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Health and Safety

CMS Cameron McKenna Newsletter

August 2012

Foreword

CMS Cameron McKenna 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.

Incident response

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 CMS' network of European offices.

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 prove to be invaluable.

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

020 7367 3000 - London
01224 622 002 - Aberdeen
07811 362 201 - Out of hours

News

High Court consideration of legal privilege

The High Court judgement in *R (Stewart Ford) v Financial Services Authority [2012] EWHC 997 (Admin)* has emphasised the importance of legal professional privilege and that it does work when properly implemented, but also demonstrated that winning the legal argument does not necessarily provide the desired outcome. The court ruled that privileged material should not have been used by the Financial Services Authority in issuing a warning notice, but nonetheless refused to overturn the warning notice simply by virtue of the inclusion of that material.

Keydata Investment Services Limited was in the business of providing marketing and sales information and products to independent financial advisers. The FSA had reason to believe that certain FSA rules had been contravened by Keydata with regard to the way they were selling and marketing a particular product. As a result, the FSA carried out investigations on Keydata. Irwin Mitchell advised Keydata as a company and also a number of their executives in a personal capacity throughout the investigation process. While the investigation was ongoing, Keydata was put into administration. Using their compulsory powers, the FSA obtained a substantial volume of data from Keydata's administrators, including Irwin Mitchell legally privileged emails and attachments. The FSA obtained express confirmation from the administrators that Keydata waived its legal professional privilege in relation to such documentation. As a result of the investigations the FSA's Regulatory Decisions Committee (RDC) issued a warning notice against the claimant in this case, who was one of the individual executives who had been advised by Irwin Mitchell in a personal capacity.

The claimant's challenge was formed on the basis that the emails in question were subject to joint legal privilege shared between Keydata itself and the executives who had been personally advised by Irwin Mitchell, and so should not have been used by the FSA when drafting the warning notice. In the substantive judgement the court agreed that joint interest privilege did apply as Irwin Mitchell were acting for the executives personally as well as for Keydata, therefore the FSA had acted unlawfully in using material that was subject to legal professional privilege.

Despite the claimant's victory, the result was bittersweet. The claimant, Mr Ford, argued that the warning notice should be quashed as it referred to privileged material; and that any FSA member of staff who had read the emails should have no further involvement in the investigation going forward. Both arguments failed.

In relation to the warning notice, the court considered that the use of emails was similar to the use of inadmissible evidence, and could be dealt with by simply removing the privileged material from the notice. The court did not accept that the warning notice would not have been issued if it did not refer to the privileged material; in fact the judge confirmed that the warning notice still worked as a 'coherent, seamless and powerful document' even without reference to the privileged material. This was partly because the substance of some of the privileged material referred to in the warning notice could also be derived from other documents over which no privilege was enjoyed. Disregarding the privileged material was therefore unlikely to have a significant effect on the FSA's decision to issue the notice. The court held that it would be erroneous to equate what the FSA had done with the public law concept of 'taking into account an irrelevant matter'. The judge did, however, agree with the claimant that the FSA should use its best endeavours to retrieve and destroy all hard and electronic copies of the privileged material and original warning notice from employees.

With regards to the continuing involvement of FSA staff who had read the privileged material, consideration was given to the private law approach – whether a lawyer in possession of privileged material should be restrained from acting. In this case the FSA investigation was at such a late stage that to exclude all of those who had been involved would significantly interrupt the

finalisation of the process. Also, the court's view was that memory of the privileged materials held no significant advantage to the FSA investigators. On that basis it would be 'disproportionate and contrary to public interest' to do as the claimant desired in terms of bringing the investigation to a conclusion. It seems therefore that the court placed significant weight on the underlying public interest at the heart of what the regulatory body was seeking to achieve.

The decision underlines that legal privilege which is properly put in place will allow a party to withhold privileged material from a regulator carrying out an investigation, however unauthorised use of privileged material will not of itself invalidate action taken by a regulator if there are other good grounds for the decision it has reached.

Introduction of new control of Asbestos Regulations 2012

The Control of Asbestos Regulations 2012 ('CAR 2012') came into force on 6 April 2012, revoking The Control of Asbestos Regulations 2006 ('CAR 2006'). These changes affect anyone who owns, occupies, manages, or otherwise has responsibilities for the maintenance and repair of buildings that may contain asbestos.

This amendment is in response to the European Commission's view that the UK failed to fully implement Article 3(3) of the corresponding Directive. Article 3(3) deals with exemptions in relation to low risk work with asbestos. The European Commission considered that CAR 2006 applied these exemptions more widely than the Directive allows. Under CAR 2006, work fell into one of two categories: licensed and non-licensed, with non-licensed work being exempt from certain requirements. CAR 2012 splits the non-licensed work category into two, creating a third category of work known as 'notifiable non-licensed work' (NNLW). Work falling into the NNLW category will no longer benefit from the exemptions.

In practice, the changes are relatively limited. The main consequence is that some types of non-licensed work will now require employers to (i) provide notification of the work; (ii) ensure workers have a medical examination at least once every three years; and (iii) keep a record of the type and duration of work done with asbestos for 40 years along with copies of all medical records. It should be noted that, in relation to medical examinations for non-licensed work, a three year transition period to April 2015 will apply providing employers with time to put suitable arrangements in place. Licensed workers will not require an additional medical to carry out notifiable non-licensed work.

Under CAR 2012 work will now only be non-notifiable if:

- The exposure to asbestos of employees is sporadic and of low intensity;
- It is clear from the risk assessment that the exposure to asbestos of any employee will not exceed the control limit; and
- The work involves:
  - short, non-continuous maintenance activities in which only non-friable materials are handled; or
  - removal without deterioration of non-degraded materials in which the asbestos fibres are firmly linked in a matrix; or
  - encapsulation or sealing of asbestos-containing materials which are in good condition; or
  - air monitoring and control, and the collection and analysis of samples to ascertain whether a specific material contains asbestos.

It should be noted that all other requirements remain unchanged. This includes identification, risk assessments, plans of work, the asbestos control limit, training requirements and medical surveillance arrangements for licensed work.

Construction (Design and Management) Regulations 2007 to be updated

The Construction (Design and Management) Regulations 2007 are to undergo re-drafting by the HSE and reissue during the course of 2014. The Regulations were initially introduced in 1994 with the aim of minimising serious injury, fatalities and ill health by improving the overall management and coordination of health, safety and welfare throughout all stages of a construction project. It is felt that the Regulations have largely achieved their objectives but concerns remain, particularly with the Approved Code of Practice (ACoP).

The review started during the course of 2009 with details expected to be presented to the HSE board this December. As part of the evaluation process external research was conducted by Frontline Consultants. On the positive side it was felt that the 2007 Regulations improved clarification of dutyholders' roles and responsibilities, the definitions of competence were strong and the ACoP was well laid out. Areas arguably requiring attention include the high level of generic paperwork and the difficulties dutyholders face when interpreting the ACoP. Following the Löftstedt report (which recommended review of the Regulations by April 2012), it appears as though the HSE are keen to address outstanding issues, including ways to reduce and simplify the ACoP.

