C/M/S/ Cameron McKenna

Health & Safety

Newsletter

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News

First charges brought under the Corporate Manslaughter and Corporate Homicide Act 2007

Although the Corporate Manslaughter and Corporate Homicide Act 2007 (the 2007 Act) has been in force since 6 April 2008, the first case of corporate manslaughter has only just begun to go through the courts.

The 2007 Act created a new statutory offence of corporate manslaughter (known as corporate homicide in Scotland), which will arise where a fatality has been caused by the 'gross breach' of a duty of care of an organisation, and where the actions of the company's senior management played a 'substantial' part in the breach. A 'gross breach' will occur where there has been a failure to comply with existing health and safety legislation and where an organisation's conduct falls far below that which can reasonably be expected. The offence can arise following the death not only of a company's employees, but also of its contractors, sub-contractors, and even members of the public – indeed anyone affected by the company's activities. Although a conviction for corporate manslaughter can attract an unlimited fine, the reputational damage associated with a conviction for corporate manslaughter may in fact be the greatest deterrent.

A small Gloucestershire-based company, Cotswold Geotechnical Holdings Limited, is now being prosecuted in relation to the death of an employee who died on 5 September 2008 whilst taking soil samples from inside an excavated pit. As well as the corporate manslaughter offence, the company has been charged with a failure to discharge its general duties under the Health and Safety at Work Act 1974 (HSWA). A director of the company has also been charged with the common law offence of gross negligence manslaughter, and with a breach of section 37 of the HSWA. The case was raised in Stroud Magistrates Court on 17 June 2009, but has been continued to 19 August at Bristol Crown Court.

It is worth noting that the company being prosecuted in this instance is a small, family-run organisation where the directors are closely involved with the day-to-day running of the company. It is therefore doubtful that this case will provide much in the way of significant insight or understanding on how the 2007 Act will be applied to larger corporations.

To view our original Law-Now please go to:
www.law-now.com/law-now/2009/corporatemansjun09.htm?&MSHiC=65001&L=10&W=corporate%20manslaughter+

Sentencing Guidelines for Corporate Manslaughter delayed

Despite the Consultation Paper on Sentencing for Corporate Manslaughter being issued in 2007, the Sentencing Guidelines for offences of corporate manslaughter have yet to be published, even in draft form.

The Consultation Paper on Sentencing for Corporate Manslaughter was issued by the Sentencing Advisory Panel to the Sentencing Guidelines Council in November 2007. The paper was published in anticipation of the coming into force of the Corporate Manslaughter and Corporate Homicide Act 2007 on 6 April 2008. In that paper, the panel expressed the view that annual turnover would be the most appropriate measure of an organisation's ability to pay a fine. The panel's provisional starting point for an offence of corporate manslaughter (committed by a first time offender pleading not guilty) was suggested as a fine amounting to 5 per cent of the offender's average annual turnover during the three years prior to sentencing. After taking into account any aggravating or mitigating factors, the court would then arrive at a fine which would normally fall within the range of 2.5 to 10 per cent of the offender's average annual turnover.

The suggestions to look at turnover have proved controversial, because using percentages in this way could cripple some companies, leading to redundancy of workers and perhaps even bankruptcy. It may also lead to great disparity in the levels of fines payable – for example, a small, family-run company could pay a fine of thousands of pounds, whereas a large, multinational company could end up paying fines up to tens of millions, for the same offence.

The Guidelines are intended to apply only in England & Wales, but it is clear from some recent Scottish judgements that the Scottish courts are already taking turnover into consideration in sentencing

To view the Consultation Paper please go to:
www.sentencing-guidelines.gov.uk/consultations/closed/index.html

Health and Safety at Work Act applied to offshore renewables

The provisions of the Health and Safety at Work Act 1974 (HSWA) are applied to work activities beyond the UK's 12-mile territorial sea limit by way of the Health and Safety at Work Act 1974 (Application Outside Great Britain) Order 2001 (the Order).

The Health and Safety Executive (HSE) has now identified two legislative gaps in the Order:

- Firstly, in relation to energy structures such as wind turbines beyond the territorial sea

- Secondly, in relation to offshore installations beyond the territorial seas where, because of a change of use, the HSWA ceases to apply, despite the fact that work activities will continue to be carried out.

The necessary amendments to the original Order will be made by way of the Health and Safety at Work Act 1974 (Application Outside Great Britain) (Variation) Order 2009 (the 2009 Order). The changes came into force on 5 August 2009. Companies involved with the construction, repair and operation of wind turbines and other renewable structures will require to do all they can to ensure compliance with existing duties under the HSWA and its associated regulations.

The 2009 Order covers not only energy structures such as wind farms, but also "related structures", defined with the aim of ensuring that all significant work activities related to energy structures are covered by the HSWA. Related structures will include those used to transmit energy produced by an energy structure back to shore (not vessels), and also accommodation for workers carrying out activities on an energy structure or related structure.

The 2009 Order also makes reference to energy structures within "renewable energy zones", which are areas outside the territorial sea which may be exploited for the production of energy from water or wind, as designated by order under section 84(4) of the Energy Act 2004. Any energy structures within these renewable energy zones will now be covered by the HSWA.

Long term, the HSE has announced its plan to revoke the Order altogether, and replace it with a new Application Outside Great Britain Order that will 'sweep up' the amendments in the 2009 Order. It will be reviewed so as to address all emerging offshore energy developments. A full public consultation will take place before a new order is made.

To view the 2009 Order please go to: www.opsi.gov.uk/si/si2009/uksi_20091750_en_1

ICL Plastics factory explosion – report published

Lord Gill's Inquiry Report into the explosion at ICL Plastics (ICL) in Glasgow was published by Ministers on 16 July 2009. The report details the conclusions of the Public Inquiry that was set up to consider the circumstances leading up to, and the health & safety and regulatory issues arising from, the explosion. It is the culmination of the first joint Public Inquiry by both the Scottish Government and UK Government.

On 28 August 2007, the owner and operator of the factory in Glasgow known as 'Stockline' (in which a gas explosion occurred in May 2004, killing nine people and injuring thirty-three) was fined £400,000 after pleading guilty to breaches of health and safety legislation. The explosion was caused by a build-up of liquid petroleum gas (LPG), which leaked out of corroding pipework that had been in place since 1969. At the prosecution, the court was told there had been no risk assessment or system in place for inspecting that stretch of pipework, which was originally above ground but had been buried in 1974. After the explosion it was estimated that the cost of replacing the pipework would have been just £405.

