



Callsafe
Services Ltd

CONSTRUCTION HEALTH & SAFETY CONSULTANTS & TRAINERS

callsafetoday

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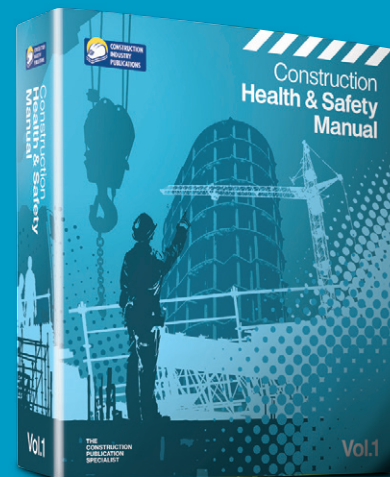
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editorswelcome

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Dave Carr | Director, Callsafe Services

Welcome to the June edition of Callsafe Today. Please follow the social distancing and hygiene requirements during the release of the COVID-19 restrictions. We as individuals, and we as a country, cannot afford another lock-down.

Articles & News

Included within this edition are the following articles and other news provided by the government, the construction industry and health and safety publications, and selected by the editor, during June.

- Back behind the wheel
- Face fit testing - The essentials
- HSE safety alert issued against KN95 facemask
- Latest construction guidance for working safely during COVID-19
- Mental Health Article - Wellbeing at Work Part 3 - Prioritising Mental Health at Work

- Most recent HSE statistics show limited action against management

There are still limited prosecutions reported in this edition due to the lack of prosecutions taking place.

Training

Callsafe are still not providing of face-to-face training due to our risk assessment still not considering this to be reasonably practicable. We are still offering our e-learning courses, which are listed on pages 20 & 21, and are available on our website at: www.callsafe-services.co.uk/e-learning.

We have now developed our platform for providing Live Online Training, with our first offering as a public course being the APS accredited CDM2015 Awareness Course, as advertised on pages 6 and 7. The first of the live on-line training courses have been provided as an

in-house course to one of clients, with favourable responses. All of our face-to-face courses are also available in the Live Online Training format for organisations wishing to book courses for their staff as an “in-house” course, but with delegates participating from various locations (home).

Free Telephone Compliance Check Offer

Callsafe are also still offering a free compliance health check, by telephone, to discuss your current and future health and safety needs. Please see page 13 for the ‘Health Check Your Compliance – Can We Help?’

Best wishes

Dave Carr

Director | Callsafe Services



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Back behind the wheel

The following article was written by James Pomeroy, Group health, safety, environment and security director at Lloyd's Register, and published in the IOSH magazine on 9th June 2020.

1. As the lockdown continues to ease and furloughed employees return to work, more of us will resume driving for work and commuting. James Pomeroy considers the indirect increase in road deaths due to people avoiding public transport during the pandemic.

2. With large groups of individuals not having driven significantly for many weeks and the road network scheduled to get busy, organisations should consider how the driving risks that their workers face may have changed as a result of the pandemic, and what measures they should take. This is important because for many businesses, driving is one of the most significant safety risks they face, and the rates of people killed or seriously injured on UK roads has increased in recent years.

INCREASED ROAD USERS

3. With the government currently advising people to avoid public transport to enable social distancing, employees who typically use trains, tubes and buses to get to work may start driving for all or part of their journey. The increased road use could

result in higher levels of congestion and air pollution, and potentially a rise in road accidents and fatalities.

4. Risk does not operate in a vacuum and the well-intentioned advice to avoid public transport, could have unintended consequences. For example, in the 12 months following 9/11, the understandable fear of flying led to a 20% decline in US airline passengers as many Americans opted to drive. The switch to roads resulted in an estimated 1,600 additional road deaths in the following year.

5. Given that surveys indicate that many UK workers are planning to follow the advice and avoid public transport, more people driving on busier roads may result in employees working longer days and increase levels of fatigue. Organisations should therefore consider the direct and indirect impact of such developments and how occupational road safety policies and fatigue management programmes may need to adapt.

GETTING EMPLOYEES READY

6. Over the coming weeks, many employees who have been working from home for several months or on furlough will resume driving for work, while others will go back to their daily commute. This will see many employees getting back behind the

wheel after several months of limited driving. Whether employees are driving for work or commuting, as they return to the workplace, many will need to re-learn many of the tacit skills, habits and behaviours that keep them safe behind the wheel. Organisations should consider providing refresher training and guidance on safe driving techniques within their return to work training, particularly for employees whose work involves driving. This could include inspecting and checking vehicles that may not have been used for many weeks.

A DIFFERENT TYPE OF DRIVING EXPERIENCE

7. As workers get back behind the wheel, they may experience a different driving environment. To encourage social distancing, many local authorities are stepping-up their sustainability programmes and reallocating road space in cities to pedestrians and cyclists. This could mean narrower roads, higher rates of congestion and consequently longer and more stressful journeys.

