

**GENERAL COUNSEL UPDATE (SESSION 4)****HEALTH & SAFETY AND INSURANCE UPDATE****Adrienne Wilson**

Good morning again and welcome to the fourth and final Webinar in our General Counsel Update series. I'm Adrienne Wilson a Knowledge Lawyer at Addleshaw Goddard and I'm chairing the session. I'm joined by partners, Erin Shoemsmith, David Young and Anne Struckmeier who will be speaking on Health & Safety, unsurprisingly as we enter a second year of the Pandemic measures, this will include a special focus on Covid 19 issues. We of course touched on Covid 19 in the Employment session last week and today we are taking in the health and safety angle. Richard Wise, a partner in our Commercial Disputes team will be covering insurance issues again with the Pandemic link. Please send us our questions using the questions function on your control panel and we'll fit in as many as time permits. We are recording this session and shall send the recording to you. It will also be posted on our website along with the other recordings from the series. With that, I'll hand over to Erin, David and Anne who are going to lead off on Covid 19 and I'll be back at the end of their section for your questions. Erin?

**Erin Shoemsmith**

Thanks Adrienne. Morning everyone. As Adrienne said you've got a combination of myself, David and Anne who are going to take you through the health and safety slot. We're going to focus in the main in relation to Covid, obviously it's the first anniversary today in relation to the lockdown but we're also going to talk you through the changes to fire and building safety and also around Brexit. So three pretty major topics to fit into quite a short space of time. So I'm going to hand over to David and Anne really first to take us through the roadmap and the big return to work.

**David Young**

Thanks Erin, good morning everybody. I'm going to take the tiller on this first slot whilst we look at the roadmap that was published on the 22nd February for England but we've tried to set it out in a format that enable you to compare the positions which are not entirely the same in Scotland which has also published its own roadmap and Anne will talk through that a little more later, and Wales, where there have been several relaxations quite recently but there's not officially any roadmap. In fact the English roadmap as the Prime Minister said when it was published, the dates that are given are the earliest that restrictions will be relaxed in England and the government has kept to that mantra since the 22nd February. The position is obviously pretty dynamic in terms of the way in which the Covid world is developing. Contrast the success of the vaccination programme here with the emergence of a possible third wave of the Pandemic in Europe which of course has vaccinated far fewer people. I won't get diverted in relation to the political rows that are ongoing and the discussions to try to resolve them but closer to home, only yesterday Mark Drakeford, the First Minister in Wales did urge people to be realistic. He said that he did not expect Wales to return to normality in 2021. That immediately prompted a rebuke from the Welsh Conservatives complaining that Scotland has a roadmap, England has a roadmap and Wales has nothing. And in England last night, quite late, the draft Regulations which are intended to set out the legal basis on which we will be taken through the roadmap to 21st June were published. Something of a mouthful but they're officially known as the Health Protection Coronavirus Restrictions Steps England Regulations 2021. They will be debated in the House of Commons on Thursday. What they effectively do is to extend most of the current restrictions which presently expire on the 31st March

for a further three months until 30th June with an obligation for reviews in that period of time at least every 35 days or 5 weeks. Nobody expects those Regulations not to pass on the vote on Thursday because even with a threat of Conservative MP rebellion its unlikely to be large enough to be significant. The labour party has said it will vote for the restrictions.

One other date of note as we approach the end of March certainly in England and in Wales next week we are due to see some further easing of restrictions although relatively modestly as you can see from the roadmap. What's not on the roadmap that has been announced by the Health Secretary recently is that as far as clinically vulnerable people are concerned, the guidance in relation to shielding now that the vaccine programme is well underway will officially end on the 31st March.

The next key date certainly for England and Wales is then 12 April which we can see from the next slide. On the 12th April in England so called non-essential retail and many other businesses are allowed to open. As you can see from the slide hospitality venues are allowed to open but only to serve people outdoors and the way in which the leisure and hospitality sector has been dealt with during the past year has of course been a source of some considerable comment and controversy. There is even now a threat on judicial review led by Sacha Lord the so-called "night-time tsar" for Manchester and others supporting it in relation to the fact that indoor leisure and hospitality is not allowed to re-open yet, it won't be allowed to re-open on the 12th April, the earliest date that it may be allowed to re-open is the 17th May. The government has always argued that hospitality venues are and were a source of transmission. The data on that has always been it seems to me relatively thin and in fact as recently as last week, in a report published by the Public Administration & Constitutional Affairs Committee, the Committee commented for the government to build public confidence it is absolutely vital that it is open on how it reaches its decisions and the data underpinning them and there are many with business interests in the leisure and hospitality sector and indeed many of us as potential customers and guests who feel that the data underpinning the decisions in relation to the sector has been pretty thin throughout.

In Scotland there's a key date on the 26th April and I don't know whether once I've side finished sort of going through the immediate roadmap Anne might want to sweep up with any comment on this but Scotland has always seemed to have quite a significant regard to the apparent links between alcohol consumption and transmission because as you can see from the slide, the restrictions that are relaxed are only relaxed to the extent that no alcohol is served.

Twelve months ago or just under months ago when the first lockdown was being eased you may recall it was roughly the 15th May when businesses started to re-open after some 7 or 8 weeks shut. At that time the government in England issued several sector guidance, I think 8 in total, in relation to working safely in different workplace settings. It has been hinted that there will be similar reviews and new guidance published as the various stages of the roadmap are reached. Some have already been updated. I think we can expect others to be updated as the weeks go on.

After the 12th April we get as you will see from the next slide, the 17th May. That's a key date for both England and Scotland. Considerable relaxation of current restrictions at that stage including the likelihood of indoor hospitality being able to open. You will perhaps have seen on the news the possibility of pilot measures in relation to spectators attending at events and other indoor venues such as theatres being allowed to open, subject to capacity restrictions initially. The government has said it will review working from home guidance but the message at the moment anyway is that it's unlikely that working from home if you can guidance will be lifted. The government also says and we've included this on the slide, the government will further ease limits on social contact enabling the public to make informed personal decisions and that has prompted a discussion about whether that means an end to social distancing, an end to the wearing of masks or face covering where they're currently compulsory.

On Sunday, Dr Mary Ramsay who is Head of Immunisation at Public Health England actually said people have got used to those lower level restrictions now and people can live with them and the economy can still go on with those less severe restrictions in place so I think certainly for a few years, at least until other parts of the world are as well vaccinated as we are and the numbers have come down everywhere, that is when we may be able to go very gradually back to a more normal situation.

