Court napping?

Records are not just red tape. Penny Harper, solicitor and director at Bond Solon Training, advises that they're there to protect you. Brian Tinham reports

"Engineers need to understand the legal framework in which they operate, and be able to conduct themselves in a competent manner in their professional and investigative roles." So says Ian Chisholm, head of technical services at the SOE (Society of Operations Engineers). No one is likely to argue with him, but what does it mean? What specifically are the requirements on individual plant engineers and their employers? And why?

There are two main strands to this. One concerns plant engineers in their everyday professional capacity, advising, specifying, installing, commissioning, inspecting and maintaining plant – particularly plant that has the potential to cause injury or even fatalities. The other is about engineers called upon to investigate an accident after the event and/or to act as an expert witness. These are litigious times, so we need to be aware and get both of these right before we're called to account.

Evidence is key

Penny Harper, a solicitor and director at legal training consultancy Bond Solon, says that best practice, robust standards and evidence are the keys, whether the issue involves disputes concerning contract law, allegations of negligence or breach of statutory duties in relation to health and safety. "The underlying principles are the same throughout: it's always about evidence and funnelling that into the legal framework to support a case, or to attack the other side's case."

Harper first gives the example of a plant engineer responsible, in part or in full, for the installation and risk assessment on a new piece of equipment. "Arrangements will have been put in place as a result of that process, covering how it's to be operated and how it should be maintained. But there also needs to be a record of how the installation and the risk assessment were carried out, what arrangements were put in place, why, by whom and their level of competence. Because, in the event of an incident or accident, that record could become vital in subsequent litigation."

Which is common sense – except that there are two primary dangers. One concerns overdoing the documentation, while the other is about seeing record-keeping as separate and secondary to the day job. "While there is no need to drown in documentation, engineers should not think of this as getting in the way of their work," warns Harper. "It's vital for engineers to keep precise records and to have a robust methodology for that. They need to understand that this is best practice."

Note that any legal action could be against the plant owner, which has a duty of care to its employees and third parties coming on site. But it could equally be against a contractor or an individual engineer. "Whatever the charge, they need to be prepared to answer the 'when', 'what', 'how', 'who' questions – and, unless the record enables them to do that in an accurate manner, they could find themselves in some difficultly."

Moving on to the witness role, we're now talking about competence mainly in terms of root cause analysis. "Even if they're not called upon to be an expert witness in court, they might be asked to be a professional witness, investigating the cause of an incident and making recommendations. In this case, engineers need an understanding of going to a situation and gathering evidence with reliability, credibility and weight," explains Harper.

Either way, evidence is clearly everything. As she points out: "A claimant might say, 'That machine wasn't properly maintained and that's why the accident happened'. Now it may be that what you did was exemplary, but, if there is no detailed record, how are you going to prove that? Without the evidence, you could be in trouble." PE

Pointers

- Don't fall into the easiest trap in the world – making assumptions based on experience, rather than examining the facts and, where relevant, the equipment, before arriving at informed conclusions
- Much the same points hold true for engineers required to be an expert witness: it's about fact-finding, followed by opinions based on observation and experience
- "It's very easy to slip into assumptions rather than simply saying 'I don't know what the position is, so I'll find out, record what I see and then draw conclusions'," warns Penny Harper

Penny Harper: detailed records remain essential

Charles Milligan