

HSE Releases Annual Workplace Fatalities

Provisional annual data for work-related fatal accidents in Great Britain's workplaces shows small change from previous years, sustaining a long term trend that has seen the rate of fatalities more than halve over the last 20 years.

Provisional annual data released by the Health and Safety Executive (HSE) reveals 142 workers were fatally injured at work between April 2014 and March 2015 (a rate of 0.46 fatalities per 100,000 workers).

This compares to last year's all-time low of 136 (0.45 fatalities per 100,000 workers). Fatal injuries at work are thankfully rare events and as a consequence, the annual figures are subject to chance variation.

The statistics again confirm the UK to be one of the safest places to work in Europe, having one of the lowest rates of fatal injuries to workers in leading industrial nations.

However, HSE's Chair points out that every death is a tragedy. Judith Hackitt said: "It is disappointing last year's performance on fatal injuries has not been matched, but the trend continues to be one of improvement. Our systems and our framework remain strong as demonstrated by our performance in comparison to other countries.

"Every fatality is a tragic event and our commitment to preventing loss of life in the workplace remains unaltered. All workplace fatalities drive HSE to develop even more effective interventions to reduce death, injury and ill health."

The new figures show the rate of fatal injuries in several key industrial sectors:

- 35 fatal injuries to **construction** workers were recorded – a rate of 1.62 deaths per 100,000 workers, compared to an average of 45 deaths in the past five years and a decrease from the 44 deaths recorded in 2013/14.
- 33 fatal injuries to **agricultural** workers were recorded – a rate 9.12 deaths per 100,000 workers, the same as the average of 33 deaths in the past five years and an increase from the 27 deaths recorded in 2013/14.

- Five fatal injuries to **waste and recycling** workers were recorded – a rate of 4.31 deaths per 100,000 workers, compared to an average of six deaths in the past five years and an increase from the four deaths recorded in 2013/14.

The published statistics also include a breakdown by country and region. These are strongly influenced by variations in the mix of industries and occupations. For example in Scotland and Wales compared to England, there are noticeably fewer employees in lower-risk occupational groups, with relatively more in higher-risk ones. In addition, the number of fatalities in some regions is relatively small, hence susceptible to considerable variation.

HSE has also released the latest available figures on deaths from asbestos-related cancer.

Mesothelioma, one of the few work related diseases where deaths can be counted directly, contracted through past exposure to asbestos killed 2,538 in Great Britain in 2013 compared to 2,548 in 2012. A more detailed assessment of the data will be provided as part of the annual Health and Safety Statistics release at the end of October. As this draws on HSE's full range of sources, including changes in non-fatal injuries and health trends, and will provide a richer picture on trends.

The Changing Demographic of Construction

By Mark Paterson, senior risk manager, QBE

Construction accounts for 6 per cent of the UK economy and remains the most dangerous land based work sector. Its output is expected to steadily rise over the next five years but this post-recession turnaround is posing a new set of health and safety threats.

The industry is struggling to address a shortage of skills, indeed research recently completed by QBE among the construction sector revealed that almost 7 in 10 firms plan to recruit additional skilled staff in the next 12 months but half are concerned about the availability of this talent. The on-site demographic is changing as a result; there are considerably more older workers and a marked increase in foreign labourers. This poses additional health and safety challenges that many firms are failing to get to grips with.

The changing demographic of the construction site:

According to 2013 ONS figures, 35,000 construction workers are aged 55 and over. Construction work can be very physically demanding. Heavy workloads combined with the normal effects of ageing can lead to premature physical decline but retaining experienced workers for longer can be hugely beneficial for firms, certainly if their skills are capitalised upon by placing them on more skilled but less physically demanding work and also creating roles for them to train younger workers in safe working practices.

With a lack of young UK nationals being trained to replace those older workers who are retiring, the sector is increasingly reliant on both skilled and unskilled workers from overseas. Employing foreign workers can present its own challenges, notable among which is the language barrier. Firms need to take a proactive approach to managing this now.

They need to carry out site audits to establish English language capability and decide whether or not to enforce a minimum level of English requirement for all workers. Clear communication is critical, firms need to identify practical solutions to ensuring all workers fully understand safety practices, for example relying on imagery to communicate safety requirements as opposed to text.

A false state of security:

The shape of health and safety in the sector appears to be grossly overestimated with Construction unions reckoning that 80% of workplace accidents are unreported and that only 9 per cent of minor accidents are ever reported. This paints an unrealistic picture that all is well in the sector and, worse, puts workers at risk. If it is not reported, it can't be prevented and what was a minor accident to one worker could easily become a major incident for another.

Clear whistleblowing policies that are developed collaboratively with workers and actively promoted and enforced by management will go a long way to addressing negative behaviours on site.

The other side of the coin:

There have been valiant efforts over the years to improve on-site safety in the sector, notwithstanding firm's struggles to address the new challenges outlined above, but often threats to workers' health have played second fiddle.

