Case No: L63YX104

<u>IN THE COUNTY COURT AT SWINDON</u>

Date: 29 July 2026

Before :

<u>HIS HONOUR JUDGE GLEN</u>
Sitting at Southampton

- -

Between :

Christopher Richard Tompkins As Executor of the estate of Edmund Winfred Tompkins	**<u>Claimant</u>**
- and -	
Tompkins (Park Homes) Limited	**<u>Defendant</u>**

- -
- -

Mr Hallström (instructed by **Tilly Bailey & Irvine LLP**) for the **Claimant**
Mr McCracken (instructed by **Keoghs LLP**) for the **Defendant**

Hearing date: 8 June 2026

- -

JUDGMENT

His Honour Judge Glen:

Introduction.

1. On 14 June 2021, Edmund Tompkins (referred to in the remainder of this judgment as Edmund) died at the age of 89 from complications associated with mesothelioma, linked (as it almost always is) to exposure to asbestos. By this claim, his son the Claimant in his capacity as executor of Edmund's estate seeks to recover general damages for pain, suffering and loss of amenity and special damages for care and for funeral expenses.

2. I heard this matter on 8 and 9 June 2026 when the Claimant was represented by Mr Hallström of Counsel and the Defendant was represented by Mr McCracken, also of Counsel. I heard evidence from the Claimant and from Angela Saunders, his sister. The Claimant also relied upon written statements from his cousins, Paul Tompkins and Catherine Wood, as hearsay. Importantly, he also relied (although not uncritically as we shall see) as hearsay on an unsigned statement prepared for Edmund shortly before his death.

3. The Defendant elected to call no evidence of fact, being realistically not in a position to do so. Both parties relied upon expert evidence and I have the benefit of:

   - a medical report from Dr Spence, a Consultant Physician, dated 8 February 2022 prepared on instructions from the Claimant.

   - a report from Ms McWilliam, an Occupational Hygienist, dated 5 November 2025 also prepared on instructions from the Claimant.

- A report from Ms Tierney, a senior consultant employed by the Institute of Occupational Medicine, dated 6 November 2025 and prepared on instructions from the Defendant.

- The joint statement of Ms McWilliam and Ms Tierney dated 10 March 2026.

At the conclusion of submissions, I reserved judgment, partly because of delays in calling the matter on and partly due the complexity of the issues that arise.

Background.

4. Edmund was for all of his working life a scrap metal merchant, carrying on business with his father Alfred and two brothers William and Francis from premises at Grazeley Green near Reading in Berkshire. He worked there and elsewhere in the locality. It seems now to be probable that he retired in about 1988 when the Defendant company assumed its present name and as I understand it the premises were redeveloped.

5. The precise status of his employment and the identity of his employer at any relevant time is in issue. The Defendant had formerly been known as Tompkins (Metals) Ltd. ('TML'). Prior to that and since incorporation it was known as A.F. Tompkins & Sons (Breakers) Ltd. ('AFTSBL'), changing its name to TML on 25 July 1968. AFTSBL was incorporated on 7 May 1965 with Edmund, his father and brothers as directors and shareholders. This remained the position certainly until 1975 when we have an annual report for the company.

6. This picture is however clouded by HMRC records which refer to the possible existence of three other companies; AF Tonkins (Metals) Ltd. ('AFTonML'), AF Tompkins (Metals) Ltd. ('AFTomML') and AF Tompkins Ltd. ('AFTL'). HMRC originally showed Edmund as being an employee of AFTonML but the updated schedule shows the employer as AFTSBL from 1962 even though this was pre-incorporation. The updated schedule continues to refer to AFTSBL even after the Defendant became TML. From 1969 the employer is shown as being AFTomML and this continues to be the case until 1987. From 1988 the employer is shown as TML (with others in 1988 and 1989) and this did not change to the Defendant's present name until 1992.

