

## **ANNEX 2 to Paper HSC/05/90**

### **Research And Stakeholder Gatherings**

#### **CONTENTS**

**2.A. Brief Thematic Overview - Pages 2 - 3**

#### **2.B. Primary Research**

Making Companies Safe: What Works – Pages 4 - 5

A Response to the CCA Report – Pages 6 – 7

Summary: Director Leadership of Health and Safety – Pages 8 – 9

#### **2.C. Peer Reviews**

Introduction – Page 10

Peer Review – Phillip James – Pages 11 – 12

Peer Review – Frank Wright – Pages 13 - 14

#### **2.D. Other Research**

Health and Safety Responsibilities Of Company Directors  
And Management – Pages 15 - 16

International Comparison Of Health and Safety Responsibilities of  
Directors – Page 17

#### **Open Forums**

Edinburgh – Pages 18 - 19

London – Pages 20 - 21

The contents of this annex has not been agreed by the relevant researchers and are meant only to be a very short precise to aid discussion. Summaries are by no means conclusive.

## 2.A. Brief Thematic Overview

### What Is a Director?

The Companies Act 1985 (s.741 (1)) defines a director as including “any person occupying the position of director, by whatever name called.” It is the role you perform, and not the title you are given, that determines whether you are a director or not. There are three different types of director –

- Executive director - an employee of the company, their contract will impose specific duties e.g. finance director.
- Non-executive director – not an employee of the company and will usually be part-time and not expected to be involved in the day to day running of the company. **There is no legal distinction between executive and non-executive directors.**
- Shadow directors – “a person in accordance with whose directions or instructions the directors of a company are accustomed to act.” They usually have an influence over the whole board and usually not just in an isolated occurrence. Professional advisers e.g. lawyers are specifically excluded but they may include company doctors and banks.

No skill base is required of a director. Directors are required to have different knowledge and skills depending on the organisation and business environment.

### What Is Happening Now?

#### Great Britain

- **Enforcement figures** – 111 directors prosecuted in relation to H&S management matters, 86 were convicted and 11 were jailed. Directors Disqualification Act 1986 – Since 1986 10 or so disqualified
- **Research perception** –
  - 1) Centre For Corporate Accountability Research (CCA) – Senior officers often play a determinative role in corporate compliance. No positive legal duties on Directors, which leads to no incentives for Directors to proactively, manage health and safety. Directors who may choose to follow the current guidance may be putting themselves at risk of prosecution as they are trying to follow a guideline, against which they can be measured. Corporate Social Responsibility is not providing a sufficient motivator.
  - 2) Greenstreet Berman Research (GSB) – SME feedback that they need more advice and support to promote higher standards. HSE guidance – 85% of boards with a named health and safety director (large organisations). 14% of these are queried by trade union/employee representatives.
  - 3) Health and Safety Laboratory Research (HSL) – Studies have found that managers have little training in health and safety and don't understand their responsibilities or potential influence. Literature suggests legislation motivates directors to manage health and safety. However, some see this as evidence for more legislation, others interpretation is that existing legislation is sufficient.
  - 4) Peer Review – **Phillip James** -

- i. In practice commitment of directors is problematic and frequently seen so by other managers
- ii. Regulations and their enforcement constitute one of the most important drivers as does individual personal liability
- iii. Voluntary approach not a wrong one however, available evidence suggests it has not had a significant impact

**Frank Wright –**

- i. Little evidence to provide interventions HSE currently pursuing and developing are wrong.
- ii. At least 1 in 6 organisations do not consider board level direction and leadership necessary or desirable.

**Directors Disqualification**

**Frank Wright** - Rarely used, more awareness needed amongst enforcing authorities and stakeholders. More review of potential enforcement required.

**Rest of World**

Out of nine countries studied 5 (Germany, France, Italy, Sweden, Japan) impose positive obligations upon either directors (or equivalents) or senior managers of companies. A further 2 have jurisdictions, which impose duties (Canada and Australia). No evidence found of director “flight” or risk aversion.

