IN THE COUNTY COURT AT CHELMSFORD

Case No: G08YJ056

Priory Place
New London Road
Chelmsford
Essex
CM2 0PP

Date: 14th June 2023

Before :

HIS HONOUR JUDGE HOLMES

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Between :

REECE EDWARD CARL COMPTON **Claimant**

-and-

(1) S & K GROUNDWORK SOLUTIONS LIMITED
(2) TDR GROUNDWORKS LIMITED
(3) COLUMBUS BUILDING CONTRACTORS LIMITED **Defendants**

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Mr Philip Grundy (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Mr Doug Cooper (instructed by **Weightmans LLP**) for the **First Defendant**
Mr Jack Macaulay (instructed by **Keoghs LLP**) for the **Second Defendant**
Mr James Murphy (instructed by **DAC Beachcroft Claims Ltd**) for the **Third Defendant**

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Hearing dates: 21st to 23rd November & 15th December 2022

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JUDGMENT

His Honour Judge Holmes:

1. Reece Compton (Mr Compton) worked as a self-employed ground worker for each of the three defendants between January 2010 and December 2018. During that work he says he was required to use vibration tools which has caused him to develop Hand Arm Vibration Syndrome (HAVS). He seeks compensation from the defendants, including a substantial claim for future loss of earnings. The defendants each disputes the degree of exposure to vibration that Mr Compton alleges, and they deny that they have been negligent or are in breach of any statutory duty to him.

2. This claim is brought against three Defendants. Mr Compton worked for Columbus Building Contractors (Columbus) from 25th January 2010 to 5th August 2011. Mr Compton began to work for S&K Groundwork Solutions Limited (S&K) on 4th February 2014. Mr Compton and his father, Mr Carl Compton moved from S&K to TDR Groundworks Limited (TDR) in November 2017 and Mr Compton worked for that company until January 2019. S&K is the First Defendant, TDR the Second Defendant, and Columbus is the Third Defendant. Between August 2011 and February 2014, Mr Compton worked in a similar role for another employer, but for what were no doubt sound reasons, no claim has been brought against them.

3. The law in this case is not contentious and has been settled by a number of cases over the last fifty years or so. The claimant must establish (1) his use of hand-held vibratory tools and his resultant exposure, (2) breach of duty, (3) causation/injury, (4) quantum (including disability under the Disability Discrimination Act 1995). The parties agree that the first issue is a simple question of fact. I will deal with that issue first.

WORK FOR THE THIRD DEFENDANT

4. Mr Compton began to work for the Columbus when he was 18 years of age. Mr Compton began that job at the same time as his father. The work of Columbus, according to Mr Compton, was mainly house extension and some work for the Co-operative supermarkets in the area.

5. When he began his work, Mr Compton was an inexperienced labourer. He says that after a couple of weeks of training, he started using vibration tools: he says he used Makita drills, Stihl disc-cutters, wacker plates, hydro-breakers (thought by the experts to be a hydraulic breaker) and electric breakers. His account is that he used at least one of these tools, sometimes all of them, each day.

6. Mr Compton says that as the least experienced member of the gang, he was the one given the job of using the vibrating tools, so that the more skilled workers could focus on doing the parts of the job which required more skill, such as installing drainage. Mr Compton describes his work as including cutting and breaking down walls, laying concrete floors such as garden paths, tarmac and paving. He would also rip out ceilings and kitchens and use a wacker plate. When working internally, he would use battery drills for screwing plasterboard and electric breakers for removing walls. Outside he would use the heavier tools.

7. In his witness statement, Mr Compton describes having to break concrete: a job which took a significant amount of time. He gives specific examples of a day's work at the Walton Road Co-operative in Felixstowe and at another Co-operative shop in Whitehouse: both involved the intensive use of vibrating tools. Mr Compton also provides a specific example of working for two months at an army barracks. During that job he had to cut and break tarmac to expose the gas (presumably pipes). He estimates that he spent between one and three hours per day using disc-cutters and hydro-breakers. He says that during the same job he would use a disc-cutter on occasions for drainage work.

8. Mr Compton says that at no stage during his work with Columbus was he provided with any specific advice in relation to HAVS. There was no job rotation, no advice about trigger times, and no health surveillance.

9. Columbus have disclosed a health and safety handbook in these proceedings. Mr Compton says that he has never seen it before. It post-dates his employment, although evidence on behalf of Columbus says that a similar document was in use at the time Mr Compton worked for them.

10. During the course of cross-examination, Mr Compton was taken to his Particulars of Claim. It was suggested but in relation to the First and Second Defendants, he had provided an estimate of how long he used vibrating tools. Mr Compton had to accept that the same information was not set out in relation to his work for Columbus. Mr Compton did, correctly, point out that further detail was provided in his witness statement.

11. Mr Compton was asked how it was that he had come to remember some of the jobs he had undertaken between the pleadings being filed and his witness statement being written. He said that he had spoken to some people, and that had helped him to remember the jobs. He said that he driven round the Ipswich area which had also assisted. It was suggested to him that the person who had

assisted was his father, as they had worked together, but Mr Compton seemed to suggest it was somebody else but did not say who.

12. It was suggested to Mr Compton that the majority of work undertaken by Columbus was domestic house extensions. Mr Compton accepted this. He also agreed that Columbus was a small company employing a number of people in different trades, but in relation to groundworks it was only him and his father.

13. Mr Compton was asked about what was involved in the work he did. It was suggested the ripping out in domestic works would not involve the use of vibratory tools, and whilst Mr Compton appeared a little reluctant to accept this, ultimately, he did. It was suggested that if he did use a wacker plate to form the base of a patio, this would be for a very small area and would take an extremely short period of time. Mr Compton said that it would depend on the size of the patio. That is of course true, but was an example of a failure to give a direct answer to a simple question.

14. Mr Compton was asked about the work at the Co-operative shops. It was suggested to him the alleged time of 5½ hours' work on vibratory tools at the White House Co-op could not be right given the work involved: Mr Compton said it was an estimate. Mr Compton made reference to the work of the army barracks but also to an alleyway and a back garden which had taken a full day to breakout.

15. Mr Compton was asked during cross examination about his use of vibratory tools. He said that after a month or two he was using those tools but he also said, "it was a slow process in building me up." Mr Compton was asked questions about what he had said in his witness statement in relation to working with vibratory tools. In paragraph 8 he said this: "I started off training and, after around two weeks of working here, I started using vibration tools." Then at paragraph 10 he said this: "my exposure increased after a few months of being there to being fully trained and on the vibrating tools within a year." In answer to counsel's questions, Mr Compton said that he was able to use the various tools within a year but he could not be more precise because the passage of time.

16. Mr Compton was asked about the availability of specific vibrating tools. He agreed that what he referred to in his statement as a hydro-breaker is a jackhammer. When it was suggested to him that Columbus did not own a jackhammer, Mr Compton responded by asking, rhetorically, whether they could not hire one in. It was suggested that Columbus did not own a wacker

plate, and that whilst one might have been hired from time to time, it was not routine. Mr Compton did not agree.

17. Mr Compton was asked about whether Neil Columbus came and worked on site. He said he came to site on a frequent basis. He accepted that Paul Cobbold worked on site. Mr Compton was asked whether Mr Columbus or Mr Cobbold had trained him. Mr Compton said that Mr Cobbold and his father had done so, rather than Mr Columbus.

18. Ultimately, Columbus' case was put to Mr Compton, that he did not use vibrating tools at all, Mr Compton said that this was nonsense. It was put to him that only thirty percent of Columbus' work required vibrating tools. Mr Compton did not agree.

19. Mr Carl Compton gave evidence that the work undertaken at Columbus was as described by his son. He says that they were never provided with training or advice in relation to HAVS, the risks of excessive exposure to vibration or trigger times. He also could not remember any risk assessments being carried out. Further, he said he had not seen the health and safety handbook.

20. Mr Carl Compton accepted that Columbus did smaller jobs than either S&K or TDR. He agreed that the average job was a domestic extension, although he said they did some bigger jobs that involved block paving. He agreed that even the jobs for the Co-op were small jobs, and if extensive groundwork was required then a company like S&K or TDR would be brought in. He said that none of the jobs referred to in the section of his statement concerning Columbus required vibrating tools. He said that there were occasions when they had to break out concrete. He said that he could remembered his son "busting out walls" using vibrating tools.

21. He was asked whether he was aware of the connection between vibrating tools and damage to hands. Mr Carl Compton did not deny this but merely said, "We just cracked on". He then said that he was "possibly" aware of the link, and then finally accepted that he was aware. It was suggested that a father, knowing of the link, would not allow his young son to use vibrating tools for six hours a day, he replied, "We had to crack on otherwise we would have no job."

22. Mr Neil Columbus gave evidence on behalf of Columbus. He said that Mr Compton was taken on as a labourer, not as a groundworker, to assist his father. Mr Compton would report to his father, and his father to him.