7. Edmund started to display symptoms associated with mesothelioma in late 2020 and was diagnosed at the start of 2021. He declined invasive treatment and became progressively more ill in the months leading up to his death. Following it, there was a post mortem. The Coroner's report states (apparently on the basis of information from the Claimant) that Edmund had in the 1950s and 1960s been involved in removing cast iron hot water tanks from breweries owned by Courage. It states that "He was exposed in the early years of his trade" and that the Claimant and his family had instructed Solicitors to look into a claim against Courage.

8. This claim was issued on 2 July 2024. It alleges that Edmund was exposed to, and not properly protected from, asbestos as a result of the Defendant's negligence and/or breach of statutory duty arising under the Factories Act 1961 and the 1931 and 1969 Asbestos Regulations. The defence in general puts the Claimant to proof but there is a specific averment that in so far as Edmund was a director of the Defendant, any injury was the consequence of his own failure to discharge his duties to it and that therefore no liability can arise.

Evidence.

Evidence of fact

9. In his draft witness statement, Edmund states that he became a director in the 1970s. He states that it is his belief that he contracted Mesothelioma as a result of his work from 1950 until he became a director and appears to limit his claim to that period. In particular, he described how he was required to cut up water tanks and remove the asbestos lining with an axe and a hammer in order that the metal could be recycled. He says that this generated dust which he breathed in.

10. He draws particular attention to the years during this period when he worked at a number of Courage brewery sites, removing water tanks and pipes. He states that no warning was given or protection supplied. He also says that aside from this he also worked in a similar manner on asbestos lined boilers from various sources.

11. In his statement, the Claimant says that he was present when Edmund's draft statement was taken. Edmund passed away shortly afterwards. He states that Edmund's exposure did not cease during his directorship. He was a 'working director' – a hands-on man who preferred manual work to administrative duties. He states that Edmund had no responsibility for health and safety, issues which were delegated to his Father and brothers. He worked 4 days out of 5 on site although he did do some office work.

12. Based on conversations with his father, he says that Edmund was in no doubt as to the source of his exposure to asbestos. He himself, when a child (he was born in 1965), observed his father breaking up scrap and confirms that this included boilers. He remembers a discussion regarding his father's work at the Courage breweries. He says that his father told him that the boilers and pipework were covered with asbestos which had to be removed. The only protection he wore was overalls, which were covered with dust and debris. He also speaks about his father's work in producing aluminium ingots, but this is not pursued as a cause of Mesothelioma.

13. In cross examination, he was asked about Edmund's draft statement. He did not accept that his father was in fact intending to limit his claim to the period prior to the 1970s, nor did he agree that his father's exposure ceased on becoming a director. He said that his father was 'incredibly ill' at the time the statement was taken and was hallucinating. He described him as being 'fixated' on the work for Courage. He said that his father was also wrong about the date that the scrap business ended. After 1988 the Defendant moved into running park home sites and therefore he acknowledged that there was no exposure after this date.

14. He did not recall speaking to the Coroner's office and was unable to comment on the suggestion of a claim against Courage in the report. He acknowledged the passage about exposure in the early years but insisted that it continued after the 1960s. He said that he had simply answered the questions asked and passed on his father's recollection. If he had been asked whether there had been exposure after the 1960s, he would have said that this was 'quite possible'.

15. He said that he could only speak about what happened in the yard. He reiterated his written evidence that Edmund was 'the man on site'. He said that he imagined that all health and safety requirements had been met at the time but could not say whether that was in fact the case. He never saw his father wear any PPE. He was asked about his statement that health and safety was delegated to others. He was unable to say how this happened and acknowledged that he had no evidence that it did. He said 'delegation' was not a word he would have used and said it was an 'interpretation' derived from the kind of man that his father was. Health and safety was not the type of role he would have taken up. His father had finished school at 14 and he believed (but did not observe) that his father's strength was in dealing with customers and staff. He said that the work was divided up between directors. William was more academic.

16. He said that he was able to be sure that the type of scrap coming in to the business would definitely have had asbestos on it. He did however agree that he would not have been able to identify it himself. It was his 'personal view' that there is no way some asbestos did not come in.

