



Lockton HSeries

Health and Safety in Construction

AUGUST 2021



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UNCOMMONLY INDEPENDENT



Welcome to the Lockton HSeries.

In a time of emerging exposures and an ever increasing use of statistical data to consider risk, Lockton's Claims and Risk Management experts discuss some of the key themes arising from the UK's Health and Safety Executive's (HSE's) 2020 annual statistics.

In our third report we look at the Health and Safety risks associated with the Construction industry.

Here the team considers what the statistics say about the prevailing and emerging risks in the sector, and discusses how best to address them.

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Injuries, Absence and Cost

Injury Volume: *Still a dangerous place to work?*

Working in the Construction industry unsurprisingly comes with significant risks of injury when compared with other sectors such as Manufacturing or Transportation.

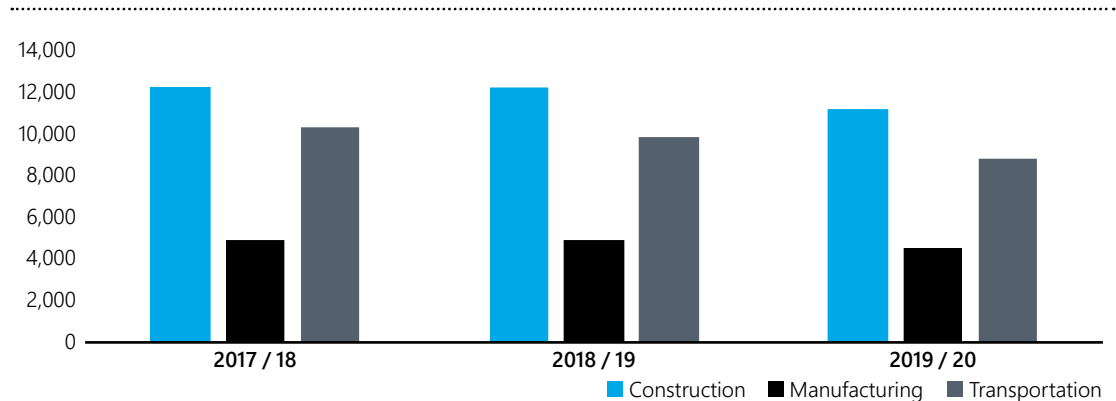
It is estimated that over the past 4 years there were, on average, 61,000 non-fatal work related injuries in the sector each year. Approximately 27% of these resulted in over seven days of absence for the injured employee.

Between 2016 and 2019 the total number of injuries reported by construction businesses decreased by 2% on a year on year basis. There was an 8% reduction in the most recent year for which data is held. It is expected that this change may be partially driven by differing working practices, absence and other factors resulting from the COVID-19 pandemic.

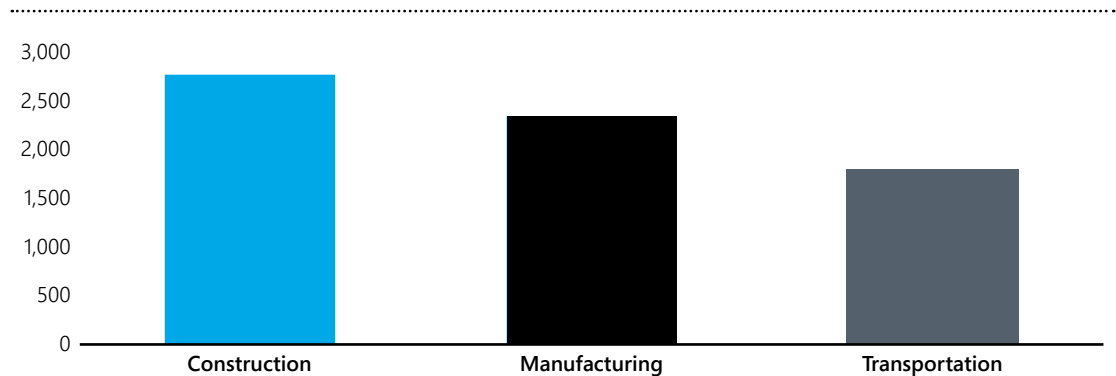
Around 2.8% of all employees in the Construction industry were injured between 2017 and 2020. This is statistically significantly higher than the all industry rate (1.8%) and compares unfavourably with the Transportation (1.8%) and Manufacturing (2.3%) sectors. The only industry in which workplace injury was more prevalent was the Agricultural sector where 3.9% of all workers sustained an injury over the past 4 years.

