



## Prosecutions

### Fatal Fall at Hotel Results in £126,000 Fine

Two firms have been fined a total of £126,000 after the death of a workman at a hotel in Buckinghamshire. John Robinson, of Milton Keynes, died when he fell about 100ft (30m) when scaffolding collapsed at the 11-storey Jurys Inn in April 2006.

McAlear & Rushe, from County Tyrone, Northern Ireland, and Lee Smith Carpentry, from Romsey, Hampshire, admitted breaches of health and safety. The judge fined the companies a total of £126,000 including costs:

- McAlear & Rushe, the principal contractor, was fined £90,000 and £42,000 costs
- Lee Smith Carpentry was fined £36,000 and £28,000 costs.

The Court heard that Mr Robinson was fitting tiles, which each weighed as much as a packed suitcase, to the side of the building when the scaffolding collapsed. He was working with his son Mark on the 15th level of 19 levels of scaffolding. Mark Robinson and electrician's mate Ivan Penkov both suffered serious injuries.

The Health and Safety Executive (HSE) said about 200 people were working on the site but the scaffolding had collapsed during a lunch break and many were in a canteen.

The Judge said the accident was a 'disaster waiting to happen'. He said there had been previous concerns about McAlear & Rushe's management of scaffolding and suggested that commercial pressure may have outweighed health and safety considerations.

Both companies have apologised for the incident. McAlear & Rushe said it had improved health and safety procedures and improved its management of scaffolding construction.

The firm which erected the scaffolding, NNM Scaffolding of Mansfield, Nottinghamshire, was also accused of breaching health and safety law. But it has gone into liquidation and its managing director John King is 'hiding in Spain'.

### Salus Be Wise

The Work at Height Regulations 2005 (WAHR) define work at height as being work in any place, including a place at or below ground level, (including access and egress from such a place of work) where if measures required by the Regulations were not taken, a person could fall a distance liable to cause personal injury.

Safe Systems of Work (SSoW) are designed to help employers manage the risks on construction sites. SSoW are used to identify the major hazards associated with the type of work in question and then ensure that appropriate controls are implemented prior to the commencement of the work. They utilise a three-part process, namely:

- plan the activity
- identify the hazards and the controls needed
- sign off.

The above incident could have been prevented through many means, including:

- legislation (Work at Height 2005 Regulations)
- Salus guides (Working at Height and Construction Site Safety)
- guidance (Health and Safety in Construction, HSE)
- topic information pack (Falls from Height, HSE)
- Q&A (Brief for the construction industry, HSE).



### **£1M Rail Fine over Maintenance Deaths**

Network Rail and Carillion Construction have been collectively fined more than £1 million following the death of two track maintenance workers crushed at night by a speeding vehicle on an adjacent line which did not have the correct lights.

Network Rail pleaded guilty to endangering non-employees contrary to section 3(1) of the Health and Safety at Work etc. Act 1974 and Carillion pleaded guilty to breaching Sections 2(1) and 3(1) of the Act by putting employees and non-employees at risk.

Stafford Crown Court heard how the driver of the maintenance vehicle had not been looking where he was going when it hit the pair. The vehicle driven by David Jones on the night in September 2004 had the wrong lights on the back as it reversed and, instead of turning his cab around, looked over his shoulder to see where he was going.

Network Rail and Carillion Construction were fined £667,666 and £444,444 respectively, and each ordered to pay £50,000 costs. John Brady, 44, of Birmingham and David Jones, 48, of Derbyshire, were each fined £750 after being found guilty of endangering the safety of rail passengers.

### **Firm Pays Out for Occupational Asthma**

Employers are being warned about the importance of protecting workers from occupational asthma. The warning comes after a firm paid out over £26,000 due to a member of staff developing asthma within weeks of being exposed to soldering fumes at work.

Turbo Power Systems Ltd was fined £3,000 and ordered to pay £3,000 in costs after it pleaded guilty to three breaches of health and safety legislation. The firm also admitted liability and agreed to pay the employee £20,000 compensation plus legal costs.

