

Pascal Bates - Regulatory, Coronial and Criminal Law CV

Regulatory Law – Health and Safety

Pascal undertakes a range of regulatory practice but is best known for health and safety prosecutions, the majority of which involve fatalities. He is standing counsel to the Health and Safety Executive. A selection of the very large number of health and safety cases in which he has prosecuted or defended in a very wide variety of industrial and other circumstances is set out below:

R. (HSE) -v- Basildon and Thurrock University Hospitals NHS Foundation Trust (No.2), 2013, Crown Court at Chelmsford

Numerous infections, two leading to death, with legionella from the chronically infected water system on site, of patients at Basildon Hospital over a period of years: this was the second case (for first see below) criticising the safety management of this NHS trust.

<http://www.telegraph.co.uk/health/healthnews/9836557/Legionnaires-deaths-hospital-had-cut-water-treatment-programme-to-save-money.html>

R. (HSE) -v- Leisure Connection Limited, 2013, Crown Court at Chelmsford

Seven year old girl died immersed in a swimming pool, unnoticed by lifeguards from the defendant company, posted too few guards in the wrong places. As the trial of issue was starting, the defendant company admitted for the first time that its offending robbed the victim of such chances as she may have had of rescue and survival and that its systems failed to identify an apparently material shortfall between the number of hours of lifeguarding needed for full and safe operation of the pool and the number it actually paid staff to do.

<http://www.heart.co.uk/essex/news/local/essex-190k-bill-childs-pool-death/>

R. (HSE) -v- UK Power Networks (Operations) Limited (formerly known as EDF Energy Networks Limited) (No.2), 2013, Crown Court at Chelmsford

Engineer died when doused in burning superheated oil exploding out of ruptured metal chamber of a tap changer (a device used to regulate the performance of a 132,000V transformer): this was the second case (for first see below) criticising the safety procedures of this national electricity distribution network operator.

<http://www.bbc.co.uk/news/uk-england-essex-20915663>

R. (Ipswich Borough Council) -v- C.V.S. (Anglia) Limited, 2012, South East Suffolk Magistrates' Court

Old oil drum still containing flammable residues exploded in garage when worker applied oxy-acetylene torch to it. Worker survived serious injuries. Garage company claimed he was making an incinerator for his superior to use on an allotment.

<http://www.bbc.co.uk/news/uk-england-suffolk-20531881>

R. (Broadlands District Council) -v- Just Learning Limited (No.2), 2011, Crown Court at Norwich

Various child safety failures alleged, most seriously relating to insufficiency of measures to stop babies and young children (one of whom lost the end of his finger) in nurseries from suffering unpleasant injuries to fingers when those were caught in doors: this was the second case (for first see below) criticising the child safety measures of this national nursery group.

<http://www.bbc.co.uk/news/uk-england-norfolk-16288570>

R. (HSE) -v- Aftab, 2011, Court of Appeal and Central Criminal Court

Man died in collapsing trench when developer failed properly to manage project to excavate new basement of Belgravia home: upheld on appeal.

<http://www.standard.co.uk/news/selftaught-engineer-fined-100000-over-basement-death-6405416.html>

R. (HSE) -v- UK Power Networks (Operations) Limited (formerly known as EDF Energy Networks Limited) (No.1), 2011, Crown Court at Norwich

Maintenance man electrocuted during replacement of 11,000V transformer when team failed effectively to isolate worksite from live power: the national electricity network operator admitted organisational failures in relation to laying down work procedures, training staff and checking upon staff: this was the first case (for second see above) criticising the safety procedures of this national electricity distribution network operator.

<http://www.bbc.co.uk/news/uk-england-norfolk-14731354>

R. (HSE) -v- British Telecom plc, 2011, Court of Appeal and 2010, Crown Court at Southwark

Telephone man killed falling from unsuitable ladder in telephone exchange: appeal ultimately not pursued by defendant telecommunications company.

<http://www.independent.co.uk/news/uk/home-news/bt-fined-300000-over-ladder-death-2161309.html>

R. (HSE) -v- Regentford Limited, 2011, Court of Appeal and 2010, Crown Court at Croydon

Illegal immigrant working for cash in hand killed by fall from unsafe scaffolding when sent to point brickwork in a blizzard. Defendant company – a charity which owned the site – unsuccessfully claimed not to be the employer and to have delegated the running of the site. Conviction and sentence upheld on appeal.

http://www.yourlocalguardian.co.uk/news/local/croydonnews/8097678.Footage_helps_convict_firm_after_man_s_death/

R. (HSE) -v- Corbould, 2011, Crown Court at Guildford

Oscar-winning special effects organiser prosecuted when cameraman killed leaning out of moving car window to film a special effects test.

