

FIRE SAFETY ON THE AGENDA FOR RETAILERS



Since the tragic events at Grenfell Tower on 14 June 2017, the topic of fire safety has rarely left the headlines. As part of the 'Terms of Reference' set by the Prime Minister Theresa May for the Grenfell Tower Inquiry, the scope and adequacy of building regulations, fire regulations and other legislation and guidance within the industry will be scrutinised, meaning fire safety will remain top of the public and political agenda for the foreseeable future.

Since the tragedy, Councils and Local Fire & Rescue Services, throughout the UK, have undertaken inspections of numerous high rise blocks, uncovering alarming findings. For example, an inspection of a new housing complex in Greenwich built by one of Britain's biggest developers revealed that fire doors were defective, fire stopping was missing and fire escapes were dangerous. Cladding was also found to be non-compliant. These findings highlight the need for urgent clarification in this area.

In response to Grenfell, the Government commissioned an independent review of building regulations and fire safety. An interim report was produced by Dame Judith Hackitt in December 2017 which concluded that the current regulatory system for ensuring fire safety in high rise buildings is not fit for purpose. The report found that the problem is connected to the culture in the construction industry and the effectiveness of the Regulators. Some of the reasons for this were attributed to the current regulations being too complex, clarity of roles and responsibilities being poor and compliance and enforcement being too weak. The next phase of the report, due in spring 2018, will focus on the need for change and will hopefully bring some much needed clarity to the area of fire safety.

Although the interim report focuses on high rise residential buildings, the findings have important implications for fire safety legislation as a whole.

Fire Safety is, of course, highly relevant to the retail and consumer sector in order to ensure the safety of employees and others, including consumers. Under the Regulatory Reform (Fire Safety) Order 2005, any employer or person who owns, controls or manages premises must take reasonable steps to reduce the risk from fire and ensure that people can safely escape. Risk assessment, as with the Health and Safety at Work etc Act 1974, is key, to identify risks and implement measures to prevent or reduce the risk from fire.

The recent prosecution of major retailer, Poundstretcher, demonstrates the importance of retailers protecting anyone who enters their premises from actual harm and the possibility of harm by removing or controlling risks. This prosecution did not involve an actual fire

but resulted in a substantial fine. The company was charged with 24 counts of breaching the Health and Safety at Work Act etc 1974 after being prosecuted by three local authorities for lack of staff training and failing to keep fire exits clear. Poundstretcher was fined £1m and criticised for apparently ignoring previous improvement notices. In contrast to this, in recent years we have witnessed other retailers being prosecuted under the Regulatory Reform (Fire Safety) Order who have received fines in the tens of thousands. These discrepancies highlight the courts' continuing inconsistent approach to fire safety cases.

One of the reasons for these continued discrepancies is that there are no specific sentencing guidelines in place to assist the courts in terms of fire safety cases. The Definitive Sentencing Guidelines for Health and Safety Offences does not specifically cover the sentencing of fire safety offences under the Regulatory Reform (Fire Safety) Order 2005, but courts are increasingly looking to the Guidelines for assistance, as supported by the Court of Appeal in R v Sandhu. In the case of Poundstretcher, the Local Authority used the Health and Safety at Work Act rather than the Regulatory Reform (Fire Safety) Order to prosecute for fire safety offences, meaning that the definitive sentencing guidelines came into play.

It is apparent that the courts are still willing to impose large fines in cases where no fire has actually occurred. A breach of fire safety regulations and the risk of what could have occurred is enough for a substantial penalty to be levied on businesses. Although courts are willing to ensure that businesses are substantially punished for fire safety breaches they have not been consistent in their approach and we continue to witness anomalies in fire safety cases.

The increased focus on fire safety is set to continue within the industry and with the Regulators. Clients are recommended to ensure that their fire risk assessments are in place and up to date and that general fire precautions are taken to ensure fire safety.

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