Businesses within the Construction industry reported 4,526 non-fatal RIDDOR injuries to employees between 2019 and 2020 with 63% of those reported resulting in workplace absence of more than 7 days. The remaining 37% were specified injuries as detailed within the RIDDOR regulations. These injuries are estimated to have led to an annual cost of over £660m to the sector.

Non-Fatal Injuries by Category and Years



Non-Fatal Injuries per 100,000 workers (2017-2020)

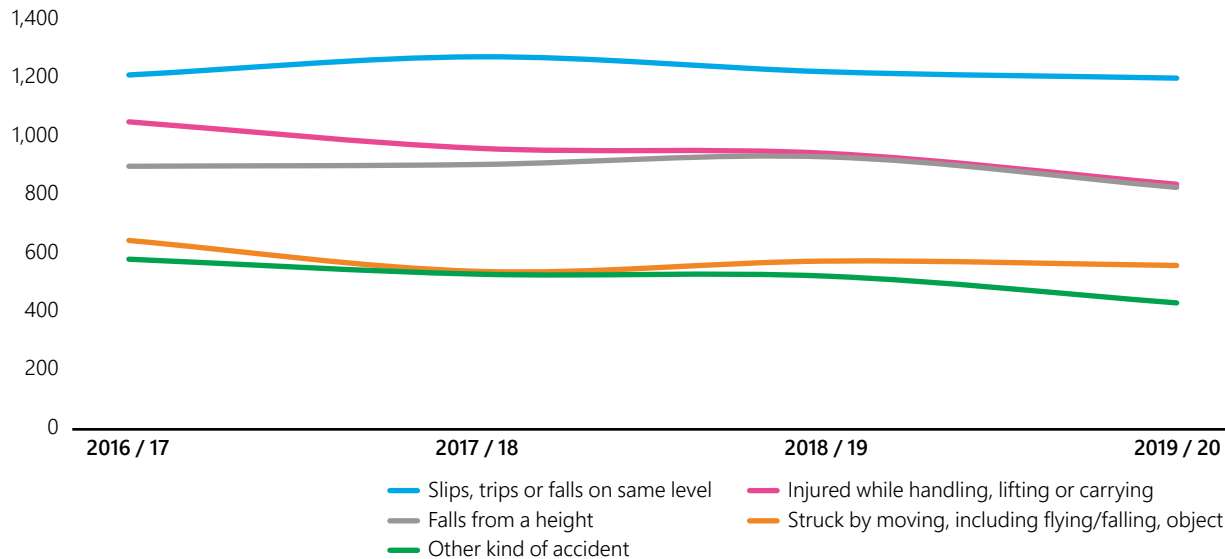


Injury Cause: *Slips and Trip risk overlooked?*

In responding to the EU Occupational Health survey, members of the European Construction industry focussed upon the risks associated with the use of machinery and tools, with 80% suggesting that this was a primary risk at their workplace. Other primary risks identified included lifting/moving (74% of survey responses), vehicles (67%), repetitive movement (65%) and slips, trips and falls (64%).

However UK statistics do not wholly accord with the survey's findings. HSE data suggests that slips and trips, falls from height and manual handling injuries are the predominant cause of injury in the UK Construction industry accounting for almost 70% of all RIDDOR reports.

