

# Brunswicks Regulatory News

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## Managing Health and Safety

Tulip Ltd, of Caxton Way in Thetford, was fined £265,000 with £21,653.35 costs, at Norwich Crown Court today (May 21) following several breaches of health and safety regulations.

On 4 October 2005, Tulip employee Michael Warnes, from Thetford, had three of his fingers amputated in a machine used to seal plastic food packaging. During the investigation it was identified that the machine was not adequately guarded and Tulip was found in breach of section 2(1) HSWA for which they received a fine of £120,000. Then on 28 Nov 2005 self-employed contractor Korim Richardson suffered a severe electric shock while changing a light fitting at the same site on Caxton Way. Mr Richardson was working on a ladder at the time of the incident and the electrical surge caused him to swing back with the ladder leading to cracked bones in his shoulder. The HSE investigation identified a failure to maintain the electrical system at the site breaching section 4(2) of the Electricity at Work Regulations 1989. Tulip received a fine of £100,000 for the breach.

Finally, on 26 February 2006 the company was served a Prohibition Notice after allowing their employees and contractors from Ecolab to access wooden walkways over a suspended ceiling at the site. The walkway did not have full guardrails at the sides so employees and contractors risked falling some 60ft through the ceiling onto the production floor. Tulip were fined £45,000 after being found in breach of section 4(2) HSWA. Ecolab was also sentenced at an earlier hearing.

HSE Inspector, Steve Gill said:

*"Tulip has received fines consistent with the failure to manage health and safety issues at their site in Thetford. The company has exposed their employees to potentially dangerous situations and HSE will not hesitate to take action against those who fall short of the law in such a way."*

Ed - the fines are very significant revealing both the ability to pay of Tulip and the extent of the criminality determined by the court.

## London Bus Company Fined

London Central Bus Company Limited was fined £60,000 and ordered to pay costs of £15,347 at The Central Criminal Courts (the Old Bailey), after the company pleaded guilty to breaching Section 2(1) HSWA.

HSE Inspector Loraine Charles said:

*“This is an example of a company putting its employees in unnecessary danger by failing to control risks and take appropriate measures to create a safe working environment. On paper, London Central Bus Company had a reasonable system for controlling risks to their employees but they failed to properly implement it. They failed to focus on areas of danger and missed what the Judge, in this case, described as ‘blindingly obvious risks’. The company were aware, following the previous fatal incident, that risks arising from work around vehicle pits were significant and potentially fatal but failed to ensure that they had identified and addressed all tasks where such risks arose”.*

On 21 October 2005, Omar Maouche, a bus chassis cleaner at New Cross Bus Garage, New Cross, London, fell into a vehicle inspection pit as he attempted to use a partial pit cover as a bridge to cross from one side of the pit to the other. He suffered compression of the spine, which has severely affected his working life since.

London Central Bus Company was found to have failed on many levels to ensure the safety of its employees. It had failed to carry out and implement the findings of a risk assessment which identified the hazards in Mr Maouche’s work, nor did it provide a system of work for this job that was safe and without risks to health. It had also failed to take effective measures to prevent falls in the workplace. In addition, the company did not provide employees with information about risks and their prevention, nor give the necessary training and supervision to ensure employees’ health and safety.

The failings in this case were compounded by the fact that another of the company’s employees died after falling into a vehicle pit at the same garage in July 2004. Concerns about the adequacy of the company’s risk assessments, the covering or fencing of vehicle pits when not in use and their general system for the management of health and safety had been raised during the HSE’s investigation into the earlier accident, but London Central had failed to adequately address those concerns in the intervening 15 months.

## Agency Worker Loses an arm

Airbags International Limited of Viking Way, Congleton, Cheshire, which manufactures components for vehicle safety airbags was fined £30,000 and ordered to pay £4,500 costs when they appeared at Chester Crown Court sentencing.

The company had pleaded guilty at Crewe Magistrates Court to a charge under s 3 (1) HSWA that it failed to ensure a person not in their employment was not exposed to risks to their health and safety.

The court heard that agency worker Oliver Britton was working at the factory on the 3 September 2007 when he was tasked with changing a roll of fabric on a machine. Oliver Britton was holding the fabric in place on the machine in the 'danger area' when a colleague started up the machine and Mr Britton's right arm became trapped. He was taken to hospital with severe injuries including several compound fractures and endured 11 hours of operations before his arm was amputated.

