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# Health and Safety Update AOSH/IOSH Bristol and West

18<sup>th</sup> January 2024

Richard Voke

Acuity Law

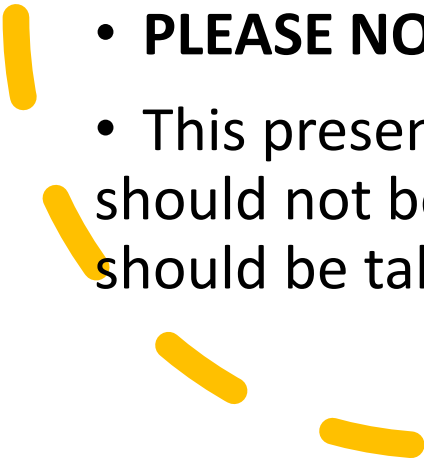
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- **PLEASE NOTE!**

- This presentation is for general information purposes only. It is not intended and should not be used as a substitute for specific legal advice. Specific legal advice should be taken before acting on any of the topics covered.



# Agenda



Statistics / latest cases - focus on:

- Mental health
- Waste
- Age

Protect Duty

Europe

Topical discussion



# SPEAKER



**ACUITY  
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- 23 years a lawyer
- 8 years HSE Inspector ( 6 years major hazards)
- 2 years risk management consultant with atomic energy authority
- 3 years science teacher
- MSc Environmental Toxicology
- Visiting Research Fellow at Bristol University Civil Engineering Department
- UK Council Member of OSAC (Overseas Security Advice Council)

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# Statistics

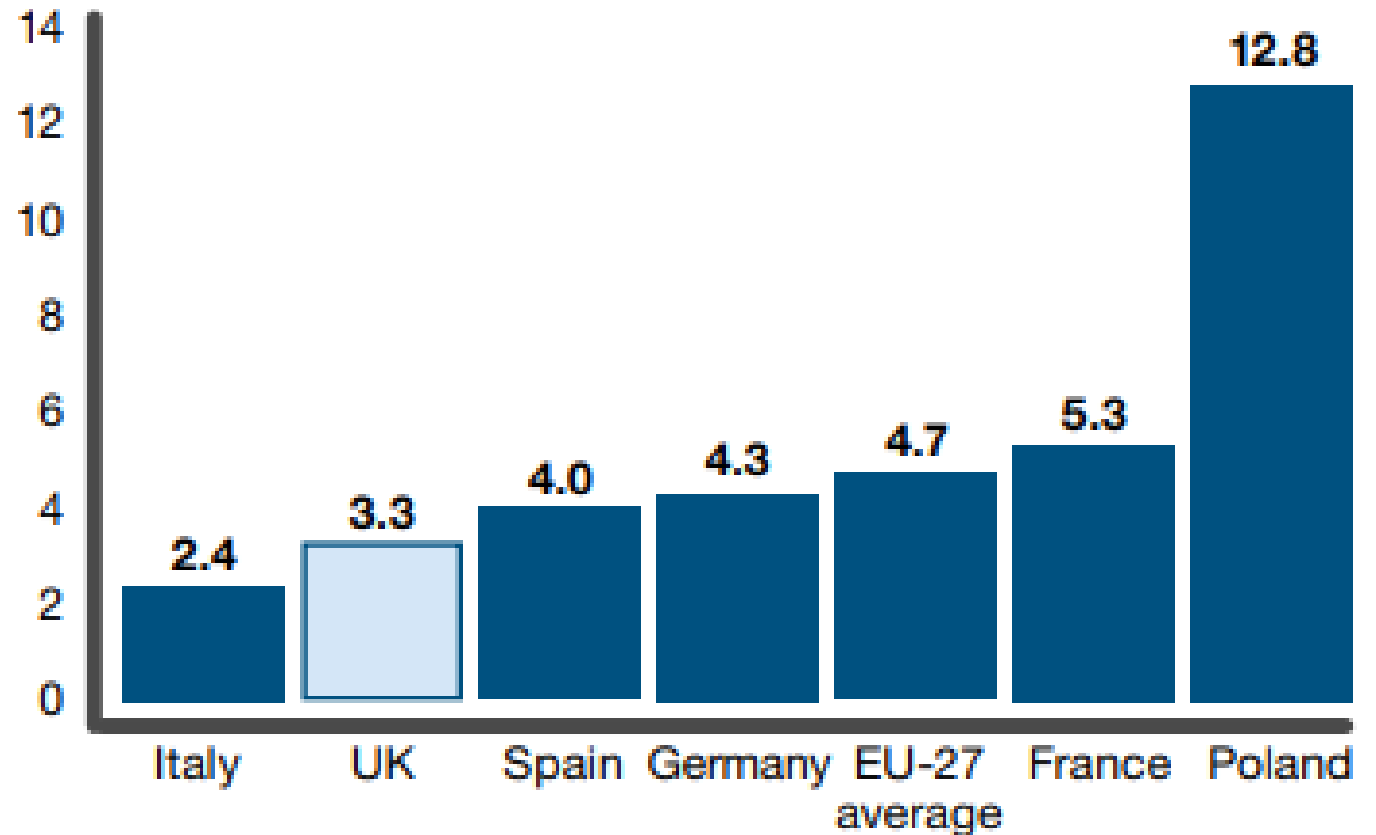
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- **1.8 million (1.8)** working people suffering from a work-related illness, including
    - **0.9 million (0.9)** workers suffering work-related stress, depression or anxiety
    - **0.5 million** workers suffering from a work-related musculoskeletal disorder
  - **135 (123)** workers killed in work-related accidents
  - **0.6 million** working people sustained an injury at work according to the Labour Force Survey
  - **60,645 (61.7k)** injuries to employees reported under RIDDOR
  - **35.2 million (36.8k)** working days lost due to work-related illness and workplace injury
  - **£20.8 billion (18.8)** estimated cost of injuries and ill health from current working conditions (2021/22)

