

The Case against Malcolm Brinded CBE

Beyond reasonable doubt

Introduction

In Scotland, existing health and safety offences and gross negligence manslaughter apply to individuals, and following the changes to corporate manslaughter law prosecutions against corporations will continue to be taken where there is sufficient evidence and it is in the public interest to do so. The difficulty in securing the prosecution of individuals, gross negligence manslaughter, particularly a Director, is the challenge to prove guilt beyond reasonable doubt. A defense for Directors would be that they were not aware, were not directly involved in the felony and to prove otherwise in large corporations must be difficult.

The Scottish Affairs Committee discussed what they considered a low level of prosecutions in this arena with the Lord Advocate Frank Mulholland. Lindsay Roy my MP is or was a member of that committee and is copied on this note. Mulholland's position was that it was not easy to bring prosecutions, such a prosecution if it was to be successful needed to be proved beyond reasonable doubt unlike civil or other prosecutions where the bar is set lower on the balance of probabilities.

That burden of proof is taken away from Crown officials in the case of Brinded because the Royal Dutch Shell (RDS) investigation in 2004/5 into his conduct in 1999 was conclusive. In 2005 at the corporate headquarters in The Hague, a meeting was held to hear the outcome of the investigation. Present were the CEO of the new Company, Jeroen van de Veer, his Legal Counsel Beat Hess, the Investigation team Jakob Stausholm and Richard Sykes, and the author who had instigated and participated in giving evidence to the investigation. The author at the time was employed under contract with the newly created Royal Dutch Shell (RDS) to lead Health and Safety audits worldwide on behalf of the Upstream part of the RDS business.

The simplicity of this of course would be if the experienced and able counsel Beat Hess would only provide a statement relaying the thoughts and words he expressed that day but like all good Counsel he will not do that, or at least not willingly. I contacted him recently to ask if he had any objections to the opinion he expressed at the meeting being published, and he has not.

What was Dr Hess's opinion in 2005?

The Case against Malcolm Brinded CBE – February 2015

What he said, after a heated discussion which I caused somewhat by saying that Brinded by his criminal neglect had killed the two unfortunate men, who died in a horrible fashion, gasping for air, when the enclosed area they were located in was rapidly filled with rich hydrocarbons from a hole in a pipe, was that there was a natural linkage between the deaths and the unacceptable behavior of Brinded in 1999, and that Brinded had contributed by his behavior to the deaths.

Who is Hess?

That Doctor Beat Hess would be credible witness to this is not doubted. Hess holds a doctorate in Law and has a master's degree in international Law. From 2003 to 2010 he was legal director and member of the executive committee of RDS. He provided the opinion on Brinded as discussed here in May 2005. He is no longer an employee of Shell. He is a Swiss national and has served on the board of Nestle and other major corporations.

What did Hess consider, what formed his opinion?

After hearing and considering the evidence provided to him by Stausholm and Sykes the deaths were in his opinion linked to Brinded's unacceptable behavior in 1999. The evidence he heard was that the immediate actions recommended by the Audit team in 1999 to reduce the intolerable risk levels witnessed on Brent Bravo were never undertaken, the investigation found no evidence of this. The investigation team's opinion was that the inability of Shell Expro to implement the immediate actions was related to the fact that Brinded had terminated the audit in full flight when he lambasted and humiliated his own auditors who had the temerity to place the blame at his door. The investigation team's opinion was that he at least, as Managing Director, should have ensured that the immediate actions to reduce risk were undertaken forthwith. With regards to the longer term actions to rectify the unacceptable behavior witnessed in 1999, these were truncated in 2001 when only 20% complete. This can be witnessed in the three attached articles accepted as accurate by RDS. As an example, chronic violation of the permit system was witnessed in 1999 and by 2003, a technical investigation by Shell post the fatalities, found that violation of the permit system had become custom and practice across the field. HSE officials had this information in their hands only weeks after the fatalities when they received it from Shell but then allowed Shell initially to make a press release that the deceased bore some responsibility for their own demise for entering the column of Brent Bravo to do work without a permit. Anyone interested should look at the Sheriff's report to see the man struggling with

The Case against Malcolm Brinded CBE – February 2015

this concept, doing work under the so called operations umbrella, the HSE could have stepped forward to assist the Sheriff but it was in their vested interest not to do so.

What position did Brinded hold in 1999?

Malcolm Brinded in 1999 was the MD of the Company Shell Expro which was an operating company over which The Hague had oversight. He was completely aware of these recommended actions and the lead auditor, the author, had warned the complete management team of Shell Expro on the 22nd of October that year that if they failed to act, and act quickly, then a major accident on Brent Bravo was inevitable. A Lead Auditor, within the Shell rules of governance, has no authority to instruct the auditee to cease operations but that is what I recommended.

What was the Lead Auditors reaction to the fact that Brent installations continued to operate with intolerable levels of risk?

I recommended that the Brent Management Team, that is the General Manager, the Asset Manager and his Deputy, all located in Seaford House remote from the main Shell Expro office at Tullos, Aberdeen, be suspended pending an investigation into their behavior. This is not contentious; the room was filled with 40 or so Shell Expro managers including the Oil and Gas Directors. My main concern, and that supported by the Audit team, was that the Brent Asset Manager under interview in 1999 appeared mentally unstable. He agreed to all the audit findings that he operated the four large Brent platforms whilst they were in a dangerous condition. He continually put the blame for this on Brinded because of the pressure that he was under to meet the Gas Nomination Contract (see Addendum). That was why he reasoned he was operating in such a fashion whilst accepting in doing so he was putting the lives (both shifts) of an estimated 1200 employees constantly at risk.

When in 2005 the Shell internal investigators interviewed the Asset Manager he had his defense prepared. They discussed and were shown confidential medical records, which could be summarized in that the Asset Manager could be considered to have operated with diminished responsibility in 1999. When asked about this by the investigators in 2005, Brinded replied that he had considered the removal of the Asset Manager in 1999 but did not do so because he thought that the Manager may suffer some sort of breakdown if he did. This decision by Brinded was in the words of the investigators inexplicable.

