

Michael Appleby explains how new guidelines on managing criminal cases could have a significant bearing on how cases involving work-related deaths are prepared and presented.

The heart of the matter

CASE PREPARATION

On 23 March it was announced that the Jubilee Line extension corruption trial – which had lasted some 18 months and is reported to have cost tens of millions of pounds – had collapsed. It is probably more than coincidental that the day before this announcement, the lord chief justice issued guidelines entitled *Control and Management of Heavy Fraud and Other Complex Criminal Cases* (www.dca.gov.uk/judicial/judges/pubs.htm)

The guidelines are primarily for cases lasting eight weeks or longer, but are also to be followed in all cases estimated to last more than four weeks. Consequently, they may bite in a contested health and safety prosecution and are likely to be applicable to a gross negligence manslaughter prosecution arising out of a work-related death.

The guidelines state that the length of complex prosecutions must be controlled to enable a jury to retain and assess the evidence it hears and to make proper use of limited public resources. It recommends an experienced judge be assigned at the outset of the case to provide continuous management.

In the future the prosecution, at an early stage of proceedings, will have to provide a written statement of its case outlining the key facts and evidence upon which it relies. At the first case management hearing the hope is there will be “real dialogue” between the lawyers and the judge to identify the focus of the prosecution case, the common ground, and the real issues in the case.

The aim is that by the time the case comes to trial only the issues that are truly in dispute are before the jury. It is also envisaged during the course of the trial that there will be further case management hearings to ensure the case is kept on track.

It is not uncommon for those involved in the criminal investigation of a work-related matter to have difficulty in understanding the mechanics of the incident. This is particularly so in a police



Illustration by Arthur Phillips

investigation, where an offence of manslaughter is suspected. Invariably, it is not so much the facts that are disputed but the interpretation of those facts. Those investigating may well take the view that because someone has died, or been seriously injured, this is evidence of a terrible failure by a company, or one of its employees. However, experience shows many incidents are due to a combination of failures, some of which may be minor.

Expert evidence can be crucial. But the prosecuting authority may experience difficulty in obtaining expert evidence that is relevant to the issues to be determined. The expert report may merely review health and safety guidance and regulations relevant to the industry rather than give an opinion on the failures that may have caused or contributed to the incident.

The guidelines observe that many interviews are too long and unstructured. They state interviews “should be an opportunity for suspects to respond to the allegations

“The guidelines should have a positive effect on the way work-related incidents are dealt with”

against them” and not “an occasion to discuss every document in the case”. This is particularly pertinent to a work-related death investigation.

It is a feature of these cases that numerous statements and extensive documentation is served by the prosecution, with scant detail of the particulars being given of the charges brought. Thus, the guidelines should have a positive effect on the way work-related incidents are prosecuted to ensure an efficient and fair trial.

However, the guidelines should not be seen as just having an impact on the way the *prosecution* conducts its case: the defence also needs to be able to set out early on its position and not just sit back waiting to see what the prosecution has to say.

Thus, a prudent company facing a possible prosecution is advised well before charge to consider what it believes the relevant issues are likely to be and the evidence it may wish to rely on. This preparation could be invaluable in responding to the new case management requirements in the event of prosecution. ■