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Director Leadership of Health and Safety

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EXECUTIVE SUMMARY

OBJECTIVES

This report presents a review of literature on directors' responsibilities for health and safety. The work has been carried out by the Health and Safety Laboratory (HSL) for the Cross Cutting Interventions Division of the Health and Safety Executive (HSE). The report will help build the evidence base in the area of directors' responsibilities for health and safety, to assist the Health and Safety Commission (HSC) when advising ministers on proposed legislation that places further responsibilities on directors regarding health and safety.

METHOD

A search of literature databases was conducted. However, only a small number of empirically based or peer-reviewed papers were found; the majority of literature in this area is either opinion based or HSE commissioned reports.

MAIN FINDINGS

Under current UK legislation directors do not have to undertake proactive health and safety management in their organisation. However, directors may be held culpable if they fail to react to a known unsafe situation. There have only been a small number of successful prosecutions of directors for health and safety offences to date.

HSC guidance recommends that directors lead safety from the top of an organisation arguing that it is essential both for effective health and safety management and an effective safety culture. Surveys of directors indicate that most directors recognise this responsibility. However, a recent survey of UK directors revealed that in 26% of the companies surveyed, health and safety is not led at director level (Wright et al., 2003).

There are many motivators for directors to engage with health and safety:

- Compliance with legislation is recognised as the key motivator.
- Fear of loss of reputation is closely related to compliance with legislation, as fear of prosecution and the bad publicity it would bring is recognised by directors as being detrimental to business success.
- There are also more direct financial considerations for many companies; effective health and safety management is perceived as being good for business, with benefits ranging from increased profit and turnover, to increased staff morale and retention.
- For many smaller businesses health and safety management is also a necessary part of winning contracts when larger companies specify the health and safety standards they expect from their suppliers.
- Moral responsibility for protecting workers is another reason cited for director leadership of health and safety. This is particularly the case in small and medium sized businesses where directors are more likely to know their workforce and interact with them more frequently than in large organisations.

The introduction of proposed new legislation on directors' duties for health and safety could have the beneficial effect of improving health and safety management and reducing accident, injury and ill-health rates due to increased director involvement. But it may also be unpopular with organisations and their directors in particular.

Because of the publicity currently surrounding corporate manslaughter legislation, directors may be wary of further legislation requiring them to take responsibility for health and safety. Any new legislation may also be difficult to enforce since the assessment of proactive measures taken by boards to promote health and safety is potentially problematic.

RECOMMENDATIONS

- There is a widely held acceptance of the potential effectiveness of Director Leadership schemes for bringing about improvements in OHS and many large UK companies are now taking director leadership of safety seriously. However, not all companies are aware of the HSC publication 'Directors' responsibilities for health and safety'. HSE should therefore continue to publicise this leaflet, the cases studies on director leadership and other relevant publications.
- There is limited empirical evidence regarding director leadership of health and safety, specifically in relation to small and medium sized enterprises, the public sector, and non-unionised workplaces. There is scope for further research to provide more detailed evidence.
- The available literature suggest that directors may lack the specific competence (knowledge and skills) required to lead effectively on health and safety, and that rectifying this may improve organisations' health and safety performance. The issue of training for directors merits further attention.
- Before any legislation to give directors responsibilities for health and safety is introduced, full consideration should be given to its impact on organisations. Particular attention should be paid to small and medium sized businesses to ensure there is not a disproportionate burden on them.
- Consideration should also be given to how to enforce any new legislation, and how its success will be measured.

1 INTRODUCTION

This report presents a review of literature on directors' responsibilities for health and safety. This section presents the rationale behind the work.

1.1 BACKGROUND

Over the years, there has been considerable debate regarding the relationship between the regulation of health and safety and the responsibilities of board members. This review offers an evaluative perspective, and weighs up the pros and cons of enforcing a leadership role for directors in relation to health and safety. This is intended to provide an evidence base to assist the Health and Safety Executive (HSE) in an examination of the pertinent issues.

This review is concerned with senior and board level decision makers – those whose concerns are strategic and whose responsibilities include making long-term plans for their organisation; modifying the organisation's structure; and, devising and implementing policy decisions. In this report, the term 'director' is used to refer to staff at this level within an organisation, across all types of organisations and sectors.

The promotion of voluntary measures to encourage greater director leadership on occupational health and safety (OHS) is a key element within the Health and Safety Commission's (HSC) Business Involvement Programme. The HSC Strategy recognises the importance that director leadership has to play in achieving targets for improved occupational health and safety performance.

Action point 11 of the 'Revitalising Health and Safety' strategy (DETR, 2000, p.26) pledged that:

'The Health and Safety Commission will develop a code of practice on Directors' responsibilities for health and safety, in conjunction with stakeholders. It is intended that the code of practice will, in particular, stipulate that organisations should appoint an individual Director for health and safety, or responsible person of similar status (for example in organisations where there is no board of Directors).'

Action point 11 also addressed the case for further legislation:

'The Health and Safety Commission will also advise Ministers on how the law would need to be changed to make these responsibilities statutory ... It is the intention of Ministers, when Parliamentary time allows, to introduce legislation on these responsibilities.'

1.2 AIM

The aim of this work was to carry out a comprehensive review of UK and international literature on director leadership of occupational health and safety, specifically focusing on factors influencing leadership behaviour and the perceived benefits such an approach brings in terms of improvements to occupational health and safety performance. The project was carried out by the Health and Safety Laboratory (HSL) for the Cross Cutting Interventions Division of HSE.

The literature review is intended to provide a better understanding of the published evidence on director leadership and occupational health and safety in terms of the director's role, influencing factors, and the benefits of director engagement. This is intended to assist the Health and Safety Commission in providing advice to ministers regarding the regulation of

directors' duties for health and safety, specifically, when considering the case for the introduction of additional legislation on directors' responsibilities. The review examines director leadership, why it is important, and factors influencing directors' behaviour. It does not address theories of leadership as this was outside the scope of the review. A brief overview of the UK legal framework and health and safety law is provided to set the context for the subject area.

