

# KEEP IT SAFE

BFFF QUARTERLY HEALTH AND SAFETY UPDATE

**JANUARY 2013**

Welcome to the BFFF quarterly Health and Safety newsletter 'Keep it Safe'.



We do hope you find 'Keep It Safe' a valuable read. Please contact BFFF on 01400 283096 or email [joannahancock@bfff.co.uk](mailto:joannahancock@bfff.co.uk) if you have any health and safety issues or wish to receive additional/back copies

Registered Office: Warwick House, Unit 7, Long Bennington Business Park, Main Road, Long Bennington, Newark, Nottinghamshire NG23 5JR

Tel: 01400 283090 Fax: 01400 283098 Websites: [www.bfff.co.uk](http://www.bfff.co.uk) [www.thenewiceage.com](http://www.thenewiceage.com)

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## BFFF HEALTH AND SAFETY INITIATIVES



### HEALTH AND SAFETY SEMINAR 2012

We had another very successful event in November with over 60 delegates from across the frozen food industry. The theme for the seminar was 'Safety Throughout TheColdChain' and delegates heard presentations from specialists on a range of topics. These specialists included representatives from HSE, BFFF members and Legal representatives with first-hand experience on some of the prosecutions faced by our industry.

Event Sponsored By:

**chalcroft**

construction built on teamwork

The delegates included BFFF members and a number of Environmental Health Officers from Local Authorities which provided excellent networking opportunities. The inclusion of EHO's within the audience inspired some very interesting questions.

Some of the feedback on the 2012 event included: *"This was the most worthwhile and useful event that I*

*have attended this year!"* And *"A thoroughly absorbing, informative and enjoyable day of HSE matters. Well worth attending."*

We will be building on our success for this year's event, using the same model of a number of subjects based around one theme on 'Safety within the Cold Chain'. We will be gearing our event to Operational Cold chain workers, Health and safety professionals and Enforcers. This year's seminar will take place on **Wednesday, 3rd July 2013** at the Ricoh Arena, Coventry.

Please e mail Joanna Hancock on [joannahancock@bfff.co.uk](mailto:joannahancock@bfff.co.uk) to register your interest and for future updates.

We would like to take this opportunity to thank Chalcroft construction for sponsoring our event in 2012. The presentations from the 2012 event are available on the BFFF web site [here](#).

### PRIMARY AUTHORITY AGREEMENT

In the last edition of Keep it Safe we outlined our thoughts on the idea of BFFF entering into one of the first Trade Association Primary Authority Agreements relevant to Health and Safety.

After detailed deliberations and discussions with local authorities and also the H&S Working Group, we believe that a BFFF Primary Authority Agreement on health and safety would be a substantial benefit to members. We are near to a conclusion on our agreed partner authority and we are now planning the details of the agreement. Please contact Joanna

Hancock to be on the distribution list for regular updates and more details on how this new scheme may be of benefit to your business.

Email [joannahancock@bfff.co.uk](mailto:joannahancock@bfff.co.uk).

**BRDO**  
Better Regulation Delivery Office

## HSE FOOD AND DRINK MANUFACTURE FORUM



BFFF is now a full member of this forum and Joanna Hancock attended our first meeting in October. This trilateral forum comprises representatives from HSE's Food Section, key food and drink trade associations and the main food industry trade unions. Meetings are held twice a year to discuss, prioritise and drive forward a range of health and safety initiatives, with members working together to further reduce injuries and occupational ill health.

We had a very productive first meeting and had the opportunity to update the group on BFFF's health and safety initiatives and to further our relationship with representatives in HSE in both the food and drink and transportation sections.

During this first meeting HSE updated the group on its planned activities, outlined their new work on vulnerable workers and the development of their MAC tool. Further detailed information on these subjects is found within this newsletter. The next meeting of this forum is in March and we are confident that the group will share Health and safety initiatives with us that will benefit the membership.

## HSE UPDATE FOR 2013

Fee for intervention (FFI) is now upon us and has been in operation since October 2012. We provided the membership with full details of this new initiative within the October edition of Keep it Safe. The first invoices from HSE are due out in January and we would be very interested to hear any comments and experiences from members. So please contact Joanna Hancock if you have any points you would like to confidentially raise in this area.

One of the current main areas of work for HSE is on their review of Regulations and Approved Codes of Practices (ACOP's) following on from the Lofstedt review. HSE has targeted 14 Legislative Measures to be revoked, 15 ACOP's for revision or withdrawal and the limitation of future ACOPs to 32 pages. BFFF has participated in the consultations for the various ACOPs that are relevant for our members and HSE are targeting their completion by April this year. HSE is also aiming to review its guidance by April which is no

mean feat as they have over 1056 hard copy publications and over 20,000 web pages of information.

Throughout 2013 HSE will be continuing to reduce their regulatory inspections although they will increase investigations (following accidents, complaints or dangerous occurrences). They will however be taking specific action in the area of Legionella Management.

### HSE Focuses on Legionella Inspection

In December 2012 HSE and local authorities began a regime of inspection for businesses with cooling towers in the west of Scotland to ensure they are appropriately managing the risk from legionella. The action follows a safety alert in July and a warning to businesses covered in the last issue of Keep it Safe.

The checks are intended to inform a campaign of inspection across Britain beginning in January 2013. It is anticipated that HSE will send out a questionnaire to



owners of cooling towers prior to inspections.

David Snowball, the Director for Scotland & Northern England said:

“We are doing these visits to focus businesses’ attention on ensuring they are doing what is required both to protect their workers and the wider public.

“Our research has confirmed that cooling towers pose the biggest legionella risk. If we, or local authority inspectors, find that the appropriate controls are not in place, we will take enforcement action.

“Inspections are a valuable part of our regulatory action. They are however no substitute for

companies meeting their legal duties on a daily basis, given that legionella levels can increase to high levels in a matter of days or weeks.”

HSE and local authorities are expected to work with companies and trade bodies to give advice and encourage the sharing of effective ways of working as part of a larger campaign throughout 2013 and beyond.

## HSE AND HSL TO RETAIN BRAND AND WEBSITE

HSE and HSL will retain their current website and brand for the foreseeable future after applications for exemption from plans to centralise all departmental websites and brand were accepted by Cabinet Office.

The approval for exemption is pleasing news for both HSE and HSL. The exemption will enable HSE and HSL to retain control of their websites, intellectual property and identity, and enable HSE to determine its own legal obligations for providing information and guidance.

