

# Austin Welch

Call to Bar: 2005



**“Austin’s attention to detail is excellent and his advocacy is persuasive and strong.” “He is an incredibly sound and skilled advocate.”** Chambers & Partners 2024 – Health and Safety - Band 1.

**“Austin is an excellent advocate. He has an authoritative presence in the courtroom and emits gravitas, he presents clear and well-reasoned arguments with ease and he is an outstanding strategist and highly respected by clients and peers.”** – Legal 500, 2024 – Business and Regulatory Crime (including Health and Safety) – Tier 1.

**“He was on the money with everything; quick to draft under serious time pressure, and his commitment is phenomenal.”** – Chambers & Partners, 2023 – Health & Safety.

**“Austin is incredibly hard working, giving his time generously and diligently to a case. His technical knowledge of business and regulatory law is second to none; he is a quick thinking master strategist, who easily finds the best way through any legal or practical issue. He immediately gains the confidence of his clients with his straightforward and tactful approach. He is a compelling advocate.”** – Legal 500, 2023 – Business and Regulatory Crime (including Health and Safety) – Tier 1.

**“His work rate and ethic are phenomenal and his attention to detail is top-tier.”** – Chambers and Partners 2022 – Health and Safety – Band 2.  
**“He combines technical and forensic analysis of legal issues with excellent, sound judgment. He brings great insight into the fundamental issues of the case and his advocacy is exceptional.”** – Chambers & Partners, 2022 – Health and Safety .

**“Austin’s written advice and submissions are to point and very persuasive. That to my mind shows a thorough assessment and review of the issues relevant for the court’s purposes.” “His preparedness of matters for hearings and his oral advocacy is that of a highly-skilled advocate. He is thorough, straight-talking and his communication skills in getting often complex issues over to lay clients are excellent.”** - Legal 500, 2022 - Regulatory - Tier 1.

## Contact details:

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## Practice areas:

Inquests & Inquiries

Health & Safety

Regulatory

Professional Discipline

## Professional appointments:

List of Specialist Regulatory

Advocates in Health and Safety and Environmental Law - List B

**“Very knowledgeable; his written and oral advocacy is top class. He is very patient and understanding with clients. A very capable lawyer and is very generous with his time. He has a very good track record.”** – Legal 500, 2021 – Regulatory (Tier 1).

**"A very personable barrister."** - Chambers & Partners, 2021 - Health and Safety.

**“His client care skills are second to none.”** – Legal 500, 2020 – Regulatory, Health and Safety and Licensing (Tier 1).

**“He combines fantastic technical ability with great client care skills.”** – Legal 500, 2019 – Regulatory, Health and Safety and Licensing (Tier 1).

**“Knowledgeable and approachable.” “Very thorough.”** – Chambers and Partners 2019 – Health and Safety (Band 2).

## HEALTH & SAFETY, FOOD SAFETY AND FIRE SAFETY LAW

Austin represents clients in relation to health and safety, fire safety, food safety and product safety offences. He is instructed by companies and individuals from a range of industries including construction, manufacturing, agriculture, waste, healthcare and transportation. He represents organisations of all types, from multinational companies and UK based PLCs, local authorities and charities through to family run partnerships.

Austin has an enviable record of achieving positive results for his clients in regulatory prosecutions and is recognised for providing focused, commercial advice. He is frequently instructed at the early stages of prosecutions and investigations to provide strategic advice to solicitors and lay clients.

Austin is known for his ability to quickly digest large amounts of complex, technical information and identify the key issues in a case. He has been involved in a number of cases involving public health outbreaks that have resulted in multiple fatalities and involved complicated scientific evidence. Austin is also regularly instructed in cases involving engineering and technical evidence.

Austin is also a member of the Regulatory List of Counsel used by the Health and Safety Executive and the Office for Rail Regulation. Austin is instructed to provide advice and prosecute cases of regulatory crime on behalf of these bodies and also local authorities.

## NOTABLE CASES

### Industrial Disease Cases

**HSE v SG** - Austin represented a furniture manufacturing company in a prosecution under section 2 HSWA. The Prosecution alleged that the company had failed to control exposure to wood dust in the company’s workshop and had failed to properly guard pieces of machinery. The case was the second time that the company had been the subject of enforcement action concerning these matters. The Prosecution had suggested that the case was one of high culpability with a high likelihood of level B harm, this would have resulted in a fine with a starting point of £54,000 with a range between £30,000 and £110,000. The Court accepted Austin’s submissions that the HSE had failed to pursue a number of lines of inquiry concerning the likelihood of harm and had failed to carry out any tests concerning dust concentration at the premises nor obtain any medical evidence concerning how likely it was that the dust present would have led to respiratory diseases. The Court agreed with Austin's submission that the likelihood of harm was low. The Court imposed a fine of £6,000.

