

Judith Hackitt's 'Risk Assessment' A Sting in the Tale

Some of the debates which take place on social media are fascinating - if not sometimes a little disturbing.

I came across a debate raging last week among health and safety professionals, not about major health and safety risks but about the right response to a wasp sting if it happens in the workplace.

Someone somewhere had been stung while in the workplace and the work manager was demanding to see the risk assessment and wanted a full investigation into the incident. The originator of the debate had been tasked with conducting the investigation.

But what to investigate? How the wasp found its way into the workplace? How to prevent further wasp stings? Should there have been a risk assessment for wasps in the workplace? Should the incident be recorded in the accident log? Is there a need for safety signs saying "Beware of wasps"?!

It was shocking to see the number of contributors to the online debate who supported doing a risk assessment and conducting an investigation or trying to come up with measures to prevent a recurrence and so on. I hope most of you reading this share my view this would be a totally disproportionate response?

Now, there are a few people who can react very badly to wasp stings – they can trigger allergic reactions that can - in extremis - be fatal. Even so, after someone gets stung in the workplace surely the common sense approach is to check that the organisation's first aid response was administered quickly and effectively? Is there anyone on the workforce known to have an allergic reaction? Simple follow up steps – no need for lengthy risk assessments and investigations.

Perhaps the most worrying thing in the debate was a general sense that too many senior managers' knee jerk reaction to any incident, no matter how trivial, is to call for a "full investigation" – leaving the poor health and safety adviser having to explain to everyone why they are investigating a wasp sting! What on earth is going on here? No one can seriously expect to be prosecuted because an employee was stung.

It's highly unlikely an employee would even pursue a civil claim against the employer. So why investigate? What is there to learn? Not a lot.

It's time for some leadership here and it should start with managers showing common sense and determining real incidents for concern and responding appropriately, and its time for health and safety advisers to be frank and tell their bosses when an "over the top" reaction is likely to do more harm than good.

British Workplaces Among Safest in the World

Figures at a record low on the 40th anniversary of the Health and Safety at Work Act

The number of people who lose their lives at work has dropped sharply by 85 per cent over the past forty years, from over 650 every year in 1974 to a record low of 133 today, new figures reveal.

The number of injuries at work has also reduced considerably by 77 per cent over the same time period, from 336,701 to 78,222. The statistics illustrate the enormous impact of an act that created a flexible, proportionate and world class regulatory system.



The 1974 Act paved the way for the creation of the Health and Safety Commission and the establishment of the Health and Safety Executive as we know it today – which regulates health and safety law working with industry to help them manage their health and safety risks effectively and also bringing irresponsible employers to justice.

Minister of State for Health and Safety Mark Harper said:

"Britain has come an incredibly long way over the past forty years in protecting its workforce. Our workplace safety record is now the envy of the world, with businesses and governments queuing up to tap into our expertise.

"Any death at work is a death too many. But few can dispute that the reduction in fatalities and injuries over the past 40 years is a significant step forward. Britain is now officially one of the safest places in Europe – and the world – to work.

"So, while we all rightly curse false health and safety excuses, it's worth thinking how fortunate we are today that we can go out to do a hard day's work safe in the knowledge that our safety is being taken seriously."

Judith Hackitt, Chair of the HSE, said:"Our health and safety law places responsibility on those who create risk to manage that risk in a proportionate practical way. It sets standards in terms of outcomes to be achieved, not by straitjacketing dutyholders and business into doing things in a particular way according to prescriptive rules.

"This means that it is universally applicable – regardless of whether you're farming, fracking for shale gas or working with nano-materials in an ultra high-tech laboratory. The Health and Safety at Work Act may be 40 years old but it – and our regulatory system - are world class."

Last year there were 27 fatal injuries to agriculture workers, 42 in construction and four in waste and recycling, all lower than the average over the past few years

Disqualified Director Jailed Over Worker Death

A businessman has been jailed for serious fraud and safety offences following the death of a worker who was crushed and killed by a two-tonne metal sand-moulding box.



