

Still getting away with manslaughter

FOURTEEN years after John Prescott, then Opposition transport spokesman, called for an overhaul of corporate manslaughter legislation in the wake of the failed prosecution of P&O Ferries for the Zeebrugge disaster, the Labour Government has made yet another pronouncement on its "promise" to make companies more accountable for deaths of people in their charge.

On September 13, the Prime Minister again affirmed the Government's "commitment" to reform the law on corporate manslaughter to make it easier for companies to be prosecuted for fatal accidents. However, he again failed to put forward a firm timetable for any such Bill to be published and did not give away any of the details that such a Bill might contain.

Tony Blair did let slip that the key test for any case being brought would rest on whether a company showed a "wilful disregard" for their employees' safety, rather than "gross negligence", the benchmark presently considered to bring about any successful prosecution. In law, such sophistry could make the difference between a company and its directors going to jail or walking away scot-free. As a lawyer, Blair must be well aware of this.

Was Blair's speech simply a sloppy use of words or a change of tack? David Bergman, founder of the Centre of Corporate Accountability (CCA), which campaigns for better health and safety enforcement, is unsure. "Clearly, a move on corporate manslaughter

Neil Hodge says that the Government is still dragging its feet on introducing corporate killing legislation

reform is positive. But Blair's wording is interesting. He talks about a new offence concerning 'wilful disregard'. This may just be a sloppy use of words, but this would amount to a much higher threshold than the gross negligence that has been understood to be the test that would be in any new offence. This suggests that any legislation may make it even harder to prosecute companies."

Two days after Blair's speech, the CCA launched its own report, *Making Companies Safe: What Works?*, to coincide with the TUC's debate on health and safety. The CCA carried out its review as a result of two recent decisions by Britain's safety regulator, the Health and Safety Commission and Executive (HSC/E), regarding corporate responsibility for workplace safety.

In October 2003, the HSC's recommended to the Government that legal duties should not be imposed on company directors, even though the HSC had previously committed itself to advising ministers "on how the law would need to

be changed to make these responsibilities statutory". Instead, the HSC concluded that it should continue with its "existing voluntary approach to promote and encourage greater corporate responsibility and accountability through engagement and publicity and guidance".

Further, the HSC/E's February 2004 strategy document, *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond*, favours a move away from traditional modes of obtaining compliance. Instead of compelling organisations to comply through the use of inspection, investigation and enforcement, the safety regulator proposes using alternative forms of interventions, involving the creation of "strategic relationships between organisations and groups", "engaging with the most senior managers to enlist their commitment", and "encouraging those at the top of the supply chain to use their influence". The new strategy document states that "acceptable health and safety standards can be achieved in many ways and much of this strategy focuses on new ways of securing compliance voluntarily".

No one should be surprised to learn that the report's key findings were that the most important driver of management action to improve occupational health and safety performance is legal regulation. Nor should anyone be surprised that the report finds growing evidence that wholly-voluntary approaches – in the form of voluntary codes of conduct or corporate social responsibility initiatives – are largely ineffective in bringing about improved standards of health, safety or environmental performance.

Yet, the Government might be taken aback by these obvious conclusions. There have been more than 2,000 workplace deaths since 1997 – the year that Labour came to power – as well as around 200,000 reported major injuries. HSE-commissioned research and investigations have consistently shown that the majority of work-related deaths and injuries in Britain – around 70 per cent – could have been prevented and were the consequence of management failure. In addition, an estimated 1,126,000 people in this country suffer from a musculoskeletal disorder caused or made worse by their work. Overall, some 2.3 million people are suffering from work-related ill-health. Last year, nearly 30,000 people suffered major injuries at work.

In May, this year the CCA revealed that since,





David Mills

Is Brown the new Callaghan?

September 2003, 9 apprentice workers – all under the age of 23 – have been killed on work placements as part of Government-funded courses.

One of the deaths has resulted in a director and company being prosecuted for manslaughter. Another death has resulted in companies pleading guilty to health and safety offences, while five of the deaths continue to be under investigation. At the time of the fatalities, all the apprentices were on vocational courses funded by the Government's learning skills council – which funds all post-16 training and education for young people. They died while undertaking the work-placement part of their course/apprenticeship.

The details of those killed are as follows: 17-year-old Steven Burke died on January 30, 2004 after falling from a height while constructing a scaffold in Manchester; 23-year-old Richard Hargrave was electrocuted at work on May 27, 2003 while working on the mains supply at a council flat in Horwich, Bolton; 20-year-old John Wing was crushed to death on July 17, 2003 while working on a "cherry picker"; 19-year-old Mark Rushby died on January 13, 2003 while installing pipework on top of a spray booth; 19-year-old Rebecca Davies was dragged to her death on September

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24, 2002 while exercising horses for a leading county racing trainer; 18-year-old Meyrick Grant received serious injuries after being crushed by a digger on a building site in North Staffordshire in August 2003 and died 2 weeks later; 21-year-old Benjamin Pinkham died 5 days after receiving serious burn injuries on February 3, 2003 when an explosion took place in a storage tank in which he was working; 22-year-old James West was crushed to death on September 10, 2002 by falling steel while working on the Cleveland industrial estate in Darlington.

