

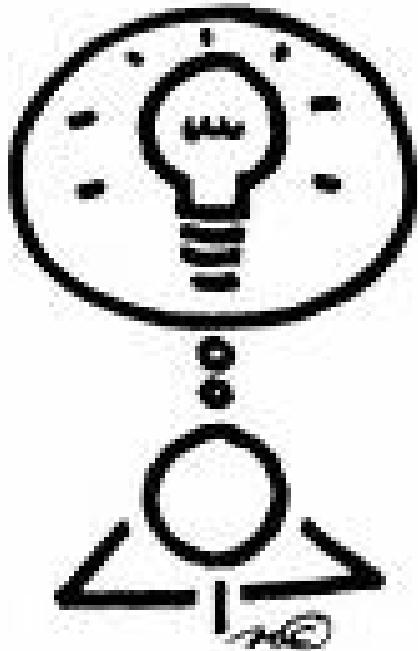


Hammerson

Culture or Compliance

BCSC – March 2009

How much do you know??



True or False about H&S

Prizes are available!!

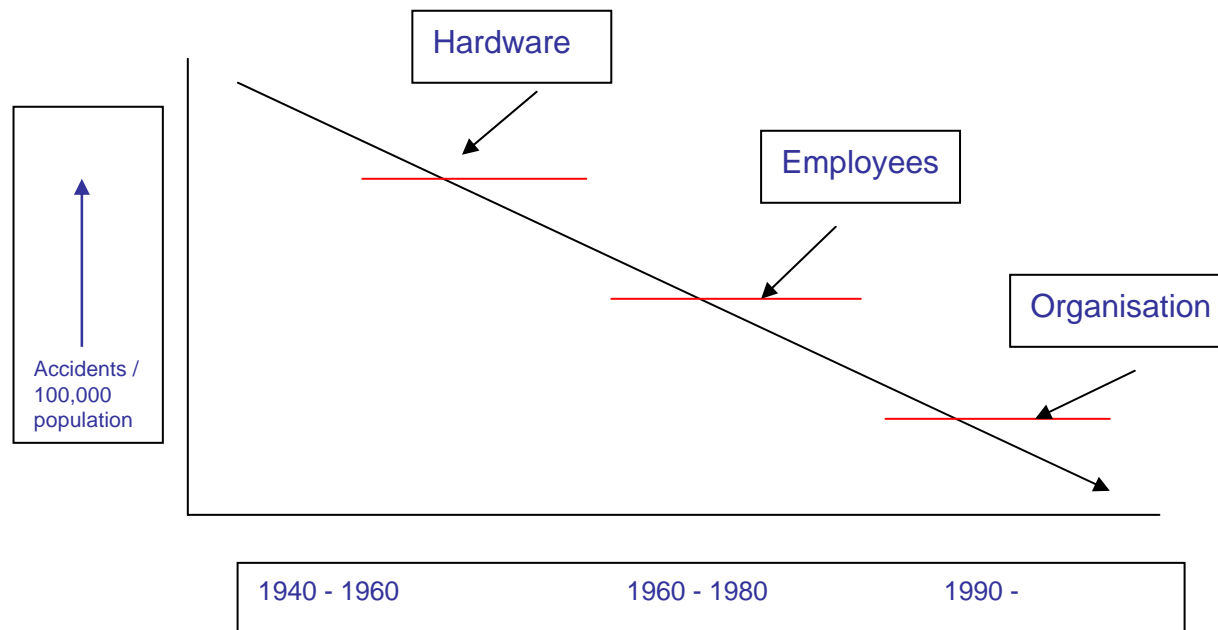
What is H&S

- Preventing prosecution and punishment
- Making changes before an accident happens
- A pain in the backside
- Management taking an interest in what we do
- Task that has to be done
- Adding value to the business
- Burdensome
- Saving Money

What came first? Culture or Compliance



Reasons to Manage – Legal development



Reasons to Manage – Common Law Duty of Care

- Employers owe duty of care to each Employee
- Must not subject employees to unnecessary risk in the course of their employment
 - Wilson & Clyde Coal v English 1938

