



Neutral Citation Number: [2026] EWHC 1025 (KB)

Case No: KB-2024-002800

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 01/05/26

**Before :**

**CLARE PADLEY (SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)**

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**Between :**

**(1) CHRISTINE DEVALL**  
**(2) PETER DEVALL**  
**(3) ROBERT DEVALL**  
**(as Executors of the estate**  
**of RICHARD DEVALL, deceased)**

**Claimants**

**- and -**

**ENGLISH ELECTRIC COMPANY LIMITED**

**Defendant**

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**Stephen Glynn (instructed by Irwin Mitchell LLP) for the Claimants**  
**Alexander Macpherson (instructed by DWF Law LLP) for the Defendant**

Hearing dates: 19 and 20 March 2026  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Clare Padley (sitting as a Deputy High Court Judge) :**

1. This case concerns a claim for damages due to alleged asbestos exposure in 1965 following the death of Mr Richard Devall ('the deceased') from mesothelioma on 28 April 2022. The claim is brought by the Claimants on behalf of the estate of the deceased, who was a husband and father, pursuant to the Law Reform (Miscellaneous Provision) Act 1934 and on behalf of the First Claimant as his dependent widow pursuant to the Fatal Accidents Act 1976.
2. I am grateful to Counsel for their detailed written and oral submissions in this case.

**Parties**

3. The deceased was born on 3 March 1944 and died on 28 April 2022 at the age of 78. He was known to his friends and family as 'Richie'. His immediate cause of death was mesothelioma, which was diagnosed in March 2022. I will refer to him in this judgment as Mr Devall.
4. The First Claimant is the widow of the deceased. She was born in March 1945 and was aged 80 at the time of the hearing. The Second and Third Claimants are their two sons, who are co-executors of their father's estate, but have played no part in this hearing. I will refer to the First Claimant as Mrs Devall in this judgment.

**Summary of claim**

5. This claim was issued on 29 August 2024. Directions were given on 24 February 2025, including permission for medical and expert liability evidence.
6. The Claimants' case in summary is that Mr Devall, who was then aged 21, worked for the Defendant between March/April to July 1965 as an apprentice electrical engineer at Sizewell A nuclear power station ('Sizewell A') in Suffolk. It is claimed that he was exposed to foreseeably harmful levels of respirable asbestos dust throughout all or most of that period, as a result of the activities of lagging teams working nearby in the turbine hall, whilst Mr Devall was commissioning the alternators. The alternators were close coupled to a steam turbine which required insulation with asbestos.
7. In the original claim form, the Claimants stated that Mr Devall's employment at Sizewell A was between 1962/3 and 1969/70, and in the original particulars of claim, it was stated that Mr Devall was based at Sizewell A in 1966 during the final year of his apprenticeship as an electrical engineer.
8. The particulars of claim were then amended in March 2025, and the revised period of alleged exposure is now said to have been between March/April and July 1965, whilst Mr Devall was on an industrial placement at Sizewell A, during the third year of his apprenticeship.

**Summary of Defence**

9. The Defendant admits that the HMRC records establish Mr Devall's employment with the Defendant from 1962/3 to 1969/70 but do not make any admissions about his specific role or tasks.

10. In summary, the Defendant denies liability in this case on the basis that the evidence upon which the Claimants rely does not establish that Mr Devall was exposed to asbestos dust during his work at Sizewell A; and also does not establish that any alleged exposure of Mr Devall to asbestos occurred in circumstances amounting to a breach of duty on the part of the Defendant.

### **Quantum**

11. I have been advised by the parties that quantum has now been agreed, subject to the issue of liability, in the sum of £215,081 inclusive of interest and deductible benefits.

### **The issues**

12. Following an invitation from the court at the close of the evidence, Counsel jointly suggested a revised list of key issues which the court was invited to determine, which can be summarised as follows:
  - i) was Mr Devall exposed to asbestos during his employment at Sizewell A as a result of insulation work?
  - ii) if so, what was the nature and extent of the insulation work carried out whilst Mr Devall was in the same vicinity, and what was the level of his exposure?
  - iii) did any exposure so found give rise to a foreseeable risk of significant injury, having regard to the state of knowledge at the time?
  - iv) if so, did the Defendant take any precautionary measures?
  - v) in the circumstances so found, was there a breach of duty by the Defendant?
13. It is for the Claimants to satisfy the court on all these issues in order for this claim to succeed. It is common ground, as set out in Professor Maskell's report, that mesothelioma is a disease which is almost invariably caused by exposure to asbestos dust or fibres. I have been advised by the parties that if asbestos exposure and breach of duty are established, then medical causation of Mr Devall's mesothelioma would not be in dispute.
14. In this judgment, after reviewing and summarising the available witness and documentary evidence and the relevant law, I will set out my findings in relation to the first two factual issues relating to asbestos exposure first and then address any remaining issues which arise.

### **Witness and documentary evidence**

15. There was no lifetime witness statement from Mr Devall. The Claimant's factual case relied on written and oral witness evidence from Mrs Devall and Mr Devall's brother-in-law, Mr John Bryant, and some documentary evidence about his employment history. The Claimants also relied on written expert medical evidence from Professor Maskell, Consultant Physician, who was not called, and written and oral expert evidence from Mr David Maddison, a Health and Safety Practitioner.

16. The Defendant did not adduce any lay witness evidence or medical evidence. It relied on written and oral expert evidence from Dr Stephen Cowley, an engineering consultant.
17. The trial bundle also included about 4,500 pages of medical records, but in light of the parties' agreement on medical diagnosis and causation, I was only taken to a few pages in those records. I have carefully considered and taken into account all the written and oral evidence put before the court, but I will only rehearse the key evidence relevant to my findings in this judgment.

