



Health and safety update

December 2019

Health and safety cases

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Acquittal of sprinkler contractor after five week trial

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Metal fabrication company fined £12,000 after ignoring Improvement Notices

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Approved Inspector company and its Director acquitted of fire safety charges

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Company Director struck off after allowing unsafe telehandler to remain in use

Mr Zarif Mohammed, the director of a waste-transfer company, was prosecuted and banned from taking a directorial role after being found guilty at Preston Crown Court of knowingly exposing his employees to unsafe conditions. [more>](#)

Any comments or queries?

Gavin Reese

+44 20 3060 6895

gavin.reese@rpc.co.uk

Nick McMahon

+44 20 3060 6896

nick.mcmahon@rpc.co.uk

Mamata Dutta

+44 20 3060 6819

mamata.dutta@rpc.co.uk

Amber Oldershaw

+44 20 3060 6647

amber.oldershaw@rpc.co.uk

Farming partnership convicted after pedestrian killed by overloaded telescopic loader

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Director sentenced following brother's fatal fall from height during solar panel installation

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Environmental

Illegal tree felling of 176 year old giant redwood

Property developer Fiorenzo Sauro and his firm, Enzo Homes Limited, have been fined £300,000 for ordering the illegal felling of more than seventy protected trees in Penllergaer, Swansea. This included the felling of a 176-year old giant redwood, placed under protection by a Tree Preservation Order. [more>](#)

Environmental permit charges dropped – *Potter Group v Natural Resources Wales (NRW)*

In November 2019, Potter Group (also known as Sundorne Products Ltd) faced ten charges alleging breach of its environmental permit. Issues were first made apparent in 2015, following local reports of flies and odours. These were investigated by permit issuers Natural Resource Wales (NRW), who issued an enforcement notice in August 2016 followed by a partial suspension of the environmental permit in April 2017. [more>](#)

Seasonal

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In the first case of its kind, a care home consultant has been jailed for four months after failing to give evidence at an Inquest into the death of a vulnerable teenager, Sophie Bennett. On 12 October 2019, Duncan Lawrence was sentenced and ordered to pay court and victim fees by Wimbledon Magistrates' Court.

The consultant had no medical qualifications and a non-medical doctorate allegedly bought from a "degree mill" university in Denmark. Having originally stated he was unable to attend the Inquest, measures were put in place enabling Mr. Lawrence to give evidence by video link. However, he refused to do so and repeatedly failed to engage with the coronial process or provide the coroner with the requested documentation.

Schedule 5 of the Coroners and Justice Act 2009 enables coroners to receive evidence as follows:

- at the inquest by giving evidence or producing documents in the person's custody or under their control relating to a matter relevant to the inquest
- producing any document or item relevant to the investigation
- providing a written statement during the investigation
- considerations of powers of entry, search and seizure, and
- the exemption of privileged material that would not be required to be disclosed in civil proceedings.

Having failed to attend the Inquest, Mr. Lawrence was referred to the Crown Prosecution service who found him guilty of "withholding evidence/documentation in relation to a coroner's inquest" contrary to the Coroners and Justice Act 2009.

When handing down sentence, the District Judge highlighted the importance of attending and providing documentation "with full cooperation and without delay" during inquests. This decision reflects the coroners' wide-ranging powers in relation to disclosure and the seriousness with which issues of non-cooperation are handled. It further demonstrates the potential for individuals to be imprisoned for disregarding coroner's orders

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Acquittal of sprinkler contractor after five week trial

A company faced serious charges under sections 2 and 3 Health and Safety at Work Act 1974 (HSWA) following an incident in which an installer fell 3 metres from a clean room roof whilst conducting system pressure testing. The accident resulted in serious injury.

Section 2(3) of HSWA places a legal duty on employers to "have in place a written statement of general policy". This document identifies the arrangements a company has in place to ensure the Health and Safety at work of all its employees, together with others who may be affected by its undertaking. Meanwhile, section 3 of HSWA places a general duty on employers and the self-employed to conduct their undertakings in a way which ensures, so far as is reasonably practicable, that persons other than themselves or their employees are not exposed to risks to their health and safety.

