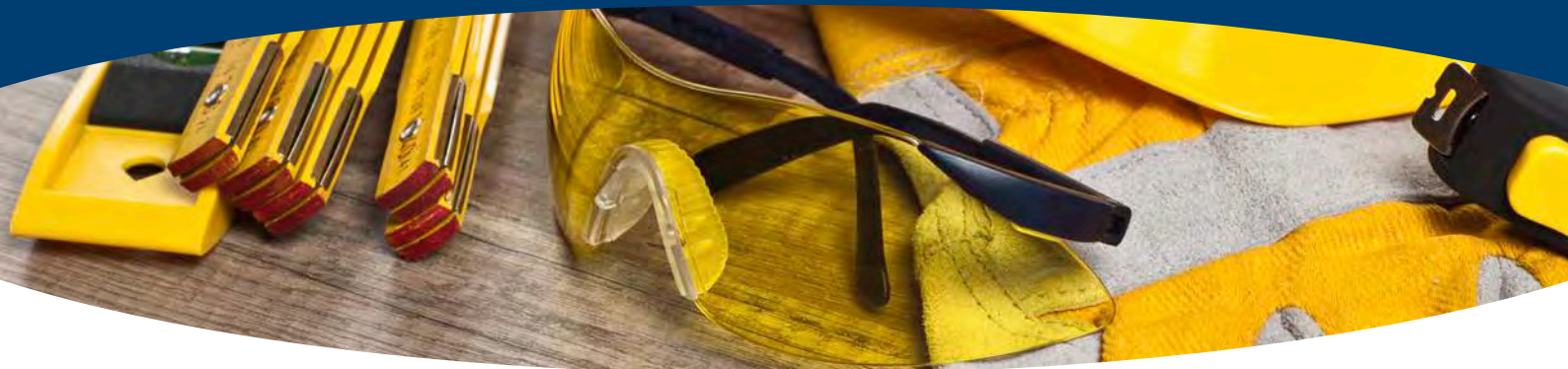


## Health and Safety Help!



### Welcome to the latest issue of *Health and Safety Help!*

I am delighted to say that our 'Real Health and Safety Conference 2016' was really well received by delegates; with over 100 turning out from some of the biggest companies and organisations in the East of England and beyond, to hear our panel of esteemed experts discuss HSE investigations and health and safety culture.

Feedback included; "Another superb session, full of inspirational content" and "An excellent conference, with plenty of chance for discussion and the ability to gain further knowledge. I'll be back, thank you." If you were unable to make it this year don't worry as we are already booked in for next year; 26 January 2017 at Newmarket Racecourse.

In this edition of *Health and Safety Help!* [Joanna Kasprzyk](#), our new solicitor, outlines the impact of the new sentencing guidelines for health and safety offences; which came in to force on 1 February 2016. [Julie Gowland](#) then goes on to discuss the issue of asbestos management; a subject that has attracted a number of prosecutions handled by the team in recent times. We then focus on our new 'safety specialists' offering and how this can assist your organisation. Finally we look at a rather bizarre and some might say 'over the top' HSE myth of the month; demonstrating how not to apply health and safety in your organisation. Remember, health and safety is about taking practical steps to ensure the safety of your workforce and is not about bureaucratic back covering.

I hope you enjoy this edition. Any feedback is welcomed and if you have any suggestions for topics to cover in future editions then please do not hesitate to contact me personally.



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# Impact of the new health and safety sentencing guidelines

As discussed in previous articles, the new sentencing guidelines for health and safety offences, corporate manslaughter, food safety and hygiene offences were set to increase fines for organisations by a potential eye-watering 10 to 15 times on a plea or finding of guilt. These guidelines officially came into force on 1 February 2016 but even prior to this there appeared to be an upward trend in sentences imposed for health and safety offences.

1. On 21 January 2016 CRO Ports London Limited was fined £1.8m and ordered to pay prosecution costs of £14,328 after a maritime terminal worker suffered multiple fractures, nerve and ligament damage after his arm became wrapped around a powered capstan, while mooring an ocean-going vessel.
2. National Grid Gas Plc was fined £1m and ordered to pay costs of £26,296 on 25 January 2016 for breaching s3 of the Health and Safety at Work Act 1974 after a worker had broken his femur. The circumstances were that the worker became trapped between two gas pipes after one had burst.
3. UK Power Networks (Operations) Ltd were fined £1m and ordered to pay prosecution costs of £153,459 on 27 January 2015 after a worker was electrocuted by a low-hanging high voltage power cable.

