

Scottish Construction Safety Group

Minutes of the meeting of January the 18th 2018

There were 21 members and guests present.

Roddy McLean introduced Katherine Metcalfe a Senior Associate with Pinsent Masons who was giving a legal update.

Katherine began by advising the meeting that she works with the health and safety team and has worked with Pinsent Masons for five years with a two year break when she worked for the fire brigade.

The sentencing guidelines for E&W apply to organisations and individuals in the H&S and food sectors, the guidelines also apply to corporate manslaughter. They are based on turnover, culpability and level of harm risked and since coming in to force the number of fines over £1 million has increased to 23 with the average being just under £700,000. Levels of fines are set out for varying sizes of company however for those companies with a turnover in excess of £50 million the courts have to decide on the level of fine. In Scotland the recent case appealed by Scottish Power Generation showed that the guidelines could be used in Scotland but “not in a mechanistic or formulaic fashion” and that the “guidelines... will often produce a useful check”. Courts in Scotland should make their own assessment based on precedent. As the procurator fiscal and defence teams don't mention categories the Courts need to make their own decision.

In E&W there is a consultation document examining the reduction in sentences for early guilty pleas although only minor changes are expected. In Scotland any reduction is based on the sheriff or judges discretion although guidelines would be useful. A further consultation is examining the sentences for gross negligence manslaughter where it is expected that sentences would increase e.g. in the Siday case where a director was sentenced to 3 years and 3 months and a safety advisor was sentenced to 9 months imprisonment sentences are likely to increase to 8 and 5 years respectively. The maximum sentence proposed is 18 years for the most serious offences. This change may impact on Section 37 prosecutions as well as impacting on Scottish sentences.

In Scotland the Principles and Purposes of Consultation document was posted; this document was prepared after extensive research and is based on fairness and proportionality. Initially this is examining death by driving and environmental crime although it can be expected to examine health and safety in the future. Similar offences should be treated equally and sentences should be no more severe than necessary with guidance being given on why the sentence was applied.

Katherine then went on to review some recent cases including that against G4S where an employee contracted legionella although it could not be shown that the disease was caused by G4S. The company had inadequate policies, monitoring and testing with poorly trained staff together with badly damaged water systems. Resulting in a £1.8 million pound fine. Kier were prosecuted for an incident near Lidgate where a worker was found lying in the road during a planing operation where the normal traffic was controlled by traffic lights. The cause of the accident was unclear however Kier were fined £1.8 million plus costs of £12,000 for failing to design and plan the roadworks (no safety zone or speed limit). Sean Hegarty (sub-contractor) was fined £75,000 plus £12,000 costs.

Tata Steel was fined £1.9 million for two offences of failing to guard machinery and failing to comply with an Improvement Notice. The fine was reduced to £1.5 million due to wrong categorisation and it was found that the Court was entitled to take account of the support being provided by the parent company. Tesco were fined £5 million for a H&S offence and £3 million for an environmental offence when it was found that 23,500 litres of petrol had leaked and entered the sewage system due to issues with fuel delivery and emergency procedures. Nearby residents had suffered from headaches and sickness which influenced the level of fine. A tipper driver was given 240 hours

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community service after reversing over a worker sealing joints on the M8 the driver had also reversed in to a live traffic lane.

Fee for Intervention was covered in the presentation where Katherine explained the process and advised the meeting that the amount of money recovered wasn't as high as expected. The most recent figures are that the recovery was £14.6 million with the HSE receiving £11 million although administration costs were very high despite most companies paying. OCS challenged the process due to the lack of independence during the appeals process and a judicial review was to be held but before the case came to court the HSE outlined plans to consult on the appeal process, settled out of court with OCS, withdrew the notices served and paid expenses. The new process has a disputes panel consisting of a lawyer as chair and two lay persons as members. The HSE chooses the chair and organises the meeting date with only written submissions being permitted. If there is no resolution the HSE will take the case to court where all the evidence can be heard. There is no cost associated with the initial dispute process.

Chevron recently appealed a prohibition Notice served on an offshore installation when an inspector identified corrosion on the treads of a stairway. He carried out a test using a fire axe which penetrated the steel. After receipt of the notice Chevron tested the stairway and all sections passed the BS test. At the appeal the tribunal found that they could take in to account evidence not available to the inspector at the time. HSE further appealed and lost and the case is now with the Supreme Court.

Fire safety post Grenfell has a number of reviews ongoing that will likely make revisions to standards in E&W which are likely to impact on Scottish standards. It is possible that the E&W regulations will be based on the process laid out in the CDM regulations. It would appear that a competence gap has been identified around those carrying out fire risk assessments.

Roddy thanked Katherine for her presentation before introducing the acting Principal Inspector of the HSE Kerry Elliot.

Kerry advised the meeting that Isabelle Martin has now joined the hazardous Installations division. Sarah Shore has taken over from Iain Brodie who is now the Regional Director, Sarah is based in Leeds. In Edinburgh there are now 2 inspectors and two trainees who mainly focus on reactive work, however other FOD inspectors are supplementing the construction sector. The work plan is similar to last year with small sites being a particular area of attention.

There was no other business. More information can be found on the Group website <http://www.scottishconstructionsafetygroup.org.uk/> .

Dates of forthcoming meetings are

15/2/18 John Bissett from the CITB with an update on events within the CITB

22/3/18 19/4/18 24/5/18

Topics including – lifting, occupational health (physicians view), toxicological information on drug and alcohol testing and fire risk assessment, will be matched to dates shortly.

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