

## Prosecutions

### Company Fined After Scaffold Collapse

A Surrey-based company has been fined after a large section of scaffolding collapsed at a site in Walton-on-Thames.

The Health and Safety Executive (HSE) prosecuted Johnson Scaffold Services Ltd, of Chaldon in Surrey, for breaching health and safety laws which led to the incident on the 18 December 2009.

Staines Magistrates' Court heard how Johnson Scaffold Services Ltd erected sheeted scaffolding around a building in Copenhagen Way, Surrey, to enable a separate contractor to refurbish the roof.

Once the work was completed, the structure was partially removed on 17 December 2009, leaving some of the sheeted scaffolding still standing. During the early hours of the following morning, a 200 foot long, 40 foot high section of the scaffolding was blown to the ground.

The HSE investigation **showed the scaffolding was not installed according to the original drawings and had not been adequately tied.** It was left in an unsafe condition overnight while being dismantled.

Johnson Scaffold Services Ltd, of Chaldon in Surrey, pleaded guilty of breaching Section 2(1) and Section 3(1) of the Health and Safety at Work Act 1974. It was fined £7,500 and ordered to pay costs of £7,000.

After the hearing, HSE's inspector Denis Bodger said:

"This was a serious incident that could have resulted in severe injury or worse, it was sheer luck that meant no one was in the way of the scaffolding when it collapsed.

**"Scaffolds should be designed by a competent person or built to a recognised standard.** At no stage during erection, use or removal should they be left in an unstable state where they could collapse. They should be adequately tied or other effective means taken.

"This should serve as a warning to other companies that HSE will not hesitate to take action against anyone that fails to build safe scaffolding."

### Several Fined in Shock Case

Two companies, a director and a sub-contractor have been fined a total of £130,000 for health and safety failings after a construction worker suffered serious burns following an electric shock from an overhead power cable.

Self-employed steel erector Mark Rushbrook, was constructing two new poultry units at Sunny Farm in Swineshead, Bedfordshire. He was using a scissor lift to clad the gable end of a steel frame when it came into contact with a power cable and he suffered an 11kv electrical shock.

Mr Rushbrook, 24, from West Winch, King's Lynn, Norfolk, sustained burns to his stomach and hands, and internal muscle damage in the 25 June 2009 incident.

The Health and Safety Executive (HSE) charged a number of parties after its subsequent investigation found the gable end of the structure was within just 4.3m of an overhead power line.

HSE told Luton Crown Court on Friday 27 May the defendants failed to identify the potential risks of working near overhead voltage lines and had not put necessary precautions in place, including notifying the relevant authorities.

Farm owner C and P Bird Brothers Ltd, admitted breaching Section 3(1) of the Health and Safety at Work etc Act 1974 for which it was fined £20,000 and Regulation 21(1) of the Construction (Design and Management) Regulations 2007 for which it was fined £20,000. It was ordered to pay £5,500 costs.

Peter Bird, a director of C & P Bird Brothers Ltd admitted breaching Section 3(1) of the Health and Safety at Work etc Act 1974 and was fined £5,000 with £2,500 costs.

The company which designed and manufactured the steel frame, Morspan Construction Limited of 21 Gold Tops, Newport, Gwent, was also the main contractor and admitted breaching Section 3(1) of the Health and Safety at Work etc for which it was fined £30,000; and Regulation 19(1)(c) of the Construction (Design and Management) Regulations 2007 for which it was fined £30,000. In addition the company was ordered to pay £5,250 costs.

Self employed steel erector and sub-contractor on the project Michael Skayman of Edenside Drive, Attleborough, Norfolk, also admitted breaching Section 3(1) of the Health and Safety at Work etc and was fined £25,000 plus £4,750 costs.

### Heinz Fined for H&S Breaches

Food giant Heinz has been fined £20,000 after a worker suffered serious injuries to his left hand at a baked bean factory in Wigan.

The 65-year-old worker lost his index finger, suffered severe nerve damage to two other fingers, and received deep cuts to his hand.

HJ Heinz Company Ltd, which has an annual turnover of more than £700 million, was prosecuted by the Health and Safety Executive (HSE) following the incident at its Kitt Green plant on Spring Road in Wigan on 11 April 2008.