17. Ms Saunders gave her evidence remotely from the United States. She began to visit the site as a child from about 1971 and lived there from 1980 to 1984. Her father would always be out 'on site', covered in dust and dirt and manually breaking up metal including water tanks, boilers and radiators. He was not often in the office and left the running of the business to his brothers. He did this until retiring in 1994.

18. In cross examination she acknowledged that she would have been very young for some of the relevant period. She also moved abroad in 1984 and therefore accepted that her brother's evidence regarding when their father ceased working may be more reliable. Otherwise, she gave evidence in accordance with her statement. She said that her father was wrong to have said that he stopped being exposed after becoming a director and that this may have been because he was ill at the time.

19. Paul Tompkins is William's son. He reiterated that Edmund was a 'working director who did the hands-on work on site with boilers and other scrap until the late 1980s. However, William was also a 'working director' and passed away in 2010 as a result, he believed, of an asbestos related lung disease. Similarly, Catherine Wood, William's daughter, describes both Edmund and William as 'hands on men', breaking up materials and removing lagging until the early 1990s.

Expert evidence.

20. It is Dr Spence's opinion that Edmund's mesothelioma was contracted as a result of his exposure to asbestos during his employment with the Defendant. He became progressively more disabled as a result from February 2021 until his death. His life expectancy was reduced by 5 years. He had no contributory comorbidities.

21. Ms McWilliam, having noted the contents of Edmund's draft statement, states that her report focusses on the period 1950 to the early 1970s. She considers it unlikely that water tanks were lined with asbestos and therefore infers that what is in fact being referred to is boilers. It is in her opinion likely that some of the material referred to contained asbestos, particularly in the early part of her reference period.

22. Given the limited detail in the draft statement regarding the nature and circumstances of Edmund's work, she says that *"...calculating the Deceased's exposure to asbestos is problematic."* If Edmund was involved in removing lagging from pipes and vessels he *"...may have been exposed to asbestos concentrations of the order of hundreds of fibres per millilitre (ml)…"* but any exposure would have been *"...highly variable and depended on factors including the aggressiveness, frequency and duration with which he undertook the work and the friability of the material he was removing"*. She states that 'dry stripping' could have generated substantial quantities of dust.

23. She identifies 1965 as the date when it became widely known that even small quantities of asbestos dust could cause Mesothelioma. She refers to TDN13 issued by HM Factories Inspectorate in 1970 which suggested maximum exposure levels. Depending on the time weighted average used and the type of asbestos, these levels in terms of fibres per millilitre are measured in single (or just into double) figures or indeed sometimes in fractions. She states that if the Claimant's evidence is accepted, *"...the Deceased may on occasion and from time to time have been exposed to asbestos concentrations above the standards of the day when he was engaged in the stripping of asbestos insulation."*

24. Ms Tierney agrees that asbestos was in use in lagging, although that use declined with time. She accepts that it is likely that Edmund would have encountered asbestos in his work. Her evidence regarding the development of knowledge and applicable limits broadly accords with that of Ms McWilliam. She says that if it is correct that Edmund continued to work with scrap after the 1970s, it is unlikely he would have encountered asbestos or have been permitted to remove it. Like Ms McWilliam, she states that it is difficult to reliably calculate Edmund's exposure based on the available evidence, which she described as being attended by 'great uncertainties'.

25. In their joint statement, the experts appear to address themselves to the period identified by Edmund in his draft statement. They agree that Edmund would have encountered lagging during his work, some of which was likely to have contained asbestos. It was plausible that he could have had some exposure to asbestos, particularly during the earlier part of this employment. However, they are also agreed that any such exposure was difficult to calculate and likely to be highly variable in nature.

The law.

