

The Enforcement Policy and Practice  
of the Health and Safety Executive  
1974-1990

Thesis presented for the Degree of Doctor of Philosophy

Frank Beverley Wright

Volume I

Faculty of Law  
UNIVERSITY OF LEICESTER

1995

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### **Acknowledgements**

I wish to acknowledge the considerable assistance that I have received from my supervisor Professor Alan C. Neal, of Grays Inn, Barrister, Professor of English Law and Director of the Centre for Law, Management and Industrial Relations, University of Leicester. I am most grateful also to Professor Charles D. Drake, of the Middle Temple, Barrister, formerly Professor of English Law and Dean of the Faculty of Law, University of Leeds for his inspiration and encouragement in the pursuit of this research.

I remain indebted to the Health and Safety Executive and the Lord Chancellor's Department and many Crown Court administrators for access to materials. Mr Kevin O'Reilly, Solicitors Office, Health and Safety Executive has given good advice and made many helpful suggestions. However for the statements made and conclusions reached in this thesis I alone accept responsibility. Finally, thanks must go to my wife, Dorothy and my children, Evelyn, Elizabeth and Adrian for their forbearance over many years.

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- 1987 Control of Asbestos at Work Regulations 1987 S.I. 1987 /2115
- 1988 Control of Substances Hazardous to Health Regulations 1988 S.I. 1988 /1657
- 1989 Noise at Work Regulations 1989 /1790
- 1992 Management of Health and Safety at Work Regulations 1992 S.I. 1992 /2051
- 1994 Constuction Design and Management Regulations 1994 S.I. 1994 /3140

## **EUROPEAN REGULATIONS AND DIRECTIVES**

### **Regulations**

Regulation (EEC) No. 1365/75 of the Council of 26 May 1973 on the creation of a European Foundation for the improvement of living and working conditions. O.J. No. L 139/1 30.5.75

### **Directives**

Council Directive of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work. (80/1107/EEC)

Council Directive of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work. (83/477/EEC)

Council Directive of 12 May 1986 on the protection of workers from the risks related to exposure to noise at work. (86/188/EEC)

Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers at work. (89/391/EEC)

Council Directive of 24 June 1992 on the implementation of minimum health and safety requirements at temporary or mobile construction sites. (92/58/EEC)

## 1. Introduction.

The criminal and regulatory law discussed within this thesis is concerned with ensuring the health, safety and welfare of persons at work.

In broad terms the law sets out both to establish what society expects of employers, controllers of premises, manufacturers and to a lesser extent employees and others, and to prescribe punishments for those who fail to meet that standard. The most significant responsibilities are placed on employers who are required to ensure the health, safety and welfare at work of their employees. Other actors in the industrial process, clients, controllers of premises, manufacturers and designers, independent contractors and directors of companies and their senior managers have duties also. Employees have an important but lesser duty to co-operate.

The Health and Safety at Work etc Act 1974, which implemented, most of the proposals of the Robens Committee on Safety and Health at Work,<sup>1</sup> represents the most significant statutory advance in its field since Sir Robert Peel's Health and Morals of Apprentices Act, 1802. The emergence of new toxic substances and the increased risk of catastrophic accidents resulting from the scale of industry or the storage of vast amounts of fuels and the like were felt to justify a new overall look at health and safety laws which had been built up piece-meal over the years. The need has been confirmed by events such as those at Flixborough, Seveso, Bhopal and Chernobyl. These demonstrate that what goes on in factories or other places of work is of interest to others and not only to those who work there. One of the main changes brought about by the Health and Safety at Work etc Act 1974 is the manner in which the "public" dimension is brought within the law. Another change is the way the law has begun to deal with the human or ergonomic side of safety, bearing in mind that most accidents arise through failure of management rather than failures of "hardware". In addition severe defects were apparent in the pre-1974 system.

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<sup>1</sup>Safety and Health at Work, Report of the Committee 1970 - 1972, London: H.M.S.O. Cmnd. 5034 (Chairman Lord Robens)

First was the problem of "apathy" at work. The system tended to encourage people to think of health and safety as primarily a matter of detailed regulation by external agencies.

Second, the statutory system was unsatisfactory on a number of other counts. It was felt that too much law already existed in the form of statutes and subordinate legislation all of which was beginning to have a counter-productive effect. More law and more inspectors was not considered to be the answer. As can be seen in the following chapter the piecemeal nature of the system, grew up to deal with particular empirical problems, often physical problems, such as the safeguarding of machinery. This haphazard approach tended to neglect the equally important questions of attitudes, capacities and performance, or the organisational system within which health and safety is set. The law was felt to be complex, intricate and difficult to understand. Health and safety statutes and regulations had become obscure and were failing to keep pace with the new range of problems. In concrete terms the results were dramatic. Every year one thousand people were killed in the workplace, some half a million people were absent from work for at least three days because of accidents, and some twenty-three million working days were lost annually through absences arising from accidents and prescribed diseases.

The Robens Committee on Safety and Health at Work prescribed a three fold remedy which was first to seek to underpin the detailed safety and health code by a clear, central statement of principles of general application.

Second, to ensure that in both its structure and presentation, the legislation and its supporting instruments should be readily intelligible to employers and workpeople whilst finally a framework would be provided which would promote a progressive and responsible approach to safety and health at work by employers and employees alike.

The clear statement of general principles was to be set out in Sections 2-7 (the General Duties) of the 1974 Act.

One seemingly intractable problem has been the wish to reduce the mass of detailed regulation but at the same time provide a framework for addressing serious health and

safety problems. This is an aspect which requires much vigilance and careful thought because of the danger of reducing national competitiveness through the overburdening smaller businesses for example but also because the reduction of regulation can obviously lead to a reduction in the quality of health and safety protection in the workplace. Inevitably new problems do present themselves and the legislators response is to provide new statutes and statutory regulations and orders.

Officials also respond by adding to the 'mass' by the provision of guidance and codes of practice and as we shall see the overall mass of legislation continues to grow. Some would welcome this state of affairs because it does have some advantages. For very large multinational firms it creates a clear standard which they can easily reach because of the resources available to them and at the same time acts as a benchmark against competition from others. The Robens Committee on Safety and Health at Work recommended that such codes of practice be issued and that such codes would provide the most flexible, discriminating and practical means of promoting progressively higher standards of health at work. The Committee pointed out that codes and standards were easier to introduce and revise, they were more progressive in that they need not be restricted to minimum standards and less likely to inhibit new developments. Further, they were effective in areas where the framing and implementation of effective statutory regulations might have proved impossible.<sup>2</sup>

Measures to repeal legislation are available in Section 80 Health and Safety at Work etc Act 1974 where a power is provided for the Secretary of State or the Minister of Agriculture Fisheries and Food to repeal or modify any of the following provisions (other than the relevant statutory provisions ) where to do so is expedient in consequence of Part 1 of the Act. These provisions are those which:

- (a) are contained in the 1974 Act or pre- 1974 Acts; or
- (b) are contained in any regulations, order or other instrument of legislative character which was made under an Act prior to the 1974 Act; or

<sup>2</sup> (See Health and Safety at Work, J.C. Wood C.B.E., LL.M. (Now Professor Sir John Crossley Wood Kt., C.B.E.) in *Studies in Labour Law*, Ed. J.R. Carby - Hall M.C.B. Books 1976 at page 20).

- (c) apply, exclude or for any other purpose refer to any of the relevant statutory provisions and which are contained in any Act not falling within (a) above or in any regulations, order or other instrument of a legislative character which is made under an Act but which does not fall under (b) above.

By virtue of section 82 (1) the term "modifications" includes additions, omissions and amendments.

A similar power is available under Section 37 the Deregulation and Contracting Out Act 1994 (see below).

Section 16 of the Health and Safety at Work etc Act 1974 provides for the issue and approved codes of practice "for the purpose of providing practical guidance in relation to the requirements of sections 2-7, or health and safety regulations under the Act." Some 50 approved codes of practice have been made under the Act.

Section 17 states that a failure on the part of a person to observe any provision of an approved code of practice does not of itself render that person liable to civil or criminal proceedings. Whilst such a code does not have direct effect, any provision in such a code which appears to a court to be relevant to an alleged contravention of a requirement or prohibition is admissible in evidence. If it is proved that there was at any material time a failure to observe any provision of a code which the court considers to be relevant for the prosecution to prove in order to establish a contravention of a requirement or prohibition, that matter will be taken as proved unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code. Approved codes of practice are approved by Ministers and not Parliament.

#### Europe

But pressures to make new regulations have also emerged with the need to honour our Treaty obligations with the European Union. Over the last ten years, at least, this subject area has become the subject of large scale regulation at European level, principally by



Council directives. This is likely to lead eventually to a complete harmonisation of health and safety law within the European Union.

Article 189 of the EEC treaty provides that a directive shall be binding, as to the result to be achieved upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

The obligation of member states under a Directive to achieve its objects, and their duty by virtue of Art 5 of the Treaty to take all necessary steps to ensure the fulfilment of that obligation, binds all authorities of member states, including national courts within their jurisdiction. It follows that in applying national law, whether the provisions concerned pre-date or post-date the Directive, the national court asked to interpret national law is bound to do so in every way possible in the light of the text and the aim of the Directive to achieve the results envisaged by it. A national judge is bound to interpret national law in conformity with the Directive. A national court is compelled to disapply a provision of national law (or ignore its application) in order to comply with the (unimplemented) obligations of European law.<sup>3</sup>

The United Kingdom is further under a duty to follow the practice of the European Court of Justice by giving a purposive construction to directives and regulations issued for the purpose of complying with directives.<sup>4</sup> It has also been established that in the event of any demonstrable failure by a state to implement the standards of the Directives and provide effective means of enforcement, individuals may in appropriate and limited circumstances sue the State.<sup>5</sup>

#### Wider Powers

Over the last fifteen years various forces have been active. The oil crisis and the supervening world recession placed a brake on on the introduction of regulations which would have added considerably to costs.

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<sup>3</sup> *Marleasing S.A. v. La Comercial Internacional de Alimentacion* [1992] 1 C.M.L.R. 345

<sup>4</sup> *Litster v. Forth Dry Dock Engineering Co. Ltd* [1989] 1 C.R. 341

<sup>5</sup> *Francovich v. Italian Republic* [1992] I.R.L.R. 84

In 1980 Sir Leo Pliatsky recommended that the Health and Safety Commission should publish appraisals of the cost to industry and employers of the measures it proposes, together with estimates of gains from those measures. (Parl. Deb. H.C. May 8, 1980, col. 203). This pressure together with a reduction in overall resources for the Health and Safety Commission and the Health and Safety Executive led to a slowdown in both regulation and enforcement.

However, in the middle and late eighties strong counter pressures for more regulation followed the fire at the Bradford Football Ground, (1985) the capsizing of the Herald of Free Enterprise (1987), the fire at Kings Cross Underground Station (1987), the Piper Alpha Disaster, (1988) the Clapham Junction Railway Accident, (1988), the Hillsborough Stadium Disaster (1989) and the Marchioness Pleasure Boat Disaster (1989). Regulation was strengthened and increased as a result. The requirement for a Safety Case was introduced for both offshore installations and the railways. Similar requirements were already in place for nuclear installations.

For offshore installations the Safety Case enables managers to demonstrate the following:

- (i) that the safety management system of the company (SMS) and that of the installation are adequate to ensure that (a) the design and (b) the operation of the installation and its equipment are safe.
- (ii) that the potential major hazards of the installation and the risks to personnel thereon have been identified and appropriate controls provided and
- (iii) that adequate provision is made for ensuring, in the event of a major emergency affecting the installation (a) a Temporary Safe Refuge .. for personnel on the installation; and (b) their safe and full evacuation, escape and rescue.<sup>6</sup>

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<sup>6</sup> Department of Energy The Public Inquiry into the Piper Alpha Disaster by W. Douglas Cullen H.M.S.O. 1990 2 vols (CM 1310).

Enforcement was improved and manpower for the Health and Safety Executive was increased but early in 1993 the Government's deregulation initiative was given renewed impetus. Member States of the European Union had an economic growth rate of 0.4 per cent in 1993 whilst Pacific Rim economies had developed rapidly to a point where the GDP per capita in Singapore now exceeds that of the United Kingdom. Seventeen million people were unemployed. In his speech at the 1993 Annual Dinner of the Confederation of British Industry, the Prime Minister, Mr. John Major, speaking on the subject of national competitiveness said:

"You create the world class companies. But in a thousand ways, the decisions that we take in Government can help or hinder you. So we, too, are part of Britain's competitiveness."

In January 1993 the Commission agreed that all existing legislation should be reviewed. In any event this was a task which had been signalled as necessary by the authors of the Robens Report in 1972 but for which, until now, resources had not been made available. Nevertheless this pressure should be tempered by caution. The national cost of accidents and ill health is between 2% and 3% of total Gross Domestic Product. Total costs to Society as a whole is estimated to be between £11 billion and £16 billion annually. The health and safety supplement to the 1990 Labour Force Survey reported 1.6 million accidents at work in the previous twelve months and 2.2 million people suffering ill health caused or made worse by work conditions. As a result of these injuries and illnesses a total of 30 million working days were lost and over 20,000 people were forced to give up work.

However, in 1994 in Competitiveness, Helping Business to Win (Cm 2563) it was announced that the Health and Safety Commission had carried out the most extensive review of health and safety legislation for twenty years. Some 370 sets of regulations and 28 Acts were examined. (Review of Health and Safety Regulation Main Report) This followed hard on the heels of the Department of Trade and Industry Report on Deregulation - Cutting Red Tape and the Report by the Comptroller and Auditor General: Enforcing Health and Safety Legislation in the Workplace. H.M.S.O 1994.

In its Review of Health and Safety Regulation Main Report the Commission made wide ranging recommendations, aimed at significantly reducing the burden on business of health and safety legislation whilst maintaining health and safety standards. In its report the Commission recommended a reduction of 94 in the number of health and safety regulations in force including the removal of over 40% of those which currently affect the generality of business. It further set out detailed proposals for the further simplification, clarification and modernisation of the remaining health and safety law. It proposes new and clearer guidance on specific regulations which have been criticised for their complexity; and makes recommendations aimed more generally at improving advice for business, particularly small business, on how to comply with the law. Finally, it proposed that strategies should be adopted which aim to make enforcement practice more coherent, consistent and effective. Measures will be introduced under the Section 80 of the Health and Safety at Work etc Act 1974 and the Deregulation and Contracting Out Act 1994 (c 40). The latter Act which came into force on 3 November 1994 seeks to

" amend, and make provision for the amendment of, statutory provisions and rules of law in order to remove or reduce certain burdens affecting persons in the carrying on of trades, businesses or professions or otherwise, and for other deregulatory purposes; to make further provision in connection with the licensing of operators of goods vehicles; to make provision for and in connection with the contracting out of certain functions vested in Ministers of the Crown, local authorities, certain governmental bodies and the holders of certain offices; and for purposes connected therewith."

As part of that review attention was drawn to some concerns that have been expressed about the usefulness of approved codes of practice. The Health and Safety Commission have therefore agreed to re-examine the current portfolio of ACOPs, including their coverage, style, content and practical value to industry. The Health and Safety Commission say that the aim will be to return to a situation where if Approved Codes of Practice are used they give practical guidance on specific hazards or to key sectors of industry on the implementation of legislation, especially legislation which applies across the board. A consultative document "The role and status of Approved Codes of Practice" was issued in 1995.

### Corporate Responsibility

Society also has concerns which have been loudly expressed in the media concerning the punishment of directors of companies when their employees have been killed at work. A television programme was broadcast in 1994 on Channel 4 entitled 'Dead Reckoning' in which Anthony Scrivenor Q.C., a prominent member of the English Bar, called for more cases to be prosecuted for manslaughter. On 20th May 1993 the Lord Chief Justice, Lord Taylor of Gosforth, giving judgement of the Court of Appeal (Lord Taylor of Gosforth C.J., Henry and Blofeld JJ.) in Regina v. Prentice<sup>7</sup> said:

"Before parting with these cases, the state of the law of manslaughter prompts us to urge that the Law Commission take the opportunity to examine the subject in all its aspects as a matter of urgency."

Comments which were affirmed by Lord Mackay, the Lord Chancellor giving judgement in R v. Adomako<sup>8</sup> in the House of Lords.

The Law Commission accepted that there was a widespread feeling amongst the public that action should be taken against companies where death has been caused by the acts or omissions of employees and that the law of manslaughter should be used against corporate bodies. It also recognised that the law in this area was unclear. The Law Commission has responded to these demands for the use of the law of manslaughter by publishing a consultation paper, looking at gross negligence manslaughter, recognising that the current rules of unlawful act manslaughter are not capable of fulfilling this function. The Law Commission has therefore provisionally proposed that there be a special regime applying to corporate liability for manslaughter where the accused. In so doing it has recognised that corporations are more likely to have failed to act rather than engaged in conscious wrongdoing. The proposal is that there be a special regime applying to corporate liability for manslaughter in which the direct question would be whether the corporation fell within the criteria for liability of the offence summarised below.

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<sup>7</sup> Regina v. Prentice [1993] 3 W.L.R. 927 at page 952

<sup>8</sup> R v. Adomako [1994] 2 All ER 79

1. Ought reasonably to have been aware of a significant risk that his conduct could result in death or serious injury and
2. His conduct fell seriously and significantly below what could reasonably have been demanded of him in preventing risk from occurring or in preventing the risk, once in being, from resulting in the prohibited harm.<sup>9</sup>

In December 1994 OLL Ltd (formerly Active Leisure and Learning Ltd) became the first company in English legal history to be convicted of the common law crime of manslaughter. The company was fined £60,000. Peter Kite, 45, its managing director, also became the first director to be given an immediate custodial sentence for a manslaughter conviction arising from the operation of a business and was sentenced to three years' imprisonment. Both defendants were found guilty on four counts of manslaughter arising from the deaths of four teenagers on 22 March 1993.

Finally, the claim has been made that the common law has a preventive role in addition to its main reparative role. As one judge has remarked, the civil sanctions running into tens of thousands of pounds can be a more coercive sanction than small fines imposed under health and safety legislation. The dual roles of the common law - reparative and preventive--have incurred some well-deserved criticism.

As has been remarked if a compensation system could be found which would serve both the purposes of compensation well while at the same time providing a deterrence against conduct which caused accidents or injuries, everyone would welcome it with enthusiasm. But if the two targets of compensation and deterrence are targeted by one regime, one may may well end up with worst of all possible worlds.

If the common law has some preventive effect, that effect is variable and easy to exaggerate. Most cases involve inadvertence or negligence rather than deliberate wrongdoing. By definition, negligence is a state of mental inadvertence when the possibility of sanctions is normally furthest from the tortfeasor's mind. The idea that the Law of tort is a loss-shifting mechanism between the victim and the tortfeasor is largely

<sup>9</sup> The Law Commission Consultation Paper No. 135. Criminal Law Involuntary Manslaughter H.M.S.O. 1994.

undermined by the practice of insurance which, in respect of employer's liability, has been compulsory since 1969. The loss is then shared amongst the policy holders. No doubt, premium loading in the light of a bad claims record has some deterrent effect, but even then the economic cost of such loading may be passed on to the consumer as the ultimate guarantor.

#### Outline Plan

This thesis begins by addressing the development of the health and safety enforcement agencies from a historical perspective from 1802 onwards. An examination of this area provides important background information on the development and scope of health and safety law and policy indicating both its content and future direction. The purposes and approaches to the Health & Safety Executive's enforcement and prosecution policy are then evaluated as are prosecution criteria, the latter both in respect of cases heard by way of indictment and prosecutions heard summarily and the Health & Safety Executive's policy concerning appeals. The prosecution of corporate bodies is most important part of this policy and practice and in some respects is also the subject of legal development, particularly with respect to the law of manslaughter and the disqualification of company directors.

This area of law and policy fits firmly within the social policy constraints of the European Union and this again is examined from a historical perspective to present day. The influence of the European Union on this aspect of social policy has grown considerably over the last forty years. Over the last ten years this has become much more the case due perhaps principally to the passage of the Single European Act and European Commission's Third Action Programme on Safety and Health at Work (1988). The latter Programme made it clear that the new legal base provided for in the revised Treaty was to be taken as contribution a significant boost for action in these fields. This phase of activity derived much of its inspiration from the 1989 Community Charter of Fundamental Social Rights of Workers<sup>10</sup> and from Part X of the Commission's associated Action Programme of 29th November 1989.

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<sup>10</sup> The United Kingdom was not a signatory to the Community Charter of the Fundamental Social Rights of Workers.

The British Government's current policy to remove unnecessary burdens on industry and the consequent ongoing review of all health and safety legislation is also discussed. Finally, the policy of the courts in dealing with serious criminal offences concerning health and safety matters is addressed.

This study draws upon original materials made available to the author by the Health & Safety Executive and the Lord Chancellor's Department. Much of the material is no longer available because of weeding of Government and Court files. In order to provide the reader with a clear indication of the original raw data from which many of the points expressed in this thesis derive directly or indirectly the author has consolidated the material into a number of annexes. These contain a record of cases heard in the higher courts and initiated by the Health & Safety Executive over the period 1975 - 1990, a statistical analysis and detailed study of the prosecutions initiated by the Health & Safety Executive in the Crown Court over this timescale.



## 2. **Institutional structure 1802 - 1990.**

"This century of experiment in factory legislation affords a typical example of English practical empiricism. We began with no abstract theory of social justice or the rights of man. We seem always to have been incapable even of taking a general view of the subject we were legislating upon. Each successive statute aimed at remedying a single ascertained evil. It was in vain that objectors urged that other evils, no more defensible, existed in other trades or amongst other classes, or with persons of ages other than those to which the particular Bill applied. Neither logic nor consistency, neither the over-nice consideration of even-handed justice nor the quixotic appeal of a general humanitarianism, was permitted to stand in the way of a practical remedy for a proved wrong."<sup>11</sup>

### **Nineteenth Century: Responding to the Forces of Change:**

#### **Setting the Standard.**

Early in the nineteenth century it was realised that remedies afforded by the common law were insufficient to deal with the scale of injury and disease brought about by the new industrialism. In the aftermath of the Napoleonic Wars and the disastrous Corn Laws, rural labour quickly swelled the growing urban populations. The owners of the new coal mines and cotton mills were concerned to produce as much as possible as cheaply as possible and as quickly as possible. Their employees, on the other hand, wanted to earn wages high enough to keep them alive and to make their working and living conditions tolerable. At that time, the new working conditions were indeed repressive. Women could be employed in coal mines and small children could be required to work in cotton mills for up to fourteen hours per day. Following the invention of the water frame, patented in 1769, large numbers of pauper children were shipped from major centres of population to become apprenticed to the cotton masters whose mills had been erected in remote locations where water but not labour was in plentiful supply. Nearly half a century later critics of the system were able to write:

<sup>11</sup> Sidney Webb (1910) in *A History of Factory Legislation*, B.L.Hutchins and A. Harrison Third Edition London Frank Cass 1966.

"there is abundance of evidence on record, and preserved in the recollections of some who still live, to show that in many of the manufacturing districts....cruelties the most heart-rending were practised upon the unoffending and friendless creatures who were thus consigned to the charge of master manufacturers; that they were harassed to the brink of death by excess of labour, that they were flogged, fettered, and tortured in the most exquisite refinement of cruelty; that they were in many cases starved to the bone while flogged to their work, and that even in some instances they were driven to commit suicide to evade the cruelties of a world in which, though born to it so recently, their happiest moments had been passed in the garb and coercion of a workhouse."<sup>12</sup>

Bargaining about wages was impossible: often payment was made in kind rather than in cash and 'tommy shops' grew up where workers were obliged to buy goods from their employer in lieu of their wages.

Sir Robert Peel's Act for the preservation of the Health and Morals of Apprentices and others employed in Cotton and other Mills, and Cotton and other Factories passed in 1802, although not a factories act in the modern sense but which purported to deal with the bad conditions created by the Poor Laws and the Re-Settlement Acts, was the first of many British statutes to regulate the hours of workers and their conditions of labour. The Act further sought to lay down very general standards of heating, lighting, ventilation, etc. and to provide for the education of pauper children who had been brought to work in the factories. By this statute, apprentice children could not be employed for more than twelve hours per day, nor could they work at night. The Act recognised the need for enforcement but unfortunately relied for this on the appointment of unpaid visitors by local justices of the peace (inspectors), one of whom had to be a clergyman. These arrangements were quite ineffective. The visitors, who were supposed to be unconnected with mills or factories, were given wide powers to enter and inspect premises and were required to make regular reports to Quarter Sessions. but most visitors lacked competence or were afraid to antagonise the mill owning magistrates. They had little interest in these problems or were too closely allied to the cotton mill owners to encourage compliance with the law.<sup>13</sup> Sadly, the Act's requirements were very largely misunderstood or ignored.

<sup>12</sup> Fielden J. (1836) *The Curse of the Factory System*. London

<sup>13</sup> Carson W.G., "The Conventionalization of Early Factory Crime" (1979) 7 *International Journal for the Sociology of Law* 37 - 60.

The Act of 1802, however, relied on the enduring themes of a limitation of working hours, control of physical conditions, and the principle of enforcement - themes which were to be developed in subsequent legislation.

Over the next twenty years further acts were passed in vain attempt to address the enforcement problem. To further widen these themes in 1815 Sir Robert Peel attempted to secure new legislation which in its protective measures took account of the technological and employment changes over the previous decade. The Bill was to be dropped because Peel didn't wish to antagonise the millowners. In the end the measure was dropped in favour of an investigation by a select committee of the House.

The 'class war' continued to develop, however. In the summer of 1819 a large crowd of some 60,000 people assembled in St. Peter's Fields in Manchester, chiefly to hear the radical orator Henry Hunt. When the mounted yeomanry were sent by the magistrates to arrest Hunt they charged the crowd, killed eleven people and wounded some four hundred, including over a hundred women. The 'massacre of Peterloo' provided a sharp warning to the mill owners and the middle classes of the dangers of such savage repression.

*The Times*, four days after Peterloo, pointed out the moral which the more liberal sections of middle class opinion drew from it:

"The more attentively we have considered the relations subsisting between the upper and the labouring classes throughout some of the manufacturing districts, the more painful and unfavourable is the construction which we are forced to put upon the events of last Monday .... The two great divisions of society there, are - the masters, who have reduced the rate of wages; and the workmen, who complain of their masters for having done so. Turn the subject as we please, 'to this complexion it must come at last'."

A further statute in 1819 applied only to cotton factories and restricted the minimum age of employment to nine years of age and prohibited in those factories the employment of children and young persons under sixteen for more than twelve hours per day (excluding

meal times) or after 9.00 p.m. Subsequent measures in 1825 and 1831 attempted to reinforce or extend these controls.

In 1830 Bentham's Constitutional Code was published, a work which advocated central inspection, the Short or Ten Hours Movement began. This marked the beginning of a twenty year campaign for statutory limitation of the working hours of women, young persons and children (and hence, by implication, of those male operatives also) which dominated the early development of factory legislation. The supporters of this movement were interested in and orientated towards the actual impact of legislation upon people's actions, towards 'influencing behaviour through enforcement.'<sup>14</sup>

The 1831 Act had brought in a twelve hour day for young persons in cotton mills, but its lack of effect served only to intensify agitation in the working class districts.

Historians are at one in their assessment that these measures were largely ineffectual and did little to ameliorate conditions for both adults and children who were obliged to work in the cramped, dangerous and dirty surroundings of the textile mills of those days.

In 1833, Lord Ashley introduced to the Commons his Bill to 'Regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom'. The Bill included provisions to allow a coroners jury to investigate the causes of death by factory machinery with the possibility of charges for manslaughter in the event of the manufacturers being shown to be negligent. Ashley's Bill was defeated but in 1833 the textile manufacturers secured the appointment of a Royal Commission to collect information in the Manufacturing Districts, relative to the Employment of Children in Factories. It concluded:

"On the whole we find the present law has been almost entirely inoperative with respect to the legitimate objects contemplated by it, and has only had the semblance of efficiency under circumstances under which it conformed to the state of things already in existence."<sup>15</sup>

<sup>14</sup> See J. Gusfield, *Moral Passage: The Symbolic Process in Public Designations of Deviance*, in C.A. Bersani (ed) *Crime and Delinquency*, London, Macmillan, 1970 p.65.

<sup>15</sup> P.P. 1833,XX, p.36.

These men who were probably motivated more by selfishness rather than philanthropy were keen to have hours worked in their competitors factories reduced to the levels worked in their own. The commissioners recommended that improvements be made to enforcement including the appointment of itinerant inspectors with wide powers to enforce the law. They also envisaged that the inspectors would have a policy making role:

"It should be the duties of the inspectors to meet as a board, to report periodically to the Government for the use of the Legislature as to their proceedings and as to any amendments of the law which they might find requisite."<sup>16</sup>

However, in 1833 the Factories Regulation Act<sup>17</sup> which was to be described as a turning point in factory legislation was also passed. This statute, known as Lord Althorp's Act and entitled 'An Act to regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom' provided *inter alia* that the twelve hour day for young persons would be retained and extended to cover those in woollen and linen mills as well as those in cotton mills. Provision was also made for the elementary education of child workers. After 1833 no child under eleven for the first year, under twelve for the second, and under thirteen for the third, was to be employed for more than forty-eight hours a week, or for more than nine in one day. No person under eighteen was to be employed more than sixty-nine hours a week, or more than twelve hours in one day. Of these periods, an hour and a half each day was to be allowed for meals, and children of the protected age groups were to attend school for at least two hours each day. However the Act's most important feature was provision for a means of enforcement. Four inspectors, Horner, Saunders, Rickards and Howell were appointed by central government and were each paid £1,000 per year. They were each responsible for a large region and had rights to enter some three thousand textile factories or mills; could make rules, regulations and orders as were necessary to implement the Act; and had powers similar to those of justices of the peace in enforcing it. Eight sub-inspectors or superintendents with lesser powers were appointed on salaries of £250 per year, but with deductions for travelling expenses.

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<sup>16</sup> P.P. 1833,XX, p.72-3.

<sup>17</sup> An Act to Regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom. See also Reports of the Central Board of H.M. Commissioners for Inquiring into the Employment of Children in Factories HC 1833

They were much less important, however, since they enjoyed no right of entry to factories until 1844.

#### The First Inspectors - A Profile

Leonard Horner F.R.S., was born in Edinburgh in 1785, the third son of a linen manufacturer. Horner was made a partner in the family firm in 1804, was for a short time a Lloyds underwriter and from 1827-1831 was warden of London University.

Little is known of Saunders.

Robert Rickards lived in India and was for a time a partner in the East India enterprise, Rickards, Macintosh and Company. He resigned from the Inspectorate in 1836 because of ill health. He was replaced by James Stuart, J.P. who was formerly an assistant commissioner for Scotland in the Factories Inquiry Commission.

Thomas Howell was a barrister. From 1822 he was Judge Advocate and Judge of the Vice-Admiralty Court at Gibraltar. In 1830, he was secretary to the Commissioners of Colonial Inquiry, and, in 1832, was himself a Commissioner for West India Relief.

#### The Distribution and Composition of the Inspectorate, 1833 - 1857<sup>18</sup>

Inspector	Period of Office	Districts (after reorganization in 1837)
Horner	833 - 1859	Northern counties of England including Lancashire and parts of Yorkshire
Howell	1833 - 1858	The western half of England from Dorset to the Mersey, and all Wales
Saunders	1833 - 1852 1852 - 1891	The eastern half of England from Redgrave Hampshire to North Yorkshire
Stuart	1836 - 1849	The whole of Scotland and Ireland
Kincaid	1849 - 1861	

<sup>18</sup> From: Safety at Work: The Factory Inspectorate in the Fencing Controversy, 1833 - 1857 by Peter W.J. Bartrip Working Paper No.4 1979 Social Science Research Council.

K.W. Wedderburn has observed that:

"[these] four inspectors were perhaps the most important innovation in British labour legislation."<sup>19</sup>

whilst Marx in Capital praised the work of these inspectors singling out Horner as rendering "invaluable service to the English working class."

Notwithstanding this important move, the Act accommodated the millowners because although it imposed further restrictions and controls, it did not mark any imminent shift towards a more 'criminal' status for the offending employer. Indeed it may be said that this process was effectively stemmed and, beginning with this statute, nineteenth century employers successfully retained a right to substantial immunity from the penal and other adverse implications of their criminal conduct.<sup>20,21</sup>

Between 1833 and 1844, Inspectors possessed both the power to prosecute and to act as magistrates on their own behalf. As has been noted above, sub-inspectors could also be appointed. The Act made specific reference to the failure of the enforcement provisions of the 1802 Act as the justification for this administrative innovation.<sup>22</sup> Although these legislative changes took some time before they began to take effect, these moves did begin to draw support from the larger and more socially aware employers as they recognised the benefits of a better disciplined workforce and the competitive advantage that fairly enforced regulations would bring.<sup>23</sup> Up to 1836 the policy was one tempered by caution: Inspectors were under instructions to be:

"in communication exclusively with the employers with a view to making the law acceptable to them."

<sup>19</sup> in *The Worker and the Law* (1971) at p.239

<sup>20</sup> See W.J. Carson, *Symbolic and Instrumental Dimensions of Early Factory Legislation* in Hood Roger, 'Crime, Criminology and Public Policy' 1974 London: Heinemann. (pp.135, 138) and

<sup>21</sup> W.J. Carson, *The Conventionalization of Early Factory Crime* in *International Journal for the Sociology of Law* 1979 7, 37 - 60.

<sup>22</sup> See generally Horner L., *On the Employment of Children, in Factories and Other Works in the United Kingdom, and Some Foreign Countries, 1840.*

<sup>23</sup> Carson W.J., "The Conventionalization of Early Factory Crime" (1979) 7 *International Journal for the Sociology of Law* 37 - 60.

It has been suggested that this period marked the

"beginning of the process whereby modern factory inspection, despite its operation under the criminal law, came to accept violation of the law as a conventional feature of industrial production, only meriting prosecution under the most unusual circumstances."<sup>24</sup>

#### Doctrine of Common Employment

It was only in 1837 that the case of Priestley v. Fowler (1837)<sup>25</sup> appeared to establish, for the first time, that an employer owed, in common law, a duty of care to his employee which was actionable by the employee if breach resulted in injury. However, Priestley v. Fowler and Bartonshill Coal Co. v. Reid (1858)<sup>26</sup> also established the doctrine of common employment. Under this common law principle if the cause of the injury to the plaintiff employee was the negligence of a fellow employee, the employer was not to be held vicariously liable unless the plaintiff employee could prove that the fellow worker was incompetent and that the employer had thereby been negligent in engaging him. In Farwell v. Boston and Worcester Rail Road Corporation (1842)<sup>27</sup> the American Courts had reached a similar conclusion. The common law thus continued to offer extremely limited protection for the worker.

Benjamin Disraeli published the novel *Sybil*, in 1845. He gave it the sub-title *The Two Nations* and advised readers that the oppressive scenes described were derived from his own observations. *Sybil* ends with the advance of an outraged mob on Diggs' tommy shop which they burned to the ground.

<sup>24</sup> W.J.Carson, The Conventionalization of Early Factory Crime.in International Journal for the Sociology of Law 1979 7, at page 51.

<sup>25</sup> Priestley v Fowler (1837) 3 M&W 1

<sup>26</sup> Bartonshill Coal Co. v. Reid (1858) 3 Macq 266 and 300

<sup>27</sup> Farwell v. Boston and Worcester Rail Road Corporation (1842) 4 Metcalf, 49



### INFORMATIONS PRESENTED ON BREACHES OF SAFETY CLAUSES.<sup>28</sup>

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Prosecution policy over 20 year period.: 1839 - 1858.

(Four inspectors, Horner, Saunders, Rickards and Howells).

[1839 one in 24 manufacturers was prosecuted]

1845 - 42 prosecutions

1846 - 53 prosecutions

1858 - 5 prosecutions

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Between 1844 and 1856 a series of Factory Acts were passed, starting with textile factories, but later extended to include other factories: each Act was the consequence of some more or less transient hazard. The Factories Amendment Act 1844 established for the first time in the United Kingdom certain minimum standards of health and safety. This legislation provided for the safety of children, young persons, and women including provision for the fencing of machinery, hours of work, meal times and holidays. The 1844 Act, like the Coal Mines Inspection Act 1850, was significant in that the Home Secretary was given power to award part of any fine imposed on an employer to a worker because of the criminal breach. This form of compensation was hardly ever used and the provision was finally repealed in 1959. Perhaps part of the reason for this might be found in the following words of Rigby L.J. in the case of Groves v. Wimborne (Lord) [1898].

"a very slight injury may be occasioned to a workman by a very gross and wilful neglect of the duty imposed by section 5 (Factory and Workshop Act 1878) In such a case it would not be right for the magistrates to inflict a slight penalty, such as £5, because the injury caused was trivial. If they considered that there had been a deliberate evasion or neglect of the provisions of the Act, it might be right for them to inflict the full penalty of £100. But on the other hand, there may be a case in which the injury to a workman is grievous, but the offence is comparatively venial.....It

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<sup>28</sup> Source: P.W.J. Bartrip and P.T. Fenn, The Enforcement Policy of the Early Factory Inspectorate, 1844 - 1864 in (1980) 58 Public Administration 87 - 102.

seems to me that there may be cases in which they would be entitled to say that the offence was slight though unfortunately it caused serious injury to the workman, and therefore only a small fine ought to be imposed." <sup>29</sup>

The Factories Amendment Act 1844 also provided for administrative measures in the form of notice provisions by inspectors as a means of securing compliance without immediate resort to punitive sanctions. In 1845 a further seven sub-inspectors or superintendents were appointed, bringing the total number of inspectors at this grade to fifteen.

#### Laissez-faire Liberalism

During the period 1846 to 1874 the Whigs and Liberals held office for twenty three years and the Conservatives for less than five. In home policy the substance of liberalism was *laissez faire* in economic life, involving low taxation, the piecemeal improvement of social conditions without radical overhaul and the encouragement of private charity and voluntary association. About 78% of convictions for breach of safety regulations established under the 1844 Act were dealt with by minimum fines. There was a marked downward trend in the number of prosecutions for breach of safety regulations from 1846 (the high point) to 1860, notwithstanding the fact that the accident rate was rising. <sup>30</sup>

The criticism should not be wholly directed at the inspectors. They didn't possess full autonomy in deciding policy, their organisation was overstretched, the legislation was imprecise, magistrates were biased and witnesses were unreliable because they feared repercussions from or had been bribed by the factory owners. Indeed the inspectors themselves were demonstrably under pressure from the factory owners. The success of prosecutions was therefore extremely uncertain.

In 1848, inspectors expressed both themselves forcibly against some magistrates and revealed important aspects of their early prosecution policy as follows:

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<sup>29</sup> *Groves v. Wimborne* (Lord) [1898] 2.Q.B. 402

<sup>30</sup> Bartrip P.W.J. *Safety at Work: the Factory Inspectorate in the Fencing Controversy*, Centre for Socio-Legal Studies Working Paper no.4. 1979.

"We deem it our duty to call your Home Secretary special attention to certain parts of the individual reports now presented to you, where you will find that some magistrates have dismissed cases on interpretations of clauses of the Factory Act which we are unanimously of opinion they have wrongly interpreted.

We are most cautious in never prosecuting unless where we feel that the act complained of constitutes an offence clearly pointed out by the law, nor unless we believe we can satisfactorily prove the commission of the offence. In the cases to which we refer there was not want of evidence to prove the facts charged, but the magistrates held that they were not violations of any provision of the Factory Acts."

The Ten Hours Act of 1847 was relaxed by the courts by legitimating children and women working in relays.<sup>31</sup> Parliament reacted swiftly with the passage of The Factories Amendment Act 1850 forbidding relays and countering Ryder: but weekly hours were increased to sixty.

The 1856 Act relaxed some of the requirements of the 1844 Act. The administrative measures provided in the Factories Amendment Act 1844 in the form of notice provisions by inspectors as a means of securing compliance without immediate resort to punitive sanctions referred to earlier were amended and occupiers were given the right of appeal by way of arbitration.

However, considerable pressure was building for the passage of further protective measures. In 1864 and 1867 specified non-textile factories (including pottery, match-making, foundries, blast furnaces, copper mills and all manufacturing processes employing more than 50 people) and workshops were subjected to some of the statutory requirements.<sup>32</sup> By 1864 there was one H.M. Chief Inspector of Factories and 22 sub inspectors.

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<sup>31</sup> *Ryder v. Mills* (1850) 3 Exch 853)

<sup>32</sup> The Factories Acts Extension Act 1867 and the Workshop Regulation Act 1867.

"[In this period] [t]he law and the legal system defined and limited enforcement procedures open to inspectors. What Inspector Saunders called 'the vague and uncertain state of the law' discouraged him from prosecuting all manufacturers on whose premises mill-gearing accidents occurred. The words 'securely fenced', he pointed out, could be very differently interpreted by different people.<sup>33</sup>

"Also, given the moderate sanctions applicable under the 1844 Act, there was little point in inspectors prosecuting hard-headed businessmen when the result of a conviction would merely to demonstrate the leniency of the criminal law. A much better policy, it could be argued, was to treat prosecution as an ultimate weapon, much more powerful in its threat than in its reality, for prosecution was not often a great hardship to employers. When inspectors did prosecute, they found magisterial attitudes a powerful deterrent against repetition of the proceeding."<sup>34</sup>

The common law was still proving inadequate however. In Clarke v. Holmes (1862),<sup>35</sup> some fencing had broken and the employer was held liable: but Wilson v. Merry & Cunningham (1868)<sup>36</sup>, followed by Allen v. New Gas (1876)<sup>37</sup>, established that the employer could, under the doctrine of common employment, avoid the liability for defective machinery by simply delegating to a subordinate the responsibility for making and keeping it safe.

In the Administration of Safety: The Enforcement Policy of the Early Factory Inspectorate, 1844 - 1864 Bartrip P.W.J. and Fenn P.T.<sup>38</sup> conclude that:

"even allowing for inspectors' enforcement policies and the constraints under which they worked, their overall impact on the accident rate was .... less than impressive."

<sup>33</sup> Half Yearly Report 1844-1845 (P.P. 1845,xxv) p.471. See P.W.J. Bartrip 'Household Words and the Factory Accident Question', *The Dickensian* 75, (1979), 17-29.

<sup>34</sup> Source: P.W.J. Bartrip and P.T. Fenn, *The Enforcement Policy of the Early Factory Inspectorate, 1844 - 1864* in (1980) 58 *Public Administration* 87 - 102.

<sup>35</sup> Clarke v. Holmes (1862) 7 H & N 937, where fencing had broken and the employer had promised to replace it there was an element of personal negligence and the case was decided on this ground.

<sup>36</sup> Wilson v. Merry & Cunningham (1868) LR 1 Sc & Div 326 H.L.

<sup>37</sup> Allen v. New Gas (1876) 1 Ex. D 251.

<sup>38</sup> (1980) 58 *Public Administration* 87 -102

By 1875 the law relating to factories and workshops was to be found in a patchwork of statutes and regulations each designed to meet the pressures of the moment without adhering to any general or overall plan. In these circumstances the law was reviewed by a Royal Commission, whose report, published in 1876, led to the passing of the Factory and Workshop Act in 1878. This Act was the first attempt at comprehensive factory legislation.

On the Second Reading of that Bill, it was said that :

"it is desirable, in the interests alike of employers and employed, that all trades and manufacturers employing the same class of labour should be placed upon the same footing, and under the same protective and restrictive regulations."

Gradually enforcement was pursued more vigorously. From 1878 the Inspectorate (now led by a Chief Inspector, and with effective district organisation and much greater numbers) turned its attention more towards the physical environment of working people. This marked something of a change since the period 1846 - 1876. Redgrave writing of this period said:

"In the inspection of factories it has been my view always that we are not acting as policemen,... that in enforcing this Factory Act, we do not enforce it as a policeman would check an offence which he is told to detect. We have endeavoured not to enforce the law, if I may use such an expression, but it has been my endeavour...that we should simply be the advisers of all classes, that we should explain the law, and that we should do everything we possibly could to induce them to observe the law, and that a prosecution should be the last thing we should take up."

Further statutes were passed on a piecemeal ad hoc basis in 1883, 1889, 1891, 1895 and 1897.

The Workers' Compensation Act 1897 instituted a compensation scheme, independent of fault and means, for hazardous industries, extended in 1906 to most employees and apprentices.<sup>39</sup>

#### Breach of Statutory Duty

In 1898 the important decision of Groves v. Wimborne established that an injured employee could found a claim in damages for breach of statutory duty. Damages claims henceforth became a very prominent feature of health and safety law.<sup>40</sup> In that case the plaintiff had been injured through the failure of the defendant to have dangerous machinery fenced as required by the Factory and Workshop Act 1878. The court accepted that, where penalties or other special remedies are provided in a statute, this is a *prima facie* indication that the right of action for damages is excluded. However, this test was not conclusive: it was necessary to consider the whole purview of the statute. As the Factory and Workshop Act was passed for the benefit of the workmen, and penalties received by the Crown could not compensate them for their injuries, it must be accepted that a breach of the Act gave rise to an action for damages. The Court declined to follow the dictum of Lord Chelmsford to the contrary effect in Wilson v. Merry & Cunningham (1868). In 1906 a small schedule of industrial diseases was recognised.

In the meantime, measures were being taken within the the Factory Inspectorate to broaden both its scope and its skills. The first medical inspector was appointed in 1898,

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<sup>39</sup> Report of the Royal Commission on Civil Liability and Personal Injuries, 1978, H.M.S.O., London (Lord Pearson) Chapter 5; Munkman John, "Employer's Liability at Common Law" 1990, 11th Edition, Butterworths, London. 15 - 16.

In 1898 the important decision of Groves v. Wimborne established that an injured employee could found a claim in damages for breach of statutory duty. Damages claims henceforth became a very prominent feature of health and safety law.

<sup>40</sup> The plaintiff in an action for breach of statutory duty must prove three things:  
 (a) that the statute imposes upon the defendant a duty, which is intended to protect the plaintiff against harm of some kind;  
 (b) that the defendant has failed to perform his duty; and  
 (c) that this breach of duty has resulted in harm to the plaintiff, which is of the kind contemplated by statute

<sup>41</sup> Report of Factory and Workshops Act Commission, 1876. Vol. II.

the first engineering specialist inspector was appointed in 1899 and the first electrical specialist inspector was appointed in 1902.

#### **Twentieth Century: Consolidation.**

The Factory and Workshop Act, 1878 was later replaced by the Factory and Workshop Act 1901, consolidating some five statutes passed in the intervening years. It was followed by a series of detailed Regulations, many still in force. This Act remained the principal statute for the regulation of factories until its repeal by the Factories Act 1937. By 1902 enforcement had improved and the number of Factory Inspectors had risen to 152. Piecemeal legislative extensions continued with the Factory and Workshop Act 1907.

The Factories Act 1937 repealed and replaced the Factory and Workshops Act 1901 to 1929, and other cognate enactments; but the subordinate legislation made thereunder, including, most importantly, the regulations for dangerous trades was continued in force as if made under the Factories Act 1937. This Act provided, for the first time, a comprehensive code for safety, health and welfare applicable to all factories alike irrespective of whether they were textile or non-textile factories and whether mechanical power was used or not. The many new requirements under this Act included such important safety provisions as those relating to lifting tackle and cranes, floors and stairs, means of access and places of work and steam and air receivers. Electrical stations, ships under repair in harbour or wet dock and works of engineering construction were also brought within the scope of the legislation. The Factories Act 1937 contained a power to make regulations governing dangerous processes or plant, although owing to the wide range of such regulations made under similar powers of the Act of 1901, it was not found necessary to make extensive use of this power, save for bringing older regulations up to date and for regulating new kinds of industry. Importantly the statute recognised for the first time the need to control risks. By Section 60, the Secretary of State was given power to make special regulations for safety and health where there was a risk of bodily injury.

In 1949 Sir Ernest Gowers was asked to chair the Committee of Enquiry into Health, Welfare and Safety in Non-Industrial Employment. This Committee was to recommend a

further extension of coverage to provide for the better regulation of health and safety in agriculture, offices and shops (*infra*).<sup>42</sup>

#### Factories Act 1961

The subsequent Acts of 1948 and 1959 added some new provisions but produced no fundamental changes in the scope and pattern of the legislation; they were repealed and replaced by the Factories Act 1961, a consolidating measure. The aim of this measure was and is the promotion of safety, health and welfare in factories, docks and construction sites of all kinds. The promotion of industrial safety at work under the Act may be classed under five main heads:

- (i) the fencing of dangerous machinery;
- (ii) the proper maintenance of all fixed plant, especially lifting gear, boilers and pressure vessels;
- (iii) the maintenance of all fixed plant, especially lifting gear, boilers and pressure vessels;
- (iv) the provision of adequate fire precautions;
- (v) the protection of employees from noxious fumes and substances.

In each respect general requirements are laid down, for example, that "every dangerous part of any machinery shall be securely fenced" (section 14) and "that there shall as far as is reasonably practicable be ...safe means of access to every workplace" (section 29). In certain industries regulations were made which provided standards for particular processes and industries, for example, the Woodworking Machinery Regulations 1922 and the Power Presses Regulations 1965.

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<sup>42</sup> See the Report of the Committee of Enquiry into Health, Welfare and Safety in Non- Industrial Employment, and Hours of Employment of Juveniles. Cmd 7664, H.M.S.O. 1949 (Chairman: Sir Ernest Gowers).



The Factories Act and the regulations made under it also imposed certain administrative requirements intended to smooth the compliance process.

During the 1960s the industrial accident rate increased and widespread demands for statutory reform emerged. The Court of Enquiry examining the causes of the accident at Brent Cross in 1965 recommended an extension of coverage of the Factories Act 1961 to include members of the public, a recommendation which was heavily underscored in relation to the Mines and Quarries Act 1954 by the Tribunal appointed to inquire into the Disaster at Aberfan.<sup>43</sup>

The Workman's Compensation Acts were repealed by the National Insurance (Industrial Injuries) Act with scaled benefits provided by the state and funded by contributions paid by employer and employee. Sir William Beveridge had recommended that an element of industrial preference should be remain within the new social security system<sup>44</sup>. In 1948 the Law Reform (Personal Injuries) Act ended the doctrine of common employment. Three years earlier the Law Reform (Contributory Negligence) Act 1945 provided that contributory negligence would in the future only be relevant to reduce a plaintiff's damages thus redressing the House of Lords decision in Caswell v. Powell Duffryn Associated Collieries [1940]<sup>45</sup> which had held that proof of contributory negligence was a complete defence to a damages claim just as for negligence.

The Employers' Liability (Compulsory Insurance) Act 1969 which came into effect in January 1972 provided that all employers should be insured against claims damages by their workers.

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<sup>43</sup> Report of the Investigation of the Crane Accident at Brent Cross, Hendon on 20th June 1964. Cmd. 2768 H.M.S.O. 1965 and Report of the Tribunal appointed to inquire into the Disaster at Aberfan on 21st October 1966. H.L. 316 HC 553. In the disaster at Aberfan, 140,000 cubic yards of liquefied colliery waste swept down a Welsh mountainside on 21st October 1966 destroying cottages and a school 144 persons died, including 116 children. 35 were injured, 29 of those were children.

<sup>44</sup> Social Insurance and Allied Services Cmd. 6404 H.M.S.O. 1942 (Chairman Sir William Beveridge).

<sup>45</sup> Caswell v. Powell Duffryn Associated Collieries [1940] A.C. 152

These developments re-established actions in negligence as a means parallel to actions for breach of statutory duty in compensating employees for injury. In particular, Wilsons and Clyde Coal v. English [1938]<sup>46</sup> further extended the common law by establishing that the employer's duty (in negligence) was not only to provide a competent staff of men but also adequate material, a proper system of work and effective supervision.

By 1972 the Factory Inspectorate had grown considerably. Some 700 Factory Inspectors were located within the Department of Employment; some 450 inspectors constituting a general inspectorate, and spread over 11 divisional offices and 101 district offices were responsible for the inspection of approximately 400,000 factories, offices, shops and railway premises. In terms of job satisfaction this was probably a high point for the District Inspector, since he had considerable status and autonomy.

These inspectors were supported by groups of specialists in mechanical, chemical, electrical and civil engineering, most of whom were located in London. In 1971 the medical branch was incorporated into a new Medical Division in the Department of Employment under the control of a Departmental Director of Occupational Safety and Health. Additionally specialist construction inspectors and fire inspectors had been recruited to work within the Factory Inspectorate's field organisation.

This code provided a model for codes regulating offshore workers (Mineral Workings (Offshore Installations) Act 1971 and offices, shops and certain railway premises (Offices, Shops and Railway Premises Act 1963). Although with regard to the latter Act the working hours of shopworkers had been first regulated in 1886 and from 1904 local authorities had been empowered to make orders limiting the opening hours of shops.<sup>47</sup>

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<sup>36</sup> Wilsons and Clyde Coal v. English [1938] A.C. 57

<sup>37</sup> Local authorities were made responsible for inspecting the bulk of the offices and shops falling within the scope of the Offices, Shops and Railway Premises Act 1963 and they also had responsibilities for inspection under the Factories Act 1961 and under the Explosives and Petroleum (Consolidation) Acts for the licensing of explosive stores and petroleum installations. In 1972 there were more than 1,600 local authorities with these responsibilities.

### Coal Mines

As for Coal Mines, the first Act was passed in 1842 following a Report of a Royal Commission on Children's Employment, but this was mostly concerned with prohibiting the employment of children and women underground. The first inspector of mines was pointed in 1843. An Act governing the inspection of mines was passed in 1850 when the number of mines inspectors was increased to four. This Act was extended by the Coal Mines Act 1855, which laid down a number of general rules to be observed in all mines: in particular there had to be a proper system of underground ventilation to prevent the accumulation and explosion of firedamp gas. The Act of 1855 after various amendments, was followed by the Coal Mines Regulation Act 1872, a comprehensive Act imposing a series of detailed obligations to ensure the safety of miners: this in turn was superseded by the Coal Mines Regulation Act 1887. Quarries were included in 1894. The regulation of coal mines was further consolidated in the Coal Mines Act 1911. This Act provided a novel means of enforcement, the workman's inspectors, the forerunners of whom were the checkweighmen recognised in the Coal Mines Regulation Act 1872. Uniquely, the 1872 statute had also provided imprisonment as a penal sanction. By 1914 there were 84 inspectors of mines and the inspectorate totalled 163 in 1960. Thereafter with the contraction of the coalmining industry, numbers began to decrease. In 1972 there were 135 inspectors, some 20 of whom were located at headquarters in London with the remainder spread over two divisions and 13 districts. About two thirds were mining engineers: the others included electrical, mechanical and civil engineers and quarry inspectors.

### Agriculture

In agriculture the first legislative steps had been taken with the passing of the Threshing Machines Act 1878 and the Chaff-Cutting Machines (Accidents) Act 1897. These were followed by the Agriculture (Poisonous Substances) Act 1952 and the Agriculture (Safety, Health and Welfare Provisions) Act 1956. In England and Wales these statutes were administered by the Ministry of Agriculture Fisheries and Food. Forty - four full time safety inspectors were spread over headquarters, 8 regions and 31 divisions each inspector spending about a quarter of his time on safety work. In Scotland farm safety provisions were enforced by nine outstationed inspectors of the Wages and Safety Inspectorate of the

Department of Agriculture and Fisheries for Scotland who spent about one third of their time on farm safety work.

#### Explosives

Acts regulating explosives date from 1875. The Explosives Act of that year introduced a system for the licensing and regulation of factories for the production of gunpowder and other explosives and led to the establishment of HM Inspectorate of Explosives within the Home Office. By 1972 nine explosives inspectors based in London had responsibilities under the Explosives Acts 1875 and 1923 and the Petroleum (Consolidation) Act 1928.

#### Railways

The Regulation of Railways Act 1840 authorised the appointment of the first inspectors. This legislation gave powers to inspectors to carry out inspections of new railways and to recommend to the Board of Trade whether they were or were not fit for public use. That power was extended by later legislation to include:

- (i) inspecting new or altered works (as defined in an agreement drawn up in 1958) on the railways;
- (ii) receiving and analysing accident data; and
- (iii) conducting inquiries into reported railway accidents.

The first Chief Inspecting Officer, known then as the Inspector General of Railways, was Lt Col Sir Frederick Smith. In this period Inspectors of Railways were always appointed from the Corps of the Royal Engineers. The Inspectorate's activities and sphere of influence grew during the second half of the 19th century so that by the turn of the century, the shape and main functions carried out by the modern Inspectorate had largely been developed. Other than for a short period from 1846 to 1851, the Inspectorate was housed in the Board of Trade until 1919. Since then (and until 1990), it was part of the Ministry, and later, Department of Transport.

### Nuclear Installations

Nuclear installations were first regulated in 1959. This regulation led to the formation of the Nuclear Installations Inspectorate. Further Nuclear Installations Acts were passed in 1965 and 1969, which placed regulatory controls over nuclear installations and the transport of nuclear materials, using techniques of licensing, permits and inspection. In 1972 there were 70 inspectors, some based in London and some in Liverpool. These inspectors had responsibilities concerning the licensing of all nuclear installations, other than those of government departments and the United Kingdom Atomic Energy Authority.

### Fire Safety and Prevention

Workplace fire safety legislation has also developed in a piecemeal fashion. It too covered a broad spectrum of widely diverse types of premises. Fire safety in various types of occupied premises was covered in such diverse statutes as the Public Health Act 1936, the Education Act 1944, the Cinematograph Act 1952, the Factories Acts 1937 - 1961, the Offices, Shops and Railway Premises Act 1963, the Licensing Act 1964 and the Gaming Act 1968, the Local Government (Miscellaneous Provisions) Act 1982, and the Theatres Act 1968. This patchwork approach led to gaps in provision and produced differing standards. Fire authorities had a duty to issue fire certificates in respect of premises used as factories. Responsibility for monitoring compliance with certificate conditions and other fire safety matters such as fire fighting equipment, fire warning systems and fire drills were the responsibility of the Factory Inspectorate.

### The Need for a New Legislative Framework

Although the incidence of fatal accidents, injuries and ill health at work over the period 1802-1969 had declined considerably the number of factory accidents during the period 1962-1969 had markedly increased. Every year one thousand people were killed in the workplace, some half a million people were absent from work for at least three days because of accidents, and some twenty three million days were lost annually through absences arising from industrial accidents and prescribed diseases. Serious criticisms had been made of the approach of H.M. Inspectors to these problems. Carson's study of the enforcement practices of H.M. Inspectors of Factories in 1970 found that preventive rather than punitive aims had been followed. Punitive sanctions were used but these were seen as

merely part of a process to ensure compliance rather than as an end in themselves.<sup>48</sup> There was a lack of clarity about the precise role of the inspectorates, some thought their proper role was that of an enforcement officer who should use the sanctions of the law widely and to the full, others that they they should be impartial skilled advisers, researchers and lecturers and policy makers.

### **New Challenges**

"If government is to learn to solve new public problems, it must learn to create the systems for doing so and to discard the structure and mechanisms grown up around old problems. The need is not merely to cope with a particular set of new problems, or to discard the organizational vestiges of a particular form of governmental activity which happen at present to be particularly cumbersome. It is to design and bring into being the institutional processes through which new problems can continually be confronted and old structures continually discarded."

Donald A. Schon, *Beyond the Stable State* London Temple Smith 1971 at page 116.

#### **(i) Period 1970 - 1978.**

This state of affairs could not be viewed with complacency and after several unsuccessful attempts to place a new Employed Persons Act on the statute book the Robens Committee was appointed in 1970 by the Secretary of State for Employment and Productivity, Rt. Hon. Barbara Castle M.P.

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<sup>48</sup> Carson W.J., "White Collar Crime and the Enforcement of Factory Legislation" (1970) 10 *British Journal of Criminology* 383-398. See also *Safety and Health at Work: Report of the Committee 1970 - 72, vol.2: Selected Written Evidence*, 1972, HMSO, London (Lord Robens) evidence of W.H. Thompson 656-669.

"To review the provision made for the safety and health of persons in the course of their employment (other than transport workers while directly engaged on transport operations and who are covered by other provisions) and to consider whether any changes are needed in:

- (1) the scope or nature of the major relevant enactments, or
- (2) the nature and extent of voluntary action concerned with these matters, and to consider whether any further steps are required to safeguard members of the public from hazards, other than general environmental pollution arising in connection with activities" <sup>4</sup>

The Robens Committee answered the growing criticisms of the *ad hoc* and piecemeal development of the pre-1974 health and safety statutory provisions by prescribing a three-fold remedy:

"First, the detailed safety and health code should be underpinned by a clear, central statement of principles of general application.

Second, in structure and presentation, the legislation and its supporting instruments should be readily intelligible to employees and workpeople.

Finally, the new provisions should provide a framework that is constructive rather than prohibiting. They should give practical guidance designed to promote a positive, progressive and responsible approach to safety and health at work."<sup>50</sup>

As a first step the new Act would not try to emulate the old legislation and reproduce a similarly elaborate and detailed mass of law. The new Act would be primarily enabling. The existing body of statutory regulations was to be rationalised and pruned. Any new

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<sup>49</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens).

<sup>50</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 40 para 125.

regulations would be kept to a minimum;<sup>51</sup> they would have a simpler style, be limited to the prescription of general requirements and appear in a form which enabled them to be readily modified. In future much greater reliance would be placed on non-statutory codes and standards. This emphasis was central to the philosophy of the Report.<sup>52</sup>

The Committee believed that codes and standards provided the most flexible, discriminating and practical means of promoting progressively higher standards of health at work. Codes and standards were easier to introduce and revise, more progressive in that they need not be restricted to minimum standards and less likely to inhibit new developments.<sup>53</sup> Further, they were effective in areas where the framing and implementation of effective statutory regulations might have proved impossible.<sup>54</sup>

But, unless there were a measure of control and co-ordination, a tangle of codes would replace the previous swathe of regulations. This control could, the Committee argued, be achieved in a number of ways. Regulations could be supplemented by linking them with codes; suitable existing codes and standards could be given formal recognition or, if no code or standard existed, the Authority would undertake or sponsor its preparation. All such codes would then be admissible in evidence in proceedings before Tribunals.

The new Act provided for one comprehensive and integrated system of law.<sup>55</sup> It dealt with the health, safety and welfare of all people at work<sup>56</sup> and for the first time provided for the health and safety of the public as they were affected by work activities. Existing statutes in

<sup>51</sup> The Committee recommended that no statutory regulation should be made before detailed consideration had been given to whether the objectives might adequately be met by a non-statutory code of practice or standard. *Safety and Health at Work, Report of the Committee 1970-1972*, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) para 142.

<sup>52</sup> *Ibid.* para 148.

<sup>53</sup> *Ibid.* para 144.

<sup>54</sup> *Ibid.* para 145.

<sup>55</sup> See Explanatory Memorandum to Health and Safety at Work etc. Bill, Session 1974-1975, Hansard Vol. 352, Col. 1643. 27 June 1974 (House of Lords).

<sup>56</sup> Domestic workers in private employment re the exception. See *Safety and Health at Work, Report of the Committee 1970-1972*, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 56 para 180. Workers employed in transport, aviation, postal services, post office engineering, hospitals, hotels and public houses, entertainment, education and civil engineering were amongst the workers covered for the first time under health and safety legislation.



the field were to be improved and eventually repealed. Section 1 (2) permits the existing statutory provisions to be "progressively replaced" by a system of regulations and approved codes of practice operating in combination with the other provisions of Part 1 and designed "to maintain and improve standards" established by or under those enactments. The Health and Safety at Work etc Act 1974 which implemented most of the proposals of the Robens Committee on Safety and Health at Work, represents the culmination of a somewhat tangled story concerning the legal treatment of a central issue in any industrialised society - the health, safety and welfare of its workers. The common law evolved a standard of care measured by reference to the reasonable employer, not in order to prevent accidents (although such might be the result), but to compensate for injury which occurred as a result of the breach of the duty of reasonable care. The criminal and regulatory law in this field performs a different function in that it sets out both to establish what society expects of employers, and to a lesser extent employees and others, and to prescribe punishments for those who fail to meet that standard.

The Health and Safety at Work etc Act 1974 considerably extended the scope of the earlier legislation. The ambit of several of the pre-1974 Acts, the Factories' Acts, the Mines and Quarries Acts, the Offices, Shops and Railway Premises Act etc., is limited spatially. Terms such as "factory," "mine," "quarry," "office," and the like were defined by reference to places. In much of the case law the relevant question is "Where was he or she at the relevant time?" the answer to which question may of itself determine the issue. The 'reference to places' approach had proved to be most unsatisfactory not least because it had made for considerable difficulties in definition, thus wasting the time of the enforcement authorities. It had led to duplication of effort and provided much scope for litigation and judicial interpretation; but more seriously it had excluded from the scope of protective legislation many dangerous activities.

The emergence of new toxic substances and the increased risk of catastrophic accidents resulting from the scale of industry or the storage of vast amounts of fuels and the like were felt to justify a new overall look at health and safety laws which had been built up piece-meal over the years. Events such as those at Brent Cross, Aberfan, Flixborough, Seveso, Bhopal and Chernobyl demonstrate that it is no longer possible to say that what

goes on in workplaces is of interest only to those who work there. One of the main changes brought about by the Health and Safety at Work etc Act 1974 was the manner in which the "public" dimension was brought within the law. Another change is the way the law has begun to deal with the human or ergonomic side of safety, bearing in mind that most accidents arise through failure of management rather than failures of "hardware". Many accidents arise because of the failure of groups of workers to co-operate with each other and share information particularly on construction sites. Important steps were taken to address this issue.

There were two chief defects in the pre-1974 system. First was the problem of "apathy" at work. The system tended to encourage people to think of health and safety as primarily a matter of detailed regulation by external agencies. Second, the statutory system was unsatisfactory on a number of other counts. It was felt that too much law already existed in the form of statutes and subordinate legislation all of which was beginning to have a counter-productive effect. More law and more inspectors was not considered to be the answer. As has been seen the piece-meal nature of the system, grew up to deal with particular empirical problems, often physical problems, such as the safeguarding of machinery. This haphazard approach tended to neglect the equally important questions of attitudes, capacities and performance, or the organisational system within which health and safety is set. The law was felt to be intricate and difficult to understand. Health and safety statutes and regulations had become obscure and were failing to keep pace with the new range of problems.

One of the Robens Committees more important recommendations resulted in an extension of coverage to all those employed under a contract of service save for some limited exceptions.<sup>57</sup>

The Robens Committee recommended that a new national Authority for Safety and Health at Work should be set up and that present safety and health legislation dealing separately with factories, mines, agriculture, explosives, petroleum, nuclear installations and alkali works should be revised, unified and administered by the new Authority. The Authority

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<sup>57</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 52 para 166.

would have comprehensive responsibility for the promotion of safety and health at work.<sup>58</sup> It would originate relevant information and disseminate it; set standards and uphold them; provide education and training; and ensure full collaboration with all national and international bodies concerned with health and safety.<sup>59</sup>

The Authority would be directed by an executive Managing Board with a full-time Chairman who would be authoritative in health and safety matters. The members of the Authority would be paid but part-time and non-executive; they would reflect the interests of both sides of industry, local authorities and others concerned with safety and health at work. The Authority would be advised on particular subjects by a number of expert advisory bodies.

Right Hon. Michael Foot M.P., the then Secretary of State for Employment, moving the Second Reading of the Health and Safety at Work Bill argued that the setting up of the Commission as a centralised co-ordinating body was the most important part of the Bill because the bodies previously responsible for the enforcement of health and safety law in this country were too fragmented. For:

"There were five departments involved, nine statutes, five hundred subordinate instruments and seven different inspectorates - all trying to deal with this complicated modern problem that is changing all the time".<sup>60</sup>

The Robens Committee had already rehearsed the Secretary of State's argument, and further, had indicated that in too complex an organisation with overlapping responsibilities

"The need to have wide consultation may mean that all can move forward only at the pace of the slowest".<sup>61</sup>

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<sup>58</sup> Ibid. para 116

<sup>59</sup> Ibid. para 115.

<sup>60</sup> Hansard Vol 871, Col. 1290. 3 April 1974

<sup>61</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 11 para 39.

### Health & Safety Commission

The Secretary of State assured the House that the Commission would be responsible through Ministers to the House of Commons, that regulations would be the responsibility of Ministers (principally Ministers in the Department of Employment) and that

"it was not the Government's intention to set up a body which was remote from questioning in the House of Commons".<sup>62</sup>

Right Hon. William Whitelaw M.P. replying to the debate for H.M. Opposition, was convinced that it was right to set up a unified Commission<sup>63</sup> even though he expressed a general doubt concerning the hiving off of responsibilities from Departments that have Ministers responsible to the House of Commons. Mr. Cyril Smith M.P. for the Liberal Party also welcomed the formation of the Commission; he agreed that it was a good thing to see nearly all the inspectorates combined under one roof, but regretted that the Government was not prepared to include the National Radiological Protection Board and the United Kingdom Atomic Energy Authority with regard to the Nuclear Installations Act.<sup>64</sup>

The establishment of the Commission is provided for in Section 10 of the Health and Safety at Work etc. Act 1974. It is further provided that it shall be a body corporate and that it shall consist of a chairman appointed by the Secretary of State and not less than six nor more than nine other members appointed by the Secretary of State.<sup>65</sup>

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<sup>62</sup> Hansard Vol. 871, Col. 1291. 3 April 1974

<sup>63</sup> Hansard Vol. 871, Col. 1305. 3 April 1974

<sup>64</sup> Hansard Vol. 871, Col. 1321. 3 April 1974. It was deemed inappropriate by H.M. Government to include the National Radiological Protection Board because it has a number of responsibilities outside the scope of health and safety at work, Hansard Vol. 871, Col. 1390. 3 April 1974. The special relationship between the Board and the Health and Safety Commission is to be seen in Section 77 Health and Safety at Work etc. Act 1974. The Nuclear Installations Inspectorate was included under the Commission's oversight.

<sup>65</sup> This provision follows the pattern established by the Manpower Services Commission in the Employment and Training Act 1973.

The first Chairman appointed was William Simpson,<sup>66</sup> General Secretary of the Foundry Section of the Amalgamated Union of Engineering Workers and a former Chairman of the Labour Party.

The appointment of a strong chairman, at that stage, was crucial since he was required to act as the focal point for health and safety in the nation.

Three members were appointed after consultation with organisations representing employers, viz. Martin Cobb M.B.E., Deputy Director, Social Security, Confederation of British Industry; Martin Jukes C.B.E., Director General Engineering Employers Confederation<sup>67</sup> and Ray Richards, Deputy Chairman of the Plastics Division, Imperial Chemical Industries.

Three members were appointed after consulting employees' representatives, viz: Peter Jacques, Head of the Social Insurance and Industrial Welfare Department, Trades Union Congress; Glynn Lloyd, Executive Member of the Union of Construction, Allied Trades and Technicians; and Terence Parry O.B.E., General Secretary of the Fire Brigades Union.<sup>68</sup>

Additionally two members were appointed after consultation by the Secretary of State with representatives of local authorities' associations, viz: Councillor James Anderson, Vice Chairman of the Health and Welfare Committee of the Association of County Councils in Scotland, and Councillor Frank Bushell J.P., Chairman of the Housing and Environmental Health Committee of the Association of District Councils.

The Commission by its structure and composition of its membership facilitates communication at the highest level and has for most of its life made decisions by consensus. The first appointments did however exhibit a lack of imagination since all the industrial members of the Commission were appointed from the Confederation of British

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<sup>66</sup> later Sir William Simpson Kt.

<sup>67</sup> Member of the Council of the Confederation of British Industry. Mr. Jukes was the first Deputy Chairman of the Health and Safety Commission.

<sup>68</sup> Members of the Council of the Trades Union Congress.

Industry and the Trades Union Congress. Whilst these groups did represent large numbers of employers and employees, these appointments enabled the views of the remainder to be too easily ignored<sup>69</sup> It has to be said that one of the later appointments, that of Mr. Christopher Chope, a former Conservative Under Secretary of State for Transport, smacked of "cronyism".

By Section 11 of the Act the Commission was charged with a fourfold responsibility to Ministers. It must prepare legislation; provide an information and advisory service ; carry out, publish and encourage research; and assist and encourage persons concerned with the general purposes of Part 1 of the Act.

Although the Commission is largely an autonomous body it is subject to control by Ministers and therefore by Parliament. It must submit its general proposals, its budget and an annual report for Ministerial scrutiny. The Minister has the power to modify any proposed regulations<sup>70</sup> and he may withhold his consent to proposed codes of practice<sup>71</sup> or proposals to hold public inquiries.<sup>72</sup> In the last resort he has power to direct the Commission.<sup>73</sup>

The Commission has a number of detailed powers which are to be found listed in Section 13. It may make arrangements and agreements with Government departments or other persons for the performance of the Commission's functions with or without payment.<sup>74</sup> Section 13 (1) (d) allows for the appointment by the Commission of persons or committees of persons to provide the Commission with advice in connection with its functions whilst the remaining subsections provide for the payment of persons on certain Commission business.

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<sup>69</sup> The total labour force in the United Kingdom at that time was 23,339,000. Only 10,364,000 (44.46%) were members of organisations affiliated to the Trades Union Congress.  
Report of the Committee of Inquiry on Industrial Democracy, Cmnd. 6706, H.M.S.O. 1977 Tables 8 and 9 pp. 16 -17.

<sup>70</sup> See Section 50 Health and Safety at Work etc. Act 1974

<sup>71</sup> Section 16 Health and Safety at Work etc. Act 1974.

<sup>72</sup> Section 14 Health and Safety at Work etc. Act 1974

<sup>73</sup> Section 12 Health and Safety at Work etc. Act 1974

<sup>74</sup> See Section 77 Health and Safety at Work etc. Act 1974. The National Radiological Protection Board carries out work on behalf of the Commission

The Robens Committee envisaged the setting up of technical working parties<sup>75</sup> which would have the expert capacity to deal with the detail of individual regulations, codes and standards. It was on the Committee's advice that the above section was enacted.

Section 14 gives the Commission power to direct investigations and inquiries into any accident, occurrence, situation or other matters - it is immaterial whether the Executive is or is not responsible for securing the enforcement of such (if any) of the relevant statutory provisions as relate to the matter in question.<sup>76</sup>

The Commission may direct the Executive or any other person to investigate the matter<sup>77</sup> and make a special report or, with the consent of the Secretary of State, direct an inquiry to be held into any such matter.<sup>78</sup>

The latter inquiry will be subject to regulations made by the Secretary of State and the proceedings will be held in public except where or to the extent that the regulations provide otherwise.<sup>79</sup>

The Regulations may provide for:

(a) powers of entry or inspection (b) the summoning of witnesses to give evidence or to produce documents (c) the taking of evidence on oath and the administration of oaths (d)

<sup>75</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 49. A decision was made at an early stage that the Commission would not have a large administrative staff. The Commission relies on the Executive to provide the policy staff required, Royal Society of Health Lecture: Function of the Health and Safety Commission. V.G. Munns.

<sup>76</sup> See the Report on Explosion at Houghton Main Colliery Yorkshire June 1975 Health and Safety Executive H.M.S.O. 1976

<sup>77</sup> See Investigation into risks of existing and proposed installations on Canvey Island, The Times March 24 1976 and the Explosion at Laporte Industries Ltd. Ilford, 5 April 1975 Health and Safety Executive H.M.S.O. 1976.

<sup>78</sup> See the Report on the Explosion at Appleby Frodingham Scunthorpe 4 November 1975, H.M.S.O. 1976 and Section 14(2) Health and Safety at Work etc. Act 1974.

<sup>79</sup> See Health and Safety Inquiries (Procedure) Regulations 1975 Section 14(3) Health and Safety at Work etc. Act 1974

the making of declarations.<sup>80</sup>

Where a report or an inquiry is made, the Commission may cause the Report, or so much of it as the Commission thinks fit, to be made public at such time and in such manner as the Commission thinks fit.<sup>81</sup>

This power was, however, criticised at the Bill's Committee stage.<sup>82</sup>

The Commission must prepare an annual report on its activities and a statement of accounts, for submission to the Secretary of State for Employment and to Parliament.<sup>83</sup>

On 31st July 1974, the Health and Safety at Work etc. Act 1974 received the Royal Assent and on 1st January 1975 by Order in Council those parts of the Act relating to the establishment and function of the Health and Safety Executive and enforcement were brought into effect.<sup>84</sup>

The Robens Committee<sup>85</sup> had argued strongly for the creation of a single safety and health inspectorate. Such a body they believed would bring about improved co-ordination, operational efficiency, and the necessary assimilation of scientific and technical expertise and support facilities.

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<sup>80</sup> Section 14(4) Health and Safety at Work etc. Act 1974.

<sup>81</sup> Section 14(5) Health and Safety at Work etc. Act 1974

<sup>82</sup> Standing Committee A, Health and Safety at Work etc. Bill Thursday 9th May 1974 Col. 169 Mr. Robert Cryer M.P.

<sup>83</sup> Schedule 2, paras 14 and 15 Health and Safety at Work etc. Act 1974

<sup>84</sup> Section 84 (3) Health and Safety at Work etc. Act 1974 and The Health and Safety at Work etc. Act 1974 (Commencement No.1) Order 1974 No. 1439 (c.26).

<sup>85</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 63.



It was therefore recommended that the existing inspectorates for factories, mines, agriculture,<sup>86</sup> explosives, nuclear installations and alkali works should be merged and in future operate under the control of the Commission.

Considerable importance was attached to the organisation of a separate multidisciplinary research and development division which would include the Safety in Mines Research Establishment, the Factory Inspectorates Accident Prevention Unit and a Statistics and Economics Department.

The emphasis behind the whole reorganisation envisaged by the Committee was on a cost effective and imaginative use of manpower and resources.

The Committee's recommendation was not endorsed by Parliament, however. The Secretary of State for Employment<sup>87</sup> during the Second Reading of Labour's Health and Safety at Work Bill made it clear that the separate identity of each inspectorate would be sustained,<sup>88</sup> moreover, he was to receive all-party support for this proposal.<sup>89</sup> Despite this separation, there is, and has long been, fusion of the inspectorates in the Policy Branch.

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<sup>86</sup> The Committee did have reservations about agriculture. It thought that problems in organisation would arise because "farming units are small, numerous and very widely scattered". It therefore recommended that although all the full-time agricultural personnel should be brought within the unified inspectorate, the field officers of the Agriculture Department should remain within the Ministry but work as agents of the Authority. Ibid The Health and Safety at Work etc. Act 1974 originally made all matters relating exclusively to agriculture the responsibility of the Agriculture Ministers but Section 116 Employment Protection Act 1975 provided that these responsibilities should be transferred to the Commission.

<sup>87</sup> Rt. Hon. Michael Foot M.P.

<sup>88</sup> The Government was under pressure from all sides to maintain the separate identity of the inspectorates, but principally from the National Union of Mineworkers. See Hansard Vol. 871, Col. 1293. 3 April 1974

<sup>89</sup> Right Hon. William Whitelaw M.P. replying to the debate for H.M. Opposition, Hansard Vol. 871 Col. 1304. 3 April 1974; and Mr. Cyril Smith M.P. for the Liberal Party. Hansard Vol. 871, Col. 1320. 3 April 1974.

The Committee recommended that the new inspectorate<sup>90</sup> should have as its prime objective the prevention of accidents and ill health, and the promotion of progressively better standards at work through the provision of information and skilled advice to industry and commerce. Inspection work should continue to include, as inseparable elements, the provision of advice and the enforcement of sanctions.

To meet the new demands made of them, the new inspectors would need to be specially trained. Their duties would span a wide variety of grades and a high degree of in-service training for the highly specialised inspector.<sup>91</sup>

Initially at least these proposals were adopted and put into practice by the Health and Safety Executive.<sup>92</sup> Although the Robens Committee did not recommend an increase in size of the new inspectorate, the Under Secretary of State,<sup>93</sup> replying to the debate, promised an increase in the number of factory inspectors of three hundred and thirty,<sup>94</sup> By January 1977 the reorganisation of the Factory Inspectorate had been completed.<sup>95</sup>

<sup>90</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 66.

<sup>91</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 68 - 69. For example courses at the former Department of Safety and Hygiene, University of Aston in Birmingham

<sup>92</sup> William Simpson, Chairman, Health and Safety Commission, 1975. Redgrave Memorial Lecture, Royal Institution, London

<sup>93</sup> Mr. Harold Walker M.P. Joint Parliamentary Under Secretary of State, Department of Employment.

<sup>94</sup> The omission by the Robens Committee of a recommendation relating to an increase in size was criticised in 'Robens Report - the wrong approach? Industrial Law Journal 2 1973 p.91. An increase in size was recommended by the Society of Labour Lawyers in Occupational Accidents and the Law, Fabian Research Series 280, Fabian Society 1970. However the Government of the day undertook to increase the Commission, Executive and administrative staff by four hundred and thirty five and to increase the technical support staff available to inspectors and the Employment Medical Advisory Service by two hundred and and five. Hansard Vol. 871, Col. 1391. 3 April 1974.

<sup>95</sup> See the proposals for the reorganisation of H.M. Factory Inspectorate. Report No.1 (Revised) Health and Safety Commission Planning Unit and W. Simpson, Health and Safety an Appraisal Managerial Law VI 27 -33.

Instead of one hundred and twenty six regional and district offices with, on average, five inspectors per district office, twenty one area offices were set up with up to thirty inspectors in each office. In addition, twenty smaller satellite or local offices were established to reduce inspectors' travelling time.<sup>96</sup>

Inspectors were required to work in an Industry group specialising in a particular industry or group of industries. A total of one hundred and fifty groups were planned whilst it was proposed, that in the case of some twenty industries, national groups would be set up for each one headed by a Deputy Superintending Inspector at area level. Each national group was asked to assume overall responsibility for a particular industry throughout the country. These groups were a logical development of the established practice in relation to industries such as cotton, wool and pottery and provided a means of deriving further advantage from industrial specialisation within the Inspectorate. The national industry groups

"provide a centre for the collection of data about practices, precautions and standards within a particular industry; acts as a central forum in HSE for the analysis and discussion of the health and safety problems of the industry, and the impact of the Commission's and Executive's broad policies and proposals; develops contacts with bodies representing interests in that industry - management, unions, suppliers of equipment and professional organisations; pinpoints health and safety problems in the industry, whether problems are peculiar to that industry or more widespread; develops ideas about ways of improving health and safety performance; identifies problems needing research; considers relative priorities; maintains consistency of enforcement practice in relation to the industry; and.... stimulates thinking and provokes constructive and planned initiatives by the industry itself." <sup>97</sup>

Additionally it was proposed to establish six Field Support Units each with mobile laboratories which would be available to provide specialist scientific expertise.

