
Health & Safety Newsletter

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Foreword

CMS Cameron McKenna Nabarro Olswang LLP is recognised as a leading firm in the area of Health and Safety. We provide specialist advice on regulatory compliance, prosecutions, investigations and corporate governance.

Emergency Response Service

The steps a company takes immediately following an incident can be pivotal and can significantly increase or decrease the likelihood of a subsequent conviction. Health and Safety Inspectors have substantial powers to enter and examine premises, remove articles and demand documents necessary for them to carry out their investigations. Immediate, on the spot advice and support can therefore prove to be invaluable in the event of an emergency.

Our dedicated team is on call 24 hours a day to provide assistance and respond to incidents on site. Our lawyers are qualified to practice in England, Wales and Scotland; but we also regularly advise clients in relation to health and safety matters in other jurisdictions and can draw on the expertise of our CMS network of European offices.

We are available for health and safety emergencies and advice; along with any other related urgent matters. In the event of an emergency the team will ensure a swift and efficient response to client queries, irrespective of the time of day or day of the week.

If your company has a health and safety emergency, you can contact us on:

0333 20 21 010 – Emergency Response Hotline (available 24 hours a day, 7 days a week)

020 7367 3000 – London

01224 622 002 – Aberdeen

0114 279 4000 – Sheffield

0781 136 2201 – Out of hours (ask for Jan Burgess)

0797 049 7274 – Out of hours (ask for Lukas Rootman)

Kelvin TOP-SET

A number of our team are qualified as approved Senior Investigators under the Kelvin TOP-SET incident investigation system. They are also able to assist in conducting an incident investigation itself, in order to ascertain the 'root cause' of an incident with a view to future preventative measures and improvements to health, safety and welfare.

Offshore environmental issues

Our team has extensive experience in advising in relation to offshore oil and gas and energy issues – ranging from defending prosecutions by BEIS to appealing enforcement notices – along with general advice in drafting of OPEPs and complying with the extensive range of offshore environmental regulation, including those introduced by the European Union Offshore Safety Directive ("OSD") in 2015. Changes introduced by the Offshore Safety Directive are extensive and have significant impact on oil & gas operators, FPSO operators, drilling companies and contractors engaged in offshore activities. We are also able to assist in any transitional measures that may be required.



HSE releases annual workplace fatality figures for 2019/20

The HSE has in July released its [annual figures](#) reporting the number of work related fatalities in 2019/20 in addition to the number of individuals who have known to have died from mesothelioma, the asbestos-linked cancer in 2018.

To summarise, the HSE figures show that 111 workers were fatally injured at work between April 2019 and March 2020, which translates into a rate of 0.34 deaths per 100,000 workers. This figure demonstrates the lowest level of yearly fatalities on record. It is however likely that this significant fall is related to the economic shut-down in March in response to the COVID-19 outbreak and the closure of non-essential workplaces, building and industrial sites.

These figures do not include deaths from occupational disease and furthermore, COVID-19 infection will not feature in fatal injury statistics in subsequent years. HSE advise that data concerning COVID-19 associated deaths will be available at a "later date".

Industrial sector breakdown

- 40 fatal injuries to construction workers were reported which accounts for the largest share;
- 20 fatal injuries to agricultural, forestry and fishing workers were reported which represents the lowest level on record;
- 5 fatal injuries to waste and recycling workers were recorded in this period. Despite this sector being relatively small in terms of employment, the average annual fatality injury rate in this sector over the past 5 years is around 18 times the all industry rate.

Most common causes of fatal injury

- Falling from height (29 instances)
- Strike by a moving vehicle (20 instances); and
- Strike by a moving object (18 instances)

The three above categories account for 60% of fatal injuries in 2019/20. Furthermore, the statistics highlight the risks to worker over 60 years old – 27% of fatal injuries were in this category despite over 60s only accounting for 10% of the workforce which is a disproportionate percentage.

The risks to members of the public are also highlighted by the new statistics as 51 members of the public were killed as a result of a work-related accident in HSE enforced workplaces with a further 41 fatalities of members of the public occurring on railways, which are enforced by the Office for Road and Rail.

Mesothelioma

In 2018, mesothelioma resulted in 2446 fatalities in Great Britain, which is slightly lower than the average of 2550 over the preceding five year period. Mesothelioma is unique in that it is one of the few work-related diseases where fatalities can be accounted for directly. The figures are expected to fall for years beyond 2020 as the current figures are largely due to occupational asbestos exposures which pre-date 1980.

