



QBE

Forum for
risk managers

Corporate manslaughter
When the inspectors call





Corporate Manslaughter When the Inspectors Call

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Professional. Legal. People.



Introduction



- Following a fatality, investigations relating to corporate manslaughter will be led by the police
- The knowledge and expertise of the regulatory enforcing authorities (such as the HSE or local authority) will be properly harnessed in any corporate manslaughter investigation under “The Work Related Deaths Protocol”



Investigation purpose



- The purpose of the investigation itself is to:
 - Find out the cause of the accident;
 - Decide whether the offence of corporate manslaughter has been committed [and/or other general health and safety offences] and if so;
 - Whether the company should be prosecuted



Immediate aftermath

- **“To do” list will include [in no particular order]:**
 - Cordon off the site of the accident/ take control.
 - Contact the emergency services
 - Make a list of those people on site
 - Ascertain a list of probable “senior managers” who may be interviewed by the Police/HSE
 - Take 3 copies of relevant documentation
 - Take photographs
 - Contact your marketing department/ press agency
 - Contact insurers (and lawyers!)
 - Instigate internal investigation procedure



Witness statements



- Main format used by the Inspectors are:
 - Notebook entries initially
 - s.9 Criminal Justice Act 1967 statements
 - s.20 Health and Safety at Work 1974 statements



Witness statements (continued)



- Factors to consider
 - Normally taken soon after accident (hours/days)
 - The person being interviewed generally has the right to have another person [“independent”] present during the questioning. Taking notes if possible
 - Witnesses should not sign their statement unless they are happy with the contents
 - Seek a copy. One may not always be forthcoming!



Documentation



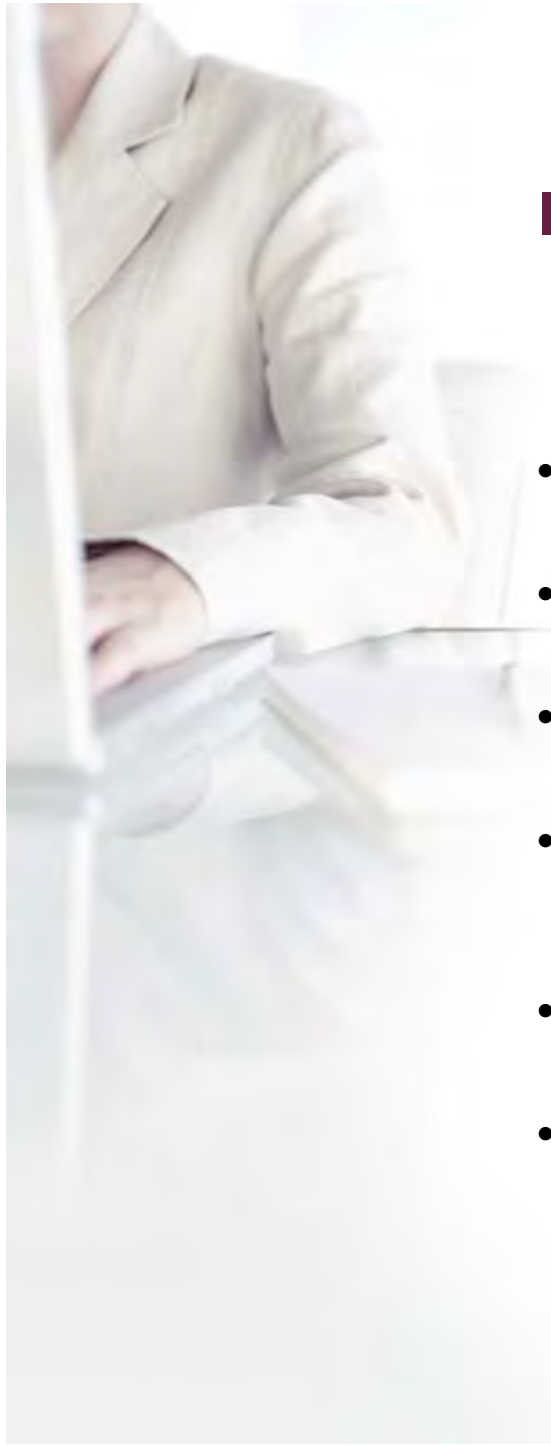
- Police/ HSE powers of search and seizure
 - s.20 HSWA 1974 – powers of inspectors to search/inspect and take copies of any document for the purpose of the inspection
 - s.19 PACE 1984 – Much wider power – police may seize any item found on the premises
 - s.22 PACE 1984 – and can retain “so long as is necessary in all the circumstances”



