

April 2000

# Presentation on "Managing WOOLF" by Mike Ware, Edge Tancred and Mike Crane, ACE Europe.

Mike Ware started the presentation by saying that the humorous aspect of the title in the programme which could be construed as a cutting reference to lawyers and that he wanted to dispel that fear! He illustrated his theme with examples drawn from outside the occupational safety arena where accident investigations are needed:-

## **Road traffic accident cases**

### ***a) In all cases where liability is an issue:***

- i) Documents identifying the nature, extent and location of damage to defendants vehicle where there is any dispute about point of impact.
- ii) MOT Certificate where relevant.
- iii) Maintenance records where vehicle defect is alleged or it is alleged by the defendant that there was an unforeseen defect which caused or contributed to the accident.

### ***b) Accident where the potential defendant was using a commercial vehicle:***

- i) Tachograph charts or entry from individual control book.
- ii) Maintenance and repair records required for operators' licence where vehicle defect is alleged or it is alleged by Defendants that there was an unforeseen defect which was caused or contributed by the accident.

### ***c) Cases against Local Authorities where highway design defect is alleged:***

Documents produced to comply with Section 39 of the Road Traffic Act 1988 in respect of the duty designed to promote road safety to include studies into road accidents in the relevant areas and documents relating to measures recommended to prevent accidents in the relevant area.

## **Highway tripping claims**

### ***Documents from Highway Authority for a period of 12 months prior to the accident:***

- i) Records of inspection for the relevant stretch of highway.
- ii) Maintenance records including records of independent contractors working in the relevant area.
- iii) Records of the minutes of Highway Authority meetings where maintenance or repair policy has been discussed or decided.
- iv) Records of complaints received about the state of highways.
- v) Records of other accidents which have occurred on the relevant stretch of Highway.

In the workplace there are many examples where health and safety legislation explicitly requires that certain actions are taken or records are kept. In other instances they implicitly, at least, recommend that measures are taken. As an example, one large insurance company has produced a checklist based on the requirements in some common Regulations to guide accident investigators to obtain more comprehensive facts surrounding the incident. In addition to the above list, the following items may be relevant:-

***a) Sources of information for Accident Reports***

- i. Accident Book Entry.
- ii. First Aider Report.
- iii. Surgery Record.
- iv. Foreman/Supervisor Accident Report.
- v. Safety Representatives Accident Report.
- vi. RIDDOR Report to Health and Safety Executive (HSE).
- vii. Other communications between Defendants and HSE.
- viii. Minutes of Health and Safety Committee meeting(s) where accident/matter has been considered.
- ix. Report to DSS.
- x. Documents listed above relative to any previous accident/matter identified by the claimant and relied upon as proof of negligence.
- xi. Earnings information where Defendant is employer.

***b) Evidence of compliance with requirements of the Management of Health and Safety at Work Regulations 1999***

- i) Pre-accident Risk Assessment required by Regulation 3.
- ii) Post-accident Re-Assessment required by Regulation 3.
- iii) Measures for implementing the requirements of Regulations 4, 6 and 9.
- iv) Health Surveillance Records in appropriate cases required by Regulation 5.
- v) Information provided to employees under Regulation 8.
- vi) Documents relating to the employees Health and Safety Training required by Regulation 11.

**Workplace claims - disclosure where specific regulations apply**

***a) Workplace (Health Safety and Welfare) Regulations 1992:***

- i) Repair and maintenance records required by Regulation 5.
- ii) Housekeeping records to comply with the requirements of Regulation 9.
- iii) Hazard warning signs or notices to comply with Regulation 17 (Traffic Routes).

***b) Provision and Use of Work Equipment Regulations 1998:***

- i) Manufacturers specifications and instructions in respect of relevant work equipment establishing its suitability to comply with Regulation 5.
- ii) Maintenance log/Maintenance records required to comply with Regulation 6

- iii) Documents providing information and instructions to employees to comply with Regulation 8.
- iv) Documents provided to the employee in respect of training for use to comply with Regulation 9.
- v) Any notice, sign or document relied upon as a Defence to alleged breaches of Regulations 14 to 18 dealing with Controls and Control Systems.
- vi) Instruction/Training documents issued to comply with the requirements of Regulation 22 in so far as it deals with maintenance operations where the machinery was not shut down.
- vii) Copies of markings required to comply with Regulation 23.
- viii) Copies of warnings required to comply with Regulation 24.

***Personal Protective Equipment at Work Regulations 1992:***

- i) Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 6.
- ii) Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7.
- iii) Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7.
- iv) Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7.
- v) Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 9.
- vi) Instructions for use of Personal Protective Equipment to include the manufacturers instructions to comply with Regulation 10.

