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This is the final H&S News for 2011- 12. Do have a decent summer break, and I look forward to seeing half a dozen of you at Hazards Conference.

It has been suggested we have a UCU stall this year, so I will organise that. I'm on leave from 7<sup>th</sup> September to 22<sup>nd</sup> September 2012, and will put my Out of Office notice up. I'll circulate more information about the ACoP consultation soon (See Item 2 below) and I'll send anything relevant round over the summer.

I will circulate some information on "Stress as an Industrial Injury" for Anti Stress & Bullying Week to the list by the 25<sup>th</sup> July 2012. You'll need to make a start on organising some activity for the week when you get back. If anyone has seen the latest from CIPD about the "new stress management tool" don't be fooled – it's the old CIPD/HSE "Stress Management Indicator Tool" from 2008 in slightly different guise, and with an accompanying 360°-evaluation questionnaire, which the manager gives to "an other" to complete, then compares the responses. Since this was originally published in 2008 we've been encouraging UCU reps to get members to apply the 360 degree approach. The fact that the manager selects who "an other" is raises serious questions about the validity of the whole process. It's difficult to see how this will be of any real value. <http://preventingstress.cipd.co.uk/>

John Bamford. UCU H&S Advice

## 1) Legionella update

The Scottish Government has reported (4<sup>th</sup> July 2012) that there has been another death caused by the Edinburgh legionella outbreak, making 3 in total. The victim, a man in his 60s from south west Edinburgh, had been unwell for a period of time. The total number of confirmed cases is now 50, with a further 49 suspected cases. There is no more news about the investigation into the causes.

UCU Factsheet at [http://www.ucu.org.uk/media/docs/j/0/hsfacts\\_hotwater.doc](http://www.ucu.org.uk/media/docs/j/0/hsfacts_hotwater.doc)

The Legionnaires Disease Approved Code of Practice (ACoP) is one the government wants to get rid of. (See Item 2)

## 2) Latest attack on regulatory standards

I circulated information recently about the consultation to review a further 30 ACoP's that the government initiated on 25<sup>th</sup> June 2012, 15 of which it wants to withdraw or seriously reduce. ACoP's have a quasi-legal position which makes them better than guidance, as failure to observe the terms of an ACoP usually means the employer is not achieving compliance, whereas they are told they are free to ignore guidance and take other measures if they so choose. Employers in our sector frequently ignore guidance – the most frequent example reported to us is safety committees that are stacked with managers and few union reps, and don't get given figures the guidance recommends they should be given.

The guidance in the SRSC Regulations Paragraph 83 in relation to safety committee membership says "*The number of management representatives should not exceed the number of employee representatives*". Paragraph 76 recommends that one of the functions of a safety committee is "*consideration of aggregated absence statistics and reasons for such absences*" [Paragraph 76(b)] so the committee can make reports "*to management on unsafe and unhealthy conditions and practices, with recommendations for corrective action*". [Paragraph 76(a)]. Data Protection legislation is the most common reason given by employers for not giving this information. The guidance specifically says "aggregated figures", which fall outside the DPA provisions. So what price guidance when employers ignore it?

The full list of ACoPs in the consultation procedure is below. To comment on all this in detail is virtually impossible in the time available. We will be discussing this next week at the TUC Health & Safety Specialists Group meeting, and I will circulate further detail following that meeting. It is important that reps put in some response, if only an objection to this whole process as undermining acceptable standards for regulation. Based on previous experience, UCU health and safety has no faith in how likely this kind of process is to influence the outcome. Those in government who are hostile to workers having safe workplaces without risk to their health will do what they have already decided anyway. The failure to consult meaningfully extends into those levels of decision-making.

Included in the consultation are the Legionnaires Disease ACoP, hard on the heels of the Edinburgh outbreak; Gas Safety after a major gas explosion in Oldham; and Asbestos, as the annual number of deaths from mesothelioma continue to increase. Agriculture, now on the list of low-risk industries, had 33 adult worker fatalities in 2011/12, up from 30 the previous year even with the ACoP in place.