Non-Fatal Injuries by Top 5 Accident Type



Similarly, these four categories also account for over 70% of all injuries in which a 7+ day absence from work was required since 2017. Employers should therefore place a strong emphasis on these four areas in order to reduce downtime, mitigate the economic cost and of course the human suffering which goes with workplace accidents. Robust risk assessment, implementation of controls, effective training and demonstrable supervision are all crucial to both preventing incidents and improving claims defensibility.

Improved risk control including an increase in mechanical equipment/aids appear to have had some effect with manual handling incidents having decreased in volume between 2016 and 2020 to the tune of 20%. Significant progress in the same period is also apparent in the volume of 'struck by' incidents (down 13%), vehicle related incidents (down 19%) and falls from height (down 8%). However, the progression in other areas is not so promising. Slip and trip incidents have reduced by only 1% over the past 5 years and continue to be the leading cause of workplace injury.

Many incidents could be avoided by effective management of working areas and access routes. A particular focus on steps and stairwells is recommended due to the increase in potential injury severity where changes in level take place. The need for good housekeeping and waste management controls should also never be overlooked.

Injuries resulting from contact with moving machinery have increased by 1% and injuries resulting from acts of violence are up by 67%. It is therefore clear that whilst industry efforts to reduce workplace injuries are having some appreciable effect, there is still some way to go to achieve unilateral risk improvement.

Illness: *Musculoskeletal and respiratory illness predominant*

Between 2017 and 2020 there were an annual average of 81,000 cases of work related ill health in the Construction sector. This equates to 3.5 workers in every hundred having reported a work related ill health condition each year. Comparatively, the figure for all industries is only slightly less at 3.4 workers per hundred. However with Construction the risk of musculoskeletal injury is double that of the 'all industries' average (with 57% of work related ill health being attributed to musculoskeletal disorders).

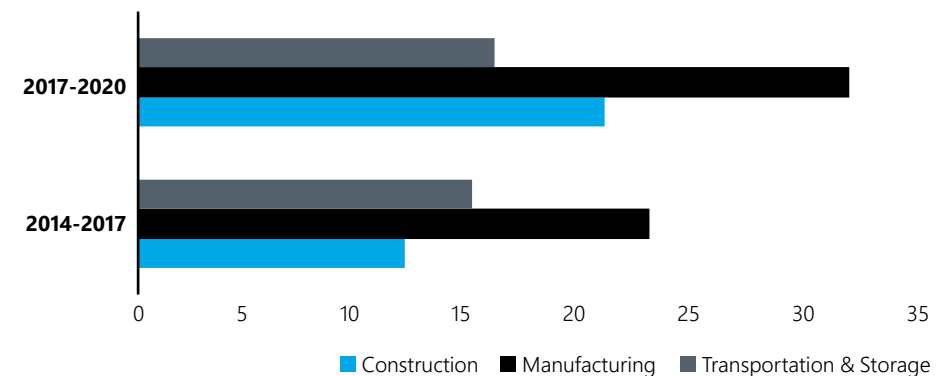
With respect to instances of mental health illness, Construction figures are relatively low when compared with other industries with only around 1 worker in every 100 having reported mental illness per year. The 'all industries' average is 1.6 workers in every 100. However it should be noted that this is an increasing trend in the sector, driven in part by an increased awareness of the subject, with the number of instances increasing by over 30% in the past 5 years.

There are diverse and differing types of mental health issues along with a multitude of guidance available on how to prevent and react to mental health concerns. One common factor is that open communication is key in identifying concerns and enabling the employer to offer appropriate support.

The sooner support can be provided the better. As such, it is important to create an environment where employees feel able to be open and honest about how they are feeling. This can be challenging in a sector where there has historically been a culture of machoism, however this is being tackled through initiatives such as 'Building Mental Health'. Where employers fail to act upon a problem which they have been made aware of, the likelihood of a successful employers liability claim increases.

