

Employers must prove they did enough

The Court of Appeal has said employers must not only undertake risk assessments, they must make sure they take the necessary action to reduce risks. It ruled that when hospital employee Donna Egan was injured using a mechanical hoist to move a patient, the burden was on the employer to prove that it had taken appropriate steps to reduce any risk to the lowest reasonably practicable level. This overturned an April 2008 decision at Salford County Court denying Ms Egan damages. In the original case the nurse had contended Central Manchester and Manchester Children's University Hospitals NHS Trust was responsible for the injuries she suffered in 2003 because it failed in its duties under the manual handling and work equipment regulations. She had been using the mechanical hoist to transport a disabled patient into a bath when the wheels jammed, causing the hoist to stop suddenly. Lady Justice Smith said it was clear the judge in the earlier case had failed to take proper account of the duty on employers under regulation 4(1)(b)(ii) of the manual handling regulations to reduce risk to "the lowest level reasonably practicable." She said the judge should have done so because the requirements of that regulation were separate from and additional to the requirement, under regulation 4(1)(b)(i), to carry out a suitable and sufficient risk assessment. No risk assessment had been carried out, so the judge ought to have focused on that regulation which imposed a duty to take positive action to reduce risk, the appeal court judge said. As the employer had been in breach of its duty to reduce the risk, it was primarily liable for the injury and should pay damages.

- Egan v Central Manchester and Manchester Children's University Hospitals NHS Trust before Lord Justice Sedley, Lord Justice Keene and Lady Justice Smith, Judgment December 15, 2008. [The Times](#). [WLR Daily](#). [Manual Handling Operations Regulations 1992](#).