendant held no duty of care towards the plaintiff as his employer or contracted worker. The defendant denies that he was liable to the plaintiff in negligence or for any of the alleged breaches of statutory duty.

[14] At para three of the defence, the defendant alleges that he has been incorrectly sued. The defence does not specify the name of the party who allegedly employed the plaintiff and/or the parties allegedly responsible for the plaintiff's injuries. Third party proceedings were not issued by the defendant against the alleged employer of the plaintiff or any other party, to include TJ Booth & Sons Ltd who owned or had control of the alleged defective trailer.

[15] The plaintiff's solicitors issued a letter of claim on 13 September 2019. In correspondence dated 23 September 2019, solicitors on behalf of the defendant replied stating as follows:

> "You wrongfully suggest in your letter that your client was in our client's employment on 20th March 2018. According to instructions, our client Mr Lyons, has never employed your client. Your client's employer at the time was Toptranz European Ltd, Klon S Vetrino, Varna, Bulgaria. Your client is well aware of this, and we suggest any claim in respect of any incident lies with your client's employer as above."

[16] Mr Fee KC, on behalf of the plaintiff, submits that the defendant's assertion that another alleged entity, namely Toptranz was the plaintiff's employer as stated in the said correspondence and in texts sent to the plaintiff after the accident, was a blatant and deliberate attempt to deflect responsibility from the defendant. Mr Fee KC further submits that the defendant has a history of dishonesty and that this attempt to redirect responsibility is a tactic which the defendant has unsuccessfully tried in the past. In this regard, Mr Fee KC referred the court to the decision of the Deputy Traffic Commissioner in *EM Dzhey EL Limited v DVSA* (21 October 2020). The case involved an appeal from a Bulgarian Company for return of its vehicle which had been impounded by the DVSA under the Goods Vehicle (Licensing of Operators) Act 1995 and the Goods Vehicles (Enforcement of Powers) Regulations 2001. Although no objection was raised by the defendant as to the relevancy and admissibility of this case which, inter alia, called into question the defendant's truthfulness, I have ignored the findings of the Commissioner in my assessment of the defendant's credibility in relation to the circumstances of this case.

[17] The plaintiff's solicitors obtained an order for discovery against the defendant. In particular, the plaintiff's solicitors sought all documentation as to the following:

(i) The ownership of lorry VRN B9822 BA;

(ii) The load that the plaintiff was working on at Carlingford docks on the date of the accident;

(iii) Monies paid by the defendant to the plaintiff;

(iv) Any order for the delivery from Carlingford docks to the TJ Booth premises which involved the defendant;

(v) Digital correspondence between the plaintiff and the defendant including text messages;

(vi) Work carried out by the plaintiff involving the defendant;

(vii) Documents relating to TJ Booth;

(viii) Weighbridge dockets relating to works carried out by the plaintiff in March 2018;

(ix) The plaintiff's employment with the defendant.

[18] In a sworn affidavit, the defendant denied that he owned the lorry VRN B9822 BA, and he averred that he did not have any documentation relating to the vehicle or the ownership of that vehicle or any documentation or digital record in relation to the load as collected by the plaintiff at Carlingford docks on the date of the accident. In the affidavit, the defendant denied that he employed the plaintiff and consequently did not pay the plaintiff for any work. He stated that he did not have any documents or digital records relating to any collection from Carlingford docks and delivery to TJ Booth's premises. The affidavit specifically states that the defendant "did not employ the plaintiff or direct him to collect and deliver such delivery."

[19] During comprehensive cross-examination by Mr Fee KC, the defendant gave inconsistent and contradictory evidence. He also made relevant admissions. I consider the following to be material in my assessment of the defendant's credibility.

[20] Firstly, the defendant did not state in his evidence that, prior to 21 March 2018, he informed the plaintiff in express terms that Toptranz was employing the plaintiff to carry out the works in question. In my judgment, the exchange of texts between the plaintiff and the defendant belies the defendant's claim that he was not the plaintiff's employer. The text on 19 March 2018 from the defendant to the plaintiff is a clear indication that the defendant was asking the plaintiff whether he was available for work, and in particular to bring a load from Belfast to Enniskillen and then return with a load to the defendant's yard. In further texts the defendant gave the plaintiff the PIN number for a fuel card. Further texts clearly showed that the defendant's instructions to the plaintiff had changed and that he was to "load rolled barley" for TJ Booth. The address and postcode for TJ Booth & Sons, Ballygawley, were specifically provided by the defendant to the plaintiff in the text. The texts before the 21 March 2018 make no reference to Toptranz.