The employee started working for the company, which makes electric generators and motors for the aerospace industry, in June 2007, where she spent up to six hours a day soldering. She worked with rosin-based soldering wire, which is known to cause occupational asthma, but was never given any training or warning about the dangers. She was soldering in an enclosed space with inadequate extraction and within a few weeks began to suffer from difficulty with breathing. She was diagnosed with occupational asthma which she has been told she will have to live with for the rest of her life.

She was later made redundant and has since been unable to find alternative employment.

Commenting on the case, HSE Inspector, Andrea Robbins, said:

"It is well established that exposure to rosin-based solder flux fumes can lead to the development of occupational asthma. It was therefore entirely foreseeable that failure by the company to implement appropriate assessment, control measures to reduce exposure to these fumes, and a failure to have health surveillance would put their employees at risk."

The company has since introduced a range of improvements including the use of a non-rosin based solder flux where possible and provision of local extraction ventilation, and a programme of health surveillance.



### Theme Park Prosecuted Following Toddler Injury

A theme park has been fined £8,000 after a toddler fell eight feet through a simulator ride last year.

The Health and Safety Executive (HSE) prosecuted Malton based theme park, Flamingo Land Ltd over the incident. The company pleaded guilty to breaching section 3(1) of the Health and Safety at Work etc. Act 1974.

The toddler, aged two at the time of the incident in March 2008 fell through a two foot square hole onto a concrete floor as he boarded a newly-refurbished Motion simulator cinema ride with his mother. He escaped serious injury, but suffered bruising to his head.

Flamingo Land Ltd was fined £5,000 and ordered to pay £3,277 costs at Scarborough Magistrates Court.

### News

#### Disability in the Workplace

The Disability Discrimination Act (the DDA) has been amended a number of times since it was originally enacted in 1995. One such amendment was the Disability Discrimination Act (Amendment) Act 2003, which came into effect in October 2004 and served to widen the scope of the DDA. A further amendment in 2005 widened the scope of the Act by extending the definition of disability.

The ethos behind the DDA is to provide protection and rights specifically for disabled workers, which employers are legally bound to comply with. Although the DDA is similar in theory to the provisions contained within sex and race discrimination legislation the main difference is that the Section (1) clearly defines the range of conditions that the legislation covers. Under the DDA employers must protect certain workers from discrimination, and there are also provisions to allow positive discrimination in certain circumstances.

#### Total Pleads Guilty Over Buncefield

Oil company Total UK has admitted health and safety breaches connected to the 2005 Buncefield oil depot explosion.

Total entered guilty pleas to two charges under the Health and Safety etc. Act 1974 and one under the Water Resources Act in the case brought by the Health and Safety Executive and the Environment Agency.

It will be tried once four other companies - Hertfordshire Oil Storage, British Pipeline Agency, TAV Engineering and Motherwell Control Systems 2003 - have been sentenced.

A series of explosions, ripped through the depot in Hemel Hempstead, Hertfordshire, on 11 December 2005, leaving 43 people injured and forcing 2,000 to leave their homes.

Widely thought to be the largest ever explosion in peacetime Europe, it measured 2.4 on the Richter scale and could be heard 125 miles away.



## Guidance

### Violence in the workplace: New guidance and toolkit

According to the 2006/07 British Crime Survey, there were an estimated 684,000 workplace incidents, comprising 288,000 assaults and 397,000 threats of violence. Any form of harassment and violence against workers, whether committed by co-workers, managers or third-parties, is unacceptable.

A new guide 'Preventing Workplace Harassment and Violence – joint guidance implementing a European social partner agreement' has been launched to help employers prevent harassment and violence in the workplace. The project had financial support from the European Commission.

The management and prevention of work related violence in retail and licensed premises has also been the subject of review by the HSE who has issued a toolkit 'Violence at Work - Tell us what you think'.

#### *Background*

Harassment occurs when someone is repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work. Violence occurs when a worker or manager is assaulted in circumstances relating to work. Both may be carried out by one or more manager, worker, service user or member of the public with the purpose or effect of violating dignity and affecting health by creating a hostile work environment.

European level employer and trade union organisations agreed in 2007 that action was required and the guidance has been drawn up by UK organisations that are represented in EU Social Dialogue in order to implement a European level framework agreement.