## Mental Health Statistics

- 1.8 million workers suffering from a work-related illness,
- Of those, 49% or 875,000 were workers suffering from a new or long-standing case of work-related stress, depression or anxiety
- 17.1 million days lost to work-related stress, depression or anxiety

Percentage of workers suffering from a self-reported work-related health problem resulting in time off work (EU and UK Labour Force Survey, 2020)



# HSE 10 year strategy (2022 to 2032)

## First of five strategic objectives:

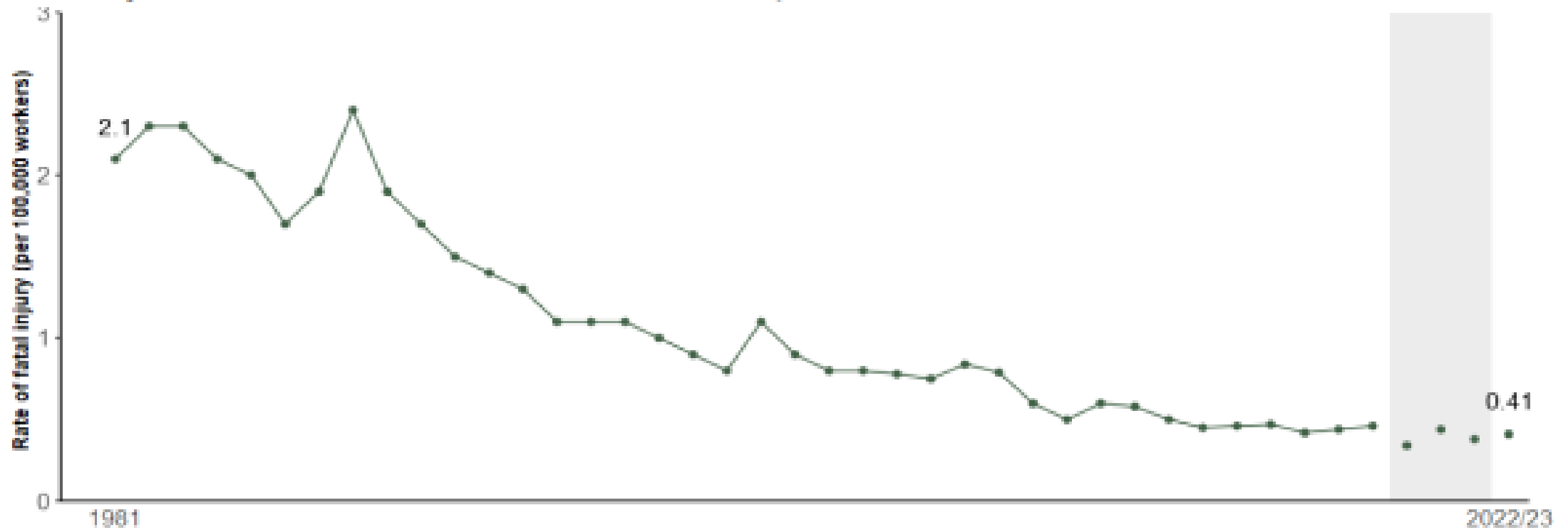
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- “Reduce work-related ill health, with a specific focus on mental health and stress”
- The most commonly reported causes (of work-related ill health) in Great Britain are now stress, depression, or anxiety.
- We will work to reduce this trend. Using our collective resource to focus on this problem, we will deliver interventions that make a real difference.
- Our knowledge and expertise will equip us to deal with any new health challenges that arise from the changing world of work”.
  - Management standards
  - Risk Assessment Guidance
  - Talking toolkits etc.
  - WHO/ILO Guidelines
  - ISO 45003

