



## Winter 2019 Newsletter

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### Useful Websites:-

- HSE Website [www.hse.gov.uk](http://www.hse.gov.uk)
- British Standards Institute [www.standardsuk.com](http://www.standardsuk.com)
- Trades Union Congress [www.tuc.org.uk](http://www.tuc.org.uk)
- Environment Agency [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

### COMMENT

Welcome to our winter newsletter designed to keep you informed of the key developments around the world of UK health, safety and wellbeing.

I was quite taken aback recently when I visited a large Company and completed an audit of their health & safety management system. There was a general awareness that health & safety came with many requirements, but when asked, the Director and owner could only come up with a couple of the more obvious ones, such as risk assessments and method statements. Normally when I visit a new Company, the Director or nominated person will have looked into their legal requirements and will have attempted to put things into place using the HSE's guidance for new businesses. Often however, they will realise that they need to employ or hire someone with the knowledge and tools to be able to address the gaps in a short timescale, especially where they are in a high-risk occupational area. My New Year message is 'do find out before you get caught out!'

**Tony Payne**

### Company fined after forklift accident

A scaffolding company has been sentenced for safety breaches after a worker was crushed by a forklift truck. The Magistrates Court heard how an employee was using a forklift truck in the yard when the vehicle overturned, trapping him underneath. The employee sustained serious life changing internal injuries and now lives with constant chronic pain and severe mobility issues.

An investigation by the Health and Safety Executive (HSE) found that the company had failed to provide training to their employees on the safe operation of forklift trucks, which would have included the importance of wearing seat belts. The company also failed to provide adequate supervision and monitoring of the forklift truck operators to ensure they were only operated by trained drivers and that safe driving techniques were followed.

The Company pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc. Act 1974 and was fined £54,270 with £8000 in costs.

### Health & Safety fines continue to rise

The 2017/18 statistics from the Health and Safety Executive show that total penalties have almost doubled since the new sentencing guidelines were introduced three years ago. The £72.6m in fines followed 493 successful prosecutions across all industries – with an average fine of £147,000.

### Out of luck, out of business....

Bad publicity as a result of an HSE investigation following the death of a worker has been blamed on the subsequent collapse of a construction business, which ceased trading just two months after the death of a 22 year-old employee, who fell through a roof he was working on.

The firm's Administrator concluded that adverse publicity in the market place as a consequence of the death and resulting criminal and HSE investigation' prevented the firm securing the necessary finance to invest in ongoing work projects.

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### ***In Short:***

- 1)** A Manchester based property owner has been given a 6-month suspended prison sentence for not undertaking an asbestos survey on a building prior to major refurbishment works.
- 2)** Nearly 40% of fatal injuries in 2017/18 - up from approximately 25% last year - were to workers aged 60 and over, despite them making up just 10% of the national workforce. This highlights the need for greater consideration when protecting older workers.

## EN131 Changes to Ladder Purchase

After 31 December 2018 British Standards BS 2037 and BS 1129 will be withdrawn and ladders and step ladders currently referred to as Class 1 and Class 3 will no longer be available following a transition period.

EN 131 is the European Standard that covers all types of portable ladders (steps, extending and combination); this is adopted by the UK using the British Standards of compliance. Changes to EN131 are designed to improve ladder safety. These changes affect the:

- Dimensions of the equipment to improve stability.
- Increased strength test requirements.
- New requirements for ladder durability.

The changes will also make buying the correct ladder much simpler where current information may potentially provide conflicting information.

Standards prior to 31 December 2018		
BS 1129 Class 3 BS 2037 Class 3 Domestic use	EN 131 Trade Standard	BS 1129 Class 1 BS 2037 Class 1 Industrial use

Standards after 31 December 2018 – New Standards	
EN 131 Non-professional For domestic users only	EN 131 Professional Intended for use in a workplace

The UK's version of EN 131 is BS EN 131. Under the new standards all ladders will have the same minimum capacity of 150Kg. Telescopic ladders must be designed and constructed for professional use. The new standards do not apply retrospectively. Therefore, providing the equipment is in good condition, there is no immediate requirement to change your existing ladders or step ladders just because the product standards are revised or withdrawn.

