

IN DEFENCE OF THE SAFETY ADVISOR

Chris Hopkins

0121 629 1779

Christopher.hopkins@pinsentmasons.com



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ISSUES

- What is the risk?
- Guidance on post incident actions
- Handling HSE interviews
- HSE Enforcement process
- Criminal process
- Maximum penalties
- Costs



What is the risk?

- **R (Nottinghamshire and City of Nottingham Fire and Rescue Service) v Liu and O'Rourke [2011] EWCA Crim 3263**
- **R v Alan Ager (11 June 2010)**
 - **“It is very rare to bring a prosecution against an individual but it was deemed that if you cannot rely upon the health and safety manager of a company to protect employees from harm, who can you rely on? For this reason, health and safety professionals are not immune to prosecution and must ensure that they have full regard to the law....”**



INDIVIDUAL PROSECUTIONS ON THE RISE

Year	Directors/ Senior Managers Prosecuted
2000-1	24
2001-2	20
2002-3	20
2003-4	17
2004-5	12
2005-6	10
2006-7	23
2007-8	13
2008-9	36
2009-10	36
2010-11	43 (provisional)





POST INCIDENT PROCEDURES

- Crisis Management Plan? Business Continuity Plan?
- Internal communications
- Press involvement
- RIDDOR reports
- Internal investigations (Legal Professional Privilege)
- Document control



WHEN AN INSPECTOR CALLS

- INSPECTORS' POWERS (s20 HSWA 1974)
 - Enter premises without warrant or permission;
 - Take a constable (Inspectors have no specific powers of arrest);
 - Take other persons or equipment onto premises;
 - Examine and investigate;
 - Direction to leave undisturbed;
 - Take measurements, photographs and recordings;

WHEN AN INSPECTOR CALLS (Cont)

- Take samples of any articles or substances found on the premises;
- Dismantle or test dangerous articles or substances;
- Take possession of dangerous articles or substances, and deal with causes of imminent danger;
- Require production, inspection and take copies;
- Require facilities and any other power which is necessary.

HSE INTERVIEWS

- Witness
 - Voluntary
 - S.20
 - Legal representation
 - Nominated representatives
 - Copy statements
- Under Caution (PACE)
 - Legal representation
 - To go or not to go?
 - Written representations

ENFORCEMENT PROCESS

- Pace interviews complete;
- Inspector produces report for his/ her Principal;
- HSE considers its Enforcement Management Model, Enforcement Policy Statement and the CPS Code for Crown Prosecutors;
- Enforcement decision;
- HSE instructs an agent prosecutor;
- HSE applies for a summons;
- Summons is issued by local Magistrates' Court and served on Defendant.

CRIMINAL TRIALS PROCESS

- First Hearing;
 - Initial details of HSE's case (possibly some disclosure);
 - Plea before venue (Magistrates/ Crown Court?);
- Committal Hearing;
- PCMH (Crown Court only);
- Trial;
- Sentencing
- Appeal?

PENALTIES

- Magistrates Court
 - £20,000 and/ or 6 months imprisonment
 - (Section 7) £5,000 and/ or 6 months imprisonment
- Crown Court
 - Unlimited fine and/ or two years imprisonment
- Gross Negligence Manslaughter
 - Imprisonment for life



FUNDING LEGAL COSTS

- Legal Aid (individuals only)
- Insurance
- Self Funding
- Recovery of legal costs
- Recovery of related FFI
- Liability for HSE costs

ANY QUESTIONS?



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