Health and Safety Executive Inspector Iain Evans said:

*"This was an entirely avoidable incident. Oliver Britton has suffered the loss of an arm because the company failed to provide a safe working environment. This should serve as a timely warning to all companies that they have a clear responsibility to ensure the health and safety of their work force. There is plenty of guidance available from within the industry and HSE on how to comply with the law."*

The court heard that because of problems ensuring adequate adhesion when fitting new rolls, it was common for a person to hold the fabric in place in the 'danger zone' while the machine was started. This procedure had been in place for three years, with supervisors aware of the practice. The company had carried out a risk assessment but this assessment failed to identify the risk.

Ed – It must be wondered why a "danger area" is so called?

## **Excavation Company Fined**

David Farrow received internal injuries and a broken pelvis in the incident, which occurred on 2nd May 2006 at a site in Rhostyllen, Wrexham, where the company were installing a septic tank system.

HSE inspector Debbie John said:

*"Construction has a significant number of risks to health and safety which need to be managed properly. There was a systematic failure by Winnington Construction Ltd to manage the risk on this site, which resulted in Mr Farrow falling into the excavation and receiving quite serious injuries. All employers have a responsibility to ensure that safe working practices are in place, because failure to do so could well cost them dearly in terms of lost working hours, and any resulting enforcement action."*

## Carbon Monoxide Incident

Hussein Jajbhay, director of property company Amadeus Investments Ltd, was fined £20,000 and ordered to pay £35,000 costs at the sentencing today at Blackfriars Crown Court, having previously pleaded guilty to two counts under HSWA.

Bill Hazleton HSE Inspector said:

*“This tragic case emphasises the importance of maintaining and checking gas appliances. Carbon Monoxide gas is a silent killer, you cannot smell or see it. Landlords have a duty to maintain their gas appliances, and it is illegal and highly dangerous not to have them checked yearly by a competent, registered gas fitter. Currently, only CORGI is recognised by HSE to register gas installer.”*

Six-year-old Elisabeth Giauque was living with her family in a rented house in Castle Close, Wimbledon. On 4 February 2005 her parents went out for the evening, leaving their three children in the care of the nanny. On their return they found Elisabeth unconscious in her bedroom. She was rushed to hospital where she died two days later. It was later established that she died from carbon monoxide poisoning.

Four days later, two other family members who had stayed overnight in Elisabeth’s room, collapsed and were taken to hospital. They were also found to be suffering from carbon monoxide poisoning.

It is the duty of the landlord to ensure gas appliances, boilers and flues are maintained in a safe condition. An annual safety check must be undertaken by a registered installer, who must provide a record of the inspection.



Hussein Jajbhay was the owner and landlord of the property at Castle Close. The last service and maintenance of the boiler at the property was carried out in January 2002. A landlords’ gas safety certificate was issued following an inspection in January 2003, which expired more than 12 months before the fatal incident.

Hussein Jajbhay pleaded guilty to two charges under 37(1) HSWA for failure of maintenance and failure to maintain a gas fitting in a safe condition.

## And another..

In 2005/6 16 people died from carbon monoxide poisoning caused by appliances and flues that have not been properly installed or maintained. Tenants should ensure that they are provided with current gas safety certificates.

The warning comes after landlord Peter Neil Ingram from Lowsonford was fined a total of £2,000 with £1,777 costs by Stratford-upon-Avon Magistrates Court. Prosecution follows an HSE investigation into the removal of part of a flue on a rented house in Wetherby Way, Stratford-upon-Avon. Mr Ingram pleaded guilty to breaching the Gas Safety (Installations and Use) Regulations 1998 and was fined £1,000 for breaching each of Regulations 8(2) and 36 (2).

In July 2006 the tenant called out an engineer after a Carbon Monoxide detector had activated and the tenant's 18-month-old son had displayed sickness symptoms. The engineer disconnected the gas supply and served a Warning Notice marked 'immediately dangerous'. The engineer noted that the flue of the central heating boiler, on which Mr Peter Ingram, husband of the property owner, had been working, was incorrectly fitted and highly likely to cause the generation of toxic Carbon Monoxide gas within the property.

Mr Ingram knew that work on gas appliances was to be conducted only by suitably qualified Corgi-registered installers but even when challenged by a neighbour had continued to undertake the work. A flue terminal was absent, the height of the flue was insufficient over a conservatory roof and the installation was left with other potentially dangerous faults. Access to the flue terminal had been gained via a neighbouring property and the occupier of that property informed their neighbour that his landlord had altered the gas flue installation in a way that was obviously incorrect, even to a layman.

