

Neutral Citation Number: [2026] EWHC 3084 (KB)

Case No: KB-2026-000279

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Wednesday 25 November 2026

Before :

ALISON MORGAN K.C.

(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

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Between :

ROGER TAYLOR	**Claimant**
- and -	
W.E. CHIVERS AND SONS LIMITED	**Defendant**

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John Paul Swoboda K.C. (instructed by **Fieldfisher LLP**) for the **Claimant**

A. John Williams (instructed by **DWF Law LLP**) for the **Defendant**

Hearing dates: 10 and 11 November 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 25 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Alison Morgan KC sitting as a Deputy High Court Judge:

Introduction

1. This is a claim for damages by the Claimant, Roger Taylor, who was born on 1 August 1940 and is now aged 85 years. The Claimant alleges that the Defendant exposed him to asbestos dust in the course of his employment negligently and in breach of statutory duty and that as result of that exposure he developed peritoneal mesothelioma.

2. The Defendant company was dissolved in 2015 but has been restored to the Register of Companies by Court order dated 18 November 2025 for the purposes of this claim.

3. It is common ground that the Claimant worked for the Defendant as a carpenter at some point in the tax year running from April 1965 to April 1966 and that in the course of his employment with the Defendant he was exposed to asbestos.

4. It is also common ground that exposure to asbestos caused the Claimant to develop peritoneal mesothelioma. It follows that causation is admitted. Liability is disputed and the case was listed for trial.

5. The quantum of damages has been agreed, subject to the issue of liability, in the sum of £260,000, inclusive of interest.

6. Although the matter was listed for a trial, no oral evidence was called by the parties. As a result of his condition, the Claimant is too unwell to give evidence and a hearsay notice was served. A further witness, Mr Malcom Hall, who was also employed by the Defendant has died from mesothelioma and a hearsay notice was served. The Claimant's wife, Giselle Taylor, provided a statement relating to the Claimant's condition. This was not disputed.

7. In respect of expert evidence, the Claimant served a statement from Dr Moore-Gillon, a Consultant Respiratory physician, which was not disputed.

8. Both the Claimant and the Defendant obtained engineering and occupational hygiene expert reports from Ms Laura Martin and Ms Jane Tierney respectively. There were no significant areas of disagreement in the joint statement produced by them and they were not called to give evidence.

9. I am extremely grateful to both parties for their assistance in this matter, in particular the helpful submissions of both counsel.

The issues

10. The key factual and legal issues to be determined are as follows:

    a) When, and for what period of time, was the Claimant employed by the Defendant?

    b) To what extent was the Claimant exposed to asbestos dust during the course of his employment with the Defendant?

    c) Was that exposure to asbestos negligent? In particular, did the Claimant's exposure to asbestos when working for the Defendant give rise to a foreseeable risk of injury,

having regard to the state of knowledge of the risks presented by low level exposure to asbestos at the time of his employment?

d) What is the proper interpretation of Regulation 20 of the Construction (General Provisions) Regulations 1961?

e) Did the exposure to asbestos give rise to a breach of Regulation 20 of the Construction (General Provisions) Regulations 1961?

Issue (a): Evidence relating to the Claimant's employment with the Defendant

11. For reasons that are considered below in relation to Issue (c), it is important to identify the date when the Claimant was employed by the Defendant. There is no dispute that this must have occurred at some point in the tax year running from April 1965 to April 1966.

12. The Claimant has provided three witness statements dated 21 November 2024, 28 March 2025 and 23 September 2025. As a result of his mesothelioma condition, the Claimant was too unwell to attend court in person and to give evidence. A hearsay notice was served with a letter from his GP, Dr Shalabi dated 4 November 2026, setting out the very considerable impact of his condition and explaining why he is not fit to give evidence.

13. In his witness statements, the Claimant explains the nature of his work as a carpenter from the early 1960s onwards. He would often move from one job to the next in a short period of time and had many employers. In his first witness statement, the Claimant provided a list of his previous employers, as far as he was able to recall. He considered a copy of his employment record from HMRC recording his previous employers. Having considered that list, the Claimant identified which employers he was not able to remember working for.

14. For the tax year from April 1965 to April 1966, the Claimant states that he worked for the company O'Dell & McCarthy on a new Safeway supermarket in Farnham in Surrey. He worked for this company *"for a short period of time may be only a few months"*. He then worked for a company called Frank Greenaway Ltd on the Old Farnham Hospital for an unspecified period of time.

15. The Claimant states as follows in relation to the period of his employment with the Defendant: *"…I worked on the married quarters [in a military barracks] in Aldershot. The site was off the A325 just outside Aldershot…This was a new housing site for soldiers' families and wives…the houses were built in blocks of either 3 or 4 terraced houses in small blocks…I recall working on this site for approximately 5 months continuously"*.

16. There is no evidence of any period of unemployment in the tax year 1965/66. The Claimant provides an account indicating continuous employment across different employers, stating that *"it was quite easy for me to move from one job to the next."*

17. The Claimant's HMRC National Insurance Contribution schedule has been obtained and shows the Claimant's employment with the Defendant in the tax year 1965/66. The

schedule identifies three employers listed on the schedule before the Defendant, and one after the Defendant.

