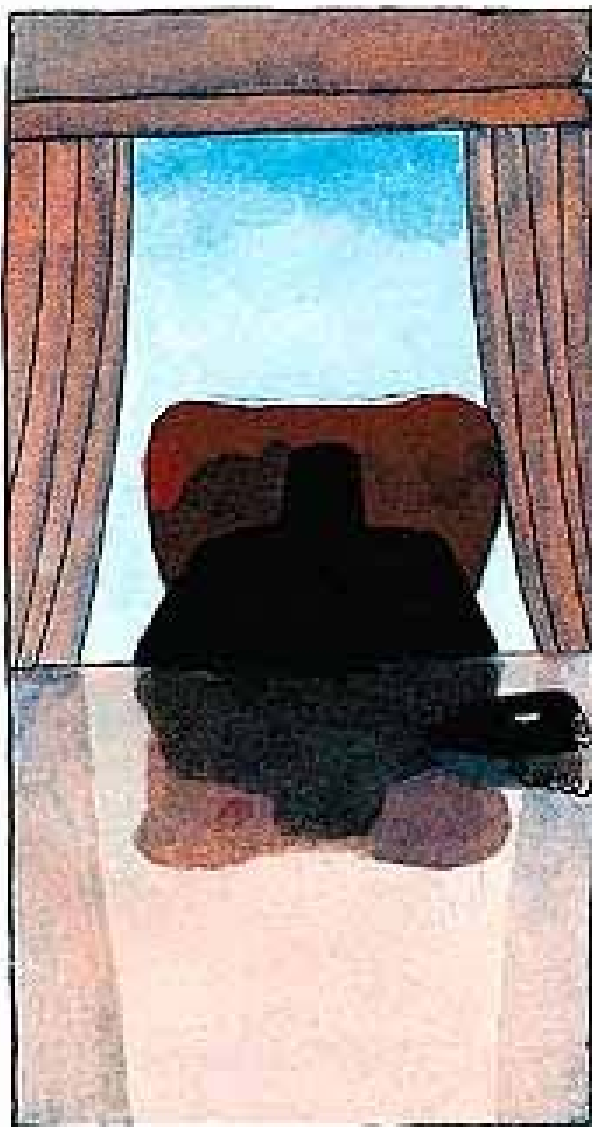
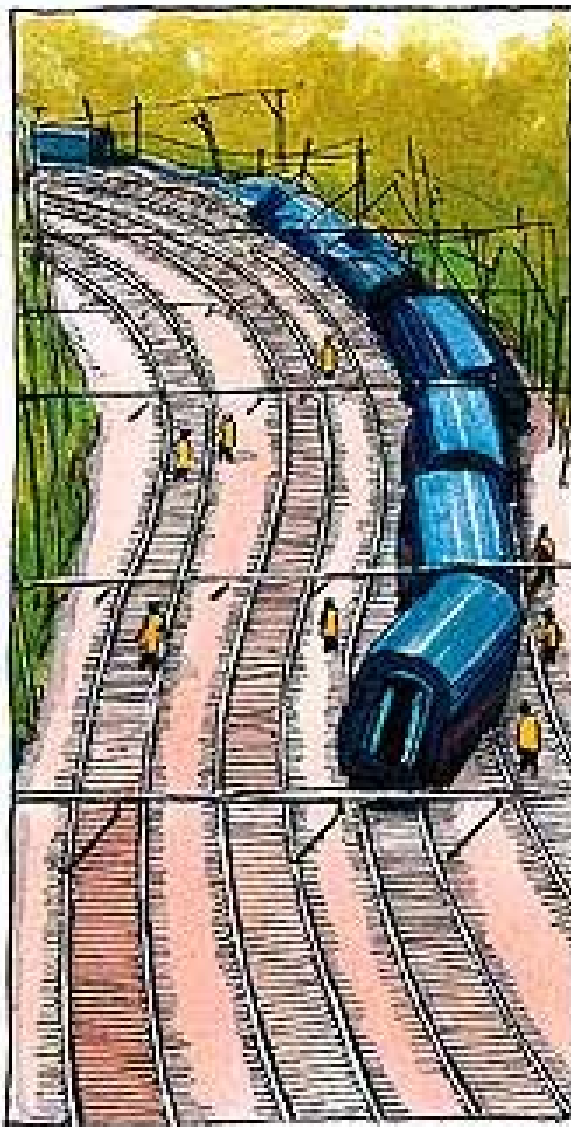