The Case against Malcolm Brinded CBE – February 2015

The finding of the 2005 investigation heard by the CEO van der Veer and his Counsel Hess was that Brinded's behavior in bringing the Audit to a stop, whilst still in full swing, and effectively dismissing the Lead Auditor from any further participation were factors that contributed to the deaths in 2003. It was, the investigation team said, the loss of morale, lack of enthusiasm and will to proceed from his humiliated auditors that brought the audit to termination, although the second phase of the audit to get quick resolution of an action plan for implementation of the corrective actions in place sort of withered in on the vine. The lead auditor, who was a senior engineer in the International EP business, was not there to defend his team from the wrath of Brinded because my return to Aberdeen had been verboten.

Through discussions with the Legal Counsel for Brinded (Keith Ruddock) in 2006/7 I was able to get Brinded to apologize to the auditors for his actions in 1999, Ruddock also prepared a statement which was to be transmitted to all Shell staff in the Upstream business to the effect that there were significant shortcomings in the follow up to the 1999 Audit but Brinded would not go ahead with this, for obvious reasons, if you compare it with the 2006 shell press release, see attached. All this is documented in correspondence passed to Grampian police at the time, contact point DCS Billy Gordon.

The Asset Manager, under pressure, how did he react, how did his behavior affect his offshore employees?

The Asset Manager discussed above was the architect and creator of what was called the **Touch F-all policy**, this policy driving the behavior offshore explained in some detail in the three articles attached. Shell Expro's Production Director had given a statement to the press in Sept 1999 to the effect that the workers concerns re what was called the Touch F- All instruction were over exaggerated, a misunderstanding. But when in 1999 this Director was interviewed by the Auditors he was told that the Touch F-All instruction was causing neglect of maintenance on an industrial scale offshore and he should issue an immediate retraction. He could not he said retract the statement, Brinded would not let him, he clearly saw himself as a victim, like many others in the organization he was cowed, although there is no doubt that he was as the Oil Director directly accountable for the health and safety of all employees across the Northern and Central oilfield.

How did Brinded not just accept the Audit finding in 1999 and get on with it?

The Case against Malcolm Brinded CBE – February 2015

In 1999 Brinded's future was on the line. The author had sent the story up the management line had given presentations in The Hague and had raised it with Brinded's boss in The Hague, the Regional Manager for Europe Bob Sprague who also had serious concerns about Brinded's behavior in the past. Malcolm Brinded in 1999 was the rising star within the Shell organization, destined for the top of the slippery pole; he was in trouble and needed to do anything he could to save his career. He couldn't suspend his Brent managers, or shutdown the Brent installations to carry out remedial work, and he couldn't let the Audit run to conclusion. Any of this would have set the alarm bells ringing in corporate headquarters in The Hague so he did nothing. He still had a problem however, how to stop the HSE discovering all this from their investigation into workers concerns re Touch F- All. **To overcome this obstacle Brinded asked his close friend Helen Liddell to intercede and request the HSE officials in Aberdeen to put a hold on their investigation.**

The role played by the then Secretary of State for Energy, according to statements made by Malcolm Brinded?

As discussed in a Note sent to Tricia Marwick, my MSP, some weeks ago, I took evidence in 1999 from the Chief Internal Auditor, in the presence of other auditors to the effect that the HSE investigation into the workers genuine concerns re Touch F-All (widely discussed at the time in the media) was curtailed when Helen Liddell allegedly asked the HSE to halt any investigation, all documented on date stamped formal Minutes. Why did she do that I asked? Helen and Malcolm had for a year or so worked closely on various projects and had become close friends. The Aberdeen Auditors described this as a special relationship, not sexual, but a close bond had developed between them. How was the Chief Auditor aware of this? The internal audit committee had asked him and the Finance Director to raise these concerns directly with Brinded, the reply being as indicated above, was what Brinded had admitted under interview.

As evidence that the HSE investigation had been halted at the Minister's request Brinded, who was under a considerable pressure from The Hague at the time, survived, because he told his Board of Directors that there was no substance to the Touch F- All concerns, and that the HSE had investigated the matter fully, it was all a misunderstanding etc. **The Board was not aware, and Brinded to survive did not tell them, that the HSE had not investigated the matter acting on the intervention of his friend the Minister for Energy.**

Is there any other evidence that HSE did not investigate the workers concerns?

The Case against Malcolm Brinded CBE – February 2015

In 2003 and as a member of the public, not as a RDS Group Auditor a position I held, I arranged to meet HSE officials at a hotel near my home in Glenrothes. My concerns were that we (Shell) had caused the deaths in September that year with our failure to act in 1999. The HSE officials were from Lord Cullen House in Aberdeen namely David Bainbridge and Tom McLaren. So I asked Bainbridge, the senior HSE man present, did HSE act on the request from Helen Liddell in 1999. He could not answer fully, it was sensitive, but also he would not deny it as a fact. What he was prepared to say was that in HSE's opinion their investigation into Touch F– All was incompetently handled by them. Minutes were kept of this meeting, that it took place is not contentious.

Baroness Liddell of Coatdyke

Several weeks ago I wrote to Helen now Baroness with a seat in the Lords. She has not as yet replied to the allegations made by Brinded in 1999. She resigned from her then position in 2003 as Secretary of State for Scotland, causing some speculation in the press as to why the sudden departure. Later she was appointed as HM's Ambassador to Australia. I only learned of her return when she came up to Scotland during the heat of the referendum along with Gordon Brown to support the better together campaign. For anyone interested, 10 minutes on the web paints a portrait of Helen as a formidable and controversial politician. Apparently emotionally charged, newspapers would report her continued hatred of all things SNP. I have no doubt if all above is not denied then its publication would cause embarrassment to the Labour Government and could have an effect on the upcoming election with many folks of the Yes persuasion still angry about her intervention in the NO campaign. Because of the politics of all this I copied Jim Murphy the leader of the Labour party in Scotland. Hopefully he could discuss and counsel the Baroness, he also has not replied. He and the Baroness are copied on this Note. I have said to the Baroness that no publication will take place till the 1st of March giving her the right of reply, and pointing out again, these are not my allegations but that of Shell whose current Company Secretary, and Counsel to the Chairman and Board, Michael Brandies are also copied.