18. A tax deduction card has also been obtained for the period from 1965/66 relating to the Claimant's employment with the Defendant. The following table appears under the title "*Income tax":*

	£	s.	d.		£	s.	d.
Total gross pay in year ended 5 April, 1966	*717*	*12*	*4*	*Total net tax deducted in year ended 5 April,1966*	*105*	*2*	*0(?)*
If employee engaged during year, deduct pay in respect of previous employment(s)	*523*	*12*	*7*	*If employee engaged during year, deduct tax in respect of previous employment(s)*	*?*	*8*	*?*
Pay In respect of this employment	*193*	*19*	*9*	*Tax deducted (or refunded) in respect of this employment. If refund, mark entry "R"*	*?*	*19*	*?*

19. As set out above, the tax deduction card states: "*Total gross pay in year ended 5 April, 1966"* was £717 12s 4d. Of that total sum, the card identifies that the Claimant earned £523 12s 7d in "*previous employment*" and earned £193 19s 9d from the Defendant, the employer listed as *"W E Chivers & Son"*.

20. The engineering experts have considered the figures set out above. The Defendant's expert Ms Jane Tierney assumes that the Claimant worked for O'Dell & McCarthy for at least 3 months. By analysis of the figures on the tax deduction card, she has assumed that the figure of £193 paid by the Defendant represents employment for a period of 3 ¼ months (27%) *"assuming he was paid similarly for his work with each employer".* The Claimant's expert, Ms Laura Martin, refers to the Claimant's account that he worked for the Defendant for approximately 5 months. In their joint report dated 22 September 2026, the experts note that the timing and duration of this period of work is a matter for the Court to determine.

The parties' submissions on the period and time of employment

21. The Claimant submits that the evidence from the Claimant, taken together with the evidence from the available HMRC records, demonstrates that the Claimant must have been employed by the Defendant for a period of approximately 5 months in the later part of 1965 and into 1966.

22. The Claimant relies on the tax deduction card as being '*uniquely important'* as the only independent, contemporaneous evidence. The Claimant submits that the wording on the

1965/66 tax deduction card leads to the safe conclusion that in the period 1965/66, the Defendant was the Claimant's final employer. That is because the tax deduction calculation cannot be undertaken until the end of the tax year and it demonstrates that the Claimant was still employed by the Defendant at the time the card was produced.

23. The Defendant notes that the Claimant's statements indicate that he recalls working at the site for "*approximately"* 5 months continuously in tax year 65/66. The Claimant does not state the dates, or approximate dates, of employment in this tax year. The Defendant highlights that the Claimant's recollection of other matters relating to his work for the Defendant has been variable and remains unspecific in important respects.

24. The Defendant also submits that the process of trying to remember events in the distant past is inherently fallible and highly susceptible to inaccuracy and error. Efforts to think back so many years are liable to be affected by external influences, including the involvement in litigation itself.

25. In relation to the documentary evidence, the Defendant submits that the HMRC schedule shows there were 5 employers in this tax year including a company called 'D & Frank Greenaway Ltd'. This company is also listed as an employer in tax year 66/67. From this it is submitted that the Claimant was likely to be employed by that company over tax years. The Defendant submits that the single facing tax deduction card does not record the dates of employment, but simply shows that the Defendant paid the Claimant £193 out of total wages that year of £717, amounting to about 27% of the total earnings, and so cannot be relied upon to establish that the Claimant worked for the Defendant at some point after October 1965.

Conclusions on Issue (a): When and for what period of time was the Claimant employed by the Defendant?

26. As noted above, a hearsay application was made in relation to the Claimant's evidence. As a result of his condition, he is too unwell to attend court or to give evidence. I must assess the weight to be attached to this evidence, having regard to section 4 of the Civil Evidence Act 1995. This includes the following:

"Considerations relevant to weighing of hearsay evidence.

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

27. I have considered carefully the weight to be attached to this hearsay evidence. I do not consider that any of the matters set out in section 4(2) have particular application in this case. I have made an overall assessment of the reliability of the evidence, having regard to all of the circumstances, including the passage of time since these events.

28. The Claimant is unable to give evidence in these proceedings because of the illness caused by asbestos exposure. These events took place 60 years ago and it is inevitable that the passage of time has impacted on his memory. It is unsurprising that the Claimant's memory has been assisted by considering the contemporaneous documentation. The Claimant was able to recall the location of his employment with the Defendant with some precision and, as considered below, the Claimant's recollection of the nature of his employment is supported by the expert evidence.

29. Given the passage of time, independent contemporaneous records are very important. I have considered the records from HMRC, including the tax deduction card. I consider that the proper interpretation of these documents is as follows:

(i) The Defendant provided a record of the Claimant's employment within the tax year from April 1965 up until 5 April 1966. As the document can only be completed at the end of the tax year, the language used on the document indicates that as at 5 April 1966, the Defendant was the last employer of the Claimant.

(ii) The reference to £523 earned from "previous employment" indicates that the Claimant had earned approximately 73% of his income for the tax year 1965/66 before he worked for the Defendant. It is a proper inference from this that employment with the Defendant came after this point and therefore in the latter part of the tax year.

(iii) The information provided by the Defendant to HMRC establishes that the Claimant earned £193, approximately 27% of his income from the Defendant for the tax year 1965/66. This equates to approximately 3 ¼ months.

(iv) The effect of (i) to (iii) above is that the Claimant is likely to have worked for the Defendant in the late part of 1965 and the early part of 1966 and for a minimum period of 3 ¼ months.

30. I have concluded that these underlying documents provide support for the Claimant's recollection that he worked for the Defendant for "*approximately 5 months*" in 1965 to 1966. Whilst this figure does not mirror the mathematical calculation conducted by the expert Ms Tierney, I consider that the records provide broad support for the Claimant's account.