The annual average over the past 5 years is 35. The incident rate is almost 10 per 100,000 workers. But it's worse than that, because a number of children and young people who are not employees but family members die each year in work-related incidents, or while playing in what is really a workplace, and these deaths are not recorded as work-related in HSE statistics.

ACoPs tell employers what they have to do to comply with the law, and all the evidence and research confirms that that's exactly what employers want – practical guidance about what to do to comply. So it's a short-sighted move to withdraw or truncate these; and we may well find a coincidence of interest emerging between employer organisations and trade unions as the consultation develops.

This is the list:

#### Section 1 - Proposal to revise, consolidate or withdraw the following ACoPs

- Dangerous substances and explosive atmospheres (ACoPs L134 to 138)
- Legionella (ACoP L8)
- Asbestos (ACoPs L127 & L143)
- Gas safety (ACoPs L56, CoP20)
- Hazardous substances (ACoP L5)
- Workplaces (ACoP L24)
- Management of health and safety (ACoP L21)
- Agriculture (ACoP L116)
- Pipelines (ACoP L81)

#### Section 2 - Proposal to make minor amendments or no changes to the following ACoPs

- Diving (ACoPs L103 - 107)
- Work equipment (ACoPs L22, L112, L114)
- Lifting equipment (ACoP L113)
- Confined spaces (ACoP L101)
- Pressure systems (ACoP L122)
- Hazardous substances - pottery production (ACoP L60)
- Hazardous substances - lead (ACoP L132)
- Quarries (ACoP L118)
- Worker involvement (ACoP L146)

#### Section 3 – Introducing a limit on the length of ACoPs

- Proposal that all ACoP documents be limited to a maximum length of 32 pages, other than in exceptional circumstances

This consultation began on 25 June 2012 and ends on 14 September 2012. The condoc is available at <http://www.hse.gov.uk/consult/condocs/cd241.htm>

All these ACoPs are available on the HSE priced publications download website at <http://www.hse.gov.uk/pubns/books/index-catalogue.htm> . If you didn't follow my advice a year or so ago and download those documents that were relevant to your work (that probably wouldn't include the mining ACoPs, for example) from this site, I suggest you do so now, before these information resources disappear.

### 3) Diesel exhaust carcinogenic – it is official

The World Health Organisation has finally categorised diesel exhaust fumes as a Class One carcinogen. It was a lead item on the news that day – a serious report on H&S for a change! Polycyclic aromatic hydrocarbons (PAHs) are chemical substances produced by incomplete combustion of carbon-based fuels, particularly diesel; they attach themselves to the tiny soot particles in the diesel exhaust and we all inhale them. There hasn't been any real work done on identifying how much lung cancer or other lung damage diesel exhaust has been responsible for, but I'm sure if there had been, it wouldn't account for very much. The damage caused by lead in petrol was also covered-up for years - see Bill Bryson's "A Short History of Nearly Everything" for an account of this.

There is anecdotal evidence in the canal community that, when narrowboats changed from being horsedrawn or steam powered to diesel power, there was an increase in the incidence of lung cancer amongst steerers some 20 years or so later. I'd like to chase that down one day

Probably not a work issue for most UCU members other than those in vehicle maintenance workshops, but you might want to close-off your car fresh-air intakes when you are waiting in a traffic queue behind a diesel or travelling behind a bus. My car has a particulate filter in the exhaust to remove soot particles, but this is a fairly recent development, most older vehicles don't.

See [http://en.wikipedia.org/wiki/Polycyclic\\_aromatic\\_hydrocarbon](http://en.wikipedia.org/wiki/Polycyclic_aromatic_hydrocarbon) for more information.

### 4) Fee for intervention

The HSE has now finally confirmed that the proposed 'Fee for Intervention' charging regime **will** come into operation in October 2012. Where an HSE Inspector identifies a 'material breach' in how employers deal with health and safety, it will charge a fee for the work the Inspector has to undertake to achieve employer compliance. Such work will include the visit that discovered the breach, and any associated work that follows, such as serving a notice, writing letters or giving advice and guidance; evidence gathering for a prosecution; any communications involved with the case; research work, getting specialist assistance etc. HSE will charge £124 per hour for an Inspectors time, and hopes to recover some of that to offset the recent 35% funding cuts imposed by government. We'll see if that happens. More detail of concerns expressed by Inspectors in the April issue (58) of H&S News.

