



Health and safety bulletin

July 2020

Fines and sentences

Oil refinery fined £1.2M after two workers sustain severe burns

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Theme park to be prosecuted following a boy being ejected from a roller coaster

The HSE have confirmed that Lightwater Valley Attractions will be prosecuted for breaching s 3(1) HSWA 1974 following an incident on 30 May 2019, when a seven year old boy was thrown from a ride called the Twister. [more>](#)

Abattoir prosecuted after failing to comply with food hygiene Remedial Action Notice

Birmingham Halal Abattoir Limited was prosecuted after failing to take appropriate action to comply with a Remedial Action Notice issued by the Food Standards Agency (FSA) regarding the way in which the slaughterhouse was operated. [more>](#)

Fall from ladder leads to £1.1M fine for Principal Contractor

Modus Workspace was found guilty of breaching section 3(1) HSWA 1974 following a five week Trial which centred on an incident on 5 September 2016. [more>](#)

Absence of guarding prompts two prosecutions by the HSE

In the first of two recent prosecutions, EGL Homecare Limited was fined £80,000. The incident, which took place on 19 June 2019, involved the production line for gluing abrasive sheets onto sponges to make scouring sponges. [more>](#)

Landlord convicted after fire at the residential property leads to death

Allah Ditta was prosecuted following the fire at his property in Harriet Street, Normanton, on the evening of 9 March 2018. The road was closed for three hours whilst fire fighters tried to tackle the blaze. [more>](#)

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Management failures result in £88,000 fine for Property Owner

A freehold property owner was fined over 17 failures in the management of his property which was a house in multiple occupation (“HMO”) – meaning it was occupied by five or more people forming at least two households. [more>](#)

Contractor ordered to pay £750,000 after two workers killed in fatigue related crash

A contractor has been ordered to pay £750,000 in fines and costs after two of its workers were killed in a crash on the A1. It was held that the contractor failed to ensure that they were both properly rested to work and travel safely. [more>](#)

Company director receives suspended sentence after roof trusses topple over and crush a worker

Jason Whiting, director of JWB (Mersea) received a six month custodial sentence, suspended for 24 months, for failing to properly plan a timber lift. [more>](#)

The Works Stores donates £35,868 to the Warwickshire Wildlife Trust following waste packaging offences

The financial contribution in this case stemmed from an Enforcement Undertaking offered to the Environment Agency by The Works Stores following their admission that between 7 April 2010 and 7 April 2016 it had not been registered as a producer of waste packaging contrary to The Producer Responsibility (Packaging Waste) Regulations 2007. [more>](#)

Round-up

FSA updates allergen guidance

The Food Standards Authority (FSA) has published updated guidance for allergen labelling following statutory changes to rules for pre-packed for direct sale food (PPDS). It is hoped that the changes will help businesses and enforcement authorities to understand the new requirements. [more>](#)

Government issues Guidance for Businesses easing out of Lockdown

The Guidance comprises 8 sets of guidelines for businesses which are expected to be open as it is not possible for workers to work from home, including construction, outdoor work, factories and plants. [more>](#)

Health and Safety Executive inspections to resume after brief suspension

The HSE are resuming “proactive” inspections as much of the UK begins to ease the lockdown. The regulator suspended routine inspections in March due to the COVID-19 pandemic, although still responded to serious issues and continued to investigate work-related deaths and major injuries across all sectors. [more>](#)

RIDDOR Reporting of COVID-19

The HSE has issued guidance for responsible persons to determine whether a case of COVID-19 needs to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). [more>](#)

Environment Agency sets out time limited easing of regulatory requirements due to COVID-19

In order to help minimise the risks to the environment and human health during the pandemic, the Environment Agency (EA) have set out Regulatory Position Statements ("RPS") for certain specific sectors where there has been some easing of the regulatory requirements. [more>](#)

Fines and sentences

Oil refinery fined £1.2M after two workers sustain severe burns

On 30 October 2013, an employee of Phillips 66 Limited and an apprentice were reassembling high pressure steam pipework when they were exposed to a high pressure, high temperature steam of around 250°C. Both sustained severe burns as a result of the incident, which were life threatening at the time.