Speaking after the case, HSE prosecuting inspector Neil Craig said:

*"The dangers of incorrectly fitted gas installations are well known. Such dangerous work, like that seen at the property in Stratford, puts lives at risk from both carbon monoxide poisoning and fires in the home. This case should serve as a reminder to home owners and tenants that any work undertaken on a gas-fired appliance should only be carried out by a suitable and qualified specialist in that field. This instance should also be a warning to landlords that they must provide tenants with a current Gas Safety Certificate and work should only be conducted by persons who are qualified, competent and Corgi-registered."*

Ed – It's worrying to see an increase in the amount of cases where Landlords seem unaware or unwillingly to use only CORGI registered engineers. It only shows that a quick saving will in the near future be an expensive mistake.

## And another ...

Mr Angelo Buratti of Moseley, Birmingham, the director of JB Group of Companies Ltd pleaded guilty, to breaching s37(1) HSWA on the basis that it was through his neglect that his company breached s3(1) HSWA. He was fined £15,000 and ordered to pay costs of £3,750.82 by Burton Magistrates Court.

The court heard that Mr Buratti, had, following a chimney fire, organised repair work to a solid fuel burning appliance, through two painters and decorators known as 'Select'. An incorrect flue liner had been used in the work and the installation was left with other faults.

HSE inspector Dr Janice Dale said:

*"The dangers of incorrectly specified flue liners and incorrect installations are well known in trades associated with building and refurbishment. Such dangerous work as that seen here puts lives at risk from both carbon monoxide poisoning and fires in the home. This case should serve as a reminder to the general public that anyone they ask to undertake work on a gas-fired or solid fuel appliance should be a specialist in that particular field. This case should also be a warning to traders that they must only undertake work for which they are qualified and competent."*

## Falling from the Sky

Murray Construction and Development Ltd, of Pottery Road, Southwick, Sunderland, pleaded guilty to a breach of section 2(1) HSWA. The case related to an incident on May 22, 2007 at Andes House, Cleadon Village, South Tyneside where one of its employees was injured when he fell 2.8 metres from rafters onto a concrete floor. South Tyneside Magistrates' Court fined the company £10,000 and ordered it to pay a compensatory award of £5,000 to the injured worker, £1,414 costs and a £15 victim surcharge.

Three employees of Murray Construction & Development Ltd were working on the construction of a new house and moving one of the rafters to accommodate a roof window. One man was standing on a joiner's stool to do this and lost his balance; he fell through a gap onto the concrete floor 2.8 metres below him. He suffered serious injuries and has been unable to return to work since the incident.

HSE Inspector Michael Brown, said:

*"Companies must assess the risks from work that they are undertaking at height and make sure that suitable measures to prevent a fall are in place. All work at height should be planned, organised, supervised and carried out by competent persons. They should take steps to avoid, prevent or reduce risks, choose the right work equipment and take collective measures to prevent falls, such as guardrails and working platforms, before other measures which may only mitigate the distance and consequences of a fall, such as nets or airbags, or which may only provide personal protection from a fall. Had this happened this worker may not have been injured."*

## Workplace Transport Accident

Redworth Construction Ltd of Malton, North Yorkshire has pleaded guilty to a charge under s3(1) HSWA after an incident in Billy Row, Crook on 23rd April 2007. They were fined £10,000 and ordered to pay costs of £2,321 by Bishop Auckland Magistrates' Court.

A bricklayer suffered serious injuries to his lower leg after he was struck by an excavator whilst working. Upon investigation HSE Inspectors found there was no segregation between pedestrians and vehicles on site and a lack of adequate traffic management.

HM Inspector of Health and Safety, Carol Forster, said:

*"One of the biggest causes of workplace incidents is people being struck by vehicles. It is the second most common kind of fatal and serious incident in construction. Any incident has serious implications for the individuals concerned and their families, and is also a major cost to employers too. Simple precautions could have stopped this incident occurring in the first place and prevented this worker being needlessly injured."*

## Crushed Fingers

An investigation was carried out after an incident that occurred, on 25th June 2007 at Metal Products (Arden) Ltd's site at Prospect Road, Burntwood Industrial Estate. An employee was routinely operated a 60-ton power press without any fixed guard.

On this occasion they had pulled a plate towards themselves, to make an adjustment, when the press came down on four fingers of the right hand. Metal Products (Arden) Ltd was fined a total of £7,000 and full costs of £4,131 were awarded to the prosecution at Stafford Magistrates' Court (on 22nd May, 2008) after the company pleaded guilty to breaches of health and safety legislation.

