



Health and safety update

December 2017

In the news

The Sentencing Council closes its consultation for sentencing of manslaughter offences

On 10 October 2017 the Sentencing Council closed its 14-week consultation into sentencing guidelines for manslaughter offences. [more>](#)

Greene King's first health and safety prosecution in its 218-year history

On 29 June 2014 a waiter working at The Six Bells Pub in Shinfield, Berkshire, was scalded with hot water from a tea urn, used as a temporary replacement for a broken boiler. [more>](#)

Optometrist's sentence for gross negligence manslaughter overturned by Court of Appeal

An optometrist, Honey Rose, 35, failed to detect a life-threatening risk to a seven-year-old boy during a routine eye-examination in February 2012, at a Boots branch in Ipswich. [more>](#)

HSE to prosecute a housing group and others for the death of a 5-year old girl

The HSE is prosecuting merged Synergy Housing Limited ("Synergy") and Aster Property Limited ("Aster"), along with Orona Limited ("Orona") for breaches of Section 3(1) HSWA 1974. [more>](#)

Fines and sentences

Spanish-based construction company is fined £3M following death of a worker

In July 2015, Jose Louis Santos Canal, one of a team of seven Spanish workers, was fatally injured during demolition works at the Befesa plant at Mereside Industrial Estate in Wales. [more>](#)

Housing Association fined for exposing workers to HAVS

In a further case involving HAVS, Cwmbran Magistrates' Court fined Charter Housing Association Ltd (now part of Pobl Group Ltd), Newport, £100,000. [more>](#)

NHS Trust fined following the deaths of five elderly patients

In separate incidents during June 2011 and November 2012 five elderly patients, aged between 72 and 92 were fatally injured, as a result of falling whilst in the care of the Shrewsbury and Telford Hospital NHS Trust. [more>](#)

Any comments or queries?

Nick McMahon

+44 20 3060 6896
nick.mcmahon@rpc.co.uk

Gavin Reese

+44 20 3060 6895
gavin.reese@rpc.co.uk

Mamata Dutta

+44 20 3060 6819
mamata.dutta@rpc.co.uk

Martin Hunter

+44 20 3060 6119
martin.hunter@rpc.co.uk

National manufacturer and supplier of kitchens fined £1.2M over death of HGV driver

In November 2014 an agency HGV driver, Richard Brown, was delivering kitchen worktops to Howden Joinery Ltd at one of their premises in Workington. [more>](#)

Companies working on Crossrail fined in excess of £1M following the death of a construction worker and two other incidents

In March 2014, Mr Rene Tkacik, 43, a construction worker from Slovakia, was working in the Fisher Street area of Central London. [more>](#)

Supplier and employer convicted after fatal crush injury during cleaning of a recovery vehicle

In May 2013, John Wallace, a vehicle recovery driver and employee of Ontime Automotive Ltd, was jet-washing a double-deck recovery vehicle at their premises in Hayes, Middlesex. [more>](#)

Company fined £900,000 after a worker is electrocuted cutting through a live electrical wire

In March 2016, a sub-contractor suffered serious injuries when he cut through a live electrical wire. [more>](#)

Prison sentence after a woman crushed by metal gate

In April 2013, Jill Lunn, 56, returned to her home in Blofield Heath, Norwich with her grandchild in the car. [more>](#)

Water company fined £300,000 for supplying water unfit for human consumption

In the summer of 2015 the microbial parasite cryptosporidium was discovered in a service reservoir holding treated water in Preston. The parasite found its way into the reservoir due to structural defects. [more>](#)

Three companies fined over £1M for asbestos exposure during refurbishment of East London school

In July 2012 a construction worker removed a suspended ceiling within a previously renovated room at St Mary's Church of England Primary School, Walthamstow. [more>](#)

Round up

Health and safety statistics for 2016/2017

The latest annual health and safety statistics can be found [here](#) on the HSE website. [more>](#)

Positive response by businesses to the HSE's call for broader ownership of workplace health and safety

Earlier this year, the HSE, along with Unions and Industry leaders, called for broader ownership of workplace health and safety by asking for public commitments from business. [more>](#)

In the news

The Sentencing Council closes its consultation for sentencing of manslaughter offences

On 10 October 2017 the Sentencing Council closed its 14-week consultation into sentencing guidelines for manslaughter offences.