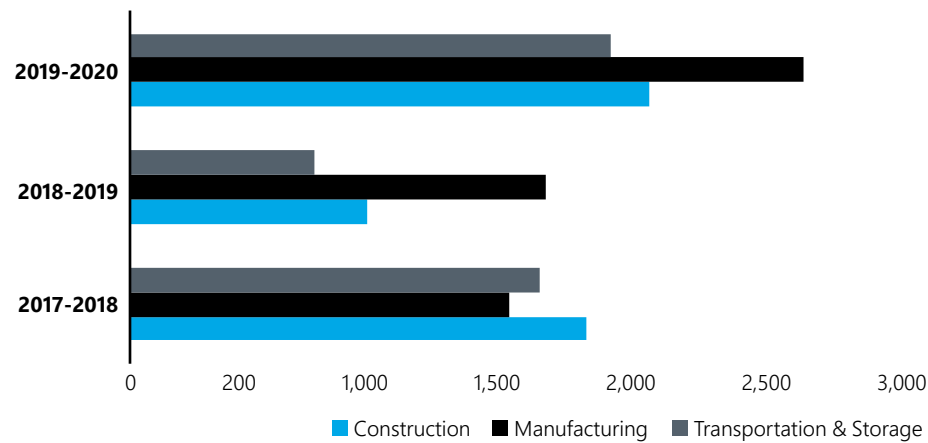
Many organisations supplement normal mental health management processes with an Employee Assistance Programme (EAP) that provides enhanced benefits to employees. These Programmes often include physical and mental health assessment tools designed to identify early warning signs, through to confidential counselling services.

Total Stress Cases ('000s)



Respiratory illness affecting the lungs is a risk that is particularly prevalent in the Construction sector. Occupational asthma is observed in around 0.7 workers in every 100,000 and the risk of Chronic Obstructive Pulmonary Disease (COPD) is noted as being increased for those in the industry, particularly roofers. Furthermore, it is estimated that occupational cancers arising from Construction activities lead to around 3,500 deaths per year with a particular risk resulting from work with asbestos. Around 46% of current mesothelioma cases among men born in the 1940's are associated with construction work with 17% attributed to carpentry work alone.

Days Lost to Illness ('000s)

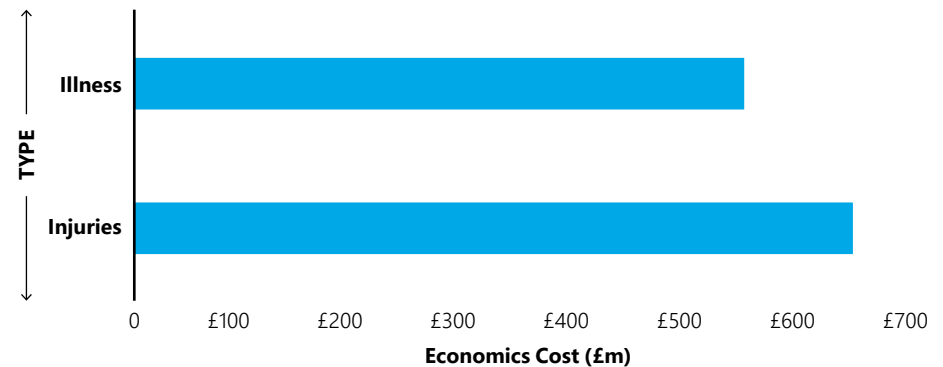


In 2019 and 2020 the Construction industry lost over 2 million working days of work to occupational illness. This is an increase when compared to previous years and it is likely that COVID-19 related absence has served to significantly increase the number of days lost by a number of industries. This is particularly true of those that have largely remained operational throughout the pandemic.

Cost: £1.2bn per year

The graph below shows the estimated costs to the Construction sector as a result of injuries and ill health during 2018/2019 (the most recent year included within the HSE data). This accounts for 8% of all such cost across all industries (£16.2bn).

