

When the Worst Happens

Managing a Fatal Accident
& Dealing with an Inquest

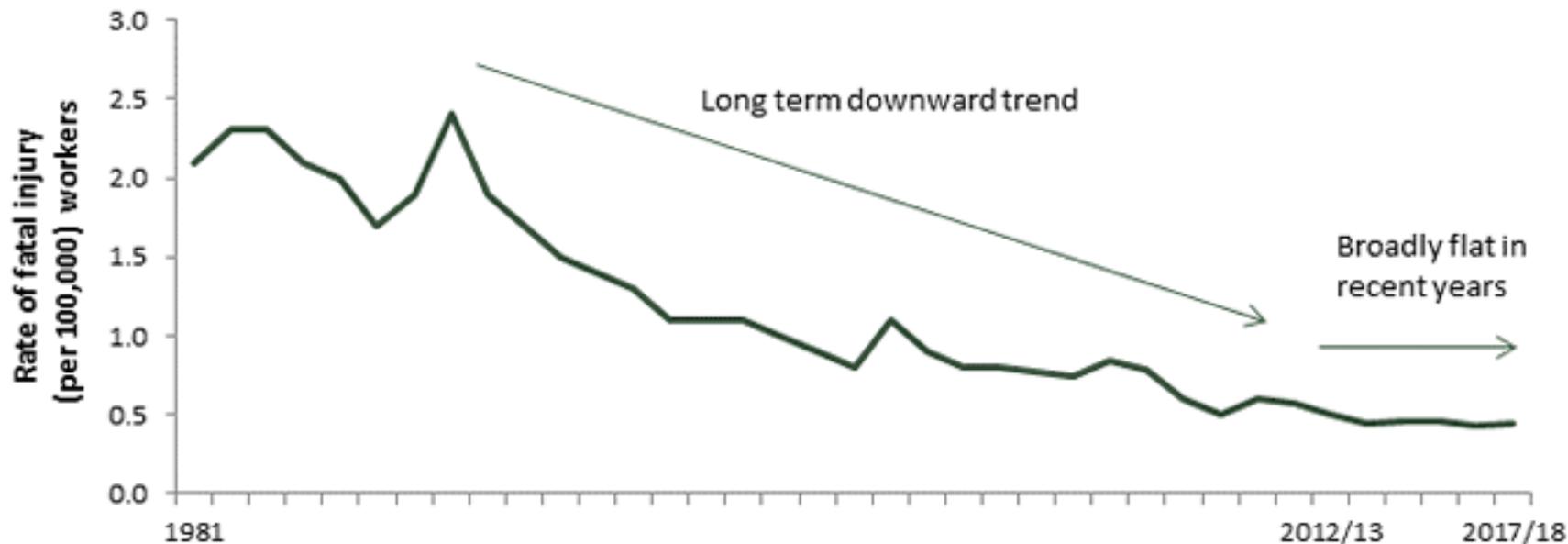
10 October 2018



Pinsent Masons

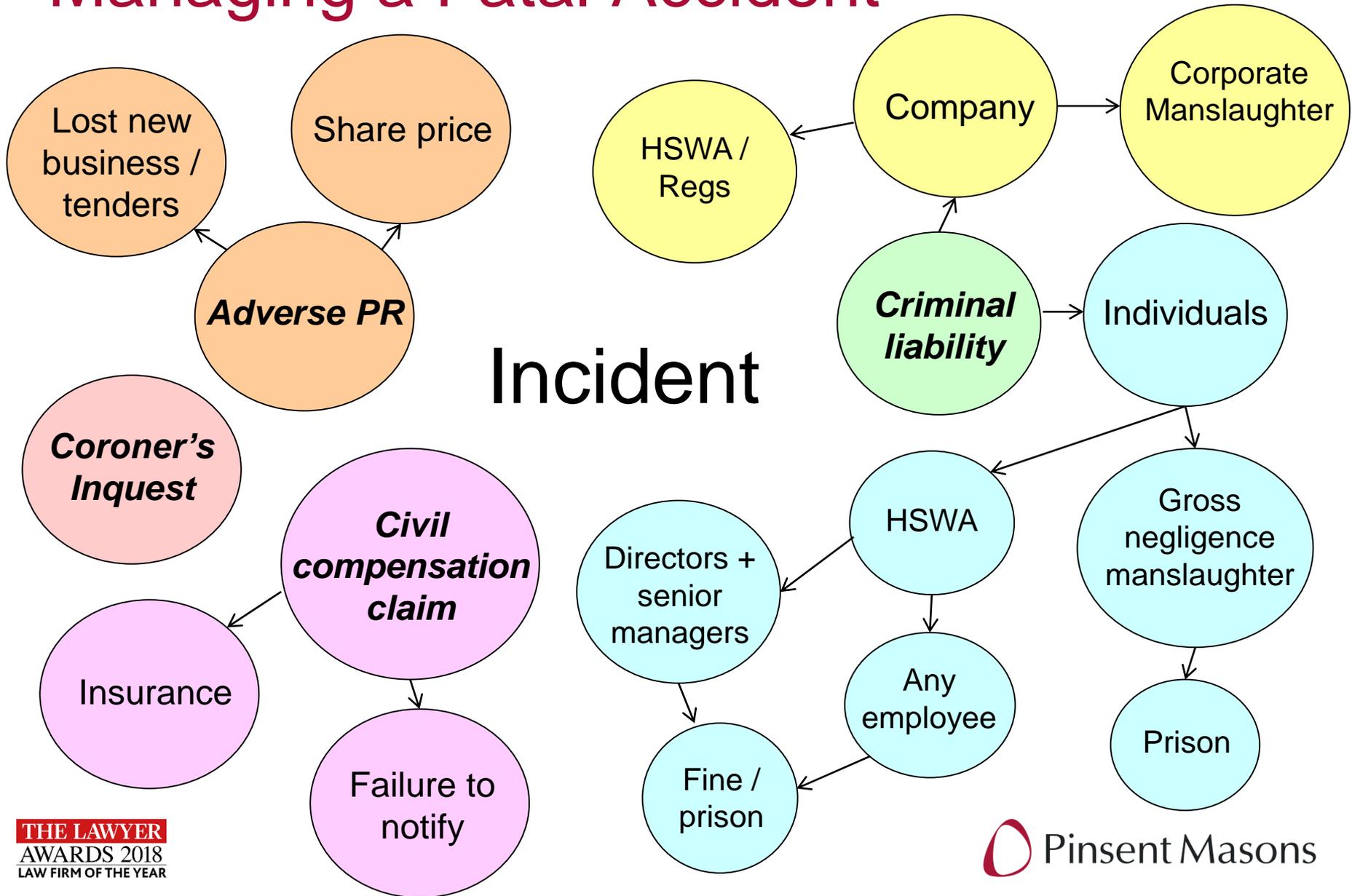
Fatal injuries in Great Britain 2017/2018

- Rate of fatal injury per 100,000 workers



- 144 workers killed and 100 members of the public killed due to work related activities

Managing a Fatal Accident

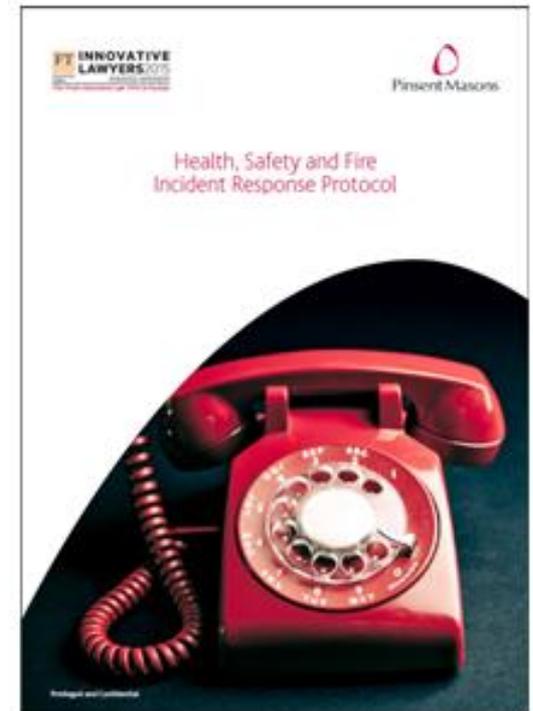


Managing a Fatal Accident

Initial response:

- Notify the emergency services
- Make the area safe (if appropriate)
- Administer first aid (if appropriate)
- Preserve the scene
- Implement Incident Response Protocol

Do not put yourself or others in danger



Managing a Fatal Accident

Incident Response Protocol

- Who needs to be contacted internally?
- What do they need to know?
- When should lawyers be contacted? **ASAP if fatality**
- When should your insurers be contacted?
- RIDDOR reporting
- Investigating the incident
- Police and HSE interviews / requests for documents
- Communications with others (next of kin or media)

Managing a Fatal Accident

RIDDOR Report

- Where any person dies as a result of a **work-related accident**, the responsible person must follow the reporting procedure
- Where an employee has suffered an injury reportable which is a cause of his death within one year of the date of the accident, the employer must notify the relevant enforcing authority of the death
- All incidents can be reported online but a telephone service is also provided for reporting fatal incidents

