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How the Courts are interpreting HSE guidance and health and safety regulations

An exploratory study of Court Judgments in personal injury claims for WRULDs

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An exploratory study of Court Judgments in personal injury claims for WRULDs

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This report presents the findings of an exploratory study of how the Courts have interpreted health & safety Regulations and Health and Safety Executive (HSE) guidance by procuring and analysing the transcripts of relevant Court Judgments in personal injury claims for WRULDs. A web site which was intended to encourage the exchange of information on relevant cases and assist in the procurement of Court Judgments was developed and evaluated. Analysis of the Judgments suggests the Courts frequently considered issues which HSE guidance on WRULDs had rarely addressed explicitly and that a lay person reading HSE guidance might not appreciate some of the issues which Courts consider important with respect to an employer's duty of care in personal injury claims for WRULDs. Analysis of the Judgments which dealt with cases in which the alleged injuries had occurred after the 'six pack' of health and safety Regulations came into force suggests that the County Courts are inconsistent in their interpretations of the Health and Safety (Display Screen Equipment) Regulations and the Manual Handling Operations Regulations and that, as yet, there is no definitive interpretation of any of these Regulations by a higher Court. The report concludes that the approach adopted in the exploratory study can be of practical use and recommends ways in which it might be developed and exploited.

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EXECUTIVE SUMMARY

Recent HSE guidance has suggested that following the guidance is not compulsory, but that doing so will normally be enough to comply with the law. While failure to comply with health and safety Regulations can result in the criminal prosecution of an employer by the enforcement authority, Regulations and HSE guidance can also be used to assist an employee bringing civil proceedings against an employer for a personal injury arising from work. The available evidence would appear to suggest that some Regulations and guidance have probably been examined more often in the civil than in the criminal Courts but that in some cases the Courts' findings might not be entirely consistent with what might reasonably be expected by a lay person reading the guidance.

This exploratory study examined how the Courts have interpreted health & safety Regulations and HSE guidance in the context of personal injury claims for WRULDs by analysing the transcripts of relevant Court Judgments. However, given that there is no central archive or index of such Judgments, a web site was developed which encouraged the exchange of information on relevant cases, such that the transcripts of the Judgments could be obtained, if necessary by paying for Judgments to be transcribed. Although the web site did not generate information on many new cases directly, it provided a focus for the reporting of information via other routes and a readily accessible and efficient means of disseminating information on Judgments in personal injury claims for WRULDs. The web site can be viewed at: `http://www.lboro.ac.uk/wruld-db`

Content analysis of 104 Judgments in personal injury claims for WRULDs available by the 30th June 2001 suggests the Courts frequently considered issues relating to the nature and causes of upper limb symptoms and the circumstances in which they arise which HSE guidance on WRULDs had rarely addressed explicitly and that a lay person reading HSE guidance might not appreciate some of the issues which Courts consider important with respect to an employer's duty of care in personal injury claims for WRULDs. Judgment was given on average about six years after the alleged injury had occurred, thus none of the Judgments accumulated by the 30th June 2001 dealt with cases in which the alleged injuries had occurred after the industry specific guidance on WRULDs produced by or in association with the HSE had been published and relatively few of the Judgments dealt with cases in which the alleged injuries had occurred after the 'six pack' of health and safety Regulations came into force.

The relatively few County Court Judgments in personal injury claims for WRULDs which shed some light on how the Courts are interpreting these Regulations suggest inconsistencies in the interpretation of certain parts of the Health and Safety (Display Screen Equipment) Regulations and some confusion about the type of work which the Courts appear to consider is covered by the Manual Handling Operations Regulations. There is no definitive interpretation of any of these Regulations by a higher Court in the Judgments in personal injury claims for WRULDs which have been accumulated so far.

This exploratory study suggests that in some circumstances following HSE guidance might be doing more than enough to comply with the law but that if the guidance does not adequately address the common law duties or if it is not being uniformly interpreted, following HSE guidance might not be doing enough to comply with the law.

This exploratory study demonstrated that a web site can assist in generating and disseminating information on Judgments in personal injury claims and that the analysis of such Judgments can produce findings on a range of issues which might be of interest and practical use to those who

draft guidance. It is recommended that the web site should be maintained and efforts made to improve its effectiveness such that the procurement and analysis of Judgments in personal injury claims for WRULDs can be continued and that consideration should be given to exploiting the web site to promote awareness of the possible consequences of failing to follow guidance and comply with health and safety Regulations. Consideration might also be given to applying a similar approach to other risks, e.g. work-related stress.

1 INTRODUCTION

1.1 BACKGROUND

Recent HSE guidance has included an introductory paragraph which states:

> *This guidance is issued by the Health and Safety Executive. Following the guidance is not compulsory and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance as illustrating good practice.*

However, employers' duties to employees are to be found in both the criminal and common law. Failure to comply with health and safety Regulations can result in the criminal prosecution of an employer by the enforcement authority. However, health and safety Regulations can also be used to assist an employee bringing civil proceedings against an employer for a personal injury arising from work. The available evidence would appear to suggest that some of the health and safety Regulations which might be considered most pertinent to the prevention of Work Related Upper Limb Disorders (WRULDs), e.g. the Health and Safety (Display Screen Equipment) Regulations and the Manual Handling Operations Regulations, have probably been examined more often and in more depth in the civil Courts than in the criminal Courts.

HSE Statistics suggest that, so far, there has been no criminal prosecution of an employer for breaches of the Health and Safety (Display Screen Equipment) Regulations and that only a relatively small number of employers have been prosecuted for breaches of the Manual Handling Operations Regulations. The Prosecutions Area of the HSE's web site provides information on 7 successful prosecutions for breaches of the Manual Handling Operations Regulations, but none prior to September 1999.

HSE guidance documents are sometimes examined in minute detail when personal injury claims for WRULDs reach trial and considerable time has been spent in some cases examining precisely what was meant by certain parts of the Health and Safety (Display Screen Equipment) Regulations and the Manual Handling Operations Regulations. Courts sometimes rely heavily on HSE guidance documents to assist in determining what a prudent employer should have known, but jealously guard the right to determine how Regulations should be interpreted and what constitutes an 'injury' in a legal sense. Anecdotal evidence suggests that, in the context of personal injury claims for WRULDs, in some cases the Courts' interpretations of certain health and safety Regulations and what constitutes an 'injury' in a legal sense might not be entirely consistent with what might reasonably be expected, by a lay person, reading HSE guidance.

While personal injury claims for upper limb disorders allegedly arising from work are not receiving as much publicity as they did several years ago, it is clear that the Courts are still dealing with many such cases. However, when such claims have attracted publicity, the press reports give an extremely limited and partial view of what is happening in the Courts with respect to WRULDs[1]. The vast majority of claims for WRULDs never reach Court and those which do are usually heard in the County Courts. Very few County Court Judgments appear on legal databases. It appears that most County Court Judgments are not even transcribed by official Court reporters, unless one of the parties has a particular reason to request a transcript, e.g. to consider an appeal. Thus, in the majority of WRULD claims which do reach Court, little

[1] Pearce, B. G. *"RSI" and the media* Occupational Health Review. 1995, Issue 57

is currently known about how the Court reached its verdict, other than by those who actually attended the hearing.

1.2 AIMS & OBJECTIVES

The primary aim of the study was to examine how the Courts have interpreted health & safety Regulations and HSE guidance in the context of personal injury claims for WRULDs by analysing the transcripts of relevant Court Judgments. However, given that there is no central archive or index of such Judgments and the limited coverage of the legal databases, the first requirement was to set up a system which encouraged the reporting of such cases and captured information on any relevant Judgments, such that the transcripts of these Judgments could be obtained, if necessary by paying for Judgments to be transcribed.

1.3 APPROACH ADOPTED

There already exist a number of networks for the exchange of information on such Judgments, however, these tend to be very informal and clearly do not record the information in a consistent or rigorous way. A novel medium which encouraged the exchange of information on such Judgments was developed, a web site, which summarised known Judgments and invited lawyers, expert witnesses, and litigation specialists in insurance companies and trades unions to supply details of decided cases. It was envisaged that it would be the lawyers and their clients and expert witnesses on the 'winning side' who would be most willing to volunteer information on previously unreported cases which had been decided on the basis of evidence heard in Court.

Prior to the commencement of this exploratory study, information on over 100 claims for WRULDs, dating back to 1977, had already been obtained by tapping into the informal networks. To record this information and new information about previously unreported cases in a consistent or rigorous way and to keep track of the sometimes complex process of obtaining a transcript of a Court Judgment a bespoke database was developed. This database was also used to generate and update the web pages. It was originally envisaged that the content analysis would be based upon data entered into the database. However, after a pilot analysis of a small sample of the Judgments to refine the categories and criteria to be used in the content analysis, it was decided to enter the data obtained from analysing the content of Judgments into an Excel spreadsheet which allowed a more flexible approach to data analysis.

It should be noted that while the materials analysed arise from legal proceedings and at times address complex legal matters, the analysis does not adopt a legal perspective or attempt to interpret the legal arguments or the law. Rather the approach adopted attempts to address the issues from a lay perspective and in particular attempts to examine whether, in the context of personal injury claims for WRULDs, the Courts' views on health & safety Regulations and HSE guidance are consistent with what might reasonably be expected, by a lay person, reading HSE guidance.

1.4 TERMS USED

It is perhaps useful at this early point to note that up until April 1999 an individual bringing a personal injury claim in England and Wales was known as a Plaintiff. A programme of reforms to the civil justice system implemented in April 1999, based upon a report by Lord Woolf and known as the Woolf reforms, among others things, caused an individual bringing a claim to be known as a Claimant.

The term WRULD encompasses all the conditions of the upper limbs, shoulders and neck which are popularly referred to as "repetitive strain injuries". While in a literal sense there is no reason why the term WRULD should not encompass Hand Arm Vibration Syndromes (HAVS), for

some reason HAVS have often been treated as distinct entities, e.g. in HSE guidance. This exploratory study excluded consideration of claims for HAVS, though a similar approach could clearly be applied to such claims.

2 WEB SITE DEVELOPMENT AND EVALUATION

2.1 DEVELOPMENT

Given that the web site was a research tool to assist in gathering information, it needed to attract those who had the information and be of use to them and easy to use. Thus, the web site needed not only to provide facilities to collect information but also to provide information to encourage lawyers and their clients and expert witnesses to visit the site and contribute their information. It was decided at an early stage that the web site could not display the full text of the Judgments. This was due to: issues associated with copyright; the size of some such Judgments and the effort required to scan them in; and the fact that the web site was not intended to be, and could not be seen to be, in competition with the commercially available legal databases. It was decided that, where available, a reference for the full text of a Judgment or where it had been officially reported could be displayed, but it was known that few such Judgments had been officially reported. Searches of the literature and the world wide web failed to identify any other research project or a web site which had similar aims and objectives. Thus, apart from generic guidelines on the formatting of web pages and the general principle of software ergonomics, there was little to guide the choice of the content or the 'look and feel' of the web pages.

Following discussions with those who had provided information on Judgments in claims for WRULDs via the informal networks, a 'wish list' of the desirable features of the proposed web site was drawn up. This identified the data set which would be required for each case summary and the basic functionality of the site, e.g. the rules for navigating through the site. However, it was clear from experiences of following up 'leads' on unreported cases and trying to track down Judgments that the database from which the web pages were to be generated and updated needed to record far more information about a case than would actually be presented on the web site and that a rigorous information and document control system was required. For example, experience had shown that one of the most successful ways of obtaining a transcript of a Judgment was to make contact with the instructing solicitor on the 'winning' side. However, this requires not only the name of the firm of solicitors, but also the name of the individual who dealt with the case and their contact details.

The 'wish list' of the desirable features of the proposed web site and the data set which would be required for each case on the database was provided to the team responsible for developing the database and the web site.

The bespoke database was developed using Microsoft Access software. The database was designed not only to store the information about cases but also to allow reports and summaries to be produced to keep track of the process of obtaining transcripts of Judgments. The database includes the facility to generate all of the HTML code that makes up the web pages, which are transferred directly to the server which hosts the web site.

The development of the web pages utilised the standard tools available at the time and attempted to accommodate a wide range of browser/platform configurations and browsing contexts. Cascading style sheets were used to ensure consistency in the 'look and feel' of the pages and particular attention was paid to the navigation facilities to allow users to keep in control of their interaction with the data and to avoid them getting lost. The use of colour and graphics were deliberately kept to a minimum in an attempt to ensure that the design acted foremost as a vehicle for the presentation of the data, structuring the information for accessibility and legibility. Where colour and graphics were deployed, they were chosen and

designed for web-compatibility and speed. Free text searching of the pages is provided by the Excite search engine of the system which hosts the web site.

It was originally planned that an initial version of the web site would be made available to a limited audience in February 2000, to evaluate the utility and usability of the web pages, and that unrestricted public access would begin in March 2000. However, it was agreed with the HSE's officer responsible for technical liaison that the web site should not be made publicly available until after certain contractual matters had been finalised, which did not happen until late May 2000. Letters were sent out in June 2000 to over 100 individuals who had contributed information on WRULD claims via the informal networks inviting them to examine the web site, which was password protected, and to comment on the utility and usability of the web pages. A number of problems relating to some of the less common browser/platform configurations were reported and corrected. A number of suggestions for improvements to the layout and functionality of the web site were also received. Where resources permitted some of these suggested changes were implemented, while others were added to a list for further evaluation and possible future implementation. The password restriction was removed towards the end of June 2000.

Details of the web site were submitted to the search engines in the usual way even though 'surfing the net' was not considered the most likely route by which those who potentially had some useful information to contribute might learn of the web site.

The HSE's press office issued a press release[2] on the 10th July 2000, which explained the purpose of the study and the existence of the web site.

2.2 IMPLEMENTATION

The web site can be viewed at: `http://www.lboro.ac.uk/wruld-db`

The web site provides brief reports on nearly 200 Judgments in WRULD claims which have been decided on the basis of the evidence heard in Courts in England and Wales. These date from as far back as 1977, though the coverage prior to 1990 is limited. The exploratory study, and thus the web site, is confined to claims which had been decided on the basis of evidence heard in Court, which excludes Out-of-Court settlements and Agreed Awards. The information currently available on the site is limited to a brief summary of each case which includes, where known: the name of Claimant and the Defendant; a brief description of the allegedly injurious work and the alleged injury; the names of the lawyers and experts involved; and the outcome of the case.

The cases summarised on the web site can be listed by date of Judgment or by name of Claimant or by name of Defendant. A search facility is provided, which allows all the information held on all the cases to be searched for a particular name, word or phrase. However, because some upper limb disorders have a variety of names and spellings the terms used for the most commonly encountered conditions have been standardised in a glossary of search terms. The different types of allegedly injurious work have also been standardised in a glossary of search terms.

Visitors to the web site are invited to send in details of cases which were decided on the basis of the evidence heard in Court by completing a Case Report Form, which can be downloaded or completed on-line. The information currently available on the web site has been gathered from a wide variety of sources and verified where possible against a transcript of the Judgment.

[2] E123:00 *Court judgments at the click of a button as new health and safety website is launched*

However, in some cases it has not been possible to obtain a transcript of the Judgment. Transcripts often contain errors in the spelling of names and sometimes omit information which ideally should be included in a case summary. A facility has therefore been provided which allows visitors to the web site to submit further details about a case already mentioned on the web site.

2.3 RESPONSES TO THE WEB SITE

The number of reports of previously unknown cases and the number of reports of additional information on known cases received via the web site compared with the numbers received via the informal networks during the first year in which the web site has been publicly available is shown in Table 1.

Table 1 Number of reports received during year ending 30th June 2001

Type of report	*Via web site*	*Via informal networks*	*Totals*
Previously unknown case	4	22	26
Additional information on known case	9	38	47
Totals	13	60	73

Reports of previously unknown cases contributed directly via the on-line Case Report Form provided on the web site accounted for 15% of the new cases reported during the year ending 30th June 2001. No reports were received on downloaded Case Report Forms. Reports of additional information on known cases contributed directly via the Amend Case Report Form provided on the web site accounted for 19% of such reports. No reports were received on downloaded Amend Case Report Forms. It is impossible to say whether or not the information reported via the web site would eventually have been captured via the informal networks. Virtually all these reports were from individuals who had not previously reported information via the informal networks, though some of them could be described as known potential sources of information.

In addition to the information received on new and known cases there were 9 comments/enquiries received via the facilities provided on the web site. This was considerably less than expected given that compensation for 'RSI' and related matters has been such a popular topic in the media and that the web site is available to the general public. This lack of popular comment and enquiries suggests a lack of awareness and perhaps reflects the disappointing response in the media to the HSE's press release which explained the purpose of the study and the existence of the web site. The lack of response to the press release in the professional and specialist press was particularly surprising.

2.4 EVALUATION OF THE WEB SITE

Given that no other web site has been identified which has been developed for a similar purpose there are no obvious benchmarks against which it can be compared. At an early stage in the development of the web site consideration was given to how to assess its effectiveness as a research tool. It was known that the system which was to host the web site recorded, among other things, the number of 'hits' which particular pages receive. However, the advice received at the time was that these statistics were virtually meaningless. For example, the 'hit rate' for particular pages did not distinguish between ten people each visiting a page once and one person visiting the same page ten times. Moreover, it can be argued that what matters in the context of the web site as a research tool is not how many people visit the site but how many of those who visit the site potentially have some useful information to contribute and how many of those who potentially have some useful information to contribute actually contribute when they do visit the site. To use 'hit rate' statistics to judge the success of the web site is to fall into the

trap of assuming that that which is readily available measures something useful, whereas in this context, that which ideally should be measured is much more difficult to measure accurately.

It was recognised at an early stage in this exploratory study that the only other readily available statistics, the number of responses of various types received directly via the facilities provided by the web site, would also be of limited use in assessing the effectiveness of the web site for several reasons. Firstly, there were no detailed year-on-year statistics on the number of reports received via the informal networks prior to the commencement of the study. Secondly, the process of canvassing those who had provided information via the informal networks to develop the 'wish list' of the desirable features of the proposed web site inevitably drew attention to the overall aims of the exploratory study and the need to report cases prior to the facilities to make such reports becoming available via the web site. Thirdly, the effectiveness of the web site is, in part, dependant upon those who potentially have some useful information to contribute actually being aware of the site. Fourthly, the web site was never intended to replace the informal networks or expected to be a prolific source of new cases. It was envisaged that the web site would augment the informal networks but capture information more quickly and in a more consistent and rigorous way. However, in the absence of any web site which had similar aims and objectives no meaningful target or even guestimate for the number of responses the web site might generate could be made. When it was launched, it was known that the web site provided information on a much larger number of Judgments in claims for WRULDs than any other known source, e.g. the commercially available legal databases. However, there was no way of knowing how many Judgments of this type were yet to be identified.

A telephone survey of a sample of those who had reported information via the informal networks, but who were known to be aware of the study and the facilities for submitting reports via the web site, suggested that some felt 'more comfortable' picking up the telephone or dictating a letter or even sending an email than completing an on-line report form. Their response to the web site was generally extremely positive, but it was suggested that the Case Report Form requested a "formidable" amount of information and that even if the case papers were readily to hand, which often they were not, it was easier just to dictate a quick letter with the basic facts. Some also appeared to believe, erroneously, that any information they submitted via the facilities provided on the web site would actually update the web site immediately which inhibited them contributing.

The overall impression gained from talking to those who had submitted information either via the informal networks or via the web site was that the majority of those who had information to contribute, usually solicitors and expert witnesses, are more used to dictating letters than completing on-line report forms. However, what appears to have happened is that even though most did not use the facilities provided on the web site to submit information, the existence of the web site had stimulated them to put pen to paper, or more often mouth to dictating machine, to contribute information. While there are no detailed year-on-year statistics on the number of different types of report received via the informal networks prior to the commencement of the study, it is clear that the total number of reports from all sources has increased significantly since the web site has become available. There is also no doubt that the web site has captured and presented the information in a more consistent and rigorous way.

While it was hoped that the web site would assist in capturing information on any relevant Judgments as or very soon after they occur, there is no evidence that it has done so more quickly than the informal networks. What the web site has done is to demonstrate to those who contribute information that their efforts are valued and that the information is used to provide a readily accessible and searchable resource which they can use for their own purposes. Thus, while the web site cannot be said to have generated much new information directly it appears to have encouraged reporting of useful information via other routes and has certainly assisted by

providing a readily accessible and efficient means of providing information on personal injury claims for WRULDs.

One of the most sophisticated web search engines, Google, has recently made the web site the first item on the found list when 'WRULD' is used as the search term. Google describes its PageRank software in the following way:

> *PageRank relies on the uniquely democratic nature of the web by using its vast link structure as an indicator of an individual page's value. In essence, Google interprets a link from page A to page B as a vote, by page A, for page B. But, Google looks at more than the sheer volume of votes, or links a page receives; it also analyzes the page that casts the vote. Votes cast by pages that are themselves "important" weigh more heavily and help to make other pages "important".*
>
> *Important, high-quality sites receive a higher PageRank, which Google remembers each time it conducts a search. Of course, important pages mean nothing to you if they don't match your query. So, Google combines PageRank with sophisticated text-matching techniques to find pages that are both important and relevant to your search. Google goes far beyond the number of times a term appears on a page and examines all aspects of the page's content (and the content of the pages linking to it) to determine if it's a good match for your query.*

In other words, the web site has grown in stature and is currently regarded as an important, high quality site. However, it will only remain so if it is regularly updated.

2.5 CONCLUSIONS AND RECOMMENDATIONS

This exploratory study has demonstrated that a web site can assist in generating and disseminating information on Judgments in personal injury claims. The study did not embark with any predetermined target for the reporting of new cases or criteria for 'success'. The web site has clearly been successful in generating information on some previously unknown Judgments, albeit a small number of such cases, and in providing additional information on some known cases. However, perhaps its most important role, from a research perspective, has been to provide a focus, a purpose, which encourages those who have information to contribute actually to contribute. The overall response to the web site, which has been publicly available for only about a year, has been very positive. However, there is clearly scope for improving the effectiveness of such a web site.

