

TURNSTONE LAW TEAM BARRISTER, BEN RICH, REPORTS ON THE FIRST ANNUAL CONFERENCE OF THE HEALTH AND SAFETY LAWYERS' ASSOCIATION

The Health and Safety Lawyers' Association held its first annual conference on 30 November 2013. Nearly 50 lawyers who practise in the field attended a day of talks and debate in central London. The Conference was opened by HSLA Chairman, Steffan Groch, who pointed out to delegates that safety issues had been thrown into sharp relief that morning by reports of the crash of a police helicopter into a pub in Glasgow.

New arrangements for coroners

The conference was addressed first by **Michael Burgess OBE**, former Coroner of The Queen's Household. He took the conference through the important parts of the new Coroners' system, following the coming into force on July 25th of the Coroners and Justice Act 2009. He suggested that it was too soon to see the full effects of the requirement that Coroners must complete inquests within six months. In any case, he said, unless the coroner had obviously been "twiddling his thumbs" the newly created Chief Coroner could do little other than accept any explanation for delay. It was not clear how these provisions could be enforced as no sanctions were written into the Act.

Buncefield - bias and the blame game

The Conference then heard from **Professor Richard Booth**, Emeritus Professor at Aston University. Professor Booth gave what he called an "iconoclastic and partisan" analysis of the 2005 Buncefield explosion. He advised Total UK who were 60% owners of the facility.

At the core of his presentation was a trenchant criticism of the role of the Health and Safety Executive in scapegoating Total and "airbrushing" out of the reports their own role in the incident. In particular he noted that it was the HSE who had said it was not necessary to include the possibility of an overflow in the MAH risk assessment. He applied conceptual research into the problems of bias, preconception and hindsight to illustrate what he said had gone wrong with the investigation into Buncefield.

The accident arose as a result of the failure of two automatic systems which should have stopped the tank overflowing. Professor Booth pointed out that it had to be accepted that if automatic systems are provided, manual checks will generally not be made. Blaming the operatives afterwards and criticising their behaviour as irrational was to miss this point.

On a lighter note, he said the explosion hadn't been all bad, and showed his audience the image of a crushed Porsche Carrera "biting the dust" as a result of the accident.

Cause and effect - concept and common sense

He was followed by **Paul Difford**, Principal Investigator and Senior Consultant with Neucom Limited. His thesis was that the model of causation adopted by both the HSE and health and safety professionals generally is incoherent.

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The so-called Swiss Cheese model includes the idea that the causes of an incident are multiple and can be traced back into the company generally, and indeed all the way back to the dawn of time. This entirely neglected the idea of personal agency and he quoted Lowe: "We seem to lose all sense of the agent's being genuinely responsible for ... his or her own actions". He urged health and safety lawyers to consider using the concept of the "deliberate act", the voluntary act of one agent which might have been impossible without all the pre-existing conditions but should not be regarded as having been determined by them.

Afternoon session

After lunch there were further sessions from **Laura Gillespie** and **Barry Smith** who gave delegates an insight into health and safety law in Northern Ireland and Scotland, and the differences with England and Wales. Finally **Gerard Forlin QC** spoke to delegates on international trends in the sector. He urged health and safety lawyers to develop an international perspective. Without it, he said, there was a danger that lawyers would "win the battle but lose the war". The advice we give clients on the law in this country, he said, could rebound when the results of that advice were tested against very different rules abroad.

This report by Turnstone Law Team Barrister, Ben Rich, was also published as a 2 Hare Court Regulatory Crime Update