***d) Manual Handling Operations Regulations 1992:***

- i) Manual Handling Risk Assessment carried out to comply with the requirements of Regulations 4(1)(b)(i).
- ii) Re-assessment carried out post-accident to comply with requirements of Regulation 4(1)(b)(i).
- iii) Documents showing the information provided to the employee to give general indications related to the load and precise indications on the weight of the load and the heaviest side of the load if the centre of gravity was not positioned centrally to comply with Regulation 4(1)(b)(I).
- iv) Documents relating to training in respect of manual handling operations and training records.

***e) Health and Safety (Display Screen Equipment) Regulations 1992:***

- i) Analysis of work stations to assess and reduce risks carried out to comply with the requirements of Regulation 2.
- ii) Re-assessment of analysis of work stations to assess and reduce risks following development of symptoms by the claimant.
- iii) Documents detailing the provision of training including training records to comply with the requirements of Regulation 6.
- iv) Documents providing information to employees to comply with the requirements of Regulation 7.

***f) Control of Substances Hazardous to Health Regulations 1999:***

- i) Initial risk assessment carried out to comply with the requirements of Regulation 6.
- ii) Reviewed risk assessment carried out to comply with the requirements of Regulation 6.
- iii) Copy labels from containers used for storage handling and disposal of carcinogenics to comply with the requirements of Regulation 7(2A)(h).
- iv) Information and training records provided to comply with the requirements of Regulation 17.
- v) Records of advice from and views of persons at work to comply with the requirements of Regulation 18.
- vi) Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7 (3A).
- vii) Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7(3A).
- viii) Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7 (3A).
- ix) Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 7 (3A).
- x) Instruction for the use of Personal Protective Equipment to include the manufacturers' instruction to comply with Regulation 7 (3A).
- xi) Air monitoring records for substances assigned a maximum exposure limit or occupational exposure standard to comply with the requirements of Regulation 7.
- xii) Maintenance examination and test of control measures records to comply with Regulation 9.
- xiii) Monitoring records to comply with the requirements of Regulation 10.
- xiv) Health surveillance records to comply with the requirements of Regulation 11.
- xv) Documents detailing information, instruction and training including training records for employees to comply with the requirements of Regulation 12.
- xvi) Labels and Health and Safety data sheets supplied to the employers to comply with the CHIP Regulations.

**g) Construction (Design and Management) Regulations 1994:**

- i) Notification of a project form (HSE F10 Rev.) to comply with the requirement of Regulation 7.
- ii) Health and Safety Plan to comply with requirements of Regulation 15.
- iii) Health and Safety file to comply with the requirements of Regulation 12 and 14.
- iv) Information and training records provided to comply with the requirements of Regulation 17.
- v) Records of advice from and views of persons at work to comply with the requirements of the Regulation 18.

**h) Pressure Systems Safety Regulations 2000:**

- i) Information and markings to be provided by designers, suppliers, repairers or manufacturers.

- ii) Written statements specifying the safe operating limits of a system to be provided.
- iii) Copy of the written scheme of examination.
- iv) Examination records required.
- v) Instructions provided for the use of operators.
- vi) Records kept of inspection reports and reports affecting safe operation or carrying out of modifications or repairs..

***j) The Noise at Work Regulations 1989:***

- i) Any risk assessment records required to comply with the requirements of Regulations 4 and 5.
- ii) Manufacturers literature in respect of all ear protection made available to claimant to comply with the requirements of Regulation 8.
- iii) All documents provided to the employee for the provision of information to comply with Regulation 11.

***k) Construction (Head Protection) Regulations 1989:***

- i) Pre-accident assessment of head protection required to comply with Regulation 3(4).
- ii) Post-accident re-assessment required to comply with Regulation 3(5).

***l) The Construction (Health, Safety and Welfare) Regulations 1996:***

- i) System of inspections and examinations of excavations etc., to comply with the requirements of Regulation 29, Schedule 7.
- ii) Reports following the above inspections, including particulars in accordance with Regulation 30, Schedule 8.

These form part of any good business practice and, as such, are not an option - they are essential!

Mike Ware than handed the baton over to **Mike Crane** who described his industrial background as an introduction to his presentation on practical the aspects of accident investigation. He started by defining the purpose as:

**to discover the facts and draw conclusions as to the :-**

- Proximate cause
- Root cause
- Contributory factors
- Systemic weaknesses

**the objective being to:-**

- Prevent a recurrence by improving Control Measures.
- Act as a basis for defence in a criminal prosecution or civil claim for damages.

