

### Council Fined For Safety Failings After Child Was Injured

Doncaster Council has been fined after an 8-year-old girl suffered multiple injuries, including a fractured hip, when a wooden hoarding was blown onto the pavement during high winds.

Doncaster Magistrates' Court heard how, in December 2013 a derelict site hoarding was blown onto the young girl trapping her between a panel and the pavement.

The Council were aware of two similar incidents involving the same hoarding being blown down in the same month. They did not take appropriate action to ensure the hoarding was made safe.

Doncaster Metropolitan Borough Council, of Civic Offices, Waterdale, Doncaster was fined a total of £12,000 and ordered to pay £1,485 in costs after pleading guilty to an offence under Section 3(1) of the Health and Safety at Work etc. Act 1974.

For more information about protecting the public visit HSE's website at:  
[www.hse.gov.uk/construction/safetytopics/publicprotection.htm](http://www.hse.gov.uk/construction/safetytopics/publicprotection.htm)

### Protecting The Public

#### What you need to do

The law says you must conduct your business without putting members of the public at risk. This includes the public and other workers who may be affected by your work.

The project client should provide information about:

- boundaries
- adjacent land usage
- access; and
- measures to exclude unauthorized persons

This will influence the measures contractors take.

Key issues are:

- [Managing site access](#)
- [Hazards causing risk to the public](#)
- [Vulnerable groups](#)

#### What you need to know

All construction sites require:

- Measures to manage access across defined boundaries; and
- Steps to exclude unauthorised people.

While the numbers of children being killed or injured on construction sites has reduced, there is no room for complacency. Each year, two or three children die after gaining access to building sites, and many more are injured.

Other members of the public are seriously injured by:

- Materials or tools falling outside the site boundary.
- Falling into trenches; or
- Being struck by moving plant and vehicles.

The client's pre-construction information should include:

- project boundaries;
- adjacent land use;
- access; and
- measures to exclude unauthorised people.

#### Managing site access

**Site boundaries:** You need to define boundaries physically, where necessary, by suitable fencing. The type of fencing should reflect the nature of the site and its surroundings.

Determining the boundary is an important aspect of managing public risk. You need to:

- **plan** what form the perimeter will take;
- **provide** the fencing; and
- **maintain** the fencing.

Questions you need to ask yourself include:

- What is the nature and type of the construction work?
- How heavily populated is the area is?
- Who will need to visit the site during the work?
- Will the site attract children?
- What are the site characteristics (eg existing site boundaries, location, proximity to other buildings).

Typically, in populated areas, this will mean a two-metre high small mesh fence or hoarding around the site.

**Authorisation:** The principal contractor must take reasonable steps to prevent unauthorised people accessing the site.

- People may be authorised to access the whole site or be restricted to certain areas;
- You must explain relevant site rules to authorised people and undertake any necessary site induction;
- You may need to supervise or accompany some authorised visitors while they are on site or visiting specific areas.

### Hazards causing risk to the public

Many hazards have the potential to injure members of the public and visitors. Consider if they exist on your project and how you will manage them.

**Falling objects** - You must make sure objects cannot fall outside the site boundary. On scaffolds you can achieve this using toe-boards, brick guards and netting. You may also need fans and/or covered walkways.

**Delivery and other site vehicles** - Make sure pedestrians cannot be struck by vehicles entering or leaving the site. Obstructing the pavement during deliveries may force pedestrians into the road, where they can be struck by other vehicles.

**Scaffolding and other access equipment** - Prevent people outside the boundary being struck while they are erecting, dismantling and using scaffolding and other access equipment.

**Storing and stacking materials** - You can reduce the risks associated with the storage of materials by storing materials within the site perimeter, preferably in secure compounds or away from the perimeter fencing.

**Openings and excavations** - People can be injured if they fall into excavations, manholes, stairwells or from open floor edges. You'll need to put up barriers or covers.

Other hazards include -

- slips, trips and falls within pedestrian areas;
- plant, machinery and equipment;
- hazardous substances;
- electricity and other energy sources;
- dust, noise and vibration; and
- road works.

### Vulnerable groups

The elderly, children and people with certain disabilities may need special attention.

Work in premises such as schools and hospitals needs careful thought and planning.

