



Birmingham Health, Safety & Environment Association

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Newsletter

June 2013

Monthly Meeting 10th June 2013

BHSEA Council Member Mark Hoare, welcomed Members to the meeting and extended a particularly warm welcome to our guests today including:

- John Oliver, Technical Development Director from the Anachrome Group
- Phil Olding, Managing Director, New Leaf Health
- Ken Davies, Health and Safety Lecturer, City of Wolverhampton College

and Members new to BHSEA:

- Dr. Anu Spratley from Cathedral Hygiene,
- Karen Howells, Senior Manager at Environ UK Ltd.,
- Richard Heath, Health, Safety and Environment Officer from the Cast Metals Federation,

Mark went on to introduce today's topics and speakers:

'FFI Six Months On.....'



Peter Galsworthy
Head of Operations, HSE West
Midlands

and

Ron Reid
Partner, Shoosmiths LLP



For full and comprehensive detail of both presentations today, please refer to Peter and Ron's slides which can be found on the BHSEA website www.bhsea.org.uk

Peter Galsworthy

Refresher and Update:

Peter began by reminding us that he came along to BHSEA last year (April 2012) to introduce Fee For Intervention (FFI). Today's presentation will therefore give a brief refresher and provide an update, picking up on some of the key issues. Peter reported that the queries and disputes process is underway. There are exclusions including Local Authorities and the self-employed in cases where they are only putting themselves at risk. Working Time legislation is also excluded.

Peter reminded us that the aim of FFI is to make sure that the non-compliant companies pay for the cost of that non-compliance. Charging under FFI starts at the beginning of the inspection. The HSE are following a Treasury steer on the matter of reclaiming reasonable costs. No change has been made on the way that the HSE makes its' enforcement decisions and the 'Enforcement Management Model' (EMM) is the tool of choice. The EMM allows for a comparison to be made between what is seen and the legal requirement, and clearly reveals the gap between the two. The HSE do factor in issues such as the involvement of vulnerable workers or young workers. Peter added that there might be residual issues to be addressed even after the lifting of the Notice and the end of the FFI period, e.g. issues around training/PPE. See BHSEA website for more details on the use of the EMM.

FFI – Work in Progress?

Peter commented that, in his opinion, FFI is 'rolling out' better than expected. Early signs are encouraging. Inspectors are not encountering too much negativity or even aggression! This may be in part due to the fact that the HSE is going to great lengths to explain the action they are taking/intend to take. Peter confirmed that his view is that it's very much about communication and the way that the HSE takes people through the Guidance. Bootle is managing the queries and very few are currently going through to the dispute stage. Early days though and everyone is still in the process of adjustment. See HSE website for further guidance www.hse.gov.uk

Member's Questions:

There were a number of questions which prompted the following key points:

- In the case of an appeal, Peter reported that the process will be dealt with quickly to avoid excessive costs.
- Peter confirmed that the HSE is addressing the matter of fairground safety.
- Invoices are sent out by the HSE every two months. The employer will already be aware that s/he is in breach, and so it is something to be expected.
- Following a question about the information available to employers for standard work / operations / procedures under FFI, Peter confirmed that some information is already available and that this is currently being improved.
- Peter confirmed that there has been “no change” in terms of HSE policy on visiting or sending a letter. Inspectors are not visiting for the sake of it.
- Peter confirmed that the charge is £124 per hour whether the work is carried out by an Inspector, Visiting Officer or an admin. person.
- A Member asked about the percentage recovery rate and Peter admitted that the HSE are not sure at this stage. From his own perspective, Peter said that the picture is encouraging.

Ron Reid

Ron began by giving us some brief details about his team at Shoosmiths and their work. Ron explained that his team effectively ‘sits on both sides of the fence’, prosecuting on behalf of the HSE and also taking prosecutions on the employers behalf.

HSE and Charging:

Ron reminded us that the HSE has, since 1975, had the ability to charge (under S43(2) HSWA) for services, although it never has. It should be remembered that there is no fee for verbal advice, fees arise from proactive as well as reactive visits. Costs are calculated in 6 minute units and the cost of specialist advice can also be claimed in addition to the £124 per hour. The original estimate for costs recovered in a full year was £43.6 million. Currently, the recovery costs are £39 million. Charges are not retrospective and cannot apply to employees, only companies. Remember that, like COMAH, the hourly rate can be raised.

If the inspection lasts three quarters of an hour and the breach comes to light at the end, the charge will be for three quarters of an hour. Non-payment is a civil debt and therefore has to be recovered in a civil court. Ron admitted that he knows of no court action as yet.

