

Sentencing Changes – Friend or Foe?

Craig Swallow, managing director of SoloProtect UK, looks at how changes in sentencing and an organisation's attitude to safety at board level could define a new sphere of competitive advantage.

How does the fear-factor of being fined influence a business's attitude to shaping its risk management strategy? Certainly it goes without saying that the vast majority of employers want their staff to be safe – but does a large fine sharpen the mind when considering your list of priorities when running an organisation?

When the sentencing council announced in November 2014 that new sentencing guidelines for corporate manslaughter and health and safety offences were being considered, you'd expect most legal industry workers and health and safety professionals to immediately understand the significance.

How this legal process eventually informs the decision making by an employer that is specifying a lone worker solution is probably slightly longer. The significance undoubtedly changes some of the conversations we at SoloProtect will be having with would-be customers – and it's important that we all understand the sea-change that is on its way.

Industry is generally speaking, very familiar with The Health and Safety at Work Act 1974, and any associated breaches being enforced by the HSE. More recently, the introduction of corporate manslaughter legislation has indeed seen the scale of potential fines levied upon organisations increase – assuming a guilty verdict is reached. That said, many of the fines were under the £500,000 suggested threshold recommended – for varying factors such as the size of the business chiefly. What we're potentially looking at moving forward however, is the prospect of fines considerably increasing across all areas – affecting both health and safety and corporate manslaughter legislation.

The consultation period for the draft guidelines has now been completed, and responses are now being reviewed with a view to informing a more formalised guideline from the sentencing council expected later in the year – several things are expected to change:

- The review has been conducted because it is thought that current sentences are too light for certain offences.

- Sentences need to have more relevance to the size of the business involved. Corporate manslaughter charges could now reach £20,000,000 for a suitably large organisation found guilty.
- Health and Safety Offences likely to increase significantly – for all offences after 12th March 2015, Magistrates' courts can order fines of unlimited amounts (previously capped at £20,000).

We are not legal experts at SoloProtect, so any new legislation change affects how we engage with our clients in exactly the same way. However, our experiences of how organisations' react to health and safety legislation changes or their implications are both significant and interesting.

It's often the case that these things are rarely at the top of a management agenda until a serious incident occurs – we understand why this is, running a business day to day will always dominate the agenda first and foremost. In the immediate aftermath of an incident however, we often then see a huge amount of activity and information searches – particularly if it involves negative PR, and a falling share-price etc that demands a visible reaction for stakeholders both internally and externally. However as time-passes, negative PR pressure abates and we often find that if no plans are followed through within two months of the incident, often plans can fall by the wayside or just move down the agenda again.

Clearly, switching between knee-jerking around an incident and hoping for the best during the good times is not the best way to run a business – but some would argue it's been more cost-effective to do that in the past.

As these planned changes take place and inform sentencing from around the end of 2015, is there an argument that perhaps the issue will force organisations into two camps? The first containing organisations that embrace the need for change and use what they're doing as part of a competitive advantage running through their communications, with the latter remaining in the more traditional boom-bust, health and safety behaviours.

Going back to competitive advantages – currently all FTSE 100 companies (many of which comply with ISO 31000) are obliged to report annually about their risk management activities. This includes creating a framework of risk management, having a risk management policy, a risk plan and a risk owner – whether the latter is a person or entity.

They have to demonstrate that risk is properly considered and managed. Using reporting like this in relation to making provision for the safety of staff allows a business to show it cares about the health and wellbeing of its employees, and is prepared to invest accordingly. This dramatically reduces the significant financial risk (of large fines etc) that a business carries whilst also having less operational profit drain through de-motivated staff leaving or being absent through stress or illness/replacement staffing/management time spent etc.

Also, as good process typically filters down over time, it's likely that other companies outside this grouping will seek to replicate this model to inform their own competitive advantage. Organisations in the squeezed middle-ground of a market will invariably look to migrate upwards to elevate their offering over competitors where possible. In short, 2016 could prove to be an interesting year in health and safety.

By Craig Swallow, Managing Director of SoloProtect UK – a business that helps organisations small and large, to protect their lone workers. SoloProtect is Exhibiting at the Safety & Health Expo 16-18 June 2015, Stand L2100.

Leadership: It's Time To Move On

By Nick Wharton

As H&S professionals or even as general managers with a genuine interest in safety and health, what is our main objective? I guess most people would agree that it is to prevent harm: injury, pain, suffering, illness, disability, death, damage, disruption.

Let's face it this should be a really easy job! On the face of it we should have no problem getting everyone on board. It is an easy message to sell. Ask any employee at any level in any organisation whether or not they want to get hurt or see anyone else get hurt.

Obviously, they will all say no. It is one aspect of work that we can get everyone to agree about. So why does it prove so difficult? Why does that improved safety performance that we all seek turn out to be so elusive?

The answer may well, at least in part, lie in how we go about trying to achieve our goals. I would like to suggest that there is too much emphasis on safety management and a significant lack of safety leadership. Safety management is important: policies, procedures, rules, risk assessments, inspections and audits.

