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## 1. Employers behaving badly

### a) College fined for tree-felling injury

Guildford College in Surrey has been fined after a student was injured by a tree as it was being felled. Redhill Magistrates' Court were told the campus supervisor of Guildford College instructed the estates team to fell a tree, and to take two work experience students with them. While the tree was being cut two other students arrived to observe the operation. The falling tree hit one of these observers, causing fractures to one of his legs.

The Health and Safety Executive investigation into the incident found that the employees were insufficiently trained to fell the tree competently. There was inadequate supervision and the risk assessments were not suitable and sufficient and in any case had not been followed.

Guildford College of Further Education pleaded guilty to breaching Sections 2(1) and 3(1) of the Health and Safety at Work Act, and were fined £70,000 and ordered to pay costs of £3,461. <http://press.hse.gov.uk/2016/college-fined-after-tree-felling-injury/>

### b) Not our sector but...

**Asbestos again:** A charitable trust that runs an academy school where a contractor was engaged to refurbish a building has been fined for disturbing asbestos.

The Williamson Trust of Rochester pleaded guilty at Chatham Magistrates to a breach of Section 3(1) of the Health and Safety at Work Act, and was fined £18,000 and ordered to pay costs of £17,000. The contractor pleaded guilty to a breach of Regulation 13(2) of the Construction (Design and Management) Regulations 2007, and was fined £9,000 and ordered to pay costs of £8,000. The trust had failed to carry out an asbestos refurbishment survey before the work began, and the contractor had failed to consult the existing asbestos register.

**Another explosion:** A lab technician at Bristol Cathedral Choir School lost parts of three fingers and suffered a ruptured bowel while preparing an explosive for use in a fireworks demonstration. In court, the school admitted it had failed to ensure the health and safety of its employees under Section 2, and failed to conduct its undertaking in such a way that pupils were not exposed to risk under Section 3 of HASAWA 1974. They were fined a total of £26,000; £8,000

for the S2 offence and £18,000 for the S3 offence, with costs of £12,176.

The prosecuting HSE inspector recommended that: *(Employers should)* "follow recognised guidance provided by CLEAPSS (formerly known as the Consortium of Local Education Authorities for the Provision of Science Services) and similar organisations regarding the control of risks to health and safety in practical science work."

UCU notes that CLEAPSS guidance is appropriate for all educational institutions.

## **2. Safety reps or safety committees**

Following recent enquiries about safety committees and problems associated with the way they operate, it is worth just restating the relative emphasis we should give to different organisational factors based on the statutory underpinning provided by the Safety Representatives & Safety Committees Regulations (SRSCR).

There are no regulatory standards for the functions or operation of joint safety committees beyond the duty on an employer to set one up if requested, and no statutory means of ensuring safety committees conduct their business appropriately. Many employers ignore the guidance that the HSE gives on safety committee operation. Questions raised with UCU include meetings routinely cancelled and not re-arranged; reps not being notified of meetings; inequality of representation – committees overwhelmed with managers; refusal to put trade union issues on the agenda; failure to make information about sickness absences available for discussion; rubber-stamping endless reports rather than

collectively discussing issues, principles and strategies in order to make recommendations to the employer for workplace improvements. All in all, a golden opportunity under the employers control for them to take any positive developments out of the process. When we asked about this some years ago, 90% of those who replied were dissatisfied with the way their safety committee operated. But on the other hand...

Our priority has to be the appointment and functioning of UCU safety representatives in sufficient numbers to be an effective representative body; and that qualification 'sufficient numbers' is crucial to our success.

The Safety Reps & Safety Committees Regulations are without doubt, the most powerful piece of industrial relations legislation we have ever had in the UK. They give trade union safety representatives a comprehensive range of statutory functions to be exercised in the workplace, from which we derive both our ability to influence how the employer deals with health, safety and welfare matters; and to build an effective and comprehensive organisation in the workplace. These are statutory functions enshrined in law, thus cannot be restricted, twisted or taken away from us by the employer. The final paragraph of the Preface to the SRSCR clearly says that, when all else fails, "Recognised trade unions can at any time invoke the rights given by the Regulations and the obligations on the employer would then apply": (<https://www.tuc.org.uk/sites/default/files/BrownBook2015.pdf> )

The onus is on us, collectively, to ensure we use these provisions to our best advantage.

