



Health and safety law update

March 2016

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Corporate manslaughter

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UKPN maintains the power distribution supplies to London, the South East and East of England. [more>](#)

Any comments or queries?

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Balfour Beatty fined £1million after worker is fatally injured fixing a central reservation barrier

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National Grid fined £1million after a worker became trapped in a ruptured gas main

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NHS fined £40,000 after pensioner falls to his death whilst riding a mobility scooter

Eighty-two year old Benjamin Withers, from Fareham, Hampshire, fell 12 feet to his death from an elevated walkway outside a health centre. [more>](#)

Three companies fined following the fall of a concrete panel from a lorry onto a worker

On 11 January 2011, Travis Hale, 45, employed as a driver by Punchards Haulage Limited (Punchards), was tasked with transporting four concrete panels from Derby to a construction site in Edinburgh. [more>](#)

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Miscellaneous

Mid Staffordshire NHS Foundation Trust plead guilty to criminal charges

Following our previous report of the HSE's decision to prosecute the Mid Staffordshire NHS Foundation Trust (the Trust) in relation to the deaths of four elderly patients from 2005 to 2014, the Trust pleaded guilty at a hearing on 4 November 2015. [more>](#)

HSE to prosecute following injury during filming of the new Star Wars film

The HSE has confirmed that it will prosecute Foodles Production (UK) Ltd after the actor, Harrison Ford, fractured his leg during the filming of *Star Wars: The Forces Awakens* on 12 June 2014 at Pinewood Studios. Foodles Production was the company responsible for production of the film and is a UK-based subsidiary of Disney. [more>](#)

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The Defendant was a health and safety membership organization which provided accreditation of health and safety qualifications. [more>](#)

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NASC launch update on scaffolding fall prevention guidelines

The National Access and Scaffolding Confederation (NASC) have launched an update of their core scaffolding fall prevention guidance SG4:15 Preventing Falls in Scaffolding Operations. [more>](#)

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HSE to prosecute Merlin Attractions Operation Ltd over Alton Towers “Smiler” incident

This follows the highly-publicised incident at Alton Towers theme park on 2 June 2015 in which five people were seriously injured on a rollercoaster, when their carriage collided with an empty stationary carriage on the same track.

Two female passengers on the “Smiler” ride suffered leg amputations and three others were also seriously injured.

Merlin Attractions Operations Ltd (Merlin Attractions), the company responsible for managing Alton Towers, has been charged with a breach of Section 3(1) of the Health and Safety at Work Act 1974 in that “it failed to conduct its undertaking, namely the operation of its Alton Towers Resort, in such a way as to ensure, so far as was reasonably practicable, that persons not in its employment who may have been affected thereby, were not exposed to risks to their health or safety, namely the risks associated with the operation of the Smiler roller coaster, whereby it is guilty of an offence contrary to Section 33(1)(a) of the Act”. Merlin Attractions will appear at North Staffordshire Justice Centre on 22 April 2016.

The HSE have stated that “This was a serious incident with life-changing consequences for five people. We have conducted a very thorough investigation and consider that there is sufficient evidence and that it is in the public interest to bring a prosecution.”

Merlin Attractions have stated that “We have cooperated fully with the HSE throughout their investigation while continuing to support those who were injured in the accident. The company completed its own investigation and published the results in November, accepting responsibility for what happened. We have also kept the HSE fully informed of the subsequent actions that we have taken to ensure that something like this cannot happen again”.

It has been suggested that human error was the cause of the incident after staff misunderstood a shutdown message and wrongly restarted the ride. This may have overridden the control system without the correct safety protocols being adhered to. There was not thought to have been any technical or mechanical issues with the ride itself.

Alton Towers was shut down for four days following the incident, resulting in a large fall in visitors. Inevitably, this had a negative impact on the finances of parent company Merlin Entertainments plc, but overall pre-tax profits are reported to have risen nominally by 0.3% to £250million, compared to £249million for the previous year, and like-for-like revenue was up 0.4% to £1.28billion. This overall result included a 12.4% decline in revenue from the theme park division (thought mainly to be as a result of the incident), but propped up by an 8% rise in revenue at its Legoland division. The theme park division of Merlin Entertainments reported turning over £285million to the end of 2015. Merlin owns other major attractions such as the London Eye and Madame Tussauds.

Under the new sentencing guidelines (see below) Merlin Attractions will be classed as a large organisation, ie one whose annual turnover is £50million or over. The suggested range of fine for a large organisation is £2.6million to £10million. The guidelines also state, somewhat ominously, that where turnover “very greatly exceeds the threshold for large organisations,

it may be necessary to move outside the suggested range to achieve a proportionate sentence". It remains to be seen how Merlin will respond to the charge, but if this case reaches the sentencing stage, one of the many questions for the court will be whether the turnover of Merlin Attractions will be classed as large or very large.