[21] Secondly, at no stage prior to the accident did the defendant indicate to him that he was not the owner of the tractor unit, but rather that it was owned by Toptranz. The defendant argues that these details would have been within the knowledge of the plaintiff because, at an earlier date, when he was involved in a minor road traffic accident in Dublin, the certificate of insurance contained with the tractor unit would have revealed that it was owned by Toptranz. In response, the plaintiff stated that he assumed the defendant owned the tractor unit since, after the accident, he contacted the defendant for details of the insurance policy, and it was the defendant who told him where to locate the relevant documents. The plaintiff emphasised that at no stage was he informed by the defendant that tractor unit was

owned and insured by Toptranz. The plaintiff merely handed over the insurance details contained within the folder identified by the defendant.

[22] Thirdly, and significantly in my judgment, the defendant failed to provide any documentation in relation to the ownership of the tractor unit VRN B9822 BA despite the order of the High Court dated 10 June 2022. In his evidence, the defendant stated that he was in a position to obtain these documents, including the certificates of insurance. The defendant failed to give any reason or explanation for his failure to provide and produce these documents which were clearly relevant to the central issues in these proceedings and, in particular, the defendant's defence.

[23] Fourthly, the weighbridge docket dated 21 March 2018 identifies the haulier as Lyons Haulage. In his evidence, the defendant accepted that this refers to his business. If the haulier was actually Toptranz, the defendant was unable to explain why no reference was made to this company in the weighbridge docket.

[24] Fifthly, in his evidence in chief, the defendant stated that since aged 18, he had been involved in haulage. However, due to "difficulties with law enforcement agencies", he lost his operator's licence. He claimed that foreign operators coming into Northern Ireland would leave their vehicles at his premises. He claimed that the owner of Toptranz was Veslin Stovaic, and it was this individual who employed the plaintiff. The defendant stated that he merely passed on Veslin Stovaic's instructions to the plaintiff and that this individual left cash in the defendant's office for the plaintiff once the work was completed.

[25] The defendant failed to produce any documentation or call any witness from Toptranz in an effort to persuade the court that, not only was the tractor unit owned by Toptranz but also that Toptranz had instructed the defendant to engage the plaintiff and to pay the plaintiff when the work was completed. If the defendant was telling the truth, such documentation and evidence would have been capable of carrying significant weight. However, the defendant gave contradictory accounts as to his relationship with Toptranz. In a text dated 15 April 2018, the defendant told the plaintiff that he worked for Toptranz. However, during cross-examination by Mr Fee KC, the defendant stated that he was actually the main contractor and that Toptranz was a subcontractor. If either of these scenarios was correct, once proceedings were issued by the plaintiff against the defendant, Mr Fee KC submits that it is difficult to understand why the defendant did not issue third party proceedings against Toptranz. No records were provided to confirm that Toptranz were subcontractors to the defendant or, indeed, that the defendant had engaged Toptranz as a subcontractor. In short, no contractual documents or any relevant documentation was produced, to include invoices, receipts, worksheets, evidence of payments, ownership of the tractor unit, certificates of insurance for the vehicle, relevant communications with Toptranz and TJ Booth & Sons etc. This list is not exhaustive. The failure of the defendant to disclose any corroborating evidence and to call witnesses in support speaks volumes as to the implausibility and untruthfulness of the defendant's evidence.

[26] Mr Fee KC, during robust cross-examination of the defendant, stated that the undeniable truth was that the defendant employed the plaintiff. The defendant was in control of the plaintiff's employment from beginning to the end. It was the defendant who provided the plaintiff with the instructions. It was the defendant who provided the tractor unit. It was the defendant who gave to the plaintiff the pin number for the fuel card which was used to pay for the 522.25 litres of diesel. All the directions came from the defendant.

