

# RTITB SAFETY SUMMIT

2024



# Investigating MHE and LGV incidents

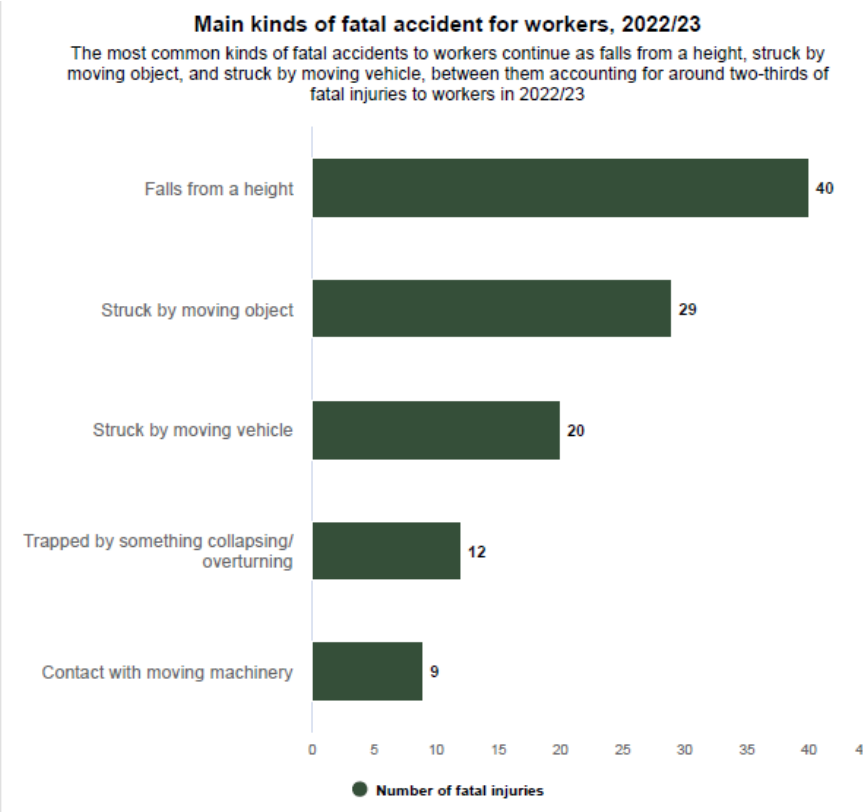
- What is RIDDOR Reportable
- The importance of Legal Privilege
- Accident Investigation
- Criminal Legal Framework



# Context of Health and Safety Law

- Breaches are criminal offences – individual offences imprisonable
- Investigated by criminal enforcement regulators
- Powers of regulators - arrest, seize documents, issue enforcement notices
- Separate process from civil law

# Fatal Accidents



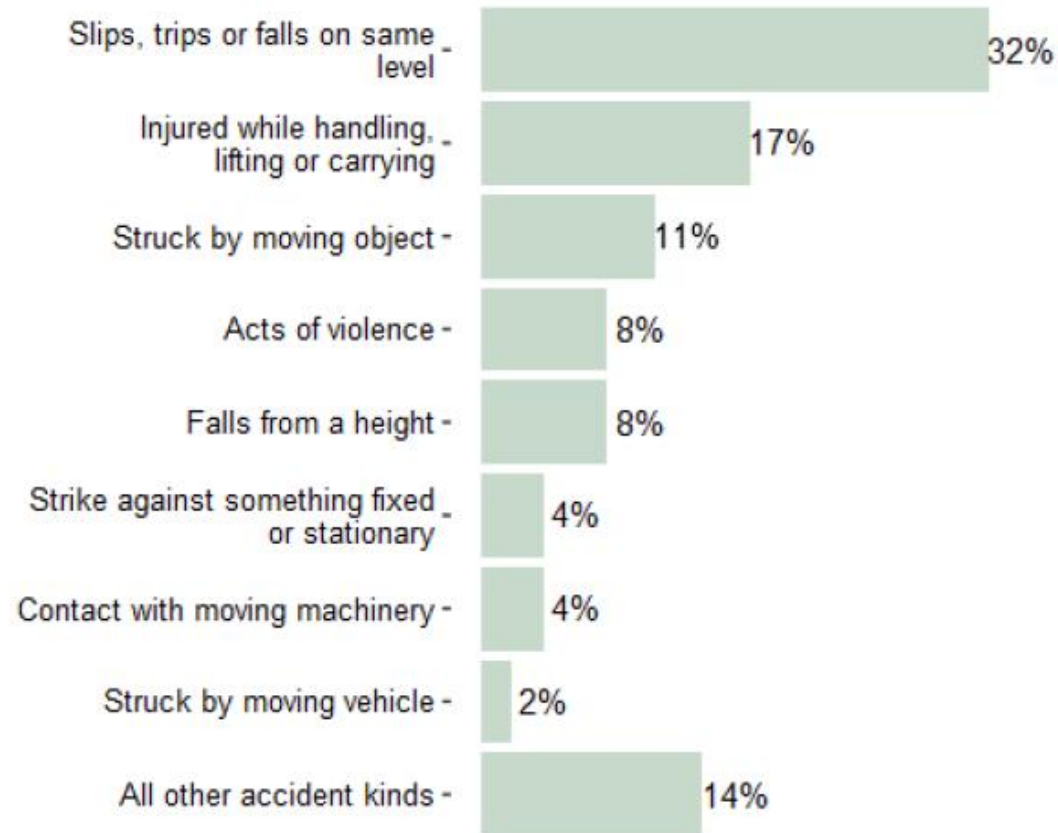
In last 5 years on:

## Transportation and Storage and Warehouse and support activities for transportation

- ✓ Struck by moving vehicle (3)
- ✓ Struck by falling object (1)
- ✓ Struck by moving vehicle (1)



# Non-fatal injuries 2022/23



# The Stages of a H&S Incident - Fatal and Non-Fatal

Stage	What we can do
Compliance The “Incident”	Crisis management planning immediate advice – legally privileged investigations, RIDDOR
Enforcement Notices	Legality, appeals, compliance
FFI	Queries, disputes, judicial review
Interview Under Caution	Statements, attending interviews
Inquest	Preparation and advocacy
Summons	Advice on plea and expert evidence
Magistrates’ Court	Advocacy
Crown Court	Trials and sentencing
Appeal to Higher Court	



# RIDDOR – Trigger to Regulatory Investigations

- Complete an online form – take care
- Accident is work-related
- Injury type that is reportable
  - Death of any person
  - Specified injury to workers
- Notify the enforcing authority by the quickest practicable means and within 10 days of the incident
- 7-day incapacitation (made within 15 days)
- 3-day incapacitations (not reportable but recordable)
- Member of the public - non-fatal
- Occupational Diseases
- Road Traffic cases exempt

# Incident Investigations & Legal Professional Privilege

- What are the dangers of undertaking an incident investigation before legal advice is received?
- The report would not be protected by Legal Professional Privilege and could be seized by the regulator i.e. Police / HSE
- What are the potential consequences with a non-privileged investigation report being prepared?
- Protection afforded by Legal Professional Privilege - regulators are prevented from seizing any material that is afforded the protection of Legal Professional Privilege



# Legal Professional Privilege

## Legal Advice Privilege

- Protects written or oral communications made confidentially between a client and their lawyer for the dominant purpose of receiving or giving legal advice.

## Litigation Privilege

- Extends to written documentation, including incident investigation reports, the dominant purpose of which is for use in contemplated litigation, either for the purpose of receiving or giving legal advice in relation to it or for obtaining evidence to be used in it e.g. expert reports



## **Common Areas that are uncovered in an investigation**

- Training missing / not recorded
- Equipment not maintained
- Near misses not recorded or actioned
- Pedestrian Walkways eroded
- Risk Assessments not up to date or fit for purpose

# Who investigates?

## Fatal v Non-fatal

### Fatal – Police and Health & Safety Regulator

- Work Related Death Protocol
- Police take primacy

### Non-fatal

- Health & Safety Regulator only
- HSE or Local Authority?
- Health and Safety (Enforcing Authority) Regulations 1998

# Offences investigated by the police

## Corporate Manslaughter

- Organisations only
- Act came into force in 2008
- Still small number of prosecutions
- Obstacles to obtaining convictions for bigger organisations
- Unlimited fines

## Gross Negligence Manslaughter

- Individuals only
- Custodial sentence (up to life imprisonment)
- Director disqualification

# Offences investigated by the HSE or LA

- Section 2 & 3 of the Health and Safety at Work etc. Act 1974 (HSWA)
- The employer's general duties = main offences
- 2(1) HSWA: *"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees"*
- 3(1) HSWA: *"It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety"*
- Qualified duties
- Reverse burden of proof

# Section 37 HSWA – Individual Liability for Directors & Senior Managers

- Offence by Body Corporate – the “*predicate offence*”
- Is proved to have been committed
- With the **consent** or **connivance** or attributable to any **neglect** by a director, manager, secretary or similar officer.
- Is guilty of the company’s offence – a so-called “parasitic” offence
- The burden is on the Prosecution to prove
- Personal criminal conviction – 2 years imprisonment



# Stages of a regulatory matter

- Crisis management
- Regulatory authorities information gathering
  - Witness statements
  - Documents
- Interviews under caution / written submissions
- Charging decision – Code for Crown Prosecutors, HSE's EPS & EMM
- Court process
  - Triable either way offences save for manslaughter
  - Choices as to plea

# Regulatory investigations

## HSE have powers to:

- Seize equipment
- Issue enforcement notices
- Conduct interviews
- Copy relevant documents



## Different types of interview

- Voluntary witness statement (“section 9 statement”)
- Compelled interview (“section 20 interview”)
- Interview under caution (“PACE Interview”)

# Enforcement Notices – Improvement Notices

An Improvement Notice should:

- state the Inspector's opinion;
- specify the provision(s) in question;
- give particulars of the reasons why the Inspector is of that opinion;
- require the dutyholder to remedy the contravention or the matters occasioning it, and;
- specify the period for compliance.
- **Appeal must be lodged within 21 days**

# Enforcement Notices – Prohibition Notices

A Prohibition Notice should:

- State that the Inspector is of the above opinion;
- Specify the matters which in his/her opinion give, or will give, rise to the risk; and
- Direct that the activity should not be carried on by or under the control of the person on whom the notice is served unless the matters giving rise to the Inspector's opinion have been remedied.
- **Appeal must be lodged within 21 days**

Thank You

Any Questions?