## GUIDANCE FOR THE SAFE SYSTEM OF WORK FOR ENGINEERS WORKING ON REFRIGERATED UNITS AT HEIGHT ON VEHICLES/TRAILERS

This is one of the new key areas of health and safety guidance we will be developing for our members in 2013. There have been a number of instances where engineers working on these units have been injured either through falls or from crushing injuries by a collapsed deflector kit. Although the majority of our members contract out this work, they still have some responsibilities for the contractors working on their site and some of our members have been prosecuted.

We have co-ordinated relevant stakeholders to form a knowledgeable working party meeting for the first time on 22nd January 2013. BFFF members on the working party include 3663, Asda Stores Ltd, Brakes, Palmer & Harvey Ltd, Petit Forestier UK and Frigoblock UK Ltd. The

working party also includes Trade Bodies (British Refrigeration Association, Food Storage & Distribution Federation & the Freight Transport Association), refrigeration contractors, manufacturers and body builders (Carrier Transicold UK, Gray and Adams, Hubbard, Marshall Fleet

Solutions Ltd, Michael Ward Ltd, Thermoking Northern). We are looking forward to gathering all their input at this first meeting to form the basis of draft guidance in this area. Please contact Joanna Hancock for more details on 01400 283096 or [joannahancock@bfff.co.uk](mailto:joannahancock@bfff.co.uk).



## HSE ENFORCEMENT STATISTICS FOR BFFF MEMBERSHIPS SECTORS 2006/07 - 2010/11

### Producers

	Number of Notices				Number of Prosecutions	
	Improvement	Deferred	Prohibition	Total	Convictions	Total Informations
2010/11	111	1	34	146	24	26
2009/10	146	0	29	175	12	12
2008/09	178	1	39	218	17	20
2007/08	120	2	23	145	28	37
2006/07	251	1	56	308	23	23

### Wholesalers

	Number of Notices				Number of Prosecutions	
	Improvement	Deferred	Prohibition	Total	Convictions	Total Informations
2010/11	5	0	2	7	2	4
2009/10	7	0	10	17	1	1
2008/09	2	0	2	4	0	0
2007/08	5	0	7	12	0	0
2006/07	3	0	1	4	1	1

### Retailers

	Number of Notices				Number of Prosecutions	
	Improvement	Deferred	Prohibition	Total	Convictions	Total Informations
2010/11	4	0	0	4	2	2
2009/10	3	0	0	3	6	6
2008/09	1	0	0	1	0	0
2007/08	0	0	0	0	0	0
2006/07	3	0	0	3	0	0

### Freight Transport

	Number of Notices				Number of Prosecutions	
	Improvement	Deferred	Prohibition	Total	Convictions	Total Informations
2010/11	40	1	15	56	5	5
2009/10	42	7	24	73	2	2
2008/09	32	0	11	43	20	27
2007/08	48	2	12	62	7	10
2006/07	32	0	18	50	14	16

### Storage Of Frozen & Refrigerated Goods

	Number of Notices				Number of Prosecutions	
	Improvement	Deferred	Prohibition	Total	Convictions	Total Informations
2010/11	18	0	4	22	6	6
2009/10	5	0	0	5	6	6
2008/09	8	0	8	16	4	4
2007/08	0	0	0	0	1	1
2006/07	0	0	0	0	0	0

As part of the LAPS agreement, HSE have agreed to provide BFFF with the details of Enforcement Notices and prosecutions specifically related to our industry, split into the same industry sectors as the injury statistics.

Total Informations relates to what regulation a company is being prosecuted under. For example, if a company is being prosecuted under S1 of the HSWA and the S3 of the LOLER regs then two informations need to be laid before the court. So in this example, the prosecution had two informations. A prosecution will always have at least one information but may have many depending on the number of breaches of law.

## SAFETY FOCUS FEATURE

### AMMONIA VALVE SAFETY ALERT

The Institute of Refrigeration (IOR) has released a Valve Failure Safety Alert which is relevant to those plants using Ammonia as the refrigerant. The alert relates to significant failures in some of the valves which have resulted in ammonia refrigeration burn injuries

IOR recommends:

- Before commencing work on any Refrigerating system wear PPE as required by your employers' Risk and COSHH assessments for the refrigerant within the system PLUS in the case of Ammonia have a respirator available and to hand.
- When working on any type of valve with screwed connections always use a check spanner to hold the body of the valve whilst undoing connections, caps, plugs, etc, with another spanner.
- Identify all refrigeration plants containing these types of valves installed in parts of the system susceptible to corrosion e.g. regular cycling from sub zero to above zero temperatures or frequent operation in a wet condition. Then DO NOT ATTEMPT to use the valves until an appropriate risk assessment is carried out for either the replacement or the continued operation of the valves.
- When working on refrigeration plants fitted with these types of valves installed and operating in dry conditions such as in HP discharge or liquid pipe lines etc, DO NOT ATTEMPT to work on the valves without firstly isolating upstream and downstream of the valve in order to limit potential gas loss.
- Ammonia was not considered to be a factor in the failure, so the engineer should be aware of the risk of refrigerant burn injury regardless of refrigerant type.
- Clean and apply refrigeration oil to threads before replacing screwed connections.
- Regularly (quarterly) examine valves for leakage and corrosion and repair, paint or replace as required.
- Consider if insulation is required to prevent ice from building up around the valve and exerting forces on the pipe stubs.

To read the full text of the alert go to [http://www.bfff.co.uk/sites/default/files/ior\\_gn\\_22\\_2\\_-\\_update\\_may\\_2012.pdf](http://www.bfff.co.uk/sites/default/files/ior_gn_22_2_-_update_may_2012.pdf)



# HSE FOOD INDUSTRY CASE STUDIES

## WORKER CRUSHED WHILST CLEARING BLOCKAGE

The following case study outlines details of the prosecution of a confectionery company after an employee was crushed to death in a sweet-making machine while attempting to clear a blockage.

### Summary

The machine automatically loaded trays of produce, separated them, pressed moulds in to the starch and then stacked them for curing elsewhere.

There was evidence that the chain conveyor which lifted the trays jammed at the in-feed area. It appears the employee climbed into the machine to clear the blockage, but he had not isolated the power or pressed the emergency stop button. Once he had corrected the fault, the limit switch which had stopped the machine was released, causing the machine to restart. He became trapped and was crushed against the machine.