Why was Brinded not sacked in 2005?

Answer; because of the proximity to another previous scandal, the reserves debacle.

As an aftermath of this scandal in 2004 the British and Dutch entities merged into the newly formed Royal Dutch Shell. RDS had to settle with \$120 million paid in fines with the US securities, and exchange commission in New York. But it was, for Shell, a Company neurotic about its good

The Case against Malcolm Brinded CBE – February 2015

reputation, and to protect its icon the pecten displayed on every Shell petrol station forecourt, that was the bigger issue. The reserves scandal wiped billions of its market value; it had overbooked 4.5 billion barrels, circa 23% of its total reserves at the time. Philip Watts the Chairman and Walter van der Wijver, who headed up oil and gas production business, were unceremoniously sacked along with the CFO Judy Boynton.

When Brinded was appointed as executive director of the newly formed RDS in 2004 he calmed City jitters by going on record that looking forward, honesty, integrity and openness with its stakeholders would be at the core of what the new Company did. What the City was not aware of was at the very time Brinded was making these statements he was under internal investigation, as previously described. So although Brinded was told he would never take over as CEO, his burning ambition, it was far too risky, he would be retained by RDS as long as he could keep the lid on this can of worms. If he could not he would have to go.

So after BBC aired the Human Price of Oil programme on 14th of June 2006, and the trade magazine upstream went into great detail about Brinded's exploits in 1999 on 16th June, two days later, Brinded forced the issue of the press release (see attached) not only to save his skin but to entrap the Chairman and the Board, because to retract this statement was to bring on its head yet another scandal. This scandal not about the counting of barrels of oil in the ground but the cover up of deaths on Brent Bravo for which Shell had already internally found Brinded guilty as charged. Could RDS survive another scandal shortly after the reserves? They thought not, and Brinded was allowed to stay on seat. Apart from any other considerations, billions wiped yet again of the market value of the new Company, could make it a target for predatory bids, so let's keep all this hushed up was the strategy developed.

What happened to journalists who attempted to make the public aware of all this? – Evidence of vindictiveness to anyone who stood in Brinded's way

In June 2006 Brinded set his Lawyers, all schooled in the Rottweiler school of Law, onto them, and here is demonstrated the vindictiveness of the man. Chris Hopson the journalist who had responsibility for the six or so pages in the trade magazine Upstream was out of employment from the magazine within a month. The paper owned and printed in Norway first received threats by Shell to cancel its subscription, and then when Hopson left, to increase its subscription as an award.

The Case against Malcolm Brinded CBE – February 2015

In Scotland, the BBC received threats for daring to say on the Frontline Scotland programme that Shell had ever operated its installations in a dangerous way. Shell were particularly aggrieved when BBC Scotland sent me transcripts of an interview before the transmission with the then Production Director in Aberdeen Greg Hill. He had told them off the record, that the follow up from 1999 was lacking and yes, one of the audit findings that the tests on Emergency Shutdown Valves (ESDV) were falsified was true. Again Shell attacked the BBC, not because what Hill had said was untrue, but because they, the BBC, had made public the information given to them by Hill, against the unwritten code of not for the record. The programme stopped shortly afterwards, no more Frontline Scotland; the Director Dorothy Parker went on gardening leave and then left. The Producer Andrew McFadyen left to join ITN. Here we record an example of how a powerful multinational can, and did, use its power and influence to inhibit the foundation for any democracy, the freedom of speech. Every threat that Shell issued to the Times, the Guardian, and to me, and many others was bluster. But a strategy nevertheless meant to deter others, and to keep the lid on this Pandora's Box. Needless to say, since 2006 till the present day, no legal action has ever been taken by RDS to follow up on its threats.

Going back to 1999, what did the Audit say about Brinded then?

In the attached three articles about undesirable behavior you can read what the unanimous verdict of the Auditors was in their top level finding. They found that the sampling process which covered seven offshore installations, and where some 200 employees were interviewed, verified that there were significant weaknesses in essential controls both on and offshore. In their opinion this was not due to the absence of structures, systems and processes but rather that inappropriate attitudes and behavior were causing non-compliance or deviation from these control business processes. They believed that the key business drivers and messages from corporate level were fostering undesirable behavior in some parts of the organization.

By corporate level they meant Malcolm Brinded MD and by some parts of the organization they meant the Brent Management team.

So in 1999 Brinded was found responsible for the malaise witnessed by his staff auditors and in 2005 he was found guilty by Shell's top lawyer, but still as explained above, he survived.

In early 2012, using the evidence of a taped conversation between Campbell and Stausholm in June 2006, I had communicated simultaneously by e-mail with DCS Billy Gordon of Grampian Police and

The Case against Malcolm Brinded CBE – February 2015

the Shell Chairman Jorma Ollila and his Counsel Michiel Brandjes. After the existence of the tape and its contents were accepted by both parties I explained to the Chairman that there were only two possible options. Either;

1. the Chairman and his Counsel were accessories after the fact housing and protecting Brinded whilst they accepted and were aware of his wrongdoing, or
2. they like many others were misled and lied to by Brinded and his legal counsel Keith Ruddock over many years

They did not reply which is the norm, but within a week or so Brinded's sudden and quite unexpected departure from RDS was announced. His departure, it was stated was initiated by Shell. This correspondence is held on file by Grampian police.

