Health and Safety: Legal Review

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Chris Hopkins

Barrister, Associate

Pinsent Masons

H&S Consultant Goes Straight to Gaol!

- Basement excavation in 2010 on a residential property in Fulham requiring underpinning of the supporting walls;
- Operative working in an unsupported trench when side wall collapsed and he was fatally crushed;
- Deceased employed by Siday Construction Limited;
- Richard Golding was an independent H&S consultant contracted to provide advice to Siday. Responsible for drafting method statement;
- Prosecution alleged that had Mr Golding inspected the site properly he would have identified both that the work was not being carried out in accordance with a safe system of work and that the excavations posed a clear risk;

H&S Consultant Goes Straight to Gaol! (2)

- Contested trial at Southwark Crown Court during November/ December 2014;
- Siday's site manager convicted of individual gross negligence manslaughter. **3 years and 3 months imprisonment;**
- Mr Golding convicted on s7 HSWA offence. **9 months imprisonment;**
- Sentencing Judge commented that Mr Golding's evidence at trial had been ludicrous and his failure to do anything when on site showed a level of disregard that was staggering.

2014 Court of Appeal cases

- The big case - **R v Sellafield Limited; R v Network Rail Infrastructure Limited**
- *The basics* – the CoA upheld substantial fines imposed on two large corporate defendants for breaches of environmental and health and safety law.
- Sellafield's turnover was £1.6bn; Network Rail's turnover was £6.2bn.
- Joint appeal against ***"manifestly excessive"*** fines imposed following early guilty pleas.
- The Court reviewed the public policy considerations that a judge must take into account when setting the level of such fines and indicated that, in future, the courts will look much more closely at the defendant company's financial circumstances, corporate structure and director remuneration.

Case analysis – R v Sellafield Limited; R v Network Rail Infrastructure Limited

- **R v Sellafield Limited**

- *The facts* – Sellafield was fined £700,000 after pleading guilty to seven infringements of environmental legislation related to the disposal of radioactive waste.

- Sellafield's system for segregating radioactive and non-radioactive waste resulted in it disposing of radioactive waste without the required safeguards for a period of 18 months.

- No one was harmed by these breaches but it was found that, had the infringements continued, there would have been an increased risk of cancer to those handling the waste.

Case analysis – R v Sellafield Limited; R v Network Rail Infrastructure Limited

- **R v Network Rail Infrastructure Limited**

- *The facts* – Network Rail was fined £500,000 in relation to health and safety failures after a young boy suffered a serious brain injury after being thrown from a vehicle which collided with a train on a ‘user operated crossing’.

- Network Rail was prosecuted under s. 3(1) HSWA and pleaded guilty on the basis that it had failed to carry out a proper risk assessment of the crossing and that if it had done so safety measures would have been introduced which may have averted the accident.

- The sentencing judge found that the risk had been "obvious and serious" and that "elementary mistakes" had been made in the carrying out and following up of risk assessments.

Case analysis – R v Sellafield Limited; R v Network Rail Infrastructure Limited

- **“Manifestly excessive fines”**

- Sellafield suggested to the Court of Appeal that the level of fine imposed (which equated to a starting point of around £1 million before the reduction for an early guilty plea) would only have been justified in the case of a major public disaster and / or loss of life.

- Network Rail maintained that the level of fine imposed (£750,000 before the reduction for a guilty plea) was appropriate only in cases where there had been a fatality.

- In responding to the above arguments, the Court of Appeal focused, to a significant extent, on the financial circumstances of the defendants.

Case analysis – R v Sellafield Limited; R v Network Rail Infrastructure Limited

- The CoA discussed the general principle that the financial circumstances of a defendant should be considered in the sentencing process.

- Applying this to companies with a **turnover in excess of £1 billion**, the court said it would always, *"examine with great care and in some detail the structure of the company, its turnover and profitability as well as the remuneration of the directors"* in order to ensure that the level of fine was sufficient to underline the seriousness of the offence and to *"bring that message home"* to those benefiting from the company's profit.

- In the case of Sellafield, *“it is an ordinary company”* (run for profit by a small amount of shareholders) and its shareholders would be directly affected by the fine and could hold the company’s directors to account for the company’s actions.

