



Health and safety update

March 2020

Fines and sentences

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Pub fined following customer’s allergic reaction

A pub in Charlbury, Oxfordshire, has been fined after a 15-year old customer suffered an anaphylactic reaction to eggs. [more>](#)

Corporate manslaughter acquittal following death of waste transfer station worker

The Defendants, Ace Waste Haulage Limited and its boss Mr Evers, have been found not guilty of corporate manslaughter and s37 HSWA charges respectively, following a three-week trial at the Old Bailey. [more>](#)

Tesco supermarket fined £733,333 as pensioner breaks hip

In August 2015, a 91-year old pensioner fell and suffered injuries requiring extensive surgery, after slipping in pool of liquid at a Tesco Extra store. The incident raised concerns about Tesco’s compliance with sections 2 and 3 of the HSWA 1974. [more>](#)

Company receives fine 5 years after workers death

Contractor McGee has been fined £500,000 five years after worker, Dainius Rupsys, died on a building site at Grosvenor Square, London, on 14 April 2014. He was fatally injured after a demolished 12 square metre concrete slab fell through the second floor to the first-floor level. [more>](#)

£75,000 charity donation prevents environmental prosecution for recycling breaches

Pet food manufacturer, Kennepak Ltd, agreed to the Enforcement Undertaking after an investigation by the Environment Agency established that the company had failed to appreciate their obligations under the Producer Responsibility (Packaging Waste) Regulations 2007. [more>](#)

Any comments or queries?

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Party boat owner fined for colliding with police dock and vessel

Daniel Wakefield, the captain and owner of a passenger boat, recently pleaded guilty to conduct endangering ships, structures or individuals, under s58 of the Merchant Shipping Act 1995. [more>](#)

Gas Fitter jailed for unsafe gas work

A self-employed gas fitter, who previously featured on BBC Watchdog, has been jailed for 16 months. [more>](#)

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Coronavirus advice for employers

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The intention of the Bill is to drive improvements in fire safety. The Bill proposes amendments to the Regulatory Reform (Fire Safety) Order 2005 which will clarify duties of the responsible person or duty-holder for multi-occupied residential buildings. [more>](#)

Fines and sentences

Takeaway owner jailed for poor kitchen hygiene

A 62-year-old man, Zhi Zhao, has been jailed for running an “unspeakably dirty” kitchen whilst banned from operating a food business. Grace Chinese takeaway was located in Cilgerran, Pembrokeshire and concerns were first raised about the business in 2015.

Following a routine investigation by Pembrokeshire Council in January 2018, officers noticed grease and dirt in the kitchen, a broken fridge filled with dirty water and serious issues with food storage conditioning and labels.

During their second investigation in March 2019, whilst some improvements had been made, there continued to be serious ingredient storage issues. Of particular concern was the absence of record-keeping by the owner, who was unable to notify officers of potential allergens in meals.

Subsequently, council officials learned that Zhao had previously been banned from running food businesses in 2009 by Maidstone Council. Counsel for Zhao confirmed that he had erroneously thought the indefinite prohibition order banning him from running a food business was for two years rather than for life. The ban was imposed after he was found guilty of various food hygiene offences in 2010 and for which he was also sentenced to 28 days imprisonment. He claimed that, had he realised it was still in force, he would not have opened the Pembrokeshire business.

When sentenced at Swansea Crown Court, Zhao pleaded guilty to three food hygiene offences, one failure to comply with a food safety improvement notice and one offence of running a food business after being banned. The Judge stated that “I have not a shadow of a doubt if the public had seen the state of the kitchen then there would not have been a single customer. It is hard to imagine anything quite so dirty.” He went on to add that the Defendant had “no concept” about how to run a food business. The Judge advocated the introduction of a national register of banning orders for local authorities.

Zhao was jailed for four months and ordered to pay £1,000 prosecution costs out of a total incurred of £3,850.16.

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Pub fined following customer’s allergic reaction

A pub in Charlbury, Oxfordshire, has been fined after a 15-year old customer suffered an anaphylactic reaction to eggs.

The teenager informed staff she had a severe egg and nut allergy whilst dining at the establishment. Staff advised her to order a panna cotta dessert, informing her both before and after the meal that it was free of these allergens. However, the passion fruit curd within the dessert contained egg and, after developing severe symptoms, the customer was rushed to hospital for treatment.

The pub owners, Pack Taverns Ltd, admitted its failure to comply with food information regulations. A fine of £3,000 was imposed together with a £170 victim surcharge. They were also ordered to pay £2,854 of prosecution costs. They had already complied with three hygiene improvement notices.