The Health and Safety team will continue to monitor developments in this area going forward.

Company fined for Legionella outbreak

With the HSE serving a further two Improvement Notices at a second Edinburgh company during the course of June, Legionella has continued to dominate health and safety headlines. First, an Improvement Notice was served on North British Distillery Company Ltd for failure to devise and implement a sustained and effective biocide control programme in one of its cooling towers. More recently, Macfarlan Smith Ltd has been served with two Improvement Notices requiring the thorough cleaning of one of its cooling towers and provision of access for inspection and maintenance of said tower.

The Edinburgh outbreak has unfolded almost simultaneously with the fining of a Lancashire holiday camp for a breach of health and safety obligations in a separate, unconnected outbreak. In this case, Pontins, which went into administration in 2010, was fined just £1,000 after two guests contracted Legionnaires' disease whilst staying at the Lytham St Annes branch. Margaret Coote stayed in chalet 229 during the course of March 2010 and fell ill the same month, later recovering. Karen Taylor stayed in the same chalet during the course of July 2010 and unfortunately did not recover.

Pontins' own records indicated temperatures in the relevant storage facilities were below HSE recommended levels, providing an optimum environment for the spread of bacteria. These readings were fed through to site advisors but despite several warnings thereafter no remedial action was taken. During court proceedings the jury also heard from Kevin Fielding, a water treatment and legionella management contractor hired by Pontins to conduct annual risk assessments of the water systems in question. He provided that, during the last batch of assessments prior to the two outbreaks in question, concerns were raised with the water storage tank that supplied water to chalet 229. It was held to not be fully compliant with by-laws governing plumbing systems and there was a 'medium degree of accumulated sludge within the tank which may have assisted bacteria.' A thorough clean was recommended.

The Crown Prosecution Service determined there was insufficient evidence to charge Pontins with corporate manslaughter. Pontins were convicted with breaching ss.2(1) and 3(1) of the Health and Safety at Work etc Act 1974 due to a failure to ensure the health of its employees and exposing

members of the public to risks to their health. Pontins plead not guilty but offered no defence or legal representation at Preston Crown Court. Upon conviction Judge Anthony Russell stated that 'serious injury to health was foreseeable' and that there were 'serious management failings.' In fining Pontins the nominal sum of £1,000 plus costs of £10,000 (which will not be enforced) Judge Russell was keen to point out that, had the business been making profits, a fine of £500,000 would have been more appropriate. In making his decision he provided that he was 'satisfied that there [were] no assets from which any appropriate financial penalty could be met…If I were to impose a fine of the appropriate amount, all that would happen is that, if there are any funds, the distribution to others who have suffered at the hands of this company, namely legitimate creditors would be diminished or extinguished because any fine would go to the Exchequer.'

Bearing in mind the outcome of the Pontins outbreak, it will be interesting to see what consequences arise out of the Edinburgh outbreak.

Safety notice issued for organisations with vertical lifting platforms

The HSE has issued a Safety Notice aimed at organisations with vertical lifting platforms installed at their premises for people with impaired mobility. Whilst this Safety Notice is predominantly aimed at sectors such as health care and transport, it is also worthwhile considering that such lifts also feature in some commercial business premises.

This Safety Notice comes as a result of two incidents where emergency landing door keys were used regularly during normal usage to override safety devices designed to prevent the opening of landing doors when the platform is not at the correct landing. Inappropriate usage of this manner effectively allows the platform to operate in a faulty manner with access being gained to the lift well when the platform is not at the same level. One of the recent incidents resulted in a fatality. This Safety Notice will be of interest to all organisations that have such a platform installed. Procedures should be reviewed accordingly to ensure emergency release mechanisms are not operated on a non-emergency basis.

For more information please visit www.hse.gov.uk/safetybulletins/liftingplatforms.htm?eban=rss-.

Duties of the Scottish fire and rescue services to undertake a rescue

Prior to the Fire (Scotland) Act 2005 fire brigades within Scotland only had a statutory duty to attend fires. In 2005 the individual fire brigades were renamed 'Fire and Rescue Services' and the aforementioned act was introduced. The 2005 Act introduced a new concept whereby the eight FRSs are now obliged to undertake rescues.

This begs the question – what falls within the scope of a rescue? If one turns to both the primary and secondary legislation in place it becomes clear that the statutory obligation on FRSs to rescue is limited to only a few specific scenarios. The Fire (Scotland) Act only places a mandatory obligation on FRSs to undertake a rescue of persons in the event of road traffic accidents (Section 10). However, by virtue of Section 11, Scottish Ministers can extend this obligation by making an 'additional function order' in relation to a specific kind of emergency. This has been done by virtue of the Fire (Additional Function) (Scotland) Order 2005 (SSI 2005/342) which places additional obligations on FRSs to also undertake rescues from:

— landslides, collapse of buildings, tunnels or other structures (Article 4)
— serious flooding (Article 5)
— serious transport incidents (Article 6).

So on the one hand legislation is quite specific about where a mandatory obligation to rescue lies, however the discretionary powers contained within Sections 13 and 14 of the 2005 Act arguably muddy the water. Section 13 gives a general sweep up by providing a FRS with the discretionary 'power to respond to other eventualities' whereby they may take any action they consider appropriate 'in response to an event or situation that causes or is likely to cause a person to die, be injured or become ill'. This is further added to by Section 14 which allows FRSs to provide manpower and equipment 'to any person for any purpose that appears to the authority to be appropriate'.

This lack of clarity raises interesting questions in relation to where the liabilities and obligations lie in respect of such rescues. The Dorset Yacht principle tells us that 'in the case of a power, liability cannot exist unless the act complained of lies outside the ambit of the power' (*Dorset Yacht Co Ltd v Home Office* [1970] AC 1004). If a FRS chooses to act by virtue of their discretionary powers under Section 13 of the 2005 Act how can they be sure that they are also acting within their power in terms of the Dorset Yacht principle, thus not assuming liability? Likewise, there are certain types of rescue that the FRSs do commonly respond to which are clearly out with the scope of primary and secondary legislation. In both scenarios, where the rescue falls out with the scope of a rescue legislation-wise, are FRSs exposing themselves if they engage in the rescue?

It is this lack of clarity on the duty to undertake a rescue which attracted criticism from Sheriff Leslie in the determination relative to the Inquiry into the death of Alison Hume [2011] FAI 51 (16 November 2011). Here, Alison Hume was walking home around midnight when she fell approximately 14 metres down a collapsed mine shaft in Galston, Ayrshire. The injuries Alison sustained were not life threatening, however, her rescue was delayed by senior fire officers showing rigid compliance with health and safety procedures. As a result Alison spent several hours in the shaft, developing hypothermia and suffering a heart attack before later dying in hospital. Fire-fighters of Strathclyde Fire and Rescue had wanted to rescue her (and had been trained to do so) but senior officers would not grant the requisite permission, believing the situation to be unsafe.

