

### Prosecutions

#### **Bromley Building Contractor Fined for Working without Asbestos License**

**A building contractor from South East London has been fined for running a construction site which led to workers being exposed to asbestos-containing materials.**

Fadil Adil, of Coniston Road, Bromley, was prosecuted by the Health and Safety Executive (HSE) for the way work was carried out on a construction site he was in charge of, on Bromley High Street between 21 and 29 June 2010. The project involved the demolition of a building which had a restaurant on the ground floor and flats above.

Asbestos insulating boards in the restaurant's ceiling were broken up during the demolition which Mr Adil was overseeing. Three workmen demolished the building using sledgehammers and hand-operated breakers, meaning they could have been exposed to asbestos fibres.

**The HSE investigation found that the defendant did not have a licence to work with asbestos, nor was he trained in construction management. At no point did the defendant carry out an asbestos survey, nor did he provide any guidance to the workmen regarding the presence of asbestos.**

HSE Inspector Ian Seabrook said: "Sadly, this kind of incident is all too familiar because the defendant's actions meant that his colleagues were more than likely exposed to asbestos fibres.

"The dangers of asbestos are well known; it is the single greatest cause of work-related deaths in the UK with around 1,000 tradesmen dying each year from asbestos-related diseases.

"Anyone working with these sorts of materials has to commission an asbestos survey to ascertain the level of work needed and then have asbestos removed in a controlled manner by a licensed contractor."

At the City of London Magistrates' Court, Fadil Adil pleaded guilty to breaching the Control of Asbestos Regulations 2006, and the Construction (Design and Management) Regulations 2007. He was fined £19,300 and ordered to pay costs of £7,654.

#### **Stourbridge Builder Fined for Illegal Gas Work**

**A builder from Stourbridge carried out gas work at four houses in Worcester despite not being Gas Safe registered.**

The Health and Safety Executive (HSE) prosecuted James Raybould, who trades as Jim Raybould Electrical, Plumbing and Building Services, following the incidents between September 2009 and 15 July 2010.

**The Gas Safe Register is the official compulsory registration scheme for gas engineers in Britain and it is illegal to carry out domestic gas work without registration.**

Worcester Magistrates' Court heard the offences were discovered when James Raybould failed to fix a leak in a gas boiler he had earlier fitted.

His client contacted a registered gas engineer who told her the work was substandard. She then alerted the Gas Safe Register, who checked the four properties where the gas work had been carried out and they found two of the fires Mr Raybould had fitted were immediately dangerous.

The court also heard a family at one of the houses had suffered from headaches, which they suspected had been caused by the gas fire.

Mr Raybould, of Lady Greys Walk, Stourbridge, pleaded guilty to breaching Section 3(2) of the Health and Safety at Work etc. Act 1974 and Regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998. He was fined £1,330 and ordered to pay £1,170 costs

### **Perthshire Malt Company Fined after Worker Loses Part of Leg**

A national malt company, Paul's Malt Limited, has been fined after a worker had to have the lower part of his left leg amputated, when he became entangled in machinery inside a grain silo.

On 27 October 2008, Derek Kinmond was trying to fix machinery within a silo when he became caught in it at the company's premises at Sidlaw Grain Store, Sidlaw, Burrelton, Perthshire.

The grain silo was emptied using a large piece of rotating machinery known as a sweep auger. The sweep auger had not been moving around the silo so Mr Kinmond switched off the electrical supply and went into the silo on two occasions in order to attempt to release the machinery which appeared to be blocked with grain. On his third attempt he did not isolate the power to the screw auger, and whilst inside the silo, he slipped and his legs became entangled in the auger.

Mr Kinmond was taken to hospital, where his left leg was amputated below the knee. His right leg was also badly broken and is still held together by plates and pins.

An investigation by the Health and Safety Executive (HSE) found that although the company had put in place procedures for working inside silos, they were not safe because there was no supervision on site to ensure that they were followed. The company used a 'Permit To Work' system which required an independent and competent person to verify that the auger was switched off before an employee entered the silo. However at the time of the incident the person nominated by the company, the site manager, had been absent for a number of months and his substitute had left the previous week.

After the hearing, HSE Principal Inspector Peter Dodd said: "If Paul's Malt Ltd had ensured that there was a competent person on site to authorise and oversee the work being undertaken to empty the grain silo, then this incident would not have happened.

"The site manager was on long term sick leave yet no review of the company's systems of work had been carried out. Mr Kinmond should not have been left in the position to be authorising his own work.

"The duty on the employers does not simply extend to giving instructions but ensuring that the instructions are carried out."

