

## Leading Health & Safety Barrister

<https://test.richardmatthewsqc.com/leadinghealthandsafetybarrister/>

Richard Matthews QC has been instructed, both for the prosecution and the defence, in a great number of health and safety cases. He has particular experience in cases involving the gas and oil industries, nuclear industry, asbestos exposure, traffic management, NHS Trust and uniformed services, construction industry fatalities, Control of Major Accident Hazards and the Construction (Design and Management) Regulations.

Richard is highly rated by the independent guides to the Bar: he is listed as the “star rated” QC in Health and Safety by Chambers & Partners and in the highest tier of leading QC’s in Health and Safety by the Legal 500

“He is incredibly bright, unbeatable on the law, and an effortless courtroom advocate; equally effective with judges and juries. He is also is a real team player with a relentless work ethic, and always has an eye on the the big picture strategy. When the stakes are at their highest, he is the man you want on your side.” (Legal 500, 2021 edition)

“A genuine expert in the health and safety world. Clients love him and he deploys a range of skills in court to get his points across.” (Chambers & Partners, 2021 Edition)

Richard Matthews QC appeared in the leading House of Lords decision on health and safety, [R v Chagot \[2008\] UKHL 73](#), and was leading counsel in two joined appeals in the Court of Appeal that followed the Supreme Court decision in Baker v Quantum Clothing Group Limited & Others [2011] UKSC 17 [2011] 1 WLR 1003. The resulting judgment, [R. v. Tangerine & Veolia \[2011\] EWCA Crim 2015, \(2012\) 176 J.P. 349](#), provided a definitive authority on the approach to offences of breach of ss 2(1) & 3(1) of the Health and Safety at Work etc. Act 1974.

Richard has appeared in many of the leading Court of Appeal authorities concerned both with liability of employers and company directors. ([R. v. HTM \[2007\] 2 All ER 665](#); [R. v. P \[2008\] ICR 96](#)) and with sentence ( [R. v. Pointon \(John\) and Sons Ltd \[2008\] EWCA Crim 513, \[2008\] 2 CrAppRep\(S\) 472](#), [R v. Transco Plc \[2006\] 2 Cr.App.R.\(S.\) 740](#), [R. v. Colthrop Board Mills \[2002\] 2Cr.App.R.\(S.\) 79](#)), including the leading authorities on the sentencing of major corporations decided by the Lord Chief Justice, [R. v. Sellafield \[2014\] EWCA Crim 49; \[2014\] Env. L.R. 19; \[2014\] L.L.R. 572](#). and group/subsidiary companies, [R. v. BUPA Care Homes \(BNH\) Ltd \[2019\] EWCA Crim 219 \[2020 1 Cr.App.R. \(S.\)](#)

Richard Matthews QC is co-author of the leading textbook on Health and Safety Enforcement ([Health and Safety: Law and Practice; Oxford University Press, 4th edition, January 2016](#)). He gave expert assistance to the Sentencing Council during the drafting of the [Definitive Sentencing Guideline for Health and Safety offences](#). In October 2020, he was again given the Chambers Bar Award of Health and Safety Silk of the Year.

He has advised extensively on criminal liability arising under sections 2/3 [Health and Safety at Work etc. Act 1974](#). Richard has advised solicitors acting for directors investigated and charged in respect of personal responsibility for company health and safety failures (s.37) and senior managers investigated and charged with personal breaches of health and safety duties (s.7). He has conducted numerous trials concerning the same. He advises a number of major UK and international corporations on health and safety regulatory compliance. He has advised on and conducted numerous appeals against HSE and local authority prohibition/improvement notices and in relation to licensed activities subject to appeal to the Secretary of State. He acted for [Agchemaccess Ltd](#) in the successful judicial review challenge to enforcement notices served by the HSE under the plant protection product safety legislation.

Richard has regularly advised and represented many of the worlds leading corporations in relation to health and safety:

“An impressive silk who has a wealth of experience in cases spanning the full breadth of regulatory and criminal health and safety issues. He has represented international corporations and individuals, as well as FTSE companies such as Siemens and Walkers, in investigations and prosecutions brought by the HSE”Chambers & Partners [2021]

Previously, over more than 10 years, Richard was Standing Counsel to the HSE and the Office of Rail Regulation (now Office of Rail and Road). During that time, he advised the HSE and Environment Agency in respect of the investigation into the [Buncefield Oil Depot explosion](#) and fire of December 2005 and prosecuted the case at trial. He led the [prosecution of Marks & Spencer Plc](#) in a lengthy trial arising from risks of asbestos exposure to workers and the public in the company’s Reading store during refurbishment work.

