

SAFETY  
LAST?

# SAFETY LAST?

THE UNDER-ENFORCEMENT OF HEALTH AND SAFETY LAW



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# Preface

This report shows that health and safety is being enforced in a very haphazard way. Despite there being detailed policies, the level of inspections, investigations and prosecutions varies enormously by region and by sector.

It is clear that different regions are interpreting the Health and Safety Executive's (HSE) enforcement policies and guidelines differently, and effort is being concentrated in traditional industries at the expense of new areas such as the service sector.

This report should be seen as an attempt to help and support the work of the HSE. The HSE remains an effective regulatory body in the UK with a dedicated and committed team of staff. It produces comprehensive guidance, and advice. This report shows however that there are significant improvements it can make in ensuring adequate enforcement of the law.

In recent years, there has been a move away from an emphasis on enforcement and instead the HSE has tried to promote a policy of working with employers where problems arise. The supporting role is to be welcomed, though it should not be at the expense of enforcement. Placing emphasis on

high risk areas has led to other sectors being under-inspected.

UNISON wants to move the debate away from the argument over whether the emphasis for the HSE should be on enforcement or on a more pro-active supporting role. We believe that we need more of both, and that the two approaches should work in tandem, with prosecutions being used for those employers who either consistently flaunt the law, place workers or the public in danger, or actually kill or injure them.

The answer lies in more resources for the HSE. If the government is serious in meeting its targets, by 2010, of a 10% reduction in fatalities and major injuries, 20% in occupational ill health, 30% reduction in days lost as a result, then it needs to expand the ability of the HSE to inspect premises, investigate reported injuries and dangerous occurrences, work with employers and prosecute the criminals.

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## Introduction

This booklet is a summary of the principal findings of a detailed statistical audit undertaken into the work of the HSE – the government body with primary responsibility for enforcing health and safety law in Britain.

The analysis was undertaken by the Centre for Corporate Accountability on behalf of the public services trade union UNISON.

It examines the work of the HSE's operational inspectors who inspect workplaces, investigate reported injuries, and decide whether or not to impose enforcement notices or to prosecute. The HSE undertakes many other activities including research, policy development and standard setting, but these activities are not within the scope of this report.

This report does not scrutinise the work of all of HSE's inspectors, but focuses on those who work in HSE's Field Operations Directorate (FOD). FOD is the largest directorate within the HSE and its over 400 field inspectors (which represent two-thirds of all HSE's field inspectors) are responsible for enforcing the law in 736,000 premises concerned with construction, agriculture, general manufacturing, quarries, entertainment, education, health services, local government, Crown bodies, and the police.

This report considers the activities of these inspectors over a five year period – between 1 April 1996 and 31 March 2001.

It looks at:

- ▶ the number of premises that they inspect
- ▶ the number of reported incidents that they investigate

- ▶ the numbers of enforcement notices that they impose

- ▶ the numbers of organisations and individuals that they prosecute.

It looks at how the levels of inspection, investigation, notices and prosecution differ:

- ▶ between five industry groupings – agriculture, construction, energy and extractive industries, manufacturing, and the service sectors

- ▶ between different parts of the country, and

- ▶ in each of the last five years.

The report also looks at the levels of fines imposed by the courts after conviction.

The tables in this report have been compiled after analysing raw HSE data. It is the first time that such an audit has been undertaken.

The report has three main purposes:

- ▶ **to make FOD's activities more transparent.** Although the HSE produces comprehensive data on the extent of reported work-related harm itself, it produces little data that allows its own activities to be scrutinised and assessed.

- ▶ **to make FOD (and HSE) more accountable.** This report raises a number of questions concerning the sufficiency of HSE resources, the adequacy of its enforcement policies and apparent inconsistencies in its enforcement record in different parts of the country and between different industries. It is hoped that this report will result in the HSE itself publishing similar information in the

### Key findings

- ▶ **The number of inspections of workplaces declined by 41% in the last five years – a decrease of 48,300 inspection contacts.**

- ▶ **On average, a registered premise will receive an inspection once every 20 years.**

- ▶ **There has been an increase in the investigation of reported incidents over the five years but in 2000/01:**

- ▶ 3% of deaths of workers
- ▶ 10% of deaths of the public
- ▶ 80% of major injuries to workers
- ▶ 93% of major injuries to the public
- ▶ 70% of dangerous occurrences
- ▶ 95% of over-three day injuries
- ▶ 55% of industrial diseases were not investigated.