The court was told that Paul O'Boyle had been disqualified from acting as a company director for 12 years in 2006 but continued to act in that capacity at a number of foundry companies, including Aztech(BA) Ltd, which operated from premises in Hampshire.

In running Aztech, Mr O'Boyle was aided by Russell Lee, who agreed to be the registered director of the company. Lee was given a suspended sentence for similar offences.

The offences came to light following the death of Ian Middlemiss, 40, from Thornhill, Southampton, who was crushed beneath a heavy sandbox on 30 September 2010. Colleagues scrambled to free him, but he was pronounced dead at the scene by paramedics.

HSE investigated the death and identified serious concerns with the systems of work in place at the time and with the lifting equipment. HSE became aware of the Companies Act offences and a joint investigation with the Department for Business, Innovation and Skills (BIS).

HSE found that the crane at the centre of the incident had not been checked and tested as the law requires, and there were inadequate provisions in place covering competency, supervision or training. The court heard the incident could have been prevented had the system of work been reviewed and properly assessed.

Inspectors also identified problems with lead exposure. Substances containing lead were used elsewhere at the site as part of a separate bronze moulding process, but the control and health surveillance measures were insufficient – meaning workers were being exposed to potentially harmful levels of lead without realising it.

The court heard that at the time of Mr Middlemiss's death, the foundry was the subject of three improvement notices served by HSE following earlier visits in September 2009 and June 2010. A number of important safety improvements were required but few had been satisfactorily implemented, largely, claimed the management team, because of financial constraints.

HSE argued that the fatal incident could have been avoided had the necessary changes in the relevant enforcement notices taken place.

Aztech BA Ltd was sentenced for a breach of Section 2(1) of the Health and Safety at Work etc act 1974, after a guilty plea was submitted on behalf of the insolvent firm by its administrators. The court imposed a fine of £100,000.

Paul O'Boyle, 56, from Andover, was jailed for a total of 26 months: 16 months for a breach of the Health and Safety at Work etc act 1974;

ten months for a breach of the Fraud Act 2006; and a total of eight months concurrent for four breaches of Section 13 of the Company Directors Disqualification Act 1986. He was also disqualified from being a company director for the maximum of 15 years.

Russell Lee, 67, of Southampton, was given a 12-month prison sentence suspended for two years after admitting the same breach of the Health and Safety at Work etc act 1974 and a concurrent six months, also suspended, after pleading guilty to aiding and abetting O'Boyle in his disqualification.

Lee was also disqualified as a director, for seven years, ordered to pay £8,000 toward prosecution costs and given 150 hours' community service.

In terms of other offences, the judge heard that between 2006 and 2011 Paul O'Boyle contravened two orders disqualifying him as a director by acting in that capacity in no fewer than four separate companies, including Aztech.

He was also responsible for the cross-firing of cheques, which were written from the bank account of one of the companies, which was no longer trading, to provide funds for Aztech.

BIS investigators established that Aztech drew almost £92,500 in this way, taking advantage of a short window after the cheques were presented but before they bounced.

The investigators also established that Russell Lee aided and abetted Paul O'Boyle as the registered director of Aztech, performing tasks such as writing blank cheques for Mr O'Boyle to run, but not fulfilling the responsibilities of being the director of the company, allowing O'Boyle to run the business.

In his sentencing comments, the Recorder of Salisbury, His Honour Judge A H Barnett, said Paul O'Boyle had behaved in a "disgraceful" way and had been culpable of "extremely shoddy business practice".

After reading a statement for Mr Middlemiss's father, the judge said the impact of the incident had been devastating: "It was harrowing, and underlines the personal tragedy that could have been avoided."

After sentencing, Tim Galloway, HSE director of operations, southern division, said: "The safety standards at Aztech BA Ltd fell well short of those required, as Paul O'Boyle and Russell Lee were only too aware.

They knew improvements were needed to protect workers like Ian Middlemiss and they had clear responsibilities as senior management to ensure the necessary changes were implemented.

"Sadly one of the many areas that was seemingly overlooked was the system of work surrounding the overhead crane. Had this been properly assessed then Ian's tragic death could have been prevented."