31. Whilst it is not possible to be precise as to the dates of employment or the duration, I am satisfied on the balance of probabilities that the Claimant's employment with the Defendant must have taken place in the latter part of 1965, with most, if not all of it occurring after 31 October 1965, for a period of approximately 5 months,

Issue (b): Evidence relating to the Claimant's exposure to asbestos dust during the course of his employment with the Defendant

32. The Claimant describes the nature of his employment with the Defendant as follows: *"I recall that the facias and soffits for the housing were made out of asbestos. The facias were flat boards with square edges on them and we would all have to fix the facias to the end of the rafters on the houses. The boards were white in colour and were either ¾ of an inch thick or an inch thick. The boards were made from asbestos. They were relatively easy to cut to size using a hand saw. I would cut the boards to size outdoors."* The Claimant recalls that he cut 12 boards per block of three terraced houses. He notes: *"When cutting the facia boards there would be a lot of asbestos dust created and inhaled by me and others working around me".*

33. He also cut the soffits to size and then drilled them into place under the eaves of the houses. For the drilling process, he notes: *"There was a lot of dust created when cut but particularly when drilling holes into the soffit boards as my face would be directly underneath…"* He cut and drilled roughly the same number of asbestos boards in this process, so 12 boards per block of three terraced houses. The Claimant states that he worked on the soffits a lot as more money could be made for that work under the bonus system.

34. The Claimant recalls that he would be working on facias and/or soffits for a day at a time and at least once every two weeks.

35. The Claimant also relies on a statement taken from Martin Hall dated 25 July 2014. Sadly, Mr Hall is now deceased having died from an asbestos-related disease. A hearsay application was made in relation to his evidence. I apply the same care in considering the weight to be attached to this evidence, pursuant to section 4 of the Civil Evidence Act 1995, but I note that no dispute as to any part of his evidence has been raised by the Defendant.

36. Mr Hall also worked for the Defendant as a labourer in 1960. He worked on a housing development at the Tidworth Military Camp. Mr Hall carried bricks and blocks up ladders to the brick layers as they were building houses. He did not work directly with asbestos. However, he worked near to carpenters who were sawing up materials, including asbestos sheeting. This process generated dust which Mr Hall observed was *"visible being blown in the wind*". He was exposed to this dust on a daily basis.

37. The engineering experts have both considered the Claimant's description of his employment. In their joint report, they agree that *"the nature of the work described to us is in keeping with accounts of the material time and the known uses of asbestos in construction…we agree that on the basis of the Claimant's description of the boards as white and of ¾ -1 inch thickness, it appears likely on the balance of probabilities that they were asbestos-containing."*

38. The experts agree that the Claimant incurred asbestos exposure in the work activities described *"at the period under consideration this would likely have included to amphibole fibre types (amosite and/or crocidolite)…"*

39. The experts further agree that *"work with, or in the vicinity of asbestos sheet products can give rise to asbestos airborne exposures…spatial dispersion has an effect on this;*

confined spaces or work in very close proximity can have an intensifying effect whereas work in open outdoor atmosphere allows greater dispersions and therefore reduced concentrations".

40. Both experts made estimates of the Claimant's likely exposure dose during the period of employment. In her report, Ms Tierney sets out her calculations, based on exposure for 8 hours a day, on one day every two weeks. Assuming a period of 5 months' employment, this amounts to 11 days. The experts both used the standard scale for quantifying the measure of exposure, namely to identify the range of fibres of asbestos in each millilitre of air (f/ml).

41. An asbestos concentration of 1 fibre/ml is the same as 1 fibre per cm^3 which is the same as 1,000,000 asbestos fibres per m^3 of air. An apparent low concentration in fibres/ml does not necessarily mean a small number of asbestos fibres. For example, 0.01 fibres/ml means that in every cubic meter of air, there would be 10,000 asbestos fibres.

42. Using these figures, the experts then calculated the exposure dose, which is measured in working years. A working year is typically taken to be to 8 hours per day, 5 days per week, 48 weeks per year, meaning that there are 1,920 working hours in a working year. The units for exposure doses are derived from fibres/ml multiplied by years to be expressed as 'fibres/ml years'.

43. In this case, Ms Tierney considered the exposure doses identified in Technical Data Note 42 *'Probable asbestos dust concentrations at construction processes'* which was first published in 1973. TDN42 provides representative concentrations for various activities involving the use of asbestos including cutting insulating board, drilling overhead and hand sawing. She arrived at a range of 4-12 fibres/ml for these activities.

44. Ms Martin considered TDN42 and also the reported figures from the Cape Group for cutting and fixing of Asbestolux. Cutting with a hand saw is listed at between 2.9 and 92.3 f/ml with an average of 36.4 f/ml, whilst drilling and affixing the boards to structures is listed at between 3.5-46 f/ml with an average of 20.9 f/ml.

45. As to the overall exposure of the Claimant during the period of his employment, Ms Tierney identified an estimate of about 0.18-0.55 f/ml years, whereas Ms Martin adopted a range value arriving at a dose of about 0.1-0.7 f/ml years. The experts noted*: "this is a fairly close level of agreement on the estimated dose".*

46. In assessing the level of exposure experienced by the Claimant during the course of his employment with the Defendant, the Defendant invited the Court to have regard to discrepancies in statements made by the Claimant at the time and in the aftermath, of his diagnosis. During clinical investigations prior to diagnosis, the Claimant told his treating physician Dr Croupe that he was previously employed as a carpenter and that he may, inadvertently, have been exposed to asbestos but that he was not aware of any specific exposure.

47. Further, on 15 March 2024, following his diagnosis, the Claimant applied for Industrial Injuries Disablement Benefit and a PWCA lump sum payment. By the time of making these applications, the Claimant recalled exposure to asbestos in five jobs, including with the Defendant, and also stated he had been exposed to asbestos during self-employment between 1969-2002.