Now that commentary doesn't appear to have received a great deal of coverage but it strikes me astonishing and in many respects incredibly pessimistic, although saying that in a week where Germany is about to go back into lockdown, France has gone back into lockdown, perhaps might be considered a little more realistic but certainly we don't expect on the 17th May there will be any relaxation in those measures. Any relaxation if it comes at all will probably come on the 21st June and Michael Gove is leading a study into the social distancing policy and the social distancing guidance, so expect more to be published on that front in the next few weeks.

June the 21st is the final stage in the roadmap for England certainly and it's at that point that in theory all the rules are relaxed. All the limits on social contact as it says are on the slide, even re-opening of nightclubs. How long is it since we heard any reference to nightclubs and the night-time economy. It will be interesting to see if that is a date which the government adheres to, it's very keen to adhere to it and of course they will also say that they're going to ease restrictions on larger events such as sporting events and performances such as theatre performances. That's on the basis that by then the vaccination programme will be substantially delivered in the UK.

What we think will probably happen at that point is that the Regulations that Parliament are going to vote on on Thursday may well be allowed to lapse when they officially expire at the end of June but they will probably not simply disappear altogether. What is currently the law will probably morph into guidance for people to follow with some of the no doubt attendant challenges that guidance versus regulation demonstrated we would have 12 months ago when there was quite often confusion about what was the law and what was guidance, but expect guidance to remain in place for some time.

As far as working settings re concerned at that point the government acknowledges that as it says on the slide social distancing is difficult and damaging for businesses and its therefore important to return to as near to normal as quickly as possible and the impact of vaccines on transmission will be used to inform the review of social distancing. We can all remember, particularly those of us in traditionally lower risk workplaces, that when businesses started to return after the first lockdown in May of last year, the measures that had to be put in place to provide what the government described as "Covid Secure Workplaces" were very considerable, they were costly, many workplaces found it difficult to adapt, many people were nervous about going into workplaces, but what we perhaps forget in all the time that has gone since is that 12 months' ago when we were in that phase, we did not have widespread testing available, we had no vaccines available, we knew very little about the way in which the virus would transmit and behave. We did not know how important ventilation was going to be in our air-conditioned, hermetically sealed office. We know a great deal more 12 months on and I think we would expect that in addition to guidance about workplace settings it will be an appropriate point in time for businesses to review their workplace risk assessments, not just from a Covid point of view but including the provisions in relation to, I won't call it Covid security as the government has publicly regretted calling it that in the past, and certainly not Covid safe because I think there is a recognition that Covid is going to with us like many other viruses for the foreseeable future.

So that is a relatively quick canter through the current roadmap or roadmaps, Anne I don't know if you wanted to say anything more about the position in Scotland.

### **Anne Struckmeier**

On a general basis not really beyond a few points I'm going to pick up on. I think there is a sense that we do things a bit differently up there because to begin with at least we had much stricter lockdown. In terms of how we deal with Covid in the workplace and the environment generally I think is we are getting through our vaccine programme and recognising that they're going to, as you say, have to live with this virus long term. Howe the four nations are dealing with it within the workplace are starting to align but what we are seeing in Scotland is an ongoing hesitancy to open up the workplace and social life generally at any speed and you're quite right to pick up on the fact that alcohol or the lack of it has been a big feature in certain key dates in Scotland so although things are opening up, hotels are opening up at the end of April in Scotland, that is for some people at least, a false dawn because alcohol is unable to be served with meals and can only be served outside and the like and we only started the loosening

up of that area of life a bit on sort of the 17th May so we are seeing differences and you can see in the slide you have up on the screen there in terms of the roadmap, whilst the UK government I think is looking for the end of June to be a real opening up of life generally, you can see from there that even at the end of June the Scottish government is still talking about the phased return of some of the staff, there are still restrictions, I don't think the document mentions it there, but in relation to individuals meeting, by the end of June we're only allowed I think six adults from three households, I'll just double check that, but no there are still quite a lot of limitations in Scotland come the end of June so the English roadmap one shouldn't expect to see that reflected in Scotland, I think particularly post-June I suspect given the hesitancy of the Scottish government we will continue to see greater restrictions on social life and indeed in the workplace around that time. You know people that can still work from home I think will be encouraged to do so until much later on in the Summer. Beyond that sort of overarching point I really have nothing more to say on that topic other than you know if you're operating in Scotland or you're coming to Scotland anticipate that there will be greater restrictions I think post-June than you will find in England.

Adrienne I think possibly I'll hand back to you.

### **Adrienne Wilson**

Thank you. I think we're moving on to the big return at this stage but we'll hold questions over on all of these Covid sections until we have completed the Covid chunk. I think it's back to you David now.

### **David Young**

Yes it is thanks Adrienne. We called it the big return and I'm not sure whether that's a slight misnomer and whether or not it will feel like there's a big return or just some kind of big release once we get through some of these dates on the roadmap. It was interesting that the Work and Pensions Select Committee took evidence last week which we've included some of the questions that were being discussed, they weren't all discussed at the Committee but some of these absolutely were and they took evidence from the Health & Safety Executive which of course is primarily responsible for regulating safety in workplaces and also from Public Health England which of course has been at the very forefront of the fight against the virus with the NHS over the course of the last 12 months or so. Last year the Health & Safety Executive was given an extra £14M by the Chancellor to assist it with its work but the point was made to the Committee last week that that was less than 10% of the budget that has been cut from the HSE's budget over the last ten years. They make the point as well and this goes to the question of how much engagement the HSE has had with businesses over the past year but it takes time to train and recruit Inspectors and in fact Inspector numbers have fallen very considerably as those budget cuts have taken effect over the last 10 years, so much so that when it came to resourcing workplace spot checks and inspections in the last few weeks the HSE has had to turn to private contractors to help. The HSE position has remained reasonably consistent throughout and it's quite an interesting one because it's not been without controversy in some quarters, particularly with trade unions and other employee representative bodies. The HSE has always said that as far as it is concerned Covid is a public health issue, it's not a workplace issue and whilst workplaces will facilitate the spreading of the virus they'll not generally cause it. We have seen several examples particularly in food manufacturing of workplaces where people have to be physically present in order to do their jobs where there have been outbreaks but relatively little enforcement. Not no enforcement, there have been plenty of improvement notices and prohibition notices although in the eyes of some not enough, but there has been very little by way for example of prosecution or more severe enforcement largely because it's not clear that there have been any breaches of workplace safety regulations in connection with the measures taken by businesses to try to contain and protect against Covid transmission in the workplace and in that sense the HSE has been relatively sensitive to the challenges faced by employers.

