DEANS COURT CHAMBERS

Peter Smith

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Education

MA LLB (Hons)

Professional Associations

Health & Safety Law Association

Northern Circuit

Areas of Specialism

- Health & Safety
- Corporate and Individual Defence in Health & Safety
- Business Crime & Regulatory
- Inquests
- Traffic Commissioner Inquires
- Common law
- Environmental

Peter undertakes defendant work. His corporate defence practice in Health and Safety prosecutions and enforcement covers a vast number of industries and organisations.

He regularly advises and represents the construction, manufacturing and chemical industries on risk, accidents and fatalities.

Peter also undertakes traffic management cases as well as defending in local authority prosecution and enforcement matters. Further, Peter represents directors, managers and employees who are subject to enforcement.

Peter specialises at inquests, both 'Jamieson' and 'Middleton' Article 2. He has wide experience in abuse of process matters and Article 6 issues together with other stay and dismissal applications. Linked judicial review work is undertaken.

Peter maintains a common law practice.

Peter works well leading a team just as well as he does working within a team and understands the needs of his clients. Whilst he is very competent across all areas of his practice, he excels on issues of liability, procedure and tactics. Peter continues to provide papers and seminars to clients on a variety of topics, attracting CPD points and a useful exchange of views on contemporary issues.

His client list includes some of the largest national and international companies.

Notable Cases

R (HSE) v. JTS Ltd: Chester 2023

Practice Area:

JTS operate across the country undertaking a variety of divisions, one of which involves industrial scale commercial laundry.
A fully trained and experienced shift engineer attended on a noise emanating from one of the dryers situated over 3m above ground level.
To do this he should have followed the control measures when undertaking a visual and audio inspection. They included the correct ladders, remaining no less than 1m from the mechanism, taping / cordoning off the area to warn others of the work being done.
Unfortunately, he had not read the handover notes from the previous shift engineer who had identified the issue which was to be dealt with at the next planned maintenance; the dryer could continue its operation until then.
Further, the shift engineer failed to keep 1m from the dryers opening / closing mechanism (only open for approximately 10 seconds) or tape / cordon off.
For some reason he lost his balance on the ladder, having gone too close to the dryer, and managed to place his hand into the opening mechanism when it closed. Ultimately the injuries led to the loss of his right hand.
The company accepted that notwithstanding the control measures in place, and that the issue had been previously identified, there should have been a guard to eliminate the risk of being caught in the opening / closing mechanism.
A prosecution followed pursuant to regulation 11(1) of PUWER 1998.
At the sentencing hearing, the HSE argued that culpability was 'medium'; level 'B' harm exposed with a 'low likelihood' of that harm eventuating, with causation made out and that JTS was a 'very large' organisation.
JTS argued 'low' culpability; accepted level 'B' harm and that 'low likelihood' was appropriate but that JTS was 'large' with an average turnover from the 3 years accounts disclosed at £291 million. It had a gross profit in 2022 of £40m.
The judge found that culpability was 'medium'; accepted level 'B' and 'low likelihood'; and that causation was made out. He proceeded on the basis that the company was 'large' in the general sense without making an exact determination.
In the result, a fine of £100,000 was imposed together with costs.
Peter was instructed by Christian Foulkes of HF solicitors.

Food Standards Agency (FSA) v. AK 2023

Practice Area:

AK a site director at a large Food Business Operators, was charged with an offence contrary to Regulation 17(1)(a) of the Food Safety and Hygiene (England) Regulations 2013 for intentionally obstructing a Meat Hygiene inspector (MHI) in the execution of his duty.
The background to this offence involved a behavioural issues with the MHI who was told that he could not carry out his duties until a preliminary investigation had been carried out.
Regulation 17(1)(a) was proved against AK and his Regulation 12(1) defence of due diligence in avoiding the commission of the offence failed as the court took the view that more could have been done.
There was no food health risk to consumers as the FSA admitted.
The proportionality of the decision to prosecute was raised on AK's behalf. After hearing all of the evidence and submissions, the judge reflected on the question of proportionality in the terms set out in the Code for Crown Prosecutors and imposed and Absolute Discharge, commenting that he questioned the decision to have prosecuted.
Peter was instructed by Richard Salvini and Michael Salmaan of Horwich Farrelly.

R(HSE) v. I Ltd & P Ltd 2023

Practice Area:

CDM 2015 prosecution of the Principal Contractor (PC) and Sub-Contractor (SC) involving a fatality when a specialist contractor fell from a roof.
The specialist contractors who employed the deceased was recommended to the SC by the electrical and mechanical designers of the PC.
At an earlier hearing, the deceased employers had pleaded guilty to various failures. After a two week trial the PC and SC were convicted of the CDM charges put and sentenced.
Peter was instructed by Catherine Henny and Claire Watson of Eversheds-Sutherland.

Rex v. S; M & R 2023

Practice Area:

Peter defended R, a General Manager at an Amusement / Trampoline Park, where in a period of 7 weeks from opening, some 270 injuries were sustained on one piece of equipment, known as the Tower Jump.
Eleven of the injuries included serious spinal damage with 4 of the individuals requiring surgery.
R was charged with two section 37(1) offences pursuant to the 1974 Act. His co-accused were two directors who pleaded guilty on the first day of trial to one count each under the same provisions.
Peter secured Not Guilty verdicts following a 3 - week trial at Chester Crown Court.
Peter was instructed by Chris Green of Keoghs.

R (South Lakeland District Council – "SLDC") v. (1) Holker Estates Ltd (2) Newmac Ltd & MR. N.

Practice Area:

Preston Crown Court: HHJ Philip Parry.

On the 8th August 2016, L a 4 year-old boy, was a holidaying guest with his father, two other adults and three other children, at Holker's Old Park Wood site, which had a swimming pool.
Unfortunately, L was able to remove his floatation aids and enter the pool, getting into difficulty, and spotted at or towards the middle of the pool at the bottom. L later died despite the efforts to save him. L could not swim.

In March 2008, five years before Newmac Ltd became involved as part-time health & safety advisors at Holker, an independent health & safety audit was commissioned for Holker's vast site, which includes a race course.
That report identified that Holker needed to provide life guards for its pools, and at Old Park, reduce pool depth. The pool was identified as 'High Priority' for Holker to address.
SLDC was the enforcement authority for Holker's premises, and undertook an inspection in September 2008. The Inspector Mr. B, noted the audit, and simply repeated the advice from the auditor on the HSE 179 Guidance, without considering the need for life guards in that the CCTV system was not constant poolside supervision.
Holker asked for clarification from SLDC and noted to Holker that reducing depth was not obligatory though referred to the pool depth, which was deeper than it should have been in the absence of lifeguards, and mentioned abrupt changes in depth, which the pool had. This in in December 2008.
Further clarification was asked from SLDC but without response.
Moving forward to March 2010, SLDC inspect again. Having considered the control measures in place, it writes to Holker in April 20102, informing them that (even in the absence of lifeguards and reducing pool depth) the control measures were compliant with HSG 179.
Following a further inspection by SLDC in January 2012, the inspector wrote to Holker and advised them to reduce the gradient / depth of the pool, but only if carrying out significant maintenance, and informing Holker that its CCTV system was more or less constant poolside supervision.
In October 2012, Holker commission the independent auditor to carry-out a further health & safety inspection.
Once again, the pool is identified as of 'High Priority', and Holker advised that the pool needs a life guard, that pool depth should be reduced, and that he disagreed with SLDC that the pool was compliant with HSG 179.
Holker, not appointing a full-time director of H & S instead bring in Newmac and Mr. N amongst others to implement the recommendations in the auditor's report; over 140 issues with the swimming pool being just one.
In line with the auditor's recommendations, Newmac advised Holker of the need to consider lifeguards and reduce pool depths in its Improvement Action Plans ("IAP's") in January 2013. Holker reply in May 2013 pointing to SLD's letter of April 2010 stating that its measures were compliant with HSG 179.
SLDC carried out no further inspections at Holker, nor seek copies of any further audits (they had not seen the October 2012 audit as it post-dated the inspection earlier) risk assessments or up-dates.
At no time prior to the tragedy on the 8th August 2016 did SLDC serve an Improvement or Prohibition Notice upon Holker. SLDC did do so but not until 2017.
Holker entered a guilty plea in early 2020 to a section 3 offence; Newmac and Mr. N not guilty pleas to a section 3 offence and a section 37(1).
In March 2022, instructions were given for Newmac Ltd to enter a guilty plea to the section 3; with no trial against Mr. N; the matter of the section 37(1) being left on the file or a not guilty verdict to be recorded, adjourned to the sentencing hearing.
In the result, Holker (on a causative basis) was fined £127,500 with £27,000 costs. The court only gave Holker 25% credit notwithstanding the date of its plea.
Newmac was fined £11,000 (on a non-causative basis, with 15% credit) and ordered to pay £5,000 cost. SLDC had claimed in excess of £150,000 in costs from Newmac, who relied upon the principle that any costs had to be broadly proportionate to any fine.
The court recorded a not guilty verdict against Mr. N.
Peter Smith was instructed by Ciaran Garnett of Plexus Law.
Holker was represented by Dominic Kay QC, instructed by Gary Smith at DWF.
SLDC instructed Nick Lumley QC.

