



### Prosecutions

#### **£50k Fine Following Horrific Incident**

A man with learning difficulties died and five others suffered agonising internal injuries after confusing dishwasher fluid with orange squash and drinking it on a council-organised trip.

East Sussex County Council was prosecuted by the Health and Safety Executive (HSE) following the incident on 7 December 2004.

The adults from St Nicholas Centre, Lewes, were on a visit to Plumpton Agricultural College to use the sporting facilities. The drink, which should have been orange squash but which actually contained the powerful chemical sodium hydroxide, had been prepared at the day centre and taken with them.

Lewes Crown Court heard how the six immediately became distressed, started vomiting blood and began fitting after swallowing the industrial cleaning chemical.

Colin Woods, 60, who had Down's syndrome, died on 5 April 2006 - 17 months after sustaining his initial injuries. Other members of the group suffered burns to their mouths, throats and stomachs and most had to undergo repeated surgery. Three will never be able to swallow normally again.

The HSE investigation found the council had failed to ensure the dishwasher fluid was safely locked away. It admitted leaving the liquid out in the unlocked kitchen of the day centre.

Although the dishwasher fluid was marked as corrosive, its container was similar in appearance to that of the orange squash.

The court heard that surviving service users were considered too traumatised by the incident to be interviewed about who mixed the drink.

HSE inspector, Andrew Cousins, said:

"This is one of the worst incidents I have investigated in all my time as a health and safety inspector - it is impossible to adequately imagine the suffering and terror that the victims must have felt as this tragedy unfolded.

"The terrible thing is that this incident and its horrific consequences could so easily have been prevented by simply locking away the container of sodium hydroxide.

"Instead, Mr Woods died a slow, painful and unnecessary death and others have suffered terrible, preventable injuries - some painful and permanent - because the council failed in its responsibility to take proper care of them. It is imperative that authorities properly protect vulnerable people in their care."

East Sussex County Council, of County Hall, St Anne's Crescent, Lewes, East Sussex, pleaded guilty to breaching section 3(1) of the Health and Safety at Work etc Act 1974. Today, the council was fined £50,000 and ordered to pay costs of £27,670



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### Company Ignored Safety Warnings

A roofing company has been sentenced after repeatedly putting its workers at risk by ignoring urgent orders to improve safety.

The Health and Safety Executive (HSE) issued a Prohibition Notice to CFR Flat Roofing after finding employees were being put at risk of a potentially fatal fall from height.

Three workers were spotted replacing tiles on a sloping roof near an unprotected gable end of a three-storey building at Thornhill Court in Cardiff on 5 August 2010.

Cardiff Magistrates Court heard the employees were working between eight and ten metres above the ground. A visiting HSE inspector issued the notice ordering work to stop immediately until safety barriers were put in place on the roof.

HSE told the court that CFR Flat Roofing had previously received a prohibition notice for breaching the Work at Height regulations in January 2010, and had been made aware of their duties under regulations.

However, on the return visit HSE found the firm had again failed to ensure work at height was carried out safely with suitable equipment, and no precautions were in place to prevent any of their three employees from falling off the roof.

Martin Nealon, trading as CFR Flat Roofing, of Vale Business Park, Llandow in the Vale of Glamorgan, pleaded guilty to breaching Regulation 6(3) of the Work at Height Regulations 2005, and was fined £5,985 and ordered to pay costs of £1,800.



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### Developer Exposed Workers to Asbestos

A property developer who ignored asbestos regulations has been given three suspended sentences of up to 12 months, 200 hours of community service and ordered to pay £10,000 costs.

Michael Murton, 36, of Bewdley, near Kidderminster, instructed contractors to remove sprayed coating containing amosite (brown asbestos) from steel beams while refurbishing a nightclub in Wrexham. The workers were exposed to the deadly substance between 11 and 24 February 2010 at 33-35 Brook Street, Wrexham.

A Health & Safety Executive (HSE) investigation found that Mr Murton had failed to survey the property before the work started. This led to the unlicensed and uncontrolled removal of the asbestos-containing material and its subsequent spread in and around the building.

Mr Murton had previously pleaded guilty to breaching Regulations 5, 8(1), 11(1)(a) and 16 of the Control of Asbestos Regulations 2006 at Mold Magistrates Court.