HSE has published guidance at <http://www.hse.gov.uk/pubns/hse47.htm> The guidance gives examples of things that would constitute a 'material breach', which, strangely, given its importance as the major cause of absence from work, doesn't include stress; and here are a few other examples not included:

- failing to undertake a suitable and sufficient risk assessment (for stress factors or anything else);
- failure to give employees information about the findings of a risk assessment;
- failure to give a safety representative such assistance as they reasonably require to undertake their functions;
- failure to give a safety representative a copy of a document the law requires the employer to keep when requested;
- failure to make available to the safety rep any information about health and safety relevant to the workplace, within the employers knowledge, WITHOUT having to be asked;
- failure to consult, in good time, over a wide range of health & safety matters; and
- failure to undertake a fire risk assessment (article 9), or to provide staff with adequate fire safety training (article 21), or to ensure emergency escape routes are kept clear (article 14) or to adequately equip premises with fire detectors (article 13) and so on (under various articles of the Regulatory Reform (Fire Safety) Order 2005). For more on fire risk assessment see <http://www.communities.gov.uk/documents/fire/pdf/150865.pdf>

This list is not exhaustive. So is there anything useful that health and safety representatives can get out of this development? Well, for a start, we can remind our employers that bad behaviour might cost them in the future, even though it doesn't at present.

While we are on the subject, I discovered this week that the Topic Pack on Worker Involvement no longer exists,(it was there a few weeks ago because I looked) and surprisingly, neither did the two HSE Inspectors I asked about it. The topic pack, if you recall, gives Inspectors guidance on how to enforce the Regulations and duties; frankly, it was little better than useless.

It was replaced in June last year and has now been improved in some respects, and I've tracked it down. Go and get a copy and have a look – they have now admitted there is no enforcement mechanism in place for many of the duties imposed on employers (Annex C), so there may be opportunities to get the inspector involved. I will do a report on this, and the management enforcement model links, over the summer.

<http://www.hse.gov.uk/foi/internalops/fod/inspect/enforcement-consultation-regs.pdf>

## 5) Reporting a complaint to the HSE

Some of us have kicked-up about the HSE hiding its contact details. This is what it now says on the HSE website. They have, apparently, re-discovered a telephone number – 0300 003 1647 available during normal office hours. If you call this number you will be asked to provide:

- your name, address and contact details;
- the name and address of the workplace or activity you are concerned about;
- a description of your concern, including who is at risk and why, if the risk is happening now, how long it is likely to go on for, how often it happens and when and where any incident occurred; and
- details about what you have done to try and resolve the issue.

### **This is then what the HSE say will happen:**

*First, we will check that the complaint relates to a work activity where HSE is responsible for enforcing the health and safety legislation. Then we will seek to identify from the information you provided:*

- *Who is responsible for health and safety at the location of the complaint?*
- *Who is at risk of injury or ill health or has no adequate welfare facilities?*
- *What injury or ill health could result and how likely is this?*

*A complaints officer will then assess your complaint and place it into one of the following categories:*

- *Red = Serious Risk and a complaints officer will follow it up as a high priority within 24 hours of receipt (or it will be passed to an inspector for an on-site investigation)*
- *Amber = Significant Risk and a complaints officer will follow it up within 5 days of receipt*
- *Green = Low Risk and it will not be followed-up by HSE*

*What we will do:*

*We may ask the employer to investigate your complaint or we may look into it ourselves. However, we cannot successfully follow up your 'red' or 'amber' complaint if, from the information you provided, we are not able to identify or establish who is responsible for the work that you have complained about from the information you provided. In such situations, this will be recorded as a "matter of concern" and no action will automatically be taken. However, if the "matter of concern" has been assessed as "red" it will be reviewed by an inspector.*

*The other situations where HSE will not investigate your complaint are:*

- *when you make a complaint anonymously to HSE or withhold contact details. This is because we are not able to substantiate or discuss the information with you or ensure that it is not a malicious complaint*