At Perth Sheriff Court recently (Tuesday 4 October 2011) Pauls Malt Limited were fined £8,000 after they pleaded guilty to breaching Section 2 (1) of the Health and Safety at Work etc Act 1974.

### **Network Rail fined £80,000 for Leicestershire Bridge Collapse and Train Derailment**

Network Rail Infrastructure Limited has been fined £80,000 and ordered to pay costs of £32,000 after a train hit a collapsed public footbridge and derailed, injuring seven people.

The sentencing at Leicester Crown Court follows an Office of Rail Regulation (ORR) investigation into the incident. On the morning of 1 February 2008, a lorry delivering to a Network Rail construction site near Barrow upon Soar station in Leicestershire struck a footbridge over the railway. The footbridge collapsed, blocking the rail line, and shortly afterwards a Nottingham to Norwich train, travelling at 65 mph, crashed into the debris and derailed.

Six passengers were on board the train at the time of the collision and suffered minor injuries and shock. The injured train driver had to be freed from his cab by the emergency services.

ORR's investigation found that Network Rail had failed to properly plan, manage, and supervise the deliveries of bulk material to its worksite. In this instance, the lorry which struck and demolished the footbridge was allowed to drive along the site with its tipper body raised.

Commenting on the case, Allan Spence, ORR's deputy chief inspector of railways said: "Network Rail's poor planning and management of the construction site at Barrow upon Soar station placed the public, passengers and railway staff in great danger. Given the circumstances it is very fortunate that no one on the train was seriously injured and that no one was crossing the footbridge when it collapsed.

"It is essential that incidents such as this never happen again. Since the time of this accident, Network Rail has made significant progress, acting on our recommendations to improve safety at its construction sites.

"ORR will always take appropriate enforcement action - including prosecution - when necessary to protect the safety of those working or travelling on the railway."

### News

#### Changes aim for swifter justice over Workplace Deaths

More health and safety prosecutions will take place before Inquests as changes to a key agreement between those who investigate and prosecute work-related deaths seek to speed up justice in England and Wales. The changes took effect from 1 October 2011.

Only in exceptional circumstances are cases currently taken before an Inquest by regulators other than the Crown Prosecution Service (CPS). Health and safety offences are only usually brought at this stage if they are being tried in conjunction with manslaughter-related charges.

The revised protocol will allow prosecution before Inquest where manslaughter or homicide charges are not relevant – if it is considered appropriate and in the interest of justice.

The changes to the Work-Related Deaths Protocol (WRDP), should mean that bereaved families see a swifter resolution to some prosecutions. They are being announced by the Work Related Deaths National Liaison Committee (NLC) and are supported by the Coroners' Society.

Richard Daniels, Chair of the NLC, said: "All signatories are committed to seeking justice for bereaved family members, when a work-related death has occurred and someone should be held to account. The change will help us deliver this justice more effectively and sooner in less complex cases.

"The NLC has worked closely with the Coroners' Society to agree the changes and they support this swifter resolution of prosecutions in some cases. We also welcome the Maritime and Coastguard Agency and the Chief Fire Officers' Association as formal signatories of the revised protocol."

The change is not mandatory and it is up to each signatory organisation to decide how they will implement it. Set up in 1998, the NLC has greatly improved the communication and collaborative working between all members when involved with a work-related death. It will be welcoming the Maritime and Coastguard Agency (MCA) and the Chief Fire Officers' Association (CFOA, on behalf of fire and rescue services) as new signatories as part of a number of changes to the protocol.

#### Access to Justice Warning for Northern Ireland

The Association of Personal Injury Lawyers (APIL) has warned that victims of injury in Northern Ireland are at risk of being denied full and proper access to justice. The statement follows the launch of a consultation by the Northern Ireland Executive which recommends a cut legal aid for most personal injury cases and the introduction of a restricted 'no-win, no-fee' system.

"Victims of needless injury, whose lives have been shattered, should have the same access to justice as anyone else," said Martin Hanna, a Belfast-based lawyer who sits on APIL's executive committee.

"If legal aid is cut and a restricted 'no-win, no-fee' system introduced, some victims of injury whose cases are complex will find it difficult to bring a valid claim. How can that ever be considered fair by a just and moral society?"

The 'no-win, no-fee' system which has been recommended by the Access to Justice Review group involves an injured person paying some legal fees out of his damages.

"Damages are calculated to compensate a victim for his pain and suffering. It flies in the face of the principles of justice for an injured person to pay legal costs out of his damages. Instead of potentially restricting access to justice, what Northern Ireland needs is a fair system which provides all victims with the opportunity to pursue the full compensation which they deserve."

