

Statement of case by Mrs Anne Ferguson (Core Participant)

Relationship of the Core Participants interests to the Inquiry terms of reference (Rule 4(2)(b))

Peter Ferguson, my husband and father of Shona was killed on 11 May 2004. He was employed with ICL Tech for 18 years. He was competent and fulfilled all his tasks in his employment as fabrication manager and latterly as operations support manager. He worked with Frank Stott as director and latterly part of the managerial structure with Stewart McColl as director. He was a caring and devoted family man and I cannot believe that he would have worked in an unsafe building. Peter's death was preventable.

(i) Issues we wish the inquiry to address having regard to the terms of reference

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|-------------------|---|--|
| Pipework | - | installation |
| | - | burying of pipework |
| | - | raising of the yard |
| | - | Checking of pipes for corrosion/leaks – responsibility of gas company, HSE or ICL? |
| | - | Did ICL check the pipework? |
| Factory | - | Use of the basement – prohibition order |
| | - | building maintenance |
| | - | areas changed by subcontractors – subject to building control? |
| LPG Gas | - | Control |
| | - | Delivery and refuelling of tank |
| | - | Pressure of tank |
| Natural Gas | - | use of it in the premises |
| | - | installation |
| Health and Safety | - | Health and Safety documentation on site? |
| | - | Consideration of pipework? |
| | - | If the underground LPG pipework was identified by HSE what follow up took place? |
| | - | Risk assessments |
| Insurance | - | Why was the insurance cover level reduced from Level 6 to Level 2? |
| | - | Did the insurers consider risk assessment? |
| ICL | - | risk assessments |
| | - | pressure testing of the pipework – who decided this at the company? |
| For the Future | - | Health and Safety practices and policies |
| | - | H&S checks on companies and procedures |
| | - | Renewal of pipework |
| | - | Current position regarding the checking of pipes |

I am aware that these following topics are not directly relevant to the terms of reference but wish them to be raised

- | | | |
|----------|---|--------------------|
| Sentence | - | appeal not allowed |
| | - | level of fine |

- Change of laws - Corporate Manslaughter/Corporate Responsibility laws introduced in Scotland?
- Work related death protocol system – timescales for bereaved families

(ii) *Aspects of the circumstances leading to the explosion that we wish the Inquiry to explore*

Pipe work

1969 pipe installed not by qualified fitter but attached tank: Pipe not corrosion protected. Who was responsible? The company or gas company?

1972 Land filled by soil and concrete which was laid on top of the gas pipe which caused the problem. Who was responsible?

Yard raised – not building control

1980 Basement in place – no building control

1988 Alerted about pipe but not followed up. Replace/re-route – why not? Cost?

Were the pipes internally checked, sanded and painted? By whom?

Did they not consider where the pipe went?

Was the pipe marked LPG?

Factory

Who should have known and did know about the pipes in the basement and underground?

Basement - prohibition order but was still being used by self employed sub contractors

Factory Building – maintenance, walls, areas changed by sub-contractors. Were they qualified to do the work?

LPG Gas

Commercially supplied has stanching agent. Did no one smell it? Due to what?

If the gas tank had not been filled on the 10th would the accident not have happened on the 11th? Pressure?

Should the gas company have checked the pipes the day before? And if so would the leak have been found?

Natural Gas

Was there Natural Gas?

Why did the company bring in Natural Gas and not change the old oven?

Why was the LPG Gas not changed to Natural Gas?

When was the Natural Gas brought in?

HSE

There was a maintenance book and Health & Safety Book in the Factory. Documentation - where?

No checks done on the pipe work 1993-2004? Who was responsible?

Insurance

The court case mentioned that the Risk Assessment decreased from Level 6 to Level 2 and was in a different format from October 2001 – why?

Insurance cover/company insurance – surely Health & Safety should give a certificate on safety?

Why did insurers not pick up on risk assessment? Were there no entries?