In his determination, Sheriff Leslie examined the wording of both primary and secondary legislation in place and deemed the mine shaft to fall within the scope of 'other structure' (Article 4 of the Fire (Additional Function) (Scotland) Order 2005) making this rescue mandatory. Sheriff Leslie was highly critical of the approach adopted stating it was 'in conflict with the greater aims of a rescue service' and that Alison's death was avoidable.

As a result of this determination the Government has instructed a further Inquiry (under the powers afforded to it in Section 44 of the 2005 Act) to be carried out by the Scottish Fire Service Inspectorate. This Inquiry will focus on how Strathclyde Fire and Rescue is now carrying out its functions in relation to the issues raised within Sheriff Leslie's report by looking at the policies, procedures and practices now in place. This in turn may result in recommendations to be actioned by all eight of the current Fire and Rescue Services. Given that the Government has recently introduced a bill to merge Scotland's eight Fire and Rescue Services into one national body, the outcome of this review could result in consequences applicable to all. It is hoped that this further Inquiry will provide a greater degree of clarity on what constitutes a rescue and also how to achieve the balance between (i) the desire of those working for a FRS to carry out their role effectively; and (ii) not falling foul of health and safety legislation and incurring the resulting ramifications.

Guidance published on cost recovery scheme due to go live in October 2012

In our last edition we reported that the HSE was planning on rolling out their new cost recovery scheme, Fee for Intervention (FFI), during the course of April 2012. This was postponed to allow time to publish appropriate guidance prior to implementation.

The HSE have now confirmed that FFI will commence on 1 October 2012 subject to Parliamentary approval. By confirming the date of implementation and providing guidance the HSE is hoping this will provide clarity to dutyholders.

The guidance provides information on how the scheme will apply, how it works and also provides helpful examples of FFI in practice. The HSE will not charge FFI for work where another fee is already payable for all or some of that work. This includes offshore oil and gas production facilities and COMAH sites. Certain categories of work activities are exempt and whilst the guidance provides quite a lot of information as to how and when the charges will apply, the statement that they will be applied where a 'material breach' has occurred may pose more questions than it answers as it would appear that the decision as to when such a breach has occurred will be at the discretion of the HSE inspector.

To access the guidance please visit www.hse.gov.uk/fee-for-intervention/resources.htm.

HSE consultation on proposals to review HSE approved codes of practice

Following recommendations laid out in Professor Löftstedt's independent review of health and safety legislation, the HSE has opened a three-month consultation on proposals for the revision, consolidation or withdrawal of its Approved Codes of Practice (ACOPs).

Whilst it is generally agreed that ACOPs play a key role in assisting the understanding of health and safety legislation and controlling risk, it is felt that there is definitely room for improvement (in particular, providing certainty and clarity for duty holders).

The HSE has now completed the initial review of 32 of its 52 ACOPs, and in doing so took into account various factors including:

— Whether an ACOP is the most appropriate format for providing guidance on the area in question.
— Whether methods of compliance outlined in ACOPs are sufficient to ensure compliance by duty holders.
— What revisions would be required to ensure advice was technically up-to-date, legally correct and clear about legal requirements.
— Whether the advice has been presented in the most appropriate way considering the intended audience.
— The number of businesses an ACOP applies to.
— The findings of the Löftstedt review and other known views.

Two ACOPs have been identified as requiring revision or withdrawal without consultation as changes have already been consulted on or the legal provisions have been revoked. These relate to lift trucks (ACOP L117 – rider-operated lift trucks: operator training) and chemical manufacturing (L130 – the compilation of safety data sheets). Arrangements for the remaining 20 ACOPs are yet to be reviewed.

The consultation paper has been broken down into three sections:

Section 1: Proposals for the revision, consolidation or withdrawal of 15 ACOPs (if agreed, these proposals will be taken forward by the review for delivery by end-2013):

— Dangerous substances and explosive atmospheres (ACOPs L134-138)
— Legionella (ACOP L8)
— Asbestos (ACOPs L127, L143)
— Gas safety (ACOPs L56, COP20)
— Hazardous substances (ACOP L5)
— Workplaces (ACOP L24)
— Management of health and safety (ACOP L21)
— Agriculture (ACOP L116)
— Pipelines (ACOP L81)

For each of the above areas there is a section detailing the proposal(s) and associated consultation questions for that area.

Section 2: Proposals for minor revisions or no changes to a further 15 ACOPs (if agreed, these proposals will be taken forward by the review for delivery by end-2014):

— Diving (ACOPs L103-107)
— Work equipment (ACOPs L22, L112, L114)
— Lifting equipment (ACOP L113)
— Confined spaces (ACOP L101)
— Pressure systems (ACOP L122)
— Hazardous substances – pottery production (ACOP L60)
— Hazardous substances – lead (ACOP L132)
— Quarries (ACOP L118)
— Worker involvement (ACOP L146)

For each of the above areas there is a section detailing the proposal(s). At the end of the section there are six consultation questions applicable to all 15 ACOPs.

Section 3: Introducing a limit on the length of ACOPs:

There is a proposal to limit the length of ACOP documents to a maximum of 32 pages, other than in exceptional circumstances. Six consultation questions are posed to the reader. If this proposal is agreed then the proposed revision of any ACOP affected will be revisited.

Legal responsibilities to protect workers' health and safety will not be altered by any changes to the ACOPs.

To view the consultation paper and for more information on how to respond please visit www.hse.gov.uk/consult/condocs/cd241.htm.

Provisional statistics on fatal injuries in the workplace 2011/2012 released

The HSE has released the provisional statistics on fatal injuries in the workplace for 2011/2012. This covers the twelve month period from 01 April 2011 to 31 March 2012. Figures will be finalised during the course of July 2013 which allows time for ongoing investigations of workplace fatal injuries which are often complex, time-consuming and can lead to further revelations which need to be evaluated. This also covers Regulation 4 of RIDDOR (Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995) which deals with the situation where someone dies as a result of their injury within a year of their accident.

By way of summary, the previous downward trend of fatal injuries over the last four years appears to have levelled-off. The main points to take from the statistics are:

— The provisional figure for the number of workers fatally injured in 2011/2012 is 173
— The figure of 173 is 12% lower than the average for the past five years (196)
— The finalised figure for 2010/2011 is 175

Cases

Schindler fined after engineer is crushed to death at heathrow

Lift manufacturer Schindler Ltd has been fined £300,000 and also ordered to pay £169,970 in costs for safety failings following the 2007 death of lift engineer Kevin Dawson, 45, who was assisting with the construction of Terminal 5A at London Heathrow.

Mr Dawson was working as part of a team within the pit of a lift shaft to install three new lift cars. A colleague used one of the cars to fetch equipment from a higher level resulting in a counterweight descending and causing fatal injuries to Mr Dawson. Investigations by the HSE found that the unfinished lift was being used to carry workers and equipment despite being missing safety-critical components. The radio and telephone communication systems in place were also found to be ineffective, resulting in workers frequently communicating by shouting up and down the lift shaft and potentially causing confusion with instructions for those working in adjacent shafts. There was no evidence that these risks had been identified, therefore Schindler had failed to appropriately plan, organise and supervise the activities undertaken and to control and prevent such risks.

