

Defending Claims (successfully)

Tom Panton, Barrister
Guildhall Chambers, Bristol

The keys to defending

- Effective issues analysis
- Evidence management (documents)
- Evidence management (people)

Issue identification

- Did it happen?
- How did it happen?
- Why did it happen?
- Who (if anyone) was at fault?

Did it happen?

- Minor injuries
- No contemporaneous report
- The Trustworthy Employee
- Credibility Issues

How did it happen?

- Contemporaneous investigation
- Witnesses (then)
- Witnesses (now)
- CCTV footage

Why did it happen?

- Investigation conclusions
- Investigation conclusions (reviewed)
- Root cause analysis

Fault

- Breach of strict statutory duty (e.g. Provision and Use of Work Equipment Regulations 1998, r5) – it's the end of the line
- Breach of statutory duty throwing evidential burden on employer (e.g. Workplace (HS&W) Regulations 1992, r12(3))
- Duty to take reasonable care (common law, other statutory duties)

Fault continued

- The death of strict liability? (HSW, etc, Act 1974, s47 since 1.10.2013)
- Negligence analysis
 - Magnitude of risk
 - Magnitude of harm
 - Cost of preventative measures
 - Social ramifications (Compensation Act 2006, s1)

Evidence management (documents)

- “We don’t have it any more” vs. “We never had it”
- Updated/organic documents – previous versions
- Authorship

Evidence management (people)

- Gone \neq RIP
- Who is critical?
- The general rule (fewer = better)
- The exception (C says condoned unsafe systems)

Evidence management (people)

CREDIBILITY

Defending successfully

- The best defence? Effective risk management!
- But when claims arise:
 - Issues
 - Documents
 - People

Thank you

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