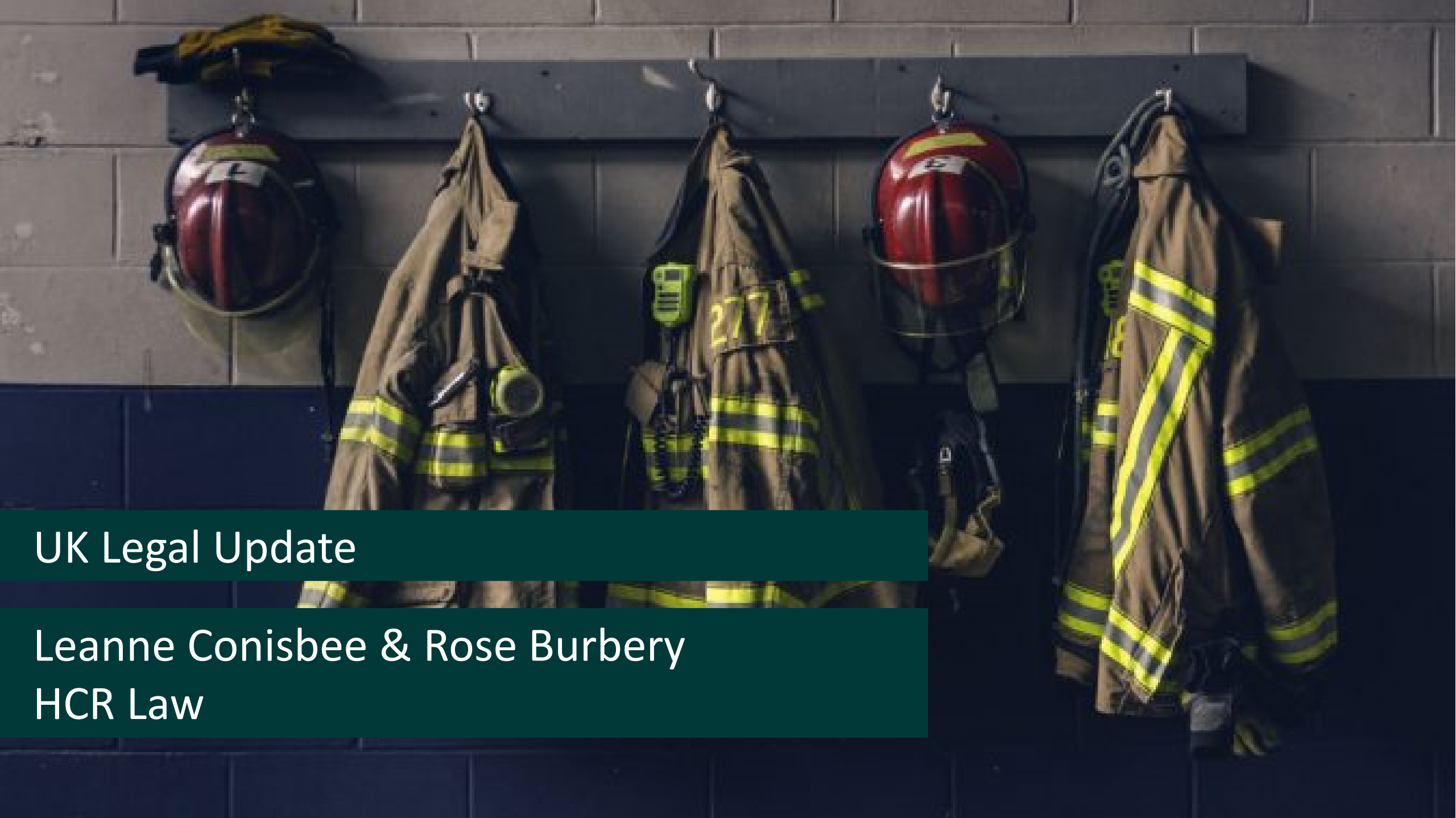




UK Legal Update

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Processes following serious incidents

- Prosecution: HSE/Police
 - Responding to emergencies: driving offences
 - Death/serious injury of employees and/or members of the public
- Coroner's Inquests and public inquiries
 - A factual enquiry but NB information used in other forums
- Civil claims for compensation
 - Based on negligence
 - EL claims: Commercial considerations against a union backed workforce
 - PL claims: special factors affecting rescue services