23. Mr Columbus said that at the relevant time, Columbus owned three electrically powered breakers, one light and two heavier ones. They bought a jackhammer in 2015, long after Mr Compton stopped working for them. The company also owned one Stihl saw. Mr Columbus' evidence is that Mr Carl Compton would be the one using the saw. Mr Columbus cannot recall whether the company owned a wacker plate at the time or simply hired one in as and when required.

24. Mr Columbus' primary position is that Mr Compton was not permitted to use vibrating tools as a young inexperienced worker. He says that he visited site once or twice a day and would sometimes work along side Mr Compton and his father and on none of those occasions did he see Mr Compton use a vibrating tool.

25. Mr Columbus dealt with the absence of documents from the time. He says that the company moved premises at some stage in 2019 and as a result all documents over six years old were deleted or destroyed.

26. During cross-examination, Mr Columbus maintained his account. He said that he had employed Mr Carl Compton as a foreman, but he quickly discovered that he did not know much. Mr Columbus accepted that some of the jobs undertaken by his company required vibratory tools. He said that it was him and Mr Cobbold, although a self-employed contractor, assisted him in managing the business, who would determine what tools were required for which jobs. They would remind staff about the risk of vibratory tools. He said that none of the work his company did would require the use of tools for a long time, it would be an hour or two hours as a maximum. He said that if a job had a large amount of concrete to remove, he would get in a sub-contractor.

27. Mr Paul Cobbold also gave evidence on behalf of the Columbus. He said that he was on site with Mr Compton for about twenty percent of the time. He described Mr Compton's role as being to carry out general labouring tasks such as preparing materials, transporting items with a wheelbarrow or digging out with a shovel. Mr Cobbold said that Columbus generally carried out smaller works such as patios and refurbishment work, but did, on occasions, do larger projects such as extensions. He echoed Mr Columbus' evidence about the use of vibrating tools, both in terms of extent and period of use. He does not ever recall seeing Mr Compton using a vibrating tool.

28. Mr Cobbold also repeats the evidence given by Mr Columbus about the Health and Safety Manual. In addition he said that when tools were hired in, they came with a book telling the men how to operate them, including information on vibration exposure times. In cross-examination Mr Cobbold said that the

manual was kept in the office (he does not say that it was provided on induction, as Mr Columbus did).

29. In cross-examination Mr Cobbold said that he agreed that the workers were regular users of handheld vibratory tools. Mr Cobbold said that risk assessments were carried out, but he said that most of the jobs were minor and with certain urgent jobs there might not be time to write a risk assessment out. He said that to his knowledge, Mr Compton was a banksman, and when they were working in trenches, he would square off, he might use a pick and do barrow work.

WORK FOR THE FIRST DEFENDANT

30. Mr Compton and his father both began work for S&K on 4th February 2014. Mr Compton says that initially his gang was just him and his father, but within two years it had grown to five people. Once the gang grew, Mr Compton says that his father was the foreman, although after Mr Reegan Slew began work, the role of foreman moved to him. Mr Slew gave similar evidence, although Mr Carl Compton denied that he was a foreman, or sought to minimise his supervisory role.

31. Mr Compton says that he was employed as a groundworker and primarily used saws, disc-cutters, CP9 guns, pokers, wacker plates and breakers. Mr Compton says that as the most inexperienced person in the gang, he was the one given the task of using the vibrating tools. When he was just working with his father, his father who would use the digger as Mr Compton did not have the appropriate ticket.

32. Mr Compton alleges that despite the company owning some tools and from time to time hiring others, that the correct tool was often not available for any given task. He says that he routinely had to use electric breakers (which were not as powerful as the appropriate tool) which caused the job to take far longer than it should have done, thereby exposing him to a greater dose of vibration. In paragraph 25 of his statement he says this, "I estimate that the most time that I spent on vibrating tools in a day was approximately 6 to 7 hours a day. The least amount of time spent on vibration tools altogether would be an hour but this was very rare and if I was using a digger, I was generally operating vibrating tools for the majority of my shift every day."

33. Mr Compton deals with a number of specific jobs in his statement and the nature of those jobs was explored in oral evidence. One has to have a degree of sympathy for all of the witnesses who gave evidence, trying to recall specific events a decade or so ago, when the witness would have little reason to recall

those events for the majority of that time. However, an analysis of what is remembered is essential.

34. The first specific job set out by Mr Compton has limited detail and is described as an example of a job on a small housing estate in Halstead.

35. There is reference in his statement to what appears to be another job in Halstead, although it may be the same. He describes a house which had already been built. For five hours a day for two weeks, he was required to break down concrete piles with a CP9 gun. He then had to construct a cordeck which required the use of a poker for two to four hours a day for four to five days. He later returned to the same site to do some work involving kerb edgings, shed bases, laying slabs and the like which required further vibration tool use, but for a lesser period.

36. Mr Carl Compton in his statement makes reference to this job. He says that a digger would dig round a pile which would take about 15 minutes, before moving onto the next pile. He describes his son being one pile behind the digger. This seems surprising, and indeed Mr Worthington, the defendants' engineering expert, doubted that 15 minutes would have been sufficient had only a CP9 gun have been used. When challenged in cross-examination Mr Carl Compton said that they might have fallen two or three piles behind and that it would taken them more than 15 or 20 minutes to do a pile.

37. I accept the evidence of S&K's witnesses that this job did not take place as Mr Compton and his father describe. Leaving aside the obvious HAVS risk involved, the idea that a businessman would tolerate the sort of delay inherent in using a CP9 gun to break down a pile, when a pile crusher could do the majority of the work in a far briefer period of time, simply makes no sense. I did not form the view that Mr Yuill is that sort of businessman.

38. The second job was a school built in Westcliffe; this also required the breaking down of piles. Mr Compton says he did this over a period of three to four weeks for six or seven hours a day using a CP9 gun and a disc-cutter. Other tasks were completed using some vibration tools for up to three hours per day, although the tasks are not specified.

39. In relation to this job, Mr Compton adds that he recalled "the site manager mentioned the job to management at S&K that … they should bring more staff in to assist us so that we could share the jobs between us but no changes were ever made."

40. Mr Yuill was asked about this job and he said that a pile cropper was available and he was taken to emails which have been disclosed showing that a pile cropper was hired at the relevant time. Mr Yuill's evidence was that this was for use at Westcliffe School. That is evidence that I accept.

41. The third job was a school in Burnham. This was a very substantial job which lasted for one or two years, although Mr Compton and his gang were only on the job for a fraction of that time. He describes breaking out concrete over two or three days for four hours a day on a small breaker. He observes that a digger attachment would have been quicker. After that, the area had to be paved. Others did the laying and Mr Compton says that he did all of the cutting, doing so for five hours a day over two to three weeks. Thereafter he had to use a wacker plate. He says that on this job, for a period of three months, he was using vibrating tools on a daily basis.

42. Mr Carl Compton also gave evidence about this job and that it involved a lot of paving. His son was required to break out concrete with an inadequate tool and as a result the job took twice as long as it should have done. He also says that the gang would pass paving slabs to his son to cut and that his son was the one who used the wacker plate once the slabs were laid.

43. Southend police station was described by Mr Compton as a job which required the use of a poker for between one and four hours a day on a concrete footing, and the use of an electric breaker.

44. Mr Compton also refers to a job in Manningtree where he was required to cut an area of tarmac with a disc-cutter and then use a broken hydro-breaker. The result of the breaker being broken was that the job took twice as long. Mr Compton says this in his statement, "I recall we reported the broken hydro-breaker and requested a pecker for the digger but management didn't seem to care as the tool was their own and it was cheaper to continue using it rather than hiring another one." Mr Compton says that he used the disc-cutter and breaker for around five hours a day for three days. He spent a little less time on vibrating tools over the next couple of days.

45. Mr Slew gave evidence about this job. He says he complained about the inadequacy of the breaker because the tarmac was so thick. Mr Carl Compton was sent by Mr Slew to get a better tool from another gang. The implication is that the correct tool was made available.

46. There was a job at Felixstowe Academy where Mr Compton was using a disc-cutter and hydro-breaker to dig out for drainage and laying edgings. This job

lasted for three weeks. Mr Compton says that he spent the majority of his time on each shift using vibrating tools.

47. Mr Compton makes reference to a job at Castle Oak Baddow. This job lasted for around two months and required them to clear the site, dig footings and pour footings. He says that he was required to use a poker and at another stage cut out tarmac slabs and lay paving. He describes having to use the wacker plate and various other tools, and he estimates his vibrating tool use to have been up to four hours a day throughout that two-month period.

48. At a job in Colchester, Mr Compton was required to break tarmac for what he describes as a long distance. He was required to use a disc-cutter; a floor saw and a hydro-breaker for approximately two to five hours a day for a three-week period.

49. In Langford he was required to cut and break tarmac. He describes using a disc-cutter and a breaker for between two and five hours a day for a five-day period.

50. A further job that Mr Compton makes reference to was in Cotessey. He was required to undertake remedial works which included cutting and breaking out curbs ready to be replaced. He says he used a disc-cutter and a hydro-breaker and was undertaking the use of vibratory tools for between three and four hours a day for two months on that job.