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<sup>96</sup> Eighteen area offices were headed by an Area Director (equivalent to a Superintending Inspector of Factories) and three by Senior Area Directors

<sup>97</sup> See the Annual Report of the Health and Safety Executive 1977 - 78 H.M.S.O. 1978. ISBN 0 11 883221 2.

Increased liaison between the Inspectorates was evident prior to the formal date of merger on January 1st 1975. There was a conscious effort to learn of each other's approach<sup>98</sup> and to pool expertise. In at least one case, Inspectors were physically transferred at an earlier date.<sup>99</sup>

The Health and Safety at Work etc. Act 1974 Section 10(1) provided for the constitution of the Health and Safety Executive as a body corporate. Section 10 (5) provides for the constitution of an Executive of three persons, "one to be appointed by the Commission with the approval of the Secretary of State<sup>100</sup> to be the Director of the Executive, and others to be appointed by the Commission with the approval of the Secretary of State after consultation with the Director<sup>101</sup>

The Executive acts as the Commission's operational arm,<sup>102</sup> although it is not empowered to give the Executive directions as to the enforcement of any of the relevant statutory provisions in a particular case. The Executive alone is charged with the duty to make adequate arrangements for the enforcement of the relevant statutory provisions<sup>103</sup> and they are permitted to appoint suitably qualified persons for this purpose<sup>104</sup>

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<sup>98</sup> See the Annual Report of the Health and Safety Executive 1977 - 78 H.M.S.O. 1978. ISBN 0 11 883221 2.

<sup>99</sup> See the Annual Report of H.M. Chief Inspector of Factories 1974 H.M.S.O. 1975.

<sup>100</sup> In August 1974 H.M. Inspectors of Explosives were transferred from the Home Office to the Department of Employment. "This was a convenient preliminary to the integration of the Inspectorate into the Health and Safety Executive when that was set up on 1st January 1975" Annual Report of H.M. Inspectors of Explosives 1974 H.C.678

<sup>101</sup> One of H.M. Principal Secretaries of State for the time being; see Interpretation Act 1889 Section 12 (3). The Secretary of State here is usually the Secretary of State for Employment.

<sup>102</sup> It appears that the Executive can operate effectively when there are vacancies in its membership. See Hansard Vol. 918, Col. 664. 4 November 1976 (Written Answers) The first holders were John Locke, Director; Herbert Dunster, Deputy Director and James Carver. See Hansard Vol. 915, Col. 413. 20 July 1976.

<sup>103</sup> Section 11(4) Health and Safety at Work etc. Act 1974. See New Law Journal January 16th 1975 page 62

<sup>104</sup> Section 18(1) Health and Safety at Work etc. Act 1974.

<sup>105</sup> Section 19 Health and Safety at Work etc. Act 1974

A Legislation Review Unit was set up within the Health and Safety Executive<sup>106</sup> and obsolete or unnecessary provisions were reviewed by a small HSE Working Party.<sup>107</sup> However the Health and Safety Executive was subject to many pressures and the pressing need to revise the old legislation was accorded a low priority.<sup>108</sup>

The Executive had been established for only twelve months when its composition was vigorously attacked by the Royal Commission on Environmental Pollution as follows:

"that the terms of reference of the Robens Committee specifically excluded considerations of the question of general environmental pollution and that the Robens Committee's concern was with the health and safety of people at work and with the protection of the public from direct hazards arising from the workplace".<sup>109</sup>

The Committee, said the Royal Commission, failed to see:

"the implications of the transfer of the Alkali Inspectorate in terms of pollution control in its wider sense", and further ".... it was an oversimplification to argue that common control arrangements should apply, for this requirement ignores great differences in the nature and scope of the interests of the two inspectorates".<sup>110</sup>

The Royal Commission concluded that:

"the incorporation of the Alkali Inspectorate in the Health and Safety organisation is potentially damaging to the interests of the environment"<sup>111</sup> and recommend "that the Alkali Inspectorate should be removed from the Health and Safety Executive forthwith and returned to the direct control of the Department of the Environment".<sup>112</sup>

<sup>106</sup> See the Annual Report of the Health and Safety Commission 1974 - 76 H.M.S.O. 1977

<sup>107</sup> See the Health and Safety Commission's Plan of Work 1983 - 84 and beyond H.M.S.O. 1984.

<sup>108</sup> See the Health and Safety Commission's Plan of Work 1985 - 86 and beyond H.M.S.O. 1986.

<sup>109</sup> Fifth Report of the Royal Commission on Environmental Pollution Cmnd. 6371 H.M.S.O. 1976.

<sup>110</sup> Ibid. para 248

<sup>111</sup> Ibid. para 257

<sup>112</sup> Ibid. para 260

Eventually these arguments prevailed. However it has to be said that problems of pollution caused by the activities of weak management or by malfunctioning or inefficient factory plant can perhaps best be dealt with by specialist Inspectors of safety and health. In addition, the Alkali and Clean Air Inspectorate has often been criticised for its weak enforcement policy.<sup>113</sup> They have always shown an extreme reluctance to take action through the courts.<sup>114</sup>

#### Local Authorities

Section 18 Health and Safety at Work etc. Act 1974 places a duty on the Health & Safety Executive to make adequate arrangements for the enforcement of Part 1 of the Act and the existing statutory provisions. Other bodies may be required to carry out enforcement duties in place of the Health & Safety Executive if required to do so by regulations made by the Secretary of State.<sup>115</sup>

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<sup>113</sup> For example Frankel M., *The Alkali Inspectorate - the control of Industrial Air Pollution Social Audit* Vol. 4 Spring 1974.

<sup>114</sup> Between 1920 - 1972 the Alkali and Clean Air Inspectorate brought fourteen successful prosecutions against registered works. 104th Annual Report on Alkali etc. Works 1967 H.M.S.O. 1968; 108th Annual Report on Alkali etc. Works 1971 H.M.S.O. 1972;

<sup>115</sup> Section 18 (3) provides that any provision made under this subsection shall have effect subject to any provision made by health and safety regulations in pursuance of Section 15(3)(c).  
Section 18 (3) provides that it shall be the duty of every local authority to make adequate arrangements for the enforcement within their area of those provisions for which they are made responsible. The duties imposed on local authorities must be exercised in accordance with any such guidance as the Commission may give them.  
Section 45 provides for powers in the event of the failure of a local authority adequately to perform its enforcement function.

The Robens Committee<sup>116</sup> argued that there was no feasible alternative to some sharing of responsibilities between central and local government. Its members believed that there were considerable intrinsic advantages in local authority inspection<sup>117</sup> and perhaps somewhat optimistically that many of the criticisms levelled against it would be reduced as a result of the re-organisation of the structure of local government.<sup>118</sup>

It therefore recommended that local authorities should have a greater share of the work in this field, but that increased co-ordination and integration with the National Authority was required.<sup>119</sup> The Committee thought it self-evident that the broad division of responsibility between central government and local authorities should be influenced by the nature of available expertise and by the need to avoid multiple inspection. It concluded that the central inspectorate should be responsible for industrial employment and that local authorities should concentrate on non-industrial employment.<sup>120</sup>

This division was made because the Committee believed that the central inspectorate possessed more expertise in industrial conditions and hazards whilst the local authority inspectorate were experienced in dealing with health and amenity.

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<sup>116</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 73 para 237

<sup>117</sup> See the Report of the Committee of Enquiry into Health, Welfare and Safety in Non-Industrial Employment, Cmd 7664, H.M.S.O. 1949 (Chairman: Sir Ernest Gowers).

<sup>118</sup> There were, prior to 1st April 1974, 79 county borough councils, 45 county councils, 227 non-county borough councils, 449 urban district councils and 410 rural district councils in England outside London. There are now 39 county councils, 36 metropolitan district councils and 296 non metropolitan district councils outside London

<sup>119</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 75 para 243. In order to increase co-ordination and integration the Committee recommended that the National Authority be given powers of supervision over local authority inspection and that the Manager of each Area Office of the National Authority should be responsible for co-ordination, without prejudice to the statutory independence of local authorities, to ensure that a common set of standards was applied.

<sup>120</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 76 para 246. Special arrangements would need to be made for Crown Premises where security considerations arose, and at hospitals and secondary schools where the range and type of hazards required special expertise

Health and Safety (Enforcing Authority) Regulations 1977 included two schedules. Schedule 1 listed activities at premises which, with certain exceptions, were already inspected by local authorities. The introduction of this schedule allowed local authorities to enforce Sections 2-9 Health and Safety at Work etc. Act 1974 at those premises. Schedule 2 listed 'new entrant' activities and allowed for an extension of local authority responsibility for enforcement within the principles outlined above.

In the period 1976 - 1977 the number of prosecutions declined. This was caused to some extent by a decision by local justices in Wallsend Magistrates' Court. The Divisional Court held that if an inspector produced evidence such as his warrant, then he must be presumed to have been validly appointed unless proved otherwise. In Campbell v. Wallsend Slipway and Engineering Co. Ltd [1977]<sup>121</sup> the competence of an inspector of the Health and Safety Executive to institute proceedings and prosecute was challenged by a company against which the inspector had laid informations. The inspector gave evidence and produced documents supporting his evidence that he had been appointed an inspector and that the executive which appointed him was itself validly appointed. The justices were not satisfied that the inspector had proved his competence and dismissed the informations. The inspector appealed by way of case stated.

The Divisional Court (Lord Widgery C.J. Eveleigh and Wien J.J. held allowing the appeal, that an inspector did not need to be empowered specifically in his certificate of appointment to institute proceedings under section 38 of the Health and Safety at Work Act 1974 because that section did not confer a power but restricted the normal right to prosecute. Considering what evidence was required to prove the valid appointment of (a) the inspector himself, and (b) the executive --- (a) under section 19 a written instrument was not a condition precedent to an effective appointment to the executive; although such an instrument was envisaged by paragraph 20(3) of Schedule 2 to the Act of 1974, the words in that paragraph were directory and not mandatory; therefore the inspector was not required to produce a written instrument to prove the valid appointment of the executive. In any event the inspector relied on the presumption *omnia praesumuntur rite esse acta*.

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<sup>121</sup> Campbell v. Wallsend Slipway and Engineering Co. Ltd [1977] Crim. L.R. 351



About 1,300 prosecutions were instituted during that year, as compared with 1,400 in the previous year. These included 150 by the agricultural inspectorate; similar prosecutions were excluded from the 1975-1976 figures.<sup>122</sup> The notice system was again widely used. In this period HSE issued 5,002 Improvement Notices and 2184 Prohibition Notices.

About 1,600 prosecutions were instituted during 1977, a marked increase as compared with 1,300 in the previous year.<sup>123</sup> Enforcement activity improved as a whole in this period with the Health & Safety Executive issuing 6,233 Improvement Notices and 2,666 Prohibition Notices.

On 8th September 1977 parts of the Criminal Law Act 1977 were brought into force by the Criminal Law Act 1977 (Commencement No. 1) Order. This raised from £400 to £1,000 the maximum fine on summary conviction for a limited number of offences under the Health and Safety at Work etc. Act 1974, which are triable summarily only, such as pretending to be an inspector or obstructing an inspector. The Criminal Law Act also raised the penalties on summary conviction for indictable offences under the Act from £400 to £1,000 effective from 17 July 1978.

In 1977 - 78 the first four field consultant groups became operational. They were established at Birmingham, Manchester, Edinburgh and Cardiff, covering the Midlands, the North West, Scotland, and Wales and the South West respectively. Each of the groups was staffed by multi-disciplinary teams of scientists and engineers to provide a comprehensive technical and scientific service for factory inspectors in the field. They each had a base laboratory and a mobile laboratory equipped with the latest instrumentation to facilitate the measurement of dusts, vapours etc.

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<sup>122</sup> See the Annual Report of the Health and Safety Commission 1974 - 76 H.M.S.O. 1977. ISBN 0 11 883011 2. at page 5.

<sup>123</sup> See the Annual Report of the Health and Safety Commission 1977 - 78 H.M.S.O. 1978. ISBN 0 11 883221 2. at page 22.

The core of Factory Inspectorate work is the planned inspection of workplaces. Factory Inspectors were concerned not only with areas of traditional responsibility (factories, construction sites, docks, shipyards, some offices etc.) but also those establishments in which the Health and Safety at Work etc. Act 1974 brought statute law to bear for the first time. Following publication of pilot studies on working conditions in the medical service and in universities and on health and safety in schools and further education establishments, planned inspection of these major new entrants was begun. The complex networks of responsibilities within these large establishments required inspectors to reconsider some of the inspection techniques and approaches to staff representatives and management which they used in the manufacturing sector. Time was also allocated to the planned inspection of smaller new entrants, including such transient activities as fairgrounds, exhibitions, delivery work etc. After inspection, each fixed establishment was placed within a framework of priorities for future attention, depending on the hazards found, the assessed hazard and the inspector's judgement of management's ability to maintain or improve standards.

The National Industry Groups continued to develop their work through representation on industry bodies, systematic visits to manufacturers and suppliers of equipment, technical advice and training.

Approximately two hundred thousand visits and inspections were made annually to workplaces by staff of the Health & Safety Executive.

In order to focus its efforts, the Health & Safety Executive uses a planned Inspection Rating system as an approach to selecting premises for pre-emptive inspection. This requires inspectors to assess the standards of safety, health and welfare achieved, the potential for serious accident or disaster, and the ability of management to maintain acceptable standards. The effect of this approach has been to ensure that limited resources are channelled towards the identification and control of the more serious risks. The system has been used since 1976 by the Factory Inspectorate and since 1980 by the Agricultural Inspectorate.

During this period the Factory Inspectorate developed a five year programme setting out the broad pattern of Inspectorate activities and special projects. The objectives were:

- (a) to ensure that inspectors and their skills are effectively deployed;
- (b) to be able to give attention on their merits to the many issues within the Inspectorate's responsibility;
- (c) to provide a basis for diverting resources for meeting urgent needs;
- (d) to allow for the expected workload from forthcoming legislation;
- (e) to identify and if possible remedy possible areas of resource shortfall;
- (f) to inform inspectors at all levels, including those with their own local responsibilities for planning.

The classes of work described above were not intended to absorb more than half the time available for active inspection. The intention was that inspectors should have an almost equal amount of time to investigate accidents, incidents and complaints which were perceived at local level as deserving of attention and to respond to requests for advice from both sides of industry.

The four field consultant groups (FCGs) which had been established in Birmingham, Manchester, Edinburgh and Cardiff were augmented by the addition of two further groups in Leeds and Hitchin and East Grinstead.

Explosives, Alkali and Clean Air, Mines and Quarries and Nuclear Installations and Agriculture Inspectors were integrated within the Health & Safety Executive. A small group of Explosives Inspectors became responsible for enforcement in the danger areas of explosives factories. There was a significant increase in the number of mining and explosives accidents compared with that of earlier years. The Alkali and Clean Air

Inspectorate created nine task forces as a means of building knowledge on subjects such as monitoring methods, dispersion, test methods for pollutants arrestment equipment etc.

Regular meetings were held with local authorities, both individually and collectively to discuss areas of concern both in relation to health and safety and industrial air pollution control and to provide them with necessary general advice and research support to assist them in the exercise of their functions under the Act.

Local authorities became responsible for enforcement in 1.3 million low risk premises. They were assisted in this function both at the policy level, with two seats on the ten member Health and Safety Commission, with representatives on the Health & Safety Executive/ Local Authority Enforcement Liaison Committee, and on the ground by the Health and Safety Executive's local authority unit and advice from designated Inspectors based in local Area offices of the Health & Safety Executive. By these means general advice and research support was given to local authorities to assist them in the exercise of their functions under the Act.

#### Railways

The Railway Inspectorate of the Department of Transport, comprising seventeen inspectors, acted as an agent of the Health and Safety Commission for the enforcement of the Health and Safety at Work etc. Act 1974 in respect of railway staff other than those employed in main workshops: enforcement in British Rail Engineering Ltd workshops and in factory and mineral railways was carried out by the Health & Safety Executive with the help of the Railways Inspectorate.

#### Offshore Safety

The administrative responsibility for offshore safety has been the source of bitter and continuing controversy. On 30th July 1976 the Prime Minister announced that the responsibilities of the Health and Safety Executive were to be extended to cover workers in the offshore oil and gas industry. The relevant Order in Council, made on 1 September 1977, applied the Health and Safety at Work etc. Act 1974, with appropriate exceptions, to offshore installations and pipelines within territorial waters and areas designated under the

Continental Shelf Act 1964 and to certain work activities in connection with those installations and pipelines. The Order also extended the provisions of the Health and Safety at Work etc. Act 1974 to construction works, diving operations and certain other activities within territorial waters, and to mines extending under the sea. In September 1978, following the Ekofisk blow-out the Secretary of State for Energy set up a committee on offshore safety chaired by Dr. J.H. Burgoyne. The committee's report was published and submitted to Government on 6 March 1980. The Government, notwithstanding the preference of the minority of the committee for enforcement by the Health and Safety Executive, accepted the main proposal that the Petroleum Engineering Division of the Department of Energy might be responsible *de facto* but would report to the Secretary of State through the Health and Safety Commission. In hindsight doubts were perhaps rightly expressed about the desirability of the Government's plan. In the first place, many felt that there would inevitably be a conflict between the Department of Energy's roles as oil-sponsoring department (with the objective of bringing oil onstream) and as a safety department. Some demarcation problems remained, e.g. onshore construction of rigs and pipelines remain a Health & Safety Executive function, whilst ships and submersibles continued to be the responsibility of the Department of Trade. The Government of the day asked the Petroleum Engineering Division of the Department of Energy to retain responsibility in connection with the Mineral Workings (Offshore Installations) Act 1971 and the Petroleum Submarine Pipe-Lines Act 1975.

#### Fire Safety and Prevention

On 1 January 1977 the general fire precautions provisions of the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963 were repealed and replaced by comparable provisions under the Fire Precautions Act 1971. Responsibility for general fire precautions in most places of work was transferred to the fire authorities (or in the case of Crown premises to the Home Office and the Scottish Home and Health Department). The Health and Safety Commission and Executive retained responsibility under the Health and Safety at Work etc. Act 1974 for all aspects of fire safety at classes of premises where the processes undertaken are such as to require specialised knowledge. These, which include large chemical works and nuclear installations, are scheduled in the Fire Certification (Special Premises) Regulations 1976.

In this period the Health and Safety Commission and Health and Safety Executive witnessed a stability in its income notwithstanding the considerable financial difficulties experienced by the Wilson/Callaghan administrations.

**Resources available to the Health and Safety Commission and the Health and Safety Executive.**<sup>124</sup>

Year	Grant in Aid	Comparable purchasing power of sum in 1991.	HSE Staff 1st April
1974 -6	£30,352,909	£118,376,345	N/A
1976 -7	£37,668,229	£126,188,567	3917
1977 -8	£42,337,266	£122, 778,071	4104
1978 -9	£46,401,810	£123,892,833	4169

Over 150 fewer people were killed at work in 1978 than in 1974.<sup>125</sup> The first five years of the Health and Safety at Work Act saw a widespread and substantial reduction in fatal accidents at work, from 651 in 1974 to 544 in 1979, on a comparable basis, i.e. in fields covered by health and safety legislation for which figures were available throughout the whole period. There were also reductions in overall accident rates, although these were less marked. The total number of reported accidents at work for the calendar year 1979, at about 319,000, was the lowest recorded over the decade.

<sup>124</sup> Sources: Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1976. HC 348 1977. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1977. HC 270 1978. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1978. HC 295 1979. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1979. HC 496 1980.

<sup>125</sup> See the Annual Report of the Health and Safety Executive 1978 - 79 H.M.S.O. 1980. ISBN 0 11 883257 3. at page 1.

In 1976 the Health and Safety Commission established three "subject" Industry Advisory Committees: dangerous substances, toxic substances and medical, and one Industry Advisory Committee, for agriculture. Industry Advisory Committees for asbestos, ceramics, major hazards and nuclear installations followed in 1977; in 1978 IACs for construction and the railways were to follow; in 1979 IACs for oil and paper and board were established; in the following year two new IACs were established for foundries and printing. The Health and Safety Commission sees the Committees as fulfilling a most important function. In the Health and Safety Commission's Report 1979 - 1980<sup>126</sup> the commission said that the committees encourage participation in the improvement of health and safety at work, enable us to draw on the expertise and advice available on both sides of industry and elsewhere and can give particular industries closer and more detailed attention than the Commission could itself give.

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<sup>126</sup> Health and Safety Commission's Report 1979 - 1980 (p.8)

*Fatal accidents 1970-1979*<sup>127</sup>

Industry	Fatal accidents	Fatal Accident rate		
	1975 - 79 average	1975 - 79 average	Change 1970-74	
	Number of deaths	Deaths per 100,000 employees	%	
Agriculture	34	11.4	-2.6	-18
Coal Mines	53	20.9	-4.1	-16
Manufacturing	175	3.4	-0.9	-21
Construction	145	14.4	-4.6	-24

The above table summarises the comparison of four major groups for which comparable figures were available. The most marked reduction was that of 24% in the construction industry, the manufacturing industry experienced a reduction of 21%, agriculture 18% and coal mining 16%.

<sup>127</sup> Source: Health and Safety Commission's Report 1979 - 1980



*All reported accidents 1970 -1979*<sup>118</sup>

	1975 - 79 average	1975 - 79 average	Change 1970-74	
	Thousands	Accidents per 100 employees		
Agriculture	4.8	1.6	-0.5	-23
Coal Mines (a)	48.4	19.2	-4.8	-20
Manufacturing	181.3	3.5	-0.1	-3
Construction	34.0	3.4	-0.2	-7

The above table again summarises the comparison of four major groups for which comparable figures were available. The most marked reductions were in agriculture 23% and coal mining 20%. In the other sectors viz. the construction industry and the manufacturing industry accidents were substantially under reported.

<sup>128</sup> Source: Health and Safety Commission's Report 1979 - 1980

(ii) **Period 1979 - 1983 The First Thatcher Government.**

In December 1979 H.M. Government decided that the Health and Safety Commission's budget for 1982/83 should be reduced by 6% from the 1979/80 level in respect of staff related expenditure. The Executive's manpower fell from 4250 in November 1979 to 4030 at the end of March 1981. By 1982 staff numbers had reduced to 3730.<sup>129</sup> The Health & Safety Executive informed the Government that cuts of this size could not be achieved without a corresponding reduction in planned programmes. Morale declined. The staffing level was now 10% above pre 1974 Act levels but the responsibilities greatly exceeded that figure, in that for example the Health & Safety Executive took responsibility for six million workers covered by the legislation for the first time. In the Health and Safety Commission's Report 1979 - 1980 the Government was invited to indicate in what areas they would like to see programmes cut.

**Resources available to the Health and Safety Commission and the Health and Safety Executive.**<sup>130</sup>

Year	Grant in Aid	Comparable purchasing power of sum in 1991.	HSE Staff 1st April
1979 -80	£55,861,003	£131,831,967	4110
1980 -1	£69,924,072	£139,848,144	3883
1981 -2	£72,882,323	£129,730,535	3712
1982 -3	£80,132,522	£131,417,336	3593

<sup>129</sup> See the Annual Report of the Health and Safety Commission 1982 - 83 H.M.S.O. 1983. ISBN 0 11 883718 4.

<sup>130</sup> Sources: Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1980. HC 201 1981. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1981. HC 229 1982. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1982. HC 156 1983. [Net Expenditure £75,593,317]. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1983. HC 156 1984. [Net Expenditure £80,160,738]

The increased responsibilities and the standstill in the budget over this period affected the staffing of field inspectors quite dramatically. In the period 1977 to 1985 the number of Factory Inspectors in the London area dropped from 85 to 74.<sup>131</sup>

In balancing tasks and resources the Director General of the Health & Safety Executive indicated that his organisation dealt with three main kinds of risk:

- a) risk of injury, maiming or death from 'accidents' ---- results are usually immediate and obvious.
- b) risk of permanent damage to health caused by exposure to chemicals, or noise, or radiations ---- results are usually delayed and not always attributable, without dispute, to the work situation.
- (c) risk of major catastrophes which could injure or kill large numbers, perhaps very large numbers, of people ---- the chances of such events are always very low and the total number of people hurt is small compared with (a) and (b), but society does not easily accept such events.

The Director General indicated that in the past attention had been concentrated on risk of injury, maiming or death from 'accidents' but in recent years there had been a shift to dealing with the risks of permanent damage to health caused by exposure to chemicals, or noise, or radiations. This trend would continue even if it meant cuts elsewhere.

In relation to the loss of life which might result from major catastrophes and which could potentially injure or kill very large numbers of people, the Director General felt that many resources would need to be deployed into establishing guidelines for design and operation; into checking that firms have analysed the hazards inherent in their operations; and in maintaining the way in which precautions are made effective in the installations. Again this trend would continue even if it meant cuts elsewhere.

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<sup>131</sup> Parliamentary Debates (Commons) Written Answers, Columns 268 -9, 4th July 1985

Interestingly a marked change of attitude was signalled by the Director General in the Health and Safety Commission's Report 1979 - 1980. He said:

"What matters is what goes on when an inspector is not there. I am convinced that the primary contribution of inspectors to health and safety is to secure a lasting change in the attitudes of people they deal with, and in the systems those people operate. The more influential those people are, the more valuable will be the change in attitudes and the more widespread the effect of the systems."

During the period January 1980 - March 1983 the Health and Safety Executive reduced its workforce from 4200 staff to 3,730 staff shedding a total of 470 staff a reduction of more than 11%. New recruitment was also suspended until early 1983.

Employees		Self Employed and other Non Employees.		Total <sup>132</sup>	
Fatal	Major	Fatal	Major	Fatal	Major
1981	449 12,315	129 5701		578 18016	
1982	468 12,275	132 5745		600 18020	
1983	443 12,447	152 6445		598 18892	
1984	432 12,494	160 6823		592 19317	

During this period fatal accidents per annum rose from 578 to 592. The number of major accidents per annum also rose from 18,016 to 19,317 in a workforce in employment of some 23.25 million. The workforce fell by over 300,000 between 1981 and 1983. <sup>133</sup>

<sup>132</sup> Health and Safety Commission's Report 1984 - 1985

<sup>133</sup> Social Trends 22 CSO 1992 Edition H.M.S.O.

**Prosecutions under all relevant statutory provisions by H.S.E Inspectorates and HSC agencies.**

Year	Informations Laid/Recorded	Convictions	Penalty per Conviction	% Conviction
1981	1892/1838	1654	189	89.98
1982	2351/2261	2065	233	91.33
1983	2238/2133	1941	252	90.99
1984	2209/2130	1944	313	91.26

In relation to some of the information the result is not known. Therefore the data includes two figures - total informations laid and informations where the result has been recorded. The conviction rates have been calculated in relation to those informations where the result has been recorded.<sup>134</sup>

**Prosecutions under all relevant statutory provisions by all enforcing authorities.**

Year	Informations Laid/Recorded	Convictions	% Conviction
1981	2408/2354	2100	89.21
1982	2819/2729	2467	90.39
1983	2749/2644	2362	89.33
1984	2794/2715	2469	90.93

In relation to some of the information the result is not known. Therefore the data includes two figures - total informations laid and informations where the result has been recorded. The conviction rates have been calculated in relation to those informations where the result has been recorded.<sup>135</sup>

<sup>134</sup> Health and Safety Commission's Annual Report 1992 - 1993 Statistical Supplement

<sup>135</sup> Health and Safety Commission's Annual Report 1992 - 1993 Statistical Supplement

(iii) **Period 1984 - 1990 The Second and Third Thatcher Governments.**

In this period the Health & Safety Commission and Executive began to witness significant changes in economic activity; notably the rapid rate of technical innovation and a major and continuing shift from agriculture, mining and manufacturing to service occupations. Many of the more dangerous industries had declined, and new industries, often including large numbers of small and subcontracting firms, were emerging. There was growing public interest in the potential for industrial hazards or substances for use at work (as, for example, pesticides) to affect the population at large; and a public demand both for information and very high standards of health and safety protection.

**Resources available to the Health and Safety Commission and the Health and Safety Executive.<sup>136</sup>**

Year	Gross Income	Comparable purchasing power of sum in 1991.	HSE Staff 1st April
1983 -4	£85,651,000	£134,472,070	3563
1984 -5	£96,207,000	£144,310,500	3616
1985 -6	£100,460,000	£141,648,600	3662
1986 -7	£101,661,000	£139,275,570	3573
1987 -8	£117,406,000.	£146,757,500	3470
1988 -9	£110,589,000.	£128,283,240	3525
1989 -90	£118,408,000.	£125,512,480	3698

<sup>136</sup> Sources: Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1984. HC 447 1985. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1985. HC 327 1986. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1986. HC 271 1987. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1987. HC 389 1988. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1988. HC 205 1989. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1989. HC 361 1990. Health and Safety Commission and the Health and Safety Executive Accounts for the period ended 31 March 1990. HC 298 1991.

The main aims of the Health & Safety Executive's inspectorates were re-affirmed as follows:

- (a) undertaking inspection of work activities at workplaces, monitoring standards of health and safety performance and assessing the quality of organisation and arrangements for health and safety at individual workplaces.
- (b) providing advice for employers, employees and members of the public;
- (c) investigating serious accidents and cases of occupational ill health;
- (d) remedying complaints from employees and members of the public;
- (e) enforcing appropriate health and safety legislation through advice, persuasion, the use of enforcement notices and, where necessary, prosecution.

	Employees		Self Employed and other Non Employees.		Total <sup>137</sup>	
	Fatal	Major	Fatal	Major	Fatal	Major
1985	404	13,183	228	7,314	632	20,497
1986	355	20,695	144	15,265	499	35,955
1987	361	20,057	197	13,847	558	33,904
1988	529	19,944	201	13,766	730	33,710
1989	339	19,941	284	12,423	626	32,364
1990	326	19,607	212	11,077	538	30,684

<sup>137</sup> Health and Safety Commission's Report 1989 - 1990

In the years commencing 1 April 1986 accidents and dangerous occurrences were reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 rather than the Notification of Accidents and Dangerous Occurrences Regulations 1980. The introduction of Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 significantly widened the coverage of the major injury category. The fatal injury category was unaffected.

During this period fatal accidents per annum declined from 632 to 538. (Under the new reporting rules) the number of major accidents per annum also declined from 35,960 to 30,684 in a workforce which had increased from 23.25 million in employment in 1983 to some 26.08 million in 1990. In 1988 167 people died in the Piper Alpha Disaster.

The incidence of fatalities in the coal mining, agricultural and construction industries continued to be of concern. The fatal injury incidence rates fell in construction, agriculture and manufacturing between 1984 and 1990. In 1989 - 1990 the injury incidence rate in construction was over four times higher than in manufacturing although neither was as high as that in the mining sector in 1989 - 1990. The Chernobyl disaster provided a timely reminder of the need for vigilance in relation to nuclear activity. It was planned to appoint 120 nuclear installations inspectors by 1 April 1988.

During the period 1986 - 1988 the Health and Safety Executive reduced its workforce from 3661.5 staff to 3,470 staff shedding a total of 191.5 staff.

However, by 1990 the Health & Safety Executive had begun to reverse this trend. During the two year period from March 1987 - April 1989 the nation had experienced a succession of very serious accidents involving huge loss of life: the capsizing of 'the Herald of Free Enterprise' Zeebrugge (6 March 1987) the fire at Kings Cross Underground Station (November 1987), the explosion and fire at the Piper Alpha oil rig in the United Kingdom sector of the North Sea and the crush at Sheffield Wednesday Football Ground (15 April 1989). By the end of that year 3,877 staff were in post including 1,342 inspectors organised in three headquarters locations, twenty Area Offices and some thirty other



offices. Its annual budget was £157,473,000. Its duties extended to more than 650,000 places of work and understaffing still impaired the Health & Safety Executive's effectiveness.

**Prosecutions under all relevant statutory provisions by H.S.E Inspectorates and HSC agencies.**<sup>138</sup>

Year	Informations Laid/Recorded	Convictions	Penalty per Conviction	% Conviction
1985	2321/2258	1915	436	84.81
1986	2199/2120	1771	410	83.54
1987	2337/2337	2053	792	87.85
1988	2328/2328	2090	541	89.78
1989	2653/2653	2289	783	86.28
1990	2312/2312	1991	903	86.16

In relation to some of the information the result is not known. Therefore the data includes two figures - total informations laid and informations where the result has been recorded. The conviction rates have been calculated in relation to those informations where the result has been recorded.

<sup>138</sup> Health and Safety Commission's Annual Report 1992 - 1993 Statistical Supplement

**Prosecutions under all relevant statutory provisions by all enforcing authorities.** <sup>139</sup>

Year	Informations Laid/Recorded	Convictions	% Conviction
1985	2772/2709	2361	87.15
1986	2812/2733	2301	84.19
1987	3062/3062	2682	87.59
1988	3059/3059	2687	87.84
1989	3366/3366	2953	87.73
1990	2957/2957	2542	85.97

In relation to some of the information the result is not known. Therefore the data includes two figures - total informations laid and informations where the result has been recorded. The conviction rates have been calculated in relation to those informations where the result has been recorded.

<sup>139</sup> Health and Safety Commission's Annual Report 1992 - 1993 Statistical Supplement

## Railways

On 1 December 1990 the Railways Inspectorate was transferred to the Health & Safety Executive. The move had been the subject of discussion for some years and the balance of advantage in remaining at the Department of Transport or transferring had always been a close one but a number of serious accidents, notably the King's Cross Underground Fire, the Clapham Junction Railway Accident and the collision at Purley showed that radical changes had to be made on the railways. This, coupled with some serious criticism in the report of Desmond Fennell O.B.E. Q.C. the Inspector appointed to hold a formal investigation into the King's Cross Underground Fire probably hastened the move. In his report Desmond Fennell O.B.E. Q.C, (later Mr. Justice Fennell) said:

" In my view the Railway Inspectorate in recent years has not made full use of its powers or devoted sufficient resources to London Underground to create the tension necessary to ensure safety. Their misunderstanding of the duties imposed by section 3 of the Health and Safety at Work Act 1974 led them to take a more relaxed approach with London Underground than they would otherwise have done. I believe that their general relationship with London Underground lacked the creative tension necessary to instill discipline and produce prompt results within the organisation. A more vigorous use of enforcement powers would probably have alerted London Underground senior management to the unsatisfactory state of affairs in stations sooner."

Shortly after the rush hour had passed its peak on Wednesday 18th November 1987 a fire of catastrophic proportions claimed the lives of 31 people and injured many more at King's Cross Underground Station. As is often the case matters could have been so much more serious. More than 100,000 passengers had passed through that station between 16:00 and 18:30 earlier that evening.

On the morning of Monday, 12th December 1988 a crowded commuter train ran head-on into the rear of another which was stationary in a cutting just south of Clapham Junction station. After that impact the first train veered to its right and struck a third oncoming train. As a result of the accident 35 people died and almost 500 were injured, 69 of them seriously. In his report Mr Anthony Hidden Q.C. (later Mr. Justice Hidden) The Inspector said (at page 163)

"The evidence showed a sincerity of the concern for safety. Sadly, however, it showed the reality of the failure to carry that concern through into action. It has to be said that a concern for safety which is sincerely held and repeatedly expressed but, nevertheless, is not carried through into action, is as much protection from danger as no concern at all."

The British Railways Board was subsequently prosecuted in June 1991 and a fine of £250,000 plus £55,000 costs for an admitted failure to ensure the safety of its employees and passengers.

Whilst in 1989 at Purley the driver of a passenger train failed to observe a signal at danger and collided with another train. A sentence of six months' imprisonment was subsequently imposed upon that driver at the Central Criminal Court.

Safety management principles need to be adopted widely throughout industry. The Health & Safety Executive is Britain's leading authority, and ministers decided that the time was right for the transfer of the Railway Inspectorate to take place in 1990. The Inspectorate continues to provide advice to the Secretary of State for Transport by means of an agency agreement with the Health and Safety Commission.

TABLE 1 DEATH OR INJURY RISK TO PASSENGERS

YEAR	Train accidents			Movement accidents			Non-movement accidents		
	Killed	Major	Minor	Killed	Major	Minor	Killed	Major	Minor
	PER BN PASSENGER MILES			PER BN PASSENGER MILES			PER BN P'GER JOURNEYS		
1985	0.00	1.35	10.04	1.35	1.83	102.30	1.44	36.82	2503
1986	0.34	1.90	12.85	0.99	3.02	98.00	0.74	40.59	2599
1987	0.12	0.53	12.17	1.47	3.28	106.90	18.82	54.51	2314
1988	1.33	2.94	21.17	1.33	4.00	102.70	0.61	81.13	2399
1989	0.24	1.58	11.03	1.01	3.93	105.40	1.25	82.55	2687
1990	0.00	0.53	5.88	1.51	4.37	104.10	1.29	67.31	2293

These figures show the fluctuations resulting from individual major accidents, the fire at King's Cross in 1987 and the collision at Clapham Junction in 1988 and from the increase in movement accident fatalities in 1990.

In 1990 Inspectors issued seven prohibition and 15 improvement notices in the year compared with four and five in 1989. Contractors were in receipt of one prohibition and two improvement notices, minor railways one prohibition and one improvement notice, the Tyne and Wear Metro one improvement notice; the remainder were served upon BRB. The marked increase in the numbers issued reflects the greater number of inspectors in the field along with a more vigorous enforcement policy.

Five prosecutions were brought to court. All but one were heard in magistrates' courts, and in every case a guilty plea was submitted. One involved an electrical installations left in an unsafe condition by a contractor at Blackpool Northern Station (LMR) which had led to a small boy being burned. The contractor was successfully prosecuted under the Health and Safety at Work Act 1974.

There were two cases which occurred on the same weekend in March where rail cranes overturned while lifting sections of track. These occurred at Faversham (SR) and Newcastle (ER). In each case the operators did not know the weight of the load to be lifted and moved it an excessive radius. There have now been four prosecutions of British Railways Board for other similar offences in the past six years. Discussions were subsequently held with the Board to establish procedures to prevent a recurrence.

The Board was also prosecuted following an accident to a member of staff in a goods lift at Westbourne Park (WR). The lift was not being properly maintained and local staff were routinely defeating safety interlocks to operate it until one of them had his foot trapped and injured at a landing.

Following the death of a young window fitter, who was electrocuted at Euston Station (LMR) in November 1988 the Railway Inspectorate prosecuted the main contractor on the site under Sections 3 and 33 of the Health and Safety at Work etc Act. The case was heard in the Crown Court and a guilty plea was heard at Middlesex Guildhall in December 1990. A fine of £5,000 with £5,000 costs was imposed.

### Disasters

Although there were lessons to be learned following the Hillsborough Stadium Disaster when 95 people were crushed to death at a Cup semi-final football match between Liverpool and Nottingham Forest on 15th April 1989 the Inquiry Chairman, The Right Honourable Lord Justice Taylor (now The Right Honourable Lord Taylor of Gosforth, The Lord Chief Justice) in his Report<sup>140</sup> agreed that notwithstanding a succession of disasters, the most recent being at Bradford in 1985 Inquiry Chairman, The Right Honourable Lord Justice Popplewell in his Report<sup>141</sup> said that responsibility for safety at

<sup>140</sup> Cm 962 HMSO 1990

<sup>141</sup> Committee of Inquiry into Crowd Safety and Control at Sports Grounds, Final Report, Cmd. 9710 (London HMSO 1986)

sports grounds would remain with the Home Office. A transfer of responsibilities to the Health and Safety Executive would have had resource implications. The Home Office evidence was as follows (see page 26):

"The Health and Safety at Work Act could also be used to enforce general spectator safety at sports grounds. Section 3 of the Act is wide ranging in that it places a duty on an 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 exposed to risks to their health or safety. A sports or other entertainment "undertaking" would fall within this category. However, it is the stated policy of the Health and Safety Commission that, as a general principle, they and the Executive wish to avoid duplication of enforcement with other authorities. The Health and Safety Executive would *not* therefore generally attempt to enforce the requirements of Section 3 of the 1974 Act when they overlap with duties imposed by other more specific legislation where other authorities have responsibility for policy and enforcement. The Safety of Sports Grounds Act 1975 represents more specific legislation and the Health and Safety Executive does not enforce Section 3 of the 1974 Act to secure the safety of spectators at sports grounds. This arrangement is agreed between the Health and Safety Executive and the Home Office."

On the evening of 6th July 1988 the Piper Alpha disaster claimed the lives of 167 people. The death toll was the highest in any accident in the history of offshore operations. In terms of a minute dated 13th July 1988 the Secretary of State appointed The Honourable Lord Cullen to be Chairman of a Public Inquiry to establish the circumstances of the accident and its cause and to hold an inquiry and report to him on the circumstances of the accident and its cause together with any observations and recommendations which he thought fit with a view to the preservation of life and the avoidance of similar accidents in the future. On 19th October 1990 the Inquiry Chairman recommended that the regulation of offshore safety should be transferred from the Department of Energy to the Health and Safety Executive <sup>142</sup> It recommended major changes be made to the regulatory regime with the following features:

<sup>142</sup> See the Report of the Public Inquiry into the Piper Alpha Disaster, The Honourable Lord Cullen, HMSO London Cm 1310).

new requirements for the submission by the operator, and acceptance by HSE, of a safety case for each installation based on systematic risk assessment;

improvements in company safety management systems, subject to regular audit, reviews and inspection; and

a programme to progressively replace the existing body of offshore safety regulations, couched largely in specific terms, by (mainly) more flexible regulations in terms of goals to be achieved, supported by non- mandatory guidance.

The government accepted Lord Cullen's proposals and the transfer took place on 1st April 1991. Additional funds of the order of £20 million per annum in 1991/92 rising to £35 million per annum in 1994 /95 were agreed.

### **Airport Safety**

At airports there are many potential risks to both workers and travellers, particularly the risk of being struck by moving aircraft or airside vehicles. Responsibility for apron safety regulation, monitoring and enforcement is joint. The Health and Safety Executive has jurisdiction over health and safety matters for all employee work areas of a UK airport but the Executive considers that the regulation, monitoring and enforcement of aircraft safety on the apron should come under CAA auspices. The Aerodrome Standards Department of the Civil Aviation Authority has recently published 'A New Framework for Delivering Safety' and this new initiative is to be given considerable emphasis by the Authority. Additionally, the Health and Safety Executive has recently established an Air Transport National Interest Group as a focus for its inspection activities at airports.



### 3. Health & Safety Executive enforcement policy and powers of inspectors

#### Enforcement Policy

In this chapter the methods used to give effect to the Health & Safety Executive's policies and methods are discussed. Inspectors of the Health & Safety Executive are more than policemen. Although the main task for the majority of inspectors was the inspection of workplaces, inspectors at various levels assist in the framing and revision of legislation; undertake investigations, surveys and research; participate in the preparation of advisory literature; liaise with manufacturers of plant and equipment, sit on various kinds of technical committees; deliver lectures; and participate in conferences at home and overseas. Factory Inspectors aimed to visit each workplace at least every four years; farms were inspected for safety almost as often, whilst other workplaces which were covered by different Inspectorates were inspected more frequently<sup>143</sup> Only a very small proportion of offences discovered by the inspectorates lead to prosecution, although there have been recent indications of a sharpening of this approach.<sup>144</sup> The Report dismisses a programme of more frequent visits to workplaces as "manifestly impracticable"<sup>145</sup> The Robens Committee advocated the adoption of a more discriminating approach towards enforcement. Traditional concepts were, it argued, inapplicable **a fortiori** to wilful, flagrant or reckless behaviour which had resulted or would result in serious injury.<sup>146</sup>

This approach marked a sharp contrast to the inspectorate's previous 'extended cautioning' policy which was aimed largely at avoiding prosecution.

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<sup>143</sup> Robens Report pages 61-62 para 202

<sup>144</sup> Robens Report page 81 para 259 and page 164 Table 5

<sup>145</sup> Robens Report page 7 para 28

<sup>146</sup> For strong criticism of this view see Woolf, Anthony D. Robens Report - The Wrong Approach, *Industrial Law Journal* 2 1973 pp.88-95.

In the Annual Report of H.M. Chief Inspector of Factories 1968, it is said "Court proceedings " take time and are only normally undertaken when reasonable persuasion to bring conditions to an acceptable standard has failed". The general approach is, perhaps best described in the following quotation from the same source:

"The enforcement and advisory work of the Inspectorate is not done with a starry - eyed and theoretical approach. The Inspector is fully aware that there may be three sides to a problem - the management's and the worker's as well as his own. The management has to run a successful business in a competitive world and must constantly experiment with new processes and materials. The worker must be allowed to behave as a human being may reasonably be expected to behave, and not as an automaton. The Inspector has to continue the job that the Inspectorate has been doing for over 130 years, that of enforcing the standards laid down by the law, many of which are not in absolute and precise terms, but hedged about by such phrases as 'reasonably practicable' and 'adequate and suitable'. In these circumstances the Inspector's training in the uniform application of the law and his wide experience are important. More than this, he cooperates with the most forward looking managements and trade and union associations in achieving standards which will become the legislation of tomorrow."

This policy was tested in a number of critical studies published in the period 1970 - 1973.

L. Greenberg who<sup>147</sup> found little correlation between the number of inspections, the number of prosecutions and the size of fines and the number of accidents; whilst in a similar but broader study of H.M. Factory Inspectorate, he concluded that its structure, philosophy and operation were outmoded.

In a deeper but more selective study, Carson<sup>148</sup> described and interpreted some empirical data concerning the enforcement of factory legislation. Carson observed that for more than a century and a half "the state has gradually increased the level of intervention in the industrial sphere by stipulating the minimum standards of safety, health and welfare which factory - occupiers should observe. In doing so it has sought to ensure that the legitimate

<sup>147</sup>The Deterrent Value of the Safety Legislation System in Israel in *Avoda Uvituch Leumi* Vol. 23 No.1 pp.20-22 examined the work of the Israeli inspectorate over the period 1962 - 1969

<sup>148</sup>in *White Collar Crime and the Enforcement of Factory Legislation* Brit. J. Crim. 1970, 383 - 399.

economic objectives of manufacturers are not pursued at the expense of persons who are employed. Carson records that in 1970 factory legislation provided for its enforcement by means of criminal sanctions. Offenders were triable summarily and could be fined up to £300 in instances where the contravention was likely to cause death or bodily injury. Carson goes on to say

"that with a fine eye to the integrity of the law's administrative machinery and personnel, imprisonment for up to three months was permitted for offences such as personation, forgery of documents and making false declarations."

Carson analysed the data on the Factory Inspectorate's files for one district in the South of England and which concerned a four and a half year period from mid 1961 - 1966. The area chosen for the research was selected for its relatively wide range of different industries and different sizes of firm. Of 661 enforcement decisions concerning some 3,800 recorded offences, prosecution was authorised in only 10 (1.5%) of cases. A plea of guilty was entered in every one of these and the average fine imposed on conviction was £50. Note: These figures should be interpreted with caution since "it is widely recognised .... that it is virtually impossible to run a business without at some time infringing the strict letter of the law".<sup>149</sup>

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<sup>149</sup> See Law Commission Working Paper No.30, Law Commission's Second Programme, Item XVIII Codification of the Criminal Law Strict Liability and the Factories Act 1961 at page 21.

*Nature of offences recorded against 200 firms during period of four and a half years.*

Type of offence	Number	Per cent
Lack of secure and properly adjusted fencing at dangerous machinery	1451	38.2
Inadequate precautions against fire and explosion	460	12.2
Other safety requirements	380	10.0
Failure to examine, test or treat plant and equipment	162	4.3
Offences against health and welfare requirements	317	8.3
Offences against administrative requirements	917	24.1
Other	5	0.1
Total	3,800	100.0

The pattern which emerged from his findings was one of substantial violation countered almost exclusively by the use of administrative procedures.<sup>150</sup>

<sup>150</sup> It would seem that a firm's attitude to the law and to the inspectorate was an important factor in the decision whether or not to prosecute. In any event the decision to prosecute was very much one of last resort Carson op.cit. p. 394.

The offences were detected through a variety of means; but chief among these was the Inspectorate's own programme of general inspection and re-inspections following up matters which had already come to light.

As can be seen below the law was enforced by the use of six major methods ranging from no formal action to prosecution. The procedures between these two extremes comprise standardised reactions of varying degrees of forcefulness. At the lower end was a procedure where the offender was notified of various matters which required attention or, if matters were more serious, urgent attention. If matters were more serious still the occupier was reminded that failure to comply with legal requirements could result in prosecution. All of the ten decisions to prosecute followed the occurrence of industrial accidents involving machinery in motion.

*Types of enforcement decision taken in respect of recorded offences*<sup>151</sup>

Enforcement decision	Number	Per cent
No formal action	36	5.5
Notification of matters requiring attention	494	74.5
Notification of matters urgently requiring attention	79	11.9
Indirect threat of prosecution	30	4.5
Direct threat of prosecution	12	1.8
Prosecution	10	1.5
Total	661*	99.7

Another matter of relevance in the context of enforcement was the Inspectorate's reaction those who repeated the offences in spite of formal warnings. In such cases a more severe response was noted.

<sup>151</sup> The two threats of certificates of unsuitability under section 69 are excluded.

*Types of enforcement decision taken in respect of recorded offences, distinguishing those which involved repeated offences from those which did not.*

Repeated Offences Involved

Enforcement decision	Repeated Offences Involved		
	None Per cent	Detected for second time Per cent	Detected for third or more time Per cent
No formal action	3.0	7.8	18.3
Notification of matters requiring attention	92.5	38.7	17.5
Notification of matters urgently requiring attention	0.9	35.2	43.9
Indirect threat of prosecution	1.9	11.3	8.8
Direct threat of prosecution	0.4	4.2	7.0
Prosecution	1.1	2.1	3.5
Total	99.8 = 463	99.3 = 141	100 = 57

The pattern is one of violation countered by the use of administrative procedures. This was undoubtedly because factory inspectors did not regard themselves as industrial policemen. They perceived their role as educators and raisers of standards. The most efficient way of achieving these purposes was to inspect regularly, make repeated check visits and when contraventions were noted to write formally to those in control of firms. As with the

first Inspectors, prosecution was regarded as a tool of last resort<sup>152</sup> Carson noted that disregard of warnings, previous convictions and lack of progress over prolonged periods all received frequent and explicit mention in reports. Firms were effectively categorised as good, bad, co-operative or those which regarded legal requirements as trivialities. It would seem that these deeply entrenched informal rules played a large part in determining enforcement decisions but by the late 1960's had very probably outlived their usefulness.

In May 1968 the Law Commission in Working Paper No.17 in the section 'Principles of Criminal Liability' raised a number of questions concerning problems of strict liability. Following the publication of this paper the Law Commission invited Professor Fitzgerald and Dr. Hadden of the Sub-Faculty of Law at the University of Kent December 1968 to undertake a study of the working of the enforcement procedures of the Factories Act 1961 in two selected districts of the Factory Inspectorate.<sup>153</sup> In this paper Carson's conclusions which have been set out above were given wide support. In 1968 some 400 inspectors were organised in more than 100 district offices covering some 200,000 factories as well as premises subject to the Offices, Shops and Railway Premises Act 1963. During 1968 some 80,000 sites and factories were thoroughly inspected, and some 25,000 accidents and complaints were investigated. Legal proceedings were brought against more than 900 firms. However it was noted in this study that the basic nature of the enforcement system had not appeared to have altered appreciably since 1833 -

" [t]he Inspectorate has always preferred to secure a progressive improvement in standards of safety, health and welfare under the terms of legislation by encouragement and persuasion rather than by rigid enforcement of the letter of the law in all cases."

<sup>142</sup> See for example, Inspector Howell's report for the last quarter of 1836 in which it was said that frequent visiting was equally efficacious as convictions in producing obedience to the law" (Parl. Papers, 1837, XXXI, 107).

<sup>143</sup> See Working Paper No.30, (Law Commission's Second Programme, Item XVIII Codification of the Criminal Law Strict Liability and the Factories Act 1961

Fitzgerald and Hadden noted that it was the declared policy of the Factory Inspectorate at the time to make a "general inspection" of every factory not less than once every four years. During the course of such an inspection, which was made without warning, an inspector would make a wide ranging tour of the premises in company with a representative of the firm, noting and discussing with him the various matters which appeared to require attention. Registers would be perused and gaps and inaccuracies noted. On return to the office a formal note of the inspection was to be recorded in the firm's file and if necessary enforcement action of the kind Carson described and noted above was taken. In the case of construction sites where places of work are usually temporary and where the head office was usually outside the Factory Inspector's District, a separate regional construction office was responsible for an independent system of inspection and administration.

In addition to the system of general inspection, Fitzgerald and Hadden described the system in place at the time for the investigation of accidents and complaints. On the figures available at the time it seemed that some 20,000 and 5,000 respectively were made in a full year although some 300,000 reportable accidents were recorded each year. Lack of resources meant that only a small proportion of reportable accidents could be investigated even though some of these visits were made at the same time as general inspections and the two functions carried out at the same visit. An accident investigation was made only where the formal report from the firm indicated that a further investigation was necessary because :

"by the severity of the injuries, by some indication that a breach of the law was involved, by their recurrence in a particular factory or for some other reason."<sup>154</sup>

Surveys at the time by the inspectorate showed that only 16% of reported accidents in factories and 19% of those on construction sites involved a clear breach of the law.<sup>155</sup>

<sup>154</sup> Annual Report of H.M. Chief Inspector of Factories (1968) Cmnd. 4146

<sup>155</sup> Accidents in the Construction Industry, H.M.S.O. 1967 and Annual Report of H.M. Chief Inspector of Factories (1968) Cmnd. 4146, pp. 76-80). On that analysis the selective investigation described is justifiable.



All other bona fide complaints were addressed as a matter of priority. In addition, considerable efforts were made to improve safety management within companies. The appointment of safety officers and safety committees was encouraged. Special visits were made to assist in the resolution of difficult problems relating say to lifting gear or steam boilers by Engineering and Medical Inspectors based centrally. Time was also spent giving lectures and talks.

As Carson explained (see above) the pattern was one of substantial violation countered almost exclusively by the use of extensive cautioning and administrative procedures. The decision to prosecute was very much one of last resort. In the vast majority of cases such matters were not regarded as criminal offences in any ordinary sense either by the Inspectorate or by the employers concerned. In cases where advice and persuasion were not enough, where a knowledge of the firm indicated that matters would not be attended to speedily or at all a check visit would be planned to take place usually some three to six months later but earlier of course if it was thought that there was an immediate danger of accident or injury. Subsequent follow up visits would be made, by the inspector, and in some cases with his superiors. Written communications from his office would change in tone and severity to reflect the degree of pressure which the inspector thought to be justified; indeed in serious or intractable cases mention might be made of impending legal proceedings if matters were not speedily attended to.

Where a series of visits and letters failed to produce the desired effect or where an accident investigation revealed a serious breach in the law, a formal prosecution report would be submitted by the inspector concerned to his superiors setting out the circumstances of the case and recommending the institution of criminal proceedings. It was a standing rule that such a report should be submitted about any major item left outstanding after a second check visit. The report would be considered by H.M. District Inspector of Factories and forwarded to H.M. Superintending Inspector of Factories. Where proceedings were authorised, as they were from just less than half of the cases submitted in Fitzgerald and Hadden's study, the case would be prepared by the inspector or by the H.M. District Inspector of Factories and conducted in the local magistrate's court as soon as a suitable hearing date could be arranged. Usually this was within an eight

week period. Firms usually pleaded guilty unless this would have adversely affected subsequent civil litigation. Courts were also empowered by section 157 Factories Act 1961 to make an order for the execution of any necessary works necessary to effect compliance with the Act.

*Prosecutions conducted by HMTI in 1968.*

Informations laid	Firms	Convictions	Per cent
2,521	937	2,371	94

The average fine in 1967 was £33 per offence. It was normal for at least two charges to be laid against each defendant. By 1970 matters had not changed greatly: three hundred thousand visits made by factory inspectors resulted in the prosecution of fewer than three thousand offences. For those convicted under the provisions of the Factories Act 1961, the average fine was £40.<sup>156</sup>

The principal finding of Fitzgerald and Hadden's study was that liability under the enforcement system was almost always fault based. Firms could normally escape criminal liability for the acts of any employee who was not in a managerial or supervisory position. The firm as such was held responsible only for those contraventions of the statutory requirements for which the management of the firm could reasonably be held to blame.

<sup>156</sup> Committee on Safety and Health at Work op.cit. p.82 para 258, 259.

Fitzgerald and Hadden's study further concluded that:

"Employers are not really expected to comply with the letter of the law in all circumstances. But they are expected to comply with the reasonable requests of factory inspectors who put into effect the general policy directives, express and implied, of the central Inspectorate on the standards to be applied on the various aspects of the legislation. In this context, fault is more or less co-extensive with delay in compliance with the various items which are picked out by inspectors in the periodic visits of inspection. Mitigating factors are not so much lack of intention or negligence as the extent of the dislocation and expense which would be involved and the prospects of future compliance in the course of rebuilding or replacement."<sup>157</sup>

The Robens Committee believed that in some situations the criminal sanction would remain appropriate<sup>158</sup> indeed they believed that exemplary punishment should follow in the case of wilful, flagrant or reckless behaviour which has resulted or will result in serious injury. To accommodate this recommendation, it was further proposed that fines should be much higher and that individuals such as directors, managers and operatives should be liable to prosecution.<sup>159</sup>

Sections 33 - 42 Health and Safety at Work etc. Act 1974 provide for the enactment of these recommendations. The maximum fines which may be imposed were higher than those in the existing statutory provisions and provision was made for penalties for offences which continue after the date of conviction.

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<sup>157</sup> See Law Commission Working Paper No.30, Law Commission's Second Programme, Item XVIII Codification of the Criminal Law Strict Liability and the Factories Act 1961 at page 58.

<sup>158</sup> Committee on Safety and Health at Work op.cit. pp.82 para 263:

<sup>159</sup> See now Sections 7, 36 and 37 Health and Safety at Work etc. Act 1974

Consequently a new spirit of individual and co-operative responsibility was sought. This new spirit of responsibility would be developed alongside a policy of *self regulation* by industry. It was hoped that the negative influence of what was seen as an excessively regulatory approach would thus be reduced. The Committee restated the view that the basic function of the state inspection services should be the provision of advice and assistance towards progressively better standards.

S.Dawson and others, in her book: *Safety at Work: the limits of self regulation*<sup>160</sup> is of the view that:

"Many studies of regulation and inspection draw a strong distinction between a remedial, conciliatory style of enforcement with an associated compliance strategy and an accusatory style of enforcement associated with a sanctioning strategy (Black 1976; Veljanovski 1981; Hawkins 1984; Hutter 1984.)"

Dawson is of the view that the Health and Safety Executive is firmly at the compliance end of the continuum demonstrating a wish to adopt the 'informal-educative' approach and strong reluctance to prosecute. In this model it is possible for the enforcement of the law to take place without the formal apparatus of enforcement being used. This policy of co-operation coupled with an unwillingness to prosecute was possibly linked to the weakness of the available criminal sanctions; but the policy nevertheless received support from Vogel in a well regarded comparative study carried out in the early 1980's. In Vogel's opinion

"...the more cooperative British approach to compliance has proved at least as effective as the more adversarial strategy adopted by officials in the United States, if not more so. It has, however, produced far less political conflict between industry and government."<sup>161</sup>

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<sup>160</sup> Cambridge University Press 1988 at page 238

<sup>161</sup> D. Vogel, *National Styles of Regulation: Environmental Policy in Great Britain and the United States* (Cornell University Press) 1986

This interesting comment had particular relevance because the Occupational Safety and Health Administration in the United States of America suffered an industry backlash in response to its perceived over-zealousness. Nevertheless, it has to be said that this policy of *self regulation* by industry has not been quite unsuccessful prompting Dawson to say:

"There seems little evidence to support Robens' fear that too much law or 'excessive enforcement' would make people at work think of the safety of themselves and others as someone else's responsibility. A more significant fear, it has transpired, is that without it being 'forced' on them, many people will simply not think about safety at all, until direct contact with death or serious injury temporarily reminds them of the need to take care."<sup>162</sup>

But the Health & Safety Commission and the Health & Safety Executive had already reached a similar conclusion in their Annual Report, for example, it was stated that:

" It is particularly important that an HSE inspector, when he or she calls, should be regarded by the firm not simply as an enforcer of the letter of regulations, but as someone able to contribute to its thinking, able to interpret legislation and formal guidance sensibly and reasonably in the particular situation and backed by scientific and technical resources which command respect. ....*It is equally important that the inspector be seen as someone willing and able to deploy the full force of law where this necessary against the very largest firms and to make judgements about their technical potential.*" (Italics supplied)

This approach was reinforced in a letter to the Guardian newspaper (August 1990) by D.C.T. Eves, Deputy Director General, Health & Safety Executive, where he stated that the Health & Safety Executive's avowed intention is, whenever appropriate, to press for more cases to be referred to the Crown Courts. There is some evidence here of a clear shift in position, at least in relation to the larger companies.

This revised approach would undoubtedly be welcomed by Dawson who writes:

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<sup>162</sup> S.Dawson and others, *Safety at Work: the limits of self regulation* (Cambridge University Press) 1988

"No amount of explanation or discussion will shift the common-sense view that rules exist to be enforced and that it is insufficient to get employers or workers simply to examine their own consciences and act justly, or even to calculate the costs and benefits of safety provision."<sup>163</sup>

It is undoubtedly the case that few activities in industry or in individual companies are truly self regulating and that few companies that can be left to their own devices. This was demonstrated in 1987 when the Health & Safety Commission became so concerned at the health and safety performance of the construction industry that that year saw a major enforcement initiative aimed at small construction sites. This industry is known to have a high accident rate, constantly changing workplaces and difficulties in dealing with a multitude of employees of varying size and commitment to health and safety. Normally, thousands of small and temporary sites are never inspected because of lack of resources and accurate information. Construction is the most dangerous land based industry; one in 600 construction workers are killed at work, six times the all industry average. Over 5,000 sites were inspected and over 6,000 contractors seen during a series of local blitzes covering 38 locations across the country. Of the 5,000 sites, conditions on 1000 were said to be so dangerous that the inspector was obliged to serve a prohibition notice, stopping work until remedial action had been taken.

Undoubtedly, this initiative does not mark the end of what has become a very long - running and important debate for as has been said :

"Inspectors who are tied up preparing prosecution cases . . . are not able to conduct inspections, search for violators, monitor compliance and so on. And since it is widely accepted that the subjective calculation of the probability of being caught is usually a more effective deterrent to illegal behaviour than a possible imagined penalty, we need to consider whether, and in what circumstances, greater deterrence might be achieved by putting more resources into inspection rather than into prosecution and punishment."<sup>164</sup>

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<sup>163</sup> S.Dawson and others, *Safety at Work: the limits of self regulation* (Cambridge University Press) 1988 at page 239.

<sup>164</sup> Hawkins *Compliance Strategy, Prosecution Policy and Aunt Sally*, *British Journal of Criminology* 30, 4: 444 -466.

Concern was also expressed to members of the Robens Committee at the low level of fines imposed for health and safety offences in magistrates courts and the consequent inefficient use of inspectorial resources. In addition, health and safety offences are rarely seen as criminal in the true sense, the cause of an accident being seen as administrative failure rather than a criminal act. To address this problem the Committee made the following important recommendations. At para 263 it was said that

" criminal proceedings are inappropriate for the generality of offences that arise under safety and health at work legislation. We recommend that criminal proceedings should, as a matter of policy, be instituted only for infringements of a type that the imposition of exemplary punishment would be favourably expected and supported by the public. We mean by this offences of a flagrant, wilful or reckless nature which either have or could have resulted in serious injury. A corollary of this is that maximum permissible fines should be considerably increased....." <sup>165</sup>

These developments would be linked to further legislative changes which would make company directors, senior managers and other employees liable to prosecution.

Shortly after the passage of the 1974 Act a detailed study of this area indicated that amongst inspectors enforcement is given a high priority.

#### **Inspectors Priorities.** <sup>166</sup>

Enforcement of the law:	44%
Improvement of standards:	33%
Advice on solutions:	22%

#### Priority tasks in relation to enforcement:

Factory visits:	47%
Other visits including accident investigation:	38%
Getting the message over:	15%

<sup>165</sup> Safety and Health at Work, Report of the Committee 1970-1972, July 1972, London: HMSO, Cmnd. 5034 (Chairman: Lord Robens) 40 para 263

<sup>166</sup> A.R. Hale (The Role of H.M. Inspectors of Factories with Special Reference to their training, Ph.D. Thesis, University of Aston, unpublished.) See also the study carried out by Hawkins - Environment and Enforcement: Regulation and the Social Definition of Pollution, Clarendon Press, Oxford 1984.

In August 1976 the Health and Safety Commission considered the inspection priorities of the Factory Inspectorate. Their aim was to :

- (1) Ensure that the efforts of inspectors should be concentrated on premises or activities which are likely to be most productive in furthering the objectives of the 1974 Act.
- (2) Ensure that a satisfactory balance is maintained between:
  - (i) Special investigations and inquiries,
  - (ii) Reactive visits to investigate accidents, complaints, etc.
  - (iii) The programme of basic inspection prepared locally.
  - (iv) Provision of information and advice.

It was agreed that premises listed for basic inspection should be listed taking into account the following factors:

- (a) the present standards of health, safety and welfare in the workplace;
- (b) the size and nature of the worst problem that could arise, whether in terms of a single incident or a long term health hazard, considered in terms both of employees and the public at work;
- (c) management's ability to maintain acceptable standards;
- (d) the length of time since the previous inspection and the consequent increased possibility that standards have deteriorated or that new hazards have emerged.

H.M. Factory Inspectorate is responsible for enforcing health and safety legislation in 750,000 workplaces. Approximately two hundred thousand visits and inspections are made annually to workplaces by staff of the Health & Safety Executive.



### Targeting of Premises

In order to focus its efforts, the Health & Safety Executive uses a planned Inspection Rating system as an approach to selecting premises for pre-emptive inspection. This requires inspectors to assess the standards of safety, health and welfare achieved, the potential for serious accident or disaster, and the ability of management to maintain acceptable standards. The effect of this approach has been to ensure that limited resources are channelled towards the identification and control of the more serious risks. The system has been used since 1976 by the Factory Inspectorate and since 1980 by the Agricultural Inspectorate.

Some fifteen per cent of inspection resources are devoted to the construction industry. This industry has the special problems of a high accident rate and a constantly changing workplace, allied to the difficulties in dealing with a multitude of employees of varying size and commitment to health and safety. H.M. Agricultural Inspectorate is responsible for enforcement and advice in some 250,000 farms and related activities. H.M. Mines and Quarries Inspectorate is responsible for inspections in mines. This is one of the most dangerous areas of land based work activity but the numbers working in this sector have been much reduced over recent years.

The number of inspectors in H.M. Nuclear Installations Inspectorate has been substantially increased over recent years because of the potentially serious effect of a major incident and of increased public apprehensions on this score. At least two incidents in which life and health have been endangered, occurred at Windscale in Cumbria during its first twenty five years of operation. Perhaps the most serious incident to occur there was in 1957 when eleven tons of uranium caught fire and disaster was only narrowly averted.<sup>167</sup>

H.M. Explosives Inspectorate inspects and licences explosives factories, investigates accidents involving explosives; deals with the control of imports of explosives, liaises with local authorities and the public on the storage and illegal manufacture of explosives and provides advice on explosives and other hazardous materials. Local authorities are

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<sup>167</sup> Nuclear Energy: the serious doubts that put our future at risk, Sir Martin Ryle, the Times, December 14th, 1976. p.14).

also responsible for enforcing health and safety legislation in some 600,000 non industrial premises but their activities fall outside the ambit of this thesis.

Section 19 authorises every enforcing authority to appoint as inspectors such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions in their area of responsibility. The enforcing authority may also terminate any appointment under this section. Every appointment under this section must be made by an instrument in writing specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector in right of his appointment is entitled only to (a) exercise such of those powers as are specified, and (b) exercise the powers so specified within the field of responsibility of the authority which appointed him. The inspector's powers may be varied by the enforcing authority which appointed him. An inspector must, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his instrument of appointment or a duly authenticated copy thereof. In practice, distinctions are made in the powers conferred on inspectors. Assistant inspectors of factories are not normally given power to prosecute under Section 39 of the Act or to issue improvement or prohibition notices under sections 21 and 22.

### **Powers of Inspectors**

Section 20 confers upon inspectors who have been validly appointed sweeping summary powers<sup>168</sup> Although these powers can be reviewed by the courts they are exercisable by inspectors in the first instance.

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<sup>168</sup> See *Tomorrows Inspector- Judge, Jury and Executioner*, V.A. Broadhurst in *Process Engineering*, September 1974, pp 116-119.)

Section 20 sets out the very wide powers which may be exercised by an inspector for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority.

These are:

Section 20 (2)

(a) at any reasonable time (or in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in subsection (1) above;

(b) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;

(c) without prejudice to the preceding paragraph, on entering any premises by virtue of paragraph (a) above to take with him-

(i) any other person duly authorised by his (the inspector's) enforcing authority;  
and

(ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

(d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in subsection (1) above;

(e) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as it is reasonably necessary for the purpose of any examination or investigation under paragraph (d) above;

(f) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d) above;

(g) to take samples of any article or substances found at any premises which he has power to enter, and of the atmosphere in or on the vicinity of any such premises;

(h) in the case of any article or substances found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in subsection (1) above;

(i) in the case of any such article or substance as is mentioned in the preceding paragraph, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely-

- (i) to examine it and do anything which he has power to do under that paragraph;
- (ii) to ensure that it is not tampered with before his examination of it is completed;
- (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under section 21 or 22;

(j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) above to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present ) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(k) to require the production of, inspect, and take copies of or any entry in-

- (i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept; and
- (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d) above;

(l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section;

(m) any other power which it is necessary for the purpose mentioned in subsection (1) above.

Section 20 (3) provides that the Secretary of State may make regulations as to the procedure to be followed in connection with the taking of samples under (g) above, including provision as to the way in which samples that have been so taken are to be dealt with. The powers given in (h) above are augmented as follows by subsections (4) and (5).

#### Section 20 (4)

Where an inspector proposes to exercise the power conferred by subsection (2)(h) above in the case of an article or substance found in any premises, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of the State.

(5) Before exercising the power conferred by subsection (2)(h) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(6) Where under the power conferred by subsection (2)(i) above an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it. (These provisions are strictly construed. In a Scottish case<sup>169</sup> an inspector failed to comply with the conditions of the above provision and the evidence, some four pieces of asbestos containing crocidolite, which he had thus obtained was held to be inadmissible. Skinner v. John G. McGregor (Contractors) Ltd was subsequently disapproved on other grounds in Laws v. Keane [1982].<sup>170</sup>

(7) No answer given by a person in pursuance of a requirement imposed under subsection (2)(j) above shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(8) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session.

An article or substance found in premises by an Inspector may give him reasonable cause to believe that it is a cause of imminent danger of serious personal injury and he may therefore feel that it should be rendered harmless. Before doing so he must take a sample of the substance or article, if it is part of a batch, and give the sample to a responsible person at the premises where the article or substance was found by him. This portion of the sample must be marked in a manner sufficient to identify it. After doing so he must give a written report of his action to such a person and also provide such a report to the

<sup>169</sup> Skinner v. John G. McGregor (Contractors) Ltd [1977] SLT (Sh Ct) 83

<sup>170</sup> Laws v. Keane [1982] I.R.L.R. 500.

owner of the article or substance in question. Section 25 Power to deal with cause of imminent danger

(1) Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered harmless under this section--

(a) any article that forms part of a batch of similar articles; or

(b) any substance,

the inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall--

(a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and

(b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner; and if, where paragraph (b) above applies, the inspector cannot, after reasonable enquiry, ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under the preceding paragraph.

Schedule 3, Consumer Protection Act 1987 conferred new powers on customs officers to assist enforcing authorities by the seizure and limited detention of imported articles or substances.

Section 25A [Power of customs officer to detain articles and substances]

(1) A customs officer may, for the purpose of facilitating the exercise or performance by an enforcing authority or inspector of any of the powers or duties of the authority or inspector under any of the relevant statutory provisions, seize any imported article or imported substance and detain it for not more than two working days.

(2) Anything seized and detained under this section shall be dealt with during the period of its detention in such manner as the Commissioners of Customs and Excise may direct.

(3) In subsection (1) above the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the goods in question are seized but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of Great Britain where the goods are seized.

Section 27A enables the Commissioners of Customs and Excise to disclose information which has been obtained in this way.

Remedying the cause of the offence and forfeiture: section 42.

Section 42 Health and Safety at Work Act 1974 empowers a court to order a person convicted of an offence under the relevant statutory provisions to take specified steps to remedy matters in his control within a specified time, instead of or in addition to, imposing any punishment.

Where time for remedying matters has been fixed by the Court order, the Court may on application before such time has elapsed, extend or further extend the time for compliance



with the order. During any time given for purposes of compliance, including extensions of time, the person convicted is not to be liable under any of the relevant statutory provisions in respect of those matters.

In those cases in which a person is convicted of an offence relating to the acquisition, attempted acquisition, possession or use of an explosive article or substance in contravention of any of the relevant statutory provisions, the Court may order that article or substance be forfeited, destroyed or otherwise dealt with, unless, on application to be heard, by a person claiming to be the owner of such article or substance an opportunity has not been given to the owner to show cause why the order should not be made.

The aim of such an order is to secure action to prevent mishaps. This procedure has not often been used probably because its aims could be achieved equally or more successfully by use of the notice procedure.

Failure to comply with a court order under section 42 is an offence by virtue of section 33(1) (o) triable summarily or on indictment. The maximum penalty in the lower courts is £20,000 or six months imprisonment or both. In the Crown Court an unlimited fine may be imposed or two years imprisonment or both.

The Employers' Liability (Compulsory Insurance) Act 1969 which came into effect in January 1972 provided that all employers should be insured against claims damages by their workers. Whilst it might be hoped that the adjustment of premiums might make a valuable contribution to industrial safety performance, the British Insurance Association in its evidence to the Robens Committee (paras 439 - 441) said that

" where substandard risks are involved or there is a higher than normal incidence of claims, increased premiums are charged and there is consequently an incentive for an employer to improve safety measures."

But they went on to say

" broadly speaking, the system of employers liability rating is not designed to be a major incentive to the adoption of safe working practice.... a rate of premium charged for any particular risk is based primarily on the collated claims experience of that class of risk .... a rate of premium based on the class experience will, however, be subject to modification for sufficiently large individual risks, reduced if the claims experience is better than average, increased if it is worse. "

The Robens Committee gained the impression that the direct contribution of the insurance companies lay more in the field of insurance against damage to premises, plant and equipment where various types of direct preventive activities are undertaken. Engineer surveyors, for example, employed or commissioned by insurance companies undertake statutory inspections of equipment such as boilers, pressure vessels, cranes and electrical equipment - a source of valuable information to the Factory Inspectorate.

The duty to insure and to display the appropriate certification is enforceable under the criminal law by inspectors of the Health and Safety Executive following an agreement made by the Secretary of State with the Health and Safety Executive under section 13(1)(b) Health and Safety at Work Act 1974.

#### 4. Approaches to Enforcement

##### Preventive inspection

Inspectors often visit premises in response to complaints or to investigate accidents. The Health and Safety Executive task of promoting legal compliance is aided by its planned programmes of preventive inspections under which a selection of premises are visited, usually without prior warning.

The main purposes of preventive inspection are to:

"(a) use our enforcement powers where necessary to secure compliance with the law; and to ensure, through the pattern of our visits, that the Executive's presence is felt in all parts of industry and that none are ignored.

b) give advice and guidance on necessary precautions and controls, including drawing attention to our wide range of priced or free publications with detailed guidance on particular hazards and/or particular industrial activities.

c) gather intelligence about risks, and management competence in controlling hazards in a relatively systematic way.

##### Inspection rating systems

The Factory and Agricultural Inspectorate (FAID)'s programme of preventive inspection is planned on the basis of a rating system, whereby the inspector takes account of the hazards to health and safety in each workplace, welfare conditions, the future worst case risks to employees and the public, the inspector's confidence in management's ability to control the risks, and the elapsed time since the last inspection. This information is quantified numerically and logged on computer. Analogous systems are in use in the Executive's other inspectorates."<sup>171</sup>

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<sup>171</sup> See the Health and Safety Commission's plan of work for 1989 - 1990 and beyond H.M.S.O 1989

In a conference which was held in London from 9 - 11 November 1992 entitled Health and Safety Enforcement in Europe it was emphasised that there ought to be similar standards of enforcement and inspection throughout the European Community. Workers would have mobility and must have the same level of health and safety protection throughout the Community. Employers would need to be reassured that they would not lose their competitive edge. Inspectors would in future have a role to play in educating, informing and policing in that order. Mr. Patrick Mc Loughlin M.P., Under Secretary of State for Employment said that the aim of the European Community should be to secure real and lasting improvements to health and safety. He argued that agreed minimum standards for health and safety should be an integral part of the internal market and that good inspection is fundamental to the success of that policy. Competent authorities would need certain powers to enforce and advise and that governments should not simply look to a regulatory framework and sanctions. Mr. Mc Loughlin indicated that the Secretary of State for Employment would propose that the Council of Ministers agree common principles for the enforcement of Social Affairs legislation, including health and safety law.

## **Prosecution Policy**

### **(a) General criteria**

#### **Prosecution**

The power to institute proceedings for an offence in England and Wales is restricted to duly authorised inspectors and to the Director of Public Prosecutions. No other person can institute proceedings except with the consent of the Director of Public Prosecutions. An inspector of the Health & Safety Executive is authorised to conduct proceedings in a magistrates' court even though he is not of counsel nor a solicitor. Most prosecutions are initiated by the H.M. Factory Inspectorate although over recent years the other inspectorates have begun to adopt a similar policy. Local authority environmental health officers also initiate prosecutions on behalf of local authorities although court proceedings are conducted by solicitors or counsel.

#### **Criminal Prosecution and Civil Redress.**

Section 47 (1) Health and Safety at Work Act 1974 segregates the criminal prosecution from the civil suit, by providing that nothing in Part 1 shall be construed as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by sections 2 - 7 or any contravention of section 8. But this provision shall not affect the actionability of any breach of duty imposed by any of the existing statutory provisions or the operation of section 12 of the Nuclear Installations Act 1965.

Section 47 (2) is explicit the other way in that, unless otherwise provided, it renders breach of a duty imposed by health and safety regulations civilly actionable, subject, of course, to damage having been caused. Where the regulations provide for a specified defence in criminal proceedings, that defence shall not be available in any civil proceedings, whether brought by virtue of section 47 (2) or not, although as regards any duty imposed as mentioned in section 47 (2), above, regulations may provide for any specified defence to be available in any action for breach of that duty.

**Burden of Proof.**

Several of the statutory provisions require the accused to do something so far as is practicable, so far as is reasonably practicable, or to use the best practicable means to achieve some state of affairs.

Section 40 Health and Safety at Work Act 1974 provides that it is for the accused to prove that these requirements have been met. This burden is not merely an evidential burden in the sense that the defence must lead some credible evidence on the subject whereupon the burden shifts back to the prosecution with the usual criminal onus of proof beyond reasonable doubt. The burden is seen as a 'persuasive burden' in that at the end of the hearing it is for the defence to satisfy the court (albeit on the balance of probabilities) that it has discharged the duty placed upon it.

This provision was tested in the Scottish case, Lockhart v Kevin Oliphant Ltd.<sup>172</sup> In this case the respondents were charged with a breach of s 2(1) in respect of the death of an employee who was electrocuted while erecting a street lamp when the lamp came into contact with a live power wire. The respondents, who were subcontractors, had relied on plans and locations supplied by consulting civil engineers and by the main contractors' site engineer but had made no inspection themselves. The sheriff held that the Crown had not proved that the respondents had failed to take all reasonably practicable steps to comply with their duty, and that the onus of proof had accordingly not shifted to them under s 40. He held further that in any event they had discharged that onus by reason of their reliance on the plans provided, and acquitted them. The prosecutor appealed to the High Court by stated case.

The High Court of Justiciary here held (1) that 'so far as is reasonably practicable' was not an integral part of the offence which consisted in a failure to achieve the result intended by the Act, namely the safety of employees, and that once it was shown, as it was by the fact

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<sup>172</sup> High Court of Justiciary (1992) SCCR 774

of the accident, that that result was not achieved, a prima facie breach of the statute arose, and the onus shifted to the respondents to prove that it was not reasonably practicable and to do more than they had done to satisfy their statutory duty; and that the respondents had led no evidence to show that it was not physically possible to do more than they did, or to show that any possible precaution was not reasonably practicable when the degree of risk was weighed against the cost in money, time or trouble of the measures necessary to avert risk; that merely to hold that the respondents were entitled to rely on the main contractors' engineers and the consulting civil engineers was quite insufficient to discharge the onus on them under s 40; and appeal allowed and case remitted to the sheriff to find the respondents guilty.

#### **Relevance of breach of general duties in subsequent civil proceedings.**

Section 11(1) Civil Evidence Act 1968 provides that:

"In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or by a Court Martial there or elsewhere shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

This section reverses the much criticised rule in Hollington v. Hewthorn<sup>173</sup> and implements the recommendation of the Fifteenth Report of the Law Reform Committee<sup>174</sup>

#### **Penalties: Health and Safety Executive and the average fine.**

Throughout the 1980's serious attempts were made by the Health and Safety Commission and the Health and Safety Executive to bring about an increase in penalties which might be imposed by magistrates' courts. In 1989 the Director General of the Health and Safety

<sup>173</sup> Hollington v. Hewthorn [1943] K.B. 587

<sup>174</sup> Cmnd. 3391, Chairman: The Right Hon. Lord Pearson C.B.E.

Executive expressed concern at the low average level of fines in magistrates courts for health and safety offences (which was at that time £420). The Health and Safety Commission pressed for an increase in the maximum fine available on summary conviction. This request was rejected by the Home Office but the Health and Safety Executive was asked to provide examples of low fines for a possible report to the Magistrates' Association.

Wide publicity was given to the issue of inadequate penalties when a relatively low fine was imposed on the BBC by Marlborough Street magistrates court following an outbreak of Legionnaires disease at the BBC's Portland Place headquarters. The Health and Safety Executive was strongly criticised for taking the case to local magistrates. The House of Commons Select Committee on Employment and particularly the Chairman The Hon. Greville Janner Q.C., M.P. very strongly held the view that such cases should be heard in the Crown Court by way of indictment.

The public reaction of the Health and Safety Executive to such criticism was first, that the expense and delay involved in committal to the higher courts are considerable; second, that the decision is one for magistrates to make; third, that public impact is a factor the agency takes into consideration and in the BBC case the speed of conviction was thought to be most important; and finally the Health and Safety Executive gave warning that it would press for all future cases of legionnaires disease to be heard in the Crown Court.

