



HEALTH & SAFETY COMMERCIAL SOLUTIONS

**IOSH**

**Legal Update**

**Matthew Breakell**  
**Partner**



*The content of these slides is only relevant at the date of delivery of this legal update (December 2020). The Law changes and these slides should not be construed as legal advice. Further these slides should not be used as further training material.*

*DACB Health and Safety Commercial Solutions offers a wide range of training sessions, including legal updates. Contact [mbreakell@dacbeachcroft.com](mailto:mbreakell@dacbeachcroft.com)*

## Matthew Breakell

- Matthew Breakell is a Partner and Head of Health and Safety Commercial Solutions at DACB. He advises in relation to corporate criminal investigations and defending prosecutions brought by regulatory agencies such as the Health and Safety Executive, Local Authority, Environment Agency, Police, Fire Authorities ORR and CQC.
- He has extensive experience in caution interviews including representing company directors at the police station in relation to Corporate Manslaughter investigations; and assisting company's through HSE / Local Authority investigations, caution interviews and prosecutions.
- Matthew also represents companies and organisations facing Coroners Inquests as a result of fatal accidents at work or being associated with the accident, guiding them through the process and providing representation at the Inquest.
- Recently Matthew has advised clients with regard to high profile fatal accident investigations, falls from height, legionella, trappings and crushing in machinery, and other work related accidents.
- Matthew also assists organisations, in particular home care providers and care homes with investigations following deaths and provides representation at Inquests as well as guidance through the investigatory process.
- Matthew has acted for Plc and FTSE 100 companies, as well as SME's and individuals.
- Matthew also delivers training for organisations.
- Matthew is a member of IOSH and a committee member for the Humber Branch and IOSH Consultancy Group. He also sits on the Advisory Group for the HQN SafetyNetwork.
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## Chris Stephens



- Chris Stephens is a Solicitor within DACB's Regulatory team in Bristol. He is also the Bristol location representative for Health and Safety Commercial Solutions. He specialises in advising clients on health, safety and environmental compliance and risk issues.
- His experience covers advising on responses to regulatory enquires, often in the immediate aftermath of an incident, and acting in prosecutions.
- He has experience representing clients under caution interviews, including at the police station in relation to Gross Negligence Manslaughter investigations and drafting submissions on behalf of companies and directors, subject to HSE and Local Authority investigations.
- Chris' experience extends to acting in the Coroner's Court following fatal accidents at work.
- His experience includes advising clients across a range of sectors including construction, manufacturing, agriculture, waste, leisure and health.
- Recently Chris has been involved in the representation of a recycling company charged with Corporate Manslaughter and the representation of a farmer subject to a Gross Negligence Manslaughter investigation. He recently concluded a three day jury Inquest following a fatal fall from height, from an unprotected roof, securing a conclusion of 'accidental death'.
- Chris also undertakes some Regulatory Road Transport work, recently advising an operator in relation to their reporting obligations to the Traffic Commissioner following a bridge strike.
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# AGENDA

HSE Annual Stats/Report

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Potential/Emerging Issues

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Case round up

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Recent Prosecutions

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## HSE's Annual Injury and Ill-Health Statistics

