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*REPORTER: Morland Sanders*

*PRODUCER: Gail Champion*

*EDITOR: David Ross*

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SANDERS: The Health and Safety Executive is an organisation riding high on the first corporate manslaughter conviction last month and the fact that fatalities in the workplaces it polices are lower than ever. Yet is that reason to celebrate? 26,000 people suffer major injuries in their jobs and three people a week die at their place of work.

DEREK: He told me someone is going to get very seriously injured or killed on that site and two weeks later he was dead, so the person he was worrying about really was himself.

SANDERS: The HSE is an organisation that will be hit hard by the Government cuts - its grant will be reduced by 35%. Tonight we reveal how that fall in revenue will affect services designed to keep workers safe. We've obtained leaked documents, indicating the organisation is proposing to cut what it calls 'pro-active' inspections by a further third and make entire sectors of industry immune from an unannounced knock on the door.

RORY: It's capitulation on behalf of the Health and Safety Executive, saying 'Look, we don't have the resources, we're going to effectively give up on inspection and enforcement in the great majority of workplaces.' What it basically is is a recipe for regulatory surrender.

SANDERS: Britain remains one of the least risky places in the world to go to work but is the very organisation that is supposed to keep employees safe now dangerously close to the edge?

### SIGNATURE TUNE

### ACTUALITY – MARK PLAYING GOLF

DOWNNS: Put the balls in [sound of balls dropping into machine]. I'm going to hit a ball, can't even see it [sound of ball being hit].

SANDERS: Mark Downs knocks ball after ball into the crisp blue skies above South Yorkshire. His swing is nigh on perfect and the shots are unremitting in their precision and power. Yet what makes Mark's skill with a club even more impressive is the fact he has significant brain damage and is virtually blind.

DOWNNS: I'd like to see it but I can't, only can see where the ball is, and after there I can't.

SANDERS: At just forty years old, this is one of his few active pastimes these days. His passion for fast cars has been swapped for computer games and nights in the club have made way for evenings in his specially adapted bungalow.

### ACTUALITY AT MARK DOWNS' HOUSE

SANDERS: Is this the new place then?

DOWNNS: Yes, I've had the kitchen done, bedrooms, it's just right for me because there's no upstairs.

SANDERS: Mark Downs' life was changed beyond all recognition after a serious accident at work.

This is a photograph of you and you've got very large bandage around your head, you have significant bruising to both eyes and I notice there are a fair few staples in that scar.

DOWNNS: About 58 staples.

SANDERS: Good quality Sheffield steel?

DOWNNS: Yeah, yeah. I got smashed on my head, I've had a plate on it, I'm blind, I can't smell, can't taste. I have to walk with a stick. I can just walk and my back just goes and I have to go straight down on the floor. I can't believe I'm still alive

SANDERS: Mark Downs was working as a welder with a Sheffield firm, Hadee Engineering. It was an arduous, dirty profession that took him all over the country. It was a job he loved - that was until the afternoon of 24<sup>th</sup> October 2007, the time when a tragic mistake on the shop floor left him only just alive. In the factory, a big job was on. A vast sheet of steel was being cut and transported. Weighing five and half tons, it was hooked on to a lift that was controlled remotely by two separate operators – one for each end of the sheet. At a particular point on the production line, the sheet needed to be raised. One crane operator correctly pressed the up button on his remote, the other mistakenly activated his crane down. This caused five and half tons of steel to swing with great force, hitting Mark Downs who was on a nearby walkway. Rachel Aram is his solicitor.

ARAM: His brain was damaged. The actual sac, the dura of the brain that holds the liquid that your brain essentially sits in had been torn and there was actually brain matter that had unfortunately come detached. The left side of his body was completely paralysed. A number of those injuries are permanent and irreversible.

SANDERS: Mark Downs' legal team believes that those injuries could and should have been avoided if his employer had kept a close eye on health and safety in the factory.

ARAM: There were a number of statutory breaches. The type of lift that was undertaken was a very complex manoeuvre, so there had to be a written method statement with a risk assessment. No risk assessment had been done. They were to have a banksman, a lookout so that no one would then enter that area. They didn't have one of those. Crane drivers dealing with that type of lift had to be appropriately trained, and while the manoeuvre was taking place there had to be supervision by a senior member of staff of that same lift - none of that took place.