R (HSE) v. (1) B & M Limited & (2) Daker Ltd

Practice Area:

Liverpool Crown Court: HHJ Trevor-Jones
B&M had been advised by Leep Utilities in June 2018 that its high voltage switchgear at the HQ in Speke, Merseyside needed maintenance work. This work would have resulted in power to its operation being cut, with an obvious impact on its business.
It was decided between B&M, Leep and Aggreko, a world leading power rental and installation company, that 2 generators were needed to provide core functions at B&M whilst the maintenance work was being undertaken.
Meetings between the 3 organisations took place culminating in the maintenance work being fixed for 22nd September 2018.
B&M took the place as Principal Contractor, with Leep and Aggreko taking the lead. Time constraints had already been fixed, but late on the 18th September, Aggreko sub-contracted the electrical connection work to Daker Limited, an electrical micro company.
Draker attended at B&M on the 19th September and informed Aggreko that the job was not straight forward, and that the time scales set unrealistic. Draker was told that Aggreko would put the cables in on Friday 21st September to assist with the time scales.
In furtherance of its work, Daker submitted its RAMS for scrutiny by B&M, Leep and Aggreko, but told by Aggreko that they would not be needed, as Leep would be providing them.
In the result, when Daker arrived on 22nd September, there was a pressurized situation due to the cables having not been put in, and then being sent to a different part of the site.
According to the evidence, it was chaotic, no leadership by B&M, Leep or Aggreko. There was no induction, permit to work, identification of core staff, or a talk about phase sequencing.
Daker's MD pointed to the work to be done by SR its qualified electrician, warning that one part of the vault was live. Leep was to have isolated before any work took place.
Unfortunately, SR with his spanner got too close to the live and an explosion took place, with SR sustaining significant life changing injuries.
Only B&M and Daker were prosecuted.
The person from B&M was not qualified to act as a Principal Contractor lead, and had told Leep and Aggreko this more than once.
B&M accepted its failings, with Draker admitting that it should not have permitted its employees to be anywhere near the live box until isolated.
Given its VLO status, B&M was fined £1m, with Daker £100 due to its dire financial position, when it had to cease trading in September 2020 by reason of insurance coverage issues, loss of business, increased costs, and employees moving on, together with on-going health issues of the MD.

HSE was represented by Craig Morris; B&M by Mark Watson QC; and Peter Smith for Daker.

R (HSE) v. M Ltd: Sheffield Crown Court 25th November 2021; HHJ Harrison.

Practice Area:

M Ltd had, up to 2019, been a large company in terms of the Sentencing Guidelines. By September 2021, it was a top end medium sized organization.
In 2018, an operative fell a distance of approximately 2m whilst using a defective ladder placed upon a trailer bed, sustaining serious injuries.
The company had a previous conviction involving a fatality at one of its other sites, and entered its plea at the PTPH, reducing the credit to 25%. There had been two charges, though the prosecution accepted one plea, with no evidence offered on the other.
It was the prosecution's case that culpability was high; level B harm risked, and a high likelihood of such harm eventuating.
Following written and oral submissions, whilst the judge chose a starting point of £380,000 the judge reduced the same to £172,500. A significant reduction was given under Step Three for the economic realities of the company, which was evidenced in the accounts, other financial information, and submissions. Added to this was reduction for the cogent mitigation which outweighed the previous conviction, and the reduced credit for the plea, with three tears to pay.

R (HSE) v. B Ltd: Leeds September 2021

Practice Area:

Higher end medium company prosecuted in respect of the removal and storage of large sheet piles by use of an excavator with driver, excavator attachment, chains and safety clamp.
During the removal of the 12th or 13th sheet pile, the pile fell from its attachments striking one of the workmen within the danger zone, resulting in significant injuries, and a six figure fine.

R (HSE) v. L Ltd: Sheffield September 2021

Practice Area:

Company prosecuted for exposing a number of workers to water miscible metal working fluids with a recognised risk of occupational respiratory diseases. One worker was diagnosed with occupational asthma after 25 years of service. The company had not addressed the issue appropriately or in time following the service of an Improvement Notice.

Inquest touching the death of DD; Northampton: June 2021. Representing Y, a Support Worker.

Practice Area:

DD was a 34 – year old resident at a service owned and operated by a large care company, who took placements from the Local Authority for individuals with autism and significant learning difficulties. The service cared for 6 such residents.
In 2018, Y who came from Ghana to the UK in 2012, applied for a position as a Support Worker with the care company in August 2018. He was offered the post verbally at interview notwithstanding that he had no experience or qualifications in caring for vulnerable adults with complex needs.
As a probationer, in his first 3 months of 6, Y was to shadow a more senior colleague for 3 days; and by the end of the 3 months, have read, understood and signed all care plans for the 6 residents, as well as the care company's policies and procedures. DD's care plan was some 200 pages; and the other 5 residents of similar size.
In addition, Y commenced some formal training in December 2018, just after the first 3 months period expired. This training included basic life saving for choking.
DD was a high-risk resident for choking when eating foods. It was necessary that DD ate her food cut into pieces. Y knew of the risk though his contact during his probationary period with DD was limited.
In January 2019, whilst still a probationer, Y was given DD to take out for a walk as she did as part of her care plan.
During the walk, Y went to a takeaway and purchased some food for himself, including 4 donuts the size of a ping pong ball.
In the takeaway, he gave DD one of the donuts, which she ate in pieces.
On the way back to the care home, which was close, DD stopped and refused to walk. Whilst there was a procedure for dealing with such a situation, Y gave DD another donut to tempt her to walk. Unfortunately, and tragically, DD put the whole donut into her mouth and began to choke.
Y panicked, and attempted to remove the donut unsuccessfully. DD collapsed and Y attempted to follow his basic training by hitting DD's back; he could not undertake abdominal thrusts and DD was now unconscious. A nearby householder with vast experience in first aid and CPR took over, and the emergency services were called.
Sadly, DD died days later.
Following two days of evidence, the coroner sitting alone, ruled out gross negligence manslaughter, and found that DD died of a hypoxic brain injury, following a cardiac arrest due to choking, which was contributed to by neglect in the giving of the second donut.
The coroner did not find that the first aid given by Y, and the point at which the 999 call was made, amounted to neglect; it was impossible to say that calling 999 earlier would have made a difference.
A Regulation 28 report is being considered in relation to the care company's 'cementing' of probationers understanding of what was required from the training given; recognising that significant changes had been made by them already. They had 14 days to respond on this issue before the coroner would consider a Regulation 28.
Instructed by Shan Cutts & Chris Green of Keoghs.

R (HSE) v. S Group Limited: 21st May 2021

Practice Area:

S Group Ltd is a medium sized company, with a history in the manufacturing industry of almost 50 years, without any previous convictions or enforcement history to its name.
In January 2020, 3 heavy stillages were being moved by a qualified driver on a side loader. The driver was struggling in the space available, and a fellow employee (the injured party) offered assistance. In doing so, he did not position himself on the same side of the loader. Unfortunately, the stillages fell from the forks of the side loader, seriously injuring the other employee.
It became clear following the investigation that the stillages were not stable on the forks; there was insufficient room to manoeuvre; there was no banksman; the area not cordoned off; and the employees had not followed certain standard procedures. This included the injured employee not being trained in the work he was doing.
Significant remedial steps were taken by company; together with an early indication of plea; and other cogent features in mitigation.
The Step Three application under the Definitive Guidelines was particularly relevant, especially following a finding of 'Medium' culpability, with a 'Low' likelihood of Level A Harm.
The starting point in the Guidelines is £100,000 but was set at £60,000 (bracket £50,000 to £300,000).
This was further reduced for both the mitigating features, and the Step Three application given the perilous financial situation which the company found itself in due to both Covid and Brexit. The fine was fixed at £33,000 together with costs and a Victim Surcharge, and two years to pay.
S Group Ltd was deemed a responsible company; very much community based, with 140 employed within a 5 mile radius.
Instructed by Paul Whitfield of Plexus Law, Leeds.

R (HSE) v. Nasmyth Technologies Ltd; March 2021

Practice Area:

The case concerned a chemical leak of hydrofluoric acid (HF), and nitric acid which was used for a one-off etching process.
This toxic mix should have been decommissioned from its tank within a set time, but unfortunately was not; with the leak took place over a weekend when the premises were empty.
There had been no COSHH assessment, and the spill kits available not bespoke to the particular mix. Three employees suffered symptoms during the cleaning up process.
Although part of a much larger group, in applying *Bupa Care Homes (BNH)*, that connection was irrelevant for sentencing purposes.
Whilst culpability was 'high', the two questions posed under 'harm' were focused upon. The court found 'likelihood' to be 'low' following written and oral submissions. This, together with the evidenced impact of both Brexit and Covid 19 upon the business, led to a much smaller fine than some might have anticipated.
Instructed by Richard Salvini, Partner at Plexus Law.