Duty

26. At common law, an employer owes a duty to his employee to keep that employee reasonably safe. The precise scope of that duty depends in cases of this kind on what the employer could reasonably have been expected to know regarding the risks at the material time. In Stokes v. Guest [1968] 1 WLR 1776 it was held that:

> *"…the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent.*

27. In citing this dicta with approval in Jeromson v Shell Tankers (UK) Ltd [2001] ICR 1223, Hale LJ added this:

> *"However, where an employer cannot know the extent of any particular employee's exposure over the period of his employment, knows or ought to know that exposure is variable, and knows or ought to know the potential maximum as well as the potential minimum, a reasonable and prudent employer, taking positive thought for the safety of his workers, would have to take thought for the risks involved in the potential maximum exposure. Only if he could be reassured that none of these employees would be sufficiently exposed to be at risk could he safely ignore it."*

28. Section 63(1) of the Factories Act 1961 (in force until the end of 1992) provided that:

> *"In every factory in which, in connection with any process carried on, there is given off any dust or fume or other impurity of such a character and to such extent as to be likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practicable measures shall be taken to protect the persons employed against inhalation of the dust or fume or other impurity and to prevent its accumulating in any workroom, and in particular, where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained, as near as possible to the point of origin of the dust or fume or other impurity, so as to prevent its entering the air of any workroom."*

29. There is an extensive definition of what constitutes a 'factory' in Section 175 of the Act. It includes *"...any premises in which, or within the close or curtilage or precincts of which, persons are employed..."* for a variety of specified purposes including *"...the breaking up or demolition of any article"*. Section 175(7) provides that *"Premises shall not be excluded from the definition of a factory by reason only that they are open air premises"*.

30. The Asbestos Industry Regulations 1931 (in force until May 1970) dealt with a number of matters but most relevantly required the provision and maintenance of ventilation in factories where asbestos was worked upon. The Asbestos Regulations 1969 which succeeded the 1931 Regulations and remained in force until 1987 also made provision for the supply of PPE.

Breach

31. The starting point in this case, as in most cases, is that the Claimant bears the burden of proving to the requisite standard each of the components of the alleged breaches of common law and/or statutory duty. No lesser standard applies because of the difficulty of proving such claims where the alleged victim is deceased (see Sienkiewicz v. Greif (UK) Ltd. [2011] UKSC 10). However, the effect of the Compensation Act 2006 is that in mesothelioma cases the Claimant need only prove that any exposure by a given defendant has 'materially increased the risk' of damage. 'Material' means any exposure other than that which is so insignificant as to be properly regarded as de minimis (see Sienkiewicz).

Brumder

32. Mr Brumder was the sole director and shareholder of a company against which he brought an action for damages for personal injury resulting from a breach of statutory duty to maintain equipment in a safe condition. The issue that arose is identified at the very start of the judgments of the Court of Appeal in these terms:

> *"The question which falls for decision in this appeal is whether the sole director and shareholder of a company who suffers personal injuries as a result of the breach by the company of an absolute statutory obligation to maintain equipment in efficient working order can bring a claim against the company even though he was in breach of his obligations to the company to exercise reasonable care to enable the company to fulfil that obligation, and the company could only do so vicariously through him."*

33. In considering this issue, the Court sought to apply dicta of Pearson J in Ginty v Belmont Building Supplies Ltd [1959] 1 All ER 414 as subsequently approved by the House of Lords in Boyle v Kodak Ltd [1969] 1 WLR 661. In Ginty, the test was defined in this way:

> *"Whether the fault of the employer under the statutory Regulations consists of, and is co-extensive with, the wrongful act of the employee. If there is some fault on the part of the employer which goes beyond, or is independent of the wrongful act of the employee, and was a cause of the accident, the employer has some liability."*

34. Pearson J considered three possible foundations for this principle. The first was the common law principle that a person should not be permitted to benefit from their own wrong. The second was an application of the pre-1945 common law principle that a person could not recover where they were wholly or partly responsible for their loss. Finally, there was the need to avoid the circuity of action that would ensue if the employee sued his employer for breach of the employer's duty and the employer in turn sued the employee for breach of his duty as director to the employer.

