



H&S Hot Topics for Waste & Recycling

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Agenda

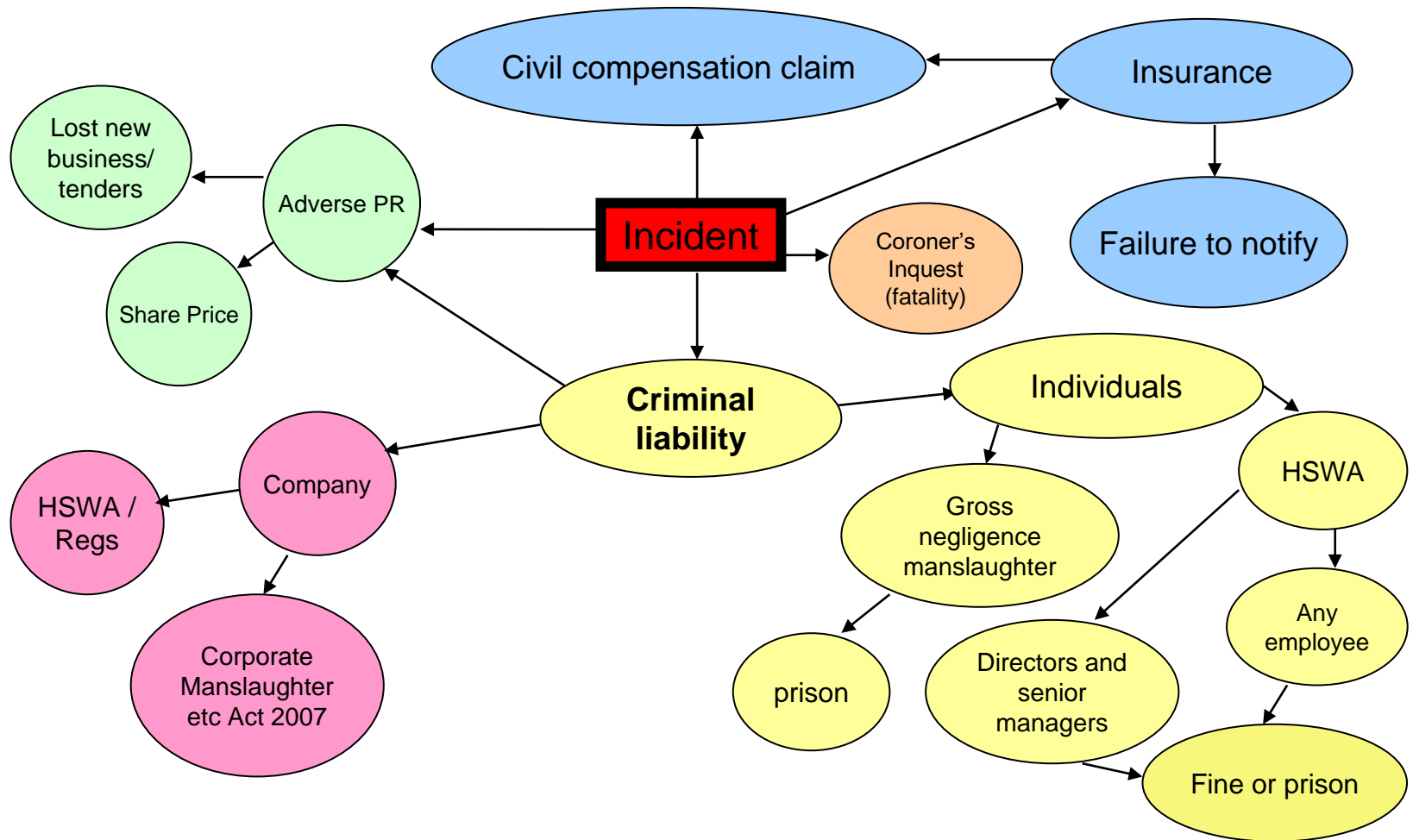
- Key risks in your sector
- Key legal duties
- COVID-19
- Mental Health and ISO 45003
- Sentencing
- New technologies in safety
- ...Questions.



