



Prosecutions

"Children and Construction Work do not Mix"

An employer has been fined after a 14-year-old boy was injured when he overturned a dumper truck on a construction site.

Kevin Banks, a building contractor from Stroud, employed the boy to work for him on a site on Rodborough Common. It is illegal for children who are still of compulsory school age to work on construction sites.

Gloucester Magistrates' Court heard how on 13 April 2010, the boy overturned the one-tonne dumper truck when driving down a slope. He was not wearing a seatbelt and suffered serious leg and foot injuries.

A Health and Safety Executive (HSE) investigation found Mr Banks had failed to properly plan, manage and monitor the work to ensure the boy and others were not put at risk.

Other untrained employees had also driven the dumper truck, often without wearing seatbelts, on some steep slopes.

After the hearing, Sue Adsett, HSE inspector, said:

"Children and construction work do not mix. As this incident shows, construction sites can be very dangerous, and children tend to have less experience and less awareness of what could go wrong.

Furthermore, anyone operating site dumpers should prove their competence to do so by holding an industry-recognised CPC driver's card."

Kevin Banks, trading as KB Building Services, pleaded guilty to failing to comply with section 13(2) of the Construction (Design and Management) Regulations 2007 and was fined £2,000 and ordered to pay costs of £4,052.

Company Fined after Workers Fall

Two workers sustained injuries after plunging into a hotel basement when the stone staircase they were demolishing collapsed under their feet.

Paul Irvine, 44, and Frank Dever, 46, from Paisley, were dismantling the staircase at the former Priory House Hotel in Largs.

Their employer, Paisley firm Ossian Construction Ltd, has been fined £6,000 at Kilmarnock Sheriff Court after an investigation into the incident which left one of the men seriously injured.

On 17 September 2007 the two workers were removing individual stair treads, weighing between 120 and 150 kg, by breaking them up with sledgehammers when the staircase collapsed. The men fell almost four metres to the basement below and were struck by the falling debris.

Mr Irvine was trapped by pieces of the stone treads so large it needed several men to shift them.

Mr Irvine sustained fractures to every one of his ribs and three vertebrae, suffered a punctured lung, and suffered significant crush injuries to his foot and a finger.

Frank Dever suffered bruising and cuts. The events have had a significant traumatic effect on both men.



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Ossian Construction Ltd of Glasgow Road, Paisley, pleaded guilty to breaching section 2 of the Health and Safety at Work etc Act 1974 by failing to ensure that there was a safe system of work for the demolition, including a plan for the work, and not providing their employees with the information, instruction, training and supervision they needed to ensure their health and safety.

Following the case, HSE inspector Annette Leppla said:

"This was a serious and entirely preventable incident that will affect Mr Irvine in particular for the rest of his life.

"Ossian Construction failed in their duty of care to their employees and both Mr Dever and Mr Irvine are lucky to be alive.

"It's not always obvious how old buildings are put together, and therefore it is particularly important to seek competent advice before any demolition work is undertaken.

"All employers carrying out working at height must make sure they plan this work properly and give their employees the training and supervision they need to do the work safely."

Homebuilder Fined After Forklift Crush Death

A leading homebuilder and one of its construction plant operators have been fined £14,500 after an incident on a site in Banbury left one man dead and two others severely injured.

On the morning of 11 January 2008, three ceramic tilers, Michael Whateley, 28, his brother Robert Whateley, and Paul Keen, all from Northampton, were waiting in a car for a building plot to be unlocked in Broughton Road, Banbury, in Oxfordshire.

Near the car, Keith Payne, of Gillett Road, Banbury, was undertaking routine checks of a telescopic materials handler - a forklift truck with an extendable arm or boom commonly referred to as a telehandler.

Mr Payne climbed into the cab of the truck, raised and then fully extended the unloaded boom of the telehandler in what he considered to be part of his routine daily checks. However, the truck tipped over and the forks at the end of the boom landed on the car, crushing the roof of the vehicle.

