

Scottish House Builders H&S Forum

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The Facts

- Dan Jones is the Operations Director for Strathdeen House Builders. It's 8.30am on Tuesday, 12 June 2014. Dan receives a telephone call from security at a site to inform him that an employee, Peter Smith, has been run over in a car park within the site. Dan goes to the car park. Paramedics and the police respond to the 999 call. The police speak to a few people but leave the site within the hour.



The Facts (cont.)

- That morning Dan instructs the company's Health & Safety Manager, Tom Jones, to complete an incident report.
- Later that day Tom sends Dan an email attaching his incident report, which is critical of the car park arrangements at the site.
- The following morning two police officers return to the site and inform Dan that Peter has died. They ask if he can provide any relevant information about the incident.
- Dan provides the police with a copy of the incident report that Tom prepared and the Police take a 'note book' statement from Tom, Dan and several other employees about the car park arrangements.

The Facts (cont.)

- The company's health and safety manual, records of health and safety audits, minutes of Board Meetings for the past two years, and Tom and Dan Brown's laptops were seized.
- Tom and Dan are invited to attend the local police station.
- During the course of his interview, Tom informs the police that:
 - He reports to Dan who, in accordance with the Safety Management Manual, has overall responsibility for health and safety.
 - In that capacity, Dan has responsibility for ensuring that risk assessments are carried out and procedures are implemented.
 - Strathdeen House Builders had recently re-tendered the contract for vehicle maintenance as part of a cost saving initiative.
 - He has said for some time that the car park is not fit for purpose.

Interview

- Role play of Dan's interview

The Facts (cont.)

- Several weeks pass by and the police decide that on the basis of the information obtained in the course of their investigation, there is no prospect of there being a charge of corporate homicide being made against Strathdeen House Builders and they pass the investigation over to the HSE.
- The HSE finalise the investigation and recommend a prosecution of Strathdeen House Builders on indictment.
- Strathdeen House Builders is prosecuted for breaching section 2 of the HSWA (failing to ensure, so far as is reasonable practicable, the safety of its employee) and regulation 3 of the MHSWR (failing to make a suitable and sufficient risk assessment)

Court Scene

- Role play of Dan's evidence

Question

- On the basis of what you heard, what is your verdict against Stratheeden House Builders?
 - A. Guilty
 - B. Not Guilty
- Would you have also prosecuted Dan?
- In dealing with the investigation, what could Dan have done better?

Learning Points

- Good health and safety compliance is essential
- Remember every day risks e.g. walking across the car park
- Serious criminal cases and significant fines are on the increase
- Necessitates:
 - Careful allocation of responsibilities
 - Accurate and balanced incident reports
 - Awareness of legal rights
 - Careful answering of questions

Learning Points

- Key legal rights
 - Right to silence (except under s.20)
 - Right to legal advice (Cadder judgment)
 - Right to withhold documents (except under s.20 or under warrant)
 - Right to withhold legal communications and privileged documents
- Implement Incident Management Plans
- Take legal advice at the outset



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