

Compass Chambers



HEALTH & SAFETY Update

Barry Smith KC

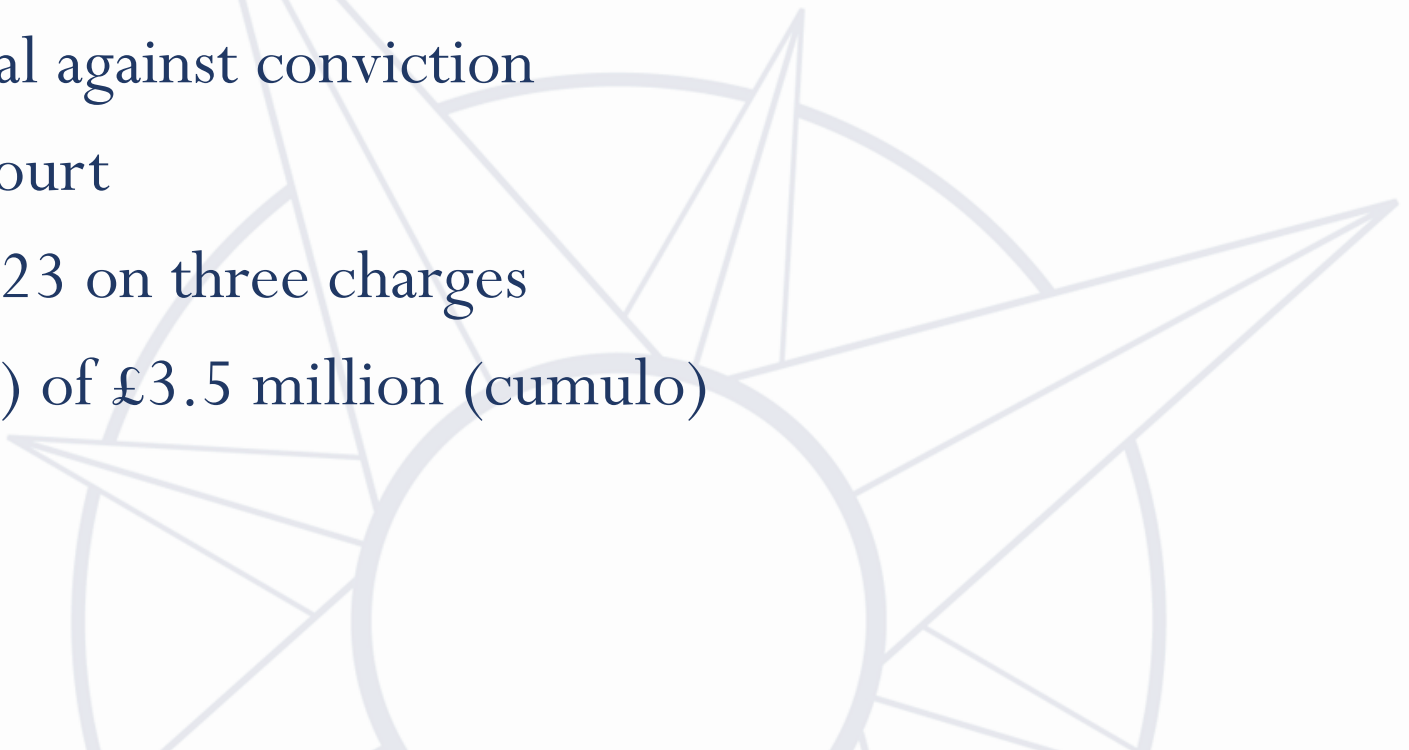


R v MORRISONS PLC





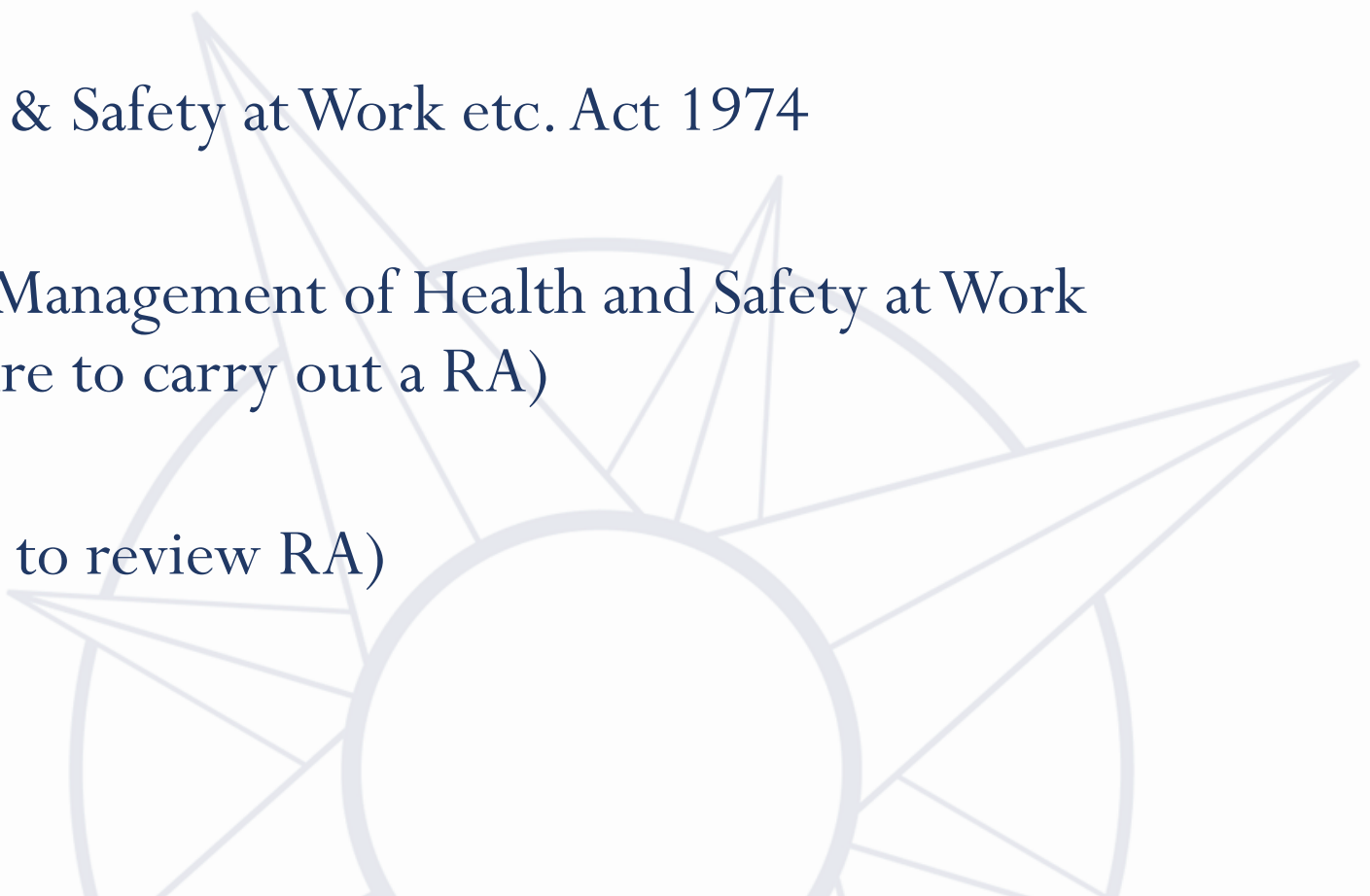
R v MORRISONS PLC

- **R v W. M. MORRISONS PLC** (unreported) [2024] EWCA Crim 627
 - Court of Appeal judgement issued 22 May 2024
 - Application for leave to appeal against conviction
 - Trial at Gloucester Crown Court
 - Conviction on 2 February 2023 on three charges
 - Sentence (on 17 March 2023) of £3.5 million (cumulo)
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R v MORRISONS PLC

Three charges:

1. Section 2 of the Health & Safety at Work etc. Act 1974
 2. Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 (failure to carry out a RA)
 3. Regulation 3(3) (failure to review RA)
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R v MORRISONS PLC

- Matthew Gunn (aged 27) was employed at Morrisons supermarket in Tewkesbury
- He had worked there for ten years
- Matthew had epilepsy and suffered frequent seizures
- The seizures varied in severity and would come on without warning
- Morrisons were aware of his condition and in June 2014 a meeting took place involving the store personnel manager and occupational health manager



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- Matthew's mother raised concerns about his use of a staircase in the store
- Employees were required to leave all personal belongings in lockers whilst at work
- Lockers were located on the first floor, accessed by a staircase
- The staircase itself was unexceptional and complied with relevant standards
- There was a large void down into the stairwell
- It was suggested that Matthew's locker should be moved to the ground floor



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- On 25 September 2014 Matthew fell from the staircase onto the floor of the stairwell below and sustained severe head injuries from which he later died
- The reasonable inference was drawn that Matthew had a seizure, which caused him to fall
- The case proceeded to trial
- The defence made a no case to answer submission on the basis that Matthew Gunn had not been exposed to a relevant risk
- That the company owed no duty to MG in relation to the use of the stairs beyond that owed to every other employee



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- The trial judge repelled the submission and allowed the case to go to the jury
 - The jury convicted on all three charges
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R v MORRISONS PLC

