



SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

UNITED KINGDOM

Name of case: [Mountpace Ltd v Haringey LBC](#) [2012] EWHC 698

Country and court: High Court, United Kingdom

Date of holding: June 2013

Summary of facts:

Mountpace Ltd contracted out renovation of a property in London including removal and disposal of the waste created by the renovation. The contractor transferred the waste to a third party, that “fly-tipped” it on two specific dates in December 2009. The contractor was convicted of knowingly causing controlled waste to be deposited on land without an environmental permit, in breach of section 33(1)(a) of the EPA 1990.

The evidence was that Mountpace had not taken any steps to ensure that the waste was transferred to an authorized person, as required by section 34(1)(c). Mountpace had relied on the contractor to comply with the statutory requirements for disposal of waste. The company assumed that the renovation contractor would be responsible for whatever waste was removed from the premises.

The magistrates' court convicted Mountpace of breach of section 34. It held that Mountpace had a duty of care to ensure that waste was disposed of safely and that it had not adequately discharged its statutory duty. The company appealed this decision.

Legal basis for holding waste generator or producer liable:

Under section 33(1)(a) of the Environmental Protection Act 1990 (EPA 1990), it is an offence to deposit controlled waste (or knowingly cause or knowingly permit controlled waste to be deposited) in or on any land without an environmental permit, or in breach of a permit. Section 34 of the EPA 1990 imposes a duty of care on anyone handling controlled waste (that is, producers, carriers, importers, those storing or treating waste, disposers and dealers or brokers) to take all reasonable steps to ensure that the waste:

- *Is not disposed of unlawfully, without a permit or in breach of any permit, or treated, kept or disposed of in a way that causes pollution or harm (that is, in breach of section 33(1) of the EPA 1990) (section 34(1)(a)).*
- *Does not escape from a person's control (section 34(1)(b)).*
- *Is only transferred to an authorized person (such as a registered carrier or licensed disposer) (section 34(1)(c)).*
- *When transferred, is accompanied by a written description that enables the transferee to know enough about it to deal with it properly and avoid breaching their permit or section 33(1) (section 34(1)(c)).*

The steps necessary to provide due care are detailed in a [manual by the government](#).

The court affirmed the judgment holding the waste producer responsible, noting:

“Even though Mountpace was not physically present at the property that was being renovated, and even though the renovation was being carried out by a contractor, Mountpace's renovation of the property was generating the waste, so Mountpace was a waste producer and was subject to the duty of care. Mountpace was in control of the waste while it was being generated on its property. Mountpace was therefore subject to the duty of care under section 34.

“The duty of care requires a waste holder to ensure that the requirements of section 34(1)(c) are met when waste is transferred. This must be complied with at the time the transfer of waste actually occurs. The question of what a waste holder is reasonably required to do to ensure that section 34(1)(c) is complied with depends on the waste holder's capacity "on that occasion in the circumstances prevailing on that occasion".

“However, a waste holder can also show that he has complied with section 34(1)(c) by referring to steps he has already taken before the transfer of the waste, in order to prepare for it. This could include checking with the Environment Agency that a waste carrier is validly registered before using him for the first time (as recommended by the code of practice).

“The court should take into account the waste holder's behaviour before the actual transfer as a part of its consideration of whether, in the circumstances, the waste holder had complied with its duty of care.”

Commentary:

The case firmly establishes that a waste producer cannot rely on the actions of a third-party to satisfy its due care duties under the law.

Note: Nothing in the waste law transposed into national law supersedes, replaces or negates potential liability under the Environmental Liability Directive or the Industrial Emissions Directive (IPPC). Both of which have been applied to waste producers.

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