



### Prosecutions

#### School Prosecuted over Caretaker Incident

An Essex School has been prosecuted after one of its staff fell from height while at work.

Caretaker David Springett was re-cladding the outside of the kitchen at Shenfield High School near Brentwood in Essex on 28 July 2010.

**The 54-year-old was working with a colleague on an unguarded work platform** when he lost his footing and fell 1.9 metres to the ground. He broke two ribs and needed a three-inch metal plate and multiple metal screws inserted into a broken arm.

**The Health and Safety Executive (HSE), prosecuting, told Chelmsford Magistrates' Court that Shenfield High School failed to take suitable and sufficient measures to prevent an employee falling from height while carrying out work.**

After the hearing, HSE Inspector Corinne Godfrey said:

"As falling from height often results in severe injury or death, the outcome of this incident could have been much worse.

"However, it could have been avoided altogether if an appropriate work platform had been provided by Mr Springett's employers. The school has a duty to protect its staff and working at height brings with it risks they should be aware of, and protect against."

Shenfield High School Alexander Lane, Shenfield, Brentwood, Essex, pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 and was fined £6,500 and ordered to pay costs of £2,243.85.



### **Profit before Safety' Leads to Jail**

An external fire risk assessor and a hotel manager have both been jailed for eight months for fire safety offences.

David Liu, who runs The Dial Hotel and Market Inn, both in Mansfield, was jailed for eight months and ordered to pay £15,000 costs after pleading guilty to 15 fire safety offences under the Regulatory Reform (Fire Safety) Order 2005.

John O'Rourke, who runs Mansfield Fire Protection Services, was also jailed for eight months and was ordered to pay £5,862.38 after he pleaded guilty to two breaches of the fire safety legislation.

**The judge said that the time had come to "send out a message to those who conduct fire risk assessments and to hoteliers who are prepared to put profit before safety".**

Fire protection officers from Nottinghamshire Fire and Rescue Service had visited both premises and found that the fire precautions were inadequate. They issued prohibition notices preventing any further use of both premises as hotels until suitable improvements had been made.

Mr Liu was prosecuted because he was the responsible person for both premises, and failed to make sure they were safe for customers staying there. Mr O'Rourke was prosecuted because he carried out fire risk assessments at both hotels, but those assessments were found to be "wholly inadequate".

Ian Taylor, Fire Protection Group Manager at Nottinghamshire Fire and Rescue Service, said: **"It is a legal requirement for places of work to have a fire risk assessment.**

**"If employers are unsure about their own ability to undertake a fire risk assessment within their premises they should seek advice from a competent person.**

"In ascertaining someone's competence to provide fire safety advice I would encourage people to ask for references, be aware of what fire safety training and qualifications they have and check to see if they are registered or accredited with an appropriate third party body."

### News

#### Company's H&S 'Basic but Adequate'

A catering firm whose employee was badly burned when she fell into a pot of curry was not in breach of health and safety laws, inspectors have said.

Sudesh Bala was employed by Shobha UK Ltd in Luton on a chicken curry order to serve 500 people at an exhibition at the NEC in Birmingham in October.

The curry was cooling down when she dragged it backwards across the floor and fell into it, inspectors said.

Ageas insurers said the firm denied liability. Mrs Bala plans to sue.

The 47-year-old from Luton, Bedfordshire, has hired solicitors DBS Law to fight for compensation. It said their client had not had sufficient health and safety training and suffered severe burns to her back, groin and buttocks in the accident.

Shobha UK Ltd said it sympathised with Mrs Bala but could not accept liability for her accident on 9 October.

Ritu Sharma and her mother Shobha Sharma took over the company in May 2009.

Ritu Sharma said when they took over she trained all the staff in the correct lifting procedures and as a supervisor Mrs Bala had been given additional one-to-one health and safety training as well.

She said signs had been placed around the workplace to remind staff of the rules, written in their native Punjabi and in English.

An inspector from the Health and Safety Executive (HSE) visited the company premises on 7 December 2010. The investigation notes said the company's risk assessment and training records were "basic but adequate".

The notes said the floor was non-slip and one in five members of staff had been given safety shoes.

The HSE has closed its investigation but suggested that trolleys should be used to help staff move saucepans around the kitchen in future.

The company said it had implemented the HSE recommendations.

Although the BBC has spoken directly to the directors of Shobha UK Ltd, DBS Law said it did not recognise that the catering firm was still trading.

