

Mock Court Trial

November 2017 – Issue 2

Almost every day we hear stories or read articles about people being injured whilst at work. What we don't often hear or see is what happens to the companies and businesses that are prosecuted in court for these health and safety offences.

Recent figures published by the Health & Safety Executive show that in 2016/17, a total of 593 cases were heard in court where a verdict had been reached and out of this a total of 554 cases resulted in a conviction (for at least one offence). In addition, there were a staggering 9495 enforcement notices issued by the HSE and 2418 issued by local authorities.

2016 also brought the introduction of the new sentencing guidelines. During the 2016/17 period a total of £69.9million in fines were issued by the courts for successful health and safety prosecutions by the HSE or in Scotland the Crown Office Procurator Fiscal Service (COPFS).

These new guidelines led to an increase in fines against large organisations, with 38 cases at/or above £500,000 and with a maximum fine of £5million being recorded.

On Wednesday 8th November the IOSH North East of Scotland Branch hosted a mock court trial, providing both members and non-members an insight into what can be expected if a prosecution case is brought against an organisation for health and safety related offences. To make the evening a bit more realistic it was held at the Aberdeen Sheriff Court with Health & Safety Law Firm Specialists, Pinsent Masons presiding.

The prosecution arose from an incident that occurred on the 29th April 2016 at a construction site on Govan Dock, Glasgow. A subcontract employee working on behalf of a Principal Contractor cut into an armoured electrical cable with an angle grinder. This resulted in a flashover causing the employee to be thrown backwards onto a concrete wall, suffering a fractured left wrist, two cracked ribs and concussion. The jury were then provided with further evidence that the employee was instructed to cut through the electric cable by his foreman.

So why was the Principal Contractor facing prosecution and not the subcontractor who employed the injured party?

The HSE investigation had identified that the Principal Contractor provided the subcontractor with incorrect information concerning the decommissioning of existing services at the site and therefore jeopardised the safety of the subcontractor employees.

As such the Principal Contractor was now facing prosecution by the Procurator Fiscal for offences under Section 3(1) of the Health & Safety at Work Act, whereby the duty of the employer is to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not exposed to risks to their health and safety and; Regulation 25(1) of the Construction (Design and Management) Regulations, in that during construction works undertaken at the site, the company failed to locate, periodically check and clearly indicate an energy distribution installation (namely a live electric cable), where it was necessary to do so, in order to prevent danger.

The characters for this event were played by our very own North East of Scotland Branch Committee members Richard Cunningham, Adam Brown, Yvonne Gilfillan and Jason Parks who faced not only cross examination by Bruce Craig and Victoria Kerr (Pinsent Masons) but also the deliberating jury, played by everyone else who attended, and the presiding Sheriff Willie Park (Pinsent Masons).



Taking the stand and facing cross examination is Yvonne Gilfillan (left) playing the role of HSE Inspector and Adam Brown (right) playing the role of Subcontract Foreman

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Throughout the evening both the defence and prosecution put forward very convincing arguments supporting both sides of the case which at the end of the trial was rounded off with concluding remarks for both. The presiding Sheriff then gave direction to the jury on finding the accused either “Guilty” or “Not Guilty” on the basis of the evidence provided.



Bruce Craig (pictured above) playing the role of Defence Solicitor

The feedback received from our members was extremely positive and consideration will be given to holding more of these types of events throughout the course of 2018, so please keep up to date of our events programme by visiting our branch webpage:

<https://www.iosh.co.uk/Membership/Our-membership-network/Our-Branches/North-East-of-Scotland-Branch.aspx>

For anyone seeking further advice, support or information on a vast health and safety related issues or indeed any other legal matters then please find more information on the Pinsent Masons website:

<https://www.pinsentmasons.com/en/expertise/services/regulatory/health-and-safety/>



Richard Cunningham and Adam Brown (above) awaiting the impending verdict from the Jury

After a short discussion between peers, the jury delivered a verdict of “Guilty”. The Sheriff followed up by summarising the offences and in delivering an appropriate decision, imposed a fine in excess of £800,000 (utilising the new sentencing guidelines).

This event was extremely well scripted and delivered by Pinsent Masons who did a remarkable job of bringing this event to life. On behalf of the North East of Scotland Branch we would again like to extend our thanks to Bruce Craig (Partner), Willie Park (Senior Associate) and Victoria Kerr (Employment Solicitor).



The attendees (above playing the role of Jury, listening intently to the evidence being presented