Given that others may wish to use a similar approach and that one of the recommendations arising from this exploratory study (see Chapter 7) is that the procurement and analysis of Judgments in personal injury claims for WRULDs should continue, i.e. that the web site should be maintained, there follows a number of recommendations for how the effectiveness of such a web site might be improved and the web site exploited.

2.5.1 Promote awareness of the web site

It is perhaps stating the obvious to note that unless those who potentially have some useful information to contribute via the web site are somehow made aware of its existence, they will not contribute. While there is no hard evidence to suggest that the effectiveness of the web site has been seriously undermined by a lack of awareness, the frequent discussions with those in the informal networks continue to identify some who are unaware of its existence. It is unclear why the HSE's press release which explained the purpose of the study and the existence of the web site produced only a very limited response in the media. It is acknowledged that the web

site would probably not be considered sufficiently newsworthy on its own to merit coverage in other than the professional and specialist press. However, the trade and popular press have regularly carried stories about large awards for "RSI" and might reasonably have been expected to have added a reference to the web site at the end of such a story. It so happened that the public launch of the web site was delayed. Had it gone ahead as originally planned, it might well have coincided with the considerable coverage given to the £243,792 damages awarded to Fiona Conaty in her "RSI" claim against Barclays Bank in April 2000. With the benefit of hindsight, it can be suggested that perhaps more emphasis should have been placed on promoting awareness of the web site. Suggestions for promoting awareness of the web site include:

Further press releases

While the trade and popular press should probably not be considered the primary target for any further press releases, it can be argued that many of those who potentially have some useful information to contribute to the web site will read the trade and popular press and that in this context any publicity is good publicity. A further press release should perhaps focus particular attention on the professional and specialist press read by those who potentially have information to contribute.

Articles in professional and specialist press

Now that there are some results available from the analysis of Judgments it should be possible to 'place' articles in the professional and specialist press read by those who potentially have information to contribute.

Talks at seminars and conferences

The web site was demonstrated at a number of seminars and conferences attended by lawyers and health and safety specialists. Further opportunities to present the results of the analysis and demonstrate the web site to appropriate audiences should be sought out.

Develop on-line links to related sites

Discussions have taken place with a number of organisations which run (not for profit) web sites with which it might be appropriate to arrange reciprocal links. However, one of the inhibitors to actually setting up any such links has been the uncertainty surrounding the future of the web site developed by this exploratory study.

2.5.2 Explore ways of improving the utility of the web site

From the perspective of those at whom the web site is primarily targeted, i.e. users who potentially have some useful information to contribute, the web site can be viewed as having costs and benefits. The costs are the time and effort required to contribute information, the benefits are the uses they can make of the system. Increasing the benefits and/or reducing the costs to the users, albeit at a cost to the provider of the web site, should increase the benefits to the provider, i.e. produce more and better quality reports. However, at present, there is no link between the costs and benefits to the user. Users can extract information without contributing anything. Moreover, at present, there is no way of knowing: who is visiting the site; how many of those who visit the site potentially have some useful information to contribute; or why they do not contribute. It is suggested that a more structured analysis should be made of the users' perceptions of the costs and benefits and the reasons for non use. Thus, areas for further investigation include:

Introducing a visitor registration system

Visitor registration screens are usually associated with e-commerce and subscription based services, but there appears to be no reason why similar techniques should not be used by a free

service to capture information about its 'customers' and their email addresses. This should provide an indication of who is visiting the web site and a route by which a dialogue can be established with those who potentially have some useful information to contribute.

Reducing the effort required to contribute information

The considerable amount of information requested in the Case Report Form should be reviewed and potential contributors made aware that not all the fields have to be completed. Consideration might also be given to the introduction of a 'Quick Case Report Form', to reduce the burden of reporting, and a 'Recent Trial Report Form', to encourage reporting of cases as they occur.

Increasing the benefits to users

While it was decided for the reasons outlined above that the web site would not display the full text of the Judgments, it is clear from discussions that many would like more detailed case summaries. Consideration should be given to what users would like to see in a more detailed case summary and the possibility of incorporating links to organisations which can provide at no cost the full text of (the few) Judgments which are available on-line. Consideration might also be given to providing some sort of reward or incentive to those who contribute new information. For example, by providing them with an email alert announcing that the web site has been updated.

2.5.3 Improve the usability of the web site

While the design of the web site placed considerable emphasis on ensuring that it was easy-to-use a number of suggestions have been made by respondents about how the interface might be improved. It should also be noted that web site design tools are developing very rapidly and that these may also offer ways of improving the interface. However, no amount of tweaking of the interface will improve the effectiveness of the web site if those who potentially have some useful information to contribute are unaware of its existence or do not perceive the benefits it offers.

2.5.4 Exploiting the web site

While the web site was primarily developed as a research tool, a mechanism for generating information on previously unknown cases and disseminating information on known cases, it could also be used to promote awareness of the possible consequences of failing to follow guidance on WRULDs. In this context, it is noted that a recent evaluation of the Manual Handling Operations Regulations and guidance[3] identified 'Fear of compensation claims' as one of the greatest motivators for both large organisations and SMEs to implement the Regulations. It would seem reasonable to suggest that promoting awareness of the possible consequences of failing to follow guidance on WRULDs and Health and safety Regulations should encourage both large organisations and SMEs to comply with HSE guidance and Regulations.

[3] *Second Evaluation of the Manual Handling Operations Regulations (1992) and Guidance*. Contract Research Report 346/2001. HSE Books.

3 IDENTIFYING AND PROCURING JUDGMENTS

3.1 SOURCES OF INFORMATION ON JUDGMENTS

Information about the outcome of a trial of a claim for a WRULD can arise from a wide variety of sources. Reference has already been made to the informal networks of lawyers, expert witnesses, and litigation specialists in insurance companies and trades unions who have provided much of the information and in many cases copies of Judgments referred to on the web site. A number of the expert witnesses who were aware of this exploratory study have regularly volunteered information on cases in which they have been involved either by telephone or in writing and occasionally via the facilities provided on the web site. However, the majority of the contributions from the informal networks have arisen from soliciting information from personal contacts gained from the experiences of the author of this report as an expert witness in such claims.

Another source of information has been reports in the popular and trade press. However, experience has shown that no reliance can be placed on the accuracy of such press reports. One of the best illustrations of this is to be found in the press coverage in October 1999 of the compensation awarded to a factory worker for an injury caused by putting the toppings on pizzas. In the *Daily Mail* on the 20th October 1999, under the headline **Pizza-topper who got RSI wins payout of £191,000**, it was suggested that "Maria Wilson, 52, was last night celebrating what is believed to be the highest ever RSI compensation payout in Britain" and that "Mrs Wilson developed the condition while employed in the special products division of the Pork Farms factory in Beeston, Nottingham, putting toppings on pizzas." On the basis of the reports in the *Daily Mail* and other national papers it would not be unreasonable to assume that: the Claimant was Maria Wilson; the Defendant was Pork Farms; the Claimant had some condition affecting her upper limbs; and that Judgment was given some time in October 1999.

Extensive enquiries subsequently tracked down the Judgment in this case which showed that: the Claimant was Maria Mility; the Defendant was F W Farnsworth Limited; and that the Claimant had symptoms in her neck and had been diagnosed as suffering from Cervical Spondylosis. A letter from the Defendant's solicitor stated: "I can confirm that Judgment was given in this case on 22 December 1998 wherein His Honour Judge Orrell indicated the various amounts he would award in respect of the head of damages. Judge Orrell was not able to hand down the Judgment on that day and accordingly there was a stay of execution on the damages. There then followed a 8 month delay before the parties received the written Judgment and after the appropriate length of time had elapsed signifying the Judgment would not be appealed, this case was then extensively publicised by both the Claimant's Solicitors and the Union."

One of the medical experts in this case had in fact submitted a brief report in December 1998 which identified the Claimant as Maria Mility and the Defendant as F W Farnsworth Limited and helpfully provided the name of the Defendant's solicitor. This information had been entered into the database and efforts made to track down the Judgment. The Defendant's solicitor was contacted and indicated in a letter in February 1999 that the written Judgment was not yet available. Following the press reports in October 1999 a letter was sent to the Claimant's solicitor requesting a copy of the Judgment, which was received in December 1999. It only became clear on receipt of the Judgment in December 1999 that the case which had been reported in December 1998 by one of the medical experts and the case which had been reported in the press in October 1999 were one and the same.

The providers of the commercially-run legal databases have assisted by providing limited periods of free access for research purposes. Searches of these databases identified some new

information on a few known cases but confirmed that the web site provided information on many more Judgments in claims for WRULDs than any of the databases. The web sites of the Court Service, the House of Lords and Smith Bernal which provide on-line access to House of Lords, Court of Appeal and some High Court Judgments have also been searched on a regular basis for relevant cases.

3.2 PROCURING A COPY OF A JUDGMENT

The case of ***Maria Mility -v- F W Farnsworth Limited*** illustrates that tracking down a copy of a Judgment can be a long and complicated process. In that case the Judge eventually handed down a written copy of the Judgment. Such long delays are uncommon but it is also unusual for Judgment to be given immediately following closing submissions. The trial of claims for WRULDs are often long and complex and Judges understandably need time to prepare their usually extensive and carefully worded Judgments. Thus, Judgment is normally Reserved, which means that the Judgment is delayed for days, weeks or even months. In some cases the Judge then hands down a written copy of the Judgment, which usually has been word-processed but can contain hand-written corrections. Sometimes they are signed and dated, sometimes not.

When Judgment has not been Reserved and when no written Judgment has been handed down, Counsel and/or solicitors usually attempt to take notes as the Judgment is read out and may subsequently produce an 'Attendance Note' or a 'Note of Judgment', but this is not a verbatim record. If the Judge has not handed down a written copy of the Judgment and for some reason one of the parties wishes to examine the Judgment in detail, for example to consider whether or not to appeal, the tape recording of the oral delivery by the Judge has to be transcribed by an official transcriber. Thus, a request to a solicitor for a copy of a Judgment can result in an 'Attendance Note' or a 'Note of Judgment', a written copy of the Judgment prepared by the Judge or an official transcript of the Judgment. However, it often transpires that no official record of a Judgment exists. This is typically the case in County Court hearings.

The process of trying to obtain an official transcript of a Judgment some considerable time after the event can be fraught with difficulties. The request has to be made to the Court on a special form which requires, among other things: the names of the parties involved; the location of the Court in which Judgment was given; the date Judgment was given; and the case number. Obtaining the correct names of the parties involved is usually not a problem. However, the location and precise date on which Judgment was given can be elusive, particularly if Judgment was Reserved. The situation can arise in which the hearing of a case starts off in one Court and gets adjourned part heard, then resumes some weeks later with the same Judge but in a different location. It is also not unknown for a Reserved Judgment to be given in a different Court to that in which the case was heard. However, it is the lack of the case number which is the most common stumbling block. Each Court seems to have its own system of case numbering, some are two alpha followed by a string of numerics, others include a year. The case number appears on the pleadings, but it is neither memorable nor of any significance to most of those involved in a case. The only time the case number is of relevance, and then it is vital, is when applying for an official transcript of a Judgment.

By the time it is known that an attempt needs to be made to have a Judgment transcribed most of the information required by the form by which the request is made to the Court is usually to hand and contact has usually been made with the solicitors acting for at least one of the parties, who will usually provide any missing information. However, if the solicitor who handled the case has left the firm or the case papers have been archived, it may prove impossible to obtain all the information necessary for the Court to locate the tapes which need to be transcribed. Experience has shown that Court offices vary greatly in their efficiency and willingness to retrieve the tapes of old cases and appear to have different policies about the number of years

for which they retain tapes. In some cases, correctly completed requests have been returned with a note to the effect that the tapes cannot be located, in others it transpires that the Judgment has already been transcribed and a copy is provided on payment of the photocopying costs.

If the tapes can be located by the Court they are sent to the official transcriber who has been nominated on the form by which the request is made to the Court. The official transcriber transcribes the Judgment and sends the draft transcript and tapes back to the Court for the transcript to be approved by the Judge. Once approved, the transcript is returned to the transcriber who sends it to the party making the request together with an invoice. In one case in which a request had been made for a Judgment to be transcribed, the Judge, on receiving the draft transcript for his approval, asked why the transcript had been requested. A copy of the HSE's press release explaining the purpose of the study was sent to the Court. The Judge declined to approve the transcript and thus the Judgment was not provided.

In summary, there are sometimes lengthy delays: between the end of the hearing of evidence and Judgment being given; between Judgment being given and knowing the Judgment has been given; and between knowing the Judgment has been given and actually obtaining a copy of the Judgment.

3.3 QUANTIFYING THE ACCUMULATING JUDGMENTS

In preparing their Judgments, Judges vary greatly in the style which they adopt, the extent to which they rehearse the evidence and Counsels' arguments and the extent to which they explain their findings on injury, causation, liability and quantum. Most cases involving one Claimant result in a Judgment of usually about 5,000 to 7,000 words, but some reach over 10,000 words. Judgments in appealed cases usually rehearse the pertinent findings but rarely address all the issues considered at first instance. Nevertheless, Judgments in appealed cases often exceed 10,000 words. In the minority of cases in which there is more than one Claimant Judgments can run to 25,000 words or more.

The size and content of Judgments are also influenced by the extent to which the parties dispute injury, causation, liability and quantum. It is important to note that claims evolve over time, most rapidly and most significantly during a trial. Perceptions of the relevance and significance of the statements of the lay witnesses and the opinions of the expert witnesses can be changed in the adversarial atmosphere of the Court. Issues which appeared significant at the start of the trial are discarded and concessions made in closing submissions. The extent to which the parties dispute injury or causation or liability or quantum can change significantly. Judgments often allude to such changes which can result in evidence and arguments which took up hours or even days of Court time being covered in a Judgment in one paragraph.

The Judgments which have been accumulated, so far, date back to 1977 and occupy in excess of one metre of shelving and are estimated to contain a total of around one million words. No attempt has been made to count the total number of words accurately.

Identifying and procuring copies of Judgments in claims for WRULDs can be viewed as a continuous process for which is it impossible to determine performance criteria, given that there is no way of knowing at any particular point in time how many Judgments of this type are 'out there' and yet to be identified. It follows, that there is no way of knowing whether the 'sample' of Judgments which is accumulating is representative of all such Judgments. All that can be said is that, at a particular point in time X cases have been identified in which it is known or believed that Judgment has been given and that it is hoped that Y of these Judgments might be obtained and that Z of them have been. Experience has shown that X, Y and Z change weekly, some times daily. It will be noted that such statements implicitly acknowledge that it is difficult,

sometimes impossible, to obtain copies of some Judgments, particularly County Court Judgments in cases which are more than about two or three years old.

4 WHICH ISSUES AND JUDGMENTS TO EXAMINE?

4.1 INTRODUCTION

Given the novel features of this research, it was perhaps inevitable that as the study progressed questions would arise about which issues should be examined and what might be achieved. The opening paragraphs of the County Court Judgment in the case of ***Lee -v- Vauxhall Motors Ltd*** in September 1994 provide a fitting introduction to a discussion of the issues which might be examined and what might be achieved by analysing Judgments. The Claimant in this case alleged that she had suffered Trigger Finger from using an air-operated cone sander, however, the opening paragraphs of this Judgment are indicative of the range of issues addressed in the Judgments in claims for WRULDs.

> *The claim involves an injury which is said to come within the category of repetitive strain injury (RSI), or Work Related Upper Limb Disorders (WRULD). The simple elegance of the first letters and the sheer ugliness of the second do not appear to prevent the increasing use of WRULD. Despite efforts by Counsel to prevent the emergence of evidence of the general controversy it was perhaps inevitable that the Doctors were unable entirely to avoid it.*
>
> *The essence of this is whether the area of RSI/WRULD is restricted to specific conditions about which there is sufficient evidence to show they are caused by or related to work, or, whether there is any overall type of condition or group capable of bearing a distinct diagnosis as RSI or WRULD. Having looked no doubt at a tiny part of the literature on the subject I suspect that increasing use of the phrase WRULD points to the way the controversy will in the end be resolved. So fast has progress been certainly over the last five years in identifying disorders as work related, so rapid the growth of formal guidance and regulation that in the end I imagine the controversy in its pure form will wither on the vine. For the moment however there is some life in it and in an adversarial system its continued existence plainly influences the approaches of experts concentrating their gaze on novel problems involving either the symptoms or the work done, or the matching of the one to the other. When you relate this to areas of industrial work outside existing experience it is inevitable that one runs into significant problems of causation and foreseeability.*
>
> *The gathering pace of information and concern can be seen from a direct comparison of the HSE MS10 document in 1977 and the HSE Guide of 1990. The one is tiny, the other substantial. In January 1993 six sets of Health & Safety Regulations were brought into operation all of which bear to some extent on RSI/WRULD. Last year the HSE published a major study as part of its survey of the labour force. On the 30th March this year the TUC published a Guide for assessing WRULD risks. There is much more.*
>
> *It seems to me that whatever criticisms there may be over the methodology this area of industrial and workplace disorders has acquired a significant momentum of its own, and, spurred on by the European Commission, the Government has by the 1992 Regulations imposed considerable changes in the way that employers will henceforth be obliged to manage the organization of work.*

4.2 DETERMINING THE SCOPE AND SCALE OF THE ANALYSES

Reference has already been made to the fact that Judgments vary in size and content and the extent to which they consider injury, causation, liability and quantum. The Judgments can be viewed as a series of case studies, rich in data. However, unlike many such series the data sets are not homogeneous and have numerous missing fields. All of the Judgments might raise interesting issues, but for different reasons. It was originally proposed that the analysis would consider: the nature of the injuries for which damages were claimed; the circumstances in which

the alleged injuries occurred; and the references to HSE guidance and health & safety Regulations. However, given the novel features of this study, at its outset it was unclear what might prove to be of interest and whether the analyses originally proposed would be likely to produce findings of any practical use. It was therefore agreed with the HSE's officer responsible for technical liaison that an initial analysis of a sample of Judgments should be undertaken to explore the issues which might be of most interest and practical use and the ways in which the Judgments should be analysed and the results presented.

4.3 INITIAL ANALYSIS OF A SAMPLE OF JUDGMENTS

The sample of Judgments chosen for this initial analysis were claims for WRULDs arising from what might broadly be described as office work. Claims of this type were chosen for several reasons. Firstly, the 35 cases of claims associated with office work were a distinct group which offered an appropriately sized sample of Judgments dating back to the early '90s. At the time, they represented about a quarter of all the Judgments that had been obtained, some of which dated back to the late '70s. Secondly, the allegedly injurious work, mostly DSE use, had been the subject of HSE guidance for some considerable time. Thirdly, the allegedly injurious work in most of the cases was potentially subject to specific statutory duties, the Health and Safety (Display Screen Equipment) Regulations. Thus, this sample of Judgments seemed likely to contain references to all the issues which it was originally proposed the analysis would consider.

One of the most significant findings to emerge from the initial analysis was that the minimum time between the alleged onset of injury and Judgment being given in the claims associated with office work was about four years, the average was over six years. This finding clearly had implications for what subsequent analyses might achieve. For example, with respect to analysing how the Courts have interpreted health and safety Regulations, it appeared unlikely that Judgments prior to 1997 would contain anything of relevance. With respect to HSE guidance, for example HS(G)60 which was published in late 1990, it appeared unlikely that any significant references would be found in Judgments prior to 1995.

Similarly, it appeared unlikely that any of the Judgments would make significant references to most of the industry specific guidance produced by the HSE or in association with the HSE, e.g. *Checkouts and musculoskeletal disorders*[4], *Work related upper limb disorders in the printing industry*[5], *Picking up the pieces Prevention of musculoskeletal disorders in the ceramics industry*[6], given their date of publication. It was originally envisaged that the Judgments might be analysed by industry sector, at least for those sectors for which industry specific guidance had been produced, but there seemed no point in so doing, if the Courts were only just considering cases in which the industry specific guidance might possibly be cited.

Moreover, the initial analysis of the Judgments in claims associated with office work painted a complex picture with respect to the issue of how the Courts are interpreting HSE guidance. Even though much of the allegedly injurious work had been the subject of specific HSE guidance for some considerable time, e.g, *Visual Display Units*[7], *Working with VDUs*[8] and *Display Screen Equipment Work*[9] arguably less relevant guidance, e.g. *Guidance Note MS 10*[10] and *Work*

[4] IAC/L91. May 1998
[5] Printing Industry Advisory Committee March 1994
[6] Ceramics Industry Advisory Committee September 1996
[7] HSE. *Visual Display Units*. 1983.
[8] HSE. *Working with VDUs*. 1986. IND(G) 36(L)
[9] *Display Screen Equipment Work*, Health and Safety (Display Screen Equipment) Regulations 1992, Guidance on Regulations L26. November 1992.
[10] *Beat conditions, tenosynovitis*. 1977.

related upper limb disorders - A guide to prevention[11] was frequently cited. In addition, what emerged from a detailed consideration of the pertinent passages of the Judgments was that HSE guidance documents were cited most frequently in the context of the foreseeability of injury and that the Courts' interpretation of HSE guidance documents in this context might, at best, be described as subject to significant variation.

Variations in interpretation appeared to arise when the type of injury allegedly suffered was not referred to explicitly in the pertinent HSE guidance documents or when there was some dispute about whether or not the condition allegedly suffered constituted an 'injury' in a legal sense. It can be argued that each case turns on its own facts and that whether or not injury could be said to be reasonably foreseeable depends, among other things, upon the nature of the injury for which damages are claimed, the employer's 'actual knowledge', the precise nature of the allegedly injurious work and when it was being performed and the state of 'constructive knowledge' at the time. It must also be acknowledged that 'constructive knowledge' is not solely based upon the interpretation of HSE guidance documents. In short, it became clear that the Courts' interpretation of HSE guidance documents was inextricably linked to the much wider issue of the Courts' interpretation of an employer's duty of care.

