IN THE COUNTY COURT AT BRISTOL **CLAIM NO: H43YY876**

B E T W E E N :

MS SIMISH CHUHAN

Claimant

and

DECHERT LLP

Defendant

JUDGMENT

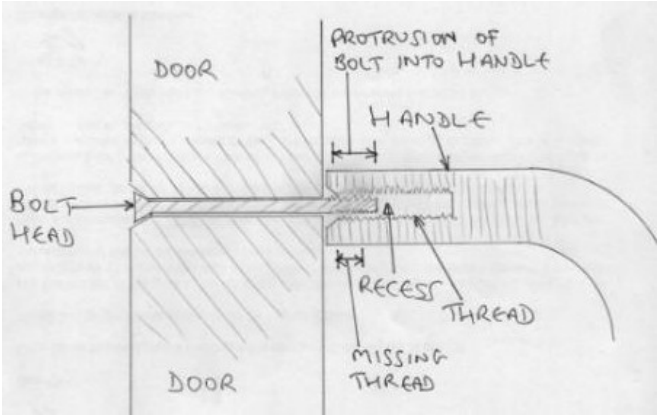
Introduction and Background

1. This is a personal injury claim arising from a workplace accident on 21 November 2018. The trial was in respect of liability only. Mr Marcus Grant of Counsel represented the Claimant and Mr Andrew McLaughlin of Counsel represented the Defendant. I am grateful to them both for their assistance.

2. The Claimant, then a 30-year-old Associate Solicitor employed by the Defendant, an American law firm, sustained a concussive head injury when the top of a door handle on a fire door ("the Door") in her workplace became detached as she pulled it. The Door was at the exit of an in-house café at the Defendant's previous offices at 160 Queen Victoria Street, London. She is said to have been unable to work in her profession since shortly after the accident. She is now aged 36.

3. The claim has significant potential value. The provisional Preliminary Schedule quantifying the 'but for' past and future earning capacities suggests a seven figure loss. The future residual earning capacity has not been quantified given the incomplete state of the quantum expert evidence. The parties have focussed on the preliminary issue of liability.

4. The Claimant asserts that the Door handle was defective for multiple reasons including the fact that the bolt securing the handle was 8 mm too short (58 mm instead of 66mm); the bolt thread was damaged having likely been cross-threaded through operator error, the same error damaging the threads of the Door handle recess which compromised the length of the undamaged bolt threads holding the handle in situ. Further details of the defects are pleaded at §10A of the - Amended Particulars of Claim**.** The Claimant's expert, Mr Hill produced a helpful diagram which illustrates his points:



5. The claim is brought under the Employer's Liability (Defective Equipment) Act 1969 ("the 1969 Act"). Common law negligence is not relied upon. It had been pleaded against the former Second Defendant (the installers of the Door), but that claim was discontinued in October 2024. The Claimant has not made any allegations concerning the inspection and maintenance of the Door.

6. The Defendant denies that the 1969 Act applies on the basis that a door of this nature cannot be "equipment" for the purposes of the Act.

7. The Defendant also contends that neither the bolt nor the handle was defective due to the negligence of a third party and had been in situ for 13 years since its contractor supplied the Door with its handle and bolt in 2005.

8. Mr Grant for the Claimant set out in his skeleton argument 53 facts that he submitted could be extracted from the written evidence as being agreed. It is undoubtedly the case that most of the factual issues about which direct evidence was adduced were uncontroversial. Factual issues which *were* controversial were largely confined to matters

about which no direct evidence was adduced. In particular, there were three questions which fell into this category:

(i) whether there had been any maintenance carried out to the Door between its installation in 2005 and the date of the accident;

(ii) how and, more importantly, when, the screw-threads were damaged by cross-threading them;

(iii) how a substance known as "thread-lock" (a strong and long-lasting adhesive) came to be applied to the far end of the screw within the Door handle and what part, if any it played in its failure.

9. Subject to the applicability of the 1969 Regulations, the expert evidence was at the heart of this case. The Claimant's expert was Mr Andrew Hill BSc CEng MICE, a chartered civil engineer whose specialist fields were said by him to include defects in buildings, including where doors, door furniture and closing equipment was said to be defective or otherwise in a state other than in accordance with the manufacturer's recommendations. The Defendant's expert was Dr Jan Graham BSc(Eng) ACGI MSc PhD DIC, a forensic consulting engineer specialising, he says, in materials science and performance, design, structural analysis, mechanics and dynamics.

10. With gratitude to Mr Grant, it is convenient to adopt (with adaptations) his list of agreed facts which, for the purposes of this judgment, can be taken to have been agreed or at least non-controversial, and they provide a useful background and framework for the events which occurred. The quotations are from witness statements or the experts' reports unless otherwise stated.

1) The landlord for the premises (Blackstone at the time of the Claimant's accident) had a contract with a facilities management company (Optimum at the time of the Claimant's accident) to provide '*preventative and reactive maintenance and repairs to the whole building*'.
2) Optimum employed '*3-4 full time maintenance operatives / engineers on site for responsive and scheduled maintenance requests*'.
3) The Defendant had its own contract with Optimum to have one of its engineers working for them on the floors they occupied.

4) Mr Robert Poynton was that engineer at the time of the Claimant's accident. He worked at the site for Optimum and its predecessor in service from mid-2016 until March 2019.

The Defendant's maintenance contract with Optimum

5) Part of the Defendant's contract with Optimum was that Mr Poynton would carry out daily visual checks to specific door handles in the premises to check whether they were loose; he would complete a bespoke 2-page daily walk around checklist.
6) That checklist did not include the Door.
7) However, it did include three waste pumps in the Café which would have required him to use the Door to both enter and leave the Café area.

Responsibility for maintenance of the Door

8) The Door was the Defendant's responsibility to maintain.

The Defendant's system of maintenance for the Door before the accident

(These can only be of relevance in relation to the issue of pre-accident maintenance work damaging the screw thread and thus the thread-lock issue.)

9) At the time of the accident, (excepting the doors in the checklist referred to in (5) above) there was no prospective system of visual inspection of door handle assemblies in place.
10) Instead, the Defendant instituted a reactive system of reporting any defect or maintenance issue relating to manual doors. Specifically, it devised and instituted a reactive health and safety system to manage the risk of door handles becoming loose by requiring '*all staff who came to work in our offices were informed during their induction training to report any maintenance issues by contacting the London Facilities Team*'.
11) The Defendant operated a maintenance software package called 'Vicinitee', in which '*slow time maintenance issues reported to Ms La Roche or a member of the Facilities Team*' would '*normally'* be entered into Vicinitee.
12) All 3-4 Optimum operatives had access to the Vicinitee software and would pick up any request for assistance with a '*slow time maintenance issue*' and attend to it.

13) However, if the maintenance issue was a '*hazard or needs more urgent attention*' then Ms La Roche would '*personally call or email the building maintenance team for someone to attend immediately, rather than wait for them to pick it up from the Vicinitee system in slow time*'.

14) In addition to Ms La Roche, any member of the General Office Team or catering staff were instructed to report '*any problems or maintenance issues*' either to her or to '*the reception team or to the Optimum staff direct'*.