**Trade union safety reps can:**

- investigate complaints by employees
- investigate any matter related to the health, safety or welfare of the employees they represent, including accidents, incidents, injuries and ill-health;
- make representations on any health, safety or welfare issue with the employer;
- conduct regular quarterly inspections in the workplace;
- inspect the scene of incidents & injury that cause absence of more than 3 days;
- meet and talk to inspectors of enforcing agencies when they visit the workplace;
- receive information from such enforcing inspectors, and
- ask their employer set-up a joint safety committee.

The SRSCR also impose obligations on employers to support and facilitate the functions and activities of trade union safety representatives. A lot of the guidance to the Regulations addresses employers directly, under headings such as "What must you consult safety representatives about?" and "Your duty to provide information".

**Employers are obliged to:**

- consult in good time with safety reps on a wide range of matters;
- automatically provide reps with any information within their knowledge related to the health, safety or welfare of employees they represent;
- give reps access to, and copies of any document related to health,

safety or welfare the law requires them to keep, when requested;

- permit reps to take such time off with pay during normal working hours as shall be necessary for them to undertake their functions and to attend training approved by their union or TUC; (The remedy for an employer failure to permit such time off is to make a claim to an Employment Tribunal under Regulation 11 of the SRSCR)
- provide such facilities and assistance as reps reasonably require in order to undertake their functions.

The appointment of safety representatives is a trade union matter; the union decides who they are and which employees they represent. Factors to consider when deciding how to organise are in Guidance paragraphs 26-28 to the Regulations. The TUC estimates that on average in the UK there is one safety rep for about every 50 employees. UCU branches need to appoint enough reps to build a strong organisation that can deal with problems effectively where they occur in the workplace – in the past we'd have said 'on the shop floor'. The safety representatives regulations that relate to offshore workplaces actually set numbers: each safety representative shall have a constituency with a maximum of 40 employees, and that there must be at least two safety representatives on any off-shore installation regardless of the number of workers.

No matter how many times we have emphasised that, despite there being a comprehensive legal framework regulating many workplace conditions, if enforcement is weak or non-existent,

then employers are emboldened to take the risk they won't be discovered. And that is really our role – keeping the employer up to scratch. And the truth is, you cannot do that on your own; the old adage 'There's strength in numbers' is perfectly true here. We have to take full advantage of this statutory underpinning and framework that allows us to develop an effective workplace organisation to take-up problems, improve conditions and ensure life at work is more equitable and less traumatic, and that is what work should be, not a death sentence.

If the choice is between active representatives involving members in their functions, or a relatively moribund safety committee, our priority is active reps every time.

These UCU documents can help you recruiting more reps. See: [https://www.ucu.org.uk/media/2767/Why-not-become-a-UCU-safety-rep/doc/hsmemb\\_berep.doc](https://www.ucu.org.uk/media/2767/Why-not-become-a-UCU-safety-rep/doc/hsmemb_berep.doc)

And: [https://www.ucu.org.uk/media/7257/Why-you-should-be-a-UCU-safety-representative/pdf/ucu\\_whybeasafetyrep.pdf](https://www.ucu.org.uk/media/7257/Why-you-should-be-a-UCU-safety-representative/pdf/ucu_whybeasafetyrep.pdf)

### **3. New sentencing guide for H&S offences in England and Wales**

New sentencing guidelines for health and safety offences by organisations & individuals, and corporate manslaughter cases came into effect on 1 February 2016 and apply to any case sentenced in courts in England and Wales from that date. The Sentencing Council has published these to address the lack of comprehensive guidance for health and safety and corporate manslaughter offences. The argument for more proportionate sentencing for H&S

crimes has been going on for many years and has been a major TUC campaign; previous guidance hasn't been successful in the past.