48. In his second witness statement, the Claimant addresses the circumstances in which he spoke to the doctor and how the forms came to be completed. He states that the forms were completed on his behalf and submitted by an asbestos disease charity, HASAG. At that time, when he had received his diagnosis, he was unclear about the dates of employment and he was identifying those employers where he believed that he could have been exposed to asbestos. He could not recall specific instances at that time, but could not rule out exposure in the working environments that he was in. Thereafter, he met with his solicitor and went into greater detail about his employment record. This led to identifying the specific instance of exposure at the time of his employment with the Defendant. He also notes that it was common knowledge at the time that the facias and soffits that he was working on contained asbestos.

The parties' submissions on Issue (b): the Claimant's exposure to asbestos dust during the course of his employment with the Defendant

49. The Defendant fairly observes that this is an area where it would have wished to have cross-examined the Claimant as to the discrepancy between his initial account to a doctor, in which he did not identify any specific example of exposure, and his subsequent position in these proceedings, where he is clear about exposure during the time of his employment with the Defendant. The Defendant has also indicated that the absence of the Claimant has compelled it to abandon pursuit of any question of contributory negligence, based on the period when the Claimant was self-employed, given that it is unable to question the Claimant about that issue.

50. The Claimant submits that the experts provide clear support for the Claimant's account that the nature of the work that he was performing when employed by the Defendant would have involved exposure to asbestos. For the reasons considered below, the Claimant further submits that by 31 October 1965, there could be no safe or permissible level of exposure in any event, and therefore any figure falling within the ranges identified by the experts would present an unacceptable risk of developing incurable cancer.

Conclusions on Issue (b)

51. Following on from my conclusion on Issue (a), having concluded that the Claimant worked for the Defendant for a period of approximately 5 months in 1965/1966, and having considered the nature of the Claimant's employment with the Defendant, I accept the experts' agreed opinion that this work involved a risk of exposure to asbestos.

52. Although I recognise that the Defendant would have wished to have cross-examined the Claimant as to why he did not identify his potential exposure to asbestos when employed by the Defendant when he first discussed the matter with a doctor, the fact that the Claimant's work for the Defendant involved a risk of exposure to asbestos is not in dispute, given the joint expert position. I accept that evidence and conclude that the Claimant was exposed to asbestos during the period of his employment with the Defendant.

53. As to the level of that exposure, I consider that the ranges adopted by the experts for the likely exposure dose in this period are well-founded and based on an analysis of the work performed by the Claimant compared against the published data. I note that they consider that the difference between the ranges that they have adopted is not significant.

I conclude, on the balance of probabilities, that the likely overall exposure sits within these ranges and should be taken as being 0.55 f/ml year.

Issue (c): Was that exposure to asbestos negligent?

54. This requires consideration of whether the Claimant's exposure to asbestos when working for the Defendant gave rise to a foreseeable risk of injury, having regard to the state of knowledge of the risks presented by low level exposure to asbestos at the time of his employment. In considering this issue, I have regard to the evidence presented in this trial, considered in the context of the relevant authorities.

55. The evidence presented by the parties includes the following:

    i. The experts' opinion as to the state of knowledge of the risks presented by asbestos at the relevant time; and

    ii. An bundle of 'General Knowledge Documents' containing 30 articles and reports charting the developing knowledge of the risks presented by asbestos from 1960 onwards submitted by the Claimant.

56. Both parties have addressed me on the literature in the Claimant's bundle. It is clear that this material overlaps to a great extent with the material presented in a number of previous cases. The material is summarised in the judgment of Stuart-Smith L.J. in *White v Secretary of State for Health and Social Care* [2024] EWCA Civ 244. There is also considerable overlap with the review of materials referred to by Swift J, in *Abraham v G Ireson and Son* [2009] EWHC 1958 (QB), Simon J. in *Lillian Rose Asmussen v Filtrona United Kingdom Ltd*, and Hale L.J. in *Jeromson v Shell Tankers (UK) Ltd* [2001] ICR 1223 (CA).

57. Consideration of this history is set out in detail in the judgment of Stuart-Smith L.J. in *White* from §44 onwards. I summarise the parts of that history that have particular relevance to this case as follows.

58. The risks that were appreciated to arise from the inhalation of asbestos were, until the 1960s, the risk of asbestosis and (later) the risk of lung cancer. These risks were known and appreciated by the medical establishment, Government, and HM Factory Inspectorate. They were, or should have been, appreciated by employers whose business involved the use of asbestos.

59. The first 'exposure limits' for asbestos came prior to the commencement of the Claimant's employment with the Defendant and were published in '*Toxic Substances in Factory Atmospheres'* (1960), which gave advice on preventing exposure in the context of factories. The document contained a section on *"maximum permissible concentrations"* [MCPs] of various substances used in industry, including asbestos. For each substance, a figure of concentration in atmosphere is given. If this concentration is exceeded, further action is necessary to achieve satisfactory working conditions. The concentrations given relate to an average concentration for a normal working day. The maximum permissible concentration for asbestos was 177 particles per cubic centimetre of air. This equated to 5 million particles per cubic foot of air (mppcf) or 30 fibres/ml (fibres per millilitre).

60. Although it is clear that an appreciation of the dangers of exposure to asbestos was not limited to those working in the asbestos industry and factories, at that time the risk of asbestosis (and subsequently lung cancer) was a risk that was thought to arise from substantial exposure to asbestos more typically associated with working in the production of asbestos.