The report is structured as follows:

- Section 2 describes the method used to search for literature.
- Section 3 describes current UK health and safety legislation and the legal background to the topic of directors' responsibilities for health and safety.
- Section 4 examines why director leadership of health and safety is important and what it means in practice.
- Section 5 investigates factors influencing directors' behaviour towards health and safety and examines in detail: compliance with legislation; protection of reputation; financial benefits and considerations; and moral responsibility.
- Section 6 presents a discussion of the key issues and conclusion.
- Section 7 provides recommendations for future work.

2 METHOD

The initial source of literature for this review was the HSE Project Officer (Neal Stone, Cross Cutting Interventions Division) and HSL colleagues familiar with the subject area. The references cited in collected literature were reviewed to ensure that all relevant literature was collected and examined. This search produced a substantial amount of the literature discussed in the review.

A literature search was also conducted by HSE's Information Services across a wide range of databases. The search was executed across a range of authoritative specialist commercial databases covering learned journals, technical papers, monographs, conference proceedings and 'grey literature'. 'Grey literature' is the term given to authoritative primary scientific report literature in the public domain (e.g. by government research laboratories, university departments or large commercial research organisations) but which may not be referenced in the major bibliographic databases.

The following databases were searched:

- Business Source Corporate.
- The Institute of Managements database.
- Healsafe.
- Management and Marketing Abstracts.
- Gale Group Management Contents.
- ABI/Inform, Psycinfo.
- HSEline.
- Cisdoc.
- Rilosh.
- Nioshtic.
- Wilson Social Science Abstracts.

Particular efforts were made to identify any studies that evaluate, either qualitatively or quantitatively, the involvement and outcomes of director leadership in OHS management. This search produced a number of 'opinion papers' but no empirical studies that had not already been identified.

The search for literature was supplemented by exploring material published on the Internet. HSE's Information Service accessed a range of appropriate portals, search engines and websites. Websites were assessed for quality, and information gathered only from trusted sources.

The literature search revealed a limited number of empirical studies on the subject of director leadership of occupational health and safety. However, it identified a number of theoretical papers, for example, numerous articles in safety magazines and professional journals expressing opinions about the importance of director level leadership of health and safety.

The majority of UK literature on this subject has been commissioned by the UK regulator, the Health and Safety Executive (HSE). Another source of material is the Centre for Corporate Accountability (CCA), a UK based charity concerned with the promotion of worker and public safety, which undertakes research on law enforcement and corporate criminal accountability (<http://www.corporateaccountability.org/about/main.htm>). Broadly, these two sources of literature conflict in their approach to director leadership of health and safety: the CCA argues that directors should be made legally accountable for health and safety, while the HSE has historically concentrated on non-legislative measures such as case studies. This approach has not enforced director leadership of safety, but instead, encouraged it.

3 LEGAL BACKGROUND

This section provides an outline of the UK health and safety legislation and potential changes to legislation in the future. This outline is provided merely to set the context of the review and is not intended to give authoritative or comprehensive details or analysis of the legislation, its application or enforcement.

3.1 THE HEALTH AND SAFETY AT WORK ACT (1974)

The Health and Safety at Work Act (HSWA, 1974) is the key legislation relating to health and safety in the UK. Section 37 of the HSWA details directors' duties as follows:

(1) 'Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar office of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.'

(2) Where the affairs of the body corporate are managed by its members, the preceding subsection shall apply in relation to the acts and defaults of a member in connection with his functions or management as if he were a director of the body corporate.'

Under sections 36(1) and 37, directors can, in specific circumstances be found personally guilty of a health and safety offence in their capacity as directors in addition to the company being liable corporately.

This places duties on directors to take action where they notice failings in health and safety; however, it does not place duties on them to proactively manage health and safety risks to their workforce.

In the year 2003-04 HSE prosecuted a total of 17 directors and managers and 11 of these were convicted (HSEa, 2005). Due to the requirement to prove that the individual was a 'controlling mind' of the company, it is considered very difficult to bring successful prosecutions against large companies (CCA, 2005). It is difficult for enforcers to attribute health and safety failings to any one individual in a large organisation. The few successful prosecutions to date have all been of small companies with a small number of directors who could be identified as the 'controlling mind' of the company.

3.2 PRIVATE MEMBERS BILL

A Private Members Bill put forward by Stephen Hepburn proposing changes to the Companies Act 1989 was debated in the House of Commons for the second time in March 2005 (Health and Safety [Directors' Duties] Bill, 2005). The Bill proposed to place an obligation upon all company directors to take all reasonable steps to ensure that their company is complying with health and safety law (Beale et al., 2005). Specifically, directors would have:

- A responsibility to be informed and aware of any health and safety problems;
- A responsibility to rectify any health and safety failure by the company; and

- A responsibility to ensure that their companies had appropriate safety procedures in place to protect their workers and the general public.

This extends directors responsibilities to undertake proactive involvement with health and safety; currently they are only required to react to health and safety incidents. The Bill was not passed due to an insufficient number of MPs present to vote; however all those MPs present voted in favour of the Bill (Hansard, 2005).

The Bill concerns proposed changes to the Companies Act 1989 and would be limited in its scope:

- It would only apply to UK based private companies operating in the UK (Beale et al, 2005).
- It would only apply to large companies (companies defined as small or medium under the Companies Act 1989 would not be affected [Beale et al., 2005]).
- Governmental organisations, local authorities, public bodies, charities and NHS trusts are further examples of organisations outside the scope of the Companies Act 1989.
- It would not apply to UK companies operating abroad or foreign companies operating in the UK. Non-Government organisations (NGOs), such as Christian Aid, are calling on the UK parliament to address this limitation and enact legislation that would help to ensure that companies are held legally accountable under national laws for their actions overseas (Christian Aid, 2004).