Sometimes investigators and employers can seriously confuse "**Cause and Effect**", as these comments on insurance claim forms illustrate:-

- **"The cause of this accident was that Mr.Jacobs was not wearing his hard hat" (He must have been 'Crackers')**  
**OR**
- **"The accident happened because the scaffold fitting hit him on the shoulder"**

Another pitfall that traps the unwary investigator is complacency - not looking into a wide enough range of reasons 'why things went wrong'. One claim form that illustrates this point contained this remark:-

**"We conclude that this accident was not the fault of any one. It was a one in million chance and there was no way it could have been avoided."**

Contrast this with the attitude that says

### **All Accidents are avoidable**

Then there is the mindset that, unconsciously sometimes, that puts all the blame on the person closest to the accident and can hit an injured victim with a 'double-whammy':-

**"We have no idea of why this accident happened but we think it could have been Ken doing something stupid. To make sure it don't happen again and to show that we are a safe firm, we sacked him"**

Then there is the is a dangerous complacency about the magnitude of risk presented by some incidents:-

**"The car came through the site at about 40 mph, knocking cones all over the place, and hit Pete sending him about six feet into the air. We didn't bother doing an investigation as it wasn't serious"**

Mike held up a number of items which had been involved in accidents and it was interesting to see how difficult it was to recognise some fragments and, hence, to discover underlying causes.

Mike reminded the audience that investigation reports are '**Discoverable Documents**' could be demanded by the 'opposing side' in court proceedings. (Secretary's Note: **This applies, even, to informal, hand-written notes which may have been added to case files as an afterthought and may be inaccurate or ill-judged. Such evidence can be damaging to a court case. If a report is written to proffer legal advice, however, it would not be discoverable**)

Mike went on to say that, because of the type of problem illustrated by these examples, a very substantial number of accidents are inaccurate in their conclusions. For example, 96% of all workplace accidents are due to 'At Risk Behaviour', yet only about 15% of accident reports show behaviour as being the causation

**(Secretary's Note: In organisations which have a rigorous investigation culture, the true proportion *is* identified correctly. HOWEVER, *it not correct to assume* that it is inevitably the person involved directly who is the cause. Almost invariably there are a variety of causes, in different levels of the management chain, many of which are outside the control of those most closely involved in the accident.)**

Following the WOOLF reforms, insurers have only three months in which to declare their stance in response to a claim for damages. The decision to admit liability **OR** to defend a claim will depend largely upon the contents of the accident investigation report. **If the correct decision is to be made** it is vital that the accident investigations are thorough and that the findings are accurate.

