



# Health and safety update

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June 2019

## In the news

### **RPC successfully defends director charged under section 37 HSWA following fall at construction site**

Our client was the director of a company that had been subcontracted to carry out a loft conversion on a residential property. One of his subcontractors sustained serious injuries when he fell from a ladder, over the top edge of some scaffolding and onto a flat roof below. It was maintained that the inadequacy of the scaffolding had previously been raised with the Principal Contractor but they declined to arrange for the height of the scaffolding to be increased. Our client also submitted evidence to show the steps that he, his employee and subcontractor had taken on site to try and improve their safety as the works progressed. [more>](#)

### **Chevron fined £5m for Pembroke Oil Refinery explosion where “illusion of safety and risk control” resulted in 4 fatalities**

The blast caused the roof of the five tonne tank to be thrown 55m into a butane storage sphere and only narrowly missed a pipe track used to transport flammable materials. Dennis Riley, Robert Broome, Andrew Jenkins and Julie Schmitz all died in the explosion, and the fifth B & A Contracts worker, Andrew Phillips, sustained serious burns. [more>](#)

### **Gross negligent manslaughter conviction of takeaway restaurant owner quashed**

In our December 2018 bulletin we reported on the death of 15-year-old, Megan Lee. She died as a result of consuming a takeaway meal, ordered through Just Eat, which contained peanut proteins despite clearly stating on the order that she was allergic to peanuts. [more>](#)

### **Priory Healthcare conviction following the death of a 14-year-old girl**

On 12 November 2018 a 14-year-old girl, Amy El-Keira, hanged herself in her room at the Priory in Ticehurst, East Sussex. She was pronounced dead the following day. At the time of her death she had been a patient in the high dependency unit at the Priory in Ticehurst. [more>](#)

## Fines and sentences

### **Company director jailed after worker killed when he was fatally trapped in a second-hand machine bought on eBay**

The Managing Director of Baldwin Skip Hire, Robert Baldwin, was sentenced to 12 months in prison after he was convicted of breaching section 37(1) of the Health & Safety at Work etc Act 1974 for allowing the company to be in breach, charges to which the company had previously pleaded guilty. [more>](#)

Any comments or queries?

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### **2 Sisters Food Group fined £1.4m after worker's serious crush injuries**

2 Sisters Food Group, a food processing company based in Yorkshire, was prosecuted after an employee was crushed by a large metal stillage. The employee was trying to unblock the conveying system when his chest was crushed by the metal stillage. He suffered several injuries including multiple fractures to the ribs and back, as well as a punctured lung. [more>](#)

### **Rail freight company DB Cargo (UK) Ltd fined £2.7m after a boy suffered electric shock**

A 13-year-old boy suffered serious injuries after he gained access to a disused signal box at one of DB Cargo (UK) Ltd's depots. Overhanging the signal box were 25,000 volt power lines. The boy made contact with the line and from the resulting electric shock suffered 80% burns all over his body. The injuries were so severe that he had to have both of his legs amputated and lost multiple fingers. [more>](#)

### **Capstone Building Ltd fined £900,000 after a worker killed in wall collapse**

An employee of Capstone Building Ltd, Thomas Telfer, was killed when struck by falling bricks. A retaining wall being back filled with concrete collapsed, causing masonry to fall on the ground below, where Mr Telfer was working. [more>](#)

### **Sellafield Ltd fined £380,000 after employee exposed to extreme levels of plutonium**

A worker for Sellafield Ltd was working in a glovebox, which was used for the processing of plutonium, when he suffered a puncture wound to his hand. He was cleaning a probe which had corroded and become sharp, causing a puncture to his protective glove and hand. Consequently, the worker was exposed to plutonium levels which were about eight times the maximum legal annual exposure limit for workers in the nuclear industry. [more>](#)

### **Suspended prison sentence for builder exposing workers to risk of a 6 metre fall**

Kenneth Morris undertook repointing work at a house in Altrincham in July 2018. During the work his employees worked at heights of 6 metres without adequate protection. Make-shift platforms were created, no scaffolding was used, and the men were not wearing protective clothing. [more>](#)