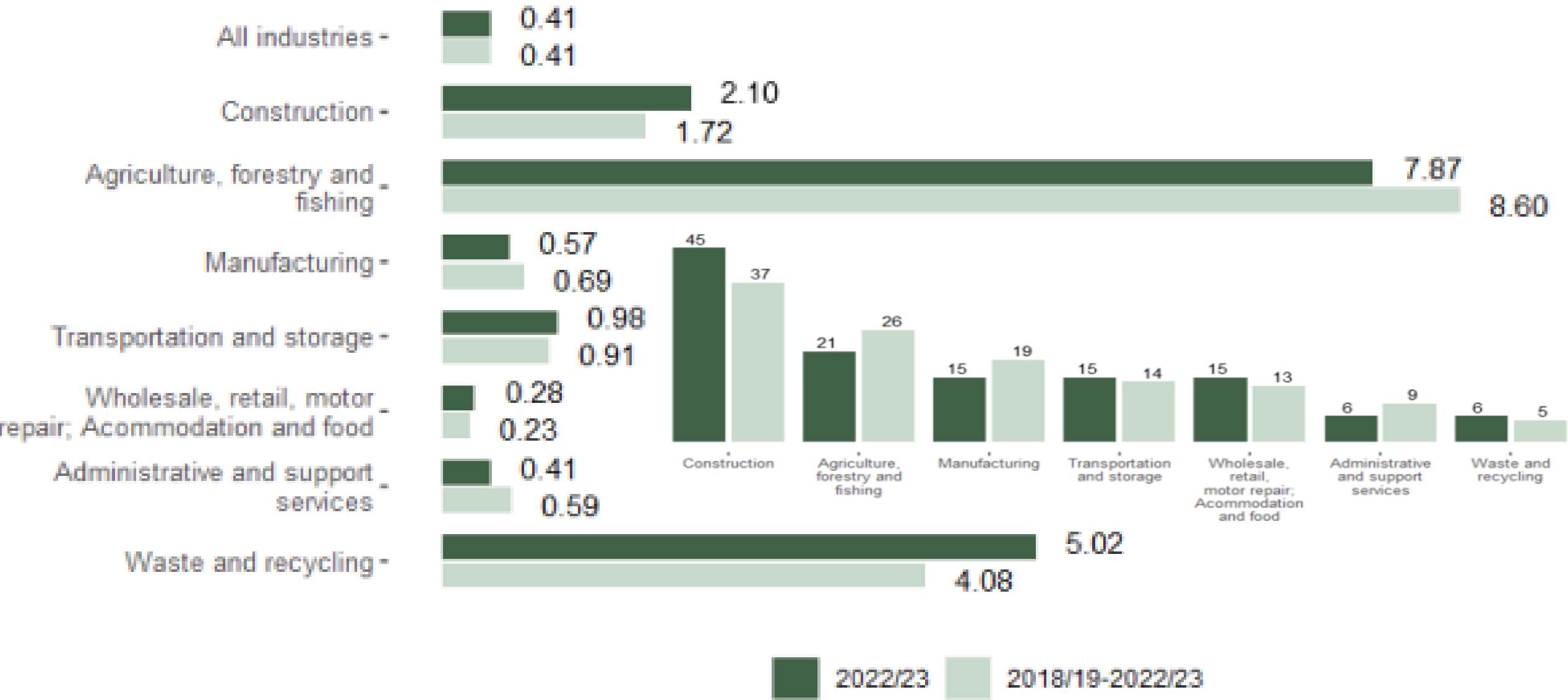


# Deaths – 22/23

- **135** workers killed in work-related accidents in 2022/23 (123 last year) (1981 – 2023)
- Deaths per 100,000 workers
- Grey area = covid affected – now back to pre-pandemic rates



