

The Company Directors
The Doctors Laboratory Limited
The Halo Building
1 Mabledon Place
London
WC1H 9AX
Email: Emer.Nestor@tdlpathology.com

Reference: 4644056

24 August 2020

Dear Sir/Madam

HEALTH AND SAFETY AT WORK ETC ACT 1974

I have been making enquiries into how well you are managing health and safety for couriers working out of The Halo Building, London following a concern raised by the Independent Workers Union of Great Britain (IWGB). I have been in contact with Ms Emer Nestor, Director of Governance at The Doctors Laboratory Limited (TDL). I have taken advice from HM Principal Specialist Inspector Vin Poran (Chemicals, Explosives and Microbiological Hazards Division) at the Health and Safety Executive (HSE).

I have identified contraventions of health and safety law. This letter explains what was wrong, why it was wrong and what you need to do to put things right. Please e-mail me with the requested information to ensure compliance by **9 September 2020**. I may visit your site to check that appropriate action has been taken.

It is important that you deal with these matters to protect people's health and safety. If you do not understand what action to take then please contact me or my Principal Inspector and we will explain further.

You will have to pay a fee because I have identified a contravention of health and safety law which is a material breach. The enclosed section on Fee for Intervention provides further information.

Whilst I looked at some of your activities to assess how you were complying with your legal responsibilities, I did not examine the whole of your business. There may also be additional areas to those I have identified which also require your attention. It is your responsibility to ensure the health and safety of your employees and other people, such as members of the public, who may be affected by the way you run your business.

I will continue to communicate with Ms Nestor about the company's arrangements for the packaging and transportation of Category B patient specimens, which is another aspect of the concern under consideration. If I identify any further material breaches of health and safety law, I will write to you and let you know.

Section 28(8) of the Health and Safety at Work etc Act 1974 requires me to inform your employees about matters affecting their health and safety. As such, I have sent a copy of this letter to Duncan Parker as an employee representative.

Field Operations Directorate

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You will find information and advice about health and safety on our website <http://www.hse.gov.uk/>

Yours faithfully

A handwritten signature in black ink, appearing to read 'A Cooper', is positioned above the printed name.

Angela Cooper
HM Inspector of Health and Safety

MATERIAL BREACH – NOTIFICATION OF CONTRAVENTION

1. The provision of information, instruction and training to couriers about your coronavirus control measures

The Health and Safety at Work etc. Act 1974 (HASWA) sections 2(1) and (2)(c) and 3(1) and 3(3)

In accordance with the above sections of HASWA, you have a duty to ensure so far as is reasonably practicable the health, safety and welfare at work of your employees. This involves providing any information, instruction, training and supervision which is necessary to ensure employees can carry out their work safely.

You also have a duty to conduct your undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in your employment who may be affected thereby are not exposed to risks to their health or safety. This involves giving them information to ensure their health or safety.

Use of gloves

It has been raised that couriers have been issued with gloves to protect themselves against coronavirus but they have not received any instruction about how to safely don and doff gloves, putting them at risk of contamination.

Ensuring couriers wear the right personal protective equipment (PPE) is important, but so too is putting it on (donning) and taking it off (doffing) in the right way, which otherwise presents a risk of contamination. Making sure you pass on the correct information and guidance to workers, and other people you deal with is an important part of ensuring couriers know how to work safely during the coronavirus outbreak.

I asked the company to provide me with information about how it was managing the risk to couriers from coronavirus and requested; its risk assessment, the rationale for the provision of any PPE and details about the information, instruction and training issued to couriers about the control measures and their PPE, including correct glove use and hygiene practices. My observations are set out below.

- The company has confirmed that single use nitrile gloves are provided to couriers as a control measure against coronavirus, for example when couriers use a petrol pump. However, it is not clear why this activity has been singled out when couriers are likely to come into contact with other frequently touched surfaces as well, such as door handles and hand rails.

The route of transmission of coronavirus is via inhalation or by touching contaminated surfaces then touching the eyes, nose or mouth. Where you are already using PPE in your work activity to protect against non-coronavirus risks, you should continue to do so. When managing the risk of coronavirus, additional PPE beyond what is usually worn is not beneficial. It needs to be managed through social distancing, hygiene and not through the use of PPE.