Managing a Fatal Accident

Accident investigations

- Why investigate accidents?
- Purpose of investigation – in contemplation of litigation, prevent a recurrence, learn lessons?
- Establish “Investigation Team” and limit communications regarding an accident outside of the team
- Ensure people are skilled in undertaking forensic accident investigations

Managing a Fatal Accident

Report writing tips

- Follow advice regarding legal privilege
- Avoid speculative, inaccurate or incriminating statements
- Be clear and chronological
- Record facts not opinions
- Be objective and probative
- Would someone outside the business understand?
- Avoid jargon and abbreviations
- Refer to the source of the facts
- Keep report in “Draft”

Managing a Fatal Accident

Police and HSE Investigations

- Police have primacy initially
- Police / HSE visits to scene of the accident
- Requests for documentation / information
- Witness interviews (voluntary / compelled)
- Nominated Representatives
- Interviews under caution / PACE interviews

Managing a Fatal Accident

Contacting your lawyers

- Advice on RIDDOR
- Support during police / regulator investigations, document requests and witness interviews
- Assistance with investigating the incident through Terms of Reference or conducting an investigation
- Legal professional privilege

Dealing with an Inquest

When are deaths reported to coroners?

- Less than half of deaths are reported to a coroner
- This is done when there is reason to suspect that:
 - the deceased died a violent or unnatural death
 - the cause of the death is unknown, or
 - the deceased was in custody / state detention
- Deaths arising from **workplace accidents** are reportable to a coroner as violent or unnatural deaths.

Dealing with an Inquest

Coroners

- Independent judicial officers appointed by local authorities
- Must be qualified lawyers – although doctors were previously also appointed and several are still in post
- Chief Coroner (Honour Judge Mark Lucraft QC), Senior Coroners (one for each of the 99 coroner areas), Area Coroners, Assistant Coroners and Coroner's Officers
- Supported by Police, HSE and other regulators

Dealing with an Inquest

Duties of a Coroner

- Make ‘whatever enquiries seem necessary’ to decide if an investigation is necessary – for example a *post mortem*
- Conduct an *investigation* into the death as soon as practicable. An investigation covers all steps leading to and including the *inquest*
- Complete an inquest within six months of the date on which the coroner is made aware of the death, or as soon as reasonably practicable after that date.

Dealing with an Inquest

Purpose and scope of an Inquest

- To ascertain:
 - Who was the deceased?
 - How did they die?
 - When did they die?
 - Where did they die?
- Coroner or Jury?
- Scope – *Jamieson* or *Middleton* inquest?

Dealing with an Inquest

Becoming involved in an investigation

- Interested Persons: family, medical examiner, trade union representative, enforcing authority representative, and *a person who may have caused or contributed to the death, or whose employee or agent may have done so*
- IPs are entitled to:
 - Disclosure of documents from the coroner
 - Informed of the Inquest
 - Question witnesses at the Inquest

Dealing with an Inquest

Preparing for an inquest

- Pre-inquest review hearings
- Disclosure of information
- Witnesses



Dealing with an Inquest

Procedure at Inquests

- Opening remarks
- Witnesses and questioning
- Expert evidence
- Submissions
- Summing up

Dealing with an Inquest

Conclusions of an Inquest

- Who, how, when, where completed in *Record of Inquest*
- **Approved short form conclusions** include: accident or misadventure, industrial disease, lawful or unlawful killing, natural causes, road traffic collision and suicide
- **Narrative conclusions** should be used only if the short-form conclusion is insufficient to ‘seek out and record as many of the facts concerning the death as the public interest requires’

Dealing with an Inquest

Prevention of future death reports

- Duty to report actions to prevent future deaths to a person who may have the power to take such actions
- Reports should be intended to improve public H&S
- Not for the coroner to state what action should be taken
- Respond within 56 days
- Chief Coroner may publish the report, response or both



Pinsent Masons

Alex Hudson

Solicitor – Pinsent Masons LLP

0161 250 0268

07917 517 576

Alex.Hudson@pinsentmasons.com

www.pinsentmasons.com

www.Out-Law.com

Pinsent Masons LLP is a limited liability partnership, registered in England and Wales (registered number: OC333653) authorised and regulated by the Solicitors Regulation Authority and the appropriate jurisdictions in which it operates. Reference to "Pinsent Masons" is to Pinsent Masons LLP and/or one or more of the affiliated entities that practise under the name "Pinsent Masons" as the context requires. The word "partner", used in relation to the LLP, refers to a member or an employee or consultant of the LLP or any affiliated firm, with equivalent standing. A list of members of Pinsent Masons, those non-members who are designated as partners, and non-member partners in affiliated entities, is available for inspection at our offices or at www.pinsentmasons.com. © Pinsent Masons.

For a full list of the jurisdictions where we operate, see www.pinsentmasons.com