Twelve months on as Public Health England indicated to the Committee we know a great deal more about Covid, how it transmits and how to deal with it, this is the question of ventilation and so forth have come more to the fore. One of the issues that the Committee looked at last week was testing in the workplace and I'll say a little more about that in the next few minutes but there is a government scheme

which is free to sign up to for employers of any size until the 31st March which provides workplace lateral flow testing and Professor John Simpson of Public Health England was asked by the Committee "is this initiative, is this measure a measure that effectively is a good health & safety at work measure or is it serving a wider public health need?" and he was firmly in the latter camp. The focus on work settings is a focus on work settings that require a physical presence for the jobs to be done and the testing that's being offered is very much to provide greater protection against transmission, not as a result of there being a workplace but simply because that is where people inevitably have to gather to do their jobs.

One of the other issues not discussed by the Committee but you'll see on the little hexagons around the centre there is the reference to an international standards organisation standard which was quietly published in the middle of December last year but actually provides a technical standard for managing workplaces during the Covid Pandemic. It again did not receive great publicity, its somewhat ironic perhaps that it took until the middle of December to be published and we've seen very little reference to it in advising clients during the past few months ourselves and certainly the HSE have not made any great merit of it, but it's more a recognition that this is a challenge around the world and this is a global standard to provide guidance to employers on how to manage the workplace during a Covid crisis.

I think it would be useful now just to spend a moment or two and I'm conscious of time on testing and vaccinations in the workplace. A great deal has been said and discussed you know in the public domain by the government and by others in relation to the vaccines and testing and I think we can probably sum up the position as we see it quite shortly. As far as vaccination is concerned its extremely unlikely that an employer will be able to compel existing employees to submit to vaccination. Why? Because vaccination is not compulsory as a matter of law anyway or of the government may be considering it in relation for example to care home workers we've read this morning, they're not confirming that, there are no plans to make vaccination compulsory and there are many people who have good reason why they cannot or do not want a vaccine. It's possible that it might be more likely for new employees to be subject to a vaccine policy but certainly as far as ACAS is concerned, as far as the Chartered Institute of Personnel and Development are concerned compulsion is not on the agenda. Supporting vaccination through facilitating people going for appointments and having a vaccination policy and keeping records subject to GDPR of those have been vaccinated are all encouraged. Its similar in relation to testing. As far as testing is concerned as you will see from the slide there are far more instances of engagement we've spoken to many clients who have voluntarily started to provide testing at work. Very few compelling it and again similar considerations in relation to compulsion but perhaps a stronger case than can be made for vaccination. I've mentioned the government's testing scheme. One of the points to make about that is that if you participate in the scheme the testing must be done in the workplace you cannot give kits to people to take home to do the testing. Home testing is available for anybody who wants it but the provisions in relation to self-isolation in the event of a positive test in the workplace are very clear and positive tests must self-isolate immediately.

That's very, very brief on testing and vaccination and it may well be that people have got questions in relating to that which we can come back to towards the end. We would recommend having policies around testing and possibly vaccination so that everybody is clear. ACAS and the Chartered Institute of Personnel and Development have both published guidance which encourages employers and employees in relation to both but through persuasion rather than the imposition of rules or policies which are too rigid. Discussion and communication is essentially key on those issues.

Can I have the next slide please?

Very briefly before I hand over to Erin. This is very much Horizon scanning and I won't spend much time on it. The government has issued a paper for consultation in relation to so-called Covid passports or certificates and whether or not these may facilitate the opening up of the economy more readily. As we're seeing from the news that emerging and the coverage of the possibility of international leisure travel this Summer for Britons, it is likely that there are going to be quite severe practical as well as potentially legal restrictions with us for a good few weeks to come yet. The government has only

committed in England to review the position in relation to international leisure travel on the 17th May but there is no certainty with the developments in Europe that there will be a great deal of relaxation. Many of us believe that there will be caution in relation to restrictions and guidance until we have been through another Winter and seen how a vaccinated or largely vaccinated population manage and how we as a country manage. From next year I've put on the last slide there, from Pandemic to Endemic which is just a recognition that hopefully we will have Covid at least under control, we will not have eliminated it, we all now recognise that and it may be Endemic around the globe after that but more manageable.

So that is essentially I think I can just hand over now to Erin who's going to look in a bit more detail at enforcement and the possibility of public enquiries.

### **Erin Shoemith**

Thanks David. As many of you will know the UK has actually implemented hundreds of laws in response to the Pandemic. David mentioned the new laws that are due to be introduced this week to mirror the Prime Minister's roadmap and our movement from Tiers to Steps. The laws really covered almost every aspect our daily lives, whether that's from movement, gatherings, business, face covering, self-isolation and travel and it has been really difficult to keep up with the ever changing and myriad of different regulations and guidance, many of which are obviously fairly hastily drafted and as Anne mentioned, they differ across the devolved nations. But what has stayed the same throughout from our perspective as health and safety lawyers is the good old Health & Safety at Work Act which is what I propose to focus on. I mean arguably HSE were really slow to respond to the Pandemic. We recognised I think fairly early on that the Pandemic would be caught within the net of the Act and had been advising accordingly so that employers really do have that legal and not delegable duty to protect their staff but also others affected by their business so far as reasonably practicable from the risk of transmission within the workplace. In this case the Chief Executive of HSE back in May I think it was said to the Work and Pensions Committee that by following the guidance that David mentioned the BASE guidance that was issued in May and has been updated and refreshed since, that businesses would be doing everything reasonably practicable to comply with the law. So really the guidance is the benchmark.

So if we move onto the next slide, what I have included there is just the different enforcement strategies so I think complicating matters even further there are different regulatory authorities enforcing various laws. Each has their own enforcement strategy, their own enforcement priorities and I have included in this slide obviously reference to the Police and Crown Prosecution Service, the Police probably have grabbed most of the headlines, in particular the Derbyshire Police, over the last couple of months. As I said I'm going to focus on the safety regulators, the HSE and the local authority who are the safety regulators within the industry. Traditionally HSE would focus on the higher risk sectors and local authorities on the lower risk. I suppose the Pandemic has really kind of turned this on its head as no sector is safe. Retail and office environments are those which are actually considered quite high risk as equal to those traditional heavier industries.

