

BRUNSWICKS' REGULATORY NEWS

IN THE COURTS

SOUTHERN CROSS HEALTHCARE FINED £175,000 FOLLOWING FATALITY

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Southern Cross Health Care Group PLC was fined a total of £175,000 and costs of £15,919.20 were awarded to the prosecution at Stafford Crown Court on Friday 16 February after pleading guilty to two breaches of health and safety legislation.

The case brought by the HSE follows its investigation into the death of a 69 year old resident, who suffocated in her bed at Hornegarth nursing home on 15 April 2005 after becoming trapped by the legs in a gap between one of the bedrails on her bed and the beds mattress.

Speaking after the case, HSE investigating inspector Andrew Bowker said: "*The death of Margaret O'Mara was the tragic result of a failure by Hornegarth nursing home to follow its own quality procedures relating to the safe use of bedrails. There was a catalogue of errors at the home that resulted in Margaret being exposed to unnecessary risk. Her room had both incorrectly fitted bedrails and an incorrectly fitted pressure mattress. The care staff who were required to fit this equipment had not been trained on how to do the job properly and had no access to instructions. Risk assessment documentation specifically designed to guide staff through the safe use of this equipment was not being used at the site.*"

Margaret O'Mara from Great Wyrley, Cannock, suffocated when she became trapped in a gap between one of the bedrails on her bed and the bed mattress. She had very limited upper body movement and could not free herself from a face down position once her legs were trapped. The accident happened at Hornegarth nursing home, Great Wyrley, Cannock.

Southern Cross Health Care Group PLC, from Darlington, County Durham, which owns Hornegarth nursing home, pleaded guilty to a breach of section 3(1) of the Health and Safety at Work etc Act 1974; and guilty to a breach of Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999.

Ed—if you read on you'll see this wasn't the only case like this.

SERIOUS INJURY BRINGS EXPECTED PROSECUTION

Two partners from a building firm were been fined £10,000 each and ordered to pay £1,290 each in costs at Folkestone Magistrates Court yesterday (Monday 5th February) as a result of an incident which left a teenager with a fractured skull and a brain haemorrhage.

Peter Swinbourne and Nicholas Rawlins, who traded jointly as Dover Building and Property Maintenance based at Threeways, Hollands Hill, Martin Mill, Dover, were prosecuted under Section 2(1) of the Health and Safety at Work etc Act 1974 following the incident which took place in Folkestone Road, Dover on 2nd October 2006. Martin Sankey, 16, from Dover was working for the company to gain experience while on a college bricklaying course. On his second day he was asked to clear some materials from the second floor of the development, on the site of the former Webbs Hotel.

As Mr Sankey was on the second floor, he blacked out and fell through the hole of a lift well that was under construction. He fell almost 5.9 metres (19 feet) to the ground floor, suffering a fractured skull, a brain haemorrhage, facial and leg injuries and extensive bruising. If a basic temporary guard had been constructed around the lift well, work could have carried on in the area unhindered as well as protecting workers like Mr Sankey who were passing through the area.

John Underwood, HM Inspector of Health and Safety, said: "*The construction industry continues to have a poor record regarding falls from height, which dominate the accident statistics despite a major effort by the industry and the HSE. Any weakness in the system of work or controls used to prevent falls can lead to dramatic and life threatening accidents. If those in control fail to insist on a high standard at all times then accidents will continue to occur. It is particularly ironic that Martin's accident occurred when he became ill and collapsed but both Martin and other workers on the site were equally likely to fall from an unprotected open edge by a slip or a trip.*"

"The level of fine awarded against the partners shows how seriously the Court viewed this failure to look after a completely inexperienced young person but illness at work is probably more likely to involve older workers. This accident was totally preventable in that a very basic timber or scaffold edge protection barrier would have prevented anyone working near the lift well or moving past it from falling."

PENKRIDGE GRANITE FIRM FINED FOLLOWING FATALITY

Just Granite Limited was fined a total of £10,000 and costs of £4,470.80 were awarded to the prosecution at Stafford Magistrates' Court on Thursday 1 February after pleading guilty to a breach of health and safety law. Mr Tihlar, a lorry driver from the Czech Republic, was crushed and killed when slabs of granite that weighed in excess of six tonnes fell and trapped him. The accident happened at Just Granite Ltd's site at Pillaton Hall Farm, Pillaton, PenkrIDGE, Stafford on 7 November 2005.

Speaking after the case, HSE investigating inspector Peter Yoxall said: "*The death of Mr Tihlar was the tragic result of a failure to take practicable precautions to control the risks associated with the unloading of vehicles that contained granite slabs. Carrying out a risk assessment for workplace transport and making sure that it is practical and effective is sensible health and safety.*"

Just Granite Ltd pleaded guilty to a breach of section 3(1) of the Health and Safety at Work etc Act 1974 and Regulation 3(1) of the Management of Health & Safety at Work Regulations 1999.

DRILLING ACCIDENT

Livingston-based Consolidate Ltd, pleaded guilty to a charge under s2 HSWA 1974 was fined £3,500 for breaches in health and safety law at Edinburgh Sheriff's Court today following a drilling accident in May last year.

The case arose after an accident in Penicuik, Midlothian, involving an employee who sustained multiple fractures to both arms and a broken elbow after becoming entangled with the drill string on a Halco 450 drilling rig.

