



CORPORATE HEALTH AND SAFETY COMMITTEE - 22ND FEBRUARY 2016

SUBJECT: RECENT HSE UPDATES

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform Members, Management and Trade Union Safety Representatives of recent updates in Health and Safety information, advice and guidance

2. SUMMARY

- 2.1 The following report is provided as information for members of the Committee, to ensure they are kept informed of changes to health and safety legislation and approved codes of practice which will affect the Council, as well as advising of any relevant accidents, incidents and prosecutions.

3. LINKS TO STRATEGY

- 3.1 The report is provided as information to Members of the Health and Safety Committee in line with the Council's Health and Safety Policy.

4. THE REPORT

- 4.1 New sentencing guidelines for health and safety offences and corporate manslaughter came into force from Monday 1st February 2016, and apply regardless of the date of the offence. It provides judges with a framework of tiered penalties for different sizes of organisation, level of harm risked and culpability.

The new guidelines are intended to improve sentence consistency and help courts to deal with offences which previously only had piecemeal guidance (such as for non-fatal health and safety offences and those committed by individuals). Previously the guidance just covered fatalities.

The new guidance has been modelled on the sentencing guideline for environmental offences, which was introduced in July 2014. It was developed because the Sentencing Council was concerned that fines for corporate health and safety offences have, in the past, been criticised as too low relative to harm caused, culpability and, on occasions, means of offenders. The Sentencing Council also wanted to ensure that health and safety sentencing would be consistent with the higher fines expected following the environmental offences guideline.

Under the new sentencing guidelines large organisations (defined as those with a turnover more than £50 million) could face fines of over £10 million for the most serious health and safety offences and more than £20 million for corporate manslaughter convictions.

Once the court has established a starting point using these factors, it must take into account financial information, such as the profit margin of the organisation or the potential impact on employees, and any aggravating or mitigating factors. The guideline specifies the following offence ranges:-

- a range of sentences appropriate for each type of offence
- within each offence, a number of categories which reflect varying degrees of seriousness
- sentences appropriate for each level of seriousness
- Offending organisations will be placed in one of four bands depending on turnover to determine the level of penalty to impose for each offence:
 - micro (with a turnover of up to £2m)
 - small (a turnover of between £2 million and £10 million)
 - medium (up to £50 million)
 - large (more than £50 million).

The new guidelines are available from: www.sentencingcouncil.org.uk

4.2 Sevenoaks District Council has pleaded guilty to safety failings after a member of the public was killed when he collided with a road sweeper.

In September 2010 a Council road sweeper lorry was cleaning the outside of a dual-lane slip road when the member of the public drove into the back of the sweeper on his motorbike.

Maidstone Crown Court heard the road sweeper had been travelling approximately 4mph and there was a bend in the road which likely prevented the motorcyclist from seeing the road sweeper. The motorcyclist was pronounced dead at the scene.

Despite the road sweeper having flashing beacons and a '360' sign on the back (a big arrow that indicates vehicles to pass by) the Court agreed that there should have been significantly more controls in place for sweeping a stretch of road like that at which the accident occurred.

A Health and Safety Executive investigation found there was no road specific risk assessment in place, just a generic one covering all road sweeping done by Sevenoaks District Council. This did not identify all suitable control measures needed for sweeping this dual-lane slip road.

Sevenoaks District Council, was fined £50,000 and ordered to pay £32,000 in costs after pleading guilty to breaching sections 2(1) and 3(1) of the Health and Safety at Work etc. Act 1974.

4.3 A Hertfordshire school has been fined for safety failings after a pupil suffered permanent paralysis when a swing collapsed.

St Albans Magistrates' Court heard how, in September 2011, a 13-year-old pupil at the school was playing on a wooden swing in an adventure playground.

The HSE investigation found the swing had collapsed because the supporting timbers had rotted. The heavy wooden cross beam of the swing fell onto the pupil's head and neck causing spinal injuries that resulted in permanent paralysis.

Queenswood School, of Hatfield, was fined a total of £50,000, and ordered to pay £90,693 in costs after pleading guilty to an offence under Section 3(1) of the Health and Safety at Work etc. Act 1974.

- 4.4 Shropshire Council has been fined £25,000 and ordered to pay £39,317 in costs after admitting breaching Section 3(1) of the Health and Safety at Work etc. Act 1974 following the death of a vulnerable day visitor to one of its care centres.