If we look at the next slide I have included in more detail the actual enforcement strategies and priorities of each of these authorities. What you will see and you'll obviously get that with the copy of the recording is that all of them do focus on encouragement and education as a tool they propose to achieve compliance. The HSE issued a note back in July which really was kind of a window into its role in regulating workplaces from the risk of Covid and particularly that dealt with interventions such as the Covid spot-checks, the reporting requirements under RIDDOR, any responses to Public Health England outbreaks and really the key headlines from that note which I think is really important here is, and it's something that David has mentioned already, is that the HSE actually don't see themselves as being at the core of the public health response but what they will focus on is individual workplaces on a case by case basis. They go into more detail around that so they won't prioritise any single isolated cases but actually where there are clusters of cases so there are two or more confirmed cases within a 14 day period that will be a medium priority for them but only where an outbreak is declared will that be a high priority for the HSE and actually that's only where there is a link to direct exposure within the workplace, that is not where there is an alternative source of infection which might be its prevalent in the external

community but as David mentioned HSE have received some real criticism for not showing its teeth. They will actually say "well we didn't need" to because in terms of the spot checks that they'd made, over 90% of employers had complied and had listened to the advice so they'd taken the action voluntarily but actually formal action has been increasingly indeed very, very rare. HSE have only issued 33 Improvement Notices over a 12 month period and 2 Prohibition Notices. They haven't taken any prosecutions in relation to outbreaks of Covid although in the Workplace and Pensions Committee that David was talking about, that wasn't ruled out by the Chief Executive of HSE.

Now the local authorities have perhaps been or maybe have been perceived to be more robust and that is probably because they are at the heart of the public health response. The government had issued a Winter plan which really did say that Covid 19 should be the local authorities highest priority reactive work and actually that all other health and safety activity has really kind of fallen down the pecking order to the lowest levels unless there had been fatal or other serious injury. They also do have other tools at their disposal so the local authorities can issue fixed penalty notices whereas the HSE can't that's not part of the Health & Safety at Work Act enforcement. If you take it onto the next slide what I've included in there are just some statistics taken from HSE's website. Now these are current as of yesterday but they really do give you a flavour of the reported cases to HSE and the local authority via the reporting regulations RIDDOR as suspected occupational Covid 19.

Now what the HSE do kind of caution is that the stats are unlikely to be accurate. They believe there's been major misreporting and that's for a number of reasons. One is that in order to report under RIDDOR there has to be reasonable evidence that work is the source of exposure, it also doesn't include which the public probably would think it would include, the deaths of patients in care homes or hospitals. So you can see there in terms of reporting between the 10th April and 13th March there were 31,380 notifications from workers and only 367 death notifications. Now that to me seems really low in the context of the wider death rate which I think as of today there were around 126,000. Actually what's quite interesting there most of those reports were actually in the second wave so September to March 71% of them, and I think as you would suspect or probably think that most of those reports come from Covid exposure to workers in the health and social work sector so hospitals, care homes and social day care. Again, HSE reported that they believe this figure is much higher and actually has been probably incorrectly recorded in relation to other personal services but again you can also see that most of those reports are in HSE workplaces and actually the significant majority are in England rather than in Wales or Scotland, so that really just gives you a picture of what the Regulators are dealing with.

If we just look at the next slide. The next slide is slightly different in the fact that it deals with enforcement for non-Covid so I think its probably right to say that in March in terms of health and safety cases it was almost pens down from the HSE and local authorities unless they were dealing with a death and there was actually a small window of opportunity when we were able to negotiate for some clients and out in relation to some of the cases that we've been dealing with and that was based upon CPS Guidance that had been given which really questioned whether some of these cases were actually in the public interest to prosecute. They were asking questions such as "is this a proportionate response?" when actually there's an expanding pipeline of cases, there is likely to be a significant delay and also you know the courts are pretty much getting clogged up. I think David and I had a few successes there, but the Criminal Courts themselves were also suffering from a real backlog. I would say actually they're probably now getting back up to speed particularly in relation to the what the courts would probably consider the non-serious cases, the more health and safety and criminal regulatory cases. I think what is quite interesting in relation to those cases is that the magistrates have issued some guidance actually within the last two weeks to say that actually health and safety cases, you know just to remind magistrates that actually their powers are unlimited so health and safety cases can be dealt with by the magistrates so even when you have or you potentially have a fine of £1M or more that is not sufficient grounds to send that up to Crown Court. So I think what we'll find there is that more health and safety cases are being dealt with in the Magistrates Court quicker, more speedy justice I think.

So also we have the Coroner's Court so there was also the position where really the coroners also had to put their pens down. All cases were halted and didn't start actually until the end of the first lockdown. I think they were really over faced with the recording of Covid deaths but also they had to get to grips with things like technology, resourcing, accommodation and I think it's probably fair to say they're pretty much in the dark ages, but there has been a huge backlog and still is a huge backlog in relation to inquests. Some inquests involving NHS staff and other critical key workers have been adjourned and won't start until May. Equally those requiring juries there have been difficulties in establishing those as well.

So that really is kind of a run through of where we are in terms of enforcement. The next slide and the next topic and the final topic being dealt with in relation to Covid is around public enquiry. I'm sure many of you will have seen over the last few days and weeks that there has been mounting pressure on the government to establish a public enquiry into the government's handling of the Pandemic. One group of families have already issued a legal ultimatum that if an inquiry is not called they will be seeking legal redress via the courts. I think what we do know about the potential for a Covid inquiry is that back in July the Prime Minister said that the UK will hold an independent review but didn't go into any further details. The First Minister of Wales and Scotland also made similar commitment so really even over the last week at PM Q's Boris Johnson said "now is not the time" and even JVT has said we need to focus on the vaccine rollout and halting the spread of transmission, but what we do see is you've got Labour, you have the families, you have the medical profession, all of them are calling for a statutory inquiry to begin by the Summer and polling suggests that that's also backed by the general public but I think it isn't right to say that no reviews have taken place so far. We've had various parliamentary committees dealing with procurement, Test and Trace, economic impact and looking at things like actually what would a further public inquiry look like.

If we just move onto the next slide. So I think it is reasonable to assume that there will be a deep dive into the Pandemic but questions really are around timing, scope, shape and format. Many of you know that public inquiries now play a real prominent role in public life and in relation to a government's response to events of public concerns you know high profile inquiries such as Grenfell, Manchester Arena are happening as we speak but the real purpose of an inquiry is to establish facts, highlight failings, obviously not criminal or civil liability but to learn lessons so they're not repeated and here really the call is for a statutory inquiry so one that is being led by a Judge or a panel with the power to compel evidence and there are other options available but this is something that the families do want because they believe there's an independence to a public inquiry.

