

Campaign Meeting 6: Work-Related Death What FACK does in supporting families after a work-death

Support, advice, explaining and advocating for them through the investigation, inquest and any prosecutions. Using our stories in campaigning and how supporting solicitors provide essential legal representation to ensure 'equality of arms' with the employers at Inquests. Issues arising from Grenfell.

Chair: Hilda Palmer, FACK, Speakers: Keith Cundall, Senior Associate Solicitor, Irwin Mitchell;

Hilda introduced the meeting by briefly giving the background to FACK and then handing over to Keith Cundall, an experienced solicitor at Irwin Mitchell who sponsors FACK and works with us on representing families at Inquests and during the procedures after someone is killed in an incident at work – we do not call it an 'accident' as most are killed by employer negligence and their death was foreseeable and could and should have been prevented, if the employer had complied with the law. People do not die at work in freak accidents or from rare diseases but because employers didn't care enough about their lives, and governments didn't make them.

Hilda talked about the launching of FACK in 2006, set up families of those killed by work who had been supported by Bereaved by Work in the North West which GMHC set up in 1990s and now wanted to set up a national campaigning organisation alongside the Centre for Corporate Accountability which closed in 2009 <http://www.corporateaccountability.org.uk/>

Keith Cundall, Senior Associate Solicitor, Irwin Mitchell

Keith talked through the legal processes after someone is killed at work, the difference between Inquests and Trials; how solicitors can help get to the truth; and increase likelihood of some justice for family through their representation by illustrating several cases in which he and FACK had been involved

Keith explained how an Inquest is different from a trial. Inquests are not adversarial, do not blame anyone, and no one is charged or can be punished at the end whatever the conclusion/verdict. The aim is to find out who died, where, when and how = 'by what means'. A solicitor or barrister can represent the family at the Inquest and ask questions of the witnesses. This enables families to get some answers to some of their questions, helps to prevent blame being heaped on the person who has been killed, and often provides vital information and evidence that can help in future HSE prosecution and also a civil compensation case. We always try to ensure representation for families as employers and companies involved will almost certainly have barristers representing them and this gives the family 'equality of arms'. But there is no legal aid for this and if there is no compensation claim then we have to try to get pro bono, free representation.

Inquests are not held in all cases of death but are held for sudden, violent, unnatural, work-related illness and incidents, and death in custody.

Keith mentioned that for work-related deaths there is usually a jury but that the Coroner can choose to sit without one and that he and I disagreed on this! He thinks Coroners are often better at judging complex facts than juries. I agree and have seen some bizarre jury verdicts/conclusions but also know that Coroners can be odd, ignorant of work, and class and other issues can mean Jury is vital to redress the balance. Juries can ask good questions and there are usually a few who understand even complex work issues well, and there may be union members or even safety or other reps. At an Inquest the standard of proof is 'on the balance of probabilities' except for unlawful killing or suicide which require the criminal standard of 'beyond reasonable doubt.'

Conclusions – used to be called verdicts – are accident, misadventure, open (discouraged), neglect, unlawful killing etc. Coroner is not a judge. Inquest is fact finding, questioning – inquisitorial – to find the 'cause' of death in broadest way, and it is not the coroner's role to allocate blame, guilt, fault on a criminal or civil basis. In fact Coroners have to warn witnesses if s/he feels they are incriminating themselves and may stop an Inquest if evidence is emerging that implies a criminal act has been committed, in which case the coroner refers the case back to the CPS/Police.

After a death at work there can be a civil compensation claim- but not in all cases especially young people with no dependents- an inquest and a prosecution by Crown Prosecution Service, CPS, - Corporate Manslaughter or Gross Negligence Manslaughter – or HSE Local Authority, for health and safety offences.

If there is a Corporate Manslaughter or Gross Negligence Manslaughter charge then this will happen first and there may not be an inquest as all the issues should be heard in Crown Court. If there is no Corporate Manslaughter or Gross Negligence Manslaughter charge then the Inquest may be held before or after the HSE Prosecution. Keith, and FACK, advise that it should be held before as information from the inquest can help in future trial.

Compensation claims can be by the estate of deceased and by dependents of deceased. Estate claims include award for pain, suffering, unless death is instantaneous, funeral expenses, loss of earnings to date of death and death duties in certain circumstances. Fatal accident claims are based on dependency and include a bereavement award, loss of deceased income/pension and cost of services the defendant would have provided.

While we say Inquest is in theory not about blame and fault, just fact- finding in reality it's a bit different!