Following this case Ministers asked the Health and Safety Executive for an explanation of its policy and practice.

The Health and Safety Executive reacted by quoting from para 263 Robens Report:

"criminal proceedings are inappropriate for the generality of offences that arise under safety and health at work legislation. We recommend that criminal proceedings should, as a matter of policy, be instituted only for infringements of a type that the imposition of exemplary punishment would be favourably expected and supported by the public. We mean by this offences of a flagrant, wilful or reckless nature which either have or could have resulted in serious injury. A corollary of this is that the maximum permissible fines should be considerably increased."



This statement was said to express well the then policy of the Health and Safety Executive well. The Health and Safety Executive was particularly assisted by other enforcement instruments such as improvement and prohibition notices indicating that these notices would often have a stronger and more immediate impact. (In 1987/8 some 11,000 notices were issued as against 2,300 informations laid in the magistrates court.)

In support of the case for higher penalties the Health and Safety Executive explained that they have regard to the fact that the number of civil cases for accidents and occupational ill health substantially exceeded their own actions. In such cases a lesser burden of proof is demanded and yet awards are very much in excess of those the courts impose under the criminal law. Moreover delay in taking a criminal case may in turn delay a victim's recourse to civil remedy. It was further stated that the Health and Safety Executive uses prosecution not as a punitive instrument but as one tool among others, to be employed at discretion within general guidelines, in the pursuit of reasonable standards and taking particular account of its exemplary usefulness. Where however offences are serious the punitive aspect necessarily enters in and the Health and Safety Executive would also take action in circumstances where the notice procedure is ineffective or has not been complied with.

It has to be said and indeed it was accepted by the Health and Safety Executive at the time that the Robens' approach is not universally accepted. The Trade Unions for example tend to regard health and safety offences as criminal offences to be dealt with in a similar way to theft etc. For this reason the Health and Safety Commission approached enforcement policy with caution. At the earliest stage broad guidelines were laid down.

However, it may be that following the legislative changes brought about with the passage through Parliament of the Offshore Safety Act 1992 more realistic penalties will be imposed generally in the future. This legislation may also perhaps go some way to correct the situation where higher fines which have been imposed by magistrates in recent years have on a number of occasions led to appeals and a reduction in the fine imposed by the Crown Court.

Section 33, which creates the offences under the Act, specifies fifteen categories of offence. Some of these are major substantive offences, such as failure to discharge one or more of the general duties in sections 2-7, or to contravene sections 8 or 9, or any health or safety regulation made under the Act (including a requirement or prohibition in such regulation.) Contravention of any requirement or prohibition imposed by an improvement notice or prohibition notice is also made an offence, thereby showing that the new administrative sanctions conferred upon inspectors are ultimately dependent upon enforcement through the criminal law.

**Prosecution criteria.**

Enforcing authorities may prosecute for:

- (1) Breaches of duties listed in the Health & Safety at Work etc. Act 1974
- (2) Breaches of relevant statutory provisions.

The criteria used to determine whether a prosecution should take place include:

- (1) Deliberate flouting of the statutory provisions, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage vis a vis those who disregard it.
- (2) Where a particular type of offence is prevalent in an activity or an area.
- (3) The magnitude of the hazard.
- (4) Reckless disregard of employers towards their employees and others in exposing people to hazards.
- (5) Record of repeated infringements by the person or the firm concerned and the perceived need to stimulate a change in attitudes.

(6) The desirability of securing publicity - to draw attention to a particular hazard and the need to give notice that the Health & Safety Executive wish to take a firm line in circumstances such as these.

(7) The occurrence of death or serious personal injury. In such cases there is often local public alarm and a positive response maximises the exemplary effect and responds to that concern.

(8) Adequacy or otherwise of the powers of the summary court to punish the offence.

(9) Persistent poor standards for the control of health hazards.

(10) Realistic prospects of conviction.

For the most part action is taken against employers but enforcement action may be taken against employees, including managers and company officers.

In "Keeping the Code Clear -- continual review of the code for Crown prosecutors ensures fair and effective decision making" Barbara Mills QC, Director of Public Prosecutions<sup>175</sup> said that one of the key documents for the Crown Prosecution Service is the code for Crown prosecutors, issued under section 10 of the Prosecution of Offences Act 1985. This document sets out the basic principles which Crown prosecutors should follow when they make case decisions. It is a public document and, although written for members of the Crown Prosecution Service, it is widely used by the Health and Safety Executive as a reference work for its own procedures. The code is kept under continual review to ensure that it continues properly to reflect the appropriate criteria used by Crown prosecutors in the decision-making process.

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<sup>175</sup> Law Society's Gazette 13 July 1994 Vol 91 No 27 p 15

On 15 December 1993, the Attorney-General announced in the House of Commons that the Director of Public Prosecutions had commissioned a formal review of the code. The Attorney General stated that both he and the Director had reviewed the fundamental principles of the code and found them to be sound. It had been agreed that the two concepts of evidential sufficiency and the role of the public interest in the decision-making process were right.

The Attorney General went on to highlight three particular areas on which the review would concentrate: the need for plainer and simpler English; clarification of the evidential criterion and the meaning of a 'realistic prospect of conviction'; and the clearer identification of those public interest factors which tend in favour of prosecution. Each of these areas was subsequently addressed.

-- Evidential criterion and a 'realistic prospect of conviction'. The code now defines a 'realistic prospect of conviction'. This is an objective test. It means that there must be enough evidence for the tribunal, properly directed in accordance with the law, to be more likely than not to convict the defendant of the offence alleged. The Director believes that this test represents a proper balance between preventing cases going before the courts which are more likely than not to fail, and continuing with cases only when there is something approaching a certainty of conviction. Neither extreme is thought to be right. The middle path represents a proper way forward in this difficult area.

Crown prosecutors must consider the strength of the evidence and the likely result of any case as if it were put before an objective, impartial and reasonable tribunal. There is no distinction for these purposes between a Bench of magistrates and a jury, both properly directed in accordance with the law.

The code's evidential test is an objective test to be considered against the background of an objective tribunal.

The Director believes that public interest factors must be brought out more clearly. Crown prosecutors also have to consider the public interest in making their decisions. In cases of

any seriousness, there is now clear guidance to Crown prosecutors that they should usually continue with a case unless public interest factors against prosecution clearly outweigh those in favour. Therefore the role of the prosecutor in determining the public interest is crucial. The code now sets out separately those factors which are in favour and those which are against a prosecution, a feature which should help in consistent decision making.

Charging practice has also been clarified. The charges selected must reflect the seriousness of the offending and provide the court with sufficient sentencing powers. It is equally important that the choice and number of charges allow the case to be explained to the magistrates or jury in a simple and clear way. If all these criteria are met, it is possible that Crown prosecutors will not have to proceed in all cases with the most serious charge where there is more than one from which to choose. Similarly, Crown prosecutors should not overload the case with any more charges than are necessary to meet the criteria set out in the code.

Crown prosecutors are encouraged to ensure that, as far as possible, the case has both the right number of charges, and charges which reflect the seriousness of the offending from as early a stage as possible. This should mean that the number of 'cracked' trials are reduced over time as all parties in the criminal justice system come to accept that the correct number of appropriate charges or counts reflect the seriousness of the offending.

The revised code aims to provide a framework for fair, effective and consistent prosecutorial decisions.

In the calendar year beginning 1st April 1990 some 170,000 sites and factories were inspected and some 27,000 accidents and complaints were investigated, 2,292 informations were laid before the courts and 12,699 improvement and prohibition notices were served.

### Summary Prosecutions

The great majority of cases prosecuted by the Health and Safety Executive are heard in magistrates courts. As has been said, fines for offences tried summarily are generally much lower. In 1976 the average fine was £89 as against the maximum fine which until 1977 was £400. Thereafter until 1984 (when it was increased to £2,000) the maximum was £1,000, the 1983 average was £252, the 1984 average £329 and the 1985 average £474. The average level of fine in Magistrates' courts (including summary proceedings in Sheriffs Courts) during 1990/91 was £599. With corrections for inflation over the last fifteen years this figure has probably increased by no more than a few percentage points per annum. Government Ministers, the Health and Safety Commission and the Health and Safety Executive have expressed concern at the low average level of fines in magistrates' courts for health and safety offences (see for example an address by Lord Hailsham in 1982) (reported in *The Magistrate* (1982) 38, 17) Health and Safety Commission/ Health and Safety Executive evidence to the Select Committee on Employment. (August 1989) and a letter to the Chairman of the Magistrates' Association (5th February 1990) in which it was said 'Fines of a few hundred pounds, for example, against large building contractors for serious breaches of health and safety legislation are unlikely to have the required deterrent effect. Fines of £100 and £345 have recently been recorded for breaches resulting in a major and a fatal injury. 'The impression one gets, however, is that some magistrates' courts and some sheriff summary courts in Scotland which may see health and safety cases infrequently do not sufficiently distinguish them - in terms of their potentially more serious consequences, of death, injury, loss of livelihood - from the day to day round of petty crimes. Also, wilfulness is not usually directed against persons or property. But possibly one of the most difficult problems is the the legal and technical difficulty encountered in many health and safety cases, a problem which also causes difficulty in the Crown Court. One of the main differences between health and safety prosecutions and others, and one not often grasped by magistrates is that prosecuting authorities bring health and safety cases before the courts as a last resort. These underlying attitudes mean that the Health & Safety Executive is being forced to prosecute where serious injury or fatality can be demonstrated rather than for seriousness of legal consequences. Magistrates are not only insensitive to these issues but as can be seen above

are also erratic in their policy of fining and committal. In recent months large fines have been imposed in magistrates' courts by the use of multiple informations, see for example a fine of £20,000 imposed on Trans Manche Link the Channel Tunnel consortium, whilst in another court a bench of magistrates might refuse to treat multiple informations separately and consequently impose a much lower fine. Some courts persistently impose low fines.

#### **Costs**

In a decision of some practical importance for the prosecuting authorities Neville v. Gardner Merchant Ltd.<sup>176</sup> The Divisional Court (Lord Justice Kerr and Mr. Justice Webster) held that where a magistrates' court convicts a party and orders the party to pay the costs of the prosecution under Costs in Criminal Cases Act 1973, section 2(2), the amount ordered to be paid may include an amount in respect of the time of the officer or person who investigated the alleged offence, notwithstanding that the officer is a salaried official of the prosecuting body.

However Section 17 (2) Prosecution of Offences Act 1985 prevents an order for costs being made for the benefit of a Public Authority or person acting on behalf of such. Cases which were commenced since April 1st 1986 were affected by this provision.

The Prosecution of Offences Act 1985 does allow appellants to receive costs from central funds. Section 16 (3) Prosecution of Offences Act 1985 provides

"Where a person (appeals to the Crown Court) and in consequence of the decision on appeal.....

(b) a less severe punishment is awarded;

the Crown Court may make a defendant's costs order in favour of the accused" (i.e. an order from central funds).

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<sup>176</sup> Neville v. Gardner Merchant Ltd. (1983) 5 Cr. App.R. (S) 349

Costs will be only be awarded against the Health and Safety Executive if the court is of the opinion that the case should not be brought.<sup>177</sup>

### **The prosecution of cases on indictment**

Cases prosecuted on indictment are heard in the Crown Court in England and Wales, and in Scotland with before a Sheriff and Jury sitting in solemn procedure. Proceedings on indictment in England and Wales are commenced by committal proceedings in a magistrates' court. The simplest form of committal proceedings is proceedings under the Magistrates' Courts Act 1980 section 6(2) where written statements are submitted to the court and papers are forwarded to the Crown Court without evidence being heard. Section 6(2) Magistrates' Courts Act applies to all indictable and either-way offences: Magistrates commit without considering the evidence but committal under s 6(2) is only possible where: all defendants have solicitors;

all the evidence is in the form of s 102 statements; none of the solicitors requires the magistrates to consider the evidence or where the offences are summary offences which can be dealt with at Crown Court when defendant is committed for trial.

Serious crime such as murder, manslaughter, robbery, serious assault and rape may only be dealt with in the Crown Court whilst minor assaults, motoring offences and most criminal damage may only be dealt with in a magistrates' court.

Under the Health and Safety at Work etc. Act 1974 this categorisation may also be found. The breach of a licence's terms and conditions or doing something without a licence for which one is necessary and the breach of any of the relevant statutory provisions concerning the acquisition, possession or use of an explosive article or substance may only be dealt with in the Crown Court. A somewhat larger number of offences are triable only summarily. These are:

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<sup>177</sup> Regina v. Lewes Crown Court ex parte Castle (1979) 70 Cr. App.R. 278



(1) The contravention of any requirement imposed by or under regulations under section 14.

(2) The intentional obstruction of any person in the exercise of his powers ..... in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself or another person.

(3) The contravention of any requirement imposed by an inspector under section 20 or the prevention or an attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of section 20(2) require an answer.

(4) Intentionally to obstruct an inspector in the exercise or performance of his powers or duties [or to obstruct a customs officer in the exercise of his powers under section 25A]

(5) Falsely to pretend to be an inspector.

Between these extremes there a large number of offences such as theft, fraud, burglary and many assault cases which may be tried in either the Crown Court or a magistrates court. Most health and safety offences now fit into this category. This, has of course substantial resource implications for the Health & Safety Executive, the courts and businesses.

There are two routes by which triable either way cases may reach the Crown Court.

First, if magistrates consider the offence is too serious for them to deal with they will decline jurisdiction. Second, if magistrates decide that the case is suitable for summary trial the defendant is given the choice of having the case dealt with by magistrates or having it committed to the Crown Court for trial by judge and jury.

In cases concerning health and safety at work when magistrates are called upon to hear a case triable either way under Magistrates' Courts Act 1980 section 19 (3) they will

consider whether to try the case summarily or sit as examining justices and commit for trial to the Crown Court. In making this decision, they will consider

- (1) the nature of the case;
- (2) the seriousness of the case;<sup>178</sup>
- (3) whether the court's power of punishment are adequate; and
- (4) any other circumstances which appear to the court to make it more suitable for the offence to be tried in a particular way.

Before the magistrates decide on a mode of trial, both prosecutor and defendant may make representations as to which mode of trial might be deemed to be most appropriate. (Magistrates' Courts Act 1980 section 19 (1 -2)). Previous convictions, previous advice and previous enforcement action may not be discussed at this stage.<sup>179</sup>

The venue for trial of an either way offence is determined before the accused enters his or her plea. Under section 19 of the Magistrates Court Act 1980, there is a mode of trial hearing at a magistrates' court at which

"the court shall consider whether ..... the offence appears more suitable for summary trial or for trial on indictment."

The section further provides that

"before so considering, the court shall afford first the prosecutor and then the accused an opportunity to make recommendations as to which mode of trial is more suitable."

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<sup>178</sup> For example in *R. v. Acrilite Ltd* (1987) The Crown Court at Chelmsford there was a serious contravention of Section 2 Health and Safety at Work Act 1974 and Regulation 4, the Notification of Accidents and Dangerous Occurrences Regulations 1980. Two employees were seriously burned as a result of a highly unsafe method of working in a still room.

<sup>179</sup> See *R. v. Colchester Justices ex parte North Essex Building Ltd*, [1977] 3 All E.R. 567.

The Act states that in reaching a decision, the magistrates shall have regard to the nature of the case, whether the circumstances make the offence one of a serious character, whether the penalty they have power to impose would be adequate and any other circumstances which appear to the court to make it more suitable for the offence to be tried one way rather than the other.

Section 6 (1) Magistrates Courts Act 1980 applies to all indictable and either-way offences. Magistrates will consider whether the prosecution has established a *prima facie* case. The evidence may be: "live" -- witnesses are called and depositions taken or "paper", that is all evidence is in the form of statements admitted under Section 102 Magistrates Courts Act 1980. The defence will usually involve legal argument.

If the court considers that a summary trial would be more suitable, the court will advise the accused of its decision. The accused may then agree to be tried summarily or opt for trial by jury.<sup>180</sup> Defendants also have to be informed that, should they consent to summary trial they may be liable to be committed to Crown Court for sentence if the magistrates' court is of the opinion that the sentence which ought to be imposed is beyond its powers. If the accused is an individual and found guilty by summary process, he may be sent to the Crown Court for sentence, if the convicting court believes that its powers are inadequate.<sup>181</sup> However, if the defendant is a corporation it cannot be committed for sentence.<sup>182</sup>

### **Mode of Trial**

Where the court comes to a decision that a trial by indictment is more suitable, it will deal with the matter as examining magistrates. In such cases neither the prosecutor nor the accused will be able to insist on a summary trial.<sup>183</sup>

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<sup>180</sup> Magistrates' Courts Act 1980 section 20 (2)(a)).

<sup>181</sup> Magistrates' Courts Act 1980 section 20 (2)(b).

<sup>182</sup> Magistrates' Courts Act 1980 Schedule 3 para 5).

<sup>183</sup> Magistrates' Courts Act 1980 section 21

Runciman was of the view that the system is not working as intended. Far too many cases are sent to the Crown Court by magistrates' courts. In 1987 47 per cent of committals occurred because magistrates declined jurisdiction; by 1990 the proportion had risen to 4% with only 37% occurring because the defendant elected to go to the Crown Court.<sup>184</sup>

**Intended plea.**

Not Guilty	56%
Guilty to some charges	17%
Guilty to all charges	27%

**Final plea.**

Not Guilty	17%
Guilty to some charges	13%
Guilty to all charges	50%

Outcome according to mode of trial.<sup>184</sup>

**Magistrates' court trial.**

Immediate custody	6%
Fine, discharge, other	75%
Community penalty	19%

**Offender elected Crown Court trial.**

Immediate custody	33%
Fine, discharge, other	44%
Community penalty	23%

<sup>184</sup> See Crown Prosecution Service Report for 1991 - 1992 and Magistrates' court or Crown Court? mode of trial decisions and sentencing by Carol Hedderman and David Moxon. Home Office Research Study No. 125. Published by H.M.S.O. 1992.

**Crown Court trial where magistrates' declined jurisdiction.**

Immediate custody	52%
Fine, discharge, other	25%
Community penalty	23%

The Divisional Court has now issued nationwide guidelines on the appropriate court to try either way offences.<sup>185</sup> In general such offences should be tried summarily unless an individual case has one or more specified features and the justices' own sentencing powers are insufficient. The guidelines set out the relevant features for the majority of either way offences but the existence of one of the specified features will seldom of itself be enough. Solicitors in making their representations on place of trial will also need to examine the appropriate penalty to be imposed, making the assumption at that stage that the defendant is of good character..<sup>186</sup>

"114. The Royal Commission on Criminal Justice recommended that in cases involving either way offences the defendant should no longer have the right to insist on a trial by a jury. Where the Crown Prosecution Service and the defendant agree that the case is suitable for summary trial, it should proceed to trial in a magistrate's court. The case should go to the Crown Court for trial if both prosecution and defence agree that it should be tried on indictment. Where the defence do not agree with the Crown Prosecution Service's proposal on which court should try the case, the matter should be referred to the magistrates for a decision.

115. Legislation should refer to the various matters (including potential loss of reputation) which the magistrates should take into account in determining mode of trial.

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<sup>185</sup> [1990] 3 All ER 979.

<sup>186</sup> See A. Edwards. [1991] Law Society's Gazette Vol 88 No 3 p 29 Criminal law update -- procedures

118. In indictable only cases submissions of no case to answer should be decided by the Crown Court. In either way cases the responsibility should fall to the magistrate's courts, where stipendiary magistrates should preside over the hearings." <sup>187</sup>

Although in Keeping the Code Clear -- continual review of the code for Crown prosecutors ensures fair and effective decision making Barbara Mills QC, <sup>188</sup> says that

"Once a decision has been taken that an either way offence is the right charge in the circumstances of the case, it is entirely wrong to withdraw it and to prefer a summary only offence in the light of the defendant's election for trial or, more rarely, the magistrates' direction for trial. Tactics such as this bring the Crown Prosecution Service into disrepute and must not be used."

Section 6 (2) provides:

(2) A magistrates' court inquiring into an offence as examining justices may, if satisfied that all the evidence before the court (whether for the prosecution or the defence) consists of written statements tendered to the court under section 102 below, with or without exhibits, commit the accused for trial for the offence without consideration of the contents of those statements, unless--

(a) the accused or one of the accused [has no [legal representative] acting for him in the case (whether present in court or not)];

(b) [a legal representative] for the accused or one of the accused, as the case may be, has requested the court to consider a submission that the statements disclose insufficient evidence to put that accused on trial by jury for the offence;

and subsection (1) above shall not apply to a committal for trial under this subsection.

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<sup>187</sup> See New Law Journal Vol 143 No 6608 p 993. Royal Commission on Criminal Justice (Pre-Trial Procedures in the Crown Court)

<sup>188</sup> Director of Public Prosecutions Law Society's Gazette 13 July 1994 Vol 91 No 27 page 15

A committal under the Magistrates' Courts Act 1980 section 6(1) takes longer and a prima facie case must be established before magistrates. Section 6 (1) provides:

(1) Subject to the provisions of this and any other Act relating to the summary trial of indictable offences, if a magistrates' court inquiring into an offence as examining justices is of opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused on trial by jury for any indictable offence, the court shall commit him for trial; and, if it is not of that opinion, it shall, if he is in custody for no other cause than the offence under inquiry, discharge him.

In deciding whether to send a case to the Crown Court for trial magistrates will be influenced by the guidance from the Lord Chancellor's Department where the initial presumption is that a cases such as drug trafficking or supply, residential burglary particularly if by night, whilst occupied or by force, arson, indecent assault particularly by someone in a position of trust, theft in a position of trust, bodily harm, use of a weapon, hospitalisation and theft by mugging should be heard by way of indictment.

Trials on indictment have resulted in prison sentences, albeit suspended, and substantial fines. The Crown Court deals, mainly, with the more serious criminal offences which are committed for trial by magistrates' courts. The Judges of this court are High Court Judges, Circuit Judges, part-time Recorders and Assistant Recorders. Overall supervision of the judicial work on each circuit is the responsibility of two High Court Judges nominated by the Lord Chief Justice to act as Presiding Judges on the circuit, under the Senior Presiding Judge for England and Wales. Where prosecutions are brought by the Health and Safety Executive cases are invariably heard by Circuit Judges, part-time Recorders and Assistant Recorders. In England and Wales it is for magistrates to determine whether a case is to be heard summarily or in the Crown Court .

In making this decision they must consider the following matters:

In those instances where there is a choice the enforcing authority will weigh the following in deciding whether to press for a summary trial or a trial by way of indictment.

- (1) the gravity of the offence;
- (2) the adequacy or otherwise of the powers of the summary court to punish the offence;
- (3) the record of the offender; [although this cannot be presented as a reason for trial on indictment see R. v. Colchester Justices Ex parte North Essex Building Co. Ltd. (1977).]<sup>189</sup>
- (4) the offender's previous response to advice or other enforcement action;  
For example in R. v. Scott<sup>190</sup> (1987) the defendant had been previously prosecuted by the Health and Safety Executive for obstructing an Inspector. The defendant was notoriously bad tempered and uncooperative with officials.<sup>191</sup>
- (5) the magnitude of the hazard; [For example in R. v. Portagas (1984) there was a very serious contravention of Section 2 Health and Safety at Work Act 1974. Five employees were seriously burned as a result of a highly unsafe method of working. Damage estimated at £50,000 was caused. Massive explosions took place, flames leapt 40 feet into the air. A thousand workers were sent home. Local residents were evacuated for three hours.
- (6) any circumstances causing public alarm; [For example in R. v. Portagas (1984) The accident resulted in a great deal of anxiety and concern among employees, their families and members of the public. Demands were made for a public inquiry. In R. v. A.W. Scott (1986), a double fatality, caused when two young men were asphyxiated in a slurry pit, aroused considerable feeling in the local community and resulted in interest in the matter from the local Member of Parliament.
- (7) any other circumstances which appear to the court to make it more suitable for the offence to be tried in a particular way.

Before a decision is made both the prosecutor and the defendant may make representations as to the most appropriate mode of trial. The prosecuting authorities will press for trial in the Crown Court where the offence is heinous or where the case has national significance. If the court considers that summary trial is more suitable the accused is so informed. If the

<sup>189</sup> R. v. Colchester Justices Ex parte North Essex Building Co. Ltd. (1977).]

<sup>190</sup> 3. All. ER. 567. R. v. Scott (1987) Crown Court at Bodmin 12 July

<sup>191</sup> R. v. Portagas (1984) Crown Court at Leicester 27 July 1985 (unrep.) 1987 Unreported



accused agrees the case will be heard summarily. However, if a person, other than a corporation, is tried summarily and convicted he may be committed to the Crown Court for sentencing if the magistrates feel that the penalty which they might impose is inadequate. If the court after considering the relevant matters decides that trial by way of indictment is more suitable it must tell the accused its decision and proceed to inquire into the case as examining magistrates. In these circumstances neither the prosecutor nor the accused can insist on summary trial. Committal proceedings are heard according to rules set out in Section 6 (1) or Section 6 (2) (shortened form) Magistrates Courts Act 1980. A recent Practice Note<sup>192</sup> sets out guidelines which magistrates are to adopt when deciding whether or not to commit "either way" offences for trial in the Crown Court.

The Health & Safety Executive regard this method of enforcement as both time consuming and expensive and prefer to avoid it if summary prosecution or the service of an enforcement notice would suffice. When cases are taken before the Crown Court the inspectorates encounter extra delay and additional costs. Approximately £3,000 is added to the average cost and four months to the average delay. Scarce staff resources are tied up. These include senior management, solicitors, Inspectors and specialist technical and scientific support. Nevertheless there is a move to take more cases in the Crown Court targeting the repeated offender, the "national" offence --- that is one involving public and political concern, particularly where public warning has been given --- and to correct for local variation.

#### **Advance information.**

As has been seen offences under the Health and Safety at Work etc. Act 1974 are for the most part triable either way. The Magistrates' Courts (Advance Information) Rules 1985<sup>193</sup> which came into operation on 20th May 1985<sup>194</sup> apply in respect of proceedings against any person ("the accused") for an offence triable either way other than proceedings where the accused was charged or an information was laid before the coming into operation of these Rules.

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<sup>192</sup> reported at [1990] 1 WLR 1439

<sup>193</sup> SI 1985 No 601

<sup>194</sup> see Magistrates' Courts Act 1980, s 144

Rule 3 provides that as soon as practicable after a person has been charged with an offence in proceedings in respect of which these Rules apply or a summons has been served on a person in connection with such an offence, the prosecutor shall provide him with a notice in writing explaining the effect of Rule 4 and setting out the address at which a request under that Rule may be made.

Rule 4 provides that if, in any proceedings in respect of which these Rules apply, either before the magistrates' court considers whether the offence appears to be more suitable for summary trial or trial on indictment or, where the accused has not attained the age of [18] years when he appears or is brought before a magistrates' court, before he is asked whether he pleads guilty or not guilty, the accused or a person representing the accused requests the prosecutor to furnish him with advance information, the prosecutor shall, subject to Rule 5 below, furnish him as soon as practicable with either--

(a) a copy of those parts of every written statement which contain information as to the facts and matters of which the prosecutor proposes to adduce evidence in the proceedings, or

(b) a summary of the facts and matters of which the prosecutor proposes to adduce evidence in the proceedings.

(2) In paragraph (1) above, a "written statement" means a statement made by a person on whose evidence the prosecutor proposes to rely in the proceedings and, where such a person has made more than one written statement one of which contains information as to all the facts and matters in relation to which the prosecutor proposes to rely on the evidence of that person, only that statement is a written statement for purposes of paragraph (1) above.

(3) Where in any part of a written statement or in a summary furnished under paragraph (1) above reference is made to a document on which the prosecutor proposes to rely, the prosecutor shall, subject to Rule 5 below, when furnishing the part of the written statement or the summary, also furnish either a copy of the document or such information as may be

necessary to enable the person making the request under paragraph (1) above to inspect the document or a copy thereof.

Rule 5 provides that if the prosecutor is of the opinion that the disclosure of any particular fact or matter in compliance with the requirements imposed by Rule 4 above might lead to any person on whose evidence he proposes to rely in the proceedings being intimidated, to an attempt to intimidate him being made or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements in relation to that fact or matter.

(2) Where, in accordance with paragraph (1) above, the prosecutor considers that he is not obliged to comply with the requirements imposed by Rule 4 in relation to any particular fact or matter, he shall give notice in writing to the person who made the request under that Rule to the effect that certain advance information is being withheld by virtue of that paragraph.

Rule 6 provides that subject to paragraph (2) below, where an accused appears or is brought before a magistrates' court in proceedings in respect of which these Rules apply, the court shall, before it considers whether the offence appears to be more suitable for summary trial or trial on indictment, satisfy itself that the accused is aware of the requirements which may be imposed on the prosecutor under Rule 4 above.

(3) Where the accused has not attained the age of [18] years when he appears or is brought before a magistrates' court in proceedings in respect of which these Rules apply, the court shall, before the accused is asked whether he pleads guilty or not guilty, satisfy itself that the accused is aware of the requirements which may be imposed on the prosecutor under Rule 4 above.

Rule 7 provides that in any proceedings in respect of which these Rules apply, the court is satisfied that, a request under Rule 4 of these Rules having been made to the prosecutor by or on behalf of the accused, a requirement imposed on the prosecutor by that Rule has not been complied with, the court shall adjourn the proceedings pending compliance with the

requirement unless the court is satisfied that the conduct of the case for the accused will not be substantially prejudiced by non-compliance with the requirement.

(2) Where, in the circumstances set out in paragraph (1) above, the court decides not to adjourn the proceedings, a record of that decision and of the reasons why the court was satisfied that the conduct of the case for the accused would not be substantially prejudiced by non-compliance with the requirement shall be entered in the register kept under Rule 66 of the Magistrates' Courts Rules 1981.

#### **Prosecution without prior warning**

As a general rule, the Health & Safety Executive aims to provide a person or a company with a reasonable opportunity to comply with the law although in some circumstances they believe it to be right to prosecute without prior warning. The circumstances in which it is deemed right to do this include: situations:

- (1) where a person's attitude has been generally unco-operative,
- (2) where the situation is constantly changing
- (3) failure to comply with an Improvement or Prohibition Notice.
- (4) Commission of an offence similar to one which has already been the subject to the issuing of a notice.

#### **Delay in the preparation of a prosecution.**

In a recent London case a stipendiary magistrate was of the opinion that there had been such a delay in the pursuit of the prosecution before the court, that these matters should not proceed further. The magistrate was of the opinion that the granting of the application was a matter for his discretion, and he concluded there had been too substantial a delay in the pursuit of the prosecution before the court. In so deciding, the learned stipendiary

magistrate had regard to the fact that the matter came before him on 31st July 1989 and that

(a) the coroner's inquest was held on 6 December 1988

(b) the gravity of the matters

(c) the defendants had been told of a decision of 30th November 1988 to prosecute (recommended on 18th November 1988)

and (d) the principles enunciated in the case of R v Fairford Justices, ex parte Brewster<sup>195</sup> which allow the court to examine the circumstances of the case and control what appears to be an excess at any stage of the proceedings, having regard to the relevant interests of the respective parties.

The Health and Safety Executive appealed to the Queens Bench Division of the High Court and the case was heard on 11th October 1990 before Bingham LJ and Waterhouse J.

In R v Highbury Corner Magistrates' Court and Another Ex parte Health and Safety Executive<sup>196</sup> Mr Philip White, an official of the Health and Safety Executive, sought judicial review of a decision of the Highbury Corner Metropolitan Stipendiary Magistrate, given on 31st July 1989 when, having accepted an information was laid against the Thames Water Authority and Davy ATC Limited alleging offences contrary to section 33(1) of the Health and Safety at Work Act 1974, he refused to issue summonses against those two defendants. The applicant sought a declaration that that decision was unlawful and an order of mandamus directing the magistrate to issue the summonses against those defendants. The background giving rise to this application was that in August 1988 the Thames Water Authority and Davy ATC Limited were both concerned in the construction of waterworks at Stoke Newington in North London. Mr Walker, an employee of the Thames Water Authority, entered a seven foot diameter pipe, which lay at the bottom of a

<sup>195</sup> R. v. Fairford Justices, ex parte Brewster (1975) 2 All ER 757

<sup>196</sup> In R v Highbury Corner Magistrates' Court and Another Ex parte Health and Safety Executive Queen's Bench Division (Crown Office List) (CO/1516/89, 11 October 1990)

shaft some 160 feet deep, in order to test plant. He was asphyxiated as a result of inadequate oxygen and excessive carbon dioxide. A Mr McCotter, an employee of Davy ATC Limited, went to his assistance but unfortunately suffered the same fate, both men dying of asphyxiation in these circumstances.

The Health and Safety Executive were at once notified, as was required, and an investigation was immediately set in train involving visits by officers of the Health and Safety Executive to the site and to both companies, the taking of statements and the gathering of information. Preliminary conclusions having been reached in November 1988, Mr White recommended to his superiors that a prosecution be initiated. On 30th November of that year the Thames Water Authority were informed that it was the Executive's intention to prosecute. On the following day the same information was given to Davy ATC Limited. Both those companies were represented at an inquest which was held on 6th December, as was the Health and Safety Executive. The evidence given at that inquiry suggested to the Executive that further enquiries were necessary. These were duly undertaken.

In the middle of February the solicitor to the Executive advised that the matter was one suitable for trial of the proposed defendants on indictment.

Steps were taken to prepare the matter for trial. Those steps included a conference with counsel in March, as a result of which further information and further statements were advised to be necessary, which were duly obtained.

When the Executive's investigation was complete, steps were taken to approach the Highbury Corner Magistrates' Court to fix a date for hearing the summonses which it was proposed to issue. A hearing date in the middle of August was fixed.

The first question raised was whether the learned magistrate had any discretion to refuse to issue summonses. That argument was not pursued and the court observed that was probably a wise course since ultimately every court has discretion to prevent abuse of its own procedure, in the language of section 1 of the Magistrate's Courts Act 1980 and in the

decision in R v Clerk to the Medway Justices ex parte The Department of Health and Social Security<sup>197</sup>

The learned magistrate's decision was criticised on three further grounds:

- a) because the material before the magistrate did not show the prosecutor's delay to be capable of being regarded as unjustifiable;
- (b) because the discretion to refuse the issue of summonses on grounds of delay only arises where significant risk of prejudice to the defendant has been thereby caused, which the magistrate did not find in the present case and of which there was no evidence; and
- (c) because in any event the better practice is to issue summonses and allow the defendant to seek to stay the proceedings as an abuse of the process if so advised at an inter partes hearing.

As to (a), the court found that, in the absence of any factual information from the proposed defendants or any contrary submission, the applicant's submission to be well-founded. The prospective defendants knew of the accident at once and were, one has no reason to doubt, very much concerned about the loss of life in such circumstances. An immediate investigation took place, involving the taking of statements and the making of visits by officers of the Health and Safety Executive. There was no question that these defendants did not know of the Executive's involvement. They must, in any event, have been alerted to the risk of fatal accident claims. They knew that it was the Executive's intention to prosecute within four months of the accident. They were obliged to prepare for the inquest, at which they were represented. No doubt an outsider might think that the process of decision-making was unnecessarily slow and bureaucratic. No doubt it could have been quicker. It is none the less incumbent on a body of this kind to proceed with some caution. It is open to criticism if it does not prosecute in a case where the public or its representatives feel that it should have done. It is open to criticism if it does prosecute and

<sup>197</sup> R v Clerk to the Medway Justices ex parte The Department of Health and Social Security 150 JP 401, [1986] Crim LR 686.

the prosecution fails for lack of appropriate consideration or evidence or preparation. It is open to criticism if it decides to prosecute in a case where the courts or the public feel that it was unreasonable to do so.

All these considerations did not justify endless delay but do require a body of this kind to proceed warily and with some deliberation. Moreover, this was not an entirely straightforward matter. The material before the court included statements, documents, publications of various kinds and photographs running to well over 100 pages. The case involved expert evidence of a detailed nature. In my judgment, it was not a case to which the Executive would have been well advised not to rush without careful thought. I do not therefore think that the learned magistrate's view of the chronology was, on the facts as known to us, sustainable.

The court accepted, however:

(a) that it may not matter if a prosecutor's delay, being sufficiently gross and sufficiently prejudicial, is or is not justifiable. If that is a correct view, then a finding that the delay was not unjustifiable may not be determinative. The court also accepted the Executive's second submission

(b). It found that there was in truth no evidence of prejudice before the learned stipendiary magistrate. It is not, in my judgment, a case in which, on the history as I have summarised it, prejudice could be inferred from the mere passage of time. Moreover, the magistrate did not find prejudice. The court concluded that the magistrate's decision was vitiated by his failure to direct his attention to the question of prejudice and to make any finding of prejudice.

As to the Executive's third submission (c), The court found that R v Fairford Justices ex parte Brewster<sup>198</sup>, concerned a different situation, and did not in its reasoning contain any principle which, in their judgment, reinforced the decision which the magistrate reached in this case.

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<sup>198</sup> R v Fairford Justices ex parte Brewster [1976] QB 600, [1975] 2 All ER 757



The court held that magistrate's decision was wrong in law and allowed the application.

#### **Prosecution following an accident.**

The criteria for prosecution should be the seriousness of the contravention rather than the severity of the accident. But the extent to which the employer could be said to be responsible for the circumstances leading to an accident and whether the employer had been previously warned of a similar infringement are also relevant. It is recognised however that an accident contributes significantly to the strength of the evidence and therefore to the chances of a successful prosecution.

#### **Prosecution Rights of Appeal**

The Health and Safety Executive may appeal by way of case stated to the Divisional Court on a question of law.<sup>199</sup> This can include questions relating to sentence if there is a plain question of law.<sup>200</sup>

An appeal may also be made from the Crown Court by way of cases stated to the Divisional Court on a question of law. This is only available in matters not related to trial on Indictment,<sup>201</sup> that is where the Crown Court exercised its power of appeal from the magistrates on questions of guilt or sentence.

Appeal may be made by way of an Attorney General's reference where a person has been tried on indictment and acquitted. This is on any point of law related to the case.

Section 36 (1) Criminal Justice Act 1972 states:

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<sup>199</sup> Magistrates' Courts Act 1980 section 111

<sup>200</sup> *Haime v. Walklett* (1983) 5 Cr App R (S) 165.

<sup>201</sup> Supreme Court Act 1981 section 28

"Where a person tried on indictment has been acquitted ..... the Attorney- General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the court, and the court shall..... consider the point and give their opinion on it."

Archbold at para 7-136 provides guidance on the use of these provisions as follows:

"It would be a mistake to think, and we hope people will not think, that references by the Attorney - General are confined to cases where very heavy questions of law arise and that they should not be used in other cases. On the contrary, we hope to see this procedure used extensively for short but important points which require a quick ruling of this court before a potentially false decision of law has too wide a circulation in the courts"

per Lord Widgery C.J. in Attorney General's reference (No.1 of 1975)<sup>202</sup>

The power given to the Attorney General is a power to refer a point of law which actually arose in a real case. There is no power to refer theoretical questions of law, however interesting or difficult:<sup>203</sup>

Thus the power to refer is to prevent a false decision of law from having wide circulation. It does not refer to those cases where the prosecution has been unable to prove its case because of a failure to marshal the necessary evidence.<sup>204</sup>

However if the Court of Appeal decides that the Crown Court has incorrectly acquitted a defendant he must remain acquitted.<sup>205</sup>

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<sup>202</sup> Attorney General's reference (No.1 of 1975) 1975 3 W.L.R. 11 at page 13.

<sup>203</sup> Attorney General's reference (No.4 of 1979) 1980 71 Cr. App. R.341.

<sup>204</sup> *Regina v. British Gas PLC* (1988) Unreported. Crown Court at Burnley 29th April 1988.

<sup>205</sup> Criminal Justice Act 1972 section 56 (7) Appeal may be made by way of Judicial Review to the Divisional Court. (Supreme Court Act 1981 sections 29 - 31 and Rules of the Supreme Court 1965 Order 53) Matters relating to trial on indictment are excluded. (Supreme Court Act 1981 section 29

**The Health and Safety Executive policy concerning appeals.**

The following questions are addressed:

1. Does the point of law require clarification? Is there a mistake of law?
2. Is the case likely to succeed?
3. What would the consequences be for enforcement?
  - (a) Could the Health and Safety Executive could achieve its purposes through other statutory provisions?
  - (b) What would be the consequences of losing in a higher court?
  - (c) What is the practical effect of the current decision? Some decisions of a lower court would receive wide publicity and could therefore very much affect industry's approach or could influence the activities of a large employer. If that were the case an appeal may be justified.
4. Is the case likely to be costly?
5. Is the sympathy of the Court likely to be with the prosecution?
6.
  - (a) Is the point of law of such general importance that it would apply in many other cases and resolve an area of genuine doubt?or
  - (b) Has the defendant failed to rectify the points complained of and was there still a serious threat to safety which could not be ignored?

or

- (c) Have the Magistrates in question made consistent errors of law and ought they to be reminded of the correct position?

#### **Enforcement action against employees.**

Prosecution of an employee under Sections 7 or 36 (1) Health and Safety at Work Act 1974 is usually justified only where the safety equipment provided by the employer has not been used. Consultation with worker's representatives by the enforcement authorities is usually recommended in such cases. If safety equipment provided by the employer has not been used and such lack of use is flagrant, prosecution of the employee may be justified. Only wilful and clear breaches are likely to be punished under these provisions.<sup>206</sup>

#### **Companies**

In at least two cases during the 1980's the Health and Safety Executive experienced difficulties in securing convictions because of the interpretation of the House of Lords decision<sup>207</sup>. Moreover, a number of prosecutions have been prolonged examining whether particular employees were part of senior management or not, one particular prosecution lasting twenty days.

In Regina v. Rowbotham Tankships Limited and Knight International Surveys Limited which was heard before His Honour Judge David Williams T.D., Q.C. at the Crown Court at Swansea on 16th - 24th June 1986. (HSE Files No. SO/273/85 and No. SO/562/86) the owners of the M.V. Pointsman, Rowbotham Tankships Limited, were acquitted on six counts of failing to discharge the duties imposed upon them by Section 2 and Section 3 of the Health and Safety at Work Act 1974. Knight International Surveys Limited were convicted of two charges under Section 3 (1) Health and Safety at Work Act 1974. The judge accepted a submission by Rowbotham Tankships Limited that the company could

<sup>206</sup> Written Answers, Parl. Debates H.C. February 19th 1982, cols.251 - 253.

<sup>207</sup> Tesco Supermarkets Limited v. Natrass [1972]

only be liable if the act or omission complained of was made by one of a class of persons who could be identified with the controlling mind and will of the company. As the master or crew were not members of this class, the company could not be liable for their acts or omissions notwithstanding the very wide discretion that he had in safety matters.

The facts were that on 15th June 1984 a series of explosions took place on M.V. Pointsman when it was berthed at Milford Haven. Four men lost their lives and twelve members of the emergency services were severely injured. The accident happened because the captain of the vessel and the company's engineering superintendent at Milford Haven had arranged for oxyacetylene work to take place in the pump room and the manhole cover which separated the slops tank from the pump room was inadequately sealed, permitting explosive vapour to pass into the pump room. The employer admitted that there was fault on the part of the Chief Officer, Mr. Eamon Cowman who was later dismissed by the company and by the Captain who was later severely reprimanded.

The second case followed an explosion in Market Street, Whitworth, near Rochdale, when a release of gas from an underground location ignited and exploded in adjacent houses.

In Regina v. The British Gas Corporation at the Crown Court at Burnley which was heard before Her Honour Judge Steel on 29th April 1988 the company pleaded not guilty to two charges alleging failure to conduct an undertaking in such a way as to ensure the safety of their employees and others contrary to Sections 2 and 3 and Sections 33 Health and Safety at Work etc. Act 1974.

As in the case of the M.V. Pointsman the charges against British Gas were similarly dismissed. The judge accepted a submission by British Gas following a ten day trial that the company could only be liable if the act or omission complained of was made by one of a class of persons who could be identified with the controlling mind and will of the company. The Court further held that as Colin Barker, Regional Manager, was not a member of this class, the company could not be liable for their acts or omissions notwithstanding the very wide discretion that he had in safety matters.

British Gas was found not guilty on direction of Judge on 29th April 1988 although it does appear that the prosecution made unnecessary concessions in this case. The costs of the defence and the prosecution were met from Central Funds.

The issue was finally resolved in the case of Regina v British Steel PLC (1994) The Times, 31 December, which was heard in the Court of Appeal. It was there held that a corporate employer was not able to avoid liability for an offence under s.3 (1) of the Health and Safety at Work etc. Act 1974, on the basis that the company at 'directing mind' or senior management level was not involved in the offence, having taken all reasonable care to delegate supervision of the work in question.

On 29 July 1990 a fatal accident occurred at a plant of British Steel PLC in Sheffield. In April 1993 British Steel pleaded not guilty to a charge of failing to discharge the duty imposed on them by Section 3 (1) of the Health and Safety at Work etc. Act 1974 to a person not in their employment contrary to Section 33 (1) of the 1974 Act. Section 3(1) of the 1974 Act reads as follows:

'(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 all persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.'

The burden of proving that it was not reasonably practicable to do more than was in fact done rested on British Steel: see section 40.

After a five day trial before His Honour Judge Crabtree and a jury, British Steel were convicted of the offence charged by a majority verdict of ten to two. They were sentenced to a fine of £100.

In July 1990 British Steel wanted to reposition a 7.5 tonne section of steel platform at their plant at Shepcote Lane, Sheffield. The operation involved cutting the platform free of its supports and moving it by crane to a new position. Subcontractors provided two men to carry out the repositioning of the platform. The men were Mr. Coullie, a welder, and Mr. Gascoigne, a plater. The subcontract was on a labour only basis, with equipment and

supervision being provided by British Steel. Mr. Crabb, a section engineer in the employment of British Steel, was responsible for the supervision of the repositioning of the platform. On 29th July 1990 the two men cut the platform free of nearly all its supports. They neglected to secure it to a crane or by means of temporary props. The platform was unstable. Mr. Coullie worked immediately under the platform. Mr. Gascoigne stepped on to the platform. It collapsed and fell on Mr. Coullie causing him fatal injuries.

Evidence was presented to show that British Steel did not plan and supervise the operation properly. Essential safeguards were not in place.

On appeal, the company argued that if British Steel at directing mind level had taken all reasonable care to delegate supervision of the operation to Mr. Crabb, then they were entitled to be acquitted. Counsel thought that the decision in Tesco Supermarkets Limited v. Natrass<sup>208</sup> warranted this view. The Judge disagreed with this view of the law.

His Honour Judge Crabtree directed the jury as follows:

"Mr. Goldstaub (Counsel for British Steel) was at pains to make it clear that British Steel had appointed Mr. Crabb the section engineer to look after this job. He was one of their most experienced, best qualified men. It is beyond dispute he was competent and qualified to give proper instructions for this sort of job and to exercise adequate supervision to make sure the job was done safely.....

I have to tell you as a matter of law that is fundamentally wrong. British Steel, as with any other employer, has a duty under this section to make sure that their operations are conducted, at least so far as is reasonably practicable and I will come to that later. The basic duty is to ensure that their undertaking, their operations. In law the employer, British Steel, cannot delegate this duty to some manager, section engineer or foreman, and wash their hands of it if it all goes wrong. The basic duty is upon the defendant company to make sure their business is operated in such a way that other people are not exposed to

<sup>208</sup> Tesco Supermarkets Limited v. Natrass [1972] A.C. 153

risk. If somebody, a visitor like Mr. Coullie (the poor man who was killed) is put at risk because of some failure on the part of British Steel, including a failure on the part of the person that British Steel appointed to conduct this tiny part of their undertaking, then if that happens British Steel are guilty of this offence unless they can get out of it by use of that proviso that it was not reasonably practicable to ensure people's safety."

Turning to the words "so far as is reasonably practicable" in section 3 (1) the judge said:

"Really you may think - though this is for you to decide and not for me - once it is proved that Mr. Crabb failed to conduct this part of British Steel's undertaking so as to do it without foreseeable risk to these men, it is difficult to see how anybody could argue that it was not reasonably practicable to avoid the risk. All it needed was that the man actually look at the job whilst he was there and to say, 'Get out'."

Following this direction the jury convicted. British Steel was eventually given leave to appeal against conviction and sentence.

In giving judgement in the Court of Appeal Lord Justice Steyn said in Tesco Supermarkets Limited v. Natrass<sup>209</sup> the case involved a charge under Section 20 (1) Trade Description Act 1968. That case involved consumer protection rather than health and safety which prima facie requires more stringent protection. Also the Health and Safety at Work etc. Act 1974 and the Trade Description Act 1968 differ in important respects. In the former there is no due diligence defence. Prima facie the duties under the Health and Safety at Work etc. Act 1974 are cast in absolute terms. See Regina v. Board of Trustees of the

<sup>209</sup> Tesco Supermarkets Limited v. Natrass [1972] A.C. 153 Tesco was applied in R. v. Andrews Weatherfoil Ltd [1972] 1 W.L.R. 118; and see Nordik Industries Ltd v. Regional Controller of Inland Revenue [1976] 1 N.Z.L.R. 194, 199 - 202; Commissioner of Taxation v. Whitfords Beach Pty. Ltd (1982) 56 A.L.J.R. 240, 245; R. v. McNamara (No. 1) (1981) 56 C.C.C. (2d) 193 (Ontario C.A.); R. v. N.M. Patterson & Sons Ltd (1980) 117 D.L.R. (3d) 517; R. v. Roffel (1985) 9 A.C.L.R. 433 R v Murray Wright [1970] N.Z.L.R. 476. See also the Massachusetts case of Commonwealth v. Beneficial Finance Company 275 NE (2d) 33 (1972) for a wide ranging discussion of the issues. For a detailed critique of Tesco, see W.B. Fisse, Consumer Protection and Corporate Criminal Responsibility (1971) 4 Adel. L. Rev. 113. Generally on corporate criminal liability, see L.H. Leigh, The Criminal Liability of Corporations in English Law (1969);



Science Museum [1993]<sup>210</sup> and Regina v. Associated Octel Company Limited [1994]<sup>211</sup>

In Regina v. Board of Trustees of the Science Museum<sup>212</sup> the Court held:

"The defence also argued that if the prosecution's submission is accepted the result may be that, subject to the defence of reasonable practicability, all cooling towers in urban areas are prima facie within the scope of the prohibition contained in section 3 (1). On the evidence led in the present case that may be correct. Almost certainly such a result would be true of a number of extra - hazardous industrial activities. Subject only to the defence of reasonable practicability, section 3 (1) is intended to be an absolute prohibition. Bearing in mind the imperative of protecting public health and safety, so far as it is reasonably practicable to do so, the result can be faced with equanimity."

In Regina v. Associated Octel Company Limited<sup>213</sup> Stuart - Smith L.J observed:

"Although Steyn L.J. was not dealing with a case involving the activities of independent contractors, classically liability for the acts of independent contractors is one of the hallmarks of absolute liability. The section is so framed as to achieve a result, namely that persons not employed are not exposed to risks to their health and safety by the conduct of their undertaking. That result could be defeated if, ipso facto, the duty could be delegated to an independent contractor."

Lord Justice Steyn said

" In our judgement the decision in Tesco does not provide the answer to the problem of construction before us."

<sup>210</sup> See Regina v. Board of Trustees of the Science Museum [1993] 1 W.L.R 1171

<sup>211</sup> Regina v. Associated Octel Company Limited [1994] I.R.L.R 540 The Associated Octel Company have sought leave to appeal to the House of Lords.

<sup>212</sup> Regina v. Board of Trustees of the Science Museum [1993]

<sup>213</sup> In Regina v. Associated Octel Company Limited [1994]

The Court thus dismissed the appeal against conviction. As regards the fine in the court's opinion it was derisory. In their view a substantial fine was required but unfortunately it was beyond the Court's power to increase it.

### **Company Directors**

The Health and Safety Executive have intensified their policy of prosecuting directors with responsibility for safety where through their inactivity or negligence they have been responsible for the failure of the safety management system.

In Armour v. Skeen,<sup>214</sup> it was held that the director of roads for Strathclyde Regional Council was guilty in the Sheriff Court on five charges relating to the accidental death of one of the Council's employees. The case arose after a workman employed on the repainting of a bridge over the River Clyde in Glasgow fell to his death. The Council and Mr Armour were prosecuted for breach of a number of safety provisions in the Factories Act and relevant Regulations relating to the lack of a safe system of work and failure to notify the local inspector that the work was being undertaken. Mr Armour's prosecution was based on s 37(1) of the Health and Safety at Work Act which provides:

"Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly".

The "neglect" on the part of Mr Armour found by the Sheriff Court related to his failure to fulfil the responsibilities for health and safety placed on those in his position by the Council, including having a sound safety policy for his department, informing employees of the implications and requirements of the Act, and training and instructing employees in safe working practices.

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<sup>214</sup> Armour v. Skeen [1977] S.L.T. 70,

Mr Armour appealed against the decision of the Sheriff Court on the grounds that he personally was not under a statutory duty to provide a safe system of work and therefore the accident could not be attributable to any neglect of such a duty. In addition, he claimed that he could not be personally prosecuted as he did not fall within the ambit of s37(1).

The High Court of Justiciary held:

"The Sheriff Court had not erred in finding Mr Armour, as the Council's Director of Roads, personally liable for neglect within the meaning of s 37(1) of the Health and Safety at Work Act."<sup>214</sup>

That s 2(1) of the Act imposes on the employers the duty to ensure the safety at work of the employees so far as reasonably practicable did not mean that the members of the Council, as policy makers, were alone responsible for the safety policy and that there was no duty on the appellant to carry out the policy. The neglect on the part of a person covered by s 37(1) need not be a neglect only in relation to a duty which the legislation has placed on that person. S 37(1) refers to any neglect, which means any neglect in duty, however constituted, to which the contravention of the safety provisions was attributable.

In the present case, the Council's Statement of Safety Policy, in particular paragraph 3 which placed the responsibility for ensuring safe conditions of work on Directors, Heads of Departments, Managers and Supervisors, and a circular sent out to all Directors and Heads of Departments reminding them of their duties under the Health and Safety at Work Act, imposed on the appellant the duty to prepare, on the bones of these documents, a written general safety policy in relation to the work of his department. His failure to do so thus constituted neglect within the meaning of s 37(1) of the Act.

Moreover, the appellant was a person within the purview of s 37. Whilst as a Council Director of Roads, he was not a "director" as used in that section, because of his position in the organisation of the Council and the duty which was imposed on him in connection with the provision of a general safety policy in respect of the work of his department, he came within the ambit of the section 37(1).

In R v Mara<sup>215</sup> Court of Appeal (Criminal Division)

CMS Cleaning and Maintenance Services Ltd. had a contract to clean a store Monday to Friday each week between 7.30 and 9 am and, by agreement, electrical cleaning machines left at the store by the company could be used by employees of the store at other times. On a Saturday afternoon, an employee of the store used one of those machines and, because it had a damaged cable, the employee received an electric shock which killed him. The appellant, a director of the company, was charged and convicted of failing to discharge an employer's duty, under section 3(1) of the Health and Safety at Work etc Act 1974, by consenting to or conniving at a breach by the company as employer to conduct the company's undertaking in such way as to ensure that persons not in the company's employment were not thereby exposed to risks to their health and safety. The appellant was convicted and was fined £200 (with 30 days' imprisonment in default).

On appeal against conviction on the ground that the company did not conduct business at the store on Saturdays:-

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<sup>215</sup> In R v Mara [1987] 1 WLR 87 Court of Appeal (Criminal Division)

Held, dismissing the appeal, that for the purposes of section 3(1) of the Act of 1974 the conduct of the company's undertaking was not confined to the hours when the company's employees were actually in the building carrying out the services of cleaning the store but included also the manner in which the company left their machines in the store and permitted the store's employees to use them; that, accordingly, there had been a breach of section 3(1) and the appellant had been properly convicted of colluding or conniving at that breach.

More recently in R. v. Baldwin Industrial Services Ltd. a case heard at the Crown Court at Isleworth on 30th September 1994, the company pleaded guilty to two charges brought under the Health and Safety at Work etc Act 1974. By failing to test and thoroughly examine its mobile crawler cranes between 1 January 1988 and 20th November 1991, in accordance with the requirements of the Construction (Lifting Operations) Regulations 1961, the company exposed both their employees (Section 2(1) Health and Safety at Work etc Act 1974) and members of the public (Section 2(1) Health and Safety at Work etc Act 1974) to risks to their safety. The company was fined a total of £70,000 and ordered to pay £70,000 towards costs.

Mr. Baldwin, being a director of the company, pleaded guilty under Section 37 (1) Health and Safety at Work etc Act 1974 in that the company's offences had been with his consent. He was fined a total of £20,000 and ordered to pay £5,000 in costs.

Any employee may also be convicted for aiding and abetting the commission of an offence by the corporate body subject to the requirement that they must have mens rea. Conversely, the corporation itself may aid and abet the commission of an offence by its agent or servant.

The Company Directors Disqualification Act 1986 provides that a court may make a disqualification order against a person convicted of an indictable offence connected with the promotion, formation, management or liquidation of a company. The conduct at which the legislation is aimed is defined in section 2 and includes health and safety matters.

Speaking in the House of Lords in 1991, Viscount Ullswater, Under Secretary of State for Employment, said:

'In our view Section 2 of the Company Directors Disqualification Act 1986 is capable of applying to health and safety matters. We believe that the potential scope of s 2(1) of that Act is very broad and that "management" includes the management of health and safety'<sup>216</sup>

This interpretation of the Act has now been followed judicially. On June 26 1992 The Crown Court at Lewes (Beryl Cooper Q.C. Assistant Recorder) fined Rodney James Chapman £5,000 for breach of Section 37(1) Health and Safety at Work Act 1974 and disqualified him from holding office as a company director for a period of two years for contravening the terms of a prohibition notice alleging that his quarry was being worked in an unsafe manner. The company, Chapman Chalk Supplies Limited was also fined £5,000 and ordered pay £3,553 in costs. Prosecutions for breach of Section 37(1) Health and Safety at Work Act 1974 are relatively rare, there having been, for example, only 23 during the year 1989/90.

The prohibition notice had been served on Chapman Chalk Supplies Ltd at Filching Quarry, Jevington in June 1990. It was alleged that the quarry had been worked in an unsafe manner resulting in significant danger from falls of rock.

In September 1990 the company had appealed to an industrial tribunal to request that the prohibition notice be lifted. The Tribunal decided that the prohibition notice might be lifted but only if the Health and Safety Executive was satisfied with the steps that had

<sup>216</sup> Hansard, 22 November 1991, col 1429-30 Section 2 Company Directors Disqualification Act 1986. The court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management or liquidation [liquidation or striking off] of a company, or with the receivership or management of a company's property. "The court" for this purpose means (a) any court having jurisdiction to wind up the company in relation to which the offence was committed, or (b) the court by or before which the person is convicted of the offence, or (c) in the case of a summary conviction in England and Wales, any other magistrates' court acting for the same petty sessions area; and for the purposes of this section the definition of "indictable offence" in Schedule 1 to the Interpretation Act 1978 applies for Scotland as it does for England and Wales. The maximum period of disqualification under this section is - (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and (b) in any other case, 15 years. See also Schedule 3 Magistrates Courts Act 1980.

been taken to make the quarry safe. Nevertheless, employees returned to work on 12th August 1991 without the prior approval of the Health and Safety Executive and thus the company was in contravention of the order of the tribunal order and s 33 of the 1974 Act which provides that it is an offence to contravene the terms of a prohibition notice served under section 22 of the Health and Safety at Work Act 1974.

In 1989 - 90 79 informations were laid against individuals. 66 (83.5%) of whom were convicted. The average fine was £744.<sup>217</sup>

Average Penalty per Conviction at 1991 Prices.<sup>218</sup>

1975	£292.50	
1976	£301.47	
1977	£299.13	
1978	£340.80	
1979	£439.92	
1980	£351.39	
1981	£336.42	
1982	£382.12	
1983	£395.64	
1984	£469.50	
1985	£614.76	
1986	£561.70	
1987	£1037.52	(includes fines against B.P of £750,000 at 1987 prices)
1988	£676.25	
1989	£908.28	
1990	£957.18	

Changes in the severity of sentences can be seen in 1984/1985 and 1989.

<sup>217</sup> HSE Statistical Services Report cited at page 137 in Corporations and Criminal Responsibility. Celia Wells, Clarendon Press, Oxford 1993.

<sup>218</sup> HSE Statistics 1982 and HSC Annual Report 1992/93 Statistical Supplement. General Index of Retail Prices 1991. (All enforcement authorities excluding local authorities).

### **Sentencing in the Higher Courts**

In 1990 average fines in the higher courts were £5,115 and as will be seen below greatly exceed those imposed by magistrates' courts. This is because the offences heard there are more serious, almost invariably involving loss of life, and it should be said, there is no reason to believe that the Crown Court will be more likely to convict or impose a higher scale of fine for similar alleged offences. In some cases fines in the Crown Court have been known to have been as low as £100. Serious concerns were expressed arising from the lack of proper safety measures by companies engaged on the construction of the Channel Tunnel. In these cases, during the late 1980's at least the reaction of the Crown Court was muted. In July 1988 the Health and Safety Executive prosecuted the five constituent companies of Translink Joint Venture in the Crown Court. These companies were then fined £8,750 plus costs of £7,000. In the second case, in November 1988 Translink Joint Venture was prosecuted in the magistrates' court and the companies were fined a total of £20,000 plus costs.

In those instances where cases were referred by magistrates to the higher courts for sentence following conviction the average fine was £2,577.

Despite the experience of the Translink Joint Venture prosecutions, fines imposed in the Crown Court tend to be considerably higher than those imposed in the lower courts.

Fines of £100,000 and £250,000 were imposed on Nobels Explosives. In the latter case the company was obliged to pay £92,000 by way of costs. The second and larger penalty was imposed because of failures in their safety management system which led to the explosion on the Fengate industrial estate in Peterborough. The company was prosecuted for breaches of Section 2 (1) Section 3 (1) Health and Safety at Work Act 1974.

A similarly high fine was recorded in March 1990 when Tate and Lyle were fined £250,000 in Greenock Sheriff's Court for breach of Section 2 Health and Safety at Work Act 1974 following an incident where one of its employees died whilst engaged in the cleaning of a sugar silo. However, this fine was reduced to £100,000 on appeal.



The highest fine to date, £750,000, was imposed on BP in March 1988 for failure of safety precautions in two incidents at Grangemouth, which resulted in the loss of three lives and which exposed serious faults in the health and safety system. The Health and Safety Executive in their Annual Report 1987/1988 stated that the fine marked " the seriousness with which the judiciary are prepared to regard serious breaches by firms with the heaviest responsibilities." B.P.'s Annual Report for that year reveals an annual profit, after taxation but before extraordinary items of £1,391m.

Mr. John Rimington, director general of the Health and Safety Executive, greeted the news of the Tate and Lyle fine by stating that the Health and Safety Executive had

"been pressing for higher fines generally for health and safety offences and this may be a further indication that courts are taking really significant breaches of safety provision more seriously."

Nevertheless, a very strong impression has evolved to the effect that the courts are more likely to convict and impose penalties where a serious accident has occurred leading to loss of life or serious personal injury rather than where the system of health and safety is at fault such that loss of life or serious personal injury could result. This is evidenced by the recent prosecution of the South of Scotland Electricity Board for inadequacies in the protection system at a nuclear power station which resulted in a fine of only £1,500. It is undeniably difficult to compare such crimes with those concerning drug trafficking, residential burglary involving the use of force, arson and indecent assault.

Breaches of occupational health requirements, rather than safety matters, have also been severely punished when two companies were fined £16,500 in 1977 for offences under the Asbestos Regulations of 1969 arising out of a substantial release of asbestos dust. Even so an undoubted bias towards safety cases rather than occupational health cases exists. Firstly, because accidents are plain to see; secondly, because they are usually more emotive and thirdly, probably because of the first two reasons, success in the courts is usually more assured.

### Judicial sentencing policy

Recent judicial policy does however seem to be moving towards more severe sentences for health and safety offences. The record for the largest fine ever imposed on a construction company for a health and safety offence was in *R. v. Transmanche - Link*<sup>219</sup> when a fine of £200,000 was imposed on the the Transmanche - Link consortium. The Transmanche - Link consortium were each ordered to pay £40,000. They had pleaded guilty to failing to ensure the safety of a worker crushed to death between two trains<sup>220</sup> David Bergman.<sup>221</sup> has argued for a modified and more severe system for the fining of companies. He said that at present, magistrates courts and the crown court when sentencing convicted companies do not have the same detailed information about the offender as they do for individuals awaiting sentence; in the case of the latter, educational details, income, expenditure and antecedents are known, and often social inquiry reports will also be provided together with an assessment of the offender's likely response to probation.

He continued:

"No such care is taken in relation to corporate offenders. No police officer or similar person gives evidence and there is no document available to the court similar to the social inquiry report. The court remains unaware of the most basic information on the company - its turnover, annual profits, history of relationship with the regulatory agency or its general health and safety record." (Ibid, p 1312.)

Bergman cites as a model the system in the United States under which a probation officer working at the federal level is required to undertake a pre-sentencing investigation into each convicted company to help the court decide an appropriate level of fine. Bergman has also argued for the introduction of "corporate probation" which has been in use in the

<sup>219</sup> *R. v. Transmanche - Link Crown Court at Maidstone*, November 1993 (Unreported)

<sup>220</sup> Slapper, G. *New Law Journal* (7 January 1994) Vol 144 No 6630 p 29.

<sup>221</sup> "Corporate sanctions and corporate probation", *New Law Journal*, September 25, 1992, p 1312.

USA since 1987.<sup>222</sup> Under this process a judge can compel a company's senior management to revise the way in which the company devises and implements safety procedures.

Conditions can be imposed by the court: for example, insistence on certain safety procedures and the employment of certain safety staff. Celia Wells has argued for "the development of liability which is better tailored to the organisational facts of corporate existence".<sup>223</sup>

David Bergman,<sup>224</sup> further suggests that companies which are criminally responsible for workplace death and injury, or whose conduct places the safety of its employees at risk, are the beneficiaries of a triple immunity without our criminal justice system in that they are:

"1. Subject to inadequate investigation (or more likely no investigation) their crimes are, in the first place, unlikely to be detected (Less than 20 per cent of non-fatal major injuries at work are investigated).

2. the Executive's advisory style of enforcement allows the majority of those unlucky few companies whose crimes are discovered by a diligent HSE inspector to escape nothing more harsh than a written warning or an improvement notice.

3. The failure of the system to develop sentencing procedures and a wider option of sanctions so that the courts can punish, rehabilitate or deter corporate offenders. Whilst courts have a wealth of sentencing options for individual offenders the only penalty that can be imposed against a company is a fine. There appears to be no rational method, indeed no method at all, by which courts come to determine the level of the fine."

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<sup>222</sup>Op cit page 1313

<sup>223</sup>Corporations: Culture, Risk and Criminal Liability, Crim L R [1993] 551 at 565. See also Corporations and Criminal Responsibility, 1993, Clarendón Press, Oxford.

<sup>224</sup>New Law Journal, 5 June 1992 Vol 142 No 6555 p 1312 Corporate sanctions and corporate probation

In August 1989 the dredger the Bowbelle sank the pleasure boat the Marchioness, killing 51 people. Ivor Glogg, who lost his wife in the disaster, brought a prosecution against South Coast Shipping Company Ltd of Canute, Southampton and four senior managers. The case was subsequently dismissed but a recent coroners inquest has recorded a verdict of unlawful killing.

A prosecution by the Director of Public Prosecutions<sup>225</sup> a case arising from the capsizing of the Herald of Free Enterprise in 1987 when 193 people died was eventually withdrawn from the jury by Turner J on the grounds that the prosecution's case was inadequate.) and without conviction? Why Bergman asks are companies which kill in the course of commercial undertaking given such indulgence by the State in being prosecuted, if at all, only for regulatory health and safety offences?

Since 1974, when the HSE was established, there have been 9,050 deaths at work yet the HSE cannot point to a single case which it has referred to the Crown Prosecution Service.

Convicting a company is difficult. The Court of Appeal has rejected the principle of "aggregation" by which a company could be incriminated from the combined failures of several of its directors. Arguably, this ruling makes it virtually impossible for a company to be convicted of manslaughter, because of the way in which responsibilities are distributed throughout a corporate body.

Bingham LJ held that:

"Whether the defendant is a corporation or a personal defendant, the ingredients of manslaughter must be established by proving the necessary mens rea and actus reus against it or him by evidence properly to be relied on against it or him. A case against a personal defendant cannot be fortified by evidence against another defendant. The case against a corporation can only be made by evidence properly addressed to showing guilt on the part of the corporation as such."<sup>226</sup>

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<sup>225</sup> DPP v P&O European Ferries (Dover) Ltd (1991) 93 Cr App R 72

<sup>226</sup> R v HM Coroner for East Kent ex parte Spooner (1989) 88 Cr App R 10 at p 17.

David McIntosh, a senior partner at Davies Arnold, Cooper, has drafted a Bill which, if passed into legislation, would enable company directors whose commercial recklessness resulted in death to be disqualified from business management for up to ten years. The Bill uses the "points system" employed in road traffic law as a model. The Bill also introduces the idea of mandatory health and safety audits.<sup>227</sup>

In R. v Sanyo Electrical Manufacturing (UK) Ltd.<sup>228</sup> fines totalling £20,000 for offences against the Electricity (Factories Act) Special Regulations and the Health and Safety at Work Act 1974 were upheld. The appellant company had pleaded guilty to two offences of failing to prevent danger from electrical conductors, contrary to the Electricity (Factories Act) Special Regulations and the Health and Safety at Work Act 1974. An employee of the company experienced an electrical shock which could have been fatal while carrying out a test, and a breach of a regulation relating to safety precautions took place over a period of 13 months. The company had a previous conviction for two offences under the Health and Safety at Work Act 1974, which resulted from a fatal accident in which an employee was electrocuted. The company on that occasion was fined £2,000.

The appellant company submitted that the learned recorder failed to take 'the lack of gravity of the offences' into account, that he over-emphasised the company's ability to pay a substantial fine and over-emphasised the possibility of an accident occurring, that the risk was minimal and that the accident only arose because of a number of coincidences.

Mr Justice Rose giving the judgement of the Court said:

"The view of this Court is that the purposes of these regulations is to protect employees against the consequences of doing things by reason of inadvertence or inattention which they would not normally do. In our judgment the learned recorder in the sentencing remarks which he made indicated that he had fully and clearly understood that which had

<sup>227</sup> See New Law Journal, October 25, 1991.

<sup>228</sup> 13 Cr App R (S) 657, 156 JP 863 (24 February 1992)

occurred and had appropriately considered the aggravating factors in the case. He had also, as it seems to this Court, appropriately taken into account such mitigation as there was. We are wholly unpersuaded that the fines imposed by the learned recorder were excessive. Accordingly this appeal must be dismissed."

Whilst in 1993 at Leicester Crown Court Geoffrey Parker, a landlord aged 50, was fined £32,000 after an amateurish attempt to repair a gas boiler, which had been disconnected by British Gas, and which led to the poisoning to death of two brothers. Judge Mayor Q.C. said

"These offences do not carry imprisonment. If they did you would be sent to prison for a substantial period of time. Leave the dock and, if you have any conscience at all, leave it in shame. But for your lack of care, your putting money above their safety, their young promising lives wouldn't have been lost. Your meanness, your selfishness and your contemptuous lack of concern for their safety caused needless deaths. I hope it weighs upon your conscience which, regrettably there's been no indication whatsoever."

The judge expressed his surprise that Parker had not been charged with manslaughter.

More recently in *R. v. Baldwin Industrial Services Ltd.*<sup>229</sup> The company pleaded guilty to two charges brought under the Health and Safety at Work etc Act 1974. By failing to test and thoroughly examine its mobile crawler cranes between 1 January 1988 and 20th November 1991, in accordance with the requirements of the Construction (Lifting Operations) Regulations 1961, the company exposed both their employees (Section 2(1) Health and Safety at Work etc Act 1974) and members of the public (Section 2(1) Health and Safety at Work etc Act 1974) to risks to their safety. The company was fined a total of £70,000 and ordered to pay £70,000 towards costs.

Mr. Richard Baldwin, a director of the company, pleaded guilty under Section 37 (1) Health and Safety at Work etc Act 1974 since the company's offences had been with his consent. He was fined a total of £20,000 and ordered to pay £5,000 in costs.

<sup>229</sup> *R. v. Baldwin Industrial Services Ltd.* The Crown Court at Isleworth, 30th September 1994.

The prosecution's case rested on the falsification of certificates for five cranes by unqualified personnel.

Passing sentence, Judge Bathurst Norman emphasised that Baldwin as company director had "orchestrated" the deception and deserved to go to jail. He said:

" I make no secret of the fact that were prison an option that was open to me today, you would be going to prison... I hope that one day Parliament will look again at this legislation and will amend it so that the sentencing judge has available to him the option of a custodial sentence."

In February of this year, Severn Trent Water was fined £100,000 plus costs at Leicester Crown Court after pleading guilty to two breaches of Section 3 Health and Safety at Work Act 1974. Poor safety procedures had lead to the electrocution of a haulage sub-contractor who was delivering a cargo of stones to a construction site on 27th May 1994.

On 8th December 1994 Active Learning and Leisure Limited was convicted at Winchester Crown Court, before Mr. Justice Ognall, on four counts of manslaughter and fined £60,000 and Mr. Peter Kite, the company's managing director, was jailed for three years for manslaughter.

#### **Custodial Sentences**

The 1974 Act permits the imposition of custodial sentences mainly in cases involving a breach of license conditions, breach of improvement and prohibition notices, breach of court orders and offences involving explosives. A custodial sentence has only ever been imposed under the Act in one case, that of a director of a small construction company for failure to have an asbestos licence and for breach of a prohibition notice. In this case a twelve month suspended prison sentence was imposed.

Thus it can be seen that an immediate custodial sentence has never been imposed for a health and safety offence in the United Kingdom although it is not altogether unknown in other Community jurisdictions. In June 1992 Mr. Jean Fournet - Fayard, president of the French Football Federation was charged with manslaughter in connection with the

collapse of a stadium in Corsica in which seventeen people died and more than 2,000 were injured. On 31st March 1995 the tribunal de grande instance in Bastia sentenced Jean Marie Boimond, responsible for building the stadium and Mr. Michel Lorenzi, former director of the Bastia football club, to two years in prison and fines FFr30,000 (£3,788). Mr. Bernard Rossi, a safety inspector, and two directors of the island's football league club, Mr. Etienne Galeazzi and Mr. Ange Paolacci, were each sentenced to 18 months in jail and a FFr30,000 penalty. Mr. Noel Bartolini, another director, received a one year sentence and FFr30,000 fine, and two officers of the French Football Federation, Mr. Luc Pilard and Mr. Michel Cagnion, received eighteen month suspended prison sentences. The courts in France have consistently imposed harsher penalties than their British counterparts. For example as early as October 1975 the tribunal de grande instance de Bethune imprisoned a French employer for his failure to ensure a safe system of work.

On 6th March 1987 a Roll on/Roll off passenger ferry the '*MV Herald of Free Enterprise*' under the command of Captain David Lewry with 459 passengers, 80 hands and laden with 81 cars, 47 freight vehicles and three other vehicles capsized with the loss of 188 lives in the approaches to the port of Zeebrugge, Belgium. A Court of Inquiry was established by the Secretary of State for Transport under the Merchant Shipping Act 1970 under a Wreck Commissioner, Mr. Justice Sheen. On the 24th July 1987 the Court found that the capsizing of the '*Herald of Free Enterprise*' was partly caused or contributed to by serious negligence in the discharge of their duties by Captain David Lewry (Master), Mr. Leslie Sabel (Chief Officer) and Mr. Mark Victor Stanley (Assistant bosun), and partly caused or contributed to by the fault of Townsend Car Ferries Limited (the Owners). The Court suspended the certificate of Captain David Lewry for one year and the certificate of Mr. Leslie Sabel for two years. In *P&O European Ferries (Dover) Ltd.*<sup>230</sup> P&O Ferries the parent company and seven of its former employees were prosecuted for manslaughter at the Central Criminal Court, London before Mr. Justice Turner. These charges could not be sustained however and jury was ordered to find the defendants not guilty.

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<sup>230</sup> *P & O European Ferries (Dover) Ltd* (1991) 93 Cr. App. Rep. 72.



### **Manslaughter**

During the period 1985 - 1990 some 600 people were killed in workplace accidents annually.

The Crown Prosecution Service recently successfully prosecuted David Holt Plastics Limited, and its director for manslaughter, following the death of one of their employees in a plastic crushing machine. An employee of the company, George Kenyon, had expressed his concern about the "guards being up" on that plastic crushing machine. Mr. Kenyon was killed while using that machine at his place of work a few days later. After the incident the Health and Safety Executive inspected the premises and carried out a full investigation on the causes of the accident. It appeared that the crushing machine had been rewired in order to by-pass a safety mechanism which, had it been working in the intended manner, would have prevented the accident. At the coroner's hearing a verdict of unlawful killing was recorded and the police were asked to investigate. The Health and Safety Executive gave the police access to the evidence and the police prepared a report for the Crown Prosecution Service. Both the Health and Safety Executive and the police eventually prosecuted David Holt Plastics Limited and its directors David and Norman Holt. Norman Holt pleaded guilty to manslaughter and received a twelve month suspended prison sentence, suspended for two years. The fines and costs in this case totalled £60,000.

Following a train crash at Purley in 1988 the train driver was prosecuted for manslaughter.

Following the difficulties experienced with the prosecution of P& O Ferries and seven of its former employees outlined above, the Law Commission published a paper on Involuntary Manslaughter in April 1994. The consultation period closed on October 31st 1994.

The law of involuntary manslaughter is concerned with two main areas: causing death in the course of doing an unlawful act and causing death by gross negligence or recklessness.

It is proposed to abolish unlawful act manslaughter to create two new offences of subjectively reckless manslaughter and negligent manslaughter. The proposals go on to focus upon motor manslaughter and corporate manslaughter. Regarding corporate liability for manslaughter all the recent cases which have evoked demands for the use of the law of manslaughter following public disasters have involved, actually or potentially, corporate defendants. When the P & O Ferries case was brought to trial, the difficulties of the law of manslaughter were compounded by the obscurities of the law of corporate criminal liability. This position is very unsatisfactory because the technical structure of the law is in effect preventing very serious policy issues from even being considered.

The Consultation Paper considers corporate liability in the context of gross negligence manslaughter only, because the Law Commission's provisional view is that unlawful act liability manslaughter should be seen as a separate category of liability. It is therefore not proposed to use the very wide rules of unlawful act manslaughter to impose criminal liability for manslaughter on corporations in whose operations a death has been caused on the basis that these operations involved an illegality of some kind or other.

Until December 1994<sup>231</sup> there had been only three prosecutions of a corporation for manslaughter in English law, and none of them had resulted in a conviction<sup>232</sup>

In the latter case the prosecution failed despite the very serious findings of a judicial enquiry, that:

"There appears to have been a lack of thought about the way in which the *Herald* ought to have been organised for the Dover/Zeebrugge run; All concerned in management, from the members of the Board of Directors down to the junior superintendents, were guilty of fault in that all must be regarded as sharing responsibility for the failure of management. From top to bottom the body corporate was infected with the disease of sloppiness...."<sup>233</sup>

<sup>231</sup> the successful prosecution of OLL Ltd

<sup>232</sup> *Cory Bros. Ltd* [1927] 1 K.B. 810; *Northern Strip Mining Construction Co. Ltd*, The Times 2,4 and 5 February 1965; *P & O European Ferries (Dover) Ltd* (1991) 93 Cr. App. Rep. 72.)

<sup>233</sup> MV Herald of Free Enterprise: Report of the Court No. 8074, Department of Transport (1987) ("the Sheen Report").

A corporation is a separate legal person. It has no physical existence and it cannot, therefore, act or form an intention of any kind except through its directors and servants.

Members or officers of a corporation cannot shelter behind the corporation and they may be successfully prosecuted as individuals for any criminal acts they may have performed or authorised.

Until the early 1940's a corporate body would have been held to have been criminally liable only if the employer himself had the necessary mental element "*Mens Rea*" or alternatively the employer might be held vicariously liable for his servants' criminal acts for offences of strict liability.

A substantial change in this law took place with three cases in the early 1940's.<sup>234</sup> These cases held that a corporation could be held directly of a criminal offence, in circumstances in which the doctrine of vicarious liability could not apply. These cases established in English law what is known as "the principle of identification". This principle allows the acts and mental states of senior personnel within a corporation, the "controlling officers", to be attributed to the corporation itself. The reasoning behind this principle is that the corporation "must act through living persons....Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company." By way of this principle it is possible to impose criminal liability on a corporation, whether as perpetrator or accomplice, for most criminal offences, notwithstanding that mens rea is required.

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<sup>234</sup> D.P.P. v. Kent and Sussex Contractors Ltd [1944] K.B. 146; R. v. L.C.R. Haulage Ltd. [1944] K.B. 551; Moore v. Bresler [1944] 2 All E.R. 515

The question whether a corporation could properly be charged with manslaughter was finally decided in the criminal proceedings brought against P&O European Ferries (Dover) Ltd. after the Zeebrugge ferry disaster.<sup>235</sup> Turner J. held in that case that :

"an indictment for manslaughter could lie against the company, because it would be possible to impute the mens rea required for manslaughter to it by "identifying" it with one of its controlling officers. In order to convict the company it was therefore necessary to prove that one of its controlling officers had been guilty of manslaughter. It is not possible to aggregate the faults of a number of different individuals, none of whose faults would individually have amounted to the mental element required for manslaughter, so that in their totality they might have amounted to such a high degree of fault that the company could have been convicted of manslaughter. "

For smaller companies it is easier to "identifying" it with one of its controlling officers. Mr Peter Kite, the company's managing director, admitted to being one of the 'driving forces' within the company. On 8th December 1994 Active Learning and Leisure Limited was convicted at Winchester Crown Court on four counts of manslaughter and fined £60,000 following a sixteen day hearing. Mr. Kite was jailed for three years for manslaughter. Co - defendant Joseph Stoddart, manager of the centre at the time was acquitted. These sentences were imposed following a canoeing accident when four teenagers, aged between 16 and 17 were drowned. Passing sentence Mr. Justice Ognall called for more control and supervision of activity centres to ensure that the lessons of this tragedy might be learned. He said

"Where parents and teachers entrust their children to those who run activity holidays the potential for injury and death is too obvious for safety rules to be left to the inadequate vagaries of self regulation. I believe that authoritative control, supervision and, if necessary intervention is called for."

