



# Construction Newsletter

Issue 1 2016

Construction Industry leaders have pledged to improve health in the industry at a landmark conference with over 150 senior business leaders taking part in the discussions as part of a drive by the Health in Construction Leadership Group.

The Sentencing Guidelines came into force on the 1st February 2016, as a result companies and individual Directors, Senior Managers and employees now face the possibility of significant monetary penalties for breaches of health and safety law.

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## Improving Health in Construction

Safety has long been a priority for the construction industry, yet workers are 100 times more likely to die from occupational disease than from accidents. The 'Health' in Health & Safety is often overlooked, however it appears that this is about to change.

Chief executives of the UK's biggest contractors and clients attended a breakfast summit organised by the Health in Construction Leadership Group, with the CEOs of Balfour Beatty, Mace, Costain and Skanska joining over 150 other leaders in Mayfair.

A phrase repeated during the day was that the industry still "shouts about safety, but whispers about health".

The group came together to discuss the industry's lack of a clear focus on the 'health' part of health and safety.

Fatal accidents on site reach the news, with 35 people losing their lives in the industry in 2014/15. However we often fail to recognise the fact that thousands of families lose a loved one to occupational illnesses each year.

Delegates at the summit were told how asbestos is still responsible for 2,600 deaths each year in construction; that construction workers are six times more likely to die from suicide than a fall from height; and that there were 69,000 cases of self-reported illness in the industry in 2014/15, costing £1.3bn in lost work days (20 per cent were related to mental health).

Andy Mitchell, chief executive of Tideway, quoted a study that revealed most people would rather admit having been to prison than having a mental health issue. Statistics like these indicate why the industry needs to challenge "everything we have done to date" when it comes to health.

This is still an industry dominated by men who work hard to make a living, but often can't afford to devote resources to their mental and occupational health. And though the younger generation coming into construction is more likely to discuss mental health issues than their parents' generation, these younger workers are still only a small percentage of an ageing workforce that is generally reluctant to touch the subject.

Small steps are being taken in the right direction. Tideway has a four-pronged approach to occupational health that broadly covers the workplace, the worker's health, the worker's wellbeing and the communities in which they will be working, with an emphasis on prevention rather than treatment.

The Considerate Constructors Scheme runs an industry helpline for workers through wristbands it sells inscribed with a phone number so that not only can workers call to discuss personal health or financial issues, but their families can too. Further details can be found [here](#). The CCS also provides guidance on best practise

*(continues overleaf)*

“ Within the Health in Construction Leadership group we want to support SMEs, and getting support from key influencers is one of the ways of doing that. ”

*Considerate Constructors Scheme*

*(from previous)*

Balfour Beatty's Heather Bryant says "If you take contractors as an example, their supply chains are massive, from one-man bands to medium-sized companies, we have got the biggest hitters within this room with the capability of leading their organisations, sharing their knowledge and expertise within supply chains."

The HSE's Chief Inspector of Construction Peter Baker argues "Occupational health is not something you'll change overnight, or in a year or two years, there has to be continuous commitment. So often you see commitments like today, but life is life, external and economic factors will drive other agendas. That's why it's so important that companies don't take their eye off the ball when all the other things happen over the next decade and start to drive industry in other ways."

The industry must also adopt a consistent approach to health, it was argued, rather than 100 different companies setting 100 different standards.

Crossrail chief executive Andrew Wolstenholme said there needed to be a realisation that health requires research and understanding to know more about the environments people are working in and how to eliminate those risks at source. The fact that so many senior people have come together is recognition of the seriousness of the topic, but also the appetite to improve, he added.

As the event drew to a close, more than 150 industry leaders pledged their commitment to the health agenda by nominating someone in their business who will take on health as an area of responsibility. They will regroup in April to formulate an industry-wide action plan for health.

This is a really exciting development in the construction industry and we will look forward to sharing further developments with you. In the meantime consider what your organisation is doing to combat ill health, could you and should you do more?

### **The Sentencing Council Guidelines for Health & Safety Offences come into effect**

The Sentencing Council's guidelines for health and safety offences, probably the most significant change in Health & Safety Law for 40 years, came into effect on 1 February 2016.

The new guidelines, if followed correctly, will dramatically increase fines for companies as well as lowering the threshold for custodial sentences for individuals.

Emphasis is placed on the risk or likelihood of harm with fines intended to have a "real economic impact". Whether **"the fine will have the effect of putting the offender out of business will be relevant"**; and **"in some serious cases this may be an acceptable consequence"**.

During the final week of January 2016 four UK companies were fined £1,000,000 or more as a result of convictions for offences under the Health and Safety at Work etc. Act 1974. Although the cases all concluded before the introduction of the new guidelines, it is clear the Courts took them into account during sentencing.

