

Are new NHS hospitals making you sick?



Many of the risks to staff and patients within the healthcare sector, and in particular those connected to the workplace, can be reduced if 'safety by design' principles are considered from the outset, writes Simon Loveday, Partner, VizardsWyeth Solicitors

The NHS is presently one of the biggest procurers of civil engineering work in the UK, through a variety of schemes

from refurbishment of GP surgeries to hospitals built under the Private Finance Initiative.

In 1999 the Office of Government Commerce produced the document "Achieving Excellence Through Health and Safety" requiring the government as a client to set high standards of health and safety at the outset of a project. All very well in principle, but in practice many complications have arisen from the complex way in which health sector construction is planned and managed.

There are three main mechanisms for the funding of this type of construction activity: direct NHS funding, Public Private Partnership and the Private Finance Initiative. There is an estimated £7.5 billion committed to PFIs over the next 10 years, representing the majority of new build activity underway and being planned for the public health sector. The aim of PFI is to transfer the financial risk of projects to the private sector, with the estates owned by private organisations operating on 'contract' to the Trust.

Concerns were raised by the HSE in 2001 that newly built or refurbished healthcare projects were not adequately addressing 'safety by design' principles. Representatives of both the NHS and construction sector visited a number of projects. A range of health and safety problems

were identified, commonly stemming from the uncertainty between the NHS Trust and the PFI over the responsibility for 'safety by design'.

Problems included: non-compliance with the Construction (Design & Management) Regulations by failing to notify the HSE and benefit from its design input until the construction was imminent; a lack of health and safety information given to contractors; and use of architects who were unfamiliar with UK health and safety law.

Resulting health and safety issues included: poor layout of Accident & Emergency departments (placing staff at risk of assault); insufficient space on wards to store and use items such as hoists needed to manoeuvre patients; suspended ceilings too weak to support installed equipment; slippery flooring; lack of water temperature monitoring; insufficiently secured windows in units with volatile patients; and confusion between PFIs and NHS Trusts as to who was responsible for inspecting and maintaining equipment.

It does not take a lawyer to appreciate the abundance of potential legal claims in relation to industrial injuries, clinical negligence, criminal injuries, public nuisance (in relation to risk of legionnaires' disease from poorly controlled water and air conditioning supplies), and more.

HSE stepped in to revise the guidance during 2004. Inspectors are now asked to visit PFI, major PPP or NHS capital funded projects at the design/planning stage to ensure that the principals of

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'safety by design' are appropriately addressed. Inspectors should take proactive steps to identify proposed projects from local knowledge or contact with Trusts, rather than wait for official notification. This is to ensure that HSE input into the planning process is not left too late. Inspectors are also expected to reference extensive guidance material produced by NHS Estates.

Trusts themselves are reminded of the need for clear contractual and leasing arrangements covering the responsibilities for the maintenance of plant and equipment; the need for effective communication mechanisms between the employers sharing PFI sites as a workplace; and their duties under Regulation 11 of the Management of Health & Safety at Work.

It remains to be seen if such steps have been, and continue to be, effective in achieving the 'safety by design' standards.

