

Legal Update 2019

10 December 2019
**IOSH Northern Ireland
Branch**

Laura Gillespie



Agenda

- HSENI Enforcement – Lessons learned
- New Legislation
- Horizon scanning
- Building Safety Reform Update

2018/19 H&S statistics

- Increased **fatalities**: 12 (as opposed to 11 in 2017/18)
 - 7 in agriculture;
 - 3 in construction;
 - 1 in manufacturing; and
 - 1 in the local authority sector.
- Decrease in **serious injuries**: 324 (as opposed to 453 2017/18)
- HSENI carried out 5,522 inspections of workplaces and served 222 formal enforcement notices

Corporate Manslaughter

- **34 total cases brought**
 - 27 in England and Wales
 - 0 in Scotland
 - 7 in Northern Ireland
- **26 convictions**
 - 17 after guilty plea
 - 9 after trial
- **8 total acquittals**
- **Largest fine: £1.2m Martinisation (London) Limited**



Enforcement – lessons learned

- **Jonathan Belshaw t/a Belshaw's Recycling Service – 24 January 2019**
 - Belshaw had employed 2 casual workers at a site which was heavily contaminated with asbestos containing materials, including asbestos insulation in the building structures
 - Belshaw failed to identify the asbestos
 - Failed to carry out adequate risk assessment
- Sentence: suspended 6 month prison sentence suspended for 3 years & fined £6,000

Enforcement – lessons learned

- **Alan Little Limited** – 21 March 2019
 - Employee fatality at its site in Lurgan during unloading operation when he was struck by a palletised load which fell from the forks of a telescopic handler
 - The handler was on loan and was being operated by an untrained employee and the load was not secured
 - Sentence: fined £50,000
 - LL: importance of training of employees and risk assessment

Enforcement – Lessons learned

- **F P McCann Limited** – 31 May 2019
 - Fatality at Knockloughrim quarry premises
 - Employee has been driving a dumper truck tasked with transferring material from the crushing and screening plant to a stockpile within the quarry
 - The dumper truck was found with the front wheels lodged in the edge protection and the employee was found fatally injured nearby due to a head injury
 - The vehicle had several faults - low break efficiencies, no parking brake, no emergency steering and no working seatbelt.
- Sentence: fined £150,000
- LL: routine maintenance of machinery

Enforcement – Lessons learned

- **Amalgamated Environmental Services (AES) Limited**
 - 19 June 2019
 - Fatality within excavation site which was being remediated following oil contamination
 - The HSENI considered there were multiple failings including the work was not sufficiently planned/ incomplete generic method statement/ unsuitable security to prevent access
 - Sentence: fined £15,000
 - LL: adequate risk assessment to inform planning operations

Enforcement – Lessons learned

- **Terex GB Limited – 27 June 2019**
 - Fatality at Omagh site
 - Employee crushed whilst moving a machines using a handheld controller in the stockyard, when it veered, trappeing him against another machine
 - Terex charged with corporate manslaughter
- Sentenced: fined £150,000 (corporate manslaughter left on the books)
- LL: importance of risk risk assessment and separation distances on site

Enforcement – Lessons learned

- **ISL Waste Management Limited** – 28 August 2019
 - Employee sustained serious injury at Mallusk site
 - Employee struck by digger arm when working at the back of an RCV
 - The digger was being driven by a shift supervisor, who was not authorised to drive the digger.
- Sentence: Fined £25,000
- LL: importance of separation distances on site and supervision of employees

Enforcement – Lessons learned

- **Enva Toomebridge Limited** - 28 August 2019
 - Contractor sustained crush injury to his foot when it was crushed in a briquetter press in Toomebridge site as a result of a guard being removed and an unguarded machine being left unattended
 - A self-employed contractor was also prosecuted and pleaded guilty to a breach of health and safety legislation.
 - Sentence: Fined £1,500
 - LL: importance of guarding and control of contractors