R (HSE) v. Profile Patterns Limited; Manchester February 4th 2021

Practice Area:

When undertaking the task of emptying a tub of carpet off-cuts into a skip using a fork lift truck, the driver reversed to re-adjust the tub but came into collision with two other employees who sustained serious injuries.
The driver was a supervisor and trained in the process which had been undertaken with out incident for a considerable period of time. One of the injured was also a supervisor and well versed in the procedure which required a separation of 2m's between vehicle and worker.
Whilst culpability was found to be 'High', it was accepted that 'likelihood' was 'Low'.
The company had no previous convictions, a good health and safety record, and had already prepared to introduce a new system for the task, which was to be introduced shortly after the date of the incident Further, Brexit and Covid 19 seriously impacted upon the company's hitherto solid financial position, which the court took fully into account.

R (HSE) v. OH LTD: Liverpool; 3rd December 2020

Practice Area:

The prosecution concerned hand arm vibration conditions which eventuated in 4 men who worked in the maintenance departments at 2 distinct employers who were subsequently the subject of TUPE. ON Ltd therefore stood in the shoes of the former entities for the purpose of the proceedings.
There were 3 charges under regulations 5(1), 6(1) and 7(1) of the Control of Vibration at Work Regulations 2005.
ON is a Housing Association, and a charitable organization. Its turnover for the last year was £99.7 million, with a surplus (not profit) of £14 million. ON was therefore a 'Large' organization for the purposes of the Guidelines applicable.
The HSE put the case at 'High' culpability; Harm at 'Level B'; with a 'Medium' likelihood of that harm eventuating, thus Harm Category 3.
In sum, the starting point is £540,000, with a range between £250,000 and £1,450,000. Since harm was caused, the prosecution invited the court to move up a harm category or within the range.
ON had to accept that if the two previous employers had been before the court, culpability would be 'High', though submitted that the nature of the liability needed to be considered in the round when at Step 3. Those previous employers had much smaller turnovers and surpluses.
It was submitted that since the HAVS conditions were of a complex nature, analogy could be drawn with the case of R v. Squibb Group Ltd [2019] which concerned asbestosis. Both were predicated upon exposure levels over periods of time. Accordingly, there was an evidential gap on the prosecutions part to support a 'Medium' likelihood. The court could not guess at how likely the conditions would develop, and therefore, a 'Low' likelihood was the only just classification at Harm Category 4.
In the result, following detailed submissions, the court took a starting point of £250,000. This was reduced to £180,000 for the cogent mitigation. There was a further adjustment down to £120,000 under Step 3, taking into account the charitable status / public utility submissions, and the impact of Covid 19.
Applying credit for the guilty plea, a fine of £80,000 was imposed on one charge taking into account the related nature of the charges, and

the Totality principle.
Instructed by Louise Roden & Peter James at BLM, 30 Fenchurch St, London EC3M.

HB LTD v. Bradford Metropolitan District Council; Leeds Employment Tribunal February 2020: Appeal against the service of an Immediate Prohibition Notice.

Practice Area:

On the 14th January 2019 an incident happened at the appellants premises when a large moveable storage tent was being moved from outside to inside of the warehouse. Wind had got beneath the tent causing it to fall and come into contact with an employee, who sustained injuries.
The matter was reported, and on the 17th January, inspectors attended the appellants premises and found the tent involved in the incident folded down, chained, and with a sign stating that it was not to be moved under any circumstances.
A second tent was inside the warehouse and fixed next to the fence rails of a walkway, with a large heavy cage in front of it, also carrying the same sign, and with a chain (disputed) fixed and one end.
The inspector instructed the appellant not to move or use the tents; this had already been communicated to the staff.
A further visit too place on the 18th January 2019. Then on the 23rd January 2019, some 9 days following the incident, and 5 days after the last visit, the inspector attended again and served a PN for immediate application, not time limited, prohibiting current use.
It was felt that neither tent posed a risk; and in any event, were going to be scrapped.
An appeal was lodged but in May 2019, the respondent's requested a stay so that the prosecution of the appellant would take place. No such prosecution was lodged and the ET lifted the stay, and the appeal was to proceed; re-applying the previous orders.
The appeal was based on the *Chevron* case which settled the approach to be taken by an ET on whether there was a risk at the date of service, irrespective of the inspector being justified; as well as additional information.
In the result, on the morning of the appeal, the respondents realistically accepted that the appeal would not be resisted. The ET Chairman allowed the appeal, cancelled the PN and awarded the appellant its assessed costs.
Instructed by Sally Hancock, Partner at BLM, Manchester.

R (HSE) v. Michael Douglas Auto-Salvage Ltd (2020); Carlisle Crown Court: Mr Recorder Hannam QC.

Practice Area:

The deceased, Mr Spence, agreed to purchase a Fork Lift Truck ("FLT") from the defendant company. He arrived at the defendant's site with a truck to take possession. The FLT had 3 wheels, but Mr Spence only had 2 rather than 3 ramps so the FLT could not be winched on from ground level. Mr Spence asked Michael Douglas for assistance in lifting the FLT onto his truck. Mr Douglas used a skip wagon, and placed the FLT onto the back of the truck as requested. Mr Spence then attached the trucks winching hook to the FLT and commenced winching. The FLT would not move; thinking the brake was still engaged on the FLT, Mr Spence went to the rear of the truck to disengage the brake. Unfortunately, with the winching still on, the hooking point failed under stress at the same time, with Mr Spence's added weight at the rear, causing the FLT to slip, crushing him, and leading to his death shortly after. The Guilty plea to a s. 3(1) was made on a fixed basis.

R (HSE) v. CJ Wildbird Foods Ltd (2019)

Practice Area:

An employee came into contact with the moving parts housed in a chute to a dust extraction unit on a food mixer, sustaining a significant hand injury.
The prosecution put its case on the basis that culpability was 'High' as was the 'likelihood' of the serious injury sustained.
There were two charges. The first pursuant to Reg 11(1) of PUWER 1998; the second under Reg 3(1) of the MHSWR 1999.
In the result, the Judge found that the happening of the incident was unique. On culpability, he decided that it was at the top of 'medium', or at the bottom of 'high'.
Level B harm was found though the Judge accepted that likelihood was 'Low', with a 'Harm category 4' determination.
The fine of £50,000 on the company which had a turnover averaging £24 million reflected the case as a whole rather than incrementally.
The unique facts, and the issue of 'likelihood' made a significant difference to the level of the fine. No separate fine was imposed on the Reg 3(1) charge. Reg 11(1) was the essence of the case.

Manchester Airport Plc (2019); Re: LB

Practice Area:

An allegation was made by the family of LB that his Epi pen medication had been confiscated by security at Manchester Airport as he was embarking on a flight to Egypt.
After several days into his holiday, he became sick and subsequently died. At the hearing, it was found as a fact that no such confiscation had taken place, and the cause of death something different.

R (HSE) v. M&M Damproof Ltd; Birmingham (2019)

Practice Area: Health and Safety

Experienced employee was replacing some corrugated sheets on a roof without any fall protection, and fell through a fragile skylight over 5m to the ground below, sustaining serious injuries.

R (HSE) v. Williams Homes (Bala) Limited (2019); Mold Crown Court; HHJ N Parry

Practice Area: Health and Safety

WH were charged with a breach of regulation 15(2) of CDM 2015, in failing to plan, manage and monitor construction work on a house build. Negotiations for the work commenced in 2014 with a contract drawn up, plans and drawings just as the CDM 2015 came into force in April. The transitional period of 6 months ended in October 2015 and the work commenced thereafter.
Part of the work required a crane to assist in positioning some steel beams. The domestic client was to organise and pay this separately notwithstanding the duties of WH as designers / principal contractors. Moreover, there was a contractor who was undertaking the build on behalf of WH who owed separate non-delegable duties as well. WH had assumed, notwithstanding its position, that the crane company was providing a contract lift as opposed to the simple contract hire.
In the event, there were no competent banksmen or slingers, and a heavy steel beam came into contact with the contractor who was seriously injured though made a good recovery.
The judge accepted that culpability was 'medium' on the basis of the RA & MS being available though not implemented. It was a Level A harm case. The judge rejected submissions for likelihood at Cat 2 harm and found Cat 1.
The company was high end 'small' and so the starting point was £160,000. Following submissions, especially given the duties held by others, including the vastly experienced contractor, the cogent mitigation, Step Three economic realities submissions and the ability to invest, a fine of £60,000 was imposed with 2 years to pay.
Instructing solicitors were Kennedy's London – Janine Holbrook, with Sally Milner from the Sheffield Office.

R (HSE) v. Thirsk Fabrications Limited (2019) Leeds Crown Court: HHJ Belcher.