[27] The defendant failed to pay the plaintiff in full. It is clear from the texts that the defendant's attitude to the plaintiff changed when the latter informed him that he had been injured at work and that, due to the injury, it was likely the plaintiff would be out of work. It is relevant that in a text dated 28 April 2018, the defendant stated as follows:

> "Didn't think you were someone to claim. Seen you in Omagh the other day walking without any problems and driving a car."

[28] The conclusions that can be drawn from the above text are obvious. First, the defendant was clearly indignant that the plaintiff would bring a claim against him. Second, the implication was that the plaintiff was not injured. Furthermore, during the course of his evidence the defendant stated, without any corroboration, that the plaintiff fell from the cab of the tractor unit and not the trailer. Also, without producing any evidence, presumably on the instructions of the defendant, Mr Nugent BL cross-examined the plaintiff claiming that there was no middle ladder fixed to the trailer in question. To exacerbate this attack on the plaintiff's credibility, the same allegation was put, again presumably on the instructions of the defendant, to Mr McBride, Consulting Engineer. If the defendant wished to seriously contest the plaintiff's version of events regarding the circumstances of the accident, I would have expected the defendant to produce photographs of the trailer in question or a similar trailer and, at the very least, to have called evidence from a consulting engineer. If the allegation was that the winding mechanism for the tarpaulin on the trailer was not defective, again I would have anticipated testimony from relevant witnesses supported by documentation as to the condition, repair and upkeep of the said mechanism. No rebuttal witnesses were called. No rebuttal documentary evidence was produced.

[29] The defendant's failure to call any witnesses to rebut or contradict the plaintiff's account of the circumstances of the accident or to call any evidence to undermine the plaintiff's credibility are clearly relevant matters for the court to consider when dealing with Mr Fee KC's submissions that the defendant is an untruthful witness and there is no defence to this claim. However, when considering Mr Fee's submissions, the court has been careful not to attach undue weight to the fact that no third party was joined by the defendant to these proceedings. In my judgment, the only conclusion that I can draw from the above is

that the defendant employed the plaintiff for his services on the day in question and that at all material times, the duty was on the defendant to provide a safe system of work for the plaintiff and to prevent him sustaining injury during the course of his working operations. This duty in negligence and breach of statutory duty would have included, inter alia, ensuring that the work equipment was not defective, providing the plaintiff with adequate warnings, instructions and training and providing suitable risk assessments and safety measures with regard to the working operations.

[30] The court's overall view is that the defendant is a dishonest and untrustworthy witness who deliberately and blatantly attempted to mislead the court in an effort to deflect his responsibility for the plaintiff and the injuries caused to the plaintiff.

The employer's duty

[31] The defendant's defence is stated in simple terms, namely that at no stage did he employ the plaintiff. His defence is based on fact and not law. At no stage does the defendant argue that the necessary legal ingredients to establish a contractual relationship between the plaintiff and the defendant did not exist. The defendant does not argue, for example, that the plaintiff was an independent contractor.

[32] In my judgment, in order to succeed in his claim in negligence and breach of statutory duty, the plaintiff must satisfy the court that, based on the evidence, the necessary elements of a contract of employment existed between the parties.

[33] It is clear that no written contract existed between the parties. Nevertheless, according to Mr Fee KC, the contract of service can be inferred from the relevant facts. In *Ready Mixed Concrete (SE) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 at 515, McKenna J stated as follows:

> "A contract of service exists if these three conditions are fulfilled:
>
> (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master;
>
> (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subjected to the other's control in a sufficient degree to make that other master;
>
> (iii) The other provisions of the contract are consistent with it being a contract of service."

[34] Therefore, the necessary elements of a contract of employment are that the employee is obliged to personally perform at least some work in return for remuneration or some other promise by the employer and, secondly, the employee agrees that the employer has authority to exercise control over his work (see *Carmichael v National Power Plc* [1999] ICR 1226 at 1230 G-H per Lord Irvine of Lairg LC.

