

There have been a significant number of cases reported in the press recently in relation to hotels that are being prosecuted for health and safety breaches. The increased visibility of such cases, highlights a need for stronger emphasis on compliance within the industry.

This article aims to increase awareness of health and safety issues amongst hoteliers by:

- examining key health and safety obligations in relations to hotels
- considering the legal, reputational and financial impact of failures to comply with health and safety duties
- providing some practical examples of how to ensure compliance with legal obligations

The reality of health and safety risks faced by the hotel industry was highlighted last month when the Telegraph reported on a fire at one of the most iconic hotels in Grosvenor Square. The fire started at the hotel, which houses a celebrity chef's Michelin-starred restaurant, during an awards ceremony and all guests had to be evacuated. In that case, procedures were followed and there were no injuries.

What Happens When It All Goes Wrong?

On-going and recent prosecutions demonstrate that health and safety failings can have tragic consequences for guests (and staff) and that enforcement authorities will not shirk from prosecuting those who they believe to be responsible.

There are two well publicised cases awaiting trial, which are prime examples of health and safety issues within hotels and the press coverage that can result:

- 1 Down Hall Country House: in this case, Chelmsford Crown Court will be trying a prosecution by Uttlesford District Council of the luxury Down Hall Country House Hotel following the death of two guests in the hotel's swimming pool in April 2013. The case is listed for trial on 21 September 2015.

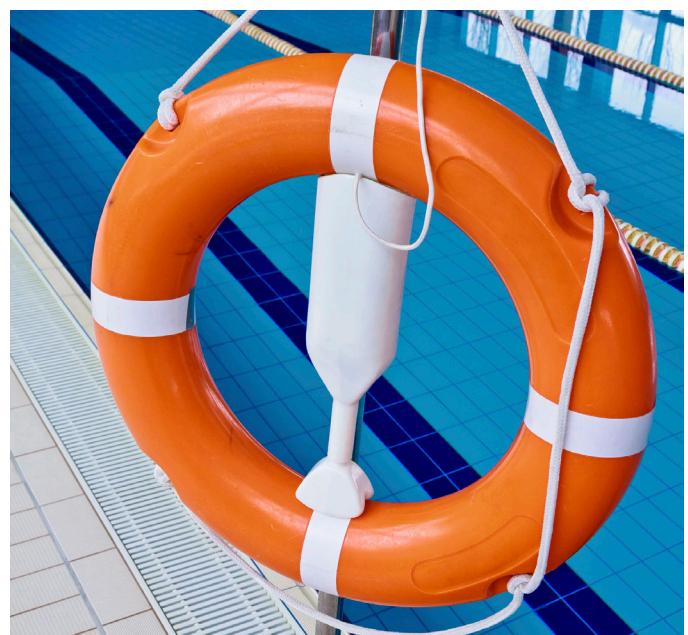
The hotel is owned by Veladail Hotels Limited and operated by hospitality company, Thenhotels LLP. Local press coverage has reported that the accusations against the hotel and the hospitality company are two-fold, being that:

- (a) they failed in their duty not to expose guests to risks as they allowed guests to use the swimming pool without having sufficient regard to risk assessments that had been carried out by health and safety consultants; and
- (b) that both Veladail and Thenhotels failed to make a sufficient and suitable assessment of the health and safety risks.

The article (in the Dunmow Broadcast) made reference to the inquest held at Chelmsford Coroner's Court last year, during which an expert advised that the gradients on the slopes significantly exceeded the recommended 1:15, meaning that swimmers would not be able to get a firm footing on the slopes. In addition, the pool was not constantly supervised by a lifeguard and the CCTV footage, which was not working at the time of the accident, was only ever used for reference and not for live monitoring.

It will be interesting to see whether the Crown Court distinguishes between the responsibilities of the owner and those of the operating company.

- 2 In a separate case, two companies (again, the owner and operator) are being prosecuted following the collapse of a balcony at the Casa Hotel in Brighouse. The balcony fell approximately 12 feet and reportedly caused injury to five people in February 2013.



