



Health and Safety Legal Update

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Zero incidents
Zero harm
Zero compromise
Keeping you healthy and safe, every day at work.

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Introduction

Karl Simons

Welcome to the first issue of our Health and Safety Legal Update newsletter.

The importance of health and safety legislation can never be underestimated. Developed by Government in consultation with industry, it ultimately benefits individuals by playing a key role in the development and setting of performance standards that keep us all safe from harm in our workplace, regardless of our role.

I sincerely hope that the information in this newsletter will help you and your team to increase your knowledge of the foundations of modern safety management that this legislation provides. In this issue, you can learn about some changes to the law that affect Thames Water, what we in Thames Water have been doing to manage some of our key health and safety risks and how we have had the privilege of working with other organisations to share our experience for the benefit of all. I hope you enjoy it.



Sentencing Guidelines Impact so far

In a recently published article, IOSH and Osborne Clarke LLP worked together to look at the impact the new sentencing guidelines have had since they came into force in February 2016. A Freedom of Information Act request revealed there has been a steep rise in the level of fines, since the guidelines came into effect, with 19 fines of £1 million or more in 2016, compared to three in 2015.

Initial analysis of the types and levels of fines during 2016 indicates that the individuals responsible are coming under even greater scrutiny, and that higher sentences are being imposed.

Sentencing Council

In 2015-2016, 46 company directors and senior managers were prosecuted under health and safety law, compared to an annual average of 24 in the five previous years.

The largest 20 fines: 2014 - 16

The following table shows the scale of the 20 largest fines handed to organisations convicted of health and safety offences in 2014, 2015 and 2016 (source IOSH and Osborne Clarke LLP).

Fine Range	Number of Fines		
	2014	2015	2016 (guidelines in effect from February 2016)
£3m +	0	0	4
£2.5m - £2,999,999	0	0	1
£2m - £2,499,999	0	1	3
£1.5m - £1,999,999	0	0	4
£1m - £1,499,999	0	2	7
£500,000 - £999,999	1	11	1
£250,000 - £499,999	4	6	0
£0 - £249,999	15	0	0

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The report goes on to state that the new sentencing guidelines increase the likelihood that directors would face custodial sentences if found guilty.

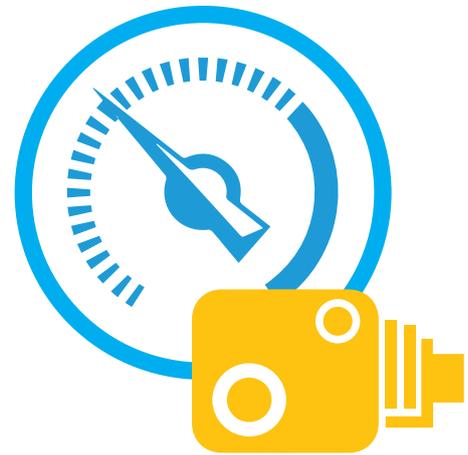
The report also confirmed that under the new guidelines, courts are starting to issue large fines for companies who have exposed workers or others to serious health and safety risks, even where an actual incident has been avoided.

The scale of fines given to organisations since the application of the new sentencing guidelines has increased significantly when compared to the twenty highest fines from the previous two years. The table, taken from the report, shows the increase from all fines under £1 million in 2014 to four fines over £3 million in 2016.

Sentencing For Driving Offences: Increase in fines for most serious speeding offences

Imagine losing a whole week's wages. What effect would that have on your monthly household budget? The fines for more serious speeding offences now have a starting point of 150% of weekly income, but drivers could be fined 100% of weekly income for the offences shown below. The potential increased loss of income and penalty points on licenses, or even disqualification from driving, should provide an incentive for drivers to maintain a safe speed when using the road.

Speed is a key factor in the likelihood and potential consequences of any road-traffic incident. In order to increase road safety for all road users, new sentencing guidelines for Magistrates have been published and these came into force on 24 April 2017. Included in the updated guidelines are changes to sentence levels for the most serious speeding offences. A recent consultation identified the need for sentencing to take into account the increased levels of potential harm that could arise from increased levels of speed.



Potential loss of 100% weekly income speeding offences:



- 31 to 40mph where there is a 20mph limit



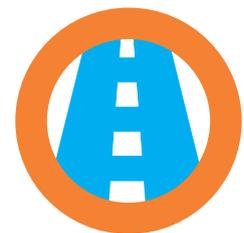
- 41 to 50mph where there is a 30mph limit



- 56 to 65mph where there is a 40mph limit



- 81 to 90mph where there is a 60mph limit



- 91 to 100mph on a motorway

The maximum fine for speeding remains the same and is set at £1,000, unless the offence occurs on a motorway, when it would be £2,500. Sentences for less serious speeding offences have not changed.

