

LHSG Meeting Overview – 12 September 2016

This year is the 75th Anniversary of LHSG, so it was fitting that the Gordon Hicks Day meeting should involve something a bit more than just free sandwiches and cakes! Members arrived to find the meeting room ready for courtroom drama with them cast in the role of the jury in the case of The Health and Safety Executive (HSE) – v – Scott Painters Limited.

A mock trial was the theme of the day, kindly run by committee member Kizzy Augustin, a criminal regulatory lawyer with Pinsent Masons LLP, specialising in the defence of health and safety matters. The cast was made up from the LHSG committee and colleagues of Kizzy – Vanessa Montgomery, Paralegal as prosecution counsel and Jennifer Burton, Solicitor for the defence.

Kizzy, AKA Judge Augustin ran a tight ship and there were times when you could have been forgiven for thinking there wasn't much 'mock' about the proceedings. Latecomers were publicly reprimanded and there were warnings of fines if mobile phones disturbed proceedings, serving to remind us all that going to court, whoever you are, is not to be taken lightly.

The Offence

Scott Painters Ltd represented by the MD Jamie Scott, (AKA John Bartlett) had breached the duty owed to employee Maria Johnson (AKA Tracy Ayton- Harding) under Section 2(1) of the HSWA by failing to provide a safe environment for work at height.

Ms Johnson was Site Foreman on day one of a painting job being undertaken by Scott Painters at Spitalfields Market. She had worked for the company for 10 years, was PASMA trained and experienced. She sustained multiple fractures when she fell from an unguarded edge of a 3m high mobile access tower she had assembled and from which she had returned to work after a lunch break. She claimed she was unable to build the tower correctly because there was insufficient equipment and that this was just the way things were done at Scott Painters.

The Evidence

In the course of the trial the jury heard evidence from the HSE inspector, Sarah Daley (AKA Alyson Evans) who investigated the incident following the RIDDOR report; from Ms Johnson and Mr Scott. The prosecution built a case out of easily remedied failings and an attitude that put profit before safety. Amongst the failures cited were:

Training

Ms. Johnson's PASMA training was out of date by a few months and there had been no toolbox talks for staff on site. Jamie Scott believed the latter to be the responsibility of the Principal Contractor.

Risk Assessment

Oh the perils of a generic risk assessment, prepared by consultants and kept “in pristine condition, in a dusty box on a high shelf.” Evidence, in the lack of records to support otherwise, that the findings of the assessment were never trained out to Ms Johnson who could therefore not have known that she should have contacted her boss when she found she didn’t have enough equipment to build the scaffold correctly.

Inadequate resources

Scott Painters had experienced a period of rapid growth and were under resourced to respond to the demands of their contracts. Rather than use some of the “substantial” profits to invest in additional management staff and equipment they continued to focus on sales and to turn a blind eye when staff didn’t have enough equipment to work safely.

Defence counsel tried to counter the prosecution case by pointing the finger of blame firmly at Ms Johnson, claiming she should have known better. There were even suggestions that alcohol might have been to blame, an accusation strongly denied as simply a passion for a regular half of Ribena!

It was also pointed out that Mr Scott had followed the correct procedures following the accident and cooperated with the HSE investigation. The HSE inspector Ms Daley had even decided not to impose a prohibition notice on the equipment. As it turned out, a decision motivated by a Friday afternoon feeling!

Sentencing

Judge Augustin reminded the jury of the seriousness of the decision they had to make in finding Scott Painters Ltd guilty. “You must be satisfied “*so that you are sure*” by the evidence submitted against the Company.” The majority wasted no time in returning a GUILTY verdict and Scott Painters were fined £150,000 + costs of £35,000.

In sentencing Judge Augustin was directed by the sentencing guidelines. Not surprisingly, the prosecution went for the highest levels in terms of culpability and harm which carries a top end fine of £1.6 million. Jamie Scott was clearly devastated by the outcome and said ‘You’ve just put 20 people out of work.’

The mock trial gave a valuable insight into how easy it is to fall foul of the law, even when you might think you are doing enough to avoid enforcement action. With hindsight, every piece of evidence against Scott Painters was avoidable but poor practices were allowed to happen because the owner didn’t believe a court case and a guilty verdict would ever happen to him.

Although the mood was somewhat sombre by the end of the trial, the feedback from members suggests the day was a great success.

“An excellent day – a good topic wonderfully enacted with a very serious message.”

“A very well run and enjoyable day.”

“Fabulous – well done all”

The outcome of the trial was debated further by members who commiserated with Jamie Scott over a drink or 2 at The Banker. Jamie wasn't buying!

Anniversary Raffle

In light of the 75 Anniversary, Liz Ferrier kindly organised a raffle. Prizes were all on a theme of 75 – including 75 worst ways to die! Congratulations to our four winners:

- Victoria Burton (Safety & Environmental Consulting)
- Jake Edmonds (MSL)
- John Schofield and Russ Bower (Family Mosaic)