Don't Want to Pay?:

Appeal against your Notice if you think it is incorrect. There is a process if you want to dispute the Fee (see Ron's slides www.bhsea.org.uk). If an initial review, carried out by a Principal Inspector does not resolve the situation, the

Appeal will go to a 'senior HSE Manager' i.e. the Head of Operations. If the dispute is still not resolved, the matter is referred to a disputes panel consisting of a senior HSE manager with operational experience, an HSE senior manager from HSE's planning, finance and procurement division and an external member drawn from industry or trade unions. Ron challenged the independence of this Panel, which seems heavily weighted in favour of the HSE. HSE could out vote 2 to 1 and Ron raised the issue of whether a QC might challenge the Panel and its independency from a Human Rights perspective.

If there is an intention to dispute the fee, Ron recommends that the breakdown of the fee is asked for and checked beforehand. Perhaps there is an opportunity to blame someone else and/or claim that someone else is also in breach?

Peter Galsworthy recommended that the employer should not be afraid to ask why there has been a material breach leading to the issue of the Notice, or to challenge the HSE about how the decision to issue the Notice under the EMM has been arrived at.

What About Consultants?

Ron suggested that consultants need to think about their terms and conditions of employment. Could there be any claim on the consultant if something is missed in the audit?

Where Are Breaches Occurring?

Following a Member's question, Peter reported that the Field Operations Division is taking the 'lions share' of the Notices and therefore doing the ground breaking work. Ron advised that no particular industry is in court more than any other however there have been a few good FFI cases in the food industry and involving bakeries.

The Power Point slides accompanying both Speakers presentations are very comprehensive and informative. Please refer to the BHSEA website www.bhsea.org.uk

Mark thanked Peter and Ron for their excellent presentations, and asked Members to show their appreciation in the usual way.

June Members' Corner

The Jackson Reforms

Laura Ford, Solicitor
Pinsent Masons



Laura explained that the Jackson Reforms were implemented on the 1st April 1st 2013. The Reforms represent the biggest change to civil procedure (including claims for compensation in respect of personal injury) in England and Wales since 1999.

Proportionality - Aims of Jackson Reforms:

Lord Justice Jackson was tasked to look at civil litigation claims, (specifically in relation to lawyers' fees), to promote access to justice at proportionate cost.

Costs:

Cases need to be considered in mind of the costs involved. Costs need to be considered at *all* stages of a case, before, during and afterwards when lawyers are looking to recover their fees. A questionnaire has to be completed in advance of the trial, in which the parties must consider whether expert witnesses will be required and what the likely costs of those experts will be.

Advantages and Disadvantages:

The process is lengthier than before but the aim is that litigation is more manageable in the hope that the reforms will eventually lead to reduced costs in litigation. On the negative side, the reforms will create uncertainty, which may be particularly worrying for lower-value personal injury claims where the costs incurred may far outweigh the compensation being claimed.

Birmingham Law Courts:

Laura added that Birmingham courts are already looking for evidence that the costs have been considered in light of the Jackson Reforms. Other courts may be slower to adopt the Reforms and there may be some inconsistency between courts and judges. Time will tell.

'No Win – No Fee & the 'Compensation Culture':

These fees, which attracted high sums, are now banned. They were very lucrative because a sum was awarded each time there was a referral from one agent to another. An example of how referral fees worked is the 'no win no fee' scenario, where an individual contacts the claims management company, which

in turn contacts solicitors etc., and the referral fees are paid through this chain. It was considered that this encouraged a 'compensation' culture and forced losing insurance companies to increase their premiums, at the detriment of society as a whole.

Qualified One Way Costs Shifting ('QOCS'):

QOCS applies to all personal injury cases, including clinical negligence. If the claimant is successful, they will be entitled to recover their costs from the defendant. If the claimant is unsuccessful, they may be vulnerable to costs orders, but only to the extent of the damages they would be entitled to. There are some exceptions however the reason for the introduction of QOCS was that it was considered for some time that claimants had enjoyed protection from adverse costs orders and there were good policy reasons for maintaining this protection.