- The “workplace risk assessment checklist” (incorrectly dated 13 May 2020) which was completed as a result of a review undertaken on 28 May 2020 indicates that there are other occasions when couriers require gloves to protect themselves from coronavirus. For example, for the activity: “*Can social distancing be maintained at collection/ drop off points from customers*”, an action is: “*Couriers to ensure they are carrying gloves (and hand sanitiser provided)*”. It is not clear why gloves are required in this situation.

Workplaces should not encourage precautionary use of PPE to protect against coronavirus outside clinical settings or when responding to a suspected or confirmed case of COVID-19. Unless you are in a situation where the risk of coronavirus transmission is very high, your risk assessment should reflect the fact that the role of PPE in providing additional protection is extremely limited. Gloves are not a substitute for good hand hygiene and may give couriers a false sense of security that their hands are clean and better protected because their hands are not touching a surface.

- Although the company is issuing gloves as a control measure against coronavirus, I have not seen evidence that it has provided suitable and sufficient instructions to couriers about; why and when nitrile gloves are necessary, how gloves should be donned and doffed to avoid contamination, where gloves should be stored until they are needed and how gloves should be disposed of after use. Page 7 of the company's risk assessment states: *"all waste items to be returned to a Company base or the client's premises for disposal via the appropriate waste stream"*. It is not clear what is meant by "an appropriate waste stream" and where couriers would be expected to keep used gloves until they can be disposed of safely. This should be made clear to couriers so that they are in no doubt about what to do.
- The company has stated that a proportion of courier staff speak Portuguese as a first language and therefore, pictorial instructions are used where possible, including in the spill kit instructions. The spill kit instructions in the courier induction material I have reviewed do not contain any pictorial (or other) instructions about how to safely don and doff gloves. This is especially concerning given the increased risk of contamination from exposure to a spilt substance. This instruction should be immediately reviewed and revised.

Action required

1. You should consider the circumstances when couriers need to use gloves as a control measure against coronavirus. If gloves are to be used, you should provide suitable and sufficient information to couriers about when and why gloves should be worn, how they should be stored and disposed of, covering all of the points raised above.
2. Please tell me about the action taken by the company to remedy this breach and provide me with a copy of the instruction issued to couriers about glove use.
3. Please send me a copy of your revised procedure for couriers dealing with spillages, ensuring it contains information about how to correctly don and doff gloves and tell me how this procedure has been communicated to couriers.

Use of masks

The company provides surgical masks to couriers to wear as a control measures against coronavirus (as well as face coverings to support workers travelling to work on public transport).

The company has stated that the instruction provided to couriers for donning and doffing a mask is the procedure entitled: "Donning and Doffing a Surgical Face Mask" which has an "effective date" of 13 July 2020. An extract of the doffing procedure is shown below.



This procedure omits that prior to the first step, the wearer should perform hand hygiene using either alcohol hand gel or run or soap and water. The risk is that couriers could contaminate themselves and/or surfaces.

Although information about performing hand hygiene before using PPE is contained elsewhere, this procedure is specific to the task of doffing a mask, which is carried out by couriers so it should be complete and contain all of the relevant information they require. This is especially important because the company uses pictorial instructions to overcome the language barrier with some couriers.

In the second step of the procedure (as per illustration above), it is unclear what is meant by the requirement to discard a mask according to “*local procedures*”. This statement is vague. The company should give clear instruction about what couriers are expected to do with a used mask.

Action required

4. You should update your mask donning and doffing procedure to ensure it is suitable and sufficient for couriers and includes information about the requirement to perform hand hygiene before doffing a mask and where masks are to be discarded.
5. Please send me a copy of your mask donning and doffing procedure and tell me what you have done to communicate this procedure to couriers.

Cleaning of sample transport containers

Cleaning, sanitising and hygiene procedures for workers are some of the main ways to ensure that people are working safely during the coronavirus outbreak. I asked the company to provide me with its cleaning procedure for transport containers, including information about the frequency of the cleaning and safe disposal of cleaning waste.

The company has confirmed that “Sani-Cloth AF” Universal Wipes are issued to couriers for cleaning and the instruction is set out in a document entitled: “2.3 General Safety Rules for Couriers”. This document contains information about spills and leaks and states that containers should be disinfected weekly using the ready to use disinfectant in the courier control office. However, this instruction it is not suitable and sufficient as a cleaning procedure because it omits relevant information, such as:

- Who is responsible for the cleaning;
- Where the cleaning should be done;
- How the container should be cleaned and how this will be effective (for example, the amount of contact and drying time); and
- Where waste cleaning material should be discarded.

