

**MEETING: 19 SEPTEMBER 2011**

**RESULTS OF PROSECUTIONS**

**JOINT REPORT OF THE CLERK TO THE AUTHORITY AND THE CHIEF FIRE OFFICER**

**1. INTRODUCTION**

1.1 The purpose of this report is to update members in relation to the outcomes of two recent fire safety prosecutions.

**2. TIRSUL LIMITED/MRS L. PARKIN - BOWLAND LODGE**

2.1 On 21<sup>st</sup> February 2011, prosecutions against Tirsul Limited and Mrs L. Parkin – the owner and manager respectively of Bowland Lodge residential home for the elderly at Western Avenue in Newcastle – came before Newcastle Magistrates' Court.

2.2 Fire crews had attended Bowland Lodge on the evening of 18<sup>th</sup> August 2009 in response to an incident involving an elderly resident who had accidentally set fire to his clothing. Sadly, the gentleman died of his injuries.

2.3 Whilst on the premises, the officer in charge discovered that a fire exit in the ground floor annexe of the premises – where the incident had occurred – had been chocked and nailed shut. Although the secured exit did not contribute to the fatal injuries sustained by the resident, it was nevertheless a serious cause for concern and a full fire safety audit of the premises was conducted by fire officers the following day. The audit highlighted a number of other deficiencies in terms of fire safety and enforcement notices were served to secure the carrying out of the necessary improvements to the premises.

2.4 The locking of the fire exit formed the basis of a charge against both the owner and manager of the premises under the provisions of the Regulatory Reform (Fire Safety Order 2005 ("the RRO"). In addition, the most serious of the other deficiencies formed the basis of a further four charges against the owner of the premises under the provisions of the RRO, namely:-

- (i) Failure to take such general fire precautions as were reasonably required in the circumstances of the case to ensure that the premises were safe. (The corridor where the incident occurred was approximately 40 metres in length but contained no separation to prevent smoke spreading along the length of the corridor.)
- (ii) Failure to ensure that, in the event of danger, it must be possible for persons to evacuate the premises as quickly and safely as possible. (The escape route beyond the previously locked fire exit was hazardous to use – being effectively part of a building site – and was not illuminated.)

- (iii) A further failure to take such fire precautions as were reasonably required to ensure that the premises were safe. (In that the method of construction of the premises, with gaps and holes in timber flooring and lath and plaster walls and ceilings, potentially allowed for rapid vertical spread of fire.)
- (iv) Failure to make a suitable and sufficient assessment of the risks to which relevant persons are exposed for the purposes of identifying the general fire precautions that needed to be taken to comply with the RRO. (The fire risk assessment in place at the time of the incident and follow-up inspection addressed none of the risks referred to above and allowed for only 2 members of staff to be present overnight to potentially manage the evacuation of 36 elderly residents with varying levels of mobility and responsiveness.)

2.5 Guilty pleas were entered by both defendants at the first hearing. Mrs Parkin acknowledged that, as manager, the locking of the fire exit was something she should have picked up. On behalf of Tirsul Limited, counsel indicated that the directors – Ram Parkash Malhotra, Darshen Kumar Malhotra and Rajesh Malhotra – had been used to the older system of annual fire checks and would have remedied the various deficiencies had they been pointed out. However, they accepted that under the RRO, self-assessment of risks was required.

2.6 Despite the mitigation on behalf of both defendants, the magistrates' took a serious view of the matter. Mrs Linda Parkin was ordered to pay a fine of £3,000.00, discounted to £2,000.00 in recognition of an early guilty plea, together with costs of £400.00 and a £15.00 victim surcharge (£2,415.00 in total). Tirsul Limited were ordered to pay the maximum fine of £5,000.00 for each of the five offences charged but again subject to a discount in recognition of early guilty pleas, giving a total fine of £18,750.00. The Company was also ordered to pay costs of £1,600.00 and a victim surcharge of £15.00 (a total of £20,365.00).

### **3. BOADEN HINDMARSH LIMITED – HIGH BRIDGE HOUSE**

3.1 A prosecution for offences under the Regulatory Reform (Fire Safety) Order 2005 was also taken against the company Boaden Hindmarsh Limited, the managing agents of the premises known as High Bridge House in Newcastle.

3.2 High Bridge House is a building containing ground floor shops and upper floor offices and in November 2008 a fire safety audit was carried out after a tenant reported concerns that homeless persons were gaining entry to the premises at night.

3.3 A number of deficiencies were noted, namely:-

- (i) No fire risk assessment for the premises.
- (ii) No suitable evacuation procedure for the premises.
- (iii) Rear external escape stairway in a state of disrepair.
- (iv) Inadequate maintenance of the emergency lighting system.

- (v) No evidence of co-operation between the managing agents and the occupiers of the premises.
- (vi) Fire alarm system showing a fault at the fire alarm panel.

The managing agents were notified, in writing, of these deficiencies and the steps that needed to be taken to address them. However, a follow-up inspection six months later revealed that all of the deficiencies remained outstanding and that, in addition, fire extinguishers were not being maintained, there was no emergency lighting on the external fire escape, a stairwell was partially obstructed and there was no record of fire drills being carried out. Of particular concern was the fact that the fire alarm system was not working at all and had been found to be beyond repair. Despite this, the building was still occupied by tenants and there were workers on the first and third floors of the building, whose only means of raising the alarm in the event of fire was by shouting. In view of this, a Prohibition Notice was served in relation to the use of the upper floors pending the taking of remedial action.

3.4 Proceedings were subsequently commenced against Boaden Hindmarsh Limited for four offences under the Regulatory Reform (Fire Safety) Order 2005. These offences were:

- (i) Failure to carry out a fire risk assessment.
- (ii) Failure to equip the premises with a (working) fire alarm system.
- (iii) Fire doors protecting the main stairwell not maintained in efficient working order or in good repair.
- (iv) Emergency routes and exits requiring illumination not provided with emergency lighting.

3.5 The defendant company pleaded guilty to all four offences when the matter came before Newcastle Magistrates' Court on 14<sup>th</sup> February 2011. The magistrates were told in mitigation that the company had no previous convictions of a similar nature, that problems at the premises were now resolved and that lessons had been learned. It was explained that the problems had arisen during a period when the company was undergoing a merger, involving rationalisation of staff and procedures and that the matter had been allowed to slip through the net. However, the magistrates took a serious view of the failings and the lack of remedial action between the first and second inspections and fined the company £2,400.00 per offence, discounted by one third to £1,600.00 in recognition of early guilty pleas. This gave a total fine of £6,400.00. The Company was also ordered to pay costs of £1,394.87 and a victim surcharge of £15.00, giving an overall total of £7,809.87.

## **4. RECOMMENDATION**

4.1 Members are asked to note the contents of the above report.