The above sentences suggest that courts consider the risk of harm on the worker/employee rather than the actual harm caused when deciding on an appropriate fine. Consideration of the risk of harm was only introduced in the new sentencing guidelines.

## Cases after 1 February 2016

Unsurprisingly, courts are set to continue to impose high fines on duty holders after 1 February 2016; albeit to date there have not been many examples of such cases in the courts. On 3 February 2016 Walter Heselwood Ltd was fined £120,000 and ordered to pay prosecution costs of £40,000 following an accident in 2009 when an employee was killed when a gas cylinder exploded and struck him in the face. The fine may not seem as high as some of the examples above, however, the turnover of the company must be considered. A fine of £120,000 for a micro/small company is likely to have a devastating impact.

Consideration of health and safety should be treated as a priority by all organisations, as the impact of large fines could have a huge impact.

Please don't forget the Birketts' health and safety mantra:

1. Say what you do.
2. Do what you say.
3. Have the paperwork to prove it.



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**“Consideration of health and safety should be treated as a priority by all organisations, as the impact of large fines could have a huge impact.”**

# Asbestos – the duties and the dangers

The health and safety team has dealt with a number of asbestos cases recently. The consequences of failing to identify and appropriately manage asbestos can be damaging, not only for the individual but also for the corporate entity. Asbestos can be found in any building built before the year 2000 and therefore impacts property owners and managers and those in the construction industry in particular. Asbestos-related-diseases are responsible for 5,000 deaths per year.

This article plans to provide some advice and assistance in managing asbestos to ensure that the correct steps are followed.

The 'duty' to manage asbestos can be found in the Control of Asbestos Regulations 2012. You will be a duty holder if:

- you own the building
- you are responsible through a contract or tenancy agreement
- you have control of the building; or
- you have taken responsibility for the maintenance or repairs.

As long as the asbestos-containing-material (ACM) is in good condition, and is not going to be disturbed or damaged there is negligible risk. But if it is disturbed or damaged it can become a danger to health.

The 'duty' to manage asbestos includes:

- ascertaining the whereabouts of all ACM's
- making and keeping an up-to-date record of the location and conditions of the ACM's (asbestos register)
- undertaking a risk assessment
- preparing a plan to manage that risk
- implementing that plan
- reviewing and monitoring the situation
- providing information to anyone who is likely to work on or disturb asbestos.

In the majority of cases work with asbestos will need to be done by a licensed contractor, for example, most asbestos removal, all work with sprayed asbestos coatings and asbestos lagging and most work with asbestos insulation and asbestos insulating board (AIB). Even non-licensed asbestos work still requires effective controls. If there is any doubt at all regarding the type of material cease work immediately and instruct a licensed contractor to take core samples.

Training is mandatory for anyone liable to be exposed to asbestos fibres at work and this includes maintenance workers and others who may come into contact with or disturb asbestos (eg cable installers), as well as those involved in asbestos removal work.



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**“Those fines are expected to increase massively in light of the new sentencing guidelines that have been introduced.”**

Failing to comply with any of the duties highlighted above can have damaging consequences for your business; as a food company and contractor recently found out. The company and their contractor were prosecuted under the Health & Safety at Work etc Act 1974 (HSAWA) and The Control of Asbestos Regulations 2012, and fined in excess of £150,000 after asbestos that was disturbed during building work was only identified by chance when an asbestos removal contractor attended site.

Those fines are expected to increase massively in light of the new sentencing guidelines that have been introduced.

## Focus on... Birketts' safety specialists

**Our team of former HSE Inspectors offer practical and realistic expert advice and assistance. They have a unique knowledge of how the regulator works and what it looks for; which adds real value to the service we provide to your business. They provide emergency response to incidents, as well as day to day practical assistance and have the support of our team of specialists solicitors and barristers where needed.**

Services offered include:

- accident investigation
- health and safety audits and health checks
- expert advice and assistance
- health and safety training
- expert witness services.

Importantly, and in contrast to many health and safety consultants, we don't do health and safety for you but help you to do it for yourselves; meaning that you learn and develop the skills necessary to ensure the safety of your workforce in to the future. Our experience has shown that this type of assistance is far more beneficial to organisations than 'contracting out' of health and safety.

We can offer many services on a fixed fee basis.



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## HSE myth of the month

**A member of staff has been told that all visitors to the building where she works have to be shown the comprehensive asbestos register, even if they are only coming for a meeting and not doing any physical work.**

The Control of Asbestos Regulations (CAR) 2012 contain a duty to pass on information about asbestos to people liable to disturb it in the course of their work or visit. However, there is no reason why people visiting simply to attend a meeting would need to see this information.

