

No-one can afford to be complacent over health and safety at work. Andrew Woolfall reviews the legal position for all involved in transport, and reveals common mistakes and the very real risks

RELAX? DON'T DO IT

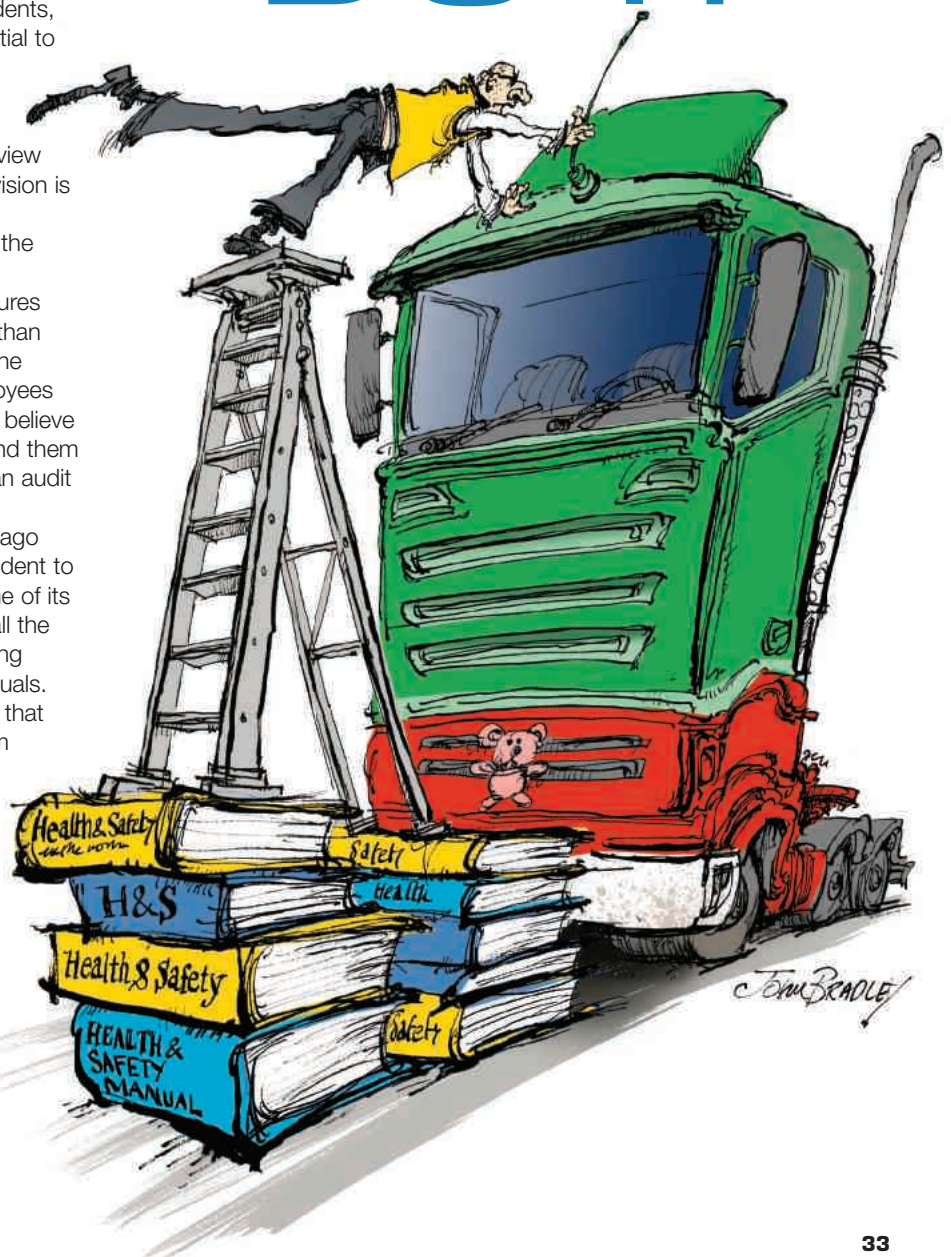
In 2013, most businesses are concerned about health and safety. While a small number still pay scant regard to either legislation or common sense, the vast majority at least try to go some way to meeting their statutory obligations. However, even those who feel they are fully compliant with health and safety regulations may find themselves falling foul of the law, if they forget simple human error.

A good safety system has to be comprised of many parts. A written health and safety policy is only the start. Detailed risk assessments and method statements are also core to preventing accidents, while regular auditing and reviews are essential to ensuring that everything works as intended and is kept up to date. It is, though, these latter items that are often an operator's downfall. But failure to properly audit and review often means that a lack of training or supervision is not highlighted. Assumptions are made that everything is correct, when that may not be the case.