### Action

The company pleaded guilty to breaching Sections 2(1) and of the Health and Safety at Work etc Act 1974 and Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 for

failing to ensure the safety of their employees and for failing to make a suitable assessment of the risks to employees to which they were exposed. The company were fined £300,000, plus additional costs of £72,901.

### Advice

The investigating Inspector said: "This tragic case highlights the need to ensure that machines are safely isolated before any maintenance takes place so it cannot unexpectedly start up.

Simply pressing a stop button does not adequately isolate a machine.

"If the machine in this case had been properly isolated from the electrical power source before the employee attempted to clear the blockage, this accident would never have happened.

"A proper risk assessment would have highlighted the dangers of entrapment. All employees need to be adequately trained in correct company procedures - whether it's for clearing blockages, operating machines or any other high risk activity."



The same company were later prosecuted for an accident at another site, where an employee suffered a severed finger while try to remove a blockage from a sweet-making machine that had not been isolated. They were fined £3,400, plus additional costs of £4,568.

Further information on how to ensure that risks to workers' health and safety from the use of work equipment and machinery are properly controlled can be found on the HSE website at [www.hse.gov.uk](http://www.hse.gov.uk)

## FORK LIFT TRUCK ACCIDENT IN FACTORY YARD

This case study outlines the details of the prosecution of a food manufacturing company following a fatality at their business.

### Summary

A food manufacture company were prosecuted after an employee was killed when he was struck from behind by a forklift truck as he walked across the factory yard.

The employee was walking across the yard to drop paperwork off at another part of the site. As he was walking, a colleague was driving a forklift carrying two large empty containers across the yard to be washed. The containers were stacked on top of each other on the front of the forklift, and the top of the load was approximately 160cm from the ground, making it hard for the driver to see over them.

As the driver approached the container wash, he felt his truck go over something, stopped, climbed out and saw his colleague lying on his back, with the lower half of his body trapped underneath the forklift.

Other employees attempted to help before the emergency services arrived. Fire crews managed to lift the forklift off the employee, but paramedics found he was not breathing and he was pronounced dead on arrival at hospital.

A Health and Safety Executive (HSE) investigation found that the company had not properly assessed the risks of moving the

clearly see where they were going. At the same time, employees were walking through the same yard, with no separation between them and the traffic, and no more protection than a high visibility jacket.

“The company should have taken steps to make sure the containers were being moved in a safe way, and managed the traffic in the yard so that people and vehicles were

not sharing the same space.”

Further information on workplace transport safety can be found on the HSE website at [www.hse.gov.uk/workplacetransport](http://www.hse.gov.uk/workplacetransport)



containers around the yard or made arrangements to make sure the containers were moved in a safe way. The investigation also found the company did not have a safe traffic management system or adequate supervision in place to keep pedestrians away from vehicles.

### Action

The company pleaded guilty to breaching Section 2 of the Health and Safety at Work etc Act 1974 and were fined £100,000.

### Advice

The investigating Inspector said: “If the company had taken simple steps to keep their workers safe, then the employee concerned would still be alive today.

“Forklifts were being moved around the yard with loads that meant the drivers could not

## LEGISLATIVE UPDATE

### COSTS OF HSE ISSUES TO RISE – EVEN IF YOU ARE NOT GUILTY!



As has been widely publicised the HSE “Fee for Intervention” (FFI) scheme has come into force (1<sup>st</sup> October 2012).

There are, however, some additional changes which you should be aware of in the removal of Defence costs orders in the case of a successful defence of a prosecution at court. These were removed pursuant to Sched 7 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which came into force on 1<sup>st</sup> October 2012.

Prior to the change the rule was that if your company was prosecuted, you engaged lawyers and successfully defended the charges then the court had scope (and would exercise its discretion in the vast majority of cases) to make an order whereby the state repaid you the majority of the costs you incurred. The changes mean that a company is no longer entitled to recover any costs unless the case gets to the Supreme Court.

This will inevitably put pressure on businesses to look to settle cases rather than incur the costs of defending them. The costs can be considerable

depending on the nature of the charge and the manner in which it is being defended – can a company, particularly in the current economic climate, afford to defend its position with no prospect of recovering the costs of doing so?

The other issue which has not been determined as yet is whether if acquitted, the FFI rules allow for any costs you have paid to be refunded to you. There are provisions to appeal against the FFI costs but any appeal must be within 6 weeks of the invoice (with an initial step taken within 3 weeks). The problem is one of timing. The FFI bills will be generated by HSE every 2 months throughout their investigation but a prosecution might take 12-18 months by which time you are likely to have paid a significant sum under FFI. An appeal needs to be raised within the 6 week period so it is unlikely you can appeal based upon having been acquitted (you will not have been by that time) and there does not seem to be any scope to raise an appeal out of time or to be determined after any criminal charges has been dealt with.

So consider the following scenario:

The HSE inspector feels there is a material breach and you get charged the FFI fees. You have the right to appeal but how likely are you to succeed if your appeal is on the basis of the statutory defence (i.e. that you have done everything reasonably practicable to avoid the breach)? That defence

generally takes a significant amount of preparation and the deployment of expert evidence; it must be highly doubtful if the necessary information would be available to run an appeal on this sort of a basis. Even if it was then, tactically, would it be in your best interests to disclose to the HSE what your defence will be and allow them to try and plug the gaps before charge?

Assume then that the HSE then charges you with various breaches and you instruct lawyers and their advice is to defend the allegations. Much to your relief and after considerable effort and costs, you persuade the court that you are not guilty. The rule would have once been that you recover the majority of the legal costs you have spent, since 1<sup>st</sup> October, as a result of the changes, you are unable to recover a single penny of those legal costs.

The combined effect is that not only do you pay the HSE’s FFI costs (wrongly incurred as the decision of the Court demonstrates there was no material breach) but you have no prospect of recovering the cash spent on your own lawyers! It does not smell much like “justice” to me.

Phil Cookson  
Partner, Roythornes Solicitors  
[philcookson@roythornes.co.uk](mailto:philcookson@roythornes.co.uk)  
01733 898970



## HSE CONSULTS ON FIRST AID TRAINING CHANGES

From 22<sup>nd</sup> October to 3<sup>rd</sup> December 2012 the HSE consulted on the proposal that it should no longer approve first aid training and qualifications, along with a review of the Approved Code of Practice (ACOP) and the associated guidance.

