

SCOTTISH HOUSE BUILDERS HEALTH & SAFETY FORUM

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FATAL ACCIDENT INQUIRY UPDATE

Recap

- 14 metre trench 2-3 metres deep in bolder-clay
- Dug that morning by operator/ganger and 2 labourers using no trench protection to lay a 300mm sewage pipe
- Large quantities of spoil piled at the side of trench at some points 300mm away from the trench
- Trench collapsed leaving 30 year old labourer deceased under 4 tonnes of soil

However:

- Company no longer trading but had clear method statements for that specific site
- Evidence that contract manager had talked through the whole procedure with the team
- All members of team had signed the method statement on the first day they were on site to say that they had read through it and understood it
- Experienced team and well qualified to know the risks and how it should have been done
- Contract manager on site day before originally to do an audit but due to pressure of work mucked in dealing with an issue so did not do a full paper based audit
- Not all daily risk assessments had been completed

HSE said:

- That there was a failure of supervision on site
- The HSE position did vary between the inspector and the HSE specialist
- May have required a ticketed supervisor on site as part of the team

The question I posed last time:

- How do you economically achieve what the HSE would require?

Supervision

- Broadly satisfied with the internal and external health and safety auditing procedures
- Accepted that no amount of health and safety legislation, practice, procedures or training will prevent an employee intent on ignoring it

Noted the difference of expert opinion as to the level of supervision required on site:

- One inspector thought that a supervisor should have been permanently on site (even if the gang is very experienced)
- The other expert who had worked in the construction industry said “a visit to the site every couple of days would have been an adequate level of managerial supervision”
- Accordingly the level of supervision was a matter of opinion
- In all the circumstances whilst permanent supervision would have prevented it in the circumstances of this case he would not criticise the company for failing to have a supervisor on site

Relevant factors were:

- (1) The level of experience of the ganger/team
- (2) The extent of supervision in place
- (3) The speed at which the infringement was carried out

- Health and safety division set up in March 2009 led by Elaine Taylor
 - 219 cases with unit
 - 78 concluded
 - 77 convictions
 - 116 live cases under consideration
 - No proceedings taken in 15
- (All figures as at 14 December 2011)*

- 1.2 million working people suffering from a work related illness
- 171 workers killed at work
- 115,000 injuries reported under RIDDOR
- 200,000 reportable injuries (over 3 day absence)
- 26.4 million working days lost due to work related illness and work placed injury

All figures from 2010/11

- PF Office instruct Police but not HSE except in work related death
- High percentage of cases recommended for prosecution by HSE are prosecuted by the PF (7% not prosecuted)
- Health and safety division provide assistance and guidance to inspectors throughout the course of an inquiry and may steer towards a certain focus and investigation

- No prosecutions resulting in imprisonment yet but expectation that it will come.

Levels of fines:

- Of the 78 cases the total sum fined is just under £4.2 million
- Although not binding the level of fine is likely to be in line with that in England and Wales and the case of HME -v- Monro & Sons (Highland) Ltd means that the Sentencing Guidelines Counsel papers will be referred to
- Cost of unit £2.16 million out of a budget of £110 million for the COPFS. 2% of the overall budget on health and safety cases which amount to only 0.08% of cases reported to the COPFS
- There has been a perception of delay but in fact there is little empirical evidence to back that up
- No corporate homicide prosecutions but a number are under consideration

- The HSE cost recovery plan has been delayed. The fee for intervention scheme was due to come into force in April this year but has now been delayed until October 2012

- Failures to fulfil general duties imposed by sections are particularly serious
- Each case will depend on its own circumstances for the level of fine
- The level or extent to which the defendant fell short of the appropriate standard
- Where death occurs that is generally an aggravating feature
- A breach with the view to profit aggravates the offence
- Whether it is a single isolated failure or a continuing one
- The accused level of resources

Example of sentencing guidelines Counsel for corporate manslaughter

http://sentencingcouncil.judiciary.gov.uk/docs/web_guideline_on_corporate_manslaughter_accessible.pdf

- “May you live in interesting times”
- “May you come to the attention of those in authority”
- “May you find what you are looking for”
- QUESTIONS



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S o l i c i t o r s

G L A S G O W

E D I N B U R G H

L O N D O N