



Lockton Risk Radar

May 2022



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01

Hybrid working: a new era for traditional business models

The Covid-19 crisis led to governments imposing stringent restrictions on national and international movements, forcing millions of non-essential workers to work from home (WFH). Two years in, hybrid working has become the norm, as societies and organisations adopt a flexible operational system that is so far, proving resilient to multiple external pressures. However, this new system is undoubtedly still a work in progress. Considering the pace of change following the pandemic, the shift to hybrid working has been far from smooth. It is an ongoing process that requires proactive risk management practices, as circumstances continue to change and evolve across the world.

Opportunities and threats

Talent beyond borders

Despite some traditional and perhaps outdated attitudes towards WFH, a hybrid working model could allow businesses to attract more geographically disperse talent and boost productivity, while reducing operational costs and expenses.¹ However, such benefits are heavily reliant on an organisation's ability to manage the transition adequately. They would need to successfully realise maximum benefit without compromising the integrity, competitive advantage and sustainability of the business. The various drivers of productivity vary across industries, businesses, and individual roles, so it's vital to address these differences when designing hybrid working models.

Cybersecurity risks

With the sudden and increased reliance on connected technologies and online tools and services for remote working, cybersecurity risks reached new highs in 2020.² Cyber criminals have exploited the weaknesses and security gaps that emerged from the unanticipated shift to WFH, when home workers became a renewed target for phishing emails, data theft and malware threats. Employees' cyber awareness and preventive behaviours have played a significant role in the success and failure of such attacks.

Working in a controlled environment such as the office, where protective measures are already in place, serves as a protective shield against such attacks, where moments of doubt can be handled collectively amongst colleagues. But potential threats may be overlooked when individuals are dealing with these situations at home. Poor cybersecurity habits, such as using personal laptops, externally transferring sensitive data, or accessing unsecured networks, can also expose a business to potential cyber incidents.

Health and safety risks

One of the major health risks associated with remote working is related to mental health and well-being, as the boundaries between an individual's work and personal life begin to blur, resulting in increased stress and burnout. As the separation between the home and the office no longer exists with hybrid working, individuals working from home are impacted by stimuli and triggers that can initiate work-induced stress even within the comfort of their homes. An EcoOnline survey in 2021 revealed that 73% of respondents identified stress as a common topic during lockdown home working, with 74% identifying isolation as a top issue. Feeling isolated or detached from other colleagues and the usual working environment can also demotivate home workers and impact their well-being, if they feel that they lack the communication, support and attention they experienced in the office.

Another health risk is musculoskeletal injuries, resulting from poor ergonomics and inadequate working habits and facilities. Non-essential workers have had to suddenly adapt to a new working environment, often without the appropriate amenities and working conditions in place, such as adequate space, chairs or even desks. Some businesses support their employees by providing them with the required setup – but to what extent do employees utilise the provided facilities? And how is the home working environment assessed by the employer?

EcoOnline's survey revealed that one fifth of sampled employers did not provide equipment as part of their hybrid arrangements during lockdowns, and that almost half (47%) of the organisations did not provide training on issues relating to home office ergonomics, remote communications or avoiding isolation, although 49% identified musculoskeletal disorders as a significant issue. The survey also revealed that 32% of the organisations did not implement risk assessments for lockdown home working.³ Another layer of complexity is added when employees have special requirements that need to be carefully assessed and accounted for. There are also various health risks associated with improper and overuse of display screen equipment (DSE), such as fatigue, eye strain and backache.⁴ Prolonged working hours and a lack of consistent breaks can both impact the health of individuals working from home.

Culture and inclusion risks

With reduced social interactions and in-person collaborations, maintaining a solid organisational culture and social cohesion has become a difficulty for many businesses. An empowering, inclusive and collaborative culture not only motivates employees to perform better, and to progress professionally, but also provides them with the emotional and mental support required to tackle any potential difficulties that might emerge in the course of their work.

Individuals working from home may feel disconnected from their colleagues, especially during meetings where other team members are gathered in the office. Observing in-person interactions, and the unintentional focus on those who are physically present on the part of management, may create a sense of disengagement and exclusion. Line managers must now ensure that individuals working from home are equally included, as well as recognised for their work and contribution to the team. Failure to do so may not only increase the risk of losing talent, reducing productivity, and impacting employee loyalty, but could also expose the business to potential discrimination claims.

