PRINCIPLES OF WORKPLACE HEALTH AND SAFETY IN THE UK

A course book for Unit DN1 of the NEBOSH Level 6 National Diploma for Occupational Health and Safety Management Professionals

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Unit DN1

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GUIDE TO USING THIS BOOK

Principles of workplace health and safety in the UK is divided into chapters that are based on the syllabus topics in Unit DN1 of the NEBOSH Level 6 National Diploma for Occupational Health and Safety Management Professionals. Some syllabus topics are split across more than one chapter.

The syllabus topics covered by Units DN2 and DN3 are covered in separate texts, and these books are designed to be used together across your studies to provide complete coverage of the syllabus.

This book includes practical tips, case law, case studies and applications designed to aid you in your studies and beyond. Each of these is presented so that they are easily identified. Examples and explanations follow.

DEFINITION

Dynamic risk assessment

The continuous process of identifying hazards and assessing risks in situations and circumstances that are fast-moving, or environments that are variable and challenging, allowing the operator to make responsive yet considered decisions to reduce risk.

Definitions of key terms

TIP

The person bringing a claim is known as the **claimant** in England and Wales, the **pursuer** in Scotland and the **plaintiff** in Northern Ireland.

In England, Wales and Northern Ireland, the person responding is the **defendant**. In Scotland, they are the **defender**.

Practical tips and advice. Where there is legislation or HSE guidance relevant to the specific topic, this will be listed in a Tip box at the end of the introduction.

CASE LAW

Perry v Hoggan[16]

In this case, a police officer was awarded damages for injuries he suffered when he entered the defender's land to execute an arrest warrant. The pursuer stepped on a defective garden slab in an outhouse and fell through it, suffering injury. As the police officer had an implied permission to enter the premises, he was entitled to protection from harm caused by the state of the premises.

Summaries of relevant judicial decisions.

CHAPTER 3: ENFORCEMENT

3.1 Introduction

Health and safety law is enforced by workplace regulators such as the Health and Safety Executive (HSE), the Health and Safety Executive for Northern Ireland (HSENI) and local authorities. These regulators appoint enforcing officers to enforce health and safety law on a day-to-day basis.

Workplaces are divided between health and safety regulators by the Health and Safety (Enforcing Authority) Regulations 1998 and, for Northern Ireland, by the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999. Generally, the HSE regulates the higher hazard industries such as construction, agriculture and manufacturing, and local authorities regulate lower-risk sectors such as retail, office space and leisure. The HSE publishes guidance for enforcing officers to help them apply the Regulations and determine the appropriate regulator for specific work activities.[1] Their website also includes a simplified list of those workplaces that are enforced by the HSE and those that are enforced by local authorities, along with a list of other regulators.[2]

Enforcing officers can become involved with organisations either proactively through inspection or reactively following an incident. The police will also play a role when there is a fatal incident in the workplace.

3.2 The duties of enforcing officers

TIP

An enforcing officer is someone who is empowered to enforce the relevant laws. Enforcing officers (also known as inspectors) are appointed under s19 of the Health and Safety at Work etc Act 1974 (HSWA) and are provided with written evidence of their appointment and the limits of their powers. This is usually in the form of a warrant card or a letter of appointment. Employers may ask enforcing officers to show this evidence during any interactions with them.

HSE inspectors are employed by the HSE/HSENI, a local authority or other enforcing authority depending on the workplace.

The duties of enforcing officers are clearly set out in the Health and Safety at Work etc Act 1974 (HSWA). Enforcing officers are responsible for:

- investigating whether employees or others are at risk;
- directing that corrective action be taken where there is non-compliance;
- taking enforcement action; and
- providing advice and guidance to support employers in complying with the law.

Enforcing officers have the power under s27 of the HSWA to obtain information they need to discharge their functions. Information obtained in this way can only be used for specific regulatory purposes and, under s28 of the Act, cannot be disclosed without the consent of the person who provided it, apart from in prescribed circumstances.

Section 28(8) states that enforcing officers shall disclose certain information when this is necessary to help keep employees adequately informed about matters affecting their health, safety and welfare. Such information can be passed to either employees or their representatives, and includes:

- factual information relating to the workplace or activities that happened, or are happening, there;
- details of any action the enforcing officer has taken, or intends taking, in relation to that workplace.

If an enforcing officer shares information with employees in this way they should also give the same information to the employer. Usually an enforcing officer will disclose the fact of enforcement action, for example, if they have served an 'improvement notice', by telling employee representatives (including trade union representatives) what they have done.

TIP

The word 'duty' in a legal context means that the party mentioned in the legislation must carry out the specified actions. For example, s2 of the HSWA sets out the general duties of employers to their employees, in this case to ensure employees' health, safety and welfare while at work (s2(1)). Section 2(2) then states how this duty is specifically applied, for example, by providing safe plant and systems.

