

BRUNSWICKS' REGULATORY NEWS

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This newsletter focuses on health and safety issues.

What's been in the courts of note and what's making the news?

IN THE COURTS OR UNDER INVESTIGATION:

BARKSTON PLASTICS FORMING LTD FINED £20,000 FOLLOWING DEATH OF EMPLOYEE.

Had HSE guidance been considered and implemented, or indeed common sense followed this death would almost certainly have been avoided. The deceased was undertaking maintenance work inside a vacuum forming machine when it began operating. He was trapped, seriously injured and later died in hospital. The rudimentary precautions of isolating the machine electrically and hydraulically were not taken. The company had devised a safe system of work—actually attached to the front of the machine—which whilst did not provide for the machine being isolated, would, if followed have lessened the impact of the incident. Iain Evans from the HSE said: "*Had this procedure been implemented, then it would have gone some way to reduce the risk of injury. However it was still not sufficient to comply with HSE guidelines in that there would still have been power to the rest of the machine and potentially stored compressed air. It would have been reasonably practicable for this procedure to include full electrical and pneumatic isolation.*" Mr Evans continued: "*The lack of risk perception through the organisation is a symptom of the lack of training delivered to both employees*

and managers who were working in this area. Whilst they all received a basic induction to the business, and some of them specific courses in the technicalities of vacuum moulding, there was no specific safety training, either external or in-house, delivered to employees working on these machines."

The company pleaded guilty to breaching s2 Health and Safety at Work etc 1974. It was fined £20,000 with £5,100 costs. The HSE asserted that the company had: failed to carry out a suitable and sufficient assessment of the risks; failed to provide a suitable and sufficient system of work; failed to implement the sub-standard system of work that they had produced; failed to supervise their employees when they should be following this system of work; failed to train and educate their employees and managers into the risks and reasons behind the control measures; and, failed to monitor effectively their health and safety systems.

Trafford Magistrates Court 14 September 2006

Maximum penalty for this offence in this court
£20,000

BUPA FINED £90,000

BUPA Care Homes Ltd has been fined £90,000 and ordered to pay £19,247 costs in a prosecution brought by the HSE, following the death of 95-year-old woman, Mrs Charlotte Wood from Mottingham.

Mrs Wood was a resident at the Abbotsleigh Mews Residential and Nursing Home in Sidcup run by BUPA Care Homes. She was unable to walk or move independently. On 28 November 2003, Mrs Wood slipped from a Sarita hoist, which was being used to get her out of a bath, and fractured her shoulder. While waiting for surgery on her shoulder, Mrs Wood contracted pneumonia and subsequently died on 2 December 2003.

Following the sentencing hearing at Southwark Crown Court HSE Inspector Hazel McCallum said,

"All too often we hear of cases where vulnerable, elderly people are not afforded the standard of care they deserve because the systems in place are not properly followed. The tragedy is that Mrs Wood's death was entirely avoidable."

The care assistant who was attending Mrs Wood had been employed by BUPA for about six weeks but had not received training and had not used this type of hoist

before. Risk assessments and procedures for manual handling and safe bathing were not brought to the attention of care assistants and the supervision of staff carrying out lifting operations was inadequate.

Mrs Wood's family say she had other minor falls from hoists while at Abbotsleigh Mews. Her son, Geoff Wood said, *"My Mother was a much loved and central part of our family and her loss was a great blow to us all. Although she was frail she was in good health and we had fully expected her to get a telegram from the Queen."*

Southwark Crown Court 7 September 2006

Maximum penalty for this offence in this court—unlimited fine

Historic note—in November 2004 BUPA pleaded guilty to two charges under the Lifting Operations and Lifting Equipment Regulations 1998. In this case a 90-year-old woman died after a brain haemorrhage resulting from a fall from a sling when she was being hoisted out of a bath. BUPA was fined £2,500 and the HSE awarded full costs.

AMPUTATION LEADS TO DOUBLE CONVICTIONS

F. O'Malley and Sons Ltd of Brighouse, and GMI Construction Group Plc of Leeds, were fined £6,000 and £3,334 respectively, plus costs of £1,327 and £1,185, after an accident, which resulted in a worker losing his lower leg.

The injured man, Mark O'Conner from Bradford, was employed by F. O'Malley and Sons Ltd to operate a dumper truck on a construction site where industrial new build and refurbishment work was being carried out by the principal contractor GMI Construction Group plc.

