IN THE DISTRICT COURT
AT HAMILTON

I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA

CRI-2019-019-002358
[2020] NZDC 21572

WORKSAFE NEW ZEALAND
Prosecutor

v

TOTAL ACCESS LIMITED
First Defendant

PERRY METAL PROTECTION LIMITED
Second Defendant

Hearing:	2 October 2020
Appearances:	Ms Garrett for the Prosecutor S Curlett for the First Defendant S Rawcliffe for the Second Defendant
Judgment:	21 October 2020 at 4.00 pm

RESERVED JUDGMENT OF JUDGE J C DOWN
[Sentencing Decision]

Introduction

[1] On 3 April 2018 Joseph Baker, an employee of the first defendant, suffered excruciating and disabling burn injuries to his hands, in the course of his employment. He was one of several individuals employed by Total Access Ltd (TAL), contracted to Perry Metal Protection Ltd (PMP), who were disassembling scaffolding that had been erected around a tank of caustic soda. He required surgery, a three day stay in hospital and ongoing treatment.

[2] Both defendants are charged under ss 48(1) and (2)(c) and 36(1)(a), with failing to comply with a duty to ensure the health and safety of workers. The charges relate to the defendants' failure to eliminate or minimise the risks associated with handling scaffolding equipment that had been erected near a tank of caustic soda and other corrosive chemicals.

The facts in detail

[3] PMP's core business is hot dip galvanising. The process of hot dip galvanising involves using a crane to dip pieces of metal into a series of chemical tanks that strip the metal of impurities before it is dipped into a hot galvanising tank of molten zinc.

[4] Ian Kennedy was the production manager at PMP's galvanising facility at Te Rapa, Hamilton, at the time of the incident. His role included contractor management and induction.

[5] TAL's core business is the provision and construction of access equipment, including scaffolding, to commercial and residential construction entities. Joseph Baker, the victim, was employed by TAL from 20 March 2017 as a labourer. On the day of the incident Mr Baker's supervisor was Wayne Sandri, who had been employed at TAL since September 2015. Mr Sandri's role at the time of the incident was as scaffolding leading hand/supervisor.

[6] There are seven large tanks within the Te Rapa galvanising facility containing corrosive chemicals diluted in water. Four tanks each contained 78,000 litres of hydrochloric acid in various concentrations; one tank contained water; a sixth tank contained 78,000 of sodium hydroxide (caustic soda). Tank seven, immediately adjacent to tank six, contained zinc ammonium chloride (flux). Finally, a tank of molten zinc was in a nearby but separate area of the galvanising facility.

[7] PMP held safety data sheets for all chemicals; those for caustic soda included the following hazards:

(a) caustic soda is classified as "hazardous";

(b) caustic soda is harmful in contact with skin and causes severe skin burns;

(c) when not in use, containers are to be kept closed;

(d) chemical resistant gloves should be worn to control exposure;

(e) dust, fumes, gas, mist, vapour and spray must not be breathed;

(f) respiratory dust masks are part of the PPE to be used if there is a risk of over-exposure; and

(g) skin is to be washed thoroughly after handling.

[8] Similar advice is contained within safety data sheets for flux and hydrochloric acid.

[9] On 5 October 2017 Mr Kennedy for PMP inducted Mr Sandri and two others for TAL onto the galvanising facility work site, in advance of TAL erecting scaffolding for electrical maintenance above tank 1. Mr Baker, the victim, was not present. Mr Kennedy, the production manager had worked onsite for a year and was aware of the contents of the tanks, the hazardous risks around them, the Risk Register, the controls required including PPE, and the eye wash and shower facilities on hand in the case of an accident.

[10] During the induction, Mr Kennedy went through "all the foreseeable hazards that we could pick at the time" and gave the TAL inductees a copy of the hazards onsite from the Hazard Register, which Mr Kennedy had amended; and a copy of PMP's Contractor Handbook, which covered health and safety in general terms, but not specific risks.

[11] Mr Sandri for TAL knew from previously carrying out work in the galvanising facility that the environment contained serious chemicals, although neither he nor the other TAL workers were informed what chemicals were in the tanks. The TAL workers

were told that they would be given breathing apparatus if they felt sick from fumes, but the risk of chemical burns was not explained by Mr Kennedy for PMP.

[12] The maintenance required was to an overhead monorail crane, used for suspending and moving large metal items between the tanks. TAL's work did not start until late February/early March 2018; the induction process undertaken the previous October 2017 was not repeated, to address the different context for new work and different workers.

