

Birmingham Health, Safety & Environment Association

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Newsletter

August 2008

Welcome *to Our New Members*

- Emma Gardner, HSE Assistant, MITIE Property Services (UK) Ltd.
- John Gilbertson, Director of Training and Development, The Key Consultancy Ltd.
- Jaginder Kaur, Director, Abel Childcare Ltd.
- Mark McCarthy, Locksmith & Carpenter, Olym'Pic' Locksmiths & Carpentry
- David Pierre, Principal Trainer, NTC (UK) Ltd.
- Gordon Bannatyne, Consultant

Corporate Manslaughter Seminar

Wednesday 11th June 2008 National Motorcycle Museum



BHSEA Vice-Chairman, Ed Friend

The morning was started by Judith Donovan, Non-Executive Board Member of the HSE Board, which was newly-formed after the merger in April this year, of the Health and Safety Commission and former Health and Safety Executive.

Judith gave a sparkling introduction to the

BHSEA Vice-Chairman, Ed Friend, acted as Chairman for the Day at this important Seminar, attended by over 70 Delegates at the National Motor Cycle Museum in Solihull.



Judith Donovan, HSE Board,
Non-Executive Board Member

event, with her heartfelt conviction of the need for this long-awaited legislation. Touching briefly, but significantly, on the horrific record of fatalities and serious injuries each year as the motivation for the new law, Judith pinpointed the responsibility of Directors to remedy this situation. She outlined the importance of the higher penalties and described the leading role of the Police and CPS to investigate and prosecute offenders.

Judith went on to repeat the responsibility of Directors in managing a key business risk and added that, by doing so, they could also deliver other business benefits. There was plenty of guidance to help them to do this and referred to the principles in the recent Institute of Directors publication that delegates had received in their seminar pack. For all of these reasons and the fact that it delivers justice, Judith concluded by saying that the HSE welcomed this Act.



Professor Frank Wright, Warwick Law School

Our keynote speaker was Professor Frank Wright who is pre-eminent in the development of this Act and acts as a Government adviser on a number of committees and working parties.

In his presentation on “New Developments in Criminal Law and Sentencing”, he gave us a sound briefing on the events that had influenced the making of this new Act. He looked as far back as the tragic loss of life in the Herald of Free Enterprise, Piper Alpha, the Kings Cross Fire and four major train crashes in

the south of England. The unfortunate occurrence of so many disasters, in such a relatively short time and all attracting damning criticism from the authorities, built up a fierce pressure of public opinion calling for “something to be done”! He placed great emphasis on the duty to promote the company’s success and described the most significant factors involved.

He then described the basis of the new offence as being where a “gross” breach of a duty of care occurs to a person(s) as a result of the activities of an organisation, which owes that duty of care. The jury in such cases must then decide if the alleged conduct falls far below what can be reasonably expected under the obligations owed under the General Duties of the Health and Safety at Work Act, the Management of Health and Safety at Work Regulations, Successful Health and Safety Management (HSG65) and any other relevant guidance or standard of “best practice”. It must also be proven that this conduct caused the death of that person(s).

Interestingly, Frank commented, this Act gives complete immunity from anyone who aids, abets, counsels or procures the offence, from ‘secondary liability’ for prosecution. The Act, however, did not amend s37 in the Health and Safety at Work Act, so there is considerable potential there for a greater use of the prosecution discretion in the exercise

of this power. Additionally, an individual can be convicted of manslaughter on the basis of gross carelessness, with a liability for imprisonment as well as a fine.

This new law is also complementary to a strong rise in attitudes and legal obligations to improve corporate governance in the UK and internationally, which can have the added benefit of being simultaneously good for business. Frank quoted the new **Companies Act 2006** as an example of ‘non-Safety law’ that supported the Manslaughter Act and cited the guidance for directors in “**Leading Health and Safety at Work**”, published jointly by the Institute of directors and the Health and Safety Commission. This document addressed the Strategic Leadership of policy, Core Strategic duties and actions and the Process for reviewing effectiveness. In total this provides a framework for saving life and staying out of court and was an essential item in the Delegates’ Seminar Pack!

Frank concluded with a mention of the **Health and Safety Offences Bill 2007**, which proposes revision to mode of trial and maximum penalties for certain health and safety offences. Although this is a Private Member’s Bill, it has Government support, passed its third reading on 13th June and will add even more motivation on companies to improve their Health and Safety management. He went on to say that, as a result of research by himself and a colleague on behalf of Warwick Law School, the Health and Safety Commission has said that increased use will be made of the **Directors disqualification Act 1986**.

Our second speaker was David Clark, Head of Complex Casework with the Crown Prosecution Service, West Midlands, whom he joined in 1988. In addition to his CPS role, he also holds a part-time appointment as the HM Deputy Coroner for Warwickshire. In presenting his “Case for the Prosecution”, he outlined the structure of the CPS, and its role in advising police on possible prosecutions, reviewing cases submitted by the police, determining major charges, preparing case for court and presenting the cases in court.



David Clark, CPS West Midlands

He emphasised that the CPS role was to “*prosecute cases firmly, fairly and effectively, where there was sufficient evidence to provide a realistic prospect of conviction and when it is in the public interest to do so.*” He added that the CPS Departmental Strategic Objective was to bring offenders to justice, improve services to victims and witnesses and promote confidence. This would be done by adopting a proportionate approach to determine which offenders should be charged and which should be diverted from court.

