

Compliance without Compromise: Success with safer, smarter leadership



Mishcon de Reya

It's business. But it's personal.

The Rule of Law: Legal Compliance and Global Standards

- **The critical role senior leaders play in safety compliance**
 - *organisation vs senior individuals*
 - *what does 'good' corporate governance look like?*
- **Understanding the global legal landscape**
- **ISO Standards, Guidance and best practice**
- **The UK 2016 Sentencing Guidelines**
 - *What can we learn from the UK approach?*
Lessons learned from relevant case studies
- **Top Tips to reduce liability and avoid prosecution for directors and other individuals**

Statistics?

2.93 million

workers die each year as a result of work-related factors

[A call for safer and healthier working environments \(ILO 2023\)](#)

395 million

workers worldwide sustain a non-fatal work injury each year

[A call for safer and healthier working environments \(ILO 2023\)](#)

2.41 billion

workers are exposed to excessive heat each year

[Ensuring safety and health at work in a changing climate \(ILO 2024\)](#)

\$361 billion

could be saved globally by implementing improved safety and health measures to prevent injuries from excessive heat in the workplace

[Heat at work: Implications for safety and health \(ILO 2024\)](#)

Why be proactive about H&S?



Recent Changes in H&S

- Change in the regulatory climate
- Increase in outsourcing
- Advances in technology
- Targeted enforcement action in some countries
- Higher fines for getting it wrong
- Focus on “**personal accountability**”
- Understanding the Regulators (HSE, EA, CPS, Government)
- Move towards mental health & wellbeing / psychological safety – not just ‘physical safety’
- **Moral, contractual, legal and financial** reasons....

So why be proactive about H&S?



Global Legal Landscape – UK vs Europe?

The UK

Goal-Setting Approach: HSWA 1974 establishes broad duties; specific regulations provide detail

Reasonably Practicable: Balance risk against cost/effort

Enforcement: HSE improvement/prohibition notices, prosecution, and custodial sentences

Europe

Framework Directive 89/391/EEC: Foundation for all member states

Harmonized Approach: Individual regulations (machinery, construction, chemicals)

Risk Assessment Centered: Mandatory and documented

Corporate H&S duties

Section 2

Duty to
employees

— Duty to “ensure” the health, safety and welfare of employees

Section 3

Duty to non-employees

— Duty to “ensure” the health and safety of non-employees

Section 4

Duty of
controller of
premises

— Duty of person who has, to any extent, control of premises to ensure premises, access and egress of premises and any plant or substance is safe and without risks to health (HSWA 1974)

“So far as is reasonably practicable”



Individual H&S duties

Duty to take reasonable care of **self** and **others** affected by work

Section 7

Duty of employees

Where an offence...has been committed with the **consent, connivance**...or attributable to any **neglect** on the part of any director, manager...or a person who purports to act in that capacity, he/she as well as the company shall be guilty of that offence

