



## Initiative – A Risk That Needs Managing

**If you brief a worker with a simple, clear instruction and tell them to revert to you for further instructions when that first step is complete, you might think that you've done everything reasonably practicable to ensure their health and safety, assuming that they have been trained to perform the task and there is a safe system of work for the activity in question.**

However, the Health and Safety Executive wouldn't necessarily agree and you would be well advised to consider whether your organisation is adequately recognising the oddities of human behaviour during your risk assessment and work planning processes.

In a number of cases the HSE have argued that it is entirely foreseeable that employees will disregard instructions they have been given and/or will show initiative and go beyond what they were asked to do. Accordingly, they have argued, a failure to take into account those behavioural risks amounts to a failure to comply with the "all reasonably practicable" test found within the general duties owed by an employer.

In one case tried in 2009, in which Osborn Abas Hunt successfully defended charges faced by construction giant Norwest Holst, the HSE argued that it was foreseeable that a highly experienced welder, given an instruction to burn welds within a safe working platform and then seek out his supervisor for the next step, would ignore that instruction, climb outside the platform and burn welds which were holding the (cantilevered) structure together. They also argued that the briefing cannot have been sufficiently clear for him to understand what the intended next step was. Tragically, as he burnt the last weld, the structure catastrophically failed and he was crushed.

The risk of him doing as he did was one the company should have managed, the HSE argued. However, the Court rejected the HSE's argument, agreeing with us that it was inexplicable and entirely unforeseeable that the man would do as he did. Accordingly our client was not required to have put in place control measures to manage that risk.

In recognising that human beings are not robots, the Court accepted that to a degree employers must recognise that workers show initiative. However, the Court held that employers were not required to foresee, and therefore guard against, extraordinary actions such as those this particular worker took.

In a second case, in which Osborn Abas Hunt was involved, the HSE unsuccessfully alleged breaches of the "all reasonably practicable" test in the employer's duty where, having briefed two workers that equipment must not be moved in its extended position in the vicinity of overhead cables due to the significant risk of electrocution, the employer had no plan to re-brief that message and took no further steps to highlight the risk. In returning verdicts of not guilty the jury presumably accepted that it was not foreseeable that the employees would disregard the instruction they were given and do something which carried such danger.

Whilst these cases both resulted in acquittals, when designing systems of work, briefing colleagues ahead of work, or planning supervision resources, you would be well placed to have in mind these tragic cases and consider whether anything more could reasonably be done to prevent something like this happening in your organisation.

Training, further case studies to illustrate these principles and specialist advice on compliance with legal duties are available from Osborn Abas Hunt.