**What Works\What Should Happen?**

Research perception - **CCA Research** – Amend health and safety law (s. 37). Duty on directors to take all reasonable steps. Publish an associated ACOP.

**GSB Research** – large organisation self-assessment report on current guidance suggests a large level of compliance. A significant minority Directors\managers report no further action is needed and boards are already providing board level health and safety direction. Similar proportions recommend more guidance\examples of leadership, defining directors duties in law and an increase in disqualifications.

**HSL Research** – explore director training, if legislation required then must have a level playing field and enforceable and measurable outcomes.

**Peer review perception – Phillip James** – Supplement existing measures with ‘positive’ health and safety duties. Ultimately a judgement decision has to be taken.

**Frank Wright** – need to tell directors what to do. An ACOP should be accompanied by a step change in the training and development of directors in accord with the Higgs Report.

## 2.B Primary Research

### (i) Making Companies Safe: What Works

**Dr Courtney Davis**  
**Centre For Corporate Accountability**

#### Objective

To answer whether - (i) The Government should introduce new legislation or voluntary codes of practice when trying to change the way companies and their senior officers conduct themselves and (ii) in relation to the law that currently exists what techniques should be employed to ensure companies and other employers actually comply with it.

#### Main Points

- There has been no consideration on the relative effectiveness of voluntary guidelines versus legislation. Greenstreet Berman survey does not provide evidence that voluntary approach most is the most effective means of bringing behavioural and cultural change. Evidence to suggest other voluntary factors e.g. CSR does not provide a sufficient motivator.
- An important factor has been the Government's own thinking on business regulation which appears to be dominated by a concern of relieving burdens on business. Independent evidence contradicts claims of 'a mounting burden of regulation.'
- Consistent findings of research are that senior officers often play a determinative role in corporate compliance and whether a company has safe working practices.
- There are no positive legal duties on Directors, which leads to no incentives on Directors to manage health and safety proactively. The need is for positive legislation backed up by enforcement.
- A review of available research reveals consistent evidence that the single most effective means of securing the personal commitment of senior managers is to impose direct personal liability on company directors and senior officers.
- Directors who currently follow the current guidance may be putting themselves at more risk than those who do not.

#### Recommendations

- Create a duty on all directors to take "all reasonable steps" to ensure company complies with the law

- Require HSC to publish an Approved Code of Practice
- Duty on large companies to appoint a health and safety information directors to keep board members informed about safety issues
- Amend health and safety law so that -
  - enforcement notices could be imposed
  - duties applied to application of section 37

## **(ii) A Response to the CCA Report ‘Making companies safe: What works?’**

**Michael Wright and Sara Marsden  
Greenstreet Berman Ltd**

### Objective

- To provide an opinion from Greenstreet Berman Ltd (GSB) on the report produced by the Centre Of Corporate Accountability (CCA) entitled ‘Making companies safe: What works?’
- To review the CCA report against HSC’s published strategy.

### Main Points

- CCA argue that previous studies were not designed to test what worked best – voluntary or mandatory. GSB do not see either intervention as mutually exclusive options. Current studies do provide a measure of the uptake of director’s responsibilities in the current regulatory framework.
- The CCA report does not explore the idea that awareness of risks and acceptance of the legitimacy of regulatory requirements is a precursor to compliance.
- One of the most consistent and strongly expressed points of feedback from dutyholders , especially SMEs, is that improved advice and support is needed to promote higher standards of health and safety.
- The CCA report concludes that enforcement has a specific affect only, not a general deterrence. This leads to the suggestion that a high level of inspection and enforcement is required. GSB’s own review of the evidence suggests that it is important to secure the interest of senior management and their commitment for improvements to be made.
- Gunningham work quoted by CCA concurs to a great extent with the “Evidence Base” produced for HSC\IE noting that regulation and loss of corporate credibility are the two most important CEO drivers.
- CCA report queries the self assessment report by GSB entitled “Health and safety Responsibilities of Company Directors and Management Board Members” (2003). GSB believe there is no evidence to indicate that respondents mis-represented themselves.