[13] On 27 February 2018, Mr Sandri for TAL visited the PMP site for 20 minutes to scope what equipment was required for the job. A number of TAL documents were available to Mr Sandri's use to identify and assess risks at the galvanising facility. As part of his role as scaffold supervisor, TAL expected him to carry out a risk assessment of the work sites and to use hazard identification forms which were available to him, both in hard copy and on the intranet. These included a Task Analysis and a Job Safety Analysis..

[14] Immediately prior to work commencing at the galvanising facility, Mr Sandri on 29 March 2018, completed a Scaffold Task Sheet/Work Scope Breakdown. He ticked the box "Complete all paperwork (TA, JSA etc)". That Task Sheet included a prompt for Mr Sandri to include job specific hazard details; few of which were completed. Mr Sandri did not complete a JSA or TA for the 29 March 2018 job at the galvanising facility and TAL did not ensure that he completed that documentation.

[15] There was discussion between Mr Kennedy and Mr Sandri regarding covering tank 7 but no mention was made of any need to cover tank 6 or otherwise address other hazard. On 28 March 2018 Mr Sandri and Mr Baker visited PMP site to discuss what was needed for the specific job. There is no record of what was discussed. Mr Kennedy apparently did not talk to TAL about the specific risks arising from the tanks or substances within them.

[16] On 29 March 2018 a TAL work party arrived at PMP to assemble the scaffolding, Mr Sandri was lead supervisor and Mr Baker was present. No induction was undertaken by PMP, nor did anyone take Mr Baker through the hazards.

[17] Although PMP shut down the plant for the Easter break, both tanks 6 and 7 were kept at their usual operating temperature of 60 degrees Celsius. Tank 7 was covered with a polyurethane sheet rather than plywood, tank 6 remained open and operating. Mr Sandri noticed that Tank 6 had not been covered as requested. The only PPE provided to Mr Baker was that usually given for scaffolding work, namely boots, high-visibility top, scaffolding gloves (with cotton outer and rubber palm), glasses and a hard hat. He was not provided with overalls. It seems no problems arose during the construction on 29 March. However, at about 7 am on 3 April 2018 TAL crew arrived at PMP to disassemble the scaffolding and take it away; Mr Baker joined them once they had started working. Because they had arrived two hours later than anticipated, when TAL crew began work, the PMP supervisors were focused on their own workers rather than TAL staff. No toolbox meeting occurred.

[18] The TAL group formed a human chain to disassemble the scaffolding above tank 7 and move the disassembled pieces of scaffolding out of the galvanising facility. Every piece passed through Mr Baker's hands. Initially, he was not wearing gloves.

[19] When the scaffolding handrails came down, Mr Baker noticed they were slippery. He found some old scaffolding gloves in the back of a TAL vehicle, then re-joined the chain. After moving about 30 decks of scaffolding, Mr Baker noticed his hands started to sting. He carried on but the pain got worse. He asked Mr Sandri, the supervisor, if he could swap places because his hands were sore and had started to swell.

[20] By the time the job was complete Mr Baker's hands were swollen, shaking, throbbing and had black marks on them. On return to TAL's site, he showed his hands to others. Mr Sandri and Mr Ihaka also reported minor burns. TAL recommended they all three go home and attend the doctor. The next day an incident report was completed at PMP, they having been alerted by Mr Sandri.

[21] Mr Baker's hands did not heal. On 5 April 2018 he went to his doctor who referred him to Waikato Hospital. Mr Baker advised hospital staff he had been exposed to caustic soda while working with scaffolding. His hands were dressed and he was prescribed analgesia and Augmentin, but by 9 April 2018 at an outpatient clinic,

it became plain that his wounds were infected and on 10 April 2018 he was admitted for medical intervention and underwent a debriding procedure together with a washout of all wounds to remove all skin and damaged muscle.

[22] On 12 April 2018 Mr Baker underwent further surgery on his hands. They were further debrided. His left thumb required a full-thickness skin graft and his hands were dressed again. He was discharged on 13 April 2018, having spent three days in hospital.

[23] Mr Sandri also suffered burns to his right arm, neck and shoulder.