The HSE undertook a full investigation of the incident and submitted a report to the Procurator Fiscal. Following the hearing in court today Hazel Yuill, an HSE Inspector involved in the case said:

"This was a particularly nasty accident and could have been totally avoided if the correct health and safety procedures had been followed. The HSE welcomes the fine and hopes that it will act as a stiff reminder to all companies using drilling equipment and other heavy machinery that they are responsible for ensuring the safety of their employees. They should act before it's too late. Rotating parts of machinery present an obvious risk of entanglement to persons able to access them during rotation. This is particularly hazardous where there are projecting parts such as drill bits liable to catch in clothing. Safe operation of this machine relied on training, experience and close supervision all of which were very limited in this case. The only safety system present on the machine was a single trip wire, which was not operating correctly and was not checked regularly. There were also no written instructions detailing the work methods to ensure safety."

The HSE have identified the guarding of drilling rigs as a priority area and will be carrying out a series of targeted inspections on this work area in 2007. A fixed guard should be used for the majority of drilling work as the primary method of preventing access to the dangerous parts of the machinery.

The British Drilling Association (BDA) in association with industry and HSE published guidance in 2000 entitled 'Guidance Notes for the Protection of Persons from Rotating Parts & Ejected or Falling Material Involved in the Drilling Process'. This documented the hierarchy of control measures necessary to protect against entanglement and is available from the BDA.

In April 2006 CET Group Ltd were prosecuted in England following an accident on a lorry mounted auger drill, which also had defective and inadequate guarding. Following this successful prosecution a letter was sent from HSE to drilling companies throughout the UK to highlight the need to improve guarding on these machines.

DERBY CITY COUNCIL'S LACK OF MAINTENANCE

The HSE is urging local authorities to review how they maintain their railings and fences, following the death of 12 year-old Vicky Thomas. Vicky died after a section of fence at Osmaston Park in Derby collapsed on 12 May 2003. HSE successfully prosecuted Derby City Council, who on 9 February pleaded guilty to breaching S3(1) of the Health and Safety at Work Act by not ensuring that the railings were maintained. They were fined £42,000 and ordered to pay costs of £58,000 at Derby Crown Court.

Andrew Turner, HSE Principal Inspector said: *"This was a terrible accident which could have been easily avoided if the railings had been properly maintained and obvious faults had been repaired. Local authorities have a duty to ensure their property is safe and that includes railings around parks and gardens operated by the authority. This accident highlights the importance of maintenance. Simple, practical steps such as regular inspection of boundary fencing and walls would stop this kind of incident happening in future."*

BUILDING COLLAPSE

The Health and Safety Executive is warning building contractors that they ignore basic safety standards at their peril. This follows the sentencing of a builder to 200 hours community service, together with a fine of £7,500 and costs of £7,190.58, for breaching a Prohibition Notice which ordered him to stop his work on a site in Elland where a building under development later collapsed.

Shabir Naseem (trading as SH Builders) of Fartown, Huddersfield, pleaded guilty today at Calderdale Magistrates' Court to charges of breaching the Health and Safety at Work etc Act 1974 (the HSW Act) brought by HSE. Despite the Prohibition Notice, Mr Naseem continued to manage construction work without the necessary knowledge, qualifications and understanding of health and safety law and did so in such a manner as to cause a partial collapse of the former Sunset amusement arcade at the junction of Timber Street and Southgate, Elland, West Yorkshire.

HSE Inspector Chris Smith, who investigated the incident, said: *"The outcome of this case could have been far more serious; it was only good fortune that no-one was hurt. You simply cannot manage a construction project safely and effectively without an understanding of, and compliance with, health and safety law. At the very least you put your business at risk, but you also run a very real risk of endangering the lives of your workers and the public."*

An HSE inspector served a Prohibition Notice on Mr Naseem on 24 June 2004, following a site visit which revealed that refurbishment work was being carried out without even the most basic of safety requirements like protective equipment, and training in demolition work. Mr Naseem ignored the Notice and on 17 March 2005 the building suffered a partial collapse as scaffolding was being removed, putting members of the public in danger as shoppers and nearby business owners were obliged to flee the scene.

TRIPLE FATALITY

Enviro-Waste Ltd, its director and its general manager were fined a total of £92,500 at Norwich Crown Court, following the deaths of three workers in a slurry tank in 2004. The prosecution was brought by the HSE following the deaths of the three employees in Thetford, Norfolk, in July 2004, when the men became trapped in a slurry holding tank during their work.

Eddie Scoggins, HSE Principal Inspector, said: *"These three deaths should make clear to all, the extremely dangerous nature of the work in confined spaces. There have now been seven deaths from confined spaces incidents in the East of England since 2003. If any proof was needed, this shows that any work in confined spaces is extremely hazardous."*

Proper precautions must always be taken at all times for this kind of work. Don't enter unless you absolutely have to. If you are going to enter a confined space then you must have fully trained staff, a documented system of work, atmospheric monitoring and emergency rescue arrangements. There may be no oxygen inside, or toxic gases may have built up.

The HSE wishes to make it clear that we expect the risks associated with this type of work to be properly managed in accordance with published guidance, whatever the size of the company. We will continue to take action against those who flout the law and put people's lives at risk."

Enviro-Waste Ltd, of Brunel Way, Thetford (registered company address: Teresa Gavin House, Woodford Avenue, Woodford Green, Essex), pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 (HSW Act) was fined £72,500 and ordered to pay costs of £50,000. The company's director, Roger Arthur Clark, and its general manager, Gordon John Betts, both pleaded guilty to breaching Section 37(1) of the HSW Act and were each fined £10,000.

