



Health and Safety at Work Inspectorate Annual Report 2009

Front cover picture

A maintenance technician suffered serious injuries when he was drenched in scalding water as he attempted to remove a motor from a circulating pump fitted to a pressurised heating system. The accident took place on the 17th November 2008.

On the 6th November 2009, Flying Flowers (Jersey) Limited appeared in the Royal Court where the Company admitted failing to comply with Article 3 of the Health and Safety at Work (Jersey) Law, 1989 for which they were fined £12,000 with £2,500 costs

Introduction

The term “health and safety” has become associated with over zealous regulation, bureaucracy and red tape which stifles business and goes against a common sense approach to the acceptance of risks that are faced in the workplace.

This view of health and safety does not reflect the work of the Health and Safety at Work Inspectorate which is to encourage the management of serious risks and to take action where organisations, and individuals, fall well below the standards required by the Law. This report therefore sets out to redress the balance and provides information on the work carried out by the Inspectorate in 2009, with statistical information on reports of accidents and ill health which occurred during the year.

A real understanding of what the management of health and safety is seeking to achieve and the proportionate manner in which this can be carried out, by addressing the real risks that exist in the workplace, will not only reduce the potential for injuries and ill health but also prove to be cost effective to business. This report will help to underline the importance of “real” health and safety to us all.

Who we are and what we do

The Inspectorate is part of the Social Security Department, with the political responsibility for health and safety at work resting with the Minister for Social Security, Deputy Ian Gorst and Assistant Minister, Deputy Angela Jeune.



Deputy Ian Gorst



Deputy Angela Jeune

The Inspectorate is staffed by the Director of Health and Safety, who is also a member of the Senior Management Team of the Department, 2 Health and Safety Inspectors and a Technical and Administrative Officer. Administrative support to the Inspectorate is provided by the Social Security Department.

Collectively, the staff employed in the Inspectorate have over 60 years experience of working in the health and safety regulatory environment and are able to draw upon this experience when providing advice and making decisions on specific matters. Despite this wealth of experience, there is still a need for continuing development of staff with

Inspectors, who are Corporate Members of the Chartered Institution of Occupational Safety and Health, to participate in continuing professional development both with the intention of ensuring that their core knowledge is kept up to date and, in addition, to deal with specific areas of concern.

In 2009, Inspectors undertook specific training on risk management, musculoskeletal risks and asbestos and attended the annual conference of the Institution of Occupational Safety and Health.

The information gained from this continuing professional development is then used to assist the Inspectorate to carry out its functions which include:

- providing information and advice;
- enforcing health and safety legislation;
- carrying out research; and
- reviewing the legal framework for health and safety legislation.

The Inspectorate also works with other bodies. For example, the Director of Health and Safety is a member of the Emergency Planning Board, and the La Collette Hazard Review Group and an ex-officio member of the Jersey Safety Council.

The Inspectorate is also represented on the Bailiff's Public Entertainment Panel, which provides advice to the Bailiff on the issue of public entertainment permits.

The Inspectorate can be contacted direct on telephone number 447300, or by email at hsi@gov.je Information on the Inspectorate can also be found on the Inspectorate section of the States of Jersey website at www.gov.je/hsi

Our approach to enforcing the Law

The role of the Inspectorate in enforcing health and safety legislation is set out in the Inspectorate's Enforcement Policy which can be found on the States of Jersey website at:

<http://www.gov.je/Working/HealthSafetyWork/Inspectorate/Pages/EnforcementPolicyStatement.aspx>

This policy, which has been agreed by the Attorney General, sets out the approach to the manner in which the Inspectorate carries out the enforcement of the Law which is proportionate to the matters which are found. Depending on the seriousness of the situation, Inspectors may therefore offer information and advice, either verbally or in writing, issue administrative notices, either Improvement or Prohibition Notices, requiring action to be taken or work to be stopped, or refer a report on an investigation to the Attorney General for his consideration on whether to instigate a prosecution of an organisation or individual.