So just moving onto the next slide. I mean really the likely key areas of a public inquiry, I mean I could speak probably for hours in relation to this but the ambit and the parameters of an inquiry are set by the terms of reference. Here the likely nub of this is you know how effectively was the UK governed during the Pandemic and how prepared was it for a Pandemic like this? So those terms of reference are so wide they cover almost every aspect of our lives but you can see that it will cover preparation, early strategy looking at the timing of lockdown, looking at the testing, the closure of businesses, schools, events, the use of data and science, PPE, hospitals, care homes, test trace isolate and support and how it was dealt with as Anne said over the different nations. I think what is clear is that it is going to be huge when it does come. There's likely to probably be more than one inquiry, inquiries split across the nations, maybe inquiries in parallel and there will be some issues that are unavoidable but I think actually there is a wider impact here and one perhaps that some sectors haven't considered so you know for example travel, hospitality, leisure, non-essential retail might want a seat at the table in relation to an inquiry because those sectors have been really badly hit.

The final slide I've got and I can see Adrienne's on so she really does want me to move on here, but just really kind of a top tip, start asking yourself or the business questions have you got a significant interest in a Covid inquiry? If you do how do you start to prepare and it really is like any litigation you know preservation of documents, you should be suspending destruction policies, avoid creating documents or material that might be detrimental, do you need to capture any helpful evidence now in witness



statements, is this something that actually you want to do as an industry and join up together as an industry or with a sector body, are your interests aligned and finally in terms of funding, how would you fund this in terms of a core participant status, do you have insurance to cover it?

Sorry Adrienne because I know I've probably gone over so I will pass back to you for any kind of questions that are coming through

### **Adrienne Wilson**

Thank you very much Erin and thank you to David and Anne as well. It's an enormous topic as we can see an unfortunately we don't have time today to explore it in all the detail that our speakers obviously would like to.

We do need to move on but I'm just wondering whether I can ask a very quick question. We've had a few come in, some of them are a little more discursive than others but perhaps we can deal with this one quickly. It is "What is HSE's view on vaccinations and whether they should be mandatory?", I'm not sure whether that's one for you David or one for Erin.

### **David Young**

So I'm happy to take it and I think as I said it's probably the case that HSE doesn't really have a view and doesn't think that it needs to have a view because that's a question about public health issues and its one about government policy and therefore not one for the HSE. I think what the HSE would probably say and in effect has said, is that as a regulator it would be happy that broadly speaking people in workplaces have accepted a vaccination because the evidence so far suggests that vaccinated people are far less likely to transmit the virus so it's really a public health question and not one on which you would expect the HSE to have any formal policy.

### **Adrienne Wilson**

Great, thank you. I think it's now time to press on with some other health and safety issues so its back to Erin and Anne on fire and building safety and then onto Brexit with David.

### **Erin Shoemith**

Thanks Adrienne. So another huge topic which I'm going to try and canter through in short shrift. So talking about fire and building safety, I mean it's just been described as the biggest change in building safety for a generation. We've got the Fire Safety Bill, we've got a UK government consultation and we've also got the Building Safety Bill and it will come as absolutely no surprise to anyone on this call that the changes are as a direct result of the tragedy at Grenfell in June 2017 which really did expose serious failings across the sector, triggered onto the public inquiry that I mentioned earlier and also the Hackitt review. The Hackitt review really produced over 50 recommendations and led to these two new Bills being published. What I should say at the beginning is we're not just talking about cladding here, we're talking about changes to make people feel safe in their homes.

I'm going to start with the Fire Safety Bill probably because that's the easiest one and the quickest one for me to deal with. This is likely to come into force in Spring. It is actually a clarification of existing law contained in the Regulatory Reform Fire Safety Order 2005 around residential buildings with multiple homes. Now they are new homes, they are old homes, they don't depend on the height of those homes but really they're there to tighten up what I think is probably just a misunderstanding but they are there to make sure that the external façades of these buildings are caught and considered as part of the fire safety strategies, so that's cladding, windows, doors, balconies they're all caught by the law.

Similarly internal flat doors that are opening onto communal areas again they're part of the consideration around fire safety, they should be part of your fire risk assessments. I should add and Anne is going to deal with Scotland shortly, that the Fire Safety Bill will apply in England and Wales.

Moving onto the fire safety consultations that the government held, this really is hot off the press, it was published last week and it applies to all regulated premises. So the government have agreed to actually take some specific steps, I have included quite a number of those on the slides there but I suppose the

main issues are really to strengthen the statutory guidance that supports the regulations, more to look a bit more like what health and safety professionals will be used to but really the focus is on kind of the responsible person, the fire risk assessments, so they're looking at competence they want to ensure that the fire risk assessors themselves are competent and that when completing a fire risk assessment that all details of the responsible person are included together with their contact information in the fire risk assessment themselves. So they need to have the individual, the organisation's details but also there is a requirement that all responsible persons take reasonable steps to identify any other responsible persons within premises so that they can co-operate and co-ordinate and I think that really is a misunderstanding in terms of the Regulatory Reform Fire Safety Order in that actually you know in some premises there will be often more than one responsible person and that they don't act in silos because actually their actions will impact upon the other responsible persons within those premises. It's also important to know that there will be an increase in fines for some offences so whereas they were £1,000 before they will move to be unlimited. So we expect that to take place fairly soon and some of those changes will come in through the Building Safety Bill which we're just about to move on to.

So the Building Safety Bill it is over 300 pages long so there is quite a significant amount to be said about it but what I should say is it only applies in England. It is currently focused on higher risk residential buildings that are over 80m in height or six storeys above ground but it does have the flexibility to change and to include other buildings so whether that may be considered hospitals, care homes, prisons, hotels and the focus on it is wider than obviously fire safety it deals with building safety through from the design stage all the way through to occupation.

So if I take you through some of the key headlines and some of them are included here but really at the heart of the Building Safety Bill is giving residents a voice so they can raise safety issues and making building owners more accountable and actually bringing in tougher sanctions for failure to comply with the regulations. I think central to this is the new Building Safety Regulator which is already acting in shadow form, is taken from HSE but will be made up of other professionals from Building Control and obviously from the local fire and rescue services it really is headed up by HSE veteran in construction Peter Barker.

If I take you just through the key issues in the design and construction phase and occupation you can see the changes here but there is a new duty holder system to mirror the construction side and management regulations who will have formal responsibility for compliance within building regulations and that will be during different gateways and phases of the building's life so there are three particular gateways, one is planning, the second is construction and the third is occupation and at each stage there will be a hard stop by the Building Safety Regulator so you know after planning, unless all the documents and the material is in place and they can demonstrate safety they will not be able to move onto the next stage so in construction and occupation so the Building Safety Regulator here is going to be really key to ensuring the safety of a building and actually what's important throughout that is there will also be what is known as the "golden thread" of information. So that will be all the information that is gathered and prepared throughout those gateways will be kept and stored digitally so dealing with you know all the way through inception and actually dealing with changes and upgrades during a building's life. So at some point whoever needs it will be able to access that information and see everything about that building.