51. In Danbury he undertook a short two-day job which involved laying slabs and for each of those two days he was using a disc-cutter for around three hours.

52. Mr Compton makes reference to a job in Merit Braintree which lasted for some seven weeks. He was required to dig out and use a poker on concreting some pads. He says he used the poker for four hours a day for a period of two weeks. For a further two to three weeks on the same job he had to cut and break concrete and tarmac for around two to three hours a day to allow some cables to be laid. Finally on that job he had to break a tree stump using a breaker because the company refused to pay for the appropriate professional equipment. He also says that he had to use a wacker plate around the new building for two hours a day. Over what period is not specified.

53. Next was a job in Bell Westcliff. Mr Compton says that for a period of five days he was breaking down piles using a CP9 gun which took him between five and six hours a day.

54. Then at Ghyllgrove School, Mr Compton says he used a breaker on some tarmac. He was required to use a wacker plate on a large area for about eight days. He was using vibrating tools for between one and four hours a day.

55. Reference is made to a further job in Harwich which involved breaking out tarmac using a disc-cutter and electric breaker. He says he undertook this job for one and a half months working for between two and four hours a day.

56. At a job at Brentwood School he was required to cut and break tarmac. Once again he was using a disc-cutter and hydro-breaker this time for four hours a day over a five-day period.

57. Finally, in his witness statement, just prior to going through the detail of the jobs I have just set out, Mr Compton makes reference to a job in Shrewsbury. No more is said about it than that.

58. Mr Compton makes reference to other jobs. He says they would involve working on footings, paving, curb laying and tarmacking. Predominantly he says he worked on cutting and breaking tarmac and or concrete as he was the cheapest labour with the least experience and as a result he was spending the majority of his shifts using vibrating tools.

59. A central part of what Mr Compton says is that the correct tools were rarely available because, in an attempt to save money, S&K would provide small tools rather than incur in the costs of hiring. Mr Compton said that S&K hired equipment out to others as well as using that equipment for their own work. Whilst he may accept that S&K owned a pecker, he said that it was mainly hired out and therefore not available to him and the other workers. Therefore, if it was necessary for him to break through concrete or tarmac, he would need to use a jackhammer as opposed to being able to use an attachment on a JCB. When it was suggested to him the pecker was never hired out and was always available for groundworks, Mr Compton said that it was on other sites. He said that he recalled asking for it on a number of occasions and being told by Mark and Steve that it was not available.

60. He also says that he received no advice or training in relation to the dangers of exposure to excessive vibration. The only health and safety training that he can recall was in relation to asbestos and digger/dumper training.

61. Mr Compton comments in his witness statement on some of the disclosure that S&K has provided. He makes reference to a poster or leaflet which contains a vibration output table. Mr Compton says that he has never seen that document

before, and whilst there may have been some posters up on the canteen wall he did not have time to read them and was not provided directly with information in relation to HAVS.

62. One of the documents provided in disclosure by S&K is a health surveillance form which is dated 30th March 2017. Mr Compton, in his statement, says that it was not completed by him and does not contain his handwriting. He says that he cannot recall signing the form but, if he did it is likely that it was passed to him on site and he signed it without any knowledge of what it was that he was signing. He comments that it was not unusual to be asked to sign things and that he naively signed documents that he was asked to sign by his employers.

63. In cross-examination Mr Compton described the symptoms he was suffering from in March 2017 as slight, almost imperceptible. He was taken to the same health surveillance hand check sheet. Mr Compton said that the signature on the form was not his. Mr Compton was asked what he would have said had he been asked about his symptoms, and he said that they were very slight and he probably did not realise, it was just one day with slight discolouring, it was the winter when it hit him. He said he had been watching a motocross event and one finger had gone white.

64. In addition, Mr Compton says of the method statements that have been disclosed that these were documents that he might have been asked to sign, but he maintains that he was given no specific information in relation to the risks of HAVS at any stage of his employment.

65. Mr Compton was asked about risk assessments and method statements in cross-examination. He was asked whether they were made available to him and he said he believed that they were. It was put to him that they contained information about vibration and he replied, "I guess so, but I never saw them." He was asked about his signature on a couple of method statements in the bundle. Mr Compton suggested that he probably did sign: someone would come round with a clipboard, laugh about it, and he would sign. He said he was quite young at the time whereas nowadays he would read what he was signing.

66. Mr Compton appears to have taken a similar view in relation to other information on site. He said he had attended many site inductions but he never looked at the health and safety folder which was in the cabin on some of the sites. He said that at no stage was he told how he should calculate the appropriate exposure time on the various tools. He said this was never discussed on site.

67. Mr Compton was taken to various photographs of him undertaking work on behalf of S&K. It was put to him that in those photographs he was either driving a digger or otherwise engaged in work which did not involve vibrating tools. Mr Compton had to accept that, although he suggested that the photographs had been specially selected to ensure they did not show him undertaking work on vibrating tools.

68. Mr Reegan Slew gave evidence on behalf of the Claimant. Mr Slew began to work for S&K after Mr Compton and his father had done so. Mr Slew said that when he began to work at S&K, Mr Carl Compton was the foreman, but that Mr Carl Compton asked him to take over that position due to personal circumstances. He then said this in his statement, "when Carl's personal circumstances improved, I was moved to a different gang as a Foreman …"

69. Mr Slew was asked about site inductions, he said that he recalled being provided with an induction on three sites. He was asked whether those inductions included information about vibration tools and he accepted that they did, but he described them as generic and said that no one read them. He also commented that if a worker did take the time to read them then he would not be working for the company. Mr Slew said that where he had signed for documents, he did so without having read them. Mr Slew describe how forms for signature would be brought to site by Mr Parnham, Mr Yuill, and on rare occasions by Mr Yuill's father. They would also conduct the toolbox talks.

70. Mr Slew was asked in cross-examination about his role at S&K. He described being a supervisor: making sure that everyone went home alive. He denied that as a supervisor he was required to monitor the exposure of workers to vibration. He said that he did not always look at method statements before work began. He denied that it was his role, or part of his role, to make a record of vibration exposure. He said that he did keep a diary but it was solely for his personal benefit so that he could answer questions about when work had been undertaken.

71. In his statement, Mr Slew commented on a number of jobs. One at a care home in Great Baddow he recalled both Mr Comptons cutting through a lot of concrete and breaking it out to change some drainage pipes. He said that the wrong tool was provided for undertaking this job, and that had a hydraulic breaker been provided, the job would have taken a far shorter period. He says in his statement that that was a common position, and that often inadequate tools were provided. Despite this, the company also complained that they were missing targets.

72. Mr Slew also alleged that although Mr Compton was an experienced ground worker by the time they were working together, he was the least experienced and therefore give the jobs which no one else wanted, including use of the vibrating tools.

73. Mr Slew was asked about the tests undertaken for a CSCS card. His evidence echoed that of Mr Compton's, although he was perhaps slightly blunter in saying that that the only thing required before taking the test was to get to know your fire extinguishers, the remainder was common knowledge. At a glance you could pass, he said.

74. Mr Slew, in his statement, said that there was no HAVS training given to them and they were provided with no information about trigger times or how long they should be spending on each tool. Mr Slew also says that there was no occupational health assessment in relation to HAVS whilst he was at S&K. He recalls one optional health check on a job, but no more.

75. Mr Slew was also asked about the presence of folders in the cabin on site. Once again he described whatever there was as being generic. He was shown two charts that appear in the trial bundle showing safe and unsafe levels of vibration exposure. Mr Slew was asked what the purpose of them was and he acknowledged that they showed the time that you can use various tools for but he said that if you abided by these times you would not have a job. When it was put to him that the workers were instructed to follow those charts he said that the only instruction was to get the job done, and they were threatened with the sack if it was not.

76. Mr Slew was also asked about the availability of plant to ensure the jobs were done correctly. He said that Mr Yuill would complain that work was taking too long, but that he would not make the right equipment available. In his statement, Mr Slew says that Mr Compton use to complain to him, as his foreman, "about the extended use of the tools and the fact that the jobs could have been completed quicker with the right tools." That is not something which Mr Compton has said in evidence. Mr Slew says that he reported this to Mr Yuill and Mr Parnham: he says nothing happened as a result of his complaints.

77. Mr Carl Compton in giving evidence in his statement about work at S&K said that his son rarely got a break from using vibrating tools. He says that there was no HAVS training or any information or advice about exposure to excessive vibration. He also does not recall any health surveillance.

78. Mr Carl Compton was asked about how he and his son came to leave S&K. He denied that they had been involved in stealing tiles from a site. He said that they were left over and that the customer had no use for them and he had been told that they could take them.

79. One curious part of his evidence was that Mr Carl Compton sought to deny that he had a supervisory role whilst working at S&K. He said he did not have the SSS (a supervisor's training qualification) and was not paid any additional sum for being a supervisor. He did accept that he told his son what to do, so he may have got the impression that he was in a supervisory position. He could say less to explain Mr Slew's evidence. He continued to deny that he was in charge, he said they all got on with the job. I do not accept his evidence on this point.

