

THE DAILY HAZARD

Workers die while Government dithers



A delegate makes her point at the 2001 Hazards Conference.

Shocking new figures from the Health and Safety Executive show that workplace deaths climbed by more than a third in 2000/01 compared with the previous year. There were 295 fatalities compared with 220 in 1999/2000. With 106 deaths, the construction industry accounted for more than a third of the fatalities. Agriculture and the service sector were other black spots.

There was a decline in the reported numbers of major and over-three-day injuries in 2000/01 but Bill Callaghan, chair of the Health and Safety Commission (HSC), pointed to an increase in under-reporting as a possible reason.

While official concern was expressed about the disastrous new figures, the newly elected Government showed little sign of action to meet its own targets for reductions in deaths and injuries at work.

There was no mention of the anticipated Safety Bill in the Queen's Speech setting out the legislative programme of the new Government. It was expected that the Government would propose tightening up of company directors' duties on health and safety and some improvements in safety reps' rights. Also missing from the Queen's Speech was any reference to new legislation on corporate manslaughter.

Subsequently, Alan Whitehead, the new safety minister, speaking to the TUC's health and safety specialists, re-affirmed the intention to bring in a Safety Bill. However, he was not able to say when this might happen. He did say that the Government would consult before legislating though the general understanding is that consultation had already taken place some time ago.

In another recent development,

the Government's desire to introduce a pilot scheme for roving safety representatives in the construction industry seems to be running into trouble. Last year, ministers were adamant that a pilot would begin in the construction industry this March. But all that happened was that major companies pledged to co-operate with union safety reps wherever they exist. Now the plan is to run pilots in construction, the leisure industry, light manufacturing, retail and the voluntary sector with a completion date of December 2002. The HSC has hired a consultant to try and find any employers willing to co-operate while the unions are still considering how to find reps willing to take part in the scheme.

Speaking at the Hazards Campaign Conference in June, Bill Callaghan came out strongly against the introduction of

Provisional Improvement Notices (PINs). These are much wanted by safety reps as a means of dealing with management time-wasting and obstruction. But Callaghan, describing PINs as 'bureaucratic', made it clear that the HSC did not favour their introduction.

Labour Must Deliver

The Hazards Campaign delegates clearly did not like this message and later in the conference unanimously agreed to start a campaign for the inclusion of workplace safety legislation in Labour's programme. The GMB and the Hazards Campaign will organise a fringe meeting at the TUC conference in order to encourage unions to make a stand on the issue.

In another sign of current dissatisfaction, the GMB and UNISON both slammed new guidance from the HSE on stress at work. UNISON in particular suggested to its reps that they throw the guidance in the bin.

The position on corporate manslaughter also needs to be cleared up. Labour has been long committed to bringing in custodial sentences for company directors found to be negligent in causing workplace deaths and this was repeated in the Election Manifesto.

But no legislation was proposed in the Queen's Speech. However, speaking at a British Safety Council event shortly after the Election, new Home Office minister Keith Bradley restated the intention to bring in a corporate manslaughter law.

However, he did not give a date when this is going to happen and there may not be any movement until the next session of Parliament which is not due to start until November 2002. The reason for the delay is apparently a need for continuing consultations on such issues as crown immunity.

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Victory on reps' rights

A key Employment Tribunal decision has consolidated the right of safety reps to time off to attend the TUC's Stage III training courses. Public and Commercial Services Union (PCS) rep Sue Catten, who works for the Benefits Agency in Hackney, brought a complaint, with the support of the union, under the Safety Representatives and Safety Committee (SRSC) Regulations after she was refused permission to go on a Stage III course. In a ruling delivered earlier this year, an Employment Tribunal decided her complaint was well founded.

Stage III has been designed by the TUC primarily for experienced reps. It provides both information and skills and reps who complete it successfully obtain a qualification from the Institute of Occupational Safety and Health. The course

lasts for one day per week for an academic year but can be taken over a maximum of three years.

Sue had been through the Stage I and II courses and wanted to go on to the more advanced course but was refused time off by her line manager. Sue appealed against this decision through the PCS but was not able to get it changed inside the Benefits Agency. Managers, acting on the advice of the personnel department, maintained that the advanced training was outside the scope of the SRSC Regulations. The managers claimed to have an opinion from the Health and Safety Executive (HSE) to this effect but were not able to support this with documentation. The union side took a contrary view, and it was this difference that was fought out at the Tribunal.

The Tribunal's decision was unequivocal. Their view of the duties of safety reps was that 'they may reasonably and legitimately require detailed further training beyond the basic training the representative should receive.' They accepted that advanced training would enable reps to represent members better and to improve their understanding of information emanating from the HSE.