Some children are drawn to construction sites as exciting places to play. You must do everything you can to keep them out of the site and away from danger.

The following specific steps are particularly relevant to child safety:

- Secure sites adequately when finishing work for the day.
- Barrier off or cover over excavations and pits.
- Isolate and immobilise vehicles and plant and if possible lock them in a compound.
- Store building materials (such as pipes, manhole rings, and cement bags) so that they cannot topple or roll over.
- Remove access ladders from excavations and scaffolds.
- Lock away hazardous substances.

## The Effectiveness of the Health and Safety at Work Act

By Kizzy Augustin and Oliver Brooks, Pinsent Masons LLP

Four decades and counting – an analysis of the effectiveness of the Health and Safety at Work etc Act 1974

Last year the Health and Safety at Work etc Act 1974, the primary piece of legislation covering occupational safety and health in the UK, celebrated its 40th anniversary. Prior to its enactment, some industries were overly burdened with uncompromising rules whilst others were subject to little or no regulation.

The Health and Safety at Work Act was conceived following consideration by the government that a broader and less prescriptive regulatory regime was required on the basis that 'those that create risk are best placed to manage it'.

### How important is the Health and Safety at Work Act?

The Health and Safety at Work Act imposes a range of duties on employers, the self employed and employees, as well as others such as designers, manufacturers or suppliers of articles and substances for use at work. It is an important and overarching piece of legislation, as it provides the legal framework to promote and encourage high standards of health and safety in the UK by seeking to reflect the law of the European Union on workplace health and safety. Specific issues that are applicable to particular industry sectors are set out in more detail in subsidiary regulations.

## Has the act been effective?

In creating the Health and Safety at Work Act, the government consulted and engaged with employers and employees for the first time in order to develop a health and safety system for modern Britain.

This consultative approach had its advantages – it aimed to simplify the existing health and safety framework, promoted legislation that had real practical application and it helped to raise awareness of health and safety issues in the workplace.

The Health and Safety at Work Act also gave rise to the formation of the Health and Safety Executive (HSE), which was established to absorb a number of different regulatory and scientific organisations.

With the help of specific initiatives, most recently the introduction of “Fees for Intervention” which enabled the HSE to recover its costs for carrying out its regulatory functions from those found to be in material breach of health and safety law, the HSE joins Health and Safety at Work Act in celebrating its fourth decade.

Despite some criticism, the HSE continues to research the effectiveness of relevant legislation by consulting with a number of industry advisory committees to develop its policies and by advising the government on health and safety.

This type of collaborative approach should continue to ensure that the HSE policies and health and safety legislation accurately address the issues faced by today’s key industries.

Although the intention to simplify matters may well have been realised in its earlier years, the Health and Safety at Work Act cultivated an excessive amount of secondary legislation, ACOPs and guidance documents.

In 2010, the government finally intervened to reduce the burden that the health and safety system seemed to place on British businesses.

There is no doubt that the Health and Safety at Work Act has stood the test of time and is still viewed as the “go-to” piece of legislation by which health and safety is governed.

Between 1974 and 2014 fatal injuries to employees have fallen by 87 per cent, whilst reported non-fatal injuries have fallen by more than seventy per cent.

The UK developed an effective piece of legislation that has subsequently been emulated by countries around the world.

## The Health and Safety at Work Act and its relationship with business

Businesses owe a duty of care to safeguard health and safety at the workplace and they must have an awareness of the main provisions of the Health and Safety at Work Act and subordinate regulations relevant to their activities.

The primary purpose of the Health and Safety at Work Act should be to help prevent death, injury and ill-health within the workplace – not simply to prosecute offenders – and this objective should not be forgotten, despite the increased amount of health and safety prosecutions, particularly of individuals, in recent years.

In order to reduce the risk of prosecution and maintain a preventative approach to health and safety, businesses should:

- Develop and regularly review their health and safety policies;
- Properly assess the risks posed by their activities;
- Consult their employees about anything that could significantly affect their health and safety at work; and
- Seek the advice of competent health and safety professionals to ensure that they are discharging their legal duties.

It cannot be denied that Britain has become a safer place for workers since 1974. The degree to which that fact is attributable to the Act versus other factors, such as the general shift away from heavy industry towards a service economy, is debateable.