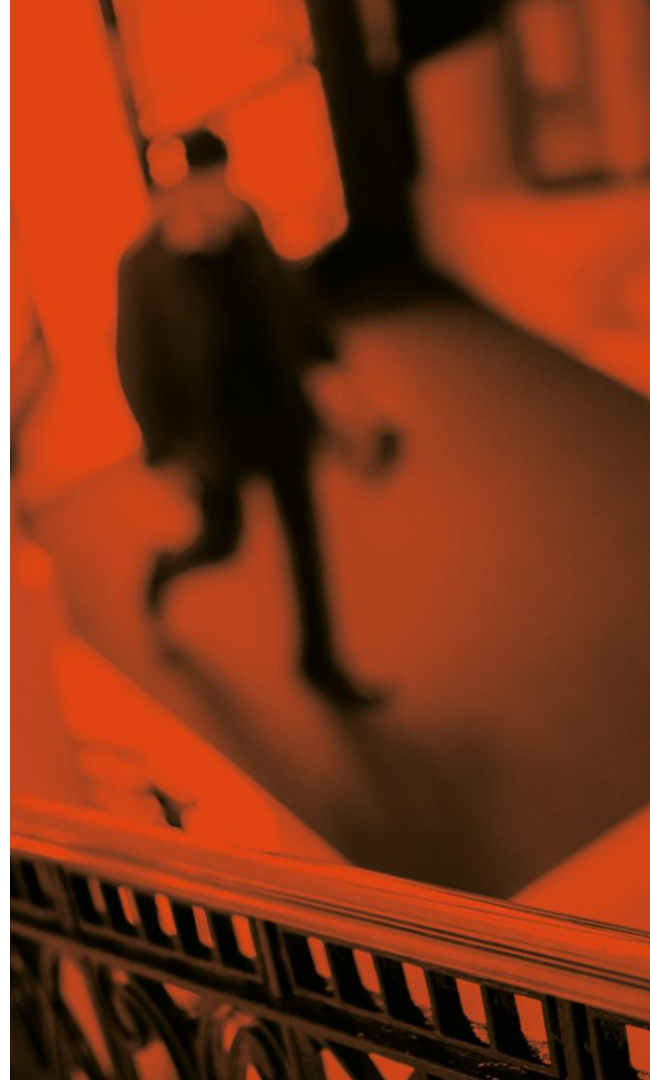
Section 37

Liability of directors and senior managers



Other legislation?

- **Corporate Manslaughter and Corporate Homicide Act 2007:**
 - *Senior management failure can result in organisational prosecution*
- **Companies Act 2006 (section 172):**
 - *Duty to promote the success of the company, including employee interests*
- **The European Framework Directive on Safety and Health at Work (Directive 89/391 EEC) - guarantees minimum safety and health requirements throughout Europe while Member States are allowed to maintain or establish more stringent measures**



Best practice for Senior Leaders

The main expectations imposed on senior execs are:

- to ensure it is aware of the risks faced by the business and to provide visible leadership on safety
 - to ensure that appropriate systems are in place and regularly reviewed and that adequate resources are available
 - to delegate, empower and hold accountable
 - to check compliance with the systems developed by the Company to manage risk
 - review safety performance at least once a year.
-
- It is NOT about micromanaging

The Safety Leadership Triangle

Strategic Level

- *Set safety vision and policy*
- *Allocate adequate resources*
- *Establish safety culture*
- *Board-level accountability / authentic leadership*

Tactical Level

- *Implement safety systems*
- *Monitor performance*
- *Review and audit*
- *Continuous improvement*

Operational Level

While directors don't manage daily operations, they must ensure:

- *Competent persons are appointed*
- *Systems are effective and followed*
- *Failures are investigated and learned from*
- *Workers are consulted and engaged*

Criminal Breaches / Enforcement

UK

- Criminal prosecution - unlimited fines; imprisonment up to 2 years
- Section 37 HSWA - personal prosecution

Germany

- Occupational Safety Act - mandatory safety officers; strict liability
- Managing directors personally liable

France

- Labour Code (Code du Travail) - strong worker representation
- Criminal sanctions - CEO and directors can face imprisonment

Netherlands

- Working Conditions Act - preventative approach
- Labour Inspectorate - Employer and management liability

Spain

Law 31/1995 - prevention services mandatory; documented risk assessments

Company and individual manager sanctions

International Standards – ISO's

ISO 45001 (Occupational Health & Safety)

[Replaced OHSAS 18001; applicable in over 180 countries; integrates with ISO 9001 (Quality) and ISO 14001 (Environment)]

- **Key Requirements for Leadership**

- **Top Management Commitment** (Clause 5.1): *Must demonstrate leadership and commitment to OH&S management system*
- **OH&S Policy** (Clause 5.2): *Senior leadership must establish, implement, and maintain policy*
- **Roles and Responsibilities** (Clause 5.3): *Assign and communicate responsibilities at all levels*
- **Worker Consultation** (Clause 5.4): *Establish processes for participation*

Complimentary Standards

ISO 31000:2018 - Risk Management

Provides principles and guidelines for managing all organizational risks, including safety

ISO 19600:2014 - Compliance Management

Framework for establishing, developing, implementing, and improving compliance systems

HSG65 - Managing for Health and Safety (HSE)

UK guidance on effective H&S management systems: Plan-Do-Check-Act

ILO-OSH 2001 - International Labour Organization Guidelines

Voluntary guidelines for OH&S management systems recognized globally

Integration Opportunity:

Modern best practice integrates ESG (Environmental, Social, Governance) with safety management

The “Plan / Do / Check / Act” principle

PLAN

- Establish policy
- Identify hazards
- Assess risks
- Set objectives

DO

- Implement controls
- Provide resources
- Train workforce
- Document processes

CHECK

- Monitor performance
- Conduct audits
- Investigate incidents
- Review objectives

ACT

- Management review
- Corrective actions
- Continuous improvement
- Update systems

UK H&S Sentencing Guidelines

- Sentencing Council consultation on draft guidelines for health and safety offences, corporate manslaughter, food safety and hygiene offences
- Definitive guidelines published in November 2015, with implementation on 1 Feb 2016
- Where are we 9 years later? Can (and should) other countries adopt and learn from the UK's flexible approach?



