276.12 *General cases No fatality*

R v Pyranha Mouldings Ltd 2014 EWCA Crim 533, 2 Cr App R (S) 43 (p 349) D pleaded early to failing to discharge a duty under Health and Safety at Work Act 1974 s 2(1). The practice for loading kayaks into a container was that an employee (a guider) lay on racks in a container to guide kayaks into position for transit. A forklift truck with a non-integrated platform would lift an employee (the loader) and kayak into position in order to slide the kayak into place. The forklift truck would then raise the platform to enable the guider to get down from the rack and out of the container. V was the guider. After V had guided the kayaks into position, the operator of the forklift truck could not see where V was because the platform obscured his view. When V was trying to board the platform, the forklift truck operator moved the platform and crushed the V's head against the roof of the container. He suffered injuries to his jaw, spine, ear, teeth and sciatic nerve. V was off work for 2 months. This unsafe work practice had been in place for 18 years, had never been risk assessed and there had been no training or formal instruction. Numerous employees had asked for a different method of working and none had been provided. In 2010, at a site inspection, the HSE had drawn to D's attention guidance relating to non-integrated platforms. It said they should only be used for non-routine work. The Judge found the risk of serious injury or death was substantial and foreseeable. D had co-operated with the investigation, timely and appropriate action had been taken to change the work practice. Held. There was no evidence of D putting profit before safety or any wilful disregard of safety procedures. Nonetheless, there was a total absence of any consideration of safety procedures, risk assessments, training or supervision and there was failure to take notice of the guidance note which had been specifically drawn to D's attention. It was appropriate to conclude that the breach fell significantly below the duty imposed. The system of work was inherently dangerous. This was a serious offence justifying a serious financial penalty. The fine was severe. It was meant to be. **£50,000 fine** with £6,562 costs upheld.

276.13 *Fire safety offences*

R v Takhar 2014 EWCA Crim 1619 D pleaded (full credit) to eight Fire Safety Order 2005 offences. From 2006, D ran a 40-room hotel and in 2009 the hotel was inspected for fire safety. The inspectors found a first floor fire exit was blocked and, upon opening it, they found the area was obstructed. A more detailed inspection followed and revealed a catalogue of fire safety breaches, each of which presented a risk of death or serious injury in a fire. The breaches included a) a failure to maintain fire safety equipment, b) a faulty fire alarm, c) no appropriate fire detection, d) securing a door using a fire extinguisher, e) the basement containing the main electrical supply and also combustible materials, f) a failure to conduct a fire assessment and g) the basement had no ceiling or fire detection system. The inspectors instructed that the breaches be urgently addressed and the blocked and secured fire exit be cleared immediately.

On their return, some remedial work had been done. A further inspection was done and further breaches were found. These included no fire alarm servicing, no staff training, missing fire notices, missing alarms, missing smoke detectors and defective smoke seals. In interview D provided several false excuses. D was aged 61 and in very poor health at sentence which was unacceptably delayed through no fault of his own. He was of good character and had since given up the hotel, having been made bankrupt. The Judge described the hotel as "a potential death trap". Held. An element of deterrence is needed which lies in immediate not suspended custody rather than the sentence length. Also the scale of the offending [over such a long time] also justifies immediate imprisonment. **6 months** concurrently, not 12.

276.15 ***Railway accidents***

See also: *R v Sellafield and Network Rail* 2014 EWCA Crim 49 (LCJ Network Rail pleaded to a risk assessment Health and Safety failing (no telephone and sight lines made a crossing unsafe). V1 drove onto a user-worked crossing on a railway line. He saw a train coming and braked. The car slipped on loose gravel and was hit by a train. V1's grandson, V2, was thrown out of the car and hit his head on the track. V1 was badly bruised and V2 suffered a brain stem bleed which had a devastating effect on him and his future. Numerous previous convictions including one with £3.5m fine. £6.2 billion revenue. There would have been no criticism had the Judge imposed a materially greater fine than £½m.)

276.20 ***Public bodies/Hospitals***

See also: *R v Sellafield and Network Rail* 2014 EWCA Crim 49 (LCJ Network Rail Health and Safety assessment failure. para 69 Profits invested into rail network. This factor to be taken into account.)