

## Welcome to the latest edition of our newsletter for all your health and safety updates.

# CORPORATE MANSLAUGHTER ACT COULD COST BUSINESSES 10% OF ANNUAL TURNOVER

Under the Corporate Manslaughter Act which came into force on the 6<sup>th</sup> April 2008 courts may impose an unlimited fine, a publicity order and/or a remedial order on firms found guilty of such an offence.

The SAP, an independent body sponsored by the Ministry of Justice advises in its consultation that because the new offence has been created for the most serious instances of management failure leading to death "a fine imposed for an offence under the Corporate Manslaughter Act should be set at a level significantly higher than an offence under the Health and Safety at Work Act involving death".

The SAP has suggested that where the defendant has pleaded not guilty a starting point of 5% of the annual turnover based on an average of over three years could be applied. Taking into account any aggravating or mitigating

factors. The courts should ultimately arrive at a figure between 2.5% and 10% of a businesses annual turnover; this may be increased to more where there are previous convictions or other serious aggravating factors.

### WHAT DOES THIS MEAN IN REAL TERMS?

Several large companies have been fined in recent years but none of these fines were anywhere near the 10% proposed. For example:

- In 2005 Transco was fined £15 million after four people were killed in a gas explosion. A fine based on 10% of the firm's annual turnover would have cost them £150 million.
- Network rail was fined £3.5 million after the Hatfield train derailment in 2000 in which four people were killed. A fine based on 10% of its latest annual turnover would have been £600 million.



- Balfour Beatty was fined £7.5 million for the Hatfield derailment, if this happened again in the future this could cost them £200 million.

In addition to such large fines there are recommendations by the SAP to impose a 'publicity order' on every business convicted of the offence and to advertise the fact of its conviction and the fine imposed. The order may also require publicity on television, in local, national and trade press or in notices to customers or shareholders.

For more information on the Corporate Manslaughter and Homicide Act please contact Keith Price or Victoria Sewell on 01604 654 111.

## DIRECTOR'S COMMENT

### WHAT IS THE REAL IMPACT?

This Act came into place in April 2008 and for businesses who fail to manage health and safety within their company it could mean the difference between a successful business or potential closure and redundancies.

The potential cost includes not only the possibility of 10% of the company's annual turnover being taken but also the embarrassment of having to notify customers and shareholders of a conviction and the need to go public with any convictions also means that such businesses are unlikely to be successful in the future.

Companies who invest well in their health and safety management should have nothing to fear, those who don't need to act on it now.

For more information please contact Paul Sewell on 01604 654 111 to see how Positive Steps can assist your business.



## CASE LAW UPDATES



### THOMAS COOK STAFF CHARGED OVER CARBON MONOXIDE DEATHS

Several editions ago we covered the story surrounding the two British children who died from carbon monoxide poisoning whilst staying in a room at the Louis Corcyra Beach hotel in Corfu.

Following an investigation two Thomas Cook employees will face trial in Greece over the deaths of Christianne Shepherd and Robert Shepherd in October 2006.

A statement issued by Thomas Cook said "it was shocked and deeply concerned" that its employees had been charged, given that the District Attorney had confirmed in December 2007 that the individuals were "in no way responsible".

A full independent investigation carried out by a gas expert found that on the 26<sup>th</sup> October 2006 the trip switch on the gas boiler was short circuited. Thomas Cook confirmed that it had a signed contract from the hotel advising that there was no gas used in the

property. Thomas Cook added that "it has to rely on information that its hotel suppliers give to it and is entitled to do so". The two employees have not been named.

### ARTIST AND COUNCIL CHIEF IN DOCK OVER INFLATABLE ARTWORK

The creator of an inflatable artwork that lifted off its moorings, killing two north east women, was yesterday charged with manslaughter by gross negligence.

