

SCOTTISH HOUSEBUILDERS HEALTH & SAFETY FORUM – LEGAL UPDATE

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SHB

Scottish House Builders
Health & Safety Forum



ENLIGHTENED THINKING

TODAY'S SPEAKERS



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THIS SESSION WILL COVER:

- HSE– recent statistics; current strategy; ongoing initiatives
- NOTICES OF CONTRAVENTION
- LEGAL PRIVILEGE
- LEGAL REPRESENTATION – the right to choose; working with your insurers
- PROSECUTIONS – Crown Office policy; individual prosecutions
- SENTENCING TRENDS
- Q&A


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HSE



- 2022/23 work related fatality figures published on 6th July 2023 by HSE
 - 135 work related deaths in UK (up from 123 the year before)
 - 45 work related deaths in Construction
- Most common causes:
 - Falls from height
 - Being struck by moving object
 - Being struck by a moving vehicle
- HSE strategy 2022 – 2032 “Protecting People and Places”
- HSE Construction Division Work Plan 2022/23 to align with HSE strategy
 - A preventative approach with more proactive inspections
 - 3,000 construction projects
- Current HSE campaigns – Asbestos and You; Dust Kills
- Increased enforcement action?..

NOTICE OF CONTRAVENTION

- Why are NoCs significant?
- Not formal Enforcement Action
- Don't ignore 
- No 'formal' appeals process
- Example – excavator/worker interaction

LEGAL PRIVILEGE

3 key 'take aways'