While a detailed policy and set of procedures might exist, many companies do little more than 'make them available' by putting a copy in the canteen or rest room, or simply telling employees where to find it in the main office. They then believe that staff will read the documents, understand them and then implement the requirements. But an audit would reveal this not to be so.

One case I was involved in several years ago concerned a large bus operator and an accident to a student undergoing work experience in one of its depots. The operator had superficially met all the requirements of the local college by producing detailed risk assessments, policies and manuals. However, what few people appreciated was that staff had not read the manuals (despite them being available in the main office), so, when undertaking certain types of repairs to

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vehicles, were not following prescribed practices. This led to the student being injured and, after almost 18 months of investigation, a prosecution against the operator and the imposition of substantial fines.

Accident investigation

When accidents occur, they are primarily investigated by the HSE (Health and Safety Executive). If there is a fatality, the police are also involved. Other bodies can also be brought in to assist and those may well include VOSA (the Vehicle and Operator Services Agency). Prosecutions can then be brought against the organisation, its directors and other individuals within the company. These might include managers, but also workshop technicians.

Everybody in the business has a responsibility, in terms of health and safety. Individuals are responsible for their own safety, and that of co-workers and anybody else who might be affected by their actions. If a manager fails to properly implement company policies or deal with incorrect working practices, or allows unsafe behaviour, then he or she may wind up in the dock alongside the company. These are not just corporate offences.

Convictions against individuals can lead to fines or even custodial sentences. Companies can face the prospect of fines running into hundreds of thousands of pounds. Prior to the introduction of corporate manslaughter, the Sentencing Guidelines Council undertook a consultation as to how this new offence, along with related health and safety infringements, should be dealt with.

Originally, the starting position was that fines should be in the region of 1–7.5% of a company's average turnover. This was because, at that time, the largest fine imposed for health and safety cases was £15million, against Transco following a fatal accident that took four lives. That sum amounted to 5% of the company's post-tax profits. However, the final guidelines do not give a percentage indicator, but instead indicate that, for a fatal accident, if prosecuted as a health and safety breach, the fine should seldom be less than £100,000. Meanwhile, if prosecuted as corporate manslaughter, the fine should rarely be less than £500,000.

Even in non-fatal cases, and where a company has good systems and procedures, employees failing to follow training and instruction can still lead to costly fines. This is because, although policies and procedures may have been in place and training given, auditing will not have been undertaken to establish that guidance is being followed.

A good example concerns another more recent case involving a commercial garage that had a ban on employees working at height using ladders. Indeed, a working platform had been purchased for this purpose. Again, all systems and procedures

were in place and the business had even been audited by its insurer with a view to compliance. But the workshop foreman chose to ignore training and standard operating procedures, and decided to undertake work on the cab of a vehicle, accessing this location by ladder. The inevitable happened, and he fell and injured himself. The HSE investigated and prosecuted on the basis that the company had failed to properly audit itself, so hadn't discovered that standard practices were not being followed.

While in this case the garage foreman was not prosecuted, presumably because he was the only person injured, when an accident has more serious consequences, proceedings against individuals can result. Earlier this year, the Crown Prosecution Service announced that charges of corporate manslaughter would be brought against MNS Mining, in connection with an incident where four men lost their lives in 2011. Malcolm Fyfield, a manager at the mine, was himself seriously injured and hospitalised, yet he is also to be prosecuted.

As is often the case, where there is a prosecution and convictions for health and safety matters, an operator and individuals – and specifically transport managers – can face the prospect of a public inquiry before the traffic commissioner. I recently dealt with just such an inquiry involving a large business that had been prosecuted twice for breaches in this area. The traffic commissioner was alarmed at what, on the face of it, were substantial fines and wanted a full explanation. Why? Because health and safety breaches in one area of operations might impact on the safe running of commercial vehicles.

That said, for individuals where conviction has resulted in a fine of more than £2,500 or a custodial penalty, there is also a very real chance that they may automatically lose their good repute. There are limited circumstances where a traffic commissioner has to take action and, as a result, the person might lose his or her ability to be a transport manager or company director in transport.

The bottom line

No operator, workshop or any other company can afford to be complacent about its obligations, in terms of health and safety. The existence of policies and procedures does not, in itself, prevent accidents. Members of staff failing to follow written instructions are the most common cause of incidents.

Problems range from employees following what they believe (but don't know) is correct practice to others behaving recklessly or downright stupidly. Either way, the authorities will take the view that inappropriate actions should have been combated by proper training and regular auditing to ensure that correct methods are being adhered to. Companies and managers who fail to follow this line risk serious financial and custodial penalties. 