
The construction sector remains a high priority for the HSE-including CDM clients

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The HSE's recently published statistics for workplace fatal injuries in Great Britain in 2017/18 confirm that construction remains the highest risk sector for fatal accidents. 144 workers were killed in Great Britain in the year up to March 2018 of which 38 (26.4%) arose from incidents in the construction sector. 30% of the fatal accidents in construction were to self-employed workers which highlights the importance to all duty holders, in particular contractors of the need to ensure that they engage workers with the necessary skills, knowledge, training and experience to carry out the work.

In light of such statistics, the sector will continue to attract the attention of the HSE as outlined in the HSE's Business Plan for 2018/19. For example, one of the HSE's five major inspection campaigns will be aimed at achieving at least 500 proactive inspections in construction refurbishment.

It is essential that all those who hold duties under the Construction Design and Management Regulations 2015 ("CDM 2015") are aware of the risks of being investigated and prosecuted by the HSE. Although most prosecutions arising from health and safety breaches on construction projects tend to be brought against contractors and principal contractors, the CDM "client" should not be complacent. The prosecution risk to a client is illustrated in a recent case reported by the HSE in July 2018. Although there was no incident resulting in any injury to anyone, the HSE found dangerous conditions at a building site, which resulted in convictions for breaches of CDM 2015 for the contractor, client and director. The HSE found that the contractor had failed to plan, manage and monitor work on site and that the client had failed to make suitable arrangements for managing the project. The client was fined £20,000. The client's director was also convicted of a health and safety offence and sentenced to 200 hours of community service.

Areas of potential vulnerability for a client can include cases where a principal designer has not complied with its duties under Regulation 11, for example - failing to control or co-ordinate the pre-construction phase of the project from its concept design to planning delivery of the construction work. Where such evidence is revealed, the client may be at serious risk of an allegation that it has failed under Regulation 4(6)(a) CDM 2015 to take reasonable steps to ensure that the principal designer has complied with its duties under Regulation 11.

Once a principal designer has been appointed, it is important for the client to hold a pre-design meeting with the principal designer and designers to discuss the brief and how health and safety will be approached on the project. At the outset, the client should also agree with the principal designer how they will liaise throughout the pre-construction phase and be kept updated so that the client can check how the principal designer is complying with his duties and also how the principal designer can help the client to comply with its duties including collating all the necessary pre-construction information. Failing to do so may result in a significant fine, particularly if there has been a serious injury or fatality.

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