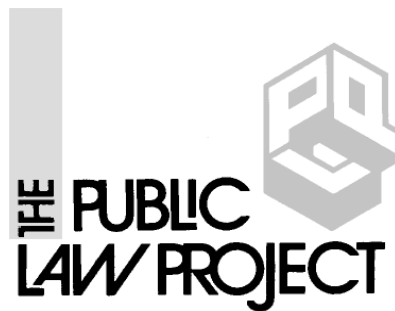


**Public accountability for work-related deaths and injuries**

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An inquest will not always be the only forum in which families bereaved by a work-related incident can discover the facts surrounding the death of their loved ones. There is of course the (often unlikely) prospect of hearing evidence within civil compensation proceedings but an important area, sometimes overlooked by Claimant lawyers, is the potential for the true facts to come out within the criminal justice system. This can also, most importantly, provide families with 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, the Health and Safety Executive and other regulators, 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 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 distinct from any civil liability the employer may face and the existence 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 of course 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. Claimant lawyers should not be shy of pursuing these issues on behalf of their clients and judicial review (or the mere threat of it) can be an effective tool in persuading enforcement bodies to act in a particular case. 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.

Following some successful judicial review cases on work-related deaths which were referred to us by the Centre for Corporate Accountability (CCA), the Public Law Project (PLP) currently has grant funding from the Joseph Rowntree Charitable Trust to assist other lawyers in developing expertise in this area. There are two strands to this work, training and consultancy, both of which are entirely free to any lawyers who wish to benefit from them.

**Training**

The training programme is currently focussed on Claimant inquest and personal injury lawyers and is delivered by PLP's lawyers in house to legal teams in firms around the

country. The training covers firstly the substantive law that governs HSE procedures, and HSE policies and protocols including the Enforcement Policy Statement and Code for Crown Prosecutors as well as a brief look at the relevant criminal offences: gross negligence manslaughter (and corporate manslaughter) and offences under the Health and Safety at Work Act 1974. Secondly, we look at the principles of public law and grounds for judicial review, and the Human Rights Act 1998 in the public law context, with a focus on the types of public law decisions that arise in the aftermath of serious work-related injuries and deaths.

The training includes a case study workshop to develop skills in spotting relevant issues and choosing the most appropriate remedy. There are detailed course notes and handouts of all the relevant statutory and non-statutory materials.

The usual format is a half day training (worth 3 CPD points) but alternative arrangements can be made (such as three one-hour sessions). Lunchtime introductory sessions (lasting around 45 minutes) are offered to any firm wanting to explore whether such training would be of benefit to them.

### **Consultancy**

The consultancy service provides advice on the public law aspects of any work-related death or injury case. 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). PLP can also advise on policies and broader issues arising from investigations into work-related deaths. Telephone enquiries are welcome, as are requests to advise sent by email, fax or post.

Example 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 lawful?
- 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?

### **Successful outcomes**

A couple of brief examples illustrate that the kind of assistance on offer is relevant in many different types of scenario.

Mr Hassan's<sup>1</sup> 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 secured action that would not otherwise have been taken. The HSE agreed to reconsider their decision in that case and conducted a thorough internal

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<sup>1</sup> Names have been changed.

review of their decision making process. The bus company was thoroughly investigated and procedures that were implemented there after the tragedy were implemented industry wide. Further, partly as a consequence of this case, they also changed an important new policy on enforcement priorities which we argued was unlawful.

Mr Stewart'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 Stewart 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 Public Law Project is a national registered charity, founded in 1990, with the object of providing assistance in matters relating to public law to people and groups who historically have had little or no access to public law remedies. We provide expert advice and representation in public law matters, carry out research and policy work and provide training in a wide range of public law areas including judicial review and other public law remedies such as complaints procedures and the ombudsmen.*

*Firms wishing to discuss training opportunities or solicitors and advisers wanting to access the free legal consultancy service should contact Clare Collier on 020 7697 2197 or by email: [c.collier@publiclawproject.org.uk](mailto:c.collier@publiclawproject.org.uk).*

[Brief extracts from this article have been previously published in *PI Focus* (APIL, October 2004)].