- ▶ **Prosecution rates have increased over a three year period but in relation to incidents investigated in 1998/9:**

- ▶ 67% of deaths of workers
- ▶ 90% of deaths of members of the public
- ▶ 89% of major injuries to workers
- ▶ 94% of major injuries to members of the public
- ▶ 95% of dangerous occurrences
- ▶ 99% of industrial diseases did not result in a prosecution.

## Key findings: Examples of inconsistency

- ▶ In the five year period, whilst the number of inspection contacts had decreased by 17.5% in the South it had decreased by 51.6% in the Marches.
- ▶ In 2000/01, investigation levels into major injuries to workers ranged from 41% in the agricultural sector to 10% in the service sector and 26% in the Marches to 11% in Greater London.
- ▶ In the five year period, the number of improvement notices increased by 192% in the construction sector but only 17% in agriculture.
- ▶ In 2000/01, the number of deaths that resulted in prosecution was 51% in manufacturing, 41% in construction, 22% in the service sector, and 10% in agriculture.

## To obtain the full report

This booklet is a summary of a much more detailed report which contains over 100 tables and a comprehensive analysis of the data and HSE's policy developments in this area.

If you would like to obtain a copy, please contact the Centre for Corporate Accountability on 020 7490 4494 or UNISON on 020 7551 1446

Alternatively, you can download it from the CCA website on [www.corporateaccountability.org](http://www.corporateaccountability.org) or the UNISON website on [www.unison.org.uk](http://www.unison.org.uk)

future and explaining apparent inconsistencies in its performance.

- ▶ **to assist in the process of policy reform.** Although it is not always practicable, it is important that arguments about reforms of the HSE should, as far as possible, be evidence-based. This report contains statistical information that should assist government (and those wishing to lobby government), with information crucial to a number of debates concerning HSE reform including those relating to the adequacy of HSE's investigation and prosecution policy and whether or not HSE is adequately resourced.

It is hoped that this report will generate a much greater understanding of the manner in which HSE conducts its enforcement activities and provide an opportunity to initiate an informed debate about HSE's policies and procedures and the financial context in which they operate.

## Contacts and inspections

### Decline in total contacts

A contact is when the inspector makes some form of contact with a premises. There are 14 types – the main ones being contacts involving inspection, investigations, enforcement and advice.

Our analysis shows that between 1996/7 to 2000/01, there was a 13% decrease in the total number of contacts with premises by inspectors. (See table 1)

There was, however, no consistent pattern in this decline. For example, there were three HSE areas – South, South West and Scotland East – where there was an increase. In the other 15 HSE areas, the decreases ranged from just 0.7% in Greater London (with 91 fewer contacts) to a decrease of 36% in South Yorkshire (with 3,377 fewer contacts).

A decrease in inspector contacts existed in all industrial sectors – though the energy/extractive sector suffered the greatest percentage decline of 34%.

### Decline in inspection numbers

Our analysis shows that of the different types of contracts that can be made by inspectors, it was inspections that suffered the greatest decline – a reduction of 41%. This represented a

decrease of 48,300 contacts throughout Britain. (See table 2)

The decline in inspections ranged from 52% in the Marches to 17.5% in the South and from 52% in construction to 24% in manufacturing.

### Numbers of workplaces inspected

We wanted to find out how many workplaces FOD inspectors contacted, and in particular inspected, last year and so we compared the number of contacts and inspections with the number of registered premises.

This showed that in 2000/01, one in nine registered workplaces had a contact, of some kind, with a FOD inspector. Again there were wide variations between industrial sectors and HSE areas. While one in five construction sites had a contact, it was one in 12 premises in the agriculture sector, and while one in six registered premises had a contact in Merseyside, it was one in 10 in East Anglia.

Moreover, our analysis showed that only one in 20 premises throughout Britain had an inspection in 2000/01. This ranged from one in 10 in construction to one in 36 in the service sector, and from one in 13 in the North West to one in 33 in the Northern Home Counties.