15) the Defendant has disclosed the Vicinitee software log for the building for the 2018 calendar year logging '*slow time maintenance issues*' between 18 January and 30 November 2018. In that log there were 13 entries relating to loose door handles, though none relating to the Door.

16) The Claimant's accident was not recorded on the Vicinitee log because it was dealt with as an '*immediate request which was reported straight to the engineer*'.

Lay witness evidence regarding the Door handle being loose before the accident

17) The Defendant has served statements from four witnesses, Mr Poynton, Ms Clarkson (Catering Manager employed by Vacherin at Café Diem), Ms La Roche (Facilities Manager employed by the Defendant) and Mr House (Director of Facilities employed by the Defendant), stating that they do not recall the Door handle being loose before the Claimant's accident. Mr Poynton states that he would have used the Door both ways on the morning of the Claimant's accident and if he had noted that the handle was loose, he would have notified Ms La Roche or Mr House. Ms Clarkson states that she estimates she used the Door 15-20 times per day and had never known it to be loose at any time. Ms La Roche states that she used the Door '*regularly, at least once a day*' and had never known the handle to be loose. Mr House was not on site on the day of the accident, and had never been aware of any issues with the Door.

18) The Claimant does not recall the Door's handle being loose either before, stating in her statement '*I pulled the handle in a normal fashion, using the force which was necessary because of the door's weight, when the top of the handle suddenly became detached without warning*'.

The Door's characteristics

19) The Door was 53 mm thick. It was a fire door.

20) That was thicker than many doors including fire doors typically in use which have a standard width of 45 mm.

21) It was fitted in 2005.

22) The Defendant '*engaged a company named HOK to act as internal architects they specify doorhandles should be similar to style range by G&S Allgood*'.

23) Mr Hill downloaded some specifications from Allgood's website. It is agreed that the Door's handle most closely corresponds with the '*BT fixing*' at the centre of the page, although Mr Hill did accept that he had not identified this himself and may have been comparing the incorrect example in the literature.

Events after the Claimant's accident

24) On the day of the Claimant's accident, after the accident, Ms La Roche called Mr Poynton and instructed him to fix the handle.

25) Mr Poynton re-attached the same screw to the same Door handle recess later that day and tested the strength of the handle with his arm.

26) On the afternoon of the accident Mr House sent an email to Mr Poynton asking '*please let me know about this door handle and how it can come off and hit someone in the head?! Can we please check this out and we need to please make sure that this door handle cannot come off again?! Please let me know.'* Mr Poynton responded '*I can't explain why the door handle came off… When I reattached the bolt that latches onto the handle, the thread of the screw was fine and I tested pulling the handle with my strength several times, and I couldn't re-create the incident. I can't guarantee that the handle won't come off again, might be best to look at west country doors report for the door and see what that* (sic) *recommend going forward?*'. This is clearly an important email.

27) The day after the Claimant's accident, the Defendant instructed its specialist door subcontractor, West Country Doors ("WCD") to assess the Door handle. WCD sent a technician called Jason Osbourne who has since left the employ of WCD. Later that day WCD informed the Defendant by email timed at 12:54 on 22 November 2018 as follows: '*we have attended, but when we got there, it had been put back on by site maintenance, we tested and it was holding fast and working*'. The email was from a

Ms Deller, whose position in WCD is unknown, but who seems to be part of the service department.

28) Prior to trial, the Defendant had served no witness evidence from WCD. It had served no documentary evidence from them relating to the Door pre-dating Mr Hill's site inspection on 24 February 2022.

29) However, during the course of the trial, it transpired that WCD had in fact supplied the Defendant's solicitors with two contemporaneous documents and which were then produced. These were an "engineer worksheet" and an invoice. The worksheet suggests a 20 minute visit between 11:20 and 11:40 on 22nd November. It records the fault as being "*Internal[?] door handle has come off*". The cause is recorded as "*wear and tear*". And the work carried out as "*Refitted handle*". The work was recorded as being "*complete*" and "*not being a temporary repair*" with no quote being required. An invoice was sent to Mr House on 29 November 2018 which recorded the visit and stated "*Attended site, refitted handle, tested and left in working order*". This contradicts the email from Ms Deller, and I will need to resolve this issue.

30) The Claimant served a witness statement from a Ms Angela Williamson upon which Mr Grant informed the court that the Claimant did not rely. It was, however, included in the trial bundle. Ms Williams was a colleague of Ms Chuhan. Paragraph 5 of the statement reads:

> "*Some months after Simish* [the Claimant] *had her accident I remember the same door handle being loose and I recall receiving an email asking staff not to use the main door to the canteen but to use the back entrance to the canteen. I cannot remember the exact date but it was definitely 2019. There was a problem with the door handle again. I remember remarking to my colleagues about it and said something along the lines of "we will have another Simish accident if they are not careful".*"

31) The handle was inspected by Mr Hill on 24 February 2022.

Findings at the time of Mr Hill's inspection on 24 February 2022

32) The length of the screw (Mr Hill) or bolt (Dr Graham) to which the top of the Door's handle was attached until the moment of the Claimant's accident was 58 mm.

33) The diameter of the screw was 8 mm – there were no grub screws involved in the Door's handle assembly (the term used by Mr Poynton in his witness statement referring to the screws fixing the door plate).

34) The chamfered section of the Door handle recess was 3 mm.
35) The depth of the Door handle recess was 24-25mm including the 3mm chamfered section.
36) The screw head was recessed by c. 3.3 mm into the hand plate face of the Door.
37) The Door is formed from '*chipboard which, given sufficient force, is compressible*'.
38) c. 5mm of the threads at the end of the screw over a threaded length of c. 5 to 6.25 mm were damaged.
39) c. 5mm of the Door handle recess beyond the 3mm chamfered section was '*marked as it was or had been threaded*'.
40) Towards the base of the Door handle recess were '*some metal fragments which were held or lodged in place*'.
41) '*Shards of metal had been forced towards the closed end of the recesses*'.
42) The sides of the outer part of the Door handle recess closer to the end of the hole were '*relatively smooth*'.
43) About three turns of thread over a depth of c. 4 mm in the Door handle recess were damaged.
44) The undamaged length of the Door handle recess started at a depth of c. 7mm.
45) '*Remnants of green thread-lock (a high strength adhesive to secure threaded screws)*' (experts' joint statement) could be seen on the screw end.
46) When the Claimant pulled the Door '*the upper screw became disengaged from the threaded hole within the top of the handle. The remaining thread engagement was reduced to nil*' (experts' joint statement)
47) 47 Newtons equivalent to 4.7 kgs of '*horizontal force*' was necessary to open the Door.
48) The Claimant could not have caused the threads to strip on the screw and the Door handle recess when pulling the Door handle towards her (experts' joint statement).

General agreement

49) A *'rule of thumb is that the engagement should not be less than the diameter of the bolt, in this case between 7.5 and 8 mm*' (experts' joint statement).
50) The damage to the screw threads and the Door handle recess threads probably did not happen at the time of installation in 2005.