It said it was in direct negotiations with the insurer and was contesting the defence the catering company had made.



### UK Offshore Health & Safety Regime a Template

A Brussels committee has backed proposals for the European Commission to use the UK's offshore health and safety regime as a template for other countries.

The European Parliament's industry, research and energy (IRE) committee met last week to vote on plans for EU-wide laws on oil and gas safety standards.

The commission has previously said there should be one piece of legislation covering all member states, but the UK Government and the country's oil and gas industry said centralised regulation could undermine the work done in the North Sea.

Last week [12 July 2011] MEPs on the IRE committee voted overwhelmingly in favour of a report which proposed that regions such as the Mediterranean and Black Sea could learn from and adopt the UK's safety regime, rather than Brussels establishing its own layer of policing.

The commission had also previously suggested national licensing procedures could be superseded by one EU-wide framework, but the committee came out in favour of countries retaining their responsibility. Liberal Democrat MEP Fiona Hall said the committee voted 41-6 in favour of the report.

She added the support it had generated would send a strong signal to the European Commission.

She said: "There was a strong British influence on this report because of our interest and knowledge of the industry. We confirmed that we think the UK's best practices should be the model for the rest of Europe. We were looking at how we could replicate it in other waters like the Mediterranean."

The north-east England MEP said she thought the UK oil and gas industry would be pleased with the outcome of the vote.

"There was a fear that the commission would bring about an all-encompassing approach that did not take into account the measures which are already working in the UK," she said.

"Frankly in some parts of Europe there is cause for concern because things are not as rigorous as they are in the North Sea. We have got the message across that we do not want extra layers of regulation, but that the practices in the North Sea need to be rolled out elsewhere."

The report will now be voted on by the parliament's plenary session before it is considered by the commission, which is due to publish its legislative package on offshore oil and gas in September.

A spokesman for the Department of Energy and Climate Change said: "We welcome the work of the IRE committee, and will continue to work with the parliament and the commission to help ensure the highest standards of health and safety and environmental protection are in place across the EU."

## Guidance

### Working with Asbestos

The HSE has issued some advice recently on working with asbestos:

**Do:**

- stop and ask if you are suspicious something may be asbestos or if you think the work might need to be carried out by a licensed contractor
- follow the plan of work and the task guidance sheets; make sure you use the right sheet for the job
- make sure you take account of other risks such as work at height
- use your protective equipment, including a suitable face mask, worn properly
- clean up as you go - stop waste building up
- make sure waste is double-bagged and is disposed of properly at a licensed tip
- wash before breaks and going home.

**Don't:**

- use methods that create a lot of dust, like using power tools
- sweep up dust and debris - use a Type H vacuum cleaner or wet rags
- take home overalls used for asbestos work
- reuse disposable clothing or masks
- smoke
- eat or drink in the work area.

Those in charge of the job are advised that they must:

- find out if asbestos-containing materials are present and plan the work to avoid disturbing these materials if possible
- ensure that anyone who is going to work on asbestos material is trained properly and is supervised
- know what work can be carried out on asbestos-containing materials, ie does this work need to be carried out by a contractor licensed by HSE?
- take account of other risks as well as asbestos, eg work at height, and take the precautions necessary to do the job safely
- use the equipment and method sheets and the right task sheet to make sure that the job is carried out properly and that exposure to asbestos is kept as low as possible
- prepare a plan of work, explaining what the job involves, the work procedures, and what controls to use
- provide you with the right equipment, which is clean, in good working order, and protects you against asbestos
- train you in using this equipment
- make sure the work area is inspected visually at the end of the job, to check it's fit for reoccupation
- make arrangements for the safe disposal of any asbestos waste
- consult the health and safety representative (if there is one).

### MS in the Workplace

Multiple Sclerosis (MS) affects over 2.5 million people worldwide, with one hundred thousand sufferers in the UK. It is a chronic neurological condition, for which there is no known cure, and which is most often diagnosed in people of working age. MS affects people differently, and can be unpredictable and fluctuating in its nature. As a result of this it can be difficult to predict how fast or far it will develop in individual cases and therefore some sufferers of MS can continue to work, sometimes for many years, after diagnosis. The ability to continue to work after diagnosis can have a positive mental effect on MS sufferers, only though if their needs and the issues surrounding MS are properly met. It is said that on average 37% of sufferers with mild MS are in employment, although more than three quarters of sufferers report that their condition has had an impact on their employment and career opportunities, with up to 80% having to stop working within fifteen years of the onset of the condition. It is said that just under half of MS sufferers need to retire early because of their condition, with the average being around eighteen years early, assuming a retirement age of sixty.