'Obligation' in the context of this chapter has the same meaning as 'duty'.

The powers of inspectors (enforcing officers) are set out in HSWA, in s20. The powers stated in s20(a)–(m) clarify what an inspector can do during an enforcement visit. For example, inspectors have the power to enter any work premises, at a reasonable time, if they believe there is reason to do so. One such reason may be to investigate a workplace accident.

It is important that organisations are aware of the role of health and safety regulators so they can manage their interactions with enforcing officers appropriately when required.

3.3 The principles of enforcement

Health and safety regulators use a range of guidance to support enforcement decision-making. The key documents are:

- HSE's *Enforcement Policy Statement* (EPS);[3]
- HSE's *Enforcement Management Model* (EMM);[4] and
- the Crown Prosecution Service (CPS) *Code for Crown Prosecutors.*[5]

There is also more specific guidance available that applies to certain cases, for example prosecution of individuals.[6] If the health and safety regulator is a local authority, its own enforcement policy will also be relevant.

5.2 The Social Action, Responsibility and Heroism Act 2015

The Compensation Act 2006 and Social Action, Responsibility and Heroism Act 2015 are intended to ensure that courts in England and Wales do not discourage members of society from assisting others through fear of litigation.

The Acts provide an additional defence to claims for negligence and/or breach of statutory duty over and above the defences discussed in Chapter 4: Civil law.

While there are arguments that the Acts go no further than to restate existing common law, they demonstrate political interest in the personal injury sphere, a desire to drive out spurious claims and an intention to encourage activities that are beneficial to society.

The Social Action, Responsibility and Heroism Act was designed to help volunteers, community groups, businesses and people who intervene to help in dangerous circumstances. It followed years of concern that people were deterred from doing good deeds for fear of legal action if something went wrong. An example might be administering first aid at the roadside following a road traffic collision. If an untrained individual intervenes at the roadside but causes further harm while trying to help, the Act may provide them with a defence to a personal injury claim in relation to the harm caused.

The government also said the Act was necessary to combat the so-called 'compensation culture'. A government press release issued on 2 June 2014 stated that the Act was "designed to bring some common sense back to Britain's health and safety culture … Changes are being made to counteract the growing perception that people risk being successfully sued if they do something for the common good – like leading a school trip, organising a village fete, clearing snow from a path in front of their home or helping someone in an emergency situation".

The Compensation Act enables courts to take into account the risks involved in carrying out a desirable activity (such as providing a school trip or charitable activity) so that people are not discouraged from taking part in such activities. The Act applies to all court assessments of liability after its implementation date, 26 July 2006.

The Social Action, Responsibility and Heroism Act goes further, providing that, in all assessments of liability after 13 April 2015, the courts must have regard to whether the defendant was acting for the benefit of society or its members, demonstrating a responsible approach towards protecting the safety or other interests of others, or acting heroically in an emergency. There have been very few cases in which the application of the Act has been tested, but it should be considered in the event of an accident, for example on a school trip or a fundraising charity hike, or in the event that a first-aider makes an error when providing treatment following an accident at work.

The provisions of these two Acts do not determine whether the defendant is in breach of a duty of care, but raise factors the courts should consider when deciding liability. Academics have raised questions as to whether or not the Social Action, Responsibility and Heroism Act may apply to contributory negligence and whether it applies where the claim is presented on the basis that the defendant is vicariously liable for the acts of another person. Neither question has been addressed by the courts.

The implementation of these Acts is intended to encourage members of society to act for the benefit of others without fear of a claim in the event of an accident.

CASE LAW

Humphrey v Aegis Defence Services Ltd[1]

When working for a private security company in Iraq, the claimant and an interpreter were carrying a stretcher together in a fitness test. The interpreter dropped his end of the stretcher, causing the claimant to suffer injuries.

The trial judge decided that interpreters were essential to the reconstruction of Iraq and that it was extremely important for them to take part in the fitness tests and be part of a team with their security escorts. The reconstruction of Iraq was a desirable activity and the use of interpreters was an essential part of that work, as was the use of fitness tests.

On appeal, Lord Justice Moore-Bick noted that the trial judge's decision was not based solely on the social utility of the activity, instead viewing the importance of the activity in question, measures required to avoid the risk of harm and nature of the foreseeable harm as factors that the court was required to consider when deciding whether the defendant was in breach of duty.

This case was determined taking into account the Compensation Act. Although the case was decided before the Social Action, Responsibility and Heroism Act 2015 received Royal Assent, and related to an incident that occurred before it came into force, the reference in the judgment to social utility and the importance of the safety of interpreters for the reconstruction of Iraq is similar to the wording of s2 of the Social Action, Responsibility and Heroism Act 2015.