Operational and process risks

Following the sudden shift in traditional business models, any failure to reassess internal policies and procedures to account for changes within the business and its environment, may result in significant operational and process risks. The increased reliance on third-party service providers and connected technologies should be accounted for and managed, as they expose businesses to new complexities and vulnerabilities. These may significantly impact the continuity and operations of an organisation.

Consistently identifying and assessing emerging risks, as well as evolving risks is crucial, as it ensures the relevance and applicability of controls in place. Poor governance and enterprise risk management practices will significantly impact the operational continuity, financial health, and ultimately the survival of a business during unprecedented circumstances. They will also expose the business to security and regulatory risks. The key feature of a sustainable business is in achieving resilience through proactive actions and considerations, rather than reactive modes of action.

73%

of respondents identified stress as a common topic during lockdown home working

74%

of respondents identified isolation as a top issue

32%

of the organisations did not implement risk assessments for lockdown home working



Considerations

- Emphasise the power of transparent communication – clear and direct communications between employees and their employers about their preferences, expectations and concerns will allow businesses not only to maintain and protect their talent, but also to proactively address their needs and preserve their wellbeing. Furthermore, internal support is bilateral. To achieve the best results, robust communication practices should be established to develop a culture of harmony, collaboration and trust.
- Ensure that the internal policies, procedures and processes account for operational changes adopted within the business.
- Consistently review existing insurance programmes to ensure that any business changes will not impact the validity and relevance of obtained covers. Furthermore, respond proactively to changing insurer expectations and requirements, to obtain the best terms and conditions upon renewal.
- Ensure that risk assessments cover home workers.⁵ Considering the changes in traditional business models and working environments, the risks associated with the shift from a controlled environment (office) to an external one (home) should be identified, assessed and accounted for. The wellbeing and safety of employees is crucial, as they are the foundation of any business and the main drivers of its growth and success. Accountability for employees' health and safety is not confined to the office; therefore, employers must ensure that their people have appropriate working conditions, even at home. Furthermore, there are other risks associated with home working, such as cybersecurity threats and potential fraud, which should also be accounted for in risk assessment reviews.
- Promote cultural evolution to reflect the changing attitudes and working preferences. Employees should not be penalised or discriminated against due to their working preferences. For some individuals, the concept of returning to the office, using public transport, and being exposed to large numbers of people, is daunting. After two years of operating within the comforts of their homes, the prospect of looming additional expenses such as childcare, can bring about considerable stress. To account for these changes, employers should ensure consistent equality and inclusion. Involving employees in group activities (which also accommodate those working from home), webinars, networking events and other collective interactions, can all help to establish a unified culture.
- Adopt a proactive risk management approach. By implementing appropriate measures that are proactive, rather than reactive, businesses can build resilience against future unprecedented circumstances that could significantly jeopardise their operational continuity, financial health, and growth.
- Implement adequate training programmes that encompass the changes in working environments and address the associated risks. Spreading awareness and knowledge about the implemented changes and their potential impact on the business, its people and stakeholders, will help to manage expectations internally. It's vital to equip employees with the tools needed to handle situations of doubt while working from home, as well as proactively mitigate any potential emerging/evolving risks. Training programmes should consistently address topical issues that could have a significant impact on the business and its people, such as cybersecurity threats and mental health and well-being.
- Recruit, develop and retain the right people.⁶

¹. <https://www.birmingham.ac.uk/documents/college-social-sciences/business/research/wirc/hybrid-working-beyond-covid19.pdf> ². Brooks, C. (2021). Alarming cybersecurity stats: what you need to know for 2021. Forbes. <https://www.forbes.com/sites/chuckbrooks/2021/03/02/alarming-cybersecurity-stats-what-you-need-to-know-for-2021> ³. EcoOnline (2021). Hybrid working survey: A major survey of 451 employers to help identify the strengths and weaknesses of hybrid working. ⁴. <https://www.hse.gov.uk/pubns/indg36.pdf> ⁵. <https://www.hse.gov.uk/home-working/employer/risk-assessment.htm> ⁶. <https://qbeeurope.com/resilience/making-hybrid-work-for-you/>

02

Personal Protective Equipment (PPE) – Employers duties expanded under new regulations

The latest Personal Protective Equipment at Work (Amendment) Regulations 2022 came into force on 6 April 2022. Under the Personal Protective Equipment at Work 1992 Regulations, employers were only required to provide PPE to employees with a contract of employment, i.e. limb (a) workers. However, new amendments mean that UK employers will now be required to supply PPE to a broader worker population. The changes extend the obligation to workers with a more casual employment relationship known as limb (b) workers. Paragraph 3 of the new Regulations sets out the new definition of a worker with limb (b) forming part of the definition.