- It is hard to find evidence of whether (or how well) mandation of Directors' Duties would work without trying it out or reviewing examples of such regulation overseas.

### Conclusions

- Directors are currently motivated (to varying levels) by the need to protect the organisation against H&S risks and to assure productivity.
- Interventions that persuade and engage senior management are more likely to prompt improvements than interventions lacking senior management engagement.
- Individual sanctions are currently rated as a lesser motivator (perhaps because they are rare).
- There is reasonable support from surveys for greater individual sanctions as a deterrent.
- UK surveys are inherently limited to Directors' experiences within current regulatory framework.

### **(iii) Summary: Director Leadership of Health and Safety – Health And Safety Laboratory**

**Mary Miller  
Health And Safety Laboratory**

#### Objective

Review literature on director's responsibility for health and safety, specifically focusing on factors influencing leadership behaviour and the perceived benefits of such an approach brought in terms of occupational health and safety performance.

#### Main Points

- It is widely accepted that should a director/manager visibly set a good example in the attitudes and actions towards health and safety, it promotes a good health and safety culture among the workforce.
- Leadership of safety issues is different to that of other business objectives, as success is based upon non-events. Therefore directors/managers need different skills to lead on safety issues.
- “At the current time, there is insufficient evidence to predict whether passing a new law would create a measurable difference in health and safety in the UK.”
- New legislation could potentially impact differently on different organisations, and could be difficult to enforce. It could be unpopular with companies, as directors fear becoming ‘scapegoats’.
- New corporate manslaughter legislation has the potential to increase the profile of directors in health and safety management, and could increase their involvement.
- However, studies have found that managers have little training in health and safety and don't understand their responsibilities or potential influence.
- Business recognises that a poor health and safety record could impact upon corporate reputation. However, they also recognise that a good safety record will not enhance their reputation.
- A considerable amount of businesses rely on informal ‘common sense’ approaches to health and safety management, particularly in SMEs where it is more common for managers to work closer with employees.

- Most authors agree that compliance with legislation motivates directors to manage health and safety. However, some see this as evidence that we need new legislation, whilst others see this as proof that the existing legislation is sufficient.
- Compliance with legislation is affected by whether companies feel the legislation is fair and reasonable, and the probability of it being effectively enforced.
- Fear of enforcement is also linked with fear of reputation damage. This can be damage to both the company's reputation, and personal reputation. It can be argued that individual liability would further motivate directors to avoid damage to their personal reputation.
- Companies that are not motivated to make a profit, or are very well resourced, are less likely to be motivated by the financial benefits of health and safety management.
- Financial climate in the UK is changing. e.g. it is predicted that insurance costs will rise and be increasingly tied to health and safety performance.
- Supply chain pressure can be an effective motivator for SMEs.
- Moral responsibility also motivates health and safety management. In SMEs managers are more likely to personally know their staff, where as in larger organisations this is expressed in terms of societal values.

## Recommendation

- Do more research.
- Publicise current guidance.
- Explore issue of director training.
- If considering legislation, ensure that there is a level playing field between SME's and large organisations.
- Consider how it would be enforced and how success would be measured.

## 2.C. Peer Reviews Of Primary Research

Two peer reviews were conducted of 3 pieces of research concerning the evidence base for improving Directors health and safety performance.

Peer Reviewers were – Professor Phillip James, Middlesex University

Professor Frank Wright, University of Salford

The 3 pieces of research peer reviewed were -

- (1) Making companies safe: What works? Centre Of Corporate Accountability (CCA) 2004  
- Not funded by HSE
- (2) A Response to the CCA report “Making companies safe : What works?” Greenstreet Berman 2005 - Funded by HSE
- (3) Director leadership of health and safety - review of literature. Health and Safety Laboratory (HSL) – funded by HSE

### Peer Review Objectives

Objectives in brief -

- (1) Thoroughness of the three reports
- (2) Key findings concerning the factors influencing directors to take responsibility for improving health and safety; the likely impact of any new legal duties placed in directors; and how directors exercise responsibility and to what effect; and
- (3) Reliability of evidence base and its fit with current HSC\E measures to promote greater director responsibility and leadership on health and safety.