8. The roads may also be busier as research indicates that many people with short commutes are looking to cycle or walk more. This is great news for sustainability and wellbeing, but could have implications for road safety, particularly given that over half the



fatalities on UK road involve cyclists, motorcyclists and pedestrians. This is not just an issue for those driving in the cities – it's worth noting that nearly 60% of all road fatalities occur on rural roads. The combination of reduced road capacity and an increase in vulnerable road users could change the nature of the driving experience and the occupational road risk many organisations face.

A DIFFERENT KIND OF WORKING DAY

9. Changes within the workplace and to working patterns may also indirectly impact driving safety. To maintain social distancing, employers are separating teams, and introducing staggered shifts

and longer working days. The impact of working longer and more compressed working shifts could increase levels of fatigue, a well-known precursor to driving accidents.

10. The recent prosecution of Renown Consultants by the Office of Rail and Road is a timely reminder of the importance of fatigue management. The prosecution involved the tragic death of two contractors who died in a road accident that was attributed to inadequate rest periods. With studies indicating that sleep-related vehicle accidents account for a fifth of UK vehicle accidents and a quarter of fatal and serious accidents, the Renown case reminds us that an organisation's obligation to manage rest periods and

driving hours does not stop during a pandemic.

11. With the virus continuing to dominate the work of the OHS profession, it's important that we do not overlook some of the more conventional risks such as driving, many of which present a significant risk to our workers and the public. It's equally important that we allow for the implications of the changes that we are having to make in our workplaces so that they do not increase risks elsewhere within our organisations. As Newton's Third Law advises, every action has an equal and opposite reaction.



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9 July 2020	13.30 – 16.30	Part 2	
21 July 2020	09.30 – 12.30	Part 1	Book here
22 July 2020	09.30 – 12.30	Part 2	
4 August 2020	09.30 – 12.30	Part 1	Book here
5 August 2020	09.30 – 12.30	Part 2	

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Contact Gemma Esprey for more information:
gemma.esprey@callsafe-services.co.uk



This course is designed to provide all persons involved in construction projects, including current and potential clients, project managers, principal designers, designers, principal contractors and contractors with a broad overview on the CDM Regulations 2015. This course is accredited by the Association for Project Safety (APS).

Session 1 Introduction and Setting Course Objectives**Session 2 Legislation**

History, application and definitions of CDM. CDM2015 transitional provisions. Domestic clients. Accident statistics and causations.

Session 3 Relationships between the Client, Principal Designer, Designers, Principal Contractor and Contractors

An outline of the interfaces between the parties involved in the construction process from concept to maintenance. Relationships between design, PCI, CPP & HSF.

Session 4 Client

Who is the client? Duties of the client. Evaluating competence and resources. Information to be provided by the Client. Notification to HSE.

Session 5 Principal Designer

The appointment and duties of the principal designer. Pre-Construction Information. Assessment of the design and the use of BIM. Health and Safety File. Optional assistance to the client.

Session 6 Designers

Who is the designer? The designers' duties. An illustration of the requirements to eliminate and reduce risks by design. Information transfer and co-operation with the principal designer and other designers, etc.

Session 7 Principal Contractor

The duties of the principal contractor. Development and implementing the construction phase plan and the requirements for the health and safety file.

Session 8 Contractors

The duties of the contractors. Management, co-operation, co-ordination, communication, information and training. Summary of CDM2015, Part 4, General Requirements for all Construction Sites.

Session 9 Examination

Closed book, multi-choice examination.

Session 10 Course Review and Conclusion**Course Objectives**

Upon completion of the course, delegates should:

- ☐ understand the need and application of the CDM regulations;
- ☐ appreciate the framework of the regulations and the interfaces between the key parties; and
- ☐ understand the duties and responsibilities of the client, principal designer, designers, principal contractor and contractors.

Maximum number of delegates: 8

Face fit testing - The essentials



The following article was published in the Safety and Health Practitioner magazine, shoponline, on 25th June 2020.

Companies should undertake periodic face-fitting tests on masks because one-off tests do not sufficiently protect workers. Also, masks should have a maintenance record.

Health and Safety Executive (HSE) guidance dictates that where respiratory protective equipment (RPE) is used, 'it must be able to provide adequate protection for individual wearers. RPE can't protect the wearer from leakage. A major cause of leaks is poor fit – tight-fitting facepieces need to fit the wearer's face to be effective.'

No two faces are the same, therefore

it is very unlikely that one particular type or size of RPE facepiece will fit everyone. Fit testing is designed to ensure that the equipment selected is suitable for the wearer.

For more detailed information on fit testing RPE, read the HSE's publication Guidance on respiratory protective equipment (RPE) fit testing INDG479.