Case analysis – R v Sellafield Limited; R v Network Rail Infrastructure Limited

- In contrast, Network Rail reinvests all of its profits back into the rail network so a fine would not be directly felt by any shareholders; indeed, it would be the public that would be most harmed.

- Instead, the court focused on the remuneration of the executive directors of Network Rail and the suggestion that bonuses had been reduced to take account of poor safety performance.

- The court said, *"the prospect of a significant reduction of a bonus will incentivise the executive directors … to pay the highest attention to protecting the lives of those who are at real risk from its activities".* Reducing bonuses in this way, *"will demonstrate to the court the company's efforts, at the level of those ultimately responsible, to address its offending behaviour"*.

Case analysis – R v Sellafield Limited; R v Network Rail Infrastructure Limited

- The Court roundly rejected the argument that the fines imposed would only be appropriate where a fatality had occurred, saying that this, *"would be to ignore the statutory obligation to consider the means of the offender".*

- The Court dismissed the joint appeal and upheld the fines.

Case analysis – R v Sellafield Limited; R v Network Rail Infrastructure Limited

- *Impact of the CoA's decision* – Whilst the principle that high value companies should expect proportionately higher fines is not a new one, the decision is a clear example of a court examining, in detail, the financial and corporate structure of a corporate defendant in order to measure a penalty against turnover and profitability.

- However, the most interesting aspect of the Court's decision was the focus into the distribution of the defendants' profits and the performance based pay of their directors so as to satisfy the CoA that the fines imposed would directly affect the shareholders and / or directors.

- The Court also made clear that in future this same level of scrutiny will "*always be necessary*" where the defendant is a large company.

R v Sellafield Limited; R v Network Rail Infrastructure Limited – Impact

- Almost 12 months have passed since the Court of Appeal handed down its judgment that the fines administered to Sellafield and Network Rail were not “manifestly excessive”.

- These decisions provoked significant comment on the soaring trend of fines imposed on large organisations convicted of regulatory offences, even where the culpability and / or harm was low.

- **Potential overreaction?**

- **Soaring fines – myth or reality?**

R v Sellafield Limited; R v Network Rail Infrastructure Limited – Impact

- **Pinsent Masons Review**

- PM analysed the sentences imposed on corporate defendants in over 150 health and safety cases, where the fine exceeded £20,000, in the 6 month period prior to, and following, the judgment in Sellafield / Network Rail.

- We looked at the nature of the offence (which ranged from prosecutions for mere risk alone to fatalities); turnover (where many defendants had turnovers in excess of £50 million and some exceeding £1 billion); and the organisation's previous convictions.

R v Sellafield Limited; R v Network Rail Infrastructure Limited – Impact

- The inescapable conclusion was that there was no discernable difference in the level of fines being imposed post-January 2014.

- In fact, the exercise confirmed what we already knew the position to be; namely, there is currently no tariff in a health and safety case and the court has a duty to consider not only the seriousness of the offence but also the means of the offender (with the latter having the potential to increase or decrease the penalty).

R v Sellafield Limited; R v Network Rail Infrastructure Limited – Impact

- This does not mean, of course, that over-zealous Prosecutors will not attempt to use the judgments as authority for the proposition that courts must now impose dramatically higher fines simply because of a defendant's resources.

- An effective way of countering this approach may be to point out some points of difference:

  – *Sellafield* concerned shortcomings in arrangements for the handling and disposal of potentially dangerous radioactive waste;

  – *Network Rail* arose out of an accident in which a child suffered catastrophic injuries;

R v Sellafield Limited; R v Network Rail Infrastructure Limited – Impact

- Both Sellafield and Network Rail operate in industries in which there is a public expectation of high safety standards because their activities bear directly on the safety of the wider public (and, in the case of Sellafield, on the environment); and
- Both companies had a serious and relevant record of previous convictions.

- It will be interesting to observe, over time, whether the true effect of the Court of Appeal's sentencing decisions is not to automatically increase fines but rather to increase the complexity and length of sentencing hearings.