The Chief Executive of the HSE commented "No one should be hurt or killed by the work they do. In these extraordinary times, we have seen many workers risking their lives to help others during the coronavirus outbreak. Although these statistics are not a reflection on Covid-19 related loss of life, it is a pertinent time to reflect.

"Every workplace fatality is a tragedy and while we are encouraged by this improvement, today's statistics is a reminder that we cannot become complacent as we look to continue to work together to make Great Britain an even safer place to live and work."

These figures emphasise the importance of implementing a safe system of work in any workplace to reduce the risk of injury or death to employees and members of the public to as low as is practicable.

HSE issues safety alert about KN95 designated face masks

The HSE have issued a [safety alert](#) stating that a number of face masks with KN95 standard designation do not provide the requisite level of protection and are of sub-standard quality. The masks will likely also be accompanied by fraudulent paperwork underpinning their designation. KN95 is the Chinese standard equivalent to European standard BSEN149:2001+A1:2009 for FFP2 facemasks. There is no independent certifying body or assurances provided to ensure that products manufactured to KN95 standards and PPE can only be sold or supplied as "PPE" if it is CE marked or, in the case of PPE which is organised by the UK Government for use by the NHS and healthcare workers which has undertaken assessments by the HSE and the Market Surveillance Authority.

KN95 certified PPE must not be used as PPE in the workplace unless their supply has been agreed by the HSE as the Market Surveillance Authority. Masks which are not CE marked and their compliance cannot be proven must be immediately removed from supply. For PPE which is CE marked, suppliers must be able to show that the marking and certification is genuine and is backed up by documentation from a Notified Body showing compliance with the health and safety requirements as required by the Personal Protective Equipment Regulations (EU) 2016/425.

Safe operation of HVAC systems in the COVID-19 pandemic

In light of the COVID-19 pandemic, and with workplaces and offices slowly returning to site following the easing of lockdown restrictions, the Health and Safety Executive has issued [guidance](#) around the safe operation and maintenance of air conditioning systems in the workplace.

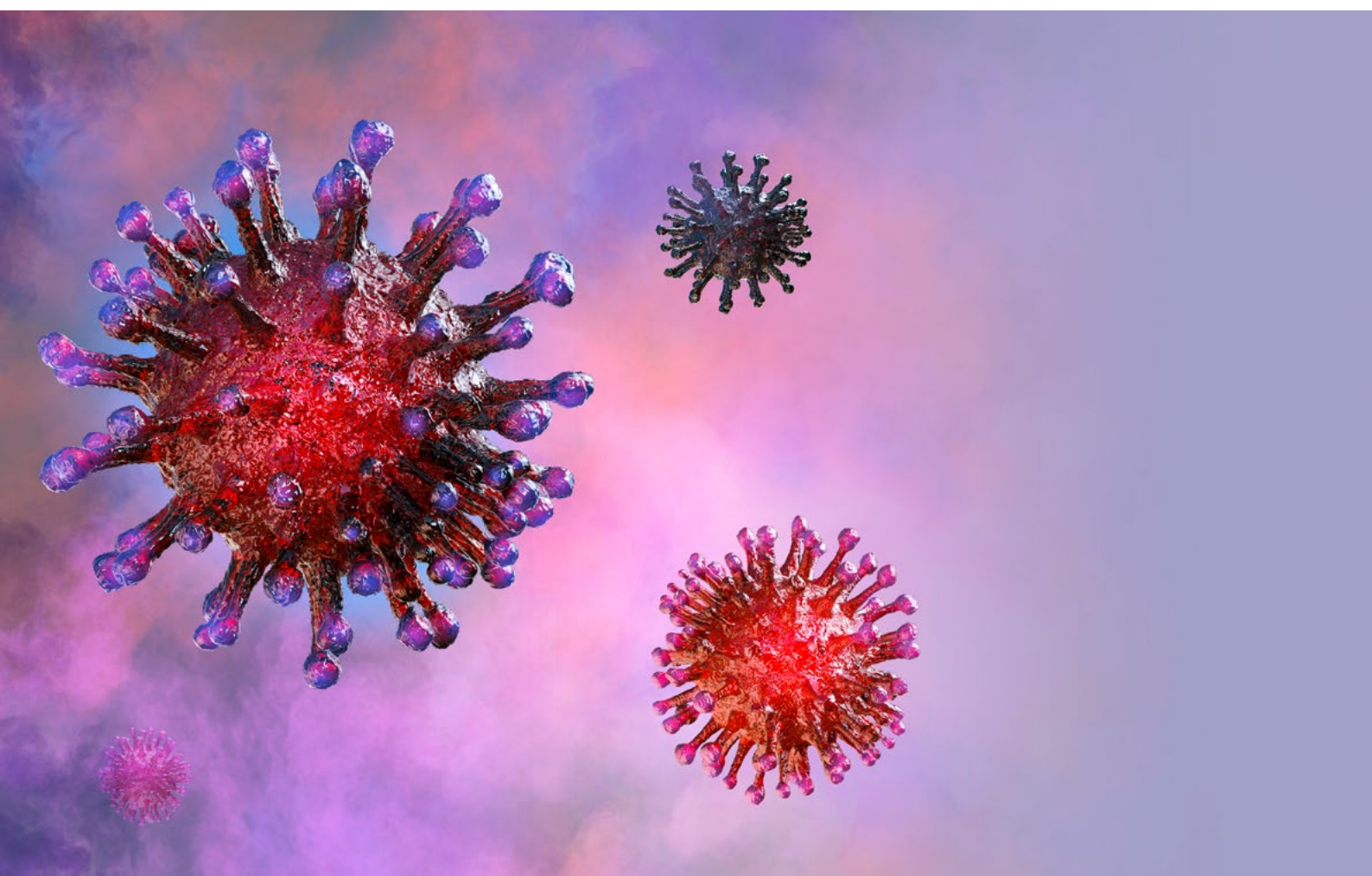
The risk of COVID-19 spreading through air conditioning systems has been deemed to be very low and the continued use of most types of air conditioning systems is not discouraged however it is recommended that the use of centralised ventilations systems which remove and re-circulate air to different rooms is adapted to avoid recirculation of air between spaces, rooms or zones occupied by different people. Instead, it is recommended that the recirculation function is disabled, and a source of fresh air is utilised instead. Air conditioning systems which mix some extracted air with a fresh air supply and redirect it to the room do not need adjusted as this will still increase the fresh air ventilation rate and increase air disturbance. "Dilution" of internal air with fresh air supply should reduce any risk of potential airborne viral transmission by reducing exposure time to any airborne viral particles, and also reduce risk of these particles settling on surfaces. Evidence shows that the virus can survive on surfaces for up to 72 hours and as such, any action that can be taken to reduce this risk is recommended.