# Rate of fatal injuries per 100,000 workers, 2022/23 and annual average for 2018/19-2022/23p.



# Waste – what’s the problem?

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HSE quote from the Valencia’s Cases

“The waste and recycling sector remains one of the most dangerous in the country, with a fatality rate 17 times greater than the average across other industries, per 100,000 people.

The average number of fatal accidents between 2018 and 2022 was four, but the 2022/23 period saw six deaths reported. Experts suggest the exclusion of road traffic accidents from these figures means the true number could be higher still”.

Any thoughts?



# Waste – what's the problem?

- Every organisation has waste health and safety issues
- Constantly moving and being near heavy plant
- Heavy and bulky containers
- Working on two Fatalities working on construction sites relating to waste

## **R v Timmins and R v Timmins Waste Services Ltd (both December 2023)**

- Operating a digger on Saturday, 15 September 2018, lifted Mr Willis, 29, onto the top of an industrial shredder following a blockage which had jammed the machine (Alutrade??)
- Mr Willis seen on CCTV working within the shredder and still operating while Mr Willis was sat within it
- Timmins reported the incident to police on Monday September 17, after Mr Willis' coat was found at work

# R v Timmins and R v Timmins Waste Services Ltd

Prosecution statement outside the court

- “Timmins was in day-to-day control of the yard and therefore must have been very well aware of the systemic and wide-ranging safety breaches by the company, as were its directors
- “Operating the shredder with Mr Willis in a vulnerable position was grossly negligent and fell far below what could be expected of a competent yard manager in his position.”
- Who prosecuted
- What charges?
- What sentence?

## R v Greenfeeds Ltd (June 2022)

- In December 2016, Nathan Walker, 19, and Gavin Rawson, 35 overcome by toxic fumes, CO2 fumes and drown in haulage tanker containing liquid food waste (classic confined space deaths)
- Gillian Leivers office and accounts manager oversaw the day-to-day running of the site, jailed for 13 years (2 x GNM plus S37 HSWA) director disqualified for 15 years
- Her husband, MD Ian Leivers, (jailed for 20 months s.37 HSWA) disq 10 years
- Transport manager, Stewart Brown, one-year suspended (S7 HSWA – found not guilty on GNM)

## R v Greenfeeds Ltd 2022

- Inadequate procedures for cleaning the tankers, lack of a suitable and sufficient risk assessment and a failure to provide breathing apparatus or PPE
- Failings longstanding, staff repeatedly alerting senior management of risks involved and the need for safety equipment and training
- Previous conviction following a similar incident that took place in 2005
- Judge stated *“Your blatant disregard for the very high risk of death was of an extreme nature,”* he said of Gillian Leivers. *“I am also of the view that your behaviour was motivated by avoiding the cost of implementing proper safety measures.”*



# Personal prosecutions – HSE Guidance OC130/8

“prosecution of an individual will be warranted in cases where there have been **personal act(s) or failing(s) by an individual**, and it would be proportionate to prosecute, bearing in mind ..... In considering risk, the Enforcement Policy Statement states that enforcement action should be focused on those **who are responsible for the risk and are best placed to control it**”.

*(Not just HSE, ORR and LA's)*

# Individual Gross Negligence Manslaughter (GNM)

To be convicted, an individual must be proved to have been:

- Grossly in breach of a duty of care owed to the deceased
- Breach must be a substantial cause of the death (Alutrade?)