3.3 VOLUNTARY GUIDANCE FOR DIRECTORS

In 2001, HSC published the booklet INDG343 'Directors' Responsibilities for Health and Safety'. This is a guidance document, which describes best practice for directors regarding health and safety. It encourages directors to take responsibility for health and safety. The leaflet explains that, although there is no legal requirement for directors to take responsibility for health and safety, it is good practice for directors to lead on the issue of occupational health and safety and send a positive message from the top of the organisation. The leaflet recommends the following five actions:

- The board needs to accept formally and publicly its collective role in providing health and safety leadership in its organisation;
- Each member of the board needs to accept their individual role in providing health and safety leadership for their organisation;
- The board needs to ensure that all board decisions reflect its health and safety intentions, as articulated in the health and safety policy statement;
- The board needs to recognise its role in engaging the active participation of workers in improving health and safety;
- The board needs to ensure it is kept informed of, and alert to, relevant health and safety risk management issues. The Health and Safety Commission recommends that boards appoint one of their number to be the 'health and safety director'.

3.4 CORPORATE MANSLAUGHTER

In 1997, the UK Government proposed introducing further legislation regarding corporate manslaughter. To date, this legislation has not been introduced, although it is programmed for the current session of parliament (BBC, 2005). Corporate manslaughter legislation would

make it easier to prosecute organisations if a fatality was the result of serious failures of the organisation's senior management, however, it would not change legislation with regard to prosecuting individual directors for their failings with regard to health and safety.

3.5 THE COMPANY DIRECTORS DISQUALIFICATION ACT (1986)

Under Section 2 of the Company Directors Disqualification Act (1986) company directors may be disqualified for up to two years from company directorship. Only eight directors have been disqualified for health and safety offences in the 19 years since the introduction of this legislation (<http://www.corporateaccountability.org/HSE/prosecution/level/main.htm>).

4 THE ROLE OF DIRECTOR LEADERSHIP

This section presents theoretical and empirical literature in relation to the role of directors in leading health and safety policy in organisations and the influential role they play in shaping an organisation's safety culture. It then goes on to examine director leadership of health and safety in practice; specifically, what evidence is there to suggest that directors actually operate in a manner that promotes good health and safety practices.

4.1 WHY IS DIRECTOR LEADERSHIP IMPORTANT?

Director leadership is considered to be an essential part of good health and safety management. It is widely accepted that if a director sets a good example in their attitudes and actions towards health and safety, it promotes health and safety as a matter to be taken seriously by the workforce. The HSE document 'Successful Health and Safety Management' states that 'visible and active support, strong leadership, and commitment of senior managers and directors are fundamental to the success of health and safety management' (HSG65, HSE, 1997).

HSE has supported the production of a range of case studies that 'demonstrate the vital role director leadership has to play in ensuring that risks to health and safety are properly managed'. These case studies are drawn from public, private and voluntary sectors across a range of industries and are available on the HSE website (www.hse.gov.uk/corporateresponsibility/casestudies/index.htm).

The HSE document 'Reducing error and influencing behaviour' (HSG48, HSE, 1999) identifies senior management commitment as an essential part of health and safety management, but also fundamental to an effective health and safety culture. A widely used definition of organisational safety culture is 'the product of individual and group values, attitudes, perceptions, competencies and patterns of behaviour that determine the commitment to, and the style and proficiency of, an organisation's health and safety management.' (ASCNI, 1993).

HSG48 states that 'commitment by top management to involving the workforce' is a key aspect of an effective culture. A number of other authors support this view, for example, Cox & Flin, 1998; and Pidgeon, 1991; Turner, 1991; Pidgeon and O'Leary, 1994 (all cited in Jeffcote et al., 2005). Shannon, Mayr & Haines (1997) who carried out a meta-analysis to determine which organisational and workplace factors influenced injury rates. They found that senior management taking an active part in health and safety was consistently linked with lower injury rates. They reported three American studies that had examined senior management and/ or safety director presence on 'Joint Health and Safety Committees'. The authors claimed that senior management activity in health and safety was 'consistently' linked with lower injury rates, however, none of the three reported studies found that senior management presence on the Joint Health and Safety Committee had a statistically significant effect on injury rates.

HSG48 cites the following as key aspects of an organisation which influence its health and safety culture:

- Senior management commitment: Commitment at this level is regarded as crucial in producing higher levels of motivation and concern for health and safety throughout the organisation. It is best indicated by the proportion of resources (time, money, people) and support allocated to health and safety management and by the status given to health and safety. The active involvement of senior management in the health and safety

system is very important. Managers need to be seen to lead by example when it comes to health and safety.

- Management style: A 'humanistic' approach to management involving more regard by managers for individuals' personal and work problems is regarded as effective. This assumes direct and rapid action to identify and resolve individual problems in an appropriately caring and concerned manner.
- Visible management: Good managers are those that appear regularly on the 'shop floor' and talk about health and safety. Staff need to see and believe that all their managers are committed to health and safety.

HSG48 also highlights that 'management visibility' is an important aspect of an effective health and safety management system. Senior management that demonstrate their commitment to the workforce and are visible to staff 'on the shop floor' are associated with good safety performance (HSE, 1999). Simpson (1996) argues that senior management leadership of safety establishes a culture which will be echoed down the chain of command through leading by example. It makes clear to all employees that the company is willing to commit resources to safety improvements.

The 1999 'Captains of Industry' survey (MORI, 2000), commissioned by the British Safety Council entailed a survey of 204 senior directors, (76% of whom were Chairmen, Chief Executive Officers or Managing Directors) from the top 500 UK companies by turnover, the FTSE 500 and the top 100 companies by capital employed. The survey showed that directors and other senior business leaders recognised the impact that safety culture has on an organisation. They cited employee morale and retention as experiencing the greatest impact from a poor health and safety culture (90% of respondents). Other adverse outcomes of a poor health and safety culture were identified as loss of corporate reputation (80% of respondents), insurance costs (80% of respondents), accidents at work (78% of respondents), as well as productivity and efficiency, customer satisfaction and sales/ profit. Sawacha et al. (1999), cited in Collins, (2002), tried to identify factors which influence safety on construction sites and found that the attitude of senior management towards safety was a significant factor in performance as measured by their accident record.