- Argued on appeal (Richard Matthews KC)
 1. A relevant risk is one materially related to the activities of the employer
 2. Epilepsy was not an occupational health condition; it was not related to the company's activities
 3. The risk of falling on the stairs was an everyday risk for people with epilepsy
 4. The staircase presented no risk to ordinary users of it



R v MORRISONS PLC

- R v Porter [2008] EWCA Crim 1271
- Head teacher of school convicted after trial in re death of 3 year old child who died following complications from injuries sustained in a fall on a flight of steps during playtime
- Conviction overturned on appeal
- Court of Appeal focused on an objective assessment of the risk
- Risks must be real; more than fanciful or those “part of the ordinary incidence of everyday life”

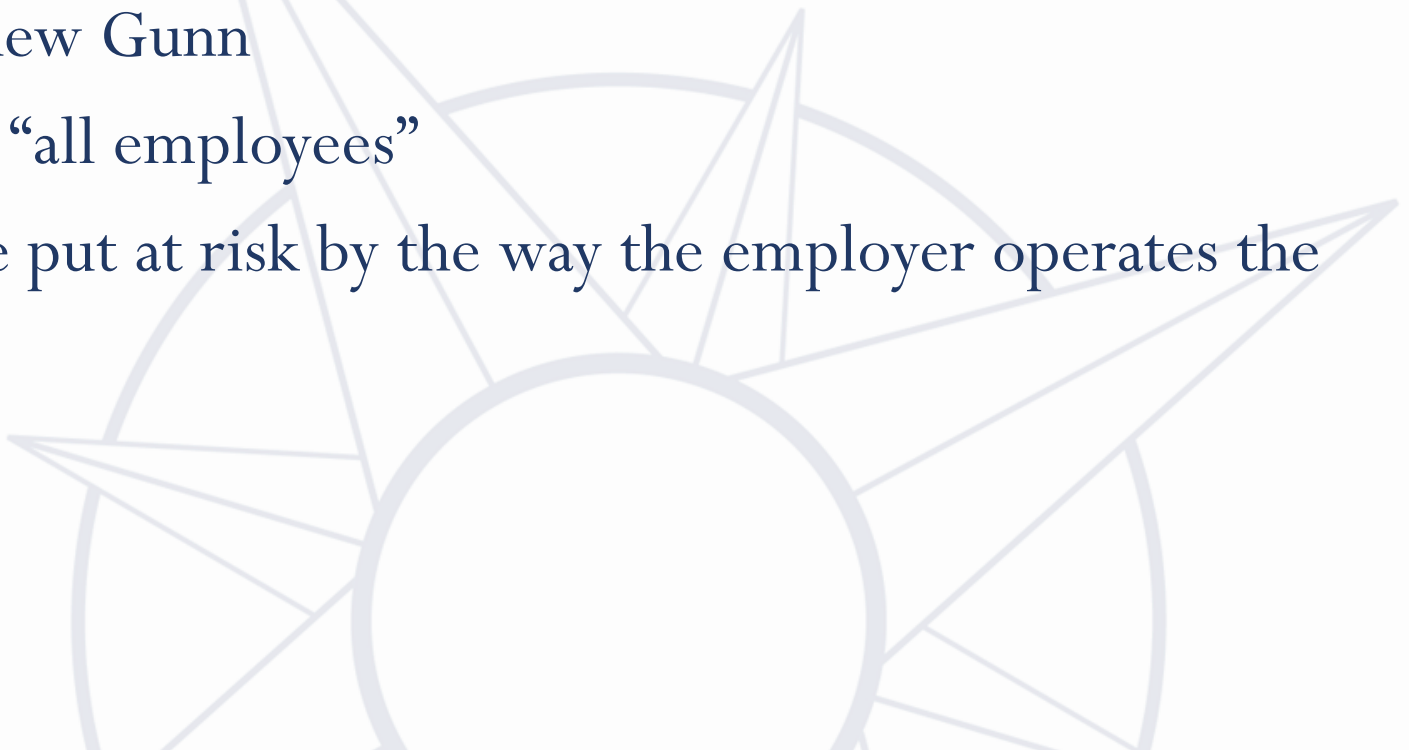


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- Court of Appeal (Lord Justice Davis) held *Porter* did not assist
- *Porter* an exceptional case in which there had been an absence of evidence from which a jury could conclude the duty holder had exposed the child to risk by the conduct of its undertaking
- *Porter* establishes no point of principle other than that the risk must be real rather than fanciful for the duty to arise
- In this case, there had been “ample evidence” that the conduct of the company exposed Matthew Gunn to “real risk”