Bill Campbell – MIBM MIEE B.Sc. C.Eng. (1)

Bill Campbell worked for 41 years in hazardous industries. After 17 years with the NCB he left that industry as a qualified Mining Engineer having spent some time at the Safety in Mines Research Establishment (SMRE) near Burton on Trent. In the late 70's and early 80's as a Chartered Engineer and with this status a member of UK Engineering Council he was an offshore installation topside facilities design engineer working in London and Aberdeen for Shell Expro. In 1983, he provided technical support to the Shell legal counsel at the FAI held in Aberdeen, into deaths caused by an explosion on the Cormorant Alpha. After a few years in operations management of offshore installations both on and offshore based in Aberdeen he headed up Operations and Maintenance Strategy for Expro. Many of the standards and codes of practice deviated from or violated by the Brent Management team were developed and authorized by Campbell. In 1996 he was transferred to Shell International in The Hague carrying out similar work. As an engineering specialist he was also a Group Auditor for the upstream business. Campbell worked closely with the HSE in the development of Safety Cases and has provided assistance to HSE at their request on other matters. During the investigation into the conduct of Malcolm Brinded, which he initiated, and with reference to his competence and personal qualities, he was reported by his employer Shell to be a person whose honesty and integrity was beyond reproach and he was in the words of his employer *a world class auditor*. Campbell has published many papers and articles mainly on the assessment and management of health and safety risks to employees on offshore installations and onshore oil and gas plants. He provided advice to the US Chemical Safety Board following the Deepwater Horizon disaster and the subject of the Brent Bravo accident is contained within Chapter Eight of the Congressional Report into this matter. (1) Qualifications held by Campbell at various times during his career, as a retired employee and a OAP no longer subscribe to MIEE or MIBM.

Appendix A:

Press Release to Employees and Media on behalf of Malcolm Brinded Executive Director of Royal Dutch Shell upstream operations on June 16th 2006

The following was Royal Dutch Shell response to the Upstream article on Shell concerning North Sea Safety on 16th June 2006, and the BBC Scotland 'The Human Price of Oil' aired on 14th June that year. This message was sent to the thousands of Shell employees in the Upstream business worldwide, and also formed the basis for media releases at the same time.

You may be aware that the Upstream trade magazine has today published an article making a number of very serious allegations against Shell in its operation of the Brent field and some **very personal, and completely unjustified**, attacks on current and former members of Shell's staff and management.

Shell strongly refutes these allegations.

Safety is Shell's foremost priority at all times and we absolutely reject any suggestion that we would compromise safety offshore. In 1999, Shell initiated the Platform Safety Management Review, in which Mr Campbell was asked to participate, **and responded vigorously to its findings.**

A follow up implementation audit conducted at the end of 2000 **confirmed significant progress had been made on both asset integrity and management systems.**

This contributed to the continuous improvement in Shell's safety performance that has been achieved since 1999 in the North Sea.

In late 2004, Mr. Campbell made allegations to Shell about his perception of a lack of follow-up to the PSMR. Shell took his claims very seriously. **A thorough investigation concluded that his perceptions were not supported by the evidence. Neither was the serious allegations concerning individuals.**

We are currently reviewing our legal position and reserve all our rights in respect of resorting to legal action to protect our reputation and that of our current and former staff.

Safety is, and will remain our first priority at all times.

Appendix B:

Why the Gas Nomination Contract was the root or underlying cause of the offshore fatalities on Brent Bravo!

This contract between British gas and Shell was put in place after the changes to the Brent installations, the so called low pressure option in the early 90's, when the product now would be gas with associated oil and produced water rather than oil with associated gas and water, the mode the installations had run in since they commenced production. Gas was now King, and it was gas that would be the principal revenue stream. It was a lucrative contract for Shell, if they met their nominated values, big numbers and straight lines to quote the operators offshore, all was well with the world. But the contract was incentivized. If during periods of cold weather, in the dark of winter, if Shell could exceed its nominated value it would be awarded with a premium payment for every cube of extra gas delivered. If it could not then British Gas would look elsewhere. But also, if during periods of high demand if Shell could not meet its nominated quota, then punitive charges would be incurred amounting to circa one £million per day.

In the early days of operating with the low pressure option punitive charges had been imposed on Shell Expro, this had to stop, the message from the top was you must produce at all costs during these critical periods, we must meet your nominated quota. Faced with these demands from above the Brent Asset manager, who was not a balanced individual, had to cope, so under pressure he issued his Touch F-All instruction. This was the driver from above that created and sustained the behavior witnessed in the attached articles. No work was to be done if there was even the slightest possibility that the platform process could be accidentally tripped. This work included maintenance of safety critical equipment such as ESD valves, deluge systems, fire pumps, and fire and gas detection systems to name just a few. When the backlog of maintenance schedules on this equipment grew exponentially, the Asset Manager overcame this difficulty by the false reporting of compliance. In 1999 for August, September and October, during the Audit period, he reported compliance of 96% on average, but the actual compliance was verified as 14%. There was another issue, pipe leaks due to sand erosion.

If a Brent Alpha, Bravo, Delta or Charlie tripped it could not be put back on line with the flick of a switch. Each gas well had to be beaned (opened) up carefully, if it was opened too quickly then the velocity of gas in the reservoir would pass a critical level where it would pick up diamond hard

particulate matter (called sand) from the reservoir which would then be carried with the gas into the surface pipe work and process vessels. These very hard particles carried in the fluid stream eroded quickly the walls of pipes leading to wall thinning and then loss of containment and also damaged the internals of control and emergency shutdown valves.

To get back to full production could take hours, but in these hours Shell were incurring punitive charges, so the wells were beamed up at times with scant regard to sand production and as a consequence hydrocarbon pipe work on the surface was failing frequently. To keep up with repairs and keep the process running a band aid approach was adopted. Install a temporary repair and keep going. They did not have the time, or the resources, to have the repairs approved in advance by a competent person.

Thus it is no surprise that every 5 days or so on Shell North Sea facilities there was a leak of hydrocarbons classed as a dangerous occurrence by legislation and government guidance notes.