PPE and COVID-19

During the coronavirus outbreak, the HSE has developed guidance about issues with PPE, including PPE in health and social care work and PPE in non-healthcare work.

Medical and fabric masks: Who wears what when?

The World Health Organization (WHO) has published a video outlining

when medical masks and fabric masks should be worn in the context of the COVID-19 pandemic.

Importance of periodic face fit testing
Fit testing will need to be repeated when there is a change in equipment or the facial characteristics of the wearer that could affect the fit. Loose-fitting devices, such as powered respirators with a visor or hood, need not be face-fit tested but still need to fit observably close to the face. Therefore, it's possible that prior to this guidance, workers may only have ever had one face fit test. HSE's HSG 53, Respiratory protective equipment at work – A practical guide, published in May 2013, raises some important, related issues around face fitting.

For instance, the guidance says: 'It is

also good practice to have a system to ensure repeat fit testing is carried out on a regular basis. This is especially important when RPE is used frequently as a primary means of exposure control, e.g. annual testing for workers involved in licensed asbestos removal. If there are any changes to a person's face though, for example, weight loss/gain, scars etc., a repeat fit test will be necessary.'

It is not uncommon that several people within an organisation will wear a mask which they were originally tested for, but no longer fits. In addition, several people use masks for long periods of time, whereas the HSE guidance states: 'It is recommended that continuous wear time for tight-fitting (unpowered) RPE is less than an hour, after which the wearer should take a break.'

Another challenge for employers is workers that have beards. Guidance from HSE recommends that those with facial hair, scars, wrinkles or marks which prevent a tight seal in the area use a loose-fitting device: 'The wearer needs to be clean-shaven around the face seal to achieve an effective fit when using tight-fitting facepieces. Training is a good opportunity to make employees aware of this. If workers have beards, or are unable to be clean-shaven, a tight-fitting device will not be suitable so an appropriate loose-fitting device should be chosen.'

The HSE's guidance – Is your mask protecting you? raises this important,

point as having this knowledge will help provide them with better protection.

How to conduct face fit testing

You can use one of two face-fit testing methods – either quantitative or qualitative – but whichever one you choose, they need to be carried out with the same exercises and conditions and with a competent person doing the face fit test.

The key points are:

- No smoking, drinking, eating or chewing gum for 15 minutes before the test, as this could affect the results;
- No beards or stubble where the mask seals because this affects the fit (some goatee beards are ok but it depends where the mask sits on the wearer; there may also be an issue with longer side burns);
- A test must be done for each different type of mask – so anyone wearing a dust mask and a halfmask will need more than one test.

This quantitative test is a precise method that uses a device to count the particles in the air outside the mask and compare them to what is inside the mask.

The qualitative test uses the wearer's sense of smell and taste to detect any leaks in the mask's seal.

During the Face Fit Test a series of 60 second exercises are carried out to determine if the mask fits correctly in this order:

1. Normal breathing;
2. Heavy breathing – walking/stepping with the mask on;
3. Turning head from side to side;
4. Moving head up and down;
5. Talking;
6. Heavy breathing – walking/stepping with the mask on;
7. Normal breathing.

How to fit your RPE

Why is it important to wear RPE? A respirator protects your lungs from hazardous substances released into the air during work activities. Before you start to fit your respirator, HSE says you should:

- Make sure you are clean-shaven around the face, to seal an effective fit;
- Make sure your hands are clean;
- Make sure that you read the manufacturer's instructions for checking the respirator and putting it on correctly;
- Make sure it's the right disposable respirator for you and that you have been fit tested for that respirator;
- Check the model and size of the mask and, if the respirator is folded open it out. Check the straps, the face seal and the nose clip. Check the filtering material for holes by putting it up to the light and looking through it, looking through the filter material;
- When checking during exhalation check the rubber diaphragm is present and can form a seal over the valve, it's not damaged and that there are no foreign objects inside it. If the respirator is squashed, crumpled or

damaged simply do not use it.

- When putting a respirator on make sure that it is the right way around. Cup the disposable respirator in one hand with the straps hanging out of the way. Hold the respirator in place on your face. Pull the bottom strap over your head to the back of your neck. Pull the top strap over your head to sit above your ears and over the crown of your head. Check the strap's not twisted, if you need to tighten the straps pull both ends at the same time, bottom first then the top. Use a colleague or mirror to check the respirator and straps are in the right positions.
- Don't over tighten the respirator, it should be tightly fitted but still comfortable. If you wear glasses make sure they do not create a gap between the respirator and your face.

How to do a fit check?

