

Briefing Note: Health and Safety

An Introduction to the Briefing Note

According to the Health and Safety Executive (HSE), in 2009/10 1,033 offences were prosecuted by the HSE (and the Office of Rail Regulation), with a further 287 offences prosecuted by local authorities. 15,881 enforcement notices were issued by all enforcing authorities. In this context, businesses need to understand the potential implications of a prosecution for a breach of health and safety legislation.

This briefing note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

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What impact can a prosecution for a safety-related breach have on my business?

A conviction for a safety-related breach can have an immense impact on your business and the individuals within it. It is a criminal offence to breach the obligations contained within health and safety legislation. If a safety breach within a workplace causes a death, then those responsible may also face prosecution for gross negligence manslaughter (in the case of individuals) or corporate manslaughter (where the defendant is a business).

Fines

Fines for the most serious safety breaches are now routinely in the hundreds of thousands of pounds. Coupled with the need to pay not only your own legal costs but also the prosecutions', non-compliance with health and safety law is costly.

Reputational damage

Increasingly, companies look carefully at the safety record of potential business partners and requests for details of any safety convictions have become standard on tender questionnaires. The damage a criminal conviction causes to your business' reputation could outlast the initial financial outlay.

Prosecution of individuals

When investigating safety breaches, inspectors routinely consider the role of individuals in workplace accidents. Although the size of fines imposed against individuals may be smaller than those for businesses, the potential impact on the individual can be severe.

Individuals can be imprisoned for breaches of health and safety law, with sentences of up to six months in the Magistrates' Courts and up to two years in the Crown Courts. Even individuals who avoid a custodial sentence will have to live with the stigma of a criminal conviction, which could restrict their ability to work in certain industry sectors or travel abroad.

Who can be prosecuted for safety offences?

There are a number of groups that can face prosecution for breaching health and safety requirements. These include:

- Employers (including limited companies, unincorporated associations, partnerships or individuals).
- The self-employed.
- Owners of premises used as a workplace.

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- Individual employees.
- Designers, manufacturers, importers or suppliers of work equipment.

Which factors will the HSE consider when deciding whether to prosecute safety breaches?

The HSE has published a number of documents that set out how it will investigate and prosecute the health and safety breaches for which it is responsible. They set out the factors that the HSE considers will favour a prosecution, for example, where:

- Death was a result of a breach of legislation.
- There has been a reckless disregard of health and safety requirements.
- Inspectors have been intentionally obstructed in the course of their duties.
- False information has been supplied, or there was an intent to deceive, in relation to a matter which gives rise to a significant risk.

How can my business influence the decision to prosecute?

In some less serious cases (for example, where it is a purely technical offence), it may be possible to influence the enforcing authority's decision to prosecute. This could be achieved in a number of ways, for example:

- Co-operation with the regulator's investigation.
- If appropriate, by accepting an invitation to send a representative of your business to an interview under caution or by providing written answers to questions under caution.

Insurance and criminal liability

- Check whether your existing insurance policy includes legal expenses cover in the event of an investigation and a criminal prosecution being brought against your business for a safety-related breach.
- Many insurance companies have panels of preferred lawyers to whom they refer their insured for legal advice. Nevertheless, your business is entitled to be represented by the lawyer of your choice.
- Most policies cover defence legal costs. However, if a number of individual members of staff are also prosecuted, the cover may not extend to all of them. Check whether your existing policy includes protection for your senior managers and directors.
- Although defence costs may be covered by such policies, any fine imposed on your business following conviction certainly will not be. Similarly, where the court orders the defendant to pay the prosecution's reasonable costs in bringing the case, these costs are rarely covered by business insurance.

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If you would like to know more about this topic or our other legal services, please contact Jeremy Laws
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