

fack families against corporate killers

Families Against Corporate Killers launched in July 2006. The image you see is of the empty boots of the loved one who went out to work in the morning and did not make it home safely at night. As I talk, I would ask to you think not only about those shoes, but also of the shoes we, the families left behind, have to walk in every day.

Please be clear, FACK is not about retribution or revenge, but rather: law and order, justice, equity, accountability and deterrence! FACK gives a collective voice to those who pay the price for employer negligence, to help equal the voice of employers and business in shaping policy on health and safety.

We are a group of families united by the bond of having lost loved ones like Andrew Herbertson who were killed **by** work. Not only workers, but also members of the public like little Samuel Adams, killed aged 6 on a day out with his family to the Trafford Centre when an incorrectly stored 18 stone railing hit him on the back of the head.

We cannot bring back the people we have lost but we can and we will use our own experiences in the fight to stop others losing their lives, or their loved ones, in work deaths which **could have** and **should have** been prevented. So, I will not rehearse health and safety statistics, but will take you behind those to the real people involved.

People like my wee brother Michael. This photo was taken on a holiday of a lifetime to Egypt where he proposed to his then girlfriend. On Thursday 4th August 2005 my mum and dad, his fiancée and myself kissed his forehead and said goodbye for the last time as he lay dead in a hospital bed. Just a couple of months ago, more than three years on, his employer company and 3 members of management finally faced trial in connection with his electrocution at work.

Many families of someone killed at work previously believed what they read and heard in the British press – that we live in a “crazy world” of health and safety laws, that an army of health and safety inspectors wield their powers so freely against employers that we live in a nanny health and safety state, and that most work deaths are the result of freak accidents! This is very far removed from reality.

FACK families can accept that true accidents do sometimes happen, but in most cases the catalogue of ignorance of health and safety laws, deliberate non-compliance, and complete lack of fear of the enforcement system and the enforcement authorities by employers, managers and directors is overwhelming.

So, what does FACK want from the enforcement authorities? We want there to be a credible threat that if you are responsible for health and safety and you do not comply, that you will get caught. We want those responsible for the decisions that lead to death to be held properly to account in law and, if guilty, to face significant penalties which are proportionate to the crime and the harm done. We want all of this so that other lives are not lost.

The Government talks of reducing the regulatory burden and removing red tape for low risk businesses. Exactly what is meant by this? A report by the Better Regulation Executive found that small firms spend under three and a half minutes a day on safety admin. Where is the burden? I spoke about Barry Martin's death in a short while. His company was very proud of its previous 50 year unblemished safety record. Is that a low risk business? Denis Le Bretton

was behind the wheels of a 50-ton truck when it plunged 20 feet into a quarry tip. The Recorder who fined two companies a total of £350,000 for the safety failings which resulted in his death commented on the excellent safety records of the two companies. Low risk businesses?

The fact that light touch regulation plus risk taking equals economic disaster has been very clearly recognised in recent months. We now need the Government and enforcement authorities to wake up to the fact that, in the health and safety arena, light touch regulation plus risk taking equals more lives lost and more families robbed of a future with their loved one.

Nine people were killed and 33 injured in what has become known as the Stockline blast. At the judicial inquiry, counsel for the Stockline Families Support Group has made it clear that the families feel individuals at the top of the tree in the company deliberately set out to deceive the HSE inspectors. I will simply pose the question – if we move to lighter touch regulation, how many more rogue employers will get *and take* the opportunity to deceive? How many more Stocklines will families have to endure?

Figures gained using a Freedom of Information request reveal that the number of HSE inspectors has been decimated since this catastrophic loss of life - a decrease of 16% in 4 years. So where is the credible threat of being caught?

I was terrified last week to read about a 12-day intensive joint inspection initiative by the HSE and Bradford Council during which they visited over 175 businesses, and it was necessary to issue 75 improvement notices and 16 prohibition notices! Things should never get so bad. Death and injury is waiting to happen:

- Trainee scaffolder Steven Burke died after falling more than 9m (30ft) while working at a water treatment plant. The 17-year-old had told his mum only two days before his death of his safety worries about the site.
- Craig Whelan, a 23 year old father of one was about to leave his job as he was unhappy with the way things were handled by his employer. He was killed in a fireball in a 200 ft chimney.
- Mark Wright predicted just weeks before his death that his employer was taking so many health & safety risks that someone would be killed one day. Tragically the death he predicted was his own. He had phoned his mum the night before his death to tell her he had a new job and was going to hand in his notice.