HSE investigating inspector Wai-Kin Liu said:

*"Operating power presses without suitable and appropriate guards is reckless and blatantly ignores the safety of employees, an act which cannot go unpunished. Power presses without suitable safeguards are among the most dangerous machines used in industry and the risks are well known. Serious injuries such as amputation can result when limbs, or parts of limbs, become trapped by moving parts. It has been a requirement in law for over 40 years that such machines have guards to stop serious injuries to operators and that has resulted in a significant and steady reduction of injury rates. It is intolerable in this day and age that incidents like this are still happening. HSE and industry has published a wealth of advice and guidance for employers to help them reduce the risk of such injuries. There really is no excuse for failing to do so."*

## More Fingers, Or Less

C&P Bird Bros Ltd of Pertenhall Road in Swineshead, was fined £5000 with £4850.80 costs at Bedford & Mid Bedfordshire Magistrates Court on 29 May after pleading guilty to breaching reg 11(1)(a) PUWER.

On 24th August 2005 C&P Bird Bros employee Diane Davies from Riseley, started the scraper cleaning system in the chicken sheds. The drive cable had become entangled and would not run. Ms Davies attempted to fix the machine by pulling on the cable. When the cable started to move her finger was pulled in between the pulley and the cable, and she suffered severe injuries resulting in the amputation of a finger.

The HSE investigation identified that the machine was not adequately guarded as the guard had been removed for a previous repair and had not been refitted.

HSE Inspector, Penny Leede said:

*“The dangers of using these machines without suitable safeguards are well known. Serious injuries such as amputation can result when limbs, or parts of limbs, become trapped by moving parts. This serious incident could and should have been prevented by the company by ensuring that dangerous parts were adequately guarded. This case illustrates how things can go wrong when risks are not properly controlled and HSE will not hesitate to take action against those who fall short of the law in such a way.”*

## And Another

The Fence Factory Ltd was fined a total of £2,000 and ordered to pay costs of £2,645 at Stafford Magistrates' Court on 15th May, 2008 after the company pleaded guilty to breaching S3 (1) HSWA. The case followed an HSE investigation into an incident on 21 May 2007 at Riverside, Blythe Valley Business Base in Cresswell. An agency worker suffered the loss of his index finger and damage to his little finger while using an unguarded circular saw to cut lengths of timber.

HSE investigating inspector Wayne Owen said:

*“Allowing machines to be operated without suitable and appropriate guards is ignoring basic safety principles, an act which cannot go unpunished. When operating such machines the level of danger to the operator and other persons nearby cannot be overstated. A high-speed revolving blade, that is sharp enough to slice through wood, is an obvious risk. It is for this reason that extra care must be taken to ensure that the operator is well trained and that the saw is well maintained and properly used. HSE produces a wide range of guidance to assist companies who use woodworking machines to identify risks to themselves and their employees.”*

## Plant Hire

Astra Plant Ltd of Heol Fawr, Nelson, Treharris, pleaded guilty Aberdare Magistrates' Court, to charges under s6 (1)(a) HSWA in that they failed to ensure that mechanical equipment provided under a hire contract was safe for use. Additionally, they also pleaded guilty to a charge under s6 (1) (c) in that they supplied Mr Kidd without adequate information in relation to the use of the excavator that detailed the conditions necessary to ensure that the excavator would be safely by Mr Kidd. The company were fined a total of £2,000 and ordered to pay £6,356.55 costs.

The lack of suitable protection came to light when farmer Stephen Kidd from Ystrad My-nach, who had hired the excavator, rolled it over as he tried to level some uneven land on his property in July 2006. He was unable to jump clear as the machine rolled, trapping his leg underneath it for 40 minutes before being released by emergency services. He suffered crush injuries to his foot and ankle.

An investigation carried out after the incident showed that no checks had been made by Astra Plant Ltd to ensure that Mr Kidd was suitably trained to operate the machine before allowing him to hire it. It was found that rollover protection had previously been fitted to the machine, but was absent at the time of hire. A number of other issues arose from the investigation including:

- Failures by the company to conduct pre-hire checks on its machinery except for fuel, oil and water checks.
- Failure to provide demonstration to Mr Kidd on how to operate the machinery at time of delivery
- Failure to provide written instructions, safety procedures or operating manual for the excavator

HSE inspector Sarah Baldwin-Jones said

*"Excavators are at risk of rolling when they are used on uneven ground, and this one should have been fitted with the relevant rollover protection, which we found had been removed during the previous hire. Companies hiring out equipment like this need to ensure that those hiring it are competent and are using the right equipment for the job planned. This was a serious case, and the failings could well have resulted in more serious injury or death to Mr Kidd."*

The company has since taken action to improve the checks it carries out on both equipment and hirers to reduce the risk of unsafe situations occurring in future.