However, official government figures from the United States, a country with approximately five times the population of Britain, reveal that there were almost thirty times more workplace deaths in that country in 2014 than in the UK.

We should also consider the success of the London Olympic Park, which was constructed without a single fatality, as opposed to the estimated 1,200 workers that have died since Qatar began constructing its 2022 World Cup stadiums.

Although such statistics are of little solace to those who have lost family members, friends and colleagues in the UK, it cannot be denied that Britain has consistently recorded some of the lowest levels of workplace injuries and fatalities in the world in recent years.

The Health and Safety at Work Act has successfully served to raise the consciousness of safety and health issues amongst employers and workers in Britain, although many will suggest that there has been little focus on “health” and more emphasis on “safety”.

Although the Health and Safety at Work Act is used by the HSE and Local Authorities for enforcement purposes, it primarily remains a useful tool to protect employees and the public from work activities, whether faced with prosecution or not.

## Travel to and from Work Counts as Working Time – ECJ Ruling

Time taken to travel to and from work for non-office based employees will now be considered 'working time', the European Court of Justice has ruled.

This time has not previously been considered work by many employers. It means firms – including those employing care workers, gas fitters and sales reps – may be in breach of EU working time regulations.

Excluding those journeys from working time would be contrary to the objective of protecting the safety and health of workers pursued by EU law, says the ECJ.

The case concerns Spanish security system installation company Tyco, whose technicians use company vehicles to travel to appointments across Spain. The employer argued that the first journey of the day (from home to the first appointment) or the last journey of the day (from the last assignment to home) do not count as "working time".

Instead, they regard this travel time as rest time under the Working Time Directive. The technicians brought a claim, and the Spanish courts referred the case to the ECJ to consider whether the travel time at the start and end of the day was officially working time.

Chris Tutton, from solicitors Irwin Mitchell, said the ruling would be "very significant" and could have an impact on pay, adding that it could mean employers will have to ask staff to opt out of the Working Time Directive's 48-hour working week.

The full judgement is available on the European Court of Justice website.

## Poundstretcher to Pay £79k Over "Disaster Waiting to Happen"

Discount retailer Poundstretcher has been sentenced for breaching health and safety regulations at a Lincolnshire warehouse, where an environmental health inspector found poor lighting, trip hazards and a risk of stock falling from height.

The firm was prosecuted for similar breaches at the same premises in 2011. Conditions at the warehouse in Stamford were a "disaster waiting to happen", Lincoln Crown Court was told.

The latest problems were spotted on a visit to the warehouse by an environmental health inspector from South Kesteven District Council on 6 June last

that was prompted by an employee raising concerns about overstocking levels and boxes blocking fire exits.

At the time, the store manager admitted overstocking was a problem but said she did not have the power to refuse deliveries. Two improvement notices were served on Poundstretcher with which the company cooperated and immediately complied.

Court recorder Stephen Lowne said it was a "miracle" no member of staff had either been hit or submerged by stock at the warehouse. "The risks were so obvious it was astonishing it was allowed to get to this stage," he said. "It is a disaster waiting to happen."

Poundstretcher Ltd admitted two contraventions of health and safety regulations and one breach of duty to employees. The company was fined £65,000 and ordered to pay almost £14,000 in costs.

The company has said that it has since made changes to procedures. Speaking after the hearing Martin Collinson, Company secretary for Poundstretcher, said: "We totally accept the judge's comments, this was totally unacceptable for our staff, customers and the public, but there was no financial benefit to the company for the conditions in this store.

"Our health and safety manager has now revamped our policy throughout our whole estate."

## Free Health & Safety Guidance

The HSE have a wide range of leaflets available on their web site giving easy to follow information on a wide range of health and safety topics. For further information go to: [www.hse.gov.uk/pubns/index.htm](http://www.hse.gov.uk/pubns/index.htm)

## Construction Safety Solutions Ltd

**Introduction:** The information provided here can help you keep up to date with the latest legislation, changes in working practices, HSE strategies and give examples of where some companies or individuals got it wrong.

We would welcome the opportunity to demonstrate our capabilities and work with you on your future construction projects, if you would like to discuss projects or our service provision in more detail please contact us directly and we will be happy to help.