We have issued Health and Safety Briefing Note HSBN66 for managers to use across the business to inform staff of these changes.



Changes to Legislation:

April 2017 update

The Repeal Bill

When Brexit is concluded and the UK leaves the EU, the UK will be self-governing and this means that many laws, (including Health and Safety law that applies to Thames Water), currently in force in Britain will no longer be in effect because they originate from the EU. The Repeal Bill will prevent gaps appearing in the UK legal system overnight by converting all of the EU requirements that will otherwise no longer apply, into British law.

The Repeal Bill, which repeals the European Communities Act, was included in the Queen's Speech to Parliament which was given on 21 June 2017. The Repeal Bill will be complimented by other legislation covering Fisheries and Agriculture among others, which will be necessary to ensure the UK established the new national policies that are required.



The Street Works (Qualifications of Operatives and Supervisors) (England) Regulations 2016

These regulations came into force on 6 April 2017 and prescribe the qualifications needed for the types of work being executed by trained operatives and supervisors. Existing certificates obtained before these Regulations came into force remain valid until they expire. When renewed, the certificates will be converted to the new equivalents. (see table overleaf)

The new certificates each have individual expiry dates and these are shown on the new style cards which no longer have expiry dates themselves. The cards are colour coded; yellow for operatives, blue for supervisors and white for combined operative and supervisors. The cards provide improved security from the existing ones and will show key certificates, (which are compulsory), on the front and other certificates achieved, (needed for the type of work being done) on the rear. The Key Certificates are compulsory and must remain valid for the others to remain valid, even if these have a later expiry date. As before, a supervisor qualification doesn't permit a person to carry out works, and qualification as an operative doesn't permit a person to supervise works.



Key Certificates are:

- Location & avoidance of underground apparatus (operatives and supervisors);
- Signing, lighting and guarding (operatives);
- Monitoring signing, lighting and guarding (supervisors);

Supervisors and operatives must have the right certificates for the type of excavation and reinstatement being carried out.



Street Works Qualifications Pre 6 April 2017 Equivalents

OPERATIVES		SUPERVISORS	
Before 6 April 2017	After 6 April 2017	Before 6 April 2017	After 6 April 2017
Excavation in the highway/road.	LA - Location and avoidance of underground apparatus. O1 - Signing, lighting and guarding O2 - Excavation in the highway.	Monitoring excavation in the highway/road.	LA - Location and avoidance of underground apparatus. S1 - Monitoring signing, lighting and guarding. S2 - Monitoring excavation in the highway.
Excavation, backfilling and reinstatement of construction layers with a cold lay bituminous surface.	LA - Location and avoidance of underground apparatus. O1 - Signing, lighting and guarding. O2 - Excavation in the highway. O3 - Reinstatement and compaction of backfill materials. O4 - Reinstatement of sub-base and base in non-bituminous materials. O5 - Reinstatement in cold lay bituminous materials.	Monitoring excavation, backfilling and reinstatement of construction layers with bituminous materials.	LA - Location and avoidance of underground apparatus. S1 - Monitoring signing, lighting and guarding. S2 - Monitoring excavation in the highway. S3 - Monitoring reinstatement and compaction of backfill materials. S4 - Monitoring reinstatement of sub-base and base in non-bituminous materials. S5 - Monitoring reinstatement in bituminous materials.
Reinstatement of construction layers in hot-lay and cold lay bituminous materials.	LA - Location and avoidance of underground apparatus. O1 - Signing, lighting and guarding. O5 - Reinstatement in cold lay bituminous materials. O6 - Reinstatement in hot-lay bituminous materials.	Monitoring reinstatement of construction layers in bituminous materials.	LA - Location and avoidance of underground apparatus. S1 - Monitoring signing, lighting and guarding. S5 - Monitoring reinstatement in bituminous materials.
Reinstatement of concrete slabs.	LA - Location and avoidance of underground apparatus. O1 - Signing, lighting and guarding. O7 - Reinstatement of concrete slabs.	Monitoring reinstatement of concrete slabs.	LA - Location and avoidance of underground apparatus. S1 - Monitoring signing, lighting and guarding. S6 - Monitoring reinstatement of concrete slabs.
Reinstatement of modular surfaces and concrete footways.	LA - Location and avoidance of underground apparatus. O1 - Signing, lighting and guarding. O8 - Reinstatement of modular surfaces and concrete footways.	Monitoring reinstatement of modular surfaces and concrete footways.	LA - Location and avoidance of underground apparatus. S1 - Monitoring signing, lighting and guarding. S7 - Monitoring reinstatement of modular surfaces and concrete footways.