- *when you have not raised the issue with the person responsible for health and safety or your trade union - unless, of course, you have good reason to believe you would be placed in a vulnerable position if you did raise your concerns with this person*
- *when there are no reasonably practicable precautions to deal with the matters that you raised*
- *when it is impracticable to pursue your complaint*

*If you want feedback, we will contact you and let you know what we have done. Or, if we have assessed your complaint as low risk 'green' we will explain our decision.*

I'm adopting a very conservative and careful approach to this information; just to say that the last 4 bullet points don't inspire any confidence in this approach. Much better you have a direct line to an HSE Inspector, and that's something I've been encouraging for years. If you haven't already, it will much more difficult now.

## **6) Asbestos again**

Asbestos has been discovered in another college. This time, it was the result of electricians undertaking re-wiring work in a former school building built around the early 20<sup>th</sup> century.

Union reps in the college are trying to discover if the management has complied with the duty to produce a plan to manage asbestos, which involves undertaking a suitable and sufficient risk assessment; finding out where asbestos exists (or, if they don't find out, the employer must assume asbestos is everywhere they haven't looked), and developing a plan to manage the asbestos.

This plan must include:

- preparing a map of the workplace showing the location of any asbestos;
- the measures being taken to manage the risks;
- details of how it will be monitored to ensure it remains in a safe condition;
- how information is given to anyone who may be likely to disturb it,;
- how the plan is reviewed, and
- how measures taken to implement the plan are recorded.

Good practice suggested in the Guidance (Paragraph 91) to the Regulation is that the asbestos should be labelled. Where there are no other preventive and protective measures in place, suitable labelling and signs should be put in place. *(The management of asbestos in non-domestic premises ACoP; Paragraph 92)*

Even better good practice guidance is that employers should involve trade union safety representatives in this whole process. For more information, and a useful little tool to help you check out what your employer has done, see our inspection checklist at:

[http://www.ucu.org.uk/media/docs/8/3/The\\_management\\_of\\_asbestos\\_in\\_the\\_workplace\\_-\\_a\\_checklist\\_-\\_Updated\\_2012.doc](http://www.ucu.org.uk/media/docs/8/3/The_management_of_asbestos_in_the_workplace_-_a_checklist_-_Updated_2012.doc)

*The management of asbestos in non-domestic premises ACoP*; download free from: <http://www.hse.gov.uk/pubns/books/l127.htm>

but be quick, it is one of the Asbestos ACoP's included in the list that the government wants to get rid of or seriously amend, and reduce in size. There are cases where size (as in comprehensiveness) does matter.

## **7) I spy with my little camera..... – AoC guidance**

The AoC has recently published a guide to using CCTV. Most of us know that CCTV is often used for security purposes in many institutions and in the public arena; the conventional view is that its presence deters criminal activity.

That may or may not be true; there is some evidence that people actually "play up" in front of cameras in shows of defiance; and there is little concrete evidence that CCTV does act as a deterrent – it's an assertion, often made by those who promote its use, those who sell it, or those who want to watch what the citizens in a democracy are up to all the time.

So you'd reasonably expect that the AoC guidance will deal with that aspect of CCTV, but it doesn't. It's about how it can be used to monitor staff behaviour, capture images and use them in disciplinary or grievance matters. It tells employers what to do and what to avoid. It's almost like they don't learn from their history, while those of us getting on in years have the advantage of memory and hindsight.

In 1998, the infamous principal at Halton College, Widnes, had a camera installed over the trade union notice board in the college, so he could see who read the union notices and who put things on the board. Natfhe and UNISON both took up these issues and it made the national press.

On 12<sup>th</sup> May 1999 Judith Cutler commented in the Independent following the financial and other scandal uncovered at Halton "*consider the cash- strapped college that could none the less afford a surveillance camera focused on the trades union notice board. Indeed, in many lecturers' contracts, criticising management constitutes gross misconduct - a sacking offence*".

So it appears that surveillance cameras can both intimidate and seriously limit your freedom, and the AoC is advising members how to install them to avoid trouble with Human Rights and other legislation.