It is also not clear whether the company has considered if gloves should be worn whilst cleaning. This should be stated in the risk assessment and/ or “cleaning instruction”.

I have seen an email from Mr Harvey, Logistics Director to all couriers dated 13 May 2020. It states: “*we supply wipes for cleaning of your transit boxes and this should be done on a very frequent basis and, as a minimum, at least once per week*”. I have consulted HM Principal Specialist Inspector Vin Poran about the frequency of the cleaning. Mr Poran’s opinion is that he would expect the containers to be disinfected on a daily basis, not weekly due to the nature of the specimens placed in the containers.

The company should consider its existing arrangements for cleaning the transport containers and produce a suitable and sufficient cleaning instruction using information freely available on-line in the product’s Information for Use document. If the company has not done so already, it should put in place monitoring and supervision to ensure people are implementing the cleaning regime and arrangements are made for replenishing products.

Action required

6. You should review your cleaning arrangements for the sample transport containers and ensure your cleaning instruction is suitable and sufficient. You should ensure monitoring and supervision arrangements are in place if you have not done so already.

7. Please send me a copy of your cleaning procedure for the sample transport containers and tell me how you have communicated the procedure to your couriers/ those who are cleaning them.

Guidance

- HM Government. Working safely during COVID-19 in or from a vehicle: <https://assets.publishing.service.gov.uk/media/5eb96cd6d3bf7f5d3a907e58/working-safely-during-covid-19-vehicles-120820.pdf>
- HSE. Information about glove doffing: <https://www.hse.gov.uk/skin/posters/singleusegloves.pdf>
- Public Health England. Guide to donning and doffing standard PPE: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877658/Quick_guide_to_donning_doffing_standard_PPE_health_and_social_care_poster_.pdf

2. The company's assessment of the risk to couriers from coronavirus

The Health and Safety at Work etc. Act 1974, sections 2(1) and 3(1)

The Management of Health and Safety at Work Regulations 1999, Regulation 3(1) ("The Management Regulations")

As an employer, you must protect people from the risk of harm. This includes taking reasonable steps to protect your workers and others from coronavirus. This is called a COVID-19 risk assessment which helps you manage risk and protect people.

Your courier COVID-19 risk assessment is not suitable and sufficient. My main observations on the assessment and the process undertaken are as follows.

- Insufficient information in the risk assessment

One of the hazards of coronavirus is getting or spreading the virus in common use areas such as canteens, corridors, toilets, rest areas and any other communal areas. A general control measure is to limit the number of people at any time using any areas that may become congested.

You have referred to controls to limit capacity in your risk assessment but your risk assessment does not contain a quantitative assessment about the number of couriers who might access the Halo Building and use the facilities at any one time. As such, it is not possible to say whether your current arrangements are effective. For example, the checklist document records the number of staff as "*varies*" and that couriers attend the building on "*an ad hoc basis depending on pickups/ drop off required*". Your Safety Officer Safety Inspection Record lists at 11.2: "*Social distancing arrangements effectively in place and max numbers adhere to*". It is not clear from this record or your risk assessment what maximum capacity is and therefore, how capacity can be properly monitored so that it is not exceeded and is safe.

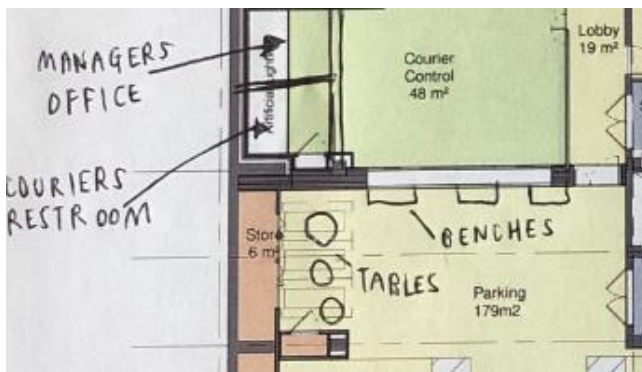
You should consider the maximum capacity levels of the various areas accessed by couriers so that you can decide upon, select, monitor and review your control measures to ensure they are effective. This is likely to include considering the number of drop-offs that couriers might make, any peak periods of activity and shift rotation information. You should ensure this information is contained in your risk assessment. Additional information about this matter is set out below in the context of specific areas that require further consideration.