It should also not surprise that the Brent Bravo FAI in 2006 determined that the initiation of the major accident event on 11th Sept 2003 was due to leakage from a pipe containing hydrocarbons which had had a temporary repair installed, and which repair had not been approved prior to installation by a competent person prior to installation, and was found to be in the words of Sheriff Harris to be **materially defective**

What the Sheriff was not made aware of was that on Brent Bravo there were another 30 not approved repairs. In the oilfield there were found 370 repairs 196 of which were not approved 80 of which were in hydrocarbon service. Between September and November 2003 the operators hand checking every line in the oilfield and found another 10 repairs on hydrocarbon lines which were materially defective. Lord Advocate Elish Angolini, in a reply to Christine May MSP, linked the deaths on Brent Bravo to the haphazard management of pipe repairs in the oilfield over the prolonged period from 1999. Something of which Sheriff Harris was, when he reached his determination, not aware

Appendix C:

Letter to parliament March 2011 informing that a Criminal investigation in Scotland had uncovered lies and deceit

My name is Bill Campbell. I am a former Senior Operations and Maintenance Engineer who also acted as a Group Auditor for Shell International. **I previously wrote to UK MP's, and to the Lords, in July 2007.**

This letter is an update on what has happened since and also what happened to the concerns raised by a number of MP's at the time. The key findings from the current investigation listed below are based on an update given to me by the Procurator Fiscal(s) on 18th February past.

Background

Some time ago the police in Aberdeen passed evidence to the Procurator Fiscal. Subsequently a criminal investigation commenced led by Anne Currie, Area Procurator Fiscal for Grampian Region assisted by Andrew Grant, Area Procurator Fiscal for Central Region. The investigation has focussed to date on the role of HSE officials at the Offshore Safety Division of the HSE based in Aberdeen. The allegations against these officials were that they were unduly influenced by Shell, potential bribery and corruption, to cover up the full circumstances of a multiple fatality on the offshore installation Brent Bravo in September 2003, and the subsequent Fatal Accident Inquiry (FAI) held in Aberdeen.

What has the investigation established, the 7 key findings

1. HSE failed to pass vital evidence to the Procurator Fiscal in Aberdeen prior to the Fatal Accident Inquiry. HSE had obtained this evidence directly from Shell only days after the fatalities and by November 2003. Shell informed HSE that the Brent Bravo fatalities were not just an unfortunate, but isolated incident, but there was a general malaise offshore with chronic weakness in essential management controls evident across the oilfield. The Fiscal was made aware of this evidence by me at the commencement of the FAI. This was the time when I first became aware that HSE had not provided this evidence to the Fiscal. He then attempted to introduce this evidence belatedly, but the Sheriff desisted, due to the restrictions placed on him by the 1976 FAI Scotland Act.

2. If the Procurator Fiscal(s) had been in possession of the evidence given by Shell to HSE in 2003, as they should have been, this would most likely have led the Lord Advocate to sanction a more General Inquiry into how Shell had operated across the oilfield in the prolonged period from 1999 till the deaths. And to how HSE had failed to reverse the degradation of facilities over this period despite issuing many Enforcement Notices and raising their ongoing concerns with Shell Directors.

3. Although Shell pled guilty to a number of serious breaches of legislation related to the deaths on Brent Bravo, their employees, and Society as a whole, were never made aware that similar breaches were apparent on 16 other offshore installations. The appalling conditions present on these installations raised risks to unacceptable levels but the workforce remained blissfully unaware of the risks they were taking, simply by being on these installations. Despite the conditions on these installations and in contravention of the HSC Enforcement Policy no formal enforcement actions were taken by HSE at the time and no attempt was made by Shell or HSE to

assess the risks of continued operation. It is estimated that some 40 prohibitions and/or improvement notices would have been required to cover some 80 serious breaches apparent at the time. Since 2003, Shell are on public record of expending to date some £800 million to return these facilities to the risk levels as stated in the offshore installation specific Safety Cases.

4. At the time the FAI results were made public the BBC in Scotland aired a TV programme on 14th June 2006 highly critical of Shell and HSE in relation to the deaths on Brent Bravo and this was picked up by Newspapers across the UK including the Times and the Guardian. In total contradiction with the facts Shell denied wrongdoing stating that in the period 1999 to the deaths in 2003 *'significant progress had been made on both asset integrity and management systems. This contributed to the continuous improvement in Shell's safety performance over that period'*.

5. HSE is aware that the Press Releases by Shell were false. I wrote to the HSE CEO complaining about this at the time, how could HSE stay mute when they were aware that the Shell statement was a pack of lies? He did not reply. The feedback from the ongoing investigation has confirmed that Geoffrey Podger, the CEO of the HSE, was aware that the statements made by Shell in their Press Releases of 2006 were false and misleading. His defence is that the Shell statement put HSE in a difficult position as their Policy does not allow them to comment on the health and safety performance of individual organisations.

6. With respect to the allegations of bribery of HSE officials by Shell over the period 1999 till 2003 the Procurator Fiscal(s) can find no physical evidence of this. They trawled through what records were currently still available looking at the degree and spread of hospitality given to HSE officials by Shell in this period. However the records for this period are no longer available being routinely destroyed after a 5-year lapsed period and were thus simply not available to examine.

7. The Procurator Fiscal(s) have reviewed the results of an internal investigation carried out to ascertain if HSE could, or should have been able to foresee and prevent the Brent Bravo fatalities with the information available to them between 1999 and 2003. The HSE internal investigation found essential weaknesses in their enforcement process **resulting in 18 recommendations for improvement** which have subsequently been implemented.

What happened to the concerns raised by MP's in 2007?

In August 2007 around 12 MP's including the then Secretary of State for Scotland got involved and wrote to Bill McKenzie at that time a Parliamentary Under Secretary of State at Work and Pensions. In a process that apparently by-passed Geoffrey Podger and his Head of the Offshore Safety Division, the HSE officials, against whom the allegations were made, were allowed to draft a reply directly to McKenzie. The Procurator Fiscal(s) carrying out the current investigation have viewed the correspondence between HSE and Work and Pensions in 2007 and it is not contentious that the information provide to McKenzie by HSE officials was false and misleading. The MP's who had raised the matter were thus hoodwinked by a false account of events.

