



CORPORATE HEALTH AND SAFETY COMMITTEE - 17TH FEBRUARY 2020

SUBJECT: RECENT HSE UPDATES

REPORT BY: CORPORATE DIRECTOR - EDUCATION AND CORPORATE SERVICES

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform the Committee about recent relevant accidents, incidents and prosecutions

2. SUMMARY

- 2.1 The report is provided as information for members of the Committee, to ensure that they are kept informed of any matters that could impact on the management of health and safety within the Council.

3. RECOMMENDATIONS

- 3.1 That the Committee note the contents of the report.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To keep the Committee up to date on any health and issues that may be relevant or may require further consideration.

5. THE REPORT

5.1 Teacher crushed by reversing delivery vehicle

- 5.1.1 An independent school has been fined after a Teacher sustained serious injuries when she was struck by a delivery van.
- 5.1.2 Cambridge Crown Court heard that on 26 February 2016, the 48-year-old Teacher was on a trip to the UK, bringing students to the college from Italy. Whilst at the front of St Andrew's College, Cambridge, the driver reversed over the Teacher, only stopping his delivery vehicle after members of the public alerted him. The Teacher sustained multiple fractures and crush injuries; her head was just inches away from one of the tyres.
- 5.1.3 An investigation by the Health and Safety Executive (HSE) found that St Andrew's Tutorial Services Ltd (trading as St. Andrew's College Cambridge) had not adequately segregated vehicles and pedestrians. Although the company had identified measures that would likely have prevented this incident, it failed to implement them.
- 5.1.4 St Andrew's Tutorial Services Ltd pleaded guilty to breaching Regulation 17(1) of the Workplace (Health & Safety and Welfare) Regulations, and was fined £30,000 and ordered to pay costs of £9,197.78.

5.2 LA prosecuted after insecure street vehicle bollard causes child's injury.

- 5.2.1 Hampshire County Council has been fined after a six-year-old girl playing on an unsecured street bollard suffered a life-changing head injury.
- 5.2.2 Bournemouth Crown Court was told that the victim was attempting to leapfrog the 0.9m cast iron hinged street bollard when it fell to the ground. As a result, the girl suffered serious, life-changing head injuries that were initially life-threatening and spent six months in hospital in a critical condition. The extent of her brain injury will not be fully known until her brain has matured.
- 5.2.3 An investigation by the Health and Safety Executive (HSE) found the bollard, which weighed approximately 69kg, was damaged and not appropriately secured. This matter had been reported to Hampshire County Council less than two weeks prior to the incident, and monthly scheduled inspections had failed to identify the issue sooner. The investigation also found insufficient information, instruction and training were provided to the Council's highways department personnel conducting ad hoc and monthly inspections, and the inspection guidance was misleading.
- 5.2.4 A Highways engineer of Hampshire County Council visited the site and reported that, while he found the bollard to be damaged, he did not think the work was urgent enough to warrant immediate repair, and did not class it as a "safety defect". The court was told how Highways Inspectors determine the seriousness of issues using their training and aptitude, and check their process against a Hampshire County Council handbook they carry.
- 5.2.5 The Highways Engineer had reported the bollard had two plastic ties on it when he attended the scene and carried out his inspection. He also told the court that he pushed against the bollard to check its resistance to movement and "it was clear it was stable". He concluded that it was not a safety issue and logged it on the council's system as a job that needed "further inquiry".
- 5.2.6 The highways engineer told the court that he then raised the bollard to its normal height because leaving it on the ground would have created a potential trip hazard.
- 5.2.7 However, experts in the trial had agreed the "main lump" of the bollard weighed around 63 kg and that using cable ties to secure it was an "inadequate control".
- 5.2.8 Hampshire County Council was found guilty after a trial of breaching Section 3(1) of Health and Safety at Work Act and was fined £1.4m plus costs of £130,632.

5.3 LA fined over death of care home resident

- 5.3.1 Derbyshire County Council has been fined £500,000 after a woman with dementia died following a fall at one of its care homes.
- 5.3.2 The 80 year old resident died in hospital a month after repeatedly falling at The Grange Care Home in Eckington in March 2016. She fell while in a communal area at the home and the staff moved her to her bed. Though she reported pain in her left side, no medical advice was sought. She had suffered rib fractures, which lacerated one of her lungs, leading to a haemorrhage.
- 5.3.3 No assessment of the pensioner's needs had been carried out by staff and no measures had been put in place to protect her, despite her being a high-risk resident. There was also a shortage of senior staff due to restructuring by the council.
- 5.3.4 At Chesterfield Magistrates' Court, Derbyshire County Council admitted failing to provide safe care and treatment.
- 5.3.5 On delivering their sentence the Judge said the fine would have been more had the authority not entered an early guilty plea, and questioned how it could have been allowed to happen at a care home rated as "good".
- 5.3.6 The prosecution is the first the Care Quality Commission (CQC) has brought against a local authority since it was given powers to prosecute health and social care providers for failing to provide safe care and treatment back in 2015.