[35] On the basis of the evidence presented to this court and considered above, it is my decision that a contract of employment did exist between the plaintiff and the defendant. As detailed above, the defendant approached the plaintiff to carry out the work in question. When the plaintiff said he was available, the defendant then issued instructions to the plaintiff as to the nature of the work and the means by which the plaintiff was to fulfil his duties. The defendant provided the plaintiff with the truck and a fuel card to place diesel in the truck. The defendant then gave the plaintiff specific instructions and directions regarding collection of the trailer from TJ Booth and Sons Ltd, onward travel to Carlingford Docks, returning the load to the premises of TJ Booth and finally leaving the tractor unit at the defendant's premises. The plaintiff was obliged to perform these obligations in return for remuneration. At all stages, the plaintiff plainly remained under the control of the defendant.

Burden of Proof

[36] In *Bonnington Casting Ltd v Wardlaw* [1956] AC 613 at 624, Lord Tucker stated as follows in respect of the burden and standard of proof:

> "No distinction can be drawn between actions for common law negligence and actions for breach of statutory duty in this respect. In both the plaintiff or pursuer must prove (a) breach of duty and (b) that such breach caused the injury complained of."

[37] In *Bonnington* at 620, Lord Reed stated as followed:

> "The employee must in all cases prove his case by the ordinary standard of proof in civil actions: he must make it appear at least that on a balance of probabilities the breach of duty caused or materially contributed to his injury."

[38] Turning to the facts of this case, the burden is on the plaintiff to prove that on the balance of probabilities the defendant was in breach of a statutory duty and/or negligence, and also, on the balance of probabilities, the defendant's negligence and breach of statutory duty caused or materially contributed to the plaintiff's injuries.

[39] It is not necessary for this court to consider every allegation of breach of statutory duty. Liability will be established if the plaintiff satisfies the burden of proof in relation to at least some of the alleged statutory breaches.

[40] The plaintiff alleges that the defendant failed to comply with the Work at Height Regulations (Northern Ireland) 2005 (hereinafter the "2005 Regulations") and, in particular, regulations 4, 6 and 7 thereof.

[41] Regulation 2 of the 2005 Regulations provides that "work at height" means –

> (a) work in any place, including a place at or below ground level;
>
> (b) obtaining access to or egress from such place while at work, except by a staircase in a permanent workplace,
>
> where, if measures required by these Regulations were not taken, a person could fall a distance liable to cause personal injury."

[42] It is significant that regulation 3(2) of the 2005 Regulations protects employees and self-employed persons. Persons under the control of an employer to the extent of his control are also protected. The regulations impose duties on every employer in relation to work done by their employees as well as others over whom they have control. The employer is, therefore, liable to more than employees strictly so-called.

[43] I am satisfied that the working operations as described by the plaintiff, necessitated him to work at a height which required his employer's compliance with the 2005 Regulations. On the basis of the plaintiff's evidence and his description of the circumstances giving rise to his fall from height, I am satisfied to the requisite standard that the defendant was in breach of regulations 4, 6 and 7 of the 2005 Regulations. Regulation 4 provides that:

> "4.—(1) Every employer shall ensure that work at height is –
>
> (a) properly planned;
>
> (b) appropriately supervised; and
>
> (c) carried out in a manner which is so far as is reasonably practicable safe,

and that its planning includes the selection of work equipment in accordance with regulation 7."

[44] On the facts, as stated by the plaintiff, the defendant was clearly in breach of this regulation.

[45] Regulation 6 requires an employer to take into account a risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000. On the basis of the plaintiff's evidence, I am satisfied to the requisite standard, that the defendant failed to make a suitable and sufficient assessment of the risks for the protection of the plaintiff's health and safety and failed to provide comprehensible and relevant information to the plaintiff regarding those risks, to include the assessment of preventative and protective measures.

[46] Regulation 6(2) of the 2005 Regulations imposes a duty on the employer to ensure that work is not carried out at a height where it is reasonably practicable to carry out the work safely other than at height. In my judgment, the plaintiff should not have been required to climb the ladder on the trailer and while at this height to attempt to dislodge and move the tarpaulin. Even if it was not reasonably practicable to carry out the work safely otherwise than at height, the defendant had failed to take suitable and sufficient measures to prevent the plaintiff falling and to sustain personal injury. In this case, the defendant failed to minimise the risks.

[47] Regulation 7 of the 2005 Regulations requires an employer, in selecting work equipment for use in work at height, to take into account the working conditions and the risks to the safety of persons at the place where the work equipment is be used and the distance and consequences of a potential fall. The defendant failed to have any regard to this statutory requirement and was clearly in breach.