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<sup>235</sup> P & O European Ferries (Dover) Ltd (1991) 93 Cr. App. Rep. 72.

He ordered that the details of the case be sent to the Secretaries of State for Education and Transport for their immediate appraisal. David Jamieson M.P. is piloting a Private Members Bill through Parliament to address the safety needs of outdoor activity centres.

The teenagers had been in a group of eight pupils, a teacher and two instructors, paddling across Lyme Bay on 22nd March 1993.

The party ran into difficulties and capsized. The company had allowed two inexperienced instructors to take the novice party of teenagers and a teacher from a Plymouth school on a trip across open sea in weather conditions even experienced canoeists would have found challenging.

These problems had been foreseen by the company's own staff. Two former instructors had in fact left the centre in June 1992 in protest at the safety standards which were in place at Active Learning and Leisure Limited and had in fact written to the company warning that fatalities would occur if safety standards were not examined. The current instructors had not recognised the seriousness of the danger until it was too late. Key staff were neither qualified nor competent and the pupils had been inadequately trained and equipped, having no elastic spray decking, emergency flares, two way radio or safety boat monitoring its progress. Once the canoes capsized, instructors had failed to tell the party to inflate their life jackets. Mr. Justice Ognall described one of the instructors as

"that luckless and melancholy figure did not know what an emergency was.... she never told them to inflate their life jackets and so they never did."

Coastguards had not been warned of the activity and were not informed that the party was missing until three hours after its estimated time of arrival.

#### The proposed law.

There is no justification for applying to corporations a law of manslaughter which is different from the general law applying to individuals. The question therefore is how the

general law of manslaughter may be applied in the particular circumstances of the corporation.

Manslaughter by subjective recklessness, subjective manslaughter will continue to be adjudicated on according to the general principle of identification described above.

The new proposals are concerned with crimes of neglect or omission occurring in the context of serious objective culpability.

The question which is now being asked is whether the company should have been aware of a significant risk that its conduct could result in death or serious injury. In order to answer this question one must ask whether it should have been aware of a significant risk because it chooses to conduct the particular operation in which that risk arises. Were those responsible for taking decisions aware of a significant risk that those operations, either at the commencement or during their continued pursuit, could result in death or serious personal injury?

The first question is should the company have been aware of the risk? Once there is evidence that employees have perceived a risk, even a small one, of serious consequence, it will then be appropriate to look critically at the company's systems for transmitting that knowledge to the appropriate level of management, and for acting on the knowledge received. Even cases where no actual appreciation of the risk can be shown, there will be instances, particularly where the failure to appreciate the risk has resulted in deaths which it is difficult to describe as wholly accidental, where in these instances it is appropriate to look at the company's management and management systems, to see whether, having taken on the enterprise in the first place, it has applied the necessary skills and systems to the task, including the employment and training of operatives capable of identifying and responding to risks that arise.

If a corporation has chosen to enter a field of activity it has a clear duty to those affected by that field of activity to take steps to avoid the creation of serious risks, in the same way that if a motorist sits behind the wheel that action imposes serious obligations of care. In

such a context the steps taken by the company to discharge that duty of safety, and the systems which it has created to run its business, will be directly relevant. Courts may expect to be invited to consider the company's overall performance in that regard as was done by the Sheen enquiry.

The standard must be objective rather than subjective. The jury in applying the standard will have to be warned against assuming that there has been a serious derogation from the standard just because a death has occurred. The standard must be a reasonable one.

The final question is this: did the company's operation fall seriously and significantly below what could reasonably be expected of it in the context of the significant risk of death or injury of which it should have been aware.

#### The punishment of corporations

The proposed penalty is a financial one. In a case which merits it, the penalty should be and can be sufficient to bring home to those who own and control the company their responsibility for its proper conduct, and their responsibility as a good citizen for its behaviour. Moreover no respectable company or organisation would leave in place systems or the people responsible for the operation of systems which had been condemned by a jury under the test proposed above especially a test which goes out of its way to seek to ensure that liability is imposed only in serious cases which display a marked failure to reach reasonable standards.

The TUC has called for a new offence of 'manslaughter at work' with responsibility for deaths borne by company directors unless they have clearly devolved safety responsibilities to individual managers. The call is contained in the TUC's response (entitled 'Paying the price for deaths at work') to the Law Commission's review of the law of manslaughter.

Powers are available under Section 2(1) Company Directors Disqualification Act 1986 to disqualify directors from holding office. On June 26 1992 The Crown Court at Lewes

fined Rodney James Chapman £5,000 for breach of Section 37(1) Health and Safety at Work Act 1974 and disqualified him from holding office as a company director for a period of two years for contravening the terms of a prohibition notice alleging that his quarry was being worked in an unsafe manner. His company, Chapman Chalk Supplies Limited was also fined £5,000.

Power to Refer to the Court of Appeal.

Section 36 (1) of the Criminal Justice Act 1972:

"Where a person tried on indictment has been acquitted .... the Attorney-General may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the court, and the court shall .... consider the point and given their opinion on it."<sup>236</sup>

The power given to the Attorney - General is a power to refer a point of law which actually arose in a real case. There is no power to refer theoretical questions of law, however interesting or difficult.<sup>237</sup>

The procedure to be followed is set out in the Criminal Appeal (Reference of Points of Law) Rules 1973.

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<sup>236</sup> per Lord Widgery C.J. in Attorney - General's Reference (No.1 of 1975) [1975] 3 W.L.R. 11 at page 13.

<sup>237</sup> Attorney - General's Reference (No.4 of 1979) 1980 71 Cr. App. R. 341.



## **5. European Union**

### **Introduction**

The European Union exercises a major influence on worldwide health and safety law and policy today. At the time of writing the Community comprises fifteen Member States: France, Germany, Italy, Belgium, Netherlands, Luxembourg, Denmark, United Kingdom, Ireland, Portugal, Spain, Greece Austria, Finland and Sweden. The Member States of the European Community have a combined population of 365 million, and account for 25% of the world's Gross Domestic Product.

In 1993 the European Economic Area was created. This is now the largest free trade area in the world with a potential market of 375 million people. Applications for membership to the European Union have recently been submitted by the Eastern European Governments of Hungary and Poland. The Czech Republic is also a likely applicant.

The European Community was created some four decades ago by three treaties: The European Coal and Steel Community Treaty signed in Paris in 1951, and the European Economic Community and the European Atomic Energy Community Treaties signed in Rome in 1957. Incorporation of these and other Treaties into English law was effected by the European Communities Act 1972 at the time of British accession.

### **The Institutions**

The Community has four institutions: namely, the Commission, the Council, the Parliament and the European Court of Justice. They derive their powers from the Treaties.

### **The Commission**

The Commission, which is principally based in Brussels, is the Community's executive body. It is responsible for initiating, proposing and implementing Community policy. If a

Member State fails to fulfil its obligations under the Treaties, the Commission can take proceedings against that Member State in the European Court of Justice.

The Commission is the motive force behind the Community, managing common policies, implementing the budget and directing the administration. It is composed of twenty members appointed by the Governments of Member States for a renewable four year period. The President and Six Vice Presidents are appointed by their fellow Commissioners. There are two Commissioners for the larger Member States of Germany, France, Italy and the United Kingdom and one Commissioner for each of the other Member States. Each Commissioner is responsible for a portfolio and has authority over one or more Directorates General. One such Directorate General, D.G.V is concerned with Employment, Industrial Relations and Social Affairs and it is from within this Directorate General (DG V/F) that health and safety and public health policies are both initiated and proposed. The Commission is assisted in its health and safety law and policy - making rôle by the European Foundation for the Improvement of Living and Working Conditions in Dublin and the Advisory Committee on Safety, Hygiene and Health Protection at Work in Luxembourg.

#### **Advisory Committee on Safety, Hygiene and Health Protection at Work**

The Advisory Committee for Safety, Hygiene and Health Protection at Work was established in 1974. It is chaired by the Commissioner responsible for the Directorate-General for Employment, Industrial Relations and Social Affairs (currently Mr. Padraig Flynn), and consists of 72 full members; each Member State has two government representatives, two trade union representatives, and two representatives of employers organisations. An alternate is appointed for each full member.

The rôle of the Advisory Committee, which has responsibility for all sectors of the economy except those falling within the ambit of the ECSC and EAEC Treaties, is to "assist the Commission in the preparation and implementation of activities in the fields of safety, hygiene and health protection at work". Because of its constitution and membership, the Advisory Committee is much more important and pro-active than its title

suggests, so that, over the years, it has had a significant influence on strategic policy development, acting alongside the European Parliament and the Economic and Social Committee. More specifically, the Committee is responsible for the following matters within its general frame of reference:

- (a) conducting, on the basis of information available to it, exchanges of views and experience regarding existing or planned regulations;
- (b) contributing towards the development of a common approach to problems existing in the fields of safety, hygiene and health protection at work and towards the choice of Community priorities as well as measures necessary for implementing them;
- (c) drawing the Commission's attention to areas in which there is an apparent need for the acquisition of new knowledge and for the implementation of appropriate educational and research projects;
- (d) defining, within the framework of Community action programmes, and in co-operation with the Mines Safety and Health Commission:
  - (i) the criteria and aims of the campaign against the risk of accidents at work and health hazards within the undertaking;
  - (ii) methods enabling undertakings and their employees to evaluate and to improve the level of protection;
- (e) contributing towards keeping national administrations, trade unions and employers' organisations informed of Community measures in order to facilitate their co-operation and to encourage initiatives promoted by them aiming at exchanges of experience and at laying down codes of practice;
- (f) submitting opinions on proposals for directives and on all measures proposed by the Commission which are of relevance to health and safety at work.

In addition to these functions, the Committee prepares an annual report, which the Commission then forwards to the Council, the Parliament, the Economic and Social Committee, and the Consultative Committee of the European Coal and Steel Community.

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### **European Agency for Health and Safety at the Workplace.**

The European Council has recently confirmed the establishment of the European Agency for Health and Safety at the Workplace in Spain. The Agency is responsible for collating and disseminating information in its sector of activities. It will also organise training courses, supply technical and scientific support to the Commission and forge close links with specialised national bodies. The Agency will also organise a network system with a view to exchanging information and experiences between Member States.

### **The Council**

The Council, which again is based in Brussels, is the principal decision - making body of the European Community deriving its powers from the Treaties. The Council is made up of one representative of the governments of each of the Member States. The composition of the Council depends on the subject matter to be discussed. General Council meetings are attended by Foreign Ministers. There, general political matters are discussed. Specialised Councils are composed of the Ministers of Finance, Transport, Agriculture, Employment, Health etc. depending on the subject. The Council meets as frequently as required. The Commission participates in all of its work. The Presidency of the Council is held by each Member State in turn, in alphabetical order, for six months. For example, in the years 1994 - 1998 inclusive the Presidency of the Council will be held by Greece, Germany, France, Spain, Italy, Ireland, Netherlands, Luxembourg, United Kingdom and Portugal. The Council meets in private and its meetings are convened on the initiative of the President or at the request of either a member or the Commission.

Most of the law- making powers of the Council have to be exercised by a qualified majority. For this purpose a system of weighted voting is used. France, Germany, Italy and the United Kingdom have ten votes each, Spain has eight, Belgium, Greece, Netherlands and Portugal have five, Denmark and Ireland have three and Luxembourg has two. In many cases a qualified majority of any 54 of the available 76 votes will suffice. Major changes in the exercise of the Council's powers were introduced by the Single European Act 1986 and the Treaty on European Union. A co - operation procedure is now

in place for much of the Community's legislative programme, including its health and safety programme. In such cases the Council will act by a qualified majority on a proposal from the Commission and after obtaining an opinion of the European Parliament will adopt a common position. The Council's common position is then communicated to the European Parliament. This communication will include a reasoned statement explaining why the Council adopted this common position and also setting out the Commission's position. If the European Parliament approves this common position or has expressed no view within three months of the communication the Council may act in accordance with its common position. If the European Parliament rejects the Council's common position the Council may only adopt it by acting unanimously. Alternatively the European Parliament may seek to amend the Council's common position. In this case the Commission is bound to re-examine the proposal taking into account the amendments proposed by the European Parliament. The Commission is then obliged to re-submit the proposal to the Council. If this resubmission does not accommodate all of the European Parliament's amendments then it must be accompanied by an opinion providing the reasons for the Council's unwillingness to do so. The Council may then approve the revised proposal by qualified majority. Unanimity is required to amend the proposal as re-examined by the Commission.

Government Ministers can meet only infrequently and a permanent representative body of ambassadorial rank is necessary to carry out routine administrative matters and to undertake preparatory work and liaise with their Governments and the Council of Ministers and so smooth the passage of E.C. legislation. This group is known by its French acronym COREPER (*Comite des Representants Permanents*).

The aims of the European Union are not only economic but political. For this reason there have been regular meetings of the European Council since 1975. This Council is differently constituted and is composed of the Heads of State or Government, the Foreign Ministers, and the President and a Vice President of the Commission.

### **The European Parliament**

The European Parliament, which is based in Strasbourg, Brussels and Luxembourg, exercises an increasingly important consultative role during the Community's legislative process, controls a part of the Community's budget, jointly with the Council approves Community Association agreements with non - member countries and Treaties for the accession of new Member States and is the European Union's supervisory body.

Article 137 of the EEC Treaty provides that the European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty. 269 million eligible voters elect 567 Members by direct universal suffrage according to the voting systems applicable in the various Member States. The number of seats allocated to each Member State is loosely related to population size. European Parliament elections take place every five years.

#### **Number of seats in the European Parliament**

Belgium	25
Denmark	16
France	87
Germany	99
Greece	25
Ireland	15
Italy	87
Luxembourg	6
Netherlands	31
Portugal	25
Spain	64
United Kingdom	87

Members of the European Parliament sit in nine multi national political groupings viz. Left Unity group, European Socialist group, Greens group, Rainbow group, Non attached,

Liberal Democratic & Reformed group, European Democratic Alliance group, European People's Party group and the European Right group.

The Parliament is headed by a Bureau composed of the President and 14 Vice - Presidents elected by its Members. Ordinary sessions of one week each month, except in August, are held in Strasbourg; extraordinary sessions of the Parliament and regular meetings of the 18 Parliamentary Standing Committees are held in Brussels. The European Parliament secretariat is assisted by a Secretary - General and a Secretariat of some 3,000 persons divided into seven Directorates - General.

### **The European Court of Justice**

The European Court of Justice, which is based in Luxembourg, ensures that in the interpretation and application of the Treaties the law is observed. The Court consists of 13 judges and six Advocates - General appointed by common accord of the governments of Member States. They hold office for a renewable term of six years. Each Member State appoints one Judge. It has been agreed that the thirteenth Judgeship will be held in rotation by nationals of the five larger Member States. In order to promote continuity and change within the Court six or seven judges and three Advocates - General retire every three years. The independence of the judges is jealously guarded. Judges are irremovable and their deliberations are conducted in secret. The judges elect a President from amongst their number for a three year renewable period. The Advocates - General are also appointed at the discretion of the governments. Advocates - General have the function according to the Treaties to act with complete impartiality and independence, to make in open court, reasoned submissions on cases brought before the Court in order to assist the Court in the performance of the tasks assigned to it. The most important cases are heard in plenary session but most cases are heard by between 3 to 5 judges sitting in Chambers. There are currently two Chambers of three judges and two Chambers of five judges.

Advocates - General, who have a function similar to that of the *Commissaire du Gouvernement* at the French *Conseil d'Etat*, must possess the same qualifications as the judges. They are also appointed for a six - year term renewable by unanimous decision of

the Council. Each of the four larger Member States has an Advocate - General of its nationality. The fifth and sixth posts are held in rotation by nationals of the smaller Member States.

A lower court, a Court of First Instance, also based in Luxembourg was created in 1989 to relieve the European Court of Justice of some of its more routine caseload. The Court of First Instance consists of 12 judges, currently one Judge per Member State, appointed for a renewable period of six years by common accord of the Member States. The Court is partially replaced every three years. The Court of First Instance sits in five Chambers of three to five members. For more important cases it will sit in plenary session.

#### **The Economic and Social Committee**

The Economic and Social Committee, which is based in Brussels, is an advisory and consultative body which is required to give its opinion on a range of social and vocational issues including health and safety at work. The Committee draws its membership from three main groups : employers, workers and an independent group comprising members with a wide spectrum of interests including professional, business, farming, the co-operative movement and consumer affairs. Its members are nominated by governments of the Member States and appointed by the Council for renewable terms of 4 years. Its members are appointed personally and are required to give their opinions in an individual capacity. They may not be mandated by their organisation. The Committee is headed by a President, a thirty man Bureau and a Secretariat. There are nine specialist sections, Agriculture and Fisheries, Industry, Commerce, Crafts and Services, Economic, Financial and Monetary Questions, Social, Family, Educational and Cultural Affairs, Transport and Communications, External Relations, Trade and Development Policy, Energy, Nuclear Questions and Research, Regional Development and Town and Country Planning and the Protection of the Environment, Public Health and Consumer Affairs. The Committee may issue opinions on all aspects of Community legislation. It has a key role in providing specialist and technical advice.



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#### Origin of the 189 members of the Economic and Social Committee

Belgium	12
Denmark	9
France	24
Germany	24
Greece	12
Ireland	9
Italy	24
Luxembourg	6
Netherlands	12
Portugal	12
Spain	21
United Kingdom	24

It is the practice of the Committee, rather like that of the European Parliament to vote by Group rather than nationality.

#### **The Policy**

The European Community made a decision in the mid 1980's to press ahead strongly with harmonisation measures in the field of health and safety. Various reasons have been put forward to explain the developing importance of this area to the European Community, of which four may be considered to be significant.

First, it is said that common health and safety standards assist economic integration, since products cannot circulate freely within the Community if prices for similar items differ in various Member States because of variable health and safety costs imposed on business.

Second, of the workforce numbering 138 million people, 10 million are victims of work accidents annually and 8,000 die each year in the Community from workplace accidents. These grim statistics give rise to an estimated bill of ECU 26,000 million paid in compensation for occupational accidents and diseases annually whilst in Britain alone the

National Audit Office in their Report 'Enforcing Health and Safety in the Workplace' estimated that the cost of accidents to industry and the taxpayer is £10 billion per year. It is argued that a reduction of the human, social and economic costs of accidents and ill-health borne by this workforce will not only bring about a huge financial saving but will also bring about a significant increase in the quality of life for the whole Community. Third, the introduction of more efficient work practices is said to bring with it increased productivity, lower operational costs and better industrial relations.

Finally, it is argued that the regulation of certain risks, such as those arising from massive explosions, should be harmonised at a supra-national level because of the scale of resource costs and (an echo of the first reason canvassed above) because any disparity in the substance and application of such provisions produces distortions of competition and affects product prices.

Much impetus was given to this programme by the campaign organised by the Commission in collaboration with the twelve Member States in the European Year of Health and Safety which took place during the twelve month period commencing 1 March 1992. This campaign sought to reach the whole of the Community's working population, particularly targeting high risk industries and small and medium size enterprises.

Each of the founding treaties laid the basis for new health and safety laws. The European Economic Community Treaty, for example, contains two provisions which are in part at least devoted to the promotion of health and safety, namely articles 117 and 118.

**Article 118** provides :

Without prejudice to the other provisions of this Treaty and in conformity with its general objectives, the Commission shall have the task of promoting close cooperation between Member States in the social field, particularly in matters relating to :

employment;

labour law and working conditions;

basic and advanced vocational training;

social security

prevention of occupational accidents and diseases;

occupational hygiene;

the right of association, and collective bargaining between employers and workers.

To this end , the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

In addition because of the close connection of health and safety with the functioning of the common market the treaty's two general legislative powers, articles 100 and 235 were used as a basis for action.

**Article 100** provided that:

The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.

The European Parliament and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation.

whereas **Article 235** provides:

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take appropriate measures.

The provisions of the EEC Treaty were augmented by the provisions in the European Coal and Steel Community and the European Atomic Energy Community Treaties providing protection in the sectors of coal, steel and nuclear energy.

The development of the Community's task came about with the introduction of a series of "Action Programmes", each of which set out broad goals for developing further the Community's occupational health and safety protective framework, and each of which has then been followed by a variety of legislative initiatives -- mostly in the form of directives.

**Article 118A.**

The foundations which were laid in the original Treaties and the early Action programmes were very much reinforced by the Single European Act 1986 which aimed to create the Single Market in 1992. The latter treaty is of significant importance in occupational health and safety. The Single European Act introduced a new provision to the European Economic Community Treaty namely, Article 118A. Article 118A sets minimum requirements. Member States must maintain the levels of health and safety already achieved and may introduce more stringent requirements. Article 118A requires Member States to "pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers" and provides for the adoption of

Directives to achieve this purpose on the basis of qualified majority voting in the Council of Ministers.

#### **Community Charter of the Fundamental Social Rights of Workers**

To meet the challenge a comprehensive programme of measures was proposed by the Commission in 1987 and adopted by the Council in the following year. This programme contained a series of measures grouped under the headings of safety and ergonomics, health and hygiene, information and training, initiatives concerning small and medium enterprises and social dialogue. Added impetus to these policies was provided by the Community Charter of the Fundamental Social Rights of Workers adopted in Strasbourg in December 1989 by eleven of the twelve Member States (the United Kingdom Government abstained).

A draft for the Charter was discussed at the European Council at Madrid on 26th-27th June 1989, following which a communiqué was issued confirming that:

- (i) The European Council considered that in the course of the construction of the single European market social aspects should be given the same importance as economic aspects and should accordingly be developed in a balanced fashion;
- (ii) The European Council re-affirmed its earlier conclusions on the achievement of the Internal Market as the most efficient method of creating jobs and ensuring maximum well-being for all Community citizens. Job development and creation would be given top priority in the achievement of the Internal Market; and
- (iii) The Council agreed to continue its discussions with a view to adopting the measures necessary to achieve the social dimension of the Single Market, taking account of fundamental social rights. For this purpose the role to be played by Community standards, national legislation and contractual relations had to be clearly established.

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### **Scope of the Community Social Charter**

The Social Charter, as agreed in December 1989, covers twelve categories of "fundamental social rights":

#### ***(i) Freedom of movement.***

The right to freedom of movement would be restricted only on grounds of public order, public safety or public health. It would give workers from one Member State, working in another Member State, the freedom to work in any occupation or profession on equal terms and with the same working conditions as nationals of the host country.

#### ***(ii) Employment and remuneration.***

In each Member State workers would receive fair remuneration sufficient for a "decent" standard of living. Protection would be given to part-time workers. There would be limits on the withholding of wages, and workers would have free access to job placement services.

#### ***(iii) Improvement of living and working conditions.***

'There should be an improvement in working conditions, particularly in terms of limits on working time such as minimum annual paid leave and a weekly break from work'. Particular mention is made of the need for improved conditions for those not on open-ended contracts (for example part-time or seasonal workers).

#### ***(iv) Social protection.***

Workers, including the unemployed, should receive adequate social protection and social security benefits.

#### ***(v) Freedom of association and collective bargaining.***

This involves the right to organise trade unions and to choose whether or not to join them, to conclude collective agreements, and to take collective action. Such action includes the right to strike, except where existing legislation stipulates exceptions (including the armed forces, the police and government service).

***(vi) Vocational training.***

It is noteworthy that this includes most university courses and some secondary education).

Workers should be able to train, and re-train throughout their working lives.

***(vii) Equal treatment for men and women.***

Action should be intensified to remove discrimination and provide support to prevent a clash between responsibilities in the home and at work.

***(viii) Information, consultation and participation for workers.***

This heading should apply especially in multinational companies and in particular at times of re-structuring, redundancies or the introduction of new technology. Worker participation would be developed "in such a way as to take account" of existing rules and traditions.

***(ix) Health protection and safety at the workplace.***

***(x) Protection of children and adolescents.***

The minimum employment age should be no lower than the minimum school-leaving age, and in any case not lower than 15 years. The hours which those aged under 18 can work should be limited, and they should not generally work at night' Once compulsory education is over, young people must be entitled to receive adequate vocational training. If they are already working, this should take place during working hours.

***(xi) Elderly persons.***

Workers should be assured of resources providing a decent standard of living in retirement. Others should have sufficient resources and appropriate medical and social assistance.

***(xii) Disabled people.***

All disabled people should have additional help towards social and professional integration.

The final provisions cover implementation of the Charter. Member States are given responsibility in accordance with national practices for guaranteeing the rights in the Charter and implementing the necessary measures. The Commission is asked to submit proposals on areas within its competence.

Since that date there has been general acceptance of regulation in fields such as health and safety at work and it is clear that within the Community as a whole there is much support for the Social Charter. Undoubtedly, Member States are anxious to show that workers, children and old people should benefit from the Community as well as shareholders and managers

#### **The 1989 framework Directive**

The principles in the Commissions health and safety programme were set out in a "framework Directive" 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. This 1989 framework Directive, which is addressed to Member States, required compliance by 31st December 1992. The overall object of the framework Directive was stated as being, "to introduce measures to encourage improvements in the safety and health of workers at work", and in its Preamble it declared that:

"(i) Member States have a responsibility to encourage improvements in the safety and health of workers on their territory and that

(ii) "taking measures to protect the health and safety of workers at work also helps, in certain cases, to preserve the health and possibly the safety of persons residing with them".

It is further noted "that the incidence of accidents at work and occupational diseases is still too high" and that "preventive measures must be introduced or imported without delay in order to safeguard the safety and health of workers and ensure a higher degree of protection".



The Directive contains re-stated general principles concerning, in particular, the prevention of occupational risks, the protection of safety and health and the informing, consultation and training of workers and their representatives, as well as principles concerning the implementation of such measures. This measure constituted a first attempt to provide an overall complement to the technical harmonisation directives designed to complete the internal market. The 1989 Directive also brought within its scope the provisions of an earlier framework Directive on risks arising from use at work of chemical, physical and biological agents. Under the umbrella of the 1989 framework Directive, a number of individual directives have also been adopted, all of which incorporate the general provisions of the framework Directive. In particular, "daughter Directives" have been adopted on the minimum safety and health requirements for the workplace, on the minimum safety and health requirements for the use of work equipment by workers at work, on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace, on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers, and on the minimum safety and health requirements for work with display screen equipment.

Additional Directives have been made as follows: Council Directive of 20 December 1993 concerning the minimum safety and health requirements for work on board fishing vessels. (93/103/EEC), Council Directive of 12 October 1993 amending Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work. (93/88/EEC), Council Directive of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries. (92/104/EEC), Council Directive of 3 November 1992 on the minimum requirements for improving the safety and health protection of workers in mineral-extracting industries through drilling. (92/91/EEC) Council Directive of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding. (92/85/EEC) Council Directive of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at

work (92/58/EEC) Council Directive of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (92/57/EEC), Council Directive of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels. (92/29/EEC) and Council Directive of 23 April 1990 on the contained use of genetically modified micro - organisms. (90/219/EEC)

As we saw above the Treaty of European Union revised the procedure for making health and safety legislation set out in Article 189 re - emphasising the position of the Economic and Social Committee and strengthening the role of the European Parliament in the process. Additionally a new and important policy commitment in this area is set out in Article 129 of the Treaty to ensure the development of a new policy initiative in Public Health, to ensure a high level of protection, to prevent disease and to provide health information and education. Since the passage of the Maastricht Treaty further measures have been passed namely, a Recommendation on a European Schedule of Industrial Diseases, a Directive on Asbestos, a Directive on Safety and Health Signs at the workplace, a Directive on medical assistance on board vessels, health and safety requirements at temporary or mobile work sites, Directives on health and safety protection in the extractive industries (containing two separate items in the Commission's 1989 Action Programme, dealing with (a) drilling industries and (b) quarrying and open-cast mining) and a Directive introducing measures to promote improvements in the travel conditions of workers with motor disabilities.

### **Current Commission initiatives**

Current Commission initiatives centre on the Green Paper on European Social Policy - *Options for the Union*, the General Framework for Action by the Commission of the European Communities in the Field of Safety, Hygiene and Health Protection at Work [1994 - 2000] and the forthcoming White Paper on European Social Policy.

The immediate tasks are:

To implement, consolidate, rationalise and extend Community legislation in this area where necessary. The Commission will bring forward proposals to remedy shortcomings in directives paying special attention to carcinogenic, toxic and harmful areas.

To complement legislation with appropriate information, training and promotion of a healthy working environment with particular emphasis on Small and Medium Size Enterprises (SMEs). Information and training will be targeted at workers and young people through special networks created at Community and Member State level. Emphasis will be given to the training of vulnerable and high risk workers.

To promote studies and research, codes of good practice and other instruments aimed at improving knowledge and action in this area. These studies include work to improve the comparability of work accident and occupational disease statistics, improving the criteria for risk assessment and risk management.

To evaluate the socio - economic impact of all measures taken in this area, and develop networks in association with other Community policies. This will include work with social partners and linkages with other Community programmes in health and biomedical research, consumer protection, agriculture and the environment.

### **The Single Market**

In addition to the many directives issued in order to promote the objectives of Article 118A, Article 100 has been replaced by a new provision in the Treaty of European Union. The new Article 100 now provides that:

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.

The new provision thus ensures that the European Parliament and the Economic and Social Committee must be consulted in all cases and not simply when the implementation of a directive would involve the amendment of legislation in one or more Member States.

This provision has been further augmented by Article 100A, a provision first introduced by the Single European Act and recently modified by the Treaty of European Union. Now the Council may act by qualified majority only in order to achieve the objective of establishing the internal market. Moreover in introducing this provision it was envisaged by the Commission that in relation to health and safety matters a high level of protection would be sought.

### **Legal Instruments**

There are four main instruments available to the Community legislator.

Regulation 189 of the EEC Treaty as amended provides:

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission

shall make regulations and issue directives, take decisions make recommendations or deliver opinions.

**Regulations:** It is further provided:

"A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."

Regulations are directly enforceable in Member States. There is no need for further implementation. Indeed it is not permissible for legislatures to consider them with a view to that end. In the field of health and safety at work regulations are rare and those that have been made are administrative in nature.

**Directives and decisions:** It is further provided:

"A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods."

Directives are instructions to Member States to enact laws to achieve an end result. In practice, directives are used mainly to bring about the harmonisation or approximation of national laws in accordance with article 100. They are therefore the most appropriate and commonly used instruments for occupational health and safety matters.

"A decision shall be binding in its entirety upon those to whom it is addressed."

**Recommendations and opinions**

Recommendations and opinions have no binding force but are indicative of policy stances.

**Enforcement**

It should be noted that directives are addressed to Member States and not to individuals. Member States are obliged to implement directives firstly because of Article 5 EEC Treaty

which makes it clear that Member States must fulfil their Treaty obligations and secondly because Article 169 EEC Treaty states that: If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. Similar provisions may be found in Article 88 of the ECSC Treaty and Article 141 of the Euratom Treaty.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice. Similar infringement proceedings may be commenced by other Member States under Article 170. Continued failure by a Member State to fulfil an obligation under the Treaty may result in a requirement that that Member State pay a fine. The powers of the Court of Justice in this respect are without limit.

#### **Article 177**

The European Court of Justice may be called upon to provide an authoritative interpretation of the purpose of a directive by means of a reference under Article 177

Article 177 of the EEC Treaty provides that:

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community;
- (c) the interpretation of the statutes of bodies established by an Act of the Council where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement request the Court of Justice to give a ruling thereon.

Where any such a question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

In two recent cases (joined), *Francovich v. Italian State and Bonifaci v. Italian State*<sup>238</sup> it was held that where a Member State fails to enact the legislation required in order to achieve the objective prescribed by a directive, it may be possible for an aggrieved individual to take remedial action directly against his Member State government. One possible route might lie in the context of the principles established by the European Court of Justice in *Francovich*. *Francovich* implied that where damage is suffered through the acts or omissions of a private party which are incompatible with directly applicable provisions of a directive which has not been implemented by appropriate legislation, an action in damages will lie against the State. However, it would appear that three conditions must be fulfilled before such liability can be created. In the first place, the objective sought by the directive must include the creation of rights for individuals. The second is that the content of those rights must be ascertainable from the provisions of the directive itself. The third condition is the existence of a causal link between violation by the State of its duty to implement the directive and the loss sustained by the individual. Where these three conditions are met, Community law directly confers on individuals the right to obtain compensation as against the State.

Second, it could also be the case given indications in *Marleasing SA v. La Comercial Internacional de Alimentacion SA*<sup>239</sup> that the 1958 Regulations themselves might become the object of judicial redrafting if it was considered that the application of the domestic rules may stand in the way of relevant provisions of EEC law.

<sup>238</sup> *Francovich v. Italian State and Bonifaci v. Italian State* [1992] I.R.L.R. 84

<sup>239</sup> *Marleasing SA v. La Comercial Internacional de Alimentacion SA* [1992] 1 CMLR 305

Third it was held in the House of Lords in Litster v Forth Dry Dock & Engineering Co. Ltd.<sup>240</sup> that the courts of the United Kingdom were under a duty to follow the practice of the European Court of Justice by giving a purposive construction to directives and regulations issued for the purpose of complying with directives. In other words the Courts will construe and interpret legislation intended to implement directives in the light of the purpose of that particular directive.

In the Green Paper: European Social Policy, Options for the Union (COM (93) 551 final of 17th November 1993 the Commission of the European Communities said:

"The effectiveness of directives depends on their being rigorously applied in the Member States. "

whilst in its White Paper: European Social Policy: A Way Forward For the Union (COM (94) 333 of 27th July 1994 the Commission said "a greater emphasis will be placed on the effective implementation and enforcement of Union law." The European Commission's social programme for the next three years was agreed on April 12th 1995. Although several health and safety directives have been included this will be a period of consolidation with an emphasis on competitiveness and job creation for EU countries. The policy of effective implementation and enforcement of Union law was re-affirmed.

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<sup>240</sup> Litster v Forth Dry Dock & Engineering Co. Ltd. [1989] ICR 341



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Progress in transposing Directives applicable to employment and social policy<sup>241</sup>


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Member States	Directives applicable on 31.12.93	Directives which measures have been notified at 31.12.93	%
Belgium	37	28	76
Denmark	37	32	86
France	37	29	78
Germany	38 <sup>242</sup>	27	71
Greece	36	24	67
Ireland	37	32	86
Italy	37	21	57
Luxembourg	37	22	59
Netherlands	37	26	70
Portugal	36 <sup>243</sup>	33	92
Spain	37 <sup>244</sup>	25	68
United Kingdom	37	34	92

Note: This table concerns Directives: 68/360/EEC, 75/117/EEC, 75/129/EEC, 76/207/EEC, 77/187/EEC, 77/576/EEC, 78/610/EEC, 79/007/EEC, 79/640/EEC, 80/987/EEC, 80/1107/EEC, 82/130/EEC, 82/605/EEC, 83/477/EEC, 86/188/EEC, 86/378/EEC, 86/613/EEC, 88/035/EEC, 88/364/EEC, 88/642/EEC, 89/391/EEC, 89/622/EEC, 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/239/EEC, 90/269/EEC, 90/270/EEC, 90/394/EEC, 90/659/EEC, 90/679/EEC, 91/269/EEC, 91/322/EEC, 91/382/EEC, 91/383/EEC, 91/533/EEC, 92/041/EEC, 92/057/EEC.

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<sup>241</sup> 11th annual report on the control of the application of Community law.

<sup>242</sup> Directive 90/659/EEC sets transitional measures for health and safety directives following German unification, and therefore applies only to Germany.

<sup>243</sup> Directive 91/382/EEC enters into force in Greece on 1.1.1996.

<sup>244</sup> Directive 90/679 enters into force in Portugal on 28.11.1995.

The transposition situation is particularly serious with regard to health and safety law.

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Status of transposition of health and safety legislation flowing from the framework Directive. On 30th June 1994 only one Member State had transposed all the Directives which were then in force and five had not notified measures to transpose the framework Directive of June 12th 1989. (89/391/EEC)

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Member States	Directives applicable on 30.6.94	Directives which measures have been notified at 30.6.94	%
Belgium	11	6	55
Denmark	11	10	91
France	11	11	100
Germany	11	1	9
Greece	10 <sup>245</sup>	0	0
Ireland	11	9	82
Italy	11	0	0
Luxembourg	11	0	0
Netherland	11	8	7
Portugal	9 <sup>246/247</sup>	7	78
Spain	11	0	0
United Kingdom	11	7	64

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Note: This table concerns Directives: 89/391/EEC, 89/654/EEC, 89/655/EEC, 89/656/EEC, 90/269/EEC, 90/270/EEC, 90/394/EEC, 90/679/EEC, 92/057/EEC, 92/058/EEC, 93/088/EEC.

<sup>245</sup> 89/654/EEC to be transposed on 31. 12. 1994.

<sup>246</sup> 90/679/EEC to be transposed on 28. 11. 1995.

<sup>247</sup> 93/88/EEC to be transposed on 31. 12. 1995.

Article 155 of the EEC Treaty

provides:

In order to ensure the proper functioning and development of the common market, the Commission shall:

---- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;

The Commission believes that the current level of compliance and transposition of Union legislation needs to be improved and this belief is *a fortiori* the case with regard to health and safety. This is a time for consolidation in the social field and priority is to be given by the Commission to the transposition of legislation. The Commission is giving effect to this policy by holding bilateral meetings to encourage Member States to act quickly with regard to this matter. Once national transposition measures have been communicated, the legislation will be subject to detailed analysis to check its conformity with national law. If further multilateral or bilateral meetings are required an implementation report will be prepared. In addition the Commission will consider any complaints received about national measures that have been adopted and will collaborate closely with the European Ombudsman, the Parliamentary Committee on Petitions and the Temporary Committee of Inquiry in the investigation of alleged contraventions or maladministration connected with the implementation of Union law.

The Commission wishes to work closely with the social partners to ensure the implementation of directives and in particular will address when appropriate the problem of implementation by collective agreements in Member States which have no tradition of *erga omnes* collective agreements. The Commission will ensure that agreements on the transposition of directives contain a reference to these directives, and will discuss with the social partners the Commissions draft reports on the implementation of certain directives and recommendations in the social field.

By Article 169 of the EEC Treaty if an allegation is made that there has been an infringement of the Treaty the Commission will

"deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice."

In 1989, 664 letters of formal complaint were sent to Member States, 178 reasoned opinions, and actions before the Court were brought in 97 cases.

This underlines the successful role played by the Commission in rectifying problems at an early stage.

In the social field the Commission will act where Member States fail to communicate a relevant national law or where the implementation has been defective. It will also cooperate with Member States' institutions in the investigation of infringements.

The Commission will also use Article 169 EEC Treaty to ensure that Union legislation is fully enforced through, *inter alia*, appropriate systems of control or sanctions which are effective in practice and have a deterrent value.

Article 171 of the Union Treaty provides that where the Court of Justice finds that a Member State has failed to comply with a judgement of the Court of Justice, the Commission will, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.

With regard to health and safety law, the main body of legislation is comparatively recent and the Commission's main emphasis is on ensuring the correct transposition of directives and the correct application of the texts adopted. Nevertheless directives are being reviewed, broadened and updated. An example of this is the chemical agents directive<sup>248</sup> which if adopted will replace three previously adopted directives on specific risks. (80/1107/EEC, O.J.L 327, 3.12.1980, 82/605/EEC, O.J.L 247, 23.8.1982 and 88/364/EEC, O.J.L. 179, 9.7.1988.

Nevertheless it is important to recall the words of the Green Paper ('European Social Policy 'Options for the Union'<sup>249</sup> that whilst these directives

".... form a valuable basis for promoting equitable working conditions and attaining an even higher level of protection for workers, it is also true that their actual effectiveness depends and will continue to depend on their being rigorously applied in the Member States."

The White Paper<sup>250</sup> re emphasises this aspect referring to the Commission's Communication on the development of administrative cooperation in the implementation and enforcement of Community legislation in the internal market<sup>251</sup> set out a policy framework for cooperation between Member States' administrations, and between them and the Commission, for the enforcement of European law, which has been endorsed by the Council Resolution on the same topic.<sup>252</sup> In the field of health and safety this will involve the use of the Senior Labour Inspectors' Committee and indeed will involve the extension of this committee's network to fields other than those of health, safety and hygiene at work. The Commission will also look at ways in which data exchange between national authorities and other central contact points and itself might bring about improvements of this kind.

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<sup>248</sup> COM (93) 155 final, 14.5.1993

<sup>249</sup> COM (93) 551 final Brussels, 17 November 1993

<sup>250</sup> 'European Social Policy 'A Way Forward for the Union' (COM (94) 333 Brussels, 27 July 1994

<sup>251</sup> COM (94) 29 FINAL, 16.2.1994

<sup>252</sup> O.J.C. 179, 1.7.94.

## 6. Presentation of data on the Courts

Within the appendices the author has drawn upon original materials made available to the author by the Health and Safety Executive and the Lord Chancellor's Department. This material includes details of cases initiated by the Health and Safety Executive where the offender has elected Crown Court trial.

The study is focussed upon the cases heard in the higher courts where the Health & Safety Executive was a party during the period June 1st 1975 - May 31st 1990. The Health and Safety Executive exercises its duties with regard to the whole of Great Britain but the ambit of this part of the study has been restricted to England and Wales.

Two cases have been heard in the House of Lords, the supreme Court of Appeal in Great Britain and Northern Ireland during the period 1975 - 1990.

The first case, Nurse v. Morganite Crucible Limited [1989],<sup>253</sup> was heard in 1988 and concerned the interpretation of Section 76 (1) the Factories Act 1961 and the Asbestos Regulations 1969 whilst the second, Austin Rover Group Limited v. H.M. Inspector of Factories [1990]<sup>254</sup>, was heard the following year on appeal from the Divisional Court of the High Court of Justice and concerned the correct interpretation of Section 4 (2) Health and Safety at Work etc. Act 1974, the burden and standard of proof and the requirement of foreseeability. The Health and Safety Executive were successful in the first case and unsuccessful in the second.

Two cases have been heard in the Court of Appeal (Criminal Division) during the period 1975 - 1990.

The first case, R. v. Swan Hunter Shipbuilders Limited and Telemeter Installation Ltd. [1981]<sup>255</sup>, was heard in 1981 and concerned the interpretation of Sections 2 and 3 Health

<sup>253</sup> Nurse v. Morganite Crucible Limited [1989] A.C. 692.

<sup>254</sup> Austin Rover Group Limited v. H.M. Inspector of Factories [1990] A.C. 619.

<sup>255</sup> R. v. Swan Hunter Shipbuilders Limited and Telemeter Installations Ltd. [1981] I.R.L.R. 403

and Safety at Work etc. Act 1974. The court was constituted by a Lord Justice of Appeal and two High Court Judges. Both firms had been convicted by the Crown Court and both lost their appeals against conviction in the Court of Appeal.

The second case, *R. v. Mara* [1987]<sup>256</sup> was heard in 1986 and concerned the interpretation of Section 3 (1) Health and Safety at Work etc. Act 1974. The court was constituted by a Lord Justice of Appeal and two High Court Judges. Its director had been convicted by the Crown Court and his appeal against conviction in the Court of Appeal was lost.

Twelve cases have been heard in the Divisional Court where the Health and Safety Commission or Health and Safety Executive was a party during the period 1975 - 1990. The Health and Safety Commission or Health & Safety Executive was successful on all save three occasions.<sup>257</sup>

The remaining material, largely previously unpublished, consists of cases heard before the Crown Court, either by way of indictment or by way of appeal from magistrates courts.

Appendix 1 provides tables of cases conducted on behalf of the Health and Safety Executive in the Higher Courts from 1975 - 1990. The tables illustrate for each case, its name, the court in which it was heard, the date of hearing, the judge(s), solicitors and counsel for the Health and Safety Executive, solicitors and counsel for respondents or defendant company, firm or individual, the subject matter of the proceedings and the decision.

<sup>256</sup> *R. v. Mara* [1987] 1 All E.R. 478

<sup>257</sup> *Campbell v. Wallsend Slipway and Engineering Co. Ltd.* [1978] I.C.R. 1015;  
*Chrysler (U.K.) Limited v. McCarthy* [1978] I.C.R. 938;  
*Murray v. Gadbury* Q.B.D. (D.C.) (HS13127/77);  
*Davies v. Camerons Industries Services Ltd.* [1980] 2 All E.R. 680;  
*Martin v. Boulton & Paul (Steel Construction) Limited* [1982] I.C.R. 366;  
*Coult v. Szuba* [1982] I.C.R. 380;  
*Deary v. Mansion Hide Upholstery Limited* [1983] I.C.R. 610;  
*R. v. Health and Safety Commission ex parte Spelthorne Borough Council* (1983) *The Times* 18 July;  
*Chisholm v. Moss Bay Engineering Limited* Q.B.D. (D.C.) (CO/46/84) 31 October 1984;  
*Kemp v. Liebherr (Great Britain) Limited* [1987] 1 W.L.R. 607;  
*Laird v. Simms (Gomersal) Limited* (1988) Q.B.D. (D.C.) (CO/1378/87) 1 March 1988 and *Joyce v. Mellors Group Manufacturing Limited* Q.B.D. (D.C.) (CO/291/88) 28 June 1988.

Appendix 2 contains statistical material indicating the spread of cases heard in different circuits of the Crown Court in England and Wales. Further tables indicate the sharp increase in cases brought on behalf of the Health and Safety Executive in the Crown Court during the late eighties and the steady increase in the number of enforcement notices and the sharp increase in fines within that same period. Finally, it can be seen that Crown Court fines increased dramatically in 1989.

Crown Court cases have been the subject of extended treatment in Appendix 3. The material should be viewed separately in qualitative terms. It is divided into two parts. For the period 1974 - 1980 only some Crown Court records were accessible and only some of those files were complete. Otherwise the material is that originally supplied by the Health and Safety Executive. A gap in research records for cases in 1981 was inevitable because of the difficulties outlined above. From 1982 the material is drawn from the full files before the weeding out of these files in the Health and Safety Executive. In cases where it has been possible to access a full file the record includes the name of the case, the Health and Safety Executive File Number, the Crown Court location, the date of hearing, the judge(s), counsel for the Health and Safety Executive, counsel for respondents or defendant company, firm or individual, the subject matter of the proceedings, the facts of the case, the indictment, extracts from the judgement, notes of counsel and the decision.



## 7. Conclusions

This thesis has shown the development of health and safety regulation and prosecution policy from 1802 to the early part of 1990. A discussion of the developments over the first one hundred and fifty years is very important since it provides a clear indication of the problems that have needed to be addressed, the solutions which were put in place and the way in which Health and Safety Executive policy is likely to develop today. From 1970 to 1990 we have witnessed marked changes. The recommendations of the Robens Committee in the two years from 1970 provided the basis for a new legislative and institutional framework.

### Impact of Robens

Parliament intended that the Health and Safety at Work etc Act 1974 should be the basis for major changes in the form and substance of legislation to improve standards in health and safety legislation. The new Act was primarily enabling and it was intended that the existing body of statutory regulations would be rationalised and pruned. Resource constraints largely prevented that plan from taking place and the best laid plans to be more flexible and to place greater reliance on codes and standards were only partly achieved. The new Act did provide for one comprehensive and integrated system of law and did provide health and safety protection for approximately eight million workers.

A new structure headed by the Health and Safety Commission was created to promote and administer health and safety. This body was charged with a comprehensive responsibility for the promotion of safety and health at work throughout Great Britain. The Commission was established as a tripartite body, answerable to Parliament, with an independent chairman and with representatives from business, nominated by the Confederation of British Industry, representatives from workpeople, nominated by the Trade Union Congress, and representatives from local authorities, nominated by local authority associations. The Commission today has a chairman and nine members. It has largely kept its original representative nature notwithstanding the sharp political changes and imperatives which have held sway over the last twenty years. The Commission's principal role concerned with the preparation of legislation has been somewhat displaced over the

last ten years because this subject area has become the subject of large scale regulation at European Union level and in some circumstances, at least, its role is restricted to that of a participant in the legislative process rather than the initiator.

The Robens Committee argued strongly for the creation of a unified single health and safety inspectorate because it believed that such a body would bring about improved co-ordination, operational efficiency and the necessary assimilation of scientific and technical expertise and support facilities. As a result the inspectorates of factories, mines, agriculture, explosives, nuclear installations and alkali works were merged within the newly formed Health and Safety Executive. These inspectorates with their differing histories and roles could not be merged quickly and the Rt. Hon. Michael Foot, Secretary of State for Employment gave them an assurance during the second reading of Labour's Health and Safety at Work Bill that the separate identity of each inspectorate would be sustained. However, over the course of the last two decades much has been done to achieve the economies and efficiencies sought. The Health and Safety Executive, a body of three people, has day to day responsibility for enforcing health and safety legislation. Its Director General is appointed by the Commission with the approval of the Secretary of State for Employment. The two Deputy Directors General are appointed by the Commission with the approval of the Secretary of State for Employment after consultation with the Director General. Since the creation of the Health and Safety Executive inspectors of alkali works have left to join the new H.M. Inspectorate of Pollution within the Department of Environment but new responsibilities have been acquired. Following major disasters on the railways, Clapham and Kings Cross, and within the offshore oil industry, on Piper Alpha, the Health and Safety Commission was asked to assume full responsibility for railway passenger safety and offshore safety. Over the five years from 1986 -1990 little discernible improvement could be seen in the reported fatal and major injury figures. This was unacceptable to the Government and the response in part at least was seen in the introduction of a more stringent enforcement policy. This included taking an increased proportion of cases to the higher courts and the negotiation of an increase in the maximum fines available to magistrates for health and safety offences. In March 1992 the Offshore Safety Act increased the fines available to magistrates for many health and safety offences, off-shore and onshore, to £20,000. The Executive also made clear its

intention to prosecute directors of companies, particularly in cases where their failure to ensure proper conditions has led to injury. It was also emphasised that efforts would be made to seek the disqualification of directors in appropriate cases. In 1991/92 the average fine imposed by the courts for health and safety offences rose by 25%. In the following year fines rose further from £1181 to £1384 and the following year fines more than doubled to £3061. In the future efforts will be made to bring about an improvement in the management of construction sites and the management of hazardous installations and ensuring safety in these workplaces and ensuring the implementation of a safety management system. Major companies, with substantial resources, have important responsibilities in ensuring safety in these areas.

We have seen that pressures to make new regulations have also emerged with the need to honour our Treaty obligations with the European Union. Over the last ten years, at least, this subject area has become the subject of large scale regulation at European level, principally by Council directives. This is likely to lead eventually to a complete harmonisation of health and safety law within the European Union.

The Management of Health and Safety at Work Regulations 1992<sup>258</sup> implement certain aspects of the second Framework Directive<sup>259</sup> and require risks to be assessed as a basis for preventive measures. This requirement which had been preceded by requirements being made in specific areas by the Control of Lead at Work Regulations 1980, The Control of Asbestos at Work Regulations 1987, The Control of Substances Hazardous to Health Regulations 1988 and The Noise at Work Regulations 1989<sup>260</sup> now applies to all employers. These regulations have brought in new duties and augmented the existing duties under the Health and Safety at Work etc. Act 1974.

<sup>258</sup> The Management of Health and Safety at Work Regulations 1992 S.I. 1992 No. 2051.

<sup>259</sup> Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC).

<sup>260</sup> Control of Lead at Work Regulations 1980 S.I. 1980 No. 1248.

The Control of Asbestos at Work Regulations 1987 S.I. 1987 No. 2115, See also Council Directive of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work. (83/477/EEC). The Control of Substances Hazardous to Health Regulations 1988 S.I. 1988 No. 1657 See also Council Directive of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (80/1107/EEC) and The Noise at Work Regulations 1989 S.I. 1989 No. 1790. See also Council Directive of 12 May 1986 on the protection of workers from the risks related to exposure to noise at work. (86/188/EEC).

Although all employers have been affected by these new provisions particular sectors have been singled out because of their danger. Reported fatal and major accident rates in the construction industry are the highest of all the main employment sectors. The high proportion of self employed in the industry, the extensive use of sub-contracting, a large casual workforce and the often fragmented management of construction sites all contribute to the industry's poor health and safety record.

The Construction Design and Management Regulations 1994<sup>261</sup> came into force on 31st March 1995. These augment the existing responsibilities under the Health & Safety at Work etc., Act 1974, the Management of Health and Safety at Work Regulations 1992 and regulations made under the Factories Act 1961. Many general provisions also apply to the construction industry. The Construction (Design and Management) Regulations and Approved Code of Practice supplement and amplify the Management of Health and Safety at Work Regulations 1992 as they affect the construction industry. They emphasise the application of the general principles of prevention and protection at all stages of a construction project. They place obligations on clients, designers and contractors to ensure an integrated and planned approach to health and safety throughout the life of the project. A planning supervisor must oversee the planning and design of a structure and a principal contractor will co-ordinate co-operation between contractors during the construction phase. An important requirement relates to the development of a site health and safety plan which identify particular hazards, inform the tendering process and contain management rules. These regulations will themselves be augmented by the Construction (Design and Management) (Mines and Quarries) Regulations and the Construction (Health, Safety and Welfare) Regulations. New fire regulations will also accompany these provisions.

The new European Directives are characterised by the universality of application and a focus on the nature of risk rather than on the nature of the workplace or the work process. The duty to carry out risk assessment will become a prominent feature of foreseeability in negligence actions.

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<sup>261</sup> The Construction Design and Management Regulations 1994 S.I. 1994 No. 3140. See also Council Directive of 24 June 1992 on the implementation of minimum health and safety requirements at temporary or mobile construction sites (92/58/EEC).

### Crown Court Practice

As has been seen the courts have shown a willingness to impose higher fines, and community service orders and in recent times to impose suspended and immediate terms of imprisonment.

One of the difficulties within this area of law is the unfortunate lack of experience of the judiciary in hearing cases, particularly those heard in the Crown Court. Undoubtedly these are difficult cases also for counsel, solicitors and juries. Few of the actors have participated in such cases before or will participate in them in the future. Many health and safety cases require an understanding of a range of legal and technical matters: chemical engineering, electrical engineering, engineering construction, company law, European law, employment law and criminal law. Some judges are appalled at what they hear whilst others become quickly bored with the technicalities and in the latter cases direct the jury to find the defendant not guilty. (See for example, R. v. D.J. Berry and R. Bayley and D.A. Green & Sons Ltd. Crown Court at Exeter 12th November 1987 and R. v. Barlborough Metals (Deptford) Limited and R. v. Crawley Crown Court at Knightsbridge October 21st 1985)<sup>262</sup>

In his summing up in the Barlborough Metals case, His Honour Judge Francis Aglionby said:

"I have reached a decision after hearing one and a half hours of legal argument that I am going to direct you to verdicts of not guilty on both counts. First that the mere fact that a person is injured or killed does not prove anything in particular. It may well offer evidence to prove a failure to discharge a duty; equally, it might be evidence that there was a safe system of work that was improperly applied."

<sup>262</sup> R. v. D.J. Berry and R. Bayley and D.A. Green & Sons Ltd. Crown Court at Exeter 12th November 1987 (HSE File No. SO/310/87) and R. v. Barlborough Metals (Deptford) Limited and R. v. Crawley Crown Court at Knightsbridge October 21st 1985 (HSE File No. SO/419/84)

"I have to refer to the totality of evidence before me. You have listened to distinguished experts say that the method used to demolish the south west corner of the boiler house at Fulham Power Station was unsafe and other experts who have contended that the method of demolition was satisfactory. The fact that there is no method statement is neither here nor there as such a statement is not statutory. When the construction plans for a building are missing, it is more difficult to plan in detail."

"Evidence was given that advice was not sought from a consulting engineer but cannot inform us as to what that advice might have been."

"The prosecution case presented two conflicting views of the appropriate method of demolition from two groups of experts and in the light of that uncertainty on the status of the evidence before you I have decided that the case should not proceed any further."

The Health and Safety Executive in a Press Release dated 24th October 1985 said

"The judges remarks about two groups of conflicting witnesses refer to the fact that HSE's inspectors gave evidence that the system used prior to the accident was unsafe whereas workers from the site said they thought it was safe. Thus in making his decision, the judge has given equal weight to the expertise of HM Inspectors and that of demolition workers."

It is odd to say the least that the judge was prepared to give the same weight to the views of demolition workers and inspectors of the Health & Safety Executive. It is surprising that Judge Aglionby doubted the necessity to have a method statement for projects of this kind. This is all the more so since Parliament now requires that there be a health and safety plan under the Construction Design and Management Regulations 1994.

The value of an experienced judge was nowhere more evident than in the case of R. v St Regis Kemsley Ltd. (1992) which was heard in Court of Appeal (Criminal Division) on the 10th February 1992. Lord Justice Watkins said that on 17th August 1989 in the Crown Court at Canterbury, before His Honour Judge Streeter, the appellant company was convicted of failing to ensure the health, safety and welfare at work of all its employees, contrary to section 2(1) and section 33 of the Health and Safety at Work Act 1974. It was fined £1,000 and ordered to pay costs of £5,000.

The company appealed against conviction with leave of a single judge.

As Lord Justice Watkins observed prosecutions under the 1974 Act are, comparatively speaking, not often brought. When they are brought, they are usually dealt with in magistrates' courts. On this occasion the company elected to be tried by jury. Again as Lord Justice Watkins observed trial by jury for an offence under the 1974 Act is a rare event. Lord Justice Watkins continued that it is the obligation of a judge, when a jury is charged with delivering a verdict in respect of an offence under such as the 1974 Act, to direct them in the most simple terms possible, otherwise a jury may become confused by the technicalities of this legislation.

Lord Justice Watkins went on to say:

"The direction in R. v St Regis Kemsley Ltd. (1992)<sup>263</sup> could unfortunately, in our view, hardly have been anything more confusing to the jury. The conviction could not, in the Court of Appeal's judgment, stand, for it was simply not possible to tell upon what basis it was founded. "

These issues are of some importance to both the Health and Safety Commission and the Health and Safety Executive since most prosecutions in the higher courts are taken on behalf the Factory and Agricultural Inspectorates and the Field Operations Division of the Health and Safety Executive now spends up to 11% of its total inspector time on court work.<sup>264</sup> The success or otherwise of the implementation of its prosecution policy has important resource implications for the organisation as a whole.

The author of this thesis, whilst principally concentrating on the enforcement policy and practice of the Health and Safety Executive from 1974 - 1990, has commented on the current issues of corporate liability and manslaughter, the extent of European level regulation, current developments in court practice and the Governments deregulation initiative. All of these are important issues and will contribute vitally to the future development and success of the Health and Safety Executives enforcement policy and practice.

<sup>263</sup> R. v St Regis Kemsley Ltd. (1992) Court of Appeal (Criminal Division) 10th February 1992.

<sup>264</sup> This takes no account of the use of other professional and senior management time.

**Appendix One**

**TABLES OF CASES CONDUCTED ON  
BEHALF OF THE HEALTH & SAFETY EXECUTIVE  
IN THE HIGHER COURTS**

**1975 - 1990**



Health & Safety Executive Cases  
heard in the House of Lords

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Applicants	Subject matter of proceedings	Decision
Nurse and Morganite Crucible Limited	House of Lords	November 9, 10 December 15th 1988	Lord Bridge of Harwich Lord Templeman Lord Griffiths Lord Ackner Lord Lowry	John F. Maxwell and Carmel Wall Treasury Solicitor	Pinsent & Company Birmingham	Asbestos Regulations 1969	Appeal of Prosecutor allowed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondent	Subject matter of proceedings	Decision
Austin Rover Group Ltd. and Her Majesty's Inspector of Factories	House of Lords	May 2-3 1989	Lord Mackay of Clashfern L.C.  Lord Bridge of Harwich  Lord Brandon of Oakbrook  Lord Goff of Chieveley and Lord Jauncey of Tullicettle	Nigel Pleming  Treasury Solicitor	Charles Harris Q.C.  and  Julian Waters Henmans Oxford	—	Appeal Dismissed

Health & Safety Executive Cases  
heard in the Court of Appeal

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Appellant	Subject matter of proceedings	Decision
R v. Lightwater Valley Ltd.	Court of Appeal	26 June 1990	Lord Justice Beldam Jupp J. Ian Kennedy J.	—	S. Grenfell	Section 3(1) HASWA 1974	Appeal Dismissed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Appellant	Subject matter of proceedings	Decision
R v. A1 Industrial Products	Court of Appeal	16 December 1986	Watkins L.J. Drake J. Ognall J.	M. Swindells	S. Hawkesworth Q.C. T. Devlin	Section 33(1) HASWA 1974 Regs 5 & 8 Asbestos Regulations 1969 Regulation 155 (2) Factories Act 1961	Appeal allowed Conviction quashed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Appellant	Subject matter of proceedings	Decision
R v. Mara	Court of Appeal	14 October 1986	Parker L.J. Hodgson J. MacPherson J.	I.H. Foster J.V. Vobe & Co. Birmingham	John R West Registrar of Criminal Appeals	Section 3 (1) HASWA 1974	Appeal Dismissed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Appellants	Subject matter of proceedings	Decision
R v. Swan Hunter Shipbuilders Ltd.	Court of Appeal	29/30 June 1981	Dunn L.J. Michael Davies J. Anthony Lincoln J.	Humphrey Potts Q.C. Frederick R.C. Such Treasury Solicitor	L.D. Lawton Q.C. J.B. Deby Q.C. Q. Tudor Evans Christopher J. Holland Q.C. Angela C. Finnerty A.D. Deas & Co. Sinton & Co.	Sections 2 and 3 HASWA 1974	Appeal Dismissed



Health & Safety Executive Cases  
heard in the Divisional Court

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondent	Subject matter of proceedings	Decision
R v. Highbury Corner Magistrates Court ex parte H.S.E.	Divisional Court	11 October 1990	Bingham L.J. and Waterhouse J.	R. Jay Treasury Solicitor	Unrepresented	Refusal by Magistrates Court to issue summonses	Magistrates decision wrong in law Declaration

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Applicants	Subject matter of proceedings	Decision
R v. Tees-side Justices ex parte J.J. Smith & Co. Woodworking Machinery Ltd.	Divisional Court (Q.B.D.)	7 December 1988	Lord Justice Bingham Leggatt J.	R. Jay Treasury Solicitor	N. Wood Grindleys Stoke-on-Trent	Section 6 HASWA 1974 Section 33 HASWA 1974 Section 17 (2) Factories Act 1961	Application dismissed with costs

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Applicants	Subject matter of proceedings	Decision
Joyce v. Mellors Group Manufacturing Limited.	Divisional Court (Q.B.D.)	28 June 1988	Lord Justice Watkins McNeill J.	N. Pleming Treasury Solicitor	K. Talbot	Section 14 (1) Factories Act 1961.	Appeal of prosecutor allowed and the case remitted to the justices with a direction to convict.

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondent	Subject matter of proceedings	Decision
John Beyers Laird v. Simms (Gomersal) Ltd.	Divisional Court	1 March 1988	Watkins L.J. and Nolan J.	Mr. Timothy Briden  Treasury Solicitor	Mr. S. Stead  Messrs Scott Turnbull & Kendall	Section 14 (1) Factories Act 1961	Appeal Allowed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondents	Subject matter of proceedings	Decision
Kemp v. Leibherr G.B.	Divisional Court	November 5 1986	Glidewell L.J. and Oton J.	Philip N. Havers Treasury Solicitor	Seddon Cripps Slaughter & May	Section 6 (1) HASWA 1974	Appeal Allowed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondents	Subject matter of proceedings	Decision
Chisholm v. Moss Bay Engineering Ltd.	Divisional Court	31 October 1984	Watkins L.J. Nolan J.	Treasury Solicitor	—	Section 2 HASWA 1974	Appeal allowed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Applicant	Subject matter of proceedings	Decision
Queen v. Health and Safety Commission	Divisional Court	4 July 1983	Woolf J.	Mr. S Brown  Treasury Solicitor	Mr. S Aitchison  Messrs Sher- wood & Co.	Procedure for the exercise of its powers under Health and Safety (Enforc- ing Authority) Regulations 1977	Conclusion of Health and Safety Commission quashed



Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Appellant	Subject matter of proceedings	Decision
Kilroe and Sons Ltd. v. Gower	Liverpool Crown Court	April 28-29 1983	H.H. Judge L. Lachs	John Kay Davis, Campbell & Co. Liverpool	David Martin Alan Roberts and Freeman Queensferry	Section 4 HASWA 1974 Extent of Duty Whether building "seperate entity"	Appeal Dismissed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondents	Subject matter of proceedings	Decision
Deary v. Mansion Hide Upholstery Ltd.	Divisional Court	26 February 1983	Goff L.J.  McNeill J.	Mr. A. Collins  Treasury Solicitor	Mr. P. Crawford  Messrs Gardner & Co.	Interpretation of Section 33(1)(a) HASWA 1974 Section 24(2) HASWA 1974	Appeal Allowed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondents	Subject matter of proceedings	Decision
Coult v. Szuba	Divisional Court	16 March 1982	Orrrod L.J.  Forbes J.	Simon D. Brown  Treasury Solicitor	Jeffrey Burke  Langleys Lincoln	Construction of Section 7 and Section 52 (1)(b) HASWA 1974	Appeal Dismissed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondent	Subject matter of proceedings	Decision
Martin v. Boulton and Paul Steel Construction Limited.	Divisional Court (Q.B.D.)	22 March 1981	Lord Justice Ormrod Forbes J.	John Laws	George Newman Q.C. Sebastian Neville Clarke	Section 2 Section 40 Health and Safety at Work etc. Act 1974	Appeal of Prosecutor Dismissed.

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Applicants	Subject matter of proceedings	Decision
R v. Camerons Industrial Services Machinery Ltd.	Divisional Court (Q.B.D.)	30 January 1980	Lord Justice Bridge Woolf J.	Alan Moses Treasury Solicitor	D. Clarke	(1) Whether the court misdi- rected itself on the construction of section 155 (2) of the 1961 Act and on the construction of regs 6, 26 and 28 of the Construction (Working Places) Regula- tions 1966 and in consequence failed properly to implement Section 81 of the Magistrates' Courts Act 1952 (2) whether there was any evidence on which the justices could properly find that the provi- sions of Section 155 (2) of the 1961 Act applied.	Appeal allowed and the case remitted to the justices with a direction to convict.

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Appellant	Subject matter of proceedings	Decision
John Murray v. Gadbury	Divisional Court	12 February 1979	Lord Widgery L.C.J.  Eveleigh L.J.  and  Stephen Brown J.	Mr. A Collins    Treasury Solicitor	Appellant in Person	Section 21 Section 24 HASWA 1974 Improvement and Prohibition Notices (Ap- peals) Regula- tions 1974	Appeal Dismissed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Appellants	Subject matter of proceedings	Decision
Chrysler United Kingdom Ltd. v. John Declan McCarthy	Divisional Court	25 July 1977	Lord Widgery L.C.J.  Eveleigh J.  and  Forbes J.	Mr. Harry Woolf  Treasury Solicitor	Mr. Harry Woolton  Field & Sons Leamington Spa	Power of a Tribunal Section 24 HASWA 1974	Appeal Dismissed

Name of Case	Court	Date of hearing	Judges	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Respondents	Subject matter of proceedings	Decision
Campbell v. Wallsend Slipway & Engineering Co. Ltd.	Divisional Court	16 March 1977	Lord Widgery L.C.J. Eveleigh J and Wien J	Mr. Harry Woolf and Mr. Hugh Carlisle  Treasury Solicitor	Mr. Peter Taylor Q.C.  and Mr John Deby  Linsley & Mortimer, Newcastle- upon-Tyne	Section 19 Section 20 Section 38 Section 39 HASWA 1974	Competence of an inspector of the Health and Safety Executive upheld



Health & Safety Executive Cases  
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Crown Court by way of indictment.

H.S.E. Reference	725/89	Name of Case	R v. Christopher James Eddon	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
				Shrews- bury	24 November 1989	-	-	-	-	-	Section 3(2) HASWA 1974	£2000	£884.34

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
238/89	R v. Headway Construction Co. Ltd.	Maidstone	20 November 1989	H.H. Judge D.J. Griffiths	Mr. Roger Eastham	—	—	—	Section 3(1)(b) and Reg 44(2) Construction (General Provisions) Regulations 1961 and Section 127 Factories 1961	£20,000	£3,609.05
271/89	R v. Dewco Services (Ringwood) Ltd.	Bournemouth	12 June 1989	—	—	—	—	—	Section 2 HASWA 1974	£1200	£1500
486/89	R v. H. Smith (Engineering) Ltd.	Southwark	27 October 1989	H.H. Judge Lever Q.C.	—	—	—	—	Regulations 3 and 15(1) Construction (Working Places) Regs 1966	£5000	£1375

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
186/89	R v. Humbrol	Beverley	28 July 1989	H.H. Judge D.R. Beahy Q.C.	P.J.M. Heppel Wilberforce Chambers, 171 High Street, Hull, HU1 1NE	—	—	—	Reg 8(1) Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972 Section 2(1) HASWA 1974	£5,000  £15,000	£10,000
238/89	R v. Flack Scaffolding Limited	Maidstone	20 November 1989	H.H. Judge D.J. Griffiths	Mr. Roger Eastham	—	—	—	Section 2(1) HASWA 1974	£5,000	£1,000

Health & Safety Executive Cases  
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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
853/88	R v. Cross	Plymouth	14 December 1988	H.H. Judge I.S. McKintosh	W.P.L. Sellick, 2, Kings Bench Walk, Temple, London, EC4Y 7DE	Bond Pearce Solicitors, 1, The Crescent, Plymouth, PL1 3AE	Alastair Macduff, Devereaux Chambers, Court, Temple, London EC4	Nash & Co., Solicitors, 12, Sussex Street, Plymouth, PL1 2HS	Section 2 HASWA 1974, Section 1 Employment of Women, Young Persons and Children Act 1920	Costs left on File; Cross declared bankrupt	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
819/88	R v. Central Industrial Property Management Ltd.	Wood Green	17 February 1989	H.H. Judge N.E. Beppard	P. Rook, 5, Kings Bench Walk, Temple, London	H.S.E.	—	Mackrell Turner, Garrett Inigo Place, 31, Bedford Street, Strand, London WC2E 9EH	Section 3(1) and 3(2) HASWA 1974	£5000 £400	£1515
843/88	R v D.S. Tilke	Stafford	21 March 1989	H.H. Judge W.A.L. Allardice D.L.	R.P. Glancy, Deveraux Chambers, Temple, London EC4	Young & Co., Longton, Stoke-on-Trent, ST3 1NZ	A Craig	Paris, Oldham and Giljira, 1, Martin Street, Stafford, ST16 1LB	Section 2(1) HASWA 1974 Reg 48(1) and 49(1) Construction (Lifting Provisions) Regulations 1961	£3000 £750 £750	£798
843/88	R v I.D. Tilke	Stafford	21 March 1989	H.H. Judge W.A.L. Allardice D.L.	R.P. Glancy, Deveraux Chambers, Temple, London EC4	Young & Co., Longton, Stoke-on-Trent, ST3 1NZ	A Craig	Paris, Oldham and Giljira, 1, Martin Street, Stafford, ST16 1LB	Sect 2(1) HASWA 1974 Reg 48(1) and 49(1) Construction (Lifting Provisions) Regs 1961	£1000 £250 £250	£798

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
800/88	R v. British Aerospace plc	Manchester	15 May 1989	H.H. Judge C.W. Humphries	David Heaton, 18, St John Street, Manchester, M3 4EA	Margaret Peasegood & Co. Solicitors, 807 Rochdale Road, Harpurley, Manchester, M9 1XD	Rayner	Barlow Hyde & Gilbert, 1, Finsbury Avenue, London EC2M 2PJ	Section 3(1) HASWA 1974	£25,000	£1,490



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
672/88	R v. E. Baxter (Hauliers) Ltd.	Southbrook	29 March 1989	H.H. Judge Monier Williams	William Hoskins, 1, Temple Gardens, Temple, London, EC4	Edward Oliver and Bellis, City House, 9, Cranbrook Road, Ilford, Essex, IG1 4EC	—	Marshall Simpson, 2A, Station Road, Gidea Park, Romford, Essex, RM2 6DA	Section 3(1) HASWA 1974	N.G.	—
679/88	R v. Nobels Explosive Company Ltd. (Wales)	Mold	29 March 1989	H.H. Judge D. Morgan Hughes	Roger Dutton, 40, King Street, Chester, CH1 2AH	Wayman-Hales, 12, Whit Friars, Chester, CH1 1PT	Richardson	—	Section 2(1) HASWA 1974 (Two offences)	£100,000	£30,000
788/88	R v. Email Patel	Preston	2 October 1989	H.H. Judge R. Lockett	—	—	—	—	Reg 25(1)(c) and 25(1)(b) Gas Safety (Installation and use) Regulations 1984	£150 £1500	£75 £75

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
650/88	R v. Fintan Doyle	Plymouth	15 February 1989	H.H. Judge Sir Jonathan Clarke.	Gordon Bebb, 2, Kings Bench Walk, Temple, London	Bond Pearce Solicitors, 1, The Crescent, Plymouth, PL1 3AE	L. Sellick	David J King Solicitors, 606 Bromford Lane, Ward End, Birmingham, B8 2DP.	Reg 33(2) Construction (Working Places) Regulations 1966. Section 2 HASWA 1974	£250	£200
650/88	R v. Barbican Construction Ltd.	Plymouth	15 February 1989	H.H. Judge Sir Jonathan Clarke.	Gordon Bebb, 2, Kings Bench Walk, Temple, London	Bond Pearce Solicitors, 1, The Crescent, Plymouth, PL1 3AE	Alastair McDuff	Nash & Co. Solicitors, 12, Sussex Street, Plymouth, PL1 2HS	Section 3(2) and 4(2) HASWA 1974 Reg 6 Construction (Working Places) Regulations 1966	Proceedings left to lie on file. Company in liquidation.	-
650/88	R v. Rees-Haugh Civil Engineering Ltd.	Plymouth	15 February 1989	H.H. Judge Sir Jonathan Clarke.	Gordon Bebb, 2, Kings Bench Walk, Temple, London	Bond Pearce Solicitors, 1, The Crescent, Plymouth, PL1 3AE	Philip Mott	Walters Solicitors, Depford Chambers, 62/64 North Hill, Plymouth, PL4 8EP	Section 3(2) and 4(2) HASWA 1974	£2000	£3000

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
618/88	R v. General Electric Company plc.	Acton	9 December 1988	H.H. Judge J. Hunter	Mark Bishop, 1, Temple Gardens, London, EC4	Darlington & Parkinson, 259 Horn Lane, Acton, London W3 9EH	—	Solicitor, General Company, 1, Stanhope Gate, London, W1A 1EH	Regs 8, 4, 7 and 5 Control of Asbestos Regulations 1987 (4 Counts)	£1000 £1000 £1000 £1000	£750
619/88	R v. BICC Cables Ltd.	Inner London Crown Court	3 May 1989	H.H. Judge G.J. Schindler (Senior Circuit Judge)	Roger Eastman, 2, Harcourt Buildings, Temple, EC49 9DM	Health and Safety Executive, Baynards House, 1, Clepston Place, London, W2 4TF	—	—	Section 2(1) HASWA 1974	£25,000	£2,426.83
619/88	R v. British Telecom plc.	Inner London Crown Court	3 May 1989	H.H. Judge G.J. Schindler (Senior Circuit Judge)	Roger Eastman, 2, Harcourt Buildings, Temple, EC49 9DM	Health and Safety Executive, Baynards House, 1, Clepston Place, London, W2 4TF	—	British Telecom Solicitors Office, 81, Newgate Street, London, EC1A 7AJ	Section 3(1) HASWA 1974	£10,000	£1,600.37

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
616/88	R v. Draincare Ltd.	Acton	3 April 1989	—	Miss Margaret Bowron, 1, Crown Office Row, Temple, London, EC4	Darlington & Parkinson, 259, Horn Lane, Acton, London, W3 9EH	Jonathan Bellamy, 2, Carden Court	Swani & Co. Crown Court, Duke Street, Cardiff	Section 2(1) HASWA 1974	£3000	£1500

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
555/88	R v. Millmead Quarry Products Ltd.	Doncaster	22nd January 1990	H.H. Judge Michael Walker	Leolic Spitue, Park Court Chambers, 40, Park Goss Street, Leeds, LS1 2QH	Frank Allen & Co., Hill House Chambers, 7, Regent Terrace, South Parade, Doncaster, DN1 2EE	Simm Lawler	—	Sections 3(1) and 4(2) HASWA 1974	£2000 N.G.	£3,731.71
574/88	R v. T.E. Scudder	Kingsbridge	20 January 1989	H.H. Judge J.D.W. Hayman.	—	—	—	—	Reg 3(1) Construction (Working Places) Regulations 1966 (Two offences)	£7,500 £2,500	£1,200
584/88	R v. David Holt Plastics Limited	—	—	—	Director of Public Prosecutions	Crown Prosecution Service.	—	Kuit, Seemart, Levy and Co., 3, St. Mary's Parsonage Manchester.	Man-slaughter	6 months imprisonment (suspended sentence)	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
525/88	R v. Loynehead Ltd.	Luton	21 March 1989	Mr. Recorder Cucker	Seddon Cripps, 1, Harcourt Buildings.	J.K.O. Ridley, Health Safety Executive, Baynards House, Cuppoint Plane, London, W2	Michael Baker, Fountain Court, Temple, London, EC4	Pennington Ward, Bowe, Clement House, 99, Aldwych, London, WC2B 4LJ	Section 3(1) Construction (Working Places) Regulations 1966	£2,800	£3000
544/88	R v. Tam Leisure Ltd.	Guildford	16 December 1988	—	David Green, 5, Kings Bench Walk, Temple, EC4Y 7DN	Hart Brown & Co. Law	D.W. Mayall I, Verulan Buildings, Grays, Inn, London, WC1R 5LQ	Stephen Martin & Son, 128, Malden Road, New Malden, Surrey, KT3 6DA	Reg 3 Notification of Installation Handling Hazardous Substances Regs. 1982 Section 3(1) HASWA 1974	£3000  £3000	£5000
554/88	R v. Frost and Frost	Exeter	6th February 1989	Mr. Recorder Markham David	Michael Brabin, 19, Southemhay West, Exeter	Crosse & Crosse, 14, Southemhay West, Exeter	Paul Dunkles	—	Section 2(1), 4(2), 2(1) and 4(2) HASWA 1974	N.G. N.G. £1000 N.G.	

