

Defensibility

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Why is defensibility important

- Claims cost you money whether you:
 - Directly contribute towards paying claims, eg you are directly responsible for meeting the first £10,000 of every claim
 - Indirectly - through increased insurance premiums, cost of investigations, the effect on morale, and perhaps fines

How you can help

- Pre accident – risk management/defence strategies
- Post accident – day 1 investigations
- Post claim – how you report to us (insurers/lawyers), help with investigation, and disclosure of relevant documents
- Analysing claims to recognise trends and prevent future accidents

The principal contractor's responsibilities include:

- Prepare and implement a written plan and site rules
- Make sure contractors have a copy of the plan and liaise with them to manage and monitor the construction work
- Make sure you have checked the competence of all appointees
- Ensure all workers on site have had a site specific induction
- Consult with workers
- Ensure adequate maintenance facilities

The contractor's responsibilities include:

- Make sure all appointees and workers have seen the site plan
- Check competence of all appointees and workers
- Make sure all of your staff have been given the appropriate training, that this is regularly updated and has been recorded
- Cooperate with the principal contractor

Pre incident documentation

- The health and safety policy document
- Method statements
- Risk assessments
- Safe systems of work

Remember in relation to documentation

- Make sure documentation is signed, dated and safely stored
- Keep documentation for at least three years
- In respect of risk assessments and safe systems of work, make sure these have been seen by employees and that fact is recorded (preferably by signature)
- Ensure all training is documented – again review annually and get employees to sign off

Post incident – day 1 investigation

- From our perspective this is key evidence
- We will win or lose cases based on the quality of this investigation
- Obtain as much contemporaneous documentary evidence as possible, eg accident report, first aid report, witness statements from other members of staff and photographs
- Preserve any evidence obtained

Accident investigation

- Who should investigate accidents?
- This may depend on the severity of the accident but could include:
 - Person with immediate control over area or activity
 - First aiders
 - Line management
 - Senior management
 - H&S Advisor
 - Technical experts
 - A team comprising of all the above
 - NB – persons undertaking investigation must have an appropriate level of competence and experience

Accident investigation

- Aim of the investigation
- Risk management – the key result should be to prevent a recurrence of the same accident
- Fact finding
 - What happened?
 - What was the root cause?
 - What should be done to prevent recurrence?
- It is not to:
 - Exonerate individuals or management
 - Satisfy insurance requirements
 - Assign blame

Accident investigation case study

- Your company has been retained to attend to the brick work on a new development of houses. You have a team of 10 employees on site who report to a foreman (Tim – also your employee). Whilst Tim was off due to illness, one of your employees Ken, a labourer, decided he needed more materials.
- The materials are stored in an area some way from the plot that Ken was working on. The agreed method of obtaining further materials is for Ken to approach Tim, who in turn contacts the site office. The principal contractor arranges for a FLT driver to bring further materials over and leaves them in a designated area by the plot.
- As Tim is away Ken decided he will get the materials himself. Whilst obtaining the materials he suffers a significant injury to his back and is taken to hospital. He is likely to be off work for some time.
- You start the investigation immediately being told about the accident by another employee, Rodger.

What documents should you aim to pass to your insurer/lawyer

- The accident report book entry
- RIDDOR Report to HSE (F2508)
- The accident investigation report, including witness statements, plans, photographs
- First aid report
- Ken's site induction documents
- Ken's training records, to include safe working practice documents – make sure these have been signed off
- The method statement and risk assessments
- The site plan and rules
- Health and safety policy
- Minutes of health and safety meetings/tool box talks
- Earnings information
- Remember the claimant has 3 years to bring a claim - make sure you keep the documents for that length of time

Why we have to pay off claims

- Unsafe systems
- Poor accident investigation
- Lack of available documents
- Condoned practices
- Unavailability of witnesses

How to cope with claims

- **Contemporaneous** documents – obtain as much documentation/information as soon as possible
- **Organisation** – ensure that methods and procedures for investigating accidents are in place and follow them
- **Preserve** information – keep any document obtained/created in a safe place – a claim may be brought up to three years from the date of the accident
- **Early** action – investigate the accident immediately and record as much information as possible