



CORPORATE HEALTH AND SAFETY COMMITTEE - 18TH FEBRUARY 2019

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 Local authority prosecution - Legionnaires' Disease

- 5.1.1 Tendring District Council has been fined after a member of public contracted Legionnaires' Disease having been a regular user of its leisure centre facilities.
- 5.1.2 Colchester Magistrates' Court heard how the member of public frequently used the showers at Walton Lifestyles when, in November 2016, he fell seriously ill and was taken to hospital where he remained for 18 days. He was diagnosed with Legionnaires' disease, sepsis, pneumonia and chronic kidney failure.
- 5.1.3 Water samples taken from the men's shower tested positive for the legionella bacteria. Legionella bacteria can proliferate in hot and cold water systems that aren't properly maintained or cleaned.
- 5.1.4 An investigation by the Health and Safety Executive (HSE) found Tendring District Council had failed to adequately manage the water systems at a number of leisure centres in the district. The significant failings included not having suitable and sufficient legionella risk assessments for the leisure facilities and not providing adequate control measures required for legionella control. Staff were not adequately trained and a lack of monitoring meant these failings went unnoticed for several months.
- 5.1.5 Tendring District Council, Essex, pleaded guilty to breaching Section 3(1) of the Health and Safety at Work Act 1974 and has been fined £27,000 and ordered to pay costs of £7,500.

5.2 Local authority prosecution – management of contractors

- 5.2.1 Darlington Borough Council has been prosecuted after a self-employed labourer was injured when a pack of roof trusses fell on him.
- 5.2.2 Newton Aycliffe Magistrates' Court was told how, on 5 October 2017, a self-employed labourer was working for two self-employed bricklayers sub-contracted to Darlington Borough Council. He was walking past the front of the building plot when a pack of roof trusses fell on him, trapping him by the head and arm.
- 5.2.3 The HSE found there was an overall failure to adequately monitor work activities at the site. Contributing factors to the incident included:
- Inadequate arrangements for the storage of roof trusses;
 - Failure to manage the amount of materials on site;
 - Failure to plan for parking of vehicles on site;
 - Poor housekeeping on site.
- 5.2.4 Darlington Borough Council pleaded guilty to breaching Regulation 13(1) of the Construction (Design & Management) Regulations 2015 (CDM) and was fined £28,000 and ordered to pay £1,648.45 in costs for failing to plan, manage and monitor the construction phase of a project in their capacity as principal contractor.

5.3 Local authority prosecution – asbestos awareness training

- 5.3.1 Kent County Council has been prosecuted after a school in Sittingbourne, Kent, failed to heed recommendations from a survey to remove asbestos disturbed by its caretaker 18 months earlier.
- 5.3.2 Environmental health officers from the council were carrying out a routine food inspection of the school's kitchen when they found asbestos rope hanging from the ceiling.
- 5.3.3 An investigation by the HSE found that the school's caretaker, on the apparent instructions of the then Head Teacher, had disturbed an asbestos flue pipe and an asbestos rope gasket while removing an air steriliser in May 2013 to make way for a freezer.
- 5.3.4 The HSE served a prohibition notice, closing the kitchen. The notice said: "You have failed to prevent the exposure of employees to asbestos so far as reasonably practicable, in particular the partial steriliser flue and sealant in the school kitchen."
- 5.3.5 Licensed contractors removed the remaining asbestos containing materials and a deep clean was carried out before the kitchen reopened.
- 5.3.6 Canterbury Crown Court was told that an asbestos survey in July 2013 ahead of planned building works graded the exposed flue as a medium risk. The report stated: "Item not due to be disturbed by proposed works but requires safe removal due to potential damage exposure."
- 5.3.7 There was no evidence that this was ever brought to Kent County Council's attention. However, neither the Caretaker nor the Head Teacher had any asbestos management or awareness training. Though the council did have policies on providing asbestos training, it had failed to check and monitor that they were being properly followed.
- 5.3.8 In March 2010 an HSE asbestos management inspection programme found that Head Teachers were not ensuring that Caretakers attended asbestos awareness training and that reporting to the Council was inconsistent.
- 5.3.9 On the HSE's advice, Kent County Council made asbestos awareness training mandatory for all relevant school staff.
- 5.3.10 Kent County Council pleaded guilty to breaching Regulation 10(1) of the Control of Asbestos Regulations at Canterbury Crown Court, and fined £200,000, and ordered to pay full costs of £21,501.

5.4 District council censured over fire safety failures and Legionnaires' risk

- 5.4.1 A West Sussex local authority has been issued with a regulatory notice for failing to assess fire and legionella risks in properties it is responsible for maintaining.
- 5.4.2 In the notice, the UK's Regulator of Social Housing said that up until 2016 Arun District Council risk assessed its housing stock on a reactive basis only, after issues had been reported. *"This means that Arun District Council cannot provide assurance that all of the relevant properties had a risk assessment in place until very recently,"* it said.
- 5.4.3 The social housing regulator added that, though the council has since risk assessed its entire property portfolio, it has not yet completed the actions highlighted in the assessments.
- 5.4.4 Arun District Council was also been criticised over water safety.
- 5.4.5 Under the Control of Substances Hazardous to Health (COSHH) Regulations 2002, the council has a statutory duty to identify and assess the risks of legionella exposure and to implement measures to control them.
- 5.4.6 However, as with fire safety, the Regulator of Social Housing said that until recently the council had only carried out risk assessments in response to concerns raised.
- 5.4.7 Due to the seriousness of these issues and the lack of urgency to address them, the regulator concluded that Arun District Council had breached part 1.2 of the Home Standard *"and caused the potential for serious detriment to [its] tenants"*.
- 5.4.8 In May the results of an external review commissioned by the council reported that there were "significant weaknesses" in its safety and health management system.

5.5 Prosecution following a fatal fall of vulnerable person from moving minibus

- 5.5.1 A healthcare company has been fined after a vulnerable patient suffered fatal injuries during a minibus journey.
- 5.5.2 Nottingham Crown Court heard how, on 16 March 2014, a vulnerable patient was fatally injured when returning from an out of hours GP appointment at Nottingham Emergency Medical Centre in a minibus. Samantha Barton died after opening a door and leaping from a minibus which was travelling at speed on the A52, just outside of Nottingham.
- 5.5.3 An investigation by the HSE found that Elysium Healthcare (Farndon) Limited failed to have systems and procedures in place, including risk assessments, information, instruction and training which would have made sure the minibus doors were appropriately secured by the (fitted) child locks, so that passengers could not leave the vehicle until staff opened the doors from the outside.
- 5.5.4 Elysium Healthcare (Farndon) Limited pleaded guilty at Nottingham Magistrates' Court to breaching Section 3(1) of the Health and Safety at Work etc. Act and fined £500,000 and ordered to pay costs of £67,500.

5.6 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.

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

Objective 1 - Improve education opportunities for all. Through ensuring that case law and relevant Health & 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.

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.

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.

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

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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