Areas covered

• Changes in the regulatory environment
• Review of prosecution trends
• Case law update
• Fees for intervention
• HSE Mythbuster Panel
Changes to Legislation

• Application of Löfstedt’s recommendations

• Other changes
Simplifying the Legislative Framework

- Health and Safety (Miscellaneous Repeals, Revocations and Amendments) Regulations 2013
  - Repeals unnecessary legislation and regulations
  - E.g. Notification of Conventional Tower Cranes (Amendment) Regulations 2010
Offshore Health & Safety Law

• Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2013
  – Consolidation of previous Orders
  – Ensuring activities associated with emerging energy technologies (‘EETs’) are covered
Revised Guidance for First Aid Provision

• Health and Safety (First Aid) Regulations 1981 to be amended in October 2013
  – Removing HSE approval of H&S personnel
  – Greater flexibility for businesses

• Draft guidance
  – Consultation closes 3 May 2013
RIDDOR

• Reversal of proposals to scrap reporting of occupational diseases and work-related accidents

• Other reforms going ahead: major injuries, dangerous occurrences and self-employed workers
Prosecution Trends

• Targeting individuals
  – Quicker and cheaper than targeting organisations

• Continued focus on construction site breaches and asbestos – ‘high five’ risks
Construction Sites

• **2011/12**: 49 workers killed while working in construction and 2,884 major injuries reported

• Recent ‘clampdown’ on construction sites
  – Enforcement action taken in nearly 20% of the 2363 sites visited

• Work at height – several recent prosecutions following anonymous complaints
Other Cases: failure to ensure

- Complaint raised by employee against owner of new salon business
- Owner unable to produce Employers' Liability Compulsory Insurance certificate
- Conviction under the Employers' Liability Compulsory Insurance Act 1969

– Importance of proper advice and due diligence when purchasing a new business
Case law update

• Recent cases of interest
Dundee Cold Stores appeal

- Employee fell through roof lighting panel
- No information about risks given to employees
- No risk assessment carried out

- Fine reduced from £135,000 to £50,000 on appeal
- Sheriff ‘distracted’ by seriousness of injuries (paragraph 24 of judgement)
British Home Stores acquittal

• Charge under s 3 of the 1974 Act
• Accident caused by the *unauthorised* acts of specialist contractors
• ‘Reasonable practicability’ test
Tangerine Confectionery Ltd and Veolia case

• English Court of Appeal case
• Definition of ‘material risk’ – Discussion of Lord Hopes comments in *R v Chargot*
• Causation not required for an offence
• Foreseeability of risk
• Rejection of new ‘derivation of risk test’
Fee for Intervention scheme (FFI)

- Introduced on 1 October 2012
- How does it work?
- Meaning of material breach

  - “when, in the opinion of the HSE inspector, there is or has been a contravention of health and safety law that requires them to issue notice in writing of that opinion to the dutyholder”
FFI – initial concerns

• Concerns raised at consultation stage
  – Focus on income generation e.g. ‘fishing expeditions’/ enforcement targets?
  – Definition of material breach too subjective?
FFI Appeals Procedure

- Appeals procedure

   Invoice Query
   HSE Fee for Intervention Team
   
   Level 1 Dispute
   HSE Senior Manager
   
   Level 2 Dispute
   Disputes Panel

   No costs will be recovered for processing queries

   HSE costs will be recovered for disputes that are not upheld
FFI Appeals Procedure

• Good practice - follow statutory process for appeals, rather than using a subsequent debt recovery action as forum for challenging the decision.

• By appealing the existence of a material breach, it may possible to head off a prosecution early.

• Dangers – reputation/ liability for costs
Impact of FFI to date

• Material breach found in just under one third of inspections to date.
• Construction sector an easy target?
• 46 challenges viewed since October 2012, 11 successful = 24% success rate.
  – All supportive of fee generation culture?

• Submit Freedom of Information request
  – English public authority
HSE Mythbuster Panel

• Background

• Purpose
  – Mechanism for challenging decisions taken in the name of health and safety
  
  – "This is a great opportunity for the public to stand with us against the jobsworths and cynics who are trivialising health and safety to suit their own ends."
  Judith Hackett, HSE Chair
Top myths

• Children banned from playing conkers unless wearing goggles

• Realistically the risk from playing conkers is incredibly low and just not worth bothering about. If kids deliberately hit each other over the head with conkers, that's a discipline issue, not health and safety.
Top myths

• A mature pear tree was felled by a local authority over health and safety fears that it attracted wasps.

• “Wasps nests can form in a variety of places and the normal action is to remove/kill off the nest not to knock down whatever they have nested in/on.”
Top myths

• Kettles banned in office due to risk of staff walking with open topped cups

• *It is clear from the evidence provided by the inquirer that the employer does not want to provide facilities for making and consuming tea and coffee in the office and is using "health and safety" as an excuse.*
Feedback

• What has changed for you?
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