[24] A WorkSafe investigation was commenced, the conclusion being that both TAL and PMP had exposed Mr Baker to a risk of serious injury or serious illness arising from working in the galvanising facility. The defendants' conduct departed from Regulation 9 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016. PMP's conduct also departed from Regulation 3.2 and 4.6 of the Health and Safety at Work (Hazardous Substances) Regulations 2017.

[25] TAL had a duty under s 36(1)(a) of the Health and Safety at Work Act 2015 to ensure, so far as was reasonably practicable, the health and safety of its workers, including Mr Baker, while working in the galvanising facility. Specifically, those failures are as follows:

(a) undertake an effective risk assessment to identify and manage the risks;

(b) develop, implement, monitor and review a safe system of work;

(c) provide suitable personal protective equipment to workers;

(d) ensure chemical tanks in the near vicinity of the work, including the tank of caustic soda, were covered;

(e) provide information, training, instruction and supervision to its workers.

[26] Although PMP did not inform TAL of the nature of the hazardous substances at the galvanising facility, or the risks posed by those substances, TAL should have been aware of the specific risk arising from caustic soda exposure.

[27] The cost of eliminating or minimising the risk was not grossly disproportionate to the risk.

(a) Undertaking a proper assessment of the risks would take only time rather than a specific financial cost;

(b) Following existing TAL procedures and adequately liaising with PMP ought to have effectively enabled identification and assessment of the risks;

(c) The provision of appropriate PPE would have been relatively low cost.

[28] PMP had a duty under s 36(1)(a) of the Health and Safety at Work Act to ensure, so far as was reasonably practicable, the health and safety of its workers, including Mr Baker, while at work in the galvanising facility. PMP had knowledge of the specific risks faced by workers handling scaffolding equipment exposed to the air in the galvanising facility. The use and operation around hazardous substances was a core part of PMP's work. It was aware of the risks those substances posed. PMP's risk register specifically noted that chains above the tanks in the galvanising facility may have residual traces of caustic soda on them and that PPE, including gloves, should be worn when handling them, appropriate training should be given, and that staff were to be aware of the hazard.

[29] To make matters worse, in January 2015 a different scaffolding company dismantled scaffolding in the galvanising facility. That scaffolding showed a white residue on it which PMP waterblasted to try and remove. At that time the scaffolding company mentioned that three workers had suffered burns to their hands and in one case eye. An incident report was provided to PMP a month after the incident. The scaffolding was independently analysed and showed that the residue was zinc oxide and would not have caused the injuries. WorkSafe also

investigated the incident and determined it was a one-off incident and no further action was taken; but it is clear that PMP were on notice as to the risks of residual deposits of chemicals in the equipment situated above the tanks.

[30] It is said that PMP failed to ensure the health and safety of workers, particularly Mr Baker, by failing to:

(a) ensure an effective risk assessment to identify and manage the risks was undertaken;

(b) ensure a safe system of work was developed, implemented, monitored and reviewed;

(c) ensure the provision of suitable personal protective equipment to workers;

(d) ensure the chemical tanks in the near vicinity of the work including the tank of caustic soda were covered;

(e) provide information, training, instruction and supervision to TAL and its workers.

[31] PMP's conduct in instructing TAL and its workers, including Mr Baker, to assemble and disassemble scaffolding above tank 7 in the galvanising facility, immediately adjacent to tank 6, exposed TAL's workers to a risk of serious injury as a result of exposure to hazardous substances. In particular, the risk of serious injury as a result of handling scaffolding equipment exposed to the air inside the galvanising facility and on which caustic soda vapours had condensed, was not raised with TAL and remained unaddressed. PMP's failures contributed directly to Mr Baker's injuries.

[32] In summary, actions not taken by PMP which would have addressed the risk include the following:

(a) There was a real likelihood Mr Baker and other of TAL's workers would suffer chemical burns while working in the galvanising facility. PMP was also aware of ways to eliminate or minimise the risk of exposure to chemicals including residue on equipment in the facility;

(b) The cost of eliminating or minimising the risk was not grossly disproportionate;

(c) The risks involved with working around hazardous substances are obvious and well documented.

The defendants

[33] Both TAL and PMP co-operated fully with the investigation.

[34] PMP has two prior convictions for health and safety related incidents. The first relates to events in December 2007 when a work fell into a tank; and on 26 August 2008 Judge Moss fined PMP $22,000, ordered reparation of $10,000, Court costs of $130 and solicitors' fees of $250.

