



Health and Safety Executive		Operational Circular	
		OC 169/1	
Review Date	28/10/2005	Open Government Status	Fully Open
Version No & Date	1: 29/04/1994	Author Unit/Section	FOD FSU

Target Audience:
All HSE Inspectors

MANAGEMENT OF COSTS IN CROWN COURT CASES

This OC describes the extent and nature of costs in Crown Court cases. In some cases HSE has incurred substantial costs, and it is suggested that such high costs may be predicted. Ways of controlling costs are discussed, and instructions are given in relation to prior approval at a senior level of high cost cases. This OC addresses the conduct of cases in England and Wales. However, the underlying principles will also be of relevance in Scotland.

BACKGROUND

1 In some recent Crown Court cases, HSE has incurred substantial costs. In consequence, a study was made of the extent of such costs, their composition, and whether such cases could be predicted. Proposals were made for the control and management of costs.

EXTENT OF HSE COSTS IN FOD CASES

2 In the past cases have been identified where there were significant HSE costs. Some were over £25,000 and also some over £100,000 and above.

MAIN COMPONENTS OF HSE COSTS

3 The largest single component of costs is normally the charges of Counsel and solicitors. These may account for over 2/3 of the total. Outside expert evidence and HSL services can also be very expensive. Inspector costs can be substantial, particularly where the prosecution arises from the investigation of a complex incident, such as a fire or explosion at a chemical plant. Lay witnesses to fact are one of the minor elements, but some have to be reimbursed for high wages, whilst others may have to be flown back to the UK from abroad.

PREDICTING EXPENSIVE CASES

4 A number of factors indicate a potentially expensive case:

- 1) the profile of the defendant - in particular, a history of defending cases as a rule, and any such indication in the particular case. It will not be cheap to prosecute a substantial organisation which has a record of using Leading Counsel in its defence;
- 2) complex legal issues, e.g. system of management issues, cases under the general provisions rather than regulations;
- 3) complex technical issues requiring external expert evidence;
- 4) cases which have attracted considerable media and political interest where the decision to prosecute has been influenced by external expectations;
- 5) cases involving substantial civil liabilities in which insurance companies are interested; and
- 6) cases involving multiple defendants. Conflicts between the defendants may be beneficial to HSE, but it will be necessary to collect and present considerable evidence to clarify the responsibility of each.

It is considered that it is frequently possible to guess which cases will be expensive, although these cannot be precise predictions; in particular, much will depend upon the course of the case, and frequently a large part of the costs can be incurred at the direction of Counsel.

WAYS OF CONTROLLING HIGH COSTS

5 Given that a case can be foreseen to be expensive, it is particularly important in such cases to ensure that no unnecessary costs and burdens are incurred. Convenience and cheapness must not take precedence over the requirements of what is necessary in the public interest, and in the interests of justice, but cost may properly be taken into account in deciding whether, and how, to proceed.

6 Paragraphs 7-12 discuss ways in which costs may be restricted.

Summary proceedings

7 The increases in penalties available to magistrates give HSE greater opportunity to propose that cases be heard summarily. The Attorney General invited all enforcing authorities to adopt the Code for Crown Prosecutors (file 168) as far as applicable, and the current Code states that Crown prosecutors may have regard to the delay and costs associated with indictment proceedings in making a request for summary trial.

Junior Counsel only

8 The use of Junior Counsel will substantially reduce costs, but if the case is of high profile and legally complex this may prove a false economy, particularly if the Defence

has both Senior and Junior Counsel. A similar consideration will also apply to leading second-string external experts.

Restriction of charges

9 Since it is not the policy of HSE to lay numerous charges, it will not generally be possible to reduce costs by restricting the number of informations. Indeed, some of the most costly cases have involved single informations.

Specific breaches

10 There may be some scope for reducing costs by laying simpler, easier to prove, specific informations. However, the charge must reflect the nature and gravity of the offence, and where there is a provable general management failure, the prosecution should include a provision such as HSW Act s.2, and relate to the "root cause" rather than the symptoms.

Administrative sanctions only

11 In some cases it may be possible to take enforcement action by way of notice procedure, but the graver the offence, the less likely it is that the matter can be disposed of in this way (See the Enforcement Policy Statement and EMM).

12 In practice, there may be little that can be done to modify the case or the approach to it in order to reduce costs, but given the large amounts of money involved, such matters as those set out above should be carefully considered.

APPROVAL OF CASES

13 Directorate/Divisional HQ have mostly been aware of potential high costs cases because other aspects have warranted contact. However, the arrangements need to be put on a formal footing so that HSE can demonstrate it is managing its resources properly.

14 No case should be approved unless there is sufficient evidence for a reasonable prospect of conviction, it is in the public interest and in line with HSC's Enforcement Policy Statement.

PRIOR APPROVAL OF HIGH COSTS CASES

15 Cases on indictment have always required further approval by the line manager of the usual approving officer and this double check should also be applied to cases where it is predicted that costs will be high. Where divisional budgets will be affected, the budget holder and occasionally the head of the Directorate should be consulted on that aspect.

16 In detail, the following action should be taken:

- 1) Where a case may reasonably be anticipated to involve costs of over

£25,000, the approving officer must advise their line manager, who must specifically consider the issue of costs in relation to budget provisions in approving the case. As necessary, there may be consultation with the head of division. This will be appropriate not only in cases where HSE is proposing prosecution on indictment, but also in cases where it is content for the case to be heard by the magistrates.

2) Where the costs may be anticipated to exceed £75,000 and particularly where the regional law costs budget might be exceeded, the head of division, in consultation with Directorate HQ, should give clearance before the case can be approved.

3) In exceptional cases where there is a high probability of very large costs, the head of the Directorate may refer the case to the Executive.

CONTROL OF CASES

17 Inspectors can ensure that cost is properly considered at the commencement of proceedings. However, once Counsel is appointed, control of the case effectively passes from HSE to Counsel, who is acting on behalf of the Attorney General. HSE is then in the position of paying the bills, but not controlling the proceedings. HSE staff may exercise influence and advise Counsel, but it cannot be guaranteed that their view will prevail. In practice, inspectors will tend to be guided by Counsel, the legal specialist, in such matters as the collection of further evidence. Counsel may decide that an expensive external (or very senior HSE) expert witness is necessary.

PROJECT OFFICER

18 In practice, the most that can generally be done to control costs of a case after approval is to ensure that an inspector is delegated to act as "project officer". This will normally be the inspector who initiated the proceedings, or their PI. When such an inspector moves, or leaves HSE, it is important that another be appointed in his/her stead. It will be the role of this inspector to monitor progress of the case by discussion and contact with the legal professionals. The inspector must report to senior management, if necessary to the head of the division, if there are serious concerns about the way the case is developing - in particular in relation to the growth of costs.

BUDGET MANAGEMENT

19 The case project officer will also be responsible for making the budget manager aware of likely calls of law costs on budgets as soon as possible. It is suggested that the budget manager be informed of an estimate of the costs at the commencement of the case, and that this be revised as necessary during its course. If there is an appeal, the budget manager should be advised of the fact in advance of the hearing. Solicitor's Office assistance will be necessary in providing estimates of costs.

29 April 1994
(FOD/101/1993)
Disc Ref:FODA1.Edt/J024/6.4.94/DH/CP

(New Disc Ref: J:\Editors\CA1\J024Ap94.sam)

ASI headings

Civil proceedings: costs: court(s): Crown Prosecution Service: legal proceedings.

