



IGNITION RISK MANAGEMENT: DESIGNED TO PROTECT

1. PROTECT YOU FROM WHAT?

It's easy to assume your business insurance will cover the costs associated with any accident. It will probably cover the costs of any immediate physical damage and injury, but that's just the tip of the iceberg. The hidden consequences of failing to recognise and mitigate against risk can be far greater:

- LOST TIME
- INVESTIGATION COSTS
- PRODUCTION DELAYS
- FINES
- LOSS OF CONTRACTS
- SICK PAY
- DAMAGE TO STAFF MORALE
- CLAIM EXCESSES
- OVERTIME PAYMENTS
- CLEANUP COSTS
- DAMAGE TO PROFESSIONAL REPUTATION

Meeting your fleet risk management requirements can save lives, time, reputation and money and it doesn't have to be a painful experience.

2. THE LAW AND YOU

Loss of orders and reputation is one thing; civil or even criminal liability is quite another. Why should your organisation take fleet risk management seriously? Because your organisation (and you personally) may be liable if you don't.

"Work related driving is one of the biggest single causes of all reportable accidents." – RoSPA

2.1 In the Spotlight

Due to the recent changes made by both Parliament and the Courts driving whilst at work is now under the spotlight of both the HSE and the Police.

2.1.1 Corporate Manslaughter and Corporate Homicide

Under the **Corporate Manslaughter and Corporate Homicide Act 2007** an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction.

The introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 has made significant changes to effectiveness in securing prosecutions:

- It is now far easier to secure a conviction for corporate manslaughter than previously
- Under the old system, disorganised or disjointed management might have provided a defence by making it difficult to identify the person responsible. Under the new legislation this situation would assist the prosecution to secure conviction by showing management failure.
- The police and Crown Prosecution Service are now primarily responsible for investigating and prosecuting offences in relation to work-related road risk rather than the HSE. This means that there are far more resources available to carry out investigations and they are far more likely to succeed.
- Clearly there is a more conviction-orientated mindset than had been present under the HSE.
- A company can be convicted of manslaughter and breaching the **Health and Safety at Work Act 1974 (HSWA)** on the same facts.
- More individuals at management level are likely to be arrested and interviewed.
- Considering the powers of arrest, much wider investigations and the vast resources available to the police and CPS in the investigation of occupational road deaths, there will be much more useable evidence that can be utilised to secure conviction of individual directors under section 37 HSWA

CASE STUDY

If the handbrake cable on a parked LGV snapped and the vehicle rolled back, crushing the person stood behind it, an up to date service record would see the LGV's owners escape liability. But if the log was not up to date; if there was no evidence that the handbrake cable had been checked - then the business owners would be exposed to a charge of corporate manslaughter.





3. LIABLE IN SO MANY WAYS...

Work-related road safety is like any other risk and as such it has to be suitably assessed and effectively managed.

“Up to a third of all road traffic accidents involve somebody who is at work at the time.” – HSE

3.1 Increased Penalties

Under the Health and Safety Offences Act 2008 sanctions in the lower courts were raised to:

- **FINES: UP TO £20,000**
- **IMPRISONMENT: UP TO 12 MONTHS**
- **OR BOTH!**

Additionally, certain offences formerly only triable in lower courts became triable in either lower or higher courts where greater penalties can be imposed.

3.2 New Guidance and Legislation

In order to effectively manage this risk the HSE has given clear guidance in **INDG 382**. This publication sets the standard and involves looking at the driver, the vehicle and the journey.

The police **Road Death Investigation Manual** has been reviewed in the light of new legislation and officers are now likely to look specifically at these factors when investigating corporate responsibility.

The Corporate Manslaughter and Corporate Homicide Act 2007 specifically requires juries to view health and safety guidance when considering whether companies have been grossly negligent.

3.3 Health & Safety Offences

There is no Health and Safety law that specifically covers work-related road safety; however it is a risk that is covered by the **Health and Safety at Work Act 1974** just as it does any other workplace risk and carries the same sanctions for failures or negligence.