Economic Costs to Workplace in 2018/19



Between 2013 – 2018, the number of new workplace claims reported to the DWP Compensation Recovery Unit (CRU) had been reducing year on year. However during the 2018/2019 reporting year there was a resurgence of claims to an annual volume of 89,461; an increase of 23% on the prior year. Volumes have continued to drop since this point but still remain higher than the 2018 total of 69,230 claims.

Whilst injury is the major contributor to overall economic cost in the Construction sector, it should be noted that illness is responsible for 75% of all working days lost. HSE data supports a growing body of business case evidence suggesting that a more balanced strategy that tackles both health (including mental health) and safety will normally pay an employer dividends. Forward thinking construction companies are generally taking a more proactive and holistic approach to physical and mental health.

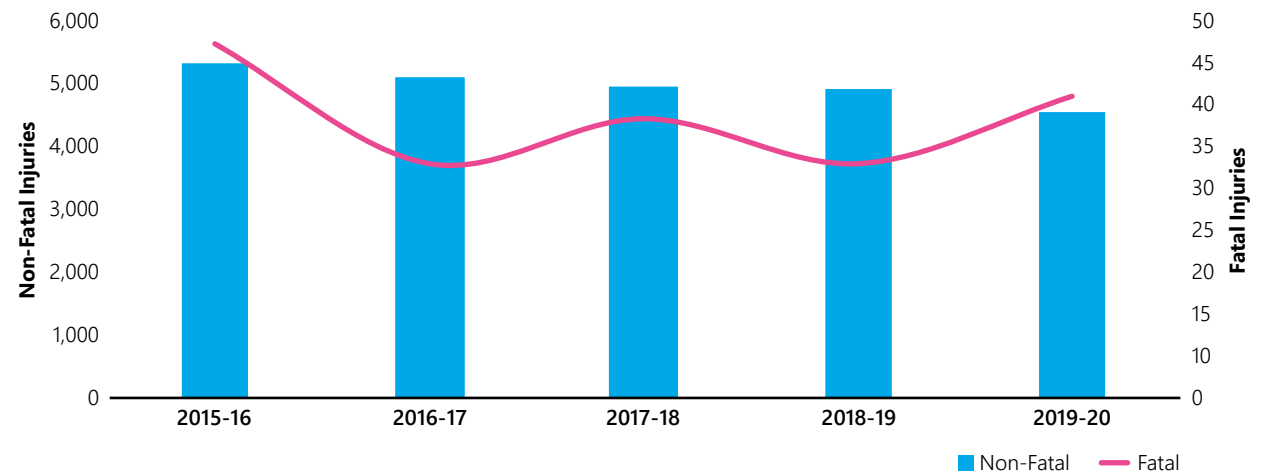


Fatal Accidents

Progress made but more action needed

In 2019/2020 the Construction industry was responsible for 40 deaths to workers and 4 deaths to members of the public. This compares with an annual average of 37 fatalities to workers and 5 members of the public each year since 2015.