SANDERS: The case for compensation went before a civil court and the judge's findings were pretty damning. Despite Hadee's claims to the contrary, the judge found no element of contributory negligence on Mark Downs' part and stated that he should be awarded full damages.

READER IN STUDIO: In my judgement, if there had been compliance with the defendant's common law and statutory duties, there would and must have been a written plan requiring a supervisor, who would have been in a position to direct the lift. There would have been training of the operators so the risk of one getting out of synchronisation with the other would have been negligible to nil. The defendant's system of working failed in every respect.

SANDERS: We contacted Hadee Engineering by phone. They said - and I quote - "Now look here, we're not responsible for that accident, and proof of that is that Health and Safety didn't prosecute. You'd better watch out, I'm warning you." And in that brief phone call, Hadee Engineering hit on what has left the Downs family most confused - why didn't the Health and Safety Executive prosecute Mark Downs' employer? Family solicitor Rachel Aram.

ARAM: The HSE actually issued a letter to the defendants the day after the accident, actually highlighting they were aware that there was no risk assessment, that there had been no banksman, and the letter itself confirmed their recommendations in that those had to be in place in future if there were to be any further lifting manoeuvres. Why they then decided not to prosecute, I cannot say. To me, those are fairly clear cut: you either have a risk assessment or you don't. A person needs to be able to go into their workplace and assume that their employer is complying with Health

ARAM cont: and Safety. Now if that isn't happening, the only way that they will be punished is through Health and Safety prosecution. I would have thought, certainly from the information we had, that they would have been able to do so.

SANDERS: The HSE investigated the accident, but despite the extent of Mark Downs' injuries and despite the crystal conclusions the judge had reached - 'The defendant's system of working failed in every respect' - the HSE decided not to pursue a prosecution. We were very keen to speak to the HSE about a whole range of issues raised in this programme, but the organisation decided not to make anyone available for interview. We were sent an email about the Mark Downs case.

READER IN STUDIO: Before HSE can bring a criminal prosecution for health and safety offences, we are required to be satisfied there is sufficient evidence to provide a realistic prospect of conviction. This requires a higher standard of proof than a civil case. Our investigation did not yield sufficient evidence that the incident could reasonably have been foreseen.

SANDERS: If you look at the official statistics, it would appear the HSE is doing a rather decent job. Estimated number of working days lost due to workplace injuries and ill health is the lowest it has ever been. The number of people fatally injured has fallen by around 80% since the mid 70s, perhaps a result of their overall aim:

READER IN STUDIO: To investigate accidents, enquire into citizens' complaints and enforce the law.

SANDERS: But is the HSE failing to enforce the law by not taking enough companies to court? Well it would appear the case of Mark Downs is by no means a one-off. Academics on Merseyside analysed the HSE's own data and they claim to have found a dramatic fall in the ratio of prosecutions. Dr David Whyte is a sociologist at Liverpool University and claims the HSE is a shadow of its former self when it comes to bringing employers to book.

WHYTE: We found some pretty dramatic trends. We found investigations of reported incidents declined by 63%. We found declines in forms of

WHYTE cont: enforcement action and most notably an almost 50%, an almost halving of the number of prosecutions of those incidents, so the most serious incidents that the HSE deals with are prosecuted at roughly half the rate they were ten years ago. Also, in a six year period, we found that the percentage of fatalities of deaths at work that were prosecuted declined from 46% to 28%. Now that's a very rapid decline indeed, so there's clearly something else going on in HSE. There's clearly a policy shift away from that type of activity.

SANDERS: Going against these figures is the information that the workplace is becoming safer year on year, number of fatalities falling, number of serious injuries falling.

WHYTE: Of course the nature of the type of work and the profile of the British workforce has of course changed and it's changed dramatically in the last twenty years. There are probably many more workers in workplaces that would not be regarded as traditionally dangerous workplaces. So we can't be complacent about the figures based upon an old profile and maybe some would argue an out of date profile of the work that we do in this country.

SANDERS: Again we wanted to speak to the HSE about the claimed fall in the ratio of prosecutions. Nobody was available for interview, but instead we were given a statement:

READER IN STUDIO: Wherever it is warranted by the facts of the case, HSE will hold companies to account for criminal health and safety failings by putting them before the courts. We do not have targets for the number of prosecutions. The only way any employer should find themselves in court is for a serious breach of the law – not to satisfy some numerical target.