Thus, the initial analysis of a sample of Judgments suggested that, with respect to analysing how the Courts have interpreted health & safety Regulations and HSE guidance, it was only the more recent, and future, Judgments which were likely to produce findings of any practical use. Moreover, while it was originally envisaged that the analysis of Judgments would examine how the Courts have interpreted HSE guidance, the initial analysis added a new dimension by suggesting that the Courts' interpretation of an employer's duty of care raised issues which might not be entirely consistent with, or even covered by, HSE guidance. It was originally envisaged that the analysis of Judgments would examine the references to HSE guidance, whereas it emerged that what was often of greater significance was the much wider issue of the Courts' interpretation of an employer's duty of care and perhaps what HSE guidance does not say about an employer's duty of care.

The initial analysis of a sample of Judgments also suggested that while an analysis of the nature of the alleged injuries for which Claimants have sought damages was potentially very fruitful, the effort required to analyse these aspects of the Judgments fully had been underestimated. In choosing claims associated with office work to explore the ways in which the Judgments should be analysed and the issues which might be of interest, it was recognised that the sample probably had more than its fair share of what might be termed 'controversial diagnoses'. However, the sheer number of words devoted to injury and causation and the number of ways of referring to diffuse symptoms and Chronic Pain Syndromes without actually using the terms were not appreciated. Substantial parts of most Judgments in the sample were devoted to the medical issues. Many of the Judgments provided a detailed review of the medical evidence and the contemporaneous medical records. This material not only raised interesting questions about what constitutes an injury and the risk factors postulated for the less well-defined disorders but also raised a number of issues relating to the Courts' interpretation of an employer's duty of care in managing employees who have reported upper limb disorders and when someone who has suffered from an upper limb disorder returns to work.

Finally, the initial analysis suggested that the circumstances in which the alleged injuries occurred was also inextricably linked to the much wider issue of the Courts' interpretation of an employer's duty of care. While the relationship between the alleged injury or injuries and work was disputed in virtually all the cases and in many cases the issue of causation was a central theme of the Judgment, this issue was not examined in detail in all of them. In some cases, it

[11] *Work related upper limb disorders - A guide to prevention.* 1990. HS(G)60.

appeared that the issues of causation and injury were closely entwined and if the Judge found that the burden of proving the Claimant had suffered an injury in a legal sense had not been discharged, the issue of causation was not addressed in the Judgment. In others cases, it was unclear from the Judgment precisely how the findings of negligence and/or breaches of statutory duty caused or materially contributed to the injury or injuries the Claimant was found to have suffered. However, it was clear that claims arising from the same type of work did not necessarily implicate the same risk factors and that a wide variety of injuries were alleged to have arisen from similar types of work.

In summary, the initial analysis of a sample of Judgments suggested that some of the analyses originally envisaged were premature and should be abandoned or at least postponed while others were more complex or potentially less fruitful than anticipated when this exploratory study was originally proposed. This initial analysis also suggested that a lay person reading existing HSE guidance might not appreciate some of the issues which Courts have traditionally considered important with respect to an employer's duty of care in this type of case, the analysis of which had not been originally envisaged or budgeted for.

4.4 ISSUES AND JUDGMENTS EXAMINED IN SUBSEQUENT ANALYSES

It was decided that the limited resources available for further analyses should be concentrated on issues which would be likely to produce findings of practical use. What this meant in practice was that attention was focussed on the nature of the injuries for which damages were claimed and how the Courts have interpreted the 'six-pack' of Regulations. It was recognised that only the more recent Judgments were likely to contain references to the 'six-pack' of Regulations and required a case study approach to provide the context in which the statutory duties had been interpreted, while the examination of the nature of the injuries for which damages were claimed required a systematic analysis of a larger number of Judgments to provide a representative sample of the alleged injuries.

It was originally proposed that the analysis would consider Judgments given between the 1st January 1993 and the 31st December 2000. The 1st January 1993 being the date the 'six-pack' came into force. The 31st December 2000 being the date the contract was originally scheduled to end. These appeared, at the time, to be appropriate cut off points. However, it was subsequently agreed, given among other things the delay in the public launch of the web site, that the length of the contract should be extended by 6 months, to the 30th June 2001. This extension to the contract was funded by utilising an under-spend on the original contract which had arisen from not having to pay as much as expected to have Judgments transcribed. This extension of the contract by 6 months not only allowed information to be gathered on more cases but also more time to actually procure copies of Judgments. Thus, the extension of the contract allowed more of the more recent Judgments to be obtained, several of which contain interesting references to health & safety Regulations.

While this exploratory study did not embark with any predetermined target for the number of Judgments which would be available for analysis, and despite not having to transcribe as many Judgments as expected, the number of Judgments accumulated by the end of the contract period was in excess of the number expected when the study was proposed in November 1999. At that time, 155 cases had been identified in which it was known or believed that Judgment has been given since 1977. A written record of the Judgment had been obtained in 109 of these cases. However, with respect to Judgments given after the 1st January 1993, by November 1999, only 107 cases had been identified and a written record of the Judgment had been obtained in only 72 of these cases. Given that these cases had been identified and the Judgments obtained over a period of at least eight or nine years, albeit on an ad hoc basis, it was considered likely that a further 15, at best perhaps 20, Judgments might be obtained during the year in which the study

was originally scheduled to run. Thus, the original proposal implicitly assumed that the analyses of the nature of the injuries for which damages were claimed would be based upon about 90 Judgments dating from the 1st January 1993.

By the 30th June 2001, 151 cases had been identified in which it was known or believed that Judgment has been given after the 1st January 1993 and a written record of the Judgment had been obtained in 97 of these cases. These Judgments were considered a sufficiently large and representative sample for the systematic analysis of the alleged injuries.

4.4.1 Characteristics of the Judgments analysed

The majority of the 97 cases were heard in the County Courts and resulted in one Judgment. Thirteen of the 97 cases were initially heard in the High Court. Seven of the 97 cases went to the Court of Appeal, with one going on to the House of Lords, resulting in 104 Judgments available for analysis, all but 11 of which were full transcripts. The Judgment at first instance in one of the cases which went to the Court of Appeal was not available and its date is unknown but is assumed to be prior to the 1st January 1993.

Table 2 Judgments given after 1st January 1993 and available by 30th June 2001

Location	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*
Judgments at first instance	4	16	8	12	16	14	12	8	6
County Court	1	9	7	12	15	13	12	8	6
High Court	3	7	1		1	1			
Judgments in Appeals									
Court of Appeal			1	1	2	1	2		
House of Lords						1			

The 97 cases involved a total of 125 Claimants. While the majority of cases involved only one Claimant, 11 cases dealt with multiple claims.

Table 3 Number of Claimants per case

Number of Claimants	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
Number of Cases	86	4	3	2	1				1

The age of about a third of the 125 Claimants is unknown. Only about a quarter of the Claimants were male.

Table 4 Approximate age of the Claimants at around alleged onset of injury

Approximate Age	*<20*	*20s*	*30s*	*40s*	*50s*	*60s*	*Unknown*	*Total*
Male		7	7	3	2		11	30
Female	2	15	27	14	6	1	30	95
Total	2	22	34	17	8	1	41	125

4.4.2 Judgments examined for interpretations of statutory duties

The initial analysis of the Judgments in claims associated with office work identified most of the Judgments which made reference to the DSE Regulations. All the remaining Judgments which were likely to make reference to the 'six-pack' of Regulations were included in the

analysis which examined the nature of the alleged injuries for which Claimants had sought damages.

4.5 PRESENTING THE RESULTS OF THE ANALYSES

While the avowed intention of this exploratory study was to address the issues from a lay perspective and not attempt to interpret the legal arguments or the law, in presenting the results of the analyses it is necessary and appropriate at various points to comment on the apparent differences between the legal and lay perspectives. These comments rely heavily on a recently published legal text entitled *Health and Safety - The Modern Legal Framework*[12] to which readers requiring a comprehensive review of the legal issues and arguments are unreservedly referred.

4.5.1 Note on statistics

Where summary statistics are presented in this report they should always be interpreted only as indicative of features of the sample of Judgments analysed and not necessarily representative of all Judgments in personal injury claims for WRULDs and certainly not representative of personal injury claims for WRULDs in general.

While the presentation of the results of the analyses, in places, makes reference to the outcome of claims and the damages awarded in particular cases, it intentionally refrains from presenting any summary statistics on these matters. While it is understandable that many, particularly it seems journalists, wish to know what proportion of personal injury claims for WRULDs which have been decided in Court are successful or whether the Claimants' success rate has changed over time, these are questions to which there are no, and never will be, accurate answers. Even though the web site provides information on a much larger number of Judgments in personal injury claims for WRULDs than any other known source, there is no way of knowing how many Judgments of this type are 'out there' and yet to be identified. Moreover, even if all the Judgments of this type were identified, the statistics would be fairly meaningless, given that an unknown proportion of Judgments are 'test cases' in which the outcome effectively determines the outcome of a number, usually an unknown number, of similar claims.

For example, the opening paragraph of the Judgment of H H Judge Byrt QC in December 1991 in the case of ***McSherry & Lodge -v- British Telecommunications plc*** states:

> *At the outset of this hearing, there were listed claims by 11 plaintiffs, for damages for personal injuries alleged to have been caused by the negligence and breach of statutory duty of the defendants, their employer. Since the issues of fact and law were similar in each case, counsel for the parties sought to simplify and shorten the proceedings by inviting the court to give judgment in only two cases, namely those of Mrs McSherry and Mrs Lodge. The explanation is that, once the court's findings in those two cases are known, the remaining claims will probably be settled on terms agreed between the parties. This way of proceeding seemed eminently sensible, and as such was approved by the court. The hearing, accordingly, has been conducted on this basis, and I now give judgment in those cases only.*

4.5.2 References to Judgments

Given that the vast majority of Judgments in personal injury claims for WRULDs have not been officially reported, in most cases it is not possible to provide a reference to the 'source material'. Thus, in presenting the results of the analyses it is necessary and appropriate at various points to paraphrase or quote passages of the Judgments. However, in some cases in which the arguments

[12] Smith I., Goddard C., Killalea S. & Randall N. *Health and Safety - The Modern Legal Framework*. 2nd Edition. Butterworths 2000

are particularly complex or the context or precise wording used is important to an understanding of the issues, lengthy passages of the Judgment are quoted in full.

5 INJURIES FOR WHICH DAMAGES HAVE BEEN CLAIMED

5.1 INTRODUCTION

The opening paragraphs of the County Court Judgment in the case of ***Lee -v- Vauxhall Motors Ltd*** in September 1994 refer to the "general controversy" surrounding RSI and WRULDs. At the heart of this controversy was, and is, the duality of meaning afforded the term 'RSI'. It is used both as a generic label to describe the range of injuries popularly understood to be caused by repetitive work, i.e. as a synonym for WRULDs, and as the name of a discrete condition of, as yet, unknown pathology and aetiology, characterised by chronic diffuse pain. It can be argued that this general controversy was, at least in part, attributable to the way in which the press had reported some of the earlier Judgments in personal injury claims for WRULDs.

The earliest Judgment which has been identified which explicitly refers to "RSI" was in December 1991, in the case of ***McSherry & Lodge -v- British Telecommunications plc***. It is perhaps no coincidence that this is also the earliest Judgment which has been identified which deals with claims associated with keyboard use. This Judgment was extensively reported in the national press on the 17th December 1991 as a watershed for WRULD claims, inspiring headlines such as: **RSI victory threatens flood of cases**, in *The Times* and **Keyboard injury awards may lead to thousands of claims**, in *The Daily Telegraph.* With hindsight, it appears that this County Court Judgment set few precedents, save for the way it was reported. In the Judgment, H H Judge John QC states: "In both cases, I have found that each Plaintiff suffered RSI as a result of her work". However, given that the Defendants conceded that "the injuries of both Mrs McSherry and Mrs Lodge were caused in the course of and as a result of their work for the Defendants" these, admittedly successful, claims cannot be considered a significant Court victory for "RSI", or a substantive court finding of keyboard use causing "injury".

The next Judgment to receive significant publicity was ***Inskip -v- Vauxhall Motors Ltd*** in April 1992. The Claimant successfully claimed damages for De Quervain's Syndrome, but was widely reported in the press as having suffered a "strain injury". For example, the headline in the *Financial Times* on the 28th April 1992 was **Vauxhall found to be negligent in RSI case**.

The Judgment in the case of ***Mountenay (Hazzard) -v- Bernard Matthews plc***, which involved claims by nine poultry workers, was reported in all five, daily broadsheets on the 10th July 1993. All these reports referred to "RSI" and "repetitive strain injury" but did not describe the specific clinical conditions for which six of the claimants were awarded damages. In part, the use of the term 'RSI' as opposed to the more specific clinical conditions might be attributed to the second paragraph of the 100-page Judgment which opens:

> *The whole field of R.S.I. or W.R.U.L.D. is an area of medical controversy the intensity of which as demonstrated by the five days of medical evidence I heard would be worthy of medieval theology.*

but closes:

> *Although the term Repetitive Strain Injury was subjected to a semantic and logical demolition by the Defendant's experts which I found wholly convincing it appears to me to have reached that point at which a term acquires a life of its own (indeed there are R.S.I. conferences) and I shall continue to use it - but I shall bear in mind that the full extent of its proper definition and connotations are in dispute.*

A second passage of Judgment, in which the H H Judge David Mellor considered the existence of what is termed "diffuse RSI" states:

In some senses it can be regarded as absurd that I as a Judge lacking in medical training or knowledge should choose to appear to say which of two sets of honestly held but totally opposed medical beliefs is correct. I am conscious of the absurdity of appearing to deny the existence of that which subsequent scientific advances may prove to exist or of exerting the existence of something that turns out to have all the substance of a will of the wisp. It is however necessary that I should do so at least in the limited sense of making a finding as to what if anything has been proved before me to be more likely than not.

The press coverage of the Judgment in ***Rafiq Mughal -v- Reuters Ltd*** inspired front page headlines on the 29th October 1993 which included: **Keyboard injury does not exist, judge rules** in *The Guardian* and **High Court judge rules that RSI does not exist** in *The Daily Telegraph*. At no point in the Judgment does H H Judge Prosser state that "RSI does not exist", whereas, this is the dominant theme of the press reports inspired by the Judgment which were littered with quotes attributed to H H Judge Prosser. He was most frequently alleged to have said that RSI was "meaningless" and had "no place in the medical books". In passing, it is interesting to note that these quotes appear in the opening sentences of the story which was carried on the Reuters Newswire. However, careful reading of the Judgment shows that the Judge was summarising the views of the Defendant's Medical Experts when he used the phrases 'RSI is in reality meaningless' and 'RSI has no place in the medical books'. It also transpires that another quote: "eggshell personalities who needed to get a grip on themselves", attributed to the Judge in *The Guardian*, and a number of subsequent press cuttings, is not a direct or accurate quote from the Judgment. It arises from the Judge quoting an article by Bammer and Martin, who are in turn quoting an Australian psychiatrist Dr Yolande Lucire.

The simple and most important fact omitted from the press reports was that H H Judge John Prosser found, on the evidence presented during the trial, that: "He fails to convince me that he has suffered a (or any) injury which he has alleged in this case, both pleaded or in evidence". The crucial point, however, with respect to the subsequent press coverage and the perception of a "general controversy", is that the press reports failed to distinguish between the "diffuse pathological condition reflected by pain" which Rafiq Mughal failed to convince the learned Judge he had suffered and the (more) well-defined clinical conditions popularly understood to be caused by repetitive work.

For over a decade prior to these Judgments, the Courts had been considering claims for upper limb disorders allegedly caused by repetitive work. It would appear that the 'general controversy' only arose, at least publicly, when the Courts started to consider claims by keyboard users and claims for what would now probably be described in a non-legal context as Chronic Pain Syndromes.

5.2 THE ALLEGEDLY WORK-RELATED INJURIES IN THE JUDGMENTS ANALYSED

While many of the Judgments provide a detailed review of the medical evidence and the contemporaneous medical records, no attempt has been made to analyse all this material systematically, primarily due to its sheer volume. Rather, attention is focused on the nature of the alleged injuries and whether they are encompassed by the descriptions of upper limb disorders in HSE publications.

It will be recalled that the 97 cases in which Judgment was given after the 1st January 1993 resulted in 104 Judgments and involved a total of 125 Claimants. The first point which emerges from a consideration of the pertinent passages of the Judgments is that in just over half of the

claims the diagnoses were disputed and the relationship between the alleged injury or injuries and work was disputed in the vast majority of cases.

Table 5 Frequency of clearly disputed diagnosis and causation

Number of Injuries Claimed	*1*	*2*	*3 or more*
Claimants	98	17	10
Diagnosis clearly disputed	49	13	7
Causation clearly disputed	87	17	9

In 11 cases there is little discussion of the medical issues in the Judgments and the precise nature of the injury and whether or not injury and/or causation was disputed at trial is unclear.

5.2.1 Diagnostic labels given to the Claimants

While most of the 125 Claimants had been diagnosed as having one upper limb disorder, 27 of the 125 can be described as claiming multiple injuries. In terms of the types of injuries for which Claimants sought damages: 40 claimed for some sort of Tenosynovitis; 30 for some sort of Chronic Pain Syndrome; 21 for De Quervain's Syndrome; 16 for Lateral Epicondylitis; 14 for Medial Epicondylitis; 13 for Carpal Tunnel Syndrome; five for some sort of Rotator Cuff injury; five for Osteo-Arthritis of the hand; four for Cervical Spondylosis; four for some sort of Occupational Cramp; four for Trigger Finger, four for Radial Tunnel Syndrome; two for Reflex Sympathetic Dystrophy; one for a Ganglion; one for an Ulnar Neuritis; and one for Shoulder Capsulitis. In addition, several claimed for unspecifed injuries to the hand, elbow, shoulder and back. In the majority of cases the site of the alleged injury or injuries was the lower part of the upper limbs, with relatively few shoulder injuries.

The accuracy of the diagnostic labels given to 69 of the 125 Claimants was disputed at trial. Of the 27 Claimants who claimed damages for more than one upper limb disorder, the accuracy of at least one of the diagnostic labels given to 20 of the 27 was disputed. The accuracy of the diagnostic labels given to half of the Claimants who had been diagnosed as having one upper limb disorder was disputed at trial.

In a few cases the difference in the opinions of the Medical Experts, with respect to diagnosis, appears to have been only marginal and can be attributed to the Medical Experts examining months or even years apart, resulting in different findings on examination. However, in many cases the dispute between the Medical Experts appears to have been more fundamental, possibly reflecting a clash of cultures[13]. This dispute usually focused on whether or not the signs and symptoms described by the Claimant or reported in the contemporaneous medical records or in the reports of the Medical Experts were consistent with or sufficient to warrant a diagnosis of the condition or conditions allegedly suffered. In other words, in many of the cases in which the accuracy of the diagnostic labels given to the Claimants was disputed at trial, there was a dispute over diagnostic criteria and/or technique, which was often confounded by evidential issues relating to the Claimant's credibility and/or the Claimant's accuracy as a historian.

In many of the cases in which the accuracy of the diagnostic labels given to the Claimants was disputed at trial, particularly those in which the Claimant sought damages for more than one upper limb disorder, the Judgments could be interpreted as suggesting that most of these Claimants probably had what might well now be described in a non-legal context as a Chronic Regional Pain Syndrome. Reading between the lines of these Judgments gives the impression that it is the legal process and in particular the perceived need to describe a Claimant's alleged

[13] Diwaker, H. N. & Stothard, J. *What do doctors mean by tenosynovitis and repetitive strain injury?* Occupational Medicine. 1995. Vol. 45, No. 2, pp. 97-104.

injury in terms of recognised clinical conditions, rather than findings of objective clinical signs, which caused many of these Claimants to be given the diagnostic labels they were given.

In 41 of the 45 claims in which the accuracy of the diagnostic label given to the Claimant does not appear to have been disputed at trial, the Claimant sought damages for one, and only one, upper limb disorder. Of these 41 Claimants: nine had De Quervain's Syndrome; five had Lateral Epicondylitis, one bilaterally; five had Carpal Tunnel Syndrome, three bilaterally; five had Regional Fibromyalgia; three had Tenosynovitis; two had Trigger Finger; two had Peritendinitis; one was described as having Peritendinitis or Tenosynovitis; one had Cervical Spondylosis; one had Cervical nerve root irritation; one had Medial Epicondylitis; one had Rotator Cuff injury; one had Radial Tunnel Syndrome; one had Diffuse symptoms in forearms and hands; one had Repetitive Strain Injury; one had Cramp of the hand; and one had Reflex Sympathetic Dystrophy.

5.2.2 Comparison with descriptions of ULDs in HSE publications

If the diagnostic labels given to the 98 Claimants who claimed damages for a single upper limb disorder, irrespective of whether or not they were disputed, are classified broadly in terms of the classification of upper limbs disorders contained in *Work related upper limb disorders - A guide to prevention*: 54 Claimants could be said to have claimed they had a disorder related to tendons or surrounding tissues; and eight could be said to have claimed they had a compression neuropathy. The remaining 36 do not clearly fit this classification. Of the 27 Claimants who sought damages for more than one upper limb disorder: 10 could be said to have claimed they had more than one disorder related to tendons or surrounding tissues; and six a combination of disorders related to tendons or surrounding tissues and a compression neuropathy. The remaining 11 could be said to have claimed they had either a disorder related to tendons or a compression neuropathy together with one or more disorders which do not clearly fit this classification.

Thus, about two thirds of the 125 Claimants could be said to have claimed they had one or more disorders encompassed by the classification of upper limbs disorders contained in *Work related upper limb disorders - A guide to prevention* with just over half of the Claimants claiming they had one or more disorders related to tendons or surrounding tissues. However, perhaps of most significance is the fact that about a quarter of the 125 Claimants sought damages for disorders which might be classified as some sort of Chronic Regional Pain Syndrome. Moreover, if as suggested earlier, in many of the cases in which the accuracy of the diagnostic labels was disputed at trial most of the Claimants, particularly many of those claiming multiple injuries, might in a non-legal context now not be given the diagnostic labels they were given, it appears that just under a half of the Claimants could probably be said to have had a Chronic Regional Pain Syndrome of some sort, which are not encompassed by the classification of upper limbs disorders contained in *Work related upper limb disorders - A guide to prevention.*

Turning now to consider the "diagnosis options" developed for the Diagnostic Support Aid for Upper Limb Disorders reported in Contract Research Report 280/2000. The list of "Diagnosis options covered by Aid and alternative labels" are listed in Appendix A of Contract Research Report 280/2000. For convenience this list is reproduced as Appendix A to this report. How well do the diagnosis options and alternative labels listed in Appendix A encompass the injuries allegedly suffered by the 125 Claimants referred to in the Judgments analysed?