BUT - R (HSE) v Jaguar Land Rover

- Employee suffered life-threatening crush injuries in June 2013 when he was dragged into inadequately guarded machinery at JLR's Solihull Plant resulting in his being in an induced coma in intensive care for 12 days;
- Employee had been investigating the latest in a series of frequent production line stoppages when he was hit by an empty vehicle carrier and drawn in;
- Machine remained unguarded post incident until HSE served an Improvement Notice in November 2013;
- JLR fined **£40,000** with **£13,474** costs at Birmingham Crown Court in December 2014 after pleading guilty to breaching Regulation 11(1) of PUWER.

Polyflor Ltd v HSE (July 2014)

- One of Polyflor's employees, a Technical Support Engineer, was undertaking maintenance work on a conveyor belt following a blockage. When the machine became blocked, a limited permit to work was raised so that the machine could be operated without any guarding in place.

- The engineer, put a spanner in the belt to find out where it was sticking. However, he was unable to let go of the spanner in time which pulled him into the machine, resulting in a broken arm.

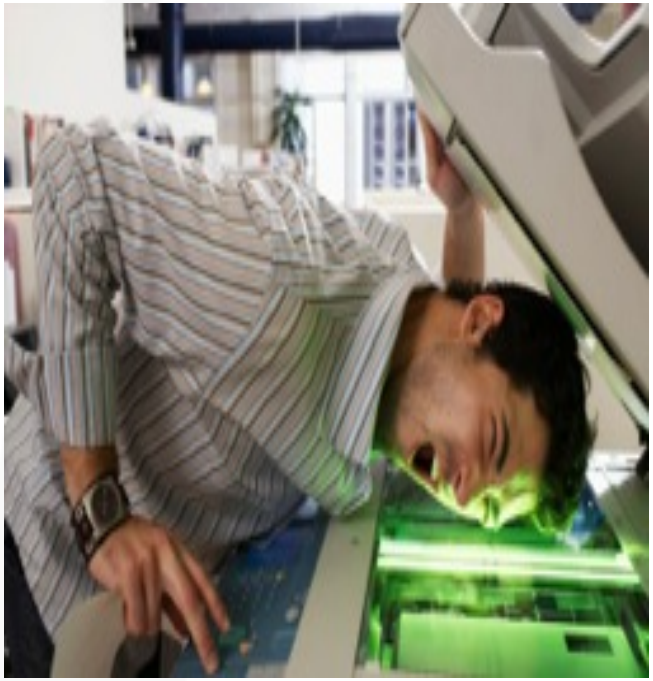
- The engineer accepted during the course of the trial that he should not have put a spanner in the conveyor belt, he had been blasé on the day of the accident and had taken a foolish risk.

Polyflor Ltd v HSE (July 2014)

- Polyflor's defence team argued that any risk was entirely attributable to and materialised due to the foolish act of the employee rather than the system of work. It was argued that there was no breach of duty under HSWA and no exposure to any risk which Polyfor had created.

- The Court of Appeal found that notwithstanding the accident was caused by the foolish act of the employee, there was still the existence of a risk created by the employer so that the onus passed to them to take all reasonably practicable steps to prevent employees from being exposed to that risk.

Polyflor Ltd v HSE (July 2014)



- When considering whether employees or non-employees are exposed to a risk, employers must consider in their risk assessments the likelihood that employees will act foolishly and depart from a laid down safe system of working.

- Risk assessments are an exercise in foresight and case law (*Baker v Quantum Clothing Group Ltd 2011 and R v Tangerine Confectionary Lit and Veolia ES (UK) Ltd 2011) makes clear that the risk assessment process (which serves as a blueprint for action)* must be broad enough in its scope to consider not only obvious risks but also things which are not obvious, including the likelihood that employees may act foolishly.

(1) Balfour Beatty and (2) Enterprise (AOL) Ltd v HSE (December 2014)

- BB was Managing Agent on the A50 for the Highways Agency. Enterprise had a contract to provide temporary traffic management ("TTM") for BB when instructed;
- BB asked Enterprise to provide TTM for a two lane closure of the A50 at Uttoxeter;
- On 25 November 2007, William Collins was driving along the A50 when he failed to negotiate the road closure and collided with a parked Enterprise van. He died a short time later;
- Police Collision Report concluded that driver fatigue was a *"very likely"* cause of the accident;

(1) Balfour Beatty and (2) Enterprise (AOL) Ltd v HSE (December 2014)

