

How to help your solicitor help you....

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Lyons Davidson
SOLICITORS



Process

- Investigation following incident
- Own investigation/internal report
- Witness evidence
- Interview under caution?
- Post interview under caution
- Prosecution/further action?

Accident Plans

- Is it a crisis...definitions?
- Roles, Responsibilities and Leadership
- Crisis management centre?
- The 'Golden Hour'
- Emergency Services
- Information management
- Communications
- External affairs
- Human resources
- Getting help from stakeholders / govt. bodies / competitors?!
- Testing/Updating

RIDDOR

- Who writes it?
- What does it contain?
- Facts not suicide note
- Only one

Insurance - Do you have the right cover?

- When does cover start?
- Cover for Directors and Employees
- Cover for the right HSWA offences
- Cover for Corporate Manslaughter
- Are the costs covered sufficient?
- Freedom to choose your lawyer
- No Legal Aid for companies – No recovery of Defendant's costs
- Insurer withdrawal of cover – misrep and proposal forms

HSE turn up on site to interview

- Take witness statements
- Voluntary (S 9) or S 20?
- RIDDOR still required
- Nominated person
- Provide facilities
- Brief interviewees?
- Representation?

Powers of HSE

- Entering premises
- Take documents
- Take statements
- Take measurements, samples, photographs
- Require answers – obstruction?
- Anything else...

Problems involved with this

- Knowing what was there after it's gone
- Functioning without key documents
- Timing of photographs and samples
- Employees co-operating
- “Do not disturb”

Solicitors' Role

- Acting for the company / directors / employees
- Conflict of interests
- Supporting those who are traumatised
- Explanation of general rights
- Using independent lawyers

Internal Reports and Legal Professional Privilege

- **Legal Advice Privilege** (client-lawyer comms)
 - Confidentiality
 - Communication
- **Litigation Privilege**
 - Confidentiality
 - Communication
 - Dominant purpose is litigation
- Report to legal advisers following incident
- Internal communications re incident
- Communications with third parties
- Privilege wording and H&S policies

Perverting the Course of Justice

“...an act tending and intended to pervert the course of public justice...”

- Maximum sentence: Life imprisonment / unlimited fine
- No perversion of justice need actually occur
- Concealing evidence
- Interfering with the evidence?
- Paying-off witnesses ‘Golden Parachute’?

Evidence of Compliance

- Policy
- Training documents
- Risk assessments
- Method statements
- Testimonials
- Accident records
- HTM (corporate manslaughter)
- Evidence of public interest considerations

Business Structures

- Limited Companies
- Partnerships
- Trusts
- Problems appointing directors with specific health and safety targets
- Insolvency

Experts

- Do you need to hire your own?
- How do you choose them?
- What is involved?
- Consider HSE experts
- Different ones at different times

Notices

- Avoiding a prohibition notice after an incident *Chilcott v Thermal Transfer Ltd*
- Tribunal's power to modify
- To appeal or not to appeal....that is the question?

Interview Under Caution

- Refuse the interview (sometimes)
- Attend the interview
- Choosing the company representative
- Delay the interview to allow time for investigation
- Give written statement (under caution)
- Read out statement on tape
- Can the evidence be used against me personally?

Involvement of Counsel

- Seriousness, fining power and rights of audience
- Benefits
 - Tactical advice if charges are likely
 - Bringing tactical considerations to bear upon investigation itself
 - Reduction in number of charges
 - Mitigation

Letter of Representation (b)

- Code for Crown Prosecutors
 - Evidential Test
 - Public Interest Test
- Seriousness
- Achieving compliance
- Achieving a deterrent effect
- Proportionality

Decision Time

- Possible outcomes
- Next steps
- Late evidence
- React to summons
- Guilty or not guilty