

A IN THE CROWN COURT
AT CROYDON

No. S20160258

B The Law Courts,
Altyre Road,
Croydon,
Surrey, CR9 5AB

Thursday, 3rd November 2016

C Before:

THE RECORDER OF CROYDON

D R E G I N A

- v -

E GCH (BURROWS HOUSE) LIMITED

F Transcribed from DARTS by Marten Walsh Cherer Ltd,
1st Floor, Quality House, 6-9 Quality Court, Chancery
Lane, London WC1A 1HP

MR. GUY LADENBURG appeared on behalf of the Prosecution.

G MR. PAUL ANTHONY SPENCER appeared on behalf of the Defendant.

PROCEEDINGS

H *(Transcript prepared without access to court bundles)*

A THE RECORDER: This is the case of GCH (Burrow House) Limited,
at 12 Derwent Road, London SE20, who appeared before the
B magistrates' court on three summonses, which are set out
in the prosecution's folder, and were committed for
sentence to this court. It appears that there is an error
C in the committal certificate which appears only to have
committed for sentence in one of the three summonses.
That is an error, and I have directed that the
D magistrates' court record of sending be rectified, as it
is agreed that the magistrates' court, and entirely
understandably, committed all three summonses to the court
for sentence.

E Before I proceed further, I must commend both the
prosecution and the defence for their careful preparation
of the case and, in particular, the two files that have
F been given to me. There was some confusion as to whether
this was a digital or a paper case. It is a paper case,
as far as the parties are concerned, and I am grateful for
G the work that has been put in, which has made my task a
lot simpler than otherwise it might have been by what
appears to be a complete focus on the relevant issues in
the case.

H The summonses arise as a result of what was found
following a serious fire at the care home, Burrows House,
at the address that I have given, on 14th October 2013,

A the date of 16th October being a thorough inspection of
the premises by the relevant authority that has brought
the prosecution. There was a serious fire at the
B premises, as I have said. It is a care home, a
residential care home, with 54 rooms arranged over two
floors, and at the relevant time it was occupied by around
C 50 residents, many of whom had been referred by the
Social Services or a hospital as being frail, elderly or
suffering from dementia. So, these were all vulnerable
D inmates; and that is alongside an equal, slightly larger
number of staff in the care of that home.

The fire occurred, it appears, probably
deliberately, by an electronic chair that had been out of
E use for a long time being set alight and in a place in the
home where it should not have been, as it was in a
corridor which was an escape route, an escape from fire;
F therefore, creating an obvious risk and danger to life and
limb, as indeed was the finding of the Inspectorate in the
case.

G Just keeping with the fire for a moment (as I say, a
serious fire), fortunately -- and it is only really as a
matter of luck, as these things are -- no one actually
H lost their lives, but there was an 84-year-old lady, Elsie
Neave, who appears to have opened the door of her bedroom
before the arrival of the London Fire Brigade and was

A overcome by smoke, collapsing unconscious in the doorway.
She was extremely badly injured from, in particular,
B carbon monoxide poisoning. She was removed to Kings
College Hospital with severe smoke inhalation and was
actually placed on a life support machine and treated in
C Intensive Care. Fortunately, she later recovered, and has
been moved to another home, operated by the parent
company, this particular care home being one of a number
of care homes run by a large company. That company
D recently, or relatively recently, took over the running of
the care home prior to the fire.

E There were also two other residents of the home who
were taken to hospital, but less seriously harmed than the
lady I have mentioned.

F So, the inspection took place some two days later,
with the result that there were, effectively, three
particular and serious failings present before the fire
G itself. In fact, all three summonses are breaches of the
relevant regulatory reform fire safety order. The first
one is concerned with a failure to make a suitable and
sufficient risk assessment in relation to fire. The
H second summons relates to a failure to ensure that
combustibles were not present in a means of escape
corridor -- and for that, a specific reference to the
chair in the corridor, and, indeed, that chair, which

A should not have been in that escape corridor, had been
there for some time; and secondly, failure to ensure that
B fire doors were not wedged or held open. The third
summons relates to fire extinguishers not being subject to
sufficient testing, fire doors missing self-closing
C devices or poorly fitting within their door frames, and
emergency lighting not subject to sufficient testing.

D It appears from everything that I have heard that
there are plainly systematic failings here in the way that
the care home was run that brought about these particular
failings.