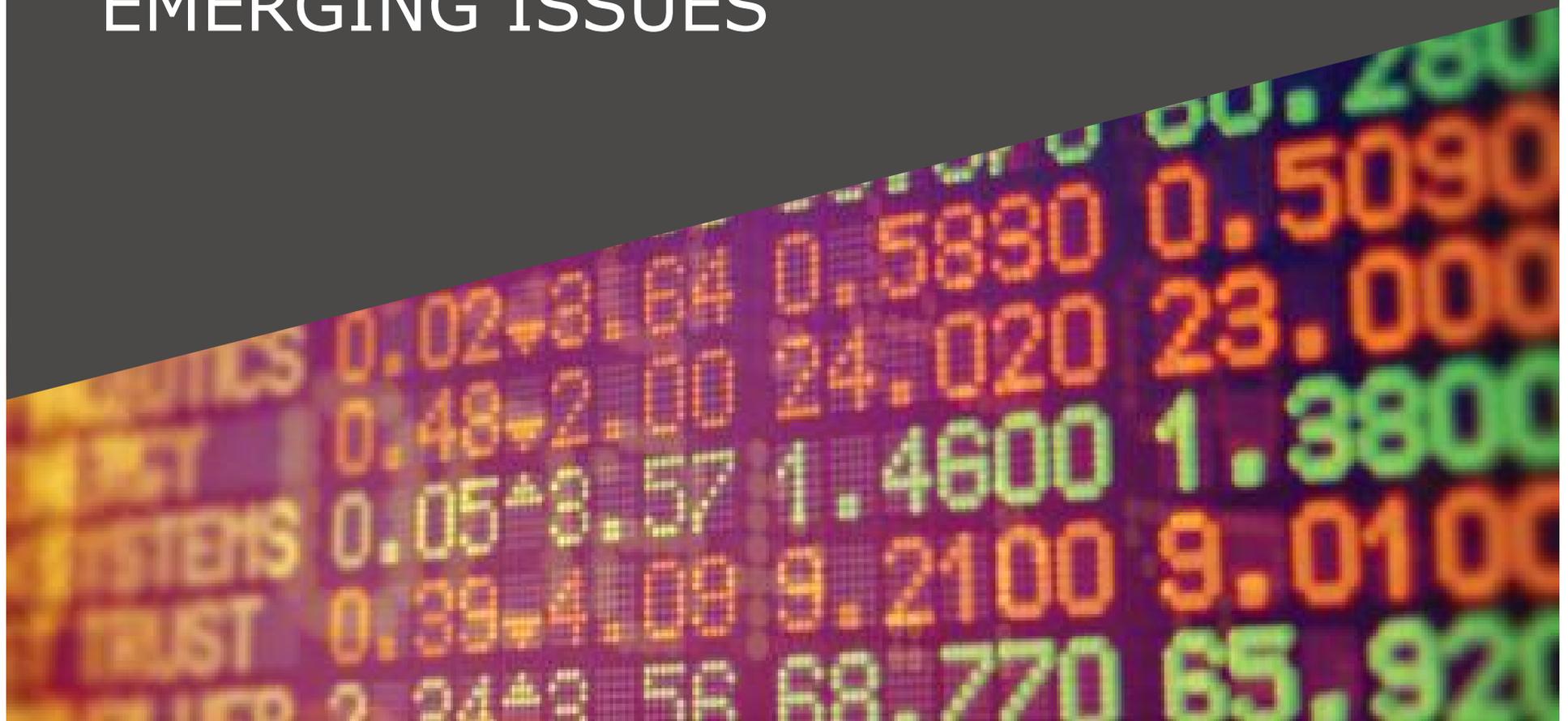
- Great Britain is still one of the safest places in the world to work
- Lowest number of deaths on record
- Impact of COVID-19
- 111 fatal injuries at work
- 693,000 workers sustained non-fatal injuries
- 1.6 million workers suffering from work-related ill-health
- 38.8 million working days lost due to work-related illness/injury
- 325 cases were prosecuted and resulted in a conviction
- Fines from convictions totalled £35.8 million

## HSE Annual Report

The statistics relating to the number and type of cases for 2018/19 are broadly similar to the previous year with:

- 1.4 million work-related ill-health cases
- 0.6 million work-related stress, depression or anxiety cases (new or long-standing)
- 0.5 million work-related musculoskeletal disorder cases (new or long-standing)
- 69,208 non-fatal injuries to employees reported by employers
- 147 fatal injuries to workers (slightly up from 143 the previous year)

# EMERGING ISSUES



## Emerging Issues

- Homeworking: Demand for Flexibility
- Mental Health: Obligations to Manage the Risks Posed
- Prosecution of Consultants: Recent Prosecutions
- Retail & Hospitality Sector: PPE - Where Will We Draw The Line?
- BREXIT: Impact of Legislation
- Inquests on the Rise?

## Working from home

- Post-Covid
- Cultural shift
- Improved technology
- Adaptive approach
- Lone Working – Updated HSE Guidance

## Who is a lone worker?

- The HSE classifies a lone worker as 'someone who works by themselves without close or direct supervision', and this incorporates a wide range of job roles.

## Employers' Duties?

- Employers have a duty of care to ensure the health and safety of lone workers as far as is reasonably practicable under the Health and Safety at Work Act 1974, as well as being legally required to assess and manage the risks to lone working employees under the Management of Health and Safety at Work Regulations 1999.

## Lone Working: Risk Management

- Medical Conditions
- First Aid
- Training
- Supervision
- Monitoring and Keeping in Touch
- Lone workers whose first language is not English

## Stress Management

- Monitor Mental Health
- Keep in Touch Procedures
- Maintain a Connection

## Working from home risk assessment

### Occupational stress

- Flexible Working Hours
- Effective Support
- Encouraging Conversations
- Adjusting KPIs
- Monitoring Employees Work/Life Balance
- IT / Technology
- Clear Guidance

## Working from home risk assessment

### Work Related Upper Limb Disorders

- How to maintain good posture
- Whether the workspace or chair can be adjusted
- How best to arrange the workspace
- Ensuring regular breaks are taken
- Ensuring adequate lighting

## Working from Home Risk Assessment

- DSE Assessments
- Support Employees to Complete a Risk Assessment
- Auxiliary Aids / Specialist Equipment
- Keep It Under Review

## Health and Safety Consultants: Prosecutions

- A health and safety consultant (and a Cambridge instrument company) were fined for risking the health of employees from hazardous chemicals.
- The consultant's background was in quality control and he did not have adequate knowledge of health and safety for the work carried on by the company. He failed to make the company aware of "do's and don'ts" regarding the use of hazardous chemicals.
- Occupational Safety and Health Consultants Register or other trader associations / safety groups.