### **Hotel owners fined £80,000 after disturbing asbestos containing materials during refurbishment works**

The owners of a hotel in Devon have been fined £80,000 and ordered to pay costs of £14,999.60 due to being in breach of sections 2(1) and 3(1) Health and Safety at Work etc Act 1974. [more>](#)

### **Gas fitter receives 12 month prison sentence after carrying out unsafe gas work**

Mr Murrie, a self-employed gas fitter, undertook gas works at multiple homes. The HSE investigation centred around the works he did at two homes in West Yorkshire. Mr Murrie had claimed to homeowners that he was Gas Safe Registered, but he was not. Therefore, he did not fall within the classification of persons approved by the HSE. There were severe defects found in his installation works. [more>](#)

### **Karro Foods Ltd fined £1.8m after two workers fell through the roof**

Two workers for Karro Foods Ltd, a food manufacturing company, were investigating a leak in a roof when a roof light gave way under their weight. They both fell 4 metres and suffered severe injuries including a fractured skull, muscular injuries, a punctured lung, fractured ribs and ongoing memory and balance issues. [more>](#)

## **Environmental**

### **Marathon Oil have been fined £1.16m after North Sea gas leak**

On Boxing Day in 2015 a pipework ruptured enabling two tonnes of methane gas to be released into the North Sea. No-one was injured as a result of the leak. [more>](#)

### **Two Essex Waste companies fined £45,000 after sub-contracting waste removal to fly-tippers**

Walsh & Sons Ltd had been contracted to remove waste from a plant nursery in Colchester for the sum of £25,000. However, Walsh & Sons had sub-contracted the work to Calahans Cleaning Services Ltd, which did not lawfully dispose of the waste, but rather dumped the waste collected outside a farm. [more>](#)

## **Round-up**

### **Guidance on UK REACH**

If the UK leaves the EU without an exit deal then the EU REACH Regulations will be brought into UK law by the European Union (Withdrawal) Act 2018. [more>](#)

### **Increase in fines since 2016 sentencing guidelines implemented**

The Sentencing Council has published an impact assessment on the introduction of the Health & Safety Offences, Corporate Manslaughter and Food Safety & Hygiene Offences Definitive Guideline. [more>](#)

## In the news

### **RPC successfully defends director charged under section 37 HSWA following fall at construction site**

Our client was the director of a company that had been subcontracted to carry out a loft conversion on a residential property. One of his subcontractors sustained serious injuries when he fell from a ladder, over the top edge of some scaffolding and onto a flat roof below. It was maintained that the inadequacy of the scaffolding had previously been raised with the Principal Contractor but they declined to arrange for the height of the scaffolding to be increased. Our client also submitted evidence to show the steps that he, his employee and subcontractor had taken on site to try and improve their safety as the works progressed.

Both our client and the Principal Contractor were prosecuted, the latter pleading guilty to a failure to have a Construction Phase Plan in place prior to the start of the works in breach of Regulation 12 of the Construction (Design & Management) Regulations 2015. However, our client, who faced a potential term of imprisonment if convicted, pleaded not guilty on the basis he had carried out everything he reasonably could to comply with safety requirements given the circumstances on site.

Following a week-long Trial at Southwark Crown Court, the jury returned a unanimous verdict of "Not Guilty". The Principal Contractor was subsequently fined £17,500 for the Regulatory charge that they had previously pleaded guilty to together with a costs order of £17,706.32.

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### **Chevron fined £5m for Pembroke Oil Refinery explosion where "illusion of safety and risk control" resulted in 4 fatalities**

The blast caused the roof of the five tonne tank to be thrown 55m into a butane storage sphere and only narrowly missed a pipe track used to transport flammable materials. Dennis Riley, Robert Broome, Andrew Jenkins and Julie Schmitz all died in the explosion, and the fifth B & A Contracts worker, Andrew Phillips, sustained serious burns.

The explosion occurred as the five workers from cleaning company B & A Contracts were emptying sludge from Tank 302, part of the Amine Recovery Unit ("ARU") in what should have been a routine operation.

The ARU consisted of two tanks which were used to store diethanolamine, which was used to clean hydrogen sulphide from petroleum products. Whilst the way the ARU was operated changed in 1998, which meant that the inside of the tanks should have been treated as containing a potentially explosive atmosphere, this change was not understood or controlled properly and was therefore not adequately documented or reflected in the training material.