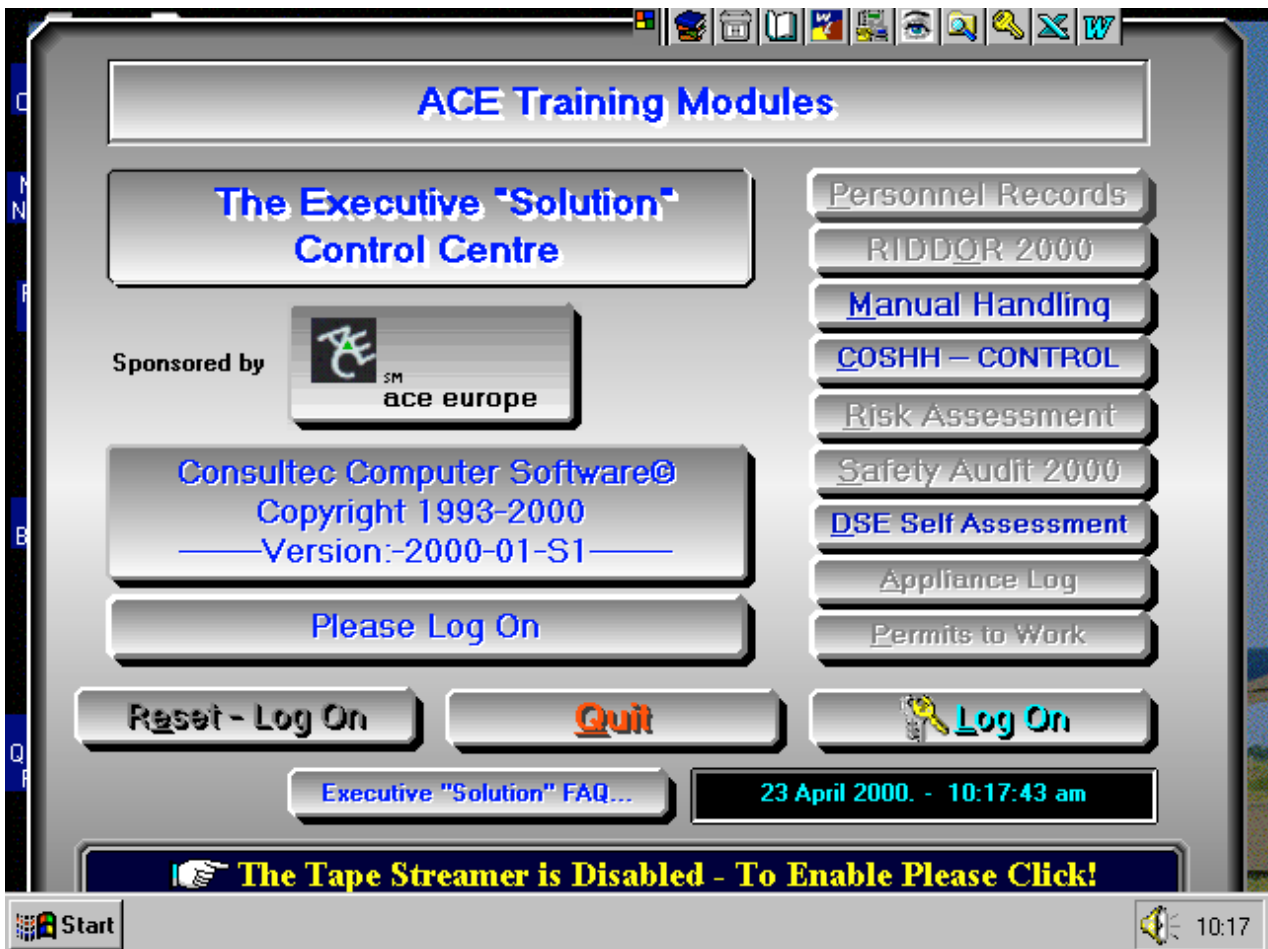
So it is important for all organisations to set their house in order and ask themselves:-

- Do we have a formal investigation procedure?
- Is training available for persons undertaking investigations?
- Do those undertaking investigations have a clear understanding of
  - The aims and understanding of the investigation?
  - The necessary techniques and skills?
- Do our arrangements include sufficiently detailed report forms and documents?
- Are all preliminary investigations carried out within 24 hours?
- Are the reports monitored and reviewed to ensure accuracy?

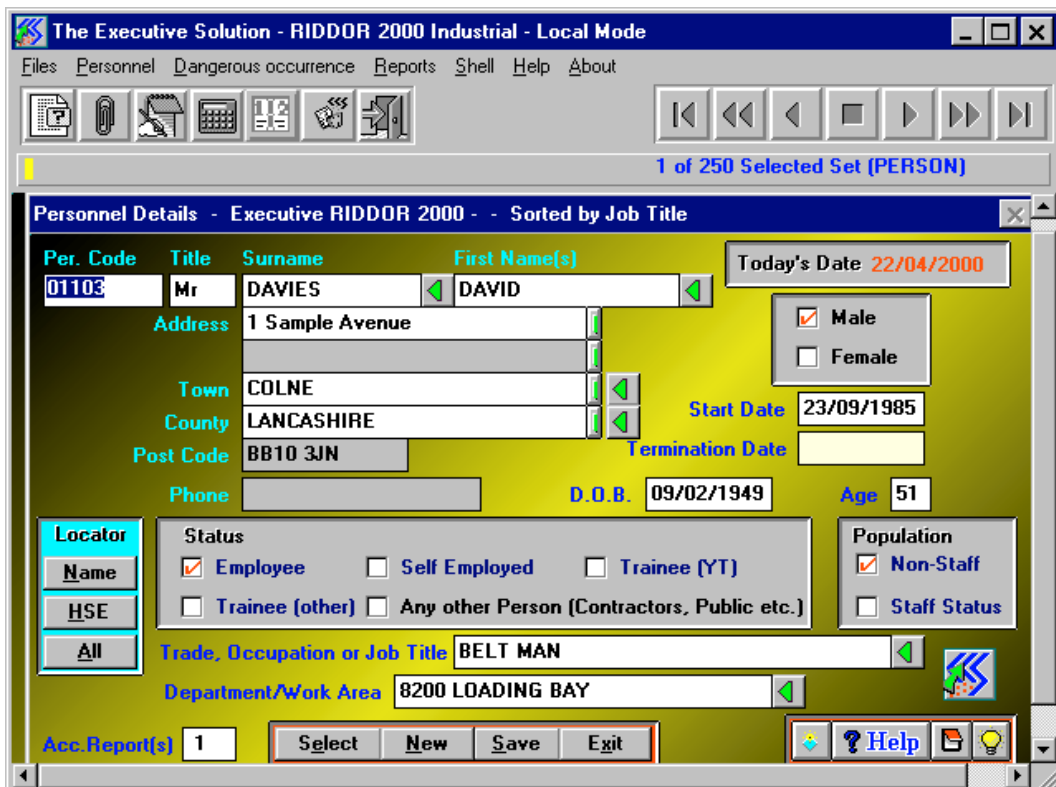
Although the WOOLF requirements are important, the need for effective accident investigation is even more urgent because:-

