

Prosecutions

Safety Helmet Saves Worker

A maintenance fitter at a steel plant in Cumbria could have been killed when part of a 300kg roller-shutter door fell on him – but his safety helmet took the brunt of the blow.

The protective headgear worn by Anthony Ryecroft, 51, was split by the impact of the warehouse door, which he and colleague Geoff Anderson, 59, had been sent to repair at the Workington, Cumbria plant of Tata Steel UK Ltd (formerly Corus) on 20 April 2009.

Workington magistrates heard that the door had been hit by a forklift truck, causing it to become stuck. The men, both employees of the company, were removing nuts from the door's supporting pillar when it became loose and collapsed.

Both the workers suffered badly broken legs, and Mr Ryecroft also sustained cuts to his head and shoulder, after part of the falling structure struck him. He was off work for 15 months as a result of his injuries, while Mr Anderson never returned to work for the company and has since taken voluntary redundancy.

The HSE investigation into the incident found that Tata Steel UK Ltd had failed to make sure a suitable risk assessment was carried out for the work and did not have a robust system in place to ensure its maintenance staff were carrying out work safely.

Said HSE investigating inspector, Mike Griffiths: "The work could have been carried out safely by removing the guide for the slats on the roller-shutter door so that it could be wound up. However, it wasn't planned properly in advance due to the company's procedures."

Sitting on 22 December, Workington magistrates fined the firm £13,000 and ordered it to pay £11,631 in costs, after it pleaded guilty to breaching section 2(1) HSWA 1974.

Speaking after the sentence, Craig Scott, managing director of Tata Steel's projects business, said: "We investigated this accident fully and made a number of changes to the way we work to ensure that something like this can never happen again. "The health and safety of our employees and contractors is our number-one priority. We want to ensure everyone working on our sites is safe."

Inspector Griffiths concluded that Mr Ryecroft "could potentially have been killed if he hadn't been wearing a hard hat".

Workers Buried in Cement Mixer

One worker died and another managed to escape when they were buried underneath 12 tonnes of limestone dust at a quarry in Somerset.

Taunton Crown Court heard that the incident took place at Whatley Quarry in Frome, Somerset, on 9 February 2008. Hanson Quarry Products Europe Ltd, which operates the site, contracted Robert Alan Taylor, trading as Quarry Maintenance Service Engineers, to remove compacted material from the inside of a large limestone fines hopper, which is used to mix the cement.

A build-up of limestone dust was preventing the mixture from flowing out of the hopper, so Taylor sent two of his employees, Neal Webber and Neil Myers, to unblock the machine. In order to remove the build-up of material, they lowered themselves into the hopper using harnesses, and stood on the mixture while chipping away at the solid material.

While they were removing the substance from the walls of the hopper, the material on which they were stood gave way. Mr Webber was buried under approximately 12 tonnes of limestone dust and was suffocated. But Mr Myers was only buried up to his chest and was able to pull himself out. He then tried in vain to rescue his colleague.

HSE inspector Ann Linden told SHP that the method of work was unsafe and that Mr Myers had only been partially buried, as he was using a shorter fixed-length line. She explained that the work could have been carried out safely if the machine had been 'banged' from the outside to loosen the mixture from the inside walls, or by fitting a vibrating device to shake the hopper.

Hanson Quarry Products Europe and Robert Taylor were issued Prohibition Notices, which prevented workers from accessing the hopper until a safe system of work was created.

Inspector Linden said: "Entering a hopper like this must be a last resort after all other possible methods of clearing compacted material have been considered and ruled out – and, even then, it needs to be very carefully planned and organised.

"In this case the parties involved did not consider an alternative to entering the hopper to clear the compacted material. The equipment and work method used in this case were not a safe option. If firms are going to send men into confined spaces they must be more rigorous with the safety systems they have in place."

Hanson Quarry Products Europe appeared in court on 22 December and pleaded guilty to breaching s3(1) of the HSWA 1974. It was fined £27,500 and ordered to pay £27,000 in costs. Robert Taylor appeared at the same hearing and pleaded guilty to breaching reg. 4(2) of the Confined Spaces Regulations 1997. It was fined £1500, plus £10,000 in costs.

In mitigation, both firms said they had no previous convictions and had cooperated with the investigation. All parties accepted that neither defendant, through their failings, caused Mr Webber's death.

The work was completed safely by fixing a vibrating device to the hopper to dislodge the remaining build-up of the material.

News

Roundup of Health and Safety in 2011

Overview

In 2011 the framework that will shape the future of workplace health and safety over at least the next 4 years became clearer. Progress was made implementing many of the recommendations made in Lord Young's review of health and safety in late 2010 and a further review of health and safety regulations by Professor Löfstedt was published. HSE also began cutting 35% of its costs to meet the government's spending target for 2015. Similarly a 28% cut in its funding of local authorities was announced; both these spending reductions will have a significant effect on H&S regulation and enforcement for the future in line with the Minister's direction to reduce inspection (but not investigation) of business.