Our enforcement policy also sets out the circumstances which have been determined by the Attorney General on whether a report detailing an apparent breach of health and safety legislation should be referred to him. These are:

- where it was significant

- where it is seen to have been conscious and deliberate
- where the public interest makes it more important that there should be a prosecution
- where it was one of a series of small breaches which suggest a persistent lack of conformity with the law
- where there was a perceived trend of similar breaches by others which might call for prosecution as a warning or example.

The circumstances where it may not be appropriate to send a report on an apparent breach of health and safety legislation are also described in the enforcement policy, as follows:

- where it was minor
- where the offence was committed as a result of a genuine mistake or misunderstanding*
- where it would not be in the public interest for the offender to be prosecuted* (For example, if by relying on information volunteered in the course of a genuine enquiry to form the basis of a prosecution, this would deter others from seeking assistance from the HSI to comply with the law)

- where it was a single incident*
- where there had been a long delay between the HSI having knowledge of an infraction and investigating it*

*These factors must be balanced against the seriousness of the offence.

As with other regulatory bodies working within the States of Jersey, the Inspectorate has a specific reporting line to the Attorney General on dealings with other States Departments where it is suspected that there may have been a breach of health and safety legislation. In this context, it is important to recognise that, for the most part, employees working in States Departments are legally employees of the States Employment Board, a body corporate established in Law, who have the legal responsibility to comply with the duties placed on an employer under the health and safety law. Employees of the States Employment Board therefore have exactly the same protection under health and safety law as employees in the private sector.

The time taken between the commencement of an investigation into a potential health and safety offence and a Court appearance can vary depending on the circumstances and complexities of the individual case. In 2009, the Inspectorate was involved in 17 investigations into

serious incidents, accidents or ill health, where consideration was given to reports being submitted to the Attorney General.

This unusually high number of investigations into matters which had the potential to result in prosecutions did have an impact on the ability of the Inspectorate to carry out preventative work, such as inspections or initiatives. The high number of investigations into serious breaches of health and safety legislation is not as a result in a change of policy.

Investigations carried out by the Inspectorate which may result in a potential prosecution for health and safety offences are, by their very nature, time consuming as the investigation has to comply with the procedures for conducting criminal investigations including, where it is considered that an individual or Company may have committed an offence, arrangements for meeting the requirements of the Police Procedures and Criminal Evidence (Jersey) Law, 2003, in relation to the interview of suspects.

The role of the Inspectorate must be seen to be impartial and not supporting an injured person or the party who is being investigated. As far as possible, the Inspectorate will inform the injured person and party being investigated at key

stages of the investigation process, for example the decision to carry out a formal investigation and whether a report is sent to the Attorney General, but is legally unable to provide any additional support or advice related to the circumstances of the case. This is a role which can only be carried out by the relevant party's own legal advisors.

The first part of this report summarises the work carried out by the Inspectorate in 2009.

Part One

Cases in Court

During 2009, there were five health and safety cases heard in the Royal Court.

Deerglen (Jersey) Limited and Heitkamp GmbH

Deerglen (Jersey) Limited appeared in the Royal Court on two occasions, the first on the 9th February 2009, where the Company was charged jointly with Heitkamp GmbH, relating to the construction of the Royal Yacht Hotel, Weighbridge in respect of offences committed between December 2005 and June 2007, and the second occasion on the 26th June 2009 on its own account, in respect of offences committed between the 17th July 2008 and the 8th September 2008 during the construction of Liberty Wharf, St Helier.

Deerglen (Jersey) Limited was fined £25,000 with £2,500 costs and Heitkamp GmbH £50,000 with £2,500 costs in respect of breaches of health and safety legislation during the construction of the Royal Yacht Hotel, and Deerglen (Jersey) Limited was fined £50,000 with costs of £5,000 in respect of breaches of health and safety legislation during the construction of Liberty Wharf.