An environmental cabinet member has since commented on the importance of food businesses implementing robust coping strategies, including staff training about allergens. In a bid to implement this, catering establishments can now be fined up to £8,000 for these offences.

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Corporate manslaughter acquittal following death of waste transfer station worker

The Defendants, Ace Waste Haulage Limited and its boss Mr Evers, have been found not guilty of corporate manslaughter and s37 HSWA charges respectively, following a three-week trial at the Old Bailey.

In 2017, just 18 months after an HSE inspection highlighted unsatisfactory traffic arrangements, a labourer, Stelian Florian Gavriiuc, was working at the Neasden Goods Yard in North West London when he was struck by one of the wheels of a shovel vehicle. Mr Gavriiuc was immediately taken to hospital, but subsequently died from his injuries five days later.

In the aftermath of investigations by the HSE and the Metropolitan Police, corporate manslaughter charges were brought against the company, and a s37 HSWA charge against Mr Evers on the basis his conduct had led to the corporate offence. In addition to defending the manslaughter charge, the company also denied two counts of failing to discharge health and safety duties.

The prosecution centred around a series of issues including pedestrian segregation, workplace transport safety and the true extent of a director's roles and responsibility. Following trial, a jury at the Old Bailey found both defendants not guilty of the manslaughter charge and s37 HSWA charges respectively. The company was convicted of failing to ensure the health and safety of their employees in view of the way which the work was conducted and was fined £240,000 with a costs order of £51,116.29 also imposed.

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Tesco supermarket fined £733,333 as pensioner breaks hip

In August 2015, a 91-year old pensioner fell and suffered injuries requiring extensive surgery, after slipping in pool of liquid at a Tesco Extra store. The incident raised concerns about Tesco's compliance with sections 2 and 3 of the HSWA 1974.

During an investigation by Environmental Health Officers, it was discovered that problems had first begun in June 2015, months before the accident took place. Store drains had been blocked by bacteria, setting refrigerator leaks into a semi-solid state which prevented further liquid passing through. Tesco engineers had attempted to clear the liquid using machines, but were unsuccessful and the blockage and leaks continued.

Measures taken to mitigate the risk prior to the accident were inadequate. These could have included barrier-restricted access, aisle closure or the shutting down of leaking refrigerator units.

Tesco pleaded guilty to the two charges, the company nevertheless argued that any culpability giving rise to injury was attributable to the local store and not to the company as a whole. In his judgment, District Judge Leigh-Smith disagreed with this and in sentencing found the company to have high culpability. It was held that, had issues been considered at managerial level, it should have had a preventative effect. Costs are to be awarded at a later date.

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Company receives fine 5 years after workers death

Contractor McGee has been fined £500,000 five years after worker, Dainius Rupsys, died on a building site at Grosvenor Square, London, on 14 April 2014. He was fatally injured after a demolished 12 square metre concrete slab fell through the second floor to the first-floor level.

Mr Rupsys had been using a thermal lance to burn through reinforcing steel bars to help an excavator operator remove a section of the reinforced slab. Demolition was originally halted amidst fears that works made the structure unsafe after another worker raised concerns with a supervisor. However, the supervisor later ordered the removal of props supporting the rest of the slab.

This work led to a collapse causing the death of Mr Rupsys and injury to the excavator operator after the excavator and its cab also fell. The investigation established that Mr Rupsys had not received adequate equipment training for use of the thermal lance or his harness, which was not attached at the time of collapse. CCTV from the site was also produced as evidence that the demolition works had been conducted in an unsafe manner.

Demolition firm McGee pleaded guilty to breaching section 22(1)(a) Construction (Design and Management) Regulations 2007 - failure of the principal contractor to plan, manage and monitor construction work in a way to ensure it is carried out without risks to health and safety, as far as reasonably practicable. The company was fined £500,000 and ordered to pay £66,236.22 in costs.

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£75,000 charity donation prevents environmental prosecution for recycling breaches

Pet food manufacturer, Kennelpak Ltd, agreed to the Enforcement Undertaking after an investigation by the Environment Agency established that the company had failed to appreciate their obligations under the Producer Responsibility (Packaging Waste) Regulations 2007.

On the basis the company were handling over 50 tonnes of packaging waste and had a turnover of over £2m, they were required to:

- register with the Environment Agency
- recycle and recover a proportion of their waste by purchasing Packaging Recovery Notes

The breaches were present over an extended period of time, from 2001 – 2016.