51) The green thread-lock was likely applied during a repair of the Door despite the Defendant's assertion that no such repair had been carried out prior to the accident (experts' joint statement).
52) It is improbable that the green thread-lock was applied at the time of installation.
53) It is possible to cause damage to the threads of the screw and handle through over-zealous or careless use of a power tool.

The Employers' Liability (Defective Equipment) Act 1969

43. Section 1 provides:

(1) Where after the commencement of this Act -

(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), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.

(2) In so far as any agreement purports to exclude or limit any liability of an employer arising under subsection (1) of this section, the agreement shall be void.

(3) In this section -

'business' includes the activities carried on by any public body;

'employee' means a person who is employed by another person under a contract of service or apprenticeship and is so employed for the purposes of a business carried on by that other person, and

'employer' shall be construed accordingly;

'equipment' includes any plant and machinery, vehicle, aircraft and clothing;

'fault' means negligence, breach of statutory duty or other act or omission which gives rise to liability in tort in England and Wales or which is wrongful and gives rise to liability in damages in Scotland; and

'personal injury' includes loss of life, any impairment of a person's physical or mental condition and any disease.

(4) This section binds the Crown, and persons in the service of the Crown shall accordingly be treated for the purposes of this section as employees of the Crown if they would not be so treated apart from this subsection."

11. There is a preliminary, potentially determinative, issue of whether the Door (or indeed the Door handle) can be regarded as "equipment" for the purposes of the 1969 Act. I intimated my regret at the conclusion of the trial that this was not an issue that was decided as a formal preliminary issue.

The Defendant's Submissions

12. Mr McLaughlin stated that there was precious little authority on the issue. It seems that there has been none since the coming into force of the Enterprise and Regulatory Reform Act 2013 ("ERRA") which removed automatic tortious liability from breaches of health and safety regulations.

13. One element of Mr McLaughlin's submissions was that these types of regulation should be construed so as not to overlap one another unless it is clear that they were intended to do so. He drew the court's attention to the Workplace (Health, Safety and Welfare) Regulations 1992 ("the Workplace Regulations"); the Construction (Health Safety and Welfare) Regulations 1996 ("the Construction Regulations") and the Provision and Use of Equipment Regulations 1998 ("the Equipment Regulations").

14. In this regard, Mr McLaughlin referred to *Mason v Satelcom*, 2008 EWCA Civ 494, paragraphs 20-21; *PRP Architects v Reid* 2007 ICR 78 @ 82 A-B and *Heeds v CC of Cleveland Police* 2018 EWHC 810, paragraph 57.

15. In that context, Mr McLaughlin submitted that it must be bore in mind that the Equipment and the Workplace Regulations remain in force. Doors, he said, fall squarely within the Workplace Regulations by virtue of regulation 18 thereof, which must mean that they do not fall within the Equipment Regulations. It follows, he submitted, that if a faulty door cannot be within the jurisdiction of the Equipment Regulations, it would be a nonsense for doors to fall within the 1969 Act: they deal with the same thing, and there is no suggestion that the definition of equipment in the Equipment Regulations was intended to be narrower than that of the 1969 Act; if anything, it reads as being wider, he submitted.

16. Mr McLaughlin dealt with the case of *Beck v United Closures and Plastics plc* 2001 Rep. L.R. 91, relied on by Mr Grant. In that case, the doors of a significant piece of plant were held to be covered by the 1969 Act. Mr McLaughlin distinguished that case on the basis that the doors were part of a machine which would not operate unless properly closed, and thus were clearly plant. Further and in any event, he said, it is a decision which is not binding on this court, being a first instance Scottish case. He also distinguished *Spencer Franks v Kellogg Brown and Root* 2008 ICR 863, also relied on by Mr Grant, a case in which the door-closing mechanism of a control room on an oil-rig was held to be equipment for the purposes of the Equipment Regulations. Mr McLaughlin submitted that the door closer there was only so found because the door was to a control room on an off-shore oil rig which was itself subject to the Offshore Installations (Health, Safety and Welfare) Regulations 1976 which state that "*all parts of every offshore installation shall be so maintained so as to ensure the safety of the installation and the safety and health of the persons thereon*". In other words, he said, the entire oil rig was a piece of equipment, and it was no surprise that the door forming part of it was to be regarded as equipment.

17. Mr McLaughlin also relied on Lord Oliver's reference in *Coltman v Bibby Tankers Ltd* [1988] AC 276 to equipment being a "chattel", no matter its size, submitting that a door, once affixed to a building becomes part of the building and therefore not a chattel any longer. He also relied on Lord Goff's speech in *Bibby* @ 301F-H to which I shall return.

The Claimant's Submissions

18. Mr Grant submitted that the door fell within the 1969 Act, and disagreed with Mr McLaughlin that there was little authority on the question of what constitutes equipment under the 1969 Act. He started by cited *Munkman on Employer's Liability* paragraphs 4.74 - 4.76:

> *Lord Cranworth LC said in* Brydon v Stewart *(1855) 2 Macq 30:*
>
> *"[An employer] is only responsible while the servant is engaged in his employment: but whatever he does in the course of his employment, according to the fair interpretation of the words—eundo, morando et redeundo—for all that the master is responsible."*
>
> *[4.75]*
>
> *There, an employer was held liable for the unsafe condition of the pit shaft which resulted in an accident when the workmen were leaving the pit. The Latin phrase eundo, morando et redeundo may be translated freely as meaning 'while at his place of employment, and while entering and leaving it'. The employer's duty therefore extends to matters arising while the workers are coming to the place of work, or leaving it, at any rate while they are on the employer's premises, for example on the stairs on the way out:* Bell v Blackwood Morton & Sons Ltd *1960 SC 11; but it may not extend to the safety of transport arrangements to take workers home:* Ramsay v Wimpey & Co Ltd *1951 SC 692 (accident due to disorganised rush of men for transport).*
>
> *[4.76]*
>
> *The duty is not confined to the actual performance of work, but also applies when the worker is doing something reasonably incidental to work: see eg* Davidson v Handley Page Ltd *[1945] 1 All ER 235 (claimant washing a tea-cup when she slipped on an oily duck-board and injured herself).*
>
> *"The obligation of the employer extends to cover all such acts as are normally and reasonably incidental to a man's day's work ...' (per Lord Greene at 237.)'*
>
> *It covers events which happen after the end of a shift. Thus when a man cycled home after working in hot and dusty conditions in a brick kiln, without being afforded proper washing facilities before he began his journey but after he finished his shift, the employers were liable for the dermatitis he developed:* McGhee v National Coal Board *[1973] 1 WLR 1, HL.*

19. In his skeleton argument, Mr Grant cited from *Bell* ¶14 and *Davidson* @237F - 238A.

20. In his closing submissions, Mr Grant relied on *Coltman v Bibby Tankers Ltd* [1988] AC 276. In that case, In that case a 90,000 ship, *The Derbyshire*, sank because it was alleged

it was unseaworthy by design. A claim was brought *inter alia* under the 1969 claiming that the ship was equipment for the purposes of the Act. The House of Lords held that the entire ship was "equipment" for the purposes of the 1969 Act. Lord Goff said that he would have had no difficulty in so finding, but for the definition contained in the Act, referring as it does to "vehicles and planes" but not water-borne vessels. But ultimately he could not see any reason for a distinction and so held as he did. Mr Grant cited Lord Oliver @ 301B:

> "*The purpose of the Act was manifestly to saddle the employer with liability for defective plant of every sort with which the employee is compelled to work in the course if his employment and I can see no ground for excluding particular types of chattel merely on the ground of their size …*"

21. Mr Grant submitted that the *ratio* was contained in the *dicta* @ 299A-C and E-F, to which I shall return, but have in mind. Having concluded that the definition in subs (3) of s1 of the Act could only have been included to enlarge its meaning, Lord Oliver went on,

> "*The key word in the definition is the word "any" and it underlines, in my judgment, what I would in any event have supposed to be the case, having regard to the purpose of the Act, that is to say, that it should be widely construed so as to embrace every article of whatever kind furnished by the employer for the purposes of his business. Thus it is not just particular plant and machinery or vehicles (for instance, a combined harvester) or particular types of aircraft (for instance, a crop-spraying aeroplane) which are to be regarded as "equipment" but plant and machinery, vehicles, aircraft and clothing of all types and sizes subject only to the limitation that they are provided for the purposes of the employer's business … However, the express reference to vehicles and aircraft, whilst it indicates that the word "equipment" is to be construed in its widest sense - a conclusion reinforced by the inclusion also of "clothing …"*"

22. Mr Grant also relied on *Knowles v Liverpool City Council* [1993] 1 WLR 1428 in which the Claimant had been injured by a faulty flagstone that he had been employed to lay. Lord Jauncey, with whom the rest of the House of Lords agreed, had no difficulty in finding that the flagstone was equipment, and pointed out that the definition only required that the equipment was used in the employer's business and not necessarily for the use of the employee. His Lordship said there was no distinction between an employer using a bought-in spanner to tighten a nut on a pump assembly when the bolt sheers injuring him, and the employee using the same spanner which itself snaps causing him injury. Purchas LJ in the Court of Appeal had expressly referred to the difficulty with cases

'falling between two stools' and had preferred the wider approach to avoid this happening.

23. Accordingly, Mr Grant argued, the door was clearly an article or chattel that was provided by the employer in the course of its business and used by the Claimant as an employee, and it was therefore covered by the 1969 Act.

24. Mr Grant distinguished *Mason* as a "very messy case" with a number of regulations potentially applying. He submitted that in terms of the so-called "six-pack regulations" (referring to six sets of health and safety regulations passed in the 1990s following six EU Directives), it should be the Directives that are looked at rather than the regulations themselves. He submitted that *Heeds* (a case relied on by Mr McLaughlin in which the electronic closing mechanism of a cell door in a custody suite in a police station was held to be covered by the Workplace Regulations only, and not the Equipment Regulations) was a case where the Workplace Regulations clearly applied to the door in question. However, he submitted that none of the six-pack regulations apply to provide a cause of action since ERRA, and a claimant is thrown back on to the 1969 Act to seek protection from the lacuna that the 1969 Act was designed to close, the case of *Davie v. New Merton Board Mills Ltd. [1959] A.C. 604*. In that case the employee had been injured by a faulty tool purchased by his employer from a reputable supplier. Because the employer was held not to have been negligent in so doing, the employee could not recover from him. The purpose of the 1969 Act was, Mr Grant said, to prevent employees falling between two stools if they were unable to pursue a third party responsible for the negligence. He went on to submit that all of the authorities interpreted the word equipment in the 1969 Act broadly: *Johnson* was a bolt on a platform; *Carr* was a barrier on a transporter and *PRP* was a lift within a building.

Discussion and Conclusion on the 1969 Act

25. I, along with some of the most distinguished judges of recent decades, have had cause to hesitate in concluding on this issue.

26. The starting point has to the words of s1(1)(a) and s1(3) of the 1969 Act. This is not a case in which the words of subs (3) help particularly: I approach this from the perspective

that the words in subs (3) were, if anything, intended to explain or clarify the general meaning of equipment (and possibly expand, but not restrict) the ordinary meaning of "equipment". However, none of the words in subs (3) are apposite to incorporate a reference to doors. I cannot read "plant and machinery" as applying to doors: both incorporate an element of production or something that is used in the course of creating whatever it is the employer produces, which does not apply to this door in this case. In my judgment, the nature of the chattels described in subs (3) differ materially from items such as doors, and do not suggest that the intention of Parliament was to expand the meaning of the word "equipment" any wider than its natural and ordinary meaning. This I also take from the speech of Lord Oliver in *Bibby*.

27. The point Mr Grant makes about the six-pack regulations not providing a remedy post-ERRA applies to all health and safety regulations: it was the whole point of ERRA, for good or ill, that unless and until a claimant can demonstrate negligence, a breach of most health and safety regulations cannot provide a cause of action. The 1969 Act still operates to cure the lacuna caused by *Davie* but only in respect of equipment, but the question is whether those injured by dangerous office buildings are back to resorting to the Occupiers' Liability Act 1957. I do not consider that the passing of ERRA can possibly operate to expand the coverage of the 1969 Act if doors would not otherwise qualify as equipment in any given operation.

28. It seems to me that there are two preliminary questions to be answered in relation to the authorities dealing with the Equipment Regulations. The first is whether the meaning of the word "equipment" should be interpreted in the same way when considering the scope of the 1969 Act as compared to the scope of the Equipment Regulations. In other words, is Mr McLaughlin correct in submitting that it would be absurd to say that if Parliament intended to exclude a door such as the instant one from the Equipment Regulations, it would nevertheless have intended to include such a door in for the purposes of the 1969 Act. Or to put it yet another way, is the scope of the 1969 Act wider than the scope of the Equipment Regulations? If not, then the second question is, do the authorities dealing with the potential overlap between the Workplace Regulations, the Equipment Regulations and the Construction Regulations assist when interpreting the meaning of "equipment" in the 1969 Act? Does the fact that the relevant item is excluded from the

Equipment Regulations by virtue of an interpretation intended to prevent overlapping mean that it should be excluded from a Statutory provision which has no potential alternative provision, which is the case with the 1969 Act. Having set those out as two questions, it can immediately be seen that the answers are in fact somewhat interdependent on one another.

29. The definition of "work equipment" in the Equipment Regulations is "*any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not)*". I do not think that the use of the word "work" adds anything given that the 1969 Act requires the relevant equipment to be used in the course of the employee's business. It has to be acknowledged, however, that the definition is different. For example, neither plant nor vehicles are specifically referred to in the Equipment Regulations. However, the definition in the Equipment Regulations do suggest to me a wider scope because "installation" is potentially more apt to describe things that are or might be considered to be part of a building or premises than the words used in the 1969 Act. Both use the word "equipment" and, referring again to Lord Oliver in *Bibby*, the intention of Parliament in passing subs (3) was to clarify or explain rather than expand: equipment keeps its ordinary meaning. That must apply to the Equipment Regulations, too. In my judgment, the definitions are sufficiently similar to one another that the authorities under the Equipment/Workplace Regulations are persuasive.