Perhaps the first point to note is that the Diagnostic Support Aid for Upper Limb Disorders does not appear to address the issue of patients possibly presenting with more than one upper limb disorder. The temporal aspects of multiple upper limb disorders and how frequently multiple upper limb disorders co-occur outside of a medico-legal context do not appear to be well

documented in the literature. If, as has been suggested earlier, it is the legal process and in particular the perceived need to describe a Claimant's alleged injury in terms of recognised clinical conditions which caused many of these Claimants to be given the multiple diagnostic labels they were given, multiple upper limb disorders may, in reality, not have co-occurred that often.

Of the 27 Claimants who alleged multiple injuries, the accuracy of the diagnostic labels given to the Claimant does not appear to have been disputed at trial in only four cases: one was described as having Osteoarthritis of the thumbs and De Quervain's Syndrome; one had Lateral and Medial Epicondylitis; a third had De Quervain's Syndrome and Cervical Spondylosis; while the fourth had Subacromial Bursitis, Ulnar Neuritis and Carpal Tunnel Syndrome. The only condition not explicitly referred to in Appendix A is Ulnar Neuritis.

Of the 98 Claimants who sought damages for a single upper limb disorder, 67 claimed an injury which had clearly been given one, but only one, of the diagnostic labels listed in Appendix A. This is not to say that the alleged injury met the diagnostic criteria used in the Diagnostic Support Aid, merely that the single diagnostic label used to describe the Claimant's condition was one of 20 conditions and alternative labels listed in Appendix A. The diagnostic label used to describe the condition was not disputed in 32 of these 67 Claimants. Thus, only 32 of the 98 Claimants who sought damages for a single upper limb disorder could clearly be said to have an undisputed diagnosis of one of the conditions listed in Appendix A, however, it cannot be guaranteed that even these 32 undisputed diagnoses met the diagnostic criteria used in the Diagnostic Support Aid.

Of the nine Claimants who apparently had an undisputed diagnosis, but not clearly one of the conditions listed in Appendix A, it was agreed that: five had Regional Fibromyalgia; one had Repetitive Strain Injury; one had Radial Tunnel Syndrome; one had Reflex Sympathetic Dystrophy; and one had Cramp of the hand, PD A4. It could be argued that Regional Fibromyalgia and Repetitive Strain Injury might possibly be synonyms for Non-specific diffuse forearm pain. However, the difficulty is that Appendix A appears to suggest that 'Non-specific diffuse forearm pain' is an alternative label for 'Impossible to make a specific diagnosis', whereas there are those who would argue, particularly some Rheumatologists and those who might be described as the medical apostles of "RSI" that it is possible to make a specific diagnosis of both Regional Fibromyalgia and Repetitive Strain Injury. The other difficulty with this 'classification' is that those who had an agreed diagnosis of Regional Fibromyalgia had symptoms in the neck, arms and hands. Thus, neither 'Non-specific diffuse forearm pain' nor 'Diffuse shoulder or neck pain' would accurately describe these Claimants' conditions.

Those who claimed damages for a single upper limb injury whose diagnosis was disputed and not clearly given one of the diagnostic labels listed in Appendix A, included Claimants who had been 'diagnosed' as suffering from: RSI/Neuroplasticity; Over-use syndrome; WRULD; Chronic strains to the soft tissues of both thumbs; Diffuse work related upper limb disorder; Aches & pains well beyond the normal aches and pains caused by fatiguing work; Occupational Overstrain Syndrome; Fibromyalgia; Repetitive Strain Injury; Repetitive Strain Syndrome; Occupational Dystonia; and Occupational Cramp. It could be argued that many of these terms are synonyms for Chronic Regional Pain Syndromes. However, there are those who would argue that many of these terms are legitimate diagnoses. As has been noted by many others many times before, terms such as Repetitive Strain Injury, Repetitive Strain Syndrome, Occupational Dystonia and Occupational Cramp all presume or imply a relationship to work, which is widely considered to be unhelpful. Such terms are particularly inappropriate, but understandably widely used, in a medico-legal context where the relationship between an alleged injury and work is often the primary issue in dispute.

While not presuming to suggest that any significant 'diagnosis options' have been omitted from the list developed for the Diagnostic Support Aid for Upper Limb Disorders, it should be noted that Claimants have successfully claimed damages for Radial Tunnel Syndrome, Reflex Sympathetic Dystrophy, Repetitive Strain Injury and Regional Fibromyalgia, which are not included in the list.

It should be noted that the corollary of the argument that in many of these cases the Claimants might have had a Chronic Regional Pain Syndrome of some sort, rather than discrete upper limbs disorders, is that any classification or listing of WRULDs should probably encompass these pain syndromes. However, if as the recent study by Macfarlane et al[14] suggests, forearm pain commonly co-occurs with other regional musculoskeletal pain syndromes, how these pain syndromes should be catered for requires careful consideration. Moreover, if as the study by Macfarlane et al also suggests, forearm pain is common and is associated not only with work related repetitive movements, but is predicted by high levels of psychological distress and aspects of illness behaviour, encompassing Chronic Regional Pain Syndromes in any guidance document could have profound consequences with respect to civil claims.

5.2.3 Co-morbidity, alternative diagnoses and other factors

It should also be noted that while no systematic analysis was undertaken of references in the Judgments to musculo-skeletal problems for which damages were **not** claimed, about a quarter of the Claimants are suggested to have some sort of musculo-skeletal morbidity in addition to their alleged injuries, e.g. ganglion, cervical spondylosis and osteo-arthritis.

Finally, it should be noted that in many of the cases in which there was clearly a disputed diagnosis the Defendant's Medical Expert(s) provided an alternative explanation, some times an alternative diagnosis, for the Claimant's reported problems. While no systematic analysis was undertaken of these references they included: Osteoarthritis of the hands; Osteoarthritis at the base of both thumbs; Pain referred from the neck; Degenerative changes in the cervical spine; Muscle fatigue; Arm pain of unknown origin; No physical cause; No known disorder; Psychosocial pressures; Somatisation; Psychosocial pressures elevating fatigue to pain; Psychogenic symptoms; Psychosomatic symptoms; Depression; Occupational neurosis; Disability behaviour; Lying or gross exaggeration; and Malingering.

There are allusions to iatrogenic and/or psychological factors in the Judgments in about a quarter of the 125 claims. It is clear from the Judgments in these cases that Courts frequently address issues relating to the nature, causes and interpretation of upper limb symptoms, which HSE publications have so far rarely addressed explicitly.

5.3 EXAMPLES OF ALLEGEDLY WORK-RELATED INJURIES AND ASSOCIATED RISK FACTORS

The claims associated with office work which were examined in the initial analysis referred to in Chapter 4 illustrate the circumstances in which some of these alleged injuries occurred and the complex issues surrounding the employer's duty of care which the Courts have to resolve. It will be recalled that the initial analysis suggested that claims arising from the same type of work did not necessarily implicate the same risk factors and that a wide variety of injuries were alleged to have arisen from similar types of work

[14] Macfarlane, G. J., Hunt, I. M., & Silman, A. J. *Role of mechanical and psychosocial factors in the onset of forearm pain: prospective population based study.* British Medical Journal. 2000, Vol.321: 676.

5.3.1 Risk factors and alleged injuries associated with office work

With respect to the risk factors referred to in paragraphs 19 & 20 of *Work related upper limb disorders - A guide to prevention*[11], given the type of work these Claimants performed, it might be expected that the risk factors most commonly cited would be frequency and duration of movements alone or possibly in combination with an awkward posture of the hand, wrist or arm. However, in those Judgments in which the issue of causation is discussed, there appears to be no clear pattern to whether or not the injury was alleged to be solely due to the intensity of the work or some combination of the intensity of work and some inappropriate posture, or solely due to some inappropriate posture. Moreover, there appears to be no clear pattern to whether or not an injury was found to have been caused by the work.

5.3.2 Posture as a risk factor

Two cases in which Claimants successfully claimed damages for an injury which was found to be primarily due to the posture in which the work was performed are particularly worthy of note.

The Judgment in the case of ***Gould -v- Shell (UK) Ltd*** in September 1999 is the only known Judgment relating to the use of a mouse which meets the criteria for inclusion in this study[15]. This case started at trial on the basis that the Claimant was performing her secretarial duties in a perfectly normal manner, but was doing so for too long, under too much pressure, with too little in the way of breaks and adopting a posture which was unsuitable, which allegedly caused her to suffer "RSI". However, during the course of her evidence the Claimant demonstrated, for the first time, how she was sitting at her desk and operating the keyboard and, in passing, how she used the mouse with her hand on the mouse but her wrist, forearm and upper arm wholly unsupported. The Judge referred to this as "a quite bizarre use of the mouse" and "a potential source of her pain and suffering", which "recast the entire case". However, the Judge also noted that the Claimant said in her evidence that she found this posture "comfortable".

The Defendant's evidence was to the effect that the Claimant was never seen to have used the mouse in the way she demonstrated in Court and that "if it had been going on" her supervisor "would have done something about it". The Judge accepted the Claimant's evidence about how she used a mouse, even though he rejected completely the Claimant's attempt "to paint" the Defendant as "an uncaring slave-driving employer" and thought she was "given to exaggeration" and in several instances "misleading" and overall that he had "hesitation in accepting her as a complete witness of truth".

The Judge went on to find that the posture in which the Claimant used the mouse was causative of her pain and suffering and that her employers should have identified that she was misusing the mouse "almost immediately" and that in failing to do so her employers failed to use ordinary common sense and, hence, failed to take reasonable care for her safety.

It can be argued, without implying any criticism of the Judge, that this Judgment is of no particular consequence in that it somewhat glosses over the precise nature of the injury and the issue of causation and that in any event the case turned primarily upon the Judge's interpretation of the lay evidence. Nevertheless, it raises a number of interesting issues about: posture as a discrete risk factor; whether an injury can occur when working in an inappropriate, but perceived comfortable, posture; whether, in 1991 and 1992, a mouse should have been regarded as "a rather innocent looking creature, incapable of causing injury" or "a new piece of machinery … which was manifestly likely to cause injury"; and whether an employee new to

[15] The only other known Judgment relating to the use of a mouse is a case which was heard in the Channel Islands, which has somewhat different legal procedures.

using a mouse needs training in how best to operate it, even though common sense might suggest the "natural way" to use a mouse.

In the case of ***Conaty -v- Barclays Bank plc*** in which Judgment was given in April 2000, it was common ground that the Claimant had suffered right De Quervain's Syndrome in 1994. However, it was also common ground that the Claimant did not use her right thumb to enter data. Both Medical Experts agreed that the Claimant's suffering from right De Quervain's Syndrome at her age (22) without either a traumatic or a hormonal cause was "a misfortune such as had not been identified in cases discussed in the literature or paralleled in the direct experience" of either Medical Expert. Nevertheless, the Judge found that the Claimant's De Quervain's Syndrome arose from the poor posture adopted by the Claimant which itself was caused by the Defendant's breaches of statutory duty, both in the layout of the work station and lack of training and the concentration of keyboarding.

Once again, without implying any criticism of the Judge, it can be argued that this Judgment is of no particular consequence and that the case turned on its own evidence. Nevertheless, this case raises a number of interesting questions. For example: Even if the Claimant "habitually .. adopted what is agreed to be a bad posture whereby her wrist was flexed and whilst using the numeric keys subject to ulnar deviation instead of being kept straight, as is recommended" was there a cogent biomechanical link between the "bad posture" of the wrist and the injury to the tendons associated with the thumb? Is it reasonable to expect an employer who observed an employee entering numeric data to consider that there was a risk of an injury to the thumb which was "stuck out to the side of her right hand" and not being used? Would a reasonable and prudent employer who had undertaken a risk assessment of the work described have rearranged the workstation or advised or trained the employee to work in a way which would have made any material difference? It is by no means clear from the Judgment precisely how the Defendant's admitted breaches of the DSE Regulations caused or materially contributed to the Claimant's injury.

In contrast to the above two cases, a number of Judgments relating to slightly earlier times provide a somewhat different perspective on posture as a risk factor and the extent to which employers should influence employees' working postures. In the Judgment in ***Asprey -v- The Post Office*** in July 1994, in which the Claimant was found to have suffered Occupational Cramp from entering post codes in 1989, the Judge said: "I would not regard it as reasonable to expect the defendants to supervise posture". Similarly, in the Judgment in ***Clarke -v- The Post Office*** in March 2000, which dealt with Fibromyalgia allegedly caused by the repetitive use of a bar-code reading pen in 1989, the Judge suggested that having to tell someone to sit up straight at a desk "was quite an unnecessary thing to do".

In the Judgment in ***Summers -v- Justica Cas Ltd*** in September 1997, in which the Claimant was alleged to have suffered Carpal Tunnel Syndrome and Writer's Cramp in 1989 from using an adding machine, the Judge said: "I am not satisfied that there was any defect to the chair and I do not accept that the defendants have a further duty to design or enforce a lay-out of an office desk indicating where an adding machine should be put, or how far in a chair should be pulled up, or whether an operator should sit up straight or lean forward. In my judgment, it is excessive to impose a duty of that kind on an employer, and an office worker can reasonably be expected to make her own judgment on that". The comments about journalists' working conditions in late 1989 in the High Court Judgment in ***Mughal -v- Reuters Ltd*** in October 1993 also appear to imply that the Court did not consider working posture to be a significant risk factor or something which an employer needed to supervise or control.

It may be simply a coincidence that the Judgments in claims associated with office work which attach particular significance to the posture in which the work was performed are mostly concerned with DSE use, whereas those which do not appear to regard posture as a significant risk factor are mostly concerned with other types of office work or DSE use prior to the DSE Regulations coming into force. However, it might possibly signal a subtle change in the Courts' perception of the significance of posture and in the Courts' perception of an employer's duty of care. It can be argued that this may have been brought about by the emphasis, some might argue undue emphasis, on the physical ergonomics of workstations in the HSE's guidance on the DSE Regulations and the lack of clarity in HSE guidance on what constitutes an awkward or poor working posture. It can be argued that a poor working posture can only be considered a possible contributory factor to a musculo-skeletal disorder if there is a cogent biomechanical link between the poor working posture and the type of disorder allegedly suffered. Moreover, deficiencies in a workstation can only be considered a possible contributory factor to a poor working posture if there is a cogent biomechanical link between the poor working posture and the deficiencies in a workstation.

6 INTERPRETATION OF STATUTORY DUTIES

6.1 EUROPEAN DIRECTIVES AND THE 'SIX-PACK' OF REGULATIONS

The opening paragraphs of the County Court Judgment in the case of ***Lee -v- Vauxhall Motors Ltd*** in September 1994 suggest that all of the six sets of Health & Safety Regulations brought into operation in January 1993 "bear to some extent on RSI/WRULD" and that "the Government has by the 1992 Regulations imposed considerable changes in the way that employers will henceforth be obliged to manage the organization of work".

In their legal text, Smith et al[12], refer to the 'six-pack' of Regulations as "a revolutionary change in the structure of health and safety law in this country" and to their implementation as directly resulting in a substantial body of the pre-existing law being repealed or revoked and much of what was left being amended or qualified. They suggest that these changes had a substantial impact on the way in which personal injury litigation was conducted and heralded a new approach from practitioners, employers, workers and unions:

> *The Regulations represented a major shift away from the old system of looking to the type of workplace or premises in which the accident occurred in order to establish which, if any, statutory provisions applied. This is because, as their titles suggest, the 1992 Regulations and their successors concentrate on combating specific categories of risk as opposed to looking to the premises in which that risk has occurred. The Regulations were important for introducing universality of coverage and this change represented a substantial extension of health and safety protection for large numbers of workers who were previously unprotected.*

6.1.1 Interpretation of the 'six-pack' of Regulations

Smith et al[12] suggest that:

> *It is well established that when considering the impact and coverage of the Regulations it is necessary to look first at the wording and overall scheme of the Directives from which they are taken.*

Expanding on this argument, these legal authors appear to place considerable emphasis on the value of Directives:

> *When considering the practical application of the new Regulations the practitioner will be primarily concerned with the following issues:*
>
> *(a) To what extent should the court look to the relevant provisions of the Directive when interpreting the Regulations?*
>
> *(b) What is the position if the standards required by the Regulations appear to fall below those set in the Directive?*
>
> *(c) What is the position if the standards required by the Regulations go beyond those set in the Directive?*
>
> *(d) What if the Regulations fail to implement the relevant article of the Directive at all?*

The listing of these issues is followed by complex legal arguments concerning, among other things, the circumstances in which private individuals can obtain directly enforceable rights from Directives and the interpretation of Directives when there are differences in the wording of a Regulation and the equivalent article in the Directive. At the conclusion of these arguments Smith et al[12] note:

It is also important to bear in mind that any question of the interpretation of Community law is a matter for the ECJ and not the domestic court. It is therefore only in the most simple of cases that the domestic court can interpret the meaning of a provision of Community law. If such a question is in doubt, it should be referred to the ECJ.

The issues of interpretation referred to by Smith et al[12] from a legal perspective, are far more sophisticated than those encountered in the accumulated Judgments. Anecdotal evidence suggests that County Court hearings of claims for WRULDs rarely, if ever, consider the wording of Directives. It would appear from the various evaluations of the Regulations which have so far been conducted[3, 16, 17] that many employers still remain ignorant of the requirements of the Regulations. It seems highly unlikely that many employers would be aware of the differences in wording between the Regulations and the Directives from which they are derived, let alone their possible implications. A lay person, relying on current HSE publications could be forgiven for focussing on the wording of the Approved Code of Practice or the guidance rather than the wording of the Regulation and for being blissfully unaware of the wording of the Directive from which the Regulation was derived.

6.1.2 Breach of Statutory Duty

Smith et al[12] suggest that the 'six-pack' of Regulations have extended the scope of the action for breach of statutory duty:

The action for breach of statutory duty is usually a more precise and focused action in an industrial accident than common law negligence, and has often also had the advantage of imposing a stricter duty on the employer. The first question, therefore, is whether the Regulations themselves support civil liability. The Health and Safety at Work etc Act 1974 (HSWA 1974), s 47(2) provides:

> *'Breach of duty imposed by health and safety Regulations shall, so far as it causes damage, be actionable except in so far as the Regulations provide otherwise.'*

The five subsidiary sets of Regulations do not have any such exclusion of civil liability and so can be relied on as the basis for actions for breach of statutory duty. However, the head Regulations of the Management of Health and Safety at Work Regulations, do provide in reg 22(1) as follows:

> *'Breach of a duty imposed by these Regulations shall not confer a right of action in any civil proceedings.'*

Thus, a breach of one of the very general duties in these Regulations (in particular, the obligation under reg 3 to undertake risk assessments, which is arguably central to the whole scheme of the present regulatory system, with its emphasis on risk) will not give rise directly to an action for breach of duty.

The authors of this legal text then consider issues relating to whether a defendant is in breach of the statutory duty:

The Approved Codes of Practice (ACOPs) and Guidance Notes may well give very useful material on this point, given their extensive nature and, in some cases, very detailed suggestions. They are admissible generally in civil actions as evidence. One potentially

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[16] *Evaluation of the Manual Handling Operations Regulations 1992 and Guidance Volumes 1 and 2*. Contract Research Report 152/1997. HSE Books.
[17] *Evaluation of the Display Screen Equipment Regulations 1992*. Contract Research Report 130/1997. HSE Books.

significant point relates to the burden of proof. By virtue of the HSWA 1974, s 17(2), where in any criminal proceedings it is proved that there was a failure to observe a provision of an ACOP covering the allegation of breach in question, then that allegation is to be taken as proved 'unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code', ie there is a statutory reversal of the burden of proof. This does not apply in civil proceedings. However, it has long been held under the old factory legislation that, where a duty is imposed to do or provide something 'as far as reasonably practicable' the onus is generally on the defendant employer to satisfy the court as to any question of reasonable practicability. From the claimant's point of view, it is to be hoped that this approach will now also be applied to the many new Regulations that adopt standards, not of reasonable practicability, but of the new terminology of suitability, sufficiency, adequacy, etc.

6.2 HEALTH AND SAFETY (DISPLAY SCREEN EQUIPMENT) REGULATIONS

Thirty four of the cases in which Judgments had been obtained by the 30th June 2001 were associated with DSE use. These cases involved a total of 40 Claimants. These Judgments date from December 1991 up to April 2001 and include one case which went to the Court of Appeal and then to the House of Lords, resulting in 36 Judgments being available for analysis. At least one other of these cases is known to have been appealed, but the appeal had not been heard by the 30th June 2001. Judgment is known to have be given in several other claims associated with DSE use, but these Judgments had not been obtained by the 30th June 2001.

The 20 Judgments in 18 of the 34 cases associated with DSE use make no reference whatsoever to the DSE Regulations. In part, this can be explained by the fact that the average time between the alleged onset of injury and Judgment being given in these 40 claims is six and a half years. Thus, the alleged injuries occurred in many of these cases prior to the DSE Regulations coming into force: in the 34 cases involving DSE use, only 13 of the 40 Claimants had alleged injuries which clearly post-dated the DSE Regulations coming into force.

In only two cases associated with DSE use in which the Claimants' alleged injuries clearly post-dated the DSE Regulations coming into force is there no explicit reference to the DSE Regulations in the Judgments. However, there are three cases in which the Judgments do make explicit reference to the DSE Regulations even though the onset of the Claimants' alleged injuries appear to pre-date the DSE Regulations coming into force. There are also four cases in which there are implicit references in the Judgments to the DSE Regulations or to the Directive from which they are derived, EEC/90/270.

