

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

14 FEBRUARY 2018
ALL WARDS

REVIEW OF HEALTH AND SAFETY INCIDENT INVESTIGATION WORK
1ST JANUARY 2016- 31ST DECEMBER 2017

1. Summary

- 1.1 The Local Authority has a legal duty under the Health and Safety at Work etc. Act 1974 to make adequate arrangements for the enforcement of health and safety legislation within its area. Generally, when a serious work related incident occurs it is symptomatic of a failure to manage work place health and safety. For this reason, investigation of work related incidents remains one of our core activities.
- 1.2 Over the 24 month period 786 incidents were reported to the City Council in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013. These notifications were prioritized to ensure that all fatalities, specified injuries, or those which indicate a serious failing in health and safety standards were investigated.
- 1.3 Some incidents require lengthy investigation and these can take a number of months to complete. This report highlights some of the more significant investigations during this time frame.

2. Recommendation

- 2.1 That the report be noted.

Contact Officer: Gary James. Operations Team Manager (Health and Safety Lead)
Telephone: 0121-303-9826
E-mail: gary.g.james@birmingham.gov.uk

3. Background

- 3.1 Health & Safety incidents in a work place have commonly been referred to as accidents. However, not all accidents are true accidents, many could be avoided and as such they are more generally being referred to as incidents. The term accident is now being reserved for unforeseen or exceptional occurrences.
- 3.2 The majority of our work is focused on investigating 'Significant' incidents and these are usually resource intensive, usually in time; analysis of what occurred; and/or identifying how and why a piece of equipment failed. Officers use the full range of investigative powers including interviewing witnesses; gathering evidence; seizure and detention of items and documentation; interviews under caution; engaging expert witnesses and preparation of prosecution files.
- 3.3 In all cases, it is the investigating officer's role to:
- establish the facts e.g. what happened;
 - take proportionate action to prevent a recurrence (serve Improvement or Prohibition Notices);
 - give consideration to instigate legal proceedings in accordance with our Enforcement Policy where unacceptable standards of health and safety management are identified and these amount to contraventions of the law;
 - highlight certain cases to the wider business and regulatory community to promote good practice and learn from previous mistakes.

4. Health & Safety Incidents

- 4.1 154 investigations into reportable incidents were carried out or completed 1st January 2016 – 31st December 2017. Six of those (more serious incidents) are summarized below. The number in brackets is the total officer time in hours taken to investigate each incident (does not include legal or counsel time).
- 4.2 Concluded Investigations:
- a) An employee at a supermarket was found to be incorrectly using a cardboard baler machine, by one of your officers, that was in a dangerous condition; the employee's arm was very close to being seriously injured by the compaction ram which would have led to a crush injury or potentially an amputation. The investigation found the door safety interlock was faulty, that enabled the baler to be used with the door open exposing the operators to the dangerous machinery inside. Immediate prohibition notices were served to protect the employees and the baler was not brought back into use. A Prosecution file was submitted, however the Limited company ceased trading a week before the court case and no further action was taken. There were some 10 to 15 employees found to be at risk from this. The damage to the interlocks enabled the machine to

be operated and loaded at the same time which was intrinsically dangerous. (27hrs work to investigate).

- b) Several members of public were injured when a small stage at a entertainment venue failed. The stage was regularly used for shows and cabaret type entertainment. Fifteen to twenty people accessed the stage, and whilst dancing, it failed leading to a broken ankle and a number of cuts and bruises. The investigation found that whilst the wooden stage had been used during events over a number of years previously, that on that particular night it was overloaded. There was no evidence of a failing warranting or that the stage was badly designed. No formal action was considered necessary however rather than enforcing against the company, the investigation found after considerable analysis that the company had acted in a reasonable manner and that the uncontrolled use was likely to have caused the failure. (64hrs work to investigate this).
- c) An employee was seriously injured when a machine weighing between half and three quarters of a ton was lifted and moved. During the lifting operation the machine was not secured properly and swung, changing the centre of gravity causing the lifting equipment to topple and fall. The person engaged in the operation was struck leading to multiple fractures of his face and arm. The investigation found that the employee (a manager) was the person who had planned the lifting operation and arranged the lifting equipment that was used. The international company were very cooperative and investigations found that the company was unaware of the operation to relocate the machinery, and had not been able to put in preventative steps. The injured party had decided to move the equipment and was not sufficiently competent to effect the move. As he sustained the injuries and no one else was injured on the basis of public interest no formal proceedings were brought against that manager. (12hrs work to investigate).
- d) An employee at a leisure company fell 3.64 metres through a rooftop skylight to the floor below and sustained bruising. The company was undertaking a roof top publicity photo-shoot on the spur of the moment. . The investigation found that the roof area had unprotected edges leading to a risk of falling 8 metres to the ground and broken skylights with tarpaulin covering. The member of staff trod on the covered skylight and dropped directly to the floor beneath. It is believed that the friction of the tarpaulin going through the skylight reduced the speed of fall such that lower limb and pelvic injuries that could have been life changing were not sustained. The employer pleaded guilty at Birmingham Magistrates Court and was fined £8,000 and was ordered to pay full costs of £1,088. The landlord responsible for the roof area also pleaded guilty at the same hearing, and was fined £6,000 and ordered to pay full costs of £1,160 for his building enable people to access the rooftop with edge protection or another suitable control. (35hrs work to investigate).
- e) An employee of a wholesalers fell backwards out of a delivery hatch 2.5 metres to the concrete floor below. CCTV footage showed him landing