Read the full article at:

<http://www.independent.co.uk/arts-entertainment/educational-notes-fraud-and-scandal-in-further-education-1093059.html> to remind yourselves what that era was like. Some might say that little has changed over the past 13 years.

So is this a sign that we are moving more openly towards consolidating the kind of authoritarian and abusive management style that more properly belongs in Victorian Britain, and all the additional stress that can bring. This kind of development seems predicated on the fact that managers believe our members need to be watched and monitored continually. See the Hazards article and review at <http://www.hazards.org/privacy/index.htm>

I saw another example recently; a proposal for a draconian drug and alcohol testing policy that would have required members to be breath-tested for alcohol and mouth-swabbed for drugs almost as a matter of course - that procedure proposed by a college HR manager has been defeated by trade union action, and replaced by a policy that offers help and assistance to anyone who has problems they want to address. *Quis custodiet ipsos custodes?* UCU reps and activists of course.

## **8) More corporate manslaughter**

Lion Steel Limited has become the third company in the UK to be convicted of corporate manslaughter after pleading guilty to the offence following a three-week-long trial at Manchester Crown Court. The company admitted the charge in relation to the death of 45-year-old employee Steven Berry, who suffered fatal injuries when he fell through a fragile roof panel in May 2008.

Charges of gross negligence manslaughter were brought against company directors Kevin Palliser, Richard Williams and Graham Coupe, as well as charges under the HASAWA against both the individuals and the company.

The CPS also intended to prosecute the company for corporate manslaughter after these charges had been heard. In the event, the judge ordered that the gross negligence manslaughter charges against Williams and Coupe be dropped. The prosecution then dropped all remaining charges against the individuals, and the H&S charge against the company, which then entered a guilty plea to the corporate manslaughter charge.

Sentencing will be on 19<sup>th</sup> July 2012; it can at most amount to a fine.

Unions and others have campaigned long and hard for any Corporate Manslaughter and Corporate Homicide legislation to cover deaths resulting from decisions made individually or collectively by senior managers and/or directors, but the government of the day in 2007 was not minded to do that.

So many would argue that little has changed; the whole point of the Act should have been to hold decision-makers to account, not just provide another vehicle to impose inadequate fines on employers, while leaving the real criminals without a record.

Corporations are inanimate entities; what is done in their name is decided by their owners and controllers. It's not just trade unions that take that view. UCU health and safety advisor has heard similar views expressed by a senior university safety professional - that little would improve until a VC or college principal or two had been sent to prison for H&S breaches.

Previously, Cotswold Geotechnical Holdings became the first company to be convicted under the Act last year and was fined £385,000. JMW Farms Limited of Northern Ireland was fined £187,500, plus £13,000 costs in May 2012.

## 9) Introductory H&S courses 2012 - 2013

Here are the dates for the introductory health and safety course following the summer break. The courses are all 3 days long.

[www.ucu.org.uk/training](http://www.ucu.org.uk/training) for more details.

E-mail completed applications to [training@ucu.org.uk](mailto:training@ucu.org.uk) or to ask questions.

Please make sure all new UCU health & safety reps get time-off to attend these courses, and that other Branch/LA officers are also encouraged to attend – all IR issues have some health, safety or welfare implication don't forget.

Location	Venue	Days	Course Date
London	Carlow Street	Tuesday – Thursday	18 <sup>th</sup> - 20 <sup>th</sup> September 2012
Birmingham	Alpha Tower	Tuesday - Thursday	16 <sup>th</sup> - 18 <sup>th</sup> October 2012
Manchester	Mechanics Institute	Wednesday-Friday	14 <sup>th</sup> - 16 <sup>th</sup> November 2012
Taunton	Lyngford House	Monday – Wednesday	26 <sup>th</sup> - 28 <sup>th</sup> November 2012
London	Carlow Street	Tuesday – Thursday	8 <sup>th</sup> - 10 <sup>th</sup> January 2013

The next second stage course, "Organising and bargaining for health & safety" will be in London; 3 days, 3<sup>rd</sup> – 5<sup>th</sup> December 2012.

### 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

Visit the [UCU Health and Safety web page:](http://www.ucu.org.uk/healthandsafety)  
<http://www.ucu.org.uk/healthandsafety>