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Corporate manslaughter

Landmark corporate manslaughter case against a NHS trust collapses

In our previous bulletin we noted the commencement of a landmark corporate manslaughter prosecution against Maidstone & Tunbridge Wells NHS Trust, following the tragic death of a mother, Frances Cappuccini, who gave birth by emergency Cesarean section. The locum anaesthetist, Dr Cornish, was also prosecuted for gross negligence manslaughter. A specialty doctor, Dr Azeez, had returned to his native Pakistan before any charges could be brought against him.

The Inner London Crown Court heard the CPS allege that Dr Cornish failed to allow sufficient air to reach Mrs Cappuccini's lungs during her recovery from the operation. If this amounted to gross negligent manslaughter the prosecution argued that the Trust employed someone it knew or should have known was not suitably qualified or trained.

However, the trial judge, Mr Justice Coulson, directed the jury to acquit both Defendants at just over two weeks into the trial after ordering that they had no case to answer. Mr Justice Coulson expressed his sympathy with Mrs Cappuccini's family, but in forceful terms explained a series of flaws in the prosecution case. He referred to evidence showing that some of Dr Cornish's actions had been "about as far from a gross negligence manslaughter case as it is possible to be". He also called some of the arguments against the Trust "perverse".

The CPS has confirmed that it does not intend to appeal against the decision, but is still deciding whether to continue proceedings against Dr Azeez.

This case was also noteworthy after it emerged that Mr Justice Coulson had ordered the Health Secretary Jeremy Hunt to delete a tweet, which he posted on the second day of the trial, stating that this was a "tragic case from which huge lessons must be learned". Such comments, it was said, could amount to contempt of court. A temporary ban was placed upon the tweet with Mr Justice Coulson stating "The trouble is there are no lawyers left in the House of Commons. There are no professional lawyers."

Whilst there has been an increase in the number of corporate manslaughter cases brought to trial, this case is a reminder of the difficulty faced by prosecutors in securing a conviction against a large organisation and establishing sufficiently grave failings at senior management level.

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Care home fined £300,000 and owner jailed over the death of an 86-year old woman

In the first corporate manslaughter case under the new sentencing guidelines (see below), Yousaf Khan, 47, of Nottingham, admitted manslaughter and was sentenced to three years and two months. His company, Sherwood Rise Ltd, was fined £300,000 for corporate manslaughter.

In 2012, Ivy Atkin, who was staying at Autumn Grange, died after she was found dehydrated and malnourished.

The case revealed serious neglect at Autumn Grange, which was eventually alerted to the police by a member of staff. The local council subsequently ended its contract with the company and the residents were moved out before Ivy Atkin died several days later.

The company was no longer operating at the time of sentencing, so with significantly reduced turnover was likely classed as a micro organisation (annual turnover of up to £2million) for the purposes of the new sentencing guidelines (see below). Given the seriousness of the neglect and failings this case would have fallen within Offence Category A, which has a range of £270,000 to £800,000 in respect of any fine for micro organisations convicted of corporate manslaughter.

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Fines and sentences

New sentencing guidelines now in force

The new sentencing guidelines now apply to all sentencing of health and safety, corporate manslaughter, and food hygiene offences taking place after 1 February 2016, regardless of the date of offence.

There is no upper limit on penalties under the Corporate Manslaughter and Homicide Act 2007 but the offence range for large organisations with an annual turnover of more than £50M will be from £4.8M to £20M and up to £10M for the most serious of health and safety offences. Very large organisations with turnover greatly in excess of £50million could face penalties well above those range maximums.

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ConocoPhillips (UK) Limited fined £3million for gas leaks on a gas platform off the Lincolnshire coast

ConocoPhillips pleaded guilty to three breaches of the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995. According to the HSE "It is only a matter of good fortune these incidents didn't result in a serious, tragic incident". ConocoPhillips was fined £3million (£1million for each offence) and ordered to pay costs of £159,459.

ConocoPhillips was responsible for two uncontrolled and one controlled but unexpected gas releases between 30 November and 1 December 2012.

The HSE found that the gas releases on 30 November 2012 occurred due to maintenance work to replace a gas pressure control valve on one of three gas turbines used to generate electricity for the installation.