- Levels of litigation are rising.
- Awards and settlements are rising by about 40% p.a.
- There is a wider range of "New Age" injuries and illnesses coming to the courts:-  
e.g. Stress, Hand/Arm Vibration Syndrome, Work Related Upper Limb Disorders.

At this point **Mike Ware** took over to demonstrate a computer-based Accident Reporting programme which insurers ACE gave to their clients. It is called the "Executive Suite Solution" and comprises a range of health and safety sub-programmes which are ideal for supporting key administrative tasks. In addition to the RIDDOR module demonstrated this afternoon there are related modules dealing with Manual Handling, COSHH, DSE Assessments, Appliance inventories and Permits to Work. The following screen print shows the introductory display.



This next screen display shows the first input screen for the RIDDOR programme.



The personnel details are permanently held on file and are pre-entered onto relevant screens. This avoids repetitive input of personal details into the integrated suite of



programmes, thus eliminating wasted effort and possible input errors. The next screen shows one of the RIDDOR continuation pages, which is modelled on the F2508. Recent changes to RIDDOR have made electronic storage of statutory records possible.

The screenshot shows a Windows-style application window titled "The Executive Solution - RIDDOR 2000 Industrial - Local Mode". The menu bar includes "Files", "Personnel", "Dangerous occurrence", "Reports", "Shell", "Help", and "About". A toolbar contains icons for help, print, save, and navigation. A status bar at the top right indicates "Single Record Selected (ACC\_FORM)".

The main window is titled "RIDDOR 2000 - Accident Analytical Details - Part of Body". It contains the following fields and options:

- Accident code: **00180\_1**
- Name: **MARK ADAMS**
- How many parts of the body were injured?  One  More than one
- Please indicate which part of the body was most seriously injured
- Head  Eye  Neck  Shoulder  Back  Chest
- Arm  Elbow  Wrist  Hand  Hip  Finger/Thumb
- Pelvis  Leg  Knee  Ankle  Foot  Toe
- Internal  Please Specify any other injured part of body:
- If appropriate, which side of the body was most seriously injured?  Left  Right

At the bottom, there are navigation buttons: PgDn, Home, PgUp, and End, along with a lightbulb icon.

Mike then demonstrated many facilities to produce accident analyses, such as Numbers of Hours Lost, Over-3-Day accidents, Accidents by Agent and Injuries to Parts of the Body. These are already built in to this suite of programmes and are available at the 'click-of-the-mouse-key'. There is also a blank form for a Pre-recruitment Medical Questionnaire, although the confidential personal data cannot be stored on this system.

## *Members' Questions*

**David Hughes** asked what measures could be taken to ensure the security of the data on the system. Mike Ware replied that it was recommended that each user should have a password to work only on designated modules.

**Marie Carroll from Sandwell Healthcare NHS Trust** asked how the confidentiality of the information on the recruitment questionnaire was secured.

She added that she was concerned that it would be less than that required by statute for Medical Records in the NHS. This prompted a lengthy discussion but Mike was able to confirm that only a blank form was stored on the programme. This was used to generate a copy for the job applicant to complete, after which it was stored as hard copy only, in the confidential personnel files. This did not alter the traditional approach which has been in common use in all industries for many years.

**Ken Talbot** made the valid point that there was often a long delay in insurers getting to an accident site. Mike Ware said that this was a problem for insurers as well.

**Mark Hoare from the University of Birmingham** asked if there was any guidance on the degree of effort that should be made to investigate accidents. Mike Ware said that there was no, one, definitive answer to this question but that employers should look at the severity of the actual injury, the potential for serious injury, the number of persons involved and the probability that there could be a recurrence. The decision would involve the investigation time and seniority of the investigator.

As there were no further questions the Chairman closed the meeting and members thanked the speakers in the normal way.

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