Significant Prosecutions

Corporate Manslaughter Act

In February Cotswold Geotechnical Holdings became the first company convicted of corporate manslaughter. The prosecution involved the death of a geologist working in a 3.5m deep trench on a development plot in Gloucestershire, when it collapsed killing him. The case was jointly investigated by the Police and HSE. After a three-week trial the company was sentenced and ordered to pay a fine of £385,000, to be paid over 10 years. A gross negligence manslaughter case against the owner of the company was dropped due to his being seriously ill.

Lion Steel Equipment Ltd are the second company to be charged under Act. They are due to stand trial in June 2012. 3 of the 4 directors of the company are also charged with gross negligence manslaughter as well as health and safety charges. On 1st September the Act was extended to cover deaths in police custody suites, prison cells, mental health detention facilities, young offenders institutions immigration suites and Ministry of Defence institutions.

Fire Safety

In July a Mansfield hotel owner and the Consultant responsible for undertaking a less than satisfactory fire risk assessment were both jailed for 8 months for breaches of fire safety regulations. No fire incident preceded the prosecutions.

Asbestos

Marks and Spencer plc. and four of its contractors were convicted for putting members of the public, staff and construction workers at risk of exposure to asbestos. Marks and Spencer plc. were fined £1 million and ordered to pay costs of £600k, PA Realisations Ltd were fined £200, Styles & Wood Limited £100k plus costs of £40k, whilst Willmott Dixon Construction Ltd were fined £50k plus £75k costs for offences that took place at the Marks and Spencer plc. stores in Reading and Bournemouth.

Reform of health and safety

Occupational Safety and Health Consultants Register (OSHCR)

OSHCR was established in January 2011 by HSE and professional bodies representing safety and occupational health consultants across the UK in response to a recommendation in Lord Young's report to the Government on the UK health and safety system – Common Sense, Common Safety. Its aim is to increase business' access to and confidence in good quality, proportionate advice and to address concerns that some – especially SMEs – find it difficult to know how and where to get external health and safety advice. By the end of 2011 there were approximately 2,700 consultants on the register.

Good Health and Safety – Good for Everyone

In March, DWP published a new health and safety framework: Good Health and Safety – Good for Everyone. This sets out how HSE will target resources reducing proactive inspections by one third, changing its emphasis from inspection to investigation. The document's publication coincided with the launch of HSE's "Health and Safety Made Simple" publication and website.

Cost Recovery

In July HSE published a consultative document on proposals for extending cost recovery. Following the consultation HSE announced it will seek to charge for its inspection and investigation services at an hourly rate of £124 where in an inspector's opinion a material breach of law has occurred. The new charging regime could come into operation from as early as 6th April 2012 but currently excludes Local Authority enforced premises.

Infoline Service

In September HSE's Infoline service, which provided a basic information service to users, closed. Former users are now directed to HSE's website which already receives approximately 26 million visits every year. The change coincided with changes to the way in which duty holders are now required to report injuries etc. under RIDDOR - web based reporting now being HSE's preferred method.

Löfstedt report

Following on from Lord Young's review, in November the Government published Professor Löfstedt's report "Reclaiming health and safety for all: An independent review of health and safety regulation". Löfstedt concluded there was no case for radically altering health and safety legislation but there was room for improvement. The report makes 26 recommendations to reduce the regulatory requirements on business, especially where these do not lead to improved health and safety outcomes. The recommendations are designed to lead to the removal of pressures to go beyond what the law requires, enabling duty holders to reclaim ownership of the management of health and safety.

Health and Safety Statistics

In 2010/11 171 workers were killed at work, up from 147 in 2010; reported major injuries however were down from 26,268 to 24,726 and over 3 day injuries down from 96,427 to 90,653. HSE estimate that 26.4 million working days were lost due to work related illness and workplace injury which (excluding cancer) costs society an estimated £14 billion/year.

Enforcement

The number of prosecutions taken and enforcement Notices issued by both HSE and Local Authorities rose in 2010/11. Duty holders convicted of health and safety offences received fines totalling £18.6million, an average penalty of £35,938 per case.

The Future

The Government accepted almost all of Professor Löfstedt's recommendations and 2012 will therefore see further changes. The aim is to establish a system of health and safety which enable employers to make sensible and proportionate decisions about managing genuine workplace risks. HSE will respond to Löfstedt by simplifying and streamlining regulations, focusing enforcement on higher risk businesses, clarifying requirements, and contributing to a rebalancing of the civil litigation system. All of this of course, will be in addition to changes in the activities of HSE and LA's in response to funding cuts.