5.4 HSE updates guidance on enforcement for welding fumes

- 5.4.1 The Health and Safety Executive (HSE) has updated its enforcement guidance after new evidence found that exposure to even mild steel welding fume can cause lung cancer and possibly kidney cancer.
- 5.4.2 As a result it no longer permits any welding to be undertaken without suitable exposure control measures being in place, regardless of the duration..
- 5.4.3 The new rules – which apply to all industries – are that any exposure to welding fumes must be controlled by effective engineering measures. The stricter enforcement measures come after the International Agency for Research on Cancer (IARC) evidence showed that general ventilation does not achieve the necessary control.
- 5.4.4 In a workshop or indoor environment, this will typically be local exhaust ventilation (LEV) which will also control workers' exposure to manganese, which has been linked to neurological effects similar to Parkinson's disease.
- 5.4.5 Where adequate control cannot be achieved from LEV alone, or it is not reasonably practicable to provide LEV (eg for work outdoors), employers must provide workers with suitable respiratory protective equipment (RPE) for the welding operative and also consider any other workers exposed to the welding fume, taking account of the level of general ventilation provided and excluding unprotected people from welding areas.

5.5 Health and safety risks associated with the process of forming 3D objects.

- 5.5.1 3D printers are becoming more widely used within industry and design and technology classrooms in schools, however there is now evidence that there are health and safety risks associated with the process of forming 3D objects.
- 5.5.2 The printers use filaments to deposit polymer through a heated nozzle to build three dimensional objects. Desktop printers are generally unenclosed, and concerns have been raised in respect of exposure to potentially harmful fumes and particles.
- 5.5.3 HSE research has informed new CLEAPSS guidance on controlling the risks. The guidance is designed for schools and colleges but the principles apply wherever such printers are used. Exposures can be significantly reduced by: setting a lower printer nozzle temperature, using a filament with a lower emission rate, and placing the printer within an enclosure fitted with a particulate filter and extraction arrangements.
- 5.5.4 All schools within the Borough have access to CLEAPSS' website to view their guidance, and use of their technical helpline. The guidance referred to above may also be viewed at:
http://dt.cleapss.org.uk/Resource-File/3D-printing-in-schools-and-colleges-managing-the-risks.pdf?utm_source=govdelivery&utm_medium=email&utm_campaign=3d-printer&utm_term=pdf&utm_content=MWE-dec-2019

5.6 Decline in number of HSE prosecutions, but increase in health and safety fines and prosecution of individuals.

- 5.6.1 Figures from the Health & Safety Executive (HSE) show that for the third year running there has been a reduction in the number of cases brought to prosecution. In 2018/19 the HSE and the Crown Office and Procurator Fiscal Service in Scotland prosecuted 394 health and safety cases, down 23% from the previous year. One of the influencing factors includes an increase in Newton hearings, where organisations plead guilty but argue to case over the details, with significant time spent on defence solicitor's challenging the sentencing guidelines introduced in 2016.
- 5.6.2 The sentencing guidelines introduced a starting point for deciding on the level of fine to impose by determining the category of offence. The court does this by considering two factors: culpability and the harm caused by the offence. The guidelines suggest that the courts should consider the risk created by an offence and not the actual harm suffered. A prosecution could therefore be brought based on the potential to cause serious injury or ill health event when no actual injury or ill health arose.

- 5.6.3 Further steps in the sentencing process look at mitigation, aggravating factors, assistance to the prosecution, a guilty plea reduction (typically the fine can be reduced by 1/3 if a guilty plea is made at the first hearing), compensation and the overall fine if the court is sentencing for more than one offence. At all these stages, cogent evidence can persuade the judge to make reasonable adjustments, so such evidence must be presented before the court before sentencing.
- 5.6.4 The organisation's turnover is the most significant factor when setting the level of fine. For large organisations with a high turnover but high costs or low profit margins this can have serious consequences. Forensic accountancy evidence can assist when the court reaches this step and enables the sentencing magistrates or judge to "step back" to check whether the overall fine based on turnover is proportionate to the overall means of the offender.
- 5.6.5 Historically, organisations have been more vulnerable than individuals to fines relating to health and safety offences but custodial sentences for individuals are now becoming more common.
- 5.6.6 Individuals convicted of health and safety offences face unlimited fines, community sentences or custodial sentences. Custodial sentences in these cases can range from six months to life for manslaughter. These individuals can also be penalised with director disqualification (maximum period is 15 years), costs and a victim surcharge payment.
- 5.6.7 In the first 12 months of the new guidelines, 4% of the individuals who were prosecuted for health and safety offences received an immediate custodial sentence of up to two years in prison.