# Parts 1 & 2 – Culpability and Aggravating/Mitigating Features

<p><b>A - Very high culpability</b></p>	<p>Very high culpability <b>may</b> be indicated by:</p> <ul style="list-style-type: none"> <li>• the extreme character of one or more culpability B factors and /or</li> <li>• a combination of culpability B factors</li> </ul>
<p><b>B - Factors indicating high culpability</b></p>	<p>The offender continued or repeated the negligent conduct in the face of the obvious suffering caused to the deceased by that conduct</p> <p>The negligent conduct was in the context of other serious criminality</p> <p>The offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct</p> <p>The negligent conduct was motivated by financial gain (or avoidance of cost)</p> <p>The offender was in a leading role if acting with others in the offending</p> <p>Concealment, destruction, defilement or dismemberment of the body (where not separately charged)</p>
<p><b>C - Factors indicating medium culpability</b></p>	<p>Cases falling between high and lower because</p> <ul style="list-style-type: none"> <li>• factors are present in high and lower which balance each other out <b>and/or</b></li> <li>• the offender’s culpability falls between the factors as described in high and lower</li> </ul>
<p><b>D - Factors indicating lower culpability</b></p>	<p>The negligent conduct was a lapse in the offender’s otherwise satisfactory standard of care</p> <p>The offender was in a lesser or subordinate role if acting with others in the offending</p> <p>The offender’s responsibility was substantially reduced by mental disorder, learning disability or lack of maturity</p>

## Starting Point and Range - GNM



### Culpability

A

B

C

D

**Starting point**  
12 years' custody

**Starting point**  
8 years' custody

**Starting point**  
4 years' custody

**Starting point**  
2 years' custody

**Category range**  
10 – 18 years' custody

**Category range**  
6 – 12 years' custody

**Category range**  
3 – 7 years' custody

**Category range**  
1 – 4 years' custody

# Starting Point and Range

<b>Large organisation</b> Turnover more than £50 million		
Offence category	Starting point	Category range
A	£7,500,000	£4,800,000 – £20,000,000
B	£5,000,000	£3,000,000 – £12,500,000

<b>Medium organisation</b> Turnover £10 million to £50 million		
Offence category	Starting point	Category range
A	£3,000,000	£1,800,000 – £7,500,000
B	£2,000,000	£1,200,000 – £5,000,000

<b>Small organisation</b> Turnover £2 million to £10 million		
Offence category	Starting point	Category range
A	£800,000	£540,000 – £2,800,000
B	£540,000	£350,000 – £2,000,000

