

PROJECT SCOTLAND

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Health & Safety Trends in Construction



bto's Construction & Engineering team provides a range of services to the Industry. Working closely with them, bto's Health and Safety team is the largest independent and dedicated health and safety team operating in Scotland. Providing a "first class" service, the Health and Safety team is ranked in band 1 by The Legal 500 and is headed by partners Clare Bone and Vikki Watt.



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by Vikki Watt

Despite concerted effort by those operating within the Construction sector over the past decade to improve health and safety, the sector unenviably remains top of the table with the highest proportion of workers fatally injured. Consolidation of existing health and safety legislation and the move away from proactive inspections by the HSE may lead to some sectors falling out of the Regulatory spotlight, but trends suggest the Construction sector will remain well and truly centre stage.

Enforcement Notices

Statistics for 2012/2013 show that the sector attracts the largest number of prohibition notices, accounting for 56% of notices served in the UK. As the trigger point for a prohibition notice is the risk of serious injury, this is perhaps proportionately higher in this sector. Prohibition notices can have a devastating impact on business, grinding work to a halt in the short term, but also in the long term, remaining a matter of public record which requires to be disclosed during future procurement processes. Recent successful challenges to prohibition notices within this sector demonstrate the benefit of obtaining expert advice.

Fee for Intervention

If the HSE regard a contravention of health and safety law as a "material breach", the FFI charging regime will be invoked. The Construction sector has attracted a significant proportion of FFI invoices served to date, second only to the manufacturing industry. In all sectors, the desire to co-operate fully with the HSE has to be carefully balanced against avoiding a creeping culture of tacit acceptance of "material breaches". Those operating within all sectors are well advised to exercise their right to challenge FFIs in appropriate cases.

Prosecutions

Almost half of all prosecutions in the UK relate to Construction and this sector has the highest conviction rate at 87%. Prosecutions range from charges labelled against clients and designers under the CDM Regulations, to breaches by principal contractors and sub-contractors of their general duties under the Health & Safety at Work Act 1974. Effective post-incident management in this sector is essential, particularly in relation to issues of legal privilege.

Corporate Homicide and Corporate Manslaughter?

The Chartered Institute of Personnel & Development (CIPD) records a rise in the number of cases charged as corporate manslaughter. In Scotland, the Crown is actively considering a number of potential corporate homicide cases, spanning all sectors. If the Construction sector continues to attract the lion's share of fatal injuries, corporate homicide cases will follow.

The Regulatory spotlight will continue to shine on those operating within the Construction industry. Architects and designers, clients and subcontractors should ensure access to robust health and safety advice is an essential part of their business armoury. Without it, as the statistics show, businesses and individuals in this sector may be dangerously exposed.

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