61. The 1960s saw a 'sea-change' in the perception of risk after 1960 and, dramatically, after the publication of Newhouse and Thompson's report *'Mesothelioma of Pleura and Peritoneum Following Exposure to Asbestos in the London Area'* received for publication in the British Journal of Industrial Medicine on 11 February 1965. The research work underpinning this report was first presented by the authors at a conference at The New York Academy of Science in October 1964 under the title *'Epidemiology of Mesothelial Tumours in the London Area'.*

62. The Newhouse and Thompson report identified the existence mesothelial tumours in patients exposed to asbestos to a far lesser extent than had previously been understood to present a risk of serious illness. The effect of this research was published in The Sunday Times on 31 October 1965, in an article written by Dr Alfred Byrne, the Medical Correspondent, titled *'Scientists track down a killer dust disease'*. The parties have helpfully provided me with a legible copy of this article, which I have considered in full. The article begins as follows: *"A disquieting 'new' occupational disease capable of killing not only exposed workmen but also perhaps his womenfolk and even people living near his place of work is the subject of intensive behind-the-scenes activity by a British scientist ... a remarkable report ... has brought the whole matter to the surface."*

63. A shorter article entitled '*Death peril in overalls'* was published in The Daily Mirror on 1 November 1965 which highlighted the risks presented by secondary exposure to asbestos.

64. Notwithstanding the publicity of this issue in national newspapers, it was only in April 1967 that the Asbestosis Research Council published the *'Recommended Code of Practice for Handling, Working and Fixing of Asbestos and Asbestos Cement Products in the Building and Construction Industries*'. In November 1967, the Government then published guidance on mesothelioma risks in *'Problems Arising from the Use of Asbestos – Memorandum of the Senior Inspectors Advisory Panel.'*

65. There was no change to the enforcement levels for asbestos until the enactment of the Asbestos Regulations 1969.

66. It follows from the above that it was only in and from the 1960s that mesothelioma was appreciated as a foreseeable risk of asbestos inhalation at all. Further, it was only in October 1965 that the risk of mesothelioma after exposure to asbestos at levels that had previously not been thought to give rise to a risk of asbestosis or lung cancer was identified. It then took two years for published guidance to address the risks in formal terms.

67. There is no evidence that any body of employers, medical expertise, Government or HM Factory Inspectorate appreciated before the 1960s that there was a foreseeable risk of injury after exposure to asbestos at levels significantly below those thought necessary to cause asbestosis or lung cancer.

68. The joint expert report of Ms Tierney and Ms Martin states as follows at §3.5: *"We agree that the employment closely coincides with a period of significant advancement in knowledge regarding the risks of asbestos disease…the end of October 1965, which we are aware has [sic] considered as a significant date with regard to the general dissemination of information on the risks of mesothelioma and asbestos exposure at levels previously thought to be low".*

69. In her report dated 7 August 2026, Ms Tierney observes as follows at §5.8.9 in relation to the use of asbestos in construction work as described by the Claimant: *"These materials were in common usage on building sites and work of this nature would not have been regarded as substantial exposure to asbestos and were not, at that time, associated with the risk of asbestos. Whilst this understanding changed following the Newhouse and Thompson report in 1965, the reaction time to incorporate/appreciate that asbestos disease was now associated with exposure to much lower levels than thought necessary to create a risk of asbestosis would have been slow. This is supported by tracing the literature in and from the 1960s".*

70. At §6.15 Ms Tierney notes: *"In my view, it would have taken some time to comprehend the meaning/significance of the Newhouse and Thompson paper. As it is, it took the HMFI/Ministry of Labour until 1967 to issue the Memorandum 'Problems arising from the use of asbestos"*. As I have noted, the Asbestosis Research Council did not produce industry guidance on working with asbestos in 1967.

71. In her report dated 21 August 2026 at §7.8, Ms Martin agrees that sector-specific guidance on using asbestos sheet products safely in the construction trades was not published until April 1967. However, she considers that concept of protecting construction and engineering workers from dust was not new at the material time. She refers here to the terms of Regulation 20 of the Construction (General Provisions) Regulations 1961, which I consider below.

72. At §7.6 of her report, Ms Martin refers to the period of the Claimant's employment being *"at around the time of the entering into public knowledge of the risks associated with asbestos exposure at levels previously thought to be low, and including from secondary exposures"*.

73. In their joint report at §3.5, the experts indicate that they hold *"slightly differing viewpoints on the expected knowledge of the Defendant at the material time, but since it is based around the uncertainty on the date of employment, we consider this a variation of consideration rather than disagreement".*

Principles established by the authorities relevant to Issue (c)

74. As indicated by Swanwick J. in *Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd* [1968] 1 WLR 1776 at 1783D-F the overall test when considering the duties of employers towards their employees is: *"the conduct of the reasonable and prudent employer taking positive thought for the safety of his workers in light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where there has been greater than average knowledge*

of the risks, he may be thereby obliged to take more than the average or standard precautions."