Processes should not be looked at in isolation – they are inextricably linked



Driving offences: responding to emergencies

- Driving without due care and attention
- Causing death/serious injury by careless/dangerous driving
- Carelessness = falling below the standard of the careful and competent driver
- Dangerous = falling far below the standard of the careful and competent driver
- Speed limits; comply with the Highway Code; keep a proper lookout
- “Urgent and immediate” risk to life can be taken into account (duress/necessity)
- **No exemption for fire service drivers from being prosecuted for bad driving !**

CPS decision making

- Stage One: is there sufficient evidence that an offence has been committed?
- Stage Two: is it in the public interest for enforcement action to be taken:
 - *“unlikely to be in the interest of the public to prosecute an individual responding to an emergency”*
 - Consider driver’s knowledge (did they think there was a threat to life)
 - Did the driver comply with relevant policies for driving
 - The driver’s record
 - NB ‘special reasons test’ ‘unusual, mitigating or extenuating circumstances’

HSE enforcement action

- Health and Safety at Work etc. Act 1974
 - Section 2
 - Section 3
 - Section 7
 - Section 37
- NB Joint memorandum with police for homicide offences
 - Corporate manslaughter
 - Gross negligence manslaughter
- NB Fee for Intervention
- Fines and prosecution costs often payable

When to expect HSE investigation

- Fatal incidents
- Major injuries
- Incidents that show major hazard controls are failing or could fail
- ***Injuries which indicate a serious breach of health and safety law***



Public liability for the rescue services

- Capital & Counties PLC v Hampshire County Council
 - Appeal One
 - Fire started in premises with sprinkler system (which had activated)
 - Fire service turned off the sprinkler system
 - Fire spread to entire building. If sprinklers had remained on, some of the building may have been saved.
 - If the FRS cause the situation to be **worse**, they can be held liable in negligence
 - **FRS is not liable for omitting to act; but for positive acts that worsen a scenario.**

Tindall & Or v Chief Constable of Thames Valley Police 2024

- 4 March 2014: Mr Kendall lost control of his vehicle on black ice.
- He got out the car and tried to warn others of the black ice.
- Police arrived, put up a 'police slow' sign and cleared the debris. They left the ice. They packed up and left.
- Afterwards, another driver hit the ice and was fatally injured.
- C said the police 'made things worse' in part because they prevented Mr Kendall from warning others.
- No liability.
 - Their attendance did not mean they had assumed responsibility to protect others from the ice.
 - Their attendance was 'ineffective' but did not create additional danger.

Claims defensibility: what can you do?

- RIDDOR reporting
- Objectivity in incident investigation
- Strengths and weaknesses of witness evidence
 - Review for possible health and safety breaches
 - Are the witness statements comprehensive to address the information that the claim is likely to include
- Might photographs/video evidence assist
- Collate documents
 - Pre-action protocol document examples :

Pre-action disclosure – EL claims

- Accident book entry / incident reports
- First aider report
- RIDDOR
- Personnel/occupational health records
- Communications between FRS and HSE
- Minutes of meetings in which incident considered
- CCTV (! Retain where possible!)
- Earnings information
- Service/maintenance records for equipment
- All relevant risk assessments
- Previous complaints/incidents



Overview

- Review key updates UK employers' liability and negligence case law
- Highlight recent findings relevant to the fire service
- Discuss implications for indemnity and liability
- Provide actionable risk management recommendations

Bullying, stress and harassment

- Employer's duties: primary liability: duty to take reasonable care for the health and safety of employees
- Protection from Harassment Act 1997
 - Behaviour must be abhorrent
 - A course of conduct
- Vicarious liability



Manual handling

- Needle v Swallowfield (2020)
 - Claimant was an engineering technician who suffered a hyperextension fracture from handling a dispensing pump.
- Stewart (now White) v Lewisham and Greenwich NHS Trust
 - Claimant was a community midwife who suffered a back injury while lifting a carry case containing an oxygen cylinder.
- Peter Manning v DNATA Catering
 - Claimant was employed as a food equipment loader and sustained a lumbar fracture from falling backwards.



John Hill v Ministry of Justice [2022] EWHC 370 (QB)

- Probationary police officer who was escorting 2 offenders back to their cells when he was assaulted
- Court of appeal held MoJ not liable
- Risk was not sufficiently above the baseline inherent risk in the job to require additional precautions



Implications for Insurers and Risk Managers



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Any Questions?



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