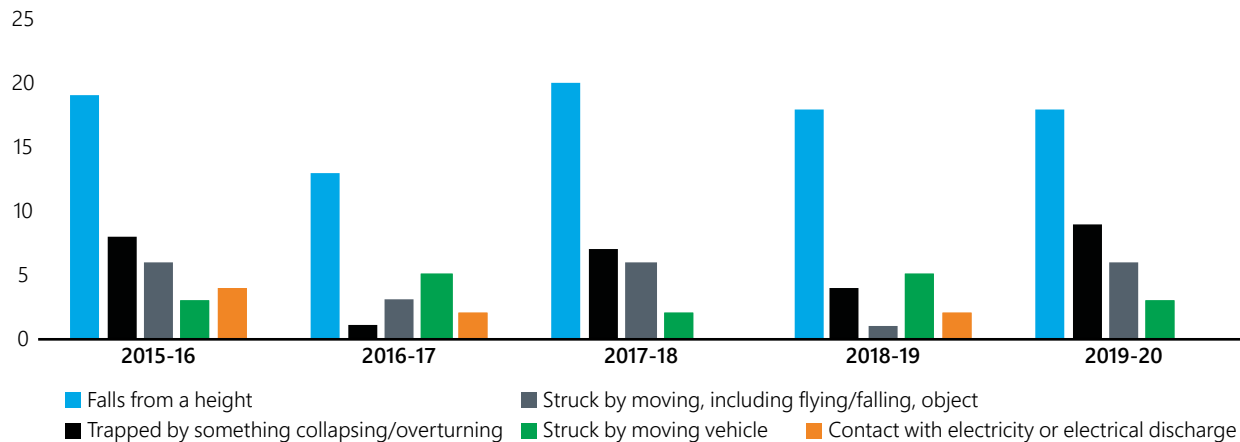
Injuries by Years



Whilst the number of deaths per 100,000 workers in the Construction industry is four times higher than the 'All industry' average (1.64 deaths compared with 0.42 deaths) it falls considerably behind the Agricultural and Waste Management sectors who have rates of 7.73 and 4.18 workers respectively.

Great progress has been made in the Construction industry over the past 20 years. During this period there has been a 78% reduction in the number of fatal accidents. However, this reduction lags slightly behind the progress made across all industries where an 84% reduction has been made across the last two decades. There is clearly more work to be done.

Fatal Injuries by Top 5 Accident Type



47% of all deaths resulted from falls from height.

Managing work at height needs to follow a hierarchy of controls – avoid, prevent, arrest. The initial aim should always be to perform the work safely from the ground whenever possible. Where work at height can't be avoided; a comprehensive risk assessment process should ensure that the correct system of work is adopted using appropriate equipment and competent employees/contractors. 22% of fatal falls in construction occur when working on fragile surfaces and this should be reflected in measures taken to control risk during such work.

Clearly Construction is a dangerous sector and one that requires very thorough and robust risk management. The risks of injuries are numerous however focus should be particularly high on those activities that can lead to serious and fatal injuries. In this respect mitigating the risk of falls from height and those regarding moving or falling objects, machinery or vehicles should be of paramount concern. Whilst management system controls can appear good on paper, operational validation via monitoring, supervision and regular audit are crucial for the construction sector.

The statistics above do not include the one work activity that tends to result in the most deaths each year. Every year more than 500 people are killed in collisions involving someone driving (or riding) for work. Whilst these are not included in the HSE statistics; there is an increasing trend for employers to be prosecuted under health and safety legislation following an incident involving their drivers/riders. Having an occupational road risk strategy is a must for construction companies.



Underreporting of exposures?

HSE statistics confirm that, at the time compiled (26th October 2020), there had been a total of 11,278 COVID-19 related notifications from UK employers. 162 of these unfortunately related to the death of the employee concerned. However, at that time the Construction industry had only reported 32 occupation exposures, none of which were fatal.

This figure would appear to be strikingly low for an industry that largely remained operational through the COVID-19 pandemic. This is likely to be a combination of the underreporting of occupation exposures, more stringent risk management and the largely outdoor nature of the work undertaken in the sector (which brings with it a lower risk of virus transmission).

The Trade Unions Congress (TUC), in their report, 'RIDDOR, Covid and Underreporting' (May 2021), referred to the fact that whilst the Office of National Statistics recorded 305 COVID-19 related fatalities to Construction workers between March and December 2020 only 4 related RIDDOR reports had been made up until 17 April 2021. The report notes that employers are able to make backdated RIDDOR reports where in hindsight the exposure to COVID-19 is reasonably assumed to be work related. Whilst under current reporting requirements employers are free to determine which exposures are reasonably assumed to have been work related, where there is clear evidence of occupational exposure (e.g. specific outbreaks between co-workers working in close proximity) it is recommended RIDDOR reports are made to avoid the potential for future investigation and enforcement action by the HSE.