Fees For Intervention: Judicial Review

Since October 2012 the Health and Safety Executive has been able to charge companies 'fees for intervention'. This system was introduced so that companies who break health and safety law cover the costs incurred by the HSE that arise from subsequent interventions, (inspection, investigation and enforcement action).

The potential for being issued with an invoice if an HSE inspector issues a 'Notice of Contravention', provides an additional incentive for companies to ensure that legal compliance is maintained and health and safety laws are not broken. In the first 18 months, following the introduction of the fees, the HSE issued more than 21,000 invoices for costs arising from interventions. With an hourly rate of £129, the fees can soon mount up for businesses, however most invoices issued during this period were for £500 or less.

Companies are able to refer matters to a Fees For Intervention dispute process to appeal against a Notification of Contravention. Recently, a facilities management company did this and when the appeal failed, the company sought a judicial review of the case. A judicial review is where the High Court is asked to rule if a decision made by a public body is lawful. During the period before the High Court ruling, the HSE announced that by September 2017, it would introduce an appeals system where evidence can be submitted and representations made, with the whole process being adjudicated by an independent panel chaired by a lawyer. This changes the initial appeal process where reviews were carried out by two HSE staff and one independent member.



Other HSE News:

Thames Water working with Government, the HSE and the BBC

Achieving a 56% reduction in cases of stress, anxiety and depression since 2013, has led to Thames Water receiving an invitation, to share our approach to managing mental health issues at work with the Health and Safety Executive. In addition, we were also invited to Whitehall for a meeting with the Cabinet Office team, writing the Prime Minister's review paper on Mental Health. Thames Water advocated for inclusion in the report the recommendation that work-related health is treated in a similar way to injury in H&S regulations.



The Thames Water Training Team went along to the BBC HQ in London to present Thames Water's 'Mind Fit' training course to a number of BBC executives. Leaders at the BBC wanted to know more about the journey Thames Water has been on to significantly reduce work-related illness across the business as a result of our Health and Wellbeing Strategy.



In Court:

Sentencing reports from the last six months involving risks similar to those managed within Thames Water and monitored at our Risk Review Meetings

Lone Working

Lone working is one of the risks on our Dynamic Risk Register and to manage this, we have our procedure 'HSP8 Lone Working', which details the requirements for managers to identify lone workers and ensure they remain safe while lone working. One of these requirements is the use of the SOLO Lone Working System, which provides support to lone workers who log onto the system during their working day. A call centre is able to summon assistance for our lone workers, if this should be needed. In a recent court case, South West Water has been fined £1.8 million following the death of a member of staff who drowned when he was working alone.



Driving On Company Business

Driving is another risk on our Dynamic Risk Register. Our Procedure, 'HSP47 Using Mobile Phones While Driving', prohibits the use of mobile phones while driving on Thames Water company business.

Almost 8,000 drivers were caught using a mobile phone behind the wheel during a week-long crackdown by police. Officers in England, Wales and Northern Ireland issued more than 40 fines an hour during the campaign at the end of last year. They also issued 68 court summonses, delivered hundreds of verbal warnings and identified 117 other distraction offences, such as eating while driving.



Legionella

Legionella bacteria is found in still, stored water and survives at temperatures between 6 and 60 degrees centigrade. It multiplies most virulently at human body temperature. We have to manage the water systems in our workplaces to ensure that legionella bacteria do not cause harm to people who use them. The management of this risk is monitored monthly at our Dynamic Risk Review meeting. A programme of inspections is carried out and our procedure, 'HSP21 Legionella' is applied.

An NHS Trust Hospital was recently fined £25,000 plus £12,000 costs after a man had contracted legionnaires disease there and subsequently died.



Service Avoidance

Thames Water has set up a Utilities Management Working Group to identify actions that will help continue to reduce the number of service damages during our excavations. The number of these has decreased by 26% over the four years from March 2013. A utility contractor company was fined £600,000 and ordered to pay costs of £15,498, following an incident where a 61 year-old worker suffered life changing injuries after coming into contact with a live underground electricity cable.





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