



# Health and safety law update

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November 2015

## News

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## Caselaw

### Corporate Manslaughter

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#### NHS Trust and two doctors charged over death of woman during emergency caesarean

This is the first time a health Trust has been prosecuted for corporate manslaughter since the Corporate Manslaughter and Corporate Homicide Act 2007 came into force in 2008. [more>](#)

#### Linley Developments fined £200,000 for corporate manslaughter

This case involved the death of 28-year-old bricklayer, Gareth Jones, who was fatally injured when an unstable retaining wall collapsed at a construction site in St Albans. [more>](#)

#### Director imprisoned for 8 months following the death of 16-year old apprentice

16-year old Cameron Minshull was working as a £3-per-hour apprentice for Huntley Mount Engineering. On 8 January 2013 the teenager became entangled within a steel cutting machine and suffered fatal injuries. [more>](#)

### Further charges against the NHS

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The HSE has decided to prosecute the Mid Staffordshire NHS Foundation Trust (the Trust) in relation to the deaths of four patients who died in October 2005. [more>](#)

### Miscellaneous

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On 29 June 2010 a major fire broke out at the Lindsey Oil Refinery in North Lincolnshire. The HSE's investigation revealed that the root cause of the fire was an uncontrolled release of crude oil. [more>](#)

Any comments or queries?

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### **Rogue trader imprisoned for six months**

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### **Scaffolder prosecuted following a member of the public's filmed footage**

Greg Pearson of Enfield, trading as "Pearsons Scaffolding", was prosecuted after a member of the public provided the HSE with photographs and video evidence of a poorly constructed scaffold in central London. [more>](#)

### **Failure to comply with enforcement notices lands MD with fine**

Jan Willem Boruch was the sole director of Janbor Ltd, a company specialising in the recycling of wood waste. Janbor Ltd, a Hertfordshire-based company, was served with three Improvement Notices in October 2014 relating to work activity at its plant, but failed to comply with them. [more>](#)

## **Fines and sentences**

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In September 2011, John Stoddart climbed onto a platform in order to check why there were creases in the paper being produced at his employers, DS Smith Paper, Cullompton, Devon. [more>](#)

### **Large building contractor fined £200,000 after a worker falls through a department store front**

Philip Evans, a 60-year old man was working at a Debenhams store in Exeter repairing glass on a canopy above their shop front. He suffered fatal injuries when falling through a glass canopy. [more>](#)

### **Two global companies sentenced following death of a worker on construction of an offshore wind farm**

A team of engineers were loading wind turbine blades onto a sea barge for delivery to Greater Gabbard, off the Suffolk coast, on 21 May 2010. During the loading of wind turbine components at Pakeston Quay, Harwich, a 2.11 tonne part of the blade transport arrangement fell off, crushing and fatally injuring one worker and seriously injuring another. [more>](#)

### **Fine for company for failing to manage legionella bacteria**

Chromalloy UK Limited did not adequately manage the risk of bacteria growing in their cooling towers for over a year. [more>](#)

## **Round up**

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The HSE responses to a number of CDM 2015 Frequently Asked Questions have just been published on the HSE website. [more>](#)

### **Upcoming Health and Safety seminar**

RPC will be hosting a Health and Safety seminar at its London office on 19 November 2015 with registration at 8:30am. [more>](#)

## News

### Long-awaited sentencing guidelines now published

The new [sentencing guidelines](#) were published on 3 November 2015. They apply to those sentenced for Health and Safety offences, corporate manslaughter and food safety and hygiene offences, on or after 1 February 2016, regardless of the date of the offence.

There is no upper limit on penalties under the Corporate Manslaughter and Corporate Homicide Act 2007, but guidance is given by reference to factors such as the financial size of the defendant, the degree of culpability, and the category of harm in addition to aggravating and mitigating factors. The offence range for large organisations with an annual turnover of more than £50m will be from £4.8m to £20m for corporate manslaughter and up to £10m for the most serious of other health and safety offences.

In the case of very large organisations whose turnover exceeds £50m, the guidelines say “it may be necessary to move outside the suggested range to achieve a proportionate sentence”.

Fines for those falling foul of health and safety, food safety and food hygiene offences will also be significantly increased.

As well as punishment, the guidelines provide for remedial orders to be made by the court in addition to or instead of punishment in cases where they may be appropriate. It should be noted, however, that addressing remedial action with offenders remains the responsibility of the Health and Safety Executive rather than the courts.