In the days prior to the incident, the lower explosive limit was found to have been 67%. Whilst this should have raised immediate alarm bells, as a safe limit should have been less than 10%, the high levels were not communicated or understood amongst those working at the refinery and were therefore not acted upon. There was a further miscommunication when a Chevron Manager who was on holiday at the time left handover instructions for the work to be postponed until his return, but this was incorrectly understood to refer to a different tank and so the work went ahead in his absence.

The HSE stated “Safety arrangements put in place that have been allowed to degrade over time become weak and ineffective. Whilst providing an illusion of safety and risk control, as seen in this case, ineffective systems do not remain strong enough to prevent real harm occurring.”

The explosion occurred during the sale of the refinery from Chevron to Valero with the latter company being the Defendant alongside B & A Contracts. However, the terms of an indemnity agreement mean that Chevron will meet the fine imposed on Valero. Both companies faced charges of breaching sections 2(1) and 3(1) of the Health and Safety at Work etc. Act 1974. Valero was determined to be a “very large” organisation under the Sentencing Guidelines and following a one third discount for the guilty pleas, the fine imposed was £5m, with a costs order of £1m. B & A Contracts, deemed to be a “micro” company, also received a one third discount for its guilty pleas and was fined £120,000 with costs of £40,000.

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### **Gross negligent manslaughter conviction of takeaway restaurant owner quashed**

In our December 2018 bulletin we reported on the death of 15-year-old, Megan Lee. She died as a result of consuming a takeaway meal, ordered through Just Eat, which contained peanut proteins despite clearly stating on the order that she was allergic to peanuts.

Mr Rashid, who was the owner of the restaurant at the time, was sentenced to three years in prison as he had seen the order containing the allergy instruction but failed “to put proper systems and processes in place”.

Mr Kuddus was the chef and sole director of the takeaway restaurant. He was sentenced to two years in prison because he “did not take reasonable steps to avoid [his] business serving food containing allergens to customers.”

However, on the 16 May 2019 Mr Kuddus won an appeal against his conviction. The Court of Appeal stated that there was no evidence that Mr Kuddus had seen the order containing the comments regarding the nut allergy. Consequently, not being aware of the prospective customer’s allergies, he could not have reasonably foreseen an obvious and serious risk of death by serving the food that he did. Therefore, the conviction for gross negligent manslaughter could not be upheld.

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### **Priory Healthcare conviction following the death of a 14-year-old girl**

On 12 November 2018 a 14-year-old girl, Amy El-Keira, hanged herself in her room at the Priory in Ticehurst, East Sussex. She was pronounced dead the following day. At the time of her death she had been a patient in the high dependency unit at the Priory in Ticehurst.

She had complex multiple health issues and had previously tried to hang herself at home several times before being admitted to the Priory.

A jury inquest in 2016 concluded that neglect contributed to her death. The Priory had failed to identify or put in place adequate control measures to ensure Amy’s safety.

An investigation was then completed by the HSE in 2016. The conclusion of the investigation was that Priory Healthcare Ltd was in breach under section 3(1) of the Health and Safety at Work etc Act 1974.

The main breaches by the Priory were in relation to the following:

- failure to carry out a suitable risk assessment
- failure to identify adequate control measures to manage the ligature risks
- failure to consider relevant industry and NHS guidance to inform its risk assessment process and recommended control measures
- failure to ensure an adequate review was carried out of the systems and control measures relating to ligature risks at Ticehurst House following concerns raised by external bodies, and
- failure to ensure staff working in the high dependency unit received adequate training and monitoring.

Despite previous suicide attempts and being classified as high risk, Amy was left with unsupervised access and the means to carry out another suicide attempt.

The Priory pleaded guilty to this offence and was fined £300,000 and ordered to pay costs of £65,801.38.

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## Fines and sentences

### Company director jailed after worker killed when he was fatally trapped in a second-hand machine bought on eBay

The Managing Director of Baldwin Skip Hire, Robert Baldwin, was sentenced to 12 months in prison after he was convicted of breaching section 37(1) of the Health & Safety at Work etc Act 1974 for allowing the company to be in breach, charges to which the company had previously pleaded guilty.