The Daily Mail ran a story that a bride to be and her friends were seriously injured when the balcony collapsed, with national coverage also extending to the Mirror and the BBC. This event also featured heavily in the local press, with the Brighouse Echo publishing a detailed account of the accident and the injuries sustained by those involved. The Bradford Telegraph and Argus has reported that the companies have admitted charges under the Health and Safety at Work etc. Act 1974 but the sentencing hearing has been adjourned and is due to be heard at Bradford Crown Court on 15 October 2015.

We will also be keeping an eye on the outcome of this case and will report further in the autumn.

Unfortunately these cases are not isolated. Past prosecutions highlight that significant financial penalties that can be imposed both on corporate organisations and their directors following a successful prosecution; and that further press coverage is very likely to follow the verdicts. Some examples of past cases include:

2010: the owners of the Liverpool Adelphi hotel were fined £65,000 (plus £70,000 costs) after a man drowned in their pool. The court held that there had been 14 occasions in the months leading up to the accident where there had been no lifeguard, that lifeguards at the hotel were not provided with on-going training and that there were persistent and unresolved electrical problems (including exposed live conductors, a junction box in the sauna sealed only with tape, and corroded electrical sockets). The Liverpool Echo reported that the sentence was imposed by Liverpool Crown Court on the basis that the hotel had not made a "proper assessment of the need for supervision".

2011: the owners of a hotel in Newquay were fined £80,000 (plus £62,000 costs) for a breach of fire safety regulations which led to a fire reported by the BBC and by local press as the worst hotel fire in 40 years. The fire resulted in the death of three guests. David Wilcock reported in the Independent that although the fire was arson-related, the defendant was found to have failed to make adequate risk assessments and had not made sure that fire detectors and alarms were tested appropriately. Criticisms were also made about suitcases being left in corridors and the poor electrical wiring at the hotel. The article explained that an inquest in 2009 revealed that the hotel had not complied with fire safety regulations from 2005, which provided that each room must have its own smoke alarm. The charges had initially been brought against two directors in their personal capacity but it was decided not to be in the public interest to pursue them on this occasion.

2012: A North London hotel was ordered to pay over £260,000 in fines and costs, after committing a number of offences dating back to 18 May 2008, when London Fire Brigade was called to a fire at the Chumleigh Lodge hotel in Finchley. Three people escaped from the fire, two by using the stairs and a third by climbing out of a second floor window. Following the fire, London Fire Brigade fire safety inspectors visited the hotel and raised a number of serious fire safety concerns. These included defective fire doors, blocked escape routes and no smoke alarms in some of the hotel's bedrooms. They were unable to produce a suitable and sufficient fire risk assessment and were found not to have provided staff with adequate fire safety training. In this case, the hotel company was found guilty of six offences under the Regulatory Reform (Fire Safety) Order 2005 and a Director of the company was found guilty of 'consent or connivance' in the commission of those same offences.



These cases demonstrate that levels of fine for breaches of health and safety duties are clearly significant when things go wrong. Further, the newspaper coverage following accidents that occur, and especially where there are allegations of "cutting corners", can be extensive and damaging. The obvious negative impact of such publicity coupled with the impact of paying fines and legal fees should be a real concern for those in the hotel industry, especially as new guidelines being introduced will significantly increase future fines.

Remember too that a hotel's licence can be reviewed for safety failings (as public safety is a licensing objective in its own right). As a review can result in the suspension or even revocation of the hotel's premises licence, there are also commercial risks involved when things go wrong, as if a licence is suspended, the hotel will be unable to sell alcohol, or provide regulated entertainment, both of which are likely to be key to the operation of full service hotels. It is not currently common practice to use licence reviews as a means to ensure compliance with health and safety obligations. However, this may change in future as an actual, or even a threatened, licensing review can be a 'quicker fix' than a formal prosecution. We have already seen licence reviews commonly used as a tool to help prevent public nuisance and 'punish' failed test purchases.

