

SPECIAL FOCUS

The Ainscough mascot and slogan adorns all the company's health and safety documentation



Everybody needs to know about corporate manslaughter, as laws change and the HSE gets tough. Ainscough's message is, 'be proactive and protect yourselves', as **Rosie Gordon** heard

Corporate manslaughter

Ainscough Crane Hire took the unusual step of inserting an open letter into the last issue of *Cranes & Access*. The letter, signed by managing director Ray Ledger, warned that Ainscough was going to raise its rental costs. It explained that crane hire rates had got so low that safety and quality were now at risk of being seriously compromised by companies who continued to offer these prices, and that Ainscough was not prepared to continue in that vein. It also warned that, if any other hire company was not telling its customers a similar thing, that they should be concerned.

One of the reasons Ledger mentioned for the 'watershed' in the crane hire business was the forthcoming introduction of the corporate manslaughter act. In fact, the letter acted as a precursor to a seminar held on that topic in Wigan on April 15.

Ledger introduced the day with more sombre words. "We are into a new world of health and safety", he said. "Due to a lack of publicity, too many people are unaware of the implications of the latest corporate manslaughter regulations. You may find what is said today frightening."

Ainscough, like most large plant hire firms, has experienced its fair share of accidents, including the ordeal of two deaths in the last seven years. As Martin Ainscough told *Cranes & Access* on the day: "Consider how many driving accidents an average person clocks up in five years, however minor. Then consider that we have up to 800 personnel working at anyone time, and almost as many cranes out on site or on the road. Accidents happen all the time. We employ a specialist to process accident reports and insurance – this is a full time



Martin Ainscough and Dr Stephen Hardy with the new Ainscough Health & Safety guidelines

job. So, frightening as it is, it is almost inevitable that we are going to come up against another serious accident or fatality again. Covering ourselves and spending time and money on these training days doesn't just give us good publicity – these actions are essential to keeping our reputation clean. Quite apart from the human cost, we do not want to be known as corporate killers."

Facing facts

The day was led by Dr Stephen Hardy, expert in the field of health and safety and a government advisor. Hardy spoke coherently and enthusiastically about the issues the whole construction industry must now address. Simply the message was – face and prepare for your responsibilities, or face and prepare for possible jail sentence under the forthcoming corporate manslaughter act. "I

am here to warn you about the solemnity of law", he said. "There will no longer be fines. There will be prison. Having visited prisons myself, I cannot recommend them to you."

Delegates heard from Ainscough's appointed Health and Safety Director, Keith Hartis, who asked that the information gleaned from the day must be passed down through the ranks of every company.

Ensuring that everyone, from crane operator to financial director knows the rules, he stressed, is crucial to surviving the ever changing, and ever more pressurised, safety legislation. Hartis will be making presentations to Ainscough customers and employees around the country to spread the word as far as possible.

Fatalities in construction have risen by 34 percent in 2000-2001 from the previous year. Unsurprisingly, the construction sector has the highest incidence of injury out of all industries. The coming corporate manslaughter ruling, which will almost certainly be enforced after this November, aims to dramatically clean up this record. Harris, who has recently completed his MA, is hard at work to ensure that Ray Ledger doesn't 'end up in the clink'. And it looks like other crane hire and related companies had better put similar efforts into their legal operations. Ainscough used the seminar to launch its health and safety documentation, a blue folder full of all the information needed to run ad safe and legal business. It hopes to see it used as a 'bible', not only to Ainscough customers, but to all in construction. As Hardy said "These documents represent human rights and a Get Out of Jail card."



Defining corporate manslaughter

To many present, the information presented by the three lawyer speakers – Hardy, along with Andrew Gilbert and Daniel McShee of Kennedy’s Solicitors, which represents Railtrack and other companies on corporate manslaughter charges- was frightening and, in terms of legal-speak, sometimes baffling. It is certainly not to be taken lightly; aside from the tragic consequences of accidents involving plant, the new rulings mean that the industry simply must be much, much more vigilant and proactive.

The Home Office proposals were outlined by Gilbert.