These accidents waiting to happen are **not** accidents!

Despite this, those with responsibility for investigating and prosecuting health and safety crimes – the police, HSE, Crown Prosecution Service and Procurator Fiscals Service – often treat the incident as a breach of regulations. Mark's parents were told by the Crown Prosecutor that "the employer may be ignorant and stupid, but he's not a criminal".

Mark was killed in April 2005. It is likely to be 2010 before a court of law finally pronounces judgment on his employers. It is the rule rather than the exception for a health and safety case to take this long to make its way through the enforcement system.

While families wait for the outcome of the investigation and prosecution processes, they are left to battle with the justice system for scraps of information. Brian French (a father of five) and Colin Ferguson were killed when their Land Rover was crushed by a 100 tonne truck at Pennyvenie opencast mine on 26 February 2007. Other than a standard letter received a month later, Brian and Colin's families received no information from the prosecuting authorities

in Scotland until more than 15 months after the deaths of their loved ones. This came only after they wrote to the Lord Advocate to tell her they had been very patient, and they thought some might say too patient because in the months they waited for news about a prosecution, Jim Griffin (a father of three) was crushed between 2 dumper trucks at Pennyenrie. His death is currently being reinvestigated by the HSE.

The length of time enforcement action takes means lessons cannot be learned and implemented before more lives are lost.

Two years after my wee brother's death I read about Barry Martin who was electrocuted during a Building Society fit-out in June 2003 when the power was inadvertently reconnected. His employer had failed to ensure power switches were padlocked closed so that they could not be switched on by mistake. The judge described it as a "matter of regret" that it had taken 4 years to get the case to court. I would put it more strongly than that because, in the intervening period, my wee brother died as a consequence of that exact same failure. In fact, we heard during the trial that 7 electricians died as a result of failure to implement these safe isolation procedures between 2004 and 2006. Why did so many men, including my wee brother, have to die before there was a push by the enforcement authorities to ensure that the safety procedures each electrician is taught during his or her apprenticeship were implemented by employers? This was a whole industry whose safety standards had become rotten to the core. Without the credible threat of enforcement, standards slip, people become complacent and lives are lost.

So, we turn to look at the penalties which result from those prosecutions which do take place. But here again we are sorely let down by the enforcement system.

Dr Graham Meldrum's family found out in open court the horrific manner in which his head was impaled by the faulty tail lift of a lorry. A Strathclyde Police surgeon, told the Fatal Accident Inquiry into his death that he "saw a male trapped in a hydraulic ramp of an articulated lorry. There was a metal spike into the right side of his skull and a metal plate slicing into the inside of his skull." Two companies were fined less than £34,000 in total in respect of Graham's death.

Lewis Murphy suffered 60% burns when he was engulfed in a massive fireball. His parents, Mick and Bet, found out in court that as their 18 year old son was taken to hospital, he had asked the paramedic if he was going to die. The garage owner was fined £10,000 with costs of £15,000. He had told the court that safety training was not offered because it was "common sense" and he expected his staff to learn by experience. The garage manager was sentenced to 9 months in prison. But just 3 months later his conviction was quashed when a statement he had made after the incident was ruled inadmissible.

17 year old Daniel Dennis had been in his job for just one week, had not been properly trained and had no safety equipment. He fell through a skylight to his death. It took a union-backed public campaign, an inquest verdict and a judicial review before Daniel's mum and dad saw the roofing firm's owner in court. Daniel's parents describe health and safety penalties as like "a thorn in the thumb".

Even in cases where fines are into 7 figures, there remains a sting in the tail. Corus were fined £1.3M for the deaths of 3 of its workers, including 20 year old Andrew Hutin, in a blast furnace explosion. But the legal costs awarded against them were more (at £1.7M). Andrew's father says: "Corus has received £75M from its insurers, which paid in full for a new blast furnace, opened with huge amount of national publicity by Prince Charles. Could someone therefore inform me, because I am obviously missing something here, who has been penalised?"

The fact is – as individuals we are held far more accountable for our actions than employers. A moment's inattention and a mistake on the motorway can lead to a death and a driver facing manslaughter charges and possible imprisonment. Yet, employers who have flouted health and safety laws for years, cutting corners to save money, will generally not face imprisonment and may in fact face no individual charges at all.

