



Health and safety update

December 2018

In the news

New gross negligence manslaughter guidelines introduced

New sentencing guidelines were brought in on 31 July 2018 for Gross Negligence Manslaughter cases. These took effect on 1 November 2018, and will apply to all such convictions from that date, regardless of the date of offence. They are the first guidelines on sentence length for this particular offence. However, they bear close similarities to the guidelines already in place for health and safety offences. [more>](#)

R v Winterton: Gross negligence manslaughter conviction upheld

The conviction of Andrew Winterton, the site manager who was held to be responsible for a labourer's death after a trench collapsed, was upheld. In September 2014, Shane Wilkinson, a labourer, standing by or in an L-shaped trench, died after being buried in earth. [more>](#)

Coroner gives opinion on Pret a Manger case

As has been widely reported in the news, 15-year old Natasha Ednan-Laperouse died from an anaphylactic reaction, having eaten a non-pre-packed Pret sandwich containing sesame seeds. [more>](#)

Fines and sentences

£2.3m fine for Stagecoach after bus crash kills two people

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£1.2m fine for Southern Gas Network Plc after gas ignited

Southern Gas, and a construction company, Cliffe Contractors Ltd, were fined when a ruptured gas main ignited causing severe injuries and burns to two employees of Southern Gas, who had been called to repair the initial damage. [more>](#)

£300,000 fine for Bridgend County Borough Council after death of 15-year old boy

A 15-year old boy was killed after a collision with a school minibus. Ashley Talbot was crossing the road to get on his bus home when the collision occurred. Another student was also injured in the accident. [more>](#)

Any comments or queries?

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£337,500 fine for WHSmith after customer falls through a trapdoor

WHSmith was fined after a 64-year old woman fell through an open trapdoor into the basement of its shop in Taunton, Somerset causing life-changing injuries. Despite a staff member attempting to grab the falling customer, they could not stop her from falling 2.8 metres and suffering an injury that required three separate operations. [more>](#)

Two men convicted of manslaughter after girl dies from food allergy

Two takeaway workers, Mr Harun Rashid and Mr Mohammed Abdul Kuddus, were convicted of gross negligence manslaughter after serving a meal that contained allergens that Megan Lee, a teenage customer, had specified she could not eat when ordering through Just Eat. [more>](#)

Cot designer jailed after admitting health and safety charges and fraud charges

Judge Martin Spencer at Leeds Crown Court sentenced Craig Williams to three years and four months in prison for designing a dangerous cot in which seven-month old baby Oscar Abbey died, despite assurances Mr Williams gave to Oscar's parents that the cot was safe. Oscar was fatally injured after he became stuck in a gap he was trying to crawl through. His body was found by his parents on 3 November 2016. [more>](#)

Environmental

Wessex Water to pay a record £975,000 for enforcement undertaking after a sewage spill into Swanage Bay

During 2016 and 2017 there were a series of illegal discharges from Swanage Sewage Treatment Works into Swanage Bay. It is estimated that in excess of 142,000 cubic metres of sewage was discharged into the bay. [more>](#)

Fine for Japanese knotweed infestation

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Round up

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For the first time the HSE has included mental ill health within its first aid advice. [more>](#)

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The HSE has published online construction injury records from RIDDOR records from 2011 to 2017. [more>](#)

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The guidelines look likely to increase the length of sentences with very high culpability factors ranging from 12 years to a maximum 18 years and the lower culpability category ranging from a minimum one year to four years.

The Sentencing Council has placed particular emphasis on harsher sentences in situations where “the negligent conduct was motivated by financial gain (or the avoidance of cost)” and where the “offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct.”

Seniority of position in the company, or in the group of individuals involved in the activity concerned will be relevant. The guidelines state that a factor indicating high culpability is “where the offender was in a leading role if acting with others in the offending.”

A factor which indicates lower culpability is “where the offender was in a lesser or subordinate role” and a mitigating factor is that “the offender lacked the necessary expertise, equipment, support or training.” Junior employees who are given too much responsibility or a lack of direction will potentially be treated less harshly than directors and/or more senior employees convicted of the offence.

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R v Winterton: Gross negligence manslaughter conviction upheld

The conviction of Andrew Winterton, the site manager who was held to be responsible for a labourer’s death after a trench collapsed, was upheld. In September 2014, Shane Wilkinson, a labourer, standing by or in an L-shaped trench, died after being buried in earth.

It was argued that Mr Winterton should have known that there was a danger and that the risk could give rise to fatal injuries. In the alternative, if he did not know, he had constructive knowledge, as he was the health and safety manager for the area. Despite walking past the site every day, being warned by a report obtained before the construction began that the soil was prone to collapse, and having had warnings from a local water company employee who visited the trench the day before the incident, Mr Winterton denied that he should have known about the dangers of the trench.

The trial judge refused Mr Winterton’s submissions of “no case to answer” on the grounds that there was sufficient evidence to direct a reasonable jury. However, Mr Winterton was subsequently granted permission to appeal on the basis that the judge had erred in law by directing the jury that they could consider what Mr Winterton ought to have known, referring to *R v Rose (Honey Maria)*.