Step 1 - Culpability

Very High

Deliberate breach or flagrant
disregard for the law

High

Fell far short of the appropriate
standard

Medium

Fell short of standard in a manner
that falls between descriptions in
high and low culpability

Low

Did not fall short of appropriate
standard

Step 2 - Categories of Harm

— Seriousness of harm risked + likelihood of harm = Harm Categories 1-4 (*NB: Risk of harm – not actual harm*)

Level A	• Death • Physical or mental impairment resulting in lifelong dependency • Health condition resulting in reduced life expectancy
Level B	• Physical or mental impairment not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day to day activities or on their ability to return to work • A progressive, permanent or irreversible condition
Level C	• All others not in A or B

Categories of harm cont...

		Seriousness of harm risked		
Likelihood of harm		Level A - Death - Physical or mental impairment resulting in lifelong dependency on third party care for basic needs - Health condition resulting in significantly reduced life expectancy	Level B - Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work - A progressive, permanent or irreversible condition	Level C All other cases not falling within Level A or Level B
	High	Harm category 1	Harm category 2	Harm category 3
	Medium	Harm category 2	Harm category 3	Harm category 4
	Remote	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

What about the upward adjustment – exposure / actual harm?

Step 3 - Categories of organisation

- Establish **financial position of offender** based on turnover:
 - **Micro** – not more than £2m
 - **Small** – Between £2m and £10m
 - **Medium** – £10-£50m
 - **Large** – £50m and above
 - **Very large companies** – turnover “very greatly exceeds” £50m (but no guidance beyond that)

Large

Turnover or equivalent: £50 million and over

	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
Low culpability		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

Individual Culpability

—Determine the offence category:

Culpability

- **Very High** - Intentionally breached or flagrant disregard for the law
- **High** – actual foresight of or wilful blindness to risk, and risk taken
- **Medium** - **an act or omission that a person exercising reasonable care would not do**
- **Low** – little fault i.e. minor error of judgment

Individuals – where is the custody threshold?

	Starting point	Category range
Very high culpability		
Harm category 1	18 months' custody	1 – 2 years' custody
Harm category 2	1 year's custody	26 weeks' – 18 months' custody
Harm category 3	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 4	Band F fine	Band E fine – 26 weeks' custody
High culpability		
Harm category 1	1 year's custody	26 weeks' – 18 months' custody
Harm category 2	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 4	Band E fine	Band D fine – Band E fine
Medium culpability		
Harm category 1	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 3	Band E fine	Band D fine or low level community order – Band E fine
Harm category 4	Band D fine	Band C fine – Band D fine
Low culpability		
Harm category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 2	Band D fine	Band C fine – Band D fine
Harm category 3	Band C fine	Band B fine – Band C fine
Harm category 4	Band A fine	Conditional discharge – Band A fine

Corporate Manslaughter and Corporate Homicide Act 2007

Prosecution must prove the way in which activities were managed or organised:

- Caused a person's **death**;
 - Amounts to a **gross breach** of a relevant duty of care owed to the deceased;
and
 - **Senior management's** role in the breach was a substantial element in the breach
- The jury may also
- *consider the extent to which the evidence shows that there were **attitudes, policies, systems or accepted practices** within the organisation that were likely to have encouraged any such failure ... or to have produced tolerance of it.*

Cotswold Geotechnical Holdings (2011)

- Junior geologist killed in unsupported trial pit collapse
- Company had no health and safety systems
- Managing director had been warned repeatedly about unsafe practices
- No risk assessments, training, or supervision
- **Outcome:**
 - First corporate manslaughter conviction in UK
 - Company fined £385,000
 - Managing director imprisoned for 8 months under **HSWA Section 37**
- **Key Lesson:**
 - Director ignorance or abdication of responsibility is not a defence. Active engagement and implementation of systems is mandatory.*

R v Chappell (2017)

- Director of steel company convicted of manslaughter after worker death
- Employee fell through fragile roof during maintenance
- No risk assessment, method statements, or edge protection
- Director had been previously warned by HSE
- Outcome:
 - Company fined £200,000
 - Director sentenced to 12 months imprisonment (suspended)
 - Disqualified from acting as company director for 5 years
- Key Lesson:**
Previous warnings and continuing failures demonstrate gross negligence. Career and reputational damage extends beyond criminal penalties

