

Chapter 7

Senior management leadership

July 1998

Attitude problems

The World of OS&H According to CJ

By staff reporter 'Skep' Tickell

Q: Well, CJ, thanks for agreeing to talk to me about how you handle OS&H at K. OSS Industries. Let's start with the legislation. Since the Health and Safety at Work Act came in over 25 years ago, what sort of impact do you think it has had in your firm?

A: *Not a great deal - except that it has made life a lot more complicated. The modern regulations in particular are a real burden. They are vague and often lead to our safety people setting requirements which, quite frankly, are "over-the-top". There is also a lot of bureaucracy with all the emphasis on safety policies, risk assessments, method statements and so on. All-in-all, it's quite a restraint on our operations.*

Q: But surely, safety has come a long way in the last quarter century?

A: *Has it? I think you safety people are among some of the prime promoter of the 'nanny state'. There's far too much overbearing protection from miniscule dangers - restricting personal freedom and playing on people's anxieties. If we're not careful we'll end up producing a nation of neurotics. The media are just as bad.*

Q: Wouldn't you agree, though, that being safe is important in any area of life?

A: *When it comes down to it, the requirement to be 'safe' is in headlong conflict with the need to take risks which is at the heart of all business. You've got to take risks to get ahead.*

Q: But you wouldn't disagree surely with the idea that business should try to avoid accidents?

A: *Of course it's very sad for everyone when someone is injured. But some level of accidents has got to be accepted as a necessary price to be paid in getting goods and services into the marketplace on a competitive basis. In our company OS&H takes up far too much time and is just another major distraction from achieving our main goals.*

Q: But what about the costs of accidents CJ? Can your company really afford not to be investing in safety?

A: *Well, we're well insured. We pay enough in premiums - so we feel we are able to recover our costs when accidents happen.*

Q: OK, but what about the staff? Don't they have a right to protection while at work?

A: *Well yes, but how far do you go? In my view employees should be prepared to accept the risks of working, in exchange for the benefits which work brings, like having a job in the first place, getting paid, getting on in your career and building up a decent pension.*

Q: Not much use in having a brilliant pension if they're not going to be around to enjoy it, though, is there CJ?

A: *But that's part of my point! In my opinion, and I've been around industry a long time, most accidents are caused by the staff themselves. It's mainly carelessness or just plain wilful disregard for safety rules. If we're going to improve safety at work we've got to concentrate more on raising employees' awareness. Provide better training and supervision, yes, but back them up with tough disciplinary measures.*

Q: Wouldn't you agree that OS&H is a good way of getting everyone involved - right across the company.

A: *Well is it? In K. OSS we have found having the trade unions involved is not a good idea. They think they know best and are resistant to practically every safety proposal we put forward. And whenever we have accidents they're always demanding to see the safety officer's report so they can claim compensation.*

Q: What about Occupational health? How do you react to the idea that health damage is now a bigger problem than accidents?

A: *Well I can't say I am surprised. Most of it is the employee's own fault isn't it? It is all due to unhealthy lifestyles – smoking, listening to loud disco music, too much fatty food or injuring themselves playing sport or doing DIY.*

Q: But given that at least some health problems are caused by workplace activities, what do you recommend?

A: *I suppose if the work's really likely to cause illness (and I'd need a lot of convincing about that) it's fair enough to issue dust masks or hearing protection. But even when you do it's the devil's own job to get them to wear it. And my managers are far too busy to run around wiping people's noses for them.*

Q: You wouldn't go along with the idea that issuing personal protection should always be a last resort?

A: *Ah! That's where all this risk assessment nonsense comes in isn't it? If you ask me it's just another reason the safety department people give for increasing their staff.*

Q: How has K.OSS fared with the Health and Safety Executive?

A: Well, so far as inspectors are concerned, they don't really have a clue what business is all about. Many of them seem to let power go to their heads. They swan around handing out notices about minor things and no two will give you the same answer in my experience!

Q: What would you like HSE to do differently?

A: Well, first of all, get off industry's back. Let us get on with doing our best for Britain and concentrate on trying to change the attitudes of employees who just don't care about safety. If HSE went after the real culprits, British industry would be a damn sight safer.

Q: I must say CJ, you don't pull any punches when it comes to saying what you think about health and safety.

A: I didn't get where I am today by pulling punches! But completely off the record of course - I never say these sort of things in the company. It wouldn't be very PC, would it?

December 1998

Taking it from the top

Why is it, that with around 2.2 million cases of work related ill health annually and 1.6 million injuries - together costing 29 million working days and up to 9 per cent of GDP, a British Prime Minister has yet to make a major speech on the importance of occupational health and safety?

The answer is, of course, that occupational safety and health lacks the profile of many other competing policy areas. There are no distinctly party political positions on many of the issues involved and there is no single remedy or 'quick fix' that will produce a step-wise change in current levels of performance. Indeed, we have yet to fully understand let alone exploit the potential of some very important 'drivers' for change.

One of these is the powerful role which world class (and mainly large) companies can play in influencing standards and promoting change in the myriad of smaller firms with which they come into regular contact in the form of contractors, suppliers and even customers. The potential impact of these relationships has recently been the subject of a special study by John Rimington CB, ex Director General of HSE (see *OS&H, July, News*).

Yet insightful as he is into the workings of modern corporations, his study still begs many questions, including what it is within such organisations which will create and sustain their desire to be at the cutting edge of health and safety performance.

Undoubtedly a major and decisive influence has to be the role exercised by the board and senior managers in such companies when it comes to providing health and safety leadership. Without effective leadership at the highest levels there is no guarantee that good OS&H performance will simply happen on its own. This is all too often apparent in the loss of momentum which occurs when those at senior level in companies fail to respond to the desire and enthusiasm of those lower down the hierarchy to 'make health and safety happen'. How often, for example, do we hear the anguished cry of the frustrated health and safety professional, 'If only my board understood why health and safety is so important!'

In fact, the whole 'management system' approach to health and safety which has developed since the 1980s (and which is now embodied in the canon of HS(G)65 and BS 8800, informed by risk assessment and supported by notions of 'safety culture'), depends critically for its success on the involvement of senior managers and board level directors. Unless they have a clear and decisive approach to formulating overall policy, allocating responsibilities and resources, setting plans and targets and measuring and reviewing performance, improvements simply will not be achieved.

There are still some senior directors, including those on the boards of some very large companies, who give the impression that they have yet to grasp fully the modern, proactive approach to risk management advocated by both regulators such as HSE and health and safety professionals. Instead they still seem to perceive the subject as a lower order technical issue associated, in the main, with compliance with regulations, the detail of which they are unsure about but which, by instinct, they are inclined to regard as bureaucratic and burdensome.

This stance contrasts sharply, of course, with that adopted by their peers in other major companies which consistently achieve high levels of OS&H performance. In such cases, the whole board, often as a result of the work an individual director championing the subject, will share a very clear understanding of the moral, regulatory and financial imperatives which dictate the need for a modern, strategic approach to OS&H. There will be an insistence that OS&H standards and performance levels must be viewed on a par with the achievement of other key business objectives such as sales, investment, training research and development and so on.

RoSPA is now mounting a new initiative called Director Action on Safety and Health (DASH) - to identify ways in which senior managers - and in particular, board level directors - can exercise a more effective influence over both the strategic direction of OS&H management in their organisations as well as day-to-day standards of performance.

While the vast world-wide literature on the subject of 'management' abounds with competing theories and findings about how individuals at senior level in organisations 'lead', there seems to be remarkably little known about what it is that such figures need to think, understand, know and do about health and safety to secure continuous improvement in their organisations. How do they go about deciding the overall approach to be adopted? How do they not only make a board level commitment to OS&H but make that commitment visible and credible to all concerned? How do they decide strategic priorities, set targets and measure performance (not just via reference to accident frequency rates but via other key indicators, including those relating to levels of health risk exposure and health damage)?

RoSPA is keen to feel its ways towards a better understanding of these issues by having informal, one-to-one discussions with directors in major companies, via research and seminars. The idea is not to lay down any artificially prescribed paths to be followed blindly but to identify 'what works' and can be developed further. This might include, for example, guidance on competencies for health and safety policy makers and planners; options for continuing professional development; and guidance on appraisal and peer review. It might also involve looking in detail at the impact of likely changes in the law on corporate manslaughter, the case for corporate reporting of OS&H performance in companies' annual reports, coverage of OS&H in business education and the desirability of instituting a special award for excellence in senior leadership and OS&H.

Because the Society acknowledges that it has limited practical contact with the OS&H practice of directors it will be treading carefully, seeking advice from a small reference group of senior figures, including those with proven board level OS&H policy experience and involvement in national - and indeed international - OS&H policy development. As in all other areas of our work the aim will not be to proclaim ourselves as experts but to act as a channel through which others can come together to assess problems and develop solutions.

October 1999

Director Action on Safety and Health

Britain leads the world in health and safety at work. Yet, despite the substantial progress that has been achieved in making work safer - particularly since the early seventies - there is still major scope across the whole economy for further reductions in current levels of occupational accidents and ill health.

This is especially true in many of Britain's small and medium size firms, where accident rates tend to be higher than in large firms and busy managers, who are struggling to ensure that their businesses survive, often lack time and expertise to tackle health and safety issues effectively.

Annually, there are estimated to be one million work accidents and some 2.1 million cases of ill-health which are caused or made worse by work. The annual cost to employers is estimated to be between £4 - 9 billion. The cost to Britain as a whole may be as high as £11 billion or nearly 3.0 per cent of GDP. However, the human cost to victims, their families, relatives and friends cannot really be quantified.

According the Health and Safety Executive, about 70 per cent of accidents could be prevented if businesses put reasonably practicable control measures in place.

Since the early to mid 1990s and the introduction of the *Management of Health and Safety at Work Regulations*, there has been increasing emphasis on the need for companies and other organisations to adopt a systematic risk management approach to health and safety, rather than an endless stream of reactive 'quick fixes' following accidents and incidents. The key to progress has been seen to be the development within companies of the right policies, people and procedures to tackle the potential for error and harm in their operations so that health and safety becomes fully integrated with all other aspects of business management.

This kind of proactive approach to risk management however requires strategic leadership in organisations, both large and small. And, while it needs specialist professional input and must be 'owned' by involving the entire workforce, it will not be fully successful unless it is led as a strategic business issue 'from the very top' by board level directors and senior managers. In short, without effective leadership at the highest levels there is no guarantee that good occupational safety and health performance will simply happen on its own.