In one case associated with DSE use in which there is no explicit reference in the Judgment to the DSE Regulations, there is an explicit reference to the Workplace (Health, Safety and Welfare) Regulations. Another Judgment makes reference to both the Provision and Use of Work Equipment Regulations and the DSE Regulations.

Thus, of the 34 cases associated with DSE use in which Judgments had been obtained by the 30th June 2001, there is implicit or explicit reference to the DSE Regulations in only 16 Judgments. All these Judgments are at County Court level. In other words, no Judgment in a claim for a WRULD has been identified in which a High Court, the Court of Appeal or the House of Lords has made reference to the DSE Regulations, let alone addressed the issue of how these Regulations should be interpreted.

Of the 16 County Court Judgments which have been identified which make either implicit or explicit reference to the DSE Regulations, only 13 refer to issues arising from the Regulations in sufficient detail to be worthy of further comment.

6.2.1 Cases which make implicit or passing reference to the DSE Regulations

Rich & Others -v- British Telecommunications plc
Newport, Isle of Wight County Court, October 1994

In this case three night telephonists alleged they had suffered the onset of upper limb injuries between October 1988 and February 1990. As might be expected given the date of onset of the alleged injuries, there is no reference in the Judgment to alleged breaches of the DSE Regulations. However, even though the Judgment acknowledges that the DSE Regulations did not come into effect until the 1st January 1993 and that they "were not available in 1990", the HSE's guidance on the Regulations is referred to in the Judgment as "not specific about the risk of upper limb disorders".

Carney -v- Trafalgar House Interiors Ltd
Croydon County Court, May 1997

In contrast to the case of ***Rich & Others -v- British Telecommunications plc***, it is clear from the Judgment in ***Carney -v- Trafalgar House Interiors Ltd*** that even though the Judge acknowledged that the DSE Regulations were not formally introduced until the autumn of 1992, "and therefore as such did not apply at the time", he accepted the evidence of the Claimant's Ergonomics Expert that by 1991 the risks arising from a person working for very long hours at a computer station were well known and that the substance of those Regulations and the guidelines going with them "were very well known to employers at the time, particularly to major companies and groups of companies like the defendants". The Judgment also suggests that there were EC regulations already in existence and applicable in this country and those "were known to employers".

Millard -v- Murray Lawrence and Partners Ltd
Colchester County Court, May 2000

This is another case in which the Judgment makes implicit reference to the DSE Regulations. The Claimant, an audio typist, sought damages for "diffuse pain in her upper limbs. H H Judge Brandt states:

> *Summarised her case is that her condition has been caused by the failure on the part of the Defendants to carry out the duties imposed upon them to take reasonable care for her as their employee, such duty being imposed initially by Common Law and from 1 January 1993 by Statute additionally.*
>
> *Her clear and unequivocal evidence to me was that she reached her present unhappy state of health by mid 1993 since when there has been little change and certainly no improvement. She complains that from January 1991 onwards she and the other audio typists were the victims of a regime comprised of pressure, neglect and lack of sympathy.*

H H Judge Brandt goes on to say:

> *Putting the matter very shortly, if in my judgment the Claimant succeeds in convincing me that by mid 1993 or thereabouts she was suffering from diffuse pain in her upper limbs as accepted by the medical experts in 1997 and 1998 then her claim succeeds.*
>
> *If this premise were established she would have no difficulty in persuading me that the upper limb disorder was work related so that I would be looking at a classic case of WRULD.*

Moreover she would have no difficulty in persuading me that the WRULD was caused more or less by all the failings on the part of her employers of which she makes complaints.

(a) The absence of any risk assessment.

(b) The failure to train her to report symptoms.

(c) The failure to ensure proper rest breaks.

(d) The failure to provide work rotation.

(e) The intensity of typing. I have reservations about this particular complaint.

Having explained his reservations about complaint (e) and dismissed two other complaints concerning poor posture and inadequate or unsafe equipment, H H Judge Brandt states:

It is of course sufficient for the Claimant to establish one or more of complaints (a) to (e) and I agree with the ergonomists that if the Claimant suffered injury by reason of these failures on the part of her employers to take care for her safety, then these injuries were in 1991 and onwards entirely foreseeable.

After reviewing the medical evidence and evidence relating to the Claimant's work load, H H Judge Brandt states:

All of this material satisfies me that any upper limb disorder dates from no earlier than 9 May 1994. I am satisfied that I can safely reject the Claimant's case in relation to anything that happened before then.

That of course does not end the matter. The Claimant will still succeed if she can persuade me that the symptoms which she developed from May 1994 onwards are attributable to negligence and/or breach of statutory duty on the part of these employers. True it is that no risk assessment was carried out until December 1994. However largely by chance the Defendants were in fact doing all the right things. The typing work load was very far from excessive. There were numerous breaks away from the desk whilst she performs the various "office junior" type tasks which she disliked. The work may not have been strictly rotated but it was highly varied and not in the least repetitive. The volume of actual keyboarding was a long way below anything that would bother either of the ergonomists.

There may have been no set tea or coffee breaks but all the staff took tea or coffee and took what are euphemistically called "comfort" breaks. From the end of 1993 I have no doubt that far from being pressurised the typing department was actively being run down. There is no evidence that either her equipment or her posture were causative of any injury.

King -v- Coopers and Lybrand Ltd
Leeds County Court, April 2001

In this case the Claimant, a secretary, sought damages for a "non specific" upper limb disorder. The Judgment refers to "EEC Regulations", but it is clear from the context that the Judge was referring to the DSE Regulations:

As far as equipment is concerned I accept [the evidence of the Defendant's National Health & Safety Co-ordinator] that the "work stations" complied with EEC Regulations, however, I find the procedures prior to 1994 for assessing risk and making secretaries aware of the same and available equipment were lax. In the event, I am not satisfied on the evidence that such laxity materially caused or contributed to the Claimant's condition.

Sharp -v- Yorkshire Bank
Manchester County Court, April 2001

The Judgment in this case is interesting in that while it makes no explicit reference to the DSE Regulations and is arguably not a Judgment in a claim for a WRULD, the Defendant appears to have been found negligent in not complying with the requirements of the DSE Regulations. The Claimant, a part-time cashier, claimed damages for the acceleration of degenerative changes in her back. The reason this 'back injury' case was included in the analysis of Judgments in claims for WRULDs was that the Claimant's injury manifested itself as neck and arm pain.

The Judgment refers to the Claimant completing "self assessment forms" in June 1993. It is known from other sources that these self assessment forms were in fact the Defendant's approach to the requirements of Regulation 2 of the DSE Regulations, i.e. risk assessments. The Judge, Mr Recorder Hull, states:

> *It is apparent from those forms that the Claimant was pressing her request for a footstool and indicating that she was experiencing pain in the course of her work. She also indicated that she did not know how to adjust the seats to make them comfortable. Those forms were apparently sent onto to Head Office but they seemed to have lain unheeded. The clear evidence is that the Defendants failed to respond to those self assessment forms.*

The Judge subsequently states:

> *Upon the evidence I have described thus far, I have come to the conclusion that there was negligence upon the part of the Defendants from June 1996 or shortly thereafter, and continuing, until the Claimant departed their employment in January 1996 in that they:*
>
> *a) Failed to heed the Claimant's complaints about her work situation which as I find it dated from at the latest June 1993 when she completed the assessment form.*
>
> *b) Failed to provide her with a suitable footstool until one provided in April 1995.*
>
> *c) Failed to provide her with suitable chair which was capable of adjustment.*
>
> *In addition to those breaches at common law both Counsel accepted before me that breach of statutory duty would add little if anything to the Claimant's claim. …… Accordingly I make no finding in relation to any breach of statutory duty.*

6.2.2 Cases involving a concession relating to a breach of the DSE Regulations

Donnellan -v- Halifax Building Society
Manchester County Court, November 1999

In this case the issue of whether or not the Claimant was a "user" within the meaning of the DSE Regulations was potentially a matter for the Court to decide. However, at trial, it was conceded by Counsel for the Claimant that the Claimant was not a "user" within the meaning of the DSE Regulations, due to the limited use she made of DSE while working as a mortgage adviser.

Conaty -v- Barclays Bank plc
Central London County Court, April 2000

In this case, to which reference has already been made in Chapter 5, a concession at trial by Counsel for the Defendant concerning breaches of the DSE Regulations effectively determined the outcome. This is a case in which in order to understand fully what some may consider to be

the Judge's controversial findings and their implications it is necessary to quote certain passages of the Judgment in full.

The Judge states:

> *In his final speech [Counsel] for the Bank accepted that they had indeed been in breach of statutory duty. The statutory regulations which apply to the Claimant's work in the accounts section included the Health and Safety Display Screen Equipment Regulations 1992, which obliged the Bank to analyse the Claimant's work station for the purpose of assessing the health and safety risks to her, so to plan her activities so that her work at the screen was periodically interrupted by breaks and changes in activities and to train and advise her about health and safety. The Claimant worked at whatever desk was appropriate for the particular task she was undertaking, whether for example opening or closing accounts. There were adjustable chairs but she tells me, and I find, keyboards with limited scope for movement, which in any event she was not instructed to position suitably, and no foot rest, She is only five foot tall. She was not instructed either as to the correct posture for use of a keyboard or as to the importance of assuming a correct posture. She habitually therefore adopted what is agreed to be a bad posture whereby her wrist was flexed and whilst using the numeric keys subject to ulnar deviation instead of being kept straight, as is recommended. The keyboarding on which she was employed was largely on the numeric keys as opposed to the alphabetic keys, She used only her right hand and made no use of her thumb in keyboarding, which accordingly she stuck out to the side of her right hand. The absence of training and even appropriate posture were not seriously challenged in evidence, although denied in the pleadings. It is said that she had only to ask for a foot rest for it to be supplied, but even if that were a defence to the breach of the Regulations I am satisfied that that is not so as a matter of fact.*

It should be noted that it was common ground that the Claimant had suffered right De Quervain's Syndrome but that she did not use her right thumb to enter data. The Judge goes on to say:

> *The Claimant adopted an approach to her work which no doubt explains in part her exemplary speed of work. She prepared her work load so as, so far as possible, to perform all sorting and handwriting for a number of accounts together and then to concentrate on the keyboarding. This she thought more efficient than taking each account separately and interrupting keyboarding with other tasks, although it transgresses advice to interrupt the keyboarding with other activity. The Bank, I am satisfied, made no attempt to plan her work otherwise. I am therefore satisfied that the concession that the Bank was in breach of its statutory duty was rightly made.*
>
> *The real issue in this case however is whether such breach caused the injury from which the Claimant undoubtedly suffers.*

Both Medical Experts agreed that the Claimant's suffering from De Quervain's Syndrome at her age (22) without either a traumatic or a hormonal cause was a misfortune such as had not been identified in cases discussed in the literature or paralleled in the direct experience of either Medical Expert. After reviewing the medical and ergonomics evidence, the Judge states:

> *[Counsel for the Claimant] relies on the fact that the regulations which the Defendant now admits to have breached are intended to protect the employee against upper limb disorders. He therefore invites me to conclude that the breach is probative of the causation. If he had reduced his submission to syllogistic form as follows: (1) the regulations are to protect*

against upper limb disorder; (2) this is an upper limb disorder; therefore, (3) the breach of the regulations caused the disorder, the logical fallacy would be obvious. He also relied, however, on the coincidence of time between the onset of the pain and the concentrated work which the Claimant says she undertook immediately before it.

After reviewing the factual evidence, the Judge states:

In such circumstances I do conclude that the temporal relationship between the activity up to Friday, 11th November 1994 associated, as I find, with pain during the working day on Friday and acute pain that night does make it more probable than not that the disorder is work related. As such I have no difficulty in holding that it arises from the poor posture adopted by the Claimant which itself was caused by the Defendant's breaches of statutory duty, both in the layout of the work station and lack of training and concentration of keyboarding which I have identified.

I therefore award the Claimant £235,000 damages.

It is by no means clear from the Judgment precisely how the Defendant's admitted breaches of the DSE Regulations caused or materially contributed to the Claimant's right De Quervain's Syndrome.

6.2.3 Cases involving a finding relating to a breach of the DSE Regulations

Turning now to the cases in which there was a significant finding, as opposed to a concession, with respect to alleged breaches of the DSE Regulations.

Westray -v- Midland Bank plc
Manchester County Court, June 1997

In this case the Claimant, a secretary, alleged she had suffered Radial Tunnel Syndrome prior to the Regulations coming into force. However, she worked for a short period after January 1993. The Judgment states:

However, from January, 1993, the Display Screen Equipment Regulations came into force. Regulation 4 of the Regulations reads:

"Every employer shall so plan the activities of users at work in his undertaking that their daily work on display screen equipment is periodically interrupted by such breaks or changes of activity as reduced their workload at that equipment."

The guidance also appears on the same page at 45(c):

"Short frequent breaks are more satisfactory than occasional longer breaks, eg, a 5 to 10 minute break after 50 to 60 minutes continuous screen, hand or keyboard work is likely to be better than a 15 minute break every 2 hours."

The defendants argue that the guidance is simply a guidance and imposes no duty on employers to give breaks of any particular frequency or interval. I agree with their interpretation of the Regulations.

Simpson -v- Dunham Bush Ltd
Southampton County Court, June 1999

In this case it was common ground that the Claimant had suffered bilateral Carpal Tunnel Syndrome which required decompression, the central issue was whether or not this was caused

by the Claimant's use of DSE in 1995. The reference in the Judgment to the DSE Regulations arises from the evidence of the Claimant's Ergonomics Expert:

> *Dealing with paragraph 4.2.1 of [his] report, it reads thus: "If the defendant provided Mrs Simpson with a keyboard that met the relevant standards there cannot be a foreseeability of her condition developing as a result of that change alone. However, I would argue the defendants were under a duty to assess Mrs Simpson's work station and system of work. Had they done so, I have no doubt that they would have classified Mrs Simpson as a user within the definition of the regulations. They should have decided that several risk factors were present and seen to it she was instructed suitably with guidance on arranging her equipment, keying posture, work schedules and the need to report difficulties."*
>
> *Then he sets out how, on his inspection of the premises and work place, he considered the defendants had failed in their statutory duty. It was that, "Mrs Simpson should have been classed as a user and her system of work should have been assessed under Regulation 2.1. The risks identified during such an assessment should have been reduced to the lowest level reasonably practicable, Regulation 2.3. Her work station should have been reviewed in line with Regulation 2.2 when her work load changed significantly and whenever there was a significant change in the hardware. The employers failed to meet the minimum equipment requirement imposed by Regulation 3."*
>
> *Paragraph 5 at the bottom of that page reads: "The defendants failed in their duty to plan Mrs Simpson's daily work routine regarding breaks in accordance with Regulation 4." He again refers to the Health and Safety's guidance in the regulations regarding that.*

When dealing with the issue of liability, the Judge states:

> *I do not propose to spend very much time on this because the answer is so obvious that they clearly were in breach of statutory duties, and also negligence. Neither of those in fact were, as I have already indicated, very seriously challenged or disputed. I am satisfied that most of the breaches which have been alleged have been proved.*
>
> *It also seems to me quite incredible that the person responsible for implementing these regulations, Mr C, was in total ignorance of the Health and Safety Display Screen Regulations of 1992. In those circumstances, it is not surprising that he failed to put them into practice.*

The Court's interpretation of the Defendant's statutory duties in this case does not appear to raise any significant issues about how a reasonable employer might be expected to have implemented the DSE Regulations. It is clear from the Judgment that the opinions of the Claimant's Ergonomics Expert were not seriously challenged and that the Judge effectively adopted those opinions in his Judgment.

Sanders -v- University of Hull
Kingston upon Hull County Court, November 1999

In contrast to the case of ***Simpson -v- Dunham Bush Ltd*** in which the Judge referred to the Defendant's "total ignorance" of the DSE Regulations, in the case of ***Sanders -v- University of Hull*** the Judge refers to the Defendant as being 'acutely aware" of the DSE Regulations and their approach "faultless".

The passage of the Judgment which makes reference to the DSE Regulations states:

> *The University, as I find, was astute to comply with the Regulations and its obligations at common law. Indeed my assessment of the staff who were called to give evidence on behalf of the University was that they were profoundly conscientious to a degree that I have not*

ever previously encountered before in many years of trying this sort of case. They were both acutely aware of the Regulations and aware of the risk that the law is designed to minimise and avoid by the imposition of these Regulations. That being the case however as a general observation if it appears that they have fallen short of those standards required in this particular case then that general approach would not excuse them.

I find that the Defendants did instruct the Claimant and others in her position about the Regulations and the risks that they were intended to avoid. In about November of 1993 there was a class training course involving information and watching the video which gave the staff, and the Claimant in particular, general guidance on the Regulations and the methods by which potential sources of stress could be recognised and avoided.

It is necessary here I think to deal with the question of the work station which she was required to work at after the time that the Applemac was installed because it seems to me that issue is very much at the heart of this case.

I have been provided with some photographs taken in l998. Photograph 4 shows the VDU and keyboard installed on in effect two tables placed together to make one larger surface. If the work station was like this from the time of its inception it would have been satisfactory to the ergonomists immediately after installation. But the Claimant contends that it was only in that condition from about a month or so before the onset of this acute pain. There is little doubt that had the Applemac and its proliferals been installed on the table which had been previously provided for the smaller Compu-graphic machine then that would have been a clear breach of the Regulations. It would undoubtedly have caused the potential difficulties which together over a long period of typing would lead to the risk of exactly this type of upper limb disorder injury.

Towards the end of the Judgment there is a further reference to the Defendant's implementation of the DSE Regulations:

I acquit the University of any negligence or breach of the Regulations. It seems to me that what they did was adequate and proper within the Rules and Regulations and that their approach to them was faultless.

The references to the Defendant being "acutely aware" of the DSE Regulations and their approach "faultless" is perhaps somewhat surprising, given that it would appear from the Judgment that the Claimant did not receive the information and training required by the DSE Regulations until November 1993 and that no risk assessment of the Claimant's workstation was carried out until January 1994.

McPherson -v- London Borough of Camden
Clerkenwell County Court, May 1999

It is interesting to compare the employer's approach to the implementation of the DSE Regulations in ***Sanders -v- University of Hull***, which some might consider tardy but which the Judgment refers to as "faultless", with the case of ***McPherson -v- London Borough of Camden***. The Judgment in this case is long and complex and in order to understand fully the circumstances in which this claim arose and what some may consider to be the Judge's controversial findings concerning an employer's duties in such circumstances, it is again necessary to précis substantial parts of the Judgment and to quote certain passages at length.

Mrs McPherson, who is dominantly right-handed, alleged that her left sided De Quervain's syndrome arose from her keyboard operations undertaken as part of her employment as a Senior Administration and Accommodation Officer in Camden's Housing Department between June 1993 and January 1994. She claimed that the condition was caused by her excessive use of her left thumb whilst operating her keyboard, as a result of both the excessive overall use of that

keyboard and of the excessive periods of its uninterrupted use. This usage was allegedly caused by the Defendant's failure to assess her keyboard usage and to give consequential advice to her as to safe working periods and overall working time that she could devote to such usage. Mrs McPherson further alleged that had the Defendant undertaken its statutory duty in these matters, her usage would have been modified such that the condition would not have occurred at all or, at the very least, the risk of the condition occurring would have been substantially reduced.

Mrs McPherson worked in the Homeless Persons Section of Camden's Housing Department for nine and half years up to her retirement. By 1993, she had become a Senior Temporary Accommodation Officer. In that year, the Homeless Persons Section was significantly re-organised. Until the 1993 reorganisation, she had not been involved in any significant use of a keyboard. The reason for the significant increase in the use of a keyboard by Mrs McPherson in June 1993 was three-fold. Firstly, the Homeless Persons Section was computerised following its re-organisation and a personal computer was placed on each desk. Previously, there had only been two computers used communally by the whole Section. Secondly, the role of Senior Administration Officer involved significant keyboard usage. Thirdly, the new joint Section required many new procedures and reports to be prepared for use in the running of the section. A further change was that Mrs McPherson was required, for the first time, to prepare and receive much email.

Mrs McPherson worked in that post until the beginning of January 1994 when she and her line manager were swapped round and she became Senior Accommodation Officer. It would appear that this occurred soon after the resumption of work following the Christmas and New Year break. Within a few days of that change, in early to mid-January 1994, Mrs McPherson began to experience intense pain in her left thumb and shooting pains up her left arm towards her elbow and neck. The pains had first been noticed in late 1993. As a result, she was required to stop all keyboard use on 1 February 1994, following a visit to, and advice from, Camden's Occupational Health Adviser on 31 January 1994. When she changed posts with her line manager in January 1994, she had similar duties albeit that the amount of keyboard work was reduced.

After quoting Regulation 2 (1) (b) and Regulation 4 of the DSE Regulations in full in the Judgment, the Judge says:

> *No assessment or workplan of any kind was undertaken by Camden in June 1993 when the H.P.S. was set up, even though each employee in the H.P.S. was provided with a new computer for his or her own exclusive use. It is instructive to observe what happened when Mrs McPherson reported her thumb complaint to Camden's Occupational Health Adviser in February 1994. The locum adviser in question was Ms S. She worked in the Occupational Health Unit and it is clear that unit, amongst other duties, carried out the type of assessment and advice-giving to Camden's computer staff that is envisaged and required by the Regulations. Indeed, instructions should have been given by Ms W and Mr G that such assessments should be carried out for the staff located at the workstations at which the new computers were installed in June 1994 [1993]. Had these instructions been given, one of Camden's Occupational Health Advisers would have undertaken an exercise similar to that performed by Ms S in February 1994 and would have given Mrs McPherson similar advice to that she received from Ms S seven months later.*
>
> *Ms S recorded the steps she took in advising Mrs McPherson and the advice that she gave her in a memorandum sent to the officer in charge of the Personnel Unit of the Housing Department, Ms I dated 18 February 1994. The relevant part of this memorandum reads as follows:*

"As another part of this department's intervention, I undertook a detailed work station assessment on 17 February 1994 and, as a result, would like to make these recommendations for when Ms McPherson returns to her current job:

1. Ms McPherson was advised to rest her keyboard flat on the desk, as it was tilted up at an angle of approximately 10 degrees.