A summary of the case arising from the construction of the Royal Yacht can be found at:

<http://www.gov.je/Working/HealthSafetyWork/Updates/Archive/Pages/DeerglenHeitkampGmbHFinEd.aspx>

A summary of the case resulting from the construction of Liberty Wharf is available online at:

<http://www.gov.je/Working/HealthSafetyWork/Updates/Pages/DeerglenFinEd.aspx>



Insufficient arrangements made for working at height

Both prosecutions arose from a persistent failure to manage health and safety including situations where operatives were working at significant height with

inadequate precautions taken to prevent falls, despite warnings and the issue of prohibition notices in relation to the work. The Court gave a very clear message that, despite no person being injured as a result of this poor management of health and safety, the reported exposure of workers to the risk of serious injury was not acceptable.

One of the reasons for prosecuting a company is to provide a deterrent. In this instance it is clear that both these prosecutions have succeeded in this respect resulting in improvements of the management of health and safety within Deerglen (Jersey) Limited.

Raffray Limited

Raffray Limited appeared in the Royal Court on the 24th March 2009 as a result of an employee of Vanni CI Ltd sustaining serious leg and foot injuries when he was trapped under the towing arm of a trailer due to the failure of the jockey wheel assembly. The investigation into the accident found that a repair carried out by Raffray Limited to a clamp, which held the jockey wheel to the towing arm, had been badly implemented and had not taken into account the safety critical nature of the component.



Trailer involved in the accident

Raffray Limited was fined £10,000 with £2,500 costs. A summary of the case can be found online at:

<http://www.gov.je/Working/HealthSafetyWork/Updates/Archive/Pages/WeldingFirmFined.aspx>

The costs of the investigation included a substantial cost for having the failed component examined at the Health and Safety Laboratory, which is an agency of the UK Health and Safety Executive. The Court supported the Crown's warning that such charges may have to be included in costs awarded in the future.

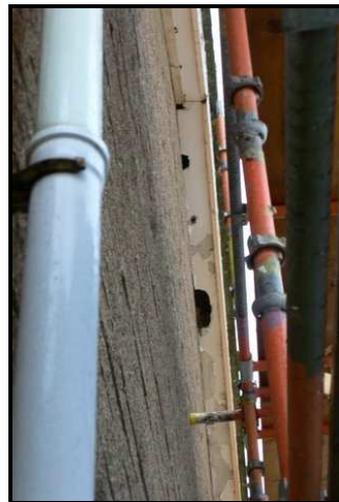
States Employment Board Coastline PVCu Products Limited

The States Employment Board and Coastline PVCu Products Limited appeared in the Royal Court on the 30th July 2009 to answer charges relating to the disturbance of asbestos during the refurbishment of Le Clos du Roncier Housing Estate, St Clement, in February 2008.

During the course of the work to overclad the soffits to a terrace block of houses on the estate, the existing asbestos soffits were damaged resulting in employees of Coastline PVCu Products Limited being needlessly exposed to asbestos fibres being released as a result of the damage. The States of Jersey Housing Department were project managing the works but, despite asbestos surveys having been carried out on the properties some years previously which had identified asbestos, failed to pass on information about the presence of asbestos to Coastline PVCu Products Limited, the contractor undertaking the works. In turn, Coastline PVCu Products Limited failed to seek information on whether asbestos was present in the houses.

The States Employment Board is the legal employer of employees of the States of Jersey and therefore had to answer to a charge relating to the failure of passing

information to Coastline PVCu Products Limited who themselves had to answer to a charge of failing to protect their employees from being exposed to asbestos.



Damage to soffit boards

The States Employment Board was fined £10,000 with £2,000 costs and Coastline PVCu Products Limited fined a total of £8,000 with £2,000 costs.

A summary of the case together with information on the legal position of public sector workers can be found online at

<http://www.gov.je/Working/HealthSafetyWork/Updates/Pages/PublicSectorWorkersSafety.aspx>

Flying Flowers (Jersey) Limited

The fifth case heard by the Royal Court in 2009 took place on the 6th November 2009 and involved a prosecution of Flying Flowers (Jersey) Limited following an accident to a maintenance technician who had been injured during the course of the removal of the motor of a circulating pump from a pressurised heating system.