One of the four cases involved construction and engineering giant Balfour Beatty plc and their subsidiary Balfour Beatty Civi Engineering Ltd. They were fined £1 million by Canterbury Crown Court after pleading guilty to breaches of section 2(1)

and 3(1) of the Health & Safety at Work etc. Act. 1974. The prosecution followed an incident in October 2012 when a worker was hit and killed by a lorry mounted crane whilst undertaking repairs to a damaged central reservation.

Organisations will be required to submit detailed financial information including turnover figures, pre-tax profit, director remuneration, pension provision, assets and debt exposure for the past three years (including where appropriate that of any associated organisation, which may lead to an examination of any group structure). Failure to produce required financial information, or the production of insufficient or unreliable financial information is likely to be viewed as an aggravating feature. The court will form its own conclusions from the circumstances and information available, including whether the offender is able to pay any fine.

Organisations facing substantial fines for such offences may also have to report such matters in their annual accounts and website with inevitable reputational damage as a consequence.

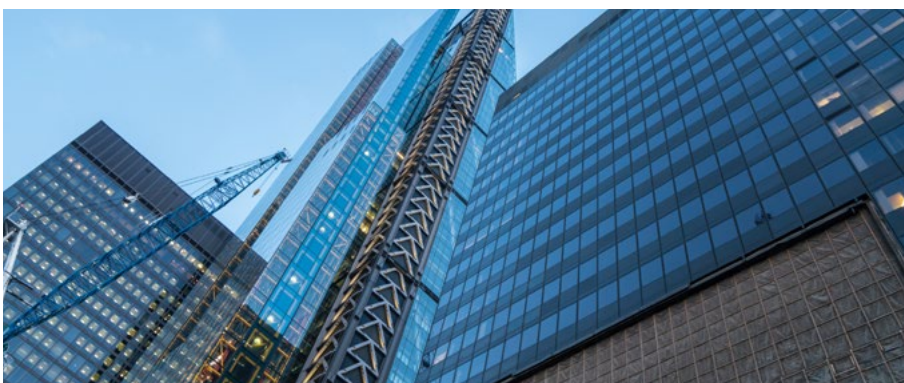
Directors and senior managers face the prospect of an unlimited fine or a custodial sentence if they are found guilty of the consent, connivance or neglect in the commission of the offence by the company. The thresholds for custodial sentences for individuals suggest a far greater likelihood of imprisonment for the most serious breaches.

Corporate manslaughter convictions require a number of evidential hurdles to be satisfied to secure a conviction. In contrast health and safety offences are much easier to prosecute and a prosecutor may consider taking that route if they feel a real impact can be achieved.

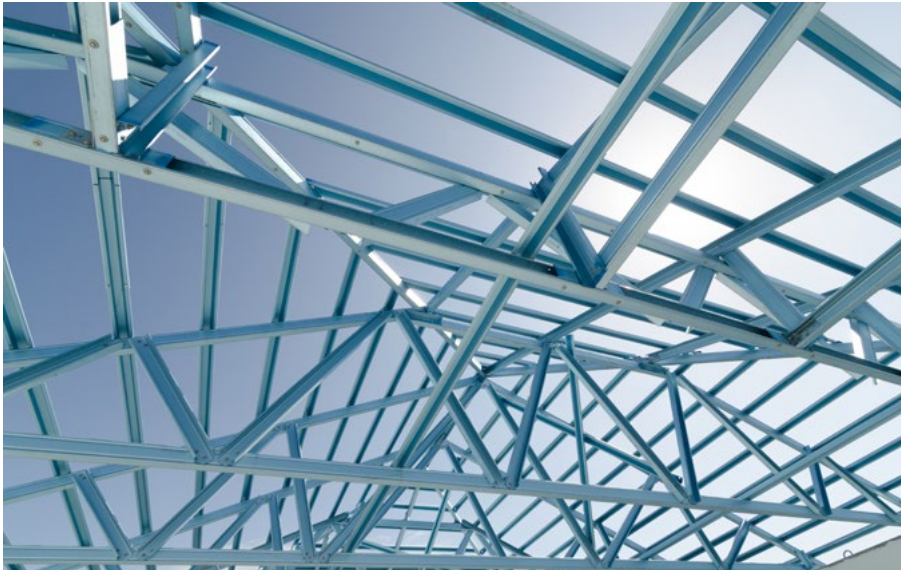
A proactive, coordinated and fully supported approach to health and safety is crucial. The guidelines make it clear that persistent offenders or those who adopt a laissez-faire approach to health and safety will face harsher fines, while single offenders with an otherwise exemplary record with an enthusiastic, forward thinking and structured approach to compliance which is fully endorsed from the top down, are likely to be dealt with in a more lenient manner, although the fine must still be large enough to be a punishment and deterrent.

