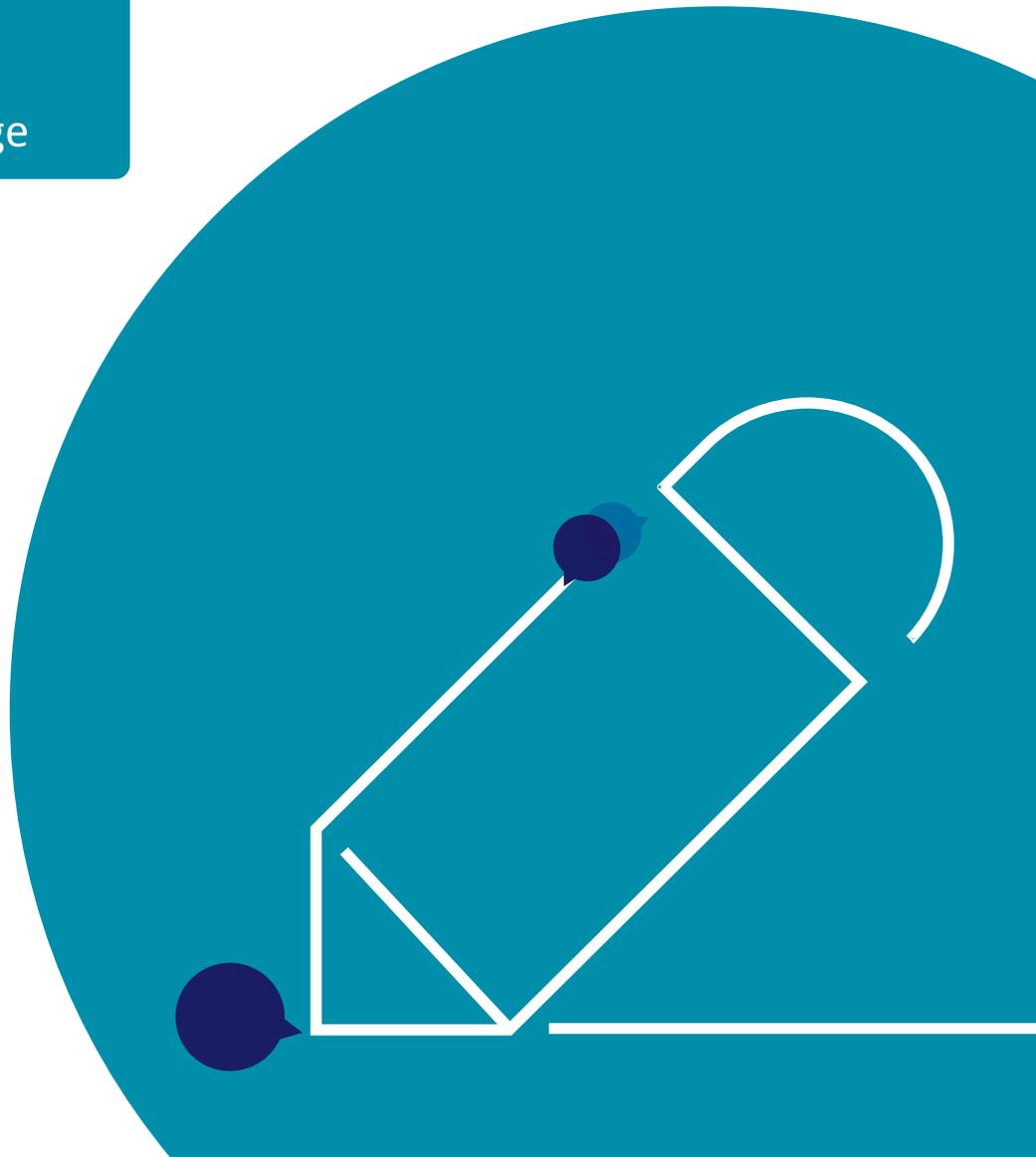


Directors' Safety e-book

- Directors' duties
- Legal lowdown
- Leadership challenge



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Directors Responsibilities:

1. Not a director?

RoSPA's head of workplace safety, Rob Burgon uses his years of health and safety expertise and first hand experience as a company director to give you the lowdown.

Not a director?