Motor involved in accident

The technician, who understood that the pump had been isolated from the pressurised heating system, was undoing the bolts securing the motor in place, when the motor was suddenly blown off its base mounting. Although the motor fortunately missed the technician, he was soaked in scalding water which gushed out of the high pressure system.

The investigation identified the lack of formal controls, operating procedures and training in place for persons working on the pressurised heating system.

Flying Flowers (Jersey) Limited was fined £12,000 with £2,500 costs.

Details of the case can be found online at:

<http://www.gov.je/Working/HealthSafetyWork/Updates/Archive/Pages/FlyingFlowersfined.aspx>

In addition to these cases which appeared in Court during 2009, there were 15 investigations into serious incidents or accidents in progress at the end of December 2009.

Enforcement notices

During 2009, Inspectors served 15 Prohibition Notices and 7 Improvement Notices.

The issues which were addressed by the serving of Prohibition notices ranged from the failure to provide safe working arrangements on the roof of a property undergoing repair, the guarding of bakery machinery, the unsafe demolition of a property and the training of crane operators.



No guard rails had been provided to protect workers from falling from the roof of the dormer windows

It was concerning to find that the type of issues which were identified by Inspectors which resulted in the issuing of Prohibition Notices to immediately protect

individuals from serious injury, had previously been the subject of serious accidents and prosecutions in the Royal Court. In these instances there was an obvious lack of learning from the experiences of others, which should have resulted in steps being taken to ensure that their employees were not placed at risk of serious injury.



Insufficient arrangements were provided to protect workers carrying out the demolition of this property

The serving of Improvement Notices is intended to provide a defined time period for the organisation to take action to comply with a legal requirement. Improvement Notices do not address issues where there is an immediate risk of serious injury; nevertheless, they do

provide a focal point for duty holders in addressing a health and safety issue which has fallen below the minimum required under health and safety legislation. Improvement Notices were served on such issues as work station assessment, competency to carry out arboriculture work with chainsaws and management of asbestos.

There is a right of appeal to an independent Tribunal against the serving of Notices, but no such appeals were made against any Notices served in 2009.

Specific details of Notices that are served are not permitted to be made public, but the Inspectorate updates the summary of Notices which have been served every 6 months. This can be found on the website at:

<http://www.gov.je/Working/HealthSafetyWork/Updates/Pages/UpdateEnforcementNotice.aspx>



Following an accident, the manner in which access was gained to the top of these storage boxes was stopped

Complaints and investigations

Complaints

The Inspectorate will respond to complaints about working conditions which give rise to a risk to the health and safety of people employed in the workplace or members of the public by the activities of those at work, with our policy on our response to complaints available on the website at:

<http://www.gov.je/Working/HealthSafetyWork/Inspectorate/Pages/Inspections.aspx>

In 2009, 175 complaints about working conditions were made to the Inspectorate. The performance indicator for the Inspectorate, which is to respond to 95% of complaints within 5 working days, was met in 2009 with 98% of complaints being responded to within the 5 working day period.

The response to complaints is prioritised with concerns over serious issues resulting in an immediate response by an Inspector who will attend at the workplace.

In 2009, complaints ranged from concerns over unsafe scaffolding, disturbance of asbestos, hazardous floors and stairs, unprotected excavations, work at height and provision of welfare facilities.



The manner in which this scaffold was being dismantled resulted in complaints being received by the Inspectorate

There does remain some confusion over the role of the Inspectorate in responding to health and safety issues, with attempts being made to clarify that the Inspectorate's role is limited to workplace health and safety. The Inspectorate is unable to make a response to concerns over health and safety matters where there is no workplace activity, such as concerns over domestic accommodation or matters which fall into the category of nuisance issues which do not come within the scope of health and safety legislation. Where

the Inspectorate is unable to respond to concerns, endeavours will be made to refer the complainant to a Department of the States that may be able to assist.

