Maintain your guard

Health and safety regulations continue to be breached, with sometimes tragic, as well as costly consequences. David Lewis reviews the legal landscape and some salutary cases

Latest HSE statistics (2009—2010) show that prosecutions were the lowest on record, with just 1,026 offences laid before the courts and 559 cases prosecuted. When issued, these figures were widely publicised, with coverage noting that, in the early 1990s, prosecution levels were three times as high. So the danger is that duty holders may consider the risk of enforcement by the HSE to be receding.

In reality, prosecution rates have been fairly consistent for the past five years. Furthermore, enforcement notices have risen to a five-year high, with 5,811 improvement notices, 47 deferred prohibition notices and 3,876 immediate prohibition notices issued last year alone.

The average fine now stands at £15,817, before prosecution and defence costs, and the hidden costs associated with proceedings. Businesses also now face the prospect of HSE charging 'intervention costs' to recover inspectors' time.

Note also that offences under the Health and Safety at Work Act 1974 (the Act) are viewed by the courts as more serious than charges under PUWER (Provision and Use of Work Equipment Regulations 1998) and LOLER (Lifting Operations and Lifting Equipment Regulations 1998). Last year, breaches of the Health and Safety at Work Act resulted in average fines of £26,649, while those for PUWER averaged £10,912.

Further, it is often a report of a duty holder's failings in respect of regulatory requirements that leads to HSE intervention. However, prosecutions under the regulations are not always favoured by HSE – the evidence being used instead to support a wider charge under section 2 or 3 of the Act.

Case law

So what do recent cases tell us? Taking PUWER first, breaches of Regulation 11(1) are common, with absence of guarding being the main cause. That regulation states: 'Every employer shall ensure that measures are taken which are effective to prevent access to any dangerous part of machinery or to any rotating stock-bar; or to stop the movement of any dangerous part of machinery or rotating stock-bar before any part of a person enters a danger zone'.

Lack of supervision was cited as a factor that allowed a worker to enter a grain silo to undertake maintenance, without first isolating the power to a screw auger. The auger was activated and the worker's leg was amputated by the machine.

Elsewhere, a maintenance worker clearing an obstruction was crushed between a rolling carriage and the support structure at the end of the tracks. The company had recognised the risks from the electric power supply and this was correctly isolated. However, the carriage itself was pneumatically powered and this had not been considered. There was no system to prevent the carriage moving, once the obstruction was removed.

Meanwhile, a fine of £20,000 was imposed for two breaches by a firm where safety devices were bypassed. Operators used spare keys to allow machinery to operate at full power despite the guard doors being open. This was allowed to happen, even though an HSE inspection had uncovered the practice just four months earlier: hence the scale of fine, in the absence of any injury.

Finally, an assembly line worker lost part of his finger when attempting to clear debris from the rotating wheel drive of a slicing machine. Here, a guard was provided, but no automatic power isolation switch when the guard was moved out of place.

Similarly, breaches of Regulation 5 – which states: 'Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair' – are also prevalent. In one case, a control lever on a log-splitting machine had been forced, allowing the machine to work without a protective guard in place. When the feed chute became blocked, the

David Lewis: breaches of PUWER legislation are still uncomfortably common

Worker is dragged through 125mm gap

A worker who sustained horrific injuries, but lived, having been dragged through a gap no wider than a CD case on a poorly guarded machine, has become a symbol for good guarding.

Barnsley Magistrates Court heard that Matthew Lowe (pictured left with his fiancee) got caught on a conveyer for moving heavy steel beams, at Compass Engineering, after peering into an outlet point to check a line of work.

His clothing snagged on the machine and he was forced through an opening just 125mm wide on the machine head – suffering a ruptured stomach and bowel, broken back, shattered pelvis, and fractured hips, right arm and ribs.

The HSE investigation into the incident, on 19 December 2008, found there was no guarding in place – a serious safety failing for both his employer and the machine supplier, Kaltenbach.

The court was told that both parties were responsible for the guarding. The machine belonged to Compass Engineering, but Kaltenbach installed and signed off the equipment as fit for use.

HSE investigators also established that Lowe, then 23, was inexperienced, having been moved from a different line.