- Before entering your workplace do a fit check to make sure you put your respirator on correctly and there is no leakage around your face;
- Make sure your hands are clean before you carry out that check;
- Cup your hands over the filter material without affecting the fit of the mask and breathe in. The respirator should suck down hard onto the face when you breathe in sharply. Breathe sharply out, you should not feel any leaks around the edges of the respirator. Repeat this until you feel you achieve a good fit.

HSE has produced guidance on how to



train users sufficiently. An appropriate training programme could cover areas including why RPE is needed, how it works and how to wear and check the RPE correctly.

The final, important point, to remember is that there is a requirement (HSG 53) for an over 28-day mask maintenance record. The guidance states that thorough tests should be carried out at least once a month, or if the RPE is only used occasionally, the interval for testing shouldn't exceed three months. The guidance provides five key points that need to be followed when carrying out RPE maintenance:

- Follow the manufacturer's instructions.
- A competent person should carry out the work.
- Keep records (see figure 7 for an example).
- Ensure the intervals for maintenance are appropriate.
- The maintenance programme should reflect the complexity of maintaining

the RPE.

HSG 53 adds: "Ideally, any parts that require replacing will be sourced from the original manufacturer of the RPE. This will ensure any replacement parts continue to allow the equipment to operate as originally intended and perform to the standards that ensure the RPE offers the protection stated by the manufacturer."

The guidance makes it clear that employers must keep records of examination and testing, and any repairs made, for at least five years. Key maintenance tasks include:

- changing any replaceable filters;
- cleaning the device;
- valve maintenance and replacement;
- checking the straps for damage;
- checking the battery charge and flow rate for powered devices.

Maintenance records can be on your own form or a manufacturer's.

HSE safety alert issued against KN95 facemasks

On the 11th June the Health and Safety Executive (HSE) is **warning against the use of KN95 facemasks as Personal Protective Equipment (PPE)**.

A safety alert was issued on Thursday 11th June 2020, urging all employers and suppliers not to purchase or use KN95 facemasks as PPE.

KN95 is a performance rating that is broadly equivalent to the EU standard for FFP2 facemasks. Products manufactured to KN95 requirements rely on a self-declaration of compliance by the manufacturer. There is no independent certification or assurance of their quality.

This respirator has been identified as suspect by HSE experts and locally arranged testing has confirmed they would not meet requirements, including to protect against the ongoing coronavirus pandemic. About 90% of the PPE concerns and queries currently being received by HSE involve KN95 masks which are often accompanied by fake or fraudulent paperwork.

HSE has quarantined around 1.5 million KN95 masks, prevented 25 million items claiming to be FFP3 respirators entering the supply chain and prevented a further four lines consisting of many millions of items entering the supply chain.

Rick Brunt, HSE's director of operational strategy said: "The KN95 facemask should not be purchased or used.

"KN95 has not been a principal source of PPE for the NHS, who has already made the decision not to supply this respirator to frontline clinicians fighting the coronavirus pandemic.

"We have found that the lack of independent testing has contributed to there being a substantial quantity of inadequate and poor-quality masks on the market, claiming to comply with the KN95 standard.

"We understand a lot of people, mainly in sectors outside of healthcare, have bought these facemasks without

realising they are non-compliant. We are concerned that people wearing them are not being protected from breathing in harmful substances in the way they expect. Protective equipment must protect."

Domestic, European and international organisations continue to raise concerns regarding KN95 masks, including details of counterfeit and illegal products. HSE is working to remove them from the supply chain with colleagues in the Office for Product Safety and Standards (OPSS), Border Force, the Medicines and Healthcare products Regulatory Agency (MHRA) and Trading Standards to identify manufacturers and suppliers of these masks and prevent them entering the UK.

The safety alert does not relate to N95 masks which are manufactured to a US Standard and have been given permission for use specifically in UK healthcare settings.

Latest construction guidance for working safely during COVID-19

The UK Government have re-issued their **Working safely during COVID-19 in construction and other outdoor work** on 24th June 2020 to reflect guidance on support bubbles, social distancing and feedback from industry.

The contents are as follows:

Introduction

What do we mean by 'construction and other outdoor work'?

How to use this guidance

1. Thinking about risk
2. Who should go to work
3. Social distancing for workers
4. Managing your customers, visitors and contractors
5. Cleaning the workplace
6. Personal protective equipment (PPE) and face coverings
7. Workforce management
8. Inbound and outbound goods

Where to obtain further guidance
Appendix – Definitions

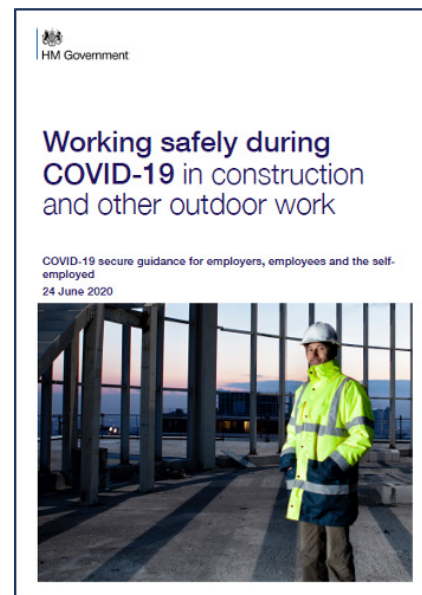
The Construction Leadership Council (CLC) have subsequently published the Site Operating Procedures, Version 5. Available on the 1st July, but dated for 4th July.