- At trial, HSE expert concluded that TTM system *"fell well short of protecting motorists;"*
- HSE argued the TTM fell well below what was required and the fatality provided evidence of the risk created by the poorly executed system. HSE argued it posed a material risk to motorists – *"That is a real risk, not a trivial or a theoretical or insignificant risk, nor an everyday risk of the sort that we all in our daily lives might face..."*
- Enterprise argued the risks were no more than the ordinary everyday risks we face in life. BB argued the TTM used was safe and the risks created by it were trivial and of low order;
- Jury convicted both and each was fined £225,000;

(1) Balfour Beatty and (2) Enterprise (AOL) Ltd v HSE (December 2014)

- BB and Enterprise appealed against conviction and sentence;
- Enterprise argued that the trial Judge should have directed the Jury that driving through TTM on a public highway was or may be regarded as an ***"everyday risk"*** and that is not a ***"material risk"*** especially for reasonable and prudent drivers;
- Reference to R v Porter ((2008) – the risk which the prosecution must prove should be real as opposed to fanciful or theoretical. *"Where the risk can truly be said to be part of the incidence of everyday life, it is less likely that the injured person could be said to have been exposed to risk by the conduct of the operations in question."*

(1) Balfour Beatty and (2) Enterprise (AOL) Ltd v HSE (December 2014)

- CA rejected both appeals against conviction and sentence;
- CA distinguished this case from Porter that involved a situation which could sensibly be described as everyday or ordinary and distinct from the activities of the appellants. This case focussed on the adequacy of the TTM; not ordinary or everyday driving;
- Negotiating the TTM was not a usual event;
- Issue here was whether the appellants failed to ensure that non-employees who might be affected by the TTM were not exposed to material risks. Any reference to everyday activities would simply have confused the Jury.

Corporate manslaughter review 2014

Pinsent Masons

Corporate Manslaughter – a busy year!

- Recent flurry of activity in this area of law after a relatively quiet period – including the first two acquittals following trial.

- Perhaps 2014 is the breakthrough year for Corporate Manslaughter offences as the CPS and the Police develop a better understanding of the legislation and the powers it affords.

- ***Quick recap*** – Under the Corporate Manslaughter and Corporate Homicide Act 2007, companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.

- ***Quick recap*** – The Act clarifies the criminal liabilities of companies including large organisations where serious failures in the management of health and safety result in a fatality.

Corporate Manslaughter – a busy year!

- ***Quick recap*** – An organisation guilty of the offence will be liable to an unlimited fine. The Act also provides for courts to impose a publicity order, requiring the organisation to publicise details of its conviction and fine.

- ***The stats so far*** – The Act came into force on **6 April 2008**:
  - 8 convictions to date (3 trials; 5 guilty pleas); and
  - 2 acquittals.

- ***2014 in numbers*** –
  - *2 convictions* (Cavendish Masonry Limited – 22 May, Sterecycle – 7 Nov);
  - *2 acquittals* (PS & JE Ward Limited – 15 April and MNS Mining Limited – 19 June);
  - *and **6 new charges*** (Pyranha Mouldings Limited – Feb, Baldwins Crane Hire Limited – Sept, A. Diamond and Son Limited (NI) – Sept, Huntley Mount Engineering Limited – Oct, McGoldrick Enterprises Limited (NI) – Nov, G&J Crothers Limited (NI) – Dec.

Corporate Manslaughter – 2014 convictions

- **Cavendish Masonry Limited**

- *The facts* – an employee was fatally injured when a two-tonne limestone block fell on him while he was completing renovation works at the £20 million home of the co-founder of Pizza Express, Hugh Osmond, near Moulsford in Oxfordshire.

- *Conviction* – the company was found guilty of Corporate Manslaughter following trial and the company pleaded guilty to a separate charge under Section 2 of the HSWA (breach of the general duties of employers to employees).

- *Sentencing* – Fine: £150,000 (payable over 5 years) and Prosecution costs of over £86,000

Corporate Manslaughter – 2014 convictions

- **Sterecycle (Rotherham) Limited (in administration)**

- *The facts* – an employee was working on an autoclave, a device used to process household waste into material for recycling by subjecting them to high pressure, when the door blew out under pressure causing an explosion. Another operator was seriously injured in the incident.

