

SAFETY: ON THE AGENDA

In a rapidly changing business environment, health and safety can slip to the bottom of the board agenda, with serious, unintended consequences for directors and their organisations. SHP offers three perspectives on what directors ought to know about avoiding criminal charges for health and safety failings.



THE LEGAL VIEW

Not one of the directors or senior officers we have defended following a major accident ever dreamt they would find themselves on the wrong side of the law. Yet, once tragedy strikes, everything changes. Directors embroiled in a criminal investigation will simultaneously be trying to deal with the devastating human, financial and reputational cost of the accident.

reason for an accident might appear as employee error or the breaking of a rule/procedure, criminal courts often link the root cause to a failure by senior managers to recognise the impact of their commercial decisions on safety.

This is particularly relevant with the country emerging from a recession, a time that has statistically been shown to result in more accidents.

Redundancy programmes/restructuring during a recession may lead to the loss of

that losses from slips/trips cost employers an estimated £5m every year; on top of this sick days cost an estimated £693 per employee per year.

Organisations with a positive safety culture report lower absenteeism, staff turnover and wage bills, as well as improved turnover and customer satisfaction. Investing in an effective safety culture can benefit the bottom line.

As lawyers advising directors facing criminal prosecution for safety offences, we make this plea: please view the start of the economic recovery as an opportunity to re-assess your safety culture, ensuring the decisions you made during the downturn (and those you are about to make) do not inadvertently put safety at risk.

By implementing a strong safety culture as the economy recovers, you will engage your employees, protect your business and, should an accident occur on site, be in a stronger position to challenge any prosecution. ■

“Directors must be aware that, while the reason for an accident might appear as employee error or the breaking of a rule, criminal courts often link the root cause to a failure by senior managers to recognise the impact of commercial decisions on safety”

Assuming their organisation survives, they will spend the next two years (or longer) investing significant management time and cost in recovering financially, emotionally and reputationally.

They must also budget for a fine, which will be set to “have a significant impact on the directors” and can be hundreds of thousands of pounds.

Directors must be aware that, while the

experienced workers, skills or supervision, which are often not mitigated with appropriate training.

As work increases, businesses might take a cautious approach to recruitment, inadvertently putting their staff under increased pressure and tempting them to cut corners.

While fatalities and serious injuries hit businesses financially, HSE figures reveal

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THE COMPANY DIRECTOR'S VIEW

As a company director, it is easy to lose track of what is important and focus on the metrics used to judge the performance of the business and directors alike.

Typical metrics such as profit, loss and sales provide the director with information to make business decisions. But, as a director, the amount of information on safety performance varies considerably. It is often no more than simple lag indicators that reflect poor performance.

Directors are rarely provided with information on the maturity of the safety culture, which, when combined with a focus on the key metrics, puts safety culture in a blind spot.

Directors are not safety experts. This often results in responsibility for safety being delegated. This sends out a message to employees that safety is not important and distances the director from what really happens in the business.

The combination of focusing on what is perceived to be important, the safety culture blind spot and risk around delegation means that a director can make no assumptions about safety culture and performance. It is crucial that directors



take ownership of safety and provide strong leadership.

Getting directors to take ownership of safety is about positioning them so they 'want to do it' as opposed to 'have to do it'. A good starting point is to understand what has happened in other organisations and be mindful of what could happen, as opposed to assuming "nothing has gone wrong so far, so everything is OK". The next step is

to develop strong safety leadership. Finally, a strong safety culture should not be viewed as simple compliance.

Directors should ask themselves the following questions:

1. Communication – is it one-way or by means of consultation?
2. Learning organisation – is the organisation good at learning from incidents?
3. Safety v production – do production goals compromise safety?
4. Commitment to safety – are your managers committed to safety?
5. Trust – is there trust between leaders and staff?
6. Safety – do staff believe that working safely is the natural way to do things?
7. Safety participation – are staff encouraged to be involved with safety?