The consultation came about following public concern for sentencing of what are known as “one punch” manslaughter offences. In 2014, the then Lord Chancellor asked the Sentencing Council to review manslaughter offences as a whole. The following manslaughter offences are covered by the guidelines:

- Unlawful act manslaughter
- gross negligence manslaughter
- manslaughter by reason of loss of control, and
- manslaughter by reason of diminished responsibility.

In the health and safety context it is (2) above, ie gross negligent manslaughter, which will be most relevant. This is a common law offence where the offender breaches its duty of care to its victim and the breach caused the death, and “*having regard to the risk involved the breach was so bad as to amount to a criminal act or omission*”.

The consultation states that current guidelines are mainly based upon previously decided first instance and Court of Appeal judgments. In considering the factors that make an offence of gross negligence manslaughter more or less serious, the Council concluded that it would be appropriate for sentences to increase in certain cases. An example is given of cases “*where an employer has had a long standing, utter disregard for the safety of employees and is motivated by cost cutting*”.

Analysing sentences passed in 2014 there were 16 sentences for gross negligence manslaughter. All were custodial penalties ranging from 9 months to 12 years, four of which were suspended.

The average sentence was 4 years, so in order to reflect current sentencing practice, the majority of cases would fall into a proposed culpability category C (medium). For this category the proposed sentencing range would be 3-7 years’ custody with a starting point of 4 years. For very high culpability the range would be 10-18 years with a starting point of 12 years custody.

The outcome of the replies to the consultation is awaited.

[Back to contents>](#)

Greene King’s first health and safety prosecution in its 218-year history

On 29 June 2014 a waiter working at The Six Bells Pub in Shinfield, Berkshire, was scalded with hot water from a tea urn, used as a temporary replacement for a broken boiler. Members of staff were asked to use ice cream containers to carry hot water from the tea urn to the sink whilst covering their hands with a cloth. One staff member stumbled and spilt the water over a colleague, Aaron Large, whose legs were scalded and he was “*scarred for life*”.

The prosecution was brought by Wokingham Borough Council and the company received a fine of £140,000 for a breach of Section 2 HSWA 1974 at Reading Crown Court on 17 November 2017. They were ordered to pay costs of £10,000.

Whilst this was the company's first health and safety conviction, the prosecution followed a fine of £140,000 for the same company in August 2017 for breaches of the Food Safety and Hygiene (England) Regulations 2013. That fine concerned three offences regarding lack of hygiene of the kitchen and equipment at The Twynersh Public House, Chertsey, Surrey, following inspections in July, August and September 2016.

That prosecution was brought by Runnymede Borough Council and sentencing took place at Guildford Magistrates Court, which found that culpability fell within the "medium" category and harm within "category 2". The range of fine for a company with a turnover in excess of £50M was £35,000 to £200,000 with a starting point of £90,000.

The fine of £140,000 plus costs of £22,571 took into account an early guilty plea for each offence and the company's previous good record.

[Back to contents>](#)

Optometrist's sentence for gross negligence manslaughter overturned by Court of Appeal

An optometrist, Honey Rose, 35, failed to detect a life-threatening risk to a seven-year-old boy during a routine eye-examination in February 2012, at a Boots branch in Ipswich. The boy subsequently died of hydrocephalus 5 months later.

In July 2016, Ms Rose was found guilty of gross negligence manslaughter and received a two-year suspended prison term, coupled with an order to carry out 200 hours of community service.

However, the Court of Appeal overruled Ms Rose's conviction stating that although there had been a "serious breach of duty", it did not amount to gross negligence manslaughter. It was held that the original ruling was based on a misdirection of Mr Justice Stuart-Smith to the jury as to the applicability of the legal test of "foreseeability".