## **Fire Safety Order**

Richard has advised and acted for Fire & Rescue Authorities , public authorities, corporations and individuals in respect of the [Regulatory Reform \(Fire Safety\) Order 2005](#)

He has advised on the issuance and appeal against enforcement notices; advised responsible persons in relation to compliance; conducted the prosecution of a landlord/ responsible person of a HMO (House in Multiple Occupation) who was imprisoned for breaches of the Order following a fire in which a tenant received horrific injuries; advised and represented a number of large UK retail and hotel chains in regard to alleged breaches of the Fire Safety Order; and represented the store manager of a major UK supermarket chain charged with personal responsibility for breaches of the Fire Safety Order. Richard was also instructed to advise and represent the London Borough of Southwark following the fatal fire at the Lakanal flats.

## **Publications**

[Health and Safety Enforcement: Law and Practice \(Oxford University Press\)](#)

**Published: 2016**

Richard Matthews QC, together with James Ageros QC, is the author off the standard practitioner's textbook on health and safety enforcement, which is published by Oxford University Press and is currently in its 4th edition (January 2016)

## [Health and Safety Offences Definitive Guideline](#)

**Published: 2014**

Richard Matthews QC acted as expert advisor to the Sentencing Council during the drafting and consultation on the definitive Guideline for sentencing in respect of Health and Safety offences. He presented to the Council on [31 January 2014](#)

## [Consolidation: the practicality and effects of the options for consolidating health and safety Regulations](#)

**Published: 2012**

Professor Löfstedt's report [Reclaiming health and safety for all: An independent review of health and safety regulation](#), identified, four broad options that could be considered for consolidating regulations that apply to business.

In January 2012, HSE commissioned research to help decide if the core set of health and safety regulations could be consolidated in any way to provide clarity and savings for businesses.

The research report written by Richard Matthews QC – [“Consolidation: the practicality and effects of the options for consolidating health and safety Regulations”](#) was published in December 2012.

## **Reported Cases**

## **R. v. BUPA Care Homes (BNH) Ltd**

[\[2019\] EWCA Crim 1691; \[2020\] 1 Cr. App. R. \(S.\)](#)

**Before: Lord Justice Davis Mr Justice William Davis and Mr Justice Julian Knowles**

**2019**

Richard Matthews QC led for the appellant in this successful appeal against a sentence imposed upon a subsidiary company where the sentencing Court had increased the fine to reflect that the defendant company was part of a much larger group with a turnover of billions of Pounds. The case involved asbestos risk, issues around causation of death and the sentencing of a subsidiary that is part of a group, where the parent company is a Very Large Organisation.

The Court of Appeal gave further guidance regarding the operation of the Sentencing Council's Health and Safety Offences Definitive Guideline and, in particular, the circumstances in which a parent company's turnover might be taken into account in Step 3 of the guideline. The appellant company, BC, appealed against a fine of £3 million imposed on them for an offence contrary to s.3(1) of the Health and Safety at Work, etc Act 1974 to which BC had pleaded guilty.

In allowing the appeal the Court of Appeal held that at Step 2 under the guideline, a sentencing judge was not only concerned with turnover and the aggravating and mitigating features set out in the table in the guideline. Although Step 1 required an assessment of culpability in the range very high to low according to the factors listed, that did not mean that, in selecting a starting point within the appropriate range at Step 2, the judge must leave out of account, or not make, a quantitative assessment of the extent of the harm and culpability involved in the offending. An offender whose culpability was high because of the presence of a number of listed factors ought in principle to be punished more severely than an offender whose culpability is high because of the presence of just one factor. The presence of multiple culpability factors could properly be regarded as matter capable of increasing the starting point within the indicated range of fine as set out in the relevant table for the size of the organisation involved. In the present case, those matters justified a substantial increase above the starting point of £1.1 million in the relevant bracket and, given that BC's turnover was significantly in excess of the starting point of £50 million, the judge's starting point at Step 2 of £2,250,000 could not be faulted in light of her conclusion that a significant number of people were put at risk ([64]–[70]).

The Court held that the judge had gone wrong at Step 3 when she increased the fine from £2,250,000 to £4,500,000 on the basis of the parent company's turnover. This course did not properly reflect the economic realities of the situation. The mere fact that one company might be the wholly owned subsidiary of a larger parent did not mean that the resources of the parent could be treated as available to, or as part of, the turnover of the subsidiary company. The guideline phrase "economic realities" could not be extended to mean that the parent's resources belong to the subsidiary simply in order to justify a large increase in fine at Step 3, any more than they could be taken into account to increase the size of the subsidiary's turnover for the purposes of the tables in Step 2.

Importantly, the Court held that it is wrong to take into account the parent's turnover to increase the fine at Step 3 absent some special factor of the type identified in *R. v Tata Steel UK Ltd* [2017] EWCA Crim 704; [2017] 2 Cr. App. R. (S.) 29, or *R. v NPS London Ltd* [2019] EWCA Crim 228; [2019] 2 Cr. App.