Carillo (1998) argues that modern approaches to safety are less focused on changing behaviour and more concerned with engaging and empowering workers. This includes taking responsibility at all levels; creating a new culture with common values; standards for safe work habits; orderliness; and accountability. To achieve this aim, it is essential that directors demonstrate their commitment to safety to the workforce.

Leadership of safety issues is fundamentally different to leadership of other business objectives because good safety performance is demonstrated by non-events (no accidents; non-occurrence of occupational ill health), unlike objectives such as productivity, profit, and turnover (which are easily assessed by objective measures). O'Dea and Flin (2003) suggest that this might explain why safety typically gets less attention at board level than other more tangible issues – because, if a company does not have a high accident rate, the directors may not appreciate the important influence safety and health issues have on other business objectives. Accordingly, directors are in a unique position to positively change the safety performance and safety culture of an organisation, which is why they are being targeted to take positive action on health and safety issues.

O'Dea and Flin also suggest that effective safety management requires different leadership behaviours compared to management of other business objectives because a good safety record typically results in non-events, which are not self reinforcing. Leadership behaviours for safety management require communication skills that promote employee motivation and participation.

4.2 DIRECTOR LEADERSHIP IN PRACTICE

Section 3.1 has indicated that director leadership of health and safety is not only an essential part of an effective health and safety management regime but also part of effective business management. This Section discusses whether directors actually lead health and safety in the manner described above.

Smallman and John (2001) have undertaken one of the few pieces of work in this field in the UK, which was not commissioned by the HSE (it was commissioned by the British Safety Council). They surveyed 102 directors on their attitudes towards occupational health and safety and its relationship to corporate reputation. They then carried out a further eight in-depth interviews to explore the directors' attitudes and priorities with regard to health and safety, and organisational practices in occupational health and safety at a senior level. In summary, it was shown that directors did view safety as being an integral part of their management plans, and a significant performance determinant; they regarded it as important to lead on health and safety from the top of an organisation. The eight directors interviewed felt that a poor health and safety record could potentially impact on corporate reputation and profits, by making one or more key stakeholders view the company less positively. However, the view was also expressed that an excellent safety record does not enhance a company's reputation.

In an Australian study of small firms (KPMG, 2001), it was found that over a third were relying on informal approaches to managing health and safety and the 'common sense' approach to safety instead of systematically identifying and controlling the risks. Research carried out by HSL highlights the fact that in small firms owners and managers often work alongside employees; each can observe the others' behaviour and seek or provide information as necessary. Owners of small firms can act as role models to their employees in communicating safe working practices (O'Hara & Dickety, 2000).

Pearson (1991), cited in Jeffcott et al. (2005), demonstrated that there can be differences in how senior executives and safety managers perceive how health and safety is managed within the organisation. The study conducted by Pearson indicated that senior executives' involvement in health and safety is not always viewed so positively by safety managers. Pearson questioned senior executives and health and safety managers on the level of senior executive involvement and commitment to health and safety. Results showed that, although 85% of senior executives claimed that they or another director always attended safety meetings, only 59% of the health and safety managers agreed that this was the case. In addition, almost a third of the health and safety managers believed that health and safety was rarely or never a priority of senior management and a further 24% were not happy with the support they received from senior executives. The managers felt that senior executives could be more proactive with regard to health and safety in general, more supportive of new procedures and policies introduced by managers, and could provide more resources (human and financial).

O'Dea and Flin (2003) highlight the influences that directors have on middle management and supervisor level staff. They argue that director commitment to health and safety is critical in shaping how front line staff deal with 'safety versus productivity' demands. This view is also supported by Rundmo and Hale (2000). 'Safety versus productivity' refers to the perception by staff that in order to do a task safely, some element of productivity must be sacrificed, e.g. the task will be slower, or less productive in some other way. Staff may feel under pressure to maximise productivity at the cost of decreasing safety. How they cope with these demands is strongly influenced by the safety culture and climate of the organisation in which they work, which is strongly influenced by directors' attitudes to safety. It is for these reasons that so much attention has recently been given to the health and safety duties of directors. Directors exert influence over the whole organisation, shaping the way managers

interpret health and safety policies and promote healthy and safe attitudes within the workforce. Cox and Flin (1998) found that the main influence on employees' safety commitment (in a study of the UK manufacturing industry) was how workers perceived 'management concern for safety'.

A study consulting UK health and safety regulators on their approach to addressing health and safety management in duty holders found that regulators considered it important to engage with senior managers because of the impact they have on the control of resources, and because of the influence they hold over the status of health and safety within the organisation and its safety culture (O'Hara et al., 2004).

The importance of director leadership in health and safety was also acknowledged in the Cullen report (2001), which recommended that the organisational policy of rail companies should ensure that senior management spend adequate time on safety issues with front line employees.

A UK study by Wright et al. (2003) found that 38% of directors interviewed in 2001, and 26% of those interviewed in 2003, delegated responsibilities for health and safety indicating a general decrease in delegation and an increase in the numbers of companies who are directing health and safety at board level. Delegation of health and safety duties was considered to be a method for increasing workers participation in, and knowledge of health and safety, which in turn could contribute to them taking increased responsibility for their own health and safety, but the evidence presented by Wright et al. seems to suggest that, increasingly, directors are now choosing to direct health and safety at board level. In their 2003 survey, Wright et al found that 82% of companies that had responsibility for health and safety at board level had heard of the HSC guidance 'Directors' responsibilities for health and safety'.

However, health and safety competence is a potential issue for those directors getting more involved in health and safety. Fuller (1999) reported findings from an audit programme of a UK water utility company. He found that managers had had little training in the area of health and safety, and had only a limited understanding of their legal and corporate responsibilities for health and safety. This might partly explain why senior managers do not always appear to lead strongly on health and safety: commonly they are appointed from disciplines other than health and safety and may be unaware of their influence in this area of operations. Accordingly, increased training of directors should result in their increased competence in managing health and safety; this could be a key target area for HSE activity.