The consultation is in response to a recommendation in Professor Löfstedt's review of health and safety, published in November 2011 and will, if approved, result in the amendment of the Health and Safety (First-Aid) Regulations 1981 (First Aid Regulations).

It is hoped by the HSE that the changes will mean employers can meet their first aid needs assessment while having greater flexibility in their choice of training provider.

The HSE was specifically interested in views on what guidance would be useful to businesses when assessing what they need in terms of first aid provision for their particular circumstances. This would necessitate a revision of the Approved Code of Practice to the Regulations.

### HSE Guidance

Employers will still need trained first aiders to provide first aid to their employees if they become injured or ill at work. However, the changes will remove the requirement for employers to use only training providers and training that have been approved by HSE,

to encourage more flexibility.

This of course means that the burden of deciding who is a competent first aid trainer passes from the HSE to the employer. To help with this the HSE will include in their guidance details of how



employers can ensure that the training that they are paying for will allow them to fulfil their legal requirements under the First Aid Regulations.

The guidance will provide information on how to select a competent training provider and will provide a set of criteria against which employers can benchmark the performance of training organisations.

The HSE further proposed that they could provide example case studies for workplaces with different kinds of hazard and numbers of employees, as well as for businesses where members of the public are present such as in the retail and entertainment sectors. The guidance could also include examples of situations where any additional training may be required in the workplace.

## First Aid Training Types

HSE is not proposing any changes to the current four-level 'framework' of aid at work provision which will remain:

- Appointed Person
  - Emergency First Aid at Work (EFAW – one day course)
  - First Aid at Work (FAW – three day course)
  - additional skills/knowledge for particular environments/circumstances (e.g. defibrillator provision, working with hydrofluoric acid or excessive distance from an A+E Department).

In addition, the HSE anticipates that nationally recognised and accredited qualifications will be available covering both Emergency EFAW and FAW.

### Removing the Burden

It is also hoped that the changes will remove the "burden" of applying for and maintaining HSE approval, for those who provide first aid training.

In the Regulatory Impact Assessment, HSE estimated annual costs to training providers to secure HSE approval for the first time and for renewal certificates and for monitoring and training, as being between £270,000 and £2.6 million over the HSE approval period.

The total cost savings to all training providers are estimated to be between £3.2 million and £6.4 million, with a best estimate of £4.7 million.

## Our concerns

There is a concern that this may actually create an additional burden to businesses. We feel that it may make it more difficult for businesses to select a competent training provider and with the opportunity for varied

training courses, businesses will find it more difficult to select an appropriate course with all the relevant content for their business.

With the current system, businesses can be confident that they are selecting a competent training provider who has been

approved by HSE and they have a selection of structured training courses to adhere to. We have responded to HSE accordingly and await the outcome of the consultation.

## NEW REQUIREMENTS FOR "NO SMOKING" SIGNS IN FORCE

The Smoke-free (Signs) Regulations 2012 came into force on 1 October 2012. The new regulations apply in England only and revoke the Smoke-free (Signs) Regulations 2007.

Under the 2007 Regulations businesses were obliged to display a number of No Smoking signs but the new legislation replaces the detailed requirements with a simple requirement that at least one legible 'No Smoking' sign must be displayed in smoke-free vehicles and smoke-free premises.



## Q & A'S

Public sector cost cutting and cutbacks to HSE resources have resulted in less HSE campaigns therefore to give our members better value from this newsletter BFFF have decided to replace the HSE Campaigns section with this new Q&A feature. Information relating to H&S campaigns will still appear in the Guidance section.

In this feature we answer your Health and Safety questions, big or small. If you have a question please contact Joanna Hancock [joannahancock@bfff.co.uk](mailto:joannahancock@bfff.co.uk) or 01400 283096. Questions will be answered anonymously.

### MANAGING SOCIAL MEDIA ISSUES

**Q.** Our business has had some issues with social media but it's all new to me. Can you give me any tips on how to manage it?

**A.** A social media policy is an essential tool for managing social networking at work but it is worth understanding the risks and legal position around it.

#### Danger areas

The use of social media, such as Facebook, My Space, Twitter, YouTube and LinkedIn, has become increasingly common at work. These are Internet based means of communicating and sharing content information with friends and like-minded communities. However, these postings pose a potential risk to an organisation's reputation from employees making adverse comments about the organisation, its managers, policies and products.

They can be made not only at work but also outside work and in the employees' own time.

The danger areas where employees can potentially misuse social media can be categorised as follows:

- Employees posting inappropriate material on websites.
- Employees criticising their employer and managers and other employees online.
- Cyber bullying. This is a growth area with examples including malicious posts and offensive tweets about colleagues.

### The legal risks

These postings have potential legal risks for the organisation. The following are examples of such risks, arising from employees' use or misuse of social media:

- *Defamation* — an employee making negative comments about a competitor.
- *Breach of copyright* — quoting someone else's work without proper attribution.
- *Harassment and discrimination* — abusive comments relating to another's sex, race or religion.
- *Misconduct at work leading to unfair dismissal* — making an inappropriate video that is then posted on YouTube.



- *Damage to reputation* — posting negative comments about the organisation and its managers.
- *Time-wasting* — overuse of social media for personal purposes.
- *Breach of confidentiality and restrictive covenants* — revealing client details.
- *Unreliable references* — unauthorised recommendation of employees, which contradicts the employer's position.

### What legislation is relevant?

UK statute does not deal directly with the issue of social media. Some of the legislation, however, is relevant, notably the:

- Human Rights Act 1998, which provides that employees have the right to private and family life, a right that can be extended to include privacy in the workplace
- Regulation of Investigatory Powers Act 1998, which details the extent to which employers can monitor or intercept employees' communications
- Data Protection Act 1988, which deals with the processing of individual data and the monitoring of e-mail communications.

### Case law?

To date, case law at Employment Tribunal (no EAT cases yet) involving human rights' defences (ie Article 8 — the right to privacy and family life; and Article 10 — the right to freedom of expression) have largely failed. The argument that the organisation, in responding to alleged social media misuse by the employee, represents an invasion of privacy, has also usually been unsuccessful.

If the employer does dismiss the employee for social media misuse on the grounds of bringing the organisation into disrepute or for misconduct, the dismissal must be within the "range of reasonable responses" test — it must be a fair and proportionate response to the employee's actions.

