



The Chartered Society for
Worker Health Protection

The British Occupational Hygiene Society

Faculty of Occupational Hygiene

Good Practice Guide for Consultants





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Worker Health Protection

The Good Practice Guide for Consultants interprets the BOHS Code of Ethics and outlines the legal responsibilities for occupational hygiene consultants.

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Executive Summary

The way we work is changing and the number of large manufacturing companies employing their own occupational hygienists in the UK has markedly reduced. This has inevitably meant that there is more of a reliance on occupational hygiene consultants.

With such a loss of in-house capability, this has also often meant a loss of mentoring to junior hygienists, negatively impacting on staff development programmes, as well as monitoring and supervision.

Whilst there are established formal routes within BOHS for personal development and progression of occupational hygienists, and a Directory of Occupational Hygiene Consultants where buyers can find service providers, this process has not always delivered the desired outcome.

Members of The Board of Trustees, the Faculty Board and health and safety regulators have all seen examples of where the occupational hygiene consultancy services received by the buyer were not up to the standards expected of a competent occupational hygienist. There are various reasons this may occur including:

- the work has been estimated and specified by someone without the right level of knowledge in the fundamentals and principles of occupational hygiene,
- site work has been conducted by technician or trainee with a low level of training and/or inadequate supervision by a competent hygienist,
- reports are not checked or reviewed thoroughly enough and contain significant technical flaws.

This guidance aims to assist those offering occupational hygiene consultancy to translate their individual competence into a high quality occupational hygiene consultancy service, raising standards in the process.

BOHS recognise a difference in the likely breadth and depth of knowledge that a Chartered Member or Fellow may have, compared to a Licentiate, and between a Licentiate and a technician or trainee.

Switching to a new online Directory of Occupational Hygiene Consultants provides an opportunity to enhance the listing to assist the buyer to choose the right service provision for their needs.

Purpose

This Guide aims to interpret the BOHS [Code of Ethics](#) for consultants, as well as to outline some of the legal responsibilities when practising as an occupational hygienist and consultant.

For the purpose of this document, 'Consultants' refers to organisations providing occupational hygiene consultancy services, whether this is a sole trader, partnership, SME or large company.

Introduction

BOHS recognise that there is always room for continued improvement in order to tackle Worker Health Protection. The BOHS [Faculty of Occupational Hygiene](#) aim to improve occupational hygiene standards, recognition and access in accordance with the BOHS [Strategy](#).

The BOHS [Directory of Occupational Hygiene Services](#) is the definitive list of companies that are able to provide qualified and experienced occupational hygienists and specialist occupational hygiene support services.

Directory eligibility is dependent on:

1. the company employing at least one Licentiate, Chartered Member or Chartered Fellow of the BOHS Faculty of Occupational Hygiene;
2. the Faculty Members having up-to-date subscriptions; and
3. the Faculty Members participation in the CPD scheme.

Following the Good Practice Guide should help organisations to avoid falling foul of health and safety law, as well as to remind consultancies that they should have robust governance arrangements in place to ensure:

- the competence of technicians or trainee staff,
- that appropriate levels of supervision are in place to provide quality assurance, and
- that reports are reviewed and quality control checked for accuracy and validity.

Consultants within the Directory of Occupational Hygiene Services should be able to demonstrate compliance with this Good Practice Guide and significant non-conformance could potentially lead to sanctions from BOHS under the Code of Ethics and possible exclusion from the Directory.

Insurance

Consultancies must have valid Employers Liability, Public Liability and Professional Indemnity Insurance in place in order to offer consultancy services.

Code of Ethics

All members of the BOHS Faculty should conduct their undertakings in accordance with the Code of Ethics. The primary aim of the Code is to ensure that at all times, members of the Faculty act in such a way that the protection and preservation of worker health is their paramount responsibility.

Competence is detailed in the following section, however, just as important as being able to demonstrate competence, is not misrepresenting qualifications or membership status to imply competence e.g. Associate Grade (AFOH) or Corporate affiliate membership. The Code of Ethics requires that Faculty members shall not:

- use 'statements in advertising their expertise or services which contain material representative of fact, or which omit material facts necessary to keep statements from being misleading about expertise or services'; and
- permit 'their employees, employers or others to misrepresent the professional backgrounds of individuals, as far as they are able to prevent this'.