Additionally, [CIBSE have published guidance](#) which states that buildings with mechanical ventilation systems should increase the operational times of the systems. Even if buildings are unoccupied, it is not recommended that ventilation systems are shut off, rather they should continue to operate continuously at reduced speeds.

Portable units or units in individual rooms do not need adjusted as these operate on total recirculation.

Employers have a legal duty to ensure an adequate supply of fresh air in the workplace and this obligation remains unchanged in light of COVID-19. In fact, the importance of this obligation has been enhanced by the spread of the pandemic as good ventilation can help reduce the risk of the COVID-19 infection by enhancing air disturbance. To facilitate this, windows and doors should remain open where safe to do so to ensure a steady supply of fresh air (fire doors and safety windows should remain closed). Employers should consider if there are any ways to prevent accumulations of “stagnant” air, for example by using ceiling fans as the risk of transmission through such fans is considered very low. Partial recirculation of air within designated areas through, for example, a local fan coil unit may also be recommended in order to help maximise the air exchange rate with outside air and to minimize the risk of any pockets of stagnant air.

It is recommended that, if employers have any concerns surrounding the safe operation of heating, ventilation and air conditioning systems (HVAC) that they contact their HVAC engineer.



Government publishes landmark Building Safety Bill to overhaul fire safety regulation

On 20 July 2020, the Government published a draft [Building Safety Bill](#) ("the draft Bill") as part of its commitment to overhaul fire safety regulation in the wake of the Grenfell Tower fire in June 2017, which claimed 72 lives. The draft Bill is the latest in a series of actions the Government has taken to improve fire safety in high-rise residential buildings, including the introduction of the [Fire Safety Bill](#) earlier this year.

The draft Bill also brings forward the recommendations of Dame Judith Hackitt in her '[Review of Building Regulations and Fire Safety](#)', which set out over 50 recommendations as to how to deliver a more robust regulatory system, and puts into action the Government's response to the '[Building a Safer Future](#)' consultation, published in April 2020.

