



**IOSH East Midlands Branch meeting**  
**Best Western Premier Yew Tree Lodge Hotel & Conference centre, 33**  
**Packington Hill, Kegworth, Derby, DE74 2DF**  
**Thursday 16<sup>th</sup> February at 12:45pm**

**Chair's Welcome:**

Colin Jenkinson opened the meeting and welcomed 140 members/guests present for this three part speaker meeting where members were to be taken through the events from a fatal accident to HSE investigations onto the legal aspects required from the employer that need to be addressed.

No branch business was discussed so Colin opened the presentations:

**Talk: The impact of getting it wrong – legally and emotionally.**

*The afternoon began with the first speaker Louise Taggart bravely telling the story of her brother Michael, fatally injured at work, in the hope of helping raise awareness of the fundamental importance of safe systems of work.*

**Michael's story: Lessons from an entirely preventable death**

"Michael's been in an accident in Dundee. We're on our way to the hospital." Those were the words my mum said to me on the evening of 4th August 2005. Assuming it was a car accident, I didn't ask, during the brief call, what had happened to Michael.

Later that evening, I kissed my wee brother's forehead and said goodbye for the last time as he lay dead in a hospital bed, with barely a scratch on him. He hadn't been in a car accident – he'd been electrocuted at work.

Michael was an experienced spark, 26-years-old and engaged to be married. It had never for one minute crossed my mind prior to his death that he might leave for work one morning and not return home. Yes, of course electricity is dangerous, but it can – and should – be worked with safely...shouldn't it?

He had cut a cable marked 'NOT IN USE', which was in fact wired into a distribution board and was not safely isolated. It took more than three years for the case against the company that employed him to get to court, and for us to find out the fundamental failings in implementing safe systems of work that led to Michael's entirely preventable death.

The HSE press release issued after the trial outcome said: "Michael Adamson's death could have been prevented had his employer ensured that safe working practices were being carried out in accordance with the company's own written procedures." I'm driven by the need to have no-one else ever have to hear those or similar words. I want his story to

reinforce why safe systems of work need to be in place, not only on paper, but also in practice.

The method statement of my brother's employer said that "before working on electrical equipment, it should be isolated and secured by means of a padlock". However, the devices for lock-off/tag-out were not provided by Michael's employer. Instead the practice on site was to use insulating tape. The HSE's specialist electrical inspector wanted to get hold of examples of the lock-off devices to show as evidence at the trial. He was asking for them in Edinburgh, in major industry wholesalers, and at every turn he was being told "Nah mate, sorry, we don't stock them. No demand from industry for them." This fundamental safety procedure, each spark had been taught during his or her apprenticeship for around 20 years prior to Michael's death, was not being implemented by the electrical contracting industry. So, a key failing appeared to be an industry-wide one. But there were also a catalogue of other failures specific to Michael's employer, including a failure to ensure he and the other sparks on site had access to the testing equipment they needed in order to do their jobs safely.

In addition, the risk assessment for low voltage electrical work was described by the mechanical project manager as a "living document". Well, during the course of the fit-out, the distribution boards were energised and work on them continued. However, the risk assessment was not revisited and was described by the HSE as "completely inadequate". And there was a critical failure in supervision and management. The electrical supervisor was to tell the HSE during his investigation interview that "I don't regard it as part of my job to ensure safe working practices were adhered to at all times." I consider that to have been a fundamentally important part of an electrical supervisor's job.

As well as Michael's employer being charged with breaching the Health and Safety at Work Act, so too were the managing director, operations director and technical services manager. Mistakes were made by the prosecutor. Those three individuals were to walk free from the dock. The lawyer for the company then referred to his client as being the "invisible man" now sitting in the dock. It didn't take too long for the jury to find the invisible man guilty as charged. But that provides my family with little in the way of justice, and nothing in the way of comfort. So that's why I want to tell his story: to stop this from happening to anyone else, and to stop any other family from having to go through what we have gone through, and will forever continue to go through. I want his story to reinforce why safe systems of work need to be in place, not only on paper, but also in practice. I want it to reinvigorate supervisors and management in the role they must play in driving safe working practices. I want it to give people the courage to speak up when they see something unsafe. And, above all, I want Michael's story to stay with people for a long time, sparking conversations and actions and contributing in whatever small way to people going home safe to their loved ones at the end of every shift.

It makes me sad and angry in equal measure to repeatedly have to read stories about work-related deaths that "could and should have been prevented had the employer ensured" that proper risk assessments were undertaken; or that adequate training was provided; or that machinery was properly guarded; or that a safe system of work was being followed; or that its own written procedures were adhered to.

Michael was a son, a brother and a fiancé, who should by now, be a husband, an uncle and a dad. I can't bring him back. So my biggest hope is that, through the telling of his story, it stops any other family from having to walk in my family's shoes.

***Should you think the telling of Michael's Story could help further enhance the safety of your colleagues, Louise can be contacted at [louise@michaels-story.net](mailto:louise@michaels-story.net) to discuss. Or, for more information, visit [www.michaels-story.net](http://www.michaels-story.net).***

## **Colin introduced our second speaker: Mr David Butter HM Principle Inspector of Health & Safety. What to expect when a HSE inspector carries out an investigation?**

David started his presentation by outlining his work within the HSE since joining in 1990 he said the any fatal injury at work would always be a number one priority for the HSE and all would be investigated. The Police would start any investigations off and if they are satisfied that it was a work related incident and not at this stage criminal then they would hand this over to the HSE.