Key Risks in Waste & Recycling

- **Key risks** that cause incidents & prosecution:
 - Moving vehicles – drivers and pedestrians
 - Machinery
 - Falls from height
 - Manual handling
 - Sharps and needlesticks
 - Fire
- **Occupational health** is a growing force:
 - Vibration
 - Noise
 - Exposure to dust or hazardous substances
 - Cancers incl. skin
 - Mental health

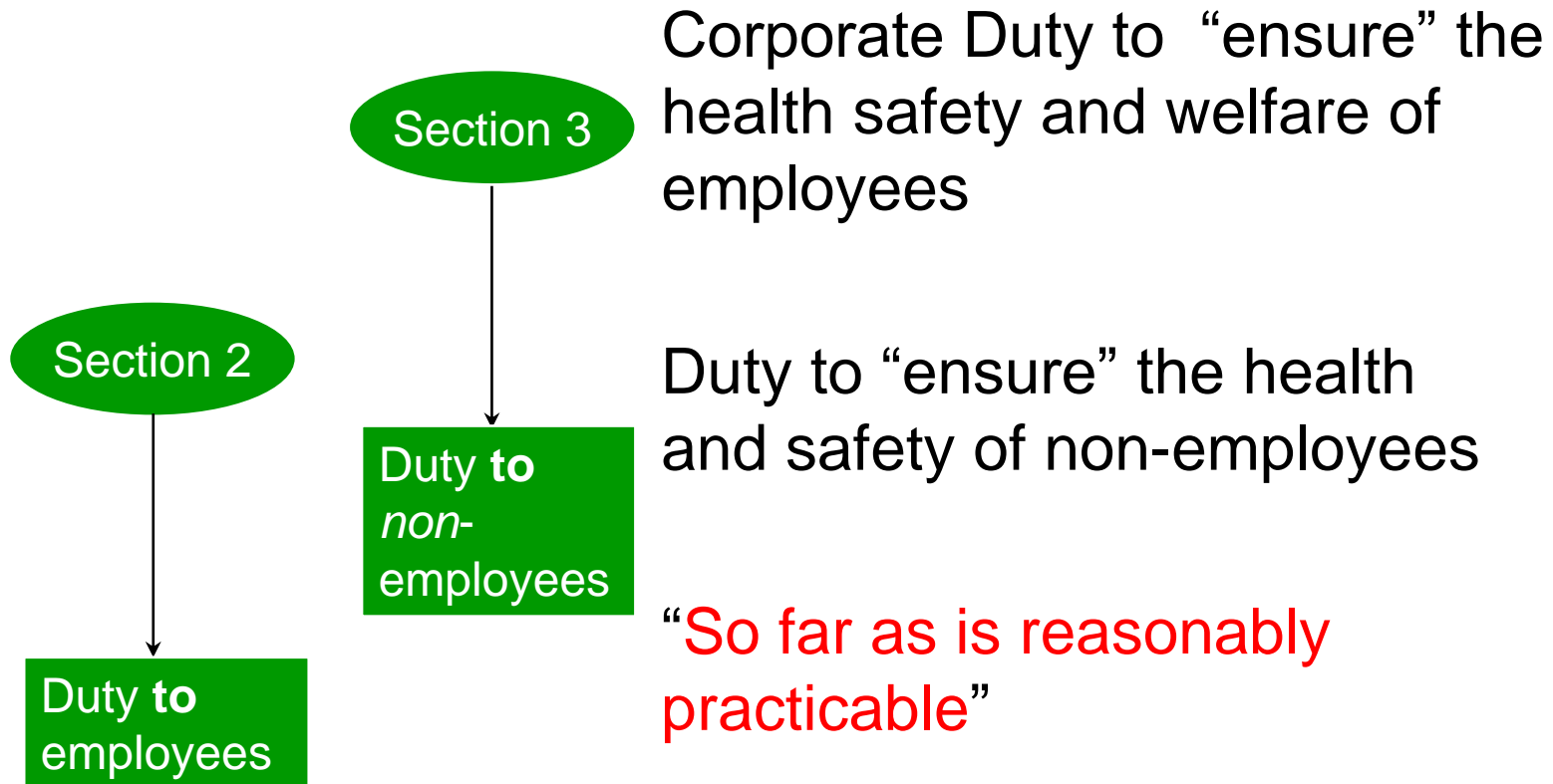
Consequences of getting it wrong!