**Table 1: Total number of contacts, 1996/7–2000/01**

	TOTAL CONTACTS
1996/7	194,650
1997/8	178,267
1998/9	176,229
1999/00	169,959
2000/01	169,876

**Table 2: Number of inspection contacts by industry, 1996/7–2000/01**

	1996/97	2000/01	% DIFFERENCE
Construction	37,774	17,908	- 52.0%
Manufacturing	34,660	26,460	- 23.7%
Agriculture	13,484	6,542	- 51.5%
Energy/Extractive	2,596	1,397	- 46.2%
Service	28,642	16,550	- 42.2%

## Investigation into reported incidents

### New investigation criteria

Following criticism by a report of a Parliamentary Select Committee in April 2000, FOD piloted a new investigation criteria policy – now formally approved throughout the HSE – which sets out what types of incidents inspectors should investigate.

Our analysis shows that although the new policy requires them to have investigated the following worker injuries in 2000/01, they remained uninvestigated:

- ▶ 16 out of 62 amputations of either hand, arm, foot or leg
- ▶ 337 out of 633 injuries resulting from contact with moving vehicles
- ▶ 69 out of 178 injuries involving electricity
- ▶ 569 out of 1,384 falls from a height of over 2 metres
- ▶ 1,327 out of 2396 industrial diseases.

For more information on this, see the full report.

Our analysis showed that the reason for the sharp decline in the number of inspections was that there had been an increase in the number of investigations into reported incidents.

However, as set out below, these levels still remain low.

There are five main types of reported incident:

- ▶ death
- ▶ major injuries (to workers and members of the public)
- ▶ over three-day injuries to workers
- ▶ dangerous occurrences and
- ▶ industrial disease.

Investigations are important to ensure that any unsafe practices that resulted in the incident will be stopped and that evidence can be collected to determine if a criminal offence on the part of the company, organisation or individual has been committed. Failures to investigate impact upon both prevention and criminal accountability.

### Deaths

Our analysis shows that until recently a large number of reported deaths were not investigated.

In the five year period, 75 worker deaths were not investigated – 15 in manufacturing; 15 in construction; one in agriculture; one in the energy/extractive sector; and the remaining 43 in the service sector. This lack of investigation has reduced from 12.3% (40 deaths) in 1996/7 to 2.5% (seven deaths) in 2000/01.

In the same period a total of 212 deaths of members of the public were not investigated – with all but two of these being in the service sector. This lack of investigation has reduced from 48% (115 deaths) in 1996/7 to 10% (18 deaths in 2000/01).

### Major injuries

Certain kinds of the most serious injuries are defined as major injuries.

Our analysis shows that between 1996/7 and 2000/01, the percentage of reported major injuries to workers which were investigated almost doubled from 10.8% to 19.3%. This percentage also represents an increase in the actual number of major injuries investigated from 2,532 to 4,335.

This increase, however, still means that, last year, 81% of major injuries were not investigated.

Looking at the whole five year period, some of the injuries to the most vulnerable workers remained uninvestigated. There was no investigation into 905 of the 1,144 reported major injuries to trainees or 126 of the 164 injuries to those involved in work-experience.

### Industry and HSE area comparisons

How consistent is the level of investigations across industries and HSE areas?

In 2000/01, levels of investigation ranged from 41% in agriculture to 10% in the service sector.

This means that a major injury to an agricultural worker was four times



more likely to be investigated than an injury to a service sector worker. (See table 3)

In 2000/01, only 13% of major injuries (267 of 2005) involving transport – part of the service sector – were investigated.

The differences between the service and agricultural sectors is partly explained by the high level of reporting in the service sector and the low level of reporting in agriculture.

It is less easy to explain the inconsistent levels of investigation in different parts of the country. These ranged from 26% in the Marches to 11% in Greater London. Even though East Anglia and Scotland East had lower numbers of reported injuries than Greater London, HSE investigated far more in the former areas – 112 in the case of Scotland East and 73 in the case of East Anglia.

## What injuries are uninvestigated?

How serious are the injuries that are not investigated? Our analysis shows that some of the most serious injuries remain uninvestigated, including in 2000/01, for example, 72 asphyxiations (44% of the total), 31 electrical shocks (35% of the total), 333 burns (57% of the total) and 418 amputations (41% of the total).

Looking at just one injury – amputations – there are great differences in investigation rates from one part of the country to another. While a similar number of amputations were reported in both the North East and Greater London in 2000/01 (63 and 62 respectively), only 29 out of 62 amputations were investigated in Greater London (42%) compared to 40 out of 63 amputations in North East (64%).