4.3 SUMMARY

This section discussed the importance of director leadership and the reality of director leadership. There is evidence that leadership at director level has a real impact on health and safety throughout all levels of the workforce. It was argued that director leadership of health and safety is an essential element of an effective safety culture and that it had a real effect on attitudes to health and safety throughout the organisation. However, specific skills to promote employee motivation and participation are required of directors leading on health and safety. Section 4.2 showed that directors generally valued health and safety and felt they played an active role in managing it, although this was not always recognised by their workforces. It is argued that because directors can see health and safety as different to other business objectives such as profit and turnover, this can explain why they might give safety less priority. However, there are some companies who currently do not lead health and safety from the board; this may be partly explained by directors' competence and knowledge in the field of health and safety or a deliberate strategy of delegation.

5 FACTORS INFLUENCING DIRECTORS BEHAVIOUR

The way in which directors behave in relation to managing health and safety is influenced by many factors. Their role within the organisation; the industry sector; type of operations; prevalence of accidents, incidents and ill health; and their personal interest and knowledge of health and safety will all influence the way in which they behave. This section discusses the main influences on the behaviour of directors in relation to health and safety management. It examines the extent to which compliance with health and safety legislation influences behaviour, and what other significant drivers of health and safety behaviour exist.

5.1 COMPLIANCE WITH HEALTH AND SAFETY LEGISLATION

Under existing UK health and safety law, there is no specific requirement for directors to take personal responsibility for health and safety management in their organisation. Despite this, as mentioned in Section 3.1, Directors have been prosecuted for failing to manage health and safety appropriately under the Health and Safety at Work Act (1974) (HSE, 2005a).

O'Dea and Flin's (2003) work examines the role of managerial leadership, at director, middle manager and supervisor level, on safety outcomes. They found that legislation does motivate director level staff to take action on health and safety issues.

Gunningham (1999) conducted a literature review commissioned by the Australian NOHSE (National Occupational Health and Safety Commission), which aimed to discover the key drivers for CEOs (Chief Executive Officers) and supervisors to undertake activities associated with good health and safety outcomes. Gunningham argues that the most significant influence on directors' behaviour is regulation and that CEOs will act to change behaviour if faced with a credible threat of regulation, especially where individual directors can be held personally accountable.

A further study commissioned by the Australian NOHSE (KPMG, 2001) ranked regulation as the second most influential factor on directors' behaviour towards health and safety, after moral responsibility. However, it is unclear how much influence can be attributed to compliance with legislation specifically, and how much influence is given to the fact that directors could be held personally accountable.

An additional consideration in relation to compliance with health and safety legislation is whether legislation that is not backed up by a credible threat of enforcement action would motivate directors to comply. Since the area of director leadership is likely to be difficult to enforce on (as evidenced by the small number of prosecutions of directors using existing legislation), there is a real possibility of legislation without a credible threat of enforcement. It could be argued that this is the current situation in the UK, given the small number of prosecutions. This might also indicate that the current levels of legislation do, indeed, act as a substantial motivator for directors' behaviour.

Gunningham cites planned or threatened legislation as a key influence on companies, as well as actual legislation that is already in place. This is an example of how companies plan for changes in the law; clearly it is better to have systems in place to cope with a new law before it becomes mandatory. The House of Commons Work and Pensions Committee report (2004) states that it is probable some companies have already changed the way in which they manage health and safety because, as stated in Action point 11 of 'Revitalising Health and Safety' (2000) Ministers have been intending to introduce new legislation regarding Directors' responsibilities when parliamentary time allows.

An additional issue raised by Gunnigham is that regulation must be perceived as fair and reasonable by companies in order to be effective. If it is not perceived so, or treated as a fair standard to which companies can aspire, companies will not be motivated to comply with the law.

Ashby and Diacon (1996) conducted a postal questionnaire survey, which examined what motivates large UK companies to take measures to reduce the risks of occupational injury to their employees. They surveyed corporate risk and finance managers from a population of the UK's 350 largest companies. Respondents placed most emphasis on ensuring compliance with regulations and the avoidance of legal liabilities. This study further supports the notion that companies are motivated to comply with health and safety law. However, it should be noted that Ashby and Diacon's study was conducted in 1993 and directors were not subject to any specific requirements for health and safety in their companies. Yet they still undertook positive actions to comply with the law. This could suggest that the existing legislation is sufficient to motivate directors to monitor health and safety performance of their companies and take action where required. This might add weight to the notion that the current levels of legislation may, indeed, act as a substantial motivator for directors' behaviour.

It is unclear to what extent additional legislation regarding directors' responsibilities for health and safety would have in terms of increasing directors' motivation to proactively engage with health and safety management and as a consequence contribute to a reduction in accident, injury and ill health rates. Pearson (1999), cited in Collins (2002), found that 43% of managers said they would invest more in health and safety if forced to do so by HSE and that 43% also said they would invest more in health and safety if they had a serious injury or fatality. This suggests that some organisations could invest more in health and safety than they currently do.

Most authors who have explored this area take the view that compliance with legislation is one of the greatest motivators for director action on health and safety management. But the way in which this is interpreted varies. Some authors argue that new legislation, giving directors increased responsibilities, should be introduced as this would improve health and safety management further. Other authors infer that existing levels of legislation already appear to act as a motivator to directors. It is unclear, therefore, whether introducing new legislation would further improve health and safety performance by way of more effective health and safety management or reduced accident, injury or ill health rates.