CMS Cameron McKenna LLP

The main points of the Inquiry Report were:

- The explosion was avoidable. The metallic underground LPG pipe was "out of sight and out of mind." It was inadequately protected when buried.

- The management of the ICL companies did not have sufficient knowledge and understanding. They did not realise that LPG was heavier than air and when escaping will track to accumulate at the lowest point in drains and voids, presenting the danger of an explosion. The risks posed in the premises were not identified and understood.

- There are serious weaknesses in the existing UK health and safety regime, due to the complexity of the legislation. There was a lack of effective communication between the HSE, the trade association of the LPG industry "UKLPG" and suppliers and users of LPG on safety issues.

- The HSE's oversight of ICL had been deficient in certain aspects. There was a failure to appreciate the significance of buried pipework and a failure to pursue follow-up visits promptly.

Lord Gill recommended a four-phase action plan for all bulk LPG installations in commercial and industrial premises. This plan consists of systematic replacement of underground metallic pipes with polyethylene pipes and a permanent system by which safety questions can be reviewed on an industry-wide basis with effective communication from the HSE. The primary responsibility for LPG safety will, of course, continue to lie with the site user as the person who creates the risk.

In response to Lord Gill's criticisms, the HSE have stated: "This was a terrible tragedy and lessons have been learned. We are well on the way to introducing new industry practices which will further lessen the risk of such an incident happening again….HSE has already done a great deal since the accident at ICL Plastics, especially in preparing for a newer comprehensive programme by the UK LPG suppliers for buried metal pipework to be replaced with newer and more robust plastic pipes. The UK LPG industry signed up to the replacement plan in June this year and work has already started, ramping up in October following preparatory data collect, risk assessments and a promotional campaign to alert duty holders to the need to take action".

To read Lord Gill's Report in full please go to:
www.theiclinquiry.org/Documents/Documents/HC838ICL_Inquiry_Report.pdf

LPG pipework survey

In light of Lord Gill's Inquiry Report into the explosion at ICL Plastics, the Health and Safety Executive (HSE) are asking all managers of LPG (Liquid Petroleum Gas) installations to provide information about their pipework in a bid to reduce the risks of accidents.

A survey has been sent out by the HSE following the decision of the UK LPG industry and HSE to replace all underground metallic pipework with pipework made from materials such as polyethylene which will not corrode. The decision was made in light of the ICL Plastics factory explosion in May 2004 which was caused by a gas leak from a corroded pipe (as discussed above). The replacement of these pipelines is the first of four phases recommended to be undertaken by Lord Gill's Report.

The replacement of underground metallic pipes is a major undertaking and will require cases to be prioritised based on the risk of the pipeline failing. Prioritisation will be determined from the responses to the LPG questionnaire. The HSE will monitor the progress of the replacement works and may follow up directly with LPG users to determine what action has been taken.

The questionnaires were due to be returned by 31 July 2009. No further information on the replacement works is yet available.

For further information on the LPG Survey please go to: www.hse.gov.uk/gas/lpg.htm

Scotland: expenses now available in fatal accident inquiries

In a significant judgement issued by the Inner House of the Court of Session on 27 May, the Lord President, Lord Reed and Lord Marnoch ruled that expenses will be recoverable in Fatal Accident Inquiries (FAIs) held in Scotland under limited circumstances. This is one of the most significant decisions in Scottish legal history, as it clarifies an area of the law which had previously been thought to be closed to expenses. The case was about much more than an award of expenses, with fundamental issues such as Crown privilege, equality of arms, and even questions such as "when is Court not a Court" and "when is a judge not a judge" being raised.

The judgement follows a long dispute between two GlobalSantaFe companies, represented by Aiden O'Neill QC and Jan Burgess, Head of Health and Safety for CMS Cameron McKenna LLP and an individual driller, represented by Beltrami & Co, against the Lord Advocate, represented by Roy Martin QC.

Starting in Aberdeen Sheriff Court in 2004, the FAI related to a fatality on an oilrig. It was ultimately found that neither the employer nor the colleagues of the deceased were responsible or could be criticised in relation to the fatality. However, the procurator fiscal's conduct during the inquiry was such that the Sheriff allowed a motion for expenses for the latter part of the inquiry, on the basis that the court had inherent power to make such an award where a party had behaved in a vexatious manner. This decision was appealed by the Lord Advocate to the Court of Session, who upheld that appeal. The most recent decision reverses the Lord Advocate's decision, upholding the Sheriff's original decision.

In a clear and well-reasoned opinion, the Inner House discuss in detail the law relating to expenses in FAIs and other forms of administrative processes. Significantly, they found that FAIs have sufficient similarities to civil proceedings to allow the general principles of civil procedure to apply to their conduct, specifically the inherent right of a judge to award expenses. This decision was made notwithstanding the fact that FAIs are a statutory procedure and that there is no express authority on this point. In administrative processes (such as FAIs) the general rule that expenses follow success does not apply. The bench noted, however, that "in certain circumstances - where conduct of a party can be described as vexatious (or an abuse of process) - it will be open to the sheriff in such a process to make an award".

The important limitation to this significant development is that expenses may only be awarded where the conduct of a party has been vexatious - the Crown will have no immunity in such a case. This suggests that the occasions where awards of expenses could be awarded may be limited, and we will watch the application of this decision in the courts with interest.

There is currently no indication as to whether the Lord Advocate intends to appeal this decision to the House of Lords.

To view our original Law-Now please go to:
www.law-now.com/law-now/2009/expensesavailablejune09.htm?&MSHiC=65001&L=10&W=FAI%20expenses+

To read the decision in full please go to:
www.scotcourts.gov.uk/opinions/2009CSIH43.html

Fatal Accident Inquiry review released

On 1 June 2009, Lord Cullen published his report on the Consultation on the operation of the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 (the Act). That legislation governs the system of judicial investigation of sudden or unexpected deaths in Scotland. The aim of the review is to ensure that Scotland has an effective and practical system of public inquiry into deaths which is "fit for the 21st century". The report, originally launched on 7 March 2008, marks the first review of the legislation in Scotland for over 30 years.