35. In dismissing Mr Brumder's appeal against the dismissal of his claim, the Court held that:

"47. Where, as is the position of the claimant, a director/claimant has paid no attention whatsoever to health and safety issues, and has abrogated his responsibilities as owner and director of the company for them, he will be in breach of his duty qua director under section 174(2)(a) of the 2006 [Companies] *Act…*

48. The consequence of this is that the claimant is a wrongdoer and falls within the first of Pearson J's explanations or justifications for the defence; the common law principle that a person cannot derive any advantage from his own wrong. The common sense proposition in Lord Diplock's speech in Boyle…that "to say 'You are liable to me for my own wrongdoing' is neither good morals nor good law" appears to me to be applicable where the director/claimant has paid no attention whatsoever to health and safety issues, and in the judge's words (at para 59) had "abrogated his responsibilities as owner and director" of the company. I do not consider that it lies in the mouth of a claimant who is the defendant's sole director and shareholder, and through whom the company must act, to assert that the company has not proved that it has done all it could to ensure compliance when it is only through the claimant director's acts that the company can act.

49 As a general rule the remedy for breach of a director's duty of care is compensation for the harm caused to the company by the director's negligence… The harm to the company would in principle be the damages payable to the injured person and the company would in principle be able to recover that sum from the defaulting director. Here, the injured person was also the director. Although the company's duty is absolute, whereas the director's is to exercise reasonable care, skill and diligence, the damages payable by the director to the company will be the sum which the injured director/claimant would in principle be able to recover from the company.

50 Unless there is a particular policy reason which precludes the company from suing the director, the employer would be entitled to recover damages against the director in the sum which the director was supposedly entitled to recover against the employer. …

51 There is in my judgment no such precluding policy in the situation before us and no reason for protecting a director who, like the claimant in this case, has made no efforts in respect of the company's health and safety duties, in a situation where it is only that person who is able to act on behalf of the company. Whether or not there could be a valid plea of circuity of action, and whether or not this situation is provided for by provisions for set-off and counterclaim, in this situation, if the director/claimant was entitled to sue, it would not be inaccurate to describe the litigation, as Pearson J did in the passage set out at para 40, as going "round in a circle".

36. The Court in Brumder noted that a strict approach had been taken to the application of these tests. This was however founded on the policy objective of protecting employees who were the weaker party in the employment relationship. It was held that:

> *"That does not apply to a director/claimant who is the only person through whom the company can act. Those considerations are strong pointers to the defence applying in the case of a director/claimant in the circumstances of this case."*

The Court noted that each case was likely to be highly fact specific. It also noted that directors might have different functions within a company and that they could delegate some of their responsibilities.

Submissions.

37. Mr Hallström submits that the evidence (including the hearsay evidence to which I should attach weight) establishes directly and by reasonable inference that Edmund was regularly exposed to large quantities of dust, both on site and 'in the yard'. This occurred during his entire employment with the Defendant which he conceded ran for present purposes from 1965 to 1988. He relied on what he argued were the similar facts in Jeromson. He also sought to place reliance on an advertisement feature placed in the Reading Evening Post for 17 August 1970 as establishing that scrap was sourced from factories. This article was disclosed only on or immediately prior to the day of the trial and its admission was objected to by Mr McCracken.

38. Mr Hallström submitted that the expert evidence shows that this dust was likely to have included asbestos fibres. There is no evidence that the Defendant gave any thought to the safety implications of this, or that Edmund was supplied with any PPE or given any warning. A reasonably prudent employer in the state of knowledge that existed during the relevant period would or should have been aware of the risks and have taken action accordingly.

39. He argued that the evidence established that Edmund was responsible only for the 'hands on' work and that there had been delegation of the directorial responsibilities for health and safety to others. In his printed case he argued that *"It was a relevant factor in* [Brumder] *that Mr Brumder was a sole director and not an employee; the case of multiple, employed directors delegating responsibility between them is a different matter."*

40. In oral argument he conceded that there was nothing beyond supposition to establish how the Defendant's directors allocated and/or delegated their responsibilities. He however made the more forthright submission that Brumder could have no application at all in cases where there are multiple directors as the company did not act solely through one of them. In such cases, the control mechanism is contributory negligence.

41. He relied in this respect on the extracts from Ginty and Brumder cited above, and on Boyle where it was held that:

> *"The plaintiff establishes a prima facie cause of action against his employer by proving the fact of non-compliance with the requirement of the regulation and that he suffered injury as a result. He need prove no more . . . if the employer can prove that the only act or default of anyone which caused or contributed to the non-compliance was the act or default of the plaintiff himself, he establishes a good defence."*

Mr Hallström also took comfort from the review of the Brumder principle by Knowles J in Carr v. Brands Transport Ltd. [2022] EWHC 3167 (KB).

