



Health and safety update

June 2018

In the news

Married couple jailed over bouncy castle death

In March 2016, Summer Grant, 7, was killed at a fairground in Harlow, Essex, when she was blown away inside an unsecured bouncy castle. [more>](#)

Truck dealership has fine reduced on appeal

In April 2017 a truck dealership, ATE Truck and Trailer Sales Ltd, was fined £470,000 at Wolverhampton Crown Court. [more>](#)

European Commission prosecutes the UK for breach of air-quality limits

On 17 May 2018 the European Commission referred the UK and five other countries (Germany, France, Spain, Italy, Hungary and Romania) to the European Court of Justice ("ECJ"), for an alleged breach of excess nitrogen dioxide levels. [more>](#)

Wedding venue owner jailed for 20 months for fire safety offences

In 2012 Cheshire Fire and Rescue Service inspected Haslington Hall, a Grade I listed building near Crewe. [more>](#)

Fines and sentences

18-Week prison sentence for owner of scrap metal business and electrical failings

On 12 March 2014, George William Edward Jones, instructed Mr Hearne to plug a tyre stripping machine into a wall socket at Carew Cars, Carew Airfield, Pembrokeshire. [more>](#)

Bupa fined £3m following legionella death of a pensioner at a nursing home

In June 2015 Kenneth Ibbetson, 86, died after contracting Legionnaire's disease at Hutton Village care home in Brentwood. [more>](#)

DHL fined £2m after worker's death during unloading procedure

The delivery and logistics firm, DHL, has been fined £2m at Aylesbury Crown Court after a failure to risk assess the failure of equipment during loading and unloading led to the death of a worker, Mr Krzysztof Sontowski, aged 36. [more>](#)

Royal Mail fined £1.6m due to collision with traffic marshal

In December 2014, a 7.5 tonne truck struck a traffic marshal at a Royal Mail depot in Hounslow, West London, causing serious injuries. [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

Car parts manufacturer fined £1.6m following legionnaires' outbreak and an explosion

The HSE prosecuted Faltec Europe Limited, a South Tyneside car parts manufacturer after a Legionnaires' disease outbreak and an explosion occurred at the same site within a year. [more>](#)

BAM Nuttall fined £900,000 due to a painter's fall through ceiling

On 7 January 2015, a painter, Paul Welstead, 31, suffered serious injury after falling 3m through a ceiling at East Croydon railway station. [more>](#)

Round up

Leaked circular leads to concerns regarding increased suspended custodial sentences

A leaked circular sent in April 2018 by the Sentencing Council to courts in England and Wales urged a review of imposing suspended sentences where community orders may be more appropriate. [more>](#)

HSE reports increase in deaths arising from construction incidents

Each month the HSE publishes an "in year work-related deaths" report. The information is collated from third parties and is not intended to be a formal statistical release. [more>](#)

New BIM specification for sharing health and safety information

The business standards company, BSI, has launched PAS 1192-6, a process providing digital health and safety risk information through each phase of a construction project. [more>](#)

In the news

Married couple jailed over bouncy castle death

In March 2016, Summer Grant, 7, was killed at a fairground in Harlow, Essex, when she was blown away inside an unsecured bouncy castle. Married couple, William and Shelby Thurston, were overseeing the castle when it flew around 300 metres into the air before colliding against a tree with Summer inside. She suffered fatal injuries.

The couple had failed adequately to secure or anchor the castle and monitor the wind conditions for the day in question. There was a yellow Met Office weather warning in place with wind speeds increasing throughout the day at up to 65kph. The HSE's investigation revealed that the castle should not have been used in wind speeds above 38kph.

The Thurstons were convicted of gross negligence manslaughter at Chelmsford Crown Court on 9 May 2018 after a three-week trial by majority verdicts of 10-2.

On 15 June 2018, Mr and Mrs Thurston were each sentenced to three years in prison. They were also sentenced to a further 12 months' imprisonment under s 3(2) HSWA 1974, which will run concurrently.