Shrewsbury Crown Court heard the 53 year old service user choked while eating his lunch at a council-run day services centre.

The service user was taken to the Day Opportunity Centre that caters for adults with learning disabilities with a packed lunch provided by carers at the residential home where he lived. At around midday the service user began to eat his lunch when he started to choke and collapsed. Staff at the Centre went to his assistance, who by then appeared to have gone into respiratory arrest. CPR was commenced and paramedics were called. On arrival of paramedics, attempt was made to intubate, this was difficult due to food in the trachea. He was taken to hospital but did not recover.

The service user had a history of choking incidents at both his residential home and day services and HSE argued that appropriate safeguards were not implemented at the Day Opportunity Centre despite these warnings.

- 4.5 A secondary school in Bristol has been prosecuted after a chemistry laboratory technician lost parts of three fingers and sustained a serious internal injury while preparing a highly sensitive explosive for use in a 'fireworks' demonstration to a class of children.

Bristol Magistrates' Court heard the staff member lost the top joints of his left hand index, middle and ring fingers and ruptured his bowel while preparing the explosive at Bristol Cathedral Choir School.

The laboratory technician spent 12 days in total in hospital after the incident in October 2014. Although he returned to work in February 2015, he has since retired.

During the HSE's investigation it was revealed that the preparation of explosive substances had been carried out in the school several times a year since 2009. The mixture in question and other substances had been used in 'fireworks' demonstrations. Other explosive substances, namely flash powder and gunpowder, were also stored in the school's chemistry storeroom.

The HSE informed the court that the incident could have been avoided if the school had implemented clear management arrangements to control and review the risks posed by the chemicals used in its teaching activities.

Bristol Cathedral Choir School admitted that it failed to ensure, so far as is reasonably practicable, the health and safety of its employees, in breach of its duty under Section 2 of the Health and Safety at Work etc Act 1974. It also admitted failing to conduct its undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment, in this case its pupils, were not exposed to risks to their health and safety, in breach of its duty under Section 3 of the same act.

The school was fined a total of £26,000 [£8,000 for the Section 2 offence and £18,000 for the Section 3 offence] and ordered to pay £12,176 costs.

- 4.6 Reading Borough Council (RBC) has been fined following an investigation into the death of a pensioner who died from exposure to legionella.

During the prosecution, brought by the HSE, Reading Magistrates' Court heard how the 95-year-old vulnerable service user arrived at RBC-operated care facility on 24 September 2012.

He had previously been in hospital having suffered a broken leg and was attending the care facility to receive intermediate care before returning to his own home.

However, during his stay he began feeling unwell, complaining of aches and pains including tightness of the chest, shortness of breath and difficulty in breathing. He was also suffering from nausea.

On 16 October 2012 he was re-admitted to hospital and a sample proved positive for the presence of Legionella. He underwent treatment for Legionnaire's disease, but died on 1 November 2012 from pneumonia related to legionella.

The prosecution said the control and management arrangements needed to ensure the risk from legionella is minimised, need to be robust. The court was told, prior to November 2012, RBC's arrangements were not robust enough in a number of areas.

The Legionella training for the key personnel at the care facility was significantly below the standard required. There were inadequate temperature checks and some of those done with respect to thermostatic mixer valves (TMVs) were done incorrectly.

Showers were not descaled and disinfected quarterly as required; flushing of little used outlets was reliant on one member of staff and there was no procedure for this to be done in the absence of that member of staff.

HSE said the failings were systemic and continued over a period of time. There was a history of legionella problems at the home. The monitoring, checking and flushing tasks were given to the home's handyman who was inadequately trained and supervised. There was no system in place to cover for him when he was away so that the requisite checks were not done.

Reading Borough Council admitted breaching Section 3(1) of Health and Safety at Work etc. Act 1974 and was fined £100,000 with £20,000 costs.

5. EQUALITIES IMPLICATIONS

5.1 There are no equalities implications.

6. FINANCIAL IMPLICATIONS

6.1 There are no financial implications.

7. PERSONNEL IMPLICATIONS

7.1 There are no personnel implications.

8. CONSULTATIONS

8.1 All comments from consultees have been included in the report.

9. RECOMMENDATIONS

9.1 That the contents of the report be noted

10. REASONS FOR THE RECOMMENDATIONS

10.1 For information only.

11. STATUTORY POWER

11.1 Not applicable to this report.

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