The consultation raised a number of issues, including the use of a dedicated team of specialist Fatal Accident Inquiry (FAI) procurator fiscals, whether the scope of the Act should be extended to the deaths of Scots abroad, whether changes should be made to deaths which fall within the mandatory category for FAIs and whether the Sheriff Court is the most appropriate forum for FAIs. There were also questions regarding procedure, including the use of preliminary hearings and whether there is a place for the use of expert assessors. A wide variety of respondents replied to the Consultation including medical and health groups, lawyers, academics, judiciary and expert witnesses.

Lord Cullen indicated that the desire for reform was apparent from the responses to the consultation and that he intends to report later in the year with recommendations for possible reform. Any such recommendation would have no force in law unless implemented by Parliament.

To see the review in full please go to:
www.scotland.gov.uk/Publications/2009/06/03102428/0

DECC and DWP consults on Restructuring of HSE's Nuclear Directorate

On 30 June 2009 the Department of Energy and Climate Change (DECC) and the Department for Work and Pensions (DWP) launched a joint consultation on the restructuring of the Health and Safety Executive's Nuclear Directorate (ND). In the rapidly developing landscape of new nuclear power in the UK, this Consultation will be of interest to all stakeholders taking part in the 'nuclear renaissance', including commercial operators, regulatory partners, employees of regulators, current duty holders who are regulated by the ND, and those parts of the Department for Transport (DfT) that would be affected by any reform (namely the Radioactive Materials Transport Team and the Transport Security and Contingencies Directorate).

The creation of a single regulator has been largely welcomed by unions, as constraints on civil service sector pay have been identified as previously hindering the recruitment and retention of staff at agencies such as the Nuclear Installations Inspectorate.

Key Proposals

The Consultation seeks responses to two key proposals to change the current system of nuclear regulation. These are:

- The creation of a new sector-specific independent regulator, with a predominantly non-executive board, which will report to (i) Ministers in respect of its regulatory functions; and (ii) Ministers and the HSE in respect of strategies and business planning.

- The transfer of the statutory responsibilities for the exercise of transport, security and safeguards functions from the Secretaries of State for Transport, and Energy and Climate Change to the new regulator.

The new regulator would be a statutory corporation (referred to as the Nuclear Statutory Corporation (NSC), to be effected by a Legislative Reform Order). The aim of the NSC is to strengthen, focus and improve the organisational framework of nuclear regulation in the UK.

It is envisaged that the NSC would have greater organisational and financial freedom than is available to existing regulators. The Chief Inspector would provide authoritative regulatory leadership, to whom the NSC board would delegate specific or individual

regulatory or operational decisions. The Chief Inspector may in turn, delegate certain operational functions to appropriate NSC staff.

For a link to the full Consultation document, including details of how to respond, please go to:
www.decc.gov.uk/en/content/cms/consultations/hse_restruct/hse_restruct.aspx

To read more and to view our original Law Now please go to:
www.law-now.com/law-now/2009/DECCjuly2009.htm

For our previous Law-now on the EU Directive establishing a binding framework on nuclear safety, please go to:
www.law-now.com/law-now/2009/euestablishesbinding260609.htm

Proposals for new 'fit note' unveiled

On 28 May, the Government unveiled proposals for a new medical 'fit note' to replace the existing sick note. The changes are intended to take effect from Spring 2010 and come in response to Dame Carol Black's 2008 report into the health of Britain's working population (as discussed in previous editions of this newsletter).

The 'fit note', which is intended to be computer generated in GPs' surgeries, gives the GP the option to indicate when someone 'may be fit for some work now'. Where the GP does so, he will be required to take a record of general details of the functionality of the individual's condition. This information, it is hoped, will facilitate the discussions between employer and employee about what steps can be taken to achieve the employee's return to work. Although the current sick note includes a 'remarks' section, its primary focus has been on the individual's health condition and how long he should be absent from work.

The new note is aimed at getting people back to work quickly from sickness, rather than to let them drift into long-term absence. The exact form of the note is still under discussion and other proposals include allowing GPs to suggest where employees may benefit from common types of workplace or job changes, e.g. phased return to work or altered hours or even an occupational health referral.

The proposed new system should help employers assess an employee's medical condition. However, employers will not be bound by the GP's recommendations and will remain responsible for ensuring that the employee is fit to return to work under the terms of his contract. Prudent employers will therefore not follow GP recommendations in isolation and should, in particular, bear in mind their responsibilities and possible exposure under the Disability Discrimination Act 1995 and various health and safety laws.

The 12-week consultation on the proposals for the new 'fit note' closes on 19 August 2009.

To view the Consultation Paper please go to: www.dwp.gov.uk/consultations/2009/Reforming-the-Medical-Statement-consultation-28May2009.pdf

To view our original Law-Now please go to: www.law-now.com/law-now/2009/newfitnotemay09.htm?&MSHiC=65001&L=10&W=fit%20note+

New sanctions for regulators: The Regulatory Enforcement and Sanctions Act 2008

The Regulatory Enforcement and Sanctions Act 2008 (the 2008 Act) received Royal Assent on 21 July 2008, but did not fully enter into force until April 2009. The 2008 Act provides for a range of new civil sanctions that are to be available in cases of regulatory non-compliance. These sanctions are intended to be more proportionate and flexible alternatives to sanctions in the criminal courts. However, before any of these sanctions can be used by any regulatory body (including the HSE), an order must be passed by Parliament allowing a specific regulatory body to use them. No such orders have been made at this stage, and BERR (the governmental department responsible for the Act) have confirmed that they are not expecting any orders to be made before April 2010 (at the earliest).

The new sanctions will include:

- **Fixed Monetary Penalties** – these are fines for relatively low, fixed amounts in the case of low-level or minor instances of non-compliance.

- **Discretionary Requirements** – this 'catch-all' phrase refers to a package of three sanctions that may be imposed on their own or in combination with each other in the event of mid to high-level instances of non-compliance. The first discretionary requirement is payment of a variable money penalty (VMP) of such amount as the regulatory body may determine; the second is what is known as the 'compliance requirement' e.g. making good a piece of unsafe equipment; and the third is what is known as the 'restoration requirement' e.g. cleaning up a contaminated area. Where a VMP has been imposed, a company cannot later be criminally prosecuted for the same offence. The position will be different, however, in the case of the other two (non-financial) discretionary requirements.

- **Stop Notices** – this is a notice prohibiting a person from carrying on a specified activity until certain steps have been complied with.