The legal landscape with respect to COVID-19 employers' liability claims is still unclear. Whilst many commentators consider that proving 'work related' causation may be challenging for Claimants, Courts have previously taken a more relaxed approach to such evidence in relation to disease exposure (particularly with respect to mesothelioma and asbestos litigation). Satellite litigation on these issues is sure to follow.

However, even if the Courts take a narrow view as to the requirements of proving where an employee caught COVID-19, employers will find it much more difficult to defend cases where demonstrable outbreaks of the disease have occurred at business premises combined with inadequate compliance with government guidance and controls. Where the illness has caused lasting damage or lead to a fatality the resulting claims are likely to be of a very significant value.

Employers are advised to ensure that they follow the HSE and UK guidance for their particular sector as closely as possible. Specific risk assessments should be in place with suitable disease controls (screens, PPE, temperature checks etc.). In view of the fact that most employees in the construction sector will be unable to work from home, employers must demonstrate a particularly robust approach to COVID-19 exposure control.

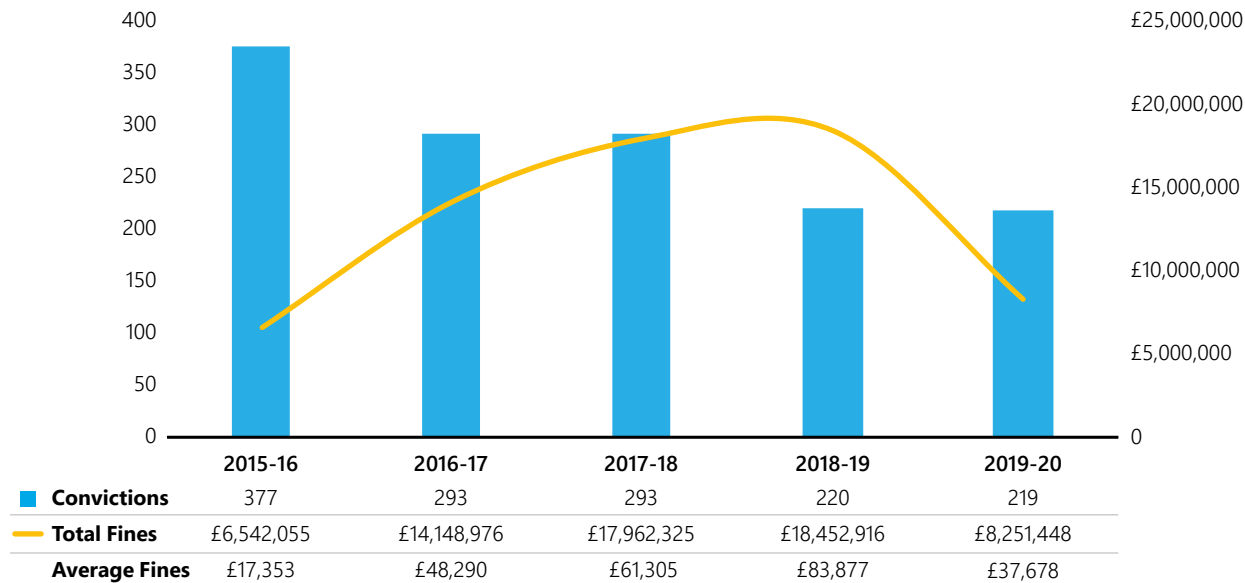
The economic uncertainty arising from the pandemic are likely to be around for some time. Job uncertainty, workforce 'rationalisation' and redundancy programmes can be a catalyst for employers' liability claims. Documented evidence should be kept of distancing arrangements and cleaning regimes along with the monitoring of individual employee compliance with the measures in place. These will serve to enhance claims defensibility should civil claims be forthcoming in the months and years ahead.