Investigations

In 2009, the Inspectorate also carried out 93 investigations into work related accidents and ill health with 48 of these as a result of notifications being made by the Emergency Services. These investigations were in addition to the serious incidents which resulted in reports being sent to the Attorney General and the response made to complaints.



The top of this lorry battery exploded whilst it was under charge, resulting in injuries to an engineer's face and eyes



A construction site worker fell over 13 feet when he climbed under a guard rail onto unsupported formwork



A fisherman had to be flown to the UK for treatment after falling from a ladder onto the pontoon whilst at the Fisherman's Quay



The catastrophic failure of this escalator was investigated by the Inspectorate

Changes to legislation

Amendment of the Health and Safety at Work (Jersey) Law, 1989

Health and safety legislation is intended to provide a self regulating framework within which employers, and others with responsibilities under the law, identify and address risks to persons who may be affected by the manner in which work is carried out.

Although the general duty placed on employers under Article 3 of the Law has, since 1989, placed a legal requirement to assess the risks to the health and safety of their employees, it became apparent to the Inspectorate that, despite producing guidance and focusing on the need to be proactive in managing health and safety at work, many instances were found where no consideration was being given to addressing significant risks in the workplace.

Part of the reason for this lack of appreciation of the duty placed on employers is the self regulating approach to health and safety legislation, as opposed to “an army” of Inspectors checking that employers are taking appropriate action.

It is also apparent that an additional reason for the lack of appreciation by employers of their need to take proactive steps to manage health and safety in the

workplace is the false belief that, because there is a far simpler framework of health and safety legislation in Jersey compared with the UK, there is a lower legal standard for the management of health and safety required in the Island. This is simply not the case.

Whilst it is true to say that there is far more health and safety legislation in place in the UK, with the UK Health and Safety Executive identifying 17 separate health and safety Acts (Laws), and over 130 sets of specific health and safety statutory instruments (Regulations), the overall standard of health and safety required in Jersey, where there is 1 main health and safety law and 12 sets of Regulations, is identical to the standard required in the UK.

Membership of the European Union has been a major influence on the development of UK health and safety legislation in recent years. In the 1970’s the UK embarked on a programme of rationalisation of health and safety legislation with the intention of having a single main health and safety law, backed up with regulations addressing significant health and safety concerns. This position, which is still the approach adopted in Jersey, has been impacted on in the UK by the requirement for the UK, as a member of the European Union, to introduce health and safety legislation in order to

meet the requirement of European Directives. This has resulted in much of the current UK health and safety legislation originating in Europe.

This perceived lack of appreciation by employers to address their duty under the Law resulted in a need for a critical review of Article 3 of the Health and Safety at Work (Jersey) Law, 1989, with the intention of clarifying the action that employers were required to take. This resulted in the Minister for Social Security taking proposals to the States in May 2009 seeking a change in the wording of Article 3 to focus on the action that an employer is required to take to manage the risks to the health and safety of their employees.

The amendment to the Law, which was adopted by the States, was sanctioned by Her Majesty the Queen, and came into force in 2010. The changes are set out in the following article which can be accessed on the web site:

<http://www.gov.je/Working/HealthSafetyWork/Updates/Pages/ChangesLaw.aspx>

Revised Approved Code of Practice for the Management of Exposure to Asbestos in Workplace Buildings and Structures

The Health and Safety at Work (Jersey) Law, 1989, provides for codes of practice to be approved by the Minister for Social Security, with the intention of providing practical guidance on how to comply with the general duties set out under Part 2 of the Law.

Following the revision of the Asbestos-Licensing (Jersey) Regulations in 2008, the Approved Code of Practice for the Management of Exposure to Asbestos in Workplace Buildings and Structures was revised and came into force on the 1st October 2009.

