

# **Accident Investigation**

**How Cases/Claims are Won and Lost**

**IOSH Ireland Branch, Construction Section**

**Finnstown Castle Hotel**

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# Anatomy of Accident Investigation

1. Reporters
2. Initial receivers
3. Accident Investigators
4. Regulatory investigations

# What you need to think about

- Purpose
- Legal environment
- What constitutes “best practice?”
- Elements of a good investigation report

# Why is a Proper Investigation so Important?

- As a tool in effective risk management
- It assists in addressing questions of liability
- It can provide answers for your organisation where other statutory investigations are being conducted e.g. the HSA, Coroner

# Determining the Question of Liability

- Establishing a duty of care
- Establishing a breach of that duty
- Proving an injury occurred
- Establishing the injury relates to the breach of duty
- Addressing the question of contributory negligence

# Civil Cases

- **Injuries Board**
- **Courts and Civil Liability Act 2003**
  - Time limit reduced from 3 to 2 years
  - Complete details set out in a Letter of Claim
  - Full details of defence required
  - Verifying Affidavit as to truth
  - Offences to make false or misleading statement
  - Claim can be dismissed for false or misleading statements

# Role of an Investigator

## Role

- To determine what happened
- To gather the facts
- To report on his/her investigation
- To draw conclusions
- To make recommendations

## Pieces of the jigsaw.....





# Skills and Competencies Required

## Investigators need to:

- fully understand their **role**
- be clear about what is involved in conducting a **full and proper** investigation
- be aware of the **legal implications** of what they do and what they write
- be knowledgeable about the **rules of evidence**
- have **good interviewing** skills
- be able to make **good records** and create an audit trail
- have **strong report writing** skills

# The Investigation Report

- Who?
- Why?
- What?

# Role

- Open mind
- “ I don't know.... let me see what the facts are“

2009



AP

2017



White House YouTube

AP

# Facts and Opinions

- Facts are not the same as opinions.....
- Facts are what **happened**
- Opinions are **what people think about**  
what happened

# Facts and Opinions

“ John was drunk....”

“ Mick was aggressive”

“ Ray did not use the machine properly”

“The protective equipment was faulty”

# Evidence

To be able to determine the facts.....

.....you have to have the **evidence**

# Evidence

- Evidence is something that gives **probative value**
- Evidence allows you to **establish the existence** or non-existence of a fact
- An investigator determines the existence or **non-existence of a fact by** weighing up all the evidence gathered
- Identifying the **source** of evidence is essential
- **Chain of custody** issues



# Stages of an Investigation

- Attending on site, securing it and preserving the area
- Gathering and retaining all relevant documentation
- Inspecting machinery, equipment – securing same
- Recording your personal observations
- Record and photograph the scene
- Retain any CCTV footage
- Get details of all persons on site
- Speak to witnesses
- Record any evidence removed from site by Gardai, HSA
- Contact Forensic Engineer, other experts
- Open Investigation file

# Witnesses

- Informal and formal interviews
- Identifying who saw what, said what, did what, when
- Watch for collusion, influences
- Watch for any assumptions, opinions
- Think about hearsay rules
- What are the **sources** of the evidence you have gathered
- Triangulating the evidence – i.e. identifying 3 sources to establish a fact (witnesses, CCTV, documents)

# Documentation

- Safety Statement
- Policies and Procedures
- Safety equipment
- Training records
- Maps
- Photographs
- Contracts/arrangements with contractors

# Before Writing your Report

## Ask yourself:

- Have you pursued all lines of enquiry?
- Are there any gaps in your investigation?
- Do you have the evidence?
- Does the picture presented answer all the questions your insurer/lawyers need answered?
- Can you draw conclusions/make recommendations?
- Are your conclusions/recommendations evidence based?

# Your Report - Who?

- Language
- Does the structure help the reader/s?
- Is it a stand alone document?
- Supporting appendices?

# Your Report - Why?

- Is it fit for purpose?
- Can the reader use it as a tool to assist in determining issues relating to liability, contributory negligence, exaggerated or fraudulent claims?
- Would the reader have any questions that are not addressed properly or at all in the report?

# What?

## Investigation Report Structure

### Section 1: Introduction

- Name of investigating officer, title & role
- Details of employer/contractor
- Date of incident
- How and when the investigation commenced and finished
- A brief summary of key findings

# Investigation Report Structure

## Section 1: Background Information

- Full details of employer/contractor
- Full details of the work on site including the task/s involved, number of personnel involved
- Contractual information in relation to responsibilities on site
- Relevant documentation (Appendices)
- Supervision on site



# Investigation Report Structure

## Section 3: The Investigation

- Date of incident
- When you commenced your investigation
- Your site inspection
- Details of who was on site, what was happening
- Details of the preservation of the scene
- Photographs (Appendices)
- Witnesses you interviewed (Statements in Appendices)
- Machinery/PPE inspected (Any reports in Appendices)
- Documentation you inspected (Appendices)
- Training records (Appendices)
- Incident Reports (Appendices)
- Reports to HSA, Coroner (Appendices)
- Other reports (Appendices)

# Investigation Report Structure

## Section 4: Conclusions

- Detail analysis and conclusions reached
- Explain your reasoning (highlighting the evidence)
- Detail any recommendations and reasons

# Review your Report

- Does it answer all relevant questions?
- Are there any inconsistencies/gaps?
- Is it a stand alone document?
- Are the necessary proofs included?
- Is the language pitched at the audience?
- Can you stand over everything contained in your report?
- Is it evidence based and objective?
- Are your conclusions supported by evidence?
- Do your recommendations make sense?

# Pitfalls

- Gaps
- Inconsistencies
- Lack of evidence/proof
- Language
- Too subjective
- Unsubstantiated findings/conclusions
- Chain of custody issues

# Disclosure

- Discovery
- Compulsory exchange of Expert Witness Reports
- Coroner's Investigation
- HSA Investigation/prosecution

# Thank you

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