Schindler pled guilty to breaching Section 2(1) and 3(1) of the Health and Safety at Work etc Act 1974 and Regulation 8(1) of the Lifting Operations and Lifting Equipment Regulations 1998. The HSE's investigations concluded that Schindler failed in its duty of care in allowing unsafe working practices to continue. Following the hearing, HSE Principal Inspector Norman Macritchie described the death as 'entirely preventable.'

Network rail fined £4 million over Grayrigg crash

Network Rail has been fined £4 million over safety failures in the lead-up to the fatal Grayrigg train crash after pleading guilty to a breach of Section 3(1) of the Health and Safety at Work etc Act 1974. The firm responsible for the upkeep of the railways accepted that it was at fault for the derailment which killed one passenger and left 86 others injured on 23 February 2007. The immediate cause of the derailment was put down to poor maintenance of stretcher bars holding moveable rails. These bars had failed resulting in the train derailing at 95mph. The judge added that if Network Rail had pleaded not guilty and were convicted after trial, the penalty would have been £6 million.

The director of railway safety at the Office of Rail Regulation, Ian Prosser, stated that Network Rail was focused on improving safety measures but at times had been too slow.

This comes relatively soon after Network Rail's previous £1 million fine for safety breaches relative to the 2005 deaths of two schoolgirls at an Essex level crossing and a £3 million fine for the Potters Bar disaster in 2002 which left seven dead.

Leading engineering and construction company fined following surveyor death

Costain Limited have been fined £250,000 and ordered to pay costs of £45,000 for safety failings after a surveyor, Richard Caddock, was killed by a reversing lorry during work to widen the M25 near Dartford. Mr Caddock, 38, was talking on a mobile phone and could not hear the approaching truck above the noise of nearby traffic. He was hit from behind on 8 April 2008.

His employer, Costain Limited, pled guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 and was prosecuted for failing to ensure adequate precautions were in place to separate the movements of people and vehicles. After the hearing HSE Inspector Melvyn Stancliffe added 'The movement of people and vehicles on construction sites requires careful planning and effective control...quite simply the two should never have been allowed to be in the same place at the same time.'

Construction company fined for repeatedly ignoring safety warnings

Unicorn Services Limited has been fined £20,000 and ordered to pay £5,490 in costs for continuing unsafe working practices at a site in Croydon after repeatedly ignoring safety warnings. Westminster Magistrates' Court heard that an HSE inspector served eight Prohibition Notices on 26 September 2011 to stop dangerous practices at the site after identifying serious safety breaches. The notices covered an array of safety breaches including dangerous scaffolding, working unsafely at height and fire hazards. When the HSE returned in October they found little to no improvement had been made. An Improvement Notice was subsequently issued requiring the site manager to arrange appropriate training in safely managing construction operations by November. This was not achieved.

Unicorn was found guilty of breaching Regulation 26(2) of the Construction (Design and Management) Regulations 2007 for poor site management and failure to adhere to an enforcement action. Following the hearing, HSE Inspector Andrew Verral-Withers provided that 'the work [at the construction site] was underpinned by poor management and appallingly inadequate paperwork...general standards fell well below those expected of a competent principal contractor, which the Health and Safety Executive will simply not tolerate.'

Asbestos removal firm fined for putting workers at risk

AG&M, a licensed asbestos removal contractor, has been fined £10,000 and ordered to pay £5,349 in costs for putting its workers at risk of exposure to asbestos during a refurbishment project. The firm failed to properly maintain a decontamination unit and respiratory masks and did not have a trained supervisor on site. A decontamination unit is of optimum importance to allow workers to thoroughly clean themselves after removing asbestos. Failure to maintain the unit would have left workers unable to shower, which is the final and most important stage of decontamination.

HSE Principal Inspector Jo Anderson provided that the failings were unacceptable and 'as a licensed asbestos removal contractor, the company was fully aware of its responsibilities to ensure the safety and welfare of its workers. Licensed contractors are required to achieve the highest standards of control to prevent exposure and spread.'

Leading UK printing group fined over death of worker

A leading UK printing group has been fined £112,500 and ordered to pay £80,000 in costs following the death of maintenance engineer, Ian Ebbs who was crushed in a printing press. Mr Ebbs, 42, climbed into the printing machinery to release a locking pin which had gotten stuck on the paddle wheel assembly, preventing it from moving downwards. Upon freeing the paddle wheel, it came down on Ebbs trapping him between it and fixed parts of the press.

Wyndeham Peterborough (then known as St Ives Peterborough Ltd) admitted breaching Section 2(1) of the Health and Safety at Work etc Act 1974. HSE Inspector Alison Ashworth pointed out that the firm had 'relied too much on the skills and expertise of experienced staff like Ian Ebbs to sort out problems, rather than having proper systems in place to identify and control them.'

Oil and Gas focus

Is it time to get cracking with fracking?

Shale gas has already transformed the US gas market and the outlook for US energy with a promised abundance of economically viable fuel. However, the method to extract shale gas, known as hydraulic fracturing (or fracking), has also prompted concerns about its environmental effects with blanket bans in countries including Bulgaria and France.

To put shale gas into context some developers predict that there could be trillions of cubic feet of reserves lying under British soil which could help reduce dependence on imports. According to the British Geological Survey, there are shale deposits stretching under the Pennine Basin from Blackpool to Scarborough, in the Midland Valley in Scotland and even possibly in the Weald and Wessex basins of southern England. However, experience of fracking in the US suggests that it might only be possible to extract a small percentage of that. It will not really be known how much shale gas there is or how much can be extracted until extensive drilling begins. Whilst environmental concerns have led to moratoria on fracking in other countries, DECC has previously provided that they see no need to mirror such actions here. This is a view shared by the Energy and Climate Change Select Committee who, after holding an inquiry earlier this year, concluded that any risks arising from fracking relate to well integrity, not to water aquifers, therefore the risk is no different to those encountered and dealt with in conventional hydrocarbon exploration and production.

In the UK environmental concerns surrounding fracking have focused on fracking induced seismic events (known as seismicity or earthquakes), well integrity, water contamination and carbon emissions. Environmental groups point out that basing the UK's energy strategy on shale gas would make it much harder to achieve climate change targets. Whilst gas is comparatively better than coal in terms of greenhouse gases and climate change, it is still a carbon intensive fuel. Widespread adoption without carbon capture and storage technology would mean missing legally-binding greenhouse gas emission reduction targets.

At the time of writing we await confirmation that the UK has the go-ahead to resume fracking operations following a spate of tremors in England. Weighing up the potential of shale gas versus the risks posed by fracking, is shale gas via fracking really a viable option? This article explores the basis for the UK's current halt on exploration activities and the various reports generated off the back of recent seismicity.