He went on to outline the national structure of the CPS and said that the West Midlands Regional manslaughter cases would be overseen by the York office of the special Crime Division, within the CPS Headquarters.

In order to maintain consistency, David said, prosecution decisions are governed by the **Code for Crown Prosecutors**. The first stage is to consider the evidence and, if a case does not pass this, it must not go ahead – no matter how important or serious it may be. Prosecutors must consider whether evidence can be used and is reliable. Also, a “*realistic prospect of conviction*” is an objective test of whether a jury, magistrates or judge, properly directed in accordance with the law, is more likely than not to convict the defendant. On the question of Public Interest, David said this involves factors both for and against, which should sometimes be put to the court when sentence is being passed. Only where the factors against public interest clearly outweigh those in favour, will a prosecution go ahead, or where in all the circumstances it is more appropriate not to.

Although the CPS has a statutory duty to prosecute Police cases, it may also take over cases instituted by other prosecuting agencies such as the HSE and Environment agency. This process is governed by the Prosecutors Convention and local co-ordinators liaise with their counterparts in other agencies, as part of a national framework. In cases where there is a fatality, the **Death at Work Protocol** has been signed by the CPS, HSE, Local Authorities, British Transport Police and the Association of Chief Police Officers. The key to handling such cases sensitively and effectively is the early communications between agencies and local liaison groups have been set up to ensure that these guiding principles actually work. The CPS works with the other agencies to decide how the case will proceed but, ultimately, has to decide on whether to bring proceedings for manslaughter. If not, then the other agencies may decide to prosecute under other legislation.

Finally, the issue of “**Gross negligence manslaughter**” has been established relating to *individuals* in the leading cases of *R v Adomako 1994* and *R v Srivastava 2005* and those common law principles will continue to assist in prosecutions under the new Act. The essential elements of the offence are:-

- the defendant is a qualifying organisation
- the organisation caused the victim’s death
- there was a relevant duty of care owed by the organisation to the victim
- There was a gross breach of that duty
- a substantial element of that breach was in the way activities were managed or organised by its senior management

A substantial part of the failure must have been at senior level, but this does not mean that senior managers can merely delegate **responsibility** to junior members of staff. Such an abrogation of responsibility could in itself be a relevant factor in **demonstrating senior management failings**. A jury **must** consider whether the evidence shows that the organisation failed to comply with any relevant health and safety legislation, and **may** consider other factors including prevailing attitudes, policies, systems or accepted practices in the organisation.

For further information, see www.cps.gov.uk



Det.Ch.Insp. Steve Bimson, West Midlands Police

Det.Ch.Insp. Steve Bimson, Senior Investigating Officer, Major Investigation Unit, with West Midlands Police is the lead officer on Corporate Manslaughter investigations and addressed the reasons for the new law right at the beginning of his presentation. He said that the “Identifaction Principle” was crucial in linking the guilt of a company to the guilt of a particular senior individual, who had to be shown to be the ‘Directing Mind’.

In complex organisations, it was difficult to prove an individual’s actions were ‘grossly negligent’.

The new law meant that there would be a change of attitude in the police service, as they became the lead investigator and would be closer to the HSE at an earlier stage, still relying on their advice for technical issues. Regarding the principles of the investigation he said that the “Golden Hour” was essential in gathering quality evidence, with the area becoming a crime scene, having a ‘Manager’ responsible for the collection of fingerprints, DNA evidence and photographic material. It was also necessary to identify possible other, related crime scenes as part of the process. Another vital link in the chain of evidence were the witnesses and, where these were classified as ‘Significant’, there may be associated welfare problems. Other important sources of evidence were CCTV and Telephone records tht must be preserved.

It was also vital for the victim to be included in the process of gathering information. A forensic post mortem was essential in establishing the exact cause/mechanism of death. It also helped the investigator to fix the circumstances at the time of death, regarding positioning at the time of death and Toxicology. Finally, there was the gathering of expert evidence from HSE, Forensic and Industry Experts.

All of this evidence had to be tested and reviewed against the key elements of the offence, Duty of Care, Activities managed, management failings, possible Gross breach of Duty and actual cause of Death. The whole process had to be controlled by a clear Investigative Strategy, regular reviews of evidence recovered to date, a consistent approach, a secured commitmant from all partners and a rigorous timetable.

The speaker from last of the Agencies to present their views was more familiar, in that it was **Rosi Edwards, Head of Operations, HSE Construction Group**, who has spoken to us several times in the past. In putting the new Act into context, Rosi covered the current accident returns and existing laws that imposed obligations and penalties corporations, as well as individuals. She went on to emphasise the



Rosi Edwards, Head of Operations
HSE Construction Group

Moral, Business and Economic cases for managing health and safety and how the real costs could be hidden in unexpected side-effects form accidents. The simple remedy for this was Sensible Health and Safety, a philosophy that HSE had been advocating for many years. This was embodied in the IoD/HSE guidance on Director Leadership, referred to by other speakers. It relied on strong and active leadership from the top and on positive involvement of Workers to implement meaningful assessment and management of risks. To be effective this process needs to be Planned, Monitored and Reviewed. Only then will directors know and understand the risks and manage procedures that are 'live' and tailored to their specific business. Rosi went on to give detailed examples of how directors could prove their diligence under the law by demonstrating effective planning, delivery, monitoring and performance reviews.

In conclusion, Rosi left us with useful links to further information and guidance and benchmarking.