He also pleaded guilty to an offence contrary to Regulation 19 of the Hazardous Waste Regulations 2005, two duty of care offences contrary to Section 34 of the Environmental Protection Act 1990. He also pleaded guilty to a charge of treating and disposing of asbestos in a manner likely to cause harm to human health or pollution of the environment contrary to Section 33 (1)(c) Environmental Protection Act 1990. These charges were brought by the Environment Agency Wales.

At Mold Crown Court, Murton was given a suspended sentence of eight months for breaching the Control of Asbestos Regulations. He was also given a 12 month suspended sentence for breaching Section 33 (1)(c) of the Environmental Protection Act 1990, and eight months suspended sentence for the offence contrary to Regulation 19 of the Hazardous Waste Regulations 2005.

Mr Murton was also ordered to carry out 200 hours of community service and to pay costs of £10,000 over two years.

HSE inspector Debbie John, said: "This is a serious incident and one that could have easily been avoided. Had Mr Murton surveyed the property for the presence of asbestos prior to the start of construction work, the sprayed coating would have been identified and arrangements made for its controlled removal by an HSE-licensed contractor.

"Instead, Mr Murton, construction workers, waste management contractors and others were exposed to potentially deadly asbestos-containing materials."

### Garage Director Fined for Ignoring Safety Notice

The director of a garage in Edgware has been fined after failing to comply with a safety order issued to protect workers from injury.

Richard Grant, of Scuff Plus Limited, was prosecuted by the Health and Safety Executive (HSE) for ignoring an Improvement Notice requiring a statutory examination be carried out on the pressure system compressor being used at the garage.

City of London Magistrates' Court heard an HSE inspector visited the garage on 6 May 2009. Mr Grant was unable to produce an examination, in line with a Written Scheme of Examination, for the pressure system compressor. The examination is a requirement under the Pressure Systems Safety Regulations 2000, and needed to ensure the pressure system is safe for continued use.

The defendant failed to reply to official letters reminding Scuff Plus Limited to comply with their legal duties therefore an Improvement Notice was served on 14 October 2009.

In January 2010 Mr Grant told the HSE inspector he would not use the pressure vessel until it had been examined by a competent person. However, a follow up check a month later found the compressor was still in use.

After the hearing, HSE Inspector Jack Wilby said:

"Richard Grant flagrantly disregarded his duties to comply with health and safety regulations, showing little respect for the risks to others from pressure systems.

"Despite having more than ten months to put things right and receiving written and verbal advice explaining his duties and how he could comply, he chose to do nothing.

"To make matters worse, Scuff Plus Limited was also given an extension on the Improvement Notice served, which it breached. This cavalier attitude to safety is entirely unacceptable.

"HSE may take tough enforcement action against employers who put their workers in danger."

Richard Grant of no fixed abode, pleaded guilty to breaching Regulations 9 (1) of the Pressure Systems Safety Regulations 2000. He was given a 12 month conditional discharge and ordered to pay costs of £500.

### News

#### **Asbestos Management – Responsibilities Ignored**

Businesses in Britain are continuing to ignore health and safety legislation regarding the management of asbestos, despite courts handing out large fines to those that break the rules, reports WebWire.

In February, the Health and Safety Executive (HSE) announced it would carry out inspections at construction sites across the country in a bid to encourage safe working practices, especially with regard to the handling of asbestos. Despite the fact that the substance is now banned as a building material in the UK, properties built or refurbished before 2000 may contain asbestos, and where appropriate, asbestos surveys need to be carried out prior to any refurbishment work being carried out.

Despite the dangers being faced by workmen on sites across the UK, a number of employers are still risking heavy fines by not taking the danger seriously.

Two companies were recently fined a total of £100,000 and ordered to pay costs of over £20,000 after breaching the Construction (Design and Management) Regulations 2007 and the Control of Asbestos Regulations 2006, and admitting exposing employees and members of the public to asbestos.

Speaking following the court case, HSE inspector Dominic Ellis, said: "Asbestos-related diseases are responsible for around 4,000 deaths a year. Working on or near damaged asbestos-containing materials, or breathing in high levels of asbestos fibres, which may be many hundreds of times that of environmental levels, could increase your chances of getting an asbestos-related disease."

#### **New UK Nuclear Industry Regulator Launched**

The interim Chair of the new Office for Nuclear Regulation (ONR) has been confirmed as Nick Baldwin, former chief executive of Powergen.

The ONR has been established as an agency of the Health and Safety Executive (HSE), pending planned legislation to establish it as a statutory body. The ONR will bring together the relevant nuclear regulatory functions of the HSE (through its Nuclear Directorate) and the Department for Transport.