What is Shale gas and fracking?
To understand fully the debate at hand one should have a basic knowledge of the process of fracking. Shale gas, which is predominantly methane, is often referred to as an unconventional energy source in the sense that it flows from shale rock as opposed to the more conventionally sourced hydrocarbons found in sandstone or limestone. Shale gas is known for not readily flowing into wells so additional stimulation by fracking assists in production. Once a well has been drilled and cased, controlled explosive charges are fired within the shale formation where shale gas is produced. Fracturing fluids (including water and sand) are then pumped at high pressure into the well. The pressure opens up existing fractures in the shale formation and also creates new ones. The sand within the mixture assists with propping the fractures open. Fluid continues to be pumped into the well to maintain pressure and also to continue development of fractures. Some fractures may be too long to maintain sufficient pressure, so plugs can be inserted to separate the well into various stages. After fracturing, the plugs are drilled through and the well depressurised which allows for the flow of gas back to surface. Waste water continues to return to the surface for the lifespan of the well.

Why are we concerned?
On 1 April and 27 May 2011 two tremors with magnitudes of 2.3 and 1.5 respectively were felt in Blackpool. The quakes were suspected to be linked to nearby fracking at the Preese Hall well operated by Caudrilla Resources Ltd. The fracking treatments were being carried out during exploration of a shale gas reservoir in the Bowland basin. Following the second quake, operations were suspended and Cuadrilla commissioned an independent report (referred to throughout as the 'Cuadrilla report') into the relationship between the tremors and their operations.

To enable DECC to evaluate fully the Cuadrilla report, DECC also commissioned an independent assessment of their findings and sought comments from the public, specialists and organisations by 25 May 2012.

The Caudrilla report
The Caudrilla report, which was commissioned by Cuadrilla Resources and carried out by an independent team of experts, was collated to:
— Establish the cause of seismicity.
— Estimate the maximum magnitude of seismic events induced by future fluid injection.
— Evaluate the potential for fracking fluid to escape into permeable rock levels and shallow water aquifers.
— Evaluate whether the seismic hazard related to a fault slippage could cause any damage on the surface.
— Identify procedures to minimise the likelihood and mitigate the magnitude of seismic events.

By way of summary, the report concluded that it was highly probable that fracking at Preese Hall triggered the Blackpool quakes. The report submits that this was only made possible due to a highly unusual combination of factors unlikely to occur together again at future sites. It was concluded that it was unlikely that the actual opening of the hydraulic fractures induced the seismic events because there was a delay of many hours between the injection of fluid and the strongest seismic event. Fluid pressure on the fault, however, has a natural timescale which fitted with the observed delay.

Even though the Cuadrilla report suggests that the probability of a repeat occurrence is low, an early detection system was proposed which could mitigate against the escalation of seismic events and potentially reduce the chance of such events exceeding safe limits. This would provide a belts and braces approach giving an extra layer of safety to operations. It is suggested that companies should monitor seismic activity at drill sites and react in specific ways when accepted levels are exceeded. The early detection system proposed mirrors systems already in place in the Netherlands and Germany and is as follows:
— **Level 1**: If no seismic events above magnitude 0 are recorded, regular operations can continue.
— **Level 2**: If an event of between 0 and 1.7 is encountered the company should continue monitoring seismicity after injection until seismicity falls back to lower levels.
— **Level 3**: If a seismic event of more than 1.7 is encountered the company should stop water injection and release pressure in the well, to reduce the pressure it exerts, whilst continuing to monitor.

The DECC commissioned report
Following the Cuadrilla report, DECC commissioned an independent assessment (referred to throughout as the 'DECC assessment').

Some important recommendations are made to enable drilling and fracking to continue but the DECC assessment otherwise paves the way for resumption of fracking under strict conditions although it should be noted that, to date, no decision has been made to resume fracking operations.

The DECC assessment queries the Cauadrilla Report's submission that the Blackpool quakes were only made possible due to a highly unusual combination of factors unlikely to occur together again. The DECC assessment argues that it is not possible to categorically state that no further quakes would be experienced during a similar treatment in a nearby well. The general theme resulting from the DECC assessment is in-line with the Cuadrilla report on many fronts but it adds a further dimension. In particular it provides that much more detailed monitoring should occur throughout the entire fracking process:

— Seismic hazards should be properly assessed before more exploration is permitted. This would involve seismic monitoring to establish what levels of activity are normal in a particular location, analysis of geological faults, and the use of computer models to assess the potential impact of any induced quake.
— Fracking should start with short duration tests followed by monitoring, to gain site specific data. Smaller volumes of water should be injected into the wells and allowed to be brought back to the surface immediately so results can be analysed ahead of larger injections and to prevent keeping rocks under prolonged pressure. The concern over the quakes is not that they may damage housing, but the damage that could be caused to cement casings that line drilled wells. If these are damaged there is a risk that gas or fracking fluids could escape.
— Sensor equipment should also be installed so fracking can be better monitored and a traffic-light warning system should be used based on quake magnitude, so any tremors of magnitude 0.5 or above are treated as a red light signal to halt fracking. This is much lower than the 1.7 threshold proposed by Cuadrilla's experts and significantly lower than thresholds elsewhere such as Switzerland (who opt for 2.3). Dr. Baptie (one of the authors of the DECC assessment) provided that 'we've opted for a much lower more conservative option…even with real-time monitoring, there will be a time lag between what we've put into the ground and what we get back out in the form of earthquakes.'

DECC published the report in full for public consultation and invited comments on its recommendations. Ministers have made clear that no decision on whether fracking will be resumed will be taken until all comments have been duly considered. The consultation period has now closed and we await feedback.

The Royal report

A third report was commissioned by the Government's chief scientist, Sir John Beddington, following the decision to halt work after the Blackpool tremors. The aim of the joint report, undertaken by The Royal Society and Royal Academy of Engineering, was to give an independent view on the scientific and engineering aspects of the risks associated with fracking. By way of summary the report (referred to throughout as the 'Royal report') concludes that any environmental risks posed by fracking can be safely managed via strong regulation and that fracking is safe if best practice is consistently followed and the industry is well regulated. Professor Robert Mair of Cambridge University and chair of the working group made up of members of The Royal Society and the Royal Academy of Engineering submitted that 'we found that well integrity is of key importance but the most common areas of concern, such as the causation of earthquakes with any significant impact or fractures reaching and contaminating drinking water were very low risk.' The key findings of the Royal report were:

— The health, safety and environmental risks can be managed effectively in the UK via implementation of best practice enforced through strong regulation. Regulation must be fit for purpose should a shale gas industry develop nationwide. Professor Robert Mair provides that 'the UK regulatory system is up to the job for the present very small scale exploration activities, but there would need to be strengthening of the regulators if the government decides to proceed with more shale gas extraction, particularly at the production stage.'

