



# Health and safety bulletin

June 2021

## Fines and sentences

### Pub landlord sentenced to nine years in prison after the electrocution of a seven year old boy in the pub garden

On 11 September 2018, Harvey Tyrell sustained a fatal electric shock whilst he was playing in the garden of the King Harold in Romford after he touched outdoor lighting which had been installed incorrectly. The pub's owner, David Bearman, pleaded guilty to gross negligence manslaughter. However, his brother-in-law, who installed the lights, Colin Naylor pleaded not guilty. [more>](#)

### Bosley Mill explosion – Judge directs jury to return not guilty verdict mid trial due to lack of evidence

A suspected "dust explosion" caused the four-storey Bosley Mill to collapse in July 2015 resulting in the death of four people who worked at the mill, run by Wood Treatment Ltd, which had produced wood chipping. The aftermath of the explosion was described as a "scene of devastation" as the fire continued to burn for weeks after the explosion and one of the bodies was unfortunately never recovered. [more>](#)

### Custodial sentence imposed on a builder who failed to report a serious incident under RIDDOR

On 8 January 2019, Simon Lewis was clearing a site with an excavator which tipped and trapped his leg which ultimately had to be amputated. Paul Adams, trading as Surrey Conversions, failed to comply with his obligations to report the incident under RIDDOR within 10 days. The HSE only became aware of the incident after Mr Lewis made a complaint around eight months later, by which time much of the evidence had been lost as the works at the site were near completion. [more>](#)

### Theme park prosecuted following death of minor on the Splash Canyon

During a school trip to Drayton Manor on 9 May 2017, eleven-year-old Evha Jannath drowned after being struck by a boat as she tried to get out of the water following a fall from Drayton Manor's Splash Canyon ride. It is reported that Evha fell into the water when the boat hit a directional barrier while she was standing. [more>](#)

#### ANY COMMENTS OR QUERIES?

##### Gavin Reese

+44 20 3060 6895

[gavin.reese@rpc.co.uk](mailto:gavin.reese@rpc.co.uk)

##### Mamata Dutta

+44 20 3060 6819

[mamata.dutta@rpc.co.uk](mailto:mamata.dutta@rpc.co.uk)

##### Charles Underwood

+44 20 3060 6890

[charles.underwood@rpc.co.uk](mailto:charles.underwood@rpc.co.uk)

##### Sharona Zovich

+44 20 3060 6432

[sharona.zovich@rpc.co.uk](mailto:sharona.zovich@rpc.co.uk)

### **Woodworking company fined over £50,000 after employee drawn into automated machine**

The HSE's investigation into an incident caused by an automated wood planer machine found that the employer, Peter Ramsey & Sons (Denholme) Timber Ltd ('Ramsey & Sons'), failed to appropriately assess the entrapment hazard posed by the machine following the installation of a new conveyor line. An employee at Ramsey & Sons sustained multiple injuries to his left arm, wrist and fingers after becoming drawn into the automated machine when his clothing became entangled in it. [more>](#)

### **Health & Safety prosecution following incident involving high voltage electrical equipment**

The owner of multi-function nuclear site, Sellafield Ltd, has been prosecuted following an incident involving an employee in April 2020. According to Sellafield's own incident log, one of their employees sustained injuries in the form of burns to his upper body from an arc flash whilst working on high voltage electrical equipment on 24 April 2020. It is worth noting that there was no nuclear material or radiological risk to workers. [more>](#)

### **Builder pleads guilty to carrying out dangerous site demolition**

Thomas Sturgess of Bodmin pleaded guilty to breaching Regulation 20(1) of Construction (Design & Management) Regulations 2015 following dangerous demolition taking place in Falmouth. Mr Sturgess was ordered to pay costs of £9,428.84 and was given a 180-hour Community Order. [more>](#)

### **Conviction for landlord and mechanic who ignored several enforcement notices**

A mechanic and landlord in Kent have been ordered to pay £8,000 in costs, in addition to receiving two suspended custodial sentences, an order to carry out 200 hour unpaid work and disqualification from directorship for six years after ignoring several enforcement notices. [more>](#)

### **£7.6 million fine for supermarket's breach of health and safety laws**

In April 2021, Tesco Stores Ltd ("Tesco") was fined £7.6 million in Birmingham Magistrate's Court following an investigation which found a range of food products being offered for sale beyond their sell by date at three of Tesco's branches. The prosecution was brought by Birmingham City Counsel under the Food Safety and Hygiene (England) Regulations 2013. Tesco were also ordered to pay £95,500 for costs and the £170 victim surcharge.