In fact, our analysis shows that in 2000/01 the amputation of three arms, seven hands, two legs, and one ear, and 410 fingers were not investigated.

Most injuries result from trips and,

perhaps unsurprisingly, few of these are investigated. However, if we look at all other types of injuries (those not resulting from trips) 74% of major injuries still remain uninvestigated. In 2000/01, around 40% of injuries resulting from contact with electricity, contact with moving machinery, high falls over two meters and drowning, suffocation or asphyxiation – a total of 1,303 out of 3,214 injuries – were not investigated.

There are even serious divergences in the investigation levels of particular incidents. In 2000/01, whilst 44% of explosions in the manufacturing industry were investigated, this compared with only 22% in the construction sector. While 80% of high falls in the North East were investigated, only 36% were investigated in Greater London.

## Major injuries to the public

As with workers, over the five year period, there has also been a rise in the percentage of major injuries to the public that have been investigated – from 1.8% to 7.2%. However, this increase can be explained by the decrease of almost a third in the number of injuries reported – from 32,813 to 12,449; and in fact, the actual number of investigations has only increased by 317.

Last year, 93% of major injuries to members of the public were not investigated. This is 12% less than the investigation levels of worker injuries.

**Table 3: Number of reported and investigated major injuries to workers, by industry, 2000/01**

	NUMBERS REPORTED	NUMBERS INVESTIGATED	% INVESTIGATED
<b>Agriculture</b>	647	262	41.0%
<b>Manufacturing</b>	7,240	1,974	27.0%
<b>Construction</b>	4,636	1,073	23.0%
<b>Extractive/energy</b>	297	65	22.0%
<b>Service sector</b>	9,618	958	10.0%
<b>TOTAL</b>	<b>22,438</b>	<b>4,332</b>	<b>19.0%</b>

## Over-three day injuries

An over-three day injury is an injury (other than one defined as a major injury) that results in a worker being off work for more than three consecutive working days.

The rate of investigation into over-three day injuries is far lower than the level of investigation into major injuries – 4.5% compared to 19.3% in 2000/01. The number and percentage of over-three day injuries investigated did however increase significantly over the five year period – from 2,803 to 4,378.

Again there is wide disparity in the investigation levels in different sectors. The difference between the 2000/01 levels of investigation in the manufacturing (7.1%) and service sector (1.9%) is particularly noteworthy, since there were a similar number of reported injuries. Although there were 18,000 less injuries in manufacturing, inspectors investigated over twice the number of injuries. (See table 4)

## Dangerous occurrences

Certain sorts of incidents – whether they cause an injury or not – are defined as dangerous occurrences. These dangerous occurrences fall into two different categories – those that result in death and injury and those that do not. In order to avoid counting incidents which have been previously included in the injury sections above,

we only consider those dangerous incidents which did not result in death or injury.

The analysis shows that the level of investigation into dangerous occurrences increased from 26% in 1996/7 to 31% in 2000/01.

Two notable changes took place in the five year period. The rate of investigation of dangerous occurrences in the service sector rose dramatically from 19.8% in 1996/7 to 35.4% in 2000/01, even though there were 99 more reported incidents in 2000/01 than five years earlier. However, the number of dangerous occurrences investigated in the energy/extractive sector declined in this period by 7% even though the same number of dangerous occurrences were reported in both years.

In 2000/01, 70% of dangerous occurrences remained uninvestigated.

In that year, investigation levels ranged from 47% in agriculture to 17% in the energy/extractive sector and from 54% in the Marches to 18% in Scotland East. (See table 5)

It is notable that the South East and Marches had almost the same number of reports (154 and 157 respectively) but the Marches investigated over 50 more dangerous occurrences than the South East.

We also looked at the type of dangerous occurrences that were not investigated. In 2000/01, this included:

- ▶ 73 out of 128 building collapses
- ▶ 146 out of 224 plant fire and explosions
- ▶ 179 out of 230 flammable liquid releases
- ▶ 88 out of 126 incidents involving a release of biological agent, and
- ▶ 592 out of 944 incidents involving failure of lifting machinery.

**Table 4: Number of reported and investigated over-three day injuries to workers, by industry, 2000/01**

	NUMBERS REPORTED	NUMBERS INVESTIGATED	% INVESTIGATED
Agriculture	1,416	166	11.7%
Manufacturing	37,127	2,624	7.1%
Construction	9,753	478	4.9%
Extractive/energy	1,304	49	3.8%
Service sector	55,023	1,061	1.9%
<b>TOTAL</b>	<b>104,623</b>	<b>4,378</b>	<b>4.5%</b>

## Industrial disease

Certain forms of occupational diseases must be reported to the HSE.