The organisation will ensure that those authorised to carry out nuclear activities, in both the civil and defence sectors, do so in a safe way – from power stations and radioactive waste to transport of materials and submarines. The ONR staff will also regulate the security of civilian nuclear installations.

Announcing the appointment of Nick Baldwin as ONR interim Chair, the HSE Chair Judith Hackitt said:

"Nick Baldwin has extensive board level experience in the public, private and not-for-profit sectors with substantial experience in governance, leadership, general management and strategic development. He has the skills and experience to lead the ONR as it is established in its new form at this critical time. The safety of nuclear power is more in people's thoughts now than it has been at any time for the last 25 years – the ONR has an important job to do in ensuring that operators in the UK uphold the highest standards of safety."

Nick Baldwin said:

"I'm very pleased to join the Office for Nuclear Regulation as it starts its journey to become a new independent regulator. I look forward to working with Mike Weightman, Her Majesty's Chief Inspector of Nuclear Installations, to create an organisation that delivers our mission of protecting people and society from the hazards of the nuclear industry."



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Mike Weightman said:

"The Office for Nuclear Regulation inherits an international reputation for excellence and a robust regulatory framework forged over more than 50 years, providing firm foundations from which to rise to the current and future challenges of the nuclear industry. Nick Baldwin and I will work together to build on that legacy. We aim to be world-leading, forward-thinking, and more open and transparent."

Employment Minister Chris Grayling announced on 8 February that the ONR would initially be formed as an agency of the HSE, pending planned legislation to establish the ONR as a statutory body.

### **New EU Rules for Lorries**

A consultation on the implementation of new EU rules covering the licensing of lorry, bus and coach operators was announced today by Roads Minister Mike Penning. The European rules under which hire and reward operators are licensed are being changed by a new EC Regulation coming into force in December 2011. This includes a requirement for all member states to establish a national register of operators as already exists in the UK. It will also require other member states to act on information from UK enforcement agencies when operators commit infringements.

Mike Penning said:

"The operator licensing system exists to make sure that the buses, lorries and coaches using our roads are operated safely and legally.

"These new EU measures will help to level the playing field for UK operators by making sure that there are effective mechanisms in all member states to allow enforcement agencies to report illegal activity by foreign vehicles.

"Our proposals for the implementation of these new EU rules will help to strengthen the operator licensing system and improve road safety without imposing unnecessary burdens on industry."

The areas covered in the consultation include the role of transport managers, how operators can demonstrate sufficient financial standing and how operators' transport managers can demonstrate their professional competence.

The consultation started last week and seeks views on how the new rules can best be implemented by the Traffic Commissioners, who issue operator licences and take enforcement action against those who break those rules. The consultation will close on 20 May 2011.



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### **Moratorium on New Applications for Doctors to Gain Appointment/Approval Under Regulations – an Update**

Approximately 730 doctors (550 appointed doctors and 180 Approved Medical Examiners of Divers (AMEDs)) are appointed/approved and periodically reviewed by the Health and Safety Executive (HSE). Gaining an appointment/approval allows the doctor to conduct medical surveillance/assessment of medical fitness for the purposes of certain statutory requirements. The main function of medical surveillance/assessment of medical fitness is to safeguard the health of employees who work with particular hazards under certain conditions.

Due to resource constraints, the HSE implemented a moratorium on new applications from 1 September 2010. This will continue until further notice but will be subject to periodic review.

Normally, the employer to whom the regulations apply will initiate a request for a doctor to be appointed/approved. The HSE has never guaranteed acceptance of an application. However, it is important to ensure those requiring medical surveillance/assessment of medical fitness under regulations do have access to appointed/approved doctors when necessary.

In the first instance, employers that need the services of an appointed doctor should contact the HSE Infoline to obtain a list of doctors already appointed for the appropriate regulation. A list of AMEDs is available on the HSE's diving website. Appointed doctors and AMEDs are widely distributed within Great Britain.

HSE will only consider a new application to appoint/approve a doctor under exceptional circumstances. For example, if there are no doctors appointed under the relevant regulation that the employer can access within a reasonable geographical area.

Doctors undertaking training (eg, in relation to the Ionising Radiations Regulations 1999 or the Diving at Work Regulations 1997) should note that successful completion of this training in itself does not guarantee an appointment or approval. The moratorium will still apply so doctors should consider its implications before arranging any training.