42. In response, Mr McCracken pointed out that there was not a match between the evidence of incorporation and the HMRC records. It therefore remained to be established that the Defendant was Edmund's employer at any particular time. In any event, he argued that the evidence relied upon by the Claimant did not cross the evidential threshold for establishing liability. He submitted that having tendered Edmund's draft statement as hearsay, the Claimant could not be heard to deny the truth of what was stated therein and in particular, the statement that all exposure predated his time as a director. This statement also correlated with what the Coroner's office appears to have been told. Any exposure was therefore likely to have been pre-incorporation.

43. He argued that the evidence of the other witnesses as to later events should be treated with caution, relying in this respect on Dexter Dias KC as he then was in Briggs v. Drylined Homes Ltd. [2023] EWHC 382 (KB):

> *"There are important and recognised limits on the reliability of human memory: (a) our memory is a notoriously imperfect and fallible recording device; (b) a greater confidence displayed by a witness does not necessarily correlate with a correspondingly more accurate recollection; (c) the process of civil litigation subjects the memory to "powerful biases", particularly where a witness has a "tie of loyalty" to a party…"*

44. He submitted that in this case, witnesses had been guilty of a degree of 'extended recollection'. Honest belief did not necessarily equate to accuracy. The statement were vague and in places palpably inaccurate. Attempts to 'fill the gaps' might be motivated by family loyalty and financial interest. There is dust in any scrapyard and it does not follow that lagging would necessarily have contained asbestos. He reminded me that both experts had found the task of measuring exposure problematic.

45. Turning to Brumder, he submitted that there was no basis for the submission that the principle could only apply in a sole director case. There was also no evidence to establish that anyone else was responsible for the breaches of duty if they were proved. He reminded me that Edmund was company secretary. He submitted that as the man on site, he was in fact primarily responsible for health and safety.

46. He sought to distinguish Carr, instead relying on broader statements of principle in the concurring judgment of Underhill LJ in Brumder:

> *"58. On the findings of the judge, when the accident to the claimant occurred, the claimant was the sole director and shareholder of the defendant company and was the person through whom the company discharged its health and safety obligations…In these circumstances can the director who was responsible for the fulfilment of the company's (absolute) obligations as to maintenance, successfully sue the company as his employer for breach of that (absolute) obligation?*
>
> *59 To my mind the answer to that question is "No"".*
>
> …

> *62. … "I understand the policy behind the imposition of the absolute obligation primarily to be, as Beatson LJ has explained, to protect the weaker party in the employer/employee relationship but also to encourage the highest standards of compliance on the part of the directors and others responsible for the performance of the company's absolute obligation. If the very director responsible for performing the company's obligation can himself sue the company for breach of that obligation, that policy will be significantly undermined."*

<u>Conclusions.</u>

47. My first task is to assess the evidence, both written and oral. I reject Mr McCracken's submission that I must accept the draft statement of Edmund as the uncritical truth. Instead, it is to be weighed in accordance with the provisions of the Civil Evidence Act 1995 and tested against the other available evidence and the inferences which can reasonably be drawn from it.

48. Mr McCracken is however on stronger ground in respect of some of his other criticisms of the evidence and his reference to <u>Briggs</u> is well made. Furthermore, it is an unfortunate consequence of Edmund's statement that the attention of the experts has been focussed on the period identified within it.

49. The principal difficulty facing me (and indeed the experts) is the lack of precision in the evidence. There is very little detail to establish the precise nature of Edmund's working environment, his working practices and the materials he was handling. Still less does the evidence serve to show reliably how (if at all) these factors altered over time.

50. Whilst I have sympathy with the difficulty in providing a more precise account, the burden of proof remains firmly with the Claimant. I have no great difficulty in finding that it is probable that Edmund was exposed to high concentrations of asbestos during his work at the Courage breweries in the 1950s and early 1960s but the question is whether the evidence can take one beyond that time.