This idea has been given strong emphasis in widely promoted publications such as HSE's *Successful health and safety management* [HS(G)65] and BSI's *Guidance on health and safety management systems*, BS8800. Yet, despite substantial sales of these important guides, there are still many directors who have yet to grasp fully this modern, proactive approach to occupational health and safety management.

Many continue to perceive the subject as primarily a technical issue associated with compliance with regulations, the detail of which they are unsure about but which, by instinct, they are inclined to regard as bureaucratic and burdensome. (And this is not to deny that there is a continuing need for regulatory simplification!)

This stance contrasts sharply with that adopted by boards in many major companies, where, often as a result of the work an individual director championing the subject, the achievement of consistently high levels of OS&H performance is regarded as something of strategic significance for the whole organisation. In such cases there will often be an insistence that OS&H standards and performance levels must be viewed on a par with the achievement of other key business objectives such as sales, investment, training, research and development and so on.

The Health and Safety Commission have sought to motivate businesses by promoting the so called 'business case' for health and safety, stressing that most of the costs of accidents and occupational disease are hidden and are not recovered through insurance.

Although there is evidence that senior managers are becoming increasingly sensitive to health and safety issues, their concern is often triggered by issues such as fear of prosecution, protecting the corporate reputation or meeting the OS&H performance expectations of major clients. They may also not have a fully developed understanding of the principal risk issues facing their company or ways in which OS&H management performance can be measured.

DASH Project

RoSPA has launched a new key issue project to try to promote and develop the extent of influence and involvement which senior figures have in company health and safety development and policy. Called 'Director Action on Safety and Health' (DASH), it will involve establishing a liaison group of 9 - 10 'key player' organisations, each of which will be taking initiatives to promote or support more effective director involvement in this area. Participants include HSE, HEA, IOSH, EEF, TUC, FSB and Loughborough and Aston Universities. The purpose of the liaison group will be to exchange views, avoid unnecessary overlaps and frictions and create synergies between individual DASH projects being undertaken by each organisation. For its part, RoSPA is keen to initiate a consultation exercise on how to encourage good practice in corporate reporting on OS&H performance both internally and in annual reports.

Annual reports

The case for re-visiting coverage of OS&H in company reports has been raised in the Government's consultation initiative on 'revitalising' health and safety (see *Risk watch*, page 36). Under the heading of 'Action by Employers ... At board level' the consultation document states "Publishing details of health and safety performance in companies' annual reports can be another powerful tool. There is already a requirement to report environmental performance. Whether on a compulsory or voluntary basis, a higher profile for health and safety in annual reporting could help." RoSPA will be responding to this idea in the context of its overall submission which will reiterate many of the strategic ideas for improving health and safety which it has put to Government departments, agencies and professional and other bodies over the last two years.

The Society believes that there is a strong case for developing an effective approach to coverage of OS&H in companies' annual reports and would welcome views on this from readers.

April 2000**A new DASH code?**

DASH (Director Action on Safety and Health) is now clearly on the health and safety strategy agenda. Since the launch of the new DASH Liaison Group at IBM's London South Bank headquarters in October 1999, there have been signs of a growing focus on the key role to be played by board level directors in achieving high levels of corporate OS&H performance.

The aim of the DASH initiative, which involves of nine 'key players' (HSE, IoD, EEF, TUC, IOSH, HEA, ABI and Aston and Loughborough Universities), is to develop a linked programme of activities over the next two to three years, each of which in a different way will be aimed at encouraging more effective involvement of directors in OS&H.

All members of the DASH Group share the view that, while Britain has a relatively good health and safety performance in European and world terms, there is major scope for further reductions in current levels of risk, harm and loss associated with work activity across the whole economy - particularly in small and medium size firms. They see the key to further progress as encouraging a more systematic approach to risk management by all organisations.

Director perceptions

At present, many managers (including directors) continue to perceive health and safety as a purely technical issue focused on compliance with prescriptive regulations and not as a strategic question to be integrated with other key business objectives. Some business spokespeople continue to express concerns about health and safety requirements being over-restrictive or 'burdensome' and many, often in smaller firms, exhibit an inability to understand and respond to the new goal setting approach. For example, guidance is often wrongly interpreted as having prescriptive regulatory force, often in situations where it is clearly disproportionate to risk - while at the same time complaints are also frequently made about regulations being too vague and impossible to comply with.

These problems can stem from a general lack of competence in the subject area (possibly as a result of a lack of coverage of OS&H concepts in professional education) and from a perception that the whole subject of health and safety is essentially rule based and lacks intellectual challenge. This was one of the principal findings of a research project carried out by with the Health and Safety Unit of Aston University in 1997 in conjunction RoSPA to determine the extent to which coverage of health and safety was a feature of MBA courses in UK businesses schools undertaken. The project found that in general health and safety was not covered in any detail; perceptions of the subject were on the whole negative and outdated; and its relationship to the modern management agenda was not appreciated. The conclusion of the work was that OS&H should be covered in business schools' curricula hut not as a separate subject.

What the DASH project seeks to find out is what directors at board level need to: feel, think, understand, know and do to initiate and drive effective risk management in their organisations.

At the October conference the suggestion was made that some sort of code of principles for directors could be useful. RoSPA hopes the following will prompt discussion:

Key DASH Principles

In leading the management of occupational safety and health in their organisations, board level directors should:

1. Formulate, endorse, communicate and continue to develop overall corporate policy for OS&H, insisting that high and continuously improving standards of OS&H performance are to be regarded as a key business objective;
2. Establish and maintain a clear structure of accountability for OS&H at all levels. They should make it clear that ultimate responsibility for OS&H rests with the board and ensure that every employee and business partner is fully competent and adequately resourced to play their OS&H. They should also ensure that the board and all other parts of the organisation have access to competent advice;
3. In consultation with all key stakeholders, formulate corporate OS&H plans and targets together with timescales for compliance, with priorities identified through risk assessment and supported, where appropriate, by corporate OS&H standards and procedures;
4. Insist that corporate OS&H performance is adequately monitored - both actively by tracking key performance indicators and reactively through investigation of accidents, incidents and cases of work related health damage;
5. In the light of findings from monitoring and from independent auditing of OS&H management systems, periodically review and report to stakeholders on progress and ensure that lessons learned are fed back to assist continuous improvement;
6. Develop and maintain their personal competence to lead OS&H and maintain their current awareness of the risk profile of their organisation and associated developments in the field of OS&H;
7. Insist that OS&H will be an integral part of all corporate activities, including dealings with other business partners, and that questions of OS&H will always be accorded necessary priority;
8. Insist on full openness, transparency, consistency, proportionality, and fairness in all OS&H matters;
9. Ensure that, whether achieved by groups and/or individuals, outstanding OS&H performance is always recognised, rewarded and commended to colleagues; and

10. Visibly foster and support the development of a positive OS&H culture.

Case for a Code?

It seems clear to RoSPA that some form of authoritative guidance is going to be needed for directors on their OS&H role, possibly as an amendment to the Approved Code of Practice to the Management Regulations. The above suggested principles still need considerable development and the Society would be interested in readers' views on what form such a code might take, including whether it should be free standing or allied to other non OS&H guidance, for example, concerned with director competence and corporate governance issues.

June 2000

Performance measurement and reporting

The aim of the DASH (Director Action on Safety and Health) initiative is to address the specific and distinct occupational safety and health role of directors - including directors at board level - who may be charged with an oversight of such matters. Specifically it is asking what it is that is needed to enable them to initiate and drive forward effective risk management in their organisations. In doing so, the DASH project focuses particularly on how directors can exercise their personal influence within their organisations and what appropriate incentives, tools, opportunities and support can be provided to encourage high standards of OSH leadership at this level.

As part of its contribution to the initiative, RoSPA - with advice from an expert reference group - has prepared a consultation paper which prompts all those with an interest in the subject to submit their views on how to improve the measuring of, and accounting for, corporate health and safety performance.

Basically, the RoSPA document examines performance measurement and reporting against a background of strategic policy development in OSH as raised in the joint DETR/HSC consultation paper *Revitalising health and safety at work* which was published last year. (The official response to consultation is expected to be published round about now).

It is important to understand that the underlying premise in the RoSPA paper is that there should be a clearer requirement - or at least some strong encouragement - for organisations to measure and report on health and safety performance. This, in RoSPA's view, would help raise the status of, and improve the understanding of health and safety management particularly among board level directors.

It would also enable more organisations to set and assess progress towards improvement targets and provide a means of diagnosing problems in the context of continuous improvement.

The issues discussed in the RoSPA paper relate to performance measurement including: the limitations set by traditional methods such as injury rate statistics; the issues involved in devising other direct measures; and the challenges associated with measuring performance indirectly by monitoring aspects of the health and safety process (e.g. auditing). It also refers to other forms of measurement - that for assessing health and safety culture, for example and puts the case for a multi-dimensional approach to performance measurement.

It concludes by reviewing the case for and against corporate reporting of health and safety performance - which is fundamental to the HSG65/BS8800 approach.

In RoSPA's view it is essential that a clear and concise account of performance against strategy should be set out for the whole workforce. This would enable everyone in an organisation to understand their employer's corporate objectives and to communicate effectively with key internal and external audiences. Indeed, the requirements of the workforce for information on OSH performance overlap with

those of a number of external audiences - stakeholders such as shareholders, regulators, insurers, clients, local and national media and political bodies.

Of course, one way in which this can be done is via companies' annual reports - though decidedly not in the way generally practiced at present. An analysis of coverage in their annual reports of OSH by companies in the FTSE 100 (carried out, by Disaster Action in 1997) showed that only half covered the subject at all. Of those that did, coverage varied from the 'relatively informative' to the 'superficial' (not to say cosmetic): and many of those deemed to be in the latter category are said to be 'market leaders' in health and safety!

In RoSPA's view, there are numerous advantages of annual OSH performance reporting:

- It provides essential information to shareholders on an organisation's approach to risk management and its effectiveness, explaining its approach to OSH as a key business performance objective;
- It provides essential information to the other key stakeholders/partners and can therefore complement the existing requirement to report on environmental performance;
- It can enable companies to report on progress towards the achievement of improvement targets;
- It can help to create a greater understanding of the 'management system' approach to OSH;
- It can provide a basis for benchmarking - within a group of companies, for example;
- It can demonstrate openness and transparency;
- It can provide a basis for the celebration of achievement, helping to demonstrate and reinforce the organisation's health and safety values;
- It provides a useful way of collating summary information on OSH in support of other business processes such as tendering, entry to awards schemes and so on.