Bill McKenzie, who was provided with the same evidence in 2009 as currently held by the public investigators, wrote to me at that time, stating his satisfaction with the advice given to him by HSE officials in 2007. He did this despite being aware that a criminal investigation into the conduct of those officials had commenced in March that year. In the same letter he made clear that Geoffrey Podger did not authorise the advice given to him in 2007 and that there was no need for him to do so. I find that statement by the Under Secretary truly remarkable.

The allegations raised by me and taken seriously by the Police and the Crown Prosecution Service in Scotland were that HSE officials had in 2003 purposefully covered up the criminal neglect of Shell, either for personal gain, or to mask from public scrutiny their failures to protect workers offshore from unacceptable risk. Could there be a more

damming allegation. Yet the reply to the Secretary of State for Scotland and the other MP's in 2007 was not, it appears, worthy of the involvement of the HSE CEO.

Finally both Shell and HSE have been given **right to reply** to what is written here and have raised no legal, or other specific objections to it issue. **For some time I have been pressing Anne Currie to make her investigation public.**

It is clearly in the public interest. Neither the Scottish nor UK Government finds argument with the proposal that in all matters related to the health and safety of persons at work, there must be openness and transparency. I would hope that on receipt of this letter the appropriate oversight committees at Westminster and Holyrood would consider the implications of this letter and give the concerns raised in the letter the public exposure they merit.

Yours sincerely

Bill Campbell
March 9th 2011

Appendix D:

Changes pending to Fatal Accident Inquiry Legislation

In 2006 after the Fatal Accident Inquiry into Brent Bravo deaths I wrote to the PF Depute Ernest Barbour and the Sheriff Harris. Sheriff Harris had been left unprotected and I could read in his report how he struggled with key issues like violation of the permit to work system. He also determined that a failure to carry out a risk assessment on an emergency valve contributed to the deaths. However no one from Shell or HSE informed him that to do so was not only a violation of Shell codes of practice many of same being authorized by the author and in any case was a contravention of offshore legislation relevant to this. He also seems to forget that the upstream level control valve was known to be in a failed condition so the last line of defense was the emergency valve. When I was in Aberdeen in Sept 2006 assisting HSE experts from Bootle we discuss this and both agreed that this was a misguided determination made by a Sheriff devoid of any assistance it would appear from Shell and the Offshore Safety Division people who should have helped but didn't.

At the same time I wrote to Colin Harris I wrote a sworn deposition on these matters to the then Lord President. Within weeks Lord Cullen was actioned by the Government to review Fatal Inquiry legislation (1). Andrew McKenzie assisting Cullen requested the evidence not presented both at the Prosecution proceedings and the FAI. A point of interest was that via email the data was continually returned to me, until I realized that the instruction written by the Brent Asset Manager to his troops offshore, the 'f' word was spelled out in full, and the government web site sensitive to foul language kept rejecting it. Anyway, the 61 bodies, and 21 individuals who responded to Cullen's review overwhelmingly supported the case for fresh proceedings, either a repeat of the original FAI or a new FAI if evidence relevant to the original FAI had not been available to the Sheriff, for whatever reason, and if a fresh FAI would be in the public interest. Supporting fresh proceedings were the STUC who mention Brent Bravo as their justification and also interestingly the HSE also support fresh proceedings. I was the only respondent who supplied Cullen with an example, providing the evidence you see in the attached articles.

The Case against Malcolm Brinded CBE – February 2015

The Brent Bravo FAI was ineffective! Yes, it satisfied the formal FAI requirements in that it found who died, when, what physically had caused their death on that day, but as to underlying causes and other factors, it was unable to look back in time because the Sheriff was restricted by the evidence led by the Crown, Shell and HSE to consider the events of that fateful day only. When the then Lord Advocate Colin Boyd eventually after months of speculation announced that an Inquiry would be held because it was clearly in the public interest, he wished such an Inquiry in his words to be an open ventilation of all the relevant facts. No doubt because Ernest Babour and Sheriff Harris were aware that this unseen evidence was lurking in the wings Sheriff Harris commenced proceedings with a harsh warning that there would be no toleration of evidence being led that was outside his singular remit to determine the cause of deaths on that fateful day, so proceedings commenced with an investigation already closed to understanding the underlying causes and any other factors that contributed to the deaths.

The British tax payer was badly shortchanged by this farce but more importantly vital lessons remain unlearned because they were never aired. Whilst Shell has the excuse in law that no person is expected to incriminate themselves through giving evidence at a FAI, a weakness in my humble opinion, the HSE officials, a public authority whose creation was to reduce risks to protect people at work under the Health and Safety at Work Act, in working in collusion with Shell to blindside the Sheriff was clearly misconduct by those officials whilst in public office which I understand is an offence in Law.

**(1) Review of Fatal Accident Legislation In Scotland – A Report issued in November 2009
by Lord Cullen**

Appendix E:

Just some of the witnesses who could corroborate this evidence but were never approached by the Procurator Fiscal Anne Currie