75. As noted by Mustill J. in *Thompson v Smiths Shiprepairers Ltd* [1984] 1 Q.B. 405 at 416B-C: *"…the standard of what is negligent is influenced, although not decisively, by the practice of the industry as a whole…The employer must keep up to date, but the court must be slow to blame him for not ploughing a lone furrow".*

76. With specific regard to the knowledge of the risks posed by exposure to asbestos, in *Maguire v Harland and Wolff plc* [2005] PIQR P21, Judge L.J. observed as follows: *"Before 1965 neither the industry generally, nor those responsible for safety and health, nor the Factory Inspectorate, nor the medical profession, suggested that it was necessary, or even that it would be prudent, for risks arising from familial exposure to be addressed by the industry. In truth, the alarm bell did not sound until late 1965, when it began to be appreciated that there could be no safe or permissible level of exposure, direct or indirect, to asbestos dust."*

77. In *Lillian Rose Asmussen v Filtrona United Kingdom Ltd* [2011] EWHC 1734 (QB), Simon J. also considered the history of the development of knowledge relating to exposure to asbestos. Having addressed the effect of the Newhouse and Thompson report and the article in the Sunday Times on 31 October 1965, he concluded as follows at §40: *"It is recognised in the present case, as it has been in other cases, that October 1965 marked a change in the state of knowledge which was or should have been available to employers".*

78. In *Williams v University of Birmingham* [2011] EWCA Civ 1242, Aikens L.J. considered the history, setting it out in an Appendix to the judgment. In the Appendix at §2 he repeated the observation made in *Asmussen* as follows: *"It is now accepted that October 1965 marked a change in the state of knowledge, which should have been available to employers of those who were exposed to asbestos."*

79. *Bussey v 00654701 Ltd (formerly Anglia Heating Ltd)* [2018] EWCA Civ 243 was a case concerned with exposure to asbestos after late 1965 during employment as a plumber. The central issue was whether the trial Judge was right to dismiss the claim on the basis that the claimant had not been exposed to levels of asbestos dust in excess of the hygiene standard for asbestos (TDN 13) published in 1970. Jackson L.J. reviewed the authorities at §§29-39. He approved the formulation of the foreseeability test for mesothelioma as set out by Aikens LJ in *Williams*, but concluded that it had been wrongly applied by the trial Judge, who had determined the issue of liability at common law by reference only to the single yardstick of compliance/non-compliance with the hygiene standards in TDN 13. The Court of Appeal concluded that the issue of foreseeability of the risk of harm should have been looked at more broadly because TDN 13 did not provide a "*bright line*" of liability in such cases.

80. Jackson L.J. referred to the opinion of the experts in that case that: *"From the mid-1960s there was knowledge that exposure to relatively small quantities of asbestos dust, in particular crocidolite, was associated with a risk of developing mesothelioma. It is generally agreed that this became common knowledge in 1965 following publication of an article by Newhouse and Thompson which received national press coverage. "*

81. In *Bussey* Underhill L.J. at §63 considered that the correct approach to the necessary inquiry involved cases of this type was twofold as follows:

(a) The first question is to consider whether, at the time of a claimant's employment, the employer should have been aware that exposure to asbestos dust gave rise to a significant risk of asbestos-related injury: *"That will depend on how quickly the knowledge, first widely published in 1965, of the fact that much lower exposures than had previously been thought to be dangerous could cause mesothelioma was disseminated among reasonable and prudent employers whose employees had to work with asbestos."* I consider that this first question is concerned with identifying the existence of a duty of care.

(b) If the answer to the first question is that the employer should have been aware that the employee's exposure gave rise to a such a risk (including that there was no known safe limit), the second question is whether it took the proper precautions to reduce or eliminate that risk. I consider that this second question addresses whether there has been a breach of the duty of care by the employer.

82. The end of October 1965 was described as "the watershed" moment in *White* at §86. Stuart-Smith L.J. at §87 observed as follows in relation to the Newhouse and Thompson findings: *"The significance of their findings was immediately appreciated and was widely publicised by a major article in the Sunday Times on 31 October 1965".* Further, at §89 he observed: *"…it was implicitly accepted before us that, after 1965, reasonably well-informed employers should rapidly have appreciated the risk of mesothelioma and that it was reasonably foreseeable that it might be caused by exposure at levels far lower than understood to be required in order to cause asbestosis or lung cancer".*

83. At §124, Stuart-Smith L.J. endorsed the approach adopted in *Bussey*, noting: *"It has the advantage of concentrating the mind on the relevant first question, namely whether the employer should have been aware that the employee's exposure to asbestos dust which their work involved gave rise to a significant risk of asbestos-related injury".*

84. In addressing this question in *White*, the Court of Appeal was considering a case where employment occurred before the October 1965 *"watershed*" moment and therefore at a time when the risk of asbestos related injury was tethered to *significant* levels of exposure. In that context, the Court considered that the levels of exposure in that case were much lower than those involved in the case of *Jeremson* and lower than the MCP of 30 fibres/ml given in the 1960 edition of '*Toxic Substances in Factory Atmospheres*'.

The parties' submissions on Issue (c): whether the exposure to asbestos was negligent in light of the knowledge to be expected of the Defendant at the relevant time

85. The Claimant submits that the starting point is Stuart-Smith's L.J. observations in *White* (with whom Newey LJ and Underhill LJ agreed), having considered the relevant literature, who noted *"…the 1960s saw a sea-change in the perception of risk after 1960 (by reason of Wagner's paper) and, dramatically, after the publication of Newhouse and Thompson's report in 1965…"*

86. The history set out within the relevant literature demonstrates that knowledge of risk of mesothelioma from asbestos exposure at low levels was first obtained by those in occupational medicine in 1960. Knowledge was then disseminated to the wider medical

profession, the Government and HMFI by 1964 and knowledge was disseminated to the wider public by reference to the Sunday Times Article on 31 October 1965.

87. The Claimant places particular reliance on the words used by the experts in the joint report that there was *"general dissemination of information on the risks of mesothelioma and asbestos exposure at levels previously thought to be low"* by this time. From this, it is submitted that by 31 October 1965 a reasonable employer within the construction industry would or should have known of the risk of exposure at low levels and that no safe level of exposure could have been assumed.