SMALL FINE—BIG RISK

The Health and Safety Executive is warning firms to make sure proper precautions are in place when working at height after Leicestershire Company, LCL Electronics Ltd of 41-45 The Warren, East Goscote Industrial Estate, Leicester was fined at Loughborough Magistrates Court on 6 February.

In April 2006 Leicestershire man Mr Warren Hurst, a contractor working on behalf of LCL Electronics Ltd to install an extraction system at the firm's base on Craftmans Way, was injured when he fell three metres from a ladder and suffered fractures to both of his wrists. On 6 February the company pleaded guilty to contravening Work at Height Regulations 2005 and was fined £1,500 and ordered to pay costs of £5,438.

Leicestershire HSE Principal Inspector John Marshall said:

"Although this was a nasty injury, it could easily have been a lot worse - every year people working at height lose their lives or suffer serious injury, people have been killed or left disabled from shorter falls from this. Employers need to ensure that work is properly planned for. Had the company assessed the work the ladder would have been identified as unsuitable for the task. Companies need to be aware of the risks of working at height and need to ensure that any work carried out has been properly planned - including carrying out a risk assessment. There are some very simple steps that need to be taken before carrying out any work at height:

1. Plan the work in advance including how you will gain access and how will you prevent falls; 2. Implement the control measures identified in the plan e.g. hire in a cherry picker, protect fragile surfaces; 3. Supervise the work so that the plan is followed and the safety measures are used. Every job is different and you need to go through these steps every time. These precautions are not new and HSE has produced lots of guidance which is freely available on the website. Firms need to ensure they have devised a proper method for doing the job - some employers clearly need to raise their game to stay on the right side of the law.

Throughout Britain 53 people died and nearly 3800 suffered a serious injury in 2004/05 as a result of a fall from height in the workplace. Falls from height are the most common cause of fatal injury and the second most common cause of major injury to employees, accounting for around 15% of injuries at work.

SCHOOL BOY ERRORS WITH SERIOUS CONSEQUENCES

William Hargreaves Ltd was fined £1,500 and ordered to pay £1,774 costs after pleading guilty to a criminal charge brought by the HSE. The case was heard at Hyndburn Magistrates' Court after a 15-year-old work experience boy fell approximately 3m from scaffolding above a loading bay. John Ferguson then 15 was spending two weeks working with bricklayers at Hargreaves' Clearwater Village housing development in Marsh House Lane in Darwen, Lancashire when he fell on 13 July 2004. Following the accident he was taken to Blackburn Royal Infirmary Hospital. He suffered a brain haemorrhage, hurt his spine, had bruises and concussion.

HSE inspector Joanne Eccles who took the case says: *"Falls from height are one of the commonest causes of injury in construction work, yet with proper protective measures, they are easily preventable. In this case the loading bay was protected by a single guardrail that was not secured. Loading bay gates should have been fitted. Hargreaves Ltd completed risk assessments relating to prevention of falls and erection of scaffolds and a young person's risk assessment was carried out, but they had not been forwarded to the site manager who was unaware of John's presence on site so he was not inducted into health and safety procedures. He was working among a team of five, assisting bricklayers with carrying of bricks, moving mortar and generally helping them. He was working on scaffold throughout this time."*

William Hargreaves Ltd of Swift House on the Bradley Hall Estate at Standish in Wigan breached Regulation 6(1) of the Construction (Health, Safety and Welfare) Regulations 1996 by failing to take suitable and sufficient steps to prevent, so far as is reasonably practicable, persons from falling.

HSE WARNS CONSTRUCTION SITE WORKERS OF THE DANGERS OF CARBON MONOXIDE EXPOSURE

The Health and Safety Executive has issued a reminder to people on construction sites of the dangers of using equipment powered by internal combustion engines in confined or poorly ventilated spaces.

It follows an accident on 22nd December 2006, where three men suffered fatal poisoning from carbon monoxide on a construction site in Reading. The source of the carbon monoxide is believed to have been a generator, which was being run inside a steel storage container. Contrary to previous reports, it does not appear that the men were sleeping inside the container.

Construction sites should also beware that (flueless) open flame heaters fuelled by natural gas or Liquid Petroleum Gas (LPG), require an adequate supply of fresh air to prevent formation of high concentrations of carbon monoxide.

The HSE, who have been assisting the police, have now taken the lead for this investigation. Karen Morris, Inspector of Health and Safety, states, "*This is a tragic accident which could have been prevented by taking simple precautions. People need to be aware that plant and equipment powered by engines are potential killers if they are not used with adequate ventilation.*"

INSPECTIONS TARGET WORK AT HEIGHT

Scotland's farmers are being warned to take extra care when working at height. During February, HSE Inspectors are carrying out a series of intensive farm inspections, throughout the country, focusing on buildings maintenance and other work at height, including regular tasks such as filling diesel tanks.

Inspectors will make unannounced visits to farms. Although they will check on other safety critical issues during their visits, they will pay particular attention to prevention of falls from height. This will include the planning and arrangements in place before work begins, but will also look at whether steps have been taken to avoid work at height in the first place.

Latest GB figures show that in 2005/06 46 people were killed in falls at work. This was the lowest ever figure, which shows that real progress is being made in controlling risks at work. However, 13 percent of all fatal accidents on farms involve falls. HSE's objective is to prevent some of the tragedies this figure represents by ensuring, for example, that building maintenance following winter gales do not add to this dreadful toll.