### Reports

#### **Evaluation of Construction (Design and Management) Regulations 2007**

This HSE research report describes the plan developed for the evaluation of the Construction (Design and Management) Regulations 2007 (CDM 2007), the findings from the pilot of the evaluation plan and options for a full evaluation of CDM 2007.

The pilot evaluation showed that there are positive signs in terms of CDM 2007 meeting its objectives, with evidence of three being met and two being partially met. However, some respondents have concerns about the effectiveness of CDM 2007 in: minimising bureaucracy; bringing about integrated teams; bringing about better communications and information flow between project team members; and better competence checks by organisations who appoint other duty holders.

The findings indicate that respondents were able to provide cost data. Some Clients, Designers and Principal Contractors reported no additional costs in complying with CDM 2007 on a project. However, the remaining Clients, Designers and Principal Contractors, and all of the Contractors did report additional costs in complying with CDM 2007 on a project.

#### **HSE Delivery Plan: 1 April 2011 to 31 March 2012**

During 2010, the Prime Minister commissioned Lord Young's review of health and safety and the compensation culture, which culminated in the publication of his report 'Common Sense, Common Safety'. His recommendations have all been accepted by Government and various departments are now engaged in implementing these. In its Delivery Plan for April 2011 to March 2012, the HSE notes that it is making good progress with implementing those recommendations for which they are responsible..

In the plan, the HSE also stress that implementing the recommendations of Common Sense, Common Safety is only one of a number of changes which are taking place that will impact upon the way the health and safety system in Great Britain operates in the future. The Government has announced that it will commission a review of health and safety regulation, the HSE and local authorities will concentrate their interventions on high-risk premises and enforcement where standards are poor, and the HSE will see the establishment of the Office for Nuclear Regulation as an agency within the HSE ahead of Government's intention to create a statutory corporation. There will also be a review of the UK's offshore regulatory framework in the light of recent events elsewhere in the world.

2011/12 will therefore see the next stage of development of Great Britain's health and safety regime. This, together with the adjustments being made as a consequence of the reductions in government funding for the period to 2015, will be a key factor influencing the HSE's delivery.

The HSE is approaching the challenges in three main ways, namely:

- make more effective use of available resources by becoming even more efficient, focussing attention on those areas where the HSE can have the most impact. This will mean making some tough choices about priorities
- recover more costs, by recognising the value of the experience and material the HSE has, and charging for it where there is legitimate scope to do so
- seek to level the playing field by ensuring that those businesses which create risks by operating outside of the law, or where a continuing high level of engagement is required, meet more of the regulator's costs that are generated as a result. The HSE will be consulting on proposals to introduce such arrangements.

### Exercises to Reduce Musculoskeletal Discomfort for People Performing Static and Repetitive Work

The Health and Safety Laboratory (HSL), on behalf of the Health and Safety Executive (HSE), has conducted a review of the literature on the benefits of targeted exercises in reducing musculoskeletal discomfort among those who perform a range of static and repetitive tasks at work. The HSL identifies that the incidence of musculoskeletal disorders (MSDs) among such workers can be reduced if a series of site-specific exercises are performed at regular intervals during the working day and such exercises are supported by rest breaks. This publication describes examples of some of the most appropriate exercises for the upper limbs.

#### *Musculoskeletal disorders (MSDs)*

Musculoskeletal disorders (MSDs) are caused by damage (either short or long term) to muscles, tendons, ligaments, nerves, soft tissues and joints. This damage is normally induced by repetitive work activities that strain the aforementioned components of the body. It is estimated that 50% of work-related sickness is attributable to MSDs. Upper limb disorders (ULDs) are a subcategory of MSDs and are conditions which specifically affect the hands, arms, shoulders and neck. The risk factors for ULDs are repetitive work tasks, poor working posture, forces applied to the upper parts of the body and the length of time an individual is subjected to them.

#### *Key findings*

This report identifies that:

- findings from this research support anecdotal evidence that tailored exercises are effective in decreasing MSD symptoms
- the risk of musculoskeletal discomfort in the upper limbs can be reduced by performing relatively simple exercises (or stretches) during short breaks
- a leaflet containing useful exercises is available from the Chartered Society of Physiotherapy (CSOP) and the HSE can now either publish its own such leaflet, or refer people to the CSOP website for its 'Fit to work exercises' brochure
- the exercises identified by the HSE will be of particular benefit to those working in front of display screen equipment, but they will also be relevant to others performing any repetitive and/or static upper limb related tasks at work
- all the exercises suggested can be performed at the workstation, are of a short duration and range in their degree of conspicuousness from 'no' to 'somewhat'
- the exercises represent respite and relaxation for the eyes, neck, shoulders, upper back, forearms/ wrists and hands
- the incidence of MSDs is related to environmental (the working environment), psychosocial and worker-specific factors
- frequent rest breaks throughout the day are essential for those performing static and repetitive work tasks using the upper limbs. They are effective at reducing the incidence of MSD and do not adversely impact on levels of productivity
- short rest breaks with exercise are more effective at reducing musculoskeletal discomfort in the short term than passive breaks
- computer-cued breaks are an effective means of ensuring workers spend time away from their screens
- task variation (changing posture and work characteristics) can reduce fatigue and lower the incidence of MSD
- for the first time the HSE has produced information of specific use to those who suffer with ULDs.



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### *Conclusion*

The HSL has confirmed for the HSE that targeted exercises can be effective in reducing the incidence of musculoskeletal disorders (MSDs) for those who perform static and repetitive activities at work: However, such exercises are most effective if introduced prior to MSD symptoms occurring and they should not be used as an alternative to designing and operating a system of work that is both safe and comfortable for workers.

## Guidance

### Safe Maintenance of Portable Tools Used in Construction

The European Agency for Safety and Health at Work (EU-OSHA) has published E-fact 54, the latest in its series of E-facts, online-only articles that give simple and practical advice on topics relevant to the promotion of occupational safety and health. This particular publication covers the issue of safe maintenance of portable tools in construction. It explains the risks associated with the use of portable tools (both hand tools and powered tools) on construction sites and specifies how such risks should be managed.

The nature of the hazards

Poorly maintained tools give rise to a number of hazards and these can be summarised as:

- mechanical failure or loss of control - a loose head on a hammer may come adrift from its handle
- safety devices (emergency buttons, protective covers, guards etc) not operating correctly with their presence therefore giving a false sense of security
- risk of electrocution, shock or burns - the result of electrical failings, damaged cables, a lack of proper insulation or earthing; alternatively, a power tool being left connected and switched on
- injury from moving parts - where cracked or broken grinding wheels or cracked blades break away from a portable power tool
- emissions of chemical substances such as toxic fumes or dust, etc
- hearing loss and/or hand-arm vibration effects due to noise and vibration
- risk of injury by accidental fall of non-secured parts or tools during maintenance
- release of high-pressure fluid from hydraulic tools
- the risk of burns from hot oil in hydraulic tools or injury from fire or explosion.

Key facts

A workplace risk assessment must be performed in advance of any maintenance activities being undertaken as employers have a duty to ensure the health, safety and welfare of all their workers, including those involved in maintenance.

The term 'maintenance' includes both preventative (proactive) and corrective (reactive) repair tasks. All repairs must be done without haste, in a professional manner, using the correct replacement parts, with the avoidance of any temporary or improvised solutions.

In order to protect worker safety it is essential that portable tools receive:

- appropriate care - they must be properly cleaned, maintained and appropriately stored. In addition, the maintenance tasks themselves must be performed in a safe manner
- daily visual checks before use to detect potential faults – to include (in the case of power tools) confirmation that guards are present and secure, tool components are not cracked and electrical connections are in good repair
- regular electrical safety testing by a competent person, in the case of powered tools.

In addition, they should be:



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- maintained only by persons who have received the necessary instruction, information and training – to include relevant risk assessment details, specified safe systems of work and the procedure for reporting problems
- labelled 'Do not use' if damaged
- handled in accordance with the equipment manufacturers' instructions as specified in the relevant operational manual
- serviced in accordance with a documented maintenance schedule. This schedule should take full account of the manufacturer's instructions and recommendations, the age of the tool, its frequency of use, the environment in which it is used, foreseeable misuse of the tool, the effects of any modifications or repairs to the tool and its previous maintenance history.

It is essential that those maintaining portable tools are provided with, and are required to wear, the necessary personal protective equipment (PPE).

This guidance also incorporates a set of checklists which are designed to help those responsible for maintaining portable tools take adequate precautions to protect themselves and others against injury during maintenance activities. The lists will also help ensure that such activities are performed to a high standard, so that inspected and repaired portable tools will be safe in use.

### Conclusion

The proper maintenance of portable tools on construction sites is critically important to ensure the health and safety both of those using such tools and others likely to be affected by their actions: However, the maintenance tasks themselves are not without risk and every effort should be made to ensure these activities are conducted in a safe manner.