



[Hugh Preston \(1994 call\)](#)

seven bedford row

20th May 2009: House of Lords ruling on PUWER

Smith v Northamptonshire County Council

Local authority employer not liable for defect in work equipment supplied by third party - interpretation of "provided for use or used ... at work" in reg. 3(2) - employer must have control over work equipment for duties to apply - work equipment must be adopted or incorporated into employer's undertaking.

On 20th May 2009 the House of Lords delivered judgment in favour of the defendant (represented by [Hugh Preston](#) of [7 Bedford Row](#)). In doing so it has given valuable guidance as to the scope of the Provision and Use of Work Equipment Regulations 1998 ("PUWER"). The case concerns the extent to which employers may be liable for defective work equipment where (a) they had not provided the equipment (b) they had no control over it and (c) it was located outside their premises.

The recent trend had been in favour of claimants, notably in **PRP Architects v Reid** [2006] when the Court of Appeal found that a lift located outside the employer's premises but used by an employee whilst at work would be covered by the regulations. Then in **Spencer-Franks v Kellogg Brown and Root Ltd.** [2008] when the House of Lords concluded that a door closer located on an oil rig under the control of a third party was also relevant "work equipment".

This decision imposes clear limits on the scope of PUWER where the employer is not in control of the equipment, and marks a significant development in judicial thinking.

Facts of the case

The claimant was employed as a carer by the local authority defendant. In the course of her duties she pushed a patient in a wheelchair over a wooden ramp

which had been manufactured, supplied and installed by the NHS. The ramp had been in situ for many years and had been periodically inspected and risk assessed by the defendant. Whilst the claimant was pushing the patient down the ramp, the edge of the ramp crumbled away causing her to fall and sustain injury.

The issues

The defendant conceded that the ramp was out of repair for the purposes of the strict liability duties under reg. 5 PUWER. It further conceded that the ramp was “work equipment” for the purposes of reg. 2(1), following guidance given by the House of Lords in **Spencer-Franks**. The issue before the Lords was therefore whether the ramp was “*provided for use or used ... at work*” for the purposes of reg. 3(2). That would determine whether the substantive duties applied.

The House of Lords ruling

The House of Lords held (by a 3:2 majority) that the ramp was not “*provided for use or used ... at work*” for the purposes of reg. 3(2), and therefore the strict liability duties that followed under the regulations did not apply.

Lord Neuberger considered that for the regulations to apply the employer must have “*control over the work equipment*”, as opposed to merely the way in which equipment is used. Lord Mance considered that the test was whether the equipment was “*incorporated into and adopted as part of the employer’s undertaking*” but agreed with Lord Neuberger’s conclusion that in practice there had to be control over the equipment for this test to be satisfied. Lord Carswell agreed.

Lord Hope and Baroness Hale dissented.

[Hugh Preston](#) of [7 Bedford Row](#) appeared for the defendant, instructed by Shoosmiths. [Patrick Limb QC](#) and [Tom Panton](#) of [Ropewalk Chambers](#) appeared for the claimant instructed by Thompsons.