80. Perhaps consistent with that denial of any level of supervision was his evidence that any method statements or risk assessments he might have seen, or signed for, had remained unread. He could not recall whether HAVS had been part of his CSCS test. He never looked in the Health and Safety folder in the cabin. He denied seeing any of the information disclosed within the proceedings. Mr Carl Compton was also asked about whether the vibrating tool work was passed around, and he said not necessarily.

81. Mr Stuart Yuill, the managing director of S&K, gave evidence. He described S&K as a groundworks company, and its clients included Balfour Beatty, Network Rail and Sainsbury's. Mr Compton was self-employed, but he accepted responsibility for his health and safety whilst working for S&K.

82. He gave evidence that Mr Compton had a CSCS card which he understood required knowledge in health and safety, including the risks posed by vibratory tools. Mr Yuill said that for each of the jobs a risk assessment and method statements were prepared. These would need to be submitted to the main contractor. He says that Mr Compton was briefed verbally, and was required to read and understand the risk assessments and method statements. He was then required to sign to confirm his understanding. Mr Yuill described holding toolbox talks on a variety of subjects, including the use of vibratory tools and HAVS.

83. Some risk assessments have been disclosed during the course of these proceedings. None of those risk assessments deals directly with the use of vibrating tools, although there is reference within them to further documents which did. Those documents have not survived.

84. Mr Yuill's evidence is that the extent of vibrating tool use alleged by Mr Compton is a gross exaggeration. Mr Yuill says that as part of the risk assessments the operatives were provided with, and should have known and adhered to, were vibration and noise limits for each tool. Mr Yuill also makes reference to a vibration output table which was available to workers at site, and also to an information sheet prepared by the Construction Confederation about HAVS. That document also contained a chart to allow workers to work out the exposure time when using a particular tool. He says this in his statement, "Such information typically formed part of the job pack given to each team and kept in a file onsite or in the work vehicle for easy access."

85. In addition to site induction provided by the S&K site supervisor, Mr Yuill said that each main contractor would also hold site inductions. Mr Yuill says that Mr Carl Compton was his son's supervisor and would therefore have had responsibility for the allocation of work to his son.

86. Mr Yuill says that in the first year of Mr Compton working with S&K he does not think that Mr Compton would have used vibrating tools for any significant period of time and that he would be amazed if it was for more than an hour's trigger time in an average day. He does, however, accept that he would have used tools such as saws, disc-cutters and wacker plates, and that breakers were occasionally used to break up an area around a given point.

87. Mr Yuill recalls that a year or so after Mr Compton began to work for S&K, they paid for him to obtain an excavator licence. Thereafter, Mr Compton would use vibrating tools less as he was performing other tasks. Mr Yuill says that if Mr Compton was using tools to anything like the degree he now says, then he was doing so in contravention of the method statements and risk assessments, and that his father was not supervising him properly. The latter point was made a few times, although its significance for this case is lost on me: if Mr Carl Compton was not supervising his son properly, then the responsibility for that rests with S&K and therefore it is not a point which assists them. Counsel accepted that in submissions.

88. In cross-examination, Mr Yuill was asked about the general practice at S&K in relation to vibrating hand tools. Mr Yuill accepted that there was a duty to avoid the use of hand-held tools which in any event could speed up work. In terms of the risk assessments and method statements, these would be prepared by consultants, A&M Safety Specialists, or they would be undertaken by him or Mark Parnham, one of his fellow directors.

89. It was suggested to him that those documents should have the tool listed, what the vibration output would be, how long it would take, and how long a man should hold the tool for. He accepted this, but he said this information was in the site folder. He said that there would have been a document which broke it down, but that none was now available. He was taken through the risk assessments and method statements which are now available, and whilst there is reference to a HAVS risk assessment – the relevant box having been ticked – that specific document has not survived. He was asked about how the men were meant to calculate the use of two different tools on the same day. Mr Yuill referred back to the same tables and said the men had the information to work this out.

90. Mr Yuill was asked a hypothetical question about what would happen had a worker reached the daily limit and the task was not completed. Mr Yuill said that the men should ring him or another person in management. He said he had never received such a call.

91. He ultimately accepted that people working for him might well need to use a wacker plate for as much as 30 minutes in a shift, and might need use a poker for that sort of time as well.

92. He was asked about his understanding of limits on usage of tools. He said he understood that $5m/s^2$ was a maximum usage which must not be exceeded and that where the A(8) – the average use in an 8 hour shift – exceeded $2.5m/s^2$ that the regulatory regime imposed duties on the employer.

93. Mr Yuill was also cross-examined about various steps that could or could not have been taken to reduce or ameliorate the use of vibrating tools. The ultimate conclusion from that evidence was an acceptance that it was necessary to reduce use as much as possible, but also that some jobs still required the use of handheld vibrating tools.

94. Mark Parnham, a director or S&K, also gave evidence. Mr Parnham said that he was on site a lot. His background was in civil engineering and therefore he would lay out the jobs. He accepted that Mr Compton would have used vibrating tools during his work for S&K. Mr Parnham gave similar evidence to that of Mr Yuill. He did describe spot checks to ensure that work was being done in accordance with risk assessments and method statements. He was asked very similar questions to those posed to Mr Yuill about how the men were to work out the trigger times. He gave similar answers. Essentially he said that there were risk assessments and method statements and that the men were

to work out the limits each day. He also accepted that there was a role for supervision in stopping men from using particular tools for too long.

95. Mr Compton was responsible for undertaking a health surveillance check sheet on Mr Compton on 30th March 2017. This asked about hand symptoms and Mr Compton denied having any hand symptoms at that point. Mr Parnham described getting all of the staff on a site in Ely together and asking them each about symptoms. He denied that he had forged Mr Compton's signature. This was the first time this sort of assessment had taken place. Mr Compton said they had been advised to do it by their health and safety advisor.

96. Mr Parnham also comments that at no stage during his work with S&K did Mr Compton complain about hand symptoms. He accept that there were no records of any specific training about HAVS.

WORK FOR THE SECOND DEFENDANT

97. Mr Compton and his father moved from S&K to TDR in July 2017. Mr Compton said that initially he worked through an agency and in January 2018 he became directly employed. In cross-examination he said that he finished working in December 2018, his statement says January 2019: nothing turns on that difference.

98. Mr Compton says that he worked as a ground worker and was required to use a number of vibratory tools including breakers, pokers, disc-cutters, ordinary drills and wacker plates during his work for TDR. He says that he used these on a daily basis throughout the course of his employment. He used a Stihl saw for cutting slabs into edgings and cutting tarmac along the curb. He did not accept that he was employed as a slab layer rather than as a ground worker.

99. During his employment, Mr Compton says that he was based primarily at the Kelvedon site. For a period of nine months he was required to cut and lay slabs. That job included laying the slab bases, the slabs themselves, and scaffold mats. He also says that he was involved in cutting drainage, breaking tarmac and other remedial work. He estimates that he used disc-cutters and wacker plates for up to five hours a day. Mr Compton describes having to cut out the road leading to one of the estates with a disc-cutter. He described one week where he had to cut a kerb line down a road using a disc-cutter for a period of five hours on each day. When using a wacker plate to set a scaffold mat, this required the use of the wacker for four hours each day. He describes it being cold when he was doing that work such that his hand froze.

100. Mr Compton describes working at a shop in Colchester. On this job, which was for between one-and-a-half and two months, he had to cut and replace curbs. He had to take out a kerb line and work all the way down the road. He was also required to cut out the tarmac on a long stretch of road by himself using a breaker. He estimates his use of the disc-cutter on the kerbs as being around two hours a day, but he says that he was switching between disc-cutters and hydro-breakers or jackhammers, but he does not specify the amount of time spent on the latter two.

101. At Stanway he was involved in curb laying. Once again this required him to cut and break around manholes and to replace curbs. He described using disc-cutters and hydro-breakers for between two and five hours a day for approximately two months. On other days he would work on paving which would include cutting round manholes. He said he would have to use a disc-cutter the hydro-breaker and then brute force to undertake the task. He estimates that the majority of his time was spent using vibrating tools. He notes that there were few jobs when no vibrating tool usage was required. Those times when he would be using a digger for extended periods were, he says, rare.

102. Whilst working for TDR, Mr Compton says that he received no health and safety training or advice in relation to HAVS. That said he describes doing a basic health and safety course and a disc-cutter course and a CAT and Genny course. Mr Compton says there was no vibration training included in these. He says there were no occupational health assessments during his time with TDR.

103. Mr Compton says that he left TDR in December 2018 so that he could come off the vibration tools after his diagnosis on HAVS. In cross-examination he accepted that he did not tell TDR of his diagnosis between June 2018, when it was made, and when he left their employment. Mr Compton said that he thought that they would not have allocated work to him. He also agreed that if he had told them of his symptoms in his hands when he was applying for a job, that he would not have been offered the job.

104. Mr Compton commented in his witness statement on a form which was completed on 2nd November 2017. In that form he has ticked "no" when asked if he has a history of HAVS. He says that that information was correct when the form was completed. He said that he had been suffering from intermittent symptoms, but those symptoms were not attributed to HAVS or vibration exposure at the time that form was completed. I have significant difficulty accepting the accuracy of that evidence.

