



Prosecutions

'Scant Regard' to Workers' Health and Safety

A director of a fuel tank manufacturing business has been banned from directing any company for five years after breaching a raft of health and safety regulations.

Brian Nixon of Evesham, Worcestershire, and managing director of Transtore (UK) Ltd was also fined £17,000.

Workers at Transtore (UK) Ltd in Stratford-upon-Avon were exposed to lead and other harmful chemicals while paint was sprayed at the plant without the correct safety measures in place. Workers were also put at risk of falls from height with no safety equipment provided.

Inspectors from the Health and Safety Executive (HSE) investigated and prosecuted Mr Nixon and Transtore (UK) Ltd in Stratford-upon-Avon, after a receiving a complaint from a concerned employee.

Mr Nixon was also ordered to pay £9,169 costs after admitting breaching Regulation 4(1) of the Work at Height Regulations 2005 and Section 33(1)(g) of the Health and Safety at Work etc. Act 1974 at Stratford-upon-Avon Magistrates' Court today.

The company, Transtore (UK) Ltd, based at Long Marston Storage, Campden Road, Stratford-upon-Avon was fined £70,000, with costs of £27,507 after being found guilty of eight separate breaches of health and safety law. The company is now in administration.

During HSE's investigation, specialist inspectors took air samples as well as blood and urine samples from the workers to assess their exposure to lead, among other harmful chemicals in the plant that were being sprayed unsafely.

The company was condemned for allowing workers to spray paint, containing toxic lead chromate, without adequate controls in place, leaving them to breathe in harmful fumes and absorb lead into their blood.

Five workers needed blood and urine tests, with the fumes having the potential to cause headaches, tiredness, and stomach pains. Long-term exposure can lead to irreversible central and peripheral nervous system damage, kidney damage and gastrointestinal problems.

All results from the workers showed higher levels of lead than the UK population average.

Workers were also expected to stand beneath the half-tonne fuel tanks they were painting during the spraying process with nothing to prevent them from being crushed if the lifting equipment, which had not been maintained or checked properly, had failed.

The company was also criticised for allowing its employees to work on top of the tanks with no safety equipment to prevent them falling two metres on to the concrete floor. The workers received no training or instructions and were left to devise their own systems of work.

HSE served four prohibition notices on the company during its investigation to immediately stop unsafe work. It also issued four improvement notices. Mr Nixon ignored the notice prohibiting work at height and continued to instruct his employees to work on top of the tanks.

HSE Inspector Peter Snelgrove said:

"Mr Nixon deliberately flouted health and safety laws and paid scant regard to the safety of his employees. I agree with what the District Judge said in court about it being a lamentable situation and it was very fortunate that there were no injuries before we carried out our investigation. Legal proceedings highlighted that there was a complete flagrant lack of attention and as we heard in court, a gross dereliction of duty by the management of this company.



Company Ignores Own H&S Policy

A plant hire company has been fined £200,000 for health and safety failings that led to an employee falling five metres to his death.

An investigation by the Health and Safety Executive (HSE) showed that the company failed to follow its own health and safety guidelines for work at height.

HSE prosecuted Ashtead Plant Hire Co Ltd trading as APlant who admitted breaching Section 2(1) of the Health and Safety at Work etc. Act 1974.

The company, based at Dalton Ave in Birchwood Park, Warrington was also ordered to pay £15,698.30 in costs at Maidstone Crown Court.

Phillip Pearce, aged 55, from the Medway area, had worked as a fitter at the company's depot at Tovil, Maidstone - where they provide portable accommodation units to the construction industry - for less than three months when he died on 16 August 2006.

Mr Pearce's job was to prepare the accommodation units - including site huts, welfare units and storage containers - which were then hired out to construction companies.

With two units stacked on top of each other, Mr Pearce climbed onto the top of the stack to help attach lifting chains so that the top unit could be lifted down. He fell more than five metres and died at the scene.

Ashtead Plant Hire Co Ltd had a written procedure for work on top of accommodation units in its depots and at customers' sites. This required people to wear a safety harness and inertia reel line and climb a secured ladder. If they slipped or fell, the line would lock and prevent a serious fall.

HSE's investigation found that workers at the depot had not been issued with this kit or been trained to use it and most did not know the company had a special procedure for doing this work.

The court heard that despite the depot handling up to 15 accommodation unit movements a day, management at the depot did not ensure that workers were aware of the procedure and did not ensure that the work was only done by those trained, equipped and authorised.

HSE Inspector John Underwood said:

"This was a wholly avoidable incident which led to a tragic and totally unnecessary loss of life.

