Safety, Health and Environment ("SHE") Regulatory

CLYDE&CO

Newsletter

Summer 2013

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Welcome

Welcome to Clyde & Co's safety, health and environment regulatory newsletter.

Our SHE Regulatory Team specialises in regulatory defence work and is '*one of the largest health and safety offerings in the UK market*' according to Chambers and Partners UK 2013 whilst we are ranked as a first tier firm by Legal 500 2012, who believe that our practice is '*in the top flight of firms working in this area*'.

We are only too aware of the difficulties that face businesses today with an ever increasing burden of regulation and legal duties. A workplace incident or a breach of those duties often culminates in an investigation and potentially criminal prosecution of a business, its management or staff.

With the stakes so high, it is essential that you and your organisation are kept up to date with changes in the law to protect the reputations of your business, its directors and employees.

Our quarterly newsletter provides a topical update on recent key developments in our areas of specialism:

- Corporate Manslaughter
- Health and Safety
- Road Traffic and Transport
- Food Safety
- Environmental
- Fire Safety
- Trading Law
- Meet one of the team

If you wish to subscribe to an electronic version of this newsletter, or if you have any comments or queries regarding the topics covered in this bulletin – please email SHERegulatory@clydeco.com.

Our new Twitter account

We appreciate that the demands on your time and the commitments of your business mean that immediate and easily accessible information is key. With that in mind and having listened to our clients' needs, we have launched a Twitter feed.

Follow us **@ClydeCo_SHEReg** for the latest news, legal updates and insights in the sphere of regulatory law.

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As the Crown Prosecution Service continues to flex its muscles under the Corporate Manslaughter and Homicide Act 2007, we set out below a summary of the ongoing prosecutions.

PS & JE Ward Ltd – charged following the death of an employee at its garden centre in Norfolk in July 2010. The employee was electrocuted when the hydraulic-lift trailer he was towing came into contact with overhead wires.

Plea and Case Management Hearing scheduled to take place at Norwich Crown Court on 14 August 2013.

MNS Mining Ltd – charged as a result of the deaths of four miners at its Gleison colliery in September 2011. The miners lost their lives when the area of the mine they were working in was engulfed in water.

Plea and Case Management Hearing scheduled to take place at Swansea Crown Court on 20 May 2013.

Prince's Sporting Club Ltd – charged as a result of the death of an 11-year old girl at its club in Middlesex in September 2010. The girl died after falling from a banana boat ride and being hit by the boat towing it.

Plea and Case Management Hearing took place at Southwark Crown Court on 26 April 2013. The company pleaded not guilty and the matter has been adjourned until 14 January 2014 at the Old Bailey for trial.

Mobile Sweepers (Reading) Ltd – charged as a result of the death of an employee on a farm in Basingstoke in March 2012. The employee was carrying out repairs underneath a road-sweeping truck when he inadvertently removed the hydraulic hose holding the vehicle up. The back of the vehicle then fell on top of the employee.

Plea and Case Management hearing scheduled to take place at Winchester Crown Court on 14 June 2013

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SHARPS- Do you know your duties?

The new Health and Safety (Sharp Instruments in Healthcare) Regulations 2013 ("the Regulations") come into force on 11 May 2013. The Regulations build on existing law and provide specific detail on requirements that must be undertaken by healthcare employers and their contractors.

In most cases, it will be clear when the Regulations apply. However, their application will be of particular interest to the following:

Contractors	A contractor whose employees work at different times at healthcare premises and non-healthcare premises is not required to comply with the Regulations when their staff are working at non-healthcare premises. However, the existing requirements to ensure risks from sharps injuries are controlled apply.
Residential care homes	The Regulations will apply if the primary purpose of the home is to provide healthcare. They will not apply if the main purpose of the home is limited to only providing residential care.
Medical staff working in prisons, schools or other non-healthcare workplaces	If an employer's primary activity is the management, organisation or provision of healthcare, the Regulations will apply.
Pharmacies	High street pharmacies are primarily retail businesses so the Regulations do not apply. However, if the primary activity of a community pharmacy is to provide healthcare then the Regulations will apply.
Non-healthcare contractors to a healthcare employer	Businesses that are contracted to provide non-healthcare services to healthcare employers, such as catering and building or plant maintenance, will only be required to act if those who work for them on the healthcare employer's premises may be exposed to sharps while they are working there.

