

Brunswicks Regulatory News

September 2008 © Brunswicks LLP
Edited by Andrew Dawson www.brunswicks.eu



BRUNSWICKS LLP
SOLICITORS

Brave New World?

So what are we to make of the credit crunch and the knock on effects for the regulatory approach taken by government? And who is to blame?

Some are seeing the failures of Northern Rock and the Bradford & Bingley as the failure of the Bank of England, the Financial Services Authority and the Government itself to police the banking sector. Others see it as a failure of the regulatory approach so beloved of the present administration.

Whatever the truth really is – and the truth in my opinion needs to be shared out between:

- The reckless gambling of senior bank executives that they would be able to raise money cheaply on the world money markets indefinitely;
- The executives who operated or condoned the pernicious practice of lending money to people who could never be realistically be expected to be able to repay it secured against over-inflated property prices;
- The regulators who stood by as the bandwagon of excessive debt careered out of control; and
- The government who enjoyed the excess revenues associated with the over inflated housing bubble they caused through allowing excessive credit yet and did not provide a suitable regulatory regime to restrain or prevent the excesses;

things can never be the same again.

I find the practice of government and indeed the practices of the City akin to those of rabid sheep or the apocryphal lemmings. We are seeing a headlong rush headlong to disaster with everyone mimicking each other. And its all done heedless of common sense or prudent questioning about the wisdom of what is being done. Of course scapegoats are now being sought.

The situation we are in now was eminently predictable. I even predicted it in 2004 when the economy slowed and was kicked forward again by a government inspired credit bubble. I learnt at school about Kondratiev cycles and related ideas of recessions taking place every 11 years or so. It is as if the political classes never studied or thought about such things!

We should have had a recession in or around 2003-4 but the government inflated the economy again through credit increasing the aberrations that in the free market jungle need to be purged in a recession.

That means, to my mind, we have the excesses generated over 15 years to be shaken out of the economy. This is likely to prolong matters especially as this recession is all about property values and lending practices. The vast majority of the population is feeling poorer and not inclined to spend. Worse still for government – hard pressed tax payers are not inclined to see their hard earned money used to prop up a profligate banking sector that is so responsible for the mess they have put us in.

So all this is likely to mean tougher, more stifling regulation. The usual cry of we must not let this happen again is already being heard and I shudder at its implications. I do not think that tougher regulations per se is in fact the answer. To my mind the regulatory framework is broadly as good as it is likely going to get at the moment. It is the quality of the regulators themselves and the work that they do that needs to be resolved. Unless and until government and the regulators seek to ensure that those working for the regulators are sufficiently well remunerated so as to attract the leading talents from the relevant sector these failures will continue.

It is instructive to look at health and safety as an example. The draftsmen behind the Health and Safety at Work etc Act 1974 did a good job. Until the recent amalgamation of the HSE and HSC there had been no fundamental change within that organisation since its foundation. The regulatory powers originally granted in 1974 have been left effectively the same. What has changed is the attitude to enforcement over the years. Until the early- mid 2000s prosecutions of directors and employees were extremely rare this of course has all changed now. This change took no change in the law – merely a change in approach.

The HSE is also showing that it is sensitive to the cry of over enforcement and under provision of advice. It is now making more efforts than it has over perhaps the last 10 years to advise and inform as well as prosecute and enforce.

One of the other lessons we need to learn from history and regulators is that creating an over-mighty regulator can be counter-productive. The purpose of regulation must be to ensure a fair playing field where all can compete with each other reasonably and with the worst market excesses curbed for the benefit of all.

So when the taxpayer is forced to pick up the bill for what is being known in the trade as toxic bad debt created by outrageously stupid lending decisions we should all as tax payers dig a little deeper in our pockets and hire the best. Let us hire those who know their respective industries inside out and have the A team as our regulators – rather than pay the continued price for ineptitude and the backlash of even tighter more constricting regulation.

Truck Death

On 2 May 2003, Shane Neal, 34, from Rothwell near Kettering, was killed in an incident involving a forklift truck while carrying out work on the Building Research Establishment (BRE) site. He was crushed when the truck overturned while he was manoeuvring it in order to dismantle a fire test rig. The HSE investigation found that Mr Neal was not adequately trained to drive the BRE provided truck.

Mr Neal's employer, Welwood Roofing Services Ltd of Corby (now in administration), has been fined £50,000 and ordered to pay costs of £25,000, by Luton Crown Court, after being found guilty of breaching of s3(1) HSWA.

BRE in Watford was also fined £17,500 and ordered to pay £12,000 costs, after pleading guilty to breaching reg 9(1) PUWER.

HSE Inspector, Alison Ashworth said:

"I hope this tragic accident makes it clear to employers that they need to take positive action to manage risks, particularly where the work involves using forklift trucks. Mr Neal's death could have been avoided had the companies involved carried out checks to confirm whether or not he knew of the dangers of forklift trucks and how to drive them safely. HSE will not hesitate to take action against those who fall short of the law in such a way."



Falling Beam causes injury

Corus UK Ltd, trading as Corus Tubes in Hartlepool, has been fined a total of £15,000 and ordered to pay costs of £6,248 by Hartlepool Magistrates' Court after pleading guilty to a charge under s2(1) HSWA following the incident on 27 April 2007.

HSE inspector, Bruno Porter, said:

"The crane operator was nearby using a remote control to lift a raft of steel beams, the longest one, some 16m in length and weighing about 1.7 tonnes, using a magnetic crane attachment. A beam snagged on the side of the building and fell from the crane, hitting the operator. He suffered severe injuries to his back and leg which left him unable to work for months. Electro-magnetic attachments to cranes can reduce certain risks, such as having to climb onto loads to sling and release the load. However, these magnets can drop their loads for a number of reasons and it is important that no one is anywhere near the suspended load until it is in a safe position. In this case the combination of the length of the steel beams and the site layout meant there was no safe operating position. The problems with magnetic cranes were well known at Corus and an alternative way of working should have been found to protect both the operator and other workers in the area."

Quarry Fatality

Aram Resources Limited of Longdowns, Penryn, pleaded guilty to breaching reg 11 (1) PUWER and reg 9 Quarries Regulations 1999. The company was fined £40,000 for the first charge, £35,000 for the second and ordered to pay costs of £30,000.

HSE prosecuted the company following an incident on 8 July 2004 at Carnsew Quarry, Mabe, in which a 42-year-old quarry worker, Robert Bickley, became caught in the fixed guard of a primary crusher machine (large, powerful machine used at the beginning of the crushing process to break up large quarried rocks into smaller pieces before they are moved along a conveyor for further crushing) as it came into contact with the moving flywheel.

Speaking after the hearing, HSE inspector Simon Edwards said:

“All employers have a duty of care towards their employees and quarries are particularly dangerous places. Although much has been done to improved health and safety standards in the quarry industry, there is no room for complacency - a quarry worker is more than twice as likely to be killed through an accident at work as a construction worker and 13 times as likely as someone working in the manufacturing industries.”

Every quarry operator, no matter how small the business must identify the risks on site and ensure that they are properly controlled. Equally, everyone working at a quarry must be properly trained and experienced for the work they do. In this particular instance, the company lacked the competence to identify that the guards provided for the machinery did not comply with health and safety standards. The company also failed to ensure that adequate training and supervision had been provided.”

Ed – It is deeply regrettable that anyone should die because simple guarding measures are not taken.

Reg 11(1) PUWER – “Every employer shall ensure that measures are taken.....which are effective to prevent access to any dangerous part of machinery.....”

reg 9 Quarries Regulations 1999 requires an employee to ensure that persons undertaking work at a quarry, particularly in respect of the guarding of machinery used in the process, are competent to do that work or are instructed and supervised by someone who is competent.....’