George Allcock, Consultant
BHSEA Management Committee

Or final speaker was certainly no stranger to BHSEA, as it was **George Allcock, past BHSEA Chairman, present Management Committee Member** and a member of the Seminar Organising Committee. Until recently, George had worked for many years as Group Safety Advisor for GKN and has a wealth of experience in developing and managing health and safety in a multi-national engineering company.

George's message was that because serious injuries are, thankfully, rare it often results in blind spots that can lead to death and serious injury. Managing "High Severity –Low Frequency Accident" risks, therefore, is a real challenge for many businesses. The only safeguard is to have a robust system of safety management in place to anticipate what might occur and George posed a series of questions for Directors / Senior Managers that could form a possible agenda for discussion at Board Meetings or Safety Committee Meetings. They included types of potential accidents, how they could happen and why, what is our actual health and safety performance and how does it compare, how effectively are we managing the risk of serious or fatal accidents AND If things go wrong, will I be held responsible? **FINALLY** – What can I/we do about it?

George reminded us that accidents are almost invariably caused by a combination of causes, such as poor engineering standards, system failures or sub-standard behaviour. not all of these may be under the control of the victim or anyone else directly involved. This means that there is always scope for management improvement! As a small test for the audience, George presented a short, practical reminder on causes of accidents, citing typical engineering examples. He also displayed examples of actual Accident, incident and Near Miss reports, with photographs, to demonstrate the simple way of bringing the

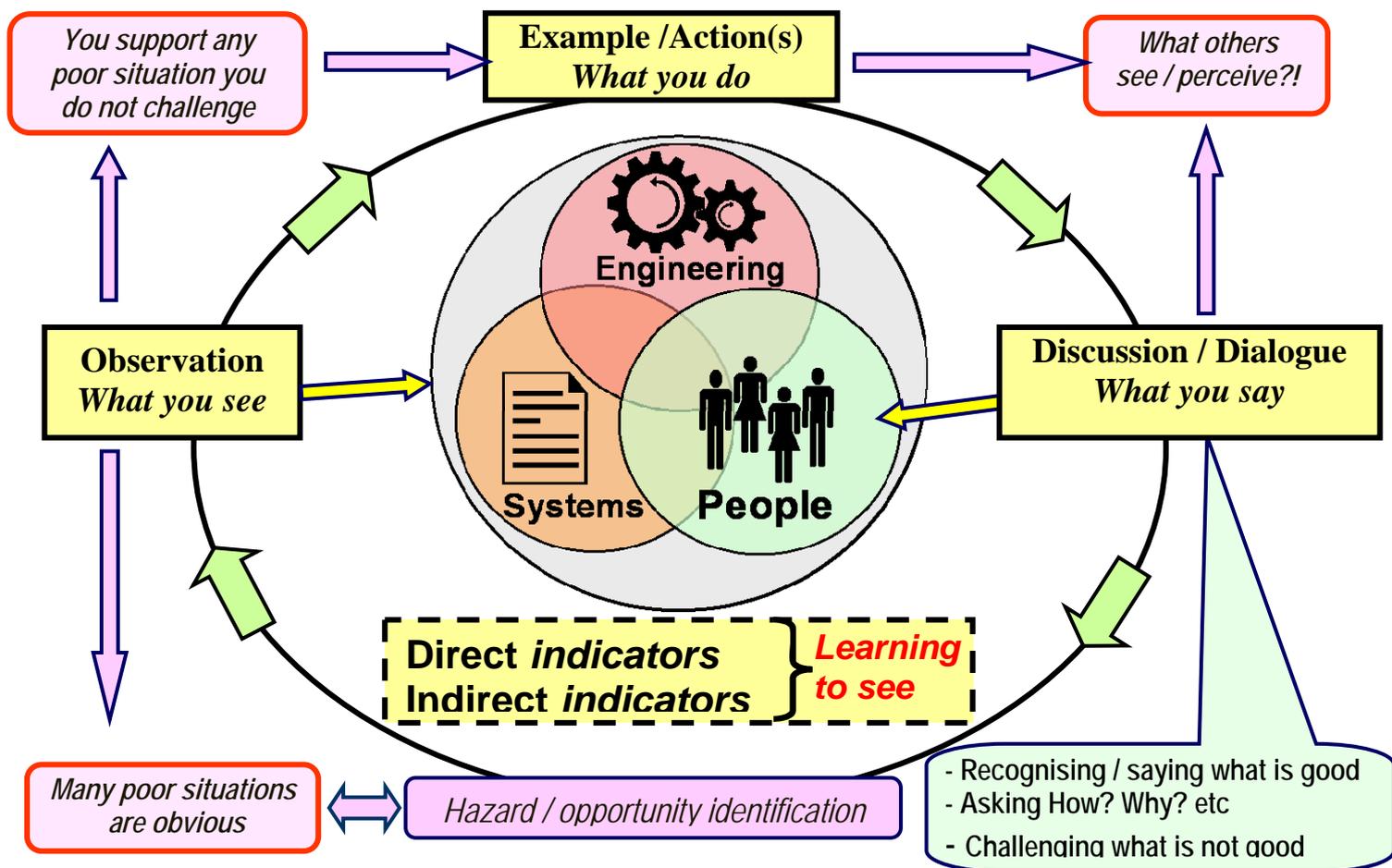
lessons home to managers and workforce alike. It is also an excellent way of encouraging commitment to implementing **“Improvement Opportunities”**. He then drew comparisons between **Poor Performers** and **Good/Excellent Performers** on a 12 element chart, confirmed by benchmarking several management units. The good performers were obviously well-manged team players, in manageable sized cells, and George went on to show us more of how these systems relied on simple visual techniques to make people more effective. At the heart of the system is the RADAR technique **R**isk, **A**wareness, **D**etection, **A**ction & **R**eview and an example of Visual Information/Posters – Safe vs, Unsafe Behaviours.