This new guidance provides courts with a structured approach to imposing appropriate penalties for health & safety breaches. They have introduced a nine step approach for the court to follow in calculating sentences and these recommendations make interesting reading, and should lead to fines and other penalties that are considerably higher and more proportionate than current levels.

To help courts set appropriate sentences, the baseline is guidance on the level of culpability ranging from "Very high - deliberate breach or flagrant disregard for the law" to "Low - minor failings occurring as an isolated incident", and 4 harm categories, calculated by multiplying the seriousness of the harm risked by the likelihood it would occur.

Having established the seriousness of the breach, then tiered penalties suggested are according to the size of the organisation and its annual turnover, and the level of culpability. For a large organisation with a turnover of +£50 million, the range for an offence or breach of duty categorised as Very High Culpability with Harm Category 1 is between £2.6 and £10 million. For a workplace fatality in a similar organisation, suggested penalties range between £4.8 and £20 million. The guidance suggests that where an organisation's turnover is greatly in excess of the £50+ million threshold, it may be necessary to move outside the suggested range to achieve a proportionate sentence. There are aggravating and mitigating factors suggested to the court under each

category, which may lead to arguments about mitigation and could lead the sentencing process to be extended.

These guidelines highlight the importance of good health and safety in the workplace, and the seriousness the courts place on breaches of duty. The potential sentences should encourage directors and senior executives throughout organisations to ensure they comply with health and safety legislation and discharge their duty of care towards employees and others. The Sentencing Council's full guidelines are [here](https://www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web.pdf): <https://www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web.pdf>

#### **4. Managing university health and safety**

Towards the end of last year, UCEA produced new guidance for employers on managing health and safety. <http://www.ucea.ac.uk/en/publications/index.cfm/landmhshe> This is broadly based on the revised HSE guidance document HSG65, available to download [here](http://www.hse.gov.uk/pubns/priced/hsg65.pdf): <http://www.hse.gov.uk/pubns/priced/hsg65.pdf>

The HSE guidance emphasises the importance of involving workers and consulting with trade unions, and the UCEA document contains reference to ensuring a role for employees, and the involvement of trade unions at both Leadership and Senior Management levels, in both consultation and membership of safety committees. Overall the document sets out a reasonable framework for managing health, safety and welfare in HE establishments. Well worth reps downloading a copy from the UCEA site and reviewing how the practical

arrangements in your institution match up to the standards recommended by the document. It is up to us to make sure our role isn't ignored or marginalised - it happens.

There are other, linked, things coming up soon with the potential to affect everyone. I've had one enquiry about the role of the International Standards Organisation that has been discussing a new international standard, ISO 45001, for some time. It is expected to be approved later this year. This is a development from OHSAS 18001, the current International Standard for H&S and is viewed by many authorities as having the potential to undermine worker involvement. This is the article from TUC Risks Bulletin 677, October 2014 which says it all really.

#### **ISO bid to 'privatise' safety standards**

*A draft standard on safety management being prepared by the International Organisation for Standardisation (ISO) could be seriously bad news for workers, unions have warned. When ISO decided in 2013 to proceed with its own international standard for an Occupational Health and Safety Management System – ISO 45001 – both the International Labour Organisation (ILO) and unions were alarmed, and objected forcibly to ISO's intrusion.*

*Unions say ISO does not have an expert mandate in occupational health and safety, and unlike ILO doesn't have to listen to those who have. The latest draft of the standard, being steered through by a working group chaired by the British Standards Institute (BSI), heightened concerns, with mentions of "workers" almost entirely removed and "worker participation" not part of the package.*

*TUC head of safety Hugh Robertson commented: "We need strong standards on health and safety but we have ones already. These were developed by the International Labour Organisation and agreed with unions, employers and governments worldwide. They put workers and worker involvement at the heart of any standards." He warned: "The attempt by ISO, led by the British standards body BSI, to develop separate standards which were not wanted by either employers' or workers' representatives, amounts to the privatisation of health and safety regulation. The unelected standards bodies, most of which have no involvement of people who actually understand the world of work, are simply trying to develop a product that they can market and make large sums of money certifying." He added: "I do not see anything in the current proposals which will drive up standards. Instead they will undermine the existing standards, including the management standards the HSE has developed in the UK, which are far better."*