almost flat to the ground with his back taking the initial impact followed by his limbs and head. The injured party broke a number of vertebra and fractured his skull. The investigation found that the hatch door lock was inadequate and defective and there was no safe system of work for use of the hatch. The hatch was located on a landing to an internal stair case. The hatch opened outwards and therefore when pushed from the inside would open, whereas if it had opened inwards pushing on it would have closed it into the rebates of the hatch framework. There were no removable rails to prevent someone falling nor significant locks to secure the hatch. As a result it could have been left open or the locking bolt failed such that when the injured person was carrying boxes down the stair he lent on the hatch and fell through. The company cooperated, pleading guilty at Birmingham Magistrates Court. It was fined £10,000 and ordered to pay full costs of £3,225. (44hrs work to investigate).

- f) An employee at a nightclub fell 4 metres down a lift shaft sustaining fractured vertebra. The investigation found that there was a fault with the middle floor door release to the lift. For some time employees were calling the lift as normal, but then used a screw driver to override the door interlocks and open the doors. On this occasion the injured party was carrying stock and saw the door was open. He, therefore, assumed the lift was present and walked into the lift shaft falling to the base of the lift well as the lift was actually above him. The company were aware of the defect (they admitted they had told staff not to use screw drivers) but failed to take any steps to rectify the defect or seal the defective. At Birmingham Magistrates Court the company pleaded guilty and was fined £10,000 and were ordered to pay full costs of £6,215.51. (42hrs work to investigate).

4.3 Due to the following being live investigations, it is not possible to discuss these in any detail as they are potentially subject to legal proceedings. Currently we are investigating;

- Another Employee who has fallen 4.4 metres through a skylight sustaining bruising.
- Employee had to have several fingers amputated after coming into contact with the dangerous moving parts of a mincing machine.
- Member of public sustained a serious head injury after a large mirror fell onto them at a restaurant.
- Several members of public injured when a ceiling collapsed at a function hall

4.4 Over the past 24 months, four companies have been fined a total of £34,500 and paid £12,919.88 in costs following your officers' investigations into work related incidents. Two sole traders were also prosecuted for failing to comply with Health and Safety Prohibition Notices. Your officers spent a total of 237hrs investigating these incidents.

- 4.5 In 2015 there was a serious incident where an employee had to have their hand amputated from using an unguarded mincing machine. As a result during food safety inspections machinery guarding has been the subject of proactive inspections by officers to ensure that the dangerous parts are guarded. For further information refer to Appendix 1.
- 4.6 The 2017-2018 Health and Safety Law Enforcement Plan includes interventions to target concerns identified during previous investigations as well as HSE national priorities. These are:
- Work at height / Workplace Transport / Occupational Health in warehousing, tyre, distribution, steel stock holders and timber premises.
 - Machinery guarding in food premises.
 - Work related violence.
 - Safe loading of delivery vehicles.
 - Shisha bars.
 - Reduce the risk of Legionella.
 - Investigations into work related diseases.

5 Implications for Resources

- 5.1 The investigation of accidents is carried out within existing resources.

6. Implications for Policy Priorities

- 6.1 Investigating work related incidents and cases of ill health will remain a core function of our health and safety related regulatory service. We will continue to investigate notifications relating to vulnerable groups but also share information with the business community to improve standards generally. This work will support a number of the City Council's priorities including Be Birmingham 2026 priorities – Succeed Economically and Be Healthy; Members' Priorities – Protect Vulnerable people.

7. Implications for Equality and Diversity

- 7.1 No specific implications have been identified.

8. Consultation

- 8.1 The work identified in this report is in response to our statutory duty and does not require consultation. However publishing this work may lead others to consider health and safety in their work place and this can only be positive.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil

APPENDIX 1

Background – food machinery guarding interventions.

An employee at a supermarket had to have his left hand amputated after it was caught and dragged into the moving parts of a mincing machine he was using. The investigation found that the guard preventing access to the internal dangerous moving parts had broken off several weeks prior and yet the machine was still being used.

On 10th March 2015 at Birmingham Crown Court the owner of the supermarket pleaded guilty and was fined £4k, given an 8 month suspended prison sentence and ordered to pay full costs of £21,869.73 (96 hrs work to investigate this).

Following attendance at training and machinery guidance produced, officers commenced inspecting machinery safety during food safety inspections in 2014.

The table below records the number of legal notices which have been served. A number of other LA's have been provided with the machinery information and have also commenced food machinery guarding interventions.

Year	Prohibition Notices	Improvement Notices	Compliance Without Enforcement	Number of inspections
2014-15	23	2	16	171
2015-16	71	5	20	225
2016-17	22	3	9	200
2017-18*	29	1	4	127

*Provisional figures –final figure 31st March 2018

The inspections have also identified breach of previous Prohibition Notice(s) served. to date this has resulted in one two traders being prosecuted in 2016.

- On 29th September 2013 at Birmingham Magistrates a sole trader pleaded guilty, was fined £480 and ordered to pay costs of £931.37
- On 8th December 2016 at Birmingham Magistrates a sole trader pleaded guilty, was given a 12 months suspended prison sentence and ordered to carry out 100 hours unpaid work. The court awarded £300 costs.

In 2017 three investigations commenced following breach of Prohibition Notice(s). As these are likely to lead to legal action no further information can released at this stage.