

Essential Briefing: Health, Safety and Welfare

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Brief Outline

- "Duty of Care":
what is it, and what is the "Standard of Care"?
- The Health and Safety at Work etc Act 1974
- Corporate Manslaughter:
The Corporate Manslaughter and Corporate
Homicide Act 2007
- A "reasonably practicable" approach
- Sources of more detailed information and free
downloads



Have a laugh now, while you can!



Duty of Care

- A requirement to exercise a *reasonable* standard of care whilst engaged in any activity that *foreseeably* could harm others.
- Before proceeding with an action for negligence, it must first be established that a duty of care *exists*; then, that the defendant is *in breach* of it.
- A “*reasonable* standard of care” means that a person who is under a duty of care exercises “*reasonable*” prudence and caution. (*A higher standard may be required of a person who holds himself out as expert.*)
- Harm must be *reasonably* foreseeable”
- A “relationship of proximity” (not med, geographical or chronological) must exist between claimant and defendant
- It must be fair, just and *reasonable* to impose liability

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What is “Reasonable”?

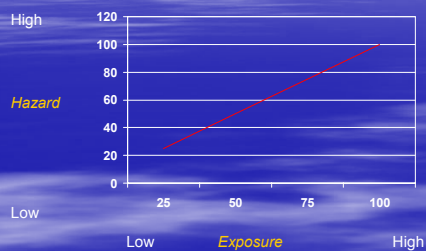
A key question: a recurring theme
Directly relevant to HASAWA 1974 and CM&CHA 2007

- *What a court considers reasonable?*
- *What a reasonable person considers reasonable?*
- *Based on sound judgement, sensible?*
- *In accordance with reason or sound thinking?*
- *Within the bounds of common sense or normal expectation?*
- *Hold that thought!*

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What is “reasonable”?

Risk = Hazard x Exposure



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A common-sense approach

(If you're doing the right thing, no need to worry. The negative consequences of inaction or wrong action won't happen)

- Identify hazards arising from work activity
- Assess the risks
 - Consider the needs of employees, contractors, suppliers, visitors, customers
- Plan to manage the risks
 - Consult employees, and any others involved
 - Develop a policy and procedures and publish them
 - Provide the necessary resources, eg PPE, First Aid Boxes
 - Provide information (eg warning signs) and training (eg handling & storage)
 - Monitor the effectiveness of these measures, and modify if necessary
 - (eg by testing and examining articles or substances used at work)

Identify and assess risks

- Identify hazards arising from work activity (duty of care)
- Such as?
 - Driving vehicles or operating machinery, cutting equipment etc
 - Falling (ladders, working at height)
 - Crushing (moving vehicles or forklifts, unstable loads)
 - Trip hazards (strapping, mains cabling, clothing, bags)
 - Slipping (wet or polished surfaces, unsuitable footwear)
 - Burning (wet, dry, cold, chemical, electric, friction, radiation)
 - Wounds (incised, abrasion, puncture, laceration, contusion)
 - Toxic or flammable materials (bundling of oil tanks)
 - Handling, lifting or transporting loads (manual/mechanical)
 - Respiratory problems (fumes, smoke, confined spaces)

Health and Safety at Work etc Act 1974

(The "etc" concerns control of dangerous substances and emissions into the atmosphere.)

- Main Aims:-
 - To secure the health, safety and welfare of all persons at work;
 - To protect persons, other than persons at work, against risks to health and safety arising out of, or in connection with, the activity of persons at work;
 - To control the keeping and use of explosives or highly flammable substances and generally preventing the unlawful acquisition possession and use of such substances.

General duties of (all) employERs

- To ensure, so far as is *reasonably* practicable (SFAIRP):
- The health, safety and welfare at work of all employees.
- A safe place of work and a safe system of work.
- A workplace that is safe and without risks to health (SAWRTH)



Particular Duties of (all) Employers

- Provide and maintain plant and systems of work that SFAIRP are SAWRTH.
- Ensure SFAIRP that the use, handling, storage and transport of articles and substances are SAWRTH.
- Provide information, instruction, training and supervision to ensure SFAIRP the HASAW of all employees.
- Maintain any place of work under the employer's control SFAIRP in a condition that is SAWRTH and adequate as regards the welfare of employees
- Prepare and revise as appropriate a written statement of policy with regard to HASAW and arrangements for carrying out that policy, and bring the statement to the attention of all employees. (>5 emp but..)
- Regulations may provide for recognised trade unions to appoint safety representatives/committees. Employers must consult any such reps to make and maintain arrangements to enable employees to co-operate.
- Employers have a duty to ensure SFAIRP that persons other than employees are not exposed to risks to their HAS



General duties of manufacturers

Any person who designs manufactures imports or supplies any article for use at work has a duty to:

- Ensure SFAIRP that the article is so designed and constructed that it will be SAWRTH when being set, used, cleaned or maintained, by a person at work.
- Carry out, or arrange for, such testing or examination as may be necessary to perform this duty (*above*).
- Take the necessary steps to ensure that persons supplied with the article are provided with adequate information about its use, and by revisions of information (if any) if it becomes known that anything gives rise to a serious risk to HAS.
- Any person who manufactures imports or supplies any substance has a duty to ensure SFAIRP that it will be SAWRTH at all times while being used processed stored or transported by a person at work or in work premises; and to carry out or arrange testing as necessary to comply with this duty.
- A person who supplies an article or substance to a customer under a Hire Purchase or Credit Sale agreement as a means of financing its acquisition by the customer from a third person shall *not* be treated as the supplier for this purpose and the duty shall fall on the effective supplier.