— Fracture propagation is an unlikely cause of contamination when you consider that shale gas extraction takes place at depths of many hundreds of metres. Even if fractures did reach overlying aquifers, the necessary pressure conditions for contaminants to flow are very unlikely to be met given the UK's shale gas hydrogeological environments.
— Well integrity is the highest priority, which is a more likely cause of possible contamination. Each well is lined with steel and cement and as long as this stays intact and wells are properly constructed, gas leakage should not be an issue. The UK's unique well examination scheme was set up so that independent, specialist experts could review the design of every offshore well. This scheme must be made fit for purpose for onshore activities.
— Robust monitoring is vital and should be carried out before, during and after shale gas operations to detect methane and other contaminants in groundwater and potential leakages of methane and other gases into the atmosphere.
— An Environmental Risk Assessment (ERA) should be mandatory. Every shale gas operation should assess risks across the entire lifecycle of operations, from water use through to the disposal of wastes and the abandonment of wells.
— Seismic risks are low and should be included in the ERA. Seismicity induced by hydraulic fracturing is likely to be of smaller magnitude than the UK's largest natural seismic events and those induced by coal mining.
— Water requirements can be managed sustainably. Water use is already regulated by the Environment Agency. Integrated operational practices, such as recycling and reusing wastewaters where possible, would help to minimise water requirements further. Options for disposing of waste should be planned from the outset. Should any onshore disposal wells be necessary in the UK, their construction and regulation would need further consideration. The US practice of leaving waste water in open ponds is something which would not be permitted in the UK.
— Policymaking would benefit from further research. The carbon footprint of shale gas extraction needs further research. Further benefit would also be derived from research into the public acceptability of shale gas extraction and use in the context of the UK's energy, climate and economic policies.

Conclusion

DECC's Chief Scientific Advisor David MacKay has provided that 'if shale gas is to be part of the UK's energy mix we need to have a good understanding of its potential environmental impacts and what can be done to mitigate those impacts.' From looking at the three reports summarised, a concluding argument could be brought that the main issue is not fracking but rather ensuring optimum well integrity going forward.

Evaluating all three reports together, it is fair to conclude that they pave the way for resumption of fracking in the UK, albeit within a more stringent framework. The Environment Agency has previously provided that 'we consider that we have the regulatory framework to protect the environment during exploratory shale gas projects – but this would have to be reviewed if ever there was a move to full-scale operational mode.' There is call for a new set of regulations to encompass every aspect of the fracking process and associated risks, and it has been argued that those currently in place are best suited to the offshore oil and gas industry, and could not simply be easily adapted to onshore use. Questions have been posed as to whether the HSE has too few staff and resources to regulate this industry going forward should it prove as popular as it is in the US We are currently still awaiting the feedback that will result from the consultation of the DECC assessment.

EU Offshore safety regulation – an update

It is rare to find an issue on which regulators, industry associations and trade unions are in total agreement but the EU's proposed regulation of the offshore industry is one of them (see our March 2012 edition Newsletter for more information). At an Oil & Gas UK conference held in June to discuss the proposal there was a very clear acceptance that the industry could not be complacent and had to strive for continuous improvement in offshore safety but an equally clear belief that the best way to achieve such improvement was by continued co-operation and collaboration between all of the stakeholders rather than an additional layer of regulation from Brussels. The rapid and effective action taken through OSPRAG to respond to the Macondo incident was cited as evidence of the effectiveness of such a collaborative approach.

It was noted that 90% of EU/EEA oil and gas production is in the UK, Norway, the Netherlands and Denmark – all countries with offshore safety regimes which the EU admits are of the highest quality – indeed, the UK regime appears to have been used by the EU as a model for its proposal. Given this, and the fact that many member states have no prospect of ever having an offshore industry, both Oil & Gas UK and the OLF, the Norwegian oil and gas operators' association, queried whether the introduction of legislation was necessary or proportionate. There has also been considerable criticism of the impact assessment presented by the Commission to justify its proposal which after analysis by GE Noble Denton and DNV is considered to be fundamentally flawed in its estimates as to the potential benefits of the proposal and of the costs of implementation. It is understood that the Commission has commissioned an independent review of the various impact assessments now put forward.

If EU legislation is required to bring practice in developing oil and gas regions up to the very high standards demonstrated by these established regimes then there was unanimous objection to the choice of a Regulation rather than a Directive to do so. DECC, the HSE, Oil & Gas UK and the UNITE union were all united on this and further support came from representatives of the industry in Norway and the Netherlands and Ireland, all of whom agreed this could be a backward step for safety. The main objections to the choice of a Regulation as the legal form are:

- the impact on existing legislation which will need to be repealed or amended to be consistent with the new Regulation – this could take considerable time (the HSE suggested up to five years!) whereas it was suggested that a directive could be implemented much more quickly (although some changes to the existing regulatory regime would still be required, they would be fewer and less dramatic)
- the potential impact of distracting inspectors and other officials over a period of months or years who should be getting on with applying the rules rather than drafting new regulations and guidance
- the impact of the transfer of legislative competence to Brussels – while the Commission would not be enforcing the Regulation directly, arguments over its interpretation would need to go to the European court and any changes to the regime would need to be agreed at Brussels level, with reduced flexibility for local approaches and solutions
- too much reliance by the Commission on 'delegated acts' contained in the appendices to the draft Regulation (these are the Brussels equivalent of secondary legislation which the Commission can amend more easily in future – the DECC/HSE view is that this should not be used for anything fundamental to the new regime).

Commissioner Oettinger gave the Energy Council (the Energy Ministers of the Member States) an update on progress on draft legislation. DECC's statement indicates that perhaps the Commission is listening. Charles Hendry said:

'Whilst the UK supports any measure which will improve EU standards in this area, we do have concerns over the proposal for a regulation rather than a directive. I therefore welcome the flexibility on this issue which Commissioner Oettinger has signalled and look forward to working with him and others under the Cypriot Presidency to secure effective and enforceable legislation.'

Apart from the fundamental issue of its legal form, there is much in the draft proposal which is uncontroversial – mirroring as it does the existing UK legal regime of safety cases, independent verification and well consents. A number of the more novel aspects of the Commission's proposal also have merit including a closer relationship between offshore safety and environmental regulation (HSE and DECC are already looking at this), common data reporting formats and greater transparency, more sharing of major incident investigation findings, and greater co-operation between EU offshore regulators to bring less developed areas up to the highest standards. However if the proposal does go forward, some of its detail will need to be clarified.

The next key point in the legislative process is the first vote of the responsible committee of the European Parliament, currently expected on 9th October, followed by a plenary vote in November. The industry will be watching closely to see if the Commission really has started listening.

DECC publishes details of all reportable oil and chemical releases

The Department of Energy and Climate Change (DECC) has begun publishing details of all oil and chemical releases that are required by law to be notified to it. Its intention is to increase transparency within the industry.

Any release, discharge or incident where there has been, or may be, a significant effect of pollution on the environment (including any event causing escape or waste of petroleum or discharge of oil at sea) must be reported. The Petroleum Operations Notice No. 1 (PON1) is the form used by operators and permit holders to report such releases.

The published details of all reportable incidents from 1 January 2012 are now available on the DECC Website. Within the spreadsheet, data recorded from all PON1 reportable oil and chemical spill incidents are classified as either 'closed' or 'under review'.

'Closed' PON1s are those that have been confirmed by the relevant operator, reviewed by a DECC Inspector and include details of the substance released, quantity and source. PON1 data that is still subject to further assessment or investigation is classified as 'under review'. The data relative to such releases will remain unpublished until closed.

It is understood that the data will be reviewed monthly by DECC.