The Court had decided in *R v Rose* that “the question of available knowledge and risk is to be judged objectively and prospectively as at the moment of breach, not but for the breach. The factual matrix was critical.”

In Mr Winterton’s case, the available evidence had illustrated that there was foreseeability of a clear risk of death to anyone in the trench and that Mr Winterton had actual knowledge of the circumstances or at least should have appreciated the risk. The question was when the trench would collapse rather than if. This was in contrast to *R v Rose*, where there was no clear sign of risk of death.

As a result, it was held that the judge had not erred in directing the jury and the appeal was dismissed.

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Coroner gives opinion on Pret a Manger case

As has been widely reported in the news, 15-year old Natasha Ednan-Laperouse died from an anaphylactic reaction, having eaten a non-pre-packed Pret sandwich containing sesame seeds.

Non-pre-packed food that is prepared in kitchens on site or nearby is currently governed by Regulation 5 of the EU Food for Consumers (FIC) Regulation. The law allows for any retailer to make allergen information available to the consumer either in writing or orally through a variety of specified ways. It is not obligatory for retailers to detail the information on each product.

Pret provided allergy information for products made in store either through advice provided orally by their staff to customers, or by written labelling posted around the shop.

The Assistant Coroner recommended that the use of Regulation 5 should be discussed, forwarding a Report to Prevent Future Deaths to Michael Gove, the Secretary of State for the Department of Environment, Food and Rural Affairs.

Following the inquest and a meeting with Natasha’s parents, Mr Gove confirmed that work is underway to review current regulations regarding allergen labelling. In advance of a proposed consultation to change legislation in this area, Mr Gove has urged businesses not to wait for the law to change and that “they should be doing all they can now to make sure consumers have the information they need to stay safe.”

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Fines and sentences

£2.3m fine for Stagecoach after bus crash kills two people

Midland Red (South) Limited, part of the Stagecoach group of companies, was fined after a bus driven by Mr Kailash Chander, former mayor of Leamington Spa, crashed into a supermarket killing two people, after Mr Chander mistook the brake for the accelerator.

It was revealed that Mr Chander had previously been formally warned about his driving after a total of four crashes in three years. In addition, the company allowed Mr Chander, who was diagnosed with dementia after the crash, to work in excess of 70-hours per week.

The managing director of the company admitted that it “bears the weight of [the] responsibility for this tragedy.”

The company was fined £2.3m for breaches under Sections 2(1) and 3(1) HSWA 1974 for failing to discharge their duty to their employees and for posing risks to persons not in their employment.

Mr Chander was individually prosecuted for dangerous driving but due to his diagnosis of dementia was declared medically unfit to stand trial. He was, however, made the subject of a two year supervision order.

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£1.2m fine for Southern Gas Network Plc after gas ignited

Southern Gas, and a construction company, Cliffe Contractors Ltd, were fined when a ruptured gas main ignited causing severe injuries and burns to two employees of Southern Gas, who had been called to repair the initial damage.

The HSE found that Cliffe Contractors, during their construction work around the pipeline, had not properly followed safety procedures or techniques. It was also established that Southern Gas did not maintain their own procedures or practices when attempting to complete their work. The HSE Principal Specialist Inspector, Martin Wayland, said that “a worker could have easily been killed.”

Both Southern Gas and Cliffe Contractors pleaded guilty to breaching Sections 2(1) and 3(1) HSWA 1974 respectively. Southern Gas was fined £1.2m plus costs and Cliffe Contractors was fined £60,000 plus costs.

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£300,000 fine for Bridgend County Borough Council after death of 15-year old boy

A 15-year old boy was killed after a collision with a school minibus. Ashley Talbot was crossing the road to get on his bus home when the collision occurred. Another student was also injured in the accident.

An investigation revealed that the layby created by the school to allow for school buses at home time was not large enough. Bridgend County Borough Council had known of the situation but had not altered or planned to alter the layby or surrounding area. As a result, students could not safely board their buses home, and this had given rise to the incident.

At Cardiff Crown Court the Council was fined £300,000 and ordered to pay costs of £29,228 having pleaded guilty to breaching section 3(1) HSWA 1974.

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£337,500 fine for WHSmith after customer falls through a trapdoor

WHSmith was fined after a 64-year old woman fell through an open trapdoor into the basement of its shop in Taunton, Somerset causing life-changing injuries. Despite a staff member attempting to grab the falling customer, they could not stop her from falling 2.8 metres and suffering an injury that required three separate operations.

Following the incident, WHSmith, who turned over £181m last year, acknowledged that they had breached health and safety procedures, locked the basement and completed a risk assessment for the next time they needed to use it.

Taunton Crown Court sentenced WHSmith, who pleaded guilty to breaching Sections 2(1) and 3(1) of HSWA 1974, to pay £168,750 for each breach plus £135,492.66 in costs bringing the total penalty imposed to £473,000.