Welfare facilities

I understand the company undertook a review of its control measures on 28 May 2020. The results of which are contained in a check list (incorrectly) dated 13 May 2020. This review checklist makes reference to restricting numbers in the parking bay/ rest area to 15 people which is to be done by instructing couriers to wait in "*other areas if necessary*". However, there is no information about; how many couriers this restriction might affect, how this will be done and where these "other areas" are as well as their maximum capacity levels for monitoring purposes.

The checklist shows that the tea and rest rooms have a maximum capacity of 2 people. The parking bay rest area has a capacity of 15 people and is situated next to motor vehicles which come in and out of the area

(see photographs and illustration sent to me below). I understand this area has around three tables and a small number of chairs/ benches. The Halo Café has a dress code making it unsuitable for couriers. The risk assessment does not contain sufficient information about how it is managing couriers' rest breaks and the limited capacity. I have not attended site but it is unclear to me where 15 people could congregate in a socially distanced manner in the parking rest bay area and if this includes seated/ standing capacity.



The company is legally required under The Management Regulations to provide suitable and sufficient rest facilities to its couriers at readily accessible places which are clean and free from contamination. Rest areas should have sufficient seats and tables for the number of workers likely to use them at any one time.

Having a rest area in a partially/ enclosed space where people consume food and drink whilst exposed to vehicle exhaust fume can introduce additional hazards to the workplace which you are required to manage. Exposure to vehicle fume can lead to irritation of the eyes and respiratory tract. The company confirmed to me on 30 June 2020 that it was investigating its current provision of welfare arrangements in the parking bay rest area. Please provide me with an update about any action the company intends to take about the provision of courier's rest facilities and information about the measures currently in place in the loading bay area to ensure couriers can be socially distanced from one another (2m where possible or 1m with risk mitigation measures). Please provide photographs of any floor markings and signage if applicable.

Specimen reception area/ "hatch area"

There is insufficient information in your risk assessment about how the company has assessed and is managing the risk in the specimen reception area. I understand this is a room measuring about 1m x 1.5m in size at the top of an open stairwell, which is routinely accessed by couriers to drop off patient specimens. It is a potential pinch point because there is no one way access.

The company has confirmed that the assessment for the specimen reception area is covered in a workplace checklist dated 11 May 2020. However, this assessment appears to have been made from the point of view of those working behind the hatch and not the side of the hatch that couriers access. For example, unlike the previously two mentioned checklists, the checklist has been completed by the “SRA” department, not the courier department. The area referred to as the “Hatch Area” includes comments about controls for workstations and a maximum occupancy of three persons, which does not appear possible in this small room.

There is mention in the checklist pertaining to the initial assessment about the “SRA” stairwell, which I understand is the specimen reception area. This is positive, but there is no reference to the room at the top of the stairs where it appears that social distancing cannot be maintained. The company has confirmed that signage has been installed requesting people give way but this action is not indicated in the check list review as being complete (see below comments below about additional control measures).

The company should consider how it is managing the courier access to the specimen reception area, including the stairwell and the room at the top of the stairs and then implement effective controls to manage the risk, taking into account the views of couriers. It should then monitor and review the controls to ensure they are effective.

- Unclear information about additional control measures

As mentioned above, I am aware that a review of the control measures was carried out on 28 May 2020. The checklist review documentation, which is a record of this review contains insufficient information to show whether further control measures have been implemented. For example:

- i) In the initial assessment checklist, for the area: *“Courier parking bays and rest area”*, “N” has been ticked for the question about whether staff can maintain a 2m distance. There is a comment of: *“Ensure furniture is cleaned and disinfected regularly”*. In the review checklist, this same area has “Y” ticked against the question about maintaining 2m distance. The comment however is the same as before: *“Ensure furniture is cleaned and disinfected regularly”*. It is therefore not clear whether this cleaning has been carried out.
- ii) In the initial assessment checklist, under the question about what is required to support hygiene, *“Review/ Increased surface cleaning”* has been recorded. “Y” has been ticked and the comment is *“Cleaning schedules to be reviewed in all areas as described above. Ensure tables, chairs and benches are included in schedule”*. The review checklist for this matter also has “Y” ticked and the same comment appears again. Again, it is not clear whether this action has been done.

