The case of Mr 'S'

The role of an individual acting as, or on behalf of, a 'competent person' under PSSR (the Pressure System Safety Regulations 2000) comes with serious obligations. S Moore Holmes takes us through the case of Mr S

The case of Twinlock v Ajax arose following the explosion of a horizontal multi-tubular boiler under normal steam pressure at a factory in Essex on 19 March 1990. There were no personal injuries, but the plant operator's insurer sued the boiler inspection organisation for damages, due to significant destruction caused at the site, as well as consequential losses.

Cause of failure was corrosion fatigue of the longitudinal welded seam to the boiler's shell. The building occupier and boiler user argued that Mr S, who worked for the boiler inspection company, had been negligent in his examination of the boiler, since he had failed to detect the problem.

In fact, the long seam was located at the four o'clock position in the boiler water space, so not open to visual examination from inside the boiler. Indeed, the last time Mr S had observed this seam was in the summer of 1985, when he had asked for the front tube plate to be replaced, due to serious in-service defects. Also, it is important to note that the failure occurred prior to final guidance issued by the Associated Offices Technical Committee and the HSE on 28 February 1991 on periodic ultrasonic examination of steam boiler long seam welds.

Competence test

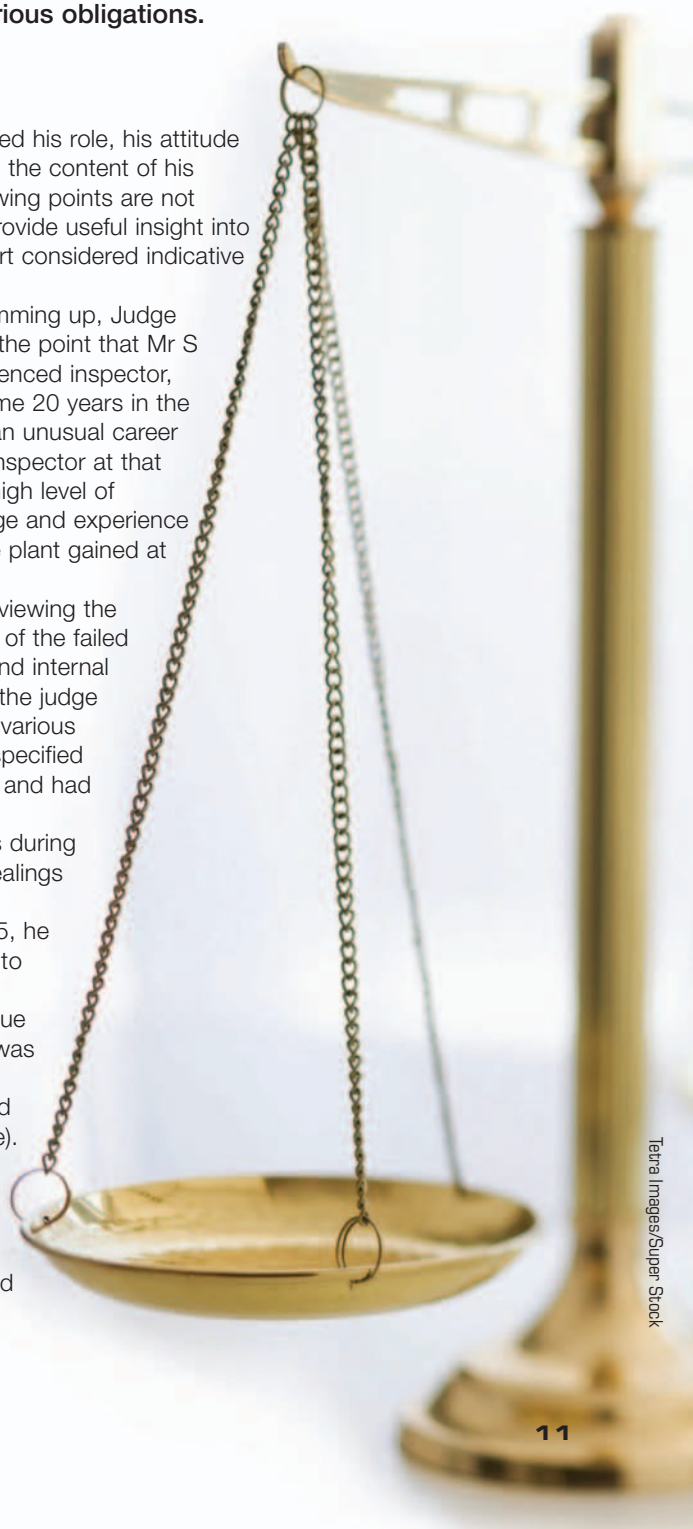
To succeed in an action under the tort of negligence, a claimant must prove three things: first, that a duty of care was owed to him; secondly, that there was a breach in that duty; and, lastly, that he has incurred consequential loss. Unsurprisingly, an important aspect of this case centred on whether there had been a breach in Mr S's duty to carry out his inspections with reasonable care and skill, in accordance with legislation.

In assessing the competence of Mr S, Justice Timothy Walker looked at the complete picture of him as an inspector, including his background, how he approached his role, his attitude and conduct, and the content of his reports. The following points are not exhaustive, but provide useful insight into attributes the court considered indicative of competence.

First, in his summing up, Judge Walker accepted the point that Mr S was a very experienced inspector, having served some 20 years in the Navy. It was not an unusual career path for a boiler inspector at that time, due to the high level of training, knowledge and experience involving pressure plant gained at sea.