Michael Whateley died from his injuries. Robert Whateley suffered fractures to his spine, and a brain injury. Paul Keen suffered neck and spinal injuries, a broken ankle, broken ribs and a fractured breastbone.

At the time of the incident, Linden Limited was the principal contractor on the site and Mr Payne worked as a self-employed construction plant operator.

The HSE investigation showed the incident was preventable if Mr Payne had followed the operating instructions in the machinery manual and ensured the telehandler was being operated on firm level ground.

Instead, while on unsuitable ground he extended the boom of the machine to its limits while the telehandler was not suitably positioned.

Also, Linden Limited failed to ensure the equipment was maintained properly and tyre pressures were found to be lower than recommended.

Following the hearing, HSE Inspector James Powell said:

"This was a horrific accident that was totally avoidable. Construction sites have inherent risks, and even rough-terrain lift trucks have strict operational limits that need to be observed. With competent operation and suitable maintenance, tragedies like this should not happen.



"Lives have been destroyed here and [the] sentencing must serve to remind all employers and employees of their duties and responsibilities while using this type of machinery."

Keith Payne, of Banbury, Oxfordshire, was found guilty of breaching section 7 of the Health and Safety at Work etc. Act 1974 on 12 October 2010. He was fined £7,000.

Linden Limited, of Cowley Business Park, Cowley, Uxbridge, Hillingdon, pleaded guilty to regulation 5 of the Provision and Use of Work equipment Regulations 1998. The company was fined £7,500 and ordered to pay costs of £25,000.

News

Fitness-to-Work tests to be Reformed after Criticism

Tests determining whether people are fit to work are to be reformed to offer more support and to take greater account of mental health conditions.

An independent review of the Work Capability Assessment, introduced in 2008, has proposed substantial changes to make it "fairer and more effective".

Campaigners say it is flawed and many decisions are overturned on appeal.

Employment Minister Chris Grayling said the test should be 'fair and just' while helping people back to work.

The government wishes to cut the number of benefit claimants, as part of its efforts to drive down the welfare bill, by ensuring all those able to work are looking for employment.

The Work Capability Assessment, introduced by Labour, is currently being used to assess new claimants and will be used to test everyone from early next year.

It involves a 'functional health assessment', denoting an individual's ability to work, rather than the previous "diagnostic medical assessment" by a GP or specialist, focusing on particular conditions.

Mental health campaigners say the test is flawed as it focuses on people's physical capacity to work while the number of test verdicts overturned on appeal shows the system is not working.

An independent review, led by Professor Malcolm Harrington, has called for 'substantial' changes to the existing system of assessment.

What we have inherited in this process is something which... does not deal enough with individual challenges and circumstances"

Mental health experts should be present in all assessment centres, it recommends, to ensure there is a full understanding of the "complexities" of individual conditions.

It also calls for more support for those being assessed, better communication of what the test entails and for tests to be filmed on a pilot basis.

"I have found that the Work Capability Assessment is not working as well as it should be," said Prof Harrington, who will continue in his role as independent reviewer.

"This is not about ripping up the current system and starting all over again. I am proposing a substantial series of recommendations to improve the fairness and effectiveness of the assessment."



Mr Grayling said the government accepted all the review's recommendations, stressing it was in 'everybody's interest' that the tests were as fair as possible.

"What we have inherited in this process is something which is too mechanised, too automated, and does not deal enough with individual challenges and circumstances,"

Final decisions would not be solely based on the outcome of the test, he said, as people's medical histories and other factors would be taken into account.

While those unable to work would continue to receive "unconditional support", those deemed fit to work would be "challenged" to do so as he believed people were always better off working than doing nothing.

The report also found there was no evidence that the assessment process was being driven by financial targets - a claim long denied by ministers.

Lord Young Concerns

Following Lord Young's resignation on Friday, some business groups have voiced concerns that projects Lord Young was working on could now be held up or 'derailed'.