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Two men convicted of manslaughter after girl dies from food allergy

Two takeaway workers, Mr Harun Rashid and Mr Mohammed Abdul Kuddus, were convicted of gross negligence manslaughter after serving a meal that contained allergens that Megan Lee, a teenage customer, had specified she could not eat when ordering through Just Eat.

Although Mr Rashid had seen the order from Just Eat with the allergy instructions, he failed “to put proper systems and processes in place”. He was sentenced to three years in prison.

Mr Kuddus was in a slightly different position. He was the new owner of the business and a tandoori chef at the time. Whilst he was not made aware of the allergy problem, he “did not take reasonable steps to avoid [his] business serving food containing allergens to customers.” He was sentenced to two years in prison.

Mrs Justice Yip, the sentencing judge at Manchester Crown Court, made clear that awareness of the dangers of food allergies is now much greater than it had been at the time of the incident in 2016, and that individuals convicted of relevant offences could expect to be regarded within the bracket of high culpability.

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Cot designer jailed after admitting health and safety charges and fraud charges

Judge Martin Spencer at Leeds Crown Court sentenced Craig Williams to three years and four months in prison for designing a dangerous cot in which seven-month old baby Oscar Abbey died, despite assurances Mr Williams gave to Oscar’s parents that the cot was safe. Oscar was fatally injured after he became stuck in a gap he was trying to crawl through. His body was found by his parents on 3 November 2016.

Mr Williams was charged initially with fraud and gross negligence manslaughter. The jury was asked to return a not guilty verdict on the manslaughter charge, after Mr Williams admitted fraud charges and failure to discharge an employer’s general duty.

Judge Spencer declared that Mr Williams had shown a “flagrant disregard” for safety standards and in relation to the fraud charge, had, despite a visit from the police, continued to sell the same cots after Oscar’s death under a different company name. Mr Williams pleaded guilty to fraud and Section 2(1) HSWA 1974, following which the Court directed the jury to find Mr Williams not guilty of gross negligence manslaughter.

Mr Williams’ employee, Joseph Bruce, was jailed for six months after he also admitted fraud.

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Environmental

Wessex Water to pay a record £975,000 for enforcement undertaking after a sewage spill into Swanage Bay

During 2016 and 2017 there were a series of illegal discharges from Swanage Sewage Treatment Works into Swanage Bay. It is estimated that in excess of 142,000 cubic metres of sewage was discharged into the bay.

Following an investigation by the Environment Agency, Wessex Water offered to pay an Enforcement Undertaking (EU) of £975,000. An EU is a civil sanction enabling individuals or organizations to make amends for any duty failings by putting in place measures to minimize the risk of future failings, repair or restore any damage and pay compensation to anyone affected. It is an alternative to the regulator, the EA in this case, prosecuting for the relevant breach.

The sum of £975,000 is a record high for an EU. The sum was agreed after the EA was satisfied that it would contribute towards flood defences and measures to tackle water pollutants such as fats, oil and grease coming from sinks.

The EU sum has been designated as to £400,000 towards a local authority flood defence scheme, £400,000 to Dorset Waste Partnership to enable a doorstep recycling service for domestic fat, oil and grease, £100,000 towards the Dorset Litter Free Coast and Sea Project and £75,000 to the Durlston Country Park and Nature Reserve.

Wessex Water has also offered £25,000 in compensation to Swanage RNLI Lifeboat Station.

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Fine for Japanese knotweed infestation

A company based in Bristol has been fined £18,000 after failing to control knotweed infesting one of its properties.

MB Estate Limited, a property company, was prosecuted by Bristol City Council after ignoring a community protection notice served by the Council in May 2017. The notice had ordered the company to clear the knotweed after complaints by several neighbours to the affected property. Knotweed is a known source of nuisance to property owners, and can lead to structural damage. The Environment Agency describe it as “indisputably the UK’s most aggressive, destructive and invasive plant”.

The prosecution that followed was under the Anti-Social Behaviour, Crime and Policing Act 2014. The Council suggested this was the first time that the civil injunction procedure to prevent anti-social behaviour had been used to prosecute for knotweed.

As well as receiving a fine, the defendant company was ordered to engage a specialist contractor to tackle the problem. The knotweed has since been removed from the property.

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Round up

HSE amends first aid advice to include mental health issues

For the first time the HSE has included mental ill health within its first aid advice.

The HSE suggests having trained personnel to identify and understand mental health symptoms and put in place measures to support anyone suffering from a mental illness. There is a suggestion that managers and employees should be better informed and trained to deal with mental health issues and to appoint appropriate first aiders.

Any training should help anyone attending to recognise warning signs and enable them to approach and support someone who may be affected, while keeping themselves safe.

The updated guidance can be accessed [here](#).

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Construction injury data now easier to access

The HSE has published online construction injury records from RIDDOR records from 2011 to 2017. The data appears on a user-friendly dashboard and can be accessed [here](#), showing statistics from the age band of the injured person through to region of incident and injury type along with various other useful data.

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