What is required?

"Sharps" refer to medical instruments or other objects that are necessary for carrying out healthcare work and could cause an injury by cutting or pricking the skin.

The Regulations follow the principles of the hierarchy of preventative control measures, set out in the Control of Substances Hazardous to Health Regulations 2002.

However, they require that the following additional control measures are considered:

- Avoid the unnecessary use of sharps
- When sharps have to be used, "safer sharps" are used where it is reasonably practicable to do so
- Place secure containers and instructions for safe disposal of medical sharps close to the work area
- Provide information and training

The HSE has published a guidance document which sets out fully the requirements of the Regulations and can be found at **http://www.hse.gov.uk/pubns/hsis7.pdf**.

Businesses that may be affected are advised to carefully consider the guidance and seek legal advice from our team of specialist lawyers if they are concerned about their application.

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Consultation into PACE Codes of Practice

A consultation has been launched in to proposals regarding changes to the Police and Criminal Evidence Act 1984 ("PACE") Codes of Practice. The consultation concerns revised versions of Codes A, B, E and F under PACE, which deal with stop and search, searching premises and the audio and visual recording of interviews. Full details of how to respond can be found at **http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes-practice/?view=Standard&pubID=1159372.** The consultation closes on 10 May 2013, following which we will provide a further update.

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Health and safety (miscellaneous repeals, revocations and amendments) regulations 2013

These Regulations, which came into force on 6 April 2013, have been introduced to remove legislation that has either been overtaken by more up to date Regulations (for instance, the Construction (Head Protection) Regulations 1989, are redundant or do not deliver the intended benefits (for instance the Notification of Conventional Tower Cranes Regulations 2010, which Professor Löfstedt argued provided no direct safety benefit).

A total of 12 statutory instruments are affected. A full list of the revoked legislation is available here **http://www.hse.gov.uk/legislation/repeals-revocations.htm**

Don't apply the brakes to your driving policy

We are often asked by our corporate clients to advise them on driver policy issues.

This is a particularly important concern, when it is estimated that up to a third of all road traffic accidents involve somebody who is at work at the time. It is understood this may account for up to 20 fatalities and 250 serious injuries every week.

What are the common mistakes?

Most employers incorrectly assume that provided they ensure their employees have a valid driving licence and MOT certificate, they have done enough to protect their business. This could not be further from the truth.

Is it just road traffic legislation which the business needs to comply with?

No, whilst the Police will continue, in the majority of cases, to take the lead on the investigation of road traffic incidents on the public highway, the Health and Safety Executive ("HSE") will also investigate road traffic matters, albeit in very limited circumstances.

Enforcement action by the HSE will usually be limited to incidents where the Police identify serious management failures as being a significant contributory factor. An example of this could be where drivers are required to work excessive hours and an accident has occurred due to driver fatigue.

What are the duties I need to comply with?

Employers are required to comply with their duties under the Health and Safety at Work Act 1974 (the "Act") to ensure that its employees are not exposed to risks to their health and safety (section 2 of the Act). This includes the time when they are driving, whether that be in a company vehicle or a private vehicle.

Although the risks associated with driving cannot be completely eliminated, an employer has a responsibility to take steps to reduce such risks to as low level as is "reasonably practicable", in the same way as they would in the workplace.

What steps do I need to take to comply with this duty?

In order to determine what steps an employer should take, it must carry out a "suitable and sufficient" assessment of the hazards and risks associated with driving as part of its work activities.

Any investigation by the HSE will seek to establish whether an appropriate risk assessment has been carried out and whether measures to address the risks have been effectively implemented by way of a driving policy.

