



Compass Chambers

# The Inspector calls: how to protect your client's interests.

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Compass Chambers

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# FOCUS ON 4 ASPECTS OF SECTION 20:

- INTERVIEW OF EMPLOYEES;
- INTERVIEW OF EMPLOYER;
- HSE POWER TO RECOVER DOCUMENTS;
- HSE POWER TO RETAIN CONTROL OF PREMISES/PLANT/EQUIPMENT.
- (STRATEGY RE RESPONDING TO IN/PN/FFI).



# INTERVIEW OF EMPLOYEES:

- CONFLICT?
  - SECTION 7 OFFENCE?
  - SECTION 37 OFFENCE?
  - IF IN DOUBT, OUT!
- CONFLICT WITH HSE ABOUT CONFLICT:
  - HSE INTERPRETATION BASED ON ENGLISH SRA.
  - DO NOT BE BULLIED!



# ADVISING ON FORM OF INTERVIEW: VOLUNTARY OR SECTION 20

- VOLUNTARY STATEMENT:
  - IT IS WHAT IT SAYS!
  - YOU ARE ENTITLED:
    - TO BE PRESENT;
    - TO ADVISE;
    - TO MONITOR WITNESS STATUS.
- IF IN DOUBT ABOUT WITNESS STATUS:
  - STOP INTERVIEW / SEPARATE REP



# SECTION 20 INTERVIEW:

## KEY FACTS:

- EMPLOYEE COMMITS OFFENCE IF FAILS TO ANSWER (SEC 3391)(F)
- EMPLOYEE COMMITS OFFENCE IF ANSWERS UNTRUTHFULLY (SEC 33(1)(K)(i))
- AGENT COMMITS OFFENCE IF ADVISE EMPLOYEE NOT TO APPEAR OR ANSWER (SEC 33(1)(F))
- ANSWERS NOT ADMISSIBLE AGAINST MAKER.



# EMPLOYER INTERVIEW:

- GENERALLY ARISE AT CONCLUSION OF INVESTIGATION:
  - INVITATION TO INTERVIEW UNDER CAUTION:
  - INVITATION TO MAKE REPRESENTATIONS:

# HSE POWER TO RECOVER

## DOCUMENTS:

- SECTION 20(2)(K):
  - “REQUIRE THE PRODUCTION OF...AND TAKE COPIES”;
- NOTE SECTION 20(8):
  - CANNOT BE COMPELLED TO PRODUCE DOCUMENTS TO WHICH PRIVILEGE ATTACHES.

# HSE POWER TO RETAIN CONTROL OF PREMISES/PLANT/EQUIPMENT

- SECTION 20(2)(E):
  - ”POWER TO DIRECT THAT...PREMISES... SHALL BE LEFT UNDISTURBED...FOR SO LONG AS IS REASONABLY NECESSARY...FOR THE PURPOSE OF ANY INVESTIGATION...”.
  - *ICL PLASTICS & ORS (2005) CSOH 35*
- COMPENSATION?
  - *HARRIS V EVANS (1988) 1 WLR 1285.*



## ADVISING ON PROHIBITION AND IMPROVEMENT NOTICES

- APPEAL TO BE LODGED WITHIN 21 DAYS.
- ISSUE FOR APPEAL: WAS THERE A BREACH?
  - *HSE V CHEVRON (NORTH SEA LTD) (2018) UKSC 7*
- STRATEGY TO ADOPT IN ADVISING:
  - NO DOWNSIDE TO APPEAL;
  - WILL BE SISTED PENDING OUTCOME OF CRIMINAL PROCEEDINGS;
  - POSITION CAN BE REVIEWED.

# ADVISING ON FEES FOR INTERVENTION:

- HSE NOTICE OF CONTRAVENTION:
- HSE INVOICE:
  - RIGHT TO RAISE A QUERY (21 DAYS)
  - RIGHT TO RAISE A DISPUTE (21 DAYS)
- STRATEGY TO ADOPT IN ADVISING:
  - AS WITH IN/PN.
  - NOTE: HSE “FFI QUERY AND DISPUTE PROCESS”.



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