All of these points raise questions about additional costs (though these need to be set against the perceived additional benefits). Such costs might be disproportionately greater for smaller organisations - particularly if reporting were a statutory requirement and the information required was extensive. As well as direct financial costs involved in the monitoring, maintenance and analysis of data, indirect costs might be incurred if the information gave a negative impression of the company's approach to safety and health especially if it was picked up by the media or used in evidence in civil proceedings.

However, a clearly visible OSH reporting requirement (and specifically an accounting requirement affecting the company at the highest level) would create a powerful incentive in those companies with deficient senior OSH management to improve. The main benefit, therefore, would be in enhancing the influence of other OSH drivers - particularly those associated with the fear of loss of reputation, business opportunities and competitive advantage.

Another significant factor is that of verification, or 'signing off' the information required. This could be internal: by a competent person, for example or by the Chief

Executive, the safety committee and/or senior safety or workforce representative. It could also be done by external auditors where these have been employed to audit OSH management systems. But however it is done, some attestation as to the accuracy and completeness of the information would clearly be important.

April 2001

Health and safety code for company directors

The HSC consultation document, *The Health and Safety Responsibilities of Directors* sets out proposals for a voluntary Code giving guidance on how directors, acting both individually and as boards, can carry out their key role in leading effective OS&H management. It is aimed at members of boards of organisations in the private and public sectors.

There are five 'action points' in the CD which in essence are as follows:

- 1) Formal and public acceptance by the whole board of their role in providing collective leadership of OS&H. (This relates to the board's responsibility to provide the vision and direction necessary to achieve continuous improvement.)
- 2) Acceptance by board members as individuals of their role in providing OS&H leadership. (This relates to the need for directors to 'walk the talk' and avoid any perceived mismatch between their attitudes, behaviour and decisions and the organisation's OS&H policy and objectives.)
- 3) Ensuring that all board decisions reflect the organisation's health and safety intentions as articulated in its health and safety policy statement. (Again this stresses the need for the OS&H implications of all decisions to be taken account of at the planning stage, for example changing management structures or engaging contractors.)
- 4) Recognition by the board of their role in engaging the active participation of the workforce in OS&H. (This highlights the need not only to consult via statutorily required procedures but to involve individual employees directly in all aspects of the OS&H management process.)
- 5) Ensuring that the board is kept informed of and alert to OS&H issues, with the recommendation that they appoint one of their number to be 'health and safety director'. (This stresses the need to periodically review policy and performance, to ensure monitoring capability and to report on OS&H performance in annual reports, to be kept informed about failures and the results of investigations, to address the OS&H implications of all decisions and to ensure that OS&H management systems are effective, including via use of auditing.) The idea of a named OS&H director is that there should be a 'champion' for the subject at board level. This may be the Chief Executive.

Whatever the detail of the Code there are several broad issues still to be addressed.

Firstly there is still a tendency by many directors to see health and safety matters as simply a question of technically obscure arid prescriptive (probably burdensome) regulatory compliance. Many directors still seem to have a 'Factories Act' view of health and safety and thus do not see it as a suitable subject for strategic consideration at board level. Those who may be tempted to resist taking a broader view need look no further than the Railtrack board to see the business risks involved in failing to engage with safety in a strategic way!

Secondly there is still a good deal of scepticism about, if not outright opposition to, the idea that directors can and should have greater responsibility for accident and ill health prevention within their organisations.

A number of commentators continue to argue against enhanced director liability for failure to prevent accidents because of the perceived complexity of risk management in large organisations. This view suggests that because directors can never be all knowing and all seeing, they cannot be held directly accountable for organisational safety failures. And those who, in the wake of major disasters, would seek to call directors to account are simply branded 'safety fascists'!

For professionals whose job it is to help improve safety this abject refusal to understand the critical role of senior decision makers in ensuring an organisation's ability to manage risk, is really quite depressing. Those who would hold that directors cannot be held to blame for health and safety failures simply do not understand just how much at odds such a view is with the growing understanding that has emerged from numerous disaster enquiries since the eighties, of the power of corporate safety management systems to address hazards and successfully control risks. The Cullen (Piper Alpha) and Sheen (Zeebrugge) enquiries showed clearly that organisations without effective policies, people and procedures to manage risk are quite literally 'accidents waiting to happen'. Contemporary OS&H management theory and practice demonstrate quite convincingly that the means to ensure effective management of prevention can and should at all times be very directly in the hands of senior directors. And, what recent railway disasters highlight is not so much the impossibility of preventing accidents but rather the need for a much higher level of risk management literacy among directors and politicians and even perhaps journalists!

The development of a Code which encapsulates the essence of effective board leadership of OS&H represents a considerable challenge. The HSC are to be congratulated for having made a start but one is bound to ask whether the Action Points as set out really do represent a logical and essential set of considerations. All, without exception are perfectly laudable, but some are quite clearly cardinal points of principle, massive in their scope and implications, while others relate more to questions of personal style.

For example, 'ensuring health and safety management systems are in place' - which arguably is at the heart of the corporate OS&H management challenge - is mentioned only in passing in the text beneath Action Point Five. Although Action Point One talks about setting policy, surely the key question to be addressed is the extent to which directors should have as one of their collective responsibilities the role of ensuring overall risk management system capability in their organisations.

Given that many directors will not be so familiar with what this entails, not only should responsibility for policy and systems development be highlighted right at the front of the Code but there might be considerable merit in attaching an explanatory annex setting out key principles, for example, along the lines of the draft 'RoSPA Principles' (see *Parting Shot, February 2001*).

Beyond this, while the draft Code stresses the need for monitoring, learning from failure and periodic review, little or nothing is said about the need to develop an

overall corporate OS&H strategy based on the results of periodic review and with clear priorities, meaningful targets and realistic timescales.

The HSC/E are under quite a lot of pressure at present to deliver on the commitments in *Revitalising* and so perhaps there has not been enough time for extensive research and benchmarking of existing best practice in OS&H leadership at board level. Hopefully this will come out in consultation (which is still one of HSE's great strengths).

March 2003**Back to the floor**

In chapter 3 of HSG65 HSE say 'Managers, particularly senior managers can communicate powerful signals about the importance and significance of health and safety objectives if they lead by example. Equally they can undermine the development of a positive health and safety culture through negative behaviour. Subordinates soon recognise what their superiors regard as important and act accordingly. Successful methods which signal commitment include: regular health and safety tours. These are not detailed inspections but a way of demonstrating management commitment and interest and to see examples of good and bad performance. They can be planned to cover a whole site or operation progressively or to focus attention on current priorities in the overall safety effort...'

All this might seem like just good common sense - directors being seen to take H&S seriously. Their presence in such activity allows them to witness and commend good practice as well as to get a real sense of where there are still gaps between the corporate H&S rhetoric and real conditions at the workplace.

That's the theory but what about practice? Indeed, how widespread is the practice of senior managers and directors taking part in H&S tours and inspections or indeed developing their own independent forays into the workplace (either announced or unannounced) to drill down to the H&S bedrock? And where directors and other senior managers are already supporting the management of H&S in this way, what are the various approaches adopted? What are some of the hallmarks of good - and bad - practice in this area? What are some of the barriers to directors taking a truly effective part in inspections and even auditing? Are there occasions when, with the best of intentions perhaps, they may actually be doing more harm than good?

RoSPA suspects (although more research evidence is needed) that director involvement in periodic inspections or tours can be not only infrequent but a bit ritualistic. They may tend to allow the H&S professional to lead and see themselves (and be seen by employees and others) as 'coming along for the ride' and showing the flag. While not unimportant this is a secondary role. They may be worried about exposing their ignorance about processes, hazards or systems of work, fearing that this may undermine employee perceptions of their authority. They may genuinely not want to press employees too hard on sensitive matters in front of their line managers in case this creates embarrassments and frictions which surface later when they have left the scene.

Alternatively, they may not actually realise the limits of their own expertise and risk subjecting other members of the team to particular 'bees' which they have been 'hiding in their bonnets', for example, by prescribing all kinds of solutions without a sufficiently professional grasp of subjects under consideration.

Of course, other members of the safety team may take the view that the difficulties which may arise on occasions from a little bit of director naivety and over-enthusiasm are more than offset by the value which such senior managers just being there adds to this part of H&S management. Given that many directors seem remote to many staff,

getting 'back to the floor' (in as realistic a way as possible) is very important indeed, not just for H&S reasons but to continue to be able to lead the business.

After all, even though it may be somewhat of a caricature, many senior managers (particularly in the service sector) may come from an accountancy or business administration background or have never got their hands dirty before going to business school. Even where they have 'come up through the ranks', technology, skills and systems will have changed, reinforcing the need for them to re-acquaint themselves with the way people in the organisation actually work. From this point of view it could be argued that H&S tours are one quite useful way in which senior managers can get out and about in a relatively informal way without too many awkward questions being asked about their motives.

What is really important is that senior managers are properly equipped to play their part. Busy as they are, it is vital that they get some form of training and briefing on the essentials of H&S management - not necessarily about the law and their liabilities nor indeed pep talks about 'the business case for H&S' - but basic briefing about hazards, risks, control measures, standards, active and reactive monitoring as well as good case study examples.

Once the basics are grasped, it is vital that they understand the need for a focused approach, avoiding the pitfalls of the old fashioned 'physical conditions' inspection and concentrating on talking to people to understand their ideas and concerns. They need to avoid the temptation to be purely safety focused and ensure that they concentrate in a targeted way on specific health issues. They need to avoid adopting the old inspector posture of 'eyes, ears and nostrils open but mouth tight shut'. Where substandard conditions, practices or incidents are identified, the aim should be to question in some depth and to try to ascertain underlying reasons why things are as they are.

In theory as much time should be taken in the committee room with the other team members (reviewing matters such as the objectives of the tour, recent incident information and priority issues) as in actually touring the workplace itself. When out on site or 'on the floor', managers need also to be quite sensitive to any barriers their presence may create to impede free flowing discussion.

Luckily in today's more egalitarian society - and especially in flatter organisational structures - the days of cap doffing and bowing and scraping to senior managers are largely at an end. Indeed, if organisations find that their employees are afraid to speak up and talk bluntly about what is really going on, then they really are in big trouble. In the area of H&S particularly, senior managers must understand that messengers bearing bad news should not be shot but listened too seriously, even if it leads to awkwardness on occasions. And of course, following tours, directors need to be fully involved in de-briefing and following through actions arising from lessons learned.