5.7 **Cases of work-related stress at an 18-year high.**

- 5.7.1 Total annual cases of work-related stress are at an 18-year high, with more new cases reported than the previous year, figures released by the Health and Safety Executive (HSE) for 2018/19 indicate..
- 5.7.2 The statistics show that stress continues to be a significant cause of workplace ill-health in Great Britain, with 602,000 workers suffering from work-related stress, depression or anxiety and 12.8 million working days lost as a result in 2018/19.
- 5.7.3 As well as the human and quality of life impacts, work-related stress represents a substantial cost to employers, employees and the UK economy.
- 5.7.4 Factors such as workload, lack of support, violence, threats or bullying and changes at work are believed to be the main causes of work-related stress, depression or anxiety, based on previous Labour Force Survey data.

5.8 **CONCLUSION**

Health and Safety remains a key priority for Local Authority consideration. Although the HSE are less proactive than previously, they will investigate and prosecute if there are health and safety failings. Ensuring that health and safety is considered and risks assessed and controlled, assists the Authority in meeting its legal obligations, in protecting the health and safety of employees and others.

6. **ASSUMPTIONS**

- 6.1 No assumptions have been made regarding the information contained in this report.

7. LINKS TO RELEVANT COUNCIL POLICIES

7.1 This report links to the Corporate Health and Safety policy and other CCBC Health and Safety Policies e.g. Asbestos, Fire, Lone Working.

7.2 Corporate Plan 2018-2023.

7.2.1 The report content contributes towards or impacts the Corporate Well-being Objectives:

7.2.2 Objective 1 - Improve education opportunities for all. Through ensuring that case law and relevant Health and Safety updates are communicated. This allows relevant information to be included in CCBC H&S Training which is afforded to employees and other across the borough.

7.2.3 Objective 2 - Enabling employment. Through provision of up to date H&S information which assists CCBC in ensuring that CCBC employees and others affected by our work activities are kept safe and healthy and able to remain in employment.

7.2.4 Objective 5 - Creating a County Borough that supports a healthy lifestyle in accordance with the sustainable Development Principle within the Wellbeing of Future Generations (Wales) Act 2015. Through ensuring that any relevant information on health risks associated with work is communicated allowing the risks to be assessed, controlled and managed and ensuring that Health & Safety policies and practises support good health and well-being.

7.2.5 Objective 6 - Support citizens to remain independent and improve their well-being. Through ensuring that relevant health and safety information is communication and can considered. This assists in ensuring that our health and safety policies and practises can be reviewed and updated as appropriate and continue to promote good health and well-being.

8. WELL-BEING OF FUTURE GENERATIONS

8.1 This report contributes to the Well-being Goals as set out in the Well-being of Future Generations (Wales) Act:-

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales

8.2 It is also consistent with the five ways of working as defined within the sustainable development principle in the Act in that we will seek to consider the long-term impact of Health & Safety policies and practices, prevent any ongoing issues and ensure that Health & Safety is integrated into good management. We will also ensure there is effective collaboration and involvement as required in order to meet our legal Health & Safety objectives in line with the act. This will assist in safeguarding the health and safety of our employees, residents, service users and visitors and ensure that the Council as a public body and social landlord meets its regulatory duties and corporate objectives.

9. EQUALITIES IMPLICATIONS

9.1 There are no equalities implications

10. FINANCIAL IMPLICATIONS

10.1 There are no financial implications.

11. PERSONNEL IMPLICATIONS

11.1 There are no personnel implications.

12. CONSULTATIONS

- 12.1 If any consultee expresses views which differ from the recommendations, the author must include them in this section and as part of the main body of the report state whether the author is of the view that they have been addressed satisfactorily in the report, whether they can/should be incorporated in the recommendation and if not incorporated into the recommendation then why not.

13. STATUTORY POWER

- 13.1 The Health and Safety at Work etc. Act 1974 and Management of Health and Safety at Work Regulations 1999.

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