Staff Competence and Supervision

The [Management of Health and Safety at Work Regulations 1999](#) state that a person is competent "where he has sufficient training and experience or knowledge and other qualities to enable him properly" to do the job in question. However, there is no comprehensive and prescriptive definition of what is required. Whilst knowledge can be assessed through formal examinations; skills and experience present a greater problem. In practice, it is often the courts that decide whether a person is competent retrospectively.

[HSG65](#) provides the following advice in relation to competency:

- If you identify lack of competence in a particular area, what are you doing to deal with the problem?
- How are staff selected for the tasks carried out?

- Are arrangements in place to ensure staff are aware of their roles and responsibilities?
- Have you identified the training they need?
 - Ensure relevant and sufficient training is delivered.
 - Check the necessary level of competence has been reached.
 - Check that training is applied.
 - Provide update/refresher training.
 - Ensure training records are kept.
- Have you provided enough competent cover for absences?

The Code of Ethics advises that Faculty members shall perform services only in the areas of their competence by:

- Not undertaking work unless qualified by education, training or experience in the specific technical fields involved, unless sufficient assistance is provided by associates, consultants or employees, and its use is made clear to the relevant clients.
- Not addressing issues of public concern unless they confine themselves strictly to matters on which they can speak with authority.
- Making themselves reasonably aware of developments in any relevant fields. Faculty members shall perform services only in the areas of their competence by:-
- Not undertaking work unless qualified by education, training or experience in the specific technical fields involved, unless sufficient assistance is provided by associates, consultants or employees, and its use is made clear to the relevant clients.
- Not addressing issues of public concern unless they confine themselves strictly to matters on which they can speak with authority.
- Making themselves reasonably aware of developments in any relevant fields.

Consultancies should be able to demonstrate that it has identified the competencies required to fulfil the range of occupational hygiene activities that it undertakes and that it has processes in place to train, assess and monitor staff against those competencies.

Individual staff should only undertake work according to their competence, experience and training or be provided with adequate supervision to extend their activity into new areas.

Effective supervision shall include the witnessing of occupational hygiene work.

BOHS Faculty Board consider that an occupational hygienist is someone who is operationally or professionally competent i.e. as a minimum, a holder of the

BOHS [Certificate of Operational Competence](#) (or equivalent). Persons operating in the field of occupational hygiene without this qualification are considered to be occupational hygiene associates, technicians or trainees.

Whilst the appropriate level of supervision needed for different members of staff may vary depending upon factors such as individual capability, experience of similar jobs, complexity of the task, etc. The following could be used as a guide for determining suitable levels of staff supervision.

Category 1 - Chartered Fellow or Chartered Member or Specialist Member (working within the scope of their specialism) e.g. a holder of the BOHS [Diploma of Professional Competence](#)).

Staff in this category have the broadest and deepest experience and are expected to be able to work to high professional standards. They should be able to assess risks, devise sampling strategies and recommend fit-for-purpose control measures to reduce worker health risks.

Staff in this category are likely to be technical leads within the organisation and be capable of operating at a senior managerial level. They would uphold and monitor professional standards and mentor others in the organisation.

Category 2 – Licentiate or Specialist Licentiate (working within the scope of their specialism) e.g. a holder of the BOHS Certificate of Operational Competence or the BOHS Certificate of Competence in an individual subject.

Staff in this category should be able to assess risks, devise sampling strategies and recommend fit-for-purpose control measures to reduce worker health exposure.

There are four grades of Faculty membership:

Associates (AFOH)

Associates (AFOH) have passed either the Basic Principles of Occupational Hygiene or one of the core Occupational Hygiene Modules offered by BOHS, and are committed to progressing to Licentiate or Member level by gaining the appropriate qualifications within five years.

Licentiates (LFOH)

Licentiates (LFOH) hold the BOHS Certificate of Operational Competence in Occupational Hygiene and have at least three years practical experience in the field.

Chartered Members (CMFOH)

Chartered Members (CMFOH) hold the BOHS Diploma of Professional Competence in Occupational Hygiene and have at least five years' experience.

