

# A guide to health and safety prosecutions

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and  
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# Preface

Corporate governance is a subject that has made headline news in recent years, moving steadily up the Government's agenda. Much of the activity has been in the financial world but now health and safety matters are also there in the discussions of the boardroom.

The aim of this book is to be a guide for those unfamiliar with the issues and who find themselves involved in a work-related criminal investigation or prosecution. This is a complex and expanding area of the law. Thus the book is not a substitute for detailed professional legal advice.

The law is to the best of our ability up to date as of 2 April 2007.

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17 April 2007

# Glossary

ACoP	Approved Code of Practice
ALARP	as low as reasonably practicable
BRE	Better Regulation Executive
BSI	British Standards Institution
BTP	British Transport Police
CDM 2007	Construction (Design and Management) Regulations 2007
CHSWR	Construction (Health, Safety and Welfare) Regulations 1996
CJA 2003	Criminal Justice Act 2003
CJPOA	Criminal Justice and Public Order Act 1994
CORGI	Council for Registered Gas Installers
COSSH	Control of Substances Hazardous to Health Regulations 2002
CPIA	Criminal Procedure and Investigations Act 1996
CPR	Criminal Procedure Rules
CPS	Crown Prosecution Service
D&O Policy	Directors' and Officers' Liability Insurance and Company Reimbursement Policy
DPP	Director of Public Prosecutions
DSE	Display screen equipment
DTI	Department of Trade and Industry
EA	Environment Agency
ECHR	European Convention on Human Rights
EPA	Environmental Protection Act 1990
FAI	Fatal Accident Inquiry
GCC	gauge corner cracking
HELA	Health and Safety Executive/Local Authority Enforcement Liaison Committee
HRA	Human Rights Act 1998
HSC	Health and Safety Commission
HSE	Health and Safety Executive

HSWA	Health and Safety at Work etc Act 1974
ICC	Incident Contact Centre
IPC	Integrated Pollution Control
LA	local authority
LOLER	Lifting Operations and Lifting Equipment Regulations 1998
MEL	Maximum Exposure Limit
MHOR	Manual Handling Operations Regulations 1992
MHSWR	Management of Health and Safety at Work Regulations 1999
NATM	New Austrian Tunnelling Method
OES	Occupational Exposure Limit
ORR	occupational road risk
PACE	Police and Criminal Evidence Act 1984
PCMH	Plea and Case Management Hearing
PII	public interest immunity
PPE	personal protective equipment
PUWER	Provision and Use of Work Equipment Regulations 1998
RDIM	Road Death Investigation Manual
RIDDOR	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
SFAIRP	so far as is reasonably practicable
SMSR	Supply of Machinery (Safety) Regulations 1992

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# 1 The Levant Mine disaster

The Levant Mine became one of Cornwall's leading mines in the 19th century. It was first 'worked' in the 1790s for copper with permanent production starting in around 1820. From 1852 tin was also mined.

The entrance to the mine is to this day situated not far from the cliff's edge, near St Just. In order to gain access to the mine itself, workers (men and young boys) had to make their way along a series of stone steps leading down to what was called the 'adit' (a tunnel) cut into the vertical cliff face some 150 feet below the surface. The adit led to a series of ladders in the shaft down which the workers would climb to reach different levels that extended out along mineral seams deep under the seabed. After the shift the workers then had to face the long, hard climb back up to the surface.

In 1857, following a vote by the shareholders of the mine, a new 'man-engine' was installed which dramatically cut the journey time from the surface to the workplace from an hour to less than half an hour. This machine was operated by a steam engine. A long wooden rod descended deep into the shaft and was linked to the engine. The machine would lower and raise the rod by approximately 15 feet.

Along the rod were a series of steps evenly disbursed. A worker would get onto the first step of the rod when it was level with him. The rod would descend the 15 feet and the worker would alight onto a ledge. The rod would then rise with the next step on the rod becoming level with the worker. The worker would get onto this step and be lowered a further 15 feet and get off onto another ledge. He would continue this process of getting on and off the steps of the rod until he reached the bottom of the shaft. When the worker wanted to return to the surface he repeated the same operation but in reverse.

Tragically on the afternoon of 20 October 1919, the linkage between the rod and the engine broke, sending 31 men to their deaths. At the time there were over 100 workers on the man-engine and it is a miracle that more did not die.

A few weeks before the incident there were reports of noises coming from the machine and juddering. Perhaps if these had been

investigated the incident could have been avoided. It might be said that without a regular system of inspection this was an 'accident waiting to happen'.

In the weeks that followed, many reports into the disaster were published, meetings held and statements taken from the survivors and other workers. The whole community entered into a state of mourning. The deeper levels of Levant were never worked again, with the mine finally closing in 1930 and falling into disrepair.

The site has now been opened as a museum, having been restored by a group of dedicated volunteers. A short underground tour down a spiral staircase and then through a narrow tunnel takes visitors to the top of the shaft of the man-engine. In the tunnel along the walls there are indents. There is a story that when it was originally reopened candles were placed in these indents to recreate the dimly lit atmosphere that the miners would have experienced. However it is said these had to be replaced with electric lighting because the Health and Safety Executive (HSE), following a visit, took the view this did not meet with safety requirements unless two signs were erected warning of the dangers of the candles.

The Levant Mine demonstrates how life has changed. Society today would not tolerate employees being forced to work in the conditions the miners endured and the risks to which they were exposed. It reminds us of the important role played by health and safety regulation in helping to ensure decent and safe working conditions. And if there had been similar failings to those which led to the disaster by a company today, society would rightly expect a criminal prosecution to follow.

But at the other end of the scale there is the anecdote about the candles. This is typical of stories that appear in newspapers from time to time as alleged examples of over-regulation and an unhealthy approach to risk.

The Prime Minister, Tony Blair, in a speech on 26 May 2005 delivered to the Institute of Public Policy Research raised concerns that Britain is becoming an increasingly risk-averse society and that this trend is having a detrimental impact on public policy. He argued that 'we are in danger of having a disproportionate attitude to the risks we should expect to run as a normal part of life' and that this is

putting pressure on policy makers ‘to act to eliminate risk in a way that is out of all proportion to the potential damage’.

HSE, as part of its Sensible Risk Management campaign, has launched its ‘Principles of sensible risk management’ which include a reminder that risk management is about properly protecting workers and the public and not creating a ‘totally risk-free society’ or ‘generating useless mountains of paperwork’. Following appeals for organisations to ‘join the debate’, HSE intends to finalise these principles in 2007.

Although there are appeals for a ‘realistic’ approach to safety, the reality is that as a society we expect ever-increasing standards of safety. Michael Baram, a Boston law professor, in his paper *The use of rules to achieve safety: introductory remarks* presented to the Workshop on the Use of Rules to Achieve Safety, Bad Homburg, Germany on 6 May 1993, wrote:

*Irrespective of the concept invoked to define what safety is at a particular point in time, as a society progresses, it demands a higher degree of safety. Thus, safety is a target moving continuously towards zero risk, except for interruptions during times of economic distress or high unemployment.*

While companies and individuals may be conversant with the health and safety regulation applicable to the business in which they operate, they are often unfamiliar with what happens when HSE (or the police) come knocking on their door following a work-related incident. The aim of this book is to give an introduction to the issues involved in a health and safety prosecution, to explain the basic process involved in a prosecution and to suggest some of the practical matters that need to be considered.

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