

Compass Chambers



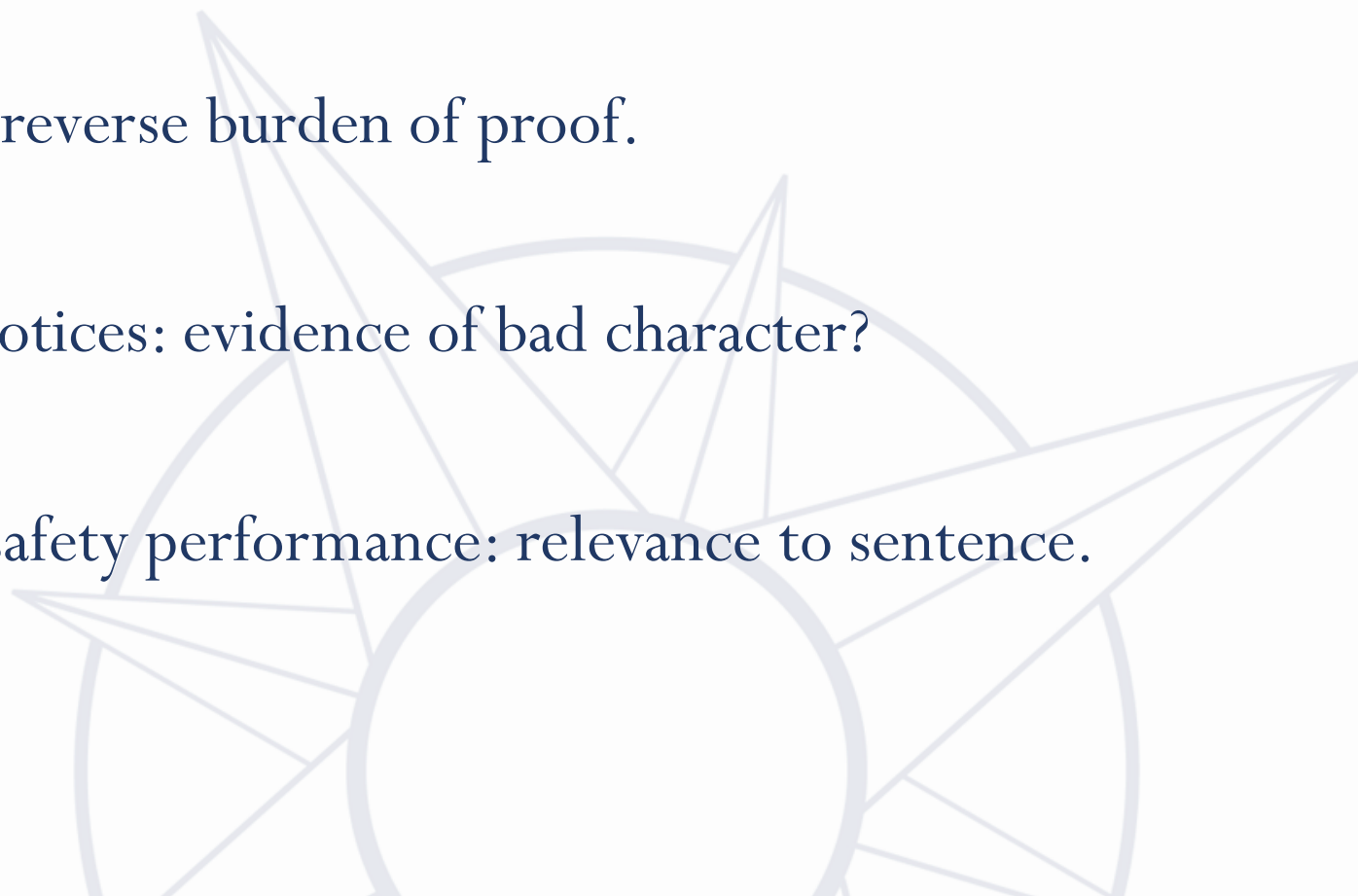
# Health and Safety Crime: Caselaw Update

Peter Gray KC



# Areas of Law

- Causation.
- Section 40 HSWA 1974: the reverse burden of proof.
- Prohibition/Improvement Notices: evidence of bad character?
- Director bonuses related to safety performance: relevance to sentence.





