## 2. THE DIFFERENCE BETWEEN CRIMINAL AND CIVIL LIABILITY

## 2.1 Criminal liability

In criminal matters, it is usually the state prosecuting the defendant before a magistrate, or a judge and jury in the Crown Court. The basic assumption in criminal liability is that there is both a mental element and physical element to the offence. For example, theft involves "dishonestly" which is a question of mental attitude, and "appropriating" which is a physical act. The burden of proof for criminal offences is that of "beyond reasonable doubt". It should be realised that various offences in relation to, for example, road traffic law or environmental law have been so structured that the "mental element" is in fact not required for a conviction. This has been as a matter of public policy to make it possible to obtain convictions which otherwise would be very difficult. The penalties for criminal offences are fines and imprisonment, as well as other non-custodial punishments.

## 2.2 Civil liability

Civil liability gives a person rights to obtain redress from another person e.g. the ability to sue for damages for personal injury. There is also the right to obtain an injunction. For there to be an award of damages, the injured party has to have suffered an actual loss, be it personal injury, damage to property, or financial loss. The burden of proof is "the balance of probability" which is much lower than for criminal matters.

If there has been a relevant criminal conviction in a particular matter, then the burden of proof in any related civil action is reversed, so that the defendant has to prove he is not liable. An example of this would be a conviction of a company for breach of health and safety legislation, followed by the injured employee suing the company for damages for personal injury.

A disincentive to suing is that the losing party pays the winners costs. In fact, this works out as a substantial proportion of the costs, rather than 100%, so a successful plaintiff has his award of damages diminished in practical terms. As a matter of public policy, it is not possible to have an enforceable insurance policy in relation to criminal penalties.

## 2.3 **Professional indemnity insurance**

Water chemists working otherwise than as employees (e.g. working as independent consultants) should take out professional indemnity insurance policies to protect themselves from the cost of litigation and also to pay any damages awarded. It is important that the insurance policy selected covers the policyholder for environmental damage, as many recent policies have excluded it. In any event, failure to protect oneself can result in financial ruin and the loss of all personal assets, including house and savings. An important protection mechanism is to conduct one's business through a limited company, either through forming one's own (see section 6.2.3 below) or by acting as a sub-contractor or employee.