In 2000/01 there were 2,396 reported cases of industrial disease, of which 1,069 (44.6%) were investigated. This was a rise of over 20% from the investigation levels in 1996/7. This percentage increase took place even though the total number of disease reports had increased dramatically.

However, it still means that over 55% of reported industrial diseases were not investigated.

As with all the other reported incidents, levels of investigation depended on the industry and the HSE area in which they took place. So, while in 2000/01 almost 69% (133 out of 194) of industrial diseases were investigated in the West Midlands, only 14% (34 out of 236) were investigated in the North East. (See table 6)

Which industrial diseases were not investigated? In 2000/01 significant numbers of the most common industrial diseases were not investigated including 590 of 889 hand-arm vibrations, 221 of the 477 cases of occupational dermatitis, and 89 of the 161 cases of carpal tunnel syndrome.

**Table 5: Number of reported and investigated dangerous occurrences by industry, 2000/01**

	NUMBERS REPORTED	NUMBERS INVESTIGATED	% INVESTIGATED
<b>Agriculture</b>	60	28	46.7%
<b>Manufacturing</b>	1,072	381	35.5%
<b>Construction</b>	1,208	342	28.3%
<b>Extractive/Energy</b>	394	67	17%
<b>Service Sector</b>	1,035	366	35.4%
<b>TOTAL</b>	3,769	1,184	31%

**Table 6: Number of reported and investigated industrial diseases by industry, 2000/01**

	NUMBERS REPORTED	NUMBERS INVESTIGATED	% INVESTIGATED
<b>Agriculture</b>	16	10	62.5%
<b>Service</b>	642	366	57.8%
<b>Construction</b>	194	96	49.5%
<b>Manufacturing</b>	1,289	555	43%
<b>Extractive</b>	255	42	16.5%

## The use of notices

There are two types of enforcement notices. An Improvement Notice can be imposed when an inspector is of the view that there has been a contravention of a provision of health and safety law. The notice will state that particular changes must be made within a particular time period.

A prohibition notice can be imposed when an inspector is of the view that there is or will be a risk of serious injury.

Our analysis shows that in the course of the five years the level of improvement notices has increased by 73% (from 3,721 to 6,462) and prohibition notices by 20% (from 3,605 to 4,315). In 1996/7, the number of improvement and prohibition notices was almost identical, but by 2000/01 over 2,000 more improvement notices had been imposed than prohibition notices. The number of Crown notices imposed was very small – 65 throughout the five year period – only 12 improvement notices and two prohibition notices in 2000/01.

The biggest percentage increases in the use of improvement notices was in

construction (with an increase of 192%) and the energy/extractive sector (an increase of 487%) though both sectors started from particularly low levels of notices in 1996/7.

There was an increase in the use of improvement notices in all HSE areas – though this ranged from 162% in North West (an increase of 159) to 4.1% in the West Midlands (an increase of just 10). And while the South had an 82% increase in the use of prohibition notices, there were four HSE areas – Northern Home Counties (-1%), Greater London (-9%), North Midlands (-12%) and West Midlands (-26%) – where the levels of prohibition notices decreased.

Are these notices the results of inspections into workplaces or investigations into reported incidents? Our analysis shows that in the five years only 225 investigated incidents resulted in an improvement notice (52 in 2000/01) and only 289 resulted in a prohibition notice (48 in 2000/01). While one incident may result in more than one notice, it is clear that most notices are the result of inspections.

## Levels of prosecutions

### Prosecutions following deaths

The number of investigated worker deaths in 1998/9 that resulted in a prosecution was 33% (83 out of 250), a rise of 8% from 1996/7. This percentage rise also reflects an actual increase in the number of deaths that resulted in a prosecution – from 70 to 83.

The rates of prosecution differ considerably between different industries and HSE areas. The percentage of manufacturing deaths in 1998/9 that resulted in prosecution was 50%, but prosecutions followed only 39% of construction deaths, 20% of service sector deaths and 11% of agricultural deaths.

In the West Midlands 60% of 1998/9

deaths (nine out of 15) resulted in a prosecution compared with 10% (two out of 20) of deaths in the South West.