2. Due to the depth of her keyboard, Ms McPherson should be provided with a wrist rest to enable her to occasionally rest her wrists and hands during typing and prevent hyperflexion (exaggerated upward bending) of her wrists.

I have also given her occupational health advice regarding her posture etc, and in total these recommendations should help prevent a recurrence of this problem."

Mrs McPherson was also given advice by the physiotherapist who saw and treated her thumb and wrist after the onset of De Quervain's. This was to the effect that she should not use the keyboard for more than 50% of the working day and should take regular short breaks from the keyboard. The advice of the physiotherapist confirms that Mrs McPherson was not taking such breaks on a regular basis. Mrs McPherson must have told the physiotherapist that this was not happening since the advice proffered Mrs McPherson was to the effect that she should "alter her work so that she can take regular short breaks" from the keyboard. Clearly the advice would not have been phrased in that way had Mrs McPherson not confirmed at that time that she was not taking regular breaks. I find that that contemporaneous statement about her working pattern corroborates and confirms Mrs McPherson's evidence that such regular breaks were not being taken.

It is clear to me that had a statutory assessment been made in June 1993, Mrs McPherson would have been advised as follows:

l. She should be provided with, and use, a wrist rest and a flat keyboard.

2. She should resort to an appropriate posture, which would have been demonstrated, whilst using the keyboard.

3. She should take regular breaks from the keyboard, of an uninterrupted length of at least 10 minutes every hour.

4. She should not use the keyboard for a total of not more than 50% of the working day.

There is no reason to doubt that, had Mrs McPherson been proffered this advice, she would have followed it. She was a conscientious worker. She worked to her job description and fulfilled the duties prescribed for her particular post. She was concerned to preserve her health and was clearly particular in looking after her health. The advice would have been given in the form of an instruction from her line manager which she would have been expected to follow and which could have resulted in disciplinary sanctions if she did not follow it. In those circumstances, I am satisfied that had appropriate advice been given, it would have been followed with the result that Mrs McPherson would have used her keyboard in both posts, in administration up to January 1994 and in accommodation thereafter, to a significantly less extent overall, with appreciably more breaks of much greater regularity so that she never worked for stretches of more than 50 minutes in any 60 minutes and with the use of a wrist rest, flat keyboard and better posture. As it was, her unassessed working methods were at variance with these recommendations in a way which, in each case, was to her disadvantage.

Camden's case was that Mrs McPherson did not adduce any evidence as to what advice would have been given to her following the required assessment. In particular, it was suggested that she did not adduce evidence as to the advice she would have got as to the

maximum proportion of the working day she should spend at the keyboard and as to the length and pattern of her breaks away from the keyboard. Camden pointed out that the suggested maximum proportion of 50% to be devoted to keyboard usage was given to Mrs McPherson after she had suffered from De Quervain's and when, in consequence, there would be an obvious tendency to limit keyboard usage to a greater extent than would have been the case for someone who had not shown any signs of RSI or of a specific complaint related to keyboard usage. In other words, if Mrs McPherson had received any advice at all as to the maximum proportion of her working day to be spent on keyboard usage at an assessment in June 1993, the advice would have been that the limit would have been significantly greater than 50% of her working day and would have been equal to or less than the proportion of time she actually spent in such work.

I do not accept Camden's submissions on this aspect of the case. Firstly, Camden's own pleaded case is that Mrs McPherson contributed to her own loss by falling "to take her allotted breaks of 10 minute away from the keyboard every hour. If Camden's case is that Mrs McPherson had allotted breaks of this type, it must follow that Camden's case involves an admission that it both did advise her to take breaks of this type and, furthermore, would have so advised her had an appropriate assessment of her keyboard activities been carried out. Otherwise, one asks rhetorically, why would Camden assert that it had allotted such breaks to Mrs McPherson? In fact, as I find, no such allotment of breaks occurred but, clearly, Camden believed both that such an allotment had occurred and that it should have occurred. Camden was required by Regulation 4 to provide for regular breaks and, had anyone in Camden turned their mind to the impact of this Regulation to Mrs McPherson, the answer would have been that she should take regular breaks of 10 uninterrupted minutes every hour.

Secondly, it is likely that some overall limitation would have been placed on her keyboard activities as part of the assessment required by Regulation 2. Mrs McPherson was advised by her own physiotherapist on 11 May 1994 as follows:

> *"I feel that ultimately she should be able to work at the keyboard for about 50% of her working day because her condition has been treated early and most successfully."*

Since the 50% advice was given on the basis that Mrs McPherson had been treated successfully, it was given on the basis that she should now be being regarded as being fully fit. It is reasonable to suppose that a competently performed assessment in June 1993 would have reached a similar conclusion that the limit should be 50% of the working day, given that Mrs McPherson was a middle-aged female who had never used a keyboard previously, save for very occasional one-off usage in the immediately preceding period.

Camden suggests that Mrs McPherson was contributorily negligent in not taking regular breaks of 10 minutes; in not wearing her wrist brace; and in not requesting an appropriate seat and footrest. Camden also suggest that she failed to follow the instructions of Mr G to stop keyboard usage completely when he gave her those instructions in 1994. However, Camden never provided, nor recommended the use of, a wrist rest; never advised that regular rest breaks of at least 10 minutes duration should be taken; and never considered more suitable furniture. Moreover, Mr G's instruction to stop keyboard use was, once it had been given, followed to the full and Mrs McPherson stopped using her keyboard, save for a limited maximum use of 10% of the working day, a usage which conformed to the advice actually given her by the Occupational Health Unit in early February 1994. Given that Mrs McPherson had never used a keyboard nor a typewriter on a regular basis in any previous job, I do not accept that she should, by using her own initiative without the advice of others, have been expected to take any of the steps suggested by Camden as ones she should have taken without advice. I, therefore, reject the allegations of contributory negligence and find that Camden was in breach of its statutory duties owed to Mrs McPherson.

Having found the Defendant to have been in breach of its statutory duties, the Judge then went on to consider the cause of the De Quervain's Syndrome in the Claimant's left wrist, which it was common ground that the Claimant had developed. The Judge concluded that Mrs McPherson had satisfied the burden of proving that her condition was caused by, or was materially contributed to by, or that the risk of its onset was significantly increased by, keyboard usage resulting from Camden's breach of statutory duty. Paragraph 41 of the Judgment states:

> *In this case, I have found that Mrs McPherson's De Quervain's condition was linked to her keyboard usage. However, the De Quervain's might also have been linked to an underlying predisposition to that condition. There is no way that the possible contribution of such a predisposition, if any, can be ascertained. However, it is clear that limiting the use of both Mrs McPherson's wrist and thumb to the usage that should have been recommended would have significantly reduced the risk of contracting De Quervain's. Equally, usage which significantly exceeds the parameters which should have been recommended, even for short periods, would materially increase the risk of De Quervain's. It follows that, on this ground alone, Mrs McPherson has established the necessary link between breach of duty and damage on the balance of probabilities. On my findings, she has proved that she should have been advised to limit her keyboard usage in defined ways; that she would have followed that advice had it been provided to her; that her actual usage was significantly in excess of that usage; that she was not negligent in adopting that usage; and that her De Quervain's can be linked medically and on the facts of this case to that usage. Mrs McPherson succeeds as to liability.*

The Court's interpretation of the Defendant's statutory duty in this case begs a number of questions about how an employer might reasonably be expected to implement the DSE Regulations. For example: whether a limitation on work at a keyboard to about 50% of the working day is necessary or reasonably practicable for DSE work in general, or for the type of work referred in this case; whether some overall limitation should be placed on keyboard activities as part of the assessment required by Regulation 2, and; whether Regulation 4 requires an employer to provide regular rest breaks of 10 minutes every hour for the type of work referred to in this case.

In their legal text, Smith et al[12], refer to this case simply by saying:

> *In the unreported case of McPherson v London Borough of Camden (1999) it was held that if there had been a risk assessment there would have been changes to the layout of the workstation and rest breaks and periods of alternative work would have been provided; those changes would have prevented the injury sustained.*

Binns -v- Speechly Bircham
Central London County Court, July 1997

The best example of a Court, albeit a County Court, explicitly addressing the issue of how the DSE Regulations should be interpreted is to be found in the Judgment in the case of ***Binns -v- Speechly Bircham.*** In the passage of the Judgment which refers to the DSE Regulations, the Judge states:

> *It does not, however, follow from the fact that the Plaintiff suffered her injury as a result of her employment that the Defendants are liable in negligence, or that they are liable because of any breach in the regulations which have governed the health and safety of users of VDU equipment since the beginning of 1993. Those regulations are the Health & Safety Display Screen Equipment Regulations 1992. They have been made in conformity with a directive of*

the European Commission made on 29 May, 1990. It is submitted by [Counsel for the Claimant] that having regard to their derivation they ought to be construed in a specific way. Certainly, it must be my duty to construe them so that they do have meaning and effect in serving the purpose which they are clearly directed to - namely, safeguarding the health and safety at work of those who use VDUs. Nevertheless, regulations of this kind impose upon employers obligations (and I suspect maybe even criminal sanctions if they are not complied with). It seems to me that the Court must take some care to derive their effect from their actual language rather than adopting an approach which might be in danger of construing them merely on the basis that it must have been the intention of the regulation that the employer should be required to do everything which would prevent that outcome which I have actually found already did follow from the employment of this particular Plaintiff.

[Counsel for the Claimant] relies firstly on Regulation 4. That requires that:

"Every employer shall so plan the activities of users at work in his undertaking that their daily work on display screen equipment is periodically interrupted by such breaks, or changes of activity, as reduce their workload at that equipment".

He invites me to construe that regulation as obliging the employer to devise an arrangement which ensures that the employee takes a sufficient number of breaks and/or sufficiently long breaks so as to reduce the employee's workload at the equipment as compared with what it would be if the plan was not devised. I cannot think that that is the requirement of this regulation. The regulation is to apply to all those who engage in work using display screen equipment as a significant part of their normal work. If such significant use places the employee in no danger of injury to health or safety, it cannot be a proper construction of Regulation 4 that nonetheless the employer is obliged to reduce the workload.

I think that the regulation means no more than a plan must be produced such that the work at the equipment is periodically interrupted either by such breaks, or by such changes of activity as reduce the employees workload at the equipment. I think that that understanding is in conformity with the guidance which was issued by the Health and Safety Executive in advance of the regulations which is, of course, of no force at all in the construction of the regulation, but is of considerable assistance in explaining the context of the circumstances of employment with which the regulation is concerned to deal. That guidance notes that in most tasks natural breaks or pauses occur as a consequence of an inherent organisation of the work. Therefore, whenever possible, jobs at the display screen should be designed to consist of a mix of screen based and non-screen based work to prevent fatigue and to vary visual and mental demands.

The guidance goes on to deal with the circumstances where it is inevitable that the work should contain intensive displays of screen work which are not interrupted. The ordinary course of the Plaintiff's work, in spite of the fact that the majority of her time was in front of the VDU, did not involve uninterrupted periods of work exclusively at the screen. There were therefore changes of activity which reduced her workload at the equipment.

The employers in this case, the Defendants, did not directly and specifically plan her work or those of any of the other secretaries employed by them. They did, however, note that the situation which I have described was a normal situation for the majority of their employees and they so recorded it in the guidance which they provided to their employees as part of the documentary support material provided following a training course to which I must refer shortly.

It is noted at paragraph 4F of that document that most jobs "incorporate tasks which require the job holder to move away from the keyboard and screen. These should be used as an

opportunity to take a break from working at the screen and keyboard and provide a change of posture and a rest for both eyes and hands."

I think it is worth noting at this stage that the particular guidance from which I have been reciting went on to say:

"Mini breaks of, say, thirty seconds used to stretch and move around are helpful".

I think that on the evidence which I have heard I am able to comment that that advice would be misleading, save insofar as it might be relevant to changes in posture as opposed to relief of muscles or tendons which are stretched by the particular exercise of intensive operation of the keyboard.

I am not, however, prepared to find that the Defendants were in breach of Regulation 4 of the regulations, having regard to the "plan" expressed in paragraph 4F of the Plaintiff's document. Regulation 6 provides in regard to the provision of training:

"Where a person is already a user on the date of coming into force of these regulations, his employer should ensure that he is provided with adequate health and safety training in the use of any work station upon which he may be required to work".

The Defendants, on the coming into force of the regulations, immediately organised short courses of training for all their existing VDU operators. The Plaintiff, indeed, attended the first such course early in 1993. Each party had proposed to call expert ergonomists who would have given evidence as to appropriate training in these circumstances. They, however, were able to agree that the training appeared satisfactory in the environment. They observed, however, that it remains possible that an individual may not appreciate the implications of all that they are told.

I think that the duty to provide adequate training must be satisfied if adequate training is provided which a person of the intelligence and knowledge of the trainee may reasonably be expected to have followed. If the trainee is inattentive, providing that reasonable efforts are made to obtain her attention and to draw the relevant matters to her attention, I think that there is compliance with the obligation of the regulation.

The training which was offered consisted of a half hour or forty minute description of the requirements of safe and healthy operation of the equipment. It was, as I find, almost entirely directed to an analysis of what is called 'the work station', i.e. the physical equipment, the relationship of the operator to the machine, the correct posture, and the like. In those circumstances, as I find, the reference to the necessity for breaks in the course of the use of the machine was incidental rather than a primary matter. Insofar as Mrs W, who conducted the training, sought to assert more, when she came to give oral evidence, than she had recorded in the written statement which she had first prepared, I do not accept her evidence. The way she puts it was that she explained the need, for example, to avoid resting the wrists on the work surface, and to use wrist pads if that was required. Then she went on,

"I mentioned the need to take regular breaks away from the keyboard and screen". I think it may be on the verge of consideration whether training so described was adequate in respect of the need for the provision of breaks. I am, however, persuaded by the agreement made between the experts who have got experience of such training, to feel that I should not find, on the balance of probabilities, that there was in fact a breach of Regulation 6. There is, however, reliance also on Regulation 7(2) which requires the provision of information. The regulation reads:

"Every employer shall ensure that users at work in his undertaking are provided with adequate information about such measures taken by him in accordance with his duties under..."

and then there is cited Regulation 4 which is the regulation with regard to the planning of activities to which I have already made reference. I do not think that that regulation can possibly be complied with by providing no information. The only possibility of alleging that information was provided is the passage in the guidance contained as part of the training course to which I have already made reference. However, it is not expressed in terms of being a provision of information as to the planning of the daily work routine of the users.

I conclude, therefore, that Regulation 7(2) was not complied with. That, of course, is not the end of the question. Before that finding becomes of any materiality it is necessary to consider whether the breach of the regulation has had at least a significant causative effect upon the injury of which the Plaintiff complains. The Plaintiff tells me, and I accept, that she did not appreciate the significance and purpose of the taking of breaks, and the making of changes of activity. That she was told of this in the course of her training, that she knew that her training was concerned with health and safety, I do not doubt. For the reasons which I have already given, however, I think it is perfectly reasonable to assume that she did not, indeed, understand the context of the training in relation to possible damage to her upper limbs as opposed to the desirability of relieving her posture or resting her eyes.

I do think that if the obligation under Regulation 7(2) had been complied with so that the Plaintiff had been informed that the employee both had a duty to plan her activities so as to ensure interruptions in her workload at the equipment, and had been told that the plan of the employer was that she should use the changes of activities which were inevitable in order to ensure a proper pattern of interruption, her approach to her work would have been different. I do not find as a fact that the periods of intensive work when she was working for Ms S were themselves the cause of her injury. However, I do note that she obtained relief in regard to her pain by so arranging her work that she increased the number of interruptions which she made in frequency, if not in length. That is an approach to her work which she could, and I think would, have made if she had been informed that that was the basis of her employer's plan for appropriate relief of the daily routine at the visual display equipment.

Accordingly, I do find not only that there was a breach of Regulation 7(2), but also that the breach was sufficiently causative of the injury which the Plaintiff suffered as to render the Defendant liable in damages.

Gallagher -v- Bond Pearce
Bournemouth County Court, February 2001

Another more recent example of a Court addressing the issue of how the DSE Regulations should be interpreted is to be found in the County Court Judgment in the case of ***Gallagher -v- Bond Pearce***. The Claimant, a secretary in a firm of solicitors, claimed damages for diffuse pain in her wrists and arms allegedly caused by typing. It is understood that this Judgment is the subject of an appeal. In the Judgment at first instance, H H Judge Tyzack states:

On 14th December 1992 an audit was carried out by Mr. O of the Defendants. This was a Health and Safety audit, which the Defendants felt was required in anticipation of the coming into force of the Health and Safety (Display Screen Equipment) Regulations 1992. (For the sake of simplicity I shall refer to them hereafter as the DSE Regulations.) They came into force on 1st January 1993. The Claimant told me that Mr. O was with her for about ten minutes. She understood that this was nothing more than an equipment check. I have not heard Mr. O give evidence about this audit.

Mr. O went through a prepared checklist with her which identified certain matters that needed attention: namely, that she required a document holder, a footrest, her chair needed replacing, and blinds were to be fitted to the window or windows of the office where she worked.

I have been referred to the detail of the DSE Regulations by [Counsel for the Claimant], and I am quite satisfied, especially having heard the Claimant's engineering expert and the Defendants' expert, that this audit by Mr. O was manifestly inadequate. In particular, the Defendants failed to ensure that prior to this audit the Claimant was given any training, a specific requirement of Regulation 6 of the DSE Regulations, and which in my judgment was an absolutely essential prerequisite to the completion of any checklist. I am quite satisfied that the Claimant herself had no idea at all that this audit was purporting to be a risk assessment carried out pursuant to the DSE Regulations. The guidance notes to the DSE Regulations at page 446 provide as follows - and I set out in my judgment paragraphs l9 and 21 in full, including (a) to (d).

I also find that there was no adequate regard to urgency so far as the identified action was concerned. I accept the Claimant's evidence that the document holder was not provided until about November 1993 - nearly 12 months later - and the footrest was provided sometime after that. That was hardly consistent, in my judgment, with paragraph 42 of the guidance notes to the DSE Regulations. I quote from paragraph 42(a)

> *"If assessment of an existing work station shows there is a risk to users or operators, the employer should take immediate steps to reduce the risk."*

So far as the provision of document holders was concerned, Mr. S said that the reason for the delay was that the Defendants wanted to try out several first, and that this took time. I am afraid I do not accept that explanation as a valid reason for nearly 12 months' delay. It is common ground that no audit or assessment was ever carried out by the Defendants into the overtime work station which the Claimant used from August 1994.

I am also quite satisfied that the Defendants were in breach of regulation 4 of the DSE Regulations. The text of this is set out on page 434 of the document before me, and reads as follows:

> *"Every employer shall so plan the activities of users at work in his undertaking, that their daily work on display screen equipment is periodically interrupted by such breaks or changes of activity as reduce their workload on that equipment."*

The notes to this regulation are set out at page 453, paragraphs 43, which I set out in full in this judgment, and paragraphs 46 and 47.

However, after the audit was completed in December 1992, I find that the Claimant's daily working routine continued in exactly the same way as it had before. This is consistent with my overall finding that the Claimant was working in a very busy commercial department for a successful and hard-working partner. The work which the Claimant was required to type was, as I find, very often urgent, and Mr. W was an exacting boss, often requiring work to be retyped after changes or amendments had been made. He for his part valued the Claimant's work, as he told me, and indeed as the Claimant herself told me, and I accept that he did not like his work being typed by anybody else. He said in evidence, in terms, that he rated the Claimant highly, and assessed her as "very good". He never felt that she did not pull her weight. For her part, she liked working for him. She liked being part of a team with him and was quite happy to work hard for him.

In that climate I find that the Defendants did not apply their minds adequately to the necessity for rest breaks. It must follow that I find them to be in breach of regulation 4. They only tried to comply with that regulation much later, namely in about March 1995. Of course, the fact that I find the Defendants to be in breach of regulations 2, 4 and 6 of the DSE Regulations, as I do, does not inescapably lead to the conclusion that they are liable to the Claimant in this action.

I return to the history. In August 1993 the Claimant was off work about a month, suffering from stress and anxiety. This related to problems she was having at home, in that her husband had been made redundant and their home was in the throes of being repossessed.

On or about 16th November 1993, the Defendants assert that they provided the Claimant with a memo and an information pack relating to the DSE Regulations. For her part, she has no recollection of receiving this information. Mr. S told me that he was responsible for sending it out. However, he was unsure as to exactly what he did. He said it may have gone out by hand, or it may have been placed in the department's pigeon hole for distribution by the post room staff.

Having heard all the evidence on this issue, whilst I accept that the Defendants intended to distribute it to all relevant members of thei staff, I am not satisfied that the Claimant did receive hers. These were, after all, very important documents, which the Defendants well knew, or ought to have known, purported to show that they had complied with regulation 7 of the DSE Regulations. That provides a follows:

> *"(1) Every employer shall ensure that operators and users at work in his undertaking are provided with adequate information about (a) all aspects of health and safety relating to their work stations, and (b) such measures taken by him in compliance with his duties under regulations (2) and (3) as relate to them and their work.*
>
> *(2) Every employer shall ensure that users at work in his undertaking are provided with adequate information about such measures taken by him in compliance with his duties under regulation (4) and (6)(ii) as relate to them and their work.*
>
> *(3) Every employer shall ensure that users employed by him are provided with adequate information about such measures taken by him in compliance with his duties under regulations (5) and (6)(i) as relate to them and their work."*

This document was not simply an ordinary memo to all employees. Bearing in mind its importance, a degree of formality as to it circulation would in my judgment have been expected of the prudent employer. For example, handed individually to each relevant employee with a short verbal explanation as to what it was, and that it was important for its contents to be read and understood, and for any questions about it to be directed to a particular person. I could envisage the prudent employer requiring those who had received the pack to indicate by signature or initials that each had done so. I am also quite satisfied that had the Claimant seen it, she would probably have remembered seeing it.