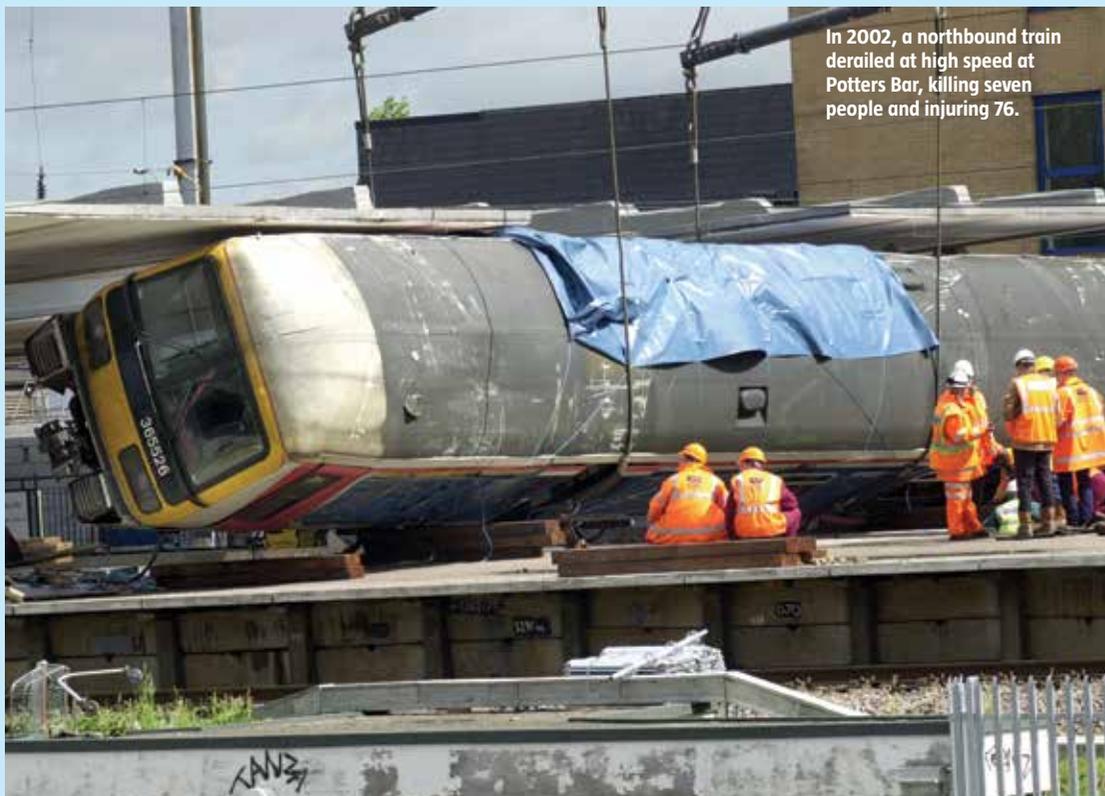
The costs of developing a good safety culture are usually visible to the director, but the costs of getting it wrong may be seen too late. Any incident will have a commercial impact, ranging from the costs in dealing with an incident through to the costs associated with criminal and civil litigation.

However, the impact can be far greater. *The Guardian* reported the demise of Jarvis

Rail, a company once worth £1bn, as follows: "The company has been on a downward, and often turbulent, spiral since admitting liability for the accident in 2002 at Potters Bar, in which seven passengers died.

"Jarvis was responsible for maintaining a stretch of track on which a set of points broke and derailed the train. Jarvis felt obliged soon afterwards to relinquish its rail maintenance duties."¹ ■

Tony Leach is group SHEQ director at Keepmoat



In 2002, a northbound train derailed at high speed at Potters Bar, killing seven people and injuring 76.

1. www.theguardian.com/business/2010/mar/25/jarvis-rail-maintenance-administration



THE CONSULTANT'S VIEW

On 23 March 2005, a massive explosion shook BP's refinery at Texas City just outside Houston, Texas.

In the tragedy, 15 workers were killed and dozens seriously injured in America's worst industrial accident for years.

A second catastrophic incident involving the same company (the blow-out which

destroyed the Deepwater Horizon drilling ship in the Gulf of Mexico) almost brought the international petroleum giant to its knees.

At first glance, the cause of the Texas City disaster looked simple: operators failed to follow the prescribed procedure for restarting part of the plant after maintenance.

However, investigations by the US Chemical Safety Board and by a panel of experts appointed by BP revealed a more complex story.

They both identified that the culture of the organisation played a significant part in the events leading to the disaster.

This conclusion – that culture is central – is found time and again, not just in relation to front-page disasters such as Texas City but in case after case involving fatalities or serious injuries in the workplace.

Culture in this context is often misunderstood and misconstrued as the mindset or attitude of employees rather than its proper definition of the norms and practices of the organisation.

Definition here is important, particularly when looking at the role of management. As directors, owners or senior managers within an organisation, we have only a limited

influence when it comes to the attitudes of the workforce.

When it comes to the norms and practices of the organisation, however, we have a pivotal role to play.

Whether consciously or unconsciously, management creates the norms and practices of the business. It does this through formal rules, policies and procedures and through the stream of informal messages, priorities and subliminal clues it gives the organisation.

If, for example, a director continuously talks about the importance of completing a task on time, does a norm or practice develop whereby on-time completion is routinely achieved by cutting corners or ignoring procedures?

If the answer is yes, it probably has very little to do with the mindset or attitude of the workforce and everything to do with the expectations created by management.

Most directors/managers genuinely want to do everything they can to ensure their workers go home safely every day. But many confuse safety with compliance, creating a culture that focuses purely on the latter.

When on the shopfloor or the construction site, they tend to look out for non-compliance (with rules, requirements for PPE and so on) but overlook those less visible indications that safety may be being seriously compromised (by pressure, poor planning, inadequate resources, supplier selection and so on).

A real safety culture is more than skin deep. It involves constantly looking for what could lead to the norms and practices becoming compromised or degraded. Doing nothing is not an option – a culture, of sorts, will develop.

The challenge for leaders is to create and sustain the right sort of culture, and recognise that they, and only they, are responsible for it. ■

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For more information on the authors – see page 4 for more details.

To be part of a national discussion on how senior officers can influence safety culture, email Jo at jforbes@dacbeachcroft.com or Mark at mark@lloydmasters.com

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The Deepwater Horizon oil spill began on 20 April 2010 in the Gulf of Mexico, and carried on for 87 days. The disaster claimed 11 lives.