The CLC have stated:

“The Site Operating Procedures have been updated by the Construction Leadership Council (CLC) to reflect the latest Government guidance following the easing of lockdown measures in England from Saturday 4 July. The ‘one metre plus’ social distancing guidelines require workers to stay two metres apart, or one metre with risk mitigation where two metres is not viable, and it is expected that sites will maintain the social distancing measures in place.”

“Other changes to the Site Operating Procedures – Version 5 are minimal and include:

- Updates to the 'When to Travel to Work' section
- The latest peak times for public transport
- Entry systems to be regularly cleaned rather than between each use
- Drivers to have access to welfare facilities
- Canteens that have been closed or offered a restricted service may now re-open."

[illegible]



Health Check Your Compliance... **Can We Help?**

DEAR READER

As one of our Callsafe Today readers, we wanted to reach out to you in order to review your current and future health and safety needs.

Following the dreadful events of Grenfell Tower and the outputs from The Hackitt Review there are industry wide concerns that there is a lack of knowledge of the Construction (Design and Management) Regulations 2015 (CDM 2015).

Despite companies carrying out health and safety training, we have found that this does not always transpire into adequate/compliant Policies, Procedures and practices. This, along with the transient nature of construction type workers, means that many organisations are left exposed and potentially negligent.

There is an incorrect perception that "Construction" means specifically 'building something'. However, the definition of "Construction" contained in the CDM Regulations is far more wide-ranging and incorporates the repair and maintenance of the structure and the eventual removal, demolition and dismantling, if, and when necessary.

As one of our readers we would like to arrange with you a free telephone consultation to discuss your current position and review any additional needs you may have.

As one of the few Health and Safety Consultancies in the UK that specialises in CDM 2015 and the Construction Industry (with a pedigree of more than 30 years), Callsafe Services Ltd is able to help businesses of all sizes to remain compliant and to help all Duty Holders to have a better understanding of the specific needs of CDM 2015.

Please feel free to view our website at www.callsafe-services.co.uk to see the range of services we can provide.

If you would like to take us up on this offer, please contact Gemma Esprey by email or telephone, so that we can arrange a convenient time best suited to yourselves for one of our health and safety consultants to contact you to discuss your needs.

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Senior Office Administrator

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Email: gemma.esprey@callsafe-services.co.uk

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- > A 'single source of truth' for health and safety information



MENTAL HEALTH & WELLBEING

Wellbeing at Work

Wellbeing at Work is a vast topic. There is a wealth of information and for any organisation just getting to grips with mental health support in the workplace, it can be difficult to know where to start. We are going to look at this important topic in six parts across this year.

In Part 1, we focused on the importance of mentally healthy workplaces. In Part 2, we looked at organisation culture and workplace wellbeing.

Part 3: Prioritising Mental Health at Work

Prioritising workers mental health ensures a happy, productive workforce. For companies taking their first steps to improve workplace mental health policies and processes, it is important to remember that this is a learning process and a long-term commitment to a better way of working, which not only positively impacts individuals but also the company as a whole.

The **'Time to Change Pledge'**, led by Mind and Rethink Mental Illness, is England's biggest programme to challenge mental health stigma and discrimination. The pledge offers companies an opportunity to make a public statement of aspiration to tackle mental health stigma in their workplace and develop an action plan, detailing tangible activities, to

bring this about. This can be a great place to start but it needs to be backed up with action or individuals won't engage if they see it merely as tokenistic.

It is essential to get senior leaders on board. This sends a clear message to all staff that wellbeing matters to the organisation. Companies can embed employee engagement through a culture of open dialogue. Include an agenda item at the end of team meetings to discuss wellbeing. It might feel strange at first, and individuals may be reserved until they feel comfortable, but talking will help to normalise conversations about mental health, and this in turn builds trust.

If line managers don't feel confident about mental health, they should make it a priority to know their mental health policies and procedures and routinely publicise internal and external support

pathways to staff. Mental Health First Aid courses can be a great place to start and managers can share with the team what they have learned to open up the first discussions. Mental Health England are now offering training online during the coronavirus crisis. For more information, visit: <https://mhfaengland.org/>



Line managers should lead by example and actively encourage the team to work sensible hours, take full lunch breaks and annual leave and adopt any other healthy working habits. Regular catch-ups and one-to-ones need to be the norm in order to build good relationships and trust. People need to be treated as individuals, praised for good work and offered support. Give permission to talk about home as well as work; we are all human beings after all. Create space for staff to ask questions and raise issues.

