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S O L I C I T O R S



An Inspector Calls

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An Inspector Calls

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Introduction

Andrew Brammer

Andrew is director and senior solicitor heading up our Business Defence Regulatory team. He excels in defending businesses and key personnel in investigations and prosecutions brought by regulators. These include the Environment Agency, Environmental Health departments, the Health and Safety Executive, HMRC, Trading Standards and Local Authorities, Traffic Commissioners, VOSA, RoHS and any other organisation or public body that can initiate an investigation or prosecution against you.

His knowledge and experience spans the regulatory spectrum from health, safety and environment to product safety, planning enforcement and Road Transport Law, and his specialist skills include:

- Advising on regulatory compliance and appropriate due diligence systems.
- Advising on damage limitations and negotiations with regulators.
- Strategic planning in the event of a major or catastrophic event in the workplace, and representation following.
- Representation in PACE interviews under caution.
- Representation in criminal proceedings at Magistrates' and Crown Court.
- Access to expert witness services.
- Training and legal awareness.

He enjoys a well earned and long established reputation, and is recognised by the Legal 500 and Chambers & Partners legal directories:

<http://www.cartwrightking.co.uk/people/andrew-brammer.php>

When might an Inspector call?

An Inspector from the HSE is likely to call in one or more of the following instances:

- Major incident.
 - Fatality
 - Serious injury
 - Serious near-miss or significant risk of harm
- Following a RIDDOR report.
- Third party complaint.
 - In context of a personal injury claim
- Routine programmed inspection

What powers does an Inspector have?

The Inspector's immediate concerns will be to:

- Prohibit and prevent any activity that has caused or is likely to cause an immediate risk of harm or serious injury.
- Require remedial action to be taken to ensure compliance going forward.
- Offer advice and guidance to assist with continued compliance.
- Commence an investigation where it appears that there has been a failure to comply with legal obligations in respect of health and safety.

The HSWA74 confers extremely wide-ranging powers on an Inspector to assist him/her in to "examine and investigate" breaches of relevant legislation and to ensure and enforce compliance by duty holders (s. 20 (2) (d) HSWA74).

The circumstances in which the HSE will undertake an investigation and the objectives of that exercise are set out in its Enforcement Policy Statement (<http://www.hse.gov.uk/pubns/hse41.pdf>).

The powers available to an Inspector to conduct an investigation are set out in section 20 of the HSWA 74. (<http://www.legislation.gov.uk/ukpga/1974/37>)

The main powers are:

- The power to examine and investigate –s.20 (2) (d) HSWA74
 - Such examination and investigation...in any circumstances to ensure compliance with legal duties and obligations.

- Enter premises- s. 20 (2) (a) HSWA74
 - Enter any premises he has reason to believe is necessary for conducting any of the functions of an HSE Inspector and the HSE.
 - No power to search premises, but can request sight of documents and take samples of anything within the premises or vicinity.
- Leave undisturbed- s.20 (2) (e)
 - Order that any premises or area within them that the Inspector has the power to enter is left undisturbed.
 - Enable further specialist investigation
- Take measurements, photographs and recordings- s.20 (2) (f)
- Take samples- s.20 (2) (g)
 - Any article or substance.
- Require production, inspection and to take copies s.20 (2) (k)
 - Any documents or books required to be kept.
 - Site Plan
 - Site Rules
 - Risk Assessments
 - Safe working methods
 - Any other books or documents which it is necessary for him to see for the purposes of examination or investigation.
 - Investigation report?
 - **LPP**
- To require answers- s.20 (2) (j)
 - Compel an individual to give responses to questions (verbal and written).
 - Responses recorded in writing and with a declaration of truth.
 - Witness can ask for a nominated person to be present.
 - Friend / co worker.
 - Union representative.
 - Responses can be used as evidence in criminal investigation and proceedings BUT not against the person giving the responses.
 - But can be in relation to an employer or company.
 - Failure to respond is a criminal offence.

How to manage an investigation: do's and don'ts

Do

1. Take immediate legal advice.
2. Have a plan.
 - Document that can be referred to.
 - Names and contact numbers of key personnel.
 - Simple list of steps to take and by whom.
 - Nominate a individual to “manage” the inspection.
3. Avoid “loose talk”.
 - Politely remind employees that they should not advance information unless required or requested to do so.
 - Exposed to misinterpretation.
 - Lack of awareness of all the facts.
 - Comments taken out of context.
 - Emotions may be running high.
 - Risk inadvertently implicating co-workers.
4. Document everything that happens.
 - Inspectors name and contact details.
 - Who says what.
 - What is requested and from whom.
 - Take photographs.
 - Chaperone the Inspector.
5. Do not be afraid to ask the Inspector “Why?”
 - Be prepared to challenge a decision if you think it is unreasonable or do not understand why it is being made.

Don't

1. Panic.
2. Obstruct the Inspector or prevent him/her from conducting their investigation.
 - Criminal offence.
3. Just hand over documentation and information.
 - At least take legal advice before doing anything.
 - If the HSE Inspector challenges this then direct him to the lawyer.
4. Try to hide information or tamper with a scene of an accident or incident.
 - Criminal offence.
 - Perverting the course of justice.

Interviews under caution

- It means that you or your business is a suspect in a criminal investigation.
- To gather evidence in a criminal investigation against you (or another) by questioning.
 - Not necessarily a chance for you to put your side of the story.
- Legal Advice.
 - Letter of invitation to PACE interview (interview under caution) will recommend you take legal advice.
 - Would you go to the police station to be interviewed under caution without taking legal advice?
- Unless under arrest, voluntary. You do not have to attend.
- Is it in your interests to attend?
 - Do you know what your defence is?
 - Have you satisfied your legal obligations?
 - How far below the bar do you think you are?
- Selection of representative.
 - Authority to speak on the company's behalf.
 - Does not necessarily need to have been a direct witness.
 - Calm and strong.
- Mitigation and cooperation.
 - Letter of representations

Tips for Success!

1. Have a plan.
2. Ask yourselves "Can I be confident about every aspect of health and safety at my business?".
3. Is there "management ownership" of health and safety?
4. Check your compliance systems.
5. Check 3rd party compliance systems.
6. Double check competency.
7. Are all the formal documents we need in place and up to date?

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