Rather than prosecute, the Environment Agency agreed to issue an Enforcement Undertaking so that Kennelpak could fund improvements to enhance the environment. The fund was shared equally between the Nottinghamshire Wildlife Trust, specifically the Attenborough Reserve Project, and the Erewash Canal Preservation & Development Association, where the funds were used to renovate Lock Cottages in Sandiacre, Derbyshire.

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Party boat owner fined for colliding with police dock and vessel

Daniel Wakefield, the captain and owner of a passenger boat, recently pleaded guilty to conduct endangering ships, structures or individuals, under s58 of the Merchant Shipping Act 1995.

In 2018, Mr Wakefield skippered a catamaran booked to host a private party, which disembarked at Canary Wharf at 11pm. Whilst travelling back to its mooring in South Bank, the boat reportedly hit the Metropolitan Police service marine unit workshop pontoon. It caused considerable damage to the pontoon, which was used to service RNLI and London Fire Brigade vessels. The pontoon remained inoperable for over a year and required £1.25 million of reparation works. In addition to damaging the pontoon Mr Wakefield had reversed out of the pier, hitting a police boat with two officers on board.

In addition to the charges brought against Mr Wakefield, the company was charged under s100 of the Merchant Shipping Act 1995 for failing to take all reasonable steps to secure that the ship was operated in a safe manner. The owner had not appointed a lookout, in contravention of the boat's Passenger Safety Certificate.

On 24 January 2020, at Southwark Crown Court, Mr Wakefield was fined £1,120 and ordered to pay prosecution costs of £1,200. In addition, his company was fined £5,000 plus costs of £15,225.

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Gas Fitter jailed for unsafe gas work

A self-employed gas fitter, who previously featured on BBC Watchdog, has been jailed for 16 months.

Mr Richard Goldthorpe was issued with a Prohibition Notice by the HSE in 2014, for his failure to register on the Gas Safe Register. The Notice banned him from undertaking any further gas work in the interim. However, the HSE discovered that he had subsequently worked on more than seven appliances and had undertaken that work in a defective manner.

Mr Goldthorpe pleaded guilty to a series of offences under sec 3(2), reg 3(3) and reg 3(7) of the Gas Safety (Installation and Use) Regulations 1998, as well as sec 33(1)(g) of the Health & Safety at Work etc. Act 1974.

Manchester Crown Court later heard that Mr Goldthorpe continued to work whilst on bail, giving rise to two further offences. He was sentenced to 16 months imprisonment. HSE Inspector Anthony Banks commented that "Richard Goldthorpe knowingly defrauded homeowners and purposely misled them into thinking he was registered with the Gas Safe Register".

Roundup

Coronavirus advice for employers

The Department of Health & Social Care (DHSC) and Public Health England (PHE) are leading the UK government response to the COVID-19 outbreak.

The current guidance for the public and employers can be found [here](#).

This includes temporary arrangements for drivers who are working in the UK supply chain, and advice regarding employers' obligations to protect homeworkers. With Government now confirming that all but key workers critical to the response to the outbreak are instructed to work from home, there has been a seismic move to home working across various sectors.

The guidance outlined by the HSE confirms the need for employers to appreciate that their obligations to homeworkers are the same as for other workers. It also emphasises the need to keep in touch with employees both to ensure that they are able to conduct their work in safe manner and to ensure that any signs of stress can be detected as soon as possible.

The specific guidance to employers regarding homeworkers can be found [here](#).

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Fire Safety Bill introduced by the Home Office

The intention of the Bill is to drive improvements in fire safety.

The Bill proposes amendments to the Regulatory Reform (Fire Safety) Order 2005 which will clarify duties of the responsible person or duty-holder for multi-occupied residential buildings for:

- the structure of external walls, including cladding, balconies and windows, and
- entrance doors to individual flats that open into common areas.

It is intended within the Bill to give the fire and rescue services greater powers to take enforcement action and hold building owners to account where it is appropriate to do so. The Bill also seeks to provide a foundation for secondary legislation to implement the recommendations made in Phase 1 of the Grenfell Tower Inquiry, making clear the obligations of building owners and managers to monitor and review key areas of fire safety in the buildings that they control – including evacuation plans and ensuring the materials used on the building are compliant with the relevant requirements.

The Bill was given its first reading on Thursday 19 March 2020, and a date for the second reading is to be fixed.

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- Shortlisted – Insurance Team of the Year – Legal Business Awards 2018
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- Winner – Client Service Innovation Award – The Lawyer Awards 2017
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