SANDERS: There are around one thousand prosecutions for health and safety offences each year. And some companies have been repeatedly brought before the courts for accidents linked to their business. David Leyland was 23 and lived in Northern Ireland. He had just got married and was enjoying life in a new house. According to dad, Derek, he was the life and soul.

DEREK: He was a lovely guy, very thoughtful. I mean, my heart's not the best now and again, but he has fairly speeded it up at occasions. Practical jokes and tricks, you just didn't feel safe around him because anything could happen, he was just a funny guy.

SANDERS: David Leyland had a job at a local landfill site run by the waste management company, Biffa. His salary was paying for improvements to his house and it was when his father was helping him with renovations that he noticed his son looked worried.

DEREK: I went and sat on the front step and I was sitting there having a smoke. David came and sat down beside me and I said, 'David, what is wrong?' And he said to me that he was going to leave Biffa, and I said, 'What do you mean?' He said, 'Dad, machinery and people don't mix,' and he told me that someone is going get very seriously injured or killed on that site.

#### ACTUALITY AT MALLUSK BIFFA SITE

SANDERS: On a Thursday morning in August 2008, David Leyland's wife dropped him off here at work at the Mallusk landfill near Temple Patrick in County Antrim. The site is a quarry and it seems that as one truck heads out with rocks, another heads up the other side to fill the hole with rubbish. It is a busy operation and it is here that David Leyland's fears about a death or an injury on the site would turn out to be tragically well founded.

DEREK: I was just settling down lovely and comfortable, TV on, and the phone went and it was my son Kenny telling me that David had disappeared. I could hear the panic in his voice, so that immediately set my heart racing a bit. I thought it's not like David, you know, David doesn't do things like this.

SANDERS: Derek Leyland has dark memories of when he learned his son was missing and he headed up to the landfill.



DEREK: I'd never been to where he worked before. The smell of rubbish really, I suppose, you know, rotten rubbish. You could just hear the people calling his name. And that name echoing off walls, and you could hear it in their voices, just the urgency, the people being frightened and scared of finding him and hoping to God that he'd got himself stuck somewhere or locked in a hut. I was scared it was something serious, that he was dead.

SANDERS: David Leyland had been working on the tip head. There was plenty of potential danger. Huge lorries reversed to tip tonnes of household rubbish, a bulldozer then scraped the waste across the site before a compactor pushed the rubbish down. The last sighting of David Leyland was early afternoon, they'd been searching for more than a day. Nobody was expecting a happy outcome.

DEREK: I glanced across and I seen earth moving equipment going up on to the site, and I thought, oh, they are starting to dig. This is some thirty hours or something after he went missing. The police liaison officer came marching up to me and said, 'Derek, where is David's wife?' and I knew immediately then and I said, 'Just over here,' and we gathered the family up. And he looked at Carol and he said, 'We have found David and he is dead.' I can hear the screams. I think actually one of the loudest was maybe mine, I don't know. The world just stopped.

SANDERS: David Leyland was found dead approximately seventy metres away from where he was last seen. The family has never been allowed to see his body. But how had David Leyland died? An HSE Northern Ireland investigation began, and it was soon found that there were problems at the Biffa landfill. A traffic light system designed to prevent lorries from coming on to the site until workers were ready was believed to have been out of action. There is no proof that this was in any way responsible for the death of David Leyland, but Mike Mulholland, the local representative from the GMB union, believes it was a fundamental safety breach.

MULHOLLAND: The significance of the traffic light system, it would indicate to any driver seeking access to the landfill site whether it was safe for them to proceed. Apparently the traffic light system had failed so therefore I would have to ask, was there someone responsible for carrying out a risk assessment on that day that would

MULHOLLAND cont: identify a safe method to allow the vehicles to travel up to the tip head? I have never seen sight of any risk assessment for that particular part of the operation.

SANDERS: But hang on a second, this is a multi-million pound turnover company.

MULHOLLAND: Exactly, there's no justifiable reason why an organisation of that size or with that type of turnover shouldn't have safe systems of working in place with regular monitoring of those to ensure that they are fit for purpose.

SANDERS: The HSE Northern Ireland brought a case against Biffa and it pleaded guilty to:

READER IN STUDIO: Failing in duties to ensure, so far as was reasonably practicable, the health, safety and welfare at work of employees.