What is a limb (b) worker?

The Employment Rights Act 1996 defines limb (b) as including workers who are contracted to perform work or provide services under any express or implied contract other than a contract of employment. Generally, they carry out casual/irregular work which may be for more than one organisation; they receive holiday pay, but not other employment rights such as the minimum period of statutory notice; and they only carry out work if they choose to. Typically, they are also not in business for themselves.

What does this mean for my organisation?

For many employers, the changes to the regulations will have limited to minimal impacts, particularly for those organisations who provide PPE based on the nature of the role/task itself, rather than the individual's employment status. Indeed, even before these changes, the Health and Safety at Work Act 1974 (Section 3) already stipulated that employers have to look after the health and safety of everyone on their worksite(s). However, we could see a significant impact on small to medium sized enterprises and in sectors such as healthcare, manufacturing and construction where there's often greater use of casual workers.




Main implications

- Some employers and agencies will need to prepare for an increase in costs to provide and maintain PPE to more workers, as well as training on how to use it effectively. This includes important PPE controls such as face-fit testing, where relevant.
- Risk assessments will need to encapsulate limb (b) workers. Where an assessment indicates that a limb (b) worker requires PPE to carry out their work activities safely, then the employer must provide any necessary PPE free of charge – as they do for employees.
- Employers will also be responsible for the maintenance, storage and replacement of any PPE they provide.
- Under the 1992 Regulations, only employees were required to report any supplied PPE that is subsequently lost or becomes defective to the employer. Under the new Regulations, this requirement has been extended to limb (b) workers.

Essentially, by 6 April 2022 employers should ensure that there is no difference in the way PPE is provided to this wider definition of workers, so the race is on for the employers affected to implement the new requirements. The HSE will likely want to ensure compliance as part of routine inspections. Enforcement action can range from verbal or written advice to enforcement notices and, in serious cases, prosecution.

Finally, it is worth remembering that PPE should be considered as a last resort in the hierarchy of health and safety control measures, that is, after all other controls have been considered.





03 | Evolving threats require evolving solutions

Businesses are facing increasing challenges in preparing and responding to crises, especially as threats against them have evolved beyond traditional, high-profile malicious exposures aimed at causing widespread death and destruction. First, the type of threats to businesses are more diverse, meaning that impacts to cyber security and business continuity are more common. Secondly, antagonists are often individuals rather than groups, acting and innovating alone under the radar. This makes it harder to anticipate and detect their movements.

It's clear that organisational risk management strategies must now pivot to an acceptance of these more varied threats, so as to be able to predict them, respond to them and recover from them. Preparation is needed to assess the risk to people, product and property, as well as the longer term brand and reputational impacts. Crisis planning and testing of those plans is essential, and there is increasing expectation on businesses to take both of these actions.

Legislation is driving a change in the culture of security at home and abroad – such as the Safety Act in the US, and the proposed Protect Duty here in the UK. Legal requirements that oblige companies to accept their duties of care, extend to employees and the general public. These obligations bring with them requirements for crisis management planning and there's no doubt that the downsides for companies who fail to do so could be considerable.

Threats

In many ways, the last few years have seen an extraordinary shift in security challenges to people, assets and reputation: criminals are more creative, terrorism more indiscriminate, natural catastrophes more frequent and severe, medical incidents more disruptive. These challenges are all becoming more significant amid increasing global uncertainties. In turn, each one of these risks can lead to greater security concerns for businesses.

There were no major terrorism events in the UK 2021, although multiple security threats were avoided – including shootings, knife attacks, plots, cyber crime and bomb threats (source: Crisis 24). These threats were typically from individuals deploying less sophisticated methods and aiming at softer targets, to create maximum loss. All of this activity is testing the abilities of companies and individuals to avoid these threats, and the abilities of first responders to provide adequate support, as targeting becomes more and more indiscriminate.



