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Dear Mr Hetherington

REGULATION 28 REPORT TO PREVENT FUTURE DEATHS – JAMES RYAN MCLAREN

Thank you for your Regulation 28 Report issued following the death of James Ryan McLaren. I would like to convey HSE's sincere condolences to James's family. In your report you raise a number of questions with the LGA, ESA, CIWM and HSE. In particular you have asked HSE to "*clarify what it means in the WISH WASTE 25 formal guidance for bins to be secure, and whether this should include the securing of bin lids by way of a generic lock that can also be opened from the inside to prevent someone from being trapped?*"

The Waste Industry Safety and Health Forum (WISH) is an industry led organisation that exists to communicate and consult with the waste and recycling industry to improve its health and safety performance. The guidance WISH produces, such as WASTE 25, Managing Access to Large Waste and Recycling Bins, is developed by the industry and HSE is consulted on the content. HSE are a member of, and advisor to, WISH but does not own the guidance that WISH produces. HSE does however endorse guidance produced by WISH as a means of managing risk, complying with the law and demonstrating best practice as industry standard.

The legal requirements for managing access to large waste bins stems from the Health and Safety at Work etc Act and associated legislation. The legislation is, in the main, outcome based and not prescriptive on how safe outcomes can be achieved. In relation to large bins the legislation effectively requires those using such bins, and those collecting the contents, to assess risk to others and do what is reasonably practicable to manage that risk. In the case of the risks covered by WASTE 25 this is in relation to the known issue of people taking shelter in large bins and the risk of subsequent injury or death when the bins are emptied into collection vehicles. The law is not prescriptive and WASTE 25 effectively demonstrates the risk and guides users to ways in which it can be managed.

Recognising a growing trend of people being discovered in commercial bins and containers WASTE 25 was developed to provide advice and guidance for businesses that produce commercial waste, manage a waste bin storage area, or collect waste as part of their work activity. It sets out reasonable measures that can be taken to try and prevent people sheltering in bins to prevent the subsequent risk of injury during collection activities. It also includes the steps collection operatives can take to check bins as it recognises that the steps to prevent access are not infallible.

The guidance sets out circumstances that make it more likely that a person may try to gain access to bins taking account of location, the nature of materials collected in the bin, ease of access and so on. These are the factors that a business using such bins will need to take into account to decide what measures they need to adopt to restrict access. Where it is reasonably foreseeable that someone may access a bin the legal obligation on a user is to do what is reasonably practicable to prevent access.

WASTE 25 then sets the reasonable precautions that businesses can take to prevent non-employees (with the exception of collection crews) from freely accessing any bins, i.e. to keep the bin "secure". In this context security is taken to mean preventing a person physically getting into the bin. The guidance highlights factors that could increase the potential of persons accessing commercial bins and containers – such as leaving them in an open and/or unsecured area. Businesses should consider storing their bins within their building, within the curtilage of their premises, or in a dedicated secure area/enclosure. This in itself may be sufficient to prevent access and negates the needs for individual bins to be locked. Other deterrents such as locating bins in a well-lit area will have a role to play.

If securing an area is not sufficient, or not practical, using lid locks to secure bin lids is another potential means of controlling access. There is no specific legal requirement to provide a lock on a commercial bin, nor are there any British or European Standards to which any bin locking device must comply. Therefore a wide range of locking systems, such as "service" or "cabinet" keys, padlocks, gravity locks, lockable straps or combination locks can be found in use.

The type of locking system selected can depend on the location, size, type and use of the bin, and will be influenced by factors such as who has supplied or manufactured it, the material from which it is constructed, and who is collecting it. Again these factors will be a matter that should be informed by a risk assessment that includes a judgement of the likelihood of a person trying to access the bins, and assessment of how robustly the locking device will withstand normal use and attempts to deliberately bypass the device.

Businesses should also monitor their bins (and the surrounding areas) for any signs of attempted access or vandalism as part of their ongoing assessment of the risk.

In deciding how to prevent access to their bins a business will acknowledge that higher levels of security will also add to the time and effort required by collection services to empty the bins.

Bin manufacturers and suppliers have undertaken research to develop a locking system that would be effective for all types of commercial bin and container, and which does not have an adverse effect on collection crews. Part of this research has concentrated on locks that can be opened from within the bin. Whilst these types of locking system are available, it is our understanding that they have not proven popular within the industry as they have not been demonstrated to be reliable often due to the robust way in which bins are used and handled that leads to damage to the locking mechanism.

As your specific question relates to what "secure" means I have not set out any detail of the role of the collection companies in this response. WASTE 25 does however give specific details of how they can work with the users of bins to manage their safety, reduce the likelihood of access and make routine checks to ensure that bins have not been accessed before they are emptied into a vehicle.

Emphasis should therefore be placed on preventing persons from accessing bins. The approach outlined within WISH WASTE 25 - the effective liaison, consultation and communication between those who produce and collect waste - is key to preventing people seeking shelter in commercial bins or containers from being seriously injured or killed.

Yours sincerely




Head of Waste and Recycling.