Corporate Killing Legislation

Ian Chisholm BA(Hons) IEng MCMi MIRTE MSOE
Head of Technical Services
SOE/IRTE



CORPORATE MAN



**CORPORATE
MANSLAUGHTER**



**CORPORATE
MAN'S LAUGHTER**

Is it difficult to prosecute the crime of corporate manslaughter?

- Proving corporate manslaughter is very difficult
- Director must be prosecuted before the company
- It is notoriously difficult to prosecute directors and senior managers of large companies
- Large organisations often delegate safety decisions
- The law does not impose a duty upon company directors to comply with health and safety law

What is Corporate Manslaughter?

- Committed by a company in relation to work related death
- controlling mind and will
- manager guilty = company guilty
- manager innocent = company innocent

Have any large companies
been prosecuted?

P&O European Ferries - Herald of Free Enterprise



soe IRTE

engineering success together

Great Western Trains - Southall Train Crash



Have there been any successful prosecutions?

- Five successful prosecutions against small companies
- Eight company directors successfully prosecuted
- Two proprietors successfully prosecuted

What are the sentences?

- Unlimited fines
- Custodial sentences
- Or a combination of both

Problems in practice with the current position

- Only companies can commit manslaughter
- Companies can not be independently prosecuted
- Allegations of manslaughter must be proved against an individual considered to be a 'controlling officer' of the company
- No separate test against a company



Plans to reform the law

- A company can still be prosecuted through an individual director
- In addition, companies will be able to prosecute for a new offence of corporate killing
- A company could be prosecuted for this offence irrespective of a case being proven against a director

Definition

Management failure by a corporation or undertaking resulting in death, with a constituting conduct falling far below what can reasonably be expected in the circumstances

The new offence requires that:

- there was a ‘management failure’ in the organisation
- the failure ‘fell far below what can be reasonably expected’
- and that the management failure was a cause of the death

Possible Penalties

- Massive fine
- Remedial order
- Directors disqualification
- Custodial sentences

Current Status



- No specific timetable mentioned by the Government
- Re-elected Labour Government committed to a new offence of manslaughter
- It is hoped a Bill will be presented to Parliament before the end of 2004

Preparation for the new Corporate Killing Bill - slide 1

- Proactive approach
- Commitment from the top
- Identify the risks that confront the company
- Eliminate those risks if possible
- If unable to eliminate then evaluate

Preparation for the new Corporate Killing Bill - slide 2

- Establish controls to regulate and manage risk
- Audit risk to establish pressure points
- Train staff to high standard
- Maintain records and relevant documentation