### The need for a clear social media policy

A clear social media policy is essential to avoid these risks. Ideally, the policy should comprise the following components.

- *Inform employees* about the risks and dangers which arise from the misuse of social media and how they can get themselves and the organisation into difficulties.
- *Set out unambiguous ground rules* of the acceptable use and unacceptable misuse of social policy, including the consequences of an employee breaking the rules. The policy should state its impact on employees both during and outside their working day. Remember that any dismissal for misuse must meet the test of "reasonable responses".

- *Include cyber-bullying* within the policy. It should also be incorporated into the organisation's anti-harassment policy.

If the organisation wishes to engage actively in social media, it should publish guidance on best practice, including what is regarded as "core time" when employees should not use social media other than on official business.

### Conclusions

Social media can certainly have advantages for promoting the business and engaging customers or clients. But, as already mentioned, employees' use of social media is best managed under a clear policy, which should be kept up to date in the light of recent employment law cases.

In September 2011, ACAS published guidance on social media. Its main recommendation is that employers should consult with staff and trade unions on policies relating to the use of Internet and social media websites.

## SAFE SYSTEM OF WORK FOR ROOFWORK

**Q.** We are looking to create a safe system of work for employees having to work on roofs composed of insulated panels i.e. coldstore/ food factory ceilings. In particular we are interested in standard solutions for:

- designing out the need for access over sandwich panel ceilings
- providing permanent safe access, where it is needed to the ceilings
- providing temporary access, in the case of unplanned access, such as repairing leaks above these ceilings

Do you have any advice?

**A.** For a start the HSE has some simple guidelines to follow:

- Ceilings and roofs should be presumed to be fragile until it is proved that they are not
  - Environmental conditions may cause deterioration of ceilings, roof claddings or their supports, making them incapable of taking a persons weight
  - Panels should not be used as a working platform unless it has been confirmed by a competent person that both the panels and their supports have been specifically designated for that purpose and are suitable
  - Guidance on loading capacities should always be sought from the manufacturer/supplier if possible
- Where frequent access is required then independently supported walkways should be installed, or boards used to spread loading for other prolonged work activities. Again, guidance from manufacturers, suppliers and designers should be followed. There have been accidents with these panels where the fixings to the steel beams had failed due to corrosion or fatigue - specifically where the thread entered the metal nut.

It should be remembered that each case needs to be independently risk assessed to determine what is suitable from a permanent and/ or temporary basis and taking into account all other factors.



## Designing out the need for access over sandwich panels

This is always the preferred option as eliminates any risk from this aspect. The main requirement for access onto panels is for maintenance of plant, pipework, electrical equipment etc so it purely requires a design that puts this equipment somewhere else. This is not always possible though where space is a premium.

It also means you can be shifting the risk somewhere else where a working platform over the panels may actually provide a safer working area. The working at height hierarchy starts with avoiding it wherever possible.

## Providing permanent access to the ceilings

An access staircase is always the preferred and safest option and for a new build, where access is required frequently and/or small materials or tools need to be moved frequently, then one should be installed. If one has not been installed as a bespoke part of the building then one can be built retrospectively however this can be costly if it is an afterthought. The staircase can be constructed from scaffolding but means it would need to be inspected on a regular basis by a competent person.

The long term cost of hire and inspection could outweigh the cost of a permanent structure.

Where only occasional access is required and materials do not have to be carried (three points of contact at all times) then a fixed access ladder could be installed however the risk assessment

needs to be robust if this is to be the case as they come with their own inherent risks.

Safety hoops, landing/rest platforms or fall arrest systems may need to be installed.

## Providing temporary access, in the case of unplanned access, such as repairing leaks above these ceilings

Temporary access is where the majority of working at height accidents can occur as they are generally reactionary and are insufficiently planned or controlled. There are many different ways to temporary access and again, this needs to be specifically risk assessed. Stair access/tower platforms are the preferred option. Mobile elevated work platforms (MEWPS) such as scissor lifts are a good option but must be operated by a trained operative and allow for safe access from the platform onto the ceiling.

Cherry pickers are also an excellent option but again need to be operated by a trained operative and access can be restrictive. Consideration must always be made as to what edge protection is in place on the ceiling also.

Ladders are not a good option and consideration needs to be made for their height, footing and tying off, suitability, inspection, carrying equipment to name a few. Access over the panels can be done through either a temporary or permanent walkway.

A temporary walkway can be installed through aluminium walkways spreading the weight and can have handrails installed.

Permanent walkways can be built off the existing steelwork of the building thus avoiding any contact with the panels. This is specialist contractor work and one would need to be appointed accordingly.

Our thanks go to Todd Hallam, EHS Director of Chalcroft construction for his input into the advice on this query.

**chalcroft**

construction built on teamwork

## GUIDANCE

### EXPECTING THE UNEXPECTED

A recent survey of business continuity planning in the UK has shown that businesses are sitting up and taking notice of the wide range of threats that have emerged in the past year. Companies are now taking action to ensure they are prepared for whatever is thrown at them.

“Planning for the worst”, the 2012 Business Continuity Management (BCM) Survey, is available free from the Chartered Management Institute (CMI). It shows that the number of organisations with formal plans in place rose last year for the third year running. Over 60% of managers now report that they work for a business that has BCM in place, compared to 58% in 2010.

In 2011, winter weather was again the most common cause of organisational disruption, causing problems for 82% of managers. Other significant business disruptions included the public sector strikes (55%), the Blackberry outage (39%), the summer riots (26%), natural disasters such as Japan’s earthquake and tsunami (19%), and international social and political unrest such as the Arab Spring uprising (18%).

A massive 81% of managers who activated their business continuity plans last year agreed it reduced disruption and therefore many had been planning ahead to minimise the impact of the Olympic Games.

Surprisingly, the survey found that only a fifth of managers expect their business critical suppliers to have a BCM system in place, and only 7% expect all of their suppliers to have systems in place. However, company strategies are now beginning to recognise the importance of supply chain resilience.

### Reduced Insurance Premiums?

In another survey undertaken by the British Insurance Brokers’ Association and the Cabinet Office, business continuity plans have been shown to reduce insurance premiums.

The majority (96%) of respondents believed that having a business continuity plan could keep businesses trading or reduce the costs they would incur. An additional 62% said that they could benefit from insurance premium discounts, reduced excesses and access to new insurance markets.