<http://www.bbc.co.uk/news/uk-england-surrey-12706207>

R. (HSE) -v- Forship S.p.a. and Newhaven Port & Properties Limited, 2010, Crown Court at Lewes and Croydon (Bean J. and others)

Seaman drowned after falling from ill-lit and ill-maintained dockside whilst trying to arrange pipes to take water onto cross-channel ferry. Italian ferry charterparty's complaints of abuse of process and lack of jurisdiction rejected by Bean J..

<http://www.hse.gov.uk/press/2010/coi-se-2109.htm>

R. (HSE) -v- PIB (UK) Limited, Blankson and Moore, 2010, Crown Court at Lewes
Pedestrian died falling into basement of unguarded property development when returning home from night out.

<http://www.hse.gov.uk/press/2010/coi-se-2906.htm>

R. (HSE) -v- Jones and Fairground Inspection Services Limited, 2010, Crown Court at Wolverhampton

One of two women thrown from ageing travelling fairground ride when weld failed rendered tetraplegic.

<http://www.expressandstar.com/news/2010/06/23/fairground-ride-owner-in-15k-fine/>

R. (HSE) -v- Basildon and Thurrock University Hospitals NHS Foundation Trust (No.1), 2010, Crown Court at Basildon

Young blind, deaf, mute tetraplegic with cerebral palsy trapped and suffocated between adult-sized bed rails at hospital which did not adequately assess risks or train staff: this was the first case (for second see above) criticising the safety management of this NHS trust.

<http://www.dailymail.co.uk/news/article-1285041/Basildon-Hospital-fined-50-000-death-severely-disabled-patient-got-head-trapped-bars-bed.html>

R. (HSE) -v- CentreWest London Buses Limited, 2010, Crown Court at Southwark

First Group bus company's failures to detect and repair malfunctioning bus gearboxes and to control pedestrian and traffic movements at busy bus garage, resulting in bus being in reverse gear when that was not selected by driver and thus in bus unexpectedly moving backwards to pin another driver between it and the bus behind, thereby inflicting fatal injuries. See below for another case involving traffic mismanagement by another First Group company, First Capital East Limited.

<http://www.hse.gov.uk/press/2009/coilon1812.htm>

R. (HSE) -v- Making Learning Work Limited, 2009, Crown Court at Wolverhampton
14 year old boy burnt in petrol fire at garage when placed there on work experience by defendant company without adequate safety checks.

R. (HSE) -v- SF(UK) Limited, 2009, Crown Court at St. Albans

British Gas group company conducting electrical maintenance sent worker to mend client's washing machine by which he was electrocuted when power was not first isolated.

R. (South Cambridgeshire District Council) -v- Just Learning Limited (No.1), 2009, Crown Court at Cambridge

Toddler died choking on piece of apple at nursery. Staff not properly trained in paediatric first aid: this was the first case (for second see above) criticising the child safety measures of this national nursery group.

<http://www.telegraph.co.uk/news/uknews/4969646/Nursery-company-fined-145000-for-baby-choking-death.html>

R. (HSE) -v- AE & E Lentjes UK Limited and Rafako S.A., 2008, Crown Court at Maidstone

Failures on a large construction site by the principal contractor and a specialist subcontractor to supervise and direct work at height, resulting in a worker falling 70 feet to his death.

R. (Norwich City Council) -v- Burlingham, 2008, Crown Court at Norwich

Hotelier's failure sufficiently to guard door to cellar stairs led to guest risking death falling down fifteen steep concrete stairs in the dark.

R. (HSE) -v- Dacorum Borough Council, 2008, Crown Court at St. Albans

Council's failure properly to direct and provide proper tools for work on buried services led to the death by electrocution of a maintenance man who severed mains cable.

R. (HSE) -v- First Capital East Limited, 2008, Crown Court at Croydon

First Group bus company's failure to control night-time traffic movements at busy bus garage and to supervise staff, resulting in one worker driving off a double-decker bus and running over and killing another worker who was in the middle of repairing it. See above for another case involving traffic mismanagement by another First Group company, CentreWest London Buses Limited.

R. (HSE) -v- Easco (Midlands) Limited, 2008 Crown Court at Coventry

Failure to control large goods vehicle reversing movements at a scrap yard, resulting in worker being run down by a reversing 12 tonne skip lorry: this was the second death within a small group of companies, occurring just 15 months after sentence at Norwich Crown Court in the prosecution arising from the first death.

R. (Stevenage Borough Council) -v- D & P Catering Equipment Limited & Greggs plc., 2008, Crown Court at Luton

Decapitation by shrapnel from explosion during repair of bakery refrigeration equipment in high street shop.