Principal Agriculture Inspector Cheryl Anthony commented:

"Every year there are needless deaths and disabling injuries in agriculture when farmers and workers take risks at height. The problem usually starts with lack of planning or poor planning. As a result, the right equipment may not be available and corners are cut. The risks, for example of falling from a ladder that is not suitable for the job in hand, or of falling through or off roofs, are usually fairly obvious. Sorting out the right controls may take time, and farmers should resist the temptation to start work before they have the right equipment. Every year farmers work on fragile roofs by 'walking the bolts' that secure the roof sheets to the purlins. This is as safe as walking the tightrope without a safety net. Farmers need to ensure they take sensible steps to manage risks. To help farmers do this HSE has produced a free Farmsafe risk assessment software tool available on the 'Agriculture' home page on HSE's website: <http://www.hse.gov.uk>. The tool helps farmers identify the control measures relevant to fall from height risks, and includes links to published practical guidance. However, farmers may need to recognize that some work really ought to be done by an experienced, competent contractor, who will provide the right equipment for the job."

RECRUITMENT AGENT'S COSTLY CONFISCATION

Adrian Michael Farmer used a fraudulent website to rip off workers has been convicted and ordered to pay more than £20,000 in a compensation order by Swansea Crown Court for running an illegal employment agency.

He was found guilty of charging vulnerable workers up to £124 a time for falsely claiming that he could find them work overseas, despite being banned in November 2003, from running an employment agency for 10 years. At a hearing at Ceredigion Magistrates' Court on 9 October 2006 Mr Farmer who was based in Llandysul was found guilty of operating his recruitment website whilst prohibited by the Department of Trade and Industry. The DTI made an application to the Magistrates' Court for the case to be passed to the Swansea Crown Court for sentencing and for confiscation proceedings under the Proceeds of Crime Act 2000 to be considered.

The Crown Court found that Mr Farmer did benefit from the proceeds of crime and ordered him to pay a confiscation order of £20,387.86, which included compensation to two workers. In addition the Court sentenced Mr Farmer to a fine of £2,500 for 3 charges of operating his employment agency whilst prohibited. Mr Farmer's defence informed the Court that Mr Farmer might have to sell his home to comply with the orders of the Court.

Jim Fitzpatrick, Employment Relations Minister, said: *"This prosecution underlines our message to rogue agents that we will not hesitate to act against any agency that wrongly and wilfully ignores the law or rips off workers. It is essential that employment agencies comply with the legislation and the DTI will continue to take whatever action is necessary, including prosecution and prohibition, to protect workers against these illegal practices. The Government is committed to cracking down on these agents, we have launched a consultation on a package of measures to protect vulnerable agency workers and we are working to ensure that enforcement is targeted where there is risk."* Mr Farmer used a website to attract potential victims. The website indicated that he could find people jobs overseas and he charged them to access job information. His website has been closed down.

Ed—confiscation orders under the Proceeds of Crime Act 2000 are becoming increasingly commonplace—even for comparatively minor offences. Any conviction for offences where a defendant has benefited unjustly from his criminal activity or his “criminal lifestyle” is likely to attract the attention of the authorities. Each Crown Court has been given a monetary target of confiscations to achieve. I'm not entirely sure how such targets fit with the concept of justice—but then I obviously have an old fashioned view of the criminal justice system.

COSTLY ASBESTOS OFFENCES

Two Lancashire companies were fined a total of £25,000 and ordered to pay total costs of £11,788 after pleading guilty at Blackpool Magistrates Court to criminal charges brought by the HSE after employees were exposed to asbestos during refurbishment work. In The Pink Leisure Ltd of 44 Queen St, Blackpool were fined £10,000 and ordered to pay £4,753 costs after pleading guilty to a breach of Section 3(1) of the Health and Safety at Work Act which requires them to protect the safety of persons not in their employment. Their contractor Eclipse Developments Ltd of Chapel St, Poulton le Fylde were fined £15,000 and ordered to pay £6,535 costs after pleading guilty of a breach of Section 2(1) of the same act which requires them to protect the safety of their own employees. The cases arose from an HSE visit - made in April 2005 following a complaint - to the site of a new night club in the upstairs of the former Odeon Cinema in Dickson Road, Blackpool above the existing Funny Girls Nightclub, operated by In The Pink Leisure Ltd.

HSE lead construction inspector for Lancashire Mark Cottrill says: *"A substantial amount of asbestos insulating board and flock asbestos was disturbed while the refurbishment was being carried out in the upper circle, leading to the construction site being closed for a number of weeks while a licensed asbestos contractor was called in to carry out an environmental clean and the removal of the remaining asbestos. Both companies had had previous advice in relation to asbestos on the site following a visit from HSE in January 2002, when a full survey was carried out and an amount of asbestos removed. Unfortunately nobody had referred back to the existing survey which identified asbestos being present in the upper circle. The prosecution was taken because of this failure and the consequent exposure of up to a dozen employees working in the construction being exposed to asbestos containing materials. Following checks we were able to confirm there was no contamination of Funny Girls night club."*

FINE FOR IGNORING HIGHWAYS AGENCY TRAFFIC OFFICER

Drivers who think they can ignore traffic directions from the Highways Agency's uniformed Traffic Officers are being reminded that they could face a hefty fine.

Under the Traffic Management Act 2004, Highways Agency Traffic Officers have powers to direct and divert traffic; stop traffic and close roads, lanes and carriageways; place and operate traffic signs; manage traffic and traffic surveys. Not complying with a Traffic Officers' directions or signs could lead to a fine of up to £1,000, driving licence endorsement and even disqualification.

