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ONR Enforcement Management Model Enforcement Decision Record (EDR)

ENFORCEMENT DECISION RECORD	
Classification Marking:	
Title: [redacted] scaffold fall	Dutyholders: Sellafield Ltd
ONR Division & Sub-division: SDFW	Date: 21/10/21
EDR No.: ONR-EDR-21-036	File Ref: 2021/79464

RELEVANT BACKGROUND

Provide a brief history of the incident and include how was this matter identified / revealed to ONR, with any relevant references?

To provide additional canteen facilities for [redacted] during the Covid 19 pandemic Sellafield Ltd arranged for the construction of a temporary overflow canteen. The canteen is an inflatable dome structure on a scaffold platform. Several contractors were involved in the installation of the dome, including Enigma Industrial Services who designed and built the scaffold platform for the dome and the stairs at four corners of the platform. The installation of the dome, including erection of the scaffolding and electrical work, was a construction project, as defined by the Construction (Design and Management) Regulations (CDM). Where there is more than one contractor working on a project, CDM requires the client (Sellafield Ltd in this case) to appoint a principal designer (PD) and a principal contractor (PC). The client appointed Sellafield Ltd to those roles.

The scaffolding platform was at a height of 1.6 metres. It was designed and built by Enigma Industrial Services Ltd. Access and egress to/from the dome was provided by the permanent [redacted] steps, however four sets of tube and fitting scaffold stairs, consisting of 5 – 7 steps had been erected at the four corners of the scaffold platform. Some witnesses stated that the scaffolding stairs were for emergency use only and personnel using the welfare dome should use the permanent [redacted] steps however, in practice, the scaffold steps were in general use.

On the day of the incident (25/03/21) the IP went into [redacted] to get a drink, then walked out of the main building towards the dome. He noticed that it was full so walked to the scaffolding stair tower on the left-hand side as he exited the main [redacted] building (the location of the incident is shown on slide 1 of 2021/49756, where the steps are labelled ‘back right steps’). As he was walking down the steps he appeared to stumble and then fall down the steps, breaking an ankle and dislocating both knees.

Sellafield Ltd undertook an investigation and identified a lack of consistency with the

rise height of the scaffolding steps. Some steps had a rise height greater than 225mm and others less than 175mm. Relevant good practice provided by the National Association of Scaffolding Confederation (NASC) Guidance (TG20) states that the rise of scaffolding steps should be within the range of 175 mm – 225 mm, with the length of the going defined by the height of rise adopted. It is not known whether this lack of consistency contributed to or caused the fall. The IP states that he does not know why he fell.

It was not possible, as part of the investigation, to determine the dimensions of the steps first-hand, for example: the dimensions of the going, the rise, the angle of the staircase, the height of the handrails as the scaffolding steps had been dismantled by the time the inspectors visited the site.

To determine the underlying causes of the incident, ONR examined the CDM arrangements for the project. Sellafield Ltd was the client, principal designer and principal contractor.

The principal designer is responsible for planning, managing and monitoring health and safety during the pre-construction phase, including eliminating or controlling risks to the health and safety of any person using a structure designed as a workplace.

The pre-construction information collated by the principal designer states that the scaffolding, including access and egress is subject to the design requirements of TG20, effectively stating that the design of the scaffolding and access and egress is the responsibility of the scaffolder. The scaffold request form completed by one of the contractors working on the project did not specify access/egress requirements onto the scaffold. This may have been because, as some witnesses suggest, that the main access route was by the [redacted] permanent steps. However, this was not set out in the pre-construction information. As it was, the design drawings indicated four tube and fitting staircases, without dimensions and without a proper design. This was not picked up by the principal designer or the principal contractor.

Sellafield Ltd's in-house investigation identified inadequate temporary works controls as a root cause of the incident in that that the stairs were an 'add-on' at the end of the process, that they had not been designed or included in the design brief (the scaffold request form). There had been no consultation between the various parties and a temporary works design had not been undertaken at the pre-construction phase.

What, if any, initial follow-up has been carried out by ONR?

An enforcement letter was sent to Sellafield Ltd requiring them to ensure that the scaffolding steps at [redacted] were adjusted to meet RGP in the NASC guidance on going/rise dimensions. The letter also required Sellafield Ltd to confirm that similar steps erected by Enigma on the Sellafield site were compliant with RGP (Ref: ONR-EL-21-001, 2021/49744).