Without such a culture, a surprise site visit or inspection by senior managers, instead of being greeted as an opportunity by employees, will be seen as intensely threatening. Indeed, if employees get wind of it beforehand, there will be much rushing around to tidy up and create a superficial impression of normality, completely defeating the object of the exercise.

One could argue whether it is actually the legitimate role of senior managers to exercise scrutiny in this way as opposed to calling their 'direct reports' to explain to them 'where they are now' in tackling H&S priorities and monitoring progress.

In this sense, the extent to which it is possible to squeeze more value out of director and senior management involvement in workplace tours (or other processes such as accident and incident investigations) is heavily dependent on the organisation's overall management style and in particular its approach to decision making and communications. There is clearly no wholly right or wholly wrong way to develop senior manager involvement at this level. There are the standard nostrums about leadership, including the need to be firm and assertive, to give praise and reinforcement in greater measure than criticism and to show patience and understanding and, above all, to listen.

As part of its continuing work on DASH (Director Action on Safety and Health), RoSPA is keen to explore some of these issues to see what can be done, not only to make the practice of director and senior manager 'H&S touring' more widespread but to see how high performing organisations can learn from one another in this area. If those that have developed positive approaches can make their findings more widely available, not only will directors in other organisations want to emulate them but there is less risk of the latter trying to re-invent too many wheels.

April 2004

‘Competent Directors?’

One of the keys to making health and safety (H&S) at work a business performance issue (rather than a matter of minimum regulatory compliance) has been the Health and Safety Commission’s (HSC) determination that all large companies and public sector employers should appoint a person at board level as a ‘champion’ for this subject, exercising strategic leadership and reporting to and from the board on targets and progress. In February 2002 the HSC published ‘*Directors’ responsibilities for health and safety*’ (<http://www.hse.gov.uk/pubns/indg343.pdf>)

(supported by further guidance on ‘*Frequently Asked Questions*’ – <http://www.hse.gov.uk/pubns/indg343faq.htm>.)

To help establish how effective the new guidance had been, they commissioned research by consultants, Greenstreet Berman (GB), on the extent to which major organisations had responded. GB’s report, which was published in July last year (accessible via <http://www.hse.gov.uk/research/rrhtm/rr135.htm>), was based on the results of a sample survey of 400 organisations drawn from top 350 FTSE companies, other large companies, and the public sector and voluntary sectors. The results showed that the proportion of companies where health and safety is directed at board level had risen from 58% to 66%. The main reasons cited for this kind of board level direction were ‘best practice’ and that power and control were located at board level. The main benefits cited for appointing board level health and safety directors were that it showed strong leadership, demonstrated commitment and helped improve health and safety performance.

In November the Commission considered another paper, ‘*Corporate responsibility and accountability for occupational health and safety: a progress report on HSC/E initiatives and measures*’ (accessible at <http://www.hse.gov.uk/aboutus/hsc/meetings/2003/141003/c105.pdf>). It is clear from this that the Commission still consider board level leadership as ‘key’ and that they are actively considering whether or not to recommend to ministers the idea of introducing specific legislation to make the appointment of board level ‘H&S directors’ mandatory.

Whether or not the HSC decide to go for a clearer legal steer, it is imperative that they address the competence of those appointed to the ‘H&S champion’ role at board level. If the appointment is made in name only and the director concerned does not have a sound grasp of the subject and the main H&S issues presenting in his/her organisation, it is unlikely that they will be able to play an effective role.

Currently the HSC’s guidance says nothing about underpinning knowledge and skills required; there is little about basic reading and nothing about where directors can go for more organised training and continuing professional development in relation to H&S. Few business schools have thought about how and where this should fit within the wider business education agenda, showing little change from the survey of coverage of H&S in leading business schools carried out by Janine Hawkins and Professor Richard Booth of Aston University in 1998 (accessible at <http://www.hse.gov.uk/aboutus/hse/policy/mba.htm>).

One conclusion of the Hawkins/Booth work was that it was unlikely that students in business schools would benefit from H&S being presented as a stand-alone subject.

Rather they suggested it should be taught by integrating suitable H&S case studies into other parts of the curriculum.

Whether or not this is the most effective way to approach the subject for H&S directors still has to be tested. Certainly directors do not require to become H&S specialists. They are unlikely to respond positively to heavy and detailed lectures on H&S legislation, case law and penalties. They need to be engaged in an intellectually challenging way but it is doubtful whether they could be expected to absorb, in detail the entire canon of contemporary thinking on health and safety management systems and culture.

What the H&S community might usefully engage on is what it is that directors need to feel, think, know and do to lead high standards of H&S management in their organisations. From this point of view it is probably more important for course providers to concentrate initially on the **‘What’** and the **‘Why’** of H&S before focussing on the **‘How’** of the subject.

When addressing **‘What’**, it is clearly vital to convince senior managers that this subject is not only important but that it is a good deal more complex than the rather restricted (not to say, negative) stereotypes that still survive in many parts of the business community. Thus it is vital that educators help their students to understand issues such as the extent, severity and costs of prevention failure so that they can appreciate the impact of accidents, ill health (caused or made worse by work) and the damage and loss that these impose on individuals, organisations and the community generally. Rather than seeing H&S as primarily about compliance with detailed regulatory prescription, senior managers need help to understand the diverse ways in which organisations create exposure to risks and the ways in which these are understood and controlled through a systematic risk based approach in dynamic ‘learning’ organisations. They need to be introduced to fundamental concepts of risk assessment and ALARP (‘as low as reasonably practicable’) (see HSE’s *‘Reducing risks, protecting people’* – accessible at <http://www.hse.gov.uk/dst/r2p2.pdf>). They need to see H&S as something integrated within all aspects of the business, rather than a ‘bolt-on’ extra; they need to understand that delivery is primarily a line-management role, not one for specialists (whether in house or out-sourced); and they need to understand that good H&S performance is about having the right policies, people and procedures in place rather than just seeking to improve the behaviours of individual ‘front line’ workers.

Similarly, when looking at the wider H&S regime, senior managers need to be exposed to the idea that organisations exist within a ‘health and safety system’ in which enforcement by the regulator is only one influence, albeit an important one, sitting alongside other roles such as those of H&S professionals, trades unions, insurers, major business partners, insurers and so on.

‘What’ leads inevitably into **‘Why’** - which is not simply a case of explaining the ethical and legal case backed by the costs of accidents and ill health to businesses and their impact on the ‘bottom line’ (see <http://www.hse.gov.uk/pubns/indg355.pdf>). A far more penetrating analysis of ‘the business case for H&S’ is required which helps directors to understand the broader practical and intellectual synergies which can exist between H&S and other business disciplines. These include for example: *Finance* and

reducing H&S losses; or *Quality* and the role of H&S in operational consistency and reliability; or *HR* and issues such as attendance management and job adaptation; or *Corporate Risk Management* and handling major H&S risks; or *Project Management* and planning for effective H&S management (CDM being the best example perhaps); or *Contractual Relations* generally, including influencing the H&S performance of suppliers; or areas such as *Insurance* and *Security* and H&S (where the links are obvious); or *Media and External Relations*, communicating effectively about both success and failures in H&S. In this sense, questions of H&S need to be freed from the H&S ghetto to which they are all too often assigned. This also means ensuring that, with the rise of '*Corporate Social Responsibility*' (CSR) in organisations, H&S is not similarly 'parked' as a subset of 'Corporate Citizenship'. Viewed in this way, an insistence on high standards of health and safety is more likely to be seen as an indispensable ingredient in the overall mix for business success and less likely to be viewed as a worthy (but in hard times, non-essential) speciality.

The '**How**' of effective H&S management is nonetheless likely to prove the most challenging area in which to engage directors. Understanding all the various elements of a management systems approach based on the ideas in HSE's '*Successful H&S Management*' (HSG65) (a potted version is accessible at <http://www.hse.gov.uk/aboutus/hse/policy/mba.htm>) is absolutely essential, extending beyond considerations such as policy development and communication into 'planning' and with a heavy emphasis on 'organising' for health and safety, looking, for example, at training needs analysis for H&S, risk based decision making and target setting and the role of active and reactive monitoring. An emphasis on practical skills such as leading team based investigation can be very important in helping senior managers to understand the aetiology of safety failure and the complexity of event chains which lead to unplanned events and losses. Similarly, learning about the importance of participating in H&S tours and inspections and chairing joint H&S committees can help directors to develop a fuller appreciation of H&S risks 'at the sharp end' and the importance of taking on board the ideas and perspectives of workers and their safety representatives. Directors also need to be introduced to essential concepts in behavioural safety, including the taxonomy of errors in HSE's '*Reducing error and influencing behaviour*' (HSG48) (see <http://www.hse.gov.uk/hid/land/comah/level3/5c72542.htm>).

But perhaps the most important way in which directors must be engaged is around the question of performance, helping them to develop a 'balanced scorecard' approach in which 'input' measures (of elements such as risk assessment, planning, and training) as well as 'output' measures (such as compliance with standards and safe systems of work) are seen as (if not more) important than 'outcome measures' such as accident and incident rates. Directors need to have a sound appreciation of the various approaches that can be adopted to auditing H&S management systems as well as techniques such as H&S Climate Surveys (see <http://www.hse.gov.uk/pubns/misc097.pdf>).

Theoretical knowledge on its own however will not empower the director who is appointed as H&S 'champion' to play a powerful leadership role. Firstly, theory needs to be explored through relevant case studies (not only of disasters like Piper Alpha, King's Cross, Zeebrugge etc but of outstanding H&S successes such as those achieved by companies like Dupont and other major higher performing corporates). Secondly, learning is best enhanced by the experience gained in application of basic

concepts, for example, combining learning about the director's H&S role with an 'Initial Status ('Where are we now?') Review' of the state of H&S management in their organisation. A third vital ingredient is ensuring that directors have good opportunities to learn by talking to their peers about problems and solutions which they have discovered in exercising a leadership role, including: selling the case for action to their senior colleagues; championing the need for higher standards and performance; leading by personal example ('walking the talk'); and generally 'keeping the faith'.

RoSPA would be interested to hear from H&S and business educators who have been able to develop approaches along these lines.

May 2005

Directors' do have duties!