Lord Young recently delivered his report on the Government's review of health and safety, entitled 'Common sense, Common safety' [266906]. The review put forward a series of policies, all of which the Prime Minister and the Cabinet accepted. Lord Young was to continue to work across departments to ensure his recommendations were carried through. Earlier this month, he was also appointed as the Enterprise Adviser to the Government.

Richard Jones, Policy and Technical Director, at IOSH, said the resignation could not be allowed to set back national debate on health and safety. He said:

"We have worked with Lord Young throughout the review process and now look forward to working with his replacement during the consultation and implementation stages that may follow.

"In our view, it is vital that the Government works closely with the profession when making reforms of critically important areas that can affect people's health and safety and working lives."

Alexander Ehmann, Head of Parliamentary Affairs at the Institute of Directors (IoD), said:

"Lord Young had a clear vision for the UK's business environment and was one of the few politicians willing to grapple with the politically sensitive, but critical, issues of health and safety and employment law reform.

"The real risk with Lord Young's resignation is that his most recent task as the Prime Minister's Enterprise 'Tsar' will be shelved. Asked to look at the barriers to growth that small and medium-sized businesses face, Lord Young was well placed to offer a welcome injection of enterprise culture into government policy-making.

"Central to those reforms would have been some long overdue improvements to the UK's employment laws. The Prime Minister must ensure that Lord Young's review is still undertaken, and by someone with authority to see through these vital changes to the UK's labour market."

Guidance

Your Health, Your Safety: A guide for Workers

The HSE, in collaboration with the TUC, has issued a guide for workers detailing what rights they have.

If you are an employee, be it full or part time, temporary or permanent, this guidance explains what your rights are, what you should expect from your employer, what responsibilities you have and where to go for help. This guidance also applies to you if you are a young person undertaking work experience, an apprenticeship, charity or a mobile or home worker.

The guidance states that you have the right to:

- work in places where all the risks to your health and safety are properly controlled
- to stop working and leave the area if you believe you are in danger
- inform your employer about health and safety issues or concerns
- Contact HSE or your local authority if you still have health and safety concerns, with this action not resulting in you getting into trouble
- join a trade union and be a safety representative
- a rest break of at least 20 minutes if you work more than six hours at a stretch and to an annual period of paid leave.

However, the guidance warns that you must:

- take care of your own health and safety from current or proposed working practices
- co-operate with others on health and safety, and not interfere with, or misuse, anything provided for your health, safety or welfare.

And the employer must tell you:

- about risks to your health and safety from current or proposed working practices
- about things or changes that may harm or affect your health and safety
- how to do your job safely
- what is done to protect your health and safety
- how to get first-aid treatment
- what to do in an emergency.

And finally, your employer must provide, free of charge:

- training to do your job safely
- protection for you at work when necessary
- health checks if there is a danger of ill health because of your work
- regular health checks if you work nights, and a check before you start.

However, if you are genuinely self-employed, you are responsible for providing your own first-aid arrangements, training, protective equipment and health checks, and for organising your own working time.



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Your employer must also provide you with the following information:

- health and Safety Law: What you should know – this should give the contact details of people who can help
- their company's health and safety policy
- an up to date Employer's liability (compulsory insurance) certificate, visible in your place of work.

Hot Work Safety Alert

The HSE has issued a safety alert reminding businesses to be aware of the dangers of so-called 'hot work'. Such work includes any process that generates a source of ignition (eg naked flames, heat, sparks) arising from working methods such as welding, flame cutting, grinding and using disc cutters. Duty holders are being reminded of the dangers of undertaking hot work on containers that contain, or have contained, flammable or combustible substances following two recent fatal accidents in North East Scotland where employees were killed whilst cutting up drums.

With hot work, there is a risk of explosion causing serious injury or death if it is carried out on drums, containers, or any receptacle which contains, or has contained flammable or combustible liquids (eg waste thinners, new or used engine oil, anti-freeze, solvents, petrol or diesel fuel).

