



# SAFETY UPDATE

Issue 11 November 2016

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RoSPA Working at Height e-book

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## NEWS

### HSE FEE FOR INTERVENTION FACES LEGAL CHALLENGE

#### Permission for judicial review of FFI appeals scheme granted

A facilities outsourcing company is seeking to quash the HSE system for deciding Fee for Intervention appeals and to challenge the rejection of its appeals against specific Notices of Contravention.

The judicial review hearing is yet to be fixed but is expected to take place in the early part of 2017. The permission was granted by Mr Justice Kerr who, when granting permission, observed that:

*"It is arguable that the HSE is, unlawfully, judge in its own cause when operating the FFI scheme; and that the scheme is either unlawful or being operated in an unlawful manner."*

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body and concern the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

#### Relationships changed and strained

One legal practice surveyed clients and found:

*"The overwhelming feeling from our national client survey is that the dynamic around HSE visits has changed dramatically, with organisations complaining of a 'double whammy' in that HSE inspectors are quick to identify a material breach, yet the advice they have provided to organisations in the past is frequently less available."*

### DESIGNER DUTIES REGARDING TEMPORARY WORKS

#### Permanent works design must consider temporary works safety

A significant number of serious incidents occur in the construction sector because of inadequate temporary works design, implementation or maintenance.

Temporary works (TW) cover a wide field of activity and are the parts of a construction project that are needed to enable the permanent works to be built. Usually the TW are removed after use e.g. access scaffolds, props, shoring, excavation support, falsework and formwork, etc. Sometimes the TW is incorporated into the permanent works – e.g. haul road foundations and crane or piling platforms may be used for hard-standing or road foundations.

It is important to recognise that permanent works designers have responsibilities in relation to temporary works which are covered by the CDM Regulations 2015.

#### PW designers have TW legal obligations

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A paper 'The Role and Responsibilities of the Permanent Works Designer' by John Carpenter, is available to download free from the Publications page on the Temporary Works Forum website.

The paper is written to "assist permanent works designers in their legal obligations in relation to temporary works, stemming from CDM2015, and to demonstrate the wider project benefits of careful consideration".

The advice is also designed to be of use to Principal Designers (a legally required client CDM 2015 appointment on most projects) and to Clients concerning what should be expected of PWDs on their projects.

<https://www.twforum.org.uk/publications/public-twf-documents/>

## HSE SEEK RISK ASSESSMENT FLEXIBILITY & SIMPLICITY

### **Proposed change to guidance could produce bonfire of 'paperwork'**

HSE is looking to change its current guidance on risk assessment and is seeking public views before the amended guidance is published.

The regulator is concerned that many people see the requirement to record significant findings of a risk assessment as something separate from other things they do to manage their business. However, HSE stress that risk assessment should be part of day-to-day business management and the risk assessment can be part of an existing business document.

HSE wants to put more emphasis on controlling risk and less on written assessments, without reducing standards adding: 'The main thing is to make sure the way you record your significant findings helps you manage risk well.'

### **Myth Buster panel set for further work?**

HSE has highlighted the proposed changes in the existing core leaflet Risk assessment: A brief guide to controlling risks in the workplace. The proposed change states:

'You may already have documents, such as guidance to employees (including HSE guidance), method statements, data sheets etc. that can serve as your record. You do not need to duplicate these. Insurers and contractors may ask for more detailed paperwork than the law requires. Ask if you are not sure (it might be, for instance, to defend any compensation claims). One way of checking if you are being asked to go beyond what the law requires, is to contact HSE's Myth Buster Challenge Panel.'

<http://www.hse.gov.uk/risk/news.htm>

## CASES

Although not all case studies are specific to the lift and escalator industry, cases that may be relevant have been included.

### **ASBESTOS REMOVAL OPERATIVE ELECTROCUTED**

#### **Nominal fine for environmental services firm in liquidation**

A company providing environmental services, has been prosecuted after a workman died during asbestos removal work at a school in Wales.

Newport Magistrates Court heard how the 26-year-old man was working in a ceiling void at a School in July 2013 constructing an 'enclosure' to contain the asbestos during its removal.