What sort of issues should be covered by the policy?

The following are some common examples of the important issues which every driving policy should cover:

- Complying with road traffic legislation and the Highway Code, such as abiding by the speed limit of the road and complying with road traffic signals
- Insurance policies to cover "business use" (this duty extends to employers)
- Roadworthiness of vehicles
- The use of mobile telephones
- A system in place for reporting incidents on the road

What are the benefits?

Case studies and research have shown that the benefits from managing work-related road safety and reducing crashes include:

- Fewer days lost due to injury
- Reduced stress and improved morale
- Less lost time due to work rescheduling
- Fewer vehicles off the road for repair
- Less need for investigation and paperwork

Having a robust driving policy in place (which is implemented and effectively monitored), underpinned by a suitable and sufficient risk assessment, will ensure that a business complies with its duties under health and safety and road traffic legislation.

Make sure you protect your business today.

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How safe is your fleet?

Following on from our article "Don't Apply the Brakes to Your Driving Policy", the International Organisation for Standardisation has developed the new ISO 39001 standard to address the need for a management system for road traffic safety.

Why was this new standard brought in?

Road traffic safety is a major concern. It is estimated that 1.3 million people are killed and 20 to 50 million people are injured on our roads worldwide each year, with many of those driving during the course of their employment.

This standard was developed to help businesses manage road safety related risks. ISO 39001 sets out requirements for safety around areas such as safe person, safe place and safe vehicle within the working environment and on the public highways.

Who does this standard apply to?

This standard applies to both public and private organisations which interact with the highways.

This standard therefore applies to fleet operators and businesses which require their employees to drive as part of their job (either using company or private vehicles).

How do you achieve this standard?

An employer must carry out a "suitable and sufficient" assessment of the hazards and risks associated with driving as part of its work activities.

Having done so, it must develop and implement a Road Traffic Safety Policy and introduce road safety objectives and action plans.

There are a number of providers, such as The Royal Society for the Prevention of Accidents (ROSPA), which will assist businesses in meeting this standard.

If, following an audit, ROSPA is satisfied that an organisation complies with this standard, a Certificate of Compliance will be issued. If, however, an organisation does not satisfy the criteria on their first attempt, they will work with them to achieve compliance by advising them of the steps to take.

What are the key benefits of compliance with this standard?

- Assist employers in complying with their duties under sections 2 and 3 of the Health and Safety at Work Act 1974
- An effective way to identify, manage and address road traffic related risks
- Reduce the risk of injuries to employee drivers and other road users
- Reduce costs by improving efficiency
- Help organisations to target their resources in the most cost effective way
- Potentially lower insurance premiums
- Improve company brand and reputation
- Win and retain new business

The benefits of obtaining and complying with this standard are significant and will ensure that a business is meeting its legal duties. Failing to do so would leave a business exposed to potential criminal liability.

How safe is your fleet?

The food rating scheme- how does it measure up?

The Food Standards Agency ("FSA") has published its findings from its ongoing evaluation of the Food Hygiene Rating Scheme ("FHRS") and the Food Hygiene Information Scheme ("FHIS"). Whilst the initial findings suggest that the schemes have been effective in encouraging businesses to improve their food safety, more could be done. Food organisations are advised to closely monitor the developments to ensure their food ratings do not fall short.

What are the rating schemes?

The FHRS for England, Wales and Northern Ireland, and the FHIS for Scotland are initiatives designed to provide consumers with information about hygiene standards in food premises at the time of their most recent inspection. Each business is given a hygiene rating between 0 and 5, which shows how closely the business is meeting the requirements of food hygiene law.

The schemes have not yet been rolled out across all areas and businesses are currently not obliged to publish their ratings. However, the ratings awarded are published on the FSA website.

What does the review encompass?

The evaluation exercise began early last year and will run to mid-2014.