During this trial, the HSE's case focused upon suggested breaches of the contractor's CDM duties to plan, manage and monitor works. It also focused on their alleged failure to undertake suitable and sufficient risk assessments or to identify and implement adequate control measures to address the risk of falling from height from the roof.

However, the Company was able to successfully establish it had done all that was "reasonably practicable" to ensure the health and safety of its employees and agency workers. Meanwhile, the principal contractor was convicted of an offence under section 3 of HSWA and continues to await sentencing.

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Metal fabrication company fined £12,000 after ignoring Improvement Notices

W S Barrett & Son Limited, a Lincolnshire metal fabrication company, were fined for not complying with three HSE Improvement Notices. The HSE initially advised the company of a problem in February 2018, after a complaint was made. However, further investigation indicated that the company did not act following receipt of a Notification of Contravention Letter. A visit by the HSE in December 2018 confirmed that the necessary changes had not been made. The Notices related to testing wood dust and powder coating local exhaust ventilation and providing LEV for welding fume extraction at the site in Boston, Lancashire.

Despite the length of time that elapsed after receiving the Notice of Contravention and thereafter three Improvement Notices, when the HSE arranged a follow up visit in April 2019, the inspector found that the Notices had still not been complied with.

At trial, the company pleaded guilty to charges brought under section 33 (1)(g) of the HSWA and was ordered to pay costs of £1,740.40 in addition to a £12,000 fine. The case underlines the importance of ensuring prompt compliance with enforcement notices, and of taking appropriate action.

Mild steel welding fume was reclassified as a human carcinogen by the Workplace Health Expert Committee in 2019. The HSE has released a safety alert for those undertaking welding activities, indicating that inspectors will discuss exposure control for all welding fumes where that occurs. The actions required under the HSE STSU1-2019 bulletin are more stringent than those outlined in previous guidance. The HSE have indicated that it has strengthened its enforcement expectation for all welding fume, including mild steel welding, because general ventilation does not provide adequate control. It is said that, regardless of duration, the HSE will no longer accept any welding undertaken without suitable exposure control measures in place, as there is no known level of safe exposure.

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Suspended sentence imposed on company director

James Harrison, former Managing Director of Laser Shapes (NW) Limited, was found to have deliberately exposed his employees to the risk of developing severe lung disease via the use of hazardous substances, and then hiding these unsafe working practices from the HSE.

The company regularly used aerosolised paints containing isocyanates and solvents to spray large tractor trailers at its site in Blackburn. Exposure to such substances can cause occupational asthma, kidney or liver damage, but proper controls were not put in place to protect workers from inhaling the dangerous fumes. At least one former worker was found to have developed a life changing condition as a result of breathing in hazardous fumes during his time working for the company, which could have been prevented if proper controls had been put in place.

Mr Harrison and the company both pleaded guilty to charges under sections 37(1) and 2 (1) respectively of the HSWA and was sentenced to 10 months in prison, suspended for 18 months, with 20 hours unpaid work and costs of £5,428.21.

After the hearing, an HSE inspector acknowledged the importance of using proper controls, including suitable extraction and respiratory protective equipment. Mr Harrison was said to have been aware of the unsafe conditions in which his employees were operating.

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Approved Inspector company and its Director acquitted of fire safety charges

An Approved Inspector, which is a private provider of Building Control Services, separate to the Local Authority was prosecuted by the West Yorkshire Fire and Rescue Service (WYFRS), its Director of the company also facing a charge on the basis that the corporate offence had been committed with the consent, connivance or neglect of the director.

A question considered was whether an Approved Inspector is a “responsible person” under the Regulatory Reform (Fire Safety) Order 2005 (RRO), and thus an entity with specific responsibilities in respect of the properties that they inspect.

