

Timothy Walker
Director General,
Health and Safety Executive,
Rose Court
Southwark Bridge
London SE1

27 September 2002

Re: HSE and Crown Bodies and Crown Servants

Dear Timothy,

I am writing to raise the Centre for Corporate Accountability's concerns about the HSE's policy in relation to:

- the Crown Censure Procedure;
- the policy towards Crown Servants;

The HSE recently provided the Centre with a copy of a Cabinet Office memo PIN 45 titled "Procedures for Enforcing Health and Safety Requirements in Crown Bodies"

We have the following concerns about this memo:

- it states that Crown Censure proceedings should be held in private – except for the involvement of a relevant trade union and the Crown Body itself;
- it indicates that HSE's policy concerning the possible prosecution of Crown Servants – which can of course include senior managers of Crown Bodies – is different in a number of key respects from HSE's policy toward the prosecution of individuals in non-Crown Bodies.
 - it was the subject of "assurances" given by the HSE to the Cabinet Office. It is difficult to see how a prosecution body can allow its prosecution discretion to be subject to prior negotiations between the prosecution body itself and the employer of a possible defendant. It appears that the HSE is forgetting that Crown Servants do not have Crown Immunity and there is no justification for prior agreements of this kind.
 - the assurances given by the HSE to the Cabinet office indicate that the HSE will only prosecute Crown Servants when there is:

- “wilful or reckless disregard of health and safety requirements” or;
- “a deliberate act or omission by them which imperiled their own safety or the safety of others”.

These tests are different from those used by the HSE when considering the prosecution of non-Crown Servants.

Section 7 of the HASAW Act 1974 allows individuals to be prosecuted when there has been a failure to take “reasonable care” and section 37 if there has been “neglect, consent or connivance”. It is not necessary to prove wilfulness or recklessness or a deliberate act or omission.

We are also concerned that the HSE has not made this memo publicly available on its website.

I am writing to request that you undertake a review of this June 2001 memo and ensure that Crown servants are not treated with any greater favor than non-crown employees.

I look forward to hearing from you on this. I shall be sending a copy of this letter to the Commission.

Yours sincerely

David Bergman
DIRECTOR