#### *Aims*

The responsibility for determining the appropriate measures to prevent and deal with harassment and violence in the workplace rests with the employer although workers play an important role in identifying and reporting incidents. Employers should involve workers – and where recognised, trade unions – in establishing procedures to deal with harassment and violence.

The stated aim of the agreement is to:

- raise awareness and increase understanding of employers, workers and their representatives of workplace harassment and both internal and third party violence
- provide employers, workers and their representatives with a framework of response to identify, prevent and manage problems of harassment and all forms of violence at work.

A framework of measures is included in this guidance document to assist employers in developing their policies and procedures.

#### *Violence in Retail and Licensed Premises Toolkit*

A toolkit providing practical advice on how to conduct a risk assessment and take action to prevent or control work-related violence has been developed by the HSE.

The main focus of the toolkit is to tackle work-related violence towards employees, and to demonstrate some of the control measures that could be implemented to help reduce the risk of violence to customers and members of the public in retail and licensed premises, and reduce the risk of crime against business.

It contains information on a range of possible control measures and good practice that other businesses have found effective.



### Advice on Lone Working

The Trade Union Congress (TUC) has published new guidance on lone working. This is in response to the findings of the 2008 safety representative's survey, which rated lone working as the sixth major hazard in the workplace. Different workplaces have different levels of risk in terms of lone working, with some groups more dangerous than others. In one sector – the retail sector, working alone is par for the course, particularly in small retail outlets, and industry figures revealed that 20,000 shop workers are physically attacked per annum and a much greater number are verbally abused and/or threatened.

Lone working is not covered by specific primary legislation, however it does fall within the general remit of health and safety legislation, particularly in terms of risk assessment, welfare provision, recording and reporting of injuries/incidents, first aid provision and consultation with employees. The main pieces of legislation relevant to lone working are the:

- Health and Safety at Work etc. Act 1974
- Management of Health and Safety at Work Regulations 1999
- Workplace (Health, Safety and Welfare) Regulations 1992
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
- Safety Representatives and Safety Committees Regulations 1977
- Health and Safety (First Aid) Regulations 1981.

The TUC lone working guidance is split into several different sections, as follows:

#### *Risk Assessment*

It is recognised that risks faced by lone workers are likely to be the same as for all workers. They may, however, face additional risks from issues such as fire, inadequate welfare facilities, theft and intruders, sudden illness/emergencies, violence and abuse from members of the public, psychological effects of social isolation, driving risks and lack of supervision/training. A detailed and comprehensive risk assessment should be undertaken, specific to the tasks the lone worker(s) is expected to undertake. Consultation should take place with the employee(s) concerned, and consideration should also be given to the working environment as well as the work task itself.

#### *Dynamic Risk Assessment*

Essentially this involves the lone worker encountering an unforeseen situation, and taking operational decisions accordingly. Dynamic risk assessment is designed to complement and augment the main risk assessment, and is not an opportunity for the employer to transfer responsibility to the employee.

#### *Violence*

If the main risk assessment identifies the potential for violence in the course of lone working the employer should look at ensuring a safe system of work, not just the provision of personal alarms etc. The way in which the task is carried out can be an effective means of reducing the risk from violent situations. Tracking systems may also be introduced for driving work.

#### *Working in Remote Areas*

Recommended actions for lone workers in remote areas include:

- safe means of travel to and from the workplace, particularly out of normal working hours
- details of how long the task is expected to take should be monitored, and a reporting-in system introduced
- suitable and sufficient welfare facilities (toilets, rest areas etc) should be provided
- information on what to do in an emergency needs to be clearly communicated
- emergency services access needs to be considered and provided for.



### *Home Working*

Again, risk assessment and consultation should take place. Issues such as ergonomics and the psychological effects of social isolation will need to be considered.

### *What can Employers Do?*

Employers can assist in terms of lone working by:

- raising awareness of the potential problems associated with lone working
- encouraging reporting of any problems
- conducting a workplace survey to determine if lone working is a problem in their workplace
- getting involved in negotiations with employers to look at policies and procedures to tackle lone working both on-site, and working away from the base.