The HSE subsequently found that whilst the workers had been adhering to the safe system of work procedure implemented by Phillips 66 Limited, a number of personnel who were involved in the safe isolation procedure had failed to complete all the required checks which allowed the incident to take place.

The company pleaded guilty to breaching sections 2(1) and 3(1) Health and Safety at Work etc Act 1974 (HSWA 1974) and was fined £1.2M and ordered to pay £20,450.05 in costs.

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Theme park to be prosecuted following a boy being ejected from a roller coaster

The HSE have confirmed that Lightwater Valley Attractions will be prosecuted for breaching s 3(1) HSWA 1974 following an incident on 30 May 2019, when a seven year old boy was thrown from a ride called the Twister. The boy sustained serious head injuries after falling between 20 – 30 foot from the ride and had to be airlifted to hospital.

This was not the first incident involving the Twister at the theme park. The ride, which is a roller coaster with tight twists and turns, was involved in an incident in 2001, when two carriages collided and caused the death of Gemma Savage, who was 20 years old and out with a group of friends from university. A prosecution followed that incident, with the theme park and an electrician subsequently pleading guilty to health and safety offences and being fined.

The HSE is currently liaising with Leeds Magistrates' Court to arrange a first hearing listing.

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Abattoir prosecuted after failing to comply with food hygiene Remedial Action Notice

Birmingham Halal Abattoir Limited was prosecuted after failing to take appropriate action to comply with a Remedial Action Notice issued by the Food Standards Agency (FSA) regarding the way in which the slaughterhouse was operated. Carcasses were moved on a rail system which was travelling too quickly, causing the carcasses to come into contact with each other and potentially cause cross contamination before they went through a post mortem examination. The Notice required the business to take steps to address the issue, known as "bunching", but the company failed to do so.

The FSA subsequently brought three charges, two for food hygiene and food safety offences and a third for failing to comply with the Remedial Action Notice. The business, which had previously been convicted for similar offences, pleaded guilty to one of the hygiene offences and the FSA agreed to withdraw the remaining two charges.

When the Court considered sentencing, culpability was deemed to be "high" but with a low risk to the public. The business was fined £4,000 and ordered to pay costs of £7,000 with a victim surcharge of £180.

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Fall from ladder leads to £1.1M fine for Principal Contractor

Modus Workspace was found guilty of breaching section 3(1) HSWA 1974 following a five week Trial which centred on an incident on 5 September 2016. An engineer who was a sub-contractor, had climbed onto an internal roof and had been inspecting the sprinkler system for leaks from an extension ladder when it slipped causing him to fall 3 metres in between a gap between the internal roof and external wall. The worker sustained significant blood loss (said to amount to half his blood stream) as well as multiple injuries, including a head injury which required 14 stitches.

The HSE's investigation established that reasonably practicable measures had not been taken to prevent those working from the internal roof from falling and that Modus, in their role as Principal Contractor, had failed to ensure that those working on the job who were not in their employment were not put at risk.

In addition to a £1.1m fine, Modus were also ordered to pay costs of £68,116.18.

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Absence of guarding prompts two prosecutions by the HSE

In the first of two recent prosecutions, EGL Homecare Limited was fined £80,000. The incident, which took place on 19 June 2019, involved the production line for gluing abrasive sheets onto sponges to make scouring sponges. An agency worker had been tasked with removing sheets of scouring sponges from the conveyor onto a pallet, when his arm got dragged in between two rollers up to his shoulder causing him to sustain significant injuries. He was diagnosed with compartment syndrome in his forearm which required an operation and he remained in hospital for 6 days following the incident.