## Business Success

*“The responsibility for the health, safety and welfare of all organisations’ employees starts at the top,”* says Judith Hackitt, Chair of the Health and Safety Executive.

Speaking at the Royal Society for the Prevention of Accidents’ Developing Leadership Action conference at Birmingham’s National Exhibition Centre, she continued:

*“Leadership from the top of every organisation is essential to create and maintain a real and lasting health and safety culture. Health and safety leadership is about good, integrated governance. The motivation for building a health and safety culture needs to be driven by the belief that not only is it the right thing to do morally, but also that it is fundamental to the business success of your organisation. Creating the right culture in your organisation will play a critical part in ensuring the health and safety of your workforce.”*

The HSE Chair highlighted the actions that all leaders should be taking:

- Challenge your organisation to deliver – don’t simply assume that it will be done.
- Don’t leave it to others to assess the risks – you should not only be aware of but have agreed the priority risks in your organisation.
- Don’t try to manage the process from the boardroom – reports may not tell you what you need to know. Find out for yourself and check what is really happening in practice.
- Organisations’ supporting systems, including pay and progression, must emphasise the importance of health and safety management.
- Reinforce your message by rewarding the right behaviours at every level.

HSE is running its ‘Shattered Lives’ campaign, to highlight the devastating consequences of slips, trips and falls in the workplace. Slips, trips and falls can be viewed as being minor, funny accidents but the effects are not. It can lead to major injuries, a lifetime of disability and in worst cases, fatalities.

## Asbestos...

Raymond Joseph Boyle of Bray, County Wicklow, Ireland, was convicted of a breach of The Control of Asbestos Regulations 2006 by undertaking demolition work that exposed people to asbestos. He was fined £4,000 in total and ordered to pay costs of £4,016 at Birmingham Magistrates Court. HSE inspector Karl Raw said:

*“This successful prosecution is a timely reminder that even with simple refurbishments there are legal duties needed to protect workers and others from the threat of asbestos. As a building surveyor with many years experience Mr Boyle should have been aware of his duty to manage the asbestos risk in a non-domestic property.”*

## Printing Problems

The HSE has issued a safety alert aimed at employers in the printing industry who use hand-fed platen machines. This follows two fatal incidents in the last 13 months where machine operators have been crushed between the platens, both cases are currently being investigated, one from April 2007 in West Drayton, London, and the other in May 2008 in Wakefield, Yorkshire.

In both cases the machines were being operated in 'dwell' mode at the time of the intervention. HSE is concerned with this activity in that the platen may automatically stroke at the end of the dwell period and safety devices may not be activated.

This safety alert highlights the dangers of using the dwell facility on these machines, together with the steps employers need to take to ensure the machine can be used safely.

## Checks on North East Scotland Farmers

Agriculture continues to be a dangerous industry to work in and has one of the worst fatal accident and occupational ill health records of any major employment sector. Last year in the sector there were approximately 8.1 deaths per 100,000 workers across the UK, where as the equivalent number in construction was approx. 3.7 deaths per 100,000 workers.

The inspection blitz will target Perthshire, Angus, Aberdeenshire and Moray and will focus on migrant workers, falls from height, workplace transport and overhead power lines.

HSE Inspector Lawrence Murray said:

*"Farming is a risky business. Within the agricultural industry the level of death and injury to farmers, workers, and members of the public is unacceptable. In 2006/07, 31 workers in Scotland lost their life at work and 2702 workers were seriously injured – of these, seven fatalities and 61 serious injuries were in the agricultural sector. However almost all of these tragic accidents could have been avoided, as the risks and precautions are well known. By reaching out to more of the farmers in this particular region, and on their own premises, we hope to get some hard-hitting messages home to them about issues that may be crucial to their own health, safety and well-being. We will continue to take action against those who ignore safety precautions. Farms where health and safety is taken seriously have nothing to fear, but we will root out those that put lives at risk".*

## HSE's Myth of the Month

### All park benches must be replaced because they are 3 inches too low

When we heard this story it really took us by surprise. How could there be health & safety law on this? The simple answer is, there isn't.

'It seems that the story originated from a decision by a facility manager and has no basis in health and safety law at all. There are no such bench height requirements and HSE will definitely not be sending our inspectors around measuring the benches!

Well, it looks like Britain's park benches will survive after all!



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