

Prosecuted school responds

Following the note 'School prosecuted' in the Safety article published in the September 1997 issue of *Education in Science*, we received this letter from the head of department of the school involved.

I hope that you are never involved in a serious school accident. I still find it difficult to express the depth of my own feelings of concern for the pupils, who were seriously injured, and their families. It was an accident which should not have happened, but it did.

In a case where serious injury has occurred the Health and Safety Executive (HSE) has a duty to investigate and prosecute if there is a case. The prosecution was unique – it was the first of a 'school' rather than an individual teacher, and it has now been widely reported. Hopefully heads of science around the country are reviewing their policies and checking their safety procedures, so the likelihood of a repetition of such an accident is minimised.

The reporting of the prosecution has so far been based only on the HSE report, however and there are always two sides to every 'story'.

The HSE report correctly that the school, and the science department had appropriate safety policies and clear procedures for risk assessment – but it is incorrect to say that 'no systems were in place for checking that the policies were, in fact, being implemented' as reported in the ASE Safety article in September 1997. There was a combination of strategies, as advised by the CLEAPSS document *Monitoring the implementation of Science Safety Policies* that had been in place since 1993, and were regularly used. Safety has always been high on the list of priorities within the Department and regular discussions and advice was given at weekly departmental meetings (which were minuted), there was formal and informal observation, and numerous checks. There was no complacency about safety – monitoring of the Science Safety Policy was continuously taking place.

There wasn't just 'guidance' on Risk Assessments, there were strict 'rules' within the Safety Policy, and correct implementation of the policy meant that equipment and chemicals

could not reach a laboratory without a Risk Assessment being done.

How could an accident have happened in one of the most safety-conscious science departments in the county? And how could the school have been prosecuted?

It must be pointed out that as the head of department concerned, I carried out all necessary procedures and monitoring with regard to the School's Health and Safety Policy. The article states 'no systems were in place for checking that the policies were being implemented' and I refute this. I did everything I knew I had to do and acted in good faith, but on this particular occasion I could not legislate for the human error of an individual teacher.

The ASE Safety article states that it is 'highly significant that on this occasion the teacher who organised the practical work was *not* prosecuted' and that previous prosecutions have been of individual science teachers based on their 'flagrant disregard of established safety precautions'. It is important for all science teachers to know that a prosecution of an individual can only take place if the HSE take a statement from the teacher *under caution*. You have all seen it on the TV – the 'what you say will be taken down and used in evidence...' type of caution. In this instance, the HSE did not caution the teacher concerned prior to his statement. In court the HSE 'blamed' the chemistry teacher concerned, but they did not prosecute him. It was the school as a body who were prosecuted.

Following the decision by the HSE to prosecute the school, and not an individual, the school management had some difficult decisions to make. The two pupils had been injured in our school – there was a moral responsibility plus a defence of the HSE case may have involved the school in a large financial cost. The decision was for the school to plead guilty and accept responsibility.

I would ask you to consider – despite all your monitoring – are your safety policies really being implemented? In the final analysis you have to trust your staff to build on their initial training, follow established safety precautions, be thoughtful and use common sense? And if they

don't, and an accident happens – be prepared for a prosecution. It could happen to you!

The Chair of ASE's Safeguards in Science Committee writes:

This letter raises a number of interesting points and sheds new light on some aspects which had puzzled us. It is perfectly true that our information came from a Health and Safety Executive (HSE) report of the court case. Not surprisingly, the report made no mention of the failure to caution the teacher directly involved in the accident. If cautioned, the teacher could have been prosecuted (but might not have been), and this would not necessarily have stopped the school being prosecuted as well. We know that the HSE is dissatisfied with safety management systems in education generally, and especially at senior management level. The HSE report indicated that they regarded the lack of training on risk assessment and the monitoring procedures in the school as unsatisfactory, but it appears the head of department (HoD) was not questioned about this. The letter from the HoD shows that there were procedures in place, at least in the science department – but the HoD was not on trial. The school was on trial – the governing body, the senior management, etc. The HoD is a relatively small cog in a large wheel. It is unfortunate that the school's decision to plead guilty (for perfectly understandable reasons) means that the HSE was not challenged in court. This leaves an impression that science staff (especially the HoD) were not doing their job, when in fact they seem to have been doing as much as was reasonably practical. No blame should attach to a teacher who is conscientiously following their employer's guidance. If our reliance on information from the HSE report led to any injustice to the head of science (or anybody else for that matter), we apologise without reservation.

It is interesting to note that in the four prosecutions resulting from science accidents which have taken place since 1974, the defendant has always pleaded guilty. Thus the full facts may have never emerged and the strength of the evidence has never been tested.