5.2 PROTECTION OF REPUTATION

Motivations to protect the organisation's reputation are difficult to separate from the issue of legislation as non-compliance with legislation may threaten the organisation's reputation. Furthermore, there is also the difficulty of separating corporate and personal reputation and their respective influence on directors. Directors may be strongly motivated to maintain their personal reputation, and act to protect that by protecting the corporate reputation of the organisation they work for. Wright et al (2005) found fear of enforcement is intertwined with fear of reputational damage. This restates the point made by Wright in 1998 that fear of loss of corporate credibility influences management to initiate health and safety improvements. O'Hara et al. (2003) found that small and medium sized enterprises also cited protection of reputation as a reason to engage with health and safety. In Australia, a similar study of environmental legislation (Streets, 1998) found that pursuing directors and managers would promote improved corporate performance because directors would be personally motivated to avoid the consequences of a prosecution (criminal conviction, fines or prison) and the stigma of the prosecution.

Gunningham (1999) argues that corporate credibility and image is the next most powerful driver of corporate and CEO behaviour after regulation/ enforcement. In a review of UK health and safety regulators' approach to health and safety enforcement O'Hara et al (2004) cite a Local Authority who regard reporting of prosecutions in local press as an effective use of resource for promoting compliance. The Local Authority gave examples of having advertised successful prosecutions of local companies. Wright et al (2005) found newspaper reports covering serious incidents and the requirement to advise customers of incidents as the best way of increasing the threat of reputational damage.

Wright et al. found the second most effective method of increasing the threat of reputational damage was a requirement to report health and safety in company reports. Peebles et al. (2002) conducted a survey of top UK companies (in terms of turnover) and found that less than half of the companies gave details of health and safety related information in their annual reports. The reasons why companies report or fail to report health and safety information in company reports are not yet fully understood but may be linked to reputation – either the promotion of good performance or management systems or the avoidance of reporting if the area is a known problem for a company. It may also be an indicator of the standing of health and safety within a company: an organisation may be more likely to report on health and safety matters if it is considered important within the organisation. Peebles et al. recommend further research to explore whether there is a link between reporting of health and safety information in annual reports and health and safety performance.

The 'Captains of Industry' survey (MORI, 2000) found 83% of senior business leaders questioned said they felt that reputation was 'very important' to their companies. Four out of five questioned felt that health and safety has a significant impact on reputation, and they expected this influence to rise in the future. This survey provides support for the conclusions reached by Gunningham.

Smallman and John (2001) conducted in-depth interviews with directors and found that directors considered that a good safety reputation does not enhance reputation, although they were very aware that a poor safety record would damage their reputation. This is consistent with much of the research, which has focussed on what causes a bad reputation, rather than the promotion of a good reputation.

Overall, research has shown that reputation is an important consideration for directors, who are fearful of the potential media coverage and other reputational damage resulting from health and safety incidents.

5.3 FINANCIAL BENEFITS/ CONSIDERATIONS

'Safety pays' is a term used to describe an argument, which proposes that companies who proactively manage health and safety bear fewer costs (e.g. O'Dea & Flin, 2003, Hopkins, 1995). It is argued that it is financially beneficial for a company to invest in health and safety and that any costs to improve health and safety (e.g. investment in new equipment, new PPE, new staff shift patterns) will be outweighed by the financial benefits of improved health and safety (e.g. less sick pay costs, improved staff retention, less recruitment costs, improved productivity). Wright et al (2005) states that 'evidence that good health and safety improves productivity' is the top ranked incentive for improving health and safety.

HSE places considerable emphasis on the 'safety pays' argument in its promotion of effective health and safety management, as evidenced by a national advertising campaign across many forms of media in early 2005. HSE has supported the production of case studies illustrating the business benefits of health and safety. These case studies highlight a range of benefits, all of which are likely to have an impact on bottom line factors. Benefits attributed to director

leadership on health and safety include: enhanced corporate reputation; improved industrial relations, improved morale; improved retention; reduced absenteeism; and, increased productivity. The case studies are drawn from a range of organisations and are available on the HSE website (www.hse.gov.uk/corporateresponsibility/casestudies/index.htm).

O'Dea and Flin (2003) question the 'safety pays' argument per se as a motivator for managerial action and suggest that if the 'safety pays' argument is promoted that not only should financial profit be emphasised but other less tangible benefits such as reputation, quality, staff satisfaction and morale should be promoted in parallel. Such factors are likely to influence profit but are more difficult to measure directly and often are not brought to the attention of company directors. Gunningham (1999) also pointed out that the 'safety pays' argument does not always work as an effective motivator and recommended using 'safety pays' as only one potential lever for action and not over relying on it.

KMPG (2001) rated greater productivity and lower workers' compensation premiums as key outputs of successful health and safety management. Improved morale and greater control over production were also cited as business benefits of effective health and safety leadership. 70% of CEOs surveyed agreed that improving health and safety procedures reduces costs. The KMPG study reviewed Australian practices, and although insurance and compensation play a greater role in Australia than the UK, it is argued that the insurance industry in the UK is currently perceived to be exerting a greater influence than before, especially in some industries (Wright et al., 2005). KPMG (2001) recommend that governments need to strengthen the commercial incentives provided by workers' compensation premiums. The perception of a culture of litigation within the UK, with increasing numbers of advertisements encouraging people to seek compensation following accidents, may mean that UK directors are motivated to take action to avoid potential personal injury claims.

Hopkins (1995) argued that 'safety pays' will not work where companies are not motivated by economic reasons, for example, charities that are not motivated to make profit and the public sector. For very well resourced companies financial arguments may not be the prime motivator. Cost savings can be achieved in areas other than health and safety, so even if there is a pressure from compensation costs to reduce claims, this does not mean that savings will necessarily come from improvements in health and safety. Compensation costs may be regarded as a routine business costs rather than a priority for action and reduction. Potential savings through improved OHS may not attract the attention of busy management teams, unless a good case is made for it. Safety officers and representatives can play a significant role in drawing the directors' attention to safety improvements that could be made. Safety officers and representatives are likely to monitor safety trends, and when management is regularly fed such information, it forms a resource to base decisions on and measure performance.