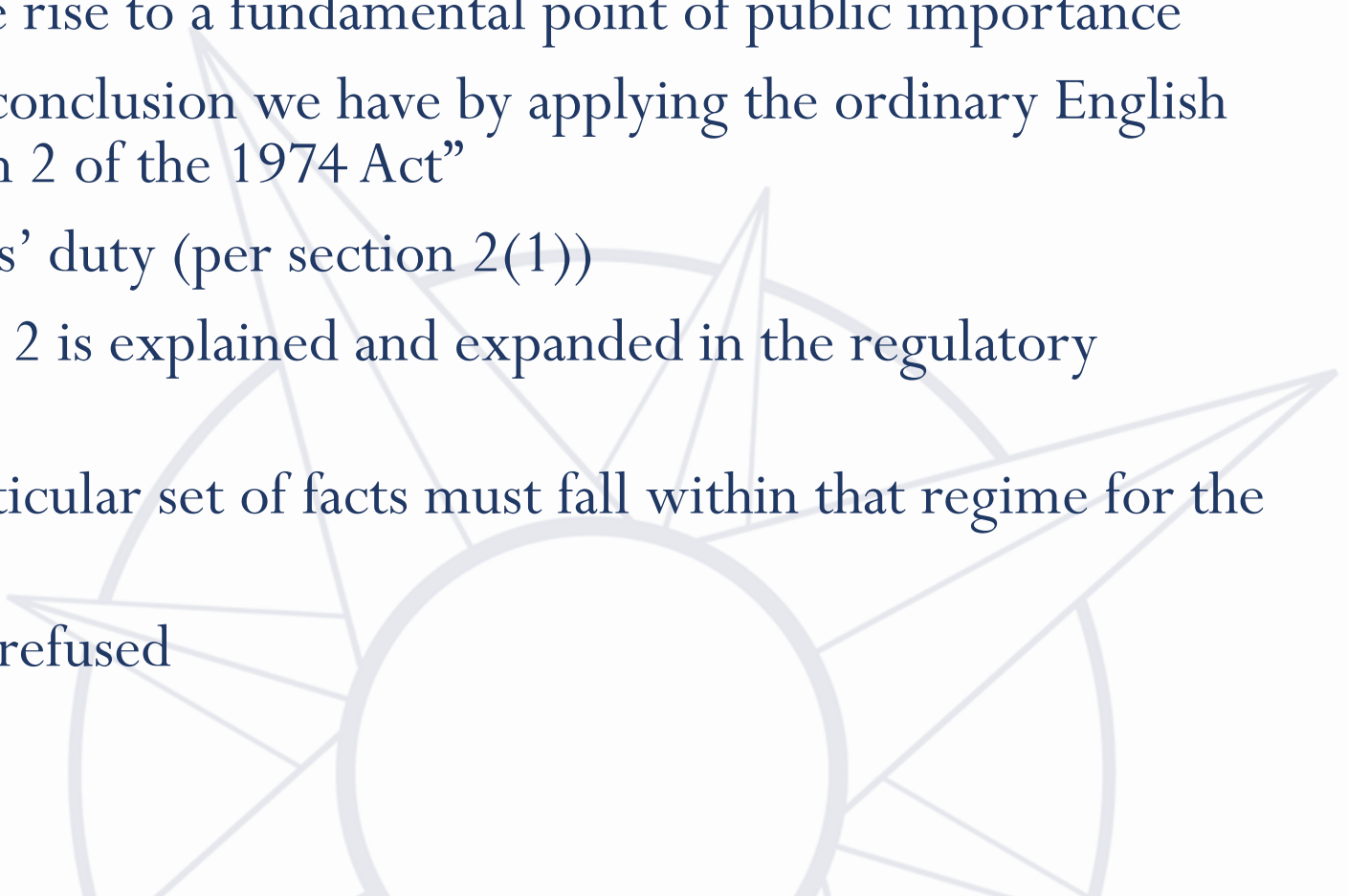


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- Whilst the staircase did not present a risk to almost all members of staff, that was to miss the point
 - It created a real risk to Matthew Gunn
 - The section 2 duty applies to “all employees”
 - If one or more employees are put at risk by the way the employer operates the business the duty arises
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R v MORRISONS PLC

- Submitted that this appeal gave rise to a fundamental point of public importance
 - Davis LJ “we have reached the conclusion we have by applying the ordinary English meaning to the terms of section 2 of the 1974 Act”
 - The generality of the employers’ duty (per section 2(1))
 - The “overriding duty in section 2 is explained and expanded in the regulatory regime”
 - “That does not mean that a particular set of facts must fall within that regime for the overriding duty to apply”
 - Application for leave to appeal refused
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Questions?



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