‘Reckless Killing’ could be the charge where your conduct has caused death, where you were aware that your behaviour could cause injury or death and when you know it was unreasonable to take the risk. This is punishable by life imprisonment.

‘Killing by Gross Carelessness’ would be the charge if your conduct has caused death and the risk was obvious to a ‘reasonable person’. If you are deemed capable of appreciating the risk in your behaviour, you could get a ten year stretch in jail.

Essentially, the current corporate manslaughter charge is halved by these two definitions. Corporate killing will be defined thus: A management failure is the cause or one of the causes of death. The conduct failing is far below what is reasonably expected in the circumstances. Further, any holding company which tries to shift its safety concerns to subsidiaries down the line will not be able to displace responsibility – the Government has prepared for this and holding companies will get prosecuted too.

When the worst happens

McShee’s talk was more about dealing with the consequences should a death occur at work. “What in the past may have been seen as a ‘routine’ work place death will now open up everything about your business to an enquiry”, he warned. “The government wants to reduce the number of lost working days through injury by 30 percent, work related ill health by 20 percent and fatalities by 10 percent by 2010. I implore you to make sure that your health and safety documentation is in order, your risk assessments undertaken and updated and anything to

do with work safety is documented. Minutes of meetings should be done by one person only and filed, and all documents written in measured language, so that they will not implicate you in any way.” He cited a case where an enquiry had uncovered a document written by a senior manager stating that the company was on ‘thin ice with the HSE’ unless it took actions over several issues. A few years on there were several fatalities and the named tasks had not been done.

“If a serious accident occurs you must not incriminate yourself. Using a lawyer can help as he will know what needs to be disclosed and what can stay private. You must be prepared to act quickly and professionally. Keep copies of all the relevant documents and preserve those documents’ integrity. Keep staff advised of their rights.” McShee went on to talk about communicating with the press, police and HSE interviews and contact with grieving relatives.

Hardy hit the message home. “You are a target group because there is a move towards intervention by the HSE, especially in construction. The new laws are there to facilitate change and there will be more convictions. But is your des-



Keith Harris, Daniel McShee and Andrew Gilbert

ignated health and safety person does their job, you will meet your targets, and if you do your paperwork right you shouldn’t have a problem. But you have to get it right.”

How will you cope?

The very positive outcome of the day was the indication that the ins and outs of the legislation are not that difficult to understand once they have been faced up to. At a workshop session, where groups discussed case studies, it became clear that even a morning’s explanation had

informed, clarified and made delegates aware of the legal obligations and implications of site safety and accidents, how best to avoid them and what likely outcomes would be of various sticky scenarios. Planning and good practice according to the CPA guidelines (see page 36, *Cranes & Access* 4.2) will see you through halfway. The other 50% of the job is taking good care of your paperwork and filing.

What did become clear though was that even if larger companies can cope easily with avoiding prosecution through organising themselves – once they are over that first hurdle of doing something, rather than simply worrying about it – what of the smaller firms? There is no doubt that the minor players will find the Corporate Manslaughter regulations a major difficulty. True, all that the HSE and CPA have advised in the past is pretty much repackaged in the new legislation and everyone should already be following good practice, thereby be safe. But the HSE is about to get tough. There is to be no more room for company directors to bury their heads in the sand, or carry on regardless with unapproved practices. Extra time, money, training and effort are required to protect companies and their directors from prosecution, and prison sentences of ten years or more in the case of death on site.

All the speakers stressed that the new laws represent changes in the profile of society rather than the criminalisation of any action that is not already deemed criminal. You must show a duty of care; your staff must be trained, certified and competent. Your machinery must be serviced and safe. You must prepare for each job and keep all your documentation up to scratch and accessible. And woe betide you if an HSE inspector shows up and you can’t produce an up-to-date and thorough risk assessment plan.

McShee quoted BSC statistics. In a recent poll, 16 percent of construction companies listed safety as a priority issue. 84 percent said that generating profit for share holders was their top aim. If what we heard on April 15 is accurate, the message for the 84 percent is this: you might think Ainscough is on a big marketing exercise. You might sneer at it’s ‘Safety before Profit’ slogan. But you’d better get on the safety bandwagon fast. ■