Practice Area: Health and Safety

Series injuries sustained to an employee when an unsecured jib positioned on the tines of a side loader used to drag heavy plate metal fell and hit the employee during the work; the side loader and jib with chain, operated by the Workshop Manager.
Albeit that the company was 'small', with a clear disparity between turnover and profit (Step Three), the issues of culpability and likelihood of harm eventuating were not straight forward. Contextualising the same was at the forefront of the submissions on behalf of the company.
Procedurally, the Workshop Manager had also been charged with a section 7(a) of the HSWA 1974; the company with section 2(1) of the same. The case against the manager was dismissed when the prosecution offered of no evidence at the PTPH. The allegations against the manager were relevant to part of the submissions for the company.
Whilst the judge was correct in a reasoned decision to fix culpability as 'high', she was equally correct in detailed remarks that 'likelihood' was 'low', notwithstanding that the breach covered a minimum period of 18 months following independent advice concerning a securing device for the jib, and more than one person was at risk. The judge was brave, and once more reasoned, in moving to a bracket which fell into the 'micro' sized organisation when all matters were considered.
In the result, there was a justifiable modest fine which permitted the business to continue, with payment spread over a 12 month period.

R (HSE) v. (1) Trueline Engineering Services Ltd & (2) Mr Paul Smith; Liverpool: 17th December 2018

Practice Area: Health and Safety

The HSE decided to prosecute the sole director of the company pursuant to section 37(1) of the HSWA 1974, for like offences committed by the company under section 2(1) of the 1974 Act, and a RIDDOR breach.
An employee fell from a partially erected tower scaffold which he was using to undertaking welding work; he sustained a broken neck.
The director was responsible for health and safety, very much 'hands on' with work and the day to day running of the company. Some employees had received the basic training in the erection and dismantling of the scaffold, others had not, including the injured employee.
Following submissions, the judge accepted that the company and the director were inextricably linked, and especially so in terms of the income derived by both. Moreover, it was difficult to distinguish between them, even though the Guidelines did, and penalties differed.
In the result, the judge accepted that, leaving the Totality Principle aside for a moment, finding that the custody threshold had not been crossed, to impose a fine on the director as well as the company, would amount to the director being punished twice.
Accordingly, the judge was persuaded that a discharge was appropriate for the director and imposed a 12 months conditional discharge, with the company receiving a modest fine.
The injured employee was deemed fit for remunerative employment after 18 months.
Comment: The HSE's decision to prosecute the director was questionable. Since 2013, the test of 'proportionality' has been a codified factor in any decision to prosecute. Whilst the director was responsible for health and safety, the circumstances did not lend themselves to separate financial penalties, a community order or imprisonment, suspended or otherwise. Precious time and money had been spent pursuing the director who, together with the business, had been operating for several decades, and without any previous convictions or enforcement history against them.

Maximising your Litigation

Practice Area:

A short while ago, Paul Verrico of Eversheds-Sutherland, kindly invited me, along with other practitioners in the field of health and safety, to contribute to an article he was undertaking for SHP, a leading publication.
The headline for the article is: 'Maximising your Mitigation'. Paul set out a number of questions, the first two of which appear in Part 1, and can be found in the link. Part 2 follows in the next publication.
As you will see, corporate reputation involving the extent of regulatory investigation is at the forefront, followed by how an organisation is perceived following an incident where a person is injured or sadly dies. The views expressed by the contributors are various. It is hoped that the article is of interest.
more

R (HSE) v. Rical Ltd (T/A AVON PDC): Birmingham; 2018.

Practice Area: Health and Safety

The subsidiary of Rical was sentenced following a plea to the strict liability offence pursuant to Regulation 11(1) of the PUWER 1998.
An employee Machine Shop Operator suffered injuries to the tops of his ring and little fingers to his dominant right hand which necessitated amputation at the mid knuckle.
The employee was working on a 'Quick Tapping' machine which put thread into a small component. It was clear that the task was simple and an unskilled operation. In essence, the employee had to insert the component into a 'key hole' whereby the thread was completed. The 'key hole' had a front plate guard preventing access to the moving parts behind it. A brush would be used to clear swarf, and unfortunately, the brush fell behind the front aspect to the machine. Instead of switching off the machine to retrieve the brush, he put his arm behind the front guard and came into contact with the dangerous moving parts to the machine.
It was clear that guarding was needed over and above the front aspect. The company immediately fitted further guarding.
There was cogent argument that medium culpability could be determined as medium, though the judge found it to be high. The harm risked was clearly B and was agreed. As to likelihood, the machine had been in use for 24 years without incident or near miss, and based on the strong *obiter* in *R v. Tata Steel UK Ltd* [2017], the submission was made that likelihood could properly be determined as medium. Surprisingly the judge rejected this and found it as high.
In the result, the judge appreciated the financial position of the subsidiary (and it was not a case where the Group could or would assist), the mitigation and early pleas, imposing a fine of £14,000 together with costs of £1,300.

R (HSE) v. (1) Aldi Stores Ltd (2) VBT Ltd: Manchester Magistrates' Court; DJ Qureshi 2018.

Practice Area: Health and Safety

Aldi (represented by Richard Matthews QC) and VBT pleaded guilty to a charge pursuant to section 3(1) of the Health and Safety Act 1974 concerning roofing work which was carried out by a self-employed sub-contractor at the Hazel Grove Aldi store on the 11th June 2016.
VBT had carried out maintenance work for Aldi over many years. On the 11th June 2016 VBT was contacted in relation to a leak at the store late in the afternoon. Unfortunately, VBT could not attend and contacted the sub-contractor who was the sole director of his own company and who had vast experience of roofing work, was trained and provided all of his own equipment. The sub-contractor had previously worked at Aldi sites not only on VBT's behalf, but for another maintenance contractor.
Whilst VBT had not used sub-contractors until around 2014, Aldi had a Contractors Authorisation procedure amongst other systems which had not been implemented / adhered to in respect of this work or other instances when contractors came on site. It was clear that had VBT informed Aldi of the situation and Aldi had fully implemented its own procedures, any risk of falling from height would or should have been minimised.
In the event, the sub-contractor got onto the roof when his access was restricted meaning his ladder (as opposed to a Tower Scaffold which he had) could not get close to the area he needed to view. When seeking to get from the roof back onto the ladder (it having been raining earlier) he slipped and fell to the ground sustaining significant injuries to his lower limbs.
The prosecution submitted for 'Medium' culpability as against Aldi (upper end) and 'High' against VBT. Level A harm was agreed though the prosecution placed the 'likelihood' of Level A harm eventuating at 'harm category 2'. Both Aldi and VBT submitted that the 'likelihood' was 'Low'.
In the result, Aldi as a 'Very large' organisation with an £8.7bn turnover and VBT with a turnover of £360,000 were fined £340,000 and £5,333.00 respectively together with costs.
The District Judge found both defendants to have 'Medium' culpability with a 'Low likelihood' of the Level A harm eventuating in the particular circumstances.
Clyde & Co (Manchester) acted for Aldi and DAC Beachcrofts (London) for VBT.

Sandwell MBC -v- Furniture Village Limited ("FV") (2018) Wolverhampton Crown Court; HHJ Ward

Practice Area: Health and Safety

An incident took place on the 1st June 2013 at FV's Wednesbury depot when an employee became trapped in a compactor machine which he had got into so as to deal with a blockage. On this occasion he had not isolated the machine having done so earlier on a similar blockage. The machine could be isolated without removing the electric cable / plug.
The investigation revealed that prior to this incident employees had been getting into the compactor to deal with blockages without isolating the same from late 2008 although FV had a set procedure for isolation which had been introduced in August 2008. The core failure was in not monitoring and enforcing the procedure at all during this period.
FV originally faced 7 charges but by the time of the first appearance at the Magistrates' only the section 2(1) offence under the 1974 Act remained.
A feature of the case was whether lids to the hopper should have been fixed as an industrial standard. It was not clear that such lids, although an additional safety feature, could be said ubiquitous in industry.
The parties agreed that FV should be categorised as a Large organisation given that its turnover in 2017 was just short of £240 million.
The prosecution submitted that culpability was high with level A harm risked and a high likelihood of that level A harm arising. This said the prosecution, placed any fine in the bracket between £1.5 million and £6 million, with a starting point of £2.4million.
Following submissions, the learned judge determined that culpability was between medium and high although a Level A harm risked but with a medium likelihood.
In the result, having accepted that the Guidelines were malleable and with clear overlaps, a starting point of £800,000 was found which was reduced to £500,000 for the compelling mitigating features. The judge further reduced the fine by £100,000 under Step Three due to the gross disparity between turnover and profit as well as some unique financial features, leaving a sum of £400,000. Full credit for the Guilty plea was given leaving a fine of £266,667 with 12 months to pay.

