

When an Inspector Calls

HEALTH & SAFETY

The HSE has a duty to investigate health and safety incidents. The HSE also has powers to attend the workplace to inspect the standard of management of health and safety, often referred to as regulatory visits. Following an incident, it is imperative to get the right balance between cooperation with the HSE without incriminating the company or any individual.

1 What can an Inspector do when they attend?

Inspectors have the right to enter any workplace without giving notice, though in most cases an Inspector will give notice of an intention to enter a workplace. On a normal inspection visit, an Inspector would look at the workplace, the work activities and consider compliance with health and safety law. An Inspector is entitled to talk to employees and their representatives, take photographs and samples, and in circumstances where they consider there to have been a breach of duty, to serve Improvement Notices or Prohibition Notices where there is a risk to health and safety.

2 How should an employer deal with an Inspector's visit?

An employer's response will depend in part or whether it is a routine visit as part of the HSE's regulatory functions, or follows an incident where an employee has been injured or worse.

In the latter circumstance, many companies and individuals incriminate themselves unnecessarily as a consequence of their natural desire to cooperate and not appreciating the formality of investigation by the Inspector and the fact that nothing is off the record.

Employers should view ongoing safety concerns and the learning of lessons as the priority. Morally this is the right approach and whatever has happened, the culpability will be greater if an event is repeated or at a later stage a Court forms the view that a company has chosen not to learn lessons.

3 What can a company do to manage an inspection?

Where there has been a serious accident, the incident site will often be sealed off as "scene of crime". The Inspector will usually want to interview those involved, take statements from any witnesses and key individuals and establish what action has been taken since the incident. An employer is obliged to comply with an investigation by an Inspector in such circumstances but it is important to manage that investigation carefully.

4 What steps can an employer take to manage an investigation carefully

One important step is to try and establish a protocol with the HSE so that all dealings are dealt with within the employer by a reliable single point of contact often referred to as a Liaison Manager. A detailed log should be maintained by the Liaison Manager of all contact with the HSE.

An investigator will usually identify documents they require. Most documents will be disclosable to an Inspector save for those that are legally privileged. An employer should take advice on legal privilege and if unsure whether a document should be disclosed. Otherwise documents should be disclosed openly and in a way that avoids so far as possible the Inspector using formal powers of seizure.

It is important to maintain a record/copies of all documents given to the investigator. An investigator should be invited to give the employer a receipt of all documentation taken. An employer should remember that post-incident documents as well as pre-incident documents are vulnerable to be seized and careful wording should be used in documents following an incident.

5 What if an Inspector wishes to interview staff?

It is common practice for an Inspector to seek statements from witnesses and to interview those who maybe suspected of offences under caution.

There is no compulsion on any individual to give a voluntary witness statement and employees should be told that such statements are of crucial importance and that nothing is off the record.

Health and Safety Inspectors do have statutory powers under Section 20 of the Health and Safety at Work etc. Act 1974 to require individuals to answer questions. Advice should be sought on whether a witness should give a voluntary statement or require a statement to be compelled under Section 20.

Where an investigator advises that an interview under caution is required then immediate legal advice should be sought. This a formal interview where the Inspector would need to have reasonable grounds for believing that the person may have committed a criminal offence. Any individual or company invited to attend an interview under caution should seek advice and have a lawyer present with them.

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