The study aims to:

- Explore how the schemes are being implemented
- Check if they are operating as intended
- Assess the impact on consumers, businesses and Local Authorities
- Assess the impact on business compliance levels and on public health

The main findings to date are as follows:

- Generally Local Authorities recognised the benefits of a single national scheme and any barriers to adopting the scheme were practical and/or financial in nature
- FHRS/FHIS were viewed by Local Authorities as a tool to enhance their enforcement role. This would be further strengthened if display of ratings by food businesses became mandatory
- Consumer awareness of the scheme was generally low at this stage, but there was evidence of the FHRS influencing those who had some awareness of the scheme
- Few food business operators fully understood the details of the scheme, but there was evidence that some had made changes and improved their rating

The FSA will continue to publish its emerging findings throughout the project, with a final report expected in summer 2014. A further update will follow in due course, however in the meantime businesses should continue to pay close attention to their food hygiene. Remember that a good rating means good business!

FSA reviews meat controls

The FSA has published its review of the value and use of food chain information ("FCI") and the collection and communication of inspection results ("CCIR") forms.

One of the key objectives of the review was to consider the relevance of the current FCI/CCIR system and whether it could be improved in ways that would impact positively on the meat production chain, an area which has become particularly pertinent following the recent scandals which have swept the country.

What is FCI and CCIR?

Hygiene regulations specify the information requirements for the health of animals arriving from the farms to slaughterhouses. This record forms the FCI.

The CCIR records ante and post mortem inspection findings and returns these to the farmer, allowing actions to be taken to improve animal welfare and health which will result in improvements in food safety.

What were the results?

The survey revealed the following key findings:

- The FCI reporting system should be maintained. Most large scale pig and poultry procedures and processors used it effectively, seeing FCI as essential to producing quality products
- However, cattle and sheep producers and FBOs felt that compiling the FCI was a burden and not particularly useful or necessarily accurate. This, together with inspection results, made them believe it was unhelpful for targeting inspection tasks
- It would be an improvement if FCI was more comprehensively applied
- The CCIR requirement was a successful tool for the larger poultry and pig producers and processors, who obtained information through the inspection recording database
- However, most of the cattle and sheep producers said that they did not regularly request inspection results

How can these concerns be addressed?

One of the key recommendations for both FCI and CCIR is to improve knowledge across the industry. This will help the industry recognise the value of FCI/CCIR and how this could be used to improve the safety of their products. As this area is subject to ever-increasing scrutiny, we shall continue to keep a close eye on developments.

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Consultation on food safety

The Food Standards Agency has launched a consultation on the proposed Food Additives, Flavourings, Enzymes and Extraction Solvents (England) Regulations 2013, which revoke and re-enact all legislation within the Food Standards Agency's remit covering food additives, flavouring, enzymes and extraction solvents in to a single consolidated statutory instrument. The legislation is part of the FSA's intention to introduce a simplified system of food safety legislation in response to the Government's Red Tape Challenge. The consultation closes on 5 June 2013 and responses can be provided at **http://www.food.gov.uk/news-updates/consultations/consultations-england/2013/foodadditives-consulteng2013.**

Consultation opens on punishing environmental crime

The Sentencing Guidelines Council ("SGC") recently launched a consultation seeking views on proposed changes to the manner in which environmental offences are punished in the criminal courts. In recognition of the infrequency with which the courts are called upon to consider the issues and the limited assistance available to them when they do, the SGC has drawn up a guideline to direct the environmental sentencing exercise. This article looks at the drivers behind the suggested changes, what the SGC is proposing and the practical effects that may result.

Why is the guideline required?

Research suggests that whilst 40,000 cases pass through the Magistrates' Courts each year, the environmental sentencing experience of the Justices was, *"likely to be so infrequent that there is no realistic possibility that substantial experience will be gained by any one individual"*. In 2011, of cases to which the guideline will apply, 1,602 were sentenced in the Magistrates' Court, with just 75 being committed to the Crown Court to be dealt with. As such, sentencing authority is extremely limited and the Courts have tended to rely upon the approach adopted in health and safety cases.