Chartered Fellows (CFFOH)

Chartered Fellows (CFFOH) are senior members of the profession who have made a distinct contribution to the advancement of occupational hygiene.

Members and Fellows of the Faculty who hold the Diploma and are practising occupational hygienists are entitled to use the status 'Chartered Occupational Hygienist'.

Staff in this category would normally only require occasional supervision or technical support on simpler scenarios, but may need support from a Category 1 occupational hygienist for more complex issues.

Category 3 – Associate with the appropriate BOHS Occupational Hygiene Module or PCert or a BOHS approved Occupational Hygiene degree.

Staff in this category should be technically competent to undertake surveys, inspection and testing in accordance with their experience and training.

Staff in this category will require infrequent supervision for less complex work (i.e. at least quarterly) and frequent (i.e. at least weekly) supervision for more complex work.

Category 4 – Technician or Trainee.

Staff in this category are likely to undertake less complex work and need to operate under a high degree of supervision [i.e. frequent (at least weekly) or daily] from a Category 3 person or above, supervising within their own competency.

It is envisaged that this category would cover trainees just starting on their occupational hygiene career en-route to Category 3, or other technical/scientific staff drafted in to cover extraordinary busy periods.

Staff operating in this category that are not being supervised by an occupational hygienist from Categories 1-3 above (who in turn are working within their competencies) are not deemed to be competent to undertake occupational hygiene consultancy work.

Mentoring

BOHS has a formal mentoring scheme and mentoring can be a good way to provide supervision and quality assurance/control for a one-man band or micro-business. For this to be effective, frequent contact with the mentor may be needed, in order to provide practical support and guidance.

Informal arrangements amongst peers in other organisations may also be acceptable, but these should be documented and arrangements tested routinely to demonstrate that the system is effective.

CPD and Refresher Training

In order to be competent, all category 1-3 persons should operate in a Continual Professional Development scheme. BOHS Faculty has a CPD scheme that is mandatory for Category 1-3 personnel.

As well as defining the training needs when determining competence for different categories of personnel, refresher training may also need to be considered for some staff, particularly when there are changes to legislation or guidance, or when quality assurance/control checks indicate that this is required.

Quoting and Survey Design

Staff writing occupational hygiene quotations, preparing tenders and devising sampling strategies should be suitably qualified to do so and have a good understanding of occupational hygiene principles and practices. Appropriate BOHS W or I Modules (or equivalent) may be sufficient level to demonstrate this knowledge and understanding.

Category 1 or 2 staff should review all quotations to make sure that they are fit-for –purpose.

A common criticism of poor occupational hygiene surveys is that the quotation and tender is based upon a certain number of samples covering many substances used in the working environment, rather than on risk, or a strategy designed to check the effectiveness of existing controls.

Quotes based on simplistic proformas or formulae are not appropriate. Quotes need to consider the complexity of the process and the amount of investigation work that may be required. Sampling or exposure monitoring may be required for different reasons and the proposal needs to address the question/s posed, for example:

- is adequate control achieved as part of the initial commissioning of a Local Exhaust Ventilation system;
- are controls still effective after a process change; and
- which are the highest risk activities and where does the focus of exposure control efforts need to be?

If practicable, arrange for a preliminary visit to discuss in detail the required scope of work. On some occasions, the client may not really know what they need or how best an occupational hygienist can help them. An effective dialogue is needed to establish this prior to quotation and specific and focussed questions may be needed by an experienced occupational hygienist to tease this information out.

The proposal should detail the categories of staff that would undertake the work, supervise the work and authorise the report. It should also specify the

objectives of the project, the means of achieving these, the timescale, the deliverables and the overall cost.

Report Writing

The report should clearly state the remit provided by the client. For the majority of instances, solely reporting the results of exposure monitoring does not constitute an occupational hygiene survey and consultants need to be able to make appropriate recommendations on control, where necessary.

Contextual information and observations are very important in terms of aiding the interpretation of results and informing the conclusions. However, the most important elements of any such report are any recommendations necessary for the dutyholder to reduce worker health exposure and comply with relevant legislation.