The Sentencing Council have sent a clear and unequivocal message - regulatory authorities expect health and safety to remain a key corporate priority. Directors must ensure that it is at the top of their agenda.

For further information please read the [Sentencing Council Guidelines](#), and contact your broker or risk manager.







## CITB estimates 230,000 new construction workers required by 2020

The CITB Construction Skills Network report, produced by the training board and Experian, forecasts that the construction industry needs an additional 232,000 workers between 2016 and 2020 – an annual recruitment requirement of 46,420.

The construction workforce will have to grow by 5.6 per cent each year to meet this requirement. It's a huge challenge – and some trades and regions will have to push particularly hard to avoid major skills shortages that could threaten industry growth over the next four years.

London and the South-East have been the boom markets as construction has recovered, but the CITB report suggests regional hotspots will need more recruits than at any point since the beginning of the last recession to keep up with the recovery.

Of all the UK's nations and regions, Wales will require the highest percentage growth: the industry in Wales will need to increase its workforce by 15.6 per cent between 2016 and 2020 if the demands of major projects such as new nuclear site at Wylfa are to be met.

Apprenticeships will be crucial to helping the industry meet these requirements and much will rest on government reforms in this area.

The Department for Transport has announced an apprentice quota system for major infrastructure projects, with contractors to be required to either create one apprenticeship for every £3m to £5m spent on a contract, or deliver a year-on-year increase in the number of apprentices employed during a contract's lifetime.

Whilst these type of measures may help to increase the uptake of apprentices there is an urgent need for experienced skilled

workers and encouraging those who have left the industry to return will be crucial in tackling the skills challenge.

According to the Office for National Statistics there were 70,000 unemployed people (as of September 2015) in the UK whose previous job was in construction – the lowest level recorded since 1995, and less than half what it was two years ago. The pool of available skilled workers is shrinking rapidly.

Expanding your workforce brings additional challenges to your safety performance, education and culture. Consider how will you manage, engage and motivate an increasingly diverse workforce. You may need to adapt your working practices to appeal to a much wider range of personalities, skills, interests and beliefs.

## Fire Safety on Site

Each year hundreds of fires occur on construction sites, with factors such as arson, the use of flammable liquids and hot works, and the shift towards more timber frame construction fuelling the risk.

The Fire Protection Association, RISC Authority and the Contractors Legal Group have published a Joint Code of Practice, *Fire Prevention on Construction Sites* to help construction companies manage the risk. It applies to projects with an original contract value of £2.5m or more, although the threshold may be lowered for higher risk projects such as timber frame construction and high rise buildings.

As well as helping to reduce the risk of accidental and malicious fires, compliance with the code can also be a condition of insurance cover.

The code covers fire risks that could affect a construction project, starting with factoring fire safety into the design phase, establishing emergency procedures,

through to dealing with site security to prevent arson and how to deal with waste materials. Specific risks such as hot work, high-rise construction sites and large timber frame structures are referred to in detail.

The HSE also publishes guidance on fire risk in its publication, *Fire Safety in Construction (HSG168)* with sections covering multi-storey buildings and high risk building such as timber being strengthened to include lessons learned from recent fires.

The code is available to purchase from [The Fire Protection Association's website](#).

You can also download the HSE guidance [here](#).

## CITB revokes over 4000 CSCS cards

The Construction Skills Certification Scheme and the Construction Industry Training Board have confirmed that they have revoked 4,615 cards following a probe into fraudulent activity at centres where candidates were taking tests accredited by both CITB and the British Safety Council.

CSCS wrote to all affected card holders in November informing them that they needed to retake their Health, Safety and Environment (HS&E) Test. Vouchers were provided to pay for retesting and steps were taken to reduce inconvenience for businesses.

More than 6,000 candidates who had completed the HS&E Test and 2,000 people who had completed the Site Safety Plus certificate were required to retake their test.

They were asked to register by 20 December 2105 or risk the cancellation of their CSCS card.

A total of 5,480 did not register to retake their test and as a result their test result is now void and of those individuals who have already used their test result to obtain a card, 4,615 cards have been revoked.

The 553 remaining candidates have until the 14 February to successfully take their test before their cards are also revoked.

Graham Wren, Chief Executive at CSCS, said: "We take assurance that CITB's in-depth analysis was accurate. While we accept that some people have been inconvenienced we have kept this to a minimum and removed unsafe cards from circulation".

"We are urging employers to check the validity of all cards by either electronically reading the CSCS SmartCard or by using "Card Checker" via the CITB website, to make sure that invalid cards are not permitted on site".

