

Fatal incident response & coroner inquests

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For today

- Case study
- Identify 5 key features of fatal incidents
- Coroner inquest headlines

Case study

- A company employee has been crushed by machinery on its premises
- Emergency services have been notified
- Police and the ambulance services have arrived and are on the scene
- The paramedics sadly cannot save the life of the individual and he is pronounced dead on the scene
- The Police have said they are undertaking an investigation and want to speak to a number of employees that afternoon and will also require paperwork and to secure electronic data which may be on the server, laptops and mobile phones

5 things – incident response

- For most organisations this will be a once only event or at most very rare
- In real time things move quickly and often in a disorderly fashion
- It is useful to have a plan to deal with this type of incident – but beware that even where they do exist things can fall apart under fire from investigators and regulators
- May be worth stress testing this periodically (don't forget that people move on and things get forgotten)



What does this incident really look like?

- Be aware of the seriousness – it is a criminal investigation – people can go to prison
- How are individuals supported?
- Must documents be provided?
- Will the police continue to deal with this?



Getting a grip

- Someone should be the lead contact for the police and HSE/EHO
- You will not be able to “control” or “steer” the police investigation – recognise and accept this
- DO NOT LET A MEDIA/SOCIAL MEDIA STRATEGY BE THE TAIL THAT WAGS THE DOG
- Count to 10 before setting off on a process of incident investigation – what are you trying to achieve?
- DO NOT treat this as if it is a personal injury liability event!!



Understand this

- The site or a portion of it may be closed off for access for several days
- The investigation likely to last a number of months – if not longer
- There is an intricate web of interlinked issues to manage:
 - Criminal investigation
 - Civil claim
 - Post incident lessons & process
 - Insurance considerations
 - Coroner's inquest
 - Commercial realities
 - Media reporting/reputational effects



But most of all – its about people

- Speaking to and support for any family needs to be handled sensitively
- Work colleagues are likely to be badly affected
- Individuals will be interviewed as witnesses – do they need support/separate legal advice?
- Individuals may be interviewed as suspects – they will need independent legal advice



In summary

Have a plan that deals with:

- Leadership of the organisation's response
- Secures data and documents from destruction
- Has the potential to offer support to individuals who are affected and/or the police or regulator wishes to interview
- That co-ordinates contacts with lawyers, insurers and covers off RIDDOR reporting and notification requirements under policy of insurance
- Management and provision of document and information requests
- Considers the interaction with the internal investigation process

Inquest issues

- In almost all cases like this there will be an inquest unless a prosecution is launched for manslaughter (corporate or otherwise)
- If the police do not prosecute and hand this over to the HSE/EHO then the inquest could take place before a final decision has been made on enforcement action – or vice versa
- The coroner is not Quincey and does not have his/her own team of investigators – they rely on the work done by the police and HSE

Importantly

- It is very likely that any inquest will:
 - Have regard to corporate documents such as risk assessments and safe systems of work
 - Hear evidence from employees as witnesses

The nature of inquests

- The purpose of an inquest aim is to identify who died and “how, when and where” that person came by his/her death
- An inquest is meant to be an inquiry and not adversarial – it may not always feel like it
- There are no “parties”, only interested persons
- The inquest cannot attribute criminal or civil liability
- This does not mean that findings must be neutral or uncritical of failings – they often are
- They are public hearings and are often reported – especially in regional media/trade press
- Workplace fatalities that are RIDDOR reportable must be held in front of a jury

Engaging with an inquest

- Decisions need to be made:
 - Will the company want to receive evidence the coroner will rely on and be represented at the inquest?
 - If so it will need to be recognised by the coroner as an “interested person” – this is not necessary in every inquest
 - If it does not how will it keep an overview of the inquest hearing
 - If employees are going to be called then it will probably want/need to engage properly with the inquest and have IP status

Interested persons defined

- There is a long list of who can be made an IP and it includes:

“a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agent may have done so”

Inquest outcomes

- The legal outcomes of an inquest are limited
- Cannot award fines or compensation
- If the jury records a finding of “unlawful killing” the matter will be looked at again by the CPS to reconsider original decisions not to prosecute for manslaughter
- Coroner is now required to issue a report to a person who s/he believes has the power to take action to prevent future deaths (RFD)
- The RFD’s are in most cases made publicly available and published on the Chief Coroner’s website
- Inquest can inform civil/commercial claims and criminal prosecutions
- Potential for serious negative publicity

It's about people again

- The family is likely to be present
- They may be represented
- They will be looking for answers – and why not!
- Individual employees may be called and subjected to aggressive questioning from the coroner and representatives of interested persons
- This could cause them to be apprehensive – what is their position and do they need separate legal representation – how can they be supported during the process
- Inquests are serious in tone and are never happy occasions

Summary – decisions to be made

- To what extent does the company want to engage with the inquest?
- Does it want to receive evidence the coroner will rely on and be legally represented – if so it will need IP status
- Or does it want to have a watching brief only?
- Likely to be led by whether employees are going to give evidence and the possibility of being criticised or receiving an RFD – think hard before sending along an employee to give evidence unsupported
- What is the concurrent enforcement position?
- What action might be taken prior to the inquest that will pre-empt issuing of an RFD?

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