30. In that context, it is also relevant that both the Equipment and Workplace Regulations remain in force despite the provisions of ERRA. Given that those regulations potentially impose a criminal sanction on the employer, the distinctions between them (in the sense of a lack of overlap) remain important.

31. In light of the authorities, it is clear that Statutory regulations should generally be interpreted, where possible, so that they do not overlap.

32. In *Spencer Franks v Kellogg Brown and Root* (2008) ICR 863, the House of Lords, dealing with the closing mechanism of a door found that, because the door was integral to the operation of the control room on the oil rig, it fell within the Equipment Regulations. Lord Hoffman emphasised the unique position that the oil rig was in from this perspective. He said at §§12-13 (emphasis added):

> *12.* ***One possibility is that the 1998 Regulations impliedly exclude apparatus which forms part of the premises upon which the work takes place. The state of premises is treated separately from equipment by the Workplace (Health, Safety and Welfare) Regulations 1992 (SI 1992/3004). In the case of ordinary work premises on land, this might be a good argument. But I do not think it applies to equipment which is attached to an offshore platform.*** *Regulation 5(1) of the Offshore Installations (Operational Safety, Health and Welfare) Regulations 1976 (SI 1976/1019) provided in general terms: "All parts of every offshore installation and its equipment shall be so maintained as to ensure the safety of the installation and the safety and health of the persons thereon."*
>
> *13. This made no distinction between the fabric of the installation and the equipment. The duty applied equally to both.*

33. In *Mason v Satelcom* [2008] EWCA Civ 494, the Court of Appeal had to consider the interrelationship between three sets of modern health and safety regulations those being the Workplace Regulations, the Equipment Regulations and the Construction Regulations, in the context of a claim following a fall from a ladder. The Defendant employer accepted that the ladder was an item of work equipment under the Equipment Regulations, but argued that the Part 20 Defendant, which was the occupier of the building in which the accident had happened, was also liable under both the Workplace Regulations and the Construction Regulations. That argument was dismissed. At §§ 20-21 Longmore LJ held:

> "*… in order to answer the first question it is necessary to consider the inter relationship of the three sets of regulations. It is clear a lot of his work equipment and thus liability for falls from ladders will be properly considered in the context of the equipment regulations is it also contemplated that falls from ladders should be considered under the construction regulations and the workplace regulations as well? If so the matter becomes unnecessarily complex… to my mind the answer is that where possible the regulations should not be construed so as to overlap. Dangers of work equipment should be dealt with under the equipment regulations; dangers in construction work should be dealt with under the construction regulations and dangers in the workplace should be dealt with under the workplace regulations.*"

34. His Lordship went on to find at paragraph 23 that falls from ladders do not fall within either the Workplace regulations or the Construction regulations. May LJ agreed at paragraph 38. Ward LJ agreed at paragraph 54 saying,

> "*it seems to me to be perfectly obvious that the different sets of regulations should not be construed so as to overlap. Each has its own area of application.*

The latter is not a workplace as that has to be considered in the workplace regulations."

35. In *Heeds* at §57*,* Jeremy Baker J, whilst accepting that situations may arise where different sets of regulations apply, specifically endorsed the proposition that where it is possible to do so, the court should construe different sets of statutory regulations with a view to avoiding their overlapping application. He did so on the basis that *Mason* was highly persuasive authority to that effect. The under appeal in *Heeds* had considered herself "bound" by Mason (which Jeremy Baker J held was too strong an assertion, but nevertheless upheld her overall approach) even though technically it pre-dated the House of Lords in *Spencer-Franks* in which the question had been deliberately open.

36. Having found that the judge at first instance had carried out a careful analysis of the relevant factors relating to her decision that the Workplace Regulations applied and not the Equipment Regulations, Jeremy Baker J held:

> *… I am satisfied that the judge was entitled to find that whilst the custody suite door was a "specialist door serving a particular function within the undertaking, it was nevertheless a door", such that the Workplace Regulations, rather than the Equipment Regulations, applied.*

37. In *Spencer-Franks*, Lord Hoffman (§14) said:

> *In the nature of things, a lot of such equipment is going to be bolted or otherwise attached to the platform, but I do not think that this prevents it from being work equipment if it is for use at work. The same may be said of the lift which was (rightly, I think) held to be work equipment in PRP Architects v Reid [2007] ICR 78.*

38. In *PRP Architects*, the claim arose out of an accident due to a defect in a lift. Pill LJ said the lift was an item of work equipment in the Equipment Regulations but went on to say @ 82A-B

> "*if the claimant had descended by the stairs and handed become jammed in a faulty fire door I doubt whether the regulations would have applied. A distinction is necessary between work equipment on the one hand and the structuring condition of premises on the other.*"

Both Smith and Neuberger LJJ agreed without demur and Lord Hoffman did not cast any doubt on this proviso that Pill LJ had raised (albeit, of course, *obiter*).

39. There is nothing unusual about the Door here, in the context of an office space. It is, of course, a fire door, but that is probably due to a requirement of either the Workplace Regulations or some other fire regulations. It is a simple door used for separating one room from another. It does not even have any of the special features of the door in *Heeds*. The Defendant's premises were subject to the Workplace Regulations which contain §18 relating specifically to doors. Doors are generally considered part of the building or premises. Accordingly, if I were dealing with a claim under both the Workplace and Equipment Regulations, I would have little difficulty, in the context of these authorities, in concluding that the Door fell within the Workplace Regulations and was not equipment for the purposes of the Equipment Regulations. But, of course, that is not this case. I have to go on to decide whether that conclusion is persuasive, or even relevant, in the context of the 19769 Act.

40. There is no authority on whether the exclusion of a door from the scope of the Equipment Regulations by virtue its being covered by the Workplace Regulations means that it falls outside the scope of the 1969 Act. There is no equivalent to the Workplace Regulations to compare the 1969 Act to. However, the fact that Parliament has deemed it necessary to provide specific provision for ordinary doors in separate Statutory regulations from the Equipment Regulations does suggest that Parliament considered, at least in 1993, that such doors are not generally regarded as "equipment".

41. There are a few authorities dealing with the meaning of equipment under the 1969 Act itself, but they all deal with very different circumstances from those in this case.

42. I have already referred to *Bibby* above. The leading speech was given by Lord Oliver who explained @ 295E – 296B how and why the 1969 Act had come about:

> *My Lords, it is common ground that the Act of 1969 was introduced with a view to rectifying what was felt to be the possible hardship to an employee resulting from the decision of this House in Davie v. New Merton Board Mills Ltd. [1959] A.C. 604 . In that case an employee was injured by a defective drift supplied to him by his employers for the purpose of his work. The defect resulted from a fault*

in manufacture but the article had been purchased by the employers without knowledge of the defect from a reputable supplier and without any negligence on their part. It was held that the employers' duty was only to take reasonable care to provide a reasonably safe tool and that that duty had been discharged by purchasing from a reputable source an article whose latent defect they had no means of discovering. Thus the action against them failed although judgment was recovered against the manufacturer. Clearly this opened the door to the possibility that an employee required to work with, on or in equipment furnished by his employer and injured as a result of some negligent failure in design or manufacture might find himself without remedy in a case where the manufacturer and the employer were, to use the words of Viscount Simonds, at pp. 620-621, "divided in time and space by decades and continents" so that the person actually responsible was no longer traceable or, perhaps, was insolvent or had ceased to carry on business. Parliament accordingly met this by imposing on employers a vicarious liability and providing, in a case where injury was due to a defect caused by the fault of the third party, that the employer should, regardless of his own conduct, be liable to his employee as if he had been responsible for the defect, leaving it to him to pursue against the third party such remedies as he might have whether original or by way of contribution.