105. Mr Compton was asked about the examination he had with Mr Howard, his medical expert, for these proceedings. When it was put to him that he had told Mr Howard that there had been no health checks, he accepted it was wrong, but maintained that he thought that that meant a medic coming to site.

106. Mr Slew was asked about the period of time that he overlapped with the Comptons at TDR. He said that he worked at TDR for some three months. There was some confusion as to exactly when this was. He confirmed that he never worked on the same site as the Comptons whilst working for TDR. He could give little evidence of relevance as a result, but he made critical comments about TDR in his statement and said it was similar in the way it operated to S&K.

107. Mr Carl Compton said that during their time at TDR, that his son used the vibrating tools even more than he had at S&K. He was mainly using disc-cutters, breakers and wacker plates. Mr Carl Compton said that there was no HAVS training and no occupational health assessment whilst they worked at TDR.

108. Mr Carl Compton denied that he was a foreman or otherwise in charge of the gang whilst they worked at TDR. He did not accept that if his son had said something earlier about his symptoms, that things could have been arranged to keep him away from the vibrating tools. Although his son, during his evidence, said that that was exactly what they did after his diagnosis in June 2018. Mr Carl Compton denied that the amount of vibrating tool use was being significantly exaggerated.

109. The second defendant served a statement from Paul Smith, its general manager at the time, however a day or two before the trial began a Civil Evidence Act notice was served saying simply that he no longer worked for the company and was unavailable for trial. I permitted the statement to be admitted into evidence and have considered the material. The weight to be attached must be limited given what was said in the witness statement from the Second Defendant's solicitors explaining the late service of the Civil Evidence Act notice. It a WhatsApp message to the solicitor, Mr Smith says that "I no longer work for TDR and as I have said before I don't know Mr Compton."

110. Mr Smith's statement says that Mr Compton was employed as a slab layer and that his time engaged on cutting slabs would have minimal due to the time taken to measure and lay the slabs. He sets out, in addition, the training courses which Mr Compton undertook whilst working for TDR.

OTHER EXPOSURE

111. Mr Compton was asked about motocross. He said that he thought the last time he had ridden more than twice a year was in 2013. He also said that in 2017 he had a bike which he could not physically ride and he sold it off straightaway. Mr Compton was taken to a letter from a physiotherapist. Within that letter is the following, "He denies any trauma although did mention having some falls when participating motocross around the time that the symptoms [in the shoulder] commenced but is not aware of any specific accident." He said that he had come off the bike, but that reference to falls in the plural was a typing error. There is also a reference to Mr Compton boxing, and he accepted in cross-examination that in 2017 he was able to undertake that activity.

112. Mr Compton was also taken to a neurophysiology report dated 13th November 2017 which contains these words, "Known Raynaud's – now has hand and wrist pain R>L doing motocross Impacts from handlebars seem to bring on severe hand pain, swelling and numbness after only a short time These symptoms are unlike those he has from his typical Raynaud's". Mr Compton was also taken to an epilepsy nurse contact summary dated 24th July 2017 where the following is recorded, "He asked whether he could still take part in motor-cross." The advice given is that it would not be safe for him to undertake. It was suggested that Mr Compton was undertaking rather more motocross that he was prepared to accept. He denied that. In my judgment the weight of evidence suggests otherwise.

OTHER ISSUES

113. Mr Compton was asked about recreational drug use. He accepted that he had smoked cannabis socially during his twenties. There was a video found on one of his social media accounts which showed him doing so. He said, when asked in cross-examination, that he had taken no other recreational drugs. He was taken to a clinic note from August 2017 in which he admitted to cocaine use, but not "IV drugs". He said that he thought the question had referred to the video from one of social media accounts. I do not accept that evidence: his answer was a lie.

114. Mr Compton was asked about his cigarette consumption. He said that he would smoke occasionally when he was drunk. He maintained that he was a non-smoker. He was taken to an entry in his medical records which records that he smokes three cigarettes a day. He denied that this entry was correct. Mr Compton told Mr Howard that he was a non-smoker. Mr Compton maintained that this was true. It was not true, but Mr Compton may have convinced himself that he was a non-smoker.

115. Ultimately, the position of both medical experts was that whether Mr Compton smoked tobacco or cannabis, or indeed took cocaine, was not of any relevance to the issues in this case. Therefore these points go solely to credibility.

116. Of more significance is Mr Compton failing to provide Mr Howard with the relevant family history. Mr Howard records on page 3 of his report, "There is no family history of similar attacks or episodes of Raynaud's phenomenon." It is clear that Mr Howard asked about this, as one would expect. However, there was a family history. Mr Compton was taken to a neurology referral where in January 2018, the GP has recorded, "Few years odd neuro symptoms arms and legs, what looks like raynauds but also motor weakness, variable and sensory disturbances/pain. Strong fhx of similar in father and sister father now disabled with symptoms." In a referral dated 25th June 2018, a doctor at Ipswich Hospital has recorded, "His sister has Raynaud's as well, but he is not aware of any weakness." Mr Compton had to accept these records and could not say why he had not said this to Mr Howard. He denied he had done it to seek to blame work rather than a family history for any symptoms that he might have been suffering. I do not accept that denial: in my judgment the omission was deliberate.

DEVELOPMENT OF SYMPTOMS

117. Mr Compton says that he first noticed symptoms of HAVS in around February 2017. In his witness statement he says that it began with him noticing intermittent numbness and tingling in his hands and that there were a few episodes where his fingertips went white. He says that the symptoms were neither persistent nor significant at this stage: they had very little impact on his work or social life. He says that as time went on his symptoms gradually worsened and he began to notice more persistent symptoms in or around November 2017, when the weather began to get colder. At this stage he noticed the whiteness gradually started to move down his fingers. He saw his General Practitioner on the 13th November 2017. His GP mentioned Raynaud's and carpal tunnel syndrome as possible causes, but no diagnosis was made. In his witness statement Mr Compton says that he discussed with his GP that his father suffers with carpal tunnel syndrome and that his sister, "experiences whitening of the tips of her fingers in the cold weather."

118. Mr Compton's GP referred him to a specialist and on 25th June 2018 he was diagnosed with HAVS. Mr Compton says that until that point he had not made a connection between the symptoms that he was suffering from and his employment. He says the consultant informed him that in his opinion the symptoms were work related rather than being due to any hereditary or other

condition. At this stage he was provided with a booklet giving him advice in relation to HAVS. It was at this stage that he began to think about alternative employment and working without vibratory tools as a ground worker.

119. I do not accept that Mr Compton had not at least thought about a connection between his work and his symptoms before the diagnosis in June 2018. He was, on my finding, aware of the link between vibratory tools and HAVS prior to that.

120. As at the date of his witness statement, 13th July 2021, Mr Compton said that he continued to suffer badly with his hands. It is particularly noticeable in the winter where he experiences several blanching attacks a day. However, he says that he experiences attacks all year round and he estimated them to be approximately three times a week on average. He says the numbness comes on more when he is exposed to cold and during the episodes of blanching. He says the attacks of whitening are disabling when they occur, and he has to stop whatever it is that he is doing. He says that his fingers turn white, they go numb, and his fingers are useless until the colour returns. He says that this can take around 45 minutes. When his hands do start to warm up they flush red and throb, which he describes as being extremely painful.

121. Mr Compton sets out a number of the steps he has taken to ameliorate his condition. He wears gloves and his bought expensive equipment in order to allow him to try and to continue to surf. He has also had to buy a big rubber case for his phone because he has a tendency to drop it due to the lack of grip. He describes struggling with certain daily activities. As examples, he says that it can be difficult to pick up small objects such as screws and buttons. He can drop glasses and bricks (when at work). He says that he struggles to maintain his garden in the colder months. Mr Compton says that he struggles when shopping as carrying bags can trigger his symptoms. Indeed even walking in the fridge or freezer aisles of a supermarket can trigger symptoms. In addition he says that he suffers with pins and needles overnight which causes him to wake and disturbs his sleep. He relates an occasion in the summer of 2018 when he was travelling to Newquay and had the air conditioning in his car on because it was a warm day, precipitated his fingers beginning to turn white.

122. Mr Compton is a keen surfer and prior to developing HAVS, he used to surf throughout the year both in North Norfolk and in Cornwall. He says that he would surf between two and three times a week. Mr Compton says that now he cannot surf between December and April. Even in the summer, whereas he

would have gone surfing for three or four hours at a time, he is now limited to between one and one-and-a-half hours before he risks an attack.

123. Two of the defendants have had investigations undertaken in relation to Mr Compton's use of social media. That has resulted in a number of photographs and videos being referred to during the course of the trial. There is no dispute that the person with the handle, "putafckinsockinit" is Mr Compton. There is a video uploaded on 8th July 2017 of Mr Compton either water skiing or wakeboarding. There is a photograph uploaded on 20th November 2017 of Mr Compton riding a motorbike off road which is accompanied by the caption, "Back on riding agen Feel #mx". Next is a photograph uploaded on 28th October 2018 of Mr Compton surfing with the caption, "From costa rica to walberswick 😂😂 fucking freezing son." Walberswick is a village on the Suffolk coast not far from Lowestoft. In relation to this photograph Mr Compton observed that due to the way in which the sea warms and cools that the warmest months for surfing in England are September and October.