Consultation to replace 2001 Health and Safety at work order with new 2013 order

A consultation launched by the HSE on proposals to replace the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 (the '2001 Order'), with the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013 (the '2013 Order') has ended. The new 2013 Order would ensure that all workers offshore are adequately protected by law and that the HSE maintains its authority to regulate offshore. Consultation ended on 4 July 2012.

The Health and Safety at Work Act 1974 (HSWA) covers work-related health and safety in the United Kingdom and sets out employer's responsibilities to employees and others in the workplace. HSWA also provides powers for further regulations to be made under it such as the aforementioned 2001 Order. Without the 2001 Order the HSE would not have the power to regulate certain specific offshore areas and work activities despite being potentially dangerous.

The 2001 Order does not extend the HSWA to all offshore activities in its entirety, and its more general provision (Article 8), which covers a wide range of activities within the territorial sea, does not extend beyond the territorial sea into the UK Continental Shelf.

The 2001 Order was amended in 2009 giving the HSE further power to regulate energy structures beyond the United Kingdom territorial sea (12 nautical miles) and offshore installations that were used for other purposes and previously not covered by health and safety legislation, until April 2011. This was latterly extended until April 2013. Without the proposed 2013 Order the HSE would not have the further powers granted in 2009 to regulate certain energy structures and offshore installations, and as such employees will not enjoy the protection provided under the HSWA.

There are three main reasons why the new 2013 Order is required:

1. To consolidate and clarify the law: Offshore wind farms are being built beyond the territorial sea limit. It is imperative that the HSE extends its regulatory powers appropriately.
2. Offshore Emerging Energy Technologies (EETs): Various new EETs relating to activities such as carbon dioxide storage and underground coal gasification are due to commence in early course. Whilst the HSE already has the power to regulate these activities, the 2001 Order was not designed with them in mind. Due to their high risk nature absolute clarity on protection provided by HSWA is required.
3. Operational lessons: The 2013 Order would provide the opportunity to clarify and simplify the law based on lessons learned since the 2001 Order.

The 2013 Order is scheduled to come into force on 6 April 2013 with the HSE due to provide guidance in advance of this date.

No crown office action to be taken after eight die on Bourbon Dolphin

The Crown Office has confirmed that no criminal proceedings are to be taken over the capsizing of an offshore supply vessel off Shetland which claimed the lives of eight on board.

The Bourbon Dolphin was carrying out an operation to shift the anchor of a drilling rig during April 2007 when the anchor chain slid across the side of the deck dragging the vessel over. The two main engines stopped and the vessel soon capsized. It sank days later.

The commission set up to investigate the incident had raised concerns about the ability of the vessel and the crew to handle such large anchors in deep water. Bourbon Offshore was fined £500,000 in Norway as the ship's captain was given insufficient time (only 90 minutes) to learn about the vessel, crew and the operation.

An inquiry found safety failings, however, the Crown Office confirmed that no one will face criminal charges due to insufficient evidence. A Crown Office spokesperson stated 'after extensive investigation by our specialist health and safety division, including interviews with key witnesses, and careful consideration of all the facts and circumstances, Crown Counsel has concluded that there should be no proceedings against the companies reported due to there being insufficient evidence.'

Oil & Gas UK publish their first ever annual Health and Safety report

Oil & Gas UK have published their first ever Health and Safety Report which is set to become an annual feature. The report covers multiple areas including a detailed summary of the UK offshore oil and gas industry's safety performance (including a summary of performance results for the period of 2011/2012), an overview of the various safety-related projects being carried out across the industry, an explanation of how the safety agenda is being effectively managed by Oil & Gas UK and its members and a look ahead to the future.

Robert Paterson, Oil & Gas UK's health and safety director, has commented that the report 'provides a snapshot of the UK oil and gas industry's safety performance and the numerous ongoing projects being undertaken to continuously improve safety...the report serves to underline the fact that the UK has one of the most robust offshore health and safety regimes in the world. The reason it is strong is because we're not complacent and we're always looking for ways to improve or to make things safer.'

In terms of safety performance, some of the main findings include the following observations:

— Despite its hazardous nature, in terms of non-fatal injuries to workers, the offshore oil and gas industry is the third-best performer in the UK - only being out-performed by the education and finance/business sectors.
— There has been a noticeable and steady reduction in the incidence of over-three-day injuries which represents a reduction of almost 70% in the last 15 years. Major and fatal injury rates have fluctuated, but overall are also making a steady decline.
— The UK's figures for lost time injury frequencies (LTIF) has been analysed against worldwide statistics published by the International Association of Oil and Gas Producers (OGP). The UK is sitting below the LTIF average, which is good news, but statistics show that other countries are achieving better results. Global comparisons should perhaps be taken with a pinch of salt as we have to consider the different reporting requirements from region to region.
— Since 2000 the HSE has had a particular focus on reducing hydrocarbon releases and asset integrity management. The industry is now two-thirds of the way through a programme to reduce hydrocarbon releases by 50%. Already, there has been a 40% reduction in major and significant releases which illustrates that the target figure is achievable. In fact, major and significant releases in 2011/2012 are at an all time low.

The report also details the ongoing projects Oil & Gas UK are involved in, including:

— The European Commission's proposals for new regulation of offshore oil and gas health and safety: Oil & Gas UK are keen to reinforce their belief that EU Regulation is a poorly conceived idea. They seek a properly-worded Directive instead that would have less of an adverse effect on the UK's existing robust legislation and are seeking to work with the EC.
— Increased focus on asset ageing and life extension.
— Support of the industry hydrocarbon releases reduction target.

To read the publication in full visit www.oilandgasuk.co.uk/publications/viewpub.cfm?frmPubID=444.

Health and Safety – what we do

Our expertise

CMS Cameron McKenna 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 specialised knowledge of the offshore and energy sector in particular, which faces greater challenges and regulation than most. However, our client base and expertise spans a broad range of sectors, including:

— Construction
— Communications
— Energy
— Leisure
— Manufacturing
— Renewables
— Transport

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 & Safety Executive.

Emergency response team

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

Our clients come to us for advice on:

— Health and Safety prosecutions
— 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 & 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.
— Advising clients on incident investigation, legal privilege and dealing with HSE inspectors.
— Preparing and drafting incident investigation reports.
— Advising clients on media, public relations and reputational issues following incidents.