These beliefs were backed by insurers, with 83% agreeing that they would provide a discount or improved insurance terms to a business interruption policy if a company had a business continuity plan in place. The survey showed that 74% of all emergencies against businesses were water (41%) or fire-related (33%).

### How to Develop an Emergency Plan

- Define the scope, roles and responsibilities for emergency management. An incident response team should:

- know exactly what their roles involve in advance
  - have the means to be rapidly contacted
  - have a set of agreed tools/protocols to help assimilate what is going on
  - have access to rehearsed decision-making structures/diagrams
  - have the ability to give accurate and measurable directions
  - have a back-up in place if they are not available
  - be the supreme executive layer at the commencement of any crisis response
  - operate in a high-risk/no-blame culture to encourage rather than deter prompt decision making
  - have direct linkage to any business continuity/emergency procedures plan
  - have immediate access to legal, HR, welfare, business, finance, IT and media advice (often as core team members)
  - have the ability to prepare a media holding statement within 30 minutes.
- Conduct risk assessments to identify threats and mitigate them

- Appoint an appropriate person to consider specifically the welfare of employees both at the time and following any tragedy
- Keep the emergency plan up to date through good practice
- Administer a testing programme to rehearse what to do before it happens
- Establish and monitor change management and succession management regimes
- Review the crisis management actions to be applied during the acute phase of any tragedy/crisis/disaster.

## THINKING ABOUT THE WINTER — YOUR LEGAL RESPONSIBILITIES

Cold weather, snow and ice can cause and accentuate many work-related risks which have to be dealt with by organisations. Slipping on icy walkways is an important hazard which can affect both employees and members of the public. Low working temperatures can present particular health and safety problems. Getting to and from work in snowy conditions puts staff at risk. Driving for work in ice and snow is especially dangerous.

All of these issues give organisations difficult choices and judgements to make. Should they allow their staff to stay at home and avoid journeys to work in snowy conditions? Should staff be sent home early to avoid difficult or risky journeys altogether? Should they allow their staff to drive for work when the weather makes such journeys especially dangerous? What legal outcomes could there be if an employee is killed or injured when making such journeys? What workplace hazards are there? How much effort should be expended to keep paths and walkways free of ice and snow? What are their liabilities should someone fall and injure themselves?

What are the legal requirements for maintaining working temperatures when the outside temperatures are below zero?

Dealing with the issue of the consequences of wintery weather presents employers with many difficult questions about risk, and their legal duty to deal with those risks.



## Legal outline

Firstly, under common law organisations have to take reasonable care of those who could be affected by the activities of that organisation. In practice, this means that an employee or a member of the public who slips on ice on a means of access provided by or in the control of the organisation can bring a civil claim against that organisation. It means that an employee who is killed or injured while driving for work in bad weather may be able to claim compensation against his or her employer. It means that ill-health effects of low temperatures may result in civil claims.

Secondly, there are legal duties placed upon employers by Health and Safety legislation. Breaching these legal duties can result in criminal prosecution leading to fines and, in extreme cases, imprisonment.

The main legal requirement is the Health and Safety at Work etc. Act 1974 (HASAWA) which requires employers and others to protect their own employees and also third parties who could be affected by their work activities. This will include consideration of the impact and consequences of wintery weather. These duties are supplemented by other legal requirements.

Regulation 3 of the Management of Health and Safety at Work Regulations 1992 requires risk assessment of all work activities and this will include considering the issue and effects of cold weather. Risk assessments should encompass all work-related risks, including those caused by winter weather.

As always the amount of effort spent on such risk assessments should be in proportion to the likely risks.

### Low temperatures in the workplace

The Health and Safety (Workplace) Regulations 1992 with its associated code of practice (ACOP) require the temperature inside workplaces to be reasonable. What is a reasonable temperature is dependant on the work activities and circumstances and guidelines are given in the ACOP. For workrooms where there is no work which involves severe physical effort eg an office, then the temperature should not drop below 16°C.

Of course in the frozen food industry this minimum temperature cannot be achieved. In these situations warm clothing, hot drinks, warm rest areas, time limitation in the cold areas and similar measures should be taken.

### Driving for work

The requirements of HASAWA include the time when employees are driving, or riding at work, whether this is in a company or hired vehicle, or in the employee's own vehicle (but not the daily commute).

Wintery weather can cause extreme risks and the effects of snow and ice can make driving very dangerous. Risk assessments performed under the Management Regulations should include driving for work.

The risk assessment may need to include when not to drive at all and in what circumstances this action may have to be taken.

Guidance and requirements for maintenance of vehicles are also required, as well as information about safe driving techniques in bad weather from sources such as the Highways Agency, ROSPA, the AA and the RAC.

### Slips

One of the most significant risks associated with wintery weather is the risk of slips due to snow and ice on walkways and paths. Employers have a duty of care not just to their own staff, but also to non-employees such as the public and other visitors. Serious injuries can result from slipping on ice and while prosecutions do occasionally take place following slipping accidents, potentially expensive civil claims are more likely.

Employers therefore need to be prepared for bad weather and take reasonable action to keep paths and walkways free from ice and snow. This is not an exact science and it is sometimes impossible to keep all accesses free from snow and ice, all of the time.

The risk assessment should have identified priority walkways and take appropriate action to keep them safe. This will include the use of salt and grit as well as warning signs.

Employers need to be able to show that they have properly considered the issue and have spent an appropriate amount of resources commensurate with the risk.

The Government and HSE have been keen to stress that they consider clearing public pathways outside the workplace to be a good thing, but to follow their 'snow code' including sensible tips such as not using hot water to clear ice.

## DIESEL RECLASSIFIED BY HEALTH EXPERTS

Workplace health and safety campaigners are calling for action to protect workers from diesel exhaust fumes after experts at the World Health Organization (WHO) recently reclassified diesel as a top rated "Group 1" carcinogen, in the same category as asbestos and tobacco.

In a statement, the International Agency for Research on Cancer (IARC), which is part of the WHO, confirmed the classification of diesel engine exhaust as carcinogenic to humans and falling within the Group 1 list of substances, based on "sufficient evidence that exposure is associated with an increased risk for lung cancer".

The IARC also confirmed links to bladder cancer, associated with diesel fumes.