Gunningham (1999) gave an example where companies in Australia can achieve self-insurer status if they can demonstrate an adequate safety management system. This could be an interesting motivator for some companies, in industries where insurance premiums are a substantial cost. However, in other industries they may not have such a great motivating effect. Directors' attitudes towards this idea will also be influenced by the culture in which they work, and so the potential to reduce insurance premiums may not influence British companies in the same way as Australian companies. However, as Wright et al. (2005) observe, the financial climate in the UK is changing and the financial incentive provided by insurance premiums is growing.

Prosecution and resultant fines could be argued as an incentive for improving safety, but significant fines are rare, and the deterrents to prosecution tend to be reputational (the shame of appearing in court, the concern to avoid moral condemnation, the fear of bad publicity) rather than financial (Hopkins, 1995).

In Australia, supply chain pressure has been used effectively on government construction projects. One project in New South Wales required sub-contractors to comply with a specified safety system, and these requirements constituted the leading motivators for firms to address safety. Similar schemes operate in the UK construction industry (e.g. 'passport schemes' which are used to ensure the competency of contractors by demonstrating staff have attended safety awareness training. Such methods can be a very effective method for targeting small and medium sized companies. In a study of good health and safety practice in small and medium sized enterprises, O'Hara et al. (2005) found that health and safety documentation was of direct benefit to businesses because it helped them to gain contracts from companies requiring this information. An example was provided where a company felt that having safety and health documentation made their prices slightly higher than their competitors and as a result thought they had lost some work, but, overall, they thought it had led to the company increasing their business because larger companies knew they could work in a safe and healthy manner.

Overall, it has been shown that proactive management of health and safety can have financial benefits in a variety of areas for an organisation. This may become an even greater influence in the UK in years to come, as insurance costs rise and premiums are increasingly tied to health and safety performance. Supply chain pressure is a strong lever for improving health and safety in some organisations who must demonstrate effective health and safety management in order to win work and remain successful.

5.4 MORAL RESPONSIBILITY

The KPMG report (2001) found that a sense of moral responsibility for the health and safety of their colleagues to be the most important factor to influence CEOs and supervisors. KPMG (2001) found, that in small businesses in Australia, moral responsibility was cited as a reason for leading health and safety at director level. Wright (1998) found that 'a belief that it is necessary and morally correct to comply with health and safety regulations' was a key factor influencing management to initiate health and safety improvements. This is to be expected in a smaller business as it is likely that the managers and directors will know the staff personally, unlike in large organisations. In larger firms the moral case is expressed in terms of societal values (Wright et al, 2005).

5.5 OTHER INFLUENCES

Gunningham (1999) argues that OHS management systems can play a valuable role in promoting health and safety, especially their role in overall safety policy.

KPMG cited benchmarking of health and safety performance as a motivator for directors' involvement in health and safety. There are two key reasons for this: companies can use benchmarking as a method for comparing their performance to similar companies working in the same sector; they can also use benchmarking to set targets for director performance, so that directors can make personal gains if targets are achieved. KPMG found varied use of benchmarking and target setting across different Australian states. HSE promote benchmarking and provide guidance for organisations interested in benchmarking their health and safety performance (www.hse.gov.uk/pubns/indg301.pdf).

Stockols, McMahon, Clitheroe and Wells (2001) showed how knowledge and training play an important role in companies' health and safety activity for small and medium sized companies. Their study, based in California, took 47 managers from small and medium sized companies and trained them in health and safety law. One year on, they measured the

companies compliance with the law, and found a noticeable improvement from the baseline measurement of the participating companies.

Hopkins (1995) suggested that routine visits from the regulator not relating to accidents, incidents or breaches may get management attention for safety improvements which otherwise might not be made. Hopkins also suggested that in unionised workplaces the threat of strike action and associated costs may be a motivator for directors to proactively manage health and safety.

Wright et al (2005) identified the following factors as not currently likely to motivate companies to comply with health and safety:

- Loss of investment or bank loans;
- The need to satisfy trade unions or employee expectations; and
- The need to satisfy customer health and safety demands/ insurance demands (however, a rise in insurance costs was rated as a possible motivation so insurance should not be ignored as a potential motivator of companies).

This suggests that there is still scope to ‘develop’ these ‘levers’ specifically in relation to customer demands (supply chain pressure) and insurance premiums.

5.6 SUMMARY

This section outlined the key motivators for directors to take action on health and safety issues. It was shown that compliance with legislation is a strong motivator for directors. However, the evidence in this area is somewhat confusing because some authors use this point to argue that new legislation should be introduced to increase directors’ responsibilities for health and safety. On the other hand, there is evidence that directors are already motivated to comply with legislation, and so it is not clear whether increased legislation would lead to more effective health and safety management.

Protection of reputation is another key influence for directors. Both their corporate and personal reputations can be affected by an adverse health and safety event. There is also considerable evidence that there are financial benefits to be gained from effective health and safety management: it can lead to general business benefits such as increased production, staff retention and morale, as well as the avoidance of cost associated with poor health and safety management.

It was noted that the influences in small and medium sized companies may be different to those in large companies where the bulk of research has been conducted. Small and medium sized companies often place a higher value on the moral responsibility to ‘look after’ colleagues and are often motivated to engage with health and safety because of supply chain pressures handed down to them by large companies.

6 DISCUSSION

The benefits that can be derived through director leadership and the management of occupational health and safety has been a topic of investigation and debate for several decades. Much of the recent interest in the UK stems from calls for changes to health and safety legislation from bodies advocating the introduction of corporate responsibility and corporate manslaughter laws. Specifically, there are calls for legislation requiring organisations to assign responsibility for health and safety to a named director, as described by HSC's guidance document 'Directors' responsibilities for health and safety' (INDG343).

6.1 BENEFITS AND DISBENEFITS OF NEW LEGISLATION

The aim of introducing new legislation to regulate directors' responsibilities for health and safety would be to improve the management of health and safety in companies, public bodies and other organisations. The introduction of such legislation would raise the profile of health and safety at board level, which would be beneficial to most organisations. It could be expected that this would benefit health and safety management in most organisations, given the potential influence of decisions at this level in promoting health and safety and allocating resources. Leadership from the top should also have an impact on each organisation's health and safety records, and may bring about a more positive safety culture within the organisation.