### **Mr Devall**

18. Although there was no direct evidence from Mr Devall, I was able to form a clear picture of him from all the uncontested evidence I read and heard. I have also seen a set of photos, including one of Mr Devall driving his Austin 'Nippy' sports car in 1966, which was relied on by Mrs Devall to more accurately date his period working away at Sizewell A.
19. Mr Devall was born and brought up near Stafford. He and Mrs Devall were married on 24 September 1966, and they have two adult sons, Peter and Robert, who are also named as Claimants in this case.
20. The Claimants' expert medical evidence from Professor Maskell (in his reports dated 27 July 2023, 25 January 2024 and 12 May 2025) was not challenged in terms of Mr Devall's medical history and diagnosis and his conclusions are supported by the contemporaneous medical records in the bundle. Mr Devall was an active man, but he had also suffered from other serious health conditions including polycystic kidney disease, prostate cancer and spinal stenosis. In 2018, he was diagnosed with idiopathic pulmonary fibrosis ('IPF'). Following a CT scan on 11 March 2022, a malignant mass was identified. He then underwent a radiologically guided biopsy which confirmed the diagnosis of sarcomatoid mesothelioma, from which he sadly died within just 7 weeks. Although Mr Devall suffered attributable symptoms for the last 5 months of life, he only became aware that he had an asbestos-related disease shortly before his death.
21. I have seen a full written employment history prepared by Mr Devall himself in or around 2018, when he responded to a survey following his IPF diagnosis. I have also seen copies of a CV he wrote in 1983 and his written application for membership of the Institute of Electrical Engineers ('IEE') in 1977. From these documents, I have a detailed picture of Mr Devall and his work history which was not challenged by the Defendant.
22. Mr Devall completed a five-year apprenticeship with the Defendant, from 1962-1967. This comprised a three-year sandwich course at North Staffordshire College (now the University of Staffordshire) followed by a fourth year in industry and then a fifth academic year back at the College full-time. It was during his third sandwich year that the Claimants now assert that Mr Devall spent four months in mid-1965, on an industrial placement at Sizewell A Nuclear Power Station in Suffolk. At that time, the construction of Sizewell A was nearing completion, and commissioning work was underway.

23. Following the completion of his apprenticeship, Mr Devall qualified as an electrical engineer. He was taken on by the Defendant and worked in its factory in Stafford which made large generators. He became a machine design engineer, before moving to a new weapons-based company as a systems engineer. His career history included a long period working for British Aerospace at their weapons research centre and visiting many defence establishments. In his final role before his retirement in 2000, Mr Devall was a senior principal scientist specialising in guided missiles. After that time, he continued to do some work writing reports until 2007/8.
24. The medical records show that when Mr Devall was asked directly by medical practitioners in 2018, in the context of his IPF diagnosis, and in early 2022, following his mesothelioma diagnosis, about any potential exposure to asbestos, he could not recall having been exposed to asbestos during his working life. The Coroner's Record of Inquest reflected this, with a note that there was "*no apparent past exposure to asbestos - occupational or otherwise*". That said, I note that Mrs Devall had provided a letter to the Coroner referring to a period of possible exposure when Mr Devall was working for BAE Systems Filton in an office on an airfield near some old Nissen huts.
25. In his written record of his employment history for the IPF survey in 2018, Mr Devall specifically recorded his 4 months at Sizewell A commissioning electrical equipment, and he also recorded his hobbies, including building/modifying cars and woodwork. His note stated in relation to his woodwork, which included furniture making and using different machines: "*Used dust extractor on large machines and air fed mask if very fine dust*".

### **Mrs Christine Devall**

26. Mrs Devall produced three witness statements for the court, dated 15 August 2022, 4 March 2024 and 21 March 2025. In her first statement, she described how she met her husband in 1961 and married him in September 1966. She became his main carer in 2020 following a back operation which left him very immobile.
27. She described as "*a very bright academic man*" and said "*it was his practice to research everything thoroughly*" and that "*he liked to know what was going on*". She confirmed that he had researched IPF. Despite that being his usual approach to life, she also told me during her oral evidence, that during the tragically short period of 6-7 weeks between his mesothelioma diagnosis and his death, her husband was understandably more focussed on putting his affairs in order than finding out the possible cause of his fatal condition. I was struck by her comment that he spent his final weeks preparing a file for her on 'What to do when I die'.
28. In her first witness statement, Mrs Devall set out details of Mr Devall's employment history and exhibited the documents which he prepared during his lifetime to which I have already referred. She included statements in relation to some of his other periods of employments to the effect that she did not believe that Mr Devall was exposed to asbestos during those employments. In relation to his time working at Sizewell A, Mrs Devall explained that she had become aware of asbestos use during the construction of Sizewell A after doing some Google research. She concluded that as Mr Devall was working there during the commissioning period and that he "*was likely to have worked alongside people who were dealing with asbestos*".