- **Enforcement Undertakings** – these are agreements made between a business and a regulator, stating that the business must undertake a specific action. It is hoped that the business itself may draw failures to the regulator's attention, and that this

will allow innovative means of returning to compliance where a business recognises it has fallen into non-compliance. It will be for the business to offer up such action, perhaps after discussions with the regulator. These undertakings are perhaps the most interesting and radical of all the new sanctions.

New stress management guidance published

In June this year, new guidance, "Line Management Behaviour and Stress at Work", was launched as part of a four-year project to identify the management practice which will help organisations to reduce stress at work. The guidance is jointly funded by the Chartered Institute of Personnel and Development (CIPD), the HSE, and Investors in People.

In-depth research was carried out across 17 organisations and included an evaluation of manager training in stress management. The guidance sets out key management behaviours for managing stress at work, which is classified under four competency headings: 1) managing and communicating existing and future work, 2) reasoning and managing difficult situations, 3) managing an individual within the team and 4) managing emotions and integrity.

The guidance has been produced in light of the fact that ill-health relating to stress at work doubled in the period between 1990 and 2007, and is now the second biggest cause of employee absence. This figure is expected to rise as a result of the current recession with a recent survey indicating that 44% of workers felt more pressured in the workplace as a result of the recession and another survey finding that 13% of workers found their work very or extremely stressful. This information should be considered carefully by employers as it is believed that work-related stress, depression or anxiety accounted for around 13.5 million lost working days in 2008 – a cost that employers can ill-afford in the current economic climate.

Ben Willmott of CIPD commented that "Employers that invest in training and developing their managers to ensure they exhibit the behaviours that manage stress at work will also reap benefits in terms of reduced conflict and staff turnover, as well as increased motivation and commitment."

To view the guidance in full please go to:
www.cipd.co.uk/subjects/health/stress/_strwklnmgr.htm

Report on shiftwork

A report published in June 2009 estimates that 3.5 million shiftworkers in the UK are facing serious health risks because the HSE do not schedule their own staff to work outside of 'normal office hours.'

Professor Andrew Watterson's report, entitled "While you were sleeping", considers that shiftworkers are subjected to second class safety because there is no preventative

health promotion during their working hours and no routine health and safety inspections outside of normal office hours. Professor Watterson considers this to be unacceptable because shiftworkers face the same risks as those who work normal hours as well as a variety of shiftwork specific risks, with atypical working hours being linked to various conditions including breast cancer, prostate cancer and an increased injury and disaster risk.

Although the HSE have published "good practice" guidance on shiftwork, this report accuses the HSE of failing to be proactive on the issues, particularly the cancer risks, and further criticises them for being "near-dormant on the working hours issue" having issued no more than two improvement notices a year relating to Working Time Regulations since 2003. However, the HSE has commissioned a major research study to investigate the reported corrrelation between shiftwork and breast cancer, other cancers and other major diseases which will run until December 2011. Furthermore, the HSE indicate that any concerns raised about shiftwork are taken seriously and if any enforcement action is taken it would not necessarily be recorded as a Working Time Regulation matter but instead may be recorded as a matter falling under the Health and Safety at Work Act.

The report is published in the online journal "*Hazards Magazine*". To view the report in full please go to: www.hazards.org/hours/shiftwork.htm

Names of those killed at work to be published

Following a ruling by the Information Commissioner, the Health and Safety Executive (HSE) are to release a list of names of those killed at work. The list will appear in the HSE Chief executive's monthly report to the board and the information will also be available on the HSE website.

The information to be published on the website will include the names and ages of the deceased, a brief description of the circumstances of the fatal incident as well as the location and date of the incident. Details will only be published in relation to work-related deaths where the HSE is the enforcing authority.

For further information and to view the list please go to:
www.hse.gov.uk/foi/fatalities/in-year-names.htm

Focus on: driving at work

Businesses fail to discharge duty of care

A recent survey has found that UK businesses are leaving themselves open to the risk of prosecution under the Corporate Manslaugher and Corporate Homicide Act 2007 and the possibility of unlimited fines or imprisonment, because they are failing to discharge the duty of care owed to "at-work" drivers.

The survey, undertaken by Matrix Global Services Limited (Matrix), interviewed 10,000 at-work drivers, and found that 40% had never seen their company's driver handbook whilst over 20% of "grey-fleet" vehicles (vehicles which are privately owned but used for their employers' business) do not have the correct class of "business use" insurance in place. It also indicated that one in twenty at-work drivers have medical conditions which should have been reported to the Driver and Vehicle Licensing Authority (DVLA).

The survey indicated that 45% of at-work drivers were driving grey-fleet vehicles. It was found that among this group there were 570 accidents in the last 12 months which were left unreported and 116 drivers were found to have had more than one unreported accident. The survey also found that almost 16% of drivers do not plan their journeys in advance whilst almost 7% admitted that they do not arrive at most of their meetings on time. These figures are significant because separate research has indicated that a driver is four times more likely to be involved in an accident when rushing to get to a meeting.

Scott Ingham, the Managing Director of Matrix, stated that the largest proportion of at-work deaths are as a result of road accidents, making at-work driving the lead exposure to organisations of all sizes; "Unless the employer is able to tell the police the condition of the vehicle, the condition of the driver and the insurance status of the vehicle, then both he and the company are exposed. There is a need to show that all of the right procedures and policies are in place, and that there is a robust audit trail to monitor all those people who might drive on business and the condition of their vehicles."

Government review of driving hours rules

On 21 July, the Government launched a consultation on the hours which can be worked by van, bus and other professional drivers.

The UK domestic drivers' hours rules (the Rules) set daily driving and duty limits, and may also prescribe rest requirements in order to improve road safety and promote good working conditions. The Rules cover drivers of vans, refuse collection and breakdown vehicles as well as many other professional drivers including shorter route bus drivers (routes of less than 50km). The Rules do not apply to lorry drivers or bus drivers on longer routes as these classes are covered by the European Union drivers' hours rules (Regulation (EC) 561/2006).

The consultation, which will run until 13 October 2009, does not propose any legislative changes but will be used to inform future policy decisions. Issues highlighted in the Consultation Paper include whether the maximum driving and duty times are set at the correct level, whether rest requirements should be introduced or changed for certain classes of drivers and an overall opinion of the Rules.

To view the Consultation Paper please go to:
www.dft.gov.uk/consultations/open/domesticdrivershours/

Update: Coroners and Justice Bill

On 14 January 2009, the Coroners and Justice Bill (the Bill) was introduced in the House of Commons. The aim of the Bill is to "deliver a more effective, transparent and responsive justice system for victims, witnesses and the wider public." It has been introduced following a number of public consultations throughout 2008. The Bill's provisions extend mainly to England & Wales, with only certain provisions extending to Scotland and Northern Ireland.