The Code of Ethics advises that recommendations should be clearly prioritised or given significance i.e. what does the dutyholder need to do to comply with the law and what is best practice?

BOHS have existing guidance for Occupational Hygienists on how to write [Clear and Concise Reports](#). It is expected that consultants should structure their reports in accordance with this guidance, while allowing for some deviation where it provides clarity for the dutyholder.

Whilst deviation from this format is expected, the areas/sections covered within the report writing the guidance are to be included within the report accordingly. There is also guidance on [how to write effective reports](#)¹.

Existing BOHS guidance on how to test [compliance with OELs for airborne substances](#) should be followed when devising sampling strategies and when comparing exposure monitoring results to the appropriate Workplace Exposure Limits. Approved methods e.g. MDHS series, should be followed where these exist.

Draft versions of reports can be shared with the client to ensure accuracy of terminology prior to issue.

[COSHH Regulation 10\(5\)](#) requires that the 'employer shall ensure that a suitable record of monitoring is made and that the record or suitable summary thereof is kept'. [L5 ACOP](#) Paragraphs 222-223 advise what a suitable record of exposure monitoring should contain.

¹ See pages 8-9 of the hyperlinked BOHS Exposure Magazine

This requirement includes 'the report author's assurance: including a written confirmation, as applicable, that the author is competent to carry out sampling and analysis, write the report and interpret the results to help the employer assess the adequacy of exposure control'.

Quality Assurance and Quality Control

It is not compulsory to have a formal quality management system, however, all organisations providing an occupational hygiene consultancy service (including sole traders or micro-businesses) should have suitable arrangements in place to ensure quality control of monitoring/testing work and the reports that they produce.

Sole traders or micro-businesses are not exempt from the need to have such a system and should implement self-checking versions (or other working arrangements) for quality assurance and checking, monitoring and testing reports.

There may be different ways to achieve this, but as an example, informal arrangements can be established between collaborating BOHS Faculty members across organisations so that experiences can be pooled, reports cross-checked and reports counter-signed.

For larger organisations, it may be possible to engage an independent organisation to conduct an annual audit of completed reports and to provide a second professional opinion when needed. Consultancies should have written quality management procedures and keep records of their audits and checks.

Peer review sessions can be carried out to ensure consistency and to share experiential learning. This can be undertaken on different aspects of work from quotation, to site work and on completed reports.

Organisations that are accredited under [UKAS](#) (United Kingdom Accreditation Service) to ISO/IEC 17020 are likely to already have comprehensive quality management schemes in place and should be applying them to their occupational hygiene practice too.

Non-accredited organisations (including consultants holding recognised BOHS qualifications) should also have an effective quality management system to support their work. Quality management systems are detailed in ISO/IEC 17020 (or ISO 9001 as a minimum).

[HSG264](#) Appendix 6 provides some good guidance on quality assurance and quality control procedures that a service provider should have in place.

The following paragraphs outline three of the essential components of a quality management system.

1. Quality assurance for site work

A proportion of occupational hygiene projects should be rechecked while the work is still in progress. The process of site selection is at the discretion of the organisation, but the system should ensure that the sites selected:

- are representative of the different types of work that the organisation undertakes; and
- cover all the site staff employed.

Until competence can be established in a particular area of work, inspections or audits for newly-qualified or recently-employed staff should be undertaken on every project; then less frequently to keep checking that they are capable of consistently working to the required standards.

- In some situations it may not be practical (e.g. very large projects) to recheck all the work. In these circumstances a representative part of the work should be rechecked. This should involve checking all aspects of the site work using the recorded data, samples and photographs to ensure records were accurate appropriate; and
- work undertaken reflects the quotation and contract agreement.

Where omissions, deficiencies or errors are identified, there should be arrangements in place to rectify the situation including retraining and supervision of personnel where appropriate.

2. Audits of completed work

There should be an annual audit of the management systems and procedures in place. It would normally be a desk-top audit as the site may have changed from the original survey, e.g. implementation of control improvements. The audits should normally include reviewing:

- report formats, structure and content;
- raw data transposition into report;
- equipment was within its calibration period;
- appropriate validated methods were used e.g. [MDHS methods](#);

- authorisation or approval of report checker, site staff – their authorisations, training records and qualifications, etc.;
- contract review – documented records of the client’s instructions – ensure that the report meets these in full;
- records and storage of raw data, site logs etc., as well as compiled reports.