The Court of Appeal restated the correct test to be applied. It held that although there was a breach in failing to carry out an examination of the back of the eyes (there was a factual dispute between Ms Rose and the child's mother as to whether he had an aversion to the bright light used in the test), it was not reasonably foreseeable that an obvious and serious risk of death arose.

Sir Brian Leveson, sitting alongside two other appeal court judges, commented that "All a reasonably prudent optometrist would have known is that, if he or she did not carry out a proper examination, signs of potentially life-threatening conditions might be missed. But this is a very different matter from knowledge that such signs in fact existed and that there was a serious and obvious risk of death."

He went on to state that "In some cases, there might be 'wilful blindness' to a serious and obvious risk of death, but that is not the present case".

[Back to contents>](#)

HSE to prosecute a housing group and others for the death of a 5-year old girl

The HSE is prosecuting merged Synergy Housing Limited (“Synergy”) and Aster Property Limited (“Aster”), along with Orona Limited (“Orona”) for breaches of Section 3(1) HSWA 1974. This is in response to the death of five-year old, Alexys Brown, who died when her head became stuck in a lift at Emmadale Close, Weymouth, on 13 August 2015.

Alexys’ head became trapped between the lift and the ground floor ceiling at her family home suffering fatal head and neck injuries. The lift was for her brother Jack, who was eleven at the time, suffering from a rare neuro-degenerative illness and wheelchair-bound.

Synergy and Aster were responsible for providing inspections of the equipment contracting others to install the lift. Orona was responsible for ongoing maintenance of the lift.

The companies are next due to appear at Weymouth Magistrates’ Court on 16 February 2018.

[Back to contents>](#)

Fines and sentences

Spanish-based construction company is fined £3M following death of a worker

In July 2015, Jose Louis Santos Canal, one of a team of seven Spanish workers, was fatally injured during demolition works at the Befesa plant at Mereside Industrial Estate in Wales.

The 32-year old was working for a sub-contracted company, Porvi Construcciones y Contratas, Valladolid, Northern Spain, tasked with demolishing redundant processing machinery. He fell whilst cutting through some steelwork which supported a large metal hopper. The structure collapsed and Mr Canal fell suffering fatal injuries.

It was discovered by the HSE investigators that the hopper was not supported before it was cut from the structure. There was no edge protection to prevent the fall. The harness discovered, and which was previously provided to Mr Canal, was not being used.

The company pleaded not guilty to breaches under Sections 2 and 3 HSWA 1974 but the jury delivered its guilty verdict at Caernarfon Crown Court. In absentia, the company received a fine of £3M and was ordered to pay full costs.

In a further site investigation at the Befesa plant during October 2015, the HSE discovered that a number of incidents at the site had not been reported, and that two workers had been diagnosed with Hand Arm Vibration Syndrome (HAVS) earlier that year.

Befesa Salt Slags Ltd of Whitchurch pleaded guilty to breaches under Sections 2 and 3 HSWA 1974 and the Reporting of Injuries, Diseases and Dangerous Occurrence (RIDDOR) Regulations 1995.

The company was fined a total of £225,000 (£150,000 for the incident involving HAVS and £75,000 for the failure to supervise and monitor demolition at its site). It was also ordered to pay costs of £67,000.

[Back to contents>](#)

Housing Association fined for exposing workers to HAVS

In a further case involving HAVS, Cwmbran Magistrates' Court fined Charter Housing Association Ltd (now part of Pobl Group Ltd), Newport, £100,000. The company was ordered to pay costs of £9,896.88. The company had pleaded guilty to breaching Regulations 5, 6, 7 and 8 of the Control of Vibration at Work Regulations 2005.

The case involved six incidents of HAVS following a health surveillance programme launched in June 2015.

The affected employees were all part of the maintenance team employed by the company. Their working conditions were likely caused or worsened by the use of vibratory power tools and significant exposure to HAVS during their daily work.