29. She stated that whilst he was working at Sizewell A he stayed away for periods of up to 6 months. She clarified in her oral evidence that she did not in fact see Mr Devall whilst he was doing his placement at Sizewell A in 1965, as they were on a break during their relationship, although she recalled that he went to work at Sizewell without a beard and came back with a beard. She said that she was aware that he sometimes came home at the weekends, but she was not able to give any direct evidence about his work at Sizewell A.
30. In her third witness statement Mrs Devall stated that she understood from discussions with Mr Bryant that Mr Devall “*was exposed to asbestos*” when he worked at Sizewell A. She went on to clarify the timing of his placement at Sizewell A and confirmed that it must have been in March-July 1965 rather than in 1966 as she had previously thought.
31. She was cross-examined at some length about two benefits claim forms which she had signed on 23 June 2022, relating to claims for Industrial Injuries Disablement Benefit (‘IIDB’) and a Pneumoconiosis etc. (Workers’ Compensation) Act 1979 (‘PWCA’) lump sum payment. On the IIDB form, it was stated that Mr Devall had “*regularly worked alongside people in the various factories/places of work who were dealing with asbestos*” and three employers were named, including the Defendant and British Aerospace. On the PWCA form which required a full employment history, the same three employers were listed on the form with a tick in the box marked “*yes*” for ‘*exposure to asbestos*’ and a fourth employer was marked “*Don’t know*”.
32. Mrs Devall accepted signing the forms and that she understood the nature of the declarations she had made but told the court that she had not filled them out herself but believed they were filled out by her solicitor. She stated that the information in the forms was not based on any specific knowledge she had of asbestos exposure by Mr Devall at any of those employments, but was simply a list of places he had worked. Mrs Devall explained that she had only become aware of possible asbestos use during the construction of Sizewell A after doing some Google research.
33. In her oral evidence, Mrs Devall accepted that her evidence in relation to Mr Devall’s period of employment at Sizewell A and any potential exposure to asbestos was entirely dependent on the account given to her after Mr Devall’s death by his brother-in-law, Mr Bryant. She was unable to confirm when they had first discussed the matter but accepted that it was likely to have been between her second and third witness statements, as she had not mentioned her discussions with him in her first or second statements.

### **Mr John Bryant**

34. Mr Bryant provided three witness statements to the court dated 9 January 2023, 3 March 2025 and 16 December 2025, which he confirmed and clarified in his oral evidence.
35. Mr Bryant was born in April 1943 and was aged 82 at the time of the hearing. He first met Mr Devall in 1962 when they both joined the Defendant company as student apprentices based in Stafford, with Mr Bryant in the mechanical engineering team and Mr Devall in the electrical engineering team. He became Mr Devall’s brother-in-law in 1967, when he married Mr Devall’s sister, Margaret, so they have close family ties.

36. He told the court that his wife had sadly passed away in 2020 and that due to that event and the impact of Covid, he did not have much contact with the Devalls during the period leading up to Mr Devall's diagnosis and death in 2022. He could not recall when he first heard that Mr Devall's death was from an asbestos related condition, but confirmed he would have been told by Mrs Devall.
37. In his first witness statement, Mr Bryant explained that during the final year of their 5-year apprenticeships, he and Mr Devall had both been sent on industrial placements at the same time. He stated that he was assigned to Hinkley Point A Nuclear Power Station ('Hinkley Point') in Somerset, whilst Mr Devall was assigned to Sizewell A in Suffolk. Mr Bryant stated that Hinkley Point A and Sizewell A were both built with Magnox reactors and were commissioned at the same time. He stated that he was made aware "*through conversations with Richie throughout this year that he was performing similar work at Sizewell A as I was completing at Hinkley A.*" He stated that they both worked in the turbine halls of the respective power stations and were both working to commission the bank alternators that had been manufactured at the Defendant's factory in Stafford, which involved many months of work.
38. The remainder of Mr Bryant's evidence in his first statement related to his recollections of his own experiences of working in the turbine hall at Hinkley Point alongside ladders who were insulating the turbines and steam pipes. He recalled seeing ladders working next to him preparing asbestos paste which created significant clouds of dust. I do not propose to rehearse all Mr Bryant's written evidence in relation to his experiences at Hinkley Point in full, as his oral evidence painted a rather different picture from this first statement.
39. Mr Bryant's evidence in relation to the extent of his knowledge of Mr Devall's experience at Sizewell A evolved in the three witness statements. In his first witness statement in January 2023, he stated (with my emphasis):
- "17. Towards the end of my placement at Hinkley Point A, Richie and I had a catch up about the progress of the commissioning of the respective power stations. I can specifically recall discussing with Richie that Sizewell A was slightly behind Hinkley Point A; their later turbo alternator was not yet working in the hall. This means that Richie was most likely working in the turbine hall at Sizewell A whilst the ladders were lagging the steam turbine.
18. Given that Richie and I were both involved with commissioning equipment including the alternators built at Stafford, Richie is most likely to have been working in close proximity to the ladders who were lagging the steam turbines and pipework with asbestos."
40. In his second statement dated 3 April 2025, Mr Bryant corrected the dates of their industrial placements and confirmed, in line with Mrs Devall's third statement, that he now believed their respective power station placements had taken place during their third 'sandwich' year at North Staffordshire College. He now stated that their placements did not in fact overlap, but that his placement at Hinkley Point A had finished in November 1964, with Mr Devall's placement at Sizewell A then taking

place from March/April to July 1965. He explained that he now believed that his conversations with Mr Devall about Sizewell A had taken place during Mr Devall's occasional weekend visits home and that they had seen each other at the Devall family home as he was by then dating Mr Devall's sister.

41. Having repeated some of his previous recollections about his work alongside ladders at Hinkley Point, Mr Bryant then included this key paragraph (with my emphasis):