43. Like Lord Goff, Lord Oliver would have had no difficulty in finding that a ship was part of a shipowner's "equipment", and the difficulty was really caused by the apparently incomplete definition in subs (3). He went on @ 297C:

> "*As Lloyd L.J. observed in his dissenting judgment in the Court of Appeal, ante, p. 284E-F, one would talk naturally of a fleet being "equipped" with battleships, cruisers and destroyers or of the "equipment" of an expedition as including supply ships. In my judgment, a shipowner's fleet of ships is properly described as the equipment of his business.* ***They are, in truth, the tools of his trade*** *and I can see no ground for treating the word "equipment" in subsection (1)(a) - leaving aside for the moment the more difficult questions posed by subsection (3) - as excluding this* ***particular type of chattel*** *as opposed to other articles, of whatever size or construction, employed by a trader in carrying on his trade.*"

44. At 297F-H Lord Oliver dealt with the submission that "equipment" was to be distinguished from a factory or workplace:

> "*Then it is said that "equipment" is to be distinguished from the factory or workplace in which working tools or machinery are provided or to which they are affixed and that a ship - or, certainly, an oceangoing vessel of the size of Derbyshire - is akin to a factory in the sense that it provides the accommodation within which the employee does his work. Whilst, therefore, it is accepted that the various mechanical contrivances which are installed in or affixed to a vessel are properly described as equipment, the ship itself, taken as a whole, is, it is argued, not "equipment" because it constitutes the employee's "workplace."*

45. Lord Oliver, having dismissed the proposition that the applicability or otherwise of the Occupier's Liability Act was of no relevance, goes on to point out that no one would think that a pleasure boat on the River Thames was anything akin to real estate or was anything other than a "*chattel employed in a business*", and thus "equipment".

46. Lord Oliver went on to say that subs (3) was a clarifying provision rather than an enlarging one (298G-H). The passage Mr Grant suggested was the *ratio* @ 299A-C reads as follows:

> "*The key word in the definition is the word "any" and it underlines, in my judgment, what I would in any event have supposed to be the case, having regard to the purpose of the Act, that is to say, that it should be widely construed so as to embrace every article of whatever kind furnished by the employer for the purposes of his business. Thus it is not just particular plant and machinery or vehicles (for instance, a combined harvester) or particular types of aircraft (for instance, a crop-spraying aeroplane) which are to be regarded as "equipment" but plant and machinery, vehicles, aircraft and clothing of all types and sizes subject only to the limitation that they are provided for the purposes of the employer's business.*

47. Referring to "plant" in the context of tax statutes, Lord Oliver gave examples including a lawyer's text books (*Munby v Furlong* [1977] Ch. 359) which is interesting, given that he had said that the subsection is a clarifying rather than expansive provision. Lord Oliver went on to hold that "*the word "equipment" is to be construed in its widest sense – a conclusion reinforced by the inclusion also of "clothing"*.

48. Lord Oliver concluded by saying @ 301A-D:

> *The customs cutter, the fire-tender or the Trinity House launch, would, I should have thought, be quite clearly "equipment" of the operations for which they were provided. If, then, some ships are equipment, where is the line to be drawn? It cannot, in my judgment, be drawn simply by reference to size as the majority of the Court of Appeal appear to have concluded. There is no logic in such a criterion nor any functional difference between vessels of different types which enables a line to be sensibly drawn. The purpose of the Act was manifestly to saddle the employer with liability for defective plant of every sort with which the employee is compelled to work in the course of his employment and I can see no ground for excluding particular types of chattel merely on the ground of their size or the element upon which they are designed to operate. Indeed, the express inclusion of all vehicles and all aircraft militates strongly against any such distinction. Like Lloyd L.J., I am impressed both by the width of the words used*

by the legislature and by the legislative purpose behind the statute and I am driven to the same conclusion that he reached.

49. Lord Goff expressed his bafflement at the exclusion of a direct reference to sea-going transport, but was clear that a ship was part of the "equipment" of a ship-owner. He said @301F – 302A (emphasis added):

> ***It is, I understand, accepted that, in respect of operations on land, the Act only provides protection for the employee in respect of defects in equipment provided by the employer on the premises, but provides no protection in respect of defects in the premises themselves.*** *It might therefore have been thought that, in respect of operations at sea, a similar distinction should be drawn between defects in equipment provided by the employer on the relevant ship, and defects in the structure of the ship itself. In both cases, whether the defect is in the structure of a building or in the structure of a ship, the employee would, on this hypothesis, be restricted to his rights against his employer as occupier, even where the defect in the building or the ship was attributable to the fault of a third party. In both cases, no doubt, nice distinctions might have to be drawn between equipment on the one hand. and the structure of the building or the ship on the other hand;* ***but since it is plain that in any event such distinctions would have to be drawn in the case of premises on land****, it is not necessarily surprising that Parliament should have intended similar distinctions to be drawn in respect of a ship at sea, although it is likely that more difficult questions could arise in the case of ships than in the case of premises on land.*

50. Lord Goff went on to hold that to treat a ship as you would a place of work on land was a false analogy, but the highlighted references in this citation must be of persuasive authority from the highest source, particularly this was an authority dealing with the 1969 Act itself. Lord Goff also went on to specifically find that subs (3) was for clarification rather than being included with the intention of restricting the ordinary meaning of the word "equipment", which should be construed in its widest sense.

51. There are intrinsic difficulties with describing a plain and ordinary door used in an office building as "equipment". It is not used in the course of a solicitor's employment save as part of the building in which that solicitor is employed. The case of *Davidson* cited in *Munkman* at §4.76 and by Mr Grant (see above) is an authority relating to the scope of the common law of negligence with which this case is not concerned. Of course, the Door is part of the building from which the Defendant carries on its business, but it cannot really be said that the door is somehow part of the process of providing legal advice, cf.

the legal texts in *Munby*, or a computer or telephone. I emphasise that this observation is made in the context of deciding whether the Door is "equipment" at all, rather than whether it is used in the course of its business.

52. It is a separate question whether the Door, if it is "equipment" was "provided for the purpose of the employer's business", which I shall deal with below if necessary, after concluding on whether the Door was "equipment" at all.