Not
retrospective

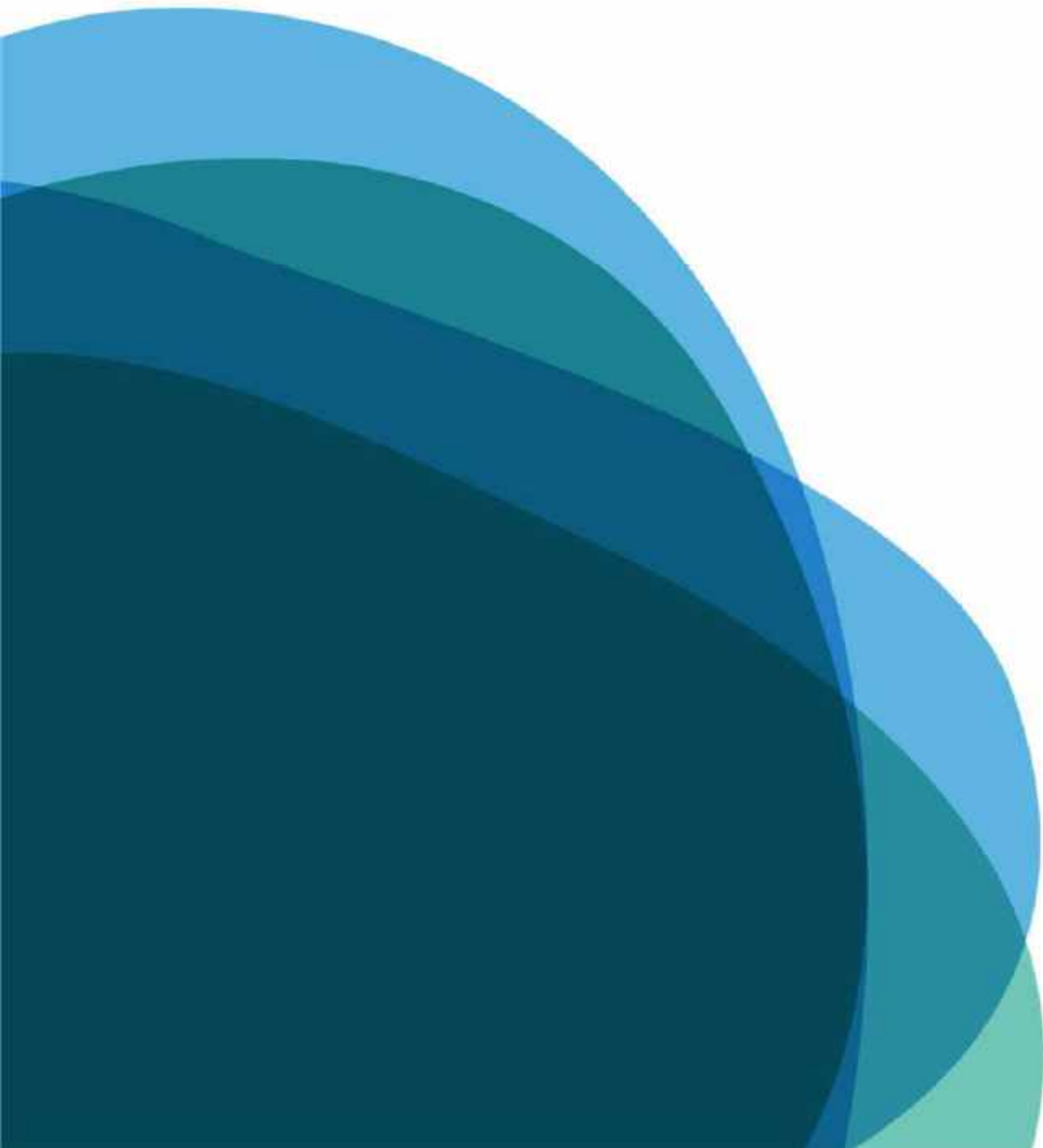
Allows company
to learn openly

Is LP
challengeable??

- As early as possible
- Role of insurer - Interests aligned?
- Right to choose –
 - Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990
 - *Pine v DAS Legal Expenses Insurance Company Limited* [2011] EWHC 658

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PROSECUTIONS



PROSECUTIONS

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

- Health and Safety Investigation Unit (HSIU) - specialist prosecution team
- New head of unit – ‘real’ crime background
- Cases reported on the rise but resources remain limited
 - 2019/20 – 10,896 deaths reported
 - 2020/21 – 15,712 deaths reported
 - 2021/22 – 15,313 deaths reported
- New framework to increase efficiencies – dedicated Crown Counsel from the outset; a period of ‘active engagement’ expected with the Defence, which failing prepare for trial; offer to plead guilty (Section 76 letter) to be received within 7 weeks otherwise indictment served
- Decision on forum - solemn or summary – based on likely fine

PROSECUTIONS

Individual Liability

- Section 7 HSAWA 1974 – duty on **employees** to take reasonable care for safety of themselves and others affected by their acts/omissions at work
- Section 37 HSAWA 1974 – **directors, senior managers**
 - where an offence of a body corporate is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate
- Sentencing
 - ranges from a fine up to 2 years imprisonment
 - English Sentencing Guidelines apply
 - Disqualification of Directors
- Increase in number of individual prosecutions
 - HMA v Andrew Grant 2022 (MD only) – 12 months' imprisonment
 - HMA v Miranda Anderson 2022 (MD and Co) - £2,000 fine
 - PF v DB (agency worker) - ongoing
- No longer a bargaining tool

SENTENCING TRENDS

Recent cases

HMA v Norbord Europe Ltd

- fatal
- 2 charges: s2 and Regulations breach for failing to provide safe system of working and suitable work equipment
- 2014 incident
- Largest fine for single fatality
- Post-trial conviction – so no discount
- £2,125,000 fine

Nov. 2022

Apr. 2023

HMA v RJ McLeod (Contractors) Ltd

- death of 10yr old boy
- 1 charge: s3 and Regulations breach in relation to risk assessment and failing to act on previous incidents of site enclosure breaches
- July 2020 incident
- £800,000 fine

SENTENCING TRENDS

What did we find?



**16 cases sentenced in
Scotland since July 2022**



Of the 16:

3 individuals
1 charity
1 Health board
1 Council 'partner'

CHANGE IN PF'S POLICY?

Post-sentencing statements

Watch out for COPFS press releases post-sentencing...

Statements departing from the 'agreed' Crown narrative

Reputational issues arising

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