The system also looked at the A-B-C of Leadership style, behaviours, actions and feedback that have such a strong influence on the **A**ntecedant (or Trigger), **B**ehaviour (an observable act) and **C**onsequence(s). When “walking the job”, all managers have to do is ask simple questions like: -

- Can you tellme/show me how you do this?
- How do you know you are doing this correctly/safely?
- what do you do if you have a problem?

to show a genuine interest in the job and their workforce and encourage more involvement on the shopfloor.

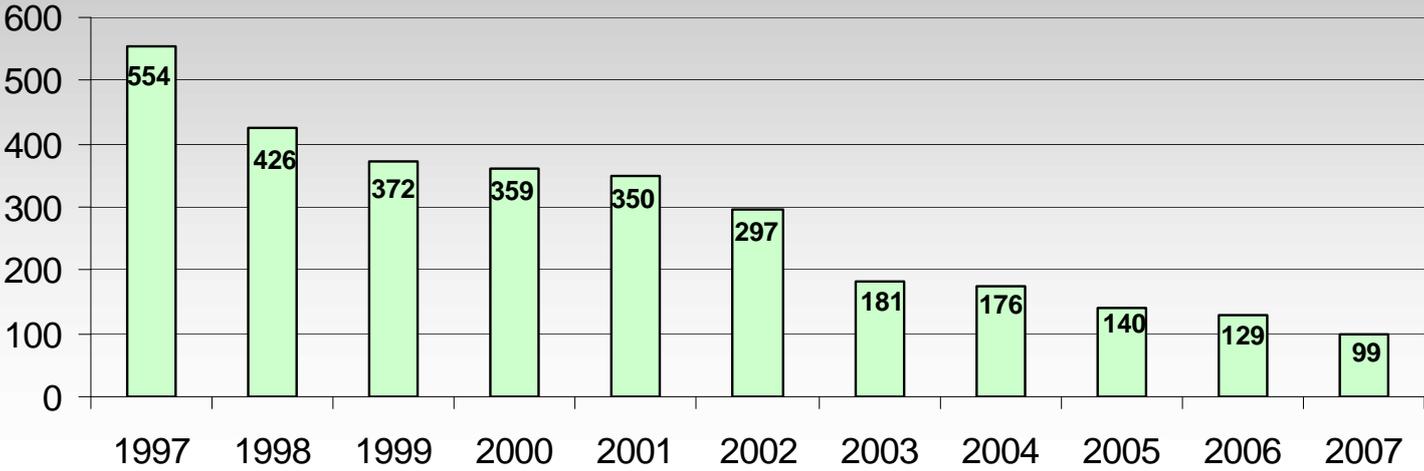
George concluded with the theme that Leadership is the Key Factor and gave us this diagram that summarised the salient elements: -



Just to prove the point that the basic principles can actually work in practice, George also produced these charts to show that GKN had achieved some impressive results with this approach. These figures were from information first published in the GKN Annual Report & Accounts, which just goes to show how the more progressive companies keep abreast of the most up-to-date best practice!

ASR - Accident Severity Rate

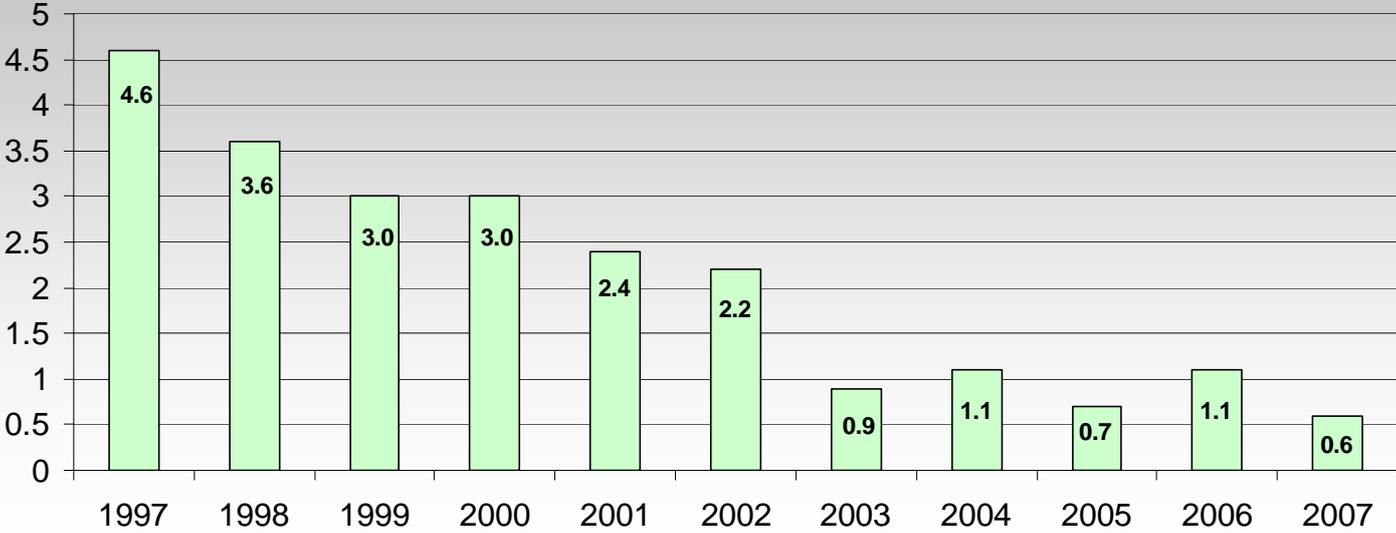
(Number of days / shifts lost due to accidents & occupational ill health per 1000 employees)