What Does the Law Require and How Can You Comply?

Hotels are required to take all reasonably practicable steps to ensure the safety of their employees and of persons not in their employment -including hotel guests. It is important to realise that the identity of the 'employer' who owes the duty under health and safety legislation may not always be obvious, given the range and combination of ownership, management and franchise structures operating in the modern hotel industry. A hotel company should consider whether they are in fact the employer or whether the staff may actually be employed by other contractors.

Directors are expected to follow guidance issued by the Health and Safety Executive (HSE) and the Institute of Directors (IOD), entitled "[Leading Health and Safety at Work](#)". (PDF)

The best way to safeguard a company's reputation and commercial success against prosecution is to be proactive and ensure that a robust risk management strategy has been implemented. Government guidance provides that hoteliers should take the following steps:

1. identify all the possible hazards
2. evaluate the risk and decide on the relevant precautions to be taken
3. put identified precautions into practice
4. monitor and regularly review assessments and actions.

Given the diverse nature of accommodation and services provided at hotels, there are a number of key areas of risk to be aware of. These include (but are not limited to): kitchens, bedrooms, reception areas, public areas, public access areas, and restaurants and bars. The types of risks that need to be considered are also wide ranging; and include - slips, trips and falls; the use of chemical products or work equipment; electrical, gas and fire safety; the risk of falling from balconies or windows; and the risk of accidents, especially with regards to leisure facilities (including swimming pools and gyms). Alcohol can also be a major risk factor and should be considered when assessing risk in any area of a hotel where alcohol is on sale – i.e. bars and restaurants but also other areas such as function rooms or even poolside or spa areas.

Some of the risks have been highlighted in the recent and ongoing cases referred to above and it would be sensible to evaluate your business to ensure you would not be subject to similar criticism in the event of a health and safety incident. For example:

- Do you prepare risk assessments for all relevant areas?
- Do you have regard to risk assessments which have been prepared by external consultants?
- Is pool use supervised effectively?
- Are fire detectors and alarms tested appropriately?

Actions should be taken to address specific risks identified in different areas of a hotel. In the context of hotel bedrooms, for example, hoteliers may need to:

- a) Ensure that any electrical equipment provided in rooms (such as hairdryers) is regularly safety-checked and that there is a system in place for faulty items to be identified and removed; and/or
- b) Arrange for the installation of window limiters to restrict the opening of windows in order to reduce (or ideally remove) the risk of falling. Low-level windows should be made of safety glass to prevent the risk of falling through them and all balconies must be structurally stable with appropriate guards in place.

Further examples of good practice can be found in ["Protecting Workers in Hotels, Restaurants and Catering"](#), published by the European Agency for Health and Safety in 2008.

Each hotel will have a different risk profile and will therefore be expected to take different steps to guard against risk; any precautions taken should be proportionate to the size of a business and the likelihood of the risk materialising.

However, **all** hoteliers should be advised to take their health and safety duties seriously and put in place tailor made strategies to combat risk. Conducting robust risk assessments, implementing control measures, and identifying and monitoring those control measures to check that they remain effective is not just good practice – it is essential. Compliance with health and safety legislation is legally required and is necessary, not just to ensure that guests are provided with a safe environment, but also to protect the business and reputation of the hotel.

If we can help with your risk management strategy, or you would like specialist advice regarding health and safety, food safety or licensing please contact a member of our team.

Contacts

Rob Elvin

Partner, Manchester

T +44 161 830 5257

E rob.elvin@squirepb.com

Stephanie Perraton

Partner, Birmingham

T +44 121 222 3559

E stephanie.perraton@squirepb.com

Nicola Smith

Senior Associate, Birmingham

T +44 121 222 3230

E nicola.smith@squirepb.com

Louise Roberts

Associate, Manchester

T +44 161 830 5038

E louise.roberts@squirepb.com