The Health and Safety Executive (HSE) have wide-ranging powers in relation to the management and supervision of work place safety. All employers have a legal duty to ensure, so far as is reasonably practicable, the health safety and welfare of all employees. An employer is also under a duty to ensure that non-employees, like members of the public or visitors to site are not exposed to a risk of harm by the way in which a business is conducted. The same duties apply to self-employed individuals and the way they conduct themselves. David explained what to expect from an HSE investigation: HSE investigations may start for a number of reasons; following a routine inspection, as a result of the emergency services being called to a workplace accident, following a report made by an employer in accordance with the duties under RIDDOR or simply because a complaint has been made. Whatever the circumstances, the purpose of the investigation is to broadly determine whether there has been a breach of a relevant health and safety duty, and if so by whom and with what effect. Other relevant factors include lessons to be learned and what response is appropriate to any breach of the law identified.

Under the Health and Safety at Work Act etc. 1974, the HSE inspectors have significant powers to enable them to gather evidence and investigate breaches of legal duties and obligations. The investigatory powers of the HSE can be greater than those available to a police officer. For example, a HSE can compel a person to provide them with information relating to a matter under investigation, a police officer does not have this power. As part of the investigation a HSE may demand the production of documents and take copies, take samples, photographs and much more. Obstructing an Inspector in the exercise of his or her powers is a criminal offence.

In almost every case, where an investigation is undertaken, there will be an interview under caution. This is a crucial and significant event and any person or representative of a business invited to attend a PACE meeting or interview under caution should always have appropriate legal representation. An [interview under caution](#) is used to gather evidence against a person or business and must be handled appropriately and with the benefit of expert legal advice. If you or your business is under investigation then you must take immediate and appropriate legal advice.

Once the evidence gathering investigation stage is complete, a decision needs to be taken about what further action (if any) is required. In many cases this will lead to a prosecution for criminal offences. Some people wrongly think that breaches of health and safety duties are not taken that seriously. This could not be further from the truth. A proven breach of a health and safety duty is a criminal offence. It is dealt with in the criminal courts and if proven, will result in a criminal record and punishment. In the case of a business, that punishment might be an unlimited fine and in the case of an individual, an unlimited fine and a prison sentence. The decision to prosecute is not taken lightly and a process must be gone through.

## **Colin introduced our third speaker: Mr Alan Millband Partner Howes Percival. Impact of it going Wrong – The Legal Stuff?**

Alan is a leading regulatory and business defense lawyer with considerable experience across the regulatory spectrum, particularly in health safety and environmental matters. He advises on all kinds of regulatory compliance issues, and represents clients who are subject to action by enforcing authorities (such as HSE, Local Authorities, Environment Agency, Police, and CQC). He is an extremely effective magistrates' and coroners' court advocate.

Alan started his presentation by stating taking advice early might improve your chances of putting forward the strongest defense available as early as possible. This could be crucial in determining if the investigation advances to a prosecution. Again, taking the advice of lawyers that specialise in criminal and regulatory law will be vital in managing both an investigation and any subsequent prosecution. An investigation or prosecution will inevitably have a significant impact on you or your business. If the HSE or LA Inspector issues an [Improvement or Prohibition Notice](#) it might stop your business in its tracks. Also, as a business owner or director you might be held personally liable for the breach of a duty. This could result in you facing criminal proceedings before the court. Whatever the outcome of the case, the process is bound to be distressing and disruptive. Add to this the impact on other co-workers following a serious workplace incident and you have a combination of factors that is bound to have a detrimental impact on you and or your business. Alan went on to cover areas such as: Investigation management advice and assistance including planning ahead, like appointing a key contact and deputy to speak to the HSE. Keep information to a small reporting loop. One of the common mistakes made is acknowledging of guilt following an incident because of inevitable tension following the incident. Getting paperwork together and it is important to carry out your own internal investigation as required under section 2 H & S Work Act. Purpose to establish fact by gathering evidence, determining root causes, identifying remedial actions & preventing recurrence. Investigation reports are disclosable unless privileged. Securing privilege Lawyer's advantages, only your lawyer gets to see unless released by your consent. Disadvantages of privileged documents HSE won't be impressed.

Other areas covered:

Engagement with health safety authorities includes drafting correspondence and arranging and attending meetings. Key person to keep log of HSE visits and any documents received.

- Improvement, Prohibition and Enforcement Notices - compliance advice; and advice in relation to and bringing appeals; as well as representation at appeal hearings in the court or tribunal
- Notifications of Contravention and Fees for Intervention (FFI) - advice on compliance and/or challenges (queries and disputes)
- Interviews under caution ('PACE' interviews) - preparation, representation and drafting statements in lieu of attendance
- Formal cautions - advice on and assistance with acceptance
- Prosecutions - defending and/or mitigating, including representation at court hearings and trials
- Inquests - preparation and representation
- Reputation management - dealing with press, media, client, customer and staff communications and issues and advice for Directors and other staffs involved

A question and answer session followed with the three speakers making up a panel.

Darren Broadhead gave the vote of thanks to all tree guest speakers.

Colin closed the meeting after thanks were given.

**Our forthcoming meetings:**

**Zero Harm - Friend or Foe**

Date: Thursday [2nd March 2017](#) 6pm to 8:30pm

Venue: NSPCC Training Centre, 3 Gilmour Close, Leicester, [LE4 1EZ](#)

**Legal Update – Ron Reid Shoosmiths Solicitors**

Date: Thursday [16th March 2017](#)

Venue: Nottingham Forest Football Club - Robin Hood Suite, Pavilion Road West Bridgford, Nottingham, [NG2 5FJ](#)