Details of the changes which were introduced in the revised Approved Code of Practice are set out online at:

<http://www.gov.je/Working/HealthSafetyWork/Updates/Pages/AsbestosACoP.aspx>

Advice and guidance

Although this report has focused on the enforcement work and response to complaints with which the Inspectorate is involved, the Inspectorate also provides advice and guidance on health and safety at work matters. In 2009, over 2,700 telephone contacts were made regarding queries made over health and safety matters. This figure accounts for over 60% of telephone contacts with the Inspectorate, rather dispelling the view that is sometimes expressed that the Inspectorate only carry out enforcement of health and safety at work legislation.



Advice was provided in 2009 on improvements to the system of scrap handling at the Harbour

A considerable amount of effort has also been given to providing relevant information, including guidance on legislation and regular articles and updates, on the Health and Safety Inspectorate section of the States of Jersey website. A good starting point for newcomers to the Inspectorate section of the website is the A-Z section, which provides a quick search function for accessing information on health and safety at work:

<http://www.gov.je/Working/HealthSafetyWork/Pages/QuickFindAtoZ.aspx>

Part Two Statistics

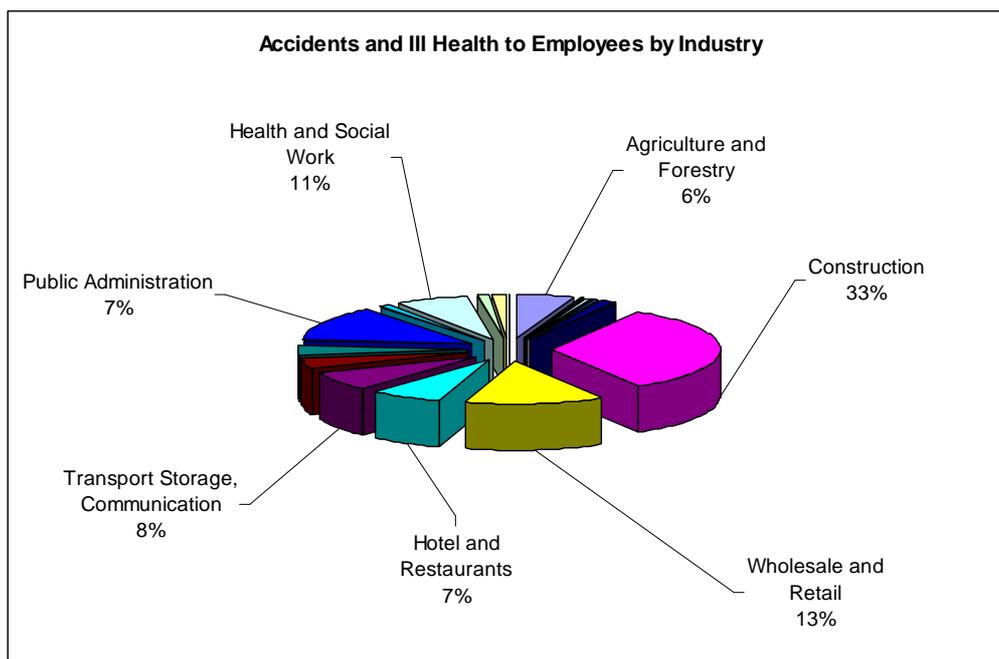
Claims made for Social Security benefit as a result of work related injuries and illness during 2009

Persons who are able to satisfy the contribution conditions for the Social Security Scheme are able to claim benefit for medically certificated accidents or ill health for 2 days or more off work.

In 2009, employees made a total of 876 claims for work related accidents and ill health, a reduction of 136 in claims made in 2008.