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
445/88	R v. N.E.L. Peebles Ltd.	Winchester	9 January 1989	H.H. Judge H.E.L. McCreery Q.C.	Nigel Seed, 3, Paper Buildings, Temple, London, EC4Y 7EU	Ensor Lisby & Firth, 6, Portland Street, Southampton, SO9 2GN.	B. Brown	Wragge & Co., Bank House 8, Cherry Street, Birmingham, B2 5JY	Section 2 HASWA 1974	£5000	£5000

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
445/88	R v N.E.L. Peebles Ltd	Winchester	9 January 1989	H.H. Judge H.E.L. McCreery Q.C.	Nigel Seed, 3, Paper Buildings, Temple, London, EC4Y 7EU	Ensor Libby & Firth, 6, Portland Street, Southampton, SO9 2GN	B. Brown	Wragge & Co., Bank House, 8, Cherry Street, Birmingham, B2 5JY	Section 2 HASWA 1974	£5000	£5000
456/88	R v. Knibbs (Bolton) Limited.	Bolton	11 August 1988	H.H. Judge V.B. Webster	Mark Laprell, 18, St. John St., Manchester.	Porter Hope & Knipe, 20-22 Bowker Row, Bolton, BL1 1JL.	Mr. Cohen	Simpson Curtis, 41, Park Square, Leeds, LS1 2NS	Section 2(1) HASWA 1974. RIDDOR Regs 3(1)(a) and 3(1)(b)	£5,000 £200 £1000	£695



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
351/88	R v. Translink Joint Venture.	Dover	25 July 1988	H.H. Judge A.F. Waley V.R.D., Q.C.	Timothy Briden, 1, Temple Gardens, Temple, EC4	G.M. and Timothy Day & Co., Solicitors, 42-44 Earl Street, Kent, ME14 1TH.	James Badenoch	Head of Legal Services, Translink Joint Venture, Surrey House, Throwley Way, Sutton, SM1 4WA.	Reg. 3(1) Construction (General Provisions) Regulations 1961. Sections 3(1) and 2(1) HASWA 1974	£250 £750 £750 (All five defendants who make up Translink Joint Venture had to pay these sums)	£7,528
355/88	R v. Brown	Knutsford	24 February 1989	Mr. Recorder Alex Carlisle Q.C., M.P.	Eric Owen, 21, Whitefriars, Chester	Wayman-Hales, 12, Whitefriars, Chester CH1 1BT	—	—	Section 2(1) HASWA Failure to comply with an improvement notice. Failure to notify accidents (RIDDOR) two separate offences)	£6000 £6000 £1000 £1000	£2,700

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
173/88	R v. SGS Inspection Services.	Acton	15 January 1990	H.H. Judge R.K. Cooke O.B.E.	Timothy Briden, 1, Temple Gardens, Temple, EC4	—	S. Evans	—	Section 3(1) HASWA 1974	£2000	£12,000
218/88	R v. R.L. Harvey	Lincoln	—	—	John V. Machin, 24, Rope walk, Nottingham.	M.G. Banks, 188, High Street, Lincoln, LN5 7BE	—	Chattertons Solicitors, 2, New Street, Boston, Lincolnshire.	Section 3(1) and 2(2) HASWA 1974.	£500 N.G.	£1000
336/88	R v. Linney	Leicester	15 May 1989.	H.H. Judge Blythe	P. Spencer, 2, New Street, Leicester	Freer, Bouskell & Co., 10, New Street, Leicester, LE1 5ND.	—	—	Section 3(2) HASWA 1974	£750	£750

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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
782/87	Rv. Applied Structures Ltd. and Stanley James Russell.	Northampton	11 September 1988	H.H. Judge Hall	M.L. Brent Q.C., 2, DR. Johnsons Buildings, Temple, London EC4.	Ironside, Ray and Vials.	-	-	Section 3(1) HASWA 1974	£500 (Insolvent Company) £4,500	£1000

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
742/87	R v. F.R. Dabell	Newport (IOW)	2 December 1988	H.H. Judge Galpin Q.C.	Richard Tyson, 3, Paper Buildings, Temple, EC4. Miss K Branigan, Lorne Park House, Lane Park Road, Bourne-mouth, Dorset, BH1 1JJ	Ensoe Lisby & Firth, 6, Prostrand Street, Southampton, SO9 2GN.	Mr. Field Fisher, Q.C. Mr. Bruce Maddick.	-	Section 3(1) HASWA 1974 (Two Counts) Reg 3(1)(a) (Two Counts) and 3(1)(b) RIDDOR 1985 (Two Counts).	£5,000 £5,000 £500 £500 Condi-tional Discharge on both counts.	£10,000
775/87	R v. Pilkington Glass Ltd.	Liverpool	25 May 1989	-	R. Fordham, Martin's Buildings, Water Street, Liverpool.	D.C. Ashcroft, John A. Betts, Twyford & Co., 139, Dale Street, Liverpool, L69 2BJ.	Maureen Roddy	Mr. A. Cledwyn Davies, Pilkingtons plc, Prescott Rd., St. Helens, Mersey-side, WA1D 3TT.	Section 14 Factories Act 1961 and Reg 3(1)(b) RIDDOR.	£4000 £500	£15,49.94.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
533/87	Rv. London Buses	Kingston upon Thames	23 November 1987	H.H. Judge Michael Cook	John Harvey, 1, Temple Gardens, London, EC4	Wilkinson Sownan, 14, Church Street, Kingston Upon Thames, Surrey, KT1 1RN.	—	I.E. King, London Regional Transport, 55 Broadway, London, SW1H 0BD.	Section 2(1) HASWA 1974.	£3000	£470
563/87	Rv. University of Sussex	Lewes	7th July 1988	H.H. Judge J.H. Cower Q.C.	Timothy Briden, 1, Temple Gardens, Temple, EC4	Wynne Baxter, Dial House, 221, High Street, Lewes, East Sussex, BN7 2AE.	—	Donne Mileham & Haddock, Frederick Place, Brighton, East Sussex, BN1 1AT.	Section 3 HASWA 1974.	£2000	£4000

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
310/87	R v. D.A. Green and Bailey and Berry Steel Construction	Exeter	12 November 1987	His Honour Judge E. Graham Neville	C.M. Bekto, 2, Kings Bench Walk, Temple, EC4Y7DE	Crosse & Crosse, 14, Southern Hay, West Exeter, EX1 1PL	—	G.D. Cann and Hallett, 40, Southern Hay, East Exeter, EX1 1PG Nash & Co., 12, Sussex Street, Plymouth, PL1 2HS.	Section 2 HASWA 1974 Section 2, 3(2) and 4(2) HASWA 1974. Construction (Lifting Operations) 1961 and Construction (Working Places) 1966.	N.G.	Central Funds.
491/87	R v. Alternative Fuels (South Wales) Ltd.	Birmingham	22 February 1988	H.H. Judge R.J. Toyn	Anthony King, 1, Essex Court, Temple, EC4 9AR	Edge Ellison & Co., Rutland House, 148, Edmund Street, Birmingham, B3 2JR.	—	Rudge & Co., 9, Portland Rd., Edgerson, B16 9HN.	Section 1 and 3 HASWA 1974	£250 £250	£2,653.64

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
226/87	R v. Larchaven	Kingsbridge	22 May 1987	H.H. Judge Baker	Messrs John Harvey and James Holdsworth, 1, Temple Gardens, Temple, London, EC4 9BB	M. Friend, 57, Hersham, Road, Walton on Thames, Surrey, K712 1LJ.	Mark Bishop	Iliffes, 5, John Street, London, WC1N 2HP.	Section 3(1) HASWA 1974. Reg 3 Construction (Lifting Operations) Regulations 1961.	£5000	£450
258/87	R v. C. Jones	Newport Monmouth (Wales)	26 June 1988	—	Philip Rees, 34, Park Place, Cardiff.	Edwards Geldand Solicitors, 16, St. Andrews Crescent, Cardiff, CF1 3RD.	—	Vizard & Co., 9, Agincourt Street, Monmouth, NPS 3D2.	—	—	—



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
134/87	R v. Briggs Gas plc	Burnley	29 April 1988	H.H. Judge A.H. Steel Q.C.	Mr. M.D. Laprell, 18, St. John Street, Manchester.	March, Pearson & Skelton, 41, Spring Gardens, Manchester, M12 2BB	A Rankin Q.C. P. Rankin.	Paul R. Smith.	Sections 2 and 3 HASWA 1974.	N.G.	—
146/87	R v. Sallie Batteries Ltd.	Sheffield	4 January 1988	—	Alan Goldsack, 2, Campo Lane, Sheffield, S1 2EF.	Robert Grayson & Sons, 14, Campo Lane, Sheffield, S12EF.	—	Dibb & Clegg, 31, Regent Street, Barnsley, S70 2HJ.	Section 16 Control of lead at Work Regulations 1980.	£750	£3,328.64
153/87	R v. Tarmac Topmix Ltd.	Chelmsford	23 March 1987	H.H. Judge P.B. Greenwood.	—	—	—	—	Section 137 (1) Factories Act 1961. Section 2(1) HASWA 1974.	£500 £5,000	£4000

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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
750/86	R v. A.W. Scott	Bodmin	12 July 1987	H.H. Judge J.A. Cox	Micheal Oerron, 92, Bouport Street, Barnstaple, Devon, EX31 1RP.	Gordon Bebb, 8, The Crescent, Plymouth.	—	—	Section 2 and 3 HASWA 1974. (Two Counts)	Left on File. £750	£500

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
737/86	R v. Thomas Carey.	St Albans	23 February 1987.	H.H. Judge P.J. Halnan	Alan Hitching, 12, Kings Bench Walk, Temple, London, EC4Y 7E2	Bretherton & Co., Romeland Hill, St Albans, Herts., AL3 4ET.	G. Tyrell, B Livesey, 2, Crown Office Road, Temple, EC4.	Vizards, 51, Lincolns Inn, Fields, London, WC2A 3ND.	Section 4 HASWA 1974.	£5000	plus costs.
739/86	R v. Smiths Builders Ltd.	Durham	21 July 1987.	—	Roger Thorn, 40, Granger Street, Newcastle.	Hay & Kilner, 33, Grey Street, Newcastle-upon-Tyne, NE1 6EH.	A.T. Hedwork, 12, Trinity Chase, Quayside, Newcastle.	Mincoff, Science & Gold, Kensington House, 46, Osbourne Road, Newcastle-upon-Tyne, NE2 2AA.	Reg 3 Construction (General Provisions) Regulations 1961.	£2000	£5,177.48

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
652/86	R v. Mutton Fertiliser Ltd.	York	10 December 1986	H.H. Judge Bennett Q.C.	David Gipton, 39, Park Square, Leeds 1.	H.S.E.	—	C.W. Nelson, Trafalgar House, 29, Park Place, Leeds, LS1 2SS	Section 2 HASWA 1974.	£1500	£725
671/86	R v. Beckenham and Bromley Roofing Co. Ltd.	Croydon	6 February 1987	H.H. Judge Graham Hall.	Mark Barchelor, 3, Hare Court, Temple, London, EC4Y 7BJ.	H.S.E.	Paul Russell.	Hexall Erskine & Co., 70, Ecclesstone Square, London, SW1V 1PW.	Section 3(1) HASWA 1974.	£2000	£500
694/86	R v. M.D. Hamilton.	Isleworth	7 December 1987.	—	John A. Hamey, 1, Temple Gardens, Temple, London, EC4	Lambert Hale & Proctor, 56, Uxbridge Rd., Stephens Bush, London, W12 8LP.	—	Cooper Whitman, 61, Fleet Street, London, EC4Y 1JU.	Section 7(a) HASWA 1974.	N.G.	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
572/86	R.v. Acrlive Ltd.	Chelmsford.	6th June 1987.	—	Patrick O'Brien, 5, Kings Bench Walk, Temple, London, EC4.	Hillard & Ward, 70, Duke Street, Chelmsford, Essex, CM1 1JT.	—	Stanley Tee & Co., 6, High Street, Bishop's Stortford, Hertfordshire, CM23 2LU	Section 2(1) HASWA 1974, Reg 4 Notification of Accidents and Dangerous Occurrences Regulations 1980.	£1,000	£1040
590/86	R.v. Fine Organics Ltd.	Tees-side	1 December 1986	H.H. Judge Sroyan Q.C.	K. Miller 19, Baker Street	Crouts, 89 Borough Rd. Middlesbrough, TS1 3AF	—	Jackson, Monks & Rowe Solicitors, 7/15 Queens Square, Middlesbrough Cleveland.	Section 2 and 33 HASWA 1974.	£5,000	plus costs.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
562/86	R v. Knights International Surveys Ltd.	Swansea	16-24 June 1986	H.H. Judge David Williams T.D., Q.C.	Mr. Martin Thomas Q.C. and Mr. P. Rees.	H.S.E.	R. Hone	—	Section 3(1) HASWA 1974 (2 Counts)	£1000	—
569/86	R v. Ablerex Construction (Southern) Ltd.	Aylesbury	9 December 1986	H.H. Harben Jack	Alan Hitching, 12 Kings Bench Walk, Temple London EC4.	Wilkins and Sons, 25, Walton Street, Aylesbury, Buckinghamshire, HP21 7QH.	Edward Faulks, 6, Kings Bench Walk, Temple, London, EC4.	Laurence Graham, 6, New Square, Lincoln's Inn, London, WC2.	Construction (General Provisions) Regulations 1961 and Construction (Working Places) Regulations 1961.	£8,000	£5,411.74

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
517/86	R v. Archibald Coletta.	Chelmsford	3 December 1986	Mr. Assistant Recorder Howe.	Alan Hitching, 12, Kings Bench Walk, Temple, London, EC4Y 7E2.	Stuart & Sons Solicitors, 71, Duke Street, Chelmsford, Essex CM1 1JU.	Mark Sutton, 2, Pump Court, Temple, London, ECA.	William A. Merrick, Barker Chambers, Barker Road, Maidstone, Kent	Section 3(1) Construction (Working Places) Regulations 1966. (2 Counts)	N.G.	—
517/86	Glass Glover Distribution Ltd.	Chelmsford.	3 December 1986	Mr. Assistant Recorder Howe.	Alan Hitching, 12, Kings Bench Walk, Temple, London, EC4Y 7E2.	Stuart & Sons Solicitors, 71, Duke Street, Chelmsford, Essex CM1 1JU.	John Grace, Sargents Inn,	Thompson & Co., Ramilies Buildings, 1-9 Hills Place, 215-217 Oxford Street, London, W1X 2LX.	Section 4 HASWA 1974.	£750	£1500
562/86	R V. Rowbottom Tankships Ltd.	Swansea	16-24 June 1986	H.H. Judge David Williams T.D., Q.C.	Mr. Martin Thomas, P. Rees	H.S.E.	Mr. Croxford.	—	Section 2(1) 7 Counts and 3(1) 8 Counts. HASWA 1974	N.G.	—



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
467/86	R v. I.E.M. Services Ltd.	Maidstone	3 October 1986	Mr. Assistant Recorder Birt	Timothy Briden, 1, Temple Gardens, Temple, London EC4Y9BP.	Argles & Court Solicitors, 12, Mill Street, Maidstone, Kent, ME15 6XU.	Robin Spon-Smith	Jack Bernstein & Co. 203, Kilburn High Road, London NW6 7HY.	Reg 44 (1) Construction (General Provisions) Regulations 1961. Section 3(1) HASWA 1974.	£2,500	£500
482/86	R v. Grubb	Ipswich	—	H.H. Judge John Turner.	Patrick O'Brien, 5, Kings Bench Wk., Temple, London EC4.	Birkett Solicitors, 20-26 Museum.	Gray	Few & Kester, Montaigne House, Sussex Street, Cambridge, CB1 1PB.	Reg 50(1) Construction (General Provisions) Regulations 1961. Section 4(2) and 3(1) HASWA 1974.	£500	£2,500

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
266/86	R v J Murphy Ltd.	Central Criminal Court	18 March 1987.	H.H. Judge Ann Davies	Neville Spencer Lewis, 12, Kings Bench Walk, London, EC4Y7E2.	H.S.E.	Jonathan Waite	Cepp & Sons 66, Duke Street, Chelmsford, CM1	Section 3 HASWA 1974. 44(1) and 3(1) Construction (General Provisions) Regulations 1961	£5,000	£4,300
422/86	R v. Blue Circle Industries plc	Oxford	7 August 1986	H.H. Judge M.K. Harrison Hall.	Charles Harris, 1, Harcourt Buildings, Temple London, EC4Y 9DA.	H.S.E.	—	Henman, Ballard & Co. 16, St. Aldates, Oxford, OX1 1HA.	Section 14(1) Factories Act 1961	£5,000	plus costs.
476/86	R v. Capital Demolition (New Haw Enterprises) Ltd.	Oxford	5th December 1986 and 19 January 1987.	H.H. Judge Leo Clark Q.C.	P. Head, 2, Crown Office Row, Temple, London, EC4Y7HJ	Thomas Mallam, 126 High Street, Oxford, OX1 4DG.	—	Hylton Potts London	Breach of a Prohibition Notice. Section 22 HASWA 1974	£4,000	£700

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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
732/85	R v. G.W. Wright.	Knutsford	30 January 1986	—	Roger Dutton, 40, King Street, Chester	Wagman- Harles, 12, White Friars, Chester, CHI IPT.	—	—	Section 2(2)(a) HASWA 1974.	Not Guilty	—
733/85	R v. C.R. Longley	Knutsford	—	—	Peter Hughes, 40, King Street, Chester.	Wayman Harles, 12, White Friars, Chester CHI IPT.	—	—	Section 6 HASWA 1974.	Not Guilty.	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
653/85	Gaylor v. Allan	Southwark	15 November 1985	H.H. Judge D.B.D. Lowe	Mark Batchelor, 3, Hare Court, Temple, London, EC49 2BJ.  The Solicitor, H.S.E., Baynards House, Westbourne Grove, London, W2 4TP	David Ratford.  Edward Lewis & Co., 9, Jockeys Fields, London, WC1R 4BW.	Section 3 HASWA 1974	£2000	£350	Prosecution costs from Central Funds	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
587/85	H.S.E. v. Bedford	Wisbech	30 September 1985	The Recorder and Justices	Timothy Briden, 1, Temple Gardens, Temple, London, EC4Y9BB Dawbarns, 1, York Road, Wisbech, Cambridgeshire, PE13 1EA	-	Section 7(a) HASWA 1974	£1000	£500	Prosecution Costs from Central Funds	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
544/85	Lovell Tankmaster v. Health & Safety Executive	Southwark	18 September 1985	—	—	—	Section 4(2) HASWA 1974	£1500	£1000	Prosecution costs to be paid by Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
520/85	Day v. Import Fabrica- tions Ltd.	Leicester	10 October 1985	H.H. Judge M.J. Astill	—	—	Section 2(1) HASWA 1974	£2000	£250	Costs from Central Funds	—



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
476/85	R v. C.A. Manning and R.D. Ward.	Ipswich	7 April 1986	H.H. Judge J.T. Turner.	Stuart Lawson Rogers, Lamb Building, Temple, London, EC49 7AS	Birketts Solicitors 20-28 Museum Street, Ipswich, IP1 1H2.	John Devaux Victor Williamson	Block and Ollingham, Ipswich, Bennetts Solicitors Martlesfield.	Section 3(2) HASWA 1974	Not Guilty £750	Costs from Central Funds.
488/85	R v. Press Construction Ltd.	Acton	24 March 1986.	G.N. Warrington	Timothy Briden.	H.S.E.	—	Leytons, 16, Lincolns Inn, Fields, London WC2A 3ED.	Regs 3(1)(b) and 44(1) Construction (General Provisions) Regulations 1961.	£1,500	£500
555/85	R v. Bentley R v. Curtis and Company.	Maidstone	20th October 1986.	—	John Reide, 5, Kings Bench Walk, London.	H.S.E.	—	Jarris and Bannister, 7 Gt. James Street, London, WC1N 3DA. Pear, Webster Pringle & John, 100 Park Lane Croydon, LR9 1DE	Section 3(2) HASWA 1974.	£2,500	£4,000

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
431/85	R v. Gomersal Ltd.	York	4/5 February 1985.	Mr. Recorder P.M. Beard	—	—	—	—	Reg 3(1)(a) Construction (General Provisions) Regulations 1961. Reg 4 Notification of Accidents and Dangerous Occurrences Regulations 1980.	£750  £250	No order as to costs.
468/85	R v. Bendle	Swansea	6 January 1986	—	Wyn Richards	—	—	—	Section 7(a) HASWA 1974.	Not Guilty	Costs from Central Funds.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
379/85	R v. E.C. Transport. (Winborne Ltd.  R v. Charles Ian Rycroft	—	—	H.H. Judge George Grant MacDonald	P.C. Mort		M. Parroy		Section 3 HASWA 1974 Explosives Act 1975. Section 33(1)(k) HASWA 1974. Explosives Act 1975. False Statement Section 34&39 Explosives Act 1975. (12 Counts)	£1600	No order as to Costs.
418/85	R v. A.M. Wilkinson and J. Wilkinson.	York.	5 September 1985	H.H. Judge H.C. Bennett	—	—	—	—	Reg 3 Agriculture (Field Machinery) Regulations 1962. Reg 4 Agriculture Power Take off Regs 1957. Section 2(1), 3(1), 22 HASWA 1974.	N.G. Counts 1-3 Count 4 £250. Count 5 £500	£500

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
135/85	R v. McKenna	Kings Lynn	12,13 June 1985	—	—	—	—	—	Section 1(1) Employment of Women, Young Persons & Children Act 1920.	£1000	£1500
248/85	R v. Freeman and Proctor and Edward Lees	Warwick	24 May 1985	—	—	—	—	—	Reg 1 Electricity Regulations 1908. Reg 17 Electricity Regulations 1908 Section 3(2) HASWA 1974.	Freeman & Proctor £2500  Not Guilty.  Lees £250	plus 90% prosecution costs.   plus 10% prosecution costs.
387/85	R v. D.H. Lumb	Taunton	20 August 1985	H.H. Judge Kenneth Willcock.	G. Mercer, 4, Pump Court, Temple, London, EC4Y 7AW	H.S.E. Regina House, 259, Old Marylebone Rd., London NW1 5RR	R. Stead	J.W. Ward & Sons, 105, High Street, Staple Hill, Bristol, BS16 5HG.	Section 2(1) HASWA 1974.	£900	£300

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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
517/84	R v. Groom	Bedford	15-18 April 1985	EE Youds	—	—	—	—	Section 3(1) HASWA 1974.	Acquittal	
586/84	R v. Fairley Marine (Coves) Ltd.	Newport	3 April 1985	B.J.F. Galpin	—	—	—	—	Reg 9(1) Highly Flammable Liquids and Liquefied Petroleum Gas Regulations 1972.	£2000	plus costs

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
405/84	R.v.G. Marley R.v.R. Marley	York	11 September 1984	V.R. Hurwiz	—	—	—	—	Reg 3(1) Construction Working places Regulations 1966.	£250 £250	plus costs plus costs
419/84	R.v. Barlboro Metals (Depford) Ltd. R.v. Cawley	Knights Bridge	21 October 1985	Aglionby	Mark Batchelor	H.S.E.	C.A. Hart-Lewton Q.C.	—	Sections 2(1) and 37 HASWA 1974.	Acquittal	
421/84	R.v. Price	Newcastle-upon-Tyne.	27 February 1985	R.A. Percy	—	—	—	—	Reg 16 (2) Wood Working Machines Regulations 1974	Acquittal.	
421/84	R.v. Lowes	Newcastle-upon-Tyne	27 February 1985	R.A. Percy	—	—	—	—	Reg 16 (3) Wood-working Machines Regulations 1974	Acquittal.	

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
321/84	R.v. Scudder	Oxford	25 February 1985	Leo Clark Q.C.	—	—	—	—	Section 3(1) HASWA 1974, Reg 41(4) Construction (General Provisions) Regulations 1961.	£8,000  £500	plus costs
321/84	R.v. Myton	Oxford	25 February 1985	Leo Clark Q.C.	—	—	—	—	Section 3(1) HASWA 1974.	£5000	plus costs
322/84	R.v. Allen	Teesside	—	—	—	—	—	—	Section 3 HASWA 1974.	£3000	plus costs.
382/84	R.v. Plusa	Sheffield	17 January 1985	—	—	—	—	—	Section 7 and 7 (b) HASWA 1974	Conditional Discharge. Acquittal.	£100



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Solicitors for Defence	Offence	Fine	Costs
135/84	R v. J. Murphy & Sons Ltd.	Derby	10 September 1984	B. Woods	—	—	—	Section 2(1) and 3(1) HASWA 1974.	£200 £10,000	£1,500
213/84	Rv. Portnagas Ltd.	Leicester	27 July 1984	E.F. Jowitt Q.C.	—	—	—	Section 2(1) HASWA 1974.	£12,000	plus costs
256/84	Rv. Marley Roof Tile.	Reading	10 December 1984	M. Birks	—	—	—	Section 14(1) Factories Act 1961.	£800	£1000
287/84	Rv. Sullivan Management Control Ltd. Rv. Colin Thomas Sullivan	Stainesbrook	16-20 September 1985.	Mr. Assistant Recorder P. Singer.	P. O'Brien	—	—	Section 2 and 37 HASWA 1974. Failure to comply with Prohibition Notice.	£500 £500 £750 1 month imprisonment (suspended) £750 £1000	£2000 £2000

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
174/84	H.S.E. v. Relabond Ltd.	Portsmouth	18 April 1984	H.H. Judge Baker Q.C.	—	—	Section 2(1) HASWA 1974	£750	£200	Central Funds	—

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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
534/83	R.v. Vibplant.	Aylesbury	21 December 1984	J.K.E. Slack T.D.	—	—	—	—	Section 2(1) HASWA 1974.	Guilty	—
565/83	R.v. New Taplow Paper Mills Ltd.	Aylesbury	3 May 1984	J.K.E. Slack T.D.	—	—	—	—	Section 2(1) HASWA 1974	£1500	£500
588/83	R.v. Foraky	Nottingham	5 March 1984	J.R. Hopkin	—	—	—	—	Section 31(4) Factories Act 1961. Section 2 HASWA 1974.	£2,000	Central Funds
596/83	R.v. Stripping Company Ltd.	Willesdon	3 December 1984	—	—	—	—	—	Section 3 HASWA 1974	N.G.	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
488/83	R.v. Hinchcliffe & Sons (Dewsbury) Ltd.	Wakefield held at Huddersfield	12 October 1983	A.L. Myerston	—	—	—	—	Contravening a Prohibition Notice. Section 22 and 3(1) HASWA 1974. Reg 3 and 4(4) Construction (General Provisions) Regulations 1961.	£100 £100 £500	
417/83	R.v. Lancaster	Manchester	27 February 1984	A.M. Prescott	—	—	—	—	Section 3 HASWA 1974.	N.G.	—
523/83	R.v. Smith Engineers Ltd.	Maidstone	14-16 May 1984	A.M. Troup	—	—	—	—	Section 4(2) HASWA 1974	£300	£500

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
187/83.	R.v. Hurley	Aylesbury	23 November 1983	L.J. Verney T.D.	P.O'Brien	H.S.E.	Lord Hooson Q.C.	Patinson and Brewer	Section 7(a) HASWA 1974	N.G.	—
224/83	R.v. BCB Pipe Freezing Services.	Croydon	8 July 1983	Jean Graham Hall.	—	—	—	—	Section 2(1) and 3(1) HASWA 1974.	£750	£500
226/83	R.v. Edward John Stringer	Bedford	13-15 July 1983	Mr. Recorder Wiseman	—	—	—	—	Section 2(1) HASWA 1974.	N.G.	Central Funds.
287/83	R.v. Jagger	Sheffield	6-7 August 1984	A.C. Lauriston Q.C.	—	—	—	—	Section 90(1) and 66(1) Mines and Quarries Act 1954.	£750 £250	—

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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
—	R.v. Potters Oils	Notting- ham	29 November- 9 December 1983.	—	—	—	—	—	Section 2(1) HASWA 1974	£15,000	£45,000
540/82	R.v South Northamp- tonshire District Council.	Oxford	31 January 1983	G.K. Mynett Q.C.	—	—	—	—	Section 2 (1) HASWA 1974	£300	£1,000



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
330/82	R.v. London Demolition (UK) Ltd.	Central Criminal Court	15 December 1982	—	—	—	—	—	Section 3(1) HASWA 1974 Reg 41(4) Construction (General Provisions) Regs 1961.	£10,000	—
337/82	R.v. Sarcio	Inner London Crown Court	—	—	—	—	—	—	Section 7 HASWA 1974 Reg 6 (3) Abrasive Wheels Regs 1970.	Not proceeded with left on file. Absolute Discharge.	—
344/82	R.v. Willcott and Abbott	Exeter	29 September 1982	—	—	—	—	—	Regs 3 and 6 Construction (Working Places) Regs 1961 Section 3 (2) HASWA 1974.	Willcott Conditional Discharge (Guilty Plea) Abbott Conditional Discharge (Guilty Plea) Willcott and Abbott N.G.	£80 £50

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
159/82	R v. Shropshire County Council	Worcester	30 June 1983	J.T.C. Lee	Maxwell	—	Roddick	—	Section 3 HASWA 1974	£2,500	—
160/82	R v. Claudio Adcock	Lincoln	30 June	Mr. Recorder Sir Godfrey Le Quesne Q.C.	—	—	—	—	Section 14 Factories Act 1961. Contravention of a Prohibition Notice HASWA 1974	£150	£100
162/82	R v. Marcant Textiles (Machinery) Ltd.	Wakefield (sitting at Huddersfield)	15 June 1982	D. Herrod Q.C.	David Gripton	R.C. Moorhouse	—	—	Section 7 HASWA 1974	N.G.	—
166/82	R v. David Glen	Tees-side	30 June 1982	R.A. Percy	—	—	—	—	Section 7 HASWA 1974	N.G.	—

Health & Safety Executive Cases  
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H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
—	R.v. Alfred Thomas	Wolverhampton	17 July 1980	P.C. Northcote	J. Roberts	Edge, Ellison Hartwell Pritchett and Co.	J.D. Riley	Lee Crowder and Co.	Section 3 HASWA 1974	£100	Central Funds.
—	R.v. W.J. Furse	Wakefield	24 July 1980	M. Gosney	A. Simpson	—	J. Derby Q.C.	—	Section 2(1) HASWA 1974	£400	£100
178/80	R.v. Goodyer	St. Albans	19 December	—	—	—	—	—	Section 7 (a) HASWA 1974	Conditional Discharge	—

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registered in 1979 and heard in the  
Crown Court by way of indictment.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
-	R.v. Hemel Hempstead Motors Ltd.	St. Albans	30 May 1980	-	-	-	-	-	Section 3(1) HASWA 1974	N.G.	-
160/79	Parker v. Hagan	Inner London	28 August 1980	-	-	-	-	-	-	N.G.	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
112/79	R.v. Cottrill	Warwick	4 June 1979	—	—	—	—	—	Section 7 HASWA 1974.	N.G.	—
110/79	R.v. Stowell Investment Ltd.	Salford	3 December 1979	—	—	—	—	—	Section 2 and 3(1) HASWA 1974.	N.G.	—
—	R.v. Dudley John Bowers	Portsmouth	22 November 1979	K.C.L. Smithies and N.J.L. Broderick	R. Backhouse	Philip Evans and Co. Bournemouth.	W. Crowther	D'Angibou and Main Bournemouth	Section 3(2) and 6(1) and 6(1) HASWA 1974.	N.G. N.G. N.G.	—
—	R.v. British Gas Corporation.	Plymouth	17-21 March 1980	A.C. Goodall M.C.	P. Beck Q.C. N. Inglis Jones	Bond, Pearce & Co.	A. Rankin Q.C. W. Rankin	J.D. Foy Q.C. British Gas	Section 2 HASWA 1974.	N.G.	—
154/79	R.v. A.W. McAllister Bowditch.	Exeter	14-16 April 1980	Mr. Recorder G.S. Harvey M.B.E. T.D.	P. Mott	Wilmott and Clark Chard Somerset	N. Hamilton Bristol	Peole and Co. Yeovil.	Reg 3 and 44(2) Construction (General Provisions) 1961 Section 3 (2) HASWA 1974	N.G.	—



Health & Safety Executive Cases  
registered in 1978 and heard in the  
Crown Court by way of indictment.

H.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.E.	Solicitors for H.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
207/78	R v. Nutall	Gravesend	11 April 1979	Street	Hitching	Kingsford Flower and Pain. Ashford.	Ripman	Mackerrall London	Construction (Lifting Operations) Regs 1961.	£4000 £750 £250 £5000	£500
—	R v. Sheavogate	Canterbury	25 May 1979	Street	Collins	Kingsford Flower and Pain. Ashford.	Saunt	Greenwards London	Reg 44(2) 3(1)(b) Construction (General Provisions) Regs. 1961 Section 3 (1) H.A.S.W.A. 1974.	£1000  N.C.	£200  —
—	R v. Cigaret Group Contractors Ltd	Canterbury	25 May 1979	Street	Collins	Kingsford Flower and Pain. Ashford.	Nixon	Ponsford Devonish London	Section 3(1) H.A.S.W.A. Section 4(1) and 4(2) H.A.S.W.A. 1974	N.C. N.C. £5000	—  £800

Health & Safety Executive Cases  
registered in 1977 and heard in the  
Crown Court by way of indictment.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
106/77	R. v. Caitlin Ltd.	Starchbrook	13 May 1977	—	—	—	—	—	Section 2 (1) HASWA 1974	£3000	£598.40
106/77	R. v. Harrison Brothers (Fidention Works) Ltd.	Worcester	15 March 1977	—	—	—	—	—	Section 2 (1) HASWA 1974	£500	Prosecution Costs
128/77	R. v. Alfred Meakin (Tussey) Ltd.	Stoke-on-Trent	—	—	—	—	—	—	Section 2 (1) HASWA 1974	£200	£500
142/77	R. v. Hermal Hempstead Engineering Co. Ltd.	St. Albans	—	—	—	—	—	—	Section 14 (1) Factories Act 1961	£500	£75
140/77	R. v. Leonard Fairclough Ltd.	Newcastle-upon-Tyne	4 July 1978	—	—	—	—	—	Section 2 (1) HASWA 1974	£750	£250

Health & Safety Executive Cases  
registered in 1976 and heard in the  
Crown Court by way of indictment.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
202/76	R.v. Ruberoid Contracts Company Ltd.	Dudley	18 October 1977	-	-	-	-	-	Reg 3 (1)(a) Construc- tion Working Places) Regula- tions 1966.	£250	Prosecu- tion Costs

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
149/76	R v. Darremouth Auto Castings Limited	Wisle	6 January 1976	-	-	-	-	-	HASWA 1974 Factories Act 1961	£100 £100 £30	-
165/76	R v. British Steel Corporation	Lincoln	16 January 1976	-	-	-	-	-	Section 2 HASWA 1974	£700	-
191/76	R v. Bish	Guildford	-	-	-	-	-	-	HASWA 1974 Failure to comply with a Prohibition Notice.	£100	£50
191/76	R v. Metal Pre-treatment Company Ltd.	Guildford	-	-	-	-	-	-	HASWA 1974 Failure to comply with a Prohibition Notice.	£250	£100

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
—	R v. Breidero Price (UK) Ltd.	Grimsby	19 March 1976	J.F. Blythe	J.M.G. Roberts	Walters & West Grimsby	C.C. Colston	John Barker Grimsby	Section 2 HASWA 1974	£5000	£500
100/76	R v. Explosives and Chemical Products Ltd.	Mold	24 May 1976	—	—	—	—	—	Explosives Act 1875.	£100	£40
102/76	R v. Raymond John Sayers	Stoke-on-Trent	11 June 1976	—	—	—	—	—	Section 1 Employment of Women & Young Persons & Children Act 1920 and Section 14 Factories Act 1961.	£1000  £100	£500



Health & Safety Executive Cases  
registered in 1975 and heard in the  
Crown Court by way of indictment.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel for H.S.E.	Solicitors for H.S.E.	Counsel for Defence	Solicitors for Defence	Offence	Fine	Costs
106/75	R. v. Jenner	Margate	16 June 1975	—	—	—	—	—	Reg 12(1) Construction (General Provisions) Regs 1961	£250	£500
112/75	R. v. Ballie Contracting Company Ltd.	Dudley	27 November 1975	Cheswynd Talbot	J.M.G. Roberts	—	F.A. Allen	—	Section 2 (1) HASWA 1974, Reg 3 (1) (a) and Reg 21 (1) (a). Construction General Provisions) Regulations 1951	£100  £100	£207.36

The Enforcement Policy and Practice  
of the Health and Safety Executive  
1974-1990

Thesis presented for the Degree of Doctor of Philosophy

Frank Beverley Wright

Volume II

Faculty of Law  
UNIVERSITY OF LEICESTER

1995

**Health & Safety Executive Cases**  
**registered in 1988 and heard in the Crown Court**  
**by way of Appeal from Magistrates Courts**

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
243/88	ACE Electro- plating Ltd. v. Parkes	Leicester	20 May 1988	H.H. Judge Bythe T.D.	Paul Spencer, 2, New Street, Leicester, LE1 5NA Owston & Co. Solicitors, 23, Friar Lane Leicester, LE1 5DQ	Phillips & Powell Solicitors, 3, De Montfort Leicester	Section 137(1) Factories Act 1961 Section 3(1) HASWA 1974 Electricity (Factories Act) Special Regula- tions 1968 and 1944 7 offences	£500	£250	£200	-
							£500 for each of the seven offences	£500	£500 for each of the seven offences		

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
602/87	John E. Clarke and Colin Nash v. Bennett	Newport (I.O.W.)	19 February 1988 22 April 1988	H.H. Judge Inskip Q.C. H.H. Judge Lewis Q.C.	S. Hancock, 17, Carlton Crescent, South- ampton, SO9 5AL  Roach Pitrs, 62- 70, Lisle Street, Newport, Isle of Wight, PO30 5EU	Messrs Wilks, 9, Garfield Road, Ryde, Isle of Wight PO33 2PS	Section 127(6) Factories Act 1961 Section 3 HASWA 1974	£750 (+ costs of £58) £750 (+ costs of £58) £750 (+ costs of £58) £750 (+ costs of £58)	£750  £750  £750  £750	£455.20	-

## Health & Safety Executive Cases

registered in 1987 and heard in the Crown Court

by way of Appeal from Magistrates Courts

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
659/87	Hertford Construction Services v. Lockwood	Oxford	18 December 1987	H.H. Judge Clark Q.C.	Robert Glancy, 2, Dr. Johnson's Buildings, Temple, London, EC4  A.H. Franklin Solicitors, 14, King Street, Oxford, OX1 4HY	Linnels Solicitors, 12, King Edward Street, Oxford, OX1 4HX	Regulation 3(1) Construction (Lifting Operations) Regs 1961 (4 Offences)	£750 for each of the four offences	£500 for each of the four offences	No order as to costs	-



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
667/87	Al Shearing Company Ltd.	Wolverhampton	4 December 1987	Ward	Sarah Paneth, 1, Essex Court, Temple, London, EC4Y9AR Norman Bayley Hooper, Round & Co. 195 Wolverhampton Street, Dudley DY1 1JW	Pages, 30/32 Lichfield Street, Wolverhampton WV1 1DH	Section 14(1) Factories Act 1961 (3 Offences)	£500 + £76 costs £500 + £76 costs £500 + £76 costs	£500 £500 £500	£275	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
431/87	Leasowe Lifting Services (Liverpool) Ltd. v. Picken	Chester	11 September 1987	H.H. Judge Elystan-Morgan	R. Dutton, 40, King Street, Chester, CH1 2AH  Camons Solicitor, 2, White Friars, Chester, CH1 1PS	Mace & Jones Solicitors, Drury House, 19, Wales Street, Liverpool, L2 0RP	Regulation 30 and 36 Construction (Lifting Operations) Regs 1961	£1500 £1500	£1200 £500	Defendants costs up to £200 from Central Funds	Appeal allowed

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
406/87	Geoffrey Reynier Ltd. v. Brotherton	Manchester	28 September 1987	H.H. Judge Hardy	R. Machell, Dean's Court Chambers, Manchester.  Mark Pearson & Skellon Solicitors, 41, Spring Gardens, Manchester M2 2BB	Butcher & Barlow Solicitors, Old Colony House, South King Street, Manchester, M2 6DQ	Section 30(9) Factories Act 1961 (3 Offences)	£2,250 plus £50 costs	£1,510 plus £50 costs	£50 (as before)	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
398/87	Blackwell v. Williams	Mold	16 Septem- ber 1987	—	Roger Dutton, 40, King Street, Chester, CH1 2AH	Clement Jones & Co., 49, High Street, Holywell, Clwyd, CH8 7TF	Section 33(1) HASWA 1974	£250	Appeal upheld		

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
277/87	Brealey v. Cowlin	Leeds	3 April 1987	Mr. Recorder Gills	Miss Angela Finnery, Pearl Cham- bers, 22, East Parade, Leeds, LS1 5BJ  Norman S. Taylor, Victor D. Zernansky & Co., 10, Butts Court, Leeds, LS1 5JS	T.L. Clough, 32a, Market Street, Bradford, BD1 1NQ	Section 13(1), 13(1), 14(1), 14(1) and 14(1) Factories Act 1961. Contra- vention of a Prohibi- tion Notice.	£100 £100 £100 £100 £100 £750 + £48 costs	£100 £100 £100 £100 £100 £750	No order as to costs	Weekly instal- ments reduced for £25 per week to £20 per week

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
958/87	Shardlow v. Davis	Derby	12 June 1987	H.H. Judge J.F. Byrde T.D.	Peter Joyce, 24, The Ropewalk, Notting- ham, NG1 5EF  AA & H.W. Timms Solicitors 1a Babington Lane, Derby, DE1 1SU	Robin Thompson & Partners, Price House, 37, Stoney Street, Notting- ham, NG1 1LS	Section 2 HASWA 1974	£500 plus £50 costs payable @ £7 per week	£500 payable @ £10 per week	Additional costs £100	Sentence lenient (H.H. Judge J.F. Byrde T.D.)

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
246/87	Christian Salvesman Food Services Ltd. v. Sykes	Ipswich	4 June 1987	Mr. Recorder Louis Borrett	John Dagg, 2, Kings Bench Walk, Temple, London, EC4YDE Birketts, 20/28 Museum Street, Ipswich, IP1 1HZ	Simon Brown	Section 2(1) HASWA 1974	£2000 plus costs of £600	£1250	No order as to costs	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
236/87	Manor Cable Ltd. v. King	Beverley	1 May 1987	H.H. Judge J.M.A. Barker and 2 JJ	David Gripton, 39, Park Square, Leeds, LS1 2NU  M.R. Jackson, Andrew M Jackson & Co.  Solicitors, Victoria Chambers Bowalley Lane, Hull HU1 1XY	Piers Reed  Cosschalk Wheldon 10, Parliament Street, Hull HU1 1XY	Sections 22(2), 22(5) and 23(1)(b) Factories Act 1961	£500 £1500 £1500	£500 £1000 £1000	No order as to costs	-



H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
159/87	A.E. Hobley (Oxford) Ltd. v. Warner	Oxford	10 April 1987	H.H. Judge Hamilton	Richard O'Rourke, 4, Paper Buildings, Temple, London, EC4Y 7EX  A.H. Franklin & Sons, 14, King Edward Street, Oxford, OX1 4HY	Henman Ball & Co. Solicitors, 116, St. Albans, Oxford OX1 1HA	Section 2(1) HASWA 1974 Regula- tion 3(1) Asbestos Licensing Regs 1983	£1000  £500 £83 Costs	£250  £250	No order as to Costs	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
130/87	R. Bygott and J. Bygott v. Tilley	Bristol	6th March 1987	H.H. Judge Sir Ian Lewis	Ian Glen, Guildhall Chambers, 23, Brand Street, Bristol. Carwright P.O. Box 18, Marsh House, Bristol, BS99 7BB	Ann Edlin Robin Thompson & Partners, Solicitors, 1, Fitzalan Place, Newport Road, Cardiff, CF2 1US	Regulation 31 Construction (Lifting Operations) Regs 1961	£1500 + £182 costs for each person	£1500	Central Funds	-

**Health & Safety Executive Cases**  
**registered in 1986 and heard in the Crown Court**  
**by way of Appeal from Magistrates Courts**

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
657/86	Malcom Jenkins v. Wright	Bristol	1986	H.H. Judge P.D. Fanner and two JJ	Richard Tyson, 3, Paper Buildings, Temple, London, EC 4V 7EY  Cartwright Solicitors PO Box 18 Marsh House, 11, Marsh Street, Bristol BS99 7BB	Malcom Jenkins repre- sented by himself in the Crown Court. Lyons Davidson Solicitors, Metherton House, 23- 29 Marsh Street, Bristol, Avon	Section 3 HASWA 1974 Reg 12 Construc- tion (Working Places) Regula- tions Section 2 HASWA 1974	£400  £400  £400  £120 Costs	£400  £400	£500	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
415/86	Bozeat Industrials v. Keddie	Northampton	23 July 1986	H.H. Judge F.A. Allen and two JJ	Roy Ashton, 22, Albion Place, North- ampton.  Beattie Phipps, 7, Spencer, Parade, North- ampton NN1 5AB	Howes Perchival, 47/49 Derigate North- ampton NN1 1UF	Sections 14(1) and 2(1) - Factories Act 1961	£1500  £1500 plus costs	£1500  £1500	£200	Failure to train and supervise staff ad- equately. Slack manage- ment and equip- ment mainte- nance.

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
383/86	Dalton & Sons Ltd.	Bournemouth	20 June 1986	H.H. K.C.L. Smithies and two JJ	Nigel Seed, 3, Paper Buildings, Temple, London, EC4Y 7EU  Lock, Reed & Lock, 53, High West Street, Dorchester, DT1 1UX	Edwards & Bodley, Bargates House, Bargates, Christchurch, Dorset.	Section 2 HASWA 1974.  Agricultural (Power Take Off) Regulations 1957	£1000  £1000 + £291 costs	£100  £100	Central Funds	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
383/86	Oakfield Eggs Ltd. v. HSE	Worcester	5 August 1986	H.H. Judge F.A. Barnes Q.C. and two JJ	M. Kingston/ M. Second, 5, Fountain Court Birmingham, Rivers B Hickman & Co. 3, Foregate Street, Worcester WR1 1DB	—	Agriculture Statutory Machinery Regs. 1959. Health and Safety at Work etc. Act 1974	£1000 £1000 £200 plus costs	£500 £500 £200	Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
354/86	M.E. Hamill v. S. Mawer (Miss) A.M. Inspector of Factories	Kingsbridge	25 June 1986	Mr. Recorder Grieve Q.C. and two JJ	Mark Batchelor 3, Hare Court, Temple, London, EC4Y 7BJ Health and Safety Executive	Miss Denham John Boys & Co., 240A, High Road, Wood Green, London N22 4HH	Reg 8 (1)(a) Construction (General Provisions) Regs 1961	£2000 plus costs	£250	£100	Costs remain at level set by Court in first instance.



Health & Safety Executive Cases  
registered in 1985 and heard in the Crown Court  
by way of Appeal from Magistrates Courts

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
653/85	Gaylor v. Allan	Southwark	15 November 1985	111 Judge D.R.D. Lowe	Mark Batchelor, 3, Ilare Court, Temple, London, EC19 2BJ.  The Solicitor, H.S.E., Baynards House, Weddorne Grove, London, W2 4TP	David Ratford, Edward Lewis & Co., 9, Jockeys Fields, London, WC1R 4BW.	Section 3 H/ASWA 1974	£2000	£350	Prosecution costs from Central Funds	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
587/85	H.S.E. v. Bedford	Wisbech	30 September 1985	The Recorder and Justices	Timothy Britten, 1, Temple Gardens, Temple, London, EC4Y 9BB Dawkins, 1, York Road, Wisbech, Cambridgeshire, PE13 1EA	—	Section 7(a) HSWA 1974	£1000	£500	Prosecution Costs from Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
544/85	Lovell Tandem v. Health & Safety Executive	Southwark	18 Septem- ber 1985	—	—	—	Section 4(2) HASWA 1974	£1500	£1000	Prosecu- tion costs to be paid by Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
520/85	Day v. Import Fabrications Ltd.	Leicester	10 October 1985	H.H. Judge M.J. Astill	—	—	Section 2(1) H/ASWA 1974	£2000	£250	Costs from Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
471/85	Williams v. Mitchell	Plymouth	6 August 1985	H.H. Judge Roff	—	—	Reg 6 Construc- tion (Working Places) Regula- tions 1966	£750	Appeal disallowed	Appellant Williams to pay costs	

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
470/85	Walkden v. Corcoran	Manchester	9 October 1985	H.H. Judge H.S. Singer	—	—	Sections 21(1), 14(1) and 155(1) Factories Act 1961  Sections 33(3) and 14(1) HASWA 1974	£1000 £1000 £1000	£500 £400 £400	Costs from Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
458/85	Wrightson v. Nardalen Packaging Co. Ltd.	Teeside	23 June 1985	H.H. Judge H.G. Hall	—	—	Section 154(1) Factories Act 1961	£1000	Appeal dismissed	Costs awarded against Nardalen Packaging Co. Ltd.	—



H.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
442/85	K.E. B. May & R. Watson v. Williams	Croydon	9 August 1985	H.H. Judge R.M.N. Band M.C. Q.C.	—	Gough Clinton, and Brown 104, Bellegrove Road, Welling, Kent, DA 16 3ZE (Solicitors)	Reg 3(1) Asbestos Licensing Regs 1983  Section 127(6) Factories Act 1961  Employ- ment of Women, Young Persons and Children Act 1920  Asbestos Regula- tions 1965  Construc- tion and Provisions Regula- tions 1961	£600  £600  £600  £6000 (5 Offences)  £600	All Fines affirmed on appeal	Appeal dismissed with costs of £900	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
425/85	Emmott v. Newlay Concrete	Leeds	24 May 1985	H.H. Judge D.M. Savill Q.C.	—	—	Sections 13 and 14 Factories Act 1961	£1000 £6000 (6 Offences)	£700 £4500 (6 Offences)	Appellant to pay own costs. HSE costs from Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
411/85	Bruce's Weather- proof Clothing Ltd. v. HSE	Birmingham	19 July 1985	Mr. Recorder R.H. Curtis Q.C.	-	-	Section 155 Factories Act 1961	£1000	£500	Costs from Central Funds	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
284/85	Restmor v. Brown	Croydon	10 May 1985	Mr. Recorder I. Judge Q.C.	—	—	Section 2(1) HASWA 1974 Reg 5 Asbestos (Licensing) Regulations 1983	£1000  £1000	Appeal dismissed	Restmor to pay £300 prosecution Costs. Balance from Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
196/85	Leeds City Council v. Crookes	Leeds	15 March 1985	Mr. Recorder A.H. Hutchinson	-	-	Section 3(1) HASWA 1974	£1000	Appeal Dismissed	Appellant to pay Respondents costs	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
187/85	L.W. Hollands v. Clark	Lewes	22 March 1985	H.H. Judge C.D. Lovegrove Q.C.	—	—	Section 3(2) HASWA 1974	£100	£100	Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
124/85	McNicholas Construction Company v. S.J. Hunter	Chelms- ford	1 February 1985	H.H. Judge Wadding Q.C.	P.W. O'Brien, 5, Kings Bench Walk, Temple, EC4Y 7DN  Hilliard & Ward Solicitors 70 Duke Street Chelms- ford CM1 1JT	L. Wainmore & Co. 17- 18 Bishops Court, Old Bailey London EC7EL  J Stuart Smith.	Three offences under Section 3(1) HASWA 1974  One offence under Section 127(6) Factories Act 1961	£3000    £750	Appeal dismissed	Costs in the Crown Court of £300 to be paid by Appellant.	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
541/84	Anjad Faqr v. D.N. Cotton	Leicester	25 January 1985	H.H. Judge E.F. Jowitt Q.C.	—	—	Five offences Section 1 Employment of Women, Young Persons and Children Act 1920	£750 x 5 £3,750	£50 x 5 £250	Central Funds	—



**Health & Safety Executive Cases**  
**registered in 1984 and heard in the Crown Court**  
**by way of Appeal from Magistrates Courts**

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
273/84	H.S.E. v. Richmond	Grimsby	12 July	-	-	-	Breaches of Factories Act 1961	£500	£250	Central Funds	-

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following appeal	Costs	Comment
174/84	H.S.E. v. Relabond Ltd.	Port- smouth	18 April 1984	1111. Judge Baker Q.C.	-	-	Section 2(1) H.A.S.W.A. 1974	£750	£200	Central Funds	-

Health & Safety Executive Cases  
registered in 1983 and heard in the Crown Court  
by way of Appeal from Magistrates Courts

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine	Costs	Comment
408/83	Thorold Construction Company Ltd.	Keighraidge	7 October 1983	H.H. Judge Curtis Raleigh	—	—	Regs 26 and 31 Construction (Lifting Operations) Regulations 1961	£750 £250	£400 £100	£150 Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following Appeal	Costs	Comment
342/83	Cementation Piling v. Clive Martin	Knightbridge	11 November 1983	H.H. Judge A.G. Friend	—	—	Breach of Regulation 19(1) Construction (Lifting Operations) Regs 1961	—	Appeal allowed	Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel/ Solicitors for H.S.E.	Counsel/ Solicitors for Defence	Offence	Fine by Magistrates Court	Fine following Appeal	Costs	Comment
175/82	Spence v. Abdul Ghaffar	Manchester	22nd September 1983	H.H. Judge J.W. Bracewell Q.C.	—	Ghafter not represented	Regulations 1 and 21 Electricity (Factories Act) Special Regs 1908 and 1944	£250	£250	Ghafter to pay costs of £125	—
293/82	C.D. Howard v. P.L. Richards	Exeter	8th July 1982	H.H. Judge J.A. Cox	—	—	Five offences under Factories Act 1961	£2,100	£1500	Central Funds	—
452/82	Williams v. R.S. Williams	Croydon	—	—	—	—	Section 2(1) HASWA 1974 Regulation 4 Notification of Accidents and Dangerous Occurrences Regulations 1980	£500  £250	Nil  Nil	Central Funds	—

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Solicitors/ Counsel for H.S.E.	Solicitors/ Counsel for Defence	Offence	Original Fine	Fine following Appeal	Costs	Comment
108/83	Wade Adams Construc- tion (UK) Limited v. Taylor	Kingston- upon- Thames	24 February 1983	H.H. Judge A.K. Allen O.B.E.	—	—	Section 4(2) HASWA 1974	£1000	£750	Central Funds	



**Health & Safety Executive Cases**  
**registered in 1982 and heard in the Crown Court**  
**by way of Appeal from Magistrates Courts**

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel/ Solicitors for P.S.E.	Counsel/ Solicitors for Defence	Offence	Fine by Magistrates Court	Fine following Appeal	Costs	Comment
514/82	G.C. Osbourne v. C.R. Hurley	Reading	20th December 1982	-	-	-	Six Offences under Factories Act 1961 and the Electricity (Factories Act) 1961 Special Regulations 1908 and 1944	£250 on each count	£100 on three counts £200 on three counts	Central Funds	

H.S.E. Reference	Name of Case	Crown Court	Date of Hearing	Judge	Counsel/ Solicitors for H.S.E.	Counsel/ Solicitors for Defence	Offence	Fine by Magis- trates Court	Fine following Appeal	Costs	Comment
136/82	Phoenix Tuberman Ltd. v. Skilling	Tees-side	19 March 1982	H.H. Judge H. Hewitt	—	—	Section 26 (1)(d) Factories Act 1961 Section 26 (1)(g) Factories Act 1961 Section 26(4) Factories Act 1961	£800  £800  £800	£400  £400  £400	Costs from Central Funds	—
151/82	McGill v. Cross	Tees-side	4th April 1982	Mr. Recorder S.W. Williamson	—	—	Section 7(1) Wood- working Machines Regs 1974.	£500	£500	£250	—
175/82	Spence v. Abdul Chaffier	Bolton	30th April 1982	H.H. Judge Ivor Taylor Q.C.	—	Chaffier not repre- sented.	Regula- tions 1 and 21 Electricity (Factories Act) Special Regs 1908 and 1944	£250	£250	Chaffier to pay costs	—

**Appendix Two**

**CROWN COURT FINES**

**1975 - 1990**

**(Statistical Material)**

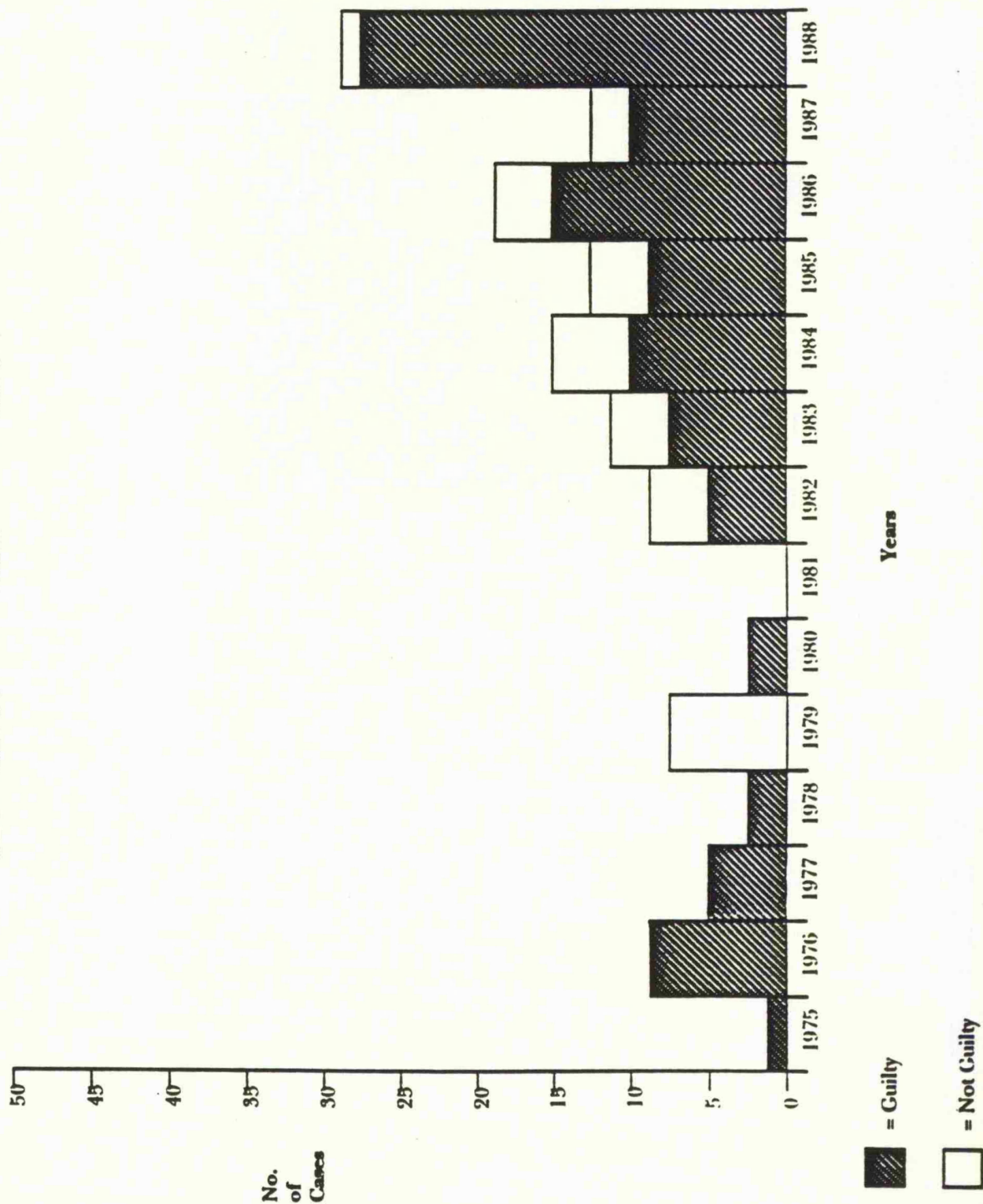
HEALTH & SAFETY EXECUTIVE CASES REGISTERED FROM 1975-1988 AND HEARD IN  
THE CROWN COURT BY WAY OF INDICTMENT.

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
ENGLAND AND WALES														
Midland and Oxford	1	5	2	—	2	1	—	4	1	4	1	2	2	4
North Eastern	—	—	1	—	—	1	—	2	2	5	2	3	1	1
Northern	—	—	—	—	—	—	—	—	1	—	—	—	2	3
South Eastern:														
London	—	—	1	—	1	—	—	2	1	2	1	2	1	8
Provinces	1	2	1	3	1	1	—	—	6	2	3	8	3	3
Wales and Chester	—	1	—	—	—	—	—	—	—	1	3	—	1	2
Western	—	—	—	—	3	—	—	1	—	—	1	3	2	6
Total	2	8	5	3	7	3	—	9	11	14	11	18	12	27

HEALTH & SAFETY EXECUTIVE CASES REGISTERED DURING THE YEARS 1982-1988 AND  
HEARD IN THE CROWN COURT BY WAY OF APPEAL FROM MAGISTRATES COURTS

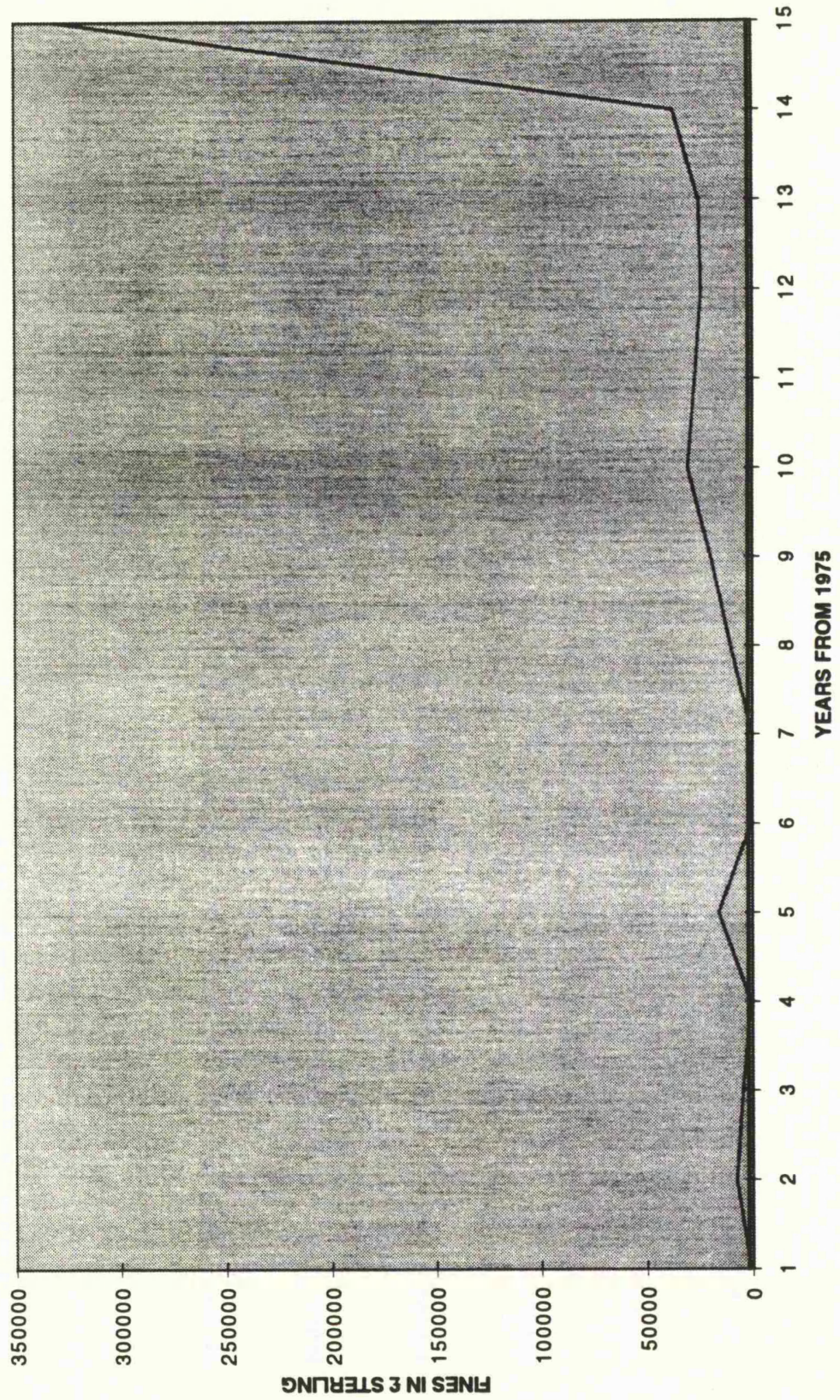
	1982	1983	1984	1985	1986	1987	1988
ENGLAND AND WALES							
Midland and Oxford	—	—	2	2	2	4	1
North Eastern	2	—	—	3	—	2	—
Northern	2	—	—	1	—	1	—
South Eastern:							
London	—	2	—	2	1	—	—
Provinces	2	1	—	5	—	—	—
Wales and Chester	—	—	—	—	—	2	—
Western	1	—	1	1	2	2	—
Total	7	3	3	14	5	11	1

# HEALTH & SAFETY EXECUTIVE CASES REGISTERED FROM 1975-1988 AND HEARD IN THE CROWN COURT BY WAY OF INDICTMENT OR BY WAY OF SECTION 6 MAGISTRATES COURT ACT 1980



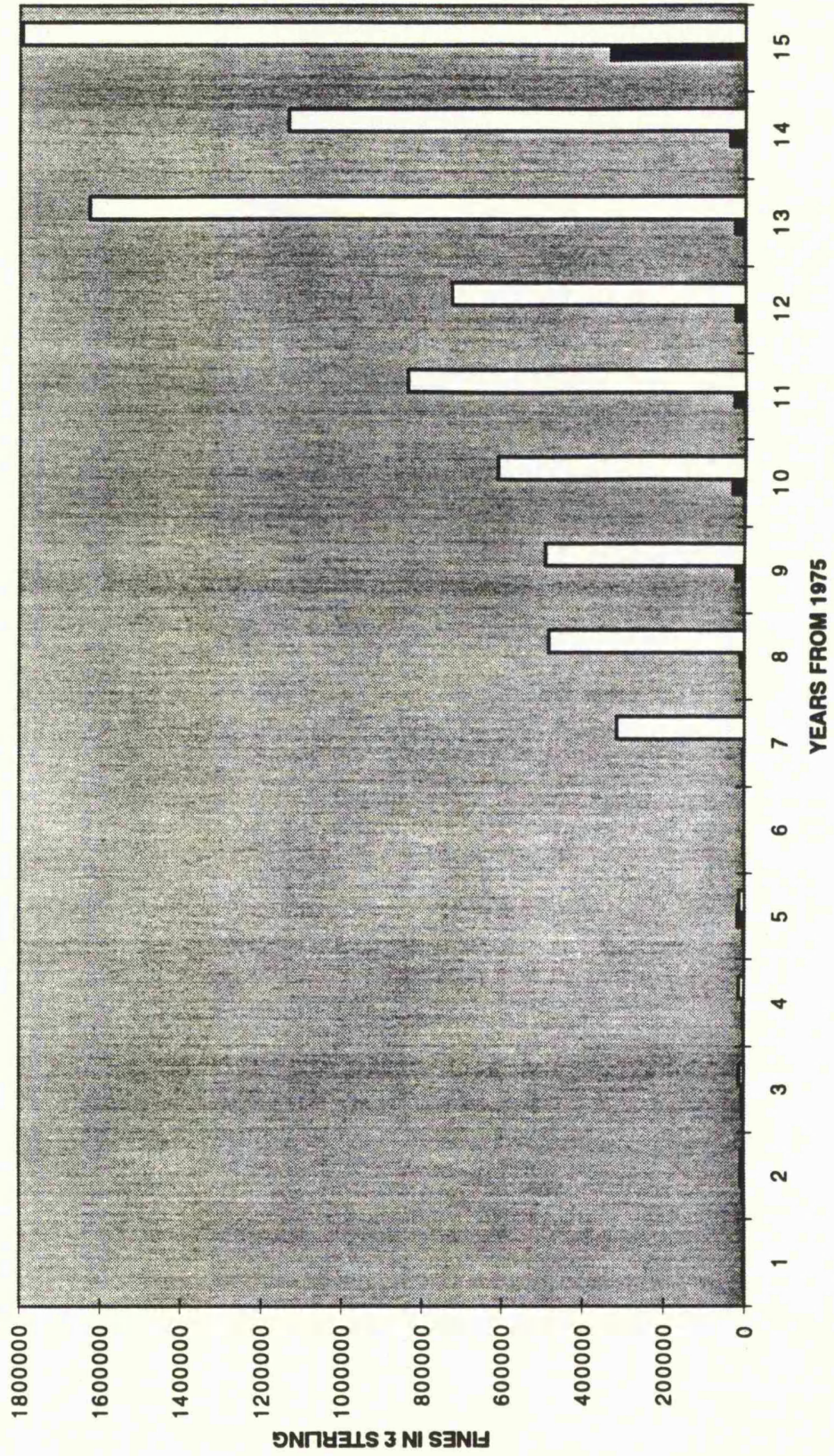


# CROWN COURT FINES FROM 1975



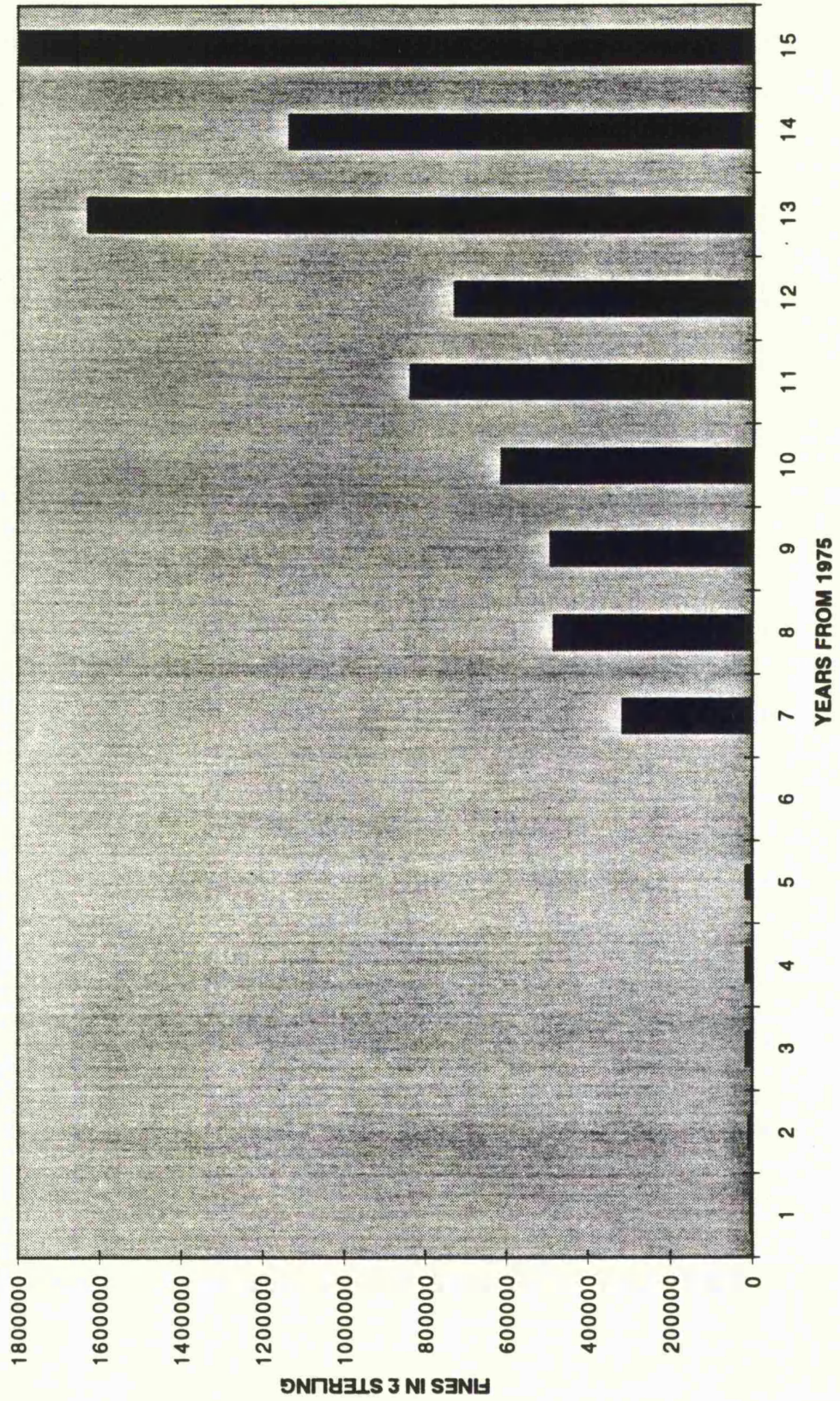


**CROWN COURT FINES IN PROPORTION TO TOTAL VALUE OF ALL FINES:1975-1989**



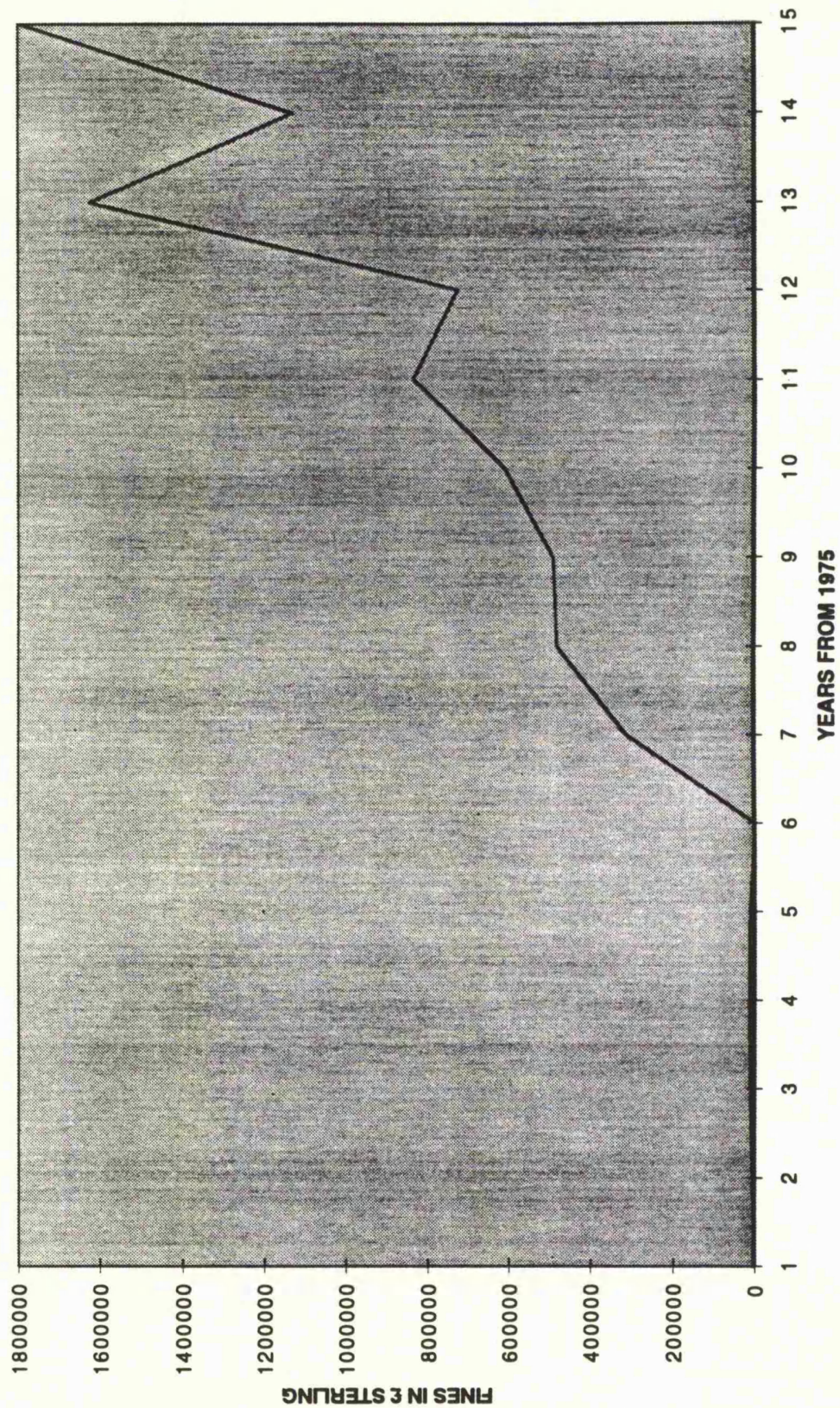


**TOTAL VALUE OF ALL FINES: 1975-1989**



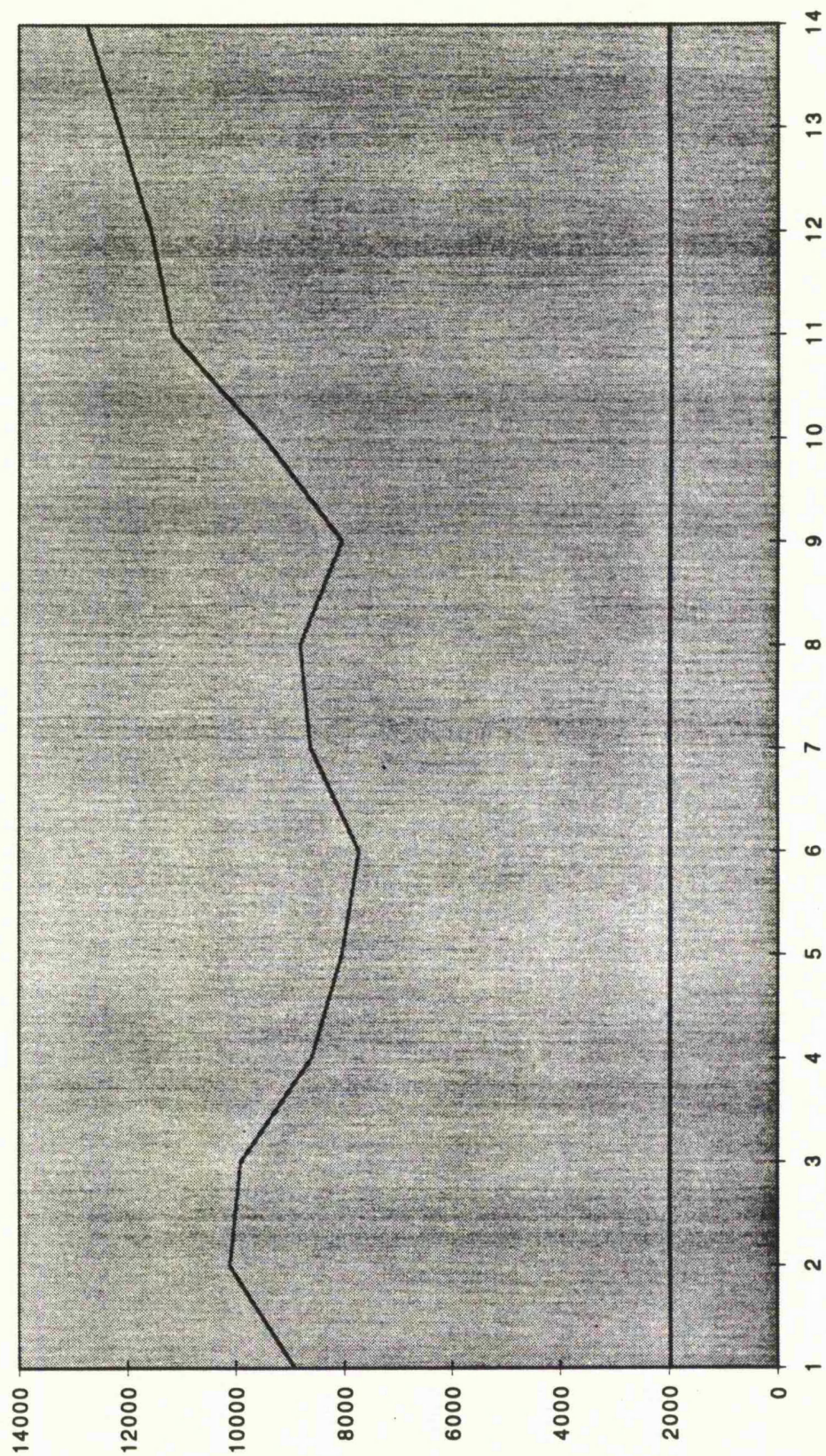


**TOTAL VALUE OF ALL FINES:1981-1989**



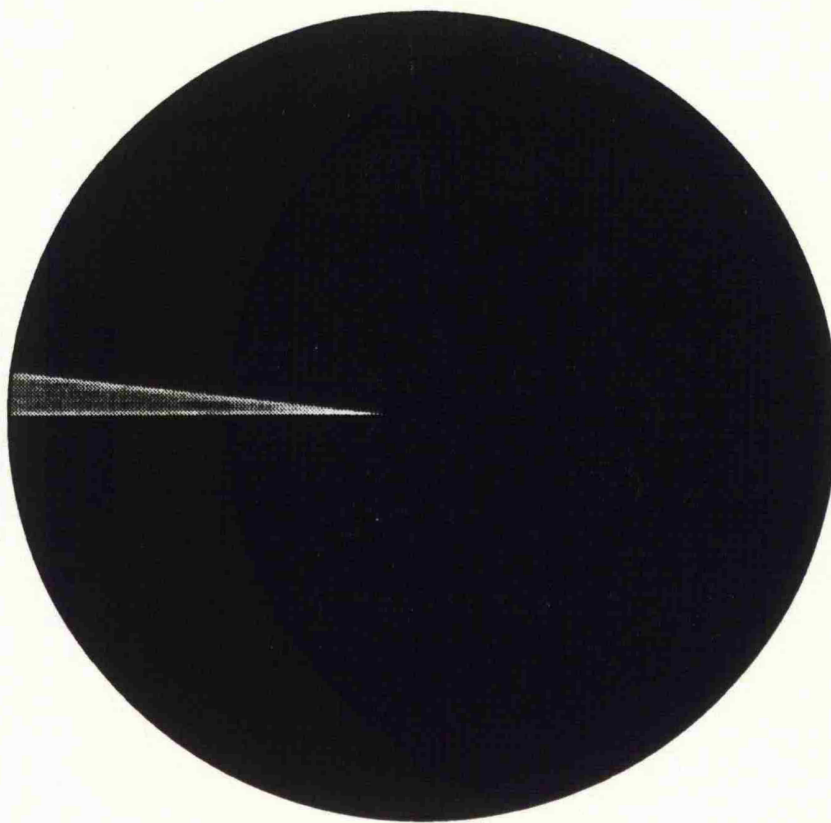


**ENFORCEMENT NOTICES ISSUED BY H.S.E. INSPECTORATES AND HEALTH AND SAFETY  
COMMISSION AGENCIES: 1977-1990**

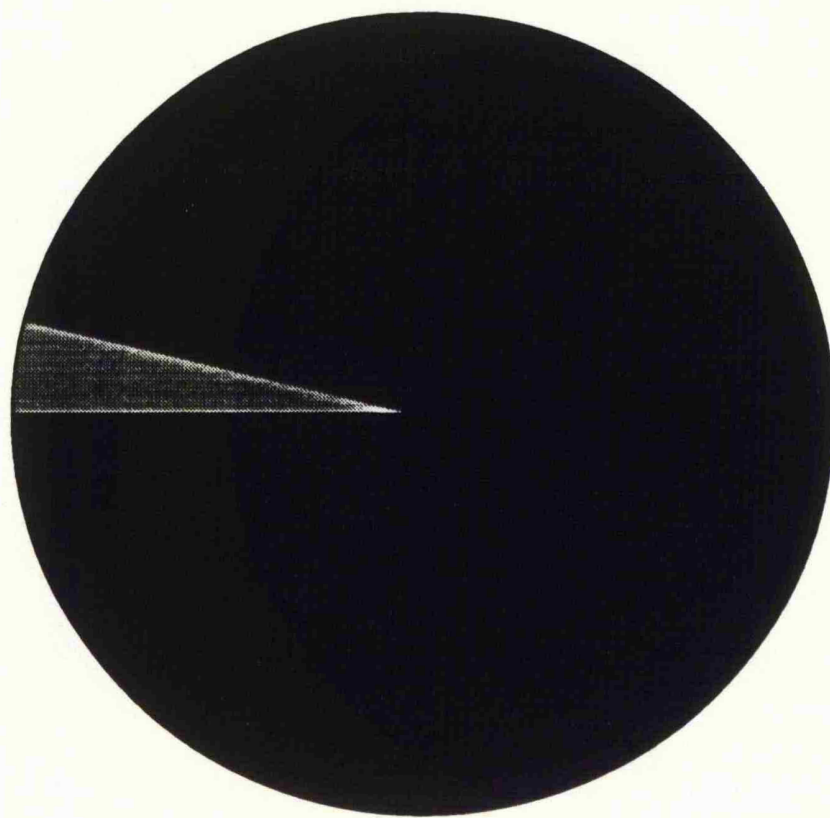




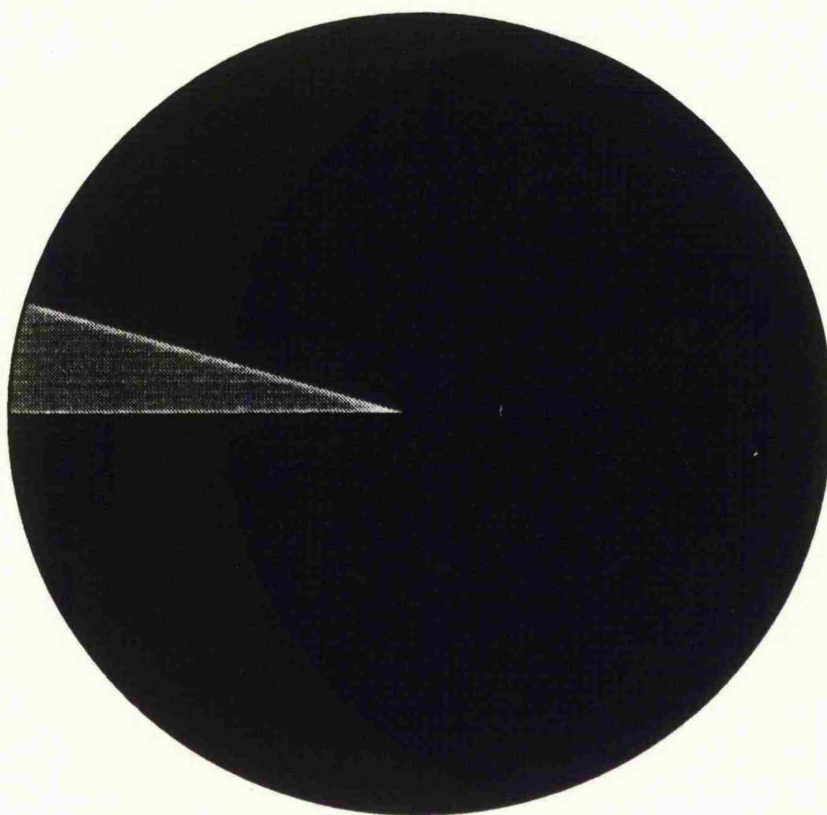
**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES: 1982**



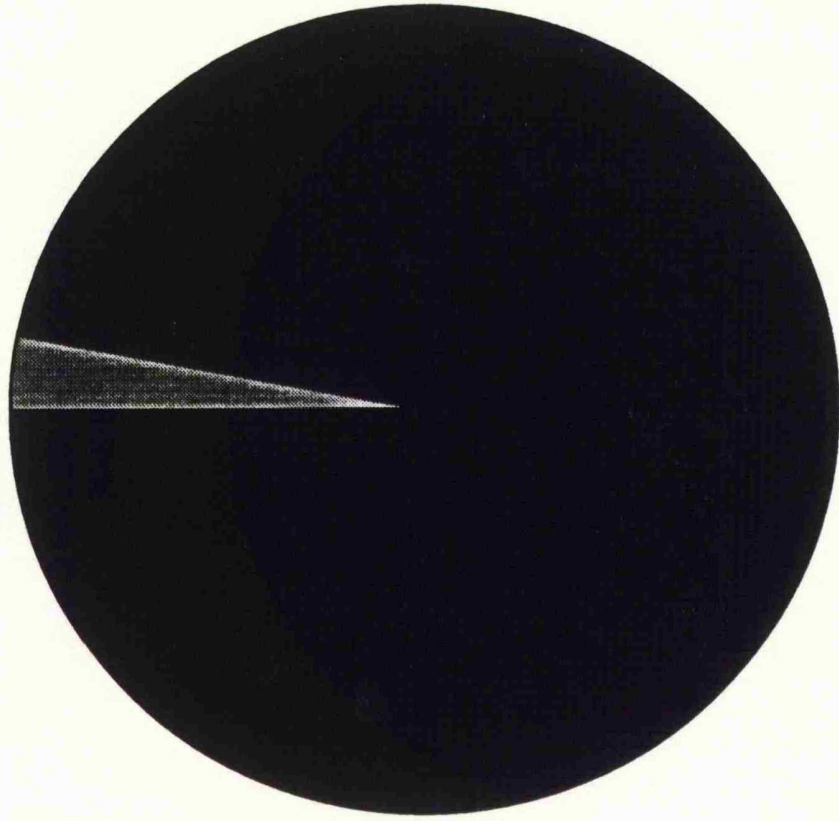
**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES: 1983**



**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES: 1984**

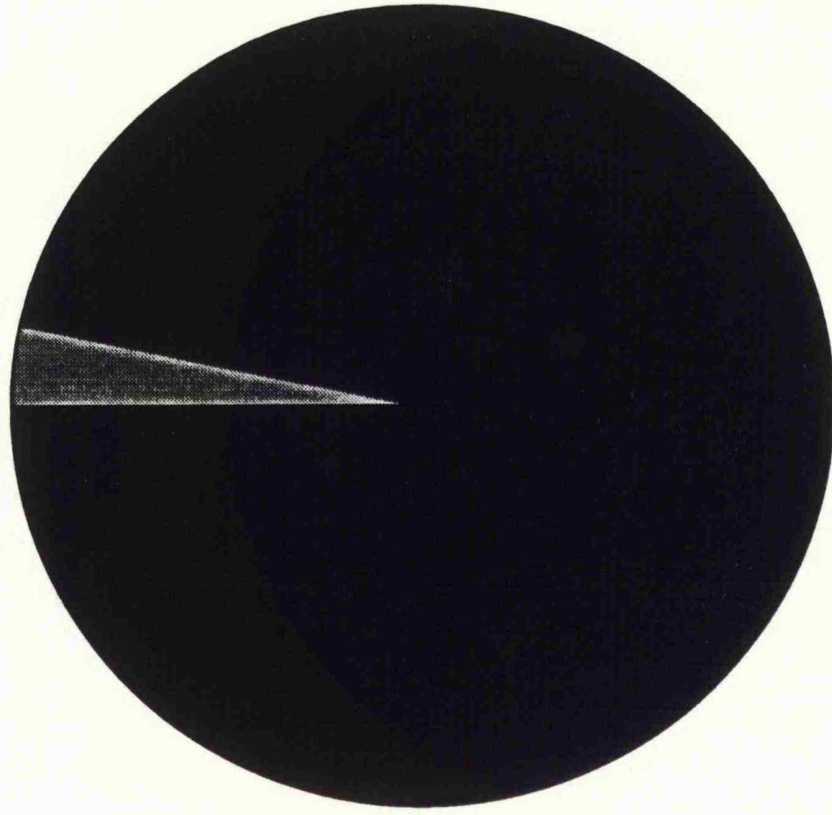


**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES:1985**

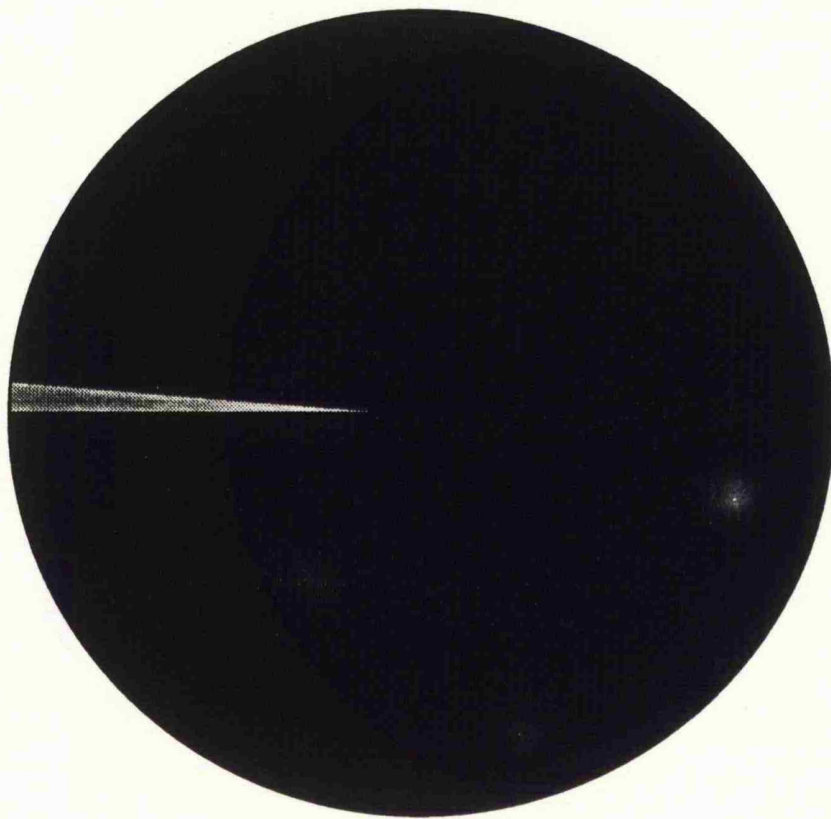




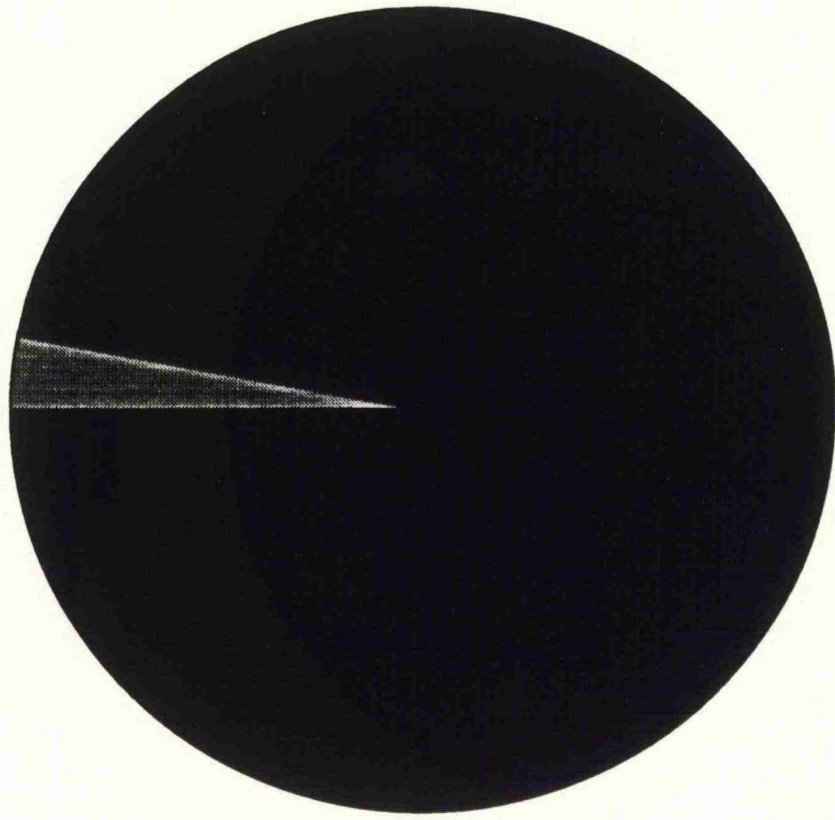
**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES:1986**



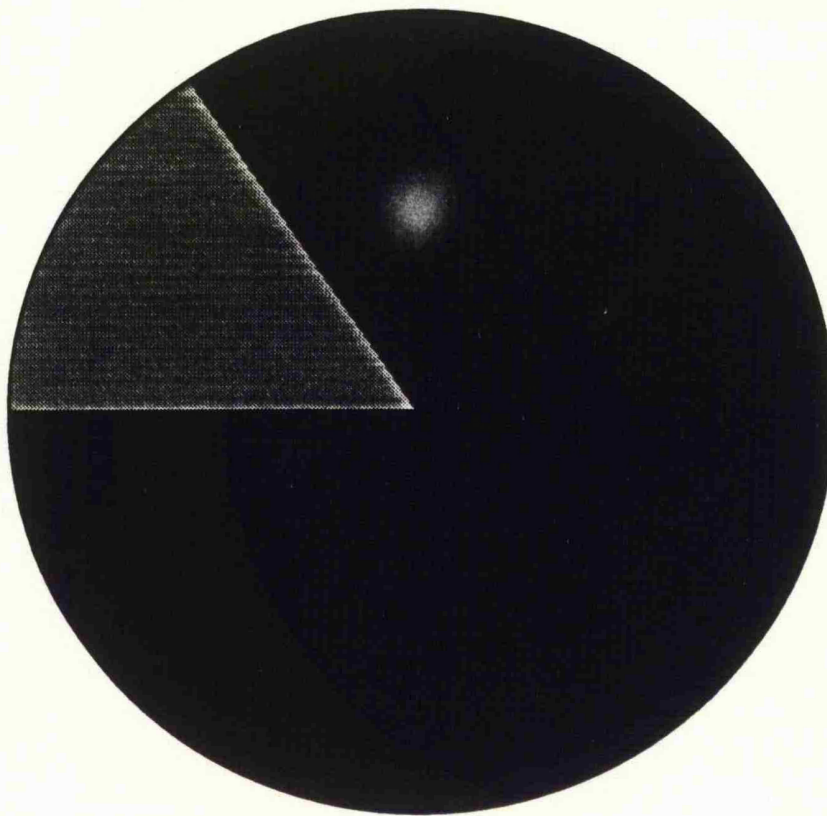
**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES: 1987**



**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES: 1988**



**CROWN COURT (ENGLAND AND WALES) IN PROPORTION TO TOTAL VALUE OF ALL  
FINES: 1989**



**Appendix Three**

**CROWN COURT CASES**

**1975 - 1990**

### **Criminal Courts.**

This study investigates those cases initiated by the Health & Safety Executive where the offender has elected Crown Court trial, where the Crown Court trial took place after magistrates' declined jurisdiction and where appeals were made to the Crown Court from a magistrates court. Any accident occurring at or in connection with work, and resulting in three or more days' incapacity, is reportable to the Health & Safety Executive. Fatal accidents are always subject to detailed investigation with a view to a report to the Coroner.