The Benefits Agency tried to argue that there was no 'business need' for a rep to go on a Stage III course but the Tribunal rejected this approach, commenting that statutory requirements and Codes of Practice had priority. The Tribunal therefore ignored all questions of business need. The Code of Practice underpinning the SRSC Regulations defined a requirement on reps' training

which in the Tribunal's view provided a justification for attendance on the Stage III course.

The Tribunal also rejected a suggestion that advanced training was unnecessary for reps who worked in an office. The Tribunal cited stress, violence from the public and repetitive strain injury as serious hazards which justified the need for training.

This is a comprehensive decision which strengthens the position of safety reps. It does not apply in every case, particular circumstances have always to be taken into account, but it does create a platform for negotiations with employers for time off for reps.

Tube manager busted

London Underground Ltd. (LUL) and one of its managers, David 'Dangerous Dave' Elkington, have been found guilty of sending sub-contractors to work in areas where the high voltage railway track was still 'live', sometimes less than 18 inches away and in wet weather. The contractors were under the threat of the sack if they didn't do what they were told.

The judge called Elkington a 'dictatorial bully.' He said LUL were guilty of 'institutional

blindness' in allowing the dangerous regime to fester for four years, that negligence went right to board level and could easily have led to loss of life. Elkington was fined £5,000 which included compensation for the men working under him.

The judge told LUL they'd 'paid only lip service to safety' and fell lamentably short of the standards expected. But rather than fine LUL, he gave it six months to get its house in order. Keith Beattie, chief engineer of

LUL, said the forthcoming review is 'going to be root and branch.'

Dangerous Dave was in charge of contract workers employed to do maintenance work on the Central Line. The work should be done when the current is switched off and the trains have finished at night. The court proved Elkington knew this but for several years he sent his gang to work near live rails, when trains were running and without a safe system of work.

Witnesses testified that several contractors received electric shocks. One was taken to hospital and linked to a heart-monitoring machine for 3.5 hours as a precaution.

Elkington had the right to hire and fire. When two of the contractors complained, they were summarily dismissed leaving colleagues feeling they had no choice but to work in the dangerous conditions. Workers spoke of how they feared for their lives, one saying: 'We were terrified. There was nothing we could do about it because if you complained you were sacked. The money was good so you

took the risk. It was a miracle no one died. London Underground should have done more.'

The Health and Safety Executive (HSE) tried to stop the 'unbelievably dangerous' conditions by issuing a prohibition notice against LUL following a complaint by one of Elkington's gang. The notice stated the work should not be done on live track. LUL later issued a works notice to this effect which Elkington signed but in January 2001 he sent his gang out to work on live track again. The prosecution began after this incident. If the HSE had issued the notice against Elkington rather than LUL, there would have been a possibility of a prison sentence.

An RMT spokesperson said this situation was even more likely to occur after the Government's part-privatisation of the Underground under PPP. LUL has already spent £1m on a safety audit. London Transport has spent £76.7 million on consultants on PPP and restructuring over the last three years.

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It is not quite clear why such matters should cause a hold-up when the legislation has been under discussion for such a very long time.

The post-election picture that emerges is not one of Labour moving forward on occupational health and safety but rather of a Government which is at best maintaining the status quo and which may be retreating from its previous commitments. Some of the demands of the Hazards Campaign charter, which had

seemed to be realisable, now might drift out of reach again. The situation calls for a response from safety reps who have already campaigned long and hard for improved legislation and who are unlikely to take kindly to the idea that this might not be forthcoming. It remains to be seen where exactly the Government stands on workplace health and safety, but there are many reps who will think, especially after the feeble reforms of the first term, that it is now time for Labour to deliver.

LIFTING OPERATIONS AND LIFTING EQUIPMENT REGULATIONS

The **Lifting Operations and Lifting Equipment (LOLER) Regulations came into force in 1998. They cover all operations and equipment which involve lifting people and goods at work. They cover such equipment as cranes, lifts, hoists, chains, ropes, slings, hooks, shackles, eyebolts, rope and pulley systems, and forklift trucks. They also cover second-hand and leased equipment, e.g. companies hiring out cranes retain duties over how the equipment is used and maintained by their customers. They apply to all workplaces – building sites, offices, hospitals, farms, factories, etc. All the requirements of the Provision and Use of Work Equipment 1998 Regulations apply to lifting equipment.**

General requirements

Risk assessment

In order to carry out a risk assessment of lifting equipment and operations, the following factors need to be considered:

- how often and where the equipment will be used
- what limitations on use are specified by the manufacturer or supplier of the equipment
- the type of load being lifted, its weight, shape and what it consists of
- the risk of a load falling or striking a person or object
- the risk of the lifting equipment striking a person or some other object
- the risk of the lifting equipment failing or falling over while in use.