Firstly, despite the title: 'Director's Safety' emblazoned across the cover, if you're not a director then fear not, this e-book *is* for you as I'll explain...

In a nut shell, directors are notoriously busy people, so your job - to take on board the key issues and communicate them up the chain of command - is absolutely vital. In fact, it's not unusual for our one-day [Director Involvement](#) training courses to be attended by a host of senior managers, with not a director in sight.

If this sounds daunting then one thing to remember is that, if used correctly, health and safety can actually help you progress potentially awkward conversations and decisions within your organisation. Based on evidence, and backed by legislation, health and safety issues exist in a factual framework which doesn't allow room for personality clashes or other 'emotional baggage'. Instead, health and safety legislation provides a solid, concrete basis from which you can push issues up-the-line.



Rob Burgon, CMIOSH, DipNEBOSH, MIIRSM
Head of Workplace Safety, RoSPA

2. Legislation – starting to bite:

And why is it important that you do indeed ‘push these issues up the line’?

Well, fundamentally because despite the temptation to demonise health and safety as part of a ‘nanny state’, stopping people, and companies from going about their business, health and safety is actually a very powerful enabler:

Health and safety enables parents to return home from work safely; it enables businesses to attract and retain their staff; it enables organisations to operate efficiently; it enables companies to maximise productivity and profitability - and increasingly **health and safety enables company directors to stay out of jail.**

In fact, health and safety failure can not only result in a criminal conviction – it also uniquely an area where you can not rely on being ‘innocent until proven guilty’, as instead the onus will be on you to explain why you should not be prosecuted. What is more, **ignorance is no defence in the eyes of the law.**

Read more about legal challenges on page 8.

Director’s responsibilities: Starting to bite

- Health and safety failure could now result in criminal convictions
- A hear no evil defence is not sufficient
- Onus on directors to manage health and safety pro-actively
- The law will hold directors accountable for any failings

3. Leadership:

As a director you can delegate each and every task, no matter how large or small, if it so suits. However, the one thing that you cannot delegate is accountability.

So ultimately, if anything does go wrong, it will come back to **you**.

It is therefore vital that if you do wish to delegate all or part of the management of safety within your organisation, you do so to a competent person who has the necessary safety training and safety qualifications to do the role. This applies equally to those within your team as to any contractors you may work with.

A competent person has the necessary:

- Skill
- Knowledge
- Attitude
- Training
- Experience

- Strong leadership from the top
- Visible commitment from the board
- Effective communication system
- Integration with business
- Worker involvement
- Provision of training and healthy conditions
- Regular assessment and review
- Seeking and acting on competent advice
- Monitoring, reporting and reviewing performance

4. Benefits of good health and safety:

Health and Safety practitioners are striving to make sure businesses are safe *and* successful. It might seem tempting to consider health and safety as a 'cost' and therefore look to make cut backs in tough times but proceed with caution , as done properly, the effective management of safety is capable of delivering real savings.

For example, as the slide below outlines, businesses with fewer accidents enjoy lower absenteeism and staff turnover, both of which are costly. Likewise, they are less susceptible to the fear, and reality, of litigation which can be very destructive for organisations.