The publication of the draft Bill overhauls the existing fire safety system by imposing new duties designed to increase accountability, transparency and oversight of fire safety throughout the life of a building, with stronger sanctions for breaches of those duties. Key changes include the prioritisation of residents' safety through the entire life cycle of a building, the creation of an Accountable Person who will be responsible for keeping residents safe in high-rise buildings, the introduction of a 'golden thread' of safety information about a building, and the establishment of a new Building Safety Regulator to ensure compliance with these new responsibilities.

Key changes

Scope of the draft Bill

Although elements of the draft Bill will apply to all buildings, many of the changes are focussed on higher-risk buildings. The definition of a 'higher-risk building' will be subject to further legislation, but the current proposal is that the initial definition will cover all multi-occupied residential buildings with a height of 18 metres or more, or more than six storeys (whichever is reached first). This definition will likely be subject to further review and change once the new regime is in force.

The draft Bill mainly applies to England, but some of the changes will also apply to Wales, Scotland, and Northern Ireland.

The life cycle of a building

When buildings are designed, constructed or refurbished, the persons or entities involved in the commissioning, design, construction or refurbishment (including those appointed under the CDM Regulations 2015) will have formal responsibilities for compliance with building regulations. Many aspects of these responsibilities will be taken further by secondary legislation.

Responsibility and duties for high-rise buildings

The draft Bill creates the role of the Accountable Person for a higher-risk building. The Accountable Person will be the dutyholder in occupation of the higher-risk building with control of the common parts or who has relevant repairing obligations in relation to the common parts, such as the owner or leaseholder of the whole building, or the management company. There may be more than one Accountable Person for a building. The Accountable Person's duties will include:

- An ongoing duty to assess the building safety risks and to take all reasonable steps to manage those risks to prevent a major incident occurring or to reduce the severity of the incident. These steps must be taken promptly. This will need to be demonstrated through a Safety Case Report, which must be kept up-to-date and will be submitted to the Building Safety Regulator (newly established under the draft Bill, see below for more detail on this);
- Registering the building (in the case of un-occupied buildings, before occupation) and applying for a Building Assurance Certificate, and displaying the certificate in a prominent position within the building. This also applies to existing buildings;
- Appointing a Building Safety Manager, who must have the organisational capability and relevant skills, knowledge, experience and behaviours for the role; and

- Various obligations that help to promote a strong partnership between residents and the Building Safety Manager, including engagement and participation (including establishing and promoting a resident’s engagement strategy), complaints handling, and information provision.

If the Accountable Person fails to comply with their duties, they will be committing an offence.

The Building Safety Manager’s role will be to support the Accountable Person in the day-to-day management of fire and structural safety in the building, and they too have specific responsibilities.

The draft Bill also contains legal responsibilities for residents, including to keep in repair and proper working order any relevant resident’s items and to comply with requests made by the Accountable Person in connection with their duty to assess safety risks and take steps to prevent serious harm.

The ‘golden thread’

The draft Bill includes provisions to help create a ‘golden thread’ of information. This will allow the right people to have the right information at the right time to ensure buildings are safe and building safety risks are managed throughout a building’s lifecycle. Information must be collected during the design and construction process and, once construction is complete, the information must be handed over to the Accountable Person. This information must be stored digitally and be kept up-to-date. The details as to what information must be kept will be made available in secondary legislation.



The Building Safety Regulator, its duties, enforcement, and offences

The draft Bill establishes the role of the Building Safety Regulator ("the Building Regulator"), which is currently being established as part of the Health and Safety Executive. The Building Regulator will have three main functions:

- Implementing and enforcing the new regulatory regime for higher-risk buildings, including responsibility for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings;
- Overseeing the safety and performance of all buildings, including overseeing the performance of other
- building control bodies and advising on existing and emerging building standards; and Assisting and encouraging competence among the built environment industry and registered building inspectors.

The Building Regulator will ensure compliance with the measures outlined in the draft Bill through a combination of toughened existing powers and new powers, such as:

- The extension of time limits for prosecution to ten years for certain notices issued under the Building Act 1984 in relation to non-compliance with building regulations.
- Powers to prosecute all offences in the draft Bill and the Building Act 1984, including the prosecution of directors, managers, etc. of companies that have committed an offence with the consent or connivance of those persons.
- Powers to issue compliance and stop notices. Failure to comply will be a criminal offence, with a maximum penalty of two years imprisonment and an unlimited fine.
- Powers to appoint a Special Measures Manager to replace the Accountable Person or Building Safety Manager where there are serious failures.

Other provisions

The draft Bill also contains other provisions relating to:

- implying building safety terms into long leases of dwellings in higher-risk buildings, including in relation to building safety charges;
- construction products;
- registration and regulation of architects; and
- a new homes ombudsman scheme with powers to adjudicate housing complaints.

