

HEALTH & SAFETY

Tim Green, a Barrister at Outer Temple Chambers

For the last century, the UK has been at the forefront of health & safety law, making workplaces in Britain as safe as reasonably practical. With the advent of more HSE enforcement action, the legal sector has had to be more and more aware of the reputational risks for clients from an investigation by the regulator.

Here to give Lawyer Monthly an update on the UK's latest regulatory developments and an insight into this sector's day to day functions, is Tim Green, a Barrister at Outer Temple Chambers specialising in health and safety, environmental law and business regulation.

Tim has 20 years' experience at the Bar and was appointed a part-time Circuit Judge aged just 39. For many years Tim has been recommended by Chambers and Partners Bar Guide and the Legal 500 for providing clients with the highest quality of advocacy and legal analysis, combined with an accessible style.

Since we spoke last year, what new laws have you seen alter the UK's Health & Safety landscape?

The most significant change has been the introduction in February 2016 of the new sentencing guidelines for health and safety offences. This was a radical departure from the old law which only provided tariffs for health offences where a fatality occurred. The new guidelines call for Judges to make a careful assessment of culpability, the risk of harm and the type of harm that might follow an accident at work. The court then has to consider a starting point before reductions are made for mitigation including guilty pleas. The net effect has been a dramatic increase in financial penalties by around tenfold for large companies, and a much greater risk of imprisonment for negligent company officers.

H&S law has proliferated in past years – what would you say has most prompted this increase in legislation and subsequent legal services on the matter?

New regulations are often a response to new European law. At the same time, the HSE has shown a willingness to take robust enforcement action and invest in large scale prosecutions. Companies and their lawyers have reacted with a much greater emphasis on compliance and have become very sensitive to the reputational risk attached to prosecution, as

well as to the severe financial penalties that can follow conviction.

What action is usually taken when a firm is found to ignore the most vital national H&S laws?

If a person is hurt at work, a prosecution by the HSE or a local authority is now commonplace. Where the offender has a good record and co-operates with the regulator, and where the harm caused was relatively minor, the regulators have shown a willingness to consider cautions as an alternative to prosecution. I would advise defendants facing investigation to invest early in preparing their defence so a realistic assessment of the prospects of conviction/acquittal can be made before proceedings are even commenced.

What are often the main reasons behind a lack of H&S compliance?

Small companies often fail to comply with health and safety law because they focus on short-term commercial gains at the expense of safety. Larger concerns often have the right policies in place but neglect to enforce them. Sudden change or growth in a company requires compliance to be reviewed and adapted, but company officers may become distracted by operational matters so neglecting their health and safety duties.

How are H&S investigations often implemented during inquests? What is the process?

Typically, an inquest will proceed before an HSE prosecution. The HSE will attend the inquest and reach a decision on prosecution, or not, having heard the evidence admitted during the inquest. It is vital that companies and their officers under investigation by the HSE at the inquest are well represented to manage the evidence that is admitted.

To what extent is the EU involved in determining UK H&S legislation? Do you think this might change?

Much health and safety law is driven by the EU but I doubt most will be repealed following Brexit. Parliament would probably deem it necessary in any event.

Is there anything else you would like to add?

Since the Court of Appeal heard the appeal of EA v Thames Water in 2015, the Courts have been making a deliberate effort to make penalties for health and safety and environmental crime consistent with those for financial misconduct. This trend is likely to continue. The reputational risks for companies and their officers from prosecution is very serious. In my view, time spent on compliance and dealing with an HSE investigation at an early stage is time well spent. **LM**



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