[more>](#)

### **Council fined after student attacks teacher at community school**

On 17 June 2016 a pupil inflicted life changing injuries upon Putteridge High School's assistant head teacher. Luton Borough Council, the employer of the community school, pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 and was subsequently fined £104,000 with £60,000 costs. [more>](#)

## Environmental

### Large fine for illegally storing end-of-life vehicles

Portland Scrap Metal Ltd's environmental permit does not allow for the storage, keeping or treating of waste vehicles. However, the Court heard that between 23 September 2018 and 18 January 2019 the firm was in fact keeping waste vehicles on their premises. [more>](#)

### Dog toy company fined for recycling breaches

Kong Company Ltd, a business selling dog toys, has paid £4,930 towards various environmental projects having failed to recycle sufficient packaging waste from its factory on the outskirts of Salisbury. The sum is a donation and will be used by The Species Recovery Trust, who fund projects to reduce the amount of plastic packaging waste through the reduction of single use plastic bottles. The donation will also be used to help two endangered plants. [more>](#)

## Round-up

### Supreme Court lowers standard of proof for inquests

On 13 November 2020 the Supreme Court dismissed an appeal which argued that it was wrong to instruct the jury to apply the 'balance of probabilities' standard when considering whether the deceased, who died in HMP Bullingdon, had committed suicide.

[more>](#)

# Fines and sentences

## **Pub landlord sentenced to nine years in prison after the electrocution of a seven year old boy in the pub garden**

On 11 September 2018, Harvey Tyrell sustained a fatal electric shock whilst he was playing in the garden of the King Harold in Romford after he touched outdoor lighting which had been installed incorrectly. The pub's owner, David Bearman, pleaded guilty to gross negligence manslaughter. However, his brother-in-law, who installed the lights, Colin Naylor pleaded not guilty.

During the trial, the Court heard that Environmental Health inspectors identified numerous electrical defects in 2009 and yet Mr Bearman failed to employ a competent person to remedy the defects prior to the incident nearly 10 years later.

Mr Naylor denied any wrongdoing in his Police interview, confirming he had over 50 years experience as an electrician and he described his work as "first class". He had installed the lighting to the perimeter of the garden around 3 months prior to the fatal incident.

The subsequent investigation found 12 defects which posed a risk of injury and 32 potentially dangerous defects at the site. One of the experts described it as the most dangerous thing he had ever seen in 40 years.

Mr Naylor was acquitted of a charge of gross negligence manslaughter but was convicted of a breach of a health and safety charge for failing to limit or prevent the risk of injury or death to others. He was sentenced to one year in prison.

Judge Martyn Zeidman QC said: "This pub was a disgrace. And... in my view, a timebomb waiting to go off."

[Back to contents>](#)

## **Bosley Mill explosion – Judge directs jury to return not guilty verdict mid trial due to lack of evidence**

A suspected "dust explosion" caused the four-storey Bosley Mill to collapse in July 2015 resulting in the death of four people who worked at the mill, run by Wood Treatment Ltd, which had produced wood chipping. The aftermath of the explosion was described as a "scene of devastation" as the fire continued to burn for weeks after the explosion and one of the bodies was unfortunately never recovered.

An investigation was launched between Cheshire Constabulary and the Health and Safety Executive. In the subsequent prosecution, a number of parties were charged:

- Wood Treatment Limited was charged with four counts of corporate manslaughter and a health and safety offence
- A company director (George Boden) was charged with four counts of gross-negligence manslaughter and a health and safety offence
- Two mill managers (Peter Shingler and Phil Smith) were charged with health and safety offences

Wood Treatment Limited pleaded guilty to the health and safety offence but denied that its failures resulted in the death of its employees. The individual Defendants pleaded not guilty to the charges that they faced.

The trial, which commenced in February 2021, had been sitting for almost 12 weeks, hearing evidence from witnesses and experts the Prosecution alleged that the explosion was caused by excessively high dust levels at the mill. However, following a half time submission, the judge subsequently directed that the charges of corporate manslaughter and gross negligence manslaughter be dropped, and for the jury to return not guilty verdicts in respect of these offences. The judge considered that there was a lack of evidence to prove that gross negligence caused the explosion. The Court of Appeal endorsed the Trial Judge's decision following an appeal by the Prosecution.

