

# APSE: Operational Health, Safety and Wellbeing Seminar

Accidents at Work: are you prepared ?  
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# Issues for today

- Managing the process
- Statutory powers of the Police and HSE
- Interviews – what are they and how to respond
- Police and HSE tactics – common techniques
- What have we learnt from recent events ?

# Incident response Practical considerations



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# Incident response – the starting point



# Practical process issues – immediate aftermath

- Rapid response likely to be needed
- Co-ordinate response
- Secure channels of communication
  - use verbal methods
  - control of documents/e-mails
- Secure and preserve scene and evidence – stop notice on document destruction policy?
- Notify insurers?
- Legal input – legal privilege to be engaged and managed?

# Media strategy

- Consider media response – re-active or pro-active?
- Beware detailed responses – less may be more
- Media strategy should not drive the response to an event
- Who will respond?
- Influence of social media ?

# Internal accident investigation

- Is it necessary – no specific legal duty?
- Why is it being investigated? A crucial issue
- Should the investigation be part of a legally privileged process?
- If not legally privileged the investigation is disclosable to regulators and lawyers for aggrieved persons in litigation
- Create a clear assessment and commissioning procedure for internal investigations – don't do it just “because we always do it”
- Inter-relationship with statutory RIDDOR reporting
- Assembling the investigation team

# HSE / Police Powers



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# HSE Powers – s.20 HSWA

- Enter premises
- Require documents be produced and take **copies** of documents
- Take photos, samples etc
- Impound sites/areas and remove equipment for examination
- Require facilities
- Interview witnesses



# Police Investigations

- Any site where an incident giving rise to an emergency callout has occurred may be treated by the police as a **scene of crime** until the police establish whether or not an offence has been committed.
- The police have the power to search premises:
  - with the consent of the occupier
  - after an arrest
  - if they have a search warrant

# Power to arrest

- HSE does not arrest anyone
- Police can arrest individuals where they have reasonable grounds to suspect they are guilty of an offence (a low test) – could include a health and safety offence
- But – the Police cannot arrest an individual on behalf of the company
- If arrested will be held in police cells and treated as any other “criminal” suspect (searched/fingerprinted etc)
- Police and HSE work in tandem in fatal cases – “Work Related Deaths Protocol”

# HSE / Police Interviews



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# HSE Interviews

- There are different types of interview
  - Interviews without caution
    - Informal (notebook) chat – nothing is off the record
    - Compulsory (S. 20 HSWA) – must answer questions, but protection against self-incrimination
    - Voluntary – no such protection
    - Ask for copies of statements
  - Interviews under caution
    - Right to legal advice in private

# HSE Interviews

- Voluntary Witness Statement
  - **Each** page signed by witness at bottom
  - Admissible in court in absence of the witness
  - Will be put to witness in court if deviate from contents
- S.20 HSWA – an offence not to answer questions
  - right to have a nominated representative present during the interview
  - Will be written down and signed

# Police interviews

- Informal note book discussions – nothing is off the record
- Voluntary s.9 witness statements – same as for HSE
- Interviews of suspects under caution
- NO power to compel answers – unlike HSE

# Police & HSE tactics

- Police
  - Can move quickly
  - Used to applying pressure to achieve goals
  - Will arrest where they consider it justified
  - Less chance to influence timetable
  - Witnesses often interviewed alone
- HSE
  - Move more slowly
  - Have powers to issue enforcement notices
  - Power to recover their costs from duty holders – FFI
  - Tend to interview & obtain evidence by consent
  - Better chance of influencing timetable and approach generally





# What have we learnt from recent events ?

- Competence of individuals and recruitment process
- Specific risk assessment
- Depth of scrutiny
- Breadth of those involved in FAI(HR Manager etc)
- Importance of paperwork
- Wider impact on organisation & individuals
- Media / public perception

# Summary

- Understand the nature of the risks
- Legal issues only arise from a failure to identify/assess or control risk
- Recognise that a failure to have appropriate process in place can itself create liability
- If an incident occurs follow process to control creating additional liability risk

# Questions





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