Asbestos Removal

Robert McCart, a Director of two Eastbourne based companies, Sussex Asbestos Solutions (South East) Ltd and Sussex Asbestos Solutions Ltd pleaded guilty at Eastbourne Magistrates' Court and has been fined £36,000 and ordered to pay £4,000 costs for breaching seven regulations under The Control of Asbestos Regulations 2006. He was also ordered to pay £4,000 compensation to the shop owner. The Court clearly accepted the gravity of the offence and also disqualified Mr McCart from being a Director for four years.

Mr McCart was charged with health and safety offences following work he carried out to a shop in Gore Park Road, Eastbourne between 17 and 19 November 2007. He was employed by a local businessman to remove asbestos insulation board from his shop. Mr McCart undertook the removal of asbestos insulation board without the required licence for work with asbestos, and without notifying the HSE.

Mr McCart failed to carry out the appropriate precautions and left a white sack containing broken pieces of asbestos insulation board outside the shop, and asbestos debris inside the property. Mr McCart's actions put members of the public at risk of exposure to potentially lethal asbestos fibres.

HSE inspector, Amanda Huff, said:

"Robert McCart deliberately flouted ignored the law for financial gain. Mr McCart was aware of the dangers associated with asbestos and yet decided to risk not only his own life but also members of the public. The HSE won't hesitate to take action against people who flout breach Health and Safety Law and put others at risk. Asbestos related diseases kill more people than any other single work related illness. It is essential that when any work is carried out which might potentially expose people to asbestos fibres that only competent operatives are used and the appropriate precautions are taken."

Cart pleaded guilty to these offences under the Control of Asbestos Regulations 20061. reg 9 an employer shall not undertake any work with asbestos unless he has notified the appropriate office of the enforcing authority in writing of the particulars specified in Schedule 1 at least 14 days before commencing that work or such shorter time before as the enforcing authority may agree.

2. reg 8(1) an employer shall not undertake any work with asbestos unless he holds a licence granted under paragraph (2) of this regulation.

3. reg 24(1) every employer who undertakes work with asbestos shall ensure that raw asbestos or waste which contains asbestos is not-

(a) stored;

(b) received into or despatched from any place of work; or

(c) distributed within any place of work, except in a totally enclosed distribution system, unless it is in a sealed receptacle or, where more appropriate, sealed wrapping, clearly marked

in accordance with paragraphs (2) and (3) showing that it contains asbestos.

4. reg 22(2) The Control of Asbestos Regulations 2006 which states that: every employer shall ensure that each of his employees who is exposed to asbestos is under adequate medical surveillance by a relevant doctor.

5. reg 18(2) The Control of Asbestos Regulations 2006 which states that: Asbestos areas and respirator zones shall be clearly and separately demarcated and identified by notices indicating-(a) that the area is an asbestos area or a respirator zone or both, as the case may be; and (b) in the case of a respirator zone, that the exposure of an employee who enters it is liable to exceed the control limit and that respiratory protective equipment must be worn.

6. reg 17 The Control of Asbestos Regulations 2006 which states that: Every employer who undertakes work which exposes or is liable to expose his employees to asbestos shall ensure that-

(a) the premises, or those parts of the premises where that work is carried out, and the plant used in connection with that work are kept in a clean state; and

(b) where such work has been completed, the premises, or those parts of the premises where the work was carried out, are thoroughly cleaned.

7. reg 16 The Control of Asbestos Regulations 2006 which states that: every employer shall prevent or, where this is not reasonably practicable, reduce to the lowest level reasonably practicable the spread of asbestos from any place where work under his control is carried out.

Glass Panel Falls

On 16 March 2006 at a Multiplex Construction UK site in Manresa Road, Kensington and Chelsea, John Rooney, a lorry driver, was injured when a 600kg panel of glass fell on him while he was standing on the back of another company's lorry. At the time of the incident, the subcontractor Scheldebouw UK Ltd was removing glass panels from the roof of the site. Mr Rooney was standing on the back of his lorry, waiting for a scaffold stillage (which is used to carry materials) to be lowered on to his lorry. Next to him was another lorry owned by a different contractor, which was transporting the glass panels from the site. The lorries were close together and there was a significant camber in the road, which meant the bed of the lorry transporting the panels was not level and was tilting towards the pavement. An A-frame stillage containing three glass panels was lowered on to the adjacent lorry. In an effort to assist the other lorry, Mr Rooney climbed on to it and one of the glass panels fell on to him, causing his injuries.

Scheldebouw UK Ltd was fined £20,000 and ordered to pay costs of £10,000, after pleading guilty to breaching s3 (1) HSWA. Brookfield Construction UK Ltd of Berkeley Square, London, has also been fined £18,000 and ordered to pay costs of £9,962 after pleading guilty to the same breach of health and safety law. Lisa Chappell, HSE inspector said:

"This incident once again highlights the need for contractors to ensure that all aspects of lifting and removal operations are fully planned and measures to work safely are clearly communicated to all workers. Had these simple steps been taken, the injuries to Mr Rooney could have been avoided."

Dirty Laundry

Eastern Counties Laundries Ltd, of West Street, Coggeshall, Essex has been fined £30,000 and ordered to pay £15,000 costs by Colchester Crown Court after pleading guilty to breaching s2 HSWA. The HSE prosecution followed an incident on 20 April 2006, at the company's site on the Gorse Lane Industrial Estate, Clacton on Sea. An employee from Clacton climbed into a conveyor feeding into the washing system to dislodge a blocked item of laundry. As he dislodged it the conveyor activated, trapping the employee's neck and hands. He sustained serious injuries, including external bruising and burns, and internal burns to his throat.

HSE inspector Julie Rayner said:

"HSE's investigation found that blockages in the washing system occurred several times a day, yet there was no formal procedure for unblocking the machine, nor any training designed for such incidents. Workers were regularly climbing into the conveyors, placing them at significant risk of injury. The system for stopping the conveyors in an emergency, which the employee in this incident activated, was also faulty.

This serious incident could, and should have, been prevented by the company ensuring that proper risk assessments and training for using this type of machinery were carried out. The company should also have taken steps, either at the point of installation or during use, to ensure that when the machine was stopped it exhausted all the energy within the system so components could not continue moving. This case illustrates how things can go wrong when risks are not properly assessed and controlled. HSE will not hesitate to take action against those who fall short of the law in such a way."

Gas Explosion causes death

Reliance Scrap-Metal Merchants (Parkstone) Limited, Poole has been found guilty breaching s2(1) and 3(1) HSWA, reg 3 MHSWR 1999 and reg 4 and 12(3)(e) of PUWER and company director David Matthews has been found guilty of s37 HSWA following the death of an employee after a gas cylinder exploded. In total, for these offences, Reliance Scrap-Metal Merchants has been fined a total of £60,000 (reduced from £90,000 because of an early guilty plea) and David Matthews has been fined a total of £1,000. Costs are still to be determined.

On 9 May 2005, employee Tommy Mooney and company director David Matthews were working at the site in Nuffield Road. Mr Matthews was using a crusher/compactor machine to crush and shear a number of pressured cylinders, which were being hand-fed into the shear blade path of the machine and held there until cut. An explosion and fireball occurred when an acetylene cylinder was crushed by the guillotine blade of machine. As a result of the explosion, both Tommy Mooney and David Matthews were seriously burned. Tommy Mooney died of his injuries in Poole Hospital on the same day.

HSE inspector David Bell said:

“This is a very sad case. Common sense tells you that if you cut up a pressurised cylinder it will explode and if it contains flammable gas then the consequences are likely to be horrific. Mr Mooney would be alive today had such risks not been taken. I urge the scrap industry to think very carefully about how it deals with gas cylinders, they should never be cut or crushed and remember that most cylinders remain the property of a gas company and should be returned. If you do come across gas cylinders in your scrap-yard, then take them out of the process and store them in secure compound before contacting the cylinder owners to arrange collection.”

