



# Scottish House Builders Health & Safety Forum - The Story of An Accident

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7 November 2018

# Key Legal Issues - Criminal



- Legal Professional Privilege
- Police/HSE investigations
- Information Gathering/Early Investigation/Best Evidence
- Report to Procurator Fiscal/Crown Disclosure
- Legal Liability (Criminal)

# Privilege



- ❑ Section 20(8) of the HASAWA 1974 – cannot be compelled to hand over documents with legal professional privilege attaching
- ❑ Instruct a solicitor immediately – to instruct/carry out investigation
- ❑ Appoint a core investigation team
- ❑ Privileged communications must remain between the team and the solicitor only
- ❑ Emails etc – be careful
- ❑ Once privilege is gone it's gone....



[www.bto.co.uk](http://www.bto.co.uk)

# Information gathering



- Get signed statements in the immediate aftermath as part of privileged investigation– covering more than just accident circumstances and aftermath
- Obtain all relevant documentation to support good H+S management within the company
- Don't wait for criminal/civil proceedings
- Lost/destroyed evidence may prejudice your efforts...



# Key Legal Issues - Criminal



- Legal Professional Privilege
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- Legal Liability (Criminal)

# Key Legal Issues - Civil



- Early Investigation/Collaboration
- Legal Liability (Civil)
- Vicarious Liability
- Reputational Risk





# Workplace injury

## 144

Workers killed at work  
In 2017/18

## 555,000

Non-fatal Injuries to  
workers according to  
self-reported estimates  
from the Labour Force  
Survey In 2017/18

## 71,062

Employee non-fatal  
Injuries reported by  
employers under RIDDOR  
In 2017/18

## 3.9 million

Working days lost due  
to non-fatal workplace  
Injuries according to self-  
reported estimates from  
the Labour Force Survey  
In 2017/18

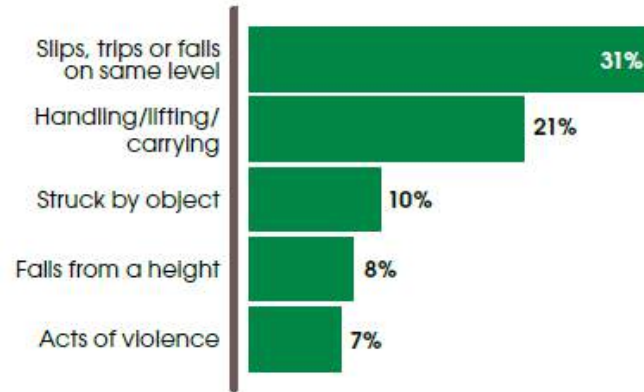
Estimated self-reported  
non-fatal injuries, 2017/18

**135,000**  
Injuries with over 7 days  
absence

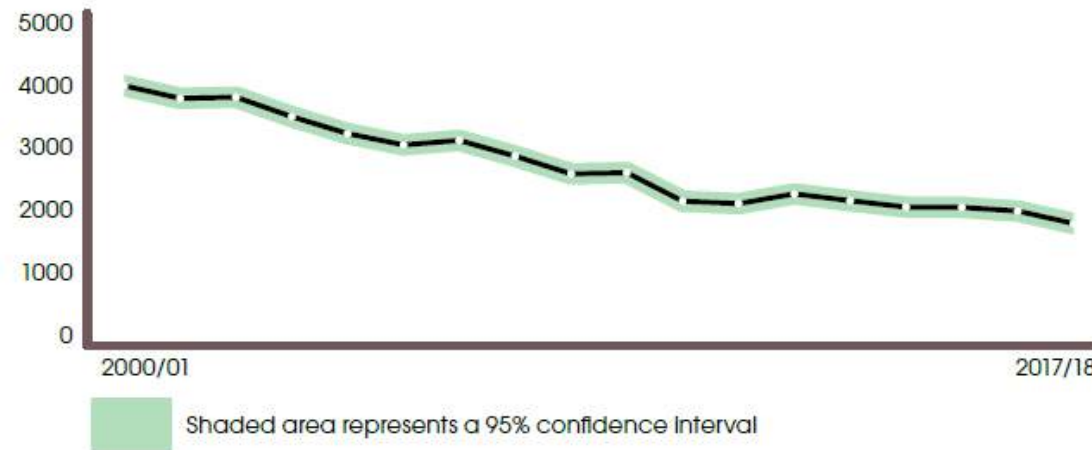


**420,000**  
Injuries with up to  
7 days absence

Non-fatal injuries to employees by main accident  
kinds (as reported by employers), 2017/18



Estimated self-reported workplace non-fatal injury per 100,000 workers



There has been a long-term downward trend in the rate of fatal injury to around 2012/13; more recently the rate has been broadly flat.

The rate of self-reported non-fatal injury to workers showed a generally downward trend.

The rate of non-fatal injury to employees reported by employers also showed a long-term downward trend.