The present private members' Bill (Health and Safety Directors' Duties) Bill presented by Stephen Hepburn MP has refocused attention on the need to clarify the duties of directors under health and safety legislation. This vital issue has come into sharper focus in recent years, not only because of RoSPA's DASH (Director Action on Safety and Health) work and strident campaigning by the Centre for Corporate Accountability but also as a result of Health and Safety Commission (HSC) guidance. HSC's 'five action points' on the health and safety responsibilities of directors (visit <http://www.hse.gov.uk/pubns/indg343.pdf> and Frequently Asked Questions on <http://www.hse.gov.uk/pubns/indg343faq.htm>) and their guidance on public reporting of health and safety performance (visit <http://www.hse.gov.uk/revitalising/annual.htm>) have helped to make health and safety a board level issue and not just a question for over-burdened health and safety advisers. More recently RoSPA research ('Back to the Floor'- visit <http://www.rospace.com/occupational-safety/bttf/index.htm>) and HSE case studies on director leadership of health and safety management have shown the importance of director involvement in leading effective health and safety management in their organisations.

There are signs that these messages are beginning to get through, particularly in major businesses which have significant perceived hazards and a strong commitment to high health and safety standards. But in vast swathes of employment, boards still pay little or no attention to health and safety and certainly do not see it as a strategic business performance issue. Many directors still harbour stereotypically negative views about health and safety law, have not woken up the business case for action and do not understand where this subject fits within Corporate Social Responsibility.

Recent HSC/E efforts to raise awareness on these points (visit <http://www.hse.gov.uk/businessbenefits/index.htm>) are to be welcomed but, for many businesses sadly, persuasion is unlikely to be enough to get them to re-think their approach to board level involvement in something as apparently mundane as health and safety. For them a stronger message is likely to be required – which is why it is worrying that the Government (in their reply to the recent Work and Pensions Select Committee report on HSC/E) have said that new legislation is not required on this subject at present and that more progress is likely to be made in the short to medium term by following the HSC's so called 'voluntary' approach.

First of all use of the word 'voluntary' gives entirely the wrong message about compliance with health and safety law. This is not a 'voluntary' option, something you can pick up when you have the time and money to address it. Secondly, and contrary to what the Government and the HSC appear to have been saying, under existing health and safety law directors (and senior managers generally in organisations) not only have collective responsibilities; they also have responsibilities as individuals. This because, as people working under contracts of employment or enjoying remuneration, they are bound by the duties placed on all employees by the Health and Safety at Work (HSW) Act and the Management of Health and Safety at Work (MHSW) Regulations.

Although they can be prosecuted separately (under Section 37 of the HSW Act) or together with bodies corporate for breaches of health legislation (particularly Section 2 of the HSW Act), directors and senior managers also have duties as employees under Health and Safety law, particularly Section 7 of the HSW Act and Regulation 14 of the MHSW Regulations.

Many people seem to believe that these parts of health and safety law relate only to employees in subordinate positions within management hierarchies and they fail to realise they also have very significant application to those in authority within organisations. For example, the duties in Section 7 are often quoted to new or junior employees during induction training rather than to those undergoing senior management training. Further the impression that Section 7 only applies to ‘the troops on the ground’ is re-enforced by Section 8 of the HSW Act which prohibits misuse of things provided for health and safety purposes and Sub Section 1 of Regulation 14 which talks about safe use of machinery, equipment, substances, transport etc.

The term employee defined in Section 53(1) of the HSW Act as a person working under a contract of employment health. Most directors will work under such arrangements. Non-executive directors who may not work under such contracts but who may receive honoraria might perhaps be considered as self employed people and have similar duties to individual employees, namely not to put their own other people’s health and safety at risk through their acts or omissions. As employees however the vast majority of directors in large organisations will be bound by the requirements of Section 7. In this context, duties in sub-section (a), *‘to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work’* have a broad and general relevance, particularly in relation to failure to carry out the responsibilities suggested in the HSC’s guidance. The duties in sub-section (b) however (*..as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.*) could be said to have even greater relevance. ‘Co-operate’ in this context could mean, for example, performing any reasonable role formally assigned to a director in a health and safety policy document.

In contrast to the duties of care of employers in Section 2 in the HSW Act which are qualified by ‘reasonable practicability’, duties in Section 7 are arguably more onerous, being qualified by ‘reasonableness’ (Section a) and ‘so far as is necessary’ (Section b).

As with Section 7, Regulation 14 of the MHSW Regulations looks at first sight to be aimed at those with ‘operative’ rather than managerial ‘responsibilities’, stressing duties not to misuse machinery etc and to report problems and shortcomings. It could however have application in cases where directors in small firms, for example, had front line health and safety responsibilities.

RoSPA considers that not enough thought has been given to thinking through and explaining the relationship between Section 7 and the HSC’s so called ‘voluntary’ guidance. This makes clear that where a ‘body corporate’ commits a health and safety offence and the offence was committed with the consent or connivance of, or was

attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, then that person (as well as the body corporate) is liable to be proceeded against and punished (HSW Act Section 37). This creates grounds for prosecution by linking (and thus attributing) the failures of an organisation (which otherwise is only a legal person but with 'no body to be punished, no soul to be damned') with the failures of an individual(s). Section 7 on the other hand places a duty of care on individual directors as employees and thus requires them to follow this through by meeting the responsibilities which they are assigned as a director by their employer. The penultimate paragraph in the section of the HSC guidance entitled *'Summary of legal responsibilities'* says *'Workers at all levels of the organisation need to ...co-operate with their employer'* but this fails to make clear that this applies to senior decision makers as much (if not more) than it does to those who are the least empowered in any enterprise.

Some might try to argue that Section 7 does not apply to a directors while he/she is acting in their role as an officer of the company as opposed to that of an employee. To many this distinction (which in practice might be very difficult to establish) is likely to seem like so much legal sophistry, particularly since most directors are employed specifically to act as company officers. Directors may be agents of the body corporate but they are not co-terminus with it. Directors may in effect do things which enable people to be employed but as individuals they are not the employer. This is quite important. An approach which accepted that directors had their specific health duties like any other member of the corporate team, would be much more equitable and would chime well with the 'single status' culture which many businesses seek to promote in their organisations.

Further, because very few (if any) directors are prosecuted for breaches of Section 7 (Section 37 being the preferred route) it is often assumed that this Section was not intended to have application to directors. From a prosecution standpoint it is the appropriateness of the charge related to the breach that is important. It could be argued that Parliament intended that Section 37 was required in order to pick up on failings at senior level. Thus if a breach is of that nature, that Section should be used but, if it is of a different nature (perhaps a lower order), then Section 7 might be appropriate - although it might also be argued by some that it should not be used instead of Section 37.

RoSPA's point however is that, whether or not a piece of law is widely used in practice for the purposes of prosecution, this does not affect its application. Were this the case much of the law might be regarded as a dead letter!

While RoSPA is inclined to welcome the Hepburn Bill to help promote discussion and while it welcomes the principle behind it, it is also attracted to the idea of the HSC developing further Approved Code of Practice (ACoP) material under the MHSW regulations based on key parts of their director guidance. This could include the five 'Action Points', including the need for companies to appoint a 'champion' at board level but leaving flexibility for who exactly this might be.

As an immediate step (and in order to answer the criticism that directors have only implied rather than specific duties under health and safety law) the Commission might amend the *Summary of legal responsibilities* section on this point and indeed the HSE

and Local Authorities might consider on occasions prosecuting directors for breaches of Section 7 duties in appropriate cases. There is also a case for clarifying the implications of Section 7 for middle managers, line managers and supervisors, designers, advisers and individual staff members, making clear that HSE currently do not prosecute individuals where they are unable to prosecute an organisation.

Some people have said that a stronger legal focus on the health and safety responsibilities of directors coupled with the appointment of a director (possibly the CEO) to act as a 'health and safety champion' at board level could lead to that person being 'scapegoated' in the event of a major corporate failure to manage health and safety. The existing HSC guidance however makes the point very clearly that champions cannot be used as scapegoats. The HSC guidance says ***'It is important that the role of the health and safety director should not detract either from the responsibilities of other directors for specific areas of health and safety risk management or from the health and safety responsibilities of the board as a whole.'*** Despite this however there is still a perception in many quarters that the health and safety champion will be the director appointed to go to jail!

There is also concern about whether the application of existing health and safety law in this area can adequately address the diversity of governance arrangements found in organisations in the UK. Sometimes governance is in the hands of non-executive boards and sometimes effective control is in the hands of executive directors with non-executives acting purely as advisers. In companies where a board of senior executives is based overseas, UK directors may in effect be no more than senior managers etc. The existing HSE guidance skirts around this by saying simply that there is a wide variety of arrangements.

The real issue is perhaps not 'should directors have duties?' but 'how should existing duties be properly expressed and explained?'. Action Point 2 of the HSC guidance says *'Each member of the board needs to accept their individual role in providing health and safety leadership for their organisation. ...You must recognise your personal responsibilities and liabilities under health and safety law..'* Later it says *'The health and safety responsibilities of all board members should be clearly articulated in your organisation's statement of health and safety policy and arrangements.'* In so far as those responsibilities, as set out, for example, in a policy statement, are necessary to enable an employer to meet their responsibilities under Section 2, it could be argued that directors as employees have a very clear legal duty to meet them.

In part it may be that the term 'voluntary' is being used by the Government to encourage some sceptics in the business community to support the HSC's 'business benefits' approach. Yet this is only possible because there is still massive confusion about what the existing law actually says and what it really means for directors. This needs to be fully explored before either proposing new law or assuming that existing law is altogether silent in this vital area.

February 2006

Parting Shots

Governance and liability

► **The government has stressed** that the new offence of corporate manslaughter currently being considered will only apply to companies and not individual directors/senior managers. RoSPA's occupational safety adviser, **Roger Bibbings**, argues that those that seek to exercise authority in organisations have to accept some level of risk of being found guilty of governance failure.

Teachers are refusing to take children on school trips and board members are resigning from NHS trusts because they fear they will be liable in the event of accidental deaths.

In practice such behaviour may be far from the norm but the government is getting seriously worried about what it perceives to be a culture of alarm leading to 'excessive risk aversion' – fuelled by a so called 'claims culture'.

In fact government spokespeople accept Treasury figures which show that the number and size of claims for injury compensation have actually been falling, but nevertheless they feel that more and more people in positions of responsibility fear being sued at the drop of a hat for any harm, however slight, and that this is making everyone 'excessively risk averse'. Society then suffers because valuable opportunities are lost.