Losing a Leg

Northampton-based international distributors NYK Logistics (UK) Limited of Cheaney Drive, has been fined £20,000 and ordered to pay £5,941 costs at Derby Crown Court after pleading guilty to contravening reg 4(1) and 17 (1) of the Workplace (Health, Safety and Welfare) Regulations 1992.

On 24 March 2006, at NYK’s premises on Burton Road in Findern, Derby, 32-year-old administrative worker Lisa Ramos, from Kirkby in Ashfield was carrying paperwork across a warehouse when she was struck by a 2.5 tonne forklift truck reversing out of a loading bay. The injuries sustained were so severe that she had to have her left leg amputated below the knee.

Andrew Turner, HSE Principal Inspector for Derbyshire, said:

“Although the company had identified that pedestrians were at risk from moving vehicles, and taken some steps to try to minimise this risk, it had become commonplace for pedestrians to walk through areas where forklift trucks manoeuvred and reversed. Workplace transport is one of the biggest causes of fatal and major injuries at work. Employers must ensure that workplaces are organised so pedestrians and vehicles can move around the workplace safely. When employers have arrangements in place to ensure that vehicles and pedestrians can circulate safely, these arrangements must be monitored to make sure that they are effective.”

Ed - Reg 4(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 states: “Every employer shall ensure that every workplace, modification, extension or conversion which is under his control and where any of his employees works complies with any requirement of these Regulations...”

Reg 17(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 states: “Every workplace shall be organised in such a way that pedestrians and vehicles can circulate in a safe manner.”

Sandblasting Fines

After pleading guilty at Hyndburn Magistrates Court to one breach of s2(1) HSWA, three breaches of s33(1)(g) HSWA and two breaches of reg 4(1) Control of Substances Hazardous to Health Regulations 2002, Andrew Thomson, trading as Thomson Sandblast, of Alan Ramsbottom Way, Great Harwood has been fined a total of £26,000 and ordered to pay £24,000 costs.

The Health and Safety Executive investigated the company after receiving a complaint that sand containing free silica was being used for the dry sand blasting of vehicles.

Blasting of articles using sand containing free silica has been banned since 1950 and can lead to silicosis, which is progressive, irreversible and can continue to develop after exposure ceases.

Health and Safety Executive Principal Inspector Dorothy Shaw said:

“When the premises were visited the general conditions were found to be poor. Vehicles were being dry blasted using what was suspected to be sand in a building that was not fully enclosed or had a filtered extraction unit. The respiratory protection equipment being used was in poor condition putting employees at risk from silicosis, which is a chronic obstructive, pulmonary disease characterised by breathlessness and a chronic cough. The HSE sets limits for exposure to workplace hazardous substances and employers have a primary duty to prevent exposure, in this case, by substituting the sand for a safer alternative which does not contain free silica. Where prevention is not reasonably practical employers have a secondary duty to control exposure by using appropriate work processes, systems and controls and the use of suitable work equipment and materials. The dry blasting of vehicles with sand containing silica and the non compliance of enforcement notices are regarded as very serious matters by the HSE. When passing sentence on Mr Thomson, the Magistrates commented that there had been a complete disregard for Health and Safety and that they had considered a custodial sentence”

Health and Safety Inspectors visited the premises on 29 June 2006 and the complaint was found to be justified. A Prohibition Notice was served prohibiting sand blasting without adequate respiratory protection equipment and Improvement Notices served for failing to maintain respiratory protection equipment, failing to provide suitable facilities for eating and drinking and for failing to provide engineering control measures.

The premises were revisited on 6 February 2007 and it was found that conditions had not changed and the enforcement notices had not been complied with. A further Prohibition Notice was served prohibiting sand blasting without adequate respiratory equipment,

Ed - s33 (1)(g) states “It is an offence for a person to contravene any requirement or prohibition imposed by an improvement notice or prohibition notice (including any such notice as modified on appeal).”

Double Fatality during Cleaning

Two employees of Galloway and MacLeod Ltd, Stonehouse, Lanarkshire, were killed on 26 November 2005, when they were cleaning inside an animal feed mixer which started up unexpectedly and without warning. Peter Brown and Charles Lee Hinshelwood were found fatally injured inside the mixer.

The two men were cleaning the inside of the feed mixer when the mixing paddles inside it started to rotate, resulting in their fatal injuries. Although the men had switched the machine off and pressed the emergency stop button prior to entering it, a wiring error in the machine's control system allowed it to start up under the control of a computer system. If the electrical power supply to the machine had been isolated, it would not have been possible for it to have started while the men were working inside it, even with the wiring error in the control system.

Galloway and MacLeod Ltd has been fined £18,750 (£25,000) at Hamilton Sheriff Court after pleading guilty to a charge under reg 16 PUWER. In addition, Barr Electrical Contractors Ltd has been fined £45,000 (£60,000) after pleading guilty to a charge under s3(1) HSWA. Both fines were reduced by 25 per cent following guilty pleas being tendered.

HSE Inspector John Madden said:

"This incident, involving the tragic deaths of two men, could have been easily prevented if the power supply to the machine they were working on had been properly isolated. The process of isolation means establishing a break in the power supply, normally by using a lockable switch, and then securing the switch in the 'off' position using a padlock to prevent it being switched back on until the work is finished. Our investigations showed that the power supply to the mixer was not properly isolated and that a wiring error inside the mixer control system meant the switches the men had used to turn the machine off were bypassed, allowing the machine to start up under computer control."

Ed – Reg 16 PUWER covers the requirement for emergency stop controls and requires that:
(1) "Every employer shall ensure that, where appropriate, work equipment is provided with one or more readily accessible stop controls unless it is not necessary by reason of the nature of the hazards and the time taken for the work equipment to come to a complete stop as a result of the action of any control provided by virtue of regulation 15(1).

(2) Any control required by paragraph (1) shall operate in priority to any control required by regulation 15(1)

Regulation 15(1) is concerned with the provision of stop controls.

School Asbestos Exposure

North Tyneside Council pleaded guilty to breaching reg 4, 6, 9, 10 and 13 Control of Asbestos at Work Regulations 2002. They were fined £17,005 and ordered to pay £3,911 costs by North Tyneside Magistrates' Court.

HSE Inspector Stephen Britton said:

"North Tyneside Council was found to have breached the regulations in March 2006, at Wallsend Jubilee Primary School in Mullen Road, which is owned by the council. The school caretaker swept the school boiler house on two separate occasions, unaware that it was contaminated with asbestos. This posed a huge risk to the caretaker's health: every year, 4000 people die of work-related asbestos diseases, more than are killed on the roads. The boiler house had been quarantined due to the presence of asbestos, and although the previous caretaker and headteacher were aware of the contamination, the replacement staff were not informed. There were no signs indicating that the area had been quarantined and the caretaker only became aware of the risk of exposure after an asbestos removal company visited the school to undertake work. This type of incident was likely to occur sooner or later. It was foreseeable that caretakers and service engineers would require access to the boiler house for routine or emergency repairs, but no instruction, training, protective equipment, washing or disposal arrangements were in place to safeguard this vulnerable group.

The regulations require those with responsibilities for the repair and maintenance of non-domestic premises to find out if there are, or may be, asbestos-containing materials within them. It also requires them to record the location and condition of such materials, and then assess and manage any risk from them, including passing on information about their location and condition to anyone liable to disturb them. Local authorities and employers in general have a duty to ensure that any asbestos present in premises is managed properly, and need to warn anybody likely to come into contact with it of the danger it poses to their health."