Solutions

Insurers have reacted to this new threat landscape and are taking the lead by breaking down silos in their businesses and redefining coverage, services and response. By providing access to the necessary expertise on a proactive and emergency response basis, they are helping organisations to understand, mitigate and respond to such risks.

More specifically, insurers are thinking differently about coverages in areas such as political violence and terrorism, product liability and K&R. This means taking insurance coverage and risk prevention solutions for concerns such as terrorism, civil commotion, war and active assailant coverage, and blending them into insurances for D&O, property, BI and liability. They achieve this by adding in crisis management, crisis communications, legal fees and salary costs, plus medical and trauma care. A critical part of any solution is the ability to provide crisis management support, alongside the work that first responders provide. A panel of vendors can deal with any security eventuality, and this certainty and quality of response is essential in the context of protecting people, property and reputations.

The post-incident recovery phase can have long-lasting and far-reaching impacts on how quickly and successfully a business can return to normal operations. Trauma Incident Management (TrIM) can be a critical element of any recovery. A security related incident will often create stress-related injuries that become apparent either immediately or some considerable time later, requiring specialist expert support that may not be readily accessible. Building this support into the insurance programme ensures that:

- TrIM consultants can attend the area and coordinate the post-event management
- A triage process is implemented, identifying where support is needed both immediately and later
- A support plan can be implemented locally, regionally and internationally

A combination of risk management consultancy, insurance and training improves threat awareness and response – often via a single insurance purchase. A range of benefits can also be provided for scenarios outside the UK, from desktop support via country risk online tools, to stabilising and managing an incident locally – and continuing that support when the affected people return home. So if an incident happens when an insured person is away from home, the insurance coverage still provides support and assistance long after the initial response, as well as on-the-ground logistics to extract individuals caught in conflict zones or unstable environments.

It's vital that organisations look at the changing security landscape, to assess the increasing responsibilities that organisations have to support their employees going forward. As silos are eroded and coverage with traditional lines blended, they can find comprehensive solutions for today's evolved and amorphous security risks.

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04

By Rachel Lawton, BLM

Ending vaccination as a condition of deployment in health and all social care settings

On 31 January 2021 the government announced plans to undertake a two week consultation to decide whether to overturn the mandatory requirement of care home staff to be vaccinated. The consultation ran from 9 February to 16 February, 1 week shorter than planned. The government published the consultation response on 1 March 2022.

The new regulations revoke the requirements that CQC registered persons only permit those who are vaccinated against COVID-19, unless otherwise exempt, to be deployed for the provision of a CQC-regulated activity in health and/or social care, and to enter CQC registered care home premises. This came into force on 15 March 2022.

There are no requirements for care homes to take any action following this U-turn in the law; however the operational guidance advises that care homes should consider devising a vaccination policy.

Employees with 2 years continuous service can bring claims against their employer for unfair dismissal; there are exceptions when claims can be brought without the requisite service. The usual time limit for issuing a claim in the employment tribunal for unfair dismissal is within 3 months less 1 day from the termination of employment.

Employees who have been dismissed may wish to pursue a claim, however if this decision was based on existing law (pre 15 March 2022) there is an arguable defence. The recent case of *Allette v Scarsdale Grange Nursing Home Ltd*, held the dismissal of a care assistant working in a nursing home who refused to be vaccinated (before the care home vaccine regulations came into force) was fair.

The position following the revocation of the legislation on 15 March will be far less clear. Employers will no longer be able to rely on breach of statutory restriction; however

there are arguments where the dismissal of an unvaccinated care home or social worker (without a medical exemption) may be justified as fair. This could be on Health and Safety Grounds supported possibly by the Code of Practice and potentially in contravention of their own vaccination policy.

Care homes should consider alternative options first, with dismissal only applying to those over 18, unvaccinated and without a medical exemption. Care homes should comply at all times with employment and equalities law and adhere to good employment practice.

When a member of staff is not vaccinated and cannot provide evidence that they are exempt, care homes should explore all options. This includes redeployment into any alternative roles where vaccination is not required, for example roles without direct contact with residents.