These all form a solid foundation and without them securely in place any successful performance is on shaky ground and prone to failure.

The problem comes when we fail to go beyond these basic building blocks, when we fail to add the essential elements of safety leadership: engagement, feedback, encouragement, recognition, support, involvement, listening, motivation, vision and direction.

If we rely purely on safety management we may well get people choosing the right behaviour – because it is expected of them, the system tells them to do it that way, they know they may get in trouble if they don't do it the right way. What safety leadership will give you is a workforce choosing the right behaviour because they believe it is the right thing to do; they do it because they want to.

Back to our original purpose – to prevent incidents that could have a wide range of implications. Pretty much all of these incidents are caused by somebody's behaviour; behaviours result from the prevailing culture; culture is inextricably linked to leadership. So why don't we tackle the root cause? I say again, there is too much focus on systems and insufficient, genuine interest in people.

Let's be honest, the traditional impression of H&S in the workplace is one of rules and regulations, checklists and clipboards. It is all a bit negative and a bit miserable. Not many people look forward with enthusiasm to the next H&S briefing or training day, despite it being the one thing that we all agree upon. The profession can wring its hands and complain that it is all so unfair and difficult to get people on board or we could ask the more challenging question: "what is our part to play in these perceptions?"

I would suggest that at least part of the answer is that the profession is too comfortable focussing on the systems and safety management whilst there is not enough understanding of, or willingness to embrace, the importance of behaviours, culture and leadership. If we are to move forward either as individuals, within organisations or as a profession there must be a willingness to take head-on the more difficult, ethereal and less concrete issues. It might not be easy to give up the comfort blanket of our systems but it is time to grow-up and look elsewhere. Ultimately this will help us to achieve what we are all working towards.

Nick trained as an environmental health officer, which resulted in an H&S enforcement role with a Local Authority, to which he later added the safety officer role. This in turn led to full-time HSE Management roles in industry. During this time Nick developed his own highly successful approach to behavioural safety. For the past 10 years he has worked with JOMC delivering Culture Change consultancy to a wide range of clients.

Business Man Jailed After Lithuanian Worker Killed After Fall From Roof At Blackburn Mill

A business man in charge of converting an old mill has been jailed, and his father, the owner of the building, given a suspended jail sentence following an incident in which a Lithuanian worker died in a fall.

The worker, Ivars Bahmanis, a 55 year old Lithuanian national living and working in Blackburn, was involved in building work at the former canal works building at Manner Sutton Street when he fell nearly eight metres and died as a result.

During the investigation HSE discovered that another employee Juris Lesinkis, a Latvian national living and working in Blackburn had fallen from a height and broken his leg at the same site, an accident which was not reported to HSE.

At the sentencing hearing on the 19th May, Preston Crown Court heard that Mr Bahmanis was carrying out refurbishment work involving installing metal brackets for new roof joists when the incident happened on the 29th January 2012. While he was working alone he fell from the wall, due to a complete lack of safety measures being in place.

Three members of the same family who had pleaded guilty at an earlier hearing to the charges received the following sentences.

Tameem Shafi, 31 (19/5/84), of Clarence Street, Blackburn, who was in charge of the project, was sent to prison for 45 weeks for two breaches of regulation 6 (3) of the Work at Height regulations 2005.

Mohammed Shafi Karbhari, 59 (28/9/55), of Clarence Street, Blackburn, the owner of the mill, was sentenced to 24 weeks imprisonment suspended for 2 years and ordered to pay £20,000 towards prosecution costs for breach of regulation 9 of the Construction (Design and Management) Regulations 2007.

Umar Shafi, 20 (11/6/94), of Clarence Street, Blackburn, who was in charge of the work on the day, was sentenced to 120 hours unpaid work and ordered to pay £3,900 towards prosecution costs for two breaches of regulation 6 (3) of the Work at Height Regulations 2005.

The prosecution followed an investigation by HSE which found that the defendants had failed to plan the work at height, employ competent contractors, that they had deliberately chosen to save money and were well aware that work was being carried out in an unsafe manner using unskilled workers.

Following the case HSE Inspector Allen Shute said: "The dangers of working at height are well known – and can be easily and safely managed. It needs to be properly planned and carried out by competent contractors.

"The defendants tried to save money by asking unskilled workers to carry out hazardous work activities around the building. As a result Mr Bahmanis died needlessly in a horrifying incident which could and should have been prevented.

There had also been a previous incident on site where another worker fell from height and broke his leg, which was never reported to HSE and only came out during the investigation. This should have served as a warning to them."

Double Prosecution After Londoner's Fatal Fall

A roofer and a national timber supplier have been sentenced for serious safety breaches after a labourer plunged more than eight metres to his death at a site in Tottenham, north London.