The prosecution followed an incident in May 2017 when James Criddle was operating a waste screening machine in the course of his work. The machine had been purchased by the company on eBay for £17,000 only five days before but the guards had been removed which exposed workers to dangerous parts of the machinery. As he operated the machine, it appears likely that Mr Criddle's clothing became entangled in the machine as he was trying to use a shovel to unblock it. Whilst his colleague tried to free him by cutting away his clothing with a knife, Mr Criddle suffocated at the scene.

The Court heard that there was no external safety stop button and no operating manual explaining how to use the machine safely. Nor had Mr Criddle been given any formal training into the correct operation of the machine. As a new screening machine would have cost £50,000, Judge Alice Robinson found that the decision to purchase the second hand machine was "a case of cost cutting at the expense of safety" – although this allegation had been denied by the defence team.

Mr Baldwin had also been charged with gross negligence manslaughter, but was acquitted by the jury of this charge. Baldwin Skip Hire was fined £75,000.

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### 2 Sisters Food Group fined £1.4m after worker's serious crush injuries

2 Sisters Food Group, a food processing company based in Yorkshire, was prosecuted after an employee was crushed by a large metal stillage. The employee was trying to unblock the conveying system when his chest was crushed by the metal stillage. He suffered several injuries including multiple fractures to the ribs and back, as well as a punctured lung.

The HSE investigated and concluded that the company was in breach of sections 2(1) and 3(1) of the Health and Safety at Work etc Act 1974. The company had not identified the inadequacy of the guarding and failed to put in place measures to prevent access to the dangerous parts of the machine.

2 Sisters Food Group pleaded guilty to these offences and was fined £1.4m with £38,000 in costs.

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### Rail freight company DB Cargo (UK) Ltd fined £2.7m after a boy suffered electric shock

A 13-year-old boy suffered serious injuries after he gained access to a disused signal box at one of DB Cargo (UK) Ltd's depots. Overhanging the signal box were 25,000 volt power lines. The boy made contact with the line and from the resulting electric shock suffered 80% burns all over his body. The injuries were so severe that he had to have both of his legs amputated and lost multiple fingers.

DB Cargo was found guilty of breaching section 3(1) of the Health and Safety at Work etc Act 1974, as it failed to protect the boy from risk of electrocution. Despite it being known to the company that trespassers often visited the disused signal box, and having been informed of the risk several times, DB Cargo failed to secure the yard. The investigation found that there were no effective obstacles in place to stop people accessing the yard, there was no adequate security present, and signs highlighting the risks to trespassers were not clearly apparent.

In addition to the fine of £2.7m for the offence, the company was ordered to pay prosecution costs of £188,874 and a further fine of £33,500 after pleading guilty to failing to provide a document under section 20 of the Health and Safety at Work etc Act 1974.

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### **Capstone Building Ltd fined £900,000 after a worker killed in wall collapse**

An employee of Capstone Building Ltd, Thomas Telfer, was killed when struck by falling bricks. A retaining wall being back filled with concrete collapsed, causing masonry to fall on the ground below, where Mr Telfer was working.

The HSE conducted an investigation and concluded that the slope behind the wall was considerably above the safe angle of repose. There was nothing to support it and so it was at risk of collapse. Capstone Building Ltd should have made the bank safe before building the wall.

Other failings were also found by HSE, such as inadequate plastic fencing erected to prevent falls, issues with machinery, and inadequate fire measures.

The company was found in breach of sections 2(1) and 3(1) of the Health and Safety at Work etc Act 1974 because it failed to ensure the safety of its employees and to safeguard non-employees from exposure to risks from its works.

Capstone Building Ltd failed to attend court and not guilty pleas were entered on its behalf. The company was found guilty. Despite the company by then being insolvent, a fine of £900,000 was imposed together with costs of £60,336. The firm's sole director had also been charged under s37 of the 1974 Act, on the basis the company's failings had occurred as a result of his consent or due to his neglect, but a direction was made during the trial to acquit him.

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### **Sellafield Ltd fined £380,000 after employee exposed to extreme levels of plutonium**

A worker for Sellafield Ltd was working in a glovebox, which was used for the processing of plutonium, when he suffered a puncture wound to his hand. He was cleaning a probe which had corroded and become sharp, causing a puncture to his protective glove and hand. Consequently, the worker was exposed to plutonium levels which were about eight times the maximum legal annual exposure limit for workers in the nuclear industry.

