

Sentencing remarks for Access Limited, a company pleading guilty to failing to ensure health and safety standards, specifically regarding the risk of injury from falling tools during scaffolding work.

**[2025]GRC023**

**ROYAL COURT  
FULL COURT**

**14 February 2025**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:  
Stephen Murray Jones OBE, Stuart Michael Crisp, Marilyn Jasmine King,  
Simon Ernest Bodkin, Jillian Clark, Ian Michael Brown,  
Kay Parnwell and Sally-Ann David.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**ACCESS LIMITED**

**Crown Advocate C G Dunford appeared for the Crown**

**Advocate A M Merrien appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

The defendant company Access Limited (“the Company”), is here to be sentenced in relation to one count of failing to discharge a duty to ensure the health and safety of others under section 25 1(a) of the Health and Safety at Work General Guernsey Ordinance, 1987, as amended, (“the Ordinance”), in that it failed to discharge a duty imposed by section 2 of the Ordinance, in that it failed to conduct its undertaking in such a way as to ensure, as far as was reasonably practicable, that persons not in its employment who may be affected thereby, were not thereby exposed to a risk to their health and safety. The specific allegation is that it failed to ensure that others were not exposed to the risk of injury from objects falling from height from scaffolding it was erecting at 17 The Pollet. The maximum penalty is an unlimited fine.

Crown Advocate Dunford has outlined the facts of the case in great detail in his written outline which he has summarised for us today and it is sufficient for the purposes of these sentencing remarks to summarise what the Court considers to be the key facts. On Tuesday 23 January 2024, the Company was erecting scaffolding in the Pollet. The Court was given photographs and shown part of a video taken at the time of the incident which was at 12.25 pm on that day. At the time, barriers were positioned only just outside the scaffold itself and the area available to pedestrians was restricted by the presence of the Company’s lorry, which was being unloaded on the other side of the street, which had the effect of requiring the public to pass through the site. The Court heard that a ratchet tool, weighing between 2.3 and 3.8 kgs (including the battery), fell as the scaffolder carrying it was in motion from the first to second level of the scaffolding, some several metres up. The tool should sit in a pouch clipped to a tool belt, with a separate tether, so that, if the clip fails, the tool will not fall. It was said that the clip was broken when it caught on a hatch between the levels of the scaffolding. As can be seen on the CCTV,

the tool fell and the scaffolder appears to try to catch it with his foot, but ends up knocking it off the scaffolding. As there was no tether, it fell to the ground. It can be seen that it fell several metres before hitting the ground. It then bounced and pedestrians are seen to move away. Several pedestrians are in the immediate vicinity of the scaffolding (see the photograph on page 17 of the bundle). Two had passed through exactly where the item fell only moments before.

The incident was reported by a pedestrian and the Company on the day in question. As can be seen in the photographs, after the incident, the barriers were moved further out from the scaffolding and, when the Health and Safety Executive (“HSE”) attended, it required them to be moved further out still, and additional barriers put up. It is not to the credit of the Company that HSE was told initially that the barriers had not been moved after the incident. Representatives of the Company were interviewed by HSE and largely answered ‘no comment’ which is not a matter to be held against the Company. The Company produced an Incident Report and sent a follow-up email to HSE in which it set out a number of measures to prevent further such incidents and implemented further training for scaffolders.

The Company has no previous convictions but, the Company was reminded by HSE of its responsibilities when working at height in 2018 and in May 2022, following two incidents involving risks from working at height when erecting and dismantling scaffolding. In 2022, HSE warned the Company that any further incidents could be referred for prosecution and that warning is said to have contributed to HSE’s decision to recommend prosecution in this matter. The Company says that the matters in 2022 are not similar to the case before this Court today.

### **Sentencing Considerations**

Health and Safety prosecutions are rare in Guernsey. In previous cases, this Court has approached sentencing by reference to what was, at one stage, the leading English case which is the Crown v F Howe and Co Engineers Limited (1999) 2 Criminal Appeal Reports 37, but also considered the broader principles contained in the English Sentencing Counsel Guidelines, which were based on that case. In particular, this Court finds of assistance the aggravating and mitigating factors from those Guidelines and the issues to take into account in relation to culpability, harm and risk. Care must always be taken in referring to the English Sentencing Guidelines, as the statutory framework in England is often different and it has long been acknowledged by the Guernsey Court of Appeal that this Court is correct to sentence on Guernsey considerations. In this case, the legislative provisions and applicable safety standards are broadly the same, so the English Guidelines are of particular assistance in that regard.