Steps to address this problem include the recent web-based *Sensible safety* debate (see my September 2005 **Parting Shots** at: www.rosipa.com/occupationsafety/partingshots – chapter 16) initiated by the Health and Safety Executive (HSE) and now the government's *Compensation Bill*.

This Bill seeks to clarify the existing common law on negligence to make it clear that there is no liability in negligence for untoward incidents that could not be avoided by taking reasonable care or exercising reasonable skill.

Clause one seeks to limit frivolous actions by making courts consider the 'desirability' of activity (such as outdoor education, health interventions etc) but this has been

sharply criticised by bodies such as the Association of Personal Injury Lawyers (APIL) in that it adds nothing in this respect to existing case law. APIL does support the Bill's provisions to regulate the unscrupulous practice of 'claims farming'.

The advent, however, of a government Bill on Corporate Manslaughter (CM) has perhaps more serious implications. It has been examined by a joint inquiry of the Commons Home and Affairs and Work and Pensions Select Committees who have urged early introduction of the new offence but called for clarification on 'serious management failure'.

RoSPA, IOSH and very many others have submitted evidence broadly in support of the Bill, in the belief that, at the highest levels in organisations particularly, it will sharpen a sense of corporate responsibility for health and safety risk management.

The government, on the other hand, has been at pains to stress that the new offence will apply only to corporations and that it will not apply to their directors and senior managers as individuals.

Nevertheless, determination of whether a company, for example, is guilty of CM by having committed a gross breach of its duty of care (through conduct falling far below what might reasonably be expected) will be based on an analysis of the behaviour of its directors and senior managers.

Thus, although ministers are saying that directors will not be in the frame for the new offence as individuals, in practice, if the latter's omissions have been so serious that the company is found guilty, it is hard

to see how they can avoid being charged with ordinary manslaughter as individuals or being prosecuted under *Section 37* of the *Health at Safety at Work Act* along with their company in parallel health and safety prosecutions. (The joint Select Committees' report supports this tougher approach.)

The government has said that CM will be reserved only for the very worst cases of corporate failure and that directors who take their health and safety risk management roles seriously will have nothing to fear. But what director health and safety leadership good practice looks like in reality is still quite hard for prosecutors and defendants alike to determine, particularly since authoritative guidance on this subject from bodies like HSC/E (INDG343 – at: www.hse.gov.uk/pubns/indg343.pdf) is still quite brief and very general.

The Health and Safety Commission are to start work shortly on the case for amending the *Health and Safety at Work Act* to clarify directors' duties (something RoSPA would very much support).

But the reform process is likely to be quite lengthy and any proposals for changes to primary legislation on these lines will have to compete for scarce Parliamentary time.

In RoSPA's view, to fill the gap and also to help inform public consultation, HSE should also develop new guidance in parallel to improve on INDG343.

Without better guidance (and quite soon) directors (as well as their trainers and advisers) are likely to be even more confused about



Parting Shots

what exactly is required as CM comes on-stream.

There is a distinct danger of an even more over-cautious response, particularly by corporate lawyers who themselves are often unnecessarily risk averse. This may further inflame the fears of those in positions of corporate responsibility about the full extent of their liability in the event of things going seriously wrong.

Underpinning all this are some huge dilemmas.

The disaster (and public inquiry) experience of the eighties and nineties, coupled with HSE work on effective health and safety management and human factors, established two things in particular:

- Firstly, the roots of many disasters lie in what the Sheen Inquiry into Zeebrugge called 'organisational sloppiness'; and
- Secondly, (linked to this) the unacceptability of heaping all blame on the shoulders of some poor, generally unempowered individual(s) who happened to be the last link in the safety failure chain and whose errors (usually compounded by impairment, distraction, poor information, conflicting operational requirements or lack of skill) tipped an unsafe situation into tragedy.

Accountability

The growing understanding of disasters as organisational safety failures has not only sharpened appreciation of the responsibilities of all those in leadership positions in organisations; it has also led to calls for them to be more publicly accountable. The work of bodies like the Centre for Corporate Accountability, for example, has been fuelled in part by the massive sense of injustice that the families and friends of disaster victims feel when no individual is brought to account for allowing corporate prevention failure on a horrendous scale.

Of course, in large organisations in particular, it is often quite difficult to show that it was the failure of a board in general to scrutinise and assure effective health and safety management arrangements that led to a particular accident.

Almost invariably accident causation is complex and, in large organisations especially, accidents tend to result from a combination of prevention failures at a number of different levels.

That is why successful prosecution of directors for health and safety offences has tended to be limited to directors in small companies who were directing operations more or less at first hand.

Nevertheless, it is clearly absurd if senior

directors and managers attempt to use this multi-branched view of causation as a way of denying their ultimate responsibility for weaknesses in systems which have led to workplace deaths or serious injuries and, at the same time, try to defend their entitlement to additional remuneration and public recognition (bonuses, civil honours etc) when there are unexpected corporate successes.

Success and failure in this sense are two equal and opposite end points for which those in charge of organisations should be held equally accountable. One could argue that the attraction exerted by the potential rewards for the former should always be balanced by an equal and opposite level of anxiety about the possible penalties associated with the latter.

An equality of carrot and stick in this sense resonates both with a sense of natural justice and an entrepreneurial culture of risk taking. But this may not be the case in voluntary organisations such as small charities where trustees give freely of their time for no reward while at the same time accepting the responsibilities which go with being an employer.

Although the government has suggested that prosecutions for the new offence of corporate manslaughter will be few and far between, is this enough to allay fears among directors and non-execs in bodies such as NHS trusts?

Many fear that, because of the positions they hold within governance structures, their personal assets or even their liberty may be at unacceptable risk.

Also, many directors who might wish publicly to highlight the competence of their organisations in areas like health and safety (for example, by stressing positive evidence such as awards or findings from audits), may still privately be very concerned about a 'reality gap' between corporate health and safety management rhetoric and really quite frightening practices on the ground. They realise (but may not wish to admit openly) that it is more by good luck than judgment that these events do not actually lead to harm.

In short, most people in positions of corporate leadership responsibility have the uneasy feeling that they are not really in control at all and that health and safety governance in this sense is assured most of the time by individuals lower down the chain of command using their initiative to plug gaps in management systems and arrangements which, if left un-addressed, would surely lead to tragedy.

It would be a great pity if the government decided to further constrain either common

law liability or the law of manslaughter (or indeed health and safety prosecution policy) to make directors and senior managers feel more at ease.

Obviously there needs to be much more clarity about what constitutes 'due diligence' by directors in leading effective health and safety management. In this sense business leaders are entitled to much greater certainty about the real levels of risk of prosecution or fines which they face so as to avoid growth of inappropriate risk aversion (such as failure to invest, for example, or to take up a senior post).

But there also needs to be a call for more personal robustness by those in leadership positions in society generally. **As part of their public duty as leaders, those that seek to exercise authority in organisations have to accept some level of risk of being found guilty of governance failure.**

There is perhaps one other strand that may yet help in getting senior managers to put the risks to them of health and safety failure in perspective, and that is the increasing focus on restorative and remedial penalties.

Following disasters there is of course the quite legitimate call for 'justice' but, rather than imposing massive fines or even terms of imprisonment, 'justice' may in reality be better served by the courts ordering companies to put right fundamental failings in their management arrangements.

It has been said of corporations that, although they are 'legal persons', they 'have no soul to be damned and no body to be punished'. Merely fining them large sums of money in practice may only punish shareholders and employees who arguably are the least guilty.

In the case of the public sector, and viewed in the long term, it is hardly punishment at all, simply senseless circulation of cash from public body to Treasury and back again.

This is why RoSPA and others have pressed hard for a much greater element of remedial sentencing for health and safety offences and indeed both HSE and the Cabinet Office are now promoting a public debate on this issue.

Also, by appointing competent health and safety specialists from outside HSE to supervise this work (which companies would have to pay for), courts could lever in additional expertise to support health and safety enforcement on 'the polluter pays principle'.

Increasing corporate accountability while combating inappropriate risk aversion is not going to be easy but squaring circles is, after all, what politics is all about!

Comments to: rbibbings@rospa.com

Parting Shots

From liability to leadership

► **Securing effective leadership of occupational safety and health** in organisations of all kinds is key to improving health and safety performance. RoSPA's occupational safety adviser, **Roger Bibbings**, examines what steps directors and senior managers can take to exercise real leadership in this area.

It is now seven years since the Labour government launched its *Revitalising Health and Safety* strategy. Looking back, although in many ways it was an odd mixture of initiatives, it did much to lift the status of the subject and to turn the focus at national level from simply promoting legal compliance to trying to get overall workplace casualty and ill health figures down. The strategy included targets for the first time, although this did not explicitly challenge individual businesses to set their own improvement targets.

Seven years on and clearly many challenges remain. The Health and Safety Executive (HSE) is still concentrating effort on reducing: falls from height (particularly in construction); cutting slips, trips and falls on the level (no laughing matter and an ubiquitous problem across all sectors); preventing workplace transport accidents (although sadly they are still not prioritising occupational road accidents which account for more than double all other worker accidents); stress (and mental ill health generally); and musculoskeletal disorders (which are a major cause of long-term sickness).

The government, via DWP (and its new health champion, Dame Carol Black), is particularly keen to focus on improving work attendance and facilitating earlier return to work, looking at occupational health provision to deliver better rehabilitation and longer term employee wellbeing.

Yet arguably the real challenges in occupational safety and health (OS&H) are not just the technical issues that need to be

addressed but how to make sustainable change happen nationwide; particularly in small and medium sized enterprises (SMEs) which lack knowledge and face 'time poverty'.

Perhaps the one key element on which the success of all these objectives rests – and which to date has still not received enough attention – is the question of how to secure much more effective director and senior manager leadership of OS&H in organisations of all kinds.

This topic, which has been one of RoSPA's 'key issues' for the last ten years, has now come more sharply into focus as the HSE and the Institute of Directors (IoD) have begun to collaborate in generating better guidance for directors – not just on their legal responsibilities but on the practical steps they can take to ensure that questions of OS&H are addressed competently and systematically in their organisations.

Accountability

Why this initiative was not taken earlier is not clear. For over thirty years there has been a growing understanding of major accidents (Kings Cross, Chernobyl, Zeebrugge, Piper Alpha, Hatfield, Texas City the list goes on and on) as organisational safety failures rather than purely technical failings or simply the result of individual human errors. More significantly it has been the growth of public concern about the limited extent of prosecution of directors for H&S offences together with the failure of high profile prosecutions of larger organisations, which has fuelled calls by campaigners for greater public accountability of both organisations

and their senior directors.