An investigation was conducted by the Office for Nuclear Regulation.

The worker had been following the company's system of work which the investigation concluded had failed to assess properly the risk to which workers were exposed when working with sharp objects in the glovebox.



Sellafield Ltd were charged with a breach of section 2(1) Health and Safety at Work etc Act 1974. The company pleaded guilty to this offence and was fined £380,000 and ordered to pay costs of £96,753.22.

It was made clear that the fine was for the specific event alone, and there were no other concerns about health and safety issues at the Sellafield site.

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### **Suspended prison sentence for builder exposing workers to risk of a 6 metre fall**

Kenneth Morris undertook repointing work at a house in Altrincham in July 2018. During the work his employees worked at heights of 6 metres without adequate protection. Make-shift platforms were created, no scaffolding was used, and the men were not wearing protective clothing.

The employees were also exposed to silica dust without adequate protection as no form of dust capture was provided. A further failure was that Mr Morris failed to insure his employees against any injury or ill health sustained during the course of their work.

The HSE identified breaches by Mr Morris of sections 2(1) and 3(1) Health and Safety at Work etc Act 1974, as well as section 1(1) Employers Liability (Compulsory Insurance) Act 1969, and he was charged. He pleaded guilty to these offences and received a 26 week prison sentence suspended for two years; he was given 180 hours community service and ordered to pay £2,000 in costs.

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### **Hotel owners fined £80,000 after disturbing asbestos containing materials during refurbishment works**

The owners of a hotel in Devon have been fined £80,000 and ordered to pay costs of £14,999.60 due to being in breach of sections 2(1) and 3(1) Health and Safety at Work etc Act 1974.

The hotel was built during the 1960's and 1970's when asbestos was widely used. In October 2016, the then owners of the hotel started refurbishment works on the building in order to refit the bedrooms and bathrooms. Despite an employee raising concerns about the potential presence of asbestos in the building early in the process, no testing of the material being disturbed was carried out. Further concerns were raised months later by external contractors. Testing of the disturbed materials was not carried out until February 2017.

Further work was carried out in May 2017, during the time of the HSE investigation, which also caused materials containing asbestos to be disturbed. The risk assessment for this work was inadequate as it did not indicate all of the materials which would be disturbed.

HSE concluded the hoteliers had breached sections 2(1) and 3(1) of the Health and Safety at Work etc Act 1974. As a result of the charges that followed, the owners of the Hotel were fined £80,000 and ordered to pay costs of £14,999.60.

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### Gas fitter receives 12 month prison sentence after carrying out unsafe gas work

Mr Murrie, a self-employed gas fitter, undertook gas works at multiple homes. The HSE investigation centred around the works he did at two homes in West Yorkshire. Mr Murrie had claimed to homeowners that he was Gas Safe Registered, but he was not. Therefore, he did not fall within the classification of persons approved by the HSE. There were severe defects found in his installation works.

As a result of his actions, Mr Murrie was served with a Prohibition Notice effectively banning him from carrying out any further works while the HSE investigation was ongoing. Despite this, Mr Murrie did carry out further works on two properties and, again, there were considerable defects in the work.

The HSE charged Mr Murrie with the following breaches:

- 5 breaches of Regulation 3(3) Gas Safety (Installation and Use) Regulations 1998
- 3 breaches of Regulation 3(7) Gas Safety (Installation and Use) Regulations 1998
- 1 breach each of Regulation 6(3) and Regulation 26(5) Gas Safety (Installation and Use) Regulations 1998
- 1 breach under Section 33(1)(g) of the Health & Safety at Work etc Act 1974.

Mr Murrie pleaded guilty to these offences and was sentenced to 12 months in prison.

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### Karro Foods Ltd fined £1.8m after two workers fell through the roof

Two workers for Karro Foods Ltd, a food manufacturing company, were investigating a leak in a roof when a roof light gave way under their weight. They both fell 4 metres and suffered severe injuries including a fractured skull, muscular injuries, a punctured lung, fractured ribs and ongoing memory and balance issues.