The HSE found that the machine should have been fitted with guards which would have prevented access to the rollers. EGL Homecare Limited pleaded guilty to breaching Regulation 11(1) Provision and Use of Work Equipment Regulations 1998 and was ordered to pay costs of £5,314.08 in addition to the fine.

In the second prosecution, involving similar failings, IFG Drake Ltd was fined £366,850 after a worker sustained fatal crush injuries whilst working on a synthetic fibre manufacturing machine on 24 March 2017. Mr Javeed Ghaffar had been working on the stretch godet section of the machine when he became entangled as he tried to remove a lap from around the rollers. This occurs when the fibres stick to the rollers and begin to wrap around them.

The HSE's investigation established that the machine was not adequately guarded and that it had become commonplace for staff to reach into and around the rollers in the way that Mr Ghaffar had done when performing the same task.

IFG Drake Ltd pleaded guilty to breaching section 2(1) HSWA 1974 and was ordered to pay £23,993 in costs in addition to the fine.

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Landlord convicted after fire at the residential property leads to death

Allah Ditta was prosecuted following the fire at his property in Harriet Street, Normanton, on the evening of 9 March 2018. The road was closed for three hours whilst fire fighters tried to tackle the blaze. Three men were in the house at the time, one of whom, Kulwinder Singh, was unable to escape and was pronounced dead at the scene. The other two residents were taken to hospital.

A subsequent investigation established that the front escape route was locked and a rear escape route led to an enclosed back garden. There was also no risk assessment undertaken to address the risks that would face residents in the property if a fire broke out.

Mr Ditta pleaded guilty to three counts of breaching fire regulations when he appeared remotely from his solicitor's office at Derby Crown Court. The prosecuting authority, the Derbyshire Fire and Rescue Service, confirmed that Mr Ditta is not facing charges of murder or manslaughter as a result of the incident. He has been granted conditional bail pending the sentencing hearing which is due to take place on 16 October.

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Management failures result in £88,000 fine for Property Owner

A freehold property owner was fined over 17 failures in the management of his property which was a house in multiple occupation ("HMO") – meaning it was occupied by five or more people forming at least two households. Southend Council had received reports of anti-social behaviour in relation to the property, which prompted a visit, during which the property was found to be in poor condition. The Council subsequently conducted a full inspection.

As the property was an HMO, the local Council required the property owners to comply with certain standards set to protect the health and safety of those living at the property. During the inspection, Mr Arise, the first owner of the property, was found to be responsible for a number of failings including:

- failure to maintain the 30-minute fire protected escape route, as both the kitchen and hallways were obstructed
- failing to inspect and test the electrical installation
- failing to ensure outbuildings were maintained, a rear shed having collapsed
- failing to ensure the windows, with windows joints held together with tape were properly maintained, and
- the absence of provision for waste collection and recycling.

Mr Arise, who did not attend the hearing, was found guilty of 17 breaches of the House in Multiple Occupation Regulations 2006. He was fined £85,000, £5,000 for each of the offences, and was ordered to pay £3,795 in costs and a victim surcharge. A second owner is due to go on trial at a later date after obtaining an adjournment to enter a not guilty plea.

Southend Council reiterated the message that it was essential for residents to have appropriate conditions to live in during the lockdown.

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Contractor ordered to pay £750,000 after two workers killed in fatigue related crash

A contractor has been ordered to pay £750,000 in fines and costs after two of its workers were killed in a crash on the A1. It was held that the contractor failed to ensure that they were both properly rested to work and travel safely.

Zac Payne and Michael Morris died on 19 June 2013 after Mr Payne fell asleep at the wheel of his work van whilst travelling back from a night shift. Their employers, Renown Consultants Ltd told the workers to undertake an extra job for Network Rail without considering whether they were sufficiently rested. Mr Payne, who was 20 years old, fell asleep at the wheel when driving home from a nightshift, crashing into a parked van. He had been awake for around 26 hours.