The guidelines also include a range of mitigating factors, which allow for voluntary positive action to remedy a failure on the part of offenders to be reflected in sentences.

Companies are being strongly advised to review and assess their health and safety procedures in order to avoid potentially crippling fines.

[Back to contents>](#)

## Caselaw

### Corporate Manslaughter

After a slow start to cases being pursued under the Corporate Manslaughter and Corporate Homicide Act 2007, there has been a recent upsurge with the following noteworthy cases.

#### **CAV Aerospace Ltd hit with record fine under Corporate Manslaughter and Corporate Homicide Act 2007**

Paul Bowers, a 47-year old, was fatally injured when a pile of metal being delivered to his workplace at Cambridge Airport toppled onto him. It was alleged that the metal stock had been placed dangerously high as it was being delivered.

CAV Aerospace (the company) was responsible for ordering and maintaining stock. It denied charges of corporate manslaughter and breaches of the Health and Safety at Work etc Act 1974. However, an Old Bailey jury reached a guilty verdict and the company was fined £600,000 and £400,000 for the two offences to run concurrently. It was also ordered to pay £125,000 costs.

This is the largest fine yet imposed for corporate manslaughter, adhering to the Sentencing Council's guideline that fines of this nature "will seldom be less than £500,000". When determining the fine, the court noted that although the company was large it was not making "vast amounts of money – at least at present".

The case is also interesting from the perspective that it was the first brought against a parent company when the incident had occurred on the subsidiary's premises. The evidence put forward by the prosecution was that all operational decisions regarding the purchasing, delivery and storage of materials fell within the responsibility of the parent company. The company had ignored persistent warnings about the dangers of falling stacks of materials in the three years prior to the incident. The HSE found six near misses all logged on the company's database but where no action was taken.

The charges for corporate manslaughter resulted from collective failings at senior management level. There were a number of mitigating factors. These were that the company had been full and open with the HSE and went beyond what "will always be expected" using the Sentencing Council's guideline. The company had also carried out significant changes to working practices with severe disciplinary action against employees who breached the new working systems; one of which had resulted in dismissal. The company had spent significant sums implementing these changes, providing support and counselling to Mr Bowers' family and making payments in addition to any damages or other payments Mr Bowers and his family were entitled to. The company had a previously good health and safety record with no prior prosecution or enforcements. It also had a generally good attitude to health and safety with managers able to make any changes on site and being trained to a "fairly high level" on health and safety, and regular reports being made to the senior management.

Despite these mitigating factors, however, the seriousness of the company's conduct when handling the delivery of materials left them with a record fine.

[Back to contents>](#)

**NHS Trust and two doctors charged over death of woman during emergency caesarean**

This is the first time a health Trust has been prosecuted for corporate manslaughter since the Corporate Manslaughter and Corporate Homicide Act 2007 came into force in 2008.

Frances Cappuccini, aged 30, died within a few hours of giving birth to her second son at Tunbridge Wells Hospital in October 2012. She had required an emergency caesarean operation.

Alongside the prosecution of the Trust, Dr Cornish, a consultant anaesthetist, has been charged with gross negligence manslaughter. At a hearing in August 2015, he was released on bail ahead of another hearing due to be heard in October.

An international arrest warrant remains in place for Dr Nadeem Azeez who was also involved in the operation. He is believed to have left the UK and returned to Pakistan. The CPS has authorised a charge of gross negligence manslaughter against Dr Azeez.

A trial date of 11 January 2016 has been set with the likely venue being a central London court.

[Back to contents>](#)

**Linley Developments fined £200,000 for corporate manslaughter**

This case involved the death of 28-year-old bricklayer, Gareth Jones, who was fatally injured when an unstable retaining wall collapsed at a construction site in St Albans. Only two days prior to the incident, the managing director of the principal contractor, Linley Developments, visited the site and discovered that the foundations for a store room would be higher than in an adjacent building. The workers were therefore instructed to dig the foundations lower, but without underpinning it.

The court found that no risk assessment or method statement was prepared for the excavation and that there was a failure to support the wall as the trench around it became lower. Linley Developments was fined £200,000 and ordered to pay costs of £25,000 after pleading guilty to the charge of corporate manslaughter on 7 September 2015.

The court also exercised its power under s10 Corporate Manslaughter and Corporate Homicide Act 2007, making a publicity order against the company.

The managing director and project manager were both given prison sentences of six months, suspended in each case for two years after both pleading guilty to breaching Regulations 28 and 31 of the Construction (Design and Management) Regulations 2007. The MD was also fined £25,000 and the project manager £5,000. The court had considered disqualifying the MD but in the end chose not to do so.