The 'No Time to Lose' campaign, launched by the Institution of Occupational Safety and Health (IOSH) last year, highlighted the staggeringly high number of occupation-related cancer deaths in the UK. Some industries are more susceptible than others, and certain working patterns have graver consequences.

The prevalence of harmful dust, such as silica or asbestos, and the use of hazardous materials put the construction sector in a high risk category. Last year, for every one accident-related fatality, 100 construction workers died from a work-related cancer.

The measures needed to minimise the risks are often relatively easy to implement and there is no reason why all UK employers, with a cancer related exposure, should not take due precautions and following the hierarchy of hazard control is an excellent place to start.

- Eliminate – redesign the work so that the hazard is removed completely
- Substitute –change the high-risk product to one that doesn't produce a hazard e.g. replacing lead based paint with acrylic paint.
- Engineering controls – install or use additional machinery, such as local exhaust ventilation, to control risks from dust or fumes. Order materials to size, to reduce the need for cutting on-site.
- Administrative controls – identify and implement procedures to enable safe working e.g. use job rotation to reduce the time workers are exposed to hazardous substances, perform risk assessments, increase safety signage and provide awareness training.
- Protective clothing and equipment – as a last resort and only to be considered after all previous measures have been exhausted. Ensure personal protective equipment (PPE) is individually fitted and workers are trained in the function and limitation of each item of PPE.

The consequences of poor occupational health standards can be grievous. By taking simple precautions, providing appropriate training and ensuring health and safety policies are consistently enforced, lives will be saved. What employer doesn't want that?

For more information on health and safety challenges for the construction sector, download QBE's Protecting Employees on site guide.

Roofing Contractor and Director Fined over Brick-Layer Death

A Yorkshire roofing firm and its Director have been prosecuted after a worker fell to his death through a fragile roof-light.

Barry Tyson, a 52 year old self-employed brick-layer, suffered fatal head injuries as a result of the fall whilst he was working to refurbish the flat roof of Aspin Park School in Knaresborough.

Watershed (Roofing) Ltd a framework contractor for North Yorkshire County Council and one of its Directors, Steven John Derham from Bradford, had engaged Mr Tyson to carry out necessary brickwork on the roof, as part of a scheme to add insulation and re-felt it.

Mr Tyson had been kneeling on the roof working when the incident happened on 16th August 2011. When he stood up he fell backwards through a roof-light and into the boys' toilet two metres below. He was taken to hospital by air ambulance but died later from his injuries.

Bradford Crown Court heard today (13th July) that a Health and Safety Executive investigation found Watershed had prepared a construction phase plan which stated that before work was carried out, the plastic domes of all roof-lights needed to be removed and the apertures boarded over to prevent falls, but when roofers accessed the roof it was found that the domes could not be easily removed.

The court also heard Watershed's Director Mr Derham visited the site on the first day to check it had been set up correctly, and the difficulties with removing the roof-lights were discussed with the workforce. It was decided that works could progress without any covering of the roof-lights.

Watershed (Roofing) Limited of Thornton Road in Bradford pleaded guilty to breaching section 3(1) of the Health and Safety at Work etc Act 1974, and were fined £80,000 and ordered to pay £39,381.32 in costs.

Mr Steven John Derham, 47, of Winterton Drive, Low Moor in Bradford pleaded guilty in his role as Director of the company to a breach of section 37(1) of the Health and Safety at Work etc Act 1974 and was fined £7000.

Speaking after the hearing HSE Inspector Martin Hutton said: "Mr Tyson's death was entirely preventable. The risks of falling through fragile materials are well known in industry and yet they remain an all-too-common occurrence.

"Control measures are often simple and cheap to install and companies must ensure they are put in place before workers are put at risk. "Watershed and Mr Derham knew this but allowed work to continue without any protection measures. However, both defendants pleaded guilty at an early stage and have taken remedial action to prevent a recurrence.

"This case should also act as a reminder to Company Directors and Senior Managers of their responsibilities to workers, and that HSE will prosecute those who fail in their duty of care.

"Mr Tyson was a loving father, grand-father and husband and will be sadly missed by his family" Information on working safely on fragile roofs can be found here: www.hse.gov.uk/pubns/geis5.pdf

Construction Firms Sentenced after Worker Death

A national construction firm and a glazing contractor have been sentenced after pleading guilty to safety breaches after a worker fell to his death from a store front in Exeter. Philip Evans was working for specialist construction company London Fenestration Trades Ltd, which was contracted by principal contractor, Sir Robert McAlpine to undertake remedial repair works to a glass façade above an entrance to a department store in Princess Hay, Exeter on 9th November 2011.

While a colleague worked on a higher part of the curtain wall from a mobile working platform, Mr Evans worked from the glass canopy to attach the lower fixings. During the course of this work, he walked along the canopy from right to left and fell through an opening above the Bedford Street entrance of the Debenhams store.