[48] The defendant is also in breach of regulations 4 and 13 of the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993.

"**Requirements under these Regulations**

4. —(1) Every employer shall ensure that every workplace, modification, extension or conversion which is under his control and where any of his employees works complies with any requirement of these Regulations which—

(a) applies to that workplace or, as the case may be, to the workplace which contains that modification, extension or conversion; and

(b) is in operation in respect of the workplace, modification, extension or conversion.

(2) Subject to paragraph (4), every person who has, to any extent, control of a workplace, modification, extension or conversion shall ensure that such workplace, modification, extension or conversion complies in each case with any requirement of these Regulations which—

(a) applies to that workplace or, as the case may be, to the workplace which contains that modification, extension or conversion;

(b) is in operation in respect of the workplace, modification, extension, or conversion; and

(c) relates to matters within that person's control.

(3) Any reference to a person having control of any workplace, modification, extension or conversion is a reference to a person having control of the workplace, modification, extension or conversion in connection with the carrying on by him or a trade, business or other undertaking (whether for profit or not).

(4) Paragraph (2) shall not impose any requirements upon a self-employed person in respect of his own work or the work of any partner of his in the undertaking.

(5) Every person who is deemed to be the occupier of a factory by virtue of section 175(5) of the Factories Act (Northern Ireland) 1965 shall ensure that the premises which are so deemed to be a factory comply with these Regulations.

Falls or falling objects

13. —(1) So far as is reasonably practicable, suitable and effective measures shall be taken to prevent the occurrence of any event specified in paragraph (3).

(2) So far as is reasonably practicable, the measures required by paragraph (1) shall be measures other than the provision of personal protective equipment, information, instruction, training or supervision.

(3) The events specified are:—

(a) any person falling a distance likely to cause personal injury;

(b) any person being struck by a falling object likely to cause personal injury.

(4) Any area where there is a risk to health or safety from the occurrence of any event specified in paragraph (3) shall be clearly indicated where appropriate.

(5) So far as is practicable, every tank, pit or structure where there is a risk of any person in the workplace falling into any dangerous substance in the tank, pit or structure, shall be securely covered or fenced.

(6) Every traffic route over, across or in an uncovered tank, pit or structure such as is mentioned in paragraph (5) shall be securely fenced.

(7) In this regulation, "dangerous substance" means—

(a) any substance likely to scald or burn;

(b) any poisonous substance;

(c) any corrosive substance;

(d) any fumes, as or vapour likely to overcome a person; or

(e) any granular or free-flowing solid substance, or any viscous substance which, in any case, is of a nature or quantity likely to cause danger to any person."

[49] In summary, having carefully considered the plaintiff's evidence, I am satisfied on the balance of probabilities that due to the negligence and breach of statutory duty of the defendant for the reasons discussed above, the plaintiff sustained significant injuries and that the said injuries were caused by the defendant's negligence and breach of statutory duty.

Assessment of damages

[50] The medical reports confirm that the plaintiff sustained a comminuted markedly displaced multiplanar fracture to the left patella with lateral dislocation and lateral fracture fragment. Following internal fixation, x-rays showed the patella

within satisfactory alignment. The fractures were fixed with three lag screws. Mr McCormack, FRCS considered that it was likely these screws would be left in situ and that it was unlikely the plaintiff would require further general anaesthetic to remove the screws.

[51] On examination of the left knee, Mr McCormack, FRCS observed a well-healed midline scar. No muscle wasting was noted in the quads muscle. The range of motion with the left knee was slightly reduced as compared to the right knee, with some minor discomfort in the patella-femoral joint at the extremes of flexion. There was no effusion in the joint and no instability of the patella nor marked crepitus. Clinical examination of the knee, almost five years post injury, denoted a normally stable knee with no effusion or abnormality on meniscal testing.

[52] The plaintiff has been unable to return to work, but the medical evidence attributes this to a cranial infection, unrelated to the subject injury.

[53] On the basis of the medical evidence, I would assess damages at £42,500. I make an order that the defendant pays the plaintiff the sum of £42,500 plus interest and costs.