53. The House of Lords in *Knowles* found that a flagstone on which the employee was working was equipment for the purposes of the 1969 Act. Lord Jauncey @ 1433H – 1434E pointed out that the use of the expression "for the purposes of the employer's business" in the statute meant that it was clearly designed to go beyond a piece of equipment that the employee had to actually use (the type of equipment that was the subject of the *Davie* case). Lord Jauncey held that it was undoubtedly the case that the flagstone was for use in the employer's business of repairing roads and pavements which led him to conclude that it was equipment for the purposes of the 1969 Act. That approach seems to acknowledge that the question of whether something is "used in the course of the employer's business" is not only a qualifying requirement (as per *Davidson* and as referred to in the previous paragraph), but also one to which the answer helps inform the issue of whether something is "equipment" at all. Both in *Knowles* and in *Bibby* (and tangentially in *Spencer-Franks*, in the sense that the entire oil rig was treated as equipment) the House of Lords observed and acknowledged the direct associations that the relevant item had with the very purpose of the employer's business i.e. a ship was intrinsically equipment for a ship-owner and the flagstone had undoubtedly been used by the employer for the purposes of repairing roads. It is difficult to say that the Door has this connection with a solicitor's business in this case.

54. I do not say that this is the test that should be applied to decide whether something should be regarded as equipment (for example, a faulty kettle in an office may well be regarded as "equipment" which also passes the second threshold test of being used in the course of the employer's business), but this connection to the ultimate activity of the employer's business, or a lack of it, seems to weigh in the scales of whether something like the Door can truly be regarded as "equipment" for the purposes of the 1969 Act.

55. In *Bibby*, it was also argued that the word "equipment" derives a more restrictive flavour by virtue of its juxtaposition to the "provided" and should be read as being something provided "to" the employee such as the tool provided to the employee in *Davie*. Lord Oliver rejected that proposition, stating that there was no reason for reading the word "provided" in anything other than its normal signification of "furnished". Even with that in mind, it seems to me difficult to describe an ordinary door as equipment provided for the purposes of the Defendant's business in any sense other than the building is. It is provided to complete a building as habitable and lawful in compliance with regulations. It does not contribute meaningfully to the business of the employer as such.

56. Finally, I must address the point that, if the door is not equipment for the 1969 Act, it leaves someone in the Claimant's position in the same position as the Claimant in *Davie*. I accept, of course, that the purpose of the 1969 Act was to provide a remedy to a Claimant in that position. As alluded to above, however, the difficulty here is that any breach of the Workplace Regulations does not amount to a cause of action in itself. I cannot escape from the fact that the 1969 Act used the words that it did. The definition could easily have included reference to parts of buildings or even doors, but it did not. Parliament included separate provision for doors, not in the Equipment Regulations but in the Workplace Regulations.

57. Taking the meaning of the word "equipment" in widest sense, it is in my judgment a step too far to strain the interpretation of the words "equipment used for the purposes of" a solicitor's business to include an ordinary door in a building.

58. Accordingly, for all of the reasons set out above, and accepting that subs (3) of section 1 of the 1969 Act is meant to be explanatory rather than expansive, but taking its meaning in its broadest sense, I still cannot conclude that the Door or its handle can be regarded as equipment for the purposes of the 1969 Act. It follows that the claim must be dismissed.

The Balance of the Claim

59. My conclusions is sufficient to dispose of this matter. However, in case I am wrong on the issue of the application of the 1969 Act, I will indicate how I would have decided a

few of the most important issues in the case. It would be disproportionate for me to set out the entirety of the evidence or Counsel's submissions, and the parties know the factual background to the case.

The Length of the Screw

60. This was largely a question of expert evidence, although I accept Mr Grant's submission that the trial is decided by a judge not by experts.

61. The case against the Defendant was, in a nutshell, that the screw attaching the handle to the Door was too short for the weight of the door and given the depth of the thread and/or the screw had been damaged by a third party by the overexuberant use of a power tool at some point before the accident, thereby causing the thread to disintegrate, which in turn led to the screw to fail without warning. It was common ground that there was no record of any maintenance work to the door before the accident, or after, save for the post-accident repair by Mr Poynter and possibly the attendance of WCD on 22 November 2018. It also became apparent during the trial that screws do, over time and use, have a tendency to unscrew themselves. Thread-lock was agreed to have been applied to the screw at some point, though when was not known. The experts agreed it would not have been applied when the door had been installed in 2005.

62. Whilst it might appear counter-intuitive, the Defendant's expert, Dr Graham, made out a logically compelling case that the screw was not too short; that its engagement with the handle was sufficient to cater for much higher forces than the Claimant could ever have asserted by herself, and that the Claimant's expert, Mr Hill was simply wrong in his assertions.

63. Mr McLaughlin's closing submissions contained a critique of Mr Hill's approach in his reports and his evidence in court. They are summarised at §§18-23 of his Speaking Note. I accept those submissions for the reasons he gives. I have no doubt in preferring the evidence of Dr Graham over that of Mr Hill.

64. Mr Grant, perhaps for those reasons, did not dwell on the expert evidence in his closing submissions. He submitted that the incident had occurred as a result of a combination of

two factors: the screw heads were damaged and the screw had come loose over time through simple use. Here, he submitted, the screw had gradually become unscrewed so that the next person who used the door inevitably pulled the handle away. Mr Grant seemed to accept the plentiful factual evidence that no-one had felt the handle to the Door loose prior to the accident. His submission was that there was significant likelihood that the screw had been damaged prior to the accident, and that damage had been done by an operative repairing the handle, which would explain the thread-lock which the operative would have used because he or she could not attain sufficient purchase.

65. Mr Grant submitted that the Defendant's lack of records and evidence meant that the evidence of the prior repairs and thus damage to the screw has gone unrecorded and is not before the court, but the logic suggests that that is what happened. The Claimant only needs to prove that the screw thread was damaged by a third party prior to the accident, Mr Grant said. He submitted that it would be just too much of a coincidence for a perfect screw to come loose, with no record of previous repair or damage to the threads: how could the accident have happened in the first place, he asked rhetorically.

66. In defending Mr Hill, Mr Grant submitted that at least he had taken the trouble to consult the manufacturer's literature, albeit in cross-examination it had become clear that he had identified the wrong type of handle. He submitted that, had the screw been longer, there would have been a longer period of it being detectably loose before an accident would have occurred. He relied on the 'rule of thumb' referred to above, and the fact that the Door was thicker than an ordinary fire door for which the literature suggested a 58mm screw. That overlooked the fact that the literature did provide that a 58mm screw was sufficient for a door up to the width of the Door.

67. Despite Mr Grant's efforts, I prefer Dr Graham as an expert in terms of qualification and experience and having heard both he and Mr Hill having been cross-examined. Dr Graham was logical and resolute without being stubborn. That is illustrated by the development of the self-untapping of screws emerging as a possibility.

Factual Disputes

(i) Damage to the thread/ application of thread-lock.

68. Mr Poynton was the main witness in this regard. He was the relevant facilities manager for the front of the building. He was working there from mid-2015, but was experienced in the business of facilities management. His evidence was that he had never noticed the handle loose before and, whilst the Door was not on his list of doors requiring a daily inspection, it was a door he used very regularly, and he would have noticed if it had been loose on any occasion. There were other facilities managers, but they looked after the rear of the building whereas he was the dedicated manager for the front. He did not recall ever having attended to the door in his 2½ years working there, nor had he heard of anyone else doing so.