124. On 6th December 2018 there is a picture of Mr Compton on a beach next to a surfboard with the caption, "Come on east coast bring some winter swells 🏵👍". Then on Christmas Eve 2018, a further photograph of Mr Compton surfing at Porthcawl, a few miles southeast of Swansea. Mr Compton gave evidence that as a result of the Gulfstream, surfing on the west coast of the United Kingdom is significantly warmer then on the east coast.

125. There are further videos of him surfing on 27th April 2019, 5th May 2019, 25th July 2019, 29th July 2019, and then again on 10th January 2020 at Walcott, a coastal village to the northeast of Norwich. There is a photograph of him appearing to wakeboard on 28th April 2020 and of surfing on 20th June 2020.There are also some images of him biking off road on 3rd March 2019, and a further one on 27th June 2020 and a video from the same occasion.

126. Mr Compton was also shown a picture of him rock-climbing in Costa Rica in October 2018 and it was suggested that this required a significant amount of finger strength. Mr Compton replied that there were some Americans who were going up and down far more quickly that he was, which was not an answer to the question asked.

127. All of these photographs and videos were put to Mr Compton. He suggested that some of them were old photographs posted sometime after the event. I reject that evidence. The comments attached to them are all in the present tense, there is no suggestion in any of the comments, made either by Mr

Compton or indeed those that have commented on his picture, to suggest these are happy memories of times past. To the extent that Mr Compton tried to persuade me otherwise, I reject his evidence.

128. Mr Compton was also asked whether his symptoms had continued to worsen after he stopped using vibrating tools. He said that they continued to worsen for a while and then eased off.

129. Mr Compton was taken to his GP records from 13th November 2017, where the doctor has recorded, "Problem: Raynaud's syndrome. History: motocross makes his whole hand swell up. Cold weather makes fingers go white and numb. Had to warm hands under the tap. Started Feb this year. Ground worker using power tools – also his hobby is off road biking, and this has started causing trouble too…" Note here, in addition, the inconsistency with his evidence of his motocross activity.

130. Mr Compton was also questioned about the extent of the blanching in the various fingers. The photographs do not show the same thing. Sometimes it is the tip of the finger, sometimes it is one side, sometimes there is a clear line and sometimes it is patchy.

WORK SINCE HE LEFT THE SECOND DEFENDANT

131. Since Mr Compton left TDR, he has worked as a bricklayer on a self-employed basis. In his oral evidence Mr Compton said that he had undertaken a course in brick laying before he began working for Columbus. It is, therefore, perhaps unsurprising that he returned to that trade. The attraction of the work to Mr Compton was that it did not involve vibrating tools.

132. Mr Compton says that he is continuing to suffer and struggle with his symptoms in the colder months and that he will often drop bricks due to a lack of sensation in his hands. He says that whenever the weather is below about 12 degrees Celsius he struggles. As a result, he has had to take a great deal of annual leave especially in the winter months when it is either been raining or the weather is below 5 degrees Celsius. At that temperature he would experience several episodes a day and he says the cold and damp weather makes it impossible for him to work. He says that he does wear gloves at work but these do not assist when the temperatures get very cold.

133. Mr Compton comments that whilst his current employer, being aware of his condition, is lenient with him he knows that they get frustrated when he takes too much time off. He says that he is worried about his ability to work in the longer term. Mr Compton says that he was earning approximately £150 a day

as a ground worker and then when he switched to being a bricklayer he was initially on £80 a day, but after a year and a half he was earning an equivalent sum to that which he earned as a ground worker.

EXPERT ENGINEERING EVIDENCE

134. The engineering evidence is summarised in a very helpful joint statement. The core of their evidence is summarised by them as follows:

"a) should the Court accept the Claimant's evidence, then the Claimant's daily vibration exposure will have exceeded the EAV [Exposure Action Value 2.5m/s^2 A(8)] and reached/exceeded the ELV [Exposure Limit Value 5m/s^2 A(8)] with all of the Defendants and placed the Claimant at a high risk of injury from HAVS;

"b) there are differences in how the experts reach the Claimant's vibration exposure estimates, however it is agreed that both approaches are feasible;

"c) where exposure was likely to reach or exceed the Exposure Action Value, or where there was risk of exposure reaching or exceeding the EAV, the Defendants should have carried out actions as required by the Control of Vibration at Work Regulations 2005 and detailed in L140 [an HSE publication on vibration]."

135. The experts gave oral evidence in accordance with their statements. They provided significant assistance in explaining the various methods they had adopted. Given my conclusions, it is not necessary to set out that evidence in greater detail.

136. The engineering experts were asked about the EAV and the ELV. Mr McGregor in his evidence said that there were no reported incidents of injury below 1m/s^2 A(8), and that it is rare below 2.5m/s^2. There is a theoretical risk of injury between 1m/s^2 and 2.5m/s^2, in the sense that there have been recorded incidents of injury.

EXPERT MEDICAL EVIDENCE

137. Mr Compton relied upon a report and oral evidence from Mr A. Q. Howard, a consultant general, laparoscopic and vascular surgeon. His report is dated 11th June 2019 and followed an examination on the same day. I have set out already some of what Mr Compton told Mr Howard.

138. Mr Howard did a number of tests upon Mr Compton which are summarised at section 5 of his report. Mr Howard concluded in section 6 of his report that there is no evidence of primary Raynaud's or musculoskeletal disorders which

could account for the claimant's symptoms other than HAVS. His firm conclusion is that Mr Compton has secondary Raynaud's (or HAVS).

139. Dr Roger Cooke, a consultant in occupational medicine provided a report to the defendants dated 11th August 2020. He did not examine Mr Compton. He criticised the approach of Mr Howard and a number of his conclusions about the distinction between primary and secondary Raynaud's. In particularly he criticised the use by Mr Howard of the light touch sensation test using cotton wool. That was, however, just one of the tests which Mr Howard used.

140. The joint statement was not particularly helpful. In their oral evidence they each defended their conclusion. Dr Cooke accepted the sensorineural symptoms and the history of tool use "increased the threshold of suspicion" that Mr Compton has secondary Raynaud's due to vibration. He held firm that other factors such as the distribution of the whitening and the family history caused him to conclude that this was primary or constitutional Raynaud's.

RELEVANT LAW

141. The Control of Vibration at Work Regulations 2005 set an exposure action value (EAV) at 2.5m/s^2 A(8) which provides a threshold level of vibration above which employers are obliged to take action. If the EAV is not reached, then there is no breach of duty on the part of the employer. The regulations also set a daily exposure limit value (ELV) at 5m/s^2 A(8) which, as the name suggests, is the maximum exposure that a worker should be exposed to. The EAV triggers a duty to undertake a number of steps, the ELV provides a limit. If the ELV is exceeded, then a claimant is unlikely to struggle in making out a claim either under the regulations or in negligence.

142. The Regulations only apply to the Third Defendant, thereafter section 69 of the Enterprise and Regulatory Reform Act 2013, has the effect that the Claimant's claim could only be brought in negligence against the First and Second Defendants.

143. That said, if the EAV was not exceeded then it would be almost impossible for a claim in negligence to succeed. If the EAV has been exceeded, then the Claimant must show that this was foreseeably dangerous and that the First and Second Defendants acted unreasonably in permitting this exposure or in failing to mitigate the risks arising from it. The test as to whether a duty of care exists is set out in *Page v. Smith* [1996] A.C. 155 at 190C in the speech of Lord Lloyd, in *Czarnikow v. Koufos* [1961] A.C. 350 at 385G in the speech of Lord Reid, and finally the judgment of Swanwick J in *Stokes v. Guest, Keen & Nettlefold (Bolts and Nuts) Limited* [1968] 1 W.L.R. 1776 at 1783.

144. In 1993 the Health and Safety Executive published a summary of the European Commission's proposals on Physical Agents, which included Hand-Arm Vibration. An A(8) threshold level of $1m/s^2$ is identified together with additional action levels at 2.5 and $5m/s^2$ (see paragraph 4.1.14 of Mr McGregor's report). The standard was not adopted.

145. In addition, I have been referred to, or have considered: *Bonnington Castings v. Wardlow* [1956] AC 613; *Lister v. Romford Ice and Cold Storage Co Ltd* [1957] AC 555; *Allen v. British Rail Engineering Ltd* [2001] EWCA Civ. 242; [2001] PIQR Q10; *Billington v. British Rail Engineering Ltd* [2002] EWHC 105 (QB); *Doherty v. Rugby Joinery (UK) Ltd* [2004] EWCA Civ. 147; [2004] ICR 1272; *Brookes v. South Yorkshire Passenger Transport Executive* [2005] EWCA Civ. 452; *Montracon Ltd v. Whalley* [2005] EWCA Civ. 1383; *Vance-Daniel v. Corus UK Ltd* [2010] EWCA Civ. 274; and *Inglis v. Ministry of Defence* [2019] EWHC 1153 (QB); [2020] PIQR P2.