Health and Safety:

The Lofstedt Review in 2011 recommended that:

- Strict Liability:
Regulatory provisions that impose strict liability or 'no fault' duties such as the Provision and Use of Work Equipment (PUWER) Regs 1998, should be qualified with 'reasonably practicable' where strict liability is not absolutely necessary, or alternatively amended to prevent civil liability from attaching to a breach of those provisions.
- Burden of Proof – From the Claimant to the Defendant:
This amendment has gone even further than the recommendations, i.e. the Enterprise and Regulatory Reform Act 2013 (which received Royal Assent on the 25th April 2013, although there is no confirmed date when it will come into force), amends the Health and Safety at Work etc. Act 1974 as follows:
Those claiming compensation regarding a breach of health and safety legislation will now need to prove that the employer responsible has not just breached the regulation but has been negligent as well.
This therefore reverses the burden of proof from the claimant to the defendant, and so in future, it will be for the claimant to prove the employers' negligence before their claim can succeed.

Announcements:

- **BHSEA Questionnaire.**
We will feed back to Members at our meeting in September and via September Newsletter.
- **Mock H&S Trial.**
The Mock trial is taking place on the 11th September at Birmingham Magistrates Court. Places have now been allocated. Will the following BHSEA members, who have already registered their interest, please confirm their attendance (and a £10 payment per person would be good!).
C006, C007, C045, C124, G029, G098, G099, G123, G133, G216

Hot off the Press....

Latest from the HSE:

Following an initial consultation last year, (<http://www.hse.gov.uk/consult/condocs/cd241.htm>), it was agreed by the HSE board that a number of ACOPs would be revised, consolidated or withdrawn in line with the recommendations by Professor Ragnar Löfstedt in his report 'Reclaiming health and safety for all'.

The Health and Safety Executive (HSE) has launched three consultations on changes to the content of Approved Codes of Practice (ACOPs) including:

- **Dangerous Substances and Explosive Atmospheres Regulations (DSEAR) L134-138**
- **Control of Substances Hazardous to Health Regs (COSHH) L5 and**
- **Control of Legionella Bacteria in Water Systems L8.**

These ACOPs are subject to a 12-week consultation ending on 30 July 2013

Consultative documents and draft versions of the consolidated or revised ACOPs are available on the HSE website:

<http://www.hse.gov.uk/consult/live.htm> along with details of how to contribute to the consultation. Subject to the outcome of the consultations and ministerial approval, the consolidated and revised ACOPs will be published by the end of the year. Although a number of ACOPs will be amended or withdrawn to make it easier for employers to understand and meet their legal obligations, **legal responsibilities to protect workers' health and safety will not be altered** by any changes to ACOPs.

The consultation period on the contents of a new Asbestos ACOP (combining two current ACOPs) is expected to begin this month (July).

• **BHSEA Bids a Fond Farewell to Rosi Edwards:**

Mrs. Rosi Edwards, HSE Divisional Director, Wales, Midlands and South West, retired at the end of May this year.



We have enjoyed a long and successful working relationship and Rosi has been a great supporter of BHSEA. The very best wishes for the future from BHSEA Members! BHSEA looks forward to working with Rosi's successor Sam Peace.

L – R: George Allcock, Rosi Edwards, David Hughes, Andy Chappell, Mark Hoare, Liz Chappell and Gerry Mulholland.

- **Overloading Sockets:**

The Electrical Safety Council recommends the use of their calculator to plug in some typical household appliances to see the effect on the load, and to get useful tips on how to avoid overloading sockets. It is free to download or to put on your website:

<http://www.esc.org.uk/overloadingsockets/>

Useful for Members who are in control of premises e.g. schools, residential accommodation etc. where domestic appliances may be provided for use.

- **Job Opportunities:**

Steve Lewis, Associate Director, Environment, Safety and Health at Mace group Ltd., tells us of a job vacancy which has arisen with one of their contractors at Birmingham Gateway Project. Martifer are looking to recruit an SHEQ Manager Briefly, the contract terms are:

- Contract with Martifer UK Limited;
- £45,000 Gross per year all inclusive, of which 7.5% payable at the 12th month of employment as a loyalty sum;
- 25 days vacations for each 12 months of employment;
- Immediate start.

Should any Member be interested, please contact direct - Francisco Loureiro, Project Director at Martifer Construction (www.martifer.com) on 0121-6438 545 (EXT.3344) or 0792 0753 690.