Ed - It is vital in any situation where children are at risk stricter controls should be observed. Regulation 4 imposes a duty on the employer to identify the type of asbestos before any work is carried out.

Regulation 6 imposes a duty on the employer to notify the enforcing authority of any work with asbestos.

Regulation 9 imposes a duty on the employer to ensure the proper use of control measures and personal protection equipment.

Regulation 10 imposes a duty on the employer to ensure that any control measures or equipment are properly maintained.

Regulation 13 imposes a duty on the employer to ensure the cleanliness of premises and plant where work takes place that is liable to result in exposure to asbestos.

Fall from height after warnings

J&D Property Services Limited from Liverpool has been fined a total of £15,000 and ordered to pay £5,000 in costs after pleading guilty to breaching s3(1) HSWA (for which it was fined £12,000), and reg 6(3) Work at Height Regulations 2005 (for which it was fined £3,000), by Liverpool Magistrates Court.

The prosecution follows HSE's investigation of an incident on 28 July 2006 at a construction site at 142-148 London Road, Liverpool. A 22-year-old concrete layer employed by sub-contractors R & J Concrete Flooring Limited was laying a concrete floor, when he fell four metres through a hole into the well of a lift shaft which had not been made safe. The investigation found that the lift shaft was not covered securely and the edges were inadequately protected.

HSE Construction Inspector Sarah Wadham said:

"HSE subsequently served a Prohibition Notice on J & D Property Services Limited requiring the company to put in place edge protection. On a further site visit on 7 September 2006 a second Prohibition Notice was served requiring the company to stop work until measures had been taken to prevent a fall. J & D Property Services Limited placed its employees at risk by not taking reasonable precautions to prevent accidents while working at height. The company failed to manage the site properly, sent an unsupervised apprentice to carry out work to protect the voids and exposed many workers to risks from falling through a lift shaft opening which was inadequately protected.

The boarding that had been put in place was more dangerous than the opening itself, because it provided a false sense of security to those who worked nearby. When the injured person stepped on the boarding it collapsed under him, and he fell through the opening to the ground below. He was seriously injured and lucky not to have been killed. Falls from height remain the most common cause of deaths in the workplace. Latest figures show that 45 people died from a fall from height at work in 2006/07, with 3,750 suffering major injury. More than half of such deaths occur in construction. Companies involved in building, refurbishment or maintenance must ensure that the work is planned properly and sensible measures taken so that workers are not exposed to risk."

Ed - Reg 6(3) Work at Height Regulations 2005 provides that "where work is carried out at height, every employer shall take suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury."

Hazardous Materials

BAE Systems Land Systems (Munitions and Ordnance) Ltd has been fined £50,000 and ordered to pay costs of £15,000 at Cardiff Crown Court after being found guilty of a breach of s2(1), s3(1) and s33(1)a HSWA when a worker was severely burned at its site in Glascoed, Monmouthshire.

The company was also ordered to pay £5,000 in compensation to Mr Ryan White, a 21 year old agency worker, who was engaged in the process of destroying pyrotechnic composition in August 2004 when it ignited, resulting in severe burns to his face, neck and both arms.

The investigation found that the disposal procedures being used at the time of the incident did not comply with BAE's own approved control procedures, and that management and supervision of the procedure was inadequate. It was also found that the accreditation process of ensuring operatives followed disposal procedures whilst destroying this material also failed to follow company policy, and the composition did not comply with the company approved specification.

HSE Inspector David Norman, said:

"This was a clear case of a company having written policies and procedures in place but clearly failing to ensure that they were implemented correctly by failing to manage and supervise the system of pyrotechnic composition disposal. The materials involved here were classed as very sensitive and required controlled measures to be implemented during disposal. The risk assessment conducted by the company had identified that the composition should have been desensitised prior to burning and that the maximum quantity to be burnt at any one time was limited.

The investigation found that the composition was burnt dry in a quantity far greater than that allowed by the procedure. Training consisted of shadowing a senior operative and reading of the procedures, however no one in the management chain ensured that this company policy was followed. Overall, the preventive measures taken by the company to ensure the safe disposal of pyrotechnic composition were ineffective; this led to poor communication and misunderstanding within the disposal area even though the risk assessment appeared to be robust on paper."

Ed - It is astonishing that a company has policies and procedures in place and then ignore them putting employees at risk.



Fall from a Ladder

Lakeside Container Services Ltd, of London Road, Grays, Essex has been fined £13,400 and ordered to pay £3,380 costs by Chelmsford Magistrates Court. The company pleaded guilty to breaching s2 HSWA and reg 6(1) Lifting Operations and Lifting Equipment Regulations 1998.

HSE prosecuted the company over an incident on 21 September 2007. An employee from Grays fell 7.5m off a ladder when it slipped while balanced on shipping containers, breaking his neck in two places, his skull and his leg in two places. As a result of the incident the worker needed six months off work and had to change his role at the company on his return.

The employee had used a ladder to climb the shipping containers after two containers were lifted at once, and the top container needed to be secured as it moved during the lift. An investigation by the HSE revealed that the process of moving two containers at once was unsafe and there was a lack of planning and risk assessment for securing the containers once they had moved in transit.

HSE Inspector, David King said:

“Every week one person in Great Britain dies due to a slip, trip or fall in the workplace, and in the East last year they accounted for nearly a third of all injuries. What the figures don’t reflect is the extent to which such an incident can affect individual workers and their families. It can lead to major injuries and a lifetime of disability, or extended time off work. In this case the employee has lasting physical injuries which have affected his capabilities at work and has also impacted on his leisure time - he was a keen motor biking enthusiast prior to the incident but has since had to sell his bike.”



Ed - reg 6(1)(b)(ii) Lifting Operations and Lifting Equipment Regulations 1998, states: “Every employer shall ensure that lifting equipment is positioned or installed in such a way as to reduce as low as reasonably practicable the risk from a load falling freely.”

NHS Trust Fined after cleaner badly injured

East Sussex Hospitals NHS Trust pleaded guilty at Hastings Magistrates' Court and has been fined £8,000 and ordered to pay costs of £8,466.71 for breaching reg 3(1) and 4(1) Electricity at Work Regulations 1989 and reg 3(1)(a) Management of Health and Safety at Work Regulations 1999.

This follows an investigation by the HSE at the Conquest Hospital in St Leonards-On-Sea, after a cleaner suffered an electric shock from a steam cleaner. The injuries he received required surgery, and he is now unable to use his right hand. He also suffers severe headaches, deterioration in his eyesight and numbness to his face, which has had a substantial impact on his life. Despite the manufacturer's instruction clearly recommending the use of a Residual Current Device (RCD) with the steam cleaner, the Trust failed to supply an RCD. This device cuts the flow of electricity and mitigates the harm caused by an electric shock.

HSE inspector Liz Smith said:

"As a result of the hospital failing to adequately assess the risks inherent in operating the steam cleaner, the victim suffered a significant number of injuries including the loss of use of his right hand. It is well known that electricity and water do not mix and there is an increased risk of an electric shock or even death. An effective means to protect against the effects of an electric shock is to provide an RCD, which is cheap and widely available, and may save a life. If the Trust had provided an RCD, the victim would not have suffered such significant injuries, which have affected his life. Hospitals need to assess the risks from all electrical equipment, but particularly equipment that is used in a wet environment, and put in place suitable measures, such as RCDs, to protect their employees, as a way of reducing the risk of incidents like this happening".

Ed - reg 3(1)(a) Electricity at Work Regulations 1989 provides that "Except where otherwise expressly provided in these Regulations, it shall be the duty of every employer and self-employed person to comply with the provisions of these Regulations in so far as they relate to matters which are within his control "

Reg 4(1) Electricity at Work Regulations 1989 provides that "All systems shall at all times be of such construction as to prevent, so far as is reasonably practicable, danger. "

Reg 3(1)(a) Management of Health and Safety at Work Regulations 1999 provides that "Every employer shall make a suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work."