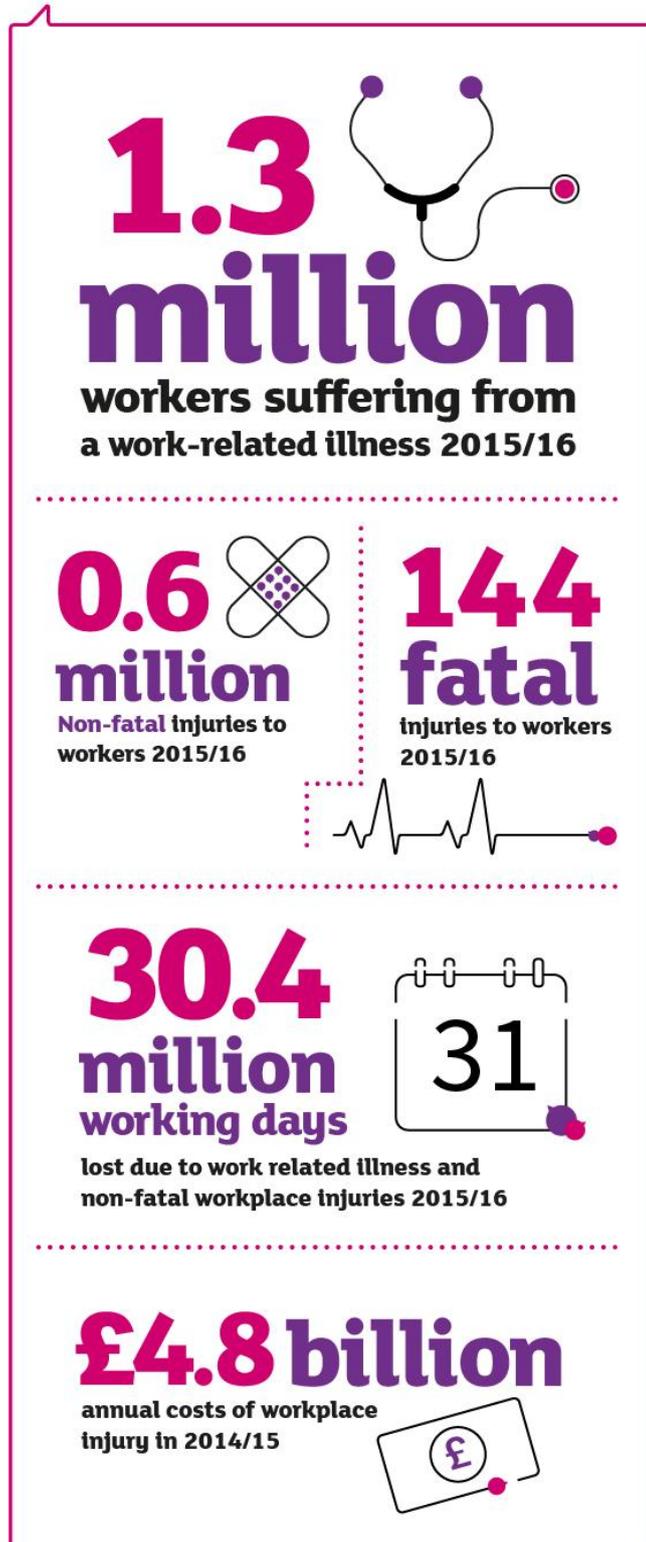
Benefits of good health and safety

- Offer significant opportunities and should not be seen as regulatory burden
- Improved standing among stakeholders
- Increased productivity:
 - Improved attendance
 - Greater job satisfaction
- Enhanced reputation for corporate responsibility
- Reduced costs and reduced risks:
 - Lower absence and turnover rates
 - Fewer accidents
 - Reduced threat of legal action

5. Costs of poor health and safety:

The financial costs of managing safety pale in comparison to the cost of having an accident and the human costs are incalculable.

HSE Statistics. Great Britain 2015/16



Company Directors: The four new health and safety challenges you face...

Dr Simon Joyston-Bechal, legal safety expert and director at [Turnstone Law Ltd](#), outlines the four key challenges you face.

Changes in the law in recent years mean that a health and safety failure could now result in criminal convictions for both your organisation and you personally.

What's more a 'hear no evil, see no evil' defence simply won't cut it. As a director, the onus is on you to manage health and safety proactively, and the law will therefore hold you accountable for any failings.

So, what are the four key challenges? And what can you do to ensure you don't fall foul of the law?

1. Imprisonment:

The stakes have been raised by the [Health and Safety \(Offences\) Act 2008](#), as now directors convicted of mainstream health and safety offences can potentially be sent to prison for up to two years.

This will only happen in the worst cases but the possibility of prison certainly changes the outlook when individuals are charged.

Directors convicted of mainstream health and safety offences can potentially be sent to prison for up to two years.

2. Corporate manslaughter:

The introduction of [corporate manslaughter legislation](#) means it's now going to be easier to convict a large or medium sized organisation for fatal health and safety failings. Rather than needing to identify one 'directing mind' who has personally been grossly negligent, prosecutors can amalgamate lesser individual failings across more than one member of senior management.

When deciding whether to convict an organisation the jury is instructed to consider: 'The extent to which...**attitudes, policies, systems or accepted practices** within the organisation ...were likely to have encouraged a failure.'