Performance Improvements – Days Lost

SIR - Serious Injury Rate

(Number of serious injuries per 1000 employees)



Performance Improvements – Serious Injuries

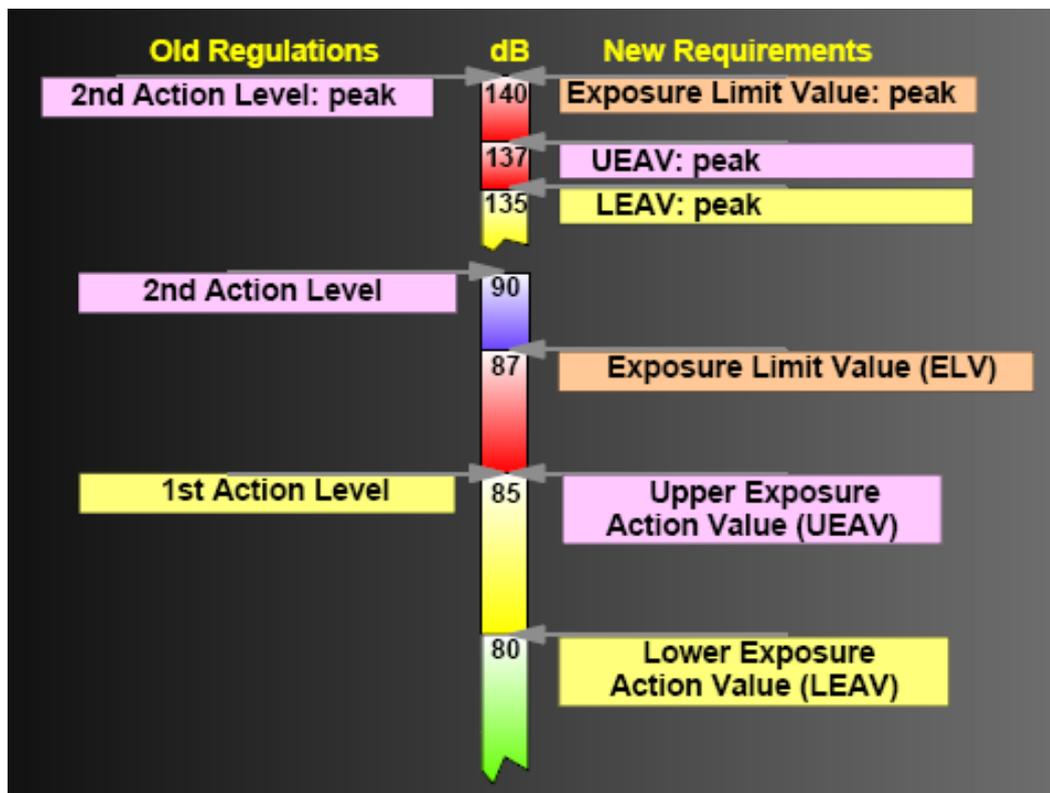
Monthly Meeting on Monday 19th May 2008

Chairman, Bob Cole of Morgan EST, welcomed the members to the meeting and, in particular, Robin Gristwood of Sandwell MBC and Tim Brian of Tweeds, who were attending for the first time. The Secretary read out apologies from the President, Morris Cooke, Mark Hoare, Gerry Mulholland, Bill Parker and Nicola Cárdenas-Blanco.

Update on the new Noise Regulations

Presentation by Steve McCrorie, Sypol Ltd.

Steve started by saying that this presentation was normally covered by a three-day course, so he hoped to finish sometime before sunset! He dealt, first of all, with the reasons for changing the Regulations and summarised the significant differences in this chart: -



Simon explained that they bring significant changes in expectations, with respect to 'policing' the requirements of the new Noise Regulations to *Control Noise*:

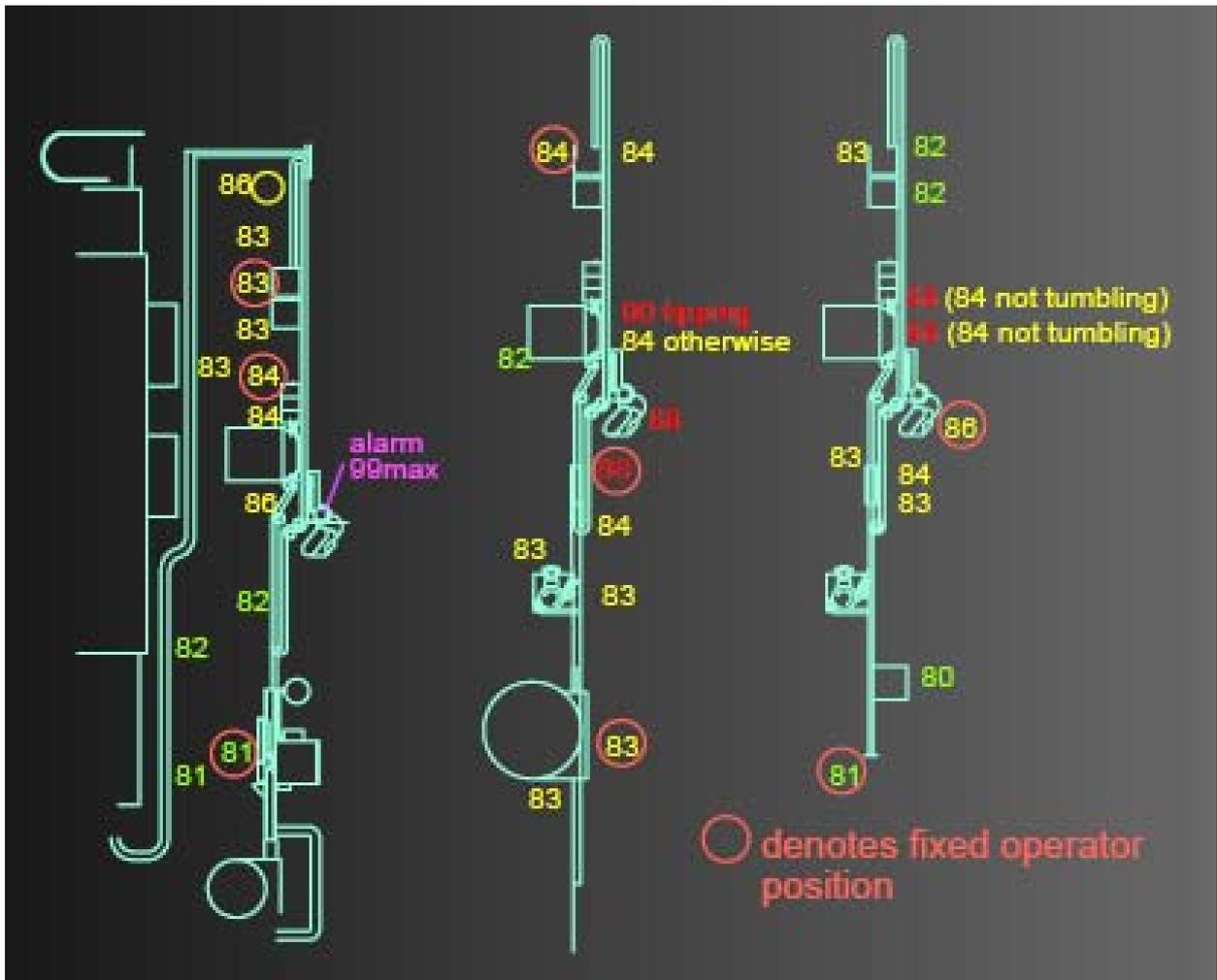
- More emphasis on a risk-based approach
- Compliance with the duty to reduce noise by engineering means
- Risk assessments should identify a programme of work
- Less reliance on PPE
- Health surveillance required above 85 dB(A)

The reasons for the changes in action levels are based on health surveillance, which provided the medical evidence.

The key point is to follow the familiar 5 Steps to control the operator's exposure to noise: -

1. Identify the environment and location of the noise hazard
2. Identify those operators likely to be exposed
3. Evaluate the risks arising from the hazards
4. Record the findings
5. Review the assessment and amend as necessary

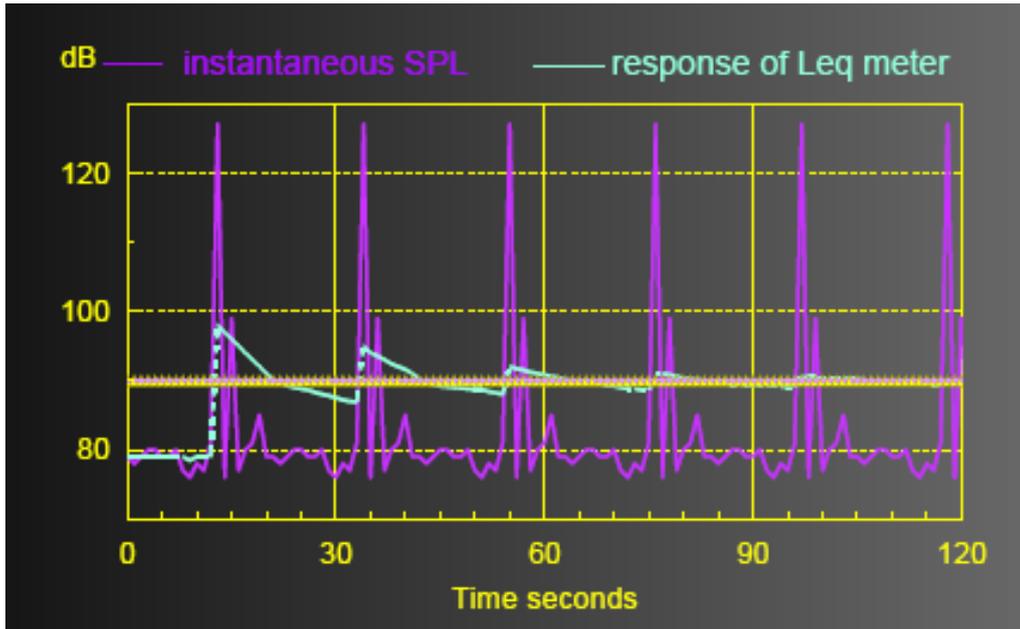
A key element in determining noise reduction controls is measurement of exposure levels, as shown in this layout plan of a workshop in which the monitoring positions are marked.