## **(i) Directors' Responsibilities for Health and Safety – A Peer Review of Three Key Pieces of Published Research**

Phillip James – Middlesex University Business School

### Review Approach

Author looked at the research in 4 broad but inter-related themes –

- The degree to which directors' attitudes and behaviour influence organisational health and safety performance
- What prioritisation directors currently appear to accord to the issue of health and safety at work
- To what extent the Law acts as a motivator
- The views expressed in the reports as to the desirability of imposing statutory health and safety duties on directors and their fit to points 1 to 3 above.

### Scope Of Research

The combined research provided a good overview of relevant research evidence with two exceptions –

- (1) The influence directors exert over health and safety management and performance.
- (2) The role of individual personal liabilities in motivating director actions regards health and safety.

### Key Findings

- the attitudes and behaviour of directors do appear to exert an important influence over their organisation's health and safety management and performance, although the evidence relating to this could be explored in greater depth;
- in a significant minority of large organisations directors take no direct responsibility for health and safety and, in those where they do, their involvement is often of a very limited nature. Author quotes research, which points out a marked disjunction between how directors and senior managers see health and safety managed in an organisation and the view of managers. Author also quotes research that among small firms a 'gap existed between theory and practice' backed up by a report observing in small firms in medium and high hazard industries one third of CEO's were relying on informal approaches to managing safety;

- directors would appear to consider that they already face considerable legal, commercial and societal pressures to take responsibility for health and safety and to avoid the occurrence of damaging incidents;
- it, nevertheless, seems that in practice the commitment of directors to health and safety is often problematic and frequently seen to be so by other managers;
- health and safety regulations and their enforcement constitute one of the most important drivers of director actions in respect of health and safety, if not the most important;
- individual personal liabilities also appear, against this background, to provide an important source of motivation, even when the likelihood of them being imposed is low;
- there is, though, scope to explore in more detail how far the evidence on this last issue sheds light on how far the introduction of 'positive' health and safety duties on directors would act to improve their motivation in this regard;
- the evidence reviewed in the three reports does not therefore conclusively indicate that duties of this type would act to improve health and safety management and performance, although it does indicate clearly that many managers believe that the making of directors more vulnerable to prosecutions and fines would have beneficial consequences;
- Voluntary approach to addressing the situation not a wrong one but the apparently slow progress, by the available evidence, does not demonstrate that the current voluntary approach to encouraging director leadership of health and safety has, so far, had a significant impact;
- on balance, the research evidence consequently provides a strong, but not conclusive, basis for arguing that the imposition of 'positive' health and safety duties on directors would serve to usefully supplement the liability that they currently face under s. 37 HSWA;
- it is, however, possible that, as with other possible types of regulatory initiative, it will, ultimately, prove impossible on the basis of research evidence to conclusively, as opposed to (very) plausibly, demonstrate that duties of this type will act to significantly improve current health and safety management and performance. It is likely that an element of judgement will ultimately have to be utilised in order to reach a decision on this issue.