"It almost defies belief that Mr Lowe's body could contort in such a way to fit through the opening it did, and it's even more astonishing that he survived to tell the tale," says HSE inspector Chris Chambers.

"Granted, he will never fully recover from the trauma, but he could easily have been killed and I could easily be commenting on another life needlessly lost," he continues. Chambers makes the point: had appropriate guarding been in place, the incident would never have occurred.

Workplace fatalities rising sharply

Workplace fatalities have risen sharply during 2010/11, according to the HSE's workplace fatal injury statistics, published in late June.

HSE notes that the underlying to 171, but, secondly, there was also an increase in the rate of fatal injuries per 100,000 workers – up from 0.5 in 2009/10 to 0.6 in 2010/11.

the consequences of not effectively managing workplace hazards," observes Julie Nerney, chief executive of the

operator reached through to clear the obstruction, resulting in amputation of his thumb and fingers. Elsewhere, a forklift truck overturned, killing the driver, due to incorrect modifications to the braking mechanism.

On occasions, the HSE may decide to pursue several breaches. In April this year, a steel firm was fined as a result of a worker's feet being crushed in a rolling mill. Fines under PUWER were imposed for failing to provide written instructions (Regulation 8(1) – £11,500); failing to guard against injury from burning (Regulation 13 – £9,000); and failing to ensure that re-connection of energy did not expose any person to risk (Regulation 19(3) – £10,500). Additionally, the firm was fined £9,000 under Regulation 3(1) (a) of the Management of Health and Safety at Work Regulations 1999, for failing to provide a suitable and sufficient risk assessment.

LOLER prosecutions

Prosecutions under LOLER are less frequent: in fact, there were fewer than 50 last year. However, two are worth mentioning. Both were breaches of Regulation 8(1), which states: 'Every employer shall ensure that every lifting operation involving lifting equipment is properly planned by a competent person; appropriately supervised; and carried out in a safe manner.'

In the first, a demolition worker was killed when a 31 ton concrete beam fell from a lorry. The beam had been craned onto the lorry, but the supporting chains were removed from the crane before the beam was strapped to the lorry, allowing the load to slip. The sub-contracted crane company was fined £30,000 and ordered to pay £10,000 costs for the Regulation 8(1) offence, but the main contractor was prosecuted under Sections 2 and 3 of the Act and fined £100,000, with costs totalling £20,000.

In the second case, incorrect equipment was used to remove a crane runway from a warehouse. The four ton girder was being carried by slings when it slipped and demolished an office.

One final point: it is easy to miss notifications of changes in legislation. The Notification of Conventional Tower Cranes Regulations 2010 became operative as of 6 April this year. Use of tower cranes on construction sites now needs to be notified to the HSE. This duty may fall on several parties, but if you supply, use, control or manage a crane, the duty falls on you. Do not be caught out assuming that another duty holder has informed the HSE. Guidance states that whoever is responsible for ensuring that the crane is thoroughly examined should ensure that the notification to the HSE is made. HSE leaflet INDG437 gives details of timings, information required and payment. PE

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The case of Mattew Lowe, reported in the July/August 201 issue of Plant Engineer, demonstrates the importance of good guarding

Legal requirements

PUWER requires the duty holder to ensure that equipment provided is suitable for its intended use, is properly maintained and inspected. Inspections should be undertaken by a competent person at regular intervals and records kept. Risks created should be recognised and eliminated. Where this is not possible, these risks should be controlled. The duty holder is required to ensure that suitable training, instruction and information are given concerning each piece of equipment. Clearly, the level of such depends on complexity and the risks recognised.

LOLER builds upon PUWER, in respect of selecting, marking and maintaining lifting equipment, which includes accessories and attachments (such as chains), but not equipment considered to be part of the load itself (such as pallets). LOLER also deals with the planning, organising and carrying out of lifting operations, defined as 'an operation concerned with the lifting or lowering of a load'. A load includes a person or people.

In all cases, it is imperative that proper records are maintained and that duty holders keep abreast of HSE warnings – for example, the bulletin issued in February this year concerning maintenance of certain JLG lifting platforms