During the Health and Safety Executive prosecution, Exeter Crown Court heard the opening had been created during previous maintenance works when a pane of glass was removed from the canopy and had not been replaced. Married Mr Evans, from Penarth, South Glamorgan fell approximately 4.5metres through the canopy on to the granite setts below. He received serious injuries as a result of the fall and died later in hospital.

The subsequent HSE investigation found the mobile platform provided was inadequate for the work being carried out. The glass canopy on which Mr Evans was working was not a safe working platform as there was no edge protection and there was the large opening through which he subsequently fell. The court was also told neither of the two workers should have left the safety of the working platform basket.

HSE inspector Jonathan Harris said: "The risks associated with work at height are very well known and recognised in readily available guidance. Planning and effective coordination between contractors is a requirement of the relevant safety regulations. Without such planning and sufficient assessment of risk, it is foreseeable that working at height will expose operatives to risks to their safety.

"In this case Mr Evans was working from an unsafe position which exposed him to the potential of falling from the edge of the glass canopy as well as the opening through which he tragically fell.

Sir Robert McAlpine Ltd of Yorkshire House, Grosvenor Crescent, London pleaded guilty to breaching Section 3 (1) of HSWA 1974. It was fined £200,000 with £17, 790 costs
London Fenestration Trades Ltd of Clare Road, Grangetown, Cardiff pleaded guilty Section 2 (1) HSWA 1974. However, as the firm is in liquidation the court could only notionally fine it £200,000 with £17,790 costs.

How Can We Change Enforcement to Improve Health and Safety?

By Simon Joyston-Bechal

England and Wales is on the verge of a revolution in sentencing for health and safety criminal offences. The combined effect of the Court of Appeal's June 2015 judgement against Thames Water Utilities and the proposed new guidelines from the Sentencing Council are set to increase dramatically the level of fines for very large organisations beyond the £100 million mark.

There are respectable arguments on both sides as to whether ratcheting up the level of fines will lead organisations to improve their health and safety performance. Whatever the case, criminal fines are a blunt tool to achieve the goal of behaviour change and accident prevention.

So, do the forthcoming sentencing guidelines present us with a practical opportunity to make a real difference and save lives? I believe they might. The sentencing guidelines could be used to encourage offenders to get together with prosecutors and agree appropriate remedial measures ahead of the sentencing hearing. This would gain traction in an environment of increasing fines if, subject to the discretion of the court, such an agreement would be a factor pointing towards a reduction or suspension of the sentence in combination with a remedial order.

How would this change be achieved?

The currently proposed sentencing guidelines already make reference to remediation and remedial orders. For example, for health and safety offences by organisations, the draft states that in all cases the court must consider whether to make ancillary orders and these may include remedial orders "in addition to or instead of imposing any punishment" on the offender.

This route would be taken up more often and more constructively if the guidelines went a little further. The problem is that in almost all cases the court does not have the time or the experience to initiate an appropriately worded remedial order. In the run up to sentencing, the prosecutors are focusing on getting a 'respectable' fine and the defence are focusing on keeping the fine down. However, if the offender had a real incentive to agree a remediation plan with the prosecutor, things might be different. The guidelines should create such an incentive.

For example, the existing wording in the guidelines could be supplemented as follows:

"Where the enforcement authority and the offender have agreed a remedial measure or measures that are sufficiently specific to be enforceable, then a remedial order may be imposed and the sentence may be reduced, or the sentence may be suspended in whole or in part subject to compliance with the remedial order.

"Without limitation, examples of such remedial measures might include completion of recognised training for holders of specific positions within the defendant organisation, or recruitment or engagement and retention of health & safety personnel with recognised qualifications.

"In appropriate cases, the required remit for such personnel could include: assessing weaknesses in the offender's health & safety arrangements and culture; then developing and overseeing the implementation of suitable and sufficient measures to remedy weaknesses; and finally reporting back to the enforcement authority."

This approach would also work for sentencing of individuals and for sentencing of corporate manslaughter with minor modifications. It should be enough to bring the parties to the negotiating table before many sentencing hearings and allow the HSE or other enforcement authority to make a real difference to the offender's behaviour in a much more targeted manner than the blunt instrument of a large fine.

It could also provide a 'safety valve' for prosecutors as well as defendants against the negative publicity that might arise from the highest fines under the new regime.

In summary, if the Sentencing Council can be persuaded to incentivise intelligent remedial measures that can be discussed and agreed ahead of the sentencing hearing and converted into a remedial order, then the new tougher enforcement regime will stand a much better chance of improving health & safety performance by offenders and gaining public approval.

Dr Simon Joyston-Bechal is a director at Turnstone Law. He is widely regarded as one of the UK's leading health & safety lawyers. Having previously qualified as a doctor, he is uniquely placed to deal with technical, safety and health related legal issues.

As well as defending H&S enforcement, he focuses on training senior management and advising organisations on legal preventive measures to reduce the likelihood of prosecution in the event an incident occurs. Contact Simon at sjb@turnstonelaw.com.