In this current time, we are all facing big changes due to Covid-19 and many of us are working from home. It's more important than ever to encourage communication through phone calls, video chats, emails and messages, to help teams stay connected and feel valued.

In order to develop an atmosphere of trust, it's a good idea for line managers to ask for feedback about the support being provided. The following list provides ideas of ways to promote dialogue, feedback and engagement:

- Staff surveys
- Focus groups
- Staff forums
- Diversity networks
- Engagement steering groups
- Monthly or quarterly performance review meetings
- Improvement or planning 'away days'
- Regular group problem-solving

- meetings or innovation events
- Work-stream groups that bring together different parts of the organisation
- Feeding back board decisions to all staff
- Effectively using internal communication channels

Ask your team to prioritise what they think the key issues are and agree timescales together. You could also explore whether team members want to lead on certain parts of the action plan so people start to recognise that everyone has a role to play in maintaining a mentally healthy workplace.

Going forward, mental health should be embedded in induction training so new staff members know it is a priority, how it is managed and what support is available to them.

If you are looking to raise the profile of mental health within your company and are not sure where to begin, these tips might be useful:

- inviting a speaker can be a good idea to get the conversation started
- internal communication channels can be used to raise awareness through blogs, factsheets, tips for managers, useful web links, FAQs, posters and newsletters
- encouraging mental health champions at all levels sends a clear message that disclosure is not a barrier to career development

Often employees will not feel confident in speaking up, so a manager making the first move to open up a dialogue can be key. You can't force someone to disclose and a manager should not suggest that someone is ill.

Take positive action to address any issues identified in discussions. When employees are involved in finding solutions, they feel ownership of the final decision and morale and productivity levels are less likely to be affected by changes.

It is in everyone's best interests to prioritise mental health in the workplace.

Let us know what you are doing in your place of work to make good mental health a priority by getting in touch through our social media platforms.

Resources

www.mind.org.uk
www.matesinmind.org
www.mhfaengland.org
www.nhs.uk
www.cipd.co.uk
www.samaritans.org

Author

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Callsafe Mental
Health First Aider



Most recent HSE statistics show limited action against management

The following article was published in the Safety and Health Practitioner magazine, shponline, on 4th June 2020.

When reinforcing the message of safety non-compliance to managers and directors, sometimes the threat of individual prosecution may be the only way to get through. But do the statistics support that position, when the lack of individual prosecutions is considered? A Freedom of Information Act request yields some interesting answers.

In this article, Paul Verrico and Eddy Steele from Eversheds Sutherland consider the latest trends in Health and Safety Executive (HSE) prosecutions of managers, directors and officers, and what should be done to make you best placed to not become the next statistic.

Let's start with the basics:

When can an individual be prosecuted under health and safety law?

The Health and Safety at Work etc. Act 1974 (HSWA) and subordinate legislation protects employees and third parties against risks to their health, safety and welfare

arising from the undertakings of duty holders. If a duty holder is suspected to have breached one of the duties, the HSE or other regulator (for example the ORR and Local Authorities) can investigate and, where there is sufficient evidence for a realistic prospect of conviction and a public interest, prosecute.

Both employers and individuals can be duty holders for the purposes of the legislation:

Section 7 HSWA permits the HSE to prosecute individuals where it can be established they have not discharged their individual duty with reasonable care or where they have failed to cooperate so far as is necessary to enable a duty to be carried out safely.

Section 36 HSWA states that where the commission of an offence is due to the act or default of some other person, that other person is also liable to be prosecuted for the offence, whether or not proceedings are brought against the principal (i.e. where someone is told to do something which is patently unsafe; the person issuing the instruction can be liable); Section 37 HSWA provides that, if

a company commits a health and safety offence, then its directors or officers can be prosecuted where the offence can be shown to have been committed through the consent, connivance or neglect of the individuals subject of the prosecution. Neglect includes the idea that the individual didn't act on information he or she should have been aware of.

The HSE has, therefore, broad powers to determine its pool of available defendants, from which directors and senior managers may find they have to extract themselves during HSE investigations after serious incidents have occurred.

What do the most recent statistics on HSE prosecutions show as regards the prosecutions of individuals?

The HSE compiles statistics on its prosecutions, enabling reviews of how successful it is as a prosecutor. The figures show that broadly, whilst it is very unlikely for a director or manager to be prosecuted, the chances of conviction if prosecuted are high.

In 2018-19 the HSE only brought 29 cases, securing 23 convictions

under Section 37 HSWA and none under Section 36. Of the 23 convicted senior post holders, nine received custodial sentences (ranging from a suspended sentence to 10 months in prison). Of those convicted, four of the directors were disqualified for between three and seven years.