“I know that Richie was working in similar circumstances with ladders mixing and applying asbestos lagging to the steam turbine in his vicinity in the turbine halls as we spoke about it when he was working at Sizewell A. Sizewell A was a later build power station with the turboalternator assembly and insulation work being at an earlier stage than at Hinkley Point A station. This would have meant that there would have been more activity on the turbine build and insulation at Sizewell A than I witnessed, and was exposed to, at Hinkley Point. It always surprised me at the time that the ladders were given suits and masks but that we weren't even though we were in the same area. Richie confirmed to me at the time that he had a similar experience.”
42. In this third statement he sought to rebut a suggestion made by the Defendant's health and safety expert, Dr Stephen Cowley, about the likely timing of the lagging work in relation to the commissioning work. He agreed with Dr Cowley's definition of commissioning work as “*the performance testing, trial-running, calibration, etc, of production equipment*” and that to test and commission the alternator under load it would be necessary for the turbine to be rotating with steam passing through the system. However, he stated that the work being undertaken by himself and Mr Devall was commissioning work on the auxiliary parts of the alternator, including the seal oil unit and the excitor. He stated that at that stage there was no requirement to put steam through the turbine, so the ladders could still be finishing the lagging of the turbine and the steam pipes.
43. During his oral evidence, Mr Bryant provided a slightly different account of his own experience at Hinkley Point. Under cross-examination, he accepted that although he had a clear memory of seeing large sacks of cement (which he now believes must have been asbestos) being opened and emptied, he could not recall any details of the container into which they were poured. He initially described it as a ‘vat’ but under further questioning as to whether it could have been a piece of mixing equipment and whether it was covered or not, he replied “*I didn't get anywhere close to it to look*”. He also confirmed that he did not see any physical mixing take place. He confirmed that the steam legs being lagged with paste were underneath the turbine and that he was working at the far end of the alternator attached to the turbine which was approximately 7 metres in length. He estimated that the ladders were working applying the paste about 10 metres away from him. He confirmed that the ladders were wearing white boiler suits, like decorators' suits, with dust masks covering their nose and mouth, rather than the specialist protective suits with hoods now used for asbestos removal.
44. He was unable to recall if there was an exhaust draught fitted to the mixing equipment, but he responded that as he could see dust in the turbine hall “*it wasn't working very*

*well if it was there.*” He confirmed that the dust he saw came from the bags being emptied and he did not recall any dust from the wet lagging work. He also told that court that he was aware of dust in the air in the turbine hall about 10 metres away, but that it did not reach where he was working or interfere with his work. He said it didn’t upset him at the time, and he didn’t think he needed a mask, but he clarified that obviously he didn’t know it was asbestos at the time. In terms of frequency, he told the court that the emptying of the bags only happened a few times during his time in the turbine hall, which only lasted a few weeks.

45. The true extent of the direct evidence that Mr Bryant could give about Sizewell A also became much clearer during his oral evidence. He frankly accepted that the dates he had given for Mr Devall’s work at Sizewell and his own work at Hinkley Point in his first witness statement were inaccurate and had been based on an assumption he had made about the timing of their industrial placements. He told the court “*It is difficult to remember details 60 years later*”. He explained that he had corrected the dates after being challenged about his evidence.
46. When Mr Bryant was asked in the witness box about paragraph 17 in his first statement (which I have set out above) in which he stated that he could specifically recall discussing with Mr Devall that Sizewell A was slightly behind Hinkley Point A, he replied “*I didn’t need to discuss that – I knew that – it was started 4 or 5 years later*” and accepted that his first statement about their conversations was inaccurate. He also accepted that his comment in that first statement that it was most likely that Mr Devall was working in the turbine hall at Sizewell A whilst the ladders were lagging the steam turbine, was based on his supposition and not a specific conversation.
47. Mr Bryant also accepted that although he could recall a conversation in 1965 in which Mr Devall mentioned that they were still insulating the turbines in the hall whilst he was there, perhaps unsurprisingly, he could not recall his actual words of 60 years ago. He did not recall Mr Devall telling him any details about the insulation work taking place in the turbine hall at Sizewell A, save that he recalled that it was to the turbines rather than the steam pipes. Mr Bryant was not able to confirm which of the two turbines was being insulated at Sizewell A or what type of insulation was being used on the turbines (ie. solid or mixed paste) and accepted that he had assumed it was the same as was used on the steam pipes at Hinkley Point.
48. Mr Bryant also accepted in cross-examination that he did not recall Mr Devall sharing any details with him about the nature, location, frequency or distance of any insulation work taking place in the turbine hall at Sizewell A. In particular, he did not recall Mr Devall ever mentioning that mixing work was being done in the turbine hall at Sizewell A, or that he was working alongside the ladders doing mixing, or what equipment they were using or what they were wearing. He also did not recall any description being given to him by Mr Devall of large clouds of dust at Sizewell A of a similar nature to those he described seeing at Hinkley.
49. Mr Bryant explained that the presence of ladders working on the turbines wasn’t a main feature of his discussions with Mr Devall. He said he was more interested in finding out about the work Mr Devall was doing in commissioning the auxiliary parts to the alternator, as he wasn’t working on the seal oil unit like Mr Bryant, but was working on the excitor. Mr Bryant was also

interested in whether Mr Devall worked elsewhere on the site, such as with the reactor as Mr Bryant had done, and in how the two projects differed.

50. Mr Bryant told the court that although Sizewell A and Hinkley Point were both first generation Magnox reactors, the two different power stations were configured very differently. Hinkley had six generating turbines situated alongside each other in the turbine hall, whereas Sizewell had two turbines, arranged end to end. He told the court that Hinkley Point had a 100 megawatt generator, but he thought that Sizewell A had a bigger 250 megawatt generator. This meant that the alternator at Sizewell was also approximately 20-25% longer than the one at Hinkley Point, so that the end where Mr Devall would have been working on the excitor was further away from the turbines.