In relation to coroners, the Bill seeks to introduce a national coroner service for England and Wales, headed by a new Chief Coroner. It aims to improve the experience of those bereaved people coming into contact with the coroner system, giving them rights of appeal against coroners' decisions and setting out the general standards of service they can expect to receive. By establishing improved powers and guidance for coroners and publicising statistics and reports to prevent deaths, the changes should reduce delays and improve the quality and outcomes of investigations and inquests. Senior coroners will also have powers to commission post-mortems where appropriate. For deaths not investigated by the coroner, a system of secondary certification will be introduced, which will enable independent scrutiny and confirmation of the medical cause of death in a way that is "proportionate, consistent and transparent".

In addition to the provisions to reform the coroner system, the Bill seeks to amend elements of the law in relation to the criminal offences of murder, infanticide and assisted suicide. It also sets down new rules for the protection of witnesses and in relation to the security of court, and it contains various amendments in the areas of legal aid, sentencing, criminal memoirs and the Data Protection Act 1998.

The Bill has passed through the House of Commons, and it is due to go to reporting stage at the House of Lords on 21 October 2009.

To see the Bill as introduced and as amended please go to:
services.parliament.uk/bills/2008-09/coronersandjustice.html

Update: Damages (Asbestos-Related Conditions) Bill – pleural plaques

The Scottish position:
As discussed in previous editions of this Newsletter, the Damages (Asbestos-Related Conditions) (Scotland) Act 2009 (the Act) was passed in Scotland on 17 April 2009.

In November 2007 the Scottish Parliament chose to legislate on the matter of pleural plaques, after the House of Lords ruled that pleural plaques would not merit compensation in English Tort Law in the case of *Johnston v International Combustion Ltd* in October 2007. Whilst not binding in Scotland, House of Lords judgments are

highly persuasive, and Johnston had already been cited in a Court of Session case. This prompted the Scottish Government to take steps to ensure the decision would not have effect in Scotland.

The Act determines categorically that people with asbestos-related pleural plaques may raise an action for damages. The position is also clarified in relation to asbestos-related pleural thickening and asbestosis - although there is no authoritative decision that these conditions are not actionable, section 2 of the Act ensures that these conditions will also constitute material damage for the purposes of raising an action. Moreover, the provisions apply retrospectively (taking effect from the date of the House of Lords judgement (17 October 2007), but will not apply to any action which has been settled or any legal proceedings which have been determined before the provisions come into force.

A group of insurers has raised a Judicial Review of the Act, and also sought interim interdict from the Court of Session to prevent the Act being brought into force - which was refused by the Court of Session. The Judicial Review continues, and although the Act has been brought into force it is likely that any actions which are raised will be sisted until the Judicial Review has been resolved. There are currently around 600 cases which have already been sisted and are unlikely to be recalled until the legality of the Act is determined.

To view the Scottish Act please go to:
www.opsi.gov.uk/legislation/scotland/acts2009/pdf/asp_20090004_en.pdf

The English position:
The UK Government introduced a similar bill - the Damages (Asbestos-Related Conditions) Bill (the Bill) - in January 2009. The Bill as introduced would overrule the aforementioned decision of the House of Lords in relation to England and Wales, and would put the right of those diagnosed with pleural plaques to claim for damages on a statutory footing similar to that in Scotland.

The Bill received its Second Reading in Parliament on 24 April 2009 and went to Committee stage on 1 July 2009. There were no amendments to the Bill, and it will now go on to the Reporting Stage on 16 October this year.

To view the UK Bill as introduced please go to:
www.publications.parliament.uk/pa/cm200809/cmbills/033/200809.pdf

New workplace safety poster

In April, the Health and Safety Executive (HSE) unveiled the updated "Health and Safety Law: what you must know" poster. A pocket-sized leaflet summarising the information contained on the poster was also launched. Under health and safety law all employers must display a copy of the poster in a prominent position in the workplace, or provide a copy of the leaflet to every worker.

The HSE insist that the new poster is modern and easy to read and replaces the old "rarely read" poster. It sets out in simple terms, using numbered lists of basic points, what employers and workers must do to comply with the legislation, and tell you what to do if there is a problem. An mp3 "talking poster" is also planned for release in the future.

The new poster must be displayed from 5 April 2014 and the old posters may continue to be displayed in the meantime, provided they are readable and the addresses of the enforcing authority and the Employment Medical Advisory Service are up to date.

To order the new poster and leaflets please go to:
www.hse.gov.uk/pubns/books/lawposter.htm

HSE Strategy – Be part of the solution

On 3 June the HSE launched their new strategy document – "Be part of the solution" – designed to reduce the number of accidents in the workplace and take a "common sense approach" to ensuring that risk management is an enabler for business, not a burden.

Health and safety standards in the UK have improved dramatically over the last 35 years, but since 2003 the rate of improvement appears to have stalled. The HSE considers that it is not acceptable to maintain the status quo, and is calling on not only business leaders, but the entire workforce, to "be part of the solution" by working together to improve health and safety standards. To do so is particularly important in the current economic climate – it is essential that employers do not cut corners in their attempt to save on costs. The HSE ran a three-month consultation on their new strategy, which came to an end in March 2009. Over 200 responses were received, and were considered alongside comments and ideas from regional workshops. Overall the strategy has four clear objectives 1) to reduce the number of work related fatalities, injuries and causes of ill health, 2) to gain widespread commitment and recognition of what real health and safety is about, 3) to motivate all those in the health and safety system as to how they can contribute to improved health and safety performance and 4) to ensure that those who fail in their health and safety duties are held to account. The ten goals which are founded in "common sense and practicality" are:

- To investigate work related accidents and ill health and take enforcement action to prevent harm and secure justice when appropriate.
- To encourage strong leadership in championing the importance of, and a common sense approach to, health and safety in the workplace.
- To motivate focus on the core aims of health and safety and by doing so, help 'risk makers' and managers distinguish between real health and safety issues and trivial or ill-informed criticism.