In terms of occupation itself there are a number of new duty holder roles that will be key going forward and they're the accountable person and building safety management roles. So once a building is occupied then the duty holder will be the accountable person and usually that will be the entity who has the right to receive funds. They will be responsible for the safety and management of risk within that building. They will be supported by the building safety manager who will effectively be the right hand person to the accountable person, so the competent person with day to day I suppose responsibility, and then you have obviously as I've mentioned before the Building Safety Regulator who will oversee that regime, they will look at areas of competence in industry, they'll look at compliance of construction products really a big focus in relation to enforcement and sanctions.

I mean in terms of practical considerations that is not due until.. so the Building Safety Bill is likely to come into force around the Winter time this year but will have a real transitional period over a number of years to get it off the ground and there are real kind of questions about how the Fire Safety Order and the Building Safety Bill how they will work together. You've got the duty holder and responsible person and then the accountable person, are they the same, how will they co-ordinate and co-operate? You also have potential issues around competence so you know as we've talked about before competent fire risk assessors but also you know these new duty holder roles how do they become competent, how do they get the right training to be able to push this forward? And really the same within the enforcement authorities. So I think the key thing here is we are still obviously awaiting more recommendations, more guidance as to how these actually are going to work in practice.

Just in relation to the final slide there from me before I hand over to Anne, so we've put a slide there about preparing for the new changes and what you can do now and I think the key advice there is to be proactive you know the regulator has already said there is no excuse waiting for these new laws to come into force, as I said they're already operating in a shadow form. So I mean a couple of things there from the list you know really it's about looking at your portfolio now, your real estate portfolio which assets fall within the higher risk buildings, having in place a management plan just to look at what steps you need to take, thinking about now who will take on those roles of accountable person and building safety manager, how do you get them up to speed, what training can you provide to them so they're ready to go? In terms of the fire risk assessment looking at those buildings again to make sure that you're multi-occupancy, residential buildings are covered in terms of the façade, the flat doors and really start looking at the information you need to gather now that will be required for that golden thread of information so looking at it, you know what have you got in terms of the design in relation to your construction phase plan? You know looking at that information now and having it there so it's ready to be stored and really looking at beginning and developing a resident engagement strategy. As I say that is really at the heart of the changes around building safety.

Now that is a real canter through a real extensive body of change. Anne if I pass over to you so you can just explain the position in Scotland and perhaps the changes and the differences.

### **Anne Struckmeier**

Yeah thanks Erin. Well following Grenfell the response from Scottish government was you know quite different and the reason for that was that we had in Scotland a fatal tower block fire in 1999 at Garnock Court and that had prompted a much earlier review of at that time current fire and building safety prompting the banning of combustible sort of cladding materials on buildings and making it mandatory for builders to ensure that any external cladding actually inhibited fire spreading and it resulted in two long standing pieces of legislation which seem to have you know survived recent scrutiny so we find building regulations and safety under the Building Scotland Act 2003 supported by regulations and also fire safety under the Fire Safety (Scotland) Act 2005 again supported by regulations.

Now it's not to say that following Grenfell the Scottish government thought all was well in Scotland and they did undertake a full independent review of the Scottish Building Standards and the fire safety regime and coming out of that had been new targeted legislation but what we won't find is that the English legislation or anticipated legislation will have really any practical effect in Scotland other than by reference to legislators in Scotland having look at it and perhaps thinking there is some you know sensible outcomes to transfer into Scottish legislation but those Acts will not apply in Scotland other than in relation to sort of two relatively small matters, one of which involves the competence of architects in Scotland. That's not to say we haven't come up with some targeted legislation to deal with issues which have been discovered to be an issue in Scotland, not least which is cladding on high rise buildings. Although we have a fraction of the problematic buildings I guess we would call them, I guess they are still numerous in number and also include schools and social housing and indeed commercial properties as well although as you'd anticipate the focus has really been on multi-occupancy residential properties.

Just to run through a few of the changes if we pop onto the next slide that would be good. So a few of the changes that have taken place following the review as I say are very targeted. We've got a new

review panel and fire safety standards and that has resulted in some changes such as cladding requirements which used to be in relation to 18 metre first buildings now applying to buildings which are 11 metres high and also in relation to certain other new types of buildings such as care homes. There is also a need for sprinklers in certain types of buildings although that has been postponed to next year. We have a new review panel and compliance and enforcement again to strengthen procedural guidance on safety critical issues and a new Building Standards Future Board and it focuses on longer term building standard system changes and another group the Fire Safety Regime Review Advisory Group which aims to give better protection for residents in high rise buildings and we have seen publications from a few of those groups over the last few months talking about certain changes that should be made and recommendations and we'll wait to see what comes of that. The one thing that did come out of last week in particular which is worth mentioning is that the Scottish Housing Minister Advisory set out later this month how the Scottish government was going to tackle the cladding issue in Scotland, again primarily as it affects residential housing. There is clearly determination not to fund remediation where Scottish government thinks other parties should at least contribute such as developers but that's going to have to be balanced up against a large number of residents and flat owners who currently are sitting in properties which are pretty much without value until all of this is resolved.

So I don't think there has been the last of changes and improvements to current legislation but what we won't see in Scotland is this wholesale change that's envisaged through the Fire Safety and Building Safety Bills that Erin has spoken about. If I could pass back to yourself.

### **Erin Shoemith**

Yeah thanks Anne and we're just passing over to David for Brexit, another significant topic.

### **David Young**

And not a significant amount of time in which to deal with it so I will be brief. We included Brexit in this update really in the context of its implications on safety whether that's workplace safety, product safety, food safety. So my comments really do need to be seen in that slightly more limited context and of course we are seeing in very practical terms the perhaps inevitable impact of the last minute trade deal that was concluded essentially on Christmas Eve. I think we'll be working through that for months to come and we will see changes both from a practical and a legal point of view as respective governments or the EU and the UK government work through those issues. What was always intended in relation to safety was that essentially there would be no major change to the legal position in the UK as a consequence of Brexit to provide broadly speaking at least two years in the case of food but generally without significant change so that businesses could get adjusted to the new government's regimes without having to tackle legal changes as well. So in relation to products for example we see nothing very different from the position before we exited the EU. What we have seen in relation to products though is that we don't now have at the moment anyway, a mutual recognition of the EU and UK product conformity requirements and regime and obviously we no longer share a common market so effectively for EU products being brought into the UK these must comply with UK law and for UK products going into the EU market those must comply with EU law which is perhaps not an unsurprising principle. Those placing EU products on the UK market must recognise that they have responsibilities as importers in relation to the EU legal regime.