In a hearing before Barnsley Magistrates' Court, both companies pleaded guilty to charges laid by the HSE under Sections 2 and 3 HSWA which alleged failures to ensure the safety of the workers on site. A dumper truck overturned on an embankment at Dearne Mill, Darton, Barnsley on 11 May 2004.

HSE Inspector David Stewart said:

"Construction is one of the most dangerous industries with 71 people killed in 2004/5 - 32 per cent of all worker's deaths - as a result of construction work. Many more have been injured or made ill. Workplace transport is a key concern with dumper trucks involved in around a third of construction transport accidents. Overturning on slopes and at the edge of excavations and embankments is one of the main causes. Anyone involved with workplace transport should take care not to underestimate the risks of operating such heavy machinery in conditions where the ground may be unstable. Principal contractors and sub contractors alike have a duty to ensure that methods of work are safe by ensuring that risks are assessed during planning of the work and that adequate safety measures are in place. "

Barnsley Magistrates Court 7 September 2006

Maximum penalty for each of these offences in this court £20,000 fine

DRIVEN INTO DANGER

Aggregate Industries UK Limited (Bardon Contracting division) and Tripod Crest Planing Limited were each fined £25,000 after pleading guilty to breaches of Sections 2(1) and 3(1) HSWA.

HSE Inspector Alec Ferguson said, *"Most of the men on site had worked together before. However, despite both Bardon and Tripod having recognised the risk of injury from reversing vehicles, and taking account of this in their method statements, the visiting lorry driver received no site induction about safe reversing from either company on site."*

The incident occurred on South Lambeth Road, Lon-

don SW8 on the night of 14 January 2003. Bardon Contracting employee Stephen Bood, aged 53, was marking a driveline on the road surface for the Tripod Planing machine to follow. With his back turned he did not see a lorry from Tripod's haulage subcontractor reversing towards him. The lorry ran over the length of Mr Bood's leg, crushing them severely. Mr. Bood is still recovering from his injuries.

Central Criminal Court—8 September 2006

The maximum penalty for these offences in this court is an unlimited fine.

IN HOT WATER FOR FALSE PRETENCES

The HSE is targeting anyone who carries out gas work without being CORGI (Council for Registered Gas Installers) registered. In recent weeks 3 installers have been prosecuted with more cases expected. Matt Rich (Bristol) - for breaching Prohibition and Improvement Notices requiring him to cease gas work and breach of gas regulations for undertaking work without being a member of CORGI. He was fined a total of £1500 plus £811 costs. Kevin Barrett (Swindon)- was charged with falsely pretending to be a member of CORGI and undertaking work whilst not being a member of CORGI. He was required to undertake 200 hours community service and pay £867 costs. Andrew Cox (Weston-super-Mare) - for carrying out servicing work on a number of appliances and properties for a

landlord over a period of time. This left the landlord with a series of safety certificates which were not legal and appliances which were unsafe. Mr Cox had previously been a member of CORGI until his competencies had run out. HSE had previously warned him not to carry out such work and he had acknowledged that such work would be illegal in writing. He was charged with undertaking work without being registered and falsely pretending to be a member of CORGI (he had signed the safety certificates and was therefore deliberately misleading people). He was ordered to undertake 200 hours community service and to pay £500 towards the total costs of the prosecution.

SATURDAY JOB BOY LOSES ARM IN MINCER

A 15 year old boy was stuck in a mincer for two hours at his Saturday job work-place. Surgeons had to amputate his arm in the butcher's shop to free him. The boy's father, commented *'The people who run the shop are friends of ours and they are distraught at what has happened.'* It is unclear how the boy became trapped.

Note— there are no age restrictions on operating machinery such as this. However, the law does require

risk assessments to take specific account of the physical and mental capability of workers under 18 to perform a work task as well as operating and maintaining such machinery.

Nearly 4,500 workers aged 16 to 24 were seriously injured or killed at work last year.

Brunswicks' Healthcare Review

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YET ANOTHER DEATH FOLLOWING A FALL FROM HEIGHT

Bulldog Products Ltd of Southport have been fined £17,500 and ordered to pay £6,998 costs after pleading guilty to breaching their s2 HSWA duty. This followed the death of a 62 year old employee, Mr Frederick Moses in a 4.6 metre fall.

Mr Moses was wrapping a pallet of trays with shrink-wrap on a mezzanine floor approximately 4.6 metres above ground level adjacent to a hole for raising and lowering the pallets. The hole was bordered on two sides by wooden fencing, on the third by a brick wall. The fourth side was equipped with three chains strung across the opening and a walkway approximately one metre wide surrounded the hole. Mr Moses removed the chains and was wrapping the pallet when he fell

through the unguarded hole to the ground floor. He died later that day in Southport District General hospital from multiple injuries.