Last month, in the first case of its kind in the country, a 45 year-old driver from Tonbridge in Kent was heavily fined for ignoring the instructions of a Highways Agency Traffic Officer. The motorist pleaded guilty to a charge of failing to comply with the Directions of a Traffic Officer and driving on the hard-shoulder. He received fines totalling £500, three points endorsement to his licence and £35 costs.

It happened while a Highways Agency crew were holding back traffic on the M25 so that Traffic Officer colleagues could go onto the carriageway to safely cone off a crash involving a lorry and a car.

Tony Burden, Network Operations Manager for the South East of England said: "*Traffic Officers do a difficult job in often dangerous circumstances. It is vital that motorists comply with their directions to ensure the safety of road users and the safety of highways staff, the emergency services and others when incidents happen on the roads. Traffic Officers work closely with the police and we are pleased to hear about this successful prosecution. The sentence sends a clear message to anyone else who is tempted to ignore instructions from a Traffic Officer.*"

Traffic Officers have no active role in law enforcement but will give evidence to the Police to prosecute drivers who cause danger by failing to comply with their directions.

Inspector Geoff Wood from Kent Police said:

"This driver not only put his own safety at risk but that of other motorists. This case sends a message that Kent Police will prosecute drivers who ignore instructions - the failure by any driver to comply with directions given by Highways Agency traffic officers or police officers is a serious matter. Kent Police works closely with the Highways Agency to reduce casualties on the roads and are committed to improving safety."

HSE REMINDS WORKERS OF WORKING AT HEIGHT RISKS

Richard Bradley, 24, fell 10 metres from a Mobile Elevated Work Platform while working on some high level suspended cables at Manor Royal Industrial Estate, Crawley on 25th January 2007. Mr Bradley suffered severe spinal injuries and fractured ribs in the incident. He has since been transferred to a North East hospital for continued treatment. In a short statement, the family said: "*This is a very distressing time for the whole family and our thoughts at this moment are focused on Richard's health. We are grateful for the messages of support already received and would appreciate our privacy at this time to focus on Richard's health.*"

An HSE spokesman said: "*An investigation into this incident was initiated on the day of the accident, and we will work with all involved to establish the facts of the issue before deciding on the most appropriate course of action.*"

Last year, over 3,700 major injuries were recorded from falls at workplaces across the UK. Over the same period, 53 people died falling from a height at work.

REVIEW OF DODGY “EXPERT” EVIDENCE

The Attorney General has announced that he will conduct a review of cases where Professor David Southall, a consultant paediatrician, was involved as a prosecution witness.

The General Medical Council is conducting a hearing into Professor Southall's conduct, part of which relates to the holding of medical records. Professor Southall is alleged to have kept separate files on some patients, including files on cases which may subsequently have been subject of criminal prosecutions, and where proper disclosure of medical records may not have been made.

In a written ministerial statement to the House of Lords today, the Attorney General, Lord Goldsmith, said: *"It is said that Professor Southall kept so-called 'special case' files containing original medical records relating to his patients that were not also kept on the child's proper hospital file. Concerns have been raised that in some of those cases criminal proceedings may have been taken but the existence of the files not revealed, resulting in their not being disclosed as part of the prosecution process. I share those concerns. What is not clear at this stage is the nature and extent of the failure of disclosure, if such it be. I have therefore decided that I will conduct an assessment of the cases where Professor Southall was instructed as a prosecution witness to determine if any 'special case' files existed in any cases involving criminal proceedings. Once that assessment has been completed, I will decide what, if any, further review is required."*

There are believed to be around 4,450 'special files', and the review will go back 10 years. As a result of work previously done on Sudden Infant Death cases, cases where children died and Professor Southall appeared as a witness have already been identified.

The review will be conducted by the Attorney General's Office with assistance from the Crown Prosecution Service.

Ed- Where doctors are engaged as prosecution witnesses, they are obliged to record, retain and reveal all their material, either in statement or report form as evidence or, if not evidence, in an index of unused material. This is the case for any expert witness.

I find the sort of abuse that may have happened here to be the worst sort of abuse the state can perpetrate. The hallmarks of a civilised society, is in my view, most discernable in the criminal justice system. Our prosecutors and their experts should be more concerned about the sanctity of the criminal justice system and the need to be fair, open and transparent to the defendant and his legal team rather than the pursuit of convictions or the “lap of honour” associated with a successful prosecution.

CAUGHT IN THE ACT

Michael Allinson of Halton Moor Road, Leeds, and Lakeland Property Consultants and Management Co. Ltd. of Dewsbury Road, Cleckheaton have been fined £1,500 plus costs of £315 each. Michael Allinson pleaded guilty to a charge under Regulation 6(3) of The Work at Height Regulations 2005 for failing to take suitable and sufficient measures to prevent workers falling a distance liable to cause personal injury prior to work starting at the site. Lakeland Property Consultants and Management Company Ltd, who were the client for the work, pleaded guilty to a charge under Regulation 10 of the Construction (Design and Management) Regulations 1994 for failing to ensure a health and safety plan was in place that took account of all the risks involved in the construction work such as work at height prior to work starting on site.

HSE inspector John Rowe found Michael Allinson and his two employees risking serious injury as they dismantled a roof whilst standing on top of it at the former Polar Garage in Wombwell Lane, Barnsley, with no form of edge or other protection to prevent them falling either through the fragile roofing sheets and roof lights from the edge created internally by the removal of roofing sheets, or from the edge of the building, on to an area of hard standing almost twelve metres below. John Rowe said: *“Working in this way is sheer folly.”*

WHAT'S NEW

NOT THE VALENTINE'S DAY MASSACRE !