The revision of the law of manslaughter (to make it easier to prosecute organisations for this offence) has been pursued to address a perceived 'justice gap' but this has resulted in much more debate about the liability of directors than it has about how directors and senior decision makers can actually exercise real leadership in this area.

Clearly OS&H needs effective leadership, particularly when one considers the scale of work-related risk and harm and the resulting loss to the UK as a whole (nearly 3% of GDP). Study after study confirms that it is top-level commitment to OS&H that determines management authority to act and that in turn this impacts levels of performance at every level, including down the contracting/supply chain.

Yet, despite all this, few business schools are equipping the business leaders of tomorrow with the insights and skills they need to act as OS&H leaders.

One of the big problems still to be overcome among some directors is that of negative perceptions of OS&H and worse still, poor attitudes ('don't know, don't care!') towards protecting people at work. Some older business leaders still seem to have a 'Factories Act' perception of H&S that they may have gleaned from their time on the shop floor before 1974. Others may harbour some sympathy for the current view projected by *The Daily Mail* and others that 'elf and safety' is out of control and that health and safety regulation represents a red tape burden that is hindering innovation and competitiveness.

Many business leaders, for example,

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including those from a financial as opposed to an operational background, may not have a sufficient grasp of the hazard/risk/harm/loss profile of their organisation. They may not have a developed understanding of the core concepts and approach in HSE's guidance – *Successful Health and Safety Management (HSG65)* – (available from HSE Books) and may be tempted to see most accidents as due mainly to the behaviour of unsafe workers.

The challenge which we still face in the UK is one of consigning these views to the scrapheap and really engaging business leaders around the idea that OS&H is:

- a strategic, performance focused, board level issue; and that while it is about operational integrity and reliability it is primarily about people and not just technicalities,
- very much about health and wellbeing not just preventing accidents,
- about unsafe systems not just individual error,
- about managing risk not just liability.

So what do directors need to: **feel, understand, think, say, know,** and **do** to lead better health and safety management?

- **Why 'feel'?** Successful directors are those who are possessed of emotional as opposed to purely rational intelligence. They understand that people matter; life is to be cherished and that safe work is a right for every employee.

They have a sense that everyone has responsibilities but that responsibility is proportional to position power. They accept that safety should be the number one corporate value and that the safe way is the right way.

- **What do directors need to understand?** Firstly that accidents and ill health are not inevitable and secondly that H&S failures have both immediate and underlying causes.

Handy aphorisms such as 'Safety is no accident!' or 'Fail to plan and you plan to fail!' should serve to remind everyone that the board must create an environment in which OS&H is built into decision making at every level. In this sense directors need to understand the vital role which boards play in setting the overall tone and direction for OS&H as well as creating clear lines of accountability. Unsafe organisations represent a far greater threat than unsafe people. (Combine the two and you really do have disaster on your hands!)

Directors need to understand that the level of H&S performance in an

organisation speaks volumes about its values and professionalism and that there is a clearly massive business case for good H&S management (not only cutting the cost of accidents and ill health but oiling the wheels of productivity and good management processes).

Above all directors need to understand that good OS&H performance cannot be forced out of the team (you can only 'do OS&H' with people not to them).

- **Think?** Where should directors focus their thoughts about OS&H? Inevitably the temptation is to concentrate on the specific and the concrete. On issues such as regulatory compliance or on the implications of an accident or incident. The real challenge is to maintain a sense of anxious curiosity about the foundations of the OS&H management regime in the organisation.

To constantly think about organisational and individual competence; about the effectiveness of managerial control; about the state of communications on OS&H; about the level of co-ordination between different parts of the business and with business partners; about the effectiveness of consultation to tap into workforce knowledge.

Above all directors need to think about the state of OS&H culture and the extent to which OS&H is a fully shared value and goal throughout the organisation.

- **Say?** The first thing that directors must say (and mean) is that that OS&H will always come first on the balanced score card. Managers and staff will be judged first of all on their health and safety performance. But equally directors need to stress that individuals will not be blamed for organisational failures.

They need to emphasise constantly that business partners such as clients and contractors must buy into the organisation's OS&H ethos. Equally they need to assure everyone that their organisation will listen and learn and that anyone who is unsure about OS&H has a right (if not a duty) to ask.

They need to say that legal requirements are a minimum standard to be achieved. And they always need to say 'thank you', especially to those who go the extra mile for H&S.

- **Know:** Directors may be extremely knowledgeable about many aspects of their business but they do not need to be OS&H experts. That said, they do need to have a general appreciation of:

the principal hazards and risks in their organisation's operations. They need to understand the theory of risk assessment and the hierarchy of risk controls, the key elements of an OS&H management system, the architecture (but not the detail) of H&S law and the organisation's H&S management strengths and weaknesses; how it is progressing against targets; and what 'good' OS&H looks like at all levels. They also need to know how sector peers are performing.

Above all they need to know what they don't know and when to call for help.

- **Do:** The main OS&H tasks for directors include: setting overall corporate policy for OS&H; setting corporate objectives and targets (for health as well as safety); allocating adequate human and other resources, including time; constantly reviewing performance/audit data; reviewing the OS&H implications of all decisions; reviewing accident/incident reports, ensuring lessons learned are fed back; communicating expectations to workforce and business partners; actively seeking, considering and responding to workforce views; and establishing a cycle of continuous OS&H improvement.

At a personal level all directors need to maintain their OS&H current awareness, have a programme of continuing professional development and, on a daily basis, act as a committed OS&H champion. This means visibly 'walking the walk' and 'talking the talk'.

Over the coming months RoSPA will be continuing to develop its suite of services and events designed to help directors who are seeking to expand their H&S leadership role. One of our existing initiatives is our annual awards (where at the higher levels, OS&H leadership is decisive in determining 'best in class').

We will also be updating our guidance on target setting and performance measurement and we are presently seeking signatories to a joint statement on the importance of GoPOP ('Going Public on Performance' – visit: www.gopop.org.uk) which is all about publicising the value of effective OS&H performance via the web.

The new HSE/IoD guidance should provide another important lever to help get OS&H leadership onto board level agendas.

Readers' comments welcome.
Email: rbibbings@rospa.com



Parting Shots

Directors' duties

► **RoSPA's** occupational safety adviser, **Roger Bibbings**, examines the issue of directors' health and safety duties and asks should regulation be introduced to enhance director leadership of H&S?

Since 1998, through its work on **DASH (Director Action on Safety and Health)**, RoSPA has helped to lead the national debate on enhancing director leadership of health and safety. The issue is not new. It has been a key theme since Robens in 1972 and before that. What is new is that the cumulative effect of major disasters in the eighties and nineties coupled with the growing anger of victims' families, has led eventually to a revision of the law of manslaughter so that corporations can now be prosecuted following workplace deaths caused by gross negligence.

Director and senior management behaviour in preventing avoidable harms has thus come under closer scrutiny than ever before.

In response to this pressure, and to recommendations from the House of Commons Work and Pensions Select Committee, HSE and the Institute of Directors (IoD) issued updated guidance – *Leading Health and Safety at Work* (INDG 417) – setting out the legal and business cases for directors to lead H&S as a priority issue in their organisations. It lists core actions and good practice for directors in a broad range of private, public and voluntary sector contexts and is accessible online at: www.hse.gov.uk/pubns/indg417.pdf

The Select Committee has said that, if the guidance does not increase director leadership and involvement in H&S issues, more

prescriptive regulations should be introduced specifying what directors must do.

I have been representing RoSPA on an IoD Oversight Group which is helping to promote the guidance and is looking at the impact of what has been a major information dissemination effort. It has also been feeding ideas back to HSE, who (via Databuild) are conducting structured research into the impact of the guidance so that this can be considered in due course by the HSE Board.

At present, positions on the way forward are quite polarised. All sides agree that effective director leadership of H&S is critical to securing good performance but there is a sharp divide between those that favour more specific regulation and others who think that guidance is the best option. The TUC and IOSH are in the former camp. The CBI and IoD are in the latter.

There is a real danger, in my view, that the issue has become so polarised that winning for either side may have more to do with accumulating points on respective ideological score cards than it does with delivering better health and safety outcomes.

To help readers make up their own minds about this issue I thought it might be useful to tabulate the main arguments that seem to be in play at the moment. The table opposite sets out my perception of the balance of the arguments for and against more regulation. To avoid leading readers in any particular direction the arguments are not set out in a

specific sequence.

In considering the case for or against new regulations much is likely to depend on what the balance of current research says, including the work being carried out by HSE. But the research will not solve the political problem – not just because each side will have its own interpretation of the adequacy and significance of the research and the evidence it produces but because to regulate or not to regulate is part of a much bigger agenda about 'better regulation', and even if key data are agreed, there will inevitably be arguments about 'glasses being half full or half empty'.

The wider challenge for health and safety professionals is that, as key individuals who should be seeking to 'lead the way', we should think the issue through for ourselves and let others know what we think regardless of who we please or who we offend.

Whichever way the decision eventually goes, we should not forget that this is not about whether director leadership is voluntary or mandatory (H&S can never be an optional extra for those responsible for leading organisations). It is really all about perception and how best to highlight the need for business leaders to deliver effective health and safety assurance.

As usual, readers' views are welcome.