Manchester Minshull Street Crown Court heard that the employee was making a new metal part for a baked bean packaging machine when the incident happened. The worker was using emery cloth to polish the component on a metal-working machine while it was rotating, when his gloved hand was pulled in.

The court was told that Heinz should have identified safety measures for the work in advance, such as providing an alternative way to polish the metal component so that emery cloth did not need to be used.

Heinz, which employs approximately 32,500 people around the globe, pleaded guilty to two health and safety offences after it failed to carry out a risk assessment for the work or to provide adequate training.

The company, of Hayes Park in Hayes, Middlesex, was fined £20,000 and ordered to pay £4,496.50 in prosecution costs.

Deborah Walker, the investigating inspector at HSE, said:

"This worker has suffered severe injuries to his left hand, which will affect him for the rest of his life, because Heinz didn't make sure he was working safely.

**"He had been employed by Heinz for more than twenty years, but was not given any refresher training on safe working practices in that time. The company also failed to assess the risks of the work he was carrying out, and make sure suitable safety measures were in place.**

"The risk of emery cloth being pulled into rotating metalworking machines is well known. Manufacturing companies should make sure employees are following the latest health and safety guidance on this issue."

HJ Heinz Company Ltd was charged with breaching Regulation 3(1)(a) of the Management of Health and Safety at Work Regulations 1999 and Regulation 9(1) of the Provision and Use of Work Equipment Regulations 1998.

### **Avoiding Responsibilities Lands Building Firm a Fine**

A London property development company has been sentenced after a migrant worker suffered severe head injuries when he fell from scaffolding at a Hackney warehouse.

The 46-year-old fell more than five metres from an incomplete tower scaffold, being used to remove floor beams from two levels of a warehouse on Homerton High Street, Hackney, on 13 October 2009.

A Health and Safety Executive (HSE) investigation found the client Nabiganj Investment Company Limited who employed the man as a principal contractor, failed to implement a number of measures that could have prevented the incident.

#### **HSE inspectors found asbestos in debris from the demolition work and discovered that no asbestos survey had been conducted prior to work starting.**

City of London Magistrates heard at least six Chinese migrant workers who spoke very little English had been demolishing floors and moving debris around, potentially exposing themselves to asbestos fibres. The worker who fell from the scaffold suffered life-threatening injuries to his head, pelvis and spine and can now only walk with difficulty.

Nabiganj Investment Company Limited of Alexandra Park Road, London pleaded guilty to breaching Regulation 4 (1) (a), Regulation 10, Regulation 14(1) and Regulation 16(1) of the Construction (Design and Management) Regulations 2007. The company was fined £37,500 and ordered to pay costs of £5,459.90.

The court heard that the firm has had previous enforcement action imposed on it relating to other sites, including two Improvement Notices for failure to comply with client duties under Construction Design and Management Regulations (CDM) and two Prohibition Notices for work at height.

Speaking after the sentence, HSE Inspector Eileen Gascoigne said:

"A vulnerable worker was left with devastating injuries as a result of the consistently poor attitude to safety this company has displayed.

"This is an experienced property development firm, it has had previous enforcement action taken against it by the HSE relating to similar issues during construction work. Once again in avoiding its responsibilities, it has put the safety and health of at least six vulnerable workers at unnecessary risk."

### News

#### Bouncy Castle Investigation

The bouncy castle which blew away in the wind with three children on it at the end of last month has been confiscated for examination by environmental health officers. One child was hospitalised following the incident.

[At the time of publication] Scarborough Borough Council's officers are investigating, under health and safety legislation, following the incident at the White House pub last Sunday [30 May 2011] afternoon where families were celebrating a double christening.

The seven year old boy who suffered serious injuries including a fractured femur, a broken arm and a fractured rib and punctured lung was taken to James Cook hospital.

His nine year-old brother had a leg injury and a seven year old girl suffered head injuries and concussion.

They were both treated at Scarborough Hospital but have since been discharged.

SBC confirmed it has taken possession of the equipment which is being securely stored pending further examination and officers are currently undertaking interviews with all relevant parties.

Councillor Bill Chatt, Scarborough Borough Council's Cabinet Member with responsibility for Housing, Property Maintenance, Public Health and Sustainability said: "Our thoughts are with the families of the children who were hurt on Sunday and we hope they all make a full recovery as soon as possible.