France v Teleperformance (2019)

- Employee suicides linked to workplace stress and management practices
- Investigation revealed systemic failures in psychosocial risk management
- Senior executives aware but failed to act on warning signs
- No adequate risk assessments for workplace stress

- Outcome:
 - Company and CEO prosecuted
 - CEO received suspended prison sentence
 - Significant financial penalties
 - Major reputational damage

- Key Lesson:

Safety includes psychosocial risks. Directors must address mental health and wellbeing, not just physical safety

Greenfeeds Limited (2022)

- Food waste plant company – 2 workers drowned in a tanker of semi-liquid pig feed
- One worker died after falling into the tanker while cleaning it in 2016, and the other worker died trying to save him. Both were released after a saw was used to cut holes in the side of the tanker.
- Emergency services attempted to resuscitate them but they died at the scene.
- A post-mortem examination concluded both Mr Walker and Mr Rawson died as a result of drowning.
- **HSE investigation**: workers were increasingly unhappy, “scared” by tasks, staff repeatedly warned management of the dangers involved with cleaning tankers, but ignored
- **Greenfeeds** – found **Guilty** of 2 counts of **Corporate Manslaughter** - £2 million fine
- **Accounts Manager** – **gross negligence manslaughter / HSWA: 13 years imprisonment**
- **Managing Director** – **HSWA breach: 20 months imprisonment**
- **Transport Manager** – **HSWA breach: 12 months suspended sentence**

Practical Legal Tips to reduce exposure to prosecution



The Culture Test

Attitude:

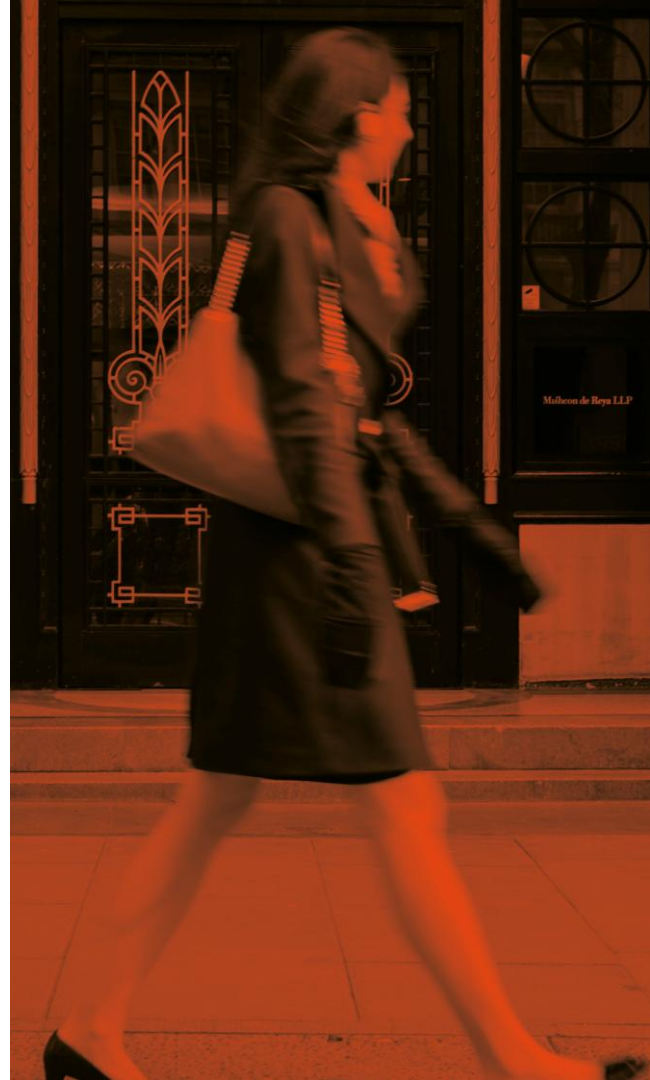
- What do the staff think & what would they say to an inspector?
- How seriously does the organisation take H&S? Fire Safety? Evidence?
- Engagement with workers – bottom up feedback

Systems & Accepted Practices:

- Do systems reflect what happens on the ground ?
- Is implementation the same across all of your premises?
- Better interaction between relevant departments (H&S advisors, Board, Senior Leadership, Risk teams)
 - *level of communication and co-operation?*

Selection and supervision of contractors:

- What about specialist accredited contractors?