The parties involved- employers, companies, individuals involved in a work death will all have legal representatives, usually barristers and often QCs, all there to determine by the questioning that they are not to blame and to foist the blame on others - to influence HSE/LA decision re prosecution- and especially the dead worker. Hence the need for legal representation of the family to ensure 'equality of arms'. The role of the solicitor is to

1. Ensure early disclosure of relevant documents at the Pre-Inquest Review Hearing and ensure that all the key people with information about 'how' the death occurred are considered as witnesses.
2. Support the family and protect the interests of the dead worker.
3. Gather evidence, both in documents and for cross examining witnesses to assist with a) proving the civil claim, negligence of legal duties and c) pushing HSE/LA/ CPS into prosecuting d) making a case for a conclusion of unlawful killing to be out to the jury if the evidence supports that.
4. Ensuring Coroner considers Regulation 28 duty – Preventing Future Deaths and raises issues with all the relevant individuals, organisations to take steps to do this.

Keith then talked about some notable cases he has been involved in with FACK.

Elmer and Bibby at Sonae chipboard factory in Merseyside. Thomas Elmer and James Bibby worked for Metso a contractor which was doing some repair work at Sonae in December 2010 when a conveyor belt which should have been switched off started up and they were crushed. Keith represented the families at Inquest and was able to ensure that so much evidence emerged, the HSE was able to take a very strong case against them to court:

<http://www.liverpoolecho.co.uk/news/liverpool-news/two-firms-ordered-pay-more-10550108>

Mike Porter was killed by cattle in May 2013 and it turned out that the same herd, in the same field had been involved in other serious incidents injuring people before, and that the HSE had warned the farmer, though not really been proactive enough. The Inquest resulted in an accidental death verdict <https://www.bbc.co.uk/news/uk-england-wiltshire-33273475> but Keith also pushed hard for good Regulation 28 actions for HSE. NFU and all other relevant organisations such as Ramblers to be involved in making strong guidelines about cattle in fields crossed by footpaths. And the prosecution which HSE had been reluctant to take until FACK/Keith were involved, resulted in a suspended sentence for the farmer

<https://www.theguardian.com/uk-news/2016/dec/05/farmer-cows-trampled-man-death-wiltshire-suspended-sentence>

Ben Singleton-Pallier - Young man killed in February 2015 when his forklift truck overturned on rough ground outside a warehouse at 4am. His whole family were very badly affected. Keith was able to get as much money as possible out of the company but this was still very small considering the massive impact, as Ben had no dependents. We managed to ensure there was an HSE Prosecution and the company pleaded guilty and were fined <http://press.hse.gov.uk/2017/company-fined-after-death-of-worker-using-fork-lift-truck/> As the coroner in the area had a very long backlog of cases, the family and HSE agreed to hold the trial first, before the inquest. After the trial the coroner decided there was no need for an inquest.

Didcot – the case of 4 men – Ken Cresswell, Chris Huxtable, John Shaw and Michael Collings -killed by the collapse of the power station while it was being prepared for demolition 23 February 2016. <https://www.bbc.co.uk/news/uk-england-oxfordshire-42891955> Keith is representing 3 of the families in civil compensation cases. Very complex case and horrible as it

took months to get 3 bodies out from under thousands of tonnes of rubble with the risk that the rest of the building might collapse too.. CPS/HSE investigation on going and we hope for Corporate Manslaughter or Gross Negligence Manslaughter charges soon...

Steve Murtgah – a very odd case where Hilda was contacted about 1 or 2 days before an Inquest by Mr Murtgah's daughter. Keith agreed to represent her pro bono at incredibly short notice, and managed to win an Open verdict and urge that lessons were learned after an odd and still unexplained death at work from cyanide poisoning in September 2009. The HSE declined to take any prosecution. Several years later his daughter contacted us again as she had been in such shock at the time, that she had not really taken it in. Keith met with her again and talked her through it which she says helped a great deal. We provided some measure of support and justice and she was not left entirely alone

<http://www.irwinmitchell.com/news/Pages/Lawyer-Urges-Safety-Improvements-Following-Cyanide-Death-Inquest.aspx>

Hilda explained a bit more about FACK's work.

Founder Members of FACK:

Dawn and Paul Adams – son **Samuel Adams** aged 6 killed at Trafford Centre, 10th October 1998;

Linzi Herbertson -husband **Andrew Herbertson** 29, killed at work in Oldham, January 1998

Mike and Lynne Hutin – son **Andrew Hutin** 20, killed at work at Corus, Port Talbot on 8th Nov 2001

Mick & Bet Murphy – son **Lewis Murphy** 18, killed at work in Brighton on 21st February 2004

Louise Taggart – brother **Michael Adamson** 26, killed at work in Aberdeen, on 4th August 2005

Linda Whelan – son **Craig Whelan** 23, (and **Paul Wakefield**) killed at work in Bolton on 23rd May 2002

Dorothy & Douglas Wright – son **Mark Wright** 37, killed at work in Deeside on 13th April 2005