The alleged charges arose from the construction of student accommodation in Leeds. The building was partially timber framed in 2015, and the Director of the defendant company inspected the building together with the local fire service. The project in question had been one which an employee of the company had inspected previously, but the Director stepped in on this occasion as the employee was on annual leave. Following the inspection, the corporate Approved Inspector issued a part final certificate confirming that floors 1 – 6 of the building complied with Building Regulations and the ground floor was separated by fire resistance of at least 1 hour. Students began moving into the accommodation shortly after the certificate was issued.

An inspection conducted by the WYFRS about six months later found a number of deficiencies in the compartmentation of the building. These were considered to be so severe that a Prohibition Notice was issued to prevent use of the accommodation. The WYFRS subsequently

prosecuted both the Corporate Approved Inspector and the Director for failing to take such general precautions as necessary to ensure the premises were safe by not placing one or more persons at risk of death or serious injury in the case of fire. It was alleged that the part final certificate should not have been issued.

Submissions were made on behalf of both the Corporate Approved Inspector and the Director to the effect that the RRO cannot be enforced against the role of an Approved Inspector. It was submitted that the prosecution had been an abuse of process. In light of this, the Prosecution offered no evidence against either Defendant and the Judge ordered acquittals.

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Company Director struck off after allowing unsafe telehandler to remain in use

Mr Zarif Mohammed, the director of a waste-transfer company, was prosecuted and banned from taking a directorial role after being found guilty at Preston Crown Court of knowingly exposing his employees to unsafe conditions.

The HSE alleged that Mr Mohammed allowed the use of a poorly maintained and damaged telehandler. The equipment had previously been the subject of enforcement action in 2017, but remained in use despite having no reversing lights, camera or mirrors which meant that the driver would not be able to see adequately when reversing the vehicle. Following an investigation in 2018, the HSE concluded the telehandler posed a serious risk of striking and seriously injuring people.

Prior to this, Mr Mohammed had also been prosecuted for traffic related health and safety offences when he was a director of a previous company, following a fatal incident in 2013. In that instance, a 21-year-old worker was killed whilst using a skid steer loader to remove rubbish. The second-hand loader's safety features did not work correctly, and the restraint bar had been disabled. The minimum engine speed had also been increased, and a further fault enabled the vehicle to reverse unexpectedly. In that case Mr Mohammed's company, Blackburn Skip Hire, had been ordered to pay £80,000 in fines and costs.

On this occasion, Mr Mohammed and his company both pleaded guilty to breaches of sections 37(1) and 2(1) respectively of the HSWA. In light of his previous history, he was sentenced to six months in prison suspended for 18 months, 190 hours of unpaid work and six further rehabilitation days. He was also struck off from working as a company director for 5 years.

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Farming partnership convicted after pedestrian killed by overloaded telescopic loader

On 22 February 2017, Anthony Ackroyd was driving a vehicle carrying three bales of hay on the front which severely restricted his visibility.

He subsequently drove over a pedestrian, killing him instantly. The deceased had been a former employee at the farm, lived in an adjacent cottage, and often came into the farm carrying out work such as gardening.

The HSE investigation that followed found as an aside that Mr Ackroyd had been driving with an employee stood on the mounting step at a point where the employee could have fallen under the wheels of the vehicle if he had slipped.

The farming business, B A L Ackroyd of Waller House Farm, pleaded guilty to breaching sections 2(1) and 3(1) HSWA and was fined £18,000 with costs of £10,690 at Leeds Magistrates Court. The HSE inspector reminded drivers of the importance of ensuring they can always see in front of them or that they take precautions that are equally effective.

This incident occurred following recent reports that transport in the workplace accounts for 5,000 incidents yearly.

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Director sentenced following brother's fatal fall from height during solar panel installation

On 9 December 2015, Stephen Webb fell through a fragile roof ridge panel and fell 7 metres suffering fatal injuries.