CPR Advice

The British Heart Foundation (BHF) has become the first organisation in the UK to actively promote Hands-only Cardiopulmonary Resuscitation (CPR).

The BHF, which is backed by Resuscitation Council UK, now advises that anyone who doesn't have CPR training should ignore the kiss of life in favour of "hard and fast" compressions in the centre of the chest.

A poll by the BHF showed nearly half of people are put off helping because of a lack of knowledge about CPR. A fifth of respondents worried specifically about the thought of the kiss of life or catching an infectious disease.

The change is backed by a national campaign, including a new TV advert featuring Hollywood hard man Vinnie Jones, which will help show how simple Hands-only CPR can be, encouraging more people to help if somebody is in cardiac arrest.

The BHF is even urging people to hum the Bee Gees classic Stayin' Alive to get the tempo of chest compressions.

The UK-wide survey also revealed four in ten people feared they'd be sued if they did something wrong, despite the fact there's never been a successful case of that kind in the UK. Without CPR of some kind there is a very small chance of someone surviving cardiac arrest.

Chest compressions with rescue breaths will continue to be part of gold standard CPR and taught during formal training.

Ellen Mason, a Senior Cardiac Nurse with BHF, said:

"The kiss of life can often be daunting for untrained bystanders who want to help when someone has collapsed with a cardiac arrest.

"Hands-only CPR should give lots of people the confidence and know-how to help save someone in cardiac arrest, the ultimate medical emergency. It's been shown that hard, fast and uninterrupted chest compressions are better than stopping compressions for ineffective rescue breaths."

More Senior Managers Prosecuted for Health and Safety Failings

The number of directors and senior managers prosecuted under section 37 of the HSWA 1974 has increased by more than 400% in the last five years, according to unofficial figures released by the HSE in response to a freedom of information (FoI) request.

In October last year, solicitor Lee Hughes asked the regulator a number of questions regarding prosecutions of individual directors over the last 12 years. The figures reported back to Mr Hughes show that:

- 43 directors and/or senior managers and company secretaries were prosecuted under s37 of the HSWA in 2010/11* – the highest since 1999/2000
- the total represents a significant increase on the 12-year-period's low of 10 prosecutions under s37 in 2005/06, and follows the period's previous high of 36 – recorded in both 2008/09 and 2009/10
- the total number of individuals convicted under s37 in 2010/11 was 35 – a substantial increase on the five convictions secured in 2005/06*
- of the senior managers and directors prosecuted in 2010/11, seven faced charges as a result of an investigation that followed a fatal incident; 15 were prosecuted for offences that resulted from an investigation where there had not been a fatal incident; and 21 resulted from an investigation where no incident of any nature had occurred.

Following conviction, three directors were disqualified for periods of between four and five years under the Company Directors Disqualification Act 1986. Data in relation to this matter were not available prior to 2008/09, a year in which three directors were also disqualified. None was disqualified in 2009/10.

Disqualification is not confined to s37 breaches; other reasons could include breaches of sections 3(2), 7, 8 and 36 of the 1974 Act, as well as contravention of Improvement or Prohibition Notices. Nevertheless, a general lack of awareness among HSE operations directors and their local-authority counterparts of the 1986 Act provisions was highlighted in an influential research report prepared for the HSE in 2007 by academics at the University of Warwick.

The research, which looked at the period between the 1986 Act coming into force and 2005, concluded that just 10 directors had been disqualified for health and safety reasons over this time frame – a figure dwarfed by the 1,500, or so, directors disqualified for insolvency, or other financial reasons over the same period.

In September last year, the Lib Dems put forward a policy paper at their party conference, advocating that the power to disqualify an individual from being a company director should be extended to serious failure to protect employees' well-being.

Moreover, despite calls for the Institute of Directors/HSE code of practice on directors' duties to be made statutory, it remains voluntary.

* The HSE cautions that this data has not been validated and may not be completely accurate.

Guidance

What is a 'Substance Hazardous to Health'?

The HSE has clarified the scope of COSHH. The regulations cover substances that are hazardous to health. Substances can take many forms and include:

- chemicals
- products containing chemicals
- fumes
- dusts
- vapours
- mists
- nanotechnology
- gases and asphyxiating gases and biological agents (germs). If the packaging has any of the hazard symbols then it is classed as a hazardous substance.
- germs that cause diseases such as leptospirosis or legionnaires disease and germs used in laboratories.

Due to these having their own specific regulations, COSHH does not cover:

- lead
- asbestos
- radioactive substances.