To do this, the fuel gas pressure safety valve and a flexible hose had to be removed. There were releases of gas due to a number of deficiencies in isolation and planning. The released gas came out of an open ended pipe connected to the high pressure vent system. Due to a breakdown in communication across the five platforms of the site meant that some workers incorrectly believed the platform was gas-free. This put the lives of up to 66 workers in danger.

A loss of electrical power subsequently made the risk more severe. The court accepted that those sent to investigate were put at extreme risk of death or serious injury, as ignition of the gas would have resulted in an explosion. It is estimated around 603kg of produced hydrocarbon gas was released into the Turbine Hall during this incident.

On 1 December 2012, another gas release happened after batteries ran down. In this case, the isolation valve was closed in time. This stopped the gas accumulating in the turbine hall, which would have put workers at risk.

The HSE served ConocoPhillips with a Prohibition Notice on 13 December 2012 to prevent further dangerous gas releases. The company confirmed on 21 December 2012 that measures were put in place to prevent a repeat of the incidents.

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UK Power Networks (Operations) Ltd (UKPN) fined £1million after electrocution

UKPN maintains the power distribution supplies to London, the South East and East of England. Dr James Kew was running on land in Saffron Walden, Essex, when he came into contact with a high-voltage cable, which was straddling a well-used footpath. It should have been 5.5 metres above ground-level but was only 1.5 metres at its lowest point.

The HSE found during their investigations that on 24 July 2012 an insulator on a pole-mounted, overhead high voltage power line had failed. This in turn had resulted in a conductor falling to 1.5 metres above a cornfield. The conductor was still connected to the power supply, energised at 11KV and was left suspended across the public footpath.

UKPN was made aware of the situation and spoke with the members of the public who had reported it. UKPN could have immediately “de-energised” that part of the network, but instead sent a technician to the scene. Dr Kew ran into the live conductor and was electrocuted whilst the technician was en-route.

The HSE investigation concluded that UKPN had not fully assessed the risk posed to members of the public, nor had it immediately de-energised the power line and controlled the risk.

On 26 January 2016, UKPN, was fined £1million at Chelmsford Crown Court, and ordered to pay prosecution costs of £153,459 after pleading guilty to a breach of Section 3(1) of the Health and Safety at Work etc Act 1974.

The HSE Principal Inspector Paul Carter said: “Distribution network operators have an absolute duty to ensure that they do everything reasonably practicable to ensure the health and safety of members of the public who may be put at risk by the operation of their undertakings. The risk posed by high voltage conductors which descend below the safe statutory height is entirely foreseeable and network operators must have robust procedures in place that facilitate dynamic risk assessment and the immediate implementation of effective risk control measures to protect the public.”

Whilst substantial, the fine may well have been even more severe had it been decided only a few days later when the new sentencing guidelines were introduced.

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Balfour Beatty fined £1million after worker is fatally injured fixing a central reservation barrier

On 1 October 2012 a team was sent out by Balfour Beatty Civil Engineering Limited, a subsidiary of Balfour Beatty PLC, to install temporary traffic management in order to repair barriers following a collision on the A2.

The crew were using a lorry mounted crane to remove the footings of a post when it slipped and swung back towards the barrier. The crane struck Larry Newman, aged 37, a worker involved in the operation. He suffered fatal head injuries and was pronounced dead at the scene.

Balfour Beatty Civil Engineering Limited was fined £1million and ordered to pay £14,977 in costs after pleading guilty to offences under Section 2(1) and Section 3(1) of the Health and Safety at Work etc. Act 1974.

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National Grid fined £1million after a worker became trapped in a ruptured gas main

On 24 June 2014, National Grid Gas plc was supervising repairs to a gas mains when a worker was trapped between two gas pipes after one of them burst. He fractured his femur. During these works the pressure behind the escaping gas increased and ruptured the pipeline.

Fire crews worked in zero visibility conditions to rescue the trapped engineer in defiance of the escaping gas creating a cloud of dust and debris. Fortunately the worker was wearing breathing apparatus, which may have saved his life.

At the sentencing hearing National Grid was found to have failed to comply with its own gas escape procedures, carry out sufficient risk assessments, communicate with the contractors carrying out the work and manage the handover of key personnel.

National Grid was fined £1million and ordered to pay costs of £26,296 for breaching Section 3 of the Health and Safety at Work etc Act 1974.

HSE Inspector Ian Redshaw, said: "This whole incident should act as a stark warning to all those involved in hazardous work – you can have all the written policies in place but if you do not follow them, if you do not carry out the risk assessments for the task, people could die."