It was during this work that whilst cutting plastic sheeting he also cut into a live electric cable and was electrocuted.

#### **Electrical supply not isolated**

HSE investigators found that the company had not taken adequate steps to ensure that the electrical supply at the school was isolated before the work was undertaken.

The business from London was found guilty in their absence, to breaching Sections 2(1) and 3(1) of the Health and Safety at Work etc. Act, 1974.

In sentencing the Judge considered the fact that the company was now in liquidation and delivered a total nominal fine of £10,000 with £1,000 in costs.

## **DRIVER FAILURE TO SECURE OUTRIGGER CAUSED DEATH**

### **Lorry driver jailed after young mother died at roadside**

It has been reported by Altrincham Today that a lorry driver, aged 25, has been sentenced to four and a half years in prison for causing the death of a 29-year-old woman after he failed to secure an outrigger/ stabiliser on his lorry. A 29-year-old and the mother of a 12-year-old son was standing at a pedestrian crossing when she was hit.

The driver was jailed at Preston Crown Court after being convicted of causing death by dangerous driving and banned from driving for five years following his release.

### **Simply ignored training**

During sentencing, Judge Lloyd told Stewart:

“It was not rocket science or a particularly difficult set of actions you had to take to stabilise that arm. This was no oversight, this was no mechanical failure, you quite simply ignored the training you had received over two courses.

Had you made the most cursory visual checks or pulled on the arm you would have realised that the arm was not secure.”

## **SITE MANAGER AND WORKMAN PROSECUTED**

### **Employees fell short in meeting their lifting operations responsibilities**

A construction site manager and an experienced construction worker have been fined for safety failings after a co-worker was struck by a concrete skip at a construction project in South London on 23 February 2012.

Woolwich Crown Court heard how a workman suffered a badly broken left leg and fractures to his right ankle and several ribs, when the empty concrete skip (weighing 215kg) became detached from an excavator and fell onto him. He was unable to work for seventeen months.

HSE investigators found there was no thorough examination certificate for the shackle on the excavator, and the shackle was defective.

- Site manager – pleaded guilty to breaching Regulation 9(1) (a) of the Lifting Operations and Lifting Equipment Regulations 1998. He was fined £1,000, and ordered to pay costs of £2,500
- Construction worker - pleaded guilty to breaching Regulation 8(1) (c) of the Lifting Operations and Lifting Equipment Regulations 1998 and was fined £1,500 and ordered to pay costs of £2,000

### **Shackle should have been taken out of use**

Speaking after the case HSE inspector Melvyn Stancliffe said:

“The site manager should have taken the shackle on the excavator out of use when he inspected it two days before the incident as he had not seen a thorough examination report for it. The experienced construction worker, accepted that he did not fully screw in the pin on the shackle as he should have done and it failed as result.

This case highlights the importance of ensuring simple checks are carried out properly and that equipment is used correctly”

## **STEEL BARS FELL FROM UNSUITABLE TROLLEY**

### **Foot of workman amputated after 900kg of metal fell on leg and foot**

A manufacturing company has been fined £130,000 for safety breaches after a worker suffered severe leg injuries and lost most of his foot.

Luton Magistrates’ Court heard how 24-year-old agency worker was injured when a trolley carrying metal stock fell on his legs causing severe injuries.

A bundle of 18 stainless steel bars weighing about 900kg was on a four-wheeled trolley. The trolley was being moved manually when it tipped causing the bundle to fall trapping his leg and foot.

### **Static work stations used for other purpose**

HSE investigators found that the trolleys had been used for some 20 years without incident and were purchased as ‘workstations’. However, employees also used the trolleys to move metal stock around the site.

There was no risk assessment or written system of work for the trolleys. The trolley wheels were faulty and there was no record of maintenance. After the accident, the trolley was given a safe working load of 500kg; half the weight placed on the trolley at the time of the accident.

The firm pleaded guilty to Section 3(1) of the Health and Safety at Work etc. Act 1974 and was fined £130,000 with costs of £2,456.40 and a victim surcharge of £120.