"The council would like to remind operators to ensure the safe use of inflatables such as bouncy castles.

"The Health and Safety Executive has previously issued guidance on the safe use and operation of this type of play equipment, which includes a section on their use during periods of high winds.

"Operators of this type of equipment have a clear responsibility to ensure it is being used in a safe manner."

#### Charity Shop Health & Safety

Charity shops run by volunteers should not be forced to close their premises because of "perceived health and safety red tape", Employment Minister, Chris Grayling, has said.

The comments follow a number of reported recent cases, in which charities have commissioned health and safety consultants to assess the risk in their shops. In some cases, the shops have then been forced to close down after being unable to afford to implement the plans created.

Grayling said:

"Let's be clear about this – there is nothing in the legislation to say that charities must hire expensive health and safety consultants to risk assess their charity shops. This is another example of the health and safety cowboys taking advantage of small organisations and is putting an unfair strain on the purse strings of organisations at the heart of our communities.

"We need to put common sense back at the heart of Britain's health and safety system and root out needless bureaucracy so we can encourage our voluntary sector and businesses to prosper."

He added:

"Where charities feel they need professional advice, the new Occupational Safety and Health Consultant's Register provides access to fully qualified advisers who meet rigorous industry standards."

Warren Alexander, Charity Retail Association Chief Executive, welcomed the clarification, but is quoted as saying:

"It's not to say that charity shops do not have a responsibility and obligation to protect their workers. All the same health and safety legislation applies – we're not getting let off any legislation."

## Guidance

### **Guidance on Labelling and Packaging in accordance with Regulation (EC) No 1272/2008**

This guidance document has been published by the European Chemicals Agency, and is relevant for suppliers of chemical substances and mixtures, namely for:

- manufacturers and importers of substances
- importers of mixtures
- downstream users of substances and mixtures (including formulators)
- distributors of substances and mixtures, including retailers.

These suppliers must label and package their substances and mixtures in accordance with the provisions of Regulation (EC) No 1272/2008 (CLP Regulation or CLP) before they are placed on the EU market.

The document provides guidance on the labelling and packaging requirements set out in the CLP Regulation. It builds on the overview provided in sections 14 to 16 of the Introductory Guidance on the CLP Regulation, also published by the European Chemicals Agency.

In particular, this guidance aims to clarify:

- what aspects to consider when estimating the label size needed
- what types of supplemental information are possible, and where to place this information on the label, see section 4.8 below
- the conditions for small packaging exemptions
- the interaction between CLP and the transport labelling rules
- how to select the most appropriate set of precautionary statements for the label.

### **Joint Guidance for Reduced Proactive Inspections**

This statement has been jointly prepared by the Health and Safety Executive (HSE) and the Local Government Group. It is intended to assist LA regulators in determining the use of proactive interventions to achieve both improved health and safety outcomes for each locality and the Government's regulatory reform agenda.

The Government's aims for health and safety reform include reducing the inspection burden on business alongside focussing on better health and safety outcomes. Refining the intervention strategies for businesses by further improving the targeting of relevant and effective interventions and preserving inspection for higher risk premises and issues should lead to a reduced number of proactive inspections, says the statement. Reducing the aggregate numbers of proactive inspections by a third across all local authorities will free up capacity for more effective outcome focussed interventions.

It is acknowledged that many local authorities already target their interventions on the basis of risk (given national and local knowledge about the sector/premises) and have re-rated all their premises in accordance with [LAC 67/2](#) so that premises are only visited proactively where they are considered high risk (relative to other LA

enforced premises). This guidance reinforces that approach in the expectation that if any LAs are not already applying this way of working they will see the benefits of doing so.

HSE have identified three categorisations for non-major hazard industries:

- those sectors which present comparatively high risk and where proactive inspection remains necessary as part of the overall regulatory approach - areas for LAs to consider under this would be category A premises as set out in LAC 67/2
- those sectors where there remains comparatively high risk but proactive inspection is not considered a useful component of future interventions - areas for LAs to consider under this would be category B1 and B2 premises as set out in LAC 67/2
- those areas where proactive inspection is not justified in terms of outcomes - areas for LAs to consider under this would be category C premises as set out in LAC 67/2.

The guidance acknowledges that businesses with a good record of managing safety hazards should not face routine inspections. Instead, councils will put greater emphasis on reactive work – dealing with complaints, investigating incidents and providing advice and support for businesses on managing workplace risks.

