

**Monday, 10 October 2016**

**Guests and New Members:**

Steve Boden – Riverside Environmental  
Andy Roper - Lovell  
Carl Fletcher – Schneider Electric  
Dave Stewardson - Mereway Kitchens  
Dexter Sewell – Birmingham City Council

**'It's All Gone Wrong – What Do I Do Now?'**

**Joint Presentation by speakers:**

**Louise Mansfield, Associate, Pinsent Masons and  
Tony Mitchell, HM Principal Inspector, HSE Construction Division, Birmingham**

**What to Expect when an Accident/Incident Occurs – from the immediate aftermath through to the HSE investigation**

At such times, the organisation's policies and procedures already in place will become invaluable and will typically cover the following areas:

**Initial steps and considerations**

Legal liability and commercial risks

- Civil: compensation, insurance
- Criminal: fines and imprisonment, damage to brand/share price.

Public liability insurance will only cover the legal costs. For example, if there is a fatality, the legal costs could be £30,000 (insurable) but the criminal fine could be £10m (uninsurable).

**First Priority – Safety of Personnel and Site**

- Call the emergency services/first aiders and ensure safe access to the site
- Check everyone is accounted for
- Make equipment safe, isolate power
- Restrict access to the site to necessary personnel only

**Other Immediate Steps**

- Notify Enforcement Agencies. It is important to recognise they have a job to do and to assist them in the most effective way.
- Notify the client, insurers, solicitors and next of kin in the case of severely injured persons.
- Prepare to deal with the media.
- Designate a senior person as the single point of contact for all queries and requests for documentation – preferably someone who understands the powers of the respective authorities. This will ensure consistency and control over what is said and also what is provided.
- Accompany the regulators around the site to ensure their safety. Ensure they comply with any PPE rules.
- Advise employees that they are not authorised to speak on the organisation's behalf and who to direct enquiries to.

**Dealing with the Regulators**

Understand or seek clarification of what is being asked of you. Co-operate fully and promptly in the case of correspondence. Seek advice where required.

### **The Importance of Internal Investigations**

There is no legal requirement for these but the benefits are twofold: to establish the cause and so help to avoid a future occurrence, and to document the sequence of events for any future legal proceedings.

To facilitate the process, ask the questions: “Who, What, Why, When and How?” It is important to:

- gather the FACTS and not be swayed by opinion
- identify any gaps in the evidence and challenge any inconsistencies.
- establish immediate, underlying and root causes **based on evidence**.

### **Legal Privilege**

This refers to confidential information which passes between a client and his lawyer. It is made for the dominant purpose of litigation which is pending, reasonably contemplated or existing. Privileged documents do not have to be disclosed to third parties (S.20(8) HSWA 1974).

Key points:

- Instruct your lawyers early - Accident Investigation stage if serious
- Lawyers to instruct experts

### **RIDDOR Reporting**

Comply where necessary, by the quickest practicable means.

### **HSE Investigation**

The HSE will investigate based upon their Incident Selection Criteria and then establish whether there has been a breach of law.

### **The PACE (Police and Criminal Evidence Act) Interview**

This takes place where the regulator has reasonable grounds to believe an offence has been committed by the suspect. Be aware that what you say at the interview can be used as evidence against you (but not others).

It is important to know the capacity in which you are being interviewed, eg as the individual suspect or as a nominated representative of the organisation.

The HSE say that the letter inviting the suspect to the interview should:

- state the offence about which they will be questioned
- give a factual summary of the case against the suspect
- state the specific issues and areas to be covered
- identify any special documents that will be referred to

Upon receipt, instruct lawyers, review the letter carefully and be well prepared.

Alternatively, you could provide a written Voluntary Submission. This enables you to respond to the regulator’s points without the unpredictability of the interview question and answer session.

### **HSE Enforcement Decisions**

The HSE will review all the evidence and decide whether to prosecute.

### **Investigation Stage Ends**

- Fee for Intervention ends
- Court process begins
- Prosecution costs begin

The Summons will appear on your doormat!