"It is completely inexcusable that the company had indentified the risks, prepared an adequate procedure to manage the risk, and then failed to implement that procedure to protect their workers.

"Health and safety is not just about filling in forms or thinking about risk, it's about taking action to prevent people being killed or injured while trying to do their job.

"I hope this case will be an example to other companies that not only must health and safety be taken seriously but also followed through."

Last year more than 4,000 employees suffered major injuries after falling from height at work, and 21 workers in the construction industry died.

£280,000 Fine After Member of Public Dies

A Buckinghamshire-based waste disposal company has been fined after a member of the public was crushed to death at the Civic Amenity site in Newbury.



HEALTH & SAFETY NEWS

Issue	1
Date:	27/04/10
Page:	3 of 7

The prosecution followed a Health and Safety Executive (HSE) investigation into Biffa Waste Services Ltd after the death of Dennis Krauesslar, at its waste disposal site on Pinchington Lane, Newbury on 10 September 2007.

Mr Krauesslar, from Bartlemy Close in Newbury, was crushed to death by a motorised loading shovel bucket used to flatten and drag the waste away from the tipping area.

At the time of the incident, the site had a covered pit into which members of the public disposed of their waste. As the 57-year-old Mr Krauesslar was tipping his garden waste into the pit, he was fatally injured after the bucket of the loading shovel struck him.

The Civic Amenity site is now closed.

At a West Berkshire Magistrates court hearing in February, Biffa Waste Services Limited of Coronation Road, Cressex in High Wycombe pleaded guilty to breaching Section 3(1) of the Health and Safety at Work etc. Act 1974 by failing to ensure that the garden waste tipping area was safe for members of the public to use.

The company also pleaded guilty to contravening Regulation 3(1)(b) of the Management of Health and Safety at Work Regulations 1999 by failing to carry out a suitable and sufficient risk assessment of the garden waste tipping area of the site to ensure people other than employees were suitably protected.

At Reading Crown Court, Biffa Waste Services Limited was fined £280,000 and ordered to pay full costs of £54,906.57.

Speaking after today's sentencing HSE's Head of Operations for the South East, Mike Wilcock said:

"This tragic incident could have been avoided if sensible precautions and working practices had been in place to prevent the loading shovel working in such close proximity to members of the public.

"Companies operating such sites must carefully assess their arrangements to ensure that they keep vehicles and pedestrians separate whenever possible."

Another Worker Killed

The owners of a scrap metal yard in Newport have been fined after a lorry driver died when a crushed car fell from a scrapheap.

The Health and Safety Executive (HSE) prosecuted Sims Group UK Ltd, of Long Marston, Stratford upon Avon, after truck driver Adrian Turner was crushed by a metal bale which rolled off the heap.

Mr Turner, 50, from Wolverhampton, was delivering scrap to the site on 28 April 2008 and was directed to deliver his load to the metal shredder area of the yard.

He left his cab and was opening the rear doors to his trailer when the one and a half ton metal bale on the scrap pile came loose and rolled down 20 feet straight into Mr Turner.

He had not received any site safety induction from Sims UK Ltd and was following instructions given by Sims operatives when he was killed.

Sims Group UK Ltd, pleaded guilty to a charge under Section 3(1) of the Health and Safety at Work etc Act 1974, and at Cardiff Crown Court the company were fined £200,000 and ordered to pay £57,500 costs.

HSE inspector Sarah Baldwin-Jones said: "Metal recycling yards can be extremely dangerous places so it's imperative companies have safe working procedures and systems in place that are observed by all staff and contractors.

"This tragic incident arose because it was custom for the loading of scrap onto the stockpile even though delivery drivers were in the immediate vicinity of it.

"Mr Turner was struck from behind by the metal bale - a crushed motor vehicle - weighing some one and a half tons. Unfortunately, death or serious injury was an inevitable consequence.



HEALTH & SAFETY NEWS

Issue	1
Date:	27/04/10
Page:	4 of 7

"The size and nature of the stockpile, combined with the method used to feed it meant that it was highly likely that materials would fall."

Mr Turner's Family issued the following statement: "While the financial penalty handed down to Sims Group UK Ltd today offers little comfort to our family we hope that it serves as a warning to those companies operating in the waste recycling industry. It should be an absolute priority to ensure death and injury to employees and others on site is avoided."

"We have been torn apart by Adrian's death and wish that no other family has to endure the loss of a loved one in the manner we did."

Lack of Guarding Leads to Fine

A speciality bread manufacturer has been fined after a worker become entangled in a bagel forming machine and broke his wrist.