The Crown Court found that Renown failed to follow its own fatigue management procedures and the working time limits for safety critical work. The time limits state that there should be a “minimum rest period” of 12 hours between booking off and booking on again. Mr Payne was also permitted to drive in contradiction of the company’s insurance policy which stated that only over-25s may drive their vehicles.

All Renown’s workers, including the two employees who were killed, were employed under zero-hours contracts. The Office of Rail and Road (ORR) found that in this context the stated procedures were particularly inadequate as there was an obvious incentive for workers to volunteer for work when they were too tired.

In March 2020, Renown Consultants were found guilty of breaching their duties under sections 2 and 3 HSWA 1974, Regulation 3 Management of Health and Safety at Work Regulations 1999. The Court stated that their gravest failure was to perform a suitable and sufficient risk assessment on the day before but fail to act on it, as well as failing to comply with the time limits for safety critical work which was the type of work both employees were involved in. Judge Nigel Graham Godsmark, sitting at Nottingham Crown Court, stated: “Operations and managers knew what they were supposed to do in relation to fatigue but lip service was paid to these systems....The failure to take seriously was reflected in [Renown’s] attitude and wilful failure of its no under 25 policy. In regard to those breaches to fatigue falling far short... I consider this a serious and systemic failure by Renown.”

Both culpability and the risk of serious injury/death were considered to be high. Whilst the turnover of the company placed it in the small category of company for the purposes of the relevant Sentencing Guidelines, with a starting point of £250,000, in light of the double fatalities and the fact the public had been put at risk the starting point was set at £500,000. In mitigation the Court recognised the company had changed their policy immediately and had a good record with no previous convictions.

The company was ordered to pay £150,000 for each of the 3 breaches, and £300,000 in costs. The Court took into account the “COVID factor”, with the firm arguing its turnover had reduced by around 27%, although the judge dismissed this as being temporary downturn in the company’s finances. The company were given two and a half years to pay the fine.

This case represented the first prosecution brought by ORR in relation to failure of fatigue management.

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Company director receives suspended sentence after roof trusses topple over and crush a worker

Jason Whiting, director of JWB (Mersea) received a six month custodial sentence, suspended for 24 months, for failing to properly plan a timber lift. Packs of roof trusses were being moved using a crane, when a pack toppled over and crushed a worker on site causing him to sustain serious injuries.

The HSE confirmed that the roof trusses should have been lifted individually and secured permanently instead of being lifted in packs.

Mr Whiting was also ordered to complete 240 hours of unpaid work for a director’s personal offence under section 37(1) HSWA 1974, with the company ordered to pay a £1,000 fine after pleading guilty to a breach of Regulation 13(1) of the CDM Regulations 2015. The Defendants were also ordered to pay costs of £25,627.

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The Works Stores donates £35,868 to the Warwickshire Wildlife Trust following waste packaging offences

The financial contribution in this case stemmed from an Enforcement Undertaking offered to the Environment Agency by The Works Stores following their admission that between 7 April 2010 and 7 April 2016 it had not been registered as a producer of waste packaging contrary to The Producer Responsibility (Packaging Waste) Regulations 2007. The regulations require that packaging materials are recycled and companies with a turnover in excess of £2M which handle more than 50 tonnes of packaging per year must ensure that a minimum percentage of waste packing is recycled.

The Environment Agency is looking to use Enforcement Undertakings more often for less serious offences “to restore and improve the environment, change behaviour and improve practices of the offender.”

The Warwickshire Wildlife Trust has confirmed that the funds will be used by the Tame Valley Wetlands Landscape for a wide range of activities, including the delivery of “education session to primary school groups about the importance of rivers and wildlife”.

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Round-up

FSA updates allergen guidance

The Food Standards Authority (FSA) has published updated guidance for allergen labelling following statutory changes to rules for pre-packed for direct sale food (PPDS). It is hoped that the changes will help businesses and enforcement authorities to understand the new requirements. The changes will take effect from October 2021.