69. He had attended on the day of the accident. He said that he had replaced the handle by using the same screw (having checked it), and tested it by placing his foot in front of the door and pulling with all of his weight. He could not replicate the accident. Mr Poynton's evidence was that he would have checked the thread of the screw as a matter of course, otherwise there would have been no point in re-fixing the handle with it. He said that he did not use thread-lock; that he had no access to thread-lock in his store, and would have had to order it if he had wanted to use it. He had not done that.

70. Mr Poynton sent an email dated 22 November 2018 in reply to one dated 21 November 2018 from Mr House, Director of Facilities with the Defendant, enquiring as to how the incident had occurred. Mr Poynton's email reads as follows:

> *I can't explain why the door handle came off, with this being a fire door they are heavy and I've never like the push plate/handle system with the heavy foot fall through this door.*
> *When I re-attached the bolt that latches onto the handle the thread of the screw was fine and I tested pulling the handle with my strength several times, and I couldn't re-create the incident. I can't guarantee that the handle won't come off again, might be best to look at west country doors report for the door and see what that recommend going forward?*

71. For ease of reference, I will repeat what I set out above in relation to WCD's visit. WCD attended on 22 November 2018. Their attending engineer has left their employ and was not called. That much is not controversial. Whilst Ms Deller sent the email that she did stating that the handle had already been fixed, WCD provided material contradicting that. The worksheet suggests a 20 minute visit between 11:20 and 11:40 on 22nd. It records the

fault as being "Internal[?] door handle has come off. The cause is recorded as "wear and tear". And the work carried out as "Refitted handle". The work was recorded as being "complete" and "not being a temporary repair" with no quote being required. An invoice was sent to Mr House on 29 November 2018 which recorded the visit and stated "*Attended site, refitted handle, tested and left in working order*".

72. WCD were established contractors for the Defendant. They must have been satisfactory and trustworthy in the Defendant's eyes. I find it unlikely that they would have charged a large firm of solicitors money for work that they did not do, particularly since the lack of work would have been observed by the Defendant's employees. Ms Deller does not state where she obtained the information for her email. It could be that there was an element of Chinese whispers, and that there had been an observation that the handle had already been fixed but Mr Osbourne nevertheless unscrewed it to check and re-fitted it. It would be difficult to spend 20 minutes just testing the door. I accept that there is no other direct evidence, but absent an allegation that the invoice and engineer's report was a forgery, which is highly unlikely in this case, on the balance of probabilities I find that an engineer from WCD attended the Defendant's premises, unscrewed the door and re-fitted it. I shall deal with what I find happened on that visit in more detail below.

73. The lack of any entry in the Defendant's records for work done to the door handle prior to the accident was discounted by Mr Grant, suggesting that such minor work as refitting the door handle would not be recorded, and any member of the rear-of-building team could have attended without Mr Poynton knowing. Any such work could have caused the damage to the thread and the thread-lock being administered he submitted. That would be an alternative or cumulative cause to the handle having failed, he said. Mr McLaughlin pointed out that the burden of proof was on the Claimant, and that the lack of records after the accident pointed to there being no evidence to support the damage to the thread having occurred prior to the accident.

74. I conclude that there is nothing other than circumspective evidence that the thread was damaged prior to the accident. Even that is countered by the lack of any record of work done to the handle afterwards. I take into account that thread-lock would not have been applied at the time of the installation of the Door: that is common ground.

75. Mr Poynton was palpably an honest witness, although I would accept Mr Grant's characterisation of him as being suggestible when hypothetical or counter-factual situations were put to him. He was clear when he did not remember, but was also clear about his work practices. He clearly had a lot of experience in facilities management and had nothing personal to gain from assisting the Defendant. The most important part of his evidence is, of course, the contemporaneous email coupled with his experience and oral evidence that he would not have mentioned the state of the thread had he not checked it before re-using the screw (which accords with common sense).

76. In my judgment, there is little doubt that the Door and its handle had caused no difficulty prior to the accident. Ms Clarkson, the café manager used the Door 15-20 times per day and she had never noticed a problem before. No thread-lock was applied upon installation, and so it must have been applied since then. Mr Hill accepted that, subject to the length of the screw, it was more likely than not that the handle had been fixed to the Door competently. The only evidence of work being done to the Door was after the accident. Mr Paynton replaced a screw with an undamaged thread, and made a contemporaneous record of that (and he had no vested interest in so doing if it were not true). On 22 November 2018 a WCD operative attended and carried out work the detail of which is unknown, but it clearly included re-fitting the door handle. The age and experience of that engineer is unknown. He was only there for 20 minutes which suggests that he carried out the work quickly. There was evidence produced by the Claimant (but ultimately not relied on) that a further incident with the Door had occurred in 2019. That was a further opportunity for the handle to be re-fixed with the same screw but with an overzealous use of a power tool and/or the use of thread-lock. The logical sequence of events is that the WCD operative caused the damage to the screw-thread and either used thread-lock to be on the safe side, or that, having damaged the thread, the handle came loose in 2019 when it was re-fitted again, but this time with thread-lock because of the lack of purchase.

77. Such evidence as there is points clearly to the Door having caused no problems prior to the accident and only after the accident was any work carried out to it. There were two recorded episodes of the Door handle being repaired after the accident. To the extent that it is relevant, the thread-lock is likely to have been applied by a tradesperson in the

knowledge that the accident had occurred (or later on after another failure). A young, inexperienced tradesperson is more likely to have been overzealous with his or her use of a power tool and/or considered that the application of thread-lock was appropriate in a handle that failed. There is no evidence that any work on the Door took place before the accident: the assertion relies on possible explanations without evidential basis. It is true that factual circumstances can be imagined whereby the damage occurred before the accident, but evidence easily outweighs what is little more than speculation.

78. I therefore find on the balance of probabilities that the screw thread was damaged after the accident on one of the occasions after Mr Poynton had re-fitted the handle that work was done on the Door, even if there was only one occasion. The thread-lock was also applied on one of those occasions.

Conclusion

79. It is unusual, perhaps, that an incident can, in law, just be an accident. However, since the passing of ERRA, Claimants face a significant hurdle in establishing a cause of action in certain circumstances, particularly in those circumstances previously covered by the six-pack regulations.

80. The statutory interpretation of the word "equipment" has caused significant difficulties for some of our most eminent judges. Each case is based on its own facts, but I have concluded on the 1969 Act after much deliberation.

81. The experts' evidence was given honestly, but in the realms of the specific situation faced here, Dr Graham was better qualified and more experienced. Mr Hill's experience lies with larger projects and, whilst I have no doubt that he has been trying to assist the court, his opinions on this Door and its handle were not as persuasive as those of Dr Graham.

82. Finally, the facts of the history of this Door and its handle, whilst incomplete in terms of documentary evidence, is quite readily resolved on the balance of probabilities when the documentary and oral evidence is examined.

83. For the above reasons, I am driven to dismiss the Claimant's claim on liability.

84. I regret the delay in producing this draft judgment, caused partly by along absence, but also by a heavy workload.

HHJ Berkley

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