- Currently
 - 2007/8 close to one worker killed every day at work in all sectors
 - Retail and Warehouse sector – over 1 per month killed at work
 - 9 workers per day suffer major injuries (RIDDOR)

- WHAT DOES THIS TELL US?
 - Systematic problems
 - Poor compliance
 - Human error
 - OR
 - Better reporting
 - Honesty
 - Good Culture

Reasons to Manage – Potential Costs

- Financial
 - Health and Safety (Offences) Act 2008
 - Corporate Manslaughter Act 2007

- Compensation
 - Negligence Claims ↑

- Publicity Orders
 - New penalty

When it goes wrong

- 1987
 - Kings Cross Fire
- 1993
 - Lyme Bay Tragedy
- 2000
 - Hatfield Rail Crash
- 2002
 - Asda Gate
- 2005
 - Buncefield
- 2009 ⇨
 - ??????

Voting time

CULTURE OR COMPLIANCE

Need to have BOTH – H&S will become inbalanced

Compliance or Culture

- COMPLIANCE

- The act of taking orders and following rules and policies
- Checking all is legally correct
- Acting to certain accepted standards
- Judged on evidence

- CULTURE

- Mix of shared trust, values, attitudes and patterns of behaviour that gives the organisation its particular character
- Ideas and beliefs that all members of the organisation share about risk, accidents and ill-health
- Judged by doing rather than saying

Corporate Manslaughter

- When could your organisation be guilty?
 - If the way in which activities are managed or organised
 - Causes a person's death, AND
 - Amounts to a **gross breach** of **relevant duty of care** owed to the deceased
 - Actions by Senior Management is a substantial element in the breach

- Who are Senior Management
 - Persons who play a significant role in:
 - Making decisions about how activities are managed
 - The actual managing of those activities

- Responsibility CANNOT be delegated

Are you exposed?

- Out of date policies and procedures
- Culture and attitude within business
- Inappropriate working practices
- Insufficient resources
- Decisions based solely on financial considerations
- Perception that safety is employees' responsibility or health & safety manager

Case Study

You are the GM of Anytown Shopping Centre. You receive a telephone call from George, the Building Services Manager who reports directly to you.

George's job description provides that he is solely responsible for ensuring the gas appliances are maintained in the residential block which is situated over the Centre Management Suite.

George tells you that a serious incident has occurred in the residents block and 3 people have died with suspected carbon monoxide poisoning. The Police are on their way and want to interview you.

What evidence do you need to collate in preparation for your interview?

Evidence – or lack of

George has not yet received any H&S training and is not aware of the legal requirement that all gas appliances should received annual maintenance.

3 years ago a decision by your Asset Manager was made to reduce the maintenance budget. You recall George telling you that he and other managers were implementing the reduced budget but you were very busy and the detail passed you by.

George decided to reduce the frequency of inspections undertaken on gas appliances and would arrange for gas service engineers to only attend calls regarding faulty appliances.

Also as residential block was to receive a full refurbishment in 6 months – gas maintenance contract had been cancelled.

Police Action

Police are investigating Anytown Shopping Centre for an offence of corporate manslaughter

Which of the following are true?

1. You are suspected of committing a criminal offence
2. You probably should arrange legal representation
3. The Shopping Centre may need separate representation to you
4. You should get together now to get your stories straight
5. You are required to inform the local authority re deaths at work.

ANSWER

1, 2, 3, 5

Day 1 of the trial

- Which of the following will the prosecution have to establish in order to get a conviction of the Shopping Centre for Corporate Manslaughter
 1. They need a conviction of you for gross negligence manslaughter to proceed
 2. A duty of care was owed to the deceased
 3. There was a poor safety culture
 4. Shopping Centre was negligent
 5. That the cause of death was due to senior management making the decision to cut maintenance back

ANSWER

2, 5

What penalties could the Shopping Centre face?

1. Prison sentence – up to 2 years for all managers
2. Unlimited Fine
3. Full page advert in The Times
4. Declaration on the front page of the Company Website saying what happened

ANSWER

2, 3, 4



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