Maurice Agis, 76, was charged in connection with the deaths of Elizabeth Collings, 68, and Claire Furnedge, 38, who were killed when his inflatable artwork Dreamscape reared up into the air on a warm Sunday afternoon on July 23, 2006. A Council Director and his authority were also charged with health and safety breaches.

Durham Constabulary has charged Maurice Agis with gross negligence

manslaughter following advice from the Crown Prosecution Service.

Mr Agis also faces an offence under Section 3(2) of the Health and Safety at Work Act of 1974 for failing to ensure the safety of persons not in his employment.

The CPS has also authorised proceedings, arising out of the same incident, against the Liverpool-based promotions company Brouhaha International Limited for a breach of Section 2(1) of the Health and Safety at Work Act 1974 and Chester-le-Street District Council for a breach of Section 3(1) of the same Act.

These proceedings follow a lengthy investigation by the HSE and Durham Constabulary. The families of those killed have been notified of the proceedings. The charges against the council are for failing to ensure the safety of members of the public. The case is still on going.



## MP'S BACK CALLS TO REGULATE THE HEALTH & SAFETY PROFESSION



**More than 50 MP's have pledged their support for regulation of the Health & Safety profession.**

The MP's signed an early day motion which contained various concerns including the fact that people without experience or

qualifications can act as health and safety advisors and that incompetent advice can put workers at risk.

Mr. Clapham welcomed IOSH's call for the government to bring forward measures to regulate the profession stating "you would not expect your dentist to be a qualified mechanic, so why would you accept a health and safety professional without relevant qualifications?".

Positive Steps welcomes calls for

the profession to be regulated as this will ultimately protect the health and welfare of people whilst at work and ensure that employers receive competent advice from properly qualified and experienced health and safety consultants.

Positive Steps only employ consultants who have relevant qualifications and experience in health and safety. All our consultants are members of IOSH.

# RECENT CASE LAW IN BRIEF

MANAGING AGENT AND LANDLORD FINED £80,000 AFTER PUTTING THOUSANDS OF LIVES AT RISK FROM UNSAFE PIER.

**Panama based Ravenclaw Investments which owns the pier and Boss Management (UK) who manage the pier denied breaching health and safety laws.**

A judge at Hove Crown Court fined the owner and the managing agent of Hastings Pier £80,000 after both firms were found guilty of ignoring health and safety improvement notices and failure to maintain the piers crumbling structure.

Hastings Borough Council started investigating the state of the 135 year old pier following complaints from several members of the public with regards to parts of the supporting ironwork falling onto the beach; and following a survey commissioned by a potential purchaser who identified structural problems.

The 227m long pier hosted regular rock concerts and club nights in its ballroom at the end of the pier.

Officers from the Council met with pier representatives on a repeated basis and requested detailed maintenance programmes but to no avail. The Environmental Health Officers received no substantive replies to letters which were sent.

Environmental Health Officers liaised with the National Pier Society which specialises in pier preservation. It agreed that what the council had requested was reasonable and that any reasonable pier owner would be taking reasonable steps to ensure the safety and integrity of the asset. The National Pier Society commented "you've got to have ongoing planned managed maintenance. There are lots of people out there with the necessary knowledge"



Both the managing agent and owner ignored Improvement Notices served on them in May 2006 which required a full structural assessment. In June 2006 the council used its emergency powers under the Building Act to close part of the pier amid concerns that it might not withstand the weight of up to 2000 people due to attend several planned music events.

The Magistrates upheld the decision to prohibit public access to parts of the structure, granting a formal court order in September 2006.

The owner and managing agent were fined under:

- S33 (1) (g) of the Health and Safety at Work Act 1974 for not complying with an Improvement Notice.
- Section 4 of the HSWA 1974 for failing to ensure the premises were safe for use.

Both companies were fined £20,000 for each of their offences and ordered to pay costs of £8156 to the Council.

This case highlights the seriousness of not taking action on any Improvement Notice served on a company and the failure to manage and maintain premises in a safe condition.