It is said in Howe that sentencing of corporate entities is fact specific. It has the aim of punishing the entity, but also of deterring others in the same line of work, to ensure the safety of employees and others exposed to risks. In calculating the right level of penalty, this Court will look at the consequences of the offending and how far short of the appropriate standards the Company fell in failing to meet the reasonably practicable test. The financial penalty must have an economic impact on the Company being sentenced.

The Court is satisfied that the Company has failed in its duties, both generally and specifically, as follows:

1. failure to position and monitor the position of barriers in such a way as to protect the public, as required specifically by the Permit to erect the scaffolding in that area, and this failure is accepted;
2. whilst there was not a dynamic risk assessment, the Court is satisfied that the risks were covered in the generic risk assessment, so that is not the most significant failure;
3. failure to follow the Risk Assessment Method Statement which had been completed and which, it is accepted, did identify some safe systems of work which were then not implemented, for example, the segregation of the heavy goods vehicle and unloading areas from the public, exclusion zones and site inductions. Again, that failure is accepted;
4. lack of effective supervision of operatives and the public;

5. despite extensive representations by Advocate Merrien, all of which the Court has taken fully into account, the Court is satisfied that there was no satisfactory evidence of adequate training, so considers that that was a failure on the part of the Company; and
6. finally and specifically, the lack of a tether for the tool, which is a breach of the guidance issued by the National Access and Scaffolding Confederation, entitled ‘Guidance on Protection of the Public’. Advocate Merrien observed that this is guidance and not mandatory but the Court notes that it was part of the Risk Assessment and Method Statement in this matter, so it was something to which the Company had undertaken to give effect.

The Company has acknowledged that it made an erroneous decision to park the lorry opposite the scaffolding, which decision was taken because of objections from neighbours when it was parked alongside the scaffold. This, in the Court’s opinion, is a serious error which had the effect of channelling the public into the danger zone.

Erecting scaffolding, being working at height, carries an obvious risk of items falling and injuring those below. Risk can never be eliminated, but, in this case, the above failures, particularly those around site safety, barriers and the lack of a tether, led directly to the situation where a tool was able to fall onto a busy street, thereby causing a risk of serious harm or death to anyone it hit. It is to be noted that nobody was actually injured.

The Court has set culpability and risk of harm levels to assist it in formulating the appropriate starting point in this matter. The culpability is set at the medium level and the Court considers that the risk of harm was at the medium level (harm category 2), when applying the English Sentencing Guidelines. The Court notes that the Company was on notice from HSE that there was a need to pay attention to matters of health and safety, even though those matters were unrelated, which the Court considers to be an aggravating factor.

The Court has been given information as to the financial state of the Company, including its accounts and Advocate Merrien has explained certain aspects of the Company’s finances and given the requisite information as to the Company’s ability to pay a financial penalty. Looking at the English Sentencing Guidelines, with a turnover of less than £2 million, the company falls into what is categorised in England as a ‘micro organisation’. That is not a title which this Court would ascribe to it, taking into account the very different economy in Guernsey and I stress that we sentence on Guernsey considerations.

Taking into account everything which has been said, the starting point for the fine in this case is the sum of £50,000.

### **Plea and Mitigation**

The Company is entitled to full credit for its guilty plea which was entered at the first opportunity. The Company has no previous convictions. The Company’s incident report and subsequent communications with HSE demonstrated that it has taken full responsibility for the incident and was voluntarily committed to ensuring that risks would be properly identified and addressed in future works. It is accepted that the Company has co-operated with the investigation by HSE.

### **Sentence**

The purpose of health and safety regulations is to protect employees and others, including the public, from harm in what is a hazardous industry. It is important that those in the industry can see the consequences of breach and are not tempted to take short-cuts which might increase the risk of accidents, injury or death. Taking into account all that has been said, and applying the appropriate discounts, the fine will be one of £28,000 payable within 7 days.

### **Catherine Maureen Fooks**

**Judge of the Royal Court**

**14 February 2025**