The HSE concluded that the company had failed to plan its working methods adequately or to train employees as to the relevant risks to their health. In addition, there was no suitable health surveillance system in place to identify HAVS at an early stage, or monitor it.

[Back to contents>](#)

NHS Trust fined following the deaths of five elderly patients

In separate incidents during June 2011 and November 2012 five elderly patients, aged between 72 and 92 were fatally injured, as a result of falling whilst in the care of the Shrewsbury and Telford Hospital NHS Trust.

Four of the patients died after falling at the Princess Royal Hospital, Telford. The other patient died in a similar way at the Royal Shrewsbury Hospital.

Stafford Crown Court heard how the HSE discovered that the Trust's fall prevention measures were not properly applied, particularly for patients in a confused mental state. The failure was exacerbated by poor consideration and communication of measures to protect against the risk of falling, by reference to the particular needs of each patient. Although policies and procedures were in place, they had not been consistently applied.

The NHS Trust pleaded guilty to breaching Section 3(1) HSWA 1974. It was fined £333,333 and ordered to pay costs of £130,000.

[Back to contents>](#)

National manufacturer and supplier of kitchens fined £1.2M over death of HGV driver

In November 2014 an agency HGV driver, Richard Brown, was delivering kitchen worktops to Howden Joinery Ltd at one of their premises in Workington. He was fatally crushed when a forklift truck containing two pallets of items weighing 2,160kg overturned.

The HSE found that the forklift truck was overloaded and visiting delivery drivers were not kept a safe distance while loading and unloading took place.

At Carlisle Crown Court it was held that although risk assessments and training were in place, they were not "fool-proof". Investigations revealed four other overbalancing incidents in 2014 at some of the company's other depots.

The company were said to have an annual turnover of £1.2 billion. In mitigation, the company had an "excellent safety record", had introduced overload alarms on forklift trucks, and had increased the safety area for HGV drivers since the incident.

The company pleaded guilty to charges under sections 2 and 3 HSWA 1974. In addition to the fine of £1.2M, it was ordered to pay costs of £33,902.

[Back to contents>](#)

Companies working on Crossrail fined in excess of £1M following the death of a construction worker and two other incidents

In March 2014, Mr Rene Tkacik, 43, a construction worker from Slovakia, was working in the Fisher Street area of Central London. He was carrying out work on the enlargement of a tunnel when falling wet concrete fatally crushed him.

Two further incidents followed within the same area of the Crossrail project, resulting in injuries to two other workers. On 16 January 2015 Terence "Ian" Hughes suffered severe fractures to his lower limbs. He was collecting equipment from inside one of the tunnels when he was struck by a reversing excavator.

Only six days later, Alex Vizitiu was cleaning pipes which supplied concrete, when one of the lines was disconnected and he was hit by pressurized water and concrete debris. He suffered head and hip injuries in addition to a broken finger.

A joint venture of three companies, Bam, Ferrovial and Kier (BFK), admitted a breach of Regulation 10(2) of the Work at Height Regulations 2005 for the death of Mr Tkacik. They were fined £300,000.

BFK also pleaded guilty to two separate breaches of Section 22 (1a) of the Construction (Design and Management) Regulations 2007, relating to the two other incidents in January 2015. They received further fines of £600,000 (the incident involving Mr Hughes) and £165,000 (the incident involving Mr Vizitiu).

The HSE discovered that BFK had failed to enforce exclusion zones adequately, which would have protected those injured from a foreseeable risk of harm.

The case was heard at Southwark Crown Court. In addition to the fines, a costs order of £42,337.28 was imposed.

[Back to contents>](#)

Supplier and employer convicted after fatal crush injury during cleaning of a recovery vehicle

In May 2013, John Wallace, a vehicle recovery driver and employee of Ontime Automotive Ltd, was jet-washing a double-deck recovery vehicle at their premises in Hayes, Middlesex. The upper deck collapsed whilst Mr Wallace was cleaning between the upper and lower decks. He died at the scene.

