



HOW SUITABLE AND SUFFICIENT IS YOUR HEALTH & SAFETY MANAGEMENT SYSTEM?

Some recent high profile cases have highlighted the importance of not only having a suitable Health and Safety Management System (HSMS) but implementing the system and remedial measures throughout the business.

Case Summary:

A well-known retailer was recently handed a £1.2 million fine for a fatal accident in one of their stores. It involved the tragic death of a child where an unsecured 100+ kilogram mirror fell on him.

Salient Points

On the surface of it, this case may seem unrelated to our sector and industry. However, below we can examine the case and how it could relate to any business sector.

- 1) £1.1 million fine was for breach of Section 3(1) of the Health and Safety at Work Act 1974 (HSWA). This Section places a duty on any Employer to take all reasonably practicable steps to ensure the health and safety of non-employees affected by their work.
- 2) A further £100,000 was levied under the Management of Health and Safety at Work Regulations 1999 (as amended). This law places a duty on any Employer to carry out suitable and sufficient risk assessments and have appropriate health and safety arrangements.

So it is worth noting both of the laws above would apply to any business.

What was said?

Other lessons to be learnt can be interpreted from comments made by the different parties involved in the case. For example, the Prosecutor for the Council stated: "The company are responsible for ensuring safety; they have to appoint people to do that. There was no checking by anybody to make sure that the mirror had been placed or fixed properly."

I.e. a company's responsibility includes the appointment of people to help them fulfil their duties such as competent persons and others (e.g. fire marshals, first aiders and in this case could have been in-store responsible person to make regular checks and follow manufacturer's instructions).

The company's own legal representative acknowledged the company's "combination of serious failings."

The Judge's comments included that the unsecured mirror was as "enormous" risk to both staff and customers. He also noted it was not an isolated incident as there had been reports at the company's other UK stores, including reports of a falling mirror in 2009 and an unsecured mirror in 2010. The Judge emphasised there had been "systemic failures", which rose to the very top of the company.



So if a member of staff had been injured, the company could have faced a further charge under Section 2(1) of HSWA. It could also imply that a business should take remedial steps for repeated issues, especially if they pose a severe risk and H&S management requires genuine leadership from the top.

What is particularly relevant is that the Judge commented that there was a health and safety system in place, but this tragedy occurred, because the system hadn't been implemented properly with the appropriate training, managing and compliance.

To conclude, it is not sufficient to just have a Health and Safety management system or arrangements in place. It must be implemented, there must be appropriate persons trained on the arrangements and failures must be addressed to prevent serious consequences.