



# LEGAL UPDATE & MOCK INVESTIGATION

Emma Bowens – Partner



**WINNER** Team of the Year  
Crime / Regulatory

Northern  
**Law Awards**  
2023

Main Partner:  
**TRINITY**  
CHAMBERS

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## Overview



- Sentencing Update
- Mock Investigation
- Legal Update

DAC BEACHCROFT

13/02/2024

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## SENTENCING UPDATE



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- 15<sup>th</sup> January 2023
- November 2021
- Canterbury City Scaffolding Ltd
- Temporary Roof
- Struck 11kV power line
- Lifting 6m scaffold tube
- Fell 5m
- Broken leg/ burns to hands
- Won't regain full use again
- Not planned/ RA

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## SENTENCING UPDATE



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- s2 HSWA
- Director s37
- GP
- £50k fine
- 18wks custody (suspended 12 mths)
- 200 hrs unpaid work
- 20 rehabilitation activity days

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## SENTENCING UPDATE

- 9<sup>th</sup> January 2024
- 1 February 2022
- Unblock Manhole
- Acute sulphate intoxication
- Traumatic brain injury
- Memory loss and nerve damage
- ID as confined space
- RAMS/ Training
- S2 HSWA
- £480k fine



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## SENTENCING UPDATE

- 9<sup>th</sup> January 2024
- 11 August 2021
- Installation of Railway Sleepers garden
- Using circular saw
- Kicked back – groin
- Larger blade/ abrasive wheel
- Guard removed
- Sleeper not secured
- PUWER
- 6mths custody (suspended 2 years)
- 200 hours unpaid work



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## SENTENCING UPDATE

- 14<sup>th</sup> December 2023
- May 2022
- 'Dust Kills' campaign
- Multiple failings
- Unguarded Machines
- LEV damaged
- Repairs outstanding 4 years
- Enforcement Notices 2009/2014
- Improvement Notices 2022
- £14k and £5k costs

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## SENTENCING UPDATE

- 8<sup>th</sup> November 2023
- 4<sup>th</sup> June 2019
- FLT overturned
- *'simply went to work and didn't come home'*
- 35-year-old
- Counterbalance truck
- Clipped Kerbstone
- Not wearing seatbelt
- £500k

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## SENTENCING UPDATE

- 8<sup>th</sup> November 2023
- 3<sup>rd</sup> March 2019
- 35 years old
- Concrete pump operator
- Cleaning pump's hose
- Blocked, then sudden release of pressure
- Struck worker in the head
- Not qualified to operate the machine
- Brain trauma, difficulties speech, memory and movement
- Hospitalised 7mths
- £175k, £75k costs

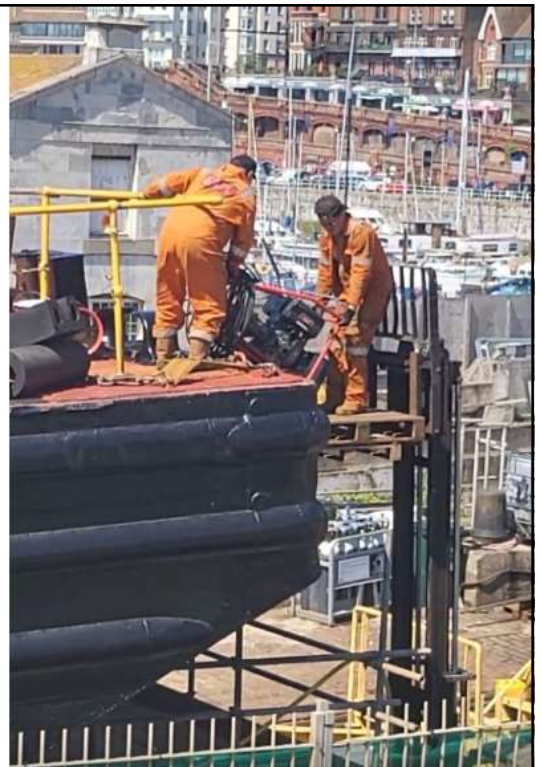


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## SENTENCING UPDATE

- 20<sup>th</sup> December 2023
- 8<sup>th</sup> July 2022
- Member of the public recorded clip
- Forklift and pallet used as mobile platform
- Heavy motorised pressure-washer
- Failure to plan WAH
- No RAMS
- £100k



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## SENTENCING: CIDER MANUFACTURER



- 30 November 2023
- 28 September 2020
- 65 year old
- Driving for Henry Westons Cider
- End of security barrier speared windshield
- Installed one month earlier
- No suitable RA
- No suitable SSOW to secure barrier
- Fined 1.4m, £28k costs

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## SENTENCING: Local Authority

- 3 August 2018
- Caretaker cleaning bike shed
- Fell from ladder 2.5m
- Fatal head injury
- Not planned or supervised
- No SSOW
- Fined £66,666



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## SENTENCING – RISK OF HARM



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Excavating suspected pipeline leak in area where previous repair.  
The pipeline contained petroleum under high pressure.

Potential to form a flammable cloud covering those nearby in a heavy spray of petrol and to be engulfed in petrol vapour

HSE found defendant had failed to properly identify & control the risks associated with carrying out a pipeline repair

Following a trial, Exolum was convicted of offences under sections 2(1) and 3(1) HSWA

Fined £2.3m and ordered to pay £157,431 prosecution costs

*"This incident had the potential to cause serious injury or death to multiple casualties and could so easily have been avoided by simply carrying out correct control measures and safe working practices."* (HSE Inspector)

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## Mock Investigation

- You receive a phone call from one of your managers, John who is hysterical and crying.
- Although it is difficult to understand what he is saying, what you can make out is that someone is receiving CPR and it is not looking good.
- **What do you do?**
- **What do you need to be thinking about?**
- **What information do you need from John?**

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## Request from Regulator



- You received a call from the HSE
- They ask you to send the internal investigation report.
- Do you send it to them?

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## Legal Privilege



- Ensure obtained legal privilege over internal investigation
- Confidential communication with your legal team to obtain legal advice on liability

### Essentials

- Sole or dominant purpose of preparing or dealing with **litigation**
- Communication with **lawyers**
- Litigation in progress or in **contemplation of litigation**
- **Confidentiality** - Avoid wide distribution of advice/ going public

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## Legal Privilege



- Restrict circulation of documents and correspondence to a core investigation team
- Advise employees/others to exercise care in creating any "document" relating to incident
- Documents should be marked "*confidential and legally privileged*"
- Keep a record of circulation lists and prohibit further copying

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## ASBESTOS

**ASBESTOS**  
**YOUR DUTY**

- 15<sup>th</sup> January 2024
- Asbestos: Your Duty campaign
- Visit a range of buildings
- Arrangements for managing Asbestos
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- Policies and procedures
- Register
- Management plan
- Training
- Awareness
- Measures to prevent disturbance

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## CONTACT INFORMATION



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