

# safeguard

Autumn 2010

## The H&S review of the decade now looms

**Prime Minister David Cameron recently declared that it was time for a 'sensible new approach' to health & safety which, he says, has seen businesses overwhelmed with red tape in recent years. David Cameron's comments were music to the ears of many businesses, including a number of our clients who have found it challenging to keep abreast of advancing regulation in the safety arena.**

Margaret Thatcher's old ally, Lord Young, was appointed to investigate two main areas, firstly the 'application and perception' of health & safety legalisation by the public against the backdrop of the public ridicule in the press for some of the bizarre things that are done in the name of 'elf'n'safety'. Secondly, his focus was to address the rise in compensation culture in recent years – an ill-disguised attack on ambulance chasing lawyers and their television adverts.

Perhaps not unsurprisingly, David Cameron's words have not found favour with everyone. Trade Unions warn vehemently that undermining the legislation that protects staff at work is not appropriate and will herald a return to cavalier bosses putting workers at risk.

### **So what has Lord Young recommended?**

Lord Young's report was released not long after the end of the Tory Party Conference where some of his recommendations were unveiled. Lord Young proudly states that the aim of his report 'is to free businesses from unnecessary bureaucratic burdens and the fear of having to pay out unjustified damages claims and legal

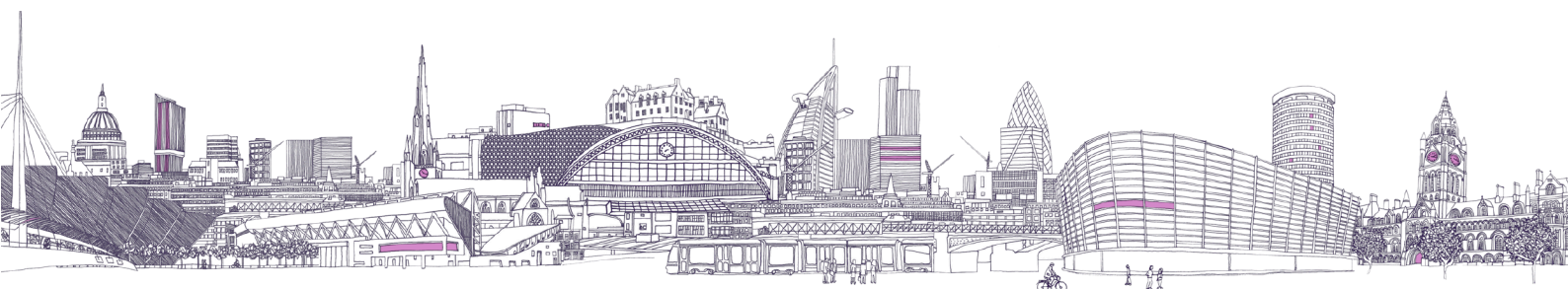
fees. Above all it means applying common sense not just to compensation but to every day decisions once again'. Here is a short summary of the recommendations included in the report:

### **Compensation culture**

- Introduce a simplified claims procedure for personal injury claims to reduce the number and the costs associated with them – it is mainly for road traffic accidents and low value medical negligence claims.
- Examine the option of extending the upper limit for RTA personal injury claims to £25,000.
- Restrict the operation of referral agencies and the way in which personal injury lawyers can advertise.
- Clarify the law so that people will not be liable for consequences of well intentioned voluntary acts, i.e. protect the good samaritan.

### **Low hazard work places**

- Simplify procedures for low hazard work places such as offices, classrooms and shops with a focus on the HSE creating simpler interactive risk assessments and check lists.
- Exempt employers from risk assessments when people work from home in a low hazard environment, and to exempt self employed people in low hazard businesses from having to do risk assessments.



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## Raising standards

- All health & safety consultants must achieve formal accreditation to professional bodies (IOSH have been campaigning for this for years) and the accreditation will be held on a web-based directory accessible to all.

## Insurance

- Insurance companies will be prevented from requiring low hazard environments to employ safety consultants to do over burdensome risk assessments.
- There is an intention to consult with the insurance industry to prevent worthwhile voluntary and sensible activities from being curtailed on health & safety grounds.

## Education

- Simplify the school process for taking children on trips.
- Introduce a single consent form for all activities that a child might undertake during his or her time at school along with simplified risk assessments for classrooms.

## Local Authorities

- Local Authorities who ban events on health & safety grounds are going to have to put their reasons in writing and the decisions can be referred to an ombudsman under a fast track process.

## Health & safety legislation

- The HSE are to produce clear separate guidance focused towards small and medium businesses involved in low risk activities.
- The current raft of health & safety regulations will be consolidated into a single set of accessible regulations.

## Working with larger companies

- A consultation is anticipated with the intention of improving the HSE's work on large multi-site retail practices.

## Combining food safety and health & safety inspections

- Food safety and HSE inspectors should be combined in Local Authorities.

- There will be mandatory participation in the Food Standards Agency food hygiene rating scheme, the results of which are published openly on line.
- Businesses will be encouraged to voluntarily display their food hygiene rating – the voluntary requirement will be reviewed after 12 months and made compulsory particularly for businesses that fail to achieve a 'generally satisfactory' rating if needed.