Firth Grounding

The Mate of the vessel was alone on the bridge during the hours of darkness. Unfortunately he fell asleep and at about 4.40 a.m on the 10 January 2007. The Sunna ran aground on the western side of the island of Swona. The vessel was carrying 1900 tonnes of Ferrosilicone. The ship was re-floated as the tide rose the next morning with the help of an Orkney harbour tug and the Longhope Lifeboat and was towed into Lyness. The Sunna received severe damage to its hull with the ship bottoms damaged from stem to the engine room bulkhead.

NES Ltd of Hafnarfjordur, Iceland pleaded guilty to breaches of the Collision Regulations, the International Safety Management (ISM) Code and Carriage of Cargoes Regulations. Southampton Magistrates fined NES Ltd a total of £10,500 and ordered £5,987 in costs to be paid for three offences. Charges against the owners of the vessel, Sunna shipping Ltd, were discontinued as the company no longer exists following the sale of the vessel in 2007.

An investigation by the Maritime and Coastguard Agency (MCA) revealed that although the ship only had a crew of seven, the watch keeper was alone on the bridge as the Captain had instructed that the seaman were to be used as day workers and not stand a watch. It also showed that about three months before the incident, during a Port state Control at Moerdijk, Netherlands on the 2 November 2006, the vessel was warned that a lookout as required by the STCW Code was required during the hours of darkness.

Ferrosilicone is perfectly safe when kept dry however when in contact with moisture it can produce hydrogen, phosphine and arsine gas. For this reason the vessel was required to carry equipment for testing the atmosphere. The equipment for detecting phosphine and arsine were out of date. The phosphine equipment by as much as 4 years. The Sunna had carried Ferrosilicone on a regular basis prior to the grounding.

The Master of the `Sunna' had previously been prosecuted at Kirkwall Sheriffs Court on 11 January 2007. He was fined £2500 for not having kept an adequate look out.

Mr Paul Coley, Assistant Director Seafarers & Ships at the MCA, said.

"The requirement for a lookout on the bridge of a ship in the hours of darkness is clearly laid down in the Seafarers' Training, Certification and Watch-keeping (STCW) Code. The Bulk Cargo (BC) Code required monitoring equipment and records of measurements to be kept. The International Safety Management (ISM) Code requires the owners and managers of vessel to comply with national and international requirements. The ISM Code also requires owners and manager ensure that procedures are in place and that they are being complied with. This case acts as reminder to owners, managers and operators of all vessels to ensure that the bridge is properly manned at all times especially at night when in congested/pilotage waters."

Chemical Woes

Two chemical company directors, Colin Stott and Simon Knowles, have been sentenced following convictions for failing to notify the Government that their company produced more than one tonne of a chemical controlled under the Chemical Weapons Convention (CWC). They were fined a total of £6,750 and ordered to pay £8,000 towards the prosecution's costs.

Colin Stott and Simon Knowles were directors of Organic Intermediates Limited which went into liquidation in August 2004. The sentence imposed by the Liverpool Magistrates Court relates to a failure to make the necessary notification during 2002, 2003 and 2004.

Business Minister Malcolm Wicks said:

"This is the first prosecution under the UK's Chemical Weapons Act and demonstrates just how seriously the UK takes its responsibilities under the Chemical Weapons Convention. The UK has a very good record and around 400 firms routinely comply with the requirements, but this sentence should convey to other companies, and to liquidators of companies that are wound up, the importance of meeting the requirements of the Act and the Convention. Legal requirements relating to controlled chemicals must be fully met - and where organisations fail to do so, prosecution is likely. The UK is practicing what it preaches - that all member states of the Convention should implement and enforce their domestic legislation."

The Department for Business, Enterprise and Regulatory Reform provides extensive guidance and advice to organisations about what they have to do in order to meet the requirements of the Chemical Weapons Act and the CWC. The UK has a very good record of meeting its obligations under the CWC and that is testimony to the approximately 400 organisations which are successfully meeting their legal requirements.

Council Truck Death

North Tyneside Council has been bound over for sentencing after pleading guilty to a breach of s3 HSWA at North Tyneside Magistrates' Court. On 2 May 2006, a member of the public, Brian Kindred, was killed after a refuse truck hit him near his home in Allanville, Camperdown, as it was reversing.

HSE Inspector Stephen Britton said:

"This is a tragic case where we found that the council's safety management procedures were not adequate. There was no supervision in place, training was cursory and did not cover guiding vehicles in any way. Had the council followed the simple and straight forward control measures that have been specifically designed for the waste and recycling industry such as, training their operators to warn the driver about pedestrians walking close to the vehicle, Mr Kindred would not have died."

Overtaken Truck

FG Construction (Nottingham) Ltd, of Glaisdale Drive West, Nottingham, has been fined £7,500 and ordered to pay £8,500 costs by Sheffield Crown Court after pleading guilty to breaching s2(1) HSWA.

The charges relate to an incident at a building site in The Manor, Sheffield, on 28 February 2006, when an employee of the company suffered a broken hip after jumping from a dumper truck as it overturned into an excavation. The ground works on the site where the incident occurred were subcontracted to FG Construction (Nottingham) Ltd by Bellway Homes Ltd, of Seaton Burn, Newcastle upon Tyne, which controlled the site.

Bellway Homes Ltd pleaded guilty at the same hearing to breaching reg 15(2) Construction (Health, Safety and Welfare) Regulations 1996, by failing to ensure that traffic routes through the site were suitable for the persons or vehicles using them. They have been fined £20,000 and ordered to pay £11,000 costs.

HSE Inspector Stephen Hargreaves said:

“The driver was forced over the edge of an unprotected excavation after Bellway Homes Ltd failed to segregate the traffic route from pedestrians crossing the site. As his dumper overturned, he jumped from the vehicle and sustained a broken hip, causing him to be off work for a number of months. This incident could have easily been avoided had there been proper safety measures in place. The injuries sustained in this case were serious, but the driver was extremely fortunate that he did not suffer even more severe consequences. Workplace transport is a key area of concern for HSE. There are many avoidable deaths and serious injuries every year because of poor planning of site transport and the failure to adequately segregate site works from moving plant works. We urge other construction companies to review the safety measures they currently have in place, and remind them that HSE guidance on this subject is readily available.”

Ed - Reg 15(2) Construction (Health, Safety and Welfare) Regulations 1996 states: “Traffic routes shall be suitable for the persons or vehicles using them, sufficient in number, in suitable positions and of sufficient size.”



Pest Problems

Manoj Patel, 47, who runs Connoisseur Sandwiches based in Borehamwood, Herts has pleaded guilty to 25 food hygiene offences. The case has been referred to a higher court by St Albans magistrates court because of the seriousness and volume of the offences.

Bench chair Alison Munro said, *'It will be up to the judge to decide, but we consider a custodial sentence is appropriate.'*

During a routine inspection of the premises in March last year, Mr Patel was issued with an improvement notice requiring him to implement a HACCP plan but, despite several follow-up visits, he failed to comply. An inspection in December then revealed that several members of his staff had no record of receiving food hygiene training and Mr Patel himself was unable to produce a training certificate he claimed to have earned. In addition, there was no hot water for a hand washbasin in the WC and containers of sandwich filling had no labels indicating when they had been prepared or when they should be used by. Further visits led to another seven improvement notices being served that month, requiring him to remove mould growth in a walk-in chiller and fix parts of the premises in poor repair. Five more inspections were carried out in January and February this year, but Mr Patel had again failed to comply with the notices.

Mr Patel told the hearing,

'Lately, because of financial problems, the business is going down, income is getting less and it was difficult to fulfil some of the commitments. I know it is very serious not to do it.'