For further information on action in the event of an Improvement Notice or for more information on suitable and sufficient health and safety maintenance and management systems please contact the office.

## Q & A: WHAT DISABILITIES ARE COVERED UNDER THE DDA 2005?

A: The Disability Discrimination Act 2005 was updated in 2005 to incorporate other disabilities which were not previously covered.

The following disabilities are now covered under the DDA 2005:

- Cancer.
- HIV and AIDS.
- Multiple sclerosis.
- Mental health conditions now no longer need to be clinically diagnosed i.e. eating disorders.

Conditions not covered include:

- Drug addictions and alcohol addictions.
- Pregnancy.
- Broken limbs which do not last longer than 12 months.

It should be noted that should a person suffer a medical condition resulting from an addiction i.e. cancer or cirrhosis of the liver then they would be covered under the DDA 2005.

## SHOULD OUR STAFF HAVE TRAINING ON DISABILITY AWARENESS?

Staff who have received disability awareness training are more aware of persons with physical, mental and hidden disabilities and the assistance that they may require. Understanding the issues that disabled persons may face can assist in providing your clients with the best service available.

For more information or to book a half day disability awareness training course please contact Victoria Sewell on 01604 654 111.

# POSITIVE STEPS UPDATES



## POSITIVE STEPS DIRECTORS TO RUN THE BUPA GREAT NORTH RUN 2008

Paul and Victoria Sewell the Directors of Positive Steps are participating in the BUPA Great North Run to be held on Sunday 5<sup>th</sup> October 2008. The Directors will be running for their chosen charity Diabetes UK.

The 13.1 mile run is the world's largest half marathon which starts in Newcastle and finishes in South Shields.

Paul comments "We have decided to run for Diabetes UK for one of our family members and because the figures are on the increase. It is a sad fact that 1 in every 250 people are diagnosed with type 1 diabetes which requires daily injections to stay alive. It is also most common in very young children and teenagers, we hope that the money raised will assist Diabetes UK and their research teams in finding a permanent cure for this medical condition".



If you or your company would like to sponsor Paul and Victoria in raising money for Diabetes UK then please go to:

[www.justgiving.com/positive-steps](http://www.justgiving.com/positive-steps)

We will keep you up to date with regards to our progress.

## MEET THE TEAM

As part of our continued service to our clients we thought it would be useful to do a feature on the key members of our team. In this edition we feature Victoria Sewell, Director and Consultant.



Victoria started the business in June 2002 having previously worked in a consultancy and in house role. Victoria is a Chartered Health and Safety Consultant (CMIOSH) and an NRAC Auditor (National Register of Access Consultants). Victoria undertakes risk assessments, health and safety policies, control of contractor schemes and access audits. In addition she ensures all new consultants undergo a rigorous training programme and all of their work is audited to ensure that high standards of service are met.

## EFFECTIVE HEALTH AND SAFETY MANAGEMENT STARTS WITH A POSITIVE STEP...

Positive Steps was founded on the basis that health and safety should help, not hinder the growth of a business. By understanding your company's aims and objectives we can identify workable solutions to meet your everyday and long term health and safety goals.

Our service based approach will enable your company to make the welfare of employees, contractors and clients a core part of your business aspirations.

We offer a comprehensive range of safety management services some of which are detailed below:

- **Access to Chartered Health & Safety Practitioners**
- **Health and Safety Risk Assessments**
- **Fire Safety Risk Assessments**
- **Disabled Access Audits**
- **Company Health and Safety Policy**
- **Display Screen Equipment Assessments**
- **Health & Safety Audits**
- **Health & Safety Training including IOSH Working Safely & IOSH Managing Safely, fire safety awareness and fire warden training, disability awareness training, manual handling and DSE assessors training.**
- **Method statements**
- **Contractors Approval Scheme**

For further information on any of our services, please call **01604 654111** or e-mail **office@positive-steps.net**



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