Enforcement – Lessons learned

- **McAuley Precision Limited – 24 September 2019**
 - 2 people suffered serious injuries (one employee) when an unsupported rack containing steel tubes and pipes fell on them
 - The HSENI found that the racking system was overloaded and the company also failed to make a suitable and sufficient risk assessment regarding the loading of the racking.
 - Sentence: fined £30,000
 - LL: adequate risk assessment and implementation of control measures

Enforcement – Lessons learned

- **Brian McGuckian, trading as McGuckian Milling Company – 7 October 2019**
 - employee sustained serious injuries when working in the blending plant at the animal feed manufacturing site when attempting to rectify a blockage, the employee's arm was drawn into an unguarded rotating screw auger resulting in the amputation of his left arm below the elbow.
 - Sentence: fined £20,000
 - LL: importance of guarding, employee training and instructions as to machinery

Trends and Sentencing – On the horizon?

- Sentencing Trends in England, Wales & Scotland
 - Robert Harvey – Scotland - November 2019 – 10 months imprisonment
 - Zarif Mohammed – England – November 2019 - six months imprisonment suspended for 18 months, and 190 hours of unpaid work with a further six rehabilitation days. He was also struck off from working as a company director for five years.
 - James Harrison – England – November 2019 - 10 months imprisonment suspended for 18 months with 20 hours unpaid work, and ordered to pay costs of £5428.21.
 - Message: enforcement authorities are increasingly willing to prosecute individuals for health and safety breaches!
- Building Safety Reform

Building Safety Reform Update

- Recap on the context for reform
- Progress to date
- Overview of the Hackitt review
- Key themes from the Government consultation
- NI

Dame Hackitt's Report

- Review of fire and building regulations in light of Grenfell
- Interim Report in Dec 2018 and Final Report in May 2018
- Sets out principles for a new regulatory framework
- 53 recommendations made to government, including:
 - A new regulatory framework which will drive culture change and new behaviours
 - A clear model of risk ownership - clear responsibilities for Client, Designer, Contractor, Owner and Manager
 - Duty holders to be overseen and held to account by Joint Competent Authority
 - Outcomes based - not prescriptive rules and complex guidance
 - Applies to HRRBs and buildings with sleeping risk

Ban on combustible materials: E&W

- Amendments to the Building Regulations 2010 came into force in E&W on 21 December 2018 to limit the use of any materials used on the **external walls** of building higher than 18 metres to European **fire rating of Class A2-s1, d0 or better**. Limited transitional provisions.
- Private Sector Remediation fund has been created to remove ACM cladding on high rise residential above 18m
- Building owners required to take reasonable steps to recover the costs from those responsible for the presence of unsafe cladding.
- Local Authorities have power and financial support to **remove and replace unsafe** cladding on private buildings (Amendment to Housing Health and Safety Ratings System “HHSRS”).

Key themes from UK government consultation: Buildings in scope – proposals

Hackitt: new and existing residential properties 10+ storeys (30m)

MHCLG:

- new and existing multi-occupied residential properties 6+ storeys (18m)
- Possible extension to non-residential multi-occupied buildings where vulnerable people sleep:
 - Hospitals, care homes, sheltered housing hotels, prisons, halls of residence, boarding schools.
- Q. Problem areas/criticisms?

The regulator

Hackitt

- a “Joint competent authority”
- HSE, FRS, LABC
- Experience of the Joint Regulators Group set up to explore how this could work

MHCLG

- A new building safety regulator
- Or potential new function of an existing regulator?
- How will it interact with existing regulators?
- Interim fire protection board

The role of the building safety regulator

- Oversight of the building regulatory system
- Oversight of industry competence system
- Ombudsman-type role for resident complaints
- Oversight of mandatory occurrence reporting
- Cost-recovery model
- Tough enforcement powers backed up by penalties akin to health and safety law
- Issues
 - Competence
 - Resourcing
 - Another layer of complexity?

