

9 March 2001

Mr Steve Vinton  
Health and Safety Executive  
Strategy and Analytical Support Directorate  
Strategy and Management Branch  
2 Southwark Bridge  
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SE1 9HS

Dear Mr Vinton

**Health and Safety Responsibilities of Directors**

Please find enclosed the Association of Personal Injury Lawyers' response to the HSC consultation document regarding health and safety responsibilities of directors.

Please do not hesitate to contact me if I can be of any further assistance.

With kind regards.

Yours sincerely

Annette Morris  
Policy Research Officer

**HEALTH AND SAFETY COMMISSION CONSULTATION**

**HEALTH AND SAFETY RESPONSIBILITIES OF DIRECTORS**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS**

**8 MARCH 2001**

The executive committee would like to acknowledge the assistance of the following people who contributed to the preparation of this response:

Any enquiries in respect of this paper should be addressed, in the first instance, to:

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## **HEALTH AND SAFETY RESPONSIBILITIES OF DIRECTORS**

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 4900 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
  - To promote full and prompt compensation for all types of personal injury;
  - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
  - To alert the public to dangers in society such as harmful products and dangerous drugs;
  - To provide a communication network exchanging views formally and informally.
  
2. APIL welcomes the opportunity to respond to this consultation document, which seeks views on a draft voluntary code on the health and safety responsibilities of directors. In summary, APIL believes that if health and safety is to be “revitalised” and achieved within organisations, responsibility for health and safety should be imposed on directors by law. It is insufficient to merely hope that directors will comply with a voluntary code of practice. In addition, responsibilities of directors, whether imposed by law or encouraged by a voluntary code, should focus on creating, implementing and monitoring effective internal management systems to deal with health and safety issues.
  
3. It should be noted that APIL’s response intends to refer to board members within all types of organisations in both the public and private sectors. For ease of reference, however, the term “director” is used to refer to all such members.

## **THE LEGAL STATUS OF THE CODE**

4. The Health and Safety Commission, within this consultation exercise, is not directly seeking views on whether the voluntary nature of the draft code represents the correct approach to the issue of director's responsibilities. This is, however, a fundamental factor when considering the effectiveness of the code. There is little point, of course, introducing a voluntary code of practice if it is unlikely to be effective.
5. The HSC, by developing the code of practice, has demonstrated that it is believed that directors can, and should, play a key role in achieving health and safety within their organisations. APIL wholeheartedly agrees that directors positively influence the extent to which an organisation addresses issues of health and safety. Directors alone have the financial and organisational powers necessary to direct the implementation of systems to adequately address health and safety issues and to decide the extent to which health and safety should take priority over production. If these powers are not implemented, as is currently frequently the case, the organisation is unlikely to fully comply with the health and safety responsibilities placed upon it by law.
6. Health and safety responsibilities are currently placed upon legal entities, i.e. companies. Companies, of course being a legal fiction, will only achieve health and safety to the extent that its' officers or rather, directors, make it achieve health and safety. There are currently, however, no duties upon directors to do so. It is, therefore, no surprise that many directors do not address their minds to health and safety, nor that this results in poor health and safety within many organisations.
7. Given that it is agreed that directors are the key to achieving health and safety, it is imperative that any action taken in respect of director's responsibilities will be effective. It is extremely unlikely, however, that a voluntary code of practice will be so. It has always been open to directors to implement best practice on health and safety within their organisations and it is well known that they have consistently failed to do this. It is likely that those directors that

would take note of the voluntary code are already addressing issues of health and safety within their organisations. It is not believed that, realistically, the voluntary code will have any impact upon those that do not.

8. There is an argument for suggesting that the voluntary code should be introduced on a trial basis for a fixed period of time and that if it failed to be effective, stronger action, such as the imposition of legal duties, taken. If, as APIL believes, the code is not effective, too many lives will be lost or ruined in the mean time. For this reason, APIL calls for the imposition of legal duties on directors for health and safety.
9. It is only through the imposition of legal duties that ALL directors will be forced to take responsibilities for health and safety within the organisations of which they are in charge. This is certainly not to create legal duties for the sake of legal duty, to create work for lawyers or to increase the possibility of prosecution. Creating legal duties will require directors to use the powers they have to make health and safety a key consideration within their organisation's activities. It is hoped that the fear of the imposition of sanctions will convince directors that it will be more advantageous to comply with their legal duties than not. This, of course, depends upon regular monitoring and enforcement.
10. The most desirable means of creating such legal duties would be by way of a regulation under s. 15 of the Health and Safety at Work Act 1974. This would prevent delay due to problems of parliamentary time. It may then be appropriate to develop an Approved Code of Practice to guide directors on how to comply with the legal duties.
11. It is suspected that organisations representing directors will allege that the imposition of legal duties will create an expensive and unnecessarily burdensome regulatory framework on directors and organisations. This, however, is untrue. Organisations already have legal responsibility for health and safety and those in charge of organisations should already be ensuring that the organisation, i.e. the legal entity, complies with its' legal obligations.

Imposing legal duties upon directors will merely place duties on directors to effectively ensure an organisation fulfils its' health and safety responsibilities.

12. In addition, director's organisations are likely to state that imposing legal duties upon directors for health and safety would be unfair as it would be impossible for a director to monitor, and have knowledge of, all aspects of health and safety within their organisation. This would be, however, to misunderstand the nature of the legal duties that would be placed on directors. Such duties would not create vicarious liability for acts or omissions within the organisation but would require directors to take action, which is perfectly within their control, such as, the implementation of health and safety management systems and to create channels for the flow of health and safety information.
13. The above arguments relate to APIL's continuing support for the creation of an offence of corporate killing with an appropriate range of sanctions such as imprisonment, fines and the disqualification of directors.

## **THE SUBSTANCE OF THE VOLUNTARY CODE**

14. Subject to what is said above, APIL fully supports all that is said within the draft voluntary code of practice. In particular, APIL is extremely pleased to see the presence of the following three points:
  - that it is important that the health and safety ramifications of investment in new plant, premises, processes or products are taken into account as decisions are made. This will encourage a longer term pro-active and strategic approach to health and safety within the particular context of an organisation;
  - that directors should inform themselves of health and safety affairs within their organisation. For too long, the ignorance of directors has allowed

them to escape accountability and responsibility for seriously deficient health and safety;

- making health and safety the responsibility of each individual director and the board of directors or management board collectively whilst nominating a 'health and safety director'. This will ensure that there is no doubt within an organisation as to who is responsible for health and safety but will prevent the possibility of 'scapegoating'.

15. In addition to what is contained within the current draft code, directors should be made responsible for creating, implementing and monitoring systems of management that will address issues of health and safety within their organisation. This is the key power that directors have, as it is directors alone that can bring about or condone the resourcing of such systems and the organisational changes necessary. This will also ensure that safety is not just discussed in the boardroom but that what is discussed is implemented within the organisation.

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