General duties of employEes at Work (Section 7)

- To take *reasonable* care for the HAS of self and other persons who may be affected by his acts or omissions;
- To co-operate with the employer so far as is necessary to ensure that any duty or requirement imposed on his employer is complied with;
- *eg using PPE, guards on machines, HI-Vis clothing;*
- Not to interfere with or misuse things provided (eg BA);
- Employers are not to make any charge or levy on employees for things done to satisfy the requirements of statutory provisions.



Enforcement

- H&S Commission may approve Codes of Practice.
- HSE may transfer enforcement to local authorities.
- Enforcing authorities may appoint inspectors with power to enter premises, inspect examine or seize items, issue improvement or prohibition notices.
- Where an offence is committed by a body corporate with the consent or connivance, or through the neglect of, a director or other officer, the individual as well as the body corporate may be proceeded against and punished.
- *(More accidents/injuries caused by management failure than careless workers)*



Offences

	Criminal	Civil
▪ Basis	Statute	Precedent
▪ Offence	Crime	Tort
▪ Action	Prosecution	Civil Action
▪ Outcome	Proof	Probability
▪ Remedy	Punishment	Compensation



Offences

- To fail to discharge a duty;
- To contravene any HAS Regulations;
- To contravene any requirement imposed by an inspector;
- To prevent or attempt to prevent any person from appearing before an inspector;
- To contravene any requirement imposed by an improvement or prohibition notice;
- To make a statement knowing it to be false;
- To make a false entry in any book, register, document etc with intent to deceive.

Other legislation

- COSHH Regulations (*coming up*)
- Display Screen Equipment Regulations
- Health & Safety (First Aid) Regulations (*coming up*)
- Manual Handling Regulations
- Noise At Work Regulations
- Personal Protective Equipment Regulations
- RIDDOR (*coming up*)
- Working At Height Regulations
- Workplace Regulations
- Work Equipment Regulations

Corporate Manslaughter and Corporate Homicide Act 2007

- Came into force April 2008;
- Concerned with serious management failures resulting in a gross breach of the duty of care;
- Substantial part of the failure must have been at senior level; looks at mgt systems & practices;
- Criminal liability arises when SMF leads to fatality;
- Unlimited fine, poss publicity order, remedial order;
- Convicts an organization for failure to manage HAS properly; (no additional requirements: HASAWA covers it)
- (But see earlier slide re possible individual liability).

RIDDOR 1995

Report of Injuries Diseases and Dangerous Occurrences Regulations 1995

- Work-related accidents diseases and dangerous occurrences;
- Duties apply to employers self-employed and persons in control of work premises. Following are reportable:-
- Death or major injury eg fracture, amputation, dislocation, electric shock, chemical burn, loss of sight, injury leading to unconsciousness or resuscitation or hospital admission for >24 hours.
- Over-three-day injury even if not "major": (includes acts of violence.)
- If doctor notifies you that an employee suffers from a reportable work-related disease
- Dangerous occurrence that could have caused reportable injury even if it didn't
- INCIDENT CONTACT CENTRE www.riddor.gov.uk riddor@natbrit.com

COSHH Regulations 2002

- Protection against health risks from hazardous substances stored handled or used at work
- Identify hazards, assess risk, decide action
- Used in work, eg paint or cleaning materials
- Arise from work eg dust, fumes or waste
- Occur naturally eg fungal spores
- Prevent or control exposure
- Ensure control measures are used
- Put emergency procedures in place
- Have COSHH Data Sheets available

First Aid

- Arrangements to provide immediate and appropriate attention in the event of accident illness or injury at work;
- Health And Safety (First Aid) Regulations 1981 require employers to provide adequate and appropriate equipment facilities and personnel! *(New regs coming 2009/10)*
- Need to assess what is "adequate and appropriate" 4U!
- MINIMUM ON ANY WORK SITE: a suitably stocked First Aid Box and an Appointed Person (1-day course).
- Need cover at **all times** when people are at work, not 9-5
- Low risk and <50: one AP, >50 and <100: one First Aider plus 1 FA per 100
- Med risk and <20: one AP, >20 and <100: one First Aider plus 1 FA per 100
- High risk 5-50: one First Aider, >50 plus one First Aider per 50
- *(Low risk eg office; med risk eg warehouse; high risk eg building site;*

“What you must do”: advice from HSE

1. Register a new business with the HSE or local authority;
2. Take out Employers' Liability Insurance;
3. Have someone competent to help you comply
(need not be a consultant)
4. Decide how you will manage HAS (**policy statement**)
5. Decide what precautions to take (**risk assessment**)
6. Provide basic welfare facilities (**toilets, washrooms**)
7. Provide free HAS training for your workers
8. Consult your workers on HAS
9. Display the HAS Law poster or give out a leaflet
10. Report some accidents, diseases, dangerous occurrences

NEED MORE INFO?

www.hse.gov.uk/pubns

-Free download of “An Introduction to Health & Safety”

www.hse.gov.uk/legislation/hswa.pdf

- Free download of HASAW Act

www.justice.gov.uk/publications/corporatemanslaughter2007.htm

Free downloads of guidance on CMCH Act

www.businesslink.gov.uk

-And click on Health, Safety and Premises



Absolutely your last chance
for a laugh!