The percentage of investigated deaths of members of the public that resulted in prosecution was a third of the number of prosecuted worker deaths – an average of 10% throughout the three years. In 1988/9, only 14 out of 134 investigated deaths resulted in a prosecution. In some HSE areas prosecution was almost non-existent – in North and West Yorkshire none of the 23 investigated deaths resulted in criminal charges. (see table 7)

Very few of the investigated deaths over the three year period – nine out of 854 deaths – resulted in the prosecution of a company director or senior manger.

### Understanding the data

An inspection or an investigation into a reported incident can result in more than one company, organisation or individual being prosecuted. In addition each of those prosecutions (or cases) may allege that more than one offence (or breach) has been committed. A single death or injury can therefore result in one or more prosecutions. Our analysis is not concerned with the total number of cases or breaches alleged after investigations, but with the total number of incidents that have resulted in at least one organisation or individual being prosecuted. We consider that a prosecution that has resulted in at least one conviction should count as though the incident itself has resulted in a conviction.

Data in this section covers reported incidents that took place between 1996/7 to 1998/9. We do not cover deaths beyond this period as the delay between date of death and completion of prosecution would mean that some incidents subsequent to April 1999 may not have yet come to court.

In England and Wales decisions over prosecution are made by the HSE inspectors, but in Scotland the decision is made by the Procurator Fiscal on the basis of evidence collected by the HSE.

**Table 7: Number of prosecutions following deaths of workers, 1996/7–1998/9**

	NUMBERS INVESTIGATIONS	NUMBERS PROSECUTIONS	% PROSECUTION	NUMBERS CONVICTIONS
1996/7	285	70	25%	68
1997/8	254	78	31%	75
1998/99	250	83	33%	82

**Table 8: Number of prosecutions following major injuries to workers in 1998/9, by industry**

	NUMBERS INVESTIGATIONS	NUMBERS PROSECUTIONS	% PROSECUTION	NUMBERS CONVICTIONS
Manufacturing	1,372	167	12%	165
Construction	658	80	12%	79
Service	479	36	9%	36
Agriculture	199	13	7%	13
Extraction	32	1	3%	1

## Prosecutions following major Injuries

Our analysis shows that, compared to deaths of workers, a much smaller percentage of investigated major injuries to workers resulted in prosecution – in 1998/9 it was only 11% (297 out of 2,740) – and that the percentage hardly changed in the three year period.

But there remained considerable divergence in the prosecution rates in different HSE areas and industries. In 1998/9, 20% of major injuries in Wales (34 out of 169) resulted in a prosecution but in the North Midlands the rate was only 6% (nine out of 155).

In manufacturing, 167 out of 1,372 (12%) investigated major injuries resulted in prosecution, while in the energy/extractive sector, rather startlingly, only one out of 32 resulted in criminal charges. (See table 8)

Only four out of 7,982 major injuries that took place between 1996/7 to 1998/9 resulted in the prosecution of a company

director or senior manager. However, 13 employees were prosecuted in the same period.

As with deaths, the level of prosecution after major injuries to the public is far less than those suffered by workers – though there has been about a three-fold rise in the percentage of prosecutions in the three year period from 2% in 1996/7 (14 out of 576 investigations) to 6% in 1998/9 (34 out of 549).

## Prosecutions following dangerous occurrences

The number of dangerous occurrences that resulted in prosecution is very small – 39 out of 927 (4.2%) in 1998/9.

Prosecution levels are low in every industry and HSE area, but it is notable that only one out of 116 dangerous occurrences in the energy/extractive sector resulted in prosecution and that none of the 79 investigated dangerous occurrences in the South West or of the 45 in the Northern Home Counties resulted in a prosecution. (See table 9)

**Table 9: Number of prosecutions following dangerous occurrences in 1998/9, by industry**

	NUMBERS INVESTIGATIONS	NUMBERS PROSECUTIONS	% PROSECUTION	NUMBERS CONVICTIONS
Construction	239	19	8%	19
Agriculture	15	1	7%	1
Manufacturing	305	12	4%	12
Service sector	250	6	2%	5
Energy/extractive	116	1	1%	1

## Prosecutions following industrial disease

1.3% of investigated reports of industrial diseases in 1998/9 resulted in prosecutions (seven out of 521). Over the three year period only 13 of the 1,404 investigated ill-health incidents resulted in prosecution.