HSE inspectors will be making a date with farmers in South Dorset on St Valentine's Day (14 February) this month, when they carry out an inspection 'blitz' to promote the dangers of 'Falls from Height', 'Workplace Transport' and 'Asbestos'.

Inspectors will be paying a surprise visit to farms in the Purbeck area of Dorset and, as well as carrying out their normal health and safety duties, they will be dispensing advice on how to avoid typical falls from height, how to reduce the risks posed by agricultural transport - particularly telescopic handlers and quad bikes - and the precautions that need to be taken if asbestos is found or suspected in buildings or materials. HSE has discussed the issue of asbestos with the National Farmers Union (NFU) and inspectors will be promoting the Union's guidelines on dealing with asbestos in the agricultural sector - 'The Use, Management and Disposal of Asbestos in Agriculture' - when they visit the farms, leaving behind useful information and contact details on their departure.

HSE Inspector, David Bell, one of the team carrying out these inspections, explained the importance of the visits: *"About half of all agricultural fatalities - that's approximately 50 deaths each year according to national statistics - are caused by either a transport-related accident or a fall from height - and quad bikes and telescopic handlers are particularly dangerous forms of workplace transport on a farm. General industry knowledge also suggests that serious injuries caused by falls are a significant problem in the agricultural sector but we don't have any actual statistics because of the problem of 'under-reporting' when it comes to non-fatal incidents. Asbestos is another danger area we are keen to highlight since there are numerous old buildings and structures on farms which could contain the material and this is very likely to be disturbed when the farmer and his labourers carry out repairs or demolition. The aim of our visits is primarily to encourage farmers to acknowledge the seriousness of health and safety measures and to take practical steps to protect themselves, their workers and any visitors to the farm from the dangers of a working farm. We will be offering information and practical, simple advice on how to avoid the types of tragic incident we've seen in the agricultural sector over recent years and explaining what the law requires. Hopefully, this 'blitz' will leave Purbeck farmers with a date to remember rather than one they wish to forget!"*

The HSE team aim to visit up to 20 farms during the course of the day and will be focusing their attention on:

- building and vehicle maintenance and repair
- training and competence of vehicle operators
- cleaning of grain stores, pits, silos and elevators
- construction, maintenance and use of equipment for access to and carrying out of work at heights
- asbestos safety guidelines

Farmers visited will be expected to demonstrate a realistic awareness of the potential hazards on their farms and of the health and safety risks that these hazards represent. They will be expected, also, to have taken any action necessary to ensure the health and safety of all those working on the farm.

DTI SCIENCE REVIEW OF HSE

A new study examining how the Health and Safety Executive (HSE) manages and uses science as part of its planning and policy-making, was published by Sir David King, the Government's Chief Scientific Adviser.

The report is the third in a series looking at how each Government department can continue to improve its use of science.

The report commends HSE's recent work to strengthen its management systems for commissioning research and its open publication system.

It also recognises that, where appropriate, HSE is prepared and able to challenge established orthodoxy regarding the science supporting health and safety issues, both nationally and internationally. It develops, conducts and uses high-quality, groundbreaking, well-reviewed scientific evidence to support its position, and engages in external debate of the findings and implications.

The report, amongst other things:

- Recommends that the size and balance of the scientific expertise within HSE and its in-house agency, the Health and Safety Laboratory, is strategically reviewed on a regular basis.
- Emphasises the need for good knowledge management - ensuring that knowledge is both captured and reviewed effectively.
- Identifies some systems that would benefit from being strengthened.

Sir David King said: *"I am pleased that over the past few years HSE has been actively developing and improving its approach to using and obtaining science. In particular, it is vital that HSE maintains its scientific capability to respond to accidents and incidents, and to keep on top of day-to-day policy and regulatory demands. Every Government department needs to draw on the highest quality science and research as part of the policy-formulation process. Policy solutions, which are based on no science or bad science, can be costly, both in terms of resources and reputation. Through reviewing each Government department's use of science we can improve the way science is managed, understood and drawn on as the basis for better policy making."*

Ed— The Government's Chief Scientific Adviser, Sir David King, has set up a rolling programme of reviews to assess the quality and use of science by Government departments. For the purposes of the reviews a broad definition of 'science' is used, which includes natural sciences, social science, economics and statistics.

The overall aims of the review programme are to:

- (a) Maintain and improve the quality and use of science in government.
- (b) Review existing departmental systems for assuring the quality, management and use of their science;
- (c) Disseminate examples of best practice from within the UK and abroad;
- (d) Inform and support the Government's Chief Scientific Adviser in his role of "advising the Prime Minister and the Cabinet on the overall health of science and scientific research funded by Government departments".

In order to formulate a view on the quality and use of science in HSE, the review focused on ten success criteria that underpin good practice in the use of science by Government departments, to identify both areas of good practice, especially those that could be adopted elsewhere, as well as areas for improvement.

PROTECTING HEALTH AND SAFETY OF WORKERS JOINT HSE AND TUC CONFERENCE

Reducing the 4.3 million days lost each year in the North West through work related injuries and illness is the theme of a conference in Manchester on Thursday 8 February. The costs of work-related ill health and injury in the region has have been estimated to be as much as £300 million. Adding in the non-injury costs such as damage to plant and equipment brings the figure to over £800 million.

'Working Together for a Healthy Workplace' is to be held at Lancashire County Cricket Ground, aims to raise awareness of how work can be made a safer and healthier place for staff by reducing the main causes of absence: back pain, stress, depression and anxiety.