*Sharan Burrow, head of the global union federation ITUC, said: "ISO must be made painfully aware that a standard that ignores the critical role of affected parties in its design and implementation, which undermines ILO standards already in place and which could give an ISO stamp of approval to blame-the-worker systems just won't work." She added: "This isn't about a piece of paper, it is about workers. ISO would do well to remember that."*

## **5. TUC Hazards at Work manual remaindered**

This 2013 edition of the book has been incredibly popular and the new edition is due out in summer 2016, which will

include some employment rights updates. The current edition is still very relevant and TUC are now offering a special price while stocks last! The new edition has been edited down quite considerably, so for those who want a bit more historical and developmental context and background to some of the issues, it is worth getting. "Remainder" price is £10.00 a copy. Order from TUC at:

<https://www.tuc.org.uk/publications/hazards-work-organising-safe-and-healthy-workplaces-2013-edition?frmpubid=591>

The Hazards at Work manual is also available as a digital book from the Apple store and others at £11.99. Wait for the new edition is our advice, unless you can get it substantially discounted.

## **6. You heard it here first (3) – vibration works**

There's more ground-breaking news on the sedentary worker front. According to an article in Occupational Health and Wellbeing from Personnel Today on 21 January,

(<http://www.personneltoday.com/hr/simple-solution-for-sedentary-behaviour-risks-at-work/?cmpid=NLC|PTPT|PTOHN-2016-0205&sfid=7012000000taB6>)

the World Health Organisation has now ranked physical inactivity as the fourth leading risk factor for global mortality, after high blood pressure, tobacco use and high blood glucose. The article brands sitting down at work as the "sitting disease", and claims that sedentary behaviour "increases the risk of ill health and has been associated with a range of serious conditions including obesity; cardiovascular disease; high blood pressure;

depression; diabetes; and musculoskeletal disorders, to name only a few". What more could there be?

It's quite convenient for employers to be able to blame sitting down as the cause of many work-related problems, rather than address the real causes. If the level of seriousness identified by WHO is true, it suggests that UK office workers should be succumbing to the 'sitting disease' in their thousands, but the HSE workplace statistics don't even mention 'sitting disease' as a cause of death, injury or illness. Perhaps this initiative from Microsoft has helped reduce the threat.

Microsoft's office in Reading is using 'vibration platforms' to vibrate people back to health after a quick burst of sitting at the desk. These are machines that you grab hold of, stand, sit or lie on and they vibrate, so do you. The comprehensive claims made for this kind of machine really do sound a bit 'snake oil'ish to me, but judge for yourselves here:

<https://powerplate.com/education-training/research>

For years vibration has damaged the backs of drivers, and destroyed blood vessels and tissue in hands and fingers.

Vibration White Finger is a condition for which thousands of former mineworkers and others have been compensated under a special Government scheme - and hand/arm and whole body vibration is now subject to the Control of Vibration at Work Regulations 2005:

<http://www.hse.gov.uk/pubns/indg242.pdf>

This kind of focus just diverts attention away from real workplace hazards and risks and allows employers to play their usual "blame the worker" game and add a quick fix. We wouldn't dream of suggesting there may be a conspiracy between the apologists for employer-created harm and the promoters of this kind of approach who may simply wish to exploit a commercial opportunity. Don't be fooled.

**John Bamford**

UCU Health & Safety Advice

Contact **UCU Health & Safety Advice**  
**UCU Health & Safety Advice is provided by the Greater Manchester Hazards Centre, and is available for 3 days each week during extended term times. The contact person is John Bamford: (e) [jbamford@ucu.org.uk](mailto:jbamford@ucu.org.uk) (t) 0161 636 7558**