SANDERS: At court earlier this year in Belfast, Biffa was fined £60,000 plus costs. In a statement Biffa Waste expressed condolences to the Leyland family and told File on 4:

READER IN STUDIO: Biffa pleaded guilty to contravention of article 4 of the Health and Safety at Work Act in relation to 'potential deficiencies' and that the plea was entered under the basis that the death of Mr Leyland couldn't be attributed to any of these potential deficiencies.

SANDERS: Biffa went on to say that there was no record of David Leyland raising health and safety concerns with the company, and it pointed out there were no previous convictions for health and safety offences in Northern Ireland. That is true, but what about elsewhere in the UK? Well David Leyland's death was by no means the first linked to Biffa - five fatalities since 2001. Some of these were the result of what David told his father he was so worried about - that mix of machinery and people.

ACTUALITY WITH COMPUTER

SANDERS: The catalogue of deaths does not make pretty reading. Now, among the cases, June 2001: an employee was killed when he became trapped by the neck in the tailgate of a waste trailer – Biffa fined £30,000. And then youv’e got February 2006: a self-employed contractor run over by a piece of machinery and killed, Biffa fined £240,000. And there’s this one, September 2007: a member of the public hit by a loading device at a household waste site. He was killed. The fine on that occasion - £280,000.

Dave Urpeth is the national Head of Workplace Injuries at solicitors Irwin Mitchell. His firm took on the case of one of those who died, and he’s personally represented a man who severed his foot while working for Biffa. He’s concerned about the level of deaths and injuries linked to the company.

URPETH: I think it’s an extremely worrying track record that Biffa has. Quite frankly that’s unacceptable.

SANDERS: To be fair to Biffa though, the sort of industry they are involved in, it is high risk, and of course there’s a greater chance of a fatality in an operation like that than there would be, say, in the offices of Irwin Mitchell.

URPETH: I’m not sure I accept that. You say it’s a high risk environment. The risks are well known and therefore can be managed. There is no reason why somebody working in the waste management industry should be expected to be crushed to death. The industry knows where the potential hazards are and they can and should take steps to remove those risks so workers are protected from harm.

SANDERS: Biffa declined to be interviewed, but a statement said it had improved communication of safety issues between management and staff. It also pointed to its recent safety record:

READER IN STUDIO: The number of accidents and injuries have been falling significantly since 2001 and our accident rates are some of the lowest in the sector. We always undertake a comprehensive accident or incident investigation, reviewing equipment, procedures, process in order to identify if improvements can be made.

SANDERS: Business leaders claim the vast majority of companies are keeping their offices and factories healthy and safe. Alexander Ehmann is the Head of Parliamentary and Regulatory Affairs at the Institute of Directors. He says that during the current recession, employers have smaller workforces and are therefore even more alert to the need to protect them.

EHMANN: Hearing about any fatality, any injury is a really concerning thing. Ultimately the Institute of Directors don't want any injuries or fatalities, but I think there is a realism that we have to inject, which is that even with the best enforcement regimes, even with the best inspection regimes in the world, we are unfortunately going to have accidents taking place. I think it is important to look at that year on year improvement. Last year's results were the lowest recorded injuries and fatalities ever.

SANDERS: So what do you think therefore about businesses that make tens of millions of pounds in profits but are then found guilty of having unsafe working practices?

EHMANN: Well, I think any company that's found to have unsafe working practices needs to be taken to book and certainly the vast majority of our members would say that too. Fines and penalties should be commensurate to the breach, and therefore if there is very serious harm or potential harm of employees being put at risk, then I think there should be stronger fines for that.

SANDERS: You would be happy to see an increase in the level of fines?

EHMANN: We would be open minded to seeing much stronger penalties in relation to the very worst offences, yes.

SANDERS: That's all well and good after a workplace incident, but what about trying to prevent accidents in the first place? Traditionally the way of checking that companies were keeping up with their Health and Safety obligations was an old-fashioned face-to-face visit either by the HSE or counterparts in local authorities.



MAN: Full PPE – gloves, helmet, eye protection.

DUNSCOMBE: So that's fine.

SANDERS: This employer is in very good shape - shelving is secure, forklifts have been checked and waste is disposed of correctly.

DUNSCOMBE: Is that ok?

MAN: Yeah, that's fine, no problem.

DUNSCOMBE: And I'll leave you to the rest of your day. Thanks for seeing us today.

MAN: No problem at all.