It is also vital to measure the duration of the exposure and both can be done on modern Sound Level Meters that act as a dosimeter as well, when held near the operator in a fixed position. When the operator is moving around, a Personal Dosimeter is used to collect noise exposure results, usually over a full shift, in variable work locations. The operator wears this, with the microphone near the ear and it provides the total noise exposure for the whole time period.

The instrument shown below is unobtrusive and convenient to use. The chart shows a typical sound measurement and illustrates how the spiky wave pattern, in purple, is averaged out by the dosimeter software, to give a steady level, in light blue, for the whole measurement period. The microphone must be placed on the same side of the operator's

head as the noise source and care must be taken not to pick up vibrations from the wearer's shoulder



Personal Dosemeter

The measurement of exposure to noise throughout the working day is expressed in decibels, with the symbol “ $L_{EP,d}$ ”, before the effect of any ear protectors worn. Another measurement that is often taken is the “Octave Band” level, which has a linear scale, recording the dB(A) figure at different sound frequencies. This provides useful information for specifying efficient hearing protection, as the noise often varies in intensity at different frequencies and the Human Ear is also more sensitive throughout the range.

The purpose of the new regulations is make sure that people not damage their hearing and the preferred method of doing this is to reduce the noise at source. The full Hierarchy of control measures is: -

1. Change the method of working to eliminate noisy operations. Steve quoted the use of chemical methods to remove unwanted deposits of concrete, rather than scabbling guns!
2. Substitute noisy equipment with quieter versions. This approach can be greatly helped by having a positive Purchasing Policy to buy or hire quieter machines and tools. Talk to suppliers about the effect of their designs on noise and compare between them. Keep a record of your decision process, so that it helps to prove that you have complied with the Regulations.
3. Segregate work areas to reduce access to high noise sources.
4. Enclose processes completely
5. Partially enclose processes in, for instance, multi-occupied workshops
6. Provide information, instruction and training AND listen to feedback from operators about possible improvements to control measure.
7. Provide PPE

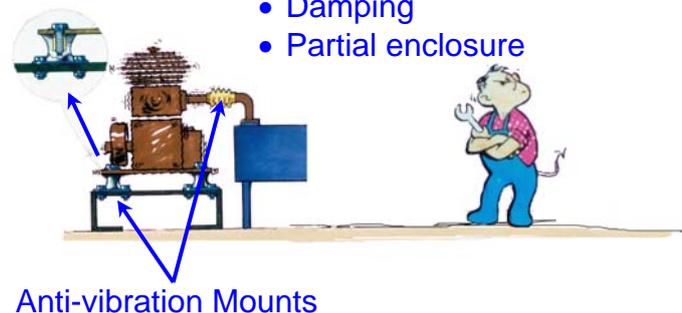
Steve went on to describe the following key characteristics of sound propagation, which affects how we should deal with it: -

1. **Low frequency noise** radiates at approximately the same level in all directions
2. It is **Non-directional** and can diffract around corners, or after passing through a hole in a barrier
3. A shield has little effect unless it is very large
4. Low frequency noise is less disturbing
5. The Human Ear is less sensitive to it than to high frequency noise
6. If it is not possible to reduce the level, it may be possible to change it so that more is at low frequencies
7. **High frequency sound** is greatly reduced by passing through air
8. It is **directional** and is **easily reflected**

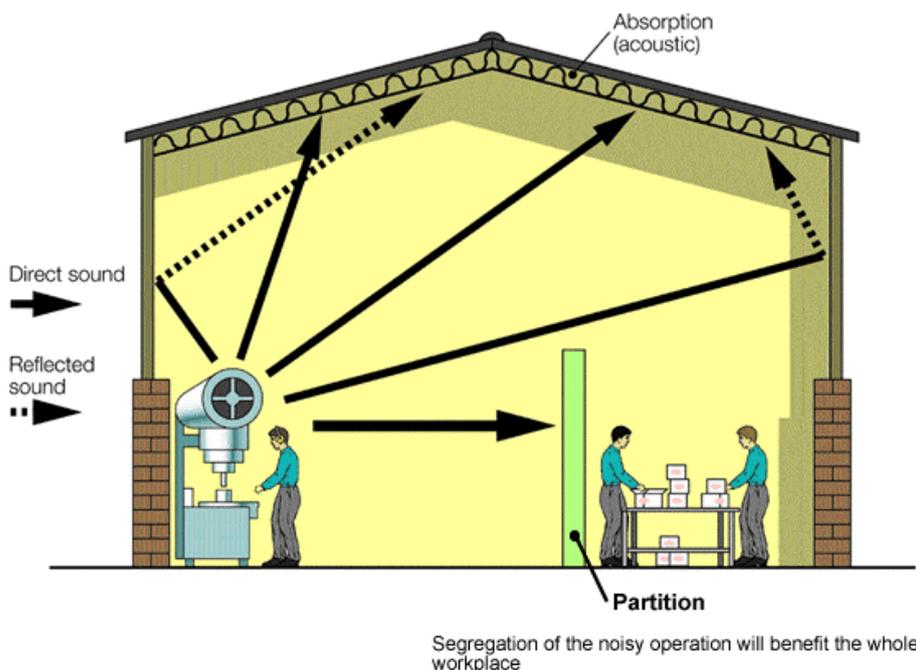
On the subject of practical Engineering Control Measures, Steve dealt firstly with the use of anti-vibration mountings, such as those shown in this sketch.