If significant anomalies are discovered in the desk-top audit, a full site resurvey may be necessary. A review of the management systems and procedures may also be necessary to avoid recurrence, as well as additional staff training, monitoring and supervision. Further auditing of completed work should also be undertaken.

3. Quality control for occupational hygiene reports

Every occupational hygiene report produced should be checked by the site staff that undertook the work for accuracy and reviewed by a Category 1 or 2 member of staff before being issued to the client. The checks should ensure that the report contents are technically consistent, accurate and complete. In particular, check:

- the client’s instructions for the occupational hygiene work and report have been followed, taking due account of providing necessary advice outside of these instructions, if a significant health risk was identified;
- all site notes agree with the final report;
- all appendices (e.g. certificates of analysis) are included as required;
- all titles, reference numbers and descriptions are correct;
- the assessments and recommendations for any control improvements are appropriate; and
- the report summary is included and is an accurate statement.

APPENDIX A

Legal Responsibilities to Staff and Others

Some of the following text is taken from the [HSE Statement to the external providers of health and safety assistance](#)

The Management of Health and Safety at Work Regulations require employers to appoint 'one or more competent persons' to help them to meet their duty to control risks at work.

As external providers, consultants deliver an essential service to employers where their own resources are insufficient. You can help your clients to manage risk sensibly, i.e., focussing on reducing real risks, both those which arise more often and those with serious consequences.

As the provider you must be competent, give a good quality service and deliver help that is fit for purpose.

Competent health and safety advice is fundamental to manage risks sensibly. It is not an optional extra; the Management of Health and Safety at Work Regulations require it. In general, being competent is having:

- relevant knowledge, skills and experience;
- the ability to apply these appropriately, while recognising the limits of your competence; and
- the necessary training to help you acquire and maintain this.

The Management Regulations do not outline how to achieve competence, or require you to have a particular set of skills or qualifications. Rather, it is set as a goal for you to achieve. What you actually need to make you competent will depend on the particular help you are proposing to provide.

Employers are likely to deal with simple health and safety issues in-house, e.g. using published guidance (for example on the BOHS or HSE website), past experience and, sometimes, formal training.

Employers are more likely to turn to external providers, to deal with more complex situations, where a higher level of competence, involving a greater depth of understanding of the issues and an ability to judge and solve problems from first principles is required. How you achieve competence is up to you. But you will have to be able to satisfy the employer that you have a sufficient level of competence for the job in hand. Being a member (at the appropriate level) of a professional body which sets competence standards for its members, and prescribes levels of qualification and schemes of continuing professional development, is one way of helping you to do this. Presenting

evidence of relevant experience, (e.g. references from previous clients) is another, as are obtaining qualifications e.g. BOHS Modules, PCerts, the Certificate of Operational Competence or the Diploma of Professional Competence.

As a provider of health and safety assistance, your advice should be fit-for-purpose:

- **Right:** based on a correct assessment of the risk; and taking account of any established standards (e.g. workplace exposure limits in [EH40](#)) and good practice (e.g. as found in HSE or BOHS guidance);
- **Tailored:** directed at the actual circumstances found in the workplace under consideration; based on your knowledge and experience of the particular industry, process, etc.; and tapping into the knowledge and experience of both the management and workers at the particular workplace.
- **Sensible:** concentrating on practical action to control significant risks; not over-responding to trivial risks; not pursuing paperwork as an end in itself; and looking to control measures that are reasonably practicable.

Competence and value for money are demonstrated by quality and clarity of practical advice, not by volume of paperwork.

It is also helpful to see whether your advice has been understood, that any problems with implementation are overcome and the impact you and the employer intended has been achieved. While not all employers will want or allow any follow up, where possible, it will help you deliver a good quality service to the employer concerned and enhance your own competence by adding to your experience.

For more complex scenarios, there is likely to be more post-report follow-up time and this may need to be factored into the quotation accordingly.