Previously, in 1988, the IARC had classified diesel exhaust as "probably carcinogenic to humans" and falling within Group 2A.

Commenting on the change, Dr Christopher Portier, Chairman of the IARC Working Group, said, "The scientific evidence was compelling and the Working Group's conclusion was unanimous: diesel engine exhaust causes lung cancer in humans."

## Controlling the Risks from Diesel Exhaust Fumes

HSE Guidance document **HSG 187 Control of diesel engine exhaust emissions in the workplace** recommends that, as with other workplace hazards, prevention of exposure to diesel exhaust fumes should be considered first. An example of this might be a programme of replacement for old diesel powered fork-lift trucks in favour of electric or LPG powered ones.

Where it is not possible to eliminate the hazard then steps should be taken to adequately control exposure. Examples of general controls include:

- workplace air extraction fans
- tailpipe exhaust extraction systems
- the use of filters attached to tailpipes
- catalytic converters
- and more general control measures such as:
  - turning off engines when not required
  - keeping doors and windows open where practicable
  - installing air vents in the walls and ceiling
  - job rotation
  - providing suitable personal protective equipment (suitable gloves should be worn when handling hot and cold diesel fuel).

Respiratory protective equipment should only be provided as a last resort when other means of control are not suitable.

The presence of soot on the walls or on other surfaces in the workplace is a useful indicator that diesel fumes are not being adequately controlled.

Diesel operated fork-lift trucks tend to produce high quantities of DEEEs. The degree of exposure depends on the number of vehicles in use at any one time, the condition of the engines, the way they are driven, the site of operation within the warehouse etc.

When purchasing fork-lift trucks, employers should consider the use of electrically driven or propane fuelled vehicles. Exposure to DEEEs can be reduced by keeping warehouse doors open to circulate the air and also by installing roof or wall mounted extraction. Furthermore, regular servicing of the trucks will improve the performance of the engines and hence reduce emissions.

Where it is unavoidable for a lorry to enter a warehouse for loading/unloading, or where a delivery van is in a loading bay in a despatch area, the engines of these vehicles need to be switched off unless required to drive hydraulic systems. When it is necessary to run the engine, other control measures should be used, such as an extraction system or a suitable filter system attached to the tailpipe.

## NEW WORKPLACE CANCER STUDY

Health and safety campaigners have called for action from the government to deal with the death toll from work-related cancers, as research on the subject was recently published in the British Journal of Cancer Supplement.

The study, funded by the Health and Safety Executive, found that around 8000 cancer deaths in Britain each year are linked to occupations — which equates to around 5% of all cancer deaths in the country.

Researchers used a list of substances that cause work-related cancer, as identified by the International Agency for Research on Cancer (IARC), to calculate the impact of work on cancer cases and deaths.

They discovered that around 13,600 new cancer cases are caused by risk factors related to work each year.

After asbestos, the main work-related risk factors were:

- night shifts — linked to around 1960 female breast cancer cases
- mineral oil from metal and printing industries — linked to around 1730 cases of bladder, lung and non-melanoma skin cancers
- sun exposure — linked to around 1540 skin cancer cases
- silica exposure — linked to 910 cancer cases
- diesel engine exhaust — linked to 800 cases.

Commenting on the research, lead author, Dr Lesley Rushton, an occupational epidemiologist based at Imperial College London, said, “This study gives us a clear insight into how the jobs people do affect their risk of cancer. We hope these findings will help develop ways of reducing health risks caused by exposure to carcinogens in the workplace.”

Further information on the research can be accessed at <http://www.nature.com/bjc/journal/v107/n1s/index.html>

## HSE VULNERABLE WORKERS SITE

Health and Safety has been used many times as an excuse for not employing certain groups of workers, specifically when it comes to race, age (both young and older workers), gender and disability. In an effort to combat this the HSE has recently updated its vulnerable workers microsite.

The common theme of the site is that Health and Safety issues alone are very rarely a reasonable argument for not employing someone. For instance a business may be reticent about employing school leavers because of immaturity or a lack of confidence leading to greater risk of an accident and reduced work efficiency. In this case with some simple management techniques including supervision and training the risks can be easily managed.

The updated site can be accessed at

<http://www.hse.gov.uk/vulnerable-workers/index.htm>





## BUY QUIET

HSE has launched a new initiative called 'Buy quiet'.

**Buy Quiet** helps manufacturers, importers, suppliers and users of equipment to work together to reduce the risk of noise-induced hearing loss in the workplace. It supports users in their duty to avoid high noise equipment when suitable lower noise equipment is available and manufacturers in their duty to minimise noise by technical means.

The key messages are:

- **Buy Quiet** is about manufacturers, importers, suppliers and users of equipment working together to reduce the risks from noise in the workplace;
- **Buy Quiet** to reduce noise in your workplace;
- **Buy Quiet** and you have a simple, common sense process that will help you to protect your workforce from noise risks;
- **Buy Quiet** and there are likely to be significant cost benefits over time;
- **Buy Quiet** and you will be helping to stimulate manufacturers to develop lower-noise machinery.

Access the HSE web site for further information on how these web pages may benefit your business.

## COPPER IONISATION SYSTEMS

### What is the issue over copper ionisation in legionella control?

HSE's information 29/11/2012:

### Important information for users and suppliers of water treatment systems that use elemental copper for legionella control

From 1 February 2013 it will be illegal to sell or use water treatment systems that use elemental copper in order to add copper ions to water as a biocide. It will also be illegal to supply the copper needed for their use.

The action has been taken at EU Level under the Biocidal Products Directive because no manufacturer supported the use of elemental copper for use as biocides in these systems during a review period that ended in September 2011.

HSE's primary concern is that legionella control is not compromised.