The MD and project manager also faced charges of gross negligence manslaughter but these were withdrawn after their respective admissions of the charges brought under the CDM Regulations.

[Back to contents>](#)

### **Director imprisoned for 8 months following the death of 16-year old apprentice**

16-year old Cameron Minshull was working as a £3-per-hour apprentice for Huntley Mount Engineering. On 8 January 2013 the teenager became entangled within a steel cutting machine and suffered fatal injuries. He had been placed at the company by an employment agency, Lime People Training Solutions, which received a £4,500 grant from the government as part of its Skills Training Agency.

During the hearing at Manchester Crown Court the company was found to have paid virtually no regard for the health and safety of its employees. Judge David Stockdale commented that “These young men – inadequately trained, inexperienced, unqualified and virtually unsupervised – were effectively left to their own devices in a workshop containing fast running, unguarded machinery.” He said the “... horrific accident was an accident waiting to happen”.

The Court did not hold back in applying its sentencing powers as a reminder that there will be heavy penalties with such a significant failure to protect employees.

The company was fined £150,000 after pleading guilty to corporate manslaughter. The company’s director, Zaffar Hussain, was sentenced to eight months in prison and disqualified as a director for 10 years. His son, who was a senior supervisor, received a four month sentence suspended for one year, 200 hours of community service and a £3,000 fine. They were each ordered to pay £15,000 in costs.

The case was of interest because the employment agency was also convicted. The agency was fined £75,000 under s3 of the Health and Safety at Work etc Act 1974. This was due to their failure to ensure that Cameron Minshull was placed in a safe working environment. This highlights the importance of an agency ensuring so far as reasonably practicable that its acts and omissions in arranging work placements do not place a person in danger.

[Back to contents>](#)

### **Further charges against the NHS**

#### **Mid Staffordshire NHS Foundation Trust face criminal charges as the fall-out from the Stafford Hospital investigation continues**

The HSE has decided to prosecute the Mid Staffordshire NHS Foundation Trust (the Trust) in relation to the deaths of four patients, Patrick Daly, aged 89, who died in May 2014, Edith Bourne, aged 83, who died in July 2013, Ivy Bunn, aged 90, who died in November 2008, and Lilian Tucker, aged 77, who died in October 2005.

During the late 2000s the Trust experienced an exceptionally high mortality rate amongst its patients and evidence of poor care, standards and neglect, from 2005 to 2009. A full-scale public enquiry took place ending with a final report in February 2013. The report made 290 recommendations mainly designed to create a new system of openness and transparency amongst NHS staff.

The HSE has confirmed that following its investigation they believe there is sufficient evidence and that it is in the public interest to bring criminal proceedings in this case. “There are four separate charges, each alleging a breach under Section 3(1) of the Health and Safety at Work Act.” The Trust remains in place as a legal entity (it no longer provides patient services after University Hospitals of North Midlands NHS Trust took over) and is due to appear before Stafford Magistrates Court for a preliminary hearing.

The Trust's special administrator Tim Rideout said the remaining "shell organisation" would oversee any "potential criminal liabilities" and added that "I am committed to bringing matters to a conclusion as efficiently and effectively as possible in the best interests of the families concerned". The Trust was fined £200,000 in 2014 following the death of Gillian Astbury, a diabetic patient, aged 66, who died in 2007 after nurses failed to provide routine insulin.

[Back to contents>](#)

## Miscellaneous

### **£1.4m fine for Total UK Ltd following major fire**

On 29 June 2010 a major fire broke out at the Lindsey Oil Refinery in North Lincolnshire. The HSE's investigation revealed that the root cause of the fire was an uncontrolled release of crude oil.

Robert Greenacre was a 24-year old man working near a crude oil distillation unit. He was working with a colleague beneath a distillation column containing hot crude oil. They were tasked with blinding a low pressure steam line in a distillation column. The blind had been removed a few weeks earlier to allow steam into the column to clean it. The column had several tonnes of hot crude oil. It was being restarted and unbeknown to Mr Greenacre and his colleague the blind had not been replaced. They therefore mistakenly opened a piece of equipment and the crude oil was released. A short time later it ignited. Mr Greenacre's colleague escaped with minor burns but Mr Greenacre was fatally injured.

The court heard how Total had failed in its safety management systems by omitting to replace the blind. The fitters were not aware of the absence of the blind or that the column contained crude oil. The hazard was not identified within any documentation.