The HSE's investigation found that the roof lights were not visible to the workers due to the accumulation of moss and dirt. The company had provided no warning to the workers that there were roof lights on the roof which were more fragile than the main roof structure. Therefore, HSE concluded that the company was in breach of section 2(1) Health and Safety at Work etc Act 1974 and prosecuted accordingly.

Karro Foods Ltd pleaded guilty to this offence and was fined £1,866,000 and ordered to pay costs of £8,019.

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## Environmental

### Marathon Oil have been fined £1.16m after North Sea gas leak

On Boxing Day in 2015 a pipework ruptured enabling two tonnes of methane gas to be released into the North Sea. No-one was injured as a result of the leak.

HSE launched an investigation and found that the company was in breach of regulation 4(1) Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) regulations 1995. Marathon Oil had not carried out a sufficient inspection of the pipework. Had it done so, Marathon Oil would have been able to identify that the pipe was being corroded by salt water, and thus rectify the issue. Although no-one was on the raft at the time of the incident, if there had been, and the gas had ignited, the Court was informed there would have been a “100% probability of fatality inside the module”. There would also have been a risk of fatality from flying debris.

Marathon Oil pleaded guilty to the offences and in addition to a fine of £1.6m was ordered to pay costs of £470,000. This is one of the largest fines recorded in an incident of this type.

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### Two Essex Waste companies fined £45,000 after sub-contracting waste removal to fly-tippers

Walsh & Sons Ltd had been contracted to remove waste from a plant nursery in Colchester for the sum of £25,000. However, Walsh & Sons had sub-contracted the work to Calahans Cleaning Services Ltd, which did not lawfully dispose of the waste, but rather dumped the waste collected outside a farm.

Walsh & Sons had failed to check where Calahans Cleaning Services was taking the waste, no transfer of waste papers were completed and it did not check that the company was registered to carry waste.

Both companies pleaded guilty to breaching their statutory duties of care under section 34(2A) of the Environmental Protection Act 1990.

Walsh & Sons were given a fine of £33,500 and ordered to pay costs of £2,924,26. Calahans Cleaning Services were fined £6,000 and also ordered to pay costs of £2,924,26.

This case emphasises the original contractor’s duty to check that the sub-contractor will dispose of the waste lawfully. The duty of care cannot simply be delegated to another company.

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## Round-up

### Guidance on UK REACH

If the UK leaves the EU without an exit deal then the EU REACH Regulations will be brought into UK law by the European Union (Withdrawal) Act 2018.

In order to prepare companies and firms, the Department for Environment, Food and Rural Affairs (Defra) has published guidance on UK REACH which is available [here](#). Guidance has also been produced on useful considerations that should be taken into account before the new UK REACH IT service goes live, which is available [here](#).

### Increase in fines since 2016 sentencing guidelines implemented

The Sentencing Council has published an impact assessment on the introduction of the Health & Safety Offences, Corporate Manslaughter and Food Safety & Hygiene Offences Definitive Guideline.

The assessment shows that overall, for health and safety offences, fines have increased for all sizes of firms. However, it is the largest firms who are facing the biggest fine increases.

The assessment can be found [here](#).

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## About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 79 partners and over 600 employees based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.

*"... the client-centred modern City legal services business."*

We have won and been shortlisted for a number of industry awards, including:

- Best Legal Adviser every year since 2009 – Legal Week
- Best Legal Employer every year since 2009 – Legal Week
- Shortlisted – Commercial Litigation Team of the Year – Legal Business Awards 2019
- Shortlisted – Best Copyright Team – Managing IP Awards 2019
- Shortlisted – Insurance Team of the Year – Legal Business Awards 2018
- Winner – Best Employer – Bristol Pride Gala Awards 2018
- Winner – Client Service Innovation Award – The Lawyer Awards 2017
- Shortlisted – Corporate Team of the Year – The Lawyer Awards 2017
- Winner – Adviser of the Year – Insurance Day (London Market Awards) 2017
- Winner – Best Tax Team in a Law Firm – Taxation Awards 2017
- Winner – Claims Legal Services Provider of the Year – Claims Club Asia Awards 2016

### Areas of expertise

- |                                    |                                  |                                   |
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| • Alternative Dispute Resolution   | • Financial Markets Litigation   | • Real Estate                     |
| • Commercial Contracts             | • Health, Safety & Environmental | • Regulatory                      |
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