Speaking after the hearing, HSE Inspector Emma Page said:

“Luke’s life has been drastically altered by what happened and this incident could have been very easily avoided with some very simple measures. The right equipment and a correct maintenance system would have prevented this from happening.”

#### **CDM CLIENT AND CONTRACTORS FINED OVER £1.5M**

##### **Pedestrian died when hit by car in poorly managed roadworks**

A local authority and two contractors have been fined £1.5m + following two separate incidents involving roadworks on a busy city centre road. One man died and another was seriously injured while attempting to cross Queens Drive in Liverpool during major resurfacing works in the summer of 2012.

##### **Combined failure of all three parties**

The 74-year-old member of the public died after being struck by a car when the temporary lights were removed with no alternative control measures put in place to enable pedestrians to cross the live lane of traffic. In addition, a large A-frame sign was placed on the crossing obscuring the view of both pedestrians and motorists.

- City Council – of pleaded guilty to breaching Regulation 9(1) of the Construction (Design and Management) Regulations 2007 (CDM) and were fined £15,000 and ordered to pay £100,000 costs. The council failed to ensure that the arrangements for managing the roadworks were suitable.
- Principal Contractor - pleaded guilty to breaching Regulation 22(1) of the Construction (Design and Management) Regulations 2007 (CDM) and were fined £25,000 and ordered to pay £80,000 costs. The firm failed to ensure the designs for the traffic management were checked or approved, the construction plan for pedestrian routes and provision of barriers was being followed.
- Contractor - pleaded guilty to Section 3(1) of the Health and Safety at Work etc. Act, 1974 and were fined £1.3 million and ordered to pay £130,000 costs. The firm failed to provide alternative assistance for pedestrians at the time of the first incident.

Speaking after the case HSE Inspector Jacqueline Western said:

“The combined failure of all three duty holders to comply with their duties on more than one occasion during the Queens Drive resurfacing project, led to one man losing his life and another suffering serious injury. It could quite easily have been two fatal incidents.”

#### **DUMPER TRUCK CRUSHED LEGS OF OPERATOR**

##### **Both legs amputated after dumper overturned on incline**

A contractor has been fined £200,000 after dumper truck overturned on a project in Cornwall. The dumper driver was airlifted to hospital where surgeons amputated both of his legs at about the knee. The injured man was operating the fully loaded front tipping dumper down an incline when the truck became imbalanced and overturned.

The workman who appears to have not been wearing a seat-belt, was thrown from the vehicle, which landed on his legs and crushed him.

HSE found the company had not “carried out an assessment for any of their drivers or their competence” in using the plant equipment.

##### **Real risk of mobile plant instability**

The firm pleaded guilty to breaching Section 2 (1) Health and Safety at Work etc. Act 1974. They were fined £200,000 and ordered to pay costs of £12,312.56.

HSE inspector Jo-Anne Michael, said

“A has been changed forever. If the contractor had planned the work properly, assessed the equipment and the drivers this incident would not have happened.

Companies must learn that risk assessments are there to protect their workers from the real risk that mobile plant can become unstable.”

#### **COUNCIL FINED £40,000 AFTER FALL FROM LADDER**

##### **Basic ladder safety failings land Yorkshire council in Court**

A Yorkshire council has been fined after an employee was injured when he fell from a ladder in April 2015.

Hull Magistrates’ Court heard how the employee fell from a ladder while descending from a porch roof which was being re-felted. He fell 2.4 m and suffered two broken vertebrae.

HSE investigators found that the ladder was not tied and there was no edge protection in place for the porch roof. The task had not been risk assessed and decisions regarding safety and equipment were left to the workers.

The council pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc. Act 1974, and was fined £40,000 and ordered to pay costs of £664.00.

#### **CLIENT FINED OVER ABSENT PRE-CONSTRUCTION INFORMATION**

##### **Major supermarket chain and CDM client prosecuted alongside contractor**

A major retailer and a building maintenance company has been fined a combined sum of £500,000 after a workman was lucky to suffer only minor injuries when he fell 10m to the shop floor after a fragile skylight failed under his weight on Merseyside in June 2014.