- To encourage an increase in competence which will enable greater ownership and profiling of risk, thereby promoting sensible and proportionate risk management.
- To reinforce the promotion of worker involvement and consultation in health and safety matters throughout both unionised and non-unionised workplaces of all sizes.
- To specifically target key health issues and to identify and work with those bodies best placed to bring about a reduction in the number of cases of work related ill health.
- To set priorities and identify which activities deliver a significant reduction in the rate and number of deaths and accidents.
- To adapt and customise approaches to help the increasing number of small and medium sized businesses in different sectors comply with their health and safety obligations.
- To reduce the likelihood of low frequency, high impact catastrophic incidents while ensuring that Great Britain maintains its capabilities in those industries strategically important to the country's economy and social infrastructure.
- To take account of wider issues that impact on health and safety as part of the continuing drive the improve Great Britain's health and safety performance.

Research carried out by the HSE indicates that nearly eight out of ten business leaders acknowledge that good health and safety standards are beneficial – partly because it helps workers feel valued, and partly because the cost of preventing an accident is almost always less than the cost incurred when an accident does occur. It makes particularly good business sense to ensure strong health and safety management during a recession. Tom Mullarkey, Chief Executive of the Royal Society for the Prevention of Accidents, has stated that: "In a highly competitive market in which clients demand higher standards in order to divorce themselves from the risk of poor contractor performance, the ability to demonstrate effective health and safety management is all the more important in winning new business."

To view the strategy in full please go to: www.hse.gov.uk/strategy/strategy09.pdf

To view our original Law-Now please go to: www.law-now.com/law-now/2009/hsejune2009.htm?&MSHiC=65001&L=10&W=be%20part%20of%20the%20solution+

Case Law

Smith v Northamptonshire County Council: House of Lords further clarify meaning of "work equipment"

On 24 July 2009, the House of Lords held that employees will have no right of claim against their employers for injury caused by equipment that has not been provided or maintained by their employer.

The case involved a care worker, Mrs Smith, who sued her employer, the Council, after she was injured when a wooden ramp crumbled underneath her foot, causing her to fall. Mrs Smith's role required her to collect people from their homes and take them by minibus to a day centre. One of those whom she had to collect was a Mrs Cotter. To get Mrs Cotter from her home to the minibus, Mrs Smith had to guide her wheelchair down a wooden ramp. The ramp had been provided 10 years previously by the NHS.

Proceedings were brought against the Council on the basis of a breach of the Provision and Use of Work Equipment Regulations 1998 (the 1998 Regulations). The 1998 Regulations impose strict liability, that is to say, where there has been a breach it will be no defence to say that there was a latent defect or to say that the remedy of such defect would not be reasonably practicable. It was stated that the application of the 1998 Regulations to the case required two questions to be answered: firstly, whether the equipment was "work equipment" within the meaning of the 1998 Regulations, and secondly, whether it was "provided for use or used by Mrs Smith at work", as required by Regulation 3(2).

The case highlights a situation which gives rise to considerable difficulty – that of an employee whose place of work is not confined to the employer's premises. As in this case, the nature of an employer's undertaking may involve sending employees to work elsewhere, and equipment may be needed to enable them to carry out the work they have been employed to do.

The decision was reached on a 3-2 majority, and those three judges who dismissed the appeal did not come to their decision easily. Lord Hope and Baroness Hale agreed that the appeal should be allowed (i.e. finding in Mrs Smith's favour that the Council were liable), but Lords Carswell, Mance and Neuberger agreed that the appeal should be dismissed (meaning that the Court of Appeal decision in favour of the Council was upheld).

There was general agreement amongst the judges that the ramp would be considered "work equipment", since it was "apparatus" or an "installation" necessary for Mrs Smith to perform her role. The judges disagreed, however, on the second question relating to the words "for use at work". The judges' decision centred largely on the extent to which the Council had control over the ramp.

In this case, the ramp was not provided by the Council for use by Mrs Smith – it was, however, being used by her at her work with their knowledge and approval (they had, in fact, checked the ramp and carried out a risk assessment). The Council had a "real choice" whether or not to let Mrs Smith use the ramp, as they would have had to make other arrangements if they had found the ramp to be unsuitable. For this

reason, two of the five judges found that the Council **did** have a sufficient degree of control over the equipment to allow the appeal and find in favour of the claimant.

However, the remaining three judges in their majority decision agreed that such a finding would stretch the boundaries of the 1998 Regulations beyond their intended meaning. It was held that because the ramp was not part of the Council's undertaking or establishment, the 1998 Regulations would not apply. The Council did not have control over the ramp - they did not provide it, or possess it, and they did not have any responsibility or any right to repair it. As expressed by Lord Carswell, the ramp was "no more than part of the environment, like the Westminster Underground Station escalator, which any employee must face when performing her functions at work away from any premises occupied by her employer".

A warning was also given to the Courts, that they must be careful not to impose responsibilities on employers which go far beyond those intended by the various EU Directives and UK laws.

The Law Lords further held that even where an employer has inspected equipment as part of a risk assessment, such inspection would not in itself imply liability. As Lord Neuberger put it: "I am unimpressed with the argument that the Council ought to be liable in this case because they inspected the ramp…the fact that the Council behaved responsibly in connection with the ramp cannot be a reason for concluding they were liable for an injury caused thereby." However, the point was made that where any such inspection did reveal a defect in the equipment there would be a good claim in negligence – not because the Council had inspected, but because it had failed to act appropriately as a result of discovering the defect.

Builder and contractor jailed for manslaughter

In July 2009, two men were convicted following the death of a 15-year old boy at a construction site. A builder, Colin Holtom, pled guilty to manslaughter, whilst a contractor, Darren Fowler, pled guilty to a failure to discharge his general duties under the Health and Safety at Work Act 1974 and to working while disqualified from being a company manager.

The 15-year old boy, Adam Gosling, had been working on a casual basis for Mr Holtom, who had been subcontracted to carry out construction work at a private residence. The project manager for the site was Mr Fowler. The work took place in April 2007 and involved the demolition of a pool house. During the demolition a 22-foot long, 7-foot high wall with a crack running down the middle was revealed which also required to be demolished. Adam Gosling and his older brother began the demolition with no supervision, and with no proper instruction on how the wall was to be taken down. The wall soon began to lean into a neighbouring garden, and when Adam informed Mr Holtom, he was told to go into the neighbour's garden and push the wall back. As he did so, the wall fell on top of him, trapping him underneath and resulting in a major head injury. He was later confirmed dead at the scene.