You should update your risk assessment and clearly note the controls that are in place to manage the risk from coronavirus and any further controls that are required.

- The company did not properly consult with couriers/ their representatives in the development of its risk assessment.

The company has confirmed that it assessed the risk from coronavirus by gathering a small group of staff who had knowledge about the courier department and whilst carrying out the assessment, it spoke with staff who were present in the courier room. This indicates poor planning about who should input into the initial assessment. The staff in the courier room consisted of; one supervisor, three courier controllers, one administrator and one motorcycle courier. The initial assessment took place on 13 May 2020 and a ‘Workplace risk assessment checklist’ (of the same date) was produced. The company’s risk assessment entitled: “Couriers Activity Risk Assessment” is dated 26 May 2020. A further review took place on 28 May 2020. On 3 June 2020, the company sent the checklist document to all couriers including IWGB representatives, which is the first time I understand that employee representatives had been provided with any risk assessment information from the company. It is my understanding that at the time of the assessment, the size of the courier fleet was in excess of 150 people, consisting of not only of motorbike couriers, but van and bicycle couriers.

It is not clear why van and bicycle couriers and courier/ employee representatives who could have helped identify situations that might cause transmission of the virus and how to remove or control that activity or

situation, were not involved in the development of the risk assessment. It is also not clear whether the company's risk assessment (Couriers Activity Risk Assessment) has been shared with couriers and/or their representative. If it has not been shared, then the company should ensure this takes place.

Consultation involves the company not only giving information to its workers but also listening to them and taking account of what they say before making health and safety decisions. The company should ensure it involves its workforce and employee representatives in the development and implementation of its COVID-19 risk assessment for couriers and any subsequent risk assessments affecting couriers. Consultation can result in a healthier and safer workplace because your workers can help you identify hazards, assess risks and develop ways to control or remove risks. It can also lead to greater co-operation and trust and better decisions about health and safety because they are based upon the experience of a range of people who have knowledge about their own job and the business.

I have not been told the reason for the delay in undertaking the risk assessment on 13 May 2020, which was around two months after the UK Chief Medical Officer raised the risk from coronavirus to the UK from moderate to high and the Government advised upon self-isolation measures. The company should ensure that it carries out a risk assessment whenever a new job brings in significant new hazards, such as the risk created by COVID-19.

Action

8. Please send me a copy of your revised COVID-19 risk assessment ensuring it contains all of the information identified above, including: your quantitative assessments of couriers using the Halo Building, your arrangements for limiting the number of couriers into the building, the provision of welfare facilities, controls for ensuring couriers can socially distance in the loading bay area, your arrangements for managing access into the specimen reception area and confirmation that the company will involve couriers and their representative in the risk assessment process.

Guidance

- HSE. Consulting employees on health and safety: <https://www.hse.gov.uk/pubns/indg232.pdf>
- HSE. What to include in your COVID-19 risk assessment: <https://www.hse.gov.uk/coronavirus/assets/docs/risk-assessment.pdf>
- HSE. Working safely during the coronavirus (COVID-19) outbreak: <https://www.hse.gov.uk/coronavirus/working-safely/risk-assessment.htm>

FEE FOR INTERVENTION

Health and Safety and Nuclear (Fees) Regulations 2016, Regulations 22 and 23

HSE will recover the costs that it incurs for the work it does in relation to contraventions of health and safety law which are material breaches. A material breach is something an Inspector considers is serious enough that they need to inform you of it in writing.

The fee is based on the amount of time that the Inspector has had to spend identifying the breach, helping you to put it right, investigating and taking enforcement action. This includes the cost for the whole visit, along with other associated work.

Sometimes an Inspector may decide to write to you about matters which are not material breaches. This includes any matters listed as 'Advice'. HSE will not recover costs for the time it takes to do this.

We send out invoices every two months and you will have 30 days to pay. You may receive more than one invoice if the work done by the Inspector covers more than one invoicing period.

You can dispute the invoice. You can find further information about fee for intervention and details of how to dispute an invoice in the leaflet HSE 48 - *Fee for Intervention: What you need to know* at <http://www.hse.gov.uk/pubns/hse48.pdf>.

Further information is also available on HSE's website at <http://www.hse.gov.uk/fee-for-intervention/>