Leeds Magistrates' Court heard the Country Style Foods employee was removing finished bagels from the machine when he spotted a build-up of dough on a roller.

He used a scraper to remove the dough, but a lack of guarding allowed his hand and wrist to be dragged into the machine and become trapped between the roller and a moving belt.

Country Style Foods which produces goods for supermarkets, bakers and foodservice customers, pleaded guilty to a breach of regulation 11(1) of the Provision and Use of Work Equipment Regulations 1998 in relation to the incident at a site on Pontefract Lane on 27 April 2009.

The firm was fined £6,000 and ordered to pay £4,570 in costs.

During the Health and Safety Executive (HSE) prosecution, the court heard the employee's injuries also included severe friction burns caused by the moving belt, which along with the broken wrist kept him off work for several weeks.

Though the injured man was experienced, and familiar with the type of machine he was using, the HSE investigation found the machine itself was new to the plant and no formal training or written instructions had been completed governing its safe use.

The investigation also revealed that the issue of insufficient guarding had already been raised by a hygiene supervisor, but no action was taken before the machine was put into use.

Following the hearing HSE inspector Angus Robbins said:

"The hazards associated with moving rollers and belts are well understood within food manufacturing, and there are established standards and protocols that should be followed in relation to guarding and clearing blockages.

"The onus is on employers like Country Style Foods to manage and control risks at all times, and set an example for others to follow. There were clear failings on this occasion, and we hope today's prosecution serves as a reminder that we will call to account employers who fail in their duties to protect their employees."

Companies Reminded to Maintain Equipment

A Lincolnshire pet food firm has been fined £1,250 and ordered to pay costs of £1,545 after one of its machines damaged a worker's hand.

Fold Hill Foods Ltd, of Old Leake, near Boston, pleaded guilty to breaching Regulation 11 (3) (c) of the Provision and Use of Work Equipment Regulations 1998 for not making sure the machinery's protection devices were working.

The prosecution was brought by the Health and Safety Executive (HSE).

Boston Magistrates' Court heard that on 7 January 2009, employee Paul Knowles, 50, of Skegness, was working on a bagging machine when the film that formed the bags was not running through the machine correctly and needed adjusting.



Mr Knowles opened the door on the front of the machine, at which point a safety cut-out switch should have stopped the machine. Unfortunately, the safety device was not working but Mr Knowles did not realise that as, coincidentally, the machine had come to a pre-programmed halt in its cycle.

Mr Knowles put his fingers on to a belt to test its tension when the machine re-started, pulling his fingers into the mechanism. He suffered a deep laceration to his middle finger and was off work for some time.

HSE inspector Scott Wynne said:

"Protection devices are there for a very good reason - to stop accidents such as this occurring.

"Mr Knowles was very lucky not to have suffered more serious injuries. I hope this case serves as a reminder to other companies of the need to ensure that such devices are in good working order and are efficiently maintained."

Illegal Gas Fitter Put Lives at Risk

An unregistered gas fitter who illegally carried out work on properties in Nottingham with falsely issued gas safety certificates has been given a 12-month community service order and ordered to carry out 200 hours unpaid work.

The Health and Safety Executive (HSE) prosecuted Paul Anthony Bailey (54) of Bridgnorth Drive, Nottingham, who traded as P A Bailey Plumbing and Heating. He pleaded guilty to breaching three sections of the Gas Safety (Installation and Use) Regulations 1998 at Nottingham Magistrates' Court. He was also ordered to pay costs of £750.

The court heard that Mr Bailey falsely claimed to be CORGI (Council of Registered Gas Installers) registered, when he carried out gas fitting work between 1 October 2008 and 31 January 2009 at premises on Broadfield in Calverton, and Radford Road in New Basford.

In addition, Mr Bailey issued gas safety certificates, using a false CORGI number, to premises on Radford Road in New Basford, Leander Close in Wilford and Long Hill Rise in Hucknall.

He also installed a gas boiler in industrial premises on Radford Road in New Basford, without the competence to do so.

Two complaints were received about Mr Bailey's work. One following an industrial job where he incorrectly installed a boiler in a garage, putting workers at risk, and the other related to the installation of a new boiler for a domestic heating system.

HSE Inspector David Butter said:

"Mr Bailey was not qualified to carry out this work on both private and commercial properties and by doing so put other workers at risk. While he had completed training at night school and was qualified, he had not registered with CORGI.

"In order to work legally in the UK, gas installers must be registered with the appropriate approved body. It is essential that homes and businesses check this before having work carried out to ensure the job is completed to a high standard and most of all, is safe."