I did of course mention earlier that my brother's employer company and 3 members of management faced trial in connection with his death. The 3 members of management were able to walk free from the dock after 4 weeks of evidence because insufficient evidence was led about health and safety duties in respect of two and the other was held not to be a senior enough member of management for the purposes of s.37 of the Health and Safety at Work Act 1974. On their release, the advocate representing the company referred to his client as an **"invisible man"** now sitting in the dock. Prosecution of the invisible man does not and will never provide justice for the family left behind, nor will it act as a deterrent to others who may choose to play fast and loose with the health and safety of their employees.

This is starkly illustrated by the case of Chris Knoop who was killed when liquefied petroleum gas exploded at North West Aerosols Ltd. An investigation revealed widespread electrical faults, an unsafe system of work and inadequate training for employees. The directors put the company into liquidation after the tragedy, in which three others were also seriously hurt. The company's directors did not attend any of the court proceedings, and the firm was not represented in court. The judge presiding over the case described the tragedy as one of those "accident[s] waiting to happen" which are not accidents. Yet he was only able to impose the "absurd and unreasonable" fine of £1 for each of two safety offences and £1 towards costs! It would be laughable if it were not so tragic, so wrong, and so unlikely to send out the right message to other companies and directors.

FAK feels this was able to happen as there are no positive legal duties on directors to be responsible for the health and safety in their organisation: the legal duties to comply with health and safety at work are on the company. But the fact is, companies do not take the decisions which lead to deaths - directors and managers do. Most workers do not die in tragic unforeseeable "accidents". They are killed because a director or manager decided their health and safety just wasn't an important enough priority.

Since FAK's establishment in 2006, we have been campaigning for directors to be given positive legal duties to be responsible for the health and safety in their organisations and if guilty of breaching them, to face a prison sentence. In 2001 in the government's 'Revitalising Health & Safety Strategy' there was a government commitment to implement such laws, but since then we have had only voluntary codes of practice and guidance from the HSE. During the passage of the recently passed Corporate Manslaughter and Corporate Homicide Act, FAK were promised by a Minister at the Home Office that such duties would be implemented separately. Instead, last year another set of voluntary guidance was issued by the Institute of Directors and the HSC (as was). I am aware that at a very recent RoSPA conference, a speaker asked for a show of hands among the 150 or so attendees as to who had seen the guidance. About 15 hands went up.

The HSE recognises that at least 70% of major and fatal injuries are due to systematic management failures. FAK families want a legal duty on all directors to hammer home to them their responsibility for ensuring their organisation complies with all health and safety laws. The lack of positive legal duties was able to be used to the advantage of the 3 defendants charged in my brother's case, assisting them in walking away from their responsibilities. Instead, the invisible man was left to be fined £300,000 for the health and safety failings which resulted in my brother's death.

Somebody wiser than me once said: “the world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing.” So, we call upon those responsible for enforcement to stop looking on.

We call upon: the Government to forget the deregulatory pleading of business and instead implement laws to make directors criminally responsible for health and safety; and to massively increase funding for the enforcement of health and safety to ensure workplaces are adequately inspected so that negligent employers can be caught BEFORE they kill someone.

We call upon: enforcement agencies, the Health and Safety Executive and Local Authorities, to be proactive and use their full enforcement powers not just seek to advise and encourage.

We call upon: those in our justice system to give work-related deaths the priority they deserve, and to prosecute swiftly and with the full force of the laws available so that lessons are learned. We call on you to communicate with families and treat them with compassion as the victims of crime.

We call upon: employers to obey health and safety law and consult and involve trade union safety reps who make workplaces safer.

If anyone feels we are acting in an unreasonable manner by making these demands, then they should stop and consider for a moment how it would feel to walk even one mile in our shoes. Until it touches your life you would be forgiven for skipping over the story in the paper. Until it touches your life you can't fully understand the impact it has: visiting the cemetery once a month and more to lay flowers for the son and brother who should have outlived us all; trying not to linger in the card shop at Christmas on those which say: “to a loving brother”; and knowing I will never answer the phone again and hear the words “how you doin’ sis?”

We can't bring back the loved ones we have lost but we can, and we will, fight on to deliver justice and prevent others losing their lives, or their loved ones. FACK families are fighting for YOUR right NOT to walk in our shoes. Please help us in this fight by joining your voices with ours and together let's make this country a safer place to live and work.

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