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NHS fined £40,000 after pensioner falls to his death whilst riding a mobility scooter

Eighty-two year old Benjamin Withers, from Fareham, Hampshire, fell 12 feet to his death from an elevated walkway outside a health centre. His mobility scooter collided with a wooden weather screen which was situated around the main entrance and access-bridge to Fareham Health centre. A section of the screen gave way causing Mr Withers and his mobility scooter to fall through the gap onto a walkway below.

The HSE found that the screen had not been constructed to the required standard, no risk assessment had been made to consider the suitability of the screen and the structure had not been adequately maintained. It was also found that the collapsed section was so badly decayed that portions of the wood could be easily removed by hand. Planned maintenance work to replace the rotten wood had been cancelled and rescheduled on more than twenty occasions without ever being carried out.

The NHS Litigation Authority had taken on criminal responsibility for the two NHS Trusts responsible for the health centre at the material time. Both health bodies were abolished in 2013. The NHSLA entered guilty pleas to breaches of s3 (1) of the Health and Safety at Work etc. Act 1974 and was fined £40,000 and ordered to pay £15,000 costs.

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Three companies fined following the fall of a concrete panel from a lorry onto a worker

On 11 January 2011, Travis Hale, 45, employed as a driver by Punchards Haulage Limited (Punchards), was tasked with transporting four concrete panels from Derby to a construction site in Edinburgh.

The panels had been designed by VTK Structures Limited (VTK) and manufactured by Hanson Packed Products Limited (Hanson).

When Mr Hale arrived to collect the loaded trailer, his employer, Punchards, had provided three straps to secure the load. Shortly after Mr Hale's journey he was contacted and asked to pull over to check his load. At this stage he was joined by the designers, VTK, whose employees advised fitting more straps.

As Mr Hale loosened one of the existing straps, a panel weighing approximately one and a half tonnes fell off the trailer and killed him.

The HSE concluded that there were insufficient straps to secure the load and that all three companies ought to have cooperated to ensure that the load was secure.

The case was heard at Derby Crown Court. Punchards (the employer) of Bramshall, Staffordshire, and VTK (the designer) were each ordered to pay fines of £140,000 and costs of £37,016 after pleading guilty to an offence under Section 2(1) of the Health and Safety at Work etc Act 1974.

Hanson (the manufacturer) of Maidenhead, Berkshire, were fined a total of £80,000, and ordered to pay costs of £37,016 after pleading guilty to an offence under Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999.

The HSE's Inspector Stuart Parry said: "VTK and Punchards should have provided Mr Hale and other drivers with better means of securing panels, such as Toast racks or A frames. They did not do so and this failing led to the tragic death of Mr Hale."

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Total fined £1.125million for North Sea oil leak

In March 2012 there was a gas leak at an Elgin field which led to the evacuation of hundreds of staff. The leak produced 6,000 tonnes of gas and was the largest ever to occur in the North Sea. A more serious disaster was only averted "because winds kept the plume of gas away from nearby flares". A two-mile wide shipping and aircraft exclusion zone was established and it took 51 days to bring the leak under control.

The leak happened when Total failed to shut down a well after discovering a fault. Mr Breen of the HSE said the failings "contributed to them losing control of the well and the sudden uncontrolled release of gas".

He added: "This is an important reminder of the ever-present hazards with oil and gas production and the need for them to be rigorously managed."

Total said: “Total regrets the gas leak, we failed to meet the very high standards we set ourselves, and which we have historically achieved. Safety is our highest priority. Following the incident we carried out our own investigation to identify the causes of the incident and what can be done to prevent similar incidents in future.”

Despite the fine being the highest ever to be imposed upon a North Sea operator, the level of fine was criticized by Jake Molloy, the oil industry representative for the RMT, who said “How hefty is hefty when a firm is making a million pounds an hour?” Total, like so many other producers, has come into court, pleaded guilty and begged forgiveness, and assured us all that it won’t happen again.”

A shot across the bows, perhaps, for any similar future incidents, particularly with the new sentencing guidelines now likely to push fines against very large organisations upwards significantly. A very large organisation will be one turning over sums very greatly in excess of £50million annually. What counts as “very greatly” in excess, however, has not been defined.

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Miscellaneous

Mid Staffordshire NHS Foundation Trust plead guilty to criminal charges

Following our previous report of the HSE’s decision to prosecute the Mid Staffordshire NHS Foundation Trust (the Trust) in relation to the deaths of four elderly patients from 2005 to 2014, the Trust pleaded guilty at a hearing on 4 November 2015.

Three of the deaths occurred after falls where the patients had been vulnerable to falling. The other death occurred after the patient was administered with penicillin, despite hospital staff being informed that she was allergic to it.

