

# SHBHSF – LEGAL UPDATE

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ENLIGHTENED THINKING

## WHAT WE WILL COVER

- **HSE update** – current focus on health
- What can you do in anticipation?
- Dealing with enforcement action - Notices of Contravention and Fees for Intervention; recent prosecutions
- **Legal update** - the way the health and safety investigation unit are dealing with cases
- Prosecution trends/FAI trends
- Enforcement appeals

- No longer a Construction Division
- Instead 2 generalist teams -
  - Investigation
  - Inspection
- Dedicated inspectors for each team but loss of sector knowledge and experience
- Less Investigation –RIDDOR triaging
- More Inspection –on health rather than safety
- Why?..

# HSE STATISTICS – ILL HEALTH

## Construction – November 2024 stats

- 78000 workers suffering from ill health (1.7 million across all sectors)
- Equates to 3.8% of the sector
- 2.1 million working days lost (430K for injuries)
- Economic cost of £632 million annually
- [www.hse.gov.uk/statistics/assets/docs/construction.pdf](https://www.hse.gov.uk/statistics/assets/docs/construction.pdf)
- a construction worker is at least **100 times more likely** to die from a disease caused or made worse by their work than from a fatal accident.
- Key health risks in construction are still **asbestos exposure, dust, and noise.**

- HSE Strategy 2022 – 2032 **“Protecting People and Places”**
- First objective in Strategy – to **reduce work related ill health**
- <https://www.hse.gov.uk/aboutus/the-hse-strategy.htm>
- **Construction 2025 Strategy** – launched in 2013

“the industry must bring the same focus to health as it has to safety, to recognise the fact that three times as many working days are currently being lost to ill-health as to occupational injury. In particular, occupational cancers, caused by asbestos and dust containing silica, are all too common in the industry.”

- HSE Business plan 2024/25 – silica and wood dust seen as health risk priorities, commitment to carry out **4,000** proactive health related inspections
- HSE Business plan 2025/2026 – commitment to carry out **8,000** proactive health related inspections
- Inspections to cover
  - Noise-induced hearing loss;
  - MSDs;
  - health surveillance;
  - asbestos – duty to manage;
  - hazardous dusts (including silica and wood dust).
- Expected enforcement range - 40- 60%!

- Review RAMS
- Audit compliance
- Demonstrate good H&S management – Plan Do Check Act
- Health surveillance- required for all employees whose work exposes them to specific health risks, even with control measures in place
- Informed by risk assessment
- Competent occupational health professional; HSE approved doctor for e.g. licensed asbestos work
- Act on results – further control measures necessary?; require deployment?
- Regularly review – note frequency of surveillance required
- Keep records – individual health records for each employee under surveillance, detailing exposures, checks performed, results and recommendations
- Check retention period for records under relevant legislation e.g. COSHH Regs 2002 – 40 years

- NOTICE OF CONTRAVENTION
  - Where HSE inspector identifies contraventions of health and safety law
  - Will set out **breaches** and **outline action** required
  - Sets out **deadline** for responding
  - Important to **co-operate** – even if don't agree!
  - Can escalate to further enforcement action; be used against the business in any prosecution
  - Cannot itself be appealed
  - **Take legal advice** before responding!..
- a NOC will trigger a fee...



- FEE FOR INTERVENTION

- When an HSE inspector identifies a **material breach** of health and safety law the FFI cost recovery scheme applies
- Introduced by **Health and Safety (Fees) Regulations 2012** ; current applicable legislation is **Health & Safety and Nuclear (Fees) Regulations 2022**
- Current cost **£183/hour** – covers all time spent by HSE even if breach identified at the end of an all day inspection!
- Can be challenged – not a material breach (**liability**); the amount charged (**quantum**)
- Strict time limits
- The only way to challenge a NOC (indirectly)
- Query stage – within 21 days – no costs incurred if unsuccessful
  - Few queries lodged, on average 2.8% (2018 – 2021) BUT of those an average 56% queries upheld/partially upheld
- Dispute stage – costs implication if unsuccessful ; very small number and even smaller success rate (0.3% of all FFI disputed and 7% of those upheld/partially upheld)