- *Conviction* – 1 x charge of Corporate Manslaughter. Charges under s.7 HSWA against director, operations manager and maintenance manager were dropped during the trial.

- *Sentencing* – Fine: £500,000 (payable within 28 days), no Prosecution costs, defence costs order in relation to the operations manager of £2,498.74.

Corporate Manslaughter – late–2013 convictions

- *November 2013* – **Princes Sporting Club Limited** pleaded guilty after an eleven year old girl had fallen from a banana boat and was fatally struck by the towing craft. The company was fined just under £35,000 but the Court also imposed the first Publicity Order requiring the company to publish details of its conviction. This highlights that in cases where defendant companies have limited financial means, the Courts may look at other ways to deter similar offences.

- *December 2013* – **Mobile Sweepers (Reading) Limited** was fined £8,000 and a Publicity Order was also made after an employee died when the road sweeping vehicle he was performing repair works on collapsed on him. ***However, its sole director, who had been prosecuted individually alongside the company, was also fined £183,000, ordered to pay £8,000 in costs and was disqualified from being a company director for five years***.

Corporate Manslaughter – 2014 acquittals

- First two acquittals for offences under the Act following contested trials.

- **PS & JE Ward Limited** – An employee was fatally electrocuted at Belmont Nursery in Norfolk when the lift trailer he was towing hit live overhead power lines. The company was found not guilty of corporate manslaughter but guilty under s.2 HSWA. The company received a fine of £50,000 and ordered to pay £48,000 in Prosecution costs.

- **MNS Mining Limited –** found not guilty in June 2014 of four counts of Corporate Manslaughter following the deaths of four miners at Gleison Colliery in September 2011. The senior mine manager had also been charged with four counts of gross negligence manslaughter and was acquitted. Interestingly, the authorities did not bring additional health and safety charges against either the company or the manager in this case.

Corporate Manslaughter – 2014 new charges

- **Pyranha Mouldings Limited** – a factory worker was burnt to death when he became trapped in an industrial oven at a canoe factory. Along with a Corporate Manslaughter charge, the company has also been charged under s.2 and s.7 of the HSWA:
  - Various charges were brought against two company directors and a senior manager under Sections 2, 3 and 6 of the HSWA;
  - Trial began at Liverpool Crown Court on 17 December; and
  - *Trial update* – Charges against the managing director and senior manager were dropped. The judge found that the senior manager designed the systems for the oven and nothing had gone wrong with them; therefore, there was no case to answer. In addition, the Prosecution conceded that the evidence against the managing director was insufficient for a conviction.

Corporate Manslaughter – 2014 new charges continued...

- **Baldwins Crane Hire Limited** – an employee was killed when the heavy crane he was driving allegedly experienced a malfunction with its brakes, causing it to crash into an earth bank and fall from the road:

- 1 x charge of Corporate Manslaughter and charges under s.2 and s.3 HSWA;

- 1 April 2015 – provisional listing for Plea and Case Management Hearing; and

- 19 October 2015 – provisionally listed for trial at Preston Crown Court

Corporate Manslaughter – 2014 new charges continued...

- **Huntley Mount Engineering Limited** – a sixteen year old apprentice died as a result of head injuries sustained while trapped in an industrial metal lathe:
  - 1 x charge of Corporate Manslaughter;
  - 1 x charge under s.2 HSWA;
  - Lime People Training Solutions Limited, which places apprentices with employers, also charged under Section 3 HSWA for failing to ensure the health and safety of a person other than an employee;
  - Company director and apprentice's supervisor charged with manslaughter by gross negligence; and
  - 6 July 2015 – provisionally listed for trial at Manchester Crown Court.

Corporate Manslaughter – 2014 new charges continued...

- *Three new charges brought in Northern Ireland*

- **A. Diamond and Son (Timber) Limited** – employee died at a sawmill site (no further facts about the case have been given). Company charged with corporate manslaughter and pleaded guilty on 18 December. Sentencing due to take place in early-2015.

- **McGoldrick Enterprises Limited** – Mary Dowds died suddenly at Maine private nursing home in Antrim. The home cares for people with learning disabilities. Company charged with corporate manslaughter and will stand trial on 13 April 2015.

