

WELCOME TO THE AUTUMN 2021 EDITION OF

Health and Safety Help!



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Welcome to the autumn 2021 edition of Health and Safety Help!



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Welcome to the Autumn 2021 edition of Health and Safety, Help!

In this issue [Julie Gowland](#) takes up the health theme, [Rebecca Utton](#) discusses the advent of hybrid working, [Francesca Reason](#) talks about the Fire Safety Act, and [Sam Haldane](#), the newest member of the team, gives his insights into how HSE may move forward post-pandemic, based on his previous prosecution experience.

I am also delighted that early November sees the return of our very popular [Real Health and Safety conference](#). This year the conference focuses on health and includes some fantastic contributors including Dr Tim Marsh, a leading behavioural safety expert and author of several leading books in the field, Laura Thomas, former EVP of Corporate Risk for the Acteon Group, and Beverley Bell, the former Senior Traffic Commissioner of Great Britain.

We welcome any questions that you might have, or if there are issues on which you would like us to comment, please do get in touch. Our aim is to provide a regular newsletter, but if you would like to see news stories as they happen, please follow us on [LinkedIn](#), [Twitter](#) and [Facebook](#).

Every attendee at our Real Health and Safety Conference will also receive a copy of Dr Tim Marsh's book, *Talking Safety: A User's Guide to World Class Safety Conversation*. Please visit our website for more information about the conference and all our [upcoming events](#).

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Hybrid working: the new normal?

The pandemic brought about a number of changes to working practices. For many, the daily routine of attending the workplace and being with colleagues was switched, almost overnight, to remote working from home.

Since restrictions have lifted businesses have begun transitioning their employees back to the office. However, for a number of people, when it comes to work it seems that there will be a 'new normal' under a hybrid working regime.

Hybrid working is an arrangement which allows an employee to split their time between the workplace and working remotely e.g. from home. It can consist of a one-off day, an informal or set working pattern or can be a temporary and adaptable measure to suit the needs of the business and/or the employee.

One in four people in the UK are expected to have some form of mental health related problem during their lifetime. Recent years have seen a steady increase in the rate of self-reported work-related stress, depression or anxiety. For 2019/20 the Health and Safety Executive reported a further increase which was significantly higher than before. During this period it was estimated that 828,000 workers were affected, resulting in around 17.9m working days being lost. For 2019/20, work-related stress, depression or anxiety accounted for 51% of all work-related ill health and 55% of all days lost due to work-related ill-health.

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A reduction in human interaction can have a negative effect, particularly to those who live alone or with difficult personal circumstances.

Hybrid working has many benefits given the flexibility it can offer and is recognised as assisting individuals achieve a better work life balance. Whether it means facilitating caring and childcare responsibilities, or rather than being on the daily commute, having more leisure time and being home for family meals, there are a number of positive aspects. It can also assist those who are perhaps a little apprehensive about returning to the workplace following COVID-19.

Although a hybrid working model can be beneficial to mental health and wellbeing, it should be borne in mind that one size doesn't fit all. A reduction in human interaction can have a negative effect, particularly to those who live alone or with difficult personal circumstances. Isolation and loneliness will be a key consideration for some whilst others may welcome a physical boundary between home and work due to finding remote working places upon them additional stress and a feeling of inability to switch off.

That said, by clearly setting out what is expected when hybrid working, keeping open strong lines of communication, provision of training and support, and upskilling line managers, organisations can ensure that the right balance is struck thereby improving wellbeing, job satisfaction and productivity.

For specialist advice on how to prepare and implement an effective hybrid working policy, contact [Rebecca Utton](#) or another member of the Regulatory and Corporate Defence Team.



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The Fire Safety Act 2021: what are the practical implications?

The tragic fire at Grenfell Tower in the summer of 2017 during which 72 people died and more than 70 were injured forced an overhaul of fire safety for buildings across the country.

The Fire Safety Bill was tabled in March 2020 following recommendations made by Sir Martin Moore Bick and Dame Judith Hackitt after completing Phase One of the public inquiry into the circumstances that led to the fire. It was made law in April 2021.

The Act aims to ameliorate the deficiencies of the Regulatory Reform (Fire Safety) Order 2005 (FSO) and impose more stringent measures in multiple occupancy buildings. Whilst the communal areas of multiple occupancy buildings were always within the scope of the FSO, historically, the interpretation only extended to the internal parts of the building.



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...the Act introduces 'risk-based guidance' to encourage an approach to assessing risk commensurate with the building's features.