[35] The second conviction relates to events on 5 October 2015 involving a victim dropping off materials at PMP's Hamilton facility and suffering injuries caused when a forklift operator attempted to lift materials from the truck which fell and struck the victim. Again PMP pleaded guilty to one charge; admitted it failed to carry out an appropriate induction procedure; and on 3 November 2016 Judge DC Clark fined PMP $33,750 and ordered reparation of $5859.30.

Prosecution submissions

[36] WorkSafe submits in relation to Total Access Ltd, a starting point fine of $400,000 is appropriate; and credit of up to 25 percent to reflect TAL's guilty plea.

[37] In relation to Perry Metal Protection Ltd (PMP) Worksafe submits a start point fine of between $450,000 $500,000 is appropriate; an uplift of 10 percent to

reflect PMP's previous relevant convictions; and credit of up to 25 percent to reflect PMP's guilty plea.

[38] Worksafe also submits that reparation in the region of $30,000 is appropriate, apportioned between the two defendants' proportionately.

[39] In addition to sentencing principles found in the Sentencing Act, I have regard to the Health and Safety at Work Act, the sentencing purposes of which are threefold:

(a) protecting workers against harm to their health, safety and welfare by eliminating or minimising risks arising from work;

(b) securing compliance through effective and appropriate enforcement measures; and

(c) providing a framework for continuous improvement and progressively higher standards of work health and safety.

[40] Specific guidance within HSWA is found at s 151, which sets out sentencing criteria. Amongst other things, the sentencing court is required to take into account the risk of, and potential for, illness, injury or death that could have occurred; whether death, serious Injury, or serious illness occurred or could reasonably have been expected to have occurred; the safety record of the company; the degree of departure from prevailing standards in the sector or industry; and the company's financial capacity or ability to pay a fine.

[41] I am directed to the guideline judgment of the Court in *Stumpmaster v WorkSafe New Zealand.*[1] I also have regard to the purposes and principles of sentencing under ss 7 and 8 of the Sentencing Act.

[1] *Stumpmaster v WorkSafe New Zealand* (2018) NZHC 2020, (2018) 3 NZLR 881 at (22) .

[42] In *Stumpmaster* the Court affirmed that sentencing in health and safety context "will generally require significant weight to be given to the purposes of denunciation, deterrence, and accountability of harm done to the victim".

[43] Sentencing requires a four-step process:

(a) assess the amount of reparation;

(b) fix the amount of the fine by reference first to the guideline bands and then having regard to personal aggravating and mitigating factors;

(c) determine whether further orders under ss 152-158 of HSWA are required; and

(d) make an overall assessment of the proportionality and appropriateness of the combined packet of sanctions - including by reference to the defendant's financial capacity.

[44] The prosecution submits that in dealing with the first step, the court should consider making awards of reparation for emotional harm and for consequential loss. I am confident that the victim has suffered financial and emotional harm as a consequence of this workplace accident.

[45] Drawing on a number of similar cases, the prosecution submits that the appropriate level of compensation for emotional harm is in the region of $30,000. This is not contested by either defendant, both of whom concede that an order in the region of $30,000 emotional harm reparation is appropriate and should be divided equally between the defendants.

[46] Turning to consequential loss reparation; pursuant to s 32(5) of the Sentencing Act the court is required to take into account compensation already paid through ACC. Therefore the assessment of consequential loss relates to the losses suffered by Mr Baker over and above the payments already made to him by ACC; which normally amounts to 80 percent of salary. The consequential loss

therefore suffered by Mr Baker is a modest $3,750. Again both defendants accept they should be jointly responsible to pay that figure of consequential loss.

[47] I next turn to the fine. The prosecution submit that the starting point should be arrived at by reference to the culpability of offending; they accept that there is a difference between the two defendants in terms of culpability, primarily because of the greater level of knowledge and therefore responsibility, held by the second defendant, PMP.

[48] I have had reference to paragraph [54] of *Stumpmaster* and the factors set out to be relevant in the assessment of a defendant's culpability; I am particularly cognisant of the following two factors:

(a) the obviousness of the hazard;

(b) the availability, cost and effectiveness of the means necessary to avoid the hazard.

[49] In the guideline case, fine ranges are proposed by reference to assessed levels of culpability – low, medium, high and very high. The prosecution in this case submit that in both the defendants' cases, culpability is appropriately reflected in the medium bracket, carrying a range of between $250,000 and $600,000 as a start point fine, with a midpoint of $425,000.