The judge told the couple that they "took the most monumental risk with children's lives by continuing to allow children on the bouncy castle...and that risk-taking cost Summer her life." He called on the HSE to make it compulsory for fairground operators to use wind speed measuring equipment.

[Back to contents>](#)

Truck dealership has fine reduced on appeal

In April 2017 a truck dealership, ATE Truck and Trailer Sales Ltd, was fined £470,000 at Wolverhampton Crown Court. The sentence followed the death of a non-employee who was struck by the roof section of a trailer which he had been dismantling.

The company had pleaded guilty to breaches of Regulation 3 (1) (a) of the Management of Health and Safety at Work Regulations 1999. Although the company had health and safety procedures in place, there was no written risk assessment for the dismantling of trailers.

The parties had agreed that the offence was low culpability, Level A harm, and had a more than minimal, negligible or trivial connection between the accident and fatality, but that the death was not a major cause. However, there was disagreement as to the likelihood of harm. The HSE argued that it was medium, whereas the company argued that it was low.

Despite the above agreement and submission, the sentencing judge found that culpability and the likelihood of harm were both high.

On appeal by the company the fine was reduced to £200,000 and the following points arose:

- although the parties were encouraged to reach agreement on the level of culpability and the likelihood of harm, such agreement was not binding on the court, so the court was entitled to depart from it in principle

- although the company pleaded not guilty under section 3 HSWA 1974 (the duty to a non-employee), and no evidence was offered by the HSE in this regard, the causal link to the contractor's death was conceded as being through the company's failure to have a risk assessment for its own employees
- this failure meant that there was no communication of any risk assessment to the contractor. The court was therefore required to concentrate on the method of work followed and the frequency of work undertaken by the company's own employees rather than those of the contractor. The Court of Appeal agreed with the sentencing judge's concern about the way in which this basis of the plea was made
- turning to the sentence itself the sentencing judge had erred in assessing culpability as high by reference to the method adopted by the contractor. That was not in accordance with the basis of plea, as set out above otherwise the relevant breach would have been under Section 3 HSWA 1974 for which no evidence had been offered. It was the method of work relevant to the employers which ought to have been considered
- as to harm the seriousness fell within Level A due to the fatality. Again, however, the sentencing judge's assessment of a high likelihood of harm was likely influenced by consideration of the contractor's method of work, rather than the company's. The Court of Appeal decided that the risk was medium, so in between the company's assessment of low and the sentencing judge's assessment of high
- the sentencing judge had erred in holding that paragraph 2 (i) of the sentencing guidelines, ie whether the offence exposed several workers or members of the public to harm, applied. The relevant task was carried out by the company's employees whereas the sentencing judge had again been focused on the work by the contractor. In any event the evidence did not support any contention that the contractor's activity had exposed several workers or members of the public to the risk of harm
- the company was a medium organisation in terms of turnover. There was low culpability falling within harm category 2. The starting point was therefore £40,000, with a range of £14,000 to £100,000. To reflect the application of paragraph 2 (ii) of the sentencing guidelines, i.e. whether the offence was a significant cause of actual harm, and "to have a real economic impact, so bringing home the appropriate message to ATE (Thames Water, at [38]), the right course is to move up to harm category 1 and indeed to the top of the category range for harm category 1 – ie, £300,000."
- this amount was reduced by one-third to take account of the guilty plea. The original fine of £470,000 was therefore quashed and replaced with £200,000.

[Back to contents>](#)

European Commission prosecutes the UK for breach of air-quality limits

On 17 May 2018 the European Commission referred the UK and five other countries (Germany, France, Spain, Italy, Hungary and Romania) to the European Court of Justice ("ECJ"), for an alleged breach of excess nitrogen dioxide levels.