Consultation and status of the Bill

The draft Bill has been published to enable consultation and scrutiny before it is introduced to Parliament. It will be examined by a Parliamentary committee and the Government also intends to work with stakeholders on areas that need refinement or further consultation before it is finalised.

Coinciding with the publication of the draft Bill, [a consultation on fire safety](#) was also launched. The Government is seeking views on:

- strengthening the Regulatory Reform (Fire Safety) Order 2005;
- implementing the Grenfell Tower Inquiry Phase 1 Report recommendations that require a change in the law to place new requirements on building owners or managers of multi-occupied residential buildings; and
- strengthening the regulatory framework for how building control bodies consult with Fire and Rescue Authorities and the handover of fire safety information.

The consultation closes on **12 October 2020**.



Cases

Consultant fined for providing inept health and safety advice

A self-employed consultant has been fined for breaching health and safety legislation after providing advice on technical and complex matters whilst being unqualified to advise his clients. The self-employed health and safety consultant provided inappropriate and flawed advice to small and medium sized companies in respect of controlling the risks of hand arm vibration, workplace noise levels and the occupational control of hazardous substances. The consultant pleaded guilty to breaching Section 3(2) of the Health and Safety at Work Act 1974 and was fined £1,400.

Examples of his incompetent advice included not identifying that paints containing isocyanates can cause asthma and breathing problems and incorrectly advising that the risk to hand arm vibration was low and advised the use of anti vibration gloves as a suitable control measure. As a result of the consultant's incompetent advice, no remedial action was implemented to prevent the exposure of employees to unacceptable levels of noise, arm vibration and chemical substances.

After the hearing a HSE specialist inspector said: "Employers are more likely to use external consultants to provide assistance in complex situations where a higher level of competence is required.

"How consultants achieve competence is up to them, however they will have to be able to satisfy employers that they have a sufficient level of competence for the job in hand. Being a member of a relevant professional body, which sets competence standards for its members and operates continuing professional development schemes is one way of helping; as is presenting evidence of relevant experience such as references from previous clients; or obtaining qualifications."

This case clearly highlights that where consultants are found to be in breach of legislation, the HSE will hold the consultants to account for their failings.

Construction firms fined after workers seriously injured

Construction firms have been fined after a mobile elevated working platform (MEWP) was struck whilst two employees were working inside it during the construction of a bypass. The workers on the MEWP were working on the structure when a steel cage collapsed into the MEWP, causing it to tip over. One of the workers suffered life changing head injuries and the second worker suffered a leg fracture. There was a near miss with a third worker on the ground. An investigation by the Health and Safety Executive (HSE) found there was no temporary support for the reinforcement cage during construction of the central pier. The two companies pled guilty to breaches of sections 2(1) and 3(1) of the Health and Safety at Work Act 1974 and fined over £1.2 million between them and ordered to pay over £40,000 in costs.

The HSE commented that *"This incident could have been easily prevented and the risk of collapse should have been identified by both companies. If a suitable safe system of work had been in place, this incident would not have occurred, and the two workers would not have suffered these injuries."*

Company fined after work at height failings

Two employees suffered serious injuries after falling from height whilst working on a school hall in Ellsemere Port. The workers were removing large window frames when an employee fell from a tower scaffold structure through a window frame. As he fell, he knocked another worker off a stepladder. Both employees were airlifted to hospital, with injuries including loss of consciousness, broken ribs and a punctured lung.

The investigation found that the tower scaffold had not been assembled correctly and the stepladder used was not suitable for the task. The employees had also not received proper training, qualifications, supervision and planning. As a result, the company was fined £17,000 and ordered to pay costs in excess of £32,000.

The HSE commented that *"Falls from height remain one of the most common causes of work-related fatalities in this country and the risks associated with working at height are well known. This incident could have been avoided with proper planning, supervision, and training, and the use of correct equipment. Companies should be aware that HSE will not hesitate to take appropriate enforcement action against those that fall below the required standard."*



Manufacturing company fined over £360,000 after fatal injury at work

A manufacturing company has been fined after a worker suffered fatal crush injuries when working with machinery on site. The deceased was working on a fibre manufacturing machine when he became entangled in a machine when clearing the rollers in the machinery. The HSE investigation found that the machine was not properly guarded and it had become common practice for employees to use a "workaround" to remove tangled material in the machine.