Also, another person suffered fatal burns in February 2004 after an explosion a garage forecourt. No other details are available.

The HSE reports that, in 2002/3, a total of 21 workers between the ages of 16 to 24 died while at work. This is a 20 per cent increase from the previous year when 16 workers lost their lives. These findings come at a time when the HSE has been forced – due to a reduction in Government spending on health and safety – to make a number of cuts to its activities.

The most recent 2002 Government funding settlement, which gave the HSE a £10 million administrative budget over a 3-year period, will result in the regulator spending less in 2005/6 than in 2003/4. A simple inflation-linked increase would have resulted in the HSE having £11 million more to spend in 2005/6 than it will now do.

SO, THE race to succeed Tony Blair is on. Assuming that the early announcement that he wants to serve for most of a third term is designed to frustrate Gordon Brown's chances of replacing him – a reasonable enough hypothesis, given the gleeful briefings from the Prime Minister's side about how the announcement was made – what obstacles now lie in Brown's path?

The first is a move from the Treasury after the next general election, given that Labour wins, probably to the Foreign Office. In normal times, Blair's praise of Brown as the most successful Chancellor the Labour Party has ever known would rule this out. However, this is a Prime Minister who revels in breaking with tradition – even with accepted norms of civilised behaviour – so it remains a possibility.

In this scenario, Brown becomes a marginalised Foreign Secretary, watching as some other big beast usurps his position as the dominant domestic figure in the Cabinet. Or he refuses to serve and goes to the backbenches in a huff, destroying his power base in the process.

I wonder whether the Prime Minister would swap a Chancellor who frustrates his domestic agenda for a brooding, vengeful Foreign Secretary who would be well placed to reclaim some of the Foreign Office's traditional powers in the field of international affairs.

As a former Chancellor who invented the five euro tests, Brown would still have a big role to play in European matters. Moreover, his links with the United States and his interest in international development would ensure that he was at least as awkward a partner as Robin Cook was for Blair in the first term – and Brown has a much larger personal political following in the party than Cook.

The second possibility – not mutually exclusive of the first – is that Brown somehow becomes yesterday's man over the next four years, slowly eclipsed in the hearts of the faithful, and of those MPs who are keeping a weather eye on who to back in the approaching contest, by some other figure.

This must be considered unlikely. By announcing last week that he was not going to serve a fourth term, the Prime Minister has already fired the starting pistol, even if the final length of the race has to be confirmed. This is a race which Brown has been running since 1994 at least – and as

the major domestic politician in the Cabinet, and one with a strong record of achievement behind him, he looks to have opened up an impregnable lead over the chasing pack.

The fact that there is a chasing pack is the final reason why Brown's succession still looks like the most likely result. Out of the rest of the present Cabinet, only Peter Hain has a political persona which is anything other than down-the-line Blairite.

The other big players – John Reid, Alan Milburn, Charles Clarke – would merely take votes from one another, just as Roy Jenkins, Denis Healey and Anthony Crosland split the Centre-Right vote in the 1976 contest to succeed Harold Wilson, allowing James Callaghan to come through the middle. The likelihood of one credible "stop-Gordon" candidate appearing looks remote right now, for natural reasons of political ego as much as anything else.

FURTHER, if I were a Blairite Cabinet minister with an eye on the succession (which, thank the Lord, I'm not), I would be looking for ways of differentiating myself from the Prime Minister, not turning myself into his placeman. Whoever Labour's selectorate votes for at some point in the next Parliament, I'll wager that it won't be another version of Tony Blair.

The parallels between Brown and Callaghan are striking. Both were defeated by their rival years before (the fact that Callaghan fought Wilson in 1963 and Brown didn't formally fight Blair in 1994 is a mere detail). Both had established themselves as the man most likely to succeed over a period of years.

And while Wilson favoured Callaghan, tipping him off about the date of the contest and allowing him to prepare, Blair has forfeited the chance to help his own favoured candidate by showing his hand so early.

Conversely, the parallels between Wilson and Blair, so often drawn by fans and opponents of the Prime Minister at one time or another, have surely been weakened by Blair's latest stratagem. Wilson ensured that the contest to succeed him would create as few ripples as possible.

The fact Jim Callaghan's Government lasted so long in such choppy waters must owe something to the smooth succession which helped to generate unity within the Labour Party. The same cannot be said of the way Tony Blair announced his intention to step down.