Read their stories here: <http://www.hazardscampaign.org.uk/fack/about/>

Listen to the FACK ers tell their stories then think about supporting good health and safety regulation to save workers lives and health, not cutting and slashing laws and their enforcement. **'Face the FACKs: the Human Face of Corporate Killing' DVD**

Face the FACKS Part 1 :: https://www.youtube.com/watch?v=IX4L-zWV_sA

Face the FACKS Part 2: https://www.youtube.com/watch?v=e-i_6lVJ0ls

Face the FACKS Part 3: <https://www.youtube.com/watch?v=c4l0UnnLYBU>

Face the FACKS Part 4: <https://www.youtube.com/watch?v=K3om3Qwpj5l>

The founding FACK families had experienced the death of someone they loved at work due to the negligence of employers, and didn't know where to turn, were not offered automatic help by anyone, and often had very bad experiences with the HSE, Police and other authorities. Even if the worker killed was in a trade union, help was not always offered and if so was not always appropriate. Victim Support did not provide help then – as not deemed victims of crime - and there was, and still is- no legal aid for representation at inquests. Local solicitors with little experience of personal injury or work deaths that families went to for help were often inexperienced in terms of the whole investigation and inquest, trial process, and though competent in dealing with compensation claims, did not provide effective representation at Inquests. Families often did not know where to turn.

That's why we set up BBW and then FACK. To provide that support advice and representation during the investigation so we could make sure the correct processes were followed, and challenge and advocate for families when needed, and try to ensure free representation at Inquests.

We also wanted to provide opportunities for families to have their say, to tell their own stories of the impact the death of a son, husband, father or other relative had on them, what they felt about those responsible and how the criminal and civil justice system had treated them. We did this via our FACK DVD, through stories on website and press releases around the inquest, trial, death. <http://www.hazardscampaign.org.uk/fack/news/newsreleases.htm> and providing speaking opportunities at union and other meetings, at Hazards Conference and at the International Workers Memorial Day events that take place all around the country on 28 April each year <http://www.hazardscampaign.org.uk/blog/hazards-campaign-28-april-international-workers-memorial-day-briefing>

FACK's aims were to support families in getting as much justice as possible, to make their voices heard, and also to campaign for better health and safety laws, enforcement and higher penalties more appropriate to killing someone through negligence, for justice and deterrence because no-one should ever die just for going to work..

We lobbied hard for a better law of Corporate Manslaughter and Culpable Homicide in 2006/7 but the law we have is not what we campaigned for nor what we were promised. Gerry Sutcliffe Home Office minister responsible at a meeting of FACK ers that we would have positive legal duties for health and safety on directors - not just on the employing company - soon, just not in the actual CMCH Act- it never happened.

We make a difference, can often ensure a prosecution is taken by HSE/Local Authority and by getting good representation at Inquest ensure that family get some of their questions answered and issues raised that bolster any future HSE/ L.A. case. Steven Allen Case where HSE sat with Steven's mother and family and FACK and said they did not think his death was 'foreseeable' and so there would not be an prosecution. We were able to say that this was against their own Enforcement Code, the law and justice and to take it to the highest levels in HSE to ensure this decision was overturned. A successful prosecution resulted and the Judge was able to praise the dignity of Steven's mum and family, make clear that he was not responsible for his own death as the employer had argued, and sentenced them to a large fine. This gave the family a great deal of justice and helped them to . <http://www.hazardscampaign.org.uk/fack/news/stevenallenvictory.htm>
http://www.cravenherald.co.uk/news/9508993.Skipton_firm_fined_over_death_of_worker/

A few notable cases:

Omar Akhtar case – 1997 Omar was killed when a FLT drove out of a timber merchants, the wrong way down a one way street to unload a lorry, with the forks raised and these penetrated his car and fatally injured him. The HSE refused to investigate as the Inspector claimed it was just a road traffic incident not related to work! Bereaved by Work the forerunner of FACK, refused to accept this and working solicitor heln Dolan and the CCA, took the HSE to a Judicial Review of their decision IN court they were humiliated and the judges quashed the HSE decision and told them to investigate http://www.corporateaccountability.org.uk/press_releases/5Apr2000.htm. A prosecution resulted <http://news.bbc.co.uk/1/hi/england/manchester/2984596.stm>

Jenny Bacon Director of HSE apologised to the Akhtar family, Michael Meacher, Minister for the HSE at the time also apologised. We heard that all HSE Inspectors were briefed about this case and warned that if Hilda Palmer – or later FACK- phoned them to call a senior person! Not blowing our own trumpets but it helps if HSE and other authorities know that someone with knowledge and experience is prepared to support families and challenge them if they fail to do a good job. We used this case to argue for prosecutions in the Glasgow Bin Lorry deaths www.hazardscampaign.org.uk/fack/news/binlorrycrash.htm

