

Health and Safety Executive		Operational Circular	
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Target Audience:
All HSE Inspectors

ABSTRACT OF DECIDED CASE

R v Board of Trustees of Science Museum

The Court of Appeal, Criminal Division dismissed an appeal by the Board of Trustees of the Science Museum against conviction for failing to discharge the duty imposed upon it by HSW Act s.3(1), when they exposed members of the public to risks to their health from Legionella Pneumophila.

Issue: "Thereby exposed to risks to their health or safety".

Act: The Health and Safety at Work etc Act 1974, s.3(1).

Circumstances: The Board of Trustees of the Science Museum appealed against conviction for failing to discharge the duty imposed upon it by HSW Act s.3(1). The prosecution alleged that, by reason of an inadequate system of maintenance of the air conditioning system, members of the public outside the Science Museum had been exposed to risk to their health from Legionella Pneumophila. The prosecution argued that it was not necessary to prove that members of the public had actually inhaled the bacterium or that it had actually been there to be inhaled. It was sufficient for the purposes of s.3(1), for there to have been a risk of it being there. The defence argued that a possible danger or potential danger could not impair the health and safety of the public and did not constitute a breach of s.3(1). That could only come about when the danger ceased to be potential and became real. The judge accepted the interpretation put forward by the prosecution and convicted the Board of Trustees. They appealed against the conviction.

Held: Court of Appeal Criminal Division.

The Court of Appeal dismissed the appeal, upholding the decision of the Crown Court. The word 'risks' in s.3(1) implied the idea of potential danger. There was nothing in the language of s.3, or in the context of HSW Act, which supported a narrowing down of this meaning.

Lord Justice Steyn in giving the judgement stated:

"Subject only to the defence of reasonable practicably, s.3(1) is intended to be an absolute prohibition, bearing in mind the imperative of protecting public health so far as it is reasonably practicable to do so".

Type of Case: Departmental, Criminal.

References: The Times 15 March 1993; 3 All ER 853, (1993) 1 WLR 1171.

LIBCAT: This item will have an entry in the HSE database LIBCAT.

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ASI headings

Court decisions: decided cases: HSW Act s.3.