## **(ii) Directors Responsibilities for Health and Safety – A Peer Review of Three Key Pieces of Published Research**

**Professor Frank Wright**

### Key Findings from Research

CCA Research Report – “Making companies safer: what works”

- CCA report correctly states that there is a substantial body of international and UK research on what motivates their employers to improve their occupational health and safety performance research but, its analysis is highly misleading and in a number of circumstances, wrong.
- The research erroneously states that there is growing evidence that wholly voluntary approaches are largely ineffective in bringing about improved standards of health, safety or environmental performance.
- No conclusive evidence to show that a guidance platform will not work.
- CCA quotes Gunnigham as indicating that the key motivating factor for CEO's and senior management is to make them liable to personal prosecution and to enforce such provisions. 2 key points –
  - 1) The work related to matters in Australia 6 years ago which was different to that of the UK today.
  - 2) In another work of the same period, Gunningham and Johnstone make the point that prosecutions would only be initiated in the face of failure of enforcement methods based on persuasion and voluntary compliance.
- Brabazon, Tipping et al report quoted by CCA only applied to construction workers and is hedged with caveats
- Little support for CCA's view that statutory duties are almost certain to provide a more effective and efficient 'lever' than other interventions HSE are pursuing and developing.

### GSB's Response

- Primarily the research has looked at larger organisations and only a bit of the public sector.

### HSL Response

- Analysis lacked necessary vigor particularly, in areas of law e.g. EC law, business law and company law.

### Assessment Of Key Findings

- Factors significant in board level arrangements – perceived importance of health and safety management; high risk operations in that company, HSC guidance and concerns centering on occupational health performance
- Need to reach out and influence considerable number of organisations, 1 in 6, who do not consider board level direction and leadership necessary and desirable.

### Likely Impact of any legal duties on Directors

- ACOP, with an enhanced guidance note (paralleling Successful Health and Safety Management, HSG65) and small set of regulations would seem an ideal way forward. Any guidance note would need to take in to account the differing obligations of organisations large and small. As well as special areas of responsibility e.g. hazardous chemicals.
- Once provisions have been put in place Board Directors need to be trained in their roles with the potential of accredited training by private sector providers.
- Measures should have equal application in both public and private sectors.

### Conclusions

- 3 million businesses in Britain employ fewer than 10 employees. More evidence in relation to these directors was needed and more effort is needed in medium, public and voluntary sectors.
- HSC should continue with its work, in a co-ordinated approach across Government, on – the promotion of director management for all organisations; corporate social responsibility, ChaSPI and the Health and Safety Performance Indicator for SMEs and the business case for health and safety.
- Work on the evidence base should be completed with a view to the adoption of an Approved Code of Practice (ACOP) on Director Responsibility.
- Any ACOP should be accompanied by a step change in the training and development of directors in accord with the Higgs Report and corporate governance developments.

## 2.D. Other Research

### (i) Health and Safety Responsibilities Of Company Directors And Management Board Members: 2001, 2003 and 2005 Surveys

Michael Wright, Sara Marsden and Evangelos Dimopoulos  
Greenstreet Berman

#### Objective

To summarise results of a 2001/2002 baseline survey, a 2003 and a 2005 follow-up with respect to the extent to which their is board level direction of health and safety in large private and public sector organisations.

#### Key Findings

- 1) Is health and safety directed at board level?
  - There has been an increase from 75% in 2001 to 85% in 2005 in the number of boards with a named health and safety director – although follow up interviews with trade union / employee representatives queried 14% of these in 2005.
  - All but one of the organisations that lack board direction say they have a health and safety manager who would report to the board in 2005.
- 2) Is H&S directed at board level, or delegated to a manager?
  - The main reasons for board direction of H&S are that 'Corporate direction is needed', 'Best practice policies', 'Directors need to visibly show H&S commitment';
  - The main reasons for delegating to management are 'Company has a general policy of delegation', 'Best practice policy' and 'H&S is an operational matter'.

The general increase in the importance of H&S is the top prompt for board-level H&S direction, with concern about corporate image/responsibility ranked second. HSC/E guidance is also an important prompt, with 82% of respondents aware of INDG343 in 2005.
- 3) What are the benefits of having one person on the board responsible for H&S?
  - There is a high level of agreement in all three surveys that board level direction offers (1) Strong leadership, (2) Focus, and (3) Consistency.
  - 6% of respondents say that H&S direction by the board offered no benefits.
- 4) What do they do?
  - A large majority of H&S directors in 2005 report carrying out the full range of tasks cited in HSC guidance to some extent, such as setting H&S targets and allocating resources for H&S. The involvement of the rest of the Board is less and varies across the tasks cited in HSC guidance.
- 5) What will increase the number of boards directing H&S?
  - A significant minority of Directors/managers report that no further action is needed because they are already providing board level H&S direction.
  - Similar proportions of Directors/managers recommend more guidance/ examples of leadership, defining directors' duties in law and an increase in disqualifications. Trade union representatives and others provide majority support for each of these.