51. I am satisfied on a balance of probabilities on the evidence before me that Edmund's recorded recollection that his exposure ceased once he became a 'working director' is unreliable. He is clearly wrong about the periods during which he worked for the company as well as when he became a director. I recognise that his recollection may well have been impaired by his disability.

52. Taking full account of the points made by Mr McCracken, I am satisfied on the remainder of the evidence that Edmund did continue to work with scrap after 1970. I am also satisfied on a balance of probabilities that some of that scrap consisted of boilers and pipework lagged with material that is likely on the basis of the expert evidence to have, at least in some cases, contained asbestos. I accept that the evidence establishes that the method of removal met the description of 'dry stripping'. It is accordingly probable in my judgment that Edmund was exposed to concentrations of asbestos fibres well in excess of the levels prescribed in TDN13. I do not find that the advertising feature assists in reaching these conclusions and it is therefore unnecessary for me to rule on its admissibility.

53. As was conceded in White v. Secretary of State for Health and Social Care [2024] EWCA Civ 224, reasonably well-informed employers should fairly rapidly after 1965 have appreciated the risks of exposure to even small concentrations of asbestos fibres. Certainly by 1970 the Defendant ought reasonably to have informed itself of those risks and to have taken appropriate precautions for the safety of its employees, whether as mandated by primary or secondary legislation, or otherwise. Whatever the position may have been later on in his employment, I am satisfied that Edmund was still being exposed to unsafe levels of asbestos in the early 1970s. Whilst his primary exposure may well have been in the 1950s and early 1960s, his exposures after that time did in my judgment materially increase the risk of contracting mesothelioma.

54. There is no evidence that the Defendant's corporate mind in fact addressed itself to the risks that it should have been cognisant of. No provision of any kind was made for Edmund's safety. This total abrogation of the Defendant's responsibilities plainly amounted to a breach of the common law duty of care. On the basis of Mr McCracken's concession that a scrapyard is capable of being a 'factory' (an issue on which I make no finding), it must also follow that the Defendant was in breach of statutory duty under the 1961 Act. It is unnecessary in these circumstances to decide whether there was also a breach of the 1969 Regulations, Mr Hallström withdrawing any reliance upon the earlier edition.

55. This brings me to the potential application of Brumder. This again involves first the need to make findings of fact. Context is important. Edmund, his father and his brothers worked together as scrap merchants in a family business. They may well have had individual strengths and weaknesses. I reject however the Claimant's evidence that Edmund was the only 'hands on' director and/or that William took greater responsibility for administrative affairs. This is inconsistent with the evidence of both of his cousins. It is also inconsistent with his status as company secretary and the fact that he still spent a day a week on office work.

56. Be that as it may, the suggestion that he somehow delegated his responsibilities for health and safety and/or that the Defendant's directors otherwise divided up roles and responsibilities between them is, as the Claimant acknowledged in cross-examination, pure speculation. In my judgment, the Claimant fails to prove that Edmund was in any different position to his co-directors in any relevant respect.

57. Brumder was a case involving a sole director and the judgments were therefore directed to that situation. I do not however accept Mr Hallström's submission that Brumder can only apply to a single director company. In the absence of delegation or allocation, all directors of a company share the same duties and responsibilities for health and safety. They are jointly and severally liable to the company for any breach of those duties.

58. Whether one adopts the Boyle approach that it is neither good morals nor good law that a claimant should benefit from his own wrongdoing, or whether one approaches it from the circularity of litigation standpoint, the principles of law that underlie Brumder apply with equal force. There can be no policy objection to this conclusion based on the nature of the employer/employee relationship. It cannot in my judgment be an answer to simply say that there are other directors who could and should have discharged their duty. Carr was a decision on very different facts.

59. It follows in my judgment that whilst the Edmund's untimely death was a consequence of the Defendant's breach of duty to him, that breach of duty was itself a consequence of Edmund's breach of duty to the Defendant. Accordingly, this claim must be dismissed.

HHJ Glen.