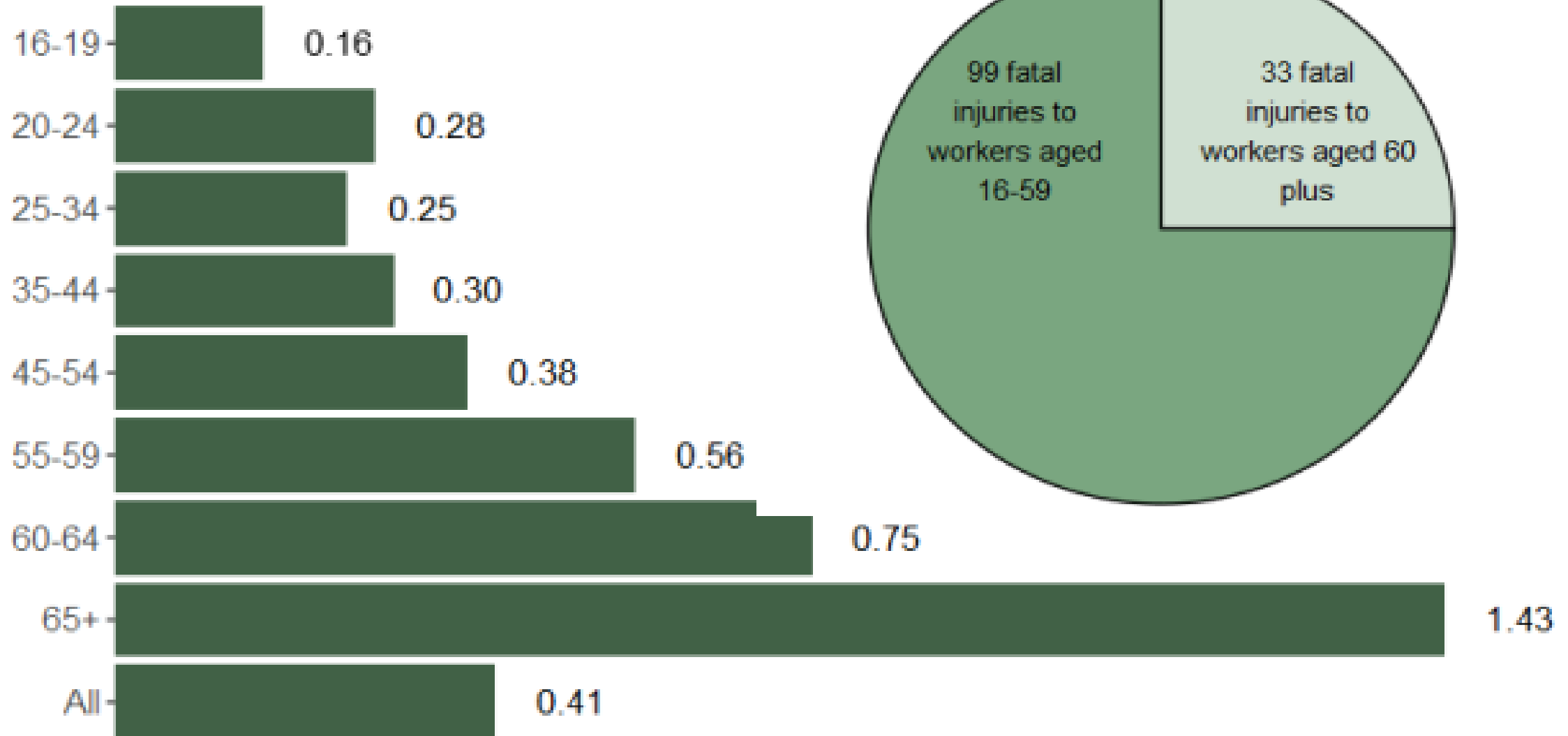
  

<b>Micro organisation</b> Turnover up to £2 million		
Offence category	Starting point	Category range
A	£450,000	£270,000 – £800,000
B	£300,000	£180,000 – £540,000

# R v Timmins and R v Timmins Waste Services Ltd

- Mr Timmins found guilty of gross negligence manslaughter. He previously pleaded guilty to consenting or conniving to discharge a general health, safety, and welfare duty to employee – what breach?
  - 7.5 years
- Timmins Waste Services Ltd was found guilty of corporate manslaughter on 6 December. The company previously pleaded guilty to an employer's failure to discharge a general health, safety, and welfare duty to employee – what breach?
  - £400k plus costs of £29,815 to the CPS and £1,874 to the Health and Safety Executive.
  - Conduct of the case

# Rate of fatal injuries by age group (per 100,000 workers), annual average for 2018/18-2022/23p. Pie chart = 2022/23.



# What's the issue with age?

HSE state - 25% deaths over 60s, but 11% of workforce

Again – working on two fatal accident cases involving people in their 60s (one hit by another driving plant, the other was the driver of the plant)



## What's the issue with age?

HSE website – “**Older workers: health and safety**”

<https://www.hse.gov.uk/vulnerable-workers/older-workers.htm>

*“Think about the activities older workers do, as part of your overall risk assessment and consider if any changes are needed.”*

- *Changes you may consider include:*
- *allowing older workers more time to absorb health and safety information or training, for example through self-paced training*
- *introducing opportunities for older workers to choose other types of work*
- *designing manual handling tasks to eliminate or minimise the risk*

*“Discrimination because of age can be lawful if employers can show that there is a good reason for their policy, for example changes to work to ensure older workers can remain in the workforce”. EHRC provides information and further advice on age discrimination”.*

# R v Valencia Waste Management Ltd – September 2023 (x2)

## Two fatal accidents

1. October 2019 - Michael Atkin (63) HGV driver employed by RT Keedwell killed by being crushed by falling 820kg bales of wastepaper when his truck being loaded by Valencia FLT driver
  - Systems for drivers to remain within their cabs, or in some other safe location away from the loading activity, were not adhered to
2. Three months later agency worker Mark Wheatley (31) after hit by falling skip when lifting two skips at same time on to truck, not same size, not balanced and hit him.
  - Valencia failed to carry out a suitable and sufficient risk assessment into skip operations meaning that safe systems of work and appropriate training were not implemented, and skips were not maintained in an efficient state. Sizes were not displayed on the skips