The new importance given to *attitudes* for example means that it is critical how your staff will answer the following police question: "**How seriously does senior management treat health and safety?**"

With this in mind, can you be confident that your employees would say that the directors set a good example and take safety seriously? Or, would they say that directors have turned a blind eye to safety matters and scrimped on [health and safety training](#) or equipment? With so much at stake you can see why it's now more important than ever for those at the top to send out the right messages when it comes to managing safety.

3. Increasing fines:

Having previously been criticised for being too low, in recent years fines in health and safety cases involving fatalities have routinely been hundreds of thousands of pounds.

In fact, new [corporate manslaughter sentencing guidelines](#) introduced in 2010 state that health and safety offences causing death should incur fines of at least £100,000; with corporate manslaughter offences resulting in fines seldom less than £500,000 and potentially in the millions.

Health and safety offences causing death should incur fines of at least £100,000

4. Recession:

If recent economic conditions have forced you to seek ways in which to work more efficiently, including by reducing staff numbers, then you're far from alone.

However, the sentencing guidelines include a list of "aggravating factors" which will lead to a higher sentence in the event of a conviction. As these include "cost-cutting at the expense of safety" it's vital that as a director you have carefully considered the safety related consequences of any job cuts.

Cost cutting at the expense of safety will lead to a higher sentence if convicted

How can you avoid personal criminal liability?

First, you can no longer adopt the approach of simply dealing with safety issues as they arise. You must have relevant, up-to-date and thorough [health and safety policies](#) in place to cover your areas of operation, as well as staying up to date with the [latest health and safety legislation](#).

The appraisal process can be an effective way of motivating individuals to consider their health and safety performance, so you may want to include H&S performance in the appraisal forms of all employees. [Health surveillance](#) can also play its role.

In the unfortunate event that an accident does occur, employees and managers will need to know how to respond. These procedures should be captured in an incident response protocol, ideally drafted with specialist legal input.

It has never been more important to set the right 'tone at the top' – and [training on understanding director involvement in safety](#) might prove a good starting point. More than ever, directors and senior managers need to understand their legal duties and actively lead the cultural safety agenda in their organisation. Who knows – you might even end up saving a life?

Director or Senior Manager?

Take our health and safety leadership challenge...

In too many organisations senior managers still tend to regard H&S as a low level, technical, or regulatory compliance issue, rather than a key strategic aspect of business performance.

RoSPA raises awareness of the need for effective board level and senior management leadership of H&S management. We want a clearer expectation that boards should set targets, review progress and report periodically on corporate H&S performance, recognising the business benefits which high H&S standards can contribute to commercial success.

RoSPA also believes that senior managers must lead H&S management by personal example.

1. The importance of director leadership:

A challenge exists to enhance the competence of organisations (and in particular of managers) to address health and safety *as an integral part of business management*. Strengthening the leadership role and influence of board level directors is particularly important, especially so in large organisations because of their potential to influence health and safety in smaller businesses via the supply and contracting chain.

Managing safety must be seen as an *integral* part of business management.

2. Director engagement:

The management system approach, informed by risk assessment and characterised by multiple feed-back loops from monitoring and review, has been promoted in HSE's guidance '[Managing for Health and Safety](#)' HSG65 which stresses the potential of a 'systems' approach to enhance standards of health and safety.

Despite the success of publications such as HSG65, there is evidence that many organisations are failing to understand the position of OS&H in relation to total quality management (TQM) and business excellence models or the potential of such models to inform and improve their approach to OS&H management. Leadership and continuous improvement with respect to OS&H is often far behind that for product or service quality and a key influencing factor is insufficient appreciation of the 'business case' for OS&H at director level.

In part this may be because many directors, particularly those in smaller firms, have not fully understood or responded to contemporary OS&H concepts. For example, they may:

- Perceive OS&H as a technical and regulatory compliance issue
- Fail to understand the goal setting approach to OS&H law
- See health and safety requirements as over-restrictive or 'burdensome'
- Wrongly interpret HSE guidance as having prescriptive regulatory force
- See regulations as being too vague and/or impossible to comply with
- Fail to fully appreciate the 'business case' for OS&H.