Jean Heywood, the council's portfolio holder for environmental health, said,

'The seriousness of this case is reflected by the fact it has been referred to a crown court for sentencing.'

HBOS Intervention

The Secretary of State for Business and Enterprise John Hutton has announced his intention to issue an intervention notice in the proposed merger of HBOS and Lloyds TSB on public interest grounds to ensure the stability of the UK financial system.

Under s42 Enterprise Act 2002 the Secretary of State can extend public interest grounds. The Secretary of State will lay the necessary affirmative Order in Parliament when the House returns after Summer recess. Currently public interest grounds cover only plurality of media ownership and national security. His decision follows advice from the UK Tripartite Authorities (HM Treasury, Bank of England and the Financial Services Authority).

Ed – Is it possible to suggest that the prime minister and the secretary of state are not singing from the same hymn sheet? I am surprised.

Worker injured from Fall

On 5 November 2007, a 42 yr old labourer, while working for a brick-layer, was barrowing bricks and rubble along planks at first floor height when he fell onto a concrete floor, sustaining a broken wrist, ankle and pelvis.

There was a significant risk of falling from the unprotected edges of the first floor extension in Wem Mill, Shropshire as suitable and sufficient measures had not been taken to prevent anyone falling almost 3 metres (10ft). J.Guest Ltd contravened other regulations by not notifying HSE of the accident within the required timescale.

J Guest Ltd of Kings Walk, Gloucester, has been fined a total of £4,000, and ordered to pay £1,880 costs after pleading guilty to breaching reg 6(3) Work at Height Regulations 2005 and reg 3(1)(b) Reporting of Injuries, Diseases and Dangerous Occurrences Regulation 1995.

Martin Overstall said:

“It was clearly evident that workers were at risk of falling from a height which was very likely to cause substantial injuries or death. The exact circumstances of the accident were unclear because it was reported late to HSE. However, the simple fact remains that someone fell due to lack of sufficient safety measures and was seriously injured. We would not normally expect someone falling from that sort of height, onto a hard surface, to survive. The consequences of a fall frequently shatters the lives of injured workers, their families and dependents. Such falls remain one of the biggest killers of employees and last year, across the country, in the construction industry alone there were 10 employees killed, 13 self-employed died and 3,409 seriously injured after falling from height. Incidents like these could be avoided if companies ensured that they had assessed the risks of working at height. Proper planning for such work and taking necessary precautions to prevent falls are often simple and there is ample free guidance readily available to help companies take the right action.”

Ed - Reg 6(3) Work at Height Regulations 2005 - “Where work is carried out at height, every employer shall take suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury.”

Height Dangers

Steve Emery Roofing Ltd of Lyme Valley Road, Newcastle-under-Lyme has been fined £2,000, and ordered to pay £1,160 costs by Newcastle-under-Lyme Magistrates' Court after pleading guilty to breaching reg 4(1) and 6(3) Work at Height Regulations 2005.

On 28 January, 2008, HSE inspectors observed roof work in progress on a domestic, terraced property in Brook Lane, Newcastle-under-Lyme. Workers were seen on an unsafe scaffold where they had altered the boards to enable them to pass roof tiles, from person to person, down to the ground, thereby avoiding breakage as the tiles were being reclaimed. There was a risk of falling up to 4 metres (13ft) from the eaves platform because of the alterations.

Magistrates also heard that this situation arose because of an absence of effective planning to avoid unsafe working at height during the tile reclamation process. It may have been practical to use a tile elevator or otherwise arrangements should have been made with the scaffolding company to fit a suitable hoist for the duration of the work.

Martin Overstall said:

"Scaffolding, where Steve Emery Roofing Ltd was contracted to work, had been altered in such a way that workers were at risk of falling. Scaffolding boards had been removed from the eaves scaffold platform to make an improvised platform at around 2 metres (6 ft), to enable the tiles to be handed down from person to person. There were wide gaps in both platforms through which workers could fall and there was an absence of edge protection and toe boards on the lower platform. Workers were not trained scaffolders and the end result was clearly unsafe. We would not normally expect someone falling from 4 metres, onto a hard surface, to survive.

The consequences of a fall, even from a lower platform, could permanently shatter the lives of injured workers, their families and dependents. Such falls remain one of the biggest killers of employees and last year, across the country, in the construction industry alone there were 10 employees killed, 13 self-employed died and 3,409 seriously injured after falling from height. Incidents like these could be avoided if companies ensured that they had assessed the risks from working at height, thought through a safe way of tackling a job, provided all the necessary equipment and ensured workers were fully trained and properly supervised. Employers must also ensure that protective measures remain in place for the whole duration of a contract. Proper planning for such work and taking necessary precautions to prevent falls are often simple and there is ample free guidance readily available to help companies take the right action."

Hand Trapped

On 7 February 2008, three maintenance engineers, employed by Invotec Circuits Tamworth Ltd of Blackburn Lancashire, were replacing the motor of a Local Exhaust Ventilation system in the company's premises at Halesfield, Telford.

To remove the motor from its position 3m (10ft) up in an external wall, two of the employees were using a ladder to access a pallet, balanced on the forks of a forklift truck, as a work platform.

As the motor was being lowered on the pallet with one of the engineers steadying the motor he became unstable and put out his left hand to stabilise himself. His hand went into the moving parts of the mast of the forklift and became temporarily trapped, six stitches were needed to repair a finger that was partially 'de-gloved'.

This situation arose because of an absence of effective planning to avoid unsafe working at height and other arrangements should have been made to ensure safe removal of the motor.

Invotec Circuits Tamworth Ltd has been fined £1,000, and ordered to pay £1,259 costs after pleading guilty to breaching reg 4(1) Work at Height Regulations 2005.

HSE Inspector Guy Dale said:

"Using a pallet balanced on the forks of a forklift as a work platform for two people and an electric motor is asking for trouble. The injury occurred as the old motor was being lowered but it could just as easily have occurred at any time while the two employees were working at height because there was nothing provided to prevent a fall. Serious injuries or a fatality are the usual consequences of such a fall and likely to permanently shattered the lives of injured workers, their families and dependents. Such falls remain one of the biggest killers of employees and last year, across the country, in the construction industry alone there were 10 employees killed, 13 self-employed died and 3,409 seriously injured after falling from height. HSE statistics highlight transport as the second biggest cause of work-related deaths, after falls from height. Every year there are around 450 major injuries to employees involving forklift trucks.

In this instance the injured party thankfully did not fall but incurred the injury in preventing a fall. Incidents like these could be avoided if companies ensured that they had assessed the risks from working at height, thought through a safe way of tackling a job, provided all the necessary equipment and ensured workers were fully trained and properly supervised. Proper planning for such work and taking necessary precautions to prevent falls are often simple and there is ample free guidance readily available to help companies take the right action."

Burns Injury to Employee

On 23 March 2007 in Banbury Road, Kineton. An employee of O'Brien & McIntyre LLP was standing in a trench of wet concrete to level it for the foundations of a new house. The wet concrete poured over the top of his Wellington boots and contaminated his clothing. As a result of the concrete being held against the skin, his legs, below his knees, received chemical burns from the cement. The situation was aggravated by a lack of suitable washing facilities on the site.

O'Brien & McIntyre LLP of Burford, Oxfordshire has been fined a total of £500 and ordered to pay costs of £150 awarded to the prosecution by Stratford upon Avon Magistrates' Court after the company pleaded guilty to breaching the Control of Substance Hazardous to Health Regulations 2002.

