

Driving at Work The Duty of Care



A briefing on the key legal issues which directors & managers should be aware of in order to manage risk and to avoid the serious consequences of non compliance

Introduction

Jeremy Scott

Partner at Langleys Solicitors LLP York
Head of Regulatory and Corporate Defence



Agenda

- The Risk
- Corporate Liability
- Personal Liability for Directors/Managers/
Employees
- Personal Liability for the Driver

The Risk

- By not managing work-related road safety a company or organisation is exposing both itself and its entire senior management team to the risk of prosecution in the event that a fatality or serious injury occurs
- It is also exposing it's drivers to the risk of prosecution
- Applies equally to company vehicles and privately owned vehicles

Corporate Liability

- s2 Health and Safety at Work Act 1974
- s3 Health and Safety at Work Act 1974
- Corporate Manslaughter – Corporate Manslaughter and Homicide Act 2007

Health and Safety at Work Act-1

- s2 – duty to ensure, so far as reasonably practicable, the health and safety at work of employees
- s3 – duty to conduct the undertaking in such as way as to ensure, so far as reasonably practicable, that persons not in the company's employment are not exposed to risks to their health and safety

Health and Safety at Work Act-2

- Management of Health and Safety at Work Regulations 1999
- an assessment of risks to the health and safety of all employees and other people who may be affected by their work activity
- periodical review of the risk assessment
- health & safety policy (written if 5+)

Corporate Manslaughter -1

- An organisation is guilty of an offence if the way in which its activities are managed or organised
- **Causes** a person's death, and
- This amounts to a **gross** breach of a relevant duty of care owed by the organisation to the deceased (falls far below what can be expected in the circumstances)
- **Duty of care** under law of negligence includes anyone driving on company business

Corporate Manslaughter-2

- s1(4) An organisation is guilty of an offence only if the way in which its activities are managed or organised by its senior management is a **substantial element** in the breach
- Senior management failure only needs to be one of the causes
- Senior can mean junior – someone who plays a significant role in decision making or management

Corporate Manslaughter-3

- Three years on – has anything changed ?
- *Cotswold Geotechnical (2011) cf Kite & OLL Ltd (1994)*
- *Lion Steel Equipment Ltd & others (Trial 12.06.12)*
- Real and important impact is on the perception of corporate responsibility

Corporate Liability

Jury will take into account :

- Attitudes
- Policies
- Systems
- Accepted practices

In other words: is there a safety culture

Individual Liability – Directors, Managers, Employees-1

- CMCHA 2007
 - easier to prosecute employer but
 - no individual liability
 - no imprisonment so
- s37 HSWA 1974 resurrected (s2, s3 etc)
 - In 2007 Court of Appeal ruled that a Director can be guilty under section 37 HSWA through neglect, even if he/she had no direct knowledge of the relevant failures that led to the incident **but ought to have done so**
- Gross negligence manslaughter

Individual Liability – Directors, Managers, Employees-2

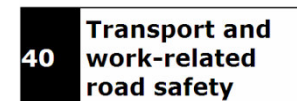
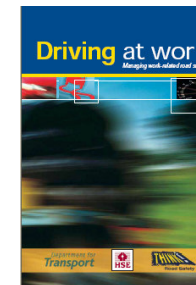
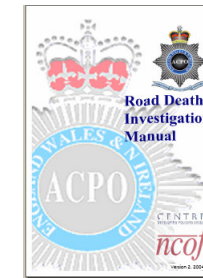
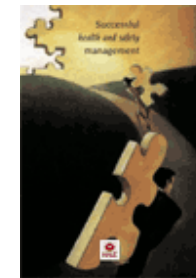
- s7 Health and Safety at Work Act 1974
- Health & Safety (Offences) Act 2008
 - no new offences
 - increased penalties
 - option of imprisonment in MC(6mth)
 - increases fine in MC (£5k to £20k)
 - option of imprisonment in CC(2yr)

Individual Liability – The Driver

- Causing Death by Dangerous Driving – maximum 14 years imprisonment
- Causing Death by Careless Driving – maximum sentence 5 years imprisonment
- Causing death whilst driving unlicensed, disqualified or uninsured driving – maximum sentence 2 years
- Dangerous Driving – maximum sentence 2 years imprisonment
- Driving Without Due Care and Attention – disqualification/points and fine

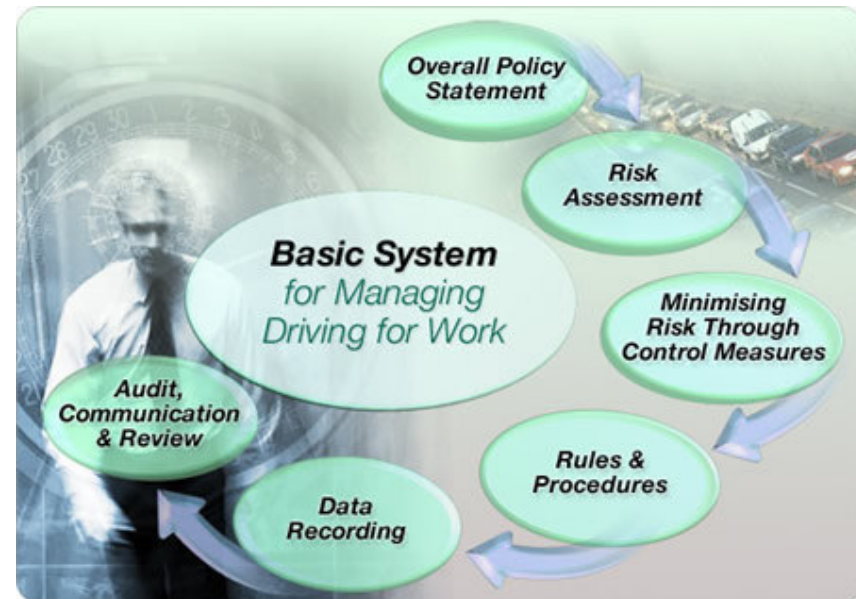
Managing the Risk-1

- HSG 65 – Successful health and safety management
- INDG382 – Driving at work
- INDG417 – Leading health & safety at work
- ACPO Road Death Investigation Manual
- TUC hazards at work. Transport and work-related road safety
- <http://www.drivingforbetterbusiness.com/how.aspx>



Managing the Risk - 2

- Prepare an overall policy statement relating to driving at work with board buy-in
- Carry out a full and documented risk assessments
 - driver, vehicle, journey
- Minimise risk by setting up administrative systems, for example to check that employees have valid driving licences, that they are adequately insured, and that the vehicles they drive are roadworthy. These checks need to be repeated regularly.
- Set up rules and procedures, for example to check driver hours/distances
- Raise awareness, provide ongoing training and back this up with relevant training records.
- Audit and monitor your procedures and systems



Langleys Solicitors LLP

Queen's House

Micklegate

York

YO1 6WG

Tel. 01904 683106

www.langleys.com

 **Langleys**