Methods

- Reduce impact and vibration
- Transmission and belt noise
- Silencing
- Damping
- Partial enclosure



Vibration of metal plates is hugely influenced by the type of metal and Steve contrasted the damping effect of lead with the lack of damping in a steel surface. Another method of damping metal sheet surfaces is to laminate the metal with either a thin damping core, or to bond a thick layer of damping on one side of the plate only. Similar effects may be achieved a thick, porous fibre plate between two thin, hard fibre plates.



This sectional view of a workshop shows how sound can travel by various routes from the source to multiple occupants. This situation may require several control measures and some are more effective than others, depending on who is to be protected. One measure that is often forgotten, or simply dismissed as being too complex, is absorption in roof spaces. Without it, however, the benefits of segregating partitions might be compromised.

Steve also gave examples of tools that could be modified to reduce noise at source, such as silencing nozzles on air lines, circular saws with laser-etched blades to dampen vibration. With saws, Steve added, it was crucial to keep the blades sharp and to clamp the material.

Another effective control measure was to reduce the time that each operator is exposed to noise, although Steve stressed that this was no excuse for allowing it to happen, just because the period was short! He emphasised the point by displaying a table to show how seemingly “small” increases in levels had a dramatic effect on the allowable exposure times.

Noise Level dB(A)	Duration of Exposure
85	8 Hours
88	4 Hours
91	2 Hours
94	1 Hours
97	30 minutes
100	15 Minutes
103	7.5 Minutes
106	3.75 Minutes
109	112 Seconds
112	56 Seconds
115	28 Seconds

The control measure of last resort is to use hearing protection. If the exposure level is above the **Lower Exposure Action Level (LEAV) of 80dB(A)**, but not above the **Upper Exposure Action Level (UEAV) of 85 dB(A)**, then the employer has to make PPE available on request. Above the UEAV, PPE *must* be provided and the **Exposure Limit Value (ELV) of 87 dB(A) at the ear** must NOT be exceeded. Steve added that the PPE must not impair communications, or the hearing of audible warnings and it must also be compatible with other safety equipment.

In conclusion, Steve said that Health Surveillance was necessary when exposure was likely to exceed the UEAV regularly. This was so that warnings should be given to employees who might be suffering early signs of hearing damage and to provide an opportunity to prevent it getting worse. This requires consultation with employees and their representatives.

After a lively question and answer session, the Chairman, Bob Cole closed the meeting and asked members to join him in thanking Steve for packing three days into one afternoon in such an informative way.

WWT Competence Briefing

BHSEA is organising a WWT Briefing on competence, aimed at informing small companies to improve their ability to demonstrate their Health and Safety Competence to potential clients, as required under the Construction (Design and Management) Regulations 2007.

This will be a *Free Breakfast Meeting* at the Birmingham Medical Institute on Tuesday 18th November 2008, so don't miss the flyer when it comes round in a few weeks. Incidentally, if you haven't given me your email address yet, please send it to me as soon as possible, as you will be missing out on a lot of useful bulletins and Mailshots!

BHSEA Annual subscriptions for 2008/2009

I hate to raise the subject of money in today's economic climate BUT I have just sent out the Subscription Invoices for the current membership year, up to 31st May 2009. Please let me have your cheques as soon as possible, so that I can keep one step ahead of the Bank Manager, who seems to need it more than we do!

If you wish to pay through the BACS system, please email me and I can provide you with a special BACS invoice containing all the relevant details.

HSE Ladder Exchange

In the latest HSE Ladder Safety Bulletin, we were reminded about the ladder exchange scheme, which started on the 1st of this month. If you have a 'dodgy' ladder, this could be the thing for you!

CH4 Cutting Edge Documentary on Health and Safety

I have been approached by October Films, who are producing a one hour documentary for Channel 4 for its award-winning Cutting Edge strand. They have special access to the HSE and HSL, but in order to fully reflect every aspect of enforcement are also keen to film with Local Authority Health Inspectors and Health and Safety Advisers. The idea is to shadow two or three professionals as they go about their work, thereby exploring the relevant themes.

Apparently they want to explore the way in which the media portrays Health and Safety Issues, so this is your chance to get one back on Clarkson!

Anyone interested should contact Jenny Evans, below: -

Jenny Evans, Assistant Producer,
Cutting Edge for Channel 4
October Films
Lyme House Studios
30-31 Lyme Street London
NW1 0EE
Tel +44 (0) 20 7284 6868 x283
email jenny.evans@octoberfilms.co.uk
www.octoberfilms.co.uk

Date of the next Meeting

**2.00 pm on Monday 8th September 2008
at the Birmingham Medical Institute**

“Gas Safety in the Workplace”

(Why do accidents occur with industrial gases?)

Terry Broughton, Course Director, Gas Safe Consultants Ltd

Terry’s presentation will address the issue of accidents with gases from the premise that “if you can’t identify the Hazards, then you can’t assess the risks!”

By using graphic illustrations of bad practice, he will examine the following areas: -

- Operators not aware of hazards*
- Risks are not appreciated*
- Inadequate controls*
- Lack of gas specific risk assessments*
- Lack of operating procedures*
- Lack of equipment inspection and adherence to
recommended replacement intervals*
- No monitoring of atmospheres*
- Lack of training*

He will also provide checklists for members to use in there own workplaces to give them an ideal opportunity to introduce meaningful improvements in good practice.

As usual, there will be a Buffet Lunch at 1.15.pm

Be there early to avoid disappointment!