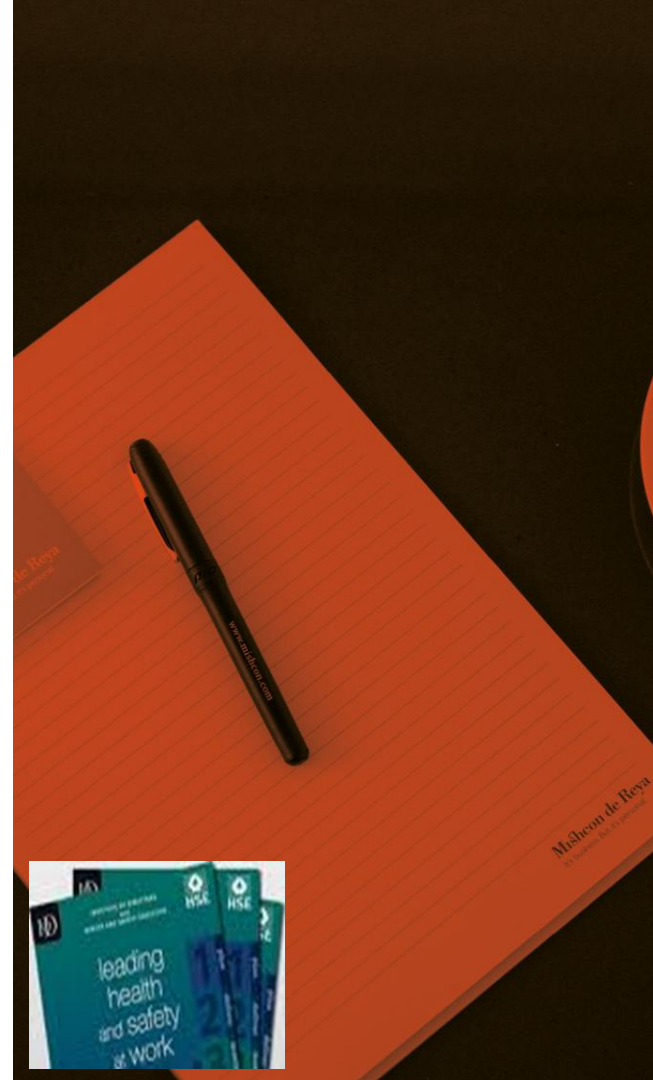


Senior Executive Training

- Senior executive offence of **neglect** under s37 HSWA (*not as proactive as someone in their position ought to have been*)
- Corporate manslaughter offence requires **senior management** failing, particularly if poor “**attitudes, policies, systems or accepted practices**”
- Understanding relevance of **IOD / HSE Guidance** (Leading H&S at Work) - <http://www.hse.gov.uk/pubns/indg417.pdf>

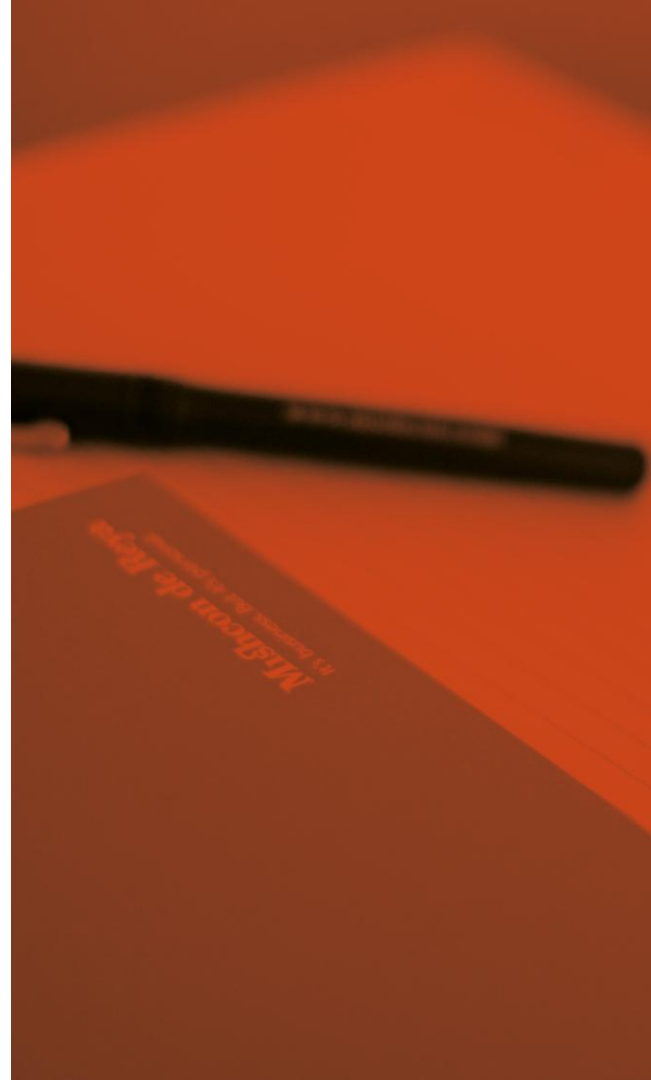
— Monitor and Measure Performance:

Leading and lagging KPIs reported to board monthly (use of language by H&S professionals?)



H&S Legal Review of Documents

- **H&S Safety Policy / Policy Statement** – remove common hostages to fortune
- **Roles and responsibilities document** – remove common hostages to fortune
- **Regular Audits** – internal and external



Incident Response Protocol

Should cover:

- Escalating incidents internally / Reporting externally
- Accident investigations / emails etc
- Managing requests for documents
- Effective communication between **Senior leadership and others**
- Regulatory interviews – should you attend?
 - Maintaining relationships with regulators - *cooperative approach can influence enforcement decisions and demonstrates corporate responsibility*
- Managing communications with third parties (e.g. press)
- Notifying insurers – what is covered for the company? (D&O) / Due diligence for directors
- Appointing specialist regulatory criminal lawyers



Key Takeaways?

- **Directors ARE Accountable (and responsible!)**
- **Systems Must Work**
- **Culture is Critical**

Your Role in Supporting Leadership:

Educate - Ensure directors understand their legal duties and potential liabilities

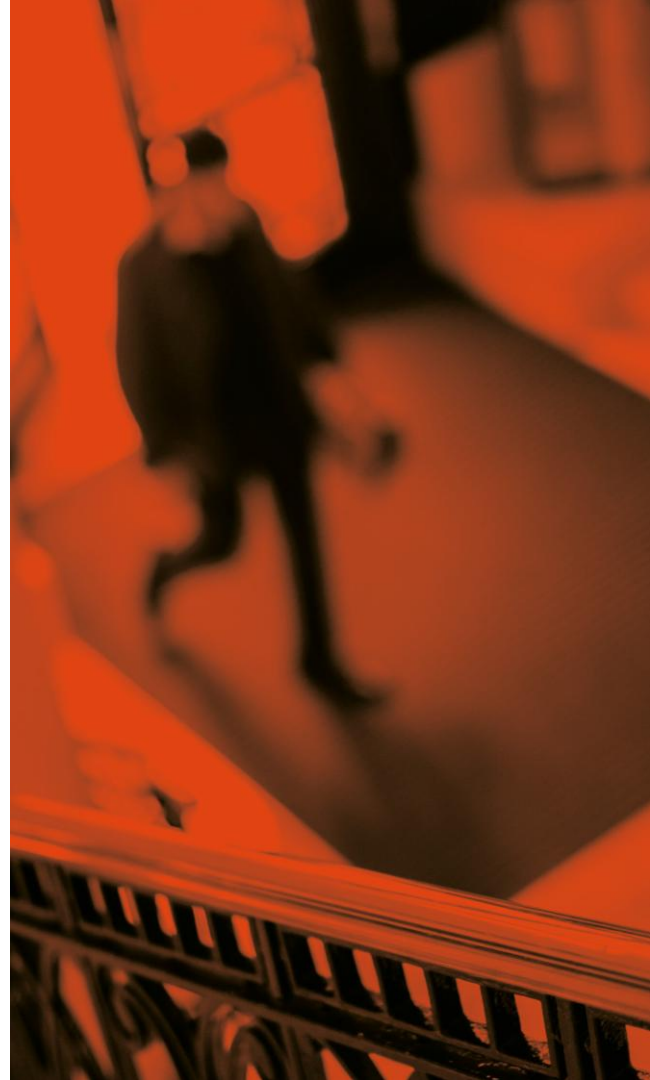
Report - Provide clear, actionable data to inform board decision-making

Challenge - Speak up when safety is compromised - you have a professional duty

Support - Help implement systems that make compliance achievable

Document - Maintain evidence trails that demonstrate due diligence

You are the bridge between operations and the boardroom - your insights can prevent tragedies and prosecutions



Questions?



Contact

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