The HSE found that the vehicle had been poorly designed by J&J Conversions Ltd. They had failed to remedy the problem, even after the upper deck had violently collapsed on a previous occasion when the vehicle was owned by a third party unconnected to this case.

J&J Conversions Ltd admitted a breach of Section 6(1) HSWA 1974. This placed a duty of care upon them, as a company involved in the supply chain, to ensure that so far as reasonably practicable, articles for use at work were being used, set, cleaned or maintained. This obligation included providing information and instructions on safe use, including any subsequent revisions to that information.

Ontime Automotive Ltd pleaded not guilty to Section 2(1) HSWA 1974 in their duty as an employer. However, it was held that they had failed to understand the danger posed with the vehicle and failed to heed a warning by J&J Conversions Ltd that the pins intended to secure the upper deck should have been checked.

At Southwark Crown Court, J&J Conversions Ltd was fined £100,000 and ordered to pay costs of £9,490. Ontime Automotive Ltd was found guilty and fined £50,000 and ordered to pay costs of £50,000.

[Back to contents>](#)

Company fined £900,000 after a worker is electrocuted cutting through a live electrical wire

In March 2016, a sub-contractor suffered serious injuries when he cut through a live electrical wire. He was working for Green North East Trading Bidco Limited, operating as Impetus Waste Management, at their site on Davy Bank, Wallsend.

South Tyneside Magistrates' Court heard how the sub-contractor had been removing an item of industrial equipment. Despite being informed that the item had been isolated from the electricity supply, the sub-contractor cut through a wire leading to a fan. After the incident, it transpired that there were several pieces of equipment which had not been electrically isolated.

The company, which went into administration in November 2016, was found guilty of breaching Section 3(1) HSWA 1974. A fine was imposed of £900,000, and the company was also ordered to pay costs of £5,390 costs and a £150 victim surcharge.

[Back to contents>](#)

Prison sentence after a woman crushed by metal gate

In April 2013, Jill Lunn, 56, returned to her home in Blofield Heath, Norwich with her grandchild in the car. She tried to close the metal gate on her driveway using a remote control, but when it did not work she tried to close it manually. The gate subsequently collapsed and fatally crushed Mrs Lunn.

The gate had been fitted one month previously by Robert Churchyard, 52, of Norwich. It weighed approximately one-third of a tonne and was designed to be operated both automatically and manually. The reason for the gate falling was that its safety-stop devices were inadequately fitted, thus failing to prevent it sliding off a steel track when manually opened.

Mr Churchyard denied gross negligence manslaughter at Norwich Crown Court. He maintained that Mrs Lunn's family had removed the stop, but this was rejected by the jury and, following his conviction, Mr Churchyard received a 42-month prison sentence.

His employer, Automated Garage Doors and Gates, was fined £12,000 after admitting at a previous hearing three counts of failing to comply with a requirement under the Supply of Machinery (Safety) Regulations 2008.

[Back to contents>](#)

Water company fined £300,000 for supplying water unfit for human consumption

In the summer of 2015 the microbial parasite cryptosporidium was discovered in a service reservoir holding treated water in Preston. The parasite found its way into the reservoir due to structural defects.

The company supplying the water was United Utilities. At Preston Crown Court in July 2017, the company pleaded guilty to a charge of supplying water unfit for human consumption, brought by the Drinking Water Inspectorate under Section 70 of the Water Industry Act 1991.

It was discovered that that the company had not carried out risk assessments, which could have prevented contamination of water supplies, nor had it taken sufficiently rapid action to protect consumers when contamination was known.

The Court heard how people affected by the contamination had to boil their water for nearly three weeks. Fortunately there was no outbreak of cryptosporidium disease, which causes symptoms of diarrhoea, stomach cramps and vomiting, if ingested.

