HSE to target Principal Designers

The HSE’s business plan for 2019/2020 sets out a clear agenda to investigate Principal Designers. Since the introduction of the Principal Designer stakeholder under the CDM Regs 2015 there have been few successful prosecutions of Principal Designers, however the scrutiny of Principal Designers and their compliance with their duties is about to get a lot closer.

The HSE business plan sets out the key objectives for 2019/2020 as follows:

- lead and engage with others to improve workplace health and safety;
- provide an effective regulatory framework;
- secure effective management and control of risk;
- reduce the likelihood of low-frequency, high-impact catastrophic incidents;
- enable improvement through efficient and effective delivery.

As part of the objective to "Secure effective management and control of risk" the HSE has stated that its priority is to "Target our inspections on specific issues and activities". For the construction industry it confirms that its inspection activities will focus on "embedding the requirements of the Construction Design Management Regulations 2015 (CDM) through targeted inspections of duty holders providing principal designer services."

In light of this, Principal Designers will want to review how they are carrying out their key responsibilities under the CDM Regulations 2015. These are principally set out in Regulation 11 and in summary are:

- Plan, manage, monitor and co-ordinate health and safety in the pre-construction phase of a project.
- This includes:
  - identifying, eliminating or controlling foreseeable risks
  - ensuring designers carry out their duties.
- Prepare and provide relevant information to other duty holders.
- Provide relevant information to the principal contractor to help them plan, manage, monitor and co-ordinate health and safety in the construction phase.

It will be important for Principal Designers to be able to demonstrate that the key duties are being fulfilled.

In the last few months, we have seen a significant increase in the HSE inspection of documents using their s.20 powers following incidents on site (some incidents having occurred several years ago) which have led to much wider and more general requests for records relating to a consultant firm’s whole approach to carrying out its duties.
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The key point to note is that the HSE are looking far beyond the cause of any specific incident but more widely at the general approach to carrying out the duties.

Issues for Principal Designers which we are commonly seeing relate to:

- Projects where the stages are not clear cut so that there is no clear delineation between the construction stage and the design stage. This could be because the design is ongoing, and in the case of D&B contracts, sometimes still at a very early stage when construction has started; or, because issues crop up on site which require a change in the design. This leads to issues with for the Principal Designer in being able to effectively monitor and co-ordinate the health and safety issues or to help the contractor in dealing with these issues.

- A change in emphasis as to who should be providing the relevant information. Where the onus traditionally has been on the designers and contractors to inform the Principal Designer of continuing design development and the risks associated the HSE appears to be increasingly looking for Principal Designers to demonstrate that they have mechanisms in place to obtain this information as part of their coordination and monitoring role.

- How far a Principal Designer should go to confirm that risks are being addressed as expected and the handling of contractors’ method statements and risk assessments.

Beale & Co regularly advise on these issues and on all aspects of the Principal Designer role from the appointment through to investigations and prosecutions.

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