

Birmingham Health, Safety



& Environment Association

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Newsletter

June 2014

Monthly Meeting - 9 June 2014

George Allcock advised Members that, following recent developments, he had been asked and had agreed to take over as Chair until the next AGM in January 2015.

New Members

George then gave a warm welcome to all and especially to our new Member here today Lee Dargue of Invotec, a company that manufactures printed circuit boards and has two sites in Tamworth and Telford. In addition, there were some seven guests present as a result of the meeting being advertised on the HSE website.

Membership Fees

At the Committee meeting earlier in the day, it had been agreed to increase Membership fees. The new fees, with immediate effect, will be £35.00 for Members with less than 250 employees and £60.00 for more than 250 employees (both fees net of VAT). As Members will be aware, fees have not been reviewed for some considerable time. However, the nominal increase still represents good value for money.

Electronic Newsletter

In a survey prior to Christmas, Members had been asked for their views on receiving the Newsletter electronically. Apart from the cost savings, it was felt this would be more environmentally friendly and also allow the Newsletter to be distributed more easily to interested parties within organisations. From a show of hands the audience indicated they would have no objections. It is likely that the move to electronic distribution will take place at the beginning of 2015. With this in mind, would Members please advise the Secretary of any changes to contact details as soon as they occur. The Newsletter will continue to be available on the website: www.bhsea.org.uk.

With regard to the sale of the Acocks Green premises, George advised that the proceeds still need to be invested and professional financial advice is being sought to ensure the Association's funds are invested wisely.

Forthcoming SHAD's

Liz Prohett, Secretary, advised that there would be an HSE organised SHAD on 17 June, the topic is "Roofworks, including Fragile Roofs". The next SHAD will be on 17 September and take the form of a Mock Trial which will be held at Wolverhampton Science Park. This follows the resounding success of the one held last year at the Birmingham Law Courts. Please book early to avoid disappointment! There is a change to the "Worker Involvement" SHAD which was due to take place in September. This will now be held in October – date and venue yet to be confirmed. The SHAD on 18 November on the subject of "Refurbishment with Occupational Health" will be held at the National Metalforming Centre. These events, led and sponsored by the HSE, are not chargeable to BHSEA Members.

George then introduced the main speaker for the afternoon – Chris Hopkins.



Legal Update – Members' Forum Chris Hopkins, Pinsent Masons LLP

Chris has been a Member of BHSEA for a number of years and is also on the Council and Management Committees. He is a barrister in a regulatory law team at Pinsents and specialises in Health, Safety, Environment and large vehicle Licensing. He recently completed a seven month secondment at Jaguar Land Rover.

Chris started by saying he would today be discussing legal updates on key topics, ie:

- Corporate manslaughter;
- Overview of recent relevant H&S cases;
- New environmental offence sentencing guidelines;
- Asbestos update;
- CDM

Corporate Manslaughter

Chris gave us an update on some high profile manslaughter cases which have been brought to Court since the Corporate Manslaughter (for England and Wales) and Corporate Homicide (for Scotland) Act of 2007 was introduced. At least 50% of cases currently being investigated by the HSE are for Corporate Manslaughter. Chris explained that, initially, there was a lot of interest and organisations were actively seeking specialist legal advice to protect them against prosecution following a death in their workplace. However, things quietened down when, after a period of time, there did not appear to be many

prosecutions. But, following publicity of cases brought to Court more recently, it is once again very much a hot topic.