What, if any, action has been carried out by the dutyholder in response?

Sellafield Ltd sent a written response confirming that that the scaffolding steps outside building [redacted] had been re-configured and now met RGP. Sellafield Ltd also confirmed that other Enigma erected scaffolding steps met RGP (Ref: 2021/49731).

Sellafield Ltd re-wrote the plant modification proposal for the welfare dome requiring the stairs to be re-built to comply with part K of the building regulations. In effect, identifying that the stairs should be built to standards of a permanent staircase rather than a temporary scaffold tube and fitting staircase. A full design drawing was produced by Enigma which was approved by Sellafield Ltd. The stair treads have been covered by a GRP overlay to ensure it is suitable for all types of shoes. The stairs were inspected by an independent subject matter expert prior to handover.

APPLICATION OF THE ONR EMM

DETERMINE THE RISK LEVEL (not applicable for Compliance and Administrative Breaches)

Explain the basis for this decision (Table 1 of Enforcement guidance).

The risk level is **moderate.**

The consequence of the incident is **significant** in that the IP has sustained injuries that may lead to permanent disability leading to a lifelong restriction in work capability or a major reduction in quality of life.

The key control measures necessary to satisfy relevant good practice have been significantly **weakened** because a number of Sellafield Ltd standards for CDM compliance were not fully implemented and the Work at Height Regs not fully complied with.

DETERMINE THE LEVEL OF COMPLIANCE (for Compliance and Administrative Breaches)

Explain the basis for this decision (Table 4 of Enforcement guidance)

DETERMINE THE BENCHMARK STANDARD

State the authority and the title of the benchmark standard (Table 2 of Enforcement guidance).

The benchmark standards are:
The Construction (Design and Management) Regulations 2015. The relevant regulations include:
Regulation 4 – Client duties in relation to managing projects:
4(6)A client must take reasonable steps to ensure that –
(a) the principal designer complies with any (other) principal designer duties in regulations 11 and 12
(b) the principal contractor complies with any (other) principal contractor duties in regulations 12 to 14.
Regulation 11 – Duties of a principal designer in relation to health and safety at the pre-construction phase:
11(1) The principal designer must plan, manage and monitor the pre-construction phase (of the project)
11(3) In fulfilling the duties in (1), the principal designer must identify and eliminate or control, so far as is reasonably practicable, foreseeable risks to the health or safety of any person ….using a structure designed as a workplace
11(7) The principal designer must liaise with the principal contractor for the duration of the principal designers appointment and share with the principal contractor information relevant to the planning, management and monitoring of the construction phase and coordination of health and safety matters during the construction phase.
The Construction (Design and Management) Regulations 2015 (CDM) Regulation 13 Duties of a principal contractor in relation to health and safety at the construction phase:
13(5) The principal contractor must liaise with the principal designer for the duration of the principal designer's appointment and share with the principal designer information relevant to the planning, management and monitoring of the pre-construction phase and the coordination of health and safety matters during the pre-construction phase.

The Construction (Design and Management) Regulations 2015 are **defined** standards.

DETERMINE THE BASELINE ENFORCEMENT LEVEL (BEL)
For Risk Decisions (Table 3 of Enforcement guidance)
For Compliance and Administrative Arrangements (Table 4 of Enforcement guidance)
State the BEL to secure compliance with the law. The baseline enforcement level is **enforcement letter**.
APPLICATION OF FACTORS
Dutyholder Factors (Table 5 of Enforcement guidance)
Consider the relevant factors and explain how they have been applied in this instance and if they have had any impact on the BEL, to conclude enforcement action. *The Factors are:*

1. *What is the inspection history of the dutyholder? Reasonable*
2. *What is the level of confidence in the dutyholder? Confident*
3. *Does the dutyholder have a history of relevant formal enforcement? No*
4. *Is there relevant incident history? Some previous regulatory advice on CDM and a current L3 regulatory issue (RI 8624) for CDM improvements*
5. *Is the dutyholder deliberately seeking economic advantage? No*
6. *What is the standard of general compliance? Reasonable*

Strategic Factors (Table 6 Enforcement guidance)

Consider the relevant factors and explain how these have been applied in this instance. If the strategic factors aren't met then discuss the enforcement action with the appropriate delivery lead.