- **G&J Crothers Limited** – employee died on 7 July 2013 whilst working at the company's Doagh site (no further facts about the case have been given). Company charged with corporate manslaughter and will stand trial in March 2015.

Collection of recent Health and Safety cases

- **'Construction company fined over worker's serious injuries'** (*November 2014)*

- ***What happened?*** IP was working on the construction of a new school building which required the installation of pre-cast concrete driven foundation piles. The six-metre long piles were driven into the ground using a piling rig until they were set. The excess part of the piles, which extends out of the ground, was then to be cropped using a hydraulic pile cropper.

  HSE found the pile cropper hired by Topcon Limited was only suitable for piles with a single, steel reinforcing bar running through the length of a pile. Another cropping machine, a power cropper, had been recommended for the school construction job by the hire company but the advice had been disregarded.

Collection of recent Health and Safety cases

The pile cropper being used was not powerful enough to cut through the concrete and four steel bars so was used to nibble the concrete away to expose the steel bars, which were then cut through with a disc cutter. The piles were then pushed to the ground in an uncontrolled manner.

As the IP was guiding the cropper over one pile, a colleague pushed another pile over but he had not cut through one of the bars. The pile twisted, fell onto the IP and he sustained multiple leg fractures as a result.

- ***Where did the company go wrong?*** Topcon Limited failed to heed two warnings that the pile cropper they had ordered was not suitable for the job, hence the need to adopt the high-risk 'tree-felling' method of pushing the piles over. The company should have foreseen that the felling of piles, in an area that workers could wander into, presented a high risk of injury.

Collection of recent Health and Safety cases

- **How much was the fine?** Topcon Limited was fined £10,000 and ordered to pay £1,980 in costs after pleading guilty to breaching regulation 4(3) of the Provision and Use of Work Equipment Regulations 1998, and regulation 29(1) of the Construction (Design and Management) Regulations 2007.

  The company must also pay the IP compensation of £10,000 for his injuries.

Collection of recent Health and Safety cases

- **'Contractors in court after leisure centre roof fall'** *(September 2014)*

- ***What happened?*** The IP was working on the roof of a swimming pool extension, which was accessed by internal stairs, connecting the various ducts and pipes with an air-handling unit. Most of the roof was protected but a section was left exposed, presenting a fall risk.

  While working, the man was standing on a narrow plywood area around half a metre wide, close to the open edge.

  His route to the stairs was blocked when he needed to go and collect some tools. While walking along the plywood next to the open edge, the plywood gave way and he fell four metres. He landed on his feet but then fell backwards, landing on concrete and rubble.

Collection of recent Health and Safety cases

The IP broke his back and had to spend five days in hospital. He also needed a back brace when discharged. He had to stay at his parents' house for six weeks and was unable to work for more than three months.

- ***Where did the companies go wrong?*** Throughout the whole process of roof work, there was no adequate protection against falls, such as barriers on the open edge. The companies failed to recognise their responsibility to ensure that work at height carried out under their control was done safely.

- **How much was the fine?** SJ Construction Limited pleaded guilty to breaching two Regulations of the Construction (Design and Management) Regulations 2007. The company was fined £10,000 and ordered to pay costs of £645.60. Seaton Heating and Engineering Services Limited pleaded guilty to breaching the Work at Height Regulations 2005 and was fined £7,000 and ordered to pay costs of £519.60.

Collection of recent Health and Safety cases

- **'Construction firm sentenced after barrier fell on baby's pram'** *(September 2014)*

- ***What happened?*** Kier Construction Limited was refurbishing a supermarket and had assembled barriers to separate the public from the work that was going on. Branding banners saying the supermarket was still open for business were attached to the barriers.

  The baby's mother parked the pram near to the barriers with her 13-year-old daughter standing next to it. As she walked to the cash machine she heard her daughter scream. She turned and saw a barrier with banner attached had fallen on top of the pram hood, which had collapsed on the baby. They tried to lift the barrier off the pram and a passer-by came to their assistance.

Collection of recent Health and Safety cases

The baby was taken to hospital with bruising to his forehead. He was discharged that day and suffered no more effects from the incident.

- ***Where did it go wrong?*** Contrary to the manufacturer's instructions, the barriers had not been filled with water to ensure stability and the barriers next to the cash machines had not been locked together.