EU Directive 2008/50/EC relates to ambient air quality and cleaner air. Nitrogen dioxide, often found in petrol and diesel, is said to contribute significantly to high levels of pollution mostly in urban areas. The gas has been linked to respiratory illnesses such as lung cancer and asthma.

The ECJ referral was the last step following a "letter of formal notice" to the UK government in February 2014. This was followed by a "reasoned opinion" in 2017 before a summons was issued in January 2018, which gave the UK government a final chance to demonstrate compliance.

Commissioner Vella stated “We can’t possibly wait any longer. It’s high time to intensify efforts and end exceedances (of pollution levels).”

Although the UK secured an extension of time in which to comply with the Directive in some areas of the country, extensions for other areas were not sought. It is these areas which are now the subject of the ECJ referral, including Greater London.

There is no hearing date listed but before any ruling is made the ECJ will seek a non-binding opinion from an independent legal advisor (an advocate-general). The ruling usually follows the opinion.

Once the ruling has been made the Commission may propose a financial penalty for both a lump sum and a daily fine until the breach has been rectified. It has been speculated potential fines could be up to £300m.

[Back to contents>](#)

Wedding venue owner jailed for 20 months for fire safety offences

In 2012 Cheshire Fire and Rescue Service inspected Haslington Hall, a Grade I listed building near Crewe. The building consisted of a timber-framed structure dating back to the late 15th century. Various enforcement notices were issued but rectification works carried out by Mohammed Isaq, 56, were inadequate.

In 2014, a further inspection of a structure within the grounds, known as “The Big Marquee”, revealed serious breaches in fire safety. Once again, Mr Isaq had ignored a prohibition notice requiring the structure to be taken out of use immediately. The fire service found during further visits that weddings had continued taking place on at least three occasions.

Mr Isaq was charged personally with failure to comply with the Regulatory Reform Fire Safety Order 2005, failure to comply with an enforcement notice and failure to comply with a prohibition notice. The same breaches were admitted by Haslington Hall Ltd of which Mr Isaq was the majority shareholder.

Mr Isaq had failed to take general fire precautions to ensure the safety of employees and the public. He had also failed to review fire risk assessments following a decision to use the second floor of the main hall as sleeping accommodation.

Judge Roger Dutton, sitting at Chester Magistrates Court, told Mr Isaq: “A more flagrant breach of the legislation there cannot be in my view. You simply ignored many of the important aspects of the enforcement notices and completely ignored two prohibition notices.”

The Court heard that Mr Isaq had a previous conviction for fire safety offences at Haslington Hall when ordered to pay a fine and costs amounting to £23,815 in January 2012.

Mr Isaq was handed a 20-month custodial sentence taking into account all of the above factors.

[Back to contents>](#)

Fines and sentences

18-Week prison sentence for owner of scrap metal business and electrical failings

On 12 March 2014, George William Edward Jones, instructed Mr Hearne to plug a tyre stripping machine into a wall socket at Carew Cars, Carew Airfield, Pembrokeshire. In doing so Mr Hearne suffered serious injuries from an electric shock which threw him four feet across a workshop.

The HSE's investigation found that the electrical installation used for Mr Jones' scrap metal business was unsafe, the socket being in poor condition with exposed wires. The roof was leaking with water ingress on the wall behind the socket. An aggravating feature was that Mr Jones had taken steps to disguise the poor condition of the workplace from HSE investigators when they initially arrived for an inspection after the incident.

At Swansea Crown Court Mr Jones pleaded guilty to breaching Section 4 HSWA 1974, which imposes safety obligations on persons with control over non-domestic premises. He was sentenced to 18 weeks in prison to run concurrently with his existing sentence. The court heard how Mr Jones was serving a prison sentence after failing to pay a confiscation order of £208,000 under the Proceeds of Crime Act 2002 following a 2014 prosecution for environmental offences. When Mr Jones failed to pay the order he was sentenced to 912 days in prison in default.