# FFI FUN FACTS

- FFI can be a costly business for dutyholders
- BUT, equally costly for HSE to implement..
- Since its inception in 2012 it has run at a loss in 8 out of 12 years
- Loss in 2023/24 - £443,000
- Biggest loss - £2,742,000 in 2015/2016

# RECENT HSE PROSECUTIONS

## ASBESTOS

### **CAVENDISH WINCHESTER LIMITED – MARCH 2024**

- Construction company and 2 directors convicted under Sections 4 and 37 of HASAWA 1974
- In the process of converting an old commercial unit into student accommodation, obtained asbestos surveys but then took no action to control exposure to asbestos during the works
- One director sentenced to 8 months in prison, the other a 4-month suspended sentence and the company fined £30,000 plus costs

# RECENT HSE PROSECUTIONS

## DUST

### **WARMSWORTH STONE** – JANUARY 2025

- Stonemason company and director prosecuted for breaches of COSHH 2002 and Section 21 of HASAWA 1974
- 7 improvement notices served, 5 of which were not complied with, for failing to control exposure of workers to silica dust
- Company fined £18,000 plus costs and director fined £1,062 plus costs

# RECENT HSE PROSECUTIONS

## NOISE

### **FIBRELINE LIMITED** - 2013

- Company convicted under Control of Noise Regulations 2005 and Section 2 HASAWA 1974
  - Failed to adequately assess the risks associated with noise nor provide sufficient protective measures, exposing employees to the risk of hearing loss
  - Fined £15,000 plus costs
- 
- Whilst limited prosecution history - Increased inspections in the last 3 months = 300% increase in noise related enforcement action

# RECENT HSE PROSECUTIONS

## HEALTH SURVEILLANCE

### **ROTHERAM METROPOLITAN BOROUGH COUNCIL - 2024**

- Council worker diagnosed with HAVS in 2005, continued to work with vibrating tools; health surveillance had confirmed diagnosis– OH findings and recommendations ignored for 14 years.
- Employee and others incentivised to keep working with vibrating tools with bonuses paid, despite deteriorating health.
- Convicted under Section 2 HSAWA 1974 and fined £60,000 and costs

# LEGAL UPDATE

## How the HSE Investigation Unit is operating

RIDDOR triage – requests for further information, initially

Queries will very often come from Visiting Officers (VOs) **NOT** warranted Inspectors – they do not have the same powers.

VOs may pass responses to Inspectors for follow up – be careful what goes back to them in writing.

**DON'T FORGET!** Legal Privilege – don't hand out too much information thinking you will avoid an investigation.



# LEGAL UPDATE

Trends we have noted so far...

- Slower to commence investigations
- Fewer immediate reactions to notified incidents, even following fatal incidents
- Less likely to be an Inspector you know
- For the time being at least, the Inspectors have less sector-specific knowledge
- More instances of VOs being tasked with investigations – be aware of the limits of their powers.



# LEGAL UPDATE

## Prosecution trends

Increase in the number of “Health” related prosecutions

Increase in number of individuals - focus on disqualification of Directors

No serious movement yet in terms of mental health enforcement – watch this space!

Timescales for resolution: threat of merely weeks for defence team to consider full Crown case, provide advice and response to Crown. Otherwise, Crown will serve proceedings

More trials on the way? Watch this space!

# LEGAL UPDATE

## Fatal Accident Inquiry trends

Prosecution or FAI..??

Increase in number of FAIs post-prosecution

Why is it relevant?

Could be in FAI several years post-accident.

Increase in publicity; time/cost to business

Requires evidence to be lead in person and results in written, public Determination

# LEGAL UPDATE

## Enforcement Notices reminder

### S21 HSWA 1974 – **Improvement Notices:**

“If an Inspector is of the opinion that a person is contravening one or more of the legislative requirements...he may serve upon him a notice”

### S22 HSWA 1974 – **Prohibition Notices:**

“activities will involve a risk of serious personal injury...”

Notices can be appealed – strict timescales for doing so, however – 21 days.

Appeal ‘suspends’ an Improvement Notice and can on application to the Tribunal judge suspend the application of a Prohibition Notice.

# LEGAL UPDATE

## Enforcement appeals

In 2023/24:

931 Enforcement Notices served in Scotland

How many appeals?

10

# QUESTIONS