The study began in 1985 and covers a fifteen year period from 1974 to 1988. Initially, the Health and Safety Executive refused access to their files because they feared that the notes on their internal files might be brought into the public domain, although the then Solicitor to the Health and Safety Commission, Mr. A.S. Dinnis did provide a list of cases taken.

Research facilities were then made available with the help of Professor Charles D. Drake, of the Middle Temple, Barrister, Professor of English Law and Dean of the Faculty of Law in the University of Leeds, His Honour Judge Baker Q.C., North Eastern Circuit and Miss B.M. Griffith Williams of the Lord Chancellors Department. Access was given to individual Crown Court records.

This position changed in 1990 and full research facilities were made available in Baynards House, Chepstow Place, London W.2 the then headquarters of the Health & Safety Executive, through the good offices of Professor Alan C. Neal, of Grays Inn, Barrister, Professor of Law in the University of Leicester, my Ph.D. supervisor, and Mr. B.J. Ecclestone, Solicitor, Health and Safety Commission. Some of these case files may not now be in existence because documentation of this nature is often destroyed after a five year period. A gap in research records for cases in 1981 was inevitable because of the difficulties outlined above. Some of the recorded material is incomplete because some details in the original records, both in the courts and in the Health & Safety Executive were missing.

1975

Two cases were heard by way of indictment in 1975 and these were the first ever under the Health and Safety at Work etc. Act 1974.

The first case, Regina v. Jenner and Son Limited was heard at the Crown Court at Margate on 16th June 1975. (HSE Files No. SO/106/75).

Prosecution for breach of Regulation 12 (1) Construction (General Provisions) Regulation 1961.

The company was fined £250 and ordered to pay a contribution towards prosecution costs of £500 .

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The second case, Regina v. Baillie Contracting Company Limited was heard before His Honour Judge R.M.A. Chetwynd - Talbot and Jury at the Crown Court at Dudley on 27th November 1975. (HSE Files No. SO/112/75). The Health & Safety Executive was represented by counsel Mr. J.M.G. Roberts (later to become Mr Recorder Roberts Q.C.). The accused company, The Baillie Contracting Company, was also represented by counsel, Mr. F.A. Allen (later to become His Honour Judge F.A. Allen).

The company was committed for trial by Dudley Magistrates Court on October 31st 1975.

Facts: A mini- tunnel one metre in diameter was being constructed through an old industrial waste tip at Netherton, Worcestershire. Stewart Spinning and Mark Waldron were asphyxiated in a tunnel being constructed by the Baillie Contracting Company Limited.

Count 1.

Statement of Offence

Failure to ensure the safety at work of employees, contrary to section 2 (1) Health and Safety at Work etc. Act 1974.

Particulars of Offence

Baillie Contracting Company Limited on the 14th of April 1975 at Netherton in the County of Worcester, being employers, failed to ensure, so far as was reasonably practicable, the safety of two of their employees, namely Stewart Spinning and Mark Waldron, who were asphyxiated in a tunnel being constructed by the said Baillie Contracting Company Limited.

Count 2.

Statement of Offence

Failure to secure and maintain the adequate ventilation of a working place, contrary to ensure the safety at work of employees, contrary to Regulation 3 (1) (a) and 21 (1) (a) Construction (General Provisions) Regulations 1961 and Section 155 (1) Factories Act 1961.

Particulars of Offence

Baillie Contracting Company Limited on the 14th of April 1975 at Netherton in the County of Worcester, being employers of workmen undertaking certain works of engineering construction to which the Construction (General Provisions) Regulations 1961 applied, failed to take effective steps to secure and maintain the adequate ventilation of the place where Stewart Spinning and Mark Waldron were working in a tunnel being constructed by the said Baillie Contracting Company Limited or of the



approach to the place in the said tunnel where the said Stewart Spenning and Mark Waldron were to work, so as to maintain an atmosphere which was fit for respiration.

Count 3.

#### Statement of Offence

Allowing persons to enter a dangerous working place contrary to Regulations 3 (1) (a) and 21 (1) (a) Construction (General Provisions) Regulations 1961 and Section 155 (1) Factories Act 1961.

The company pleaded guilty to a failure to ensure the safety at work of employees contrary to section 2 (1) Health and Safety at Work etc. Act 1974 and a failure to secure and maintain the adequate ventilation of a working place contrary to regulation 3 (1) (a) and 21 (1) (a) of the Construction (General Provisions) Regulations 1961 and Section 155 (1) Factories Act 1961. The prosecution accepted a not guilty plea to Count 3 (allowing persons to enter a dangerous working place contrary to regulation 3 (1) (a) and 21 (2) of the Construction (General Provisions) Regulations 1961 and Section 155 (1) Factories Act 1961) and offered no evidence.

Judge Chetwynd - Talbot fined the company £400 on each of Counts 1 and 2 plus costs of £207.36 .

He said that the company had shown a "woeful lack of foresight " and that it must be made clear to the defendants and other companies that where dangerous work is undertaken the necessary precautions must be taken.

### 1976

Six cases were heard by way of indictment in 1976.

The first case, Regina v. Dartmouth Auto Castings Limited was heard at the Crown Court at Warley on 6th January 1976. (HSE Files No. SO/149/76).

Prosecution for breaches of Section 2 Health and Safety at Work etc. Act 1974, breaches of the Factories Act 1961.

The company was fined £230 and ordered to pay a contribution towards prosecution costs.

---

The second case, Regina v. British Steel Corporation was heard at the Crown Court at Lincoln on 16th January 1976. (HSE Files No. SO/165/76).

Facts: The case arose out of an explosion at British Steel Corporation's works at Appleby Frodingham, Scunthorpe, Lincolnshire on 4th November 1975 when eleven people died.

Prosecution for breaches of Section 2 Health and Safety at Work etc. Act 1974.

The company was fined £700 and ordered to pay the prosecution's costs.

---

The third case, Regina v. Bredero Price (U.K.) Ltd was heard at the Crown Court at Grimsby on 19th March 1976. The Health & Safety Executive was represented by Mr. J.M.G. Roberts. The accused company, Bredero Price (U.K.) Ltd., was also represented by counsel, Mr. C. C. Colston (later to become His Honour Judge Colston Q.C.)

Facts: The case followed the crushing to death of an employee in a trough mixer.

The company, which had entered a written plea of guilty, was committed for trial by magistrates under Section 1 Criminal Justice Act 1967.

Count 1.

#### Statement of Offence

Failing to ensure the safety of employees contrary to Sections 2 (1) of the Health and Safety at Work Act 1974, contrary to Section 33 (1) (a) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Bredero Price (U.K.) Ltd on the 11th day of June 1987 at Immingham Dock, Immingham, in the County of Yorkshire, failed to ensure so far as was reasonably practicable, the safety at work of their employees David Smith and George Joseph Gude.

Mr Recorder J.F. Blythe T.D. said at the Crown Court at Grimsby:

"The offence showed a breach of statutory duty and must be marked by a substantial penalty, not only as a punishment, but as a mark of public disapproval. It must be shown that these provisions were not only necessary but must be complied with."

The company was fined £5,000 and ordered to pay a contribution towards the prosecution's costs of £500.

---

The fourth case, Regina v. Explosives and Chemical Products Company Limited was heard at the Crown Court at Mold on 24th May 1976. (HSE Files No. SO/100/76).

Facts: The company pleaded guilty to contravening the terms of a magazine licence issued under the Explosives Act 1875.

The company was fined £100 and ordered to pay a contribution to the prosecution's costs of £40.

---

The fifth case, Regina v. Raymond John Sayers was heard at the Crown Court at Stoke on Trent on 11th June 1976. (HSE Files No. SO/102/76).

Facts: The case arose out of an accident to a 16 year old boy on 24th May 1975 at a scrapyard in Tunstall, Stoke on Trent.

Sayers was fined £1100 and ordered to pay a contribution to the prosecution's costs of £500.

Prosecution for breaches of Section 1 (1) of the Employment of Women and Young Persons and Children Act 1920 and Section 14 (1) Factories Act 1961.

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The sixth case, Regina v. Metal Pre Treatment Company Limited and Regina v. John Lubbock Bish was heard at the Crown Court at Guildford. (HSE Files No. SO/191/76).

Facts: Failure to comply with a Prohibition Notice contrary to Section 33 (1) (g) Health and Safety at Work etc. Act 1974.

The company was fined £250 and ordered to pay a contribution to the prosecution's costs of £100. John Lubbock Bish was fined £100 and ordered to pay a contribution to the prosecution's costs of £50.

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1977

Three cases were heard by way of indictment in 1977.

The first case, Regina v. Caitlin Limited was heard at the Crown Court at Snaresbrook on 13th May 1977. (HSE Files No. SO/105/77).

Prosecution for breach of Section 2 (1) Health and Safety at Work etc. Act 1974.at Walthorne, Essex on 18th August 1975.

The company was fined £3000 and orderd to pay prosecution costs of £598.40.

---

The second case, Regina v. Ruberoid Contracts Company Limited was heard at the Crown Court at Dudley on 18th October 1977. (HSE Files No. SO/202/76).

Prosecution for breach of Regulation 3 (1) (a) Construction (Working Places) Regulations 1966 at Wolverhampton on 4th March 1976.

The company was fined £250 and orderd to pay a contribution towards prosecution costs.

---

The third case, Regina v. Alfred Meakin (Tunstall) Limited was heard at the Crown Court at Stoke on Trent. (HSE Files No. SO/128/77).

Prosecution for breach of Section 2 (1) Health and Safety at Work etc. Act 1974 following an explosion at the new pottery, Tunstall, Stoke on Trent on 18th March 1976.

The company was fined £300 and ordered to pay a contribution towards prosecution costs of £500.

### 1978

Three cases were heard by way of indictment in 1978.

The first case, Regina v. Hemel Hempstead Engineering Company Limited was heard at the Crown Court at St. Albans on 27th January 1978. (HSE Files No. SO/142/77).

Prosecution for breach of Section 14 (1) Factories Act 1961.

The company was fined £500 and ordered to pay a contribution towards prosecution costs of £75.

---

The second case, Regina v. Ruberoid Contracts Company Limited was heard at the Crown Court at Newcastle Upon Tyne on 4th July 1978. (HSE Files No. SO/140/77).

Prosecution for breach of Section 2 (1) Health and Safety at Work etc. Act 1974.

The company pleaded guilty to one charge, the remaining three charges were left on file. The company was fined £750 and ordered to pay a contribution towards prosecution costs of up to £250.

---

The third case, Regina v. Appin Construction Company Limited was heard at the Crown Court at Maidstone on 27th June 1978 (HSE Files No. SO/112/78).

Prosecution for breach of Section 2 (1) Health and Safety at Work etc. Act 1974 and the Construction (Working Places) Regulations 1966.

The company was fined £8,000 and ordered to pay a contribution towards prosecution costs of £800.

1979

Seven cases were heard by way of indictment in the Crown Court in 1979.

The first case, Regina v. Cotterill was heard at the Crown Court at Warwick on 4th June 1978 (HSE Files No. SO/112/79).

Prosecution for breach of Section 7 Health and Safety at Work etc. Act 1974

Cotterill pleaded not guilty and the jury was unable to reach a verdict. A verdict of not guilty was recorded and costs were paid from central funds.

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The second case, Regina v. Edmund Nuttall Limited was heard at the Crown Court at Gravesend on 24th August 1979 (HSE Files No. SO/207/79) before His Honour Judge J.S. Streeter and one Justice of the Peace (R.E.C. Evans) and a Jury. The Health & Safety Executive was represented by counsel Mr. A. N. Hitching and Edmund Nuttall Limited was represented by Mr. P.H. Ripman.

Facts: Mr. D.A. Milner, H.M. Principal Inspector of Factories, led the investigation into the causes of the accident at Edmund Nuttalls site at Littlebrook 'D' Power Station, Dartford Kent on 9th January 1978. A Passenger hoist had fallen to the bottom of the onshore outfall shaft killing four of the occupants and severely injuring five others. The last thorough inspection had been carried out on 12 - 16 June 1977. The working load of hoist was recorded as eight passengers or one ton. The evidence of M.C. White 27.11.78. Scientific Officer, Health and Safety Executive, Sheffield was that the rope was very badly corroded and had lost up to 98% of its energy absorption capacity. The static axial breaking strength of rope in the region of final rope failure was 2.6 tonf. Undamaged and uncorroded rope would break at 18.0 tonf i.e. it had lost 85% of its original strength. Mr. B.J. James H.M. Senior Engineering Inspector of Factories found on 18th July 1978 that

- (a) The hoist had been poorly maintained resulting in gradual deterioration of at least part of the hoist rope and of the safety gear.
- (b) Deterioration of the hoist rope had been allowed to continue until fracture of the rope occurred whilst a load less than its safe working load was suspended from it.
- (c) The condition of the safety gear, particularly the linkage and mechanism between (1) cums and overspeed governor and (2) cams and hand-operating lever indicated that lack of maintenance had caused seizure of vital components.

Mr. James Subsequently found on 11th September 1978 that

- (a) The hoist had been poorly maintained, resulting in gradual deterioration of the safety gear mechanism.
- (b) The condition of the safety gear governor was such that it was doubtful whether the contact pressure between wheel and guide provided by gravity would have been sufficient to ensure continuous and effective rotation of the wheel during movement of the hoist cage.
- (c) The deposits of muck (aided possibly by corrosion) on the safety gear cam mechanism had prevented complete and effective operation of one of the cams.

First Count

Statement of Offence

Breach of Construction (Lifting Operations) Regulations 1961, contrary to Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work etc. Act 1974



#### Particulars of Offence

Edmund Nuttall Limited on the day of January 1978 at Littlebrook 'D' Power Station in the County of Kent, being an employer of workmen undertaking operations or works to which Section 127 of the Factories Act 1961 and the Construction (Lifting Operations) Regulations 1961 applied. did contravene Regulations 3 (1) and 10 (1) (b) of the said regulations in that a lifting appliance namely an Ace Passenger and Materials Hoist Plant no EN 116 installed in the onshore outfall shaft and used by employed persons, was not properly maintained and in particular that part of the suspension rope was severely corroded and devoid of lubricant.

#### Second Count

##### Statement of Offence

Breach of Construction (Lifting Operations) Regulations 1961, contrary to Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work etc. Act 1974

##### Particulars of Offence

Edmund Nuttall Limited on the day of January 1978 at Littlebrook 'D' Power Station in the County of Kent, being an employer of workmen undertaking operations or works to which Section 127 of the Factories Act 1961 and the Construction (Lifting Operations) Regulations 1961 applied. did contravene Regulations 3 (1) and 46 (1) of the said regulations in that a lifting appliance namely an Ace Passenger and Materials Hoist Plant no EN 116 installed in the onshore outfall shaft and used by employed persons without it being used by employed persons without it being thoroughly examined by a competent person at least once in the six months prior to the 9th January 1978.

### Third Count

#### Statement of Offence

Breach of Construction (Lifting Operations) Regulations 1961, contrary to Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work etc. Act 1974

#### Particulars of Offence

Edmund Nuttall Limited on the day of January 1978 at Littlebrook 'D' Power Station in the County of Kent, being an employer of workmen undertaking operations or works to which Section 127 of the Factories Act 1961 and the Construction (Lifting Operations) Regulations 1961 applied. did contravene Regulations 3 (1) and 45 of the said regulations in that a number of persons greater than the maximum number of persons greater than the maximum number marked in the hoist cage were carried in an Ace Passenger and Materials Hoist Plant no EN 116 installed in the onshore outfall shaft.

### Fourth Count

#### Statement of Offence

Breach of Construction (Lifting Operations) Regulations 1961, contrary to Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work etc. Act 1974

#### Particulars of Offence

Edmund Nuttall Limited on the day of January 1978 at Littlebrook 'D' Power Station in the County of Kent, being an employer of workmen undertaking operations or works to which Section 127 of the Factories Act 1961 and the Construction (Lifting

Operations) Regulations 1961 applied. did contravene Regulations 3 (1) and 42 (2) of the said regulations in that a lifting appliance namely an Ace Passenger and Materials Hoist Plant no EN 116 installed in the onshore outfall shaft and used by employed persons, the device provided to support the cage together with its safeworking load in the event of failure of the hoist rope (or any part of the hoisting gear) was not maintained and in particular the clamping units were badly corroded and devoid of proper lubricants.

#### Fifth Count

#### Statement of Offence

Breach of Construction (Lifting Operations) Regulations 1961, contrary to Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work etc. Act 1974

#### Particulars of Offence

Edmund Nuttall Limited on the day of January 1978 at Littlebrook 'D' Power Station in the County of Kent, being an employer of workmen undertaking operations or works to which Section 127 of the Factories Act 1961 and the Construction (Lifting Operations) Regulations 1961 applied. did contravene Regulations 3 (1) and 42 (2) of the said regulations in that a lifting appliance namely an Ace Passenger and Materials Hoist Plant no EN 116 installed in the onshore outfall shaft and used by employed persons, the device provided to support the cage together with its safeworking load in the event of failure of the hoist rope (or any part of the hoisting gear) was not maintained and in particular the sprung seating washer was missing and only part of the wheel width of the governor mechanism was in contact with the guide.

A fine of £10,000 Edmund Nuttall Ltd., civil engineers of London, pleaded guilty to four charges under the Construction (Lifting Operations) Regulations 1961 following a lift accident in January 1978 at the Littlebrook 'D' Power Station in which four men

were killed and five others were injured. (See The Hoist Accident at Littlebrook 'D' Power Station, January 9th 1978, H.M.S.O. 1978)

Fines of £4000, £750, £250 and £5000 were imposed and the company was ordered to pay £500 towards the costs of the prosecution. A fifth count remained on file with the instruction that the charge should not to be proceeded without leave of the Court of Appeal.

Nuttalls had two previous convictions:- the first at Bristol Magistrates Court on 17th November 1975 when the company was fined £50 and secondly at Kendal Magistrates Court on 20th July 1977 when the company was fined £100 and ordered to pay £4.50 costs.

R. v. Dudley John Bowers in the Crown Court at Portsmouth on 22nd November 1979 (Court File No. 790322). Mr. Bowers was committed for trial by Portsmouth Magistrates Court on July 20th 1979. The case was heard by His Honour Judge K.C.L. Smithies and His Honour N.J.L. Brodrick in the Crown Court at Portsmouth on 22nd, 23rd and 26th November 1979. The Health & Safety Executive was represented by Mr. R. Backhouse. The accused, Dudley John Bowers, was also represented by counsel, Mr. W. Crowther.

Facts: The accident occurred at a bonfire and firework display at King George V. Playing Fields Cosham on 5th November 1978 when a girl, Miss Karen Bailey was killed. A number of others were injured. The accident was investigated by Mr. R.W. Midworth for the Health & Safety Executive. The Funfair had two rides and sideshows. The local authority had sponsored and provided the bonfire. IBM (UK) had sponsored and provided the Firework Display and Funfair. The funfair contained a fairground amusement machine and a disco twist made and operated by Mr. D.J. Bowers. The machine had been assembled by Bowers from parts made by a number of subcontractors. Some parts were made by Bowers themselves. The shaft had failed after less than one year in use. This seemed to be because of a design fault (said R.A. Kelly, Engineering Inspector HSE). The design of both the attachment of the upper

radial arm and of the carousel shaft was unsound. Bowers didn't have the necessary design experience and qualifications to assess the stresses in passenger carrying machines. A set of four cars flew up in the air, this in turn, led to the fatality and injuries. Guidance on these matters was available in the Guide to Safeguard Fairs HMSO 1976. Published by the Home Office.

#### First Count

##### Statement of Offence

Conducting an undertaking so that persons not in his employment were exposed to risks to their health and safety, contrary to Section 3 (2) of the Health and Safety at Work etc. Act 1974.

##### Particulars of Offence

Dudley John Bowers on the 5th day of November 1978 in the City of Portsmouth being a self employed person and conducting an undertaking namely the provision to the public of an amusement machine known as a Disco Twist ride did not so conduct that undertaking in such a way as to ensure so far as was reasonably practicable that he and other persons (not being his employees) who might be affected were not thereby exposed to risks to their health or safety.

#### Second Count

##### Statement of Offence

Manufacturing an article which was not so designed and constructed as to be safe and without risks to health when properly used contrary to Section 6 (1) (a) of the Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Dudley John Bowers on divers days between 1st January 1977 and the 5th day of November 1978 manufactured an article for use at work namely a Disco Twist ride and did not ensure so far as was reasonably practicable that the said Disco Twist ride was so designed and constructed as to be safe and without risks to health when properly used.

#### Third Count

#### Statement of Offence

Supplying an article which was not so designed and constructed as to be safe and without risks to health when properly used contrary to Section 6 (1) (a) of the Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Dudley John Bowers on divers days between 1st January 1977 and the 5th day of November 1978 supplied an article for use at work namely a Disco Twist ride and did not ensure so far as was reasonably practicable that the said Disco Twist ride was so designed and constructed as to be safe and without risks to health when properly used.

On Counts 1 and 2: The defendant had pleaded not guilty and the jury was discharged from giving a verdict. The verdict on Count 3 was not guilty by direction because the court held that the defendant could not supply himself.

Regina v. Fowler in the Crown Court at Stafford on 3rd December 1979 (HSE File No. 110/79). The company Stockwell Investment Limited was convicted. A prosecution was brought against Fowler by way of indictment for a breaches of Section 2 and Section 3 (1) Health and Safety at Work etc. Act 1974. The defendant had pleaded not guilty and counsel was directed to offer no evidence against him. Costs were paid from central funds.

In a jury trial at York Crown Court on November 27th 1979, Swan Hunter Shipbuilders Ltd. and Telemeter Installations Ltd were fined £3,000 plus costs and £15,000 plus costs respectively.<sup>1</sup> This case arose following an incident in September 1976 when eight men working on HMS Glasgow which was under construction by Swan Hunter Shipbuilders Ltd at their Neptune Yard on the River Tyne were killed in a fire. The fire started when a welder, without any negligence on his part, struck his arc with his welding torch. The reason for the intensity of the fire and the rapidity with which it spread was that the atmosphere had become oxygen enriched to the extent of 45%, which was more than double the normal. This had occurred because a Mr Burton, a former employee of Swan Hunter but at the relevant time working for Telemeter Installations Ltd, a sub-subcontractor working on the vessel, had failed to turn off the oxygen supply when he left work the previous evening.

The dangers that can be created when oxygen is used in poorly ventilated areas, as it was here, were well known to Swan Hunter and in particular to their Chief Safety Officer Mr Douglas. Following two earlier fatal fires caused by oxygen enrichment, he had drawn up a "Blue Book" of instructions for users of fuel and oxygen. This highlighted the dangers and set out a number of rules for safe use of oxygen.

Copies of this Blue Book were distributed to Swan Hunter's own employees but not to employees of other companies working alongside Swan Hunter's own men. Swan Hunter and Telemeter Installations Ltd. appealed to the Court of Appeal. Swan Hunter appealed against conviction. Telemeter appealed against the sum they were ordered to pay.

Because Swan Hunter were successful in the Crown Court in showing that they had taken such steps as were reasonably practicable to provide their own employees with the necessary information and training relating to the use of oxygen it was not right

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<sup>1</sup> See the fire on H.M.S. Glasgow, September 1976, H.M.S.O. 1978: R. v. Swan Hunter Shipbuilders Ltd. [1982] 1 All E.R. 264).

that they should have to pay the costs involved in that issue. The order that Swan Hunter pay the whole of the costs of the trial and of the committal proceedings would therefore be varied so that they pay only two thirds of the taxed costs of the trial plus the costs of the committal proceedings.

Telemeter's appeal against the order that they pay a total of £15,000 by way of fine together with costs on the grounds that there was a disparity between this sum and the £3000 fine levied against Swan Hunter would be dismissed. Taking into account the costs that Swan Hunter would have to pay, the disparity between the financial penalty on Swan Hunter and that on Telemeter was not so great.

In Regina v. Sheavagat Limited at the Crown Court at Canterbury which was heard before His Honour Judge Streeter and two Justices of the Peace (Mrs. Stewart and Mrs Coutts) on 25 May 1979 (Court File No. 790524) The Health & Safety Executive was represented by counsel Mr. A. Collins. The accused company, was also represented by counsel, Mr. Saunt. The company pleaded guilty to a failure to take precautions to prevent danger from an electrically charged overhead cable a breach of the Construction (General Provisions) Regulations 1961) Sections 44 (2) and 3 (1) (b), contrary to Section 155 (1) Factories Act 1961 and Section 33 (3) Health and Safety at Work etc. Act 1974.

The prosecution accepted a not guilty plea to Count 2 (Failing to conduct an undertaking in such a way as to ensure the safety of persons other than employees contrary to Section 3 (1) (a) and (3) Health and Safety at Work etc. Act 1974.

The company was fined £1000 to be paid forthwith and ordered to pay £200 towards the costs of the Prosecution. The remainder of the prosecutions costs were ordered to be paid out of central funds.

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In Regina v. Cignet Group Contractors Ltd at the Crown Court at Canterbury which was heard before His Honour Judge Streeter and two Justices of the Peace (Mrs.



Stewart and Mrs Coutts) on 25 May 1979 (Court File No. 790524) The Health & Safety Executive was represented by counsel Mr. A. Collins. The accused company, was also represented by counsel, Mr. Nixon. The company pleaded guilty to a failure when having control of non-domestic premises namely The Post Office, The Telephone Engineering Centre, Littlebourne Rd. Canterbury in the county of Kent, to take any measures to ensure so far as was reasonably practicable that the said premises were safe and without risks to health for persons namely Nigel Woodhouse, Frank McCabe and Francis Michael Cooper who were not their employees, but were using the said premises made available to them as a place of work. Contrary to Sections 4 (1) and (2) and 33 (1) (a) and (3) of the Health and Safety at Work etc. Act 1974. The company was fined £5000 to be paid forthwith and ordered to pay £800 towards the costs of the Prosecution. The remainder of the prosecutions costs were ordered to be paid out of central funds.

The prosecution accepted a not guilty plea to Count 3 (Failing when having control of non-domestic premises namely The Post Office, The Telephone Engineering Centre, Littlebourne Rd. Canterbury in the county of Kent, to take any measures to ensure so far as was reasonably practicable that persons not in their employment namely Nigel Woodhouse, Frank McCabe and Francis Michael Cooper who might be affected by the said undertaking were not hereby exposed to risks to their health or safety. Section 3(1) and 33(1) and (3) Health and Safety at Work etc. Act 1974.

In these two linked cases Sheavagate were sub contractors to the Cignet Construction Group. Their task was to erect steel frames and fix external cladding sheets to the buildings under construction in Littlebourne Rd Canterbury a G.P.O. complex Cignet supplied materials and plant and Sheavagate supplied the labour. Work started on site in September 1977 and lasted until November 1977. Work recommenced on 18 January 1978. British Crane Hire who leased the crane advised Wingate that they thought the " Safety clearance was 15 feet " although they did not know. Mr. F.M. Cooper, the crane driver who worked for Sheavagate was moving some small purlins from a stockpile which was some 4' high. A high tensile overhead pylon wire was situated some 40' to 50' from the ground. Small items of steelwork had been lifted

without problems having been encountered. The crane driver then had to lift some larger beams 20' in length. He tried to keep these some 15 - 20' below the wires. Whilst slewing these beams under the wires there was a large flash and explosion as the jib arced against the wires. At the time of the accident the two beams were still on the hook some four to five feet from the ground. One man was injured and one was killed.

**1980**

Seven cases were heard by way of indictment in the Crown Court in 1980. The penalties ranged from three acquittals to a conditional discharge and fines of £100 without an award of costs and a fine of £400 plus £100 costs. This was the Health & Safety Executive's most unsuccessful period in the Crown Court and coincided with a drop in morale resulting from cuts in the level of grant in aid to the Health & Safety Executive from the Treasury.

The first case which followed a fire at Bayly's Wharf, Lockyer Quay, Coxside, Plymouth, Devon on 4th February 1978 arising from the discharge in a confined area of propane gas from twelve 104 lbs capacity cylinders in rapid succession and in such quantities and at such a rate of discharge as to cause the formation on the site at Bayly's Wharf of a cloud of flammable gas material which ignited and exploded and thus caused injury to five employees. In *Regina v. The British Gas Corporation* at the Crown Court at Plymouth which was heard before His Honour Judge A.C. Goodall M.C. on 17 - 21st March 1980 in a five day trial. The Health & Safety Executive was represented by counsel Mr. P. Back Q.C. (Later Mr. Recorder Back Q.C.) and Mr. N. Inglis Jones and The British Gas Corporation was represented by counsel, Mr. W. Rankin Q.C. and Mr. A. Rankin (Now Mr. Recorder Rankin Q.C.). The company pleaded not guilty to a charge alleging failure to conduct an undertaking in such a way as to ensure the safety of their employees contrary to Sections 2 and 33 Health and Safety at Work etc. Act 1974. British Gas was found not guilty on direction of Judge on 21 March 1980. The costs of the defence and the prosecution were met from Central Funds.

**Statement of Offence**

Breach of duty to ensure the safety at work of employers contrary to section 2 and 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

British Gas Corporation on the 4th day of February 1978 at Bayly's Wharf, Lockyer Quay, Coxside, Plymouth in the county of Devon failed to discharge the duty of an employer to ensure, so far as is reasonably practicable, the safety at work of its employees, mainly by allowing the discharge in a confined area of propane gas from twelve 104 lbs capacity cylinders in rapid succession and in such quantities and at such a rate of discharge as to cause the formation on the site at Bayly's Wharf aforesaid of a cloud of flammable gas material which ignited and exploded thereby causing injury to five employees.

Mr. George Mitchell H.M. Inspector of Factories, Health and Safety Executive visited the British Gas Corporation South Western Region cylinder filling depot at Bayleys Wharf at 10.00 a.m. Saturday 4th February 1978 to investigate the circumstances leading to the fire which had been extinguished by the fire brigade first prior to his arrival. He had visited this depot eleven times between 17th September 1974 and 4th February 1978 and given verbal advice on the safe stacking of cylinders. Letters to British Gas had been sent on 15 April 1975, 4 May 1977 and 12 December 1977. On 16 March 1976 a deferred Prohibition Notice DP/ 165/10/76 was served requiring that electrical equipment sited adjacent to the cylinder loading bank be made flameproof or removed. This notice was complied with on 30th April 1976. On 4th May 1977 British Gas Corporation issued with an Improvement Notice I/01/02/2/77 requiring provision of water drenching to the bulk LPG storage tanks. This notice was complied with on 7th October 1977. From time to time the Health & Safety Executive had criticised the stacking of cylinder close to the walls but no other adverse comment made.

Mr. Harold Seaton, H.M. Senior Chemical Inspector of Factories said:

In response to a telephone call from Mr. Mitchell H.M. Senior Chemical Inspector of Factories I visited the site of British Gas Corporation, Bayly's Wharf Lockyer Quay Coxside Plymouth on 6th February 1978. I saw the damage caused by a fire which I understood had broken out at approximately 07.50 a.m. on 4th February 1978 and in

which five men had sustained burns. The site was approx rectangular being 48m wide and 74m long to which vehicular access was gained by means of a gate in the north wall. It was enclosed by steep rock faces to the south and west and by high walls on the remaining sides. To the left of the gate was a collection of small buildings which housed toilet facilities, a press room and a small store. Appliances fuelled by gas were seen in the buildings but none were ignited. To the right of the gate was the loading bank at the south end of which was the room where liquefied petroleum gas was filled into cylinders. The roof covering of the toilet block the filling room and part of the loading bank had collapsed. My immediate impression of the site was that in certain circumstances, a release of gas would not be readily dispersed but would be retained at low level. A large number of cylinders used to contain LPG had been involved in the fire and there were primarily located either in the yard or on the loading bank. Damage was greatest in an area adjacent to the wall of the loading bank which formed the west boundary of the site. Water had accumulated over a large area of the gate farthest from the entrance gate, from which I deduced that the yard sloped significantly from north to south. The LPG storage vessels were located at the lower end of the site.

From the evidence available at the time, I concluded that the fire had resulted from the ignition of a significant quantity of LPG. All valves on the filling lines were closed and the pumps were not running. I understood that tests had already been carried out by the Gas Board personnel and no leaks from the fixed installation had been found. This I accepted partly as the pipe work did not extend along the loading bank to the most severely damaged area but terminated in the filling room itself. In addition I didn't consider that positive identification of the ignition source was worth while as a significant release of gas would eventually have been ignited perhaps even outside the boundary of site. Mr. John Fiddaman, Divisional Commander, West Division, Devon Fire Brigade, said that the fire centred over a group of forty 104lb. LPG cylinders.

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In the second case which also led to an acquittal: Regina v. A.W. McAllister Bowditch at the Crown Court at Exeter which was heard before Mr. Recorder C. S. Harvey M.B.E., T.D. and two Justices of the Peace (Miss A.F.G. Ratcliffe and Mrs E. Foster) on 14 - 16 April 1980 in a three day trial. The Health & Safety Executive was represented by counsel Mr. P. Mott (Later Mr. P.C. Mott Q.C.) and Mr. A.W. McAllister Bowditch was represented by counsel, Mr. N. Hamilton.

#### First Count

Failure to take precautions to prevent danger to an employed person from an electrically charged overhead cable contrary to the Construction (General Provisions) Regulations 1961 Regulation 3 and 44(2) and the Factories Act 1961 Sections 127 and 155.

#### Particulars of offence

Arthur William McAllister Bowditch on 7th day of August 1978 at No. 3 Springfield Rd. Milbourne port in the county of Somerset being an employer of a workman undertaking work to which he said Regulations applied failed to take all practicable precautions to prevent danger to his employer one Andrew James Caddy from certain electrically charged overhead cables.

#### Second Count

Failure by self employed persons to conduct his undertaking in such a way as to ensure so far as is reasonably practicable that he and other persons (not being his employees) who might be affected thereby were not thereby exposed to risk to their health or safety contrary to Section 3 (2) of the Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Arthur William McAllister Bowditch on the 7th day of August 1978 at No. 3 Springfield Rd. Milbourne port in the county of Somerset being a self employed person failed to conduct this undertaking mainly the erection of the shell of a house at the said site in such a way as to ensure as far as was reasonably practicable that Andrew James Caddy a person affected thereby was not thereby exposed risk to his health and safety from electrically charged overhead cables.

An Inquest had been held at the Court House, North Street, Wincanton.

Verdict: Accidental Death by Electrocutation.

Mr. A. W. Tilley, H.M. Inspector of Factories said that in mid afternoon on Monday 7th August 1978 he received a telephone call from the Yeovil Police informing him of an electrocution on a building site off Station Road in Milbourne Port. He visited the site later that day where he met Police Officers the site owner a Mr. Comber, Mr. Bowditch and a number of 'Southern Electricity' Board Officials. He was shown a house that was in the course of construction with walls at various heights up to about 12' high. Some scaffold was erected there and ended on a concrete floor slab to the left of building as you looked at it from the site road. He was also shown a metal scaffold tube that lay on the concrete floor slab and burn marks at one end of the tube. The tube measured 21' 4" long. The nearby scaffold had a scaffold fitting on one of its horizontal members open ready to receive a vertical scaffold tube. Beneath the fitting on concrete floor slab was a scaffold base plate with a little pile of rust close to it. To the left of the building when received from the site road were 3 overhead 11 k.v. conductors side by side. The nearest of these to the scaffold was above a point that measured from the scaffold.

Harold Bradshaw, a Senior Electrical Inspector of Factories HSE - FCG Wales and South West , also visited the building site of B.S. and H.M. Comber 3, Springfield Road off Station Road in Milbourne Port, Somerset. It had been reported to H.M. Principal Inspector of Factories that Mr. Andrew James Caddy had received a fatal

electric shock whilst carrying a scaffold pole. He was shown a house under construction where the accident took place and the layout of the site is as shown and indicated on the attached sketch prepared by me. The area shown in 'Broken Line' was a concrete foundation for an extension to the house under construction. Scaffolding (shown in Green) with wooden working platform had been erected on the north, south and west sides and was being continued along east side. Brickwork had reached the height of first floor level. An 11,000 volts, 3 phase line constructed to B.S.1320 crossed the site, and one of the base conductors was immediately above the Southeast corner of the concrete foundation as shown on the sketch and at a height of 17' 6" above ground level. A scaffold pole steel base plate was seen on the concrete foundation 8' from corner of house and 3' 3" from the foot of the east wall, and immediately above was fitted on the horizontal scaffold pole, a clip for connection two scaffold poles together. He was also shown a 21' 4' scaffold pole lying across the concrete as shown on the sketch and I observed burn marks at both ends of the type consistent with a high voltage electrical discharge.

In a statement Michael Francis Sheldon Electrical Engineer (Operation and Maintenance Engineer) Southern Electricity Board Yeovil District said that the proper procedure to have adopted in this case would have been to have asked the board to switch out the line whilst the scaffolding was being erected.

Memorandum from Counsel on the Court file.

This was a quite exceptional case, and one quite unprecedented in my experience. A jury trial where the jury had to decide between a contract of service and a contract for services, the distinction between reasonable practicability and all practicable steps had to be discussed and a decision had to be reached on the evidential consequences of possible precautions of a very technical (electricity) nature. I had to open to the jury the whole law of master and servant as against self employment and while the time in preparation was bad enough had it not been for my 15 years experience in civil p.i. cases it would have been several days longer. Frankly a case like this is quite unsuitable for a jury, and the difficulties it caused were enormous and only circumvented, in the absence of a judge with any great civil experience.



The third case which also led to an acquittal was Regina v. Hemel Hempstead Motors Ltd which was heard at the Crown Court at St. Albans on 30 May 1980. The Crown alleged a breach of Section 3 and 33 (1) of the Health and Safety at Work etc. Act 1974. The Health & Safety Executive offered no evidence and was ordered to pay £150 in costs.

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In a sad and unusual case Regina v. Alfred Thomas heard in The Crown Court at Wolverhampton Before His Honour Judge P.C. Northcote on 16th and 17th July 1980 (Court File No. 800532) Thomas was convicted and a fine of £100 was imposed to be paid at the rate of £10 per week (In default one month imprisonment). Prosecution costs: Central Funds (£300) Defence Costs: Legal Aid (£345)

The Health & Safety Executive was represented by Mr. J.M.G. Roberts (later to become Mr Recorder Roberts Q.C.). The accused was also represented by counsel, Mr. J.D. Riley. Alfred Thomas was committed for trial by Dudley Magistrates Court on 7th May 1980 upon his own election under section 7 Criminal Justice Act, 1967 to the Crown Court at Dudley.

Mr. Thomas pleaded not guilty to a failure to ensure the safety at work of employees contrary to section 3 (2) Health and Safety at Work etc. Act 1974.

On 21st of October 1979 Alfred Thomas, a self employed builder, was undertaking the repointing of certain brick work and stonework at the premises of the Ideal Benefit Society in Priory Street Dudley. He failed to conduct his undertaking in such a way as to ensure so far as reasonably practicable that other persons (not being his employees) who might be affected were not thereby exposed to risk to their safety. Two men who were helping him and members of the public passing along priory street were in fact exposed to a risk to their safety, namely a risk that the scaffold and ladder from which one of the men (Kenneth Drew) was working would fall down into the street. Kenneth Drew died as a result of fall from scaffolding at 1.55 p.m. 21st October 1979. The deceased's wife committed suicide one week before trial. F.A.

Sant, H.M. Inspector of Factories, said that neither the tower or the ladder were secured to the building and there was no indication that they had been secured. In his opinion the operation was highly dangerous and suicidal.

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In the fifth case Regina v. W.J. Furse and Company Ltd. heard in The Crown Court at Wakefield Before His Honour Judge Gosney on 24th July 1980 (Court File No. 800096) W.J. Furse and Company Ltd pleaded guilty and a fine of £400 was imposed to be paid by 1st August 1980 and £100 towards Prosecution costs with the remainder from Central Funds.

The Health & Safety Executive was represented by Mr. A. Simpson (a Recorder of the Crown Court and later His Honour Judge Simpson). The accused was also represented by counsel, Mr. J. Deby Q.C. (a Recorder of the Crown Court) W.J. Furse and Company Ltd was committed for trial by Wakefield Magistrates Court on 8th February 1980 to the Crown Court at Wakefield.

#### Offence:

Failure to ensure the safety at work of an employee contrary to section 2 (1) Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

W.J. Furse & Co. Ltd. on 22nd March 1979 at Albion Mills, Westgate, Wakefield in the County of York, being an employer within the meaning of the Health and Safety at Work etc. Act 1974 did fail to discharge a duty under the said Act in that they failed to ensure, in so far as was reasonably practicable, the safety at work of an employee namely Alan Wardman, in that they failed to provide a system of work that was so far as was reasonably practicable safe for the erection of a metal pipe external to the boilerhouse chimney at the said Albion Mills.

On 22nd March 1979 West Yorkshire Police advised the Health & Safety Executive of a fatal accident to a steeplejack at the premises of M.P. Stonehouse, Albion Mills, 153 Westgate, Wakefield. The evidence of Malcolm James H.M. Construction Engineering Inspector of Factories, Health & Safety Executive was of the opinion that the brickwork at the top of the 120' high chimney was in a weakened state with the mortar between the brickwork either missing or in a powdery state. The ring of mortar around the top of the chimney was unreinforced and had virtually no strength. The likely mode of failure of the brickwork was that when it was subjected to loads imposed on it by the occupied bosun's chair, individual bricks were gradually slid from their bed joint until total collapse occurred.

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The sixth case which also led to an acquittal was Regina (Parker) v. Hagan which was heard at the Inner London Crown Court on 28th August 1980 (H.S.E. File No. 160/79) The Health & Safety Executive offered no evidence and was ordered to pay costs.

In the seventh case Regina v. A.J. Goodyer heard in The Crown Court at St Albans on 19th December 1980 (Court File No. 801032) Goodyer was convicted of failing to discharge a duty imposed by Section 7 (a) of the Health and Safety at Work etc. Act 1974 and a conditional discharge was imposed. He was committed for trial by Bishop's Stortford Magistrates Court on 24th September 1980 to the Crown Court at St. Albans.

Offence:

Failing to discharge a duty imposed by Section 7 (a) of the Health and Safety at Work etc. Act 1974 contrary to Section 33 of the said Act.

#### Particulars of Offence

Alan James Goodyer, on 4th day of December 1979, being an employee at work failed to discharge his statutory duty to take reasonable care for the health and safety of himself and of other persons who might be affected by his acts or omissions at work in that he operated a power press while certain dangerous parts of the said machinery were not securely fenced, namely the tools of the said power press.

Goodyer had used a power press, after having removed its guards, at the firm Gould Electronics where he was head of engineering and as a consequence he had injured himself.

### 1982

Six cases were heard by way of indictment in the Crown Court in 1982. The penalties ranged from two acquittals to a fine in one case of £45,000 plus £15,000 costs. The Health & Safety Executive began to emerge from its unsuccessful period in the Crown Court but during the first half of 1982 it was still suffering from the drop in morale referred to above resulting from cuts in the level of grant in aid to the Health & Safety Executive from the Treasury.

In the first case Regina v. Claudio Adcock heard in The Crown Court at Lincoln on 30th June 1982 (HSE File No. SO/160/82) Claudio Adcock was convicted of a failure to fence under Section 14(1) and Section 155 Factories Act 1961 and of a contravention of a Prohibition Notice. The case was heard before Mr. Recorder Sir Godfrey Le Quesne Q.C. Claudio Adcock pleaded guilty and on the first charge he was fined £50 or three months imprisonment and on the second charge he was fined £100 or three months imprisonment. Five other counts were left on file. £100 towards prosecution costs to be paid for by the defendant. Fines were said to be low because of defendant's means.

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In the second case Regina v. Macart Textiles (Machinery) Ltd. heard in The Crown Court at Wakefield (sitting at Huddersfield) on 15th June 1982 (HSE File No. SO/166/82) Macart Textiles (Machinery) Ltd. was acquitted of the offence of supplying an unsafe article, contrary to Section 6(1) Health and Safety at Work Act 1974. The case was heard before His Honour Judge Herod and a Jury.

#### Particulars of offence

Macart Textiles (Machinery) Limited, in or about May 1981 failed to ensure that an article supplied by them for use at work, namely a Laroche picking machine was so designed and constructed as to be safe and without risks to health when properly used in that access could be obtained to the swift and to the feed roller while the said machine was in motion.

The jury was unable to come to a decision after 3 1/2 hours deliberation. Jury discharged and a verdict of not guilty was entered. The Health & Safety Executive's prosecution costs were paid from Central Funds whilst the defendants paid their own costs because they had elected that the case be heard in the Crown Court. Counsel (David Gripton) felt that this matter was probably too "technical" for jury. Sixty per cent of all jury trials result in acquittals in favour of the Defendants. This figure was higher in cases which involved complicated questions of fact and law.

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In the third case Regina v. David Glen heard in The Crown Court at Teesside on 30th June 1982 (HSE File No. SO/169/82) was acquitted of the offence of failing to discharge a duty to take reasonable care for the health and safety of himself and other persons who may be affected by his acts or omission at work contrary to Section 7 and Section 33 Health and Safety at Work Act 1974. The case was heard before His Honour Judge Percy and a Jury.

#### Particulars of offence

David Glen on 6 October 1981 failed to take reasonable care for the safety of himself and other persons at work at No. 2 Primary Mill Lackenby Works British Steel Corporation Teesside Division Middlesborough in that he drove No. 2 crane in such a manner as to cause the crane to collide with No. 1 Charger crane.

The Health and Safety Executive lost this case because the employee had impeccable character because his superiors were equally guilty of neglect and because the prosecution witnesses disagreed on questions of fact.

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In the fourth case Regina v. London Demolition (UK) Co. Ltd. heard in The Central Criminal Court on 15th December 1982 (HSE File No. SO/330/82) London Demolition (UK) Co Ltd were main contractors. They had been engaged to carry out

demolition work in Lombard Street London E.C.3. Ashdover Limited were labour only subcontractors. Martin Sweeney was an employee of Ashdover Limited. A reinforced concrete beam weighing 4 1/2 tonnes fell on Mr. Sweeney and crushed him to death on Monday 16 November 1981. London Demolition (UK) Co Ltd were found guilty on the following two charges and fined £10,000.

#### Statement of Offence

Failing to discharge the duty imposed by virtue of section 3(1) Health and Safety at Work Act etc. 1974. Contrary to Section 33(1) (g) and (3) Health and Safety at Work Act etc. 1974

#### Particulars of Offence

London Demolition (UK) Co Limited on 16th November 1981 being employers failed to conduct their undertaking namely the demolition of a building at 33 Lombard Street London EC3 in such a way as to ensure so far as was reasonably practicable that persons not in their employment, namely employees of Ashdover Ltd. and in particular one Martin Sweeney, who might be affected by their said undertaking were not thereby exposed to risks to their health and safety in that they failed to take any reasonably practicable precautions to protect the said Sweeney from the risk of being killed by the fall of a beam on the second floor of the said building.

#### Second Count

#### Statement of Offence

Failing to take precautions to prevent the accidental collapse of part of a building contrary to Regulation 41 (4) Construction (General Provisions) Regulations 1961 and Section 33(3) Health and Safety at Work Act 1974

#### Particulars of Offence

London Demolition (UK) Co Ltd on 16th November 1981 being contractors performing work, namely building operators consisting of the demolition of a building at 33 Lombard Street London EC3 failed during the progress of the said work to take necessary precautions, whether by adequate shoring or otherwise to prevent , so far as practicable the accidental collapse of part of the said building, namely a beam on the second floor thereof, the collapse of which might have endangered a person employed.

London Demolition (UK) Co Ltd's previous record was as follows:

28.1.75

Breach of Section 127 Factories Act 1961

Guilty plea                      Fine £25 plus costs

28.1.75

Breach of Construction (General Provisions) Regulations 1961 (Reg. 40)

Guilty plea                      Fine £100 plus costs

22.6.82.

Breach of Construction (General Provisions) Regulations 1961 (Reg. 41)

Fine £500 plus costs

Breach of Construction (Lifting Operations) Regulations 1961 (Reg. 47)

Fine £500 plus costs

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The fifth case Regina v. Alan Frank Willicott and Julian Mark Abbott was heard in the Crown Court at Exeter before His Honour Judge E.G.Neville on 29th September 1982 (HSE File No. SO/344/82) Alan Frank Willicott and Julian Mark Abbott elected



trial on indictment at Torbay Magistrates Court. 3rd June 1982. (See Section 6(2) Magistrates Courts Act 1980).

Alan Frank Willicott and Julian Mark Abbott were labour only subcontractors on a site in Torquay where a block of flats was being built. On 13th October 1981 an accident occurred when a 19 year old workman Paul William Boydell, a weak youth, fell approximately 30 feet. His injuries were a broken arm, a broken leg, back injuries and internal bleeding. There was an unauthorised variation to scaffolding and Boydell's barrow had been overfilled. Alan Frank Willicott and Julian Mark Abbott were held to be employers even though it was claimed that Boydell was self employed.

# CONSTRUCTION OF LUXURY BLOCK OF FLATS

R.M.SMITH LTD.

|

CHAMBERLAIN - sole employee responsible  
for overseeing work and controlling sub-contract labour.

|

Alan Frank Willicott and Julian Mark Abbott  
(Labour only bricklaying contract.)

Scaffolding provided by Scaffolding Great Britain Limited.

Count 1

Statement of Offence

Contravening Regulations 3 and 6 of the Construction (Working Places) Regulations 1966 contrary to Section 155(2) Factories Act 1961 and Section 33(3) Health and Safety at Work etc. Act 1974

Particulars of offence

Alan Frank Willicott and Julian Mark Abbott on 13th October 1981 being employers of workmen failed to ensure so far as was reasonably practicable that there was sufficient safe access to an egress from a builders hoist platform to a scaffold working platform on a site at Hesketh Road, Torquay where Paul William Boydell was working.

Alan Frank Willicott Guilty plea. Conditional Discharge

To pay £80  
towards  
prosecution  
costs.

Julian Mark Abbott	Guilty plea.	Conditional Discharge	To pay £50
			towards
			prosecution
			costs.

Count 2

Statement of Offence

Failing to discharge a duty imposed by Section 3(2) Health and Safety at Work etc.Act 1974 contrary to Section 33(1) Health and Safety at Work etc.Act 1974.

Particulars of offence

Alan Frank Willicott and Julian Mark Abbott on 13th October 1981 being self - employed persons failed to conduct their undertaking in such a way as to ensure so far as was reasonably practicable that Paul William Boydell was not exposed to risks to his health and safety.

Alan Frank Willicott Not Guilty

Julian Mark Abbott Not Guilty

His Honour Judge E.G.Neville said the offences were very technical.

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The sixth case, Regina v. Potters Oils Limited, was heard at the Crown Court at Nottingham from 29th November 1982 to 9th December 1982. The company, who were a specialist cleaning contractors were engaged to clean a series of one million gallon black oil storage tanks for which they used 7,500 gallons of kerosene. During this operation the inside of the tank was floodlit using non-flameproof lamps.

## Count 1

## Statement of Offence

Failing to ensure the safety of employees contrary to Section 2 (1) Health and Safety at Work etc. Act 1974.

## Particulars of offence

Potters Oils Limited on divers days between 10th October 1980 and 31st October 1980 failed to ensure so far as was reasonably practicable the safety of its employees engaged cleaning tank No. 924 at North Killingholme Haven.

## Count 2

## Statement of Offence

Failing to ensure the safety of employees contrary to Section 2 (1) Health and Safety at Work etc. Act 1974.

## Particulars of offence

Potters Oils Limited on 4th day of December 1980 failed to ensure so far as was reasonably practicable the safety of its employees engaged cleaning tank No. 923 at North Killingholme Haven.

The Judge commented that the contractors had shown a deplorable disregard for the safety of their employees. There had been a near total lack of safety training and they were foolhardy in allowing the jetting of hot kerosene inside the tanks.

The company was fined £15, 000 and ordered to pay £45,000 towards the costs of the Prosecution. The remainder of the prosecutions costs were ordered to be paid out of central funds.

**1983**

Four cases were heard by way of indictment in the Crown Court in 1983.

The first case Regina v. Shropshire County Council was heard at the Crown Court at Worcester, on June 30th 1983 (HSE File No. SO/159/82). The case was heard by His Honour Judge Lee and lasted five days. The Health & Safety Executive was represented by counsel Mr. J. Maxwell. The accused, Shropshire County Council, was also represented by counsel, Mr. W. Roddick.

Shropshire County Council whilst carrying out rekerbing operations as part of road maintenance operations caught with a JCB mechanical excavator a gas supply pipe outside her house, tore it out of the main and fractured it. In due course the gas mixed with the air and caused a huge explosion.

An elderly lady, Miss Rushton had her house was destroyed when she struck a match. She subsequently died after a week in intensive care with severe burns.

Investigations had showed that proceedings should be taken in the Crown Court because: (See F.I. Note 1984/52)

- (1) this was the third time in three and a half years that the Council had been sufficiently negligent in its activities as to justify legal proceedings;
- (2) it had not tried to locate the underground gas services because of a well publicised case dismissed by a stipendiary magistrate in Cardiff on almost identical facts which had given highways authorities the misguided impression that it was not reasonably practicable to do so; and
- (3) the problem of damage to gas services causing a major explosion is a matter of serious concern to the public.

Shropshire County Council was found guilty of a breach of duty imposed by Section 3 Health and Safety at Work etc. Act 1974 and fined £2,500 plus £1,500 of prosecution costs, the remainder to be paid by Central Funds.

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The second case, an acquittal, Regina v. Hurley was heard at the Crown Court at Aylesbury, on November 23rd 1983 (HSE File No. SO/187/83) following committal at Beaconsfield Magistrates Court. Hurley had elected trial on indictment. The case was heard by His Honour Judge L. Verney T.D.. The Health & Safety Executive was represented by counsel Mr. Recorder D. P. O'Brien. The accused, Hurley, was also represented by counsel, Mr Recorder the Lord Hooson Q.C.

In the early morning of 7th November 1982 an accident occurred at Denham Station when three painters who were working in the station were killed and a train driver was slightly injured. Hurley was the painter's supervisor. It seems that there were two lines at Denham and the accident was caused by the men who were working on the wrong line. Apparently, they should have been working on the down line which was closed to traffic on their behalf but in fact they were on the up line. Counsel had advised that there was no case against British Rail.

It was said on file that the Railway Inspectorate takes few prosecutions. It is some time since there was a prosecution of British Rail in England and that one was not successful. However in terms of casualties this is the second most serious accident to occur to railway staff in the operational railway since the act came into force.

#### Statement of Offence

Failing to discharge the duty imposed by virtue of section 7(a) Health and Safety at Work Act etc. 1974 to take reasonable care for the health and safety of other persons who may be affected by his acts or omissions at work, contrary to Section 33(1) (a) of the Health and Safety at Work Act etc. 1974

#### Particulars of Offence

James Francis Hurley, on the 7th day of November 1982, at Denham railway station, Buckinghamshire, being an employee within the meaning of the Health and Safety at Work Act etc. 1974, did fail to take reasonable care for the health and safety of other persons who might be affected by his acts or omissions, namely Morris King, Stewart Andrew Mulvihill, Christopher Maher and Raymond James, while he was supervising painting by causing or permitting or failing to prevent the said Morris King, Stewart Andrew Mulvihill and Christopher Maher from working in a position of danger to themselves and any person travelling by train on the up line.

Hurley pleaded and was found not guilty of this charge. and discharged.

The court ordered that the defence and prosecution costs be paid out of central funds both for the committal and the Crown Court hearing.

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The third case, also an acquittal, Regina v. Edward John Stringer was heard at the Crown Court at Bedford, on July 13 - 15 1983 (HSE File No. SO/226/83). The case was heard by Mr. Recorder Wiseman and a Jury. The case concerned an alleged breach of the Construction (General Provisions) Regulations 1961 Regulation 41(4) following the death of a labourer Mr. A.O. Odell, whilst carrying out roof repairs.

It was alleged that on Wednesday 28th July 1982 Edward John Stringer, failed to take precautions by adequate shoring or otherwise to prevent, as far as was practicable, accidental collapse during the demolition of a roof which might have endangered a person employed. The prosecution failed to prove its case and costs were ordered to be paid from central funds.

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The fourth case, Regina v. Hinchcliffe and Sons (Dewsbury) Limited, was heard at the Crown Court at Wakefield, on 12th October 1983 (HSE File No. SO/488/83).

Hinchcliffe had demolished a building and sold the store and scrap. Two prohibition notices served.

- 1) Ensure removal of asbestos before demolition began.
- 2) Prohibited demolition of two storey wall fronting Dale Street unless a scaffold was erected to protect the highway during demolition or a road closure was obtained (in writing).

Hinchcliffes demolished part of a wall which fell into the road in contravention of the notice. A half ton slab of concrete overhung the road supported by a few slender strands of reinforcing rod. H.M. Factory Inspector had to direct its removal personally. Twenty five/thirty tons of rubble fell into the roadway.

There had been no response by the contractor to letters and notices. The contractor was unco-operative in the extreme. The company was found guilty on six of the seven counts charged. Fines totalled £1,200.

The defendant company was required to pay £450 of the prosecution's costs, total prosecution costs were £862.50 plus VAT., with the balance to be paid from central funds funds. Twenty eight days were allowed for payment to be made.

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### 1984

Twelve cases were heard by way of indictment in the Crown Court in 1984.

The first case Regina v. Jagger was heard at the Crown Court at Sheffield, on August 6th - August 7th 1984 (HSE File No. SO/287/83). The case was heard by His Honour Judge Lauriston Q.C. and a Jury. The case concerned breaches of the Mines and Quarries Act 1954. Kenneth Jagger was an underground worker at Houghton Main Mine. On 13th April 1983 he was found below ground at the transport point of the Fenton South Intake in possession of a cigarette and was smoking it. Jagger was charged under section 90(1) Mines and Quarries Act 1954 and section 66(1) Mines and Quarries Act 1954 and was found guilty on both charges. Judge Lauriston said he would have imposed a prison sentence if he had had the power to do so. On the first offence Jagger was fined £750 with 2 months of jail in default of payment and on the second offence he was fined £250 with 1 month of jail in default of payment. He was allowed to make payment at the rate of £20 per week.

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The second case Regina v. Lancaster was heard at the Crown Court at Manchester, on February 27th 1984 (HSE File No. SO/417/83). The case was heard by His Honour Judge Prestt Q.C. and a Jury. The case concerned an alleged breach of Section 3 Health and Safety at Work Act etc. 1974. Lancaster demolished a wall with a mechanical excavator so that the wall fell into a public street which had not been closed to traffic. The case was withdrawn. First witness (a police constable) revealed material discrepancies between his witness statement and his evidence in court. Lancaster had a previous conviction for a failure to comply with a Prohibition Notice on 7th November 1980 at Middleton Magistrates Court when he was fined £200 and £28 costs.

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The third case Regina v. Asbestos Stripping Company Ltd. was heard at the Crown Court at Willesden, on December 3rd 1984 (HSE File No. SO/596/83). The case concerned an alleged breach of Section 3 Health and Safety at Work Act etc. 1974.

#### Statement of Offence

Failing to discharge the duty imposed by section 3(1) Health and Safety at Work etc. Act 1974 contrary to section 33(1)(a) Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

The Asbestos Stripping Company Ltd. on a day or days between 22nd February and 4th March 1983 at the Nurses Home St. Bernards Hospital Southall Middlesex being an employer did fail to conduct its undertaking of asbestos removal consultants and contractors in such a way as to ensure so far as was reasonably practicable that persons not in its employment who might be affected thereby, in particular residents of the said nurses home, were not thereby exposed to risks to their health through exposure to asbestos dust.

The Asbestos Stripping Company Ltd. was found not guilty.

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The fourth case Regina v. Foraky Ltd. was heard at the Crown Court at Nottingham on March 5th 1984 (HSE File No. SO/588/83). The case was heard by His Honour Judge Hopkin and a Jury. Foraky was prosecuted for alleged breaches of section 31(4) Factories Act 1961 and section 2 Health and Safety at Work etc. Act 1974.

He was convicted of an offence under section 31(4) Factories Act 1961 and fined £2000 (Costs from Central Funds). The charge alleging a breach of section 2 Health and safety at Work etc. Act 1974 was allowed to lay on file.

The charges followed an explosion during work on a road oil tank vehicle which resulted in the death of two workman. On Friday 1st July 1983 a road tanker exploded and killed a fitter and a driver at Colwich Industrial Estate, Nottingham.

Foraky Limited is a small engineering company which employs some 25 people. Its concerns are drilling operations in the petroleum gas and coal industries. Among the company's activities are the manufacture and repair of drilling operations and the repair and maintenance of their motor vehicle fleet which includes 4 bulk tankers, 2 of which are equipped to carry petroleum products.

Company operated 10 heavy commercial vehicles and about 40 cars and vans. One of the vehicles, Seddon Atkinson 2600 gallon vacuum tanker, was modified in November 1982 to carry crude oil and water mixture for BP Ltd. On its last journey it carried 90% water and 10% crude oil in a mixture. Rates varied 10% - 40% crude oil and 90% - 60% water.

Fitter used oxyacetylene torch to release a bolt whilst carrying out repairs - explosion resulted. Cutting gear used to remove bolts from flanges - violent explosion - door torn from hinges hit Mark Nason and his father Bert Nason.

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The fifth case Regina v. H. Smith Engineers Ltd. was heard at the Crown Court at Maidstone on May 14 - 16th 1984 (HSE File No. SO/523/83). The case was heard by His Honour Judge Troup and a Jury. H. Smith Engineers Ltd. was prosecuted as follows:

Count 1.

Statement of Offence

Failing to discharge the duty imposed by virtue of section 4(2) Health and Safety at Work etc. Act 1974. Contrary to section 33(1)(a) and (3) of the said Act.

### Particulars of Offence

H. Smith Engineers Ltd. on 16th May 1983 at Lowfield Distribution Depot, Hermitage Lane, Barming, Kent, being premises over which they had a degree of control and which were non domestic premises made available as a place of work to persons who were not their employees, did fail to take such measures as it was reasonable for them to take to ensure so far as was reasonably practicable that the said premises, the means of access thereto and egress therefrom, and the plant provided for use there were safe, in that they did fail to take reasonable measures to ensure that one Stephen John Neal and one Barry Bernard Reeves could work on the asbestos cement sheet roof there without danger of injury from falling.

In this case a demolition worker, Barry Reeves, fell through asbestos roof. No crawling boards in use at the Lowfield Distribution Centre, Hermitage Lane, Barming. A series of steel framed asbestos roofed warehouses were being used by a food distribution business and the warehouse was being extended. Mr. Reeves suffered a fracture of his left hand and pelvis.

The firm was found guilty of the offence as charged and fined £3000 plus £500 costs.

### Previous Offences.

1. 30.1.80 Regulation 3(1) Construction Working Places Regulations 1966  
Fine £50 and £25 costs.
  2. 30.1.80 Regulations 3(1) Construction Working Places Regulations 1966  
Fine £10.  
3.11.80 section 2 Health and Safety at Work etc. Act 1974.  
Fine £250 and £50 costs  
3.11.80. Regulation 3(1) Construction Lifting Operation Regulations 1961  
Fine £250.
-

The sixth case Regina v. New Taplow Paper Mills Ltd. was heard at the Crown Court at Aylesbury on May 3rd 1984 (HSE File No. SO/565/83). The case was heard before His Honour Judge Slack T.D. and a Jury. New Taplow Paper Mills Ltd. was prosecuted as follows:

Failure to discharge the duty imposed by section 2 of the Health and Safety at Work etc. Act 1974. New Taplow Paper Mills Ltd pleaded guilty and was fined £1,500 plus up to £500 in costs.

Mr. A. Hussain a machinist was removing broken paper from a printing machine on (17.March 1983 at 5:40 p.m. when his arm became trapped. On His left hand and arm were crushed.

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The seventh case Regina v. Vibroplant PLC. was heard at the Crown Court at Aylesbury on December 21st 1984 (HSE File No. SO/534/83). The case was heard before His Honour Judge Slack T.D. and a Jury.

Vibroplant PLC. was prosecuted as follows:

#### Statement of Offence

Failure to discharge the duty imposed by virtue of section 2(1) Health and Safety at Work etc. Act 1974. contrary to section 33(1)(a) and (3) Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Vibroplant PLC on 12th day of March 1983 at Chesney Wold Bleak Hall, Milton Keynes, Buckinghamshire being an employer failed to ensure so far as is reasonably practicable the safety of its employees while at work loading a Terrapin relocatable cabin on a low loading lorry.

Aa accident was caused to Mr. William Henry Brown at Vibroplant PLC Chesney Wold Bleak Hall, Milton Keynes Saturday March 12th 1983.

An ex hire Terrapin relocatable (accommodation) cabin was being transported down to the firm's new Colnbrook depot. In order to do this it was necessary to load it on to a low loader lorry from the Colnbrook depot which was driven by the Colnbrook driver. A large heavy duty fork lift truck was borrowed from Matt Transport for the purpose. The fork lift truck was used to raise the accommodation unit and position it in such a way that the low loader could be reversed beneath it. It was about to be positioned on the back on the back of the low loader when suddenly the floor of the cabin gave way and the forks came through it.

William Brown, a driver, went to help with the loading. He was watching the positioning of the cabin when the floor gave way. As a result he sustained severe injuries to his head, involving a fractured skull, a broken nose, broken cheekbones and a broken jaw. As a result of the incident has also lost his right eye.

The cabin was constructed of chipboard which was nailed to a softwood frame. The structure weighed 3000 kg. These cabins are not designed to be lifted by forklift trucks.

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The eighth case Regina v. J. Murphy & Sons Ltd. was heard at the Crown Court at Derby on September 10th 1984 (HSE File No. SO/135/84). The case was heard before His Honour Judge Woods and a Jury.

An accident occurred on 9th August 1983 in Chesterfield when a child was injured. Dominic Creasy sustained multiple injuries and will be seriously handicapped for life. The parent company has an annual turnover of between £50 million and £60 million. They employed some 3000 persons. The company had been prosecuted eleven times

within the last five years. The company had no safety management system. They addressed this subject in a casual manner.

#### Count 1

##### Statement of Offence

Failure to discharge its duty imposed by section 2(1) Health and Safety at Work etc. Act 1974 to ensure the safety at work of all its employees, contrary to section 33(1)(a) of the said Health and Safety at Work etc. Act 1974.

##### Particulars of Offence

J. Murphy as an employer failed to ensure, so far as was reasonably practicable the safety of its employees including Daniel Scully, during the pressure testing of a gas pipeline by the provision of such plant system of work and instruction as would avoid risk of the expulsion under pressure of the test and from the pipe.

#### Count 2

##### Statement of Offence

Failure to discharge its duty imposed by section 3(1) Health and Safety at Work etc. Act 1974 to conduct its undertaking in such a way as to ensure that persons not in his employment who might be affected thereby were not exposed to risks to their safety contrary to section 33(1)(a) Failure to discharge its duty imposed by section 2(1) Health and Safety at Work etc. Act 1974.

##### Particulars of Offence

Two children Dominic Creasy and Andrew Brian Paine were exposed to risk to their safety by the expulsion of a test from a pipe under pressure test. (Insufficiently

anchored) J. Murphy failed to take reasonably practicable measures to ensure a safe system of pressure testing including the provision of safe and adequate plant, instruction and supervision.

J. Murphy & Sons Ltd were fined £2000 on Count 1 and £10,000 on Count 2 plus prosecution costs of £1,500.

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The ninth case, Regina v. Portagas Ltd. was heard at the Crown Court at Leicester on July 27th 1984 (HSE File No. SO/213/84). The case was heard before His Honour Judge Jowitt Q.C. and a Jury.

The case followed a huge explosion and fire at Old Station Works, Desford, Leicester on 28th January 1984 arising from the discharge of propane gas. Flames leapt forty feet into the air and parts of cylinders were thrown hundreds of yards. Damage was estimated at £50,000 and Leicestershire County Council called for a public inquiry.

#### Statement of Offence

Breach of duty to ensure the safety at work of employers contrary to section 2 and 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Portagas Ltd on the 28th day of January 1984 being an employer failed to discharge the duty under Section 2 (1) Health and Safety at Work Act 1974 to ensure, so far as is reasonably practicable, the safety at work of its employees, whilst undertaking the filling of new cylinders with liquefied propane gas at premises known as the Old Station Works, Desford, in the County of Leicester in that

(a) such cylinders were initially charged with excessive quantities of liquefied propane prior to venting air.



b) the venting of and from such cylinders was not carried out in a safe place.

c) excessive numbers of such cylinders were vented simultaneously.

d) all sources of ignition were not excluded from the area during venting.

Portagas Ltd pleaded guilty and were fined £12,000 plus costs.

Two prohibition notices were issued to prevent further bottling until certain conditions were met.

FILE NOTE attached to these papers.

B.G. Davies  
Area Director,  
East Midlands

9th March 1984

Prosecution on indictment urged for the following reasons:

- (a) very serious contravention of Section 2 of the Health and Safety at Work Act 1974. Five employees were seriously burned as a result of a highly unsafe method of venting air from LPG cylinders. It seemed to Mr. Davies that there were no mitigating factors to justify only summary proceedings.
- (b) The accident resulted in a great deal of anxiety and concern employees, their families and members of the public and demands for a public inquiry.
- (c) It is important that the LPG industry generally is in no doubt about the very strong enforcement action the Health and Safety Executive will take for failure to maintain the highest safety standards at major hazard installations.

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The tenth case, Regina v. Marley Roof Tile Company Ltd. was heard at the Crown Court at Reading on December 10th 1984 (HSE File No. SO/256/84). The case was heard before His Honour Judge M. Birks and a Jury.

The case followed serious injury to Mr. T.J. Perry, an employee of the Marley Roof Tile Company Ltd., following a failure to fence securely a dangerous part of the machinery contrary to Section 14 (1) Factories Act 1961.

Marley Roof Tile Company Ltd pleaded guilty and were fined £800 plus £1,000 costs. The company had committed four previous offences.

Prosecution on indictment authorised for the following reasons:

See LP Code Ac II:

(1.) Gravity of offence

Injured persons arm was amputated. He could have been killed. The conveyor had been unguarded for many months.

(2.) Adequacy of powers of summary court

A maximum fine of £1,000 is inadequate in view of the company's record in guarding conveyors.

3.) Record offences

Well known company with nine similar factories throughout the country. They have been prosecuted at this factory and at their factory in Delamere, Cheshire following accidents at conveyor drums.

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The eleventh case, Regina v. M. Allen and T. Allen was heard at the Crown Court at Teesside in October 1984 (HSE File No. SO/322/84).

