



Lawyer Paul Verrico on dangerous driving

Texting while driving: Court sends message

THE recent news that Lord Ahmed of Rotherham was jailed for 12 weeks after a fatal crash on the M1 in 2007 may not surprise people who read the case – after all, the evidence indicated that the peer had been texting at the wheel in the immediate lead up to the collision.

The sentencing judge's comments are worth noting. Mr Justice Wilkie explained that the texting itself had no bearing on the fatal collision.

Lord Ahmed was jailed on the basis that he had sent and received five text messages while driving in the dark, apparently within the speed limit, on the motorway.

Even though the texting didn't cause the accident, it was

deemed to be sufficiently dangerous to necessitate a prison sentence.

The judge commented: 'It is of the greatest importance that people realise what a serious offence dangerous driving of this type is... I have come to the conclusion that by reason of the prolonged, deliberate, repeated and highly dangerous driving for which you have pleaded guilty, only an immediate custodial sentence can be justified.'

What is dangerous driving?

Section 2A(1) of the Road Traffic Act 1988 provides that a person is driving dangerously if:

- a) the way he drives falls far below what would be expected of a competent and careful driver; and
- b) it would be obvious to a competent and careful driver that

driving in that way is dangerous.

The test thus concentrates on the nature of the driving rather than the driver's mental state.

Examples of such behaviour include cases where motorists have driven at 119mph on a motorway, where vehicles have been corroded and where a diabetic driver, aware that there was a real risk of a hypoglycaemic attack, drove on regardless.

The legislation aims to make roads safer for all those that use them. The relatively recent advent of widespread mobile phone use has added a new set of distractions for the average motorist.

In Lord Ahmed's case, the court emphasised that the mere act of sending and receiving text messages while behind the wheel

is of itself sufficiently serious to warrant a custodial sentence.

Good employers should offer guidance to their employees on what constitutes 'safe driving' using as a basis the Health and Safety Executive's document 'Driving for Work - Managing Work Related Road Safety' which is free from the HSE website. Driving policies should underline the seriousness of breaking road traffic law.

Lord Ahmed apparently plans an appeal 'against an unduly harsh sentence'. But regardless of the outcome of any such appeal, the message is clear: drive while distracted at your peril.

Eversheds are running a series of seminars in conjunction with the AA on driving for work. CFJ
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Martin Cummins on the value of good technical advice

Your 'best' answer may be the wrong one

IT ain't easy being technical; I mean we get asked all sorts of questions, but when an answer isn't what the contractor wants to hear then we're the bad guys.

We're not always the first port of call for advice as typically the particular question will have bounced around several technical departments in the hope that eventually the customer will get the answer they were looking for.

And I don't necessarily mean the right answer, as often this knocking on doors approach is simply to help them frame the question so they get the answer they were looking for, the one that makes for a cheaper, simpler project, regardless of whether it's right and correct given all site variables.

Take a recent hospital project. Built around the mid 1900s, the building had 15 to 20 stories high. There was very little history of previous flooring coverings, adhesives or even the substrate.

It would have been easy for a contractor to phone up and say: 'I've got this old hospital floor, we need a smoothing compound of 'x' N/sq mm compressive strength, what have you got?'

A spec could have been offered there and then. But being

'technical', you ask further questions. The uncertainty of the answers make a site investigation necessary. All this, of course, is a cost to us as the manufacturer.

In this instance, when the floor was uplifted there were several potential problem areas which required different approaches. Ideally, we would have liked to do some compatibility testing or trial areas to ascertain the performance of various products in situ, but unfortunately time constraints prevented this.

A recommendation was based on knowledge gained on the site visit.

Work began, but due to the unusual nature of the adhesive residue the performance was not as good as we would have expected.

This meant we had to reinvestigate the flooring and upgrade the recommendations accordingly (an isolating primer was needed over some of the residues) so that the job would be successful and we could guarantee it.

The problem with this site was that the strip-out was not carried out by the flooring contractor and the first opportunity he had to assess the floor was when all the

coverings, partitions etc had been removed.

Had he or we been able to see the floor coverings in place we may have been able to predict what adhesives had been used and what areas may have been at risk. But all we could see was a dark, blackish adhesive in most areas and a dark yellow adhesive in other areas.

There was a distinct line across the floor where the initial system had succeeded on one side, but failed on the other... yet the black adhesives appeared very similar... obviously they were not.

One adhesive was adversely affected by the standard primer and compound application, whilst the other was fine.

The contractor now had to use a more time-consuming costly primer system, but he appreciated our involvement and could see the issues for himself. We had worked as a team to resolve the issues, something which can still make the flooring industry an enjoyable business to be involved in.

My question is about other manufacturers making specifications with apparent guarantees, but without proper investigation.

What happens if these go

wrong? Will the manufacturer support the contractor? Will the contractor accept he was not given full information? Only time will tell.

In the above case it would have been easy to have made a recommendation based on weak information without a site visit and full knowledge, yet I'd be writing a different article now about a floor that had failed.

Technical is there for a reason and I hope you appreciate that quite a lot of time and effort goes into ensure that the various flooring installations you undertake actually work and are successful.

Technical's only motivation is to see a job done correctly; it is not to generate extra costs and more work (we don't get bonuses like sales guys!!) else we'd be out of business very, very soon.

Technical is there to be used and I say with caution 'abused', but we are there for one reason and that is see that you get the correct information that delivers the end product you want and what the customer wants – success. **CFJ**

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