[50] The prosecution submits that a start point for the second defendant PMP should be in the range of $450,000 - $500,000 and in TAL's case, the start point of $400,000 to reflect its lower culpability to be appropriate for TAL.

[51] In contrast Ms Rawcliffe, counsel for PMP the second defendant, submits that the appropriate starting point is $300,000. Whilst Ms Curlett submits on behalf of the first defendant TAL, that the start point at the bottom end of the median or moderate range of $250,000.

[52] The difference in culpability assessed or reflected in the start points submitted by counsel and recognised by the prosecution, are justified primarily

because of the site specific nature of the risks that were within the knowledge of PMP, to a much higher level of experience and expertise, than they were available to TAL.

[53] PMP submits that a combination of mitigating factors can give rise to a very generous discount of 30 percent, in addition to 25 percent for guilty pleas.

[54] The second defendant relies upon the following mitigating factors:

(a) Remedial measures;

(b) Remorse and reparation paid;

(c) Cooperation with the authorities.

[55] Ms Curlett for TAL also submits very significant discount for mitigating factors are justified; namely remorse and reparation, previous good character, and cooperation.

[56] Both counsel acknowledge that the case of *East by West Company Ltd v Maritime New Zealand* [2] urges caution in applying discounts for cooperation, where cooperation is legally expected as an obligation under the Act. Cooperation to justify further discount would, the prosecution says, require a defendant to go above and beyond the duties obligated by legislation, before a discount could be justified.

[57] On the subject of mitigation, I am troubled by the apparent ease with which huge discounts are applied in Worksafe cases, almost as a matter of course. I am satisfied, by reference to the guideline case of *Stumpmaster*, that a sentencing court should think long and hard before concluding that a case justifies such significant discounts.

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[2] *East by West Company Ltd v Maritime New Zealand* [2020] NZHC 1912 at [119(a)].

Decision on culpability

[58] I have come to the conclusion, by reference to the specific facts of this case and the effect upon the victim Mr Baker, that culpability does sit neatly as suggested by all counsel, within the medium range in the guideline case of *Stumpmaster*.

[59] I have considered the various cases brought to my attention by prosecution and defence counsel, and have come to the following conclusions:

(a) Given the greater degree of knowledge on the part of the second defendant Perry Metal Protection Ltd, that company's culpability sits in the mid-range of that band at the level of $350,000, as a start point;

(b) Due to its lower culpability, I have concluded that the appropriate start point for the defendant Total Access Ltd, is $300,000.

Aggravating and mitigating factors

Aggravating factors

[60] There are no discernible aggravating features in relation to TAL, the first defendant.

[61] As for the second defendant, PMP, given the two previous convictions previously noted, inevitably there must be a modest uplift to the sentence. I have determined the appropriate uplift is one of 5 percent.

Mitigating factors

Total Access Ltd

[62] Turning now to mitigating factors - firstly TAL have demonstrated remorse through a willingness to engage with restorative justice and a willingness to pay

emotional harm reparation, which the Court will order. It is noted that there has been no attempt to make a reparation payment prior to this proceeding, both parties waiting for the order of the Court. In TAL's case, that justifies a reduction of 5 percent.

[63] As far as remediation is concerned, the prosecution makes the point that where remediation is merely putting right a process that was wholly inadequate. To justify a discount for remediation, a company must go above and beyond the minimum requirements highlighted by Worksafe NZ. I am satisfied that TAL has not only put right what was wrong, but has also remediated the situation above and beyond the requirements of Worksafe, and I am satisfied that the future safety of TAL's employees is now more appropriately ensured. The reduction for TAL should be 10 percent for remediation.

[64] Finally I turn to cooperation, a similar principle applies here and indeed is reinforced by the case of *East by West*. Cooperation is a legal obligation and to grant a discount for such cooperation would normally not be justified unless the company has gone above and beyond the basic level of cooperation required in law. I am satisfied that TAL has done so, which justifies a discount of 5 percent.

[65] This results in an overall discount for TAL of 20 percent in addition to the 25 percent discount for guilty pleas.

Perry Metal Protection Ltd

[66] Turning now to mitigating factors relevant to PMP, for the same reasons that I have outlined for the co-defendant, PMP has demonstrated a willingness to engage with restorative justice and has unquestioningly agreed to emotional harm reparation as proposed by the prosecutor. In those circumstances I conclude that a discount of 5 percent is justified for remorse.