Care homes might also need to consider paid or unpaid leave for their staff, although this would not be a long-term solution, this may be appropriate in certain circumstances such as a redeployment to a new role or a delay in obtaining a medical exemption.

Where an employer still requires work to be carried out and is unable to redeploy the employee, this would not amount to a redundancy situation, the reason for termination would be dismissal and the employee would not be entitled to a redundancy payment. The employer will need to ensure that it follows a full and fair process and consider fairly how it selects employees for redeployment or dismissal. Selection criteria should be objective and non-discriminatory.

There are other reasons for dismissal which may arise, for example, if an employee dishonestly provided false evidence of vaccination, this is likely to amount to misconduct and may even amount to gross misconduct.

However, not being vaccinated or medically exempt will not in itself amount to misconduct.

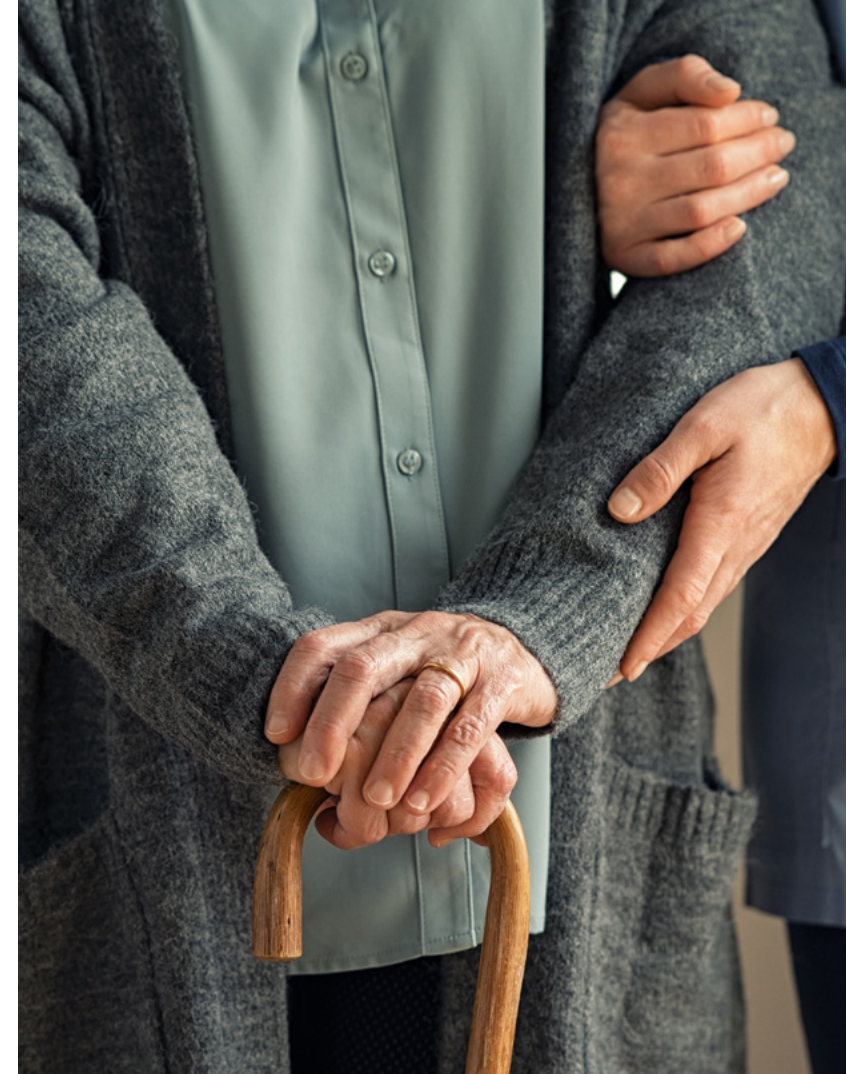
From 1 April 2022 employers no longer have to explicitly consider COVID-19 as part of risk assessments. There is still an overriding duty to identify risks in the workplace and note these in risk management assessments, including all risks arising from coronavirus. Employers are obliged to take reasonable steps to reduce risks in the workplace. Employers should therefore encourage their employees to maintain a fully vaccinated status to protect both themselves as well as everyone else in the workplace, with a particular emphasis on those that are vulnerable.

