Programme

• 9.00 – 9.30 - Breakfast and registration
• 9.30 – 9.40 – Welcome by Branch Chair and Housekeeping
• 9.40 – 9.50 – Tyne & Wear Branch AGM
• 9.50 – 12.00 – Presentations including coffee break
• 12.00 – 12.30 – Lunch
• 12.30 – 15.45 – Mock Trial including coffee break
• 15.45 – 16.00 – Questions and close
Welcome

Tony Bough Chair

Tyne & Wear Branch
Tyne & Wear Branch

Annual General Meeting
Order in Court!

How does a case progress through the criminal courts?
First Things First

- All prosecutions are brought by “the Crown”.
- Different kinds of offences:
  - Summary only.
  - Either way.
  - Indictable.
- All prosecutions start in the Magistrates’ Court.
The Magistrates’ Court

• All cases start here.
• Hears summary and either way offences.
• Allocation and sentencing guidance.
• District Judge? Lay Bench?
• Role of the Legal Advisor.
• Forms of address and dress code.
The Crown Court

- Hears either way and indictable only offences.
- Role of the Judge.
- Role of the Jury.
- Role of the Clerk.
- Forms of address and dress code.
The Decision To Prosecute

- Investigation concludes and case file is prepared.
- CPS review - is further investigation required?
- The evidential and public interest tests.
- Authorisation to charge.
- Charging procedure.
- Differences when HSE prosecute.
Preliminaries

- Written charge.
- Advance Disclosure.
- Some offences can be dealt with by post.
- Better Case Management – in theory.
- Guilty plea – proceed to sentence.
- Not guilty plea – venue? Case Management.
Trial Preparation If Not Guilty Plea

• Trial before lay bench or District Judge?
• Disclosure of prosecution “unused material”.
• Defence Case Statement.
• Disclosure of further prosecution material.
• Standard directions for trial preparation.
• Expert evidence.
• Trial bundle.
Structure Of A Trial

- Defendant confirms plea.
- Prosecution opens case – opening speech.
- Prosecution calls its witnesses.
- Prosecution “closes” – “No case to answer”?
- Defence opening.
Structure Of A Trial (Cont’d)

• Defence witnesses
• Will the Defendant give evidence?
• Closing speech(es)
• The Jury goes out
Giving Evidence

- Examination in Chief:
  - Telling a story – based on witness statement.
  - open or non-leading questions.
- Cross Examination:
  - Purpose.
  - Closed or leading questions.
Giving Evidence (cont’d)

- Re-examination.
  - Only on issues arising from cross examination.
  - Open questions.
And Finally

- Questions from Judge or Jury.
- Unanimous/Majority verdicts.
- Pre-Sentence Reports.
- Ancillary orders e.g. POCA.
- The sentencing decision.
- Costs
Questions?
Civil v Criminal Litigation
Differences, Interaction and Similarities
The Case for the H&S Professional
Introduction

• What is “civil litigation”?  
• Main differences to criminal enforcement. 
  – Civil protects “individual rights”, criminal protects “society”.  
  – Civil aims to provide compensation/a remedy, criminal aims to punish/deter.  
• Greater role of insurance providers.
A Whole Different Ball Game?

• Venue
  - Criminal – Magistrates’/Crown Court.
  - Civil – County Court/High Court.

• The growth of “electronic claims” for civil.

• Claimant (“Plaintiff) v Defendant.

• Burden of Proof:
  - Criminal – “beyond reasonable doubt”.
  - Civil – “balance of probability”.
Is Timing Everything?

• Different time limits apply:
  – Criminal – no time limit to start prosecution (unless summary only offence) – subject to abuse of process arguments.
  – Civil – for personal injury claims, three years accident – unless Claimant is a minor.

• Are there merits in settling a civil claim before any prosecution? Or is it best to try and get a prosecution “out of the way”? 

Anatomy Of A Civil Claim

- Accident/incident.
- Claimant takes legal advice.
- Obtain evidence, instruct experts.
- Settlement?
- Issue Proceedings.
- Settlement?
- Trial.
What Must A Claimant prove?

• Essentially, that the Defendant – usually the employer – has been negligent:
  - The Defendant owed a duty of care.
  - That duty of care was breached.
  - The breach has caused loss.
  - That loss was foreseeable.
• Breach of duty under HSWA???
Back To The Future?

- The “demise” of breach of statutory duty as a cause of action.
- Impact of S69 Enterprise and Regulatory Reform Act to accidents post 1 October 2013.
- “Employers should always have the opportunity to defend themselves against a compensation claim when they have done nothing wrong and have taken all reasonable precautions to protect their employees”.
A Charter for “Rogue Bosses”?

- Some workers remain protected from “breach of statutory duty”.
- “A breach of regulation will be regarded as strong ... evidence of negligence”.
- The reasonable and prudent employer.
- Knowledge constantly evolves.