Total pleaded guilty to breaching Regulation 4 of the Control of Major Accident Hazards Regulations 1999 (COMAH) and were fined £1.4m and ordered to pay costs £34,084.05.

Whilst Total pleaded in mitigation that their general attitude to health and safety was good, the fine imposed was significant given the fatality and that the incident could have been foreseen. The court also took into account time constraints placed on employees and Total's previous conviction arising from the 2005 Buncefield explosion.

[Back to contents>](#)

### **Rogue trader imprisoned for six months**

Christopher Shaw, known under several aliases, was jailed for six months for carrying out illegal gas work at a home, putting a family with two children at risk of serious injury, or even death.

Mr Shaw traded as SOS Express Plumbing. He was known to the police and a warrant was issued for his arrest after he failed to attend Bradford Magistrates' Court in connection with several gas safety offences.

Despite not being a registered gas engineer, either with Gas Safe or the previous gas registration body Corgi, Mr Shaw installed a boiler at a family home in breach of a prohibition notice, which prevented him from performing gas work. The boiler installation was later found to be unsafe, exposing the family and those nearby to potential carbon monoxide poisoning, fire and explosion.

The family experienced persistent problems with the boiler, which Mr Shaw returned to repair on several occasions. The faults were eventually discovered by a registered gas engineer working for the boiler manufacturer.

The unsavoury nature of Mr Shaw's work came to light at the hearing when it was revealed that he received a Prohibition Notice in 2011 after carrying out unsafe work at various properties between March 2010 and May 2011, including a house run by a charity which supported homeless people.

Mr Shaw pleaded guilty to breaches of 3 (3) and 26 (1) of the Gas Safety (Installation and Use) Regulations 1998 and Section 33(1)(g) of the Health and Safety at Work etc Act 1974. He was given a six-month prison sentence for each of the three charges to run concurrently.

[Back to contents>](#)

### **Scaffolder prosecuted following a member of the public's filmed footage**

Greg Pearson of Enfield, trading as "Pearsons Scaffolding", was prosecuted after a member of the public provided the HSE with photographs and video evidence of a poorly constructed scaffold in central London. The scaffold was fifteen metres high. It had been poorly erected with workers as well as members of the public walking beneath it clearly placed at risk.

The HSE served a Prohibition Notice ordering work to be stopped until the scaffold was made safe.

Mr Pearson pleaded guilty to ss 6(3) and 10(1) of the Work at Height Regulations 2005. He was handed two prison sentences of ten weeks to run concurrently, suspended for 12 months. He was also ordered to pay costs of £200 and a victim surcharge of £80.

[Back to contents>](#)

### **Failure to comply with enforcement notices lands MD with fine**

Jan Willem Boruch was the sole director of Janbor Ltd, a company specialising in the recycling of wood waste. Janbor Ltd, a Hertfordshire-based company, was served with three Improvement Notices in October 2014 relating to work activity at its plant, but failed to comply with them.

The Health and Safety Executive (HSE) served the notices and prosecuted Mr Boruch, rather than the company, for its failure to comply. He was fined £8,000 after pleading guilty to an offence under Section 37(1) of the Health and Safety at Work etc Act 1974. He was also ordered to pay legal costs of £2,089.

Although this case arose from relatively minor health and safety breaches against a small company, it highlights the consequences of failing to comply with enforcement notices, particularly the potential personal liability of directors of companies.

[Back to contents>](#)



## Fines and sentences

### Paper company fined £400,000 following the death of an employee who became trapped in machinery

In September 2011, John Stoddart climbed onto a platform in order to check why there were creases in the paper being produced at his employers, DS Smith Paper, Cullompton, Devon. As no one saw the accident, the circumstances are unclear but it seems that Mr Stoddart was somehow dragged onto a felt belt used to drain water out of the pulp mixture, which then ripped so that he fell into the machinery below, suffering fatal injuries.

DS Smith Paper pleaded guilty to a breach of Regulation 11(1) of the Provision and Use of Work Equipment Regulations 1998 due to its failure to risk assess the procedure for investigating the cause of creases in paper and for failing to install a guard around the felt belt.

The court sentenced DS Smith Paper to a £400,000 fine and it ordered them to pay legal costs of £34,761.