### **Expert evidence on asbestos exposure**

51. I have read the reports from Mr Maddison and Dr Cowley and heard oral evidence from them both. I will summarise their evidence in relation to asbestos exposure and then return to any relevant evidence on breach of duty later in the judgment.
52. Mr Maddison's report contained some information about the dates of the construction work at Hinkley Point and Sizewell A based on his internet research which was broadly consistent with the evidence of Dr Cowley and with Mr Bryant's oral evidence. In summary, the online evidence sources he referenced confirmed that construction at Hinkley Point A began in 1957, the turbine generators were supplied by the Defendant, the commissioning of the power station was completed in early 1965, and Hinkley Point started generating in 1965.
53. The same sources confirmed that construction at Sizewell A nuclear power station began four years later, in 1961, the reactors and turbines were both supplied by the Defendant, the commissioning of the power station was completed in early 1966 and Sizewell A started generating in 1966.
54. Mr Maddison fairly explained in his report and in his oral evidence that he had no personal knowledge of the use of asbestos insulation in nuclear power stations like Sizewell A in the 1960s, but his report contained some general publicly-available background information about the use of such asbestos insulation in the 1960s:
- i) A "Code of Practice for Replacement of Thermal Insulation Material Containing Asbestos", dated February 1968, which stated that:

"It can be assumed that all high temperature insulating materials other than mineral wool, glass fibre and ceramic fibre, used before April 1967 contained asbestos."
  - ii) "A 2024 document, produced by the Nuclear Restoration Services (NRS), titled "Sizewell A Site – Environmental Management Plan 2024/25" which stated at page 16:

"Examples of Work Completed and Upcoming Works Requiring Mitigation Measures

The Turbine Hall demolition project has continued to progress over the last 12 months. Current successes to date include the removal of hazardous asbestos products utilised for pipe lagging insulation.”

55. Mr Maddison then set out information about the types of asbestos fibre used in such insulation, which was agreed in the joint report I have summarised below. His opinion in relation to asbestos exposure in this case was stated in these terms:
- “..it is my opinion that at least some of the lagging used to insulate steam plant and pipework in the Turbine Hall at Sizewell A nuclear power station is likely to have contained asbestos. The position in relation to whether, as a matter of fact, asbestos containing lagging materials were being mixed and applied in the Turbine Hall at Sizewell A nuclear power station in proximity to the Deceased will remain for the Court to consider.”
56. Mr Maddison’s report contained detailed generic evidence in relation to the control of occupational health risks, the development of knowledge of the hazards and risks associated with asbestos dust and with asbestos insulation and lagging, and evidence about the very significant difference in concentrations of dust produced by the mixing and application of asbestos. He also confirmed that a rule of thumb often used is that concentrations of asbestos dust may be expected to reduce to 1/10th of the magnitude at source with each 20-30 feet distance and he confirmed in his oral evidence that this reduction would apply to each further similar distance from the source, so that at 40-60 feet the concentration may be expected reduce to 1/100<sup>th</sup>.
57. Mr Maddison properly emphasised in his report that any conclusions about the intensity, frequency, duration and extent of any exposure to asbestos that Mr Devall may have experienced during his work at Sizewell A were also for the Court to consider. However, the expert opinion expressed in his report on the Defendant’s breach of duty was primarily based upon the written witness statements of Mrs Devall and Mr Bryant which I have summarised, and on the assumption that some exposure by Mr Devall to the uncontrolled mixing and applying of asbestos paste in the turbine hall was accepted by the court.
58. Mr Maddison also included a long appendix summarising the development of knowledge (in particular legislation and guidance) in relation to asbestos related disease and its control. This included a summary of the *Newhouse and Thompson* article on mesothelioma from occupational & domestic asbestos exposure, which was published in October 1965 and was described in the case of *White v Secretary of State for Health and Social Care* and *Cuthbert v Taylor Woodrow* [2024] EWCA Civ 244 as “*the watershed*” in light of the wide publicity it received following coverage in the Sunday Times. He also attached another appendix outlining the development of occupational hygiene standards and limits in the UK including information about dust ‘*threshold limit values*’ or TLVs. It is right to note, although both parties agreed that nothing turned on it in this case, that both experts agreed that there were differences of view amongst experts about the appropriate approach to take to the conversion of American TLV to units of fibres/ml used in the UK.

59. In his oral evidence, Mr Maddison maintained his views about the Defendant's duties and went further in seeking to criticise the conclusions of the Court of Appeal in the decision in *White* and placing more reliance on other less well-publicised evidence around the risks of low asbestos exposure which emerged during the 1960s. As Mr Glynn clarified in his closing submissions that he was not seeking to rely on Mr Maddison's opinion on these issues to support a case based on the application (rather than mixing) of asbestos insulation, and in the light of my factual findings, I do not need to resolve those disputed points.
60. Dr Cowley agreed with much of the factual background set out by Mr Maddison and accepted that in general terms, during the 1960s, asbestos-containing materials were used in Sizewell A. He agreed that it was probable that insulation on the turbines at Sizewell A at the time of construction contained asbestos, but he also explained that either asbestos mattresses or asbestos paste could have been used on the turbines and he commented that mattresses would be suitable for covering such large surfaces and being encased, as they could be removed for maintenance work. He provided photographs of the turbine halls at Hinkley Point and Sizewell A which showed the different layouts and, in one picture, showed the metal casing which would have covered the turbines at both sites after they were insulated. He also agreed that very high levels of dust were released at the time of mixing asbestos paste whilst dust levels were generally low when applying the wet paste. He accepted that if Mr Devall had worked close to ladders mixing asbestos insulation paste, he was likely to have been exposed to high levels of asbestos dust. In short, his opinion was that there would have been much lower levels of dust associated with the application of wet asbestos paste or other forms of solid asbestos insulation at some distance.
61. In their joint statement, the experts agreed that asbestos paste would have been mixed and applied as paste on the steam pipes and that asbestos insulation in the form of mattresses or asbestos paste would have been used on the turbines, during the construction and commissioning of Sizewell A power station. They also agreed that such paste contained chrysotile and crocidolite and/or amosite fibre type and that crocidolite and amosite are the most potent of the three asbestos fibre types.
62. As I have already noted, the experts reached no agreement as to the fact and extent of Mr Devall's actual asbestos exposure and both experts deferred to the court as to findings of fact on that issue.
63. Their oral evidence was primarily confined to questions in relation to foreseeability and breach of duty which only arise if asbestos exposure is established. In light of my findings of fact, I do not propose to set out further details of their oral evidence on those points.