3. Strengthening Involvement:

Having previously been criticised for being too Greater uptake of pro-active risk management is unlikely unless there is increased commitment to OS&H from senior business leaders. Factors which are likely to stimulate greater director involvement in OS&H include:

- Ethical considerations
- Official guidance on directors' OS&H roles
- The 'business case' for OS&H (including loss of corporate credibility following accidents etc)
- OS&H law and enforcement
- Client pressure
- Trades union and workforce involvement
- The impact of common law claims
- Shareholder, public and political expectations
- Legislative reform to enhance corporate and director liability
- Higher standards of corporate governance.

4. Measuring and reporting on performance:

RoSPA suggests that one of the reasons why OS&H receives less board level attention than other business priorities is because of the difficulty in measuring effectiveness in responding to what is a complex, multi-dimensional challenge.

In order to manage health and safety effectively, it is essential that organisations should set out a clear and concise account of their performance against strategy for the whole workforce - but especially for managers, safety representatives and health and safety professionals. This is to enable all employees to understand progress in achieving corporate health and safety objectives and for those with management responsibilities to communicate such information to key internal and external audiences.

You can find out more about reporting on [corporate H&S performance](#) on the RoSPA website.

6. Corporate Manslaughter and Corporate Homicide:

Directors and senior managers can be charged with "consent, connivance or neglect."

Although criminal charges brought under the [Corporate Manslaughter and Corporate Homicide Act 2007](#) in the event of a death will relate to corporations and not individuals, significant failure by directors to comply with the guidance is likely to form an important part of the evidence necessary to secure conviction. It will also be relevant in considering the guilt of any director or senior manager charged with "consent, connivance or neglect" in relation to offences under Section 37 of the Health and Safety at Work Act ([HSW Act Section 37](#)).

Find out more about [involuntary manslaughter](#) on the RoSPA website.

7. Guidance:

Joint [guidance from the Institute of Directors and the HSE](#), which applies equally to the private, public and voluntary sectors, sets out core actions and suggests good practices which business leaders should take to ensure that health and safety issues are being managed effectively within their organisations and that they are keeping health and safety performance under review.

There are three essential principles:

- 1.Strong and active leadership from the top
- 2.Worker involvement
- 3.Assessment and review.

The guidance contains a health and safety leadership checklist which is designed to assist directors in ensuring they are delivering this important agenda within their organisation. This guidance should also be viewed against the backdrop of the [Corporate Manslaughter and Corporate Homicide Act 2007](#) which came into force in April 2008.

8. Training:

RoSPA's Director's Masterclass/Briefing Service

To help directors and senior managers to assess their leadership in this vital area, RoSPA has developed unique, tailored consultancy packages. Including high-level briefings, 1 to 1 reviews, facilitation of benchmarking with directors and advice on showcasing good practice.

RoSPA's Director Involvement in Health and Safety training

This is a one-day course for directors, governors, trustees, officers and their equivalents in the private, public and voluntary sector. Delegates will gain a clear understanding of director's responsibilities for health and safety and get practical advice on driving forward their health and safety strategy.

Want to find out more?

Call: **+44 (0)121 248 2233**

Email: enquiries@rospa.com

About RoSPA:

RoSPA (The Royal Society for the Prevention of Accidents) is a registered charity and one of the UK's leading safety organisations. Through our [workplace safety training](#), [consultancy](#), [fleet](#), [awards](#) and [membership services](#), we work with organisations within the UK and overseas.

Why choose RoSPA training?

RoSPA offers one of the widest ranges of health and safety training courses and in-company safety training in the UK, from operative level right up to director and board level. We are one of the leading providers of NEBOSH and IOSH accredited courses, manual handling, safer people handling, auditor training and core health and safety training courses, covering a wide range of topics within the areas of risk assessment and the management of occupational safety.

We also lead the way in practical health and safety consultancy and audits. Tailored services provide a service that suits and ensures you're fully compliant and - above all - safe.

Which courses does RoSPA offer?

[NEBOSH Courses](#)

[IOSH Courses](#)

[Safer People Handling](#)

[Manual Handling](#)

[Core safety skills](#)

[Practical skills](#)

[Auditor training](#)

[In-company training](#)

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accidents don't have to happen

The Royal Society for the Prevention of Accidents

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RoSPA
RoSPA House
28 Calthorpe Road
Edgbaston
Birmingham
B15 1RP
+44 0121 248 2000

RoSPA Scotland
Livingston House
43 Discovery Terrace
Edinburgh
EH14 4AP
+44 0131 449 9378



www.rosipa.com