



Health and Safety Executive		Operational Circular	
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Target Audience:
All HSE Inspectors

The Divisional Court held that a delay of nearly a year after a fatal accident before laying informations was not unjustified. ...

ABSTRACT OF DECIDED CASE...

R v Highbury Corner Magistrates' Court ex parte Health and Safety Executive...

Issue: Refusal by stipendiary magistrate to issue summonses because he considered the delay in laying the informations to have been unjustifiable. ...

Act: Magistrates' Courts Act 1980 s.1. ...

Circumstances: In August 1988 the Thames Water Authority and DavyATC Limited were both concerned in the construction of water works at Stoke Newington in North London. Two employees were asphyxiated in a 7 foot diameter pipe at the bottom of a 160 feet deep shaft. ...

Investigation by HSE began at once. In November 1988 a decision was taken to prosecute and the Thames Water Authority and DavyATC Limited were informed of this. Evidence given at the inquest held on 6 December 1988 indicated that further enquiries were necessary. In February 1989 it was decided that trial of the proposed defendants should be on indictment, and in March as a result of conference with counsel it was decided that further information and statements were necessary. HSE's expert gave a statement in May, which was followed by further investigations and discussion, and a final statement on 10 July 1989. ...

On 31 July 1989 informations were laid before the stipendiary magistrate. The stipendiary queried the delay. The complicated history of the case was explained, but he declined to issue the summonses against the defendants because "the delay in laying the information was unjustifiable and in the exercise of my discretion I refused the applications". ...

HSE sought judicial review of the decision, and in particular a declaration that it was unlawful and an order of mandamus directing the magistrate to issue the summonses. ...

Held: Queen's Bench Divisional Court. ___

The decision of the magistrate was declared to be wrong in law. Lord Justice Bingham considered that the material before the magistrate did not show that the prosecutor's delay was unjustified. ___

"It did, as the summary of the chronology that I have given makes clear, take some time for decisions within the Health and Safety Executive to be taken. No doubt an outsider might think that the process of decision-making was unnecessarily slow and bureaucratic. No doubt it could have been quicker. It is none the less incumbent on a body of this kind to proceed with some caution. It is open to criticism if it does not prosecute in a case where the public or its representatives feel that it should have done. It is open to criticism if it does prosecute and the prosecution fails for lack of appropriate consideration or evidence or preparation. It is open to criticism if it decides to prosecute in a case where the courts or the public feel that it was unreasonable to do so. All these considerations do not justify endless delay but do require a body of this kind to proceed warily and with some deliberation. Moreover, this was not an entirely straight-forward matter. The material before us includes statements, documents, publications of various kinds and photographs running to well over 100 pages. It is a case involving expert evidence of a detailed nature. In my judgement, it was not a case into which the Executive would have been well advised to rush without careful thought." ___

Further, Lord Justice Bingham found that "It is not, in my judgement, a case in which, on the history as I have summarised it, prejudice could be inferred from the mere passage of time. Moreover, the Magistrate did not find prejudice". Lord Justice Bingham agreed that "the preferred practice in all save the most exceptional cases is for the magistrates' court to issue the summonses and permit the defendant to make any application he may be advised to make thereafter". ___

Type of Case: Judicial Review. ___

Reference: Unreported. Transcript by Marten Walsh and Cherer Ltd CO/1516/89. ___

LIBCAT: This item will have an entry on the HSE Database (LIBCAT). ___

NOTE ___

In this case it was accepted that considerable time and care was appropriate when HSE was bringing a complicated case, however, it is very important that the preparation of all prosecutions be dealt with expeditiously by inspectors. ___

Where cases take a long time to prepare a chronology of events should be kept which could be used by the prosecution if it is necessary to justify delay. ___

The Queen's Bench Divisional Court heard this case on 11 October 1990. Subsequently summonses were granted by the original magistrate in November 1990. Committal procedures were held in January 1991 and the cases were heard in the Crown Court in May 1991. The defendants pleaded guilty. Thames Water Authority were fined a total of £20,000 for breaches of HSW Act ss.2(1) and 3(1), and Davy ATC

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Limited were fined a total of £10,000 for breaches of the same provisions. Costs of £6,278.16 were awarded to HSE. ___

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ASI headings___

Court decisions: decided cases: Magistrates Court Act 1980 s.1.