Jointly organised by the HSE and the North West TUC, the event is aimed at health and safety representatives, who will look at stress in the workplace - including bullying and harassment -and also at back pain, repetitive strain injuries, and how exposure to chemicals can cause occupational asthma, dermatitis and cancer.

Keynote speaker will be Health and Safety Commissioner Hugh Robertson who is a senior policy officer on health and safety at the TUC and a member of the Industrial Injuries Advisory Committee.

Health and Safety Executive North West Regional Director David Ashton said:

"Simple precautions can greatly reduce the misery and expense caused by work related injuries and illness. This is the message that we are trying to get across through campaigns such as our 'Better Backs Campaign' and through enforcement action where necessary.

Stress is the adverse reaction people have to excessive pressure or demands. There is a clear distinction between pressure, which can create a 'buzz' and be a motivating factor and stress from overbearing pressure. Companies have a legal duty to ensure the health, safety and welfare of their employees and tackling stress positively can help improve employee commitment to work, performance and productivity, customer satisfaction, as well as reduce staff turnover."

HSE CARLISLE CONSTRUCTION SEMINAR

Cumbrian construction firms will be given free advice at a Working Well Together health and safety event held at Carlisle United FC on Thursday 22 March 2007.

The event is one of a series of free partnership events designed to raise awareness of key health and safety issues in the industry and also giving advice on how to avoid risks on building sites.

"The event is a must for anyone running a small building, construction or contracting company or if you are self employed," says HSE Construction Inspector Dave Charnock. "It will focus specifically on construction as one of the worst industries for incidents in the UK. The day is designed to make all those working in construction take health and safety matters more seriously. An alarming number of incidents take place in this industry, many of which could be avoided with a few sensible precautions. We will giving short talks on some of the most common problems in occupational health and work at height, including hand arm vibration; noise; manual handling; welfare issues; scaffolding; and ladders and steps. All these lead to serious but preventable accidents and injuries. A morning spent with us could prove very valuable to your long-term health and safety and that of your workers."

PIG FARMERS GET HELP TO SAVE THEIR BACON

The HSE is holding its first ever health and safety day aimed exclusively at the pig industry..

Farming can be a risky business. Agriculture has one of the worst fatal accident and occupational ill health records of any major employment sector - despite representing only 1.7 per cent of the workforce it still accounts for 16% of the fatal injuries to workers across the country.

Working with the industry to make farms a safer place, HSE is staging two half-day events which will focus on giving small family businesses free expert help on health issues like noise, dust and skin diseases and advice on the use of site transport like skid steers, tractors tele handlers and slurry tankers. Site housekeeping will not be forgotten either with issues like working at height, asbestos, electricity, pressure washing, and slips and trips covered, as well as animal handling

As well as offering advice, the event will give farmers the chance to discuss legal matters and will help them spot hazards and identify precautionary measures, whilst allowing them to meet and swap stories with others in the pig farming industry. The day will consist of two seminar presentations, followed by four accident scenarios demonstrated by instructors with industry experience.

The event is aimed at managers or senior members of staff, and those attending will be given a free pack that includes guidance from the HSE.

HSE'S EVENT PUTS THE SPOTLIGHT ON BACK INJURY

Back injuries amongst employees can seriously damage the productivity of a small business, so the Health and Safety Executive (HSE) today joined forces with the Federation of Small Businesses (FSB) to hold a conference on the problem.

Back injuries amongst employees can seriously damage the productivity of a small business, so the Health and Safety Executive (HSE) today joined forces with the Federation of Small Businesses (FSB) to hold a conference on the problem. The half-day event, which was in support of the Welsh Assembly Government's Welsh backs campaign, was attended by small businesses from across North Wales, and included presentations from insurers, health professionals, the FSB and HSE.

HSE Principal Inspector Chris Ward said: *"It's a false economy to disregard good health and safety practice as being too expensive, when an accident can cost businesses a lot more money in the long run in terms of sick pay, insurance claims, and ultimately possible enforcement action. With back pain, it is accepted that it is not always preventable, and this event has provided medical advice on the best ways to reduce the risk of incurring back injuries."*

EDUCATING THE EDUCATORS

Over 50% of all accidents in education are caused by a slip or trip and in a bid to reduce this, the Health and Safety Executive (HSE) is holding a Midlands workshop at Warwickshire College on 8 March 2007. HSE Awareness Officer Sarah Wilson said: *"Last year there were 1962 slip and trip major injury accidents in the education sector and 571 of those were to employees. We are now working closely with the education sector including universities and colleges to reduce this number. 90% of the slip and trip accidents resulted in a broken bone. This meant that last year 513 employees were off work for a significant amount of time due to a broken bone. This event is aimed at managers working in the further and higher education sectors from across the Midlands and will give guidance on assessing the risks of slipping and tripping and what can be done to control them."*

During the day, areas of greatest risk will be highlighted in a practical way combining the latest information on a variety of topics including: Legal requirements, Identifying slip hazards, Cleaning, Design of buildings

TOUGHER PENALTIES FOR MISUSE OF PERSONAL DATA

For the first time courts will be able to jail people who trade in - or deliberately misuse - the personal data of others, in a move to crack down on the illegal trade in personal information.

The decision follows a public consultation on increasing penalties for deliberate and wilful misuse of personal data and is part of the Government's strategy on data sharing to deliver better public services to individuals.

The Government has been increasingly concerned about an apparent growth in the trade in personal data. Current penalties of a fine in the Data Protection Act 1998 (DPA) have not provided a sufficiently strong deterrent. These concerns were highlighted in special reports to Parliament by the Information Commissioner, What Price Privacy, and What Price Privacy Now?

