




Surveying Safely

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Overview 


Aims and objectives of the session:

1. Understand your legal duties as a surveyor to ensure safety
2. Discuss the implications of getting it wrong
3. Identify steps you can take to minimise risk




Overarching legal duties on your employer 

- **Duty to keep employees safe** - s2(1) HSWA 1974
 - duty to ensure the safety of employees, so far as reasonably practicable
- **Duty to keep members of the public safe** - s3(1) HSWA 1974
 - duty to ensure the safety of those affected by your undertaking, so far as reasonably practicable
- **Duty on those in control of premises (to any extent) to keep non-employees safe** – s4 HSWA 1974
 - Duty to take such measures as are reasonable to ensure the premises are safe and without risks to health, so far as is reasonably practicable


Overarching legal duties on you 


- **Employee?** - s7 Health and Safety at Work etc. Act 1974
 - take reasonable care for the health and safety of yourself and other persons who may be affected by your acts or omissions at work;
 - and
 - to co-operate with your employer so far as is necessary to enable their duty to be complied with

- **Director/senior manager?** - s37 Health and Safety at Work etc. Act 1974
 - "consent, connivance or neglect"

Core H&S regulations sitting under HSWA 

- ▶ **The "6 pack" regulations** – includes core obligations including duty to prepare written risk assessments (Reg. 3 Management of H&S Regulations 1999)
- ▶ **Construction (Design and Management) Regulations 2015**
 - ▶ **"Designer"** – an organisation or person who:
 - ▶ "Prepares or modifies a design; or
 - ▶ Arranges for, or instructs, any person under their control to do so."
 - ▶ **"Design"** – "includes drawings, design details, specifications and bills of quantities (including specification or articles or substances) relating to a structure, and calculations prepared for the purpose of a design"



In the event of a death.... Additional offences 


Corporate Manslaughter and Corporate Homicide Act 2007
 An offence will be committed if it can be proved

- the way in which its activities are managed or organised by senior management
- cause a person's death and
- amounts to a gross breach of a relevant duty of care


Gross negligence manslaughter (common law manslaughter)
 The old law remains in place for individuals.
 To successfully prosecute, there must be evidence of (1) gross breach of a duty of care (2) which causes a death.

Who regulates and enforces health and safety? 



Legal ramifications of a health and safety breach 

	Penalties	Other potential consequences
Companies	<p>Unlimited fines under HSWA and Corporate Manslaughter Act</p> <p>Remedial order and publicity order possible under Corporate Manslaughter Act</p>	<p>Civil claim (likely, insured)</p> <p>Reputational risk</p> <p>Delays and commercial costs</p>
Individuals	<p>Unlimited fines or imprisonment of up to 2 years for individuals (HSWA) and life for gross negligence manslaughter</p>	<p>Civil claim (possible, may be insured under business policy)</p> <p>Reputational risk</p> <p>Directors disqualification</p>

Penalties are soaring since introduction of new guidelines 

- **Network Rail** – fined £4m (September 2016)
- **Merlin Attractions** – fined £5m (September 2016)
- **Cristal Pigment UK Ltd** – fined £3m (November 2016)
- **Wilko** – fined £2.2 million (January 2017)
- **Warburtons** – fined £2 million (January 2017)
- **Bakkavor Foods** – fined £2 million (April 2017)
- **Iceland Foods** – fined £2.5 m (September 2017)

> Prosecutions of individuals and custodial sentences are on the rise
 > Consultation on GNM – custodial sentences set to increase substantially

Household names sentenced in 2017 RICS

How can these duties be met? RICS

HSE's Guidance Note – HSG65

How can these duties be met? RICS

1. Proper planning of visits
2. Scope the service you are providing carefully (including limitations)... and stick to the scope!
3. Communicate and cooperate effectively with other duty holders on site on safety matters
4. Ensure safety outside of site visits too


How can these duties be met? 

1. Proper planning of visits




Costain Limited


Fine: £250,000 (pre-new sentencing guidelines – likely to be seven figures now)

How can these duties be met? 


- i. Collect as much information as possible from the person who has requested the visit or the organisation in control of the site.
- ii. Use this information to carry out a written risk assessment
 - **Generic** risk assessment – for visiting property under your company's management where a wealth of information is available
 - **Specific** risk assessment – for unknown sites
 - **Detailed** risk assessment for higher risk sites - e.g. where access equipment may need to be used or work will be carried out in a confined space


How can these duties be met? 

- iii. Ensure risk assessment covers common risk areas, for example:
 - Condition of property
 - Structural stability
 - Occupation
 - Roof/scaffold/other work at height work required
 - Dangerous substances
 - Diseases
 - Site rules
 - Lone working

How can these duties be met? 


Case study 1: Assessing occupancy and risks of lone working



How can these duties be met? 

2. Scope the service you are providing carefully (including limitations)... and stick to the scope!

Case study 2:
The story of the helpful surveyor



How can these duties be met? 


Case study 3: Landslide - Looe, Cornwall



How can these duties be met? 


3. Communicate and cooperate effectively with other duty holders on site on safety matters




How can these duties be met? 


4. Ensure safety outside of site visits too


- i. **Office working**
- ii. **Flexible/Home working**
- iii. **Driving for work**

How can these duties be met? 

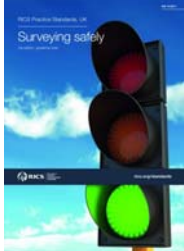
4. Ensure safety outside of site visits too (continued)







How can these duties be met? Reminder: 

HSE's Guidance Note – HSG65

How can these duties be met? 



But... needs to be updated as follows:

- To refer to the new sentencing guidelines for H&S offences
- HSE Guidance on risk assessment ("Five Steps to Risk Assessment") has been replaced by "Risk Assessment – A Brief Guide to Controlling Risks in the Workplace" INDG163 (rev 4)
- CDM Regulations – Reference should be made to the CDM 2015 Regulations rather than the 2007 Regulations.

Questions? 



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