HSE Inspector Gill Chambers said: "*This tragic accident shows the importance for all businesses in assessing their work at height and putting in place measures that prevent people falling. This company put in place simple measures after the accident that, if they had been in place before the accident, would have prevented Mr Moses' death.*"

North Sefton Magistrates Court (Southport) 27 September 2006

Maximum penalty for this offence in this court—£20,000 fine.

TOP GEAR INCIDENT

HSE and police are investigating the circumstances surrounding Richard Hammond's high speed crash at the former RAF Elvington air base near York on 20 September 2006.

It is understood that the HSE's enquiries relate primarily to the planning, preparation and organising of the activities, including the marshalling and emergency arrangements.

Richard Hammond's co-presenter Jeremy Clarkson has long been critical of what he has described as health and safety fascism. It is presumed that this must have

irritated the BBC as it seems they took the opportunity to get their own back on the night of the accident. In the flagship 10 o'clock TV News bulletin there was a near hysterical report by a BBC journalist singling out Clarkson's apparent attitude and comments regarding health and safety. This looked like the BBC seeking to position itself away from Clarkson and curry favour with the investigators. However given the wave of sympathy and support for Hammond the later reports from the BBC shied away from repeating this position at least in public.

PERSONAL PROSECUTION— TAKE ONE

The HSE has issued a reminder about the dangers of inexperienced or untrained workers using lift trucks. This follows the prosecution of a man who, while using a forklift truck against instruction, caused serious injury to a lorry driver. HSE Inspector Kathryn Wells, who carried out the investigation said: "*This case demonstrates all too clearly what can happen when an inexperienced and untrained driver gets behind the wheel of a forklift truck*". Travers Clarke, then aged 19, was living in Dewsbury and working as a security guard at Crown Point Site, Hunslet Road, Leeds. He was fined £260 for failing to take reasonable care for his own health and safety and that of another person. On 6 March 2005, Mr Clarke agreed to unload a consignment of cardboard used to make printed packaging from a lorry, despite the fact that he had no training and had

been specifically instructed by both the company whose site he was guarding, and his employers, White Knight Security, not to use any work equipment on site. He was using a counterbalance forklift truck to unload a number of 728kg cardboard pallets when one fell from the forks onto the 63 year old delivery driver, fracturing the driver's pelvis, foot and ribs, and causing spinal injuries. HSE Inspector Kathryn Wells, went on to say: "*Forklift trucks are used throughout industry for moving materials and goods. However, they are not a straightforward piece of machinery to operate and drivers require specific and thorough training.*"

Leeds Magistrates Court—18 September 2006

Maximum penalty for this offence in this court £5000 fine

AMPUTATION

Rence Engineering Services Ltd of Brighouse, have been fined a total of £4,000 plus costs of £1,261 following an accident in which an employee lost his lower leg.

The injured man was assisting an operator who was using a forklift truck to lift and turn a fabrication at the company's site at Royd Business Park in Dye House Lane, Brighouse on 14 September 2005. The fabrication fell and landed on the right leg of the man who was standing close by. The leg was so badly injured it later had to be amputated from below the knee. HSE Inspector Kirsty Townend said:

"By taking a little more time to plan it safely this accident was entirely foreseeable and preventable. Accidents involving objects falling from lifting equipment are sadly all too common and, as in this case, the results are often disastrous for the individuals involved. Employers have a duty to do all they can to prevent such accidents by assessing the risks be-

forehand, making sure the work is planned and safety measures are adequate. Anybody using lifting equipment should be properly trained and all equipment should be checked and well maintained by a competent engineer. Anyone working with fork-lifts or lifting equipment in general should never underestimate the risks."

The company pleaded guilty to an offence contrary to regulation 8(1) of the Lifting Operations and Lifting Equipment Regulations which alleged failure to ensure that the lifting operation was properly planned, supervised and carried out in a safe manner, and under Regulation 9(3) for failing to ensure that the forklift truck used was in good condition, checked and maintained.