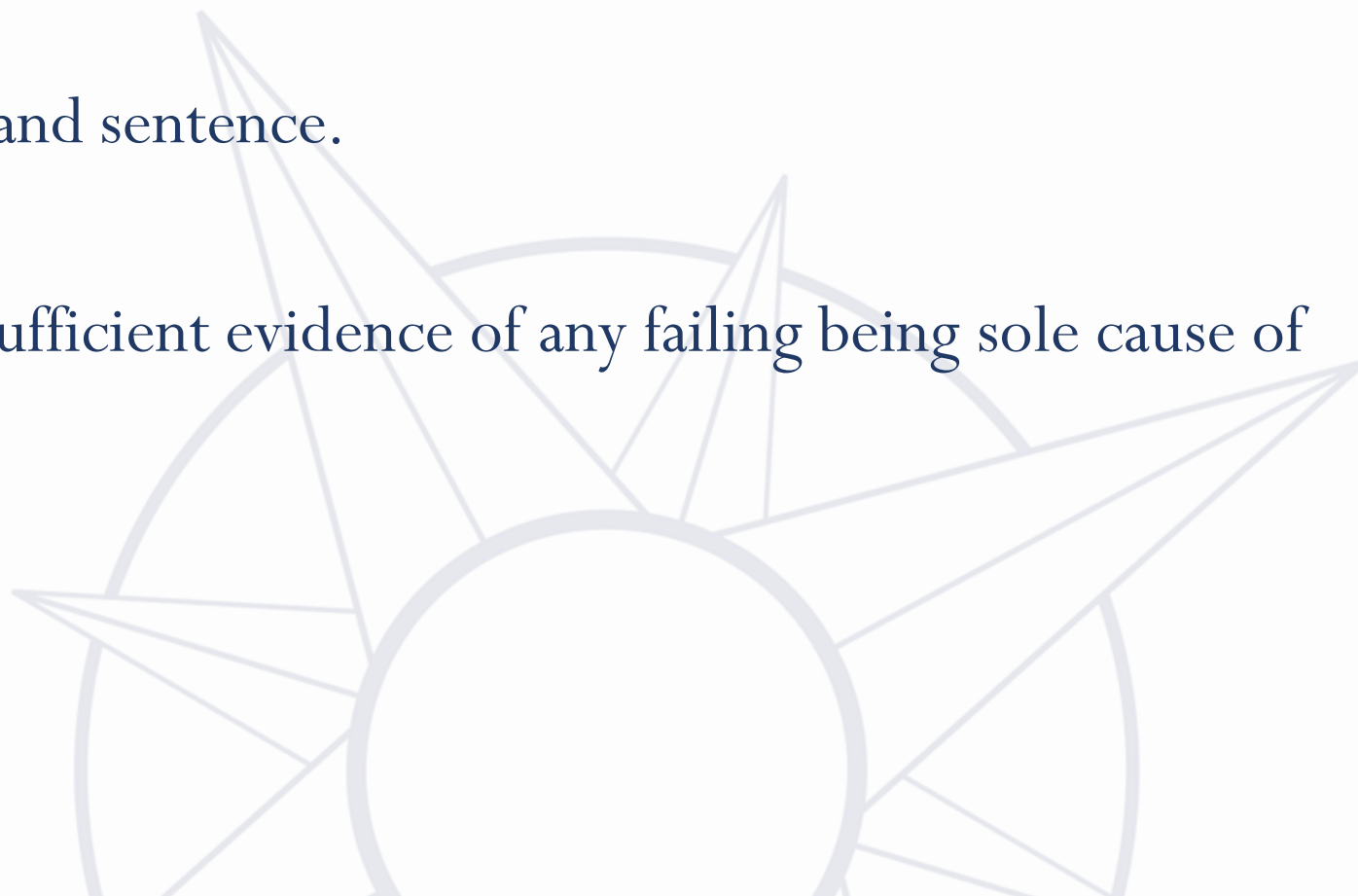
# Cases

- Bowie v Procurator Fiscal, Falkirk (2023) SAC (Crim 2)
- R v AH Ltd (2021) EWCA Crim 359
- Health and Safety Executive v Evergreen Construction Limited (2023) EWCA 237.
- R v Sellafield Limited and Network Rail Infrastructure Limited (2014) EWCA Crim 49.



# Bowie v Procurator Fiscal, Falkirk (2023)

- Appellant convicted of offence under Section 37 HSWA.
- Appealed against conviction and sentence.
- Re causation: argued that insufficient evidence of any failing being sole cause of accident.
- Appeal refused.





- “No requirement for the Crown to prove that the failure arising from the appellant’s neglect was the sole or even the main cause of the death. It sufficed if that failure made a significant or material contribution to the death”. Para 18.
- “Significant Cause”:
- more than minimally, negligibly or trivially contributing to the outcome.
- Where other factors present may be relevant to level of penalty.
- Step 1 Part 2 of Sentencing Guidelines.