The incident was investigated by the HSE, along with the Homicide and Serious Crime Command. Investigations revealed that although the incident took place in on 23 April Mr Fowler knew that the wall was dangerous as early as 18 April– as proved by an email sent by him to the client. Aside from the fact that Adam, as a 15-year old – should not have been allowed to work on site, there was also found to be a "complete disregard for basic health and safety requirements" throughout the entire construction project, with no risk assessments, no training, inadequate personal protective equipment and minimal supervision. Even when Adam approached Mr Holtom to alert him to the issue of the leaning wall, Mr Holtom took no action

himself, and did not go to inspect the area. There were no welfare facilities on site, and the workers were not even covered by Employee Liability Insurance.

Mr Holtom was sentenced to three years imprisonment after pleading guilty to manslaughter, and Mr Fowler was sentenced to 12 months imprisonment for working whilst disqualified.

Focus on: driving at work

Two Fines in Five Days for Construction Company

A construction company has been prosecuted twice in five days for two separate workplace accidents in which one worker was killed and another seriously injured.

In relation to the first incident, Bouygues (UK) Limited, had been contracted to build teaching accommodation on an East-London site. On the day of the incident Robert Caston, a maintenance engineer, was carrying metal shelving from a storage area across a one-way vehicle route. Mr Caston was struck and killed by a reversing vehicle, known as a 'telehandler' – similar in appearance and function to a forklift, but with a single telescopic boom that can extend forwards and upwards from the vehicle.

The failings of the company were found to be numerous. Although the company had identified the need for a banksman to direct vehicle movements on site, no such banksman was in place on the day of the incident. Furthermore, no pedestrian barriers were in place to enclose the storage area, and there were no marked pedestrian crossings. The company pled guilty to breaching sections 2 and 3 of the Health and Safety of Work Act 1974 (HSWA), by failing to ensure the safety not only of Mr Caston, but of their own employees. It was fined £160,000 with costs of almost £22,000.

The second incident, in which a carpenter fell from a height of five metres, resulted in a fine of £18,000 for breaching section 3 of the HSWA. The carpenter had been working on the edge of a platform and leaning out beyond the area protected by handrails. As he reached out the carpenter fell onto a platform below resulting in multiple injuries including fractured ribs and a fractured collarbone. It was established that the company had failed to draw up a risk assessment or method statement explaining how the work should have been carried out, and that the company had relied on a poorly supervised and inadequately trained system of harnessing.

Companies fined £265,000 for failure to maintain plant equipment

Two companies have been prosecuted in relation to the death of a forklift truck driver at a waste water treatment works in September 2003.

The driver was crushed between the descending arm and the side of his vehicle due to the complete lack of the side cab window. The window normally acted as a guard, but had been damaged during a lifting operation five weeks prior to the incident. Although there were no witnesses to the incident, an explanation was offered such that the man leant out of the cab window and came into contact with the joystick, bringing the arm of the forklift down onto him.

MB Plastics Limited and Birse Integrated Solutions Limited pled guilty to offences under the Health and Safety at Work Act 1974 and were fined £150,000 (with £25,000 in costs) and £50,000 (with £41,000 in costs) respectively. It was found that there had been a failure to prepare suitable and sufficient risk assessments in relation to forklift truck operations, and that there had been a failure to follow health and safety procedures. Birse, as the principal contractor on site, had a duty to supervise MB Plastics as its subcontractor, yet the company's management system was not implemented, meaning that the lack of cab window went unnoticed. MB Plastics, as

employer to the deceased, had primary responsibility for the welfare of their employees but it was found that MB Plastics "completely failed to have any proper regard to their health and safety obligations."

Company fined after forklift reverses over worker

In June 2009 BAM Construction Limited was fined £15,000 and ordered to pay £13,540.90 costs after pleading guilty to breaching section 3(1) of the Health and Safety at Work Act.

A sub-contractor was working under the control of BAM Construction Limited at a new shopping complex. He had been installing the fire protection system and carrying a piece of plasterboard when he was reversed over by a forklift causing severe injuries to his left leg and a dislocated bone in his right leg. The injuries were so severe that the man has still not returned to work more than two years after the incident.

Although the company had policies in place, it was found that BAM Construction Limited had failed to effectively plan, organise, control, monitor and review traffic on the site and had failed to maintain and manage traffic routes. Workplace transport remains one of the major causes of fatal accidents and major incidents and this incident highlights that it is not enough to have workplace transport policies in place – they must also be effectively implemented.

Dumper truck driver jailed for 18 months

A man has been sentenced to 18 months imprisonment in yet another case involving breaches of health and safety arising from driving at work.

A foreman at a recycling depot in Sunderland ran over and killed a colleague in the site's yard. The foreman, James Johnston, admitted that he had been driving "by instinct", because the truck was so overloaded with timber he could not see out of the front window. The employer company, Alex Smiles, was also charged and pled guilty to a breach of section 2 of the Health and Safety at Work Act 1974. The company was fined £15,000 with costs of £5,000.

The results of the HSE investigation into the death indicated that the traffic management at the depot had been inadequate: there had been no traffic management plan at the site – no segregation, no pedestrian zones and no designated crossing paths. It was also revealed that the incident was not an isolated one – the practice of overloading vehicles was found to be commonplace.

The HSE served an improvement notice on the company after the incident, requiring the implementation of a proper traffic management system. This has since been complied with.

Focus on: working at height

Company fined after employee suffers serious injuries in 10-metre fall

A company and a contractor have been prosecuted in relation to serious injuries suffered by an employee when he fell from a height of more than ten metres in July 2007.

The employee of Hansen Transmissions Ltd (the Contractor) was working on the replacement of a condenser unit at the premises of Veolia Environmental Services Birmingham Limited (VESB) when he fell. He landed on a pallet of bundled narrow bore copper pipes which absorbed much of the impact, but suffered serious injuries including broken ribs and a punctured lung.

On 3 July 2009 the Contractor pled guilty to breaching section 2(1) of the Health and Safety at Work Act and was fined £70,000 (with £22,000 in costs). It was found that the system in place with the Contractor for working at height was unsafe as workers were provided with an inadequate working platform and had inadequate protection from the drop below. At the same hearing, VESB pled guilty to breaching section 3(1) of the Health and Safety at Work Act and was fined £100,000 (with £22,000 in costs), VESB having failed to properly manage or maintain the work being carried out by the Contractor.

Construction company fined after death of worker

A Scottish construction company and one of its directors have been convicted of failure to ensure proper health and safety standards. It is only the second successful prosecution of a company director in Scotland for a breach of health and safety legislation in six years.