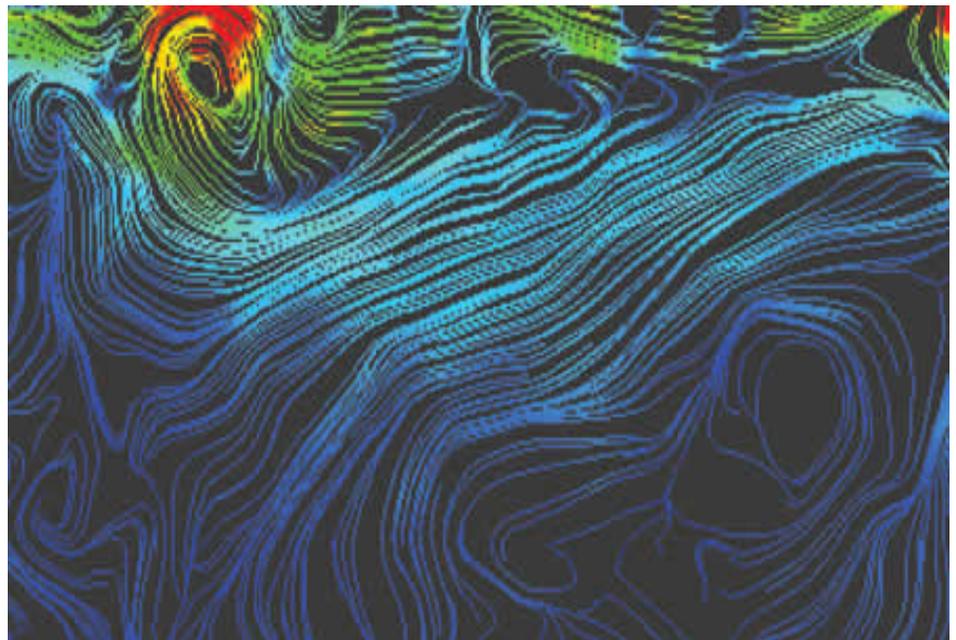
Businesses and organisations have a responsibility to manage the risks from legionella and it is essential that these duties continue to be met. In addition, HSE intends to pursue an 'essential use derogation' for use of copper in legionella control systems in the UK.

We encourage users of these water treatment systems to contact the manufacturer to discuss a way forward. See the HSE web site here for a useful Frequently Asked questions section on this topic.

## LOCAL EXHAUST VENTILATION (LEV)

HSE has developed a frequently asked questions section on their web site around local exhaust ventilation including Airflow, LEV Competence and thorough examination & testing.

Click [here](#) for more information and to view the web pages.



# ENFORCEMENT ACTION

## PROSECUTION CASE FOR FROST BITE

At our recent health and safety seminar, delegates heard the details behind a recent prosecution case experienced by one of our members. This case related to one of their cold store operatives working at -21°C who experienced rashes and swelling in his feet which was later diagnosed as frost bite.



It is important to note that this employee worked for a professional and reputable company and he was provided with:

- Appropriate PPE
- Worked appropriate shifts with regular breaks
- Received induction training and provided with relevant risk assessments and safety information.

However, although he was provided with the relevant PPE, on two occasions he was found not to be wearing the correct boots. The employee said that his didn't fit properly and he preferred to wear his own (non thermal shoes) and the company provided him with replacements.

Following the diagnosis of frost bite the employee claimed £35,000 for damages that was settled in full by the companies insurers and the employee later resigned. However, following his resignation and some 3 years after sustaining his injury the employee made a complaint of his injury to the Local Council. The EHO investigation lasted just under two years and the company

were charged against 8 breaches of legislation. Having failed to reach a commercially acceptable position with the prosecution at the Magistrates court the prosecution stated that the case should be sent to the crown court and the magistrates agreed.

The negotiations continued after committal for trial, and the agreed basis of plea was reached and it read:

'The defendant will accept that they failed to provide the employee with the correct personal protective equipment namely freezer boots when he commenced employment in June 2006; further the defendant failed to provide him with any boots until December 2006; The failure of the defendant to provide the employee with the correct personal protective equipment led to his injury.'

The offences were restricted to a single breach of section 2 Health and Safety at Work etc Act 1974

The judge accepted the basis of the plea and asked for an indication of the company's turnover. The company declined to provide this information. The judge then

imposed a fine of £112,500 plus costs which was reduced by one third for an early plea to £75,000.

The company appealed against the fine and the Court of Appeal restated the principles in *R v F Howe and Sons Engineers (1999)* 'the objective of prosecutions for health and safety offences in the work place is to achieve a safe environment for those who work there and for other members of the public who may be affected. A fine needs to be large enough to bring that message home where the defendant is a company not only to those who manage it but also to its shareholders.'

Even so, the appeal was successful and the fine was reduced to £50,000.

There were some clear lessons from this issue:

1. Records are so important. Companies should ensure they have complete records of all PPE issued to employees.
2. Companies need to follow and rigorously enforce their own systems
3. Companies should understand the nature of regulatory contact/ visits and discussions i.e. ensure that the correct designated personnel deal with all regulatory contact
4. Companies should understand the relevance of civil claims and managing insurers/ brokers

## CPS CHARGES FOURTH COMPANY WITH CORPORATE MANSLAUGHTER

The Crown Prosecution Service (CPS) has confirmed that it has charged a flower nursery with corporate manslaughter in connection with the death of an employee from electric shock.

On 15 July 2010, Grzegorz Krystian Pieton was working at Belmont Nursery in Terrington St Clement. He died from electrocution when the metal hydraulic lift trailer he was towing touched an overhead power line.

Announcing the commencement of the case, Rene Barclay, Principal Crown Advocate in the Special Crime and Counter Terrorism division of the CPS, said prosecutors had concluded there

was sufficient evidence to charge the flower nursery.

PS & JE Ward Ltd, trading as Belmont Nursery, has been charged with corporate manslaughter as well as failing to discharge a duty imposed by s.2(1) of the Health and Safety at Work, etc Act 1974, which covers the duty of the employer to ensure, so far as reasonably practicable, the health and safety of employees.

This is the fourth company the CPS has charged with corporate manslaughter since the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007, which came

into force in 2008.

In a statement issued through its solicitors, the company said, "Belmont Nursery has worked closely with police, the HSE and other agencies investigating the incident at the nursery. As formal legal proceedings are now under way it would be inappropriate for us to comment on any aspect of the case at this time. Everyone at Belmont Nursery remains profoundly saddened by the death of Mr Pieton, and his family have been, and are constantly, in our thoughts."

**SAVE  
THE  
DATE**

## HEALTH & SAFETY SEMINAR



**Wednesday 3 July 2013**  
**Ricoh Arena, Coventry CV6 6GE**

Share best practice and hear relevant case studies on Health & Safety topics specific to the frozen food industry.

Network with other H&S professionals

Our previous seminars utilised a winning formula of speakers from the HSE, a Local Authority Inspector and case studies from BFFF members

Cost: £99 ex VAT per member delegate

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