The fragile skylights should have been identified and precautions taken but the contractor received no information relating to the fragility of the roof from the client as required by the CDM Regulations.

##### **Risk is the issue – customers could have been injured**

The judge said was “a minor miracle” the workman had not died or been seriously injured after landing on shelving in the soft drinks section. He pointed out that customers could have been hurt. He added that although the workman was not seriously injured it was “the risk of harm that was the issue”.

- Retailer – pleaded guilty to breaching Section 3 (1) of the Health and Safety at Work etc. Act 1974 and Regulation 10 of the Construction (Design and Management) Regulations 2007 and was fined £200,000 with £712.70 costs
- Contractor - pleaded guilty to breaching Regulation 9 of the Work at Height Regulations 2005, Section 2(1) of the Health and Safety at Work etc. Act 1974 and Section 3 (1) of the Health and Safety at Work etc. Act 1974 and was fined £300,000 with £624.60 costs.

Speaking after the hearing HSE Inspector Chris Hatton said:

“Contractors should treat all roofs with care and check before starting any work if they are fragile. I am shocked at a company the size of Tesco failing to take even basic precautions to prevent injury to its employees and further, to risk injury to the public”

#### **ASBESTOS FAILURE ON CLIENT LED REFURB PROJECT**

##### **Client rushed works with unqualified and inexperienced people**

A Bolton night club owner has been sentenced after admitting a failure to carry out a survey for asbestos before starting on the refurbishment of a local night club.

Manchester Magistrates’ court heard how the firm and its sole director undertook the management of a refurbishment project without an experienced contractor in place to manage the site. Up to 20 workers were potentially exposed to asbestos fibres.

##### **Cost cutting at expense of safety**

The director pleaded guilty to breaching Section 3(1) of the Health and Safety at Work etc. Act 1974, and Regulations 5(a) and 16 of the Control of Asbestos Regulations 2012, and was fined £5,720.00 with costs of £3,535.86.

The judge remarked that the defendant chose to rush through the works with unqualified and inexperienced people running the site on a day-to-day basis. He went on to say that it was clear that these offences amounted to a 'degree of cost cutting at the expense of safety'.

HSE inspector Matt Greenly said after the case:

"The requirement to have a suitable asbestos survey is clear and well known throughout the construction industry. Only by knowing if asbestos is present in any building before works commence can a contractor ensure that people working on their site are not exposed to these deadly fibres."

#### **DRILLER SURVIVES POWER LINE STRIKE**

##### **Contractor and client fined after workman suffers extensive burns**

Two Norfolk-based companies have been fined after a worker suffered life-changing injuries following an overhead power line strike in April 2014 when the injured workman was operating the controls of a lorry mounted drilling rig.

The mast contacted an 11kV power line running across the working area when a colleague moved the vehicle. The workman suffered serious injury including extensive burns to his scalp, arms, legs and feet and loss of two toes.

##### **Power line strikes remain all too common**

HSE investigators found that neither company had taken effective precautions to prevent work equipment contacting the electrical conductors.

- Contractor 1 pleaded guilty to a breach of Section 3(1) of the Health and Safety at Work etc. Act 1974 and was fined £134,000 with £6484 costs.
- Contractor 2 pleaded guilty to a breach of Section 2(1) of the Health and Safety at Work etc. Act 1974 and was fined £80,400 with £6596 costs.

After the hearing, HSE Inspector Jessica Churchyard said:

"Similar incidents involving overhead power line strikes remain all too common in Great Britain and are almost always entirely avoidable. Duty holders planning, organising and carrying out such work must ensure that site-specific risks are identified and controlled. Where hazardous electrical conductors need to be kept live, workers and equipment must be kept at a safe distance from them.

#### **WORKMAN DIED UNDER BUNDLE OF METAL PIPES**

##### **Firm fined over unsafe system for moving pipe with fork lift truck**

A metal fabricator from Oldham has been prosecuted and fined £70,000 after a workman died when he was crushed under metal pipework.