## Prosecutions against individuals

Individuals can be prosecuted in three main ways:

- ▶ if the employer is a partnership or a sole trader: since the employer is an individual, when the employer is prosecuted, the individual partners or sole trader will be prosecuted.
- ▶ if the employer is a company: Section 37 of the Health and Safety at Work Act allows a company

**Table 10: Number of prosecutions involving Section 37 of the Health and Safety at Work Act 1974**

	NUMBERS OF PROSECUTIONS	NUMBERS OF CONVICTIONS	PROSECUTIONS FROM DEATHS	PROSECUTIONS FROM MAJOR INJURIES
1996/7	11	10	4	2
1997/8	11	11	2	2
1998/9	12	12	3	0

director or senior manager of a company to be prosecuted if it can be shown that an offence committed by the company was committed with their consent or connivance or was attributable to their neglect.

- ▶ employees: any employee can be

prosecuted for breach of section 7 of the HASAW. This can include a shop floor worker or a manager.

In 1998/9 there were 12 prosecutions against either a director or senior manager. (See table 10)

## HSC's Enforcement Policy Statement

In 1995, the HSC published an enforcement policy statement – which among other things, set out the 'circumstances' when HSE inspectors should 'consider' prosecution. This statement applied during the whole five year period for which this audit is concerned.

These 'circumstances' have been criticised for being unduly vague and difficult to apply to individual cases. The lack of certainty allowed inspectors a great deal of discretion as to when, and when not, to prosecute. It provided an opportunity for extraneous issues – like the level of available resources and inspector time – to dictate when prosecutions did or did not take place.

In January 2002, the HSC published a new enforcement policy statement. This includes a much clearer set of criteria for when prosecution – assuming sufficient evidence exists – should take place. It states, for example, that whenever there is sufficient evidence to prosecute in relation to a death, a prosecution should take place. However, the statement does not have a similar position in relation to major injuries, industrial diseases or dangerous occurrences. This new statement had not been published when our analysis was undertaken.

# Courts and sentencing

## Understanding the data

In most prosecutions, a single incident will result in one defendant being prosecuted in one court.

However, in relation to a small number of incidents, a prosecution may result in either:

- ▶ One defendant being sentenced for two different offences – one taking place in the magistrates court and the other in the Crown Court or;
- ▶ Two separate defendants being sentenced – one in the magistrates court and the other in the Crown Court.

When an incident has resulted in a conviction in both the magistrates and the Crown Court we have counted it as though the incident resulted in a conviction in the Crown Court.

## Sentencing following deaths

In the three years between 1996/7 and 1998/9, the average fine following a death has more than doubled from £28,900 to almost £67,000. Our analysis shows that this is the result of two factors. First, there has been an increase in the number of cases that have resulted in sentencing in the Crown Court – an increase from 40% to 60%; and secondly, the average fine imposed by the Crown Court for each death has nearly doubled from about £55,000 to £100,000. (See *table 11*)

The levels of fines imposed by the courts varies depending on the HSE area and industry. In the case of deaths that took place in 1998/9, in manufacturing the average fine was from £108,000 per death while in the service sector it was only £16,000. And while convictions following two deaths in the North West in 1998/9 resulted in an average fine of £343,500, convictions following three deaths in Scotland West resulted in an average fine of £7,083.

The average fine following convictions of deaths of members of the public are about half the level following worker deaths – £33,200 following a prosecution for a death in 1998/9.

## Sentencing following major injuries

The average fines relating to major injuries to workers are much lower than those relating to worker deaths – in 1998/9, six times less – and the average level of fines did not increase over the three year period. The relatively low level of fines is linked to the high percentage of prosecutions – over 80% in all three years – that

resulted in sentencing in the magistrates court. (See *table 12*)

## Sentencing following dangerous occurrences

The average fine following a dangerous occurrence has more than doubled over the three years from £12,900 to £28,300. One of the reasons for this is that more cases are sentenced in the Crown Court. (See *table 13*)

Again there are big variations in HSE area and industry. While six convictions in the North West resulted in an average fine of £71,000, in six HSE areas the average fines were less than £10,000.