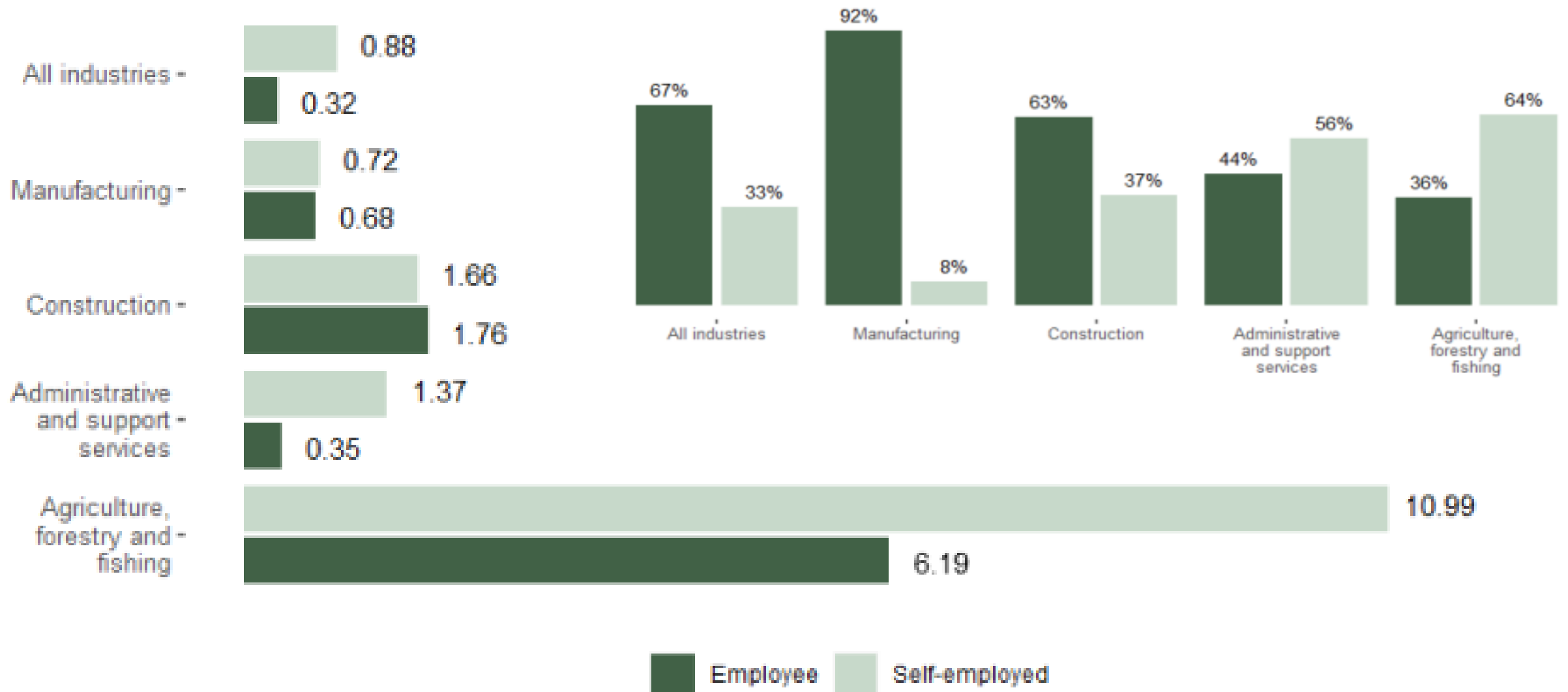
## R v Valencia Wast Management Ltd – September 2023 (x2)

- Following Mr Atkin’s accident, Valencia pleaded guilty to HSWA Section 3(1) was fined £1 million.
- Following Mr Wheatley’s accident Valencia Waste Management Limited pleaded guilty to HSWA Section 2(1) was fined £2 million

The company was also ordered to pay combined costs of £21,054.

“Both deaths were avoidable. More needs to be done to make the use of vehicles on waste and recycling sites safer.”

# Rate of fatal injuries to employees and self-employed workers per 100,000 (employees/self-employed) 2018/19 – 2022/23p



# Protect Duty

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Terrorism (Protection of Premises) Draft Bill

Kings Speech 7<sup>th</sup> November 2023

Home secretary

- “clarify who is responsible for security activity at locations in scope, thereby increasing accountability, and
- to improve outcomes UK-wide so that security activity is delivered to a consistent level”.