SANDERS: Local Authorities tend to look after smaller businesses - their remit accounting for around 90% of all shops, offices and warehouses. It's the HSE which polices the larger, more high-risk companies in areas such as nuclear, construction and chemicals. Many of those businesses will be visited frequently by inspectors to ensure they are complying with regulations. However, according to Dr David Whyte from Liverpool University, in other sectors of industry, HSE figures show a sharp drop in the use of the door knock.

WHYTE: We found what we regard as a collapse in the number of inspections – a 69% fall in inspections. Now let's be very clear about this, that means that we have less than a third the number of inspections in workplaces than we had ten years ago. But there's another point here, which is that as inspections decline at that level, the capacity of the HSE to know about what goes on in the workplace also declines. So you know, of course, there may well be a long term decline in particular types of injuries, but there are a great number of injuries and diseases which are not recorded in this process that we don't know anything about. And we can only know about them if the HSE was involved in much more inspection and much more surveillance of the workplace.

SANDERS: But that seems highly unlikely to happen.

#### ACTUALITY WITH PAPERWORK

SANDERS: I've just been sent a document that has been leaked to File on 4. It is signed by Geoffrey Podger. Now he is the Chief Executive of the HSE. It's just four pages long, but includes some rather radical proposals. In here he is suggesting a reduction of HSE proactive inspections by a third from 2011/12 onwards in relation to the previously planned levels. Now if I turn to page two, we get the details of how he says that could be achieved. This part states it is not intending to reduce inspection in the high hazard areas, principally nuclear, chemicals and off-shore, but this is where it gets really interesting. He is saying proactive inspections can be stopped in sectors where the proactive inspection isn't seen as cost-effective and also sectors where Mr Podger admits there remains significant risk but proactive inspection is not considered a necessary or useful component in future interventions.

The HSE says these are points for discussion, do not constitute a final decision and therefore it can't comment further. Nor would it confirm which sectors could now be exempt from proactive inspection, but it has campaigners worried. Rory O'Neill is a Professor of Occupational Health at Stirling University and the editor of a workplace safety magazine called Hazards. He fears for employee safety if the HSE proposals become policy.

O'NEILL: What it basically is is a recipe for regulatory surrender, the Health and Safety Executive saying, look, we don't have the resources, we're going to effectively give up on inspection in the great majority of workplaces, but if you work say in many food manufacturing workplaces or print shops, places where you might be rundown by a forklift truck or have your hand sliced off by a cutting machine or a guillotine, things like that, you may never ever see a Health and Safety inspector. But worse than that, your employer will know they will never see a Health and Safety inspector, so if that job needs fixing, if that machine's just working just a little bit wrong, the guard's broken or something like that, well there's no reason to mend it today, you put it off till tomorrow, because HSE's not looking over your shoulder and there's not going to be an







SANDERS: Gareth Young was sixty and the main earner in the family and so he stayed in his job at a packaging factory despite those concerns. Elaine recalls the day he set out to work for the last time in August 2009.

YOUNG: We'd been away to Turkey for two weeks and we'd had a really good time. The next morning he got up to go to work and round about 3 o'clock in the afternoon there was a knock on the door and the two policewomen came in and, you know, said that this accident had happened and that he had died. You just can't believe things like that happen, can you, in work? Coming back from holidays happy, still on a high, you just feel as if you've gone numb and you can't take it in.

SANDERS: According to the family's solicitor, Mick Antoniwi, the accident happened in a disused part of the factory when Gareth Young was in there alone.

ANTONIWI: At the time he was doing something that he had done previously, so he would have seen it as something that was quite natural to him, that he had to do as part of his job. And we also think that management were aware of what was going on, that men were going into this area. So on the day of the accident, Gareth went into it in order to extract a piece of metal from the back of a panel for part of the packaging process in the main factory. Whilst he was extracting it, this large heavy panel began to slide and landed on him and crushed him to death. It was some time before he was actually found.

SANDERS: What's the Health and Safety significance of being in a disused part of the factory alone?

ANTONIWI: Well the first thing is that, because it's an area they weren't meant to be, there would have been no control over what the individuals were doing and there would have been no assessment of what potential risks were there, so there was no consistent system of risk assessment.

SANDERS: Gareth Young had been working in the same factory doing the same job for years, but eight months before he died, his employer went into administration. The staff were taken on by another company with a sole director based in