## Sentences following industrial diseases

The level of fines following industrial diseases has decreased by over 75% over the three year period – from £24,100 in 1996/7 to £5,600 in 1998/9. (See *table 14*)

## Health warning

**It is difficult to interpret sentencing data since the average level of fines can be easily distorted by one or two large fines. Also certain fines that may appear to be large could well be small when compared to the profits or turnover of the company/organisation sentenced; and conversely, a fine that may appear to be small could well be large compared to the wealth of the company.**



# SAFETY LAST?

Table 11: Fines following deaths of workers, 1996/7–1998/9

	NUMBERS CONVICTIONS	TOTAL AVERAGE FINE	NUMBERS MAGISTRATE	% MAGISTRATE	AVERAGE MAGISTRATE FINE	AVERAGE CROWN FINE
1996/7	70	£28,908	43	61%	£12,000	£55,000
1997/8	75	£42,813	42	56%	£11,000	£82,000
1998/99	82	£66,911	33	40%	£15,000	£100,000

Table 12: Fines following major injuries to workers, 1996/7–1998/9

	NUMBERS CONVICTIONS	TOTAL AVERAGE FINE	NUMBERS MAGISTRATE	% MAGISTRATE	AVERAGE MAGISTRATE FINE	AVERAGE CROWN FINE
1996/7	201	£9,380	176	86%	£6,300	£29,000
1997/8	291	£7,580	253	87%	£6,900	£12,000
1998/99	294	£10,236	239	81%	£9,000	£14,800

Table 13: Fines following dangerous occurrences, 1996/7–1998/9

	NUMBERS CONVICTIONS	TOTAL AVERAGE FINE	NUMBERS MAGISTRATE	% MAGISTRATE	AVERAGE MAGISTRATE FINE	AVERAGE CROWN FINE
1996/7	27	£12,800	19	70%	£9,600	£20,600
1997/8	45	£18,200	35	78%	£6,800	£64,900
1998/99	38	£28,292	25	58%	£26,900	£31,000

Table 14: Fines following industrial diseases, 1996/7–1998/9

	NUMBERS CONVICTED	AVERAGE FINE
1996/7	4	£24,125
1997/8	2	£11,500
1998/99	7	£5,642

To see the calculations in more detail see full report

## The best and the worst

Which is the HSE area with the best overall record of inspections, investigations and prosecutions?

The top three HSE areas were:

- ▶ West Midlands
- ▶ The Marches
- ▶ East Midlands

The three HSE areas with the worst overall record were:

- ▶ South West
- ▶ Scotland West, (which had the overall worst record).
- ▶ Greater London

The 19 HSE areas comprise seven key regions, and we have also ranked the regions from best to worse.

- ▶ 1 The Midlands
- ▶ 2 North West

- ▶ 3 Wales and West

- ▶ 4 Home Counties

- ▶ 5 York and North East

- ▶ 6 London and South East

- ▶ 7 Scotland

Which industry was inspected and investigated and prosecuted the most. Our analysis showed that the 'best' regulated industry was manufacturing and the worst was the service sector. The order went:

- ▶ Manufacturing

- ▶ Agriculture

- ▶ Construction

- ▶ Energy/extractive sector

- ▶ Service sector

## Some questions for the HSE and the government

- Why are there such inconsistencies between HSE areas in the level of inspection, investigation, and prosecution?
  - Why are 70% of dangerous occurrences not investigated when all of them are defined as dangerous?
- What are the implications of the large reduction in the number of inspections?
  - Why do only 5% of investigated dangerous occurrences and 1% of industrial diseases result in a prosecution?
- Why is the level of investigation into deaths and major injuries of the public (and levels of prosecution following investigations) so much less than those involving workers?
  - Why did only one out of 32 investigated major injuries and one out of only 116 investigated dangerous occurrences in the energy/extractive sector in 1998/9 result in a prosecution?
- Why are so many major injuries not investigated including, in 2000/01:
  - ▶ 41% of amputations, 44% of asphyxiations, 67% of burns;
  - ▶ 40% of the injuries resulting from contact with electricity, contact with moving machinery and high falls?
- Why are so few senior managers and directors prosecuted?

The Centre for Corporate Accountability aims to promote worker and public safety by providing advice, and undertaking research and advocacy, on matters relating to law enforcement and corporate accountability.

It runs a 'Work-related Death Advice Service' to assist bereaved families on ensuring that the death is adequately investigated and subjected to proper prosecution scrutiny.

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## THE UNDER-ENFORCEMENT OF HEALTH AND SAFETY LAW

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