The company director subsequently pleaded guilty to the health and safety offence after the four manslaughter charges he faced were dropped. Following further consideration of the position, the Prosecution decided not to pursue the health and safety charges against the two mill managers, who were subsequently cleared.

Wood Treatment Limited was given a £75,000 fine for its admitted breach of section 2 HSWA. Mr Boden, who admitted a breach of s37 HSWA for causing the company to be in breach of health and safety legislation by his consent, connivance or neglect, was sentenced to nine months in prison, suspended for 18 months. He was also fined £12,000 and was banned from being a company director for four years.

[Back to contents>](#)

### **Custodial sentence imposed on a builder who failed to report a serious incident under RIDDOR**

On 8 January 2019, Simon Lewis was clearing a site with an excavator which tipped and trapped his leg which ultimately had to be amputated. Paul Adams, trading as Surrey Conversions, failed to comply with his obligations to report the incident under RIDDOR within 10 days. The HSE only became aware of the incident after Mr Lewis made a complaint around 8 months later, by which time much of the evidence had been lost as the works at the site were near completion.

The HSE's investigation found that Mr Lewis had no formal training in the operation of excavators and the model provided was not appropriate for the job. The HSE also established that there was no health and safety documentation on site, no employer's liability cover in place (which impacted on Mr Lewis' ability to bring a civil claim for compensation) and Mr Adams had not received any health and safety training despite being in the construction industry for 50 years.

Mr Adams pleaded guilty to breach of Regulation 3(1) of the Reporting of Injuries, Diseases and Dangerous Occurrences Act 2013 and received a 24-week custodial sentence with a costs order of £2,033 also imposed.

[Back to contents>](#)

## Theme park prosecuted following death of minor on the Splash Canyon

During a school trip to Drayton Manor on 9 May 2017, eleven-year-old Evha Jannath drowned after being struck by a boat as she tried to get out of the water following a fall from Drayton Manor's Splash Canyon ride. It is reported that Evha fell into the water when the boat hit a directional barrier while she was standing.

Although the inquest declared the death 'accidental', six "matters for concern" were identified including:

- only half of the ride's route was covered by CCTV cameras, and it was not possible to adequately monitor the CCTV in any event as staff had other tasks to complete
- warning signs were incomplete and, in some cases, illegible
- there were no safety warnings to guests boarding the ride
- the staff had not been trained to carry out a water rescue
- there was no rescue equipment available to staff
- staff had "no clear understanding" of emergency procedures

The Assistant Coroner highlighted the risk that future deaths would occur unless action is taken. The HSE issued a water ride safety notice to all theme parks immediately after Evha's death and the Assistant Coroner urged all theme parks to address water ride safety concerns. She also prepared a report for the Prevention of Future Deaths to UK theme park managers ([www.judiciary.uk/publications/evha-jannath](http://www.judiciary.uk/publications/evha-jannath)).

The HSE, who had delayed bringing a prosecution following conclusion of the inquest, charged the theme park owner with breaching Section 3(1) of the Health and Safety at Work etc. Act 1974. The park owner pleaded guilty and was fined £1 million.

The company operating the park at the time of the incident (Drayton Manor Park Ltd) had since gone into administration, and subsequently purchased by another company. The possibility of this had not gone unmissed by the judge handing down the sentence, Mr Justice Spencer, who noted that there was "no prospect of the fine being paid" although that did not deter the Judge from imposing the appropriate fine.

[Back to contents>](#)

## Woodworking company fined over £50,000 after employee drawn into automated machine

The HSE's investigation into an incident caused by an automated wood planer machine found that the employer, Peter Ramsey & Sons (Denholme) Timber Ltd ('Ramsey & Sons'), failed to appropriately assess the entrapment hazard posed by the machine following the installation of a new conveyor line. An employee at Ramsey & Sons sustained multiple injuries to his left arm, wrist and fingers after becoming drawn into the automated machine when his clothing became entangled in it.

Ramsey & Sons pleaded guilty to breaching Section 2(1) of the Health & Safety at Work etc Act 1974 for failing to ensure, as far as reasonably practicable, the health, safety and welfare at work of all of their employees. Ramsey & Sons was subsequently fined £56,000 and ordered to pay £3,484.84 in costs.