[67] A remediation discount is also sought for PMP. The reality is that PMP already had in place a carefully designed and entirely adequate system to ensure safety of employees and contractors on their work sites; this case demonstrated a

failure of leadership and therefore implementation of those procedures. Remediation therefore was minimal and amounted to the reinforcement of the need for managers to ensure the safety of contractors as well as employees and a change of staff. In those circumstances I conclude that remediation in PMP's case justifies a discount of 5 percent.

[68] Similar to TAL, PMP has been cooperative throughout the investigation; counsel concedes the authority in *East by West*, suggesting that cooperation, being a legal obligation, would not normally justify a discount. I am satisfied that PMP cooperated with Worksafe to a high degree and therefore justifies a discount of 5 percent.

[69] The total discounts for PMP are therefore 15 percent; however, an uplift of 5 percent to reflect previous convictions effectively reduces that discount to 10 percent.

Sentence orders

Reparation

[70] Reparation is agreed between the parties at the following levels:

(a) Emotional harm reparation - $30,000, to be divided equally between the two defendants, meaning emotional harm reparation from each defendant of $15,000;

(b) Further, for consequential losses, a payment of $4,000, to be shared between the two defendants equally, therefore a further reparation payment for each defendant of $2,000;

(c) A total of $17,000 reparation for each.

Fines

[71] The first defendant (TAL) from a start point of $300,000 receives an overall discount of 45 percent, being 20 percent for mitigating factors and 25 percent for guilty pleas, resulting in a fine of $165,000.

[72] The second defendant (PMP) from a start point of $350,000 receives an uplift of 5 percent and then discounts of 15 percent for mitigating factors and 25 percent for guilty pleas, resulting in an overall reduction of 35 percent, and a fine of $227,500.

[73] I then turn my mind to an overall assessment of the proportionality and appropriateness of the total imposition of reparation and fine. In relation to both the defendants, I have concluded that the overall sums set out above are proportionate and fair.

Costs

[74] I have not been asked to make any further orders under ss 153-158, primarily, because the defendants have been cooperative in carrying out all remediation required of them. However Worksafe are seeking a payment of $13,750 towards its external legal costs, to be split between the defendants.

[75] Both defendants argue that this is excessive and out of step with prosecution cost orders made in other cases. The prosecuting authority in this type of case is in-fact permitted by statute to make a claim for costs for investigation as well as prosecution; Worksafe has not sought to do so here, but has sought to recover a significant proportion of its prosecution legal costs namely $13,750.

[76] I am satisfied that a significant payment of costs is justified in this case but I will limit it to a contribution of $10,000 overall, to be shared equally between the two defendants. Therefore a prosecution cost payment of $5,000, to be paid by each defendant, order is made. I have considered whether it is necessary to

revisit the proportionality test but conclude that it is not, and that costs of $10,000 is proportionate to the overall financial penalties being imposed by this Court.

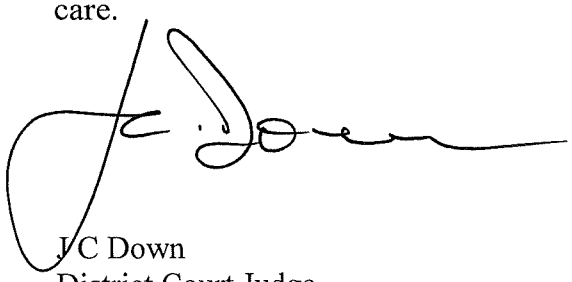
Ability to pay

[77] Finally, I have considered the question of ability to pay. Often in such prosecutions small companies are operating so close to the line of unprofitability that to impose financial penalties, of the order determined today, would effectively put that business out of action and cause much greater loss to others. I have sought submissions from both counsel on the subject of affordability and neither party wishes to make any submissions.

[78] I therefore conclude that there is no issue as to affordability and order that the financial penalties be paid by both defendants in full within 28 days of this judgment being published.

Conclusion

[79] It is with great sadness that I note in closing that these nasty injuries to the victim, and the significant financial cost to both companies, could all have been avoided simply by the enforcement and provision of appropriate PPE; primarily a pair of chemical proof gloves and, given the way that poles were carried by the workmen, suitable overalls. This would have been both easy and cheap and was well within the expertise, knowledge and capacity of both defendants to provide on the day. I am troubled that such easy and straightforward steps were not taken by either defendant, in a situation which cried out for the basic exercise of great care.



JC Down
District Court Judge