### Union Accuses Government of Putting Shop Workers at Risk

The shopworkers Union Usdaw is launching a campaign against police cuts in England and Wales concerned that it will threaten the safety of public-facing workers.

The Union will be petitioning against the budget cuts during its annual Respect for Shopworkers Week, (7 - 11 November 2011). Usdaw General Secretary John Hannett proposed a motion at the Labour Party's Annual Conference in Liverpool saying, "Every minute of every day a shopworker is assaulted, threatened or abused. That is why one of Usdaw's major campaigns is called Freedom from Fear.

Shopworkers should be free from the fear of violence, threats and verbal abuse and it should never be accepted as just a part of the job."

"But it isn't only shopworkers that face these problems. NHS staff, teachers, firefighters, the police and all public-facing workers have the same concerns."

Mr Hannett observed that the cuts could result in a loss of 16,000 frontline police officers, 1,800 PCSOs and over 16,000 policing staff. The union is concerned that the losses will cause a decrease in shopworkers' safety. Violent incidents against shopworkers have halved since 2004 but this trend could be reversed with reduced numbers of police on the streets.

### Mobile Phone Addiction Threatens Safety on Roads

Road safety charity Brake and Direct Line are warning of the danger of mobile phone addiction, after a survey showed that nearly three in 10 drivers (28%) texts at the wheel and one in 13 (8%) do this at least once a week. One in 11 drivers (9%) surfs the web, emails, uses apps or social networking sites when driving.

Texting has been found to make drivers 23 times more likely to cause a crash, potentially killing or maiming innocent road users. But increasingly people are using their phones to do much more than make calls and send SMS messages: responding to emails, social networking, inputting navigational data or using other mobile phone applications.

Research into the impact of sending or receiving text messages among young drivers found the amount of time drivers spent with their eyes off the road increased by up to 400%. Drivers made 28% more lane excursions and 140% more incorrect lane changes. Research using a driver simulator to explore risks drivers face when using phones for emailing found a heightened crash risk. In a large-scale study of commercial drivers, which monitored the impact of them texting at the wheel, their crash risk increased to 23 times that of a driver paying full attention. Studies looking at the impact of talking on your mobile at the wheel have found crash risk is quadrupled, whether you're on a hand-held or hands-free phone.

It is illegal to drive a vehicle or ride a motorcycle while using a hand-held mobile phone, smartphone or PDA. It is illegal to use any kind of electronic device to send or receive spoken or written messages or still or moving images or access the internet. This includes when stopped at traffic lights or queued in traffic.

Brake and Direct Line warn driver distraction from mobile phones could rise as technology uptake rapidly increases and smartphone 'addiction' becomes more common. The organisations are calling on drivers to commit to turning off their phone and putting it out of reach when driving to prevent temptation. They are also calling on the government to take urgent action against driver distraction from phone use at the wheel.

The organisations say the government should:

- make traffic policing a national policing priority, to enable an increase in traffic police, enforcing mobile phones offences and providing an effective deterrent to drivers who would flout the law
- conduct widespread media campaigns that highlight the dangers of mobile phone use at the wheel, alongside other distractions, and the consequences of being caught or causing a serious crash

- ban the use of hands-free mobile phones when driving in line with research showing it dramatically increases crash risk
- change the law so being caught using a mobile phone while driving results in a disqualification for a minimum 12 month period, to provide a real deterrent from this dangerous behaviour; failing this, at the very least we need a far higher fixed penalty fine for this offence
- incorporate road safety into the national curriculum to ensure that the next generation of drivers understands the dangers of using a phone at the wheel

### **Dangerous Drivers to Face Longer Jail Terms**

Dangerous drivers who seriously injure others could spend longer in jail thanks to a new criminal offence. **The new offence of 'causing serious injury by dangerous driving' will carry a maximum sentence of five years in prison and allow the courts to impose tougher punishments on dangerous drivers who devastate the lives of others.**

The changes will be taken forward as part of the Government's Legal Aid, Sentencing and Punishment of Offenders Bill.

For the vast majority of other dangerous driving cases, the maximum penalty of two years' imprisonment provides the courts with sufficient and proportionate powers to punish offenders.

Road Safety Minister Mike Penning said, "The vast majority of motorists are safe and responsible but the wilfully reckless minority who put lives in danger must face serious penalties.

"We are taking action to help the police tackle drink and drug driving, as well as to crack down on uninsured and dangerous drivers, and this new offence will mean the courts can properly punish those who inflict serious injuries.

"These measures - together with improved educational courses for drivers who need to improve their skills - will help ensure Britain's roads remain among the safest in the world."