The Work Foundation has conducted a study into MS in the workplace and, in particular, looking at the employment and career aspirations of MS sufferers. It has recognised that many MS sufferers want to work, however a greater understanding of the condition would be advantageous in order that the right support is provided and that the MS sufferer can continue to be a valued member of the workforce. To a certain extent the symptoms of MS are unseen, for example, depression, anxiety, mobility problems, reduced dexterity, slurred speech, urinary and faecal frequency and urgency and cognitive impairment causing memory and concentrations, however one major symptom, fatigue, is the main one which MS sufferers say must be taken into account when looking at employment. The report outlines some interventions which it believes have the greatest positive impact on MS sufferers include fatigue management, cognitive behavioural therapy, flexible working hours, a greater understanding of the condition and specialist MS nurses with increased training in the condition. The report identifies four main stakeholders who it believes are critical to improving the conditions and prospects of MS sufferers in the workplace.

#### *Individuals who have MS*

- be proactive about their condition
- advise their employers in order that the right help can be put in place
- actively manage their condition and highlight to employers how time management flexibility could benefit both parties.

#### *Employers*

- look at flexible working arrangements
- try to provide job quality, don't make excessive or damaging job demands and look at ergonomic good practice in the context of their business
- involve occupational health professionals at the earliest opportunity to assist disclosure
- work together with GPs to support phased return to work according to the Fit Note.

#### *Health Professionals*

- coordinate care with all the parties involved (occupational health, physiotherapy, specialist MS nurses)
- recognise that people with MS are often workers too. Start discussions about work and careers of those with MS shortly after diagnosis
- make use of the Fit Note to indicate types of work that can and cannot be done.

### *Policy Makers*

- encourage job retention and maintain the 'Access to Work' scheme
- be aware of the impact changes to the welfare system may have to MS sufferers and rethink the assessment process with regard to the fluctuating nature of MS
- recognise the importance of the various health professionals involved in the care and treatment of MS sufferers
- promote and recognise interaction between health professionals and employers to accommodate the needs of MS sufferers.

## **Construction Products Regulation**

The Fire Industry Association (FIA) have published a Fact File on the recently introduced Construction Products Regulation (CPR), also known as Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC. The legislation becomes substantially effective in July 2013, although some parts took effect in April 2011. It replaces the Construction Products Directive (CPD) which was introduced to prevent technical barriers hindering trade in construction products in the EU and in the European Economic Area (EEA).

This Fact File explains the CPR and its impact on UK products. It also discusses differences between it and existing legislation (especially the CPD) in this area. The CPR provides definitions for construction products, making available or placing on the market, and manufacture.

The CPR provides information on when and how the 'CE' mark should be applied. Under it, CE marking of products will be mandatory across Europe, with no exemption for products that remain in the UK. However, any product placed on the market before 1 July 2013 in compliance with the original CPD is deemed to comply with the CPR, and as such retesting is not required.

The CPR replaces the 'Essential Safety Requirements' of the CPD with 'Basic Works Requirements' (BWR's) and adds a seventh BWR – 'Sustainable use of natural resources.' The introduction of this requirement will oblige suppliers and manufacturers to take into account the recyclability of construction works; their materials and parts after demolition; the durability of construction works and the use of environmentally compatible raw and secondary materials. More information on this requirement is provided in an annex to the CPR.

Details are also provided on when declarations of performance might be required. If there is no declaration of performance then CE marking is not permitted. The Fact File also notes that the requirements of the CE marking Directive (765/2008) must be met. It also notes that many of the original requirements relating to CE marking contained with the CPD are re-iterated in the CPR.

The CPR establishes single points of contact for questions relating to construction products, although the UK contact point has yet to be identified. It lists the obligations of manufacturers which extend beyond preparing declarations of performance and associated technical documentation to include matters such as proper batch marking of products; provision of safety information and instructions; and, dealing with non-conforming products.