# Home Office / Protect UK - 8<sup>th</sup> November 2023

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- “remain committed to introducing this important piece of legislation .... as was reaffirmed by the Bill’s announcement in the King’s Speech on 7 November.
- **Nevertheless**, the pre-legislative scrutiny process provided us with important feedback .....particularly in relation to the requirements within the standard tier. In advance of the Bill’s introduction, **the Government has decided to launch a further public consultation on a revised approach to the standard tier.....** ensure we strike the right balance between enhancing public safety and not overburdening organisations.
- Once the consultation has concluded we will introduce the Bill as soon as parliamentary time allows”.

# Martyn's Law after victim of Manchester Arena terrorist attack 2017 killing 22

Manchester Arena Public Inquiry - Established 20<sup>th</sup> October 2020 closed 1<sup>st</sup> August 2023

## Similar Inquiry into Post Office scandal

- **Volume 1** of the public inquiry published in June 2021
  - Missed opportunities to prevent or minimise the effect of attack; Serious shortcomings in security; Recommendations included the implementation of 'the protect duty'
- **Volume 2** of the inquiry published in November 2022 - Response of the emergency services
  - Heroic act by numerous people; Lack of communication and coordination; The above led to poor risk management and injured not being treated in timely manner – 'the Care
- **Volume 3** of the inquiry published in March 2023 - Response of the emergency services
  - Actionable intelligence could have prevented the attack; missed opportunity included **not** moving swiftly on intelligence; poor cooperation between security services and Counterterrorism policing

# Contents of bill



- Regulator – to be defined
- Qualifying Public Premises (QPP) –
  - Used predominantly for purposes in sched 1 - shops, entertainment, recreation, libraries museums, hotels, worship, travel, health, education etc.
  - Accessed either in whole or in part by the public or a section of the public, **and**
    - The premises have a public capacity of 100 or more individuals (Standard Duty Premises)
    - Enhanced Duty Premises – QPP with capacity more than 800
- Qualifying Public Events – not (QPP) premises but premises with public access with capacity of >800 attendees by permission (what about London and Westminster Bridge attacks, Borough Market and demos and unincorporated associations)
- Registration of premises and notification of events
- Responsible person in control of the premises or the event
- Evaluation and assessment of terrorist risk



# **Responsible Person must evaluate (aligned with wider regimes i.e. H&S, Fire):**

## **Standard terrorism evaluation -**

1. Types of acts of terrorism most likely to occur
2. Measure put in place to mitigate that risk
3. Measure put in place to reduce harm caused by any such terrorism event
4. Procedures to be followed after a terrorism event
5. How individuals who work at the premises will be made aware of the risk

## **Enhanced terrorism evaluation or qualifying public event**

1. The types of acts of terrorism most likely to occur at, or in the immediate vicinity
2. The reasonably practicable measures that might be expected to reduce the risk of acts of terrorism of those types occurring at, or in the immediate vicinity
3. The reasonably practicable measures that might be expected to reduce the risk of physical harm to individuals if acts of terrorism of those types were to occur at, or in the immediate vicinity of, the premises or event

- Training, Coordination and Cooperation – with other interested parties
- Enforcement
  - Contravention Notices
  - Restriction Notices
  - Penalty Notices – fixed penalties (max £10k in Standard, or £18m or 5% of worldwide revenue), daily penalties
  - 28 day notification period - appeals (28 days)
  - Offences – non compliance
    - with contravention notice if enhanced or event, not an offence if standard
    - with restriction notice
    - Defence of ‘reasonable steps’ but has evidential burden
    - Sentence – fine and or up to 2 years – summary fine and max sentence in mags
    - Senior manager – consent connivance or attributable to neglect


# The Retained EU Law (Revocation and Reform) Bill (RUEL)

Take back control of law – deregulation of EU based law, promote growth

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- All of ‘Regulations’ not ‘Acts’ (H&S, food, product safety environmental etc.)
- Originally all automatically revoked at end of 2023 unless assessed as ‘relevant’ by gov departments and become ‘assimilated law’ (4000+)
- Major disquiet – legal uncertainty etc.
- Reversed this now have to justify revoking – now listed in a schedule (600)
- Submissions from depts to be revoked (31 from HSE) – lots are obsolete – “nothing of importance” (HoL and Commons commentary)
- Remember Lofstedt 2011 – “Reclaiming health and safety for all”
- However, gov still have powers and intent to revoke - ongoing process

# Mr Bates v The Post Office

- Health and safety issues?
  - What laws?
  - Could there be a prosecution?
  - Who will prosecute?
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