The Factors are:

1. *Does the action coincide with the public interest? It is appropriate for the public interest test that some formal enforcement action is taken because of the severity of the injuries.*
2. *Does the action protect vulnerable groups? Not relevant*
3. *What is the long-term impact of the action? Enforcement action should help achieve sustained compliance.*
4. *What is the effect of the action? Positive*
5. *What is the functional impact of the action? The action should help secure compliance with benchmark standards and is comparable to action taken by other regulators such as HSE.*
6. *Does the action align with the principles and expectations of the EPS? PACTT would be met.*

ENFORCEMENT ACTION RECOMMENDATION

Record the recommended enforcement action here.

Enforcement letter

Role	Name		Date
Inspector	[redacted]	[redacted]	21/10/21
Peer Reviewer (Discretionary)			

DELIVERY LEAD REVIEW – (To be completed by Delivery Lead)

The review process requires delivery lead to consider; that the application of strategic factors is addressed by the proposed enforcement action; whether the proposed enforcement action meets the Enforcement Policy Statement. If prosecution is to be considered that the enforcement action is aligned to the Code for Crown Prosecutors in England and Wales or the Prosecutors Code in Scotland; in this situation, the case needs to be developed in the Investigation and Prosecution

Report and summarised in this section (Include within the review statement the reason the review was initiated).
Note: This section is not applicable to an enforcement decision recommendation of prosecution. *If the decision review concludes that a different enforcement outcome to that recommended is appropriate, then this shall be justified by the delivery lead in this section.* *Should the proposed enforcement action be below the original BEL, then this justification is expected to provide full detail of the rationale for that decision, and the decision should also be independently reviewed, usually by the Operational Inspection Professional Lead.* I support the inspector's recommendation of an enforcement letter (ONR-EL-21-028 (CM9 2021/79464) which is at the original BEL and is a proportionate, targeted response to addressing underlying causes identified as part of investigation ONR-INV-21-002 (CM9 2021/79458). As noted by the inspector above, ONR-EL-21-028 follows on from the initial enforcement letter (ONR-EL-21-001, CM9 2021/49744) sent to Sellafield Ltd requiring them to make improvements to scaffold steps and address the immediate causes.

Role	Name	Signature	Date
Delivery Lead	[redacted]	[redacted]	2/11/21
Operational Inspection PL (if proposed enforcement is < BEL)			

ENFORCEMENT OUTCOME (To be completed by Delivery Lead)
<u>State the Enforcement Action</u> (include any file reference to how the enforcement action was communicated to the dutyholder). *Check:* • *Ensure that the enforcement action deals with the most serious risks in order of priority, and in appropriate timescales.* • *That the cause of the risk is addressed.* • *Underlying problems addressed.* • *That the enforcement action takes into account the scale of the failures, e.g. isolated or multiple failures.* • *The enforcement action deals with the fundamental cause of the problem(s), e.g. workplace precautions, risk control systems or management arrangements.*
My 'Delivery Lead' comments above are relevant.

Enforcement outcome is Enforcement letter ONR-EL-21-028 (CM9 2021/79467) with progress tracking though associated Level 3 Regulatory Issue RI 9046. Investigation report ONR-INV-21-002 (CM9 2021/79458) refers. ONR-EDR-21-037 (CM9 2021/79462) covers application of the EMM to Enigma Industrial Services Ltd.		
Delivery Lead Print Name:	Signature:	Date:
[redacted]	[redacted]	2/11/21

Differences of opinion should be rectified by utilising ONR guidance on Resolving Differences of Regulatory Opinion in ONR; NS-INSP-IN-002.
Convey the enforcement outcome to the dutyholder.
Send completed form to the CNI office for processing.

PUBLICATION SUMMARY:

For notices or directions the following summary will go onto the ONR website. For notices, publication will be once any appeal period has completed.

This may not be appropriate due to security considerations in all cases, if this is the case then please state below – 'Not for publication on security grounds' and discuss with the communications team.

Enforcement Action	
Served against	
Description	
Breaches	
Compliance date	