The court held that the starting point for sentencing was 24 weeks in prison but reduced this to 18 weeks due to a 25% discount for a guilty plea. The costs of prosecution were assessed at £19,000, but the court declined to impose a costs order bearing in mind Mr Jones still owed £208,000 from the confiscation order, which would remain payable upon his release from prison.

[Back to contents>](#)

Bupa fined £3m following legionella death of a pensioner at a nursing home

In June 2015 Kenneth Ibbetson, 86, died after contracting Legionnaire's disease at Hutton Village care home in Brentwood. Mr Ibbetson moved into the home in March 2015 but soon became unwell.

Mr Ibbetson was diagnosed with a lung infection and died at Basildon Hospital having contracted the disease. It was later discovered that the taps within Mr Ibbetson's ensuite bathroom at the home contained a high level of legionella bacteria.

Sitting at Ipswich Crown Court, Judge Emma Peters said the care home "allowed legionella to persist" despite various "warning bells" since 2012. She went on to say that "No one had a grip of the risk in Hutton Village care home," and the company had shown a "lack of remorse".

The residential care arm of BUPA, BUPA Care Services, pleaded guilty under section 3 HSWA 1974 and was fined £3m and ordered to pay costs of £151,482.

[Back to contents>](#)

DHL fined £2m after worker's death during unloading procedure

The delivery and logistics firm, DHL, has been fined £2m at Aylesbury Crown Court after a failure to risk assess the failure of equipment during loading and unloading led to the death of a worker, Mr Krzysztof Sontowski, aged 36.

In February 2015, Mr Sontowski was assisting an HGV driver in reversing into a loading bay at DHL's depot in Milton Keynes. The dock leveller used to make up the difference in height between the floor of the lorry and the unloading ramp became stuck. The loading bay doors could not therefore be opened. Mr Sontowski asked the driver to pull slightly more towards a wheel lock mechanism in order to hold the vehicle in place when unloading. This would then have released the dock leveller. However, the driver, who heard the dock leveller engage, failed to spot Mr Sontowski who was crushed against a wall.

Although a risk assessment was in place it was deficient in not taking into account the risk of the dock leveller becoming stuck. The court referred to a similar failing in 2012 and a lack of any action taken at that point. In mitigation the court praised DHL for providing financial assistance to Mr Sontowski's family and taking the proceedings very seriously.

[Back to contents>](#)

Royal Mail fined £1.6m due to collision with traffic marshal

In December 2014, a 7.5 tonne truck struck a traffic marshal at a Royal Mail depot in Hounslow, West London, causing serious injuries.

Isleworth Crown Court heard how there was a series of health and safety failings, namely failing to carry out risk assessments or to have any site monitoring or supervision. Royal Mail had also failed to give its workers safety information or training and had failed to maintain a safe transport system, including road markings and signage.

The Royal Mail pleaded guilty under Section 2 (1) HSWA 1974 in a prosecution brought by the London Borough of Hounslow. The court initially calculated the fine at £2.4m due to the failings resulting in a high likelihood of harm, but reduced this to £1.6m due to the early guilty plea. Royal Mail was also ordered to pay costs of £21,785.

This is the highest fine imposed upon Royal Mail and largest secured by the above borough council.

[Back to contents>](#)

Car parts manufacturer fined £1.6m following legionnaires' outbreak and an explosion

The HSE prosecuted Faltec Europe Limited, a South Tyneside car parts manufacturer after a Legionnaires' disease outbreak and an explosion occurred at the same site within a year.

Newcastle Crown Court heard that a total of five people (two employees, two agency workers and one local resident) contracted Legionnaires' disease between October 2014 and June 2015. The company had failed to manage water cooling systems within its factory, which led to bacteria spreading to potentially lethal levels.

On 16 October 2015 at the same factory there was an explosion after an operator attempted to recover a part that came off production rollers. The part came into contact with an electrostatic grid, which created a spark and subsequent explosion. The operator, a 19-year-old man, suffered first degree burns to his face and arms.