A v London Borough of Southwark[2]

The claimant, a student at a school for which the defendant was responsible, presented a claim for damages following an accident in the playground during a PE lesson in which the claimant fell while running. The claimant alleged that the playground's surface had been wet, and that the defendant had been negligent.

The Social Action, Responsibility and Heroism Act 2015 was considered by the judge when deciding whether the defendant had been negligent.

The court decided that the PE lesson was a desirable activity, the playground surface was not wet, the space between the runners was sufficient, the teachers had given suitable instruction to the pupils and the collision was not reasonably foreseeable.

The claim was dismissed.

Given the circumstances of the accident, there was a question as to whether the outcome of the case would have been different had the Social Action, Responsibility and Heroism Act 2015 not been implemented, but the court took the Act into account when making its decision.

DEFINITION
Stakeholders are the people, groups or organisations that are impacted by or have an impact on an organisation, a project or work. Stakeholders will have an interest in or concern about the organisation, project or work.

All stakeholders will have an impact on, and be impacted by, the success or otherwise of health and safety management and, therefore, have expectations of how health and safety is managed, including:

- a safe and pleasant working environment;
- adherence to statutory and regulatory requirements;
- consistent provision of products and services that meet customer needs and minimise loss and disturbances/disruption; and
- return on investment.

The health and safety professional can proactively engage with stakeholders to help identify their needs and how well the organisation is meeting these needs. Engaging in this manner also helps develop good relationships and is more likely, though not guaranteed, to help if there are stakeholder concerns.

24.5 Ways to understand and influence different stakeholder groups

A process of stakeholder mapping can aid understanding and organisation of stakeholders, as well as supporting stakeholder management and engagement by:

- identifying stakeholder interests to support success and avoid conflicts;
- developing a more comprehensive list of potential stakeholders;
- prioritising stakeholders' needs;
- supporting an appropriate frequency of engagement;
- identifying the most effective and efficient engagement strategies; and
- measuring how engagement activities impact stakeholders over time.

There are a range of stakeholder mapping models available that identify attributes of a stakeholder. None of them are perfect but they can act as a guide in deciding who is important and perhaps those that are less so, which will assist with prioritising engagement activities. The priority assigned to the stakeholder will determine the method and frequency of engagement and the level of influence required by a health and safety professional.

Take for example the power/interest grid as shown in Figure 1. It presents a simple way to classify stakeholders and tailor an engagement strategy.

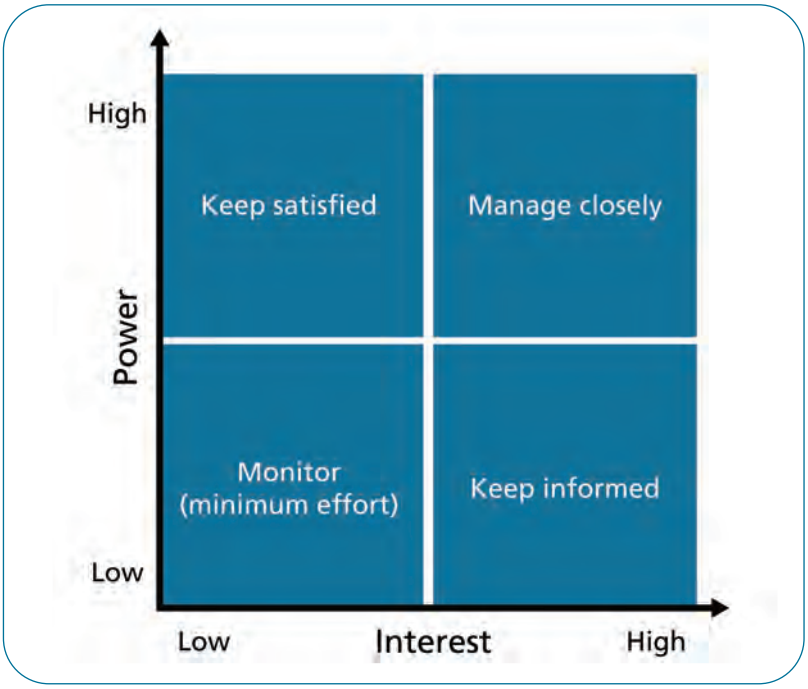

Figure 1: Power/interest grid to map stakeholders

Stakeholders can be mapped on to four quadrants based on their level of power or influence and their level of interest. Each quadrant requires different actions or levels of engagement:

- **High power/high interest:** manage closely, regularly engage and manage expectations
- **High power/low interest:** meet their needs, keep them satisfied and actively consult
- **Low power/low interest:** monitor and provide information as needed
- **Low power/high interest:** keep informed and maintain interest

The placement of stakeholders in the model will suggest the frequency and level of stakeholder engagement, for example, more or less frequently and/or with more or less intensity.