Mark Wright

CPS apologised, the Director of Public Prosecutions, Kier Starmer, accepted that the CPS had failed to follow their own enforcement Code and the law and apologised for not bringing charge of Gross Negligence Manslaughter against the manager. There was a big meeting of CPS, HSE and Police with Dorothy and Douglas Wright in London, where they all apologised, promised to learn the lessons, and do better in future. <http://www.hazardscampaign.org.uk/fack/news/wrightvic.htm>

Sepsis case- John Atkin <https://www.mwsolicitors.co.uk/news/injury-health-news/406-coroner-s-verdict-in-case-of-john-atkin>

We ensured the HSE knew of this case and investigated as the RIDDOR Report had been misread and not taken as a work-related fatality. We are still pursuing HSE over a prosecution and also getting the message out about the risk of sepsis from dog or other bite and from any puncture wound, which is what John's mum and brothers wanted.

Cyran Stewart <http://www.hazardscampaign.org.uk/blog/fack-comment-on-the-accidental-death-conclusion-by-jury-at-the-inquest-into-the-death-of-cyran-justin-stewart> <http://www.hazards.org/age/> We are currently awaiting news as to whether Swansea Council will take a prosecution against the company for Cyran's death

Didcot- Collapse of Boiler House while it was being prepared for Demolition, killing 4 workers 23rd February 2017 - Ken Cresswell, Chris Huxtable, John Shaw and Michael Collings.

FACK is supporting three families through the recovery of the bodies and the investigation process and we are awaiting criminal charges soon. <https://www.mirror.co.uk/news/uk-news/didcot-power-station-collapse-killed-11947247>

Mark Seward killed by a 'missile' not in war but at work: <http://www.hazards.org/gallery/goodgrief.htm>, <https://www.gmblondon.org.uk/news/widow-of-worker-killed-at-work-in-2015.html> Tracey Seward Mark's wife spoke at hazards 2017

Cameron Minshull killed at 16 in death trap factory employers charged and found guilty of Corporate Manslaughter and H&S offences <http://www.hazardscampaign.org.uk/fack/news/cameronm.htm>, Cameron Minshull:

<https://www.facebook.com/bbcnorthwesttonight/videos/1002228529808209/?fref=nf>

<http://www.hazards.org/deadlybusiness/cameronminshull.htm>

A film showing a little of the work of Families Against Corporate Killers, FACK, work with Cameron;s family: BellyflopTV:

<https://www.youtube.com/watch?v=EzRGtdFX2oA&feature=youtu.be>

If you think we do a good job please get your branch to make a donation.

You all heard Louise Taggart speak in the Friday Plenary about her brother's death

https://www.youtube.com/watch?v=mMa6_RrrUxM&feature=youtu.be and also about the real number of people killed each year The Whole Story- <http://www.hazardscampaign.org.uk/wp-content/uploads/2018/08/AugThe-Whole-Story-2018.pdf>

Each year on International Workers Memorial Day FACK issues a Statement and Louise Taggart writes so eloquently in the #IWMD18 FACK Statement <http://www.hazardscampaign.org.uk/blog/uk-fack-statement-international-workers-memorial-day-28-april-2018-iwmd18>

Michael's story: <https://www.shponline.co.uk/michaels-story-lessons-from-an-entirely-preventable-death/>

Last year at #Haz2017 just a few weeks after Grenfell, we relaunched our 'We love red tape because it's better than bloody bandages' ecard, making clear the link between deregulation of health and safety and the cause of the fire and pledging ourselves to fight to make Grenfell the 'Enough is Enough moment' when deregulation is stopped. We tried to influence the Terms of Reference of the Public Inquiry, we asked for Core Participant Status but were denied, like many more groups. We fight on for an end to deregulation and to support Grenfell community in fight for truth and justice:

<http://www.gmhzards.org.uk/wordpress/wp-content/uploads/2018/06/Enough-is-Enough-pdf.pdf>

Read more about FACK here: <http://www.hazards.org/deadlybusiness/firmfavourites.htm>

<http://www.hazards.org/deadlybusiness/fackatwork.html>

<http://www.hazards.org/deadlybusiness/fightingfamilies.html>

FACK: "We sit with families in their darkest hour and help them speak truth to power"

Help us to help more families of those killed at work

FACK is supported by Greater Manchester Hazards Centre, Trade Union donations, and sponsorship from Irwin Mitchell solicitors **and others. But we exist on a shoestring and so** if you think we do a good job then please support us and help us to reach and help more families with a donation from your branch.

Please make cheques payable to GM Hazards Centre Ltd with FACK written on the back, or pay by BACS with 'FACK' in the reference line.

Name of Bank: Unity Trust Bank (Nine Brindleyplace, Birmingham B1 2HB)

Sort code: 60 83 01 Name of account: Greater Manchester Hazards Centre Ltd Acc No 20090443 Put FACK in the reference line



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