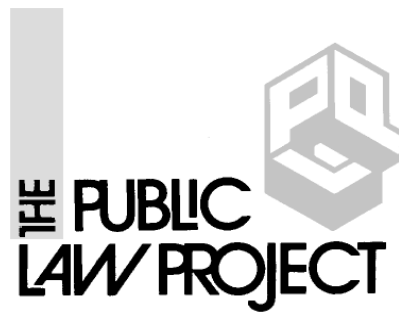


Public Accountability For Work-related Deaths and Injuries

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Many people who suffer an injury at work or families who have lost a loved one in a work-related incident are not only interested in seeking compensation for their loss but also want public accountability for the incident from an employer or manufacturer and from the public bodies charged with ensuring compliance of those companies with the law.

Accountability should come via the enforcement mechanisms of the police and CPS, local authorities and the Health and Safety Executive, all of whom have powers in different circumstances to investigate and if necessary prosecute an employer for health and safety or other criminal offences (such as manslaughter). There are other regulators in specific sectors which have similar duties to uphold standards, for example, the Commission for Social Care Inspection or the Maritime and Coastguard Agency. These duties are quite separate from any civil liability the employer may face and the availability or otherwise of a civil claim should not affect or be affected by any criminal investigation or prosecution for breaches of health and safety law.

In order to ensure that companies are held to account, it is important that these regulatory bodies operate lawfully, that the investigation is rigorous and the prosecution decision soundly based. Decisions, or failures to act, may appear to be unreasonable or unlawful. When you need advice deciding whether or not there may be a public law challenge, this is when the Public Law Project (PLP) can step in.

Free advice for solicitors

A new service from PLP has recently been launched to assist solicitors acting for those injured or the bereaved families of those who have died in work-related incidents. The consultancy service is focussed on providing advice on the public law aspects of a case. These are currently explored less often than issues relating to a civil compensation claim or inquests. Sometimes the prospect of a criminal prosecution or action against a regulator may be just what is needed to assist clients in their quest for understanding of what has happened, and to help prevent similar tragedies in future.

PLP is a national legal charity, founded in 1990, which provides expert legal advice and consultancy to solicitors and other legal advisers on all aspects of public law including judicial review and other public law remedies such as complaints procedures and the ombudsmen. Following some successful judicial review cases on work-related deaths which were referred to us by the Centre for Corporate Accountability (CCA), PLP has secured funding from the Joseph Rowntree Charitable Trust to fund the work of a specialist lawyer to provide free legal advice in this area. The advice is free to any solicitor or caseworker in private practice or the advice sector, but is not available direct to clients (except where a referral for casework is accepted).

This project will run for 2 years, during which time PLP will provide specialist advice and support on the public law issues arising out of work-related deaths and injuries and accept referrals of appropriate judicial review cases. PLP can also advise on policies and broader issues arising from investigations into work-related deaths.

You can get expert advice on whether there may be legal grounds to challenge decisions or failures on the part of public bodies. Some of the types of issues that can arise in a particular case are:

- Should the HSE or the police have carried out an investigation?
- Was the CPS or HSE's decision not to prosecute reasonable?
- Should there be a Coroner's inquest? Was the inquest carried out lawfully?
- Who should take responsibility for investigating an incident if more than one agency is involved (e.g. the police, the local authority, the HSE, a regulatory body or Inspectorate)? Does one investigation preclude another?

These are just examples. PLP can advise on all these, or any other public law issues that arise in the context of the aftermath of a work-related death or injury.

Successful outcomes

The kind of assistance on offer is relevant in many different types of scenario. Mrs Allen's¹ husband was killed in an incident at work. The Health and Safety Executive (HSE) investigated and prosecuted the company but no individual directors. Despite prolonged correspondence the HSE would not confirm who had been interviewed, or why no individuals had been prosecuted. This situation is a very common one faced by those who advise bereaved families on work related deaths. In this instance the CCA, who run a work-related deaths advice service for clients, had been assisting Mrs Allen. They wanted to know whether the failure to prosecute a director or the failure to disclose information could be challenged. They turned to the Public Law Project for help.

PLP advised Mrs Allen to make a complaint to the HSE's Open Government Complaints Panel, and made very detailed representations on her behalf. When the panel met, they found that the HSE had failed to ask witnesses for their consent to disclose their details and statements and that the HSE should apologise for this failure. They also found that the HSE's policy statements and guidance on disclosure issues were contradictory and recommended the HSE address this.

As a result of this complaint, the Director-General of the HSE also wrote to staff about obtaining consent for disclosure more promptly, and has arranged for the HSE's open government information to be put on their website so members of the public can access it more readily. The HSE investigators also agreed to a meeting with Mrs Allen, CCA and PLP, which was also attended by someone from their Open Government branch. At the meeting they disclosed who had been interviewed – having belatedly obtained their consent - and provided a very detailed explanation as to why they had not

¹ Names have been changed, but the case examples are accurate.

prosecuted any individuals. PLP were then able to advise Mrs Allen on any possible challenge to this decision.

Although Mrs Allen had a solicitor dealing with her compensation claim, they did not have the expertise or resources to pursue these issues. The complaint made by PLP has led to a change in HSE policy, an increase in the availability of information from them, and the family being provided with detailed answers to their queries.

Mr Cooper's son, and three other workers, were killed in an incident when they were working on a bridge and the gantry beneath them collapsed. The disaster was investigated and the company involved convicted of health and safety breaches. Bizarrely, the Coroner decided not to hold an inquest, despite the fact that it was a sudden and unexpected death and that very serious concerns over safety had been discovered. Was the Coroner's decision lawful?

PLP advised Mr Cooper that the Coroner could not lawfully decide not to hold an inquest in these circumstances; this was in fact in breach of the Coroner's Act 1988, as the Coroner did not have this discretion. However, despite detailed representations the Coroner would not change his mind and refused again to hold an Inquest. Judicial review proceedings were brought and as a result a new inquest was held.

When the inquest finally took place, a verdict of unlawful killing was returned. If the family had not been able to pursue judicial review proceedings an inquest would never have been held, nor this verdict returned. The police and HSE are now considering whether a further prosecution of the company and any individuals should be pursued.

Mr Hassan's 13 year old son was killed by his own school bus. The HSE decided that it was not a matter for them and repeatedly refused to investigate. When faced with such intransigence can anything be done?

PLP's involvement has secured action that would not otherwise have been taken. The HSE have agreed to reconsider their decision in that case and are currently seeking a QC's advice on the legality of a policy that we have challenged. The final outcome remains to be seen. An update will be available from PLP's website at www.publiclawproject.org.uk at the end of the case.

Training

A further aspect of the project is training that will be provided to assist lawyers and others in identifying relevant issues and in bringing challenges to the decisions of enforcement bodies.

A full day's training course is being held jointly by PLP and the CCA in London on Thursday 11 November 2004. The morning session, run by David Bergman, Director of the CCA, will focus on investigation and prosecution procedures following work-related death and injury. The afternoon session, run by PLP, will look at mechanisms for challenging the decisions of enforcement bodies and will include an overview of the grounds and procedure for judicial reviews. For further information about the course or to book a place call Sugar Munthali on 020 7490 4494, email

admin@corporateaccountability.org or download the programme and a booking form at http://www.publiclawproject.org.uk/Downloads/CCA_training_prog.pdf.

Legal advice given as part of this project is free to all solicitors and advisers working in England and Wales. Judicial review claims are usually funded under a CLSF certificate.

Solicitors and advisers can access the free legal consultancy service by email: c.collier@publiclawproject.org.uk, by phoning Clare Collier on 020 7697 2197, or by fax to 020 7697 2199.