



Case No: B3/2010/2992

**Neutral Citation Number: [2011] EWCA Civ 1135**  
**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM SOUTHAMPTON COUNTY COURT**  
**MR RECORDER DE FREITAS**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Wednesday 27<sup>th</sup> July 2011

**Before:**

**LORD JUSTICE THOMAS**  
**LADY JUSTICE HALLETT**  
and  
**LORD JUSTICE ELIAS**

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**Between:**

**Broadfield**

**Appellant**

**- and -**

**Meyrick Estate Management**

**Respondent**

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(DAR Transcript of  
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Official Shorthand Writers to the Court)

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**Mr Timothy Grice** (instructed by Harris Fowler Limited) appeared on behalf of the **Appellant**.

**Mr Charles Woodhouse** (instructed by Plexus Law) appeared on behalf of the **Respondent**.

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**Judgment**

**(As Approved)**

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**Lady Justice Hallett:**

1. The appellant, Mrs Broadfield, was employed by the respondent as an accounts assistant. She was a thoroughly decent and honest employee of many years' standing. At about lunchtime on 26 September 2005 she fell as she left her office. She suffered serious injury and sued her employers for breach of their statutory duty. The trial judge, Mr Recorder De Freitas, in an admirably succinct extempore judgment, reluctantly found against her on nearly every issue before him. She has permission to appeal his decision.
2. Mrs Broadfield fell in the following circumstances: her office was on the first floor of an old cottage. There was a single steep staircase leading up to and including a landing. From the bottom there was a turn to the right and then a straight stretch of stairs, along which there was a handrail to the right; this was the only handrail provided for the staircase. From the landing there was a sharp turn to the right and the staircase included two further steps up to the office. The last riser was on the line of the threshold of the office. The treads were narrow, relative to its rises. It was a typical period cottage staircase.
3. On the day in question, as the appellant made her way out of the office, at or immediately before the threshold of the office doorway, she missed her footing and tripped and fell onto the landing. Her momentum carried her down the straight staircase to her left. She fell heavily and suffered fractures to the cervical and thoracic spine. It is not known what caused her to miss her footing. The claim against the respondents was made on the basis that had there been a handrail present along the two steps at the top of the staircase she would have been able to regain her balance.
4. It was agreed between the parties that the respondents owed the appellant duties under the Management of Health and Safety at Work Regulations 1999, the Workplace (Health, Safety and Welfare) Regulations 1992, the Occupiers Liability Act 1957 and under the Common Law as the appellant's employer. However, the issues before the trial judge and before us this morning have narrowed considerably. Counsel agree that the Common Law duty of care as occupier and employer, on the facts of this case, adds nothing to the alleged breaches of statutory duty. They further agree that the relevant Regulations for our purposes are the Workplace Regulations, to the mast of which Mr Grice, for the appellant, firmly pinned his colours.
5. The Management Regulations are relevant to the extent that the judge found a breach. The respondent's assessment of the risks at work to its employees was far too generic in nature and failed to concentrate on the specifics of the particular staircase. However, the breach has limited if any impact on the present appeal. The judge made a clear finding that the failing to assess and record the risks was not causative of the accident. Mr Grice attempted to submit that there may be some evidential significance in the breach but did not press the point with any great vigour.

6. Thus, I focus solely on the narrow issues of Regulation 12.5 of the Workplace Regulations and causation. Under Regulation 12.5 the respondents were under a mandatory duty to provide:

"Suitable and sufficient handrails [...] on all traffic routes which are staircases except in circumstances in which a handrail cannot be provided without obstructing the traffic route."

7. The Recorder rejected what he understood to be the appellant's argument, namely that Regulation 12.5 imposed a duty similar to the modern Building Regulations to fit a continuous handrail to every inch of a staircase with two or more rises. Here that would have included the landing and the top two steps leading up to the threshold of the office. He found that the handrails fitted along the straight stretch of the staircase were suitable and sufficient, albeit they did not stretch the entire length of the staircase and did not cover the winder at the bottom of the stairs. Further, he found that even if he was wrong about that, the statutory exception applied to the top two steps; in other words a handrail could not be fitted to them without obstructing the traffic route. Mr Grice submitted that the judge was wrong on all counts in law and on the facts.
8. As to the law, he relied heavily upon various short guides to managers, entitled Workplace (Health, Safety and Welfare) guides published by the Health and Safety Executive, the latest incarnation of which was published in 2007; upon the Statutory Code of Practice published by the Health and Safety Executive to accompany the Workplace Regulations, and upon the duty imposed by the modern Building Regulations that would apply if the cottage was built today.
9. A passage in the relevant guide to managers (at page 91) reads:

" A handrail should be provided on at least one side of every staircase and on both sides if there is a particular risk "
10. Paragraph 100 of the relevant Code of Practice reads:

"A secure and substantial handrail is to be provided and maintained on at least one side of every staircase except at points where a handrail will obstruct access or egress..... "
11. If the modern Building Regulations had applied to this building Regulation 6.3 would require that:

"Every stair with two or more rises should have a continuous handrail to provide guidance and support to those using the stairs."
12. Mr Grice argued that the combined effect of the above is that the duty on the respondents was clear. It is agreed this was one staircase. A handrail that is suitable and sufficient within the Regulations, he argued, can only mean a

handrail which is available to users of the staircase along the whole length of the staircase, unless the statutory exception applies. Mr Woodhouse countered with the assertion that the Regulations could not have been intended to cover every inch of every staircase and every landing, no matter how wide and how safe. What constitutes a suitable and sufficient handrail is a matter of fact and degree; it will all depend on the circumstances, the type of staircase, the nature of the use and the kind of people who use it.

13. Mr Recorder De Freitas, described the Regulations as ambiguous, but he accepted Mr Woodhouse's interpretation. There was and is little authority to assist him or us on the construction of Regulation 12.5. We were referred to just one previous decision of this court: Ellis v Bristol City Council [2007] EWCA Civ 685. There the same Regulation (Regulation 12) was in play albeit the case concerned a different sub-Regulation in relation to the slipperiness of a work surface.

14. In Ellis, Smith LJ, giving the lead judgment with which Lloyd and Wilson LJJ agreed, said in relation to the same Code of Practice at paragraph 33:

"In my view, the judge was wrong to refuse to have any regard to the Code, as an aid to construction. It was, as Mr Walker accepted, of no significance that the Code had not been pleaded or put to the respondent's witnesses. It is well established that official publications emanating from the relevant government department can be referred to in civil proceedings as an aid to construction: see the cases cited in Bennion on Statutory Interpretation 4<sup>th</sup> Edn at page 599. It seems to me that a Code of Practice which is designed to give practical guidance to employers as to how to comply with their duties under statutory regulations can be taken as providing some assistance as to the meaning it was intended those regulations should have. However, it is always necessary to treat such guidance with caution. It may be wrong. It does not carry the authority of a decision of the courts. Here, in construing the meaning of the regulation, the judge should have considered the meaning and purpose of the regulation, any relevant judicial authority and also the Code of Practice."

I respectfully agree with those observations.

15. I was initially troubled, as the judge was troubled, by the prospect of appearing to impose upon employers the duty to provide a handrail in circumstances where it simply may not be necessary; for example, including the wide safe landing postulated by Mr Woodhouse or, here, around the whole of the landing at the top of the stairs. I was attracted by the argument that

what constitutes a sufficient and suitable handrail will depend upon the individual circumstances.

16. However, the overriding objective of the Regulations is to protect the employee at work. In this case, where there are two possible and reasonable constructions of a Regulation, to my mind, the construction which best promotes the safety of the employee is to be preferred. Stairs are inherently dangerous places, even if modern and straight. The Regulations are designed to provide a safe place of work if at all possible, and the Code and the guide explain how that can best be done. The duty placed on employers should be clear and to my mind it is clear.
17. Reading the two together: the relevant part of the Regulation and the Code impose a duty to provide: a suitable and sufficient handrail i.e. a “secure and substantial handrail” “on at least one side of every staircase” which is a traffic route. There was a duty here, therefore, to provide a handrail on one side of the staircase including on one side of the two top stairs, unless the statutory exception applied. I do not intend to consider every possible configuration of landings and stairs and the extent to which the duty will apply in other cases. It may well be that a landing of the kind envisaged by Mr Woodhouse is so extensive it breaks what would break a staircase into two or can no longer be considered part of the staircase. It may well be that, as here, a handrail around an entire landing is unnecessary because a handrail provided on the side of all the stairs would suffice to comply with the duty. It will all depend on the facts.
18. I turn therefore to the issue of the statutory exception. The words of the regulation make plain that the burden is upon the employer to prove the exception. The applicable standard is that of impossibility. Again, I was initially attracted to the proposition that this was simply a question of fact for the judge and this court should not disturb his finding. However, as the argument developed, I saw force in Mr Grice's argument that the respondent had done little to satisfy the burden upon them. They called Mr Stout, described by the judge as an “impressive witness”, but his speciality was as an environmental health officer. He was not an expert in this field. He had not been called as such and permission had not been given under the CPR to call him as an expert. His investigations did not focus on the question of Regulation 12.5. Also as Mr Grice pointed out, he was wrong on a number of significant factual matters; for example he wrongly concluded that the failure to provide a handrail at the bottom of the stairs would not amount to a breach of the Regulations. Mr Woodhouse conceded that it did.
19. Absent Mr Stout's evidence, the judge was left to form his own impression from photographs. To my mind that is not good enough. The judge should not have been left in this position on such an important issue. I am not one to encourage the unnecessary use of experts, but to my mind much more was required by way of evidence and detailed analysis of an issue at the heart of the case, namely: whether a handrail would have obstructed the traffic route. For example, the judge might have been assisted by some proper measurements and information on the various forms of handrail now available. He could then form a sensible conclusion as to impossibility based on proper