In addition to the Management Regulations, the [Health and Safety at Work etc Act 1974](#) – Sections 3, 7 & 36 collectively require that as an employer, you must ensure that any individual performing a task on your behalf has the competence to do so without putting the health and safety of themselves, or others, at significant risk.

HSW Section 3 places general duties on employers and the self-employed to conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that people other than themselves or their employees are not exposed to risks to their health or safety. They should also provide adequate information regarding any aspects of their products or services that might affect their health and safety.

A good summary of Section 3 duties for service providers (including consultancies) can be found in [L8 ACOP](#) 4th edition Paragraph 76 and this can be distilled down to the requirements in the following paragraphs.

Suppliers of products and services, including consultancy aimed at preventing or controlling the risk to substances hazardous to health, must, so far as is reasonably practicable ensure that:

- (1) measures intended to control the risk of exposure to substances hazardous to health are so designed and implemented that they will be effective, safe and without risks to health when used at work;
- (2) any limitations on their expertise or the products or services they offer are clearly defined and made known to the dutyholder;
- (3) any deficiencies or limitations which they identify in the dutyholder's systems or procedures to control the risk of exposure to substances hazardous to health are made known to the dutyholder;
- (4) their staff have the necessary ability, experience, instruction, information, training and resources to carry out their tasks competently and safely.

Those who supply services, such as testing or monitoring should make clear to the dutyholder any deficiencies in the control measures that may pose a significant risk of exposure. They should also make the dutyholder aware of any limitations in their own expertise, products or services so they can make arrangements to ensure that these deficiencies or limitations are addressed.

It is thought likely that this duty will be discharged if the service provider puts these concerns in writing to the client.

Service providers should also ensure that their staff and contractors are competent to carry out the task safely. They should be properly trained to a standard appropriate to the various tasks they perform, such as risk assessment, advising on control measures, sampling or testing and maintaining LEV systems.

All staff and contractors should be suitably trained, managed and supervised and given appropriate resources or support. In particular, they should be aware of the actions to take in situations outside of their knowledge or experience.

APPENDIX B

When things go wrong

The HSE have some examples of bad, poor and good advice by health and safety consultants on their website here:

<http://www.hse.gov.uk/business/examples.htm>

Consultant creep is a recognised problem within occupational hygiene, as the basics of sampling may be relatively easy for other related professions to undertake. However, competency cannot always be ensured – such as the environmental consultants that monitored personal exposure to respirable crystalline silica in a woodworking machine shop, as RCS was the only exposure monitoring they had previously undertaken and they were also unaware of the existence of a Workplace Exposure Limit for softwood dust.

Less competent consultants may fail to recognise that some hazardous substances are carcinogens or asthmagens, and as a consequence, the report may not recommend the correct level of controls or the need for health surveillance. This important oversight may mean that the dutyholder fails to take appropriate action accordingly and both the dutyholder and service provide may be in breach of the law.

Reasonable Care

A consultant may be judged on both his acts and defaults i.e. what he does and also what he doesn't do.

What is reasonable for a health and safety professional is different from what is reasonable for an ordinary employee. If you present yourself as an expert, you should know more than health and safety professionals who don't profess those specialisms. The generalist may know they require a health risk assessment, and recognises hazards; the occupational hygiene consultant should know where exposure occurs, the magnitude of exposure and whether exposure may lead to a risk of ill health and also what the appropriate controls should be to mitigate the risk.

When considering the possible culpability of a consultant, ill health or injury arising from any commission or omission does need to be foreseeable. Whilst an occupational hygiene professional might not anticipate an allergic contact dermatitis reaction arising from liquid hand soap, but should be able to anticipate that frequent hand washing and wet work could lead to dermatitis. If you make a judgment that controls are sufficient to manage a hazard, and the majority of other specialists might have made the same judgment, then it

is deemed unlikely that a prosecution of the individual would follow an accident or incident.

Whilst the majority of health and safety criminal prosecution are brought against employers, there are some cases where occupational health and safety professionals may be prosecuted under health and safety legislation, or even by the police for gross negligence manslaughter.

New Sentencing Guidelines for health and safety offences came into force in 2016 and the examples below may not reflect these new guidelines.