The changes followed a consultation in the UK following the death of Natasha Ednan-Laperouse after an allergic reaction to a packaged baguette she had eaten.

The guidance applies to PPDS, which is packaged onsite by a business and then sold from the same premises. Such food will be required to have a label with an ingredients list and the allergens contained. It is applicable to England, Wales and Northern Ireland and brings the way the allergen information is provided in line with other prepacked food.

The guidance can be found in full [here](#).

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Government issues Guidance for Businesses easing out of Lockdown

The Guidance comprises 8 sets of guidelines for businesses which are expected to be open as it is not possible for workers to work from home, including construction, outdoor work, factories and plants.

One of the key elements in the guidance is the responsibility for employers to carry out an appropriate COVID-19 risk assessment and encourages consultation with employees in order to make the system more robust. The guidance outlines an “expectation” that employers with more than 50 people will publish their risk assessments on their websites, with smaller businesses encouraged to do so as well.

Where social distancing cannot be followed, the Guidance recommends that workplaces should be redesigned to maintain social distancing as far as possible with the introduction of staggered start times, one way walk throughs and increased entrances and exits to avoid unnecessary contact. The Guidance also recommends cleaning is conducted more frequently with particular attention paid to high contact areas such as door handles and communal equipment.

The Guides – which were originally published on 11 May but are being regularly updated to reflect industry feedback – can be found [here](#).

Separate Guidance on Managing Risks and Risk Assessments at Work produced by the HSE can be found [here](#).

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Health and Safety Executive inspections to resume after brief suspension

The HSE are resuming “proactive” inspections as much of the UK begins to ease the lockdown. The regulator suspended routine inspections in March due to the COVID-19 pandemic, although still responded to serious issues and continued to investigate work-related deaths and major injuries across all sectors.

The HSE has now received and responded to around 5,000 complaints, and has previously warned employers it would issue enforcement notices to those who failed to comply with the two-metre social-distancing measures.

The Prime Minister announced on 10 May that the Government would provide up to £14m of additional funding for the HSE to employ call centre workers and inspectors and to purchase equipment during the easing of the lockdown so that inspections can be increased. As employers begin to re-open, it is crucial that government guidance and health and safety laws are adhered to especially with the HSE gradually increasing on the spot inspections.

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RIDDOR Reporting of COVID-19

The HSE has issued guidance for responsible persons to determine whether a case of COVID-19 needs to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). The guidance confirms that there is no requirement to report where the incidents of disease or death relate to members of the public, patients, care home residents or service users. The reporting requirement applies strictly to COVID-19 that has been contracted as a result of a person's work, i.e. occupational exposure.

The Guidance outlines three potential types of incidents which should be reported under RIDDOR:

- an accident at work that has or could have led to the release or escape of coronavirus should be reported as a dangerous occurrence
- a person at work who is diagnosed with coronavirus which is attributed to an occupational exposure to the virus should be reported as a case of disease
- a worker who dies as a result of occupational exposure to coronavirus must be reported as a work-related death due to exposure to a biological agent.

The full Guidance can be found [here](#).

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Environment Agency sets out time limited easing of regulatory requirements due to COVID-19

In order to help minimise the risks to the environment and human health during the pandemic, the Environment Agency (EA) have set out Regulatory Position Statements ("RPS") for certain specific sectors where there has been some easing of the regulatory requirements. RPSs have been issued for various sectors including Agriculture, Waste Management and the Water Industry.

The Environment Agency confirm that in order to use a COVID-19 RPS, it is necessary to comply both with its:

- specific conditions – including any requirements to notify the EA or to obtain the EA's approval, and
- requirements concerning pollution and harm to human health.

The need for the RPSs is under constant review by the EA and statements will be removed from the listing if they expire. The EA make clear that it is necessary for each individual RPS to be reviewed in order to determine whether or not it remains in force or has expired.

The current list of RPSs can be found [here](#).

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