E So, there are aggravating features here, which are
set out in what has come to be known as the *Friskies*
F schedule, following the leading case, really, in this area
of health and safety, and the schedule as out in judgment
of Scott-Baker LJ. In fact, I see it was decided as long
G ago as the year 2000; so, it is 16 years old, this leading
authority. That is set out at divider 3 of the
prosecution bundle, where it is said that there were a
large number of relevant persons placed at risk at the
H premises (and I have already enumerated them), including
those who were vulnerable through age and/or disability
(and I have made reference to that already); secondly,
that a fire occurred at the premises, the effect of which

A was to cause injury to relevant persons (and I have made
reference to that already).

B The effect of the fire was to damage severely six
rooms in one wing of the building, and so they were
completely out of use for a period of time, resulting in
C the obvious inconvenience and distress to those fortunate
enough not to have been physically affected by it and who
no doubt had to be moved elsewhere.

D The facts of the case thus far clearly require the
court, in the case of a company, to pass significant fines
to reflect the harm that has occurred and what can only be
described as the failure to take health and safety and the
E particular fire safety issues properly in the list of
priorities. It may be argued that the health of the
inmates, vulnerable as they are, might be regarded as the
number one priority, but they cannot be properly cared for
F and their health accommodated if they are not safe, if
they are not free from the risk of fire. It is quite
clear from all that I have heard, and giving the financial
G strictures that there are in this particular area of what
is in fact a commercial as well as a caring activity or
business, as it is, that insufficient focus was applied to
H fire safety.

I refer to systematic failings. I am persuaded that
this is not a case of profiteering or turning a blind eye,

A essentially, knowing the failings present and not
confronting them and dealing with them. It is much more
an issue of there being so much to do, inadequate
B resources, and issues that should have been picked up
simply were not picked up for those reasons, because the
staff and the team were otherwise occupied in the way that
C has been set out in the plea in mitigation.

I must also take into account what has happened
since, what has happened in the case -- a timely guilty
D plea, and I shall apply that to the level of fines -- and,
also, the steps that have been taken since this dreadful
fire to remedy the defects that were identified; and there
is a good body of material in the defence folder on all
E that, and it is quite clear that for a substantial period
of time now, all the issues have been addressed and there
are no longer any risks present at this home.

F I must also take into account the fact that this is
a clean company, that the company has no previous
failures; it has no previous convictions. I have been
G referred to a significant number of authorities, which are
always fact-specific but give the court at least some
guide as to where the level of fine should be in a case
H such as this, with the failings and features that I have
identified -- something like 10 quite different

A authorities over the last 16 years, authoritative cases,
almost all if not all Court of Appeal decisions.

B I also take into account the actual level of funding
applied to rectifying the position. Some £350,000, as set
out in one document I have seen, has been spent by the
whole group of companies (of which this is one) to bring
C their fire and safety regime up to scratch. There had
been a previous good safety record for this company, and
so it is a matter of great regret what actually happened
on that fateful day and what was found as the failings two
D days later.

E Weighing all these matters up, and being mindful of
the actual turnover and profits of the company, which is
set out in the defence response -- a relatively brief but
well argued response, in a separate document headed
F Defendant's Response to the LFPA Case Statements -- I must
decide what the justice of the case requires. This is not
a case where the fines should be levelled in a way that is
going to ruin the company. That is not this sort of case.
G But the fines must be such to mark the mischief that has
occurred here and as a deterrent to other such
organisations, so that fire and health safety must be put
H at the top of the list of priorities when applying
resources, scarce or not, as the case may be.

A I have taken into account all the submissions made
in mitigation and as much of the large bundle as I have
been able to digest. I do not think I have missed
B anything material.

In the result, it seems to me that the total
criminality involved here justifies fines of £45,000; that
is to say, if this had been a contested matter. But to
C demonstrate that I do apply the one-third discount for a
timely guilty plea, the fines are reduced to £30,000. So,
as I indicated in the course of the submissions, that will
D be divided up into fines of £10,000 on each of the three
summons.

This is a case to which the surcharge provisions,
E I believe, do apply.

MR. LADENBURG: Yes.

THE RECORDER: So, there has to be a surcharge -- sometimes
F known as a victim surcharge, although that has nothing to
do with the particular victims in the present case -- of
£120. There being no issue as to the prosecution costs,
G I make an order that the company must pay the prosecution
costs in the sum of £12,966.

That completes my sentencing remarks. Again, as
H I began, I conclude: I am grateful to both the parties
for the way they have presented the case.

A

Is there an application for time to pay? You made reference to that. I must stipulate a time to pay.

Otherwise, the order is not enforceable.

B

MR. SPENCER: My Lord, would your Lordship allow three months for that sum to be paid?

THE RECORDER: I will. I will say three months to pay.

C

MR. SPENCER: I am very grateful.

THE RECORDER: Thank you.

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