The company pled guilty to breaching section 2(1) of the Health and Safety at Work Act and after the hearing the HSE commented that *"This was a tragic and wholly avoidable incident, caused by the failure of the company to provide adequate guarding against dangerous parts of the machine. Companies should be aware that HSE will not hesitate to take appropriate enforcement action against those that fall below the required standards"*

Company fined after high-pressure gas leak

During the course of excavation works, a company was sentenced for causing a high-pressure gas leak and damaging a 10 inch gas pipeline whilst engaged in the work to widen the M8 motorway. During the work, the company hit the pipeline with an excavator during pipeline diversion works, resulting in 271 tonnes of gas being released in the vicinity of employees near the M73 junction.

The company pled guilty to breaching section 33(1)(c) of the Health and Safety at Work Act 1974 and fined £150,000. The HSE commented that *"this incident was totally avoidable and put workers at risk. The contractor failed to follow procedures and chose to conduct excavations in the vicinity of a high pressure pipeline by mechanical excavator instead of excavating by hand."*

Plumbing company fined after explosion at a domestic property

A plumbing and heating company has been fined £5,000 after an employee suffered serious burns at a domestic property. The employee had been replacing a gas boiler in the property when an explosion occurred when he was soldering new water pipes. A gas supply pipe has been cut prior to installation of the new boiler, but the open end had not been properly sealed and closed off. The HSE found that a flammable atmosphere had developed which was ignited by a blow torch and that the gas supply had not been properly isolated.

The company pled guilty to breaching sections 2(1) and 3(1) of the Health and Safety at Work Act with the HSE commenting that *"the injuries sustained to this employee could so easily have been avoided, simply by carrying out the correct control measures and safe working practices. Employers, and others, should be aware that HSE will not hesitate to take appropriate enforcement action against those that fall below the required standards."*

Motor sales company and occupational health provider fined for safety breaches

A motor sales company has been fined £140,000 after breaching section 2(1) of the Health and Safety at Work Act and Regulation 8 of the [Reporting of Injuries, Diseases and Dangerous Occurrences Regulations \(RIDDOR\)](#) by failing to adequately assess and control the foreseeable risk of [Hand Arm Vibration Syndrome \(HAVS\)](#). In 2013, an employee was working in as a repair technology repairer and regularly used hand held power tools to undertake repairs in the scope of his employment. He subsequently developed HAVS. Following the diagnosis, the motor company took no action safeguard the employee from further harm and his condition was not reported to the authorities in line with RIDDOR legal requirements.

In addition, the occupational health and safety consultants engaged by the company to provide HAVS surveillance pleaded guilty to breaching section 3(1) of the Health and Safety at Work Act 1974 after failing to provide suitable and accurate advice to the motor sales company as the employer or to inform the employee of the results of his health surveillance, even when specifically requested to do so by him. The occupational health firm were fined £4,000 and ordered to pay over £8,000 in costs.

The HSE inspector commented that *"The motor vehicle repair trade must understand the importance of suitable risk assessments and having a robust occupational health and safety management system. Employers should ensure that the results of health surveillance are acted upon and employees are protected from the risks from HAV when working with handheld power tools. Occupational health providers are in a unique position in safeguarding the health of employees and must provide accurate reports to employers following HAV health surveillance. Employers must act on these reports."*

This case shows the importance of the interaction between occupational health providers and their employers in providing a safe system of work.





Oil and gas news

OGUK COVID-19 GUIDANCE: SAFE WORKING FOR UKCS OFFSHORE INSTALLATIONS

The oil and gas industry has been working to manage the COVID-19 threat whilst ensuring the continuity and security of UKCS operations and in response to this, Oil and Gas UK (“OGUK”) has published an [extensive guidance document](#) which incorporates the advice given from regulators, trade unions, public health agencies and governmental guidance.

It is the aim of any industry guidance and approach that in managing health and safety risks, including the risks of COVID-19, that these risks are mitigated to a level that is as low as is reasonably practicable. It is notable that a sensible, practicable and tailored approach should be taken to the management of the COVID-19 risk offshore, and any bespoke COVID-19 practices and risk reduction methods should be rolled out in tandem with the existing obligations to manage the wider health, safety and environmental aspects of offshore risk management, for example Safety Case and OPEP.

The risk factors

Oil and Gas industry workers have been allocated key worker status and as such, priority testing is available for workers and members of their households. If they display symptoms consistent with COVID-19, tests are available and also for those who are refused travel offshore as a result of screening tests. In certain circumstances, a negative test result and no symptoms displayed for 48 hours may permit an individual to return to work within the 14 day quarantine period is complete, but only after the relevant consultation with the employer and a medical consultation.