**HSE v ES** – Represented a national road haulage, logistics and distribution company in a prosecution under section 2 HSWA following an incident involving the potential exposure to asbestos of a number of employees. The case involved complex evidence relating to causation, exposure levels and the likelihood of harm as well as consideration of whether the defendant fell into the category of being a very large organisation. A fine of £120,000 was imposed.

**HSE v G** – Represented a national construction company charged with breaching section 2 of the Health and Safety at Work Act and the Control of Asbestos Regulations. The prosecution had suggested that the case involved high culpability and category 1 harm, resulting in a starting point of a fine of £950,000. Following submissions, the court accepted that the case involved medium culpability and category 3 harm and imposed a fine of £125,000.

**R v J** – Junior counsel for the Crown in the prosecution of a national retail company following an outbreak of Legionnaires' disease in Stoke on Trent in 2012, caused by a contaminated hot-tub, that resulted in the deaths of 2 people and hospitalisation of many more. The company was fined £1 million.

**HSE v H & H** – Represented two hospitality companies charged with breaching sections 2 and 3 of the Health and Safety at Work Act and the Control of Asbestos Regulations. The prosecution had originally suggested that this was a case of high culpability and category 1 harm. If accepted this would have attracted fines with starting points of £250,000 and £160,000 for each of the companies respectively. Following the service of applications to dismiss certain of the counts the HSE discontinued the charges under section 2 and 3 of the Health and Safety at Work Act and accepted that the case involved category 3 harm. A total fine of £34,000 was imposed.

**HSE v U** – Represented a company and managing director in a prosecution under section 3 of the Health and Safety at Work Act and the Control of Asbestos Regulations. The prosecution had suggested that the case was one of very high culpability and category 1 harm. Following the calling of expert evidence on the question of 'likelihood of harm' arising from asbestos exposure and submissions from the defence the court found the case to be one of medium culpability and category 2 harm. A fine of £5,720 was imposed.

## Working at Height Cases

**HSE v SS** – Represented an aviation production company in a prosecution under section 2 HSWA following the fall from height of one of its employees. The Prosecution had alleged that the defendant company fell into the very large organisation category for sentencing and that the Court should take account of the finances of its parent company – both submissions were rejected by the Court. A fine of £660,000 was imposed.

**HSE v D & R** – Represented two linked waste recycling companies charged with separate breaches of the Work at Height Regulations at the Crown Court at Southwark. The prosecution had suggested that the starting point for the fines for both companies was £1.2 million. Following submissions, the court imposed a total fine of just under £140,000.

**Manchester City Council v R** – Represented a clothing distribution company in relation to a prosecution under section 2 of the Health and Safety at Work Act following a fall from height at the company's warehouse. The prosecution had suggested that the case involved high culpability and category 1 harm, suggesting a starting point of a fine of £250,000 with a range between £170,000 and £1 million. Following the service of expert evidence by the defence in relation to the actual risk and likelihood of harm, and following submissions, the court found medium culpability and category 3 harm and imposed a sentence of £28,000

**HSE v J** – Represented a company charged with breaching section 2 of the Health and Safety at Work Act following an 8-metre fall from a roof suffered by one of the company’s employees. The court rejected the prosecution submission that the case involved high culpability “at the high end.” The prosecution had suggested that the starting point for the fine was “a figure higher than £160,000”. The court imposed a fine of £40,000.

**R v C** – As junior counsel, represented a company and sole director charged with offences under section 3 of the Health and Safety at Work Act following a fatality at a construction site in which two employees had fallen through skylights.

**HSE v R** – Represented a construction company in an appeal against a prohibition notice following an inspection at site when employees were working on the roof of a building.

**HSE v K** – Austin represented a school in relation to a prosecution under section 2 HSWA following an incident in which a caretaker had fallen from a flat roof. The Court rejected the prosecution submission that the case fell into the high culpability bracket and accepted Austin’s submission that the fine should be significantly reduced to take account of the school’s lack of ability to make any profit. A fine of £10,000 was imposed.