### **Legal principles**

64. The Claimants no longer pursue the pleaded allegation that the Factories Act 1961 applied either to Mr Devall's work at Sizewell A, as it was still under construction at the time, or to the Defendant, because it was not the occupier of the site.
65. The Claimants' case is solely based on the assertion that Mr Devall's pleaded exposure to asbestos dust at Sizewell A was in breach of the Defendant's common law duty towards him, as his employer. The extent of that duty is in turn informed by the

employer's state of knowledge, having regard to the available publications and literature about the relevant degree of asbestos exposure in existence at the material time. The Claimants must satisfy the court on all the issues I have outlined at paragraph 12 of this judgment.

*Case law on asbestos exposure*

66. In determining the primary factual issue of asbestos exposure, the authorities are clear that the court must exercise particular caution in making factual findings and must apply the usual evidential threshold. Whilst the case of *Fairchild v Glenhaven Funeral Services Ltd* [2003] 1 AC 32 allows for a special rule of causation in cases involving multiple employers, no such relaxation of the rules applies to the primary fact-finding role of the court in historic asbestos exposure cases. The Defendant relied on the case of *Sloper v Lloyds Bank* [2016] EWHC 483 (QB) in which this need for caution was emphasised and applied in a fact-finding judgment relating to alleged asbestos exposure 30-40 years earlier. In *Sloper*, Spencer J stated at paragraphs 60 to 64:

“60. Witnesses have had to try to recall what, at the time, would have been unremarkable details of these buildings 30-40 years later. It follows that however credible the testimony of a witness may seem, the reliability and accuracy of the details of that testimony have to be assessed against any objective evidence.

61. In relation to mesothelioma cases, there is a particular need for caution in this regard, as Lord Rodger emphasised in *Sienkiewicz v Greif UK (Ltd)* [2011] 2 AC 229, having regard to the special rule of causation in such cases, established in *Fairchild* (supra). At paragraph 166 he said:

“It is important that judges should bear in mind that the *Fairchild* exception itself represents what the House of Lords considered to be the proper balance between the interests of claimants and defendants in these cases. Especially having regard to the harrowing nature of the illness, judges, both at first instance and on appeal, must resist any temptation to give the claimant's case an additional boost by taking a lax approach to the proof of the essential elements. That could only result in the balance struck by the *Fairchild* exception being distorted...

62. Mr Platt QC, for the defendants, drew my attention to a very recent Scottish decision in a mesothelioma claim with some similarities to the present case, where Lord Pentland made some helpful observations on the reasons for caution: *Prescott v The University of St Andrews* [2016] SCOH 3 (13th January 2016). Drawing upon observations of Leggatt J in *Gestmin SGPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), at paragraphs 15-23, Lord Pentland said, at paragraph 42 of the court's Opinion:”

“The process of attempting to remember events in the distant past is an inherently fallible one; it is a process that is highly susceptible to error and inaccuracy. Our efforts to think back many years to recollect the details of past events are liable to be affected by numerous external influences; involvement in civil litigation can in itself operate as a significant influence. All remembering of events many years ago involves processes of a reconstructive nature; these processes are largely unconscious with a result, as Leggatt J said, that the strength, vividness and apparent authenticity of memories are often not reliable markers of their truth. Having seen and heard the pursuer give evidence, I have come to the view that I must evaluate the reliability of his claimed recollections with caution. I have, wherever possible, tested his evidence against other evidence in the case and have considered objectively where the probabilities lie.”

63. In *Gestmin* Leggatt J made the pertinent observation, at paragraph 19:

“The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice the party who has called the witness or that party’s lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.”

64. These latter observations are, in my view, particularly apposite in the present case in relation to the evidence of the witnesses called by the claimant. The tragic nature of the case and the natural desire to assist in any proper way, are inevitable human reactions. These, and the other factors referred to in the passages quoted above, make it all the more important to test the recollection of witnesses against contemporaneous documentation.”

67. The Defendant also relied on a number of authorities in relation to the court’s general approach to the assessment of witness evidence, including the leading case of *Gestmin SGPS S.A. v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) in which Leggatt J. (as then was) highlighted the challenges in relying solely on witness testimony, however credible it may seem. The key principles to be derived from *Gestmin* and other relevant authorities on fact-finding in the context of a similar historic asbestos case were helpfully summarised by Dexter Dias KC, sitting as a Deputy High Court Judge (as he then was) in *Briggs v Drylined Homes Ltd* [2023] EWHC 382 (KB) at paragraph 14. I do not propose to set them all out in full, but I adopt his summary and

have had regard in particular in this case to the following propositions at paragraph 14(1), (2) and (8):

“(1) The burden of proof rests exclusively on the person making the claim (she or he who asserts must prove);”

(2) Each determination is governed by the conventional civil standard of a balance of probabilities;

...