The HSE's Inspector commented that Ramsey & Sons should have produced a detailed risk assessment when the conveyor was added to the existing machine. He highlighted that this would have identified the need to guard the unguarded rotating shaft in order to prevent access and prevent injury.

[Back to contents>](#)

### **Health & Safety prosecution following incident involving high voltage electrical equipment**

The owner of multi-function nuclear site, Sellafield Ltd, has been prosecuted following an incident involving an employee in April 2020. According to Sellafield's own incident log, one of their employees sustained injuries in the form of burns to his upper body from an arc flash whilst working on high voltage electrical equipment on 24 April 2020. It is worth noting that there was no nuclear material or radiological risk to workers.

Following an investigation into the incident by the Office for Nuclear Regulation (ONR), the decision was made to prosecute Sellafield for breaching Section 2(1) of the Health & Safety at Work etc Act 1974 ("1974 Act"). On 18 December 2020, Sellafield pleaded guilty to the offence and was fined £320,000 plus £12,079.07 in costs.

[Back to contents>](#)

### **Builder pleads guilty to carrying out dangerous site demolition**

Thomas Sturgess of Bodmin pleaded guilty to breaching Regulation 20(1) of Construction (Design & Management) Regulations 2015 following dangerous demolition taking place in Falmouth. Mr Sturgess was ordered to pay costs of £9,428.84 and was given a 180-hour Community Order.

Members of the public raised a number of concerns in or around December 2017 in relation to the demolition taking place in Falmouth. Photographs received by the HSE showed extremely poor and unsafe working practices, such as no procedures for working safely at height, risk of workers falling from the site and inadequate fencing around the site being demolished.

The HSE made an unannounced visit, following which they prohibited all further demolition work pending investigation. Investigations found that that safety measures did in fact fall significantly below the expected standard, with little or no planning with regard to the buildings' structural stability. In particular, there were no risk assessments, no demolition plans and no welfare facilities on site. The HSE also concluded that there was an apparent lack of skills, knowledge and relevant experience on behalf of the defendant.

[Back to contents>](#)

## Conviction for landlord and mechanic who ignored several enforcement notices

A mechanic and landlord in Kent have been ordered to pay £8,000 in costs, in addition to receiving two suspended custodial sentences, an order to carry out 200 hour unpaid work and disqualification from directorship for six years after ignoring several enforcement notices.

The defendant ran a car repair and sales business from the premises, where car parts were stored. The defendant also acted as the landlord of the premises, which was a house of multiple occupancy. The HSE received concerns that workers were accessing the unguarded flat roof, which prompted a multi-agency intervention at the premises in order to protect vulnerable workers, tenants and the wider community.

The HSE and Kent Fire and Rescue Service subsequently issued seven enforcement notices for various unsafe working conditions, including unsafe working at height, dangerous electrical installations, flammable risks and machine guarding. These notices were however ignored which resulted in the prosecution of the defendant.

The defendant ultimately pleaded guilty to failing to comply with the notices.

[Back to contents>](#)

## £7.6 million fine for supermarket's breach of health and safety laws

In April 2021, Tesco Stores Ltd ("Tesco") was fined £7.6 million in Birmingham Magistrate's Court following an investigation which found a range of food products being offered for sale beyond their sell by date at three of Tesco's branches. The prosecution was brought by Birmingham City Council under the Food Safety and Hygiene (England) Regulations 2013.

The level of fine was determined by reference to Tesco being a very large organisation for the purpose of calculating the fine by reference to The Definitive Guideline on Corporate Manslaughter, Health and Safety and Food and Safety Hygiene Offences ("the Guidelines"). Under the guidelines, fines are determined based on the size of the organisation, which is assessed by turnover or equivalent, ranging from micro to large organisations. Although there is no specific table for "very large organisations" (ie those organisations where turnover greatly exceeds the threshold for large companies), there is a recognition that for a sentence to be proportionate it may need to move outside of the range suggested for large companies, a fact expressly acknowledged by the Magistrate.

Tesco had been fined £160,000 for a similar offence in September 2020, just seven months prior. Tesco were also ordered to pay £95,500 for costs and the £170 victim surcharge.

[Back to contents>](#)



### **Council fined after student attacks teacher at community school**

On 17 June 2016 a pupil inflicted life changing injuries upon Putteridge High School's assistant head teacher. Luton Borough Council, the employer of the community school, pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 and was subsequently fined £104,000 with £60,000 costs.