Anyone contemplating hot work on used drums or similar containers or anyone that manages staff who use welding and cutting equipment, must urgently review their working and training procedures in line with this guidance to ensure that risks are adequately controlled. In many cases hot work may not be necessary. Safer alternative methods of working could be employed. These may include :

- disposal or replacement of drums and tanks rather than repairing
- use of cold cutting techniques (eg hydraulic shears, pneumatic chisels)
- use of cold repair methods.

If hot work is necessary, the risks should be avoided by using a specialist company or reduced by using methods such as gas-freeing, cleaning or inerting before hot working. All employees engaged in hot work must have received adequate training in the risks involved and the precautions required.



BSIF Guidance on Changes to EN 149 Respiratory Standards

The British Safety Industry Federation (BSIF) which describes itself as the UK's leading trade body within the safety industry has published an eight-page information guide for users of respiratory protective equipment (RPE), those specifying such equipment and suppliers. This guidance explains the recent changes to RPE requirements, the rationale behind them and their implications.

Background

The BSIF has published its guidance in response to amendments to the following standards that apply to RPE:

EN 12491+A2
EN 12492+A2
EN 14387+A1
EN 143+A1
EN 405+A1
EN 1827+A1
EN 149+A1

It explains that EN149 2001 was amended in response to concern that the RPE filtering process could potentially be compromised when used in an oily environment. Also, its testing standards didn't take account of the fact that the performance of a RPE filter would become degraded after a period of use and the product information tended not to explain this risk.

Key changes

The amendments to RPE requirements stipulate that:

- there must be clear differentiation between single use disposable products (non-reusable, labelled as 'NR') and disposable products (those that can safely be re-used after appropriate cleaning – termed reusable products or 'R')
- where a product is marked 'R', meaning 'reusable', the manufacturer must specify the appropriate cleaning procedure
- there is a requirement for additional testing of reusable RPE after storage to confirm its efficacy
- an extended 'exposure' test must be conducted to ensure that the RPE filter media remains fully effective over time
- new markings must be applied to RPE from now on, to confirm that the equipment complies with the new requirements.

There is no requirement for a product recall of RPE manufactured and placed on the market before these changes were applied, namely existing stocks. Suppliers are however strongly recommended to check with the manufacturer whether products in use provide suitable protection against identified hazards.



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Tailored advice

This guidance provides specific advice tailored to its three different RPE audiences. They must:

Users

- inspect equipment for the 'R' or 'NR' marking. Its presence will indicate that it conforms to the current/amended standard
- check with the relevant supervisor or manager whether RPE is suitable for the task if it doesn't meet the current/amended standard
- treat RPE marked 'NR' as a 'single use' item. Any RPE without markings, or whose markings are at odds with how they used to be labelled, should be referred to a supervisor or manager.

Specifiers

- be aware of the changes to RPE markings and take account of them when selecting or recommending such products for use
- carefully check equipment for an 'R' or 'NR' marking. Its presence will indicate that it conforms to the current/amended standard
- remember that as part of the updating process, some products now have an increased level of breathing resistance which needs to be considered alongside the appropriateness of its fit
- note that RPE that can be used more than once will be marked with an 'R' to indicate it is reusable. An alternative should be sought for any product that has an 'NR' marking, if historically it was reused
- recognise that RPE produced before the amendments were put in place may still be suitable for use, after confirming this with the supplier or manufacturer.

Suppliers and distributors

- recognise that RPE products conforming to the former standards will still be on the market for some time and ensure that customers are appraised of the new requirements and reassured as to the calibre of existing stock, as necessary
- be advised that as part of the updating process some products now have an increased level of breathing resistance which could affect product choice
- provide appropriate advice to customers based on good product knowledge
- ensure any imported products comply with the amended standards.

All interested parties are advised to contact the BSIF if they require further advice in relation to the recent changes in RPE requirements.