- A majority of Directors/managers agree that defining duties in law would be useful and many cite benefits, such as better H&S. A significant minority cite adverse impacts such as making H&S a matter of liability management. Some state there would be no effect because they already do it.

### Should Directors Duties be Defined in Law

Since directors drivers have not changed the evidence can be interpreted in more than one way –

- 1) A judgement is needed as to whether 80% is considered good enough or whether further headway is needed into the 20% who delegate health and safety leadership to a manager (compromising a small but significant minority).
- 2) If headway is to be made a multi-faceted approach is suggested by respondents, with the definition of directors duties law being suggested as part of the approach.
- 3) There remains a need to convince some respondents about the virtues of directing health and safety at board level (instead of delegating it to a manager) and about the virtues of having a named director for health and safety.

## **(ii) International Comparison of Health and Safety Responsibilities of Company Directors**

**David Bergman, Dr Courtney Davis and Bethan Rigby**  
**Centre for Corporate Accountability**

### Objective

To look at nine countries to see whether health and safety duties are imposed upon boardroom directors (and other senior managers) and if so, what they are and whether they assist in prosecution of directors.

The report does not look at partnerships. All countries are similar to Great Britain in that they allow businesses to 'incorporate' and create a separate legal entity. The research looks at boardroom directors.

### Main Findings

- Five out of nine countries have safety legislation that imposes positive obligations upon either directors (or equivalents) or senior managers of companies. These are Germany, France, Italy, Sweden, Japan. Two countries have some federal states, which impose duties on either directors or senior managers - Canada (four out of fourteen jurisdictions) and Australia (two out of nine jurisdictions).
- The majority of the nine countries studied impose positive duties on directors.
- Countries which have directors duties can be divided into 2 categories – (i) those with legislation that imposes direct and clear positive safety obligations upon directors and (ii) those who impose a positive duty on a person who is either a director or senior manager.
- Countries which have no or minimal duties on directors either – (i) have an offence similar to Section 37, (ii) impose a duty upon an employer or supervisor that could apply to a director or do not impose any duty at all.
- Evidence about enforcement varied.
- None of the survey respondents suggested the existence or enforcement of Directors led to 'Director flight.'
- None of the respondents suggested the imposition of legal duties in Directors resulted in 'risk aversion.'

The reasons advanced by regulatory or other official bodies for imposing directors duties reflect arguments for such reform in Great Britain.

## **2.E OPEN FORUM WITH EXPERT PANEL**

(i) Director Responsibility for Health And Safety. What the Evidence Shows

27<sup>th</sup> September 2005

Edinburgh Business School, Heriott-Watt University, Edinburgh

### Summary

#### **Chairman to Audience\Panel - Is there acceptance that something needs to be done about current duties on directors?**

(Discussion points bulleted)

- Yes but disparity between smaller firms and larger organisations need to be considered. Successful Health and Safety Management (HSG65) very good but don't have anything like it for directors. No point bringing legislation unless inform directors what they need to do. Chairman - Danger of Isolating Directors if something is done?
- In one way Directors already isolated. Fennel Director?
- Isolated now as H&S needs to be integrated in to the Board.

#### **Chairman - Are Directors Briefed or Involved?**

- Depends on individual company set up.
- Individual duties already exist in H&S Law and why not on directors.
- Wider issue involved – need for a stringent check on directors before they are allowed to set up a company or be a board member.
- Chairman made points about simplification of company Law Model, the skills required of a director and the need to differentiate between large and small organisations.