However, Judge Mark Brown said: *“It was the largest event of its kind since the privatization of the water industry many years ago and it had a major impact on day to day water consumption. There was significant disruption to domestic consumers but also to businesses as well.”*

Due to a surge in panic buying supermarkets were forced to restrict the amount of bottled water per customer. It was reported that United Utilities has so far spent £25m, including £18.3m in voluntary compensation to householders and businesses affected, providing one million bottles of drinking water at the time of the contamination and donating thousands of pounds to charity.

Nevertheless, the Court imposed a fine of £300,000 on United Utilities and ordered it to pay prosecution costs of £150,000.

[Back to contents>](#)

Three companies fined over £1M for asbestos exposure during refurbishment of East London school

In July 2012 a construction worker removed a suspended ceiling within a previously renovated room at St Mary’s Church of England Primary School, Walthamstow. He discovered suspected asbestos, which subsequently turned out to be present in other areas of the school.

Although an asbestos survey had been in place, it had included multiple caveats and other disclaimers on which appropriate checks had not been carried out.

Southwark Crown Court heard how Waltham Forest Council had contracted with NPS London to manage development and refurbishment of its estate. The principal contractor was Mansell Construction Services at the time of the incident, but by the time of sentencing it had become Balfour Beatty. Squibb Group was engaged as a sub-contractor.

Balfour Beatty was fined £500,000 for breaches of Sections 2(1) and 3(1) HSWA 1974 and ordered to pay costs of £32,364.84.

NPS London was fined £370,000 for a breach of Section 3(1) HSWA 1974 and ordered to pay costs of £32,364.84.

Squibb Group was fined £400,000 for a breach of Section 2(1) HSWA 1974 and ordered to pay costs of £175,000. Squibb was found guilty at trial, whereas the other two companies had admitted their respective breaches and pleaded guilty.

[Back to contents>](#)

Round Up

Health and safety statistics for 2016/2017

The latest annual health and safety statistics can be found [here](#) on the HSE website.

This is the first full year in which the sentencing guidelines revised in 2016 have been effective. Although the HSE reports fewer prosecutions taken in 2016/17 than in the previous year, there has been an increase in total fines to £69.9m from £38.8m for 2015/16.

[Back to contents>](#)

Positive response by businesses to the HSE's call for broader ownership of workplace health and safety

Earlier this year, the HSE, along with Unions and Industry leaders, called for broader ownership of workplace health and safety by asking for public commitments from business.

More than 100 organisations made commitments so that from Friday 24 November the HSE launched an online community dedicated to inspiring business to share their commitment to Helping Great Britain Work Well.

The launch of the new web community is intended to establish a social sharing network where companies and businesses can make their commitments, share their journey of improvement and help each other and encourage others to follow in their footsteps.

Examples given by the HSE are:

- Water utility company, Welsh Water, launching a “*Back to Health*” scheme providing medical treatment assisting employees’ recovery from illness or injury significantly faster than NHS provided treatment.
- Construction company Morgan Sindall committed to introducing a suite of “*Engagement Discussions*” as part of its “*100% Safe*” Cultural Development Programme, which has led to improved knowledge and understanding of health and safety practices.

Those interested in joining the Help Great Britain Work Well web community can do so at [#HelpGBWorkWell](#).

[Back to contents>](#)

About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 83 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 – Overall Best Legal Adviser – Legal Week Best Legal Adviser 2016-17
- Winner – Law Firm of the Year – The British Legal Awards 2015
- Winner – Competition and Regulatory Team of the Year – The British Legal Awards 2015
- 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

Areas of expertise

- | | | |
|------------------------------|---------------------------|------------------------------|
| • Competition | • Employment | • Projects & Outsourcing |
| • Construction & Engineering | • Finance | • Real Estate |
| • Corporate/M&A/ECM/PE/Funds | • Insurance & Reinsurance | • Regulatory |
| • Corporate Insurance | • IP | • Restructuring & Insolvency |
| • Dispute Resolution | • Media | • Tax |
| | • Pensions | • Technology |
| | • Professional Negligence | |