DISCUSSION

146. I remind myself that the claim is brought by Mr Compton and he has the burden of satisfying me on the balance of probabilities as to the various elements of his claim. I also remind myself that it is often a fool's errand to look for perfection in a claimant's evidence. That is especially true in a case which involves events which began a dozen years ago, and even more so where there would have been no particular reason to remember details which are now of significance.

147. My first task is to determine whether I accept Mr Compton's evidence as to his exposure to vibration. There are significant problems with Mr Compton as a witness. There are seventeen short points that demonstrate the problems with his evidence. They are of varying degrees of significance. The detail of these points has been set out above, and I will not now repeat them: this is intended only as a summary.

(1) When did Mr Compton begin working on vibrating tools at Columbus? Was it after a couple of weeks or was it a slow process in which it was built up over a period of 12 months? Mr Compton's evidence is not entirely consistent.

(2) The nature of the work undertaken by Columbus: was it primarily house extension, as Mr Compton said in his statement, or did it involve a number of other types of work, which required a greater use of vibrating tools as was said in his oral evidence? Mr Compton's evidence is not entirely consistent.

(3) The comparative lack of detail of the work done for the Third Defendant in comparison to the First and Second Defendant. This is particularly stark in the Particulars of Claim.

(4) Who it was that Mr Compton travelled around Ipswich with, to try and identify the jobs he did with Columbus.

(5) Mr Compton's evidence that he was required to remove piles by use of a CP9 gun, and that he was able to keep up with a digger which was excavating round them. At best this was an exaggeration of what took place.

(6) Photographs of various sites, albeit snapshots and susceptible to selective disclosure, show appropriate tools on site, and do not show Mr Compton using vibrating tools.

(7) The forging of Mr Compton's signature. Mr Compton had the opportunity to confirm the position set out in his witness statement, namely that he did not recall signing the documents, but he went further and suggested that the signature was not his, with the necessary implication that it had been placed there by others. There was no expert evidence on that point. It was not a point which was pleaded. Although there might be a number of reasons why a signature could be forged on a document, if the workers were really as relaxed about signing documents as the rest of the evidence suggests, then there really was nothing to be gained by anyone falsifying a signature on a document. Mr Compton was trying to get himself out of a difficult question being asked in cross-examination.

(8) I also do not accept the general tenor of Mr Compton's evidence that there was a reluctance to provide the proper tools for the job. Whilst there were no doubt occasions when tools were not immediately available, it was not in S&K's interests to be routinely providing inadequate tools. There was also a slight tension in Mr Compton's evidence. He suggested both that the tools were not available, and when it was suggested to him that they were, he said that the tools were on other sites.

(9) The form completed for TDR on 2nd November 2017 is inconsistent with evidence on the onset of his symptoms. Mr Compton also accepted that he did not inform TDR of the diagnosis when he received it, rather he looked for other work.

(10) Mr Compton told Mr Howard that there had been no health checks during his employment. This was wrong, as Mr Compton accepted in evidence

that there had been a health check. There was certainly one in March 2017 and a further form completed in November 2017.

(11) I am also satisfied that Mr Compton's participation in motocross was greater than he sought to portray. He was keen to ask the epilepsy nurse whether he could undertake the activity: if he was doing it less than twice a year, he would not have been concerned about it.

(12) Mr Compton was wrong to say that the test for the CSCS card did not ask questions on HAVS. I was taken to extracts from tests which show that such questions are asked.

(13) Mr Compton denied recreational drug use beyond cannabis. He was taken to a clinic note from August 2017 in which he admitted to cocaine use, but not "IV drugs". He was asked a clear question and gave an untruthful answer.

(14) Mr Compton said that he would occasionally smoke a cigarette when he was drunk. He maintained that he was a non-smoker. He was taken to an entry in his medical records which records that he smokes three cigarettes a day. He denied that this entry was correct. Mr Compton told Mr Howard that he was a non-smoker. This was not true.

(15) Mr Compton failed to provide Mr Howard with an accurate family history. The omission was deliberate.

(16) Mr Compton's assertion that he made no connection between his symptoms of HAVS and his employment until he was formally diagnosed in June 2018. This was also untrue.

(17) Mr Compton's continued surfing is surprising given the symptoms and the effect upon him of HAVS. Of course there is something admirable in someone overcoming a difficulty to pursue a passion. However, in my judgment, Mr Compton's attempts to explain the amount of surfing was far from convincing. Equally concerning was his suggestion that some of the photographs were old: the captions do not support such a position. I do not accept his evidence as being truthful on this point.

148. I find that Mr Compton has been untruthful in a number of respects. I accept that in relation to the S&K and TDR that he did use vibrating tools to a limited extent. Those two defendants admit as much. I also accept that he used them on some occasions whilst working for Columbus. However, in my judgment, he has grossly exaggerated his usage.

149. In addition, Mr Compton called his father and Mr Slew to give evidence. Mr Carl Compton was aware of the risks posed by vibrating tools. Sadly, his approach to this that they simply, "cracked on", is not an uncommon one in construction. However, I have significant difficulty accepting that he allowed his 19-year-old son to use vibrating tools for up to six hours per day. All of these men had undertaken their CSCS test which includes questions on HAVS. HAVS (or vibration white finger, as it was called) was not some new phenomenon by 2010, it was common knowledge, especially in the construction industry. I reject his evidence that he was only "probably" aware of HAVS.

150. One of the most troubling parts of Mr Carl Compton's evidence was his desire to distance himself from any form of responsibility for his son. The evidence from each defendant was that he was employed as a foreman. Mr Slew's evidence was to that effect too. I simply do not accept Mr Carl Compton's evidence that he was not employed in that role. It was untruthful evidence.

151. I did not accept Mr Slew's evidence that as the supervisor, as he accepted himself to be, that he was not responsible for monitoring the amount of time spent by workers using vibrating tools. It is difficult to accept that he was unaware of the risk of overuse of vibration tools and there should be a limit on their use. I had the distinct impression that he was not seeking to be an impartial witness. It was quite clear from his evidence that he had parted on bad terms. I treat his evidence with caution.

152. It follows that the evidence of Mr Carl Compton and Mr Slew does not assist Mr Compton, or cause me to reconsider my conclusion about his evidence.

153. That is not to say that there were not aspects of the Defendants' evidence which was beyond criticism. There is force in a number of points made by the Claimant concerning training and risk assessments, or more properly, the absence of documentary evidence on those points.

154. Columbus had a health and safety manual, and I accept it did so at the relevant time, but there was an absence of training records and risk assessments. It is a point common to all these Defendants. However, the further back in time, the less reason there is as to why records such as these should have been retained.

155. I accept Mr Columbus' evidence about the tools which his company owned: that they were lighter tools and that they did not own a jackhammer until after Mr Compton stopped working for them. I also accept his evidence that Mr Compton was employed as a labourer and was not trained on, or permitted to

use, vibrating tools. I also accept that he went to site once or twice a day and did not see Mr Compton using those tools. Mr Cobbold's evidence was supportive of Mr Columbus' evidence, and I accept his evidence too.

156. Whilst the absence of risk assessments from S&K is unfortunate, Mr Yuill gave evidence that some of their larger clients required risk assessments and method statements to be prepared. These had to be submitted and approved. It follows that on a number of the larger jobs these must have existed and were checked by those responsible for health and safety in the larger organisation. It stands to reason that if those documents, or the vast majority of them, cannot now be located, that the absence of such documents does not show that they did not exist. Further support for this position is found not only in those documents which do survive, but that S&K subcontracted the production of these documents to consultants, A&M Safety Specialists.

157. I accept that S&K undertook toolbox talks and that health and safety, including the use of handheld tools was taken seriously. Generally, both Mr Yuill and Mr Parnham were careful witnesses who made concessions when such was appropriate or necessary.

158. Each of these defendants had adequate processes in place to deal with the relatively limited use of vibrating tools which took place here.

CONCLUSION

159. I do not accept Mr Compton's evidence as to his use of vibrating tools; it was nothing approaching the magnitude that he now seeks to assert. I am sure that in relation to Columbus he rarely, if at all, used vibrating tools. In relation to the other two defendants, I am satisfied that he would, on occasions, have used vibrating tools, but I am not satisfied as to the extent of that usage being of the magnitude alleged by Mr Compton. I do not accept that it was of a magnitude as to reach the EAV, I would struggle to be satisfied that it was even in excess $1m/s^2$ A(8) on the Claimant's evidence. The Claimant has the burden of proof. He does not satisfy it.

160. Even if I could have been satisfied that, on occasions, the exposure exceeded $1m/s^2$ with the first and second defendants, it was not a regular occurrence. I am satisfied that each employer had policies and procedures in place and that they acted reasonably in circumstances where the exposure was not of a frequent or significant amount. The claim against each defendant therefore fails. For both of those reasons, the claim fails at the first hurdle.