Those who are deemed vulnerable or extremely vulnerable by reason of age, underlying medical or respiratory issues and should be shielding at home should not be working in an environment where social distancing is not possible, i.e. offshore.

Operators and employers should identify vulnerable workers within their workforces and make a risk-based determination on whether they should be mobilised offshore. This assessment should include considering:

- The risk to the individual of developing severe COVID-19 symptoms offshore;
- The impact on the workforce and teams who may need to care for the infected person offshore;
- The impact on the business in respect of safety critical roles and appropriate manning levels.

When travelling to and from the point of mobilisation, the OGUK are mirroring the government advice to avoid public or shared transport. There is an exemption for offshore workers from the quarantine requirement to isolate for 14 days when returning to the UK and details are given on the UK Government website [here](#).

When on board helicopters and air transport, barriers have been installed between passengers and flight crews to provide a physical shield to avoid droplet spread and face coverings in the form of “snoos” are provided for use during the flight. Survival suits, offshore equipment and life jackets are thoroughly sanitised between uses, including ear protection.

Social Distancing Offshore

It is unlikely that any offshore installation will be able to fully socially distance whilst upholding existing offshore health and safety obligations. Changes to work tasks should be made wherever possible to maintain increased hand and respiratory hygiene. Where increased hand hygiene and social distancing measures would not be practicable, other measures such as ensuring that workers are positioned back to back or side to side rather than face to face to reduce viral droplet spread. The time workers spend in close proximity with each other should also be reduced wherever possible and increased cleaning of these areas should be facilitated. Common areas should be adapted, for example by reducing the number of seating areas or spacing them out and access to spaces such as communal gyms, TV rooms and canteens should be scheduled so that contact is minimised. Current industry practice is being shared between installation operators through Step Change in Safety which outlines the types of changes implemented by the industry.

Furthermore, the number of personnel and visitors attending the installation should be reduced as far as is possible and only those who need to attend physically in person should be mobilised offshore. For those who must be mobilised offshore, existing arrangements for offshore visitors such as site inductions, mobilisation processes and record keeping are used to ensure that COVID-19 specific practices and measures offshore are communicated and understood. Government guidance remains that all those who can continue to work from home should do so. Even in the context of offshore operations, some activities or tasks can be conducted wholly or partially remotely, such as training, assessments, audits and inspections. Oil and gas operations were not ordered to close at the start of the pandemic, rather reduced staffing levels were implemented to attempt to reduce the risk of the spread of COVID-19.

However, these minimum staffing levels are not sustainable long term as postponed activities requiring increased staffing levels will become critical. The balance of risks will shift as time progresses, for example the balance between COVID-19 risk and a major accident occurring as a result of deferring maintenance or essential offshore works. Postponed works should be subject to comprehensive and regular risk assessment to regularly assess the balance between COVID-19 risks and the continued postponement of worksopes.

Cabin sharing should be reduced wherever possible to maintain social distancing or, where sole occupancy is not practicable, to minimise cabin sharing to those working on the same shift patterns to minimise contact between the offshore population. This is known as “cohorting” in order to reduce the number of contacts is kept to the bare minimum. Enhanced cleaning of cabins, shared and single occupancy, will also help to minimise the risk of infection spread. From previous offshore experience, OGUK note that when cabins are shared, the frequency of the use of communal and “break out” areas increases. Installation operators should note that the maximum available capacity for common areas may limit the potential for cabin sharing. A list of individuals sharing cabins should be maintained, as in the case of a positive offshore COVID-19 case, in order to effectively “contact trace”, the individual’s close contacts will need to be identified. Workforce engagement is vital if the requirement for sharing is identified, in order to explain the requirement, reasons and mitigations that can be taken.

Enhanced cleaning

Enhanced cleaning routines should be implemented to minimise the risk of COVID-19 spread on board the installation. Thorough, frequent cleaning of surfaces provides group protection for those working offshore and good hand and respiratory hygiene practices should be promoted, for example frequent hand washing and sanitising, with a particular emphasis on this before and after eating or touching the mouth, nose or face. Touchpoints should be cleaned regularly, for example light switches, handrails and tables. Regular cleaning materials are sufficient for day to day cleaning, however in the case of cleaning areas in which a suspected or confirmed COVID-19 case is self-isolating, the [Public Health England Infection, Prevention and Control Guidance](#) should be adhered to.