Prosecution Example 1

In 2001, Mr Lockwood, an occupational hygiene consultant, was fined £1,000 plus £2,000 costs at Stafford Crown Court, for causing employees at a Staffordshire sawmill to be exposed to unacceptably high levels of hardwood dust. The sawmill company had engaged the consultant to carry out dust sampling.

The consultant did not ensure that enough representative samples of employee exposure to hardwood dust were obtained. The resulting report misled the sawmill into believing exposure to wood dust was adequately controlled, when it was not. The sawmill company committed an offence under regulation 7(1) of COSHH because of the act or default of the consultant. The consultant pleaded guilty to a breach of Section 36 of HSW.

Prosecution Example 2

George Farrar (Quarries) Ltd employed Richard Atterby to provide health and safety advice and carry out risk assessments for more than three years. When HSE inspectors turned up to investigate a tipper truck accident at the quarry, they picked up on several other health and safety failings, including stonemason employees being exposed to respirable crystalline silica dust, something Mr Atterby had never mentioned in his risk assessments. While George Farrar (Quarries) was prosecuted in 2009 for this and other failings under HSW Section 2(1), Mr Atterby was also prosecuted under HSW Section 36(1).

The wording of this section is: “Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of an offence”. Mr Atterby contributed to the health and safety offence by failing to assess the risk from RCS and therefore failed in his professional duties.

An HSE inspector blamed the silica exposure on poor advice provided by Mr Atterby. His comments included the following.

- The risk assessment prepared by Atterby was superficial and totally inadequate. It led to a high risk of exposure to respirable silica during stonemasonry work because effective measures to mitigate silica exposure were not determined and implemented.
- The case should act as a lesson to other companies that rely too much on the advice of consultants. They could not outsource their responsibilities. The duty of care remained with them as employers and the selection and use made of consultants was crucial.
- Consultants should not offer advice on topics unless they were fully qualified to do so.

Mr Atterby was fined £1000 plus £700 for a breach of Section 36(1) of the HSW for failing to assess the risk of employees' exposure to sandstone dust.

Prosecution Example 3

Prior Scientific Instruments Ltd employed Keith Whiting for seven years to provide health and safety advice. Mr Whiting failed to identify the health hazards of working with trichloroethylene and isocyanates, resulting in a paint sprayer becoming ill and unable to work. Prior Scientific Instruments was prosecuted in 2013 under Section 2(1) of the Health and Safety at Work etc Act 1974 for failing to ensure the health of its employees.

In addition, Mr Whiting was also prosecuted under Section 3(1) of HSW, the general requirement to safeguard the health and safety of people not in your employment. Mr Whiting was fined £1,500, plus £1,000 costs.

The investigating HSE inspector said that: "Whiting's background was in quality control and he did not have adequate knowledge of health and safety for the work going on at this company. He failed to make them aware of the 'do's and don'ts' regarding the use of hazardous chemicals".

He also added that "In 2010, the government commissioned Lord Young to review health and safety laws and among the findings, the inquiry recognised that there were a lot of people claiming to be health and safety experts, who were in fact, not".

Prosecution Example 4

In 2016, Hereford Magistrates' Court heard how an employee contracted dermatitis after being exposed to sensitising ingredients in rubber compounds.

TRP Polymer Solutions Ltd, of Netherwood Road, Rotherwas Industrial Estate in Hereford, was fined £40,000 after a worker contracted allergic contact dermatitis.

An investigation by HSE found the company, which manufactures specialist rubber sealing components and high performance elastomer 'O' rings, had failed to assess risks from products used, or manage those risks.

TRP Polymer Solutions' health and safety advisor failed to understand the underlying issues to the level required for the company to understand its responsibilities.

The firm pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974, and Regulations 6 and 11 of the Control of Substances hazardous to Health 2002, and was fined £40,000 and ordered to pay costs of £6,529.

Paula Underwood, a self-employed health and safety advisor, of Slaughter Castle, Kimbolton, Leominster, Herefordshire, pleaded guilty to breaching Section 3(2) of the Health and Safety at Work etc. Act 1974, for failing to carry out her duty under the act to a level of competence expected by someone carrying out her role, thereby exposing others to risks to their health and safety.

Ms Underwood was fined £1,000 and ordered to pay costs of £200.