To find out the story behind the key figures, visit [www.hse.gov.uk/statistics/causinj/index.htm](http://www.hse.gov.uk/statistics/causinj/index.htm)

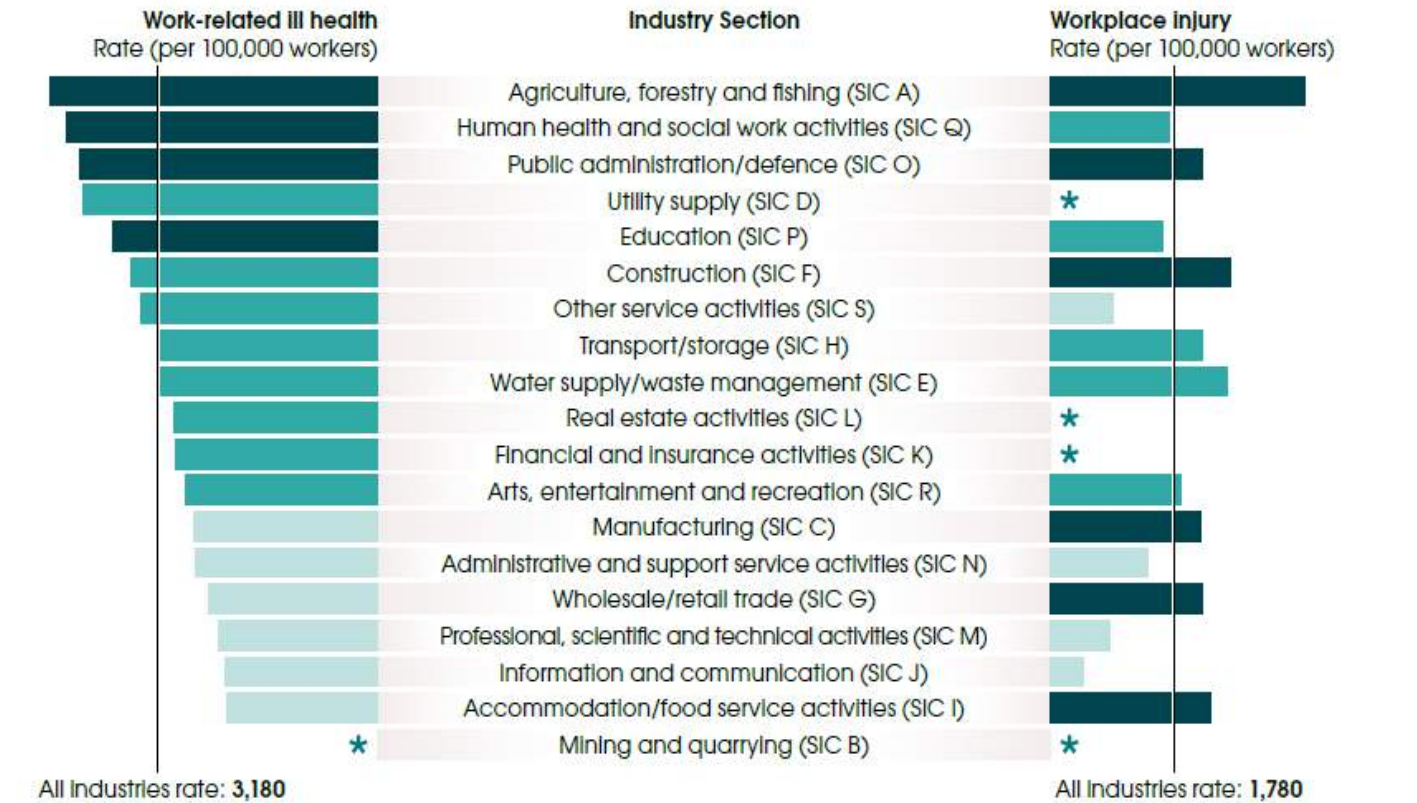




# Industries



Rate of self-reported work-related ill health and non-fatal injury by industry



Industries with ill health rates statistically significantly higher than the rate for all Industries were Agriculture, forestry and fishing, Human health and social work activities, Public administration and defence and Education.

Agriculture, forestry and fishing, Construction, Accommodation and food service activities, Wholesale and retail trade (including motor vehicle repair), Public administration and defence and Manufacturing had statistically significantly higher Injury rates than for all Industries.

To find out the story behind the key figures, visit [www.hse.gov.uk/statistics/industry](http://www.hse.gov.uk/statistics/industry)

Compared to all Industry rate:

- statistically significant - higher
- no statistically significant difference
- statistically significant - lower

\* Indicates sample cases too small to provide reliable estimate

Source: Labour Force Survey annual average estimate 2015/16-2017/18





# Vicarious liability – Will it blow up in your face?







[www.bto.co.uk](http://www.bto.co.uk)





## WORK TRAGEDY Midlothian construction worker crushed to death in horror machinery accident

Andrew Darling, 47, is thought to have been installing gear at the NWH Group premises at Mayfield when he was dragged into a machine at around 2pm on Tuesday

By Alexander Lawrie  
21st June 2018, 3:02 pm | Updated: 21st June 2018, 3:13 pm

COMMENT  
**NOW**



## NEWS

## Worker hurt in Marischal Square accident

🕒 10 February 2017



**A worker was left with a fractured leg and ribs after an accident at the Marischal Square construction site in Aberdeen.**

Details of last Friday's incident have only just emerged.

Work at the site was halted this Friday afternoon to give all workers a refresher on health and safety.



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