

Court cuts £700k Whirlpool fine to £300k on appeal

The £700,000 fine handed to domestic appliance manufacturer Whirlpool UK Appliances after a contractor died when he fell from a work platform has been slashed by more than half by the Court of Appeal.



7430063ee MUST CREDIT PHOTOS BY: sdp USA/REX/Shutterstock
Corporations in Michigan, USA - 18 Oct 2016 A logo sign outside of the headquarters of The Whirlpool Corporation in Benton Harbor, Michigan

Article date: Wednesday, January 10, 2018 - 08:30

Barrister Dominic Adamson, who represented the company, said the sentencing judge His Honour Judge Patrick had “erred” in his application of the sentencing guidelines and that the original sentence was “manifestly excessive”.

On 21 March 2015 Clive Dalley, a 66-year-old contractor, was standing on a 5 m high elevating mobile platform (MEWP) installing fire detection equipment at Whirlpool’s factory at Yate, near Bristol. Elsewhere in the factory maintenance staff started an overhead conveyor, unaware of Dalley’s presence. The movement destabilised the MEWP, toppling it and dropping him to the floor.

The Health and Safety Executive (HSE) found there was no supervision or controls to prevent the conflicting tasks being carried out.

Whirlpool admitted breaching s 3(1) of the Health and Safety at Work Act but challenged the sentence on the basis that the trial judge had wrongly applied the sentencing guidelines.

At the original sentencing hearing at Bristol Crown Court in March 2017, Judge Patrick determined that though Whirlpool’s culpability was low and there was a low likelihood of harm (harm category 3), the seriousness of harm risked was the highest (level A). He said the company’s turnover placed it above the £50m threshold for a large organisation under the guidelines and set a starting point for the fine at £1.2m, reduced to £700,000 to reflect mitigating factors and an early guilty plea.

However at the Court of Appeal on 20 December, Lord Chief Justice Burnett said this figure was too high.

While he agreed with the trial judge that Whirlpool should be treated as a 'very large' company, he noted there should be "no mechanistic extrapolation for levels for large companies".

In 2014 and 2015 Whirlpool's turnover was £672.8m and £710.8m respectively.

The Court of Appeal noted that the starting point fine for a 'large' organisation is £35,000, which it adjusted to £250,000 (the top end of the next category range) to reflect the fact that a worker was fatally injured. The court then increased this further to take account of Whirlpool's very large status and set a starting point of £500,000.

This was reduced by £50,000 for mitigating factors, and then by one third for an early guilty plea, resulting in a £300,000 penalty.

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