

Michael Large
HS Consultation 2007
Policy Unit
Institute of Directors
116 Pall Mall
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20 June 2007

Dear Mr Large,

Response to consultation on draft voluntary guidance on health and safety for directors

This letter is our response to the consultation organised by the Institute of Directors regarding the proposed draft guidance on health and safety for directors.

As you may know, the Centre for Corporate Accountability is a charity concerned with the promotion of worker and public safety. Our focus is on the role of state bodies in enforcing health and safety law, investigating work-related deaths and injuries, and subjecting them to proper and appropriate prosecution scrutiny.

Need for legally enforceable directors duties on health and safety

The CCA's view is that voluntary guidance would be nowhere near as effective in bringing about the kinds of changes in the conduct of directors in relation to health and safety as the introduction of legislation imposing these duties.

We would urge all those involved in drafting and commenting on the guidance to press the Health and Safety Commission/Executive and Government to bring forward legally binding duties on directors at the first opportunity.

The Health and Safety Commission (HSC) in December 2005 support the principle of changing the law on directors duties. This decision was based on research undertaken by Prof. Phil James, commissioned by the Health and Safety Executive (HSE), that concluded that legal change would be more effective than voluntary guidance. The report concluded:

“On the basis of the evidence reviewed in the report, there would seem reasonably good, evidence based, ground for trying ‘the legislative’ route, as

suggested in the CCA report. Thus this evidence does indicate that statutory requirements are a major and perhaps the main driver of director behaviour with regard to the issue of health and safety at work. It also indicates that directors are influenced by potential personal legal liabilities, even when the likelihood of their being penalised is low – a point which further suggests that the presence of such liabilities can have a positive impact notwithstanding the existence of a low probability of their actually being imposed – and suggested that many managers believe that beneficial consequences would flow from making directors more vulnerable to prosecution and the imposition of fines ... [O]n 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 section 37 of the Health and Safety [at work] Act”.

This report and a wealth of other evidence about how changing the law would increase the possibility of holding negligent directors to account supports the clear need for legally enforceable directors duties.

Further, the HSC in May 2006 decided to delay putting the legal option forward to the Government due to some pending reforms (namely the Corporate Manslaughter and Corporate Homicide Bill, the Companies Act, and work on alternative sanctions). All of these matters have now progressed to virtual resolution and none provide anything like legally enforceable duties on directors regarding health and safety law. We will therefore be calling on the HSC to advise the Government on reforming the law in this matter as soon as possible.

The draft guidance

Our primary concern about this guidance, as will be evident from our argument above, is that it should not be used to delay the urgent need to achieve legally enforceable positive health and safety duties for directors. We are particularly concerned that the time taken to produce and disseminate the guidance, plus any time given to see how the guidance works in practice, will simply delay further the reform needed to provide the most effective protection from death and injury due to health and safety breaches for workers and members of the public.

We would therefore urge all those involved to press for this legal change to be made at the first opportunity.

The Guidance itself is an improvement on the existing voluntary guidance. However we believe it should be much clearer on what information the Board should be provided at each board meeting, and what issues should be discussed as part of the regular item on health and safety. In our view this should include data on deaths, injuries, response, preventative action, communication with regulators, complaints by workers, concerns of managers and other matters.

It should also be clear what the key responsibilities are of a company/organisation in relation to health and safety – training, instruction, provision of safety equipment etc. This is essential, as directors' responsibilities only make sense in the context of the duties placed upon the organisation.

We also think that it would be useful to state that directors should take all reasonable steps to ensure that the organisation complies with the law. This was the language of the proposed new legal duty on directors that was proposed by the HSE – and it neatly encapsulates the relationship between the organisation and the directors.

On page 4, it should be made clear that risk assessments should not just be carried out but that they should be carried out by competent people and that the preventative solutions identified to reduce risk should be adopted where appropriate.

If you would like further information on CCA's views on this matter, please contact me at david.bergman@corporateaccountability.org, or on 020 7490 4494.

Yours sincerely,

David Bergman
Executive Director