R. (S.) 18 . There was no such factor here: the offence rose out of BC's breach of duty that was not delegated to the parent, it was a large and profitable organisation in its own right, and there was no suggestion that it would be unable to pay the fine and require instead the parent to pay it, or that it would not be a going concern absent the financial support of the parent company. That it remitted its profits to its parent was nothing to the point. The fine before discount for plea should therefore have been £2,250,000. Applying a one-third discount for the guilty plea, a fine of £1,500,000 was substituted ([82]–[87]).

## **R (on the application of Southwark London Borough Council) v London Fire and Emergency Planning Authority**

[\[2016\] EWHC 1701 \(Admin\)](#) [\[2016\] All ER \(D\) 198 \(Jul\)](#)

The President of the Queen's Bench Division ( Sir Brian Leveson ) Mrs Justice McGowan D.B.E.

2016

Richard Matthews QC appeared as leading counsel for the London Borough of Southwark, the owner and landlord of Lakanal. Six fatalities occurred when Lakanal, a block of maisonnette apartments caught fire. The inquests were held over some three months before a Construction Court Judge, appointed as Deputy Coroner, and a jury.

The inquest jury found particular failings on the part of London Fire Brigade that contributed to the deaths. See [here](#) for verdicts and related information.

Following this, the London Fire Brigade (London Fire & Emergency Planning Authority) sought to continue a criminal investigation and prosecution of the London Borough of Southwark in relation to the Regulatory Reform (Fire Safety) Order 2005. Richard Matthews QC led the three counsel team that sought to Judicially Review this decision, and the case was decided by the Administrative Court in a [judgment](#) delivered by the President of the Queen's Bench Division, Sir Brian Leveson.

## **Corporate manslaughter – sentencing a small company**

[\[2015\] All ER \(D\) 292 \(Mar\)](#) [\[2015\] Lexis Citation 38](#)

Macduff J

2015

Richard Matthews QC appeared for the first defendant company, P Ltd, which was convicted following a trial of corporate manslaughter of one of its employees, who had died after becoming trapped in an industrial oven. It was further convicted of offences under the [Health and Safety at Work etc Act 1974](#), along with the second defendant director, M. In sentencing, the judge expressed his intention to that the penalty should bite against the director shareholders whilst at the same time ensuring that the company was preserved for the benefit of its employees. The judge imposed a fine of £200,000 on P Ltd.

## **R v. Sellafeld Ltd**

[\[2014\] EWCA Crim 49](#); [\[2014\] Env. L.R. 19](#);

**The Lord Chief Justice of England and Wales Mr Justice Mitting and Mrs Justice Thirlwall**

**2014**

Richard Matthews QC led for the defence in this defining appeal before the Lord Chief Justice of England and Wales, which concerned the sentence of very large organisations for health and safety offences and environmental offences. The approach adopted by the Court informed the subsequent guidelines issued by the Sentencing Council.

S, with turnover of £1.6 billion and an annual profit of £29 million, had been fined £700,000 for offences relating to the disposal of radioactive waste. N, with turnover of £6.2 billion, had been fined £500,000 following a collision at an unmanned level crossing which resulted in very serious injuries to a child. The judge found that S's failure was systemic and potentially exposed the public and those who handled waste off-site to unnecessary risk. S had relevant previous convictions. The judge took into account the fact that the instant breaches were not deliberate or reckless, no harm had been done and the actual risk of harm was low.

S submitted that the level of fine equated to a major public disaster or loss of life, a significant nuclear event or an unmitigated environmental pollution incident. N submitted that a starting point of £750,000 would only be appropriate where there was more than one fatality, a public disaster, or where the defendant was convicted of corporate manslaughter.

S's offences were of medium culpability, extending to management but with no actual harm and a very low risk of harm. Guilty pleas had been entered at the first opportunity and S had co-operated considerably. Account was also taken of its previous offences. It was not appropriate to consider a fine of £1 million as apposite only to a major disaster. That would ignore the court's obligation under s.164 of the 2003 Act to have regard to the offender's financial circumstances and the sentencing guidelines. There was no ceiling on the amount of fine that could be imposed. It was clear that a fine of £700,000 after a guilty plea reflected moderate culpability, no actual harm and a very low risk of harm. It also had to be viewed against the requirement that directors or shareholders of companies involved in the nuclear industry had to give the highest priority to safety, as Parliament had directed. The fine imposed would achieve the statutory purposes of sentencing by emphasising to those directors and professional

shareholders the seriousness of the offences, and provide a real incentive to remedy the failures found to exist.

