

SIMON JONES MEMORIAL CAMPAIGN

Comments following consultation meeting on 14th August 2006 with THE MACRORY PENALTIES REVIEW TEAM

Introduction

This response has been prepared on behalf of the Simon Jones Memorial Campaign. Simon was a 24 year old Sussex University student. He was spending a year out before taking his final exams. To support himself in this period he signed on at an employment agency. On 24th April 1998, regardless of his total lack of experience or training as a stevedore, the agency sent him to Euromin Ltd at Shoreham to help unload a ship. Within two hours of his arrival he had been killed.

Simon's death was horrific and entirely preventable. It happened because his employers made no attempt to comply with Health and Safety Law - a situation made possible because that law is not rigorously enforced. Simon was not killed by faulty machinery but by perfectly good machinery being incorrectly used.

The Simon Jones Memorial Campaign was set up by Simon's friends in attempt to get justice for Simon and to get better protection from negligent employers for others like him. It also tries to raise awareness of the failure of the legal system to protect workers' safety and to campaign against vulnerable, poorly paid people in low paid jobs being used to replace a properly trained, experienced and protected workforce. We are entirely independent, receive no funding and are manned entirely by unpaid volunteers.

The Simon Jones Memorial Campaign has received extensive communication and comment from people bereaved as a result of work place incidents and has been lobbying for eight years for better preventive legislation and better investigation into workplace deaths.

Simon Jones Memorial Campaign has a well established and internationally acclaimed website www.simonjones.org.uk. We are therefore dismayed that we were not offered a meeting with the Macrory Review team at an earlier date. Along with other groups who have close contact with victims and experience of what passes for justice and regulation in this country, we seem to have only been invited as an afterthought when the deadline was fast approaching for responses and when an organisation such as ours would find it extremely difficult to prepare a written response on time.

Problems of Inspection and Enforcement

Although we appreciate that the array of sanctions and penalties for non-compliance with laws and regulations is limited and agree that a more extensive toolkit could be useful, we must stress that even with the most Draconian sanctions imaginable, there would be no improved deterrence and no greater compliance unless it were accompanied by a massive improvement in inspection rates and greater enforcement when companies and individuals are found to be breaking the law and ignoring regulations. There is also a problem of enforcement even when effective sanctions are available e.g. Following the Ramsgate walkway collapse which resulted in several deaths the court imposed a massive fine on the Scandinavian manufacturer. This fine was never paid. The company refused to recognise the court because Britain had failed to sign up to the relevant convention. We have many companies registered abroad operating in this country. How can we be sure sanctions will be enforced?

The needs of victims and potential victims are not addressed

A further concern we have is that the Macrory Review consistently refers to the "needs of the offender". The needs of the victims, potential victims, bereaved relatives and society as a whole take secondary consideration if indeed they are considered at all. Sensible legislation seeks to protect the innocent and society as a whole not the offenders and potential offenders. To take considering the needs of the offender to its logical conclusion we should beware of locking up rapists and violent thieves for fear we may infringe their requirements to continue to offend. Where the offender is concerned the only consideration should be – why did they offend? This is usually found to be one of four reasons: -

Total lack of consideration for workers/members of the public. Many companies look on their workers as disposable resources rather than living sentient beings. Research by the British Safety Council found that in the FTSE top 100 companies profit was consistently given priority over worker safety even with the prospect of unlimited fines and adverse publicity should they be responsible for death or major injury.

Wilful ignorance of safety requirements to safeguard the health and safety of others.

In rare cases the ignorance is unintentional but hardly less forgivable. If people/ organisations are going to set up a profit making concern then they should research all regulatory and legal requirements from the outset. Unintentional ignorance of the law would not be seen as an excuse if a private motorist infringed driving legislation.

In even rarer cases the company is knowledgeable and has made great efforts to comply with regulations but because of some oversight has still contravened them in some way.

The last of these reasons rarely elicits more than a verbal warning or at worst an enforcement notice. Unfortunately the people in the other three categories are usually treated similarly.

Basic Principles

We agree in the main with Macrory's basic principles for effective sanctions but the devil of course is in the detail. Nowhere can I find the statement that the offender should be punished. If an important part of sentencing for individuals is a punishment element the same should be true when sentencing companies and other undertakings.

While we agree wholeheartedly that a sanction should deter future non-compliance it is hard to see how this can be brought about without increased frequency of inspection of premises. Otherwise how can outcomes be assessed?

Interpretation of Statistics

On what basis does Macrory say that compliance in the UK is generally good? The HSE has so few inspectors it can barely visit premises more than once every 10 years. Many companies seriously under report injuries and near misses. The jury is still out on how many people have been affected by asbestos exposure. Martell of Euromin had a wonderful safety record because he never recorded incidents and near misses and he did not get caught out until Simon was killed. All we can say is our system of inspection is so low we have no idea what the real levels of compliance are. For this reason we should not take a company's apparently good safety record into account when they kill or maim. Do we consider murderers' previous record for homicide when sentencing or do we consider the crime for which they stand accused?