R (HSE) v. ANGLO RECYCLING TECHNOLOGY LIMITED; Manchester 2018

Practice Area: **Health and Safety**

Anglo Recycling pleaded guilty to an offence contrary to section 2(1) of the Health and Safety at Work Act 1974 following an accident in March 2016 when an employee and Team Leader suffered serious injuries to his left arm as he attempted to remove a blockage on a Pre-Chopping Machine without isolating the same. The machines at the mill all had guards and interlocks save for one part of this machine though to the rear. There was a guard but the interlock had not been wired up. The machine reduces the size of used carpet which goes into recycling. Whilst the employee was vague as to what actually happened, given that the trapping point at the rear of the machine was some 15cm's inside of the access hole of only 15.5cm's, he must have put his left hand inside the machine, the guard not being in situ at the time. The guard had been missing but how long the company could not establish. Evidence suggested that the missing guard had been raised months earlier. In not isolating the machine in the first place together with the absence of a guard and interlock, the breach was established especially given that the legislation is there to cover lapses by employees no matter how experienced. It was shown that there was a system for isolation to take place for cleaning and blockages. The company fell to be sentenced as 'small' for the purposes of the Guidelines and with a small profit where a disparity between turnover and profit could be shown. Following submissions, the court determined high culpability, Level B harm risked but a low likelihood. In the result, a fine of £8,000 was imposed and £5,500 costs.

R (HSE) v. AJ METALS LIMITED; Wolverhampton 2018

Practice Area: **Health and Safety**

AJ Metals pleaded guilty to an offence contrary to regulation 11(1) of the Provision and Use of Work Equipment Regulations 1998 following an incident in 2016 when an employee sustained an injury to his right hand requiring the amputation of his right index finger. The company had inherited 3 machines when it took over the company in 2001. The small machine was a 3 roll bending machine for 5mm diameter metal. It had no guard. Whilst the employee was vastly experienced and having used the machine many times before, had his index finger trapped in the 'nip'. Culpability was determined as high, with Level B harm risked and medium likelihood of that risk arising. The company was top end of 'micro' and a bracket of £30-£100,000 looked at. In the result, the judge arrived at a starting point of £35,000 (suggested starting point for bracket £54,000) following submissions and reduced it for guilty plea to a fine of £23,300.

R (Suffolk Coastal District Council) v. Spedworth International (East Anglia) Ltd; Ipswich 2017

Practice Area: **Health and Safety**

Peter Smith had a submission of no case upheld at the close of the prosecution case, to a charge alleging a breach of section 3 of the Health & Safety at Work Act 1974, concerning 5 emergency exit gates at the Foxhall Stadium in Ipswich.
It was alleged that although the large gates were not locked, they were fastened in such a way that made them difficult to open in an emergency and therefore a Steward was required to be in close proximity so as to open them should it be necessary. The company had previously pleaded guilty to 4 other charges relating to the maintenance and egress of two tiered stands as well as a failure to comply with Improvement Notices; all of which have been rectified. Sentencing took place on those charges following the prosecution's case on the outstanding charge being dismissed.

R (HSE) v. ESL Fuels Limited; Liverpool Crown Court – HHJ Conrad QC 2017

Practice Area: **Health and Safety**

This prosecution came about due to an incident which took place at the Stanlow Oil Refinery on the 19th January 2015.
ESL is a blender and supplier which specialises in the manufacture and trading of innovative fuel products for the road, heating, heavy duty haulage and marine markets.
In 2014 ESL wished to undertake a process of treating waste oil so as to arrive at a re-saleable product within the bounds of its waste permit from the EA and in compliance with the sites status as a lower tier COMAH business.
As part of the ongoing maintenance and up-grading programme which ESL was committed to, it undertook a substantial refurbishment of the site, including its tank farm. The refurbishment involved tenders from specialist sub-contractors. One of the sub-contractors who won a tender had worked at the site previously and the two men tasked with pipe replacement work were extremely familiar with the site, the personnel, practices and procedures.
ESL had a long standing Permit to Work system (PTW) which had been reviewed and revised. Unfortunately, ESL's PTW Issuer on the 19th January 2015 was not privy to conversations which the two employees of the specialist sub-contractors had had with key personnel of ESL as to work on a different tank which was linked to the tank covered by the PTW. ESL's PTW Issuer understood that the work was a continuum.
The PTW was issued and the sub-contractors used a hand grinder on a blanked off pipe which contained residue gas. The sparks from the grinder ignited the gas which resulted in the top of the tank being blown out. No person was injured and the only two people at the tank farm were the sub-contractors who were well away from the blast.
ESL faced charges under sections 2 & 3 of the Health & Safety at Work Act 1974. The prosecution accepted that the section 2 breach did not aggravate the section 3 offence; the incident coming about due to one event only.
ESL was a medium sized organisation though with a relatively small profit margin.
The prosecution submitted 'High' culpability, Level A Harm and 'Medium' likelihood of the harm eventuating. Therefore the bracket contested was £220,000 to £1,200,000 with a starting point of £450,000.
Given that there was a system in place for PTW, there having been around 4,000 issued over a three and a half year period with communication between the sub-contractors and other key personnel breaking down; 'Low' culpability was argued on the basis of the definition within the guidelines. Level A harm was easy to put but likelihood of harm eventuating could also be argued as 'low' given the fact that only a limited number of men were present.
It was submitted that whilst this gave a bracket much lower with a £60,000 top end, the Guidelines were not to be adopted in a 'ready reckoner' manner.
In the result, given the guilty pleas, absence of any previous convictions, enforcement history, cogent mitigation and the isolated nature of what took place, the judge found 'Medium' culpability with harm category 2 but, as submitted, should be at the very bottom of the bracket

below the suggested starting point.
A fine of £100,000 was imposed together with costs.

Gwynedd Council v. DJ Fruit Limited & Sole Director; Llandudno Magistrates' Court. Before District Judge Gwyn Jones (2017)

Practice Area: **Health and Safety**

This prosecution by the Local Authority ("LA") related to an independent contractor who had undertaken work at the defendant's premises attending unannounced but assisting with a roller shutter door which had been damaged.
The accident happened when the contractor was permitted, with the assistance of an employee of the company and then its director, to get onto the pallet of a fork lift truck and raised to around 6'.
As the contractor loosened the tension on the cables to the roller shutter door, the shutters went down and his hand entered into a gap which led to him losing the tops of three fingers and falling from the pallet on the fork lift truck.
The incident took place in December 2014, pre-dating the introduction of section 85 of LASPO 2012 thereby limiting the courts sentencing powers.
The company had risk assessed work at height and suitable and sufficient equipment (not fork lift and pallet) was to be used along with supervision, not least properly plan.
Unusually, the LA put 18 charges before the court; 9 against the company and 9 against the director. At the first hearing, the LA withdrew 16 of the charges leaving a section 3(1) of the 1974 Act against the company and a section 37(1) of the same against the director. Guilty pleas were indicated and the matter was adjourned for the parties to submit relevant documentation and bundles to argue venue and should the court retain the matter, sentence.
In the result, the learned District Judge accepted jurisdiction and sentenced.
The LA had put culpability as 'High', 'Level B' harm with a 'High likelihood of harm'. This was contrasted with the defendants submission that culpability was 'Medium' and 'Medium likelihood of harm' in the circumstances. After taking some time, the District Judge found in favour of the defendants submissions and sentenced the company using a £24,000 starting point and fining it £16,000. The director was fined £10,000 and costs reduced significantly for unreasonable delay especially in respect of the director and two years given to pay.

R (HSE) v. Alec Sharples Farm Supplies & Transport Limited (2017) Manchester Crown Court; HHJ Mansell QC

Practice Area: **Health and Safety**

The company pleaded guilty to an offence pursuant to s. 3(1) of the Health & Safety at Work Act 1974 when a non-employee who ran his own haulage business, was crushed by a reversing lorry in a shared vehicle space and subsequently died in May 2014.
Both the deceased and the driver of the reversing lorry were aware of each- others presence initially and even spoke, but made assumptions shortly after.
The company had compiled a risk assessment and method statement for the reversing of articulated vehicles in the haulage yard. The documents identified the risks, stating that before any reversing took place, a banksman was required to assist. Unfortunately, at the material time, a banksman was not present and the reversing vehicle collided with the deceased who was uncoupling his own vehicle.
From the financial information available, it was apparent that the company was going through difficult times and was placed in the lower half of 'micro'. The prosecution argued that culpability was 'high', Level A 'harm', risked and a 'high likelihood of harm' – Category 1.
Following submissions, the learned judge found that culpability as 'medium', accepting that there was a system but not sufficiently adhered to. As anticipated Level A 'harm' was determined, with 'likelihood' difficult to assess but somewhere between Category 1 and 2. Given the plea, cogent mitigation, disparity between the turnover and profit / loss, the learned judge discounted and arrived at a starting point of £45,000 with a fine of £30,000 imposed together with costs and a Victim Surcharge. The company was given seven years and two months to discharge the liability on a monthly basis.

R (HSE) v. Maesbrook Care Home Ltd (2017) - Shrewsbury Crown Court – HHJ Tindal.