Further discussion centred around –

- Need for a code of practice to create a level playing field in H&S duties. Closer engagement with smaller organisations to achieve this is needed.
- Perceived threats of a direct penalty on directors a motivating factor but also have to look at the needs of directors. Different motivators are all linked.

- Point made recent increase in (construction [not sure]?) fatalities in Scotland. Question posed if voluntary approach working.
- Should not criticise voluntary approach but got to augment that.
- Need to ascertain what the measures of success would be for any new duty on directors imposed.
- Suggestion made that companies would measure themselves along with a regulatory gauge.
- Evidence that guidance making an impact but not really qualitative guidance. Difficult area as this debate has been around for approximately 15 years.
- Need to engage more directors in worker involvement. Employees pressure a driver.

**Chairman – Is there a need to change to a more legal approach?**

- Depends on what levels of compliance you are looking for
- Legislation now crucial.
- Do not know what impact legislation alone would produce. Staged approaches via detailed guidance to legislation.
- Need to impose duties on all directors not just single director as this could act as a scapegoat.
- Knowledge and skills needed to improve director leadership in health and safety. Need to separate knowledge out to skills and behaviour.
- Point made as to whether you impose the same duty on Executive and Non-Executive directors.

## **(ii) Director Responsibility for Health And Safety. What the Evidence Shows**

6<sup>th</sup> October 2005

Insight Investment, HBOS PLC, London

### Summary

#### **Chairman opened debate to the floor for discussion -**

- Organisation represented did not want legislation but could see evidence for improvement. Need to understand how other countries frameworks are made up. Private and public organisations need to be treated in the same way.
- Overwhelming evidence for regulation of directors.
- Real debate is about how directors duties can be better clarified. Question of duty cannot be separated from role and competence. More work is needed on what good practice looks like. Research not focused on reality of good practice but on the Law. Boards do not really think out health and safety.
- Need to look at what change of behaviour an individual penalty on directors would have.
- Difficulty will be in defining public and private sector director responsibility and separating individual from collective director and board responsibility.
- Regulation would be worthless without further guidance to show directors what they need to do.

#### **Panel responses –**

- Need to focus on quality of leadership. Vision of what director leadership should; look like in public and private sector. Problem of defining in Law a charismatic director leading health and safety.
- Got to do fundamental work before legislation. Need to develop guidance first before legislation. Scapgoating can be dangerous as this is about raising H&S standards. Need to define what directors should do in all sectors before you can sanction people who don't comply. Some boards are controlled overseas. Need to use persuasion and partnership European and International standards bodies.
- Not an either or. Need to look at competence and then legal framework. Need to provide a legal framework and then explain it.

Discussion then went on to the potential of risk adverse behaviour or scapegoating following the imposition of directors duties. Preliminary research results were quoted as not having an effect on risk adverse culture. Department of Transport research was quoted as increasing risk averseness due the threat of individual culperability? Opinion put forward that rail industry needed to be more risk averse.

#### **Further Audience\Panel discussion –**

- Question raised of whether or not health and safety performance increased by directors duties in other countries. [Response was – it's not possible to judge this by simply looking at fatality and injury statistics, as there are too many variables.
- It is impossible to legislate for improved soft skills. Legal requirement should encourage the board to push for better health and safety standards.
- View expressed that there was no direct evidence of improvement in performance by increasing directors duties.
- Any legislation would need to address real problems of proving accountability of directors. Question raised on how the family of the bereaved would be involved.
- Need to look at code of corporate governance when looking this issue.
- Directors duties not necessarily about competence but also about priorities.
- Need to improve and make more use of Directors Disqualification legislation
- Proposal put forward to amend Directors Disqualification legislation to make directors responsible for corporate breach.
- Concern those Directors duties will lead to more legislation and associated problems.
- The research case for Directors duties will not be conclusively either way. Eventually a discretionary decision will have to be made.