Strength and stability (Regulation 4)

Employers must ensure that equipment has adequate strength and stability for each load particularly with regard to mounting or fixing points. An appropriate safety factor should be introduced to guard against all foreseeable failure modes. Factors which affect the stability of equipment include the characteristics of the surface on which it is used, the size and nature of the load, the way the load is intended to be lifted, and the maximum wind loading. Mobile equipment which can be dismantled and assembled at different locations, e.g. tower cranes, must be stable under all foreseeable conditions.

Lifting people (Regulation 5)

This applies to people using lifts as part of their work. Employers must ensure that equipment for people is such as to prevent people being crushed, trapped or struck or falling from the carrier. This also applies to people carrying out activities from the carrier. There must

be suitable devices to prevent the carrier falling. There must be a means of rescuing people trapped in a carrier. People should be lifted by equipment not designed for lifting people only in exceptional circumstances where it is not practicable to use less hazardous means.

Installation and positioning (Regulation 6)

Equipment must be installed and positioned to reduce as much as possible the risk of the equipment or load striking a person or the load drifting, falling freely or being released unintentionally. Loads should not be lifted over people. Loads should normally be placed within an enclosure. Access by people to lifting shafts should be prevented by gates which are automatically locked except when the equipment is at the landing.

Marking (Regulation 7)

Equipment, including accessories, must be marked with the safe working load. Equipment for lifting persons should clearly indicate the maximum number to be carried. Equipment not intended for lifting persons but which could be so used in error must be clearly marked that it is not designed for lifting persons.

Planning and supervision (Regulation 8)

Employers must ensure that every operation with equipment involving the lifting or lowering of a load must be properly planned by a competent person, appropriately supervised and carried out in a safe manner. The planner should have adequate practical and theoretical knowledge and experience. The plan must address the risks identified by the risk assessment and propose appropriate control measures. It must cover the selection of appropriate equipment plus its safe use for the particular task. For routine tasks involving a single piece of equipment, the plan would normally be devised by the operator. For complex or unusual tasks, appropriate supervision should be provided. The plan should ensure that loads are not carried or suspended over persons. If an operator cannot observe the full path of a load, the employer must provide a person(s) able to guide him. Appropriate measures must be taken to ensure that loads are attached, detached and secured safely. Environmental factors must be taken into account, e.g. when weather conditions deteriorate, the use of equipment in the open air should be halted. Equipment must not be used if there is a danger of it overturning.

Proximity hazards must be avoided, e.g. contact with overhead power lines. Equipment must be stored in a way that ensures it does not deteriorate. Employees involved in lifting operations must have appropriate training and instruction. Where two or more pieces of equipment are used, the plan should be in writing.

Examinations (Regulation 9)

Employers must ensure that equipment is thoroughly examined before it is put into service for the first time and after any significant change that affects its operation. If the equipment is obtained from another undertaking, it must be accompanied by physical evidence that it has been examined. Where safety depends on the installation conditions, it must be thoroughly examined on each occasion after installation or assembly and before use. Equipment must be thoroughly inspected at least every six months if intended for carrying people, at least every 12 months if used for other purposes, or according to a scheme devised by the examiner. Examinations should also take place after any exceptional event such as accident or dangerous occurrence. Examinations must be carried out by competent persons who are sufficiently independent and impartial for objective decisions to be made. Examinations may involve the performance of tests as determined by the competent person.

Reports and defects (Regulations 10 and 11)

A person carrying out a thorough examination must report as soon as possible in writing, providing the following information:

- name and address of employer for whom the examination was made
- address of the premises at which the examination was made
- particulars sufficient to identify the equipment including the date of manufacture
- date of the last examination
- the safe working load for the equipment
- in relation to the first examination after assembly or installation at a new site or location that the examination has been performed and the equipment is safe
- in relation to a periodic examination, the interval since the previous examination and whether the equipment is safe
- particulars of any defects and repairs, renewal or alteration needed in consequence
- particulars of any tests performed
- the latest date for the next examination

- the date of the examination
- the name, address and qualifications of the examiner, whether he is self-employed or the name and address of his employer
- the name and address of any person authenticating the report
- the date of the report

An examiner must report defects forthwith to the employer owning or using the equipment. The defects must also be reported to the relevant enforcing authority. When a defect is reported an employer must not use the equipment until it is rectified. Employers must retain copies of examination reports and make these available for inspection when requested to do so.

What safety reps can do

Safety reps should check:

- that proper risk assessments are carried out of all lifting equipment and operations
- that equipment has the strength and stability for the job intended and that it is properly installed
- that equipment for lifting people meets necessary safety requirements
- that all equipment is clearly marked with the safe working load which is never exceeded
- that all jobs are properly planned and supervised
- that all necessary examinations are carried out with the results reported to employers and the enforcement authority
- that equipment is taken out of use until defects are rectified
- that workers are advised to leave the vicinity if there is a serious and imminent danger that equipment might fail.