Brothers Jailed for Asbestos Exposure

Two brothers have been jailed after they exposed workers to asbestos. At least seven workers, one aged just 17 at the time, are known to have been exposed to asbestos during refurbishment work at a former print works since February 2012.

Neither Akram Hussain, 52, and Inam Hussain, 47, were qualified or experienced in construction, demolition or refurbishment work, nor were they licensed to remove asbestos.

Despite repeated visits from HSE inspectors and numerous enforcement notices warning them of their failings, the brothers continued to refurbish the building and disturb asbestos material – putting workers at risk.



A prohibition notice was issued on 17 February 2012, stopping all work with, or liable to disturb, asbestos. A 'direction to leave undisturbed' was also issued for the building until HSE had provided written confirmation that work could continue.

Several lorry-loads of waste contaminated with asbestos were removed from the site and taken to an unlicensed waste disposal site in Stoke-on-Trent. Workers were also witnessed exiting the site covered in dust and not wearing the correct protective clothing.

A further prohibition notice and an improvement notice were served on Akram Hussain on 25 February 2012. A separate prohibition notice was served on Inam Hussain on 18 May 2012 for the non-licensed removal of asbestos from the building.

An asbestos survey was later carried out, but work inside the building continued to disturb materials containing asbestos.

The court heard that HSE is aware of at least seven workers being exposed to asbestos in the building. Many more could have been exposed during the course of the refurbishment project.

Akram Hussain and Inam Hussain both pleaded guilty to safety breaches. Akram Hussain was given a custodial sentence of 22 months and was ordered to pay costs of £43,000. Inam Hussain was given a custodial sentence of 14 months.

Speaking after the hearing, HSE inspector Lindsay Hope, said: "The Hussains have shown a willful disregard for the health and safety of workers and others.

"Our investigation uncovered a catalogue of serious errors, safety failings and disregard of the laws around the safe and correct removal of asbestos.

"This was an appalling case of failing to properly plan, manage and resource this project, which led to workers being exposed to risks to their health from asbestos."

Construction directors invited to witness live PACE interview

Representatives of the construction industry are being invited to an event where they will be shown the process of being interviewed under caution.

Working Well Together, a campaign to improve health and safety in the construction industry, has organised the half day event 'Wrong Direction, Don't Fall For It' at Keele University in Staffordshire from 8.30am to 1pm on 19 September.

Presented by HSE inspectors and lawyers, a director of a fictional company will be interviewed under Police and Criminal Evidence (PACE) conditions in front of the audience.

The scenario is an employee who has fallen from height through a fragile roof, with the HSE questioning Marc Taylor, the operations director for Dizzy Heights, before deciding whether or not to prosecute the company for safety breaches.

The operations director will be cross-examined by a barrister before the barrister and the lawyer take questions from the floor.

HSE inspector, Janice Dale, said: "Protecting the health and safety of employees and/or members of the public, who may be affected by construction activities, is an essential part of risk management and must be led by those at the top.

"Failure to include health and safety as a business risk in key decisions can have catastrophic results.

"Those who come along will be able to see first-hand what it is like for a representative of the company to face questioning under PACE conditions, and the implications for those involved."

For more information, or to book a place, contact Anne Twigg at HSE: anne.twigg@hse.gsi.gov.uk.

CD275 – Consultation on draft Approved Code of Practice (ACOP): Safe use of lifting equipment (L113)

This consultative document seeks your views on the revised version of the Approved Code of Practice (L113) relating to the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER).

This revision follows the agreement to review such documents identified by Professor Ragnar Löfstedt.

The amendments proposed are designed to bring the document up to date with regulatory and other changes and to make the understanding and use of the document easier, particularly with clarifying which equipment is subject to the provisions of the regulations and the role of the competent person.

The amendments also accommodate suggestions made in the earlier consultation in September 2012.

The proposed amendment will be of interest to those that work with any lifting equipment provided at work or for the use of people at work, those who employ such people, those that represent them and those people who act as a competent person in the examination of lifting equipment.

This consultation began on **20 August** and ends on **14 October 2014**.

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