1999

Witnesses	Subject Matter
Gerbrand Moyes – Chief Auditor in Aberdeen Ken Merry – Auditor John Madden – Auditor Bill Campbell – SIEP Group Auditor	That Malcolm Brinded admitted under interview that he requested the then Minister for Energy Helen Liddell to intervene and stop the HSE officials investigation into workers concerns re Touch F All and its implications – All documented on date stamped MOM
Bill Campbell – SIEP Group Auditor Ken Merry – Auditor	That two sessions were held with Chris Finlayson at that time Director in charge of North Sea operations to retract the statement he falsely made to the media re Touch F All, to do something immediately to reduce the risks on Brent Bravo and to suspend the Brent Bravo Asset Manager who appeared stressed and mentally unstable – all documented in date stamped MOM
Colin Wight – BBC North et al	That a recording of what Finlayson released to the press in the form of a complete denial of the verified effects of TFA is held on file by the BBC
Gordon Muir - Brent Engineering Manager	That Muir was terrified about what the Brent Asset Manager was doing offshore and had taken his concerns up the line but to no avail
Gerbrand Moyes – Chief Auditor in Aberdeen Ken Merry – Auditor John Madden – Auditor Bill Campbell – SIEP Group Auditor Chris Finlayson – Oil Director Tom Botts – Gas Director Marc Carne – Central Field Manager	On 22 October 1999 Campbell requested Brent Bravo should cease production until remedial work to reduce intolerable risks were undertaken. Also that the Brent General Manager, the Asset Manager and the Deputy Asset Manager be suspended pending an internal inquiry into their conduct. Management presentation in power-point held on file by Grampian police
Robert Sprague – Shell European Manager with oversight over Shell operations in the UK	That Sprague had serious concerns about Brinded and had taken these concerns up the line. Sprague later informed me via my boss that Brinded had survived disciplinary action because the HSE had given him the all clear – see comments in main body of case against Brinded
Paul Mann – Head of Health and Safety Department in The Hague	That he and his staff were presented by the 1999 Audit findings

2003

Witnesses	Subject Matter
Bill Campbell David Bainbridge – OSD Aberdeen Tom McLaren – OSD Aberdeen	Met these officials 28 th October and handed over Audit Findings from 1999. They had no prior knowledge of these findings. To the question did you act on the intervention of Helen Liddell in 1999, no acceptance but also no denial, that said however their investigation into TFA had been incompetently handled
Greg Hill – Shell Production Director Tom McLaren – OSD Taf Powell – Head of OSD	That in November only a month after the fatalities Shell had passed the results of their post fatalities review to OSD – so at that juncture OSD had the full picture – this is not contentious as will be covered later

2004/5/6

Witnesses	Subject Matter
Ronnie McDonald – OILC Tom McLaren – OSD	McDonald had attended prosecution proceedings at Stonehaven Sheriff Court, raised concerns with Tom McLaren, why no mention of TFA at this session? McLaren scoffed at the idea stating that it would not be raised, which it wasn't
Bill Campbell David Bainbridge and Tom McLaren – OSD Aberdeen	On 22 nd May sent letter to OSD in Aberdeen Bainbridge asking that evidence from 1999 be passed to Procurator Fiscal Ernest Barbour and that the then Lord Advocate Colin Boyd be advised – at that time there were ongoing concerns that a FAI would not be held - documented
Bill Campbell Colin Harris – Sheriff at FAI Ernest Barbour PF Depute	Concerned that McLaren had <u>not passed</u> evidence to PF sent evidence from 1999 and the evidence from the Shell post fatalities technical review to them both – letter retained on file
Ian Whewell – Head of OSD who took over from Taf Powell	Whewell wrote to me to say that the 22 nd May letter to Bainbridge had been discussed with Ernest Barbour but neither the letter or the evidence was passed to Barbour - documented

The Case against Malcolm Brinded CBE – February 2015

Christine McCrossan – Solicitor for deceased Moncrieff Jake Molloy – OILC	That McCrossan had raised evidence sent to her with Ernest Barbour at the beginning of the FAI. According to Molloy she was told to keep quiet if she wanted to maintain a job in Law in Scotland
Christine McCrossan	Sent me a letter saying Babour unlikely to consider evidence I had provided and suggesting I raise the matter with the then Lord Advocate Colin Boyd, this I did – letter retained on file
Colin Boyd – Lord Advocate	Asked for copy of McCrossan letter I had passed to Chamber Street be returned, it was the only copy, I had passed him the original, asked for copy of letter from PF Depute to Lord Advocate, about how my evidence had been handled, that also refused although I said I would be prepared to come to Edinburgh to read report in camera. I was then informed by CPS that my evidence, in any case, was unsolicited . This is documented.
Cathy Jameson - Justice Minister	I wrote complaining about the conduct of the Lord Advocate and offered to come to parliament to discuss evidence. And also discuss my concerns about Colin Boyd. This offer was refused, no reply. This is documented
Campbell, Richard Sykes, Jakob Stausholm, Beat Hess and Jeroen van der Veer	Meeting in The Hague, to discuss Malcolm Brinded's conduct in 1999 from the internal investigation findings. This is fully covered in the case against Brinded. No minutes taken. Advised letter of censure passed by van der Veer to Brinded.
Christine May – MSP Elish Angolini – Lord Advocate	May raised concerns with the new Lord Advocate Elish Angolini, Angolini who replied that my evidence from 1999 and 2003 would have overwhelmed a singular FAI into the deaths on Brent Bravo and would have merited a separate Inquiry – no such Inquiry took place . No explanation of why ever given. She also linked the deaths to the haphazard management of temporary pipe repairs apparent over a prolonged period of time from 1999. This is documented
Sheriff Colin Harris	Because of risks to structure on Brent Bravo if the massive gas release had ignited he states in his FAI report that a separate Inquiry into this aspect alone should be considered, no such Inquiry took place .
Greg Hill – Shell Production Director Dorothy Parker – BBC Andrew McFadyen - BBC	At a meeting prior to the BBC Scotland Frontline programme Hill admitted 1999 audit not followed up properly and that it was true that in 1999 ESDV tests were falsified – these off the record comments documented in e-mails
Dorothy Parker – BBC Andrew McFadyen - BBC	After the off the record comments by Hill were sent to me Shell threatened to sue BBC, Frontline programme halted, Parker left BBC to go freelance, McFadyen joined ITN/Channel 4
Media interest, TV and newspapers	Frontline Scotland Human price of oil aired 14 th June 2006, the Upstream trade paper publishes allegations against Malcolm Brinded 16 th June.
Chris Hopson – Upstream Magazine Health and Safety Editor	Hopson released from Upstream after threats from Shell
Royal Dutch Shell	Press release on 16 th June 2006 all covered in main body of this article
Greg Hill –Production Director Jakob Stausholm – RDS Group Auditor	In a phone conversation Stausholm to Campbell: Stausholm states that Hill was forced to make the press release on 16 th of June 2006 <u>against his will and knowing it was entirely false and misleading</u> – conversation taped but a copy of this was never requested by Shell or the PF Anne Currie during her 2 year investigation
Jorma Ollila – RDS Chairman Geoffrey Podger – CEO of HSE	Wrote to Shell Chairman and HSE CEO – how could they allow such a pack of lies to be issued. Told HSE CEO that his position in not going public to retract a statement by Shell that he knew to be false and misleading was morally repugnant, no replies. – The letter retained on file
Campbell Jake Molloy - OILC Ian Whewell – Head of OSD Kevin Myers – Technical Director of HSE Greg Hill – Production Director	At this meeting held at Lord Cullen House HSE confirmed that the evidence from the 2003 Shell post fatalities review was passed to them in November 2003 by Greg Hill only days after the fatal event. HSE also agreed that the causal factors apparent in 1999 were exactly the same as those contributing to the deaths in 2003. They further confirmed that despite this evidence, although discussed with Ernest Barbour, was never passed to him or passed or discussed with the then Lord Advocate Boyd, despite my request previously that it should be on 22 nd May 2005.
Campbell Jakob Stausholm	Shortly after the 16 th of June Shell press release Stausholm phones me to apologize for the press release. He had no part in it and had been humiliated since it ignored completely his investigation findings, also the opinion of the Shell legal counsel Hess that Brinded had a responsibility for the deaths. This conversation taped but not used or requested by PF Anne Currie