Overview of recent relevant H&S cases (Including penalties and fines imposed)

Corporate Manslaughter and Corporate Homicide Act 2007	Corporate Manslaughter and Corporate Homicide Act 2007
<ul style="list-style-type: none">- <i>R v Cotswold Geotechnical (Holdings) Ltd (Feb 2011) (in Liquidation)</i><ul style="list-style-type: none">• Fined £385,000 in equal instalments over 10 years- <i>R v JMW Farms Ltd (Northern Ireland) (May 2012)</i><ul style="list-style-type: none">• Fined £187,500 payable in 6 months- <i>R v Lion Steel Equipment Ltd (July 2012)</i><ul style="list-style-type: none">• Fined £480,000 over 3 years- <i>J Murray & Sons Ltd (Northern Ireland) (October 2013)</i><ul style="list-style-type: none">• Fined £100,000 over 5 years 	<ul style="list-style-type: none">- <i>Princes Sporting Club Limited (November 2013)</i><ul style="list-style-type: none">• Fined £34,579.69 (equating to the entirety of the assets of the company) plus costs of £100,000 within 28 days.• First ever Publicity Order!- <i>Mobile Sweepers (Reading) Limited (February 2014)</i><ul style="list-style-type: none">• Fined: £8,000 plus costs of £4,000 and Publicity Order• Sole director<ul style="list-style-type: none">- Fined: £183,000 and costs of £8,000- Disqualified as a director for 5 years 

As you will see, some significant penalties have been awarded to reinforce the gravity of these cases. Even when companies have had little in the way of assets, the Judge has found a way to impose the penalty, for example by permitting repayment over a lengthy period of time.

There had been a case in Scotland which had attracted a fine of £1.7 million. Chris commented that it has been a long time since there had been a fine at that level. The Court found “an enduring failure ...”, since previous incident reports required by the HSE revealed the same issues had occurred on earlier occasions (see Powerpoint presentation on the website: www.bhsea.org.uk).

A case in mid-Staffs Hospital highlighted the difficulties of awarding large fines where money is coming out of public funds and thus impacting on public services. An example of this was a case where a diabetic patient had died as a result of a failure to administer insulin. The Trust pleaded guilty and was duly fined. The Judge pointed out that had the Trust been a profitable commercial company the fine would have been significantly higher.

Chris noted the fact that there has been an increased willingness by the HSE to investigate hospital cases.

Company Reputation

There can also be Publicity Orders made. This is where companies are “named and shamed”. This adverse publicity can sometimes have a detrimental effect on a company which far outweighs the monetary fine.

However, not all cases brought to Court result in a straightforward prosecution, as in the case of P S and J E Ward:

- Worker at a Norfolk flower firm killed after the trailer he was towing touched an overhead power line;
- Following a contested trial, the Jury cleared P S & J E Ward of manslaughter; BUT
- Jury convicted the company of a breach of health and safety law;
- Company was due to be sentenced on 6 June 2014.

In addition to fines, a director can also be disqualified from holding directorships for a number of years, with obvious significant personal consequences.

There are four more high-profile cases still going through the courts, including one concerning a mining disaster in South Wales where the mine manager is himself at risk of prosecution.

Section 37 HASAWA

In another case three senior directors were charged under Section 37 of the Health and Safety at Work Act – one of them was a finance director who was culpable because his financial decisions not to invest sufficiently into the area of health and safety had ultimately led to tragedy. One director was not even based on site where the incident happened. Only one director had given the actual instructions which led to the fatality.

Environmental Offence Sentencing Guidelines

Sentencing Council - Definitive Guideline for Environmental Offences

- Issued 27 February 2014;
- Apply to offences sentenced in England and Wales after 1 July 2014, regardless of the date of the offence;
- Compensation / confiscation / fines apply;
- Fines linked to offence category - culpability and harm factors;
- Within each category the court is given a starting point and range of possible fines;
- Different starting points and ranges apply depending on the size of the company (determined by reference to turnover or equivalent) but range from £100 to £3 million.

Chris said that the new Environmental Offences Sentencing Guidelines from 1 July 2014 have to be referred to by the Courts prior to sentencing. The Guidelines will address some inconsistencies that have occurred in the past where a small company and a huge corporation have received similar sized fines. In future, fines will range from £500,000 to many millions of pounds, depending on the turnover of

the company. The fine now has to be appropriate and large enough to impact on the company.

Companies can also be required to pay compensation as well as have any profits/proceeds of crime confiscated.

