

WEIGHING UP THE LAW

Sailesh Mehta talks to Karen Galloway, a solicitor for North Yorkshire County Council, about some of the issues faced when bringing a fire prosecution

THERE IS often misunderstanding in who has the duties for fire safety and how these duties apply, as well as gaps in what is required, thus leaving buildings non-compliant and unsafe and people open to prosecution.

SM: The first case I'd like to discuss involves a nail parlour in York, where there were two responsible persons identified.

KG: The nail parlour was in a four-storey building on Stonegate in the heart of historic York. The ground floor held the nail parlour, above a basement full of flammable materials, and our Fire Investigation Officers also found people sleeping on the upper floors.

SM: One of the difficulties in relation to at least one of the responsible persons, the manager, was what relationship she had with the ownership and control of the premises?

KG: After some detective work we realised that the building wasn't owned by those operating the business, so the fire officer and I went out to speak to the landlady and inspect a number of documents. We were therefore able to establish the element of control that we needed for the manager to be culpable, as well as the person leasing the premises. As a result, the two defendants pleaded guilty to five offences between them.

Our investigations also discovered that the people sleeping at the site were illegal workers, who had been taken on by the two defendants. This led to the involvement of UK Border Force, who also carried out an inspection.

SM: How did that work? Were they willing to share information with you and vice versa?

KG: Absolutely. The fire authority will always work with other statutory and public agencies, and here, UK Border Force were coming at it from an immigration perspective. But with illegal workers in unsafe buildings at risk of significant harm, or even death, that's when the fire service comes in.

This particular case also involved Thames Valley Police, who also wanted details of our investigation passed to them as intelligence to assist with a number of their enquiries. It was very much a massive operation, with shared information across a number of agencies.

SM: The next case to look at concerns the prosecution of a night club owner, which also had difficulties surrounding ownership but in a different way. What were the problems you found there?

KG: This one really was complicated, because when we started to uncover who the operating company and who the



Sailesh Mehta is a barrister at Red Lion Chambers. He heads the Fire Law Team, where he prosecutes and defends in serious fire cases. He represents fire brigades as well as companies and their directors. Sailesh lectures on aspects of regulatory law.

He can be contacted on: sailesh.mehta@18rlc.co.uk

operating person was behind the nightclub, we discovered that the defendant had, I think, 26 different companies – some of which had folded, whilst some had been given different names.

The offences were quite serious (no working fire alarm, no detection system, no emergency lighting), so we had to get to the bottom of who was responsible. This involved extensive searches at Companies House to allow us to bring charges against both him in his personal capacity as a director using Article 32(8), and also against the company.

SM: With this morass of companies, where one would be shut down only for another one to spring up from the ashes doing exactly the same job, it meant one continuing offence might involve two or three companies. A real difficulty was whether the defence would argue that the corporate veil cannot be lifted, and that only the companies could be prosecuted.

KG: There are not many cases where the actual director is sued in his personal capacity, because companies exist to take away the culpability. But the prosecution was a success, with the defendant ordered to pay £175,000.

SM: A further nightclub case that you were involved in saw another problem surrounding who was culpable for fire safety risks.

KG: Yes, the Kuda nightclub was licensed for 645 people, but when our officers physically counted the numbers using the CCTV, they found about 1,300 people were in the nightclub on one evening in November 2017. Charges were brought against the owners, the manager, and against the security company.

SM: Is it unusual to prosecute the security company who ordinarily would have no duties when it came to fire safety?

KG: Yes, it is. Their defence was that they were just being told to keep letting people in, and it ended up with the defendants all trying to blame each other. There was pressure on the manager from the company to get as many paying customers as possible, and pressure on the security company, who felt that if they had complained, their services might be

Karen Galloway is a solicitor for North Yorkshire County Council, who, from 2008, has advised North Yorkshire Police Fire and Crime Commissioner Fire and Rescue Authority on enforcement matters, undertaking prosecutions on their behalf. By working with Fire Officers and with advice from Sailesh Mehta, they have achieved excellent results.



dispensed with. We took the view that the liability was there, and we should let the courts decide who was liable. It was accepted by the security company representatives that they did owe a duty, that the bare minimum level of safety was adhered to under the Fire Safety Order (FSO).

All three defendants were found guilty, with mitigation argued by the security company's law team to reduce their sentence.

SM: The last case to discuss involves a fatality and was unusual in terms of the facts as well as the law.

KG: This case was known as Potter's Lodge, where an employee of the responsible person lived in a converted stable of the main house. It had a bedroom, kitchen, and toilet on the first floor, but a doorway, which would have been a fire escape, had been bricked up. The man therefore couldn't escape from the only door that was otherwise available when a fire broke out and he sadly died.

SM: One of the first questions that needed to be answered was whether this was actually a breach of the FSO. The argument could be made that if you have someone living in your attic in your own home, you wouldn't be in breach of the order as it doesn't apply to your home accommodation. We therefore had to grapple with the law relating to that.

KG: Yes, we had the main house, then the outbuilding conversion, and then the curtilage of the property, so we prepared a solid legal argument through various case law to show the FSO had been breached. We argued that this was a house in multiple-occupation. We would have had to test this had the case gone any further, but because of the evidence, the defendants pleaded guilty and this aspect wasn't fully tested.

SM: One of the things regarding this was that you had to make sure that the fire services' senior personnel

were aware of the potential for a trial, that the public interest test had been satisfied, and also the potential for losing?

KG: This decision went all the way to the top, as obviously, we had to consider the cost to public money. But with the legal advice that we were able to give, they were very supportive, and I was given the go ahead to proceed. I think the fire authority felt it very important that the case should be tested because a man had died, and the right result needed to be obtained.

SM: How does this case show the impact that many different third parties holding vital evidence can have?

KG: The case involved contact with the planning authority, as we were being presented plans of the property to try and establish whether the FSA should apply or not. Fire Officers have to have knowledge of how to go out and obtain the evidence and make sure that it's admissible. The first few days after an incident are absolutely vital in terms of collecting evidence, speaking to people, and getting witness statements.

This means starting from scratch and outlining the basis of the case, and then adding the detail. They also need to involve anyone else required to make sure that we get the right outcome.

SM: If we look at the early years of prosecution, from 2012 onwards, is it your experience that fire officers who attend possible scenes of crimes and venues for prosecution were well trained enough to gather and note the evidence?

KG: I think our officers have grown in confidence and knowledge in that particular area. When we first started out, there were probably some issues and maybe one or two missed opportunities. But I think that the officers received very good training and that they are now much more aware of who they need to speak to, what questions they need to be asking, and how they need to be recording and documenting the evidence that they then take forward.

It should also be noted that not all cases lead to prosecution. It can depend on many things, including the Code for Crown Prosecutors, public interest, and the fire authority itself, who are very aware of the local demographics and the effect that a prosecution may have on businesses. ◀