2007/12

Witnesses	Subject Matter
Geoffrey Podger – HSE CEO	Wrote to CEO on 14 th March 2007 informing him that I would write to Work and Pensions Committee with oversight over the HSE about the misconduct of his officials, had previously received significant documentation from the then HSE Chairman showing a split within the OSD in Aberdeen – letter on file

The Case against Malcolm Brinded CBE – February 2015

Jorma Ollila – Shell Chairman Michiel Brandjes – Company Secretary and Corporate Legal Counsel	Sent a letter, detailing the facts, to the Chairman and his Legal Counsel. This letter retained on file and held on file by Grampian police
House of Commons – Work and Pensions Committee	Evidence related to the misconduct of HSE officials passed to Committee with the request that I be given an opportunity to present the evidence before them, this declined when they replied due to lack of time
House of Commons – Work and Pensions Committee	The committee published my evidence without amendment and this is contained in their third report for session 2007/8: Commons publication HC 246 -11
Lord President – Lord Hamilton	Sent a sworn deposition covering all this material in July 2008
Commons MP's and the Lords Bill McKenzie – at that time Under Secretary at Work and Pensions	Wrote to all MP's etc telling them about the conduct of Shell and HSE on 24 th July 2008. As a result of this some 20 plus MP's wrote to the Undersecretary Bill McKenzie for an explanation
Bill McKenzie – at that time Under Secretary at Work and Pensions	He replied to the effect that the information he had received from the OSD officials in Aberdeen was that the evidence I had supplied them was for information only and in any case was not relevant to the FAI held in 2006
MP's generally including the then Secretary of State for Scotland Des Browne and also Anne Begg in her role on the Work and Pensions Committee	Informed the MP's they had been deceived and that was not the agreed position reached in the meeting in 2006 with the OSD boss Ian Whewell, and the HSE Director Kevin Myers and Jake Molloy of OILC. Asked Bill McKenzie to write to Geoffrey Podger to say if he stood by the false information given to parliament
Bill McKenzie Geoffrey Podger	Podger replied to McKenzie that he was not aware of the information passed to DWP but in any case had not authorised same, this correspondence is held on file by the PF Anne Currie and Grampian police – he had not authorised it because he knew it to be false
DCS Simon Blake Grampian Police PF Anne Currie	I wrote to Grampian police in 2008. After a delay, informed by Blake that evidence had been passed to PF Anne Currie at her request. My request to come to Aberdeen to sign a statement etc and explain evidence to police had been turned down
PF Anne Currie PF Andrew Grant DCS Billy Gordon Grampian police	I had initial meeting with Currie and Grant on 12 th March 2009 at PF Office in Kirkcaldy. This was an informal meeting to discuss the evidence in general, no minutes were taken. No statements from me was requested. During the next two years no further evidence was requested from me but rather frustrated by what I sensed was time wasting by Anne Currie I passed her more and more evidence. Any correspondence between us was initiated by me, and all correspondence is held on file by Grampian police
PF Anne Currie PF Andrew Grant	Second meeting with Currie and Grant on 18 th February 2011 at PF office at Kirkcaldy – this is summarised in Appendix C
Commons MP's and the Lords	Wrote to give update - See Appendix C
Tricia Marwick Kenny MacAskill	Wrote to my constituency MP and the Justice Secretary complaining about conduct of Anne Currie, an investigation that took over two years but no one was ever interviewed, no corroborating witnesses were ever approached although she maintained she had carried out a full investigation in an exemplary manner.
Tricia Marwick Lord Advocate – Frank Mulholland DCS Billy Gordon – Grampian police	Marwick obtained a reply from Mulholland on 23 April 2012 which was totally false and misleading, the police can confirm this because they were kept in the loop with all communications between Campbell & Currie
MSP's general	MSP's wrote to Anne Currie asking why her investigation had not been made public, she did not answer this question but replied again that hers was a full investigation but she did not explain why such an investigation could be called such without corroboration from the many witnesses
Jorma Ollila – Shell Chairman Michiel Brandjes – Company Secretary and Corporate Legal Counsel DCS Billy Gordon – Grampian police	In a joint communication with the Chairman and his legal counsel indicated that the existence of the taped telephone conversation Campbell & Stausholm was that any further denial by them could be viewed by the police as aiding and abetting Malcolm Brinded to cover up his wrongdoing. Brinded's unexpected departure from Shell was announced in a press release circa early April 2012, the release of Brinded, as covered by the Petroleum Intelligence Review et al was said to have been initiated by Shell