In addition to acknowledging the limited guidance available, the SGC was also motivated by:

- Specific requests for a guideline from various interest groups
- Concerns expressed in some quarters that current levels of fine were insufficient to properly reflect the seriousness of offending and produce the required deterrent effect
- The difficulty for Courts in pitching financial penalties for corporate defendants

What are the SGC's objectives?

These drivers helped shape the objectives for the new guideline, which are to:

- Devise a guideline that supports sentencers in applying the array of factors evident in environmental cases in a consistent way
- Increase levels of fine where the seriousness of offending requires this

The intention is that the level of fine should reflect the extent to which the offender fell below the required standard, meeting in a fair and proportionate way the objectives of punishment, deterrence and the removal of gain derived through commission of the offence; "it should not be cheaper to offend than to take the appropriate precautions".

What does the consultation cover?

The consultation paper, seeks views on:

- The principal factors that make an environmental offence more or less serious
- The additional factors that should influence the sentence
- The sentences that should be given for environmental offences
- Anything else that should be considered during the sentencing process

Will the guideline apply to all environmental offences?

No. Primarily, the guideline will apply to offences committed under section 33 of the Environmental Protection Act 1990 (unauthorised or harmful deposit, treatment or disposal of waste) and regulations 12 and 38 of the Environmental Permitting (England & Wales) Regulations 2010 (illegal discharges to air, land and water). These offences are selected due to the frequency with which the Courts sentence such matters and the relatively high statutory maximum penalties presently available.

The SGC intends also to extend the guideline to the following similar offences:

- Section 34, Environmental Protection Act 1990 ("EPA") (breach of the duty of care in relation to waste)
- Section 1, Control of Pollution (Amendment) Act 1989 (transportation of controlled waste without registering)
- Section 80, EPA (breach of an abatement notice)

The big news

Prior to drawing up the guideline, the SGC discussed three possible sentencing models with a pool of Crown Court Judges, District Judges and Magistrates. *"The feedback… was that a narrative guideline that lists the principles a sentencer should follow would not be helpful without clear starting points and ranges"*. This has resulted in the SGC now consulting on a tariff based guideline; a marked change to the present system in which no tariff is imposed. Perhaps acknowledging the magnitude of this change, the SGC is seeking views as to whether notwithstanding the introduction of the tariff, the guideline provides the sentencing Court with sufficient flexibility.

What will the starting points be?

The guideline identifies four groups of defendant:-

- Large organisations: turnover exceeding GBP 25.9 million. For these defendants the most serious offences will attract a starting point of GBP 750,000 with a range of GBP 270,000 to GBP 2 million. The least serious offences have a starting point of GBP 3,000 with a range of GBP 1,000 to GBP5,000
- Medium organisations: turnover between GBP 6.5 million and GBP 25.9 million. For these defendants the most serious offences will attract a starting point of GBP 250,000 with a range of GBP 90,000 to GBP 690,000. The least serious offences have a starting point of GBP 1,000 with a range of GBP 650 to GBP 2,000
- Small organisations: turnover not exceeding GBP 6.5million. For these defendants the most serious offences will attract a starting point of GBP 25,000 with a range of GBP 9,000 to GBP 70,000. The least serious offences have a starting point of GBP 100 with a range of GBP 50 to GBP 200
- Individuals: these defendants will be subject to the banding system currently contained within the Magistrates' Court Sentencing Guidelines. For these defendants the most serious offences will attract a starting point of 18 months' custody with a range of 1 to 3 years. The least serious offences have a starting point of a Band A fine (typically 50% of relevant weekly income but varying from 25% - 75%) with a range of conditional discharge to a Band A fine

It is interesting that the SGC has prepared a guideline that categorises defendants according to turnover given that a similar move in the sphere of corporate manslaughter sentencing was roundly criticised and ultimately abandoned. In the current economic climate where profit margins in many industries remain slim or non-existent, it is anticipated that many of the same arguments will be deployed in responses to the consultation exercise.