Asbestos

A revised ACOP was published in December 2013. There is also a new Mesothelioma Act of 2014. Government compensation in the region of £123,000 will be available to claimants where either the business or the Employer's Liability insurer cannot be traced, which may be the case given the long incubation period of such diseases - sometimes up to 40 years. The record for the largest fine awarded for an asbestos-related disease is still held by Marks and Spencer, at £1 million in 2011.

CDM

These Regulations were introduced in 2007 and the review closed last week. They were mainly brought in to cover major infrastructure engineering projects as well as smaller scale non-domestic works. However, analysis has shown that 2/3rds of fatalities do not occur on the large projects, as thought, but on smaller sites. The Regulations are about to change following a consultation meeting held on 6 June and it is proposed that the new regulatory framework will be more applicable to smaller sites where the risks are higher.

The HSE are also proposing the replacement of the CDM Co-ordinator role with a 'Principal Designer' role and all contractors must be properly qualified. One major change is the effect the new regulations will have on the domestic market. Previously, a householder having work done on their house would not have had the responsibilities of the Client, as is the case for commercial projects. Now, the householder will have Client responsibility. However, as soon as they employ a builder or principal contractor, the responsibility for compliance as the Client will rest with that contractor with immediate effect.

Questions

Lee Dargue, of Invotec, queried why some manslaughter cases seem to come to Court very quickly, whilst others drag on for months or years and what processes are likely to extend the timescale. Chris pointed out that collating evidence and taking witness statements can be a lengthy process. Also, where there is a fatality the HSE would usually await the outcome of the Coroner's Inquest for additional intelligence gathering, prior to finalising their investigations. This approach has been heavily criticised and HSE will be adopting a different approach in future as they recognise it is important to conclude matters whilst events are relatively fresh in everyone's mind.

Another question related to the number of corporate manslaughter prosecutions of smaller concerns – the softer targets - that the CPS appear to be focusing on under this Act, when existing legislation is more than adequate. It was commented that it is often easier to reach smaller companies – 'one man bands' such as Geotechnical rather than large organisations such as Network Rail etc.

A question was raised with regard to CDM concerning how a householder self-managing his building project and employing the trades himself would now be affected. Chris advised that the HSE had not been in favour of going after

ordinary householders but their hands are tied in that they have to be seen to be complying with the EC Directive.

With regard to the sporting tragedy which had led to a young person losing their life whilst on a banana boat adventure, a comment was made that the Publicity Order, apart from discouraging parents from allowing their child to be involved with that particular company, had a wider message that the activity was highly dangerous and should be discouraged anyway. Since the assets of Princes Sporting Club Limited were small the Judge, feeling that his hands were tied but that he could not let them off, levied a fine in the region of £35,000 (see slide on page 3), which more or less equated to the entire assets of the Company.



Civil Liability Compensation Culture Steve Parton

The company Steve works for – AXA Insurance – recently produced a document which is the second in a series discussing the present compensation culture.

Steve went on to summarise the relevant points of the document. A survey had been conducted in December 2013/January 2014 where about 200 small and up to 249 medium enterprises were interviewed – particularly those personnel responsible for arranging Employer's Liability insurance and those with health and safety responsibilities. In answer to a series of questions posed to the audience, about a quarter said their companies had received Employer's Liability claims over the last five years, a third felt that insurers were making money out of the claims and half felt that the UK does indeed have a compensation culture.

The survey confirmed that a quarter of the organisations interviewed had been the subject of a claim by an employee or former employee. Surprisingly, insurers had reported significant underwriting losses of £525 million in the last seven years even though accident rates were reportedly on a downward turn. 85% of companies felt that the number of fraudulent claims were now on the increase. Feeling was that Claims Management Companies were fuelling this increase and that efforts to limit the marketing activities of such companies may help to curb this trend. A major concern is the number of unsolicited telephone calls, texts and e-mails received from these organisations following a claim and how they are able to access our data. There will in future be attempts to close down CMC's which flout privacy laws.