Count

Failure to discharge its duty imposed by section 3(1) Health and Safety at Work etc. Act 1974 to conduct its undertaking in such a way as to ensure that persons not in his employment who might be affected thereby were not exposed to risks to their safety contrary to section 33(1)(a) Health and Safety at Work etc. Act 1974.

The Allens were burning straw. Several vehicles collided in smoke on a nearby road although no one was injured.

Fine £3,000 plus costs.

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The twelfth case, Regina v. Gary Marley and Ross Marley was heard at the Crown Court at York on October 11th 1984 (HSE File No. SO/405/84).

The case was heard before His Honour Judge V.R. Hurwitz and a Jury.

Contravening Regulation 3 (1) Construction (Working Places) Regulations 1966 by failing to connect a scaffold rigidly to a building as required by Regulation 15 (1) of the said Regulations, contrary to section 155 (2) Factories Act 1961.

Gary Marley and Ross Marley on 7th day of February 1984, being contractors undertaking operations to which the Construction (Working Places) Regulations 1966 applied, namely the erection of a scaffold, failed to comply with the requirement of Regulation 15 (1) of the said Regulations in that the scaffold was not rigidly connected with the building.

Gary and Ross Marley pleaded guilty and were each fined £250 plus costs. Part of the costs were met from central funds.

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**1985**

Eleven cases were heard by way of indictment in the Crown Court in 1985.

The first case, Regina v. John Plusa, was heard at the Crown Court at Sheffield on January 17th 1985 (HSE File No. SO/382/84).

On November 14th 1983 an accident occurred at the Stocksbridge Works of the BSC Special Steels. John Plusa a fitter, was injured, suffering two broken ribs, two cracked ribs, a collapsed lung and a fractured leg. Subsequent investigation satisfied the Inspector that Mr. Plusa was in serious breach of company safety rules and had failed to carry out the system of work which would have prevented the accident.

**Count 1****Statement of Offence**

Failing to discharge the duty imposed by virtue of section 7(a) Health and Safety at Work Act etc. 1974 to take reasonable care of himself contrary to Section 33(1) (a) of the Health and Safety at Work Act etc. 1974

**Particulars of Offence**

John Plusa on 14th November 1983 while at work as an employee of British Steel Corporation failed to take reasonable care for the safety of himself when working on crane 0271/17 by obtaining a permit to work on immobilising the said crane.

John Plusa was convicted of this offence and given a conditional discharge. Plusa was ordered to pay £100 towards prosecution costs.

## Count 2

## Statement of Offence

Failing to discharge his duty as an employee at work to co-operate with his employer so as to enable his employer to perform its duty under Section 2 (1) Health and Safety at Work etc. Act 1974 contrary to section 7(b) Health and Safety at Work Act etc. 1974 and to Section 33(1) (a) of the said Act.

## Particulars of Offence

John Plusa on 14th November 1983 while at work as an employee of British Steel Corporation failed to co-operate with his employer so far as was necessary to enable British Steel Corporation to ensure so far as was reasonably practicable the safety of all its employees at work as required by Section 2 (1) Health and Safety at Work etc. Act 1974 in that he failed to co-operate in implementing the safety rules for personnel working on or near the track of electric over-head cranes.

John Plusa was acquitted of this offence. The evidence was that safety procedures were often breached. Men often went to work on the maintenance of cranes without obtaining a permit to work, without isolating the power to the crane. The employers were not as zealous as they might have been. Employees were not taken to task about it. They were not disciplined.

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The second case, Regina v. Barlborough Metals (Deptford) Limited and Regina v. D.R. Crawley was heard at the Crown Court at Knightsbridge on October 21st 1985 (HSE File No. SO/419/84). The case was heard before His Honour Judge F.J. Aglionby and a Jury. The Health & Safety Executive was represented by counsel Mr. Mark Batchelor. Barlborough Metals (Deptford) Limited were represented by Mr. C.A. Hart - Leverton Q.C. and a junior. Donald R. Crawley, a director of Barlborough Metals (Deptford) Limited was also represented by leading counsel and a junior.

The bodies of two workers were found under nearly 1,000 tons of steel and concrete after the building was demolished. Mr. Paul Taylor

Barlborough Metals (Deptford) Limited were charged with failure to ensure the safety of employees on the site in Townmead Road, Fulham, London between May and June last year.

The company was acquitted following the judge's direction to the jury, following submissions by defending counsel.

Mr. Mark Batchelor of counsel in advice to the Health & Safety Executive following the conclusion of this case said that all the indications were that the jury was furious with this decision. The outcome of this case caused surprise and disappointment within the Health & Safety Executive. The Parliamentary Under Secretary of State, Department of Employment requested a note of explanation following a report in the London Evening Standard of 24th October 1985.

In his summing up, His Honour Judge Francis Aglionby said:

"I have reached a decision after hearing one and a half hours of legal argument that I am going to direct you to verdicts of not guilty on both counts. First that the mere fact that a person is injured or killed does not prove anything in particular. It may well offer evidence to prove a failure to discharge a duty; equally, it might be evidence that there was a safe system of work that was improperly applied."

"I have to refer to the totality of evidence before me. You have listened to distinguished experts say that the method used to demolish the south west corner of the boiler house at Fulham Power Station was unsafe and other experts who have contended that the method of demolition was satisfactory. The fact that there is no method statement is neither here nor there as such a statement is not statutory. When the construction plans for a building are missing, it is more difficult to plan in detail."

"Evidence was given that advice was not sought from a consulting engineer but cannot inform us as to what that advice might have been."

"The prosecution case presented two conflicting views of the appropriate method of demolition from two groups of experts and in the light of that uncertainty on the status of the evidence before you I have decided that the case should not proceed any further."

The Health and Safety Executive in a Press Release dated 24th October 1985 said

"The judges remarks about two groups of conflicting witnesses refer to the fact that HSE's inspectors gave evidence that the system used prior to the accident was unsafe whereas workers from the site said they thought it was safe. Thus in making his decision, the judge has given equal weight to the expertise of HM Inspectors and that of demolition workers."

It is odd to say the least that the judge was prepared to give the same weight to the views of demolition workers and inspectors of the Health & Safety Executive. It is surprising that Judge Aglionby doubted the necessity to have a method statement for projects of this kind. This is all the more so since Parliament now requires that there be a health and safety plan under the Construction Design and Management Regulations 1994.

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The third case which resulted in an acquittal, centred on alleged breaches of the Woodworking Machine Regulations 1974 by Stanley Price and Stanley Lowes who were trading as a partnership (Your Way Fencing).

The case was heard by His Honour Judge R.A. Percy and a jury on 27th February 1985 at the Crown Court at Newcastle upon Tyne (HSE File No. SO/421/84).



## Count 1

## Statement of Offence

Failing to provide a riving knife at a circular sawing machine contrary to Regulation 16 (2) of the Woodworking Machine Regulations 1974 and Section 155 of the Factories Act 1961.

## Particulars of Offence

Stanley Price on 7th March 1984 at Unit 15A, Airport Industrial Estate, Kenton, Newcastle upon Tyne being the occupier of a factory failed to provide for the Metalclad circular sawing machine at which Joseph Reynold Brown was working, a riving knife which was securely fixed behind and in a direct line with the saw blade.

## Count 2

## Statement of Offence

Failing to guard that part of the blade of a circular sawing machine which was above the machine table contrary to Regulation 16 (3) of the Woodworking Machine Regulations 1974 and Section 155 of the Factories Act 1961.

## Particulars of Offence

Stanley Lowes on 7th March 1984 at Unit 15A, Airport Industrial Estate, Kenton, Newcastle upon Tyne being the occupier of a factory failed to guard that part of the blade of the Metalclad circular sawing machine at which Joseph Reynold Brown was working, which was above the machine table with strong and easily adjustable guards.

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The fourth case, Regina v. Fairey Marine (Cowes) Limited, was heard at the Crown Court at Newport on April 3rd 1985 (HSE File No. SO/419/84). The case was heard before His Honour Judge F.J. Aglionby, a justice and a Jury. The case concerned a painter, Mr. Christopher John Butt, who had burned to death. Butt who was aged 35 years was a married man with three children. He was working at the Cowes Shipyard, Pelham Road, Cowes, Isle of Wight. He was using an unsuitable handlamp in an area where highly flammable concentration of vapour had built up.

#### Statement of Offence

Being the occupier of a factory wherein a regulation made under the Factories Act 1961 namely regulation 9 (1) of the Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972 was contravened contrary to Section 155 of the Factories Act 1961.

#### Particulars of Offence

Fairey Marine (Cowes) Ltd on 30th July 1984 at Cowes shipyard, Pelham Road, Cowes, Isle of Wight was the occupier of a factory at the said address wherein regulation 9 (1) of the Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972 was contravened in that means likely to ignite vapour from a highly flammable liquid, namely a hand held lead lamp was present where a dangerous concentration of vapours from highly flammable liquids might reasonably be expected to be present, namely inside a tank where coal tar epoxy paint was being sprayed.

Regina v. Fairey Marine (Cowes) Limited was convicted and fined £2,000 plus costs.

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The fifth case, Regina v. Groom, was heard at the Crown Court at Bedford on April 15th - 18th 1985 (HSE File No. SO/517/84). The case was heard before His Honour Judge E.E. Youds and a Jury.

#### Statement of Offence

Failure to discharge a duty imposed by virtue of section 3 (2) Health and Safety at Work etc. Act 1974 contrary to Section 33(1) (a) and (3) Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Barry John Groom on 21st May 1984, being a self employed person failed to conduct his undertaking namely the repair of guttering at Pine Works, 34, Chandos Road, Ampthill, Bedford in such a way as to ensure so far as was reasonably practicable that he and other persons (not being his employees) namely employees of Boynett and Co. Ltd. who might be affected thereby were not thereby exposed to risks to their health in that he failed to take all reasonably practicable precautions to prevent the inhalation of fibres of amosite asbestos.

Groom was acquitted. He had not realised that asbestos would be present. He had no previous convictions.

Boynett and Co. Ltd., Pine Works, 34, Chandos Road, Ampthill, Bedford were convicted of an offence under section 2 (1) Health and Safety at Work etc. Act 1974 following a plea of guilty at Ampthill Magistrates Court. The company was fined £250 plus costs.

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The sixth case which involved the carrying out of work by children aged thirteen and fourteen years in a factory, Regina v. McKenna, was heard at the Crown Court at Kings Lynn on June 12th - 13th 1985 (HSE File No. SO/135/85).

#### Statement of Offence

Contravening Section 1 (1) Employment of Women, Young Persons and Children Act 1920 so far as it relates to employment in Factories, contrary to Section 155 of the Factories Act 1961.

#### Particulars of Offence

Gordon Roy McKenna on 23rd October 1984 at Bellamy's Lane, West Walton, Wisbech, Cambridgeshire was the occupier of a factory where David Horrell, a child aged 13 years was employed in an industrial undertaking.

#### Statement of Offence

Contravening Section 1 (1) Employment of Women, Young Persons and Children Act 1920 so far as it relates to employment in Factories, contrary to Section 155 of the Factories Act 1961.

#### Particulars of Offence

Gordon Roy McKenna on 23rd October 1984 at Bellamy's Lane, West Walton, Wisbech, Cambridgeshire was the occupier of a factory where Colin Lenton, a child aged 14 years was employed in an industrial undertaking.

One child did not attend court and could not be found. That charge was therefore dropped. McKenna was convicted on the other charge and fined £1,000 plus £1,500 costs.

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The seventh case concerned Freeman & Proctor Limited, Nuneaton, Warwickshire who were welding engineers. On the 30th July 1984 at 4 p.m. an electrical explosion

occurred in the factory. At 7.15 p.m. a further explosion occurred and Mr. Yates, their general manager, was severely burnt in his hands and face.

The situation was brought about by a combination of poorly arranged apparatus and Mr. Lees demonstrable incompetence to deal with post fault conditions on high energy industrial switch gear.

What was initially a good quality well installed switchboard with a certified fault capability, had been degraded since its installation. This degradation had been brought about by the addition of unsuitable apparatus and conductors in the form of an extension box and connection to the 1,000 Ampere busbars of unsupported, small section multi - strand single insulated conductors.

Under fault conditions these cases would begin to disintegrate before the designed electrical protection installed on the switchboard would operate to clear the fault. It was foreseeable that overload conditions developing into a fault would result in serious damage to the equipment caused by high energy release. Persons close to the switchboard at the time of the fault could be seriously injured.

Regina v. Freeman & Proctor Limited and Edward Lees at the Crown Court at Warwick which was heard before His Honour Judge Wilson - Mellor and a jury on 24th May 1985 (HSE File No.SO/248/85).

Count 1

Statement of Offence

Contravening Regulation 1 of the Electricity Regulations 1908 as amended by the Electricity (Factories) Act) Special Regulations 1944, contrary to Section 155 of the Factories Act 1961.

#### Particulars of Offence

##### Freeman & Proctor Limited

On the 30th day of July 1984 being the occupier of a factory at King Edward Road, Nuneaton, Warwickshire, to which said factory the Electricity Regulations 1908 as amended by the Electricity (Factories) Act) Special Regulations 1944 applied, failed to comply with Regulation 1 of the 1908 Regulations in that certain apparatus and conductors forming an extension to the main medium pressure distribution switchboard were not sufficient in size and power for the work they were called upon to do and were not so installed and protected as to prevent danger so far as was reasonably practicable.

#### Count 2

#### Statement of Offence

Contravening Regulation 17 of the Electricity Regulations 1908 as amended by the Electricity (Factories) Act) Special Regulations 1944, contrary to Section 155 of the Factories Act 1961.

#### Particulars of Offence

##### Freeman & Proctor Limited

On the 31st day of July 1984 being the occupier of a factory at King Edward Road, Nuneaton, Warwickshire, to which said factory the Electricity Regulations 1908 as amended by the Electricity (Factories) Act) Special Regulations 1944 applied, failed to comply with Regulation 17 of the 1908 Regulations in that the switchboard passageway at the main medium pressure distribution switchboard did not have a clear and unobstructed passage of ample width and height with a firm and even floor.

### Count 3

#### Statement of Offence

Failure to discharge a duty imposed by virtue of section 3 (2) Health and Safety at Work etc. Act 1974 contrary to Section 33(1) (a) Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

#### Edward Lees

On the 30th day of July 1984 at King Edward Road, Nuneaton, Warwickshire, being a self employed person, failed to conduct his undertaking of electrical contracting in such a way as to ensure, so far as was reasonably practicable, that he and other persons who may be affected thereby and in particular one Alan Yates, were not thereby exposed to risk to their health or safety.

Freeman & Proctor Limited were convicted on Count 1 and acquitted on Count 2. It was required to pay a fine of £2,500 and 90% of the prosecution costs. Payment was ordered to be made within 14 days.

Edward Lees was convicted on Count 3. He was fined £250 and required to pay a fine of £250 and 10% of the prosecution costs. Payment was ordered to be made within 28 days.

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The eighth case, Regina v. David Harry Lumb was heard at the Crown Court at Taunton on August 20th 1985 (HSE File No. SO/387/85). The case was heard before His Honour Judge Kenneth Willcock Q.C. and two lay Justices. The Health & Safety Executive was represented by counsel Mr. G. Mercer. Mr. D. H. Lumb was represented by Mr. R. Stead.

David Harry Lumb was charged as follows:

Count 1

Failing to discharge the duty imposed by Section 2 (1) Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

Particulars of Offence

David Harry Lumb on the 30th day of August 1984 at premises known as The Somerset Wire Factory, Bristol Road, Bridgewater, Somerset, being an employer, failed to ensure so far as was reasonably practicable, the safety at work of his employee, Steven Hoy, in that he caused or permitted the said Steven Hoy to work on a fragile roof without taking any or any sufficient precautions to protect the said Steven Hoy from the danger of falling through the said roof.

Count 2

Failing to discharge the duty imposed by Section 3 (1) Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

Particulars of Offence

David Harry Lumb on the 30th day of August 1984 at premises known as The Somerset Wire Factory, Bristol Road, Bridgewater, Somerset, being an employer, failed to ensure so far as was reasonably practicable, that Steven Hoy, a person not in his employment who might be affected thereby, was not thereby exposed to risks to his safety in that he caused or permitted the said Steven Hoy to work on a fragile roof without taking any or any sufficient precautions to protect the said Steven Hoy from the danger of falling through the said roof.



Lumb was convicted of failing to discharge the duty imposed by Section 2 (1) Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974 and fined £900 and £300 costs.

Steven Hoy, a demolition worker injured his back as he fell through an asbestos cement roof. Neither scaffolding nor crawling boards were provided. Lumb had worked in the demolition business for 24 years and had founded his own company three years earlier.

His Honour Judge Kenneth Willcock Q.C. said:

"You are an experienced and skilled contractor, and we do not doubt you have set high standards for a great number of years."

"You are well thought of in the industry, and this carries considerable weight with us."

"But on this occasion you you have lapsed because you have not supervised an employee, thinking he would be imbued with some of the skills you have acquired yourself, over a number of years."

"It was up to an employer to "nag" his employees to make sure they did the right thing."

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The ninth case, Regina v. A.M. and J. Wilkinson was heard at the Crown Court at York on September 5th 1985 (HSE File No. SO/418/85). The case was heard before His Honour Judge H.G. Bennett Q.C.

Two brothers ran a farm. They had been prosecuted in 1979 when a similar beet harvester had been used with an unguarded power take off shaft. The offence this time

was similar. Cammish, who was not an employee but who lived in the farm cottage, had been at risk on October 10th 1984.

The defendant was convicted of failing to discharge the duty imposed by Section 3 (1) Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974 and fined £250.

The defendant was further convicted of failing to discharge the duty imposed by Section 22 Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974 and fined £500.

The defendant was required to pay costs not to exceed £500 with a balance from central funds.

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The tenth case, Regina v. Gomersal Ltd was heard at the Crown Court at York on February 4th and 5th 1985 (HSE File No. SO/431/85). The case was heard before Mr. Recorder P.M. Beard.

The case concerned the demolition of a former brewery. Eighteen year old Michael Waugh was riding on a dumper truck in a dangerous manner. Waugh sustained fractured ribs and was obliged to spend seven days in hospital.

Gomersal Limited were charged with and convicted of:

Failing to comply with safety requirements affecting an employed workman contrary to Regulation 3 (1) (a) Construction (General Provisions) Regulations 1961 and section 155 (2) Factories Act 1961.

Gomersal Limited on 17th January 1984, being an employer of workmen who was undertaking operations to which the Construction (General Provisions) Regulations 1961 applied, failed to comply with the requirements of regulation 35 of the said

regulations affecting a workman employed by Gomersal Ltd. in that such a workman, namely Michael Alexander Waugh rode in an insecure position on a truck.

Gomersal Limited was fined £750. (Prosecution costs from central funds.)

Failing to notify an accident, contrary to Regulation 4 (1) (a) Notification of Accidents and Dangerous Occurrences Regulations 1980 and 33 (1) (c) of the said Health and Safety at Work Act 1974.

Gomersal Limited on 17th January 1984, being an employer of Michael Alexander Waugh and the responsible person for the purposes of the Regulation 4 of the Notification of Accidents and Dangerous Occurrences Regulations 1980 failed to notify the enforcing authority namely the Health and Safety Executive, forthwith by the quickest practicable means of an accident resulting in major injury to the said Michael Alexander Waugh.

Gomersal Limited was fined £250. (Prosecution costs from central funds.)

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The eleventh case, Regina v. Sullivan Management Control Ltd and Colin Thomas Sullivan was heard at the Crown Court at Snaresbrook on September 16th - 20th 1985 (HSE File No. SO/287/84). The case was heard before Mr. Assistant Recorder P. Singer. The Health & Safety Executive was represented by counsel Mr. P.O' Brien.

Prosecution arose from asbestos stripping operations which were part of the redevelopment of a disused factory at Redif House, Wantz Lane, Dagenham.

Visits by an Inspector in March 1984 revealed work in progress without any regard for health precautions which continued in the face of service of a Prohibition Notice.

The company was charged with two offences of failing to discharge its duty to its employees under Section 2 Health and Safety at Work etc. Act 1974 and a third charge of contravening the Prohibition Notice. Mr. Sullivan a director of the company

was charged with participating in all three of these offences under section 37 Health and Safety at Work etc. Act 1974.

Sullivan Management Control Ltd and Colin Thomas Sullivan pleaded not guilty but were convicted on all counts.

In sentencing the judge, Mr. Assistant Recorder P. Singer, commented on Sullivan's callous indifference to the health of his employees and his extreme, obstinate and unwarranted opposition to the Health & Safety Executive. Sullivan had a cynical disregard for the dangers of asbestos.

The scale of the risk from exposure described by witnesses was incalculable but the potential damage to health is both insidious and irreversible.

A serious view was taken of matters concerning the disposal of noxious substances.

Sullivan Management Control Ltd was fined a total of £2,000 plus prosecution costs to a maximum of £2,000.

Colin Thomas Sullivan was fined a total of £1,500 for breaches of Health and Safety at Work etc. Act 1974 and sentenced to one month imprisonment suspended for two years for contravention of the prohibition notice and ordered to pay £2,000 towards prosecution costs.

### 1986

Sixteen cases were heard by way of indictment in the Crown Court in 1986.

The first case, Regina v. E.C. Transport (Wimborne) Ltd. and Charles Ian Rycroft was heard at the Crown Court at Bournemouth on July 4th 1986 (HSE File No. SO/379/85). The case was heard before His Honour Judge George Grant MacDonald. The Health & Safety Executive was represented by counsel Mr. P.C. Mott. The defendants were represented by Mr. M. Parroy.

The defendant company pleaded guilty to twelve offences and Rycroft pleaded guilty to four offences. The court imposed a fine of £100 upon each of the counts to which the party pleaded guilty, some £1,600 in all. The Health & Safety Executive thought this to be unduly low and believed that the judge had failed to understand the danger created. A fine of £50,000 had been expected.

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The second case, Regina v. Bendle (Joseph) was heard at the Crown Court at Swansea on January 6th 1986 (HSE File No. SO/468/85). The Health & Safety Executive was represented by counsel Mr. Wyn Richards. The defendant elected trial in the Crown Court and was formally committed under Section 6(2) Magistrates Courts Act 1980. The defendant had been driving a truck and ran into two employees, Arthur Jones who was killed and Terrence Lloyd who was injured.

#### Count 1

#### Statement of Offence

Failing to discharge his duty as an employee whilst at work to take reasonable care for the health and safety of other persons contrary to section 7(a) Health and Safety at Work Act etc. 1974 to take reasonable care of himself contrary to Section 33(1) (a) of the Health and Safety at Work Act etc. 1974

#### Particulars of Offence

Joseph Bendle on 29th January 1985 being an employee at his place of work at Alcoa Manufacturing (G.B.) Limited, Bridge Road, Waunarlwydd, in the County of West Glamorgan failed to take reasonable care for the health and safety of other persons who might be affected by his acts or omissions as the driver of a fork lift truck.

Case dismissed. Costs from central funds.

Alcoa Manufacturing (G.B.) Limited had been convicted in Gowerton Magistrates Court on 30th April 1985 and fined £800 and £60 costs.

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The third case, Regina v. Charles Arthur Manning and Robert Desmond Ward was heard at the Crown Court at Ipswich on April 7th 1986 (HSE File No. SO/476/85). The case was heard before His Honour Judge J.T. Turner and a Jury. The Health & Safety Executive was represented by counsel Mr. Stuart Lawson - Rogers. The defendants were represented by Mr. John Devaux.

Charles Manning operated an amusement park in Felixstowe. On the 6th day of May 1985, Bank Holiday Monday, a Chair O' Plane collapsed because the timber structure and supporting pieces were of inadequate strength due to decay. The structure had been examined by Robert Ward, a chartered aeronautical engineer and proprietor of specialist engineering inspectors, Robert Ward Engineering Services, on the 31st January 1985. As a result of the collapse a fifteen year old schoolboy suffered a broken left leg and a fractured right knee and a nineteen year old man also suffered a broken right leg.

Mr. Stuart Lawson - Rogers of Counsel suggested a charge under Section 4 of the Health and Safety at Work Act 1974. The Solicitor's Office of the Health & Safety Executive suggested that this may be inappropriate because it was doubted whether a person could be said to "use" the fairground ride or whether they simply rode on it and

did not take any part in the control or operation of it. A further reason is that whilst this site was a permanent one and Charles Manning both owned and operated the rides it was felt that other operators might feel they could escape responsibility because they are only concessionaires or because they operate a touring fair.

#### First Count

Failing to discharge the duty under Section 3 (2) of the Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

Charles Arthur Manning on the 6th day of May 1985, being a self employed person, within the meaning of the Health and Safety at Work Act 1974, failed to conduct his undertaking, namely the Charles Manning Amusement Park, Felixstowe, Suffolk, in such a way as to ensure, so far as was reasonably practicable, that other persons (not being his employees) who might be affected thereby, were not thereby exposed to risks to their safety in that on the said date visitors to the said park were allowed to ride upon an amusement device known as a "chairplane" which was part of the said undertaking and under his control but which was unsafe by reason of its timber structure and certain supporting pieces being of inadequate strength due to decay.

#### Second Count

Failing to discharge the duty under Section 3 (2) of the Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

Robert Desmond Ward on the 31st day of January 1985, being a self employed person, within the meaning of the Health and Safety at Work Act 1974, failed to conduct his undertaking, namely Robert Ward Engineering Services, in such a way as

to ensure, so far as was reasonably practicable, that other persons (not being his employees) who might be affected thereby, were not thereby exposed to risks to their safety in that on the said date, whilst purporting to carry out a "thorough examination" of a passenger carrying amusement device, known as a "chairplane", at the Charles Manning Amusement Park, Felixstowe, Suffolk, he failed to detect and duly report that the timber structure and certain supporting pieces were decayed and that the said device in the said condition was unsafe for use by customers of the said Park.

Following an 8 day trial Charles Arthur Manning was acquitted on Count 1 and awarded costs from central funds. Robert Desmond Ward was convicted on Count 2 and was required to pay a fine of £750. He was ordered to pay £600 to the legal aid fund although the fund paid the remaining costs. The prosecution costs were paid from central funds although Ward was ordered to pay a contribution of £750. Payment was ordered to be made within 60 days. If Ward's fine was not paid within that period he would be sent to prison for sixty days.

The Judge said it gave him no pleasure to sentence a man of Ward's undoubted ability and expertise for a serious offence which had caused danger and injury to the public however he made it clear that the sentence on Ward would have been more severe had it not been for the fact that his income was low (£225 per week) and that he had an obligation to pay for his disabled son's education.

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The fourth case, Regina v. Press Construction Limited was heard at the Crown Court at Acton on March 24th 1986 (HSE File No. SO/488/85). The case was heard before His Honour Judge Worthington and a jury. The Health & Safety Executive was represented by counsel Mr. Timothy Briden.

Contravening a regulation made under the Factories Act 1961 expressly imposing a duty on them contrary to section 155 (2) of the said Factories Act 1961.



Press Construction Limited on 26th November 1984 at Station Road, Harlesden, London NW10 failed to discharge the duty imposed by Regulation 3 (1) (b) of the Construction (General Provisions) Regulations 1961 applied, in that they failed to take all practicable steps to prevent danger to persons employed by them including one David John Theobald from a live underground cable by rendering the said cable electrically dead or otherwise as required by Regulation 44 (1) of the said Regulations.

On 26th November 1984 on the pavement outside 26 Station Road, Harlesden Mr. David Theobald was using a heavy weight jack hammer, to break the ground with a view to fitting two new water supplies, when he struck a live electric cable. Mr. Theobald received burns to his face, hair neck and arms and was taken to hospital.

The defendant company pleaded guilty and the court imposed a fine of £1,500. Press Construction Limited was required to make a contribution of £500 towards prosecution costs.

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The fifth case, Regina v. Donald John Bentley and R. Curtis (Assessors) Ltd. was heard at the Crown Court at Maidstone on October 20th 1986 (HSE File No. SO/555/85). The Health & Safety Executive was represented by counsel Mr. John Reide.

At approximately 3.30 p.m. on Saturday 27th April 1985 a fairground amusement ride known as paratrooper collapsed at a Dover fair. Twenty children were injured. Nineteen were taken to hospital and five were detained. The injuries included broken arms and legs. The ride consisted of ten two seater chairs (fitted with passenger restraints) suspended from radial arms which were rotated at speed by an electric motor. Place of rotation could be tilted by operation of a ram supplied with hydraulic fluid under pressure from a pump and second electric motor. The ride was of British manufacture and had undergone thorough examination by an appointed (i.e. competent) person about five weeks before the incident.

An electrical fault or faults led to the hydraulic pump delivering excess pressure to the ram and cylinder at a point in the operating cycle when the ride was raised and rotating. A wrongly set pressure relief valve did not operate and the end cap of the cylinder failed under pressure. With the sudden loss of hydraulic fluid the still rotating ride fell under gravity, injuring passengers.

Mr. D.C.T. Eves, then H.M. Chief Inspector of Factories said that in relation to this incident a prosecution by way of indictment was appropriate.

He said in a file note that:

"it is important that H.S.E. is seen to take a tough line with fairground operators and competent persons involved in the thorough examination of these rides, and the Dover incident attracted much interest from the media. This approach should encourage others and should provide much useful publicity. This case must not fail."

Count 1.

Failing to discharge the duty under Section 3 (2) of the Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

Particulars of Offence

Donald John Bentley on the 27th day of April 1985 at Dartford Park, Dartford being a self employed person, within the meaning of the Health and Safety at Work Act 1974, failed to conduct his undertaking, namely the operation of a fairground amusement device known as paratrooper in such a way as to ensure, so far as was reasonably practicable, that persons not in his employment who might be affected thereby, were not thereby exposed to risks to their safety in that he failed to take all reasonably practicable precautions to ensure that the paratrooper, and the hydraulic and electrical systems and ride supports thereof were safe.

## Count 2.

Failing to discharge the duty under Section 3 (1) of the Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

## Particulars of Offence

R. Curtis (Assessors) Ltd on the 20th day of March 1985 at Dartford Park, Dartford being an employer within the meaning of the Health and Safety at Work Act 1974, failed to conduct his undertaking, namely the examination of a fairground amusement device known as paratrooper in such a way as to ensure, so far as was reasonably practicable, that persons not in his employment who might be affected thereby, were not thereby exposed to risks to their safety in that the said examination was not a thorough examination to include checking the integrity of all aspects of the device including the hydraulic and electrical systems and ride supports.

Donald John Bentley pleaded not guilty but was convicted and fined £2,500. R. Curtis (Assessors) Ltd. pleaded guilty and was convicted and fined £2,500.

The defendants were each required to pay £4,000 towards the prosecution costs the balance to be paid from central funds.

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The sixth case, Regina v. G.W. Wright was heard at the Crown Court at Knutsford on January 30th 1986 (HSE File No. SO/732/85). The Health & Safety Executive was represented by counsel Mr. Roger Dutton.

A farmworker sustained a compound leg fracture when the unsupported side of an excavation collapsed.

Case dismissed. Costs from central funds.

The seventh case, Regina v. C.R. Longley and Company Ltd. was heard at the Crown Court at Knutsford on January 30th 1986 (HSE File No. SO/733/85). The Health & Safety Executive was represented by counsel Mr. Peter Hughes.

Prosecution of a manufacturer of reinforced concrete silo panels under Section 6 Health and Safety at Work Act 1974.

Case dismissed. Costs from central funds.

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The eighth case, Regina v. I.E.M. Services Ltd. was heard at the Crown Court at Maidstone on October 3rd 1986 (HSE File No. SO/467/86). The case was heard before Mr. Assistant Recorder Birts (Now Mr. Recorder P.W. Birts Q.C.) and a jury. The Health & Safety Executive was represented by counsel Mr. Timothy Briden. The defendants were represented by Mr. Robin Spon-Smith. This was a fatal accident involving Mr. Stephen Parker on 29th January 1986.

I.E.M. Services Limited, a firm based in Harrow, Middlesex were electrical sub-contractors brought onto Telling Limited's site at the Great Hall, Mount Tunbridge Wells, Kent by the principal mechanical/electrical sub-contractor, Mala Engineering Limited. Tellings were undertaking refurbishment work and the construction of new car parking facilities. I.E.M. Services Limited were to carry out electrical installation work in connection with the heating and ventilation plant in the basement boiler room and other plant and equipment in the immediate vicinity. I.E.M. Services Limited commenced work in November 1985. During the morning of 29th January 1986 site clearing staff employed by D.P. Payne Limited, including Mr. Stephen Parker started to clear debris. During the course of this work, Mr. Parker grasped the coil of six wires that was lying on the floor and was electrocuted. His grip on wires could not be released until the two control panels were turned off. One of the wires was connected to a 238 volt supply.

No precautions had been taken to insulate the ends of the six wires that had been left in the light well and no other precautions had been taken to ensure that these wires were safe.

#### Count 1

Contravening a regulation made under the Factories Act 1961 expressly imposing a duty on them contrary to section 155 (2) of the said Factories Act 1961.

I.E.M. Services Limited on 29th January 1986 at Telling Limited's site, The Great Hall, Mount Pleasant Road, Tunbridge Wells, Kent failed to discharge the duty imposed by Regulation 44 (1) of the Construction (General Provisions) Regulations 1961 (S.I. 1961 No. 1580) applied, in that during the progress of operations or works to which the said Regulations applied they failed to take all practicable steps to prevent dangers to persons employed by them including one Stephen Parker from any live electrical cable which was liable to be a source of such danger whether by rendering such cable electrically dead or otherwise as required by Regulation 3 (1) (b) of the said Regulations.

#### Count 2

Failing to discharge the duty under Section 3 (1) of the Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

I.E.M. Services Limited on the 29th day of January 1986 at Telling Limited's site, The Great Hall, Mount Pleasant Road, Tunbridge Wells, Kent where they were conducting an undertaking failed to discharge the duty to conduct failed to conduct the said undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in his employment who might be affected thereby, including Stephen

Parker, were not thereby exposed to risks to their safety in that they exposed Stephen Parker to the risk arising from a live electrical cable.

I.E.M. Services Limited pleaded not guilty to Count 1 and was acquitted of that charge. The company did, however, plead guilty to count 2 and was fined £2,500. I.E.M. Services Limited was required to pay £500 towards the prosecution costs the balance to be paid from central funds.

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The ninth case, Regina v. Grubb Limited was heard at the Crown Court at Ipswich. (HSE File No. SO/482/86). The case was heard before His Honour Judge John Turner and a jury. The Health & Safety Executive was represented by counsel Mr. Patrick O'Brien. The defendants were represented by Mr. Gray. Grubb Limited was committed for trial by Colchester Magistrates Court on July 22nd 1986.

The omission of temporary crossbracing contributed to the collapse of a steel framed single storey warehouse in strong winds on November 5th 1985. Four men were seriously injured and a van parked below was almost sliced in half. The failed structure made up one half of a 67 metre long by 89 metre wide twin span superstore being built by developer Property Associates for the Sainsbury food chain. The design work was let to Powlesland and the fabrication and erection contract to Slade. Slade, in turn, subcontracted the erection work to Grubb, a Cambridgeshire company of industrial construction engineers.

#### Count 1

Contravening a regulation made under the Factories Act 1961 expressly imposing a duty on them contrary to section 155 (2) of the said Factories Act 1961.

Grubb Limited on 5th day of November 1985 at Tollgate West, Stanway, Colchester, Essex failed to comply with Regulation 50 (1) of the Construction (General Provisions) Regulations 1961 (S.I. 1961 No. 1580) in that during a temporary state of

instability of the structure before it was completed, all practicable precautions were not taken by the use of temporary guys, stays, supports and fixings or otherwise where necessary to prevent danger to persons employed, Michael James Graham, Neil Wallace Saggars, James Christopher Cleary and Stephen John Thompson through the collapse of the steel frame building, contrary to Regulation 3 (1) (b) of the said Regulations.

#### Count 2

Failing to discharge the duty under Section 4 (2) of the Health and Safety at Work Act 1974, to persons not in its employ who use non-domestic premises made available to them as a place of work, contrary to 33 thereof.

#### Particulars of Offence

Grubb Limited, on the 5th day of November 1985, being a person in control of premises at Tollgate West, Stanway, Colchester, Essex and having made the said premises available as a place of work to Michael James Graham, Neil Wallace Saggars, James Christopher Cleary and Stephen John Thompson who were not its employees, failed to take such measures as it were reasonable for a person in its position to take to ensure, so far as was reasonably practicable, that the premises were safe in that precautions were not taken by the use of temporary guys, stays, supports and fixings, or otherwise, to prevent danger through the collapse of the steel frame of the building during a temporary state of instability of the structure before it was completed.

#### Count 3

Failing to discharge the duty under Section 3 (1) of the Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

Grubb Limited, on the 5th day of November 1985, being a person in control of premises at Tollgate West, Stanway, Colchester, Essex where they were conducting an undertaking failed to discharge the duty to conduct failed to conduct the said undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in his employment who might be affected thereby, including Michael James Graham, Neil Wallace Saggars, James Christopher Cleary and Stephen John Thompson were not thereby exposed to risks to their safety in that they did not take precautions by the use of temporary guys, stays, supports and fixings, or otherwise, to prevent danger through the collapse of the steel frame of the building during a temporary state of instability of the structure before it was completed.

Grubb Limited pleaded guilty and was fined £500 and ordered to pay £2,500 towards the prosecution costs the balance to be paid from central funds.

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The tenth case, Regina v. Archibald Coletta and Glass Glover Distribution Limited was heard at the Crown Court at Chelmsford on 1-3 December 1986. (HSE File No. SO/517/86). The case was heard before Mr Assistant Recorder Howe and a jury. The Health & Safety Executive was represented by counsel Mr. Alan Hitching.

Mr. R. Knights fell through a false ceiling to his death whilst on a working platform. The unsafe nature of the ceiling was not indicated by guard rails or barriers.

#### Count 1

Contravening the Construction (Working Places) Regulations 1966, contrary to section 155 (2) of the said Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.



Archibald Coletta on 29th January 1986 at Glass Glover Distribution Limited's premises at Elizabeth Way, Harlow, in the County of Essex, being an employer of workmen undertaking building operations to which Section 127 of the Factories Act 1961 and the Construction (Working Places) Regulations 1966 applied, did contravene Regulation 3 (1) and 33 (2) (a) of the said Regulations in that he did not provide in respect of an edge, being one which an employed person was liable to approach or near which any person was liable to pass and from which such a person was liable to fall a distance of more than 6'6" a suitable guard rail and toe boards so placed as to prevent the fall of such person, material or articles.

#### Count 2

Contravening the Construction (Working Places) Regulations 1966 , contrary to section 155 (2) of the said Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

Archibald Coletta on 29th January 1986 at Glass Glover Distribution Limited's premises at Elizabeth Way, Harlow, in the County of Essex, being an employer of workmen undertaking building operations to which Section 127 of the Factories Act 1961 and the Construction (Working Places) Regulations 1966 applied, did contravene Regulation 3 (1) and 36 (2) in that he did not provide for a person passing or working near material liable to fracture if weight were applied to it and so situated that if it were to be so fractured a person was liable to fall a distance of more than 6'6" a suitable guard rail or other suitable means of preventing, so far as reasonably practicable, any person so passing or working near falling through the said material.

#### Count 3

Failure to discharge a duty, contrary to Section 33 (1) (a) of the Health and Safety at Work Act 1974.

Glass Glover Distribution Limited on a day between the 1st day of July 1985 and the 30th day of January 1986, being a person who had control of premises at Elizabeth Way, Harlow, in the County of Essex, and to whom Section 4 of the Health and Safety at Work Act 1974 applied failed to take such measures as it was reasonable for a person in their position to take to ensure so far as reasonably practicable, that their premises were safe and without risk to health, in that they failed to provide (a) in respect of an edge, being one which an employed person was liable to approach or near which any person was liable to pass and from which such a person was liable to fall a distance of more than 6'6" a suitable guard rail and toe boards so placed as to prevent the fall of such a person, material or articles; (b) in respect of a person passing or working near a material liable to fracture if weight were applied to it and so situated that if it were to be so fractured a person was liable to fall a distance of more than 6'6" a suitable guard rail or other suitable means of preventing, so far as reasonably practicable, any person so passing or working near falling through the said material.

Archibald Coletta was found not guilty to Counts 1 and 2. Glass Glover Distribution Limited was fined £750 and was required to pay £1500 towards the prosecution costs within 14 days, the balance to be paid from central funds.

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The eleventh case, Regina v. Rowbotham Tankships Limited and Knight International Surveys Limited was heard before His Honour Judge David Williams T.D., Q.C. at the Crown Court at Swansea on 16th - 24th June 1986. (HSE Files No. SO/273/85 and No. SO/562/86). The Health & Safety Executive was represented by counsel Mr. Martin Thomas Q.C. and Mr. P. Rees. Mr. Croxford appeared on behalf of the Accused Rowbotham Tankships Limited and Mr. R. Hone appeared on behalf of the Accused Knight International Surveys Limited.

In this case the owners of the M.V. Pointsman, Rowbotham Tankships Limited, were acquitted on six counts of failing to discharge the duties imposed upon them by Section 2 and Section 3 of the Health and Safety at Work Act 1974. Knight

International Surveys Limited were convicted of two charges under Section 3 (1) Health and Safety at Work Act 1974. The judge accepted a submission by Rowbotham Tankships Limited that the company could only be liable if the act or omission complained of was made by one of a class of persons who could be identified with the controlling mind and will of the company. As the master or crew were not members of this class, the company could not be liable for their acts or omissions notwithstanding the very wide discretion that he had in safety matters.

The facts were that on 15th June 1984 a series of explosions took place on M.V. Pointsman when it was berthed at Milford Haven. Four men lost their lives and twelve members of the emergency services were severely injured. The accident happened because the captain of the vessel and the company's engineering superintendent at Milford Haven had arranged for oxyacetylene work to take place in the pump room and the manhole cover which separated the slops tank from the pump room was inadequately sealed, permitting explosive vapour to pass into the pump room. The employer admitted that there was fault on the part of the Chief Officer, Mr. Eamon Cowman who was dismissed by the company and by the Captain who was severely reprimanded.

#### First Count

Failing to discharge the duty to ensure so far as reasonably practicable the health safety and welfare at work of all employees, contrary to Sections 2 (1) and 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

Rowbotham Tankships Limited, at Milford Haven Docks on the 15th day of June 1984, being an employer within the meaning of the Health and Safety at Work Act 1974, failed to discharge their duty under Section 2 (1) of the said Act to ensure, so far as was reasonably practicable, the health and safety at work of all their employees on board their vessel, the M.V. Pointsman, in that by themselves, their servants or

agents, they failed to provide that the manway cover of the slop tank beneath the pump room of the said vessel was properly secured and a gas-tight seal.

#### Second Count

Failing to discharge the duty to ensure so far as reasonably practicable the health safety and welfare at work of all employees, contrary to Sections 2 (1) and 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

Rowbotham Tankships Limited, at Milford Haven Docks on the 15th day of June 1984, being an employer within the meaning of the Health and Safety at Work Act 1974, failed to discharge their duty under Section 2 (1) of the said Act to ensure, so far as was reasonably practicable, the health and safety at work of all their employees on board their vessel, the M.V. Pointsman, in that by themselves, their servants or agents, they caused or allowed one Andrew William Hammond to issue Naked Light Certificates for hot work on the said vessel when the said Hammond was not a competent analyst and was not competent to issue such certificates.

#### Third Count

Failing to discharge the duty to ensure so far as reasonably practicable the health safety and welfare at work of all employees, contrary to Sections 2 (1) and 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

Rowbotham Tankships Limited, at Milford Haven Docks on the 15th day of June 1984, being an employer within the meaning of the Health and Safety at Work Act 1974, failed to discharge their duty under Section 2 (1) of the said Act to ensure, so far as was reasonably practicable, the health and safety at work of all their employees

on board their vessel, the M.V. Pointsman, in that by themselves, their servants or agents, they caused or allowed hot work to be carried out in the pump room of the said vessel, without checking sufficiently or at all as to whether the slop tank beneath it was empty, or its contents were capable of producing flammable vapours.

#### Fourth Count

Failing to discharge their duty to conduct their undertaking in such a way as to ensure so far as reasonably practicable that persons not in their employment but who might be affected thereby were not thereby exposed to risks to their health safety, contrary to Sections 3 (1) and 33 (1) (a) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Rowbotham Tankships Limited, at Milford Haven Docks on the 15th day of June 1984, being an employer within the meaning of the Health and Safety at Work Act 1974, failed to conduct their undertaking pursuant to their duty under Section 3 (1) of the said Act in such a way as to ensure, so far as was reasonably practicable, that persons on board their vessel, the M.V. Pointsman, who were not in their employment but who might be affected thereby, namely Keith Martin Harding and David Huw Davies, were not exposed to risks to their health or safety in that by themselves, their servants or agents, they failed to provide that the manway cover of the slop tank beneath the pump room of the said vessel so as to ensure that the same was properly secured and a gas-tight seal.

#### Fifth Count

Failing to discharge their duty to conduct their undertaking in such a way as to ensure so far as reasonably practicable that persons not in their employment but who might be affected thereby were not thereby exposed to risks to their health safety, contrary to Sections 3 (1) and 33 (1) (a) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Rowbotham Tankships Limited, at Milford Haven Docks on the 15th day of June 1984, failed to conduct their undertaking pursuant to their duty under Section 3 (1) of the said Act in such a way as to ensure, so far as was reasonably practicable, that persons on board their vessel, the M.V. Pointsman, who were not in their employment, but who might be affected thereby, namely Keith Martin Harding and David Huw Davies, were not exposed to risks to their health or safety in that by themselves, their servants or agents, they failed to inform Andrew William Hammond, who boarded the said vessel for the purpose of issuing Naked Light Certificates of the existence and position of the slop tank beneath the pump room of the said vessel.

#### Sixth Count

Failing to discharge their duty to conduct their undertaking in such a way as to ensure so far as reasonably practicable that persons not in their employment but who might be affected thereby were not thereby exposed to risks to their health safety, contrary to Sections 3 (1) and 33 (1) (a) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Rowbotham Tankships Limited, at Milford Haven Docks on the 15th day of June 1984, failed to conduct their undertaking pursuant to their duty under Section 3 (1) of the said Act in such a way as to ensure, so far as was reasonably practicable, that persons on board their vessel, the M.V. Pointsman, who were not in their employment, but who might be affected thereby, namely Keith Martin Harding and David Huw Davies, were not exposed to risks to their health or safety in that by themselves, their servants or agents, they caused or allowed the said Harding and Davies to commence hot work in the pump room of the said vessel when to do so was unsafe by reason of the presence of flammable vapours therein.

The Health and Safety Executive were particularly concerned about the ramifications of the decision made in the Pointsman case since it seemed to be a major loophole in the legislation. It is understood that counsel advised that the Attorney-General be asked to refer the decision in this case to the Court for the opinion of the Court of Appeal because:

- (1) The decision of His Honour Judge David Williams, Q.C. in the Pointsman case gravely weakened the coercive effect of the legislation to the point where no prosecution could succeed if the company's paper policies were in order and no act or default on behalf of the controlling officer of the company could be proved.
- (2) The Court of Appeal had not been asked to consider whether the offence set out in the Act was one of strict liability.
- (3) The object and scheme of the act itself suggested that the statutory offences set out in Section 33(1) are offences of strict liability, not requiring mens rea but subject to the defence set out in Section 40 of reasonable practicability.

Accordingly counsel advised that the following questions be put to the court:

- (i) Is an employer guilty of an offence under Section 33 (1) (a) of the Health and Safety at Work Act 1974 where failure to discharge his duty to ensure the health, safety and welfare at work of all his employees arise as a result of the act or default of an employee or other agent?
- (i) Is a company similarly guilty where the failure to discharge its duty as in (i) above, arises out of the act or default of a servant who does not form part of the directing mind and will of the company?

Following discussions by the Health and Safety Commission on 16th December 1986 it was agreed that a narrow view would be taken of this judgement. If action was to be

taken at all it would be limited to amending draft Regulations dealing with the shipowner/master relationship.

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The twelfth case, Regina v. Ablere Construction (Southern) Limited was heard before His Honour Judge Harben-Jack and Jury at the Crown Court at Aylesbury on 9th December 1986. (HSE Files No. SO/569/86 and No. SO/562/86). The Health & Safety Executive was represented by counsel Mr. Alan Hitching. Mr. Edward Faulks appeared on behalf of the Accused Ablere Construction (Southern) Limited.

The accident occurred when Mr. Durcan and Mr. Henry O' Hare were working in an excavation the sides of which were supported by a steel box. The excavation was some two metres in depth. Access to the workplace was via a 3.5 to 4 metre section of unsupported clay ground. Mr. Henry O' Hare, the deceased was buried as he attempted to climb out of a trench. The side of the trench collapsed.

#### Count 1

Contravening the Construction (Working Places) Regulations 1966 , contrary to section 155 (2) of the said Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

Ablere Construction (Southern) Limited on 21st November 1985 at Stokegrange Site, Wendover Road, Aylesbury, in the County of Buckingham, being an employer of workmen undertaking building operations to which Section 127 of the Factories Act 1961 and the Construction (Working Places) Regulations 1966 applied, did contravene Regulation 3 (1) in failing to comply with the requirements of Regulation 6 (1) in that there was not, so far as was reasonably practicable suitable and sufficient safe access to and egress from every place including an excavation at which persons including Anthony Durcan and Henry O' Hare, at any time worked.



## Count 2

Contravening the Construction (General Provisions) Regulations 1961 , contrary to section 155 (2) of the said Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

Ablerex Construction (Southern) Limited on 21st November 1985 at Stokegrange Site, Wendover Road, Aylesbury, in the County of Buckingham, being an employer of workmen undertaking building operations to which Section 127 of the Factories Act 1961 and the Construction (General Provisions) Regulations 1961 applied, did contravene Regulation 3 (1) in failing to comply with the requirements of Regulation 8 (1) in that an adequate supply of timber of suitable quality or other suitable support was not provided and used to prevent, so far as was reasonably practicable and as early as was practicable in the course of the work, danger to any person employed including Anthony Durcan and Henry O' Hare, from a fall or dislodgement of earth rock or other material forming a side of an excavation.

Ablerex Construction (Southern) Limited were convicted on both counts and fined £8,000 and ordered to pay costs of £5,411.74.

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The thirteenth case, Regina v. Fine Organics Limited was heard before His Honour Judge Stroyan Q.C. and Jury at the Crown Court at Teesside on 1st December 1986. (HSE File No. SO/590/86). The Health & Safety Executive was represented by counsel Mr. K. Miller.

The company failed to provide safe plant for the treatment of chemical effluent produced from the BSM process. On the morning of 15th March 1986 two vessels exploded killing a process operator and starting a fire which destroyed the whole plant. Modifications had been carried out to the plant, the consequences of which had been imperfectly understood.

### Count 1

#### Statement of Offence

Failing to discharge its duty imposed by section 2 Health and Safety at Work etc. Act 1974 to ensure the safety at work of all its employees, contrary to section 33 of the said Act.

#### Particulars of Offence

Fine Organics Limited on the 15th day of March 1986 at Northwest Industrial Estate, Peterlee, being an employer within the meaning of the Health and Safety at Work etc. Act 1974 failed to ensure, so far as was reasonably practicable the safety of its employees. In particular by failing to take adequate precautions in the design and use of vessel V51, receiver R46, and associated pipework being used for chemical treatment, namely the treatment of organic waste with hydrogen peroxide giving rise to an oxygen enriched flammable atmosphere, in that:

- (i) there were no adequate controls to prevent the liquor under peroxide treatment from heating above its flash point.
- ii) the said equipment was not provided with explosion relief.

Fine Organics Limited were convicted and fined £5,000 and ordered to pay costs.

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The fourteenth case, Regina v. Malton Fertilisers Limited was heard before His Honour Judge Bennett Q.C. and Jury at the Crown Court at York on 10th December 1986. (HSE File No. SO/652/86). The Health & Safety Executive was represented by counsel Mr. David Gripton.

The case came before magistrates on 7th October 1986 and they decided that the case could more appropriately be heard on indictment. On 4th November the case was committed in accordance with section 6 (2) of the Magistrates Court Act 1980.

On 8th April 1986 Mr. D.W. Sawdon was cleaning fertiliser from the floor of his vehicle's trailer. His vehicle and trailer were positioned under an 11KV 3 phase power supply. Mr. Sawdon was electrocuted when his vehicle body was raised and came into contact with one of the conductors. The Health & Safety Executive's view was that the organisation of work activities by the company was sadly lacking.

Count 1

#### Statement of Offence

Failing to discharge its duty imposed by section 2 Health and Safety at Work etc. Act 1974 to ensure the safety at work of all its employees, contrary to section 33 (1) (a) of the said Act.

#### Particulars of Offence

Malton Fertilisers Limited, on 8th April 1986, being an employer, failed to ensure, so far as was reasonably practicable, the safety at work of its employees, including David William Sawdon, whilst operating tipping vehicles under the overhead electricity cables in the lorry park.

Malton Fertilisers Limited were convicted, following a guilty plea, and fined £1, 500. The company was ordered to pay prosecution costs of £725.

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The fifteenth case, Regina v. Blue Circle Industries PLC. was heard before His Honour Judge M.K. Harrison-Hall and Jury at the Crown Court at Oxford on August

7th 1986 (HSE File No. SO/422/86). The Health & Safety Executive was represented by counsel Mr. Charles Harris.

The case came before Woodstock Magistrates on 1st April 1986 and they decided that the case could more appropriately be heard on indictment. The case was committed in accordance with section 6 (2) of the Magistrates Court Act 1980.

The incident giving rise to the prosecution was the death on Thursday 16th January 1986, by crushing of 26 year old Stephen Silvester. He was crushed between the fast moving belt of a stone crusher and the return idler roller at the tail end drum of a stone crusher conveyor.

The belt had not been properly guarded since 1981. The company had since taken steps to provide proper guarding.

The company had a good safety record.

Count 1

Statement of Offence

Failing to securely fence dangerous parts of machinery, contrary to Section 14 (1) and Section 155 of the Factories Act 1961.

Particulars of Offence

Blue Circle Industries on 16th January 1986, being the occupier of a factory within the meaning of the Factories Act 1961 at Shipton on Cherwell, Kidlington, Oxfordshire, failed securely to fence dangerous parts of a stone crushing conveyor machinery there situated, namely the belt and return idler roller nip, at the tail end of the said conveyor.

Blue Circle Industries PLC. was convicted, following a guilty plea, and fined £500 plus costs.

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The sixteenth case, Regina v. Capital Demolition (New Haw Enterprises) Limited was heard before His Honour Judge Leo Chalk Q.C. and Jury at the Crown Court at Oxford on December 5th 1986 and January 19th 1987 (HSE File No. SO/476/86). The Health & Safety Executive was represented by counsel Mr. P.Head. Mr. D.W.G. Read, Managing Director, Capital Demolition (New Haw Enterprises) Limited appeared for the Accused company.

The case was committed by Oxford City Magistrates in accordance with section 6 (2) of the Magistrates Court Act 1980.

The defendant company demolished a building despite the fact that a prohibition notice had been issued prohibiting the carrying out of further work because of a risk of serious personal injury resulting from their method of work.

#### Count 1

#### Statement of Offence

Contravention of a Prohibition Notice, contrary to section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Capital Demolition (New Haw Enterprises) Limited on 15th February 1986 demolished an office block at a site known as Grove Cranes, Towns Road, Oxford in contravention of a Prohibition Notice served on 6th February 1986 pursuant to Section 22 Health and Safety at Work Act 1974.

Capital Demolition (New Haw Enterprises) Limited was convicted and fined £8,000 plus £700 costs. The fine was subsequently reduced to £4,000 following evidence of the company's financial circumstances.

1987

Twelve cases were heard by way of indictment in the Crown Court in 1987.

The first case, Regina v. J. Murphy Cable Contractors and Civil Engineers Limited was heard before Her Honour Judge Ann Davies and Jury at the Central Criminal Court on 18th March 1987. (HSE File No. SO/266/86). The Health & Safety Executive was represented by counsel Mr. Neville Spencer Lewis. Mr. Jonathan Waite appeared on behalf of the Accused J. Murphy Cable Contractors and Civil Engineers Limited

On 4th October 1985 Daniel Friel was killed while using a jack hammer when the hammer went through a 240/415v cable which was contained in a steel pipe. The death was caused by burns received.

The case came before City of London Magistrates on 1st April 1986 and they decided that the case could more appropriately be heard on indictment. The case was committed in accordance with section 6 (2) of the Magistrates Court Act 1980.

## Count 1

Contravening the Construction (General Provisions) Regulations 1961 , contrary to section 155 (2) of the said Factories Act 1961.

## Particulars of Offence

J. Murphy Cable Contractors and Civil Engineers Limited on 4th day of October 1985 at Bishopsgate, London, EC failed to comply with Regulation 44 (1) of the Construction (General Provisions) Regulations 1961 (SI 1961 No. 1580) in that during the progress of operations or works to which the said Regulations applied they failed to take all practicable steps to prevent dangers to persons employed including Daniel Friel from any live electrical cable which was liable to be a source of such

danger whether by rendering such cable electrically dead or otherwise contrary to Regulation 3 (1) (b) of the said regulations.

#### Count 2

Failing to discharge the duty to persons not in their employment imposed by Section 2 (1) Health and Safety at Work Act 1974 and 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

J. Murphy Cable Contractors and Civil Engineers Limited, on 4th day of October 1985 at Bishopsgate, London, EC at Milford Haven Docks on the 15th day of June 1984, failed to conduct their undertaking in such a way as to ensure, so far as was reasonably practicable, that persons in their employment , but who might be affected thereby, including Daniel Friel, were not exposed to risks to their health or safety in that they exposed Daniel Friel to the risk arising from a live electrical cable.

J. Murphy Cable Contractors and Civil Engineers Limited were convicted, following a guilty plea, and fined £5,000. The company was ordered to pay prosecution costs of £4,300.

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The second case, Regina v. Beckenham and Bromley Roofing Company Limited was heard before His Honour Judge J. Graham Hall and Jury at the Crown Court at Croydon on 6th February 1987. (HSE File No. SO/671/86). The Health & Safety Executive was represented by counsel Mr. Mark Batchelor. Mr. Paul Russell appeared on behalf of the Accused Beckenham and Bromley Roofing Company Limited.

The accident occurred on 5th March 1986 when a workman was carrying a 45 kg drum of cold bitumen up a ladder and dropped this from his shoulder on to a child's head. The ladder was situated near the entrance to a school science block.



The case came before Bromley Magistrates and they decided that the case could more appropriately be heard on indictment. The case was committed in accordance with section 6 (2) of the Magistrates Court Act 1980 on 21 November 1986.

#### Count 1

Failing to discharge the duty to persons not in their employment imposed by Section 3 (1) Health and Safety at Work Act 1974 and 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Beckenham and Bromley Roofing Company Limited, on 5th March 1986 at Ravensbourne School for Boys at Hayes Lane, Hayes in the Borough of Bromley carried out an undertaking, namely building repair works, and in so doing failed to discharge their duty by conducting the undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in their employment, but who might be affected thereby, including Stephen Haywood, were not exposed to risks to their health or safety during roof repairs to the school science block.

Beckenham and Bromley Roofing Company Limited were convicted, following a guilty plea, and fined £2,000. The company was ordered to pay a contribution towards prosecution costs of £500.

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The third case, Regina v. M.D. Hamilton was heard before the Crown Court at Isleworth on 7th December 1987. (HSE File No. SO/694/86). The Health & Safety Executive was represented by counsel Mr. John Hamey.

The defendant was an employee of London Buses Limited. On 26th April 1986 he was shunting buses when he drove his bus forward into a fuel bay fatally injuring a

fellow employee. His foot had slipped off the pedal oil had been spilt on it and his foot had thus become jammed between the brake pedal and the throttle.

The case was committed in accordance with section 6 (1) of the Magistrates Court Act 1980 on 21 November 1986. Mr. M.D. Hamilton, the defendant, opted for committal.

#### Count 1

Failing to discharge the duty imposed by virtue of section 7(a) Health and Safety at Work Act etc. 1974 to take reasonable care for the health and safety of other persons who may be affected by his acts or omissions at work, contrary to Section 33(1) (a) of the Health and Safety at Work Act etc. 1974

#### Particulars of Offence

M.D. Hamilton, on the 26th day of April 1986, at Hanwell Bus Garage, Hanwell Broadway, London, being an employee within the meaning of the Health and Safety at Work Act etc. 1974, did fail to take reasonable care for the health and safety of other persons who might be affected by his acts or omissions, namely Imtiazullah Sheikh, while he was shunting buses in the fuel bay of the said garage.

M.D. Hamilton pleaded and was found not guilty of this charge. and discharged. The court ordered that the defence and prosecution costs be paid out of central funds both for the committal and the Crown Court hearing.

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The fourth case, Regina v. Smiths Builders Limited was heard before the Crown Court at Durham on 21st July 1987. (HSE File No. SO/739/86). The Health & Safety Executive was represented by counsel Mr. Roger Thorn. Mr. A. T. Hedworth appeared on behalf of the Accused Smiths Builders Limited.

The prosecution arose from an accident involving two employees of a building firm who were injured whilst carrying out roofing repairs at a client company. The two men lowered a steel roof sheet on to high voltage busbars and sustained severe electrical burns.

Cases were proposed against both the workman's employer (Smiths Builders Limited) and the occupiers of the factory where the accident occurred. (Anglo Great Lakes Corporation PLC). At Newcastle Magistrates Court on 18th September 1986. Anglo Great Lakes Corporation PLC pleaded guilty to a charge under Section 3 (1) Health and Safety at Work etc. Act 1974 and were fined £1500.

The case was committed in accordance with section 6 (2) of the Magistrates Court Act 1980 on 21 November 1986.

#### Statement of Offence

Failing to take all practicable steps to prevent danger from live electrical apparatus, contrary to section 155 (2) of the said Factories Act 1961 and Regulations 3 (1) (b) and 44 (1) of the the Construction (General Provisions) Regulations 1961.

#### Particulars of Offence

Smiths Builders Limited on 29th May 1986 at premises at Anglo Great Lakes Corporation PLC, at Newburn Hough, Newcastle upon Tyne, failed to comply with Regulation 44 (1) of the the Construction (General Provisions) Regulations 1961; in that during the progress of operations or works to which the said Regulations applied, they failed to take all practicable steps to prevent danger to persons employed by them including Kenneth Donaldson and Nicholas Clay) from any live electric apparatus namely bus bars located on a wall of the group 3 transformer house, and which electrical apparatus was liable to be a source of such danger, whether by rendering the said cable electrically dead or otherwise.

Smiths Builders Limited was found guilty of this charge and fined £2,000. The company was ordered to pay £5,177. 48 towards prosecution costs.

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The fifth case, Regina v. A.W. Scott was heard before His Honour Judge Anthony Cox and a Jury in the Crown Court at Bodmin on 12th July 1987. (HSE File No. SO/750/86). The Health & Safety Executive was represented by counsel Mr. Gordon Bebb.

The case arose following a double fatality when two young men were asphyxiated after entering a concrete slatted floor slurry pit. An unsafe system of work led to a casual worker entering the pit to retrieve a fallen suction hose pipe used in connection with a slurry vacuum tanker and being overcome in an oxygen deficient atmosphere. The defendant on discovering the body, summoned assistance from a nearby garage and the proprietor's son subsequently entering the pit to attempt a rescue also succumbed to the effects of toxic gas.

Reasons why the Health & Safety Executive decided the Crown Court was the most suitable mode of trial.

"The defendant, known for bad temper, of proven notoriety to officials, having considerable financial resources and a large farming business is regarded as 'a power in the land'. The double fatality aroused considerable feeling in the local community and resulted in an enquiry by the local Member of Parliament. For these reasons and as the defendant is known by all local Magistrates it was decided that the Crown Court was the most suitable mode of trial."

Previous offence: 4th January 1982 - Prosecution by the Health & Safety Executive. Fine £100 for obstructing a Factory Inspector.

Charges:

Breach of Section 3 Health and Safety at Work etc. Act 1974

Breach of Section 2 (2) (a) Health and Safety at Work etc. Act 1974

Breach of Section 2 (2) (c) Health and Safety at Work etc. Act 1974

His Honour Judge Anthony Cox said:

" Mr. Scott, the events which have been brought before this Court, provide a very serious state of affairs partaking to your farm, resulting in an accident, a tragedy to two young men. If all these dangers are as widespread in the farming community as it appears, then in my opinion it is a shocking state of affairs, and I hope that this case will receive the widest possible publicity, so that such feelings that exist in others, may be rapidly expelled.

The fact that young Stephen Pulleyblank was overcome so quickly whilst still on the ladder going down in the pit is appalling. There is some evidence that you had been warned, and I understand you dispute that and I am at any rate prepared to accept that you had used this system on a good few previous occasions, without any accident leading to a false sense of security.

I shall take into account the matters which have been put forward on your behalf. Certainly giving you credit for the plea which you have entered and for the cooperative attitude which you have displayed. On the one count you will be fined £750, in addition you will pay £500 for costs. The other two charges will be left on file.

I repeat what I said, that I hope this case will receive wide publicity, because the dangers which you were exhibiting in the evidence which I have heard in this case are dangerous and which people should take note of, and for which careful steps should be taken to ensure that employees are not exposed to these gases unless all proper steps are taken."

A.W. Scott pleaded guilty was convicted of the first charge and fined £750. The other two charges were ordered to be left on file. Scott was ordered to pay £500 towards prosecution costs.

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The sixth case, Regina v. Acrilite Limited was heard before the Crown Court at Durham on 6th June 1987. (HSE File No. SO/572/86). The Health & Safety Executive was represented by counsel Mr. Patrick O' Brien.

The prosecution arose out of an incident at the premises of the defendant at Tilbury Green, Ridgewell, Essex during the night shift of 31 December 1985 and 1st January 1986. The heat exchanger of a distillation vessel containing methyl methacrylate broke and leaked. The leaking vapour (which is highly inflammable) ignited causing a fireball which caused extensive damage to the premises and severe burns to two employees (Deeble Rogers and Wright).

The case was committed by Castle Hedingham Magistrates in accordance with section 6 (2) of the Magistrates Court Act 1980 on 4th March 1987.

#### First Count

Failing to discharge the duty to ensure so far as reasonably practicable the health safety and welfare at work of all employees, contrary to Sections 2 (1) and 33 (1) (a) of the said Health and Safety at Work Act 1974.

#### Particulars of Offence

Acrilite Limited, on the 31st day of December 1985, being an employer, failed to ensure, so far as was reasonably practicable, the health and safety at work of their employees and in particular Adam Deeble - Rogers in that they failed to take reasonably precautions to prevent fire in the still room.

### Second Count

Failing to report a notifiable dangerous occurrence, contrary to Regulation 4 (1) (b) of the Notification of Accidents and Dangerous Occurrences Regulations 1980 and 33 (1) (c) of the said Health and Safety at Work Act 1974.

### Particulars of Offence

Acrilite Limited, on a day between the 1st day of January and the 31st day of December 1985, being the responsible person within the meaning of Regulation 4 (1) (b) of the Notification of Accidents and Dangerous Occurrences Regulations 1980 failed within 7 days to send the required report to the enforcing authority, namely the Health and Safety Executive, of a dangerous occurrence of a type specified in Part 1 of Schedule to the said Regulations being an occurrence affecting Number 3 still.

### Third Count

Failing to report a notifiable dangerous occurrence, contrary to Regulation 4 (1) (b) of the Notification of Accidents and Dangerous Occurrences Regulations 1980 and 33 (1) (c) of the said Health and Safety at Work Act 1974.

### Particulars of Offence

Acrilite Limited, on a day between the 1st day of January and the 31st day of December 1985, being the responsible person within the meaning of Regulation 4 (1) (b) of the Notification of Accidents and Dangerous Occurrences Regulations 1980 failed within 7 days to send the required report to the enforcing authority, namely the Health and Safety Executive, of a dangerous occurrence of a type specified in Part 1 of Schedule to the said Regulations being an occurrence affecting Number 4 still.

Acrilite Limited pleaded guilty to Count 1 and was fined £1,000. The remaining charges were left on file. The company was ordered to pay £1,040 towards prosecution costs. It was recorded that the company had poor working practices.

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The seventh case, Regina v. Tarmac Topmix Limited was heard before His Honour Judge Greenwood in the Crown Court at Chelmsford on 23rd March 1987. (HSE File No. SO/153/87).

The prosecution arose out of a fatal accident to Mr. W. Childs at Purfleet on 1st July 1986.

Tarmac Topmix Ltd. were convicted of an offence under Section 14 (1) Factories Act 1961 at a hearing before Milton Keynes Magistrates at Simpson Road Fenny Stratford, 14 February 1986.

#### First Count

#### Statement of Offence

Beginning to use premises as a factory before being entitled to do so under section 137(1) Factories Act 1961 contrary to subsection 4 of the said section.

#### Particulars of Offence

Tarmac Topmix Ltd on or before 1983 began to use as a factory premises known 41B Motherwell Way, West Thurrock, Essex, without having served on the Inspector for the District written notice contrary to particulars required by the said subsection.



## Second Count

### Statement of Offence

Failing to ensure the Health, Safety and Welfare at Work of the employees contrary to sections 2(1) and 33(1) of the Health and Safety at Work Act 1974.

### Particulars of Offence

Tarmac Topmix Ltd on 1 July 1986 being the employer of persons working at premises known as 41B Motherwell Way West Thurrock, Essex, failed to ensure so far as was reasonably practicable the health, safety and welfare at work of all its employees in that the pan mixer installed at the said premises for operation by the employees was capable of being operated with its hinged lid open.

Tarmac Topmix Limited was found guilty on the first charge and fined £500. On the second charge they were also found guilty and fined £5,000. The company was ordered to pay £4,000 towards prosecution costs.

Tarmac Topmix Ltd. were convicted of an offence under Section 14 (1) Factories Act 1961 at a hearing before Milton Keynes Magistrates at Simpson Road Fenny Stratford on 14 February 1986.

Tarmac Topmix Limited was found guilty of this charge and fined £2,000. The company was ordered to pay £5,177. 48 towards prosecution costs.

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The eighth case, Regina v. Larchaven Limited (trading as Anglo Asphalte Co.) was heard before His Honour Judge Baker in the Crown Court at Knightsbridge on 22nd May 1987. (HSE File No. SO/226/87). The Health & Safety Executive was represented by counsel Mr. John Harvey and Mr James Holdsworth. Mr. Mark Bishop appeared on behalf of the Accused Larchaven Limited.

This case concerned a fatal accident to a member of the public on 9th October 1986. An asphalt layer, Mr. Collins, employed by Larchaven Limited (trading as Anglo Asphalte Co.), a sub-contractor, employed by Percy Trentham Ltd. dropped a bucket of asphalt from a height of 40 feet on to a member of the public below. (Mrs. Abtin) who later died from her injuries.

Larchaven Limited was found guilty on the first charge and fined £5000. The company was ordered to pay £450 towards prosecution costs.

The case was committed to the Crown Court in accordance with section 6 (2) of the Magistrates Court Act 1980.

#### Statement of Offence

Failing to discharge the duty under section 3 (1) of the Health and Safety at Work Act 1974, contrary to Section 33 (1) of the said Act.

#### Particulars of Offence

Larchaven Limited on the 9th day of October 1986, being an employer within the meaning of the Health and Safety at Work Act 1974 failed to conduct its undertaking in such a way as to ensure that persons not in its employment were so far as was reasonably practicable not exposed to risks to their health or safety during the laying of new asphalt on roofs at Cumberland Mansions, Seymour Place, London W.1.

#### Statement of Offence

Contravening a health and safety regulation contrary to Section 33 (1) of the Health and Safety at Work Act 1974.

### Particulars of Offence

Larchaven Limited on the 9th day of October 1986 being a contractor and an employer of workmen under the duty imposed by Regulation 3(1) of the Construction (Lifting Operations) Regulations 1961 while undertaking operations or works to which the said Regulations applied failed to comply with the requirements of Regulation 49 (1) of the said Regulations in that loads being raised and lowered using the gin wheel to and from the 4th storey level on the Seymour Place elevation of Cumberland Mansions, Seymour Place, London W.1 were not adequately secured.

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The ninth case Regina v. D.J. Berry and R. Bayley and D.A. Green & Sons Ltd. was heard in the Crown Court at Exeter before His Honour Judge E.G.Neville and Jury on 12th November 1987 (HSE File No. SO/310/87). The Health & Safety Executive was represented by counsel Mr. G.M. Bebb.

Messrs Bailey and Berry elected trial on indictment at TorbayMagistrates Court. D.A. Green & Sons were content with summary trial but magistrates decided that the cases were closely linked and that they therefore should be heard in the Crown Court. Committal took place at Torbay Magistrates Court on 15th October 1986. (See Section 6(2) Magistrates Courts Act 1980).

On 5th May 1986 Mr. Kenneth Outhton, aged 45 years, fell 40 feet to his death whilst using a lever lift to raise a steel cross tie. He overbalanced whilst using the equipment and fell. The deceased worked for B & B Steel Constructions, (Messrs Bailey and Berry) who were subcontractors working for D.A. Green & Sons Ltd., the main erectors. This multi million pound project was managed by Module 2.

Count One.

Statement of Offence

Failure to ensure, so far as was reasonably practicable, the safety at work of all their employees contrary to section 2 (1) and 33 (1) of the Health and Safety at Work Act 1974.

Particulars of Offence

David John Berry and Robert Bayley trading as B & B Steel Constructions on the 5th day of May 1986 in carrying out or allowing to be carried out steel construction work by their employees at the English Riviera Centre, Chestnut Avenue, Torquay, in the County of Devon, they -

(a) failed to provide and maintain plant and a system of work that was, so far as is reasonably practicable, safe and without risk to health whereby they:-

(1) allowed such work to be carried out without providing scaffolding or safety nets or safety sheets alternatively without using safety harnesses or belts attached to a suitable and securely fixed anchorage.

(2) provided a levalift which had been inadequately maintained.

(b) failed to inform, instruct and supervise their employees as was necessary to ensure, so far as is reasonably practicable, that they were prevented from carrying out such work without using safety harnesses or belts attached to a suitable and securely fixed anchorage.

Count Two.

Statement of Offence

Failure to conduct its undertaking in such a way as to ensure, so far as was reasonably practicable, that they and other persons not in its employment who may be affected thereby were not thereby exposed to risks to their health and safety, contrary to section 3 (2) and 33 (1) of the Health and Safety at Work Act 1974.

Particulars of Offence

David John Berry and Robert Bayley trading as B & B Steel Constructions on the 5th day of May 1986 being self-employed failed to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that they and their contractors to the English Riviera Centre, Chestnut Avenue, Torquay, in the County of Devon were not exposed to risks to their health and safety whereby they:-

(a) allowed their contractors to carry out work either without providing scaffolding or safety nets or safety sheets alternatively without using safety harnesses or belts attached to a suitable and securely fixed anchorage.

(b) provided a levalift which had been inadequately maintained.

Count Three.

Statement of Offence

Failure to take such measures as was reasonable for such persons in their position to take to ensure, so far as was reasonably practicable, that plant provided for use was safe and without risk to health contrary to Section 4 (2) and 33 (1) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

David John Berry and Robert Bayley trading as B & B Steel Constructions on the 5th day of May 1986 as persons who had to some extent control of the English Riviera Centre, Chestnut Avenue, Torquay, in the County of Devon, being non-domestic premises made available to them as a place of work failed to take such measures as was reasonable for them to take to ensure, so far as reasonably practicable, that the levalift provided by them for use by persons who were not their employees was safe and without risk to health.

Count Four.

#### Statement of Offence

Failure to maintain properly a lifting appliance contrary to Regulation 10 (1) (b) of the Construction (Lifting Operations) Regulations 1961, Section 155 (2) of the Factories Act 1961 and Section 33 (1) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

David John Berry and Robert Bayley trading as B & B Steel Constructions on the 5th day of May 1986 being an employer of workmen undertaking building operations or works of engineering construction by way of trade or business did fail to maintain properly a lifting appliance namely a levalift.

Count Five

Failure to provide safety nets or safety sheets contrary to Regulation 38 (1) Construction (Working Places) Regulations 1966, Section 155 (2) and Section 33 (1) of the Health and Safety at Work Act 1974.

David John Berry and Robert Bayley trading as B & B Steel Constructions on the 5th day of May 1986 being an employer of workmen undertaking building operations or works of engineering construction by way of trade or business did fail where practicable to provide and so erect and keep in such positions as to be effective to protect persons carrying on that part of the work suitable safety nets or safety sheets of such a design and so constructed and installed as to prevent, so far as practicable, injury to persons falling on to them.

Count Six.

#### Statement of Offence

Failure to conduct its undertaking in such a way as to ensure, so far as was reasonably practicable, that they and other persons not in its employment who may be affected thereby were not thereby exposed to risks to their health and safety, contrary to section 3 (2) and 33 (1) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

D.A Green & Sons Limited on the 5th day of May 1986 being employers failed to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that they and their contractors to the English Riviera Centre, Chestnut Avenue, Torquay, in the County of Devon were not exposed to risks to their health and safety by allowing them to carry out steel construction work either without providing scaffolding or safety nets or safety sheets alternatively without using safety harnesses or belts attached to a suitable and securely fixed anchorage.

At the end of the prosecution case His Honour Judge E.G.Neville said that the jury properly directed could not safely and sensibly convict the defendants. The costs of the defence and the prosecution were met from Central Funds.

The Health and Safety Executive believed that the case would probably have succeeded in the Magistrates Court however it was not prepared well enough for success in the Crown Court.

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The tenth case Regina v. Swift Transport Services Ltd. was heard in the Crown Court at Exeter before His Honour Judge Hamilton and Jury on 27th August 1987 (HSE File No. SO/420/87). The Health & Safety Executive was represented by counsel Mr. Mark Laprell.

Committal took place at Trafford Magistrates Court on 14th July 1987. (See Section 6(2) Magistrates Courts Act 1980). The magistrates believed their sentencing powers to be inadequate.

Mr W. Chamberlain an employee of Swift Transport Services Ltd. was crushed to death whilst helping to unload his lorry using a forklift truck. He was delivering steel bars to a warehousing company. The bars were bundled and were thirty three feet long. Instead of using an overhead crane a forklift truck was used. The Health and Safety Executive's Field Consultancy Group report confirmed that the load on the forklift truck was inherently unstable. As the lorry driver assisted in off loading the bars they fell from the forks and trapped him causing injuries from which he subsequently died.

Swift Transport Services Ltd. was fined £2000 plus prosecution costs of £552.

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The eleventh case Regina v. Thomas Carey & Sons Ltd. was heard in the Crown Court at St. Albans before His Honour Judge Halnan and Jury on 23rd February 1987 (HSE File No. SO/737/87). The Health & Safety Executive was represented by counsel Mr. Alan Hitching. Thomas Carey & Sons Ltd. was represented by counsel, Mr. G. Tyrill and Mr. Bernard Livesey.

Committal took place on 8th December 1986.



A trench was in the course of excavation. The sides of the trench were supported by pairs of sheets held apart by metal trench props with screw adjustment and hydraulic props from frames supplied by Mechplant. Two metres of the trench were left without trench sheets to provide support and pipes were lowered into that part of the trench. At around three o' clock on 5th June 1986 Mr. P.J. Walsh, the leading hand in the gang, was standing just beyond the end of the pipe that had been laid when the unsupported side of the trench collapsed. Mr. Walsh was totally buried and was found to be dead when the emergency services recovered his body.

Count 1.

#### Statement of Offence

Contravening the Construction (General Provisions) Regulations 1961, Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Thomas Carey & Sons Ltd. on the 5th day of June 1986 at Fairlands Way, Stevenage in the County of Hertfordshire being an employer of workmen undertaking a building operation or works of engineering construction to which Section 127 of the Factories Act 1961 and the Construction (General Provisions) Regulations 1961 applied did contravene Regulation 3 (1) in failing to comply with the requirements of Regulation 8 (1) in that an adequate supply of timber of suitable quality or other suitable support was not provided and used to prevent, so far as was reasonably practicable, and as early as practicable in the course of work, danger to any person employed, including Patrick James Walsh, from a fall or dislodgement of earth rock or other material from a side of the excavation.

Count 2.

Statement of Offence

Failing to discharge a duty imposed by Section 2 of the Health and Safety at Work Act 1974 contrary to Section 33 of the said Act.

Particulars of Offence

Thomas Carey & Sons Ltd. on the 5th day of June 1986 at Fairlands Way, Stevenage in the County of Hertfordshire being an employer of workmen failed to ensure so far as was reasonably practicable, the Health and Safety and Welfare at Work of all their employees including Patrick James Walsh in that they failed to provide and use an adequate supply of timber of suitable quality or other suitable support to prevent danger to any person including the said Patrick James Walsh from a fall or dislodgement of earth rock or other material from a side of the excavation.

Count 3.

Statement of Offence

Failing to discharge a duty imposed by Section 3 of the Health and Safety at Work Act 1974 contrary to Section 33 of the said Act.

Particulars of Offence

Thomas Carey & Sons Ltd. on the 5th day of June 1986 at Fairlands Way, Stevenage in the County of Hertfordshire being an employer failed to conduct their undertaking namely excavation works in such a way as to ensure so far as was reasonably practicable, that persons not in their employment who might be affected thereby were not exposed to risks to their Health or Safety at Work in that they failed to provide and use an adequate supply of timber of suitable quality or other suitable support to

prevent danger to any person from a fall or dislodgement of earth rock or other material from a side of the excavation.

Count 4.

#### Statement of Offence

Failing to discharge a duty imposed by Section 4 of the Health and Safety at Work Act 1974 contrary to Section 33 of the said Act.

#### Particulars of Offence

Thomas Carey & Sons Ltd. on the 5th day of June 1986 being a person using non domestic premises made available to them at Fairlands Way, Stevenage in the County of Hertfordshire as a place of work and who had to an extent control of the said premises failed to take such measures as it was reasonable for a person in their position to take to ensure so far as was reasonably practicable, that the said premises were safe and without risk to the health of persons not being their employees using the said premises in that they failed to provide and use an adequate supply of timber of suitable quality or other suitable support to prevent danger to any person from a fall or dislodgement of earth rock or other material from a side of the excavation.

Thomas Carey & Sons Ltd. pleaded guilty to Count 4 and fined £5000 plus prosecution costs in the Magistrates Court and the Crown Court. The Court directed that there should be a finding of not guilty on Counts 1-3.

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The twelfth case, Regina v. London Buses was heard before His Honour Judge Toyne and Jury in the Crown Court at Kingston on 23rd November 1987. (HSE File No. SO/533/87) The Health & Safety Executive was represented by counsel Mr. John Hamey.

The prosecution arose out of an incident on 18th December 1986 at Norbiton Bus Garage, Kingston upon Thames when Mr. Robert William Beer, a general hand, was working as a fuel man in the garage. Mr. McEwan, also a general hand, moved the bus he was working on forwards but could not stop the bus while working at the rear of the bus in front.