## Reports

### The Hidden Workforce Building Britain

Exposing exploitation and protecting vulnerable workers in construction

This publication is the result of research commissioned by the Union of Construction Allied Trades & Technicians (UCATT) and carried out by Community Links and Manchester Business School, The University of Manchester.

The research combined two types of research methodology. Firstly, a qualitative 'action research' based approach setting out individual stories that seek to capture the day-to-day experience of vulnerable construction workers. Secondly, a piece of academic research based on interviews and a range of secondary data and sources looking at the role of regulation and the enforcement agencies.

The denial and abuse of workers' employment rights throughout industry is a cause for grave concern for trade unions, community organisations and the individual workers themselves. The construction industry is notorious for its short term contracts, complex sub-contracting chains and informal employment practices, all of which leave workers open to exploitation. But the economic slide which began in 2008 has hit the construction sector especially hard and made life even more precarious for many who work within it. Deregulation and greater marketisation have led to almost one in five workers being classified as vulnerable in one form or another.

#### Overarching recommendations

- there should be a renewed, independent labour inspectorate for the UK
- new and existing inspectorates must increase their reach
- if additional funds cannot be found, though we highly recommend that they are, then increased partnership work must be developed with unions, the voluntary sector, advice groups, local authorities and business groups – forming alliances to reach and support more vulnerable workers and prosecute exploitative employers
- The new labour inspectorate should be carrying out more proactive investigations.

#### Specific recommendations

1. Increase tax revenues for UK plc by ending the unique Construction Industry Scheme (CIS) tax regime.
2. Stop undermining the legitimate construction industry by:
  - a. Increasing the resources for statutory enforcement agencies (funding and staff); and
  - b. Widening the Gangmasters Licensing Authority (GLA) remit to include the construction industry.
3. Remove the 'Catch 22' for Romanian and Bulgarian workers by removing the Accession Worker Card requirement.
4. Increase safety on construction sites by increasing the provision of English as a Second Language (ESOL) classes for newly arrived migrant workers.
5. Encourage legitimate working by increasing local provision of ESOL and information, advice and guidance (IAG) about health and safety and employment rights.

#### Broader institutional recommendations

1. BIS (or the new inspectorate), in partnership with the CBI and TUC, should run a national publicity campaign to raise the awareness within unions and employers on the link between employment rights and enforcement agencies.
2. Trade unions should increase knowledge of enforcement agencies, ie who they are and what they do, through their own organisations.
3. BIS and research and academic institutes should fund and conduct more research into vulnerability at work. Much of the current work tends to be on traditional health and safety issues. A systematic attempt to broaden the remit of that research would assist the work of the enforcement agencies.

## Guidance

### ASFP Guide to inspecting Passive Fire Protection for Fire Risk Assessors

This draft guide has been produced to assist Fire Risk Assessors carry out inspection of Passive Fire Protection (PFP) as part of a Fire Risk Assessment. When the consultation period ends a final version will be completed and issued.

PFP products are those 'built-in' to the fabric of a building to restrict the growth and spread of fire. They do this by controlling the combustibility of wall and ceiling linings, by dividing the building into fire resisting compartments and by providing protection for the structure of the building to prevent its collapse. PFP products include: fire doors, fire resisting walls, floors and ceilings, fire resisting ducts and dampers, fire stopping and fire protection to steelwork.

PFP is designed to ensure that in the event of fire, the occupants can escape, fire will not spread easily within it or to other buildings, the fire and rescue service can attend safely and it will not collapse prematurely. As part of undertaking a fire risk assessment, fire risk assessors will need to undertake an evaluation of PFP in a building.

Whilst a full investigation of all PFP is the ideal; it is generally not necessary for a fire risk assessment under the current legislation. In addition, such investigations cannot be undertaken thoroughly without a detailed and in some cases invasive inspection. This is impractical and is also outside the scope of expertise of most fire risk assessors. If a more detailed investigation is required, or if during a fire risk assessment significant issues or problems with the PFP are discovered, then the need for an appropriate professional site inspection should be included in the report of the fire risk assessment. The Risk assessor must decide on what is needed in terms of PFP and then evaluate what is there and see if it is adequate.

This guide contains information to assist assessors in deciding what PFP is needed for primary life safety and indicates how each type can be checked including:

- lining materials for walls and ceilings on escape routes
- fire doors
- construction of fire resisting walls, ceilings and floors
- penetrating services in walls ceilings and floors forming escape routes
- fire protection to the structure of the building
- cavity barriers
- external fire spread
- sandwich panel construction