APPLICATION 1

Consider who your stakeholders are. Map your stakeholders using the power/interest grid model. Explain who needs to be prioritised and why.

24.6 The importance of stakeholder feedback on health and safety performance

Having a means for stakeholders to provide feedback and responding to this feedback is vital in improving health and safety management in the organisation. Stakeholders will experience health and safety management at different levels, and so feedback from these different people provides a rich mix of information on an organisation's health and safety performance.

The health and safety professional will have frequent opportunities to engage with workers, or their representatives, and managers both informally, through on the job conversations, and formally through consultative processes and surveys.

An efficient and comprehensive information management system also helps organisations to:

- comply with legal and regulatory obligations;
- protect information used within the organisation;
- ensure that the information being retained is of suitable quality and that it complies with organisational procedures;
- minimise the risk to the organisation of confidential information being seen outside the organisation;
- manage information effectively; and
- minimise reputational risk.

28.3 Retaining information for minimum time periods

28.3.1 What is limitation?

Limitation is a time limit imposed by statute on the lifetime of a claim, which both obliges the claimant to bring the claim in a timely way and protects the defendant from having to deal with a claim a long time after the events giving rise to it occurred. A time limit that is imposed by law supersedes whatever retention time limit might be imposed internally by an organisation on the same document.

The purpose of the law on limitation is to:

- allow the claimant enough time and opportunity to consider the facts and law before deciding whether or not to bring a claim; and
- limit the time the defendant is exposed to the possibility of a claim being brought. The thinking behind this is that the defendant ought not to have to face a 'stale' claim some considerable time after the event, by which point key documents may have been destroyed and/or witnesses' memories have faded (even if the witnesses in question can still be located).

Each jurisdiction in the UK has its own legislation relating to limitation.

28.3.2 England and Wales

The Limitation Act 1980 ('the Act') provides a set of different limitation periods for different types of action.

If the limitation period has expired, the defendant has a complete defence to the claim. This means that, if the court finds that the relevant limitation period has expired, the claim will not be able to proceed except in certain limited circumstances.

The Act is divided into three sections:

Part 1 sets out the 'ordinary time limits' for different types of action;

Part 2 deals with the extension or exclusion of those ordinary time limits; and

Part 3 deals with miscellaneous and general provisions.

28.3.2.1 Part 1 – Ordinary time limits

This covers several types of action. Table 1 shows the limitation periods for the main types of action most likely to be encountered.

Claim type	Time limit (from the date of the negligent act or breach)
Tort, for example negligence (excluding personal injury claims)	six years
Simple contract	six years
Personal injury claims	three years
Claims under the fatal accident legislation	three years
Latent damage claims (excluding personal injury)	either six years from the date the cause of action accrued or three years from the date on which the claimant had (a) the knowledge and (b) the right to bring the claim
Overriding time limit for negligence actions (excluding personal injury)	15 years, after which the claim cannot be brought even if the cause of action has not accrued

Table 1: Time limits for common types of action under the Limitation Act 1980

28.3.2.2 Part 2 – Extension or exclusion of ordinary time limits

In certain cases, a claim can still be successfully brought even though the primary limitation period has expired. Document retention will still need to be considered, even if it seems that the claim has run out of time to be litigated. The two most likely circumstances in which a claim will be brought after the limitation period has expired are covered by sections 28 and 33 of the Limitation Act.

Section 28 – Disability

Under s28, the effect of a claimant acting under a disability is that limitation is suspended until the date on which the claimant ceased to be under a disability or died. At that point, the limitation period starts to operate and, for a claim not involving personal injury, the claim must be brought within six years or, for a personal injury claim, three years from that date.

As set out in the Mental Capacity Act 2005, 'disability' means either that the claimant is a minor (aged under 18) or lacks capacity to instruct their lawyers or otherwise deal with the case because of illness or injury.

Section 33 – Discretionary exclusion of time limit – personal injury/fatal claims

The court has discretion to allow a case to proceed in personal injury/fatal claims. It will consider any prejudice caused to the claimant by the case not being allowed to continue against any prejudice caused to the defendant in having to deal with an old, or possibly stale, case. In the event of an application under s33 by the claimant to the court to allow the claim to proceed, the availability of documents and witnesses will be important factors for the court to take into account when making a decision.

28.3.3 Scotland

The Prescription and Limitation (Scotland) Act 1973 provides for much the same time limits. The personal injury limit is three years from either the date of the accident, the date on which the last act of negligence in respect of a continuing cause of action took place, or the date on which the injured person was aware that their injuries were serious enough to warrant a claim.