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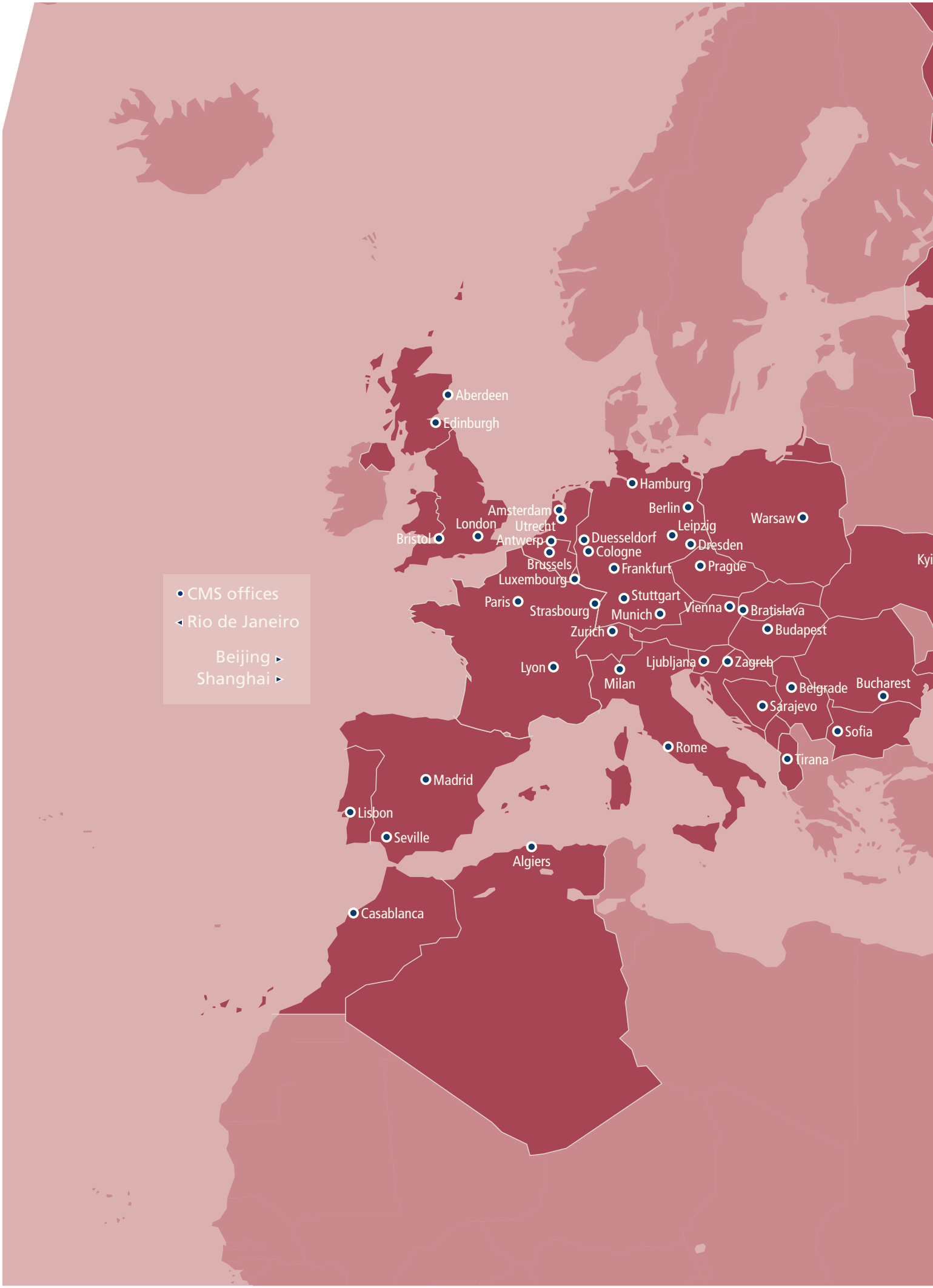
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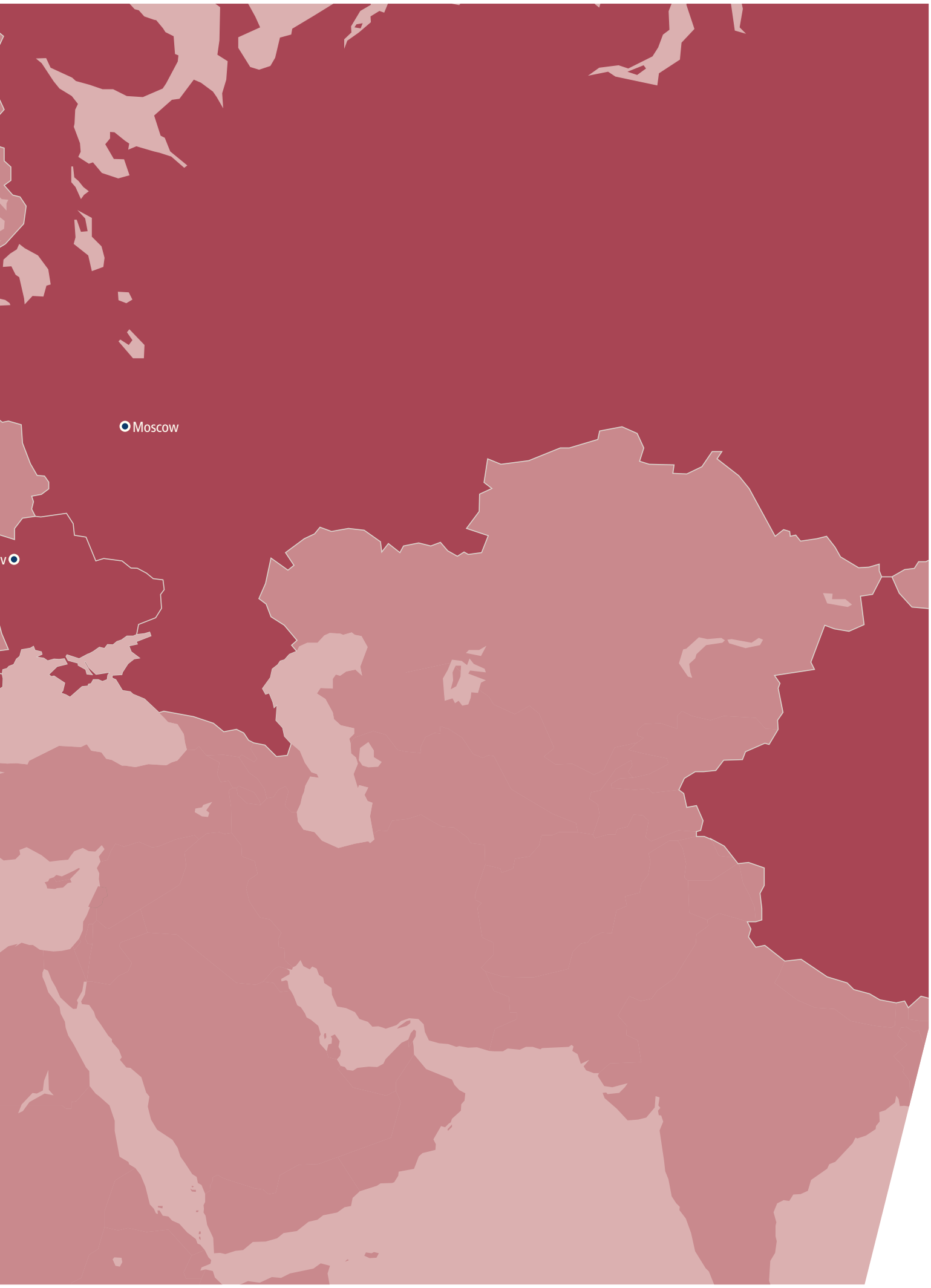
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