88. The Defendant emphasises that the general principles of law that apply to claims against employers apply also to claims for asbestos lung disease. Reliance is placed on *Stokes v Guest, Keen & Nettlefold (Nuts & Bolts) Limited* (supra) at 1783C-F; *Thompson v Smiths Shiprepairers (North Shields) Limited* (supra) at 415C - 416B to highlight the importance of industrial practice; and *Baker v Quantum Clothing Group plc* [2011] 1 WLR 1003 at §§9-10, 34 per Lord Mance, to highlight the importance of placing the focus on contemporaneous advice and guidance rather than applying the benefit of hindsight.

89. The Defendant submits that the common law principles reflect the fact that both knowledge and safety standards evolve over time; that it is the contemporaneous knowledge and standards which are relevant; and that absent evidence of actual knowledge, consideration should be given to the knowledge materials reasonably within the contemplation of a like employer working in the relevant industry sector.

90. The Defendant further submits that insofar as evolving knowledge and standards requires a reasonable employer to take specific steps, a reasonable period of time should be allowed for that to happen. After the publication of the Sunday Times article, there was a continued belief in the medical profession and those advising Government that some level of occupational exposure to asbestos was safe and did not give rise to foreseeable risk of injury.

91. The Defendant submitted that the earliest that the risk of injury caused by lower level exposure to asbestos was reasonably foreseeable to an employer involved in the construction injury was when guidance to the construction industry on the use of asbestos materials in construction processes was first published, which was in April 1967.

Conclusions on Issue (c): whether the exposure to asbestos was negligent

92. It is common ground that the publication of the article in The Sunday Times on 31 October 1965, following on from the Newhouse and Thompson report, was a significant event. However, it is not accepted by the Defendant that from this point onwards the risk of harm from asbestos exposure at a lower level was reasonably foreseeable.

93. Given the date parameters engaged in this case, I must determine whether from the point of publication of the article in late October 1965, an employer of those working with asbestos would or should have known that there was a risk of injury arising from low level exposure to asbestos.

94. The evidence addressing this issue comes from the experts in this case.

95. Ms Tierney indicated in her own report that the industry *"...would have taken some time to comprehend the meaning/significance of the Newhouse and Thompson paper"* and referred to the time taken to publish revised industry guidance. However, in the joint expert report, Ms Tierney and Ms Martin agreed that the period of the Claimant's employment: "*closely coincides with a period of significant advancement in knowledge regarding the risks of asbestos disease…the end of October 1965, which we are aware has [sic] considered as a significant date with regard to* ***the general dissemination*** *of information on the risks of mesothelioma and asbestos exposure at levels previously thought to be low"* (emphasis added).

96. From this opinion, I have concluded that by the end of October 1965, there was general awareness of the risks presented by exposure to asbestos at lower levels. I consider that the position of the experts in this case mirrors the observations of Stuart-Smith L.J. in *White*, namely that the significance of the Newhouse and Thompson findings was '*immediately appreciated and was widely publicised'.*

97. I also conclude, adopting the language used in *White* at §89, that thereafter: "*reasonably well-informed employers should rapidly have appreciated the risk of mesothelioma and that it was reasonably foreseeable that it might be caused by exposure at levels far lower than understood to be required in order to cause asbestosis or lung cancer".*

98. I consider that the "*rapid appreciation*" of the risk of mesothelioma falls within the timeframe of the Claimant's employment with the Defendant.

99. It follows that applying the two-stage test identified by Underhill L.J. in *Bussey*, on the first issue, I conclude that at the time of part of all of the Claimant's employment, the Defendant should have been aware that exposure to asbestos dust gave rise to a significant risk of asbestos-related injury.

100. On the second issue, I have considered whether the Defendant took proper precautions to reduce or eliminate that risk. There is no evidence that the Defendant took any steps to reduce or eliminate the risk presented to the Claimant or anyone else through asbestos exposure.

101. In the context of this case, I reject the submission made on behalf of the Defendant that insofar as evolving knowledge and standards required a reasonable employer to take specific steps, a reasonable period of time should be allowed for that to happen. There is no evidence indicating that Defendant reacted to the knowledge of the risk in any way. It follows that no question as to the reasonableness of those steps and the time period in which they might have been taken arises for consideration. I do not consider that it was reasonable for an employer to have waited for the guidance in 1967 to be published.

102. Further, given that the knowledge that was disseminated by the end of October 1965 indicated that there could be no safe or permissible level of exposure to asbestos, the reasonableness of any precautions taken by an employer thereafter to allow exposure to occur would need to be carefully scrutinised. In my view, the nature of the risk that presented by that time, which should have been known by any employer using asbestos products, means that taking no precautionary steps at all or delaying in reacting to the information, even by a period of months, was not reasonable.

103. As a result, I have concluded that the exposure of the Claimant to asbestos during the course of his employment with the Defendant was negligent.

Issue (d): What is the proper interpretation of Regulation 20 of the Construction (General Provisions) Regulations 1961?

104. The Claimant alleges that the Claimant's exposure to asbestos gives rise to a breach of a statutory duty under Regulation 20 of Part 7 of the Construction (General Provisions) Regulations 1961. Part 7 addressed "*Dangerous or unhealthy atmospheres"* and under a heading *"Inhalation of dust and fumes to be prevented"*.