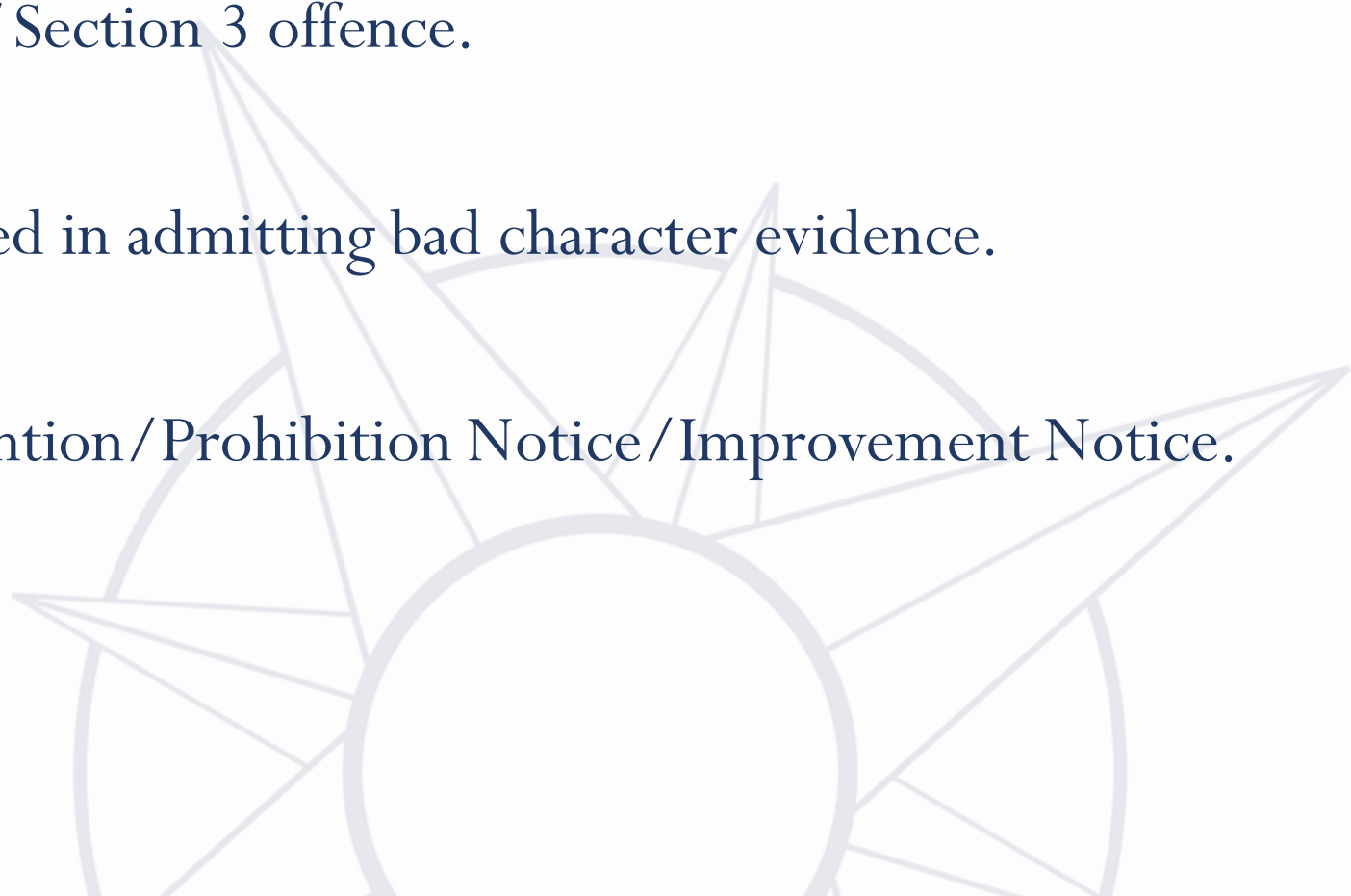
# R v AH Ltd (2021)

- Appeal against ruling re burden of proving “reasonable practicability” under Section 40 HSWA.
- R v Davies (2003) ICR 586: argued that wrongly decided on 4 grounds:
  - “reasonable practicability” an element of the offence;
  - Placing legal burden on accused incompatible with presumption of innocence;
  - Inappropriate distinction between “regulatory” and “truly criminal” offences;
  - Legal burden of proof on accused not proportionate.



# Health and Safety Executive v Evergreen Construction Limited (2023)

- Appeal against Conviction of Section 3 offence.
- Principal Ground: Judge erred in admitting bad character evidence.
- Status of Notice of Contravention/Prohibition Notice/Improvement Notice.





# R v Sellafield Limited and Network Rail Infrastructure Limited (2014)

- Conjoined Appeals against Sentence.
- Extent to which a financial penalty serves the principal purposes of sentencing.
- Information to be provided to the Court.
- Relevance of bonuses related to safety performance.
- Application of stated principles to Sentencing Guidelines at “Step Back” point.



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