evidence. I would therefore uphold Mr Grice's complaint about the inadequacy of the evidence called to meet the statutory exception. To my mind the respondents failed to bring themselves within it on the evidence they called.

20. However, knowing that Mrs Broadfield is in court and before she raises her hopes, I have to say quickly that there is one major hurdle left before her and it is the question of causation.
21. The appellant's argument that the judge's conclusion on causation was contrary to the evidence depends again to a significant extent upon the modern Building Regulations. Mr Grice emphasises, perfectly properly, that the purpose in providing a handrail is to provide guidance and support to those using the stairs. A suitable designed handrail should prevent users from losing their balance when on the stairs. A handrail can also enable users to regain their balance in the event of a fall and can reduce the severity of the fall. Mr Grice referred the court to the fact that this was a particularly difficult staircase. It was accepted in evidence and, he said, a matter of common sense and experience that a person about to descend the staircase would naturally place a hand on, or in the vicinity of, the handrail for guidance and support. Furthermore, he suggested it would be natural and obvious for a person who was aware of the presence of the handrail to reach out for it if he or she stumbled or lost balance at the top of the staircase.
22. The appellant is a patently honest, sensible and reliable witness. She gave evidence that she would have used a handrail had there been one. Regular users said they thought the staircase would have been safer had a handrail been fitted. Mr Grice insisted, therefore, that a handrail would have been effective to prevent a loss of balance and/or interrupt the momentum of the fall. He submitted it was wrong for the Recorder to place emphasis on the fact that the appellant volunteered that she was hurrying to complete banking procedures before 1.00. This, he pointed out, might explain why she stumbled, but argued has no logical bearing on the question of whether she would have used the handrail, if there, to steady herself and/or grabbed it if she started to fall.
23. At times Mr Grice appeared to argue that the judge had no choice but to accept that the failure to provide a handrail played a part in causing the accident. In my judgment, however, that is far from the case. This issue was fairly and squarely before the judge as an issue of fact upon which there was evidence from both sides and competing arguments. The judge was not bound to prefer Mr Grice's arguments to those of Mr Woodhouse; he was not bound to prefer the evidence called on behalf of the appellant or the appellant's evidence herself. Mr Woodhouse pointed to the fact that, on the appellant's own case, as she was hurrying she lost her footing before she stepped down onto the step. She stumbled straight down onto the half landing. It was on the landing that she claimed she would have grabbed a handrail. Most importantly, Mr Woodhouse reminded the court that the appellant gave a visual demonstration as best she could of how she fell. That is an extremely important piece of evidence of which the members of this court do not have

the benefit. The judge had the benefit of analysing her demonstration and her explanation of what she could recall. I have no doubt that the demonstration would have weighed heavily in the judge's mind. In any event, he was best placed as the trial judge to make the assessment of how the appellant would have fallen having heard and considered all the material put before him. He found as a fact that even if a handrail had been present, Mrs Broadfield would not have been in a position to use it. The evidence was there to support that conclusion and it was therefore open to him, in my view, so to find. It is as simple and, I regret, as damning to Mrs Broadfield's case, as that.

24. Accordingly, whatever success Mr Grice may have had on his other grounds, ultimately, in my judgment, he was doomed to fail on this ground. I would therefore, with the same reluctance displayed by the Recorder, dismiss this appeal.

**Lord Justice Thomas:**

25. I agree.

**Lord Justice Elias:**

26. I also agree.

**Order:** Appeal dismissed