Lord Falconer, Secretary of State for Constitutional Affairs and Lord Chancellor, said:

"We are determined to do all we can to stamp out this intrusive and illegal trade. People have a right to have their privacy protected from those who would deliberately misuse it and I believe the introduction of custodial penalties will be an effective deterrent to those who seek to procure or wilfully abuse personal data. Greater data-sharing within the public sector has the potential to be hugely beneficial to the public and is wholly compatible with proper respect for individuals' privacy. One of the essential ways of maintaining that compatibility is to ensure the security and integrity of personal data once it has been shared."

Section 55 (4-8) of the DPA makes it an offence to sell or offer to sell personal data which has been (or is subsequently) obtained/ procured knowingly or recklessly without the consent of the data controller.

The Government intends to amend section 60 of the DPA to increase the penalties available to the Courts. Currently section 60 provides for:

- On summary conviction, a fine not exceeding the statutory maximum (£5,000) ; and
- On conviction on indictment, an unlimited fine.

To deter people from trading in personal data, the Government intends to amend section 60 of the DPA to allow for, in addition to the current fines:

- On summary conviction, up to six months imprisonment (increased to twelve months imprisonment in England and Wales when s154 of the Criminal Justice Act 2003 comes into force); and
- On conviction on indictment, up to two years imprisonment.

The Government will introduce this amendment when Parliamentary time allows.

BUPA PROSECUTED FOLLOWING BED RAIL ENTRAPMENT

BUPA was prosecuted at Frome Magistrates Courts on Friday, 2 February, under s3 HSWA 1974 and Regulation 4 (3) of the PUWER 1998, following an incident three years ago at the Clare Hall Nursing Home in Stone Easton, Somerset. The company pleaded guilty to both charges and was fined £18,000 for the Section 3 and £5,000 for the Regulation 4; it was also ordered to pay full costs of £12,607.60.

HSE conducted a joint investigation with the Commission for Social Care Inspection (CSCI) following the death of an 80-year-old resident, Eleanor Newton, at the Somerset care home on 17 April 2004. Mrs Newton was found entrapped in a set of bed rails fitted to her bed and died shortly afterwards. The post mortem on Mrs Newton's death was 'indeterminate' and did not establish a direct link between the entrapment and cause of death.

However, it is evident that Mrs Newton was in a situation of high risk and HSE secured a successful prosecution relating to the company's failure to ensure that BUPA's overall bed rail policy was properly implemented at Clare Hall. This failure resulted in poor risk assessment and awareness of potential risks, inadequate staff training and unsuitable rails being used.

HSE Inspector, Helen Sherwood, who investigated the case, said: *"This prosecution should send a clear message to all care home owners about the risks associated with their everyday equipment. Bed rails might look harmless but if they are incorrectly fitted or if unsuitable rails are used or if staff are inadequately trained - particularly in the case of elderly and frail residents - then they could pose a real danger. I'm pleased to say that Clare Hall and BUPA overall responded very positively to the two enforcement notices served during our joint investigation with CSCI and improvements have already been made. We now want other care homes to be equally responsible - let's not wait for a tragedy to strike before the message gets through."*

BUPA is currently working with HSE and other authorities in developing a comprehensive bed-rail training package which should be available later this year to interested parties. .

LINPAC LEGIONELLA RISK

The HSE has warned companies to ensure that water chiller systems are adequately treated to prevent outbreaks of legionella - which affects more than 250 people nationally every year.

The warning comes after LINPAC Materials Handling UK Ltd was fined £2,500 and costs of £13,000 at Aldridge and Walsall Magistrates' Court on Monday 5 February after pleading guilty to a breach of Section 2(1) of the Health and Safety at Work etc Act 1974, for failing to adequately control the risks from legionella at their Walsall site between 5 January and 3 March 2004.

Speaking after the case, HSE investigating inspector Angela Gallagher said: *"Companies need to be aware that any system containing water at a temperature likely to exceed 20oC and which may release an aerosol during operation or maintenance presents a foreseeable risk of exposure to legionella bacteria. Linpac had neglected to take action to control that risk in their chiller system. They had also failed to prevent unsafe working practices which created exposure to potentially infected aerosols."* During a visit to the Linpac site at Newfield Close, Green Lane, Walsall, HSE inspectors found evidence of poor maintenance of the chiller unit at the factory. There was also a lack of biocide treatment - used to inhibit the growth of legionella - within the unit



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Incidentally Brunswicks was the first UK law firm to create podcasts.

IN BRIEF

In response to recent media coverage of the Health and Safety Executive's (HSE's) safety record, Deputy Chief Executive (Operations), Justin McCracken, said:

"The rates of accidents and injuries in HSE are low compared with other organisations, as you would expect. HSE gave this information, and explained it, to the journalist concerned who contacted us about accident rates. The resulting media coverage is misleading and inaccurate. It does not compare like with like. Instead it takes all HSE injuries (even the most minor ones) and then compares them with only the most serious injuries in industry. There are far more minor accidents (that, by law, do not need to be reported) occurring within industry than serious ones, so it is not surprising that the conclusions drawn are misleading. For example, if you compare like with like, HSE had a rate of around 2.4 reportable accidents for every 1,000 employees which is several times lower than that in equivalent service sector organisations. Readers should also be made aware that the health & safety "inspector", caught shaving whilst at the wheel of his car and banned from driving, is not an HSE employee."