Enforcement

Construction prosecutions commonplace

The Construction industry continues to face regular scrutiny from the HSE, originating both from routine HSE inspections and investigations following serious incidents that have led to life changing injuries. Responsible for 45% of all successful HSE convictions in all industries, 9 out of 10 HSE prosecutions against Construction companies lead to a conviction. Falls from height, excavation works and machinery/vehicle related prosecutions are commonplace particularly where insufficient risk controls are observed by inspectors and/or businesses fail to appropriately respond to improvement notices.

Convictions and Fines





Whilst the overall number of prosecutions taken by the HSE has dropped over the past 5 years, until 2019/2020 the average level of fine was increasing year-on-year. This was as a result of the implementation of new sentencing guidelines in 2016 which levied much higher penalties on offending businesses. This punitive trend is likely to continue in the coming years; the data in 2019/2020 most likely being effected by the COVID-19 pandemic and delays to high value and complex cases caused by the inability to hold live Court hearings.

A selection of reported prosecutions in the sector over the past 3 months include:

ASAI Construction Ltd – fined £30,000 – failure to obtain an asbestos survey prior to commencing work leading to several people being exposed to asbestos fibres.

Ron Richardson Construction Ltd – fined £18,000 – failure to follow own procedures and insufficient supervision of work at height following observation of two workers waterproofing a flat roof without the means to prevent a fall.

Nickell and Richmond Limited – fined £40,000 – insufficient safety measures implemented resulting in the death of employee caused by a fall from height.

NMC Surfacing Limited & Fraden Contracts Limited – fined a combined £364,000 – a failed lifting operation led to part of an air conditioning plant falling on an employee breaking his leg. Insufficient equipment, training and poor planning alleged.

Harlands Builders Limited – fined £12,000 – excavation collapsed on employee after three sides left unbuttered leading to a broken leg.

Paul Adams – builder imprisoned for 24 weeks for failure to report a serious incident at a site where he was in charge. There was no health and safety related documentation and there was no employer's insurance cover for the injured employee to claim against. Mr Adams had not obtained any health and safety related training during his 50 years in the construction industry.

BAM Nuttall Limited – fined £700,000 – failure to adequately assess the risks to employees after worker killed whilst repairing equipment at the side of a road.

All Construction businesses are advised to ensure that they can evidence robust risk control and health and safety management systems in order to defend themselves in the event of enforcement proceedings. Familiarity with cover for legal expenses is advised along with carefully considered major incident procedures should the HSE begin an investigation without warning. All employees should be briefed as to the appropriate process to follow and who needs to be contacted immediately should the HSE attend site, which can occur on occasion without prior notice. Early legal representation should be sought so as to manage any interview or evidence collection process and ensure that the businesses interests are protected. Failure to do so can lead to significant consequences as any prosecution progresses.

Summary

The Construction industry continues to be a very dangerous place to work. A major source of fatal accidents, businesses in the sector must ensure that risks are properly controlled, particularly where employees are working at height.

In addition there are a plethora of other risks that cannot be ignored. Slips and trips are a major contributor of workplace injury and the sector has particularly high exposures to long tail diseases. The resulting claims can be costly and lead to significant absence from work.

The underreporting of COVID-19 related claim is worthy of Risk Managers' immediate attention and could lead to HSE action; a risk that is particularly acute in a sector which is clearly at the forefront of the regulator's attention.

Furthermore, whilst injuries are a natural focus in the industry, the cost and prevalence of illness, particularly musculoskeletal and respiratory, must be addressed through regular, thorough and bespoke risk control implementation and documentation.

Employers in the Construction Industry must place a cultural emphasis on the safety of their employees and members of the public. They must work with their employees to provide suitable training and equipment, understand risks and address them quickly. In an area which too often reports life changing injuries and illness those that fail to heed the warnings risk reputational damage, extensive costs and widespread employee absence.

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If you need assistance with your risk management or claims programme
Lockton's dedicated experts are here to help. Please contact us at
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