The basics

Civil Liabilities	Criminal Liabilities
<ul style="list-style-type: none">– negligence / vicarious liability and occupiers liability– claim is brought by injured person, estate or dependents– monetary compensation– need actual bodily or psychological injury– corporate liability– insurance	<ul style="list-style-type: none">– Legislation (HSWA / Regulations)– enforced by HSE or EHO– fines and/or imprisonment– <u>no need for actual injury (Risk)</u>– corporate & personal liability– discloseable in tenders– adverse PR– no insurance for fines

Corporate H&S duties – HSWA 1974



Risk and Reasonable Practicability

- Risk
 - Reasonably foreseeable (not fanciful/hypothetical)
 - Arising out of business (not everyday risks)
- Reasonable Practicability and risk assessments



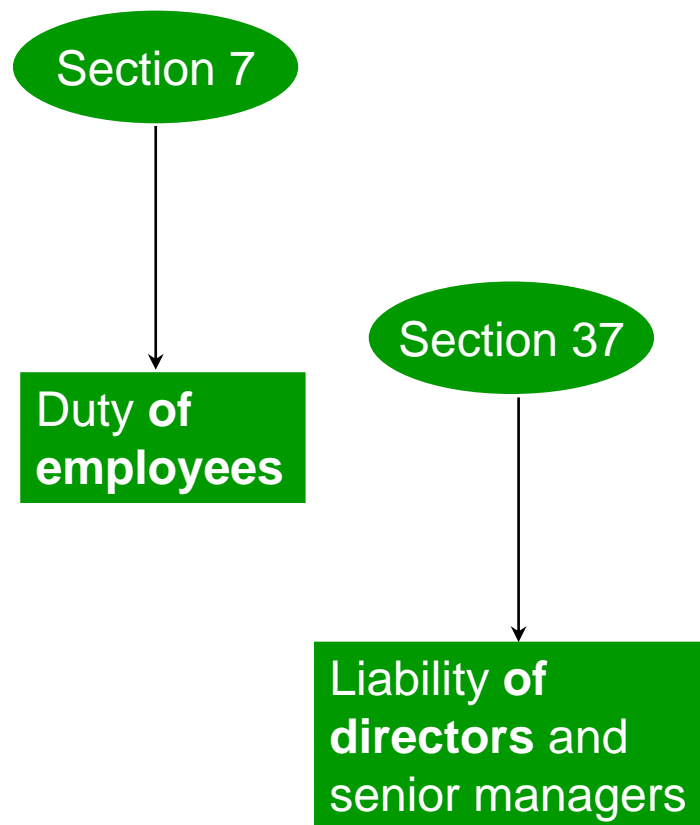
What is 'reasonable practicability'??

- Leadership and investment in H&S
- Robust systems, policies and procedures
- Competent advisers
- Skilled and trained workforce
 - Effective supervision
- A vetted supply chain
 - Effective monitoring
- Auditing, monitoring and responsive action