## Recent Court Cases

### Case 1 - Balfour Beatty fined £1,000,000

In a case that reached sentencing before the introduction of the new Sentencing Guidelines Balfour Beatty has been fined £1 million after a road worker was killed whilst repairing a central reservation barrier that had been damaged in a road traffic collision.

Canterbury Crown Court heard how, on 1 October 2012, a team was sent out by Balfour Beatty Civil Engineering Limited to install temporary traffic management in order to repair barriers on the A2.

The crew were trying to remove the footings of a post that had snapped off, using a lorry mounted crane. The lorry mounted crane slipped from the concrete footing, and swung back towards the barrier, hitting the worker on the head. Larry Newman, aged 37, sustained severe head injuries and was pronounced dead at the scene.

Balfour Beatty Civil Engineering Limited, of Churchill Place, Canary Wharf, London, was fined a total of £1million, and ordered to pay £14,977 in costs after pleading guilty to safety offences.

After the hearing, HSE inspector Andrew Cousins said: "This was an entirely preventable incident that could have been averted by simply creating and implementing a safe system of work. If a suitably sized excavator had been used to remove the footing mechanically it would have prevented this tragic loss of life completely.

"Employers have a responsibility to create safe systems of work for hazardous activities that their workers may be undertaking. The workers should be trained in safe systems of working and adequately supervised. Safety needs to be proactively managed and not just left to chance."



### Case 2 - A Cheshire Construction Company is hit with a £397,500 penalty following fatality

A Cheshire construction company has been ordered to pay £397,500 in fines and costs following a fatal accident in 2011 at a site in Wimslow. This tragic event could have been avoided had the company simply ensured materials on site were stored and stacked safely.

Liverpool Crown Court heard that Edgemere Projects Ltd of Tarporley, Cheshire, was the main contractor at the site when on 7 January 2011, Andrew Dytiche aged 23, sustained fatal crush injuries when a pack of bricks fell on him.

An HSE investigation found that the storage of materials was poorly organised and pallets used to store and move bricks around the site were also in poor condition.

Edgemere Projects Ltd pleaded guilty to safety breaches and was fined £97,500 with £300,000 costs.

In our opinion the fine would have been significantly higher should the case have been tried under the new Sentencing Guidelines.

### Case 3 - Construction firms fined over electric shocks to workers

A construction worker suffered life changing injuries when he received an electric shock from an overhead power line.

Ashley Coe, an agency worker, working on site for Pascon Limited, was part of a group of workers laying cables in a trench when the incident happened on the 13 March 2013.

An excavator being used for the task tracked underneath a 33kV overhead power line and struck the power line. Mr Coe was helping to control a cable drum suspended from the arm of the excavator when the incident occurred.

Despite the high risk work being undertaken, principal contractor British Solar Renewables Ltd (BSR) failed to install goal posts and

signage to warn of the presence of overhead power lines in the area.

Subcontractor Pascon Limited who were installing the cables in the trench had failed to assess the risks of working under the overhead power lines, and subsequently had not appropriately planned, managed and monitored the work in order that it could be carried out safely. As such they were using an unsafe method of installing the cables in the trench which ran underneath the overhead power lines.

As a result of the 33kV electric shock Mr Coe suffered a life changing brain injury and had to be resuscitated by attending paramedics. He is unlikely to ever work again. Two other workers received shocks but escaped serious injury.

BSR was charged with breaching Regulation 34(2) of the CDM Regulations 2007 and received a £250,000 fine and was ordered to pay full costs of £72,466.

Pascon Limited was fined £30,000 plus £25,000 contribution to costs after admitting a breach of Regulation 13(2) of the CDM 2007.

Speaking after the hearing HSE Inspector James Lucas said: "This incident was entirely preventable and arose from clear failures to plan, manage and monitor the work and to ensure that the construction site was set up with appropriate measures to control the risks of working under overhead power lines".

### Case 4 - Scaffolding Company fined following fall from height

A scaffolding company based in Dorset has been fined for safety failings following an incident where an employee fell through a roof light.

Weymouth Magistrates' Court heard how Weller Scaffolding Limited of Dorset had been contracted to erect access scaffold and perimeter handrails around the roof of a small industrial unit at East Road, Bridport.

An employee of Weller Scaffolding accessed the roof which was constructed of asbestos cement with intermittent roof lights when he fell through one of the roof lights.

An investigation by the Health and Safety Executive (HSE) found the incident which occurred on 17 July 2014 was due to the work not being properly planned, or appropriately supervised which led to it being unsafe.

Weller Scaffolding Limited of Westway Business Park, Dottery Road, Bridport, Dorset, pleaded guilty to breaching Regulation 4(1) of the Work at Height Regulations 2005 and was fined £10,000 with £5,628 costs.