These statistics in respect of section 37 HSWA prosecutions demonstrate a lower success rate of 79% against the HSE's 93% general conviction rate.

That said, if the HSE, after an investigation, elects to prosecute a director as well as a commercial organisation utilising the section 37 vehicle, then – statistically – the director is more likely than not to be convicted, either by way of a guilty plea or by way of a finding of guilt after trial, by judge at the Magistrates' Court or by a jury at the Crown Court in more serious cases. Thus, whilst it is correct for Health and Safety Professionals to posit that custody could result from breaches of the law, the reality is unlikely. We are unable to trace any manager or director of a large company having been convicted of an offence in the reference period.

As a health and safety professional, what should I be doing to get managers' attention, then?

It is trite but established safety theory to refer to the hidden Bird's 'iceberg' theory costs of any serious incident – the commonly accepted figure is that for every £1 in direct

costs, a minimum of £8 in indirect costs are incurred. As lawyers, our direct experience is more attuned to the terrible human costs to those involved in a major incident. These range from physical and mental disability of injured persons; grief, loss and bereavement to the families of the victims and the guilt, shame and sorrow of those who feel that they have been responsible or culpable in the facts of an incident.

Where a regulator investigates, the spectre of the potential for personal prosecution often causes sleepless nights, anxiety and fear. Until a matter is concluded, any lawyer can only point to the low statistical likelihood of prosecution but cannot guarantee that there will be no potential criminal liability. Social opprobrium can feel like a sentence in its own right. Of course, if a senior duty holder has failed in his or her employee obligations, there will likely be a HR investigation which often results in disciplinary action. Some managers find that they 'lose the shop floor' if workers perceive that an incident was the manager's fault – irrespective of the reality. These consequences can rightly

be emphasised to managers and directors as important reasons to take safety seriously.

How can I demonstrate I am taking all 'reasonably practicable' steps?

The buzz words here are 'evidenced assurance' – directors and managers of organisations should revisit their safety management systems, and – as a matter of course – conduct periodic reviews of all their working practices. There are sector specialist guidance notes and regulations to think about when conducting any periodic review, depending on the practice areas or sector specialisms your business operates in.

You should consider:

- Risk assessment and suitability of control measures;
- Training of staff and non-staff where appropriate;
- Communications;
- Inspections and audits;
- Processes for identifying non-conformities;
- Worker consultations; and,
- Leadership culture and opportunities for continual improvement processes.



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Construction company fined after crush injury to employee

On 3rd June 2020 a construction company was fined after a worker was seriously injured while erecting a timber frame chalet bungalow. Chelmsford Crown Court heard that in July 2017, a worker was seriously injured when roof trusses toppled over while being moved by crane at a site in East Mersea, Essex.

An investigation by the HSE found that scaffolding was not installed around and within the building to enable workers to have a safe area of work. Lifting the roof trusses in packs created risks which were not sufficiently managed. The company and company owner had failed to plan, manage and monitor the work under their control. JWB (Mersea) Ltd, pleaded guilty to breaching Regulation 13(1) of The Construction (Design and Management) Regulations 2015. The company was fined £1,000.

Company director and owner, Jason Whiting, pleaded guilty to breaching Section 37(1) of the Health and Safety at Work etc Act 1974. He received a six-month custodial sentence, suspended for 24 months. He was required to do 240 hours of unpaid work. HSE was awarded full costs of £25,627.32.

Manufacturing company fined after worker crushed to death

On 5th June 2020 IFG Drake Ltd has been fined after a worker suffered fatal crush injuries whilst working on a machine at the site in Huddersfield. Leeds Crown Court heard how, on 24th March 2017, Mr Javeed Ghaffar, was working on the stretch godet section of a synthetic fibre manufacturing machine at Victoria Mills, Victoria Lane, Huddersfield. He became entangled in the machine when he was performing a task of removing a lap from around the rollers. A lap occurs when fibres stick to the rollers of the machine and begin to wrap around them.

The HSE investigation found that the machine was not adequately guarded. It had become custom and practice for employees to reach around the inadequate guarding in place to deal with problems of this nature IFG Drake Ltd pleaded guilty to breaching Section 2(1) of the Health

& Safety at Work etc Act 1974. The company was fined £366,850 and ordered to pay £23,993 in costs.

School fined after a pupil was severely injured using a band saw
Cargilfield School has been fined following the incident where a pupil sustained severe cuts to his middle and index finger on his right hand and serious tendon damage, when using a band saw.

Edinburgh Sheriff Court heard that, between 1st September 2015 and 2nd November 2017, in the Construction Design and Technology Workshop at Cargilfield School, Edinburgh, pupils made wooden boxes using a band saw which is classed as a dangerous machine.