Manchester Crown Court heard that the 53-year-old workman was operating a side-loader forked lift truck to move a vacuum-packed pipe bundle weighing 1.5 tonnes when the bundle fell crushing him underneath.

##### **System of work changed for worse**

HSE investigators found that method of packing bundles had changed without being documented. The previous method used a wooden framework which was more stable and provided a safe system.

The firm pleaded guilty to breaching Section 2 (1) of the Health and Safety at Work etc. Act 1974 and was fined £70,000 and ordered to pay costs of £5,000.

HSE Inspector Mike Lisle said:

"There was no risk assessment carried out on this new method of working and no system put in place for the operators to follow. If the company had provided a safe system of work for their employees to follow this tragic incident to Mr Dunne could have been avoided."

*NOTE:-*

*Inclusion of company or organisation information in this newsletter does not constitute an endorsement by LEIA for the services provided.*



## **PUBLICATIONS**

### **DRAFT EN 81-80 RULES FOR THE IMPROVEMENT OF SAFETY OF EXISTING LIFTS OUT FOR COMMENT**

EN 81-80 is an important standard for the improvement of existing lifts. LEIA featured it in the Modernisation Technical Seminar in June last year.

The revision, taking into account the changes in the new EN 81-20, is out for public comment. Comments are welcomed from LEIA members.

Please send these to Nick Mellor at LEIA by 13 January to allow all LEIA comments to be collated and submitted to BSI by the deadline.

The draft EN 81-80 is on the draft standards page on the LEIA website and can be reached by clicking the link below:

[LEIA website Draft En81-80](#)

### **UPDATE YOUR BIM LEVEL 2 SUITE OF STANDARDS WITH THE NEW BS 8536-2**

BS 8536-2 provides a structured and systematic approach to briefing to ensure operating and maintenance costs are minimized. It addresses linear infrastructure assets such as transport/energy distribution and geographical infrastructure assets such as flood alleviation.

The new standard adopts the structure and format of its companion document, BS 8536-1:2015, and as such, incorporates the principles of briefing associated with BIM Level 2 and Government Soft Landings.

BS 8536-2 is available as a free download from the BIM Level 2 website. This has been made possible due to sponsorship from the Department of Business, Energy & Industrial Strategy and the Building Information Modelling (BIM) Task Group.

<http://pages.bsigroup.com/e/35972/m-medium-email-utm-content-cta/pmyk1t/403123600>

### **ROSPA WORKING AT HEIGHT E-BOOK:**

Become a RoSPA SafetyMatters subscriber, and you can download their exclusive Working from Height ebook and many other titles.

<http://www.rospa.com/safety-matters/>

# WHAT'S IN YOUR DRINK?



**UNITS**  
**2.3**

175ml 13%

STANDARD GLASS OF WINE



**UNITS**  
**3.3**

250ml 13%

LARGE GLASS OF WINE



**UNITS**  
**1.0**

50ml 20%

GLASS OF FORTIFIED WINE (E.G. SHERRY)



**UNITS**  
**2.3**

4%

PINT OF LAGER



**UNITS**  
**3.0**

5.2%

PINT OF STRONG LAGER/BEER



**UNITS**  
**10**

13.5%

BOTTLE OF WINE



**UNITS**  
**1.9**

400ml 3.8%

CAN OF LAGER



**UNITS**  
**1.4**

275ml 5%

ALCOPOP



**UNITS**  
**1.0**

25ml 40%

SINGLE SPIRIT

RECOMMENDED DAILY LIMITS

**MEN = 3-4 UNITS** **WOMEN = 2-3 UNITS**

[WWW.NHS.UK/ALCOHOL](http://WWW.NHS.UK/ALCOHOL)



**Alcohol Concern**  
Making Sense of Alcohol



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***Rule of thumb for calculating Units of Alcohol:***

***% alcohol = number of Units per 1 litre of your drink***

***1 pint (approx. 0.5 litres) of 5.2% beer has  $0.5 \times 5.2 = 2.6$  Units.***

***1 Unit is the amount that can be assimilated by your body in 1 hour.***

***2.6 units will take 2.6 hours to work its way out of your body.***

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