He had been working with his brother, Michael John Webb, on a solar panel installation at a barn in Manor Farm, Hereford. The HSE's investigation found that no measures had been put in place to prevent falls either from or through the roof.

The employer company, Light Power GRP Limited, pleaded guilty to breaching Regulation 4(1) of the Working at Height Regulations 2005 and was fined £80,000 with a victim surcharge of £120.

Michael John Webb was a director of the company and pleaded guilty to the same charge and was given a 12-month community order to carry out 200 hours of unpaid work and ordered to pay costs of £15,000 with a victim surcharge of £60.

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Environmental

Illegal tree felling of 176 year old giant redwood

Property developer Fiorenzo Sauro and his firm, Enzo Homes Limited, have been fined £300,000 for ordering the illegal felling of more than seventy protected trees in Penllergaer, Swansea. This included the felling of a 176-year old giant redwood, placed under protection by a Tree Preservation Order.

Representatives of Enzo Homes Limited claimed the felling was accidental. However, investigations suggest each tree was identified and the sites' suitability for new homes assessed. In particular, the redwood was surrounded by a blue circle to indicate its status as a heritage tree. It was placed in a construction exclusion zone behind barrier fencing. Despite being 70 metres away from those trees marked to be cut down, it was felled towards the end of 2018.

During trial, District Judge Neale Thomas declared the order was a "deliberate and defiant" attempt to create room for new housing. Enzo Homes Limited were fined £120,000 whilst Mr Sauro was fined £180,000. The individual tree contractor, Arwyn Morgan, who carried out this illegal act was fined a further £120,000 after pleading guilty to destroying ancient woodland in contravention of the Tree Preservation Order. It is thought Mr Sauro will appeal the decision to the Crown Court.

The earliest value estimate of this giant redwood tree has since been downscaled, as a measurement of the tree revealed the diameter of its trunk, and thus its age, was less than had originally been believed. It has since been re-valued at £66,736. The value for the other 72 trees was £1,000 each bringing the total value of the lost trees to £138,000.

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Environmental permit charges dropped – *Potter Group v Natural Resources Wales (NRW)*

In November 2019, Potter Group (also known as Sundorne Products Ltd) faced ten charges alleging breach of its environmental permit. Issues were first made apparent in 2015, following local reports of flies and odours. These were investigated by permit issuers Natural Resource Wales (NRW), who issued an enforcement notice in August 2016 followed by a partial suspension of the environmental permit in April 2017. Every landfill site in Wales requires an environmental permit from NRW to operate. The permit provides details of how to manage the site in order to minimise the impact of landfill on air, land and water.

It was alleged that Potter Group was not storing its Refuse Derived Fuel (RDF) in accordance with pest and odour management plans. As a result, thousands of tonnes of waste had to be diverted to landfill. However, Potter Group denied this in court and reiterated the company's effort to make the scheme work. NRW chose to prosecute Potters approximately 18 months after site operations had ceased.

After two days at trial, NWR offered no further evidence in the case as a guilty verdict appeared increasingly unlikely. This appeared to be a commercial decision to avoid excessive legal costs. On 6 November the District Judge found Potter Group not guilty on any charges. In a final statement Potter argued that their loss of permit had caused damage to local authorities and government ambitions to achieve zero waste to landfill.

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Seasonal

'Tis the season to be jolly

Mere hours after the BBC decorated its Christmas tree at London's Broadcasting House, it was removed and chopped to pieces, allegedly to comply with Health and Safety guidelines.

Conifers of the tree's size (roughly 16ft) are thought to cost around £2,000 to decorate fully. However, the BBC were asked to remove the tree due to activity taking place in the piazza in the lead up to Christmas. It is thought the space was needed for coverage of the general election, with the exit poll and election results projected on to the Broadcasting House.

BBC Africa's editor was quick to post a picture of the tree being chopped up, suggesting it "has had a traumatic day at the barbers".

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About RPC

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- 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

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