[Back to contents>](#)

### Large building contractor fined £200,000 after a worker falls through a department store front

Philip Evans, a 60-year old man was working at a Debenhams store in Exeter repairing glass on a canopy above their shop front. He suffered fatal injuries when falling through a glass canopy. Both Sir Robert McAlpine and its sub-contractor, London Fenestration Trades (LFT), were fined £200,000 each, although the latter was in liquidation at the date of sentencing.

The mobile elevating work platform being used during the work was inadequate. There was a gap in the canopy which had been created by LFT removing a damaged pane. Aside from Mr Evans working on a glass surface it had been raining and there was no edging. Despite workers knowing about the gap they were too focussed on completing the job. The workers had harnesses and lanyards but there were no anchor points to attach them.

[Back to contents>](#)

### Two global companies sentenced following death of a worker on construction of an offshore wind farm

A team of engineers were loading wind turbine blades onto a sea barge for delivery to Greater Gabbard, off the Suffolk coast, on 21 May 2010. During the loading of wind turbine components at Pakeston Quay, Harwich, a 2.11 tonne part of the blade transport arrangement fell off, crushing and fatally injuring one worker and seriously injuring another.

Chelmsford Crown Court heard both workers were employed by Siemens Windpower A/S (SWP) but were working for Fluor Ltd, the principal contractor.

The HSE investigation revealed serious safety failings in the two firms' management systems for the loading operation, which allowed vital parts of equipment to go unchecked before being lifted.

Following a four-week trial in July, prosecuted by the Health and Safety Executive (HSE), Fluor Ltd was found guilty of breaching Section 3 (1) of the Health and Safety at Work etc Act 1974 and ordered to pay £275,000 in fines and £271,048 costs.

Siemens Windpower A/S (SWP) were charged with the same offence and pleaded guilty at an earlier stage, and they were also charged under Section 2 (1) of the Act (duty specific to employees). They were fined £375,000 and ordered to pay costs of £105,355.

[Back to contents>](#)

### **Fine for company for failing to manage legionella bacteria**

Chromalloy UK Limited did not adequately manage the risk of bacteria growing in their cooling towers for over a year. The case was before Derby Crown Court who heard that during a visit in May 2012, a HSE inspector felt spray on his face, saw the yard's surface was wet and that nearby cooling towers were corroded. Such conditions can increase the risk of legionella bacteria which is carried in water droplets. If the water is inhaled it can lead to legionnaire's disease, a potentially fatal form of pneumonia.

The inspector extended his visit to the rest of the site and another owned by the company and found significant failings in the company's control, recording and management of legionella risks.

The company was fined £55,000 for each of the two offences (£110,000 in total) plus costs of £77,252. The court heard that a laboratory analysis of a water sample taken from one of the company's sites had found legionella bacteria levels to be so high that immediate action was required to clean the system. In addition the company did not keep biocides (chemicals which kill bacteria) at effective levels.

[Back to contents>](#)

## Round up

### New CDM 2015 guidance now published on HSE website

The HSE responses to a number of [CDM 2015 Frequently Asked Questions](#) have just been published on the HSE website.

Similar questions and earlier responses are already published on the CITB (Construction Industry Training Board) [website](#) although the questions and HSE responses are not exactly the same as those on the CITB website. It is not clear which response take priority.

[Quick Link to latest HSE FAQ's](#)

[Back to contents>](#)

### Upcoming Health and Safety seminar

RPC will be hosting a Health and Safety seminar at its London office on 19 November 2015 with registration at 8:30am. For further details, please contact Laura Gill at [seminars@rpc.co.uk](mailto:seminars@rpc.co.uk)

[Back to contents>](#)

## About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 78 partners and over 600 employees based in London, Hong Kong, Singapore and Bristol.

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

At RPC we put our clients and our people at the heart of what we do:

- Best Legal Adviser status every year since 2009
- Best Legal Employer status every year since 2009
- Shortlisted for Law Firm of the Year for two consecutive years
- Top 30 Most Innovative Law Firms in Europe

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

- Winner – Law Firm of the Year – The Lawyer Awards 2014
- Winner – Law Firm of the Year – Halsbury Legal Awards 2014
- Winner – Commercial Team of the Year – The British Legal Awards 2014
- Winner – Competition Team of the Year – Legal Business Awards 2014
- Winner – Best Corporate Social Responsibility Initiative – British Insurance Awards 2014
- Highly commended – Law Firm of the Year at The Legal Business Awards 2013
- Highly commended – Law firm of the Year at the Lawyer Awards 2013
- Highly commended – Real Estate Team of the Year at the Legal Business Awards 2013

### Areas of expertise

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