

SCOTTISH HOUSE BUILDERS HEALTH & SAFETY FORUM

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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

- A difficult issue but with proper preparation it is not too onerous ...

Low value claims:

- Pre action protocol
 - Voluntary in Scotland so you can ignore it if you choose
 - There are advantages to claims handling in that you should get more disclosure from a pursuer
 - The documents you require to disclose depend on the nature of the claim

Lists of disclosure requirements are set out in the protocol which is available on the Law Society of Scotland website (search for “Pre-Action Protocol”)

Specification of Documents

- Most are in standard wording but they can be adjusted to suit particular requirements
 - Initial Specification of Documents is intimated with the Court claim and includes:
 - Medical records
 - Accident investigation report
 - Wage records
- Specifically drafted Specification of Documents:
 - Require to identify the foundation for requiring that document
 - Not a fishing exercise!

- Optional Procedure will normally require disclosure within seven days
- If no disclosure using “Optional Procedure” then a commission is required
- A Commission is a *quasi* judicial hearing where the “haver” has to appear and answer questions about the documents that have been sought but not disclosed
- Bear in mind potential disclosure when drafting an Accident Investigation Report:
 - “Witnesses clearly lying”
 - “We must change our procedures”
 - Root causes
 - Consider if litigation likely whether it is economic to try and obtain legal privilege

Pure law:

- Pleural plaques: This matter is now settled. Although there may be a further appeal (which is thought to be unlikely) the Damages (Asbestos-Related Conditions) (Scotland) Act 2009 allows claims. Asbestos exposure remains a massive issue for the construction sector and the presence of asbestos in buildings is still a cause of great concern particularly in refurbishment works
- HSE are proposing to charge employers for the costs of identifying and correcting breaches of duty. A trial region has already been identified. There is no proposal as yet to alter the position in Scotland whereby no finding of costs can be made on a prosecution but this may change
- HSE have introduced online reporting for RIDDOR from 12 September 2011. The emphasis is on increasing use of online services (and all the technical difficulties that brings). Reports can still be made by telephone

- Insurance issues with Timber Frame Construction
 - In the last five years there have been a number of major losses. Insurers estimates put these at tens of million
 - Arson is a major problem and the cause of a number of big claims
 - Major risk to fire fighters if in construction phase so likely they will simply pour water from outside
 - Market reacting with insurers retreating, higher premiums, requirement to comply with specific Conditions Precedent ie compliance with the Joint Fire Code and increased emphasis on risk management
 - Security may be required even on smaller projects
 - Requirement to consider third party risks including escape, fire fighter safety etc
- Actions to take:
 - Security, treatment of timber before erection, restrict combustibles on site, fire fighting extinguishers, supply of water etc.
- Paperwork:
 - Hot work permits, water supply, access ensured and plans, evacuation plans for neighbours (an awkward discussion to have) etc
- Need to disseminate all of this to all levels of worker!

Scottish cases

- Breach of Work at Height Regulations 2005. Incomplete staircase on new build house site. Employee fell through a void between landings falling a total distance of 2.86 metres. £8,000 fine.
- Breach of Section 2. Employee fell 6.45 metres from a work platform of a loading bay. Failure to ensure how this activity would be carried out, removal of guardrails and toe boards, failure of adequate supervision, lack of training, no competent person inspecting scaffold. Reported 7 April 2011 fined £200,000
- Ganger prosecuted under Section 7. Was also excavator operator who had exposed 14 metres of trench 3 metres deep. Labourer killed by trench collapse. 6 June 2011 fined £250
- Individual installing a gas fire which he was not qualified to do as he was doing general building and plastering work. 11 October 2011 given 240 hours Community Service Order

There is a wild variation in the level of fines imposed. There is no Sentencing Guideline Counsel in Scotland so this state of affairs is likely to continue. However, anecdotally it seems that sanctions against companies are becoming more severe ...

- 14 metres of trench ranging from 2 to 3 metres deep in boulder-clay.
- May have been dug that morning by operator/ganger and two labourers using no trench protection to lay a 300mm sewage pipe
- Enormous amounts of spoil piled at side of trench in some instances allegedly in the region of 300mm from the edge of the trench
- Trench collapse leaving 30 year old labourer deceased under approximately 4 tonnes of clay

The Company no longer trades but:

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

What did the HSE expect/demand should have been happening?

HSE position:

- That there was a failure of supervision on site
- The HSE position varied between the inspector and the HSE specialist
- May have required a ticketed supervisor on site as part of the team
- One inspector thought there should have been a supervisor who was empowered on site all of the time at a level of contracts supervisor or contracts manager

The challenge for you:

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

Rory Jackson

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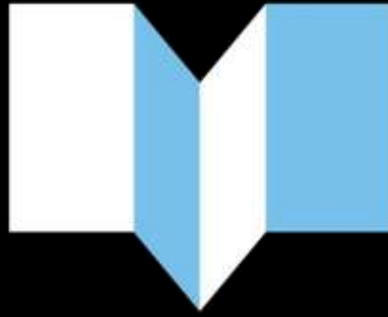
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