Personal H&S duties – HSWA 1974

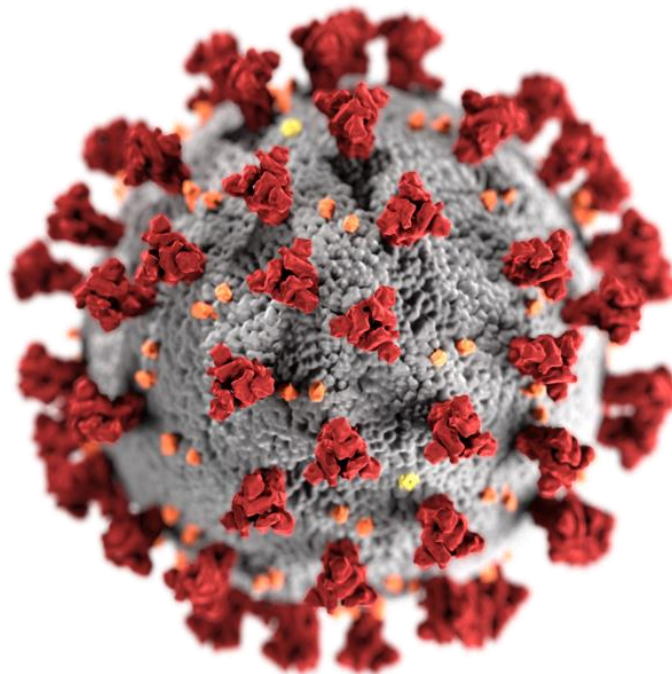
- Duty to take reasonable care of self and others affected by work and to co-operate with employer (s.7)
- Where an offence... has been committed with the **consent**, **connivance**, or...attributable to any **neglect** on the part of any director, manager ... or a person who purports to act in that capacity, he/she as well as the company shall be guilty of that offence (s.37)



Personal H&S duties – s.37 HSWA

- **Consent** - have knowledge and endorse / direct it
- **Connivance** – have knowledge and ignore it
- **Neglect** – should have been aware (even if they were not) and taken action
 - People with authority & operational knowledge are the most vulnerable
 - Consequences
 - Fines
 - Imprisonment
 - Disqualification





COVID-19 AND THE POST- PANDEMIC ECONOMY

Action taken by the Government

- **‘Living with COVID-19’** – remaining restrictions* cease on 24 February
 - Changes include:
 - Self isolation periods following positive test
 - Informing employers of isolation periods
 - Risk assessments
 - ‘Working Safely’ guidance (1 April 2022)
- Revoked legislation
- HSE guidance: adequate ventilation, sufficient cleaning, and good hygiene remain.

* In England

Post COVID Workplace: Hybrid Working and Flexible Working

77% of employees preferred **hybrid working**

55% of parents preferred **hybrid working**

Increased flexibility = improved productivity and employee loyalty

Welsh Government

Long-term remote working model – 30% of workforce working remotely

ACAS Guidance

HSE updated home working guidance

Long COVID: Supporting employees

Communication

Occupational Health

**Phased
returns**

**Work
from
home**

**Flexible
working**

**Reassure staff on
workplace safety**

Ongoing support

First COVID-19 Prosecution



September 2021: 316,000 Covid spot checks carried out by HSE.



MENTAL HEALTH AND ISO 45003

Context – HSE Statistics 2020/21

- 1.7 million workers suffering from a work-related illness, **822,000** were for work-related stress, depression or anxiety.
- Key Statistics
 - Breakdown of 822,000 figure:
 - 451,000 workers suffered a **new** case of work-related stress, depression or anxiety (up from 347,000 in 2019/20)
 - 449,000 reported that this was **caused or made worse by** the effects of the covid pandemic.

ISO 45003 – Aim and Key Concepts

Aim is to help organisations prevent work-related injury and ill health and promote wellbeing at work

- Relevant to all organisations
- Managing **psychosocial risk** within a OH&S management system based on ISO 45001
- Identification of psychosocial hazards
- Risk assessments and control measures

ISO 45003 – Hazard Identification

- Data collection and analysis
- Processes – review of job descriptions, consultations, surveys, inspections, statistical review
- Multi-disciplinary approach – OSH, HR, Risk, Legal.

