

# fack families against corporate killers

On 4 August 2005 my brother, Michael – an electrician by trade – left for work first thing in the morning from the home he shared with his fiancée. He spent some time working in Edinburgh and then received a call to go to Dundee to help out with an “all hands on deck” job to get a sports shop ready for opening. At that job he suffered an electric shock. By the time we reached the hospital he was already dead. Later that same night I kissed my 26 year old brother’s forehead and said goodbye for the last time as he lay lifeless in a hospital bed.

Michael was working to connect the power to turnstiles which would allow entry to a gym within the JJB store. This involved connecting cables above a false ceiling. He cut through a wire which was marked “not in use”. But the cable had not in fact been isolated at the circuit board and power was flowing through it, delivering the fatal electric shock.

The Health and Safety Executive reported within a couple of months of Michael’s death, recommending prosecution of Michael’s employer Mitie Engineering Services (Edinburgh) Ltd, along with two directors and a senior manager. It then took a further 3 years to get the case to court.

The information flow from the Procurator Fiscal’s Office to ourselves was virtually non-existent during the first year. We were left to chase details throughout the majority of our dealings with the Office, adding to the stress we were under.

The first preliminary court hearing didn’t take place until 20 August 2007, more than two years after Michael was killed. We complained about an inability to hear what was going on during these preliminary hearings and were told that we should just sit as far forward as we could in the public gallery (which we were already doing) and should strain to hear. On another occasion we had travelled to Dundee to hear the pleas being entered by each of the accused before the trial started a fortnight later. What we had not been told was that a hearing had taken place the previous week at which certain of the accused had asked for the postponement of the trial, a request which had been granted. Nobody had thought to inform the family of this - we had to hear it in open court.

The trial did finally get underway in September 2008 and various charges under the Health and Safety at Work Act 1974 were laid against the company, two directors and a manager. These included that there had been failure:

- to provide and maintain a safe system of work;
- to provide such information and supervision for employees to ensure their health, safety and welfare;
- to provide a suitable and sufficient risk assessment for low voltage electrical work;
- to manage the distribution board and test the circuits and wires connected into it before they were made live; and
- to ensure safe isolation procedures and provide suitable equipment to prevent electrical injury.

At the beginning of the trial, my involvement with FACK was raised as a preliminary point by the representative of one of the individuals and we took the decision to remove Michael’s story from the FACK website. On another occasion one of them asked the Sheriff to make a direction that we, the family, should not smile at the jury! The Sheriff noted she was not prepared to make any such direction and indeed it was “not appropriate” to make any such direction. Let’s face it, there was nothing for us to smile about.

We had written to the Lord Advocate and Solicitor General in January 2008 to tell them that our faith in the ability of the Procurator Fiscals’ Service to deliver justice had hit an all-time

low. We were told we had been failed, but were given an assurance that we would not be failed again. But the case against the two directors and one senior manager did not even reach the jury and we were left feeling that we had been failed in the worst way possible by the prosecution service. As I understand it, insufficient evidence was led in respect of two and the wrong charges were laid against another. On their release, the advocate representing the company referred to his client as an "invisible man" now sitting in the dock. Please be clear - 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.

During the sentencing hearing, the argument presented on behalf of the company was that they had offered to plead guilty many months prior to the court hearing on condition that no charges were laid against the individuals. After a month-long trial and a verdict of guilty from the jury, they were now using this to try to get a reduction in the company's sentence. Thankfully, the Sheriff rejected this argument as "misguided". She pointed out that if the company had been serious about accepting its guilt, this could have been done after the three individuals were released from the dock but instead, three more days of court time and money were spent, and there was one more weekend of strain for the jury and, most importantly, us the family while they reached and delivered their verdict.

The company was fined £300,000. The three men who were released from the dock along with supervisors and managers who gave evidence – each will live with their own conscience every day, just as we live with our grief and our memories. We hope their first thought every morning is for the safety of those working for them. We want them to know that every time we see a Mitie silver-grey van, we think of the Private Ambulance of the same colour which brought the body of a loving son, brother and fiancée from a Dundee mortuary to an Edinburgh funeral director's. And we hope for the sake of all families like ours that never again will one of their employees leave home in a works' van and return in one belonging to an undertaker.

During the trial we heard evidence that, between 2004 and 2006, seven electricians died as a result of failure to ensure power switches were padlocked shut to prevent their inadvertent reconnection. The HSE inspector who investigated my brother's death was unable to obtain examples of the padlocks from major suppliers. He was told this was because there was "no demand" for them from the industry. This padlocking is a fundamental safety procedure each electrician is taught during his or her apprenticeship, yet it was a procedure not being implemented by employers.

A wise soul 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, to all who can make a difference to health and safety standards - be you a director, manager, supervisor or fellow employee and in whatever industry you operate - we urge you to take action before it's too late.

Because, no court case or penalty imposed by the courts will bring Michael back from his final journey to a far too early grave. And, be in no doubt that we are now on the longest of journeys - the rest of our lives without the loved one who should have outlived us all.



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