Corporate Killing and the Road Transport Industry



Vehicle Roll-overs



Tipper Stability



Wheel Security

Wheels have been flying
off lorries for years

The wheels on the bus go
round and round... until

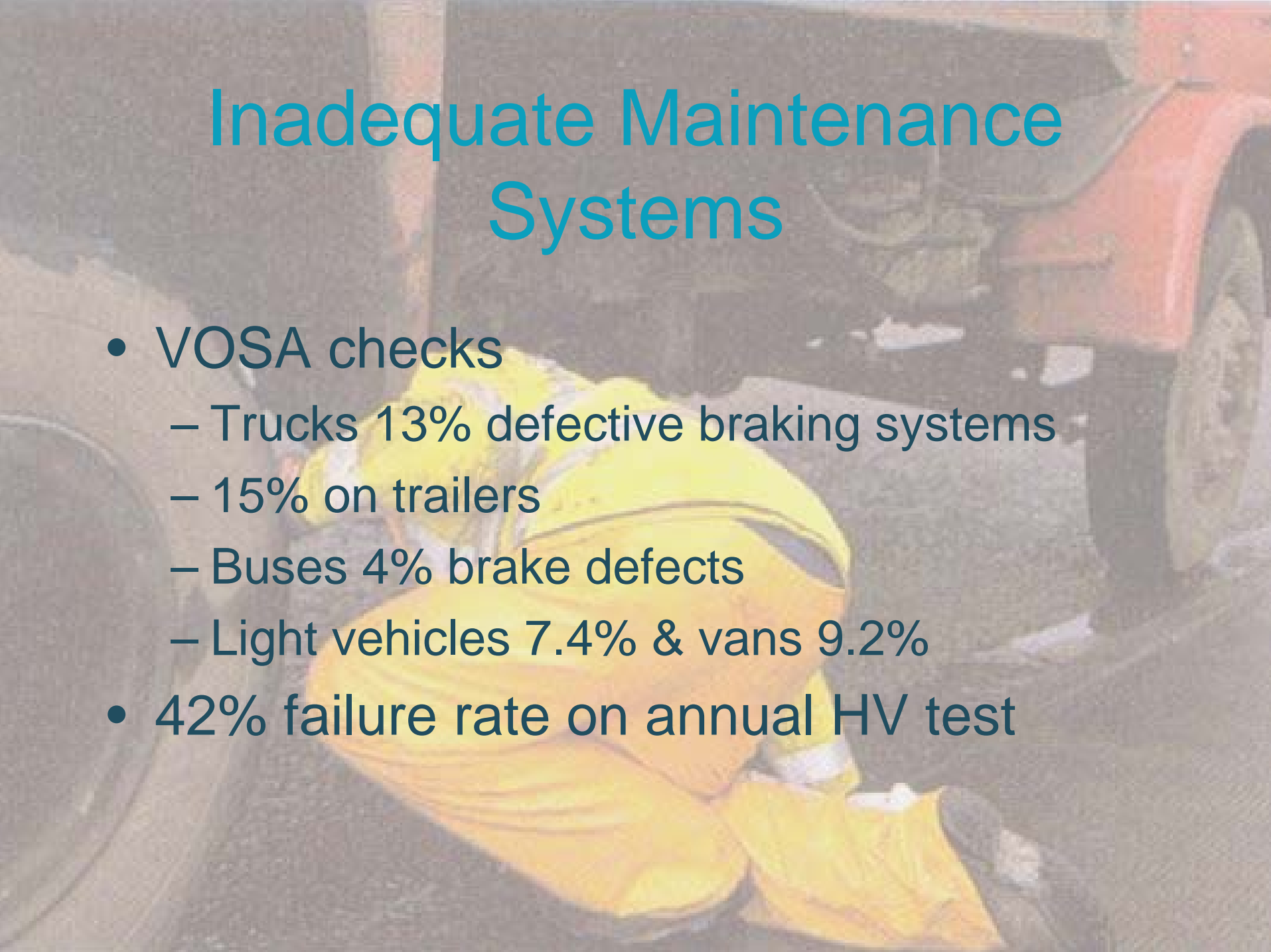
Lost Wheels - Lost Lives

Wheel loss operator
loses O Licence

More wheel losses occur
from heavier vehicles

Wheel Loss - A Survivor's Story

Inadequate Maintenance Systems

A person wearing a bright yellow safety suit is kneeling on the ground next to a vehicle, likely performing maintenance or inspection. The background shows the lower part of a vehicle, including a wheel and a red fender.

- VOSA checks
 - Trucks 13% defective braking systems
 - 15% on trailers
 - Buses 4% brake defects
 - Light vehicles 7.4% & vans 9.2%
- 42% failure rate on annual HV test

And finally...

- A recent case - a young man was hit by a 20 tonne trailer, which had detached its self from a tractor unit
- Rare outcome - manslaughter verdict in a corporate context
- At the subsequent trial it was alleged that there was a defect in a hitch mechanism which was 'obvious to the naked eye'
- Director of company found **guilty** and received a sentence of 240 hours community service

The End

Corporate Killing Legislation

Ian Chisholm BA(Hons) IEng MCMi MIRTE MSOE

Head of Technical Services

SOE/IRTE

soe IRTE

engineering success together