

Legal Update 2021

LOHSG
Lancashire Occupational
Health and Safety Group

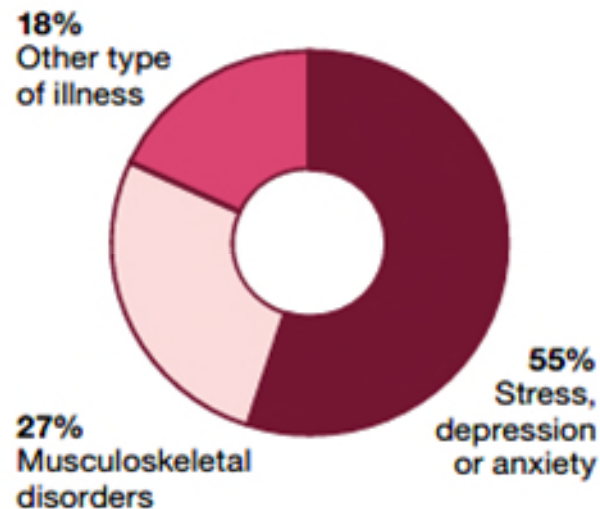
12 January 2021



Pinsent Masons

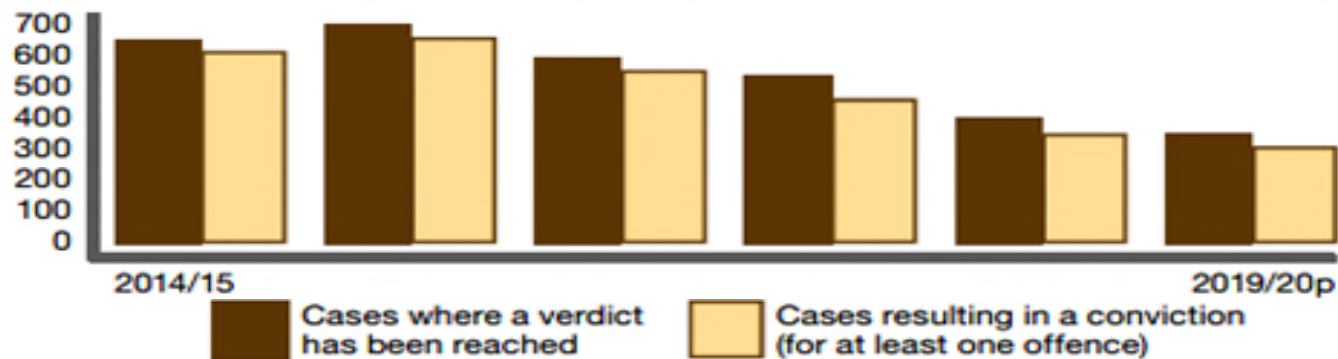
HSE Statistics 2019/2020

- 1.6 million suffering from work-related ill-health and 32.5 million days lost.
- Annual cost of new cases of work-related ill-health - £10.6 billion
- Work related ill health - dominated by stress, anxiety and depression.
- Working days lost by type of ill health:

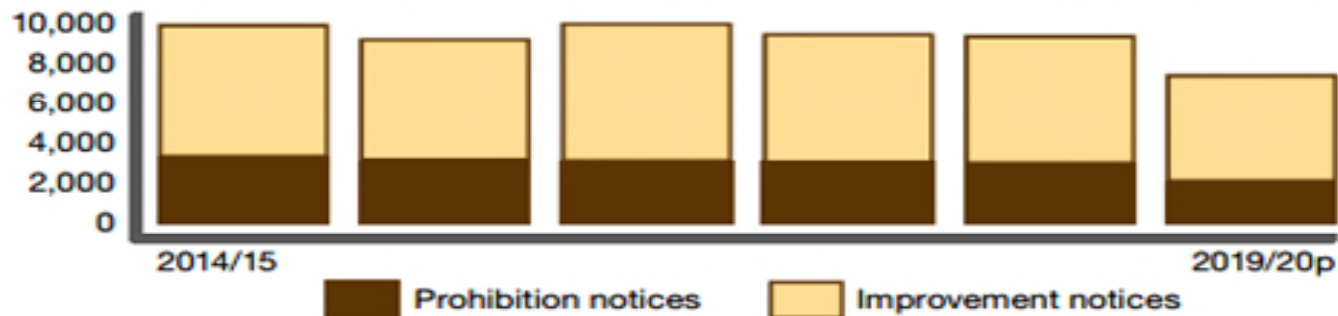


HSE Statistics - Enforcement

Prosecution cases brought by HSE and, in Scotland, COPFS



Enforcement notices issued by HSE



Building Safety Bill

Dec 2017 - Hackitt Interim Report

May 2018 - Hackitt Final Report

July 2020 - Introduction of Building Safety Bill

July 2021 – Bill receives Royal Assent

? – secondary legislation and guidance issued

? – new buildings brought into the regime

? – existing buildings brought into the regime

Building Safety Bill - Reform of Building Control

- Applies to **all** buildings
- New role for HSE
 - Overseeing competence of inspectors
 - Updates to building regulations
 - Updates to approved documents
- Enhanced enforcement powers
- Increased penalties for non-compliance
- Personal liability for directors and senior managers

New Building Safety Regime

- Applies to Higher Risk Buildings – initially buildings with residential units and over 18 metres or more than 6 storeys (with some exceptions)
- A new regulatory framework for fire and structural safety overseen by the Health and Safety Executive which will drive culture change and new behaviours
- A clear model of risk ownership - clear responsibilities for Client, Designer, Contractor, Accountable Person and Building Safety Manager
- Outcomes based - not prescriptive rules and complex guidance

Model for future enforcement

- Improvement/Correction Notices
- Prohibition Notices
- Withdrawal or conditions attached to building safety certificate
- Civil and criminal sanctions:
 - Carrying out work without Gateway approval
 - Not applying for a building safety certificate
 - Non-compliance with certificate conditions

Building Safety Bill – who has duties during design & construction?

- During design, construction and refurbishment:
 - Duties are to be aligned with **CDM**
 - Client, Principal Designer and Principal Contractor
 - Over-arching **duties to ensure building safety** and to certify compliance with the Building Regulations

Gateway System – Overview

Duty holders must demonstrate how they are ensuring building safety to gain approval of the new regulator to proceed to the next stage of development.

Gateways:

- Gateway 1 – Before planning permission is granted
- Gateway 2 – Before construction begins
- Gateway 3 – Before occupation begins

Building Safety Duty Holders

- During occupation:
 - New “**accountable person**” – usually the owner
 - An appointed **building safety manager**
- Only the building safety regulator may transfer the Accountable Person and Building Safety Manager accountability under the building assurance certificate to a third party

Golden Thread of information

“the right people have the right information at the right time to ensure buildings are safe and building safety risks are managed throughout the building’s lifecycle.”

Information to be held digitally to ensure design intent and subsequent changes are captured, and used to support safety improvements.

For new builds the duty holders must start to collect this information during the design and construction phase and then hand over to the Accountable Person.

Competence

Competence Steering Group - 'Setting the Bar'

- overarching system of competence with four key elements:
 - a new competence committee overseen by the Building Safety Regulator
 - a national suite of competence standards –12 new sector-specific frameworks
 - independent assessment and reassessment against competence standards
 - Accreditation of assessors.

Competence (2)

- British Standard for an overarching competence framework
- PAS standards for three regulated roles – PC, PD and BSM
- Registers of competent individuals maintained by professional bodies
- Registers of competent organisations maintained by HSE

Fire Safety Bill

Aims to amend and clarify the RRO

The Responsible Person for multi-occupied, residential buildings must manage and reduce the risk of fire for the following:

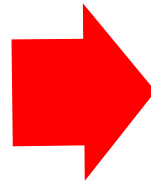
the structure and external walls of the building, including cladding, balconies and windows;

entrance doors to individual flats that open into common parts.