European Ruling – Detrimental to Small Firms?

New rules on long-term sick leave are preventing almost three-quarters of small businesses from employing new staff, figures from an FSB-ICM poll show.

A European Court of Justice ruling under the Working Time Directive means that statutory entitlement to paid annual leave will continue during long-term sick leave. The FSB-ICM poll of more than 1,400 respondents shows that the ruling will affect the way 71% of businesses employ.

Of those, 38% will be more cautious about taking on new staff with health problems, 21% will be less likely to take on new staff and 17% will be more likely to dismiss staff on long-term sick leave. At a time of already high unemployment, the Federation of Small Businesses (FSB) is concerned that this ruling is having a detrimental effect on employment in small firms.



The figures also show that a different ruling, also under the Working Time Directive - to allow workers to convert annual leave into sick leave, taking the annual leave at a later date - will have a negative impact on over half (54%) of the respondent's businesses.

As the debate on the Working Time Directive reopens this autumn, the FSB is urging the European Commission to review these Court rulings to ensure the law is rewritten to reverse these decisions. This will encourage small firms to take on more staff and help bring the country further onto the road to recovery.

Small firms understand the importance of good health in the workplace and the FSB is calling for more advertisement of the Fit Note which replaces the sick note. The Fit Note - which aims to focus on what an employee can do at work - will help get employees back to work sooner. This will help ease staff on long-term sick leave back into work and will give small business owners more incentive to keep hold of their invaluable staff.

Buncefield Explosion – Trial Underway

The trial of three companies over the explosion at Buncefield Oil Storage Depot in 2005 began on Wednesday 14 April 2010.

The court heard that workers at the oil depot were under pressure from work loads and did not receive the training they required.

Three firms are currently on trial over the Buncefield oil depot blast. The explosion in December 2005 resulted in 40 casualties, damage to residential and commercial premises nearby, and significant environmental pollution. The explosion measured 2.4 on the Richter scale and could be heard 125 miles away.

The court heard yesterday that supervisors at the site were not given support in key areas and were often under pressure to ensure the tanks were filled to the maximum.

The allegations were made as Hertfordshire Oil Storage Ltd (HOSL), TAV Engineering Ltd and Motherwell Control Systems 2003 Ltd faced prosecution by the HSE and the Environment Agency for their role in the explosion.

Total UK has already admitted three health and safety breaches in connection with the explosion while the British Pipeline Agency Ltd has also admitted two charges in connection with the explosion. Motherwell Control Systems 2003 Ltd is currently in voluntary liquidation.

The trial is expected to last until the end of June.

Guidance

Working Time Regulations 1998: Guidance on the Legislation

This Local Authority circular provides guidance on the Working Time Regulations 1998. The information has been updated in light of the HSE's experience of enforcing the Regulations. It also takes account of various amendments to the Regulations.

This guidance may also be of use in providing duty holders with guidance on the Regulations. It reflects HSE understanding of how the Regulations will be interpreted, based on relevant case law where appropriate. It is not intended to be definitive since ultimately only the courts can determine whether the law has been complied with in a particular case.

The Regulations impose obligations on employers in relation to the working time of workers over the minimum school leaving age, including the provision of rest breaks, and night work restrictions.

Both HSE and local authorities (LAs) enforce the relevant requirements of the Regulations in relation to premises for which they are each responsible for enforcing the relevant statutory provisions under the Health and Safety (Enforcing Authority) Regulations 1998. Enforcement in Railways transferred from HSE to the Office of Rail Regulators (ORR) in April 2006. HSE and LAs enforce the following relevant requirements:

- Regulation 4(2) - maximum weekly working time
- Regulation 6(2) - night work limits



HEALTH & SAFETY NEWS

Issue	1
Date:	27/04/10
Page:	7 of 7

- Regulation 6(7) - night work special conditions
- Regulation 7(1) - health assessments for night work (adults)
- Regulation 7(2) - health assessments for night work (young workers)
- Regulation 7(6) - worker transfer from night work
- Regulation 8 - work patterns and adequacy of rest breaks
- Regulation 9 - record keeping
- Regulation 24 - compensatory rest as it applies to reg.6(1), 6(2),6(7) or 6A.

The Regulations are not relevant statutory provisions made under the HSW Act. As such, they do not fall within the areas to be considered by safety representatives under the Safety Representatives and Safety Committees Regulations 1977. Although it has no formal legal standing it would be good practice for employers to actively involve their employees in discussions about implementing these Regulations.