Enhanced cleaning procedures will likely disrupt the “usual” cleaning procedures offshore as increased cleaning obligations may result in more stewards being required. Any increase in offshore manning should also take into account the increased need for cleaning, and the requirement for additional cleaning personnel and resources should be considered.

PPE and face coverings

Face coverings should also be considered by Operators where social distancing is not possible or is difficult to maintain. Any use of face coverings offshore should consider the appropriate ways of removing and donning the masks and any safety implications that may arise from the wearing of the covering. For example, the ability to communicate effectively or project voice should be considered and also the need for the covering material to be suitable for the work environment, for example by taking into account any flammability concerns. The existing obligations for PPE to protect offshore workers from other respiratory hazards in the workplace are not extinguished by this guidance.

Workforce management

As discussed in relation to cabin sharing, limiting contact between different shift groups can help to reduce the spread of infection. Staggering of meal times and accessing common areas will assist with this, as will “cohorting” of workscopes and shifts. Appropriate personnel levels should be maintained at all times, for example continuing to ensure that not all Control Room Operators are on the one shift. Details of these cohorts should be maintained at all times, in case of the requirement for contact tracing. If significant changes are made to work patterns to facilitate cohorting, for example a permanent shift from day to night working or an increase in length of the offshore rotation, these changes should be incorporated and assessed in the risk assessment.

The application of this guidance, together with industry collaboration and sharing of practices and processes through [Step Change in Safety](#) will enable the industry to manage the threat of COVID-19 on an ongoing basis. The oil and gas industry is recognised as critical to the national infrastructure, and must continue to maintain operations whilst balancing and managing the risk of COVID-19.



What we do

CMS is recognised as a leading firm in the area of Health and Safety. We provide specialist advice on regulatory compliance, prosecutions, investigations and corporate governance.

We have specialist knowledge of the offshore and energy sector in particular, which faces greater challenges and regulation than most. However, our client base and expertise encompasses a broad range of sectors, including:

- Construction
- Health and healthcare
- Energy
- Global health and safety advice
- Hotel and leisure
- Manufacturing
- Renewables
- Transport
- Technology
- Infrastructure
- Waste
- Real Estate

Regrettably, accidents at work can be serious and sometimes result in fatalities. Our clients appreciate the high level of attention and support we are able to offer during what can be a difficult time for any organisation. We are able to provide assistance with every aspect of incident response, including incident investigations, dealing with witnesses, defending prosecutions and advising senior management on relations with the Health and Safety Executive.

Emergency response team

Our specialist team is on call to provide assistance and respond to incidents 24 hours a day, every day of the year. Our team is qualified to practise in England, Wales and Scotland but also regularly advises clients in relation to international working practices and health and safety matters in other jurisdictions.

Our clients come to us for advice on:

- Emergency response
- Health and safety prosecutions
- Crisis management
- Accident inquiries
- Formal interviews and investigations undertaken by inspectors
- Corporate manslaughter investigations
- Inquests and Fatal Accident Inquiries
- Appeals against Improvement and Enforcement Notices
- Compliance with UK and European regulatory requirements
- Drafting corporate health and safety policies and contract documentation
- Safety aspects of projects and property management
- Due diligence in corporate acquisitions/disposals
- Directors' and officers' personal liabilities
- Management training courses
- Personal injury defence
- Risk management and training

Recent experience

- Defending health and safety prosecutions of client companies
- Appealing other types of enforcement action against companies (e.g. Prohibition Notices)
- Conducting numerous Coroners' Inquests and Fatal Accident Inquiries – including some of the most high-profile and complex Inquiries to have taken place in relation to offshore incidents
- Obtaining the first ever award of expenses against the Crown in favour of a client company following a Fatal Accident Inquiry
- Taking appeals to the High Court of Justiciary
- Taking appeals on human rights issues to the Privy Council
- Defending Judicial Reviews
- Advising on forthcoming health and safety legislation
- Assisting clients in consultations with the Health and Safety Executive and other regulatory bodies, including the Department for Energy and Climate Change
- Advising clients in relation to Safety Cases, corporate governance issues and directors' duties and liabilities
- Undertaking transactional due diligence in relation to health and safety matters
- Carrying out health and safety audits
- Advising clients on incident investigation, legal privilege and dealing with Health and Safety Executive inspectors
- Preparing and drafting incident investigation reports
- Advising clients on media, public relations and reputational issues following incidents
- Advising clients in the immediate aftermath of an incident and providing emergency response services
- Successfully defending environmental prosecution

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