Andrew Ward, 44, from south east London, was fatally injured on 22 May 2012 when he fell through a fragile roof at Howarth Timber's site in Bruce Grove. At the time, he was working for roofer and builder Paul Hardy, trading as Hardy Construction. The Health and Safety Executive (HSE) prosecuted both Leeds-based Howarth Timber and Paul Hardy, from Kent, after an investigation exposed dangerous failings in the planning and execution of the work.

Southwark Crown Court heard (18 May) that Howarth Timber had hired Paul Hardy to fix a leaking cement roof at the site. However, the company failed to check Mr Hardy's competence before work began or properly assessed the risks associated with the job.

Paul Hardy didn't plan the work adequately and failed to provide a risk assessment or method statement detailing how he would carry it out. Instead of making sure there was safe access to the roof, he provided an incorrectly-erected tower scaffold and an untied ladder. He also failed to provide a suitable working platform, covering or guardrails despite the work being carried out near a fragile roof.

Paul Hardy, of Grosvenor Road, Belvedere, Kent, was sentenced to four months in prison suspended for 12 months and fined £3,000 with £11,756 in full costs after admitting breaching Section 3(2) of the Health and Safety at Work etc Act 1974.

Howarth Timber Building Supplies of Prince Edward Works, Pontefract Lane, Leeds, was fined £93,750 and ordered to pay full costs of £12,580 for a breach Section 3(1) of the same Act. Both parties had pleaded guilty at earlier hearings.

Investigating HSE inspector Chris Tilley said: "Falls through fragile roofs are sadly all too common but this tragic incident could have been avoided if adequate checks had been carried out on the contractor's competence, the work been planned properly and carried out with the correct equipment.

"The dangers of working at height are well-known in the construction industry and guidance is widely available. The work here should ideally have been undertaken without the need to directly access the roof, for example by using a Mobile Elevated Working Platform, or, if that is not possible, with safety measures to minimise the risk of falling such as or netting, crawling boards and fall arrest harnesses.

"Falls from height continue to be the most common cause of fatality to workers and accounted for 29% of deaths reported to HSE in 2013/14 – meaning that 19 workers lost their lives in falls that were avoidable."

Steel Firm Fined Over Death At Foundry

A steel foundry has been sentenced after a South Yorkshire worker was killed when he was struck in the face by a shard from an abrasive disc that exploded from a hand-held grinding machine.

Stuart Stead, 49, of Mexborough, Doncaster, was using the hand-held grinder while he worked on a casting at H.I. Quality Steel Castings Ltd in Fornsett Street, Sheffield, on 7 March 2012.

As he used the high-frequency machine, the disc fitted to it suddenly exploded catapulting fragments across his workbay. A shard went straight through Mr Stead's visor and hit him in the mouth. Mr Stead, a father of three grown-up children, received fatal injuries and was pronounced dead at the scene. The incident was investigated by the Health and Safety Executive (HSE), which today 11 May prosecuted H.I. Quality Steel Castings at Sheffield Crown Court. The company pleaded guilty to a serious safety breach at an earlier court appearance (9 Feb).

HSE found the abrasive disc was nine inches in diameter although the grinder had a maximum permissible tool diameter of only two inches unless guarded. It was also attached to the grinder using a non-proprietary tool.

In addition the disk was rated for 6650 rpm but the grinder was running at 12,000 rpm. The grinder had no guard so as it exploded, the pieces were forcibly expelled across the bay, one ending up some ten metres away. Two of Mr Stead's work colleagues, who were nearby, said later they had heard a loud bang and one turned to see him collapse to the floor. They ran to his aid and saw the visor broken and the piece of disk in Mr Stead's mouth.

HSE said the excessive speed of the grinder coupled with the added load caused by the non-standard attachment had put stresses on the disc way beyond its capacity, resulting in its catastrophic failure. The court was told that HSE's investigation had uncovered a number of previous incidents when discs had come off grinders. However, none of these had been mentioned in monthly minutes of the company's health and safety meetings for the site.

These included:

- In 2011 a 230mm diameter disc suffered a blade disintegration and part went through the foundry roof
- A sand disc attached to a grinder using an adaptor shattered and put a hole in a bench and shattered a light fitting 30 feet up
- A disc flew off a grinder, being used by Mr Stead, which was never found
- A cutting disc bounced off the stomach of another worker.
- And in the week before the fatality – a lump came off a disc Mr Stead was using and shot down the workshop hitting another worker under the eye.

HSE said H.I. Quality Steel Castings Ltd had allowed the use of unsafe combinations of parts with the grinders, many of which were unguarded. Despite some initial training in abrasive wheels, employees did not understand rotation speeds of machines versus discs and had free access to a wide variety of them, contributing to the prevalence of unsafe combinations.

The company also failed to monitor disc/grinder use so unsafe practices were not picked up and near miss incidents were not properly investigated. H.I. Quality Steel Castings Ltd of Foundry Street, Whittington Moor, Chesterfield, was fined £150,000 and ordered to pay £24,000 in costs after admitting breaching section 2(1) of the Health and Safety at Work etc Act 1974.

Visit <http://www.hse.gov.uk> for free guidance on safety in use of abrasive wheels.