## Survey finds a Quarter of employees leave work over mental health

St Johns Ambulance recently conducted a survey of 1000 employees from the administrative and Human Resources sector which identified that a quarter of respondents had previously left a role due to stress or mental health problems. The charity went on to urge employers to take mental health and the wellbeing of their workforce seriously. This coincides with the 'Chartered Institute of Personnel and Development' and the charitable organisation 'Mind', updating their guidance, which aims to equip managers with the knowledge and skills to support the early identification of potential sufferers. <https://www.cipd.co.uk/knowledge/culture/well-being/mental-health-factsheet>

## Latest Health & Safety Statistics released for 2018

As part of its 'Helping Great Britain work well' strategy the Health & Safety Executive (HSE) has released its latest update on the collective countries workplace health and safety performance.

### Key facts



For further data and context visit: <http://www.hse.gov.uk/statistics/overall/hssh1718.pdf>

### In Short:

3) Producing counterfeit Construction Skills Certification Skills cards has led to the fraudster breaching The Fraud Act 2006. He has subsequently pleaded guilty and been given a three year and eight-month prison sentence.

4) Legionella has been found in the showers of a Council owned Gym. It was discovered after a member of the public was admitted to the local hospital. The HSE will be investigating and prosecuting the council for the legal breaches.

### GDPR

Although the requirements of GDPR suggest that personal information should not be retained or shared, there are two particular instances when, for health & safety purposes, it is permissible to do so. The first of these is where there is a legal duty placed on an employer, for example if a serious accident occurred, you would need to report this to the HSE under RIDDOR and this would include the personal information of the individual. You are also required to retain health surveillance records for up to 40 years. The other example is where you have a 'legitimate interest' reason to hold information, i.e. training records which also hold personal information.

GDPR is all about transparency, and therefore you must advise employees as to what personal details you hold about them.

### EHOs and FFIs

A cross-party group of MPs is recommending that the HSE's ability to charge fees (Fees for Intervention) for work resulting from a company's material breaches that they discover during investigations is extended to include Local Authority Environmental Health Officers (EHOs). At present EHOs, who enforce less risky occupational areas such as retail and warehousing, do not have the ability to recover their costs from errant employers. The current rate is £129.00 per hour for work where the HSE can show a material breach exists and this would be an incentive for Local Authorities to improve compliance in less risky occupational areas. At present the costs come from council budgets and this has resulted in a fall in the number of EHOs employed by almost 100% in the period 2010 to 2016. When one considers that two thirds of all workplaces and half of the nation's workforce is covered by EHOs, it does make sense for Local Authorities to be able to access this scheme and the potential income.

### Architects

Chartered members of the Royal Institute of British Architects (RIBA) will be required to pass a mandatory health & safety test as from 2019. The Independent Review of Building Regulations and Fire Safety following the Grenfell Tower tragedy recommended that architects be safety competent when designing buildings, the main reason for the test to be implemented. Included in the test will be questions covering the duties of Principal Designers under the CDM 2015 regulations. It will be similar to the current online training available and those who fail will have the opportunity to take resits.

### *In Short:*

**5)** A worker has been killed by a reversing side-loader fork truck at a builders' merchants. The Company have been fined over ¼ Million pounds for failing to implement and follow their own transport plan.

**6)** A brick making company has been fined £200K after a worker was drawn into a moving conveyor where the guards had been removed to clear a blockage. The chargehand was left paralysed from the chest down and had an arm amputated.

## Sentencing guidelines

Managers who are negligent in their responsibilities can expect higher penalties now that new court guidelines are in force. Of particular relevance is where a charge of 'gross negligence manslaughter' is made, following a gross breach of duty of care to an employee or other person, which results in them being fatally injured in a workplace.

Where an offender shows a blatant disregard for the victim's safety, or is motivated by financial gain or cost-cutting, they could expect a sentence of between five to twelve years imprisonment. For higher culpability cases, the range is between twelve and eighteen years. On the other hand, where there was simply a lapse in an otherwise satisfactory standard of care (lower culpability), the sentence would likely fall in the range of one to four years.

## Brexit

The UK Government has addressed the issue of post-brexit health & safety legislation by implementing the 'Health and Safety (Amendment) (EU Exit) Regulations 2018'. These will amend 11 sets of current regulations as well as one direct acting EU regulation. The result of this process will be that the UK can continue to use EU inspired directives and instructions in domestic law. With Brexit due in March 2019, more information will become available as the year unfolds.



## And Finally...

The comments, observations, views and advice contained in this newsletter are for general guidance only and are not a substitute for competent expert advice or reference to Acts and Regulations or other legal sources in individual cases and circumstances. Advice can be obtained from, amongst others, Insurers, Solicitors, Enforcing Authorities and your own competent person. You should always ensure that you obtain competent professional advice in individual situations.