Email: rbibbings@rospa.com



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CONSIDERATIONS	FOR REGULATION	AGAINST REGULATION
Motivation	Statutory regulation will motivate directors who are non-compliant or who may still be resistant to engaging with H&S. Guidance gives the impression that leading H&S is optional for directors. Regulation is needed to get directors to go on courses etc.	A voluntary approach is better because willing compliance is always more effective. A cultural shift is required, promoted by Corporate Social Responsibility and greater awareness of the business case for H&S. Education not compulsion is the answer.
Clarity	The existing duties in the <i>Health and Safety at Work Act</i> (HSWA) are too vague. Only statute law can spell out clearly what is required.	HSWA has proved generally effective as a goal setting framework. It is better to rely on good guidance and case studies.
Liability	New regulations would allow for prosecution or other forms of enforcement if directors failed to discharge their duties. Directors would know precisely what was expected of them.	Prosecution is already a possibility under <i>Sections 7 and 37</i> of HSWA ('consent, connivance or neglect'). If there are successful corporate manslaughter prosecutions there will undoubtedly be 37s as well.
Proportionality	The new specific duties should apply to all directors and non-executives in private, public and voluntary organisations.	All organisations are different and a guidance approach is needed to allow for flexibility of response.
Red tape and burdens	If directors of organisations are already acting responsibly, new regulations will not impose any extra burdens. It is reasonable to expect things like minutes of board decisions etc on H&S issues to be kept.	Specific regulations are likely to encourage a formulaic, 'tick box' approach. Increased director liability may encourage risk aversion by individuals and investors. The lawyers and consultants would have a 'field day'.
Enforceability	Regulations will enable HSE and local authority inspectors to write enforcement notices etc to deal with non-compliance.	You cannot bring about behaviour and attitude change in this area by compulsion. Enforcement could engender resistance.
Impact of guidance	Research shows that the HSE/loD guidance has had little impact and delivered little real change.	The guidance has reached a very large audience. Time is needed for it to bed down.
Social expectations	Directors have been 'getting away with murder'. The public expects clearer rules to be in place.	The advocates of regulation are just using it as an excuse to bash 'fat cat directors'.
Raising standards	Director engagement with H&S is still at a low level, despite guidance. Even directors in better run companies need to be made to 'up their game'.	The H&S problem is not in better run companies. It is in less well managed organisations, including in the public sector. Why regulate good performers?
Better regulation	Post Hampton Review, ministers are automatically prejudiced against the case for any new regulations and need to be persuaded otherwise.	UK industry is already heavily over-regulated. Yet more regulations will not help.
Penalties	Non-compliant directors could be disqualified, fined or even imprisoned.	Most penalties will take the form of fines. What is the point in fining organisations large sums, especially in the public sector, when they should be spending it on safety?
International experience	A statutory approach to directors' duties in H&S works well in other jurisdictions.	Britain has a different business, social and legal framework.
Business support	Higher performers in OS&H are not opposed to the case for new regulations.	SMEs are the key problem area but more regulation will just tarnish the brand image of H&S which is already at a low level in this group.
Equality of treatment for H&S	Business leaders already face many legal obligations on business administration and leadership, so why not on H&S?	H&S is one part of a much bigger jigsaw of duties in the wider context of the new combined code on corporate governance.
Recession	H&S may slip down the business agenda during recession. Specific regulations will help to keep directors focused.	Business has got enough on its plate trying to survive. More regulation will simply add to this burden when jobs are at risk.

Directing directors

► **Directors and senior managers that understand and prioritise** health and safety, create the conditions in which everyone else in their organisation can work together to operate safely, says **Roger Bibbings**, RoSPA occupational safety adviser.

On 20 January I attended a forum run by the Business Accountability and Responsibility Centre at the University of South Wales for academics, practitioners, health and safety professionals and lawyers. The aim was to consider two important areas of health and safety law: *Section 37 of the Health and Safety at Work etc Act 1974 (HSWA)* and the *Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA)*, and to explore key issues in relation to offences under both these statutes. The fruits of the debate are being written up and published by the university, in part to provide the background material for a further meeting to be held at Westminster.

For many of those who campaigned for the important change in the law of manslaughter which it introduced, CMCHA seems to have failed to fulfil their expectations, namely to target large organisations for 'corporate killing'. At the time of writing there have been five successful prosecutions but all of these have been small companies. In four of the prosecutions thus far, guilty pleas have been entered, while charges

against individual senior managers/directors for manslaughter have been dropped, possibly as a result of plea bargaining. It is still early days but there seem to be practical and political barriers to successful prosecutions of large companies.

The nature of *Section 37* of HSWA – tied as it is to offences under other parts of the Act – also continues to provoke debate. Evidence suggests that *Section 37* may be being used more but again, only against directors in small companies. While 'corporate killing' is an offence of organisations rather than individuals, clearly the acts and omissions of those in senior decision-making roles have also to be considered. But exactly how CMCHA and *Section 37*, HSWA fit together in practice remains unclear. Every one at the recent forum seemed to agree that the original aim of CMCHA had been to hold directors to account but there was no consensus on how best this might be achieved.

For the last 16 years RoSPA has been campaigning for measures to strengthen director leadership of OS&H. The reason we continue to feel so strongly about this is because we know from both research and our own experience that what actually keeps

people safe at work are not just the particular preventive or protective measures that have to be put in place following risk assessment to safeguard people from specific hazards, but the policies, organisation and arrangements which together give organisational assurance that significant risks can be tackled on an ongoing basis. Key elements here include: director leadership, workforce involvement and use of competent advice/services.

Of the three, the role of directors is arguably the most crucial. Directors and senior managers that understand and prioritise health and safety, create the conditions in which everyone else in their organisation can work together to operate safely. Conversely, directors who do not understand this and who fail to take action to enable their colleagues to manage safely create the conditions in which unsafe and unhealthy systems of work go unchallenged and people are damaged as a result.

Such business leaders need to understand not just that people's lives are in their hands but that managing effectively for good health and safety outcomes also reduces financial losses due to accidents, incidents and health-related staff absence; it supports



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quality and environmental management; and it helps to advance workers' morale and overall corporate reputation. It is, in fact, a bellwether of an organisation's overall culture and values because in practice such leadership cannot succeed other than by valuing openness, fairness and participation. ('You can only do health and safety with people, not to them!')

So to lead health and safety successfully directors have to do a whole lot more than simply sign off policies and budgets and engage suitably qualified H&S professionals. They need personally to become immersed in some of the challenges of running a safe and healthy operation.

RoSPA initiated its campaign on 'Director Action of Safety and Health' (DASH) in 1998 (www.rospa.com/occupational_safety/info/dash.pdf) and this helped to ensure that this theme was part of the then incoming Labour government's 'Revitalising Health and Safety' strategy in June 2000. We were party to development of 'version one' of the Health and Safety Executive's (HSE) guidance on directors. Later we also initiated a campaign called 'Going Public on Performance' (www.gopop.org.uk) which urged all companies to include details of H&S performance in their annual reports, another theme from 'Revitalising' which unfortunately never got very far.

Over a number of years we supported the *Centre for Corporate Accountability's* ultimately successful campaign to reform the law of manslaughter to enable organisations causing death by negligence to be found guilty of this offence without first having to identify a controlling mind. And we have at various times indicated our support in principle for Private Members' Bills dealing with directors' duties and disqualification.

Throughout, however, we have said that it is not enough simply to clarify the duties of directors in general terms, what is needed is to highlight, in a transparent way, key elements of director leadership including not just policy level decision-making and periodic performance review but practical involvement of individual directors and senior managers in key aspects of health and safety management such as tours, inspections, investigations, participation in training etc, and the need to pay close attention to the health and safety implications of strategic decisions.

Despite all that has gone on over the last decade and a half, a big educational effort is still required, a view we formed very early on as a result of a research study we helped to carry out in 1997 (together with Aston University) into the coverage of H&S in courses

for those undertaking MBAs in UK business schools (Hawkins and Booth, 1998). The results then were depressing and sadly little has changed since.

Then, in 2004, working with a consultant, Sara Lumley, we initiated a study of 'front end' director involvement called 'Back to the Floor' (www.rospa.com/occupational_safety/currentcampaigns/dash/backtothefloor.aspx) which showed that even in many higher performing companies, director leadership was weak and tokenistic.

Eventually, when HSE and the Institute of Directors (IoD) developed *INDG417 (Leading health and safety at work, see www.hse.gov.uk/pubns/indg417.pdf)*, we got closely involved in drafting and publicising this guidance which it was promised would be benchmark material in future corporate manslaughter cases. Later we were also part of the IoD review group which looked at the impact of this fairly short and easy to read document. But again, despite considerable publicity, hard evidence about its uptake and implementation was difficult to find.

Since the mid-1990s I have tried to represent RoSPA's viewpoint, on the issue of director leadership in this column (see www.rospa.com/occupational_safety/resources/partingshots/default.aspx). In our magazines – *OS&H*, *Bulletin* and *Safety express* – and in our OS&H e-bulletins, we have sought to track high profile cases to ensure directors are held accountable in cases where their 'consent, connivance or neglect' has led to cases of injury or damage to health. We have also covered the issue of director leadership and performance reporting regularly in various ways at our seminars and events over the last fifteen years. I talk regularly on director leadership in different settings and in recent years have been invited to talk to boards from time to time (usually pro bono). And as a leading training organisation we provide training courses for directors and senior managers.

In addition to calling for more severe penalties for directors found guilty of H&S offences, RoSPA has argued consistently for compulsory re-education and remedial programmes for directors and their organisations. And, where directors and senior managers as employees have failed to carry out their company's H&S policy, we also favour more prosecutions under *Section 7* of HSWA (which imposes an absolute, unqualified duty on employees to cooperate with their employer's health and safety policy and arrangements).

We feel that the way ahead must include not just expanding and giving legal force to the basic principles in *INDG417* but also

indicates the basic competence (knowledge, skills and experience) needed by directors and senior managers for them to discharge their roles. We would like to see stronger requirements for employers to investigate accidents/incidents/cases of work-related ill health in partnership with workers, to make use of appropriate H&S services, and to manage major under-regulated issues such as work-related road safety. Our campaign on this latter issue started in 1996! (www.rospa.com/drivertraining/morr/background/24arguments.aspx).

RoSPA insists on clear evidence of director and senior manager leadership from companies seeking to win recognition in our awards, with such evidence needing to be stronger at higher levels of award. And we favour a thorough examination of H&S leadership by directors and senior managers as part of all contractor H&S pre-qualification processes, particularly as an important part of all public procurement.

More recently, however, in the context of the Lord Young and Löfstedt reviews, we have been diverted into arguing hard in defence of existing health and safety legislation. Together with IOSH and others, we opposed the abolition of the *Managing Health and Safety Regulations'* Approved Code of Practice (ACoP), arguing instead that it should be retained and improved as the 'Highway Code' for H&S management, which should include clearer statements about the responsibilities and expected behaviours of directors and senior managers. Such a code, we feel, should be taught as an integral part of all business management education courses. Instead the publication produced in place of the ACoP – as part of the Government's 'modernisation programme' – while useful as an introduction (see *Managing for health and safety, www.hse.gov.uk/pubns/books/hsg65.htm*), still lacks sufficient bite and direction.

The case for further legal change to create the right approach to directors' duties and liabilities still needs further debate and is unlikely to remain permanently off the agenda. However, in the current political and economic climate we do not anticipate an enhanced appetite for legal change on this issue and many at the forum last month seemed to agree with RoSPA that more effort now needs to be put into director education and CPD and into indicating 'what good looks like'.

Readers' views are welcome.
Email: rbibbings@rospa.com