Britain: Calls to appoint safety directors conceal government inaction

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25 April 2002

Claims against directors for health and safety failures have risen by 175 percent in Britain since 1989. In the last year for which figures are available there were 656 deaths at work, with more than 180,000 injuries being reported to the Health and Safety Executive. There were also 600 deaths of individuals who had been exposed to asbestos during their working lives.

If only a small proportion of those deaths had occurred in one incident, it is not difficult to imagine the outcry that would arise followed by demands for a public inquiry and immediate legislation to remedy whatever had caused the incident. It is then laudable that the government's Health and Safety Commission (HSC) is trying to do something to curb employee-related accidents—or is it?

Last summer the HSC published its guidance *Directors' responsibilities for health and safety*, explaining how directors can ensure that their organisation has an active, effective approach to managing health and safety risks.

Laid out into five action points, the guidance sets out the roles and responsibilities of the board and its members in respect of health and safety risks arising from the organisation's activities. It also says that it is important that directors set out their expectations of senior managers with health and safety responsibilities and the arrangements for keeping the board informed and advised of all relevant matters concerning performance. It recommends that "each member of the board needs to accept their individual role in providing health and safety leadership for their organisation," and that "board members must recognise their personal responsibilities and liabilities under health and safety law," even when work is contracted out.

Most of the content in the guidance is simply reiterating existing regulations. Under sections 2 and 3 of the Health and Safety at Work Act 1974, employers are responsible for ensuring the health and safety of workers and for reducing risks to others affected by work activities (including members of the public). The law states that "where a 'body corporate' commits a health and safety offence, and the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, then that person (as well as the body corporate) is liable to be proceeded against and punished" (section 37, Health and Safety at Work Act 1974).

The law also states that an organisation needs to prepare, and make sure that workers know about, a written statement of its health and safety policy and the arrangements in place to put it into effect. These general duties on employers are expanded and explained in the Management of Health and Safety at Work Regulations 1999, which require employers to assess the work-related risks faced by employees, and by people not in their employment and have effective arrangements in place for planning, organising, controlling, monitoring and reviewing preventive and protective measures.

The HSC guidance differs from the law in one very important point. It recommends that every board should appoint one of their number to be a "health and safety director". "By appointing a health and safety director the organisation will have a board member who can ensure that these health and safety risk management issues are properly addressed," says the HSC guidance. "The chairman and/or CEO have a critical role to play in ensuring risks are properly managed and that the health and safety director has the necessary competence, resources and support of other board

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members to carry out their functions. Indeed, some boards may prefer to see all the health and safety functions assigned to their chairman and/or CEO. As long as there is clarity about the health and safety responsibilities and functions, and the issues are properly addressed by the board, this is acceptable," it adds.

Despite favouring the election of one of the board to become health and safety director, the HSC goes on to say that "the role of the health and safety director should not detract either from the responsibilities of other directors for specific areas of health and safety risk management or from the health and safety responsibilities of the board as a whole." The guideline is therefore a mess, given its insistence that all directors need to take responsibility for health and safety risks, but only one should take the rap if things go seriously wrong.

In any case, the HSC guidance will largely be ignored. Already, two of the country's biggest business lobby groups have slammed the idea that boards should appoint one of their number to take ultimate responsibility for ensuring safety in the workplace, as opposed to any form of collective responsibility.

The Confederation of British Industry (CBI) wrote in reply to the HSC's initial consultation paper, "rejecting the need for appointing an individually named director, which would detract from the team requirements for good health and safety standards to be owned by all."

The Institute of Directors (IoD) is even more critical of the HSC's confused guidance: "The IoD does not support the recommendation that boards of directors should appoint a specific health and safety director.... The IoD firmly believes that the board as a whole should take responsibility for health and safety standards and performance. Unfortunately there would be a risk of dilution were there to be a specific named health and safety director. Scapegoating might also occur and it might be very hard to recruit somebody to a position that might be regarded in some organisations as the sole guardian of such matters. There is also the issue that, in many small and medium-sized enterprises, for example, having to recruit a specific person at board level would be a very costly exercise. What is primarily needed is adequate management systems, overseen by the board."

On their face, the arguments of CBI and IoD make a better case than the government's. Nevertheless, arguments over corporate and director responsibility for accidents or deaths at work are largely academic. Despite government pressure to reduce employer-related deaths and accidents, and proposals by the Home Office to introduce new corporate killing laws that will carry severe penalties for offending directors, most industry leaders still put safety way down their list of business priorities. A new British Safety Council-MORI survey shows that generating profits for shareholders (84 percent) is the top objective for British business. Of the nearly 100 "captains of industry", mainly chairmen, presidents and managing directors of FTSE 500 companies, took part in the poll, only one in six, or 16 percent, singled out improving safety in the working environment.

When safety concerns are raised, many companies are opposed to doing anything due to the possible costs incurred. In January this year an engineering consultant who lost his job after raising health and safety issues concerning the handling of asbestos was awarded more than £40,000 after winning his unfair dismissal claim.

Albert Wardle, 62, was asked to return his hard hat, overalls and site boots when his contract with Cadogan Consultants Ltd was not renewed. The development and engineering consultancy claimed it was because of a downturn in work. But a Glasgow employment tribunal heard that during his employment Wardle had continually raised concerns about safety and training in relation to asbestos exposure. The tribunal concluded that there was no fall in demand for Wardle's services and that the real reason for his dismissal was his health and safety activities. The tribunal noted that none of the company's directors had any degree of comprehension concerning their responsibilities under the various health and safety regulations.

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