Interestingly, the economic downturn has led to more employees making claims, especially noise-induced hearing loss claims which have almost doubled over the last 12 months.

An on-line portal has been introduced to standardise the claims process and reduce costs to the insurer. Originally, this system was for low value motor claims but now Employers' Liability claims up to £25,000 are processed on-line. There will now be a limit to the costs that solicitors and claims management companies can charge – thus reducing their profits. (In some cases this has led to mergers or companies going out of business.) Strict timelines must now be adhered to and investigations need to be carried out immediately following an incident. Employers' Liability claims needs to be registered within 30 days to fall within the limited window for investigation ('portal'). After this length of time costs begin to escalate significantly.

Other measures to improve practices include introducing more robust medical investigations into workplace injuries and involving independent medical panels and not the employee's GP. There needs to be better recording of data and there will be a clamp down on how companies receive details. Consumers will be given details of their rights of redress if data has been obtained inappropriately.

A question was raised by Lee Dargue with regard to whether the "independent medical panel" would be a private or public body. However, this is unknown at present.

George wrapped up by reflecting on the need, in the light of the changes mentioned in this presentation - and the importance and impact of them – for the inclusion of a half or one day seminar in the programme next year. This would cover liability issues raised and discuss what organisations can do to defend themselves, from a criminal and civil point of view. There was a positive response to this being included, possibly for a nominal charge.

Members' Corner

***Henry Skinner,
Action on Hearing Loss
and Interpreter Emma***

George welcomed the guest speaker Henry Skinner, representing Action on Hearing Loss – previously known as RNID.

Henry himself is deaf and was therefore assisted in his presentation by his interpreter Emma. The organisation is a charity and provides a range of services and products, like telephone amplifiers, flashing doorbells, vibrating alarm clocks etc.



Some Statistics about Deafness

Henry began by presenting some statistical information:

- Currently there are 10 million people in the UK who are deaf or hard of hearing (that is 1 in 6 of the population). 6.4 million of these are of retirement age and older.
- 400,000 rely on lip reading
- 150,000 were born with their hearing but have been deafened over time.
- 2 million wear hearing aids.
- 50,000 to 70,000 in the UK use British Sign Language.

Causes of Hearing Loss

- 1) Some suffer hearing loss as a result of issues of the outer ear.
- 2) Others suffer sensorineural deafness such as from presbycusis, which is age-related hearing loss and affects 90% of those over the age of 80.
- 3) Deafness can also be caused by diseases such as Rubella, drugs, exposure to loud noises in the workplace or in a social context eg Rock Concert, or even as a result of head injury.
- 4) There are also some medical conditions which affect the hearing such as Meniere's Disease, tinnitus and recurring hearing infections.
- 5) Deafness can also be hereditary.
- 6) It is widely recognised that regular exposure to noise in excess of 80 dBA can seriously damage hearing.

Loss of Communication – Workplace Issues

Hearing loss can be a significant barrier to communication, especially within the workplace. Often people not affected are unaware of how to communicate with those who are deaf or hard of hearing. Information that is widely available to those with hearing, for example via radio, television, or even general conversation, is lost to the deaf. Those with hearing often fail to appreciate what it must be like to be without this vital sense. Many deaf people say they regularly experience impatience from others and sometimes people will just walk away from them. This is frustrating to both parties.

How to Communicate

When communicating with a deaf person it is important to:

- face the person and ensure that the lighting is sufficient for them to be able to lip read.
- don't eat, chew or obscure your face when you are speaking.
- introduce the topic of the conversation. This will help to avoid confusion or misunderstandings.
- try not to use jargon and get the point over in the simplest way.
- be patient, and above all don't shout!

Helpfully, technology allows for communication in the written form via text and e-mails. Loop systems are also available for use with the telephone.

