

**CCCS**  
DAC BEACHCROFT

  
NEWCASTLE CONSTRUCTION SAFETY GROUP

## HEALTH & SAFETY LEGAL UPDATE

Emma Bowens - Partner  
27<sup>TH</sup> JANUARY 2023



**WINNER!**  
Team of the Year  
Crime/Regulatory  
DAC Beachcroft

**Law Awards**  
CRISLEY

1

---

---

---

---


---

---

---

---

### TODAY'S SESSION



- o Sentencing Update – Key cases
- o Approach to Prosecutions – recent trends
- o General Legal H&S Update – What to expect in 2023

2

---

---

---

---

---

---

---

---


### SENTENCING UPDATE – KEY CASES

Kier (12 January 2023)

*Smart Motorway (Cheshire)*

Two incidents on smart motorway scheme

- 28 March 2018
- Overhead cable brought down which hit a lorry
- 21 January 2019
- Crane struck an overhead powerline landed on motorway and hit by a lorry.



3

---

---

---

---

---

---

---

---

SENTENCING UPDATE – KEY CASES

Kier (12 January 2023)



- Fined £4,415,000
- £80,759 costs
- No injury to workers or the public
- Risk of Harm
- Large number of people exposed to risk
- Guilty plea – early GP discount

11/18/2022

4

---

---

---

---

---

---

---

---

SENTENCING UPDATE – KEY CASES

KEEBAR CONSTRUCTION (JUNE 2022)

*(Joblings Sunderland)*



- October 2017
- Refurbishment works at a former department store
- Asbestos fibres across 5 floors
- 1315 square metres of contaminated waste
- s.37 HSWA
- 2 Directors sentenced
- 14 months prison sentence (suspended for 2 years)
- 120 hours unpaid community work
- Suspended from being directors for 10 years
- Costs £44,774.21 each

11/18/2022

11/18/2022

5

---

---

---

---

---

---

---

---

SENTENCING UPDATE – KEY CASES

P & R PLANT HIRE (LINCOLNSHIRE) LIMITED AND D. BROWN (BUILDING CONTRACTORS) LIMITED 16 May 2022



- July 2018
- No Induction
- No suitable planning
- No risk assessment or method statement
- No equipment provided
- s.2 and s.3 HSWA - Trial
- D. Brown (Building Contractors) Ltd - £300k
- P & R Plant Hire (Lincolnshire) Limited - £24k
- Manager – s.7 HSWA – 18 weeks imprisonment (suspended for 2 years), 200 hours community service and costs of £12k – health difficulties
- Site Manager – s.7 HSWA – 8 weeks imprisonment (suspended for 2 years) and costs of £1,200

11/18/2022

11/18/2022

6

---

---

---

---

---

---

---

---

SENTENCING UPDATE – KEY CASES

S&S QUALITY BUILDING CONTRACTORS LIMITED  
(NOVEMBER 2022)

- January 2018
- Suspicion that people were sleeping on site
- Serious & repeated failings in fire safety management
- Risk to workers and the public visiting flats out of business hours
- Director failed to implement improvements identified by HSE
  
- s.3 and s.37 HSWA
- Co fined £600k following guilty plea
- Director fined £4,200
- Community order – 100 hours unpaid work

HSE REPORT

7

---

---

---

---

---

---

---

---

SENTENCING UPDATE – KEY CASES

Alutrade Limited (April 2022)



- June 2017
- Scrap metal recycling yard
  
- Corporate manslaughter
- Co fined £2m - £105k costs
- MD fined £15k - £7k costs
- Director fined £5k - £4k costs
- H&S Manager fined £2,635 and the company was ordered to pay his costs.
- Costs of £44,774 each