Secondly, in reviewing the inspection history of the failed boiler in reports and internal correspondence, the judge observed that, at various times, Mr S had specified repairs and tests, and had made several recommendations during his 14 years of dealings with the boiler.

Indeed, in 1985, he advised his client to replace the boiler, rather than continue with repairs (this was unrelated to the defect that caused the ultimate failure). When this was not carried out, he reduced the periodicity of inspection required from the usual 14



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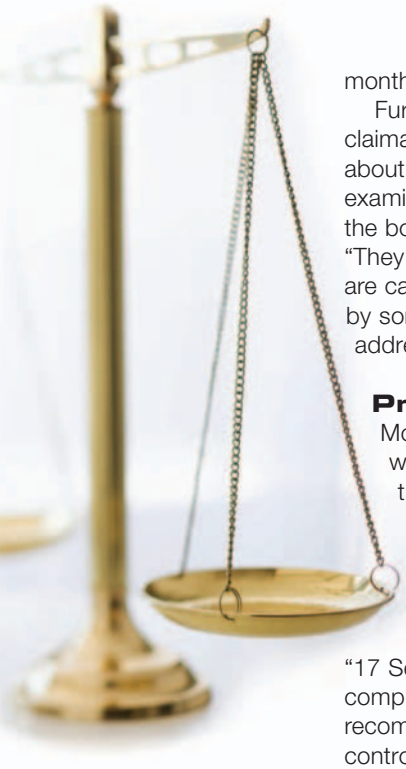

months to just three months.

Furthermore, it was noted that in 1987 the claimant had complained to Mr S's employer about what it considered to be an excessive examination regime. The judge commented upon the boiler reports that Mr S prepared as follows: "They are not mechanistic proforma reports. They are carefully considered and conscientious reports by someone who is doing his job properly, and addressing the detail of each inspection."

Procedures and protocols

Moving on to procedures and protocols, Mr S worked for an inspection company that, from time to time, distributed notes, guidance and instructions to its inspectors to support them in their role. Judge Walker found that not only did Mr S read them, but he also implemented them.

An example cited in court was that, on "17 September 1976, Mr S recommended that, to comply with Technical Data no 25 [that being a recommendation from the HSE] daily and weekly control checks should be kept in the form of a log". Plainly, Mr S had been active in following instructions and disseminating guidance he had received, in order to promote best practice and enhance safety, thereby demonstrating both his professional attitude and diligence in his job.

As to conduct, actions of Mr S over the years were described in similar terms by three of the claimant's own employees, who had first-hand knowledge of his performance on site. Two described him as "very strict" and the third as "very thorough". These witness statements showed that Mr S approached his work without fear or favour, his priority being the safety of the plant he was called upon to examine.

The judge commented: "It is ironic that the plaintiff, who now [through its insurers] complains that Mr S did not do his job properly, in 1987 complained that Mr S inspected the boiler too often. My own assessment of Mr S is that he was a thorough and conscientious inspector who, if anything, overstated the problems with the boiler."

So what does the law require? Regulation 9 of PSSR [Pressure System Safety Regulations 2000] requires an examination in accordance with a written scheme to be carried out properly by a competent person.

'Examination' is defined in Regulation 2 as 'a careful and critical scrutiny of a pressure system or part of a pressure system, in or out of service, as appropriate, using suitable techniques, including testing where appropriate, to assess (a) its actual condition and (b) whether, for the period to the next examination, it will not cause danger when properly used, if normal maintenance is carried out…'

As revealed in the case of Mr S, it is important that surveyors perform this duty with reasonable care and skill, in line with their company protocols and written scheme procedures, in order to protect themselves, as well as their employer, in the event that problems arise later.

Summing up

Various aspects of an examiner's role, from his dealings on site to the quality and content of his reports, are likely to be relevant in establishing an overall view as to whether this standard has been met. Many factors can militate against competent behaviour, including inadequate training, lack of knowledge, insufficient technical monitoring and supervision, complacency and undue time pressures. Competent persons, both as individuals and as companies, need to be vigilant to guard against all of these.

Should a surveyor be unfortunate enough, like Mr S, to find himself in court, it would be a vindication of his or her competency to hear, as Mr S did, those final words from the judge: "In my judgment, the claim in negligence against Mr S and [his employer] fails." PE

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The views expressed above are the author's alone and do not necessarily reflect the views of RSA.

Key functions for competent persons under PSSR

Under PSSR (the Pressure System Safety Regulations 2000), a competent person has two distinct functions: to draw up and certify written schemes of examination (Regulation 8) and to carry out the required examinations (Regulation 9).

Regulation 2 defines the competent person as '…an individual person [other than an employee] or a competent body of persons, corporate or unincoporate; and accordingly any reference in these regulations to a competent person performing a function includes a reference to his performing it through his employees'.

The Approved Code of Practice (ACOP), published by the HSE, provides further detail on the competent person organisation as having: staff with practical and theoretical knowledge and experience of the relevant systems; access to specialist services; effective support and professional expertise within their organisation; and proper standards of professional probity.

The ACOP divides pressure systems into three categories – 'minor', 'intermediate' and 'major' – and provides guidance as to the attributes a competent person should possess for each. For example 'major' pressure systems will usually require at least one senior member of staff at CEng or equivalent in each relevant discipline, with technically qualified staff in support having detailed knowledge of the systems concerned, examination techniques, the law and codes of practice.

The ACOP also states that accreditation to BS EN ISO/IEC 17020 [6] is recommended for competent persons who certify written schemes and perform examinations on major systems.