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The notable changes

An increase in the burden placed on 'Responsible Persons' is one of the key takeaways of the Act, largely due to the fact that:

- it further defines multiple occupancy as any residential building with two or more sets of domestic premises, irrespective of building height
- the external parts of the building such as the walls, windows, balconies and cladding will now be covered by the FSO and will need to be risk assessed by the Responsible Person who must also manage and where reasonably practicable, reduce the risk from fire
- doors between premises that lead to common parts of the building will also fall under the remit of the FSO
- the Act introduces 'risk-based guidance' to encourage an approach to assessing risk commensurate with the building's features. In practice, this should mean that where a Responsible Person has complied with the guidance (to be issued by the Secretary of State), there will be a presumption that the FSO has been complied with.

Although the 2021 Act is mercifully succinct, those that it applies to will need to be aware that different sections will come into force at different times and that it may therefore be sensible for building owners to review and update their fire risk assessments to incorporate the required changes simultaneously.

A question is often raised as to the definition of a Responsible Person and understandably so. Under the FSO, in a residential premises, the owner of the building, and/or those with control over it will be deemed to be the Responsible Person. In a workplace, the responsible person will be the person who has control of the premises in connection with the carrying on of a trade, business or other undertaking.

One of the most controversial issues covered in the Bill was the question over who would be liable to pick up the tab for remedial works to cladding. Proposed amendments to ensure that leaseholders would not have to cover the bill for what will inevitably be very expensive remediation failed however and the current position is that in circumstances where the lease provides that landlords can pass down these costs as part of a service charge, leaseholders will be liable.

If you have any concerns about how the Act may impact your organisation, please contact [Francesca Reason](#) or another member of the [Regulatory and Corporate Defence Team](#).



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Health and Safety: more than just 'safety'?

With the number of work-related stress, depression or anxiety cases reported rising, instilling a positive health and safety culture is more important than ever.

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We are all aware of the things we can do to help improve employee health but organisations with good health and safety cultures positively encourage and facilitate it.

Safety culture has been defined as “the product of individual and group values, attitudes, perceptions, competencies and behaviours that determine the commitment to and proficiency of an organisation’s H&S management”. In simpler terms, safety culture can primarily be referred to as the way things are done in your workplace.

With an historic focus on safety, the ‘health’ part of health and safety is now very much under the spotlight with mental health being recognised as of fundamental importance in achieving a positive health and safety culture: from the wellbeing of the individuals concerned to maximising productivity and reducing injury and illness in the workplace.

If your employees are struggling, the likelihood of them producing their best is minimal; if employees are distracted they are more likely to make an error. We are all aware of the things we can do to help improve employee health but organisations with good health and safety cultures positively encourage and facilitate it.

Some organisations utilise mental health first aiders, and these can certainly be very good at setting the tone and encouraging an open dialogue, others encourage employees to cycle to work. Whatever steps are taken they must be part of a holistic approach.

Businesses must appreciate the importance of mental health as a vital part of its health and safety culture.





Many assume that after drafting procedures, compliance will automatically ensue... only where the motivation of the business and its people, and the regulatory aims intersect is higher compliance more likely to be achieved.



Organisations with positive safety cultures understand that incidents can occur at any time and have robust systems in place deal with them.

Key aspects of a positive health and safety culture are:

- compliance
- engagement
- learning and leadership.

Compliance

Compliance with health and safety regulations is essential. Failure to comply can have a significant impact on the business, the employees, and the individual directors or senior managers of the business. Many assume that after drafting procedures, compliance will automatically ensue, yet securing better compliance is a difficult task. Only where the motivation of the business and its people, and the regulatory aims intersect is higher compliance more likely to be achieved.

Engagement

The HSE have conducted a number of studies relating to engagement: involving workers in health and safety leads to healthier and safer workplaces and produces a range of benefits for workers and managers. Workers are more likely to engage and participate if you give the correct training, make it easy to engage, gain ground-level input and provide the right resources. This will lead to better compliance and improved outcomes.

Learning and leadership

Effective health and safety performance comes from the top. It is paramount that you lead by example; if management are willing to commit to health and safety, employees will follow suit and employee buy-in is critical in achieving a positive safety culture.

Organisations with positive safety cultures understand that incidents can occur at any time and have robust systems in place deal with them. When they do occur, they are effectively investigated internally and the root causes communicated to employees. Most importantly, they lead by example by learning from these incidents and ensuring they never happen again.