HSE prosecuting inspector Tony Woodward said:

"Cement is widely used in construction. Anyone who uses cement - or anything containing cement, such as mortar, plaster and concrete - or is responsible for managing its use, should be aware that it presents a hazard to health. Wet cement can cause burns; these often take months to heal and in extreme cases need skin grafts or can even lead to amputation. Exposing employees to substances that are hazardous to health ignores basic safety principles. The average DIY person may have little knowledge of the dangers of cement in its powder state or as wet concrete but there can be no real excuse for an established building business. The lack of available washing facilities on a building site, in this day and age, is totally unacceptable.

HSE publishes a wealth of advice and guidance for employers to help them reduce the risk of such injuries. There really is no excuse for any company failing to be aware of the health and safety regulations relating directly to its own business. Fining a company is not necessarily the greatest punishment or deterrent but, particularly in the construction sector, a company competing for work and needing to declare that it has been prosecuted for breaching health & safety legislation is very likely to have a distinct disadvantage over one with a clean record and those placing contracts can check for prosecutions on the HSE website."

Ed - Reg7(1) COSHH Regulations provides that "Every employer shall ensure that the exposure of his employees to substances hazardous to health is either prevented or, where this is not reasonably practicable, adequately controlled." The maximum penalty for the breach in the lower court is a fine of £5,000.



Falling through the roof

Profile Construction & Interiors Ltd, Alresford, pleaded guilty at Basingstoke Magistrates' Court and has been fined £234, and ordered to pay £200 costs as well as a victim surcharge of £15, for breaching reg 9(2) of the Work at Height Regulations 2005.

On 29 August 2007, an employee fell 3.5m through a fragile roof and suffered a broken collarbone, fractured ribs and a fractured skull in three places. He was working on the roof of an industrial building, applying self-adhesive flashboard to a chimney, and was standing on two crawling boards that Profile Construction & Interiors Ltd had provided. However, the crawling boards were an insufficient platform to work on, and no coverings or guard-rails had been provided to prevent him falling through the roof.

HSE inspector Joanna Woodcock said:

"This type of accident is unfortunately very common in the construction industry and totally preventable. In this case the injuries were not life threatening but this is often only a matter of chance. I urge companies to take heed and put in place measure which prevent their workers falling through fragile roof sheets. If Profile Construction and Interiors Ltd had taken this simple first step a lot of pain and suffering could have been avoided. HSE is keen to offer guidance and a good starting point is our website, which contains comprehensive information on safe working at heights."

Ed - Reg 9(2) of the Work at Height Regulations 2005

"Where it is not reasonably practicable to carry out work safely and under appropriate ergonomic conditions without passing across or near, or working on, from or near, a fragile surface, every employer shall -

- (a) ensure, so far as is reasonably practicable, that suitable and sufficient platforms, coverings, guard rails or similar means of support or protection are provided and used so that any foreseeable loading is supported by such supports or borne by such protection;
- (b) where a risk of a person at work falling remains despite the measures taken under the preceding provisions of this regulation, take suitable and sufficient measures to minimise the distances and consequences of his fall

You Create? You Manage.

Judith Hackitt delivered a strong message during the National Safety Symposium in Warrington.

"We in HSE are not responsible for managing health and safety in your workplace - you are."

Giving her vision of health and safety in the 21st century, Ms Hackitt went back to the roots of the HSWA and revisited the fundamental principle that *'those who create the risk are best placed to manage it'*.

Since the introduction of HSWA, safety performance has improved by more than 70% but more than 200 people continue to die at work every year. HSE's provisional figures of work related fatal injuries in Great Britain last year revealed that 228 workers lost their lives as a result of a workplace accident. A further 28,000 workers suffered major injuries in the form of broken limbs, amputations and serious burns. Over two million people have illnesses that were either caused or made work by work.

Highlighting real health and safety issues affecting Britain's workforce, Ms Hackitt slammed critics who have repeatedly concentrated on 'elf and safety' stories, saying: *"There is a need to draw a clear distinction between real health and safety - stopping people getting killed and the nonsense and jobs-worth's who shamelessly use 'elf and safety as an excuse. You should know that HSE does not care about banning conkers, pancake races or playground games such as British Bulldog. Health and safety does not stop anyone from doing their job - it actually enables them to do it more safely and efficiently. This ranges from finding better ways to help emergency services to perform risk assessments and anticipate problems before they find themselves in life or death situations so that they can quickly adopt the right measures, to enabling small firms to comply with legislative requirements in a simple and proportionate manner."*

Ms Hackitt also revealed that the HSE board is due to launch a new strategy for workplace health and safety in Great Britain in early December. HSE will initiate a consultation process in December which will enable stakeholders to comment on the strategy. The strategy will optimise the performance of the overall health and safety system and clarify the roles of the regulated, the regulator, the workforce and others affected by health and safety in Great Britain.

Volunteers are protected

The HSE, and the Scotland's Trade Union Centre have teamed up to remind voluntary organisations that they all have a role to play in ensuring the health and safety of their army of volunteers, and to reassure volunteers that they too are protected by legislation.

HSE Principal Inspector John Blackburn commented:

"Having proper procedures in place is important to prevent accidents and make sure workers and volunteers can work in a safe environment. Organisations have a moral as well as legal duty to be aware of health and safety, and it also makes financial sense. Employees and volunteers too, should ensure they take reasonable care of themselves and others, and to cooperate with their employer. HSE believes it is crucial for volunteers and employees alike to be involved in the safety process. Safety Committees have an important role to play in promoting cooperation on health safety and welfare matters, providing a forum for discussion, ideas and recommendations to the employer and to promote and support normal employer / employee systems for reporting and control of workplace solutions. Topics covered should include risk assessment and legislation, with emphasis on worker involvement in the process; the purpose of having a safety policy; how a risk assessment helps to prevent accidents in the workplace; workers rights and the role of the trades unions. Workers and volunteers can be involved in the safety process through a union, safety rep, discussions with staff and other volunteers or use of a staff suggestion scheme."

Robert Atkinson, Occupational Health and Safety Development Manager for the Scottish Centre for Healthy Working Lives said:

"Healthy Working Lives Advisers can provide free and confidential advice in your workplace. Our Advisers work with many voluntary organisations, indeed they are our single largest client group, meaning that all our Advisers have knowledge of the sector and experience of the health and safety issues and appropriate solutions. All the services provided by Healthy Working Lives are free and the voluntary sector can also access a number of free online and face to face training courses to help build staff competence. More information is available through the HWL advice line on 0800 019 2211."

Ian Tasker, STUC Assistant Secretary said

"As an organisation the STUC understands the constraints that many voluntary sector organisations are under and we recognise the commitment from the sector, its workers and volunteers in delivering services to users. Our experience has shown that, on the whole most voluntary sector organisations recognise their responsibilities to protect their workers but hesitate on how to develop their health and safety systems and cannot afford to access professional assistance to do so".

VAT scam costly

Prison sentences totalling over 75 years have been handed down by Wolverhampton Crown Court to twelve people found guilty for their part in a major conspiracy to steal £20 million from the public purse in a sophisticated VAT scam. Some of these jail terms are running concurrently - Total sentences handed down in this case came to nearly 120 years.

The HMRC investigation began in 2001, resulting in two separate trials, into what has become known as carousel or 'missing trader' fraud. This involved the dishonest manipulation of the VAT system through the import and export of mobile phones. The fraud featured 7 people from Staffordshire, 3 from Lancashire, 1 from Leicestershire, and 1 from Essex.