Towards the end of his Judgment, H H Judge Tyzack states:

As to foreseeability, I am quite satisfied that it was reasonably foreseeable that the Claimant would suffer an injury of some kind to her upper limbs if insufficient attention was paid to such factors as her work station, the volume and intensity of her work, the provision of proper rest breaks, and the existence of a varied working routine. The Defendants, in my judgment, knew or ought to have known that there were health risks to their secretarial staff from keyboard work if inadequate attention was paid to such factors. I accept the submission of [Counsel for the Claimant] that the Claimant does not need to prove that the actual injury suffered by the Claimant was foreseeable. It is sufficient if the damage was similar in kind to that which was foreseeable, such as cramp or tenosynovitis. I am also quite satisfied that such risks have been well known for many years.

And specifically on the issue concerning the duty of care, the Defendants in my judgment owed the Claimant a duty of care not to expose her to the risk of suffering injury to her upper limbs, and an allied duty to take reasonable steps to reduce such risks to the minimum reasonably possible. In my judgment, they are in clear breach of that duty in addition to

being in breach of statutory duty, as I have set out above. Those breaches are, of course, very much interrelated.

I am satisfied that the Claimant's injury to her arms and wrists was caused or contributed to by those breaches. Accordingly, for all those reasons, I give judgment for the Claimant.

6.3 MANUAL HANDLING OPERATIONS REGULATIONS

At the start of the previous section dealing with the interpretation of the Health and Safety (Display Screen Equipment) Regulations it was possible to give an indication of the proportion of Judgments in claims associated with DSE use which made reference to the DSE Regulations. The same is not possible for the MHO Regulations. While from a legal perspective there may be some uncertainties concerning the boundaries and definitions of DSE equipment and DSE use, it is a relatively simple matter to identify cases in which the allegedly injurious work involved the use of what a lay person would readily identify as a DSE workstation. It is far harder, given that 'manual handling operations' is such a nebulous concept, to identify cases in which the allegedly injurious work could be said to involve a manual handling operation. Indeed, one of the issues which emerges from the analysis of the Courts' interpretation of the MHO Regulations is the type of work covered by the Regulations.

Of the cases in which Judgments had been obtained by the 30th June 2001, there is implicit or explicit reference to the MHO Regulations in only nine Judgments. All these Judgments are at County Court level.

6.3.1 Cases which make implicit or passing reference to the MHO Regulations

Conyon -v- Manor Bakeries
Walsall County Court, November 2000

In this case the Claimant sought damages for "bilateral repetitive strain injury". The Judgment refers to an alleged breach of statutory duty under the MHO Regulations, but the allegedly injurious work is not described and there is no indication of which parts of the MHO Regulations were allegedly breached. The Judge considered the medical evidence "as a preliminary yet definitive issue" and having found that the Claimant had failed "to prove on the balance of probability any causative link between her symptoms and her work" did not address "the wider aspects of the case on liability" in the Judgment.

Lindsay & Johnson -v- Claremont Garments Ltd
Newcastle upon Tyne County Court, January 1998

In this case the Claimants sought damages for injuries allegedly caused by ironing. There is a brief reference in the Judgment to the MHO Regulations:

The movements required of Mrs. Lindsay and said to have been causative of her injury were the crab like movements of the left hand. This was but a part of her job. There was, in my judgment, no rapid repetitive actions nor twisting and gripping movements required. There was no forceful use of the muscles in a repetitive way, nor were the muscles used at great speed for prolonged periods, nor was she working at the limit of her range of movement. There was nothing faulty in the design of or the supply of the equipment or plant. The targets set out for the work were carefully worked out and accepted by the workers. There was, I find, no pressure by the management for the workforce to meet unreasonable targets.

There was minimal force, no postural difficulties. I find nothing in the task that she had to carry out that would alert the reasonable employer to any danger. There was, I accept, no reason why any reasonable employer could be expected to suspect that the system of work adopted would lead to the type of injuries sustained. There was an obligation, I find, to look

at the task of pressing anew when complaints of pain and difficulty were made, but I find that even if that had been carried out, as the defendants concede, in about December, 1991 there was nothing that could or should have been altered in the system of work.

In Mrs. Johnson's case minimal force was required to depress the membrane switch of the industrial iron used. No criticism, in my judgment, could be made of the equipment provided or the targets set. The complaint was of repetitive action of the vertical steaming movement. There was proper equipment provided. No movements were at the limit of the range of movement. There were no postural difficulties. The work station was well designed I find that in her case as well the three key elements of undesirable force, bad posture and high repetition were not present.

For the defendants it was conceded that their duty was to carry out a review of the pressing task in December, 1991. There is now the formal obligation imposed as from the 1st January, 1993 by the Management Regulations, 1992 and the Manual Handling Regulations, 1992. It is accepted that by that date the provision of elasticated supports and the complaints of arm pain by certain of the employees should have prompted a review, as would the state of knowledge that a reasonable employer within the garment industry ought to have had. I accept that had this been done no fault would have been found in the system of work or the equipment at the factory.

Mainprize & Gill -v- Cranswick Country Foods Ltd
Kingston upon Hull County Court, May 1999

In this case the Claimants sought damages for upper limb injuries allegedly caused by their work as skilled butchers. The Judge makes brief reference in the Judgment to the MHO Regulations, but was clearly more concerned with the Defendant's negligence which he describes as "amounting to recklessness":

In January 1994 the Defendants were required to produce a Health and Safety Policy and carry out an assessment under the Manual Handling Regulations (Vol B 252 at Page 270 and in particular at Page 278/279). At page 281 the Defendants observe "repetitive work done by boners" and under the column for recommendations considered "tea breaks and switching activities". In the action taken column there was either no reference to that part of that section or the initials "OK" appear. This observation was inserted without any consultation with any of the employees who were working on the line and who would, in my judgment, have welcomed additional breaks and ought, in my judgment, further, to have had some job rotation (either on a daily, half daily, or even hourly basis). The Defendants' consideration of these safety issues was perfunctory and superficial at its highest and, was more probably, non existent. These men were engaged in tasks (not only on the shoulder line but also on the other lines) in which they were handling meat which was sometimes very chilled (thereby requiring more effort) and were engaged in work which carried (even to a layman) an obvious risk to fingers, hands and arms. There is absolutely no evidence whatsoever to suggest that the Defendants took any professional advice on the safety, health and welfare of their employees notwithstanding complaints from their employees or the huge publicity during the 1980s relating to upper limb disorders caused by repetitive work.

The Defendants failed to provide any proper education to their employees as to how they might minimise or reduce the risk of strains etc, and gave them no warnings either as to the risk nor as to the need to report symptoms immediately (notwithstanding the fact that there was no works doctor or works nurse on site). Furthermore, and most importantly, they gave them no advice and education as to the increased risk which they faced upon a return from holiday or when commencing a completely new task. The medical evidence clearly established that the failure to introduce any preventative measures (eg increased rest breaks and/or a gradual return to repetitive activity after holidays) did materially increase the risk

of injury. The Defendants argue that that alone did not amount to them being negligent. I profoundly disagree. It seems to me that there has been by these Defendants the most abject failure to consider and implement the most simple and basic safeguards for the health and safety of their employees. In my judgment, being on piece rate, the Claimants ought to have been allowed to have such breaks as they wished themselves and should not have been required to work for such periods of time as the Defendants thought proper. It is obviously necessary for the Defendants to require a certain minimum production from their employees but, that having been achieved, an employee on piece rate ought to have been allowed to earn as little or as much above that figure as he or she considered reasonable The consideration by that employee of what was reasonable depends upon the Defendants giving to them proper education, information and warnings as to the risks involved in the work (even though the risks may appear to be self obvious the employees require clear warning that the risks could involve long term injury). Furthermore the Defendants (and not the Claimants) knew that the risks were increased upon return to work after holiday and ought to have made allowance for such in the production rate they required of their employees on return and ought to have given proper education to their employees as to the reasonable steps they should take to protect themselves.

In my judgment by their gross negligent (amounting to recklessness) these Defendants turned what was a known and foreseeable risk to their employees engaged in these manual operations into an almost inevitable consequence that most of their employees would suffer significant aches and pains and some would inevitably suffer permanent injury.

6.3.2 Cases involving a finding relating to a breach of the MHO Regulations

Rance -v- Lomax Sayers Ltd
Plymouth County Court, April 2001

In this case the Claimant successfully claimed damages for tendonitis arising from her work as a Horticultural Assistant. Mr Recorder Donne begins his Judgment by describing the Claimant's work:

In the Spring and Summer of each year, her main job was to prepare pot plants for marketing. There were two stages of preparation of pot plants - grading and marketing. Both stages needed much the same work but the grading stage (carried out twice) was easier in that the material at the base of the plant was rather easier to remove.

The Claimant spent about 90% of her time preparing the plants and about 10% loading up the van and watering. The loading of the van would take place every 2 to 3 days and would take about a morning. Watering would be done on the path with a hose the day before the loading of the van. Very much the bulk of her time, therefore, during these months was taken up with the preparation of pot plants.

That preparation, whether it be grading or marketing, involved taking up the pot in one hand, scraping out the moss and algae around the base of the plant and around the inner rim of the pot, removing any dead foliage (probably with the fingers) and then, with a pair of snippers, snipping off the ends of the branches to give an even overall appearance. Lastly, the pot was re-packed with a top layer of compost around the base of the plant.

Mrs. Rance's evidence (which I accept) was that the need for removing dead foliage was rare.

After completion of the process, the pot was put into a sectioned tray and when the tray of 20 or 30 was full, it was lifted off the work-top and carried over to the place adjacent to the previous tray on the ground. How long that part of the operation took depended on how far away the tray had to be taken. The work-top used by the Claimant was made up of planks on a wheelbarrow which she would move as and when appropriate.

The pots varied in size. The pot used most by the Claimant was a 7 cms high square one made of very light thin black plastic-type material. Even with the pot and compost in it, they were not heavy and their weight is not a relevant issue.

The Claimant did prepare larger pots 1 litre in size (sometimes 1.5 or 2 litres) but her method of preparing them was different to the smaller ones and not relevant, or certainly not important, to the issues in the case. It is her preparation of the small pots which is.

It will be noted that the Judge explicitly states that the weight of the pot plants is "not a relevant issue". Later in the Judgment, the Judge again states that "weight is not relied upon by the Claimant as a factor in this case".

It is the Claimant's case that the process which I have described and particularly the requirement to produce 1,000 pots a day for market led, in 1996, to her suffering upper limb disorders from which in November 1996 she had to give up work.

After reviewing the evidence of the Engineering/Ergonomics Experts the Judge states:

I find, based upon this and my own observation of the demonstration of the way Mrs. Rance carried out the task, that her wrists, particularly her left wrist, were at or near the extremes during a significantly repetitive process. It was not a process as repetitive as someone, given by way of example during the evidence, picking up and stacking bricks in repetitive movements of a few seconds only for hours on end, but I think it important to couple the repetition with the requirement (as I find there was) for speed. About 3 pots a minute was, in my view, a high requirement (I would go so far as to say a very high requirement) leading to the need for significant repetitive rotation of both wrists (particularly the left) for long overall periods. I accept that there were "variation breaks" but, even taking those into account, I think that this task, especially as carried out by the Claimant, was foreseeably risky in relation to upper limb disorders. ……. Her breaks were 10 to 15 minutes in the morning and 30 minutes at lunch-time. I do not regard these as anything like sufficient to cater for the foreseeable risk of upper limb disorder which I have found there was.

I have had regard to the Manual Handling Regulations but, in the light of my findings, I do not think that they add very much. I have already referred to my view as to the need for assessment.

I therefore find:

(i) That it was foreseeable that each operative would carry out the task in his or her own way.

(ii) That there should have been an assessment of the way in which each operative carried out the task.

(iii) The way in which the Claimant carried it out was her natural way of doing it i.e. it was perfectly proper and not in breach of any safety requirement or common-sense.

(iv) If there had been assessment of the way she worked, it would or should have led to concern about the amount and extent of the rotation of both wrists.

(v) That concern could and should have been addressed by ameliorating the process with more breaks and/or a lesser requirement for the number of pots. I add here that I heard no evidence from any lay witnesses for the Defence. It follows that this aspect of the Claimant's case succeeds.

After reviewing the medical evidence, the Judge states:

In what I have found an interesting but not easy medical aspect of the case I find, for the reasons set out above, that the Claimant has proved to the necessary standard that she sustained tendonitis as the result of her work but not epicondylitis or any other injury. In 1996 she was clearly suffering from the development of inflammatory nodal osteo-arthritis in both hands which may have been exacerbated by her work, but was not caused by it.

Linking my findings in the two aspects of the claim (work and medical) I find that the Defendant was in breach of its statutory duty under the Manual Handling Operations Regulations 1992 under Regulation 4(1)(b)(i) in failing to make a suitable and sufficient assessment of the manual handling operation and Regulation 4(1)(b)(ii) in failing to take appropriate steps to reduce the risk of injury to employees undertaking manual handling operations to the lowest level reasonably practicable.

I find that they were negligent in relation to the following particulars of negligence pleaded in paragraph 6 of the Particulars of Claim: (a) (to the extent above), (b) to (j) inclusive and (n).

I find that these breaches and negligence were causative of the Claimant's tendonitis suffered increasingly through 1996 and on into 1997.

I find also that even if she had returned to work after a period of rest, the resumption of that work would have resurrected her tendonitis.

To that extent, therefore, her claim succeeds.

This case provides an interesting interpretation of the MHO Regulations, given that even though weight was not considered a relevant issue, it was found that the employer should have undertaken a detailed risk assessment under Regulation 4(1)(b)(i).

Rochester -v- Techfill
Huddersfield County Court, July 2000

In this case the Claimant successfully claimed that he had suffered Tenosynovitis while tightening caps on bottles. An Attendance Note of the Judgment refers to the Claimant working at a rate of 16 to 17 bottles per hour for periods in excess of 1.5 hours and to the force required to tighten the caps being approximately 3-4 Nm. The Judge is recorded as quoting Regulation 4 of the MHO Regulations and finding that "in these circumstances no sufficient risk assessment was made and I find the Defendants failed to take appropriate steps to reduce the risk of injury to the lowest level reasonably practicable. The Defendant company should have devised and enforced a regime of rotation." The Attendance Note of the Judgment refers to a breach of Regulation 4 (1)(b)(2) of the MHO Regulations.

Sutton -v- British Trust for Conservation Volunteers Enterprises Ltd
Central London County Court, September 1999

A Note of Judgment in this case refers to the Claimant as having been engaged as a manual worker throughout his working life, primarily on building sites. However, his claim arose from his involvement as a volunteer on the Defendant's community action scheme for the unemployed. Each volunteer 'worked' two days a week and was expected to attend a half day job search. The Claimant undertook five main tasks, namely fencing, gravel loading, clearing of gorse bushes, concrete busting and earth clearing. The Claimant evidently only 'worked' 22 days and the heavy physical work of which he complained, namely gravel loading and concrete breaking, only took place over a total of three days. The Claimant sought damages for Lateral Epicondylitis, which the Medical Experts agreed he had developed in late 1993. The Claimant pleaded breaches of the MHO Regulations. The Note of Judgment states:

With respect to the Manual Handling Operations Regulations 1992, it is argued by the defendants that these do not apply. Manual Handling Operations are defined in Regulation 2

of the Regulations. It is clear that the regulations and their definition as a whole are principally intended to deal with heavy loads but do not seem to include handling of tools and this appears to be supported by the guidance to the regulation.

[Counsel for the Defendant] says that the guidance is not binding on the judge, but not only do I find it persuasive, I agree with it and in the circumstances of this case, where it is said that sledge hammers and crow bars were too heavy, I find that the regulations do not apply.

Even if I am wrong, I have had no evidence of the weight of the crowbars/ sledge hammers used in this particular case. Even if they were too heavy l do not find that the regulations were contravened, as it was not suggested in the evidence of either Mr Sutton or Mr F that these tools were too heavy. The only complaint was that the work was arduous. In arguing that the regulations to apply, [Counsel for the Claimant] heavily relies on the case of Hawks v London Borough of Southwark*, but I do not find that this case takes matters any further and there are very big differences between that case and this.*

Oliver -v- Tesco Stores Ltd
Central London County Court, July 1999

In this case the Claimant successfully claimed that she had suffered an unspecified hand injury in June 1994 when retrieving a 4 kilogram box of sausages from a cage in a store room. The Judge evidently found that the Defendant was in breach of the MHO Regulations, but precisely which parts of the MHO Regulations were breached in this case is unclear from the Judgment:

Mrs Oliver says that Tescos, her employers, are responsible for this accident because of the chaotic way in which they loaded the cages into the chiller room; there was no semblance of order; and that the cages were such that she could not move them. Apparently they are designed - nobody has quarrelled with this -with two fixed wheels and two swivel wheels. The cages are difficult to move. They will only move in the way in which they are put into the position in the chiller room. It is very difficult to swivel them.

She said she tried to move the cages, but they were so heavily laden that she could not move them. She did not think that the task of getting the box of sausages was beyond her capabilities. She could reach the box. She was able to take items out of the cage first of all. She did not ask for anybody else to come and move the cages for her. The delivery men had gone at that stage, and there was nobody else of the warehouse staff around. She had a customer waiting for sausages, so she did not want to keep that customer waiting too long while she went and searched the store to try and find somebody who could perhaps move the cage for her, not that it really occurred to her to do that, because this was not a task beyond her capabilities.

She says that Tescos are responsible for this by breach of the Manual Handling Operation Regulations 1992, in that the task involved twisting her trunk because of the position of the cages. The box of sausages was difficult to grasp, because with the length of time she had been in the chiller room her hands were getting cold. …….

Tescos were in breach of the regulations because there were space constraints preventing good posture: she had to twist her body to the left to get in to the target cage. She says therefore Tescos are in breach of those regulations and they are responsible for her accident. ……..

So what Mrs Oliver is saying is basically she was not given any training in how to manoeuvre the cages or how to unload the cages. She says that she was told how to pick heavy loads from the floor by kinetic lifting. Of course in this case she was not lifting a heavy load from the floor. She was lifting sausages off a shelf which was approximately at waist height. So she says that Tescos are in breach in not giving her proper training either.

…….……

There was a hazard presented to Mrs Oliver which should not have been. The cages should have been stacked properly. They should not just have been pushed in. Mrs Oliver said that the delivery men were always in a hurry. They never even left delivery notes of what they had delivered. They just drove the lorry up to the back door, dropped the back of the lorry, pushed off the cages, closed the door, closed the lorry and went off to the next delivery. There was no attempt on their part to put matters in a tidy order so that people could get at the cages without having to run the risk of injuries.

Counsel said on behalf of Mrs Oliver that, with the benefit of hindsight, probably Mrs Oliver should have got assistance. But hindsight is a marvellous thing - we can always do everything differently with hindsight. But at the time, faced with this task, Mrs Oliver felt it was not beyond her capabilities. And it should not have been beyond her capabilities to take a small packet of sausages off a cage if the cages had been properly stacked.

In all those circumstances I find this accident happened as Mrs Oliver said it did. It happened for the reason that Tescos did not have a proper system for storing their cages and presented a hazard to Mrs Oliver, which they should not have done, in breach of their statutory duties and in breach of their general duties. In those circumstances I find that Mrs Oliver succeeds in her claim, that the responsibility for this accident rests : fairly and squarely with Tesco.

Gissing -v- Walkers Smith Snack Foods Ltd
Lincoln County Court, July 1999

In this case the Claimant claimed that packing around 3,000 bags of crisps per hour had caused an injury to his left wrist. The Medical Experts agreed that the Claimant had suffered a discreet episode of either Tenosynovitis or Peritendinitis Crepitans. The Claimant claimed, among other things, that the Defendant had breached the MHO Regulations. H H Judge Heath states:

……. l have read the Manual Handling, Regulations and are of the opinion that they are neither aimed nor directed at this type of work and even if they were, I am not satisfied that the Defendants did breach the Regulations.

Moffitt -v- Norweb plc
Manchester County Court, May 1997

In this case the Claimant, an Overhead Linesman, successfully claimed damages for aggravation of Lateral Epicondylitis. The work is not described in detail in the Judgment, but there are references to pulling heavy cables and using heavy tools in awkward positions. The first reference to the MHO Regulations appears in the passage of the Judgment in which the Judge refers to the evidence of the Claimant's Engineering Expert:

He said and it is agreed that the Manual Handling Operations Regulations 1992 applied to the work of an Overhead Linesman. He asked me to consider whether the Defendants were in breach of Regulations 4 (1) (a) and 4 (l) (b) (1) of the Regulations.

The Judge subsequently states:

Having listened to the submissions made by Counsel on behalf of both parties I have reached the conclusion that the Defendant were in breach of the Regulations and were also negligent.

6.4 WORKPLACE (HEALTH, SAFETY AND WELFARE) REGULATIONS

Only two references to Workplace (Health, Safety and Welfare) Regulations were found in the Judgments in claims for WRULDs which had been obtained by the 30th June 2001.

Sharp -v- Yorkshire Bank
Manchester County Court, April 2001

This case has been referred to above, in 6.2.1, in the context of an implicit reference to the requirements of the DSE Regulations, which resulted in a finding of negligence. The Claimant, a part-time cashier, claimed damages for the acceleration of degenerative changes in her back. In the Judgment, Mr Recorder Hull states:

> *In addition to those breaches at common law both Counsel accepted before me that breach of statutory duty would add little if anything to the Claimant's claim The relevant sections of the Offices Shops and Railways Premises Act were repealed on the 1st of January 1993. I was informed by Counsel that the Workplace Regulations were of no relevance due to the fact that they came into effect in January 1996. Accordingly I make no finding in relation to any breach of statutory duty.*

Conyon -v- Manor Bakeries
Walsall County Court, November 2000

In this case, which has already been referred to in section 6.3.1, the Claimant sought damages for "bilateral repetitive strain injury". The Judgment refers to an alleged breach of statutory duty under the WHSW Regulations, but the allegedly injurious work is not described and there is no indication of which parts of the WHSW Regulations were allegedly breached. The Judge considered the medical evidence "as a preliminary yet definitive issue" and having found that the Claimant had failed "to prove on the balance of probability any causative link between her symptoms and her work" did not address "the wider aspects of the case on liability" in the Judgment.

