

## Legal Liabilities of Project Managers

This overview raises the question of what the PM's criminal liabilities would be if their advice or omissions contributed to a Client failing to fulfil one of their statutory duties.

Ultimately, the project manager could be prosecuted through application of Section 36 of the Health and Safety at Work etc. Act 1974 (HASWA). This states that "where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person." In other words, a PM could be prosecuted for causing a Client to breach CDM 2007 whether or not the Client is also prosecuted.

This approach was used by the HSE in a prosecution on 12/11/08. Calderbrook Estates had appointed a Michael Stephenson as a roofing contractor. An employee of Stephenson fell four metres from the roof and broke both his heels. Stephenson was prosecuted for a breach of the Work at Height Regulations 2005 for having failed to arrange a safe system of work. Calderbrook was prosecuted for exactly the same offence, by virtue of Section 36 of HASWA, due to their default:

*continued...*



Specifically, Calderbrook failed to supervise and monitor the work which it had partly organised thereby contributing to the accident and the offence committed by Stephenson.

.....To avoid risk of prosecution under section 36 of HASWA, PMs should therefore ensure that the Client's duties are complied with insofar as these matters are under the control of the PM.

.....The Client cannot delegate their legal CDM liabilities to the PM but should a Client breach a Regulation due to the failures of a PM, the PM could face prosecution for that breach, whether or not the Client is prosecuted.

*The above is an extract from a recent APS newsletter*

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