Practice Area: **Health and Safety**

A resident at Maesbrook, who was of full capacity but had suffered a stroke prior to admittance, was being showered when she slid from a shower / commode chair as she leant forward so that a carer could wash her back and shoulders in September 2014.
When the resident slid from the chair, she landed in the sitting position. The only outward sign of injury was a small laceration to her left elbow and no other complaints made. During the evening, the resident began to complain of pain in her right knee. As a consequence, her GP was called and a subsequent x-ray revealed a fracture to her left hip. Surgery was considered but declined. On her return to the care home, the resident was well for a week but then deteriorated very quickly and died shortly thereafter. The cause of death was recorded as 1a) cardiorespiratory failure; 1b) fractured neck of left femur; and 1c) fall.
There was a care plan, risk assessment including showering and all carers had been adequately trained in manual handling, aids and equipment.
Unfortunately, the risk assessment, although adequate, did stipulate that two carers should be required when showering took place. The risk assessment was open to misinterpretation and accepted by the HSE's own expert as a poor clinical decision for one carer to attend when the shower / commode chair was utilised rather than a recliner chair.
The HSE chose to prosecute the care home under section 3(1) of the HSWA 1974. Given that the risk assessment required 2 carers to be in the shower room to reduce the risk of falling, and was open to misinterpretation, a guilty plea was entered.
Both in the HSE's written documentation and before the court, a starting point of £160,000 was argued on the basis of 'high' culpability, Level A seriousness of harm risked and 'high' likelihood category 1. The care home was a 'micro' company with a turnover of under £2 million.
It was argued for the care home that culpability was 'medium' given that there was an adequate risk assessment and care plan in place which was not properly implemented. Further, that whilst it was easy to submit Level A, death was not a realistic category in terms of seriousness of harm risked in the circumstances; if it was, 'likelihood' would be no higher than 'medium', category 2.
The learned Judge accepted the defendant's submissions and accepted a £30,000 starting point, reducing it to £20,000 for the early plea.
more

R (HSE) v. Northumbria University at Newcastle (2017) Newcastle Crown Court : HHJ Bindloss

Practice Area: Health and Safety

The University was charged with and pleaded guilty to an offence pursuant to s. 3(1) of the 1974 HSWA.
A practical exercise was being undertaken to assess the effects of caffeine on the body during strenuous exercise. This practical had taken place once per year since 2009 without incident.
Two students volunteered to take the caffeine in soluble form and undertake the exercise. The students had received a lecture which identified the risk of caffeine overdose in the early morning.
When they attended the lab, a Lab Practical Guide was provided which identified that the amount of caffeine should equal 4mg per kilo of body mass. To assist the 2nd year students were two Technicians, one educated to degree level.
Instead of calculating 4 x 76.6 (one of the students weight) giving 306.4 mg (0.306 of a gram), the calculation was undertaken as 0.4 x 76.6 giving 30.64 and weighed out on the scales in grams.
Whilst the risk had been identified and all previous calculations undertaken correctly, the Lab Practical Guide did not spell out the exact calculation required, maximum dose or inbuilt checks, therefore a risk of miscalculation.
Counsel for the HSE submitted for a £3.6 million starting point based on the University being 'Very large' and with 'High' culpability, 'Level A' harm and 'High' category 1'Likelihood' of harm.
Following submissions, the learned Judge found that the University could not be classed as 'Very large' although its income significantly exceeded £50 million. Further, that although finding 'High' Culpability and 'Level A' harm, accepted that the 'Likelihood' of the harm occurring was 'Medium'.
In the result, the learned Judge arrived at a starting point of £900,000 (range £550,000 - £2,900,000) reducing it to £600,000 given the University's charitable status, public benefit and mitigation. A further reduction was made for the guilty plea and a £400,000 fine imposed.
The issue on 'Likelihood' of harm was no doubt influenced by the HSE's own expert Dr Poole expressing part of his opinion thus:-
"If the students and supervising technicians have a GCSE qualification in mathematics they should be able to do this calculation as it requires no more than simple multiplication. I am surprised that neither the students nor the technicians could do this calculation...without the need for additional training."
'Likelihood' of harm was argued as 'Low' on the University's behalf.

R (HSE) v. Hallworth Construction (Cheshire) Limited 2016

Practice Area: Health and Safety

Acted for Hallworth Construction (Cheshire) Limited who were undertaking the construction of a substantial, albeit domestic, extension to a property in Hale.
A bricklayer who was undertaking work at height fell through a newly constructed sky light sustaining several injuries after having been rendered unconscious. The prosecution was brought under 2 regulations pursuant to the Work at Height Regulations following a HSE investigation alleging a failure to properly plan, undertake suitable and sufficient risk assessments as well as properly supervising the work being undertaken. After hearing 2 days of evidence and submissions, the company was acquitted on both charges.

R (HSE) v. Kenneth Thelwall [2016] EWCA Crim 1755

Practice Area: Court of Appeal

Appeal against a sentence of 12 months immediate imprisonment with an 18 month starting point in respect of a fatality when an employee was crushed while remotely loading a MEWP onto a low loader. The deceased had no specialist training which was required and there was no risk assessment or method statement for the task. The appellant / applicant, was the sole director of a micro company who had shown the deceased how to load, without himself having had specific training. Uniquely but in different circumstances entirely, the appellant / applicant had a previous conviction involving a fatality in 2012 for which he was fined. The LCJ made it plain that the 2015 Guidelines are in place and therefore no references to any previous sentencing decisions should be made. Further, that any applications for costs in such cases, by the HSE when they appear, should be limited to that which the CPS would recover for an advocate alone, if called upon to attend. In this case, the HSE's counsel had served a 19 page skeleton in response to the single perfected document, including the Grounds of Appeal which the appellant / applicant relied upon. In the event, the appeal / application, was refused.

R (HSE) v. Marriages Specialist Foods Limited 2016

Practice Area: Health and Safety

The court was faced with sentencing the defendant for offences pursuant to PUWER 1998 under the 2015 Guidelines when an employee suffered a serious hand injury working on an unguarded grain machine. Culpability was found 'High' with 'Harm' Level C at 3. The defendant company was 'Medium' category in size. After deciding upon a £75,000 starting point, the judge reduced it by not ignoring the training and experience of the employee who was himself a supervisor and arrived at £60,000 to include other mitigating features. The judge further reduced the sum by the timely guilty plea and imposed a £40,000 fine together with costs.

R (Ryedale District Council) v. Warmest Welcome Limited 2016

Practice Area: Health and Safety

The local authority brought this prosecution in relation to an incident which took place at its hotel, 'The Old Lodge' in Malton, North Yorkshire.

In the early hours of 2nd August 2015 a guest at a wedding reception was in the reception area. CCTV was in operation at the time.

There are a set of double doors from reception which provide access to the cellar. The steps to the cellar were old and steep.
The guest in this case was conversing with other guests and moved to allow others to pass. As she did so, she moved in front of the double doors and gentle came into contact with same. As she did so, both doors opened and she fell backwards into the cellar and onto the steps sustaining injuries.
Unfortunately, the doors had not been secured by locking as they should have been and as recognised in a risk assessment. There had never been an issue with the doors opening previously.
The company fell into the 'micro' bracket just, and the profit relative to turnover was low.
In sentencing following a guilty plea, the District Judge accepted that culpability was 'medium' but harm 'high'. The court said that the bracket was £14,000 to £70,000 with a starting point at £30,000.
Following a reduction for the guilty plea and other cogent mitigating features, the fine was £13,000 with £9,000 costs and twelve months to pay.

R (HSE) v. Cargill PLC. Court of Appeal Criminal Division (2016)

Practice Area: Health and Safety

Peter appeared in this sentence appeal with leave of Cranston J. The appeal as to the sentence of £600,000 involving a fatality is probably the last to be heard in respect of the 2010 Definitive Guidelines ahead of the coming into force of the 2015 Guidelines on the 1st February 2016. Cargill PLC had a turnover in excess of £1.2bn.

R (HSE) v. National Grid Gas PLC. Sheffield Crown Court (2016)

Practice Area: Health and Safety

Peter appeared for NGG at a sentencing hearing which went part heard from Grimsby Crown Court.
The case involved a serious injury to a contractor who was trapped by his legs during a gas leak repair following the failure of a 24" medium pressure gas main as he worked. The contractor was wearing his breathing apparatus at the time but it took the emergency services 1 and a half hours to extricate him from the trench with the evacuation of the nearby home owners.

R (HSE) v. Goss Graphic Systems Limited; Aktrion / Meta Management; Beck & Pollitzer Engineering; Southwark Crown Court (2016).

Practice Area: Health and Safety

Peter represented Goss Graphic Systems in this case. Goss pleaded guilty to non-causative breaches of the Work at Height Regulations in respect of their own employees and the CDM Regulations in relation to a sub-contractor.
An employee of the sub-contractor Beck & Pollitzer fell 6m from a huge press at Westferry London that was being dismantled. The Beck employee was being supervised by his employer and sustained serious injuries. Aktrion was convicted of breaches of the Welfare Regulations.