Legal professional privilege



- Documentation created for the purpose of seeking legal advice is protected and does not need to be disclosed. *Waugh v British Railways Board*
- Useful in undertaking a thorough review of the incident without incriminating company in future proceedings



Interviews under caution



- “PACE” interviews (Police and Criminal Evidence Act 1984)
- Viewed as a suspect. Generally at police stations!
- Company representative to speak on behalf of the company
- Always tape recorded – answers can be used in criminal proceedings
- Right to be legally represented
- Power of arrest for not co-operating



Other considerations



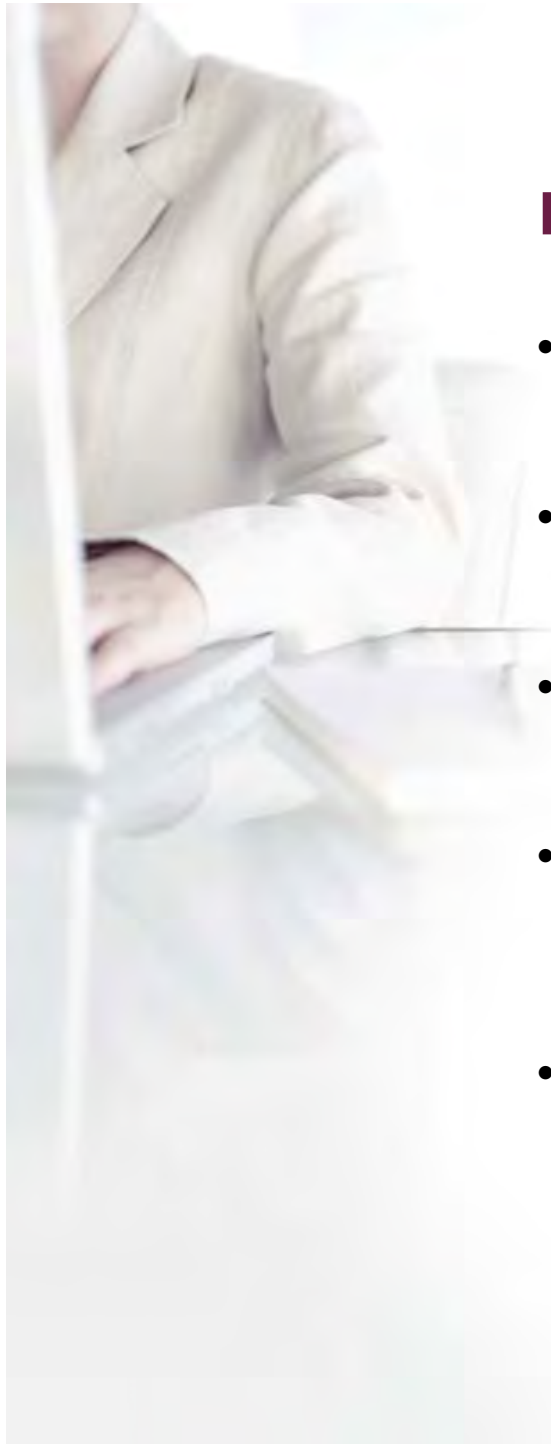
- Serious incident procedure
 - Company should have an internal procedure in place to set out how to deal with a serious incident e.g. cordoning off the area, roles and responsibilities. Should be reviewed regularly
- Directors and Officers Insurance
- Public Relations
 - Statement to the press



Improvement / prohibition notices



- **s. 21 HSWA – Improvement Notices**
 - Requires company to remedy contravention within a specified time period. Tactics on appeal?
- **s.22 HSWA – prohibition notices**
 - Preventing activities to be carried out until contraventions have been remedied
- **s.24 HSWA – appeals against notices**
 - Company can appeal against a notice within 21 days of issue. Must be in writing to the appropriate employment tribunal and specify name, address, date of notice, name and address of inspector, which aspect is challenged and grounds of appeal



DWF recommended actions - Do



- Take legal advice at an early stage, ideally straight after the incident (legal professional privilege). Know your rights!
- Consider the need to have representatives during voluntary and s.20 interviews
- Make a proper record of all documents given to the inspectors/police
- Check insurance policies (e.g. D&O policies), indemnity may be provided for the cost of legal representation during the investigation and subsequent proceedings
- Try to ensure that, where a company is under investigation, it speaks through one nominated individual to avoid confusion



DWF recommendations – don't



- Allow employees to be interviewed without inspectors providing an assurance that they will provide a copy of the statement
- Agree to be interviewed under caution without legal representation
- Do anything that might amount to an obstruction offence
- Forget the fact that the inspectors are investigating with a view to taking enforcement action and misinterpret a casual approach



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