


# Property damage oil spills, reliance and duties of delivery drivers

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## Pilgrims Management Company Ltd v Birlem Limited [2023] EWHC 508 (TCC)

During a delivery of oil to residential flats the oil tank was overfilled causing a spillage and damage to the property. The court examined whether the defendant's delivery driver was at fault or the claimant's managing agent (Kinleigh Folkhard and Hayward) who supplied incorrect information to the delivery driver.

The key issue was whether a professional delivery driver could rely on representations from a professional managing agent and/or whether they had to undertake their own investigations.

## Facts

The claimant was the freehold management company who employed Kinleigh Folkhard and Hayward as its managing agent. When tenants complained about cold water, Kinleigh Folkhard and Hayward investigated and took the view that the oil tank of the boiler was empty. Kinleigh Folkhard and Hayward arranged for a delivery of oil to the property to refill the tank, with a delivery company (the defendant) who had not delivered oil to the property before and was therefore not familiar with it.

An employee of Kinleigh Folkhard and Hayward informed the defendant that the oil tank was empty and had a capacity of 6,000 litres when in fact it only had a capacity of 4,546 litres.

It was a disputed fact as to whether the defendant's delivery driver called Kinleigh Folkhard and Hayward when he arrived at the property to access the boiler room.

The defendant's driver tested the overflow system of the tank, which had an alarm that sounded when it was full. He filled the tank and stopped when the alarm sounded, noting that only 4,523 litres were delivered.

The question for the experts was, what was expected of a reasonably competent delivery driver in that situation? They agreed that the driver's own investigations should cover three matters, when filling a tank from an external fill point:

1. The oil tank and associated equipment was in a suitable condition to receive the delivery;
2. The tank had sufficient ullage (i.e. unfilled capacity) to receive the oil without overflowing;
3. Suitable safety devices were installed at the external fill point including an overfill alarm system.

As to reliance on the claimant's managing agent's instructions, the experts agreed that:

"in a commercial setting, a delivery driver may rely on assurances provided by a suitably qualified competent person nominated by the recipient property owner/occupier".

The experts differed as to whether the Kinleigh Folkhard and Hayward employee should be regarded as a competent person for these purposes.

## Court's decision

The court was satisfied that the defendant's driver had made the calls to Kinleigh Folkhard and Hayward and was told by their employee to fill the tank from an external filling point (i.e. not to enter the boiler room).

The court was also satisfied that Kinleigh Folkhard and Hayward had held their employee out as being competent to direct the oil delivery and that the defendants' delivery driver was entitled to rely on the representations made by her/ Kinleigh Folkhard and Hayward.

The court also agreed with the defendant's expert that:

"if a delivery of oil has been ordered by a professional firm, as occurred in this case, the driver was entitled to carry out the filling process at the external fill point once he had checked the functioning of the alarm."

The court therefore held that the defendant was not in breach of its duty and the claim failed.

## Comment

Although fact specific the case is a useful examination of responsibilities for damage in circumstances where property owners have employed professional managing agents who then in turn direct independent contractors / workmen to undertake certain work, in a certain way, and where those directions are relied upon by the contractors / workmen.

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