## Machinery and Guarding Cases

**HSE v LCC** – Represented a local authority that was prosecuted in relation to its failure to implement sufficient safeguards relating to the exposure to HAVS of members of its Highways Department. The case involved consideration of expert evidence relating to exposure levels, likelihood of harm and the treatment of VLOs that were in the public sector. A fine of £50,000 was imposed.

**Hambleton District Council v CH** - Represented a hospitality and entertainment company in a prosecution alleging breaches of section 2 HSWA and PUWER, concerning a life changing accident suffered by an employee who was injured whilst using an all terrain vehicle. The company was fined £45,000.

**HSE v M** - Represented a steel engineering and manufacturing company in a prosecution alleging a breach of section 2 HSWA arising out of the company's failure to manage the risks associated with the use of vibrating tools and the risk of HAVS. Following the service of expert evidence by the defence, the Court accepted that the likelihood of level B harm occurring was 'between low and medium' and that no actual harm was caused by the defendant's breach. The Court imposed a fine of £90,000 on the company, significantly below that which the HSE had originally suggested.

**HSE v N** - Represented a food distribution PLC in a case concerning an employee who lost three fingers having trapped them in a piece of unguarded machinery. The HSE accepted the defence representations that the case fell into medium culpability (as opposed to high, as originally alleged) and the Court accepted the defence submission that the case was one of low likelihood of harm as opposed to the prosecution submission that it fell in the medium bracket. A fine of £100,000 was imposed.

**HSE v B** - Represented the HSE in the prosecution of a demolition company in relation to an accident in which an employee suffered life changing injuries having become trapped by a roof beam when operating a MEWP. The Court accepted the prosecution assessment that the case involved high culpability and category 1 harm and imposed a fine of £250,000.

**HSE v C** - Represented a national food distribution company that is a subsidiary of an Irish multinational food company. The case involved an employee who had suffered serious injuries when his arm became ensnared in a packaging machine that had not been properly maintained. The company was fined £400,000.

**HSE v S** – Represented a company in relation to a workplace accident in which an employee had lost a finger whilst operating a piece of machinery. The court rejected the prosecution submissions in relation to culpability and harm and accepted the defence submissions that the case was one of medium culpability with category 3 harm. The prosecution had suggested the case fell within the range of fine between £30,000 and £110,000. Instead the court imposed a fine of £19,000.

**HSE v C** - Represented the company and managing director in a prosecution under section 2 HSWA. **HSE v C** - Represented a drilling company and its sole director in a prosecution under section 2 HSWA. The case involved allegations that the company had provided unsuitable drilling equipment to its employees over a period of more than 20 years, resulting in the employees contracting hand arm vibration syndrome (HAVS). A fine of £36,000 was imposed.

**South Kesteven Borough Council v L** - Represented a company, which was a subsidiary of a German multinational company, in a prosecution under section 2 of the Health and Safety at Work Act. The prosecution had suggested that the case was one of very high culpability with level 1 harm. Following submissions by the defence the court rejected the prosecution assessment of culpability and harm and imposed a fine of £25,000.

**HSE v S** – Represented the director of a company charged with an offence under section 37 of the Health and Safety at Work Act following a workplace fatality in which a lorry reversed into a banksman. Case discontinued by the prosecution.

## Food Safety Cases

**Durham County Council v C** - Represented a food manufacturing and distribution company in a prosecution for food safety offences following a salmonella outbreak that occurred in 2017 and was alleged to have resulted in over 20 people becoming infected and 2 deaths. The Company, as well as two directors who had been charged, were acquitted. **Blackpool Borough Council v G&S** – Represented the owners of a Blackpool hotel charged with breaches of the Food Safety and Hygiene Regulations.

**Blackpool Borough Council v G** – Represented a restaurant owner charged with breaches of the Food Safety and Hygiene Regulations.

**Thanet District Council v A** – Represented a national retailer in relation to alleged breaches of the Food Safety and Hygiene Regulations. Case discontinued.

**FSA v MA** – Represented an abattoir in a prosecution by the Food Standards Authority concerning breaches of food hygiene rules relating to the storage and treatment of halal meat. After submissions the court imposed a limited fine of £12,000.

## Fire Safety Cases

**SYFRS v B** - Representing a national retailer in relation to fire safety breaches at one of their stores.

**SYFRS v T** - Representing a health and safety advisor in relation to allegations that he had prepared a defective fire risk assessment. Fine of £750.

## Public Event Safety

**Nottingham CC v U** - Represented a company and director who had been charged with offences under section 3 HSWA relating to a mass crushing event at an urban music festival in Nottingham. The case was discontinued.