## Police and fire services

- Police officers and fire fighters will escape the risk of investigation/prosecution for health & safety breaches, if they have put themselves at risk as a result of committing an heroic act. The HSE, Police and CPS are to consider further guidance to put this into effect (it is notable that there is no mention of the ambulance service in this recommendation).

Lord Young's review was heralded for months, and with such a significant amount of press coverage that one might be forgiven for wondering if the review was anything than an exercise in Government populist propaganda! It comes as no surprise that the final report does exactly as predicted and without any real surprises. The proof of course will be in the pudding in terms of *how* some of the recommendations above will actually be implemented, but since Lord Young is staying on to oversee the recommended changes, one might expect change to actually happen!

We will be watching closely when the consultation on consolidating the current raft of health & safety legislation into a single set of accessible regulations begins in March 2011. By June 2011 the HSE are to produce the required clear guidance for small and medium sized businesses engaged in lower risk activities, which will be interesting to say the least since it is arguable the HSE enforcement policy has had the greatest impact in increasing the fear amongst employers about health & safety compliance! The H&S world will change, and in many ways for the better. For our clients there will undoubtedly be a greater impact on SME's than larger organisations, and on office environments, but those in the higher risk industries, such as the manufacturing, construction and waste sectors are unlikely to see much change or much reduction in red tape, in spite of the hype.

For further advice contact Ruth Armstrong on 0121 234 0038 or email [RArmstrong@hbj-gw.com](mailto:RArmstrong@hbj-gw.com)

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# Electric gates – make sure yours are compliant!

Several recent high profile fatal accidents involving children tragically crushed by electrically powered gates have caused the HSE to issue warnings to gate manufacturers and installers as well as construction and facilities management businesses. This warning applies to all those who manufacture, install and maintain electrical gates in private homes as well as on commercial and residential developments.

The HSE issued a bulletin on 2 September 2010 telling the target audience of the things that need to be done with the installation, modification or maintenance of electrically powered gates where people have access to them.

- The opening and closing forces of the gates need to be measured using the correct equipment. If an installation business does not have the correct equipment to measure the opening and closing forces, the HSE guidance is clear – do not install them.
- When electric gates are opening or closing, the force must be limited to those in the British/European Standards and gates should automatically reverse if they hit someone or something.
- Gates should have sensors that can stop the movement if someone has been detected. This could be in the form of photoelectrical devices (light beams) which stop the gates before they reach an obstacle. If there are parts of the gates where a person could become trapped or crushed during movement, these parts need to be protected. For example, the parts of a gate that pass through the gate post.

- All gates must have an emergency release mechanism in case someone gets trapped.
- HSE safety notices are only ever intended to reinforce and update previous information so this is not new law. The bulletin is a reflection of the HSE's reaction to the recent deaths of two young children.
- The two separate tragic fatal incidents involved automatic sliding gates. In both accidents the children were trapped between the closing edge of the gate and the gate posts. The children were trapped because their presence in the vicinity of the closing edge was not detected by the gate's safety mechanisms and the closing force of the gates were higher than the relevant European or British standard so neither the children themselves nor people in the vicinity were close by or strong enough to overpower the gate force.

Given the increased use of electrical gates these days in private residences and in social housing developments, the HSE is indicating its intention to be much more vigilant in terms of enforcing the existing legislation and in particular in relation to any incident where a member of the public suffers injury.

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## Fined following death by excavator bucket

On 22 November 2004 a Salford construction worker involved in the demolition of the Albert Park Inn in Salford died from injuries he sustained when hit by the bucket of a digger on site.

Fines of £30,000 were issued at the Manchester Crown Court on 10 September following a prosecution by the HSE of the company and two individuals.

Barry Godliman and Robert Watson both pleaded guilty to breaching Section 3(1) of the Health and Safety at Work etc Act 1974 for failing to ensure the safety of workers on the site. They both faced fines of £7,500 each with costs of £2,000 towards the costs of the prosecution. Windmill Demolition was also found guilty of the same offence and fined £15,000.

HSE Inspector Stuart Kitchingman commented 'this case demonstrates how important it is for contractors to be aware of their health and safety duties, especially when there are several companies working on a project'.

This case is another in a long line of fatal accidents involving excavators, and a clear indication that the HSE expect a heightened sense of awareness of the risks posed by excavators by all who work on construction sites.

For further advice contact Kay Shotton on 0121 234 0055 or email [KShotton@hbj-gw.com](mailto:KShotton@hbj-gw.com)

## Worker left disabled after fall from platform

An employee of Klarius UK Ltd was left disabled as he fell from a mobile scaffold which had inadequate edge protection.

On 18 August 2009 the machine operative, Barry Derbyshire was carrying out routine maintenance on a machine that was used to make vehicle exhaust pipes. The machine had an oil leak and Barry Derbyshire climbed up a mobile tower scaffold to locate the leak. However, he lost his balance and plunged more than two metres to the ground suffering a fractured vertebra and a further crushed vertebra.

The scaffold lacked a guardrail on one side as the company felt it would interfere with access to the machine.

The company who pleaded guilty at Newcastle-under-Lyme Magistrates Court on 3 August were fined £8,000 and ordered to pay costs of £1,892 following their breach of 6(3) of the Work at Height Regulations 2005.

HSE Inspector Lynne Boulton said 'The company had a clear lack of appreciation of risk. If Klarius UK Ltd had used the right equipment and ensured there were guardrails on the scaffolding, this incident would never have happened'.

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