HSE investigatory powers and what to do after an accident
Stephen Chessher, February 2005

If a serious accident at work occurs, an investigation will normally be carried out by the Health and Safety Executive ('HSE') or a local authority trading standards department and/or the Police (if there has been a fatality). The HSE has a range of investigatory powers including the power to require production of documents and the power to require anyone to answer questions.

Reporting

- Major injuries, dangerous occurrences etc must be reported under the Reporting of Injuries, Diseases etc Regulations 1995 ('RIDDOR') 'forthwith by the quickest practicable means'. Reporting can now be done online http://www.riddor.gov.uk.

Internal Investigations

- Consider involving in-house or external lawyers from the outset. If reports, witness statements etc are prepared for the purpose of obtaining legal advice or in contemplation of litigation, they are likely to be legally privileged and therefore not disclosable in subsequent proceedings, criminal or civil. Photographs and/or a video record of an accident scene may prove invaluable.

Improvement and Prohibition Notices

- An improvement notice may be served by an inspector if a contravention is likely to continue. It will normally require the contravention to be remedied within a specified period of time. It can be appealed in which case it is suspended until the appeal is disposed of.
- A prohibition notice may be served if an inspector considers that an activity involves a risk of serious personal injury. It will require the works (or a specified portion of the works) to be suspended until the risk has been averted. It may be appealed but will not be suspended automatically.
- There is a more detailed article on this website on Improvement and Prohibition Notices.

Powers of Entry/Search

- HSE inspectors do not have a general power of search. Nor can they obtain a search warrant (but Police may obtain a warrant if they are involved in an investigation).
- Inspectors do have power to enter premises in defined circumstances, e.g. to take photographs, measurements or samples following an accident.
- It is an offence intentionally to obstruct an inspector in the exercise of his powers. If in doubt, the safest course is to take legal advice immediately.

HSE Interviews

- Interviews may be one of 3 different types - compulsory, voluntary or voluntary under caution and it is important to establish which type of interview the inspector intends to use. You are always entitled to be legally represented at an interview.
- Inspectors can require anyone to answer questions and sign a declaration of truth (compulsory interview). This is not the same as making a witness statement which is
voluntary. A compulsory interview cannot be used as evidence against the person who gave it.
- Inspectors can request anyone to make a voluntary statement which may subsequently be used as evidence.
- Inspectors will interview under caution if they already suspect someone has committed an offence. They are voluntary and legal advice should be taken before agreeing to be interviewed. Interviews should be tape recorded and generally conducted in accordance with the Codes of Conduct issued under the Police and Criminal Evidence Act 1984. A suspect may make written submissions instead of agreeing to an interview under caution.
- If the investigation is being conducted by the Police (normally because it is a manslaughter investigation), the Police may use their power of arrest to detain a suspect for questioning. There remains a right of silence but in some circumstances an adverse inference may be drawn from silence.

Production of Documents

- Inspectors may require documents to be produced to them and inspect or copy them. This is not a power of search (see above).
- Inspectors cannot require production of documents which are legally privileged (see above).

Abuse of Powers

- In the event that investigators exceed their powers, for example by unlawfully searching for or seizing documents or materials, it may be appropriate to make an immediate application for an injunction. If necessary and the case warrants it, an application can be made to a judge out of court hours by telephone.
- If evidence has been obtained unlawfully, it can be excluded at the discretion of the trial judge.

For further information about what to do after an accident, please contact:

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