The Better Health at Work Partnership Strategic Programme promotes voluntary measures to encourage greater director leadership on health and safety. The HSC strategy stresses the role of director leadership in improving health and safety performance. Following their assessment of the HSC guidance (Directors' responsibilities for health and safety, INDG343), Wright et al. (2005) concluded that further legislation is not needed but only revitalisation of current guidance backed up with case studies. However it should be noted that the study focused on large companies and does not represent the views of directors of small and medium-sized enterprises (SMEs) in the UK, who together employ a large workforce but may have different working and health and safety arrangements. Also, the study by Wright et al (2005) could have been subject to response bias in that directors responding may have been motivated to give the impression that safety is competently managed because they do not want increased levels of legislation

The House of Commons Work and Pensions Committee report (2004) suggests that company directors should have a legal obligation to ensure their company is complying with safety law. If there was not a measurable difference in levels of health and safety then there would be no benefit in introducing a new law. 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. A study carried out by the Eagle Star Insurance Group shows that only 30% of UK firms comply fully with health and safety regulations (Corporate Cover, 1994), cited in O'Dea & Flin, (2003). However, these figures may have changed since the study was conducted.

6.2 CONSIDERATIONS OF INTRODUCING NEW LEGISLATION

The overall aim of new legislation, were it to be introduced, would be to improve the management of health and safety. Can this be achieved? Different parties have different opinions about this. The CCA (Davis, 2005) argued that regulation of directors' duties for health and safety is the only method that will ensure organisations to take action.

A new law could increase board members' awareness of health and safety issues and the impact that they have on their company. The impact on different organisations could be very different. In those organisations that already have a good health and safety management system, and good levels of corporate social responsibility and an effective safety culture, the implementation of a new law may not have much effect, as the company is already competent in managing health and safety and has positive leadership of health and safety matters.

Measuring the impact of such legislation would also be a challenge, in order to declare it a success or otherwise. KPMG (2001) found that Australian Health and Safety Jurisdictions in different states had generally been poor in measuring the impact of introducing programmes of legislation, which means that there was very little objective information about how best to motivate directors to improve their firms' health and safety performance.

The new legislation could be difficult to enforce. While it would be relatively easy to ensure every company appointed a named director of health and safety, it would be harder to ensure that the boards of organisations were prioritising safety and taking action on health and safety matters. There is an argument that, because such legislation would be difficult for regulators to effectively enforce, it should not be introduced, as companies who do not comply are unlikely to experience any consequence for inaction.

Another potential pitfall associated with any new legislation could be its unpopularity with companies. Because of the high levels of publicity given to corporate manslaughter laws and recent prosecutions, company directors might be very cautious about appointing a named director of health and safety because of prosecution fears. The Private Members Bill put forward by Stephen Hepburn (Beale et al., 2005) proposed to place a 'general duty' on all company directors with regard to health and safety. Although the appointment of a 'Health and Safety Information Director' is required, they would not be individually responsible for health and safety, only for providing the board with the information so that the directors can all carry out their safety duties. This addresses the Institute of Directors concern that individual directors may be made scapegoats, making it difficult and costly to recruit directors for the role.

6.3 CONCLUSION

It is difficult to draw firm conclusions when there is very limited empirical evidence on the subject area. Overall, there is little research on directors' views on health and safety – most studies have looked at managers and supervisors further down the chain of command. The majority of research has focused on employees' attitudes to health and safety.

There is scope for HSE to strengthen its case for non-legislative measures by building a more persuasive argument that directors' responsibility for health and safety has a wide impact across the performance of an organisation. There is also scope for the development and strengthening of a variety of levers: the threat of legislation, the threat of (adverse) publicity, and supply chain pressure being just three examples. There is also potential for increased education and training of directors in health and safety, which has been shown to lead to increased director leadership and ownership.

HSE are currently providing support for voluntary leadership of health and safety by directors. For example, the case studies of organisations who place a strong emphasis on director leadership of safety. Other work recently commissioned by HSE includes an examination of the UK legal framework for health and safety. This work will examine the use and the effectiveness of the Company Directors Disqualification Act (1986) as a legal sanction for directors convicted of health and safety offences (HSE Tender T/6140, HSEb). Further work looking at legislation relevant to directors' responsibilities for health and safety

abroad is also underway (HSE Tender T/6174, HSEc). Additionally, a third phase of the director's survey is underway.

If 'corporate killing' legislation is introduced (as the Government has been intending since 1997) it could have a wide impact on the area of director responsibility for health and safety. It is likely that such legislation would greatly increase the profile of directors in leading health and safety. This may lead to directors' taking increased interest in, and responsibility for, health and safety, even if legislation regarding directors responsibilities, is not introduced.

7 RECOMMENDATIONS

- There is a widely held acceptance of the potential effectiveness of Director Leadership schemes for bringing about improvements in OHS and many large UK companies are now taking director leadership of safety seriously. However, not all companies are aware of the HSC publication ‘Directors’ responsibilities for health and safety’. HSE should therefore continue to publicise this leaflet, the cases studies on director leadership and other relevant publications.
- There is limited empirical evidence regarding director leadership of health and safety, specifically in relation to small and medium sized enterprises, the public sector, and non-unionised workplaces. There is scope for further research to provide more detailed evidence.
- The available literature suggest that directors may lack the specific competence (knowledge and skills) required to lead effectively on health and safety, and that rectifying this may improve organisations’ health and safety performance. The issue of training for directors merits further attention.
- Before any legislation to give directors responsibilities for health and safety is introduced, full consideration should be given to its impact on organisations. Particular attention should be paid to small and medium sized businesses to ensure there is not a disproportionate burden on them.
- Consideration should also be given to how to enforce any new legislation, and how its success will be measured.

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