

Vertex

at the heart of adventure

Issue 5
August 2018



MYTH BUSTING in the Ropes Course Industry Part 1

In the next couple of newsletters we thought we'd take a look at some of the myths that have crept into our industry over the years and do a little myth busting!

Most of what you will read are questions and statements that we've either been asked about or have heard on our travels to customer sites and industry related events.

First off we're going to be looking at some of the myths around the Law, Regulations, Approved Codes of Practice, Guidance and Standards

Get in touch

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Q. Is BS EN 15567 the Law?

A. No

The status and relationship between the HSWA, regulations, standards, ACOPS and guidance has been a longstanding source of confusion in the high ropes course industry and elsewhere.

The Health & Safety at Work Act, 1974 ("HSWA")

The primary health and safety legislation, the law that governs what we do, both in relation to our employees and our customers, is the HSWA.

“The [HSWA] sets out the general duties which employers have towards employees and members of the public, and employees have to themselves and to each other. These duties are qualified in the Act by the principle of 'so far as is reasonably practicable'. In other words, an employer does not have to take measures to avoid or reduce the risk if they are technically impossible or if the time, trouble or cost of the measures would be grossly

disproportionate to the risk. What the law requires here is what good management and common sense would lead employers to do anyway; that is, to look at what the risks are and take sensible measures to tackle them. ”

HSE Leaflet HSC13(rev1)

Regulations

Health and safety regulations (secondary legislation), like the HSWA, impose legal requirements on duty holders. They are enforced by enforcement authorities like the HSE and local authorities. Examples of regulations applicable to our industry include the Management of Health and Safety at Work Regulations 1999, Work at Height Regulations 2005 and Personal Protective Equipment at Work Regulations 1992.

“The Management of Health and Safety at Work Regulations 1999 (the Management Regulations) generally make more explicit what employers are required to do to manage health and safety under the Health and Safety at Work Act. Like the Act, they apply to every work activity. ”

HSE Leaflet HSC13(rev1)

Approved Codes of Practice

Information intended to assist duty holders in understanding their legal duties can be found in ACOPs and guidance.

Approved Codes of Practice (“ACOPs”) are published by the HSE. They have a special legal status created by the HSWA. When a duty holder is prosecuted for an alleged offence, any provision of an ACOP which appears to the court to be relevant to the duty alleged to have been contravened shall be admissible in evidence. If it is proved the duty holder has failed to follow the ACOP the offence shall be taken as proved unless the court is satisfied the duty holder has complied with the law by some other means.

Guidance

The HSE also publishes guidance on all sorts of health and safety subjects and it's well worth taking the time to read those that relate to our industry. These documents are headed with the initials HSG and are designed to help you interpret the law, help you comply with the law and to give technical advice. If you follow the guidance it's reasonable to assume that you are doing enough to comply with the law.

Whilst there is not a HSG for our specific industry there are some that would be considered analogous enough to be considered relevant in some cases. Two that have recently formed part of investigations and prosecutions are;

- **HSG 175 - Fairgrounds and amusement parks: Guidance on safe practice**
- **HSG 48 - Reducing error and influencing behaviour**

Guidance is also published by industry bodies. A prominent example is the UK Ropes Course Guide, 2015 V4.2. Although not published by the HSE, should a duty holder be prosecuted it is very likely that reliance will be placed on provisions of the UK Ropes Course Guide that are relevant to the alleged offence to prove the duty holder fell short of the standard required in the circumstances.

Standards

British and EU Standards are not sources of law. Consequently, duty holders are not legally obliged to follow them. However, like guidance, where a duty holder is prosecuted the relevant provisions of a standard may be relied upon as a benchmark against which the conduct of the duty holder will be measured. BS EN 15567 is not the law, it is a standard, but one that you could potentially be measured against should there be accident.

It should also be made very clear that the requirements of BS EN 15567 part 1 or 2 are not the bench mark of best or good practice. It is considered the lowest level of safety or the starting point of safety and quality. Simply following BS EN 15567 will not mean

you have met your duties required by law. It does not absolve your need to complete risk assessments and determine for your course, with your staff and your customers what would constitute “ensuring safety” and “as far as reasonably practicable”.

Here is an example of an accident on a zip wire, where the zip wire structure and operation met the requirements of the standard but the EHO investigating it determined that they had not met their duties under the Health and Safety at Work Act section 3.1;



General duties of employers and self-employed to persons other than their employees.

(1) 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.

The zip wire had a very good primary brake called a ZipStop. Then as an emergency brake it had absorbent padding designed to prevent a significant injury should the ZipStop fail or not be operated correctly. This was fully compliant with the definitions in BS EN 15567 for primary brake (3.22), emergency brake (3.23) and also the definition of serious (3.21) injury. It was fully compliant with the relevant clauses in the BS EN 15567 covering the design and build of zip wires.

On this day the ZipStop brake didn't perform its function (the specific reason why is not important here) and the person went straight through and hit the padding. They were bruised, battered, winded and of course extremely scared but not seriously injured as defined in BS EN 15567. So can we assume everything was OK and was this enough for the operation to be meeting their legal duties?

When applying the principles of the HSWA any investigating authority will ask the question is “could or should more have been done to ensure safety that was reasonable and practicable?” We must remember under investigation that it not about what injures occurred but what injuries could have occurred combined with the question “is it right that a paying customer or member of the public is exposed to what could be a controllable risk?” Therefore, would a second brake before the padding take away from the zip wire experience and would it have been reasonable and practicable for one to be installed on this zip wire, designed as it was, at this location with this customer group?

The investigating EHO employed and applied the UK legal duties and determined that a second proper brake was needed and shut the zip wire down until the changes were made. They have now been running it with this extra brake with no negative effect on the operation but a dramatically increased level of safety for their customers.

The lesson here is to conduct proper risk assessments and ensure you are doing all you reasonably and practicably can without it being detrimental to the experience or activity itself. If in doubt consult with experts who can help you.

THE LAW	REGULATIONS	HEALTH AND SAFETY GUIDANCE	STANDARDS & NORMS	GUIDANCE
Health & Safety at Work Act, 1974	Management of the Health & Safety at Work Regulations, 1999	HSG 175 - Fairgrounds and amusement parks: Guidance on safe practice	BS EN 15567: 2015 Parts 1 & 2	UK Ropes Course Guide, 2015 V4.2
	Working at Height Regulations, 2005	HSG 48 - Reducing error and influencing behaviour		
	PUWER, 1998			
	LOLER, 1998			
	PPE Regulations, 1992			

If you want to know more about the HSWA, regulations and standards for our industry then we'd recommend you read the following:

- Health & Safety at Work Act, 1974
- Management of Health & Safety at Work Regulations, 1999
- Working at Height Regulations 2005
- Provision and Use of Work Equipment Regulations 1998 ("PUWER") ACOP
- Lifting Operations and Lifting Equipment Regulations 1998 ("LOLER") ACOP
- Personal Protective Equipment at Work Regulations 1992 ACOP
- BS EN 15567:2015 Parts 1 & 2
- RIDDOR
- First Aid at Work ACOP

So BS EN 15567 is not the law, it is a standard, but one that you could potentially be measured against should there be accident.



Date for your diary....

Industry Day

**"Your staff and customers...
the heart of your operation"**

21st November 2018

Zip World, North Wales

Cost: £50+ vat per person

Time 9.30am - 4.30pm

Four inspiring speakers talking about your staff and customers and how important they are to a successful and profitable business.



**Next MYTH BUSTING newsletter will concentrate on PPE...
...keep your eyes peeled**



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