•
Evidence And Disclosure


- Civil claims – “proactive disclosure”.
  – Documents on which you rely; AND
  – Documents which adversely affects your/the other party’s case; AND
  - Documents which supports the other party’s case.
Role Of The H&S Professional

- What role could you play in any civil, as well as criminal proceedings?
- Writing any report with disclosure in mind?
- Writing any report with close scrutiny in mind.
- “Experts” - when is an “expert” not an expert?
- What other evidence may be called?
Fees For Intervention

• Effective from 1 October 2012.
• “Material breach of health and safety”.
• Applies to Improvement/Prohibition Notices.
• HSE plan to recover £23 million by the end of this financial year.
• Dispute process.
Legal Professional Privilege

- What is it?
- Why do lawyers go on about it so much?
- Why do we use it?
- What do we need for privilege to apply?
- How do we get it?
- “Danger Zones”.
Corporate Manslaughter Mock Trial

“This wasn’t just a tragic situation; It was a tragedy waiting to happen”
Corporate Manslaughter – Introduction

- The mock trial.
- New test - from 6 April 2008.
- What can we learn from the limited cases to date?
- Director prosecutions – a “bargaining chip”?
- Breach of statutory duty – “second bite of cherry”?
The New Test

• There has been a **death**, AND
• The organisation owed a duty of care to the deceased, AND
• The organisation is in gross breach of that duty, AND
• The way in which the organisation’s activities are managed or organised by senior management is a substantial element of the breach.
Housekeeping Notes
“Organisation”
Gross Breach Of Duty Of Care
Senior Manager
Substantial Element
The “New” Law – Selection of Guilty Pleas

• **Peter Mawson Limited** - £200,000 plus £20,000 HSWA + £31,000 costs (including HSWA February 2015. Director sentenced 8 months imprisonment, 200 hours unpaid work and costs of £31,504. Publicity Order.

• **Huntley Mount Engineering and Lime People Training – Manchester – 13 July 2015** - £150k fine and £15k costs.

• **Linley Developments** - St Albans - 7 October 2015 – fined £200,000 plus costs of £25,000 to be paid over 6 years – 2 charges of manslaughter against after director and manager pleaded to .......... charges.

• **Kings Scaffolding** – Liverpool - 22 October 2015 – fined £300,000.
The New Law – The Pace Picks Up ..... 

- **Stereycle Rotherham Limited** (in administration) - £500,000 (November 2014).
  The company “didn’t properly understand the risks of, and lacked the competence in, operating steam pressure autoclave systems”.

- **Pyranha Mouldings** - £200,000 plus £45,000 costs.
  Director – 9 months imprisonment, £25,000 fine plus £45,000 costs. (March 2015).
  “By choosing to take on the design and installation of the machine, Pyranha assumed responsibility for its safety. However, the machine clearly endangered the safety of those working with it”.
The New Law – The Pace Picks Up ..... (Cont’d)

- **CAV Aerospace** – £600,000 plus £125,000 costs – July 2015.

  “Senior management had “received clear, unequivocal and repeated warnings over a sustained period of years” before the incident”.
The New Law – The Acquittals

- **PS & JE Ward Nurseries** (April 2014):
  - £50,000 fine + £48,000 for breach of HSWA.
  - 3 years to pay.
  - No specific risk assessments.

- **MNS Mining Limited** (June 2014):
  - Trial involved 45 prosecution witnesses.
  - Mine manager also acquitted of manslaughter.
  - No HSWA charges on the indictment.

- **Maidstone NHS Trust** (January 2016)
  - Corporate and individual prosecutions.
The Difference A Year Makes!

- **G&J Crothers (NI)** – guilty plea fined £22,500 and £1,500 costs – February 2015.

- **Sherwood Rise Limited** – first care home convicted - £300,000 after early guilty plea under new sentencing guidelines – classed as a Micro Company. Director - imprisoned for 3 years 2 months and disqualified as a director for 8 years – February 2016.

Manager – 1 year suspended prison sentence and disqualified as a director for 5 years.
Factors relevant in acquittal of MNS:
- Inspection, plan of work, control measures.
- Expert evidence.
- Conduct not “far below” reasonable standard.

Factors relevant to conviction of Sterecycle:
- Worker concerns and warnings.
- Previous incidents.
- Unsafe adaptations to machine.
Sentencing Guidance (1)

• From 1 February 2016.
• 9 Step process.
• Culpability and harm.
• Individuals and organisations (turnover).
Sentencing Guidance (2)

• Corporate manslaughter questions:
  – Foreseeable serious injury?
  – How far short of the appropriate standard?
  – How common is this kind of breach in the organisation?
  – More than 1 death?
  – Category A or B.
  – Range - £180,000 – £20,000,000.
Questions
360+
Partners

1800+
Legal professionals worldwide

3000+
Total Staff

45
Offices across 6 continents