Following an investigation by the HSE it was found that the school's measures concerning violence and aggression posed by pupils were insufficient. Steps were not taken to reduce the risk of injury posed by pupils to as low a risk as reasonably practicable. The HSE also found that the Council did not ensure that the school had individuals sufficiently competent to ensure such a threat was addressed and staff members at the school did not have the necessary training. The Council also failed to monitor the adequacy of any measures put in place by the school. This ultimately resulted in the Council's failure to pick up and address any shortcomings.

[Back to contents>](#)

# Environmental

## Large fine for illegally storing end-of-life vehicles

Portland Scrap Metal Ltd's environmental permit does not allow for the storage, keeping or treating of waste vehicles. However, the Court heard that between 23 September 2018 and 18 January 2019 the firm was in fact keeping waste vehicles on their premises.

During the aforementioned time period, Environment Agency officers visited the firm's premises four times, on each occasion noting waste vehicles on site. Multiple warnings were given to the firm, all of which had been ignored and end-of-life vehicles remained on site.

The firm's director has said that the vehicles were not end-of-life when they entered the site, and that the vehicles would be assessed before deciding to scrap them. The same director ultimately accepted breaching an enforcement notice and the firm pleaded guilty to the offence. The firm was ultimately fined £9,000 for ignoring the Environment Agency's warnings, as well as £6,352.30 in legal costs.

The Environment Agency has highlighted that any profit generated by continuing such a practice will just be taken away and all efforts wasted. They also highlighted that ignoring such warnings will only make situations worse.

[Back to contents>](#)

## Dog toy company fined for recycling breaches

Kong Company Ltd, a business selling dog toys, has paid £4,930 towards various environmental projects having failed to recycle sufficient packaging waste from its factory on the outskirts of Salisbury. The sum is a donation and will be used by The Species Recovery Trust, who fund projects to reduce the amount of plastic packaging waste through the reduction of single use plastic bottles. The donation will also be used to help two endangered plants.

The company's finance director admitted three separate offences, including failure to register and take reasonable steps to recover and recycle waste packaging and failure to submit certificates of compliance to the appropriate Agency. The company made the Enforcement Undertaking offer after their breaches of packaging waste regulations were discovered by the Environment Agency.

Numerous high-street clothing retailers have found themselves with similar sanctions for failing to comply with packaging regulations.

[Back to contents>](#)

## Round-up

Some of the recent Enforcement Undertakings accepted by the Environment include:

- Barclays Bank Plc – Oil pollution to the Hendon Burn in Sunderland in November 2016 and operating without an environmental permit. A reactive offer was made and the company will contribute £100,000 to three separate charities, as well as taking action to revise its refill processes and restore the site and watercourse
- Cre8 Accommodation Solutions Limited – Burning waste at Newport, Isle of Wight in April 2018 and operating without an environmental permit. The company will contribute £2,500 to Hampshire and Isle of Wight Wildlife Trust as well as implementing an environmental policy, producing a risk assessment and restoring the site
- Wessex Water Services Limited – Sewage pollution at Moorlinch Sewage Treatment Works in July 2018 and operating without an environmental permit. The company will contribute £225,000 to Plymouth University and the Moorlinch National Nature Reserve. They will also carry out site repairs and remediation works, as well as covering the Environment Agency's costs and taking action to benefit impacted third parties

### Supreme Court lowers standard of proof for inquests

On 13 November 2020 the Supreme Court dismissed an appeal which argued that it was wrong to instruct the jury to apply the 'balance of probabilities' standard when considering whether the deceased, who died in HMP Bullingdon, had committed suicide.

Lady Arden and Lord Wilson agreed that the civil standard safeguards the interests of those adversely affected by the conclusion, with short-form conclusions potentially enhancing the recording of suicides and assisting in research. In highlighting the importance of accurate suicide reports to enable the necessary social and medical care, Lady Arden added that a standard of 'beyond reasonable doubt' may result in the under reporting of suicides.

Lord Kerr and Lord Reed disagreed and said that a statutory basis for the criminal standard of proof to be applied to verdicts in cases of suicide is 'unquestionably' established in the Coroners (Inquests) Rules 2013.

In lowering the standard of proof for all conclusions in inquest hearings, it may become easier for juries to reach conclusions of unlawful killings or suicides than was previously the case. This is likely to have a significant impact on inquests which involve serious health and safety breaches as the decision of enforcement authorities normally follow once the Inquest has concluded.

[Back to contents>](#)