New Duty Holder roles

- During design/construction and refurbishment:
 - Aligned with CDM
 - Client, Principal Designer and Principal Contractor etc
 - Over-arching duties to ensure building safety and to certify compliance with the Building Regulations
- During occupation:
 - New “accountable person” – usually the owner
 - An appointed building manager
- Named directors where duty holders are organisations

“Dutyholder roles can be fulfilled by either an individual (defined legally as a natural person) or a legal entity. However, we are considering whether, where this is discharged by a legal entity, there should be a single accountable person at board level who can be identified as having responsibility for building safety”

Overview of Gateway System

- Duty holders must demonstrate how they are ensuring building safety to gain approval of the new regulator to proceed to the next stage to development.
 - Gateway 1 – Before planning permission is granted
 - Gateway 2 – Before construction begins
 - Gateway 3 – Before occupation begins
- What about existing buildings?

During occupation – safety case

- Identifies hazards
- Describes how risk are controlled
- Details safety management system, including emergency procedures
- Reviewed every five years
- Only the building safety regulator may transfer the Accountable Person's accountability under the building safety certificate to a third party – implications for sale and restructuring
- Same rules for the Building Manager

Golden thread of building information

- Maintained and held digitally
- To capture the original design intent and any subsequent changes
- Compliance with BIM standards
- Government will define standards via guidance.
- Key dataset to be stored in spreadsheet format to allow the regulator to compare data. This should be open and accessible by default.

Competence

- Industry-led
- Organisations in roles of PD, PC and building safety manager must have a nominated individual registered with the regulator as competent
- Professional and trade bodies to create an overarching competence framework for anyone working on buildings in scope – See: “Raising the Bar Interim Report”
- Appropriate level of fire and structural safety knowledge
- Overseen by a separate, independent, stakeholder-led standards committee under auspices of the regulator

Resident engagement

- “At the heart” of the new system – links in with the role & responsibilities of the accountable person/building safety manager in occupation
- Resident Engagement Strategy
- Pro-active provision of building safety information
- “Culture of openness” – further information to be provided on request – e.g. how assets in the building are managed
- Requirement for residents to cooperate with the accountable person – access and information
- Complaints procedure for raising safety concerns

Model for future enforcement

- Improvement/ Correction Notices
- Prohibition Notices
- Withdrawal, or conditions attached to building safety certificate
- Civil and criminal sanctions:
 - Carrying out work without Gateway approval
 - Not applying for a building safety certificate
 - Non-compliance with certificate conditions
- Extension of time bar for breach of building regs – either 6 or 10 years

6 things to take away

- New regulatory regime for all of those involved in construction, building owners and managers with criminal sanctions
- Potentially bureaucratic but cannot simply ignore it and rely on outsourcing (consider client CDM duties!)
- Need to consider how duty holders would meet the requirements – knowledge, resources etc.
- Consider how obligations are passed down and expressed in contracts/leases etc. to reflect the duties and obligations
- Ensure this new regime will be integrated into procurement processes
- Start preparing now – especially the golden thread

What about NI?

- The DoF Building Standards Branch has sole responsibility for the development of the NI Building Regulations
- DoF has a statutory obligation to consult with the Northern Ireland Building Regulations Advisory Council (NIBRAC)
- The Construction Industry Forum (CIFNI) Building Regulations Subgroup was established in November 2019.
- The Subgroup will provide assistance to NIBRAC, in its consideration of DoF proposals, by representing the views of the local construction industry, The Subgroup will primarily focus on change to the following regulations:
 - Fire Safety;
 - Conservation of Fuel and Power; and
 - Site preparation and resistance to moisture

GDPR

- Conditions of processing
- Additional requirements for health information
- Privacy Policy
- Data Sharing Code of Practice
- Data security
 - Hard copy records
 - IT systems
 - Mode of transmission

Questions?



Laura Gillespie

Partner – Pinsent Masons

028 9089 4885 / 07918721998

laura.gillespie@pinsentmasons.com