Social Isolation

People with hearing loss can very quickly become socially isolated. Those around them may be talking very quickly or over each other, or there may be distracting background noise. This causes a great deal of embarrassment and unease to the deaf person. Eventually they will simply consider it too much of a struggle to keep up with the conversation and so withdraw. Everyday life, such as shopping or being in a train station can become very difficult. Even a visit to the GP can prove to be particularly difficult and arranging an appointment by telephone impossible.

MP3 Players

Steve Parton raised the question about people in noisy workplaces using MP3 players set at high volume and what an employer should do. Henry confirmed that there are a number of guidelines available to employers about safe noise levels and how to educate the workforce as to how to protect their hearing from dangerous levels.

Audible Fire Alarms

Mark Hoare raised the problem of audible fire alarms in buildings. Henry responded that some areas do have the flashing light system. In hospitals there is the 'buddy' system where a member of staff is assigned to a deaf person and alerts them to any danger. Also, the actions of others would help alert the deaf person if they all seem to be rushing in the same direction.

Construction Sites and Wearing Ear Defenders

Another question from the floor referred to workers on construction sites being disadvantaged by ear defenders and asked whether there was any other sensory equipment available to signal danger. Henry advised that many companies use pager or mobile telephone systems which can vibrate in the pocket to alert the worker of any danger.

George thanked Henry, in conjunction with Emma, for his most interesting and thought-provoking presentation.

(Don't forget to check BHSEA website www.bhsea.org.uk for the slides covering today's presentation.)

Job Opportunities

Health & Safety Manager/Advisor

Croft Building & Conservation specialises mainly in the restoration of historic buildings, having typically 12–15 construction sites operational at any one time, mainly within the Midlands area and managed from their office at Cannock. They

are currently looking to appoint an experienced Health & Safety Manager/Advisor, preferably with knowledge of the construction industry. For more in information, visit the web site at: www.croftbc.co.uk or contact Mike McGovern on Tel: 01543 509156 Mobile: 07967 186729.

Health, Safety & Training Advisor Vacancy (Construction Industry)

SATS Ltd are a professional construction industry Consultancy, specialising in Health, Safety & Training matters based in the West Midlands with a local client base. They are seeking to expand their small team by appointing a self-employed advisor based in the West Midlands area, initially in a part-time role, with progression to full-time (subject to performance).

Please call Mike Pearson on 07824 390746 for an informal chat in the first instance, to be followed by a formal recruitment process for good quality applicants.

Safety Advisor / Senior Safety Advisor

M J Evans Construction is seeking someone to progress quickly to a manager's role within a civil engineering / groundworks company. Please forward your CV to Tim.Mason@mjevansconstruction.co.uk. For further information contact Tim on 01543 373759 or Mobile: 07530 231391.

Announcements

- 2014 BHSEA Programme Meetings - Dates for your Diary:**

<p>8 September 2014 Safety Software for Managers NEBOSH, ACT, Cardinus, Elearning Health and Safety</p>	<p>13 October 2014 Construction-CDM & HSE Policies Update. Russell Adfield, HSE And Members' Corner speaker: Alan Hicks of Knotweed Services Limited</p>
<p>10 November 2014 Respiratory Sensitisers Professor Sherwood Burge, Heart of England NHS.</p>	<p>8 December 2014 Face Fit Testing & Tight Fitting Respirators Alan McArthur, 3M PLC</p>

In Memoriam - Dick Bush

We regret to announce that Dick Bush died recently and his funeral took place on 22 May at St Leonards, Beoley. Dick, who was Director of the Safety Unit at the University of Birmingham prior to his retirement some 20 years ago, was also a Chair of USHA (then USA) and a strong supporter of AURPO and ISTR.

He hosted a number of seminars and conferences at Birmingham which some of our members may recall.

Any messages of condolence may be forwarded to the Secretary for onward transmission to the family.

Date of Next Meeting
2.00 pm Monday, 8 September 2014

at the Birmingham Medical Institute

Safety Software for Managers
NEBOSH, ACT, Cardinus,
Elearning Health and Safety

Don't forget the buffet lunch at 1.15 pm