ICL

Who discussed in 1988 risk with HSE Assessment – Proof – Options: Excavate or pressure test?

Company chose to pressure test – why? Cost?

Where did workers and self employed smoke cigarettes?
Who was the company Health and Safety representative?
Company known as “penny pinching”, cut corners to save money, not spend on updating machinery. Would have cost £400 to place pipe above ground. Did not take on Health and Safety Consultant.
Did each employee have a Health and Safety statement of intent?
Simple management structure in place
Stated in court – individual directors had personal knowledge of the history of the pipe work – who?
Owner of companies states he does not feel culpable. General breach of duty of care by the company. Cumulative managerial errors – who/why/when?

For the future

Health and Safety enforcement policy/resources/funding/working practice/spot checks on companies/often and thorough checks needed and definite follow up visits with carry forward notes from previous visits/pipe work safe working life – how long before the renewal of a pipe?
Identify and eliminate risks
Key role in enforcing the law
Fire Authority – building plans altered/updated

Now almost four years on have the laws changed? Are H&S checking similar pipes?

What information would be required to prove controlling mind? Paperwork/Contracts/Written Proof/Percentage Shares

Could the case have been tried on something other than Health and Safety? At court – why is it inappropriate for the Crown to present an individual valuation of the associated companies?

As stated above, I am aware that the following questions are not directly relevant to the terms of reference but wish them to be raised

Sentence

To question the Judge – appeal not allowed
The Judge did not take into account the background report and account finances, assets and other companies
Larger fine stated it would close the company and workers would be out of work. How many original employees returned to work at ICL Tech and are actually fabricating goods?
How many personnel employed at ICL Plastics? Parent Company?
Sale of Land?
Fine £400,000 and yet the insurance company had paid out £500,000 and the company are keeping £100,000 for a pension fund – for whom?
Company were charging the gas company with liability for inspecting and replacing the pipe when installing the tank and each time the tank was replaced. Will they succeed?

Change of laws

Improve public confidence in the legal system
Improve timescale for bereaved families – October 2006 work related death protocol system just takes too long.
If Health and Safety UK wide why is corporate manslaughter not UK wide?
Pass Corporate responsibility law?

(iii) Topics in respect of which we would wish to participate

I would wish to participate in all the topics noted above. In both stage 1 and stage 2.

(iv) What we would wish to seek to establish in respect of each of those topics

I would wish to establish why such building practices were occurring in a building of that age. In my view, it was the way in which the building was designed and the use of spigots, that resulted in the collapse. (Refer p9 of Crown narrative).

I would wish the HSE guidance in relation to small/medium sized businesses to be stronger. In particular I would wish an explanation as to the type of Health and Safety checks that took place in the building and to ensure that in future recommendations made are followed up. In particular, I would wish to ensure Health and Safety enforcement policies are established, use of resources is considered. I would wish there to be improved working practices established and spot checks on companies. Also, often and thorough checks with follow up visits and carry forward notes from previous visits to ensure that the pipe work has a safe working life.

I would wish to establish that safeguards are put in place to ensure that qualified persons install such piping and tanks.

I would wish owners of small companies to be held liable for fatal accidents caused by lack of Health and Safety. I would wish to ensure that all buried LPG pipes are replaced and subsequently checked properly. I would wish it to be established who owned the gas pipe and therefore who should have been checking the pipe work. The company have stated that they did not have responsibility for the pipe.

(v) How each proposed topic would assist the Chairman in fulfilling his terms of reference?

In my view the topics identified above would assist the Chairman in fulfilling his terms of reference as they all relate to the circumstances leading up to the incident on 11 May. The pipe work, the use of the building, the use of LPG and Natural Gas, the HSE guidance and checks, the assessments undertaken by the Insurance companies and the role of the ICL company in the lead up to the incident.

I appreciate that the topics of sentence and change of laws are not directly relevant to the Chairman's terms of reference but I would like these to be considered.

ANNE FERGUSON