

Lincolnshire Health and Safety (Waste and Streets) Group

Briefing Note

Glasgow Refuse Vehicle Fatal Collision December 2014

Introduction

Following the fatal crash of a refuse vehicle in Glasgow December 2014 The Lincolnshire Health and Safety (Waste and Streets) Group have been following proceedings to try and identify learnings.

At this time neither the Council nor the driver have been charged under criminal law such as death by dangerous driving however this is still open to civil claims.

The Legal Position

Scotland has different methods of legal enforcement to England and in this case, the matter has been dealt with by the Crown Court - Lord Advocate Frank Mulholland QC through a Fatal Accident Inquiry. As the incident was road traffic accident HSE handed over proceedings to the Police very soon after the incident.

The case is focused on the negligence of the Council as employer and the driver as employee.

In order to bring a successful criminal case, prosecutors would have to prove that Mr. Clarke the driver was in control of the vehicle at the time of the incident but, because he was unconscious, he was not in control, so The Lord Advocate has determined that "the necessary criminal intention" is not present."

Furthermore, there appears to be insufficient evidence to establish "foreseeability" and prove that the driver knew he was unsafe to drive that day, for the following reasons:

- There was no evidence from Mr. Clarke's work colleagues that he was unfit on the day of the crash and no indication that he would faint at the wheel.
- After a blackout in 2010, a doctor for First Bus (Mr. Clarke's employers at the time) advised him he was fit to resume his employment as a driver and that he did not require to notify the DVLA of what happened.
- Mr. Clarke was seen by other doctors, including his GP following the 2010 incident. No doctor has ever told Mr. Clarke he was unfit to drive. No doctor has ever told Mr. Clarke that he had to notify DVLA of the 2010 episode.
- Even if the DVLA had been notified of the 2010 event, the "worst-case scenario" would have been for Mr. Clarke's license to be suspended for 12 months. "If during that period there was no recurrence, no cause for concern, his license would have been returned to him."
- When Mr. Clarke moved from First Bus to Glasgow City Council, there was "no concern" raised in the reference from the bus company surrounding his fitness to drive.
- Crucially, between April 2010 and the Glasgow tragedy, Mr. Clarke had no further fainting episodes.

Mr Mullholland QC said "when you put all of that evidence together it is quite clear that I have no doubt that you cannot establish, cannot prove that Mr Clarke knew that he was unfit

to drive that day as a result of an ongoing medical condition. If you can't prove that then you cannot prove criminal intention".

Similar considerations applied to other allegations, such as obtaining the council job by fraud.

Mr. Mulholland said: "The same evidence in general terms applies - namely Mr. Clarke is given a reference by First Bus to Glasgow City Council, he's not told he's unfit, he's not told he needs to notify DVLA, there's no evidence that he must have known he was unfit to drive. So, you cannot prove the necessary criminal intention for that common law fraud."

Interim Learning

There are a number of issues which have been raised by the court and Sherriff Becket has been tasked with determining what recommendations should be made to help reduce the risk of similar accidents in the future. It is widely anticipated that the recommendations will be forthcoming before the New Year.

We know that the driver of the vehicle did not inform his employers that he had a history of blackouts, fainting, dizziness, vertigo or depression however, at no point had a medical practitioner recommended that his licence be removed.

None of the medical records were sent to Mr. Clarke's GP to be checked and Dr. Willox, a Bupa occupational health doctor who conducted one of Mr. Clarke's medicals said she would have stopped him driving had she known about his previous episode.

Although the type of vehicle and cab is not one commonly used in Lincolnshire it is worth noting the technical findings of the experts brought in to examine the cab of the lorry after the crash.

They were asked to determine if either of the crew in the rear could have reached the handbrake lever on the dashboard from behind the metal safety bar and concluded that while the vehicle was moving, this possibility was "remote".

And another expert said the two other crew men had as little as five seconds in which to react, and had acted the way most people would have in the "intense environment" of the crash.

The inquiry also heard:

- Pulling the brake could have caused the bin lorry to skid down the pavement, potentially causing even more casualties - although North Lanarkshire Council did tests in a similar lorry and found it stopped within five metres.
- An emergency stop button or even an automated braking system could be added to such vehicles in future.
- Having a driver's GP check over applications for bus and lorry licences and renewals would help make sure unfit drivers could not "slip through the net".

Until the determination the following learning points should be considered;

1. The importance of medical tests and records cannot be overestimated. Employers of drivers of HGV's should ensure all steps are in place to ensure drivers undergo routine medicals in accordance with UK legislation and these records are retained with any advice contained in them acted on.
2. Communication with employees who are engaged in safety critical jobs should ensure they are fully aware that that all medical conditions which may affect their ability to work safely should be notified to their line manager or supervisor.

The first stage of this exercise will be to identify safety critical jobs through the risk assessment process and clear examples of what may affect safety (sensory reduction or impairment, mobility or neurological conditions as well as diagnosed medical conditions) and then to provide training/briefing sessions and record that these have taken place.

3. There are already legal requirements on employers with regard to the provision of health screening for some jobs which present a foreseeable risk of harm e.g. work with asbestos or work in a noisy environment.

Lincolnshire local authorities may wish to re-visit the effectiveness of pre-employment medicals questionnaires and routine health screening for jobs which present a reasonable and foreseeable risk of significant harm not already covered by specific legislation.

For local authority waste collection services this is likely to involve working more closely with occupational health providers and quite possibly referring the pre-employment self-declaration/questionnaire to an employee's GP for checking.

Future Activity

Until we receive the final determination from Sherriff Beckett hopefully before the New Year we can only make assumptions on what the recommendations will be. Proactively, a special meeting is being held on 16th October of both private and public sector partners and colleagues to determine a sensible and coordinated approach to how we can move forward with the learning points identified.

North Kesteven DC will also engage with other private sector organisations (Shanks, FCC, and Veolia) to gauge national opinion and will have the opportunity to question HSE directly at a meeting on 15th September 2015.

North Kesteven DC are also actively monitoring the road haulage trade associations to take a country and industrywide view and will share findings with the group at the October meeting.

Moving forward, care must be taken to avoid setting an unsustainable precedent for the industry which goes over and above the legal requirement.

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