- **National Local Authority (LA) - Enforcement Code**

The HSE's Local Authority Unit has provided the following information about the new Enforcement Code:

- The new Code has now been launched to improve the targeting of health and safety inspections – ensuring that local authority checks are more focused on serious risks and poor performers.
 - Local authorities are expected to target proactive inspections on high risk activities in specified sectors or on workplaces where intelligence suggests that risks are not being effectively managed. A listing of the activities and sectors suitable for inspection is published along with the Code.
 - To find out more information about the National Code, please go to the HSE's Website: <http://www.hse.gov.uk/lau/publications/la-enforcement-code.htm>
 - The HSE's response to the public consultation exercise can also be found at: <http://www.hse.gov.uk/consult/condocs/cd247.htm>
- **Local Authorities** will be interested to know that the Royal Society for the Prevention of Accidents (RoSPA), supported by Public Health England (PHE) and funded by the Department of Health, has produced a handbook

‘Delivering accident prevention at a local level in the new public health system’ which provides guidance on how local authorities can reduce the burden of accidents by encouraging people to take responsibility for their own safety, health and wellbeing. Published on line on the 16th June, the document provides valuable advice on effective interventions for those involved in developing local strategies, and on how partnership working can help improvements in accident prevention and other areas of public health. It highlights the importance of reducing the huge burden of accidents on families, local communities, accident and emergency departments, the wider health and social care services and the economy as a whole, and the benefits of investing in prevention.

Produced in consultation with the National Institute for Health and Clinical Excellence (NICE), NHS Bristol and others, the handbook is available as [a free download from RoSPA's public health web pages](#). It follows the publication of [The Big Book of Accident Prevention](#), which earlier this year was sent to every member of every health and wellbeing board in England.

• **Musculoskeletal Assessment Course**

James Rind, Director & Chartered Physiotherapist of WorkStrong, is running a one day Musculoskeletal (MSK) Assessment Course at the end of June and July. The Course is designed specifically for Occupational Health Nurses and Advisors. The course covers the following areas:

- A review of relevant anatomy of the MSK system
- Typical MSK injury types
- MSK red flags
- The Subjective and Physical examinations
- Information on how to optimally return to work those employees with MSK conditions.

More information about the course and forms to make a reservation of a place can be found by accessing their website at www.workstrong.co.uk/training T: 029 20460467. WorkStrong delivers Occupational Musculoskeletal Health Services to a range of companies throughout the UK.

• **Health and Safety Goes On Tour....White Van Road Show:**

Working in partnership with Working Well Together (WWT) and the HSE, and Wates Construction Midlands, BHSEA went on tour at the end of April. Held over the course of a week, the Road Show visited a number of Wates Construction and Living Space projects. Five Wates sites at Leamington Spa, Stratford Upon Avon, Erdington, Dudley and Walsall were visited. The theme was Occupational Health and the 5 key health topics covered included:



- **silica dust** – this was delivered by the HSE in the form of a video clip presentation which explained the risk of being exposed to silica dust that can enter the respiratory tract and potentially cause lung disease.

- **asbestos** – delivered by Environmental Essentials in their mobile van and giving operatives the chance to look through a microscope at asbestos fibres.
- **manual handling** - a hands on approach with a trainer from 'Pristine Condition' who demonstrated safe lifting techniques, using 'real life' construction site products such as cement bags and pallets.
- **noise and vibration** – presentation usually made in a canteen area, with the workforce learning about the health effects of vibration, including symptoms and the signs to look out for.
- **PPE** – 'Uvex' brought along various items of PPE to show operatives how they could protect themselves from health hazards in the workplace.



The Road Show was a 'first' for these Partners working together, and it represented a different method of passing key health messages to operatives. We took the message to the operatives and their site and it proved to be very successful. Operatives generally can feel more comfortable and engage more easily when learning within their own working environment rather than sitting in a classroom.



Supervisors were also pleased with how the Road Show was run. By setting the Show up within the site, the operatives were not spending long periods away from their work. Feedback was very positive with a number of participants really enthused by the whole Event.

The Road Show proved to be a great success capturing an audience of over 300 construction workers. Future plans are to carry out further events (not only involving Wates operatives), to continually engage with the work-force, develop SHE standards, and to work together on Wates journey to zero harm.

QUOTE OF THE DAYS:

'great set up & really new way to approach health & safety'

'never done anything like this before & felt confident to get involved as was in our own environment'

'topics covered in an interactive way & could understand the importance of the messages'

'tea & biscuits & a free goodie bag! Now that's how to learn about health & safety!!'

• Solve A Mystery!

BHSEA has received a Membership Subscription cheque from 'LFP Associates', Sort Code 09-01-27. This organization cannot be traced on the BHSEA database. Can anyone throw any light on this? Contact the Secretary secretary@bhsea.org.uk

Date of Next Meeting

**2.00 pm Monday 9th September 2013
Birmingham Medical Institute**

**Thomas Store
Zero2050**

**Integrated Environmental &
Quality Management Systems**

&

Members' Corner

British Epilepsy Association

Epilepsy and Work

Don't forget the buffet lunch at 1.15