This was the second fatal accident to occur in 1986 in which a fuel man was crushed between two buses. London Buses had made no change to their operating system since the first incident.

Since the accident, London Buses brought in yellow box markings, additional training and have been carrying out trial runs on checking oil and water away from the fuel bay. On 19th May 1987 the Health & Safety Executive issued an improvement notice requiring that by 30th June 1987 additional safeguards be put in place to protect the fuel pump operator from the risk of crushing between a stationary and moving bus.

The case was committed by Magistrates, at the request of the accused in accordance with section 6 (2) of the Magistrates Court Act 1980.

Count 1.

#### Statement of Offence

Failing to discharge the duty imposed by virtue of Sections 2 (1) of the Health and Safety at Work Act 1974, contrary to Section 33 (1) (a) of the said Act.

#### Particulars of Offence

London Buses Ltd. on the 18th day of December 1986 at Norbiton Bus Garage, Gordon Road, Kingston being an employer failed to ensure, so far as was reasonably practicable, the health and safety at work of its employees including Robert William Beer.

London Buses Ltd. was convicted and fined £3,000. The company was further ordered to pay prosecution costs of £470.

His Honour Judge Toyne described the case as a tragic one but that he had to take into account that this was a fatal accident. He said complete safety could not be guaranteed until the design of the location of the oil check could be modified.

**1988**

Eleven cases were heard by way of indictment in the Crown Court in 1988.

The first case which followed an explosion in Market Street, Whitworth, near Rochdale, when a release of gas from an underground location ignited and exploded in houses adjacent thereto.

In Regina v. The British Gas Corporation at the Crown Court at Burnley which was heard before Her Honour Judge Steel on 29th April 1988. The Health & Safety Executive was represented by counsel Mr. M. D. Laprell and The British Gas Corporation was represented by counsel, Mr. A. Rankin (Now Mr. Recorder Rankin Q.C.) and Mr. W. P. Rankin.

The company pleaded not guilty to two charges alleging failure to conduct an undertaking in such a way as to ensure the safety of their employees and others contrary to Sections 2 and 3 and Sections 33 Health and Safety at Work etc. Act 1974.

As in the case of the M.V. Pointsman, when Rowbotham Tankships Limited and were acquitted on six counts of failing to discharge the duties imposed upon them by Section 2 and Section 3 of the Health and Safety at Work Act 1974 the charges against British Gas were similarly dismissed.

The judge accepted a submission by British Gas following a ten day trial that the company could only be liable if the act or omission complained of was made by one of a class of persons who could be identified with the controlling mind and will of the company. The Court further held that as Colin Barker, Regional Manager, was not a member of this class, the company could not be liable for their acts or omissions notwithstanding the very wide discretion that he had in safety matters.

British Gas was found not guilty on direction of Judge on 29th April 1988 although it does appear that the prosecution made unnecessary concessions in this case. The costs of the defence and the prosecution were met from Central Funds.

#### Statement of Offence

Failure to ensure, so far as was reasonably practicable, the safety at work of employees contrary to section 2 and 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

British Gas Corporation on the 17th day of September 1986 failed to ensure, so far as is reasonably practicable, the safety at work of its employees, at a location known as Market Street, Whitworth, near Rochdale, when a release of gas from an underground location ignited and exploded in houses adjacent thereto.

#### Statement of Offence

Failure to conduct its undertaking in such a way as to ensure, so far as was reasonably practicable that persons not in its employment who may be affected by its undertaking were not thereby exposed to risks to their health and safety, contrary to section 3 and 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

British Gas Corporation on the 17th day of September 1986 failed to conduct its undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment, and in particular those who were present or resident at a location known as Market Street, Whitworth, near Rochdale, and who may have been affected by its undertaking, were not exposed to risks to their health and safety in consequence of a release of gas from an underground gas main at the said location, which ignited and exploded in houses adjacent thereto.

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The second case, Regina v. Stallite Batteries Limited was heard before the Crown Court at Sheffield on 4th January 1988. (HSE File No. SO/146/87). The Health & Safety Executive was represented by counsel Mr. Alan Goldsack. (Now His Honour Judge Goldsack Q.C.)

The prosecution arose because of bad management and deliberate flouting of the law by the company. The defendant elected prosecution on indictment. The case was committed in accordance with section 6 (2) of the Magistrates Court Act 1980. The case concerned a breach of Section 16 Control of Lead at Work Regulations 1980. Stallite Batteries Limited pleaded guilty and were fined £750 and ordered to pay prosecution costs of £3,328.84.

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The third case, Regina v. F.R. Dabell was heard before His Honour Judge Galpin Q.C. in the Crown Court at Newport, Isle of Wight on 2nd December 1988. (HSE File No. SO/742/87) The Health & Safety Executive was represented by counsel Mr. Richard Tyson and Miss K. Brannigan. The Accused F.R. Dabell was represented by counsel, Mr. Field Fisher Q.C. and Mr. Bruce Maddick.

The accidents occurred when children slipped under a guardrail. The first child, a two-year-old called Colin Holland, fell approximately 10 feet from the walkway and subsequently died from injuries received. The accident occurred between 5.00 p.m. and 5.15 p.m. The equipment continued in use and between 8.15 p.m. and 8.30 p.m. a six year old child, called Carley Fielder fell from the walkway a distance of 10 feet on to the tarmac below. The accidents were reported by the hospital where they had been taken.

#### Statement of Offence

Failing to discharge the duty under section 3 (1) of the Health and Safety at Work Act 1974, contrary to Section 33 (1) (a) of that Act.



#### Particulars of Offence

Francis Richard Dabell, being the Managing Partner of an undertaking known as Blackgang Chine Fantasy Theme Park and thereby being an employer within the meaning of the said Act on the 18th day of June 1987 at the said Theme Park in the County of the Isle of Wight failed to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment, including Colin Holland, were not thereby exposed to risks to their health or safety when on an elevated walkway from the poop deck of the Jolly Smuggler Play boat to the tree house from where a person was liable to fall more than 2 metres and which was not adequately fenced.

#### Statement of Offence

Failing to discharge the duty under section 3 (1) of the Health and Safety at Work Act 1974, contrary to Section 33 (1) (a) of that Act.

#### Particulars of Offence

Francis Richard Dabell, being the Managing Partner of an undertaking known as Blackgang Chine Fantasy Theme Park and thereby being an employer within the meaning of the said Act on the 18th day of June 1987 at the said Theme Park in the County of the Isle of Wight failed to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment, including Carly Fielder, were not thereby exposed to risks to their health or safety when on an elevated walkway from the poop deck of the Jolly Smuggler Play boat to the tree house from where a person was liable to fall more than 2 metres and which was not adequately fenced.

#### Statement of Offence

Failing forthwith to notify the enforcing authority by the quickest practicable means of an accident arising out of or in connection with work, contrary to Regulation 3 (1) (a) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 and Section 33 (1) (c) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Francis Richard Dabell, being the Managing Partner of an undertaking known as Blackgang Chine Fantasy Theme Park and thereby being the responsible person as defined in the said Regulations, failed to notify the enforcing authority, namely the Health and Safety Executive, by the quickest practicable means of an accident arising out of or in connection with work, to Colin Holland on 18th June 1987 at the said Theme Park in the County of the Isle of Wight whereby Colin Holland was admitted immediately into hospital for more than 24 hours.

#### Statement of Offence

Failing forthwith to notify the enforcing authority by the quickest practicable means of an accident arising out of or in connection with work, contrary to Regulation 3 (1) (a) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 and Section 33 (1) (c) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Francis Richard Dabell, being the Managing Partner of an undertaking known as Blackgang Chine Fantasy Theme Park and thereby being the responsible person as defined in the said Regulations, failed to notify the enforcing authority, namely the Health and Safety Executive, by the quickest practicable means of an accident arising out of or in connection with work, to Colin Holland on 18th June 1987 at the said

Theme Park in the County of the Isle of Wight whereby Carly Fielder was admitted immediately into hospital for more than 24 hours.

#### Statement of Offence

Failing to send a report to the enforcing authority within 7 days of an accident arising out of or in connection with work, contrary to Regulation 3 (1) (b) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 and Section 33 (1) (c) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Francis Richard Dabell, being the Managing Partner of an undertaking known as Blackgang Chine Fantasy Theme Park and thereby being the responsible person as defined in the said Regulations, failed to send to the enforcing authority, namely the Health and Safety Executive, a report on an approved form within 7 days of an accident, arising out of or in connection with work, to Colin Holland on 18th June 1987 at the said Theme Park in the County of the Isle of Wight whereby Colin Holland was admitted immediately into hospital for more than 24 hours.

#### Statement of Offence

Failing to send a report to the enforcing authority within 7 days of an accident arising out of or in connection with work, contrary to Regulation 3 (1) (b) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 and Section 33 (1) (c) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Francis Richard Dabell, being the Managing Partner of an undertaking known as Blackgang Chine Fantasy Theme Park and thereby being the responsible person as defined in the said Regulations, failed to send to the enforcing authority, namely the

Health and Safety Executive, a report on an approved form within 7 days of an accident, arising out of or in connection with work, to Colin Holland on 18th June 1987 at the said Theme Park in the County of the Isle of Wight whereby Carly Fielder was admitted immediately into hospital for more than 24 hours.

F.R.Dabell was convicted on counts 1 and 2 and fined £5,000 on each count. He was further convicted on counts 3 and 4 and fined £500 on each count. He was further convicted on counts 5 and 6 and conditionally discharged for twelve months. He was ordered to pay prosecution costs of £10,000.

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The fourth case, Regina v. C. Jones was heard in the Crown Court at Newport, South Wales on 26th June 1988. (HSE File No. SO/258/87). The Health & Safety Executive was represented by counsel Mr. Philip Rees.

The case was committed by Magistrates, at the request of the accused in accordance with section 6 (1) of the Magistrates Court Act 1980.

The accused was convicted of three offences under the Power Take - Off Regulations 1957 and the Field Machinery Regulations 1962. The defendant was fined £100 on each charge plus a total of £150 in costs.

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The fifth case, Regina v. Alternative Fuels was heard before His Honour Judge Toyne and Jury in the Crown Court at Birmingham on 22nd February 1988. (HSE File No. SO/491/87) The Health & Safety Executive was represented by counsel Mr. Anthony King.

Alternative Fuels (South Wales Ltd.) had bought a tank some 72" long, 47" wide and 41" deep. It was octagonal in cross section. It contained sludge. An employee, by the name of Mr. Gethin, was instructed to clean out the tank using a high temperature steam and water pressure jet washer. This operation was not entirely successful and it

was decided to cut holes on top of the tank to enable the tank to be thoroughly cleaned by means of a flame cutter. The tank at this stage was mounted on a lorry.

As soon as the flame cutting commenced there was a violent explosion and parts of the tank were thrown across a street narrowly missing two parked cars, windows in neighbouring premises were broken, the rear end of the tank hit the wall of the premises some 8' to 10' off the ground and bounced back into the roadway. A small fire developed on the back of the lorry which was quickly extinguished by company employees.

Mr. Marshall, Mr. Gethin and Mr. Woollam suffered minor cuts, abrasions and contusions when a tank containing old oil residues exploded when it was flame cut by Mr. Marshall.

Count 1.

#### Statement of Offence

Failing to discharge the duty imposed by virtue of Section 3 (1) of the Health and Safety at Work Act 1974, contrary to Section 33 (1) (a) of that Act.

#### Particulars of Offence

Alternative Fuels (South Wales Ltd) Limited on the 13th day of February 1987 being an employer failed to conduct its undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment, including David John Marshall, Ann Barnard and Colin Southam who may be affected thereby were not exposed to risks to their safety in that the said Company failed to take reasonably practicable precautions to ensure that a tank owned by the said Company was cut in a safe manner.

Count 2.

Statement of Offence

Failing to discharge the duty imposed by virtue of Sections 2 (1) of the Health and Safety at Work Act 1974, contrary to Section 33 (1) (a) of the Health and Safety at Work Act 1974.

Particulars of Offence

Alternative Fuels (South Wales Ltd.) on the 13th day of February 1987 being an employer failed to provide such information, instruction and supervision in the cutting of a tank as was necessary to ensure, so far as was reasonably practicable, the health and safety at work of its employees including John David Woollam and Scott William Gethin.

Alternative Fuels (South Wales Ltd.) was convicted on counts 1 and 2 and fined £250 on each count. The company was further ordered to pay prosecution costs of £2,653.64.

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The sixth case, Regina v. University of Sussex was heard before His Honour Judge Gower and Jury in the Crown Court at Lewes on 7th July 1988. (HSE File No. SO/563/87) The Health & Safety Executive was represented by counsel Mr. Timothy Briden.

On 4th March 1987 at 2.10 p.m. in Lab 13 School of Molecular Sciences, University of Sussex Mr. Richard Bettinson of 49, Florence Road, Brighton a research student was injured when carrying out chemistry research.

Glass from a fume cupboard caused penetrating injuries to his abdomen requiring surgery following a chemical reaction involving an acetylene compound which had

been detonated. Mr. Bettonson was detained in hospital for 3 weeks. After 2 months convalescence he was able to resume his research studies.

#### Count 1

#### Statement of Offence

Failing to discharge the duty imposed by Section 3 of the Health and Safety at Work etc. Act 1974 contrary to Section 33(1)(a) of that Act.

#### Particulars of Offence

The University of Sussex on 4th March at Falmer, Brighton, Sussex being an employer, failed to conduct its undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not who might be affected thereby including Richard Mark Bettinson a research student were not thereby exposed to risks to their health or safety in that it failed to take reasonably practicable steps to ensure that research was carried out using a safe method.

University of Sussex pleaded guilty and was fined £2000 The University was further ordered to pay £4,000 towards prosecution costs.

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The seventh case, Regina v. Applied Structures Limited and Stanley James Russell was heard before His Honour Judge Hall and Jury in the Crown Court at Northampton on 11th September 1988. (HSE File No. SO/782/87) The Health & Safety Executive was represented by counsel Mr. M.L. Brent Q.C. (Now Mr. Recorder M.L. Brent Q.C.).

Mr. Philip Gerreyn and five friends were hoisting the dance floor (24 feet x 47 feet.) when without warning the wire ropes used in conjunction with hand operated winches snapped and the structure which weighed 5.3 tonnes crashed down on to the ground

killing Mr. Philip Gerreyn and his five friends. Stanley James Russell had applied inadequate skills and planning.

#### Count 1

##### Statement of Offence

Failing to discharge a duty to persons other than employees contrary to Section 3 (1) and Section 33(1)(a) Health and Safety at Work etc. Act 1974.

##### Particulars of Offence

Applied Structures Limited being an employer on divers days between the 8th day of January and 20th day of April 1987 failed to conduct its undertaking namely the design supply and installation of a dance floor over a swimming pool at Niden Manor Estate, Moreton Pinkney in such a way as to ensure, so far as was reasonably practicable, that the persons not in employment namely the residents for the time being of the said Niden Manor Estate who might be affected thereby were not thereby exposed to risks to their health or safety.

#### Count 2

##### Statement of Offence

Failing to discharge the duty imposed by Section 3 of the Health and Safety at Work etc. Act 1974 contrary to Section 33(1)(a) of that Act.

##### Particulars of Offence

Stanley James Russell on divers days between the 8th day of January and 20th day of April 1987 being a director of Applied Structures Limited consented or connived at the breach by the said company of the duty of an employer under Section 3 (1) of the



Health and Safety at Work etc. Act 1974 to conduct its undertaking in such a way as to ensure, so far as was reasonably practicable, that the persons not in employment namely the residents for the time being of the said Niden Manor Estate Moreton Pinkney were not thereby exposed to risks to their health or safety or the said breach of duty by the company was due to his neglect.

Count 3

Stanley James Russell - Breach of Section 36 (1).

Applied Structures Limited, which was an insolvent company, pleaded guilty and was fined £500. Stanley James Russell was convicted of the offence under Count 2 and was fined £4,500. Stanley James Russell was further ordered to pay £1,000 towards prosecution costs.

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The eighth case Regina v. Translink Joint Venture was heard before His Honour Judge Waley V.R.D.,Q.C. and Jury in the Crown Court at Dover on 25th July 1988. (HSE File No. SO/351/88) The Health & Safety Executive was represented by counsel Mr. Timothy Briden. The accused was represented by James Badenoch.

Four empty eight tonne muck cars decoupled from another muck car attached to an outbye locomotive at the top of a 15.7% (1 in 6) adit and they ran down the whole 300m track before derailing. Two men sustained non reportable injuries. Mr. A. Froggatt was severely shocked, bruised shoulder. Taken to hospital, released later the same evening. Mr. D. Johnson sustained bruising to his leg. This was treated at site (First Aid Centre). Both men, employees of F.B.J. Fabrications Ltd. were working near the end of Adit A1. On hearing the approaching runaways they ran towards the existing Marshalling Tunnel backshunt for cover. It seems probable that their bruising was the result of the scramble to safety, not actually that they were hit by the runaways. All skips badly damaged. Damage to trackwork. Some electrical switchgear damaged.

Judge Waley V.R.D.,Q.C. said:

I have to deal with this accident. Public need reassurance - those operating railways, oil rigs etc. Subject to legally enforceable rules to safeguard life and limb. Not my job to tell how to run.....Nevertheless as member of public feel very much assured by steps that have been taken. Certainly impressed variety of safety issues and number of precautions.

- public reassurance needed.
- grace of god alone
- failure more incompetent. Disobedience. Failure of that kind marked. Reflect disquiet.
- Penalties multiplied 5 times over.

Count 1

Regulation 3 (1) Construction (General Provisions).

Regulations 1961. Contrary to Section 155(2) F.A. 1961

Failure to properly maintain a wagon serial number 102 in use there for transport purposes, as required by Regulation 26 of the said regulations.

Count 2

Breach of section 2(1) Health and Safety at Work Act etc. 1974.

Safety of employees.

Count 3

Breach of section 3(1) Health and Safety at Work Act etc. 1974.

Safety of persons not in their employment.

Translink Joint Venture pleaded guilty to all charges and was fined £8,750. [Count 1 Each defendant was fined £250, Count 2 Each defendant was fined £750] Count 3 Each defendant was fined £750] The company was further ordered to pay prosecution costs of £7,528. [14 days to pay]

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The ninth case, Regina v. Knibbs (Bolton) Limited was heard before His Honour Judge Webster and Jury at the Crown Court at Bolton on 11th August 1988. (HSE Files No. SO/456/88). The Health & Safety Executive was represented by counsel Mr. Mark Laprell. Mr. Cohen appeared on behalf of the Accused Knibbs (Bolton) Limited.

The case was committed by Bolton Magistrates Court on 14th June 1988 in accordance with section 6 (2) of the Magistrates Court Act 1980.

The case arose as a result of an accident that occurred on the premises of Knibbs (Bolton) Limited, Kay Street, Bolton on 29th October 1987 and the failure of the firm to report the accident to the Health and Safety Executive. The firm was part of the FIAT dealership network and were involved in car sales, vehicle and service repair. The Bolton firm employed 30 people. The company also traded as part of D.C. Cook which has a registered office in Rotherham.

The case involved an accident to Anthony Sheehan, a 26 year old valet. He suffered an electric shock from a faulty 240v socket outlet whilst working with a high pressure power washer which was used for cleaning cars. Sheehan was thrown across the workshop floor. He was absent from work for more than a month and suffered a minor stroke. The firm failed to report the accident to the appropriate authority either forthwith by telephone or within 7 days in writing on a prescribed form. In fact it was almost 3 months before the accident was reported. This caused a delay in the investigation of the accident.

## Count 1.

## Statement of Offence

Failure to ensure, so far as was reasonably practicable, the health, safety and welfare at work of all their employees, contrary section 2 and Section 33 (1) of the Health and Safety at Work etc. Act 1974.

## Particulars of Offence

Knibbs (Bolton) Limited on the 29th of October 1987, failed to ensure, so far as was reasonably practicable, the health, safety and welfare at work of its employees, and in particular one Anthony Sheehan, at their premises at Kay Street/Higher Bridge Street, Bolton, when the said Anthony Sheehan received an electric shock whilst using pressure cleaning apparatus in the valeting workshop.

## Count 2.

## Statement of Offence

Failure to notify the Health and Safety Executive forthwith by the quickest practicable means of an accident as required by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985, contrary to Section 33 (1) of the Health and Safety at Work etc. Act 1974.

## Particulars of Offence

Knibbs (Bolton) Limited, failed between the 29th of October 1987 and 1st November 1987, to notify the Health and Safety Executive forthwith by the quickest practicable means of the occurrence of an accident to Anthony Sheehan on the 29th of October 1987 as they were required to do by Regulation 3 (1) (a) of the Reporting of Injuries,

Diseases and Dangerous Occurrences Regulations 1985, in that they failed to notify the said Executive at all prior to the 11th day of December 1987.

Count 3.

#### Statement of Offence

Failure to send to the Health and Safety Executive within seven days of the occurrence of an accident a report thereof on an approved form as required by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985, contrary to Section 33 (1) of the Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Knibbs (Bolton) Limited, failed within seven days of the 29th October 1987 to send to the Health and Safety Executive a report on an approved form relating to the occurrence of an accident to Anthony Sheehan on the 29th of October 1987 as they were required to do by Regulation 3 (1) (a) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985, in that no report of such a kind was sent to the said Executive until one dated the 21st day of January 1988, which was received on the 25th day of January 1988.

Knibbs (Bolton) Limited was convicted of all charges and was fined £5,000 on Count 1, £200 on Count 2 and £1,000 on Count 3. The company was further ordered to pay prosecution costs of £695.

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The tenth case, Regina v. Tam Leisure Limited was heard before His Honour Judge Lewisohn and Jury at the Crown Court at Guildford on 16th December 1988. (HSE Files No. SO/544/88). The Health & Safety Executive was represented by counsel Mr. David Green. Mr. D.W. Mayall appeared on behalf of the Accused Tam Leisure Limited.

The case was committed in accordance with section 6 (2) of the Magistrates Court Act 1980.

The local authority had telephoned the Health and Safety Executive advising them that a large number of LPG cylinders were on site.

#### Count 1

##### Statement of Offence

Contravention of Health and Safety Regulations contrary to Section 33(1)(c) of the Health and Safety at Work etc. Act 1974.

##### Particulars of Offence

Tam Leisure Limited on or before the 28th day of January 1988 undertook an activity, namely the storage of a hazardous substance namely Liquefied Petroleum Gas at premises known as Chalk Pit, College Road, Epsom in a quantity in excess of 25 tonnes without notifying the Health and Safety Executive at least 3 months prior to the commencement of the said activity, contrary to Regulation 3 of the Notification of Installations Handling Hazardous Substances Regulations 1982 and to Section 33 (1) (c) of the Health and Safety at Work etc. Act 1974.

#### Count 2

##### Statement of Offence

Employer failing to discharge the duty imposed by Section 3 of the Health and Safety at Work etc. Act 1974 contrary to Section 33(1)(a) of that Act.

#### Particulars of Offence

Tam Leisure Limited on or before the the 28th day of January 1988 being a employer and in control of non-domestic premises, did not conduct their undertaking, namely the storage of a hazardous substance namely Liquefied Petroleum Gas at premises known as Chalk Pit, College Road, Epsom in such a way as to ensure, so far as was reasonably practicable, that the persons not in employment namely persons in or using the roads and premises adjacent to the said premises, and emergency services personnel, were not exposed to a risk to their safety from the consequences of fire and explosion from Liquefied Petroleum Gas which was not stored safely, contrary to Section 33 (1) (a) of the Health and Safety at Work etc. Act 1974.

Tam Leisure Limited pleaded not guilty but was convicted of all charges and was fined £3,000 on Count 1 and £3,000 on Count 2. The company was further ordered to pay prosecution costs of £5,000.

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The eleventh case, Regina v. General Electric Company P.L.C. was heard before His Honour Judge Hunter and Jury at the Crown Court at Acton on 9th December 1988. (HSE File No. SO/618/88). The Health & Safety Executive was represented by counsel Mr. Mark Bishop.

The case was committed by Acton Magistrates Court in accordance with section 6 (2) of the Magistrates Court Act 1980 against the wishes of both the prosecution and the defence.

## Count 1

## Statement of Offence

Failing to prevent exposure of employees to asbestos, contrary to Regulation 8 of the Control of Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work etc. Act 1974.

## Particulars of Offence

General Electric Company P.L.C. on 15th day of April 1988 at GEC Hirst Research Centre, East Lane, Wembley in the County of Middlesex, did fail to prevent the exposure of their employees John Hannon and Steven John Holt to asbestos when they worked on the amosite asbestos insulated cold water pipe in Room A51 at the said premises contrary to Regulation 8 of the Control of Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work Act 1974.

## Count 2

## Statement of Offence

Carrying out work which exposed employees to asbestos without identifying the type of asbestos involved in the work, or before assuming the asbestos was crocidolite or amosite and treating it accordingly contrary to Regulation 4 of the Control of Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work Act 1974.

## Particulars of Offence

General Electric Company P.L.C. on 15th day of April 1988 at GEC Hirst Research Centre, East Lane, Wembley, in the County of Middlesex, did carry out work on a cold water pipe which was lagged by insulation containing amosite asbestos which work exposed their employees, John Hannon and Steven John Holt to asbestos before



either the type of asbestos had been identified or it had been assumed that the asbestos was crocidolite or amosite and treated accordingly contrary to Regulation 4 of the Control of Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work Act 1974.

#### Count 3

##### Statement of Offence

Failure to ensure that adequate information, instruction and training was given to employees who were or were liable to be exposed to asbestos so that they were aware of the risks from asbestos and the precautions which should be observed, exposure of employees to asbestos, contrary to Regulation 7 of the Control of Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work etc. Act 1974.

##### Particulars of Offence

General Electric Company P.L.C. on 15th day of April 1988 at GEC Hirst Research Centre, East Lane, Wembley in the County of Middlesex, did fail to ensure that adequate information, instruction and training was given to employees John Hannon and Steven John Holt who were or were liable to be exposed to asbestos when they worked on the amosite asbestos insulated cold water pipe in Room A51 so that they were aware of the risks from asbestos and the precautions which should be observed contrary to Regulation 7 of the Control of Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work Act 1974.

#### Count 4

##### Statement of Offence

Carrying out work which exposed their employees to asbestos without making an adequate assessment of that exposure, contrary to Regulation 5 of the Control of

Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

General Electric Company P.L.C. on 15th day of April 1988 at GEC Hirst Research Centre, East Lane, Wembley, in the County of Middlesex, did carry out work on a cold water pipe which was lagged by insulation containing amosite asbestos which work exposed their employees, John Hannon and Steven John Holt to asbestos without having made an adequate assessment of that exposure, contrary to Regulation 5 of the Control of Asbestos at Work Regulations 1987 and Section 33 of the Health and Safety at Work Act 1974.

General Electric Company P.L.C. pleaded guilty to all charges. The company was fined £1,000 on each Count . The company was further ordered to pay prosecution costs of £750.

**1989**

Twenty two cases were heard by way of indictment in the Crown Court in 1989.

The first case was Regina v. Pilkington Glass Limited at the Crown Court at Liverpool which was heard on 25th May 1989. (HSE File No. SO/775/87) The Health & Safety Executive was represented by counsel Mr. R. Fordham and Pilkington Glass Limited was represented by counsel, Maureen Roddy.

The case was committed by St. Helens Magistrates Court in accordance with section 6 (2) of the Magistrates Court Act 1980.

This case involved a lorry driver who had received leg injuries as a result of a JCB reversing into him during an unloading operation.

Count 1.

Breach of Section 14 Factories Act 1961.

Count 2.

Breach of Regulation 3 (1) (b) Reporting of Injuries and Dangerous Occurrences Regulations 1985.

Pilkington Glass Limited was convicted and fined £4,000 on Count 1 and £500 on Count 2. The company was further ordered to pay prosecution costs of £1,549. 94.

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The second case was Regina v. Barbican Construction Limited, Rees - Haugh (Civil Engineering) Limited and Fintan Doyle at the Crown Court at Plymouth which was heard on 15th February 1989 before His Honour Sir Jonathan Clarke. (HSE File No. SO/650/88) The Health & Safety Executive was represented by counsel Mr. Gordon

Bebb and Barbican Construction Limited was represented by counsel, Mr. Alistair McDuff. Rees - Haugh (Civil Engineering) Limited was represented by Mr Philip Mott. Fintan Doyle was represented by Mr. L. Sellick.

This case involved the construction of Western Approach Car Park at Sainsbury's Homebase, Plymouth. Sir Robert McAlpine Limited were awarded this contract by Plymouth City Council. Sir Robert McAlpine Limited saw themselves as managing agents and sub contracted the work. Rees Haugh (Civil Engineering) Limited were one of the appointed subcontractors (work concerned totalled £2,644,344) and they in turn sub contracted work to LCS Construction Limited. LCS Construction Limited were engaged to carry out steel fixing and concrete form work but after three months went into liquidation. The contract was then let to Barbican Construction Limited.

On 13th April 1988 a Mr. Barry Donogan, a carpenter, fell from the structure fifty feet to the floor below. He fractured both legs, and suffered severe head and skull injuries, fractured ribs and a fractured left arm.

Count 1.

#### Statement of Offence

Failure to conduct their undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in their employment who may be affected thereby were not thereby exposed to risks to their health and safety contrary to Section 3 (2) and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Barbican Construction Limited on a day between April 11th and April 14th 1988 being employers failed to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment, namely carpenters carrying on shuttering duties at Western Avenue Approach Car Park, Western

Approach, Plymouth in the County of Devon were not exposed to risks to their health or safety by failing to provide any or any adequate edge protection scaffolding guard rails or barriers at the 7th level stairwell.

Count 2.

#### Statement of Offence

Failure to take such measures as it was reasonable for persons in their position to take to ensure, so far as was reasonably practicable, that premises available for use by persons using the premises were safe and without risk to health contrary to Section 4 (2) and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Barbican Construction Limited on a day between April 11th and April 14th 1988 being persons who had to some extent control of non domestic premises namely Western Avenue Approach Car Park aforesaid failed to take such measures as it was reasonable for persons in their position to take to ensure so far as was reasonably practicable, that the said premises were safe and without risk to the health of persons not being their employees namely carpenters carrying out shuttering duties by failing to provide any or any adequate edge protection scaffolding guard rails or barriers at the 7th level stairwell.

Count 3.

Failure to maintain so far as was reasonably practicable suitable and sufficient safe access and egress from their place of work contrary to Regulation 6 of the Construction (Working Places) Regulations 1966, Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

Barbican Construction Limited on a day between April 11th and April 14th 1988 being contractors and/or employers of workmen undertaking building operations affecting workmen employed by them failed to maintain a safe access and egress to and from the 7th level of the Western Avenue Approach Car Park stairwell by leaving or permitting to be left refuse and obstructions on or about the said stairwell.

Count 4.

#### Statement of Offence

Failure to conduct their undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in their employment who may be affected thereby were not thereby exposed to risks to their health and safety contrary to Section 3 (2) and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Rees - Haugh (Civil Engineering) Limited on a day between April 11th and April 14th 1988 being employers failed to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in its employment, namely carpenters carrying on shuttering duties at Western Avenue Approach Car Park, Western Approach, Plymouth in the County of Devon were not exposed to risks to their health or safety by failing to provide any or any adequate edge protection scaffolding guard rails or barriers at the 7th level stairwell.

Count 5.

#### Statement of Offence

Failure to take such measures as it was reasonable for persons in their position to take to ensure, so far as was reasonably practicable, that premises available for use by

persons using the premises were safe and without risk to health contrary to Section 4 (2) and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Rees - Haugh (Civil Engineering) Limited on a day between April 11th and April 14th 1988 being persons who had to some extent control of non domestic premises namely Western Avenue Approach Car Park aforesaid failed to take such measures as it was reasonable for persons in their position to take to ensure so far as was reasonably practicable, that the said premises were safe and without risk to the health of persons not being their employees namely carpenters carrying out shuttering duties by failing to provide any or any adequate edge protection scaffolding guard rails or barriers at the 7th level stairwell.

Count 6.

Failure to provide a suitable guard rail toe-board or other barrier contrary to Regulation 33 (2) (a) of the Construction (Working Places) Regulations 1966, Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Fintan Doyle on a day between April 11th and April 14th 1988 being a contractor and/or employer of workmen undertaking building operations affecting carpenters employed by him who were liable to approach or near edges of the opening in the floor at the 7th level stairwell of the Western Avenue Approach Car Park and from which they were liable to fall more than 2 metres failed to provide a suitable guard-rail toe board or other barrier as specified in the said regulation to prevent as far as possible the fall of such persons.

## Count 7

Failure to provide and maintain a system and place of work that was, so far as was reasonably practicable, safe and without risk to health contrary section 2 (1) and Section 33 of the Health and Safety at Work etc. Act 1974.

Fintan Doyle on a day between April 11th and April 14th 1988 failed to provide and maintain a safe system and place of work at Western Avenue Approach Car Park aforesaid whereby in carrying out or allowing to be carried out building operations by his employees he:

(a) Allowed or permitted the shuttering carpenters to carry out shuttering works at the 7th level stairwell without any or any adequate edge protection scaffolding guard rails or barriers.

(b) Failed to instruct, train or supervise the shuttering carpenters as was necessary to ensure that they did not carry out shuttering works at the 7th level stairwell without any or any adequate edge protection scaffolding guard rails or barriers.

The case against Barbican Construction Limited (Counts 1-3) was abandoned because the company went into liquidation.

Rees - Haugh (Civil Engineering) Limited was convicted and fined £2,000 on Count 4. The company was further ordered to pay prosecution costs of £3,000.

Fintan Doyle was convicted and fined £250 on Count 5 and fined £250 on Count 6. He was further ordered to pay prosecution costs of £200. The fines to be paid in one month from 15th February 1989. (30 days in default).

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The third case was Regina v. R.L.Harvey (trading as R.Harvey Builders) at the Crown Court at Lincoln. (HSE File No. SO/218/88) The Health & Safety Executive was represented by counsel Mr. John V. Machin.

R.L.Harvey (trading as R.Harvey Builders) was committed to the Crown Court at Lincoln from Boston Magistrates Court on 11th March 1988 in accordance with Section 6(2) Magistrates Courts Act 1980.

A 44 year old lady was out shopping on 12 June 1987 and was walking past a building site, when she was hit by a piece of falling timber, approx. 22 feet long and measuring 8 x 2 ins in diameter she was rendered unconscious when the object hit her skull leaving a compound skull fracture.

Wound was a 6" linear frontal scalp laceration, behind the hairline and requiring thirteen sutures.

D.T. Hope F.R.C.S., Ch.M.  
Consultant Neurosurgeon.

Count 1.

#### Statement of Offence

Failing to discharge a duty to persons other than employees contrary to Section 3 (1) of the Health and Safety at Work etc. Act 1974 and Section 33(1) thereof.

#### Particulars of Offence

Richard Leslie Harvey on the 12th day of June 1987 being an employer within the meaning of the Health and Safety at Work etc. Act 1974 while erecting timbers onto the roof of Oldrids Store, Strait Bargate, Boston, Lincolnshire, failed to conduct his undertaking in such a way as to ensure, so far as was reasonably practicable, that

persons who were not in his employment who might be affected thereby, including June Elizabeth Willerton, were not exposed to risks to their safety.

Count 2.

Statement of Offence

Failure to discharge the duty under section 2 (2) (a) of the Health and Safety at Work Act 1974 contrary to section 33 (1) thereof.

Particulars of Offence

Richard Leslie Harvey on the 12th day of June 1987 being an employer within the meaning of the Health and Safety at Work etc. Act 1974 while erecting timbers onto the roof of Oldrids Store, Strait Bargate, Boston, Lincolnshire, failed to failed to ensure, so far as is reasonably practicable, the safety at work of its employees, including Dean Williamson and John Butler, in that neither a safe system of work nor adequate equipment were provided and used.

Particulars.

The means of lifting timbers from the ground to their final position were unsafe and inadequate because

1.(a) no secure lifting system for the timber was provided as for example a pulley, a crane or a gin wheel.

(b) The system of manoeuvring the timber from the scaffolding to its final position was unsafe in that the Defendant was not so positioned or supported as to be able adequately and safely finally to position the timber.

2. In the circumstances Dean Williamson and John Butler should not have been instructed or permitted to work or remain in a position of risk of injury from falling material.

3. Dean Williamson's position in standing on the unguarded and unfenced roof of a van in the course of the lifting operation was unsafe.

R.L.Harvey (trading as R.Harvey Builders) was convicted of a breach of Section 3 (1) Health and Safety at Work etc. Act 1974. The firm was acquitted of a breach of Section 2 (2) (a) Health and Safety at Work etc. Act 1974. was further ordered to pay prosecution costs of £1,000. The fines to be paid in twenty eight days.

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The fourth case was Regina v. Brown at the Crown Court at Knutsford which was heard before before Mr Recorder Alex Carlile Q.C., M.P. and Jury on 24th February 1989. (HSE File No. SO/355/88) The Health & Safety Executive was represented by counsel Mr. Eric Owen.

Employee fell through a roof and is now permanently paralysed . The defendant had seventeen previous convictions for safety offences.

Offences:

1. Failure to discharge the duty under section 2 (2) (a) of the Health and Safety at Work Act 1974 contrary to section 33 (1) thereof.
2. Failure to comply with an Improvement Notice.
3. Failure to Report (Two offences).

Mr H.C. Brown was convicted and fined £14,000. [Failure to discharge the duty under section 2 (2) (a) of the Health and Safety at Work Act 1974 contrary to section

33 (1) thereof. £6,000. Failure to comply with an Improvement Notice £6,000. Failure to report an accident RIDDOR (Two offences). £1,000 each offence.]

The company was further ordered to pay prosecution costs of £2,700. Two offences were allowed to lie on file.

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The fifth case was Regina v. NEI Peebles Limited at the Crown Court at Winchester which was heard before His Honour Judge H.E.L. McCreery Q.C. and Jury on 9th January 1989. (HSE File No. SO/445/88) The Health & Safety Executive was represented by counsel Mr. Nigel Seed and Mr. B. Brown appeared on behalf of the defendants.

The accident occurred at the Royal Aircraft Establishment at Farnborough. NEI Peebles Limited were specialist subcontractors whose task there was to service motors for jet engines. NEI Peebles Limited were a wholly owned subsidiary of Northern Engineering Industries PLC. On 6th August 1987 Mr. Philip John Globe, an experienced test engineer, had been asked to carry out tests on nine large electrical motors. The prosecution alleged that the system used to carry out these tests was unsafe, because he had been inadequately supervised or instructed.

Count 1.

#### Statement of Offence

Failing to discharge the duty imposed by virtue of Section 2 of the Health and Safety at Work etc. Act 1974, contrary to section 33(1)(a) of the said Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

NEI Peebles Limited on 6th August 1987 at Royal Aircraft Establishment, Pyestock, Farnborough, Hampshire being an employer, failed to ensure, so far as was reasonably practicable, the health, safety or welfare at work of all its employees in that it failed to take reasonably practicable precautions to ensure the safety of its employee Philip John Globe from death or injury at work by electric shock.

NEI Peebles Limited was convicted and fined £5,000. The company was further ordered to pay prosecution costs of £5,000. [The judge indicated that but for the mitigation and the guilty plea the fine would have been £10,000.]

That the fact that there was a fatality was a material fact for the Court.

His Honour Judge H.E.L. McCreery Q.C. said that NEI Peebles Limited failed to supervise and check on Mr. Globe, they did not provide him with an earthing rod, there was not a way in which he could satisfy himself that the isolation switch had been operated and that therefore it was safe for him to proceed.

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The sixth case was Regina v. Loymead Limited at the Crown Court at Luton which was heard before Mr. Recorder Cucker and Jury on 21st March 1989. (HSE File No. SO/525/88). The Health & Safety Executive was represented by counsel Mr. Seddon Cripps and Mr. Michael Baker appeared on behalf of the defendants.

The case against Loymead Limited was committed to the Crown Court at Luton from Stevenage Magistrates Court on 4th August 1988 in accordance with Section 6(2) Magistrates Courts Act 1980. [Both the prosecutor and the accused would have been content with summary trial.]

The case against Loymead Limited was committed to the Crown Court at Exeter at the request of the accused.

## Count 1.

Failing to guard an opening or edge as required by Regulations 3 (1) and 33 (2) of the Construction (Working Places) Regulations 1966 contrary to Section 155 of the Factories Act 1961.

## Particulars of Offence

Loymead Limited on the 21st day of September 1987 being an employer of workmen undertaking building operations or works to which Section 127 Factories Act 1961 and the Construction (Working Places) Regulations 1966 applied, contravened Regulation 3 (1) of the said Regulations in that an opening or edge of the floor or wall in the Westgate Centre, Stevenage, which a person employed was liable to pass and through or from which a person was liable to fall a distance of more than two metres was not provided with a suitable guard rail of adequate strength together with toe-boards or other barriers or with other barriers or with other other covering so constructed as to prevent the fall of persons as required by Regulation 3 (1) and 33 (2) of the said Regulations.

Loymead Limited pleaded guilty and was fined £2,800. The company was further ordered to pay prosecution costs of £3,000.

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The seventh case was Regina v. Frost and Frost trading as R.B. Toys (Devon) a firm at the Crown Court at Exeter which was heard before Mr. Recorder Malcolm Davies and Jury on 6th February 1989. (HSE File No. SO/554/88) The Health & Safety Executive was represented by counsel Mr. Michael Brabin and Mr. Paul Dunkles appeared on behalf of the defendants.

The case against William Swain Frost and Patricia Jean Frost trading as R.B. Toys (Devon) was committed to the Crown Court at Exeter by Cullompton Magistrates at the request of the accused on 5th September 1988.

H.M. Factory Inspectorate visited R.B. Toys (Devon) a company which has manufactured soft toys since 1984. Much advice has been given concerning the storage of highly flammable foam crumb and fur fabric material.

The prosecution alleges the unsafe storage of highly flammable polyurethane foam and fur fabric on two separate dates 3rd February 1988 and 18 May 1988.

Count 1.

#### Statement of Offence

Failure to ensure the health, safety and welfare at work of employees, contrary to Section 2 (1) and 33(1) of the Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

William Swain Frost and Patricia Jean Frost trading as R.B. Toys (Devon), between 2nd and 5th February 1988 being an employer, did fail to do all that was reasonably practicable to ensure the safety of employees in connection with the storage of fur fabric and polyurethane foam crumbs.

Count 2.

#### Statement of Offence

Failure to ensure the safety of persons, not being employees, but who use non domestic premises made available to them as a place of work, contrary to Section 4 (2) and Section 33 (1) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

William Swain Frost and Patricia Jean Frost trading as R.B. Toys (Devon), between 2nd and 5th February 1988 being a person in control of non domestic premises within the meaning of of the Health and Safety at Work Act 1974, namely the Victoria Hall, Tiverton Road, Cullompton in the County of Devon, in connection with the storage of fur fabric and polyurethane foam crumb, did fail to take such measures as were reasonable to ensure, so far as was reasonably practicable, that the premises were safe and without risk to the health.

Count 3.

#### Statement of Offence

Failure to ensure the health, safety and welfare at work of employees, contrary to Section 2 (1) and 33(1) of the Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

William Swain Frost and Patricia Jean Frost trading as R.B. Toys (Devon), on the 18th May 1988 being an employer, did fail to do all that was reasonably practicable to ensure the safety of employees in connection with the storage of fur fabric and polyurethane foam crumb.

Count 4.

#### Statement of Offence

Failure to ensure the safety of persons, not being employees, but who use non domestic premises made available to them as a place of work, contrary to Section 4 (2) and Section 33 (1) of the Health and Safety at Work Act 1974.



#### Particulars of Offence

William Swain Frost and Patricia Jean Frost trading as R.B. Toys (Devon), between 18th May 1988 being a person in control of non domestic premises within the meaning of the Health and Safety at Work Act 1974, namely the Victoria Hall, Tiverton Road, Cullompton in the County of Devon, in connection with the storage of fur fabric and polyurethane foam crumb, did fail to take such measures as were reasonable to ensure, so far as was reasonably practicable, that the premises were safe and without risk to the health.

William Swain Frost and Patricia Jean Frost trading as R.B. Toys (Devon) pleaded not guilty to all charges. They were found not guilty of Counts 2 and 4 but guilty of Count 3. The individuals were each fined £1,000 the fine to be paid within three months (or serve a term of imprisonment for 30 days in default). William Swain Frost and Patricia Jean Frost trading as R.B. Toys (Devon) were further ordered to pay prosecution costs of £500. Count 1 was not proceeded with and ordered to lay on file: usual terms.

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The eighth case was Regina v. T.E. Scudder Limited at the Crown Court at Knightsbridge which was heard before His Honour Judge J.D.W. Hayman and Jury on 20th January 1989. (HSE File No. SO/574/88)

This was a collapse of a scaffold at the Metropole Hotel Development Site, Harbet Road, London W.2. Twenty people were walking underneath at the time. All were able to run clear. The only person injured was a person who fell off a moped when she braked.

#### Count 1.

Failure to comply with the duty imposed by Regulation 3 (1) of the Construction (Working Places) Regulations 1966, in that they failed to ensure that a scaffold under

their control was rigidly connected to a building so as to ensure its stability as required by Regulation 15 (1) of the said Regulations contrary to Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

T.E. Scudder Limited on 22nd January 1988 at the Metropole Hotel Development Site, Harbet Road, London W.2 did fail to ensure that the scaffold under their control on the aforementioned site was rigidly connected to the building so as to ensure its stability contrary to the aforementioned Regulations and the Health and Safety at Work Act 1974.

#### Count 2.

Failure to comply with the duty imposed by Regulation 3 (1) of the Construction (Working Places) Regulations 1966, in that they failed to ensure that a scaffold under their control had been inspected by a competent person within the immediately preceding 7 days before use thereof, as required by Regulation 22 (1) (a) of the said Regulations contrary to Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

T.E. Scudder Limited on 22nd January 1988 at the Metropole Hotel Development Site, Harbet Road, London W.2 did fail to ensure that the scaffold under their control on the aforementioned site had been inspected by a competent person within the immediately preceding 7 days before use thereof contrary to the aforementioned Regulations and the Health and Safety at Work Act 1974.

#### Count 3.

Failure to comply with the duty imposed by Regulation 3 (1) of the Construction (Working Places) Regulations 1966, in that they failed so far as was reasonably

practicable to make and keep safe the place of work of their employees as required by Regulation 6 (2) of the said Regulations contrary to Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

T.E. Scudder Limited on 21st March 1988 at the Metropole Hotel Development Site, Harbet Road, London W.2 did fail, so far as was reasonably practicable, to make and keep safe the place of work of their employee, one Patrick Murphy, who was standing on a wall that was undergoing demolition some 15 feet from the ground, contrary to the aforementioned Regulations and the Health and Safety at Work Act 1974.

T.E. Scudder Limited was convicted on the first count and fined £7,500. The company was also convicted on Count 2 but there was no separate fine. The company was further convicted on Count 3 and fined £2,500. T.E. Scudder Limited was ordered to pay prosecution costs of £1,200. Payment within fourteen days.

#### Previous convictions.

Oxford Crown Court 25th February 1985 - Guilty Plea Fine £8,000.

Construction Regulations 1961 Regulation 41 (4) Fine £500.

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The ninth case was Regina v. David Holt Plastics Limited heard in the Crown Court in December 1989. (HSE File No. SO/584/88). Mr. R.H.Q. Henriques Q.C. appeared for the defendant Norman Holt.

The Crown Prosecution Service successfully prosecuted David Holt Plastics Limited, and its director for manslaughter, following the death of one of their employees in a plastic crushing machine. David Holt Plastics Limited recycled plastics.

An employee of the company, George Kenyon, had expressed his concern about the "guards being up" on that plastic crushing machine. Mr. Kenyon, aged 25 years, was killed while using that machine at his place of work a few days later. George Kenyon became entangled with heavy duty plastic that he was feeding into the machine. He was drawn into the shredder (agglomerator). No trace was found of him only body tissue.

The accident occurred at 6.40 p.m. on 24th May 1988. The deceased was working on a Falzoni FBM Condor 1200 Agglomerator machine (Italian made) known in the industry as a crumbing machine. The machine had a large drum some 54" deep by 48" wide with a horizontal blade at the bottom. It was driven by a 270 h.p. motor blade which rotates at approx 1200 r.p.m. The cover was fitted on top of the machine with a central feed opening 19.5" in diameter through which plastic, for example polythene sheeting can be fed. However, the cover was hinged at the mid-point. It was normal practice if the material was big bulky and difficult to handle, to lift the cover to make it easier to feed. A pneumatic time delay bolt coupled with a fail - to - danger electrical limit switch was fitted which was intended to hold the cover in position, but neither were working - the pneumatic pipe supply having been cut and the interlock effectively disconnected, the operating lever had also been removed. It had not worked for a considerable period.

A Prohibition Notice was served on David Holt Plastics Limited on 25th May 1988. The Prohibition Notice was contravened on 31st May 1988. [Statement of N. Ross Cheetham H.M. Factories Inspector Preston]. The Prohibition Notice had been badly drafted and the Area Director suggested dropping the prosecution.

At the coroner's hearing a verdict of unlawful killing was recorded and the police were asked to investigate. The Health and Safety Executive gave the police access to the evidence and the police prepared a report for the Crown Prosecution Service.

On 7th October 1988 David and Norman Holt attended Rawtenstall Police Station accompanied by their solicitors Mr. Nathan Marks and Miss Mendesolm. The

defendants were arrested by Detective Inspector Hargreaves being suspected of the manslaughter of George Kenyon.

Detective Inspector Hargreaves said:

"The failure by the principals of the firm, David and Norman Holt, to provide adequate guarding and safety devices on the highly dangerous machines despite official warnings, displayed such a degree of negligence to amount to a total disregard for the health and safety of their employees. Their actions were unlawful and dangerous and led directly to the death of George Kenyon."

Both the Health and Safety Executive and the police eventually prosecuted David Holt Plastics Limited and its directors David and Norman Holt. Norman Holt pleaded guilty to manslaughter and received a twelve month suspended prison sentence, suspended for two years. The Health and Safety Executive prosecuted for breach of Section 22 Health and Safety at Work etc. Act 1974, Section 14 (1) Factories Act 1961 and Section 137 (1) Factories Act 1961. The fines and costs in this case totalled £60,000.

The prosecutor, however, accepted a non-guilty plea by David Holt, who according to evidence given at the Crown Court hearing, may have known as much about the machine as his younger brother.

The judge himself seemed to find the Crown Prosecution Service's acceptance of David Holt's plea surprising. He said in court to David Holt that if the case

"had been pursued you may well have had a sentence equal or even greater than your brother's and there would have been no suspension on either".

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The tenth case was Regina v. Draincare Limited which was heard at the Crown Court at Acton on 3rd April 1989. (HSE File No. SO/616/88) The Health & Safety

Executive was represented by counsel Miss Margaret Bowron and Mr. Jonathan Bellamy appeared on behalf of the defendants.

Draincare Limited was a small company with two directors, Mr. and Mrs. C. Staggs and three employees. Mr. Staggs was a qualified plumber.

Mr. John Martin, an employee and a qualified plumber, entered a sewer manhole to clear a drain blockage. He was overcome and his colleague, Mr. Peter Fitzgerald who was waiting at the top of the manhole also entered and collapsed. Neither man had been trained or instructed in the standard precautions for entering confined spaces. They had no equipment and were not aware of the hazards. Mr. Martin died the same day in hospital. The client was a local authority whose employees doing similar work were equally ignorant of the hazards and precautions. Action has been taken to remedy this and ensure that the council fulfils its obligations to vet and supervise contractors.

The case against Draincare Limited was committed to the Crown Court at Acton by Willesden Magistrates Court on 18th October 1988.

Count 1.

#### Statement of Offence

Failing to ensure, so far as is reasonably practicable, the health, safety and welfare at work of employees, contrary to Section 2 (1) Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Draincare Limited being an employer within the meaning of the Health and Safety at Work Act 1974 on 29th October 1987, failed to ensure the health, safety and welfare of its employees, namely John Vincent Martin and Miles Peter Fitzgerald, from the

dangers of entering a confined space namely a drain at Dorman Walk, London N. W.10; the said failure being caused, in particular by Draincare Limited's failure to provide, so far as is reasonably practicable, (a) a safe system of work and (b) the necessary information, instruction, training and supervision.

Draincare Limited was convicted and fined £3,000. The company was further ordered to pay prosecution costs of £1,500. Both sums payable within fourteen days.

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The eleventh case was Regina v. B.I.C.C. Cables Limited and Regina v. British Telecommunications P.L.C. which was heard at the Inner London Crown Court before His Honour Judge G.J. Shindler Q.C. (one of H.M. Senior Circuit Judges) and Jury at on 3rd May 1989. (HSE File No. SO/619/88) The Health & Safety Executive was represented by counsel Mr. Roger Eastman.

B.I.C.C. Cables Limited were contracted to British Telecommunications P.L.C. to install a fibre optic cable between the Nine Elms and Brixton Exchanges. Access to ducts was gained from an existing B.T. manhole. Three gangs, each of eight men and one foreman, were employed on this contract. From time to time gangs would also undertake work in other areas of London. The three London gangs were co-ordinated by a B.I.C.C. site supervisor. Also allocated to each gang was a B.T. supervisor. The role of the B.T. supervisor was to monitor the performance of the gang, to ensure the quality of their work, to direct the gang as to which areas they should work in and to ensure that each contractors working party had possession of, and was using B.T. approved gas testing equipment (explosive/flammable gas detector and Davey lamp). The accident investigation carried out by T. Hetherington and dated 30th June 1988 revealed that the gangs in London had only one flammable gas detector (Draeger Warnex) each and no Davey lamps. No breathing apparatus or other rescue equipment was available. Neither the site supervisor nor any of the foremen had been adequately trained regarding the dangers of confined spaces. Air testing was not undertaken routinely before entering manholes. The cable installation gangs were inadequately trained.

The case involved the asphyxiation and drowning of a 19 year old labourer, Stephen Lockett, whilst he carried out cable operations in a B.T. manhole. The other men were also overcome (but later regained consciousness) whilst attempting to rescue Stephen Lockett.

Regina v. BICC Cables Limited

Count 1.

Failing to discharge a duty imposed by Section 2 (1) of the Health and Safety at Work Act 1974 contrary to Section 33 (1) thereof.

Particulars of Offence

BICC Cables Limited on or about the 16th day of June 1988, at Clapham Road, London, SW9 in the Inner London Area, being an employer of workmen, failed to ensure, so far as was reasonably practicable, the safety of their employees, including one Stephen Lockett, in that they failed to prevent the said Stephen Lockett whilst in the course of his employment, from being overcome by asphyxiating or toxic gases and thereafter drowning.

Regina v. British Telecommunications P.L.C.

Count 1.

Failing to discharge a duty imposed by Section 3 (1) of the Health and Safety at Work Act 1974 contrary to Section 33 (1) thereof.

Particulars of Offence

British Telecommunications P.L.C. on or about the 16th day of June 1988, at Clapham Road, London, SW9 in the Inner London Area, being an employer of



workmen, failed to ensure, so far as was reasonably practicable, the safety of persons not in their employment but who may be affected thereby, including one Stephen Lockett, an employee of BICC Cables Limited in that they failed to prevent the said Stephen Lockett from being overcome by asphyxiating or toxic gases and thereafter drowning.

BICC Cables Limited was convicted and fined £25,000. The company was further ordered to pay prosecution costs of £2,426.83.

British Telecommunications P.L.C. was convicted and fined £10,000. The company was further ordered to pay prosecution costs of £1,600.37.

On 24th June 1988 a prohibition notice was served prohibiting all B.I.C.C. Cables Limited (Communications and Electronics Division) activities in confined spaces below ground.

On 26th June 1988 a prohibition notice was served prohibiting B.I.C.C. Cables Limited from working on the BT optical fibre cable installation work.

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The twelfth case was Regina v. E. Baker (Hauliers) Limited which was heard at the Crown Court at Snaresbrook before His Honour Judge E.F. Monier Williams and Jury at on 29th March 1989. (HSE File No. SO/672/88) The Health & Safety Executive was represented by counsel Mr. William Hoskins.

E. Baker (Hauliers) Limited failed to ensure the safety of a contractor, Mr. Robert Dore whilst he was working on site. He was struck and killed by a mechanical shovel which was dirty, poorly maintained and had limited driver visibility because of the shattered windscreen on his Volvo BM mechanical shovel. No other effective means of safe working had been adopted to ensure the vehicle's safe operation.

The case was committed by Havering Magistrates Court on 17th August 1988 in accordance with section 6 (1) of the Magistrates Court Act 1980.

A plea of not guilty was entered.

Count 1.

Failing to discharge a duty to persons not in its employ imposed by Section 3 (1) of the Health and Safety at Work Act 1974 contrary to Section 33 (1) thereof.

Particulars of Offence

E. Baker (Hauliers) Limited being employers on the 10th day of February 1988, at York Road, Rainham, Essex, failed to conduct their refuse transfer operations in such a way as to ensure so far as was reasonably practicable, that one Robert Kenneth Dore, a person not in their employment, who was affected by the said operation, was not exposed to risks to his safety from the Volvo BM mechanical shovel which had not been maintained so as to give the driver thereof adequate visibility.

The prosecution failed to prove its case. A verdict of not guilty was entered upon the Judges direction at the close of the Prosecution's case. Defence costs from central funds.

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The thirteenth case was Regina v. Esmail Patel which was heard at the Crown Court at Preston before His Honour Judge R. Lockett and Jury at on 2nd October 1989. (HSE File No. SO/788/88).

## Count 1.

Installed a gas appliance in contravention of Regulation 25 (1) (c) Gas Safety (Installation and Use) Regulations 1984, contrary to Section 33 (1) (c) Health and Safety at Work Act 1974.

## Particulars of Offence

Esmail Patel on the 19th day of May 1988 installed a gas appliance, namely a Baxi Brazilia 8000S balanced flue gas heater in a fire place in a rear downstairs room at 11, St. Stephens Road, Little Harwood, Blackburn so that availability of sufficient permanent supply of air for the appliance for proper combustion was not such as to ensure that the appliance could be used without instituting a danger to any person or property.

## Count 2.

Installed a gas appliance in contravention of Regulation 25 (1) (b) Gas Safety (Installation and Use) Regulations 1984, contrary to Section 33 (1) (c) Health and Safety at Work Act 1974.

## Particulars of Offence

Esmail Patel on the 19th day of May 1988 installed a gas appliance, namely a Baxi Brazilia 8000S balanced flue gas heater in a fire place in a rear downstairs room at 11, St. Stephens Road, Little Harwood, Blackburn so that the means of removal of the products of combustion from the appliance was not such as to ensure that the appliance could be used without constituting a danger to any person or property.

Esmail Patel was convicted of the offence under Count 1 and fined £150. He was further ordered to pay prosecution costs of £75. He was further convicted of the

offence under Count 2 and fined £1500. He was further ordered to pay prosecution costs of £75.

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The fourteenth case was Regina v. Central Industrial Management Limited and Andrew Christopher which was heard at the Crown Court at Wood Green before His Honour Judge N.E. Beddard and Jury at on 17th February 1989. (HSE File No. SO/819/88). The Health & Safety Executive was represented by counsel Mr. P. Rook. Renovation work was being carried out at a large residential property at 10, Prince Arthur Road, Hampstead, London N.W.3. The contract had been awarded to Central Industrial Management Limited of 27/31 Blandford Street, London W.1. Central Industrial Management Limited employed Andrew Christopher who in turn hired building labour. A wall which was under construction collapsed on to Patrick Hannigan, a self employed labourer as a trench was being dug adjacent to it.

The case was committed by Hampstead Magistrates Court on 12th December 1988 in accordance with section 6 (2) of the Magistrates Court Act 1980.

Count 1.

Failure to discharge a duty imposed by Section 3 (1) of the Health and Safety at Work Act 1974 contrary to Section 33 (1) (a) Health and Safety at Work Act 1974.

#### Particulars of Offence

Central Industrial Management Limited on or about 10th day of February 1988, being an employer within the meaning of the Health and Safety at Work Act 1974 failed to discharge a duty imposed on it by Section 3 (1) of the said Act namely to conduct its undertaking in such a way as to ensure, so far as was reasonably practicable, that persons not in their employment, who might be affected thereby, namely Patrick Hannigan, James Hannigan, Alan Bloomfield and Nikita Charles Leslie were not thereby exposed to risks to their safety

Count 2.

Failure to discharge a duty imposed by Section 3 (2) of the Health and Safety at Work Act 1974 contrary to Section 33 (1) (a) and Section 33 (3) Health and Safety at Work Act 1974.

Particulars of Offence

Andrew Christopher on or about 10th day of February 1988, being a self employed person within the meaning of the Health and Safety at Work Act 1974 failed to discharge a duty imposed on him by Section 3 (2) of the said Act namely to conduct his undertaking in such a way as to ensure, so far as was reasonably practicable, that other persons (not being his employees) who might be affected thereby, namely Patrick Hannigan, James Hannigan, Alan Bloomfield and Nikita Charles Leslie were not thereby exposed to risks to their safety

Central Industrial Management Limited was convicted of the offence under Count 1 and fined £5,000. The company was further ordered to pay prosecution costs of £1515. Andrew Christopher was convicted of the offence under Count 2 and fined £400 to be paid within two months failing which he would serve 14 days imprisonment.

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The fifteenth case was Regina v. D.S. Tilke & I.D. Tilke which was heard at the Crown Court at Stafford before His Honour Judge W.A.L. Allardice D.L. and Jury at on 21st March 1989. (HSE File No. SO/843/88). The Health & Safety Executive was represented by counsel Mr. R. P. Glancey and Mr. A. Craig appeared on behalf of the defendants.

On 8th August 1988 Leon Walker was killed when a home made hoist collapsed. The load of some 2.5 - 3 cwt fell on to Mr. Walker. The machinery was old and the partners were aware of frequent problems arising as a result.

The case was committed by Burton upon Trent Magistrates Court, who declined jurisdiction, on 17th December 1988 in accordance with section 6 (2) of the Magistrates Court Act 1980.

Count 1.

#### Statement of Offence

Failing to comply with the duty of an employer to ensure as far as is reasonably practicable the health and safety and welfare at work of all his employees, contrary to Section 2 (1) and Section 33 (1) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Derrick Samuel Albin John Tilke & Ian Derrick Tilke on 8th day of August 1988, at Home Farm, Rangemore, Burton-on -Trent in the County of Stafford, being failed to ensure, so far as was reasonably practicable, the safety of one of their employees, namely Leon Walker during the operating of a hoist on a Bedford vehicle, registration number Q217 FVT.

Count 2.

#### Statement of Offence

Contravening Regulation 48 (1) of the Construction (Lifting Operations) Regulations 1961 contrary to Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Derrick Samuel Albin John Tilke & Ian Derrick Tilke on 8th day of August 1988, at Home Farm, Rangemore, Burton-on -Trent in the County of Stafford being employers of workmen undertaking operations or work to which Section 127 of the Factories Act 1961 and the Construction (Lifting Operations) Regulations 1961 applied, did contravene Regulation 48 (1) of the said Regulations in that a hoist carrying a person, namely Leon Walker, was not provided with a cage so constructed as to comply with the requirements of the said Regulation 48 (1).

Count 3.

#### Statement of Offence

Contravening Regulation 49 (1) of the Construction (Lifting Operations) Regulations 1961 contrary to Section 155 of the Factories Act 1961 and Section 33 of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Derrick Samuel Albin John Tilke & Ian Derrick Tilke on 8th day of August 1988, at Home Farm, Rangemore, Burton-on -Trent in the County of Stafford being employers of workmen undertaking operations or work to which Section 127 of the Factories Act 1961 and the Construction (Lifting Operations) Regulations 1961 applied, did contravene Regulation 49 (1) of the said Regulations in that every part of a load was not securely suspended or supported whilst being raised or lowered and was not adequately secured to prevent danger from slipping or displacement.

Derrick Samuel Albin John Tilke & Ian Derrick Tilke pleaded guilty to all counts. Derrick Samuel Albin John Tilke was fined £3,000 (Count 1), £750 (Count 2) and £750 (Count 3). Ian Derrick Tilke was fined £1,000 (Count 1), £250 (Count 2) and

£250 (Count 3) The partnership was further ordered to pay prosecution costs of £1,596.

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The sixteenth case was Regina v. Philip Cross which was heard at the Crown Court at Plymouth before His Honour Judge I.S. McKintosh and Jury at on 26th May 1989. (HSE File No. SO/853/88). The Health & Safety Executive was represented by counsel Mr. W.P.L. Sellick and Mr. A. MacDuff appeared on behalf of the defendants.

On 9th April 1988 David McCourt was killed when he lost control of a 10 ton Stothert and Pitt vibrating roller used to compact rock fill on a 2:1 embankment 5 metres high during the construction of the St. Budeaux bypass in Plymouth. The machine rolled over and crushed David McCourt in his driver's cab. The method of work, the supervision, the training and maintenance were contributory factors but the post mortem indicated a high blood alcohol level.

The case was committed to the Crown Court at Plymouth on 14th December 1988 in accordance with section 6 (2) of the Magistrates Court Act 1980.

Count 1.

#### Statement of Offence

Failed to ensure as far as is reasonably practicable the health and safety and welfare at work of his employee, contrary to Section 2 (1) and Section 33 (1) of the Health and Safety at Work Act 1974.

#### Particulars of Offence

Philip Cross on 8th day of April 1988 failed to ensure, so far as was reasonably practicable, the health, safety and welfare at work of his employee, David McCourt



whereby in carrying out construction works on the St. Budeaux bypass construction site, Devon.

- (1) Provided and maintained in an unsafe condition plant, namely a vibrating roller with defective control linkage.
- (2) Failed to provide and maintain in a safe system of work by allowing or permitting David McCourt to compact the embankment in an unsafe manner.
- (3) Failed to supervise David McCourt so as to ensure to ensure
  - (a) that he compacted the embankment in a safe manner
  - (b) that he was in a fit condition to use the said vibrating roller.

#### Count 2

Breach of Employment of Women, Young Persons and Children Act 1920.

[Schoolboy of 15 employed by Philip Cross.]

Philip Cross was declared bankrupt on 10th January 1989. His liabilities were in excess of £250,000.

Cases left on file not to be proceeded with without leave of the court.

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The seventeenth case was Regina v. Humbrol Limited which was heard at the Crown Court at Beverley before His Honour Judge D.R. Bentley Q.C. and Jury at on 28th July 1989. (HSE File No. SO/186/89). The Health & Safety Executive was represented by counsel Mr. P.J.M. Heppel.

This was Humberside's worst fire since the Flixborough incident. 138 officers used 31 fire appliances. 110 households were evacuated. Total loss to Humbrol Limited was £10m.

Facts: On 2nd November 1988 Frank Norrie, the Aerosol Filling Manager instructed Jeffrey Rowlands, the material handler, to collect 60 litres of acetone from the paint shop to add to batch of paint already in the Aerosol Filling Department. Jeffrey Rowlands put 59 litres of acetone into a 45 gallon drum and then he took the drum (unsecured) on the forks of the fork lift truck. Rowlands took the drum down to the aerosol filling department. The truck stopped some distance from sliding steel doors. Forks were lowered to the floor. The drum was wedged in forks. Michelle Smith, an operative, retracted the forks whilst Rowlands manhandled the drum. The drum became free but he was unable to hold it. The drum tipped over. All the acetone was spilt. It occupied an area of 10 feet x 20 feet. Rags were thrown into the pool of acetone, withdrawn and placed in a metal dustbin.

Electrical equipment was still running. Frank Norrie asked Gillian Gibb to press the emergency stop button. There was a huge explosion. The panel doors of the main control cabinet were blown forward and the pool of acetone flashed over. At this stage Jennifer Powley and Janine Gifillian were standing on the pile of rags brought to the centre of the pool.

Jennifer Powley, aged 17 years, received fatal injuries, she was blown forward on to her face into the flaming acetone (would have died within 30 secs of receiving injuries).

Janine Gifillian, aged 19 years, was kept in Pinderfields hospital for four and a half months. She had 80% burns to her head and face and suffered permanent disfigurement.

Two other workers suffered immediately reportable injuries.

## Count 1.

## Statement of Offence

Failing to convey highly flammable liquids in vessels designed and constructed so as to avoid the risk of spilling, contrary to Regulation 8 (1) of the Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972 and Section 155 (1) of the Factories Act 1961.

## Particulars of Offence

Humbrol Limited on 2nd day of November 1988 at the factory premises at Marfleet in the City of Kingston upon Hull conveyed a highly flammable liquid, namely acetone in a vessel not designed and constructed so as to avoid the risk of spilling.

## Count 2

Failing to ensure the health, safety and welfare at work of his employee, contrary to Section 2 (1) and Section 33 (1) (a) of the Health and Safety at Work Act 1974.

## Particulars of Offence

Humbrol Limited on 2nd day of November 1988 failed to ensure, so far as was reasonably practicable, the health, safety and welfare at work of employees cleaning a spillage of acetone in the course of their work.

Humbrol Limited was convicted on the first count and fined £5,000 and further convicted was convicted on the second count and fined £15,000. The company was further ordered to pay prosecution costs of £10,000.

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The eighteenth case was Regina v. Kestrel Flying Club Limited which was heard at the Crown Court at St. Albans before His Honour Judge C.C. Colston Q.C. and Jury at on 7th July 1989. (HSE File No. SO/228/89). The Health & Safety Executive was represented by counsel Mr. Roger Eastman.

Facts: On 18th May 1988 Michael John Price, a cleaner at the Kestrel Flying Club, taxied a Cessna 152 aeroplane and crashed it into a hanger.

The case was committed by Ampthill Magistrates Court on 21st February 1989 in accordance with section 6 (2) of the Magistrates Court Act 1980.

Count 1

#### Statement of Offence

Failure to discharge a duty to persons other than employees contrary to Section 3 (1) and Section 33(1)(a) Health and Safety at Work etc. Act 1974.

#### Particulars of Offence

Kestrel Flying Club Limited on or about 18th May 1988 in the County of Bedfordshire being an employer, failed to conduct their undertaking in such a way as to ensure, so far as was reasonably practicable, that the persons not in employment, including Michael Price and other members of the public who may have been affected thereby, were not thereby exposed to risks to their health or safety in that they failed to provide adequate training and supervision for the said Michael Price who taxied a Cessna 152 aeroplane registration number G - BNJJ.

Kestrel Flying Club Limited was convicted on the first count and fined £5,000. The company was further ordered to pay prosecution costs of £2,145.64.

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The nineteenth case was Regina v. Headway Construction Company Limited and Regina v. Flack Scaffolding Limited which was heard at Maidstone Crown Court before His Honour Judge D.J. Griffiths and Jury on 20th November 1989. (HSE File No. SO/238/89). The Health & Safety Executive was represented by counsel Mr. Roger Eastman.

Facts: On 20th September 1988 an employee of Flack Scaffolding carried a 21 foot long scaffold pole across a site. It came into contact with an electrically charged (33 kv.) overhead cable. Ian Smith subsequently had his hands amputated between the arms and wrist and his feet amputated between the knee and ankle. Smith was 18 years old: not been given the necessary information, training and supervision so he was unaware of the danger from overhead lines.

Count 1

#### Statement of Offence

Failing to take discharge a duty pursuant to Section 3 (1) (b) and Regulation 44 (2) of the Construction (General Provisions) Regulations 1961 and Section 127 Factories Act 1961 contrary to Section 155 Factories Act 1961.

#### Particulars of Offence

Headway Construction Company Limited, on or about 20th day of September 1988 at Gateway Food Market construction site, High Street, Cranbrook in the County of Kent, being a contractor undertaking works to which section 127 Factories Act 1961 and the the Construction (General Provisions) Regulations 1961 applied did contravene Regulation 3 (1) (b) and Regulation 44 (2) in that where an electrically charged overhead cable was liable to be a source of danger to a person employed during the course of the said works, namely Ian Nicholas George Smith, is failed to take all practicable precautions to prevent such danger by the provision of adequate and suitably placed barriers or otherwise.

## Count 2

## Statement of Offence

Failure to discharge a duty to persons other than employees contrary to Section 2 (1) and Section 33(1)(a) Health and Safety at Work etc. Act 1974.

## Particulars of Offence

Flack Scaffolding Limited on or about 20th day of September 1988 at Gateway Food Market construction site, High Street, Cranbrook in the County of Kent, failed to discharge a duty in that it did not ensure, so far as was reasonably practicable, the safety at work of an employee, namely Ian Nicholas George Smith.

Headway Construction Company Limited pleaded guilty to the first count and was fined £20,000. The company was further ordered to pay prosecution costs of £3,609. Flack Scaffolding Limited pleaded guilty to the second count and was fined £5,000. The company was further ordered to pay prosecution costs of £1,000.

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The twentieth case was Regina v. Special Steel Company Limited which was heard in the Crown Court before His Honour Judge A. Simpson and Jury. (HSE File No. SO/298/89). The Health & Safety Executive was represented by counsel Mr. Stuart Brown.

Facts: The prosecution arose out of a fatal accident on June 24th 1988 when an employer was trapped and crushed by a moving "charger car".

The case was committed by magistrates in accordance with section 6 (2) of the Magistrates Court Act 1980.

## Count 1

## Statement of Offence

Failure to discharge a duty to persons other than employees contrary to Section 2 (1) and Section 33(1)(a) Health and Safety at Work etc. Act 1974.

## Particulars of Offence

Special Steel Company Limited on June 24th 1988 failed to discharge a duty in that it did not ensure, so far as was reasonably practicable, the safety at work of its employees.

Special Steel Company Limited pleaded guilty to the above charge and was fined £3,500. The company was further ordered to pay prosecution costs of £4,670.

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The twenty first case was Regina v. H. Smith (Engineering) Limited at the Crown Court at Southwark which was heard before His Honour Judge J.M. Lever and Jury on 27th October 1989. (HSE File No. SO/486/88)

Facts: This was a collapse of a scaffold at St. James' Square, London SW1. H. Smith (Engineering) Limited were subcontractors to Lovell Construction Limited. The scaffolding was erected by Aerial Scaffolding. The main structure of the building was being demolished and the front wall brought down to first floor level. The scaffolding height had not been reduced. It remained fully sheeted. The sheeting acted as a sail. The lack of ties allowed the scaffolding to collapse. This was a main thoroughfare of national significance. Damage was caused to three cars - two were being driven.

Count 1.

H. Smith (Engineering) Limited on 19th December 1988 at 26, St. James' Square, London SW1 contrary to Section 155 Factories Act 1961 and Regulation 3 Construction (Working Places) Regulations 1966 did fail to support securely a scaffold and sufficiently and properly strut or brace the same to prevent collapse and did fail to connect rigidly the same to a building or other structure contrary to Regulation 15 of the said Regulations.

Particulars of Offence

On 19th December 1988 at 26, St. James' Square, London SW1 was demolished did fail to reduce the height of the scaffold that had been attached to the said building and did fail to remove monoflex sheet there from so that scaffold projected sixteen feet above the demolished building and was thereby unsupported as required by Regulation 15 of the said Regulations, so that the scaffold was blown over and fell to the ground.

H. Smith (Engineering) Limited pleaded guilty and was convicted and fined £5,000.

H. Smith (Engineering) Limited was ordered to pay prosecution costs of £1,375.

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The twenty second case was Regina v. Christopher James Eddon at the Crown Court at Shrewsbury on 24th November 1989. (HSE File No. SO/725/89)

Facts: Fatal accident on 3rd March 1989 to a YTS trainee who was using a pressure washer.

Count 1.

Failing to discharge the duty under Section 3 (2) of the Health and Safety at Work Act 1974, contrary to 33 (1) (a) of the said Health and Safety at Work Act 1974.



#### Particulars of Offence

Failure to ensure that other persons (not being his employees) who might be affected thereby, were not thereby exposed to risks to their safety contrary to Section 3 (2) of the Health and Safety at Work Act 1974.

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**1990**

Three cases were heard by way of indictment in the Crown Court in the first three months of 1990.

The first case was Regina v. S.G.S Inspection Services Limited at the Crown Court at Acton which was heard before His Honour Judge Cooke and Jury on 10th January 1990. (HSE File No. SO/173/88) The Health & Safety Executive was represented by counsel Mr. Timothy Briden.

On 22nd November 1986 two men were injured after falling to the ground when the cage attached to the boom of a mobile access platform became detached from the boom as a result of unsatisfactory welding. The mobile access platform was inspected every two months by S.G.S Inspection Services Limited.

Count 1.

Statement of Offence

Failing to discharge a duty to persons other than employees contrary to Section 3 (1) and Section 33(1)(a) Health and Safety at Work etc. Act 1974.

Particulars of Offence

S.G.S Inspection Services Limited on the 22nd November 1986 at the premises of PTP Aerial Platforms Limited, Ferry Lane, Rainham, Essex failed to conduct its undertaking, namely the inspection of an IPAF Mark Lift Diesel Hydraulic Platform Hoist No. SP124 in such a way as to ensure, so far as was reasonably practicable, that the persons not in employment including Patrick Daniel Paul Gibbons and Adrian Alan Ball, were not thereby exposed to risks to their health or safety.

S.G.S Inspection Services Limited was convicted and fined £2000. The company was further ordered to pay prosecution costs of £12,000.

On 27th January 1988 PTP Aerial Platforms Limited pleaded guilty to a charge under Section 6 Health and Safety at Work etc. Act 1974 and were fined £2,000.

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The second case was Regina v. Millmead Quarry Products Limited at the Crown Court at Doncaster which was heard before before His Honour Judge Michael Walker and Jury on 22nd January 1990. (HSE File No. SO/555/88) The Health & Safety Executive was represented by counsel Mr. Leslie Spittle and Mr. Simon Lawler appeared on behalf of the defendants.

A lorry driver was found dead outside the cab of his tipper lorry which had the empty body raised and in contact with an 11kV cable. There was no witness to the accident but it appeared that the driver who was not employed at the quarry had arrived one hour before the start of work and had parked under the overhead lines and raised the body of the vehicle to drain it of rainwater. Until ten days before the accident a stone berm was in place which prevented vehicles parking under the overhead lines, but the stone had then been removed some 22 metres to allow a temporary job of mineral exploitation to be completed. No signs were exhibited to warn approaching drivers. The stone berm has since been replaced pending the removal of the overhead lines and a prohibition notice has been issued prohibiting vehicular movement in the vicinity of the overhead lines until adequate protection is provided.

Inquest was held at the Law Courts, Doncaster on June 30th 1988 concerning the death of Peter Taylor who died on 20th May 1988 at Scabba Wood Quarry Sprotborough. Peter Taylor was born on 21st January 1958 and was aged 30. Death by electrocution - death by misadventure.

### First Count

#### Statement of Offence

Failure to discharge the duty imposed under Section 3 (1) Health and Safety at Work Act 1974 contrary to Section 33 (1) of the said Act the particulars of the offence being that Millmead Quarry Products Limited on or about 20th May 1988 failed to conduct their undertaking at Scabba Wood Quarry Sprotborough in such a way as to ensure so far as was reasonably practicable that persons not in their employment who might be affected thereby were not thereby exposed to risk to their health or safety.

### Second Count

#### Statement of Offence

Failure to discharge the duty imposed under Section 4 (2) Health and Safety at Work Act 1974 contrary to Section 33 (1) of the said Act the particulars of the offence being that the Company having control of premises at Scabba Wood Quarry Sprotborough failed to take such measures as was reasonable for a person in their position to take to ensure so far as was reasonably practicable that all means of access to the quay available for use by persons were safe and without risks to health.

Millmead Quarry Products Limited was convicted on the first count and fined £2000. Count 2 was left on file. The company was further ordered to pay prosecution costs of £3,731 71p.

His Honour Judge Michael Walker said that he had to impose a suitable penalty for the breach of duty. He took account of the guilty plea and the responsible attitude of the company and lack of previous record. This was not a flagrant breach and the risk was not an obvious one. The high voltage cable was in an elevated position and no-one can explain how it was that the tipper came to be in contact with it. The fault lay in the no - replacement of the stone on the driveway to prevent the lorry being in the

place it was, so that the accident could not have happened. There was a high responsibility on companies not to be in breach.

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The third case was Regina v. Nobels Explosives Company Limited at the Crown Court at Mold which was heard before His Honour Judge Morgan Hughes and Jury on 29th March 1990. (HSE File No. SO/679/88) The Health & Safety Executive was represented by counsel Mr. Roger Dutton and Mr. Richardson appeared on behalf of the defendants.

Fatal accident at Nobels Cookes Works, Penrhyndeudraeth, Carmarthen.

The system of work devised by Nobels Explosives Company Limited was breached as a matter of course by experienced workers. Breaches were unknown to management. There was a serious failure by the company to supervise properly.

#### First Count

##### Statement of Offence

Failing to ensure so far as is reasonably practicable the health and safety at work of employees, contrary to Section 2 (1) and 2 (2) (a) and 33 (1) (a) Health and Safety at Work Act 1974 as amended.

##### Particulars of Offence

Nobels Explosives Company Limited on the 14th day of June 1988 failed in their duty to ensure the health and safety of their employees at Cookes Works, Penrhyndeudraeth in the County of Gwynedd in that they did not provide a system of work that was as far as was reasonably practicable safe such that magnetic detectors in the explosive mixing house could only be overridden remotely by a person in

authority who had ensured that any metal had been removed from constituents of the explosives mix.

#### Second Count

##### Statement of Offence

Failing to ensure so far as is reasonably practicable the health and safety at work of employees, contrary to Section 2 (1) and 2 (2) (a) and 33 (1) (a) Health and Safety at Work Act 1974 as amended.

##### Particulars of Offence

Nobels Explosives Company Limited on the 14th day of June 1988 failed in their duty to ensure the health and safety of their employees at Cookes Works, Penrhyndeudraeth in the County of Gwynedd in that they did not provide plant that was so far as is reasonably practicable safe by reason of the absence of equipment which would prevent access to the mixing compartment in the explosives mixing house during the mixing of explosives.

#### Third Count

##### Statement of Offence

Failing to ensure so far as is reasonably practicable the health and safety at work of employees, contrary to Section 2 (1) and 2 (2) (a) and 33 (1) (a) Health and Safety at Work Act 1974 as amended.

##### Particulars of Offence

Nobels Explosives Company Limited on the 14th day of June 1988 failed in their duty to ensure the health and safety of their employees at Cookes Works,

Penrhyndeudraeth in the County of Gwynedd in that they did not provide the supervision reasonably necessary to ensure that the operating instructions for the safe mixing of explosives were complied with.

Nobels Explosives Company Limited was convicted on all counts and fined £100,000. The company was further ordered to pay prosecution costs of £30,000.

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