## **Wilmott Dixon Construction Ltd [2012] EWCA Crim 1226**

[2012] EWCA Crim 1226

**2012**

Appeal regarding nature of risk and asbestos exposure, in regard to the Health and Safety at Work etc. Act 1974. Led for prosecution.

## **R (Agchemaccess) v. HM Inspector of Health and Safety [2012]**

**2012**

Richard Matthews QC was leading counsel for the claimants. The case concerned a series of Enforcement Notices issued under the Plant Protection Products Regulations 2011, which were quashed by consent follow a challenge by way of judicial review.

## **HSE v Marks & Spencer & Others**

**2011**

Richard Matthews QC led the three counsel team that prosecuted Marks & Spencer Plc and others in regard to the control of and exposure to asbestos during refurbishment works to stores. The case followed a lengthy investigation into the Marks & Spencer Plc, refurbishment contractors and asbestos removal contractors undertaking work in various stores On 27 September 2011, Marks & Spencer Plc was fined £1 million.

## **R. v. Tangerine Confectionery Ltd; R. v. Veolia ES (UK) Ltd**

[\[2011\] EWCA Crim 2015.](#)

**Lord Justice Hughes**

**2011**

Richard Matthews QC led for the prosecution in these joined appeals that resulted in the defining Court of Appeal authority on the nature of risk, causation and foreseeability, delivered by Lord Justice Hughes (as he then was).

The case followed the decision of the House of Lords in [Chargot](#) and the Supreme Court in [Baker v Quantum](#) [2011] UKSC 17 [2011] 1 WLR 1003.

In *Tangerine & Veolia*, the Court described how, “It is apparent from the history of these cases, and of others which have been cited to us, that the deceptively concise terms of [the Health and Safety at Work etc. Act 1974] may have given rise to a number of unresolved conceptual debates which are troubling Crown Courts. The present two cases are said to give rise to the following questions,

- i. What is the relationship between ‘safety’ (s 2) and ‘risk’ (to safety) (s 3)?
- ii. Where there has been an injury is the Crown required to prove that the offence caused it?
- iii. To what extent must the Crown prove that the risk ‘derives’ from the defendant’s activities?
- iv. What, if anything, is the relevance to these offences of foreseeability of injury or of an accident which has in fact happened?

The Court went on to answer all these questions.

## **R v. Winter, Winter & Alpha Fireworks Ltd [2011] 1 Cr App R (S) 78, [2011] 1 Cr App Rep (S) 78, [2010] EWCA Crim 1474**

[\[2010\] EWCA Crim 1474](#)

**2010**

Richard Matthews QC appeared for the Prosecution in relation to the prosecution of two individuals and a company for gross negligence manslaughter and corporate offences following the death of two firemen in an explosion at a fireworks factory.

**R. v. Chargot Ltd (t/a Contract Services) and others [2008] UKHL 73; [2009] 2 All ER 645 (HL)**

[2008] UKHL 73

2008

Richard Matthews appeared for respondents. This House of Lords decision provided the seminal definition of the meaning and elements of the offences of breaching ss 2 and 3 Health and Safety at Work etc Act 1974 and the liability of directors under s 37 of the Health and Safety at Work etc. Act 1974.

**R. v. Pointon (John) and Sons Ltd [2008] EWCA Crim 513, [2008] 2 CrAppRep(S) 472**

[\[2008\] EWCA Crim 513](#)

[2008] 2 CrAppRep(S) 472

2008

Richard Matthews QC appeared for the appellant in this appeal against a sentence imposed for health and safety offences following acquittal on corporate and individual manslaughter charges, in which the Court of Appeal reduced the sentences imposed by the Crown Court judge.

**R v P Ltd [2007] EWCA Crim 1937, [2008] ICR 96, CA**

[\[2007\] EWCA Crim 1937](#)

2007

Richard Matthews appeared for Appellants in this interlocutory appeal to the Court of Appeal from a preliminary ruling concerning directors liability under s 37 Health and Safety at Work etc Act 1974.

**R v HTM Ltd [2006] EWCA Crim 1156, [2007] 2 All ER 665, [2006] ICR 1383**

[\[2006\] EWCA Crim 1156](#)

**2006**

Richard Matthews appeared for Appellants. This was an interlocutory appeal to the Court of Appeal from a preliminary ruling concerning foreseeability of risk and the Management of Health and Safety at Work Regulations 1999.

**R. v. Total (UK) Ltd, Hertfordshire Oil Storage Ltd, Motherwell Control Systems (2003) Ltd, TAV Engineering Ltd and British Pipeline Agency Ltd**

**2003**

Richard Matthews QC appeared for the prosecution in this Health and safety and environmental prosecution following the [Buncefield oil storage depot explosion and disaster](#).