Chris Harrison, Deputy Director of Operations, Criminal Investigation, for HMRC said: *"This was not some kind of victimless crime, but organised fraud on a massive scale perpetrated by criminals all bent on making fast and easy profits at the expense of the British taxpayer. This was theft of revenue needed to fund our country's public services. 'Missing trader' fraud is not merely a paper fraud but often features links to other forms of criminal activity including murder, shootings, kidnap, extortion and intimidation which bring devastation to our communities. This case is a further example of our determination and success in bringing to justice the criminals behind this type of fraud. The sentence should send out a clear message to others who may contemplate such criminal activity. We would particularly like to acknowledge the excellent support we have received from Staffordshire Police and West Midlands Police in bringing this case successfully to conclusion."*

The fraud involved the import of mobile phones from various EU countries, VAT free, or a paperwork trail which suggested that imports had taken place. It was likely, in many instances, that the goods described in the documents did not even exist. The paperwork showed the goods would then be sold more cheaply, but with VAT added, through a chain of companies (known as 'buffers') each involved in the plot and sham invoices would be issued. Once the goods had been sold on a number of times they would be exported back to EU countries. This was facilitated by a corrupt freight forwarding company who provided apparent independent confirmation of the legitimacy of the trade and false paperwork on the transport of the alleged goods. The exporter would then claim a VAT credit from HMRC for the VAT paid on the purchase of the goods.

The fraud took place over a three month period. The gang would divide the dishonest profits of the fraud and launder them through various bank accounts some based in Gibraltar and Hong Kong. Assets to the value of £4.5M have been seized and Confiscation Orders are being secured to reclaim this money for the public purse. These assets comprise of a helicopter, a yacht, two properties including Meaford Hall, performance vehicles - a Ducati, Aston Martin, Ferrari and two Bentleys, Rolex watches and diamonds.

Employers warned to prepare for tough new migration controls

Under the Government's new Australian-style points system businesses wanting to employ skilled foreign workers from outside the EEA and sponsor their entry to the UK must apply for a licence.

The Agency is committed to supporting industry through the introduction of the rules to ensure legitimate businesses do not fall foul of the new regime and only those with the skills the country needs will be able to work or study here and no more.

Employers planning to recruit skilled workers from outside Europe must register with the UK Border Agency by 1 October to ensure they are licensed when the scheme goes live at the end of November. This stark message was given in West Sussex, during the first of a series of meetings on the tough new points system for national and international industry.

Border and Immigration Minister Liam Byrne said:

"The points system is one of the biggest shake-ups to the immigration system in a generation ensuring only those with the skills we need will be able to work or study here and no more. This tough points system, plus our plans for newcomers to earn citizenship, will reduce overall numbers of economic migrants coming to Britain, and the numbers awarded permanent settlement. Our message to businesses is loud and clear - if you want to employ foreign workers from outside the EEA, you need to apply now for a sponsor licence."



Earlier this year the Home Office unveiled the criteria which businesses will have to meet to become a sponsor under the points system. These are that:

- any business must register with the Agency as a sponsor before they can bring foreign workers from outside the EEA into the UK to work; and
- as a condition of keeping their licence, sponsors will need to alert us if migrants do not comply with their immigration conditions - for example if they disappear or do not turn up for their job or course. Any sponsor that does not comply with this requirement will risk losing its licence. From November, those who register successfully will be able to sponsor new foreign workers to work in the UK or support those already in the UK who want to stay.

To get in under Tier 2 (General) skilled foreign workers must have:

- enough points through their qualifications and potential earnings;
- a good grasp of English language; and
- enough money to support themselves for the first month of their stay. The new points system is just one part of the biggest shake up to immigration and border security in 45 years, along with fingerprint visas for anyone wanting to come to the UK and compulsory ID cards for foreign nationals.

As well as assisting employers on how to register as licence holders with the right to bring in foreign workers from outside the EEA, today's event saw forgery experts explaining the simple steps employers can take to help spot forged passports.

Immigration chiefs were also on hand to give the clear message that employers found to have negligently employed illegal migrants face large on-the-spot fines of up to £10,000 prosecution and a prison sentence.

Care Home Blitz

Health and safety issues relating to hot water, hot surfaces, unguarded windows, Legionella, manual handling, latex, bed rails and migrant workers will be high on the agenda when the inspections take place and owners and managers can expect strong enforcement action if they are found to be contravening health and safety regulations. These 'surprise' inspections will take place during a two-week period from 15 to 26 September in Somerset.

Additionally, inspectors from Local Authorities and those from the Commission for Social Care Inspection are likely to be carrying out visits during the same period.

HSE inspector Trudi Smyth, who is coordinating the initiative, said:

"This inspection 'blitz' should give both us and the local authorities a good overview of the standards of the health and safety in care homes across the county. Our findings will help to inform our proactive work with the homes and we will be holding a series of Health and Safety Awareness Days, together with the local authorities, across the South West in the new year, prior to our next inspection campaign. However, this is not just an exercise in collecting data. Over the next two weeks, inspectors will robustly challenge any owners or managers of homes where employees, residents and visitors are being put at risk because of health and safety failures and we will not hesitate to take enforcement action to secure improvements."

New Consumer Protection

A new system that will better protect consumers comes into effect from 1 October as a result of the Consumers, Estate Agents and Redress Act:

- Consumer Focus will be formed through the merger of the National Consumer Council, energy watch and Post watch. The new body will be a more powerful consumer champion, with much stronger powers than its predecessors - including the ability to demand information from companies.
- Energy and post companies will have to take greater responsibility for resolving customers' complaints. The regulators, Ofgem and Postcomm, will now fine companies who fail to meet tough new standards. They will also announce how well companies are handling complaints - giving those that perform the best a competitive advantage
- If companies and consumers can't reach agreement on complaints a new independent ombudsman will step in. The ombudsman will be free for consumers, but companies will have to pay hundreds of pounds for every case that reaches this stage. Unlike energy watch and post watch, the redress schemes have the legal power to enforce resolution and award compensation for consumers

Business Secretary John Hutton said:

"These changes will help consumers get a better deal. One single body, rather than three, means a stronger voice holding business and Government to account. It means a more joined up approach to tackling problems. Energy and post companies will have to take greater responsibility for handling complaints or face significant fines. And where complaints can't be resolved voluntarily, new redress schemes give the system teeth."

Ed Mayo, Chief Executive of Consumer Focus, said:

"There could not be a more appropriate time to launch a new, more powerful consumer champion and to improve complaints handling. Current economic conditions are tough and consumers are telling us that value for money is their number one concern. The creation of Consumer Focus, a new kind of campaigner, is a once-in-a-generation opportunity to put consumers at the heart of business and government decision-making. We will campaign for a fair deal for consumers, because if consumers are confident then everybody, including families, business and the economy, benefits."

HSE's Myth of the Month

HSE bans this, that and the other

There have been many reports of HSE, and health and safety law, being responsible for banning all sorts of things. For example, flip flops at work, knitting in hospitals, school sports days, a charity Christmas swim and even cuddly toys on dustbin lorries.



Actually, HSE has banned very little outright, apart from a very few high-risk exceptions (e.g. asbestos which kills over 4,000 individuals a year). HSE believes that health and safety should be about taking practical steps to manage real risks, not bureaucracy leading to the banning of everyday activities.

Next time you hear of a 'ban', if in doubt check it out.

The HSE's copyright in this cartoon and its caption is acknowledged as is the licence to reproduce them.



Registered Office:
56 Hamilton Square, Birkenhead CH41 5AS
Registered Number OC311095
Registered in England & Wales
Regulated by the Solicitors Regulation Authority.

A list of members is available at our registered office or on our website
www.brunswicks.eu

Editor: Andrew Dawson

Podcasts

Brunswicks was the first law firm in the UK to branch out into podcasts. We've got an extensive library of podcasts available to download free of charge. You can find them on our website.

Brunswicks Health Care Review

If you have an interest in health and social care why not subscribe to Brunswicks Health Care Review, our weekly digest of what's new and changing in the sector. You can find a back catalogue on our website as well as information on how to subscribe

The assistance of Jonathan Graves in producing this edition is gratefully acknowledged