An investigation by the HSE found Cargilfield School failed to make a suitable and sufficient assessment of the risks arising out of or in connection with use of the band saw and failed to adequately supervise pupils while they were carrying out tasks using the band saw. The pupil was making a free hand cut on the band saw without adequate workpiece support and was not adequately supervised.

Cargilfield School pleaded guilty to breaching Sections 3(1) of the Health





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and Safety at Work Act and was fined £3,350.

Hotel owner sentenced for fire safety failings

Alan Diamond, who owns the Cornhill Hotel in Blackpool, was given a nine month sentence, suspended for 18 months, after 'nearly two years' of investigations by Lancashire Fire and Rescue Service (LFRS).

In January 2019, the hotel on Blackpool's seafront was said to be facing council action after nine of ten improvement notices handed out by the town's health and safety officers were not complied with, and after both the police and LFRS provided evidence about the poor state of management. LFRS had ordered it closed temporarily in summer 2018 amid concerns about its 'inadequate' fire alarm system.

Numerous issues

LFRS reported that the decision to prosecute, and the final sentencing against Mr Diamond, came 'after nearly two years of work involving fire safety teams' in the town alongside the council health and safety teams, with initial complaints received in June 2018 by LFRS after an issue was reported with the fire alarm system. Fire safety inspectors 'initially provided support' to Mr Diamond, with a voluntary

agreement put in place to close the premises during fire safety works.

Fire safety officer Stephen Simm had visited in May 2018, and reported that 'numerous issues were seen, such as cracked tiles, no window restrictions, and loose fixtures and fittings', while the police had seen officers take 'at least' 38 calls related to the hotel and its management that year, including 'rows over the standard of rooms', domestic incidents, fraud and theft.

However, LFRS added that in August 2018 the council health and safety department received a complaint from a paying guest who had stayed at the hotel, and 'subsequently' LFRS fire safety inspectors discovered the fire alarm system 'was switched off with paying guests still staying at the hotel overnight'. They discovered a range of fire safety breaches 'of such a serious nature that the decision was made to prohibit use of the hotel'.

These included 'inadequate' fire safety management, means of escape, means 'for giving warning in the event of a fire' and fire separation. The prohibition notice served 'stated that nobody should use the premises other than to undertake remedial fire safety works', but Mr Diamond 'continued to accept paying guests and advertise the hotel

on a number of internet websites' – LFRS finding evidence on 'three separate occasions' of paying guests sleeping at the hotel.

Failings

Mr Simm added in early 2019 that 'the issues were so serious I felt the property would put anyone staying on the premises at risk of death or serious injury', while council health and safety officer Marcus Maddock served the improvement notices, having visited 'numerous times' in the last 11 months 'due to various public complaints'. Mr Diamond had submitted a letter to a hearing held in January 2019 stating that he had signed over the running of the hotel to another hotel group in the town, and added that most of the required work had been carried out, and that the new management company would be putting their own action plans in place.

LFRS however proceeded with a prosecution and legal proceedings, which set out a case against Mr Diamond for failing to:

- make a 'suitable and sufficient' fire risk assessment
- make and give effect to such arrangements as were appropriate 'for planning, organising, controlling, monitoring and reviewing



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- preventative fire safety measures at the hotel
- provide appropriate firefighting equipment, detectors and alarms suitable for the premises.

Other charges included that Mr Diamond had failed to 'ensure that escape routes and exits could be used as quickly and as safely as possible' by 'failing to provide adequate' fire doors throughout the premises. He was also charged with 'failing to provide adequate and sufficient' staff fire safety training, and failing to comply with the prohibition notice. After a 'number' of court appearances, he pleaded guilty in February to offences under the Regulatory Reform (Fire Safety) Order 2005.

At Preston Crown Court, Mr Diamond was given a nine month sentence suspended for 18 months, with LFRS' fire protection group manager Mark Hutton commenting: "These were extremely serious fire safety failings which, had a fire occurred in the hotel, were highly likely to have led to widespread loss of life, serious injuries and potentially far-reaching damage to the wider community and reputation of Blackpool as a safe place to visit and stay.

"Our team of dedicated fire safety inspectors, and business safety advisors, work tirelessly to support all businesses that set out to comply with fire safety regulations. Sadly in this case the owner of this business chose not only to ignore that support,

but also elected to repetitively breach a prohibition notice and allow his building to be used for guest sleeping accommodation even though he knew there were serious problems with fire doors and the fire alarm.

"Members of the public who expect to be able to book safe sleeping accommodation, and other businesses who are competing in the same marketplace and choose to invest in and embrace fire safety, should be in no doubt that when situations like this occur, and the regulations are flouted, [LFRS] and its inspectors will not hesitate to gather evidence and take those issues to the courts."

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