  Inspectors also discovered that the previous month, high winds had caused the barriers to fall over and the site manger had ordered the removal of the banners. Concrete blocks were then placed at the base of the barriers but they were not filled with water.

- **How much was the fine?** Kier Construction Limited was fined £4,000 after pleading guilty to breaching Section 3 of the Health and Safety at Work etc Act 1974.

Collection of recent Health and Safety cases

- **'Construction firm and roofing director prosecuted following worker fall'** *(July 2014)*

- ***What happened?*** IP fell as he cleared materials from a flat roof. He picked up a piece of ply board that he assumed was debris without realising it concealed a roof light void beneath.

  He fell feet first through the void and landed on the first floor some 5.6 metres below, fracturing his spine on impact and heavily bruising his diaphragm, lungs and thighs.

- ***Where did it go wrong?*** Measures taken to mark and protect the void (and other similar voids) were totally unacceptable and any number of workers could have suffered a similar fate.

Collection of recent Health and Safety cases

Further failings included fall risks in other locations at the site, such as the edges of the flat roofs where there was no edge protection, fall risks on the scaffold, open joists, and open staircases where there were no handrails.

Other issues were also identified across the site, including fire risks and inadequate fire prevention measures; numerous slip and trip hazards caused by excess rubbish and debris; and glazed window frames stored upright and unsecured that were liable to fall and cause injury.

- **How much was the fine?** Right Angle Limited was fined £15,000 and ordered to pay full costs of £5,375 after pleading guilty to a single breach of the Construction (Design and Management) Regulations 2007. The director of the second company, John Donald, was fined £4,000 with £3,965 costs after admitting a breach of the Work at Height Regulations 2005.

Collection of recent Health and Safety cases

- **'Asbestos firm's errors exposed workers to hidden killer'** (May 2014)

- ***What happened?*** Angus Group Limited was sub-contracted to carry out asbestos removal work on behalf of the contractors demolishing a school. Before work began, an asbestos survey found the end walls of the school's main hall were covered in a spray-applied coating of asbestos, and should therefore be removed by a licensed contractor under safe, controlled conditions.

  The company ignored these recommendations and the asbestos spray coating on the main hall walls was chiseled off using power tools without any screens, enclosures or air extraction systems in place. Asbestos-containing material was bagged and carried to a skip outside.

Collection of recent Health and Safety cases

- ***Where did it go wrong?*** Catalogue of failings in the way the work had been planned and carried out. The exact location of asbestos material was not identified and the work only took one day to complete rather than the planned seven.

  Risk assessments were too generic; enclosures, segregation and containment measures were inadequate; plans lacked detail; access and transit routes through the buildings weren't clear; employees lacked specific instruction, and there was no reference to the original asbestos survey in the plan.

- **How much was the fine?** Angus Group Limited was found guilty of eight breaches of the Control of Asbestos Regulations 2006, and was fined a total of £109,000 and ordered to pay a further £42,100 in costs.

HSE cases involving individuals (directors / managers)

- **'Building firm director in court over health risk'** (August 2014)

- **What happened?** A company director (Roland Couzens of CSC Construction Limited) had been overseeing a project to refurbish a row of Victorian terraced houses between May and September 2013.

  CSC Construction Limited had been stripping the houses bare before plastering them and fitting them with new kitchens and bathrooms.

  HSE carried out an inspection of the site and found that one of the vacant properties was being used for the site office and to provide welfare facilities for the workers. However, there was no hot or warm water supply in either the kitchen or bathroom.

HSE cases involving individuals (directors / managers)

Bricklayers and plasterers were put at risk of suffering skin burns as they were working with cement and plaster but could not use hot water to clean themselves. A roofer working with lead could also have suffered lead poisoning from residues on his skin.

The director admitted to visiting the site several times a week during the project but failing to provide a hot water supply until after the HSE inspection, despite the need for hot water being highlighted in the company's construction plan.

- **What penalties did the director receive?** Mr Couzens was fined £2,000 and ordered to pay £3,102 in prosecution costs after pleading guilty to a breach of the Health and Safety at Work etc Act 1974.