R. (HSE) -v- Port of Tilbury Limited and Glading, 2007, Croydon Crown Court

6 year old boy killed at port in fork-lift truck accident by falling ½ tonne paper roll; port company's managing director also prosecuted against under s.37.

R. (HSE) -v- Lord Condon and Sir John Stevens, Central Criminal Court (Crane J.)

Alleged failures by Metropolitan Police Commissioners to safeguard their constables.

Regulatory Law – Other

Although health and safety work is the core of Pascal's regulatory practice, he has advised and represented clients in a variety of regulatory areas. Very frequently these have involved foreign clients, behind the scenes advice and/or non-contentious work, so clients in the summary below are generally not identified. Recent instructions have included:

Food and Environmental: Pascal, who is A List Counsel to the Environment Agency, undertakes a wide range of food and environmental work. He is currently advising a local authority on enforcement of regulatory provisions against a national supermarket group. In 2013 he acted (with David Travers Q.C.) for a dairyman prosecuted by FSA for selling raw milk in Selfridge's food hall: following negotiations, the case was not pursued by the FSA: <http://www.bbc.co.uk/news/uk-england-22454324>. In 2012 he has advised Poundland Limited, the well known national chain of retailers on domestic and European food law. And he has also recently acted for a local authority investigating criminal shortcomings in accommodation provided by a landlord for a tenant.

Consumer Protection: Pascal is currently instructed in relation to a set of massive alleged consumer protection raids by trading standards officers which temporarily closed down the business under investigation. Now that it is plain that no prosecution can or will be brought, Pascal is assisting with pursuing civil compensation claims through the courts and by means of the special statutory arbitration scheme for consumer protection and trading standards cases.

Business/Insolvency Regulation: Pascal has advised those investigated by BIS under the Companies and Insolvency Acts upon the scope of compulsory investigative powers being deployed against them and those investigated by the SIA upon the scope of licensing requirements under the Security Industry Act.

International Sanctions and Arms Controls: in 2013 Pascal has advised upon the implications of the UK and international sanctions regimes affecting Iran for those involved in affected business in the UK and has advised upon the implications in the United Kingdom of US federal arms trade control regulations.

Transferred Prisoners: Pascal's submissions (<http://www.bbc.co.uk/news/world-europe-guernsey-11697252>) before Saunders J. as to the true construction of the legislation governing the fixing of minimum terms for a Guernsey man convicted of murder and transferred to serve his life sentence in England have led to the passage of new primary legislation in Guernsey: Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 (<http://www.bbc.co.uk/news/world-europe-guernsey-15091959>).

Coronial Law

Pascal is also frequently instructed in coroner's inquests, both with and without juries, for example:

In re ZH (deceased) (2013) – death in custody of a father of two from late diagnosed medical condition: article 2 inquest examining on behalf of deceased's family the response of the various prison and medical authorities.

In re AC (deceased) (2012) – twelve year old boy drowned in river after falling from makeshift rope swing hung over water's edge: inquest confirmed adequacy of safety provision by riparian local authority client and thus that action by Coroner under rule 43 was not required.

<http://www.bbc.co.uk/news/uk-england-kent-13695632>

In re Raymond Compton and James Cackett (deceased) (2011) – two patients contracted legionella and died in hospital: 2-3 week article 2 inquest explored inadequacies of hospital's legionella management over a lengthy period, legitimacy of holding together inquests into deaths several years apart and the restrictions to be put on disclosure of documents provided to the Coroner by properly interested persons.

http://www.brentwoodweeklynews.co.uk/news/basildon/9366983.Doctor_says_he_wasn_t_trained_to_tackle_legionnaires_disease/

In re John Higgins (deceased) (2011) – engineer doused in burning superheated oil exploding out of ruptured metal chamber of a tap changer (a device used to regulate the performance of a 132,000V transformer).

http://www.eadt.co.uk/news/colchester_worker_killed_in_accidental_explosion_1_930338.

In re MG (deceased) (2011) – seven year old girl died immersed in a swimming pool: 6 day inquest explored inadequacies of lifeguarding provision.

<http://www.bbc.co.uk/news/uk-england-essex-13418798>

Non-Regulatory Crime

Non-regulatory criminal work is undertaken on occasion, particularly in complex or unusual cases and ones involving difficult questions of statutory construction. Recent instructions have included a multi-million pound diversion of wine from bonded warehouses (ultimately meriting sentences of up to 7 years), and a case of computerised faking of a number of identity documents, including passports from several different countries.

Pascal has also regularly been instructed in public law cases and civil cases arising from criminal conduct or investigations: details of some of these appear in his Civil (including Public) Law CV.