161. Mr Grundy asks me to deal with my conclusions in relation to the sensorineural deficits elicited on testing by Mr Howard and agreed by Dr Cooke not to be a symptom of primary Raynaud's disease. I do not find it necessary to determine the differences between the two medical experts in this case given my conclusion on the exposure. Mr Cooke held to his view that this was primary Raynaud's.

162. Mr Grundy is in essence seeking to reverse engineer the case by seeking a determination that the symptoms are more consistent with secondary Raynaud's and therefore, because there was some vibratory tool use in this case, it follows that this is the most likely explanation for whatever symptoms that the Claimant had.

163. Whilst, if I accepted Mr Howard's conclusion, that Mr Compton had secondary Raynaud's, that would be a factor to weigh in the balance in determining the amount of tool use, it would be no more than a factor rather than determinative. As it is the two experts differ in their conclusions. Whilst it might be seen as a binary choice – either I accept Mr Howard or Dr Cooke's evidence – where it is being used as grounds to undermine factual conclusions I have otherwise reached, the absence of a clear and definitive answer on that point means that a determination on that point would add little if anything to my conclusions on the facts. For the reasons I have given, I do not find it necessary to come to a conclusion on which expert is correct.

FUNDAMENTAL DISHONESTY

164. Given my findings of fact, I do not strictly need to go on to consider the provisions of s.57 of the Criminal Justice Act 2015, but given that the parties have made submissions on the point, and the likely application of CPR r.44.16(1), it is probably helpful for me to express my conclusion.

165. There are a number of authorities that have dealt with the application of fundamental dishonesty both within s.57 and r.44.16. The Court of Appeal in *Howlett v. Davies* [2017] EWCA Civ. 1696; [2018] 1 W.L.R. 948 dealt with a number of points. First it is not necessary to formally plead fundamental dishonesty, the key question would be whether the claimant had been given adequate warning of and a proper opportunity to deal with the possibility of a conclusion that a claim had been fundamentally dishonest and that the points had been sufficiently explored during oral evidence.

166. There can be no doubt that the issue was one which the claimant knew he was facing from the beginning of the trial, if not before. Mr Macaulay makes clear reference to it at the beginning of his skeleton argument (in the context of s.57,

but the point is the same). Mr Grundy made reference to it in his oral opening, even if only to suggest that this was not really a case where it was likely to arise. Finally, Mr Compton was carefully and clearly cross-examined on whether he was telling the truth and whether he has exaggerating his use of vibrating tools.

167. As to the meaning of the term 'fundamental dishonesty, the judgment of His Honour Judge Moloney QC in *Gosling v. Hailo* (unreported) was specifically approved at paragraph 16 of *Howlett v. Davies*. The judge said this:

> 44. It appears to me that this phrase in the rules has to be interpreted purposively and contextually in the light of the context. This is, of course, the determination of whether the claimant is 'deserving', as Jackson LJ put it, of the protection (from the costs liability that would otherwise fall on him) extended, for reasons of social policy, by the QOCS rules. It appears to me that when one looks at the matter in that way, one sees that what the rules are doing is distinguishing between two levels of dishonesty: dishonesty in relation to the claim which is not fundamental so as to expose such a claimant to costs liability, and dishonesty which is D fundamental, so as to give rise to costs liability.
>
> 45. The corollary term to 'fundamental' would be a word with some such meaning as 'incidental' or 'collateral'. Thus, a claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral matter or perhaps as to some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim: a claim which depended as to a substantial or important part of itself upon dishonesty.

168. In *Sinfield v LOCOG* [2018] EWHC 51 (QB); [2018] P.I.Q.R. P8, Julian Knowles J, said this:

> 62. In my judgment, a claimant should be found to be fundamentally dishonest within the meaning of s.57(1)(b) if the defendant proves on a balance of probabilities that the claimant has acted dishonestly in relation to the primary claim and/or a related claim (as defined in s.57(8)), and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation. Dishonesty is to be judged according to the test set out by the Supreme Court in *Ivey v Genting Casinos Limited (t/a Crockfords Club)*,[[2018] AC 391].

> 63. By using the formulation "substantially affects" I am intending to convey the same idea as the expressions "going to the root" or "going to the heart" of the claim.

169. The Supreme Court in *Ivey* expressed the common law test for dishonesty in the following terms:

> 74. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.

170. In *Pegg v. Webb* [2020] EWHC 2095 (QB); [2020] Costs LR 1001, Martin Spencer J. held that in a claim for general damage and other consequential claims arising out of a road traffic accident, dishonesty as to the extent of the injuries suffered "is not merely incidental or collateral but forms the very basis of the claim."

171. Finally, I was taken to *Cojanu v. Essex Partnership University NHS Trust* [2022] EWHC 197 (QB); [2022] 4 WLR 33, in which Ritchie J. dealt with an appeal from an application of s.57. In paragraph 47, the judge set out five steps to be taken by a trial judge, "(i) the section 57 defence should be pleaded; (ii) the burden of proof lies on the defendant to the civil standard; (iii) a finding of dishonesty by the claimant is necessary (more on this below); (iv) as to the subject matter of the dishonesty, to be fundamental it must relate to a matter fundamental in the claim. Dishonesty relating to a matter incidental or collateral to the claim is not sufficient; (v) as to the effect of the dishonesty, to be fundamental it must have a substantial effect on the presentation of the claim."

172. I confess some difficulty with the first point: the need to plead a s.57 defence. Certainly in relation to a r.44.16 the position was made clear in *Howlett v. Davies* and specific pleading is not required. Otherwise, the various points are a helpful summary of the authorities.

173. I disposed of this claim at the first hurdle, but that does not mean that evidence on other issues, which could have been of importance to my determination of

the claim, is irrelevant to the assessment of whether the claimant has been fundamentally dishonest.

174. I identified seventeen issues with Mr Compton's evidence during the course of my judgment. I am satisfied on the balance of probabilities that he was dishonest in his evidence about the forging of the signature, in what he said to his medical expert about his family history, smoking and the absence of health checks, his evidence about not using recreational drugs other than cannabis, and in denying his knowledge of the link between vibrating tools and HAVS. He exaggerated his use of tools whilst working for each defendant and was not truthful in what he said about his participation in motocross or the effect of his symptoms on his surfing. I am satisfied that he was dishonest by the standards of ordinary decent people.

175. I am also satisfied that some of these matters are fundamental to the claim. Whilst I did not resolve this case on the basis of whether the symptoms, that I accept (at least to a degree) that Mr Compton suffers from, were caused by HAVS or by a constitutional Raynaud's phenomenon, it was a central part of the claim which Mr Compton had to prove if he was to succeed. Being dishonest to the medical expert in a personal injury claim is likely to be being dishonest about a fundamental element of the claim and it is so in this case. The other issues identified were cumulatively fatal to his credibility, but they were not fundamental to the claim.

176. Mr Grundy points out that the medical experts both took account of the recorded medical history in coming to their conclusions. Ultimately that is right, although Mr Howard only did so after his first report was written, when Mr Compton's solicitors drew his attention to the family history (see addendum report of 6th April 2020, paragraph 2).

177. In my judgment, the intent and the effect are two different things. It is not necessary that someone has actually been misled, it is enough that something untruthful was said in relation to a fundamental aspect of the case. To illustrate the point, one could take a witness who says in court that he had never suffered whiplash in a car accident before. Counsel then produces insurance documents that show that the claimant has had four accidents and on each occasion he has claimed for whiplash, including one where the accident occurred a month before the index accident. One could not argue that such a claimant had not been dishonest in relation to a fundamental element of the case. The only difference here is that Mr Compton mislead the medical expert as opposed to

the judge. In my judgment that is not a significant difference and the decision of Martin Spencer J. in *Pegg* would appear to be supportive of that view.

178. Equally, if it is being suggested that being untruthful about family history in relation to a condition where there are two competing causes (constitutional – which is more likely if there is a family history – or secondary to vibration) is not fundamental to an element in the case, then, in my judgment, that is wrong. That is how I interpret the fifth of Richie J's steps in *Cojanu*. His Lordship could not have intended that in the example I have given above, where the lie was exposed immediately after it was told that it was not dishonesty to a fundamental aspect of the case. If the lie is in relation to a point which is of no significance, then that would be a different matter. It cannot be left to chance as to whether the medical expert happens to see the relevant record which exposes the dishonesty.

179. But even if I wrong about that, the cumulative effect of the matters in relation to which Mr Compton has been dishonest drive to me to the conclusion that he has been fundamentally dishonest. The more untruths told, the less deserving of the QOCS protection, or more deserving of the punitive effect of s.57, the claimant is. In my judgment there must come a point when the court can stand back and look at a number of lies and take them together cumulatively.

180. Although I have not as yet heard submissions on costs and there may be factors of which I am unaware, I do find Mr Compton to have been fundamentally dishonest within the meaning of CPR r.44.16(1) and would have done so had I been required to consider s.57.

FINAL REMARKS

181. I am grateful to counsel for the detailed and helpful submissions and for the spirit in which the trial was conducted.