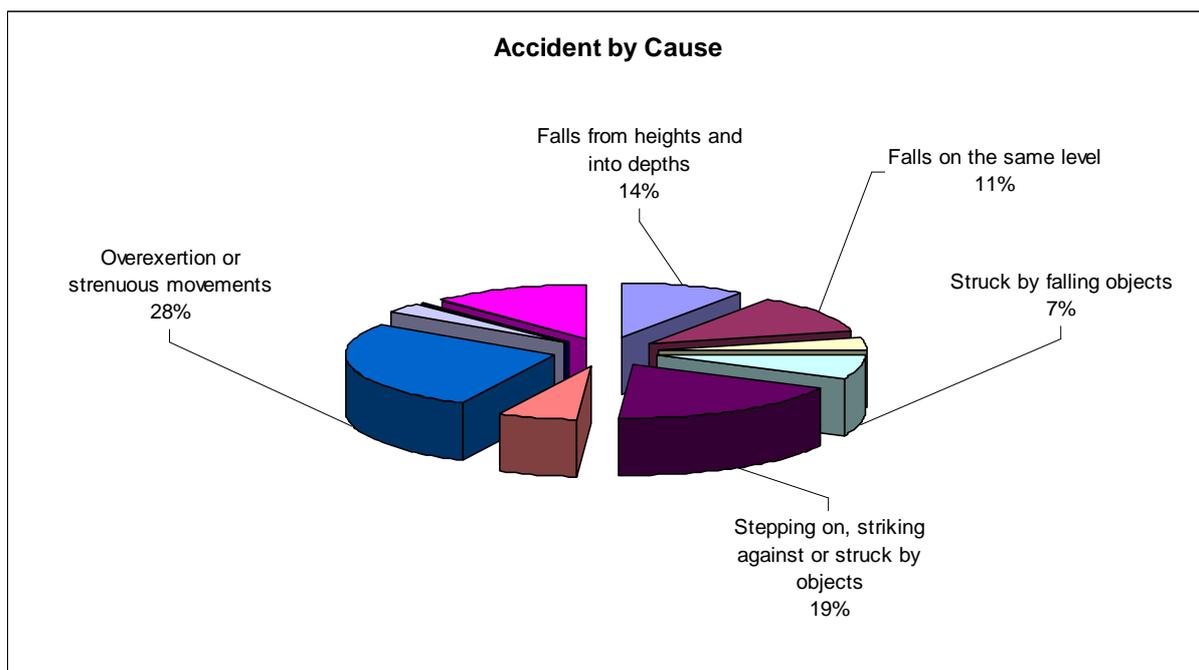
587 of these claims were reported as being due to an accident and 288 due to ill health, 1 was unclassified as insufficient information was provided.

33% of all claims were made by construction workers which, statistically, indicate that construction remains the industry with the highest risk of an employee suffering an accident or from ill health as a result of their work.