### **Safety Notice – Firewood Processing Machines**

Recent accident investigations indicate that some firewood processing machines may be unsafe because the guards provided are too short or the other safety devices provided may be easily overcome. This safety notice, issued by the HSE, gives advice to users.

It advises that users should:

- ensure that machines are used and maintained in accordance with the manufacturers' instructions
- check that all guards and other safety protective devices (including interlock devices) are adjusted and functioning correctly (eg the machine does not operate with interlocked guards open). The machine should not be used until any significant faults are corrected
- where the controls require two hands for operation users should ensure that:
  - both controls have to be operated together
  - machines cannot operate with one control 'jammed' open and the second allowing single-hand operation of a machine that was designed with the intention of two-hand operation
- it is not possible to start the splitting process inadvertently or to operate both manual controls simultaneously with one hand or arm or with other parts of the body
- the machine is only used by a single person as any second person eg who removes split wood, is not protected by the two-hand control.
- guards, including the length from the open end or aperture, should prevent people from having easy access to the dangerous parts, at the saw and splitter ram, from the normal operating position.

In terms of delivery/assembly at site, it is noted that all parties should ensure that the machinery has been correctly assembled in accordance with the manufacturer's instructions, and all safety devices are functioning as intended.

## Reports

### Health and Safety: a Risky Business?

In this report, the British Chambers of Commerce (BCC) reveals that half of businesses identify health and safety 'yellow tape' as a burden. While health and safety in the workplace is important, the volume and ambiguity of this regulation means that it is often misapplied, with small- and medium-sized firms particularly affected.

Lord Young's 2010 report reviewed current legislation, but there has been too little done to implement its proposals, says the report. In a new survey of nearly 6,000 employers, carried out by the BCC, nearly half (47%) claimed regulation around health and safety issues was a burden on their business. A fifth of sole traders identified health and safety regulation as a barrier to taking on their first employee. The cumulative cost of health and safety regulation in the UK amounts to over £4 billion.

Commenting on the report, David Frost, Director General of the British Chambers of Commerce, said:

"Health and safety regulation in the workplace is important, but it must be made more industry-specific. The UK has a good record on health and safety and preventing accidents at work. However, employers are dealing with a multitude of regulations that do not necessarily add to the safety of workers. The government's Red Tape Challenge lists 131 separate health and safety regulations. The sheer volume of rules causes confusion for employers, particularly amongst smaller firms without the resource to tackle this.

"Good health and safety legislation is crucial in high-risk environments and must protect employees from genuinely dangerous hazards in the workplace. But time and time again, we hear of unnecessary and unreasonable examples of health and safety. For example, home workers are treated in the same way as those working onsite, with the employer forced to conduct ever-more elaborate and costly assessments of the employee's home environment.

"Where regulation is irrelevant or misapplied, we are asking the government to consolidate and simplify. We welcome the government's Löfstedt's review into health and safety, and hope this will deliver for business. Only a straightforward and more proportionate system of health and safety regulation will make it easier for employers to comply, and allow them to focus on growing their businesses, driving employment and contributing to economic growth."

The report highlights examples of what it suggests are the most burdensome regulations, including:

- the requirement to have an appointed first-aid person in the workplace
- the Control of Artificial Optical Radiation at Work Regulations 2010
- Control of Vibration at Work Regulation 2005.

It is felt that health and safety regulation must be better balanced to avoid unnecessary burdens on business and also to safeguard employees. There is an opportunity for the consolidation and simplification of numerous health and safety regulations, which would significantly reduce the compliance burden on businesses. There are currently 131 regulations relating to health and safety in the UK. The BCC believe the current stock of health and safety legislation distracts businesses from driving economic growth and creating employment.

In its report, the British Chambers of Commerce makes several recommendations around health and safety rules, including:

- low-risk businesses must not be treated in the same way as high-risk businesses
- the information function of HSE is critical and the government must ensure that despite cuts to its budget and restrictions on marketing spend, its business engagement and information activities are not diminished
- implementing the recommendations of the Davidson Review - the Davidson Review of implementation of EU legislation recommended that in low-risk sectors HSE should consider exempting the self-employed from certain Health and Safety legislation
- eliminating duplication will improve health and safety policy.