It is not good enough to say that work place deaths are falling in this country therefore compliance has improved because this fails to consider that the loss of heavy industry and mining alone would have resulted in a fall in the annual death toll. It is also the case that increased activity by campaign groups and trades union over the years combined with some very effective publicity has had an effect. Further although the massaged fatality figures show a decline, the combined figure for fatalities and major injuries is increasing. This could indicate two things: -

The reduced levels of inspection, investigation, prosecution and other sanctions by HSE have allowed greater non-compliance.

The reduction in deaths may simply be due to advances in medical care.

HSE has estimated the cost to the country of fatalities and major injuries is in the region of £30 billion; the cost in human suffering and financial loss to victim's families is far greater than this yet HSE is trying to concentrate on "advice" instead of enforcement notices and prosecutions and HSE is haemorrhaging inspectors in the Field Operations Division.

Reliance on Criminal Prosecution

When we consider sanctions and penalties, we find it hard to accept Macrory's assertion that there is an over reliance on criminal prosecution. Only 30% of avoidable workplace deaths are prosecuted each year. The HSE has established that at least 70% of these deaths are a result of negligent management. If at least 40% of deaths caused by negligent management each year are not prosecuted, how can we be placing an over reliance on criminal prosecution?

The true figures are even worse than the above statistics reveal because the HSE does not include deaths to members of the public, deaths relating to the supply of flammable gas, deaths covered by merchant shipping, civil aviation or air navigation legislation or deaths in the road haulage industry.

The figures for prosecution following major workplace injury are no more inspiring. In the case of death and major injury the law has been broken with devastating effects on both the victim and the victim's family. **We do not want these transgressions decriminalised.** If the courts are failing to hand down sufficiently harsh

sentences to deter reoffending and to act as a deterrent to others then we need to educate judges and magistrates so that they realise corporate homicide and grievous bodily harm caused to workers by an organisation is just as much a crime as a serious mugging that results in death or major injury. Both offences were carried out to minimise expenditure and save money. Both showed total disregard for the person required to generate the money.

Sanctions

The main sanction missing from the proposed list is imprisonment. The senior management who make the decisions to run an undertaking unsafely should be made to take responsibility for their actions and omissions. These people are dangerous and should be removed from society and re-educated. Similarly Macrory makes little mention of closing down premises while remedial action to prevent further offences takes place. This could be a very good sanction particularly if the undertaking whether private company or local authority were required to continue to pay the wages of the workforce during this process.

In general the HSE already is in possession of a good range of sanctions because it can require a company to rectify the situation that caused the problem whether this be incorrect use of machinery, lack of staff training, insufficient manpower, failure to supply correct equipment, lack of risk assessments or failure to manage the situation. The problem is lack of staff in Field Operations Division, lack of financial resources to enforce the law properly and lack of will by the government that would rather see HSE turned into a glorified advisory bureau.

Restorative justice

While it can be seen that where non-compliance has simply resulted in a financial loss, or in certain minor environmental contraventions restorative justice could play a major or additional role in sanctioning, where death and major injury is concerned it amounts to trivialising a disaster to talk about restorative justice. How can anyone restore my son to life, healthy, kind, intelligent and sympathetic? How can anyone restore my peace of mind so that I do not panic when my surviving son leaves the house for fear I shall never see him again? How can you restore sight to the blind and movement to the paralysed?

The best you could do is get the court to award compensation for suffering, loss of income and the expense of continuing care to save the family the additional burden of fighting the case through the civil courts.

Independent Tribunals

It is hard to see how a further tribunal would be an advantage over the courts. If we look at industrial tribunals that have the power to order compensation to complainants, we find that though they can order it they cannot enforce it. This means the claimants then have to go through the civil courts to obtain the compensation awarded by the tribunal. It seems pointless to suggest spending huge amounts of money setting up a new bureaucracy when it would be more efficient to use that money to increase the size of the present HSE and Local Authority inspectorate and to educate the judiciary.

Sample Enforcement Pyramid

The main problem here is that there are too many layers. A warning letter is no less expensive to write than an official enforcement notice but the latter has some teeth. People are killed and maimed while we work slowly up the many layers of the enforcement pyramid. Transgressions should lead directly to enforcement notices and thence to prosecution in a criminal court. Once more in the absence of sufficient inspection to assess outcomes, the lower layers of the pyramid can be ineffective. Four men were killed in the Hull warehouse collapse despite the building being the subject of two improvement notices and a prohibition notice because no-one had been back to check those notices were being complied with. Only criminal prosecution was effective at stopping the criminal proceedings but by then four men were dead and four families traumatised.

We would therefore submit that where regulatory offences cause no physical harm it might be appropriate to impose an administrative sanction. However where there is actual or potential physical harm caused by the offence i.e. all Health and Safety legislation and some Environmental legislation these cases should continue to be dealt with by the courts but with more effective penalties. Macrory's suggested penalties should be in addition to these rather than a substitute.

Presented on behalf of Simon Jones Memorial Campaign www.simonjones.org.uk by Anne Jones