If we can move to the next slide. The principle change that people will notice is that all those products which used to have to carry a CE mark from 2022 must bear the new UK conformity authority mark, UKCA mark which has already been published. Northern Ireland is unsurprisingly problematic at the moment because it is legally part of the UK market but because of the notional border its de facto still part of the EU market and it follows EU rules on product labelling. We are already seeing and we are already advising clients in relation to some of the challenges being thrown up by this slightly artificial arrangement which was designed to avoid a hard border and I think it's fair to say that there will be focus on how this can be made to work more effectively on all sides. It is particularly challenging for goods getting into the Northern Ireland market at the moment because products only intended for the Northern Irish market and not for onward into the EU can be assessed against what are the required EU standards

again somewhat artificial, by a UK conformity assessor as opposed to an EU conformity assessor, so that's a kind of a slight relaxation but has to be separately labelled with the UK NI CE marking which is a third marking. It's all pretty clumsy and those who are involved on this call in trading with, to, from and indeed through Northern Ireland will be only too familiar I suspect with some of the practical challenges that are already arising.

Next slide please. Obviously the slides are getting a bit weary now as well but the next slide deals essentially with food from recollection and the practical challenges in relation to food are perhaps even more marked because of the border assessments and controls that are taking place when products leave the EU and indeed when products enter the EU, leave the UK and indeed enter the UK. There are challenges in relation to fresh products in particular and whilst we having changed any food safety or food hygiene laws in the UK and we're still essentially following EU regulations, we have made the necessary changes if you like on paper to reflect the fact that the UK is now its own market and separate from the EU. The problem in a practical scene is not necessarily that we see great queues at the borders of freight, although those are practical problems and they were practical problems over Christmas and the New Year, but it's essentially the fact that there will need to be UK bodies set up to replace the EU bodies where previously those EU bodies were undertaking assessment so practical barriers in relation to the movement of EU foodstuffs in particular which are likely to leave us with challenges for much of this year. All of it can change of course if the UK and the EU decide to make amendments to the existing trade deal but the temperature between the UK and the EU at the moment is probably best described as "chilly" so it's unlikely that we'll see much positive progress in that respect in the coming weeks.

Thanks Adrienne.

#### **Adrienne Wilson**

Thank you David. I should have mentioned earlier that we'll try to come back at the end of today's Non session for a wrap up and to pick up on all further questions on all topics but given time, I'd like to move to Rich who's going to talk about current insurance issues and as I said we'll come back at the end assuming we have time to do a round robin of final questions. So over to you Rich.

#### **Richard Wise**

Lovely thank you. So if we can have the next slide. I'm going to start with business interruption insurance and I think it's probably another topic that just over a year ago we wouldn't have expected to have had quite as much public prominence. The Supreme Court decision in the FCA's Business Interruption Test Case was handed down on the 15th January. I'm just going to talk briefly about the key findings for policy holders. It's a long and complicated Judgment, 120 pages long, so I'm not going to attempt to explain all of it now and I'm sure you wouldn't want me to. So by way of a quick reminder this was a test case brought by the FCA with the intention of resolving uncertainty around a number of common non-damage business interruption insurance wordings in the context of Covid 19.

So there are 21 policies looked at and 8 insurers involved and it was a leapfrog appeal to the Supreme Court following a first instance decision from September 2020 so everything has happened relatively speaking very quickly in this context. The headline news is it was a positive government for policy holders. The Supreme Court found in favour of the FCA on all the points appealed by it and also on all of the points that the insurers appealed with the result that there is broader coverage than there was in the first instance judgement.

So if we just move onto the next slide please.

The judgment focused on three types of non-damage clause, so disease clauses, so those provide cover for business interruption losses caused by the occurrence so the happening or the relevant event of a notifiable disease within a specified radius of the insured's premises so for example within 25 miles of premises.

Prevent of Access clauses so those provide cover for business interruption and losses due to an inability to access or use the business premises and then hybrid clauses which combine the two.

So the Supreme Court actually disagreed with the first instance judgment on an important point by finding that each individual case of Covid-19 was an occurrence so a relevant or happening for insurance purposes but crucially despite that finding what it went on to say about causation meant that the coverage position remained favourable to policy holders. So the crux of the insurers' coverage causation argument was that policy holders had to show that the losses could not have been sustained but for the insured peril and a nice fat insured peril is the Pandemic so the wider Pandemic. There's a coverage issue for policy holders and the reason for this is that, say for example, an auditor closed a particular business premises wasn't the result of generally speaking a specific occurrence of Covid 19 in that particular shop or bar or workplace actually it was generally speaking the result of the wide Pandemic and the government measures.

So in what's quite an interesting move for insurance law more generally the Supreme Court has rejected the proposition but four tests may be the alternative and its said that that may depend upon the working and the context. So in respect of the disease clauses it held that each individual case of Covid 19 was an equally effective cause of the restrictions which led to the business interruption loss so as a result all a policy holder has to show is that my clients had Covid 19 which occurred within that specified radius so within the 25 miles and then that will be an equal and effective cause but the prevention of access and the hybrid wordings the Supreme Court said that the insured peril should be considered in combination with other similar uninsured events to assess whether the cause will make it satisfied. To put that another way its sufficient if the insured peril so on the occurrence of the disease within 25 miles act in combination or concurrently with another uninsured but not excluded peril for example the wider outbreak of the disease and all of the other instances of Covid 19 in causing the loss.

So if we just move onto the next slide. What that means is the policy holders are covered for losses caused by the Pandemic even though the insured peril isn't sufficient to worry about the loss by itself and the Supreme Court has interpreted other phrases more broadly as well which is helpful to policy holders. So phrases such as "restrictions imposed" which are referring to those steps taken by relevant authorities in those prevention of access clauses are being interpreted more broadly than they were in the first instance decision so for example its now in some instances possible to claim for reduced footfall rather than just an order to close where that's hindered the use of the business premises.

Then turning to quantum which is obviously a really important issue for policy holders there are two main issues that have been raised to do with how the turnover of a business should be calculated and therefore working out what the indemnity for an insurance should be. So trends clauses is one and pre-trigger losses is the other and dealing with both of those very quickly. When considering the turnover of the impacted business the Supreme Court has said the only appropriate adjustment to be made is the circumstances unconnected with the Pandemic so for example when you're thinking about pre-trigger losses or trends clauses reduced sales as a result of the public following an instruction to stay at home in the period immediately prior to the closure of the business shouldn't be used as a reason to suggest that there was a downward trend in the business and consequently a lower insurance recovery. Good news for policy holders there. There are some unresolved issues so the Supreme Court's decision that each instance of Covid 19 is itself an occurrence means that aggregation, so how many excesses or how many limits of liability apply is still a live issue for those who've got multiple business premises or locations around the country and the answer to that question that aggregation question of whether there should be more than one excess or more than one limit of liability, will depend on the specific wording of that policy and also the factual circumstances as well.