Calderdale Magistrates Court—15 September 2006

Maximum fine for these offences in this court £5000 per offence

PERSONAL PROSECUTION—TAKE TWO

Mr Lee Smith, an employee of Premier Storage in Southwark, was fined £1,000 after an accident involving a forklift truck that left two teenagers seriously injured. One suffered a broken back, the other a broken neck and back. The incident took place on 11 February 2003 while Mr Smith was working at the premises of Premier Storage, Hyson Road, London, SE16. A forklift truck with a man-riding cage was parked outside. Timothy Whitton, aged 19 and his brother Stephen Whitton, aged 18, who were employees at a neighbouring firm, climbed in to the cage to have a closer look at it. The Warehouse Manager raised the cage until it was about 21 feet above the ground. Mr Smith, who had watched the cage being raised, then climbed into the forklift truck and reversed it down the forecourt and made a sharp turn at which point the vehicle overturned. The

brothers sustained serious injuries. Timothy Whitton suffered a broken back, a broken right femur and dislocations to several of his toes, three of which were subsequently amputated. Stephen Whitton suffered a broken neck and smashed vertebrae. Despite having made a good recovery, they both continue to suffer from their injuries to this day. Following the hearing at HSE Inspector Emma Stiles said, *"This case is a stark reminder to all that forklift trucks are not toys to be played with and that if employees decide to undertake such an act of horseplay then the Health and Safety Executive will take action against them."*

Croydon Crown Court - 8 September 2006

Maximum penalty in this court for this offence—unlimited fine

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WHAT'S NEW?

FIRE SAFETY LAW SHAKE UP

The 1st October is a momentous day in the history of fires safety law. Everyone in business or owning or occupying non-domestic premises for their work is affected. We are told that the new fire laws are simpler and safer—time alone will tell.

Fire safety law will now be covered by one piece of legislation and for premises fire certificates will be abolished. The emphasis will be on preventing fires and reducing risk with a 'responsible person' tasked to ensure the safety of everyone who uses the premises including carrying out checks on fire protection equipment and facilities. The Fire Gateway website (<http://www.fire.gov.uk>) offers tools to assist businesses perform their own risk assessments. There is also comprehensive guidance available—although given just how much paper is available on this subject it has to be open to doubt about how much will actually be read. The Minister responsible for the fire and rescue service, Angela Smith, said: "*Risk assessment is a process that should be familiar to all businesses and the self-employed across England and Wales. These new rules will remove burdens from business - replacing over 70 separate pieces of fire safety legislation with a single reform. If your premises complies with current fire safety regulations, then the major difference you will notice is that new rules are cheaper and easier to follow especially as, in most cases, you will now be dealing with one regime and one enforcer.*"

CFO Iain Cox, chairman of the Chief Fire Officers Association National Fire Safety Committee, said:

"Compliance with the new Order should be straightforward for those businesses that meet the existing standards. All employers and others who have a responsibility for fire safety are urged to check their procedures by using the self assessment available on the Fire Gateway. Fire and Rescue Services will be carrying out audits to check compliance and where standards are not acceptable they will work with the responsible person to identify a suitable solution. Formal enforcement action using notices or the courts is very much the option of last resort other than in the most serious of cases. Our over-riding aim is to reduce the numbers of fires, the number of people killed and injured and the risk to business from fire."

Interesting Fire Facts

There were approximately 81,500 fires in non-domestic premises (places where people work, meet and gather) in England and Wales between 2002 and 2004. As a result 65 people died and about 3,900 were injured.

The overall economic cost of fire in England and Wales was just over £796m in 2004 (this figure includes property losses, fatalities, injuries and lost business). The average economic consequential cost of fire to a business in 2004 was £34,400

SOUNDING OFF

So what will this fire law shake up really mean? Time will tell and as with all things safety related all people of goodwill will wish the reforms well. However have we just witnessed the devolution of fire safety to business? Some might term that a form of privatisation.

One trusts that the vision of the friendly fire officer assisting business comply with the law has not been consigned to history as the new regime does cast the fire authorities in the role of fire-policemen, prosecutors and enforcers. Of course, over the years the fire authorities have been and did prosecute cases. Our experience of them in recent years is of a prosecutor-cum-regulator seeking to find its feet—and not always hav-

ing the maturity to know when prosecution was inappropriate.

The new regulations require all who share occupancy of a premises and those who control the premises to cooperate on matters of fire safety. Fine in theory—but what if you have a taciturn or absent party—often a landlord, or you need other's co-operation to verify that shared evacuation routes are appropriate?

This is an interesting mix in which to throw the fire authorities as enforcers. I predict tears before bedtime! If the new regime saves lives and limits property damage I will congratulate those responsible—but I'm not holding my breath.



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