105. Regulation 20 was as follows:

> *"20. Where in connection with any grinding, cleaning or spraying or manipulation of any material, there is given off any dust or fume of such a character and to such an extent as to be likely to be injurious to the health of persons employed all reasonably practicable measures shall be taken either by securing adequate ventilation or by the provision and use of suitable respirators or otherwise to prevent inhalation of such dust or fume".*

106. The parties have addressed me as to the proper interpretation of the following terms within Regulation 20:

(i) "*…given off any dust or fume of such a character and to such an extent…*"

(ii) "*likely to be injurious*"

(iii) "*all reasonably practicable measures*".

107. In *Abraham v G Ireson & Son (Properties) Ltd* (supra), Swift J. ruled that the term "*likely to be injurious*" implies that a degree of foreseeability is required. This position is common ground between the parties.

108. I was also asked to consider the proper interpretation of expression "*given off*" within Regulation 20. The Claimant submits that in this case, if the level of exposure is assessed at the point of *'emission'* of the dust, and not *'inhalation'* of the dust, then it does not matter whether the exposure was before or after the knowledge of the risk presented by lower levels of exposure to asbestos. The Claimant submits that the evidence demonstrates that the dust "*given off*" at the point of emission during the Claimant's employment was significantly greater than at the point of inhalation and to an extent which was "likely to be injurious" by reference to the awareness of risk presented by exposure to significant levels of asbestos, which was common knowledge by the early 1960s, at the latest.

109. The Claimant relies on the agreed position of the experts that the dust levels were intensified at the point of emission and the Claimant's evidence as to the levels of visible dust produced during the process of cutting the boards with a handsaw and drilling the soffits. It is submitted that this evidence demonstrates that significant levels of dust were produced at the point of emission, with no precautions being taken by the Defendant.

110. The Defendant relies on the judgment of the Supreme Court in *McDonald v Department of Communities & Local Government* [2014] UKSC 53 in submitting that the language of Regulation 20 requires both a qualitative and a quantitative assessment of the dust produced. It is submitted that the qualitative assessment necessarily imports the question of foreseeability, which the Defendant submits is to be determined at the time of the work conducted and which means that it adds nothing of substance to the common law duty owed by the Defendant to the Claimant as his employer. It repeats its submission that the risk presented by exposure of the type involved in the Claimant's work for the Defendant was not reasonably foreseeable as at the time of his employment in 1965/66.

Conclusion on Issue (d)

111. In light of my conclusions in relation to the common law duty, I do not consider that it is necessary for me to determine whether the expression *"given off*" in Regulation 20 should be interpreted as applying to the point of emission or inhalation of the dust.

112. Whether the levels of exposure are considered to be at the point of emission (at higher levels), or the point of inhalation (at lesser levels), I have concluded that by the time of part or all of the Claimant's employment, it was reasonably foreseeable that lower levels of exposure was "*likely to be injurious*" in any event.

Issue (e): Did the exposure to asbestos give rise to a breach of Regulation 20 of the Construction (General Provisions) Regulations 1961?

113. My conclusions on this question follow on from my analysis of the other issues.

114. In short, I conclude as follows:

(i) During the course of his employment with the Defendant, the Claimant was involved in the manipulation of material, namely asbestos;

(ii) In connection with the manipulation of that material, there was "*given off*" asbestos dust;

(iii) By the time of part or all of that employment, it was or should have been known by the Defendant that exposure to asbestos dust even at lower levels presented a risk of serious harm;

(iv) It follows on from (iii) that the "*giving off*" of dust was of such a character and to such an extent as to be "*likely to injurious*" to the persons employed; and

(v) No reasonably practicable measures were taken to secure adequate ventilation, to provide and use suitable respirators or otherwise to prevent the inhalation of such dust.

115. I conclude that there was a breach of the statutory duty under Regulation 20 of Part 7 of the Construction (General Provisions) Regulations 1961.

Judgment

116. For the reasons set out above, I find that the Defendant exposed the Claimant to asbestos dust in the course of his employment negligently and in breach of a statutory duty.

Postscript

117. Following circulation of the draft judgment to the parties, a draft order has been prepared.

118. There is one area of dispute in the draft order. The Defendant has applied to the Court for an extension of time to apply for permission to appeal. It seeks 7 days from the date when the judgment is handed down. The Defendant invites the Court to determine the application for permission to appeal on paper. The Defendant has indicated that if no appeal is to be pursued, the Defendant will notify the Court and the Claimant accordingly. The Defendant has explained that this time is needed in order to seek instructions from its ultimate funder in this case, the Financial Services Compensation Scheme.

119. The Claimant opposes this application, submitting that this is a case where time is of the essence and there is no reason why a different procedure to the standard procedure should be adopted. It is submitted that it would be detrimental to the Claimant for there to be delay.

120. Pursuant to Rule 52.3(2), where an application for permission to appeal is made to the lower court, it is to be made *"at the hearing at which the decision to be appealed was made"*. In *McDonald v Rose [2019] EWCA Civ 4*, at §21, the Court of Appeal summarised the procedure to be adopted by parties who intend to seek permission to appeal from the lower court, providing guidance that was noted to be good practice but not mandatory. I have considered that guidance with care. Applications to adjourn are to be deprecated and will generally be unnecessary irrespective of whether the judgment was ex tempore or, where there was a formal hand-down following a draft judgment being circulated to the parties. It was, however, accepted that in certain circumstances an adjournment may be necessary to enable the parties to formulate their grounds of appeal and their submissions in support.

121. Arrangements will now be made for this judgment to be handed down. The parties received the Draft Judgment on 16 November 2026. There has been sufficient time for instructions to be taken. It is likely that over 7 days will have passed before the judgment is handed down, subject to the Court's availability. If an application for permission to appeal this judgment is to be made, it must be made either in writing before the hearing, or at the time when the decision is handed down.