HSE REPORT

8

---

---

---

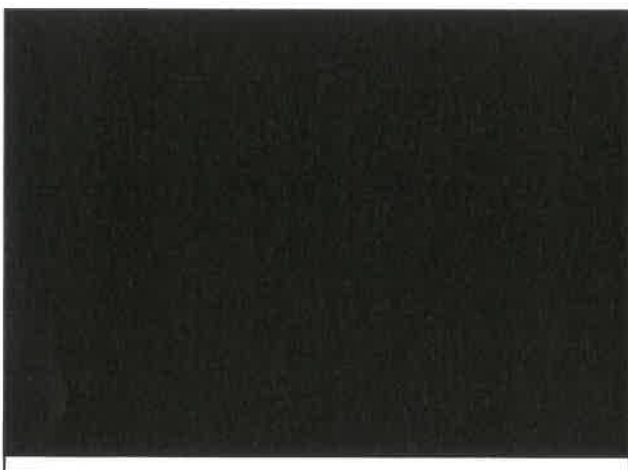
---

---

---

---

---



9

---

---

---

---

---

---

---

---

SENTENCING UPDATE – KEY CASES



SAINSBURYS (APRIL 2022)

- June 2020
- Pandemic response
- A queuing system originally used red and white tape secured to fixed objects
- Replaced with stronger black and white baling twine between two concrete pillars
- Lady on a mobility scooter couldn't see twine - drove her scooter between the two concrete pillars.
- Split her mouth and fractured her jaw, teeth and palate.
- No risk assessment had been carried out on the use of the twine.
- No previous convictions, immediately removed the twine and co-operating with the investigation,
- Fined £1m and ordered to pay £18,000 costs.

HSE STATISTICS

10

---

---

---

---

---

---

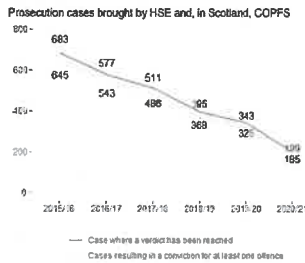
---

---

---

---

HSE APPROACH TO PROSECUTIONS  
ANNUAL STATISTICS 2020/21



HSE STATISTICS

11

---

---

---

---

---

---

---

---

---

---

HSE APPROACH TO PROSECUTIONS  
ANNUAL STATISTICS 2020/21

- Almost 6 years since the introduction of the Definitive Guideline for offences under health and safety, environmental and food safety and hygiene laws
- Latest HSE statistics show:-

Enforcement action	
Completed 290 criminal prosecutions with a 98% conviction rate	Issued over 6,000 notices including approximately 5,190 notices for improvement and 1,740 prohibition notices
Completed 62% of fatal investigations within 12 months of receiving primary responsibility for target of 60%	

- Almost 50% increase since last year in cases prosecuted (199 (2020/21)), but not up to pre-pandemic levels
- 5 prosecutions resulting in fines over £1 million
- 52 prosecutions resulting in custodial or community service/rehabilitation orders

HSE STATISTICS

12

---

---

---

---

---

---

---

---

---

---

### HSE APPROACH TO PROSECUTIONS

- o The number of prosecutions are dropping but the trend continues towards higher fines.
- o Magistrates (the lower court) are flexing their judicial muscles – no limit on fines!
- o Personal liability (and potential jail time) for directors is a real risk.
- o Remember offences are based on risk not outcome – high fines even when there is no harm

HSE 18/02/2017

13

---

---

---

---

---

---

---

---

### HSE APPROACH TO PROSECUTIONS - PRACTICAL STEPS

#### Requests from the Regulator



The HSE sent the following request:

- o Please provide a copy of all relevant risk assessments, method statements, statutory certificates, daily checks, maintenance records, training records for Peter.
- o Please also provide an explanation of what has happened and what steps have been taken to remedy the problem and prevent a reoccurrence.
- o **How do you deal with this request?**
- o **Do you have to send the documents and are they privileged?**
- o **How will you explain what has happened and post incident action?**

HSE 18/02/2017

14

---

---

---

---

---

---

---

---

### HSE APPROACH TO PROSECUTIONS

#### WHAT CAN YOU DO



HSE 18/02/2017

15

---

---

---

---

---

---

---

---

Skills Gap

43% increase in cable strikes  
since COVID !!