HSE cases involving individuals (directors / managers)

- **'Directors and two firms fined for potential asbestos risk'** (August 2014)

- **What happened?** Baxketh Limited, a metal-recycling business, agreed to remove the steel work from the premises of another company on the basis that it would take the value of the scrap metal as payment for the work. However, the steel included several pipe work systems covered in lagging containing potentially-dangerous asbestos fibres, which were removed by workers without the firm putting any measures in place to prevent the spread of asbestos fibres.

  Inspectors visited the site on 22 February 2013 following a complaint from a worker at a neighbouring premises.

HSE cases involving individuals (directors / managers)

Inspectors saw two of the Company's directors on the site, with a significant amount of pipe work and damaged insulation scattered on the ground. One of the directors was operating a mechanical excavator with a grab to move steel work from the ground into a skip.

Tests carried out by HSE later confirmed that the insulation debris found lying on the ground did contain asbestos.

The work carried out by Baxketh Limited meant asbestos debris was scattered over the working area, which exposed workers there and on neighbouring sites to a potential risk to their health.

HSE cases involving individuals (directors / managers)

- **What penalties did the directors receive?** One of the company's directors, Michael Almond Snr, was fined £1,000 and ordered to pay £204.80 in costs after pleading guilty to breaching Regulation 5(a) of the Control of Asbestos Regulations 2012.

  The other director, Michael Almond Jnr, was fined £650 after pleading guilty to breaching Regulation 16 of the same legislation. There was no order for costs against this director.

  In addition, Baxketh Limited was fined a total of £12,000 and ordered to pay £3,804.20 in costs after pleading guilty to breaching Regulations 5(a) and 16 of the same legislation. UK Tankcleaning Services was also fined £10,000.

HSE cases involving individuals (directors / managers)

- **'Developer goes to prison after repeatedly flouting safety laws'** (July 2014)

- **What happened?** HSE visited the site being redeveloped on 28 February 2013 following complaints from local residents worried about debris falling from upper storeys and of the danger to workers being left without any protection from falling while working at height.

  The developer, Eze Kingsley, who was found to be in control of workers at the site, verbally abused the HSE Inspector who visited. The inspector had to return with Essex police officers later to serve prohibition notices requiring an immediate stop to unsafe work at the site. The developer reacted strongly to this, physically assaulting the inspector.

HSE cases involving individuals (directors / managers)

HSE's investigation found that there were no safety measures in place to prevent injury to workers from debris falling from height and that there was also a real risk of injury to members of the public using the road and pavement next to the site being redeveloped.

- **What penalties did the developer receive?** Mr Kingsley was given a 30 month prison sentence after being found guilty of two breaches of section 3(2) of the Health and Safety at Work etc Act 1974, to be served concurrently with three 12-month prison sentences after being found guilty of three counts of contravening a Prohibition Notice contrary to section 33(1)(g) of the same Act. He was also ordered to pay costs of £5,000.

  The developer was found guilty of assaulting an inspector from HSE at a separate court appearance.

HSE cases involving individuals (directors / managers)

- **'Company director in court after unsafe gas work'** *(March 2014)*

- **What happened?** The HSE conducted an investigation into Black Country Ranges Limited's work it had undertaken at two fish restaurants after complaints had been received from the restaurants' respective owners. At one of the restaurants, the company's director, Richard Stowe, took parts of the gas range away to prevent its use until bills were settled and even installed a device to disconnect the frying range remotely from his mobile phone.

  The company had previously fitted the gas ranges at the two restaurants and the HSE found that the ranges presented an immediate risk to the users and customers of the two fish bars and had to be disconnected, one before it was even put into commercial use. The appliances themselves were not compliant with European standards or BSI approved.

HSE cases involving individuals (directors / managers)

The company exposed staff, visitors and customers to the risk of explosion and injury, after leaving gas appliances in an ‘immediately’ dangerous condition.

Much of the work at the two fish bars had to be completely redone, incurring significant additional costs for the owners.

- **What penalties did the director receive?** The director was given a five month prison sentence, suspended for 12 months, and ordered to carry out 240 hours of community work after pleading guilty to two breaches of the Gas Safety (Installation and Use) Regulations 1998 and one breach of the Health and Safety At Work etc Act 1974.

  He was also ordered to pay a £1,000 contribution towards costs.

Questions

Mobile: 07585 996117

christopher.hopkins@pinsentmasons.com

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