COVID-19 is also a reportable disease under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, which further strengthens the encouragement by employers to ensure their employees to maintain a fully vaccinated status.

The reversal in the regulations will of course have a significant impact on care homes in terms of morale as many individuals may feel hard done by if they have been dismissed under a regulation that has been subsequently overturned. There will likely be an increase in the administration costs for care homes, in particular following government advice for care homes to draft their own vaccination policy.

The legal position and effect on care homes and their staff can only be assessed on a case by case basis. The BLM employment team can be contacted for tailored advice.

When a member of staff is not vaccinated and cannot provide evidence that they are exempt, care homes should explore all options. This includes redeployment into any alternative roles where vaccination is not required, for example roles without direct contact with residents.



05 | HSE Updates

Worker falls 15 metres after platform collapses resulting in a six-figure company fine

A civil engineering company in the North-East of England has been sentenced, following a worker falling 15 metres when a platform collapsed. The incident, on 31 July 2019, resulted in life-threatening injuries.

An investigation by the HSE found that the company failed to carry out a full structural appraisal of the platform before demolition. Had this been carried out, the appraisal would have allowed for an appropriate risk assessment and for the work to be completed safely.

The company pleaded guilty at Teesside Magistrates Court to breaching Sections 2(1) of the Health and Safety at Work etc Act 1974. They were fined £200,000, and ordered to pay full costs of £20,991.24.

HSE inspector Richard Littlefair commented after the hearing: “When undertaking demolition work where structures are being left in a pre-weakened state, it is essential for those in control of the work to take appropriate measures to ensure the safety of all those involved with the work. This includes ensuring that consideration is given to the stability of structures before and during demolition work, as well as ensuring that control measures are in place to mitigate other associated health and safety risks, such as work at height.”

Top tip: Preventative action should always be considered when undertaking demolition work – especially in assessing structural stability where work is at height.

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Asbestos management company director jailed after failing to protect workers

Chelmsford Crown Court found that during a major refurbishment in February 2017, project workers were exposed to asbestos, as the company director had failed to protect them from exposure. The concerns were brought to the attention of HSE by workers at Ensure Asbestos Management Limited, who thought they were being endangered while refurbishing a department store in Plymouth.

After investigation by the HSE, it was found that the company had irregularities in their asbestos surveys and clearance certificates – some of which proved to be fraudulent. It was found that the company intentionally cut corners in managing the danger of asbestos exposure when being contracted to remove all identified asbestos containing materials from the site.

Ensure Asbestos Management Limited of Sawbridgeworth, Hertfordshire pleaded guilty to breaching Section 2(1) and 3(1) of the Health and Safety at Work etc Act 1974. The company was fined £100,000. The director also pleaded guilty to the same offences and has been sentenced to ten months of imprisonment and disqualified as a director for five years. He was also ordered to pay costs of £14,505.

HSE inspector Georgina Symons commented following the hearing: “Ensure Asbestos Management Limited – a previously licensed asbestos removal contractor – failed to work within the law, despite having a wealth of knowledge on the risks associated with exposure to asbestos and the necessary training to have done so safely. They deliberately falsified documents and cut corners.”

Top Tip: Cutting corners in asbestos management can lead to substantial fines and even imprisonment. Companies must protect their workers by ensuring sites are safe to work on, and in doing so protect themselves from prosecution – [guidance can be found here](#).

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15-year-old employee suffers serious burn injuries following explosion and flash fire

After an explosion and flash fire, a 15-year-old employee of a metal recycling firm suffered serious burns, resulting in both the Worcestershire-based firm and its director being penalised.

In August 2019, at Birmingham Magistrates' Court, it was heard that the boy, working for A & S Metal Recycling Limited, suffered 22 per cent burns to his body when aerosol canisters exploded when passed through a shredding machine, causing a flash fire.

HSE found that the work unit did not have measures in place to process aerosol canisters and there were no control measures to prevent fire and explosion risks. Additionally, the activity was being carried out by minors, employed as part of a casual working arrangement, using inadequate equipment.

The company pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 and fined £66,000. The fine was served as a compensation order and is to be paid to the 15-year-old boy. Additionally, the company was ordered to pay costs of £8,192.55.