R (Leeds City Council) v. TNC Café Bars & Music Limited and Mr Nicholas Bird; Leeds City Magistrates' Court (2016).

Practice Area: Health and Safety

This case which attracted a great deal of media attention involved a 48 year old Spanish Film Director who attended the New Conservatory Bar in Leeds City Centre.
The bar is owned by TNC and its sole director Mr Bird. The company was charged with a breach of section 3(1) of the Health & Safety at Work Act 1974 whilst Mr Bird, section 37(1) of the same Act as a secondary offender.
The 48 year old asked for a taster of light ale. The barman pulled a sample and the man drank it. Unfortunately, unknown to the bar man, a line clean was in progress and the sample contained caustic soda. The customer suffered serious life threatening and life changing injuries.
The case was prosecuted by Samuel Green QC. Peter represented TNC and Mr Bird.District Judge David Kitson retained jurisdiction to sentence the defendant's after written and oral submissions were made.
http://www.bbc.co.uk/news/
http://www.theguardian.com/uk-news/
http://www.mirror.co.uk/news/
http://www.yorkshirepost.co.uk/news

R (HSE) v. National Grid Gas Plc (Dugdale Bridge); Preston Crown Court (2015).

Practice Area: Health and Safety

Tragic accident involving an 11 year old school boy who climbed onto a ledge on Dugdale Bridge, Burnley, and onto a pipe belonging to NGG running beside and next to the bridge (canal side) and falling onto the canal path then into the water losing his life.
NGG was prosecuted for not having a deterrent guard in place as it had on other pipelines. Peter appeared as Junior Counsel being led by Michael Hayton QC.
The case attracted media attention.
http://www.bbc.co.uk/news/
http://www.dailymail.co.uk/
http://press.hse.gov.uk/2015/
http://www.lancashiretelegraph.co.uk/news/
http://www.burnleyexpress.net/news/
http://www.lep.co.uk/news/

R (HSE) v. Jamie Clark T/A Jamie Clark Amusements (2015)

Practice Area: Health and Safety

Case concerned a section 3(1) prosecution in relation to a trapping point on the 'Mickey Mouse Express' ride when a 3 year old boy sustained a nasty laceration to his fingers.

R (HSE) v. Newhey Roofing Limited (2015)

Practice Area: Health and Safety

Peter represented the company at Inquest and the subsequent Crown Court sentencing hearing which involved the fatal accident of a site supervisor who fell from a defective ladder and over the scaffolding rail at roof height.

Inquest into the Death of Ivan Campbell (2015)

Practice Area: Inquest

Peter represented the private care home looking after Mr Campbell who suffered a variety of health issues including dementia. Mr Campbell was admitted to hospital but died in circumstances that were not readily ascertainable. A first post-mortem revealed significant damage to the liver. The second post-mortem by a Home Office pathologist identified that the liver had been split almost in half and that such a presentation could only have been caused by a blunt force such as a punch or a kick ruling out accident.
The coroner found that the private care home was a good care home with no systemic failings but returned a conclusion of unlawful killing against an unnamed individual. It is now a matter for the Police and the CPS.
http://www.telegraph.co.uk/news/
http://www.manchestereveningnews.co.uk/news/
http://www.itv.com/news/

HSE v. ITW Limited (T/A Stokvis Tapes UK) (2015)

Practice Area: Health and Safety

Crush injury to the hand having been trapped by the dangerous parts of a machine. The Magistrates' were persuaded to accept jurisdiction notwithstanding a sizable turnover and profit.

HSE v. Portmans Transport Limited (2015)

Practice Area: Health and Safety

Employee injured when a large crate in a container fell and crushed him during a devanning procedure in concert with a fork lift truck driver.

R (HSE) v. Euro Dismantling Services Ltd (In Administration) & PP (2015)

Practice Area: Health and Safety

Fatality involving a sub-contracted labourer and bobcat driver who attempted to eject a large half cut tank from the opening in a fourth floor building in the absence of a guard rail. Company and its Site Supervisor convicted of section 3 and section 7(a) of the Health and Safety at Work Act 1974 respectively. The company in administration was fined and the Site Supervisor given a suspended sentence after a two week trial.

R (HSE) v. Watershed (Roofing) Ltd & SD (2015)

Practice Area: Health and Safety

Sub-contractor under the control of the Principal Contractor via a director fell through a fragile but raised roof light on the flat roof of a school after the method statement created was found obsolete for the roof light removal. The company pleaded guilty to section 3 and a director to section 37 of the Health and Safety at Work Act 1974. Both defendants' were fined.

R (HSE) v. WC (2015)

Practice Area: Health and Safety

A 24 year old ground worker on his second day at work was crushed when he fell / slipped from heavy mounds of spoil piled up immediately next to an excavation for drainage which buried him when he entered the excavation. No shuttering had been applied to the excavation and the spoil had not been removed from the sides of the groundworks giving rise to an obvious risk of collapse. The company had breached the CDM Regulations in material respects and the director, who was working on the site at the time, pleaded guilty to section 37 of the Health and Safety at Work Act 1974. He was given a suspended prison sentence together with a fine and a contribution to the HSE's costs.

Tameside MBC v. Paul Slann T/A Paul's Carpets (2015)

Practice Area: Health and Safety

Fatal accident following a carpet fitting contractor falling on the cellar steps of an old building when seeking to retrieve underlay. The steps were old, uneven, of different heights and no hand rails had been fitted. Further, in the shop where the cellar trap door was, no guard rails had been fitted, which exposed visitors to a risk when open.

HSE v. Gardiner Colours Limited (2015)

Practice Area: **Health and Safety**

Fatal accident, when an unsecured silo fell from the tines of a fork lift truck during a decanting operation, crushing the employee.

Inquest into the death of Yale Howarth (2015): HM Coroner for North Wales East & Central

Practice Area: **Inquest**

Peter represented Wrexham CBC. The inquest concerned the tragic death of 15 year old Yale Howarth following an interview with his Child Protection Officer and two other adults, in respect of a female pupil requesting the morning after pill, when both had been at a party the previous weekend. There was never any suggestion by the female pupil as to an absence of consent and the evidence was that sexual intercourse had not taken place. The school comes under Denbighshire County Council, who was an interested person, together with the Health Board for Wales, due to the school nurse being involved. This was not a child protection issue for Wrexham CBC in the particular circumstances.

Newark & Sherwood District Council v. Sherwood Castle Limited (2015)

Practice Area: **Health and Safety**

Employee suffered a serious cut to his right forearm following the use of a mechanical saw. The injured party had not received specific training or instruction to use the saw at the material time; he had used the saw on previous occasions.

R (HSE) -v- (1) Enterprise (AOL) Limited & (2) Balfour Beatty Infrastructure Services Limited [2014] EWCA Crim 2684 Court of Appeal

Practice Area: **Health and Safety**

Peter appeared on behalf of the second appellant Balfour Beatty. It concerned a traffic management fatality. The issue on the conviction appeal was whether in context, the deceased was exposed to a material risk. There was also an issue as to the admissibility of expert evidence.
The first appellant was represented by Tim Horlock QC and the HSE, by Rex Tedd QC.

R (HSE) -v- Adler & Allan Limited (2014)

Practice Area: **Health and Safety/Regulatory**

Peter represents the defendant company following a petrol vapour explosion injuring two employees.

Her Majesty's Attorney General (IOM) -v- Manx Utilities Authority (2014)

Practice Area: **Health and Safety/Regulatory**

Peter was instructed to advise in relation to the prosecution by the A-G following the fatality of an employee of the Manx Utilities during excavation works next to a wall that collapsed.

Inquest Touching Upon the Death of Edna Gadsby (2014)

Practice Area: **Inquest**

This was a long running inquest attracting wide spread media publicity when a conditionally released patient killed his mother.

Second Inquest Touching Upon the Death of Callum Osborne (2014)

Practice Area: **Inquest**

This was the second inquest into the death of Callum Osborne who died as a result of a trench collapse. The first inquest was not completed and resulted in a Judicial Review following the original coroners handling of whether ‘unlawful killing’ or ‘accident’ should be left to the jury. The HSE were keen for an ‘unlawful killing’ conclusion to be left, notwithstanding that the CPS had reviewed the issue on two occasions and decided that there was insufficient evidence.
Peter represented the company/director who undertook the excavation work and in the result, the fresh coroner directed the jury to return ‘accident’ with a short narrative. The case attracted a great deal of media attention.

R (Natural Resources Wales) v. W & WE (Wales and West England) Limited (2014)

Practice Area: **Health and Safety**

Breach of an environmental permit condition and a failure to comply with an enforcement notice.

R (Cooper) v. HM Coroner for North East Kent [2014] EWHC 586 (Admin); Mitting J.