## Health and Safety Consultants: Prosecutions

### Clive Weal

- A Health & Safety Consultant has been prosecuted for providing inadequate advice to one of his clients.
- He was ordered to pay £1,400 for his breach.
- Consider complexity of situation and the level of competence.

## Summary

- Employers' duties under Health and Safety at Work etc. Act 1974 cannot be delegated entirely – a risk of potential liability remains.
- Employers are to consider carefully its choice of HS consultants and advisors based on their competency and experience.
- Likewise, HS consultants and advisors should only undertake work they are qualified and experienced enough to do so safely.
- Conflict of Interest? Can safety managers/consultants be impartial and where do they sit personally after an incident?

# 2021 VISION



## Hospitality & Retail Sectors: Drawing the Line on PPE?

- Post Lockdown
- Vaccine
- Post – Covid Normality?
- PPE?
- Government Guidance?
- Business Approach?
- HSE Approach?

## BREXIT: Impact upon the 'reverse' burden of proof

- Section 40 of the HSWA
- Reverse Burden of Proof
- *R v Davies* [2002] EWCA Crim 2949
- Article 2: Presumed Innocent Until Proven Guilty
- Ripe for Challenge after BREXIT

## Inquests on the Rise?

- Maughan
- *"Balance of Probabilities"*
- Suicide Conclusions Up
- Unlawful Killing Up??

## Draft Building Safety Bill

- HSE to create a new Building Safety Regulator (BSR)
- Prioritises blocks of flats more than 18m high or more than six storeys tall in England
- Oversight role in the safety and performance of buildings
- Promoting improvements in the competence and organisational capability
- Joint Regulators Group (JRG)

## HSE Targeted Inspections

### Transport and Logistics

- The HSE is working with local authorities to inspect businesses in the transport and logistics industry to ensure they are managing the risk of coronavirus (COVID-19).
- HSE inspectors and local authority officers will be visiting warehouses and distribution centres across the country.

### Dust

- Earlier this year, they made a series of targeted inspections focusing on respiratory risks and occupational lung disease; looking at the measures businesses have in place to protect their workers' lungs from the likes of asbestos, silica and wood dust. This was part of HSE's longer term health and work strategy to improve health within the construction industry.

# CASE ROUND UP



## Recent prosecutions

### Formula Scaffolding (London) Limited

Formula Scaffolding (London) Limited of Church Lane, Chessington was found guilty in their absence to breaching section 3(1) of Health and Safety at Work Act 1974 and have been fined £160,000.00 and ordered to pay costs of £11 533.36, after scaffolding collapsed on to a street in Maidenhead while it was being dismantled.

### The Platform Lift Company

The Platform Lift Company, Millside House, Anton Mill Road, Andover, Hampshire have pleaded guilty to breaching a single charge of section 3(1) of the Health and Safety at Work Act 1974 and have been fined £6,000 and ordered to pay costs of £9,104.50, after a worker suffered life changing injuries while dismantling an external platform lift.

Mr Davey Marcus (Company Director), Windsor Avenue, Whitehead, County Antrim pleaded guilty to two charges of Regulations 20(1) and 20(2) of Construction (Design & Management) Regulations 2015 and was fined £480 and ordered to pay costs of £1,000.

## Recent Prosecutions

### Cheshire West and Chester Council

Cheshire West and Chester Council of Nicholas Street, Chester, pleaded guilty of breaching section 3(1) of the Health and Safety at Work etc. Act 1974. The Local Authority was fined £300,000 and ordered to pay costs of £5,607.40, after a young child fell almost three metres to the floor from a gap in railings, sustaining serious head injuries.

### Lightwater Valley Attractions Ltd

Lightwater Valley Attractions Ltd, pleaded guilty of breaching Section 3(1) of the Health and Safety at Work etc. Act 1974 and was fined £333,344 and ordered to pay costs of £16,183. after a child was ejected from the Twister ride at Lightwater Valley Theme Park in Ripon, North Yorkshire resulting in serious head injuries.

## Concluding Remarks

- HSE front and centre of the enforcement of COVID
- 2021 a return to 'business as usual?'
- State of the HSE
- State of the criminal justice system
- Individual's more at risk?
- Fines still pose a real risk to business continuity – importance of getting it right from the outset never more critical.



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