

Michael Appleby discusses the implications for health and safety cases of new provisions under the Criminal Justice Act governing the admissibility of 'hearsay' evidence

Hearsay: pure and simple

GIVING AND USING EVIDENCE

On 4 April 2005 new statutory provisions under the Criminal Justice Act 2003 came into effect regarding the admissibility of hearsay evidence in criminal trials. These changes are relevant to health and safety cases and other related prosecutions connected to workplace incidents.

Hearsay evidence is: a statement not made in oral evidence at court that a party to the proceedings, i.e. the prosecution or the defence, wishes to rely on in order to prove its case.

As well as simplifying the existing law on hearsay evidence, the Act also makes some radical amendments to it. Perhaps the most significant change, as far as health and safety cases are concerned, is the admissibility of previous statements.

When a workplace incident occurs, an employee may make a written statement for his/her employer, or the employer may take a statement from the employee for its own investigation. If that employee gives evidence later at trial which is inconsistent with any previous statement, this statement can not only be used to undermine his/her credibility, as was the case under the old law, but can also be used as evidence of the truth of its contents.

It is not uncommon for the investigation into a health and safety incident to be long and drawn out and for any subsequent criminal trial to take place some considerable time after the incident. The Act allows a witness to use a previous statement to refresh his/her memory. Further, if a witness cannot remember what happened and cannot reasonably be expected to remember well enough to give oral evidence, the previous statement can be relied on if the witness indicates that it was made when matters were fresh in his/her mind and, that to the best of his/her belief, it contains the truth.

The Act mirrors the previous statutory provisions for the admissibility of business documents. These documents are admissible,



Illustration by Arthur Phillips

providing their reliability is not in doubt, if:

- the document was received by a person in the course of the business;
- the supplier of the information had personal knowledge of the matters dealt with in the document; and
- where the document has passed through a number of hands, each person must have received the document in the course of the business.

The rule avoids difficulties where it is not clear who supplied the information. But providing there is every reason to assume the document is reliable, and providing oral evidence can be given by somebody about the matter, the fact that this person did not supply the information is irrelevant.

It should also be noted that if an 'officer' or 'agent' of a company, when interviewed, makes a 'confession', providing he/she was authorised to speak on behalf of the company, then, under s76 of the Police and Criminal Evidence Act 1984 this confession will amount to an informal admission by the company and can be used as evidence against it.

Finally, there is a safeguard in the Act where a case against a defendant is based wholly or partly on hearsay evidence. If the hearsay evidence is so unconvincing that, considering its importance to the case, any conviction would be unsafe, the judge can stop the trial anytime after the prosecution has finished calling evidence. In these circumstances the judge will either direct the jury to acquit the defendant or order a retrial. ■