(8) There are important and recognised limits on the reliability of human memory: (a) our memory is a notoriously imperfect and fallible recording device; (b) a greater confidence displayed by a witness does not necessarily correlate with a correspondingly more accurate recollection; (c) the process of civil litigation subjects the memory to “powerful biases”, particularly where a witness has a “tie of loyalty” to a party (*Gestmin SCPS S.A. v Credit Suisse (UK) Ltd* EWHC 3560 (Comm) at [15]-[22], per Leggatt J (as then was));”

68. Counsel also provided detailed written and oral submissions in relation to knowledge, foreseeability and breach of duty and I was referred by both parties to the relevant case law, including the recent 2024 Court of Appeal decision in the conjoined appeals in *White*. In that case, the court considered the degree to which employers ought to have appreciated the risk to employees and others arising from exposure to low levels of asbestos dust before 1960. Stuart Smith LJ undertook a comprehensive review of all the relevant literature up to and including the period under scrutiny in this case. He highlighted the gradual development of knowledge and coverage in the medical literature during the 1960s and ‘the watershed’ date in late October 1965, when the *Newhouse and Thompson* article was published and widespread coverage in the Sunday Times and other news outlets followed. This brought the potential risk of mesothelioma from low levels of asbestos exposure, that had previously not been thought to give rise to a risk of asbestosis or lung cancer, into the public domain.
69. In light of my factual findings in relation to asbestos exposure, I do not propose to rehearse the parties’ submissions or further case law on the issues of foreseeability and breach of duty. Suffice to say that in this case, the Claimants contended that the level of exposure alleged resulting from close proximity to the mixing of asbestos, would have been at a much higher level than was found in the cases in *White*. The Claimants also implicitly accepted that the level of exposure resulting only from the application of wet paste or mattresses without mixing, would have fallen into the very low exposure category, for which breach of duty prior to “the watershed” in October 1965 was unlikely to be made out. In those circumstances, the only relevance of this case law at this stage is to highlight the critical significance of the contested factual issues in relation to the alleged asbestos exposure, to which I will now turn.

### **Discussion and conclusions on asbestos exposure**

70. In the amended Particulars of Claim it was pleaded that Mr Devall “worked in close proximity to the ladders who were mixing up raw asbestos with water in vessels before

*applying the same by hand*'. In his closing submissions, Mr Glynn confirmed that the Claimants' case was put on the basis that Mr Devall had been exposed to the mixing of asbestos paste in the vicinity of where he was working in the turbine hall, and that this activity involved the release of asbestos dust. He accepted that his case would not be made out if the court was not satisfied that such mixing had been taking place in the turbine hall at Sizewell A whilst Mr Devall was working there.

71. In his closing note, Mr Glynn accepted what he described as the 'development' of Mr Bryant's evidence in the witness box, and sought to put his case on the basis that if the court was satisfied that unguarded asbestos mixing described by Mr Bryant had been carried out at Hinkley Point, it was also likely to have been carried out in the same way at Sizewell A, with the same significant levels of dust being created.
72. Mr Macpherson maintained his original position, namely that the Claimants have simply not been able to adduce any reliable evidence upon which the court can safely make the findings of exposure pleaded in this case.
73. In reaching a conclusion on the key factual issue of whether the Claimants have satisfied the court that mixing of asbestos took place whilst Mr Devall was working in the turbine hall at Sizewell A, I have carefully considered all the lay, expert and documentary evidence presented to the court.
74. I have also had regard to all the relevant case law in relation to the significance of factual findings and the assessment of witness evidence which I have summarised above. I bear in mind in particular that the alleged asbestos exposure of Mr Bryant and Mr Devall, and the conversations about that exposure relied on by the Claimants took place over 60 years ago and that there is a close familial relationship between them.
75. This case is somewhat unusual in that there has been no direct evidence of asbestos exposure from Mr Devall himself or from anyone who was working with him at Sizewell A at the same time.

#### *Expert evidence*

76. I have summarised the extent of the expert evidence available to the court about asbestos use at Sizewell A during its construction and commissioning stages.
77. As I have recorded, I heard expert health and safety and engineering evidence from Mr Maddison and Dr Cowley. Mr Maddison accepted that his conclusions on the key issue of asbestos exposure were almost entirely reliant on the Claimants' witness evidence. He did not clearly distinguish between the risks associated with the different types of insulation work in his evidence and I found him to be a somewhat defensive expert witness when being questioned. His experience appeared to be primarily focussed on advising employers on prevention rather than providing an objective assessment of the extent of an employer's duty in relation to historic exposure. As I have noted, he also took significant issue with some of the conclusions reached by the court in *White*, but Mr Glynn confirmed he was not seeking to rely on his expert evidence to pursue these arguments.
78. I found Dr Cowley to be a more consistent, objective and reliable expert who was prepared to volunteer information about the use of asbestos in the power stations and

give a balanced view about the issues. When there was any dispute between them, I preferred his evidence to that of Mr Maddison. On the basis of Dr Cowley's evidence, which I accept, I am satisfied that asbestos insulation was used at Sizewell A during its construction and that this took the form of wet asbestos paste and pre-formed asbestos mattresses of a type described in the joint statement, summarised at paragraph 61 above. This was also consistent with the information from the Google searches undertaken by Mrs Devall and Mr Maddison.

79. However, both experts were absolutely clear in their reports and oral evidence that they were not able to assist the court on the key factual issue of whether Mr Devall would have been exposed to any asbestos dust from mixing of dry asbestos during his period of work at Sizewell A.