### What to expect in 2023

- ❖ HSE 10-year Strategy and Plan
- ❖ 2022/23 will be transitional / foundational year
- ❖ Deliver min of 7000 proactive inspections to construction projects
- ❖ Investigate high priority concerns (1450-2075 PA)
- ❖ Complete 80% of fatal investigations – 12 months of primacy
- ❖ Complete 90% of non-fatal investigations within 12 months of incident
- ❖ Complete 80% of concern investigations within 4 months
- ❖ Spot checking programmes
- ❖ Building Safety Regulator
- ❖ New operational guidance on welfare standards
- ❖ Complete and publish report re Control of Asbestos at Work Regs 2012
- ❖ Select Committee on HSE regulation of asbestos
- ❖ Skills gap



16

### GENERAL LEGAL H&S UPDATE

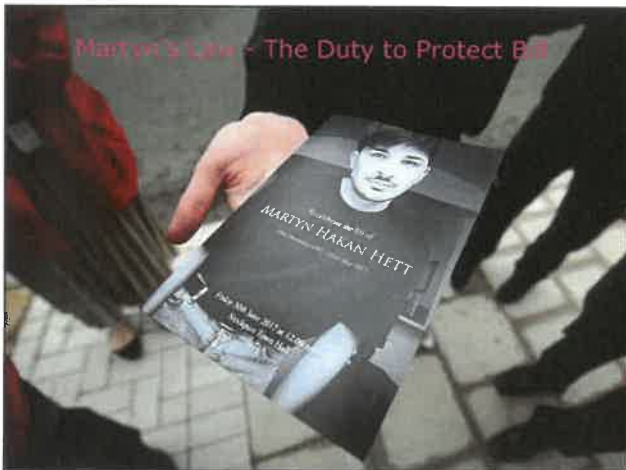
#### New Regimes for Building Safety and Fire

- The **Building Safety Act** became law in April 2022 - a hugely significant piece of legislation and overhauls the way residential buildings are constructed and maintained in the UK, and the introduction of a new Building Safety Regulator
- The **Fire Safety (England) Regulations** comes into force in January 2023 – imposes significant new legal requirements on owners or those responsible (e.g. managing agents) for residential buildings



17

### Martyn's Law - The Duty to Protect Bill



18

### Martyn's Law – the Duty to Protect Bill

Applies to:

- Publicly accessible venues
- Capacity of 100+ persons  
Large organisations employing 250+ staff
- Operate at publicly accessible locations

Aims

- Enhanced culture of security
- Consistency of application
- Greater certainty of effect

© RIDDOR

19

---

---

---

---

---

---

---

---

### Martyn's Law – the Duty to Protect Bill

Owners and managers to:

- Review their current measures
- Consider enhanced security plans, personnel, procedures
- React and respond to different threats,
- Training and refresher courses for staff

© RIDDOR

20

---

---

---

---

---

---

---

---

### Mock Investigation Event

Thursday 23<sup>rd</sup> February 2023 - online  
9.30 – 12.00



#### Example Client Success

- 5 years
- 1000 people attended course
- **40% reduction in general accidents**
- **80% reduction in RIDDOR reportable incidents**
- **60% reduction in the cost of EL/PL claims**

© RIDDOR

21

---

---

---

---

---

---

---

---



**Health & Safety  
Commercial Solutions**

**Emma Bowens** – Partner  
T: +44 (0) 191 404 4192  
M: +44 (0) 771 869 9387  
E: [ebowens@dacbeachcroft.com](mailto:ebowens@dacbeachcroft.com)



**WINNER!**  
Team of the Year  
Crime/Regulatory  
DAC Beachcroft

---

---

---

---

---

---

---

---