A man was working on the building of a block of flats when he fell nearly three metres down an exhaust shaft and later died of his injuries. It was found that the accident occurred because there was not a robust barrier on the edge of the shaft; the type of barrier normally found at a roadworks site had been used instead.

Discovery Homes (Scotland) Limited pled guilty to a breach of section 2(1) of the Health and Safety at Work Act and was fined £5,000. Mr Richard Pratt, a director of Discovery Homes (Scotland) Limited who also performed the duties of site manager, was fined £4,000 after pleading guilty to a breach of section 37(1) of the Health and Safety at Work Act. It was found that the culpability of the company was entirely attributable to the neglect of Mr Pratt.

Company fined after builder left paralysed

A company has been prosecuted after a worker was paralysed after falling ten feet through roof joists while working. In April 2005 the worker fell while joists were being removed from the ceiling of an archway, resulting in serious injuries to his back causing permanent paralysis. Property People (NW) Ltd (Property People) had failed to provide a safe platform for its employees to use.

Property People pled guilty to breaching section 2(1) of the Health and Safety at Work Act and Regulation 3(1) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 by failing to report the incident to the HSE. The company was fined £92,000 and ordered to pay costs of £11,404. Working at height is the biggest cause of workplace deaths and the severity of this case reminds employers that the consequences for failure to comply with the legislation can be severe.

Company fined £150,000 after worker's arm crushed in roller

A Company has been prosecuted following an incident in which an employee was seriously injured while attempting to clean the trim return conveyor belt on a gum sheeting machine. The moving part of the machinery was unguarded which allowed the employee's arm to be drawn into the machinery causing very serious injuries.

In July 2009 The Wrigley Company Limited pled guilty to breaching both section 2 (1) of the Health and Safety at Work Act and Regulation 11 (1) of the Provision and Use of Work Equipment Regulations 1998. The company was fined £75,000 for each charge and ordered to pay costs of £21,000.

During the HSE investigation of the incident it emerged that two previous safety consultant reports commissioned by the company in 2002 and 2006 had highlighted the guarding deficiencies but the company had failed to address the issues adequately. The company incorrectly relied upon training and the expectation that staff would always follow isolation procedures during the cleaning of the conveyor belt.

£175,000 paid in compensation for mesothelioma

A former hospital plumber, Alan Ward, has received £175,000 following a diagnosis of the asbestos-related disease, mesothelioma.

Mr Ward raised his personal injury claim against Yorkshire and Humber Strategic Health Authority. Mr Ward had been exposed to asbestos whilst working for a number of hospitals between 1964 and 1972, but he had never been warned of the dangers to his health of exposure to asbestos, nor had he been provided with any personal protective equipment.

Company director fined for smoking at work

In July 2009, a company director was prosecuted for repeatedly smoking at his workplace. The director, Martin Lenehan, was caught smoking during an inspection by the local authority, despite the fact his firm, Metric Scaffolding, had previously been issued with a warning.

The Council visited the premises after receiving an anonymous complaint such that employees would routinely smoke in their offices and vehicles. At that time the written warning was issued to the company. During a follow-up visit to the premises, the Council found Mr Kenehan smoking at his desk. He was issued with a £50 fixed penalty fine, but refused to pay and so was summoned to Court. He then received a £175 fine with £75 in costs.

Spider scare case unsuccessful

A German woman has recently been unsuccessful in her claim for 6000 Euros (approximately £5,190 at today's rates) against her housecleaners for negligence for injuries suffered after she was startled by a spider in her garage!

The woman claimed she had been surprised by the presence of a spider which caused her to fall over, break her wrist and bruise her hip. She alleged she had employed the housecleaners to maintain the garage and specifically to remove cobwebs on a monthly basis. The court, however, ruled that this was nothing more than an unfortunate accident caused by an every day risk, and pointed out that spiders could easily make their way into the garage in between cleaning.

Health and Safety - what we do

We have extensive experience in health and safety – particularly in the Energy sector reflecting the challenging nature of this highly regulated industry. However, our client base spans a number of industry sectors, including:

- Aviation
- Transport
- Energy
- Renewables
- Leisure
- Manufacturing
- Construction
- Communications

Regrettably incidents can be serious, even involving fatalities, and our clients have appreciated the high level of attention and support we are able to offer at what can be a very difficult time for any organisation. We are able to provide assistance in every aspect of responding to an incident, whether that is incident investigation, dealing with witnesses, defending a prosecution or advising senior management on liaising with the Health and Safety Executive. Our dedicated, specialist team is always on hand to provide assistance, 24 hours a day through our on call system if required. In addition, we provide advice on corporate governance issues, assist in transactional due diligence on health and safety and assist with general updates, information and training to clients. Our team are qualified to practice in both England & Wales and Scotland, and regularly provide advice to clients in relation to international working patterns.

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 Prohibition Notices
- compliance with UK and European regulatory requirements
- drafting corporate safety policies and contract documentation
- safety aspects of projects and property management
- due diligence in acquisitions
- directors' and officers' personal liabilities
- management training courses
- personal injury defence
- risk management and training.

CMS Cameron McKenna has a reputation as the leading firm in the area of health and safety, providing specialist advice on regulatory requirements, risk management and corporate governance, as well as representing organisations facing enforcement action and claims for compensation.

Recent experience

- Defending solemn prosecutions of client companies, arising out of serious incidents.
- Appealing other types of enforcement action taken against companies (e.g. prohibition notices).
- Conducting numerous Fatal Accident Inquiries - including some of the most high profile, lengthy and extensive inquiries to have taken place in relation to Offshore matters.
- Conducting Coroners' Inquests.
- Obtaining first ever award against the Crown in favour of a client company following an Inquiry.
- Taking appeals to the High Court of Justiciary.
- Taking appeals on human rights issues to the Privy Council.
- Defending Judicial Reviews.
- Advising clients on forthcoming health and safety legislation.
- Assisting clients in consultation with the regulatory body (HSE).
- Advising clients in relation to Safety Cases and on Corporate Governance issues and Directors' responsibilities.
- Undertaking transactional due diligence in relation to health and safety matters.
- Advising clients on carrying out incident investigation and on dealing with HSE inspectors following an incident, including the powers of HSE inspectors.
- Preparing and drafting incident investigation reports.
- Advising clients on media and reputational issues following incidents.

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