



Accident Investigation & Corporate Manslaughter

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Accident Investigation

The Law



- Health and Safety at Work Act 1974
 - Endangerment offences – risk is enough!
 - Reverse burden of proof- can you show you did all that was reasonably practicable?
 - S.33 – Corporate Liability
 - S.7 – Individual liability
 - S.37 - Director/ Senior Management Liability

Interviews



- Initial Interviews
- S.20 interviews
- Under Caution
- Be prepared

Accident Investigation – The Report



- *“There were no risk assessments, no COSHH assessment and no PPE. It was Jerry’s responsibility to do this but he was on holiday. No replacement had been asked to cover for Jerry and his cupboard was empty. This is against the law and in breach of the company’s systems and procedures.*
- *John Smith, the site supervisor, set up a system of work that was not in compliance with the site manager’s rules. The system could therefore not be regarded as safe.*
- *The root cause of the accident was poor pre-work assessment that resulted in the wrong methods of work being applied although these were thought by the site manager at the time to be fine. This led directly to the fatal accident occurring.”*

Accident Investigation - Golden Rules



- Do not admit liability
 - Admissible confession
 - Nullify insurance
- Do not set out offences committed
- Do not to blame individuals
- Do not to “shoot from the hip”
- Careful language
- Extreme care with root cause analysis
 - Causation is a serious aggravating factor
 - Do you know enough?
 - Do you need an expert?
- Consider privilege

Accident Investigation – Effective Writing



- Written reports - keep it simple and factual
- The 4 Cs: **Clear, Concise, Correct, Complete**
- Be precise – avoid ambiguity, use clear language not jargon
- Take great care and use the utmost prudence when recording opinion, recommendations and conclusions
- **If in doubt, leave it out** (at least until have taken advice)

Accident Investigation - Privilege



- Privileged documents do not have to be disclosed
- Solicitor-client communications
 - Relating to advice on legal duties and vulnerabilities
- Third party communications
 - **dominant** purpose of the communication is the “contemplation of legal proceedings”
- We can help set up privilege
- Separate legal report



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Corporate Manslaughter

Corporate Manslaughter



The Current Law

- Did the death result from, an individual's recklessness and
- Is that individual sufficiently senior in the organisation that his guilt should equate to the company also being considered guilty of manslaughter?
- The “controlling mind”.

Corporate Manslaughter



The new proposals

- An organisation will be guilty of corporate manslaughter if a “gross management or organisational failure” causes a person's death.
- Applies to management failures by an organisation’s “senior managers” – either individually or collectively.

Corporate Manslaughter



What is a gross failure?

- Conduct which “falls far below what can reasonably be expected of the organisation in the circumstances”.
 - Compliance with health and safety law
 - Attitudes, policies, systems, practice of organisation.

Who are “senior managers”?

- Persons who play significant roles in
 - The making of decisions about how the whole or a substantial part of its activities are organised, or
 - The actual managing or organising of the whole or a substantial part of those activities.



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