*Lay witness evidence*

80. I turn next to the lay witness evidence which is relied on by the Claimants to support their pleaded case on exposure.
81. I found Mrs Devall to be an honest and careful witness who was frank in admitting that she had not any direct knowledge of Mr Devall's asbestos exposure at Sizewell A or the other employers listed when she signed the two benefits forms. She was very hesitant when being cross-examined and was clearly very concerned not to mislead the court.
82. I accept her evidence about the timing of Mr Devall's work at Sizewell A between March/April and July 1965, supported as it is by his own written records and her photographs. However, she accepted that her beliefs about Mr Devall's possible asbestos exposure at Sizewell A were entirely based on her Google research and the information she was given by Mr Bryant. In reality, Mrs Devall was not able to provide any direct witness evidence to support her own case.
83. It follows that the Claimants' factual case depended almost entirely on the evidence given by Mr Bryant, to which I now turn. I also found Mr Bryant to be an honest, frank and careful witness.
84. Mr Bryant gave careful and considered answers to all the questions he was asked in the witness box and readily accepted when he simply could not recall things. In fact, as a result of his candour, it became apparent during his oral evidence that even if Mr Bryant's limited recollection of the activities of the ladders working at Hinkley Point was accepted as being reliable, his evidence in relation to Mr Devall's alleged similar asbestos exposure at Sizewell A was almost entirely conjecture.
85. In relation to his evidence about his own exposure at Hinkley Point, I accept the broad thrust of Mr Bryant's evidence and I am satisfied that he has a genuine recollection of seeing bags of dry asbestos being emptied a few times, creating clouds of dust about 10 metres away in the turbine hall, and of seeing ladders applying wet asbestos paste to the steam pipes attached to the turbines. I also accept the explanation in his third statement as to why some final lagging of the steam pipes was still taking place whilst he was doing commissioning work. For the reasons I have set out below, I do not intend to make any more specific findings in relation to Hinkley Point, as I do not consider

that such findings will assist me in relation to the findings of fact I need to make in this case in relation to Sizewell A.

86. As I have recorded, Mr Bryant accepted in the witness box that he had no recollection of Mr Devall telling him any details about the insulation work taking place in the turbine hall at Sizewell A, save that it was 'to the turbines' rather than the steam pipes. He accepted in cross examination that Mr Devall did not share any details about the type of insulation material used on the turbines, whether any mixing took place, whether he saw the application of asbestos paste or asbestos mattresses, or as to the location, frequency or distance of any such work from Mr Devall. Most significantly, he did not report any description by Mr Devall of seeing clouds of dust in the turbine hall whilst he was working there. To the extent that his written witness statements contained broad assertions and broad recollections about Mr Devall confirming at the time that he had a similar experience to Mr Bryant, those assertions were not maintained by Mr Bryant in his oral evidence.
87. Mr Bryant also accepted that the two power stations were being constructed on different timescales, with different configurations and, as was apparent from the publicly available information and photographs provided by Mr Maddison and Dr Cowley, they contained different numbers and sizes of turbines and alternators. Mr Bryant also confirmed that he and Mr Devall were performing slightly different tasks, at different stages of the commissioning process. Given all the evidence before the court of the significant differences between the two sites in terms of location, types of turbines, configuration and layout, timing, stages of construction, commissioning and insulation, I do not consider that I can properly draw any reasonable inferences about Mr Devall's possible exposure based on the entirely separate experience of Mr Bryant at a different location. To do so would be no more than conjecture.
88. The only conclusion that can be drawn from Mr Bryant's evidence is that, despite his understandable wish to assist Mrs Devall in this claim, Mr Bryant was not able to provide any direct evidence to the court to support the Claimants' pleaded case that Mr Devall was exposed to the mixing of asbestos paste in the turbine hall at Sizewell A whilst he was working there in 1965. Mr Bryant accepted that he had no direct knowledge of the turbine hall at Sizewell himself and that he did not recall Mr Devall telling him in any detail about the insulation work being undertaken. Furthermore, he had made no mention of mixing work was being done in the turbine hall or of any clouds of dust being created.
89. The absence of any direct evidence from Mr Bryant of any reported exposure by Mr Devall to dust (even if not recognised as being asbestos at the time) in the turbine hall is also consistent with the only available documentary evidence in this case, namely Mr Devall's medical records. As I have noted, the medical records indicate that Mr Devall had breathing issues for a few years before his final diagnosis with mesothelioma and that he had been diagnosed with IPF in 2018. It is apparent from the document in the bundle he prepared for the IPF survey that Mr Devall was fully aware in or around 2018 of his employment history, including his time at Sizewell, and of the relevance of any previous exposure to 'dust' (if not asbestos) including as a result of his woodworking hobby. Despite that, and Mrs Devall's evidence about his scientific approach and enquiring mind, the medical records in both 2018 and 2022 include a note that Mr Devall could not recall any possible exposure to asbestos.

90. I consider it more likely than not that if Mr Devall had seen any ‘large clouds of dust’ in the air near where he was working at Sizewell A, similar to those described by Mr Bryant, then he would have recalled this, in the same way as Mr Bryant, when asked about any such possible exposure to dust at the time of his IPF diagnosis. This conclusion is also supported by Mrs Devall’s evidence in her second statement that Mr Devall researched IPF.

*Conclusions*

91. I accept that it is not unusual in cases of this nature for there to be no direct evidence from the deceased, but in such cases there is usually witness evidence from other employees who were working in similar conditions at the same time. In this case, there is no such evidence. The evidence from the experts and Mr Bryant, taken at its highest, goes no further than establishing that one or more turbines were being insulated with some form of asbestos insulation at Sizewell A during the period that Mr Devall was working there. I accept that this gives rise to a possibility that Mr Devall was exposed to asbestos during that time. However, beyond that, the Claimants are not able to provide any evidence to satisfy the court as to the nature of insulation being used, or as to whether any dust was created, or as to the extent of any exposure by Mr Devall to that dust.
92. For all these reasons, having carefully considered all the available evidence in this case, I am not satisfied that the Claimants have established on the balance of probabilities that Mr Devall was exposed to asbestos during his employment at Sizewell A as a result of the mixing of asbestos in the turbine hall.
93. In some cases, on the basis that conclusions on key disputed facts might later be found to be wrong, it can be appropriate to go on to consider the further issues of foreseeability and breach of duty in any event. However, in a case of this nature where I have concluded that the Claimants have not established their case on asbestos exposure at all, it would not be appropriate to do so.
94. Despite my immense sympathy for Mr Devall’s family for the tragic circumstances of his diagnosis and death, this claim must be dismissed.