Employee health and how that influences safety is an area we are focusing upon in our upcoming [Real Health and Safety Conference](#).

If you want help to review the current culture within your organisation, and advice as to how to improve it, [Birketts' Health and Safety Team](#) has an array of experts on hand who can provide practical and realistic assistance.



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Health and safety enforcement emerging out of the pandemic

Over the last 18 months health and safety enforcement, like so many regulatory processes, has changed dramatically. Prosecuting authorities have had to consider the merits of cases that they were bringing for prosecution more closely than ever before, and whether any alternative disposals could be properly entertained.

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...with the enormous number of criminal cases outstanding, health and safety cases fell towards the bottom of the pecking order.

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The gradual re-opening of business and the courts coupled with the increased chance for Inspectors to pro-actively investigate does not mean that everything from the pandemic should be forgotten...

Health and Safety Executive (HSE) Inspectors, like most of us, have been homeworking, which meant that investigations have not been at the level that they were pre-pandemic. This, coupled with the backlogs we are seeing at courts across the country, has created an unprecedented level of pressure in the health and safety enforcement process.

The Code for Crown Prosecutors, which the HSE follow, requires prosecutors to consider the seriousness of the offence, culpability of the suspect and whether a prosecution is a proportionate response. During the height of the pandemic, a greater focus was placed on consideration of whether it was a proportionate response to bring a prosecution, especially considering the backlog of cases and the time it was taking to get a case to court; made much worse by the near shut-down of the criminal justice system. Unfortunately, with the enormous number of criminal cases outstanding, health and safety cases fell towards the bottom of the pecking order. As it stands, more substantial cases are being listed for trial in the Crown Court for late 2022 or early 2023.

What this means for companies or individuals being investigated for alleged breaches of legislation is that they are going to be left in limbo for a significant period of time, particularly with less serious incidents. Compliance with health and safety law should be achieved through engagement with the HSE by way of advice, reviews and letters; formal enforcement should be taken by way of improvement or prohibition notices. Prosecutions are currently reserved for the most serious of offences.

The gradual re-opening of business and the courts coupled with the increased chance for Inspectors to pro-actively investigate does not mean that everything from the pandemic should be forgotten and that the default position must be prosecution.

If you receive a request for a written submission from the HSE, or a request to attend an interview, we are here to help guide you through the process. Please contact [Sam Haldane](#) or another member of the [Regulatory and Corporate Defence Team](#).

The Real Health & Safety Conference 2021

Thursday 4 November 2021

*Newmarket Racecourses Conference Centre,
Rowley Mile Drive, Newmarket, CB8 0TF*

To secure your place, please visit
[our Eventbrite page](#)

If you would like more details
about this event, please visit
birketts.co.uk/events

Event details

Date: Thursday 4 November 2021

Time: 8:45am - 3:30pm

Tickets: £120

**Venue: Newmarket Racecourses
Conference Centre, Rowley Mile Drive,
Newmarket, CB8 0TF**

The 'health' in health and safety, so often overlooked in favour of an emphasis on safety, is now front and centre as more and more organisations begin to understand how it impacts employee engagement and safety outcomes.

Led by Matthew Gowen, Partner (Barrister) and Head of Birketts' award-winning Regulatory and Corporate Defence Team, the main topic of our 2021 Real Health and Safety Conference will be employee health, with breakout sessions focussing on the role risk assessments have in incident prevention.

The conference will benefit organisations from any sector. Complementing our expert lawyers, we are delighted to be joined by guest speakers and contributors including:

- Dr Tim Marsh – author of *'Talking Health, Safety and Wellbeing: Building an Empowering Culture in a Post-COVID World'*
- Laura Thomas – former Logistics UK board member and Deputy Traffic Commissioner; Director of Consul-T
- Jamie McDonald – Director of SHEQ at the Norse Group
- Beverley Bell CBE – former Senior Traffic Commissioner for Great Britain; Consultant at Birketts
- Chris Taylor – former Head of FOD (SE) HSE; Consultant at Birketts.

Aimed at directors and senior management teams, the programme includes industry specific breakout sessions which will provide an opportunity to discuss the main themes and issues of interest to participants, as well as an opportunity to share knowledge and experiences. Each breakout session will have contributors relevant to the industry sector with plenty of opportunities to ask questions.

If you would like to receive regular seminar invitations and legal updates please visit birketts.co.uk/register and select the 'Health and Safety' box.