Practice Area: Inquest

The question was whether or not the Administrative Court should, as a matter of settled practice or principle, accede to an application for judicial review of a decision by a coroner, to leave a particular conclusion to a jury, notwithstanding that such challenges have been entertained by the High Court in four modern cases?

Inquest touching the death of Dana Louise Baker in the Worcestershire Coroners Court (2014)

Practice Area: Inquest

This complex Article 2 inquest concerned the death by hanging of a lower 6th Form student following the breakdown of her foster care placement. Peter represented the Child Care Bureau, a private limited company who provided independent foster care placements for the local authority. The deceased was a "Looked After Child" and the primary responsibility for her care from an Article 2 perspective, rested with the local authority in terms of any real and immediate risk to the deceased's life and the steps necessary to avert that risk. Detailed findings were made by the coroner and the inquest attracted national media attention.

Inquest touching the death of Elizabeth Kerr in the Manchester Coroners Court (2013)

Practice Area: Inquest

This was another complex inquest concerning the carbon monoxide poisoning of the deceased, an elderly lady residing in the second floor flat above a bank in which the cellar contained a large boiler that was faulty and carbon monoxide permeated through the building by a means not fully determined. There were 15 interested parties. Peter represented a senior Fire Officer who was also the HAZMAT Officer at the material time.

R (HSE) -v- Assystem UK Ltd

Practice Area: Inquest

Fatal crushing injury when deceased on top of a gantry ladder and overhead crane came into contact with him. TV and radio coverage.

R (HSE) -v- National Grid PLC

Practice Area: Inquest

Unexpected release of high pressure gas causing serious leg injury to experienced workman.

R (HSE) -v- Britannia Hotels Ltd

Practice Area: Health and Safety

Case involving asbestos control.

R (HSE) v. C Brown & Sons Ltd

Practice Area: Health and Safety/Regulatory

Fatality involving an experienced maintenance fitter who was crushed on the gantry of an overhead moving crane.

R (HSE) v. Nightfreight (GB) Ltd

Practice Area: Health and Safety/Regulatory

Fatality following a roll away HGV at a haulage yard.

R (HSE) v. Balfour Beatty Infrastructure Services Ltd.

Practice Area: Health and Safety/Regulatory

Fatality to a road user on a temporary traffic management system.

R (HSE) v. National Grid Plc.

Practice Area: Health and Safety/Regulatory

Systems risk failure

R (HSE) v. Thor Specialities (UK) Ltd.

Practice Area: Health and Safety/Regulatory

Adverse chemical reaction and spillage on a high tier COMAH site.

Oldham MBC v. Heron Foods Ltd.

Practice Area: **Health and Safety/Regulatory**

Injury to a member of the public from risk posed by the cleaning system.

Middlesbrough CC v. Cleveland Cable Co. Ltd.

Practice Area: **Health and Safety/Regulatory**

Injuries sustained in manual handling and fork lift truck use.

R (HSE) v. Watts Truck & Van Ltd.

Practice Area: **Health and Safety/Regulatory**

Injuries sustained from a fall from height.

R (HSE) v. Peackocks Plc.

Practice Area: **Health and Safety/Regulatory**

Retail premises risk to the public.

R (HSE) v. Shaw Group Ltd

Practice Area: **Health and Safety/Regulatory**

Serious injuries from the use of an overhead crane.

Gawler v. Raettig [2007] EWCA Civ 1560

Practice Area: **Court of Appeal**

This case changed the law in relation to academic appeals previously only entertained by the CA in matters of public law. The Master of the Rolls held that in certain circumstances, the court had jurisdiction to hear private law cases by way of academic appeal providing that there was a sufficient public interest element involved.

Babbings v. Kirklees MBC [2004] EWCA Civ 1431.

Practice Area: **Court of Appeal**

Peter was instructed in the trial at first instance when he successfully defended the local authority against a claim by the claimant who suffered a significant arm injury during a gymnastics class at school. The court did not call upon Peter to attend the claimant's oral application for permission to appeal; subsequently dismissed.

Moss v. Dixon [1998] CA.

Practice Area: **Court of Appeal**

Liability of pedal cyclist and the interpretation of the Highway Code. It involved signalling; contributory negligence and liability generally. He was instructed by the successful respondent.

Hurd v. Sterling Group Plc [1999] CA.

Practice Area: **Court of Appeal**

First case to come before the court post CPR. It concerned the admissibility of expert evidence on liability issues and the duty of experts. He was instructed for the successful defendant/respondent.

Walker v. Wabco Automotive [1999] CA

Practice Area: **Court of Appeal**

Vibration induced carpal tunnel syndrome by hand held vibrating tools. Case covered duty, breach, foresee-ability, admissibility of expert evidence and the weight to be attached to HSE Guidelines. He was instructed for the successful defendant.

What the Directories say

"Peter is the go-to barrister for difficult and sensitive health and safety prosecutions and inquests."

Chambers and Partners, 2024

“His expertise in this area is standout and he’s an outstanding litigator.”

Chambers and Partners, 2024

“Peter has an excellent manner with clients and he prepares cases very well.”

Chambers and Partners, 2024

Peter is exceptional in his organisation and planning. He commands great respect from the bench, which is particularly beneficial in the technical aspects of matters, and he is a great communicator with both corporate clients and individuals.

Legal 500, 2024

Peter is an excellent technical lawyer and an outstanding advocate. He is clear in his advice, pragmatic, and commercially savvy with a robust style and encyclopaedic knowledge of the law and procedures.

Legal 500, 2024

Peter is robust, has an eye for detail and has great experience and knowledge in the specialist area of HSE sentencing guidelines

Legal 500, 2023

Peter is highly knowledgeable and is academic in his approach. It is of note that he commands much respect from the bench and other interested parties who often reach out for his advice. From the outset of a matter, Peter has a strategy which ensures that there are no periods of uncertainty or high-pressure preparation

Chambers and Partners, 2023

He is very responsive and very knowledgeable in the regulatory criminal and health and safety arena.
An exceptional lawyer - he's hugely experienced and always thoroughly prepared.
He's very good from a technical point of view and is willing and able to assist at any time.
He is a hugely experienced barrister, who is always thoroughly prepared and very responsive as well.

Chambers and Partners, 2022

Peter is very efficient and forms a realistic view from the outset. He is very organised and ensures a smooth ride through the regulatory landscape to clients who may not always want to hear his view on liability.

Legal 500, 2022

His main strength is his technical knowledge of the law and the rules and procedures that apply. Allied to tenaciousness and an ability to get to grips with problem cases and issues, this is a formidable and impressive combination.

Legal 500, 2021

Peter is an excellent technical lawyer who is approachable and has an excellent communication style which is appreciated by clients." "He’s technically very good and knows the rules and procedures very well. He's also very hard-working, very reliable and goes the extra mile.

Chambers and Partners, 2021

A real details man and a very nice advocate. He gets his points across well.
He’s technically very good, is very hard-working and always goes the extra mile.

Chambers and Partners, 2021

He is an excellent lawyer and a really persuasive advocate. He's very charming with instructing solicitors and lay clients, and his technical expertise and skills as an advocate back his charm

Chambers and Partners, 2020

A specialist defence barrister who represents individuals and companies in enforcement actions brought by the HSE and local authorities.
He acts for domestic and international clients from a broad spectrum of industries, including transport, construction and education.
Very down-to-earth and always willing to put up a fight.

Chambers and Partners

An impressive courtroom tactician, who obtains results

Legal 500

He has sound judgement and excellent interpersonal skills' (Regulatory, health and safety, and licensing)

Legal 500

Highly regarded for his expertise in defending corporate clients in relation to health and safety prosecutions.

Chambers UK

A specialist defence barrister who represents individuals and companies in enforcement actions brought by the HSE and local authorities.
He acts for domestic and international clients from a broad spectrum of industries, including transport, construction and education.
He understands the issues in a case very quickly and talks authoratitively with clients.
Recent work: Acted in a case involving a Spanish film director who suffered serious internal injuries after being served a taster of light cask ale containing high levels of caustic soda.

Chambers and Partners

Defends companies and individuals from a wide range of industries in enforcement actions by government regulators for breaches of health and safety legislation. (Health & Safety)

Chambers UK

Always on hand to assist and offer guidance on high-profile health and safety investigations. (Regulatory, health and safety, and licensing)

Legal 500

Recommended for corporate regulatory defence.

Legal 500

Tenacious and fights his clients' corner.

Legal 500

Highly astute, with fine attention to detail.

Legal 500

Well known for defending in health and safety prosecutions.

Legal 500

A specialist defence barrister who represents individuals and notable companies in enforcement actions brought by the HSE and local authorities.
He is very impressive. His practice alone would allow him to take silk.
He's always got the client's best interest and outcomes in mind, and his preparation is highly detailed.
He's very competent and has very good technical knowledge.

Chambers UK

Acts for both corporate and individual defendants on health and safety cases in a variety of sectors.

He is very experienced and has a very understated but effective style of advocacy.

Chambers UK

Recommended for his corporate defence work.

Legal 500

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