The director pleaded guilty to breach of Section 37(1) of the Health and Safety at Work etc Act 1974 and was ordered to complete 100 hours of unpaid work and given a six-month custodial sentence, suspended for two years.

HSE inspector, Alex Stobart commented after the hearing: "The waste and recycling industry has the potential to be extremely hazardous, and in this case two children were needlessly exposed to significant risks on site. The explosion and fire led to one child being hospitalised with significant burn injuries. This incident could so easily have been avoided by simply implementing the correct control measures and a safe system of work, as standard within the industry."

Top Tip: As noted by the HSE inspector, had the correct control measures and a safe, organised system of work been in place it could have prevented serious injury to the minor. [Here is HSE guidance on how to control risks at work.](#)

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Health and safety updates

Changes to the Highway Code: rules on using motorways

As of 29 January 2022, the Highway Code has been updated and the DVSA are urging all drivers, both old and new, to familiarise themselves with the amendments. The relevant amended rules are:

- Rules 1 to 35 (Pedestrians)
- Rules 47 to 58 (Animals)
- Rules 59 to 82 (Cyclists)
- Rules 103 to 158 (General rules, techniques and advice for all drivers and riders)
- Rules 159 to 203 (Using the road)
- Rules 204 to 225 (Road users requiring extra care)
- Rules 238 to 252 (Waiting and parking)
 - We would recommend that businesses ensure that their fleet (and grey fleet) drivers are familiar with the changes.

COVID-19 update

Continuing to reduce the risk of COVID-19 transmission in the workplace

HSE have updated their guidance following the ending of legal restrictions in England from 24 February 2022, which includes the removal of the requirement to self-isolate. Please note that the timescales for the removal of restrictions are different for Scotland and Wales.

The guidance reaffirms [adequate ventilation](#), [sufficient cleaning](#) and [good hand hygiene](#) as being the main measures to ensure risk reduction. There is further guidance on working safely which contains advice and information for various types of works.



Weightmans secures trial win for one of the UK's largest retailers

This was an important case in reiterating the principles established in Ward v Tesco.

A major high street retailer and Weightmans LLP have successfully defended a claim made following a slipping accident in the defendant's Burnley store. The claimant brought a claim for personal injury as a result of slipping on a clothes hanger in the store on 10 July 2020.

The defendant accepted that unfortunately the claimant had had an accident in store but defended the claim, on the basis that they had a reasonable system of inspection and cleaning in place and that the clothes hanger appeared so proximate in time to the accident that the defendant was unable to prevent the claimant slipping on it.

The claim was brought under the Occupiers' Liability Act 1957 and/or negligence. It was confirmed by the court that Ward v Tesco remains the lead authority in retail claims.

The defendant's reasonable system incorporated:

- Risk assessments which identified the relevant hazards and controls in place
- Training – induction and refresher training, supported by training materials and training records, which included identification of slip and trip hazards and the steps that staff should take
- Zero tolerance policy in respect of items on the shop floor
- Regular checks by staff – constantly patrolling the store throughout opening hours, supported by witness evidence from those staff

The defendant relied upon witness evidence from three members of staff working in the store on the day, confirming that the relevant area had been checked in furtherance of the inspection system, just prior to the accident. They were also able to adduce CCTV evidence, showing that the general state of the shop floor was tidy, which the court accepted.

The court was satisfied that the risk assessment identified the risks; confirmed the procedures in place; and confirmed that the staff were adequately trained in respect of the need to check for hazards. Therefore, it was found that there was an effective system in place on the day and the claim was dismissed.

The court rejected the claimant's argument that the regular checks at the accident location should be documented, with the Judge questioning whether such a high duty threshold was necessary or even practicable in a busy high street retail store such as the defendant's. The court could not see how a written record of coat hangers being on the floor would assist on the issue of risk.

This was an important case in reiterating the principles established in Ward v Tesco. The court made a common-sense decision given that high footfall means that one can never prevent stock, or items brought into the shop by customers, from being dropped on to a shop floor. Therefore, there is always a potential risk of injury. However, it is incumbent on customers to look where they're going. In addition, provided that retailers can evidence they have identified this risk and have put in place a regular system of inspection and cleaning then they have complied with their legal obligations.

06 | In case you missed it



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