## **New Motor Vehicle Repair Publication up to Speed**

HSE has published guidance on 'Health and safety in motor vehicle repair and associated industries' (Series code HSG261). It worked with representatives from the motor vehicle repair industry to develop the guide, which replaces two previous publications; Health and safety in motor vehicle repair (HSG67) and Health and safety in tyre and exhaust-fitting premises (HSG62), both published in the early 1990s.

It reflects changes in the industry since then, including:

- air conditioning
- air bags
- hybrid vehicles
- compliant paints and spray guns
- 'Small and Medium Area Repair Techniques' (SMART).

It includes extensive guidance on a number of issues including:

- tyre repair, replacement and inflation
- exhaust and windscreen replacement
- body repair and refinishing including isocyanate-containing paints
- roadside recovery and repair of vehicles
- working under vehicles including vehicle inspection pits
- fire and explosion
- noise and vibration
- electrical safety
- valeting.



### Tractor Deaths Prompt Safety Guidance

The HSE has updated its guidance on tractor safety. The guidance, Tractor Action: A step-by-step guide to using tractors safely, has been issued following a number of recent deaths involving tractors. These included a 39-year-old worker who died last month while fixing a machine with the tractor running and a 46-year-old who died in August after his tractor overturned into a ditch.

While fatalities and serious injuries on farms have declined in recent years, farming is still one of the most dangerous occupations in the UK, with 26 deaths and 1,500 serious injuries in 2008/09.

The updated guidance is intended for anyone who operates a tractor or tractor-operated machinery in industries such as farming, forestry, horticulture, amenity horticulture and the sports turf industry.

The guide includes a number of key points on a number of areas including:

#### *Before Starting*

- safety checks
- clothing
- safe stop.

#### *In Position*

- getting in and out
- visibility and seat adjustment
- seat belts
- controls
- external controls.

#### *Driving*

- passengers
- clutch use
- other machines and trailers
- overhead power lines
- overturning.



### Consultation

#### Proposals to Extend Lorry and Bus Driver Safety Measures

Proposals to extend licence renewal measures and fitness reporting for drivers of lorries and buses have been published by the Department for Transport (DfT) in conjunction with the Driving Standards Agency (DSA) and Driver and Vehicle Licensing Agency (DVLA).

The measures are outlined in a consultation on the implementation of new European requirements on driver testing, training, examination and licensing, which come into force in 2013. Other motorists affected by proposals outlined in the consultation include driving instructors, motorcyclists and drivers wishing to tow medium-sized trailers.

At present, drivers of buses and lorries renew their licences every five years when over 45 years old and demonstrate their fitness to drive through a full medical report.

From 2013, under-45s who drive these vehicles will also need to confirm medical fitness and renew their licence every five years. Under-45s will not require a full medical report and will still only need to renew their photograph every ten years. All other drivers and riders will continue to renew their driving licences every ten years, as is currently the case.

##### *Mopeds, Motorcycles, Tricycles and Quadricycles*

From 19 January 2013, mopeds will be subject to EU driver licensing rules for the first time, bringing all other Member States closer to existing practice in this respect. New vehicle categories relating to mopeds, motorcycles (with or without a sidecar), motor tricycles and quadricycles will also be introduced.

##### *Testing and Training*

- to drive a car towing a medium-sized trailer or to qualify at age under 24 to ride a more powerful motorcycle, a candidate should either pass a practical driving test or undertake a minimum seven hour training course
- DSA will need to develop suitable test systems for direct access to all three categories of motorcycle, and practical tests will also be available to those seeking to progress through the categories
- it is proposed not to have a separate test for drivers of light cars or vans towing medium trailers but to continue to offer only the heavy trailer test, which when passed will allow drivers to tow both medium and heavy trailers.

##### *Driving Examiners*

The new Directive introduces EU standards for the initial qualification, quality assurance and periodic training of examiners conducting practical tests for licence acquisition. Although the new EU provisions are very largely in accordance with DSA practice, some changes will be required to the future arrangements for driving examiners. The new standards will apply to all driving examiners, not just those employed by the DSA.