Guide on Economic Incentive Schemes

European research suggests that economic incentive schemes encouraging companies to invest in risk prevention are a cost-effective option for governments looking to cut the numbers of work-related accidents and illnesses. This guide issued by the European Agency for Safety and Health at Work is based on the findings of an European economic incentives project aimed at developing a practical and user-friendly guide to help incentive providers in the EU create or optimise their own economic incentive schemes.

Some EU Member States already offer various kinds of financial rewards for businesses that invest in keeping their employees safe, ranging from state subsidies and grants, through to tax breaks, preferential terms for bank loans, and lower insurance premiums for the best-performing businesses.

The European Community strategy 2007–12 on occupational safety and health (OSH) recognises that there is a need to use economic incentives to motivate enterprises to apply good practice in their prevention work. Research has shown that external economic incentives can motivate further investments in prevention in all organisations and thus lead to lower accident rates. For example:

- an incentive scheme introduced in the German butchery sector in 2002 led to a 28% fall in reportable accidents over the following six years compared to a 16% fall in the sector as a whole. In total numbers this means there were about 1,000 fewer accidents per year in incentivised companies
- after the Italian Workers' Compensation Authority began to subsidise bank credits in order to stimulate investment in health and safety among small businesses, the companies taking part in the scheme reported a reduction in workplace accidents of between 13 and 25%
- an incentive scheme in the Finnish agricultural sector has slashed the accident rate by 10.2%, preventing over 5,000 accidents so far.

Further arguments to introduce an economic incentive scheme, especially for private or state-run insurance companies include:

- improvement of corporate social responsibility (especially in large companies)
- improved reputation of the insurance company
- creating win-win situations with clients
- competitive advantage (for private insurance companies).

One conclusion from the EU-OSHA economic incentives project is that incentives schemes should not only reward past results of good OSH management (such as accident numbers in experience rating), but should also reward specific prevention efforts that aim to reduce future accidents and ill-health.

Reports

HSE Statistics 2010/2011

These statistics cover work-related fatalities that are reportable under RIDDOR, and are updated on a quarterly basis. A consequence of providing detail that is as up-to-date as possible is that many of the cases listed are still under investigation. Therefore, these statistics are released on a provisional basis.

The key facts are as follows:

Ill health

- 1.2 million people who worked during the last year were suffering from an illness (long-standing as well as new cases) they believed was caused or made worse by their current or past work. 0.5 million of these were new conditions which started during the year
- A further 0.7 million former workers (who last worked over 12 months ago) were suffering from an illness which was caused or made worse by their past work
- 2,321 people died from mesothelioma in 2009 and thousands more from other occupational cancers and diseases such as COPD.

Enforcement

- 551 cases were prosecuted by HSE (including 33 by the Procurator Fiscal in Scotland)
- 129 cases were prosecuted by Local authorities (including 5 by the Procurator Fiscal in Scotland)
- 18,290 enforcement notices were issued by all enforcing authorities.

Injuries

- 171 workers were killed at work, a rate of 0.6 fatalities per 100 000 workers
- 115 379 other injuries to employees were reported under RIDDOR, a rate of 462.1 per 100 000 employees
- 200,000 reportable injuries (defined as over 3 day absence) occurred, according to the Labour Force Survey, a rate of 710 per 100,000 workers.

Working days lost

- 26.4 million days were lost overall, on average 15 days per case of work-related illness or workplace injury
- 22.1 million due to work-related ill health and 4.4 million due to workplace injury.

Enforcement

- in 2010/11, the HSE prosecuted 551 cases (33 through the Procurator Fiscal in Scotland), an increase of 9% from the previous year
- of these 551 cases, a conviction was secured against at least one offence in 517 cases (a conviction rate of 94%)
- duty holders found guilty of health and safety offences received fines totalling £18.6 million, giving average penalties on conviction of £35 938 per case
- in 2010/11, local authorities prosecuted 129 cases (5 through the Procurator Fiscal in Scotland), an increase of 10% from the previous year
- of these 129 cases, a conviction was secured against at least one offence in 125 cases (97% of all cases proposed)
- duty holders found guilty of health and safety offences received fines totalling £2.2 million, giving average penalties on conviction of £17 612 per case.

It is noted that some deaths are excluded from these statistics as they are reportable under other legislation. The main exclusions are as follows:

- fatal accidents involving workers travelling on a public highway (a 'road traffic accident'). Such incidents are enforced by the police and reported to the Department for Transport. Those killed whilst commuting (travelling from home to work, and vice versa) are also excluded
- fatal accidents involving workers travelling by air or sea. These incidents are the responsibility of the Air Accident Investigation Branch and Marine Accident Investigation Branch, and reported accordingly
- fatal injuries at work due to 'natural causes', usually heart attacks or strokes, unless brought on by trauma due to the accident
- accidents to members of the armed forces.