Health and safety law states that organisations must:

- Provide a written health and safety policy (5 or more employees).
- Assess risks to employees, customers, partners and anyone else who may be affected by their activities.
- Arrange for effective planning, organisation, control, monitoring and review of preventative and protective measures.
- Ensure that they have access to competent health and safety advice.
- Consult employees about their risks at work and current protective and preventative measures.

If a health and safety offence is committed with the consent, connivance of, or is attributable to any neglect on the part of any director, manager or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under **Section 37 of the Health and Safety at Work etc Act 1974**. Those found guilty are liable for fines, disqualification as a director and, in some cases, imprisonment.

3.4 Directors

Directors may be disqualified under the **Directors Disqualification Act 1986, s2(1)** without additional investigation or evidence.

Individual directors are also potentially liable for other related offences such as the common law offence of gross negligence manslaughter: proved when individual officers of a company by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment.

In July 2007 the Court of Appeal specifically considered directors' duties in relation to **Section 37 of the Health and Safety at Work Act 1974**. If a director is aware that he/she is not dealing with a particular risk and either consents to the company continuing as it is, or turns a blind eye, he/she will be guilty of breaching s37. Directors will also be guilty of breaching s37 if they are neglectful of their duty of care and either knew or ought to have known about the risk the company was running.

And...

These requirements are in addition to the duties you have as an employer under road traffic law, e.g. the **Road Traffic Act and Road Vehicle (Construction and Use) Regulations**.





4. THE LEGISLATION

4.1 Health and Safety at Work Act 1974 (HSWA)

Section 2(1) HSWA States:

"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all his employees."

Section 3(1) HSWA States:

"It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected are not thereby exposed to risks to their health and safety."

If someone drives on behalf of the company as part of that business, whether or not the company owns the vehicle, the activity will, according to health and safety legislation, come within the company's undertaking.

4.2 The Management of Health and Safety at Work Regulations 1999 (MHSWR)

Regulation 3 (MHSWR) sets out the requirement upon an employer to carry out:

"...a suitable and sufficient assessment of the risks to health and safety..." of his employees and persons not in his employment.

Regulation 5 (MHSWR) sets out the requirement to manage the risk:

"...for the effective planning, organisation, control, monitoring and review of the preventative and protective measures."

And...

"Where the employer employs five or more employees, he shall record the arrangements."

An employer can appoint someone outside their business to assess a risk, but the duty to assess will always remain with them.

The Approved Code of Practice to the MHSWR makes it clear that the assessment of risk is based on the frequency of a hazard occurring and the consequence should the hazard materialise. This means that even if the frequency is low, if the outcome, should it occur, is catastrophic, control measures would be required.

4.3 The Safety Representatives and Safety Committees Regulations 1977, the Health and Safety Consultation with Employees' Regulations 1996

Employers must consult either their employees directly, their representatives or their trade union safety representative in good time regarding matters related to their health and safety at work.

4.4 The Provision and Use of Work Equipment Regulations 1998

These regulations apply to such equipment provided for use or used by an employee at work and may also apply to equipment used by a self-employed person working on behalf of the company.

a) Suitability

"Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided."

"In selecting work equipment, every employer shall have regard to the working conditions and to the risks to the health and safety of persons which exist in the premises or undertaking in which the work equipment is to be used and any additional risk posed by the use of that work equipment."

"Every employer shall ensure that work equipment is used only for operations for which, and under conditions for which, it is suitable."

b) Maintenance

"Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair."

c) Information and Instructions

"Every employer shall ensure that any of his employees who supervises or manages, and all persons who use, work equipment, have available to them adequate health and safety information and, where appropriate, written instructions pertaining to the use of the equipment."

d) Training

"Every employer shall ensure that all persons who use and any employee who supervises or manages the use of work equipment have received adequate training for purposes of health and safety, including training in the methods which may be adopted when using the equipment, any risks which may entail and the precautions to be taken."

DON'T HOPE YOU'RE SAFE; KNOW YOU'RE SAFE. MAKE SURE YOU MEET YOUR FLEET RISK REQUIREMENTS.

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