For the legionella outbreak the company pleaded guilty under Sections 2 (1) and 3 (1) HSWA 1974 and was fined £800,000.

For the explosion, the company pleaded guilty to breaching Section 2 (1) of HSWA and was fined £800,000. The company was also ordered to pay costs of £75,159.73 and a victim surcharge of £120.

[Back to contents>](#)

BAM Nuttall fined £900,000 due to a painter's fall through ceiling

On 7 January 2015, a painter, Paul Welstead, 31, suffered serious injury after falling 3m through a ceiling at East Croydon railway station. BAM Nuttall and its subcontractor, McNealy Brown, were contracted by Network Rail to refurbish part of the station.

Although Mr Welstead and his colleague received a site induction they received no briefing on the risk assessment regarding safe working at height. On the morning of the above date, Mr Welstead fell through an unguarded ceiling into a waiting room below.

BAM Nuttall and McNealy Brown each admitted breaches under Section 3(1) HSWA 1974 and were fined £900,000 and £65,000 respectively at Croydon Crown Court.

[Back to contents>](#)

Round up

Leaked circular leads to concerns regarding increased suspended custodial sentences

A leaked circular sent in April 2018 by the Sentencing Council to courts in England and Wales urged a review of imposing suspended sentences where community orders may be more appropriate.

The circular stated that in 2005 there were almost 203,000 community orders. By 2010 this number had reduced to 188,000 and 108,000 by 2015. On the other hand, the number of suspended sentence orders had risen with 4,000 in 2005, 46,000 in 2010 and more than 52,000 in 2015.

According to the Guardian newspaper to whom the circular was leaked, the circular stated that:

“In such cases, if the suspended sentence order (SSO) is then breached, there are two possible outcomes – neither of which is satisfactory. Either the courts must activate the custodial sentence and the offender then serve time in custody even when it may never have been intended that they do so for the original offence. Or the court could choose not to enforce the suspended sentence, thereby diminishing the deterrent power of such orders.”

It went on to state that: “A suspended sentence is a custodial sentence and not a more severe form of community order. They can only be imposed where the court has determined first that the custody threshold has been crossed and second that custody is unavoidable ... At that point the court may then undertake a weighted assessment of the various factors which may lead the court to consider that it is possible to suspend the sentence.”

The director of the National Probation Service has confirmed that probation officers would refrain from recommending suspended sentences in pre-sentence reports. However, as the Guardian reports, Penelope Gibbs, the director of Transform Justice, fears it could lead to judges giving more immediate prison sentences if they are discouraged from using suspended sentences.

[Back to contents>](#)

HSE reports increase in deaths arising from construction incidents

Each month the HSE publishes an “in year work-related deaths” report. The information is collated from third parties and is not intended to be a formal statistical release. This is due to subsequent investigations possibly determining that some incidents are not reportable under RIDDOR, eg deaths due to natural causes.

Nevertheless, HSE information covering the period April 2017 to March 2018 suggests 34 deaths resulting from construction incidents.

94% of these incidents are classified as a) fall from height (17); b) struck by an object (6); c) struck by a moving vehicle (2); d) trapped under something collapsing (7); e) other (2). Additionally there were two further incidents involving members of the public injured due to construction-related incidents.

If these statistics are confirmed within the final HSE report there would have been a 12% increase in construction-related deaths for 2017/2018 compared to the previous year.

[Back to contents>](#)

New BIM specification for sharing health and safety information

The business standards company, BSI, has launched PAS 1192-6, a process providing digital health and safety risk information through each phase of a construction project.

PAS 1192-6 Specification for collaborative sharing and use of structured Health and Safety information using BIM is designed to enable users of BIM (Building Information Modelling) easier access to and sharing of health and safety knowledge and guidance.

It is relevant to any organization or individual that contributes to the design, construction, and maintenance of an asset, therefore being relevant to any duty-holder under the Construction, Design and Management Regulations 2015.

[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 | |