The CPR clarifies the requirements associated with European Technical Approvals (ETAs) and also explains the role and rules for Technical Approval Bodies (TABs). A manufacturer can request an ETA to be prepared. A 'European Assessment Document' is drawn up and adopted by the organisation of TABs for any construction product not covered or not fully covered by a Harmonised European Standard where performance in relation to its essential characteristics cannot be entirely assessed because:

- the product does not fall within the scope of any existing harmonised standard



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- for at least one essential characteristic of that product, the assessment method provided for in the harmonised standard is not appropriate
- the harmonized standard does not provide for any assessment method in relation to at least one essential characteristic of that product.

The CPR allows for 'Simplified Technical documentation' to be used by manufacturers, and especially 'micro-enterprises' to replace type testing or type calculation with 'Appropriate technical documentation.' This, however, is subject to certain conditions such as the availability of a Commission decision that states that the product meets the requirements of the harmonized European product standards.

Market surveillance measures have also been strengthened, but the Fact File notes that some stakeholders feel these measures have not gone as far as they should have.

## Reports

### Health & Safety Duties on the Police Service

The Health and Safety Executive (HSE) has published an explanatory note which details the principles behind the statement: Striking the balance between operational and health and safety duties in the Police Service, a collaborative piece of work from the HSE, the Chief Constable of Greater Manchester and the Association of Chief Police Officers (ACPO) which was published in 2009. This explanatory note also takes full account of the recommendations in Common Sense, Common Safety, October 2010: 'Police officers should not be at risk of investigation or prosecution under health and safety legislation when engaged in the course of their duties if they have to put themselves at risk as a result of committing a heroic act'.

This explanatory note uses a series of case studies to demonstrate how police action will be construed by the HSE and emphasises that whilst the Police Service is in a unique situation, it is essential for health and safety management to be effectively integrated with operational management on the basis that police officers are employees for the purposes of health and safety legislation.

#### *Guiding principles*

This note explains that:

- there is recognition of the fact that there are inherent risks involved in the carrying out of policing activities and even when all reasonably practicable measures have been taken, the residual risk to staff may still be substantial
- reasonably practicable steps to reduce risk will include the provision of appropriate training, equipment and personal protective equipment (PPE). There is also an expectation that all relevant guidance and policies will be available
- police officers and other staff must receive adequate training to ensure they can take effective risk-benefit decisions in the course of operational policing duties
- those working for the Police Service face a number of foreseeable risks and these include dealing with violent people; controlling large crowds and managing public disorder; intervening to protect members of the public in hazardous situations; managing incidents related to natural hazards; dealing with risks from criminal activities; pursuits and terrorist threats; dealing with fatal road traffic collisions
- there is no expectation that every police officer will be trained for every scenario and the HSE accepts that skills relating to risk-benefit decision-making will depend on an officer's rank, grade and position
- the HSE will not investigate or take enforcement action against an individual who performs an act of heroism
- the HSE acknowledges that police are often required to make fast and appropriate risk-benefit decisions in rapidly changing situations. The HSE expects them to make the best possible decision(s) based on the information available at the time and with specific reference to the immediacy of the threat; the resources and equipment available; the relevant operational instructions and with the benefit of their guidance/training
- properly informed decisions taken by competent senior or supervisory staff will not be reviewed by the HSE with the benefit of hindsight in the event of a serious incident/accident occurring during police operations.



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### *Key facts*

In its discussion of the case study outcomes, the HSE indicates that in order to properly balance operational requirements and health and safety duties, it is necessary for the police to ensure that:

- they identify, assess and control (so far as is reasonably practicable) known and foreseeable risks for all planned operational activities
- they consider whether the benefit of resolving a situation outweighs the associated risks
- procedures and guidance are in place to address known risks
- risk-benefit based decisions are made by trained and experienced personnel using the information available at the time and with reference to the need for dynamic risk assessment
- the equipment available to deal with a situation is both correct and adequate
- there is recognition of the importance of communication
- individual officers act within their own limitations and strengths
- there is competent advice on occupational health, safety and welfare available to police officers and other staff
- roles and responsibilities within the chain of command are clearly established
- there is effective liaison between the police and the HSE's Public Services Policy Team on matters relating to operational policy.

### *Conclusion*

There is recognition by the HSE of the fact that policing often involves staff working in a challenging and dangerous environment: However, whilst health and safety law clearly applies to operational policing, it does not prevent police officers from responding to emergencies. There is an acceptance that preserving law and order has inherent risks but, as far as is reasonably practicable, such risks must be minimised.