Further reading

Safe use of lifting equipment. Lifting Operations and Lifting Equipment Regulations 1998. Approved Code of Practice and Guidance, L113
Health and Safety Executive, 1998
ISBN 0 7176 1628 2

Safe use of work equipment. Provision and Use of Work Equipment Regulations 1998. Approved Code of Practice and Guidance, L22
Health and Safety Executive, 1998
ISBN 0 7176 1626 8

Simple guide to the Lifting Operations and Lifting Equipment Regulations 1998, INDG290
Health and Safety Executive, 1999
ISBN 0 7176 2430 7

Revitalised reps vote for action

The 12th National Hazards Conference lived up to all expectations as 550 campaigners met in Manchester in June. At the main annual gathering for health and safety activists, attention focused on Hazards Charter demands around strengthened rights for safety representatives, and our demand for tougher punishment of companies who offend.

Although Bill Callaghan reassured conference that the Health and Safety Commission was committed to back room talks with Ministers around the missing Safety Bill, delegates recognised that the softly softly approach was insufficient. In fact there was general unhappiness about the Commission's complacency about a range of issues. Opportunities to bring in clear-cut Regulations have been missed because the Commission wants a 'greater degree of consensus amongst the social partners.' These issues include working time, where they appear to have given up on trying to enforce the health and safety aspects, and stress, where people want much more than awareness exercises. The TGWU staged a publicity event to highlight road traffic deaths, around 70 a week, many of which are work related and preventable: another area where regulation is needed.

Crosby Moni and Stirling Smith lead a lively plenary discussion on community and workers actions against the globalisation of corporate capitalism with positive examples of action against Cape in South

Africa and the UK as well as horror stories about the export of hazards to the developing world.

Greater Manchester Hazards Centre is to be congratulated for everything running exceedingly smoothly, and for taking on the task of organising the next conference, due in September 2002.

TRAINING COURSES AT LHC

There are still a few places on our one-day training courses on:

- **3rd September**
Introduction to workplace safety and risk assessment
- **4th September**
VDU hazards and DSE assessments

Venue: Hampstead Town Hall Centre

Cost: £40 per person per course

Call us if you want to book.

Management Council dayschool

Hot on the heels of the national Hazards Conference, London Hazards Centre held a dayschool for Management Council members and staff on 7 July. This discussed how the Centre adapts its services and develops in the immediate period, in the light of new developments and the changing needs of the Centre's users who remain predominantly trade union safety representatives, tenants groups and other community activists. Management Council members were keen to get involved in selling the Centre within their own organisations. Also, in a short period of time they produced a shopping list of topics they would like us to spend more time on, from rats on deprived council estates to violence at work as a problem that disproportionately affects black workers, from the need for harder arguments regarding the safety case against PPP schemes, to the need for better arguments on PINs, roving representatives, and other Hazards Charter demands. If we act on a fraction of the ideas, especially organisational matters regarding strengthening links with regional trade unions, we will be doing well. All who attended wanted a repeat session next year.

Voluntary sector training project reaches conclusion

The Centre's three-year National Lottery funded voluntary sector training project, ended in June. In the first year over 550 organisations willing to participate in the project were identified. Their health and safety needs were established by consultation meetings in every London borough. Training modules were devised and three days training provided to all the participants in the second year.

In year three, all the participants were invited to apply for further support. More than 200 did so. The support took the form of:

- additional training
- help with the safety policy
- risk assessments
- inspections
- information

The main findings of the project were:

- stress is the most common hazard in the voluntary sector
- the needs of black and minority ethnic organisations are different – language and cultural factors have to be taken into account
- health and safety law is of limited usefulness in the voluntary sector – enforcement hardly takes place and the

HSE and local authorities have very limited resources to assist compliance

- training and support is vital for the welfare of staff
- lone working and violence training were in great demand

A typical example of the conditions discovered is as follows. A day-centre manager attended all three days of the initial training. She then found there was no time available for health and safety management. She requested a visit by the Centre to carry out an inspection which revealed:

- fire drills never carried out
- no COSHH assessments for highly corrosive chemicals used in a dishwasher
- first aid certificate expired
- first-aid room cluttered with jumble
- incorrect VDU workstation set-up
- no manual handling assessments for kitchen staff who lift bags of potatoes, etc and volunteers who push wheel chairs
- no inoculation policy for staff and volunteers
- storage shelf too high and unstable
- un-mounted fire extinguishers

Though funding for the project has now expired, the need to raise standards in the voluntary sector is as acute as ever.



WE HAVE MOVED TO

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