The Trust will be sentenced at Stafford Crown Court. The Trust was fined £200,000 in 2014 following the death of Gillian Astbury, a diabetic patient, aged 66, who died in 2007 after nurses failed to provide routine insulin, so with the multiple deaths on this occasion along with the new sentencing guidelines, it will be instructive to see what level of fine is handed down.

The Trust has been at the heart of an intensive investigation due to an exceptionally high mortality rate amongst its patients and evidence of poor care standards and neglect, from 2005 to 2009.

The Trust’s special administrator Tim Rideout had previously stated how he is “... committed to bringing matters to a conclusion as efficiently and effectively as possible in the best interests of the families concerned.” Continuing with this theme he has since confirmed that “We have been working with the HSE since their decision to prosecute MSFT. I have made a commitment to bringing matters to a conclusion in the best interest of the families concerned.”

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HSE to prosecute following injury during filming of the new *Star Wars* film

The HSE has confirmed that it will prosecute Foodles Production (UK) Ltd after the actor, Harrison Ford, fractured his leg during the filming of *Star Wars: The Forces Awakens* on 12 June 2014 at Pinewood Studios. Foodles Production was the company responsible for production of the film and is a UK-based subsidiary of Disney.

Harrison Ford suffered his injuries when he was struck by a heavy hydraulic metal door on the set of the spaceship, the Millennium Falcon.

Foodles face charges under sections 2 and 3 of the Health and Safety at Work etc. Act 1974, Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999, which sets out the duty of an employer to “make a suitable and sufficient assessment of the risks of health and safety ...”, and Regulation 11(1) of the Provision and Use of Work Equipment Regulations 1998, which states: “Every employer shall ensure that measures are taken in accordance with paragraph (2) which are effective (a) to prevent access to any dangerous part of machinery or to any rotating stock-bar; or (b) to stop the movement of any dangerous part of machinery or rotating stock-bar before any part of a person enters a danger zone.”

The HSE has stated that “By law, employers must take reasonable steps to protect workers – this is as true on a film set as a factory floor. We have investigated thoroughly and believe that we have sufficient evidence to bring the case to court.”

Foodles Production told the BBC that “Cast and crew safety is always a top priority. We provided full cooperation during HSE’s investigation into the on-set accident that occurred in June 2014 and are disappointed in the HSE’s decision.”

They will appear at High Wycombe Magistrates Court on 12 May 2016 to face the above charges.

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Health & safety diploma dispute marks first fast-track lawsuit at UK antitrust tribunal

The Defendant was a health and safety membership organization which provided accreditation of health and safety qualifications. The Claimant was a company which had developed qualifications, training material and courses in health and safety, including a diploma in applied health and safety. The Claimant submitted an application to the Defendant for the accreditation of its diploma qualification.

The Defendant refused, resulting in the first ever fast-track competition claim before the UK Competition Appeal Tribunal (CAT). The case settled early with the Defendant agreeing to various undertakings. The Claimant had submitted that the Defendant held a dominant position in the market for health and safety training and qualifications and, furthermore, that its refusal to accredit the Claimant’s diploma qualification was an abuse of its dominant position.

The Claimant had sought an injunction, a declaration that the Defendant had abused its dominant position, damages, interest and costs. However, it dropped all of its claims following the settlement agreed through the new fast-track procedure.

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Round up

Latest HSE fatality records reveal one death during October – December 2015

Each month the HSE publish the in-year details of all deaths at work [click here](#) under their jurisdiction. The information is “as reported” by third parties and does not purport to be a formal statistical release.

Subsequent HSE investigation may determine that some are not reportable under RIDDOR. HSE reports (updated 04/01/2016) show that one (1) death occurred involving “construction” during the months October – December 2015 within the accounting period April 2015 – March 2016.

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NASC launch update on scaffolding fall prevention guidelines

The National Access and Scaffolding Confederation (NASC) have launched an update of their core scaffolding fall prevention guidance SG4:15 Preventing Falls in Scaffolding Operations [click here](#).

It deals with the following factors for those operating within the scaffolding sector:

- erecting floor height lifts
- bridging with beams
- loading bay gate installation
- cantilever scaffolding
- chimney stack scaffolding
- personal fall protection equipment.

The NASC past President, Kevin Ward said:

“SG4 works! The NASC accident statistics speak for themselves and in light of these, this revision has been more of a fine-tuning exercise rather than trying to reinvent the wheel. We’re very happy to be launching the revised SG4 guidance. Since its inception in the 1990s, SG4 has stood the test of time and evolved to become the de facto standard for the protection of scaffolders working at height.”

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