So how is seriousness determined?

The guideline sets out a step by step approach to the sentencing exercise. The first step is to determine seriousness by categorising the offence according to the harm caused and then identifying the culpability factors.

There are four harm categories based on the Environment Agency's Common Incident Classification Scheme. There are also four culpability categories: deliberate offences, those committed recklessly, those committed negligently and those where there is low or no culpability.

The Court will then engage in the familiar process of analysing the aggravating and mitigating features by reference to identified factors increasing or reducing the seriousness of the offending.

Having arrived at a proposed level of fine, it is suggested the Court step back from the process and take into account other factors that may warrant some adjustment to the proposed punishment. Matters such as means, the impact on employees and customers are relevant here, as interestingly is the effect of the fine on the offender's ability to improve conditions and achieve compliance.

Echoing the well known health and safety authority of R v Howe, the SGC confirms that, for corporate offenders, *"the fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance"*. It continues, "whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence". The guideline also suggests that sentencers should add to the fine any economic benefit the offender has derived from the wrongdoing.

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What is the effect likely to be?

The SGC anticipates that corporate entities which commit more serious offences can expect a higher fine than is presently the case. This is by virtue of the operation of the tariff outlined above. However, for individuals and smaller organisations, it seems likely that current fining levels will be maintained bearing in mind the requirement for the sentencing Court to consider the offender's means when handing down a financial penalty.

What happens next?

The consultation closes on 6 June 2013. If the proposals are accepted and the guideline introduced, it will apply to the relevant offences irrespective of the date of the offence.

To view the consultation paper or to respond to it, please go to **http://sentencingcouncil.judiciary.gov.uk/get-involved/consultations-current.htm**

"This has resulted in the Sentencing Guidelines Council now consulting on a tariff based guideline; a marked change to the present system."

"Whether this fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence."

FIRE! FIRE!- Who should respond?

Controversy has arisen following the request by the Fire Minister, Brandon Lewis MP, to the Regulatory Reform Committee ("RRC") to consider whether delegated legislation could be introduced to allow fire services to contract out parts of their services to a "suitable provider".

This request came about following enquiries by the Cleveland Fire and Rescue Authority, which is said to be interested in becoming a mutual society. The Government hopes that legislative changes will allow local fire services to become employee-owned mutuals or co-operatives, and run their fire service in the way that it believes is best.

However, there have been arguments from some MPs and fire brigade unions that the proposed reforms represent an attempt to introduce privatization into the fire service. They argue that the risk is that private companies will put profits before the public, with potentially disastrous results. Critics have argued that such contentious proposals should be implemented as primary legislation (which is subject to full Parliamentary scrutiny), rather than delegated legislation (which is not always open to full Parliamentary debate).

Mr Lewis has denied that the Government is seeking to privatise the fire service. He has sought to emphasise that i) any decision to mutualise would be made by the individual fire authority, and ii) local fire authorities would remain statutorily responsible for fire and rescue services. However, the RRC has asked the plans to be re-drawn. If these plans remain unsuitable, they will be debated in Parliament.

Mr Lewis recently reiterated his support for employee-led mutuals within the fire sector. We shall have to wait and see whether this results in further proposals.

"They argue that the risk is that private companies will put profits before the public, with potentially disastrous results."

Staying clear of the black list

The Consumer Protection from Unfair Trading Regulations 2008 ("CPUT") provide a broad and flexible enforcement tool. However, this very flexibility can sometimes make it hard to tell whether a commercial practice is permissible or not.

It may have been this very complexity which led legislators to compile the list of "banned practices" which appear in Schedule 1 to CPUT. Since any individual or organisation will be guilty of a criminal offence if it engages in conduct which falls within this Schedule, businesses are advised to pay close attention to whether their conduct could be caught in the "black list".

What is a banned practice?