Fire Safety Bill (2)

Further reform likely to clarify who the responsible person is and align fire safety and building safety

- Consultation closed on 12 October



Also allows secondary legislation to implement recommendations from Grenfell Tower phase 1 report

- Fire doors
- Lifts
- Signage
- Fire service info – design and materials of external walls, plans, premises information boxes,
- Evacuation plans, PEEPS, signals

COVID-19 & RIDDOR

- Reportable scenarios where the responsible person must follow the reporting procedure:
 - Dangerous occurrence - any accident or incident which results or could have resulted in the release or escape of a biological agent likely to cause severe human infection or illness
 - Disease - a worker has been diagnosed as having a disease attributed to an occupational exposure to a biological agent.
 - Death - a worker dies as a result of occupational exposure to a biological agent.

COVID-19 & RIDDOR

- Current HSE Guidance:
 - Official confirmation of COVID-19 infection from a public testing body should be considered equivalent to a registered medical practitioner's diagnosis.
 - Reasonable evidence of occupational exposure to COVID-19 being likely cause of disease.
 - Should be 'more likely than not' that person's work was source of exposure.
 - Judgement to be made on information available, extensive enquiries not needed.

HAVS – HSE Inspection & Enforcement guidance

- ‘Hand-arm vibration: Inspection and Enforcement Guidance’ for HSE inspectors and Visiting officers published in 2020
- HAV to be considered a ‘Matter of Evident Concern’ where:
 - exposure is likely to be at or above the Exposure Action Value (EAV); or
 - there is evidence of vibration-related ill health (eg HAVS, CTS) not being properly managed; or
 - employees report tingling when using vibrating tools, which persists for 20 minutes or more afterwards

HAVS – HSE Inspection & Enforcement guidance (2)

- 3 step approach to be taken by Inspectors:
 1. Determining exposure;
 2. Adequacy of control and management of risk;
 3. Considering enforcement action
 - a) Improvement notices
 - b) Prohibition notices
 - c) Prosecution

HAVS – consequences of failure to control risks

- Perrys Motor Sales Limited prosecuted in relation to an incident in 2013
- An employee working as a small to medium area repair technology (SMART) repairer, who regularly used handheld power tools was diagnosed with HAVS.
- The company failed to adequately assess and control the risk to SMART repairers. Following diagnosis, no action was taken to protect worker from further damage to health, and diagnosis not reported under RIDDOR.

HAVS – consequences of failure to assess and control risks

- Guilty plea to breaching Section 2 HSWA and Regulation 8 of RIDDOR
- Fine: £140,000, Costs: £7,658.67 (Turnover of £421m but operating at a loss before tax of £398,000)
- OH consultant also prosecuted and pleaded guilty to a breach of s.3 HSWA
- Fine of £4,000 and £8,716.17 in costs.

Inquests - R (Maughan) v HM Senior Coroner for Oxfordshire [2020] UKSC 46

- Decision
 - The standard of proof required for ‘unlawful killing’ and ‘suicide’ verdicts now the civil standard (i.e. on the balance of probabilities) and not the criminal standard (i.e. beyond all reasonable doubt).
- Case History
 - Original inquest – could not be sure beyond reasonable doubt that M had tried to kill himself.
 - Appeal courts – civil standard for suicide verdicts, criminal standard for unlawful killing verdicts.

R (Maughan) v HM Senior Coroner for Oxfordshire [2020] UKSC 46

- Impact on H&S cases
 - Increase ‘seriousness’ of fatal incidents in workplace
 - Evidence relating to gross negligence or corporate manslaughter
 - Expanded scope and increased length of inquests
 - More lawyers and disparity between families and organisations
- Comments
 - Underreporting of suicides
 - Prejudice on criminal proceedings?

Questions?



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