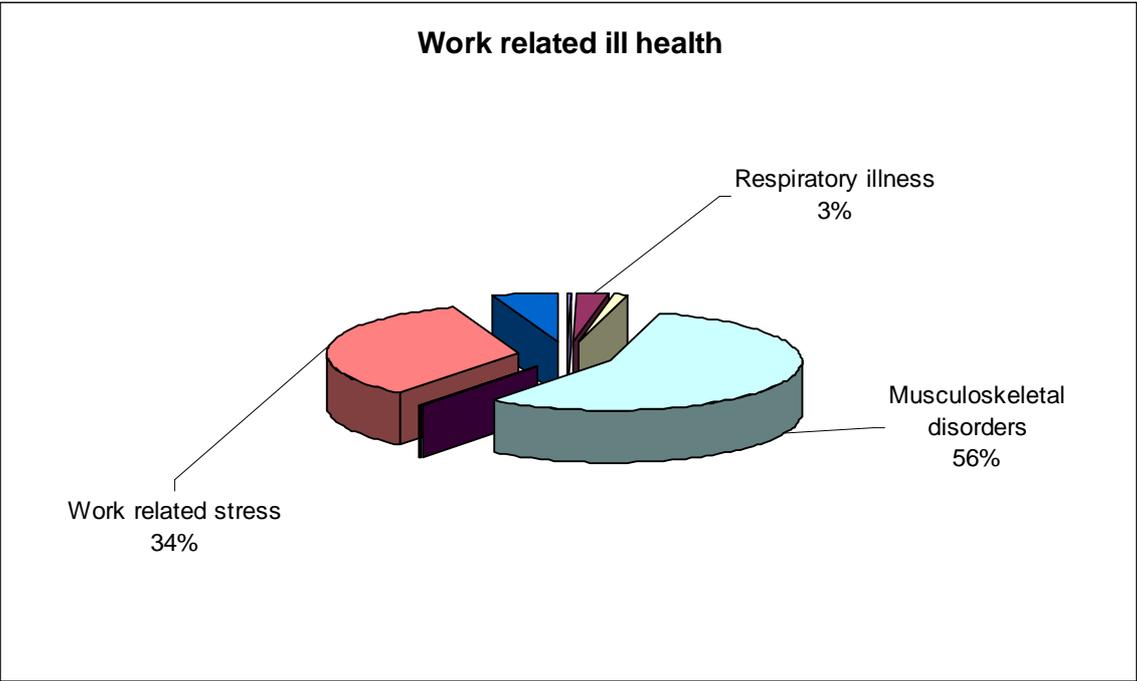


When a claimant identified that the claim was due to a work related accident or ill health, they were sent a short questionnaire seeking additional information. There is no legal obligation to return this questionnaire but it does assist the Inspectorate to carry out further analysis of the reasons for the accident or ill health. 619 questionnaires were returned to the Inspectorate.

In 2009, the analysis of the questionnaires that were returned indicated that the major causes of accidents were as a result of overexertion or strenuous movement and falls (from heights and into depths and on the same level).



The main causes of work related ill health were due to musculoskeletal disorders and work related stress.



Jersey Annual Social Survey

The Jersey Annual Social Survey (JASS) is an annual statistical survey carried out by the States of Jersey Statistics Unit to provide official social statistics about Jersey.

In 2009, approximately 3,300 households were selected at random to complete the survey in July 2009, with the household member who next celebrated their birthday and was aged over 16 years old asked to complete the form.

The response to the survey was considered to be extremely high with over 54% of the sampled households completing the survey meaning that the results from the survey are both representative and accurate.

In 2009, for the first time questions were included in the survey on work related accidents, in order to provide additional information to that gained from the statistics obtained through claims for benefit from the Social Security system.

The JASS survey found that overall 6% of workers, with a higher proportion, up to 11%, of those working in "Routine" or "Technical" type occupations, reported that they had suffered an accident at work within the last 12 months.

3% of those who had suffered an accident at work took over one day off from work with over 8% reporting that they had taken over a day off work as a result of a work related illness, disability or physical or mental problem that was caused or made worse by their job, or work that they had done in the past.

As Social Security benefit is paid for two or more days off work, the JASS survey provides additional information on accidents and ill health that is not captured by the data recorded on the Social Security benefit system. This additional information suggests that more workers have accidents and suffer ill health than is identified through the Social Security benefit system, reflecting accident ratio studies which established a link between minor accidents and other dangerous events and serious accidents.

The JASS survey has therefore reinforced the need for employers to take proactive action in managing health and safety in the workplace in order to reduce the likelihood of these minor accidents escalating into more serious accidents.

Key Points 2009

- 5 health and safety prosecutions were heard in the Royal Court
- The Royal Court issued a warning that the level of costs in health and safety prosecutions may rise in the future to cover charges associated with the investigation carried out by the Inspectorate
- 22 enforcement notices were served during the year
- 175 complaints about working activities and conditions were made to the Inspectorate.
- Amendment to Article 3 of the Health and Safety at Work (Jersey) Law, 1989 passed by the States
- Revised Approved Code of Practice for the Management of Exposure to Asbestos in Workplace Buildings and Structures introduced
- 876 claims for Social Security benefit were made by in 2009 by employees as a result of work related accidents and ill health This represented a reduction in claims of 136 over claims made in 2008
- The 2009 Jersey Annual Social Survey provides a more complete picture of work related accidents and ill health which occurred to persons working in Jersey, reinforcing the need for employers to take positive action to manage health and safety

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