The Schedule lists a total of 31 practices and a criminal offence is committed if the conduct falls within any one of 29 of those 31 practices. However, even this may not be so simple.

Two recent cases provide a practical illustration and show that the scope of "banned practices" needs to be considered carefully.

Bait advertising and astroturfing

An investigation by the Office of Fair Trading ("OFT") into the activities of a group-buying website "Groupola" uncovered evidence of bait advertising, in the form of a promotion for an iPhone at a vastly reduced price. It transpired that only eight handsets were actually available at the stated price, despite the presence during the sale of indications suggesting that many more had already been bought by consumers.

The activities of the trader were considered by the OFT to be a breach of provisions specifically outlawing bait advertising.

However, more interesting was the OFT's assertion that the law had also been breached by the business in circumstances where an employee had posed as a consumer and posted positive comments on its website relating to the sale. Such conduct, referred to as "astroturfing" is specifically prohibited if carried out by traders or their employees. However, significantly, it could conceivably be extended to situations where traders employ anonymous third parties to do the same.

Groupola signed undertakings in relation to their conduct, so the matter was not tested further. However, businesses should be warned if they are tempted to carry out such "astroturfing" in relation to their own products.

Illegal satellite decoders

Fans of live football will know that Saturday afternoon matches cannot be broadcast live in the UK. However, those Albanians who are lucky enough to possess a satellite dish and the relevant decoder card are not subject to such a restriction. Similarly, any UK consumers who were not overly troubled by the legality of the use of such decoder cards in the UK could, until recently, avail themselves of the same choice by making a purchase from a UK company, Alsat UK Limited.

Officers from Brent and Harrow Trading Standards Service took the view that Alsat's actions in offering the decoder cards for sale were in breach of paragraph 9 of Schedule 1, which prevents traders from *"stating or otherwise creating the impression that a product can legally be sold when it cannot"*.

The Court disagreed, concluding that it could not be said that it would be a criminal offence to sell such cards in the UK (for reasons relating to the interpretation of complex copyright legislation). However, the fact that Trading Standards were willing to prosecute in the first place is a further demonstration that what constitutes a "black list" activity is far from clear-cut.

What are the lessons for businesses?

Schedule 1 provides an attractive way of circumventing some of the complications that the Regulations present for enforcers. But as the case studies above show, even the "banned practices" do not provide an open and shut enforcement tool.

Businesses should be warned that regulators are willing to test the waters as to whether conduct falls within the scope of the black list and indeed will interpret such practices quite widely. Monitor your business' conduct closely and beware the black list!

1. **Who are you?**

   Angharad Reynolds – Associate – Safety Health and Environment Regulatory Team

2. **Why did you choose the law?**

   Having graduated with a degree in English Literature, I did work experience at a legal aid criminal defence practice. The work turned out to be considerably less glamorous than Ally McBeal, but I enjoyed the human aspects to the job, the social interaction with different types of people, and being able to make a constructive difference to people's lives. There is nothing more important to people than their liberty.

3. **What personality traits make a good lawyer?**

   I think that the personality traits that make a good defence lawyer are tenacity, resilience and being able to think on your feet.

4. **How would your colleagues describe you?**

   I would hope that my colleagues would describe me as pragmatic and approachable.

5. **What is the best thing about the work?**

   The best thing about the work is the variety; no two cases or clients are the same.

6. **What did you learn?**

   The main thing that I have learnt in undertaking defence work is to expect the unexpected and to deal with it.

7. **What do you do in your spare time?**

   I am an avid supporter of the Welsh rugby team, which is particularly gratifying at the moment!

8. **What is your favourite holiday destination?**

   The Gower peninsular for stunning views and beautiful beaches, I even quite enjoy the inevitable rain.

9. **If you could take three things to a desert island, what would they be?**

   A dingy to escape, an iPod and my dog in case I couldn't.

10. **What you would be if you weren't a lawyer?**

    A career option which would have considerable benefits would be a buyer in the fashion department in Harrods.

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