ISO 45003 – Adopting the Guidance

- Possible incentives:
 - Mitigation of legal risk
 - Commercial incentives
 - Sector requirements
 - Reputation management
- Possible disincentives:
 - Organisational inertia
 - Lack of resourcing
 - Lack of enforcement action by regulators
 - Not reportable under RIDDOR



SENTENCING

Recent Fines - 2021

- **WH Malcom Limited - £6.5m (July)**
- National Grid Gas Plc - £4m (February)
- **British Airways Plc - £1.8m (June)**
- Essex Partnership University NHS Foundation Trust - £1.5m (June)
- Nexus - £1.5m (May)



HSE Enforcement Statistics

No. of cases prosecuted by HSE (or referred to COPFS for prosecution in Scotland where conviction was achieved)

2019/20 – **325** cases

2020/21 – **185** cases

No. of enforcement notices served by HSE

2019/20

1,948 Immediate
Prohibition notices
5,125 Improvement
notices

2020/21

1,107 Immediate
Prohibition notices
1,821 Improvement
Notices

Total fine for H&S Offences

2019/20 - **£34.9m**

2020/21 - **£26.9m**

British Airways Plc – June 2021

- Significance – Doubling of starting point; application of earlier COA decisions (*R v Whirlpool 2017 and R v PFPH 2021*)
- Facts
 - Vehicle collision at Heathrow in March 2018
 - Employee struck by a baggage transport tug
 - Knocked under another passing tug
 - Suffered serious life changing injuries
 - HSE investigation found:
 - Unsafe walking route common practice for 10 years+
 - Failings in management of workplace transport risks
 - Failures in supervision, monitoring, risk assessment and training
 - Pleaded guilty to S2 HSWA 1974

British Airways Plc – June 2021

- Sentence
 - BA's turnover for 2020 reduced substantially but still a VLO
 - Outcome - **£1.8M fine.**
 - HC / HC3 for large = SP £540K
 - Move to top of range for culpability being at high end of HC = SP of £1.45M
 - Appropriate to move outside of range given VLO status
 - Doubled SP to £2.9M
 - No aggravating features
 - Mitigation reduced SP to £2.7M
 - 1/3 discount for guilty plea

WH Malcolm Limited – July 2021

11 year old Harrison Ballantyne died when he gained access to a rail depot to retrieve a football, climbed onto a stationary freight wagon, and received a fatal electric shock from the overhead line.

Offences: S3 Health and Safety at Work etc Act 1974 and Reg 3 Management of Health and Safety at Work Regulations 1999

WH Malcolm Limited found guilty at trial & fined £6.5m – highest H&S fine in E&W under guidelines

WH Malcolm Limited – Sentence

- **Sentencing remarks:**
 - Defendant failed to take responsibility for serious and obvious failure to prevent public access.
 - 3 children witnessed the incident- evidence of serious psychological harm for each of them.
- **High Culpability Harm category 1**
 - SP = £2.4M
- **Additional Factors- sentence moved up a category because:**
 - More than one person exposed to risk of harm.
 - Offence was a significant cause of actual harm.
 - Whirlpool – effect of death on sentence
 - SP = £4M within range of £2.6m and £10M

WH Malcolm Limited – Sentence

Aggravating Factors

- Previous enforcement history
- Very significant ongoing effects of the death on at least 3 of the children
- Failure to carry out the work

Mitigating Factors

- Boundary rectified following death
- Director took personal responsibility for ensuring the safety of location and work

No reduction for guilty plea, as case contested at trial
£6.5m fine imposed



NEW TECHNOLOGIES IN SAFETY

AI Technology

Examples of potential threats:

- Misuse of workplace sensors – tracking worker activity
- Lack of collision control – robotic devices
- Responsibility for AI enabled decision-support systems

Protections:

- Regulatory oversight
- Risk assessment
- Training

Calls for regulation by TUC

- Human review
- “Switch off” from work
- Consult on “high risk” technology

Drone Technology

Flyer ID
required

2030:
£42bn

Maximum
drone flying
weight:
25kg

Minister
for
Drones

Pilot training
requirements
determined by
weight of
drone

SAFed guidance:

- Safe access/ safety devices not available
- Enhance findings of thorough inspection
- Justified operational impact

Questions?



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