6.5 PROVISION AND USE OF WORK EQUIPMENT REGULATIONS

Only two references to Provision and Use of Work Equipment Regulations were found in the Judgments in claims for WRULDs which had been obtained by the 30th June 2001.

Donnellan -v- Halifax Building Society
Manchester County Court, November 1999

It will be recalled (from 6.2.2) that in this case, at trial, it was conceded by Counsel for the Claimant that the Claimant was not a "user" within the meaning of the DSE Regulations, due to the limited use she made of DSE while working as a mortgage adviser. However, the Claimant had also pleaded a breach of Regulation 5 of the Provision and Use of Work Equipment Regulations 1992. It was alleged that a short cable caused the keyboard to be offset to her right as the Claimant undertook a mortgage interview, which meant that to use the keyboard the Claimant's hand was in ulnar deviation. It was contended that this abnormal position of the hand was responsible for the Claimant's De Quervain's Syndrome. The Judge found that the Claimant's workstation was "suitable and sufficient in terms of its positioning" and that there was no breach of statutory duty.

Sutton -v- British Trust for Conservation Volunteers Enterprises Ltd
Central London County Court, September 1999

This case has already been referred to in 6.3.2. A Note of Judgment in this case refers to the Claimant as having been engaged as a manual worker throughout his working life, primarily on

building sites. However, his claim arose from his involvement as a volunteer on the Defendant's community action scheme for the unemployed. Each volunteer 'worked' two days a week and was expected to attend a half day job search. The Claimant undertook five main tasks, namely fencing, gravel loading, clearing of gorse bushes, concrete busting and earth clearing. The Claimant evidently only 'worked' 22 days and the heavy physical work of which he complained, namely gravel loading and concrete breaking, only took place over a total of three days. The Claimant sought damages for Lateral Epicondylitis, which the Medical Experts agreed he had developed in late 1993. The Claimant pleaded breaches of the PUWE Regulations. The Note of Judgment states:

> *With respect to the Provision and Use of Work Equipment Regulations 1992, it is alleged that the tools provided to the claimant were not suitable and that insufficient training /information was given with respect to the tools.*
>
> *I disagree. Mr H demonstrated the task and ways in which tools were to be used. They were suitable and no complaint was made by either Mr Sutton or Mr F that they were not. Most were ordinary instruments used every day, aside from a Swedish axe, although it was the evidence of both Sutton and F that once they were shown how to use the axe they found it to be very good.*

6.6 PERSONAL PROTECTIVE EQUIPMENT AT WORK REGULATIONS

The Judgments in claims for WRULDs which have been obtained by the 30th June 2001 make no reference to the Personal Protective Equipment at Work Regulations.

6.7 MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS

Only two references to Management of Health and Safety at Work Regulations were found in the Judgments in claims for WRULDs which had been obtained by the 30th June 2001.

Sutton -v- British Trust for Conservation Volunteers Enterprises Ltd Central London County Court, September 1999

This case has already been referred to in 6.3.2 and in 6.5. A Note of Judgment in this case refers to the Claimant as having been engaged as a manual worker throughout his working life, primarily on building sites. However, his claim arose from his involvement as a volunteer on the Defendant's community action scheme for the unemployed. Each volunteer 'worked' two days a week and was expected to attend a half day job search. The Claimant undertook five main tasks, namely fencing, gravel loading, clearing of gorse bushes, concrete busting and earth clearing. The Claimant evidently only 'worked' 22 days and the heavy physical work of which he complained, namely gravel loading and concrete breaking, only took place over a total of three days. The Claimant sought damages for Lateral Epicondylitis, which the Medical Experts agreed he had developed in late 1993. The Claimant pleaded breaches of the Management Regulations. The Note of Judgment states:

> *With respect to breaches of the Management of Health & Safety at Work Regulations 1992, it is said that the defendants failed to make suitable and sufficient risk assessments. I do not agree. It was the evidence of Mr W that a general assessment of health and safety was made by the defendant's as required by their contract with the [Department of Employment]. The only valid point is that Mr Sutton did not attend the induction course but he certainly received instruction from Mr H who demonstrated tasks and use of tools and I can find no breaches of the Management of Health & Safety at Work Regulations, which in any event do not confer civil liability outside negligence, and I have already found that the defendants were not negligent.*

Lindsay & Johnson -v- Claremont Garments Ltd
Newcastle upon Tyne County Court, January 1998

In this case, which has already been referred to in 6.3.1. the Claimants sought damages for injuries allegedly caused by ironing. There is a passing reference to the Management Regulations in this Judgment:

> *The movements required of Mrs. Lindsay and said to have been causative of her injury were the crab like movements of the left hand. This was but a part of her job. There was, in my judgment, no rapid repetitive actions nor twisting and gripping movements required. There was no forceful use of the muscles in a repetitive way, nor were the muscles used at great speed for prolonged periods, nor was she working at the limit of her range of movement. There was nothing faulty in the design of or the supply of the equipment or plant. The targets set out for the work were carefully worked out and accepted by the workers. There was, I find, no pressure by the management for the workforce to meet unreasonable targets.*
>
> *There was minimal force, no postural difficulties. I find nothing in the task that she had to carry out that would alert the reasonable employer to any danger. There was, I accept, no reason why any reasonable employer could be expected to suspect that the system of work adopted would lead to the type of injuries sustained. There was an obligation, I find, to look at the task of pressing anew when complaints of pain and difficulty were made, but I find that even if that had been carried out, as the defendants concede, in about December, 1991 there was nothing that could or should have been altered in the system of work.*
>
> *In Mrs. Johnson's case minimal force was required to depress the membrane switch of the industrial iron used. No criticism, in my judgment, could be made of the equipment provided or the targets set. The complaint was of repetitive action of the vertical steaming movement. There was proper equipment provided. No movements were at the limit of the range of movement. There were no postural difficulties. The work station was well designed I find that in her case as well the three key elements of undesirable force, bad posture and high repetition were not present.*
>
> *For the defendants it was conceded that their duty was to carry out a review of the pressing task in December, 1991. There is now the formal obligation imposed as from the 1st January, 1993 by the Management Regulations, 1992 and the Manual Handling Regulations, 1992. It is accepted that by that date the provision of elasticated supports and the complaints of arm pain by certain of the employees should have prompted a review, as would the state of knowledge that a reasonable employer within the garment industry ought to have had. I accept that had this been done no fault would have been found in the system of work or the equipment at the factory.*

It is perhaps not surprising that there are so few references to breaches of the Management of Health and Safety at Work Regulations, given that as noted at the start of this chapter Smith et al[12] state:

> *… a breach of one of the very general duties in these Regulations (in particular, the obligation under reg 3 to undertake risk assessments, which is arguably central to the whole scheme of the present regulatory system, with its emphasis on risk) will not give rise directly to an action for breach of duty.*

However, Smith et al[12] go on to argue that breach of the Management Regulations may be actionable indirectly through the medium of a common law negligence action.

…….. although the Management Regulations do not themselves support civil liability, there is no reason why they should not be relied upon as evidence of required practice, failure to follow which can constitute negligence. For one thing, the actual wording of the exclusion of civil liability in reg 22 does not preclude this indirect use of the Management Regulations in a negligence action; for another, certain other parts of the Regulations as a whole assume that key concepts in the Management Regulations (especially on risk assessment) are an integral part of the overall scheme of protection.

Thus, although the absence of a necessary risk assessment is not itself actionable as a breach of statutory duty, it is so central to the whole scheme that it should be considered important evidence of a failure to provide a safe system of work in all the circumstances, and therefore common law negligence. This argument is also applicable to other parts of the Management Regulations, such as health and safety arrangements, health surveillance, the need for procedures to deal with serious and imminent dangers and the principles of prevention.

A footnote explains that:

The Management of Health and Safety at Work Regulations 1999, reg 22, only states that breach of a duty imposed by the Regulations is not to confer a right of action in any civil proceedings. It is submitted that this only means that the Regulations cannot be relied upon directly, in order to maintain an action for breach of statutory duty. In the case of an action for negligence, that cause of action already exists by virtue of the employer's want of care, and the Regulations are only being used to substantiate that want of care, not to 'confer' the right of action.

Thus, while Judgments in personal injury claims for WRULDs might be expected to make few, if any, references to the Management Regulations in the context of a breach of statutory duty, reference to the Management Regulations might be expected in the passages of (future) Judgments which deal with negligence.

7 DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

7.1 DISCUSSION

It can be argued that the most important general finding to emerge from this exploratory study is the suggestion that it is not what HSE guidance says but what it does not say that is perhaps most significant. HSE guidance on WRULDs has so far rarely addressed explicitly some of the issues relating to the nature and causes of upper limb symptoms and the circumstances in which they arise which the Courts frequently consider. Most obviously, HSE guidance has not addressed Chronic Regional Pain Syndromes for which a significant proportion of the Claimants had sought damages, some successfully. Similarly, there are numerous references in the Judgments to an employer's duty of care, the scope and importance of which a lay person reading HSE guidance might not appreciate. Courts appear to be, or at least used to be, particularly interested in the 'duty to warn'. In 'white collar' cases there also appears to be a particular interest in whether or not there were adequate rest breaks, while in 'blue collar' cases the emphasis tends to be on whether or not there was adequate job rotation. The recent emphasis being placed on rehabilitation also raises questions about the Courts' interpretation of an employer's duty of care in managing employees who have reported upper limb disorders and when someone who has suffered from an upper limb disorder returns to work. While it is unreasonable to expect HSE guidance to cater for or to anticipate the immense variety of circumstances in which personal injury claims for WRULDs have arisen or might arise, it can be argued that a lay person reading HSE guidance might not appreciate some of the issues relating to the nature and causes of upper limb symptoms and an employer's duty of care which the Courts appear to consider important.

The most recent guidance on the Provision or the Use of Work Equipment Regulations 1998[18] and the Management of Health and Safety at Work Regulations 1999[19] explicitly states, albeit in the context of who is covered by the Regulations, that "only the Courts can give an authoritative interpretation of the law" and explains the legal status of ACOP and guidance material. However, the context suggests that 'the law' to which these passages refer is the criminal law. Thus, one of the questions raised by this exploratory study is whether HSE guidance adequately addresses common law duties. Following the guidance will not necessarily "be doing enough to comply with the law" if the guidance does not adequately address the common law duties.

It can also be argued that there appear, from a lay perspective, to be possible conflicts or at least inconsistencies between the common law duties and HSE guidance. For example, it is difficult from a lay perspective to reconcile paragraph 31 of the guidance on the DSE Regulations with the House of Lord's Judgment in ***Pickford -v- Imperial Chemical Industries plc*** and the High Court Judgment in ***Moran -v- South Wales Argus***.

Paragraph 31 of the guidance[9] on the DSE Regulations states:

> *Because of the varying nature and novelty of some display screen tasks, and because there is incomplete understanding of the development of chronic ill-health problems (particularly musculoskeletal ones), prediction of the nature and likelihood of problems based upon a purely objective evaluation of equipment may be difficult. It is therefore most important that employers should encourage early reporting by users of any symptoms which may be related to display screen work. The need to report and the organisational arrangements for making a report should be covered in training.*

[18] *Safe use of work equipment* Approved Code Of Practice and Guidance L22, 2000
[19] *Management of Health and Safety at Work* Approved Code Of Practice and Guidance L21, 2000

In the case of ***Pickford -v- Imperial Chemical Industries plc*** the Claimant sought damages for Cramp of the hand PDA4, allegedly caused by her work as a secretary in the late 1980s. The case was originally heard in Chester High Court and Judgment in favour of the Defendant was given in November 1994. The Claimant appealed and Judgment in favour of the Claimant was given in July 1996. The Defendant appealed and Judgment was given in favour of the Defendant in the House of Lords in June 1998. In the House of Lord's Judgment, Lord Hope of Craighead states:

> *As for the giving of warnings, the respondent said in her particulars of negligence that she should have been told of the risk of contracting PDA4. The giving of warnings of the risk of disease or injury is a precaution which is familiar in the field of litigation for personal injury. But in the case of conditions such as PDA4, which are not easily identifiable and not well understood, great caution must be exercised as to the content of any such warning and as to whether to give a warning at all is appropriate. To impose a duty which may cause more harm than good would be undesirable. The law does not compel employers to take steps which may bring about the condition which they wish to prevent. Conditions which are associated with functional or psychogenic disorders present particular difficulty. So the judge was right to pay careful attention to the advice of the experts, and to the practice in the industry, as to precise terms of any warning that the appellants might responsibly give to their employees about the risk of contracting PDA4.*
>
> *[One of the Defendant's Medical Experts] said that those who were prone to anxiety might perceive that they had the symptoms of the disease, so a balance had to be struck. On the other hand a balanced warning might simply do no more than accord with the common sense precautions which everyone would take. [One of the Claimant's Medical Experts] said that it would be disgraceful to give a warning which said that if you developed pain you may never work again. The warning which he would have regarded as acceptable was simply to go and see the works doctor if you develop unusual pain or discomfort. But that was not the kind of warning which the respondent was looking for - she went her GP two days after she had noted in her diary for the first time that she had pain in her hands, and a few days later she was seen by the works doctor. The judge accepted the evidence of the appellant's ergonomist, that it was not the practice in industry in 1988 and 1989 to give a warning of any kind about the risk of contracting PDA4, and that of the appellants' chief medical officer, who said that no literature had ever come to his attention advocating such a warning. His evidence was that the appellants were well aware that poor siting of equipment could lead to eye strain and other disorders, and that steps had been taken to ensure suitable work station design and siting and that appropriate information was given to visual display operatives. But he would have regarded a warning that muscle fatigue might develop into PDA4, a rare disease, to be counterproductive and, in the absence of advice by a suitable expert body such as the Health and Safety Executive to the contrary, he did not consider it necessary or proper to give such warnings. The judge also accepted Dr. L's evidence that a formal system of instruction, warning and advice was adopted and implemented for typing staff in the accounts department as the working day was confined to accounts and difficulties in changing postures could arise in their case. But such a system was not considered necessary for secretaries as they carried out many non-typing duties in the course of their working day.*

In the case of ***Moran -v- South Wales Argus*** the Claimant sought damages for Repetitive Strain Syndrome allegedly caused by her work as a copytaker. In the Judgment given in Cardiff High Court in November 1994, the Judge states:

….. the defendants' duty of care in such circumstances is to take such steps for the well-being of their office staff as to avoid injury, that the duty of care cannot extend to the avoidance of pain because pain is too vague and because some pain is inevitable in any manual occupation.

It should be noted that in both these cases the alleged injuries arose prior to the DSE Regulations coming into force, but that the Judgments were given after they came into force. It would appear, from a lay perspective, that circumstances can arise in which following HSE guidance might be doing more than enough to comply with the common law. However, it is not intended to suggest that where the Courts' interpretations of employers' common law duties appear, from a lay perspective, to be inconsistent with HSE guidance on health and safety Regulations, the guidance can be ignored.

With respect to the Courts' interpretations of health and safety Regulations, it will come as no great surprise that the Judgments in personal injury claims for WRULDs which have been obtained so far make no reference to the Personal Protective Equipment at Work Regulations and make few references to the Workplace (Health, Safety and Welfare) Regulations, the Provision and Use of Work Equipment Regulations and the Management of Health and Safety at Work Regulations, none of which are of significance. While the Judgments shed some light on how County Courts have interpreted certain parts of the DSE and MHO Regulations, what is perhaps most surprising is that so few of the Judgments in personal injury claims for WRULDs even consider these Regulations, let alone provide an informative interpretation.

This can be explained, in part, by the fact that relatively few of the accumulated Judgments deal with cases in which the alleged injuries occurred after these Regulations came into force. It is also clear that claims for WRULDs often turn on issues relating to injury and causation and that liability is often a secondary issue in such cases. Of most significance, however, is the current lack of any definitive interpretation of any of the Regulations by a higher Court. No doubt higher Courts will, in due course, provide definitive interpretation of these Regulations in this type of claim.

It is clear that circumstances can arise in which the County Courts' interpretations of health and safety Regulations appear, from a lay perspective, to be inconsistent with HSE guidance on the Regulations. For example, it can be argued that a lay person reading HSE guidance on the DSE Regulations might not appreciate that Regulation 4 of the DSE Regulations requires regular rest breaks of 10 minutes every hour for a manager using DSE, as the learned Judge found in ***McPherson -v- London Borough of Camden***, referred to in 6.2.2. Similarly, it can be argued that a lay person reading HSE guidance on the MHO Regulations might not appreciate that a task involving the handling of light objects required a detailed risk assessment under Regulation 4(1)(b)(i), as the learned Judge found in ***Rance -v- Lomax Sayers Ltd***, referred to in 6.3.2. The County Court Judgments in personal injury claims for WRULDs show a lack of consistency in the interpretation of HSE guidance on WRULDs and in the interpretation of certain parts of the DSE Regulations and some confusion about the type of work which the Courts appear to consider is covered by the MHO Regulations. One of the underlying problems appears to be that there are no Regulations which specifically apply to repetitive work. This is somewhat ironic, given that anecdotal evidence suggests that the Directive from which the DSE Regulations were derived started life as the draft of a Directive on repetitive work.

Clearly, each case turns on its own facts and where the Courts' interpretations of health and safety Regulations or of employers' common law duties appear, from a lay perspective, to be inconsistent with HSE guidance, the inconsistencies are not necessarily due to some omission or flaw in the drafting of HSE guidance. While it is unreasonable to expect HSE guidance to anticipate or to cater for the immense variety of circumstances in which health and safety

Regulations or employers' common law duties might be invoked or interpreted in personal injury claims for WRULDs, it can be argued that where the Courts reach decisions which appear to be inconsistent with HSE guidance some revision to the guidance may be needed such that there is a reasonable expectation of the guidance being uniformly interpreted in the Courts and in the workplace. It would be presumptuous to suggest whether such revisions should seek to bring the guidance in line with the findings in some Courts to avoid misinterpretations in the workplace or whether such revisions should seek to clarify the guidance to avoid possible misunderstandings in the Courts. However, it can be suggested that following guidance which is not being uniformly interpreted in the Courts and in the workplace will not necessarily "be doing enough to comply with the law".

7.2 CONCLUSIONS

This exploratory study has demonstrated that a web site can assist in generating and disseminating information on Judgments in personal injury claims, its most important roles being to provide a focus for the reporting of information and a readily accessible and efficient means of providing information. However, there is clearly scope for improving the effectiveness of such a web site.

This exploratory study has also demonstrated that the analysis of Judgments in personal injury claims can produce findings on a range of issues which might be of interest and practical use to those who draft guidance. However, there can be lengthy delays in such claims reaching Court and the Judgments becoming available for analysis.

This exploratory study has confirmed that, in the context of personal injury claims for WRULDs, the Courts' interpretations of certain health and safety Regulations and what constitutes an 'injury' in a legal sense might not be entirely consistent with what might reasonably be expected, by a lay person, reading HSE guidance.

With respect to WRULDs, the Courts' interpretation of HSE guidance documents and findings on the foreseeability of injury arising from various types of work are inextricably linked to the wider issue of the Courts' interpretation of an employer's duty of care.

While the 1992 Regulations undoubtedly imposed considerable changes in the way employers were obliged to deal with the risks of WRULDs, as yet, there is little evidence about how they have influenced the Courts' interpretation of an employer's duty of care in claims for WRULDs.

The full value of this research will only be achieved if the study is extended, such that the most recent Judgments and those emerging over the next few years are captured and analysed. At the very least, this should provide further interpretations of the Health and Safety (Display Screen Equipment) Regulations and the Manual Handling Operations Regulations and related guidance.

While the web site was primarily developed as a research tool, a mechanism for generating information on previously unknown cases and disseminating information on known cases, it could also be used to promote awareness of the possible consequences of failing to follow guidance on WRULDs and health and safety Regulations.

7.3 RECOMMENDATIONS

The procurement and analysis of Judgments in personal injury claims for WRULDs should continue. The web site being an important focus for the reporting and dissemination of information, it should be maintained and efforts made to improve its effectiveness.

Consideration should be given to which of the issues which can be examined by analysing Judgments are of most interest and practical use and subsequent analyses tailored appropriately.

Consideration should be given to using the web site to promote awareness of the possible consequences of failing to follow guidance on WRULDs and health and safety Regulations.

Consideration should be given to applying a similar approach to other risks e.g. work-related stress.

APPENDIX A

The "diagnosis options" developed for the Diagnostic Support Aid for Upper Limb Disorders reported in Contract Research Report 280/2000.

Diagnosis option	Alternative labels
Raynaud's Syndrome	Raynaud's Phenomenon, Hand-Arm Vibration Syndrome, Vibration White Finger
Ganglion	
Dupuytren's Contracture	
Trigger Finger	Stenosing Tenosynovitis
Osteo-Arthritis	
Rheumatoid-Arthritis	
Carpal Tunnel Syndrome	
De Quervain's Disease	De Quervain's Tenosynovitis, De Quervain's Tenovaginitis
Tenosynovitis	Tendinitis, Peritendinitis, Tenovaginitis
Non-specific diffuse forearm pain	"Impossible to make specific diagnosis"
Arthritis of Elbow	
Olecranon Bursitis	
Lateral Epicondylitis	Tennis Elbow
Medial Epicondylitis	Golfer's Elbow
Bicipital Tendonitis	Humeral Tendinitis, Bicipital Tenosynovitis
Rotator Cuff Tendonitis	Supraspinatus Tendonitis, Infraspinatus Tendonitis, Teres Minor Tendonitis, Subscapularis Tendonitis, Rotator Cuff Tear, Subdeltoid Bursitis, Subacromial Bursitis
Shoulder Capsulitis	Frozen Shoulder, Adhesive Capsulitis
Osteo-Arthritis of Acromioclavicular Joint	Acromioclavicular Syndrome
Cervical Spondylosis	Osteo-arthritis of the neck, Cervical Syndrome, Radiculopathy, Cervical Spondylarthrosis, Cervical Root Syndrome
Diffuse shoulder or neck pain	Tension Neck Syndrome, Cervicobrachial Syndrome, "Impossible to make specific diagnosis"

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