So in terms of what happens next so for policy that were encompassed by the judgment insurers should be in contact with their policy holders and they should be looking to adjust and pay those claims. That said, I am aware that that isn't universally happening, there are still arguments going on some in relation to aggregation and some more generally. It is also worth bearing in mind that for the policy holders who are dissatisfied because we are dealing with extensions to cover here typically the limits are often lower and if you're below £350,000 for your policy claim, the Financial Ombudsman service is an option and whilst it's got a backlog of cases it is working through them. For policy holders who have wordings that

weren't directly considered by the Supreme Court there may also be questions and I use one example very quickly now just to highlight. Occurrences at the premises wordings weren't specifically considered but we think the reasoning of the Supreme Court on causation can equally apply there. So these are wordings that require not an occurrence within say a 25-mile radius but actually at the premises and a lot of insurers we were seeing were saying you have to link that specific outbreak at your premises to the fact that you have been closed. Actually applying the logic that I was talking about earlier in relation to causation we think it could be said that actually that outbreak at your premises is an equal and effective cause along with all of the other Covid 19 occurrences that have taken place, you're just effectively talking about a smaller geographical radius which is the extent of the premises.

So that was all I was going to say on Covid specifically. If we move onto the next slide I'm just going to touch a little bit on the impact on the wider market of Covid and other trends. So it's doubly unfortunate that we've had the issues of Covid because the market generally in insurance was already hardening by which I mean we were seeing increasing premiums and narrower scope of cover. Probably one of the most obvious areas where we're seeing this is directors' and officers' liability insurance which is vital for many businesses. That market has been hit really hard by investigation costs over the last few years given the massive uptake in regulatory activity and we've even seen a number of insurers actually withdrawing from writing new business. We are also seeing specific carve outs and exclusions being added and probably the most troubling one that we've seen a number of times recently has been exclusions for liabilities relating to or connected with insolvency events and I've put just one example of a clause that we've seen on the slide there. So this is happening particularly in the leisure sector but we're also aware in that context of businesses who just aren't able to buy DLI at all and as you can imagine that's a considerable headache when you've got to think about how you protect directors and actually how you encourage them to take on and continue in those roles particularly when you're talking about non-executive directors and I'll come on in a minute to a few practical steps that businesses might be able to take.

So if we go onto the next slide I was also just going to highlight a number of other potentially wider effects of Covid and the market trends and other exclusions we're seeing. So we're seeing a number of market standard exclusions that are now available that are appearing in policies so one example there I've put up in relation to professional indemnity insurance. There's a Lloyds Market Association standard wording in the ◆40.45 – tape 2 virus exclusion and whilst this isn't the broadest of its type it still excludes any claim in any way caused by Covid 19 its mutations or variations and any fear or threat of it, so you can see how actually if the professional services firm has an issue it could potentially be linked back in some way.

Another concern for professional services firms and for other businesses that have been able to operate largely remotely is the challenge of things like mechanical breakdown exclusions. So these typically seek to exclude losses arising from internet or VPN failures or damage or corruption to software or IT equipment or loss of use or functionality. Then finally by way of exclusions the transactional risks and you have a slightly different underwriting process here so you're looking at for example the liability of sellers on the W&I policies where that's often limited to fraud or dishonesty, insurance recover is really important and you should be aware of exclusions that might cut across recovery entirely and look closely at the language because if Covid 19 is a concurrent cause and its excluded you might find that there's a carve out.

And then just the last slide quickly just a few practical steps for people to think about taking. So firstly review wordings very carefully, there are a number of standard clauses as I said. Think carefully and early about presenting your risk to insurers for renewal, don't leave it late and think about the fact that it might be necessary to give additional information and particularly additional financial information and we know that in some instances that's been able to unlock the position. Unfortunately it might well be necessary to incur additional premiums to maintain certain coverage and then finally for D&O particularly think carefully about things like indemnities for directors if you're having issues with D&O and remember that actually where you're concerned about insolvency situations and that's the issue for cover, think

about where in the group those indemnities might be given and what's permitted and also remember that just because the Articles give the power to indemnify that isn't enough on its own. Articles of Association aren't a contract between a director and the company so the individual will only be able to enforce them if they're in a standalone document or if they're in an employment contract so it needs a bit of careful structuring thought.

Adrienne that's a whistle-stop tour. I will hand back to you and hopefully we are roughly on time.

### **Adrienne Wilson**

Thank you so much we are more or less on time. As I said I had hoped to come back for a wrap up of questions. I would like to just return to the Covid topic where we had a number of questions and see if we can get a quick answer on this one. I think it looks like it's for you Erin. Why have HSE issued so few notices and no prosecutions? Has it not been rigorous around enforcement of workplace safety in the past year?

### **Erin Shoemith**

Thank Adrienne. I think it's really for the reasons that I said. In terms of workplace transmission the evidence actually has been that most companies have complied and they have put Covid secure measures in place so actually the likelihood of transmission is outside the workplace or it may be in the smoking shelters or the fact that people are travelling together or maybe living together, it's a prevalence in the community rather than being able to find reasonable evidence that there has been a workplace transmission. So I think most businesses have voluntarily taken action so there's no need for the HSE to go down that rigorous and I suppose robustness of issuing improvement notices and prohibition notices so that's the reason why they haven't taken any enforcement action and equally they are being judged against all local authorities and the Police who do have that ability to slap you with a fixed penalty notice that you would get such as you know similar for speeding offences or car parking. So that's the reason why they have taken the action they've taken.

### **Adrienne Wilson**

Thanks Erin and I think with that we do need to conclude today's session so I'm sorry if we haven't had time to answer your particular question today but if you'd like to follow up on any of the points we've discussed please do get in touch with one of our speakers, you can see their details on the screen the moment. As I mentioned at the start we've been recording this session and we'll send you a recording of that in the next day or so. It will also appear on our website along with the other recordings from this General Counsel series so this is the last of our General Counsel updates for now. Do check out our Events Page on our website for more webinars you might be interested in attending and now all that it remains for me to do is to thank today's speakers and to thank you all for joining us and I hope you have a good rest of the day. Thank you and bye bye.